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In Support of the Imposition of Antidumping Duties:

On behalf of The Nitrogen Solutions Fair Trade Committee:

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FRED MUGICA, Director, Supply and Distribution, CF Industries  
JOE A. EWING, Vice President, Marketing and Distribution, Mississippi Chemical Corp.  
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In Opposition to the Imposition of Antidumping Duties:

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APPEARANCES: (cont'd.)

In Opposition to the Imposition of Antidumping Duties:

On behalf of J.R. Simplot Company:

DEAN TVINNEREIM, Director, International Sourcing,  
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P R O C E E D I N G S

(10:30 a.m.)

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2  
3 VICE CHAIRMAN HILLMAN: Good morning. On  
4 behalf of the United States International Trade  
5 Commission, I welcome you to this hearing on  
6 Investigation Nos. 731-TA-1006, 1008 and 1009 (Final),  
7 involving Urea Ammonium Nitrate Solutions from  
8 Belarus, Russia and Ukraine.

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

15 Schedules setting forth the presentation of  
16 this hearing and testimony of witnesses are available  
17 at the Secretary's desk. I understand that parties  
18 are aware of the time allocations. Any questions  
19 regarding time allocations should be directed to the  
20 Secretary.

21 Since all written testimony will be entered  
22 in full into the record, it need not be read to us at  
23 this time. All witnesses must be sworn in by the  
24 Secretary before presenting testimony.

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1 tentative calendar and transcript order forms are  
2 available at the Secretary's desk. Transcript order  
3 forms are also located in the wall rack outside the  
4 Secretary's office. Finally, if you will be  
5 submitting documents that contain information you wish  
6 classified as business confidential, your requests  
7 should comply with Commission Rule 201.6.

8 Madam Secretary, are there any preliminary  
9 matters?

10 MS. ABBOTT: Yes, Madam Chairman. With your  
11 permission we will add Jennifer McCadney of Collier,  
12 Shannon, Scott to the calendar on page 2.

13 VICE CHAIRMAN HILLMAN: Okay. Before we  
14 proceed, I would like to extend my thanks to all  
15 parties. I know given the snowstorm in Washington, as  
16 well as all of the activities going on over at the  
17 Commerce Department with respect to this product, this  
18 has been a difficult couple of days.

19 I know there were requests that we change  
20 the date of this hearing. Obviously that involved a  
21 lot of parties and could not be done. I do hope that  
22 the slightly delayed opening has at least struck  
23 something resembling a compromise. We do appreciate  
24 the fact that it has been very difficult for all of  
25 you to be here with us today, and we appreciate the

1 efforts that have allowed us to proceed as we are this  
2 morning.

3 With that, we will proceed to our opening  
4 remarks.

5 MS. ABBOTT: Opening remarks on behalf of  
6 the Petitioners will be made by Valerie A. Slater,  
7 Akin, Gump, Strauss, Hauer & Feld.

8 MS. SLATER: Good morning, Madam Chairman,  
9 members of the Commission, Commission staff. My name  
10 is Valerie Slater. I am a partner in the law firm of  
11 Akin, Gump, Strauss, Hauer & Feld.

12 It's a pleasure to be here with you this  
13 morning on behalf of the Nitrogen Solutions Fair Trade  
14 Committee, the Petitioners in this investigation. The  
15 committee's members are producers of UAN solutions,  
16 and they include CF Industries, Terra Industries and  
17 Mississippi Chemical Corporation.

18 UAN solution is one of those relatively rare  
19 birds in that it's an almost perfect commodity  
20 product. It is a nitrogen fertilizer. It's widely  
21 used in the United States, and until recently this  
22 product was not imported in any significant quantities  
23 from Russia, Ukraine or Belarus.

24 The fact pattern that you have before you is  
25 in some respects fairly simple. There are two

1 significant consuming markets for UAN in the entire  
2 world; that is the European community and the United  
3 States.

4 In mid 1999, the European Commission  
5 initiated an antidumping proceeding on nitrogen  
6 solutions from a number of countries, including  
7 Belarus, Russia and Ukraine. Preliminary EU dumping  
8 measures took effect in March of 2000. Final measures  
9 were issued in September of that year, and the shift  
10 of this product from the EU into the United States was  
11 immediate, and it was dramatic.

12 The imports from these three countries  
13 increased 250 percent from 1999 into 2000, from about  
14 270,000 tons to almost 1,000,000 tons in the course of  
15 one year. Dramatic growth continued into 2001 as the  
16 imports from these countries continued to increase  
17 dramatically to more than 1.3 million pounds. This  
18 growth in volume was also accompanied by a tremendous  
19 growth in market share, and in a commodity market, as  
20 you well know, this happens one way. It happens  
21 through pricing.

22 This influx of very low-priced UAN solution  
23 displaced from Europe has had a devastating impact on  
24 the producers of the product here. It left the  
25 industry in a loss position at the end of calendar

1 year 2001. It left the industry in a position at the  
2 end of that year that was worse than the impact that  
3 they had felt as a result of the gas price spikes in  
4 late 2000 and early 2001. The influx of this product  
5 didn't stop in 2001. It continued quite heavily in  
6 the first quarter of 2002 and basically didn't abate  
7 until the petition was filed.

8 Those opposing the petition are going to  
9 spend a lot of time today trying to explain away this  
10 huge influx of unfairly priced product. They're going  
11 to argue that the imports were needed because the  
12 producers abandoned their customers. They're going to  
13 argue that the influx was temporary. They're going to  
14 argue that the imports of this extremely fungible  
15 commodity were not purchased on the basis of price.  
16 They're going to argue the domestic industry's very  
17 clear injury is not related to imports.

18 We are absolutely confident that the facts,  
19 when you look at them carefully and you look at them  
20 in detail, will demonstrate to you otherwise. The  
21 truth of the matter is this. There were no supply  
22 shortages. There was no abandonment of the UAN market.  
23 You can test this theory very nicely when you look at  
24 the data that you've got on your record, particularly  
25 when it's broken out on a half year basis.

1           As to the temporary nature of the influx,  
2 your record tells you otherwise. The imports from a  
3 number of sources surged early in 2001, and then they  
4 went away as natural gas prices and product prices  
5 abated. This product came sooner, and it didn't leave  
6 until this petition was filed.

7           The record that has been amassed in this  
8 investigation we believe will provide to you  
9 compelling evidence of the manner in which this  
10 product suppressed prices and had serious volume  
11 impacts on the industry. That evidence, when you  
12 evaluate it in light of your relevant statutory test,  
13 is certainly going to lead you to a final affirmative  
14 evaluation.

15           We look forward to discussing the record and  
16 the legal issues with you this morning. Thank you.

17           VICE CHAIRMAN HILLMAN: Thank you.

18           MS. ABBOTT: Opening remarks on behalf of  
19 the Respondents will be made by Paul C. Rosenthal,  
20 Collier, Shannon, Scott.

21           MR. ROSENTHAL: Good morning, members of the  
22 Commission.

23           When I first started to think about the  
24 evidence in this case, one word came to mind.  
25 Seinfeld. You all remember the Seinfeld show? It's

1 still in reruns if you don't remember. As described  
2 by the characters George Costanza and Jerry Seinfeld,  
3 it was a show about nothing.

4 This UAN solutions case is a case about  
5 nothing, at least nothing with respect to imports.  
6 Indeed, what is striking is that if you look at the  
7 condition of the domestic industry with imports  
8 present in the marketplace and with imports not  
9 present, the picture looks remarkably the same.  
10 Whatever is happening to the domestic industry, and  
11 we'll talk more about that later today, has nothing to  
12 do with imports.

13 To be sure, there are some things to talk  
14 about when it comes to the domestic UAN solutions  
15 industry; for example, how the most important factor  
16 affecting the industry is high natural gas prices, how  
17 transportation and transportation costs are such  
18 important factors in the industry and relatedly the  
19 regional nature of the industry, how there is limited  
20 domestic supply on the west coast and on the east  
21 coast, how UAN solution is readily substitutable with  
22 other nitrogen based fertilizers.

23 Not surprising, many of the conditions of  
24 competition identified in the staff report and by the  
25 Respondents in their preliminary investigation and in

1 fact agreed to by the Petitioners explain why the  
2 domestic industry is in the position it is in.  
3 Imports, however, are not part of the story They are  
4 not part of this show.

5 So while Petitioners' case may be about  
6 nothing, this hearing will be about something. It  
7 will be about those things that explain the condition  
8 of the domestic industry. Our witnesses will tell you  
9 about the regional nature of the industry, and they'll  
10 tell you about how that regional nature affects  
11 competition.

12 They'll tell you as well about how natural  
13 gas prices increased dramatically in the last half of  
14 2000 and the first quarter of 2001, and because of the  
15 seasonality of the industry there were supply  
16 disruptions in the period immediately preceding the  
17 spring planting season.

18 Our witnesses will tell you as well how  
19 uncertainties at that time period caused a reaction by  
20 UAN consumers. Indeed, this uncertainty was caused in  
21 substantial part by the U.S. producers of UAN,  
22 including the Petitioners. The domestic producers  
23 appeared to signal the marketplace that more supply  
24 shortfalls and even higher prices were on the way due  
25 to their well-publicized sales of rights to natural

1 gas. We'll be talking about the so-called hedge  
2 contract issue later today.

3 In fact, what the record will show you and  
4 what our witnesses will discuss is that imports were  
5 driven, if not actually invited by in some instances,  
6 the actions by the UAN producers to curtail their UAN  
7 production in order to take advantage of the profits  
8 they could make on higher natural gas prices.

9 Our witnesses will also explain a phenomenon  
10 rarely, if ever, seen in ITC proceedings. Take a  
11 close look at the data. As imports increased in the  
12 last part of 2000 and the first part of 2001, domestic  
13 and import prices began to rise. Understand that.  
14 Imports increase as domestic and import prices rise.

15 In fact, rising imports coincided with the  
16 industry's best financial performance in the period of  
17 investigation. To be sure, and follow this closely,  
18 rising imports did not cause the better profitability  
19 of the domestic industry, nor did the decline of  
20 imports later in the period of investigation cause the  
21 domestic industry to suffer.

22 Imports, as purely residual supply in this  
23 marketplace, simply are not a factor in explaining  
24 what has happened to or what will happen to the  
25 domestic UAN industry. All the talk and the

1       Petitioners' submissions are, in the words of  
2       Seinfeld, yada-yada-yada. The legal translation in  
3       this case is no injury, at least no causation due to  
4       imports.

5               We'll explain that more today, and I look  
6       forward to our discussion in the afternoon. Thank  
7       you.

8               VICE CHAIRMAN HILLMAN: Thank you. Are we  
9       ready for the first panel?

10              MS. ABBOTT: Yes, Madam Chairman. The panel  
11       has been sworn.

12              VICE CHAIRMAN HILLMAN: You may proceed.

13              MS. SLATER: Thank you. Good morning,  
14       members of the Commission and staff. It is a pleasure  
15       to be with you this morning.

16              We have brought before you a panel of  
17       witnesses that we think will be able to not only  
18       describe to you very accurately not nothing, but  
19       something which is extremely important to this  
20       industry and which is in fact critical to its  
21       survival.

22              I want to first thank the Commission for  
23       agreeing to postpone this hearing. As you mentioned,  
24       Commissioner Hillman, this has been a very long couple  
25       of days. All of the people who are here to testify

1 have been involved with this, and we do appreciate the  
2 little bit of extra time this morning. It has been  
3 very helpful for us. I must say, this is the first  
4 time when we've done our final run through of  
5 testimony and we said good morning, and it was  
6 actually morning, so we are grateful for this little  
7 extra time.

8 Let me first introduce the panel. With me  
9 this morning are Mr. Joe Ewing of Mississippi Chemical  
10 Corporation, Mr. Joe Giesler of Terra Industries, Mr.  
11 Fred Mugica of CF Industries and also Mr. Glen Buckley  
12 of CF Industries. Mr. Richard Downey of Agrium is on  
13 our panel, along with his counsel, Mr. Joel Junker.

14 My colleagues, Bernd Janzen and Anne Cusick  
15 of Akin Gump, are also here today.

16 I also want to mention that we've been  
17 fortunate to have Mr. Robert Leitse, who is the CEO of  
18 CF Industries, be able to attend, although we had not  
19 been able to put him on the witness list, but he is  
20 with us also this morning.

21 Before we start, I want to just make sure  
22 the Commission is aware, because I know there was some  
23 interest in this, that a suspension agreement was in  
24 fact concluded in the Russian investigation yesterday  
25 evening/this morning, spanning that time frame. The

1 agreement, and actually I have not seen the final  
2 version, but it is completed, and we have our filing  
3 this morning with the Commerce Department and with the  
4 Commission a request for continuation of the  
5 investigation. That may have been done already.

6 With that being said, I'd like to turn first  
7 to Mr. Joe Giesler of Terra Industries, who's going to  
8 give some description of this product and the market  
9 and the situation with respect to imports from the  
10 subject countries.

11 MR. GIESLER: Good morning. My name is Joe  
12 Giesler. I'm the Vice President of Industrial Sales  
13 and Operations for Terra Industries.

14 Terra is the largest UAN producer in the  
15 United States, with plants in Iowa and Oklahoma, and  
16 we market UAN in 37 states. For the past three years,  
17 I have had the responsibility for the marketing of  
18 Terra's UAN throughout the United States. I have  
19 worked in various capacities in the fertilizer  
20 industry for 22 years.

21 Today I would like to provide you with a  
22 basic description of UAN and the UAN market. I will  
23 briefly discuss channels of distribution and the  
24 marketing of UAN in the United States. I would also  
25 like to tell you how the flood of FSU imports in the

1 United States' market has impacted Terra and the U.S.  
2 industry as a whole.

3 UAN has unique characteristics that  
4 differentiate it from other nitrogen fertilizers. It  
5 is the only basic nitrogen product that is a non-  
6 pressurized solution. UAN is a clear liquid that is  
7 relatively easy and inexpensive to apply by using a  
8 tank with booms which can spray large areas. It can  
9 be mixed with liquid herbicides and pesticides, which  
10 can then be uniformly applied requiring only one pass  
11 across the field, a benefit that farmers particularly  
12 appreciate.

13 It is a liquid that can be applied to the  
14 surface rather than incorporated into the ground, so  
15 the soil does not need to be tilled when it is  
16 applied. This has made it very popular for crops in  
17 regions where no till agricultural practices are  
18 preferred or required. For this reason, UAN is also  
19 commonly used as a pre-plant or pre-emergent  
20 fertilizer. Also, an increasingly significant use of  
21 UAN is injection into irrigation systems in a practice  
22 known as fertigation.

23 Because UAN is a non-pressurized nitrogen  
24 solution, it can be shipped and handled relatively  
25 easily. Unlike anhydrous ammonia, it is non-hazardous

1 to transport and store. UAN is also easier to handle  
2 in transportation, storage and use than either urea or  
3 ammonium nitrate because it does not risk caking if  
4 stored improperly and may be pumped rather than  
5 carried into and out of transport and storage tanks.

6           There are some key elements that are  
7 important to understand when you look at the UAN  
8 market. First, UAN, whether it's produced  
9 domestically or overseas, is a fungible commodity.  
10 The fact that we and other producers purchase or  
11 exchange both domestic and imported product and  
12 commingle the products in inventory, as do our  
13 customers, makes it clear that imported UAN is  
14 perfectly substitutable with our own production.  
15 There are no variations in grade, quality or  
16 specifications. UAN is UAN. Price is the factor that  
17 customers look at when making purchasing decisions.

18           Second, demand for UAN is seasonal. It is  
19 most heavily used in the spring season, generally from  
20 April through June, although this varies by region.  
21 During the fall and winter, large volumes of product  
22 must be moved through the distribution channels to be  
23 in position to meet peak demand in the spring.

24           This is especially important because of the  
25 liquid. UAN cannot just be stored in any warehouse.

1 It must be stored in liquid storage tanks at terminals  
2 owned by a U.S. producer, an importer, a distributor  
3 or a retailer. Thus, U.S. producers typically offer  
4 UAN at lower prices during the fall season to maintain  
5 production volumes and promote movement of product  
6 into storage space in preparation for the spring  
7 season.

8           However, if the fixed solution storage  
9 capacity is full prior to the peak season, producers  
10 normally will have no choice but to scale back  
11 production. This is precisely what happened in mid  
12 2001 and in the spring of 2002 as very cheap imports  
13 from Russia, Ukraine and Belarus flooded the market.

14           Third, because of its unique characteristic,  
15 UAN typically commands a price premium on a cost per  
16 pound of nitrogen basis over urea and ammonia.

17           Fourth, as Mr. Mugica will describe in more  
18 detail, importers and domestic producers sell nearly  
19 all of their UAN shipments to distributors and  
20 retailers who in turn sell to farmers. U.S. and  
21 imported UAN travel through identical channels of  
22 distribution to all UAN markets in the United States.

23           Terra markets its UAN in 37 states, although  
24 our plants are in the heart of the country, through  
25 commercially competitive access to truck, barge and

1 especially rail transportation. Terra delivers UAN  
2 competitively to states as far south as Georgia,  
3 Texas, as far west as California, as far east as New  
4 York and Maryland, and as far north as Michigan,  
5 Minnesota and Washington. The majority of our UAN is  
6 sold and delivered outside of the 100 mile radius of  
7 our plants. In fact, except for 2001, California has  
8 ranked seventh or higher in sales volume for Terra.

9           Finally, natural gas is the principal raw  
10 material used in manufacturing ammonia, which is in  
11 turn the principal input to the urea and ammonium  
12 nitrate used in making UAN solutions. Natural gas  
13 accounts for well over half of the cost of making UAN  
14 and can typically account for as much as 70 percent.

15           Let me briefly discuss the extraordinary  
16 natural gas situation that arose in late 2000 and  
17 early 2001. At that time, U.S. natural gas prices  
18 spiked to unprecedented levels. On January 1, 2001,  
19 gas prices briefly reached \$10 per mm/btu. To give  
20 you some idea what that meant, price since 1997 had  
21 averaged \$2 to \$3 per mm/btu.

22           While this phenomenal gas price spike led  
23 some U.S. producers, including Terra, to curtail a  
24 small amount of UAN production, curtailments of the  
25 UAN production were very short-lived and, importantly,

1 occurred for the most part in December and January,  
2 well before the season started.

3 In Terra's case, we curtailed our production  
4 by a small percentage for only about five weeks. As  
5 we have described to the Commission in detail in our  
6 questionnaire response, Terra's total curtailments  
7 during this period, whether natural gas related or due  
8 to mechanical failures, affected less than seven  
9 percent of our entire annual production for 2002.

10 Most importantly, this did not affect our  
11 ability to supply our customers. Let me be crystal  
12 clear about this. We at Terra were never unable to  
13 supply our customers during the period of high gas  
14 prices. We never told our customers to look  
15 elsewhere. We did, however, make clear to them that  
16 our supply could not be locked in at what were then  
17 current prices, given cost pressures, but we never  
18 suggested that supply would not be available.

19 It's possible that customers perceived that  
20 there would be shortages of UAN as a consequence of  
21 production curtailments of urea and ammonia. However,  
22 customers would have very quickly known that those  
23 curtailments were short-lived and were having no  
24 effect on UAN production.

25 Terra issued a press release on January 23,

1 2001, announcing that it was restarting its UAN plants  
2 at its Verdigris and Woodward, Oklahoma, facilities.  
3 With these restarts, Terra would be operating at 99  
4 percent of UAN capacity. Terra also issued a dealer  
5 bulletin on February 12 assuring dealers that there  
6 was enough nitrogen to meet U.S. crop demands and  
7 urging dealers to pass this information on to their  
8 customers, the farmers.

9 Finally, in early February, Terra met with  
10 its major customers and explained the reasons for and  
11 the limited impact on Terra's temporary plant  
12 curtailments. We were very clear that Terra would be  
13 able to fully supply them with UAN from inventories  
14 and current production for the current season.

15 Now, unquestionably the higher UAN prices  
16 had the effect of increasing imports from all kinds of  
17 places for one simple reason. The higher prices  
18 offset the normally prohibitive cost of transporting  
19 UAN, which is, after all, 60 percent water, across  
20 oceans. Some of our customers understandably  
21 purchased some of these imports.

22 At the beginning of January, however, gas  
23 prices fell very quickly. The limited curtailed  
24 production came back on stream, and most of the non-  
25 traditional imports that had entered as a result of

1 the temporary market situation quickly exited the  
2 market.

3 For example, substantial levels of imports  
4 from places like Algeria, Bulgaria, Romania and  
5 Germany came into the market, attracted by unusually  
6 high prices that offset the significant ocean freight  
7 cost required to bring this material to the United  
8 States. For the second half of 2001, with U.S.  
9 production fully restored by the beginning of March,  
10 these imports disappeared.

11 That, however, was not the pattern for  
12 imports from Russia, Ukraine and Belarus. Those  
13 countries, which had previously exported little or no  
14 UAN to the United States, came into our markets in  
15 calendar year 2000 after Europe imposed antidumping  
16 duties. We saw almost 1,000,000 tons in 2000 with  
17 about one-quarter of that the year before. They  
18 increased again in 2001, surging early in the year  
19 with other imports, but they never returned to levels  
20 near or even near what they had been.

21 Imports from these countries continued at an  
22 unprecedented rate in the second half of 2001. Almost  
23 700,000 short tons entered into the second half of the  
24 year. Importers kept bringing in this material, even  
25 though gas prices were down. Product prices were

1 down. U.S. production was back at full capacity, and  
2 demand was, at best, flat.

3 By the beginning of the spring season in  
4 2001, between the record imports and U.S. production  
5 levels, the market was saturated with product. To  
6 continue moving this additional FSU product, the  
7 importers priced at lower and lower levels. There is  
8 no other way to move as much UAN.

9 This pricing and volume created a downward  
10 price spiral that left U.S. producers with high  
11 inventories, lost profits and curtailed plants. The  
12 low-priced import volumes not only did not stop, but  
13 the decline in gas prices and the decline in product  
14 prices. They continued throughout 2001 and into 2002.

15 While CFI reports that operating rates for  
16 U.S. UAN producers were approximately 80 percent in  
17 January of 2001 when gas was at its peak, 87 percent  
18 in February and 97 percent by March, by June 2001 U.S.  
19 capacity was running at only 48 percent compared to 80  
20 percent the previous June. When this petition was  
21 filed last April, it had never recovered above the 82  
22 percent reached in November of 2001. More recently,  
23 in the first quarter of 2002, our industry operated at  
24 less than 70 percent as production curtailments were  
25 implemented in direct response to the effects of these

1 imports.

2           For Terra, the impact of these imports has  
3 been direct and substantial. While we have been  
4 accustomed to import competition from other countries,  
5 that competition has typically been fairly priced.  
6 The imports from these FSU countries, however, hit  
7 both coasts in 2000 with a vengeance. While the  
8 increase in calendar 2000 was significant, the  
9 tremendous surge of this low-priced import into the  
10 Gulf coast and Texas ports later in 2000 and in 2001  
11 was devastating for Terra and for all U.S. producers.

12           In 1999, less than 15,000 tons of this  
13 material entered at New Arlington, Texas. However, in  
14 the last four months of 2000, over 150,000 tons  
15 entered, and in 2001 over 650,000 tons were imported  
16 into the Gulf.

17           With major plants sited in the midwest farm  
18 belt or along the Mississippi River, U.S. producers  
19 have strategically advantaged to serve the midwest and  
20 the Mississippi River markets. For most imports, for  
21 most fairly traded imports, Gulf port entry points  
22 have previously made little sense as the cost of  
23 shipping to those ports plus the cost of unloading and  
24 transporting to distribution points up river would not  
25 have allowed competitive pricing with efficient, well-

1 placed U.S. production.

2           However, imports from Russia, Ukraine and  
3 Belarus have been priced so cheaply out of the Black  
4 Sea and the importers had such large quantities to  
5 move in the second half of 2000 these imports began to  
6 move directly in substantial quantities into the Gulf  
7 ports and up into the river system where it has been  
8 distributed by rail, truck and barge throughout the  
9 primary consuming areas.

10           Pricing not only at the Gulf, but in Terra's  
11 markets throughout the Corn Belt, began to be  
12 referenced to vessel prices -- Russian, Ukrainian and  
13 Belarusan vessel prices in the Gulf. Prices were very  
14 low. For example, from May 2001 to February 2002,  
15 import values of UAN from Russia dropped from \$85 a  
16 short ton to about \$57 per short ton.

17           The real impact of these prices can't be  
18 appreciated just by looking at import data. Because  
19 so much of this material has come to the ports, in  
20 order to move it into storage space the imports are  
21 delivered with price protection terms. That means  
22 that UAN imported say in April or May 2001 with a  
23 declared value of \$100 may well have been delivered to  
24 a distribution point at that time. The price would  
25 have been adjusted later in the year to reflect the

1 vessel price at some predetermined date.

2           If the shipment was price protected through  
3 December, for example, the earlier import would  
4 ultimately be priced at the much lower \$70 vessel  
5 price than in fact in December. In this way, product  
6 situated throughout the distribution system has been  
7 continually discounted. It's the only way the  
8 importers of this material were able to continue to  
9 move this product and gain market share.

10           Finally, I want to briefly address some  
11 statements that have been publicly made concerning the  
12 sale of natural gas as least as it applies to Terra.  
13 There are only two situations in which we actually  
14 sold physical gas. In December 2000, because the Port  
15 Neal plant was down due to a mechanical failure and we  
16 could not use the gas, we did sell off a small  
17 quantity. The gains from that sale offset production  
18 costs and benefitted customers in January pricing.

19           Also, when we made a decision to curtail  
20 production in our Verdigris plant in December 2000 due  
21 to gas cost that decision was made based on the  
22 evaluation of product price, production cost, and this  
23 is important, and our ability to meet customer  
24 commitments.

25           This very limited curtailment did not impact

1 our ability to serve our customers. We had adequate  
2 inventories on hand throughout this period. The flood  
3 of unfairly traded FSU imports has forced U.S.  
4 producers to reduce our prices to meet this import  
5 competition or to cede volume. As a result, we lost  
6 market share when the dumped imports flooded the  
7 distribution system. Later, as we tried to regain  
8 market share even at fire sale prices, margins  
9 continued to erode.

10 Left unchecked, imports from Russia, Ukraine  
11 and Belarus will continue to flood our markets at  
12 irrational prices. They have nowhere else to go. The  
13 U.S. and the EU are the only significant markets for  
14 UAN. We have petitioned for relief because there is  
15 no other way to address the problem.

16 The FSU producers have proven their  
17 commitment to dumping in the EU and in the U.S. with  
18 regard to urea and now with regard to UAN. As we have  
19 observed market conditions decline with no sign of  
20 improvement, it has become overwhelmingly clear to us  
21 that this problem is not going to resolve itself. The  
22 industry simply cannot continue under the current  
23 market conditions.

24 On behalf of Terra Industries and the rest  
25 of the UAN industry, I urge the Commission to make an

1 affirmative determination so that industry will  
2 receive some relief from the unfair trading practices  
3 that have had a serious negative impact over at least  
4 the last two seasons.

5 Thank you.

6 MS. SLATER: Thank you.

7 I'd like to turn to Mr. Fred Mugica of CF  
8 Industries, who will discuss the national marketing  
9 and distribution of UAN and the situation from CF's  
10 perspective.

11 MR. MUGICA: Good morning. My name is Fred  
12 Mugica, and I'm Director --

13 VICE CHAIRMAN HILLMAN: Can you check that  
14 that microphone is on? If not, could you pull it a  
15 little closer?

16 MR. MUGICA: Okay. It's on. How is this?

17 VICE CHAIRMAN HILLMAN: No. You still need  
18 it closer. Partly that's just to make sure the court  
19 reporter can pick it up as well.

20 MR. MUGICA: Okay. How is this?

21 VICE CHAIRMAN HILLMAN: Much better.

22 MR. MUGICA: Good? Okay.

23 My name is Fred Mugica, and I'm Director of  
24 Supply and Distribution for CF Industries. I have  
25 been in the fertilizer industry for 25 years. CF is a

1 farmer owned cooperative and the second largest U.S.  
2 producer of UAN.

3 CF operates a state-of-the-art UAN  
4 production facility in Donaldsonville, Louisiana, near  
5 the Port of New Orleans and serves its customers  
6 throughout the United States from that site by truck,  
7 rail and barge.

8 We market UAN to customers across the  
9 country through three channels of distribution --  
10 directly to our member/owner regional co-ops who are  
11 not required to buy from us and who make each purchase  
12 on a competitive basis, to non-members through our  
13 wholly owned subsidiary, Matlock, Inc., and directly  
14 to non-member UAN distributors and dealers.

15 In my position, I oversee production  
16 scheduling, logistics and supply planning. My  
17 position has enabled me to observe firsthand the  
18 negative effects of the surge of dumped subject  
19 imports on the domestic UAN market, and this is what I  
20 would like to address today.

21 In particular, I'd like to try to dispel a  
22 few myths that the Commission is hearing about what  
23 has been happening in the UAN market over the last  
24 several years. First of all, let me stress that UAN  
25 is a commodity product and that the market for UAN is

1 a national market. Like other domestic UAN producers,  
2 CF Industries ships UAN from its production site to  
3 customers across the country.

4 In addition to our plant, which is situated  
5 on the Gulf and is well positioned to use the  
6 Mississippi River distribution system, we market from  
7 distribution facilities in the midwest and eastern  
8 United States. At any given time, because price  
9 information in this market is transparent and current,  
10 customers know the best available price for UAN, and  
11 that is the price we have to meet to make the sale.

12 It is then up to us to see if we can make  
13 the transportation economics work whether the customer  
14 is less than 50 or over 500 miles from our  
15 distribution facilities. The customer doesn't care  
16 where his UAN is shipped from. He only wants to know  
17 the delivered price.

18 The Commission is being told that the  
19 domestic UAN market is regionally differentiated and  
20 that U.S. producers have historically served  
21 Mississippi Basin and Corn Belt markets while imports  
22 have been needed to adequately serve the east and west  
23 coasts. I strongly disagree.

24 As we explained in our questionnaire  
25 response, CF's customers are mostly located in the

1 midwest, in the eastern United States and the mid  
2 south. I say mostly because in fact since 1999 CF has  
3 sold to customers in over 40 states.

4 To say a little bit about the eastern U.S.,  
5 CF has built strong customer relationships from  
6 Georgia and the Carolinas in the south up through  
7 Pennsylvania and New York in the north, all of which  
8 CF has been able to serve competitively out of our  
9 Donaldsonville production facility.

10 Where in the country we can ship  
11 competitively is not a question of distance from plant  
12 to customer, but of our production efficiencies and  
13 the transportation rates that can be negotiated.  
14 There is no clear correlation between shipping  
15 distance and transportation cost, and CF can and does  
16 achieve solid netbacks on long distance deliveries.  
17 For example, rail and barge carriers prefer long hauls  
18 over short hauls. Therefore, in many instances the  
19 cost per mile can be cheaper on a long haul than on a  
20 short haul.

21 Certainly imports have always been present  
22 in the eastern U.S., but with the exception of the  
23 surge of dumped imports from Belarus, Russia and  
24 Ukraine beginning in 2000 we haven't been able to  
25 compete with them. In fact, CF's eastern U.S.

1 customer base is an important one, comprising up to 21  
2 percent of our total member sales over the period of  
3 investigation.

4 CF routinely ships UAN from Donaldsonville  
5 to the eastern U.S., including to deep water  
6 facilities such as Baltimore. CF's cost to ship to  
7 east coast ports have ranged from \$10 per metric ton  
8 to \$24 per metric ton over the period of  
9 investigation, while vessel costs out of the Black Sea  
10 have been in the \$14 to \$30 range. In other words,  
11 our freight costs to the east coast are competitive  
12 with and sometimes advantageous over FSU imports.

13 Another example is CF's UAN terminal in  
14 Rochester, New York, which we have been able to  
15 service competitively by rail. Again, there is no  
16 regional differentiation. CF regularly ships UAN over  
17 long distances and across regional lines and does so  
18 on a competitive basis.

19 The same holds true for CF and the western  
20 United States. As Mr. Jerry Christian of our  
21 subsidiary Matlock explained last May at the staff  
22 conference, a number of large Matlock accounts are in  
23 Arizona and California, markets he typically services  
24 by rail out of the Gulf. In fact, in selling to that  
25 market and arguably crossing regional lines we are

1 competing with other U.S. UAN producers that also  
2 produce in or near the Mississippi Basin.

3 For example, Farmland out of Coffeerville,  
4 Kansas, and Terra out of Verdigris, Oklahoma, are  
5 vying for the same business west of the Rockies.  
6 Again, there is no regional differentiation in the UAN  
7 market. It is a national market, and CF, like our  
8 competitors, frequently ships products over long  
9 distances when transportation economics permit, and  
10 they often do.

11 I would also like to stress that none of our  
12 domestic markets are isolated from one another. UAN  
13 is a commodity product served by many competing  
14 suppliers, and CF Industries, like our competitors,  
15 must take the price that the market dictates. This  
16 means that we cannot hold an artificial pricing  
17 advantage in a particular market.

18 If, for example, a customer in Baltimore is  
19 offered lower priced imported product, that customer  
20 will push us to meet the lower price on a delivered  
21 basis from New Orleans. There are simply no invisible  
22 lines that somehow divide the domestic UAN market and  
23 stop pricing information from reaching all sellers and  
24 buyers. We routinely hear from customers who give us  
25 the opportunity to make a sale, but only if we can

1 meet or beat the price being offered by an importer of  
2 FSU product.

3 There is another myth about the domestic UAN  
4 market that I'd like to briefly discuss, and that is  
5 the myth of UAN supply shortages during late 2000 and  
6 early 2001.

7 First of all, while we have given you in our  
8 questionnaire response the details of our curtailments  
9 during the entire period you are examining, you should  
10 recognize that CF's only curtailment of UAN production  
11 during the high gas price period of December 2000  
12 through January 2001 was not only extremely limited,  
13 but was as much a matter of inventory management as of  
14 gas price.

15 We had too much product on hand. There was  
16 never even an issue of adequate supplies to serve our  
17 customers, and our company went so far as to issue a  
18 press release making sure that customers who may have  
19 been nervous due to gas price increases knew that  
20 there was no supply issue from our standpoint. CF had  
21 plenty of supply, and we were able to supply all of  
22 our customers. We were never short of supply, and no  
23 one was turned away.

24 In fact, what happened to us and to other  
25 producers was that we were forced to curtail

1 production after gas prices had normalized. Because  
2 so much cheap UAN from the former Soviet countries  
3 continued to fill the distribution system, our  
4 inventories were overflowing, and we had nowhere to  
5 put any more product.

6 The problem was never lack of supply, but  
7 lack of customers. Again, we did not cut off any of  
8 our customers. They turned to extremely low-priced  
9 imports, leaving us with mounting inventories that we  
10 could not get into the distribution system.

11 From April of 2001 right through the spring  
12 of 2002, our UAN production was curtailed for one  
13 reason. There was so much of the very cheap Russian,  
14 Ukrainian and Belarusian material in the market that we  
15 could not sell our UAN. I do not remember in my 25  
16 year history with CF ever having curtailments of this  
17 magnitude. Again, to be clear, these curtailments  
18 were well after gas prices had returned to normal, but  
19 when FSU imports had not.

20 As the record of this investigation spells  
21 out very clearly, the fact of the dumped FSU imports  
22 on the U.S. industry has been devastating. In fact,  
23 the dumped imports could not have come at a worse  
24 time. In 1999 and early 2000, the industry felt the  
25 serious effects of rationalization of capacity as

1 significant new and efficient plants came on stream  
2 and older, less competitive facilities were phased  
3 out. The oversupply during this transition affected  
4 our bottom line in ways you can clearly see in our  
5 financial data.

6 By the second half of 2000, we were emerging  
7 from this transition, and, even with natural gas  
8 prices rising, the industry's health was improving  
9 compared to 1999. However, the FSU imports which were  
10 shut out of the European community began arriving in  
11 unprecedented quantities and certainly had a negative  
12 impact on this recovery.

13 When the massive quantities of dumped  
14 imports remained in the U.S. market even after the  
15 normalization of gas prices in mid 2001, our financial  
16 situation deteriorated further. From CF's  
17 perspective, the damage caused by the unfairly traded  
18 imports is evident in our performance for fertilizer  
19 year 2002. During that year, with dumped imports  
20 clogging the U.S. distribution system, our capacity  
21 utilization was down to only 63 percent, and our  
22 financial results were equally dismal despite the fact  
23 that gas prices had returned to historical levels.

24 The direct effects of the dumped imports on  
25 the U.S. industry are also shown by what happened when

1 they withdrew from the U.S. market following the  
2 initiation of this dumping investigation. Our UAN  
3 results began to show noticeable improvement after the  
4 filing of the petition. Our questionnaire response  
5 allows you to compare the first half of calendar year  
6 2002 with the third quarter of 2001. This improvement  
7 continues as customers once lost to FSU imports are  
8 returning to us to recover their needs.

9 One example is what is happening with  
10 Matlock's customers in Arizona and California. As a  
11 Matlock executive testified at the staff conference  
12 last May, his sales to UAP, a large purchaser of FSU  
13 imports, dropped from over 12,000 tons in 2000 to only  
14 394 tons in 2001. As of April 2002, however, UAP had  
15 turned back to Mr. Christian and purchased nearly  
16 5,000 tons through the end of 2002.

17 I'd like to conclude with just a few words  
18 about the current situation. Natural gas prices are  
19 again on the rise, and some parties to this  
20 investigation are suggesting that this will lead to  
21 shortages. This reflects a simplistic and wrong view  
22 of the UAN market. UAN prices are influenced by many  
23 factors, of which natural gas prices are only one. In  
24 a strong UAN market, domestic producers can operate  
25 profitably even when gas prices are above historical

1 levels.

2           Currently, with gas about \$5.50 per mm/btu,  
3 we are finding that product prices are rising as we  
4 move into the season, and UAN sales are profitable.  
5 This would not have been the case if the unfair  
6 imports hadn't been impacted by the pendency of this  
7 action.

8           Since the summer of 2002, with these very  
9 low-priced imports in check for the moment at least  
10 and supply/demand balances restored, we have been  
11 producing at healthy levels, and we will be able to  
12 continue producing into the spring and serving our  
13 customers.

14           That concludes my statement. Thank you.

15           MS. SLATER: Thank you, Mr. Mugica.

16           I'd like to turn quickly to Mr. Joe Ewing of  
17 Mississippi Chemical.

18           MR. EWING: Thank you. Good morning. My  
19 name is Joe Ewing, and I am Vice President of  
20 Marketing and Distribution for Mississippi Chemical  
21 Corporation or MissChem.

22           I've been with MissChem for 21 years, and in  
23 my position I am involved not only with the marketing  
24 of UAN, but also with MissChem's purchases of physical  
25 natural gas and the entirely separate area of hedging

1 against volatility in the natural gas market.

2 The Commission is hearing from parties  
3 opposed to this case an allegation it has heard  
4 before. It is an allegation that remains as dead  
5 wrong today as it was when it surfaced through the  
6 Ammonium Nitrate case. In particular, they argue  
7 again that during the period of high natural costs  
8 from December 2000 to February 2001 when natural gas  
9 reached an all-time high of \$10 per mm/btu that  
10 MissChem sold natural gas instead of using it to  
11 produce UAN.

12 This claim is still wrong. Saying it over  
13 and over again doesn't change the facts. We have  
14 explained the details to the Commission during the  
15 Ammonium Nitrate cases and in our questionnaire  
16 responses in this investigation exactly what did  
17 happen in the late 2000 and early 2001 period, but for  
18 the sake of absolute clarity I'd like to repeat a few  
19 of those points here.

20 Like many of our competitors, we at MissChem  
21 hedge a percentage of our natural gas requirements in  
22 the financial markets. As our monthly financial  
23 contracts reach expiration, we sell our hedge  
24 positions. In fact, like the majority of all us  
25 hedgers, we never actually take physical delivery of

1 this hedged gas.

2 As the Commission is well aware, hedging is  
3 a financial practice that enables us to smooth out our  
4 production costs over time. Specifically, the gain or  
5 loss on hedged gas helps to offset changing prices in  
6 the physical gas market. This has been our practice  
7 ever since the NYMEX financial market for natural gas  
8 opened in 1990.

9 Our sales of hedged gas have nothing to do  
10 with UAN production decisions. Selling gas hedges  
11 does not mean that we have no gas to produce UAN. We  
12 have never made UAN or any other fertilizer from  
13 hedged gas. As was explained in testimony before the  
14 Commission staff last May, MissChem typically hedges  
15 considerably less than all of its anticipated gas  
16 supply needs for a given month. As a normal practice,  
17 we sell our hedge positions every month.

18 This is what happened also in December of  
19 2000. The only difference was that we sold the  
20 contracts a little earlier in December than usual  
21 because we believed the financial prices had peaked  
22 and that we would realize a better margin than by  
23 waiting until the normal end of the month sale. As  
24 usual, we then went into the market and purchased  
25 physical gas for our production.

1           It's important to understand that in this  
2           extraordinarily volatile period of high gas cost our  
3           decisions concerning production were made based, as  
4           always, on our assessment of the relationship between  
5           gas prices and product prices, as well as customer  
6           commitments.

7           We at MissChem assessed daily the  
8           relationship between production costs and product  
9           prices and the best course of action in light of that  
10          relationship. Let me stress that all of our decisions  
11          were made with our existing customer commitments in  
12          mind. In fact, the very press release from  
13          December 11, 2000, that opponents of this case keep  
14          pointing to when they argue that sales of gas hedges  
15          where they advise not to produce indicates the  
16          contrary.

17          The press release could not have been more  
18          clear that the sale of the hedge positions in early  
19          December did not affect our ability to produce and  
20          satisfy customer commitments. Here's the part of the  
21          press release which is a statement from our CEO,  
22          Charles Dunn, that the opponents of the case don't  
23          quote, and I quote:

24                 "Going forward, we will continue to  
25          determine operating levels for our plants based on the

1 relationship between natural gas prices, nitrogen  
2 product prices and our customer requirements, as we  
3 have been doing for some time."

4 I'd also like to clarify that there was no  
5 UAN production curtailment during that time period.  
6 What we curtailed was ammonia production, not UAN. We  
7 continued to use purchased ammonia for UAN production.  
8 Our questionnaire response provides all the details.

9 Here's one important fact that opponents of  
10 the case are also ignoring. From September 2000  
11 through February 2001, when gas prices reached  
12 all-time highs, MissChem's UAN production actually  
13 slightly exceeded our stated capacity at times. In  
14 September of 2000, we operated at 99 percent of  
15 capacity. In October of 2000, we operated at 102  
16 percent of capacity. In November, we operated at 101  
17 percent of capacity.

18 In December, as natural gas prices were  
19 escalating rapidly, we operated our UAN facilities at  
20 102 percent of capacity. In January of 2001, with gas  
21 prices at \$10, we operated at 99 percent capacity,  
22 and, in February, we operated at 97 percent of  
23 capacity.

24 There were no UAN production curtailments  
25 until after gas prices began to return to normal

1 levels when massive amounts of dumped subject imports  
2 clogged the U.S. distribution system. Just like other  
3 domestic UAN producers, by the spring and summer of  
4 2001, Miss Chem was experiencing great difficulty  
5 placing product in the market. Our inventories rose  
6 as our customers turned to the dumped product.

7 While we were able to resume normal levels  
8 of UAN production in the second half of 2001, in early  
9 2002, again massive amounts of dumped UAN from Russia,  
10 Ukraine and Belarus were still in the U.S.  
11 distribution system, again forcing us to curtail  
12 production.

13 In conclusion, if there is a single point  
14 that I'd like to leave for the Commission it is that  
15 MissChem did not at any point sell gas instead of  
16 producing UAN. There is simply no credibility to that  
17 argument. Instead, we produced as much UAN as we  
18 could and closed UAN production only when dumped UAN  
19 imports made it impossible for us to place our product  
20 into the market.

21 The market remained saturated with their  
22 low-priced Russian, Ukrainian and Belarusian UAN until  
23 we filed this case in April of last year. By that  
24 time, the spring season for calendar year 2002 was  
25 destroyed. By the third quarter, however, of 2002,

1 the market was looking up, and in fact with these  
2 imports under control and prices no longer depressed  
3 product prices rose in the third quarter of the year,  
4 something we almost never see.

5 This spring UAN is poised for the best year  
6 in a while, even though gas prices are rising. We  
7 urge you to grant relief and not to let these imports  
8 again destroy our market.

9 Thank you very much.

10 MS. SLATER: Thank you.

11 We're going to hear now from Mr. Richard  
12 Downey of Agrium.

13 MR. DOWNEY: Good morning. My name is  
14 Richard Downey. I'm Director of Business Research for  
15 Agrium. I want to thank the Commission for the  
16 opportunity to address a few brief comments that  
17 emphasize the effect of subject imports on Agrium's  
18 UAN operations.

19 Agrium US is a UAN producer based in the  
20 western United States, including two UAN production  
21 facilities in Sacramento, California, and Kennewick,  
22 Washington. These facilities were acquired from  
23 Unical in late 2000. The two facilities have a  
24 combined UAN capacity of over 400,000 tons.

25 First, I would like to clarify the nature of

1 UAN sales in western United States. The staff report  
2 and various submissions to the Commission reference  
3 coastal markets, including the west coast market. The  
4 term is misleading in that UAN sales and distribution  
5 are defined far beyond supply and usage along that  
6 coastal region.

7           The western U.S. has been supplied for  
8 decades from a mix of domestic facilities in the  
9 western portion of the midwest, such as Oklahoma and  
10 Kansas, as well as regional western-based UAN  
11 producers. These producers include Agrium's  
12 facilities in California and in Washington, UAN  
13 facilities in Oregon and Wyoming owned by Coastal,  
14 Inc., and the UAN facility in Idaho owned by J.R.  
15 Simplot that's no longer operating.

16           Historically, some non-subject UAN imports  
17 have served a limited role. There has been UAN source  
18 from Canada and some limited volumes from a diverse  
19 mix of countries, largely some various European  
20 countries. However, subject imports did not appear in  
21 the western region until 1997.

22           UAN subject imports to California have shown  
23 a steady upward progression starting in 1997 at 27,000  
24 tons and reaching over 230,000 tons in 2002. This  
25 trend of increasing import volumes occurred both when

1 prices were high and subsequently when prices dropped  
2 in the second half of 2001 and early 2002.

3           Agrium knows that this import volume trend  
4 did not occur because the western U.S. is the  
5 so-called natural import market because of some  
6 transportation cost advantages, although the U.S.  
7 staff report repeatedly cites significant cost  
8 disadvantages when product is moved more than 100  
9 miles and is, therefore, a spatially differentiated  
10 product. This is an oversimplification that can be  
11 misleading.

12           As with any bulk commodity, UAN  
13 transportation costs are a significant component of  
14 final delivered price. For subject imports to the  
15 western U.S., ocean freight rates from subject  
16 countries to west coast ports are actually 70 percent  
17 higher than to east coast or southern U.S. Gulf ports.  
18 These imports must then incur additional charges for  
19 terminaling, transfer and storage. Final delivery for  
20 imported product is often made by truck, which is the  
21 highest cost mode of transportation. As a result, the  
22 total transportation cost is generally higher than  
23 from U.S. producers that supply this market.

24           While transportation costs account for a  
25 slightly higher component of UAN price than for other

1 nitrogen product, the differences are not that large.  
2 For example the cost of shipping UAN by rail 500 to  
3 700 miles accounts for about 25 percent of UAN prices.  
4 This compares to 22 percent for ammonia and 21 percent  
5 for ammonium nitrate. These are relatively small  
6 differences. The Commission should also bear in mind  
7 the selling price on a per ton basis already accounts  
8 for the difference in nutrient value among the  
9 different nitrogen products.

10 In sum, increased western U.S. market  
11 penetration by imports is not a result of comparative  
12 advantage. Instead, it reflects unfair pricing from  
13 the Black Sea ports.

14 I would like to close my comments with an  
15 observation on the future and the threat of material  
16 injury. We at Agrium are competing with suppliers who  
17 have made a concerted market decision to supply the  
18 market with subject imports rather than their own or  
19 other U.S. production. As the Commission is aware,  
20 certain importers have made significant investments in  
21 import terminals and have pursued publicly a marketing  
22 strategy of supply based on imported rather than  
23 domestic material.

24 We must view this approach as an undeniable  
25 indication that imported materials from the subject

1 countries will continue to appear in our key markets  
2 to support the statements and investments of our  
3 competitors. Consequently, to the extent that subject  
4 imports have already had a negative impact on price,  
5 production, market share and profitability for both  
6 western and midwest producers that supply the western  
7 U.S. market, we can only conclude that such injuries  
8 are indicated for the future unless the remedy of  
9 antidumping duty is maintained.

10 Thank you.

11 MR. KLETT: Good morning. My name is Daniel  
12 Klett. I'm an economist at Capital Trade, Inc.,  
13 testifying on behalf of Petitioner in this  
14 investigation. My presentation will address certain  
15 causation issues based on information collected by the  
16 Commission in its questionnaire responses and staff  
17 report.

18 These include the degree of  
19 interchangeability between U.S. UAN and subject  
20 imports, timing issues with respect to import volume,  
21 market share and changes in the U.S. industry's  
22 condition, and the significance and duration of any  
23 U.S. production curtailments, price depression and  
24 suppression, including the alternative causes of  
25 depressed price as asserted by Respondent, and lost

1 sale/lost revenue.

2 First, there's no issue regarding the  
3 commodity nature of UAN, as has been discussed  
4 earlier. One non-price factor asserted by Respondents  
5 is that because of a relatively high transport cost to  
6 price relationship, U.S. UAN and subject imports are  
7 differentiated based on regional distinctions as to  
8 where they are sold.

9 The industry witnesses have already  
10 discussed why this is not true. In fact, one of the  
11 key reasons subject imports had such detrimental  
12 effects on the industry is shown in Exhibit 1 where it  
13 shows that subject imports started to enter the Gulf  
14 coast ports in 2000, and in 2001 the Gulf accounted  
15 for a majority of total subject imports. These  
16 imports did not remain on the coast, but traveled  
17 inland by barge or by train to compete directly with  
18 U.S. producers in the Corn Belt market.

19 As shown in Exhibit 6, page 14 of our  
20 prehearing brief, imported UAN was held in  
21 distribution terminals located in Kansas, Iowa,  
22 Minnesota, Nebraska, Missouri, Indiana, Illinois,  
23 Wisconsin, Ohio, Oklahoma, Kentucky and Colorado.

24 The second issue I want to discuss is  
25 subject import volume and market share trends and the

1 relationship to the U.S. industry's condition. As we  
2 have stressed in our prehearing brief, any causation  
3 analysis must use half year data to isolate the  
4 effects on the UAN market and imports of the natural  
5 gas spike that occurred in late 2000 and early 2001.

6 Exhibit 2 shows the U.S. industry's  
7 operating profit margins from 1999 to 2001. The data  
8 for 2000 and 2001 half years is from the staff report  
9 from the preliminary phase of this investigation in  
10 Appendix C. I want to discuss these trends in  
11 relation to import share trends based on import  
12 shipments rather than Census data. The import totals  
13 from both these sources are virtually identical over  
14 the 2000 to September 2002 period. Only the  
15 distribution of the volume differs. Because import  
16 shares on this basis are confidential they are not  
17 shown in the graph, but I will discuss them  
18 qualitatively, and it's included in our prehearing  
19 brief as well.

20 Based on importers' shipments, subject  
21 market shares increased steadily from 1999 to the  
22 second half of 2000 and stayed at high levels to the  
23 first half of 2002. U.S. producers' profitability  
24 also improved from 1999 to the second half of 2000.  
25 However, as explained by Mr. Mugica, the industry

1 experienced poor conditions in 1999 due to a supply/  
2 demand imbalance that had little or nothing to do with  
3 subject import competition.

4 Using 1999 as a baseline year, therefore,  
5 will tend to show an improvement in industry  
6 profitability, but it does not mean that competition  
7 from subject imports did not also have adverse  
8 effects. The key period for purposes of injury and  
9 causation are the second half of 2001 and first half  
10 of 2002. This period also corresponds to fertilizer  
11 year 2002, which is how the U.S industry views the  
12 market.

13 As natural gas prices fell from their peak  
14 in January 2001, supply side pressures on UAN also  
15 were reduced, and UAN prices began to fall. Lower UAN  
16 prices resulted in non-Canadian non-subject imports  
17 virtually exiting the U.S. market, as you can see from  
18 Exhibit 3.

19 Subject imports remained in the market in  
20 the second half of 2001 in large volumes, and the  
21 prices at which they were sold declined dramatically  
22 through the first quarter of 2002, as shown in Exhibit  
23 4, and were below prices of other non-subject imports.

24 U.S. producers' inventory levels also  
25 increased to above normal levels by June 2001. In

1 attempting to compete with the volume and pricing of  
2 subject imports and because of high inventory levels,  
3 U.S. UAN producers' prices fell at a much faster rate  
4 than the decline in their natural gas costs in the  
5 second half of 2001. As a consequence, operating  
6 profits plummeted to a loss position of 18 percent of  
7 sales in the second half of 2001, an even greater loss  
8 than experienced in 1999.

9 For confidentiality reasons I have not  
10 presented 2002 profitability data, but it is in our  
11 brief at Exhibit 3. It shows that UAN producers'  
12 operating margins remained at very weak levels during  
13 January-June 2002 when subject import market share  
14 based on shipments remained high. In the third  
15 quarter of 2002, sales of subject imports declined  
16 significantly in reaction to the filing of this  
17 proceeding. Accordingly, U.S. operating profit  
18 margins improved considerably in the third quarter of  
19 2002 as shown in Exhibit 3 of our prehearing brief.

20 The third issue I want to discuss are UAN  
21 production curtailments and whether this is a  
22 non-price factor that can explain the increase in  
23 subject import volume and market share. Exhibit 5  
24 shows monthly UAN production levels as compiled by the  
25 Fertilizer Institute. The period normally associated

1 with the natural gas spike is the last quarter of 2000  
2 and first quarter of 2001.

3 To the extent there were production  
4 curtailments during this period, they were restricted  
5 to the three month period December 2000 through  
6 February 2001. Even over these three months,  
7 production averaged 849,000 tons a month, not a large  
8 reduction as compared to an average monthly production  
9 volume of about 900,000 tons a month for comparable  
10 periods the previous two years. In addition, the  
11 Commission collected detailed information from U.S.  
12 producers on production curtailments, which is  
13 reported in Exhibit 17 of our prehearing brief.

14 The lag between import sale and entry into  
15 the U.S. is two months or less, so U.S. supply  
16 disruption for UAN or even fears of a disruption can  
17 only explain any subject import volumes entered prior  
18 to April 2001. In fact, as described in the  
19 prehearing report, for 17 of the 28 purchasers that  
20 even reported supply disruptions from U.S. producers,  
21 the disruption period ended at the latest in the  
22 spring of 2001.

23 It's no coincidence that the average unit  
24 value of subject imports plummeted by 23 percent from  
25 June to July 2001 and fell by an additional 23 percent

1 through March 2002. The confidential monthly pricing  
2 data for subject import sales tells a similar story.  
3 Price declines of this magnitude are not consistent  
4 with the U.S. supply shortfall explanation of subject  
5 import volumes in the second half of 2001, which  
6 totaled about 600,000 tons, and the significant volume  
7 of subject imports that continued to be sold into the  
8 U.S. market in the first half of 2002. You can also  
9 see from this exhibit that UAN production fell much  
10 more steeply in the second half of 2001, and this  
11 decline was due in large part to the excess supply of  
12 subject imports in the market.

13 The fourth issue is price depression or  
14 suppression. UAN is a commodity, and the importance  
15 of price has been discussed earlier. Subject imports  
16 increased significantly and gained U.S. market share.  
17 Based on these facts and patterns, there's a strong  
18 inference that subject imports contributed in a  
19 material way to the price declines for UAN and the  
20 declining profitability experienced by U.S. producers,  
21 particularly in the second half of 2001 and first half  
22 of 2002. Trends from the aggregate monthly  
23 questionnaire pricing data which represents virtually  
24 full coverage of both U.S. and subject imports are  
25 shown in Exhibit 20 of our prehearing brief and also

1 support this conclusion.

2 Respondents have attempted to explain their  
3 market share gains based on non-price factors such as  
4 alleged supply shortfalls and regional differences to  
5 where U.S. UAN and subject imports are sold. These  
6 arguments are not supported by the facts, as has been  
7 discussed earlier.

8 Respondents also argue that the absence of  
9 consistent underselling undermines the finding of  
10 price depression or suppression due to imports and  
11 that other factors, not competition with subject  
12 imports, fully explain U.S. producers' U.S. price  
13 trends. These include changes in U.S. production  
14 costs, particularly natural gas, and competition with  
15 other nitrogen fertilizers.

16 It is true that there has been no consistent  
17 pattern of underselling versus overselling, no  
18 consistent pattern of underselling versus overselling,  
19 but with the 30 percent concentration sales for U.S.  
20 producers from the Baltimore area included it's a more  
21 even split between overselling and underselling. A  
22 revised margin of underselling summary is included in  
23 Exhibit 21 of our brief. In any case, for a commodity  
24 a mixed pattern of underselling is to be expected,  
25 particularly when information is disseminated through

1 publications such as Green Markets.

2 A UAN supplier's price cannot diverge  
3 significantly from the known market price. There are  
4 numerous examples of purchasers reporting in their  
5 questionnaire having purchased UAN imports due to  
6 lower price, and these are summarized in our brief at  
7 pages 21 through 46 in Exhibit 11.

8 The last issue I want to discuss relates to  
9 lost sale and lost revenue allegations. Respondents  
10 attempt to parlay the lack of confirmed lost sales as  
11 reported in the prehearing report as proof of the  
12 absence of price competition from subject imports, yet  
13 a close review of the purchasers' responses  
14 demonstrates that as much as anything else the  
15 purchasers were unable to confirm the specifics  
16 because the actual country of origin of their  
17 purchases was unknown due to the commodity nature of  
18 UAN.

19 For example, of the 18 individual companies  
20 for which responses were reported, 10 either gave no  
21 response at all, or the response was an inconclusive  
22 Other. Furthermore, the responses classified as  
23 Disagree sometimes were inconsistent with information  
24 reported in purchaser questionnaires by the same  
25 company, or the stated basis for the disagreement did

1 not address the specific allegation. We go into  
2 detail in this in our prehearing brief.

3 Thank you for your attention.

4 MS. SLATER: Thank you.

5 I have only a few minutes left. I think  
6 part of the effect of the snowstorm and the suspension  
7 agreement is that we can't always make our  
8 presentation as concise. I think less time leads to  
9 more presentation, but let me use five minutes, and I  
10 will hope that members of the Commission will ask  
11 questions about some of the things that I can't cover  
12 as quickly.

13 I want to talk briefly this morning about  
14 some issues that we think are very important and we  
15 want to make sure that you pay particular attention to  
16 when you look at the record of this investigation.

17 First of all, I want to make sure the  
18 Commission understands that in the final  
19 investigation, unlike in the preliminary  
20 investigation, the questionnaires did not request data  
21 on a half year basis. It was something we had asked  
22 the Commission to do in the preliminary phase. You  
23 did this. You relied and looked at that half year  
24 data in doing your analysis.

25 It is not present in the staff report,

1       although we do have the preliminary half year data.  
2       More importantly, producers accounting for a very  
3       large percentage of production voluntarily provided to  
4       you half year data running all the way through June of  
5       2002.

6                       Now, that's very important for you to see  
7       for a couple of reasons. Mr. Rosenthal would like to  
8       have you look at trends on a broad annual basis in a  
9       way which masks the impact of certain possible sources  
10      of injury to the industry and combines it with the  
11      impact of the imports to the point where he is then  
12      enabled to make an argument that the imports had no  
13      effect.

14                      It is absolutely crystal clear when you look  
15      at the half year data, which, by the way, is  
16      especially important because this industry works on a  
17      fertilizer year basis, fertilizer years beginning on  
18      July 1 of each calendar year.

19                      You can see very, very clearly the  
20      difference between, for example, the impact of the  
21      natural gas price spike in the early part of 2001 and  
22      the impact of the continuing and large flood of  
23      imports from the subject countries through all of  
24      calendar year 2001 and into the first quarter of 2002  
25      prior to the filing of the case.

1                   You can see when you look at the half year  
2 data the inventories were of the industry. June of  
3 each year is normally a time when inventories are very  
4 well drawn down at the end of the season. Take a look  
5 at that data. It's in Exhibit 3, the half-year data  
6 taken from your own record is there. You will see  
7 that the inventories were high in the middle of 2001  
8 when these imports continued to flood in and when the  
9 prices fell.

10                  When you look at half-year data you can see  
11 extremely clearly the difference between the pattern  
12 of on-subject imports and subject imports, both of  
13 which one might even argue, even for the sake of  
14 argument concede that some of the subject imports in  
15 the beginning of 2001 were in response to the higher  
16 product prices and the higher gas prices. You can see  
17 very clearly the difference in patterns there. The  
18 non-subject imports from a number of sources went away  
19 immediately when it became clear that U.S. production  
20 of UAN was fully on-stream, that there really was not  
21 an issue for UAN presented. Non-subject imports  
22 stayed and stayed and stayed, and it stayed by virtue  
23 of prices that fell and fell and fell.

24                  Look at the exhibit in our petition which shows  
25 you the comparative CIS values of subject and non-

1 subject imports. Non-subject imports were always  
2 substantially below all other imports and the  
3 difference became larger and larger as we went into  
4 2001 and the products needed to move.

5 I encourage you to take a look at that data. You  
6 need to see that to be able to understand the  
7 difference in the impact of what was happening.

8 You'll also see when you look at that data that  
9 the financial results from the first half of 2001, the  
10 period when these extraordinary gas price spikes were  
11 experienced was significantly better than later in the  
12 year when the imports came.

13 I'd like to talk to you also about the interim  
14 period data, make sure that you understand the  
15 January-September 2002 is largely post-petition period  
16 and you need to be able to separate out before and  
17 after. The half-year data helps you do that a little  
18 bit. You can look at the first half versus the last  
19 quarter. Exhibit 3 shows the financial and pricing  
20 results there.

21 I'd like to talk a little bit about threat. I  
22 hope we can do that during questions. We have  
23 tremendous capacity in each of these countries which  
24 now has no home. There is nowhere else for this to  
25 go. There is no significant other consuming market.

1 You've recognized that a number of times during your  
2 examination of various nitrogen markets. UAN is a  
3 very specialized product. It's a solution. These  
4 countries do not have the infrastructure for  
5 distributing or even applying this product. It has  
6 nowhere else to go with the EU orders in place.

7 Thank you for your attention this morning. I  
8 know you'll have lots of questions and we'll do our  
9 best to answer them. Thank you.

10 VICE CHAIRMAN HILLMAN: Thank you, Ms. Slater,  
11 and again I'd like to extend our profound thanks to  
12 all of you. I know traveling to Washington in the  
13 midst of this snowstorm was not easy on any of you so  
14 we appreciate the efforts that all of you have made to  
15 be with us this morning and appreciate all of your  
16 testimony.

17 With that I will start the questioning this  
18 morning.

19 I guess if I could turn to the industry  
20 witnesses, kind of both on this issue of whether they  
21 were shorted and to make sure I understand a little  
22 bit better how prices get set.

23 A number of you have said in describing your  
24 sales of your gas futures or in general your  
25 production decisions have said that you were always

1 keeping in mind your "customer commitments."

2 I'm trying to understand the nature of those  
3 commitments. When you say we kept in mind our  
4 customer commitments, what were those commitments  
5 exactly?

6 MR. GIESLER: Customer commitments are product  
7 that we have orders for at specific prices or pre-paid  
8 money for, or we have what would be considered  
9 forecasted tons to be sold, but yet we have no  
10 commitment for them to be take. That would not be  
11 considered a commitment.

12 VICE CHAIRMAN HILLMAN: I'm sorry, just to make  
13 sure I understand it. When you say commitment you  
14 mean an already-placed order or something that's  
15 already been paid for --

16 MR. GIESLER: Correct.

17 VICE CHAIRMAN HILLMAN: But not those things that  
18 you expect to come in in the future because in the  
19 past they have. In other words you're describing a  
20 commitment that is a real legal commitment?

21 MR. GIESLER: Correct.

22 VICE CHAIRMAN HILLMAN: Typically for what length  
23 of duration would that kind of a commitment be?  
24 You've already got an order placed, you've already got  
25 money paid down. That typically would be for supply

1 for how long a period or what kind of volume?

2 MR. GIESLER: It could run a very long period of  
3 time because a lot of times we have, for like pre-paid  
4 programs are done in December for spring so you have  
5 to produce those tons for spring usage. You may also  
6 take orders that you know is going to take a period of  
7 time to deliver because a customer can't take a large  
8 quantity at one single time. It may take months, to  
9 three months to get the specific product to them.

10 VICE CHAIRMAN HILLMAN: Are those typically a  
11 commitment both on volume and price?

12 MR. GIESLER: Yes.

13 VICE CHAIRMAN HILLMAN: And does the price change  
14 or is the price absolutely fixed? In other words, is  
15 there any kind of an escalator clause or any kind of a  
16 meter release provision that would affect the pricing  
17 within the scope of that kind of commitment?

18 MR. GIESLER: On a pre-paid commitment there is  
19 no price change. It is committed at that price.

20 There is very rarely on most other orders that  
21 have escalator clauses, it may be situations where if  
22 the customer cannot receive it within a specified  
23 period of time that we've agreed to, that negotiation  
24 for a price with a ceiling level may go into effect at  
25 that point in time, but that is agreed to on the front

1 end of the commitment.

2 VICE CHAIRMAN HILLMAN: Others? How about for  
3 CF?

4 MR. MUGICA: For CF we have a similar situation  
5 as Terra in the sense that when we have a pre-paid  
6 business those are what you referred to I think as  
7 legal commitments at a pre-determined price for  
8 shipment at a future date.

9 We will also have, I think we would consider  
10 commitments in terms of member forecast and member  
11 intents. They're sometimes referred to as member  
12 intents, where our member customers will give us a  
13 projection as to what they will expect to take from us  
14 in the future, but those are just forecasts and  
15 they're not commitments in a legal sense.

16 VICE CHAIRMAN HILLMAN: There would be a volume  
17 understanding. Would there be a price understanding  
18 that go along with those --

19 MR. MUGICA: No, there would not. Those would be  
20 priced at the time of shipment at the market price.

21 VICE CHAIRMAN HILLMAN: Others? Mississippi  
22 Chemical or --

23 MR. GIESLER: Commissioner Hillman, part of the  
24 forecasting piece, we consider that -- Customers are  
25 telling us what they're going to need. Therefore we

1 need to produce this quantity of product to supply  
2 them. The customers that we've already done business  
3 with and continue to do it. That's why we have to  
4 operate our facilities for a year round period to  
5 manage it and we have to go into a long term  
6 relationship with the customers to understand their  
7 needs.

8 The only difference is the price is not  
9 established on that.

10 VICE CHAIRMAN HILLMAN: But when you testified  
11 earlier, and I guess the same thing for CF, that  
12 whatever curtailments in production may or may not  
13 have occurred, they were never such that you were not  
14 able to meet all of these commitments, these kind of  
15 expectation commitments as well as the pre-paid  
16 commitments. That is the testimony?

17 MR. GIESLER: That is correct.

18 VICE CHAIRMAN HILLMAN: Mr. Ewing, for  
19 Mississippi, I'm just trying to make sure I  
20 understand, when you say you were prepared to meet  
21 your customer commitments, i'm just trying to make  
22 sure I understand exactly what those are.

23 MR. EWING: As expanded in the last couple of  
24 comments, I would agree with it 100 percent. In other  
25 words we would consider, of course, anything that we

1 had committed to with price and volume up to that  
2 point would be a firm commitment, and any commitment  
3 we made as a projection for customers based on  
4 historical take patterns and that sort of thing would  
5 have been a volume expectation or a volume commitment,  
6 but not a pricing commitment.

7 VICE CHAIRMAN HILLMAN: Mr. Downey, anything  
8 different?

9 MR. DOWNEY: It's exactly the same with Agrium,  
10 yes.

11 VICE CHAIRMAN HILLMAN: Just so I understand it,  
12 as a portion of your sales, how much of it falls into  
13 this pre-paid absolutely locked in in terms of both  
14 volume and price? Is that a big part of the market or  
15 is most of your business in this kind of expectation,  
16 you kind of know the orders are coming. I'm trying to  
17 understand how large the pre-paid over a period of  
18 time volumes are.

19 Again, if it's confidential information I  
20 understand it, putting it in the post-hearing. I'm  
21 just looking for a general sense.

22 MR. EWING: The way the industry typically works  
23 is since the consumption is in the spring of the year,  
24 there are many times months and months of production  
25 that we have to ship into customer tanks which we have

1 basically agreements with. Either there may be a  
2 consignment agreement or a storage agreement, that  
3 sort of thing. So that may actually go on all the way  
4 through February.

5 In Mississippi Chemicals' case the spring season  
6 typically starts March, April, in that time period.

7 All of those tons that go in through that long  
8 time period, in our fertilizer year from July 1  
9 production all the way through February are basically  
10 fill tons, what we call fill tons. Those would be the  
11 first time pass-through, all the tanks are full,  
12 they're ready to go for the spring season. Those are  
13 actual commitments that are made pretty much a firm  
14 deal by the time you get through February.

15 So I would say that certainly production through  
16 that time period would be pretty much firm commitments  
17 and pretty well priced by the time you get to that  
18 point of the year.

19 But going forward when the spring season starts -  
20 - March, April, May, June, to finish up the year,  
21 that's the refill system That's when we're shipping  
22 back into customers again. That is the time period  
23 when prices are not fixed. We basically try to take  
24 whatever appreciation in the market we can get at that  
25 particular point.

1           VICE CHAIRMAN HILLMAN:  Going again to this  
2 shortage issue, because obviously the Respondents have  
3 made a lot of arguments about it.

4           I just want to get from your sense, do you think  
5 there was a perception in the market?  Again, leave  
6 aside whether you think you could have covered it.  
7 Did your distributors, did the retailers, did the  
8 marker perceive that there was a shortage?

9           MR. GIESLER:  It's very possible they could have  
10 had the perception there was a shortage.  When they  
11 hear of all the ammonia production that was being  
12 curtailed and the urea production, that's nitrogen in  
13 total.  The UAN is the last of the nitrogen production  
14 in the United States.  That's going to be affected by  
15 skyrocketing gas prices because it doesn't have a one-  
16 to-one correlation with the gas.  But it is possible  
17 because of the curtailments and closures of the  
18 ammonia plants and urea plants.  It could have been  
19 bundled.

20          VICE CHAIRMAN HILLMAN:  Would others agree?  Do  
21 you think the market perceived a shortage during that  
22 period, or that there would be a shortage?

23          MR. MUGICA:  I would agree with that.  That was I  
24 think one of the reasons CF went forward with a press  
25 release early on, because we felt there was an

1 incorrect perception that there would not be enough  
2 nitrogen. So I would agree with what Mr. Giesler  
3 said, that it probably was related to some of the  
4 ammonia and urea curtailments that had taken place.

5 VICE CHAIRMAN HILLMAN: Ms. Slater?

6 MS. SLATER: If I could just supplement that, I  
7 think there are two separate issues. One is were  
8 there shortages, and you can see in your data the  
9 answer is no. The question is were there perceptions  
10 of shortages and could that explain these level of  
11 imports. The answer to that is yes and no.

12 Perceptions of shortages, maybe. If you take a  
13 look at something we cited in our brief which is a  
14 Green Markets report from January 1st. For example,  
15 in addition to all the kinds of things Mr. Giesler was  
16 testifying about, an industry analyst who is well  
17 known I think to everyone in this room, Mr. John  
18 Douglas, was in the lead article predicting horrible,  
19 I think that high gas markets could decimate the U.S.  
20 nitrogen industry. He was predicting what the outages  
21 would be.

22 His doomsday scenario with respect to UAN as  
23 opposed to ammonium urea was a ten percent reduction  
24 in capacity. He was talking about 25 percent  
25 reduction in urea, 40 percent reduction in ammonia.

1 UAN, was there ever a reasonable perception that  
2 supply would be short? The answer is probably no.

3 If there was such a perception and customers  
4 acted on it, and this is the thing I really want to  
5 make sure you take away. The lead time between the  
6 ordering of imports and their arrival here, we've had  
7 testimony in the staff conference, you'll see it in  
8 other places in your record, is roughly 60 days.  
9 Sometimes less.

10 Even if you want to accept that customers  
11 panicked and went out to buy imports early in the year  
12 before everyone understood through a variety of  
13 articles and conversations and press releases that  
14 there was plenty of production out there, it might  
15 explain the imports that arrived through April. And  
16 if you take a look at the pattern of non-subject  
17 imports, that's exactly what you'll see happening.  
18 You'll see an increase and you'll see it tapering off  
19 very quickly, coming into the spring. Not with  
20 respect to these imports.

21 The quantities that came in the second half of  
22 the year were tremendous. You cannot tie it in any  
23 way to market perceptions about what was happening,  
24 particularly when you understand the spot nature of  
25 those sales and you watch how the prices change.

1           So I think the issue of whether there was that  
2 perception is a very different one from whether it  
3 could possibly explain what happened here.

4           Pay attention to what you'll hear this afternoon  
5 about lag time, because if it comes up certainly there  
6 were questions asked during the staff conference and  
7 60 days was the lag time that was there.

8           Thank you for your patience.

9           VICE CHAIRMAN HILLMAN: I appreciate very much  
10 those answers and we'll turn now to Commissioner  
11 Miller.

12           COMMISSIONER MILLER: Thank you Commissioner  
13 Hillman, and thank you to the witnesses for being here  
14 today. Ms. Slater, if it makes you and your panel  
15 feel any better, I have to admit that my own  
16 preparations for this hearing were more than a little  
17 bit affected by the snow, so we've all been trying to  
18 catch up here a little bit. It's a complicated  
19 industry and the staff put together a very detailed  
20 staff report that's helpful. Usually I try to meet  
21 with them beforehand and I wasn't able to do so, but  
22 your testimony today has been very helpful. The  
23 exchange that you just had with Commissioner Hillman  
24 was also very helpful in terms of understanding the  
25 issue of the perception of the customers and how we

1 put that aside from what may or may not have been  
2 happening with the industry so it's all been very  
3 helpful.

4 I think perhaps what I'd like to start with if I  
5 could, to switch a little bit but it's all kind of  
6 related, to ask the producers to talk a little bit  
7 more about the relationship among nitrogen  
8 fertilizers. In particular, Mr. Giesler, given your  
9 comment a moment ago about there was a perception not  
10 just of shortage of UAN but of nitrogen fertilizers  
11 across the board. The urea and ammonia issues,  
12 ammonia nitrate issues, the production that may have  
13 been affected by the high gas prices.

14 Just because of the relationship of the different  
15 nitrogen fertilizers, and I know we'll hear about this  
16 this afternoon. If I could ask the producers to talk  
17 a little bit -- First of all I probably should clarify  
18 which of the producers make the various different  
19 products. And to talk about the relationship from a  
20 supply standpoint of the different fertilizers. I'm  
21 interested in the demand side, too, but you're the  
22 producers so let's talk about it from the supply side  
23 first.

24 MR. GIESLER: As far as the manufacturing?

25 COMMISSIONER MILLER: Yes.

1           MR. GIESLER: Terra is a big UAN producer, but  
2 obviously you have to start off with anhydrous ammonia  
3 to make any nitrogen form. So we have anhydrous  
4 ammonia production and then we take the anhydrous  
5 ammonia and upgrade it into urea liquor and ammonium  
6 nitrate liquor and mix the two together with water to  
7 get 32 percent solution.

8           The thing with that is that our facilities  
9 operate integrally, integrated in the fact that the  
10 processes, you can't reduce volumes of some products  
11 or process without affecting the cost or the  
12 efficiencies gained or even the ability to run the  
13 plant. We always have a little bit of excess ammonia  
14 capacity over and above what we put into the UAN  
15 production. Therefore we can lower our ammonia rates  
16 to about 85 percent without affecting our efficiency  
17 rate. But all of that will then go into UAN and we're  
18 still maintaining maximum operating rates of our UAN  
19 in our facilities.

20           MS. SLATER: One thing, as you're answering I  
21 think part of the question is also what do you produce  
22 for sale. So I think if I'm understanding your  
23 question --

24           COMMISSIONER MILLER: Yes.

25           MS. SLATER: -- it's not only the issue of the --

1           COMMISSIONER MILLER: The internal transfers, but  
2           --

3           MS. SLATER: -- production for sale of the  
4 products, and you'll find that, quite interestingly,  
5 these producers don't, there's not as much overlap as  
6 you might think in their production for sale of the  
7 various nitrogen products.

8           MR. GIESLER: We do sell anhydrous ammonia, UAN,  
9 and we sell a small quantity of urea within the U.S..  
10 Of course that's a different facility. We also sell a  
11 little ureal liquor but that goes into the industrial  
12 feed market and it's just because we have excess urea  
13 liquor capacity at one facility.

14          COMMISSIONER MILLER: Mr. Ewing, do you want to -  
15 -

16          MR. EWING: Thank you.

17          Mississippi Chemical, we produce anhydrous  
18 ammonia in several locations but the location where we  
19 produce the UAN we have two ammonia plants. What we  
20 typically do, we also have the ammonium nitrate  
21 facility in the same location. We are not the largest  
22 by any stretch of the imagination, UAN producer.  
23 We're the smallest of the three here. But we are the  
24 largest ammonium nitrate producer. So we kind of use  
25 a different tack with our sales and our marketing.

1           The facility there is set up such that we can  
2 actually curtail ammonia production, which is what we  
3 did in the early part of 2001 when the gas prices were  
4 high, because all the gas goes into the ammonia  
5 production. And then downstream products are just a  
6 result of what gas went into ammonia.

7           What we did in early 2001 was we did not curtail  
8 UAN, we curtailed our ammonia production and then  
9 brought in imported -- by imported I mean rail product  
10 in from our other facility in Donaldsonville,  
11 Louisiana, to make up the difference in the actual  
12 ammonia. You have to run an ammonia plant in  
13 conjunction with a urea plant to get the CO2 which is  
14 a by-product. It has to go into the urea process. So  
15 we cannot completely shut off an ammonia plant. We  
16 have to crank it back to an efficiency level that we  
17 can stand, and then so that we have the CO2 supply,  
18 and then we can also bring in ammonia and make sure  
19 that we don't lose any downstream products like UAN  
20 and ammonium nitrate.

21           So that's kind of how we operate and market our  
22 products there.

23           COMMISSIONER MILLER: Mr. Mugica?

24           MR. MUGICA: We produce ammonia, urea and UAN at  
25 Donaldsonville also. We have four ammonia plants,

1 four urea plants and two UAN solution plants.

2 As Mr. Ewing explained, if you want to produce,  
3 for us if we want to produce UAN we have to produce  
4 urea which means we also have to produce ammonia  
5 because you need carbon dioxide in order to produce  
6 urea.

7 So while we can do some curtailments at the  
8 margin, this plant was really designed to run as a  
9 unit.

10 What we did in terms of the natural gas situation  
11 in late 2000 and early 2001 is we continued to run UAN  
12 throughout. We curtailed slightly in December and  
13 January because we had too much product in our system,  
14 not because we couldn't justify producing UAN. And we  
15 were able to curtail ammonia and some granular urea  
16 production, and then we went out and bought granular  
17 urea on the open market. So that's how we handled the  
18 gas situation.

19 By the time March rolled around the plants were  
20 once again operating as they're designed to do, as a  
21 unit, at near capacity.

22 I'm not sure if that addresses you --

23 COMMISSIONER MILLER: It does. It's given me the  
24 kind of background that I'm looking for.

25 Mr. Downey, do you want to describe Agrium's

1 facility?

2 MR. DOWNEY: Sure. Agrium U.S. is actually a  
3 wholly-owned subsidiary of Agrium. We do have  
4 production facilities in Canada, a number of them that  
5 produce ammonia, urea and UAN solutions and ammonium  
6 nitrate. The two facilities in the U.S. that are UAN  
7 producers have the capability of producing it off of  
8 produced ammonia, or at least for Kenowick it does,  
9 but the last little while we've been buying ammonia or  
10 urea and ammonium nitrate solutions and producing the  
11 UAN at those facilities.

12 So we, just an overview, we've got nitrogen  
13 production in Canada of all the major products; in  
14 Kenowick and in California we produce predominantly  
15 UAN solutions.

16 COMMISSIONER MILLER: Okay.

17 MS. SLATER: If I may, Commissioner Miller, one  
18 thing that may be helpful to you. In exhibit 23 to  
19 our pre-hearing brief there is TFI data showing the  
20 past utilization for U.S. producers for ammonia, urea  
21 and UAN. And there is also a graph, you can get some  
22 idea just to sort of show you how relatively unrelated  
23 production of one is to cutbacks in the other in terms  
24 of product for final output and sale.

25 UAN, as you can see from these graphs which is

1 the past page in that exhibit, UAN production was not  
2 significantly impacted during these high gas price  
3 periods compared to what happened to urea and  
4 anhydrous ammonia.

5 MR. KLETT: And if I just might add, one reason  
6 for that is that the different nitrogen content of  
7 these fertilizers. UAN is 32 percent; urea 46  
8 percent; and anhydrous over 80 percent. So kind of the  
9 vulnerability to natural gas price cost increases.  
10 It's less for UAN than for the other nitrogen  
11 fertilizers.

12 COMMISSIONER MILLER: All right. I have to ask  
13 my follow-up the next time around.

14 VICE CHAIRMAN HILLMAN: Commissioner Koplan?

15 COMMISSIONER KOPLAN: Thank you very much, Madame  
16 Chairman. And I want to thank the witnesses for their  
17 testimony. You've taken on I think the issues raised  
18 by Respondents head on. I appreciate that, but I'm  
19 not there yet. So I'd like to set the table if I  
20 could and go through some of this with you all again.

21 The Respondent International Raw Materials, Inc.  
22 acknowledges that the domestic industry appears to be  
23 in a chronic state of ill health but argues that this  
24 is entirely the result of structural factors involving  
25 the supply, cost and price of natural gas in the

1 United States.

2 They further argue that this resulted in supply  
3 disruptions and a crisis of uncertainty for nitrogen  
4 fertilizers in general and urea ammonium nitrate in  
5 particular, beginning in mid-2000 and lasting almost a  
6 year.

7 In addition, they allege that the increase in  
8 subject imports and their entry into the central  
9 basin, which allegedly is the domestic producers'  
10 principal market, was a short-lived one-time  
11 occurrence and thus they claim there's no causative  
12 link between the condition of the domestic industry  
13 and the subject import volumes and prices.

14 I note that the quantity of subject imports did  
15 drop by 61.6 percent between the nine month 2001 and  
16 2002 interim periods, although the quantity of  
17 domestic demand remained steady.

18 I'd like to have each of the domestic producers  
19 respond to this, but take this into account, and this  
20 has not been discussed yet this morning. I'm  
21 interested in how you respond to the fact that a  
22 significant number of domestic purchases, 11 of 28  
23 questionnaire responses, stated that they could not  
24 fulfill all of their purchasing requirements from  
25 domestic UAN producers, and eight of those 11 provided

1 additional comments, all of which identified U.S. UAN  
2 producers exclusively as the suppliers that at times  
3 did not have UAN available to sell to them. That's in  
4 the staff report in chapter two, page nine. Because  
5 it's BPI I can't get into the identity of the  
6 suppliers that were referred to there, but there is  
7 specificity.

8 In addition to that, to close the loop on this if  
9 I can, how do you respond to the results of 80 monthly  
10 price comparisons between the domestic and subject  
11 imported product number one, that's the product with  
12 the 32 percent nitrogen concentration, that reflect  
13 that in 51 of those comparisons subject imports  
14 oversold the domestic product?

15 MS. SLATER: A wonderful multi-part question.

16 COMMISSIONER KOPLAN: Thank you very much. I'm  
17 looking for a multi-part answer.

18 And let me say this if I could, just to help the  
19 reporter. If as you the domestic witnesses respond  
20 you could each identify yourselves again for the  
21 record so the reporter doesn't have to strain on that.

22 MS. SLATER: Let me ask Mr. Giesler to maybe  
23 start and we'll make the rounds. It is a very  
24 detailed question. Maybe we can break it down and  
25 start with the notion of talking about the purchaser

1 questionnaire comments. Would that be as good, to  
2 jump into the middle there?

3 COMMISSIONER KOPLAN: Sure. And I will say to  
4 you that what you can't provide here if you check the  
5 transcript and provide any additional detail to these  
6 answers in the post-hearing it would be most  
7 appreciated because this is very important as far as  
8 I'm concerned.

9 MS. SLATER: We'll be happy to do that.

10 COMMISSIONER KOPLAN: Thank you.

11 MR. GIESLER: Mr. Commissioner, as far as  
12 supplying, not having a supply of the product by the  
13 purchasers, the issue for that comes down to we had  
14 product to offer them to sell. We offered them  
15 product and said we would have product for them. They  
16 addressed it with what's our price today. We pushed  
17 it saying we have product when you need it, we'll want  
18 to price it closer to the season and time. A lot of  
19 times that is construed as we're not wanting to supply  
20 them. That's not really the case. We just didn't  
21 want to give a quote for a future shipment at that  
22 point in time. But we did offer them product to  
23 supply.

24 COMMISSIONER KOPLAN: I appreciate what you're  
25 saying. What I'm missing today to be quite honest

1 with you, I would have liked to have seen some of the  
2 purchasers here that would be backing up the arguments  
3 that you've been making this morning. That's what's  
4 missing for me right now.

5 I'm looking, as I say, at what we have in our  
6 staff report and I've got folks that specifically, I  
7 just quoted to you what the numbers are in terms of  
8 the number of purchasers, 11 out of 28, I went through  
9 that for you. So that's the kind of specificity I'm  
10 looking for.

11 I understand that you're in effect brushing it  
12 off, but I've got people who have come forward and,  
13 not the Respondents now, but people you would be  
14 selling to, saying these things. Do you follow me?

15 MR. GIESLER: Yes.

16 COMMISSIONER KOPLAN: Who's next?

17 MR. EWING: I'll take a crack at it.

18 COMMISSIONER KOPLAN: Oh, can I just as a  
19 housekeeping matter, when you testified in your direct  
20 presentation you cited the December 11th, 2000 press  
21 release that you said wasn't quoted in its entirety.  
22 Just for the record, that is Exhibit 1 to, it's an  
23 exhibit to the Respondent's brief and it is in there  
24 in its entirety and I will come back to that press  
25 release myself in my own questions.

1 MR. EWING: Okay.

2 COMMISSIONER KOPLAN: Go ahead.

3 MR. EWING: I think what we talked about a little  
4 earlier was the perception in the marketplace during  
5 that time. There was a lot of uncertainty perhaps in  
6 the fact that the ammonia plants were going down  
7 because of natural gas.

8 The thing is that imports of ammonia from  
9 Trinidad, Venezuela, places like that that are natural  
10 sources of supply for anhydrous ammonia which we own a  
11 facility or half of a facility in Trinidad, generally  
12 it was known that ammonia could be had in the import  
13 market.

14 The uncertainty had to do with pricing. As we  
15 always said, we make decisions on our production based  
16 on the natural gas prices in relationship to product  
17 prices with our customer commitments in mind, and we  
18 described what we considered to be our customer  
19 commitments.

20 So during that December/January period of time we  
21 were looking at natural gas prices and we were looking  
22 at product prices. Product prices had not responded  
23 to this situation in the marketplace until about  
24 January. So I think the perception was there that  
25 perhaps there would not be enough supply in the

1 marketplace.

2 I don't know the specifics of what you're looking  
3 at in there because I haven't seen the business  
4 confidential information myself so we really can't  
5 respond specifically, but I suspect that a lot of what  
6 you're seeing in there is perception that was in the  
7 early part of that year.

8 COMMISSIONER KOPLAN: What I don't understand is,  
9 it seems to me that it's more than a perception if you  
10 can't quote price at the time -- If there was  
11 uncertainty, it sounds like, maybe not intentionally,  
12 but that you might be contributing toward creating  
13 that uncertainty.

14 MR. EWING: That's very possible because --

15 COMMISSIONER KOPLAN: I appreciate that.

16 MR. EWING: What happened was, I mean if you're a  
17 customer and you called during that time period, and  
18 this was December or January, and natural gas prices  
19 are \$9 or \$10 and we're looking at our production  
20 rates and trying to decide what we're going to do, and  
21 the customer wants a price for March, which he may  
22 very well be quoted from a Russian producer or an  
23 importer, at a price that economically we just cannot  
24 do. So we'll say no, we can't meet that price. But  
25 we certainly intend to produce, we intend to provide

1 our customers with their product, but you know we  
2 can't price the produce three months in advance. We  
3 just can't do that.

4 COMMISSIONER KOPLAN: I see my light's going to  
5 go on and I want to hear from the other witnesses when  
6 I come back to my next round.

7 But I want you to keep this other part in mind  
8 that I mentioned when I read the question. This was  
9 part three. That was how do you respond to the  
10 results of 80 monthly price comparisons between the  
11 domestic and subject imported product, the 32 percent  
12 nitrogen concentration which I understand is most of  
13 what's sold here, that reflect that in 51 of those  
14 comparisons the subject imports oversold the domestic  
15 product. I haven't heard a response to that part of  
16 it yet, and my time is up.

17 MS. SLATER: We look forward to answering that  
18 one, Mr. Koplan.

19 COMMISSIONER KOPLAN: Thank you.

20 Thank you, Madame Chairman.

21 VICE CHAIRMAN HILLMAN: Thank you.

22 I guess maybe as a precursor to responding to  
23 Commissioner Koplan, I wonder if you can help me  
24 understand just basically how prices get set.  
25 Obviously we've seen the green markets and all these

1 studies and the prices are very transparent, but I'm  
2 just trying to make sure I understand sort of what do  
3 you think moves prices?

4 Presumably, I'm trying to understand that we've  
5 obviously had other fluctuations in gas prices. Do  
6 prices of UAN typically follow gas prices? If so, is  
7 there a lag between them? I'm trying to get from your  
8 sense of it, what drives prices up or down? I realize  
9 there's a lot of things going on out in the market,  
10 but it just is not clear to me from reading all the  
11 data that we have, and obviously we've had gas spikes  
12 in the past. Is it traditional that whenever there's  
13 a gas price increase that you all get a price increase  
14 for UAN? And if so kind of by how much or what kind  
15 of lag time? Help me understand just generally who  
16 leads prices, how prices as a general rule, how do you  
17 see prices getting set in the marketplace? Leave  
18 aside the underselling just for a minute. We need to  
19 get there, but I need to start with a better  
20 understanding from you in the market how prices get  
21 set.

22 MS. SLATER: Let me ask Mr. Buckley who's the  
23 chief economist, among other things for CF Industries,  
24 to take a first crack at that and maybe some of the  
25 others would then like to jump in.

1 MR. BUCKLEY: Thank you.

2 As I believe Val Slater mentioned earlier in her  
3 testimony, this is a true commodity business. UAN is  
4 a commodity product where basically the prices that  
5 are set are set in the marketplace. It's a true  
6 supply/demand balance and that's what determines  
7 price.

8 But being a commodity product, one of the things  
9 that happens is that last increment of supply, the  
10 lowest price in there typically is tonnage that sets  
11 the market price. So that becomes a problem  
12 particularly in this case when we saw low-priced  
13 imports coming into the market. In order to stay in  
14 that market, to capture that business we have to meet  
15 that price. So it is a true commodity business in  
16 that sense in that it is determined by supply/demand  
17 conditions.

18 To elaborate a little bit more on your question,  
19 when you're looking at the individual products, for  
20 example urea and UAN, in the case of urea, that has  
21 its own supply/demand conditions. That is a product  
22 that's traded on a worldwide basis. It's produced,  
23 marketed all over the world and it is the preferred  
24 product because of the characteristics that Mr.  
25 Giesler mentioned earlier.

1           So in the case of urea, the supply/demand  
2 conditions that we're looking at are not just what's  
3 in the domestic market but it's a total world market  
4 that's setting the price.

5           In the case of UAN it's different. Again, that's  
6 a market that basically is a U.S. market. As Ms.  
7 Slater mentioned, most of it is sold in the U.S., a  
8 little bit in Europe. Basically that's the market.  
9 So it's more of a localized supply/demand condition.

10          There are factors that affect all nitrogen  
11 products, gas prices being one of them. But then they  
12 also have their own individual supply/demand balances  
13 which sets them apart and makes them unique markets  
14 among themselves.

15          VICE CHAIRMAN HILLMAN: In the past when gas  
16 prices have gone up have UAN prices gone up as well?

17          MR. BUCKLEY: The only time we really saw a major  
18 run-up in gas prices was during that late 2000, early  
19 2001. Prior to that gas prices were very very stable  
20 for eight, nine, ten years and we really didn't see  
21 much of a change in gas prices.

22          MS. SLATER: When I asked that question,  
23 Commissioner Hillman, to a person all of the fellows  
24 said we wish every time gas prices changed the product  
25 went up. I think Mr. Buckley has given you a good

1 feel for the supply/demand factors.

2 VICE CHAIRMAN HILLMAN: Just back to you Ms.  
3 Slater or perhaps Mr. Klett, what reliance shall we  
4 place on AUVs, average unit values? Because part of  
5 me says this does not look to be a case in which  
6 there's a lot of product shifting or product  
7 differentiation. Most of the imports are all 32  
8 percent concentrate products. Are AUVs a reliable  
9 indicator of -- They're not a proxy for price, but I'm  
10 just trying to understand from your perspective how  
11 much reliance can we comfortably place on average unit  
12 values in this case?

13 MS. SLATER: AUVs are a very helpful indicator  
14 for you in this case because this product is very much  
15 a commodity. So it is a commodity in the sense that  
16 it's commingled freely. Mr. McGrath testified at the  
17 staff conference, and I'll find the quote, that this  
18 is almost a perfect commodity market, were his words.  
19 That there is complete information so we've got a  
20 fully fungible product where it is priced as a  
21 commodity.

22 The AUVs, the values of the imports as they hit  
23 they hit those ports and as compared to the other  
24 imports are very useful, to give you some idea of how  
25 those imports affected the market.

1           Obviously they're not a surrogate for price, per  
2           se, but they can give you some idea of the price of  
3           these imports. And Dan wanted to add something.

4           MR. KLETT: Yes, I think the AUVs are  
5           particularly important when you're looking at price  
6           trends over time, and the price data you collected  
7           that's in the staff report where there was a question  
8           asked from both importers and U.S. producers on their  
9           monthly sales for all products without regard to  
10          destination, you pretty much have full coverage from  
11          both U.S. producers and importers in terms of their  
12          monthly AUV selling prices in the U.S. market 2000  
13          through September 2002. And I think when you look at  
14          those trend relationships that's very useful  
15          information. Because of the transport cost element,  
16          AUVs are less useful when you're looking at price  
17          comparisons because you can have some inland  
18          transportation cost differentials that may distort  
19          that, but I think for purposes of looking at trends  
20          and who did what when and by how much, I think they're  
21          very useful.

22          VICE CHAIRMAN HILLMAN: To the producers, help me  
23          understand the relationship between again more from a  
24          production standpoint, but a cost standpoint, the cost  
25          of gas versus the cost of the product. I'm just

1 trying to understand. The allegations being made to  
2 some extent by the Respondents is that because of the  
3 spike in gas prices you simply sort of tripped over  
4 the line at which it was not economically viable to  
5 produce UAN. And I'm just trying to understand  
6 whether there is kind of a margin, if you will,  
7 between the cost of gas and what the price of UAN has  
8 to be in order for it to be an economically viable  
9 product.

10 Is there one, and kind of if you can say what it  
11 is, I'm not asking for it in specific numbers, but  
12 sort of generally what it is. And at any point during  
13 the period of investigation did we cross that? Did  
14 the margin in essence become zero in terms of what you  
15 need in terms of a spread between gas prices versus  
16 UAN prices?

17 MR. MUGICA: Let me answer that in this way.  
18 Obviously our costs of production are going to be  
19 related to gas pricing and with the increase in gas  
20 prices our cost of producing UAN went out. The  
21 problem was that the price of UAN did not keep up with  
22 the cost of production because of the overall  
23 supply/demand for UAN in the marketplace.

24 So when gas prices came back down again our cost  
25 production came down, but I'm talking about 2001. The

1 imported material was still in the system and prices  
2 were coming down at a faster rate than production  
3 costs which led to production capacity outages, even  
4 while gas prices were going down. So really, it's  
5 margins that determine production rates, not just gas  
6 prices.

7 VICE CHAIRMAN HILLMAN: Is there anybody that  
8 wants to add anything? Has this margin, if you will,  
9 been relatively -- Is there generally a spread that  
10 you've been persistently able to get until this recent  
11 period?

12 MR. GIESLER: Commissioner Hillman, with Terra  
13 Industries during that tomogram of the high gas prices  
14 with the hedges that we had in place the value of, and  
15 with the prices of the commodity of UAN going up, we  
16 were never at a point with our hedged factor that we  
17 had. We only had a percentage of our business done,  
18 but about ten percent of that we had to do physical  
19 gas at whatever the market was, but we were never  
20 underwater on it.

21 VICE CHAIRMAN HILLMAN: Actually that comment  
22 just reminds me, if you can in your post-hearing  
23 brief, Ms. Slater, just because it probably does  
24 involve confidential information, in the pre-hearing  
25 brief of Novinka at page 11, they're questioning how

1 the accounting treatment of the income from the  
2 hedging transaction was taken into account in the  
3 financial statements that were included in the  
4 questionnaire responses and in the pre-hearing staff  
5 report. I just wondered if you could please just  
6 comment on it in terms of how each producer accounted  
7 for its hedging transactions in the financial data and  
8 comment on Respondent's allegations on that.

9 MS. SLATER: We would be happy to do that, and I  
10 will note that that was something that was inquired  
11 about in the questionnaires so the data is there.

12 I just want to mention to you, within your  
13 questionnaires there was a very specific question  
14 asked of each producer concerning the highest price of  
15 natural gas that could be tolerated given the highest  
16 product prices that you've experienced for various  
17 nitrogen products. The answers to that question were  
18 extremely instructive, not well compiled or compiled  
19 in detail in the staff report, and we'd be happy to do  
20 that for you in our post-hearing. What they indicate  
21 is that this industry can tolerate some surprisingly  
22 high gas prices for the production of UAN given  
23 product prices that are rising commensurately. Much  
24 moreso than for some of the other nitrogen products, I  
25 think for the reason that Mr. Klett mentioned.

1 VICE CHAIRMAN HILLMAN: Thank you very much.

2 We'll now turn to Commissioner Miller.

3 COMMISSIONER MILLER: Thank you.

4 First I'm very interested in the exchange you've  
5 just had with Chairman Hillman.

6 Ms. Slater, is there anything you want to say at  
7 this point about how the, about the financial  
8 accounting issue? I wouldn't mind hearing it here if  
9 there's something you can say generally about it at  
10 this point.

11 MS. SLATER: This allegation that somehow the  
12 hedging gains were not reflected in production costs,  
13 which is total nonsense to use a technical legal term,  
14 was raised in the staff conference. We've answered  
15 it. Every producer takes these natural gas hedging  
16 gains, or losses, when they occur, and they are  
17 applied against the cost of production so that in  
18 effect hedging gains such as those recognized by  
19 Mississippi Chemical, and by the way all of these  
20 companies do not hedge, and you will see that also in  
21 the questionnaire responses. Those all offset  
22 production costs for that period in appropriate  
23 proportion to the products to which they apply. So  
24 the answer is absolutely yes.

25 Novinka, given what we've already seen in the

1 questionnaire responses, I think that was somewhat out  
2 of line.

3 COMMISSIONER MILLER: Okay.

4 I also want to make sure that I've heard fully  
5 the answer to Commissioner Hillman's question about  
6 whether or not at any point in the period of  
7 investigation gas prices reached the point that in the  
8 choice between producing and not producing, given how  
9 high gas prices were, companies chose not to produce.

10 Mr. Mugica, your answer still kind of struck me  
11 as addressing more the period after gas prices began  
12 to come down. I can look, for example, this is the  
13 Fertilizer Institute Monthly Report so I can hold it  
14 up. It was up here, right? I can look here and see  
15 this drop in production that occurs during the  
16 national gas spike, and I can see the lower drop here.  
17 And I understand your argument, this is essentially  
18 what you're attributing to the imports down here.

19 You're more or less granting that this is  
20 attributable to natural gas prices.

21 MS. SLATER: In our pre-hearing brief there is a  
22 compilation, your questionnaire asked lots of  
23 questions of each company and you have from every  
24 producer extremely detailed information about  
25 curtailments. We summarized that in our brief, Dan

1 will tell me in a second which exhibit that is, and  
2 pulled that all together for you.

3 The curtailments that occurred in that period  
4 were only in very small part actually attributable to  
5 natural gas, and not that, as a bottom line I'm not  
6 sure how much it matters when you look at the  
7 production levels which were always quite high, along  
8 with inventory. But you have a very detailed breakout  
9 individually by producer and then aggregated as to the  
10 level of curtailments and what the reason cited by the  
11 various producers was.

12 I don't want to monopolize this. You need to  
13 hear from these guys.

14 COMMISSIONER MILLER: That's good enough. I  
15 appreciate your pointing me to it and I'm sorry I  
16 hadn't read all of it yet.

17 MS. SLATER: It's Exhibit 17.

18 COMMISSIONER MILLER: Thank you.

19 I will take a closer look at it.

20 In part I came back to this because looking at the  
21 chart that you referred me to earlier that showed  
22 urea, UAN and ammonia I guess, you see a similar drop,  
23 understanding they're all natural gas is at the core  
24 of all of them. It's fundamentally an input into all  
25 of them by virtue of the way the manufacturing line

1 works which was helpful in my last line.

2 What I'm trying to get to is now actually the  
3 relationship of urea prices, and urea on the demand  
4 side. Because one of the points here is there's only  
5 so high you can go with UAN prices because you have  
6 to, farmers, purchasers, have alternatives. For  
7 example, urea. That's an argument that we'll hear  
8 this afternoon.

9 So I would like -- And what I see in the  
10 information you show is a similar drop in production,  
11 capacity idealization at least I think was the chart  
12 you referred me to earlier, for the other nitrogen  
13 fertilizers as well. I know we have the pricing  
14 information that shows us their prices went up as  
15 well.

16 I'm making your argument for you unfortunately,  
17 but I guess what I'm trying to get at is okay, so how  
18 much of an alternative is there if all these price are  
19 moving together in the market? Can farmers switch  
20 from UAN to urea? How do the prices of the competing  
21 products relate to each other?

22 MR. BUCKLEY: Yes, Commissioner.

23 When you look at the nitrogen markets in general  
24 these prices, as I mentioned earlier, there are  
25 certain factors that drive all of them so prices to

1 some extent will move together based on these macro  
2 factors. But when you look at the individual prices  
3 of the products they do move independently of each  
4 other. Part of that reason is the fact that urea is a  
5 market product and that drives the urea price. In  
6 fact during the time period you're talking here UAN  
7 prices were moving up, urea prices were not moving up  
8 anywhere near that, in fact they actually leveled off  
9 there for a period and that's because it was being  
10 influenced by the world market.

11 As far as the demand side of this and the  
12 substitutability between products, there is a small  
13 degree of substitutability between the products but  
14 it's a limited amount. The reason is, basically it  
15 goes back to what Mr. Giesler talked about earlier,  
16 the characteristics of the product. When you're  
17 looking at ammonia it's an 82 percent high analysis  
18 product, it has to be injected into the soil, it's  
19 used almost all pre-planned, a little bit of side  
20 dress, but there's a specific use typically under a  
21 cultural practice which has complete fall plow downs  
22 and the standard, I just lost the terminology, but the  
23 normal cultural practices in the midwest.

24 UAN is a liquid. UAN is used to carry  
25 herbicides. So you can't carry a herbicide in

1 ammonia, you can't carry a herbicide with urea. So  
2 one of the primary uses for UAN is a herbicide  
3 carrier. So pre-plant, when they go out and broadcast  
4 herbicides they're going to use UAN. There's no  
5 substitute for that use. When you get into  
6 fertigation, as Mr. Giesler mentioned earlier, again  
7 that has to be UAN. It has to be a liquid product  
8 that's non-pressurized. So there are specific uses  
9 for UAN.

10 UAN is also used in a no-till farming system  
11 because it can be sprayed right on top of the stubble  
12 in the field. You can't do that with urea. You can,  
13 but you'd have a problem with volatilization. So there  
14 may be a little bit of substitutability there, but  
15 it's limited because urea will volatilize and escape  
16 into the air.

17 So there are specific uses for each one of these  
18 products and while there is a small amount of  
19 substitutability, these become overriding factors.

20 There's also a lot of other factors that get  
21 involved here. Equipment. Not all farmers have all  
22 equipment. Some farmers may have an ammonia rig and a  
23 UAN rig but won't have a dry applicator. Some will  
24 have, depending on what cultural practice they're  
25 using, will have their equipment designed to what

1 their program is. It varies by location, by farmer.  
2 A lot of farmers base their cultural practices on what  
3 their father did. You hear it all the time. This is  
4 what my daddy did so that's what I'm going to do. So  
5 you have a lot of that type of thing that sort of gets  
6 into this market.

7 So there's both product characteristics that make  
8 these things not substitutable to a large degree,  
9 there's equipment limitations, there are supply  
10 limitations into the marketplace.

11 You have a situation where you have to produce  
12 all year for a short period of time, so there are  
13 dealers will go out there and they will base how much  
14 storage they have, how much they want to bring in  
15 prior to the season based on historical commitments.

16 So if all of a sudden you try to make this huge  
17 change, they really can't do it. They don't have the  
18 storage, they don't have the supply lined up.  
19 Basically they're working on what their historical  
20 average tonnages are. So there's those types of  
21 structural impediments to substitutability.

22 So while there is some, it's very very limited.

23 COMMISSIONER MILLER: The chart I was remembering  
24 in our staff report is the one that's basically from  
25 Green Markets which despite what you're describing as

1 not so substitutable characteristics, the prices here  
2 seem to move at least very much together. Now that I  
3 assume is because of them all being based on the  
4 natural gas seed stock.

5 MR. BUCKLEY: Right.

6 MR. KLETT: Commissioner Miller, I think Exhibit  
7 6 to my testimony which I didn't get a chance to refer  
8 to but it's the last one, it is true that prices move  
9 together for some of the macro economic factors that  
10 affect all nitrogen fertilizers, but while you see a  
11 fairly, a correlation in terms of trends, there are  
12 periods of time where the price spread between the  
13 different nitrogen fertilizers actually does shift  
14 around quite a bit, and Exhibit 6 shows on an annual  
15 basis the price premium of UAN over urea and over  
16 other nitrogen fertilizers. And while the price  
17 differential swings quite a bit, you see that UAN's  
18 share of total nitrogen fertilizer, from 1992 to 2001,  
19 and these are fertilizer years, has remained  
20 relatively constant.

21 So if these products were close substitutes I  
22 would have expected to see more in the nature of  
23 relative shifts in volume and reaction to relative  
24 shifts in price differentials than you see  
25 historically.

1 MS. SLATER: Exhibit 9 to our pre-hearing brief  
2 also has data relevant to that that might be useful  
3 for you, Commissioner Miller. It shows the price  
4 premiums over time among the different nitrogen  
5 products and the relative shares of the nitrogen  
6 market, and you can see UAN stays very constant  
7 regardless of how its price premium varies with  
8 respect to urea, for example.

9 COMMISSIONER MILLER: Thank you.

10 VICE CHAIRMAN HILLMAN: Commissioner Koplan?

11 COMMISSIONER KOPLAN: Thank you, Madame Chairman.

12 Mr. Ewing, let me come back to you. Had you  
13 competed your response to this question that I had  
14 asked in the first round, or did you have anything  
15 left?

16 MR. EWING: I'm trying to remember where I was.  
17 It's been awhile.

18 COMMISSIONER KOPLAN: I think the last thing I  
19 had asked you all to keep in mind was the 80 monthly  
20 price comparisons that we had, and 51 of those reflect  
21 overselling by the subject product.

22 MS. SLATER: The industry people have a slight  
23 disadvantage in terms of commenting on those  
24 particular comparisons. Let me, if I might be so  
25 bold, I know you need to hear from them but I want to

1 address those particular comparisons and then maybe  
2 they can talk about what they've seen in the  
3 marketplace. They, of course, haven't had the benefit  
4 of seeing the whole record and the confidential  
5 record.

6 COMMISSIONER KOPLAN: Can I come back to you --

7 MS. SLATER: Absolutely.

8 COMMISSIONER KOPLAN: Because I haven't heard at  
9 all yet on this one from Mr. Mugica or Mr. Buckley on  
10 behalf of CF Industries. So if I can get as much as I  
11 can in the public forum and then you can certainly  
12 respond to me in the post-hearing, but I'd kind of  
13 like to use this while I have the industry witnesses  
14 here.

15 Gentlemen, if you could identify yourselves again  
16 for the record as you respond, and tell me as much as  
17 you can on the question that I asked on the first  
18 round.

19 MR. MUGICA: I'm Fred Mugica from CF Industries.

20 You had maybe about four different parts to your  
21 question. Are you referring specifically to the price  
22 question now in terms of hearing from us?

23 COMMISSIONER KOPLAN: I'm referring specifically  
24 to those parts that dealt with the fact that 11 out of  
25 28 purchasers, questionnaire responses, said that the

1       Petitioners could not fulfill all of their purchasing  
2       requirements and that eight of those 11 provided  
3       additional comments, all of which identified U.S. UAN  
4       producers exclusively as the suppliers that at times  
5       did not have UAN available to sell to them.

6               Then I coupled that with the 80 monthly price  
7       comparisons that we have that show the fact that in  
8       those comparisons 51 out of the 80 of the subject  
9       imports were overselling domestic as opposed to  
10       underselling.

11               I cited those two things because my lead-in to  
12       this traced what I consider to be the Respondent's key  
13       arguments as to what's going on here, and the fact  
14       that you all I said had taken it on head on in your  
15       direct presentation, but as far as the questionnaire  
16       responses and the monthly price comparisons, there's  
17       been no discussion of that this afternoon. It's now  
18       this afternoon. And I wanted to hear from you on all  
19       of that because it doesn't seem to jive with what I'm  
20       hearing from you otherwise.

21               MR. MUGICA: I think I can address at least part  
22       of your question.

23               In terms of the perception that I think Mr. Ewing  
24       and Mr. Giesler talked about, I think that --

25               COMMISSIONER KOPLAN: And Mr. Ewing indicated

1 that it's possible that you all might have created  
2 that perception.

3 MR. MUGICA: Well I think it might be possible.  
4 I guess in the case of CF, I can speak for CF. I  
5 would be very surprised if any of these purchasers  
6 mentioned, we have not seen that information. But  
7 whether CF was in fact one of those suppliers that  
8 said they would not have supplies. Yes, we had a  
9 press release pretty early into this whole shortage  
10 period where we indicated we would have all our supply  
11 for all of our customers.

12 With respect to CF, I don't believe that that  
13 would have been the case. With respect to the  
14 industry I agree that there may have been a perception  
15 of shortages which might have contributed to those  
16 comments and also the idea of supply at market price  
17 or supply at a price might have been misunderstood as  
18 not having supply.

19 So that I think could explain why some of the  
20 purchasers were commenting that they were unable to  
21 find supply from the U.S. producers.

22 With respect to the monthly price comparisons, I  
23 frankly don't feel comfortable answering that  
24 question. I have not seen any of that data so I would  
25 think that we'd like to address that at some future

1 point, at least from my point of view.

2 MR. BUCKLEY: Yes, Commissioner Koplan, in  
3 reference to the underselling and overselling in the  
4 market, that is difficult to respond to because I  
5 haven't seen this data either. But it seems to me  
6 that in a market like this you're going to have both  
7 underselling and overselling because what you're  
8 trying to do as a producer is to go in and trying to  
9 match prices. You don't want to lose sales. You want  
10 to be able to go in there and capture that business.  
11 You don't want to lose market share. So you're going  
12 to be trying to market product and keep pricing close  
13 or at least try to match the price.

14 As far as the underselling/overselling, there are  
15 problems in this market. You've got to remember, most  
16 of the product is sold within a very short period of  
17 time, and during that time it's a very fluid market.  
18 So you have things that are changing on a day-to-day  
19 basis.

20 COMMISSIONER KOPLAN: Let me jump in for a second  
21 and raise this with you all. I mentioned on my first  
22 go-around that it would have been somewhat helpful for  
23 me if we had some purchasers here that I could  
24 question on this point.

25 Let me ask those of you who are the industry

1 witnesses, do you have examples, and you don't have to  
2 tell me who they are, but can you provide me post-  
3 hearing with statements from purchasers who would  
4 indicate that they chose a product over your product  
5 because it was priced below you? In other words do  
6 you have specific evidence for me of lost sales and  
7 lost revenues with affidavits that you can submit?  
8 I'd like to hear from the three of you.

9 MR. GIESLER: Commissioner, yes, we can. And may  
10 I --

11 COMMISSIONER KOPLAN: That's information we don't  
12 have at this point in time, is that right?

13 MR. GIESLER: Correct.

14 Also may I address the pricing differential?

15 COMMISSIONER KOPLAN: Absolutely.

16 MR. GIESLER: A lot of that has to deal with  
17 delivered pricing versus FOB pricing. Because the  
18 imports where they're coming to their market at the  
19 delivered number, ours to get to there is an FOB  
20 number delivering to them. So we have freight within  
21 the differences. If we don't have a specific terminal  
22 in that point, it wasn't recorded.

23 MS. SLATER: There are some structural issues  
24 about this pricing data and also with respect to your  
25 purchaser questionnaire responses, I almost can't

1 control myself any more. I'm going to have to jump in  
2 on this.

3 COMMISSIONER KOPLAN: I do know that staff has  
4 been having conversations with Mr. Klett, Mr. Benedict  
5 has talked to you also. So I think I know where you  
6 might be heading.

7 MS. SLATER: But in terms of the purchaser  
8 questionnaires, I have to say I think this is a  
9 constant, sort of a persistent problem in the way the  
10 Commission necessarily has to collect its data. That  
11 is the individuals, the purchasers, number one who  
12 tend to supply questionnaires are those who have been  
13 very happy getting the unfair imports or the cheap  
14 imports. People who have been happily supplied don't  
15 necessarily have an incentive to come back.

16 But more importantly, of course, these people  
17 can't see or can't be told the allegations so we can't  
18 respond to them directly.

19 I will say to you that in your purchaser  
20 questionnaires there is abundant evidence in the ones  
21 that you have of purchasers buying because the prices  
22 are low. Our pre-hearing brief goes into that in some  
23 detail.

24 If you look at the responses about why the  
25 imports were purchased, there's very clear evidence

1 that price was the driving factor for many of these  
2 imports and the comments are there as well.

3 So we'll be glad to supplement it but your record  
4 is also pretty good on that fact.

5 COMMISSIONER KOPLAN: I appreciate what you're  
6 saying. Let me just respond in this fashion, that if  
7 -- You are entitled to the BPI. So if there is  
8 evidence that would swing that balance the other way  
9 that you have that you can add to this record through  
10 your post-hearing submission I'd appreciate it.

11 MS. SLATER: We will --

12 COMMISSIONER KOPLAN: I'm only going with what I  
13 have in front of me now.

14 MS. SLATER: We will do that. What we cannot do,  
15 of course, is to indicate to the producers, to  
16 question them about particular purchasers and provide  
17 full facts concerning that particular purchaser.  
18 That's a real limitation that there is here and I  
19 would suggest to you that you need to be in this  
20 situation particularly cautious for two reasons.

21 You will see throughout the purchaser  
22 questionnaires and hear throughout the presentation  
23 this afternoon I'm sure from the other side a constant  
24 conscious or unconscious attempt to confuse UAN with  
25 nitrogen, and perceptions that producers may have had

1 or experiences that purchasers may have had with other  
2 nitrogen products may have translated themselves into  
3 questionnaire responses here.

4 We can't get to the bottom of that and we can't  
5 talk to the producers about it, so there is a -- not  
6 without violating APO, so there's a significant  
7 handicap there.

8 The second thing that I would mention to you is  
9 that if you look carefully at those responses, notice  
10 the extent to which in some cases the language appears  
11 more than once, suggesting that perhaps you had some  
12 purchaser questionnaires that were, there were some  
13 drums beating and some encouragement given.

14 It is --

15 COMMISSIONER KOPLAN: Can you be specific in the  
16 post-hearing on that?

17 MS. SLATER: I will be pleased to do that.

18 COMMISSIONER KOPLAN: My time has run out. I'll  
19 come back to you but I appreciate being indulged. We  
20 can resume this. Thank you, Madame Chairman.

21 VICE CHAIRMAN HILLMAN: Thank you.

22 I guess if I can go to a somewhat different  
23 issue, and Ms. Slater, I definitely appreciate your  
24 point in terms of looking at the data on a half-year  
25 basis or even quarterly basis, but I'm still trying to

1 get at the issue of what appears to be a lack of sort  
2 of temporal connection, timing connection between when  
3 the imports were in the market and the financial  
4 performance of the industry. I guess i particular I'm  
5 concerned about 1999.

6 You stated in your pre-hearing brief very clearly  
7 that 1999 in essence was not a good base year for us  
8 to use and should not be reflected upon in terms of  
9 looking at it, but obviously it is a year in which we  
10 have the data. A number of your witnesses touched on  
11 it a little bit, but I guess if I could ask a little  
12 bit more specifically for people to tell me, again,  
13 you're in essence saying don't look at 1999 as a base  
14 year. I'm trying to get a better sense from the  
15 industry why was 1999 in that sense aberrational?  
16 There's no question that the financial performance of  
17 the industry in 1999 is the worst of all of the years  
18 that we're looking at, and there were virtually no  
19 subject imports in the market.

20 So I'm just wanting to make sure I understand  
21 why, because it's not just one company. It's the  
22 industry. Why is 1999 such an aberrational year  
23 financially for the industry?

24 MR. BUCKLEY: If I could try to address that.

25 In 1999 what happened is we had a confluence of

1 factors here, but the biggest one was we had a lot of  
2 brand new capacity that came on-stream in late '98 and  
3 early 1990.

4 VICE CHAIRMAN HILLMAN: And if I can stop you  
5 there, just so I understand it. When capacity comes  
6 on-line in this industry does it tend to come on, does  
7 it have to come on in large chunks because of the  
8 nature of it? And if it comes on in a large -- How  
9 big is a large chunk? In other words, I'm just trying  
10 to understand when you say capacity came on-line, I'm  
11 trying to get a lintel better understanding of why so  
12 much in 1999.

13 MR. MUGICA: I'll answer that.

14 Capacity typically comes on in large chunks.

15 VICE CHAIRMAN HILLMAN: How large is large?

16 MR. MUGICA: For example we brought on a new UAN  
17 plant which had a capacity of a million tons a year,  
18 so that's, now that was large, but 500,000 ton type  
19 capacity additions are not uncommon. It's just the  
20 capital-intensive nature of the business.

21 VICE CHAIRMAN HILLMAN: Mr. Downey, in your  
22 testimony I think you referenced some things connected  
23 perhaps to, I think connected to 1999. I'm just  
24 trying to understand from the industry generally why  
25 1999 was so aberrational.

1 MR. DOWNEY: Actually '99 was when we, we didn't  
2 own our UAN facilities in the United States in 1999.  
3 That was actually owned by Unocal, but I know that --

4 VICE CHAIRMAN HILLMAN: Your purchase was --

5 MR. DOWNEY: Our purchase was actually 2000. But  
6 there was a lot of capacity that came on in 1999 that,  
7 and it doesn't take much to have an impact on the  
8 price side, especially when we're talking some --

9 VICE CHAIRMAN HILLMAN: Was there a reason it  
10 would have all come on in 1999 or such a significant  
11 chunk in 1999?

12 MR. GIESLER: Chairperson Hillman, the capacity  
13 actually came on in 1997 and '98, is when they started  
14 bringing the capacity on. Terra was a part of that.  
15 We brought on approximately 500,000 tons in fourth  
16 quarter of '97. There was another plant that came on  
17 in early '98. And CF brought theirs on in the second  
18 half of '98 which was about 1.8 million tons of new  
19 capacity that came on, more efficient facilities,  
20 lower cost facilities, and then this created an  
21 inventory hangover in June 30th of '99 for the  
22 industry and in August of '99 there was announced  
23 closures of higher-cost, lower-efficient, older  
24 facilities that took out between fall of '99 and in  
25 the first quarter of 2000 approximately one million

1 tons of capacity was idled, shut down because of their  
2 efficiencies.

3 VICE CHAIRMAN HILLMAN: And just so I make sure  
4 I'm clear on it, the facilities that have been closed,  
5 that is a real permanent closure? They could not be  
6 brought back on-line if market conditions were to  
7 change?

8 MR. GIESLER: Yes, ma'am. And it took until  
9 after first quarter of 2000 to work that inventory  
10 away.

11 VICE CHAIRMAN HILLMAN: That's very helpful.

12 MR. KLETT: And I think as Mr. Giesler indicated,  
13 not only did new capacity come on-stream, but some of  
14 the old capacity that was still in existence before it  
15 was taken out was higher cost capacity as well. Which  
16 also contributed to the poor conditions in 1999.

17 VICE CHAIRMAN HILLMAN: Turning to a different  
18 issue that also gets to this issue of helping me  
19 understand how prices get there. I guess I need to  
20 understand a little bit more in terms of your customer  
21 base and more how they make purchasing decisions.

22 I'm trying to understand, do most distributors  
23 for the product purchase UAN from a wide variety of  
24 sources or do they tend to be more, you have  
25 distributors that are very loyal to you and the vast

1 majority of the product that they sell is your  
2 product? And I'm trying to figure out where imports  
3 mix into that. Do most distributors sell again an  
4 amalgamum of everybody's product? Help me understand  
5 how exclusive or completely non-exclusive distributors  
6 are to each of you.

7 I'm sorry that wasn't a very clear question, but  
8 I hope you understand it.

9 MR. EWING: Since we're the smallest producer  
10 it's fairly easy for me to answer that. We don't have  
11 any customers that are exclusive buyers of our  
12 product. We have customers that buy the majority of  
13 their product from us perhaps, to the extent we know  
14 what they use which is not an exact science. But for  
15 the most part our customers buy from numerous sources.

16 VICE CHAIRMAN HILLMAN: No real loyalty in  
17 particular.

18 MR. EWING: No. It's price driven. Loyalty only  
19 to the extent that we have some traditional people  
20 that we supply and we try to use those tanks every  
21 year, and try to maintain those relationships. But as  
22 far as when it comes time to fill up those tanks again  
23 the next year, it's a pricing issue.

24 VICE CHAIRMAN HILLMAN: Okay. Others?

25 MR. GIESLER: Joe Giesler with Terra.

1           We do not have a distributor that is exclusive to  
2 us. They have multiple vendors that they buy from.

3           VICE CHAIRMAN HILLMAN: Including imports?>

4           MR. GIESLER: Including imports. It's always an  
5 option for them. We have smaller customers that may  
6 be located close to our facilities that we do provide  
7 100 percent of their product. However they're always  
8 solicited by competition on that basis.

9           VICE CHAIRMAN HILLMAN: When they distribute more  
10 than one producer's product, do they commingle it  
11 within a given tank?

12          MR. GIESLER: Yes, ma'am.

13          VICE CHAIRMAN HILLMAN: Others?

14          MR. MUGICA: I'm Fred Mugica from CF.

15           We are a cooperative and we have generally two  
16 types of customers -- members and non-members. Both  
17 of those types of customers buy from a variety of  
18 suppliers so even our own member customers who are  
19 part owners of the company are not required to buy  
20 product from us. They can shop from whoever they want  
21 to buy from and typically do buy from suppliers other  
22 than CF.

23          MR. DOWNEY: In terms of UAN, actually for  
24 ammonia sometimes where we own a tank you actually  
25 have longer term or more tie-in shall I say to the

1 customer. On most other products, and UAN certainly,  
2 you would have customers you tend to go to, but they  
3 all have other suppliers. We're always competing. We  
4 actually own retail in the U.S. where we don't even  
5 have necessarily that high a component of our sales to  
6 our own retail.

7 All those customers have other suppliers they  
8 look to as well.

9 VICE CHAIRMAN HILLMAN: That's very helpful.  
10 Again, I'm just trying to understand this issue of  
11 where the price gets set and how. And basically  
12 everybody is looking at the same kind of Green Markets  
13 and these other reports to figure out prices. Okay.

14 A couple of sort of minor issues. The staff  
15 report mentions the issue of swaps, that sometimes  
16 product is swapped I think for transportation reasons  
17 or for other reasons. It wasn't clear to me how big a  
18 factor, if any, this issue of swaps are in the  
19 marketplace. Do you all participate in swaps of  
20 product and can you give me some sense of what portion  
21 of the total volume of product sold would be subject  
22 to a swap?

23 MS. SLATER: I'm going to ask Mr. Mugica to take  
24 a first cut at that question.

25 Let me just note that the term swap is not really

1 something the industry uses. I think that's a  
2 holdover from uranium. They talk about exchanges of  
3 product.

4 VICE CHAIRMAN HILLMAN: Fair enough.

5 MR. MUGICA: Exchanges are a standard practice of  
6 the industry. It's a commodity product. So CF's UAN  
7 is the same as Terra's UAN. So we can exchange it.

8 It's done for freight economics essentially.  
9 It's done to save a couple of dollars i freight to a  
10 particular location, distribution location or a  
11 particular customer.

12 In terms of the sort of the magnitude of the  
13 exchange activity, I would characterize it as  
14 relatively minor in the overall context of the UAN  
15 market of whatever, 11 million tons or something. I  
16 would be surprised if there were maybe five percent,  
17 in that range, exchange activity involved with that  
18 sales volume.

19 Again, they're common, they're standard practice  
20 in the industry but i would characterize it as  
21 relatively minor.

22 VICE CHAIRMAN HILLMAN: I appreciate that. I was  
23 trying to figure out whether it would or would not  
24 have had any significant effect on the pricing data or  
25 the things that we're looking at.

1 I think those have been very helpful answers. I  
2 will now turn to Commissioner Miller.

3 COMMISSIONER MILLER: Thank you. Now I don't  
4 have to ask the swap question so I appreciate your  
5 answer on that.

6 One other thing that I wanted to make sure I  
7 understood was the pricing data, that one Green  
8 Markets chart that we were looking at earlier, that I  
9 was looking at and thinking about the comparison of  
10 different nitrogen fertilizer reports.

11 I just want to make sure I fully understand the  
12 Green Market data as well as the role it plays in the  
13 marketplace which I know you were just discussing with  
14 Chairman Hillman.

15 This says it's a mid-cornbelt price. Simple  
16 averages.

17 Tell me a little bit more about this price. Is  
18 this pretty much a national price or are there much  
19 differences? It is it a price that everybody uses as  
20 an index and then they sort of, if they're on the East  
21 Coast they're this much above or below, and West Coast  
22 above or below, and does it include imports? Just  
23 tell me more about the Green Market price series, what  
24 you know about how they put it together and how you  
25 use it. Just whatever.

1 MR. BUCKLEY: The Green Market data is basically,  
2 unfortunately it's not transaction information, it's  
3 information that basically the Green Market, the  
4 people that work for Green Markets will talk to  
5 various people within the marketplace and come up with  
6 a price based on those interviews across the market.

7 As far as mid-cornbelt, that basically covers  
8 that area from Indiana, Ohio, Illinois, Iowa, and  
9 interviews with people within that market.

10 So that's basically how all these are distributed  
11 or how these are come up with.

12 I think the second part of your question is --

13 COMMISSIONER MILLER: Would there be regional  
14 differences? Is it a national price? How would  
15 different areas of the country other than the mid-  
16 cornbelt look at this.

17 MR. BUCKLEY: In the specific regions if we take  
18 UAN on mid-cornbelt, great lakes, northern plains,  
19 they're all going to have slightly different pricing  
20 and averages within the regions.

21 The prices typically will tend to move together,  
22 but differences could be in transportation  
23 differentials between the two, between mid-cornbelt  
24 and upper midwest, for example. And I'm not really  
25 sure I know where I'm going with your question, but

1       yeah, there are prices that are going to be different  
2       in different regions, as you can see within here.

3               COMMISSIONER MILLER:   Maybe one way of testing  
4       this is to ask Mr. Downey what he thinks when he looks  
5       at this price.   What do you use this for?

6               MR. DOWNEY:   Green Markets does split out some  
7       different regions of the U.S. and some of the regions  
8       vary depending on the product, so they do say in the  
9       northeast and the southeast and so they break it out.  
10       And there's not just transportation, there's other  
11       regional factors on supply/demand that might impact it  
12       and will change it over time.

13               They get that high and low price, they talk to a  
14       bunch of people and say what do you think of, what's  
15       the going price this week?   They talk to buyers and  
16       sellers and they put a range out there.   So it is sort  
17       of a constructed price based on their discussions with  
18       the industry and that's put out and that's public for  
19       anyone to take a look at, so it's an indicator.

20               COMMISSIONER MILLER:   Okay.

21               If I was looking at Green Market itself, it would  
22       have different areas.

23               MR. DOWNEY:   All different regions of the United  
24       States.   It would cover the whole U.S.O..   And they've  
25       just sort of chosen some different regions and lumped

1 some states together. Some people will say well why  
2 did they put that state there. But it does cover the  
3 U.SO..

4 COMMISSIONER MILLER: Mr. Giesler, did you want  
5 to add something?

6 MR. GIESLER: Yes, I did. Again, it's a  
7 conglomerate of prices but you will have differentials  
8 within even a state, the state of Illinois, due to the  
9 distribution costs it may take to get to the souther  
10 part of Illinois by barge versus inland or up river,  
11 up the Illinois River, closer to Chicago. There will  
12 be differences in the pricing so they're trying to  
13 bring it as much together as possible to give some  
14 kind of an idea of what's been going on.

15 COMMISSIONER MILLER: Going on in the market.  
16 Okay.

17 I think the only other, this isn't so much of a  
18 question as a request, Ms. Slater. In your post-  
19 hearing responses to Commissioner Koplan that he's  
20 asked you about, the sort of analyzing this purchaser  
21 information, this is a kind of half empty/half full  
22 kind of approach to a glass, but I note that our staff  
23 report says that 17 of the 28 responding purchasers  
24 said they had been able to, the producers had been  
25 able to fully provide their requirements. So to the

1 degree you analyze the eight, please also analyze the  
2 17 so that we can kind of have a picture of both sides  
3 of that.

4 MS. SLATER: That would be my great pleasure.

5 COMMISSIONER MILLER: I had a feeling I didn't  
6 need to ask, but I just wanted to be sure.

7 I have no further questions at this point. I  
8 appreciate all the answers you've given me this  
9 morning.

10 VICE CHAIRMAN HILLMAN: Commissioner Koplan?

11 COMMISSIONER KOPLAN: Thank you, Madame Chairman.

12 Just for the record, so that I'm clear on this,  
13 Ms. Slater, when you respond post-hearing on those  
14 price comparisons, I just wanted to point out my  
15 understanding is that the 80 monthly price comparisons  
16 I referred to are U.S.O. producers and importers prices  
17 on the net U.S.O. FOB selling price, not delivered  
18 price. Is that your understanding?

19 MS. SLATER: That's what was collected.

20 COMMISSIONER KOPLAN: That's what I'm inquiring.

21 MS. SLATER: Oh, what was requested. And I'm  
22 sure you understand because I know you follow these  
23 data very carefully, but there are some severe  
24 limitations to the data collection in the particular  
25 case arising both from the nature of the industry,

1 meaning the disbursed sales from the importers tend to  
2 be at the port and then the product travels through a  
3 distribution system before it hits the point where  
4 most of the first sales physically are made by  
5 producers.

6 So we're not, in the first place, even in a best-  
7 case analysis likely to get a lot of direct  
8 comparisons. We struggle to look for places.

9 Secondly, you're missing large chunks of importer  
10 data that you should have had. We talked about that  
11 in the brief. I don't want to violate any --

12 COMMISSIONER KOPLAN: I appreciate that. I hear  
13 what you're saying. I'm only stating this for the  
14 record because we were sliding over towards a  
15 discussion of delivered price and in terms of these  
16 price comparisons what I'm looking at is FOB because  
17 we're looking at producers and importers prices.

18 MS. SLATER: You should be.

19 COMMISSIONER KOPLAN: Thank you.

20 Let me come back to you if I could, Mr. Ewing.  
21 You had indicated that you normally take these hedging  
22 transactions, do them on a monthly basis. I think  
23 that was your direct testimony. I'm looking at your  
24 prepared statement.

25 MR. EWING: Yes, sir. That's right.

1           COMMISSIONER KOPLAN: Could you for the record  
2 post-hearing provide me with, through the period of  
3 investigation, the hedging sales that you made during  
4 this period of investigation?

5           MR. EWING: Certainly.

6           COMMISSIONER KOPLAN: When these took place, the  
7 quantity, et cetera. Because the only press release I  
8 came across was this \$16 million sales that is the  
9 subject of a December 11, 2000 release.

10          MR. EWING: Let me explain why that one's the  
11 only one that's there. At the time, being a publicly  
12 traded company it was determined by the legal staff  
13 that that was a material event under the Securities  
14 and Exchange Commission, so we felt at the time that  
15 we needed to publicly disclose that event. But it's  
16 by no means the only transaction. The normal  
17 transactions were happening every month.

18          COMMISSIONER KOPLAN: I appreciate your telling  
19 me that.

20          Let me come back if I could to the beginning of  
21 your direct presentation when you were talking about  
22 the period December of 2000 to February of 2001 and  
23 that's sort of like the window you were focusing me on  
24 when natural gas reached an all-time high of \$10.

25          MR. EWING: Yes, sir.

1           COMMISSIONER KOPLAN: That appeared to be a  
2 particular phenomenon during that period of time. But  
3 I'm going to quote to you from a press release issued  
4 by your company at another time, and it says, and this  
5 is a direct quote from Mr. Dunn. "Like all producers  
6 of urea and nitrogen solutions we are feeling the  
7 impact of high natural gas prices while demand for  
8 these products remain in line with our expectations.  
9 We are reducing their production until we can capture  
10 a more favorable margin."

11           That was Mr. Dunn, but that was back on June 6th  
12 of 2000. So it would appear that this is not just  
13 this narrow window that --

14           MR. EWING: Again, certainly natural gas prices  
15 were escalating during the whole fall, but what he's  
16 referring to primarily there is ammonia production,  
17 not UAN production.

18           COMMISSIONER KOPLAN: Okay.

19           Let me come back to the December 11th release if  
20 I could. Respondent, international raw materials, and  
21 I mentioned this in their pre-hearing brief, they  
22 allege that petitioners turned growing feelings of  
23 uncertainty among their customers to resentment by  
24 announcing at the height of a supply and price crisis  
25 that in order to reap extraordinary profits in the gas

1 commodity market they were selling their natural gas  
2 futures contracts which would have enabled them to  
3 purchase natural gas at well below prevailing market  
4 prices. And that's what you attacked in your  
5 testimony.

6 MR. EWING: Yes, sir.

7 COMMISSIONER KOPLAN: Exhibit 5 of this press  
8 release in referring to this particular transaction  
9 said that "Mississippi Chemical Corporation announced  
10 that it had sold all of its natural gas futures  
11 contracts in order to take advantage of the  
12 opportunity provided by the unprecedented high prices  
13 for natural gas." And that as a result of that  
14 transaction you all realized a pre-tax gain of \$16  
15 million in your second fiscal quarter ending December  
16 31, 2000.

17 That sounds like a highly unusual event. Do you  
18 have any other \$16 million transactions? On average  
19 how many monthly transactions would it take to add up  
20 to \$16 million?

21 MR. EWING: Sure. I don't have the information  
22 but we can certainly provide that.

23 COMMISSIONER KOPLAN: That would be great. I  
24 would appreciate that.

25 MS. SLATER: Commissioner Koplan, I also want to

1 just point out that the sale of hedges from any  
2 company that would have been selling hedges at that  
3 time would have had a higher value or gain on the  
4 hedge to the extent that the gas prices had risen. So  
5 it's not necessarily a function of any major event or  
6 difference in practice at Mississippi Chemical. And  
7 you've heard lots of testimony at this Commission on  
8 this particular press release before, which has been  
9 put in the record of this investigation, but keep in  
10 mind that the number itself has to be evaluated in  
11 light of what was happening with the gas at the time.

12 COMMISSIONER KOPLAN: Let me stay with this for  
13 just one second, and this is for the other domestic  
14 industry witnesses. I think I've spent a fair amount  
15 of time with you, Mr. Ewing, but did the rest of you  
16 follow a similar path with hedging during this period  
17 of investigation? Any of the rest of you?

18 MR. GIESLER: Yes.

19 COMMISSIONER KOPLAN: Could you submit that  
20 information for the record?

21 MR. GIESLER: Yes, sir. We can.

22 COMMISSIONER KOPLAN: Thank you.

23 MR. GIESLER: Actually it's already been  
24 submitted on what we did when we, and on the  
25 questionnaire that I did.

1           COMMISSIONER KOPLAN: Each transaction? You  
2 submitted a detailed accounting of each transaction?

3           MR. GIESLER: If it's not there I will provide  
4 it.

5           COMMISSIONER KOPLAN: Okay. That's what I'm  
6 interested in. In terms of the timing, the quantity,  
7 the amount. Because what I'm hearing from Mr. Ewing,  
8 it was basically on a monthly basis. I'm interested  
9 in what the trend was.

10          MR. MUGICA: On behalf of CF Industries, we did  
11 not have any hedged gas.

12          COMMISSIONER KOPLAN: Okay.

13          MR. DOWNEY: Agrium's two facilities actually  
14 during that time period were based on ammonia  
15 production so we were actually moving the ammonia down  
16 and upgrading so we're not producing the ammonia,  
17 buying gas there and producing the ammonia out those  
18 two facilities. We're actually upgrading it from  
19 ammonia or other products that are brought in.

20          COMMISSIONER KOPLAN: Let me ask a different  
21 question.

22          Did any of you have to turn to imports to meet  
23 any customer requirements?

24          MR. EWING: We did purchase a small amount of  
25 import material during that time period.

1           COMMISSIONER KOPLAN: And do we have that  
2 information on the record?

3           MR. EWING: Yes.

4           COMMISSIONER KOPLAN: Anybody else?

5           MR. GIESLER: Yes, sir, we did and we have that  
6 information provided.

7           COMMISSIONER KOPLAN: Okay.

8           MR. MUGICA: CF Industries, in calendar year 2000  
9 we bought some imported UAN. It was purchased as a  
10 result of an ammonia plant incident that we  
11 experienced in May of that year which caused us to  
12 shut down 50 percent of our ammonia capacity and so we  
13 bought some UAN during that time in response to that  
14 incident.

15          COMMISSIONER KOPLAN: From which country?

16          MR. MUGICA: I believe it was from Russia.

17          MR. DOWNEY: Agrium didn't bring any product in  
18 from subject countries. We did move as we do most  
19 years some product from Canada.

20          COMMISSIONER KOPLAN: Okay.

21          Thank you for those responses. Thank you, Madame  
22 Chairman. I have nothing further.

23          VICE CHAIRMAN HILLMAN: Let me check,  
24 Commissioner Miller?

25          COMMISSIONER MILLER: (No audible response)

1           VICE CHAIRMAN HILLMAN: Seeing that there are no  
2 further questions from here, let me turn to staff.  
3 Does staff have any questions of this panel?

4           MR. DEYMAN: The staff has no questions.

5           VICE CHAIRMAN HILLMAN: Mr. Rosenthal, do  
6 Respondents have any questions of this panel?

7           MR. ROSENTHAL: Yes, Madame Chairman.

8           A question for each of the Petitioners. Focusing  
9 on the time period spring of 2001, did each company  
10 responding separately, did you tell any of your  
11 customers that you were unable or unwilling to supply  
12 UAN solutions to them during that time period? You can  
13 start anywhere you like.

14          MR. MUGICA: On behalf of CF the answer is no.

15          MR. EWING: With respect to not being able to  
16 supply, Mississippi Chemical was not in the mode of  
17 telling people we couldn't supply product. It had to  
18 do with the pricing situation as we mentioned earlier.

19          MR. ROSENTHAL: Just to clarify, if you tell a  
20 customer, going back to the questions by the  
21 commissioners earlier about what a commitment is. If  
22 you tell a customer that you can supply them at some  
23 point but you can't tell them the price, would you  
24 regard that as a commitment to them to supply the  
25 product?

1 MR. EWING: Yes.

2 MR. ROSENTHAL: I just want to clarify what a  
3 commitment is.

4 MR. GIESLER: With regard to Terra Industries we  
5 had the same policy where we would offer everybody  
6 supply. We did not offer to supply our customers. We  
7 said we would not supply a price at this time but we  
8 would supply the product an price it when we got  
9 closer to the market time.

10 MR. DOWNEY: The same situation in terms of not  
11 being able to guarantee a price at that time, but we  
12 didn't turn any customers down.

13 And just to clarify, this was not that uncommon.  
14 Every year you get an issue where you can't  
15 necessarily guarantee the price three months out for  
16 all of your customers. You can't do it. It's part of  
17 the business that happens every year.

18 MR. ROSENTHAL: This is a question for the  
19 witness who testified in response to Commissioner  
20 Koplan's question that you imported product to meet  
21 your demand.

22 If you are able to meet your demand and supply  
23 your customers product, why did you import?

24 MR. EWING: Joe Ewing, Mississippi Chemical.

25 We imported a small amount of product I believe

1 from Russia because we could buy it cheaper than we  
2 could make it.

3 MR. GIESLER: Joe Giesler with Terra Industries.  
4 We purchased a small portion of the product. Some of  
5 it was imported. And again, we could purchase it at a  
6 price cheaper than we could make it.

7 MR. MUGICA: Fred Mugica from CF. We purchased  
8 product because we had a plant incident where we were  
9 forced to bring down a large part of our ammonia  
10 capacity and we were unsure at the time when it would  
11 come back up.

12 MR. DOWNEY: Agrium didn't purchase any UAN from  
13 subject countries.

14 MR. ROSENTHAL: Mr. Downey, does Agrium import  
15 ammonia or any components of the UAN solution?

16 MR. DOWNEY: Agrium has imported other nitrogen  
17 products, yes.

18 MR. ROSENTHAL: That goes into making the UAN  
19 solution?

20 MR. DOWNEY: Yes. Again, not from subject  
21 countries.

22 MR. ROSENTHAL: Okay. Thank you very much.

23 VICE CHAIRMAN HILLMAN: No further questions?

24 MR. ROSENTHAL: No further questions.

25 VICE CHAIRMAN HILLMAN: It's my understanding

1 that Commissioner Koplan does have one further  
2 question before we release this panel.

3 COMMISSIONER KOPLAN: Thank you, Madame Chairman.

4 This is for Mr. Downey. Mr. Downey, just last  
5 week your company reported that, and this is a news  
6 release dated February 5th, that "recently  
7 international nitrogen policies have been pushed  
8 higher by disruptions in global supply including  
9 shutdowns in Venezuela and curtailments in North  
10 America due to rising natural gas prices." That's a  
11 quote from it. That's the 4th Quarter report.

12 In your view what would the impact of these  
13 curtailments be particularly in light of the  
14 allegation that subject imports have now basically  
15 left the market?

16 MR. DOWNEY: Just a clarification on the  
17 Venezuela, that was due to obviously some of the  
18 strike and problems there. It wasn't due to natural  
19 gas.

20 Actually there have been a number of disruptions  
21 on nitrogen products as a rule, mainly obviously  
22 ammonia and urea in Venezuela, in Indonesia. So that  
23 has impacted other nitrogen product availability, not  
24 UAN specifically.

25 COMMISSIONER KOPLAN: Thank you.

1 Thank you, Madame Chairman.

2 VICE CHAIRMAN HILLMAN: With that I think we have  
3 reached the point at which we will release this panel  
4 and thank you very much for your testimony. We really  
5 do appreciate your taking the time to be with us.

6 We will now break for lunch and I would ask  
7 everyone to resume, given the lateness of the hour, at  
8 2:15.

9 I do remind everyone that this room is not secure  
10 over the lunch hour so if you have BPI information you  
11 must take it with you.

12 At this point the hearing is adjourned.

13 (Whereupon at 1:25 p.m. the hearing was recessed,  
14 to reconvene at 2:15 p.m. this same day, Thursday,  
15 February 20, 2003.)

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

2                   MR. ROSENTHAL: Thank you. Good afternoon.  
3                   It's not often I get a chance to start speaking in the  
4                   afternoon, but I'll try to make the most of it.

5                   We have a very distinguished group of  
6                   witnesses today. I will introduce who they will be.  
7                   Some of them will be presenting direct testimony;  
8                   others will only be responding to questions. Our  
9                   first witness in a minute will be Dean Tvinnereim, who  
10                  is the director of international sourcing for the J.R.  
11                  Simplot Company.

12                 The next witness will be W.P. "Tip" O'Neill,  
13                 Jr., president of International Raw Materials. "Tip"  
14                 and I have worked together for the last 20 years or  
15                 so. He first approached me when I was doing work on  
16                 an elemental sulfur from Canada dumping case. He  
17                 approached me to work for him and the respondents on  
18                 the case, and for this entire 20-year period he  
19                 thought I only represented respondents. It's a rude  
20                 awakening.

21                 Also testifying today will be Robert  
22                 Willard. He will be standing in for D. Willard, who  
23                 is CEO and president of HighQ. They will be  
24                 presenting direct testimony.

25                 Also testifying will be Patrick Magrath from

Heritage Reporting Corporation  
(202) 628-4888

1 Georgetown Economic Services. And then other industry  
2 witnesses available for questions will be Kim Koker,  
3 the vice president of Texas Liquids; and Brent Hart,  
4 the vice president of Transammonia.

5 Other counsel here with me will be Peter  
6 Koenig, Mitch Dale, and Karl Abendschein of the Miller  
7 & Chevalier firm, and my colleague, Jennifer McCadney  
8 of Collier, Shannon. So we'll try our best to  
9 complete the record for you this morning.

10 With that introduction, let me start with  
11 Mr. Tvinnereim.

12 MR. TVINNEREIM: Madam Chairman, members of  
13 the Commission, good afternoon. I am Dean Tvinnereim,  
14 director of international sourcing for the J.R.  
15 Simplot Company. J.R. Simplot is a major U.S.  
16 agribusiness firm with over 9,000 employees. J.R.  
17 Simplot is engaged in crop and livestock production,  
18 fertilizer production and distribution, among other  
19 things. J.R. Simplot is a U.S. UAN producer as well  
20 as a distributor of Russian UAN to American farmers.

21 Over the Commission's period of  
22 investigation, the vast majority of J.R. Simplot's  
23 domestic UAN sales were domestically made, whether by  
24 J.R. Simplot or bought from other U.S.-based  
25 producers. I'm a third-generation farmer from South

1 Dakota. I'm also a 25-year-plus veteran of the  
2 nitrogen fertilizer industry. My prior employer was  
3 Petitioner, Terra Industries. I have seen many cycles  
4 in the nitrogen fertilizer industry.

5 Events of the last three years were  
6 unprecedented. Imports of UAN from Russia, Belarus,  
7 and Ukraine did not injure U.S. UAN producers. The  
8 facts are as follows. Nitrogen fertilizers add  
9 nitrogen to the soil to promote growth of plants and  
10 pasture. Such fertilizers include UAN, Urea, ammonium  
11 nitrate, and anhydrous ammonia. U.S. producers make  
12 these fertilizers, both here and abroad, and offer  
13 them in the U.S. market. These fertilizers are made  
14 from natural gas.

15 In the second half of 2000, natural gas  
16 prices skyrocketed. Through futures contracts, U.S.  
17 nitrogen producers had previously secured at low  
18 prices long-term purchases of natural gas. Still,  
19 the producers adopted prices for nitrogen fertilizers  
20 that reflected escalating replacement costs of the  
21 raw-material natural gas, not their actual hedged  
22 lower cost of natural gas from supply contracts.

23 As a result, during this 2000-2001 period,  
24 UAN prices moved so high as to be unaffordable to  
25 farmers. 2001's U.S. UAN market prices were the

1 highest in a decade and 28 percent above the 10-year  
2 average. The price premium of UAN relative to  
3 substitute nitrogen fertilizers also increased.  
4 Farmers face a tough, competitive world market. Their  
5 grain prices could not support the high UAN prices.  
6 UAN farm customers were forced to wait out the market,  
7 reduce UAN purchases, or switch to more affordable  
8 fertilizers.

9 At the same time, nitrogen fertilizer  
10 producers sold their rights to low-cost natural gas.  
11 They earned windfall profits from selling those rights  
12 rather than use those rights to buy natural gas at the  
13 lower, pre-spike prices to make nitrogen fertilizers.  
14 Nitrogen fertilizer producers elected to curtail  
15 domestic nitrogen fertilizer production, including  
16 UAN. These producers were not willing to sell needed  
17 nitrogen fertilizers, including UAN, at any price  
18 because they did not have affordable natural gas to  
19 produce them, having sold their rights to lower-cost  
20 natural gas.

21 It was a shock to the market to have UAN  
22 producers suddenly tell customers, not just for UAN  
23 but for all nitrogen fertilizers, no, we can't supply  
24 you product at this time. During this time, some U.S.  
25 producers would not even return our phone calls

1 requesting UAN or other nitrogen fertilizers, and  
2 those that did only did so to say that they had no UAN  
3 or other nitrogen fertilizers to supply us at that  
4 time.

5 U.S. producers would not answer questions as  
6 to when they would supply. It was not a question of  
7 price. They just would not even talk about supply.  
8 U.S. producers communicated this message throughout  
9 the market, that is, they could not reliably guarantee  
10 needed nitrogen fertilizers, including UAN.

11 A nitrogen fertilizer, including UAN,  
12 shortage developed. There was even talk that in some  
13 areas away from normal or river transportation farmers  
14 would not get what they needed from any source and  
15 that they were told that they should plant a crop that  
16 needs less fertilizer and thus not corn in particular.  
17 Only after U.S. producers communicated the above  
18 message to the market did distributors and UAN  
19 producers buy imported urea and UAN as an alternative  
20 source of supply for their customers in the quantities  
21 to which Petitioners now object.

22 Reflecting the supply shortage, the subject  
23 UAN imports were at a price that was at a premium to  
24 the market, including higher than U.S. producer  
25 prices, and historic premiums over nitrogen fertilizer

1 substitutes, especially in the Mississippi River basin  
2 supplied by petitioning U.S. producers. These imports  
3 were for reasons other than price or dumping. Imports  
4 were here because U.S. producers limited supply and  
5 communicated a strong message to the market of future  
6 supply unreliability.

7           Bad weather intensified nitrogen fertilizer,  
8 including UAN, supply shortages. In the fall of 2000  
9 and the winter of 2001, the Mississippi River froze  
10 early. Barge transportation used by U.S. producers to  
11 move product on the river to end users stopped earlier  
12 than normal. Later, heavy snows and the melting of  
13 those snows in the spring caused the Mississippi River  
14 to flood. The U.S. Corps of Engineers had to close  
15 key portions of the Mississippi River until at least  
16 May 15, 2001.

17           As a result, the Mississippi River opened  
18 for barge traffic at least six weeks late and after  
19 the fertilizer-application season had already passed.  
20 As much as one million tons of U.S. producer  
21 fertilizer, including UAN in barges and in terminals,  
22 was stuck along the Mississippi River during this  
23 time. It could not get to end users until after the  
24 fertilizer-application season had already passed.

25           In the interim, needed nitrogen in the form

1 of urea, UAN, and ammonia was imported to meet the  
2 supply shortfall. It was railed and trucked to  
3 customers. Natural gas prices began to fall in early  
4 2001. As that occurred, U.S. producers resumed  
5 production of nitrogen fertilizers, including UAN. It  
6 was the change in natural gas prices, removing  
7 opportunities for profit taking on the natural gas  
8 hedging contracts, not a change in subject imports,  
9 that caused U.S. producers to resume normal UAN and  
10 other nitrogen supply production and communicate to  
11 the market that they could now supply product.

12 U.S. producers stopped normal domestic  
13 supply before the subject imports of alleged concern  
14 and resumed normal production after those subject  
15 imports. By this time, those supplying needed  
16 nitrogen fertilizer to farmers had already made  
17 alternative arrangements with sources believed more  
18 reliable. In fact, the U.S. producers' off-again/on-  
19 again supply of nitrogen fertilizers to the market  
20 disrupted pricing. It added supply to the market  
21 without consideration of nitrogen fertilizer market  
22 needs.

23 At this time, too, the million tons of U.S.  
24 producer nitrogen fertilizer, including UAN, stranded  
25 on the Mississippi River by weather was freed up.

1 U.S. producers sold it at distressed prices because  
2 the buying season had passed. UAN-substitute urea  
3 sold at half its beginning-of-the-year-2001 price.  
4 Later, in 2001, as the nitrogen fertilizer shortage  
5 passed, the price of the entire nitrogen fertilizer  
6 product range, including UAN, returned to traditional,  
7 average 1990's levels, levels still above those at the  
8 start of 1999, the start of the Commission's period of  
9 investigation.

10 As the supply shortage eased, subject  
11 imports dropped dramatically by the fourth quarter of  
12 2001 and onward to the historically low prior levels.  
13 By May of 2002, subject imports virtually had  
14 disappeared. There are, after all, severe constraints  
15 to subject imports entering the United States in  
16 significant quantities absent U.S. shortages.

17 First, there are enormous transportation  
18 costs, 45 percent of entered value for the subject  
19 countries to export to the United States resulting  
20 from the low value of UAN relative to weight.  
21 Second, there is a substantial price- and time-factor  
22 risk when importing UAN, and many other difficulties  
23 account for the long-term, low market-penetration  
24 level of imported UAN, i.e., under five percent of the  
25 U.S. UAN market and one percent of the total nitrogen

1 fertilizer market.

2           Despite the recent lack of subject imports,  
3 domestic UAN producers continue to report losses and  
4 reduced profitability. The fact also shows that their  
5 real problems are not due to subject imports.  
6 Throughout the Commission's period of investigations,  
7 earnings announcements from the petitioning  
8 Mississippi basin UAN producers repeatedly attribute  
9 any business difficulties to high natural gas prices,  
10 poor weather, low crop prices limiting demand and  
11 prices that farmers can afford.

12           It has become a running joke over the years:  
13 What is their latest excuse? Not once were unfairly  
14 priced, subject UAN imports mentioned in these  
15 announcements, much less as a major reason for their  
16 difficulties. In fact, many U.S. UAN producers  
17 themselves bought substitute UAN import material,  
18 mainly urea, to distribute, including imports from  
19 their own production facilities in countries with  
20 inherently lower natural gas costs, such as Trinidad  
21 and Tobago.

22           J.R. Simplot, in 2000-2001, sold UAN from  
23 our Canadian facility in Brandon, Manitoba, to UAN  
24 customers located right in Petitioner Terra's back  
25 yard at a good profit to J.R. Simplot through measured

1 use of hedging of natural gas prices, yet Petitioner  
2 Terra cannot seem to make money on UAN, including  
3 during periods with or without subject imports. Terra  
4 complains about the problems it has with natural gas  
5 price increases, yet Terra repeatedly states in its  
6 quarterly and annual reports natural gas prices are  
7 only hedged against adverse price increases for about  
8 10 percent of their purchases. It makes no sense.

9           There have been no subject imports in 2003  
10 or in significant amounts for some time before.  
11 Still, in January 2003, PCS shut down UAN production  
12 at its Geismar, Louisiana, plant, the largest, single-  
13 train, U.S. UAN plant. Also in 2003, CF Industries  
14 reduced UAN production at its Donaldson, Louisiana,  
15 facility to instead make more urea, solid urea, I  
16 should add. CF Industries has now tried recently to  
17 swap for more imported UAN into the East Coast. As of  
18 February 7, 2003, domestic nitrogen producers have  
19 again curtailed or idled production. Terra, Myskim,  
20 and four other producers recently idled 3.7 million  
21 tons of annual capacity to make nitrogen fertilizer,  
22 including UAN, 24 percent of the U.S. total.

23           Once again, this is a nitrogen fertilizer  
24 issue, not just UAN, and not related to subject UAN  
25 imports. Subject imports had long since left the U.S.

1 market. As the above indicates, one, past UAN market  
2 conditions were not UAN specific. Rather, this is a  
3 nitrogen fertilizer issue impacting all nitrogen  
4 fertilizer. Two, U.S. producers cut back UAN  
5 production and told the market that they could not  
6 assure future supply. Only then were domestic  
7 customers forced to import sufficient UAN and other  
8 nitrogen fertilizer substitutes in response to product  
9 shortages, real or perceived.

10 Other evidence demonstrates that the subject  
11 imports are not injurious. One, over the years,  
12 including during the Commission's period of  
13 investigation, U.S. producer UAN prices have closely  
14 followed those of other nitrogen fertilizer  
15 substitutes, specifically, urea, anhydrous ammonia,  
16 and high-density ammonium nitrate.

17 If a surge in subject UAN imports adversely  
18 affected U.S. market UAN prices, U.S. UAN prices would  
19 have fallen relative to other nitrogen fertilizers.  
20 This did not happen. Indeed, UAN prices sold at an  
21 increased premium relative to some other fertilizers  
22 during the time period of 2000 and 2001. Two, the  
23 underlying problem is there is not enough natural gas  
24 in this country to supply demand. The price firms and  
25 households can afford to pay for gas that will be used

1 to produce electricity and heat homes is far more than  
2 what farmers can afford to pay for fertilizer to  
3 produce crops.

4 UAN's share of total cost of production of  
5 key agricultural products, such as corn, by far the  
6 greater user, is high, somewhere over 20 percent. Our  
7 international competitors, such as Canada, are not  
8 subject to artificially high nitrogen fertilizer or  
9 UAN prices. A \$180-per-ton, closed-market, UAN price  
10 versus a normal, open-market price of \$130 per ton  
11 increases the cost of producing a bushel of corn by  
12 eight cents a bushel. That increase makes the  
13 differences between being internationally competitive  
14 and not, and we are in a global economy.

15 In 2001, total U.S.-planted corn acres was  
16 76 million acres, down significantly from 85 million  
17 acres in 1976. Overall, the farm economy has been  
18 poor, with increased global pressure from food and  
19 fiber production elsewhere. High UAN or other  
20 nitrogen fertilizer prices force our farmers to cut  
21 usage. In Fertilizer Year 2000-2001, total U.S.  
22 nitrogen consumption dropped nine percent from the  
23 peak of past consumption. UAN consumption fell an  
24 even greater 12 percent from the peak years of use.  
25 Farmers are coming off a long drought and are short of

1 money. Last year was the worst level of U.S. corn  
2 production in almost 15 years. Wheat and soybean  
3 production was similarly depressed.

4 The East and West Coast UAN markets combined  
5 are about a quarter of U.S. UAN consumption. The  
6 petitioning Mississippi basin UAN producers have  
7 traditionally not supplied the West or East Coast from  
8 their Mississippi basin plants. Transportation costs,  
9 timing, logistical issues of supplying the coasts with  
10 UAN from their production facilities are the reason.  
11 Imports, subject and nonsubject, have traditionally  
12 supplied the East and the West Coast markets.

13 For that reason, the antidumping position  
14 filed in this case stated that the concern that led to  
15 the filings of the petition was subject imports into  
16 the Mississippi River basin, but any subject imports  
17 into the Mississippi River basin were purchased to  
18 remedy a product shortage and were not price dumping.  
19 Those subject UAN imports into the Mississippi River  
20 basin were sold at or above U.S. producer prices and  
21 at a higher price premium relative to fertilizer  
22 substitutes than was historically normal. Thank you.

23 MR. ROSENTHAL: The next witness will be Mr.  
24 O'Neill.

25 MR. O'NEILL: Madam Chairman and

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1 Commissioners, good afternoon. My name is Tip  
2 O'Neill. That's a name that's served me reasonably  
3 well outside the beltway. It sometimes draws some  
4 humor within the beltway.

5           The marketing and distribution of fertilizer  
6 has been the focus of my entire 33-year career. I'm  
7 president of International Raw Materials, commonly  
8 referred to in the trade as "IRM." We are a  
9 Philadelphia-based company which specializes in the  
10 international distribution of liquid and dry-bulk  
11 fertilizers. I have recently been reelected to the  
12 board of the Fertilizer Institute based here in  
13 Washington, which is our U.S. organization or  
14 association, and I'm also a director of the Canadian  
15 Fertilizer Institute based in Ottawa.

16           Although IRM's operations are international  
17 in scope, in this particular market, the United  
18 States, our primary focus is on the wholesale  
19 distribution of nitrogen fertilizer in California,  
20 Oregon, and Washington.

21 -- distributors since 1992. These states all west of  
22 the Rocky Mountains have historically relied on  
23 offshore supply for a significant percentage of their  
24 fertilizer requirements, whether by rail from Canada,  
25 by barge from Alaska, or by deep-water vessels from

1 production points further afield.

2 Our major customers are typically farmers'  
3 cooperatives, large public companies, and major buying  
4 groups of independent retailers. We receive the  
5 product into our distribution system by ocean vessel,  
6 river barge, and rail car, and for the most part it is  
7 delivered to our customers by truck on a just-in-time  
8 basis. This system includes 75,000 tons of tank  
9 storage for UAN in a number of locations along the  
10 West Coast and on the Columbia River System, as well  
11 as warehouses for storing dry product.

12 In addition to imported products, we also  
13 distribute nitrogen fertilizers from several North  
14 American producers through this system. As mentioned  
15 in my previous testimony, transportation costs for  
16 fertilizer are expensive relative to their total  
17 delivered cost, and we've heard that also earlier  
18 today. Fertilizers are, for the most part, a  
19 commodity and, therefore, price sensitive, making  
20 transportation costs a critical element of the  
21 fertilizer-distribution business.

22 In the case of UAN, shippers are paying  
23 freight on a product that contains 68 percent water.  
24 This factor has led, in particular, to the development  
25 of regional markets for UAN in the United States. As

1 a rule-of-thumb, inland rail-transportation costs from  
2 the Mississippi River basin producers in the U.S. to  
3 the West Coast are comparable or greater than the  
4 ocean-transportation costs from Eastern Europe to the  
5 same market. This makes imported prime contract  
6 naturally very competitive in the West Coast market.

7 In addition to expensive transportation  
8 costs, another characteristic of the U.S. UAN  
9 industry, which I noted in my earlier testimony, is  
10 the lack of adequate and competitive domestic UAN  
11 production capacity in the West Coast market to meet  
12 the total demand in that region. The lack of  
13 competitively priced natural gas in the region is one  
14 reason for this, and it is documented, it seems, every  
15 day. The media continues to report on California's  
16 ongoing struggle to procure competitively priced  
17 electricity, which also in large measure is produced  
18 in that region by natural gas-fired generation plants.

19 A majority of the nitrogen fertilizers that  
20 are traded internationally are produced in countries  
21 where natural gas is priced very competitively  
22 relative to the United States. Thus, for many years,  
23 a significant portion of the UAN solution consumed  
24 west of the Rocky Mountains has been either imported  
25 product or, as the Agrium testimony this morning,

1 product upgraded locally into UAN from import  
2 feedstock.

3           The record clearly shows that the UAN market  
4 in Fertilizer Year 2000-2001 was impacted with an  
5 unprecedented increase in the price of natural gas,  
6 the major input in UAN production. As natural gas  
7 prices began and continued to soar, and, of course, it  
8 was reported every day in the press, domestic UAN  
9 producers started to curtail production, and that fact  
10 was reported every week in the trade press, Free  
11 Markets being one of those publications, with much  
12 publicity early in the fertilizer year.

13           In response to a clearly perceived  
14 anticipated shortage, UAN wholesalers like ourselves  
15 and domestic producers, as we heard this morning, made  
16 arrangements for an increase in UAN imports. The  
17 market was responding to clear and very public signals  
18 from a domestic producer that they were backing out of  
19 the market. The record developed shows that at least  
20 two of the domestic producers publicly announced to  
21 the equity markets that they had generated substantial  
22 profits by selling their natural gas in lieu of  
23 produced UAN, and this got lots of press. Besides the  
24 press releases, it was certainly picked up by the  
25 trade press people, the things that people like

1 ourselves and farmers read.

2 I have to comment at this point that people  
3 don't make press releases when you liquidate as a  
4 matter of course a hedge position. So this is the  
5 sort of thing that catches people's eye.

6 Market reverses. The market started to  
7 reverse then. The price of natural gas finally began  
8 to plummet. Domestic UAN producers resumed  
9 production. Indeed, recent import data indicate that  
10 imports fell dramatically as well in response to the  
11 declining price of natural gas. Subject imports  
12 dropped from a million tons in January through  
13 September 2001 to 391,000 tons for the same period in  
14 2002. This represents a 62 percent decline in  
15 imports.

16 It is important to note that U.S. import  
17 statistics indicate that there were no imports in  
18 June, July, October, or December of 2002, and of the  
19 107,000 tons that did enter the U.S. in August,  
20 September, and November of 2002 all of this was  
21 reported as cleared into West Coast ports, Oregon and  
22 California, this trend being consistent with the  
23 previously established trading pattern into that  
24 market.

25 While we are sympathetic to the Petitioners'

1 overall problems, imports of UAN are not the cause of  
2 any injury to our domestic producers. Their problem  
3 is clearly that they are operating in a national  
4 economy that has developed a ferocious appetite for  
5 natural gas. To the extent that domestic producers  
6 were injured at all is by reason of a combination of  
7 structural factors, including the supply, cost, and  
8 price volatility of natural gas in the United States  
9 as well as actual and perceived shortsighted and self-  
10 interested decisions made by the domestic producers.

11 Reliability of supply is critical in the  
12 fertilizer business, especially during the spring  
13 season when we are all shipping on a continuous, just-  
14 in-time basis to our customers. Twenty-four hours a  
15 week, the farmers are in the fields working. With the  
16 curtailment in domestic production, fertilizer  
17 distributors and farmers had to rely even more than  
18 usual on imports, as the domestic producers had  
19 clearly signaled to the market they were unwilling  
20 and/or unable to fully supply traditional demand.

21 The domestic UAN producers' subsequent  
22 resumption of full production, combined with a  
23 reduction in demand, caused prices to fall. As the  
24 price leaders historically always in this market, the  
25 domestic producers were able to quickly regain their

1 market share that they had earlier ceded to the  
2 subject imports.

3 Based on these facts, I urge the Commission  
4 to conclude that there is no injury to the domestic  
5 UAN industry by reason of imports. Continuous,  
6 reliable, and competitive supply of UAN into the  
7 western United States is critical to our business as  
8 well as western agriculture as a whole. Thank you.

9 MR. ROSENTHAL: Mr. Willard?

10 MR. WILLARD: Thank you. Madam Chairman,  
11 members of the Commission, good afternoon. My name is  
12 Robert Willard. My father, D. Willard, who was  
13 scheduled to testify today, is sick and unable to  
14 appear. I appreciate you allowing me to testify in  
15 his place.

16 My father is part-owner and CEO, and I am  
17 president of Willard Agri-Service, a distributor of  
18 urea, ammonium nitrate, and other fertilizer products  
19 to some 1,800 farmers in Maryland, Virginia, West  
20 Virginia, Delaware, New Jersey, and southern  
21 Pennsylvania. We are based in Frederick, Maryland,  
22 with facilities also in Mount Airy and Lynch near  
23 Chestertown, Maryland, on the Eastern Shore, as well  
24 as in Marion, Pennsylvania.

25 Willard Agri-Service has been in business

1 since 1969 and currently employs approximately 60  
2 full-time employees. Also, my father and brother farm  
3 2,500 acres in Montgomery County, Maryland, growing  
4 corn, wheat, and soy beans. My family has been in  
5 agriculture in Maryland since the late-1700's.

6 I'm here today to testify in opposition to  
7 the imposition of antidumping duties on imports of UAN  
8 from Russia, Belarus, and Ukraine, which, in my view,  
9 have not caused injury to U.S. producers of UAN  
10 neither in 2001, 2002, and certainly not today.

11 There are many large UAN storage tanks,  
12 several containing one million gallons or more, at  
13 Philadelphia, Baltimore, Norfolk, Wilmington, North  
14 Carolina; Charleston, and Florida -- that's  
15 Jacksonville, Florida. Most of these tanks have been  
16 filled with imported UAN from subject and nonsubject  
17 countries for the last 30 years to supply farmers on  
18 the East Coast. It is important for the Commission to  
19 understand that for distributors of UAN on the East  
20 Coast the decision to purchase imported UAN has  
21 nothing to do with dumped selling prices. Rather, it  
22 is based on the simple fact that domestic UAN  
23 producers are unable to meet demand in our regional  
24 market. U.S. producers supply UAN to much of the  
25 nation; however, most of the major UAN producers in

1 the U.S. are located along or a considerable distance  
2 west of the Mississippi River.

3 To my knowledge, there are three UAN  
4 production plants in the East: one in Augusta,  
5 Georgia, and another in Lima, Ohio, owned by PCS, and  
6 a third in eastern Canada owned by Terra. Each of  
7 these facilities is antiquated and able to supply only  
8 very limited quantities of UAN. As for the major  
9 producers of UAN in the Midwest, they generally are  
10 unable to supply our markets in the East because of  
11 high overland, barge, and ocean freight costs.

12 Willard Agri-Service, as I indicated, began  
13 operations in 1969. In 1973, we were told by our U.S.  
14 suppliers that they could no longer fully meet our  
15 supply needs. I should point out that we normally buy  
16 as much domestically produced UAN as possible because  
17 domestic UAN sourced in the East Coast is usually less  
18 expensive than imports.

19 However, since 1973, domestic producers have  
20 never been able to meet our requirements, some years  
21 supplying less than 50 percent of our needs. This is  
22 exactly what happened in the winter before last in  
23 2000-2001, when domestic producers elected to sell  
24 their natural gas futures contracts while cutting back  
25 on UAN production. The domestic industry, quite

1 frankly, showed no regard for its U.S. customers,  
2 telling us simply that no product was available.

3           This was a difficult period for our company,  
4 and we and others along the East Coast had to scramble  
5 to find alternate sources of supply. We thus  
6 increased our purchases of imports. By mid-2001, when  
7 natural gas prices began to fall, U.S. producers  
8 resumed production, and UAN prices began to decline.  
9 However, with the spring planting season largely  
10 completed, domestic producers soon found themselves  
11 with too much product in inventory, which further  
12 dampened market prices. Also East Coast distributors  
13 continued to cover their needs with imports because  
14 domestic producers would not commit as to when they  
15 would have product available.

16           In full year 2001, U.S. producers were able  
17 to supply only some 45 percent of our company  
18 requirements. However, we were unable to obtain  
19 domestic UAN when we needed it most, during the April-  
20 May planting season. We must have a ready and  
21 reliable supply of UAN. Therefore, we must continue,  
22 as we have for the past 30 years, to purchase some  
23 imports. However, we do not believe subject imports  
24 have caused any injury, nor do they pose any threat of  
25 future injury to the domestic industry. We pay a

1 higher price for imports most of the time, including  
2 the last three years. Thank you.

3 MR. ROSENTHAL: Our last witness will be Dr.  
4 Magrath.

5 MR. MAGRATH: Good afternoon, Madam  
6 Chairman, members of the Commission. My name is  
7 Patrick Magrath, Georgetown Economic Services,  
8 representing IRM, Limited.

9 Rarely have the conditions of competition  
10 unique to the industry been more important to the  
11 facts in an unfair-trade case than this one, two-year  
12 determination. Generally, the Commission recognized  
13 the important conditions of competition in its  
14 preliminary determination in this case, and we've  
15 already heard a discussion of many of those conditions  
16 by witnesses on our panel: First, the profound effect  
17 that the price of natural gas has on producer prices  
18 and actual supply, especially in the latter half of  
19 2000 and the first quarter of 2001; second, of how,  
20 due to seasonality, the resultant supply disruptions  
21 in the period immediately preceding the 2001 spring  
22 planting season caused a great amount of uncertainty  
23 and protective reaction by UAN consumers, from  
24 scrambling for alternate supply to cutting back on the  
25 use of UAN, to switching to alternate nitrogen

1 fertilizers. And, finally, how certain U.S.  
2 producers, including Petitioners, exacerbated this  
3 uncertainty by appearing to signal the market that  
4 more supply shortfalls and even higher prices were on  
5 the way by their well-publicized sales of rights to  
6 natural gas at moderate prices, the so-called hedge-  
7 contracts issue.

8           On this last point, the Commission should  
9 review both testimony by purchasers at the preliminary  
10 staff conference as well as the extraordinary  
11 criticisms leveled at U.S. producers' behavior in  
12 purchaser questionnaire responses in this final phase  
13 and in response to the lost-sales allegations to  
14 better appreciate the damage these producers have done  
15 to their customer relationships, but more importantly,  
16 for an indication of the real motives behind the one-  
17 time entry of subject imports into the Mississippi  
18 River central basin.

19           However, we feel that there is one condition  
20 of competition, and we would prefer to call it a  
21 condition of noncompetition, that has been given short  
22 shrift in the Commission's preliminary determination  
23 as well as no mention in Petitioners' brief, and this  
24 condition stems from the fact that UAN is mostly  
25 water, with transport costs being over 20 percent of

1 total shipment price for U.S. producers and up to 48  
2 percent for subject country imports.

3 In the words of the staff report, UAN is a  
4 "spacially differentiated product among suppliers in  
5 the U.S. market due to its high transportation costs  
6 relative to its product value, especially for  
7 distances greater than 100 miles."

8 UAN is sold close to where it is produced or  
9 where it is entered into the country. Data collected  
10 by staff shows almost 70 percent of U.S. production of  
11 UAN is sold within 500 miles of the plant. Importers  
12 report that they sell 96 percent of their product  
13 within 500 miles of the port of entry. To stray  
14 further from home for sales, the staff report warns,  
15 and this is the staff report, is "a competitive  
16 disadvantage."

17 With these facts in mind, simply looking at  
18 a map of the U.S. production locations highlighted  
19 will indicate both what Petitioners' causation  
20 problems are in this case and what will continue to be  
21 their salvation, no matter how they treat their  
22 customers. But the fact of the very high  
23 transportation costs, coupled with geography, shows is  
24 a very weak, attenuated, competitive market situation,  
25 with imports serving primarily coastal customers, as a

1 matter of fact, almost exclusively, and U.S. producers  
2 concentrated in and serving predominantly the great  
3 bulk of the total U.S. market, which is located in the  
4 farm states clustered in the central basin.

5 In fact, the staff report indicates that no  
6 U.S. producer claimed it sold UAN on a nationwide  
7 basis. That is from their questionnaire responses and  
8 in contrast to some of the testimony today, which I  
9 found curious.

10 Again quoting from the staff report, this  
11 "spacial differentiation leading to competitive  
12 disadvantage explains the many trends and data the  
13 contradict Petitioners' claims in this investigation  
14 and which have been emphasized in Respondent briefs."

15 So, with transport costs and geography as a  
16 background, we'll begin with Petitioners' notion that  
17 UAN is a basic commodity, and U.S. product and subject  
18 imports are substitutable. Yes, I said that in the  
19 preliminary, and, yes, a storage tank filled with 32  
20 percent Russian UAN solution and one filled with U.S.  
21 solution are perfectly substitutable in application.  
22 And once again, as the staff report points out, how  
23 often are these two sitting side by side? Only a very  
24 small portion of U.S. production is located on the  
25 West Coast, and much of that production is Simplot's,

1 who is opposed to this case.

2           Only one antiquated facility producing UAN  
3 is located within 100 miles of the Atlantic coast, the  
4 distance beyond which suppliers become competitively  
5 disadvantaged, according to the staff report again.  
6 As we stated, 96 percent of imports are sold within  
7 500 miles of the port of entry, over 82 percent within  
8 100 miles of the port of entry. The great majority of  
9 production, shipments and consumption of this product  
10 is in the central river basin, where subject imports  
11 just cannot get to except under extraordinary market  
12 situations, such as occurred in late-2000, early 2001.

13           This point, the overall lack of multiple  
14 competitive supply forces for this critical  
15 agricultural input, is corroborated by purchases, who  
16 cite availability as the most important variable in  
17 purchasing decisions. In fact, as has been mentioned  
18 already, reliability of supply was ranked second.

19           In a departure from the usual results that  
20 the Commission sees in these questionnaire responses,  
21 which tend to emphasize price, lowest price and even  
22 quality were ranked down the list in the very  
23 important category by purchases. Let me point out  
24 that in those questionnaire responses, availability in  
25 that context clearly means an availability of the

1 physical product. Reliability of supply means supply  
2 of the physical product. It does not have anything to  
3 do with whether firm prices have been declared or  
4 whether prices should be negotiated. In product  
5 quality, your channel for distribution, which is the  
6 way the Commission is usually presented with this  
7 issue; but on lack of a physical product availability,  
8 both domestic and imported sources in the same  
9 geographical market is the most important condition  
10 through this period of investigation, even in that  
11 brief period, in which subject imports did enter in  
12 the Central Basin. Why? Because, the imports entered  
13 that market only when the domestic production was not  
14 in that market, only in response to shortfalls and  
15 supplied by domestic producers. This lack of any  
16 meaningful competition between U.S. and subject  
17 country UAN manifests itself throughout the ITC  
18 database, as indicated by the absence of any effect of  
19 subject imports on U.S. producer volume, prices, or  
20 impact on operations; specifically, volume.

21 As the Petitioner admits, there were only minimal  
22 subject imports coming into the Gulf Coast ports for  
23 1999 and much of 2000, the petition at 18. A month-  
24 by-month, port-by-port import table here in our brief  
25 shows imports began entering the Gulf Coast ports in

1 quantity only in late 2002, in response to supply  
2 disruption warnings from U.S. producers that began in  
3 June 2000, excuse me, and late 2000, and became  
4 reality in November and December of 2000. Those  
5 vertical lines show the announcements of feedstock  
6 shutdowns -- feedstock plant shutdowns and then actual  
7 shutdowns of UAN, further feedstock shutdowns very  
8 late 2000.

9 As you can see from this chart, imports to the  
10 U.S. producers Central Basin stronghold became  
11 noticeably only in the third quarter of 2000 and were  
12 significant decline by midyear 2001, almost a year  
13 before the filing of this petition. By December 2001,  
14 which I remind the Commission is during the height of  
15 the production stocking cycle, imports into the Gulf  
16 were at minimum levels. And according to official  
17 statistics, there have been no imports in the Gulf at  
18 all since February 2002.

19 The petition, in this case, was filed April 19,  
20 2002, as you can see by the vertical lines on the  
21 right of the chart. The dependency of this case  
22 stopped imports or had they stopped themselves, unable  
23 to compete in the Central Basin after the price of  
24 natural gas subsided and producers decided to ramp up  
25 production once more.

1           Traditionally and except for about a one-year  
2 period in late 2000-2001, imports entered into the  
3 West and East Coast marketing areas, areas in which  
4 U.S. production facilities are very small relative to  
5 total U.S. production consumption. Within that one-  
6 year period, the volume of imports into the Central  
7 Basin was also relatively small to U.S. production in  
8 the Basin. Furthermore, U.S. producers, themselves,  
9 bought some of these subject imports to help cover  
10 their own commitments in the shortage period, as you  
11 have heard earlier today, and swapped additional  
12 tonnage for subject imports, which you have also had  
13 testimony concerning. In other words, subject imports  
14 in this critical period helped the U.S. producers keep  
15 their customers during the crisis of late 2000-2001.

16           Price: pricing data gathered by the staff in  
17 this investigation are simply devastating to  
18 Petitioner's case. Again, the reason for the absence  
19 of any discernible price effect is the general lack of  
20 competition due to the segmented geographic markets of  
21 domestic and imported UAN. Comparing U.S. to subject  
22 import prices, 51 of 80 comparisons, almost two-thirds  
23 of all comparisons showed overselling -- yes,  
24 overselling by subject imports. And I would like to  
25 say, I've been appearing in front of the Commission

1 for a while, as you know, and so have other people on  
2 our panel and we have never heard such a lopsided  
3 maturity described as mixed. Further, the tonnages  
4 undersold were much smaller than the tonnages  
5 oversold.

6 Finally, since our emphasis here on the inherent  
7 disadvantage of imports marketed to the Central Basin,  
8 which is the basis for Petitioner's original claims of  
9 injury, the overwhelming number of price comparisons  
10 to the Central Basin ports surveyed showed most  
11 overselling by large margins. And as I said, the  
12 instances of overselling were overwhelming.

13 It is worth the Commission's time to examine all  
14 of the price comparison tables certainly, but  
15 especially that of the one table comparing prices in  
16 the Gulf New Orleans. Note the blanket overselling by  
17 subject imports, not a mixed pattern, once again.  
18 Even if domestic prices rose steeply -- if domestic  
19 prices rose steeply from September 2000 through  
20 February 2001, note the small quantities sold by  
21 importers and the spotty availability of the import  
22 offerings.

23 How is it possible, given the agreed on fact of  
24 U.S. and import fungibility; how is this possible,  
25 given Petitioner's scenario of UAN being a commodity,

1 whose sales are price driven? And why does the  
2 overselling persist, even as U.S. prices rise, thereby  
3 disproving, in our opinion, any claim of price  
4 suppression/depression?

5         These contrary trends have not been answered by  
6 Petitioners. We don't think they can be. The general  
7 overselling shown only makes sense under Respondent's  
8 explanations, that imports came into the Gulf Coast  
9 ports only for a limited period and only to fill the  
10 gap in U.S. production shortfalls. Imports, in fact,  
11 were welcomed; some were bought or swapped by the  
12 producers, themselves; and they were consistently sold  
13 at prices above those of the domestic product.

14         In a commodity, in which purchases are being on  
15 the basis of prices, shouldn't imports have to  
16 undersell, in order to establish a foothold and gain  
17 market share? Indeed, all the pricing tables show  
18 consistent overselling by imports and U.S. prices  
19 generally increasing over the period of investigation,  
20 you can see in Chart 2. These prices during the  
21 period rose and sell according to the price of natural  
22 gas and in tandem with other nitrogen fertilizers, as  
23 is fully discussed in the staff report, again.

24         If domestic UAN prices were being suppressed or  
25 depressed by import prices, the correlation in price

1 trends with other nitrogen fertilizers, which is very  
2 high, as related in the staff report, and, of course,  
3 assumes fairly traded, these correlation coefficients  
4 would not be above the 90 percent, as calculated by  
5 staff. And, finally, in terms of impact, with no  
6 significant volume or price effects, there can be no  
7 significant impact of imports on the domestic  
8 industry.

9           Again, the staff report clearly shows these  
10 disconnects, with profitability at a low point in  
11 1999, minus some 17 percent on sales. Subject imports  
12 were just 2.7 percent of the national market and  
13 entirely absent in the Central Basin market stronghold  
14 of U.S. producers; then with profitability increasing  
15 to almost breakeven levels in 2000, as subject import  
16 penetration showed its largest increase in the period;  
17 then industry profitability sinking to its second  
18 lowest point in the period of investigation, almost  
19 eight percent of sales, in January-September 2002.  
20 What happened? Subject imports declining by 62  
21 percent in that period and no import shipments into  
22 the Gulf since February.

23           Unit value of domestic sales rose 58 percent from  
24 1999 to 2001, as subject imports and market share rose  
25 to their highest level; but, then, these unit values

1 fell by 32 percent in 2002, concurrent with subject  
2 imports decline, 62 percent. Where is the connection  
3 here that the Commission looks for between imports and  
4 the performance of the domestic industry? Where is  
5 the import impact?

6 The last straw, if all that has been presented  
7 heretofore is not enough to convince the Commission of  
8 the lack of a causal link, maybe the embarrassing  
9 absence of any confirmed loss sales or loss revenue  
10 allegations. Petitioners put forth 46 percent of such  
11 allegations involving 20 different purchasers of UAN.  
12 None were confirmed. On the contrary, the staff  
13 report relates how inquiries as to these allegations  
14 were used by several purchasers to complain to staff  
15 yet again -- and this would almost be two years after  
16 the fact -- complaint yet again about producers  
17 breaking supply commitments in the 2000-2001 period  
18 and selling their natural gas positions to reach  
19 short-term profit. These hedges had a profound effect  
20 on the customer base. They had the sell of those  
21 hedges.

22 There is no impact from subject imports, nor  
23 their volume and price effects where there is no real  
24 competition between imports and U.S. producers. That  
25 is why you see profits going up, even though imports

1 go up. That is why you see U.S. prices going up, even  
2 though imports go up. And that's why you see that  
3 among a list of 20 purchasers provided by Petitioners,  
4 there cannot be found a single one, who would pinpoint  
5 imports as having anything to do with U.S. industry's  
6 condition. Nor it follows can there be an imminent  
7 threat of injury unless someone finds a way to reduce  
8 the weight of water and, hence, drastically alter  
9 transport costs and logistics advantages of U.S.  
10 producers in the major predominant market area,  
11 consumption area of the Central Basin.

12 Given these high and immutable barriers to entry  
13 for imports into the U.S. heartland, where the great  
14 majority of the market is and will remain, it doesn't  
15 make any difference what subject country capacity is  
16 or whether there's a dumping order in the European  
17 Community or not. Subject country imports simply  
18 cannot get from there to the corn belt at competitive  
19 prices. And an affirmative vote here would only serve  
20 to damage IRN and other importers and distributors and  
21 their customers on the coastal areas, where  
22 traditionally and must continue to depend on imports,  
23 because due to the same geographic and logistic  
24 barriers, as well as other factors such as the Jones  
25 Act, corn belt UAN can't get from there to here

1 either.

2 That concludes my presentation, but I would like  
3 to specifically especially thank the staff for getting  
4 the facts out in this case. They were valuable.  
5 Thank you.

6 MR. ROSENTHAL: That concludes our direct  
7 testimony. We're ready to answer questions.

8 VICE CHAIRMAN HILLMAN: Thank you, very much, and  
9 I would like to start by thanking this panel. We know  
10 you faced many difficulties, as well, in light of the  
11 snow storm, to get here and we very much appreciate  
12 the effort that all of you have made and the time that  
13 you have spent with us this afternoon. It's been very  
14 helpful. I will turn to Commissioner Miller to begin  
15 the questioning.

16 COMMISSIONER MILLER: Thank you, Madam Chairman,  
17 and thank you, as well, to all of the panel for being  
18 here today and helping with the investigation and  
19 being prepared to answer our questions.

20 I think, particularly in light of a couple of the  
21 comments Mr. Magrath just made, I sort of want to go  
22 back to the point on the hedging for natural gas  
23 prices, because I guess I just sort of want to see if  
24 I understand your point. I mean, the companies have  
25 said, and I think I'm not an expert in financial

1 futures markets and such and these kind of financial  
2 practices, but I do understand the concept of  
3 essentially using these kinds of hedges to protect  
4 your production costs. It's a financial tool. It's  
5 not real. It's a financial tool. And my  
6 understanding from what we heard this morning, what I  
7 understand as the financial practice, is they use them  
8 to protect their production costs over time.

9 The fact that they sold their hedges at a time  
10 when natural gas prices were going up, and in our  
11 financial accounting, that means that it basically is  
12 accounted for in reducing their costs, seems like it's  
13 using those hedges for exactly what they're meant to  
14 be used for, to basically flatten out production costs  
15 at a time otherwise that they would rise. Now, they  
16 don't totally protect it and, obviously, our financial  
17 information reflects the cost increase, that natural  
18 gas price spike, they're not -- I don't know that  
19 anybody would advise them that it would be good  
20 financial practice to hedge 100 percent of their  
21 production. I suspect that that would not be  
22 feasible.

23 But, I guess what I'm saying here is, you know, I  
24 hear this sort of, oh, they sold their cheap gas  
25 instead of using it. No, they sold the hedges to

1 reduce their costs. That's what it's all about. So,  
2 I don't really get this argument, in all honesty. I'm  
3 having trouble understanding what the point is here,  
4 other than kind of a visceral reaction of some kind.  
5 Yes, I'm sorry, you'll have to help me.

6 MR. TVINNEREIM: Dean Tvinnereim is my name. I  
7 go by "TV," so you can call me that. It's a lot  
8 easier.

9 As I stated earlier, I've been in the business 25  
10 years and I think I know a little bit about natural  
11 gas and its effects on operating economics of the  
12 business, in particular. And I just want to relate a  
13 real brief story to you.

14 I joined J.R. Simplot Company in early 2000 and  
15 shortly thereafter, I sensed a fundamental change in  
16 natural gas demand. We were having these brownouts in  
17 California. We were having water issues. We were  
18 having electrical generation problems, because of low  
19 water levels. And there was lots of indications why  
20 natural gas was going to move.

21 And in April of that year, I went to visit our  
22 Brandon Nitrogen facility in Brandon, Manitoba, and I  
23 remarked to the controller, at that time, who was new  
24 to the fertilizer business of J.R. Simplot, I said, we  
25 are going to have a really, really good year on

1 nitrogen. And he goes, well, why is that. And I go,  
2 simply stated, we have most of our natural gas hedged  
3 and most of our competitors do not. And as the  
4 testimony bore out today, CF said they had zero gas  
5 hedged, if I heard the testimony correct. As you see  
6 repeatedly in Terra Nitrogen's quarterly and annual  
7 statements, they are consistently 10 to 12 percent  
8 hedged, which is nothing. I mean, 10 to 12 percent  
9 hedged, when your basic raw material, your basic  
10 ingredient of manufacturing is gas and you're only 10  
11 to 12 percent hedged, what have you done, as a  
12 reasonable business person, to protect your business?

13 Okay. So, then the next question goes on, well,  
14 what's the big deal -- I'm kind of paraphrasing here,  
15 so pardon me -- what's the big deal about selling your  
16 hedges, because that happens all the time? And you're  
17 absolutely correct; you're absolutely correct. But,  
18 here's the difference, is in the normal execution of a  
19 hedged contract or a hedged position, because when  
20 you're hedged, your long paper and short physical, and  
21 when you're on line, you become long physical and  
22 short to future -- short to paper, okay, or cover your  
23 paper, all right.

24 So, in the normal course of our business, when we  
25 sell our hedged gas, our paper position, we sell it

1 for the month of use. In other words, we soon will be  
2 entering March. We will be selling our March contract  
3 paper and whatever profit or loss that we have in that  
4 contract will be applied against the physical that we  
5 buy. In the physical, we buy on a monthly index  
6 contract unrelated to the futures, as does every other  
7 producer in this room, okay. And then, if there's a  
8 profit from the sale of that hedge, it offsets our gas  
9 position. If we have a negative transaction, it  
10 increases our costs.

11 What happened in the period that we all seem to  
12 be the most focused on, late 2000-2001, what happened  
13 was the Petitioners, in this case, sold whatever  
14 hedged position they had. And, again, their testimony  
15 tells you that it was a very small hedge position.  
16 They sold that position and instead of them running  
17 normal business operations, they reduced ammonia  
18 production, urea production, and, in some cases,  
19 maintaining their UAN production. But the overall net  
20 effect was that the total nitrogen pool, the total  
21 nitrogen pool in the United States was reduced and  
22 there was strong signals, signals that came out in  
23 green markets, fertilizer markets, other industries,  
24 publications, it came out in announcements in the Wall  
25 Street Journal. It came out in quarterly financial

1 reports. The fact of the matter is, is that they sold  
2 their hedged positions and reduced their total  
3 nitrogen operations.

4 In the case of J.R. Simplot, we did not do that.  
5 We sold our hedged position and continued to run our  
6 plant at full rate, okay. That's the difference. So,  
7 you can capture the physical -- I mean, you can  
8 capture the paper profit and apply it against your  
9 physical needs, or you can capture your financial  
10 profit and then not even buy the physical side. And  
11 that's what was happening.

12 COMMISSIONER MILLER: Well, your suggesting that  
13 whatever your hedged amount is always going -- or  
14 always has to exactly match your physical needs.

15 MR. TVINNEREIM: No, I'm not saying it has to  
16 match it perfectly; no, I'm not saying that. But, I  
17 can tell you this, I started in the commercial grain  
18 business and we use hedges in the commercial grain  
19 business all the time. There, we have a policy in the  
20 grain business, if you're 100 percent physical, you're  
21 100 percent paper. You're always covered, okay. In  
22 the petrochemical industry, which nitrogen is a part  
23 of the petrochemical industry, typical hedging  
24 opportunities would cover anywhere from 50 to 100  
25 percent of your physical needs, okay, and depending on

1 how you feel about the marketplace.

2 In a previous company that I worked for, we had  
3 strict policy guidelines that in certain periods of  
4 time, the closer to the use period, the higher we had  
5 to be hedged. The further out, the less we had to be  
6 hedged. And so, we managed our position that way.

7 MR. ROSENTHAL: I think Mr. O'Neill would like to  
8 add something here.

9 COMMISSIONER MILLER: Sure, please.

10 MR. O'NEILL: Let me just address the perceptions  
11 issue here. If you go back and do detailed research  
12 on public announcements by these companies, unwinding  
13 hedges is not a matter ever of a public announcement.

14 COMMISSIONER MILLER: Well, I wanted to ask you  
15 about that comment.

16 MR. O'NEILL: And so what happened was all of a  
17 sudden, everybody is reading the papers, gas is going  
18 up, people are shutting down production, and then  
19 there's an announcement -- two announcements that  
20 people have taken major profits on their hedges. So,  
21 it's a signal of the market. It's very similar to the  
22 signal that Tom Ridge gave the City of Washington,  
23 when he said, buy duct tape. And all of a sudden,  
24 there's no duct tape, and all of a sudden, you know,  
25 we've got a very -- this signal and a number of other

1 signals for buyers. We see plants shutting down,  
2 ammonia plants, urea plants, we see people selling --  
3 liquidating their positions and not buying the  
4 physical gas, taking profits.

5 You read -- you know, you read and, of course,  
6 all these public announcements, these public  
7 companies, you've got lawyers looking at them five  
8 different ways, so they're very measured. So, you're  
9 reading -- you know, you're reading it word by word.  
10 And, as the buyer, you're saying, okay, this is  
11 significant; what does this mean. And I think that  
12 customers, like ourselves, were saying, these guys are  
13 going to throttle back. They've got financial  
14 problems. They're going to take their profits and  
15 run.

16 COMMISSIONER MILLER: It's interesting -- do you  
17 mind if I finish? It's interesting your perception of  
18 it and you're telling me that that's the perception  
19 out there. You know, I can't read it the way you  
20 could. I can look at that and say, you know, are they  
21 trying to signal. They just made a lot of money or  
22 something. Is there a market that they're trying to  
23 communicate to.

24 Mr. Rosenthal, I can see you shaking your head,  
25 so you want to agree. But, I'm going to actually -- I

1 may have to wait until later, after I let you finish.  
2 But, I will invite Ms. Slater, in her post-hearing  
3 brief, to address the question of why the companies  
4 put out a sort of unprecedented press release on this  
5 point, because I can't figure out the companies -- I  
6 would like to hear the companies' statement about why  
7 they did it.

8 COMMISSIONER KOPLAN: I don't mind waiting, if  
9 you want to close the loop on it.

10 COMMISSIONER MILLER: Mr. Rosenthal?

11 MR. ROSENTHAL: I just want to differentiate  
12 between the press release on the hedges versus the  
13 other perceptions that are being created quite apart  
14 from the announcement that we're making extraordinary  
15 profit of 16 million, I think in the first missed  
16 press release that Commissioner Koplan was talking  
17 about earlier. Take a look at the Washington Post  
18 December 21st edition that we provided in our  
19 submission and it's quoting Peter Baer, talking about  
20 high natural gas prices affecting a lot of different  
21 products.

22 Terra Industries is quoted there and it was their  
23 Mark Rosenbury, the Chief Administrator Officer,  
24 saying that it's closed three of its six U.S. ammonia  
25 plants, which used natural gas as the main ingredient

1 for fertilizer production. And with all due respect,  
2 I do know the difference between ammonia and UAN  
3 solutions and even urea, although not much more than  
4 that. But, it says that the company realized to be  
5 much more profitable to stop production in December.  
6 Okay, we're not talking about just taking a hedge  
7 profit. It says, "the company recognizes it to be  
8 more profitable to stop production in December and  
9 sell the natural gas back to market at current prices,  
10 which are much higher than the price Terra was  
11 obligated to pay under existing December supply  
12 contracts," said Mark Rosenbury, Chief Administrator  
13 Officer.

14 It goes on to say, "we looked at these current  
15 prices and said, 'this is crazy,'" he said. "Terra  
16 hasn't disclosed the profit it will make selling its  
17 gas, but Rosenbury said it would be substantial." It  
18 goes on, "in coming months, Terra's good fortune could  
19 be reversed. It usually buys gas a month at a time  
20 and the prices for January delivery most likely will  
21 be well above its breakeven point. That would keep  
22 Terra's plants closed, Rosenbury said, but eliminate  
23 the opportunity to sell natural gas at a profit. If  
24 this persists, it's going to be a real problem."

25 "He estimates that at a total annual U.S.

1 production capacity of 18 million tons of ammonia,  
2 four million tons of production isn't operating now.  
3 'Could we be short of fertilizer next spring? It's  
4 possible that farmers will not have as much as they  
5 want,' said Rosenbury."

6 Now, that is not just a matter of capturing the  
7 extraordinary profits on hedged prices. If that is  
8 not a signal for the market that's been echoed  
9 throughout the industry, what else is? What are  
10 farmers supposed to do? What are distributors  
11 supposed to do, when they're being told that  
12 production is being shut down in nitrogen -- and it's  
13 not just in ammonia; it's in other nitrogen  
14 fertilizers -- and they're being told by a major  
15 producer that there may not be enough fertilizer for  
16 next spring.

17 COMMISSIONER MILLER: Thank you, Commissioner  
18 Koplán, and thank you, Mr. Rosenthal.

19 COMMISSIONER KOPLAN: Thank you. Thank you,  
20 Madam Chairman. To what extent do the increases in  
21 subject imports in 2000 and 2001 simply represent a  
22 shift in subject country exports from the European  
23 Union to the United States? What role, if any, did  
24 the provisional March 2000 and final September 2000  
25 European Union antidumping duties on UAN have in this

1 shift? I note that Petitioners state that the U.S.  
2 accounts for nearly 65 percent of worldwide  
3 consumption.

4 MR. ROSENTHAL: Our position is that the order in  
5 the EU has had nothing to do with the import into the  
6 U.S. There have always been imports in the U.S. on  
7 the Coast, that you've heard, and what drove the  
8 imports into the Mississippi region was the  
9 extraordinary natural gas pricing and the reaction by  
10 the domestic UAN producers during the last half of  
11 2000 and the first half of 2001.

12 Recognize right now -- or recognize even before  
13 this petition was filed, imports went away in that  
14 period, as you saw from Dr. Magrath's testimony. The  
15 order in the EU was in place, then. It's still in  
16 place, as far as I know. And imports are essentially  
17 absent from the Gulf Coast region and were prior to  
18 the petition being filed.

19 COMMISSIONER KOPLAN: What affect did the  
20 antidumping duties in the European Union have on  
21 exports to the European Union by the subject  
22 countries? What was the volume before and what  
23 happened as a result?

24 MR. ROSENTHAL: I'd have to get you that for the  
25 post-hearing brief.

1           COMMISSIONER KOPLAN:   Okay.

2           MR. MAGRATH:   If I could add, the Petitioners, in  
3           their brief, made much -- they state that the subject  
4           countries can ship production between UAN and other  
5           nitrogen products on the same facilities, which would  
6           indicate, itself, that they have another response of  
7           the Russian or other producers, just to shift the  
8           facilities around.

9           COMMISSIONER KOPLAN:   I appreciate what you're  
10          saying.  I've seen that, but I am curious as to the  
11          affect it had on subject imports going into the  
12          European Union.

13          MR. MAGRATH:   Another reason that we don't think  
14          the two are related, Commissioner, is once again, the  
15          large role transport costs play.  These countries are  
16          a lot closer to the European Union and able to be much  
17          more competitive at either fair price or unfair price  
18          with the western European Union consumers.  By the  
19          time they get it all the way around to San Francisco  
20          or even Savannah, Georgia, 48 percent, as the staff  
21          report said, is added into the cost.

22          COMMISSIONER KOPLAN:   Thank you, Mr. Magrath.  
23          Regardless of whether subject imports were drawn into  
24          the U.S. market in late 2000 and early 2001, because  
25          of high U.S. natural gas prices and U.S. producers

1 cutbacks in UAN production, why was subject imports  
2 well over 100,000 short tons per month in each of the  
3 months August through November 2001, even though U.S.  
4 natural gas prices have fallen substantially by then?

5 (No response.)

6 COMMISSIONER KOPLAN: Do you want me to repeat  
7 the question? Do you understand the question?

8 MR. O'NEILL: Yes. Well, certainly, we continue  
9 to, on the west coast, to resupply ourselves. So, if  
10 you look at our pattern of consumption, there was no  
11 material change.

12 COMMISSIONER KOPLAN: Okay.

13 MR. WILLARD: A lot of times, Mr. Commissioner,  
14 it's --

15 COMMISSIONER KOPLAN: If you could each identify  
16 yourselves against the record for the reporter?

17 MR. WILLARD: Robert Willard.

18 COMMISSIONER KOPLAN: Thank you.

19 MR. WILLARD: A lot of times it's how we buy  
20 fertilizer. You may be buying in June for the  
21 following May. And so, it's not always purchased  
22 directly at that time frame. You're doing much like  
23 we were talking with hedges, you're looking at the  
24 market, you're looking to see what you think is the  
25 best time to buy. But, once again, reliable supply is

1 an important issues. So, most cases, at least six  
2 months in advance, somebody like myself wants to have  
3 it lined up. So, the time frames can get skewed that  
4 way.

5 COMMISSIONER KOPLAN: Thank you.

6 MR. MAGRATH: Commissioner?

7 COMMISSIONER KOPLAN: Mr. Magrath? I don't need  
8 your name plate. I know who you are.

9 MR. MAGRATH: I'm sure you do.

10 COMMISSIONER KOPLAN: I'm sure Mr. Koenig  
11 wouldn't want to be confused.

12 MR. MAGRATH: Nor would I; nor would I. Strange  
13 bedfellows here. The reason I was indicating Mr.  
14 O'Neill, he told us the story over lunch about how his  
15 last steal, there was an over four-month duration to  
16 it. The 60-day time frame that Ms. Slater talked  
17 about this morning, that's just for the physical  
18 moving of the product by ship from Eastern Europe to  
19 an Atlantic coast port. It takes an extra 15 days, I  
20 understand, to get to the west coast ports. You not  
21 only have to do that, you have to negotiate and  
22 arrange for all of those transports and logistics of  
23 boatloads. All that is with the transaction, too.

24 So, what imports there are in mid-2001, there is  
25 a much more lengthy time frame there, in terms of the

1 supply commitment and negotiation and the actual entry  
2 into the U.S. port, 60 days.

3 MR. O'NEILL: Mr. O'Neill. Let me just give you  
4 a time line, because as I was listening to that  
5 testimony this morning, it kind of caused me to make a  
6 phone call. A vessel that we brought in, the MV  
7 Vicintia, which came out of the Black Sea, we  
8 contracted for that on the 15th of February 2001.  
9 That's when we absolutely made the written deal,  
10 having been through a negotiation for a several week  
11 period prior to that. The vessel actually loaded on  
12 the 19th of May. It arrived in Stockton on the 21st  
13 of June. So, there's more than 120 days of lead time.  
14 And then when that was actually entered and Custom's  
15 cleared, as far as the statistical data, we're not  
16 sure.

17 But, you can see that that's not an untypical  
18 sort of lead time, particularly in a period of  
19 uncertainty, where even today, because the market has  
20 been a bit firmer, it's very difficult to buy any  
21 tonnage for March shipment out of Europe. So, now,  
22 you're looking at April, people are trying to sell you  
23 May. By the time the ship gets there, the ship slips  
24 a little bit, you're looking at 35 days, 33 days from  
25 the Black Sea into the west coast. You're looking at

1 an extremely long time line.

2 COMMISSIONER KOPLAN: Thank you for that.

3 MR. ROSENTHAL: Let me just add one other thing,  
4 which is what I've heard from these witnesses and  
5 others indirectly, but you can confirm this with the  
6 purchasers. It was the spring of 2001, when the  
7 domestic producers were still being unwilling or  
8 somewhat elusive about their ability to supply the  
9 market and customers were having to decide what they  
10 were going to do. Some of them did, as I think Mr.  
11 Willard indicated, decided they're going to contract  
12 out, so they can make sure that they're going to be  
13 able to get shipments not just in the spring, but over  
14 the next six months or so. So, a lot of those  
15 importers and customers said, we're not going to rely  
16 on the vagaries of the marketplace now or at least  
17 what the domestic producers are telling us they might  
18 be willing to supply at some point. We're going to  
19 protect ourselves, get a reliable supply, and we're  
20 going to contract out six months.

21 So, a number of them did not want to say, oh,  
22 yes, we're okay. Now that the gas is coming down,  
23 we'll go out and make a deal with the domestic  
24 producers. It wasn't possible to do it immediately  
25 and, secondly, they want to protect themselves for the

1 next few months. But, if you take a look at the  
2 imports, they did, in fact, go away as the market  
3 stabilized.

4 COMMISSIONER KOPLAN: Thank you. Let me lead  
5 into this. Petitioners are arguing that they were  
6 well positioned geographically to serve all markets in  
7 the U.S., whether in the coastal regions or in the  
8 farm belt. They, also, argue that even when prices  
9 were at an all time high in late 2000 and early 2001,  
10 domestically produced UAN was never in short supply.  
11 I heard your question this morning, at the conclusion  
12 of their testimony. Do you have examples of  
13 Petitioners telling customers that they could not meet  
14 their commitments? Was the implication of your  
15 question that you have a smoking gun or something?

16 MR. ROSENTHAL: Well, I wanted to get them on  
17 record, because the staff report directly contradicts  
18 the testimony you heard today. And I thought I had  
19 heard some indications earlier of denial that they  
20 ever turned down or said they were unable to do it. I  
21 wanted to make that clear, because that's not what the  
22 staff report says, based on the purchasers' responses.

23 COMMISSIONER KOPLAN: Okay.

24 MR. ROSENTHAL: And clearly, it isn't  
25 corroborated by the loss sales information, and

1 besides which I have Exhibit A sitting next to me, who  
2 has been in that situation.

3 COMMISSIONER KOPLAN: Did you want to re-identify  
4 Exhibit A for the record?

5 MR. ROSENTHAL: That's Mr. O'Neill.

6 COMMISSIONER KOPLAN: Thank you.

7 MR. MAGRATH: Actually, he has Exhibit B to his  
8 right.

9 COMMISSIONER KOPLAN: Let me see if I could get a  
10 quick one in here. How long can this product remain  
11 in inventory before it must be sold and delivered?

12 MR. O'NEILL: There's pretty much an indefinite  
13 shelf life for the product.

14 COMMISSIONER KOPLAN: Okay.

15 MR. O'NEILL: You're carrying costs are the costs  
16 to the bank most of the time, that's some cost or  
17 fixed cost, and money carrying costs.

18 COMMISSIONER KOPLAN: Okay. I've got time for  
19 one more. Petitioners assert the natural gas prices  
20 normalized long before May of 2001, in their brief at  
21 page 38. Is this true, in light of some of the press  
22 information I've seen lately, including Agrium's press  
23 release covering its fourth quarter report of 2002?  
24 They're referring a surge in January of this year in  
25 their fourth quarter report.

1 MR. TVINNEREIM: Well, if you're asking if  
2 natural gas prices normalized by May of 2001 --

3 COMMISSIONER KOPLAN: Actually, they say long  
4 before May 2001.

5 MR. TVINNEREIM: Yes, I can't remember exactly  
6 what the price was in May of 2001, but I want to say  
7 it was somewhere in the neighborhood of four dollars  
8 in MMBTU. I think somebody might have a graph around  
9 here showing that. But, the previous eight or 10  
10 years --

11 COMMISSIONER KOPLAN: Excuse me, it went from  
12 four to 10, didn't it?

13 MR. TVINNEREIM: No, no, no. You're talking  
14 about May 2001.

15 COMMISSIONER KOPLAN: Right.

16 MR. TVINNEREIM: Right. That's after the big  
17 spike. Natural gas hit roughly \$10 in January of  
18 2001.

19 COMMISSIONER KOPLAN: Thank you.

20 MR. TVINNEREIM: Okay. But even so, when we got  
21 to May, I believe gas was still in that four dollar  
22 range, plus or minus; I can't remember which. And as  
23 you heard Mr. Buckley testify with CF Industries this  
24 morning, he said something to the effect that what  
25 happened during that period of time was way above what

1 had happened the previous eight or 10 years. Mr.  
2 Buckley testified that natural gas prices had been  
3 fairly steady at a much lower number for eight to 10  
4 years.

5 But, again, to say it was normal, I know this  
6 much, because I talked about the fact that Simplot was  
7 heavily hedged going into this period of time and we  
8 continued to be heavily hedged. And I remember, as an  
9 outspoken critic with inside my organization, I said,  
10 maybe something different has happened with gas and  
11 maybe we ought to reevaluate how strongly we want to  
12 be hedged. And the consensus in the company, at that  
13 time, was to stay heavily hedged. And guess what  
14 happened? Gas prices kept falling and we, at Simplot,  
15 were on the wrong side of the gas market and domestic  
16 producers that were not hedged gained a huge advantage  
17 in the second half of 2001, going into 2002, as gas  
18 prices dropped to roughly two dollars.

19 COMMISSIONER KOPLAN: Thank you, Madam Chairman.  
20 I think Mr. Rosenthal is trying to get one last word  
21 in, if you'll indulge that.

22 MR. ROSENTHAL: I just want to make sure we're  
23 getting to the last part of your question, which is  
24 are natural gas prices going back up again in the most  
25 recent period.

1 COMMISSIONER KOPLAN: Right.

2 MR. ROSENTHAL: I think they answered yes to  
3 that, but I want to make sure the industry witnesses  
4 agree with that.

5 MR. TVINNEREIM: Yes, they're up now.

6 MR. O'NEILL: Natural gas prices now are  
7 somewhere plus or minus six dollars in NCF.

8 COMMISSIONER KOPLAN: Thank you. Thank you,  
9 Madam Chairman.

10 VICE CHAIRMAN HILLMAN: Thank you, and I would  
11 joint my colleagues in thanking you, again, for your  
12 testimony. It's been very helpful.

13 I guess if I could start with you, Mr.  
14 Tvinnereim. I want to go back a little bit to the  
15 response you gave to Commissioner Miller on this issue  
16 of the hedging and what it's implications were.  
17 Because, as I heard you explain it -- I'm trying to  
18 square it with the argument as I heard it, because I  
19 think your criticism, if you will, of the domestic  
20 industry, as I heard it, was twofold: one, that they  
21 didn't hedge enough, which strikes me as a little bit  
22 sort of different from a brief that's basically  
23 arguing that they should be faulted for selling their  
24 hedged position or strikes me that it comes as the  
25 reaction in the market was, what a bad thing they've

1 done, that they've sold these hedge positions, but, on  
2 the other hand, I heard your responses more, you  
3 didn't hedge enough; and then secondly, that what you  
4 did that was bad was that you didn't then buy physical  
5 gas and produce.

6 Is that a fair sort of sense of what your sense  
7 is that unlike J.R. Simplot, they didn't buy physical  
8 gas and produce?

9 MR. TVINNEREIM: Yes, and it gets into this --  
10 there's a difference between hedging --

11 VICE CHAIRMAN HILLMAN: Right.

12 MR. TVINNEREIM: -- and speculating. And the  
13 producers, and I think Mark Rosenbury's statements  
14 that were read here by Mr. Rosenthal outlined that.  
15 There's a difference between hedging and speculating.  
16 And so what Terra and Mr. Rosenbury were willing to do  
17 was sell their hedged gas, take that profit, and leave  
18 them vulnerable in future months. And that's what Mr.  
19 Rosenbury testified to.

20 VICE CHAIRMAN HILLMAN: I guess two things that I  
21 want to understand. It's my understanding that J.R.  
22 Simplot then went on in 2001 and closed both of its  
23 facilities; is that correct? You closed your  
24 California and your Oregon facility?

25 MR. TVINNEREIM: No. We still are operating our

1 Helm, California facility.

2 VICE CHAIRMAN HILLMAN: Okay.

3 MR. TVINNEREIM: We're still operating that.

4 VICE CHAIRMAN HILLMAN: Okay.

5 MR. TVINNEREIM: Okay.

6 VICE CHAIRMAN HILLMAN: What about the Oregon --  
7 oh, I'm sorry, Idaho facility?

8 MR. TVINNEREIM: The Idaho facility we closed and  
9 that decision to close Idaho was a twofold position.  
10 We had an old 1960s reciprocating ammonia plant, old,  
11 inefficient technology, and we decided that we  
12 couldn't afford to operate that plant anymore and it  
13 was cheaper to buy ammonia than it was to produce  
14 ammonia. And as you have heard testimony earlier, you  
15 have to have your ammonia production running, in order  
16 to make urea.

17 VICE CHAIRMAN HILLMAN: Okay. Was there a  
18 shutdown of the Helm, California plant, at some point  
19 during this POI?

20 MR. TVINNEREIM: NO. We've continuously run our  
21 Helm, California plant. But, we make a multitude of  
22 products.

23 VICE CHAIRMAN HILLMAN: Do you produce UAN at  
24 your Helm, California plant?

25 MR. TVINNEREIM: Yes, we do.

1           VICE CHAIRMAN HILLMAN: Okay. And was there any  
2 stoppage of the production of UAN at the Helm,  
3 California plant?

4           MR. TVINNEREIM: We run that facility, in terms  
5 of UAN production, as a swing facility. I mean, we  
6 make UAN, but it's not -- it's a different plant than  
7 what you would see at Donaldsonville, Louisiana or  
8 Vertigree, Oklahoma. It's a different operation. The  
9 two plants, it's not apples and apples.

10          VICE CHAIRMAN HILLMAN: Okay. I'm still trying  
11 to understand, you did produce UAN at your Helm,  
12 California plant throughout the POI without cessation,  
13 without --

14          MR. TVINNEREIM: No.

15          VICE CHAIRMAN HILLMAN: -- cutbacks?

16          MR. TVINNEREIM: No. The plant has been up and  
17 down, not because -- the UAN plant at Helm has been up  
18 and down, in terms of production, but it's based on  
19 the way we run the whole plant. We make a multitude  
20 of products at that plant.

21          VICE CHAIRMAN HILLMAN: Okay. Would you say your  
22 production levels of UAN over the course of the POI  
23 have changed out of the Helm, California plant?

24          MR. TVINNEREIM: No; they haven't changed  
25 materially, no.

1           VICE CHAIRMAN HILLMAN: Okay. You simply readily  
2 switch between the production of UAN and the  
3 production of your other products?

4           MR. TVINNEREIM: Yes, we've done that for years.  
5 It's a normal course of operation at Helm.

6           VICE CHAIRMAN HILLMAN: Okay. I'm not sure that  
7 quite squares with at least one piece of information  
8 in our record, but I'll take another look at it.

9           I guess if I could go back to the distributors,  
10 Mr. Willard and I don't know whether Mr. Koker or Mr.  
11 Hart want to chime in at all on this either. Again,  
12 I'm trying to understand from your perspective whether  
13 you're aware of any farmers or distributors that  
14 actually switched between using UAN to using urea or  
15 the other products. I mean, we've heard a lot of  
16 testimony that you can; that, in theory, you could.  
17 And on the other hand, we've heard a lot of testimony  
18 about it's a practical matter, because they're applied  
19 differently and they have different attributes; that  
20 while in theory you could do it. I'm trying to  
21 understand whether it actually occurred and sort of  
22 when and in what volume. Mr. O'Neill?

23           MR. O'NEILL: Let me lead off. This is Tip  
24 O'Neill. I can think of two important customers of  
25 ours in the Pacific northwest that have and certainly

1 did, during the period of time, switch from UAN  
2 consumption to the melding of urea. It would be  
3 Quincy Farms, as well as Nuchem in central Oregon.  
4 Both those customers, I think in particular, a  
5 position that we had, advanced a forward commitment,  
6 where we had positioned UAN to that customer and they  
7 got a better opportunity to buy urea, so they melded  
8 urea. And we see that in California, as well.

9 The technology to melt urea is very simple. You  
10 just need a big vat and some hot water and a mixer.  
11 And if you look at the pricing of UAN, it's always  
12 within \$10 of the nutrient value, that's the end value  
13 cost of urea or ammonia, because people can switch  
14 back and forth. So, there's a \$10 to \$11 convenience,  
15 because it comes ready to go, as opposed to having to  
16 run a process, making investments in the melding  
17 facility.

18 VICE CHAIRMAN HILLMAN: I'm just trying to make  
19 sure I understand. So, when the price differential  
20 between UAN and urea gets to what level are people  
21 switching?

22 MR. O'NEILL: Ten dollars.

23 VICE CHAIRMAN HILLMAN: Ten bucks.

24 MR. O'NEILL: Ten to 11 dollars. It depends on  
25 the individual. But, certainly, if you look at -- and

1       Agrium just led with a big price increase in our  
2       market. And I can tell you that the UAN price, if you  
3       look at it on a per end basis, that UAN price is  
4       within \$10 of the cost of the dry product.

5               VICE CHAIRMAN HILLMAN: Now, we've, obviously,  
6       heard a lot of testimony that there are a series of  
7       advantages of using UAN, in terms of being able to use  
8       on a no till sort of a field, that you can add  
9       herbicides and other things to it. It's one pass over  
10      the field, and all these other attributes. Would you  
11      say that the melted liquified urea has exactly those  
12      same characteristics or --

13              MR. O'NEILL: I'm not an applicator; but,  
14      certainly, it goes into a liquid. It goes into a  
15      center pivot. We never have complaints. Most of -- a  
16      lot of what goes on today -- farmers are like  
17      homeowners, they get somebody, the equivalent of  
18      Chemlawn, they come in and spray their fields. Mr.  
19      Willard, he's out there with the equipment. You have  
20      one farmer, maybe one or two hands on thousands of  
21      acres. He may or may not have equipment. He will  
22      contract with an applicator like Mr. Willard, to come  
23      in and apply so many pounds of N, so many pounds of P,  
24      so many pounds of K per acre. And that contractor,  
25      that retailer, whoever, will go in and say, okay,

1 well, I can get you this many pounds of N using UAN,  
2 or I can get you this many pounds of N using melted  
3 urea. And the melted urea goes through the same  
4 equipment.

5 VICE CHAIRMAN HILLMAN: Okay. It looks like Mr.  
6 Koker wanted to comment. And just for the record,  
7 since you did not present direct testimony, if you  
8 could just give us one quick sentence on Texas  
9 Liquids.

10 MR. KOKER: Okay. I'm Kim Koker. I'm with Abel  
11 Corporation. We run our business, our fertilizer  
12 businesses as what's called Fertilizer Company in  
13 Louisiana and Texas Liquid Fertilizer in Texas. And  
14 we do have the ability to melt urea. We melt urea as  
15 the normal course of business. It's a product that we  
16 have a viable and there are many applications. We can  
17 substitute liquid urea for UAN. You can't ever  
18 substitute 100 percent of it; but, in our case, in  
19 2001, our purchases of UAN went down substantially,  
20 because we could buy the urea melted and it gave us a  
21 substantial profit.

22 VICE CHAIRMAN HILLMAN: And would you agree with  
23 Mr. O'Neill that you do that when the price  
24 differential is in the range of \$10?

25 MR. KOKER: Well, \$10, it's more on a per unit

1 basis with us. And if it gets about -- 10 to 15  
2 percent is what we like to see. In 2001, our average  
3 cost of urea was 15 percent below our average cost of  
4 UAN in the spring of 2001.

5 VICE CHAIRMAN HILLMAN: Mr. Willard, did you want  
6 to add something?

7 MR. WILLARD: Yes. I will confirm what Kim is  
8 saying. It's a little bit like some of the testimony  
9 that happened this morning, though, wherein this  
10 region, and this is an environmentally sensitive  
11 region, so we don't -- it's harder to switch here,  
12 because we use herbicides and things and we do a lot  
13 of no till and that makes it harder to switch. But if  
14 the price difference gets too big, like Kim is saying,  
15 we have to set up to melt urea.

16 VICE CHAIRMAN HILLMAN: Okay. But, this is a  
17 factual matter: can you use the melted urea exactly  
18 the same as you use the UAN? In other words, can you  
19 mix herbicide in with it? Can you effectively apply  
20 it on a no till field?

21 MR. WILLARD: It's close. It's not exact, but it  
22 is pretty close. And I think if the price difference  
23 got big enough, we would learn how to do it.

24 VICE CHAIRMAN HILLMAN: Okay.

25 MR. KOKER: Yes, Kim Koker, again. We knife

1 inject most of all of the product. Our growers knife  
2 inject it in the ground. And so, in that case, they  
3 can be used. And in some cases --

4 VICE CHAIRMAN HILLMAN: You knife inject even  
5 UAN?

6 MR. KOKER: Yes. And in some cases, our growers  
7 prefer urea over UAN, because of the characteristics.  
8 It's more stable and it lasts longer, if you can get  
9 it below the trash that's on top of the ground.

10 VICE CHAIRMAN HILLMAN: Okay, all right. Thank  
11 you. I turn to Commissioner Miller.

12 COMMISSIONER MILLER: I'm going to follow up on  
13 the same subject, actually, because given the  
14 testimony that you've just given, I would ask then,  
15 Mr. Rosenthal, Exhibit 6 of the Petitioner's  
16 submission this morning, shows the share of the  
17 nitrogen market, I guess this is market consumption,  
18 the percent of total nitrogen that UAN has accounted  
19 for. They had it in this bar chart. They had the  
20 corresponding numbers in their pre-hearing brief. And  
21 their point regarding this was that even with  
22 variations in the price premium over time, UAN has  
23 held basically steady, if anything, slightly increased  
24 over time, at least in the 1990s, in terms of its  
25 share of the market for all nitrogen fertilizers.

1           So, how do you square this with what you're  
2 saying? I mean, if, in fact, it's that easy to  
3 switch, why, when the price premium gets too high,  
4 don't you see a switch reflected in overall  
5 consumption share? I mean, you may know this or that  
6 producer that can do it; but the question is, is it --  
7 when you look at the big picture, is it really making  
8 a difference? These numbers suggest, no, it's not  
9 making a difference.

10           MR. MAGRATH: If I understand you --

11           COMMISSIONER MILLER: Mr. Magrath?

12           MR. MAGRATH: If I understand this question,  
13 Commissioner, it doesn't vary. All these nitrogen  
14 fertilizers track very closely. Now the point that we  
15 were making in our testimony is if there had been  
16 price suppression or depression of imports of UAN and  
17 UAN only anywhere down the line, those very high  
18 correlation coefficients of all four of them moving at  
19 the same time, that would have been broken asunder by  
20 the price suppression and depression. But, instead,  
21 you don't have these big spreads.

22           You may have had it in this period of where it  
23 did get out of whack in 2000-2001, and that's what  
24 they're talking about. They're talking about could  
25 they do it. But the prices have tracked along and to

1 us, it's evidence of no causative link by reason of  
2 price.

3 MR. ROSENTHAL: Let me try this a different way.  
4 I want to go back, because Pat's point is really  
5 something that -- if you come out with nothing --

6 COMMISSIONER MILLER: His point is a little  
7 different.

8 MR. ROSENTHAL: It is a little different, but it  
9 is a great point, in my humble view. And please don't  
10 forget that one, underline that in the transcript.

11 COMMISSIONER MILLER: I've got to figure out  
12 which ones fit with the numbers.

13 MR. ROSENTHAL: Okay.

14 COMMISSIONER MILLER: It's a great point if it  
15 works.

16 MR. ROSENTHAL: But, it's different.

17 COMMISSIONER MILLER: Okay.

18 MR. ROSENTHAL: His point is that all these  
19 different forms of nitrogen track in terms of price.  
20 And if imports of UAN were having a price depressing  
21 effect, you wouldn't see UAN tracking with the other  
22 prices for urea, ammonia, et cetera, when those other  
23 products are allegedly not being adversely affected by  
24 unfairly traded imports. So, why do you see that?  
25 Okay, that's his point. You understand that?

1 COMMISSIONER MILLER: Right.

2 MR. ROSENTHAL: Going back to this chart, I think  
3 that over time, I don't disagree with the basic theory  
4 behind Mr. Klett's chart here. All things being equal  
5 over time, because of the convenience of UAN, people,  
6 who are used to it and are set up to use UAN, will use  
7 it and there has to be a pretty big price swing, in  
8 order to have people change their behavior.

9 What happened in that brief period were two  
10 things. One is when people couldn't get domestic UAN,  
11 they got imported UAN. So, you would expect that this  
12 relative chart would stay relatively the same.

13 Now, on the fringes and in certain areas, people  
14 said, you know what, there's enough of a price gap and  
15 we've got the flexibility to do exactly what Mr.  
16 O'Neill said some of his customers are doing, what Kim  
17 Kroker said that he was doing, that they were, in  
18 fact, switching from UAN to urea that had been melted  
19 down. But, you're not going to see that sustained  
20 unless you see the price gap sustained over a long  
21 period of time, which did not happen.

22 COMMISSIONER MILLER: Okay. Thank you.

23 MR. TVINNEREIM: I just wanted to make a brief  
24 comment on this, too. This is using statistics from  
25 the IFA, which I believe Terra, CF Industries, and

1 MissChem all belong, are members of the IFA. But  
2 according to their data, U.S. nitrogen consumption --  
3 total U.S. nitrogen consumption, and I testified to  
4 this and I remarked on this earlier this afternoon,  
5 dropped nine percent in 2000-2001. Total nitrogen  
6 consumption in the United States dropped nine percent  
7 from its peak year. And I'd have to go back and look  
8 at the data what the peak year was, but I think it was  
9 like 1994.

10 In this same period, 2000-2001, UAN consumption  
11 fell 12 percent from its peak use, 12 percent from its  
12 peak use. And I can tell you this, to just back up  
13 the testimony of other people here this afternoon, is  
14 J.R. Simplot is, also, a major retailer of nitrogen  
15 materials, herbicides, pesticides, in California,  
16 Washington, Oregon, Idaho, North Dakota, Minnesota,  
17 Nebraska, Colorado, okay. And I can tell you, because  
18 I'm in charge of buying the fertilizer for the  
19 company, that our own company retail stores  
20 dramatically decreased their UAN purchases in the  
21 spring of 2001 and used urea. I mean, we witnessed  
22 it.

23 And another example of this is, we are the  
24 largest stockholder of a company called California  
25 Ammonia, which is the largest distributor of ammonia

1 in the State of California. And in the spring of  
2 2001, total fertilizer demand in the State of  
3 California dropped dramatically. It's a well known  
4 fact. It's a well documented fact. But, California  
5 Ammonia ammonia sales actually increased and the  
6 biggest use for California Ammonia's ammonia in the  
7 dealer market is to make a product called Aqua, which  
8 is a liquid non-pressure ammonia product. It's called  
9 Aqua Ammonia. It's a 20 percent solution. And it  
10 displaced significant quantities of UAN consumption.

11 COMMISSIONER MILLER: Well, you've got me looking  
12 at some of the consumption numbers and your comment  
13 about urea -- well, just possibly sort of go back for  
14 a minute to the bigger picture here. I mean, these  
15 numbers do tell me that urea has definitely gained in  
16 terms of consumption, relative to the other nitrogen  
17 fertilizers. Why is that?

18 MR. TVINNEREIM: Well, I think there's probably  
19 two main reasons for it. Number one, in the world  
20 market, urea is the product of choice. It is the most  
21 favored nitrogen in the world market. Number two, and  
22 probably just as important, is the fact that urea  
23 contains 46 percent nitrogen versus -- it's the  
24 highest concentration of nitrogen of any nitrogen  
25 fertilizer with the exception of anhydrous ammonia.

1 And urea, which was testified earlier by the  
2 Petitioners, is a product that's very easy to handle  
3 and store and all that kind of stuff.

4 So, the availability of -- this light is bugging  
5 me -- the availability to ship urea throughout the  
6 globe, it's much more acceptable. I mean, there's all  
7 kinds of bulk carriers to carry urea, where UAN has a  
8 limited number of vessels capable to service that  
9 trade.

10 COMMISSIONER MILLER: Okay. I apologize for  
11 digressing for a moment. I'm having this feeling I'm  
12 in a steel case, where we do this steel case today and  
13 that one and that one and I know they're all related,  
14 but I hardly ever, except last year, get an  
15 opportunity to look at them all together. And these  
16 nitrogen fertilizers are a little bit the same. We've  
17 done urea. We've done ammonia nitrate. But, I  
18 apologize. I don't know how many other products we  
19 did in the meanwhile; so, I, again, have to try to  
20 reconstruct the puzzle and put it back together. I  
21 apologize.

22 MR. ROSENTHAL: You can solve that in the future  
23 by just having these all be seen as one like product.

24 COMMISSIONER MILLER: You want to give us your  
25 position on that issue? No. All right. I didn't

1 even get to the other question I wanted, but I'll have  
2 an opportunity. Thank you.

3 COMMISSIONER KOPLAN: Are you suggesting that we  
4 look at all those steel products again?

5 (Laughter)

6 I just want to know. With that I have no  
7 additional questions. I'd like to thank the members  
8 of this panel. I think this has been a great hearing  
9 today and all the testimony that I've heard has been  
10 very very helpful. Now I just have to figure out what  
11 to do with it.

12 Thank you again. Thank you, Madame  
13 Chairman. I have nothing further.

14 VICE CHAIRMAN HILLMAN: Thank you.

15 If I can go back again to the distributors  
16 to try to understand a little bit more this issue of  
17 the lack of supply or Mr. Magrath in his testimony at  
18 one point used the actual words breaking supply  
19 commitments. I'm trying to understand that in the  
20 context of something you said, Mr. Willard, where you  
21 said you want to line up your supply six months in  
22 advance.

23 When you say that, help me understand that.  
24 Do you actually enter into a contract and start  
25 payments where you have both volume and price agreed

1 upon, absolutely committed six months in advance? Or  
2 when you say line up six months in advance, kind of  
3 what are the details of that?

4 MR. WILLARD: Well, because the seasonality  
5 of what we do -- We can have, usually every year we'll  
6 put out 60-70 percent of our total year's volume in  
7 about three weeks, so it's fast and furious, and this  
8 is the planting season. So you kind of don't want to  
9 have to bring the product in that fast because that's  
10 kind of intense and you're working seven days a week.  
11 But you have to make sure that you have the supply  
12 because if you don't have that supply for your  
13 customers, they're going to very quickly switch  
14 suppliers, and farmers seem to have like the longest  
15 memories in the world. We've never done it. We'll go  
16 to extreme measures, even if we've gotten close, I've  
17 gone back into the market and paid whatever to make  
18 sure that I have the supply.

19 So in this timeframe --

20 VICE CHAIRMAN HILLMAN: But when you line it  
21 up, when you say that, you've contacted an importer or  
22 someone and said I'm going to need X volume? Or do  
23 you actually enter into kind of a price/volume  
24 agreement and start pre-paying?

25 MR. WILLARD: Well one of two ways. I'm

1       sorry I didn't explain that well.

2                       We can store about 75 or 80 percent of what  
3       we use in a year. So we have some advantages. But it  
4       may take four months to get that storage full, based  
5       on whether you're getting rail cars or trucks of  
6       whatever. So you do try to have that done.

7                       Then some years I'll buy 100 percent. You  
8       can pre-pay, as somebody testified this morning. I  
9       have pre-paid the supplier. In other words I may give  
10      him the money in September that I'm going to take  
11      delivery on in May. And everybody looks at that  
12      differently and you're looking at the markets much as  
13      we talked about hedges and things this morning.  
14      There's no hedging on my side of it, but you may hedge  
15      it by buying it ahead of time if you think the  
16      market's better. But it's more of a supply issue so  
17      that I know I have the product when I need it.

18                      VICE CHAIRMAN HILLMAN: And just so I  
19      understand it clearly, have you ever entered into what  
20      you understood to be an agreement where the domestic  
21      industry would be supplying you in time for the  
22      planting season and then they reneged on that  
23      commitment, whatever the level of the commitment was?

24                      MR. WILLARD: I can say that I have never  
25      done that. I wish my father was here because he's

1 done it much longer than me. But I'll have to say  
2 that I've had domestic producers come to me that year,  
3 my producers, and to their credit they said I can't  
4 supply all your needs. This year I can only supply X  
5 amount, so then I had to go to the imported market to  
6 make up the difference.

7 VICE CHAIRMAN HILLMAN: But is that after  
8 they've already told you I will supply you with  
9 whatever amount, X amount?

10 MR. WILLARD: No.

11 VICE CHAIRMAN HILLMAN: Then later on  
12 they've come and said we can't do that.

13 MR. WILLARD: No. I've never had that  
14 happen, but I can't say that it hasn't. I've done  
15 this about five years on the buying side. My father's  
16 done it 35 years.

17 VICE CHAIRMAN HILLMAN: some of the others.

18 MR. ROSENTHAL: Just to clear up, are you  
19 saying though that they said they could not supply  
20 what your historical need were, even though they  
21 didn't have an actual, ironclad commitment? Is that  
22 what you're saying?

23 MR. WILLARD: That is correct, yes.

24 VICE CHAIRMAN HILLMAN: I had understood  
25 that from the direct testimony.

1 Mr. Koker?

2 MR. KOKER: In my case, our two largest and  
3 most reliable suppliers are CF Industries and their  
4 division Matlock, and Terra Industries, and in both of  
5 their cases I can never remember an instance where we  
6 have not had an agreement where they agreed to supply  
7 me product that they didn't do it. As a matter of  
8 fact, I know both of them have purchased product to  
9 cover me when they had problems supplying me. In fact  
10 in 2000 that's exactly what Mr. Giesler testified to  
11 doing is he bought product to supply me on the Gulf  
12 Coast because he said he could do better by doing  
13 that.

14 I have had on a couple of smaller suppliers  
15 at times who had said that we had a plan to purchase  
16 product and then for whatever reason they chose not to  
17 come into my market with the product.

18 But my major suppliers, I cannot say that  
19 that's happened.

20 VICE CHAIRMAN HILLMAN: I don't know whether  
21 any of the rest of you, Mr. O'Neill, whether you  
22 wanted to add anything or, we haven't really heard  
23 from Mr. Hart from Transammonia. I don't know whether  
24 you have anything you wanted to add.

25 MR. HART: Transammonia is primarily an

1 importer, not a distributor.

2 VICE CHAIRMAN HILLMAN: Okay.

3 Then going to this issue of when prices get  
4 set. As I heard the testimony from the Petitioners  
5 this morning, it obviously is very different from what  
6 you're saying. What they said was they were prepared  
7 to make volume commitments, if you will, they simply  
8 weren't prepared to make pricing commitments that far  
9 in advance.

10 I'm just trying to make sure I'm  
11 understanding your testimony that your perception was  
12 they were not even willing to make volume commitments.  
13 So that's what I thought I heard at least some of your  
14 witnesses suggesting is that you couldn't even get  
15 them to commit to any volume. It wasn't a price  
16 issue, it was they wouldn't make volume commitments.  
17 Is that correct?

18 MR. WILLARD: That's correct.

19 VICE CHAIRMAN HILLMAN: Of any kind OR they  
20 simply said you want whatever it is, some large  
21 number, and I can only supply you with some smaller  
22 part of it? Or literally I will not make a commitment  
23 to you?

24 MR. WILLARD: No they said what you said  
25 first. Maybe I wanted X tons and they could only give

1 me half X tons. But they told me that up front and  
2 they lived by that.

3 VICE CHAIRMAN HILLMAN: And just so I  
4 understand that, was half X, whatever that is,  
5 substantially less than what they had been providing  
6 you in previous year?

7 MR. WILLARD: Some years I'd gotten much  
8 more than that from them yes.

9 VICE CHAIRMAN HILLMAN: Okay. Any others  
10 with any sense of this issue of whether there was an  
11 unwillingness to make a volume commitment or whether  
12 it was an unwillingness to commit to a price in  
13 advance?

14 MR. O'NEILL: Certainly in the spring of the  
15 period in question, the POI, we had solicited an offer  
16 from Terra Industries and that offer was withdrawn  
17 before we could accept it. Even today going forward,  
18 and we talk in terms of availability of supply, but  
19 then you also have an issue of price.

20 We're still trying to get a price for March  
21 tonnage and that's this year. It's very difficult if  
22 you're trying to run a business without knowing what  
23 your supplied price is going to be going forward.

24 VICE CHAIRMAN HILLMAN: Just so I'm clear,  
25 can you get a volume commitment with a price to be

1 determined according to what the market looks like in  
2 March? Or can you get no commitment?

3 MR. O'NEILL: Currently we can get a volume  
4 commitment, we can't get a price commitment.

5 But if you go to the off-shore market you  
6 absolutely have a firm price and you know exactly what  
7 your costs are going to be.

8 VICE CHAIRMAN HILLMAN: I understand.

9 Mr. Magrath?

10 MR. MAGRATH: I'd just like to point out  
11 that the quid pro quo for those volume and firm volume  
12 and price commitments in the import market as you see  
13 from the staff report is that Mr. O'Neill and other  
14 people pay a price premium. In other words they  
15 oversell the U.S. product.

16 VICE CHAIRMAN HILLMAN: Okay.

17 MR. O'NEILL: That's an important point. We  
18 have, going into the April, May, June period we need  
19 continuity of supply in our terminals, and our biggest  
20 competitor at that time sometimes tends to be the  
21 domestic producers rail direct.

22 We're prepared to pay a premium so that we  
23 know that we have a continuity of supply and that we  
24 have a fixed price.

25 VICE CHAIRMAN HILLMAN: I guess I want to go

1 back then to another point. You all in discussing  
2 these sales of hedges and what happened in terms of  
3 production coming out of the market at the time when  
4 the gas prices were going up. I don't know if you can  
5 see it as well, it's public, but the point that the  
6 Petitioners were making this morning that I'm wanting  
7 to get your response to was that if you looked at when  
8 production actually started declining, it doesn't  
9 actually come down in terms of when did the U.S.  
10 industry throttle back its production. It's arguably  
11 not until June of 2001 which presumably is after gas  
12 prices have gone below \$4 and obviously at near the  
13 time when imports have peaked and are at very high  
14 levels.

15 So clearly they are attributing this sort of  
16 volume decline to the imports, and really are showing  
17 that their production did not decline when the gas  
18 prices were high. So I just want a response to that.

19 MR. TVINNEREIM: Dean Tvinnereim with JR  
20 Simplot Company.

21 Again looking at this graph, you can see  
22 that in December 2000, January 2001 that yes, UAN  
23 production was cut. That's number one.

24 Then as you roll into February, March,  
25 April, they have stepped up their production and it

1 started to decline, where it declined to an extremely  
2 low level in June/July.

3 But the thing that I testified to and I  
4 think everybody in this room that's in the industry  
5 realizes, is that in the spring of 2001 we had serious  
6 flooding issues that backed up fertilizer. There was  
7 at least a million tons of nitrogen trapped on the  
8 Mississippi River. That's one thing.

9 And number two, the demand, and everybody I  
10 think in this room has testified to that, the demand  
11 for fertilizer declined substantially in fertilizer  
12 year 2000-2001. So you had difficulty in delivery,  
13 you had a decreasing demand, and then the other thing  
14 that we spoke of is urea substitution. All those  
15 things came together and by golly, we had a surge of  
16 inventory. But it was --

17 VICE CHAIRMAN HILLMAN: In the spring of  
18 2001.

19 MR. TVINNEREIM: 2001. Because of issues,  
20 the flooding issues, the falling demand, the lack of  
21 demand for fertilizer. Everybody testified to that,  
22 that there was a decrease in demand in that fertilizer  
23 year. And then the substitution, urea for solution.

24 As you went down -- This is a week by week,  
25 month by month process. As you went down the timeline

1 all of a sudden you get to a point in time where  
2 you're choked up with inventory. In fact, and this is  
3 probably one of the major contributors of why price  
4 pressure came on UAN, which I testified to, is that  
5 urea prices fell by half. Urea prices at the  
6 beginning of 2001, FOB New Orleans, was somewhere in  
7 the neighborhood of \$220 a ton FOB New Orleans. And  
8 by June/July of that year you could buy all the urea  
9 you wanted for less than \$110 a ton. That's a  
10 dramatic, dramatic fall. And people were crucified,  
11 I'm telling you, the financial hit that this industry  
12 took because of falling urea prices was huge.

13 VICE CHAIRMAN HILLMAN: I appreciate those  
14 remarks.

15 Commissioner Miller?

16 COMMISSIONER MILLER: Thank you, Madame  
17 Chairman, because that's exactly the same question  
18 that I was interested in hearing their reaction to.

19 Bur Mr. Tvinnereim, this period and the  
20 period that you just described also coincides with the  
21 period immediately after the big, big monthly  
22 increases in imports.

23 So that aspect of it fits exactly with the  
24 arguments of the Petitioners. You're not saying that  
25 huge inventories, prices plummeted, this was all in

1 the timeframe following which, immediately following  
2 which imports were running at monthly highs way, way  
3 above where they had been in any time in 2000, even if  
4 they were growing in 2000.

5 I mean this is exactly the point, isn't it?

6 MR. ROSENTHAL: I would say you're looking  
7 at the wrong trough here. You need to go back to the  
8 one that is beginning in December of 2000 and January  
9 of 2000 and February of 2000. That's when the  
10 announcements were made about cutting back production  
11 of nitrogen of various sorts. Ammonia. But also as  
12 you see here, there was an actual reduction in  
13 production of UAN solutions. That's when the word  
14 went out not just that we're going to collect on our  
15 hedges, but that we were going to shut down  
16 production.

17 That's when people began to contract for and  
18 actually that's not when it began. It began in the  
19 fall because these announcements started to happen in  
20 the summer of 2000.

21 But when production actually went down,  
22 people understood that they were announcing those  
23 production cuts and Mark reacted. They went out and  
24 started importing.

25 There's no question that that was done.

1 Imports came in in greater volumes in the spring, and  
2 it was in direct reaction to the announcement by the  
3 producers that there was going to be a shortage of  
4 fertilizer, something I reqd to you from the  
5 Washington Post.

6 COMMISSIONER MILLER: Speaking of which,  
7 where was that article, because I thought you said you  
8 had submitted it.

9 MR. ROSENTHAL: It was in our preliminary  
10 brief, but we'll be happy to submit another copy for  
11 the final.

12 COMMISSIONER MILLER: We were trying to find  
13 it.

14 MR. ROSENTHAL: When you get to this next  
15 period, then the UAN producers after having curtailed  
16 production cranked back up again in the spring, in  
17 March of 2001. By that point imports were already  
18 ordered. By that point you have the flooding on the  
19 Mississippi. You have the urea coming out the market.  
20 By that point I know the Petitioner's view is well  
21 hey, we're back. You guys need to do a moonwalk out  
22 of the market with your imports because now we're  
23 ready to supply and we were only kidding about those  
24 cutbacks before, so now buy our products.

25 By that point the market had already been

1 affected. Imports had already been contracted for, not  
2 just for a month or two but for a longer period of  
3 time to assure supply. Urea was coming into the  
4 market. You had flooding on the Mississippi. By that  
5 point the perfect storm was brewing and it wasn't  
6 imports that was the cause of that storm. It was the  
7 domestic producers' announcement and actual production  
8 cutbacks previously.

9 Now you see, as the period goes on later, go  
10 back to the chart, the very chart that Petitioners  
11 wanted you to look at. You go back and you look at  
12 the summer, you get past the trough in June and July,  
13 imports are still coming in at that period because  
14 they've been previously contracted for. Ms. Slater  
15 and the Petitioners say why did imports keep coming in  
16 past the spring when the problems were already solved?  
17 But still production went back up at that point. Not  
18 to its peak levels, but it went back up.

19 So there is really a disconnect between  
20 their story and the import behavior in the  
21 marketplace. That's where I go back to my opening  
22 statement. Imports do not account for the behavior of  
23 this industry.

24 COMMISSIONER MILLER: I think I have one  
25 other question. The Petitioners have made note of the

1 behavior of non-subject imports as being different in  
2 their view than the subject imports. In other words  
3 the imports not subject to this investigation behaved  
4 in very much the way you've described, kind of in  
5 reaction to the perceived shortages but after that  
6 dropped out of the market much more quickly.

7 Their point on the subject imports, if you  
8 look at it on a monthly or semiannual, if you look at  
9 the half-yearly data is that they started to increase  
10 more earlier, at an earlier point in time, and they  
11 don't decrease as much.

12 Do you disagree with those descriptions of  
13 the data? The data, you're just looking at what the  
14 numbers are. We can talk about what motivates them,  
15 but just to make sure we at least are on the same page  
16 in terms of what the numbers show, do you disagree  
17 with that curarization of subject versus non-subject  
18 imports?

19 Mr. Magrath?

20 MR. MAGRATH: Pardon me. I heard that part  
21 of Petitioners' argument and I really fail to find the  
22 real relevance.

23 I mean if the Commission were to determine -  
24 - It was the Commission's job to determine whether  
25 subject imports injured non-subject imports, then they

1 might have a case. But just because a certain set of  
2 suppliers for reasons of their own, and I recall from  
3 the preliminary transcript that there was talk about  
4 supply disruptions of ammonia and things in Venezuela  
5 and Algeria and other sources just because they  
6 behaved in one way and the importers of this product  
7 decided to import from Russia and these other CIS  
8 states, I don't really see where that has any effect  
9 on their case which is to prove that those imports,  
10 there's a causal link between the imports and the  
11 domestic industry.

12 MR. ROSENTHAL: I will answer as of right  
13 now and I'll have to go back and look. I don't  
14 disagree with the data, but I certainly agree with Dr.  
15 Magrath's point about how you read the data.

16 But the other thing is by definition,  
17 presumably any import that didn't exit the market  
18 quickly enough from the Petitioners' point of view  
19 gets to be a subject import. That's how this case  
20 worked.

21 If they'd gotten out of Dodge sooner, then  
22 they wouldn't be subject to the case. But the subject  
23 imports just didn't exit in time, at least from the  
24 point of the Petitioners, and therefore they get to be  
25 part of the investigation. That doesn't mean that

1 those imports are any more injurious as Dr. Magrath  
2 said than the imports that existed earlier. And if  
3 you take a look at the profitability data you can see  
4 that there's absolutely no correlation, certainly no  
5 causation, that you can attribute to the subject  
6 imports and the condition of the industry.

7 Commissioner Miller, I know you had one more  
8 question, but if you want I'll make one more comment  
9 on my own time since I have leftover time.

10 But just on your question for Ms. Slater earlier  
11 about commenting on those purchasers who did not  
12 report having a problem getting their supplies.

13 The very nature of this inquiry of the purchasers  
14 is to find out why they imported. We have a situation  
15 where where my assumption is that since the domestic  
16 industry accounts for a vast majority of this market,  
17 they've dominated the market year in and year out, and  
18 you had imports that came in and went out over a  
19 certain limited period of time, the real focus of the  
20 inquiry ought to be not if you were able to get your  
21 product from the domestic industry because presumably  
22 most --

23 The inquiry ought to be gee, why did you import?  
24 Was it for a reason that was price related because  
25 there was underselling and that's the traditional

1 approach, or was there something else going on?

2 It is very important in this investigation to  
3 have a number of importers or purchasers, as  
4 Commissioner Koplan points out, a significant number  
5 saying it was because of unreliability, unavailability  
6 in this instance.

7 It doesn't surprise me that most purchasers say I  
8 could get the product. Look at the market share that  
9 the domestic industry has. That's my comment. You  
10 can take that out of my time.

11 COMMISSIONER MILLER: Well, we're still on mine,  
12 but that's all right. I'll take all comments. I  
13 understand what you're saying.

14 I think at the same time because so much of your  
15 case has focused on this issue of availability of  
16 supply some purchasers did say that in our record, and  
17 I think you have to look at, you know, what they said  
18 very specifically; that there were difficulties, but,  
19 on the other hand, contrary to what you just said I  
20 think a lot of them told us, more of them told us,  
21 that there was not a difficulty in the price.

22 If the whole case hinges on the issue of  
23 availability of supply, I think you have to look at  
24 the range of what purchasers said and not just look at  
25 those who said they had a problem. I take your point.

1 You have to find out those who said they accounted for  
2 some of the increase in imports did so. Both ways.

3 I have no further questions.

4 VICE CHAIRMAN HILLMAN: Okay. I hope I have just  
5 a couple quick follow ups.

6 First, just a request for the post-hearing brief.  
7 Dr. Magrath, if you could please on these? You've  
8 indicated in these boxes announcements of feedstock  
9 plant shutdown, actual shutdown of a plant. If you  
10 could give me the plants and the volumes if they were  
11 announced? I'm just trying to put some perspective on  
12 again the specifics of the wheres, the whens and the  
13 how much, in particular the how much. That would be  
14 appreciated.

15 Mr. Koenig, two questions that may or may not  
16 involve BPI information related to your clients. I  
17 wondered if you could comment on Footnote 12 on Table  
18 3-1 in the staff report, and again it's not entirely  
19 clear to me whether that's confidential, but given  
20 that some other parts of that table are I'll simply  
21 leave it if you could comment on it in the post-  
22 hearing brief.

23 As well, if you could comment on the references  
24 that Petitioners have made in their brief on pages 44  
25 and 45 to incomplete price data. Obviously to the

1 extent that there is incomplete price data, if there's  
2 anything you can do in terms of working with those  
3 involved to make sure that we get complete price data,  
4 you know, from everyone that's here and involved and  
5 again comment, if you would, on what Petitioners have  
6 said on pages 44 and 45 of their brief.

7 Third question is it's my understanding that  
8 there are at least two other known Russian producers  
9 of UAN who failed to respond to the Commission's  
10 questionnaires. Again, if anybody here can help  
11 describe the Russian industry at large rather than  
12 just, you know, the one company from whom we have data  
13 in terms of, you know, how many producers, capacity,  
14 you know, production, export sales, you know, any of  
15 the traditional data that we would collect.

16 I think it would be very helpful. If not, if  
17 there isn't any information forthcoming, if you want  
18 to comment on Petitioners' request that we take  
19 adverse inferences on the Russian side.

20 I guess next would be actually a question both to  
21 Ms. Slater and to you. If there is anything in the  
22 suspension agreement with Russia that you think should  
23 in some way be taken into account. Obviously Russia  
24 is the largest shipper. Obviously we haven't seen the  
25 suspension agreement, but if it suggests anything to

1 us that you think we ought to be noting in terms of  
2 looking at this record and at this vote, I would ask  
3 you to do it.

4 The last one would be more of a question I guess,  
5 Mr. Rosenthal, to you or to Mr. Koenig, the same  
6 question I asked to Val Slater. Obviously this is a  
7 case in which a lot of the pricing data is difficult  
8 in terms of whether you feel comfortable in terms of  
9 what kind of comparisons you're making, in terms of  
10 trying to get as close to apples to apples  
11 comparisons. The staff has put together tremendous --  
12 this is probably one of the longest pricing sections  
13 of a staff report we've ever seen.

14 It's not entirely clear to me how exactly  
15 consistent those trends would be with average unit  
16 values because clearly if we look at the average unit  
17 values there's no question that the U.S. average unit  
18 values would be higher, and all of the subject imports  
19 would generally be considerably lower, which would  
20 suggest more uniform underselling, if you will.

21 I mean, I realize that they're not prices, but I  
22 wondered if you could comment on what you think we  
23 should make of average unit values, which pretty  
24 persistently show average unit values from Belarus,  
25 Russia and the Ukraine being quite a bit below U.S.

1 average unit values.

2 MR. ROSENTHAL: I have a very concise answer, and  
3 in this case you ought to basically throw the average  
4 unit values in the trash can. They are of absolutely  
5 no probative value here.

6 You're talking about a product that has at least  
7 by everyone's admission as a major part of its price  
8 transportation. What the staff did here is exactly  
9 what one would do; try to measure the price in the  
10 U.S. FOB for both domestic and imported product.

11 The notion if you take an AUV, an average unit  
12 value, FOB foreign port and compare that to a domestic  
13 AUV I think makes no sense for an industry like this.  
14 There's a very good reason why the staff did what it  
15 did in making its comparison. That's because you're  
16 mainly shipping water, and the transportation costs  
17 are so high.

18 In order to have a proper comparison, you've got  
19 to figure out what is the price, what is the total  
20 price going to be landing that product in the U.S.  
21 Averaging the values has absolutely no value in trying  
22 to analyze what's going on here.

23 You heard testimony from all the witnesses on the  
24 enforcement and transportation costs, particularly on  
25 the Respondents. My bet is -- well, I will stop

1 there. I don't know if Dr. Magrath or anyone else  
2 wants to comment.

3 I heard the question before, and I wanted to leap  
4 out of my chair and say no, no. That's exactly wrong.

5 VICE CHAIRMAN HILLMAN: I'm always fair. I give  
6 you an opportunity to answer as well.

7 MR. ROSENTHAL: I appreciate the opportunity.  
8 Thank you.

9 MR. MAGRATH: The AUV level, the AUV, is not  
10 where the domestic like product and the subject  
11 imports compete, or in this case don't compete. They  
12 compete on the basis of price. That's why the  
13 Commission collects pricing data in all these  
14 investigations. It was, we agree, unusually complete.

15 I think I speak for the whole panel in saying  
16 that we don't have any problem with the pricing data  
17 in this investigation.

18 VICE CHAIRMAN HILLMAN: Okay. I appreciate those  
19 comments.

20 Commissioner Miller?

21 COMMISSIONER MILLER: (Non-verbal response.)

22 VICE CHAIRMAN HILLMAN: Commissioner Koplan?

23 COMMISSIONER KOPLAN: Just one thing, Madam  
24 Chairman.

25 If my recollection is right, I believe this

1 morning Ms. Slater said that when she got the  
2 suspension agreement she was going to provide it for  
3 the record. Is that correct?

4 VICE CHAIRMAN HILLMAN: We'll get it.

5 MS. SLATER: I didn't, but I will.

6 COMMISSIONER KOPLAN: I got the result I wanted  
7 anyway. Thank you. I have nothing else.

8 VICE CHAIRMAN HILLMAN: No further questions. Do  
9 staff have questions of this panel?

10 MR. DEYMAN: I'm George Deyman, Office of  
11 Investigations. I have no questions, but I have a  
12 couple of requests for data in the post-hearing  
13 briefs.

14 There has been quite a bit of discussion both  
15 this morning and this afternoon on the period  
16 September 2000 through about April of 2001. It would  
17 be helpful for the staff if there was at least some  
18 discussion in the post-hearing brief on the second  
19 half of 2001, the period in which imports were over  
20 100,000 short tons in each of the months, August  
21 through November, so it would be helpful to know to  
22 what extent, if any, the volumes and prices of imports  
23 in the second half of 2001 affected the domestic  
24 industry.

25 Also, it would be helpful if any of the parties

1 could give us information on the industry in Ukraine,  
2 for which we currently do not have any substantial  
3 information.

4 That's all. Thank you.

5 VICE CHAIRMAN HILLMAN: Ms. Slater, while I would  
6 normally turn to you for questions, I'm afraid you  
7 used up all of your time, so at this point there is no  
8 further time remaining.

9 We will dismiss this panel with many thanks for  
10 your very helpful testimony. We appreciate the time  
11 and the effort that you've taken both in the briefs  
12 and in your answers to our questions.

13 Just so you know time remaining, Ms. Slater, you  
14 have five minutes for your closing statement. Mr.  
15 Rosenthal, you have five minutes for rebuttal and five  
16 minutes for closing for a total of 10 minutes.

17 We will take a moment to let this panel be  
18 dismissed. Many thanks.

19 (Panel excused.)

20 MS. ABBOTT: Could everyone be seated, please?

21 VICE CHAIRMAN HILLMAN: You may proceed when  
22 you're ready, Ms. Slater.

23 MS. SLATER: Thank you. There's always so much  
24 to say and so little time to say it during these final  
25 comments.

1           Obviously we'll have lots of comments on lots of  
2 questions in the post-hearing brief, but there's a  
3 couple of things we heard this afternoon that I think  
4 it's absolutely important to bring up with you at this  
5 point.

6           When you look at what happened in 2001 and 2002,  
7 keep in mind that the period of the high gas prices  
8 and the product prices driving it was very brief. We  
9 can spend a lot of time discussing and arguing and I'm  
10 sure disagreeing with Mr. Rosenthal and his group  
11 about what happened, but the fact of the matter is  
12 even if you accept for sake of argument that there was  
13 some confusion with respect to UAN in the marketplace  
14 and that customers were not concerned, that doesn't  
15 explain the level of subject country imports that kept  
16 entering this country well into 2001 and continuing  
17 into 2002 right up until the point when the petition  
18 was filed.

19           Let's make no mistake about that. The difference  
20 between subject and non-subject imports and what  
21 happened is a very important part of the story. It's  
22 important because the non-subject imports that came in  
23 from non-traditional sources in the beginning of 2001  
24 were presumably being purchased on no different basis  
25 than the subject imports that you're looking at today.

1 Those imports behaved exactly as you would expect in a  
2 situation where there was even a perceived temporary  
3 supply issue.

4 Now I want to speak to the issue of the lag time  
5 that's involved, how long would it have taken people  
6 to get the product here. At the Commission's staff  
7 conference there was a witness, a Mr. Dougherty, from  
8 Iowa who was testifying precisely about why he  
9 purchased subject country imports during the 2001  
10 period that we've been focusing on today.

11 Mr. Dougherty was talking about getting this  
12 product into his plant in Iowa up the river. He said,  
13 "We were able to find supplies overseas, but it takes  
14 as long as 65 days to get the foreign product to our  
15 company. We need to locate a source, negotiate a  
16 contract, wait for it to get to the United States, get  
17 it up the Mississippi River and into storage."  
18 Sixty-five days.

19 That statement is corroborated by other  
20 information you have on your record. You have  
21 questionnaire responses that ask about that question.  
22 You cannot explain the huge quantities that continue  
23 to flow. Even if you want to accept that that's what  
24 brought it here in the first place, it continued to  
25 flow at the second half of the year.

1           I would submit to you that if you take a look at  
2           the data you will see that there's a very good  
3           explanation for it, and it has to do with the  
4           difference in the pricing of imports from the various  
5           sources. These imports were very, very low-priced out  
6           of the subject countries.

7           The importers wanted this product. They have  
8           built terminals. You didn't hear much about that this  
9           afternoon. Simplot has built a terminal. Texas  
10          Liquid is involved with that terminal, Mr. Koker's  
11          organization, at the Texas Gulf for housing imported  
12          UAN. Simplot has built a terminal on the west coast  
13          for housing imported UAN.

14          That's what this is about. The cheaper the  
15          product you can bring in, the better the mark up.  
16          Maybe you can get the guarantee, you know, that you'll  
17          have this at a very, very low price, very attractive  
18          to them.

19          Now, I also want to respond very quickly to the  
20          notion that this product did disappear. Not so. They  
21          are trying very carefully to separate out what came  
22          into the east and west coast and what came into the  
23          Gulf. There are some important lessons about the  
24          product coming into the Gulf because it had to be  
25          very, very cheap to do that.

1           Most importantly, the shipments at the end of the  
2 year that began to be directed more toward the coastal  
3 areas is because the Gulf terminals were saturated.  
4 So much product had come in and had come in from these  
5 particular countries that there was nowhere else for  
6 this product to go along the Gulf terminals and so it  
7 wasn't until January, and it would have picked up  
8 again in the spring as product began to move. Don't  
9 be fooled by that.

10           Finally, I want to just say to you that you  
11 didn't hear very much today about the EU antidumping  
12 orders, and I didn't expect you would, from the other  
13 side. This is an overriding factor, and it's  
14 something you need to take into account. This product  
15 has nowhere to go but the United States market. It  
16 will come here without an antidumping measure in  
17 place.

18           We think the suspension agreement will help on  
19 that score, but if there is not relief this product is  
20 going to come in tremendous quantities, and we can  
21 give you information -- we've given you quite a bit  
22 already -- about the capabilities of these countries  
23 to flood these markets at prices that look nothing  
24 like prices from imports coming from anywhere else in  
25 the world.

1           Thank you so much for your attention today, and  
2 we appreciate all the good questions. Thank you.

3           VICE CHAIRMAN HILLMAN: Thank you.

4           Mr. Rosenthal, you may proceed when you're ready.

5           MR. ROSENTHAL: Thank you. I have about two  
6 minutes of rebuttal and maybe three minutes of  
7 summary, so I'll try to not use up all my time.

8           Just a couple of rebuttal points. I just want to  
9 pick up on this last set of questions about why didn't  
10 the imports get out of here earlier, or why didn't the  
11 subject imports behave better like their counterparts  
12 that left when the Petitioners wanted them to.

13           As you can tell by my approach here, I don't  
14 believe that's the right way to approach this topic.  
15 The fact of the matter is that I view it as a red  
16 herring. The subject imports did in fact exit. They  
17 didn't have to, but they did in fact largely exit the  
18 Gulf coast almost entirely, and they did it well  
19 before the time the petition was filed.

20           If you saw the official import statistics that  
21 Dr. Magrath put up here, the last import shipment into  
22 the Gulf coast region came in in February 2002, which  
23 meant that even on the short time frame that Ms.  
24 Slater suggested that it was contracted for at least  
25 60 days before that, so there hadn't been any imports

1       contracted for until or at least no later than  
2       December of 2001 and probably earlier, well before the  
3       petition was filed. That suggests that the imports  
4       were perceived to be no longer necessary in the  
5       marketplace.

6               Now, why didn't they get out of here in the  
7       summer or May when Petitioners would have preferred  
8       because they were back producing at full capacity? I  
9       think you've got to go back to the answers provided to  
10      you by the actual purchasers. They felt burned They  
11      felt that they had an unreliable supplier base when  
12      you look at the announcements that were made in  
13      December and January.

14             Not just the announcements. You had actual  
15      production curtailments. You had suppliers telling  
16      their purchasers we can't supply you. With all due  
17      respect, I don't think it matters whether the answer  
18      that you get as a purchaser is that we couldn't supply  
19      100 percent or we couldn't supply you 50 percent as  
20      Mr. Willard suggested. The fact is when you have a  
21      seller telling you that they're not going to meet your  
22      needs, you need to go elsewhere to supply your farmers  
23      who need that product when they want it.

24             When you're being told in the marketplace I'm not  
25      going to be able to give that product to you or I

1 can't promise you that I will and you know you need  
2 that, then you're going to act rationally and go out  
3 and secure supplies. If you're going to be rational  
4 about it, are you going to secure supplies and say  
5 gee, do you know what? I think I may be able to  
6 supply them in May or June or July, but I'm not sure.  
7 I don't know what the price will be.

8 What are you going to do? You're going to go out  
9 and say I'm going to go and make sure that I'm going  
10 to cover my bases going forward. In the case of a lot  
11 of purchasers that meant they imported through the  
12 summer and through the fall of 2001.

13 Does that make their imports  
14 injurious? Of course not. Just because those imports  
15 continued through the rest of the year in 2001 and  
16 diminished only in the fourth quarter of 2001 doesn't  
17 make them any more injurious, so I feel that has to be  
18 understood.

19 One last rebuttal point, and that is that the  
20 Petitioners mentioned or said on one hand that the  
21 announced ammonia production shutdowns had nothing to  
22 do with UAN, but they also indicated that they  
23 imported UAN due to ammonia plant shutdowns in other  
24 instances.

25 We'll go back and point out that contradiction in

1 our post-hearing brief, but if CF, which is the  
2 specific company that admitted in response to  
3 questions that they imported UAN due to an ammonia  
4 plant shutdown. Why would not purchasers in our  
5 industry have a right to be worried about producers  
6 announcing feedstock shutdowns that began in June  
7 2002? Of course they have a right to be worried. Of  
8 course they have a right to go out and look for  
9 alternative sources of supply.

10 With that, that's the end of my rebuttal. Now  
11 I'll go to summary. I'm not sure you can tell the  
12 difference.

13 What's interesting if you look at the  
14 Petitioners' approach here is that they essentially  
15 want you to ignore the record in this proceeding. In  
16 essence what they're saying is don't pay attention to  
17 the year 1999. Don't pay attention to full year data.  
18 Ignore the evidence of import overselling. Disregard  
19 the lack of verified lost sales. Disregard the  
20 absence of any confirmed lost revenues allegations,  
21 and don't credit at all the purchasers who reported  
22 that they were unable to purchase product from  
23 domestic UAN producers. In essence, they want you to  
24 throw out most of your database.

25 In addition, they want you to essentially do a

1 leap of logic, if you will, and say do you know how  
2 our profits were going up when imports were going  
3 down? Don't pay attention to that either. That is  
4 one of the most peculiar aspects of this.

5 Instead, what the Petitioners want you to do is  
6 create new databases, take a different approach. Use  
7 a half year. Throw out your pricing series that the  
8 staff worked laboriously on and did a fantastic job  
9 on. Instead, go to AUVs, which you never use and  
10 which of course you shouldn't use here for the reasons  
11 I pointed to earlier. In essence, pay no attention to  
12 the man behind the curtain. We'll make up some things  
13 for you that you should use as your alternative base.

14 That is an approach that I urge you not to  
15 accept. This is a very well constructed record.  
16 There's a lot of work that went into this, and it is a  
17 record that shows without question that the condition  
18 of the domestic industry, as woeful as it is and as  
19 sympathetic as I am about it, has nothing whatsoever  
20 to do with imports.

21 Imports are not the cause of the problem in 1999.  
22 Imports are not a problem in 2000 or 2001. Imports  
23 are not a problem in 2002, and they sure are not a  
24 problem in 2003. They're not going to be a problem  
25 going forward into the future unless, as Dr. Magrath

1 suggests, one finds a way to reduce the weight of  
2 water, which the Petitioners may want to suggest you  
3 do for purposes of the final staff report too.

4           Seriously, what you must do is rely on the facts  
5 of record. Don't make things up. Don't create new  
6 approaches where they are not justified. That's not  
7 to say that the staff report is perfect or that all  
8 the data the Commission ever collects is the right way  
9 to do things. There are problems and peculiarities in  
10 every record that's created, but what the Petitioners  
11 are asking you to do is essentially ignore virtually  
12 99 percent of the evidence you have before you, and I  
13 suggest you can't do that.

14           If you rely on the evidence before you, you  
15 will, I firmly believe, reach the conclusion that  
16 there should be a negative determination in this  
17 investigation.

18           Thank you.

19           VICE CHAIRMAN HILLMAN: Thank you. With that,  
20 I'd like to thank all parties for their participation.  
21 Everyone's participation was extremely helpful to the  
22 Commission in this effort.

23           Post-hearing briefs, statements responsive to  
24 questions and requests of the Commission, and  
25 corrections to the transcript must be filed by

1 February 27, 2003. Closing of the record and final  
2 release of data to parties will occur on March 17,  
3 2003, and final comments will be due on March 19,  
4 2003.

5 With that, this hearing is adjourned.

6 (Whereupon, at 4:50 p.m. the hearing in the  
7 above-entitled matter was concluded.)

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**CERTIFICATION OF TRANSCRIPTION**

**TITLE:** Urea Ammonium Nitrate Solutions  
**INVESTIGATION NO.:** 731-TA-1006, 1008 and 1009 (Final)  
**HEARING DATE:** February 20, 2003  
**LOCATION:** Washington, D.C.  
**NATURE OF HEARING:**

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

**DATE:** February 20, 2003

**SIGNED:** LaShonne Robinson  
Signature of the Contractor or the  
Authorized Contractor's Representative  
1220 L Street, N.W. - Suite 600  
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

**SIGNED:** Carlos Gamez  
Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

**SIGNED:** Eurydice Hazzard  
Signature of Court Reporter