UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	
CERTAIN DUCTILE IRON WATERWORKS	)	Investigation No.:
FITTINGS FROM CHINA	)	TA-421-4
	)	

REVISED AND CORRECTED COPY

Pages: 1 through 228

Place: Washington, D.C.

Date: September 26, 2003

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

THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	
CERTAIN DUCTILE IRON WATERWORKS	)	Investigation
FITTINGS FROM CHINA	)	No.: TA-421-4
	)	

Friday,
September 26, 2003

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

The conference commenced, pursuant to Notice, at 10:10 a.m., before the United States International Trade Commission, ROBERT CARPENTER, Presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Staff:

DIANE MAZUR, Supervisory Investigator
FRED RUGGLES, Investigator
BILL GEARHART, Attorney/Advisor
JOHN BENEDETTO, Economist
DAVID BOYLAND, Accountant
BILL GREENE, Industry Analyst

ADDITIONAL APPEARANCES:

IN SUPPORT OF IMPORT RELIEF:

DAVID GREEN
President
Ransom Industries, LP

APPEARANCES: (Continued)

IN SUPPORT OF IMPORT RELIEF:

DON WAUGAMAN
Vice President for Sales and Administration
Tyler Pipe Co.

JOEL BLAIR
National Sales for Utility Products
Tyler Pipe Co.

THOMAS TESKE
General Manager
East Jordan Iron Works, Inc.

WILLIAM KLINEFELTER
Assistant to the International President,
Legislative and Political Director
United Steelworkers Union of America

MICHAEL KERWIN
Georgetown Economic Services, LLC

BRAD HUDGENS
Georgetown Economic Services, LLC

PAUL ROSENTHAL, Of Counsel
Collier Shannon Scott, PLLC
Washington, D.C.

ROBIN GILBERT, Of Counsel
Collier Shannon Scott, PLLC
Washington, D.C.

IN OPPOSITION TO IMPORT RELIEF:

DAN McCUTCHEON
Vice President
Star Pipe Products, Inc.

FRANCIS J. SAILER, Of Counsel
Lafave & Sailer, LLP
Washington, D.C.

APPEARANCES: (Continued)

IN OPPOSITION TO IMPORT RELIEF:

STEVE SAHA
Executive Vice-President
Pipeline Components, Inc.

LAWRENCE J. BOGARD, Of Counsel
Neville Peterson, LLP
Washington, D.C.

VICTOR PAIS
President
SIGMA

SIDDHARTH BHATTACHARJI
Vice President
SIGMA

LARRY RYBACKI
Vice President, Marketing
SIGMA

KEIR WHITSON
Consultant
SIGMA

ROBERT GOSSELINK, Of Counsel
White & Case
Washington, D.C.

JOHN REILLY
Nathan Associates, Inc.
On Behalf of Beijing Tongzhou Songzhuang Foundry, Beijing Cheng Hong Foundry and the China Chamber of Commerce of Metals, Minerals & Chemical Importers and Exporters

HAMILTON LOEB, Of Counsel
Paul, Hastings, Janofsky & Walker, LLP
Washington, D.C.

SCOTT FLICKER, Of Counsel
Paul, Hastings, Janofsky & Walker, LLP
Washington, D.C.

APPEARANCES: (Continued)

IN OPPOSITION TO IMPORT RELIEF:

ALEXANDER W. KOFF. Of Counsel
Paul, Hastings, Janofsky & Walker, LLP
Washington, D.C.

I N D E X

I N D E X

P R O C E E D I N G S

(10:10 a.m.)

MR. CARPENTER: Once again, I apologize for the delay. Apparently the problem was on our end where the Commission did not inform the reporting service that they needed to be here this morning. We certainly think the court reporter for getting here on such short notice. She just found out about it about a half-hour ago, and was able to get over here quickly. So we appreciate that.

Well, good morning and welcome to the United States International Trade Commission's conference in connection with Investigation No. TA-421-4 concerning imports of certain ductile iron waterworks fittings from China.

My name is Robert Carpenter. I am the Commission's Director of Investigations and I will preside at this conference.

Among those present from the Commission staff are from my far right: Red Ruggles, the investigation; on my right, Diane Mazur, the supervisory investigator; on my left, Bill Gearhart, the attorney/advisor; John Benedetto, the economist; David Boyland, the accountant; and Bill Greene, the industry analyst.

The purpose of this conference is to allow you to present your views on the subject matter of the investigation in order to assist the Commission in determining whether market disruption exists by reason of the subject imports, and whether delay in taking action under Section 421(i) of the Trade Act would cause damage to the domestic industry that would be difficult to repair.

We will start the conference with a five-minute opening statement from each side, beginning with the petitioners. Following the opening statements, each side will be given one hour for their direct testimony. The staff will ask questions of each panel after their presentations, but no questions from opposing parties will be permitted. At the conclusion of the statements from both sides, each side will be given ten minutes to rebut opposing statements and make concluding remarks.

Speakers will not be sworn in. However, you are reminded of the applicability of 18 USC 1001 to false or misleading statements. Speakers are also reminded not to refer in their remarks to confidential business information, and to speak directly into the microphones.

Finally, we ask that you state your name and affiliation for the record before you beginning your presentation.

Are there any questions?

(No response.)

MR. CARPENTER: If not, welcome, Mr. Rosenthal, and please proceed with your opening statement.

MR. ROSENTHAL: Thank you, Mr. Carpenter, thank you members of the staff for being here this morning.

Because you lost time earlier, I will speak very rapidly. I'm just kidding.

This hearing is an extraordinary opportunity for the Commission and the President to finally make use of the 421 statute in an appropriate case. I know that the Commission has made recommendations for relief in a couple of the previous cases, but the President has declined to do so. We're hoping, obviously, as a result of these proceedings that the President will act to save the jobs that are at stake in this industry.

Now, as we all know, the 421 statute says that relief is appropriate if imports are increasing in such quantities or under such conditions as to cause or threaten market disruption to domestic producers of a like or a directly competitive product. And as the Commission as recognized in previous cases, that standard is met if imports are increasing rapidly, either absolutely or relatively, if the domestic industry is materially injured or threatened with material injury, and that the rapidly increasing imports are a significant cause of the material injury or threat.

Here, as we will demonstrate this morning and as you will have seen in our questionnaire responses and in the petition, here all of the statutory standards are met.

While confidentiality concerns prevent us from making a detailed discussion of all the data in the record, there can be no dispute about a few facts that are public or will be, we hope, public, and that has to do with the rapid rise in imports, the excessively and extremely low price of those imports, the downward pressure on domestic pricing that the imports from China have caused, and the consequent injury suffered by the domestic industry which includes total plant closures, partial plant closures, layoffs, furloughs, and a virtual sea of red ink for those survivors.

The injury in this case is manifested both by lost production volumes and lower prices as I said. The lower levels of production, of course, have exacerbated the problems faced by the remaining domestic producers because fewer units are being produced by the high six cost assets of the industry.

And as the data should show, pricing has been abysmal over the period of investigation, especially in the latter years of that period.

Are imports from China the only cause of injury to the domestic industry?

No, and we're not going to argue to you today that they are the only cause. There are other imports in the marketplace that contribute to the domestic industry's problems, but China is far and away the largest source of the industry's injury both in terms of volume and price.

Imports from China are, in the words of the statute, a significant cause of material injury suffered by the domestic industry.

Unfortunately, this morning you won't be able to hear much from all the other entities that have been hurt by the Chinese import surge. Much of the domestic industry has either ceased production altogether or begun to import from China or elsewhere.

What you have before you are representatives of the survivors, the companies and workers who want to take a stand, who want to continue producing U.S. waterworks fittings here in the United States to supply a very, very important infrastructure need.

So I won't take anymore time in my introduction today other than to say that you will understand, I hope, by the time this conference is done, why the industry is eligible for relief.

Thank you.

MR. CARPENTER: Thank you, Mr. Rosenthal.

Mr. Loeb, if you could come forward now.

MR. LOEB: Thank you, Mr. Carpenter.

I am Hamilton Loeb with Paul, Hastings, representing the Chinese producers. I am going to use the podium just for the convenience of the group, so that everyone doesn't have to relocate for me to make my opening remarks. And I apologize to Mr. Boyland and Mr. Greene for speaking to their heads.

You know, there is one simple rule in life, which is that you can't make an omelette without eggs. Similarly, you can't have a 421 case without a surge.

Here there is no surge. The imports at issue are not only not increasing rapidly, as the statute requires, they are not increasing at all. And you now have questionnaires from the foreign producers and exporters that demonstrate that, that cover virtually all, if not all, of the imports. And I would suggest to you you have that information at warp speed and record time for the Commission. We probably had 10 days to get everybody in the industry to get this stuff pulled together, and I think they did just a wonderful job at it.

So what we have here now is a record with no surge, but yet a 421 case that was not only filed but filed with a critical circumstances allegation. I didn't hear Paul Rosenthal mention it, but the reason we are here this morning as opposed to going through the normal process beginning with a full hearing in 421 is that we're here because of critical circumstances, and this is the first time that provision in the 421 statute has ever been claimed or asserted.

We'll have a good bit to say in our direct presentation about the statutory standard and the facts related to the critical circumstances issues. Scott Flicker will cover that in our presentation in some detail.

But I would just say at the opening you certainly cannot get the critical circumstances without a very strong showing of rapid increase in imports or surge over a very short period of time. That is the only thing that could justify having everything in the already extremely rapid 421 process accelerated even further for having a second proceeding in front of the Commission and the Commission staff as we are this morning, and potentially for going to the President twice, not once, with respect to this supposed claim of market disruptions.

Here, the imports not only are not surging in the short period of time, the record shows you that the 2003 imports of the subject merchandise are going down. So it is very difficult to understand how a claim of critical circumstances can be sustained on its face.

What the petitioners have tried to bring in is not eggs, but egg substitute, and the egg substitute is a concocted set of numbers which were drawn from the HTS import data that they got from the Census Bureau. You will see that that analysis is based on errors piled on top of assumptions on top of mistake. John Reilly will go into that in some detail in our presentation, and I think it's worth paying close attention to because it shows that the petition should never have been filed.

But it was filed on the basis of that pile of errors and assumptions which we will go into. And now we have essentially unscrambled the egg substitute and we've also shown in the foreign producer questionnaires what the real data is with respect to the import volumes.

And again, as I say, there is nothing to support any claim of increased, much less rapid increase, much less surge, much less surge in such an immediate period that critical circumstances can be shown.

I've said nothing so far about market disruption. We will cover that in our direct presentation. Suffice it to say that the record will show you, now that you have one, that contrary to what Paul said, prices in this product are not subject to downward pressure, not subject to extremely low pricing by the Chinese producers.

I hope you will ask the producers when you have a chance to question them, the domestic producers, about their own price increase implementation over the course of the last 12 months.

We will also cover the difficult to repair issue. I think we are really here, if nothing else, to cover the issue of whether something will happen that is so difficult to repair that the Commission should intervene twice and should move everything up, and the only reason for doing that would be if there were such a difficult injury that immediate relief is needed, not just the relief you get almost immediately in the normal Section 421 process.

And I believe our presentation will show that there is no such injury alleged in the petition, and I don't think you will hear anything from the petitioners that will suggest to you that there is an injury that will be difficult to repair sufficient to create a critical circumstances claim.

Thank you.

MR. CARPENTER: Thank you, Mr. Loeb.

And Mr. Rosenthal, I'll turn it back to you.

MR. ROSENTHAL: Thank you. As a lawyer who has worked for the poultry industry, I love agricultural analogies and I'll be glad to talk about eggs and egg substitutes later.

In the meantime, I would like to introduce our panelists, and have them present their direct testimony. Our first witness today will be David Green, who is the President of Ransom Industries, and he will be followed by Don Waugaman, who will provide his title. Then will come Mr. Joel Blair; then Tom

Teske, who is not from McWane Industries, but is distributor of waterworks fittings products; then Mr. William Klinefelter of the United Steelworkers of America; and then it will be Mr. Michael Kerwin of Georgetown Economic Services to present an economic analysis to you.

Finally, I'll say a few words about critical circumstances, and some of the other interesting statutory and philosophical issues that are raised by this case.

With that, I'll turn it over to Mr. Green.

MR. GREEN: Good morning, Mr. Carpenter and members of the Commission staff. My name is David Green. I am the president of Ransom Industries.

Ransom Industries is a subsidiary of McWane, Incorporated, and is responsible for overseeing and managing the operations of two of the three facilities owned by McWane that produce ductal iron waterworks fittings, otherwise known as DIWF, in the United States.

In particular, Ransom Industries is responsible for managing the operations of the Union Foundry Company located in Anniston, Alabama, and the Tyler Pipe Company which operates in Tyler, Texas. McWane also operates a third facility, the Clow Water

Systems Company in Coshocton, Ohio, that produces ductal iron waterworks fittings.

I have served as the president of Ransom Industries since February of 2001, and have been employed by McWane since 1993. During my tenure with McWane I have also held senior management positions with Clow Water Systems Company, Kennedy Valve and Hydrant Company, M&H Valve and Hydrant Company, all of which are McWane subsidiaries.

The three fitting facilities operated by McWane account for the vast majority of the remaining ductile production of DIWF in the United States. At the time of the Commission's 1993 dumping investigation, there were six domestic producers of DIWF in the United States. There has been a significant reduction in the domestic production of DIWF since then.

Of those producers, American Cast Iron Pipe Company has shrunk domestic production of DIWF to a fraction of prior levels, and imports some DIWF. Griffin Pipe Products ceased production of DIWF and is buying import product. U.S. Pipe and Foundry Company has closed a DIWF production facility recently, and shrunk to a fraction of the 1993 production levels of DIWF.

This leaves Clow, Tyler and Union as the last significant domestic producers of DIWF left standing. Absent the President providing our industry with safeguard relief from the increasing volumes of Chinese DIWF entering the United States, and sold at depressed prices, we too likely -- we too will likely be forced to cease domestic production of DIWF.

The impact of the growing volume of imports of DIWF from China on our industry has been devastating. While we have not yet been forced to import DIWF to supply our customers, we have incurred significant operating losses. We are now at a point where we cannot continue to incur these losses we have been suffering.

Absent relief from the disruptive effects and downward pricing pressures of the Chinese DIWF enter the United States, we will be forced to shut our production operations resulting in the end of volume production of DIWF in the United States, and our country's complete dependence on imported waterworks fittings, a key component of our country's domestic potable water supply infrastructure.

We have requested that Commission find that critical circumstances exist with respect to our industry's condition. We recognize that this is the first time that such relief has been requested in a Section 421 proceeding, and that it is a request that the Commission is not often confronted with in the safeguards proceedings.

Our industry's need for import relief, however, is acute and it is urgent.

Earlier this summer we considered closing one of our two main DIWF production facilities. A final decision on closures however was postponed based upon our hope that we will be able to secure an affirmative critical circumstances determination from the Commission and provisional import relief from the President.

As an interim step, production volume at Union Foundry was reduced approximately 44 percent, and that 145 people lost their jobs when we shut down a modern automatic molding line that was installed in the year 2000.

As you know, we have requested interim relief under the critical circumstances provision. The reason we have requested this provisional relief is the dire financial situation of the business. We don't know how much longer we can continue to lose money on every pound of product we sell.

Does that mean if we don't get interim

relief we will shut down our facilities immediately? No.

First, we have an obligation to our customers to supply them so we will not precipitously close our plants. We will continue to do everything possible to try to increase our sales and maintain employment, and we obviously hope that the market will improve. But realistically, we will at a minimum have to increase the number of days our plants are idle.

To be clear, we will not announce an immediate shutdown. We will, however, be forced to further downsize our operations and withhold additional needed investments. Moreover, in the event the Commission or the President reaches a negative final determination, we will likely reduce production capacity dramatically over the ensuing months to match the declining market for domestically- produced DIWF.

If we have to turn to imports totally, this would result in the loss of close to 1,000 manufacturing job in Ohio, Texas, and Alabama, and would add to the growing number of manufacturing jobs that have been lost in the United States within the last few years.

Because of the very sensitive nature of these decisions, my ability to speak about them today in this public hearing is limited. We have, however, attempted to provide the Commission with a significant degree of detail concerning our current analysis of the industry's situation and our response to the Commissioner's questionnaire.

We will also be addressing the critical circumstances issues in our post-conference brief, and would welcome an opportunity to respond to written questions from the Commission.

McWane and Ransom Industries have a strong desire to continue producing DIWF in the United States, and are committed to making additional investments in our facilities and personnel to further increase our ability to compete against imports of DIWF from China in the event our industry receives an import relief program.

The DIWF industry is both highly competitive and capital intensive. To stay competitive producers must continuously make capital improvements and investments to maintain and improve production facilities. Just this week, however, we were forced to decline an additional investment at one of our facilities, which we will describe further in a post-conference brief.

We have already made significant

improvements to improve productivity as well as our safety and environmental compliance. The investments made to date, however, have been insufficient to enable us to deal with the unprecedented volume of low-priced imports of DIWF from China surging in the United States.

It is absolutely crucial that we have the opportunity to realize a reasonable return on these investments. The unprecedented volume of low-priced imports of DIWF from China has undermined our return and threatens our industry's continued existence.

We are awaiting a signal from the Commission and the President. We are a long-term domestic producer and desire very much to continue our operations in the United States. Absent a period of relief from the large volume of low-priced imports from China, however, we will be forced to close facilities and to source DIWF from abroad.

Accordingly, we request that the Commission reach an affirmative finding concerning the existence of critical circumstances, and make a strong remedy recommendation to the President.

We appreciate the hard work by the Commission and its staff on this case. We realize this type of an investigation is particularly difficult and intense with many short deadlines. Your work is very important and vital to the continued existence of our industry. I would be pleased to answer your question at the appropriate time.

MR. ROSENTHAL: Mr. Waugaman.

MR. WAUGAMAN: Good morning. I'm Don Waugaman. Vice President of Sales and Administration for Tyler Pipe Company. I have been a vice president with Tyler Pipe Company for the last nine years, and before that spent 20 years in sales and distribution in a nonrelated industry.

I am also vice president of sales for Tyler Union with Ransom Industries, a position I assumed in 2002.

I want to thank you for the opportunity to speak with you this morning about the ductile iron waterworks fittings industry and why we need the Commission's help.

First, the products we make and/or supply in the United States cover a full range of products in our petition, from small diameters of two-inch up through 42-inch product. We are competitive with import DIWF from China in every way, including quality, delivery time, service, and broad product offerings. But we can't sell as cheaply as the Chinese ductile iron waterworks fittings and remain in business.

Ductile iron waterworks fittings are an integral part of our municipal water systems and are used mainly to connect pipes, valves, hydrants and other fittings where there is a change in direction of water flow. Whether domestically made or imported, ductile iron waterworks fittings are marketed almost entirely through distributors. Even when you see products listed in manufacturers' catalogues and on inventory in manufacturers' web pages, these products are being offered for sale mostly to distributors.

These distributors, in turn, sell to end users who are municipalities, utilities and contractors. Because of this structure, when we price our products we have to consider not only what price we would like to get from our distributor, but also whether that distributor is able and willing to buy from us at that price, allowing him to them resell product to end users competitive with imports from China being offered by other distributors.

Our pricing system is based on a published list price. We sell to our distributors at a percentage discount off of that list price, depending on the local market conditions. This percentage discount is reflected by applying a multiplier to the list price. For example, a .03 multiplier is in fact a 70 percent discount off of list price.

This system is used by domestic producers as well as importers. Determining a competitor's market multiplier in a given area through routine market intelligence is not difficult for either manufacturers or importers. For this reason, it's very reason for importers of Chinese ductile iron waterworks fittings to offer prices that undercut ours.

Our market multipliers vary throughout the country, and it seems no matter where the level of our market price the Chinese importers are constantly below. If have a multiplier of a .043, they may be at a multiplier of a .036. If we are at a .29 multiplier, they may be at a .26 or even lower.

These pricing practices have brought the U.S. industry to the dire situation that we are in today.

Ironically, we are being injured at the time when housing starts and other construction projects have kept demand for ductile iron waterworks fittings fairly strong even in an otherwise weakened economy.

The U.S. industry's precarious financial position is not because of a declining demand. It is because we can't continue to maintain sales volumes at a price level that gives us a return.

Years ago there were greater differences between imported and domestic ductile iron waterworks fittings than there are today. Imports were not always of equivalent quality and did not always meet technical standards. Those differences have since been eliminated, leaving price the only real differentiating factor in a purchasing decision.

There are still distributors and end users who would like to buy U.S. made product out of preference. But even that preference is not a deciding factor as pricing gets more cutthroat.

Just yesterday when visiting a distributor in northern Virginia, I was informed that Loudon County, which is one of the last remaining counties in Virginia that preferred domestically-produced products, are now accepting Chinese ductile iron waterworks fittings only because the price difference is so great despite that fact that our multiplier in northern Virginia is the lowest in the country at a 71 percent discount off of list price.

So the only way we have been able to keep certain production volumes and market share has been to join the race to the bottom. We just can't do that anymore as the financial data we have presented to you makes very clear.

In a moment, I'm going to ask two other witnesses to speak with you about the competitive issues in our market from their own perspective. Joel Blair can tell you more about pricing, sales and marketing issues from his experience working both for U.S. producers and for importers of ductile iron waterworks fittings.

Tom Teske, of East Jordan Iron Works, is a longstanding distributor in the U.S. industry's ductile iron waterworks fittings market, as well as a U.S. producer of other foundry products.

As a final point, I would like to note that when the Commission and staff look at the evidence of lost sales and lost revenues in this case, the collected information may not be typical of what you have seen in other cases. This is because the difference in the way ductile iron waterworks fittings are sold; that is, we sell mainly through distributors rather than directly bidding to end users.

If we are not competitive with the marketing selling price to our distributors, then they, in turn, lose bids to Chinese imports.

We gave more detail on this in a recent submission to the Commission, and I would be happy to answer any questions about this submission either at this staff conference, or if it involves proprietary information, in a written submission following the conference.

Thank you for your time. Now I would like to introduce Joel Blair. Joel.

MR. BLAIR: You're going to have to kind of help me relax a little bit.

Good morning. I'm Joel Blair. I am the national sales manager for the utilities division of Tyler Pipe and Union Foundry. And as you can probably judge, I have been in this business for a long, long time.

My testimony today may be of particular interest to the Commission and the staff in this case. As Don mentioned, I have firsthand experience in sales and marketing of both domestic and imported waterworks fittings, including the ductile iron waterworks fittings that are the subject of this investigation.

For several years, I was a partner in a business located in Kansas City selling waterworks fittings. I joined Tyler Pipe's sales staff in 1985, and in 1987, became sales managers. I left Tyler and joined an importer, Star Pipe Products, as its sales manager. I was with Star Pipe from February of 1997 to August of 2000, at which time I returned to Tyler Pipe.

With this background, I am well versed in the competitive issues between domestic and imported waterworks fittings including fittings imported from China.

There are many similarities and few differences between U.S. made and imported ductile iron waterworks fittings. We, as well as the importers, sell ductile iron waterworks fittings through a network of distributors. These products are generally not sold to contractors or municipalities who are actually the end users. The products are also similar in quality and meet the same standards established by AWWA, which is the American WaterWorks Association.

In fact, at the time I was with Star, I believe that the quality of products Star imported was comparable to that of Tyler and Union, and I believe that to be true today.

In our business, selling price is established, or selling price to distributors is established by applying a multiplier to a published list price. As a matter of fact, other domestic producers and importers have published list prices that virtually mirror ours.

A specific multiplier applies to a trade area, such as a state or several states. These multipliers can and do change as market conditions change.

We, as well as Star, SIGMA, and PCI use this method of pricing system. Consequently, without too much effort our competitors can find our pricing level and easily sell to distributors at multipliers lower than ours.

Chinese ductile iron waterworks fittings are selling at prices so low that we have difficulty selling domestically-produced product. If we reduce our price in an effort to maintain sales volume, they further reduce their prices. In fact, when I was with Star, inside sales personnel were authorized to reduce prices to secure a sale, and with that kind of flexibility many sales were made.

Another example of the competitive marketing practices of importers of Chinese ductile iron waterworks fittings involved offering special services at no additional cost to the customer. Importers, particularly SIGMA, not only priced their ductile iron waterworks fittings lower than the domestic prices, but they offer special delivery services without charging the customer the freight cost.

The services involves running what is called a route truck several areas in the country with inside sales reps calling customers ahead of the truck schedule to offer quick delivery on very short notice. This was a great service but it's very costly.

In most businesses the customer would be expected to pay a freight for this service, but SIGMA and the other importers have found another way to undercut us in the market.

I appreciate your time and I'll be happy to answer any questions that you may have.

MR. ROSENTHAL: Our next witness is Mr. Teske.

MR. TESKE: Good morning. My name is Thomas Teske. I am general manager and vice president of sales and marketing for East Jordan Iron Works in East Jordan, Michigan.

East Jordan Iron Works has been in operation since 1883, and has been family owned throughout the history. East Jordan Iron Works is a producer of municipal construction castings, fire hydrants and waterworks valves.

In the upper midwest, East Jordan Iron Works also operates as a distributor of waterworks products.

I am here today to speak in particular about East Jordan Iron Works concerns as a distributor of waterworks products, but I can also speak about these concerns from an understanding of what it is like to be a U.S. manufacturers trying to compete against very low-priced imports.

My company itself has been involved as a petitioner in antidumping and countervailing duty cases that have resulted in orders against imported municipal castings products.

East Jordan Iron Works has purchased waterworks fittings from Tyler Pipe for approximately 40 years, and we have been building ductile iron waterworks fittings since the company started making them about 20 years ago.

EJIW has purchased ductile iron waterworks fittings from Tyler for the following reasons: excellent service and delivery, high quality, broad product offerings, and competitive pricing.

Tyler Pipe maintains large inventories of ductile iron waterworks fittings and provides fast and reliable deliveries on a regular basis.

East Jordan Iron Works is committing to providing products of high quality that are made in the USA, but we cannot ourselves compete against distributors of Chinese-produced ductile iron waterworks fittings unless we are able to charge competitive prices to our customers.

We know that Tyler Pipes has had to consistently reduce its prices to customers just to keep Chinese imports from taking away its market share, but that they can't keep doing this and stay in business.

We have received solicitations from importers and manufactures of Chinese waterworks fittings since approximately 1990. The early products and solicitations were mainly for high-volume generic fittings of questionable quality. Since 1990, we have seen the number and size of importers grow substantially.

Today, companies such as SIGMA, Star Pipe, Pipeline Components, Inc. are handling significant quantities of ductile iron waterworks fittings that are imported from China. The quality and breadth of product offerings of the ductile iron waterworks fittings has also increased since 1990. So the Chinese product is extremely competitive with domestically produced fittings.

We are solicited on a regular basis via the internet directly from Chinese manufacturers interested in supplying us with enormous castings, including ductile iron waterworks fittings. I have copies of e-mails that I can provide in the post-conference brief.

As a distributor of waterworks fittings, East Jordan Iron Works is very familiar with the prices offered by importers and domestic manufacturers because we have to compete against the prices offered by other distributors. The prices at which importer waterworks fittings are offered are lower than the prices offered by Tyler Pipe.

Some of our customers who are the end users of waterworks fittings still have a preference for products made in the USA and are willing to pay a small premium for a domestically manufactured product. But other customers, given that imports meet the quality and the technical standards established by the American Waterworks Associations, will simply purchase based on price.

I noticed because East Jordan Iron Works has branches throughout the United States, and there are some parts of the country where the markets have shifted entirely to Chinese fittings solely because of price.

Given this reality, the continuing and

increasing marketing activities of importers and manufacturers of ductile iron waterworks fittings from China is a serious threat to the U.S. manufacturers of ductile iron waterworks fittings, and to all other related products for the waterworks business.

There currently is am ample supply of waterworks fittings produced in the United States, but if current trends continue the number of domestic producers will continue to decline. The only way out of this trend is for the U.S. Government to intercede on behalf of the ductile iron waterworks fittings industry and provide a remedy so the industry can raise its prices to a reasonable level.

If the U.S. industry cannot get some price relief, we will soon have no domestic source for these critical elements of the country's waterworks systems.

As a distributor that wants to represent quality products that are made in the USA, I sincerely hope we can prevent the U.S. industry from going away of so many other manufacturing businesses.

Thank you for providing me the opportunity to present my views.

MR. ROSENTHAL: Mr. Klinefelter.

MR. KLINEFELTER: Good morning, Mr. Carpenter, members of the Staff. It's a pleasure as always to be here to defend American workers.

I am William J. Klinefelter. I'm the assistant to the president, legislative and political director of the United Steelworkers of America.

And our union strongly supports the domestic industry's petition on ductile iron waterworks fittings.

The USWA represents workers employed at two of the three McWane plants producing ductile iron waterworks fittings or DIWF. USWA members have been adversely affected by the market disruptions caused by increased imports of low priced DIWF from China. The domestic industry has suffered plant closures and layoffs as a direct result of these imports. We are concerned about additional layoffs and plant closures due to low-priced imports.

As the Commission knows, 10 years ago there were six companies producing DIWF in the United States. There are now half as many significant domestic producers and employment has declined significantly. Indeed, steelworkers at Tyler Pipe recently have sought trade adjustment assistance from the Department of Labor.

As bad as things have been in the DIWF industry, they could get worse. Without relief from the imports of DIWF, McWane may be forced to close one or more of its plants or possibly cease all domestic production of DIWF. That would be devastating to the domestic industry and its workers. It would also be terrible for the communities that rely on this industry, these foundries for employment opportunities.

If you have ever visited these communities, these facilities are really the rock bed of employment in these areas, and so they are very significant to the overall economy.

Now, there has been a lot of discussion in the press recently, including speeches by the administration, the secretary of commerce recently, about the crisis in manufacturing. I mean, we have lost 3 million manufacturing jobs and those losses are continuing. We have to do something to stem that tide.

And one of the things that could be done and the administration has pointed to China in many ways being a significant problem to the United States in terms of manufacturing jobs. One of the things that you could do as the Commission and ultimately the President could take some actions to stem the loss of jobs in the United States and to maintain the industry that is vital to the country's infrastructure; namely, finding critical circumstances in this case.

The USWA strongly urges the Commission to make affirmative determinations about critical circumstances and market disruptions in this investigation, and to recommend to the President that he impose provisional relief in the form of import tariffs of 95 percent, as well as appropriate and necessary long-term import relief.

I heard an allusion at the beginning of this that this was about eggs. Well, this isn't only about eggs. This is about eggs and this is about bacon and this is about shelter and this is about wages and this about education and this is about family supportive jobs which we can no longer afford to lose in this country. And I know that this Commission is always at the tip of the spear in these kind of disputes, and we urge you to find what is necessary in order to preserve the livelihood of these families in these communities.

Thank you.

MR. ROSENTHAL: Thank you. Mr. Kerwin.

MR. KERWIN: Good morning. I'm Michael Kerwin of Georgetown Economic Services.

I would like to say a few words this morning about the import data on ductile iron waterworks fittings from China and the condition of the domestic industry. Because the specifics of the industry data remain business proprietary and because of the limitations of the import database, my remarks will be necessarily broad and mercifully brief.

As was noted in our petition, the classification under the U.S. Harmonized Tariff Schedule that corresponds to ductile iron waterworks fittings was just created in January of 2002. For this reason, we do not currently have reliable import data for the period 1998 through 2001. We made some broad estimations of these data in our petition, but we realize that it will only be through the Commission's questionnaire process that we will arrive at accurate import figures for the subject merchandise for the 1998 through 2001 period.

Even with the breakout of the subject merchandise under the U.S. Harmonized Tariff Schedule in 2002, the import statistics did not become immediately accurate. Early in 2002, there was obvious misclassification of import entries of DIWF as both importers and customs personnel were unaware of the new tariff breakout.

It was not until representatives of the

domestic industry visited customs officials at the port level and explained the significance of the new HTS breakout that imports began to be properly classified on a regular basis. For this reasons, the official statistics for at least the first half of 2002 are unreliable.

So what can we say about the Chinese imports of DIWF and why do we believe that a critical circumstances finding is warranted in this case?

Well, we can tell that the official statistics in the first six months of 2003 were nearly seven times as high as those in the first half of 2002, and were more than twice as high as those in the second half of 2002.

We know that imports in the first half of 2003 were on the same order of magnitude as those estimated for four of the five calendar year periods from the period 1998 through 2002.

We also know that China has been the largest source of imports of DIWF throughout the entire period of investigation, and that the average unit values of imports from China were the lowest or among the lowest of any source country throughout this period.

Finally, although we do not yet have a comprehensive database, we do know that the data available so far from responses to the Commission's questionnaires support our claims.

We also have the firsthand knowledge of Tyler Pipe, Union Foundry, and Clow Water Systems as to the increasingly destructive levels of imports of DIWF from China on their operations as you have heard this morning.

The members of the industry have seen China expand its presence and its market share in the market for ductile iron waterworks fittings. More and more distributors are carrying Chinese fittings, and more end users are willing to purchase Chinese DIWF, particularly when the pricing is significantly below that of the domestically-produced product.

The injury suffered by the domestic industry has not been attributable to any declines in U.S. demand for ductile iron waterworks fittings, which has been relatively healthy during the period of investigation. Because demand for DIWF is to a significant extent keyed off of housing starts, the U.S. market for the product has not suffered in the same manner as many of the other ferrous metals that are used as industrial inputs.

Chinese imports, rather than consumption trends, have been a significant cause of the injury suffered by the domestic industry during this period.

As a result of the growth in low-priced ductile iron waterworks fittings from China, domestic industry shipments and profitability have been in decline since 1999. Indeed, as domestic industry shipments have fallen, the industry's operating returns have gone from profitability to substantial losses.

Because production of ductile iron waterworks fittings is capital intensive, domestic producers have attempted to maintain production volumes in order to keep costs down. Despite these efforts, Chinese imports have continued to undersell the domestic industry and in the face of rapidly growing inventories the industry has had little option but to curtail production. You can't lose money on every sale and make it up on volume.

Production cutbacks have resulted in employment declines. Union Foundry was forced to lay off 60 employees due to a shift reduction in July of this year, and terminated an additional 85 employees in August as an entire production line was shut down.

As production levels fall, at some point it simply becomes economically infeasible to continue producing ductile iron waterworks fittings.

Just this summer U.S. Pipe closed its Alabama facility in which DIWF was produced. These production shutdowns affect not just the families of the laid-off employees, but also have a substantial impacts on independent suppliers to the foundry, and their communities.

It should be noted that the domestic industry has made ever effort to compete with Chinese imports. McWane has invested millions throughout the period of investigation at Tyler, Union and Clow in order to improve efficiency and to improve worker and environmental conditions.

As we saw at our plant tour this week at Union Foundry's facility in Alabama, significant capital investments have been made in the industry over the last several years there, demonstrating a commitment to continued efficient domestic production of ductile iron waterworks fittings.

Indeed, McWane has specific capital investments that it would like to make in order to further improve production efficiency and output. However, in the face of substantial operating losses over the last several years there is simply no way that additional investment can be justified under current market conditions.

The ductile iron waterworks fittings industry is in desperate need of relief from Chinese imports, and a critical first step in its turnaround is an affirmative critical circumstances finding in this investigation.

That concludes my remarks this morning. Thank you for your attention.

MR. ROSENTHAL: Thank you, Mr. Kerwin.

I would like to make a few remarks concerning critical circumstances and some of the other legal or factual issues that might arise, and I'm sure I will invoke or precipitate some questions from the staff after I get done.

First, I want to just note the questions of surge that Mr. Loeb raised in his opening statement. We disagree with what I recall his position has been in other 421 cases that the Commission should only look at the most recent period and only should look at the period after the time that the U.S./China bilateral agreement was signed or since the 421 law went into effect. I believe that's his argument, and he may make that later today.

First, as a factual matter I do believe the data will show that there is an import surge and it won't matter particularly whether you look at the entire period of investigation or even the most recent few year period.

But be that as it may, I don't believe the basis for his argument that you should only focus on the period since the 421 enactment, or the China/U.S. bilateral agreement went into effect makes much sense, because when the U.S. and China reached their deal, and when Congress put in the 421 law, it wasn't as if there was any tariff concessions being made on the U.S. side.

This is a deal in which the Chinese were granting greater access to their market. They were the ones making the concession, and its concessions. It was not like a NAFTA or other deal where the U.S. was opening up its market further. The theory was our market is pretty open as it was, and it was the Chinese who had to make adjustments to their markets.

And the 421 provision and the special China safeguard provision was a recognition that China was different. It was a non-market economy and it was in a transitional period. This is not a situation where China could be treated the same way that other market economy countries could be treated, and yet they were a real threat to U.S. industry and manufacturing.

So the notion that you look at imports only after that agreement because somehow there would be a surge as a result of tariff concessions has no basis in the record or in the legislative history. So that's point number one.

Point number two has to do with what the statute said, increased quantities or under such conditions. As you see here, imports are coming in in increased quantities without any question, and a rapid increase in those quantities. But also under the conditions that make it very difficult for the U.S. industry to compete.

Namely, they are offering incredibly low-priced terms, and as Mr. Blair mentioned, other non-price terms that effectively lower the price to their customers.

But in contemplating the statutory provision and then seeing Mr. John Reilly behind me, I was thinking that Commission ought to really have a little broader look at how it interprets the 421 statute, or at least make sure that it doesn't ignore the "under such condition" provision.

And by the way, I have a great deal of respect for Mr. Reilly who is the economist for the respondents in this case. I am sure I will agree with nothing he says when he gets up here later, but I do believe he tells the truth or tries to as he sees it. I'm sure he's getting very nervous now that I have said that.

But in about 1989, he appeared on behalf of the Japanese forklift truck industry at a hearing, actually it was in the other building just before you moved here because the final hearing was here and the prelim. was at the building at 7th and E, Northwest.

Mr. Irvin was the presiding officer at the staff conference, and Mr. Irvin asked why the Japanese in the wake of the change in the value of the yen did not increase their prices. And Mr. Reilly answered truthfully, because if they increase their prices, they would lose market share. Now, that was the undoubtedly correct, true answer.

Flash forward to 2003, and understand what the waterworks fittings industry has done in order to prevent further erosion of their market share. If you look at the data here, you will see a surge in imports from the beginning of this period, and then a continued increased, although a slowing of that increase, I believe the data will show.

Why is that? Because the domestic industry realized that if it continued to have its prices at a level where it could make a profit, it was going to lose market share, and therefore it decreased its prices, or at least did not increase its prices in a way to cover its increased costs and maintained its competitiveness as best as it could with the Chinese imports, thereby slowing the rate of increase, but having two effects: One, losing money on every ton it sold; and yet still managing to lose market share to the imports.

I believe that that scenario is justification for import relief under Section 421.

The flip side of that is that if the industry decides that it's not going to lower its prices and compete with the Chinese imports, and therefore it must lose more market share in order to be eligible for relief, it will be an invitation to have the rest of this industry close down in order to gain relief, which doesn't make a lot of sense.

And let me turn now to this question of critical circumstances because it is a tough issue, and I recognize that you and the Commission and we and the respondents will be struggling with it.

Point number one, this is an industry, if you look at the data, that is losing money at a rapid pace.

Point number two, they have already done a lot to invest to make themselves more competitive.

Point number three, they have already closed idled production facilities and had layoffs.

Then we reach the question of what do you do now? How much longer do you continue to lose money before you decide you're going to close more productive capacity, before you lay off more workers?

Enter Collier Shannon. What's the advice that you give as Collier Shannon to these clients in this dire situation? Do you have to actually -- first of all, do you have to threaten that you're going to close the plants in order to show that you're going to have harm that's difficult to repair?

My view, quite honestly, is I never like to come to the Commission and threaten anything. I think it's bad form. I don't believe that you should have to say or want to say if you don't give us relief, we are closing our doors tomorrow.

And as you heard Mr. Green's testimony today, we are very careful to back off from anything that would be, considered to be a threat of that nature, because as a practical matter we're not, or McWane is not going to close the doors the day after a presidential decision that might be adverse to them. That's not the way the industry works and they have got relationships with their customers that are too valuable, et cetera.

And I've very curious to hear what the respondents will say about what is harm that's difficult to repair. I can't go into what the questionnaire responses said in any detail, but we have tried to explain what the economic costs would be if we didn't get relief.

The question for McWane in particular is how much in additional losses can you take before you decide it's no longer worth investing in this industry and before you have to begin an orderly shutdown of production facilities, before you have to actually import significant volumes of imports to supply your customers because they are no longer willing to pay the price for your product that will cover your costs.

And you know, as Mr. Klinefelter said, I mean, is it harm that's difficult to repair if you lay off workers?

I am very curious to hear if the respondents will say that if workers lose their jobs, that is harm that's difficult to repair. Is it reparable, will they consider reparable that workers are laid off but they can be recalled three months later? Is that reparable harm so the industry is not eligible for action under the critical circumstance provision?

I mean, we're struggling with this too. I want to hear what they have to say about that too. There have already been 145 workers laid off over this summer. If more workers are laid off, is that enough for a critical circumstance finding, or does it have to be something else?

From my perspective, I'm going to still have a job after the critical circumstance determination is made, but there are jobs in jeopardy, and the statute doesn't talk about that, but it is inevitable that over the course of the next months workers will either be furloughed because there is not enough work for them to do, or they will lose their job permanently.

Again, it is a very difficult area to get into because to the McWane folks credit, they have come in, they have invested a lot of money, they have tried to maintain a workforce in the United States and tried to turn around companies that were going out of business in order to maintain U.S. production. They are committed to U.S. production. But at some point they have got to say we're can no longer invest, we can no longer afford to lose money day after day.

And I am now going through the public musings, publicly our conversations about what does it take to prove critical circumstances, what is going to happen over the next several months at McWane if things aren't changed?

I'll tell you, going back to the statement I made earlier, what they really need to do in order to stop the hemorrhaging is to raise their prices. But if they do that, they will lose their market share, and there will be no through-put at the facilities, and they will have to begin to import in a serious way in order to meet their customer needs.

I will stop there and invite questions later. Thank you. That concludes our statement.

MR. CARPENTER: Thank you Mr. Rosenthal, and thank you very much to the panel for your presentations. It was very helpful.

We'll begin the questions with Mr. Ruggles.

MR. RUGGLES: Fred Ruggles, Office of Investigations. A couple quick questions.

Nonsubject imports, how significant are they? Where are they coming from? And does McWane have any production facilities offshore? You can answer them here or in a post-hearing.

MR. ROSENTHAL: Non-subject imports, you've got the data and we'll summarize that in the post-hearing brief. They are a problem, principally imports from Korea, India, and Brazil. They are less of a problem than imports from China, but China is really the leader of the importers in terms of price and certainly they account for the lion's share of the import volume, but the other imports are chasing the Chinese and all competing against one another as well and so they are certainly contributors to the problems that the industry is facing.

China is by far and away the most significant problem. The other imports are a real problem and a concern and one of the issues that we have to grapple with to be sure, but I think to be fair, if you solve the China problem, you, the commission, the President, you're not going to solve the problem that the domestic industry is facing, but you will go a long way towards solving that problem.

With respect to where McWane has other facilities, they have facilities in Canada, but not waterworks fittings facilities.

MR. GREEN: I believe the question was does McWane have offshore production facilities and we do not have -- in this product line, we do not have offshore production facilities.

MR. RUGGLES: Do you know of any other domestic producers or former producers that have offshore production facilities?

MR. GREEN: I do not. Maybe Don knows.

MR. WAUGAMAN: It's my understanding that Griffin Pipe did for a period of time own a foundry in Mexico, which I understand they do not own any longer. I guess you would consider that an offshore facility. I don't know of any of the other producers, domestic producers, that have actually purchased or owned offshore facilities.

MR. RUGGLES: No further questions right now.

MR. CARPENTER: Mr. Gearhart?

MR. GEARHART: Bill Gearhart in the Office of the General Counsel.

I'd like to start first with the prong of the statute that relates to delay in taking action caused damage to the relevant domestic industry which would be difficult to repair.

Mr. Rosenthal, what is the delay we're talking about here in terms of number of days?

MR. ROSENTHAL: I think we're talking about a couple of months.

MR. GEARHART: When you talk about a couple of months, can you be a little more precise?

MR. ROSENTHAL: I can get you the precise number of days from the statutory time line, I just haven't counted them up on a day-by-day basis.

Mr. Gearhart, do you know the answer to that question or are you --

MR. GEARHART: Well, there are -- I'm trying to see what your view of this is. There seems to be one way of counting if you look at Section 421(i) and there's another way if you're looking at 421(h) and you come up with two different numbers.

MR. ROSENTHAL: I don't have it. We can get you our calculation on a daily basis. We have not done that.

MR. GEARHART: Okay. But you are arguing that a delay will cause damage --

MR. ROSENTHAL: Yes. And our assumption is that the difference between waiting for the normal time period and getting relief under critical circumstances is a couple of months.

MR. GEARHART: But you don't know what the time period is yet.

MR. ROSENTHAL: No, you asked me the precise number of days and I said I don't know the precise number of days.

MR. GEARHART: The second question is, again, it's going to this issue, when the statute refers to damage, what kind of damage in a legal sense should the commission be looking at? Should we be looking at a specific event, for example?

MR. ROSENTHAL: I think damage that's difficult to repair would include such things as the firing or letting go of workers, taking out of production equipment that is used to make the product. It is financial harm that is large enough to prevent the sort of investment in the industry that would be necessary to get more efficient over the ensuing period.

So, for example, unlike what I would regard in preliminary injunction cases where it's often said that monetary damages would not qualify as irreparable harm in a preliminary injunction context, in this context, I believe that monetary damages or monetary harm is enough because in a preliminary injunction, the normal theory there is that if you can get repaid by the defendant in the case and it's only money, so to speak, then it's not irreparable harm, if there's something else that's going on here.

In this kind of proceeding, McWane, the domestic industry is not going to be repaid the millions of dollars they are losing. They are going to be foregoing that money forever and to the extent that money is foregone, that means it is that much less that they will be able to invest to make their facilities more competitive.

MR. GEARHART: Again, should we be looking in terms of the statutory standard? Should we be looking for something that we can identify, that we can measure, either a specific event such as something will happen or loss of the contract or something else that is reasonably certain to happen, as opposed to something that could conceivably happen. I'm trying to get your sense as to what the statute intends we find or would have to find in order to find that there would be damage that would be difficult to repair.

MR. ROSENTHAL: Obviously, a difficult answer because there's been no other finding and the best I can tell you is the following: obviously, if you had an identifiable event, if McWane or anyone would say that the day after a critical circumstance determination were made, if it were negative, that the plants would close, workers would be laid off, that would be a specific identifiable event, that would probably make it easier for you to make a decision or understand what the consequences are of a negative decision.

I think that, for the reasons I indicated earlier, we are not willing to make that sort of stark statement and it certainly makes the decision for the commission harder.

I think that in our questionnaire responses we have identified certain things that will happen to the company if there isn't relief granted: the loss of money and either the furloughing or firing of workers I would think might qualify as events, if you will. The alternative, though, is to say to McWane keep them on the payroll even though they are no longer making money for you and therefore avoid that event. This is why I'm struggling and I'm trying to answer your question.

MR. GEARHART: I appreciate that.

MR. ROSENTHAL: For us, I know it would be easier to say if you do this or you don't take action here, the following consequences will inevitably flow and nothing that we can do will prevent that from taking place. And I would like to make that argument in a way, but I cannot be disingenuous to tell you that if on November 15th we don't have relief that McWane won't get another contract or something else might not happen that will allow them to stay in business.

So to go back to your original question, is there a specific event or does the statute require a specific event? I would say no. I understand that it would make the decision by the commission and the President easier if there were one, but I don't think there is an event required.

You have to try to analyze whether the harm that has been described is difficult to repair or to and, to me, as I said before, that is not an objective standard or a specific event that is easily defined.

MR. GEARHART: So in other words, if I can paraphrase what you're saying, that accumulation of possible events or ongoing events would be sufficient to meet the statutory standard?

MR. ROSENTHAL: I think that several adverse effects, several adverse events that could not be reversed or ameliorated, would be sufficient. Harm that's difficult to repair, which is the statutory phrase, remember, it says difficult to repair, not impossible to repair. If it's difficult to repair, I would say that you could have several adverse effects that if you could not reverse those or ameliorate those sufficiently would be sufficient to meet the statutory standards.

MR. GEARHART: Now, would these have to occur during this period that we're looking at or could they be events that are happening or maybe taking effect outside of the period?

MR. ROSENTHAL: I would say that the easier case is if it happened only in that period, but I don't think the statute requires you to look only at that couple months or however many days you're looking at there because there may be things that happen during that period that will lead to other events beyond that period that cannot be fixed and the reason why I stumble a bit here is because Mr. Green alluded to a decision that was made just this week, right after we filed the questionnaire responses, about a particular investment that McWane was considering for one of their facilities.

Their decision, and it was a multi-million dollar investment, their decision was we cannot make that investment today under the current market circumstances and my question to them was, well, what happens if you made this investment or made the decision to make the investment in November after the President's decision?

And they said, well, that's actually too late because to make that investment work for us, we have to do the order this week. And we'll go into detail in our post-conference brief on that.

It means the ripple effect from not making that decision the week of September 22nd will mean that there will be consequences for both the Union and Tyler plants several months down the road. And it will also mean a lack of ongoing cost reduction.

Now, they can make this decision to make this investment in December or they can make it in March, but not only will they have lost money over that time period, but they will lose a particular opportunity to maximize the efficiency of this.

So I know it's a lengthy answer and when you see in the post-conference brief what I'm talking about, I hope you'll understand why I believe from a legal perspective it would be unfortunate to take too narrow a view of the time period that you're looking at.

MR. GEARHART: Okay. That's helpful. And if in your post-conference submission you could provide us with any additional analysis in terms of the direction the statute sends us in as well as legislative history and any guidance that we can glean from prior commission cases, that would be helpful, too.

MR. ROSENTHAL: Mr. Gearhart, I have to say one thing. As a lawyer looking at the statute, I'm talking to clients and say, gee, it would be great -- our best case would be if you could say X, Y, or Z, it would enhance the case. And they say, Paul, life is not that simple, we have 87 different decisions that are coming at us to decide how we're going to be competitive, if we make an investment here, what does it do to the investment there.

Business people don't have quite the linear life that I would like them to have in this kind of environment where every day something is happening that affects your investment, it makes like complicated. And, understandably, when the commission has a statute in front of it and is trying to figure out how to apply that statute to these particular facts, things get a little bit more messy than I would like them to be as a lawyer.

MR. KERWIN: Excuse me. Could I just add one observation as a non-legal person? And maybe you don't really want to hear my opinion, but --

MR. GEARHART: No, please go ahead.

MR. KERWIN: But to its credit, the commission has long -- I've always felt that the commission has really shown a great appreciation for common sense in its determinations and obviously you're going into an area here where the commission has not blazed a trail before, you don't have a long history of previous determinations in regard to this critical circumstances question, but one of the things -- what this reminds me of to some extent is making a threat determination in the sense that you have to look backwards to make some kind of a determination as to what you may think going forward.

From my perspective, it's very difficult to say with any -- we can't say with any certainty what will happen in the period of the next several months.

What we can say with certainty is what has gone on in 2003 and how the industry has been affected and what its track record has been, that we've seen rounds of layoffs, we've seen whole lines being shut down at production facilities. We've seen entire production facilities shut down.

So to some extent, you have to believe that what is past is prologue. And we've also seen an industry that's just hemorrhaging money. And so from my perspective, it's not a legal perspective, but from my perspective and a common sense perspective, I think, the writing is on the wall here, that things are not going to improve unless some action is taken and that there has been a pattern of very damaging occurrences that have gone on over the course of 2003 and that any industry and any company can only lose so much money for so long in producing a manufactured product.

So I think you have to put it in the context of the totality of what's gone on in the course of this year in much the same way that the commission would in a threat context, to look back and see what has happened over the last couple of years in order to come up with some kind of a vision as to what might happen down the road.

MR. ROSENTHAL: May I ask the staff's indulgence? Mr. Klinefelter has to leave shortly. Do you have any questions that you might direct to him at this point?

MR. GEARHART: I don't have any questions.

MR. CARPENTER: I do have one question for Mr. Klinefelter.

MR. ROSENTHAL: I'm sorry, the same applies to Mr. Teske. I apologize. As you know, we had the late start.

MR. CARPENTER: Mr. Klinefelter, I believe you said in your testimony that one of the producers has filed a petition with the Department of Labor for trade adjustment assistance. Do you know if any determination has been made in that case?

MR. KLINEFELTER: No, no determination has been made at this point in time.

MR. GEARHART: Thank you.

MR. KLINEFELTER: But I will say, as we always say, trade adjustment assistance is a wonderful invention, but what we really want is jobs.

MR. GEARHART: Sure.

MR. ROSENTHAL: Any questions for Mr. Teske?

MR. BENEDETTO: John Benedetto with the Office of Economics.

You mentioned some e-mail solicitations. It might be very helpful if you could submit those, please.

And you had also said that you noticed Chinese fittings first entering the marking in 1990, but they were lower quality. About what time did they start to turn up as higher quality and higher volume products? Or roughly. It doesn't need to be exact.

MR. TESKE: The product lines have improved their breadth, too, along with quality. There have been continued improvements. I think it's been a continuous quality improvement on behalf of the importers and foreign manufacturers.

MR. BENEDETTO: Thank you.

MR. ROSENTHAL: Mr. Gearhart, Mr. Green

wants to add one more thing to answer your last question.

MR. GREEN: Some of the dynamics that are at manufacturing facilities, in our opinion, if we delay relief, we think every week is important and the reason being if we delay relief then our idle plant weeks, the weeks that we're idle, increase and then our experienced workers at our facilities have less monthly income, then they end up going somewhere else because they have bills to pay. So we starting getting a deterioration of the experienced worker staff at the facility that actually make the product and manage the workers.

Also, secondarily, the capital projects get delayed. The decisions on those capital projects get delayed. We would like to make the decisions, they naturally, just like a construction project down the street, have a certain amount of months that you have to be able to get the equipment in, get it in place, to get that benefit, and we need to be able to get these benefits prior to the selling season, which is typically weather-related throughout the country. We would rather get those capital projects in place and get those maximum benefits starting right out in the selling season. That's all I have.

MR. GEARHART: Thank you. I'd like to now turn to some questions relating to market disruption, which is the other prong. Let me start with the domestic industry.

How would you define or describe -- and I know you've done some of this in the petition -- the domestic product that is like or directly competitive with the imported product? What is the domestic product?

MR. ROSENTHAL: Double iron waterworks fittings.

MR. GEARHART: Is it like or is it directly competitive, or is it like and directly competitive? I'm just trying to essentially establish a record, that we have all of this.

MR. ROSENTHAL: It is like the ductile iron waterworks fittings that are imported from China. We're not making a directly competitive argument there.

MR. GEARHART: And could you then run through the five factors -- again, I'm trying to build a record here -- that the commission typically considers in looking at determining whether an article is like or directly competitive, starting with physical properties. And some of this you can certainly spell out in your post-conference brief, too. If you could follow that order, it would be very helpful.

MR. ROSENTHAL: Certainly. The physical properties are identical. They all have to meet certain specifications, as mentioned before.

The channels for distribution are the same.

MR. GEARHART: Same physical properties?

MR. ROSENTHAL: Yes. First, physical properties.

MR. GEARHART: Okay.

MR. ROSENTHAL: Second, the channels for distribution are the same. Virtually all, with some minor exceptions, are distributed through this distribution process you heard described earlier. There are some very small sales accounting for a tiny percentage of the market that goes to end users and both the domestic and the importers sell to that small end user market as well, so there's no distinction there.

In terms of the --

MR. GEARHART: So if I could just stop you on that, if the Loudon County government, for example, were looking for some fittings, they would find that the domestic and the imported product, whether it's

Chinese, Indian, or whatever, would be offered for sale by the same distributors?

MR. WAUGAMAN: I would say that they would find there is a number of distributors that they could buy from. Some would offer domestic product, some would offer imported product, and some would offer both.

MR. GEARHART: But the selling channels would be the same and many of the distributors would be selling products from multiple sources?

MR. WAUGAMAN: Yes. The distribution channel would be the same.

MR. GEARHART: What about uses? I'll let you go through the list.

MR. ROSENTHAL: The uses are identical. There are not any different uses for the products, whether they're U.S. or imported, and there are no -- these particular products are used only in particular applications and you're not going to see a waterworks fitting that meets the AWA specifications used for an application like a plumbing fixture in somebody's house or some other application that doesn't need to have those specifications met.

MR. GEARHART: Next issue would be where and how made. And that probably involves two questions:

the domestic products, are all the fittings that are part of the like product as you describe it, are they basically made in the same plants on the same equipment by the same workers or are some made in one plant, let's say, and others made in a different plant on different equipment?

MR. GREEN: They're basically made -- the processes are fairly comparable. Most of the product can be made between Union Foundry or Tyler Pipe. Clow Water does not have the ability, they're not a major producer. Now, probably 70 percent of the product that is made a Union can be made at Tyler, but there is still some product that has to be made at Union.

MR. GEARHART: What would those products be and can you be more specific on that?

MR. ROSENTHAL: I think he's talking only about ductile iron waterworks fittings. They have dedicated lines that make only ductile iron waterworks fittings at these facilities. There are some lines that can be used for products other ductile iron waterworks fittings and I think we indicated in the questionnaire response what the percentage of other products might be manufactured on some other of the lines.

MR. GEARHART: Okay. These are products

outside the scope of the investigation?

MR. ROSENTHAL: Correct. Yes.

MR. GEARHART: But in terms of the products included within the scope of the investigation --

MR. WAUGAMAN: There are some that currently are only able to be made -- within the scope of this investigation only able to be made at Union at this time.

MR. GEARHART: And why is that? Is that because of the size of the product and the machinery? You need different machinery for it?

MR. WAUGAMAN: No, actually, it's because of the breadth -- I would say in this product line there's probably 1500 different configurations in the DIWF category and different end configurations, so you have a vast investment of patterns and tooling that was made years ago at Union Foundry but we may not have duplicate of that type of configuration or type of product at Tyler Pipe, the same duplication of tooling along that whole product line.

MR. GEARHART: What about the imported products? And you may not be the right ones to answer this, but in terms of how the imported products are produced in China, are they essentially made on the same equipment in the same manner as the domestic

product or are they made by a different process on
very different equipment?

MR. GREEN: I can't speak specifically of how they produce over in China. I will say that as the industry has evolved and we have invested more and more into automated equipment because of labor costs, I would think it's a similar process, it's a matter of whether you do it by hand or whether you use automated equipment. And ours is mainly automated equipment.

MR. GEARHART: Anything else anyone can add?

MR. WAUGAMAN: No, not at all. I think that question could probably be better answered by the other people in the room.

MR. GEARHART: Let me move on to another question in this area.

Is there one like product or are you arguing that there are several potential like products?

MR. ROSENTHAL: We believe there's one like product here.

MR. GEARHART: And even though there are different sizes of fittings -- what would your argument be, then, in terms of why these different sizes and shapes and whatever of fittings should be all part of one product?

MR. ROSENTHAL: Interestingly enough, when we first brought the petition in the ductile iron waterworks fittings case in 1983, the dumping petition, we argued that the like product should be compact ductile iron waterworks fittings up to 16 inches in diameter, because that was really the bulk of the market, probably 90 percent of the domestic production and the imports went into that and the rest of the production really wasn't of much consequence.

The commission rejected that and did not put an upper limit on the size of the fittings and we have decided the better part of valor is not to argue about that. We believed that the commission determination ultimately was the correct one and so we believe there's one like product here.

MR. KERWIN: Could I just add? Mr. Green accompanied us on a tour of Union Foundry this week in Alabama and one of the things that struck me in seeing their production process was just -- having seen a number of other production facilities of different types before -- was how much ability they have to make this broad spectrum of products on the same machinery and you actually see, for example, in the tar dipping line, you see one type of fitting followed by a very different type of fitting, all coming down the same line. And even in the casting end of it, they can switch very quickly between different types of fittings on the same line. So that really struck me, that it's very much the entire spectrum of products that's being made on the same production equipment in the same facilities.

MR. GEARHART: In other words, it's sort of like a continuum, the term that the commission has used in other cases?

MR. ROSENTHAL: Yes.

MR. GEARHART: Let me move on to rapidly increasing imports. What is the basis for your claim that imports are rapidly increasing? What period of time -- and I know you touched on this a little bit earlier, but what period of time should the commission be looking at to see whether there's a rapid increase?

MR. ROSENTHAL: I believe you should be looking at the entire period of investigation when looking at the increase and the rapidity. As I said earlier, I don't believe there's any basis for focusing only on the period post the U.S.-China bilateral agreement or the 421.

I recognize that there are arguments that have been made about just looking at the last year or two of the period. I don't believe there's any basis in the statute for that, from a factual point of view.

So if you're looking for a legal answer, that's my legal answer. From a factual point of view, I think we will satisfy anybody's definition of rapidly increasing imports, whether you look at the beginning of the period through the end or just the last couple of years.

Mr. Kerwin, you may want to add to that. I recognize we've got some confidentially concerns here.

MR. KERWIN: Yes. I would prefer not to get into too much detail about what we have available so far in terms of the questionnaire responses, but I would be happy to cover that in detail in the brief.

MR. GEARHART: I know some of the data are confidential and perhaps you would be uncomfortable for that reason answering this question, but if we were look at just imports between 1998 and 2002, let's say, are imports rapidly increasing?

MR. ROSENTHAL: In my view, yes.

MR. GEARHART: Since 1999?

MR. ROSENTHAL: I would say yes.

MR. GEARHART: Since 2000?

MR. ROSENTHAL: Is this like an eye test? I'm sorry.

MR. GEARHART: Again, I don't want you to be divulging confidential information either, but --

MR. ROSENTHAL: Well, now I'm trying to recall what I've seen. I would say yes, but I would prefer -- the answer would be yes and what I recall seeing is that the rate of growth has slowed in the last, or at least based on the data I've seen, slowed towards the end of the period, but I think it is still growing and a lot depends on where you measure from. Certainly if you measure from the beginning of the period, it is rapid and a surge under anyone's definition.

I'm sure Mr. Loeb will argue just look at the last couple of seconds.

MR. GEARHART: What about since 2001?

MR. ROSENTHAL: I would argue that there was an increase.

MR. GEARHART: This is in actual terms? Relative?

MR. ROSENTHAL: Well, that's one of the other things that we have to look at. I'm just looking at -- I don't have the data right now, I don't want to characterize that now, but my understanding of the imports, in an absolute term, there have been increases and rapid ones through the course of the period. I believe the rate of increase has slowed towards the end of the period in absolute terms, but we have not looked at whether they have increased or surged or grown rapidly towards the end of the period in relative terms because we don't have all the consumption data.

MR. GEARHART: What weight should the commission give to the interim imports?

MR. ROSENTHAL: I'm sorry?

MR. GEARHART: The interim year imports.

MR. ROSENTHAL: I think you should -- there's no reason to weigh the interim imports more heavily or lighter than otherwise. And when you're looking at interim reports, you've got to look not just at the volumes, but at the prices as well. So I don't think you should give particularly more weight to the interim imports.

And I do want to return you to the point that I made in my testimony earlier, Mr. Gearhart, which is when you're looking at volume, you cannot or you should not look only at that because the statute talks about the phrase under such other conditions, it says increased quantities or under such conditions. And I'm not disputing that there has to be an increased volume of imports over the period you analyze, but if you accept my theory that the domestic industry has two choices when they're facing import competition, which is keep your prices up and watch your market share go or drop your prices to maintain market share, I think when you see a slowing of the import growth in any time during the period, you have to look at whether it was done in conjunction with having the domestic industry be more price competitive with the imports so that they didn't lose additional market share. Those are the other such conditions I think you need to look at.

MR. GEARHART: Let me just ask one more and then I'll turn it over to others because I've got some additional questions I'll come back to, but just following up on the other conditions argument, if imports were not increasing, how would they under such conditions be causing market disruption if you didn't have market disruption because imports weren't rapidly increasing? And realize there's a threat element in there, too.

MR. ROSENTHAL: And because the question is price. What the domestic industry does when they're faced with lower priced imports, it's either fight them based on price and lower their margins and potentially lose money, depending on where they are on the costs, or they can decide that they are not going to lower their price and not lose their margins, but instead lose their production volumes and let the imports take a larger share of the market. So you can have market disruption, you can have imports causing a great deal of trouble to the domestic industry without having them take a great deal of additional market share because the industry has decided to fight based on price.

And, by the way, we've seen this in a number of cases, the commission has, that weren't 406 or 421 cases, they've been in the Title VII context, and I can cite to you a number of instances where the commission has found material injury caused by imports where import market share hasn't grown much at all.

MR. GEARHART: But did those statutes have a rapidly increasing import --

MR. ROSENTHAL: No, and I recognize that there is a separate provision to show rapidly increasing imports and that's why I say to you we satisfy the rapidly increasing imports, but I also tell you why you ought not look at a tiny fraction of the time period of investigation to look at that because you also have to look at rapidly increasing and the other such quantities. If, for example, you chose one year or another over the period you may reach a different inclusion. That's why I don't think there's any statutory basis for picking one year or another.

MR. GEARHART: I'll turn the microphone over to John Benedetto.

MR. BENEDETTO: Thank you. John Benedetto with the Office of Economics.

Thank you all for coming and if any of my questions touch on confidential business information, please say so and just follow up with an answer in the confidential briefs.

First, for the industry witnesses, roughly how many distributors are there in the entire country? Are we talking 1000 or less or --

MR. WAUGAMAN: I think if you look at how many different companies or how many different branches, some distribution companies may have 100 or 150 branches. There are certainly in the number of different companies well into the hundreds. If you go into the branches, then that number would approach a thousand, maybe more. I don't have the exact number, but the number of individual companies is certainly over 100 and when you look at their multiple branches, much greater than that.

MR. BENEDETTO: And these companies are

mostly local or some of them are national with
branches?

MR. WAUGAMAN: That's both. You have some that are local and only have one branch, you have some that are part of a national company that have branches from coast to coast.

MR. BENEDETTO: And if you can say this publicly, roughly what percentage of the home market is the national one with the branches? Roughly. If you can't say publicly --

MR. WAUGAMAN: I can give an estimate from my perception of it.

MR. BENEDETTO: Sure.

MR. WAUGAMAN: If you look at -- can you ask the question one more time so I make sure I answer it correctly?

MR. BENEDETTO: Of all the distributors, roughly what percentage of DIWF goes through the ones that are national distributors with branches as opposed to ones that are just local ones?

MR. WAUGAMAN: I would say that over half of the product sold goes to national companies.

MR. BENEDETTO: And these distributors, I guess they also distribute other pipe products to the same end users? Is that correct?

MR. WAUGAMAN: Other products besides ductile iron waterworks fittings?

MR. BENEDETTO: Yes.

MR. WAUGAMAN: Yes. That's correct.

MR. BENEDETTO: And so for a distributor, how important is DIWF as what they distribute it to those end users? Is it a large part of what they're selling?

MR. WAUGAMAN: Well, I wish Mr. Teske was here to answer that question because they sell a lot of different products, ductile iron pipe, plastic pipe and other things, it certainly is significant to us, but I wouldn't want to hazard a guess at what percentage of total dollar sales of an average distributor that is.

MR. BENEDETTO: With the end users, you said that they are municipalities for water treatment plants, for housing starts with construction. Could you give me a little more detail about who the end users are and roughly what percent of the market they are? I mean, we're talking about water treatment plants, but also construction and also construction and also -- is that right?

MR. WAUGAMAN: I can answer part of that question and then I'll let Joel jump in, he's got a lot more years experience, no offense, Joel, than I do.

You have different end users. You've got municipalities that are municipal governments that buy directly themselves. You've got contractors that do work for municipalities, under contract with the municipalities. You've got contractors that do work in housing developments and private work and you've got contractors that build water treatment plants. And a lot of them do a number of the different things, the same contractor that's doing government municipal work may also be doing private sector work, so I'm not sure how exactly you would want to divide it or even could divide the end use market, because a lot of them use the same broad scale products in each individual type of project they might do.

Joel, do you have anything to add to that?

MR. BLAIR: I think ultimately the end user in most cases is a municipality or a water authority. Now, there are maybe some private industries where these products are sold, but by and large, the product, even though it might be a water treatment plant or a sewage treatment plant, ultimately becomes the property of a municipality or a water company.

MR. BENEDETTO: Okay. Anything else on

MR. GREEN: If I could add to that, a significant amount of the product is used in water transmission lines, getting water to subdivisions that are purchased or developed with local developers. The end user is the contractor that buys his product from the distribution chain.

MR. BENEDETTO: Okay. That's helpful.

How common are Buy American agreements among your customers?

Mr. Waugaman, I believe when you talked about Loudon County, were you implying that they are phasing out Buy American agreements in some places?

MR. WAUGAMAN: I do not believe that Loudon County, and I don't have that for a fact because I got this information from one of our distributors, I don't believe Loudon County ever had a Buy American per se agreement. I think they had a preference to use domestic made products because of the products, the services, the things that went along with them. But I think as the price differential became greater and greater between domestics and imports that that preferential treatment or the preference to buy domestic made products, they just said, hey, the price is too great and we're not going to do that. They did not have, to my understanding, a Buy American clause in their municipal spec, they had a preference for American products.

MR. BENEDETTO: Is that typical that it's not a legal thing, it's a preference rather than a binding --

MR. WAUGAMAN: Although I believe some municipalities may have actual Buy American specs, most of the specs in municipalities are based on preference of a vendor to buy from. A lot of people have specs where they say we want to buy Tyler product or Union product or whosever product it is. I think the number of municipalities that actually have a Buy American, it must be domestic, spec to purchase are very small.

Joel, you may want to add to that.

Well into the single digits, certainly not over 10 percent, well into the single digits of the product sold would have an actual Buy American spec. I couldn't put a firm number on it.

MR. BLAIR: I would agree with what Don said.

MR. BENEDETTO: Okay. Anything else?

MR. GREEN: I think when we've researched this before we've often come across language which is in about every one of those Buy American towns, it says if the price differential is more than 5 or 6 percent, they can buy whatever they want to.

MR. BENEDETTO: I see. Okay.

If you have any other information, there's been several references to other plants that were closed, that there used to be six companies and then now we're down to three U.S. companies that produce the bulk of the DIW. If you have any other information that you would be able to put on the record about why these companies closed, I think that might be very helpful.

And one final question. Again roughly, about what percent of your distributors are only distributing only U.S. DIWF as opposed to distributing both or distributing imported? Are most distributors distributing both U.S. and imported DIWF?

MR. WAUGAMAN: Paul says don't guess. I'd rather get you the exact numbers and get back to you in the brief.

MR. BENEDETTO: That would be great.

Thank you all very much. I appreciate it.

MR. BENEDETTO: Mr. Boyland?

MR. BOYLAND: David Boyland, Office of Investments. Thank you for your testimony.

I have a couple of questions regarding

information that's been submitted to date.

On page 8 of the questionnaire, part 34, we asked for internal profit and loss statements and I do not believe anybody submitted those. Could those be submitted?

MR. ROSENTHAL: We're obviously conferring here. Let's find out how to answer that.

(Pause.)

MR. ROSENTHAL: Yes, we will. I didn't realize those hadn't been submitted.

MR. BOYLAND: Thank you.

The income statement which each plant producer filled out, page 9, part 36, when I look at the average unit values, the average unit costs, are there changes in raw material input prices, direct labor, wage rates? What would be driving changes in averaging the costs from period to period? Would it be production volume as opposed to other factors?

MR. ROSENTHAL: We would prefer to answer that in the post-conference brief.

MR. BOYLAND: Part 37, page 10 of the questionnaire, asks for capital expenditures by year. With respect to the pattern of capital expenditures over the period examined, how would you characterize that? As being normal or within the range of your activity in the previous five years? Anything unusual or different during that period?

MR. ROSENTHAL: Let me make sure I understand the question. Are you saying is this five-year period different than the previous five year period?

MR. BOYLAND: Yes.

(Pause.)

MR. ROSENTHAL: Are you looking at the consolidated statement now or the individual companies?

MR. BOYLAND: The question is sort of both. I'm assuming you'd have to answer it on a company-by-company, plant by plant basis, but I guess the question is we do see changes in magnitude from period to period and I guess the question is is that what would be consistent with the previous period or was there anything unusual about the period in terms of your projection?

MR. GREEN: You know, I think, overall, it's important to note that the costs are pretty stable for this period of investigation and are we able to accomplish that with increasing certain capital investments in certain periods of years. Those are offset by some other cost reduction to be able to be balanced out for the most part.

In the foundry business, there have been changing regulations regarding air quality standards, what comes out of our facility, the effect on the environment, et cetera, so that in the last three or four years has resulted, as those standards have gotten more stringent, have required us to do more investment along those lines.

Productivity, if you're going to put a new molding line in, that may be a two-year real infusion of capital investment that you wouldn't be doing that major molding line two years later or after that. So I would say there are some dynamics that are in place that would show some variation based on different managers or the overall management team that may be responsible for those facilities, but overall I think it's important to note that the cost is not really the issue. The result is the costs have been relatively stable over the years, however, in order to maintain our market share, our pricing has had to come down continually in order to be competitive.

MR. BOYLAND: Thank you. I guess sort of the other part of the question was just simply there is a lumpiness in terms of capital expenditures and you wouldn't expect -- obviously, you're going to put

a new line in once every X number of years and I guess
the question was if I looked at the previous five
years, I would probably see a similar pattern, an
increase in capital expenditures for a particular
project and then a decline in following periods, sort
of the up and down.

MR. GREEN: You would see some. In a very,
very healthy market, you would probably see a
consistent amount, for every dollar that drops off in
appreciation, you'll have a dollar invested in new
product. And you have to do that just to be stable.
If you see your margins coming down and the pricing
being more aggressive and you need to make changes to
be even more cost competitive, you may see a larger
investment in some type of molding machines in order
to accomplish that and to remain competitive and
remain a viable domestic producer.

MR. BOYLAND: That kind of raises the
question in terms of that particular investment that
you're referring to was mostly to increase your cost
competitiveness as opposed to increasing your capacity
to supply additional --

MR. GREEN: It actually -- I wasn't on board
when that decision was made to produce that, I wasn't
responsible for the fittings companies in addition to

the other companies that I've got, but at that time, it's my understanding the decision was made to be able to have more capacity, to provide based on the current volume of tonnage that we were seeing 1998 and 1999 to justify that major expenditure and also to reduce the overall cost in order to get a decent return on investment to pay for that piece of equipment.

MR. WAUGAMAN: Excuse me. I would like to add to the answer if I could and answer it from a Tyler Pipe perspective, from my point of view. I was employed by Tyler prior to the McWane acquisition and my belief is, although I think we have to go back and check the numbers, if you look at capital investment between 1993 and 1998, most of that time under the previous owners, that you'll find the level of capital investment in the plant for productive improvement to be far less than what you see in the period from 1998 to 2003.

MR. BOYLAND: Why was that? There just was a focus on other products, et cetera? What would have been the reason?

MR. WAUGAMAN: Now being in the position to have access to the actual reasoning for that, I think it's just a matter that our new owners believed in putting more money into the manufacturing process to make it more productive than the previous owners did of taking a position of higher prices and milking the profit out of the business while in fact there was any there.

MR. GREEN: We see that pretty regularly prior to acquisition, that the previous owners that would be losing money would not have the access to capital to make the necessary investments to say in that business, so when we purchased these facilities we put the necessary capital amount that we believe was required in to grow and strengthen the business, versus just harvest it and watch it die.

MR. BOYLAND: This is sort of a related question. In part 38, we actually asked for a breakout of expenditures based on whether they were environmental or safety related and we're seeing kind of a different -- and some of it is correlated with the larger expenditures, but in general, are these environmental expenditures discretionary? Or not discretionary, but do you have a window in which to make these expenditures? I mean, we are seeing sort of different magnitudes, different periods where they've increased, they drop off

MR. GREEN: What I've seen in my career in the foundry business is different states going through different enforcement cycles or at least when their awareness is being enforced more. The regulation may be on the books for five years prior, but just in the last three years there's been more and more emphasis put on, so it really does not allow us to be very discretionary. We're fortunate that with those expenditures we can still maintain our costs, again, focusing on the issue being pricing and the market.

MR. WAUGAMAN: I'd like to add something and maybe David could confirm also. When you put money into a foundry operation to increase its productivity, a lot of times that means you have to upgrade the environmental pollution systems that go along with that. You can't just discretionarily decide to spend money on production improvements without the additional bag house and so forth that need to go along with that.

MR. GREEN: I would concur.

MR. BOYLAND: This sort of touches on what Mr. Gearhart was talking about in terms of which plant is producing what type or what part of the scope.

During the period, was there a change in the product mix in general in terms of what was being sold and produced within that 2 to 42 inch range? I mean, was there a shift or was it about the same?

MR. WAUGAMAN: Yes, I would say just to answer that question briefly that it stayed relatively stable. I can look at the exact figures and we can report on how that's changed over the years, but I think relatively stable in that product range.

MR. BOYLAND: Okay. So from year to year, if I see a change in averaging in cost or revenue, I'm not seeing a change in the product going out the door, I'm seeing a change in the pricing?

MR. WAUGAMAN: Well, I thought your question was was there a change in the variety of the product mix and I think variety of the product mix offered hasn't changed.

MR. BOYLAND: Oh, I'm sorry.

MR. WAUGAMAN: Of the product mix sold, if you look at major categories in sizes, there has not been a big change, but there may be in a certain year with a project that requires a lot of 18-inch fittings. Where a lot of those are sold because of a major project, they may not be sold the following year. So there's always a fluctuation in sizes but, in general, size ranges, it's stayed fairly constant.

MR. BOYLAND: As far as range available, but from period to period, there could have been differences?

MR. KERWIN: What changes, you basically have the same product line and that has been consistent. We may have incremental average monthly sales of each of those particular items.

MR. BOYLAND: One final question. In the testimony it was noted that Ransom directly owns the Union and Tyler and Clow is sort of outside of that?

MR. GREEN: Correct.

MR. BOYLAND: As a division of McWane?

MR. ROSENTHAL: I believe we've already submitted an organizational chart for the record.

Mr. Green, if you want to try to interpret that chart?

MR. BOYLAND: Yes. I guess maybe the question is more -- not getting into the propriety information, but I can see that what's being produced at Clow is -- what is being produced other than subject merchandise is different than the other two plants and I guess I'm just kind of asking if -- well, the reason that it's outside of the orbit of the other two is because it is.

MR. GREEN: Because Clow Water Systems Company is primarily a ductile iron pipe manufacturing facility, but they do also have a green sand foundry there that produces some DIWF.

MR. BOYLAND: Okay. So the fact that the majority of what they're doing is outside, they don't operate within the other two?

MR. GREEN: Correct. The way we're structured is we have an Executive Vice President, they're responsible for the ductile iron pipe manufacturing facilities. And we have someone else responsible for the fire hydrants and the water valve manufacturing in businesses. And then myself is responsible for, in this case, the ductile iron waterworks fittings.

MR. BOYLAND: This is for post-hearing submission. If you could addressing during the period examined the relationship between profitability and capital expenditures, I guess from the perspective of the actual results and what you were anticipating, sort of what happened and what you were projecting to happen.

MR. ROSENTHAL: We'll try to answer that in our post-hearing brief. Yes.

MR. GREEN: Thank you.

No more questions.

MR. CARPENTER: Mr. Greene?

MR. GREENE: Bill Greene, Office of Industry. I just have three questions.

When we were at Union Foundry on Wednesday and we were talking about the manufacturing process, I could have -- maybe I was mistaken, but I thought there was a differentiation based on size, that the green sand was used from 2 inches to 36 and above 36 they were using a resin coated no bake system, which is different machinery.

MR. GREEN: You are correct. There is a certain machine that is able to produce eight inch and below sizes. There is another machine that produces efficiently sizes 10 inch through 24, something along those lines. And then there's the no bake system that you would say historically produces greater than 30 inch and maybe some configurations of 30 inch.

MR. BOYLAND: So it's physical size?

MR. GREEN: It's a physical size issue.

MR. BOYLAND: Okay. But I thought it was a completely different way of making a core, that there's not --

MR. GREEN: The process is different, but the criteria is what will fit on the machine. If we could fit the 36 inch diameter machine on a high production machine, we would make it that way, but there is -- I think our numbers are -- hang on one second.

MR. WAUGAMAN: The 24 inch and below is approximately 90 percent of the product that we sell, 30 inch and up overall domestic industry.

Twenty-four inch and below is about 90 percent of what the domestic industry sells of fittings, and 10 percent roughly and less is 30 inch and up.

MR. GREEN: So carrying that a step further, you wouldn't want to buy -- you know, the incremental cost of being able to put a larger size on an automatic molding machine, you would pay millions and millions of dollars more for that equipment to be able to have that feature on a very small quantity of products, so you invest along the automatic molding machines. You invest on the higher volume side.

MR. GREENE: Thank you. Second question is someone spoke to the fact that housing starts and construction projects had a large influence on sales. Could you talk about the seasonality of sales and production?

MR. WAUGAMAN: In addressing the two parts of that question, first housing starts. Because when you're building new home developments and subdivisions you need to put a lot of piping systems in for the fresh water that have a lot of direction changes in the pipes. Therefore, you use a lot of fittings in any housing development, so they directly relate to the sales of our DIWF fitting products.

As far as seasonality goes, and again that's different in different parts of the country. Of course, when you're in the north in Minnesota, Massachusetts and New England there's a greater seasonality when they can't operate those projects and dig below the frost line, where in the southern part of the country you see less seasonality.

It blends out in our sales that you do see a seasonality where April on through October again are a stronger sales month, tapering down at year end and not picking up again. It's not a drastic drop where sales go away because a lot of our product in the southern part of the country isn't exposed to that same seasonality.

MR. GREEN: And if you take your sales hat off and you look at it on the operations side, you would rather operate consistently month in and month out and let your inventory levels rise and fall accordingly.

MR. ROSENTHAL: And just to reiterate a point made earlier, Mr. Greene, as Mr. Green said, one of the reasons why they would like to get investments done now or implemented in the late fall/early November/December period is to have the investments be able to kick in when the market picks up in the spring later on.

I'm not going to argue that this is like an agricultural product where the seasonality is so great, but there is a reason why you want to make investment decisions and get things in place sooner rather than later, and it really goes back to Mr. Gearhart's question about urgency and critical circumstances.

MR. GREENE: Last question. Sorry. Go ahead.

MR. KERWIN: I just wanted to add one point. Not to flog a dead horse here, but it's kind of ironic that to the extent there is some seasonality and that the summer months are really, you know, the relatively high point of the demand point for DIWF, this is exactly when these layoffs and closings took place this summer.

MR. GREENE: Last question. When Union closed its automated mold line, was that production transferred to Tyler, or was it just cut out altogether?

MR. ROSENTHAL: In our post-hearing

conference brief we'll tell you what happened to what was being produced on that line.

MR. GREENE: All right. Thank you.

MR. CARPENTER: Ms. Mazur?

MS. MAZUR: Diane Mazur, Office of Investigations. Thank you, gentlemen, Ms. Gilbert, for your presentations this morning.

It's always helpful to get as much as we can out in the public record. Thanks very much to the industry witnesses particularly for coming and helping us understand your business.

Let me start first with the like or directly competitive product. We've heard your statements, Mr. Rosenthal, as to what your position is. The Respondents' pipeline component has suggested that there at the least are two market segments in this industry, 30 inches and below and 36 inches through 64 inches, which is beyond the scope as well.

Would you care to comment on that publicly? Whatever you need to follow up in the post-conference brief would be appreciated.

MR. ROSENTHAL: Yes. Number one, we don't believe there are different market segments. Frankly, as we said before, these products are a continuum.

McWane makes products beyond the break point suggested by the PCI letter, as we pointed out in our response, and other domestic manufacturers, small though they may be in terms of production, do make product beyond those made by McWane, so that's the essential point.

I think the Respondents' letter is kind of mistaking the difference between different sizes and a so-called segmented market. As we understand that term, we don't see a segment here. You see a range of products, most of which are made by the Petitioners, but all of which are made by the domestic industry as a whole.

While it is true that most of the production that gets sold to distributors in the domestic industry and like the importers sell to end users as well, I don't think I've ever seen -- I shouldn't say that. Market segmentation is a tough argument to make based on sizes or simply the limitations of a particular producer's capability.

I'll let Ms. Gilbert supplement that if she'd like. No? Okay.

The note that was just passed to me indicates that contrary to the submission made by PCI, McWane does produce 36 inch product, so not only do we disagree with the notion of segmentation. We certainly disagree with their characterization of who produces what and where they would draw their particular line.

MS. MAZUR: Following it to the next level, though, if one were to make a like or directly competitive product argument based on size, based on some of the things you were just speaking to with our Mr. Greene regarding the different production processes on size, could you just in your post-conference submission just run down the Commission's factors on like or directly competitive?

MR. ROSENTHAL: Certainly.

MS. MAZUR: All right. Thank you.

We need to I think clarify the channels of distribution data and some apparent inconsistencies that we might be having here on the record.

Mr. Waugaman, you were basically saying, and I think there was general consensus, that in terms of channels of distribution distributors are the vast majority of products sold.

MR. WAUGAMAN: That's correct.

MS. MAZUR: That is the channel.

MR. WAUGAMAN: Yes.

MS. MAZUR: Would that conflict then with what's been submitted in say the Commission's questionnaires and what we've got on the record in terms of the data?

We asked for shipments by waterworks houses, other distributors and end users. Perhaps there is no conflict here. Would you consider waterworks houses distributors?

MR. WAUGAMAN: Yes.

MS. MAZUR: Then explain the difference between a waterworks house distributor and other distributors. Who are the others?

MR. WAUGAMAN: There's not much of a difference between a waterworks house and a distributor from our perspective. We use that word interchangeably.

If you use the word other distributors, that could be a distributor that primarily sells plumbing products or electrical products. There are many distributors in the industrial business. They may be referring there to distributors that sell products other than waterworks branches.

In other words, if a plumbing house that sold primarily toilets and things for plumbing of a construction job and one of their customers wanted to buy a ductile waterworks fitting because he was doing the underground part of that office building and they bought a ductile iron waterworks fitting from that distributor, that would be an other distributor.

MS. MAZUR: Do you know of any differences again between the U.S. distribution channels and the importers who sell Chinese product?

MR. WAUGAMAN: No, I don't.

MS. MAZUR: Mr. Kerwin, I wonder if you could take a look at some of the confidential information we've gotten in our questionnaires with respect to what the importer questionnaires are giving us on channels of distribution, and if you've got any comment on that if you could do so in the post-conference submission?

MR. KERWIN: Sure. We'd be happy to.

MS. MAZUR: Thank you.

MR. WAUGAMAN: If I could just add one thing to that? In the questionnaire, I'm not sure exactly how it was stated, if that was stated was it sold to or delivered to.

It could be possibly that a product is delivered to a contractor, but sold to a waterworks distribution house. I'm not sure how the Respondent reflected that in the questionnaire.

MS. MAZUR: All right. Let me move over to some of the other preliminary data that we seem to be getting to our questionnaires.

We've got data basically showing us that there are relatively high levels of inventories in the industry, and they seem to be consistently high. Is there something specific to this product that requires a fairly substantial inventory level?

MR. GREEN: Excellent service, and also compare this to the valve and hydrant business. In the valve and hydrant business, using your manufacturing glasses, there's not that many different configurations or transitions.

You know, a valve. You either have a six inch valve, an eight inch valve, a 10 inch valve, a 12 inch valve. It's very rare you would have, at all possible, a 10 inch by two inch valve, a 10 inch by three inch valve, a 10 inch by four inch valve, a 10 inch by six inch valve, in order to be able to tie in.

You know, in a piping system you may have a 10 inch transmission line, but you're tying in a three inch line or down the road a two inch line or down the road a six inch line, so there's just a tremendous amount of products that really only make sense operationally to run one time a year.

You only want to do one setup because you could run that on your automatic molding machine one or two hours and make six months', seven months' worth of inventory. You don't want to make a one month supply and then come back next week and set it up again and run another week's supply or something along those lines.

From my experience, coming from the ductile pipe background, the valve and hydrant background and the fittings, with fittings we typically maintain about a four month use of inventory levels because our service levels are such that 95 percent of the time we will deliver to a customer his order complete, every item, every line item, within five days of when he places that order.

Sometimes that's not good enough, so we have to have that investment in inventory in order to have excellent delivery.

MR. WAUGAMAN: If I could add to that that the vast majority of our sales are required by our distributors immediately. In other words, out of stock. Not made to order where you go back to the foundry and mold and coat a product.

For that reason and with the vast breadth of our product line, and I don't have the exact number, but it's between 500 and 1,000 different SKUs of products that we carry as stock products. You in turn need to have inventories to support that demand from distribution.

MR. GREEN: If I may add? What we see a lot from our distribution, and our whole focus is to be excellent supporters of our distribution network, is they're under mandates to multiply their turn by whatever margin they make on their product, so if they make a low margin on something they want to turn that inventory eight, nine, 10 times. Thus, if they have a turn time profit margin being 100 percent that is what the distributor channeled managers are being forced to adhere to.

We've seen in the last eight years I guess more pressure of maintaining the inventory that has historically been at the distributor's yard being at the manufacturer's yard because the distributor wants to just pick up the phone on Monday and get a delivery and pick up the phone next Monday and get another delivery. They don't store a month's supply of product on their yard as they may have done 10 years ago.

MS. MAZUR: Thank you. That was very helpful.

Let me ask a couple of questions about product mix as a followup to other questions that were raised earlier. You've indicated that essentially it's been stable over the period of our investigation in terms of your mix of product, but was there not a standard change in the compact standards that basically allowed for a shift from full back down to compact in the size ranges to allow the fitting to go from a 24 inch to a 48 inch fitting?

MR. WAUGAMAN: I think to address the first part of your question, there were changes. The vast majority of the changes from full body to compact ductile took place prior to the term, the period of time under this discussion today, the investigation today.

As far as you had mentioned 24 inch and up? I'm sorry. What was the second?

MS. MAZUR: Forty-eight.

MR. WAUGAMAN: Forty-eight inch and up?

MS. MAZUR: No. It allowed you to go from 24 to 48 at a compact standard.

MR. WAUGAMAN: I believe that has been allowed for a period of time. I'll let Joel address that.

MS. MAZUR: We've got indication that it was late 2001/early 2002.

MR. BLAIR: The AWWA standards are reviewed each five years, and as new products and new producers bring products into the market those standards are expanded to cover size ranges and configurations. That's the natural progression. The larger diameters have been introduced to the C-153 standard.

MS. MAZUR: Have you seen a shift away from full body to compact in terms of your sales and production over the period of investigation?

MR. WAUGAMAN: In the larger diameter specifically, yes. In the up through 24, the answer would be no.

MR. GREEN: And again, 90 percent of the product is 24 inch and below in size.

MS. MAZUR: Okay. All right. I think the last item I really want to talk about is rapidly increasing imports just to make sure that we're all using the same data and we agree that that is what should be used.

The Commission has received data through its questionnaires, its importer questionnaires. Do you believe those data are what the Commission should be relying on in terms of imports and market penetration?

MR. ROSENTHAL: Yes, we do.

MS. MAZUR: Okay. Lastly is the -- actually, it's not the last question.

The reason we're all here today instead of at a normal hearing is critical circumstances. Your clients, Mr. Rosenthal, have made great efforts to provide us with as much information as they could on this issue, but a specific question in the questionnaire asks for the effect or what the difficult to repair damage would be if provisional relief were not granted.

The response in the questionnaires dealt with the question in terms of a much longer time frame. It could have been just a misunderstanding of the question or poor phrasing of the question.

Could you take a look at that question in our questionnaire, 5-B I believe it was, and respond in the same time frame that we've been talking about this morning, roughly two months, the difference between provisional relief and what normal relief would have been?

MR. ROSENTHAL: We will go back again and give you a finer tuned answer on that.

MS. MAZUR: Okay. That's good. The last item, Mr. Rosenthal, is the notion that imports should be viewed over the entire period of investigation, and you found no evidence in the statute or legislative history to go to a shorter timeframe, more contemporaneous.

In the recent Brake Drums and Rotors investigation we had at least two Commissioners, Chairman Okun and Commissioner Koplan, find that in fact there was ample provision in the legislative history specifically that addressed the concerns about potential increased import competition from China in the future.

Essentially what I'm asking you to do is address it briefly now if you will, and then in your post-conference submission please address Footnote 65.

MR. ROSENTHAL: I certainly will. I read that, and I said to myself I can't wait to come before Commissioner Koplan and Chairman Okun to explain to them why they're wrong on that.

Honestly, I don't see that. In fact, I think it's an incorrect reading of the legislative history and the statute. I did note that, as I said, but there are other Commission decisions under 421 that make it quite clear that a thorough, less dramatic increase over a longer period of time also satisfies the rapidly increasing import standard, so clearly we've got that here.

As I said to you, I would argue that the emphasis on the interim period or the last year or so is incorrect, and I think with the additional briefing Commissioners Koplan and Okun will see it differently.

MS. MAZUR: Could you help them along in terms of elaboration in your post-conference submission?

MR. ROSENTHAL: Absolutely.

MS. MAZUR: Thank you. Those are all the questions I have.

MR. CARPENTER: I had a few questions. Unfortunately, I still have a couple questions left on rapidly increasing imports.

Mr. Loeb, in his opening statement, said that he felt that imports had to be increasing over a very short period of time.

Mr. Rosenthal, you said a number of times that you felt the increase did not need to be after the U.S.-China bilateral agreement. I think you also said at one point that the increase doesn't need to be over a minute period or something to that effect, so I take it that you're disagreeing with his feeling that it does have to be over a very short period of time.

MR. ROSENTHAL: Yes, I do disagree with that, and I think notwithstanding the footnote cited by Ms. Mazur earlier there have been a couple of decisions by the Commission under 421 that indicate it doesn't have to be over a short period of time.

We'll cite these in our post-hearing brief more directly, but I think it was the Hangers case where the increase highlighted by the Commission was from January 1997 to January 2001, which was prior to the time that the decision as made in that case. We'll go into more detail on that in our post-hearing brief or post-conference brief.

MR. CARPENTER: Okay. Good. I believe you also said at one point that you felt there was a surge at the beginning of the period of investigation, and then there was a slower increase during the remainder of the period.

My question is do you feel that the rapid increase in imports occurred at the beginning of the period or during the entire period?

MR. ROSENTHAL: There's been an increase over the entire period, and the question is when was the increase most rapid. I think the increase was most rapid at the beginning of the period. Again, now we're only talking about absolute volume. We're not talking about relative volume because honestly I have not seen that analysis.

What I say may change based on when we're looking at market share numbers, but for absolute volumes clearly the increase is more rapid beginning in 1998 through the first few years of the period of investigation and slows in the later time period based on the numbers that I've seen.

From my way of thinking and based on some of the earlier statements under the other Commission decisions in 421, that satisfies the rapidly increasing standard.

I will stop there. In our post-hearing brief after we have some more time to analyze the data both in absolute and relative terms we'll have a more robust opportunity to argue this, especially since we won't be having to do this in public and worry about revealing confidential information.

MR. CARPENTER: That's good. To clarify though, you feel that if there was a rapid increase at the beginning of the period that would be enough to satisfy the statute?

MR. ROSENTHAL: The answer is yes, especially when you also include with that the other conditions that were taking place as a result. This is why I emphasized this in my colloquy with Mr. Gearhart.

If the increases, the surge, was slowed somewhat because the industry reacted by dropping their prices and reducing their profitability, I think that's a very important component of your analysis of increasing volumes and the pace that the volumes increased.

I'm as happy as the next person to engage in the discussion of angels dancing on the head of a pin and what constitutes a surge. I think that by any measure if you look at the beginning of the period to this time that imports have increased rapidly and would have surged.

What I don't think is particularly helpful is and I don't think particularly authorized under the statute is focusing on one slice of that period, as much fun as it is to argue about what that slice means.

I also think that you have to look not just at the volume part of this statutory phrase. You can't ignore it. I'm not suggesting you do, but take it also in the context of the statute. It says "or under such conditions."

It is the word "or", not "and", and so you need to give value. You need to give some content to that phrase, and I'm suggesting what that content ought to be here.

MR. CARPENTER: Thank you.

Mr. Kerwin, I had one question for you. If I heard you correctly, I thought at one point you said that imports from China in the first half of 2003 were about seven times higher than they were in the first half of 2002. Was that based on questionnaire data, or was that based on statistics?

MR. KERWIN: No. That was strictly based on the data in the petition, which were the official statistics which, of course, we frankly don't place much stock in.

Like I said, we recognize that the questionnaire process is a way to get at the issues of what actually were the import volumes throughout the period of investigation.

MR. ROSENTHAL: I did not jump up and disagree with Mr. Kerwin because I think given that the Commission has limitations on what you can get, I agree that you've got to rely on the importers' questionnaires, but to the extent that you may not have all of the imports covered you need to, of course, recognize that too.

It's hard for me today sitting here knowing or for you to know what you don't have. You just need to be careful about drawing conclusions about the universe based on what you have, too.

MR. KERWIN: Yes. I would add one point, which is, as I mentioned in my testimony, we've now had this breakout of the HTS since the beginning of 2002, and over time we feel that there has been, you know, an increase in the amount of knowledge of both the Customs officials and importers as to the existence of this new category and where DIWF should be classified under the new system.

Clearly, in the beginning of 2002 that was not the case, which is why we came up with the methodology to in some very ham-fisted way estimate what the imports had been in the first half of 2002. None of this is very satisfying to us, but we felt we had to put numbers together for purposes of the petition that in some way estimated for that period.

On the other hand, over time we believe that the classification has gotten to the point where it's apparently being done properly. When you look at the official statistics for the first half of 2003, the numbers are extremely significant.

How you compare that to the volumes from the previous periods may become somewhat problematic, but we feel that at least the official statistics in 2003 appear to be properly developed and to be reflective of reality and that those should be borne in mind in reviewing the questionnaire responses.

We realize that you have to have a consistent database from one source. It's not the way the Commission typically does things to sort of say okay, we're going to use questionnaire response data through 2002, but then we're going to switch to the official statistics in 2003, interim 2003.

I know that's not typically how the Commission would develop a database. However, I think that again that at least the statistics that we end up with through the questionnaire process should be checked against the official statistics in the 2003 period just to get some idea, of course, of coverage and, you know, any other implications there may be in relation to the questionnaire data.

MR. CARPENTER: Thank you very much.

A couple other areas. One, there was some testimony about a large number, maybe 1,500 or so, or configurations of these types of fittings.

Is it a common practice in the industry where certain producers specialize in certain types, certain configurations or sizes, and if they don't produce a full line of products they'll purchase other sizes that they don't manufacture from other sources, or do you attempt to produce a full line of products?

MR. WAUGAMAN: Well, let me address that as I believe what you're asking there. You're talking about both producing and selling as two different aspects --

MR. CARPENTER: Right.

MR. WAUGAMAN: -- of the situation?

I would think that if you looked at our product offering, which you have been submitted a catalog of our products that we offer, that I would suggest that if you look at the similar catalog from other domestic producers you would find it very similar in breadth and depth of the product line, as I think you would find if you got a product catalog from Star, Sigma or PCI. I think you would find a very, very similar product line, depth and breadth of the product.

Whether those products are manufactured by different parties, I can't address the other domestic producers in certainty. I can tell you that of our product offering that well over 99 percent of those sales are produced in either the Tyler or Union or Clow plant.

When it comes to the other domestic producers, I do not believe that American Cast Iron Pipe manufactures below 12 inch or 12 inch and below.

That's my understanding. They buy those and offer that product, and I believe the same thing to a lesser extent from U.S. Pipe.

Does that answer the question?

MR. CARPENTER: Yes, it does. Thank you.

You also I believe at one point said that quality is not much of an issue in this case because of the AWWA standards. The quality tends to be fairly consistent from different sources.

I just wanted to make sure that there wasn't something like a high end line and a low end line of this particular product in this industry.

MR. WAUGAMAN: No. You're absolutely right. The product is pretty standard across the board.

MR. ROSENTHAL: And that really is the kind of way I understand market segmentation decisions made by the Commission in the past to have gone, whether there's a particular niche where the imports have -- going back to, for example, a market segmentation case on <u>Disposable Lighters</u> where the Chinese lighters and Thai lighters seem to be at the lower quality and lower price, and they were only in that segment. The Bic lighters are in the higher price.

That's how I understand market segmentation, which is why we don't agree with the characterization of the Respondents there, but you don't see that in this industry. It's pretty much the commodity product, certain specs, and there isn't a high end and low end in terms of quality or price.

MR. CARPENTER: Thank you.

Mr. Loeb, in his opening remarks, indicated that U.S. producers imposed or attempted to impose price increases over the last 12 months. Could you comment on that?

If it's confidential, if you prefer to comment in your brief that's okay also.

MR. WAUGAMAN: I would like to make a comment on that without getting into detail.

In general, the only list price increase that we imposed in the last 18 months was a five percent list price increase on our up through 12 inch product, I believe, Joel, and that was last October since around that time and up until today.

Up until today, we have submitted to the Commission a list of multiplier decreases. Although we did have a list price increase, we submitted a list of multiplier decreases in market areas approaching 20 different multiplier decreases in 20 different areas.

Those were the only ones based on being competitive with Chinese imported ductile iron water main fittings, so we did have one price increase on a portion of our product line in that period of time on the list price, but it was more than completely wiped out and gone into the negative with multiplier decreases we needed to be, because if you remember the testimony the list price is only one part of the formula of the formula. The multiplier is the major part.

It is correct to say that we have had a list price increase. It's also correct to say that we've had numerous multiplier decreases that have more than offset that list price increase.

MR. BLAIR: I believe the increase was more in the four percent or three percent range than five percent, though. The list price change.

MR. CARPENTER: Thank you.

MR. GREEN: I would like to add if we look at the period of this investigation, the pricing, the average pricing in the market has decreased I believe it's 24 percent -- it's in our answers to the questionnaire -- since 1998.

MR. ROSENTHAL: Therefore, I'm not sure the use of the word "impose" is a correct one when we talk about Tyler or Union or any of the McWane entities announcing a price increase. They're not in a position to impose a price increase on anybody.

MR. CARPENTER: Thank you.

Mr. Blair, you indicated in your testimony that importers have been providing free delivery to customers, if I understood you right. How long has that practice been occurring, and does it occur on all sales?

MR. BLAIR: To my knowledge, it does not apply to all sales; only to the sales that can be accommodated through their route trucks. I can't tell you how long they've been running route trucks, but it's been for quite some time. Several years, in my opinion.

MR. CARPENTER: Is that a practice that the U.S. industry has attempted to match?

MR. WAUGAMAN: Let me answer that. It's a practice that we have attempted to compete with. We have not taken to the practice of running route trucks, calling ahead and saying if you want one fitting we'll stick it on there and drop it at your site, no freight charge.

Our normal practice is that we have a minimum quantity that we will ship freight paid, and that varies from 5,000 to 10,000 pounds, depending on the part of the country.

What we've had to do is we've had to eliminate that minimum quantity in many instances and ship three, four or five fittings to an end use customer to compete with Chinese imported fittings where they would buy two, three or four of those and get them freight free as well.

We have attempted to compete, but not in the manner of running a route truck, but in getting product to our customers without charging them freight by delivering smaller quantities than our standard practices are.

Does that answer your question?

MR. CARPENTER: Yes. Just to make sure I understand, when you talk about running a route truck are you saying that they are delivering small quantities of fittings without calling for a delivery charge where you typically have had a minimum requirement before you would provide free delivery?

MR. WAUGAMAN: Practice had been we would provide free delivery after you met a minimum per order. My understanding is the way the route truck system that Joel referred to is that they will run a truck from one of their distribution sites on a regular route, and there is no minimum for free delivery.

If you want one fitting dropped off, they'll drop off one fitting. If you want 10,000 pounds, they'll drop off 10,000 pounds. It's just a way of getting a service of free delivery for small quantities, which we've had to match in a different manner of doing business, in fact basically lowering our selling price.

MR. CARPENTER: Do you know when that practice started approximately?

MR. BLAIR: I do not, but I believe it's been in existence for five or six years.

MR. CARPENTER: I see. Okay. Thank you.

MR. GREEN: Mr. Carpenter? If I could clarify? I mis-spoke. That percentage was too high.

Since 1996, our average market price increase has decreased 14 percent. Since 1998, it's decreased about nine percent.

MR. CARPENTER: Okay. Thank you.

What can you tell us about the trend in raw material cost during the period of investigation? Have there been any significant increases, particularly in recent periods?

MR. GREEN: In general what we've seen, and some of these are cyclical. Two years ago, electric prices were very high, but scrap steel was at a historical level. Electrical prices on a unit basis have come down. Scrap steel prices have gone up.

Natural gas is cyclical. Some years it will be very high. Some years it will be very low. This summer was very high, and I think everybody is aware of that, so you do go through those gyrations.

In the last year we've seen a pretty good increase on the scrap steel prices, but overall our costs are relatively stable for the period of time in this investigation.

MR. CARPENTER: Thank you.

I think just one last question on capital expenditures. Looking through your questionnaire response, it appeared that you provided a considerable amount of detail about capital expenditures during the period of investigation and broken out as to different types. For example, for productivity increases and environmental and safety and health and so on. We appreciate all those details.

I may have missed this, and I know you provided some information about possible future capital expenditures, but if you haven't already provided it could you provide us with details about the amount and the time period of capital expenditures that you would expect during the remainder of this year and during next year by type of expenditures, whether it's for environmental reasons or safety and health reasons or other productivity reasons?

MR. GREEN: I could safely say in this industry until March there will be probably zero --

MR. CARPENTER: Okay.

MR. GREEN: -- until we get some determination of where we're going in this industry.

MR. CARPENTER: Of course, as I understand too a lot of this depends on what happens in this case, but if there are any particular expenditures that you feel that you would have to incur during the next year or so in order to stay in business if you could provide us with details about those to the extent you haven't already?

MR. ROSENTHAL: Understood. We have supplied you with what was planned for 2004 and 2005, I believe. I alluded to earlier and Mr. Green alluded in his statement to an investment that had been decided against just this very week.

We will, understanding your question, try to give you more detail about that investment decision I just mentioned plus what would be spent or not depending on what happens over the next three months, six months, and in the window period between November and March or over the two month period in which the difference would be between a critical circumstance determination and a final determination.

MR. GREEN: If I could add?

MR. CARPENTER: Sure.

MR. GREEN: I think the classifications that we provided were our standard ones, which are safety, environmental and replacement, not necessarily productivity increases.

MR. CARPENTER: Okay. That's good.

MR. GREEN: Can I get a clarification as far as your question? When you talk about expenditures, do you mean capital expenditures or capital investments, or you're talking about expense items?

MR. CARPENTER: I was talking about capital investments.

MR. GREEN: Yes. Okay. Thank you.

MR. CARPENTER: Thank you.

Any other staff questions? Mr. Gearhart?

MR. GEARHART: Let me just ask a couple of followup questions.

First, on critical circumstances, in your post-conference submission could you take a look at the couple of Commission investigations under Section 201 where the Commission -- there's at least one --

looks at critical circumstances? This would be post 1994.

MR. ROSENTHAL: It was the Tomatoes case, was it not?

MR. GEARHART: That was Perishable Agricultural Products. That's somewhat similar. I believe actually it may have been technically under 302 using the 201 standard on Corn Brooms.

MR. ROSENTHAL: Okay. Yes. Thank you.

MR. GEARHART: See if there is any instruction the Commission can glean from the views of the Commissioners in that case for this case.

Going back to the question of rapidly increasing imports, you referred to the Hangers case and the Commission looking at a longer term trend. In relooking at that case, could you also indicate when the bulk of that increase in imports occurred, whether it occurred early in the period or late in the period?

MR. ROSENTHAL: Actually, we will in our brief look at all the cases. Fortunately, this is not a large body of material to comment upon. We will explain the similarities and differences between our facts and those and the Commission's findings.

MR. GEARHART: All three?

MR. ROSENTHAL: Yes.

MR. GEARHART: Okay. Thanks.

Earlier you indicated that the increase in imports in the case of the products we're dealing with today occurred early in the period. Can you characterize what happened with respect to the data relating to the condition of the industry early in the period?

For example, was production higher then? Lower? When was profitability for the industry highest during the five year period? Was it at the time of the increase in imports, the greatest increase in imports, or did it occur later and so forth?

Again, I realize a lot of this information is confidential.

MR. ROSENTHAL: Let me just help out a little bit here because at least, as I said, I don't have the relative data on market share, but my understanding of what happened in the industry was the following.

As the imports came in and gained more market share, the domestic industry still was making money. At a certain point the industry said do you know what? We can't continue to lose sales and have our profitability decline, so we've got to drop our prices and thereby stem the rising tide of imports, slow it down, but at the risk of profitability.

When that approach was taken, you will see a decline or a decline in the rate of import increase, but an acceleration of the decline in the profits of the industry. That is the way I understand what happened not just from the data, but from what people have told me who have been working in this industry. That is how I understand the facts.

MR. GEARHART: So in other words, the material injury followed the increase in imports, but did not coincide with it?

MR. ROSENTHAL: No. I don't agree with that characterization. The rapid increase or the most rapid increase took place earlier in the period. In order to blunt the rate of increase, the domestic industry had to lower its prices, be more competitive and thereby not give up its production volume.

It was the need to match the importer prices that was the biggest factor in driving down the profitability, and so with all due respect, Mr. Gearhart, I think you're looking for a dichotomy that does not exist in the real world.

Every day when the industry is out there, they have to decide are we going to meet the importer's price and thereby lose money on that sale, or are we going to not meet that price and lose the volume.

What you see here is a perfect example of the Hobson's choice of the industry saying do you know what? Up to a certain point we are willing to give up volume, but after that we can't do it any more and still operate our plants efficiently. That is why you see a more rapid rise of imports earlier in the period and a slowing down of that rate of increase later.

The import injury began when the imports began to increase. I'm not saying that the profitability went down, but the real injury or the decline in profitability is most evident when the domestic industry decided to fight back by no longer ceding as much market share and lowering their price.

MR. GEARHART: I'm just trying to understand your argument. I appreciate your spelling it out in greater detail.

Capital expenditures were talked about earlier. Can you characterize industry capital expenditures over the period? I'm familiar with the numbers, but I'd rather have you do it so I'm not disclosing anything confidential.

Have capital expenditures over the period increased significantly, have they not, or are you uncomfortable characterizing them at all?

MR. ROSENTHAL: I'm happy to repeat what was characterized earlier because I know my clients won't be upset about reviewing confidential information. But I think you heard Mr. Waugaman say that capital expenditures during the period of investigation were greater under the McWane ownership than under the previous owner, number one.

Number two, that the capital expenditures were somewhat lumpy in the sense that they were made not on a consistent, on a year basis but as particular requirement for modernization, upgrading and in the case of environmental and other standards necessitated.

But I think this is an industry or at least for the companies that I represent one that's characterized by a fairly high level of capital investment in this period.

MR. GEARHART: And this would be later in the period going up or, again I'm not trying to have you divulge anything confidential.

(Pause.)

MR. GEARHART: Maybe I should just ask the question then and let you address it in the brief. But the question is how would changes let's say in capital expenditures have impacted profits during the period of investigation and how would changes impact on the need to make capital expenditures during the next couple of months which are the focus of the delay and would give -- your testimony that you're putting off making capital expenditures? So how would the recent capital expenditures and the level of capital expenditures, particularly as it changed over the period of investigation, affect this need to make these expenditures over the next two months or so?

MR. ROSENTHAL: We'll be glad to address that in a post-conference brief.

MR. GEARHART: The final question relates to imports from other sources. And in your petition you indicated there are imports from other sources.

To what extent do these compete with imports from China as well as imports from domestic sources? And how should the Commission go about isolating the effects of those imports or at least in terms of determining that imports from China are a significant cause of material injury? And that the let's say the Chinese imports are not following the other imports?

MR. ROSENTHAL: I think they all compete against one another in the marketplace because you're talking about a commodity product. And these are sold to the AWWA specifications. So other imports compete with the subject imports and with the domestic product.

How would you go about identifying which imports might be a significant cause or whether the Chinese imports might be a significant cause? I think you've got data in the record already now thanks to the questionnaire responses and that indicates what the largest volume of imports, and I think that will indicate China.

You also have information at least from the official import statistics, which I recognize are not particularly good, about averaging of values. But I think you also have the opportunity to talk to people in the marketplace, purchasers, bidders and certainly members of the domestic industry to find out what the relative level of pricing and aggressiveness is between the various import sources.

You also have some of the Respondents here who handle I think both the Chinese imports and imports from other countries and you can get information from them directly about what the pricing of the imports are from the various sources that they handle.

MR. GEARHART: Okay. Well, what I was

hoping to do is see if there is any additional information you could provide on this that we don't have already that would be useful in helping us address these questions.

MR. ROSENTHAL: We will do our best on that. I think most of the questions directed at us thus far have been focused on the impact of China. But if you're asking for additional information about other imports we'll do our best.

MR. GEARHART: Thank you.

MR. CARPENTER: Mr. Boyland?

MR. BOYLAND: This is not a capital expenditure related question, it's more of a mechanical question.

The company provided a consolidated income statement and other information for McWane, Inc. Basically it's my understanding that it combined Clow, Union and Tyler. Is that correct?

MR. SAHA: That is correct.

MR. BOYLAND: Okay. Just by checking some of the numbers it looks like we're not getting the sum of the three in the consolidated. And if there's a reason for that we'd like to know. Or maybe the numbers just somehow didn't get. But I'm assuming that the three should add to the one.

MR. SAHA: The individual responses include intercompany transfers, sales that were valued between Clow and Tyler and vice versa. And so when you see a consolidated financial sheet then you no longer have those company transfers.

MR. BOYLAND: Okay. So you're saying the illuminations are explaining the differences?

MR. SAHA: Yes.

MR. BOYLAND: For a couple of periods, and I'm referring more to the cap -- I'm sorry, it is a capital related question because a couple of the periods in which, for example, environmental expenditures are being reported for one company the total in the consolidated doesn't appear to be reflecting that. So maybe I'm assuming that wouldn't be an illumination difference.

So I guess I'm just asking if the company could review the totals and compare it to the individual items and make sure that it's consistent.

MR. SAHA: We'll do that.

MR. BOYLAND: Thank you.

MR. CARPENTER: Thank you very much for your patience and for your thorough responses to our questions. We appreciate it.

We'll take a recess until 1:25 and then ask the Respondents to come up as one panel to the table. Thank you.

(Recess, 1:14 p.m. to 1:27 p.m.)

MR. CARPENTER: Mr. Loeb, please proceed whenever you are ready.

MR. LOEB: Thank you very much. For the record, Hamilton Loeb for the Chinese Respondents. And I'm going to take just a moment up front to tell you what the roadmap is on the Respondent presentation side.

We're going to begin with just a few minutes on the legal standard. There have been a number of questions in the earlier session focused on that. And since this is the first critical circumstances allegation in a 421 case and there are only a few prior other critical circumstances cases at the Commission and under Section 201 for example, we thought it would be useful to set the stage on the legal standard although normally we would leave that to post-conference briefing. So Scott Flicker will cover that.

Then we'll go to John Reilly who will provide the analysis of the record that the Commission has now compiled on the 421 factors, particularly on the surge or rapid increase element and the inconsistencies in the surge allegations that appear in the petition.

Following that we will have testimony from the importers. As I understand it, Larry Bogard will speak and then there will be testimony from Mr. Saha who is on my left and from Dan McCutcheon from Pipeline Components and from Star Pipe respectively.

And then I believe that's all the importer witnesses who will be testifying. Oh, I'm sorry, Larry Rybacki. I was told it would be Larry, I got the wrong Larry.

All right, so we will, anyway, we will proceed in that order with respect to the importers who are here. And there are others here at the table who are available to participate in the responses to questions.

And then finally we'll just tie up the critical circumstances issue which after all is why we're here. And we will focus on that at the conclusion of our prepared presentation.

MR. FLICKER: Good afternoon. I'm Scott Flicker from Paul Hastings representing the Chinese producers. Sorry to see Mr. Gearhart is not at the table since I know that this is the issue that's going to be nearest and dearest to his heart as he's grappling with the record here and that's critical circumstances.

Because this is the first occasion in which the staff and the Commission have been asked to address a claim of critical circumstances under Section 421 we think it's useful to spend a few minutes on the legal framework and to set into context the Petitioners' request for emergency relief here.

We're before you on the 21st day after the petition was filed. The work that has been done in the intervening time by the ITC staff and by the parties has been absolutely enormous. We submit that the Commission's treatment of the Petitioners' request here in the first case for critical circumstances will stand as a precedent for all future cases under 421. And we further submit that if the Commission finds the requirements for critical circumstances is satisfied in this case on this showing then every petitioner will have an incentive to ignore the already super-compressed 60-day time frame for a determination that the Commission has in ordinary cases and jump directly into hyperspace which is the 45-day critical circumstances determination that is required here.

I want to make three basic points this afternoon. First, critical circumstances cases properly framed are so extraordinary and so rare that we have been to date unable to locate a single instance in which the Commission has found critical circumstances to exist in a safeguard case, period. This case on these facts is certainly not the place to start blazing a new trail.

Second, in these kind of specific safeguard cases the Petitioners completely control the timing of the filing and therefore the timing of when relief would first become available. They thus bear an understandably high burden to prove that the extra couple of months of relief that a critical circumstances allegation provides if accepted is so absolutely necessary that the staff and the Commission and the parties must turn themselves inside-out to complete a preliminary investigation rather than proceed straight to the final determination process.

And while the timetable for the ITC phase is accelerated significantly, the pace of that acceleration is really nothing compared to what then gets handed to the USTR and the President of the United States for the mere 20 days as opposed to the usual 55 days in which to make an evaluation of whether to impose any relief or not at the provisional stage.

So if the Petitioner is going to erect these hoops and demand that everyone jump through them double time, the Commission and the staff should have every expectation that the showing of injury, its immediacy and the difficulty in reversing it be substantial indeed. We think that the petition falls well short of the mark and we think that the record falls well short of the mark. And I think that from the presentation we heard this morning nothing changed.

Finally, the standards that are set by the WTO agreements for the finding of critical circumstances require that such a finding be reserved for only the clearest showing of market disruption, extreme import surges, grave injury to the domestic industry, absolutely no doubt of a direct substantial link between the two. Nothing short of this can satisfy piling a preliminary emergency tariff remedy on top of an already extraordinarily accelerated safeguard proceeding.

Simply put, if the Petitioners can satisfy critical circumstances here on this generalized showing of harm why would any petitioner not seek for a critical circumstances finding in another case.

I want to take a few more minutes to address the legal framework such as it is in which the Commission will make this determination. We start with the language itself which is found in Section 421(i). And the sum total of the description that's provided there is that the Commission must within 45 days of the filing of a petition that alleges critical circumstances determine whether delay in taking action would cause damage to the relevant domestic industry which would be difficult to repair.

This part of the inquiry can really be broken into two pieces. First, whether the domestic industry is suffering damage which would be difficult to repair. And, secondly, whether there is a direct causal link between a delay in taking action under Section 421 and that very damage.

If the Commission finds in the affirmative under both of these prongs then it must further preliminarily determine whether imports of the product which is the subject of the investigation have caused or threaten to cause market disruption. In other words, the Commission must on an accelerated basis find that rapidly increasing imports are a significant cause of material injury, essentially the same inquiry as required on a final determination.

Now, in the regulations that implement this provision the Commission recognized the importance of requiring that Petitioners who after all, as I said, control the date on which the starting gun is fired here come forward with a highly detailed showing right in the petition itself. The regulations require that if a petition alleges critical circumstances, I'm going to read here from 19 C.F.R. 206.448, "the petition shall provide detailed information supporting that claim as well as detailed information demonstrating that delay in taking action under Section 421 would cause damage to the relevant domestic industry that would be difficult to repair."

That's what the regulations say.

Now, if this were a court I would be before you with a motion to dismiss the complaint because it's simply not possible to characterize the conclusory statements that we saw in the petition, even the APO version, and say that those meet the requirements of the statute of the regulations. They simply do not.

So simply put, the Commission can dismiss the critical circumstances allegation in this case because the petition fails to meet the requirements of the statute in the regulations.

Now, beyond the language of the statute and the requirements of the regulations there is unfortunately very little in terms of precedent or guidance that the Commission or the staff will be able to draw from in seeking to evaluate the adequacy of the critical circumstances claim here. There is no analogous critical circumstances provision in Section 406 which we all know is the statute under which Section 421 was modeled and essentially follows from.

The critical circumstances determination that the Commission makes in Title 7 cases is based on entirely different standards. It's directed to entirely different issues and conduct. And although Section 201, the global safeguards provision, has an element of critical circumstances it does differ in scope, it differs in timing, which is a critical difference here, and in any event there's virtually no precedent in which the provision is even addressed much less analyzed.

Article 6 of the WTO agreement on safeguards represents the direct heritage of Section 421's critical circumstances provisions because Section 421 itself codified the provisional relief language in Article 16.7 of China's WTO assessment agreement.

Now, under the WTO safeguards agreement a member may take provisional safeguard measures pursuant to a preliminary determination where delay would cause damage which would be difficult to repair and where there is clear evidence that the increased imports have caused or are threatening to cause serious injury. This again suggests that the showing must be substantial, the case must be absolutely clear before a provisional remedy can be imposed.

I'll have some more to say about how you try to apply some of these standards or these principles to the facts as we have them in this case but at this point I'd like to turn the microphone over to Mr. Reilly who can discuss some of the economic data.

MR. REILLY: Thank you. Good afternoon, and I note that I optimistically typed in good morning on my speaker's notes.

For the record, I'm John Reilly of Nathan Associates appearing on behalf of the Chinese producers of ductile iron waterworks fittings. Before I get into my analysis I'd like to beg your indulgence. A frog has taken up residence in my throat so every once in a while I may give off a croak and you will now understand why.

In my statement today -- and please turn to the first page of my handout -- in my statement today I will address three economic conclusions that are directly related to the Petitioners' assertion of critical circumstances and its proposal for relief.

First, the Petitioners' estimates of subject import volumes and trends which appear to be central to its case for critical circumstances fail to satisfy even a minimal analytical standard of validity. And I will demonstrate in detail why this is so.

Second, foreign producers questionnaire data now on the record and importers' data as well both contradict Petitioners' estimates of subject import volumes and trends and belie any notion of critical circumstances.

I note also the data undermines each of the other elements that must be shown on a Section 421 case, that is the data on the record must show that there has been no surge or rapid increase of the subject imports from China, that the domestic fittings market is not being disrupted, and that Petitioners' financial performance has nothing to do with subject imports. But I will leave these issues to the post-conference briefs and the full hearing before the Commission.

Finally, Petitioners' proposal for immediate relief in the form of a 95 percent ad valorem tariff on subject fittings from China is fatally flawed on its face. And I will go into this in some detail as well.

Now please turn to page 2.

Concerning Petitioners' assertion of critical circumstances it appears to stem from the premise that subject imports from China are surging now. Page 2 of the petition states "absent prompt provisional relief from the surging volumes of low priced imports from China the domestic industry will suffer damage that will be difficult if not impossible to repair."

Now please turn to page 3.

Indeed, Petitioners' estimating methods if they were legitimate would yield an apparent subject import surge in 2003 to an annualized six-year peak of approximately 24,000 tons, up from 13,000 tons in 2002. On close examination, however, the apparent import surge can be seen as a product of Petitioners' estimating methods rather than any basic pattern in the underlying data.

Now please turn to page 4.

Through December 2001 subject ductile iron waterworks fittings and other iron fittings were reported under HTS 7307.19.3080. This was in essence a basket category. As of January 2002 subject fittings have been reported separately in a new HTS category 7307.19.3070. I will refer to this as the 3070 category.

Other fittings formerly in a basket category have been placed in a new basket designation HTS 7307.19.3085 or 3085.

On a combined basis the total volume of subject fittings and other fittings imported from China have been quite steady from 2002 to the present, in the range of 31,300 tons to 34,200 tons. That is, the total imports covered by the broad basket category prior to 2002 and the imports covered by the two new categories in 2002 and 2003 are about the same. The maximum fluctuation from 2001 to 2003 on an annualized basis is only 2,900 tons.

How then did petition undercover such large fluctuations in the subset of subject imports -- subject fittings from China?

And please turn to page 5.

Actually the estimating method tells the tale. Petitioner concluded correctly that misclassification of subject imports is rampant in the first half of 2002 since far too little volume had been reported in HTS 3070. Accordingly, Petitioner focused on the data for July 2002 to June 2003 which is based on the assumption that the misclassification problem had been solved and that subject imports were being correctly reported in HTS 3070.

Subject fittings from China accounted for about 59 percent of combined imports for the 12 months ending in June 2003. Petitioner employed this fixed ratio to the basket category to estimate imports from China of subject fittings for each year of the 1998 to 2001 period.

To estimate full year 2002 imports of subject fittings from China Petitioner doubled reported imports in HTS 3070 for July to December 2002. For this period reported subject imports from China amounted to only 41 percent of combined imports. This ratio accounts for the 2001 to 2000 decline in subject imports found by Petitioners -- excuse me, 2001 to 2002 decline.

Finally, Petitioners took January to June 2003 subject imports from China as reported in HTS 3070 as a fixed amount. For this period reported subject imports accounted for fully 70 percent of combined imports. And this high ratio accounts for the apparent subject import surge in 2003, that is the ratio going from 41 percent to 70 percent is basically where the surge came from.

Now let's recap.

Implicit in this method is the assumption that imports during the first half of the calendar amounting to about 70 percent of combined imports and during the second half of the year amounting to only about 41 percent of combined imports would produce a valid average for the entire year.

In estimating 2002 subject imports, however, Petitioner violated this rule with the implicit assumption that subject imports would account for only 40 percent of total imports in both the first and the second half of the year. Likewise, in comparing the estimated data for January to June 2003 with the estimated data for January to June 2002 Petitioners made an implicit assumption that subject imports from China will account for more than 70 percent of combined imports for full year versus -- 2003 versus 41 percent for full year 2002.

In short, all of the Petitioners' estimated fluctuations in subject imports from China for the 2001 to 2003 period reflect analytically indefensible inconsistencies in the treatment of reported imports in HTS 3070 for the July 2002 to June 2003 period. All of the fluctuations are based on differential applications of ratios from that one year period.

Now please turn to page 6.

Now, as I mentioned a minutes ago, Petitioners' estimating method flawed as it is rests on the assumption that reported data in HTS 3070 for July 2002 to June 2003 are substantially correct. A look at the monthly data for the period, however, indicates that this is certainly not the case.

During January to June 2003 only a very small volume of subject imports was reported in HTS 3070. During the first half of 2003 the reported volume of subject imports rose sharply and steadily to about 90 percent of combined imports in June and with the update of July figures also about 90 percent. These data strongly suggest the subject imports have been under reported throughout 2002 relative to 2003 to date.

Accordingly, the assumption of data accuracy in Petitioners' estimating methods is most likely invalid. And to Petitioners' credit they have mentioned that they do consider this data to be unreliable. But these data are the basis for their conclusion that imports are presently surging.

And I'd add that these methodological flaws aren't hard to spot. As an economist I really can't imagine these methods being relied on in ordinary circumstances. The petition asking for extraordinary relief in an exceptionally compressed time frame, and that ultimately seeks the direct attention of the President is hardly an ordinary circumstance. From my point of view, I'm not at all sure that the Commission should undertake a full scale investigation under Section 421 on the basis of assertions bound to these clearly defective estimating methods.

And now please turn to page 7.

Turning to my second conclusion. And the conclusions I'll be discussing now address what the data on the record show. And although the underlying data are confidential I do have permission from the foreign producers to make some statements about the data and also some clearance from the importers to make some statements about the data.

Now, the data on the records in the foreign producers' questionnaire we believe to be complete and up to date. We believe it covers substantially all exports of the subject product from China for the entire period of investigation.

This data contradicts Petitioners' analysis and puts the lie to any notion of an import surge. Please note that I have omitted the scale on the chart to safeguard confidential information. And we will provide the actual detailed figures in our post-conference brief.

Now, exports of subject fittings from China to the United States did increased between 2000 and 2001. In 2002 exports remained stable at about the same level as in 2001.

In both 2003 and 2004, however, exports are projected to decline. The projected 2003 decline exceeds 10 percent.

And let me emphasize that the full year 2003 projection is fully consistent with reported actual exports for January to June 2003 which have declined by more than 10 percent relative to the same period in 2002. So in terms of actual data the volume of exports from China has declined significantly in 2003 first half relative to interim 2002.

Now, I should note I don't have a slide or a chart for it by the aggregated data from the importers' questionnaires tell the same tale. That is, subject imports did increased between 2000 and 2001 but remained stable during 2002 and between interim 2002 and interim 2003. One way to characterize it would be to say from a technical economist's point of view imports were as flat as a petrified pancake on an iron stove.

The difference between 2002 and -- I'm sorry, 2001 and 2002 imports as reported by the importers was 400 tons. The difference between interim 2002 and interim 2003 imports was 200 tons. That's to my mind very flat.

I should also note that we believe that the importers' data covers all significant imports and substantially all products into the United States, subject product coming into the United States from China throughout the period of investigation.

Now, the other point I think I should emphasize here is that the decline in exports from China clearly leads imports because the change in exports will be followed by a change in import volume. The actual decline in exports from China are 10 percent, actually more than 10 percent during the first half of the year, indicates that second half imports from China will be lower than second half 2002 imports -- second half 2003 imports that is.

Now, in sum the foreign producers' data in combination with the importers' data as presently on the record shows plainly that imports are not surging. On the contrary, they're in decline. As a result the keystone of Petitioners' case for critical circumstances and provisional relief has gone missing.

And now please turn to page 8. And I'll now turn to the Petitioners' remedy proposal.

Now, even if Petitioner had a case for provisional relief its proposal for a 95 percent ad valorem tariff fails to pass the laugh test. Petitioner based it calculations on the aggregate average customs value of subject products from China as reported by Census. Now, there's no basis for assuming that such a value would be in any way comparable to some measure of the value of U.S. production. Indeed, the misclassification issues I've already outlined indicate that employment of census AUV data would not be appropriate.

In addition, and more importantly there's an obvious level of trade issue. I'm at a loss to understand why Petitioner chose to employ a customs value except perhaps that it provided the lowest available figure. The landed average unit value of subject fittings from China reported in the USITC dataweb is more than 20 percent higher than the reported unit customs value. Moreover, the reported landed value includes no provision for the importer's costs of doing business and related resale markup.

And be advised that the importers' costs of doing business is not trivial. And I think you'll see that plainly reflected in the types of markups that are appearing in the importers' questionnaire responses.

In short, the use of customs value constitutes selection of an inappropriate level of trade that results in a ridiculously overstated tariff proposal. Indeed, the data presently on the confidential record show not surprisingly that any domestic and import price differentials are far, far less than 95 percent. The reality is that a 95 percent tariff would essentially preclude imports of the subject fittings from China. It would not moderate the level of Chinese imports during the proposed emergency period of critical circumstances, it would end them altogether.

In sum, the absence of any subject import surge means the Petitioner has no case for provisional relief. In addition, Petitioners' grossly overinflated provisional remedy proposal has no rational economic basis even if a case could be made for provisional relief.

Thank you for your attention.

MR. LOEB: Now we go to the importer witnesses. And we begin with Mr. Rybacki.

MR. RYBACKI: First of all I'd be remiss if

I didn't thank our friends in McWane for all their kind words on our quality and our service. I don't often hear that in the marketplace, so thank them for that.

Good afternoon. My name is Larry Rybacki. I am vice president of marketing and sales for SIGMA Corporation, an importer of ductile iron waterworks fittings from China, India, Korea and Mexico. I have over 27 years of experience in this industry.

I am joined today by Victor Pais, my partner and president of SIGMA Corporation and Siddharth Bhattacharji, our vice president. And we appreciate this opportunity to present our views to the Commission staff regarding whether imports of ductile iron waterworks fittings from China into the United States are a significant cause of material injury to the domestic ductile iron waterworks fitting industry.

While our comments today address in particular the issue of critical circumstances, an issue that the Commission itself must address in just three weeks, we would be happy to answer questions related to any issue of interest or concern to the Commission staff.

We at SIGMA were very surprised when McWane filed its petition on September 5. We were surprised because as one of McWane's longstanding competitors in the ductile iron waterworks fittings market we have learned a great deal about the company over the years. McWane, as has been reported in the newspapers, is a large, highly successful, profitable company. McWane has dominated the ductile iron fitting business market for a long time and today the company controls close to 75 percent of the U.S. market.

McWane controls pricing in virtually every market in this country. As a matter of fact, Mr. Teske's market where he supplies that McWane product in Michigan and the state of Illinois, McWane has over 90 percent market share.

In the last two decades McWane has brought nearly every independent -- has bought every independent ductile iron waterworks manufacturer across the United States and Canada. Today McWane's three subsidiary foundries supply the vast majority of U.S. origin ductile iron waterworks fittings with the remaining two U.S. foundries. ACIPCO and U.S. Pipe supplying only a small share of the total ductile iron waterworks fittings production.

Put simply, McWane is the domestic ductile iron waterworks industry, fitting industry. It is important that the Commission staff understand the root of McWane's market dominance. McWane is a large producer of three other allied products: ductile iron water main pipe, big valves and fire hydrants. These other products are used in conjunction with ductile iron waterworks fittings and usually constitute 80 percent of a project's cost.

As a result, McWane has tremendous leverage over its customers and sells fittings with these other products. In addition, because of its dominance in the soil pipe and fittings market McWane has even more clout with distributors who handle those lines. As you can imagine, this is a business model that is difficult if not impossible for companies like SIGMA to compete against.

Although McWane continues to dominate the U.S. ductile iron waterworks fitting market, over time we have managed to use our reputation for exceptional customer service and just-in-time delivery to carve out or own niche in a market that is otherwise controlled by McWane.

Having bought out all domestic ductile iron waterworks fittings competition McWane now has turned to U.S. trade laws in an effort to block ductile iron waterworks fittings imports, eliminate all competition and secure total domination of the ductile iron waterworks fitting market in the United States. An affirmative determination in this case will achieve these goals and will result in significantly higher prices for U.S. end users many of whom are municipalities struggling to balance their budget.

There is no doubt that we are all facing difficult times. Construction activity in the United States has been relatively flat for some time. 1999 and 2000 were exceptional boom years during which companies like McWane and SIGMA shipped foundry products in response to unprecedented demand from the construction sector. Demand has dropped off compared to those boom years and costs even for importers like SIGMA are increasing.

In September 10 SIGMA announced a price increase to its customers for all fittings and accessories because of rising raw material costs from China and increases in ocean freight rates. Reviewing the challenging market conditions that we have all faced in the last year it is understandable that McWane is eager to blame someone or something for its troubles. But imports from China are not the root cause of McWane's problems.

Over the last three years no new importers have began to source China origin ductile iron waterworks fittings. These three U.S. importers who together import the bulk of the ductile iron waterworks fittings from China comprise only a minor percentage of the total U.S. market. The ductile iron waterworks fitting importing business into the United States is a long established sector defined by very stable importing behavior.

The import figures that McWane cited in its petition just don't seem to reflect reality. A close review of the proprietary data supplied by three importers here today will demonstrate to the Commission staff that imports simply have not jumped in recent years and that there have been no dramatic changes with respect to imports that could have led to McWane's alleged injury.

We urge the Commission staff therefore to scrutinize McWane's petition and to use all of the data provided by the Chinese producers, exporters and U.S. importers represented here today to reach a fair determination in this case. As Mr. Flicker has discussed already in determining whether critical circumstances exist, the first step involves determining whether a delay in taking action would cause damage that cannot be repaired. An accurate critical circumstances determination must take into account the seasonal nature of our industry and the effect that any provisional measures might have on the industry if such measures were implemented in mid-November.

SIGMA typically imports 55 percent of all fittings in the first half of the calendar year. Imports are front loaded in the early half of the year in order to ensure that we have sufficient inventories to service the spring, summer and early fall construction season when most of our sales occur. Our importing pattern is designed so that we reach the end of the construction season with reduced inventories on hand.

Nonetheless, even though inventories do decline over the course of the year our inventories typically remain sufficient to respond to spot market demand in the latter part of the year. In other words, SIGMA already has completed the majority of its importing for the year.

Provisional measures that block imports would have little or no effect because inventories already are in place to service projected demand over the course of the next few months. McWane states "without the implementation of provisional relief the significant losses being suffered by the domestic industry will force McWane to close at least one of its ductile iron waterworks fittings facilities immediately." We do not believe that imported ductile iron waterworks fittings are the reason McWane is planning to close one inefficient facility and consolidate its production in other units.

As noted above, the bulk of 2003 imports from China and elsewhere already have entered the U.S. market. With sufficient import inventory provisional measures will not allow McWane to sell its fittings free from all competition in the coming months. Moreover, the construction season is beginning to wane and we are entering a period of the lowest demand of the entire year. Thus, a delay in taking action would not be the cause of damage in the domestic industry.

Finally, given the fungible nature of ductile iron waterworks fittings in standardized AWWA specifications ductile iron waterworks fittings imports from China could be replaced by equivalent product imported from non-PRC sources including India and Korea which are currently exporting ductile iron waterworks fittings into the U.S. market.

We urge the Commission staff to ask that McWane provide a thorough explanation of how the requested provisional relief would prevent the company from having to close one of its foundries. This seems like a stretch.

A more important question is whether the lack of three months of provisional relief would really force McWane to close one of its foundries. I doubt it. It is difficult to imagine that the fate of an entire foundry could hinge on a few months of import relief, especially when ductile iron waterworks fitting imports already have begun to ebb for the year.

It is important to keep in mind that the entire annual volume of all ductile iron waterworks fitting imports is almost equal to just a few weeks of production at the McWane foundries.

In conclusion, while each business must do its best to operate efficiently and make a profit, McWane has taken the profit objective to an extreme not seen in any other American business. They have used their dominant power in ductile iron waterworks fittings to dictate all aspects of the business by making this petition. They are now trying to get the Commission to stifle the only alternate source of ductile iron waterworks fittings left to distributors.

In summing up, the imports have a very small portion of the market and there is no growth as shown by reliable data and their poor financial performance. If any, it's largely due to poor management.

This concludes my remarks. I thank the Commission staff for this opportunity to testify. And needless to say, the investigation is critical to all the importers sitting here today. We welcome your questions and are committed to providing you all the information necessary to ensure that the staff can issue a fair, well-documented and accurate determination. In the end SIGMA is confident that a fair analysis in this case can lead only to no finding of critical circumstances and a resounding negative injury determination.

Thank you.

MR. SAHA: Good afternoon. My name is Steve Saha and I'm the vice president of pipeline components.

PCI is an importer and seller of ductile iron waterworks fittings from China. We are a relatively new company. PCI was started in 1997. However, my person experience in the U.S. market for DIWF fittings and other waterworks products extends over 18 years and I'm very familiar with both the history and current data mix of the U.S. market for DIWF.

McWane enjoys an enormous market power in the United States. Its position as the dominant supplier of DIWF in the U.S. market will not be harmed in the least if the requested provisional tariff is not imposed. McWane's market power is built on a foundation of at least three elements.

First, McWane is the U.S. manufacturer of the great bulk of the DIWF produced in the smaller venues. This gives McWane an enormous marketing advantage if not a monopoly in states such as Michigan, Pennsylvania, New Jersey and where Buy America laws require government-funded projects to use U.S. origin DIWF. Even without legal requirements there are other government entities such as Cook County, Illinois that buy American as a matter of practice making McWane essentially the only available supplier to these markets as well.

In addition, because freight costs for DIWF are high respective to the value of the product there are large sections of the country where imported DIWF simply cannot compete effectively. McWane charges a premium for its product in those broad areas of the U.S. market where it is sheltered from any effective competition.

The concept of the McWane map is widely

known in the industry. This map identifies McWane's multipliers to its salesmen on a state by state basis and documents a wide disparity in McWane's pricing among the states.

Second, McWane manufactures and sells pipe, big valves and fire hydrants in addition to DIWF. The ability to supply all of the components necessary in a water system on an integrated basis gives McWane great control over its distributors' customers. The distributors know that if they attempt to purchase DIWF from someone other than McWane, McWane has the ability to restrict their supply of other waterworks products.

Third, McWane employs a rebate scheme to reinforce its position in the market. Under this scheme McWane offers to pay annual rebates to its customers if the customers buy 100 percent of their DIWF from McWane. These rebates may amount as high as 17 percent of the value of annual purchases. For some customers these rebates can total hundreds of thousands of dollars.

McWane is infamous in the industry for what they call import policing. Company officials who inspect jobsites on a regular basis to ensure that the DIWF in the project is 100 percent supplied by McWane or the rebate will be denied to the distributor who supplied the project.

None of the elements underpinning McWane's market dominance will be affected in any way if the Commission does not recommend provisional trade restraints. It is vitally important to understand that the market for DIWF is divided into two segments based on size and PCI urges the Commission to grant its request for supplemental questionnaires on this point.

Until this case McWane did not manufacture DIWF in any of the large sizes and to my knowledge now has only limited production at 36 inches. There was one question that was brought up about compact and full body fittings. McWane still last year produced only full body fittings. This year they are producing some ductile iron fittings to 36 inches but that does not mean they have the entire range. They have very limited range to 36 inches. Whereas the importers have the complete range to 48 inches.

The larger size ranges are supplied by ACIPCO, American Cast Iron Pipe, U.S. Pipe and the importers. The size issue is important because all of us supply DIWF in response to the specifications of a project. A pipe system is designed by the ultimate end user, the cities, towns. The fittings diameters are specified by the system designer not by the supplier. A single 48-inch elbow, for example, cannot be replaced with a dozen 4-inch elbows. Imposing a massive tariff on a 48-inch elbow which McWane cannot make will not enable McWane to sell a single additional 4-inch elbow.

At PCI we believe that we offer several benefits to our customers that McWane cannot match. We are particularly proud of our engineering service office that specializes in complete plant work. We provide our customer with complete pickup service, line drawings for projects. This is a true value added service because it enables our distributor customers to participate in projects that would otherwise be unavailable to them. Our engineering service is unique in the industry. It is a service that I know that McWane cannot provide.

Moreover, we offer faster, more responsive service to our customers. We can deliver a customer's order within two to four business days. I do not believe that McWane can match this.

Notably, none of these competitive advantages would be affected by provisional trade restraints.

I agree with my competitors that the U.S. market for DIWF is seasonal. I also view that as a result the bulk of imports for 2003 have already entered the country. The provisional trade restraints requested by McWane would coincide with the slowest part of the year. They are not necessary at this point. Nor are such trade restraints necessary when it is clear that prices for DIWF, including McWane's prices are increasing.

On September 8 we at PCI announced a price increase because of our increased costs for fittings and increased transportation costs. Both the worldwide increase in the cost for raw material for the foundries and the surge in ocean transport costs are widely acknowledged in the industry.

Far more significant, however, McWane has raised its prices twice in the past six months. The most recent increase was in August 1, only eight weeks ago. Our customers tell us that in some areas of the country, for example Georgia and Florida, these price increases were substantial. Clearly the price increase has been successful because beginning on September 15 my salespeople started hearing repeatedly from customers that McWane has been contacting them and telling them to expect a third price increase in the very near future.

It is hard for me to imagine that McWane will suffer any harm in the next few months after imposing its third price increase in a matter of months, much less harm that is difficult to repair. McWane did have a list price increase last year in November of 4 to 5 percent 12-inch and below. They had a multiple increase this year in March, April of this year and again August of this year.

At page 2 of the public version of the petition McWane threatens to close at least one of its DIWF facilities imminently. McWane has made similar threats in the past. As reported on the PBS program "Frontline" and in the New York Times McWane threatened to close Kennedy Valve Foundry in Elmira, New York as part of an effort to persuade the New York Attorney General not to seek criminal penalties in connection with the death of a McWane employee. According to PBS, McWane ultimately agreed to pay $500,000 in fines and donations and pled guilty to an environmental felony. McWane did not have to close Kennedy Valve to this date.

Since the spring of this year there have been reports throughout our industry that McWane has already moved efficient high volume automated equipment from Union Foundry to Tyler Pipe in Tyler, Texas. Tyler Pipe is believed to be the more efficient and technologically advanced of the two foundries. The common belief in the industry since the spring has been that McWane intends to consolidate its operations into Tyler Pipe in Texas.

In short, the industry believes the planned consolidation has been under consideration by McWane for months before the petition was filed. The suggestion that a plant will be closed if emergency trade restraints are not imposed in a few weeks is not credible.

The requested provisional trade restraints would not assist McWane for the reasons I've already stated. What such restraints would do is shut the U.S. market to imports from China and create new opportunities for imports from Brazil, Korea, India. These third country suppliers already have a significant presence in the U.S. market. Provisional trade restraints will make them even more significant suppliers.

Thank you.

MR. McCUTCHEON: Good afternoon. My name is Dan McCutcheon and I'm the vice president of Star Pipe Products in Houston, Texas. I've been in the pipefitting business for more than 20 years and I've had direct day to day involvement in the ductile waterworks fittings market for over 8 years.

Star Pipe is one of the largest importers of ductile iron waterworks fittings from China. We stand to be quite substantially affected by McWane's actions here today. We believe McWane's allegations are without merit and request this Commission decline to afford it the unwarranted provisional as well as the final relief it requests.

We have, of course, read with interest the petition filed by McWane in its three U.S. foundries. While much of the market is deserving of considerable discussion we necessarily have very limited time to help you understand what really matters to your consideration of McWane's allegation that it requires immediate relief to stave off the closure of one of its foundries.

As I read the petition and as I heard McWane's story here this morning it is the imminent closure of that foundry that forms the premise for its request that the Commission afford it immediate and rather extraordinary protection from imports. And it is against the alleged backdrop of a supposedly huge and increasing volume of Chinese imports and massive surges in Chinese imports this imminent closure is said to be certain.

You've already heard discussion of the fact that McWane's statements of the levels of imports is based on faulty understanding of the implementation of the new HTS provision that divided certain ductile iron fittings from other ductile iron products. Indeed, our customs broker has advised us that some of our imports were incorrectly classified for sometime after the split of the HTS into two separate provisions due to confusions at the ports. We know other importers, however, who collectively account for nearly 100 percent of all imports from China have provided the Commission with full and complete import data demonstrating the actual importations of ductile iron waterworks fittings. And these data should form the basis for your conclusions concerning whether there has been a huge, massive increase in these imports or not.

Based on our experience and what I expect the data will show there has been no such increase and certainly there has been no massive surge. And certainly the next few months do not afford the opportunity for increased imports to hit the market. Particularly in the northern and eastern parts of the

U.S. generally too the market slows down appreciably in the winter months. The November to March period is especially slow. During this period we typically make only about 25 percent of our annual sales. Indeed, our imports in the first half of the year are always higher than in the second half of the year.

Notwithstanding this seasonality, based on our experience with Chinese suppliers we are required to place orders that permit us to avoid the somewhat substantial downtime for various holidays, including the New Year and the traditional Chinese spring celebration that usually falls in early February. Consequently, we maintain inventories sufficient to cover our requirements over several months, particularly during the period we are now entering.

And by the way, I would note that there was a fairly lengthy and disruptive longshoremen strike in late 2002 that resulted in the delayed entry of entire shipments over a two to three month period.

McWane's argument that it requires immediate duties of 95 percent over the next several months as the sole potential means to save its ailing foundry seems more than just a little bit overblown. I don't mean to be callous because as a substantial employer itself Star Pipe is not anxious to see workers out of work. But the fact is that Star Pipe has sufficient current inventory to meet its likely winter season requirements over the next few months regardless of the imposition of some draconian tariff like McWane requests.

If anything, this duty seems designed more to hurt the U.S. market by limiting necessary, even critical materials that McWane itself cannot possibly supply on a timely and complete basis. Indeed, McWane's self-described attempt to combat some phantom market disruption in the U.S. is more properly characterized as an attempt to disrupt that market.

The fact is that McWane controls 70 percent or more of the U.S. market. And its market share is already naturally protected in certain areas based on various statewide Buy American requirements. Additionally, there is an increasing number of municipalities that bowing to extreme pressures we believe is being applied by McWane have adopted policies expressly designed to eliminate foreign manufactured products from their waterworks system.

We recently received a letter from the City of Tucson's Water Department implementing just such a policy, wrongly asserting that our product did not meet AWWA standards because it is of foreign origin.

An additional circumstance that we come up against in the marketplace is a loyalty rebate program that McWane has supported over the last six to eight years. Under this program McWane offers its customers, apparently on a quarterly basis, rebates based on a single measure of a customer's loyalty. If a customer purchases, promotes and represents McWane-owned foundry produced product at 100 percent level it receives a rebate. Buying even one non-McWane fitting renders the customer ineligible for the rebate in that quarter.

More recently we have been told that an exemption is granted so long as the non-McWane fitting purchased by an otherwise loyal customer is a domestic producer. While this may not seem to represent anything unusual, in the U.S. market it has a very significant and anti-competitive effect. McWane is presently in virtually every corner of the U.S. market and is well protected in those states.

For example, New Jersey and Pennsylvania where Buy American provisions literally prohibit foreign competition. Star Pipe salespeople have encountered situations where a potential customer, for example a waterworks house with distribution centers, both in Pennsylvania and other less well protected markets where McWane is not insulated from competition is forced to purchase McWane material in each of several markets in order to preserve a substantial rebate and further in order to protect its supply in Pennsylvania. This effectively stretches the reach of Pennsylvania Buy American requirements well beyond the borders of Pennsylvania.

It is critical that a supplier in this industry be able to provide a full range of product in every size and shape. Absent an ability to do so a supplier is at a distinct disadvantage in the market. But the supplier must also be able to accommodate the contractor's onsite immediate delivery requirements, a factor that allows contractors and their supply houses to maintain much lower inventory levels as their project proceeds.

This is actually something that our sales network is set up to accommodate. We sell Star Pipe as a full line supplier with high quality first rate service capabilities that McWane has not been able to equal either in terms of product range or service. In short, there is nothing new or different in the market today than there has been over the last several years. And certainly there is no good reason for the imposition of any duty or any other remedy.

Thank you and I will be happy to answer your questions.

MR. FLICKER: Having previously discussed the legal framework and now having heard the discussion of the facts on the record it would be useful to set the Petitioners' critical circumstances and injury claim into the context of the timetable, the timetable applicable to this filing.

The statute is not a model of clarity but here is how we have done the math. If Petitioner had filed an ordinary 421 petition this Commission would issue its determination on day 60 and any remedy would be in place no later than day 165. And that's allowing for all time for consideration and all time, maximum time for the provision to be implemented.

Under the critical circumstances procedure the Commission makes its preliminary determination on day 45 and any provisional remedy takes effect no later than day 80. Thus, the Petitioner bears the burden to show, among other things, why the additional 85 days to obtain final relief under and ordinary filing would directly cause the difficult to repair harm it alleges.

For example, if the issue, and we have heard now the Petitioner say that we are not talking about a case in which they are planning imminently to close a plant. Let's use that and since the statute and the regulations require that the allegation be made in the petition let's take it on its face.

If the Petitioner faces the need to close a plant no later than the 66th day after it chose to file its petition absent the provisional remedy then why specifically in detail could it not keep the plant doors open for 85 more days, why specifically in detail could that plant not simply be reopened?

And I do want to echo the comment made by Star Pipe, nobody is saying that creating unemployment is not a situation which would be troublesome but let's talk about what plants do all the time. Companies temporarily shut down production facilities all the time. The record is McWane has done it. They do it for maintenance. They do it to draw down inventory. They do it because they might be facing a job action. What specifically in detail makes that circumstance hard to repair?

At a minimum the Petitioners must make this showing. They have not. I've heard them say they'd be interested for us to tell them what we think critical circumstances would be. I submit that this reverses the burden of proof under the statute.

I noticed several times that the Petitioners completely control the timing of the case by selecting the date on which they filed the petition. And here if the Petitioners had filed the petition in mid-June instead of waiting until early September they would have initiated the case for a timetable for ordinary release sometime in mid-November, precisely the same time as imposed by putting a delayed filing on a Commission posture.

There is every evidence that the Petitioners were aware of Chinese imports in June, that they were blaming those imports for their need to cut back on production in June. And we point the staff to the text of the speech of Mr. Page to the Anniston, Alabama Rotary Club on June 17 which is attached as Exhibit 7 to the petition, all of the basic allegations the Petitioner is making here, all of the claims of dire circumstances are in that speech. And if the Petitioners had filed an ordinary 421 case on June 17, 2003 they'd be looking at relief in the same early November time frame that they now seek to obtain through a Commission allegation.

If there is any criticality here it's the product of the Petitioners' timing and not true Commission.

The Commission also has the right to demand the Petitioners demonstrate precisely how the provisional relief that they seek, the 95 percent tariff on imports, would prevent the hard to repair damage that they now allege. I urge the staff to consider Mr. Reilly's assessment of the 95 percent methodology. The proposal really bears no relationship to time. And also urge the staff to consider what the importer witnesses have said here today about the seasonality of demand, inventory levels and the availability of non-subject imports. There is simply no evidence that the Petitioners will gain any significant market share from a temporary tariff on imports imposed at the height of winter.

To sum up, there is simply no evidence of market disruption here, much less the type of clear and convincing evidence that is required under the WTO standard for the imposition of a provisional remedy. There is no showing of harm flowing from an inside delay in the availability of relief and there is no market disruption.

Thank you.

MR. LOEB: By my count we have something in the range of 60 seconds left. And we're happy to yield that back.

MR. CARPENTER: Thank you, gentlemen, for your testimony. We will begin the questions with Mr. Ruggles.

MR. RUGGLES: Fred Ruggles, Office of Investigations. Thank you very much.

One general question. Chinese production of the ductile iron waterworks fittings is this a domestically consumed product or is this produced strictly for export, and if so, to where?

MR. LOEB: Let me take a first cut of that and then I'll ask others to chime in. China does obviously have a domestic market for fittings. It as I understand it adheres not to the AWWA standard but to the ISO standard. So this petition being focused on the fittings that would be used in the U.S. market, that's the AWWA standard, would therefore, you know, focuses on this market.

There are home market sales of fittings although they will not be the same standard, they will be effectively the equivalent product in, you know, millimeters as opposed to the U.S. measures and related differences in the standard.

Anybody else want to add to that?

MR. BHATTACHARJI: The home market production of Chinese fittings is really an evolving issue because China was essentially making a type of fitting which was very locally designed. It was not even ISO to start with. And they were using some very ancient type of bell and socket type of connection which we phased out of years after the problems of the lead joints and all those things evolved.

So the Chinese were using a very old design. And then later on, and this is just about in the last, within the last decade they started adopting ISO level standards for their domestic manufacturing for what fittings they needed for their own use.

And speaking of that, within the ISO levels and the AWWA there is a substantial difference between the two types of fittings that are made.

Would you like some details on that?

MR. RUGGLES: In a post-hearing brief would be fine, not here right now. Thank you.

MR. BHATTACHARJI: Okay.

MR. RUGGLES: Okay, along this line the Chinese production of the ductile iron waterworks fittings are they similar to what's produced in Brazil, Korea, Germany?

MR. BHATTACHARJI: The production in Korea, Germany, Brazil each of them rely on some basic ISO parameters. But each market has got a little twist to what they do on it.

The ISO parameters is really it's a parameter which has been internationalized because of the fact that they're all using metric standards but they just want to make sure that everybody is complying with openings in metric sizes. However, each market, Brazilian ISO fitting is a little different from the French ISO fitting is a little different from the Korean ISO fitting is a little different from the Japanese.

MR. RYBACKI: Fred, if I might, I think you were also asking about the domestic market. The Brazilian fittings, the fittings from India, Mexico, Korea and China are all the same as far as being AWWA C-153 standards waterworks fittings and they are literally the same.

MR. RUGGLES: Okay, and lastly, when we look at the data that's been submitted should we rely more on the importers' questionnaires, foreign producers' questionnaires or official statistics?

MR. REILLY: I think it's clear that the official statistics are seriously flawed. We believe that both the importers' questionnaire data and the foreign producers' questionnaire data are reliable in terms of accuracy and in terms of comprehensiveness of coverage of the exports and imports. So I would say that both are reliable and can be used with confidence.

MR. RYBACKI: I would like to make one statement. I was in shock as the head of sales and marketing for SIGMA, we are the largest importer, when we got the petition and especially the critical circumstances. I watch it obviously daily so maybe because people kid around and say I watch the sales hourly. But our sales are stagnant. Waterworks fittings sales are stagnant from the year before. No growth.

I was with the company in the 1980s that sold over $20 million of waterworks fittings. And if the truth be known, the C-153 was adopted I nicknamed it the compact fitting so I feel it was kind of like our baby and I've been in it over 20 years. It took SIGMA six years to get back to where we were in the mid-'80s when I joined forces with them, my old company, and took a bunch of people with me. And the fact that this is a critical nature and we're the leading importer and our sales are stagnant that was a big surprise to me.

So through nine months we are stagnant with the year before.

MR. LOEB: Can I just make one comment on Mr. Ruggles' question? Just so you're understand the relationship between the importer questionnaires and the foreign purchaser questionnaires, we made every effort to trace backwards where we talked to the importers about to the extent they could identify what foundries were involved, what exporters were involved in moving material from a foundry overseas to importers.

And to the best of our knowledge I think we've got that either completely tied up or virtually completely tied up. That is to say we went from both directions so that we would be able to deliver complete statistics. We hoped to be able to do that. We weren't confident we would but now I think we believe that we have.

MR. REILLY: I'd like to supplement that by saying that the differences between the data you get from the importers' questionnaires and the exporters' questionnaires in our opinion are all timing related. Thus, we expect that the clear decline in exports from China, for example, during 2003 first half will show up in 2003 second half as a reduction of imports.

MR. RUGGLES: As you're looking at the data in a post-hearing brief would you please explain some of the differences between what the imports and what the foreign exports report is? Thank you.

MR. LOEB: We certainly will try to do that.

MR. CARPENTER: Mr. Gearhart?

MR. GEARHART: Just a couple of questions. Again going back to the question of critical circumstances. And I asked a couple of questions this morning of counsel for the Petitioners. If you could address some of those issues in your post-conference briefs.

And I know you've elaborated, Mr. Flicker has elaborated quite a bit earlier, if you could elaborate too in terms of the length of the delay in terms of number of days I think that would be helpful in terms of looking at 421(i) and 421(h) and how that should be figured and so forth.

MR. FLICKER: Yes, we'll lay that out. We've noted what I think you're alluding to which is a potential ambiguity in how you read the statute. And we'll discuss how we think it reads out.

MR. GEARHART: Appreciate that.

In terms of the domestic industry and definition of domestic industry and like or directly competitive product do you agree with the arguments that the Petitioner made this morning in terms of how we should define the domestic industry and the like or directly competitive product? Or do you disagree and on what basis and what should it be if it's to be something different, and why?

MR. FLICKER: I think that's one that we'll want to cover in the post-hearing brief after we've had a chance to digest a bit more what the Petitioners said this morning.

I know that Mr. Bogard and his client have put some information on the record that suggests there might be some segmentation in the market that needs to be paid attention to. And we'll address that in the brief as well.

MR. GEARHART: Can you also address as part of that sort of a description of the product mix that would be coming in in terms of the imports as compared to the domestic product that's being produced? And it would be helpful if the Petitioners could do that as well as part of that discussion. And also processing along with that some of the questions asked by Mr. Greene of Commission staff this morning for example.

A question for distributors. I think Mr. Saha would be probably a good person to ask this question of but others may have views also. Do you sell -- I believe you're a distributor of the Chinese fittings, is that correct?

MR. SAHA: I'm sorry, could you repeat?

MR. GEARHART: You're a distributor of, you sell the Chinese --

MR. SAHA: Fittings to be distributed?

MR. GEARHART: Yes.

MR. SAHA: Yes, we do.

MR. GEARHART: Do you sell fittings, the same type of fittings from other countries too?

MR. SAHA: We import from India.

MR. GEARHART: You import from India. Brazil?

MR. SAHA: Not Brazil.

MR. GEARHART: Do any of the other distributors import from other countries?

MR. SAHA: Are you asking me?

MR. GEARHART: That are here. That are here. I'm asking any of the others sitting around the table.

MR. BHATTACHARJI: In SIGMA we do, we import from Mexico, Korea and India as well as China.

MR. GEARHART: If import relief were imposed here at 95 percent tariff or some other level what would be your ability to import the same types of products from other sources, would you have any difficulty filling the loss of what you're importing from China? Would there be significant limitations with respect to certain types of fitting products that you're importing? What would be the impact of the short-term remedy action or even something a little bit longer?

MR. BHATTACHARJI: From a short-term point of view as you mention I think we have sufficient inventory to carry us through the next three to four months so we don't anticipate any sort of short-term impact.

But from a medium term impact it needs a little more review because the devil is in the details there. All the foundries in Mexico and more so in Korea, India are making the same sort of fittings which Chinese are making. So it's just a question of just ramping up the production at the various places between all the different typings and.

MR. GEARHART: But could you readily import from those countries then? What kind of delay would be involved in --

MR. BHATTACHARJI: Absolutely.

MR. GEARHART: -- bringing in from India?

MR. BHATTACHARJI: There should not be delay in terms of bringing in product.

MR. SAHA: Well, I honestly feel in the short-term three four months there will be no impact whatsoever. In the medium range, like Mr. Bhattacharji is talking about, in four to like four months to a year's time, yes, there will be some difficulty, foundries do not come up running overnight, it will take them some time to ramp up. But there will be, we will get into some hardship.

But after the year is over, yes, we can get from any one of these countries or from all of these countries. And we will be back the way we are today within one year's time.

MR. GEARHART: And this would be the complete range of products --

MR. SAHA: The complete range of products.

MR. GEARHART: -- that you're bringing in from China now?

MR. SAHA: Yes.

MR. GEARHART: Thank you.

MR. CARPENTER: Mr. Benedetto?

MR. BENEDETTO: John Benedetto from the Office of Economics. Thank you all for coming here today. If I ask any questions that involve confidential business information please feel to say so and follow up with an answer in your confidential briefs.

My first question is in general do you agree with Petitioners' characterization this morning of the distribution market? And about what percent roughly of U.S. distributors will purchase your imported DIWF as opposed to just purchasing U.S.?

MR. RYBACKI: I think the Petitioners were probably correct that 10 percent were precluded and the market is for the other 90 percent. I think that's fair.

MR. BENEDETTO: Anyone else?

Okay, Mr. Rybacki, you said McWane's advantage, part of one of their advantages is that they sell these other products that are related?

MR. RYBACKI: Correct.

MR. BENEDETTO: Do you also sell these products?

MR. RYBACKI: No.

MR. BENEDETTO: So McWane has that advantage sort of exclusively?

MR. RYBACKI: No, the ability to get into those product lines is well beyond our wildest dreams, it's too much money to get involved.

MR. BENEDETTO: And I believe it was SIGMA this morning we heard the allegations from the

Petitioners or the description of running a route truck. If you can say so publicly is that more or less accurate?

MR. RYBACKI: I'll address that. That's a fair question.

We've had a route truck in the southeast only. We've done it out of our Russell Pipe facility in Alabama. And it has been we've done it back in the old Russell Pipe days when they were a foundry. And we do it on a limited basis. It's not quite accurate that we deliver the fittings and pay the freight on that. Our guys are all on an incentive program to keep the freight rates down so it would not be in their best interest to do that.

But we do run a route truck. Not all the time. We actually we're phasing it out a little bit because it's marginally worthwhile. And also the fact is that we've had a difficult time in the southeast because the predominant marketplace is controlled by three major national distribution chains, Ferguson, National Water and Hughes Supply. And all three are loyal to McWane.

So we've had a difficult time in the southeast. And as a result the route truck effectiveness has moved.

In Houston, we have a facility in Houston. We have a facility in Ontario, California, Cambridge, New Jersey. None of them really run a route truck. You know, we use common carriers.

MR. BENEDETTO: You said one of your advantages was just-in-time delivery. Is that related to that issue of the route truck?

MR. RYBACKI: Yeah. We are -- I heard Mr. Greene speak this morning -- and certainly McWane has improved their service and they do a good job but we think that we are as good as it gets in the industry. We can deliver almost anywhere in 24 hours, worst case 48. So we are -- service is our mantra.

MR. BENEDETTO: And if any of you could provide information maybe in general right now or more specifically later in a brief about which states or localities have Buy American policies? I mean how many states is this? Are we talking about half the states or and exactly what the policies are? How big a restriction is this?

MR. LOEB: We will try to coordinate with importer counsel. Importers may have more information than we will and we'll coordinate with them on that.

MR. BENEDETTO: And my final question to Mr. Saha. You said that due to freight costs imported

DIWF can often not compete with U.S. DIWF in certain parts of the country. Again, this may be confidential, but which sections of the country would be the ones that have trouble?

MR. SAHA: Mostly the upper Midwest and far Northwest part of the country.

MR. BENEDETTO: But on the coast?

MR. SAHA: Coast that's where most of the importers are.

MR. BENEDETTO: Okay. Thank you all very much.

MR. CARPENTER: Mr. Boyland?

MR. BOYLAND: Thank you for your testimony. I have no questions.

MR. CARPENTER: Mr. Greene?

MR. GREENE: Just one question. Are most of your imports in the 4, 6 and 8-inch variety or are there other ranges that you import?

MR. RYBACKI: We import all the way up. But the bulk of our -- I think Mr. Waugaman answered that question for the Petitioners today and the bulk of the business is 24-inch and down. But we have seen a spike. In the old days 4-inch was the big runner then it came 6 and now, you know, 6, 8 and 12 and 16. You know, water fixtures are going larger. And there's reasons for that, economic reasons for that.

So that, you know, 6, 8, 12, 16, 24, those are the main runners. And then of course we go all the way in the contract range to 48.

MR. CARPENTER: Ms. Mazur?

MS. MAZUR: Just a follow-up on that. With respect to product mix do you, have you felt any impact any section of the market between compact and full-bodied fittings or vice versa?

MR. RYBACKI: Yes. The compact fitting eventually took over the market in the '80s, in the late '80s and certainly throughout the '90s. Compact fittings through 24 inches, standard operating procedures.

We occasionally have a city or a town that will use what we call, you know, our full body or we call them extra heavy or C-110 fittings. And there are still some diehard water superintendents who would like the extra heavy fittings but not many left. There are some certain areas in Florida, New York and a few other places, Detroit that will use the extra heavy fitting. But compact is pretty much readily acceptable nationwide everywhere.

MS. MAZUR: If we're looking at trends in quantities particularly should we attribute any decreases in product by weight to change in product mix from full bodied to compact? And how significant might that be in terms of volume decreases?

MR. BHATTACHARJI: In this, just to clarify this concept about the compacts again. As Larry said, the dominant fitting standard was the full body. And then in the mid-'80s the compact standard was introduced. And over a period of time, initially from 4 to 12 then 4 to 16 and 4 to 24 and now all the way to 48 inches the compact standard has been officially approved by AWWA.

But the transition from 12 to 16, 16 to 24, 24 to 48, in each of these the imports took a kind of leading role in this transition. And in fact, the imports did most of the testing, research, getting and pushing the envelope to the sizewise envelope and marketing it and getting customers to accept.

The domestic industry since they had a huge commitment already in the full bodied range all the way up to 48 inches was kind of a little slow in picking up steam on that matter. And it was really more customer driven as customers got used to the large size compact. And they liked it, it was easier to handle. And there was more demand and as a result the domestic industry also started offering. But they had been slow.

And even now as we go into the range 36, 42, 48 I believe the imports have a much wider and a better representative range in compact than the domestic.

Now, having said that and since this has always been in a transition period, if you, if somebody wanted a 48 inch 90 and in a stable market if the 48 inch 90 bent for maybe say 400 pieces in a year it probably still says 400 but now so much lighter added that amount.

So in answer to your question we would feel that if you take a unit measure that you can see something else and the trend will be different than if you take and added. Also you will see a difference in the aggregate dollars because since it's a lighter fitting the unit revenue on that is less too.

MR. RYBACKI: As a follow-up answer I think that Mr. Saha's thesis or whatever had never been answered. And I think some people need to understand, the Petitioner is strong in the fitting market through 30-inch, dabbles in 36. But the 42 and 48, 54, 60-inch material those are used primarily on wastewater treatment plants they do not participate in. So to ask that that be part of the investigation we think is, you know, a little unfair, and there's reason for that.

Last year one of our biggest customers in the country was the Petitioner because they couldn't make 42, 48 and 54-inch fittings so we made them for them. And that was the Cloudwater System, the Cleveland Wastewater Treatment Plant. And it was just one of those things.

So to look at that as hurting their business on an everyday basis or whatever we strongly feel that that should not be part of it. That's where their competitors in the pipe, American and U.S., shine and that's where the importers have always had a place in the marketplace in the large diameter fittings and in treatment plants.

MR. BHATTACHARJI: I just wanted to clarify. Because of this transition taking place and since the domestic production has been kind of more stacked towards the full bodied, when you compare the statistics you have to look at the relative growth and you have to factor that in because it may look in a tonnage way the imports are rising compared to this. But if you really look at it in a unit way it may not be so.

MS. MAZUR: In terms of our period of

investigation 1998 to June of 2003 would we see a steady impact in terms of increases or decreases in volume, volume based on a weight basis as you shift more from full bodied to compact? Or is full bodied such a small portion of the market that it really doesn't impact that dramatically?

MR. BHATTACHARJI: It's a good question. We are not privy to the total data but we can say that logically speaking there should be an impact because of going from full bodied to compact. But how much we don't know because we don't have the industry data.

MS. MAZUR: Thank you very much. Those are all the questions I have.

MR. CARPENTER: Mr. Gearhart?

MR. GEARHART: Just one further question.

This morning Mr. Rosenthal had raised questions about "under such conditions" in terms of the statute and how that phrase should be applied in a proceeding like this. And if, Mr. Loeb, Mr. Flicker, you could address that in your brief too that would be appreciated.

And anyone else who wants to address it.

MR. FLICKER: I think that the one thought I'll leave you with is that regardless of what that phrase may mean you have to have market disruption in order to have remedy under 421. And if you look at the statute's definition of market disruption you have to have the rapidly increasing imports.

You cannot ignore that factor and use the "under such conditions" language earlier in the statute to read that out of the definition of market disruption. But we'll address it in greater detail in our brief.

MR. GEARHART: Thank you.

MR. CARPENTER: I just have one question that I didn't ask the Petitioners this morning but I'll ask you now. And I can ask them to address it in their brief.

If the domestic industry were not to receive provisional relief and was forced to lay off a significant number of workers but ultimately they were to receive a remedy under the statute would in your view would it be difficult for the industry to find the skilled labor that it needs to continue production at the level that it was previously based on your knowledge of labor in the industry? And that's something you may want to think about and respond in your brief. But if you have any comments now?

MR. SAHA: Well, my comment by hearing Mr. Greene is that most of Tyler's and Union fittings are mostly made in automated molding machines so it's not mostly labor skills they're looking at. On the other hand in China and India it's a lot of labor skills. This is mostly machinery skills so you just need machine operators really.

So I do not think they would have an impact as to the people as far as the skilled labor is concerned as far as making fittings.

One other addition I do have, McWane does have two or three, I think it's two other plants right there in Birmingham, or in Alabama. So those plants can easily keep those people, if they have laid them off.

MR. RYBACKI: I would like to chime in for two seconds.

Also one has to wonder if the Petitioner didn't have this as a plan, an economic plan for quite some time. That is to divert the production from Anniston to Tyler, Texas. Tyler being a little more efficient. Also the fact that they lost so many employees, first I heard 75, how I heard today something.

Tyler was bought by McWane some years ago and I do believe that's the number. The Petitioners can answer that better.

They immediately cut the work force, or over a short period of time they cut the work force in half and kept sales and production because of the molding machines and so forth up.

So the fact is that McWane is used to laying off people for economic reasons and they certainly did it at Tyler. I question if the plan at Union wasn't hatched years ago to close that to a more, a better facility than is in Tyler, Texas where they can centralize production and make it easier.

MR. BHATTACHARJI: I'd like to add something more here in terms of, and again we are just going by newspaper accounts and famous New York Times articles where they are talking about the fact that the type of employees and labor that McWane was bringing in didn't really indicate any sort of level of skills that they're looking for. They were just supplementing one labor pool with another labor pool.

So it doesn't seem like in that foundry there was a great need for already skilled people to make fittings.

MR. CARPENTER: Thank you.

Mr. Loeb?

MR. LOEB: I'd just add one point on that. I think it's useful to respond to Mr. Gearhart's question and it also ties into a point which we certainly will go into in post-hearing brief, but I don't want to leave this moment without having said it.

The question was asked what kind of damage under the special circumstances, under the critical circumstances provision, would be required, and as we were hearing what answers the Petitioners offered, it sounded to us as though it was that they might have to make a decision about some unidentified capital investment a couple of months later rather than now.

The point I would emphasize is that when you look at the confidential material that has been submitted I think you'll see that there's a little bit of an irony in the suggestion that's been made here that it is the great sensitivity to the individuals who could be laid off under these circumstances that is motivating the Petitioner. Because I think when you look at what they suggest capital improvements might be made they will further indicate to you that there are employment consequences which are one reason why those capital improvements might be made.

So I wouldn't want to let that irony go without notice.

MR. CARPENTER: Sir, go ahead.

MR. PAIS: Listening to the Petitioners' presentation today and having seen the public version of the petition it looks like within 21 days the whole emphasis seems to have shifted. First it was a huge surge which when they started getting the true facts, finding the lack of it, this morning it is all about pricing damage, damage from pricing. We have submitted data on an average realization basis. Our pricing over the years have not declined, which only means either their raw material costs may have gone up or they are being hit with some other expenses as some of them have alluded to.

Also in pricing as all my colleagues have attested, they are the price leaders. They have every opportunity, power, control, clout to set the pricing in the market to whatever level they wish to.

Unfortunately they have taken an aggressive preoccupation with the market share, domination. They have known to be the one to quickly drop the prices, but as we all have to match it. They have the flexibility to raise whenever they have conquered that market share in a reasonable market. We don't.

You have to look at the so-called multiplier map. The difference could be 30 to 60 percent. So if they decide on economic level that it needs to be set, all they have to do is set it and the small group that we are, we are very eager to meet that and service, because as we have said time and again, this is not from the pricing. This is from service. The range, the 304s are small but still employ 500 employees. So we all have our own profitability criteria as well, but it can be very easily documented that all they had to do was have a little patience.

For example,and some of this could be, the problem could be the loss of sales from some quarters. We don't have an incident where they used to sell fittings to one of their fellow manufacturers here. They depended on ACIPCO. Since they stopped the production of the small rings, they were buying from McWane.

A little later they decided to import part of their range from Brazil. As soon as McWane team found in person that they had imported they raised the multiplier so high that ACIPCO had to go and buy from the market elsewhere. And I'm pretty sure McWane lost a lot of business. It was not required, but it was just the realization that they were not able to exercise their will on that customer to dominate.

So all I want to say is the pricing, it really goes back to them. They have the power, they have the ability, and what we heard today may have been a culmination of years of misuse in the pricing.

Again, even today they have the power.

MR. RYBACKI: I'd like to make one quick observation too, as it regards pricing.

When you look at pricing and Mr. Blair, Mr. Waugaman and Mr. Green referred to multiplier charts and multipliers and the importers being too low. Well pricing is a net function. It's a function of the front end multiplier and the back end rebate. We never had rebates before. Rebates was used in the plumbing industry for many many years and McWane instituted it a number of years ago.

McWane last year came up with an aggressive loyalty program to the big three nationals where they raised the rebate substantially to 17 percent in some cases. We've never given a 17 percent rebate, nor will I. And it's not the way we do business.

So when you analyze it there are many markets where in fact we are selling our product net/net at a higher price than McWane because we do not participate in that large rebate at the other end.

Another thing that you have to look at too, American, we talked about ACIPCO. They bought a foundry recently in Oklahoma. That foundry will produce fittings domestically which will get them back into that marketplace. I don't know what size range yet but they're making some now and the foundry they have is feasible and workable and it's going to be interesting to see what they do with that foundry. So that's another tidbit I think the Commission ought to know about.

MR. BHATTACHARJI: It is interesting because here is another U.S. domestic manufacturer who does not think the situation is so bleak as to look at capital expenditure or a matter of some imports. Here is a well established domestic manufacturer actually who has made an investment in a foundry and now deciding to produce more.

It could very well be, as alluded earlier, that they got a bitter lesson from dealing with McWane and relying on McWane to supply some of the fittings. They decided to pull away from that and just stabilize their own requirements.

MR. CARPENTER: Thank you very much for all your detailed response to our questions.

Ms. Mazur has one more.

MS. MAZUR: Just one more item given the unique circumstances of this critical circumstances investigation.

I just wanted to give notice to both Petitioners and Respondents that the Commission may have additional follow-up written questions for you. If they do, and it's a possibility not necessarily a reality, we would hope to have them to you by Monday at noon at the very latest. If you could then incorporate your responses to those questions in the post-conference briefs that would be appreciated.

Thank you.

MR. CARPENTER: Mr. Boyland has one additional question.

MR. BOYLAND: This actually is for the U.S. producers.

I wanted to alert you to an additional data request that we'll include in that written submission, written question on Monday, I guess. Regarding rebates. We would like to have a breakout.

I'm assuming that it is going to be reflected in your financial results. I'd like to have a breakdown as to where it is and how much for each period.

Thank you.

MR. CARPENTER: All right. Once again, thank you very much. We appreciate your time this afternoon and your detailed responses to our questions.

We'll take a short recess until about 3:10

or 3:12 and we'll have the closing statements from both sides beginning with the Petitioners.

Thank you.

(Whereupon, a brief recess was taken)

MR. CARPENTER: Mr. Rosenthal, please proceed whenever you're ready.

MR. ROSENTHAL: Thank you. Let me get a couple of preliminary points out of the way first.

I know Ms. Mazur asked a few questions about compact versus full-bodied fittings. If you go back to our 1993 case the entire market virtually had shifted to compact as opposed to full-bodied by the time that case was filed. That's why we filed it only originally on compact ductile fittings and not full-bodied. There are still some residual full-bodied out there, but, so there's been nothing new during this period of investigation as far as those products are concerned.

It is almost laughable to hear some of the speculation by Respondents here about the market dominance by McWane as the almost monopolistic behavior they're being accused of. McWane is losing money on every ton. If they had the market power attributed to it by Respondents you'd think they'd at least raise the prices above their cost. Obviously

McWane doesn't have that kind of market power and the allegations to the contrary are quite untrue.

I will say, Mr. Boyland, that the pricing data you already have is net of the rebates, so just to confirm that. I'm sorry, Mr. Benedetto.

I should also add that the question of loyalty rebates and other programs along those lines also apply to the importers. Sigma, the importers all have their own programs to inspire continued sales by their customers. Their volume base, etc.

I think you heard, but I want to just reemphasize that the importers sell to a lot of the same distributors as McWane does. It's not as if people only carry McWane. There's one group that only carries McWane, only importers, and nothing in between. There are many many distributors who sell both importer and domestically produced products.

There's a lot of speculation also by Respondents concerning the cause of McWane's problems are not imports but rising costs, et cetera. That is untrue. You've got the cost information in front of you and you also have the investment information. There was a lot of questions about that earlier.

McWane has invested heavily in order to make itself more efficient and keep costs under control and they've done a reasonably good job of that over the years. Unlike a lot of other industries where costs have increased dramatically, McWane's costs have increased only a moderate amount.

By the way, that recently discussed investment that McWane decided this week to forego would have lowered its cost per ton still further. It would not have reduced employment as speculated by Mr. Loeb, but it certainly would have reduced their costs, but the ceiling was given the market conditions today they could not get a return on that investment over a reasonable period of time. I'll give you more of that information later.

McWane does supply the full range of products and as I said before it's totally untrue that they respect the supply of other McWane products to their distributors. McWane sells pipe valves and hydrants to distributors who buy no fittings from Tyler or Union.

By the way, we were delighted to hear about the Sigma announced price increase. This might be a first in certainly Mr. Blair's memory. We'd certainly not only like to see evidence of it on paper but in the marketplace. This is the best news we've heard today.

By the way, the other speculation about Union foundry being inefficient is not true, certainly not compared to most other foundries in the country.

Mr. Greene, your Mr. Greene, visited Union and saw the modern facilities there and this other speculation, maybe Oliver Stone is loose in the audience, but the speculation that there's been a secret plan to close Union for a long time is totally ludicrous.

McWane has spent millions and millions of dollars in improving that facility and making it into a modern and efficient facility. If they had been planning for years to close it down why would they have made that investment?

I would say, it's kind of an interesting phenomenon that we're here today answering some of these allegations. We were told we should have filed the case earlier so it would have been on the same track and not forced the Commission and everyone else to go through a more accelerated schedule on critical circumstances. On the other hand, it would have been nice not to have to file the case at all.

As a practical matter when McWane came to us and started talking about this case actively in June and July the question was what was the proper remedy?

When could we get the quickest relief? And if we don't get relief, when will they have to close the plant?

In August they were deciding which plant they would close. Originally they thought they would have to close one of their plants by the end of the year and that was their plan. They are struggling mightily to prevent that from happening. One of the reasons why I was not willing to say earlier or our Mr. Green was willing to say we will definitely close a plant between November 15th and January whatever to fit into the critical circumstance window or the 85 day period that was being talked about is because I don't want them to make any statement here that they cannot fully live by.

At the same time I don't want them to win the case and win critical circumstances only because they go ahead and follow through with a commitment that may be required by some or expected by some to actually go ahead and close the plant. That's not the way things should be done.

Let me turn to the, we don't have time to rebut in this period all of the misstatements earlier but I want to just turn to some of the analysis of critical circumstances and what we're arguing about --

volume versus other conditions. I'm very glad that the Respondents decided to make public at least the trend information. Now it makes it easier for me to respond to Mr. Gearhart. I was uncomfortable earlier since it wasn't my data.

Looking at their chart from the beginning of the period of investigation to 2002, the last full year which you have data, imports have increased dramatically. I regard that as a surge.

They would argue that imports didn't increase dramatically from 2001 to 2002, but certainly over this longer period, to me that satisfies the surge provision and the volume provision of the statute.

Also, just to be clear, I'm not saying that we satisfied that surge provision, the volume provision by the other conditions. That's a separate provision and we think it was satisfied.

We understand the other side is arguing pay no attention to these previous years, just look at the years from 2001 to 2002 where there's an increase, but a more modest one. And of course, imports were flat 2002 to 2003. But what I'm also saying here, which is crucial to our argument, is that if we were willing to cede a certain amount of market share, allow imports to come in a certain amount but at this point or during this period prices began to decline, McWane began to say there are certain things up which we will not put and that is further declines in our market share and the result has been lower pricing and lower profitability.   That is the essence of the argument of volume and other market conditions and I'm glad they allowed me to have this chart so I could summarize it for you.

I will say that the Respondents I'm sure unintentionally, but appear to have a rather cavalier approach to plant closings or at least layoffs. Their theory is that you can simply close a plant here or lay off people, have them go work at some other McWane entity and then come back when the coast is clear is totally ludicrous.

If it takes a year or six months to start up more production in Korea or India as we heard, why would they think it would be faster in the United States?

I don't know how much more time I have Ms. Mazur.

MS. MAZUR: You have one minute remaining.

MR. ROSENTHAL: With that, I will sum up in a couple of sentences.

First of all, contrary to what you heard the problems that the industry is having is not the result of alleged poor management. Poor management or poor managers would make no capital investments. They would have poor delivery rates and a poor product. They would have high and increasing costs. They would have inexperienced managers and poor quality. McWane doesn't meet that definition.

They have done a wonderful job of taking over foundries that were failing and turning around and investing. What they want here is an opportunity to continue to invest in the United States, have employment in the United States, keep jobs here.

We believe that we have satisfied the standards for not just the ultimate final relief but the interim relief called for under the critical circumstance provision of the statute and we urge you to have the Commission see it our way. We will do everything we can to cooperate with the staff to get you the information you need to reach that outcome.

Thank you.

MR. CARPENTER: Thank you, Mr. Rosenthal.

Would the other group please come forward now?

Welcome, Mr. Loeb.

MR. LOEB: Thank you. I'll make just a couple of comments in response to things that Mr. Rosenthal just said.

First, it's interesting to us that the real argument for critical circumstances here didn't appear in the opening that you heard, it didn't appear in the presentation that the petitioners offered. There was some questioning from the staff about critical circumstances factors, but it sure sounds to us like they basically have withdrawn it.

They've indicated that the claim that was in the petition, which was that a plant would necessarily be closed instantaneously is no longer their contention and they do that notwithstanding the specific requirements of the commission's regulations for a critical circumstances allegation which, as Mr. Flicker pointed out, required that there be detail and specifics about the claim that's being made and the factual basis for it.

Just to speak in legal terms for a moment to kind of address Mr. Gearhart's point on this, there are four elements that show up in the critical circumstances provision in the statute: delay, causation, damage and repair. I don't think we heard a case made for any of those four as being demonstrated on the record here. So for any of those four reasons, if we were in a court of law, we'd probably say we'd be entitled to a directed verdict on the basis of the record that's been put in front of you.

Certainly we think the commissioners when they look at the record should reach the conclusion that none of the critical circumstances requirements have been demonstrated.

I want to say one word about non-subject imports just responding to something in Mr. Rosenthal's original presentation. I think the question was asked by Mr. Ruggles with respect to non-subject imports, Mr. Rosenthal's response was that, yes, indeed, they are a problem. What I wrote down is "a real problem and a concern, we have to grapple with them, to be sure."

And one might ask if that's really the situation why are we sitting here today in a 421 case? Why don't we have a 201 case, which would propose relief from all the import sources?

I think the answer to that is fairly clear. I think it has to do entirely with political climate. We're in a political climate now where the attention given to Chinese exports to the U.S. market is becoming more and more pronounced and I think the reason that we might be here under a 421 petition rather than the alternative really has to do with what looks to me like potentially a political use of the commission, which I think would be inappropriate if that's what's occurring and I hope the commission will recognize it as such.

Finally, with respect to non-subject imports, I think that factor also eliminates the argument that relief here from a presidential order in a critical circumstances setting would achieve anything for the U.S. industry. There are adequate inventory quantities available, as you heard several of the witnesses testify, that make it fairly clear that these importers would continue to be able to supply their market with the Chinese material through any period that would be affected by critical circumstances.

One tiny item. I think Mr. Rosenthal said in his closing a moment ago that he wondered whether any of the importers also have loyalty rebates. I've been told that they do not, none of them, and, in fact, it would hardly be a surprise, none of them carry a product line which is as expansive as McWane's. They would be hard pressed to enforce a loyalty rebate if they wanted to have one, given that they sell only one piece of the large product offering which McWane both offers and, as they testified, uses to try to discourage customers from going to Chinese fittings.

Finally, Mr. Rosenthal did make reference to our page 7 in the John Riley exhibits, which is the graphic showing the trend lines among imports from foreign producer questionnaires. We haven't elected here and we'll still reserve for the post-hearing brief the opportunity to go directly into the question of what is the appropriate period to measure the surge, but I really want to just make two comments on the record now. One is that whatever period you conclude, you nonetheless are required by the language of the market disruption definition in the statute to find that imports are rapidly increasing and, as has been mentioned in commissioner opinions, including Commissioner Koplan's opinions, the language is in the present tense.

Here, there is no increase at all in anything that could be considered the present tense, so it is very difficult to see how this graphic could provide any support for a claim of market disruption under the language of the statute and as it has been interpreted by at least several of the commissioners.

The final point I would make is that it seems to the petitioners' strategy in these cases, we've seen it in some of the prior 421s to say, well, let's just look over the whole period of investigation as the period for the surge. It hardly needs saying, but the reason the commission asked for five-year data is not because a surge which merits extraordinary intervention by the commission and then by the commission on an incredibly short time table can legally, permissibly go back five full years.

The commission asks for five-year data so that it can make some judgments about whether a surge shows up in the recent year or two compared to what prior evidence and prior trends in the industry were. So obviously there is a period of investigation, but the period of investigation for when the surge is occurring certainly can't be the full five years.

With that, we thank the staff, appreciate your attention, and would be glad to respond to the questions that we understand are coming Monday.

MR. CARPENTER: Thank you, Mr. Loeb.

I have just a few final scheduling comments.

There will be another APO release on Monday, September 29th. The deadline for the submission of corrections to the transcript and for post-conference briefs is Wednesday, October 1st. If briefs contain confidential business information, a non-confidential version is due on October 2nd.

The commission has not yet scheduled a vote for this phase of the investigation, however, it will report its determination on critical circumstances and, if necessary, its preliminary determination on market disruption and recommendations on proposed provisional relief to the President on October 20th.

Thank you for coming. This conference is adjourned.

(Whereupon, at 3:31 p.m., the hearing in the above-entitled matter was adjourned.)

//

//

//

//

//

//

//

//

//

//

//

CERTIFICATION OF TRANSCRIPTION

TITLE: Certain Ductile Iron Waterworks

INVESTIGATION NO.: TA-421-4

HEARING DATE: September 26, 2003

LOCATION: Washington, D.C.

NATURE OF HEARING: Preliminary Conference

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: September 26, 2003

SIGNED: LaShonne Robinson
Signature of the Contractor or the Authorized Contractor's Representative
1220 L Street, N.W. - Suite 600
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

SIGNED: Carlos Gamez
Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

SIGNED: Beth Roots
Signature of Court Reporter