

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
POLYCHLOROPRENE RUBBER) Investigation No.:
FROM JAPAN) AA1921-129 (Second Review)

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THE UNITED STATES INTERNATIONAL TRADE COMMISSION

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 POLYCHLOROPRENE RUBBER) Investigation No.:
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Tuesday,
 May 3, 2005

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

The hearing commenced, pursuant to notice, at 9:31 a.m., before the Commissioners of the United States International Trade Commission, the Honorable STEPHEN KOPLAN, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

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

APPEARANCES: (cont'd.)

Staff:

MARILYN R. ABBOTT, SECRETARY TO THE COMMISSION
WILLIAM R. BISHOP, HEARINGS AND MEETINGS
COORDINATOR
SHARON BELLAMY, HEARINGS AND MEETINGS ASSISTANT
JOHN KITZMILLER, INVESTIGATOR
RAYMOND CANTRELL, INDUSTRY ANALYST
ROBERT HUGHES, ECONOMIST
CHARLES YOST, ACCOUNTANT/AUDITOR
PETER SULTAN, ATTORNEY
GEORGE DEYMAN, SUPERVISORY INVESTIGATOR

Congressional Witness:

THE HONORABLE CHARLIE MELANCON, U.S. Congressman,
3rd District, State of Louisiana

In Support of the Continuation of the Antidumping Duty
Order:

On behalf of Dupont Dow Elastomers, LLC (DDE):

JANE E. AUSTIN, Global Business Director,
Chloroelastomers, DDE
PETER VAN BALLEGOOIE, Global Marketing Manager,
Neoprene, DDE
MARY JANE CASTELLANO, Business Analyst Consultant,
DDE
DENIS MCCREA, Neoprene Technical Associate, DDE

ROBERT A. LIPSTEIN, Esquire
KENT A. GARDINER, Esquire
MATTHEW P. JAFFE, Esquire
SOBIA HAQUE, Esquire
Crowell & Moring, LLP
Washington, D.C.

APPEARANCES: (Cont'd.)

In Support of the Revocation of the Antidumping Duty Order:

On behalf of Gates Corporation (Gates):

JOHN RUSNACK, Manager, Strategic Planning and
Implementation, Gates
HOWARD HURWITZ, Counsel, Gates

FRANK J. SCHUCHAT, Esquire
Schuchat, Herzog & Brenman, LLC
Denver, Colorado

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P R O C E E D I N G S

(9:31 a.m.)

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2
3 CHAIRMAN KOPLAN: Good morning. On behalf
4 of the United States International Trade Commission, I
5 welcome you to this hearing on Investigation No.
6 AA1921-129 (Second Review) involving Polychloroprene
7 Rubber From Japan.

8 The purpose of this second five-year review
9 investigation is to determine whether revocation of
10 the antidumping duty order on polychloroprene rubber
11 from Japan would be likely to lead to continuation or
12 recurrence of material injury to an industry in the
13 United States within a reasonably foreseeable time.

14 Notice of investigation for this hearing,
15 list of witnesses and transcript order forms are
16 available at the Secretary's desk. I understand the
17 parties are aware of the time allocations. Any
18 questions regarding the time allocations should be
19 directed to the Secretary.

20 As all written testimony will be entered in
21 full into the record, it need not be read to us at
22 this time. Parties are reminded to give any prepared
23 testimony to the Secretary. Do not place testimony
24 directly on the public distribution table. All
25 witnesses must be sworn in by the Secretary before

1 presenting testimony.

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

6 Madam Secretary, are there any preliminary
7 matters?

8 MS. ABBOTT: No, Mr. Chairman.

9 CHAIRMAN KOPLAN: Very well. Let us proceed
10 with the opening statement.

11 MS. ABBOTT: Opening remarks in support of
12 continuation of orders will be by Robert A. Lipstein,
13 Crowell & Moring.

14 CHAIRMAN KOPLAN: Good morning.

15 MR. LIPSTEIN: Good morning, Mr. Chairman,
16 members of the Commission. My name is Robert
17 Lipstein. I'm with the law firm of Crowell & Moring,
18 and I'm here today as counsel for Dupont Dow
19 Elastomers or DDE. DDE appreciates the opportunity to
20 present to the Commission its case for continuation of
21 the antidumping finding on polychloroprene rubber from
22 Japan.

23 As the Commission well knows, the statute
24 governing sunset reviews instructs that you are to
25 evaluate the likely volume of subject imports, the

1 price effect of subject imports and the impact on the
2 domestic industry of subject imports all in the
3 context of the business cycle and conditions of
4 competition facing the domestic industry.

5 In the context of a full review such as
6 this, the Commission would normally have the benefit
7 of an extended factual record on these issues
8 presented by both sides. Here, however, the Japanese
9 producers of polychloroprene rubber, or PCR, have
10 continued their pattern of refusing to participate in
11 the ITC's sunset review process.

12 None of them has responded to the notice of
13 institution, and the Commission determined correctly
14 that their responses were inadequate. As the
15 Commission staff report has noted in this case, at the
16 prehearing phase there were very little data on the
17 Japanese PCR industry. Information on total capacity
18 is available. However, no information on shipments
19 and inventories has been received, all of which
20 supports the proposition that the Japanese producers
21 have refused to respond to the Commission's foreign
22 producer questionnaire.

23 Through their deliberate decision not to
24 participate in this process, they have left the
25 Commission without certified information as to their

1 production capacities, their actual production
2 volumes, their cost to produce PCR, the markets in
3 which they sell and the prices at which they sell.

4 Under the statute the Commission is
5 instructed in these circumstances to use facts
6 available and indeed may use adverse facts available
7 here as the Japanese producers have not acted to the
8 best of their ability to comply with the Commission's
9 information requests.

10 The evidence presented by DDE on this record
11 undoubtedly explains the absence of the Japanese
12 producers from this proceeding. DDE has documented
13 the enormous amount of PCR capacity in Japan that
14 cannot be absorbed in the Japanese domestic market, as
15 well as the economic incentives for Japanese PCR
16 producers to operate their facilities as close to
17 capacity as possible.

18 DDE has further shown that the Japanese have
19 bought their way into other markets at below cost
20 prices, most notably in Brazil. This evidence shows
21 that PCR purchasers are price sensitive and that low
22 prices will shift significant shares of the market in
23 very short order.

24 The experience of the Japanese and third
25 country markets thus demonstrates that whatever the

1 product qualification process may entail in this
2 industry it is easily satisfied by the Japanese PCR
3 product, and once satisfied competition is all about
4 price.

5 DDE's evidence thus supports a determination
6 that absent the antidumping finding on PCR rubber from
7 Japan, DDE is highly likely to face a significant
8 volume of low-priced Japanese PCR imports. The
9 Commission must then determine what will be the impact
10 of those imports on the domestic industry; that is, on
11 DDE itself.

12 Here the story is vastly different from the
13 information that was presented to the Commission five
14 years ago in the first sunset review. Particularly in
15 recent years DDE has experienced very substantial
16 material cost increases. Despite several attempts to
17 pass through these increased costs in recent years,
18 DDE has been unsuccessful in doing so. This is borne
19 out not only by DDE's financial data for the PCR
20 business for 2003 and 2004, but also in the pricing
21 data collected by the Commission from our producer
22 questionnaire response.

23 DDE's inability even to recover cost
24 increases demonstrates how competitive the market is
25 for its products and thus how price sensitive are its

1 customers when choosing suppliers.

2 Two more brief points if I might. First,
3 DDE acknowledges that it has pled guilty to price
4 fixing with respect to PCR. DDE was represented in
5 the antitrust cases by my partner, Kent Gardiner, who
6 is here today, and to the extent that the Commission
7 has questions about those cases and such questions can
8 be addressed in a public forum Kent will try to do so.

9 We would submit, however, that in the
10 ultimate analysis the antitrust case should not be a
11 factor in the Commission's decision. The plea period
12 in that case covers less than the first half of the
13 five-year period.

14 I understand with the indulgence of the
15 Secretary and the Commission I would like to borrow a
16 few minutes from DDE's presentation to finish my
17 opening.

18 CHAIRMAN KOPLAN: It does not work that way.
19 Sorry.

20 MR. LIPSTEIN: All right. Thank you, Mr.
21 Chairman.

22 CHAIRMAN KOPLAN: Certainly. Madam
23 Secretary?

24 MS. ABBOTT: The panel in support of the
25 continuation of the antidumping duty order should

1 please come forward.

2 Mr. Chairman, the witnesses have been sworn.

3 (Witnesses sworn.)

4 CHAIRMAN KOPLAN: Thank you, Madam
5 Secretary.

6 You may proceed.

7 MR. LIPSTEIN: I will have my partner,
8 Matthew Jaffe, introduce our panel.

9 CHAIRMAN KOPLAN: Good morning, Mr. Jaffe.

10 MR. JAFFE: Good morning. It's a pleasure
11 to be here again. My name for the record is Matthew
12 Jaffe with the law firm of Crowell & Moring. We
13 represent Dupont Dow Elastomers.

14 We have four witnesses here today on behalf
15 of Dupont Dow Elastomers to present testimony to the
16 Commission and to respond to the Commission's
17 questions. The four witnesses are:

18 Jane Austin, who is the Global Business
19 Director of specifically the neoprene area; Peter van
20 Ballegoie, who is Global Marketing Manager for
21 Neoprene; Mary Jane Castellano, who is the business
22 analyst consultant in this particular area; and Denis
23 McCrea, who is a neoprene technical associate located
24 at the Pontchartrain plant.

25 We will begin our direct presentation with

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1 Jane Austin.

2 MS. AUSTIN: Thank you. Good morning. My
3 name is Jane Austin, and I'm the Global Business
4 Director for Neoprene for Dupont Dow Elastomers based
5 on Wilmington, Delaware.

6 Dupont Dow Elastomers or DDE is the only
7 producer of polychloroprene rubber in the United
8 States. Polychloroprene rubber, which I will refer to
9 in my testimony as either PCR or neoprene, was the
10 first synthetic rubber polymer marketed in the United
11 States. In fact, neoprene was invented by Dupont in
12 1931.

13 In the 1970s, when Dupont petitioned the
14 United States Government to impose an antidumping
15 finding against PCR imports from Japan, the U.S. PCR
16 market was still growing. In 1979, when the demand
17 for PCR was still quite high, Dupont operated four
18 plants that produced PCR. In 1999, when we last
19 visited with the Commission, we operated just three
20 plants, and today DDE operates two manufacturing
21 plants, the Louisville facility located in Kentucky
22 and our Pontchartrain facility located in La Place,
23 Louisiana.

24 As you know by now, DDE has already
25 announced plans to further consolidate production of

1 neoprene by the end of 2006 at our Pontchartrain
2 facility, making it the only remaining PCR production
3 facility in the United States.

4 As I will discuss later, the Commission's
5 determination may have a significant impact on the
6 future of the Pontchartrain facility, but first let me
7 review a little bit about the markets in which we
8 participate and the products that we produce.

9 PCR is a vital component in a number of
10 applications.

11 CHAIRMAN KOPLAN: Excuse me. I hate to
12 interrupt you. We have a congressional witness who
13 just arrived. It will not count against your time,
14 but I would have him come in and give his testimony.

15 Madam Secretary?

16 MS. ABBOTT: The Honorable Charlie Melancon,
17 United States Congressman, 3rd District, State of
18 Louisiana.

19 MR. MELANCON: Good morning. I appreciate
20 the opportunity to visit with you and hope I didn't
21 interrupt everything, but it looks as though I
22 probably did.

23 CHAIRMAN KOPLAN: That's okay.

24 MR. MELANCON: I'm Congressman Charlie
25 Melancon. I'm the newly elected congressman from

1 Louisiana's 3rd Congressional District.

2 I wanted to visit this morning because of my
3 concern particularly with a firm that is in my
4 district that is affected by the ITC's rulings and
5 hearings today.

6 I felt it's important to come here today to
7 place this Commission's review of neoprene dumping by
8 the Japanese chemical companies in the context of jobs
9 and the economy of southeast Louisiana. A significant
10 portion of my domestic chemical industry -- of our
11 domestic chemical industry -- is located in my
12 district along the Mississippi River corridor.

13 It's an industry which has provided high
14 paying jobs and considerable economic impact to an
15 area of my state where other industries have begun to
16 falter. It is also an industry that is struggling to
17 cope with rising energy cost and unfair foreign
18 competition.

19 It is only with the protection of the ITC in
20 instances such as this antidumping order on Japanese
21 neoprene that our domestic industry can survive in
22 such a predatory marketplace.

23 If this Commission chooses to revoke the
24 antidumping order on neoprene rubber from Japan the
25 effects in my district in southeast Louisiana would be

1 dramatic and severe.

2 Dupont Dow Elastomers manufactures neoprene
3 at its plant in LaPlace, Louisiana, and employs
4 presently 215 workers with good wages and good
5 benefits, and that, my friend, is becoming a rarity.
6 That means that no less than 215 good jobs are at risk
7 if the Commission revokes this dumping finding and the
8 competitive market becomes flooded with underpriced
9 Japanese neoprene.

10 The Commission was right when it originally
11 found Japanese dumping in the U.S. neoprene market,
12 and reaffirming that finding will not only protect the
13 jobs in LaPlace but encourage significant investments
14 there by Dupont Dow.

15 America has lost many good paying jobs in
16 all sectors of our national economy not because our
17 industries are not competitive, but rather because of
18 the laissez faire attitude that we must go through and
19 extended and cumbersome process to show damage, and
20 sometimes a response is too little and too late.

21 Therefore, I ask for a quick response to Dow
22 and my request so that a viable competitive domestic
23 company can go forth with its plans that will provide
24 much needed good jobs for America.

25 In a market safe from unfair foreign

1 dumping, Dupont Dow Elastomers intends to beef up its
2 LaPlace operation. They will look to add more jobs at
3 the plant and make significant capital improvements to
4 their facilities.

5 Dupont Dow estimates approximately \$100
6 million in overall economic impact in Louisiana alone
7 if it makes these investments, but it can only move
8 forward with its plans if the ITC continues to
9 recognize the harm from unfair Japanese trade
10 practices and reaffirms its antidumping order.

11 As you can see, there's much at stake in my
12 district. I am confident that as the ITC continues
13 the review process that the unfair trade practices of
14 the Japanese chemical industry will be readily
15 apparent, and I strongly urge that you reaffirm your
16 antidumping order on the Japanese neoprene
17 manufacturers in light of the consequences to the U.S.
18 industry.

19 I'd like to thank the Commission for its
20 time in allowing me to appear before you on this very
21 important issue.

22 CHAIRMAN KOPLAN: We very much appreciate
23 your testimony. Let me see if any of my colleagues
24 have questions.

25 (No response.)

1 CHAIRMAN KOPLAN: If not, thank you for
2 coming. You are excused.

3 MR. MELANCON: Thank you so much.
4 Appreciate it.

5 CHAIRMAN KOPLAN: Thank you, Congressman.
6 Ms. Austin, you're back on the clock.

7 MS. AUSTIN: Okay. Thank you.

8 CHAIRMAN KOPLAN: Okay.

9 MS. AUSTIN: I'll start again at the point I
10 broke around the markets --

11 CHAIRMAN KOPLAN: Sure.

12 MS. AUSTIN: -- and products that we
13 participate in. As I was saying, PCR is a vital
14 component in a number of applications including the
15 following:

16 (1) Adhesives. For example, contact bond
17 adhesives or roofing adhesives. (2) Belts. Drive
18 belts, industrial belts or timing belts. (3) Hoses.
19 Automotive brake hoses, power steering hose or fuel
20 hose covers. (4) Latex. Consumer, medical and
21 industrial gloves, dipped goods and finally wire and
22 cable, appliance cords and power cables.

23 Before you here we have some examples of
24 these products, and if you'd like to take a look at
25 them later you can.

1 DDE manufactures five major types of
2 neoprene families. Our Louisville plant currently
3 manufactures all five major types while our
4 Pontchartrain facility primarily manufactures just
5 two, the types that we call W and A types, which are
6 generally considered to be lower value or commodity
7 type grades.

8 There's a proposal in place to upgrade the
9 capabilities of our Pontchartrain plant so that it can
10 also manufacture in commercial quantities other types
11 of neoprene product families, particularly the higher
12 value neoprene types.

13 This is a basic introduction to the
14 business, and now I'd like to turn to Peter van
15 Ballegoie, who is DDE's global marketing manager for
16 neoprene. Peter will first outline for you some of
17 the basic competitive conditions that DDE confronts
18 today in the global and U.S. market for PCR.

19 Peter?

20 MR. VAN BALLEGOOIE: Thank you, Jane. Good
21 morning, everyone. As Jane just mentioned, by name is
22 Peter van Ballegoie. I am the global marketing
23 manager for neoprene with Dupont Dow, and I've been in
24 that position for about three years.

25 As the Commission knows from its sunset

1 review five years ago, neoprene is now in the decline
2 phase of its product life cycle as substitutes have
3 become more readily available.

4 With that said, however, PCR remains a very
5 useful and important product in our economy. There is
6 still a great need for it, and we expect there to be a
7 continuing viable demand for neoprene over the next 15
8 to 30 years. It's just that the demand for neoprene
9 is less than it was 25 years ago.

10 What this also means is that the market in
11 which PCR operates is a mature one. Developments
12 involving this product have been very limited for a
13 number of years now, which leads me to my next
14 important point. DDE's key competitors are the
15 Japanese producers, Denki, Tosoh, SDK, and the
16 European producers, Bayer, who now basically markets
17 their PCR through Lanxess, and Enichem, now known as
18 Polimeri.

19 All of these companies have manufactured PCR
20 for years. Our product families are readily
21 interchangeable with their product families. In
22 Attachment 1 to our prehearing brief it shows a table
23 that lists exactly which of our neoprene product
24 families can be substituted with SDK's shoprene, Denki
25 chloroprene or Tosoh's skyprene. This table was

1 created 10 years ago, but it is really every bit as
2 valid today as it was then.

3 That our products can be easily substituted
4 for the Japanese product families and vice versa means
5 that competition among producers nearly always comes
6 down to price. In the last five years, Japanese
7 producers have engaged in aggressive pricing to
8 increase their market share. Our prehearing brief
9 highlights Brazil where Japanese PCR producers nearly
10 doubled their market share in the adhesive segment by
11 selling at what we believe are prices below their cost
12 of production.

13 We are seeing this type of aggressive
14 pricing strategy not just in South America, but in
15 Asia, particularly in China and Malaysia, in Europe,
16 particularly in Spain, and even in North America in
17 Canada.

18 This could not have come at a worse time for
19 DDE given our skyrocketing costs over the last two to
20 three years. DDE uses four key raw materials to
21 manufacture PCR -- butadiene, chlorine, caustic soda
22 and natural gas.

23 If you assume that the cost to DDE for each
24 of these raw materials was \$1 in 2000 then the cost to
25 DDE today for butadiene would be \$1.60, for chlorine

1 \$1.78, for caustic soda \$1.87, for natural gas \$1.88.
2 Add all of that together, and the \$4 that DDE used to
3 spend on raw materials in 2000 now adds up to \$7.13,
4 nearly double just what it was five years ago.

5 There is one more key condition of
6 competition that the Commission should consider during
7 this review, which Jane is going to talk about.

8 MS. AUSTIN: Thank you, Peter.

9 As Peter noted, the demand for PCR has been
10 dropping steadily for a number of years. You would
11 assume then that global production capacity would also
12 be dropping at a pace that matches more or less the
13 decrease in demand.

14 DDE has already taken steps certainly in the
15 past, and we have plans to do so again in the not so
16 distant future, to adjust our production capacity to
17 mirror this declining market demand, but the Japanese
18 PCR producers, for reasons that I will now try to
19 explain, apparently have not decided to downsize their
20 production capacity.

21 As I mentioned before, DDE has moved from
22 four PCR plants to two in the last 10 years. In 1997
23 we closed our plant in northern Ireland. Then in 2002
24 we exited from a joint venture that manufactured PCR
25 at our plant in Japan. DDE now operates just two PCR

1 plants both located in the United States, and, as I
2 said, we plan to consolidate further to one plant at
3 the Pontchartrain facility by the end of 2006.

4 By contrast, if you look at the Commission's
5 first sunset review determination you will see that
6 the Commission found, and I quote, "Despite a steady
7 drop in global demand for polychloroprene rubber,
8 Japanese producers have significantly increased their
9 production capacity whereas total non-Japanese
10 capacity has declined."

11 The Japanese PCR producers, based on our
12 observations, still have not rationalized their
13 production facilities in line with the declining
14 global demand. Let me go through each of them and try
15 to give you what we believe is rationale behind their
16 decisions not to rationalize capacity.

17 Let me first start with SDK. We have a
18 pretty good understanding why that company
19 manufactures PCR because of our previous joint venture
20 relationship with them. DDE terminated the joint
21 venture because it no longer made business sense to
22 operate yet another PCR manufacturing facility under
23 the current market conditions, especially one in
24 Japan. Indeed, the Japanese facility was our highest
25 cost manufacturing facility at the time.

1 SDK is a large chemical conglomerate that
2 happens to produce excess chlorine as a byproduct at
3 some of its other chemical facilities, and safe
4 disposal of chlorine as a byproduct is problematic.
5 Therefore, from SDK's perspective it needed a means by
6 which to rid itself of the chlorine byproduct, and the
7 best alternative was to continue to manufacture PCR no
8 matter what the demand for the product is or at what
9 price it could be sold.

10 The second competitor, Denki. It is well
11 known that Denki owns a large stockpile of a key raw
12 material it needs to manufacture PCR. Therefore, from
13 Denki's perspective it has already paid for much of
14 the cost related to PCR production so it might as well
15 continue to produce and sell PCR until it depletes its
16 stockpile.

17 Finally, the third competitor from Japan,
18 Tosoh. We really don't know why Tosoh hasn't
19 rationalized capacity, but we do know that they focus
20 their offering on the higher value product lines, and
21 the U.S. will be a very attractive market for them.

22 Peter will now explain why Tosoh, SDK and
23 Denki will set their sights immediately on the U.S.
24 market if the antidumping finding is revoked.

25 MR. VAN BALLEGOOIE: Our market intelligence

1 indicates that if the antidumping finding is revoked
2 the Japanese PCR suppliers would find the U.S. market
3 to be very attractive for the following key reasons:

4 First, Japanese PCR producers must export
5 most of their production in order to maintain
6 acceptable levels of capacity utilization because
7 their domestic market for PCR is comparatively small.
8 Domestic Japanese demand for this product has
9 deteriorated over the years basically because those
10 companies that used to buy it have since sent their
11 production offshore or found substitutes.

12 Based on data from the Japanese Synthetic
13 Rubber Association, it now appears that Japanese PCR
14 demand covers only about 30 percent of the available
15 Japanese PCR production capacity, the balance of
16 course going to export markets.

17 Second, the U.S. market for PCR is quite
18 large in comparison to the Japanese market. It is the
19 world's largest market for PCR, comprising about 20
20 percent of world demand by volume and even more by
21 value. The U.S. market also has a small number of
22 customers who generally purchase large volumes of this
23 product so with relatively little infrastructure,
24 relatively little marketing and relatively little
25 logistical effort it would be easy for a Japanese

1 producer to capture a significant share of the U.S.
2 market quickly.

3 Finally, the average prices for PCR in the
4 United States are higher than the average prices in
5 other markets. This mostly has to do with product mix
6 sold in the United States. That is, not only is the
7 United States the world's largest market for PCR
8 generally, but it is also the largest market for
9 higher valued PCR.

10 This gets back to what Jane discussed about
11 Tosoh and its line of higher value PCR products and
12 also about SDK and Denki and their excess production.
13 The U.S. market is a perfect market for the Japanese
14 producers to switch their exports because there they
15 could sell at higher prices than in other countries
16 but still significantly below the prevailing U.S.
17 prices.

18 It is thus likely that if the antidumping
19 finding is revoked Japanese producers will move
20 aggressively into the U.S. market to sell PCR to U.S.
21 customers. It is also likely that revocation of the
22 antidumping finding will lead to considerable price
23 underselling by Japanese producers at price levels
24 that would have a significant depressing or
25 suppressing effect on the prices for domestic like

1 products.

2 With these factors combined, a considerable
3 volume of imports of PCR from Japan priced to
4 aggressively undersell domestic neoprene, it is
5 certain that there will be a significant adverse
6 impact on our U.S. neoprene business.

7 MS. AUSTIN: To be quite frank about it, our
8 business, the neoprene business, sits as an important
9 crossroad in our history.

10 DDE has already announced plans to
11 consolidate our PCR production facilities by the end
12 of 2006. This was a difficult decision for DDE, but
13 once you understand this industry and the business
14 cycle you will appreciate the current and forecasted
15 market conditions required us to move in this
16 direction.

17 Our Pontchartrain plant currently
18 manufactures mostly the lower value or commodity
19 grades of neoprene. We plan to upgrade
20 Pontchartrain's capability so that it can manufacture
21 higher value products to meet a wider range of market
22 needs, but whether we follow through on this
23 investment plan depends on our continuing analysis of
24 the neoprene business based on market conditions.

25 There are a number of factors currently

1 affecting that analysis that did not exist five years
2 ago. At the first sunset review, the Commission found
3 that the domestic industry was performing well on the
4 reported figures for sales quantity and value,
5 operating margins and growth profits. A review of
6 DDE's financial numbers for this period paints just
7 the opposite picture.

8 At the first sunset review there was
9 evidence that raw material costs were declining, and I
10 believe that certain Commissioners held the view that
11 this evidence suggested that DDE had flexibility in
12 the prices charged to its customers. A review of
13 today's raw material cost figures for DDE demonstrate
14 conclusively that no such flexibility exists.

15 In other words, DDE, the only remaining U.S.
16 PCR producer, is operating in what the Commission
17 calls a weakened state, which brings me to the last
18 factor I will talk about today that has a significant
19 impact on whether we follow through on our plans to
20 upgrade the Pontchartrain plant; that is the
21 antidumping finding itself.

22 If the antidumping finding is revoked,
23 imports from Japan are likely to have a significant
24 adverse impact on our production, shipments, sales,
25 revenues and thus ultimately our neoprene investment

1 strategies.

2 The domestic industry is already vulnerable
3 to declining demand and escalating raw material and
4 energy cost. Add to that a significant volume of low-
5 priced PCR imports from Japan, and it's virtually
6 certain that the domestic industry will suffer
7 material injury within a reasonably foreseeable
8 period. It's even possible that the domestic industry
9 may cease to exist altogether.

10 Therefore, on behalf of Dupont Dow
11 Elastomers I respectfully request that the Commission
12 vote not to sunset the antidumping finding. Thank you
13 for your time.

14 MR. JAFFE: Thank you, Jane, Peter. That
15 concludes our direct presentation.

16 CHAIRMAN KOPLAN: Thank you. I appreciate
17 your testimony, and we'll begin the questioning with
18 Commissioner Lane.

19 COMMISSIONER LANE: Good morning, and thank
20 you for coming this morning and making your
21 presentation and being willing to answer our
22 questions.

23 I would like to start with Denki is not
24 subject to dumping margins and represents a
25 significant share of Japanese PCR capacity. Does it

1 pursue an aggressive pricing strategy, and a follow-up
2 question will be if they're not subject to a dumping
3 margin why do you think they are not already in the
4 U.S. market?

5 Ms. Austin?

6 MS. AUSTIN: Yes. Thank you. Indeed as you
7 noted, in the original antidumping finding around
8 Japanese PCR producers injury was found, and various
9 dumping margins were assessed. Denki has a zero
10 margin.

11 Over this period of time, Denki has been
12 virtually absent from the U.S. market. They have not
13 participated. Presumably if they did they would be
14 found to have lower prices and, therefore, be assessed
15 a different margin.

16 I'd like for Peter to make some comments
17 around some examples that we have outside of the
18 United States where there's not an order in place
19 where Denki does practice very aggressive pricing
20 tactics.

21 Peter?

22 MR. VAN BALLEGOOIE: Yes. Thank you, Jane.

23 COMMISSIONER LANE: Okay, but first why do
24 you think that Denki is not selling product over here
25 right now when it doesn't have any dumping margins?

1 MS. AUSTIN: My conclusion or my assessment
2 of it is that with that dumping order in place or
3 finding in place they are basically shy of the
4 marketplace.

5 If they did participate there would be a
6 request for a review and a margin assessed for Denki,
7 and I don't believe that they can participate in the
8 U.S. market without dumping. That's my conclusion
9 based on their activities in other markets around the
10 world.

11 MR. JAFFE: Commissioner Lane, if I might
12 add? If you look at the historical record there have
13 been a number of administrator reviews requested at
14 the Department of Commerce during the 1990s and I
15 believe also in the 1980s, and in all those reviews
16 there has been a no shipment finding with respect to
17 Denki as well, so there's been no evidence that
18 they've actually shipped. Once the antidumping
19 finding was put into place they stopped shipments to
20 the United States.

21 I would also add, though I can't go into
22 great detail because the historical record dates back
23 to 1973 and it is marked as a proprietary document in
24 the Commission's report, that the finding of zero in
25 this case again is a very unusual finding. In other

1 words, they were found to be dumping, but there was a
2 zero.

3 The reason why, again I can't go into great
4 detail because it is marked. It's a 1973 document
5 marked as business proprietary, but if you would like
6 we can explain it further in our posthearing brief.

7 COMMISSIONER LANE: That would be a good
8 idea. Thank you.

9 MR. JAFFE: Thank you.

10 COMMISSIONER LANE: And Mr. --

11 MR. VAN BALLEGOOIE: van Ballegooie. Peter
12 van Ballegooie.

13 COMMISSIONER LANE: Would you finish your
14 answer?

15 MR. VAN BALLEGOOIE: I had an additional
16 comment as well just to follow up on Jane's earlier
17 remarks, and that is indeed to your question Denki
18 does follow an aggressive pricing behavior in other
19 parts of the world. We've seen that kind of behavior
20 in Asia Pacific region, excluding Japan, and also in
21 South America. I have some specific examples that
22 would support that.

23 During the period of this sunset review in
24 the early part of it like from 1999 to 2000 Dupont Dow
25 had a very significant market share, about 50 percent

1 roughly, in the adhesive segment in Brazil, and during
2 the period of the sunset review this declined to
3 somewhere in the range of about 25 to 35 percent, and
4 in fact the volume share that we lost was picked up by
5 the Japanese PCR suppliers, Denki and the others as
6 well.

7 We've also gotten information from the
8 importation statistics which definitely demonstrates
9 that the two or three Japanese PCR suppliers do price
10 typically well below both European PCR suppliers and
11 Dupont Dow.

12 COMMISSIONER LANE: Okay. Thank you.

13 In your posthearing brief I would also like
14 for you to go into reasons, more specific reasons, on
15 why you're closing your larger Louisville facility
16 instead of the smaller LaPlace facility, and then I
17 also have some questions about what you're actually
18 going to do on that that I think you can answer on the
19 record here.

20 Will you be using any of the equipment from
21 the Louisville facility and transferring it to the
22 Pontchartrain facility, and what about workers?

23 MS. AUSTIN: As you indicate, some of that
24 is sensitive information, and we'll provide a lot more
25 detail in our posthearing brief, but it is an obvious

1 question that you raise why are we choosing to shut
2 down the Louisville facility, which today has the
3 capability to produce higher value products, and
4 therefore consolidate at our Pontchartrain facility.

5 There are two major reasons. I guess the
6 basic one boils down to the age of the facilities.
7 The Louisville plant is a much older facility, and we
8 are going to have to put some significant investment
9 in terms of basic infrastructure for that facility to
10 continue running.

11 Then you make the choice do you want to do
12 your investment at Pontchartrain or in the older
13 facility, Louisville, and we choose to put it into the
14 newer, more modern facility in Pontchartrain.

15 The second point, an important one also, is
16 that we have one monomer production facility, a very
17 significant investment in that capability, and it's
18 located at Pontchartrain so today we ship monomer to
19 our Louisville plant, which we incur additional cost
20 from that and some safety exposure by shipping monomer
21 on the highways.

22 For those two reasons, the age of the
23 facility and the location of our monomer plant, that's
24 why we've chosen to consolidate at Pontchartrain.
25 With that consolidation, you know, as I mentioned

1 earlier we plan to do a significant investment to
2 upgrade the plant so that we can make the full range
3 of neoprene products at that facility.

4 I think you also had a question around
5 equipment. There will be some minor equipment, but
6 for the most part it will be upgrades and new
7 equipment that's put in place at our Pontchartrain
8 facility and kind of the same answer on workers.
9 There will be a few people that are able to relocate
10 and will have employment at that larger facility for
11 those employees, but in general that's not the case.

12 COMMISSIONER LANE: Okay. Now I have a
13 question about I guess it's Tosoh. Is it subject to a
14 dumping margin now?

15 MS. AUSTIN: Yes. My understanding is that
16 Tosoh is subject to the margin, 55 percent.

17 COMMISSIONER LANE: Okay. Thank you.
18 Looking at the worldwide rubber statistics published
19 by the International Institute of Synthetic Rubber
20 Producers, Inc., particularly at the figures for world
21 consumption, can you explain why PCR consumption in
22 North America declined more than in western Europe,
23 Latin America, Asia, the Middle East and Africa?

24 MR. VAN BALLEGOOIE: Yes. I'd like to
25 respond to that. First of all, the average decline of

1 PCR in the North America region was on the order of
2 about four percent, roughly four percent per annum
3 over the last couple of decades. The rest of the
4 world is probably an average of about 1.1 to 1.5
5 percent.

6 The key reasons for that difference in my
7 view are that in the North America region we have a
8 very -- well, we sell significant volumes of product
9 into the power transmission belting application, which
10 is currently undergoing quite some transition to EPDM
11 substitution, PCR to EPDM substitution, so that
12 explains a good portion of the decrease.

13 In addition, there are some segments,
14 particularly liquid dispersion segments -- for
15 instance examination gloves, surgical gloves -- which
16 have moved away from the North America market into
17 other parts of the world, particularly Asia Pacific,
18 and the reason for that is primarily lower labor costs
19 are supporting that migration of business from the
20 U.S. to the parties.

21 COMMISSIONER LANE: Okay. Thank you. My
22 time is up. I may have a few more questions in the
23 next round.

24 Thank you, Mr. Chairman.

25 CHAIRMAN KOPLAN: Thank you.

1 Commissioner Pearson?

2 COMMISSIONER PEARSON: Thank you, Mr.

3 Chairman. Good morning to the panel.

4 Going back to Denki for a minute if I could,
5 I believe, Ms. Austin, that you had indicated that you
6 didn't believe that Denki could sell into the United
7 States without dumping, but yet if the United States
8 has the highest priced market for polychloroprene
9 rubber why couldn't they sell to this country without
10 dumping?

11 MS. AUSTIN: I guess there are a couple
12 parts to answer your question. One, I guess my
13 understanding of the dumping definition is around also
14 an understanding of your cost position.

15 Denki, SDK and Tosoh in a high cost region
16 of Japan we believe have higher manufacturing costs,
17 and if you look at their behavior in other parts of
18 the world outside of their home market they engage in
19 very aggressive pricing activity to gain share to sell
20 their incremental pounds.

21 The PCR manufacturing is a very cost and
22 capital intensive process and so with your facility in
23 the ground you want to sell out and maximize capacity
24 utilization so everyone looks at those last pounds and
25 they're willing to sell, you know, below their full

1 cost in order to maximize capacity utilization. I
2 believe based on their behavior in other regions
3 that's how they'll enter the U.S. market.

4 Another point on that is that if you look at
5 their sales today outside of Japan again they're
6 selling very aggressive pricing. They could actually
7 trade up and increase their profitability by coming to
8 the U.S. market and still be well below the current
9 average market price in the U.S.

10 COMMISSIONER PEARSON: So what's their
11 motivation for running their business irrationally or
12 in a way so as not to maximize their revenues?

13 MS. AUSTIN: Two points I think drive, and I
14 mentioned earlier not in detail though but why I don't
15 believe the Japanese have rationalized capacity and
16 shrunk their business even though it's a declining 70
17 year plus marketplace for these products.

18 Denki runs a process based on calcium
19 carbonate, and basically their production facility is
20 sitting on a mine of calcium carbonate so they do have
21 access to raw material that they already own, they've
22 already paid for, and I believe there's an incentive.
23 They look at their economics differently than U.S.
24 companies do in terms of the return that they want on
25 that business, and I think they'll continue to

1 produce.

2 Another key thing is that I mentioned
3 earlier that it's very capital intensive and high cost
4 manufacturing facilities. It's not easy to exit the
5 business so once you're in the business and you're
6 down to one production facility, which Denki has, it's
7 very difficult to make that final decision to exit.

8 COMMISSIONER PEARSON: But calcium carbonate
9 is basically limestone --

10 MS. AUSTIN: Right.

11 COMMISSIONER PEARSON: -- if I'm not
12 incorrect.

13 MS. AUSTIN: That's right.

14 COMMISSIONER PEARSON: That's a resource.
15 As economists we know that all resources are scarce.
16 I would not list limestone as being among the world's
17 most scarce resources. I mean, there are abundant
18 supplies in a number of countries, including some in
19 the United States, that are utilized commercially.

20 Is the availability of limestone really an
21 important factor in keeping that plant open?

22 MS. AUSTIN: A very insightful question.
23 Yes, you're absolutely right. Calcium carbonate would
24 be considered a commodity.

25 It's a different monomer process, and in

1 fact when Dupont first went into the business of
2 producing neoprene we were using what was called the
3 acetylene process based on calcium carbonate, but it
4 is an extremely hazardous process to run. In fact,
5 Dupont unfortunately had an accident -- I don't
6 remember the exact date; this was I think in the 1960s
7 or 1970s -- where we did have an explosion with the
8 acetylene process.

9 We massed a huge technology effort to move
10 to the butadiene process, which is currently the
11 process that most PCR producers around the world are
12 operating on. Denki for whatever reason chose to stay
13 with the acetylene process.

14 COMMISSIONER PEARSON: Okay. Mr. Lipstein?

15 MR. LIPSTEIN: Yes, Commissioner Pearson.
16 If I might add to this?

17 The record at the Commerce Department also
18 shows that for a particular exporter/importer pairing
19 for Denki there is a 55 percent margin in place which
20 we can again elaborate on further in our posthearing
21 submission, but I think there are two questions here.

22 One is if in fact Denki were able to sell
23 into the United States in substantial quantities
24 without dumping then your question assumes that they
25 would do so in large volumes. They haven't really

1 sold anything here, and their zero margin goes back
2 all the way to 1973 so it's not that they have had a
3 history of year after year of selling here and not
4 dumping. The history is that they have not been here
5 since the antidumping finding was put into place.

6 The second point I would add is it would be
7 very helpful if Denki had bothered to show up itself
8 to answer these questions, and the fact that it has
9 not, I think as I mentioned in my opening remarks,
10 suggests that adverse inferences should be drawn from
11 that.

12 COMMISSIONER PEARSON: Well, I'll grant you
13 your second point that it would be helpful if Denki
14 was here.

15 Looking at the staff report, and this is
16 Table 4-2, most of the material in there is BPI and so
17 I won't talk about the details, but my observation is
18 that Denki appears to be a firm that's listed as
19 having sold into the United States throughout this
20 period of review so were those sales, and maybe you
21 can't say this here, but I'm curious whether those
22 sales were part of this specific category of Denki
23 sales that would have a 55 percent duty, or were those
24 zero duty?

25 MR. LIPSTEIN: I don't think we know the

1 answer to that question as to whether those were zero
2 duty or 55 percent duty. As you point out this is BPI
3 information, but I think there are certain inferences
4 that can be drawn from the information which we're
5 happy to discuss further in our posthearing
6 submission.

7 COMMISSIONER PEARSON: Okay, because I look
8 at this. I see Denki participating in the U.S. market
9 in a modest way, and then it makes we wonder well, if
10 this is such a high-priced market why not participate
11 in a more active way.

12 MR. LIPSTEIN: And I think Ms. Austin's
13 answer is for them to do that they would have to be
14 selling here below their fully allocated cost of
15 production and that if there were enough volume of
16 sales to warrant the expense on Dupont Dow's part to
17 request and participate in an administrative review of
18 those sales we would indeed find that there would be a
19 much higher dumping margin than zero.

20 COMMISSIONER PEARSON: Okay.

21 MR. LIPSTEIN: If I might add, Denki perhaps
22 has been nibbling around the edges in order to stay
23 below the radar.

24 COMMISSIONER PEARSON: Okay. Just out of
25 curiosity, do you know enough about Denki's corporate

1 structure and resources to explain how it apparently
2 manages to sell all of its product everywhere in the
3 world at below its cost of production?

4 If indeed it's selling into the United
5 States, the highest priced market in the world, at
6 less than its cost of production that must mean 100
7 percent of its sales are below its cost of production,
8 which seems to me an interesting business model, easy
9 to get into but not one that's easy to stay in
10 necessarily.

11 MS. AUSTIN: In their home market I believe
12 based on competitive intelligence, customer feedback,
13 that the market price is quite a bit higher, similar
14 to the U.S. market, so a good portion of their sales
15 are there but they do indeed export.

16 As I mentioned earlier, you know, the
17 objective is to sell out to maximum capacity
18 utilization and so they'll sell the last pound as much
19 as possible. We all will. We'll try to sell and fill
20 up our plants and maximize capacity utilization.

21 You know, their economics and how they
22 assess their business, what kind of returns they're
23 looking for, I think the Japanese have a different
24 view on the economics of their business and what they
25 expect from them.

1 COMMISSIONER PEARSON: Yes, and of course
2 there are cultural differences in business practices
3 in various parts of the world, but still you need some
4 pretty deep pockets somewhere to fund the type of
5 aggressive selling that you've described in terms of
6 their sales to markets in other countries.

7 MS. AUSTIN: Uh-huh.

8 COMMISSIONER PEARSON: My light is changing
9 so, Mr. Chairman, I'll pause now. Thank you.

10 CHAIRMAN KOPLAN: Thank you, Commissioner,
11 and I want to thank the witnesses for their testimony
12 thus far.

13 Let me start with the domestic industry
14 witnesses with my first question. On page 29 of DDE's
15 brief it states, and I quote, "DDE is currently
16 scheduled to close its plant located in Louisville,
17 Kentucky. DDE's remaining plant located in LaPlace,
18 Louisiana," that is the Pontchartrain plant,
19 "primarily manufactures lower value PCR products.
20 Plans exist to upgrade the capabilities of the
21 Pontchartrain plant to enable it to manufacture
22 additional higher valued PCR products."

23 At a later point you also state, "Whether
24 DDE will follow through on its current business plans
25 or alter them depends on its continuing analysis of

1 business earnings based on market conditions which in
2 turn depend partially on whether the antidumping
3 finding is revoked or not."

4 On page 34 of your brief, the amount of
5 money and the number of years it will take to upgrade
6 the LaPlace plant is bracketed.

7 Now, this morning in response to
8 Commissioner Lane you testified that the Louisiana
9 (sic) plant is closing rather than LaPlace for
10 basically two reasons. One, the age of the Louisville
11 facility and, two, the fact that only LaPlace has
12 monomer production, and you have to ship that to
13 Louisville. Am I correct? Your microphone?

14 MS. AUSTIN: That's correct.

15 CHAIRMAN KOPLAN: Thank you. I'm wondering
16 though if you could tell me because this hasn't been
17 discussed at all.

18 Could this be also in part at least because
19 of the July 31, 2003, settlement filed in Federal
20 Court in Louisville between Dupont, the Justice
21 Department and the EPA which provided for \$550,000 in
22 civil penalties, and eight supplemental environmental
23 projects known as SEPs valued at \$552,000, and a green
24 buffer zone between the Louisville plant and the
25 surrounding area, and in addition a contract with a

1 community group to set up a website information center
2 reporting on local environmental concerns?

3 Now, my basis for that is a story that
4 appeared in *Business Wire* on Thursday, July 31, 2003.
5 It would appear to me that some of the things that
6 you've agreed to do are ongoing requirements and have
7 costs involved. Since none of that has been discussed
8 I'd like to hear from you on it.

9 Your microphone?

10 MS. AUSTIN: Thank you. There were several
11 points made there, and I'd like for our counsel to
12 address the comments regarding the recent settlements.

13 CHAIRMAN KOPLAN: Now, this question only
14 relates --

15 MS. AUSTIN: The EPA?

16 CHAIRMAN KOPLAN: This question only relates
17 to the EPA violations.

18 MS. AUSTIN: Okay.

19 CHAIRMAN KOPLAN: I have other questions,
20 but I'm starting with this one. Yes.

21 MS. AUSTIN: Okay. On the Louisville
22 facility, as I said, Louisville is our oldest
23 manufacturing facility.

24 CHAIRMAN KOPLAN: I understand all that.

1 MS. AUSTIN: The infrastructure costs, which
2 include costs to meet upcoming environmental
3 regulations, will be quite substantial to bring that
4 facility up to meet future regulations and so we chose
5 to put the investment into the Pontchartrain facility,
6 the newer facility, and where the monomer plant is
7 located.

8 It really came down to economics, what's the
9 best business case. We studied all of the cases. We
10 studied keep both plants open obviously. We studied
11 shut down Louisville, which was our conclusion, and
12 consolidate to Pontchartrain.

13 We studied the reverse, but with that
14 reverse it came down basically to economics because
15 you'd still have to ship monomer from Pontchartrain,
16 which means you'd also have to keep the monomer
17 facility running and so a large portion of our fixed
18 cost at Pontchartrain would remain.

19 Even though we would shed the cost of
20 polymer production there, you'd still maintain a
21 significant cost base to run monomer and you'd still
22 have the Louisville facility where we would have to do
23 significant investments on the infrastructure there,
24 so the business case just didn't look as attractive.

25 CHAIRMAN KOPLAN: Let me put it to you this

1 way. From what I'm hearing, the sooner you shut
2 Louisville down the sooner that you cut back on some
3 of these, as you've described it, quite substantial
4 costs that are connected with what I read to you.

5 For example, the supplemental environmental
6 projects and these other things that you need to do,
7 the website and the rest, and so you're definitely
8 saving money at that end as a result of this EPA
9 settlement as well. Isn't that correct?

10 MS. AUSTIN: Well, the basic fundamental
11 issue though is there's too much capacity in the
12 industry right now today. You know, even if there was
13 no investment required to either facility we have too
14 much capacity and too much fixed cost.

15 CHAIRMAN KOPLAN: Okay.

16 MS. AUSTIN: So the business case, we ran
17 the business case looking at no investment required at
18 either facility, and the basic conclusion is there's
19 too much capacity in the industry.

20 CHAIRMAN KOPLAN: But the things I read that
21 you're required to do under that settlement, that's
22 accurate, correct?

23 MS. AUSTIN: To my knowledge, that's
24 correct.

25 CHAIRMAN KOPLAN: Thank you. Let me ask

1 this, staying with the domestic industry witnesses.

2 In response to staff's request, you, along
3 with importers of PCR, provided pricing data for four
4 products listed in Chapter 5 at pages 3 to 5 of our
5 staff report, of our confidential staff report. What
6 I'm about to ask you is not confidential.

7 Are PCR Products 1 and 2 described as for
8 industrial goods the higher grade? Are Product 3 for
9 solvent-based adhesives and Product 4 described as
10 solid chips considered lower grade?

11 If so, are you saying that Products 1 and 2
12 are now only produced in Louisville? Also, if you
13 differentiate for me the end use application for the
14 higher versus lower grade?

15 Who wants to begin? Ms. Austin?

16 MS. AUSTIN: Could you please repeat the
17 question?

18 CHAIRMAN KOPLAN: Sure.

19 MS. AUSTIN: Thank you.

20 CHAIRMAN KOPLAN: First, are Products 1 and
21 2 described as for industrial goods the higher grade
22 as opposed to Products 3 and 4?

23 MS. AUSTIN: Okay.

24 CHAIRMAN KOPLAN: Now, you participated in
25 the selection of these particular four products, so

1 what I'm describing should not be unknown to you.

2 MS. AUSTIN: Okay.

3 MR. VAN BALLEGOOIE: I can respond to that
4 question. Product 1, which describes GRT products --

5 CHAIRMAN KOPLAN: Yes.

6 MR. VAN BALLEGOOIE: -- for use in
7 industrial goods, that would be considered a higher
8 value.

9 CHAIRMAN KOPLAN: That's what I thought.

10 MR. VAN BALLEGOOIE: Yes.

11 CHAIRMAN KOPLAN: And what about Product 2?

12 MR. VAN BALLEGOOIE: Product 2, PCR for
13 industrial goods, WRT or Denki equivalent? That would
14 be a higher value product.

15 CHAIRMAN KOPLAN: That was my guess, but I
16 need you to tell me.

17 MR. VAN BALLEGOOIE: Yes. Product 3?

18 CHAIRMAN KOPLAN: Yes.

19 MR. VAN BALLEGOOIE: This is for AD types
20 primarily for adhesives. That would be a lower value
21 price.

22 CHAIRMAN KOPLAN: Right.

23 MR. VAN BALLEGOOIE: And the last one,
24 Product 4, these are really specialty products serving
25 a very niche application in the market. I'd say that

1 would be higher value.

2 CHAIRMAN KOPLAN: Higher value?

3 MR. VAN BALLEGOOIE: Yes.

4 CHAIRMAN KOPLAN: Okay. Now let me come to
5 the second part. You're helping me out here.

6 Are Products 1 and 2 now only produced in
7 Louisville, from what you were saying about
8 Pontchartrain?

9 MR. VAN BALLEGOOIE: Right.

10 CHAIRMAN KOPLAN: I see Ms. Austin is
11 nodding yes.

12 MS. AUSTIN: That's correct.

13 MR. VAN BALLEGOOIE: They are both
14 Louisville products, yes.

15 CHAIRMAN KOPLAN: Okay. I think you've
16 covered this for me.

17 When you close, when DDE closes the
18 Louisville plant, admittedly it's going to take years
19 -- I can't get into the number of years -- to upgrade
20 Pontchartrain. What are your existing customers to do
21 for higher grade product in the foreseeable future if
22 the existing order on Japan remains in effect and your
23 business plan is still in limbo?

24 MS. AUSTIN: Our business plan is actually
25 in progress. We have already staffed a project team

1 working on preliminary design and estimates for the
2 upgrades needed at the Pontchartrain facility. In
3 fact, Denis, who is here with us today, is on the
4 project team.

5 Our final decision on that investment will
6 be made in the third quarter of this year, and as I
7 said earlier the determination here with the
8 antidumping finding may have an impact on that final
9 decision.

10 CHAIRMAN KOPLAN: But am I correct that
11 there could be a gap between the closing of Louisville
12 and the upgrading of Pontchartrain, or are you going
13 to wait for years to upgrade Pontchartrain and then
14 close Louisville?

15 MS. AUSTIN: No. I don't know that I want
16 to disclose the specific dates, but the upgrade of the
17 Pontchartrain facility will be complete with adequate
18 time to transition from Louisville to Pontchartrain.
19 We also intend to --

20 CHAIRMAN KOPLAN: Could you submit detail on
21 that for me in the posthearing? Let me tell you why.

22 MS. AUSTIN: Yes.

23 CHAIRMAN KOPLAN: As I read through the
24 materials, it's kind of confusing to me as to exactly
25 when this is all supposed to take place. I see that

1 there have been different times and dates, and it's
2 not clear to me what your timetable is --

3 MS. AUSTIN: Okay.

4 CHAIRMAN KOPLAN: -- as we speak now.

5 MS. AUSTIN: Okay. Another key point is for
6 the transition we've already started this effort to
7 build adequate inventory to cover the qualification
8 time for customers.

9 CHAIRMAN KOPLAN: Perhaps when you do that
10 you could specify how much money you've spent thus far
11 at Pontchartrain because you did use a figure in your
12 brief as to what that would all cost and how much time
13 is right.

14 Do you understand? I'd like to get as much
15 detail as I could, taking a snapshot as to where you
16 are right now.

17 MS. AUSTIN: Okay.

18 CHAIRMAN KOPLAN: Thank you very much.

19 I will turn to Vice Chairman Okun.

20 VICE CHAIRMAN OKUN: Thank you, Mr.

21 Chairman, and let me join my colleagues in greeting
22 you all this morning and thanking you for your
23 participation and your willingness to answer
24 questions. I appreciate what I've heard so far.
25 There have been a number of questions on the Japanese

1 non-subject so I think I'll go back to that.

2 Again, we've got a very old order here, so
3 one of the things in the sunset I like to explore is
4 changes from the original investigation to now the
5 second sunset, second transition sunset review.

6 Maybe Mr. Ballegooie I'll go with you
7 because you're a global marketer. One of the things
8 I'm interested in is looking ahead now, and you've
9 talked about kind of the decline in consumption.

10 What about looking at the rest of the world?
11 If you're looking at your global markets right now and
12 what might have changed even from our first review but
13 certainly from the original investigation in terms of
14 where global companies are going to be focused.

15 If I look at these consumption charts that
16 we have from the world and regional consumption data
17 statistics, it looks to me that people are going to
18 want to look at Asia, you've still got a lot in
19 Europe, but tell me how you look at it. In other
20 words, what are the changes out there as you look
21 ahead and where this product is going to be sold and
22 why. Why would some of these markets be better than
23 others?

24 MR. VAN BALLEGOOIE: Okay. Thank you. I'll
25 gladly respond to that.

1 I think your first point in that a lot of
2 companies are setting up operations in Asia and
3 probably particularly in China is very accurate. We
4 anticipate PCR growth in that region to be probably
5 the most robust globally. The other markets, however,
6 are very much more mature. I would say in the South
7 American market we're looking at that, which is
8 primarily adhesives, by the way, I think that will be
9 probably stable to low decline. We anticipate that
10 the North American and European markets will probably
11 also be in a decline mode as the substitution to EPDM
12 continues.

13 The market intelligence that we've gathered
14 from some of our key customers suggests that, for
15 instance in the power transition belting application,
16 we should expect to see continued declines, or
17 transitions from PCR to EPDM on the order of some five
18 to ten percent per annum, and this is a very large
19 segment for us.

20 So when you look at, some areas obviously
21 will be increasing, Asia Pacific, but overall the
22 global picture is still one of modest decline.

23 VICE CHAIRMAN OKUN: Thank you.

24 And just so I understand, I'm not sure if I
25 heard this this morning, are you the largest producer

1 globally? How does DDE stack up, the current DDE going
2 forward versus the other global competitors?

3 MR. VAN BALLEGOOIE: Sure. If you look at
4 our production capacity versus the other PCR suppliers
5 and also our sales volume versus the others we are
6 still the global leader.

7 VICE CHAIRMAN OKUN: Thank you.

8 Let me ask you about your customers and
9 contracts and how important particular customers are.
10 If we're looking at this market going forward and the
11 ability of the Japanese to enter the market, the staff
12 report and your brief talked a little bit about the
13 qualification issues. And in terms of your, I guess
14 referred to as strategic customers, tell me how you
15 view them and how the contracts or the negotiations go
16 with them when you're --

17 MR. VAN BALLEGOOIE: For our strategic U.S.
18 customers I presume you're referring to?

19 VICE CHAIRMAN OKUN: Right. Let's start
20 there.

21 MR. VAN BALLEGOOIE: First of all let me
22 reiterate that the North America region is a strategic
23 one for DuPont Dow, it has been for a number of years.
24 It's the market that we would focus on and ensure that
25 we will supply the needs of our key customers in that

1 region.

2 With regard to contractual arrangements that
3 we have, obviously I can't go into specifics but it is
4 safe to say that we do have either longer-term
5 contracts -- We have a mix of longer-term contracts
6 and in some cases I would say price letters of
7 understanding with our largest customers in this
8 region. Then we have other customers where it's
9 primarily even essentially spot pricing. They buy,
10 place orders and --

11 VICE CHAIRMAN OKUN: One of the things I was
12 interested in was Ms. Austin's responses to the
13 Chairman with regard to what you would do during the
14 transition from Louisville to Pontchartrain in
15 supplying the whole products mix. You talked about
16 inventories. But just so I understand again what we
17 have about qualifications.

18 If you switch, when you make the switch to
19 another facility for a higher grade product that's not
20 currently produced at Pontchartrain, will a customer
21 then need to requalify for that facility, for that
22 product? Would that be the normal process?

23 MR. VAN BALLEGOOIE: I understand the
24 question that you have. I think the answer to that,
25 it really depends on which segment the customer is

1 competing in. In certain segments, let's say the ones
2 which ultimately end up into automotive applications,
3 I think that's definitely a safe assumption that they
4 would have to requalify. In other segments, and we
5 currently even have this where customers use products
6 interchangeably from one plant to the other,
7 requalification efforts would be minimal if at all, so
8 it's very much segment related.

9 MS. AUSTIN: Maybe I could just add one
10 clarifying point on that.

11 We have already produced production,
12 commercial quantities of the specialty types at
13 Pontchartrain. We've gone ahead, and through our R&D
14 efforts and so forth run trials, production trials,
15 and have commercial quantities available. So our
16 customers will begin the qualification process
17 shortly.

18 VICE CHAIRMAN OKUN: I appreciate that
19 additional information.

20 MR. VAN BALLEGOOIE: Also, if I could just
21 add one other little detail.

22 VICE CHAIRMAN OKUN: Yes.

23 MR. VAN BALLEGOOIE: With regard to
24 requalifications, in some of the let's say lower value
25 regions globally -- Asia Pacific, South America --

1 requalifications tend to be very very rapid. I just
2 wanted to mention that as well. It's not like these
3 are typically very lengthy procedures.

4 VICE CHAIRMAN OKUN: As opposed to for the
5 higher value.

6 MR. VAN BALLEGOOIE: I'd say that's true,
7 yes.

8 VICE CHAIRMAN OKUN: Okay, and while we're
9 talking about prices overseas, in the pre-hearing
10 brief at page 24 there were some tables there with
11 prices in some of the overseas market, and the
12 information is obviously bracketed there, but the one
13 question I had, and I think it was Mr. Ballegooie when
14 I was listening to your testimony, you had talked
15 about, and I think I understand here, that you have a
16 big product mix. So a high value product is going not
17 be priced much differently than a lower value product.
18 I'm trying to understand then how we look, and this
19 might go to, Mr. Jaffe may want to jump in here, which
20 is how do we look at average prices in this market?
21 Can I take much from these charts when I don't know
22 what the product mix is that's being sold by the --
23 You might know, Mr. Ballegooie might know. Are we
24 talking about apples to apples here? You're selling
25 the same product mix in the, pick a market, I think

1 the Brazil market you mentioned, as your Japanese
2 competitors would be?

3 MR. VAN BALLEGOOIE: I'll try to comment on
4 that.

5 It is true that different regions have
6 different product mix requirements. It depends on the
7 segments in those regions and the amount of volume
8 being sold into those segments. However what you can
9 do is make some comparisons for regions which are
10 like. For instance the South America region, it's
11 primarily lower value products that go there. And a
12 good portion of lower value product is also sold into
13 North America.

14 So when you look at the price differentials
15 you can make some inferences, but the blends of high
16 value to lower value are somewhat different between
17 regions.

18 VICE CHAIRMAN OKUN: I think Mr. Jaffe
19 wanted to say something, but just to help me
20 understand. Again, if we're talking about -- Can you
21 give me a general idea of the difference in the values
22 of, if it's a high value product you're selling into a
23 region versus a low value, I mean are we talking a
24 spread of several dollars or just --

25 (Pause)

1 MR. VAN BALLEGOOIE: Thank you. I just had
2 some clarification.

3 In terms, if you're looking within one
4 region I'd say it's fair to say that the product mix
5 that DuPont Dow supplies would be very comparable to
6 the product mix of for instance the Japanese PCR
7 producers. That I believe is accurate.

8 My comment earlier was that different
9 regions have different product mixes.

10 VICE CHAIRMAN OKUN: I appreciate you coming
11 back to that.

12 Then just in terms of the spread --

13 MR. VAN BALLEGOOIE: Yes. I guess, let's
14 say if you use 100 as sort of the benchmark for lower
15 value products, higher value ones probably, I'd say 30
16 to 50 percent higher, depending on application.

17 VICE CHAIRMAN OKUN: I appreciate all those
18 answers. I see my time has expired.

19 Thank you.

20 CHAIRMAN KOPLAN: Thank you.

21 Commissioner Miller?

22 COMMISSIONER MILLER: Thank you, Mr.

23 Chairman.

24 Let me join in welcoming the witnesses. We
25 appreciate your being here again to help us understand

1 the current state of your industry.

2 Let me begin I think by asking you, Ms.
3 Austin you described and you've responded and
4 elaborated in questioning regarding the reasons for
5 the closure of the Louisville facility.

6 Take me back a little bit. As you said in
7 your initial testimony, DDE has gone from four to one.
8 Now we've learned a good bit about going from two to
9 one. Take me back a couple of steps to what was
10 involved in the closure of the previous two plans and
11 the decisionmaking that went into that.

12 MS. AUSTIN: I'm going on history and
13 reports and so forth as I've been in the business for
14 a little over a year now.

15 COMMISSIONER MILLER: Sure.

16 MS. AUSTIN: It basically boils down to the
17 same issue around a mature declining industry. The
18 PCR market peaked in the late '70s and since then it's
19 been in a steady decline, about one to one and a half
20 percent per year decline in volume, so over time you
21 basically get to a critical point in capacity
22 utilization where it no longer makes sense to continue
23 operating the facility.

24 Actually my understanding is the first
25 facility that we wanted to shut down in the mix of

1 four that we had at the time was the facility that we
2 had the joint venture with SDK in Japan. It was our
3 highest cost facility. It was a difficult negotiation
4 with a joint venture partner and in the end we chose
5 to go ahead and shut down our Maydown facility first.
6 We had 100 percent control of the Maydown facility.
7 So we shut that facility down in 1997.

8 Then of course the market has continued to
9 decline. Our next decision was to again go back and
10 shut down the joint venture in Japan. As I described
11 earlier, Showa had other reasons for wanting to
12 continue running that facility even though it's the
13 highest cost from our time there, it was the highest
14 cost manufacturing facility at the time. So we were
15 unable to negotiate a shutdown and we exited from that
16 joint venture and Showa continues to run that
17 facility.

18 So we exited from that. It didn't
19 significantly, of course, change capacity utilization
20 and we're still faced with an over-capacity situation,
21 and now we're faced with a decision to go from two to
22 one plant.

23 COMMISSIONER MILLER: So when you're talking
24 about the four, the four included the Japanese
25 facility, and there are no other DuPont or Dow

1 facilities globally making the product. There's just
2 the two left in the U.S. at this point in time.

3 MS. AUSTIN: That's correct.

4 COMMISSIONER MILLER: You reminded me again
5 that I wanted to ask you a little bit more about some
6 of the things you said about the Japanese producers
7 having by-products or stocks of material. The SDK,
8 you talked about a chlorine by-product. What's that a
9 by-product of?

10 MS. AUSTIN: They're actually producing
11 caustic for consumption in some of their processes and
12 sale on the market. When you produce caustic you also
13 produce chlorine as a by-product, so they go together.

14 Their outlet or their use for that chlorine
15 is their PCR production.

16 COMMISSIONER MILLER: And DDE doesn't have
17 the same kind of production line that provides any by-
18 product or stock to it.

19 MS. AUSTIN: That's correct. We purchase
20 our chlorine on the market.

21 COMMISSIONER MILLER: A related question.
22 The raw material costs that you spoke of and the
23 increases in raw material costs that have occurred
24 over the last two or three years, for the most part
25 those sounded like globally traded raw materials,

1 correct? What I'm asking in this question is to
2 understand to what degree these raw material cost
3 increases affect all the global players that produce
4 PCR.

5 MS. AUSTIN: I understand the question, and
6 you're right. For some of the materials like
7 butadiene, it's an oil-based product and oil is a
8 global commodity, so I think everyone is facing the
9 same challenges around oil-based materials.

10 In the U.S. we also have a double challenge,
11 though, around our natural gas prices and therefore
12 energy, it's a very energy-intensive process to
13 produce PCR and natural gas, as you know the issues
14 we're facing in the U.S. with our energy policy, we
15 need to address supply of lower cost natural gas for
16 the U.S.. So that is a unique challenge that we face
17 here in the U.S. that's not seen worldwide.

18 The other point, and again it's just with
19 one of those competitors, Denki, they are still on the
20 older acetylene process, so it's not the butadiene
21 oil-based process.

22 COMMISSIONER MILLER: Okay. I'm jumping
23 around a little bit. I'm trying to keep my train of
24 thought here and stay with the same line.

25 Facilities that produce this, am I correct,

1 do they produce anything else? Can the same
2 facilities be used to produce, for example, any of the
3 substitute products that are competing against --

4 MS. AUSTIN: Unfortunately, no.

5 (Laughter).

6 COMMISSIONER MILLER: When you shutter them,
7 in the instance, for example, with Louisville and the
8 Pontchartrain plant, you're talking about moving some
9 of the equipment, is that correct?

10 MS. AUSTIN: A small amount.

11 COMMISSIONER MILLER: You're talking about
12 consolidation so I assume that's what that means.

13 MS. AUSTIN: We're going to consolidate, do
14 new investment at the Pontchartrain facility. And
15 when I say consolidate, we will only operate one
16 facility at that time.

17 COMMISSIONER MILLER: Okay.

18 Let me go if I could for a minute to see if
19 there's anything further that would help me understand
20 the issue of the substitute products.

21 EPDM I think Mr. Ballegooie you reference
22 the EPDM, if I have that correct, as being
23 particularly significant. Do either DuPont or Dow
24 make either the EPDM or the other kinds of substitute
25 products for PCR that are in the market?

1 MR. VAN BALLEGOOIE: Yes. EPDM is
2 manufactured by I believe six or seven, at least six
3 or seven suppliers globally, and DuPont Dow does
4 supply a Nordel product line of EPDM.

5 COMMISSIONER MILLER: When you say there are
6 other global suppliers of the product, are they, are
7 we talking about the same group of companies? That's
8 essentially what I'm trying to understand.

9 MR. VAN BALLEGOOIE: I believe Bayer,
10 they're producing EPDM as well as PCR. I think the
11 overlap pretty well stops there with Bayer.

12 COMMISSIONER MILLER: Okay. Ms. Austin, you
13 were shaking your head.

14 MS. AUSTIN: That's correct. There are one
15 or two that produce both types of elastomers but then
16 there's a whole other set of companies that produce
17 PEDM that are not in the PCR business. Exxon for
18 example.

19 COMMISSIONER MILLER: I know you've spoken
20 to the issue, but to the extent I can get you to just
21 elaborate on this substitution and how this is
22 occurring, I almost don't even know exactly what
23 questions to ask. I just want to say talk about it
24 please, expand please.

25 MR. VAN BALLEGOOIE: I can offer a few

1 comments on that.

2 I guess maybe the first question is why.
3 Why is it happening?

4 I'd say basically these are trends, for
5 instance if we're talking about power transition
6 belting, it's a trend that the automotive
7 manufacturers have been moving towards longer,
8 longevity belts, so belts that last longer and are
9 able to tolerate a higher thermal endurance. And as
10 well, in general, the oiled requirements for belts
11 have declined significantly over the years because of
12 cleaner-running engines.

13 So when you look at sort of the key macro
14 trends, I think the designers at the automotive
15 companies comes to the conclusion that PCR may not be
16 the best, the requirements have been evolving from
17 strengths that PCR used to have to those that EPDM
18 currently has, and I think that's really what's been
19 driving the transition in that particular segment.

20 COMMISSIONER MILLER: Is EPDM cheaper to use
21 for them or is it just a matter of the characteristics
22 being more suitable?

23 MR. VAN BALLEGOOIE: That's a very good
24 question and it's actually complicated because if you
25 just look at base price of the raw material you would

1 say that EPDM is cheaper than PCR, but of course the
2 power transmission belt manufacturer has to look at
3 its total system cost. We don't really have that
4 detailed information, but from what we understand it
5 is really quite difficult and even still fairly
6 expensive to make an EPDM-based belt versus a PCR
7 belt.

8 COMMISSIONER MILLER: Okay.

9 MR. VAN BALLEGOOIE: But we're not in the
10 best position to answer that question, obviously.

11 COMMISSIONER MILLER: Maybe I'll have some
12 questions from the purchaser we'll hear from this
13 afternoon as well, so I appreciate that. I may have
14 further questions on the next round. Thank you.

15 CHAIRMAN KOPLAN: Thank you, Commissioner.
16 Commissioner Hillman?

17 COMMISSIONER HILLMAN: Thank you, and I too
18 would join my colleagues in welcoming you. We thank
19 you for your testimony and for answering our questions
20 and being with us this morning.

21 Maybe if I can start first with
22 understanding -- I appreciate your sense that imports
23 from Japan have been limited in the U.S. market, but
24 if I do look at the data that we have on the record
25 for this period of review it would show a fairly

1 significant increase, granted from a small base, of
2 imports from Denki, again that is not subject to a
3 duty as I understand it, and I'm curious whether you
4 have any sense of why we would see that increase.
5 Again, I acknowledge from a small base, but it
6 nonetheless is a significant increase in the total
7 volume of imports from Denki. Why?

8 MS. AUSTIN: I have some comments and
9 perhaps Peter can add to this. But there is a trend
10 and it's really worldwide but it goes wherever
11 automotive production occurs. That Japanese companies
12 specify materials, in Japan, then they have what we
13 call landed Japanese operations in other countries,
14 like landed Japanese operations here in the United
15 States. So I believe because the technical
16 specifications are often made in Japan that there is
17 some pull, so to speak, for Japanese PCR suppliers.

18 As you point out, though, it is a
19 significant percentage increase but also it's a very
20 small base.

21 COMMISSIONER HILLMAN: So the product that
22 you're saying Denki would be sending in here would be
23 going to Japanese auto suppliers?

24 MS. AUSTIN: It could partially. I'm sure
25 that would be an initial target.

1 COMMISSIONER HILLMAN: And what kind of
2 product would that be on this issue of higher value
3 added versus lower value?

4 MS. AUSTIN: For automotive applications,
5 the higher value products.

6 MR. JAFFE: If I could just add, I wouldn't
7 make the assumption that it's necessarily entering at
8 a zero rate. If you look at page Roman Numeral I-2 of
9 the Commission staff report you'll see that if it
10 enters it by itself it's at a zero rate, but if it's
11 working through a third party and here they mention a
12 third party by the name of Hoen Sangyo Company, the
13 rate is actually 55 percent for Denki-manufactured
14 PCR.

15 COMMISSIONER HILLMAN: Like I said, we're
16 all struggling to understand this issue of what's
17 happened in terms of import volumes because if we just
18 look at what our record looks like, it appears to me
19 that everything that Denki ships should be coming in
20 here paying zero duty. So again, I think we've all
21 asked, trying to understand this. Just sitting here
22 it doesn't make sense to me that if Denki is a
23 significant Japanese producer with a zero margin why
24 we see the very low levels of imports that we've seen.

25 I hear your answer, Ms. Austin, that you

1 think they, your perception is that they perceive they
2 could get a margin added since there is an order in
3 place.

4 MS. AUSTIN: Uh huh.

5 COMMISSIONER HILLMAN: Again, Mr. Jaffe, if
6 there's anything in the post-hearing brief that you
7 can tell us about the history of this order, maybe
8 that would be useful. But part of me is just looking
9 at that data that I've got and I'm clearly seeing an
10 increase in imports and I must say at very high
11 average unit values. So again, I don't have specific
12 price data, but it would suggest to me that the
13 product is coming in here in increasing volumes at
14 very high average unit values which is not really
15 going, Ms. Austin, to your sense that they can't sell
16 in here without dumping or that they can't sell in
17 here without massively undercutting on the price side.

18 So I don't know whether you can comment on
19 what you think is the relative competitiveness today
20 of again, this limited volume of imports, whether
21 there's anything you can add to help me understand
22 what's going on.

23 MR. VAN BALLEGOOIE: Yes, I'd like to just
24 offer the following comments.

25 First of all they would basically be

1 exporting the product into the U.S. in very niche
2 applications, so that probably explains why it's at a
3 higher price level. I believe the scenario would be
4 totally different if they went into let's say the
5 larger volume or generic kind of application areas.

6 The second point is that through our market
7 intelligence we also understand that they supply
8 product to neighboring countries like Canada and
9 Mexico specifically, which they work through a custom
10 mixer to make compound which then enters into the U.S.
11 region without any kind of a duty implication.

12 So there are sort of several avenues that
13 they approach to bring product into the region.

14 COMMISSIONER HILLMAN: So your sense is
15 there is product coming in as completely finished
16 product or --

17 MR. VAN BALLEGOOIE: As compound. Not
18 finished product, but as PCR compound.

19 COMMISSIONER HILLMAN: Not subject product,
20 all right.

21 Let me go back to the issue of prices.
22 You've described that you have this kind of blended
23 contract, some long term, some short term, some
24 whatever. Help me understand, are raw material cost
25 increases, is there anything within any of these

1 contracts that permits an escalation in the price over
2 the life of the contract to reflect raw material cost
3 increases?

4 MR. VAN BALLEGOOIE: The answer to that is
5 yes. When we have longer-term contracts exceeding a
6 year we virtually always, in fact I think it's true to
7 say we always have raw material escalation clauses.

8 COMMISSIONER HILLMAN: What portion of your
9 sales would be subject to a contract that has a price
10 escalator in it?

11 MR. VAN BALLEGOOIE: But just to mention,
12 the number of long-term contracts that we have are
13 comparatively small to the total amount of business
14 that we have in the U.S. market.

15 COMMISSIONER HILLMAN: Would you have a
16 sense of what volume of your total sales are subject
17 to a contract that has a price escalator to reflect
18 raw material prices?

19 MR. VAN BALLEGOOIE: I would -- We'll reply
20 to that post-hearing.

21 COMMISSIONER HILLMAN: Fair enough.

22 Part of what I'm trying to understand, and
23 again, this is tricky, is what's happened to prices
24 over this period of review. Because prices clearly
25 appear relatively stable over this time, and again

1 it's hard for us to then sort out how much of this is
2 the issue of the antitrust issues versus how much of
3 it is an issue of what's happened since 2002.

4 Do the 2002 onward prices reflect the
5 increased material costs?

6 MS. AUSTIN: Yes, I mean we've had increased
7 raw materials every year since 2002, we've had
8 escalation in the key raw materials as well as energy,
9 and therefore our pricing reflects that. Which
10 demonstrates our inability to pass through these price
11 increases.

12 Peter did mention that in some cases we have
13 contracts that have openers to discuss with customers
14 passing through raw material increases. We're not
15 always, and in fact not very successful as
16 demonstrated from our flat pricing, even though raw
17 materials and energy have gone up 70 percent, 70 to 80
18 percent in the last few years.

19 MR. VAN BALLEGOOIE: I just have an
20 additional comment to that as well. I believe the
21 information has been provided in the pre-hearing
22 brief, and it is a table which demonstrates that while
23 yes, it is true that during this sunset period our
24 nominal PCR prices have increased modestly, when you
25 look at the real PCR prices, taking into account all

1 of the raw material escalation, it has in fact
2 declined from 1999 to present. Real prices, taking
3 into account raw material costs.

4 MR. LIPSTEIN: Commissioner Hillman, the
5 pricing data was collected by the staff and is in the
6 confidential staff report at Table 5-1, and I think it
7 does show quite starkly the inability of DDE to pass
8 through the raw material cost increases in the form of
9 the finished product price.

10 COMMISSIONER HILLMAN: And obviously our
11 task is to try to understand why that is. Again,
12 normally in these cases the answer when I ask that
13 question, so why aren't you passing along more of
14 these costs, is because the subject imports are
15 holding down the prices and we can't compete with
16 these dumped imports and that's what's holding down
17 the prices.

18 But as you've said, you have very little
19 Japanese presence of product in the market, so it's
20 not clear to me how it is that we are -- What we are
21 supposed to make of your statements that you're not
22 able to pass along your raw material cost increases.
23 What is, in your view, holding down the prices?
24 Because it is very hard for me to say that it's
25 imports. Japanese imports, it strikes me again,

1 that's the traditional answer that we would hear, but
2 I'd like to hear from your perspective, why are prices
3 not going up if costs are going up?

4 MS. AUSTIN: It's global capacity
5 utilization, and remember, there are two other
6 competitors that serve the U.S. market from Europe, so
7 there are three players here in the U.S. market and we
8 also of course are operating in a global market, and
9 it's excess capacity utilization.

10 As we have tried the last two years to move
11 forward with prices to recoup the raw material costs,
12 we've lost share, and everyone's looking to sell that
13 last incremental pound even below full cost.

14 COMMISSIONER HILLMAN: So it's not the
15 Japanese, but your view is it's the Europeans and just
16 the availability of greater supply. It's purely just
17 more supply chasing less demand is the problem.

18 MS. AUSTIN: Globally, that's correct.

19 MR. VAN BALLEGOOIE: In addition to that,
20 though, it's also -- I believe capacity utilization is
21 the overriding factor, as my colleague mentioned, but
22 there's also strong customer power as well which
23 prevents us from being able to successfully pass
24 through price increases.

25 COMMISSIONER HILLMAN: Okay. I might need

1 to come back to that.

2 Thank you.

3 CHAIRMAN KOPLAN: Thank you.

4 Commissioner Lane?

5 COMMISSIONER LANE: Good morning again.

6 I have a few questions basically relating to
7 the antitrust proposed settlement. I've looked at the
8 plea agreement and has that been accepted by the Court
9 yet?

10 MR. GARDINER: Commissioner Lane, yes. Kent
11 Gardiner. It has been accepted by the court, yes.
12 Sentence has been imposed and the plea agreement
13 accepted.

14 CHAIRMAN KOPLAN: Can you pull your
15 microphone closer? I don't know if it's working
16 actually. I see the light is on, but --

17 MR. GARDINER: Okay.

18 COMMISSIONER LANE: When was it accepted?

19 MR. GARDINER: March 29th.

20 COMMISSIONER LANE: Of 2005?

21 MR. GARDINER: Yes.

22 COMMISSIONER LANE: The fine that was
23 imposed that DDE agreed to pay, will that fine be
24 booked against the earnings of DDE or will DuPont
25 and/or Dow, the parent companies, actually pay that

1 fine?

2 MS. CASTELLANO: I'm Jane Castellano.

3 The fine will be booked against DDE's
4 earnings.

5 COMMISSIONER LANE: Okay. And looking at
6 part of the confidential report, or the staff report
7 and its business proprietary information relating to
8 Table 3-6 on the operations of DDE, would it be
9 possible for -- Mr. Jaffe, maybe I'll ask you this.
10 Would it be possible for you to submit in a post-
11 hearing exhibit what your expenses, your SG&A, well,
12 your general and administrative expenses and your
13 other expenses be without the costs that you are
14 allocating for the fine and the legal fees, and then
15 what would that do to your net profits.

16 MR. JAFFE: Certainly we can add that table
17 and put it in the post-hearing brief.

18 COMMISSIONER LANE: Thank you.

19 Looking again at the plea agreement, it says
20 on page three that the polychloroprene rubber affected
21 by this conspiracy was sold by one or more of the
22 conspirators to customers.

23 Can you identify the customers that you sold
24 -- Maybe my real question is did any of your customers
25 participate in the illegal activity?

1 MR. GARDINER: No, Commissioner.

2 COMMISSIONER LANE: Okay, so none of your
3 customers were participants in this price fixing.

4 MR. GARDINER: Participants in any sort of
5 inappropriate conduct, no.

6 COMMISSIONER LANE: Okay. And I'm probably
7 going to be shot for this, but I'm just sort of
8 curious. If you were guilty of price fixing back
9 then, how do we know that it's not ongoing?

10 MR. GARDINER: The plea agreement that was
11 reached between DDE and the Department of Justice
12 covered a specific period. It covered a period that
13 ended in April of 2002. As the Department of Justice
14 indicated both in that agreement and when it stood up
15 to recite the facts of its evidence to the federal
16 court at the end of March, it made a determination
17 that the conduct as to DDE ended in no later than
18 April of 2002.

19 It made a similar determination with regard
20 to Enichem. There was a plea agreement that was
21 announced yesterday with Enichem that we received
22 notice of late last night from the prosecutor, and
23 that plea agreement covers the same period that the
24 DDE agreement covers. And once again, as best we can
25 tell, reflects the Department of Justice's

1 determination about the end date of the conduct.

2 In terms of, from DDE's perspective, a
3 likelihood of recurrence of the conduct, we have
4 ongoing obligations to the Justice Department,
5 cooperation obligations and the like. We could
6 describe those to you in more detail in our post-
7 hearing brief, but we could say as a general matter
8 that there is basically an entirely new management at
9 DDE that post-dates the end date of the conduct in
10 question.

11 COMMISSIONER LANE: And you're prepared to
12 tell us today that to the best of your knowledge no
13 price fixing is ongoing at this time.

14 MR. GARDINER: From our perspective that's
15 unquestionably the case, Commissioner, and has not
16 been going on in any way since no later than April of
17 2002, and as I said, in terms of what actually went on
18 in the period that is covered by the plea from August
19 of 1999 through April of 2002, in our post-hearing
20 brief we could provide you with I think even greater
21 assurance about the limited nature of the conduct.

22 COMMISSIONER LANE: I would appreciate that.
23 Thank you.

24 If DDE were to completely abandon PCR
25 production in the United States in the event the

1 antidumping order was lifted, who would be available
2 to replace the lost tonnage and product lines in both
3 the United States and globally?

4 MS. AUSTIN: One, I guess, if we, if the
5 finding is revoked in sunset it would have an impact
6 on our decision of whether or not we do the upgrade at
7 the Pontchartrain facility. WE would, though,
8 continue with the Pontchartrain facility at least for
9 some period of time. I think it would be very
10 difficult for us to maintain the economics needed to
11 run the business with an undifferentiated product
12 offering if we don't do the investment.

13 So it will be over a period of time that
14 capacity would go down, and eventually we may be faced
15 with a decision to exit the business. Capacity
16 utilization, there's freeboard, so to speak, probably
17 most of the competitors, that would pick up the extra
18 capacity.

19 So there would be one, our plan that we've
20 already announced and are moving toward consolidation
21 at the Pontchartrain facility. WE intend to upgrade
22 that capability and capacity with the investment
23 project that we have started.

24 In the event we didn't do that, though, we
25 would continue to produce PCR at that plant with

1 current capabilities. Then over time, and I'm not
2 sure how much time that would be, we may face a
3 situation where we wouldn't be economically viable to
4 keep that facility open either.

5 COMMISSIONER LANE: Okay. One last quick
6 question. I'm interested in -- I could understand all
7 of the products that you all were talking about except
8 I didn't understand the one about power transmission,
9 I'm not exactly sure what one that is and maybe you
10 can show me which one that is.

11 MR. VAN BALLEGOOIE: The sample that you
12 have in front of you, the large belt. It's an
13 industrial belt and it's basically to transfer power
14 from the engine to the power train. It's the round
15 one with the ribs, the circular article with the ribs
16 on the inside. That's the industrial belt.

17 COMMISSIONER LANE: Thank you.

18 CHAIRMAN KOPLAN: Thank you, Commissioner.
19 Commissioner Pearson?

20 COMMISSIONER PEARSON: Mr. van Ballegooie,
21 you had commented earlier on the issue of market power
22 and suggested that purchasers have quite a bit of it
23 and that's been one factor in constraining any price
24 increases.

25 How many customers does DDE have for

1 polychloroprene rubber?

2 MR. VAN BALLEGOOIE: Are you referring
3 globally or in the U.S. market?

4 COMMISSIONER PEARSON: Well, the U.S. market
5 I guess because that's where the price question came,
6 is related to.

7 MR. VAN BALLEGOOIE: In terms of total
8 volume that we supply to this market, its probably
9 safe to say, I'd say in the 40 to 50 percent range
10 would go to the larger size customers.

11 COMMISSIONER PEARSON: Forty to 50 percent
12 of the volume would go to --

13 MR. VAN BALLEGOOIE: In this range.

14 COMMISSIONER PEARSON: -- some number of
15 larger customers.

16 MR. VAN BALLEGOOIE: Larger size customers.
17 Ones which I would say would have some considerable
18 customer purchasing power.

19 COMMISSIONER PEARSON: And how many
20 companies would there be in that 40 to 50 percent of
21 larger customers?

22 MS. AUSTIN: I guess we could give that
23 detail in the post-hearing brief specifically, but the
24 key point I think that Peter is trying to make here is
25 that particularly in the U.S. market there is a very

1 concentrated amount of volume with a handful of
2 customers in the U.S. market.

3 MR. VAN BALLEGOOIE: And just to conclude on
4 that, that is in fact what I believe makes us
5 relatively vulnerable, quite vulnerable, to the
6 possibility of Japanese PCR suppliers coming into the
7 region with aggressive pricing behavior, because it's
8 a relatively concentrated market, few customers, very
9 little effort actually in our view to approach these
10 and be successful with a comparatively significant
11 potential payoff of large volume.

12 COMMISSIONER PEARSON: But the total number
13 of manufacturers worldwide of PCR is also not large.
14 We're talking about a handful of firms globally, is
15 that correct?

16 MR. VAN BALLEGOOIE: PCR customers globally?

17 COMMISSIONER PEARSON: No, no. PCR
18 manufacturers.

19 MR. VAN BALLEGOOIE: Yes, that is true.
20 It's a handful.

21 COMMISSIONER PEARSON: That's what, I was
22 trying to weigh the concentration on the production
23 side of the industry as compared to concentration on
24 the consumption side of the industry. I have little
25 doubt that there would be market power issues there,

1 but it's not clear to me who has more power. Any
2 comments on that?

3 COMMISSIONER PEARSON: Well, from our
4 perspective I think we have to look at the success
5 rate that we've had in passing through price increases
6 and let that be the indicative factor in determining
7 really who has the power. I would argue that
8 suppliers who have a very high level of power should
9 be able to pass price increases through with
10 comparative ease, and we have been, unfortunately for
11 us, we have been very unsuccessful in transitioning
12 and passing on those price increases.

13 COMMISSIONER PEARSON: Ms. Austin?

14 MS. AUSTIN: I think we also discussed
15 earlier that the products are highly substitutable.
16 It's a 70-year plus old industry, and while we do
17 pride ourselves on our technology and so forth,
18 frankly the industry is basically the same and has the
19 same capabilities worldwide.

20 The buying decision basically comes down to
21 price, and it doesn't take much of a price
22 differential to introduce a competitive situation.

23 COMMISSIONER PEARSON: If you have anything
24 to add for the post-hearing on this issue of market
25 power I'd be interested in seeing it. I'm kind of

1 curious about it because it struck me initially as a
2 counter-intuitive argument to be made by an industry
3 that doesn't have that many players in it. It could
4 be an entirely valid one, but whatever you can explain
5 privately would be great. Thanks.

6 MR. VAN BALLEGOOIE: I'd just like to add
7 one point and that is when you're considering the
8 competition you of course are considering in-kind
9 competition but there is also a considerable amount of
10 non-in-kind competition which also needs to be
11 factored in, but we'll have more of those details in
12 the post-hearing brief.

13 COMMISSIONER PEARSON: And that would be
14 particularly for some of the specific PCR products
15 that compete with some other type of material and if
16 the price for the polychloroprene rubber goes too high
17 then users would switch to the other material, right.

18 You might also want to try to give us some
19 sense either now or in the post-hearing of how much of
20 the total volume of PCR production is vulnerable to
21 that type of substitution if prices should rise.

22 MR. VAN BALLEGOOIE: Actually, I would like
23 to respond to that in the post-hearing brief because
24 it's a pretty complicated question. You sort of have
25 to look segment by segment. It's not just EPDM. There

1 are other substitute products in different segments
2 that impact.

3 COMMISSIONER PEARSON: Fair enough. I would
4 not guess it would be an easy answer, but if you
5 wanted to comment now I wouldn't stop you.

6 Let me shift gears just a bit and ask about
7 non-subject imports. It's a little bit unusual for an
8 industry to come in and focus so heavily on imports
9 that are relatively modest, in this case from Japan.
10 I understand this order deals with Japan so it's
11 appropriate to focus on it.

12 But in the broad scheme of things, are the
13 non-subject imports not a concern? Just looking at
14 the information in the public staff report there's
15 like a factor of 30 in terms of the difference between
16 the subject imports from Japan and the non-subject
17 imports. That's a big difference. How can you
18 compete effectively with the non-subject imports and
19 yet be so concerned about the possibility of some
20 additional competition from Japan if this order would
21 be lifted?

22 Pardon me for taking a long time to get to
23 the question.

24 MS. AUSTIN: The 30 percent that you
25 mentioned, is that in terms of size?

1 COMMISSIONER PEARSON: No, a factor of 30.

2 MS. AUSTIN: Factor of 30 in terms of size?

3 COMMISSIONER PEARSON: If you look at page,
4 in the staff report, page 4-1, Table 4-1 which is all
5 public, you'll see that the volume of product in 2004
6 entering the United States from Japan was about 1.2
7 million pounds if I've got the zeros in there right,
8 and the imports from all other sources were about 38
9 million pounds. So about 30 times more from the rest
10 of the world than from Japan.

11 With that additional background, I go back
12 to the question. Why would a few additional imports
13 from Japan make any difference?

14 MS. AUSTIN: One, I don't believe there have
15 been very many imports from Japan into the U.S. region
16 because of the finding, because of the order that's in
17 place. We are obviously concerned about all the
18 competitive forces that we're facing, but our history
19 has been with the European producers, that they've not
20 been found dumping, and I just think our U.S.
21 situation, we do have two other strong competitors
22 here -- Lanxess and Polimeri, both from Europe. If
23 the order is lifted then we're going to have three
24 additional competitors in the U.S. who have shown
25 repeatedly in other regions of the world that they're

1 willing to sell below what we believe are their full
2 booked costs so it will make the situation even that
3 more challenging here in the U.S..

4 MR. VAN BALLEGOOIE: The one additional
5 point I would just like to add to Jane's comments is
6 that opening the market to another competitor like
7 SDK, for instance, opens us up to a competitor who has
8 basically an identical capability of product line.
9 Identical product line offering to us. So there would
10 be, in fact I would say, the most dangerous kind of
11 competitor to have because of their ability to supply
12 essentially drop-in product.

13 MS. AUSTIN: They were our joint venture
14 partner for several decades, and share the same
15 technology, have the same product offering, same grade
16 slate.

17 COMMISSIONER PEARSON: Okay.

18 So you compete around the world with both
19 Japanese producers and European producers. If you
20 were to look at Brazil, for instance, which was
21 mentioned before, are the European producers able to
22 sell into Brazil, or are they not competing in that
23 market?

24 MR. VAN BALLEGOOIE: Yes, the European PCR
25 producers also supply into Brazil, but I think if you

1 look at relative market shares in that region over the
2 sunset review period that we're discussing today,
3 where has the growth in market share, where has that
4 come? It has clearly come from the Japanese PCR
5 suppliers.

6 COMMISSIONER PEARSON: But based on the
7 experience in Brazil, even though you compete there
8 with both the Europeans and the Japanese with no duty
9 orders in effect, the concern is in this country the
10 competition would be somehow different if the Japanese
11 were here.

12 MR. JAFFE: If I might add, there's a major
13 difference of course in Brazil. There's no duty order
14 in effect because there's no manufacturer of PCR in
15 Brazil.

16 The second point is yes, that if you look at
17 the Brazilian example then what you see here is you
18 see that DDE and the Europeans are coming in basically
19 at the same prices, and then what you see is the
20 Japanese came in very recently, for example, during
21 the sunset period of review, undercut those prices
22 that we believe, based upon our relationship with SDK
23 and also our information with regard to Denki and
24 their structure, at very low prices and in certain
25 segments of that particular industry, that area, that

1 market, they really stole quite a bit of market share
2 in a short period of time.

3 So the way that the Japanese act overseas
4 versus how the Europeans act overseas, if you look at
5 the Europeans, they're acting the same way in the U.S.
6 market as they are overseas where they're not engaging
7 in this very price-aggressive strategy, versus the
8 Japanese overseas engaging in a very aggressive price
9 strategy such that if the antidumping finding is
10 revoked, we would expect them to engage in a very
11 similar type of activity here in the United States and
12 because of the structure of the United States those
13 major customers that you can easily grab volume from,
14 the Japanese subsidiaries, they would be able to
15 immediately upon entry grab a market share that would
16 be equal to if not greater than their market share
17 pre-antidumping finding.

18 COMMISSIONER PEARSON: Thank you very much.

19 Mr. Chairman, thank you for your indulgence.

20 CHAIRMAN KOPLAN: Certainly, Commissioner.

21 Mr. Gardiner, I note that you were a
22 signator to the plea agreement of March 29th of this
23 year so I appreciate your being here to be able to
24 answer our questions today as it relates to that
25 proceeding.

1 Let me start with this. I say to you, I
2 started my career here as a prosecutor at the Justice
3 Department so I have some familiarity with what the
4 policies used to be at least at that time many years
5 ago with regard to plea bargaining. Basically both
6 sides give up something in a plea bargain, at least
7 that's the way it used to be.

8 You mentioned an agreement to, that was
9 entered into last night that you were notified of,
10 correct?

11 MR. GARDINER: Yes, Mr. Chairman.

12 CHAIRMAN KOPLAN: Again, who is that with?

13 MR. GARDINER: The actual entity is called
14 Sindile, which is not a name I'm familiar with, but it
15 is Enichem or Polimeri. It's gone by various
16 different corporate names.

17 CHAIRMAN KOPLAN: And that was for the exact
18 same period as you entered a plea for?

19 MR. GARDINER: The only exception was the
20 start date was one month later. September '99 through
21 April of 2002.

22 CHAIRMAN KOPLAN: Let me mention one to you
23 that I think is also tied into this. When I went on
24 the Justice's web site looking at the press releases,
25 their antitrust site had, of course, the release of

1 January 19th of this year that you all were in the
2 process of, but what I fell into was seven days
3 earlier a company by the name of Zeon Chemical entered
4 into a plea agreement and that agreement called for a
5 \$10.5 million criminal fine that was being accepted.

6 Was Zeon a player in this conspiracy?

7 MR. GARDINER: No, Mr. Chairman. Different
8 product line. I believe that was --

9 CHAIRMAN KOPLAN: It's described as
10 synthetic rubber as well.

11 MR. GARDINER: Yes, I believe it's called
12 NBR which is a different product, not a product
13 produced by DDE.

14 CHAIRMAN KOPLAN: So they have nothing to do
15 with the case in which you and the folks last night
16 plead, is that correct?

17 MR. GARDINER: That's correct, Your Honor.

18 CHAIRMAN KOPLAN: No, I'm not Your Honor,
19 I'm
20 just --

21 MR. GARDINER: Sorry. Wrong room.

22 (Laughter).

23 CHAIRMAN KOPLAN: I appreciate the
24 escalation,
25 but --

1 MR. GARDINER: No, the cases have been
2 linked in the way the investigation unfolded and one
3 of the companies, Bayer, and another, Crompton, both
4 were involved in an extensive amnesty disclosure to
5 the department, but that case does not affect DDE in
6 any way.

7 CHAIRMAN KOPLAN: I appreciate that. Thank
8 you very much for that.

9 Let me pick up on the questions that
10 Commissioner Lane asked with regard to this, and I
11 frankly found that helpful to me. I just want to move
12 along that line with you if I could.

13 On pages 13 to 14 of your brief you argue
14 that past antitrust violations should not play a role
15 in our review determination. I'll be honest with you,
16 I'm not persuaded by that particular argument.

17 I look upon the financial effects of the
18 price fixing during the period under examination as a
19 condition of competition that I intend to consider.
20 The plea bargain with the antitrust division of the
21 Justice Department covers a period that began one
22 month after we published the first sunset review that
23 I happened to have participated in and continued for a
24 period of 33 months until April of 2002, admittedly.

25 Now I note that the plea bargain indicates

1 DOJ had evidence that during the 33 month period, this
2 is what they would have presented they said in the
3 agreement, that during the 33 month period your sales
4 to U.S. customers totaled at least \$410,500,000. It
5 imposed a criminal fine of \$84 million plus interest
6 to be paid in six annual installments. So the first
7 installment would have been in April of this year.
8 Correct?

9 MR. GARDINER: That's correct.

10 CHAIRMAN KOPLAN: But it does not preclude
11 civil matters of any kind or actions brought for any
12 violation of the federal tax or securities laws, or
13 actions by state agencies. In other words, DDE's
14 financial exposure is ongoing and will run into the
15 foreseeable future, and I need the details of what
16 this is likely to cost.

17 According to your 2004 Form 10K, in 2004 you
18 set up a reserve of about \$250 million to reflect
19 anticipated losses because of your company's potential
20 exposure. This is bound to affect the future of the
21 Pontchartrain plant, at least I would assume that. In
22 addition to the criminal fine, what civil settlements
23 have you reached, when and for how much, and what
24 other litigation's been instituted in the public realm
25 that's currently pending?

1 For example, on page 14 you mentioned that
2 DDE agreed to pay civil settlements with a class of
3 its direct customers that covers the period 1999
4 through 2003. Is that the \$42 million that was court
5 approved last November?

6 MR. GARDINER: Yes, it is.

7 CHAIRMAN KOPLAN: For the post-hearing,
8 could you provide me with the details of what I'm
9 asking for?

10 MR. GARDINER: Yes, we will.

11 CHAIRMAN KOPLAN: I appreciate that very
12 much.

13 If I can come back to the domestic industry
14 witnesses.

15 At page I-20 of the confidential staff
16 report, the staff reports that in 2004 Germany and
17 France provided 93 percent of the quantity and 90
18 percent of the value of imported PCR while Japan
19 provided three and six percent respectively.

20 If the order is revoked, assuming there is a
21 resumption of dumping, why wouldn't subject imports
22 simply take market share away from the non-subjects
23 rather than DDE? I'm asking that in part because
24 Gates makes that argument at page eight of its brief.
25 I'd like to hear from the industry witnesses on that.

1 MS. AUSTIN: Yes, there are a couple of
2 reasons why we believe that DDE business in the United
3 States would be targeted before other suppliers in the
4 U.S.. One, SDK, I mentioned earlier, our joint
5 venture partner, they have literally drop-in products
6 to ours so it would be very easy for them to approach
7 DDE customers and say this is the exact same product.

8 Tosoh focuses on the high end products.
9 Denki also has a wide range of products.

10 If you look at the European sales that are
11 here in the U.S. today, not exclusively, but
12 preferentially they seem to be targeting liquid
13 dispersion applications versus dry types, and we
14 believe it will be more difficult for the Japanese to
15 serve the liquid dispersion market from halfway around
16 the world, shipping water, liquid dispersion products,
17 to the U.S..

18 So those combination of reasons, we think
19 they will target the dry applications, high value
20 types that we participate in.

21 CHAIRMAN KOPLAN: But it is possible, isn't
22 it, that they could target all of you?

23 MS. AUSTIN: It's possible, yes, but I think
24 for the reasons I mentioned that they will target us
25 moreso than the other suppliers.

1 MR. VAN BALLEGOOIE: There are, perhaps
2 another one or two points we could consider in this.
3 The first is that we sell a significant amount of
4 volume to Japanese subsidiary companies in the U.S.
5 who obviously have their owners in Japan. Any of the
6 Japanese PCR suppliers are very well situated by
7 relationships that they have established with those
8 owner companies to be very effective in taking that
9 share away from us at these accounts.

10 The other additional point, as I mentioned
11 and referred to earlier, there are a fairly
12 concentrated market with several large volume
13 consumers and it is predominantly DDE that would be
14 supplying those customers, whereas the European PCR
15 suppliers are supplying smaller, numerous but smaller
16 volume customers.

17 So again, with the reasons of relatively
18 little marketing, relatively little logistical effort,
19 they can capture a significant share of the U.S.
20 market.

21 CHAIRMAN KOPLAN: Thank you for that.

22 I have one brief question remaining for
23 counsel.

24 At page 36 of your brief you claim that DDE
25 never qualified for state tax credits available

1 through the Kentucky Industrial Revitalization Act.
2 You state that DDE never became eligible for the KIRA
3 credits and consequently never received the \$20
4 million in tax credits.

5 The question is, however, did DDE apply for
6 the KIRA credits? And if so, will you provide copies
7 of the business records that relate to the application
8 and its disposition?

9 MS. AUSTIN: Could we provide those details
10 in the post-hearing brief?

11 CHAIRMAN KOPLAN: Yes, that's what I'm
12 asking, if you would --

13 MS. AUSTIN: Yes, we can. Thank you.

14 CHAIRMAN KOPLAN: So is the answer you did
15 make application, though?

16 MS. AUSTIN: I'd like to answer that in
17 subsequent --

18 CHAIRMAN KOPLAN: Sure. Thank you.

19 I'll turn to Vice Chairman Okun.

20 VICE CHAIRMAN OKUN: Thank you, and again
21 than you to the witnesses. You've touched on a number
22 of issues of importance.

23 Let me if I could -- I realize I just messed
24 your name up so badly the first time. Van
25 Ballegooie, is that how you pronounce it?

1 MR. VAN BALLEGOOIE: It's a difficult Dutch
2 name, sorry about that.

3 VICE CHAIRMAN OKUN: I apologize for my
4 earlier mangling of your name. It happens.

5 The information you were just responding to
6 with the Chairman with regard to the type of products
7 that you sell here that you believe the Japanese would
8 sell and what the Europeans, what Ms. Austin was
9 testifying to.

10 I think, Mr. Jaffe, if you could put that in
11 the post-hearing brief and discuss that so that I
12 could make sure I understand what products we're
13 talking about and who is selling what currently and
14 why, whether that makes a change in the future.

15 The other thing, and I know Commissioner
16 Hillman had asked you to provide this for post-
17 hearing. I just want to make sure that I understand
18 the different information that's in our report which
19 is in regard to the volume of product you're selling
20 to your large customers. You gave a figure here, but
21 also how much of that is under a long-term contract,
22 to make sure I understand what those numbers are.

23 Then the other question is, if we see in
24 here an increase in sales to distributors, can you
25 talk a little bit about if there are any changes in

1 the markets going forward with regard to sales to end
2 users by DDE versus sales to distributors, is there
3 any trend there that we should be looking for or
4 anything else we should look at with regard to sales
5 to distributors versus end users?

6 MR. VAN BALLEGOOIE: In the U.S. market we
7 do have basically two distributor outlets that we use
8 to sell product to the end users. I don't see there
9 being any specific differences via that channel to
10 market versus direct sales in terms of the competitive
11 situation that we have. It's really the same.

12 VICE CHAIRMAN OKUN: And with respect to the
13 non-subjects in the market and with regard to the
14 Japanese, would you see them looking to sell to end
15 users directly or would the distributor channel be
16 more important based on the information you have?

17 MR. VAN BALLEGOOIE: As far as my
18 understanding from the market intelligence we have,
19 Bayer or now Lanxess. They also have a similar model
20 to us. They sell directly to customers in the U.S.
21 market and they also sell via a distributor, Polymer
22 Latex for their liquid dispersion products.

23 And as far as I understand with Polimeri,
24 it's pretty much the same situation. They sell direct
25 to a few accounts and via distributor.

1 With the Japanese PCR suppliers, they also
2 have already establish sales offices in the U.S., all
3 three of them do. It would be speculation on my part
4 but I imagine they would go directly, direct to
5 market.

6 VICE CHAIRMAN OKUN: And the sales offices
7 are for this product or --

8 MR. VAN BALLEGOOIE: As far as my
9 understanding is, it's to cover their entire range of
10 products that they sell. It's not specific to PCR.

11 VICE CHAIRMAN OKUN: If there's any other
12 information that you have about that in addition to
13 what was in the brief I'd appreciate that for post-
14 hearing as well.

15 Mr. Jaffe, was there something you wanted to
16 add? No? Okay. You had your hand on the microphone,
17 I just wondered if you were trying to grab it from
18 him.

19 (Laughter).

20 VICE CHAIRMAN OKUN: Mr. Gardiner, just to
21 follow up, there have been a number of questions that
22 have been covered already with regard to the antitrust
23 agreement. The one that you mentioned that was
24 announced last night, can you make that part of the
25 post-hearing submission?

1 MR. GARDINER: Yes, we will do that.

2 VICE CHAIRMAN OKUN: If you think of
3 anything else of relevance on that I would appreciate
4 seeing that as well.

5 I don't know if Mr. Lipstein or Mr. Jaffe,
6 if it's for you, I understand the argument you've made
7 in your brief with regard to how you would have us
8 view the plea agreement with respect to the period of
9 review and kind of isolating the period and citing the
10 litigation in the Elkem case as a precedent.

11 My question, and I didn't see it addressed
12 directly there and I think it was reflected in some of
13 the questions of my colleagues with regard to the
14 financial liabilities, both ongoing and what we see
15 reflected in our current financial data, is how should
16 we take this into account when determining
17 vulnerability of the industry? I heard Mr. van
18 Ballegooie talk about vulnerability, and yet when I
19 look at the record and think about both the financial
20 implications of this settlement and the difference in
21 the financials in the period after the price fixing
22 time period ends, I'm not sure how I factor that in on
23 vulnerability. Can I find this industry vulnerable
24 because it had to quit price fixing and therefore its
25 financials go down and that should lead me to say

1 they're more vulnerable to imports from Japan? I have
2 a hard time with that.

3 MR. LIPSTEIN: I'll take the first crack at
4 that.

5 VICE CHAIRMAN OKUN: Okay.

6 MR. LIPSTEIN: A couple of observations.
7 The first is that if you look at the financial
8 performance of just the operating business, stripping
9 out completely the costs and expenses of the antitrust
10 case, it still shows a fairly dramatic deterioration
11 which the staff report I think correctly attributes to
12 the fact that there have been significant raw material
13 cost increases and that the marketplace has not
14 permitted DDE to pass through those cost increases in
15 the form of price increases.

16 The second comment I guess I would make is
17 that you're looking at a period post-April of 2002
18 where you are seeing financial and economic
19 performance that is unfettered by the antitrust issues
20 and so the performance of the marketplace from April
21 of 2002 to the end of your data collection period I
22 think gives you a very accurate picture of the
23 weakened state, I think as Ms. Austin described it, of
24 DuPont Dow as the domestic producer, and it has
25 nothing at all to do with the expenses of the

1 antitrust case. This is simply a fact that the
2 industry is in decline, capacity is still overhanging
3 and exceeds demand, and so you have too many pounds
4 chasing too few customers.

5 VICE CHAIRMAN OKUN: Okay. I hear your
6 answer. I think for post-hearing I would appreciate
7 you looking at that and giving that analysis as well
8 for post-hearing. Again, I do -- It troubles me,
9 again, whether it's a condition of competition or not,
10 how exactly to view this plea agreement but I
11 understand the argument you're making and I think some
12 of the other questions have already been asked with
13 regard to the financials and with regard to, I think
14 it was Commissioner Hillman's questions regarding what
15 was going on in that last two year period are of
16 relevance as well. So I will look forward to looking
17 through that in the post-hearing.

18 Let me go back briefly, one question that I
19 had again with regard to the switch to the production
20 facility in Louisiana. I understand the particulars
21 are confidential and sensitive and you'll submit
22 those.

23 But just so I understand these products
24 again, in the Louisville plant, is it the number of
25 reactors -- what allows you to make the different

1 products at these plants? Is it how many reactors you
2 have that allows you to do high value versus low
3 value? Help me out on the basics on that one.

4 MS. AUSTIN: Just simply, it's different
5 comonomers or monomers that are used in the production
6 of the different types of neoprene. The two commodity
7 grades at the Pontchartrain facility do not use a
8 specialty monomer that's used at the Louisville
9 facility. There's also a different curing technology
10 that's applied to some of the products at Louisville
11 and we don't have that chemistry in the process at
12 Pontchartrain.

13 So the upgrade that will occur is to put in
14 capability to run that different chemistry. It's not
15 number of reactors or finishing capability, it's the
16 actual chemistry and monomer that's used in the
17 production.

18 VICE CHAIRMAN OKUN: Okay, and I can't see
19 your name back there, but on the next row here.

20 MR. McCREA: I'm Denis McCrea. I's just
21 like to add to that in addition, the types that are
22 made at Louisville involve things like sulfur, they
23 involve different sorts of resins and we don't have
24 facilities to handle those at Pontchartrain. They
25 also involve additives like thiuram and we don't have

1 facilities to handle those either at Pontchartrain, so
2 that's what Jane is referring to. Those facilities
3 exist at Louisville, but not at Pontchartrain.

4 VICE CHAIRMAN OKUN: That's very helpful to
5 my understanding.

6 And quickly, Ms. Austin, when you're talking
7 about the liquid dispenser part of it, is any of this
8 relevant to that? This big thing here in the middle?

9 MS. AUSTIN: The gloves are for a dipped
10 application where the material is dipped and coated
11 with the PCR.

12 VICE CHAIRMAN OKUN: Okay.

13 MR. VAN BALLEGOOIE: And also the very nice
14 green medical breather bags, those are liquid
15 dispersion products.

16 VICE CHAIRMAN OKUN: That's helpful. I'll
17 take a look at those during the break. Thank you very
18 much.

19 I see my time's going to change, Mr.
20 Chairman.

21 CHAIRMAN KOPLAN: Commissioner Miller?

22 COMMISSIONER MILLER: Thank you, Mr.
23 Chairman.

24 The one other area I would like to ask you
25 to expand on either here or in a post-hearing

1 submission if that's your preference, is to talk a
2 little bit about DDE's exports and export markets.

3 Obviously you've shown some familiarity with
4 the global market today, but if you can here that
5 would be helpful, just help me understand what are
6 your major export markets. I'm also interested in
7 whether you export the same high value/low value
8 products that you sell in the United States or if
9 there's any difference in the product mix in what you
10 sell overseas versus what you sell in the United
11 States.

12 Can you address those questions publicly or
13 --

14 MR. VAN BALLEGOOIE: I think we'll provide
15 the details to you in the post-hearing brief, but
16 maybe --

17 COMMISSIONER MILLER: That would be fine.

18 MR. VAN BALLEGOOIE: -- but maybe some
19 general comments are as follows.

20 COMMISSIONER MILLER: Yes.

21 MR. VAN BALLEGOOIE: The major regions that
22 we export to, Europe, the European region is a very
23 significant one. All the countries there -- Germany,
24 France, Italy. And in terms of product mix, generally
25 it's very similar to what we have in North America.

1 I guess a key point of difference is in the
2 North American marketplace we also sell more of the
3 monomer products which are really very much a
4 specialty type and we don't sell that pretty well
5 anywhere else globally.

6 In other regions like South America, it's an
7 important region for us. Not as important as Europe
8 in terms of volume or revenue, but it's primarily
9 lower value PCR products which end up in that region.
10 Primarily into the adhesive segments.

11 In the Asia Pacific area which is from a
12 volume point of view very important for us, from a
13 profitability point of view less important because of
14 the very low pricing that we have in that region which
15 is due to the competitive nature of the Japanese PCR
16 competition that we face there, but in terms of
17 overall products that we supply, again, predominantly
18 it would be the lower value types. But it's a bit of
19 a mix. We also sell some of the higher value types as
20 well.

21 COMMISSIONER MILLER: When you said a moment
22 ago that you sell, in Europe you don't sell the
23 monomer, what you referred to as specialty products.

24 MR. VAN BALLEGOOIE: Yes.

25 COMMISSIONER MILLER: Would those be

1 characterized as high value products?

2 MR. VAN BALLEGOOIE: Those would be, it's a
3 very very niche business and that would be high value,
4 yes.

5 COMMISSIONER MILLER: Okay.

6 To the extent you want to elaborate with any
7 specifics in the post-hearing submission I think
8 that's useful.

9 With that I have no further questions. I
10 appreciate all your answers to my questions as well as
11 those of my colleagues today.

12 MR. VAN BALLEGOOIE: Thank you.

13 CHAIRMAN KOPLAN: Thank you.

14 Commissioner Hillman?

15 COMMISSIONER HILLMAN: Thank you. I hope
16 just a couple of follow-ups.

17 Ms. Austin just to make sure I understand
18 this issue of the potential closing of the Louisville
19 facility and the moving down to the Pontchartrain
20 facility, can you tell me if that happens in the way
21 that you've described, will the capacity of -- What
22 will be the total capacity compared to what you have
23 now? Again, if you have to do that post-hearing, fair
24 enough.

25 MS. AUSTIN: We're going to have to answer

1 that in the post-hearing brief, but I will say that
2 the investment plan at Pontchartrain is to widen the
3 breadth of the product line that we can produce at
4 Pontchartrain as well as increase the capacity at the
5 Pontchartrain site. But the actual number we have not
6 disclosed publicly.

7 COMMISSIONER HILLMAN: If you can do that in
8 the post-hearing that would be very helpful.

9 Then if I can understand just a few of the
10 data issues, because obviously there has been, in the
11 staff report and others we've relied to some degree on
12 these numbers from IISRP, and my understanding is in
13 your brief you've also relied on some specific numbers
14 from a Japanese rubber trade association or something.

15 First, with respect to the Japanese numbers,
16 if we could get the actual data that you're relying on
17 for that. Then secondly, if you can tell me a little
18 bit more about the IISRP and any of the data issues
19 connected to that. Obviously those kind of statistics
20 are ones that we've looked at in terms of trying to
21 understand aggregates for demand and consumption in
22 other places, and yet obviously your brief is casting
23 some doubt about our reliance on that data.

24 So if you can help me understand that data,
25 why people participate and don't participate in it,

1 and what we should make of that.

2 MR. VAN BALLEGOOIE: Okay. Perhaps I'll
3 offer a few comments on that.

4 IISRP, we've been using their figures during
5 the sunset review period up until about I'd say
6 December of 2003 when we started to notice there were
7 some apparent anomalies in what our understanding was
8 and what was being reported. In fact I'd say the
9 numbers became even more unreliable in quarter one of
10 2004 at which time we decided not to participate with
11 the organization and use that information.

12 Maybe Jane --

13 MS. AUSTIN: I guess our understanding, when
14 we noticed the data looked really suspect, out of
15 whack, we did some inquiries and indeed the IISRP did
16 not have all members continuing to participate in
17 providing their statistics so they were starting to
18 make their own extrapolations. The data became very
19 unreliable. WE chose not to participate any further.

20 So I'm sure that their estimates are more
21 blind because they don't have members participating
22 any longer.

23 COMMISSIONER HILLMAN: So you started, you
24 think the anomalies began December 2003?

25 MR. VAN BALLEGOOIE: At that point in time

1 was the first time I noticed that there were
2 surprising deviations in their numbers, let me just
3 phrase it like that.

4 Historically, before that, I'd say they were
5 very consistent with what our expectations would have
6 been.

7 COMMISSIONER HILLMAN: I appreciate those
8 answers.

9 In response to the Chairman, I just want to
10 make sure in your answers on the issues of these tax
11 incentives, can you clarify whether DDE received any,
12 at any point, tax incentive payments from the Kentucky
13 Industrialization Revitalization Act or any other
14 Kentucky state programs geared to your Louisville
15 facility. So if there were any payments at all
16 actually made to DDE, if you could detail that in your
17 post-hearing brief as well.

18 MR. GARDINER: That's fine.

19 COMMISSIONER HILLMAN:

20 Thank you. I appreciate that.

21 Finally, if I can come back to the antitrust
22 issue. First, I just want to make sure I understand,
23 and again, if you can't say so here, if there's
24 anything that can be said in the post-hearing, that
25 the conspiracy included both European companies as

1 well as DDE. So in other words those, all three of
2 those companies were involved?

3 MR. GARDINER: That's correct.

4 COMMISSIONER HILLMAN: And then the
5 Japanese. Was there any participation by the Japanese
6 in the price fixing conspiracy?

7 MR. GARDINER: I think we would have to
8 comment in our post-hearing brief on that.

9 COMMISSIONER HILLMAN: If you could do so.
10 The plea agreement also states that the
11 price fixing was for prices in the U.S. and elsewhere.
12 Can you specify, were the markets in which there was
13 price fixing going on discussed in the course of this?
14 And are there things that can be put, again, in the
15 confidential record on where exactly the price fixing
16 was occurring outside of the United States?

17 MR. GARDINER: We can attempt to address
18 that as well.

19 COMMISSIONER HILLMAN: I would appreciate
20 that.

21 Lastly, I share the Vice Chairman's concerns
22 on this issue of how are we to take this into account.
23 Obviously it raises I think a lot of the same, I share
24 a lot of her concerns. It's a little troubling to me
25 to look at a record in which the financial performance

1 was one thing during the period of the price fixing,
2 then changes and is worse in the absence of it, and
3 yet I'm supposed to be saying as a result of that
4 you're more vulnerable and therefore I have to leave a
5 dumping order on.

6 I would ask are you're briefing this to also
7 address, I understand your brief addresses the Elkem
8 issue. To me there are some distinctions there. Part
9 of the Commission's concern in the ferrosilicon matter
10 was the fact that the conspiracy was not disclosed to
11 the Commission, so some of the concern that came out
12 of that was this issue of a fraud on the Commission,
13 that we were told that prices were being set in a very
14 competitive way and it turns out after the fact we
15 learn that there was price fixing going on during a
16 significant portion. This is different. You've
17 obviously all told us straight up that there was price
18 fixing going on during this period. So that element
19 of Elkem is not there.

20 But the other element of it that I would
21 like you to brief that was clearly there is, I don't
22 want to describe it entirely as an unclean hands
23 doctrine, but it is this general, sort of equitable
24 notion of is it really appropriate to come in and say
25 you need to leave a dumping order in place when

1 arguably the effect of the dumping order was to allow
2 you to engage in a more effective conspiracy because
3 you had less conspirators that you had to deal with.

4 If the dumping order is keeping the Japanese
5 out of the market, you only have to engage with two
6 European companies in order to have an effective price
7 fixing conspiracy. Is it sort of as a matter of
8 equity an appropriate matter for the Commission to in
9 essence allow the antidumping duty law to play a role
10 on the antitrust side of it? These are both laws
11 geared at anti-competitive behavior at some basic
12 economic level.

13 There's a part of me that is very troubled
14 at the notion that you in essence can use one to make
15 the other a more effective remedy.

16 So as you're briefing this issue of how we
17 take into account the price fixing conspiracy, it
18 obviously affects prices not only in the U.S. but in
19 these other markets. You're telling me to look at
20 what the Japanese are doing in Brazil. But if the
21 price fixing was affecting the prices going into
22 Brazil it's not so clear to me that I should just look
23 at those as straight-up price comparisons as a fair
24 way of looking at what the Japanese would do.

25 So it does have implications over sort of

1 both the equitable legal aspects of the case as well
2 as the actual data that we're looking at.

3 So as you're addressing the Vice Chairman's
4 questions I would ask you to add these other issues
5 into it as well.

6 With that I have no further questions, but I
7 thank you very much for your answers to all the
8 questions this morning.

9 CHAIRMAN KOPLAN: Thank you.

10 Commissioner Lane?

11 COMMISSIONER LANE: Thank you.

12 Mr. Gardiner I want to make sure I
13 understood what we're going to get in the post-hearing
14 brief.

15 Are you going to tell us in the post-hearing
16 brief whether or not this conspiracy or this violation
17 of the antitrust laws included any Japanese producers?

18 MR. GARDINER: The one issue I need to give
19 some consideration to is the Department of Justice's
20 ongoing investigation and our cooperation obligations
21 with regard to that ongoing investigation. I would
22 just ask the indulgence of the Commission. We just
23 need to think that issue through on that very
24 particular question.

25 COMMISSIONER LANE: Okay, I guess.

1 I may not have asked the question correctly
2 the first time around so I want to make sure that when
3 the numbers are restated in your post-hearing brief,
4 will that also include the money that was paid in
5 civil settlements to your customers?

6 MR. GARDINER: Yes, it will.

7 COMMISSIONER LANE: And if you can say this,
8 and if not put it in your post-hearing, was Gates one
9 of the companies that you settled with in a civil
10 suit?

11 MR. GARDINER: I believe that discussion
12 with Gates is ongoing and we'll look into what we can
13 say about that.

14 COMMISSIONER LANE: Okay. And Ms. Austin,
15 going back to the closing of the Kentucky plant, I am
16 assuming that the Louisiana plant if it increases and
17 more investment is put in there, that more employees
18 will be needed. Will you be able to tell us in your
19 post-hearing brief how many more employees might be
20 needed and why the Kentucky employees would not be
21 offered, all of them would not be offered the
22 opportunity to move to Louisiana and take those jobs?

23 MS. AUSTIN: We will address that
24 specifically and in detail in the post-hearing brief
25 and outline exactly the employment plan as a result of

1 the expansion at Pontchartrain.

2 COMMISSIONER LANE: My last question is how
3 do you respond to the domestic purchasers' argument
4 that they need the assurance of having more than one
5 supplier of PCR in case one supplier is unable to
6 provide at some time?

7 MS. AUSTIN: A couple of points there. One,
8 they already have a second and a third source of
9 supply from the two European producers that sell here
10 in the United States, so there are three PCR suppliers
11 currently active here in the United States.

12 Another point would be that the reliability
13 of these plants is extremely high. We've not have a
14 significant outage at either plant for over 20 years.

15 COMMISSIONER LANE: Thank you.

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

18 CHAIRMAN KOPLAN: Thank you, Commissioner.
19 Commissioner Pearson?

20 COMMISSIONER PEARSON: Are the Japanese
21 producers subject to an antidumping duty in the
22 European Union?

23 MS. AUSTIN: To my knowledge they are not.

24 COMMISSIONER PEARSON: Are there antidumping
25 orders on the Japanese producers anywhere in the world

1 we know of other than in the United States?

2 MS. AUSTIN: One that I'm aware of is in
3 China.

4 COMMISSIONER PEARSON: It's correct that DDE
5 does sell a fair amount of product into Europe, right?

6 MS. AUSTIN: That's correct.

7 COMMISSIONER PEARSON: What is the
8 competition like in Europe against the Japanese
9 producers? I asked about Brazil before and that maybe
10 wasn't the right comparison, because in Europe there
11 is production of the product and it's a developed
12 country market, and perhaps we could look at it as a
13 situation that would not be entirely unlike the market
14 conditions that would prevail in the United States if
15 the order would be revoked here.

16 MR. VAN BALLEGOOIE: Perhaps I can offer a
17 few comments there.

18 In the European marketplace, yes, you do see
19 the other PCR suppliers there in fairly significant
20 amounts. I'd say their behavior is a little bit
21 dependent on the region. For instance in Spain, and I
22 think we've provided some information into the pre-
23 hearing brief. They do supply it at the lowest price
24 into that country from all of the PCR suppliers. I
25 don't have off the top of my mind what the average

1 number is, but it's in the document. As well in some
2 other regions, for instance closer to home, in Canada
3 they are active and they do participate. My
4 understanding, the lowest prices in the marketplace of
5 any of the PCR suppliers participating in Canada.

6 So they do participate and they're really at
7 the low end of the price spectrum.

8 COMMISSIONER PEARSON: My observation of the
9 European antidumping authorities have been that
10 they're not at all reluctant to go ahead and impose an
11 order if indeed they see something inappropriate going
12 on. Maybe I'm giving them too much credit, but I kind
13 of am getting the sense that what's going on in Europe
14 might be relatively reasonable competition. If you
15 have a way of either adding to or subtracting from
16 that view by all means go ahead, either now or in the
17 post-hearing.

18 MS. AUSTIN: Perhaps we could explore that
19 further in the post-hearing brief and provide you our
20 analysis of the European market and how competition
21 has been behaving over the last few years.

22 MR. JAFFE: I would just add that of course
23 we're not a domestic producer in the European market
24 so we cannot petition the antidumping authorities in
25 Europe to bring a case against Japan.

1 COMMISSIONER PEARSON: Of course, but Bayer
2 and Polimeri certainly would have that ability.

3 I'm just happy to learn more if there's
4 something we should know.

5 Looking once again at Table 4-1, at the
6 bottom it lists the unit values for imports from Japan
7 and all other sources. I'm curious, I know there's a
8 concern that the Japanese would sell aggressively into
9 the U.S. market, but if we look at the prices at which
10 they have been selling over this period of review and
11 we see that they're roughly twice as high as the value
12 of imports from other sources.

13 Can you comment on that?

14 MR. JAFFE: I guess just to add that, I
15 think Peter already testified that it looks like they
16 are actually exporting at very low quantities into a
17 niche market and therefore maintaining a very high
18 price probably in order to, because of the antidumping
19 finding that is actually keeping them out of the
20 market and preventing them from actually exporting
21 much larger volumes, aware that if they are going to
22 do so, that they would be unlike in the past where
23 there was a number of times in which an antidumping
24 administrative review was requested and there were
25 findings of no shipments here in a particular case,

1 they're making sure that they're not exporting large
2 quantities at low prices because of the antidumping
3 finding.

4 COMMISSIONER PEARSON: I understand that
5 there easily could be product mix issues involved in
6 these numbers as well, but if I understood correctly
7 from the earlier comment, that if we were to consider
8 a low value product being worth 100 then a high value
9 product might be worth 130 to 150. Well, the price
10 spread that we see in the average unit values in Table
11 4-1 is greater than a spread of 50 percent. So it's
12 an interesting niche market that they're filling,
13 obviously.

14 If you have no -- Go ahead.

15 MR. VAN BALLEGOOIE: Just to comment. One
16 has to be careful, when you're looking at comments
17 about average ranges of high value prices, for
18 instance as I mentioned earlier we do sell some
19 monomer products in the U.S. which is a very high
20 price because it's on a totally different basis from
21 our normal dry and liquid dispersion products. So
22 it's probably a wider range than I had mentioned
23 earlier.

24 COMMISSIONER PEARSON: I understand. There
25 can be things going on that aren't apparent here. I'm

1 just looking at the numbers and trying to put it all
2 together and it doesn't add up quite as neatly as I
3 would like. So if there is anything more to be said
4 about that in the post-hearing, that would be fine.

5 My last question. I'm correct to understand
6 that those of you who currently are involved in the
7 senior management of DDE are a different group of
8 people than were involved in the business at the time
9 of the price fixing?

10 MS. AUSTIN: That's correct. I joined the
11 chlorelastomers or neoprene business at the end of
12 2003, December 2003.

13 COMMISSIONER PEARSON: Okay. I thought that
14 was the case.

15 I would just express to you my best wishes
16 for being able to run the company in a way that is
17 seen as fair and appropriate by competitors and
18 customers. Rebuilding the reputation of a firm is not
19 easy, so in addition to dealing with issues like this
20 antidumping order you've got a business to run and I
21 hope that it goes well

22 MS. AUSTIN: Thank you.

23 COMMISSIONER PEARSON: Mr. Chairman, I have
24 no further questions.

25 CHAIRMAN KOPLAN: Thank you, Commissioner

1 Pearson.

2 I do have one matter, as I've listened to
3 the questions.

4 Mr. Gardiner, when did you first learn that
5 DDE was a subject of this criminal investigation?

6 MR. GARDINER: There was a subpoena issued
7 by the Department of Justice in March of 2003.

8 CHAIRMAN KOPLAN: Okay.

9 MR. GARDINER: That was our first knowledge
10 of the matter.

11 CHAIRMAN KOPLAN: I appreciate that.

12 I note that your numbers were significantly
13 different in '03 and '04 than they were previously,
14 and Commissioner Hillman has actually gotten into this
15 with you.

16 What I would like for you to do for me in
17 the post-hearing is, I'm going to direct your
18 attention to Table C-1 of the confidential staff
19 report, and the, for example the numbers on the last
20 line, I can't get into the details of that here
21 because it's BPI, but the shift from 2002 to 2003,
22 2003 being the year you found out there was an
23 investigation going on, and the footnotes in Table 3-6
24 of the staff report, footnotes one and two at page
25 III-9 is the page that that table appears on.

1 What I'd like you to do is tell me what
2 impact the notice of the ongoing investigation had on
3 the numbers I'm looking at. For purposes of post-
4 hearing. Because from what you're telling me,
5 starting in March of '03 until the agreement was
6 reached in '05, that was the period of the ongoing
7 investigation. Of course your role is still ongoing
8 because you're cooperating into the indefinite future
9 with regard to this investigation.

10 But I think if you look at those tables
11 you'll see why I'm asking the question. Is that clear
12 to you?

13 MR. LIPSTEIN: Yes it is, Mr. Chairman.
14 We'll respond to those questions in the post-hearing
15 brief.

16 CHAIRMAN KOPLAN: Thank you. I appreciate
17 that. I appreciate all the answers to my questions.
18 I have nothing further.

19 Vice Chairman Okun?

20 VICE CHAIRMAN OKUN: I have no further
21 questions, but I do want to thank you for your
22 testimony this morning and the answers to our many
23 questions, and I look forward to the post-hearing
24 submission.

25 CHAIRMAN KOPLAN: Commissioner Miller?

1 Commissioner Hillman?

2 COMMISSIONER HILLMAN: I have just one quick
3 follow-up.

4 You responded to Vice Chairman Okun on the
5 activities of the current Japanese producers in the
6 U.S. market in terms of their marketing. I do think
7 in the record somewhere it states that when the joint
8 venture with SDK changed, that SDK -- I assume you had
9 been doing all of the marketing in the U.S. for any
10 SDK product, whatever it might have been that was
11 coming in. So once that joint venture ended, SDK
12 then, and this is what I'm trying to make sure I
13 understand, established its own marketing activities
14 within the U.S.? And if so, to market what? Was it
15 just subject product or something else? Anything you
16 can tell me about how extensive, or what did they do
17 when your joint venture ended in terms of either
18 starting up or expanding on marketing activities in
19 the U.S., either for their total product mix or for
20 the subject product in particular?

21 MS. AUSTIN: Let us make sure that we get
22 the information correct and provide it in the post-
23 hearing brief, but I don't recall off the top of my
24 head if they had marketing for their other products
25 already established in the U.S.. But since the exit

1 of the joint venture they have established their own
2 approach to the market, albeit very limited of course,
3 because of the antidumping --

4 COMMISSIONER HILLMAN: When you say
5 approach. I just want to make sure, they have
6 offices, sales reps --

7 MS. AUSTIN: They have --

8 COMMISSIONER HILLMAN: All of that.

9 MS. AUSTIN: Exactly.

10 MR. JAFFE: And if you also look at the
11 changed circumstance determination made by the
12 Department of Commerce it says in a public that they
13 actually established marketing operations here in the
14 United States following the breakup of the joint
15 venture, directed at the PCR.

16 COMMISSIONER HILLMAN: And again, looking at
17 the import data, this is what I'm trying to
18 understand, how significant have these been? It
19 doesn't look --

20 MS. AUSTIN: To date they've not been very
21 significant at all, I believe due to the finding
22 that's in place.

23 COMMISSIONER HILLMAN: All right. If
24 there's anything you want to add to that in the post-
25 hearing that would be most helpful, and with that I

1 have no further questions.

2 CHAIRMAN KOPLAN: Thank you.

3 Does any other Commissioner have questions
4 of this panel?

5 Seeing that there are not, Mr. Deymon, does
6 the staff have questions of this panel before I
7 release them?

8 MR. CANTRELL: Ray Cantrell, industry
9 analyst no the staff.

10 You may wish to address what I have to say
11 in post-hearing if you'd like due to time limitations,
12 but I just wanted to bring a few things up that I
13 copied during testimony.

14 One is that it was said the reason that DDE
15 had exited from the SDK joint venture is that they
16 were the highest cost producer in Japan, yet they
17 have captive, apparently have captive sources of
18 chlorine which would indicate that that would help in
19 their cost structure.

20 Anther thing is, it was stated that SDK
21 would be a threat to the DDE in the U.S. because they
22 shared technologies. However, I just wondered with
23 the high cost, the situation being the highest cost
24 producer in Japan, and is this logical business
25 strategy in light of the fact that we have some

1 information that we received over the internet,
2 through the internet, that SDK raised PCR prices twice
3 during 2004.

4 So if you could comment on that.

5 And the price increase, by the way, was due
6 to escalating feedstock cost.

7 Thank you.

8 MS. AUSTIN: We can provide more detail --

9 CHAIRMAN KOPLAN: You need to stay with your
10 microphone when you respond. I know it's difficult,
11 but --

12 MS. AUSTIN: Sorry. I'll be looking up
13 here.

14 CHAIRMAN KOPLAN: That's right.

15 MS. AUSTIN: We can respond, Mr. Cantrell,
16 in more detail in the post-hearing brief, but your
17 point is exactly right on. It doesn't make business
18 sense.

19 When SDK was part of our group of
20 manufacturing sites, it was the highest cost facility
21 in the DDE operations. I guess that's one point I
22 apologize if I stated that wrong earlier. I don't
23 know the costs of the other Japanese producers.

24 But in our grid, our four plants that we
25 operated in the early 1990s, the SDK facility was by

1 far the highest cost facility. Even with the raw
2 material buy product in hand from their caustic
3 process.

4 So it's high fixed cost, high labor cost,
5 high energy cost, other factors contributing to the
6 high cost of that operation.

7 So is it logical for them to stay in
8 business? Our opinion was no. But they do continue
9 to do so and I personally think it's probably because
10 of the chlorine by-product. They have a strong
11 business in caustic and when you produce caustic you
12 also produce chlorine and it's very difficult to get
13 rid of it. You either consume it, which is what
14 they're doing in the PCR process, or you use caustic
15 to neutralize it. They have to find a way to consume
16 it.

17 I'm not sure if I addressed all of your
18 points or questions, but we'd be glad to give you more
19 detail in the post-hearing brief.

20 MR. CANTRELL: Thank you very much.

21 The staff has no further questions.

22 CHAIRMAN KOPLAN: Thank you for those
23 questions.

24 Before I release this panel, Mr. Schuchat,
25 am I pronouncing it right?

1 MR. SCHUCHAT: Yes.

2 CHAIRMAN KOPLAN: Do you have questions of
3 this panel before I release them?

4 MR. SCHUCHAT: I do not.

5 CHAIRMAN KOPLAN: You do not.

6 With that, I want to thank this panel for
7 both its direct presentation and its responses to our
8 questions. I look forward to your post-hearing
9 submissions as well.

10 We'll now break for lunch. We'll come back
11 in an hour.

12 I would caution you that any BPI information
13 that you have with you should be taken with you when
14 you leave the room for the lunch break because the
15 room is not secure.

16 So I'll see you back here in one hour.

17 (Whereupon at 12:20 p.m. the hearing was
18 recessed, to reconvene at 1:20 p.m. this same day,
19 Tuesday, May 3, 2005.)

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

(1:20 p.m.)

CHAIRMAN KOPLAN: Good afternoon. I'm getting the signal from the secretary's table that the time is now to begin. So, Mr. Schuchat, -- I am pronouncing that right -- why don't you begin?

MR. SCHUCHAT: Thank you very much, Mr. Chairman. Thank you, Commissioners, for the opportunity to appear today here in this hearing.

My name is Frank Schuchat with the law firm Schuchat, Herzog & Brenman in Denver, Colorado. I'm here on behalf of the Gates Corporation and am accompanied by John Rusnack, the manager of strategic planning and implementation, the Gates Corporation; and Howard Hurwitz, an in-house counsel.

I want to thank you again for the opportunity to be here. I want to explain why Gates is here. Gates is an industrial user of polychloroprene rubber and has been a purchaser of that material for a very long time and has substantial businesses in the United States that are dependent upon CR rubber.

We are here today because the fate of the domestic industry producing CR rubber is of very significant importance to Gates because of its

1 manufacturing activity in the United States that
2 depends upon access to an adequate supply of the
3 particular grades of CR rubber that are required for
4 Gates' manufacturing. So Gates is here because of its
5 interest in the outcome of this case, and Gates is
6 also here because we believe we have significant
7 information and evidence that should be part of the
8 record in this proceeding.

9 That's why Gates is here. A question we
10 can't answer is why the Japanese producers are not
11 here. It's more than speculation. We would be of the
12 view that the Japanese producers are not here because
13 their interest in the U.S. market is not high, not as
14 described by Dupont Dow in their presentation. The
15 Japanese have been excluded from this market in any
16 significant way for 32 years by the antidumping order,
17 and we think, after that passage of time and with the
18 opportunities in other parts of the world, their
19 interest in this market is likely diminished.

20 Gates will present testimony for the
21 Commission to add to the evidence that you have before
22 you to make a decision in this sunset review. Because
23 of the lack of participation by most of the Japanese,
24 we understand that you would resort to what facts are
25 available, and we would like you to consider the

1 evidence which Gates has today in your determination.

2 We want to focus on a couple of points. I
3 don't have APO access. We're an industrial user, not
4 an interested party to the proceeding. We can only
5 comment on certain aspects of this investigation, but
6 we would like to stress for you that notwithstanding
7 what you've heard today, CR rubber is not highly
8 substitutable, at least not with respect to the
9 applications that large-volume, strategic purchasers
10 such as Gates needs CR rubber for. We believe that
11 it's only moderately substitutable, and we're going to
12 address that point.

13 We also don't believe that if the order is
14 allowed to sunset after 32 years that the Japanese
15 producers will come into this market in large volumes,
16 and we don't believe they will come into this market
17 at prices that would be disruptive.

18 One of the factors that limits the ability
19 of the Japanese or any other producer to move rapidly
20 into this market is the need for qualification, at
21 least with regard to users of high volumes of high-
22 quality CR such as Gates.

23 Mr. Rusnack is going to give you much more
24 detail on qualification and the lead times and also
25 the fact that CR is not a simple product. It's not

1 fungible, in that one supply can be quickly or rapidly
2 substituted for another supply.

3 Those are the points on which we intend to
4 focus, and with that, I would like to have John
5 Rusnack begin his testimony.

6 CHAIRMAN KOPLAN: Good afternoon.

7 MR. RUSNACK: Good afternoon. My name is
8 John Rusnack. I'm manager of strategic planning and
9 implementation for Gates Corporation.

10 CHAIRMAN KOPLAN: Could you move the
11 microphone just a bit closer to you, sir?

12 MR. RUSNACK: How is that? Is that better?

13 CHAIRMAN KOPLAN: Much better. Thanks.

14 MR. RUSNACK: Okay. And Gates Corporation
15 is owned by the Tomkins, PLC, company, and we're
16 headquartered in Denver, Colorado.

17 Gates is a purchaser of significant
18 quantities of polychloroprene rubber, which we
19 describe as "CR" at our company, and we use it in the
20 U.S. and foreign facilities for producing automotive
21 and industrial belts, hoses, and other products.

22 For very good reasons stated in our
23 prehearing brief, and which I'll review in some detail
24 this morning, Gates strongly opposes continuation of
25 the antidumping order on CR from Japan. We have

1 entered an appearance as a party in this case, and I'm
2 here today to testify because our company believes
3 that the Commission should be aware of facts which
4 demonstrate that removal of the antidumping order on
5 imports from Japan will not result in material injury
6 to the domestic industry.

7 First, I would like to give you some
8 background about Gates. Our company was started in
9 1911, when Charles Gates acquired the Colorado Tire
10 and Leather Company in Denver for \$3,000. Colorado
11 Tire and Leather made a single product, the durable
12 tread, a steel-studded band of leather that motorists
13 would put around their flimsy tires to extend the wear
14 time. It was a big success, and within a few years of
15 that, John Gates and Charles Brother invented the
16 rubber timing belt, the rubber V-belt with fabric and
17 rubber, and that became their next huge success.
18 Within a decade, Gates established itself as the
19 world's largest manufacturer of V-belts, and that's a
20 title that we hold today still.

21 From its modest beginning, Gates
22 Corporation, formerly known as the Gates Rubber
23 Company, has grown into the world's largest
24 manufacturer of industrial and automotive belts and
25 hoses and other associated products.

1 In 1996, the company became a wholly owned
2 subsidiary of Tomkins, PLC, a publicly traded company
3 which is a world-class, global engineering and
4 manufacturing group, with market and technical
5 leadership across three businesses. The businesses
6 are industrial and automotive, air systems components,
7 and engineered and construction products. It's the
8 industrial and automotive area that we're talking
9 about today with the belts and hoses.

10 Today, Gates is the only nontire-producing
11 rubber company with sales and manufacturing operations
12 in all of the world's major markets, including North
13 America, Europe, Asia, Australia, and South America.
14 Every day, customers around the world rely on Gates'
15 products in an almost endless range of applications.
16 Gates hoses transfer a variety of materials, from the
17 finest wines to chemicals, steam, and oil.

18 The company's industrial belts provide power
19 to all kinds of machines, from rock crushers, copying
20 machines, motorcycles, snowmobiles, and machine tools.
21 Car, truck, and heavy equipment engines stay cool
22 because of the coolant hoses that Gates makes. Our
23 automotive belts transfer power to engine accessories,
24 turning such items as air conditioners, power steering
25 pumps, water pumps, alternators in your car. And

1 Gates hydraulic hoses and coupling assemblies provide
2 fluid power to coal-mining, timber-harvesting, and
3 construction equipment.

4 I first began working in the rubber industry
5 in 1960, when I took a job with Uniroyal. The
6 Uniroyal Power Transmission Division was acquired by
7 Gates in 1986, and I went with it to Denver. Since
8 then, I have been employed by Gates, working in a
9 variety of staff positions, and throughout my career
10 I've had wide-ranging experiences and responsibilities
11 involving CR, including managing a plant in Brazil
12 where we used CR as our major input to timing belts.

13 I have also had automotive belt development
14 groups and research groups reporting to me, and they
15 were developing products in Cr.

16 I spend now a considerable amount of time in
17 our plants and talking to people in our plants who are
18 using CR and am quite familiar with our company's CR
19 purchasing requirements and the way we go about
20 sourcing and how we influence our sourcing decisions,
21 as well as the conditions that generally exist in the
22 U.S. and the rest of the world markets for CR and CR
23 products.

24 Gates has risk-management policies which
25 apply in all product categories, and they mandate that

1 we avoid dependence on a single source for a key input
2 for any of our manufactured products. It's just good
3 business sense. Over the last several years, as
4 documented in the Commission staff's prehearing
5 report, the number of U.S. producers of CR and the
6 number of their domestic plants has been reduced as a
7 result of decisions made by the CR manufacturers
8 themselves.

9 Gates' strategy to address this contraction
10 and to mitigate an unacceptable risk of reliance on
11 only one domestic supplier producing at two
12 facilities, soon to become one, has been to diversify
13 our supply base. Gates has increased purchases of CR
14 from European suppliers so that we have access to
15 secondary sources and do not rely on one source only.
16 However, we have not had adequate access to a long-
17 term supply of secondary sources for all of the CR
18 grades and specifications we need; and, therefore, we
19 continuously are out in the marketplace looking for
20 another source of supply or more sources, and they are
21 limited. As you heard from earlier testimony, there
22 are just a small number of producers in the world.

23 If this antidumping order is allowed to
24 sunset, Gates will likely seek to purchase some
25 quantities from Japanese suppliers over time. That

1 would give us access to one or more additional
2 secondary sources, but we do not plan to purchase
3 large volumes of Japanese CR if the order is allowed
4 to sunset.

5 Let me be clear about Gates' position. Our
6 objective is not to become dependent on any foreign-
7 based suppliers for the substantial part of its CR
8 requirements. Our U.S. plants need to receive CR on a
9 continuous schedule in order to remain in operation.
10 Because of the considerable and growing risk, cost,
11 and uncertainty that exist when sourcing from
12 suppliers located thousands of miles distant from our
13 operations, we really must have a domestic supplier
14 for most of our CR requirements.

15 I must add to that that the testimony I've
16 heard this morning indicating that there is a chance
17 or a likelihood that that supplier may not continue --
18 after leaving Louisville and moving to Pontchartrain,
19 might not supply the high-end items. That sort of
20 changes our thinking a little bit if that's really
21 what's going to happen, and we can talk more about
22 that in a little bit.

23 I believe that most, if not all, large-
24 volume CR purchasers would likely have the same
25 preference for a domestic supplier. This is not a

1 matter of loyalty to the domestic producer; it's just
2 self-interest and common sense. To be quite candid,
3 however, as a CR user, we are, at this time, very
4 concerned about relying on the sole remaining U.S.
5 producer, DuPont Dow Elastomers.

6 In 2002, DDE announced its intention to
7 close its CR plant and Kentucky, and, so far, DDE has
8 made no firm commitment to maintain any U.S. capacity
9 to manufacture the higher-value CR products need by
10 Gates, and I think that was emphasized this morning,
11 and it's concerning. Indeed, in its prehearing brief,
12 DDE suggests that it might not make investments needed
13 to maintain a U.S. production facility for higher-
14 value grades of CR, and they are the largest producer
15 in the world.

16 Gates and other industrial users of CR are
17 placed in a very vulnerable position because of the
18 actions of DDE. That's nothing new, however, because
19 as the Commission knows, DDE has pleaded guilty to,
20 and has paid substantial fines for, criminal
21 violations of the antitrust laws by fixing prices of
22 CR in the United States during at least the period
23 between '99 and '02.

24 DDE's CR business may be in a very
25 challenging position at this time, but this is a

1 situation of DDE's own making and is not the result of
2 import competition. The competitive position of DDE
3 is not likely to be affected adversely by removal of
4 the antidumping order on CR from Japan. Gates
5 absolutely must be assured of continued reliable
6 access to sufficient quantities of CR in grades we
7 need that meet our quality standards in order to be a
8 competitive manufacturer in the United States of
9 automotive and industrial belts and hoses and other
10 products for the United States markets.

11 And given legitimate concerns now and into
12 the future about cost, shipment delays, port security,
13 and other risks of disruption of supply associated
14 with oceangoing transport, reliable access for us
15 means there is a healthy and viable domestic supplier
16 to support the bulk of our needs.

17 In order for you to fully appreciate Gates'
18 concerns, I want to describe to you our manufacturing
19 process for CR-based products. Gates mixes CR in two
20 locations in the United States, and in mixing we're
21 talking about taking the basic CR and putting it
22 together with other ingredients so that you can make
23 something useful out of it. We mix in a plant in
24 Galesburg, Illinois, that employs 94 people and
25 another plant in Columbia, Missouri, which employs 133

1 people.

2 After mixing, Gates transfers the CR. We
3 ship it in slab form to the plants that are actually
4 making the finished products in CR. These plants are
5 located in Siloam Springs, Arkansas, where 601 people
6 are employed; in Ashe County, North Carolina, where
7 256 people are employed; and in Moncks Corner, South
8 Carolina, where there are 265 people employed. So
9 there are at least 1,350 Gates jobs in the United
10 States which depend on the continued existence of a
11 domestic CR industry to provide reliable support for
12 our CR-based products.

13 CR purchased from DDE, as well as from
14 European suppliers, is often bought under long-term
15 contracts, and shipments are delivered weekly in
16 pellet form to both Gates mixing plants in the United
17 States. Manufacturing belts from CR requires Gates to
18 mix the approved CR with various other chemicals into
19 a slab stock. This slab stock is then shipped from
20 the mixing plant to the manufacturing plant, where it
21 is further processed into finished products: belts
22 and hoses.

23 However, it is during the mixing stage where
24 Gates needs to carefully assess the properties of the
25 CR so that when the CR is mixed with the various other

1 chemicals, the slab stock has the necessary physical
2 properties to make a belt which will, in turn, meet
3 the specifications required by Gates' customers.

4 As Gates stated in the response to the
5 purchasers' questionnaire, part 3, qualification of
6 suppliers and supply of CR is a long and often arduous
7 process. Before Gates buys CR from any supplier, a
8 new supplier or a new supply location, or buys a
9 different grade of CR from an existing supplier, or
10 any combination associated with suppliers and grade
11 slates, the material has to be qualified for specific
12 Gates applications. Gates also requires its CR
13 suppliers to conform to ISO 9001 and TS 16949. These
14 are quality-standard programs and implies discipline
15 in their record-keeping and their actual systems.

16 Qualification involves a material evaluation
17 and analysis of the chemical and physical properties
18 of the CR supply stock and also static and dynamic
19 testing of the CR in a finished belt or a hose or
20 other product. This process is expensive, and it can
21 take up to 12 months or longer, especially where fleet
22 testing is mandated by the customer, and fleet testing
23 would involve putting belts in a car, let's say, in
24 Las Vegas or Minneapolis for hot and cold extremes and
25 driving it for 50, 60, 80, 100,000 miles to verify

1 that the product works in the field, and that's quite
2 time consuming and expensive.

3 We test for heat resistance, water
4 resistance, performance at certain horsepowers on an
5 actual belt test, running the belts on pulleys the way
6 they would be used in an actual application but at an
7 accelerated rate so that we can force failures early
8 on and understand what we have in that belt, whether
9 it's good or bad or needs improvement.

10 We've had situations where a material could
11 not be qualified. For example, a relatively recent
12 attempt to qualify a European CR supplier's product
13 for Gates V-belts was discontinued based upon
14 disappointing horsepower test results. So it was not
15 substitutable for the DDE material.

16 CR polymer alone is not sufficient to make a
17 highly engineered product like a belt or a hose. CR
18 must be combined with other ingredients to make it
19 useful for mixing into a product, as I mentioned
20 earlier. It's much like in making a cake. You cannot
21 bake a cake from flour alone, although it may be the
22 primary ingredient. Other ingredients are needed to
23 complete the recipe. However, if you do not know the
24 makeup of your flour and how it will react with the
25 other ingredients, and you don't know if your cake is

1 going to work, if it's going to be acceptable to your
2 customers, whether it will taste good or have the
3 proper consistency, et cetera, it's a very similar
4 process.

5 Gates would prefer, like all global
6 companies, to standardize the material ingredients and
7 inputs into its products. To date, this has not been
8 completely possible. This is because Gates has
9 maintained that CR is not easily substitutable for
10 purposes of manufacturing belts and hoses. The
11 products we make are highly engineered and require
12 very special fine tuning and work on the part of
13 chemists and engineers.

14 The staff agreed in its report, at II-11,
15 where it stated that there is a moderate level of
16 substitutability. By way of illustration, Gates
17 maintains a list of approved CR materials, and the
18 approved list means you can't buy that material unless
19 it's on the list. So, by way of illustration, we
20 first test a grade of CR to determine if it's
21 acceptable for use by Gates for the manufacture of our
22 products, and if it is, we can put it on the list. Of
23 all of the CR tested, Gates has approved for purchase
24 59 distinct grades of CR from seven suppliers.

25 Gates, in order to approve each of these 59

1 different grades, had to thoroughly test each and
2 every one of them. Through this testing, Gates
3 learned that of those 59, only eight of those grades
4 are considered equivalent grades for our purposes. Of
5 those eight, only six can be dual-sourced, purchased
6 from two different suppliers. Out of all 59 products,
7 only one of 59 can be purchased from three different
8 sources.

9 What this means is that of all of the CR
10 that Gates purchases worldwide, only 13 percent are
11 considered to have equivalent grades. Of all of the
12 CR Gates has approved via testing for purchase
13 worldwide, only 10 percent can be sourced from two
14 suppliers, and less than two-hundredths of a percent -
15 - that's a pretty small number -- of all of Gates' CR
16 sourced worldwide can be purchased from three
17 different suppliers.

18 Of the 44 grades that have only one
19 supplier, DDE is the manufacturer of the lion's share
20 of those CR grades. That means just shy of 75 percent
21 of the CR Gates has approved for purchase is
22 determined by our testing process to be unique enough
23 that they must be treated as a separate grade of CR
24 and tracked separately in our products. They can't be
25 commingled and say this one is as good as that one;

1 they have to be treated separately.

2 To provide a real-world example that
3 illustrates how difficult it can be to substitute
4 grades of CR, several years ago, Gates put a
5 particular grade of DDE CR through all of the
6 extensive testing required to approve it for purchase,
7 followed by all of the further testing that was
8 required to develop a product suitable to our
9 customers' needs. Our customer in this case was a
10 major automobile manufacturer. The product was a
11 belt. This was a very important contract for Gates.

12 Gates had finished the testing and was ready
13 to go into production to supply belts to this major
14 automaker. DDE decided at the last minute not to
15 supply Gates with that particular grade of CR. Gates
16 was left with egg on its face and was unable to supply
17 this major customer with the belts it required. If CR
18 was easily substitutable, Gates certainly would have
19 found another source for CR in that situation, but
20 given the time required to qualify a new supplier,
21 Gates was unable to meet the customer's requirements.

22 What are the differences in CR grades? The
23 obvious ones are viscosity and crystallization rate,
24 and that's quoted in all of the suppliers' literature.
25 Then there are modifiers added to effect various

1 properties, like sulfur or mercaptans. These are all
2 accounted for when the grades are named by the
3 suppliers.

4 Other differences that are not accounted for
5 by the suppliers; these come from different trade
6 secrets of manufacture and different process choices.
7 There are trace ingredients of different kinds of
8 amounts. Some grades are blended to get an average
9 property. Two grades with the same average that have
10 been blended could have very different details as to
11 how that average was reached; and, therefore, they
12 could have different properties when you start to make
13 products out of them.

14 Why do these differences matter in Gates'
15 products? Gates belts are subjected to much more
16 demanding conditions than any other products. It's a
17 dynamic product, and it's actually a likely like a
18 tire, if you consider how dynamic a tire is and how
19 much stress and strain it takes. It's constantly
20 moving and flexing and has to transmit power, and
21 that's pretty much what a belt is like on a smaller
22 scale.

23 Gates belts are subjected to much more
24 demanding conditions than many products. They are
25 expected to have long life at hot or cold, wet or oily

1 conditions. These demands tend to exaggerate
2 differences between grades. Heat resistance is known
3 to be sensitive to trace chemicals that might be left
4 in the CRs as a point of their manufacture. Similar
5 to a Craftsman screwdriver with a lifetime warrantee
6 versus a cheap import that rusts and breaks, both are
7 steel, both look shiny when purchased, but inside the
8 steel is totally different, and the life expectations
9 and value over the long term can be very different.

10 The other reason is that a belt has other
11 components, such as reinforcing fabrics and yarns, and
12 all of these go together in a composite, and adhesion
13 between these materials, what makes them stick
14 together so that they don't come apart when you use
15 the product, can also be very sensitive to trace
16 chemicals left in the CR. A small difference in
17 adhesion can mean a big difference in performance down
18 the road.

19 Similarly, the CR compound that Gates makes
20 out of CR supplied itself has

21 lots of ingredients that must react together
22 to make a good rubber belt. We put different
23 components together, mix different ingredients, and
24 they are different depending upon the application that
25 we're looking to accomplish.

1 Trace ingredients can inhibit these
2 reactions and result in inferior properties that show
3 up in later testing. They are not always obvious in
4 the early screening tests.

5 The importance we place on qualification of
6 suppliers and supplies is not unique to Gates and is
7 probably consistent in the way in which other high-
8 volume purchasers operate as well.

9 I would like to emphasize that with this
10 time-consuming qualification process and the attention
11 paid to the chemical and physical properties of
12 particular sources, it is simply not plausible to
13 assert, as DDE does in its prehearing brief, that
14 sunset of the antidumping order will be followed by a
15 rush of imports of CR from Japan. Adding a new
16 supplier takes time and expense and is not undertaken
17 likely by an significant industrial user.

18 Moreover, the suggestion made by DDE that
19 all CR is basically highly substitutable and that the
20 price is the only relevant distinction between sources
21 of supply simply ignores the reality. In the real
22 world, one could not, and does not, easily shift from
23 one CR supplier to another to take advantage of a
24 lower-priced offer.

25 The key factors which Gates considers in its

1 CR-purchasing decisions, in addition to qualification,
2 include availability, reliability, delivery, product
3 consistency, and whether the material quality meets or
4 exceeds industry standards. Price of the material is
5 secondary to all of these other factors. Product
6 consistency, reliability of supply, and availability
7 are the most important factors that we must consider.

8 Gates absolutely must be assured a continued
9 reliable access to sufficient quantities of CR in
10 grades we need to meet our quality standards in order
11 to be a competitive manufacturer in the United States
12 in making automotive and industrial belts and hoses
13 and other products for our markets. Given legitimate
14 concerns now and into the future about cost, shipment
15 delays, port security, and other risks of disruption
16 to supply when relying on oceangoing transport,
17 "reliable access" for us means we have access to a
18 domestic supplier to support the bulk of our needs.

19 Gates has received warnings from ocean
20 carriers about tight conditions, noting that space for
21 shipping to U.S. ports from Asia, in particular, is in
22 high demand and is overwhelming the capacities of
23 carriers to meet the demands of all of the shippers.

24 The April 2005 issue of American Shipper has
25 an article entitled "Pacific Trade Frets over U.S."

1 Backups." The article describes backups and delays
2 and deliveries of oceangoing cargo because of
3 unprecedented U.S. port and rail terminal congestion.
4 These are problems that we prefer to avoid by using
5 domestic suppliers.

6 Our expectation is that if the antidumping
7 order is allowed to sunset after all of this time, the
8 Japanese suppliers will probably endeavor to have some
9 material qualified by high-volume, U.S. purchasers
10 like Gates who require secondary sources to mitigate
11 the risk of complete dependence on DDE. If they
12 become qualified, we would expect these Japanese
13 suppliers to export some CR to the United States.
14 However, we do not expect large volumes of imports
15 from Japan, regardless of price.

16 As the Commission staff has concluded, there
17 is only moderate substitutability. Gates notes that
18 DDE stated in its prehearing brief that in the last
19 review the Commission concluded that CR is highly
20 substitutable. Gates disagrees with DDE and agrees
21 with the Commission staff that CR is only moderately
22 substitutable.

23 In addition to the limitations on U.S.
24 purchasers shifting to new suppliers, which will hold
25 down import volumes from Japan, another reason that a

1 large influx of imports from Japan is unlikely is
2 because Japanese CR producers are focused on other
3 export markets, especially within Asia and
4 particularly in China. Last year, there was an
5 explosion in a plant of the Shanxi Synthetic Rubber
6 Group in China which may have disrupted supply for the
7 China market and created opportunities for Japanese CR
8 exporters to ship into China.

9 The explosion suggests that better
10 opportunities for Japanese producers exist in Asia,
11 and right now the Asian economy is moving along quite
12 nicely and absorbing materials of other kinds as well
13 in the world. This explosion also underscores the
14 disruptions that can occur in a CR plant and why Gates
15 does not want to risk its business by relying
16 exclusively or largely on a single supplier.

17 Gates could not -- in any case, we would not
18 -- rely on Japanese sources for the substantial part
19 of our CR needs. Meanwhile, and with good reason, we
20 are very concerned about what DDE will or will not do
21 with its U.S. CR manufacturing facilities.

22 As DDE concedes in its prehearing brief, the
23 Louisville, Kentucky, plant is scheduled for closure,
24 and DDE's other facility in Louisiana is not presently
25 equipped to manufacture higher-value CR products, and

1 Gates needs those for its U.S. manufacturing.

2 In this time of uncertainty, in order to
3 protect our substantial U.S. manufacturing operations,
4 Gates must diversify its supplier base to supplement
5 its substantial purchases of U.S.-made CR. It is high
6 time to remove the antidumping order which has covered
7 Japanese CR for over 30 years.

8 On behalf of Gates and for the benefit of
9 other U.S. companies which must have reliable,
10 available access to CR of a consistent quality to
11 maintain competitive manufacturing operations within
12 the United States, we ask the Commission to allow the
13 antidumping order on CR from Japan to sunset. Thank
14 you for your time and attention. I'll be pleased to
15 respond to questions.

16 CHAIRMAN KOPLAN: Thank you for your
17 testimony.

18 I just want to note for the record that the
19 witnesses have been sworn, and I wanted to do that
20 before we start questions. Yes, Mr. Schuchat?

21 MR. SCHUCHAT: We think this is an
22 appropriate time for the commissioners to ask
23 questions. That concludes our testimony.

24 CHAIRMAN KOPLAN: Okay. Then we will begin
25 the questioning with Commissioner Pearson.

1 COMMISSIONER PEARSON: Thank you, Mr.
2 Chairman, and let me welcome the afternoon panel and
3 express my appreciation to you, as purchasers, for
4 taking the time and the effort to become involved in
5 this investigation. We often are lacking input from
6 purchasers, and I just want to say that you could have
7 done a lot of other things today, and taking the time
8 to come here is very helpful to us, so it's
9 appreciated.

10 MR. RUSNACK: Thank you.

11 COMMISSIONER PEARSON: This morning, we
12 discussed five types of polychloroprene rubber that's
13 manufactured by DDE. How many of those five types
14 does Gates buy?

15 MR. RUSNACK: At least, the number one type
16 is as I remember what was described.

17 COMMISSIONER PEARSON: Okay. But you're not
18 in a position where you're using all types. You're
19 really focused pretty much on one basic type of --

20 MR. RUSNACK: Well, we don't look at it in
21 those categories of five. As I mentioned during my
22 testimony, we have 59 separate items that we've
23 tested, and of those just a small amount of them are
24 considered equivalent, and some of them are highly
25 specialized for special applications that we use only

1 in certain types of belts and products.

2 COMMISSIONER PEARSON: Okay. But as a
3 practical matter, are you able to get some of your 59
4 types provided by the Pontchartrain facility as
5 compared to the Louisville facility?

6 MR. RUSNACK: To my knowledge, we buy
7 nothing from Pontchartrain. I'm only familiar with
8 the products that we buy from Louisville.

9 COMMISSIONER PEARSON: Okay. In which
10 countries does Gates have manufacturing facilities?

11 MR. RUSNACK: We have manufacturing
12 facilities not only in the United States but in
13 Mexico, Brazil, and various countries in Europe,
14 including Germany, Scotland, Spain, France, Poland, --
15 I may have missed one -- and we have plants in Asia:
16 two in China, one in Japan, one in Korea, one in
17 Thailand.

18 COMMISSIONER PEARSON: Okay. So you truly
19 are a global manufacturer of belts and hoses.

20 MR. RUSNACK: Yes. We also have an
21 operation in India that takes semi-finished goods and
22 finishes them.

23 COMMISSIONER PEARSON: It's probably safe to
24 assume, though, that not all of those facilities
25 manufacture belts and hoses. That would be --

1 MR. RUSNACK: The ones that I'm talking
2 about do.

3 COMMISSIONER PEARSON: Oh, okay.

4 MR. RUSNACK: We also have plants in Canada.
5 We have two plants that make metal parts that are
6 complementary to running our belts on pulleys with
7 tensioners and sprockets.

8 COMMISSIONER PEARSON: So with plants in
9 such a number of countries, is Gates buying the
10 polychloroprene rubber from DDE in all of those
11 locations? I'm not asking it very clearly, but what I
12 want to get a sense for is, to what degree would you
13 be using DDE product in plants outside the United
14 States?

15 MR. RUSNACK: We use DDE products, and
16 traditionally we have -- when I was in Brazil, we used
17 to use DDE exclusively in the timing belt plant that I
18 ran in the state of Sao Paulo, and that was all a
19 DuPont neoprene.

20 We use DuPont Dow CR material in Europe as
21 well in large numbers. When DuPont Dow had their
22 joint venture in Japan, that was material that our
23 Unita facility used exclusively for CR, and to my
24 knowledge, they are continuing to use that material
25 today, now that it's wholly owned by Showa Denko, so

1 that was a tradition.

2 COMMISSIONER PEARSON: So in some other
3 locations, you have developed products that use
4 polychloroprene rubber produced by some other company.

5 MR. RUSNACK: That's correct. Yes, sir.
6 Yes, Commissioner.

7 COMMISSIONER PEARSON: And I know you've
8 talked about that there is only moderate
9 substitutability, so what I'm wanting to understand a
10 little better is if you were to make a decision to
11 shift, in any location, from using one company's
12 polychloroprene rubber to another's what do you have
13 to go through to do that? Do you have certain
14 products that are standardized enough, a product that
15 you manufacture in the United States and also in
16 China, for instance, so that you could just switch the
17 supply? You have prequalification done, and you can
18 just switch the supply, and you're neutral between
19 buying from one company versus another?

20 MR. RUSNACK: That's how we start out. When
21 we build a new operation someplace, we transfer
22 completely all of the specifications and all of the
23 materials, and it becomes prohibitive after a time to
24 continue to move all of the materials, so we encourage
25 substitution of local materials, and that may also

1 mean that it changes the compositions because, as I
2 mentioned earlier, of at least 59 CRs that we use,
3 they are not all on one interchangeable. It doesn't
4 mean you can't use them. It does mean that you have
5 to substitute other materials to compensate for the
6 differences.

7 So, therefore, a CR that we use in one
8 country, if we try to use it in the other country, our
9 first preference is to see if it's directly
10 substitutable, if it's an easy drop-in, and, lacking
11 that, it becomes then a development project which
12 becomes even more expensive than simply testing and
13 verifying. So, yes, it can be done, but that adds to
14 the degree of difficulty.

15 COMMISSIONER PEARSON: So once you're set up
16 to manufacture a certain belt in a certain facility,
17 the tendency is to stay with those suppliers that are
18 providing the materials, and you run the line because
19 you have total confidence in the product that's coming
20 out the end.

21 MR. RUSNACK: That's true, and there is
22 another factor also. For some of the major customers
23 that we have, both in the automotive and on the
24 industrial side, on both sides of the aisle, OE,
25 original equipment for automotive and industrial, have

1 the same way of approaching things. Once you get a
2 product approved for them, they don't want you to make
3 any changes at all; they want it to be the same for
4 the life of the product they make and the life of the
5 product that we provide to them. So it becomes very
6 difficult to make substitutions, and it is usually
7 only driven by our customer themselves if the supply
8 of that product runs into trouble.

9 COMMISSIONER PEARSON: It was mentioned this
10 morning that at least one Japanese firm is able to
11 offer the same basic categories of CPR that DDE is
12 providing. Does your experience conform to that?
13 Would your experience bear that out? Can you purchase
14 from Japan any type of -- probably not any one of your
15 59 types, but what percentage of the 59 types can you
16 get from Japan? Let me put it that way.

17 MR. RUSNACK: We're using some of their
18 materials in Europe, and we've also run some tests on
19 their materials and found that although they are used
20 extensively in our Japanese affiliate in Unita, they
21 don't seem to translate well, some of them, just some
22 of them, don't translate well into a different product
23 type, and we found that out last year.

24 So it's okay for use in Unita, our
25 affiliate, and they are making timing belts, but then

1 to move that material into V-belts, sometimes it
2 works, and sometimes it doesn't work. And yet the DDE
3 material, in that same application, works. So there
4 may be some processing differences that we're not
5 aware of. Maybe there were some changes made that
6 we're not aware of. We don't know the answer, but
7 it's very definitely there in the testing.

8 When you get to the final test, and you get
9 through the heat, the cold, the oil, all of the
10 resistance tests, and everything looks the same, when
11 you get to the horsepower test, and you start putting
12 a load on the belt, and you find out that this one
13 runs on an accelerated test for 300 hours, and this
14 one only runs 50 hours, and you can repeat that test
15 and do it in a lot of different ways, you become very
16 sure that it has to do with the CR and not with the
17 other ingredients because the CR is the only variable;
18 it's the only thing we changed.

19 COMMISSIONER PEARSON: So as you're
20 developing a new product at one of your plants
21 overseas, you're going to be looking at various
22 suppliers, I suppose, offering you inputs to that. If
23 you have a competitive and reliable supplier that's
24 not from the United States for polychloroprene rubber,
25 you'll look seriously at their product, I would

1 imagine.

2 MR. RUSNACK: We will if it's available.
3 There are constraints. With our European suppliers,
4 there are limits to the amount of supply we can get at
5 any given time, and that's part of the negotiation
6 that we've gone through, and apparently they are
7 fairly well served, and there is a limit to how much
8 they make available to us at any given time.

9 COMMISSIONER PEARSON: So price will play
10 some role in a decision that Gates would make in terms
11 of which company to buy a product from. How large of
12 a role is price playing?

13 MR. RUSNACK: Well, as I mentioned in my
14 testimony, it's down on the list because, first, we
15 have to have a product that's consistent, that's
16 reliable, that's available. We have to be able to get
17 it in the quantities that we need, and those are all
18 of the considerations that come first, and a lot of
19 testing, and the purchasing department only steps in
20 after the engineers are done. When the engineer says
21 it's okay to buy and puts it on the approved list,
22 then the purchasers can buy it. Up until that time,
23 if it's not on the list, they can't buy it.

24 COMMISSIONER PEARSON: In your experience in
25 Brazil, did you see the Japanese offering particularly

1 aggressive pricing relative to other suppliers?

2 MR. RUSNACK: Well, Mr. Commissioner, at the
3 time I was in Brazil, it was a long time ago, and they
4 had the borders completely closed.

5 COMMISSIONER PEARSON: Ah, so you were
6 working with some domestic source of supply?

7 MR. RUSNACK: There was no domestic source.
8 It was DuPont at that time, and they were bringing
9 material in bond into the a warehouse, and we were
10 buying from there, but there were heavy duties on it.

11 COMMISSIONER PEARSON: Okay. Well, my light
12 is changing, so, Mr. Chairman, I'll pass.

13 CHAIRMAN KOPLAN: Thank you, Commissioner.

14 I want to thank you very much for your
15 direct presentation and your answers thus far. Why
16 don't I begin with this?

17 Mr. Rusnack, I understand that you want to
18 be able to diversify your suppliers, and that's why
19 you want the order revoked, and that was covered as
20 well in your prehearing brief and counsel's statement
21 and your testimony, but I'm interested in whether you
22 could provide me with any instance when DDE was unable
23 in any way to satisfactorily meet your needs, and you
24 did that this afternoon with the illustration that you
25 gave me at the bottom of page 9 and page 10 of your

1 brief with that example that you gave.

2 Let me say this to you. I would like to
3 follow up on that with you. Although you don't
4 receive APO, you can submit information, confidential
5 business information, to us, and that will be
6 protected. I see that counsel is nodding, and he
7 understands that. And so what I would like you to do
8 for me in the post-hearing is describe in detail, for
9 example, when you say DDE decided at the last minute
10 to bow out, is it because they did not have the
11 capacity? Did they choose not to supply? What were
12 the reasons that they gave you? How late in the
13 process did you become aware that DDE would not
14 supply? If you could give me time reference the size
15 of the order.

16 In other words, one of the things I look at
17 in these cases is the economics of it all, and so the
18 financial details of the transaction, you know, what
19 it cost you not to be able to get that and all, would
20 be helpful, if you could spell it out, understanding
21 that when you say "several years," it sounds to me
22 like it falls within the time frame that we're looking
23 at right now, this five-year period. So would you do
24 that for me?

25 MR. RUSNACK: I certainly will.

1 CHAIRMAN KOPLAN: I appreciate that very
2 much.

3 MR. RUSNACK: Thanks for the opportunity.
4 I'll do that.

5 CHAIRMAN KOPLAN: Okay. I appreciate that.

6 Now, in your prehearing brief, at page 6,
7 you state, and I'll stay with you, sir: "Gates
8 contends that the sole domestic producer, DDE, and its
9 designated successor, DuPont, are not vulnerable to
10 import competition from Japan," and you've gotten into
11 this this afternoon as well. If DDE has considerable
12 market power in the U.S., as well as other markets, by
13 virtue of its financial strength, because of its
14 technological innovations and proprietary
15 technologies, and because of the depth of its customer
16 relationships, including its relationship with Gates,
17 -- that's the quote from the brief -- with regard to
18 your claim that DDE has considerable market power in
19 other markets, as well as in the U.S., could you
20 please comment on the following excerpts from pages 24
21 and 25 of their brief?

22 And I quote: "Japanese producers also
23 appear to be offering PCR in third-country markets at
24 prices below their costs of production." Then they go
25 on and say: "More specifically, DDE maintained around

1 a 50-percent share of the Brazilian PCR adhesives
2 segment during the," and I guess that's Product 4,
3 maybe 3, "during the '99-to-2000 period, but this
4 decreased to 32 percent in 2003 and further down to 21
5 percent in the first quarter of 2004. This decline
6 was due primarily to Japanese PCR being sold at the
7 lowest price level in Brazil."

8 Could you comment on those quotes that I've
9 just cited from their brief?

10 MR. RUSNACK: Well, I'm not really familiar
11 with that part of the market, --

12 CHAIRMAN KOPLAN: Okay.

13 MR. RUSNACK: -- and I'm afraid I can't add
14 much to that.

15 CHAIRMAN KOPLAN: Okay. Is that true with
16 regard to the Japanese in any of the markets that you
17 are familiar with?

18 MR. RUSNACK: I can say that in the European
19 market, Gates does business with Japanese producers,
20 and they are just another supplier. It's not that
21 they are dominant, in our view, but they sell a
22 product to us, but we buy from other suppliers as
23 well. In Europe, we buy from DDE. We buy the
24 material that's exported from this country to Europe.
25 We buy from Bayer, who is now Lanxess, and Polimeri as

1 well as the Japanese producers.

2 CHAIRMAN KOPLAN: Thank you for that.

3 This question is for you or for Mr. Hurwitz
4 or both. As an industrial user, do you purchase both
5 Product 1, described as a sulfur-modified type with
6 Mooney viscosity 36 to 55 in solid chips, and Product
7 2, with low-temperature resistance, high
8 crystallization resistance, Mooney viscosity, 43 to
9 53, from DDE? Those descriptions appear in Chapter 5
10 of the public version of the staff report. If so, did
11 you buy from DDE on a spot or contract basis, and if
12 you know, were those products produced at Louisville
13 or LaPlace or at both plants?

14 MR. RUSNACK: I think, in order to give you
15 a comprehensive answer, we'll have to do that at a
16 later time in a post-hearing brief. There are some
17 elements of that we could probably talk about, but I
18 think it's better if we put it all together in one
19 form.

20 CHAIRMAN KOPLAN: If you're going to do
21 that, then let me include this in my request, if I
22 could. Do you claim that the prices you paid for DDE
23 for those products fell victim to the price-fixing
24 conspiracy in existence during the sunset review? If
25 so, can you quantify for me, in your post-hearing, any

1 injury you claim you sustained and whether you have
2 joined, or plan to join, in any civil litigation
3 regarding this.

4 MR. RUSNACK: We will answer that in detail.

5 CHAIRMAN KOPLAN: In detail.

6 MR. RUSNACK: Yes, sir.

7 CHAIRMAN KOPLAN: I look forward to that.

8 Thank you.

9 On November 1, 2002, the SDEM/DDE Japan
10 joint venture dissolved, and we've heard a lot about
11 that today. However, according to DDE, as a result,
12 Showa Denko KKK, otherwise known as "SDK," has
13 apparently decided to establish its own U.S.
14 subsidiary, Showa Denko America, SDA, to develop
15 business here.

16 With regard to your desire to diversify
17 suppliers, will that not be more attractive to you
18 than the result you think you would obtain if we
19 revoke the order?

20 MR. RUSNACK: The result, sir? What result?
21 I'm sorry. I missed something.

22 CHAIRMAN KOPLAN: The ability to diversify
23 with this new --

24 MR. RUSNACK: -- with a new supplier?

25 CHAIRMAN KOPLAN: Yes, exactly. Showa Denko

1 America, SDA.

2 MR. RUSNACK: Yes. In fact, if we had the
3 opportunity to try to buy from any of the three
4 suppliers, we would consider that to be an expansion
5 of our supply base potentially if they would sell to
6 us.

7 CHAIRMAN KOPLAN: Do you have a sense of
8 when they would be up to speed here so that you could
9 advantage yourself of that?

10 MR. RUSNACK: I'm concerned that it might
11 take a while because the reports that we're getting
12 from our people on the ground in different countries
13 is that the Japanese companies seem to be pretty well
14 satisfying demand, and with the --

15 CHAIRMAN KOPLAN: I didn't catch the last
16 part.

17 MR. RUSNACK: They are pretty well
18 satisfying demand in the areas that they have been
19 selling in in the past 30 years, especially in Asia
20 where the economies are moving up, and our projections
21 are that, yes, the capacity, if DDE does not take
22 capacity out, the capacity overall, worldwide, should
23 stay about the same through 2013. But we're also
24 showing that our projection is that the usage, the
25 demand of CR, will be fairly flat during that same

1 period, understanding that it's decreasing in this
2 country, but it's growing in Asia. That's our
3 understanding.

4 CHAIRMAN KOPLAN: Thank you.

5 Mr. Schuchat, did you want to say something?

6 MR. SCHUCHAT: If I could say something.

7 CHAIRMAN KOPLAN: Certainly.

8 (Discussion off the record.)

9 MR. RUSNACK: If the question that you had
10 asked before also includes wanting to know what we
11 would do with Showa Denko since they apparently have
12 an office here, -- I wasn't aware of that -- if we had
13 the opportunity, and the order was sunsetted, we
14 certainly would be interested in talking to them if
15 they would talk to us, and if we could get a supply
16 from them, we would talk to them, but I think it would
17 be a modest supply that they would offer, and we
18 certainly would not want to go very heavy, as we had
19 mentioned earlier and as I talked about in my
20 testimony. But we would like to have the opportunity
21 to have as many suppliers available as possible
22 because there really aren't that many in the world.

23 CHAIRMAN KOPLAN: Thank you very much for
24 that. I see my red light is about to come on. I'll
25 turn to Vice Chairman Okun.

1 VICE CHAIRMAN OKUN: Thank you, Mr.
2 Chairman, and let me join in welcoming you to the
3 Commission. We very much appreciate your
4 participation. Purchasers often bring an important
5 perspective on conditions of competition in the U.S.
6 market, and from the testimony you've given, I think
7 you also bring a global perspective that I think is
8 very helpful in this sunset review. So, again, I very
9 much appreciate you taking the time to travel to be
10 with us today and answer our questions.

11 Let me, Mr. Rusnack, if I could just start
12 with you, you had just mentioned, at the end of your
13 response to the chairman, some projections with regard
14 to capacity and usage. Is that data that you can make
15 available to the Commission?

16 MR. RUSNACK: It's in the questionnaire that
17 we filled out.

18 VICE CHAIRMAN OKUN: It's in the
19 questionnaire. Okay. Is that based on the public
20 data? Are you pulling it from some of these public,
21 like the world usage charts?

22 MR. RUSNACK: This is combined from some
23 public information and some other information that our
24 people on the ground have gathered, and it's really
25 our impression of what's liable to happen and how we

1 see things going forward. That's what we make our
2 plan is based upon. That's how we plan our strategy.

3 VICE CHAIRMAN OKUN: Okay. That's helpful.
4 I don't think I've actually seen that part of the
5 questionnaire, but I will make sure that I look at
6 that because I know we also asked for some public
7 data, so that's helpful.

8 The other thing that was curious, you talked
9 about what you do in other markets and who you
10 purchase from, and you mentioned the Japanese
11 producers in Europe, I believe it was. And one of the
12 questions we covered this morning with the domestic
13 producers -- there is Denki, which has a zero-percent
14 margin. Is there a reason you wouldn't purchase from
15 them in the United States? Have you tried to purchase
16 from them, or do they not sell the right products for
17 you? If you could comment on that in a public
18 session.

19 MR. RUSNACK: Well, we do purchase from them
20 in Europe, but it's my understanding, from our
21 director of purchasing in Europe, that they are
22 interested in staying in Europe, and they were not
23 interested, at that time, at the time we talked to
24 them -- it's been several months -- that they weren't
25 interested, at that time, in coming here.

1 VICE CHAIRMAN OKUN: The Japanese were not
2 interested in --

3 MR. RUSNACK: That's what he told me.

4 VICE CHAIRMAN OKUN: Okay, okay.
5 Interesting.

6 MR. RUSNACK: That particular company.

7 VICE CHAIRMAN OKUN: Right, right. You
8 talked about SDK, that you weren't aware of their
9 office, but what their situation might be.

10 MR. RUSNACK: Yes.

11 VICE CHAIRMAN OKUN: Okay. When you
12 referenced earlier the 59 grades and the seven
13 suppliers, -- you went through that in your testimony
14 and why you really don't have that many suppliers that
15 can do that many of the products, if I understood the
16 testimony -- did you submit that information as well,
17 what those products are and who those suppliers are?
18 Have you already supplied that?

19 MR. RUSNACK: No. We haven't yet.

20 VICE CHAIRMAN OKUN: If you could supply
21 that, and to the extent that, and perhaps counsel can
22 help us understand those grades, how they would fit
23 into the way, as I understand it, we put in the staff
24 report and from the domestic producers, the different
25 grades, the W, the A, and I understand you're in the

1 automotive section of it. But just so I understand
2 what product mix it is and if it's just niche products
3 within that, to help me better understand the market
4 conditions that you're talking about there. I think
5 that would be very helpful.

6 MR. RUSNACK: We'll certainly do that.

7 VICE CHAIRMAN OKUN: Just a follow-up on a
8 question from Commissioner Pearson, again, about your
9 experience in purchasing in other markets where you're
10 active, and you mentioned a number of those markets,
11 and you had talked about the different -- I think when
12 you were talking about Europe, you talked about DDE
13 and buying from Polimeri and the Japanese. Are you
14 buying the same product mix from each of those
15 companies in Europe? In other words, the companies,
16 are they competing for the same product to sell to
17 you?

18 MR. RUSNACK: There are some similarities in
19 the grades. In fact, as the DDE folks mentioned,
20 DuPont invented neoprene, polychloroprene rubber, and
21 others have emulated it. Usually what will happen is
22 the engineers, if they are looking at an alternative
23 source, will look at a grade slate that is said to be
24 the same as the one that they were using in the
25 application that they are interested in. So it's

1 usual that that's what would happen.

2 VICE CHAIRMAN OKUN: One of the questions
3 that we discussed this morning, and I understand you
4 have access to the APO information, but in looking at
5 prices in the other markets to try to help understand
6 whether the U.S. is an attractive market for the
7 Japanese or not, was this question of whether there is
8 a product differential and the products having quite a
9 spread between the lower value and the products you're
10 in, --

11 MR. RUSNACK: Yes.

12 VICE CHAIRMAN OKUN: -- whether there is any
13 information you could submit, post-hearing, business
14 information, that would help us understand pricing
15 with regard to similar products for you from the
16 different companies.

17 MR. RUSNACK: During this time period that
18 we've been talking about?

19 VICE CHAIRMAN OKUN: Yes.

20 MR. RUSNACK: Certainly can.

21 VICE CHAIRMAN OKUN: That would be helpful
22 to understanding that.

23 And then, just help me again in terms of how
24 you see demand in the United States market in the next
25 year or two when you're making your projections for

1 your company.

2 MR. RUSNACK: Well, I think our demand will
3 probably decrease a bit because we are making
4 substitutions to other kinds of polymers because of
5 the performance we get from those polymers. Our
6 scientists and engineers are always looking for newer,
7 better, bigger, so that we can satisfy our customers
8 and keep up with the demands of our very demanding
9 customers.

10 VICE CHAIRMAN OKUN: I think that I know the
11 domestic producers commented on some of those, but
12 could you be specific on the substitution that you see
13 primarily? Is there one in particular?

14 MR. RUSNACK: Well, one of the items that
15 was mentioned was EPDM polymer, and that's being used
16 in our automotive business for original equipment for
17 the belts that drive the accessories under the hood of
18 the car, and that's going forward, and that will
19 continue.

20 We've also introduced EPDM in a couple of
21 other product lines like snow V-belts for snowmobiles.
22 That used to be all CR, and it's low volume. It's not
23 a lot of volume, but that's the direction we're going
24 in.

25 So, directionally, there are some

1 substitutions that will be made. In some cases, we've
2 substituted some SBR in cases where high temperature
3 is not as big an issue. It's a lower-cost polymer but
4 very -- on price. Right now, the big problem is
5 getting supply, and that's a problem with a lot of our
6 materials. Supply is very constrained. So we do what
7 we can with what we have and what we can get.

8 VICE CHAIRMAN OKUN: And then if we could
9 talk a moment about prices in the U.S. market now, and
10 one of the issues that was being explored this morning
11 was just in terms of how prices are set and what role
12 contracts play. As I heard you describe it, you're a
13 large buyer, a large customer. We had some discussion
14 about who has market power in setting the prices, and
15 if I look at this record, there's obviously been a lot
16 of raw material increases. Could you talk about
17 pricing over the period that we're looking at here in
18 your experience as a big buyer?

19 MR. RUSNACK: Yes, I can. What I would like
20 to do is put that we're big in perspective. We're big
21 in the belt and hose business, but if you look at tire
22 companies who are in the rubber business, we're very
23 small. The chemical companies that make polymers and
24 the fabric companies, the yarn and fiber companies,
25 that make the substrates that we need for our

1 products, they really cater to the tire companies. So
2 we end up as a relatively small company between
3 giants.

4 We have giant suppliers, and then, on the
5 other hand, we have the giant automobile makers and
6 the giant equipment makers, so we're usually caught in
7 the middle on this. And for our materials, we have to
8 go with the materials that are available because the
9 tire companies wanted them.

10 This is not crying "poor me," but this is
11 just a fact because we have to have enough volume to
12 get people to invent things for us, and in many cases
13 we just don't.

14 And then what we find out is that when
15 prices go up as they are -- For example, EPDM is very
16 much in demand now. It's used a lot in roofing
17 materials, so the construction boom has taken up a lot
18 of EPDM, and the capacity is being exhausted, and
19 nobody is building a new plant for EPDM right now. My
20 understanding is that it takes two to three years to
21 build a plant, so that means we're going to be in
22 short supply for two to three years, and as a result
23 of that short supply, the prices are being pushed up.

24 VICE CHAIRMAN OKUN: What about for CR?

25 MR. RUSNACK: In CR, we've gotten price

1 increases as well.

2 VICE CHAIRMAN OKUN: And would you describe
3 that? You were talking about what you think is
4 driving the other one, short supply. Here, I heard
5 the domestic producers talk about overcapacity. How
6 would you describe the situation for CR in terms of
7 what --

8 MR. RUSNACK: I think it's probably strength
9 in the marketplace that's allowing that to happen
10 because we don't have the power in the marketplace to
11 resist, and the suppliers do.

12 VICE CHAIRMAN OKUN: And in terms of raw
13 material versus capacity constraints versus demand,
14 what was the key driver out of those?

15 MR. RUSNACK: Well, what's happening to us
16 is that once we get our specifications in place that
17 says this will be a product made in CR, we've
18 mentioned that it takes a long time to convert to
19 something else or to a different CR, and so we're on
20 the hook for this time period, and there is nothing we
21 can do except work hard to try to find an alternative
22 as soon as we can. That's really the position we are
23 put in.

24 VICE CHAIRMAN OKUN: I appreciate all of
25 those responses. My red light has come on. Thank

1 you, Mr. Rusnack.

2 MR. RUSNACK: Thank you.

3 CHAIRMAN KOPLAN: Commissioner Miller?

4 COMMISSIONER MILLER: Thank you, Mr.

5 Chairman, and let me join in expressing my
6 appreciation to you for being here today, Mr. Rusnack,
7 and you, Mr. Schuchat, and Mr. Hurwitz as well. We do
8 appreciate very much your perspective.

9 I want to follow up on some of the questions
10 and answers I just heard from you in response to Vice
11 Chairman Okun, probably because I was trying to just
12 understand the nature of the purchasers of PCR. They
13 have been described as many high-volume purchasers,
14 and you've described yourself as a fairly large
15 purchaser.

16 But then when you were talking just a minute
17 ago about being stuck in between big suppliers and big
18 customers, and you said something about you have to,
19 more or less, use what the tire manufacturers are
20 asking for, I got a little confused. This product
21 that we're talking about isn't used in tire
22 manufacturing, I don't believe, is it?

23 MR. RUSNACK: What I was referring to, and I
24 wasn't very clear, is that for us to buy a new fiber
25 or a new fabric because we use fibers and fabrics in

1 our belts as substrate and strengthening materials, --

2 COMMISSIONER MILLER: Right.

3 MR. RUSNACK: -- we have to see what's on
4 the market, and what's on the market for industrial
5 use is usually there because of some big customer who
6 wants it there.

7 COMMISSIONER MILLER: Right.

8 MR. RUSNACK: So some of the reinforcement
9 we use is even tire cord, and we use that for
10 reinforcement because it's available on the market,
11 and if it weren't, we wouldn't be able to get it made
12 for us because our volumes, although they look big to
13 us, are not very big to the people who are making
14 fibers and yarns because they make it in such huge
15 quantities.

16 Just as with the polymer manufacturers, our
17 usage may seem like it's very big to us, but some of
18 these manufacturers who are producing polymers for
19 EPDM, for example, one operation that I was in, they
20 make a half a million pounds a day, seven days a week,
21 every day of the year, except when they shut down to
22 clean up and make another grade slate.

23 So if we're ordering several million pounds,
24 that's not even a week's production for these people.
25 So it may seem like a lot to us, and it may seem like

1 a lot to our customers, but to these producers, they
2 have such huge capacities that it really goes through
3 very fast.

4 COMMISSIONER MILLER: Okay. So maybe you're
5 big in the PCR world but not in the general polymer
6 world or the tire cord world.

7 MR. RUSNACK: We're big in the end products.
8 The end products that we make, belts and hoses; we're
9 big in those.

10 COMMISSIONER MILLER: I got you.

11 MR. RUSNACK: But those other things are
12 supplies to us that we put into these products, and
13 these belts and hoses are the products that we
14 actually make and sell.

15 COMMISSIONER MILLER: Okay. On EPDM, if you
16 could help me a little bit in understanding that
17 switch. You described where you're doing it, but it
18 still isn't clear to me exactly why this is happening.
19 I asked the question of the DDE panel this morning,
20 and I heard their answer. You, as a manufacturer of
21 the belt, tell me, in your view, why is that
22 substitution going on.

23 MR. RUSNACK: Substituting from CR to other
24 polymers?

25 COMMISSIONER MILLER: Yes, yes.

1 MR. RUSNACK: Well, in the case of EPDM,
2 EPDM has much better high-temperature characteristics
3 than CR. For example, if we go back to the late
4 nineties, the car companies were looking for belts
5 that would last 100,000 miles or even the life of the
6 car, and up until that time, the CR belts would last
7 maybe fifty, 60,000 miles, and at that point, the heat
8 under the hood of the car, because it's very hot
9 around the engine, starts to show aging on the belts
10 because the CR was not quite as resistant. It has
11 nice resistance, but it doesn't have great resistance
12 to heat.

13 So when we introduced, and Gates was the
14 inventor of the EPDM belts because we were the first
15 ones who were able to make that kind of a composite
16 work in a belt -- although EPDM has been around for a
17 long time, we managed to make a belt out of it first.
18 That doesn't heat age the same way. It takes a long,
19 long time before it shows any cracking, and there is a
20 belt that you can run for 100,000 miles, and we've run
21 some in trucks in special configurations over 200,000
22 miles. So that's one of the reasons.

23 On the other end, EPDM also has better low-
24 temperature characteristics, down to minus 40 degrees,
25 which is important in some parts of the country, in

1 particular, and it's a bit better than CR.

2 So it's performance characteristics that
3 drive most of the changes that we make.

4 COMMISSIONER MILLER: Okay. So is it going
5 to totally substitute for the CR belts eventually?

6 MR. RUSNACK: In the case of original
7 equipment for automotive, for these accessory drive
8 belts, it has already. Since the late nineties, it
9 gradually has taken that over. There are still a lot
10 of CR belts in the aftermarket -- "in the
11 aftermarket," by that, I mean replacement belts. If
12 your belt needs replacing in your car, and you have
13 one replaced, it probably would be with CR because
14 it's a good product, and we sell a lot of those.

15 COMMISSIONER MILLER: Is the CR belt, then,
16 cheaper than the OEM belt that's made of EPDM?

17 MR. RUSNACK: Not necessarily. It depends
18 upon all of the ingredients that go together with it,
19 but it's a better-performing belt in terms of what the
20 car companies are looking for.

21 COMMISSIONER MILLER: We've had our
22 experience with other aftermarket cases here in the
23 automotive industry, so I'm always learning something
24 about my car, whether it's the brakes or the
25 windshield. Today it's the drive belt.

1 All right. That is interesting. Let me see
2 if I go to some other areas I wanted to explore.

3 I know you were asked this question, in
4 part, earlier, and I just wanted to go back and kind
5 of phrase it again. I'm trying to understand if there
6 are differences among the different global suppliers
7 of CR that would make you choose one over the other.
8 You've described your company as buying from multiple
9 suppliers in the European market, and I'm just trying
10 to understand if there are differences between the
11 suppliers that prompt you to look to one versus the
12 other, depending on the physical characteristics of
13 what you're looking for.

14 MR. RUSNACK: Well, on the surface, in
15 looking at the grade slates where they are called
16 comparable by the suppliers, it looks as though we
17 have an easy time of it making substitutions. In
18 reality, as I mentioned earlier, it doesn't always
19 work out that way, and we have to have a good reason
20 to make the change.

21 It costs quite a bit of time and money to
22 make a substitution, and we find that one of the
23 things that makes it worthwhile is to make sure we
24 have a supply base that's varied, and we have our eggs
25 distributed in many different baskets, as many as we

1 can.

2 One that prohibits this kind of thinking is
3 that we want to spend our money mostly on making new
4 products, and the same people and equipment that we
5 use to figure out how to make substitutions and how to
6 test the products are the same people in the same test
7 units, the same technicians, who would work on new
8 products.

9 So it's always a question of how do we spent
10 our money, and we would rather make new products if
11 given a choice, but at the same time, to protect
12 ourselves and to diminish the risk of supply breakage
13 or disruption, we have to do a certain amount of this
14 cross-testing and make sure that we have suppliers
15 that can take care of different segments of our
16 business, and that's a choice we have to make all of
17 the time.

18 COMMISSIONER MILLER: Okay. I hear you, and
19 I sort of understand there is this bit of a conflict
20 here between what I hear about your need to diversify
21 supply in terms of protecting your supplier base, but,
22 on the other hand, not being able to make these
23 changes easily. So I hear both of those elements
24 running through your testimony. They conflict a bit,
25 but I think I understand your point.

1 What I'm trying to get at more is whether
2 different global suppliers offer you different reasons
3 to go to one versus the other when you choose to find
4 that second supply, if there is a reason, on one
5 product, that you look to Bayer as your second source
6 or a Japanese supplier as your second source, Polimeri
7 as your second source. That's not really the issue.

8 MR. RUSNACK: I don't think that's something
9 that drives us. What does appeal to us, for example,
10 is if the manufacturer of CR has some special grades
11 that work well for us. Over the years, DDE has been
12 our big supplier for a long, long time, before I was
13 with the company, and they were DuPont at that time,
14 and there were some specialty grades that we've used
15 over the years that have been just right for us for
16 certain types of applications or certain parts of our
17 operation that may be a little bit in every bit of the
18 materials that we made. And it's those specialty
19 items that sometimes make a big difference to us, I
20 think, more than just comparing grade slates and say
21 this one is equivalent to that. Yes, it's close
22 enough that we can work with it. If we're building a
23 new product, we can build around that difference a lot
24 easier than trying to make a straight substitution.
25 Take this out, put this in, doesn't work as well

1 sometimes as starting from zero and saying, "Okay. We
2 know what we have, and we'll build around that. We'll
3 make the product work for us." I don't know if that
4 helps.

5 COMMISSIONER MILLER: All of your answers
6 our helpful. The red light is on, so if I have any
7 further questions, I'll raise them in the next round.
8 Thank you.

9 MR. RUSNACK: Thank you.

10 CHAIRMAN KOPLAN: Commissioner Hillman?

11 COMMISSIONER HILLMAN: Thank you, and I,
12 too, will join my colleagues in expressing our great
13 appreciation for your taking the time and the effort
14 to be with us, to file your prehearing briefs, to give
15 us the data that you have, and to be here to answer
16 questions. It's much, much appreciated.

17 If, I guess, I could go to the issue of
18 trying to understand a little bit more and follow up
19 on some of these pricing questions. Obviously, if
20 you're operating plants in Mexico and Brazil and EU
21 and Asia, you're purchasing product in all of those.
22 For this CR product, how would you describe prices in
23 the U.S. vis-a-vis prices in the rest of these
24 markets? In other words, you're purchasing for your
25 U.S. production as well as all of these other markets.

1 What are U.S. prices like in comparison?

2 MR. RUSNACK: Our experience over the past
3 few years has been that -- let's go back four or five
4 years, in that time period -- that prices in the U.S.
5 in general were competitive with each other, and
6 prices in Europe in general were competitive with each
7 other, but the price level in the U.S. was much
8 higher.

9 COMMISSIONER HILLMAN: The U.S. price is
10 much higher than the European price.

11 MR. RUSNACK: That was our experience, yes.

12 COMMISSIONER HILLMAN: And how about vis-a-
13 vis Latin America or Asia?

14 MR. RUSNACK: For South America, I think
15 what I can do is get that information for you. I
16 would rather not misspeak, and we can put that
17 information together, if that's okay.

18 COMMISSIONER HILLMAN: I think it would be
19 helpful. You obviously heard the testimony this
20 morning focusing, to some extent, on Brazil, --

21 MR. RUSNACK: Yes.

22 COMMISSIONER HILLMAN: -- suggesting that
23 the Japanese are selling into the Brazilian market at
24 much lower prices than either DDE or the Europeans
25 are. Are you aware of what prices are in Brazil among

1 the various players selling there? Would you have any
2 comment on what you think --

3 MR. RUSNACK: We'll put information together
4 on that. I can't answer it right off the cuff,
5 unfortunately.

6 COMMISSIONER HILLMAN: To the extent that
7 you mentioned that you are doing this purchasing in
8 each of these different markets, are you typically
9 buying the same grade from different suppliers in each
10 of these markets such that you can compare whether the
11 price from one supplier is higher or lower than
12 another for the same product?

13 MR. RUSNACK: Typically, the workhorse
14 grades, the ones we use the most, are similar. There
15 might be two or three or four of the grades that are
16 used the most, and then there are a lot of peripheral
17 ones. There are a bunch of other ones, as I mentioned
18 earlier, that we use for specific purposes. But, yes,
19 to some extent, we can compare grades that way and
20 say, well, this is supposed to be the equivalent of
21 that, and the price here is this much, and the price
22 there is that much. Yes, we can do that.

23 COMMISSIONER HILLMAN: If you can, or at
24 least comment on -- again, the testimony from this
25 morning was very clear that the Japanese are

1 significantly below the prices of either the U.S.
2 production or the Europeans, and I'm just wondering
3 whether, as a purchaser, you think that's true or not.

4 MR. RUSNACK: We'll give you some details on
5 that.

6 COMMISSIONER HILLMAN: I think that would be
7 very, very helpful.

8 Then I wondered if you could comment a
9 little bit following up on Commissioner Miller's
10 question, which is to try to understand -- again, you
11 heard some of the testimony this morning, the
12 Petitioners describing that Denki is, if you will, in
13 a certain market, and others are better able to do
14 specialty products, and others are more in the low-
15 value-commodity-type product more often. How would
16 you describe the major players in terms of their
17 product range?

18 MR. RUSNACK: You're thinking of the
19 Japanese suppliers?

20 COMMISSIONER HILLMAN: Let's start with the
21 Japanese.

22 MR. RUSNACK: Well, Denki is us with some
23 product for particular type belts in Europe but not
24 for other types of belts in Europe. So without
25 actually conferring with my colleagues directly to

1 find out why is that, I would just assume that they
2 found that it works better in some places than in
3 others.

4 And for Showa Denko, they have been
5 supplying to our Japanese affiliate, Unita, for over
6 30 years, when it was a joint venture with DuPont, and
7 they have been very happy with them as a supplier.
8 And my understanding is that we're also buying from
9 them in Europe some small quantity, and I'm not sure
10 about Tosoh.

11 COMMISSIONER HILLMAN: Okay. I was just
12 going to say, how about Tosoh?

13 Now, on the European side, which means --
14 what I'm hearing from your testimony is that both
15 Denki and Showa Denko can supply what I will call the
16 high-end, specialty grades of product, so they both
17 are capable of doing that.

18 MR. RUSNACK: Absolutely. We would not be
19 buying the low-grade materials because it doesn't work
20 for our products.

21 COMMISSIONER HILLMAN: Okay. And,
22 similarly, you would describe Polimeri and Bayer as
23 being able to provide also a broad range of grades and
24 all of the specialty higher-end products.

25 MR. RUSNACK: Exactly. Yes, indeed.

1 COMMISSIONER HILLMAN: Would you describe
2 any of the producers as more predominantly in the
3 lower-value commodity, more like product?

4 MR. RUSNACK: You know, we really don't work
5 in that area, so it would be a little hard for me to
6 comment.

7 COMMISSIONER HILLMAN: Okay. I appreciate
8 that. That was, to some extent, in terms of
9 understanding your testimony.

10 MR. RUSNACK: Yes.

11 COMMISSIONER HILLMAN: Obviously, a lot of
12 what was said this morning focused not just on this
13 issue of what's going on in the belts and hoses part
14 but in the adhesives and the latex and the wire and
15 cable.

16 MR. RUSNACK: Sure.

17 COMMISSIONER HILLMAN: Do you have a sense
18 on that? You've described your sense of what's going
19 to happen to consumption for this product, this issue
20 of the shifting over to the other products, and
21 basically, as I heard it, describing a pretty flat
22 amount of demand for CR. I want to make sure I
23 understood that. Is that for use in belts and hoses,
24 or do you generally think across the entire spectrum
25 of what CR goes into that we're going to see flat

1 demand?

2 MR. RUSNACK: Of course, we're pretty tunnel
3 visioned with our product line, and in our product
4 line we think that's the direction it's going in, that
5 there will be some point at which it's going to level
6 off, and I think we have a fairly good idea of where
7 that point is, and it's going to take some time to
8 even get to that point, but we'll be ramping down a
9 little bit and maybe a little faster than that with
10 some of the products that we're trying to introduce.
11 It takes time to do that.

12 I think what we'll find is there is going to
13 be an area where CR is indispensable and that we'll
14 have that around for a long time, and for that, it
15 would be good for us if we had a domestic producer,
16 and it would be a little alarming if the world's
17 biggest producer decided to stop making the high-end
18 material. It would be alarming for us to find out how
19 we would supply ourselves.

20 COMMISSIONER HILLMAN: Okay. Then if we go
21 -- Vice Chairman Okun started asking this issue about
22 prices and how they get set here in the U.S. market.
23 For your purchases here, you're purchasing directly.
24 You're not going through a distributor. Correct?

25 MR. RUSNACK: That's correct.

1 COMMISSIONER HILLMAN: On a long-term
2 contract?

3 MR. RUSNACK: We try to make long-term
4 contracts.

5 COMMISSIONER HILLMAN: Do the contracts
6 typically have any price escalator/de-escalator
7 clauses linked to raw material prices?

8 MR. RUSNACK: You know, I haven't looked at
9 a contract myself for quite some time. They used to
10 have, and what our latest looks like, I'm not sure
11 because that negotiation is done in Europe by our
12 director of purchasing there for the company.

13 COMMISSIONER HILLMAN: For both your
14 operations here as well as in Europe.

15 MR. RUSNACK: That's correct. We can find
16 that out.

17 COMMISSIONER HILLMAN: Okay. I think it
18 would be helpful just to understand how that works.

19 MR. RUSNACK: We'll get that information for
20 you.

21 COMMISSIONER HILLMAN: And in terms of price
22 increases, we've heard, again, the testimony this
23 morning that there have been a lot of attempts to push
24 through price increases to reflect the increase in
25 material costs, not entirely successfully. How would

1 you describe what's gone on in the last, say, two
2 years in terms of prices in the U.S. market for this
3 product?

4 MR. RUSNACK: Well, there have been some
5 price increases and, in fact, more recent than in the
6 past two years with CR and some of our suppliers.
7 These have been hard negotiations, and it's across all
8 of the polymers.

9 COMMISSIONER HILLMAN: Okay. Again, if
10 there is anything you can add in the post-hearing to
11 give us some details on --

12 MR. RUSNACK: We'll give you details.

13 COMMISSIONER HILLMAN: -- sort of the when
14 and the how much of these price increases, I think it
15 would be --

16 MR. RUSNACK: We'll do that exactly. We'll
17 get that information from our affiliates --

18 COMMISSIONER HILLMAN: Okay.

19 MR. RUSNACK: -- who do the actual
20 negotiation.

21 COMMISSIONER HILLMAN: Okay. And then the
22 other one that -- I understand you're saying that you
23 haven't spoken to them recently, but obviously the
24 thing that is perplexing us, to some degree, among
25 many things in this case, is this issue of why Denki

1 has had the limited presence that they have had in the
2 U.S. market, given that they have had this zero margin
3 for all of this time. I heard your answer that they
4 are basically saying they are satisfied with the level
5 of demand that they have in Europe and in Asia, but if
6 there is anything further that you know that you could
7 add to the record to try to help us understand that, I
8 think that would be helpful.

9 MR. RUSNACK: We'll try, but this could be a
10 nonanswer that we're getting. We're really not sure
11 what the root of that is, but we'll try.

12 COMMISSIONER HILLMAN: Last question. You
13 mention in your testimony this facility in Shanxi in
14 China.

15 MR. RUSNACK: Yes.

16 COMMISSIONER HILLMAN: Were they a producer
17 of CR? It wasn't clear to me what happened in terms
18 of this fire and its implications for the market.

19 MR. RUSNACK: They were a producer.

20 COMMISSIONER HILLMAN: They were a producer.

21 MR. RUSNACK: Yes.

22 COMMISSIONER HILLMAN: Okay.

23 MR. RUSNACK: And the plant blew up.

24 COMMISSIONER HILLMAN: And the plant blew
25 up. Hence, the reason we have not heard anything more

1 about them is that they are currently not a producer.

2 MR. RUSNACK: Not that I know of.

3 COMMISSIONER HILLMAN: Are there other
4 producers in China?

5 MR. RUSNACK: Yes. There is at least one
6 more, --

7 COMMISSIONER HILLMAN: Okay.

8 MR. RUSNACK: -- I think. We can verify
9 that.

10 COMMISSIONER HILLMAN: And if you can tell
11 us whether you know whether they export product or
12 whether all of their production is to serve the
13 Chinese market. Was this Shanxi plant exporting?

14 MR. RUSNACK: I don't think so, but I'm not
15 sure, but we'll find out.

16 COMMISSIONER HILLMAN: Okay.

17 MR. RUSNACK: I'll get the details because
18 our people on the ground know that.

19 COMMISSIONER HILLMAN: All right. That
20 would be extremely helpful. Thank you.

21 CHAIRMAN KOPLAN: Commissioner Lane?

22 COMMISSIONER LANE: Good afternoon, and I
23 too welcome you to this process, and Mr. Schuchat?

24 MR. SCHUCHAT: Schuchat.

25 COMMISSIONER LANE: Is this your first

1 appearance before the Commission?

2 MR. SCHUCHAT: No, it isn't. Actually, I
3 used to be an attorney advisor in the general
4 counsel's office, and I've been here a number of times
5 since.

6 COMMISSIONER LANE: Well, welcome back,
7 then.

8 MR. SCHUCHAT: Thank you.

9 COMMISSIONER LANE: As I understand it, you
10 are here because you want to ensure a diversity of
11 supply, and you must be feeling somewhat of a dilemma
12 here, because you want a diversity of supply and you
13 are asking that the orders be revoked, but on the
14 other hand, if the orders are revoked and DDE goes out
15 of business, then that presents a real problem for
16 you. Am I understanding what I'm hearing correctly?

17 MR. RUSNACK: Oh, you're saying that exactly
18 right. On the other side, if the order is not
19 revoked, and they still decide not to move all their
20 facilities and put the same high-end materials into
21 Pontchartrain, then we're in a worse position, because
22 we would not be able to diversify our supply and we
23 still would lose our domestic supplier.

24 COMMISSIONER LANE: So the best outcome for
25 you is to have the order off and DDE go through with

1 their plans for Pontchartrain?

2 MR. RUSNACK: Yes. That would be the best.

3 COMMISSIONER LANE: Okay. So now I have a
4 few other questions. The product that you are buying
5 now from Japan, are you buying it over in Japan and
6 it's being transported to this country, or is it being
7 imported over here and you're buying it over here?

8 MR. RUSNACK: Well, if I misled you, I'm
9 sorry, but we're not buying any Japanese CR in this
10 country in any way, shape or form.

11 COMMISSIONER LANE: Okay. Are you buying
12 any of your product in this country from anybody other
13 than DDE?

14 MR. RUSNACK: Yes. We're buying from Bayer,
15 and that company has changed -- they spun off the
16 business and called it Lanxess, and we're buying from
17 Polimeri, and these are both companies that produce in
18 Europe.

19 COMMISSIONER LANE: And so are you buying
20 the product here, or are you buying it in Europe and
21 then bringing it over here?

22 MR. RUSNACK: We negotiate the contracts in
23 Europe, but we buy from this location against the
24 contract. And what happens is, we actually place the
25 orders locally -- let me rephrase this. We buy from

1 their local representatives, and their local
2 representatives bring the material into their
3 warehouses and we buy and -- we release from their
4 warehouses.

5 COMMISSIONER LANE: Okay. Now, this morning
6 we heard that you do have two suppliers from the
7 European Union to back up your suppliers. Are they
8 able to provide all of your needs for CR --

9 MR. RUSNACK: No --

10 COMMISSIONER LANE: -- if you wanted to do
11 that?

12 MR. RUSNACK: No, they've given us
13 indication that there's a limited amount that they
14 would be able to sell to us because of other
15 commitments that they already have.

16 COMMISSIONER LANE: Are you DDE's largest
17 customer?

18 MR. RUSNACK: I know we're a large customer.
19 I can't say exactly if we're the largest, but it
20 wouldn't surprise me to know that we were.

21 COMMISSIONER LANE: And do you sell your
22 belts and hoses under the Gates name?

23 MR. RUSNACK: Yes, we do.

24 COMMISSIONER LANE: I have to admit that
25 I've seen lots of belts and hoses, but I never knew

1 who made them or what the brands were.

2 MR. RUSNACK: Well, I'll have to tell our
3 advertising department about that.

4 COMMISSIONER LANE: Well, I'm really
5 interested in -- are you actually now making belts and
6 hoses that will last 100,000 miles?

7 MR. RUSNACK: Yes, we are. And it makes our
8 after-market sales people very upset.

9 COMMISSIONER LANE: And are those belts and
10 hoses going in both domestic cars and foreign-made
11 cars?

12 MR. RUSNACK: Yes, they are. What kind of a
13 foreign car do you have?

14 COMMISSIONER LANE: I have a BMW.

15 MR. RUSNACK: There you go.

16 COMMISSIONER LANE: And at the price of
17 gasoline these days, I need to save money on belts and
18 hoses. So, seriously, do the same things -- do the
19 same -- are belts and hoses made up of the same
20 components?

21 MR. RUSNACK: They're different, and they
22 are some of the same raw materials in some cases, but
23 the difference in the way the product is used dictates
24 that different kinds of materials are usually in
25 place.

1 COMMISSIONER LANE: We heard this morning
2 some information about the price fixing. And we also
3 heard that none of DDE's customers were involved in
4 the price fixing. Did it ever cross your mind that
5 perhaps there was something askew about the pricing,
6 back prior to 2002, with what you were buying from
7 DDE?

8 MR. RUSNACK: Really not. We just thought
9 that there were difference in market conditions from
10 Europe to the U.S., and it wasn't something we really
11 liked, but that's where it was. But as far as
12 accusing them of being -- of fixing prices at that
13 time, it didn't -- didn't really register. It was
14 disappointing to find out when we did, last year, that
15 that had been going on.

16 COMMISSIONER LANE: Mr. Chairman, I think
17 that's all the questions I have. Thank you.

18 CHAIRMAN KOPLAN: Thank you, Commissioner.
19 Commissioner Pearson?

20 COMMISSIONER PEARSON: Are there any
21 polychloroprene rubber manufacturers in the world that
22 are not suppliers to Gates at some location?

23 MR. RUSNACK: Well, I understand that
24 there's one in Russia that has been looked at, but
25 we're not buying from them, to the best of my

1 knowledge. And we are buying in China for our Chinese
2 operation. We are buying some material from the
3 Chinese producer of CR. But I think we have, at one
4 time or another, purchased from just about everybody
5 else, and it may be we still have the full lineup one
6 place or another, because we have operations all over.

7 COMMISSIONER PEARSON: Okay, so you've been
8 able to work, then, with basically most manufacturers
9 to develop some product for your use that has been
10 compatible with your needs.

11 MR. RUSNACK: Yes, we have very talented
12 scientists and engineers, and they can do some
13 interesting things to make belts work and come up with
14 good product that our customers would like.

15 COMMISSIONER PEARSON: And then, obviously,
16 the PCR manufacturers are sophisticated enough so that
17 they have been able, perhaps with some guidance, to
18 provide the consistent material that you would need in
19 your -- for your input.

20 MR. RUSNACK: And in some cases, through
21 joint efforts, they've developed special grade spin-
22 offs that have helped us for very special
23 applications.

24 COMMISSIONER PEARSON: So you really are in
25 a position of pretty well knowing the world of

1 polychloroprene rubber because you have worked with so
2 many of the manufacturers.

3 MR. RUSNACK: Well, I think that we've had a
4 good relationship with the different manufacturers,
5 and have learned that, even though it's a small group
6 overall, we've learned to diversify where we can, when
7 we can.

8 COMMISSIONER PEARSON: I'm familiar with the
9 Gates name, for belts, in particular. Are your major
10 competitors for U.S. sales located in the United
11 States, or are they overseas and then exporting belts
12 or hoses to the United States?

13 MR. RUSNACK: Well, you know, ten years ago,
14 the answer would be different. Traditionally, we had
15 Dayco and Goodyear as our big competitors. In the
16 interim, Bando from Japan has built a plant here, and
17 Mitsuboshi from Japan has built a plant here, and then
18 we have a host of companies, like Pix from India, who
19 are shipping product here. So we have a lot of
20 competition. The list is quite long, and there are
21 other names on the list, as well. And we're facing
22 domestic and also import squeeze on our business, and
23 we have to stay flexible and light on our feet and
24 make sure we have enough supply.

25 One of the big things that we have going for

1 us is our great distribution system, and that only
2 works as long as you have belts in the distribution
3 system. And we can only do that with belts, have them
4 in the distribution system, if we can get the
5 materials to make them with. So that's why I'm here
6 today.

7 COMMISSIONER PEARSON: And given that there
8 now are some foreign companies manufacturing in the
9 United States -- I think that's the --

10 MR. RUSNACK: Yes, that's true.

11 COMMISSIONER PEARSON: -- what you were
12 saying. Are you seeing some decrease in imports
13 overall, or with the access by the Indians to the U.S.
14 market, are imports rising?

15 MR. RUSNACK: Well, imports are rising. And
16 we're getting competition from Korea as well as India,
17 and it's just a never-ending battle. So we have our
18 marketing strategies and we have our manufacturing and
19 development strategies as well, to try to make sure we
20 stay strong in the countries that we're represented
21 in.

22 COMMISSIONER PEARSON: And, of course, part
23 of that strategy is, I suppose, to stay at the high
24 end of quality and make that 100,000-mile-plus belt.

25 MR. RUSNACK: Yes, we rely on our technology

1 to get us in the door with our major customers, and
2 our good manufacturing to keep us in the door once we
3 get there.

4 COMMISSIONER PEARSON: Based on your
5 knowledge of manufacturing of belts and hoses around
6 the world, is there some significant advantage that a
7 manufacturer would have in Korea or in India, relative
8 to the United States?

9 MR. RUSNACK: Well, there -- if you look at
10 the belts that are labor-intensive, you would think
11 that in lower labor areas, there would be some
12 advantage. And if they have availability to materials
13 that are lower cost, then maybe there'd be an
14 advantage there too. But what we do know is that our
15 competitors seem to be looking for a bridge head here,
16 so that they can establish themselves and become a
17 factor in the marketplace.

18 COMMISSIONER PEARSON: Okay. And are all of
19 your products carrying your brand name, or do you
20 manufacture belts for an auto company, for instance,
21 that would carry their name or some related name?

22 MR. RUSNACK: We do some private labeling,
23 as well, and we sell a lot of belts.

24 COMMISSIONER PEARSON: Okay. Well, I think
25 that pretty well concludes my questions, but I just

1 wanted to comment, for me it's been very interesting
2 to talk about belts and hoses because at one time in
3 my career when I actually still had brown hair, I
4 farmed for a living, and I had a great acquaintance
5 with belts on things like tractors and combines and
6 forage harvesters and manure spreaders and fans and
7 augers and hydraulic hoses for a lot of that stuff,
8 and at one time I even used to ride snowmobiles and
9 have had the opportunity to change those belts. So
10 for me, your discussion has been very tangible; I've
11 been able to relate to the product, and I just wanted
12 to say how much I appreciate you coming and sharing
13 that with us.

14 MR. RUSNACK: Thank you very much.

15 CHAIRMAN KOPLAN: Thank you, Commissioner.
16 I don't have any additional questions. I want to join
17 my colleagues in thanking you, though, for both your
18 direct presentation and your responses to our
19 questions thus far, and I also look forward to your
20 posthearing submission. I'll turn to Vice Chairman
21 Okun.

22 VICE CHAIRMAN OKUN: Just a couple of quick
23 follow-ups. There's one thing, Mr. Rusnack, that you
24 said in response to Commissioner Lane's question about
25 the price fixing that made me want to follow up, which

1 is, you said that, I think, you weren't aware, but you
2 thought there were just different competitive
3 conditions in the different markets. Does that mean
4 because the U.S. price was higher than the other --
5 what did that mean, I guess? I don't want to put
6 words in your mouth. I'm trying to understand what
7 that meant.

8 MR. RUSNACK: Well, at the time we were
9 going through this discussion, I was thinking back
10 several years when the prices were obviously higher in
11 the marketplace here. Although we had competitors
12 here, they were competing and the prices were at a
13 higher level than the competitive prices were in
14 Europe.

15 VICE CHAIRMAN OKUN: Okay.

16 MR. RUSNACK: And at the time, we were
17 thinking, well, there are more competitors in Europe,
18 and that's probably the reason. They just had three
19 here, but they had the full contingent in Europe that
20 were competing, and that was probably keeping prices
21 in line, and yet, it was apparent that none of the
22 producers that we were dealing with were looking to
23 give up any market share in Europe even though the
24 prices were lower than they were in the United States.

25 VICE CHAIRMAN OKUN: And then after the, I

1 guess, the plea announcements and the, you know, the
2 period post the price fixing allegations applied to,
3 what did the prices do in the two different markets?

4 MR. RUSNACK: After which? I'm sorry.

5 VICE CHAIRMAN OKUN: After -- I mean, in
6 other words, if the period that the plea covers goes
7 up to, whatever, 2002, did you then see it as a
8 difference in the market between EU and U.S., European
9 market and the U.S. market --

10 MR. RUSNACK: Well --

11 VICE CHAIRMAN OKUN: -- from in '03 than you
12 did in '02?

13 MR. RUSNACK: Yeah, but the part of the
14 market that we can see best is the prices that we're
15 actually paying, and during that period from -- we
16 were looking at from '99 to '03, because that's a
17 different time period that was set for a different
18 purpose in this price fixing thing. And we were
19 looking at price changes, and they seemed to go up in
20 our estimation, both here, not so much in Europe, but
21 here, the competitors seemed to both raise prices
22 about the same time around '98, '99, something like
23 that. And then it seemed to level off for a while,
24 and if you'd like some detail on that I can certainly
25 supply that.

1 VICE CHAIRMAN OKUN: I'd appreciate that.
2 And then the other just follow-up I wanted was, when
3 you're talking about, you know, how to evaluate what
4 the domestic producers are going to do with the new
5 plant, and we obviously heard their testimony and we
6 have information with regard to what they're planning,
7 I mean, was there anything you heard this morning that
8 makes you think it would take longer than they're
9 saying? I mean, in other words, the way I understood
10 the testimony this morning was, well the plans are
11 confidential, there's a plan in place where you could
12 produce all the different grades of product there.
13 Was there anything you heard this morning that you
14 would say, you know, that doesn't sound like what we
15 would think would be consistent with the experience
16 with other producers?

17 MR. RUSNACK: Well, you mean as far as
18 moving from Louisville to Pontchartrain?

19 VICE CHAIRMAN OKUN: Yes.

20 MR. RUSNACK: Maybe I was looking at it
21 through a different filter this morning, but we had an
22 experience a number of years ago when DuPont Dow
23 closed a plant in Texas that was making EPDM. It's
24 not CR, but there's something here that I think is
25 something I'd like to mention. And what we arranged

1 there, where they said, well, we can't sustain this
2 plant anymore, we have to close it, and that was the
3 only source we had for that particular polymer that
4 would work in our belts that we had made the invention
5 on, we had patents on it, and we were supplying many,
6 many, many customers and we were really on the hook
7 because we couldn't just stop supplying them, and what
8 we did in that case is we negotiated that we got a
9 large amount of material made during their last couple
10 of campaigns, so that they put that material in the
11 warehouse for us, so that we would have 15 to 16
12 months with that material running out, so that we
13 could qualify some other producer.

14 And during that time period, we were under a
15 lot of pressure to get all this qualified, and then we
16 had to qualify with each of our customers. It was a
17 huge task, and we effectively lost two years of time
18 that we could've been producing new inventions and new
19 products, and it was just something we had to live
20 with, because that was the condition that we were
21 faced with. So if -- just to fast-forward to
22 Louisville, if Louisville is going to shut down, we'll
23 have to make discussions as to how much material we
24 can get made in advance, what's the shelf life
25 expectancy on each of these materials that we would

1 want to be made in advance, and we would have to just
2 muddle through and do the best we can and work with
3 other producers and work our way through this as we
4 have in the past.

5 VICE CHAIRMAN OKUN: I appreciate that
6 perspective. I didn't have any other further
7 questions. Mr. Schuchat, was there any other legal
8 issues, or other points you want to raise on the
9 remainder of my time that I have for questioning?

10 MR. SCHUCHAT: Thanks for the offer, but I
11 think we're okay. Thank you.

12 VICE CHAIRMAN OKUN: Very well. Thank you
13 very much, and I, again, appreciate all the responses
14 and will look forward to your posthearing submissions.

15 MR. RUSNACK: Thank you.

16 CHAIRMAN KOPLAN: Commissioner Miller?

17 COMMISSIONER MILLER: I didn't think I had
18 any other questions. I just wanted to clarify the
19 story that you were just relating to Vice Chairman
20 Okun, that related to EPDM, and --

21 MR. RUSNACK: Yes, it was just an example of
22 how we would behave in the event our supply dried up.

23 COMMISSIONER MILLER: Right, and it was
24 DuPont, or --

25 MR. RUSNACK: It was DuPont Dow at that

1 time.

2 COMMISSIONER MILLER: It was DuPont that you
3 said. And that's not the same as the example you gave
4 in your initial testimony about a problem that you
5 had.

6 MR. RUSNACK: No, that's another one.

7 COMMISSIONER MILLER: That's a different
8 situation, okay. And let me just ask one question, if
9 I can, following up on that. I think earlier today I
10 did ask DuPont whether they made EPDM, and the answer,
11 I believe, was yes.

12 MR. RUSNACK: Yes, they do.

13 COMMISSIONER MILLER: Do you still use them
14 as a supplier for EPDM, but from other facilities
15 other than the one at --

16 MR. RUSNACK: We use them as a supplier, and
17 expect that we will continue to buy from that same
18 source. I realize that the joint venture is
19 dissolving, but nevertheless, we expect to be using
20 more in the future.

21 COMMISSIONER MILLER: Okay. All right. I
22 just wanted to make sure that was clear. I have no
23 further questions for you. Thank you very much.

24 CHAIRMAN KOPLAN: Commissioner Hillman?

25 COMMISSIONER HILLMAN: Thank you. I had

1 just a couple, I think, follow-ups. One, in your oral
2 testimony, you were discussing this whole objective
3 not to become dependent on any foreign-based suppliers
4 and that you need to receive CR on a continuous
5 schedule to remain in operation, and then you
6 commented that, in light of the testimony this
7 morning, you've changed your thinking. I wanted to
8 make sure --

9 MR. RUSNACK: In what way? I'm sorry.

10 COMMISSIONER HILLMAN: -- that I understood
11 what that change in your thinking was or whether there
12 was anything that you wanted to add to that, or
13 whether it was any different than --

14 MR. RUSNACK: You mean as far as DuPont Dow
15 shutting down their operation?

16 COMMISSIONER HILLMAN: I believe that's what
17 you were referring to. Again, you --

18 MR. RUSNACK: Yes.

19 COMMISSIONER HILLMAN: You sort of diverted
20 a little bit from the --

21 MR. RUSNACK: Okay.

22 COMMISSIONER HILLMAN: -- from your prepared
23 testimony to say that in light of what you'd heard,
24 you've changed your thinking, and I just wanted to
25 make sure I understood what that change was.

1 MR. RUSNACK: Well, yes. The change is
2 this: If we find that there is no domestic source,
3 then we have to make sure that we get ourselves well
4 diversified and that we have the ability to bring
5 material from off-shore. And if Louisville closes and
6 they don't replicate their capabilities in
7 Pontchartrain, then we will be without a domestic
8 source for the products that we make. So that changes
9 the game considerably. If they do move the Louisville
10 capability to Pontchartrain, we expect to continue to
11 do business with them as a domestic source, and
12 continue as far as we can see into the future.

13 COMMISSIONER HILLMAN: Okay. All right.
14 Then the other question I had was --

15 MR. RUSNACK: Sorry if I confused things.

16 COMMISSIONER HILLMAN: No, no, no. I just
17 wanted to make sure I understood it. The other
18 question was, in your prehearing brief, you mention
19 that you had experienced constraints on the
20 availability of supplies from your European sources.

21 MR. RUSNACK: Yes, that's true.

22 COMMISSIONER HILLMAN: I wanted to make sure
23 I understood what those constraints were.

24 MR. RUSNACK: They had limited capacity that
25 they would devote to use because they were serving

1 other commitments, and even at a time when we wanted
2 to increase our purchases from Bayer, it took us
3 several years to finally get them to a point where
4 they would agree to do that, and we wanted to get more
5 diversification, so we started working with Polimeri,
6 and they said, okay, we'll sell to you, but there are
7 limits to how much. And that was negotiated in Europe
8 by our director of purchasing, as to what the
9 limitations are, and the same reason is that they had
10 commitments to supply others and we just were not on
11 their list for a long -- you know, like, it's not that
12 we've been a big customer of theirs for a long time.
13 We had been a huge customer of DuPont Dow for a long
14 time, and DuPont before that.

15 So it's not always easy to break in, and
16 there are only a handful of suppliers in the world.

17 COMMISSIONER HILLMAN: I'm just trying to
18 square that with the testimony that we heard this
19 morning --

20 MR. RUSNACK: Yes.

21 COMMISSIONER HILLMAN: -- which is, again,
22 obviously you're looking at the world from your lens
23 in terms of the hose and belt market, but obviously
24 the testimony that we heard this morning was that,
25 basically, there is a significant amount of

1 overcapacity worldwide. And, therefore, I would
2 assume -- and oversupply worldwide. And yet, you're
3 telling me that you've had significant constraints on
4 the ability to access that supply, so I guess I'm
5 trying to understand, from your perspective, does it
6 seem as though there is in fact overcapacity worldwide
7 for CR, and oversupply of product?

8 MR. RUSNACK: Well, we can't see it in terms
9 of Bayer/Lanxess or Polimeri, and maybe the
10 information that I'm giving you is a little bit more
11 current, perhaps, because the economies are up, and
12 that's the problem we've run into. That's our
13 experience.

14 COMMISSIONER HILLMAN: Okay. So your view
15 is supply is tight, and whatever the capacity is
16 that's out there, there is demand to meet, in essence,
17 all of that capacity?

18 MR. RUSNACK: Well, all I can say is that
19 the capacity that we've been offered by these two
20 companies is limited. Now, maybe in the next
21 negotiation it'll change, because I don't know what
22 their criteria were for giving us that amount. But I
23 do know that in the case of Bayer, they were telling
24 us, if we go back to '03 and we go back beyond that to
25 2000, they were making a grade slate for us as an

1 experiment. That was a grade slate that's already in
2 the marketplace by DDE and others. And we went
3 through all the testing with them, and they decided
4 not to supply it to us. They said that they had
5 capacity constraints, and it took three more years
6 before they got to a point where they said that they
7 would convert some of that capacity to make that
8 particular product for us.

9 And that's a direct experience. That's the
10 best I can tell you about what their constraints are
11 and how they're serving the market.

12 CHAIRMAN KOPLAN: Thank you.

13 Commissioner Lane?

14 COMMISSIONER LANE: I have two questions and
15 I'm sure you answered this and I have just forgotten
16 what you said. If Denki now can come into this
17 country with no tariff, or no duty, or no margin,
18 whatever, why are you not now buying from them?

19 MR. RUSNACK: Well they've indicated to our
20 purchasing director in Europe that they were
21 interested in staying with their customer base in
22 Europe and not coming to this country. They've
23 indicated that in different ways. I don't know what
24 their reason is.

25 COMMISSIONER LANE: So you have tried to buy

1 from them and they won't sell to you?

2 MR. RUSNACK: Well we've talked to them
3 about it in Europe and maybe it's the dumping Order.
4 I don't really know. I can find out exactly what the
5 conversation was like and give you that information,
6 but I'm really not very close to that one.

7 COMMISSIONER LANE: Okay. I would
8 appreciate it. When you were talking about you're
9 always looking for new innovations, et cetera, would
10 all of those or the bulk of them be using CR?

11 MR. RUSNACK: For the newer innovations
12 we're looking at materials that will go beyond what CR
13 can do.

14 As I had mentioned before, with the EPDM and
15 the way we were able to make belts out of EPDM, as the
16 first people in the marketplace with that we found
17 that we could get much higher operating temperatures
18 for longer periods of time than we could with CR and
19 also work at the very cold end too -- down to -40 --
20 and that gives properties that the car companies in
21 particular would like to see so that they have belts
22 that last longer on the cars.

23 COMMISSIONER LANE: Thank you.

24 Mr. Chairman, that's all I have.

25 CHAIRMAN KOPLAN: Are there any other

1 additional questions from the dias?

2 Seeing that there are none, Mr. Deyman, does
3 the staff have questions of this panel?

4 MR. DEYMAN: The staff has no questions.

5 CHAIRMAN KOPLAN: Thank you.

6 Mr. Lipstein, do you have questions of this
7 panel?

8 MR. LIPSTEIN: Mr. Chairman, we do not.

9 CHAIRMAN KOPLAN: All right. Thank you very
10 much for your presentation today.

11 MR. RUSNACK: Thank you.

12 CHAIRMAN KOPLAN: Apparently there are no
13 further questions there for you and you're excused.

14 (Witness excused.)

15 CHAIRMAN KOPLAN: Mr. Lipstein, this is not
16 a typographical error. You've got 41 minutes left
17 from your direct presentation plus five minutes for
18 closing.

19 MR. LIPSTEIN: I can assure the Commission
20 that I will not use anywhere near all of that.

21 CHAIRMAN KOPLAN: I assumed that. You may
22 proceed. Would you like to give me a preview of how
23 much you think you need to use?

24 MR. LIPSTEIN: I'm hoping about five
25 minutes.

1 CHAIRMAN KOPLAN: That's in addition to
2 closing?

3 MR. LIPSTEIN: No. That should be all the
4 time I needed for my closing.

5 CHAIRMAN KOPLAN: That's for closing?

6 MR. LIPSTEIN: Yes. We've covered a lot of
7 ground today and I guess the questions that come to my
8 mind from listening to all of this are three. One is
9 what is the likely behavior of Japanese PCR producers
10 in the event that this Order is revoked? Are they
11 likely to come here? That's question number one.

12 If they are likely to come to the United
13 States, in what volumes and at what prices is question
14 number two. Question number three is what would be
15 the impact of that entry into the United States market
16 on DDE's performance?

17 We have a couple of facts that I think are
18 undisputed at this point. Fact No. 1: The Japanese
19 PCR producers clearly have capacity available to them
20 after satisfying the Japanese domestic market needs.
21 Fact No. 2: The Japanese PCR producers have the
22 necessary customer contacts to gain swift access to a
23 significant part of the U.S. PCR market.

24 They have those contacts either because
25 those customers in the U.S. market are themselves

1 Japanese transplants -- I think the witness from Gates
2 mentioned Bando -- or they're serving the U.S.
3 customers in locations outside the United States, such
4 as Gates.

5 So they have demonstrated that they can make
6 the quality of PCR that these customers demand. Fact
7 No. 3: The Japanese PCR producers have demonstrated
8 particularly in their recent activity that they're
9 willing to sell at exceptionally low prices in order
10 to purchase market share.

11 We've heard this story today about the
12 experience in Brazil. Fact No. 4: The U.S. average
13 pricing level is higher than the European pricing
14 level, it's higher than the Latin-American or South
15 American pricing level. Why? Precisely because the
16 Japanese have not been permitted to participate in the
17 U.S. market to date because of the constraining
18 affects of the Order.

19 They are participating in Europe, they are
20 participating in Latin America. They have not
21 participated here because the Order has constrained
22 them from being here and so the other markets around
23 the world which are used as comparison have been
24 influenced by the fact that the Japanese in effect
25 have been dumping globally, but they have not been

1 permitted to dump here.

2 There are a couple of questions that I think
3 are left hanging throughout this discussion. One
4 Commissioner Pearson raised which is how is that two
5 European suppliers who are unconstrained by any anti-
6 dumping order in the United States managed to export
7 approximately 30 times I believe was the number of the
8 volume of PCR to the United States than three Japanese
9 suppliers are able to do?

10 That's an interesting question. What is
11 constraining the Japanese suppliers from participating
12 here if it's not the anti-dumping Order? Question
13 number two, Denki. It is not just Denki's last couple
14 of years of experience, this Order has been in place
15 for 32 years and throughout that time they've had a
16 zero margin.

17 If we look back to what happened just prior
18 to the implementation of this anti-dumping Order the
19 Japanese had rapidly gained share in the United
20 States. I believe the original injury finding says
21 that their imports tripled just prior to the entry of
22 the anti-dumping Order.

23 The Order goes in place, the Japanese exit
24 the market. For 32 years Denki has not participated
25 to any significant degree in this market. Certainly

1 it is not the zero margin that's at issue here, it's
2 the existence of the Order.

3 The third question I would raise is this.
4 SDK spent an enormous amount of time and money to try
5 and obtain the successor rights to DDE's joint venture
6 zero margin by a changed circumstance review process
7 at the Commerce Department.

8 They even went so far as to have a
9 verification in Japan by the Commerce Department to
10 see if they were entitled to the successor in
11 interest. Why would they have gone through this time,
12 money, effort, expense if they were not interested in
13 the U.S. market?

14 Clearly they are, but they were not able to
15 succeed to the zero margin rate that DDE Japan had and
16 therefore they have to import at a 55 percent margin
17 rate. So we have capability, incentive to come to the
18 U.S. That leaves us with the question of impact.

19 There were a number of questions raised
20 today about how do we evaluate the anti-trust case?
21 How do we take all this into the impact of all of this
22 on DDE? Your decision is forward looking. What is
23 going to happen to the domestic industry in the
24 reasonably foreseeable future?

25 We know that the Europeans have a certain

1 share of the U.S. market which reflects the lack of
2 constraint of an anti-dumping order. If the Japanese
3 were to obtain a similar share of the U.S. market,
4 that would clearly have a very harsh financial impact
5 on DDE in the United States.

6 How do we know that the Japanese are going
7 to take sales from DDE and not from the Europeans?
8 That was the question that was raised today. Well we
9 have the experience of DDE in Brazil. Japanese
10 targeted DDE in Brazil, took business of Gates away
11 from DDE in Brazil.

12 We know that DDE has the majority position
13 with the Japanese transplant suppliers in the United
14 States today. Who are the Japanese most likely to
15 target? The Japanese transplant suppliers. Who is
16 going to be hurt by that? DDE.

17 So I think that if we take the totality of
18 the record that we have here what we have is a
19 customer who is very much clearly concerned about
20 reliable supply, but we have a reliable supplier for
21 them and several others available to them. They are a
22 global operation, they can purchase globally.

23 I think, Commissioner Lane, you raised the
24 question this way: If we revoke the Order and DDE
25 goes under how does that help Gates? Gates' testimony

1 said we would like to have a strong, healthy DDE as a
2 domestic supplier.

3 I would submit to you if you look through
4 the entire record in this proceeding the only way that
5 you will have a strong, healthy domestic industry is
6 to continue the anti-dumping Order on Polychloroprene
7 Rubber from Japan. That, Mr. Chairman, is all I have.

8 CHAIRMAN KOPLAN: Thank you very much.

9 Post-hearing briefs. Statements responsive
10 to questions, and requests of the Commission and
11 corrections to the transcript must be filed by May 12,
12 2005. Closing of the record and final release of data
13 to parties June 3, 2005. Final comments June 7, 2005.
14 With that, this hearing is concluded.

15 (Whereupon, at 3:20 p.m., the hearing in the
16 above-entitled matter was concluded.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Polychloroprene Rubber from Japan
INVESTIGATION NO.: AA1921-129
HEARING DATE: May 3, 2005
LOCATION: Washington, D.C.
NATURE OF HEARING: Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: May 3, 2005

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: Renee C.M. Katz
Signature of Court Reporter