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Tyler Pipe Industries, and Union Foundry Co.:

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P R O C E E D I N G S

(9:32 a.m.)

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2
3 CHAIRMAN OKUN: Good morning. On behalf of
4 the United States International Trade Commission, I
5 welcome you to this hearing on Investigation No. TA-
6 421-4, Certain Ductile Iron Waterworks Fittings from
7 China. The Commission instituted this investigation
8 under Section 421(b) of the Trade Act of 1974 to
9 determine whether certain ductile iron waterworks
10 fittings from China are being imported into the United
11 States in such increased quantities or under such
12 conditions as to cause, or threaten to cause, market
13 disruption to the domestic producers of like or
14 directly competitive products.

15 Before we begin, I note that the Commission
16 has granted a request by certain Respondents to hold a
17 portion of this hearing in camera so that proprietary
18 information may be discussed. The in-camera session
19 will follow the public presentations by Petitioners
20 and Respondents. Only those persons covered by the
21 administrative protective order will be allowed to
22 attend this portion of the hearing. The in-camera
23 session will commence with a presentation by the
24 Respondents. Petitioners will be permitted to present
25 an in-camera rebuttal presentation. The hearing will

1 then return to a public forum and conclude with
2 rebuttal, if desired, and a closing statement by each
3 party.

4 Schedules setting forth the presentation of
5 this hearing and testimony of witnesses are available
6 at the secretary's desk. I understand that all
7 parties are aware of time allocations. Any questions
8 regarding time allocations should be directed to the
9 secretary.

10 As all written material will be entered
11 fully into the record, it need not be read to us at
12 this time. All witnesses must be sworn in by the
13 secretary before presenting testimony.

14 Finally, if you will be submitting documents
15 that contain information you wish treated as business
16 confidential, your request should comply with
17 Commission Rule 201.6.

18 Madam Secretary, are there any preliminary
19 matters?

20 MS. ABBOTT: No, Madam Chairman.

21 CHAIRMAN OKUN: Let us proceed with the
22 opening statements.

23 MS. ABBOTT: Opening remarks in support of
24 relief will be made by Paul C. Rosenthal, Collier
25 Shannon Scott.

1 CHAIRMAN OKUN: Good morning, Mr. Rosenthal.

2 MR. ROSENTHAL: Good morning, Madam

3 Chairman, and members of the Commission.

4 We are here today to discuss the little-used
5 provision of law known as Section 421 of the Tariff
6 Act of 1974 that, to date, has not provided any relief
7 to any domestic industry, through no fault of this
8 Commission.

9 Trade law observers have questioned the
10 utility of this provision of law, the China-specific
11 safeguard that was negotiated as part of China's
12 accession to the WTO. Simply stated, because of the
13 administration's unwillingness to provide relief in
14 two previous cases in which the Commission has
15 recommended a remedy, people questioned whether the
16 promise of safeguard relief is illusory, a challenge
17 that is laid down with no real expectation that the
18 test will or can be met. For some, it seems as if the
19 promise of Section 201 relief is like the promise of
20 help that the Wizard of Oz offered Dorothy, on the
21 condition that she bring back the broomstick of the
22 Wicked Witch of the West. Of course, if the
23 Petitioners in this case thought that the standards
24 for 201 relief were impossible to meet, we would not
25 be here today. We believe the facts of this case

1 justify relief to the domestic industry and its
2 workers.

3 This morning, our witnesses will explain
4 what the record to date demonstrates: (1) that
5 imports of ductile iron waterworks fittings have
6 increased rapidly, whether you look at imports in an
7 absolute sense of compared to other measures, and no
8 matter what the segment of the period of investigation
9 you choose to scrutinize; (2) that the increased
10 volumes of low-priced imports are causing market
11 disruption with the resultant material injury to the
12 domestic industry.

13 In fact, every measure that the Commission
14 analyzes points to an affirmative determination.
15 Domestic production has declined. There has been a
16 significant idling of production facilities, including
17 plant closures. The industry has not been able to
18 operate at a reasonable level of profit.

19 Indeed, the financial picture is getting
20 increasingly bleak. The volume and value of shipments
21 has declined and continues to decline. Employment has
22 declined, with layoffs of hundreds of workers this
23 year alone. And while inventories normally are high
24 in this industry, they have increased to truly
25 unhealthy levels. In fact, the only reason the

1 domestic industry's market share has not declined as
2 fast as production is that it has been selling out of
3 its vast inventories for the past year.

4 All of these injurious effects are caused,
5 in large part, by imports from China, as indicated by
6 the information of the record concerning underselling,
7 lost sales, lost revenues, and price declines in the
8 face of rising costs and a growing market. Naturally,
9 the Respondents have alternative explanations for
10 everything, and, naturally, when the data in the staff
11 report don't support the Respondents' theories, they
12 either ignore the data or create new numbers. We will
13 go into that more later today.

14 At the outset, however, I do want to comment
15 that a tactic that the Respondents have used in their
16 prehearing briefs, which may or may not be repeated at
17 the hearing today, that is, implying that because
18 McWane, the Petitioner, has had well-publicized
19 environmental and workplace safety problems, that it
20 is somehow not entitled to Section 421 relief. We
21 will address that in our testimony this morning.

22 This case is not about taking responsibility
23 for past mistakes. McWane has and continues to do so.
24 And, of course, the case is not about McWane's former
25 managers. It is about the future of this industry and

1 its workers. Other domestic producers have been hurt
2 by the Chinese imports. Indeed, McWane is not the
3 only domestic producer to support this case, and one
4 of the representatives of the other producers, Mr.
5 Murray of U.S. Pipe, is here this morning and will
6 testify.

7 Ultimately, what this case comes down to is
8 jobs into this industry, good-paying and safe jobs, by
9 any measure, better than the jobs in Chinese
10 foundries. That is why we are delighted to have Leo
11 Gerard, the president of the United Steel Workers of
12 America, here this morning as well.

13 In addition to witnesses from McWane, you
14 will also hear from an independent distributor, Mr.
15 Teske, who will tell you about the nature of the
16 Chinese competition in the marketplace.

17 When the testimony is concluded today,
18 you'll have a more complete understanding of the
19 industry and the nature of import competition from
20 China, and I trust you will conclude that the
21 standards for relief under Section 421 have been met
22 and justify the remedy sought by the Petitioner.

23 Thank you.

24 CHAIRMAN OKUN: Thank you.

25 MS. ABBOTT: Opening remarks in opposition

1 to relief will be made by Hamilton Loeb, Paul,
2 Hastings, Janofsky & Walker.

3 CHAIRMAN OKUN: Good morning.

4 MR. LOEB: Good morning. Thank you, Madam
5 Chairman. Good morning, members of the Commission.

6 The thing I remember most about the "Wizard
7 of Oz" is the moment where Dorothy says to her little
8 dog, "Toto, we're not in Kansas anymore." And Mr.
9 Rosenthal's remark about the "Wizard of Oz" reminds me
10 of that because here we're not in a dumping case, and
11 we're not in a Section 201 case. We're in a very
12 different environment, as Dorothy and Toto were. We
13 are in a Section 421 case, a brand-new statute adopted
14 for very specific purposes using very specific
15 language.

16 If Petitioners' claim doesn't fit into this
17 statute, and they have elected to pursue this statute
18 rather than the other alternatives that are clearly
19 available to them and, in fact, that they have
20 previously used in front of this Commission, then
21 that's their choice, not anything that was created by
22 the Wizard of Oz.

23 We will make three points in our
24 presentation. First, imports are not increasing
25 rapidly, as the statute requires. You'll hear how the

1 data adds up from John Reilly of Nathan, our
2 economist. You'll hear from all of the significant
3 importers. All of the significant importers are here
4 and will testify this morning. And you will hear from
5 a number of the major distributors in the industry,
6 distributors who buy from McWane and U.S. Pipe and
7 import sources, including nonsubject imports as well
8 as Chinese imports, and you will hear from them about
9 what's been happening in this industry, which bears
10 both on the increasing-rapidly standard and on the
11 market-disruption standard.

12 As you hear the Petitioners' presentation on
13 the increasing-rapidly point, I would just ask you to
14 remember two things. First, this case was filed as a
15 guess. You'll remember from the critical
16 circumstances briefing that Petitioners filed this
17 case not really knowing what the import numbers were.
18 No fault of theirs, but there had been no breakout in
19 the customs categories until 2002, and everyone
20 recognizes that the 2002 data were full of
21 misclassification and unreliable.

22 So they took their guess, and it has turned
23 out that imports have not increased as rapidly as they
24 may have thought that they did and certainly not
25 rapidly enough to make the case here, now that we have

1 solid data from questionnaires.

2 You will also, I'm sure, hear from Mr.
3 Rosenthal in his presentation about what I call the
4 "start-date issue." Commissioners Koplman and Okun
5 commented in the Brake Drums case that the start date
6 and the analysis date has to focus on post-WTO
7 accession imports. That certainly is correct. I'm
8 sure you'll hear, as the staff heard in the
9 conference, to the contrary, but, of course, I would
10 remind you that when you hear that, we are talking
11 about surge, we are talking about statutory language
12 that talks about imports that are rapidly increasing,
13 and we think the interpretation that Commissioners
14 Okun and Koplman provided was correct.

15 Now, we'll also cover market disruption. We
16 appreciate the Commission's indulgence in the granting
17 of time for an in-camera presentation. We know that's
18 not favored, and we don't desire to keep information
19 out of the public domain to the maximum extent
20 possible. In this case, because of the way the
21 Petitioner arrays within the industry, it's almost
22 impossible to say anything meaningful on market
23 disruption without talking about APO data. We
24 appreciate the opportunity to do that, and you will
25 hear from Mr. Reilly when we get to the APO session.

1 And particularly, we hear about the internal
2 issues, not the import issues or import effects that
3 are related to the condition of the U.S. industry, and
4 you'll hear how the pricing allegations, allegations
5 that the Chinese are hurting the Petitioner by
6 underselling are belied by both the product-pricing
7 evidence that the Commission has collected and by the
8 overall pricing evidence in the form of AUV
9 information and so on.

10 We will ask the Commission to also think, as
11 it listens to the Petitioners, to ask, if it's true
12 that imports are rising as rapidly from nonsubject
13 countries as they are from subject, or maybe even more
14 rapidly, as Mr. Rosenthal acknowledged at the staff
15 conference. It's a significant problem for
16 Petitioners. Why are we here under 421, not Section
17 201, which is the permitted global safeguard
18 exemption, and why doesn't that make more sense for
19 Petitioners because even if they were to get relief
20 here, all that would do would be to shift effects over
21 to other sources like India and so on.

22 I appreciate the Commission's listening to
23 our opening. We look forward to our presentation
24 later this morning.

25 CHAIRMAN OKUN: Thank you.

1 Madam Secretary, please announce the first
2 panel.

3 MS. ABBOTT: The first panel, in support of
4 relief, should please come forward.

5 Madam Chairman, all witnesses have been
6 sworn.

7 CHAIRMAN OKUN: Thank you.

8 (Pause.)

9 CHAIRMAN OKUN: Before we proceed with this
10 panel, Commissioner Koplán would like to welcome some
11 special guests here today.

12 COMMISSIONER KOPLAN: Thank you, Madam
13 Chairman. I believe that there is a group of students
14 that just came into the room from Brandeis
15 University's International School of Business, and I
16 would just welcome them to this hearing. Welcome.

17 Thank you for straightening me out, Mr.
18 Laehy. I'll talk to you about that later.

19 CHAIRMAN OKUN: Shall we welcome the group
20 that's with you, Mr. Laehy? They are visitors from
21 Indonesia perhaps? All right. Well, then we welcome
22 this group. We may see other groups throughout the
23 day, but we very much appreciate you being here and
24 hope you find it useful.

25 Maybe I should just check, Mr. Rosenthal, to

1 make sure I have the right witnesses here before me
2 for this panel.

3 MS. ABBOTT: Madam Chairman, with your
4 permission, John E. Freeman will be added to the
5 witness list. He is with the United States Pipe and
6 Foundry Company. He is vice president and corporate
7 counsel.

8 CHAIRMAN OKUN: Without objection. Madam
9 Secretary, we'll note -- I hope this is not a sign of
10 the day, but we have two Mr. Don Waugamans out there
11 listed on the thing.

12 (Discussion off the record.)

13 COMMISSIONER KOPLAN: I'm glad it's not just
14 me this morning.

15 CHAIRMAN OKUN: Maybe it was that "Wizard of
16 Oz" analogy we're going to be living with the rest of
17 the day.

18 All right, Mr. Rosenthal, you may proceed.

19 MR. ROSENTHAL: We'll let you know if we
20 have the right witnesses at the end of the day. We're
21 not going to spend a lot of time on introductions.
22 Our first witness will be Michael Kerwin.

23 MR. KERWIN: You can see that the domestic
24 industry has been reduced to cloning its most
25 important employees here this morning.

1 Good morning. I'm Michael Kerwin of
2 Georgetown Economic Services. This morning, I would
3 like to address some of the broad economic and
4 industry issues that are critical to the Commission's
5 analysis in this case. By any yardstick, imports of
6 ductile iron waterworks fittings from China are
7 increasing rapidly. This is true whether one surveys
8 the period of investigation as a whole or concentrates
9 on the latter half of the period.

10 The rapid increase in Chinese imports has
11 occurred both in absolute terms and in relative terms
12 whether compared to apparent domestic consumption or
13 production of DIWF. Despite Respondents' assertions
14 to the contrary, the estimates of Chinese imports that
15 were included in our petition were radically
16 understated compared to the actual numbers reported by
17 the importers.

18 In 2002, for example, Chinese imports were
19 almost twice as large as those estimated in the
20 petition. As shown in the public data of the staff
21 report and summarized in Figure 1, Chinese imports
22 increased every year from 2000 through interim 2003
23 and by 70 percent between 2000 and 2002.

24 I would like to have been able to show you
25 these data back to 1998, but the figures for the years

1 before 2000 have not been released publicly.

2 Further, despite claims put forward by
3 Respondents at the staff conference that imports were
4 fading away into insignificance in the current year,
5 imports from China in interim 2003 have continued to
6 increase. Despite assurances that Chinese import
7 entries would decline in advance of the slower winter
8 season, monthly imports of DIWF from China have been
9 increasing through the year. While imports averaged
10 1,700 tons per month in the first quarter of 2003, in
11 July and August that average reached 2,800 tons, a 71
12 percent increase.

13 Given these ongoing increases, Figure 1
14 conservatively estimates full-year 2003 imports by
15 doubling the volumes reported for the first half of
16 the year.

17 The market share of Chinese ductile iron
18 waterworks fittings shipments in the U.S. market
19 likewise increased every year from 2000 forward, as
20 shown in Figure 2. From a level of 11.4 percent in
21 2000, Chinese import market share rose to 16 percent
22 in 2001, 17.6 percent in 2002, and a peak of 18
23 percent in the first half of 2003. While I cannot
24 disclose the precise figures, I can say that over this
25 same period the domestic industry showed consistent

1 losses in its market share.

2 Chinese market share gains occurred
3 concurrent with significant declines in unit values.
4 Between 2000 and 2002, average unit values of
5 shipments of Chinese imports fell by 13 percent, and
6 they were six percent lower in the first half of 2003
7 than in the comparable period of 2002.

8 Simply put, in the second half of the
9 Commission's period of investigation, the only period
10 for which public data are available, imports from
11 China quickly and significantly increased their share
12 of the U.S. market as their unit values dropped. Over
13 the same period, the domestic industry lost
14 substantial market share.

15 Please bear in mind these simple but
16 critical facts as you consider the arguments put
17 forward by the Respondents that imports from China
18 have had no impact on the domestic industry. In their
19 briefs, the Respondents have conveniently circumvented
20 the facts by arguing that the Commission essentially
21 cannot examine any of the import data previous to 2001
22 in making its determination, citing to previous
23 determinations under Section 421.

24 Respondents' logic stipulates that the
25 Commission cannot even use 2000 as a base year in

1 assessing the significance of import growth in the
2 years 2001 and 2002. Rather, Respondents interpret
3 the law and the Commission's precedent as allowing an
4 assessment of growth in the current case only between
5 2001 and 2002 and into interim 2003. However, in both
6 the Garment Hangers and Brake Drums and Rotors cases,
7 the Commission made clear that it had examined each of
8 the years of the entire period of investigation in
9 coming to its affirmative findings of rapidly
10 increasing imports. In the case of Pedestal
11 Actuators, such an analysis was simply unnecessary
12 because there were no imports from China in the 1997
13 through 2000 period.

14 Even in the Brake Drums and Rotors case, in
15 which Chairman Okun and Commissioner Koplán expressed
16 their views as to a need to focus on the more recent
17 years of the POI, assessment of such growth examined
18 import volumes in 2001 and 2002 in relation to 2000 as
19 a base year. Thus, Respondents' arguments in the
20 current case that the Commission should only examine a
21 single year's worth of volume growth, from 2001 to
22 2002, are not only misplaced in relation to a logical
23 assessment of import growth; they are inconsistent
24 with the interpretation of Chairman Okun and
25 Commissioner Koplán in the Brake Drums and Rotors

1 determination.

2 In point of fact, the absolute growth in
3 imports of ductile iron waterworks fittings from China
4 in the two-year period between 2000 and 2002 was 70
5 percent, more than twice the figure over the same
6 period in the Commission's finding of rapidly
7 increasing imports in Brake Drums and Rotors.

8 Imports of DIWF from China also continue to
9 increase in absolute terms in interim 2003 and grew
10 even more quickly in relation to domestic consumption
11 and production. Thus, imports of DIWF from China have
12 grown consistently since 2000 and at a rate in excess
13 of that shown for brake drums and rotors. If the
14 statutory standard for a rapid increase was met in
15 that case, it certainly is met in the case before you
16 currently.

17 In assessing the impact of these rapidly
18 increasing imports on the domestic industry, the
19 Commission should be aware that there are no
20 meaningful alternate causes of material injury.
21 Aggregate U.S. demand for ductile iron waterworks
22 fittings, for example, was healthy during the period
23 of investigation. In fact, consumption increased in
24 every year of the POI, expanding by four percent
25 between 2000 and 2002 and an additional five percent

1 in interim 2003.

2 Nor do imports of DIWF from other source
3 countries offer a more compelling explanation as to
4 the material injury suffered by the domestic industry.
5 As shown in Figure 3, the official import statistics
6 through the first eight months of 2003, the only year
7 for which meaningful public data are available,
8 indicate that imports of DIWF from China exceeded
9 those from all other sources combined in every month
10 of the year.

11 Indeed, for this period as a whole, China
12 accounted for two-thirds of all U.S. imports of
13 ductile iron waterworks fittings. Imports from China
14 in this period were four times greater than those from
15 the next-largest source country and reflected unit
16 values 29 percent lower than those from other
17 countries. Imports from nonsubject sources have
18 affected the domestic industry, but China has been the
19 biggest and most aggressive player in the U.S. market.

20 Despite the evidence that I have just
21 recapped, the Respondents in this case continue to
22 cling to their contention that Chinese imports have
23 had no effect on the domestic industry. In support of
24 this contention, they have thrown around claims of
25 highly attenuated competition between domestic and

1 Chinese DIWF and Buy America provisions that convey "a
2 great marketing advantage, if not a monopoly" to the
3 domestic industry.

4 To hear the Chinese Respondents tell it,
5 they have been lucky to gain a toehold in the U.S.
6 market for DIWF, and the pervasiveness of Buy America
7 requirements effectively protects the domestic
8 industry from pricing competition. This, of course,
9 begs the question: If the domestic industry is truly
10 protected from competition, why would it choose to
11 lower prices in a period of growing domestic demand
12 and increasing costs?

13 If Buy America requirements are so pervasive
14 and important within the U.S. market, shouldn't the
15 domestic industry be able to pass on its increased
16 costs to its customers? How could such a protected
17 industry be losing so much money, and how could
18 Chinese import volumes have increased by 70 percent in
19 two years if they were barred from a significant part
20 of the U.S. market? If Chinese imports have not
21 affected the domestic industry, why has U.S.
22 production of DIWF fallen dramatically since 1999, as
23 shown in this indexed representation?

24 Clearly, the domestic industry has been
25 exposed to intense competition from low-priced Chinese

1 imports, and the result has been the severe material
2 injury summarized in the staff report. As shown in
3 this comparison of indexed figures, as Chinese imports
4 have grown, the result has been declining domestic
5 production of ductile iron waterworks fittings,
6 despite increasing consumption of the product in the
7 U.S. market.

8 The staff report also shows that extreme
9 price competition is taking place in the U.S. market,
10 with underselling by Chinese imports occurring in 107
11 out of 110 possible price comparisons by margins
12 ranging from 14 to 34 percent. It is precisely such
13 underselling that has led to declines in industry
14 prices on the products tracked by the Commission of 7
15 to 21 percent from 2001 to 2003.

16 As you will no doubt hear this afternoon,
17 Respondents hold that this underselling and the market
18 share gains of Chinese imports during the period of
19 investigation have nothing to do with the dreadful and
20 worsening financial performance of the domestic
21 industry.

22 According to Respondents, U.S. Pipe and
23 ACIPCO are performing very well, and McWane is
24 dragging down the industry due to its capital
25 investments in worker safety and environmental

1 protection. As you will hear from Mr. Murray of U.S.
2 Pipe, he strongly disagrees with Respondents'
3 assertions that his company is performing well. I
4 would also direct you to the questionnaire response of
5 ACIPCO in relation to the Respondents' arguments.

6 As to the claims regarding McWane, the
7 expenses cited by the Respondents do not begin to
8 explain the declines in the company's profitability
9 during the period. The largest capital expenditures
10 made by McWane during the POI were not related to
11 worker safety or environmental protection but to the
12 installation of a state-of-the-art, automated molding
13 line and related system at Union Foundry's Anniston,
14 Alabama, facility. This production line, which was
15 designed to dramatically improve Union's productivity,
16 has been idle for much of this year due to the
17 injurious effects of Chinese imports on production
18 needs.

19 Nor do Respondents' claims as to the impact
20 of safety and environmental investments on McWane's
21 operating profits pass the Accounting 101 laugh test.
22 When a capital investment is made in a given fiscal
23 year, it is not taken as an operating expense in that
24 year. Rather, the expense is amortized over the life
25 of the asset via annual depreciation expenses. In the

1 case of capital investments made by McWane, those
2 assets were depreciated over periods ranging from
3 seven to 20 years. So if a \$5 million investment is
4 made in an asset with a useful life of 10 years, just
5 \$500,000 in depreciation will be claimed as an expense
6 in a given fiscal year, assuming straight-line
7 depreciation.

8 Review of McWane's DIWF income statement
9 shows that its depreciation expenses did not change
10 significantly from year to year during the POI. More
11 importantly, during the period from 2000 to 2002, when
12 industry profitability fell to large losses, McWane's
13 depreciation expenses were actually declining. The
14 consolidated income statement shows quite clearly that
15 declines in sales revenues, not increases in costs,
16 and certainly not increases in depreciation costs,
17 were primarily responsible for the declines in
18 McWane's profitability on DIWF production in this
19 period.

20 Respondents have also put forward a number
21 of specious claims in relation to the threat of
22 further material injury presented by imports of DIWF
23 from China. Specifically, claims have been made that
24 such imports are tapering off and present no threat of
25 future material injury to the domestic industry due to

1 their diminishing presence in the U.S. market.
2 Respondents continue to cite to the projections of
3 falling volumes for interim 2003 in the foreign
4 producers' questionnaire responses despite data now on
5 the record from both U.S. importers and the official
6 import statistics showing that imports in 2003 have
7 continued to increase.

8 In other respects, the foreign producers'
9 questionnaires illustrate very clearly just how
10 focused the Chinese industry is on the U.S. market and
11 the massive threat it presents to the domestic
12 industry. Exports in the United States account for
13 the vast majority of DIWF produced in China, with
14 Chinese producers projecting that exports to the U.S.
15 market in 2003 will represent 97 percent of their
16 total production of the products.

17 Further, based on data reported for 2002,
18 Chinese producers have sufficient excess capacity to
19 increase their exports to the United States by 37
20 percent above their 2002 peak without any further
21 expansion of production capacity.

22 I'll end it there, and I would like to now
23 turn it over to the members of the domestic industry,
24 who will convey some of their experiences as to the
25 injurious effects of rapidly increasing imports of

1 ductile iron waterworks fittings from China.

2 MR. ROSENTHAL: Our next witness will be Mr.
3 David Green.

4 MR. GREEN: Good morning, Madam Chairman,
5 and members of the Commission. My name is David
6 Green. I am the president of Ransom Industries, LP.

7 Ransom Industries is a subsidiary of McWane,
8 Inc., and is responsible for overseeing and managing
9 the operations of two of the three facilities owned by
10 McWane that produce ductile iron waterworks fittings,
11 DIWF, in the United States. In particular, Ransom
12 Industries is responsible for managing the operations
13 of Union Foundry Company, located in Anniston,
14 Alabama, and Tyler Pipe Company, which operates in
15 Tyler, Texas.

16 McWane also operates a third facility, the
17 Clow Water Systems Company in Kashoctan, Ohio, that
18 produces ductile iron waterworks fittings.

19 The three fittings facilities owned by
20 McWane account for a significant majority of the
21 remaining domestic production of DIWF in the United
22 States. At the time of the Commission's 1993 dumping
23 investigation, there were six domestic producers in
24 the United States. There has been a dramatic
25 reduction in the domestic production of DIWF since

1 then.

2 Of those producers, American Cast Iron Pipe
3 Company has shrunk domestic fitting production to a
4 fraction of prior levels and now imports some
5 fittings. Griffin Pipe Products ceased domestic
6 production of DIWF altogether and is buying import
7 product. U.S. Pipe and Foundry Company closed a
8 fittings production facility in Anniston, Alabama,
9 earlier this year, and its current production of the
10 subject product is far below its 1993 production
11 levels.

12 The impact of growing volume of imports of
13 DIWF from China on our industry has been devastating.
14 We are now at a point where we cannot continue to
15 incur the operating losses we have been suffering.
16 Absent relief from the disruptive effects and
17 significant downward pricing pressures of the Chinese
18 imports entering the United States, we will be forced
19 to shut our production facilities, resulting in the
20 end of volume production of DIWF in the United States
21 and our country's complete dependence on imported
22 waterworks fittings, a key component of our domestic
23 potable water supply infrastructure.

24 Our industry's need for import relief, as a
25 result, is acute, and it is urgent. Earlier this

1 summer, we reduced the production volume at Union
2 Foundry by approximately 44 percent, and we were
3 forced to let 195 employees go when we shut down a
4 modern, automatic molding line that was installed just
5 three years ago. We don't know how much longer we can
6 continue to lose money on every pound of product we
7 sell.

8 McWane and Ransom Industries have a strong
9 desire to continue producing ductile fittings in the
10 United States, and we are committed to making
11 additional investments in our facilities and personnel
12 to further increase our competitiveness in the event
13 our industry receives an import-relief program.

14 This industry is both highly competitive and
15 capital intensive. To stay competitive, producers
16 must continuously make capital investments to maintain
17 and improve production facilities. In September,
18 however, we were forced to decline an additional
19 investment at one of our facilities, based on the
20 uncertain future of the industry.

21 We have already made significant investments
22 to improve productivity as well as our safety and
23 environmental compliance. The investments made to
24 date, however, have been insufficient to enable us to
25 deal with the unprecedented volume of low-priced

1 imports of ductile fittings from China surging in the
2 United States. It is absolutely crucial that we have
3 the opportunity to realize a reasonable return on
4 these investments.

5 I would like to address two points. The
6 Respondents have testified that McWane dominantly ties
7 its fitting ties to ductile pipe sales. This is
8 simply not true. In fact, our fittings are installed
9 more, by a factor of two-to-one, to plastic pressure
10 pipe, which McWane does not produce.

11 Secondly, the partners opposing the domestic
12 industry's request for relief have argued that our
13 recent investments to strengthen workplace safety and
14 environmental performance are the cause of our current
15 financial situation. These assertions are also wrong.

16 Over the years, McWane has bought a number
17 of failing foundries whose previous owners had failed
18 to invest in modern equipment, as well as
19 environmental and workplace safety compliance.

20 McWane, by contrast, has made substantial investments
21 in its facilities and save thousands of high-paying
22 American jobs.

23 The company's commitment to the promotion of
24 worker safety and a clean environment is longstanding.
25 McWane has specifically made significant investments

1 in the Union, Clow, and Tyler facilities since they
2 were acquired in 1977, 1985, and 1995, respectively.
3 These expenditures are a known and expected
4 requirement of doing business in the foundry industry
5 in the United States. Such investments were regularly
6 undertaken by McWane long before the recent publicity
7 our facilities have received.

8 The workplace safety and environmental
9 investments made at McWane facilities over the last
10 several years do not explain the domestic industry's
11 current financial condition. Rather, it is the large
12 volumes of low-priced imports of DIWF from China that
13 have caused us to lower our prices and reduce
14 production on the DIWF that we are able to sell that
15 are to blame for the industry's current condition.

16 The domestic producers and their employees
17 are awaiting a signal from the Commission and the
18 president. We are a long-term domestic producer and
19 desire very much to continue our operations in the
20 United States. Absent a period of relief from the
21 large volume of low-priced imports from China,
22 however, we will be forced to close domestic
23 production facilities and to source DIWF from abroad.
24 If we have to turn to imports totally, this would
25 result in a loss of nearly a thousand manufacturing

1 jobs in Ohio, Texas, and Alabama and would add to the
2 growing number of manufacturing jobs, high-paying,
3 mind you, that have been lost in the United States
4 within the last few years.

5 Accordingly, we request that the Commission
6 reach an affirmative market-disruption finding and
7 recommend that the president implement a 95 percent
8 tariff on all imports of DIWF from China.

9 We appreciate the hard work by the
10 Commission and its staff on this case. Your work is
11 vital to the continued existence of our industry. I
12 would be pleased to answer your questions at the
13 appropriate time.

14 MR. ROSENTHAL: Mr. Murray?

15 MR. MURRAY: Thank you. Good morning. My
16 name is James R. Murray, and I am vice president of
17 business development for the United States Pipe and
18 Foundry Company, headquartered in Birmingham, Alabama.

19 The United States Pipe and Foundry Company
20 is a wholly owned subsidiary of Water Industries,
21 Inc., a publicly owned company listed on the New York
22 Stock Exchange and traded under the symbol, WLT. U.S.
23 Pipe, the largest domestic producer of ductile iron
24 pipe in sizes four through 64 inch, celebrated its
25 centennial year in 1999.

1 Today, I sit here representing a company
2 that has successfully served the domestic water
3 industry for the past 104 years. Unfortunately, in at
4 least one of our most important products, ductile iron
5 waterworks fittings, however much we celebrate the
6 past, the future is in serious jeopardy.

7 U.S. Pipe perfected the production of
8 ductile iron pipe, which is superior in strength to
9 cast iron, and was the first in the industry to use
10 ductile iron exclusively for pressure pipe and
11 fittings. U.S. Pipe has also been a significant
12 producer in the United States of the product subject
13 to this investigation, ductile iron waterworks
14 fittings, and hopes to be able to continue producing
15 these fittings in this country.

16 Our company makes a full range of sizes of
17 ductile iron waterworks fittings, from four to 64
18 inches in the compact category and from three to 48
19 inches in full-bodied, ductile iron waterworks
20 fittings.

21 I'm here today because my company strongly
22 supports the petition filed by McWane. In review of
23 the public versions of the briefs filed by the
24 Respondents, it is clear that they are hoping to win
25 this case by a strategy of divide and conquer,

1 claiming that only McWane has been struggling
2 financially and that McWane's problems are not caused
3 by imports from China. I can tell you that this is
4 not true. While I cannot discuss publicly the
5 financial performance of U.S. Pipe's waterworks
6 fittings business, our questionnaire response lays out
7 in very clear terms why we need relief requested in
8 this case.

9 Anyone with the least amount of business
10 acumen who has reviewed the financial results of the
11 ductile iron waterworks fittings business of U.S.
12 Pipe, as submitted in our confidential questionnaire,
13 would realize that the company has had, and continues
14 to have, a significant problem. I might add that any
15 reviewer's attention should also be directed at the
16 amount of capital monies that has been reinvested over
17 the period of time covered by the questionnaire.
18 Clearly, this is not a business at U.S. Pipe that has
19 been starved for capital, and despite the infusion of
20 these capital monies, the situation remains dire.

21 I assume that U.S. Pipe's performance in the
22 waterworks fittings business is very much in line with
23 the other domestic producers as well. Imports of
24 ductile iron waterworks fittings from China are our
25 number one competitive problem, and I believe this is

1 also true for McWane.

2 The fact that U.S. Pipe has been struggling
3 to compete with low-priced Chinese imports so much was
4 part of the reasoning behind the recent closure of our
5 Anniston, Alabama, plant in April of this year. That
6 closure was permanent. It is not recoverable. It not
7 only meant a loss of tax revenue at local and state
8 levels but a permanent loss of 100 much-needed jobs in
9 Anniston and many other jobs in businesses that served
10 our plant, such as raw material suppliers and energy
11 and transportation services providers.

12 In our effort to stem further lost sales, we
13 have also had to reduce prices and roll back price
14 increases. We have also had to reduce our workforce
15 at our Chattanooga, Tennessee, ductile iron waterworks
16 fittings plant as a result of sales lost to imports,
17 even though some of our production at the Anniston
18 plant was moved to Chattanooga. Over one-third of the
19 ductile iron waterworks fittings workforce lost their
20 jobs at the Chattanooga plant since the beginning of
21 last year, despite the shift in production from
22 Anniston. We also had to let go five sales personnel,
23 a significant cut for that type of staff, but even
24 more, it is a statement of our declining market share.

25 What U.S. Pipe has had to do this year is

1 drastic but by itself will not be enough for us to
2 regain strength in the market. We need the relief
3 requested in the petition so we can get pricing for
4 our products to a level where we can make a reasonable
5 return. If we do not get the relief being sought, we
6 must consider the option to exit altogether the
7 production of ductile iron waterworks fittings. If we
8 have to do this, it would leave only one other
9 domestic supplier of the product, that is, if McWane
10 could still remain in the business.

11 If the trends we've been seeing continue,
12 there may be no domestic suppliers of this product
13 that is critical to delivering potable water to this
14 country's infrastructure. We support the request for
15 a 95 percent tariff on imports of ductile iron
16 waterworks fittings from China. This tariff rate may
17 be higher than the Commission has recommended in the
18 past, but we need a tariff this high to receive any
19 meaningful respite from the extremely low prices
20 existing in the market.

21 Finally, I want to thank the Commission and
22 staff for your efforts and hard work on this
23 investigation. I hope my testimony has been helpful,
24 and I would be happy, at the appropriate time, to
25 answer any questions. Thank you.

1 MR. ROSENTHAL: Mr. Gerard.

2 MR. GERARD: Thank you. My name is Leo
3 Gerard, and I'm the international president of the
4 steel workers union, and I'm here today because it's
5 actually been a little over two months, and I missed
6 all of you, and you'll be happy to know that I didn't
7 bring a couple hundred people with us this time. That
8 probably shows the financial state of the union, as
9 well as the financial state of the industry we
10 represent.

11 Let me just very quickly say that our union
12 represents employees at eight McWane facilities,
13 including Tyler Pipe and Union Foundry, and these are
14 two of three foundries in which McWane manufactures
15 ductile iron waterworks fittings. Our members also
16 produce ductile iron waterworks fittings at U.S.
17 Pipe's Chattanooga facility that you heard about in
18 Tennessee, where approximately 250 members are
19 currently employed at that facility. That number is
20 down from 400 that worked there in 1998.

21 Imports of this product from China have
22 already had a significant, negative impact on our
23 members. Several months ago, Union Foundry, as you
24 heard, was forced to shut down its Anniston, Alabama,
25 facility, in which we lost 145 jobs. This

1 announcement was made only several months after U.S.
2 Pipe and Foundry completely closed its Anniston
3 facility, resulting in the loss of 80 jobs.

4 CHAIRMAN OKUN: Mr. Gerard, I hate to
5 interrupt you, but can you just pull your microphone a
6 little bit closer?

7 MR. GERARD: Oh, okay.

8 CHAIRMAN OKUN: Thank you.

9 MR. GERARD: The loss of 80 jobs. While
10 it's often easy to gloss over these numbers, as you
11 know, when I testify here I always try to tell you
12 that this is not just a technical issue; this is an
13 issue of human beings, real lives, important
14 industries, family-supporting jobs and communities.

15 No American should lose his or her job as a
16 result of a surge in low-priced imports of Chinese
17 fittings entering the United States. These job losses
18 are of great concern, and the actions taken by this
19 Commission and the president will either help the
20 industry survive or will pronounce the death knell of
21 the industry. I don't think it's extreme to say that
22 the future of this industry in this country is in the
23 hands of this Commission and what you do.

24 Absent import relief, effective import
25 relief, from the huge volumes of low-priced waterworks

1 fittings from China, there will certainly be
2 additional layoffs and closures in the domestic
3 industry, and, as you've heard, many of us believe it
4 may cease altogether.

5 I want to jump very quickly, because I know
6 there is a limited amount of time, and express my
7 outrage that in the prehearing brief the Chinese
8 Respondents describe McWane's workplace safety and
9 environmental record as abysmal and claim that the
10 record tarnishes McWane's reputation as a place of
11 dependable employment.

12 Our members work in those facilities, and
13 nobody that represents Chinese communists has a right
14 to call what our members do and the work that they do
15 as abysmal. They work in those facilities under
16 collective agreements that we've negotiated, and to
17 make those comments is the equivalent of people in
18 glass houses shouldn't throw stones.

19 That these Chinese communists hired guns to
20 come here and make those kinds of accusations about
21 us, coming from a place that tolerates child labor,
22 prison labor, no environmental standards, no free
23 labor movement, no free press, is an insult to our
24 members and what they do for a living.

25 We've had some difficulties in the foundry

1 industry. Anyone who has ever been in a foundry knows
2 it's a hot, dirty, dangerous place to work and that
3 every day you have to go to work, and you have to
4 repair and fix and clean the stuff that you did
5 yesterday. And I give credit to McWane for coming in
6 and taking foundries that would have been on the verge
7 of closing, or are already closed, and trying to
8 rehabilitate them and bring them back to life and
9 invest in both the technology and the workplace health
10 and safety.

11 We have invested a tremendous amount of time
12 and resources in working with McWane, and their
13 president, Ruffner Page, and I have negotiated a
14 protocol for health and safety that we are
15 implementing, and I'm not ashamed to tell you that
16 when that protocol is completely implemented and that
17 all of our members have received the training and
18 development that we've bargained together, health and
19 safety practices and environmental practices at McWane
20 will be amongst the highest in the North American
21 foundry industry and certainly in the water fittings
22 industry.

23 I would love for us to see what it looks
24 like in a Chinese foundry. I know from people that
25 I've met that have gone to China that have looked at

1 these places that those folks work and have the
2 advantage in this market of paying about one-twentieth
3 of the U.S. wage under circumstances and working
4 conditions that are truly abysmal and truly an
5 outrage. And for them to dare, dare, use that as a
6 defense is an insult. I don't think I can sit here
7 and represent our members without making that as
8 crystal clear as I possibly can.

9 Let me just say that we are working every
10 day on the health, safety, and environmental issues at
11 McWane. We're working every day on productivity
12 issues. But I will not ask our members -- it would be
13 immoral for you, as a Commission, to expect us to ask
14 our members -- to lower our standard to Chinese
15 standards while they surge into our market, destroy
16 our pricing, take our jobs, and then use that to tell
17 us we can't compete.

18 There is a travesty going on in this
19 country. The secretary of commerce and the secretary
20 of the treasury -- days run by, but I think the
21 secretary of commerce is either on his way again or
22 just came back from going to try to tell the Chinese
23 communists to quite manipulating their currency and
24 using that as an advantage, let alone their one-
25 twentieth wage structure -- there are no environmental

1 laws. There are no health and safety laws. There is
2 no free press. There are no free trade unions. I
3 haven't forgotten Tiananmen Square, and I resent it.

4 This Commission, if it does not grant the
5 relief -- I want to say this in the most respectful
6 way because I truly have a tremendous amount of
7 respect for all of you that I've gotten to know
8 through being here so often. The hard work that you
9 do and the dedication of you and your staff is
10 unprecedented, and I think you're one of the finest
11 agencies in government. But under these
12 circumstances, if this Commission does not respond and
13 not give the tariff relief that we need, you will
14 sentence this industry to death, and you will sentence
15 it to death to Chinese communists who don't enjoy any
16 of the freedoms that we have and use that position, in
17 state-owned industries and a few private industries,
18 to destroy our market.

19 I can't tell you how much our members are
20 counting on you to fix this problem. I'll be happy to
21 answer any of your questions as well. Thank you.

22 MR. ROSENTHAL: Mr. Waugaman. The real Mr.
23 Waugaman.

24 MR. WAUGAMAN: Thank you. I think taking
25 just a second to let what Mr. Gerard said sink in is

1 probably more appropriate than the opening that I was
2 going to start with. I agree 100 percent with what he
3 had to say, and I think it was very apropos to why
4 we're all here today.

5 I did take an oath to tell the truth this
6 morning, so I, in fact, am the real Mr. Waugaman. My
7 name is Don Waugaman, and I'm vice president of sales
8 and administration for Tyler Pipe, as well as vice
9 president of sales for Tyler Union with Ransom
10 Industries.

11 The fittings produced by the domestic
12 industry do cover a full range of ductile iron
13 waterworks fittings specified in our petition,
14 including diameters two through 64 inches. We are
15 competitive with the product imported from China in
16 every way, including quality, delivery times, service,
17 and product offerings, but we can't sell as cheaply as
18 the Chinese imports and remain in business. It's that
19 simple.

20 Ductile iron waterworks fittings are an
21 integral part of municipal water systems and are used
22 mainly to connect pipes, valves, hydrants, and other
23 fittings where there is a change in direction in water
24 flow or a change in diameter of the piping system.
25 Whether domestically made or imported, ductile iron

1 waterworks fittings are marketed almost entirely
2 through distributors. These distributors, in turn,
3 sell to end users who are municipalities, utilities,
4 and contractors. Because of this structure, when we
5 price our products, we have to consider not only what
6 price we would like to get from a distributor but also
7 whether the distributor will be able to then resell
8 the product to end users competitively with imports
9 from China offered by another distributor.

10 My colleague, Mr. Joe Blair, will address
11 more on the pricing issues in his testimony.

12 Ironically, we are being injured at a time
13 when housing starts and other construction projects
14 have kept the demand for ductile iron waterworks
15 fittings strong, even in an otherwise weak economy.
16 The U.S. industry's precarious financial situation is
17 not because of declining demand. It is because we
18 have been unable to maintain sales volumes at prices
19 that will allow us a reasonable return.

20 Years ago, there were greater differences
21 between imported and domestically produced ductile
22 iron waterworks fittings than there are today. The
23 imports were not always of equivalent quality and did
24 not always meet technical standards. Those
25 differences have since been eliminated, leaving price

1 the only real differentiating factor in the purchasing
2 decision. There still are distributors and end users
3 who would like to buy U.S.-made products, not because
4 of Buy America requirements, which, in fact, are few
5 and far between, but out of purchaser's preference.
6 But even that preference is not a deciding factor as
7 pricing gets more cut-throat.

8 In our prehearing brief, we provided a
9 lengthy list of jurisdictions that have eliminated
10 their preferences for domestic ductile iron waterworks
11 fittings within the past three to four years. These
12 jurisdictions have been offered prices so low, they
13 can no longer ignore the difference.

14 Thank you, and I'll turn it over to Joel.

15 MR. BLAIR: Good morning. Thankfully, I am
16 the only Joel Blair, and I am the national sales
17 manager for the utilities division at Tyler Pipe and
18 Union Foundry.

19 My testimony today may be of particular
20 interest because I have firsthand experience in sales
21 and marketing of both domestic and imported waterworks
22 fittings, including the ductile iron waterworks
23 fittings that are the subject of this investigation.

24 For several years, I was a partner in a
25 waterworks distribution business in Kansas City,

1 selling ductile iron waterworks fittings. I worked in
2 sales at Tyler Pipe in the mid-eighties, and joined
3 Star Pipe Products as its national sales manager in
4 1997. I was with Star Pipe until August 2000 and
5 returned to Tyler Pipe at that time.

6 With that background, I am well versed in
7 the competitive issues concerned in this case. There
8 are many similarities and few differences between the
9 U.S.-made and imported ductile iron waterworks
10 fittings. At the time I was with Star Pipe, I
11 believed that the quality of products being imported
12 was comparable to that of Tyler and Union, and I
13 believe this to be true today.

14 More important than what I think, though, is
15 what our customers think. Years ago, it was harder
16 for the Chinese to convince customers that their
17 quality was equal to that of the domestic industry.
18 Along with other salesmen at Star, we were fairly
19 successful in getting customers to try Chinese
20 product. Since they met the AWBA technical standards
21 and were lower priced, the imports were bought and
22 found to be acceptable. While some customers are
23 willing to pay slightly more for a domestic product
24 because of reputation and great service, that number
25 has dwindled over the past few years.

1 In our business, our pricing system is based
2 on a published list price. As a matter of fact, all
3 of the other domestic producers and importers have
4 published list prices that virtually mirror ours. We
5 sell to our distributors at a percentage discount off
6 that list price that vary, depending on local market
7 conditions. Discounts do vary throughout the country.
8 In addition, rebates are paid to most customers. This
9 system is used by the domestic producers as well as
10 the importers.

11 Determining a market discount for a given
12 area through routine market intelligence is not
13 difficult for either manufacturers or importers. For
14 this reason, it is very easy for importers of Chinese
15 ductile iron waterworks fittings to offer prices that
16 undercut ours. These pricing practices have brought
17 the U.S. industry to the dire situation we are in
18 today.

19 Chinese ductile iron fittings are selling at
20 prices so low that we have difficulty selling the
21 domestically produced products. We know of nowhere in
22 the country where importers' selling prices are at or
23 above the domestic producers. If we reduce our price
24 to keep our sales volume, they reduce their prices
25 further. In fact, when I was at Star Pipe, the inside

1 sales personnel were given authorization to reduce
2 price to secure an order, and with this kind of
3 flexibility of pricing, many sales were made.

4 I appreciate your time and will be happy to
5 answer any questions you may have, with the possible
6 exception of how to fix the Redskins.

7 MR. ROSENTHAL: Mr. Teske.

8 MR. TESKE: Good morning. My name is Thomas
9 Teske. I'm general manager and vice president of
10 sales and marketing for East Jordan Iron Works,
11 located in East Jordan, Michigan.

12 East Jordan Iron Works has been in operation
13 since 1883 and has been family owned and operated
14 throughout the history. East Jordan Iron Works is a
15 producer of municipal construction castings, fire
16 hydrants, and waterworks valves. We sell our
17 manufactured products nationally to major
18 distributors, municipalities, and contractors. In the
19 upper Midwest, East Jordan Iron Works operates as a
20 distributor of waterworks products.

21 I'm here today to speak, in particular,
22 about East Jordan Iron Works' concerns as a
23 distributor of waterworks products. We have purchased
24 waterworks fittings from Tyler Pipe for approximately
25 four years, and we've been buying ductile iron

1 waterworks fittings since the company started making
2 them, approximately 20 years. We've found that Tyler
3 offers us excellent service and delivery, high
4 quality, broad product offerings, and competitive
5 pricing. Tyler maintains a full range of inventory
6 and provides fast and reliable deliveries on a regular
7 basis.

8 East Jordan is committed to providing our
9 customers with high-quality products that are made in
10 the USA, but we can't compete against distributors of
11 Chinese-produced ductile iron waterworks fittings
12 unless we are able to charge competitive prices to our
13 customers. We know that Tyler Pipe has had to
14 consistently reduce its prices to customers to keep
15 Chinese imports from taking away its market share.
16 They can't keep doing this and stay in business.

17 We've received solicitations from importers
18 and manufacturers of Chinese waterworks fittings since
19 approximately 1990, and Chinese manufacturers
20 regularly attempt to solicit ductile iron waterworks
21 business from us via the Internet. I've submitted a
22 number of those requests to the Commission.

23 The quality and breadth of the product
24 offerings has increased over the years, so Chinese
25 product is extremely competitive with domestically

1 produced fittings. While the imports from China have
2 always undersold the domestic product, in recent years
3 there seems to have been greater acceptance of the
4 Chinese product in the marketplace. In the last
5 several years, it has especially been apparent if the
6 domestic producers were to gain the sale against
7 Chinese competition, they would have to lower their
8 price.

9 As a distributor of waterworks fittings,
10 East Jordan is very familiar with the prices offered
11 by importers and domestic manufacturers because we
12 have to compete against the prices offered by other
13 distributors. The prices at which imported waterworks
14 fittings are offered are lower than the prices from
15 Tyler Pipe.

16 Our customers do prefer made in USA and are
17 willing to pay a small premium for domestically
18 manufactured product, but other customers, given that
19 the imports meet the quality and technical standards,
20 will simply purchase based on price. We have branches
21 throughout the U.S., and we know that there are some
22 parts of the country where the markets have shifted
23 substantially to Chinese fittings solely because of
24 price. Given this reality, the increasing marketing
25 activities of importers and manufacturers from China

1 are a serious threat to U.S. manufacturers.

2 There currently is an ample supply of
3 waterworks fittings produced in the United States, but
4 if current trends continue, the number of domestic
5 producers will continue to decline. The only way out
6 of this trend is for the U.S. government to intercede
7 on behalf of the ductile iron waterworks industry and
8 provide a remedy so that the industry can raise its
9 prices to a reasonable level. If this U.S. industry
10 cannot get some relief, we will soon have no domestic
11 source for these critical elements of the country's
12 waterworks systems.

13 As a distributor that wants to represent
14 quality products are made in the USA, I certainly hope
15 that the Commission can prevent this industry from
16 going the way of so many other manufacturing
17 businesses. Thank you.

18 MR. ROSENTHAL: In the few minutes
19 remaining, I want to touch on a couple of points I
20 alluded to in my opening statement. As you may
21 recall, in our post-conference brief in this case, we
22 took issue with the views of Chairman Okun and
23 Commissioner Koplan that in Section 421 cases the
24 Congress intended the Commission to focus on imports
25 after China's accession to the WTO.

1 With all due respect, I don't see any
2 evidence in the legislative history that reflects any
3 congressional intent to focus on post-WTO-accession
4 imports. That's mainly because, as we know, the
5 China-U.S. agreement was basically one sided, as
6 stated by many of the congressional proponents of this
7 provision. The U.S. did not have to make any tariff
8 concessions; and, therefore, one would not expect a
9 surge of imports after China's accession. So focusing
10 on the post-China accession period, I don't think, is
11 justified by the legislative history. I'm sure I'll
12 engage of invite some discussion there. In my desire
13 to ever be provocative, I wanted to throw that out to
14 you.

15 Having said all of that, though, I don't
16 think it makes a tremendous amount of difference in
17 this case because, as you heard from Mr. Kerwin, it
18 doesn't matter which time period you focus on here;
19 there has been a surge. And even accepting the
20 analysis in the Brake Drums and Rotors case, the time
21 period looked at there, if the same one is used here,
22 you show a surge even greater in our case than in that
23 one.

24 There are a couple of other unique aspects
25 of the Section 421 remedy that I would love to discuss

1 with you, and Mr. Loeb nicely took the bait to start
2 talking about the Wizard of Oz, and we'll talk about
3 that more later as well. But among the other unique
4 aspects of the 421 remedy that we ought to focus on
5 is, number one, the notion that I think the
6 Respondents have now abandoned that it's an adjustment
7 statute for the U.S. industry and that the U.S.
8 industry has to file adjustment plans.

9 The Commission, I think, rightly rejected
10 that in your previous cases, and we haven't heard it
11 in this case, but one of the reasons why 421 doesn't
12 require adjustment and 421 is different from the
13 Section 201 cases is the recognition that the Chinese
14 economy and Chinese industries are different.

15 Mr. Gerard said it better than I can, and
16 that is, China is different, and the administration
17 that negotiated the accession agreement and the
18 Congress that passed this understood that adjustment
19 in this case and the periods of relief have to reflect
20 that difference with the Chinese. The notion that
21 U.S. industries that are facing surging Chinese
22 imports have to adjust enough to bring down their
23 wages, not spend money on labor and the environment in
24 order to be more competitive doesn't make sense, and
25 that was not the congressional intent.

1 I'll spend more time on this later, if you
2 would like, but really, the reason why the safeguard
3 provision was in there and lasts for 14 years is the
4 recognition that the Chinese economy has to change.
5 Currency policies have to change. Their wages have to
6 go up. They have to start acting more like a market
7 economy. So to put the burden and the expectation
8 solely on domestic industries to adjust to the import
9 competition and not expect the Chinese to change, I
10 think, is misplaced. By the way, I'm not saying that
11 as an excuse for domestic industries who don't try to
12 modernize and don't do everything they can to become
13 more efficient.

14 You know from the record in this case that
15 this domestic industry has spent a lot of money
16 modernizing, has spent a lot of money reducing their
17 costs. So that's not what this argument is about.
18 It's trying to get the Commission and the
19 administration, ultimately, to take a much more
20 fundamentally different view of Section 421 than it
21 apparently has taken in previous cases and certainly
22 different than the approach it's taken in Section 201
23 cases.

24 I would like to turn next to the issue
25 raised in respondents brief that Mr. Gerard so

1 eloquently reference, and that is the notion that
2 somehow McWane is the cause of its own problems
3 because it spent money on environmental and workplace
4 compliance, and, Respondents, imports aren't the
5 problem. It's all that money you've spent on safety
6 and environmental compliance.

7 To the extent these arguments are sincere,
8 they are totally baseless. To the extent they are
9 efforts to bias the Commission against McWane, they
10 should be recognized as such and rejected.

11 Now, let's be clear. McWane has had its
12 problems. The well-publicized, New York Times front-
13 line reports presented, though, a very, very distorted
14 and inaccurate view of the company. Certainly, McWane
15 acknowledges that during a period of rapid growth it
16 made mistakes, and its safety and environmental record
17 did not live up to its own standard. It's paid fines.
18 It continues to be responsible for rectifying those
19 mistakes it's made previously.

20 There is no denying that there have been
21 problems. But those reports, well publicized and, of
22 course, repeated numerous times in the prehearing
23 briefs here by Respondents, ignored a great deal of
24 information that clearly illustrates McWane's
25 commitment to environmental safety and safety

1 management. Unfortunately, as a privately held
2 company, McWane has had the view that it really
3 doesn't make a lot of sense to pick a fight with an
4 opponent that buys ink by the barrel full, so it has
5 not mounted a public relations offensive to combat the
6 distorted picture that's been presented in the press.

7 What it's done instead is to mount a safety
8 and environmental offensive, and you heard Mr. Gerard
9 talk about the efforts that are being made at McWane
10 facilities to make the McWane plants a model
11 workplace. The McWane management team, which assumed
12 operational control of the company five years ago, has
13 demonstrated a strong commitment to safety and
14 environmental excellence, and they are delighted to
15 join in a partnership with Mr. Gerard and the USWA in
16 that effort.

17 Ironically, Respondents want to twist
18 McWane's efforts to protect its workers and the
19 environment as a reason to deny relief in this case.
20 Can you believe that argument? According to
21 Respondents, McWane's injury isn't caused by imports;
22 it's all that spending on workers and the environment.
23 Respondents would actually deny relief under this
24 theory to an industry that is spending money, \$100
25 million over the last several years, to be precise, in

1 order to benefit an industry in China that incurs no
2 such costs. It's hard to imagine an argument more
3 cynical. It's also one of the more shameful arguments
4 or shameless I've heard, and I've heard a few in my
5 days here at the Commission. I may even have made a
6 few.

7 To criticize, as the Respondents have done,
8 any American producer, let alone one that's spent \$100
9 million on safety and the environment, gives new
10 meaning to the term -- actually it's not a Chinese
11 term either -- "hutzpah," which for those who need a
12 translation, is unmitigated gall.

13 Thank you, and I have a suspicion that I
14 won't need to invite your questions.

15 CHAIRMAN OKUN: Thank you. Thank all of you
16 for your testimony today, for your willingness to be
17 here to answer our questions, and for all of the
18 information that you've provided and will continue to
19 provide. I want to thank, in particular, the industry
20 witnesses who take time from their regular business to
21 travel to the Commission, and to Mr. Gerard, as a
22 representative for labor, to be here to tell their
23 story as well.

24 Before we begin our questioning, I want to
25 ask witnesses that when you respond, to please restate

1 your name, not because we don't now believe that we
2 know who is out there but because we can't always see
3 the name tags, and it helps our reporter as well. And
4 with that, Vice Chairman Hillman will start the
5 questioning this morning.

6 VICE CHAIRMAN HILLMAN: Thank you, Madam
7 Chairman, and I would join the chairman in welcoming
8 you all, and welcome back to many of you. Mr. Gerard,
9 you're right. We've missed you over these couple of
10 months. We do appreciate everyone taking the time to
11 be with us this morning.

12 I guess, if I can, I want to start by making
13 sure I understand some of the pricing issues that a
14 number of you had talked about. Mr. Teske, maybe if I
15 can even start with you, and I would start by thanking
16 you for being here. It's always helpful to have some
17 folks on the distribution side as well to help us
18 understand some of the issues about how products get
19 priced in the market.

20 You mentioned that companies are willing to
21 pay some premium sometimes to get U.S. product. Can
22 you help give me a sense of how much of a premium, and
23 has there been any change over this period of
24 investigation in terms of how much of a premium
25 somebody might have been willing to pay to get U.S.

1 product?

2 MR. TESKE: Yes. Thomas Teske, general
3 manager and vice president of sales and marketing,
4 East Jordan Iron Works.

5 It's probably two ways to answer that.
6 Number one, in some markets they prefer made in USA
7 that we're in. In Michigan, it's a heavily made-in-
8 USA area, and so the preference is towards USA
9 suppliers.

10 VICE CHAIRMAN HILLMAN: Just so I'm clear,
11 when you say "preference," is this a legal preference
12 --

13 MR. TESKE: No.

14 VICE CHAIRMAN HILLMAN: -- where they are
15 required, or it's a --

16 MR. TESKE: There is no legal preference.
17 It's just the local municipalities may have a
18 preference to have made in USA or to know the
19 manufacturer. They may specify a manufacturer like
20 Tyler, Clow in their specifications, and so they have
21 a preference to those products.

22 VICE CHAIRMAN HILLMAN: Would you have a
23 sense of what portion of them would actually specify,
24 "I want Tyler. I want Clow. I want U.S. Pipe. I
25 want a particular U.S. producer"?

1 MR. TESKE: They probably all have a
2 specification area in a job, but it also may say "or
3 approved equal." So it might have those names, and
4 then it would be approved equal. And in a fitting
5 case --

6 VICE CHAIRMAN HILLMAN: Would an approved
7 equal include an import?

8 MR. TESKE: It could, conceivably, yes.

9 VICE CHAIRMAN HILLMAN: Okay.

10 MR. TESKE: And then in other markets, say,
11 the greater Chicago Land area, there's probably 23
12 distributors of product, of waterworks products there,
13 and some are domestic, and some are import, and a
14 number of them may blend if they can, where they
15 supply both.

16 VICE CHAIRMAN HILLMAN: Okay. Getting back
17 to this premium and the size of the premium.

18 MR. TESKE: I don't know. It's hard to
19 quantify.

20 VICE CHAIRMAN HILLMAN: A couple percent?

21 MR. TESKE: Five percent.

22 VICE CHAIRMAN HILLMAN: Okay. And would you
23 say it's changed over the period?

24 MR. TESKE: Well, I think right now what
25 we're seeing throughout the country is that even

1 though housing is going strong, most of the
2 municipalities and state governments are suffering,
3 and so everyone is looking at costs, and everything is
4 more competitive. It's more competitive between
5 distributors to sell products. So everyone is looking
6 to see how they can improve or maintain a margin.

7 VICE CHAIRMAN HILLMAN: Now, Mr. Blair, I
8 think you were the one who testified about this issue
9 of working off a list price and then offering a
10 discount off of it. Am I correct that everyone in the
11 market does that, works off of a list price and then
12 offers a given customer a certain percentage discount
13 off of it?

14 MR. BLAIR: Yes. I'm Joel Blair. I'm the
15 sales manager for Tyler Union.

16 That is the way that we price our product in
17 the market: a list price with a multiplier discount
18 to various parts of the country, and those discounts
19 vary.

20 VICE CHAIRMAN HILLMAN: So would the
21 relationship between the price of various fittings
22 products, in other words, a certain size, certain
23 shape would be a certain price, and then another size,
24 another shape, another price -- those relationships
25 wouldn't vary. In other words, if you're giving a

1 discount, you're giving the same discount off of the
2 entire list, or do you change the amount of discount
3 specific to a given product?

4 MR. TESKE: We apply the same discount to
5 all fittings.

6 VICE CHAIRMAN HILLMAN: Okay. Would it be
7 your sense that that's what everybody in the industry
8 does? Mr. Murray, would you have any comment on what
9 U.S. Pipe would do?

10 MR. MURRAY: I would agree, Ms. Hillman,
11 that that's the industry fashion, and U.S. Pipe
12 follows that.

13 VICE CHAIRMAN HILLMAN: And then I believe,
14 Mr. Blair, in your testimony you said that the amount
15 of the discount may vary from region to region in the
16 country in some ways. Give me a sense of how much
17 that variance is.

18 MR. BLAIR: Can I take just a minute?

19 VICE CHAIRMAN HILLMAN: Sure.

20 (Pause.)

21 MR. WAUGAMAN: Excuse me. I'm Don Waugaman.

22 VICE CHAIRMAN HILLMAN: Sure. Go ahead, Mr.
23 Waugaman.

24 MR. WAUGAMAN: Maybe I should answer that.
25 The discount can range between 52 percent off of list

1 and as much as 71 percent off of list.

2 VICE CHAIRMAN HILLMAN: Okay, okay. And
3 then help me understand how frequently fittings are
4 sold as a larger package of goods, and is there a
5 sense that if somebody is prepared to buy X amount of
6 pipe, and you're going to add in such-and-such amount
7 of fittings, you give a bigger discount on the
8 fittings or a bigger discount on the pipe. Help me
9 understand how much product is sold as part of a
10 package that would include things other than fittings.

11 MR. WAUGAMAN: This is Don Waugaman. I'll
12 answer that. It's very easy to answer. Absolutely
13 none of it. We do not sell our fittings as part of a
14 package, although that was alluded to by the
15 Respondents earlier. We never sell to a distributor
16 our fittings as part of a package with any other
17 products, whether it be pipe or hydrants or anything
18 else, when we sell our products to a distributor.

19 VICE CHAIRMAN HILLMAN: Mr. Murray, would
20 you have a sense, from U.S. Pipe? Do you produce --

21 MR. MURRAY: Well, I think the qualification
22 that Mr. Waugaman used was correct: to a distributor.
23 There is another family of customers out there, the
24 contractors, that obviously when they ask for
25 quotations for jobs, they include pipe, valves,

1 hydrants, fittings, things of that nature, so they
2 are, in a sense --

3 VICE CHAIRMAN HILLMAN: But you're not
4 selling directly to them. It's the distributors that
5 are selling to them.

6 MR. MURRAY: No. We also sell directly to
7 contractors, absolutely.

8 VICE CHAIRMAN HILLMAN: And your sales to a
9 contractor might include some sort of packaging of
10 pipe and other products.

11 MR. MURRAY: Yes.

12 VICE CHAIRMAN HILLMAN: Okay. And what
13 portion of your sales would be to this kind of a
14 contractor?

15 MR. MURRAY: Well, in ductile iron
16 waterworks fittings, it depends on the size of those
17 fittings. On the smaller fittings, a large
18 percentage. On the larger fittings, a much smaller
19 percentage.

20 VICE CHAIRMAN HILLMAN: Okay. Now, Mr.
21 Waugaman, you're basically indicating that you're not
22 selling to this kind of a contractor that Mr. Murray
23 is.

24 MR. WAUGAMAN: That's correct. All of our
25 fittings from Tyler and Union are sold 100 percent to

1 distributors. I'm not an officer with Clow, but my
2 understanding is that Clow does sell a small
3 percentage of their fittings to end-use customers,
4 contractors and municipalities.

5 VICE CHAIRMAN HILLMAN: Okay. Mr. Teske?

6 MR. TESKE: Thomas Teske. We buy fittings
7 from Tyler, and then we package them with Griffin
8 Ductile Iron Pipe. We've represented Griffin Ductile
9 Iron Pipe for over 40 years. And then we quote that
10 as to the job, or with plastic pipes also.

11 VICE CHAIRMAN HILLMAN: Okay. And then when
12 you do that, are you trying to, in essence, price? Is
13 there a relationship between how much of a discount
14 you might do on the fittings versus the pipe?

15 MR. TESKE: Well, they are both sold at a
16 different markup, if that's what you mean.

17 VICE CHAIRMAN HILLMAN: Okay.

18 MR. TESKE: They are independent events,
19 though.

20 VICE CHAIRMAN HILLMAN: Okay. I appreciate
21 that.

22 MR. TESKE: The customer purchases a
23 package, but how we price them -- they are not all
24 marked up the same way.

25 VICE CHAIRMAN HILLMAN: I'm sorry. Mr.

1 Green?

2 MR. GREEN: Well, whenever there is a break.

3 VICE CHAIRMAN HILLMAN: No, no. Go ahead.

4 MR. GREEN: Are you finished? David Green,
5 president of Ransom Industries.

6 I think it would be simpler, I guess, for
7 the Commission if we explain certain things. U.S.
8 Pipe -- Jim is also a producer of ductile pipe, so we
9 have separate business groups within the McWane
10 family, and we keep them separate for a specific
11 reason. I'm in charge of the ductile iron waterworks
12 fittings and sole piping products, et cetera. There
13 is another individual on my level that is responsible
14 for all of the fire hydrants and water valve sales,
15 another guy that manages all of the ductile pipe
16 manufacturing facilities and their sales approach.

17 We, as a company, my companies, we don't
18 package, period, because I don't, in my group of
19 companies, don't produce ductile pipe. I have no
20 control over ductile pipe, so I don't package.
21 Typically, Clow Water, with their little bit of
22 ductile fittings that they produce relative to us and
23 the total industry, they are a ductile pipe plant. So
24 where the ductile pipe plants in the country sell
25 about 50 percent of their product, I think, to

1 contractors, that's a whole other issue besides what
2 we deal with with Ransom, Tyler Pipe, Union, et
3 cetera.

4 VICE CHAIRMAN HILLMAN: Okay. I appreciate
5 that. Mr. Rosenthal?

6 MR. ROSENTHAL: You do have in the record
7 the percentage of fittings that go to distributors
8 versus end users.

9 VICE CHAIRMAN HILLMAN: Right. I'm aware of
10 that. I was just trying to understand this issue, to
11 the extent that there is any of this packaging going
12 on, who is doing it? If there is anything you want to
13 add on how the prices of the relative pieces of the
14 package, the fittings versus the pipe, get set. Mr.
15 Teske, do you have a sense of that? Are you looking
16 at independently what's going on in the market for
17 pipe versus what's going on in the market for
18 fittings? How do you decide what to price?

19 MR. TESKE: Definitely. I mean, the
20 distributor quotes construction projects and, in many
21 cases, our pricing on fittings is somewhat
22 standardized. The price of pipe varies on every job
23 almost. And so we call for quotations for pipe, and
24 then we put a bid quote together, and we quote the
25 product to the contractors or the municipalities.

1 VICE CHAIRMAN HILLMAN: Okay. Thank you
2 very much. I appreciate those answers.

3 CHAIRMAN OKUN: Commissioner Miller.

4 COMMISSIONER MILLER: Thank you, Madam
5 Chairman. Let me join in thanking all of the
6 witnesses for being here today. Thank you, Mr.
7 Gerard, as well for adding the union's perspective.

8 My questions, at least the first round, are
9 similar to Commissioner Hillman's in the sense that
10 I'm trying to understand the industry better and what
11 you do. I'm looking at this and going, I haven't
12 seen, at least, this particular fitting industry. You
13 know, a few weeks ago we had a hearing on malleable
14 cast iron fittings, and I'm remembering -- we always
15 see the industry in different bits and pieces, and you
16 look different, and I want to make sure I understand
17 exactly a little bit more about the industry.

18 And at least, to start, I think I'll sort of
19 aim some of my questions toward the product side. It
20 was useful in terms of the market distribution that
21 you were just talking about with Vice Chairman
22 Hillman.

23 Help me a little bit on understanding, for
24 example, the differences and what's been happening in
25 relative markets of the full-bodied and compact

1 product and the size ranges. It looks to me like
2 we're seeing some changes or some shifts. Can you
3 just help me understand the products and what
4 relationships might be going on and changes between
5 the full-bodied and compact product?

6 MR. WAUGAMAN: Let me address that. I'm Don
7 Waugaman.

8 I'm going to give some numbers out here that
9 I think are appropriate to give in an open forum.
10 Full-bodied fittings are a small percentage of the
11 fittings being currently sold in the United States. I
12 don't have a breakdown, of course, of imported
13 fittings, but in looking at domestically produced
14 fittings, full bodies now only represent approximately
15 15 percent of the tonnage sold in fittings in the
16 United States.

17 COMMISSIONER MILLER: Has that changed over
18 time?

19 MR. WAUGAMAN: That's changed over time. If
20 you look at the time of the investigation, there has
21 not been a great change, to my understanding. I've
22 got numbers back as far as 2000, and at that time it
23 was around 18 percent. So there has not been a big
24 change.

25 My understanding, and maybe Mr. Blair can

1 answer this, is the majority of the change from full-
2 bodied to compact fittings took place in the late or
3 mid-eighties, probably as late as the early nineties.
4 Joel, can you comment on that?

5 MR. BLAIR: Joel Blair, Tyler Union.

6 Yes. The major change from full bodied to
7 compact occurred in the eighties, early nineties.

8 COMMISSIONER MILLER: Why? What is the
9 difference between these two products that caused the
10 shift?

11 MR. BLAIR: The major difference, in
12 addition to price, is that they are lighter fittings.
13 They are easier to handle. They are probably more
14 worker friendly. They perform the same functions.

15 COMMISSIONER MILLER: The compact.

16 MR. BLAIR: That's correct.

17 COMMISSIONER MILLER: Mr. Rosenthal?

18 MR. ROSENTHAL: Commissioner, may I present
19 a little historical perspective?

20 COMMISSIONER MILLER: Please.

21 MR. ROSENTHAL: When we filed the dumping
22 case on ductile iron waterworks fittings in 1992,
23 decided in 1993, we filed the case on compact ductile
24 iron waterworks fittings and excluded full bodied at
25 the time and gray iron and actually excluded over 16

1 inches for the following reasons. By the time we
2 filed that case, the market had already moved away
3 from gray iron fittings to ductile because ductile had
4 superior strength and was seen as a better product and
5 moved away from the full bodied, which was bigger,
6 heavier, et cetera, to the compact.

7 So the vast majority -- 85 percent, 90
8 percent -- of the industry overall is in the compact
9 and the ductile fittings, and the reason why there are
10 a few laggards out there, some municipalities have
11 already kind of committed to full bodied and maybe
12 even gray iron, still. I don't know if there is much
13 out there. But they have been more reluctant to shift
14 over time. But most of the industry, by 1993, had
15 shifted to the compact and ductile. As you'll see
16 from the statistics as well, while there is still a
17 fair number of sales in total of product over, let's
18 say, 24 inches, 90 percent of the market is probably
19 24 inches and below in terms of size. Compact and
20 ductile is where the vast, vast majority of the market
21 is and has been since the early nineties.

22 COMMISSIONER MILLER: Okay. And you alluded
23 to the size issue. I look at the differentiation we
24 have. We have information in the staff report on the,
25 you know, over and under 30 inches, but then I look at

1 our pricing products, and they are all a good bit less
2 than 30 inches. I think they are mostly in, like, six
3 and eight and such. Is that where most of the
4 industry is? We have a much larger scope in terms of
5 size than we do in our pricing products, so I want to
6 understand how our pricing products relate to the
7 overall.

8 MR. WAUGAMAN: Maybe I can answer at least
9 part of that question. And, again, on the statistics
10 that I have, which are based on domestic producer
11 sales, up through 24 inch is approximately 90 percent
12 of all of the tonnage of fittings sold. When you look
13 at that, and I don't know how those products were
14 picked, but when you look at our products with the
15 highest amount of unit sales are those in that range
16 of the products that were designated for pricing in
17 the questionnaire.

18 MR. ROSENTHAL: And just to maybe make
19 obvious the point, if 90 percent is below that cutoff
20 on tonnage, it means that, on a unit basis, there are
21 actually many fewer units in that 10 percent because
22 these are heavier products.

23 COMMISSIONER MILLER: Okay.

24 MR. ROSENTHAL: There are relatively few
25 sales in those heavy products. They exist but not

1 very many.

2 COMMISSIONER MILLER: Okay. Now, when it
3 comes to the imported product, the Chinese product,
4 tell me where you see them competing the most, and,
5 again, whether any increases in one area versus the
6 other. Anybody?

7 MR. WAUGAMAN: If you want to know where
8 they are competing, if we can get a map of the United
9 States and show --

10 COMMISSIONER MILLER: I mean in terms of
11 size, not --

12 MR. WAUGAMAN: Oh, okay. I thought you
13 meant where they are competing. That's a pretty big
14 geography.

15 To the best of my knowledge, they offer
16 fittings in every size that we manufacture, and I
17 think if you'll look at their catalogues and compare
18 them to ours, they have at least as many different
19 SKUs, product ranges, and sizes that we offer, even
20 some larger diameter than we offer as Tyler Union, but
21 there are other domestic manufacturers that offer some
22 of those larger sizes above 48 inch.

23 MR. MURRAY: Commissioner Miller, we believe
24 the market -- James R. Murray, vice president, U.S.
25 Pipe -- we believe the market is 75 percent in volume

1 for the 12 inch, and we personally believe imports are
2 in that range in terms of their size. We estimate 80
3 percent, just as a matter of internal analysis, that
4 80 percent of all of the Chinese imports are in the
5 four-to-twelve-inch size range.

6 COMMISSIONER MILLER: All right. One reason
7 I asked that question, I'm just eyeballing this,
8 frankly, and what I'm looking at the industry
9 representatives aren't able to see. So you can
10 comment, Mr. Kerwin, if you want to, either now or
11 post-hearing.

12 You know, I see the overall import data,
13 what it suggests in terms of growth in import volume.
14 Okay? When I look at the growth in volumes in our
15 pricing products, I don't quite see the same degree of
16 an increase, I don't think. Do I? I mean, I'm
17 eyeballing this pretty much on the grass, but that's
18 what it looks like to me.

19 Now, we don't have great coverage on the
20 pricing products, and I take that probably to be
21 because there are so many varieties of products that
22 are produced and sold here. Is that a fair comment,
23 Mr. Kerwin?

24 MR. KERWIN: Yes, yes. The coverage on the
25 pricing products, even with the five that the data was

1 collected on, is relatively small compared to the
2 overall marketplace. But, yes, you're talking about
3 literally hundreds, perhaps even up into the
4 thousands, of different stock-keeping units that fall
5 under the definition of this product.

6 So it's unlikely -- even though that range
7 of products and these individual specifications are
8 some of the most common, there simply aren't any
9 individual products that are going to take up, say, 10
10 percent of the market. So I think your observation is
11 accurate, but due to the limited size of the sample,
12 you can't draw too many conclusions from it.

13 COMMISSIONER MILLER: Okay. Mr. Rosenthal,
14 do you have anything to add?

15 MR. ROSENTHAL: One of the interesting
16 phenomena that you'll see here if you look at the data
17 -- we'll join the argument about what's a surge and
18 when is a surge and argue there has been a surge if
19 you measure it, certainly from '98, certainly from
20 2000, and I would argue that what you have here from
21 the year 2001 is a continuation of the surge because
22 imports have had record levels and continue going that
23 way. Okay? That's a backdrop to answer your
24 question, even though it goes to another issue.

25 What's happened in the last year, year and a

1 half, of the period of investigation is that as market
2 share by the Chinese continued to increase, the
3 domestic producers, and I'll speak principally for
4 McWane, said, look, we have to drop our prices, get
5 more competitive with the Chinese in order to prevent
6 them from coming into the marketplace and gaining more
7 market share. So you have the data there, and you can
8 see what has happened in terms of pricing. The
9 domestic producers were essentially trying to slow
10 down the import growth by dropping price, and I think
11 that's the data that's reflected in your data.

12 COMMISSIONER MILLER: Okay. All right. My
13 time is up, but perhaps I'll come back to this.

14 CHAIRMAN OKUN: Commissioner Koplan?

15 COMMISSIONER KOPLAN: Thank you. I want to
16 thank the witnesses for their direct testimony and
17 their responses to the questions thus far.

18 Mr. Rosenthal, if I can start with you? I
19 note that there's a *New York Times* article provided by
20 the Chinese Respondents in their prehearing brief at
21 page 29 that dwells for the most part on the tragic
22 death of Mr. Roland Hosken on June 29, 2000, at
23 McWane's Texas foundry.

24 But, it also notes at the same time that Mr.

1 Loeb argues at page 11 of his prehearing brief, and I
2 quote: "The Commission has data providing full year
3 import information on Chinese DIWF for 2001 and 2002
4 and half year data for full year 2003."

5 I'm continuing the quote: "The Commission
6 should and must use this 2001-2003 data, not data from
7 earlier portions of the period of investigation, to
8 evaluate whether imports are increasing rapidly." As
9 part of the basis for his argument he cites our prior
10 421 case, the Brake Drums case.

11 Now, I've got the full text of that footnote
12 that both sides have referred to. Let me say to you
13 that consistent with my analysis then I will continue
14 to focus on the more recent time in this
15 investigation, but our period in this investigation
16 begins in January 1998 and runs through the first half
17 of 2003.

18 When I say I'm going to focus on the more
19 recent time, I begin with the year 2000 as my base
20 period, not 2001, okay? That is, I believe,
21 consistent with what I said before. I want to
22 understand where you take issue with that, Mr.
23 Rosenthal.

24 MR. ROSENTHAL: We would be delighted if you
25 focused on the year 2000 forward, as you saw from Mr.

1 Kerwin's statement, because that's exactly the period
2 you used in the Brake Drums and Rotors case, and if
3 you use that period our case for rapidly increasing
4 imports or surge, if you want to put it that way, is
5 even stronger than in that case.

6 I don't take issue with that. Perhaps my
7 comment in my statement earlier has more to do with a
8 Talmudic reading of statutory interpretation than it
9 does in terms of the practical impact on this case
10 because I think if you look at this case from 2000
11 forward you get the result that we urge upon you,
12 which is a finding of rapidly increasing imports.

13 My comment had to do with the reason why
14 post WTO accession was not necessarily a good trigger
15 for looking at the most recent period. I do believe
16 that there may be other reasons to do exactly what
17 you've said. I appreciate what you also said in the
18 footnote, which is you do look at the entire period,
19 and you use that as a base. I don't have any argument
20 with that aspect at all.

21 COMMISSIONER KOPLAN: Well, I'm glad that we
22 were able to clarify that. Thank you.

23 Having said that, let me stay with you for a
24 moment. This next question is my one bite of the
25 apple because in a 421 case we're covering both injury

1 and the remedy, so let me run through this with you if
2 I could.

3 I've read the section of your prehearing
4 brief urging in the event the Commission reaches an
5 affirmative determination we should recommend to the
6 President that he impose a 95 percent ad valorem
7 tariff on subject imports. In fact, I read it, but
8 I'm not sure I understand it. In order to help me
9 better understand what you are proposing, let me ask
10 you a series of relatively short questions.

11 First, how long do you propose the period of
12 relief should remain in effect, because I didn't see
13 anything in that section that refers to that. We can
14 go through these one at a time.

15 MR. ROSENTHAL: We would recommend five
16 years.

17 COMMISSIONER KOPLAN: Okay. How should that
18 period of five years be phased out?

19 MR. ROSENTHAL: We have not agreed amongst
20 ourselves about what the phase down period should be.
21 I don't believe there is a requirement in the statute
22 for a phase down here, and I'd like to if I could
23 answer that more fully in the post-hearing brief.

24 I do, and I don't want to take a lot of your
25 time here, but this is a different animal, 421. I

1 know you appreciate that.

2 COMMISSIONER KOPLAN: I do appreciate that,
3 and I do know it's not a requirement. I'm also aware
4 that you're asking that this be the first case where
5 the President agrees and goes in the affirmative on
6 this.

7 MR. ROSENTHAL: Yes.

8 COMMISSIONER KOPLAN: I know you're not
9 required to, but I wanted to ask you because I didn't
10 see anything on it. This issue wasn't discussed in
11 this section as to whether or not you're going to come
12 up with one.

13 MR. ROSENTHAL: The answer is despite what
14 you might think, we are practical. We will come up
15 with a phase down period, but our view is that for the
16 first several years of relief there should be a
17 minimal amount of reduction for the reasons that we
18 have stated, which is the large differences in the FOB
19 value of the Chinese shipments, FOB Chinese port, and
20 the U.S. producer cost and prices, and we think that a
21 high tariff is necessary to make up that gap.

22 Obviously if things change, if, for example,
23 the currency changes, if wages go up more rapidly in
24 China, then the relief can be phased down more
25 rapidly. I don't want to filibuster on this question.

1 COMMISSIONER KOPLAN: No, because I want to
2 continue on with the question.

3 MR. ROSENTHAL: Okay.

4 COMMISSIONER KOPLAN: Your responses to
5 these for purposes of post-hearing, at least from my
6 standpoint, would be useful.

7 MR. ROSENTHAL: Absolutely.

8 COMMISSIONER KOPLAN: All right. The next
9 question along this line is how much revenue do you
10 estimate will be generated each year by resultant
11 price increases for the domestic industry, assuming
12 that your proposal is accepted?

13 I know you can't give me that now, but I
14 would like that information when you do get into this
15 in the post-hearing.

16 MR. ROSENTHAL: We'll do that. One of the
17 difficult parts of always trying to do these
18 calculations is trying to figure out how much duty
19 absorption there will be, but we will do our best.

20 COMMISSIONER KOPLAN: I know you mentioned
21 that in your brief, but I would appreciate it if you
22 do do your best.

23 MR. ROSENTHAL: Certainly.

24 COMMISSIONER KOPLAN: How will your proposed
25 tariff affect the quantity of subject imports each

1 year that the relief remains in effect?

2 MR. ROSENTHAL: We will answer that in our
3 post-hearing brief.

4 COMMISSIONER KOPLAN: Finally, although I
5 realize you are not required to submit an adjustment
6 plan in a 421 proceeding, specifically if you would
7 provide what does the domestic industry plan to do
8 differently during the period of relief if the
9 President decides to make this the first Section 421
10 investigation for which relief is granted?

11 That, of course, is assuming, because I have
12 to combine this with my questions. I don't want to
13 tell you I've made my mind up on the main case, but if
14 I don't ask these now I can't get to it later with
15 you, all right?

16 MR. ROSENTHAL: I understand. Certainly
17 we'll do that. I will just say that we have already
18 given a fair amount of information about the future
19 plans and investments for the next couple of years.

20 COMMISSIONER KOPLAN: You're asking for a
21 five year period.

22 MR. ROSENTHAL: Correct. Yes. We will go
23 further in our post-conference brief or post-hearing
24 brief about precisely how we would make use of the
25 remaining time of the relief period. Thank you.

1 COMMISSIONER KOPLAN: Thank you very much.
2 I do have a number of other questions, but I see my
3 red light is about to come on.

4 Thank you, Madam Chairman.

5 CHAIRMAN OKUN: Commissioner Lane?

6 COMMISSIONER LANE: Thank you.

7 Listening to everybody talking about how
8 happy they are, glad to be back here after a period of
9 absence, I would like to say I would have liked to
10 have been here last year, but it was beyond my
11 control.

12 Let's ask a few questions about what we've
13 got going on today. Looking at the record, the
14 consumption of these fittings are up. Do you all
15 believe that this trend is going to continue, that the
16 need for the product is going to increase?

17 MR. WAUGAMAN: Let me try to address that
18 because I don't have a crystal ball.

19 If you would have asked me this question
20 three years ago whether the need would have continued
21 to increase, I probably would have said I hope so, but
22 I really am not optimistic that it would. It has
23 continued. As interest rates stayed low, housing
24 continues to grow, and that drives the installation of
25 our products, as well as others.

1 Addressing the future, especially with an
2 election year coming up, I would not like to try to
3 address. In talking to our distributors, most
4 distributors that I've talked to see the need
5 continuing at at least the current rate through next
6 year. They're not very optimistic about increases,
7 but they're not saying that they see a big drop coming
8 in the future as well.

9 I know that that's not a very definitive
10 answer, but that's a tough one to judge. We believe
11 that the market will at least stay the same as what it
12 is and hopefully if interest rates stay low should
13 continue to grow at least slightly.

14 COMMISSIONER LANE: I'm sure that the record
15 has this, but I can't put my fingers on it right now
16 so I will just ask. Are the bulk of these sales made
17 to the ultimate end consumer being residential people,
18 or are the bulk of these sales to municipalities and
19 big item projects?

20 MR. TESKE: Tom Teske, East Jordan. I'll
21 try and answer that.

22 The sales are through distributors, but then
23 most of the sales right now are being driven by the
24 development of single family homes in subdivisions
25 where potable drinking water system lines are going in

1 prior to the homes being built.

2 Those systems, those are purchased by
3 contractors and installed according to municipal
4 specifications, and upon approval by the municipality
5 or township or subdivision or county or state they
6 then become part of the U.S. infrastructure, and
7 they're owned and operated by the cities or governing
8 bodies. Those are the end bodies responsible for the
9 maintenance of 90 percent of them.

10 MR. ROSENTHAL: Excuse me, Commissioner
11 Lane. May I interrupt just for one second and ask
12 your indulgence and that of the rest of the
13 Commission?

14 Mr. Gerard is going to have to leave very
15 soon. Are there any questions that anyone would like
16 to direct to him? I apologize. I understand this is
17 your time.

18 CHAIRMAN OKUN: Madam Secretary, can you
19 just stop the time for a moment and let me just check
20 with my colleagues?

21 What I'll do, Mr. Rosenthal, is just go in
22 order of the Commissioners and see if anyone has any
23 questions.

24 MR. ROSENTHAL: Thank you very much. I
25 apologize.

1 CHAIRMAN OKUN: Vice Chairman Hillman?

2 VICE CHAIRMAN HILLMAN: Thank you. I do
3 have just one quick question, which was to make sure I
4 understood the timing of the negotiations of this
5 protocol on health and safety with McWane.

6 If you could just help us understand? When
7 did you begin these discussions? I take it from your
8 testimony they have been completed, but if you can
9 just give me a sense of the timing of this protocol
10 and also whether you have any similar protocol in
11 effect at the other facilities, the non McWane
12 facilities, at which you do have USWA workers?

13 MR. GERARD: Because McWane has a number of
14 facilities in which we have collective bargaining
15 relationships, we've had health and safety programs at
16 different phases of development with McWane.

17 Also because they purchase facilities from
18 other corporations, many of those facilities that
19 they've purchased were in need of substantial
20 investments and improvement and modernization and so
21 the health and safety protocol were at different
22 levels at different facilities.

23 Mr. Page and I entered into a discussion
24 about a year ago about trying to find a way to get a
25 common approach to all of McWane's facilities in

1 occupational health and safety. Their health and
2 safety professionals and ours had a series of
3 meetings, and we drafted up a very substantial
4 protocol on training, on participation, on inspection,
5 on a wide range of health and safety and environmental
6 projects that regardless of the facility we would have
7 had our common standard.

8 We are in the process now of putting
9 literally hundreds of people through common training
10 programs through a structured approach. I would think
11 to get from where we are now to finish the training
12 and do other things and move through that process
13 we're probably talking about a year's work and then
14 continuous upgrading and improvement. We have, as I
15 said, either facilities, and we're going to train
16 literally hundreds of people.

17 VICE CHAIRMAN HILLMAN: Okay. So the
18 protocol itself you finished negotiating when?

19 MR. GERARD: Eleven months ago roughly.

20 VICE CHAIRMAN HILLMAN: Okay. So now you're
21 at the implementing?

22 MR. GERARD: We're in the training and
23 development stage. Once we've got people trained,
24 we're going to take a group of those people and bring
25 them to a higher level, and they will be like

1 literally health and safety inspectors in the
2 facilities.

3 VICE CHAIRMAN HILLMAN: Okay. Do you have
4 similar protocols with any other --

5 MR. GERARD: Not as broad in this sector of
6 industry. We have similar structures in tire and
7 rubber and steel, but this industry had been a bit
8 fragmented with a lot of separate ownership, and
9 because McWane attempted to consolidate some of that
10 foundry industry there was an opportunity to develop a
11 common base, as opposed to trying to do it eight
12 different times.

13 Let me just say that in case there are no
14 other questions that I'm fascinated by the discussion
15 because I'll just tell you what our members and
16 leaders believe. Our members and leaders believe in
17 this industry. They're in what they call a targeted
18 industry. I don't know that that has any legal
19 ramifications at the ITC.

20 They believe that the Chinese Communists,
21 because they have the difference of their system,
22 price doesn't matter. They want the business. What's
23 happening is they're undermining the pricing structure
24 of the industry, and because they're undermining the
25 pricing structure of the industry no matter what they

1 produce it at it ain't going to be low enough. When
2 that starts to happen they gain.

3 We have to struggle every day on the shop
4 floor to make sure that wages, benefits, health care
5 modernization, investments in health and safety in the
6 environment, are part of the daily struggle, and if
7 it's a targeted industry our members are really quite
8 worried, and they're counting on what happens here.

9 CHAIRMAN OKUN: Mr. Gerard, I need to
10 continue to see if other colleagues have questions for
11 you.

12 Are you finished, Vice Chairman Hillman?

13 VICE CHAIRMAN HILLMAN: Thank you.

14 CHAIRMAN OKUN: Commissioner Miller?

15 COMMISSIONER MILLER: No. I appreciate your
16 elaborating on some aspects of the agreement in
17 response to Vice Chairman Hillman. I have no
18 additional questions. Thank you.

19 CHAIRMAN OKUN: Commissioner Koplan?

20 COMMISSIONER KOPLAN: Thank you, Madam
21 Chairman.

22 I was going to ask a question similar to
23 what Commissioner Hillman just asked, but I also have
24 two others. The first one, Mr. Gerard. Mr. Teske
25 touched on this in his direct testimony, but I want to

1 hear from you as well.

2 Chinese Respondents argue that the
3 Petitioner enjoys protection from import competition
4 in certain geographic markets and refers to this as
5 the Buy American factor. They use this as a principal
6 argument to explain away a substantial margin of
7 underpricing on five DIWF products during the period
8 January 1998 through June 2003.

9 I'm aware of Mr. Rosenthal's argument that
10 includes distinguishing between Buy America
11 requirements and domestic preference specifications,
12 but I'd like to hear from you on this issue as well.

13 MR. GERARD: To the best of our knowledge,
14 we are not aware of any legal Buy American policy by
15 any municipality. Let me say with much candor and a
16 little bit of disappointment, even where we've tried
17 to get one municipalities have been reluctant to do
18 so.

19 COMMISSIONER KOPLAN: But I'm also
20 interested in the impact of where there are Buy
21 American requirements. In other words, is this a
22 significant factor in this particular case?

23 MR. GERARD: No. I don't know of any
24 specific. There may be some, but let me just say our
25 staff are working on this on a regular basis because

1 their livelihood depends on it.

2 We don't know of any municipality that has
3 passed a legal requirement in the last three, four,
4 five years that you by law or by municipal statute
5 have to buy American. I do say they have, and I think
6 that's where we may be able to add something. There
7 are regions that have historical preferences because
8 they may have used that stuff for the last 50 years
9 domestically, and they want to continue using it so
10 there's a historical preference.

11 We try to promote that, but it's been for
12 our purposes and our members very minimal, and we
13 haven't saved many jobs because of it. In fact, we've
14 lost jobs because of the Chinese undermining the price
15 system.

16 COMMISSIONER KOPLAN: Thank you for that.

17 MR. GERARD: Okay.

18 COMMISSIONER KOPLAN: The second question I
19 had relates or goes back to the negative critical
20 circumstances determination or finding.

21 Tell me in terms of the statute . What
22 damage difficult to repair, if any, has occurred to
23 date as a result of the Commission's negative critical
24 circumstances vote on October 16?

25 My recollection is that McWane indicated at

1 the time that they would basically continue business
2 as usual so as not to lose skilled employees or scare
3 off existing or potential customers. Is that what's
4 happened since October 16? Have they continued to
5 operate in that fashion? Can you add anything?

6 MR. GERARD: McWane has had difficulty at
7 the Tyler Pipe Facility with permitting and some stuff
8 that has caused the facility to shut down, get
9 repermited and come back up. Other than that --

10 COMMISSIONER KOPLAN: When did that occur?

11 MR. GERARD: Three weeks ago, a month ago.
12 Three weeks to a month ago. It was a lapsed permit
13 that has to be renewed.

14 Our day-to-day work with McWane has been one
15 where McWane has committed with the international
16 union and the local union reinvestment in
17 modernization of their facilities. They've committed
18 to working with us to do all of the health and safety
19 regulatory work to comply and go beyond the law.

20 COMMISSIONER KOPLAN: So the implementation
21 of the protocol has continued?

22 MR. GERARD: It's continuing as we speak. I
23 think today people are out of the plants in training
24 programs.

25 The point that I want to make is the

1 protocol that we find with McWane goes above and
2 beyond the law, so the first step that we have is that
3 you've got to meet the health and safety environmental
4 minimum standards of the law, and then in our protocol
5 we're going beyond the law.

6 I guess that's why I was so emotional and
7 took such issue with Chinese Communists that have no
8 right taking offense with us because we're enforcing
9 our rights and demanding that we work in clean and
10 safe workplaces. McWane is living up to that since we
11 signed the protocol.

12 COMMISSIONER KOPLAN: Thank you very much.
13 I thank you for the answers to my questions.

14 MR. GERARD: Thank you.

15 COMMISSIONER KOPLAN: Thank you, Madam
16 Chairman.

17 CHAIRMAN OKUN: Commissioner Lane, do you
18 have anything specific for Mr. Gerard?

19 COMMISSIONER LANE: Yes. Mr. Gerard, is it
20 your position that since you've entered into the
21 protocol with McWane that you don't have any concerns
22 about --

23 MR. GERARD: Absolutely not. They're a
24 corporation. We're always watching them.

25 COMMISSIONER LANE: Well, let me finish.

1 That you have no concerns about their safety standards
2 that won't be addressed if you do see any problems?

3 MR. GERARD: I want to make sure I
4 understand your question and I answer it properly.

5 All of these foundries are hot, dirty,
6 dangerous places to work under the best of
7 circumstances, so we will always, every day have a
8 concern about health and safety.

9 If we implement the protocol as we've
10 negotiated it and if we follow that protocol every day
11 24 hours a day, we believe that we will have one of
12 the safest foundries in North America. That doesn't
13 mean it's going to be a safe place to work. It's a
14 foundry.

15 What we've done in the protocol is to take
16 McWane way beyond the minimum requirements of the law.
17 I'm also practical enough to know that when we got all
18 of those eight operations under one umbrella to
19 negotiate one common protocol, that isn't something --
20 I'll put it another way. That isn't an event. It's a
21 process. The signing of the protocol was the event.
22 The implementation is the process.

23 I believe that McWane's facilities will
24 become safer and environmentally more clean, but we're
25 not going to turn our back on them.

1 COMMISSIONER LANE: No, but my question
2 is --

3 MR. GERARD: Okay.

4 COMMISSIONER LANE: -- are you satisfied
5 with the level of cooperation that you are getting
6 from McWane to keep the protocol being met?

7 MR. GERARD: Now I understand. I'm
8 satisfied, and I believe that the level of commitment
9 at the top of the corporation exists.

10 I'm going to be very candid. I think that
11 there's a communications difficulty in the McWane
12 structure because they've had these independent
13 business units and that not every business unit is
14 responding to the protocol as Rufner Page and I
15 thought they would, but overall, as I said, it's a
16 process, and I believe the commitment by the
17 corporation at its senior leadership level is
18 committed to doing it.

19 I know that we've had ongoing discussions.
20 I know that Mr. Page has had meetings with his senior
21 people, and I believe that their commitment, our
22 commitment, the work at the plant level will get us
23 there.

24 It's a slow process, but I believe that
25 they're committed to getting us there, and if they're

1 not we'll just have other difficulties to deal with.

2 CHAIRMAN OKUN: Commissioner Pearson?

3 COMMISSIONER PEARSON: Mr. Gerard, I have no
4 questions. I appreciate very much your presentation.
5 I think my colleagues have done a good job covering
6 the waterfront.

7 MR. GERARD: Thank you. Thank you very
8 much.

9 CHAIRMAN OKUN: Mr. Gerard, I have no
10 questions. The issue about the protocol has been
11 thoroughly covered. I appreciate that. You are free
12 to leave.

13 We will turn to Commissioner Lane's
14 questioning now.

15 MR. ROSENTHAL: Thank you very much for your
16 indulgence. Appreciate it.

17 COMMISSIONER LANE: Let's go back the safety
18 and environmental concerns that have been raised about
19 McWane apparently in a *New York Times* article.

20 Has McWane responded on the record
21 responding to that article, or would you like to
22 comment on the record today as to the accuracy of the
23 record, or is there anything else that we need to know
24 about that story?

25 MR. ROSENTHAL: Commissioner Lane, I

1 responded somewhat to the New York Times article. As
2 I mentioned, the McWane decision early on was not to
3 pick a fight with an entity that buys ink by the
4 barrel full.

5 I have a tremendous amount of information,
6 as do others at McWane, that we brought point by point
7 many of the allegations in the New York Times article,
8 and I don't believe that the company has gone on the
9 record with much of this.

10 Part of the frustration was that they gave a
11 lot of this information to the New York Times before
12 the Times even printed its article and it was ignored,
13 so they're somewhat leery, shall we say, about trying
14 to fight this out in the press.

15 COMMISSIONER LANE: Would it be appropriate
16 for you to provide in post-hearing a summary of
17 McWane's response to that article?

18 MR. ROSENTHAL: Yes. We'd be glad to.
19 Thank you.

20 COMMISSIONER LANE: Okay. Thank you.

21 MR. GREEN: Commissioner Lane, let me just
22 say that Paul may not want to say this, but a lot of
23 the folks that were in a management position at the
24 time that led up to the problems that were way before
25 the article was actually done, through discussions

1 between the company and Union, a lot of that
2 management is no longer here.

3 That management wasn't listening very well
4 to workers and workers' concerns. To McWane's credit,
5 they got rid of most of them.

6 COMMISSIONER LANE: Okay. Thank you.

7 MR. GREEN: I would just like to add as far
8 as Tyler Pipe is concerned, which there's two points
9 I'd like to make.

10 One, McWane operates more than 20 to 25
11 plants. I won't give the specific number for
12 confidentiality. The brunt of the assault, as I've
13 characterized it, from the New York Times article was
14 mainly focused on four facilities. I believe concrete
15 steps were put in place years ago prior to the article
16 to take care of the issues.

17 I am particularly familiar with Tyler Pipe
18 because back prior to 2001 I was in the valve and
19 hydrant business running a facility safely and exactly
20 what Leo would like or we would like or the community
21 would like. I was asked to go take responsibility for
22 Ransom Industries and Tyler Pipe and actually relocate
23 to the Tyler Pipe facility to start implementing the
24 changes that I knew needed to be or as I saw fit
25 needed to be put in place at Tyler Pipe. That was

1 February of 2001.

2 I think our record from that point in time,
3 knowing the specifics and getting into the detail of
4 the instant rates, et cetera, have decreased in excess
5 of 30 to 35 percent annually since that year, and the
6 performance of that facility has improved
7 considerably.

8 Even some of the current issues that were
9 brought up, the South plant permit issues, are a
10 result of trying to clean up old permits that were
11 initiated by our predecessor, Tyler Corporation, Tyler
12 Pipe Industries, who we bought the facility in 1995,
13 permits that were issued back in the early 1980s
14 trying to clean up all of that old history.

15 I have personally taken the rug at Tyler
16 Pipe and shook it trying to clean up everything that I
17 possibly can, and that has been my career with McWane
18 since 1993. I'm trying to just provide a summary, an
19 overview from where I sit.

20 COMMISSIONER LANE: Consistent with that,
21 can you provide in post-hearing the information or the
22 statistics of showing how the safety record has
23 improved since February of 2001?

24 MR. GREEN: Yes.

25 COMMISSIONER LANE: Okay. Thank you.

1 CHAIRMAN OKUN: Commissioner Pearson?

2 COMMISSIONER PEARSON: Thank you, Madam
3 Chairman.

4 A question first for Mr. Kerwin. You
5 displayed earlier Figures 4 and 5. There were no
6 units on the vertical axis. Why?

7 MR. KERWIN: Figure 4 is an indexed
8 accounting of the proprietary data that was contained
9 within the staff report. We have specifically not
10 labeled the axis due to concerns of giving away
11 proprietary information.

12 The same is true of Figure 5, which contains
13 the same information on production from 2000 forward
14 through 2003, so in the interest of not disclosing any
15 proprietary information there's no label to the scale
16 because those are indexed figures starting from a
17 level of 100.

18 COMMISSIONER PEARSON: Yes. Okay. So
19 there's no proprietary information disclosed, but as a
20 practical matter is there any information disclosed
21 when there's no knowledge of the axis, what's on the
22 axis? I mean, is there anything useful about these
23 figures?

24 MR. KERWIN: I believe so. It shows the
25 trend over time, yes.

1 MR. ROSENTHAL: What you're looking at,
2 Commissioner Pearson, is trends, and the Respondents'
3 argument is that the imports, both their volumes and
4 the prices, have had no adverse effect on the domestic
5 industry.

6 What we're trying to show over time is at
7 least the trend in production, if not the absolute
8 numbers in Figure 4, and the comparison of the trend
9 in imports compared to the trend in U.S. production in
10 Figure 5.

11 You're absolutely right. Without absolute
12 numbers these charts are less helpful than they
13 otherwise might be, but again the point was to at
14 least be able in a public forum to rebut the charge
15 that there's no nexus between imports and production.

16 You've got the actual data in your record to
17 decide whether our figures distort or actually
18 properly reflect what's going on.

19 COMMISSIONER PEARSON: I have some questions
20 about non-subject imports. The global markets that
21 I'm more familiar with tend to be very flexible, a lot
22 of moving of product, substitution from one country to
23 another based on changes in supply and demand, a very
24 fluid marketplace.

25 Is that also the case for ductile iron

1 waterworks fittings, or is there more rigidity in the
2 international marketplace?

3 MR. WAUGAMAN: Mike has more of the figures
4 that are confidential and proprietary that I may not
5 have on other Respondents from non-countries if that's
6 the right term, from other countries from China.

7 Historically I think from what we've seen in
8 the market there has always been the majority of the
9 product that has come in has been Chinese product.
10 It's marked on the product, and you can tell where it
11 comes from.

12 MR. KERWIN: I would just add that obviously
13 the Chinese are the driving force behind pricing in
14 the marketplace. They are and have been the number
15 one source country for this product, definitely have
16 the broadest product line of offerings, I believe the
17 largest number of producers, and they have really been
18 in the driver's seat in this market in terms of
19 driving of pricing, as well as the leaps and bounds
20 they've made in market share.

21 It is our belief that if the remedy that we
22 have requested is put into place and Chinese imports
23 begin to reflect more realistic pricing in the
24 marketplace that the non-subject source countries will
25 likely follow their lead.

1 COMMISSIONER PEARSON: Could I inquire from
2 the panel? Do you have direct knowledge of pricing
3 differences between Chinese product and imports from
4 other countries?

5 That was the statement, as I understood it,
6 from Mr. Kerwin. I'm just wondering. Is that a
7 statement that can be corroborated by the panel?

8 MR. ROSENTHAL: Commissioner Pearson, just
9 to help you on this or help us on this, the
10 information in the record does provide information on
11 non-subject imports' average unit values compared to
12 the prices from China, and that was what was
13 referenced by Mr. Kerwin earlier.

14 If you're asking for specific marketplace
15 prices --

16 COMMISSIONER PEARSON: We have people on the
17 panel who have quite a bit of experience in the
18 marketplace, so I thought there might be some general
19 knowledge that it's much harder to compete against
20 products from China than from some other origin.

21 MR. ROSENTHAL: I didn't understand you to
22 be asking that question. I thought you were asking
23 about specific prices from the other countries.
24 That's why I wanted to clarify if you're asking for
25 average prices or --

1 COMMISSIONER PEARSON: No. There was the
2 price leadership assertion, and I just don't have a
3 sense of the marketplace. Those of you who do, give
4 me a better sense for it, please.

5 MR. BLAIR: I'm Joel Blair. As far as we
6 can determine, there is no differentiation between
7 product brought in from China or from India in the
8 pricing in the marketplace from the importers.

9 MR. WAUGAMAN: Let me also address that.
10 This is Don Waugaman.

11 There are also other countries of
12 importation -- Brazil, Mexico, Korea. In addressing
13 it broadly to say I think Joel addressed that there
14 may not be any pricing differentiation between India
15 and between China.

16 A lot of times until the product comes here
17 we don't know what an importer is selling, whether it
18 be Chinese or Indian product. Different people have
19 sold Mexican and Brazilian product. From my
20 understanding of the market and the market pricing,
21 the competition on those products has not been near as
22 severe as the products coming from China.

23 COMMISSIONER PEARSON: Okay. Table 2.1 of
24 the staff report, some of you have it, contains
25 confidential business information, but it does compare

1 imports from China and other sources.

2 As I review those data, it appears to me
3 that imports from other origins constitute a
4 substantial percentage of all imports. Can you
5 comment on whether you think there's the potential for
6 further growth in non-subject imports?

7 MR. KERWIN: There certainly is a potential
8 for further growth in non-subject imports. Our belief
9 is that the single country of China obviously -- in my
10 testimony I addressed in 2003 the single source
11 country accounted for approximately two-thirds of all
12 imports of this product within 2003. That's one
13 country.

14 The numbers in the staff report are the
15 aggregate of all other countries, including all the
16 source countries that Waugaman just listed. Clearly,
17 to have a single source that accounts for two-thirds
18 of the imports, and I believe I also said in my
19 testimony that China had four times as much volume as
20 the next largest country during this period.

21 So when you're comparing individual players
22 and what they're likely to do, individual source
23 countries and what they're likely to do further down
24 the road, I think you have to start from that initial
25 understanding of just how important the Chinese

1 imports are, the kind of market share they have, the
2 broad product line that they offer, the broad
3 acceptance of the product in the U.S. marketplace and
4 then compare back to the individual source countries
5 that the product is also sourced from. They're
6 relatively small in comparison individually.

7 COMMISSIONER PEARSON: Yes. I would concur
8 that China appears to be the largest single player in
9 the import market.

10 I think I'll hold my further questions for
11 the next round.

12 CHAIRMAN OKUN: Thank you for an interesting
13 response.

14 I want to go back to price. I wondered, Mr.
15 Teske, if you could add anything to Commissioner
16 Pearson's question about how you see other non-subject
17 imports in the marketplace in terms of the competition
18 or the prices, quantity.

19 Now, I should make sure. You just handle
20 U.S. product?

21 MR. TESKE: Right, so I'm probably not the
22 best person to answer that question.

23 CHAIRMAN OKUN: You don't see it directly
24 because you're handling --

25 MR. TESKE: Right. I only know that if

1 we're competing with a domestic product against
2 someone who's selling an imported product there's
3 normally a price differentiation, which is hard for us
4 to be successful in the sale, you know, unless we have
5 some preference towards our product.

6 CHAIRMAN OKUN: When you say competing
7 against imported product, do you often know that it's
8 Chinese, or do you --

9 MR. TESKE: No. We really -- right. I
10 mean, correct.

11 CHAIRMAN OKUN: Okay. Then if I could go
12 back on the comment regarding what the AUVs about non-
13 subjects may or may not tell us.

14 I wanted to ask a more general question I
15 guess to you, Mr. Kerwin, and you, Mr. Rosenthal, on
16 AUVs because one of the arguments raised by
17 Respondents is that if you look beyond the pricing
18 products that you would find the pricing, and they
19 used the AUVs I think generally, as I understood their
20 chart, to make this argument.

21 I wanted to get your response to it, but I
22 guess first the response would be how useful are AUVs
23 in this type of product category when we have this
24 very large spread? I guess that is my first question.

25 MR. KERWIN: I'd be happy to answer that and

1 take a crack at it.

2 I think the average unit values in terms of
3 pricing comparisons are largely useless. Obviously an
4 average unit value can show a trend over time, but to
5 the extent that the mix of the products changes over
6 that time, that may be misleading.

7 The Respondents cite to the data from the
8 staff report that show the volume and value and
9 average unit value of products by size. Well, the
10 problem is that the division is made between above and
11 below 30 inch.

12 As we've heard from some of the witnesses
13 this morning, the amount of volume in the above 30
14 inch category is so small as to be almost
15 insignificant, which means that the below 30 inch
16 category is essentially the whole product range and
17 almost the entire -- certainly the lion's share of the
18 volume of the product overall, so even within that
19 below 30 inch range you're seeing literally hundreds
20 of products within that range, and obviously the
21 product mix can change over time.

22 One of the things that the Respondents were
23 adamant about early on in this case is that it was
24 critical that the Commission change its questionnaires
25 that it was sending out to both the industry and to

1 the importers to develop full information on this
2 issue of above and below 30 inch diameter product.

3 I think that the record has come to show
4 that that has essentially been a waste of the
5 Commission's time because there is such a small
6 element of the market that is actually in this above
7 30 inch category, and it is the Respondents themselves
8 that made the claim that their product was more
9 heavily weighted towards larger diameter product.

10 To the extent that the Chinese product
11 reflects larger diameters, which typically sell at
12 higher prices per ton than smaller diameter fittings,
13 of course that would have an effect of pulling up the
14 average unit value for the group overall.

15 CHAIRMAN OKUN: Okay. Mr. Rosenthal, did
16 you want to add something to that?

17 MR. ROSENTHAL: Recognizing the limitations
18 that Mr. Kerwin has described and as you recognize,
19 even then for what they're worth if you look at the
20 unit value chart you can still see that the Chinese
21 are below on average all the other import sources, and
22 their trend is trending downward in a steeper way than
23 the other import sources.

24 I want to clarify to both Commissioner Okun
25 and Commissioner Pearson. It is not that we're

1 unconcerned about imports from other sources. We are.
2 I will take issue with Mr. Blair, my own witness, but
3 my understanding from what I've heard elsewhere in the
4 industry is that the Chinese are traditionally below
5 everybody, including India, and that the other
6 countries' imports are essentially chasing the Chinese
7 to the bottom.

8 That's not to say we're not concerned about
9 India and these other countries, but that the Chinese
10 are the, if you will, worst offender in the
11 marketplace from the point of view of domestic
12 producers. I'll also say that we are looking at other
13 remedies.

14 CHAIRMAN OKUN: I guess I really just had
15 the fundamental question whether the AUVs are useful
16 or not, I mean, to look at, and then I did have the
17 same view of looking at them. I'm not sure that it
18 showed anything other than maybe that they were small
19 percentages. Anyway, I understand your answer on
20 that.

21 With regard to the non-subjects, perhaps in
22 post-hearing you can find another distributor or
23 others who could comment more directly on them. I do
24 think it is useful to hear from the industry on where
25 they see the competition and whether they sense it

1 being Chinese or not in this particular type of case,
2 so anything else you can add on that I think would be
3 useful.

4 Mr. Murray, you had stated either in your
5 testimony or in response to a question, you talked a
6 little bit about price increases that you had
7 attempted, but that I think you had said had not
8 stuck.

9 I know there is information in the record
10 regarding those, but I did want to make sure that I
11 understood from the industry representative the timing
12 of those attempted price increases, what we know about
13 the most recent price increases, whether they've stuck
14 or not and when you would get a sense of that.

15 I'd like to hear from you too, Mr. Green,
16 but Mr. Murray?

17 MR. MURRAY: Ms. Okun, we have in fact -- we
18 are in the process of analyzing the most recent price
19 increase, which was in August of this year.

20 I'm in the same sort of position in trying
21 to make sense of whether or not the price increases
22 have indeed held or if indeed have taken hold because
23 of the complexity of the marketplace in general with
24 all of the distinct geographical areas that have
25 different prices with the myriad products that are

1 sold, considering the weight per unit of each of those
2 products.

3 It's quite difficult and so it's a little
4 early to tell, but if an opinion matters for anything
5 I don't believe that. I'll believe it when I see it.
6 I'll put it that way.

7 CHAIRMAN OKUN: And then just for my sake,
8 because I don't have it in front of me, were there any
9 other attempts of price increases during the period we
10 looked at?

11 MR. MURRAY: Yes. Yes, there were.

12 CHAIRMAN OKUN: And did those hold? What
13 was the timing of those?

14 MR. MURRAY: Not necessarily. I wish I
15 could be more conclusive than that, but as I was
16 stating here earlier I was looking at the graphs which
17 covered the period of investigation, and it's hard to
18 make any sense or rationale so I can't really give you
19 an answer.

20 CHAIRMAN OKUN: When was the timing of the
21 other ones that would have --

22 MR. MURRAY: There was an earlier one
23 earlier this year in March, I believe.

24 CHAIRMAN OKUN: Okay.

25 MR. MURRAY: I'm unsure about the earlier

1 process.

2 CHAIRMAN OKUN: I think some of this may
3 have been in the record, but just in terms of post-
4 hearing I want to clear that up.

5 Mr. Green?

6 MR. GREEN: I'd like to take a first stab at
7 it from more of an operational background, and I'll
8 let Don fill in the gaps that I may leave.

9 I think it's important that the Commission
10 understands or that we communicate clearly that there
11 are several different types of price increases. We've
12 already talked that we've pretty much -- us and the
13 importers are working off the same list price, which
14 happens to be the Tyler or Union list price, which we
15 are the predominant manufacturer and player in the
16 DIWF market.

17 We have attempted and in some cases been
18 successful over the period of investigation with list
19 price increases, say a five percent list price
20 increase to the market.

21 Now, having said that, and we've already
22 provided in testimony that in different regions mainly
23 by different states there are different multipliers
24 that apply. While you may be raising the ceiling, you
25 find that to stay competitive you have a lowering in

1 particular states your multiplier, your discount
2 multiplier.

3 In essence, what I have to look at as a
4 manager and I think as an analyst what is the trend of
5 our annual average national price level for all of our
6 utility fittings. There is a definitive trend.

7 The only way that we've been able to slow
8 down the growth of imports is by aggressive price
9 reductions, and we have had -- you know, in
10 particular, the trend is definite over the period of
11 investigation, about a reduction of \$100 to \$150 a ton
12 on our product across the board as an average as it's
13 reported in our financial books, so the overall trend
14 is definitely declining. I think we have some other
15 documentation that we've provided in our responses
16 that spell that out of what that trend is.

17 There was one year in 2001 where there was
18 intense -- when I was first at Tyler and my focus was
19 mainly on the operations and addressing the concerns
20 that I previously discussed where there was a price
21 increase in that period of time for that year. When
22 that price increase happened in that year, the import
23 market share increased from 11 percent to 17 percent.
24 I have those numbers. They increased.

25 CHAIRMAN OKUN: I'll give you a chance when

1 I come back.

2 MR. GREEN: I'm sorry. I can say it right
3 now. The percent, and not to delay any further, go
4 from 11.4 percent of the market share to 16 percent of
5 the market share, so it has been -- the overall
6 pricing has definitely been declining over the period
7 of investigation.

8 CHAIRMAN OKUN: Okay. I see my red light
9 has come on. I do have some followup questions with
10 regard to a couple things you said, but I'll come back
11 to that.

12 Vice Chairman Hillman?

13 VICE CHAIRMAN HILLMAN: Thank you. I guess
14 having now listened to and sort of trying to follow
15 this whole discussion about average unit values,
16 subject imports, non-subject imports, does cause me to
17 look at this data and to ask either you, Mr. Kerwin,
18 or you, Mr. Rosenthal, or potentially even in a post-
19 hearing brief to help me understand what I think are
20 pretty significant differences between the data as
21 reported based on imports directly as opposed to
22 shipments of imports.

23 The import data, you know, would be that
24 which you would see in Table 2.1, as opposed to the
25 shipments of import data that are detailed in Appendix

1 D. They would show a very different situation in
2 terms of the average unit values of subject product,
3 non-subject product and domestic product than what is
4 laid out in terms of subject/non-subject in Table 2
5 and what would be reflected in the pricing data.

6 If you can help me understand why we would
7 see such significant differences between data as
8 reported on the import basis versus data reported on
9 shipments of imports? We obviously always see some
10 differences that are temporal in nature, but why such
11 a different pattern in terms of AUVs?

12 MR. KERWIN: Well, the critical fact in
13 relation to the Chinese imports is that the unit
14 values at which these products are entering the United
15 States being sold by the Chinese producers are
16 incredibly low, and the markup on this product that
17 the importer takes, and admittedly you have some costs
18 associated with getting the product to where it is
19 ultimately sold to a distributor, but the markup on
20 this product is obviously great.

21 It's very attractive to the importers, and
22 it's just that disparity between the entered value of
23 the product and the selling price of the product that
24 we believe justifies our request for such a high
25 tariff in our remedy to be placed on the Chinese

1 imports that are coming in at these very low values.

2 VICE CHAIRMAN HILLMAN: Then help me
3 understand why the same wouldn't be true for non-
4 subject imports. In other words, if I look at one set
5 of data, I have Chinese imports the lowest and then
6 non-subject imports.

7 If I look at the data on the basis of
8 shipments of imports they're reversed, which means
9 people are not doing the same kind of markup for non-
10 subject products. Why?

11 MR. KERWIN: I think that's accurate that
12 the product is not being sold by the foreign producers
13 at such incredibly low levels as that coming out of
14 China.

15 I don't want to go too far in discussing the
16 non-subject imports because I believe essentially all
17 those numbers are proprietary at this point, but it's
18 clear that the product that is being shipped from
19 China is being sold at the lowest average unit values
20 and the lowest selling prices coming into the United
21 States of any source country.

22 VICE CHAIRMAN HILLMAN: Okay.

23 MR. KERWIN: This is an extremely cheap
24 product, and it's extremely attractive to the
25 importers because they can enjoy such a high markup on

1 this product.

2 VICE CHAIRMAN HILLMAN: And as a general
3 matter, would you tell us that we should be looking at
4 the import data or the shipments of imports?

5 MR. KERWIN: I think the average unit
6 values, as I said before, are of limited importance in
7 coming to the question, for example, in dealing with
8 the question, for example, of underselling.

9 VICE CHAIRMAN HILLMAN: How about on the
10 volume side? Again, there is a difference if you look
11 at imports, as opposed to shipments of imports.

12 MR. KERWIN: Well, the Commission staff
13 calculated market share on the basis of the shipments
14 of the imported product. Obviously there's two ways.
15 We've seen that done different ways in different
16 cases.

17 You know, sometimes the Commission does not
18 have a full accounting of what exactly has been
19 shipped. Therefore, they will rely on the import
20 numbers for purposes of establishing apparent domestic
21 consumption.

22 I think in this case you have a relatively
23 complete record, and the calculation of market share
24 could be done either way. I think the most salient
25 indicator of the effect of the product in the

1 marketplace is the market share as it has been
2 calculated on the basis of shipments.

3 VICE CHAIRMAN HILLMAN: Okay. Okay. Some
4 of your answer also goes to a question I had in terms
5 of the remedy.

6 Mr. Rosenthal, obviously you have based your
7 calculation of what you think is an appropriate tariff
8 level on the declared Customs value, not on our
9 pricing data or on our underselling, I presume to some
10 extent for the reasons that Mr. Kerwin has just
11 outlined in terms of why and how these differences
12 occurred.

13 I would like, if you know it now or if you
14 want to add it in a post-hearing brief, for any
15 precedent in prior Commission remedy recommendations
16 to look at declared Customs values as opposed to
17 pricing or other data on the record. Why should I go
18 to that? I mean, you're obviously picking the lowest
19 number we've got or, if you will, the largest margin
20 number.

21 Why, if that's not what the product is being
22 sold at in the market, if there is a big markup
23 occurring, why is that a good number to base any kind
24 of a tariff on?

25 MR. ROSENTHAL: As you mentioned, Vice

1 Chairman Hillman, I'm not aware of the Commission ever
2 expressing the basis for why it picked a particular
3 tariff level based on margins of -- I shouldn't say
4 that.

5 There may have been statements that based on
6 margins of underselling and some Commissioners'
7 opinions, but, to my knowledge, there is not an
8 understanding or a practice that says that a tariff
9 recommendation, for example, ought to be designed
10 solely or mainly to reduce the margins of
11 underselling. That's point number one. I don't think
12 there's a precedent or a necessity to base your
13 recommendation on that.

14 As a practical matter in this industry,
15 because of the wide gap between selling prices in the
16 marketplace and the entered value and the great
17 ability by importers to essentially reduce their
18 profits and absorb the tariffs, that's why we
19 recommended a tariff as high as we did, as you
20 recognized.

21 We will come back to you with a little more
22 elaboration of this, but I will also reiterate that
23 what you're trying to do here is to come up with an
24 effective remedy, and, if I may, and again through no
25 fault of this Commission -- I know you're always

1 struggling to do something worthwhile, and I recognize
2 with six Commissioners it's difficult to always come
3 to a consensus on what is worthwhile.

4 As someone who has gone through these cases
5 and cases involving the administration and many going
6 back for more than 20 years, what often happens is a
7 negotiation process. What often happens is a watering
8 down of the recommended relief by the Commission. I'm
9 being practical here.

10 The idea is let's do something for the
11 industry, but let's not do anything too painful from
12 the importers' point of view. My fervent hope is that
13 if you're going to come up with a recommendation here
14 that is done in a way that has the objective and the
15 result of providing relief that will allow the
16 investment on our side that's made to do better in
17 terms of cost reduction.

18 Commissioner Koplan's questions on remedy I
19 think I understood, you know, that you get five years
20 if you get this tariff. What are you going to do with
21 it? How is that going to actually help you do this?
22 I understand why you're asking that.

23 I think it's appropriate, although, as I
24 said earlier too, that you also ought to be asking
25 what are the Chinese going to be doing in terms of

1 currency and the other things to be more market
2 oriented.

3 VICE CHAIRMAN HILLMAN: Mr. Rosenthal, that
4 red light has been on for quite some time now.

5 MR. ROSENTHAL: Sorry. I urge you to come
6 up with something that is going to be effective.

7 VICE CHAIRMAN HILLMAN: Okay. Thank you.

8 CHAIRMAN OKUN: Commissioner Miller?

9 COMMISSIONER MILLER: Mr. Rosenthal, had you
10 finished your answer? Was there any more to add? It
11 sounded like you had more or less, even though I know
12 you'll add something more in the post-hearing
13 submission.

14 MR. ROSENTHAL: Thank you. I will stop.

15 COMMISSIONER MILLER: Okay. I say that
16 because I don't believe I have any further questions.
17 I was interested in the AUV questions that Chairman
18 Okun has already asked, so I appreciate your answer
19 there.

20 I may have some questions with regard to the
21 financials, but since we're having an in camera
22 session I'm going to hold those for that point in time
23 because I think, given the confidential nature of the
24 financials, I think that's where I'd like to have the
25 ability to ask something that isn't just for a post-

1 hearing brief.

2 With that, I have no further questions. I
3 appreciate all of the answers that I've heard today to
4 all of my colleagues' questions as well. Thank you.

5 CHAIRMAN OKUN: Commissioner Koplan?

6 COMMISSIONER KOPLAN: Thank you, Madam
7 Chairman.

8 I won't start with you this time, Mr.
9 Rosenthal.

10 Mr. Green, you heard me ask Mr. Gerard about
11 what's occurred since October 16 when we voted on
12 critical circumstances, and you heard his answer. Do
13 you have anything to add to that?

14 If I can refresh you, I stated to him that
15 my recollection was that McWane indicated at the time
16 that you would basically continue business as usual so
17 as not to lose skilled employees or scare off
18 potential existing or potential customers, and I asked
19 him was that, from his standpoint, what had happened.

20 From what he said, since mid October the
21 protocol has continued, and it has been for your
22 employees business as usual. Is that correct?

23 MR. GREEN: That's correct. We can't afford
24 to lose those workers.

25 COMMISSIONER KOPLAN: Okay. Thank you for

1 that. I just wanted to give you the opportunity to
2 add to that if you wanted to.

3 This has been touched on already, but I'd
4 like to raise this. I'd like the industry witnesses
5 to respond to an argument made by Pipeline Components,
6 Inc. at page 9 of their prehearing brief that the
7 domestic manufacturers consider subject product to be
8 a secondary product in this country, merely used to
9 compliment your sales of ductile iron pipe and other
10 waterworks. In other words, that's how the domestic
11 industry uses this product.

12 PCI argues that it's common knowledge in the
13 industry that ductile iron pipe is a major, if not the
14 major, component of each company's product line, and
15 each company sells a full menu of water distribution
16 components. That's at page 15.

17 I believe you did touch on this in your
18 direct presentation. If you have anything you want to
19 add to it, that's fine. If not, I do acknowledge that
20 you did get into this. I just wanted to follow up
21 again, though.

22 MR. GREEN: I believe I've already addressed
23 it adequately.

24 COMMISSIONER KOPLAN: Okay. Thank you.
25 Appreciate that.

1 MR. WAUGAMAN: Excuse me, Commissioner. I
2 would like to add something --

3 COMMISSIONER KOPLAN: Sure, Mr. Waugaman.

4 MR. WAUGAMAN: -- more, and this is Don
5 Waugaman, to what Mr. Green had said from a marketing
6 perspective.

7 Never, to my knowledge, has our company ever
8 gone to a distributor and said we are or not going to
9 sell you fittings if you do or do not buy ductile iron
10 pipe or valve and hydrants from other McWane
11 divisions.

12 I don't believe that's ever happened, and I
13 have never heard in the field of any of the other
14 McWane divisions going and saying I'm not going to
15 sell you valve and hydrants or not sell you pipe at a
16 different price unless you buy fittings. I've never
17 heard that done in the industry, and I think that
18 absolutely never occurred.

19 COMMISSIONER KOPLAN: Thank you for that,
20 Mr. Waugaman.

21 Yes? I see another hand. Mr. Teske?

22 MR. TESKE: Yes. Thomas Teske. I just
23 wanted to add to that. I mean, we are a Griffin Pipe
24 distributor. That's a competitive pipe to their
25 sister pipe company, and we do manufacture fire

1 hydrants and valves which are competitive to their
2 sister company. We've never been asked.

3 COMMISSIONER KOPLAN: Thank you.

4 MR. GREEN: If I could add a comment? I
5 remember, you know, back coming out of my retraining
6 and MBA program after eight years in the commercial
7 construction business in this area when I first got
8 into McWane and the sales aspect I remember calling up
9 the sales manager for ductile pipe when I was making
10 valves and hydrants and saying, you know, what are
11 your thoughts on valves and hydrants.

12 He basically told me not politely, but for
13 the record I'll say politely. He said the heck with a
14 bunch of valves and hydrants. That still resonates in
15 my head.

16 COMMISSIONER KOPLAN: All right. Thank you.
17 Does that complete the industry's response to that
18 question?

19 MR. MURRAY: I'd just like to ask why PCI
20 felt motivated to make that statement? I mean, really
21 for U.S. Pipe to frame a response I'm curious as to
22 why PCI would say that that's not an important product
23 or a primary product of our company. On what basis
24 would they make that claim?

25 COMMISSIONER KOPLAN: I don't speak for

1 them, Mr. Murray. I'll be seeing them this afternoon.

2 MR. MURRAY: Very good. You might ask them.

3 COMMISSIONER KOPLAN: Let's see if I can get
4 through one more.

5 If I can come back to the non-subject
6 countries for a moment? I know there's been a lot of
7 discussion on that, but I'd like to come back to the
8 impact of sales of this product from non-subject
9 countries on your financial performance over the
10 period of examination.

11 Those in opposition argue that your capacity
12 utilization cannot properly be evaluated without our
13 taking into account the extent to which domestic
14 manufacturers have incorporated this product from
15 third countries, as well as China, into their
16 marketing strategies. That's at page 11 of their
17 prehearing brief.

18 I see my red light has come on. I'll let
19 you respond to that in my next round.

20 Thank you, Madam Chairman.

21 CHAIRMAN OKUN: Commissioner Lane?

22 COMMISSIONER LANE: The disparity between
23 the prices of the domestic industry and the foreign
24 imports. Is that disparity followed through, or is it
25 reflected in the ultimate sales to the end user, the

1 consumer public? I hope I've made myself clear.

2 MR. WAUGAMAN: Yes, and maybe I'll let Mr.
3 Teske, our distributor, follow through with that.

4 We sell, as I said in my testimony, at a
5 price that we believe we need to be competitive when
6 we sell our distributors so that they can resell our
7 product into a marketplace and not either lose
8 business to another distributor selling import
9 products or they as a distributor decide to buy import
10 products instead of ours.

11 We have to sell at a competitive nature to
12 that distributor. The distributor then marks up that
13 product and resells it to end users. What you're
14 asking is the reflection of our selling price
15 reflected. If ours is decreased, is that then
16 decreased to the end user? We don't have any control
17 of that.

18 Maybe Mr. Teske can address that further.

19 MR. TESKE: Thomas Teske. I'm not sure
20 there's a complete correct answer to that question.

21 The lower price is used to the degree that
22 it helps someone achieve the overall package, you
23 know, to be a successful low bidder. It may be
24 reflected, or it may help them improve their overall
25 margin. It all depends how one chooses to balance the

1 bid.

2 COMMISSIONER LANE: Okay. Maybe my question
3 really is if a big developer is building a subdivision
4 and if he chooses to buy McWane products and the guy
5 down the road is building another subdivision and he
6 decides to buy foreign fittings, what is the end
7 result between those two subdivisions to the ultimate
8 consumer?

9 I mean, is the ultimate consumer going to
10 notice much difference whether or not it's a McWane or
11 a foreign fitting?

12 MR. TESKE: Well, these products are buried
13 so, you know, once they're installed you really don't
14 know.

15 COMMISSIONER LANE: No. I mean price-wise.

16 MR. TESKE: That depends on the developer's
17 decision of how they price the products that they
18 sell, how they incorporate or build their cost
19 structure.

20 COMMISSIONER LANE: Well, what I'm asking is
21 from a practical standpoint what have you all seen?
22 Does the disparity in prices actually -- I mean, is
23 the ultimate consumer getting a better deal from those
24 projects that use cheaper priced foreign goods?

25 MR. WAUGAMAN: I can address that from what

1 we've seen in the market, Commissioner, and that is
2 that my belief is that that consumer is paying pretty
3 close to the same amount -- maybe not exactly, but
4 pretty close to the same amount -- for a product no
5 matter whether it's our product or an imported
6 product.

7 We try to sell our products to our
8 distributors where they in fact can be competitive,
9 but my belief is that when it comes to the end use
10 buyer when he's buying from a distributor he's
11 probably paying pretty close to the same price for
12 that end use product.

13 We have had end use product quotes, which
14 our distributors have brought to us quotes from a
15 similar distributor supply imported Chinese product,
16 and we've had to adjust our pricing where that price
17 of our product can be similar to that price in the
18 marketplace.

19 I really don't believe there is much
20 difference, if any at all, between what the ultimate
21 consumer is paying.

22 MR. GREEN: I would like to add that
23 relative to the scale of a subdivision the fittings
24 are a small part of the subdivision. Of course,
25 that's a driving factor for consumption, but it's a

1 small part in the overall cost of the subdivision.

2 It's our belief that whatever low cost that
3 the importer obtains from importing product, basically
4 it allows him to have a better margin and allows the
5 contractor to have a lesser degree of a better margin
6 in his back pocket.

7 The ultimate consumer I don't believe
8 benefits from or would notice any difference whether
9 it's an import other than our belief performance-wise
10 maybe, but would see the savings in their back pocket.

11 COMMISSIONER LANE: Okay. Thank you.

12 Now, the next question I have is what has
13 happened to the McWane facility since August of this
14 year as far as production, employees, hours worked and
15 wages paid? Have those been affected since all this?

16 (Pause.)

17 MR. ROSENTHAL: I was just cautioning Mr.
18 Green not to discuss any proprietary data, but I think
19 there is some public information certainly on the slow
20 downs at the Union facility since August.

21 You're looking for information past what
22 you've got for the first half of the year?

23 COMMISSIONER LANE: Yes. Yes. I don't want
24 to violate any confidential information.

25 MR. GREEN: I think I've already announced

1 in my opening presentation what the labor situation
2 was at Union Foundry and what reductions were at what
3 period of time.

4 Sitting here right now, I don't remember
5 what month the last round of reductions were at Union.
6 It was around that August timeframe, but I think your
7 question dealt with since August.

8 The only thing that's happened that has been
9 unfortunate is this situation in the South plant of
10 the Tyler Pipe facility to where we're currently not
11 operating as we work with the regulators, the state
12 regulators, to clean up old permitting issues.

13 The pay rates are governed by collective
14 bargaining agreements that are in effect, so there's
15 been no real change other than trying to minimize to
16 get a standard work week and not run overtime.

17 COMMISSIONER LANE: So are you running as
18 many shifts now as you were in August? You're not
19 allowed to answer that?

20 MR. ROSENTHAL: I think Mr. Green is getting
21 -- I'm trying to tell him you're looking from the end
22 of the first half of the year, and we're getting hung
23 up on does that mean August is the beginning or the
24 end point?

25 COMMISSIONER LANE: Okay.

1 MR. ROSENTHAL: Since the end of July? Is
2 that what you're asking for?

3 COMMISSIONER LANE: Yes.

4 MR. ROSENTHAL: Okay.

5 MR. GREEN: The end of the June is the half
6 of the year under investigation.

7 MR. ROSENTHAL: I'm sorry. Even better

8 MR. GREEN: Since that time, in my testimony
9 we did have to idle the GFD molding line, and that was
10 a layoff of approximately 185 people associated with
11 that facility. That is a matter of record that we've
12 presented, so just to clarify that I guess.

13 COMMISSIONER LANE: Okay. Thank you.

14 CHAIRMAN OKUN: Commissioner Pearson?

15 COMMISSIONER PEARSON: Mr. Rosenthal, you'll
16 appreciate that this is my first 421 case. I'm trying
17 to sort out and make sense of it.

18 You know far more about the statute and its
19 potential application than I do, so help me out on
20 this one if you could.

21 COMMISSIONER KOPLAN: This is my first one
22 too.

23 COMMISSIONER PEARSON: Okay. Well, we'll
24 learn it together.

25 Let's assume that injury is found, and then

1 the Commission will have responsibility to determine a
2 remedy. You have earlier urged us to try to come up
3 with an effective remedy.

4 Is there any way to devise an effective
5 remedy? Is there any way to devise a remedy in this
6 case that won't have the effect of encouraging
7 increased non-subject imports?

8 MR. ROSENTHAL: A fair question, and
9 certainly Respondents would argue don't bother because
10 if you do anything with respect to China then you're
11 going to have imports from India and other sources. I
12 understand that argument, and I understand the
13 concern.

14 If the answer is nothing you can do will
15 help the industry you might be frustrated, and so
16 would we, but I think the answer is yes, you can do
17 something to deal with China which would not be
18 undermined severely by non-subject imports.

19 First, China is really the price leader. If
20 the Chinese prices rise, I believe that the imports
21 from other countries will also increase their prices,
22 so it will have a beneficial impact on the industry if
23 you get Chinese prices to increase.

24 Secondly, to respond to your question
25 earlier, this is not, if you will, grain or some other

1 agricultural commodities which I know you're familiar
2 with where there are many, many sources. Yes, there
3 are other import sources. India has been mentioned,
4 Brazil and China have been mentioned, but all these
5 sources have to be able to, number one, meet the AWWA
6 specs, which is a limitation. There are a limited
7 number of non-subject import sources that can come
8 into the market and undermine the relief.

9 Third, I would say that while Mr. Loeb would
10 prefer that the industry deal with the non-subject
11 imports through a 201 case or would have preferred
12 that we dealt with the imports from China in an
13 antidumping case, I think I heard him concede material
14 injury and causation before. I'm just kidding. He
15 may have a different view on that.

16 As a practical matter, I don't think you as
17 a Commission have to decide that you are solving all
18 of the industry's problems if you deal with the issue
19 of China. If the result of an effective remedy on
20 China or a remedy on China is that the imports from
21 India increase, then the industry has the option to
22 come in if it can prove dumping and injury as a result
23 of increased imports from India to bring a case of
24 that sort.

25 I believe that that is not something that

1 you have to anticipate or calculate in devising your
2 remedy. If you fix, if you will, or attempt to fix
3 the China problem, a large portion of the problem that
4 the industry faces will be resolved. It would solve
5 everything.

6 I want to be very, very clear about this.
7 We made it clear in the staff conference. I want to
8 make it clear now. China is by far the most
9 significant problem that the industry has faced. I'm
10 not going to say that imports from other countries are
11 not a problem, but they are nowhere close to the
12 problem that the imports from China have been.

13 That may change. If China recedes, imports
14 from India may come up, but I don't think they will
15 come up as aggressively, as rapidly as the imports
16 from China have because that has not been the history
17 to this point, and I believe that even if the volumes
18 increase the prices won't be at the levels of the
19 Chinese prices.

20 COMMISSIONER PEARSON: Okay. I have
21 observed over time unintended consequences of
22 government actions in marketplaces, so let me ask
23 about two possible ones here.

24 First, if Chinese imports are no longer in
25 the marketplace is it plausible that imports from

1 other countries would come in at a higher value, thus
2 giving higher earnings to the manufacturers in the
3 other countries?

4 MR. ROSENTHAL: I want to make sure I
5 understand the question. That imports from India, for
6 example --

7 COMMISSIONER PEARSON: Yes.

8 MR. ROSENTHAL: -- might come in at a higher
9 value or a higher price than they are coming in now
10 and, therefore, increase the returns of the Indian
11 producers?

12 COMMISSIONER PEARSON: Yes.

13 MR. ROSENTHAL: I think that's not only
14 possible. I think that's likely. That would not be a
15 bad consequence from the point of view of this
16 industry because we don't have any problem with other
17 producers making money on their products as long as we
18 can as well.

19 Part of the problem you have here is that
20 the prices are so low that the domestic industry
21 cannot make money on its product, but if others priced
22 more realistically I don't think there's a -- it's a
23 consequence that we would have terrible problems with.

24 COMMISSIONER PEARSON: Okay. So in that
25 situation if we have five years of relief, for

1 instance, and all of a sudden you are a manufacturer
2 of ductile iron waterworks fittings in a country
3 that's not subject to any import limitation, you're
4 making more money because you're selling at a higher
5 price into the United States.

6 Why don't you reinvest in your facility if
7 you think you can recoup that investment within five
8 years and try to claim all the market share in the
9 United States that the Chinese are giving up?

10 MR. ROSENTHAL: That is certainly one
11 possibility, but another possibility is that you may
12 actually pay your workers more money and spend more
13 money on environmental and safety issues as well.

14 The other prospect, or while they are
15 getting more money the domestic industry is also being
16 able to invest, become more competitive and be able to
17 deal better with its foreign competition going down
18 the road.

19 Honestly, clearly fair questions, but I
20 would flip it around, as I want to do, and say the
21 alternative is that if you don't take the action to
22 put an effective remedy in place this industry won't
23 be around to know whether it can compete against
24 imports from a stronger Indian competitor five years
25 from now.

1 I understand the possibility of these
2 consequences, but I know and I believe that there is a
3 much greater possibility, and I would say put it in
4 the probability category, that the people sitting
5 around this table will not be here in five years to
6 test whether that consequence has come to pass.

7 COMMISSIONER PEARSON: Mr. Green?

8 MR. GREEN: If I could add real briefly?
9 All we're appealing for or petitioning for is so that
10 we can make a reasonable rate of return and to be able
11 to continue our capital investment plan that we've
12 been maintaining for many, many years. That's all
13 we're asking for.

14 I don't think that we're going to have this
15 plethora of profits flowing in the door that we can
16 just harvest and have a cash cow. It's going to be
17 still a demanding industry, but we're asking that we
18 can get with a reasonable profit.

19 I don't know that we're going to drive --
20 we're not proposing to drive the Chinese imports out
21 of the market. We're just asking to be on a level
22 playing field.

23 COMMISSIONER PEARSON: I could clarify that.
24 Too much of my career was spent working for businesses
25 that were not doing well financially. Although that's

1 a very interesting experience, I certainly don't wish
2 it on anyone. I want you to understand that I have
3 some appreciation for financial hardship.

4 In this particular case, just going back to
5 the point, I mean, don't we run the risk of imposing a
6 remedy that inadvertently leads several years down the
7 road, perhaps even within one year down the road, to a
8 much stronger, more robust competition from non-
9 subject countries?

10 I mean, do we run the risk of taking a short
11 term step seeking relief that just makes life all the
12 less tenable and livable in the long term?

13 MR. ROSENTHAL: The answer is yes, but
14 unless you take that risk, and it is a risk, there is
15 an absolute certainty that there will be no long term
16 for this industry, and yet this is my first 421 case,
17 but it's not my first import relief case here by a
18 long stretch.

19 I'll tell you that every one of the cases
20 that comes before this Commission, whether it's a 201
21 case or a Title VII case, has that implicit risk in it
22 because every case that comes before the Commission
23 the Petitioners are asking for prices to increase so
24 they can make more of a profit to invest or survive,
25 you name it.

1 Every one of those instances in which the
2 price increases in the U.S. provides an opportunity
3 for foreign producers to increase their prices as
4 well, and so there's always the risk that you will
5 make the foreign producers stronger in the short term.

6 In some instances, Commissioner, I will tell
7 you that the longer term has not been good for the
8 industry. Ultimately they couldn't survive despite
9 the relief recommended. There have been other
10 instances where the industry has survived, prospered,
11 and but for the relief provided by the Commission
12 would not have been able to do that.

13 There's certainly no guarantees in the
14 Commission business and the remedy relief business,
15 but the only guarantee I think that is fair to have is
16 that this industry is headed for oblivion, extinction,
17 and if there's not a remedy here there will not be an
18 ability to know whether the consequences of relief
19 will be bad or good.

20 COMMISSIONER PEARSON: Thank you.

21 CHAIRMAN OKUN: There were a number of
22 questions on the operations of the industry that I had
23 written hopefully to pose in public session, but given
24 that we have an in camera I think I will just hold
25 that entire line of questions for the in camera

1 session when we can talk in more detail about
2 information that's confidential business information.

3 A post-hearing request for you, Mr.
4 Rosenthal, which is if you can include in your brief a
5 focus on the conditions of competition that you think
6 are particularly relevant here. I know you've been
7 asked a question about the demand over the period, and
8 I'd be interested in that as well.

9 As it relates to remedy, one of the
10 arguments made about remedy by the Respondents is
11 arguing about seasonality and when the imports come
12 in. I wondered if there was anything you could say
13 about that at this point?

14 I'd also like to cover it in post-hearing,
15 but is there anything in terms of how you look at the
16 record and how we would evaluate any remedy for any
17 seasonality?

18 MR. ROSENTHAL: Two very brief points. One
19 is despite their argument on seasonality that most of
20 the imports will come in in the first half of the
21 year, what Mr. Kerwin pointed out earlier I thought
22 was quite interesting, and that is imports have
23 continued to come in at an increasing rate since the
24 first half of the year, so I think that undermines
25 their seasonality concern.

1 We do concede that much of the sales take
2 place in certain periods of the year, but it's
3 apparent that the import sales don't follow that same
4 pattern.

5 CHAIRMAN OKUN: Okay. Then you were asked a
6 number of questions on remedy that I will look for in
7 the post-hearing brief, but I guess in listening to
8 your response a few moments ago I guess I would say,
9 Mr. Rosenthal, that I would encourage you to put in
10 not the one to negotiate down with the Administration,
11 but the one you really think they need because, given
12 the experience in the 201, I don't think that's what
13 the Administration did.

14 Not that it was my remedy anyway, but I just
15 want to say that. I'm not looking at you ask for the
16 moon because you don't think that's what you're going
17 to get. Give us what you think this industry needs.

18 MR. ROSENTHAL: Fair enough. Believe it or
19 not, I believe that because of the uncertainties and
20 for the reasons we told you about, that high margins
21 by the importers, I do think the remedy we recommended
22 is justified.

23 I also have been around long enough to know
24 that it is unlikely that the remedy, even though I
25 think it's justified, is likely to be accepted by the

1 Administration, but I honestly believe that what we
2 put in our prehearing brief and what we've told you
3 today has a good economic rationale and will provide
4 the basis for a recovery.

5 I hate to negotiate against myself, however,
6 but we will put in alternatives and a greater
7 justification for those alternatives in our post-
8 conference brief or post-hearing brief.

9 CHAIRMAN OKUN: Okay. Mr. Kerwin, you
10 wanted to add something?

11 MR. KERWIN: Yes. Thank you. This is to
12 follow up to Paul's answer and also comes back to the
13 point that we ended Vice Chairman Hillman's
14 questioning on in the last round.

15 I just wanted to add that the justification
16 for the tariff that we requested at the time that we
17 put the petition together to request for a 95 percent
18 tariff was based on the disparity between the entered
19 values of the Chinese product and the cost of
20 production that is inherent within the domestic
21 industry for this product.

22 Since that time, as the record has been
23 developed it turns out that in point of fact the
24 entered values of this product as reported in the
25 questionnaires are actually lower than what was shown

1 in the official statistics -- go figure -- and that
2 the cost of production for the industry overall was
3 actually higher, so the disparity is actually greater
4 between the entered product.

5 The entered value and the cost of production
6 is actually greater than what we pointed to for our
7 justification in the petition. That's point one.

8 CHAIRMAN OKUN: Did the petition ask for the
9 95 percent, or did it ask for a quota?

10 MR. ROSENTHAL: We did ask for 95 percent.
11 We said that we would wait to see the volume data once
12 it came in because we thought a quota might be better.
13 Having had the benefit of more time, et cetera, we
14 decided to stick with the tariff recommendation.

15 MR. KERWIN: My mistake. We've submitted so
16 many documents in this case so rapidly that I'm
17 getting them mixed up. Perhaps that was the post-
18 conference brief. My mistake.

19 At any rate, the other point that I wanted
20 to make was that when you're assessing a 95 percent
21 tariff and you look at the average unit values as
22 reported by the foreign producers of what they're
23 selling this product into the United States for, and
24 these are public figures, \$645 per ton in the first
25 half of 2003, that compared to an average shipment

1 value of those products within the United States of
2 \$1,775 per ton. That's an enormous disparity, as we
3 discussed before.

4 What you should bear in mind is that the
5 tariff will be assessed on the entered value. It will
6 be something very close to that \$645 per ton. A 95
7 percent tariff on \$645 is somewhere around the
8 neighborhood of \$600, \$600 some.

9 If you then add that onto or compare that to
10 the existing average unit value of \$1,775 per ton,
11 that works out to about a 34 percent increase in that
12 we'll call it a selling price, even though we know
13 it's not. It's an average unit value. In relation to
14 that average unit value, that's a difference of only
15 34 percent as opposed to the 95 percent on the entered
16 value.

17 CHAIRMAN OKUN: I think the points have been
18 raised, and certainly I'll look at them in post-
19 hearing, but I think this AUV issue I think raises a
20 lot of concerns for me. If we're not relying on it
21 for what you think that it's being sold for, I'm
22 trying to understand whether that's a good idea to do
23 for the remedy.

24 I think in formulating what we are trying to
25 do. I think you need to keep those points in mind.

1 MR. KERWIN: Let me finish my thought. That
2 34 percent actually happens to be the highest figure
3 of underselling that is shown in the product specific
4 pricing information for the five products on which the
5 Commission gathered data. Thirty-four percent. It's
6 the exact same number.

7 That's assuming that none of the duty is
8 absorbed by the importers. That's assuming that 100
9 percent of that \$600 and some tariff is passed through
10 in the price to the purchaser of this product.
11 Personally, I believe that to be farfetched to assume
12 that none of this duty increase will be absorbed by
13 the importers.

14 CHAIRMAN OKUN: Okay. I will look at what
15 you submit, and I will evaluate that if we get to that
16 point.

17 Mr. Green, at the end of my last round we
18 were talking about pricing in the market. I don't
19 know if there was anything else that you had wanted to
20 add. I thought at one point you had wanted Mr.
21 Waugaman to comment on that.

22 Mr. Waugaman, you look like you have your
23 microphone. Was there something you wanted to add?

24 MR. WAUGAMAN: Yes. If David was finished,
25 I want to add something because I read the

1 respondent's brief about an an August price increase
2 and an April price increase, and here as Vice
3 President of Sales and Marketing, I'm scratching my
4 head trying to figure out exactly what they're talking
5 about, so I an imagine the confusion of the committee
6 as to what the price increases really were.

7 Let me address this very simply in saying
8 the last list price increase that Tyler Union had was
9 announced to take place in October of last year. It
10 was less than a five percent price increase on
11 fittings up through 12 inch.

12 It was not actually implemented until
13 January of this year because implementing it early
14 would have put us out of a competitive position. We
15 implemented that in January of this year. That was
16 the last price increase. That is the list price
17 that's in effect today.

18 We also over the period of the last two
19 years have had to increase our discounts, in fact
20 lowering the selling price to the market on numerous
21 occasions. We submitted with our questionnaire
22 approximately 20 occasions where we have had to
23 actually decrease the selling price by increasing the
24 discount on the list.

25 We have made an attempt on a limited area to

1 try to reduce the discount on the list, in fact
2 raising list price or raising prices to the field, but
3 on no occasion have we ever tried to do that above the
4 level that we were prior to increasing our discount,
5 so in fact there has been no price increases that have
6 gone through that have not been subsequently addressed
7 by a previous larger price decrease.

8 The only time I have ever seen, and I take
9 my hat off to the Respondents talking about pricing
10 and raising prices, but I can tell you the only time
11 I've ever seen an announcement of a price increase by
12 an importer that was not preceded by a price increase
13 by a domestic supplier, the only time I've ever seen
14 that happen was when a distributor gave me a copy of
15 such price increase the day before, mysteriously the
16 day before our last meeting here with the staff.

17 I may add that from our experience in the
18 field, we have seen no implementation of that price
19 increase or multiplier change, discount change that
20 was announced at that time. I hope that clarifies the
21 issue a little more.

22 CHAIRMAN OKUN: Yes. I appreciate all that
23 additional information. To the extent there's
24 anything that needs to be supplemented on the record,
25 I would appreciate that as well.

1 Vice Chairman Hillman?

2 VICE CHAIRMAN HILLMAN: Thank you. I hope
3 just one quick followup, Mr. Green, on the response
4 that you gave to Commissioner Lane just to make sure I
5 understand it.

6 Can you confirm? You said that the Tyler
7 South plant is not currently operating today?

8 MR. GREEN: That is correct.

9 VICE CHAIRMAN HILLMAN: Okay. How much of
10 McWane's production does that Tyler South plant
11 represent? Again, if that's a confidential number you
12 can submit it.

13 MR. GREEN: Okay. We will submit that
14 confidentially.

15 VICE CHAIRMAN HILLMAN: Okay. When do you
16 anticipate reopening the facility?

17 MR. GREEN: Negotiations with the state is a
18 day-to-day process. We're making good progress, but I
19 don't have a firm date. I would anticipate it here in
20 the next probably week or so.

21 VICE CHAIRMAN HILLMAN: And the plant was
22 shut when?

23 MR. GREEN: We voluntarily closed the
24 facility as we worked these issues out with the state
25 approximately three weeks ago. It was probably three

1 Fridays ago tomorrow.

2 VICE CHAIRMAN HILLMAN: Okay. That's the
3 only additional questions I had.

4 MR. GREEN: Could I possibly address --

5 VICE CHAIRMAN HILLMAN: Sure.

6 MR. GREEN: -- a question that Commissioner
7 Lane had addressed?

8 I had a chance to go back and look at my
9 real numbers when we were talking about production
10 equipment being shut down. The first phase of the
11 shutdown of the GFD molding line was done in July.
12 That was where we eliminated a production shift.

13 In August, we eliminated the first shift,
14 which would have been thus the second shift of
15 production reduction, so that was done after the
16 period of investigation, so technically July and
17 August.

18 VICE CHAIRMAN HILLMAN: Okay. Appreciate
19 those clarifications, and I have no further questions,
20 Madam Chairman.

21 CHAIRMAN OKUN: Commissioner Koplan?

22 COMMISSIONER KOPLAN: Thank you, Madam
23 Chairman. I just have a couple of matters left.

24 First, Mr. Rosenthal, I'd like to echo what
25 the chairman said with regard to your evaluation of

1 your remedy recommendation. I don't really consider
2 this a proceeding where you'd be negotiating against
3 yourself. That's not the purpose of what we're doing.

4 At the same time, I remember when I asked
5 you my detailed questions with regard to remedy.
6 Initially, the one thing that stood out in my mind was
7 that you kept using the word practical, so reminding
8 you that I heard that more than once I would simply
9 urge you to be practical.

10 MR. ROSENTHAL: I appreciate that. I'll
11 certainly do my best on it, but I will tell you quite
12 honestly that it is very important for the Commission
13 to recognize when I say practical, I'm not talking
14 about just politically practical.

15 COMMISSIONER KOPLAN: I understand.

16 MR. ROSENTHAL: I'm talking about effective
17 remedy. When you're looking at a tariff remedy, you
18 know as a matter of law that your tariff gets applied
19 to the product value as entered. Actually, it's FOB
20 foreign port. Then you add the freight and the
21 insurance, et cetera.

22 It is not a tariff that is added or
23 addressed solely at the margins of underselling. Mr.
24 Kerwin explained how we got to where we got, and I
25 think it is entirely justified. I also recognize that

1 it's a much higher number than the Commission is used
2 to hearing and it may take you aback, but it is a
3 practical number. It is a number that's based on
4 what's happening in the marketplace.

5 I also recognize that it is a higher tariff
6 than this Commission has ever recommended, and it
7 gives you pause. We will do our best to explain why
8 that's the best way to go. If not, as I said, we'll
9 come up with some alternatives that may make you feel
10 more comfortable.

11 COMMISSIONER KOPLAN: I wouldn't say it
12 gives me pause. I would say you got my attention with
13 it. I don't think I need to say any more on that
14 point.

15 MR. KERWIN: Commissioner Koplan, could I
16 add one point? We're well aware that this is not a
17 dumping case. We've heard that since we walked in the
18 door this morning.

19 Just by way of illustration, I would say
20 that it's not unusual in the least in the many dumping
21 cases that we have seen in relation to products from
22 China to see dumping margins of 200, 300, 400 percent
23 often times in relation to the same product that may
24 be coming from another source country that ends up
25 with a 20 or 30 percent dumping margin.

1 COMMISSIONER KOPLAN: But this is not a
2 dumping case.

3 MR. KERWIN: I'm well aware of that, but I
4 provide that by way of illustration to say that it is
5 not unusual to see these types of disparities,
6 depending on the source country, that China is
7 certainly the country that is typically selling
8 products at the absolute lowest prices in relation to
9 other countries.

10 Therefore, I don't find it extremely unusual
11 when you're looking at China by itself to recommend a
12 remedy that would be significantly higher than what
13 you would recommend in the 201 context where you're
14 recommending a remedy that would be applicable to all
15 countries essentially in the world unless there's some
16 exclusions.

17 COMMISSIONER KOPLAN: I appreciate what
18 you're saying, Mr. Kerwin. I'm just saying when we're
19 looking at a dumping case you're looking at an
20 allegation that the product is being unfairly traded.
21 The thrust in the 421 is not that. It's that there's
22 this rapid increase.

23 MR. KERWIN: Understood. Understood.

24 COMMISSIONER KOPLAN: I appreciate, though,
25 what you're saying.

1 Let me come back now, if I could, to the
2 question that I left with on the last round just so
3 the record is complete on it. You all have had a
4 chance to think about it, but I'll state it again for
5 the record.

6 In following up on other questions of my
7 colleagues in this area, this particular area, I'd
8 like you to discuss the impact of sales of this
9 product from non-subject countries on your financial
10 performance over the period of examination because
11 those in our position have argued specifically that
12 your capacity utilization cannot be properly evaluated
13 without taking into account the extent to which
14 domestic manufacturers have incorporated DIWF from
15 third countries, as well as China, into their
16 marketing strategies. Again, that's from PCI's
17 prehearing brief at page 11.

18 MR. ROSENTHAL: Their argument doesn't get
19 me more clear. I read it before, and I wasn't sure
20 what they were saying then. I hate to have someone
21 attempt to answer that because I'm not exactly sure
22 what the allegation is.

23 To the extent that they're saying that --

24 COMMISSIONER KOPLAN: That's why I asked the
25 question.

1 MR. ROSENTHAL: Honestly, if they're
2 suggesting that third country non-subject imports have
3 been incorporated into the industry's marketing plans
4 and that has somehow affected capacity utilization,
5 I'm not sure if that's where they're going.

6 I heard another argument from the
7 Respondents about capacity utilization, which I think
8 was that gee, since capacity utilization is
9 historically low in this industry imports can't be the
10 problem, which is another issue, but I'm not sure
11 that's the one that you're asking.

12 COMMISSIONER KOPLAN: I thought what they
13 were arguing was that non-subjects have had an effect
14 on your capacity utilization and that that's not being
15 taken into account. I thought that was the thrust of
16 what they were arguing. They can better explain that
17 this afternoon.

18 Mr. Green?

19 MR. GREEN: If I may address something on
20 the capacity utilization subject? It is possible to
21 be profitable in the sand molding foundry industry
22 with relatively low capacity utilization rates.

23 It is important to note, in my opinion, that
24 our rates have declined during the period of
25 investigation during also a period of significant

1 consumption growth because we are losing market share
2 as the import share has grown two to three times.

3 Sand molding processes, unlike maybe coat
4 hanger production or whatever, require a lot of
5 maintenance repair time due to its destructive process
6 nature. We also allow for some excess capacity. When
7 we spend a significant portion of dollars into a
8 molding line, we allow a little bit of growth room in
9 a market that we anticipate to be growing at a
10 somewhat steady rate, which we have seen over this
11 period of investigation.

12 COMMISSIONER KOPLAN: Thank you very much
13 for that. Does anybody else want to add to that?

14 (No response.)

15 COMMISSIONER KOPLAN: If not, I appreciate
16 that response.

17 Finally, Mr. Teske, in your opinion, has the
18 Chinese product been more widely accepted in recent
19 years? If so, why and over what period of time?

20 MR. TESKE: I think in the U.S. in the whole
21 market it's definitely had an increased acceptance,
22 particularly in markets like Texas, Houston,
23 California areas. I do believe that the Chinese
24 product over the past 10 years has improved in
25 quality, and I think their product breadth, their

1 product offerings have improved.

2 I think many of the original importers just
3 imported high volume items. I think over time they've
4 added to their product line and in many cases can
5 match what at one time would have been a domestic
6 advantage of having a broad product offering.

7 I think that over time they've improved all
8 those variables, coupled with the fact that they have
9 a lower price, and because there's fewer domestic
10 competitors over the same period of time I think
11 they've been able to grow.

12 COMMISSIONER KOPLAN: Thank you, Mr. Teske.

13 If I could just come back, Mr. Rosenthal,
14 just for a second on that issue of capacity
15 utilization that we were just discussing? Because
16 it's all bracketed and I can't get into it here, if
17 for the post-hearing you take a look at page 12 of
18 PCI's brief where there's a discussion of this, but it
19 is bracketed? If you could respond perhaps in a
20 little more detail post-hearing?

21 MR. ROSENTHAL: Certainly.

22 COMMISSIONER KOPLAN: Thank you very much.
23 With that, Madam Chairman, I have no further
24 questions, and I thank you all for your responses.

25 CHAIRMAN OKUN: Commissioner Lane?

1 COMMISSIONER LANE: With the shutdown of I
2 think you called it the South Texas plant or maybe the
3 plant in south Texas, that's been shut down for the
4 last three weeks. Has the production been shifted to
5 one of the other facilities?

6 MR. GREEN: Not yet. We've been drawing
7 down the inventories of available product.

8 We're working diligently to get that
9 facility back up and running, and we expect it to be
10 in the near future so it is not as conceivable to be
11 shifting production over to another facility. It
12 would take a period of time to be able to do that.

13 COMMISSIONER LANE: Okay. Thank you.
14 That's all the questions I have.

15 CHAIRMAN OKUN: That's all the questions you
16 have? Okay.

17 Commissioner Koplan, do you have some guests
18 to greet?

19 COMMISSIONER KOPLAN: Yes, I think this time
20 I actually do, Madam Chairman. I'll hold Mr. Lahey
21 accountable if the answer again is no, but I believe
22 that the people who just came into the room are
23 students from Brandeis University's International
24 School of Business.

25 Do I see people nodding their heads in the

1 affirmative? If you would all stand, I'd appreciate
2 it. Welcome to the Commission.

3 (Applause.)

4 COMMISSIONER KOPLAN: Thank you, Madam
5 Chairman. It's nice to be right once out of twice.

6 CHAIRMAN OKUN: Thank you, and welcome.

7 Commissioner Pearson?

8 COMMISSIONER PEARSON: I have no further
9 questions, Madam Chairman.

10 CHAIRMAN OKUN: One question for the post-
11 hearing, which is if you, Mr. Green, could just give
12 some, and I guess maybe what is the question is
13 whether you had some type of production or business
14 plan that would have related to when you installed the
15 new equipment at Union and if we could have those
16 submitted post-hearing? I was just kind of
17 interested.

18 I heard what you said about demand, but if
19 there was anything else that would have been in any
20 business documents, I'd like to see those.

21 MR. GREEN: Okay.

22 CHAIRMAN OKUN: Mr. Rosenthal, as much as I
23 love to engage in all kinds of legal issues with you,
24 I don't think this is the case you really want to pick
25 a fight with me on the footnote, so I'm going to leave

1 it like that.

2 If you bring in another case where I think
3 we need to argue about what Commissioner Koplan and I
4 said about the WTO accession and the accompanying WTO
5 China specific safeguards language and what the U.S.
6 statute meant and what time period it was meant to
7 cover, we can argue about it then.

8 MR. ROSENTHAL: By the time the next case
9 comes around, it will be a historical anomaly.

10 CHAIRMAN OKUN: Exactly.

11 MR. ROSENTHAL: We can talk about it in our
12 rocking chairs.

13 CHAIRMAN OKUN: All right. There you go.

14 With that, I don't have any other questions.
15 I know we have a long afternoon ahead of us, so let me
16 turn to staff to see if staff has any questions.

17 MS. MAZUR: Diane Mazur, Office of
18 Investigations. Staff has no questions.

19 CHAIRMAN OKUN: Let me turn to counsel for
20 Respondents to see if they have questions of this
21 panel.

22 MR. LOEB: Madam Chairman, Hamilton Loeb for
23 Respondents. No questions. Thank you.

24 CHAIRMAN OKUN: Okay. Before we break for
25 lunch then let me remind all parties that the room is

1 not secure, and you need to take any confidential
2 business information you have with you.

3 We will return at 2:00. With that, this
4 hearing is adjourned.

5 (Whereupon, at 12:55 p.m. the hearing in the
6 above-entitled matter was recessed, to reconvene at
7 2:00 p.m. this same day, Thursday, November 6, 2003.)

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1 that. Then we will go to the importers.

2 If we have a couple of moments of excess
3 time once the importers are finished there are two or
4 three further points that Scott Flicker and I will
5 attempt to cover. If not, they're quite likely to
6 come up in questioning.

7 Before I turn it over to John Reilly let me
8 just provide a short preview on an issue that
9 Commissioner Koplan raised that will bear on what
10 you're about to see.

11 Our view as it says in the brief is that the
12 relevant period for determining whether an increase is
13 occurring or not at a rapid rate is in this case 2002-
14 2003 imports, so John Reilly has prepared his
15 presentation using 2001 as the base year. You'll see
16 that in a moment.

17 I'll come back later when we have time to
18 explain the reasons why that position is proper but
19 I'd just simply say that even if you use 2000 as your
20 base year what you're going to see is that all of the
21 change, all of the increase, all of the "rapid"
22 activity occurred a long time ago and we would say
23 cannot be squared with a finding that imports are
24 rapidly increasing under the statute. Even if you
25 include the 2001 imports in your evaluation of the

1 increase rather than as part of your base period.

2 With that I'll turn it over to John Reilly.

3 MR. REILLY: Thank you.

4 Good afternoon, Madame Chairman and members
5 of the Commission. For the record, I'm John Reilly
6 appearing on behalf of the Chinese Respondents.

7 You won't see any visuals from me during the
8 public part of the presentation. I had some put
9 together but I liked Mr. Kerwin's visuals better so
10 I'm going to use those and I'd ask you to refer to
11 them.

12 I note on Figure 1 that he shows imports at
13 close to 25,000 tons in 2001; almost exactly 25,000
14 tons in 2002; and then increasing to 27,500 tons
15 approximately annualized 2003.

16 The problem is the data don't support his
17 annualized 2003 figure. In fact during the interim
18 period imports between the first half of 2002 and the
19 first half of 2003 increased by only a little over one
20 percent, from 13,800 tons to 14,000 tons. Applying
21 that increase, that one percent or so increase to the
22 products imported during 2002 would give you a figure
23 of just over 25,000 tons. Around 25,500 tons. We
24 believe this is a much more reasonable way of
25 projecting imports for the year than Mr. Kerwin used.

1 Using his method you would have
2 substantially overestimated imports during 2002.
3 Rather than the 25,000 tons imported you would end up
4 with close to 28,000 tons as an estimate.

5 Next he has shown market share. The
6 projected imports that he has used for interim 2003
7 might imply that the import market share would be
8 higher than 18 percent. I realize we're talking
9 shipments here and not imports. But in fact that's a
10 reasonable estimate of the import market share for the
11 full year. That's an increase of just a couple of
12 tenths of a percentage point over 2002 and in
13 cumulation, two percentage points over 2001. The
14 increase in share you see between 2000 and 2001 is the
15 result principally of the sunseting of the
16 antidumping duties.

17 Next he showed you some data for 2003.
18 Monthly data. This is Figure 3. These data, if you
19 sum the imports for the first half of the year add up
20 to 12,000 tons. Interestingly, the Chinese producers
21 reported that their exports from China fell by over
22 ten percent between the first half of 2002 and the
23 first half of 2003, from roughly 15,000 tons down to
24 13,000 tons. So the import figures of 12,000 tons for
25 the first half a year reported by Census are quite

1 reasonable relative to the volume of exports from
2 China which in fact declined between the first half of
3 2002 and the first half of 2003.

4 In addition the Chinese have projected that
5 their shipments before year 2003 will be down. We
6 realize there were some figures provided to the
7 Commission that suggested that imports might in fact
8 be up. In checking we have found that some of the
9 data that was reported in the supplemental is in fact
10 orders that were let for imports that will not be
11 entering the United States until 2004. We will
12 provide corrected figures as soon as we can.

13 That concludes my presentation. Thank you.

14 MR. LOEB: Next we're going to turn it over
15 to the importers and distributors. Rob Gosselink has
16 set up a batting order in that respect.

17 I'm going to turn the floor over to him. I
18 would just note for the record that sort of like law
19 school, he's sort of in the back row here. So Rob,
20 we'll let you introduce the importers.

21 MR. GOSSELINK: Actually I think I'll just
22 let the importers and distributors introduce
23 themselves and go in the order we arranged.

24 First up is Larry Rybacki from SIGMA Corp.

25 MR. RYBACKI: Chairman, Commissioners, good

1 afternoon. My name is Larry Rybacki. I am the Vice
2 President of Sales for SIGMA Corporation, a New Jersey
3 based importer of ductile iron waterworks fittings
4 with over 240 American employees.

5 We import fittings from China, India, Korea
6 and Mexico. Victor Pais, our President, and Siddharth
7 Bhattacharji, our Vice President, join me today.

8 This October I addressed your staff
9 regarding whether provisional duties should be applied
10 in this case. Your resounding negative critical
11 circumstances determination suggest that my testimony
12 and that of other importer resonated with your staff.
13 I hope that my testimony today also will help you to
14 understand the current state of the U.S. ductile iron
15 waterworks fitting market.

16 I trust that the information I am about to
17 provide will guide you in determining that Chinese
18 imports have not injured and do not threaten to injure
19 the U.S. ductile iron waterworks fitting industry.

20 First, just a few facts about our company.
21 SIGMA pioneered the production of ductile iron
22 waterworks fittings in China. Through significant
23 investment in our people, research and development,
24 production, and our distribution system today is a
25 strong and responsible partner in the American

1 waterworks industry. Today we are the second largest
2 ductile iron waterworks fitting supplier in the market
3 but we are still a distant number two to the market
4 leader McWane.

5 We are keenly aware how McWane has come to
6 dominate our market. We hope that our observations
7 will help you to put this case into the proper
8 context.

9 First McWane dominates the domestic market.
10 Plain and simple. The three main distribution chains
11 -- National Waterworks, Hughes, and Ferguson have
12 bought into the McWane loyalty program and are
13 committed to buying all their ductile iron waterworks
14 fittings from McWane.

15 These three chains account for more than 50
16 percent of the total market, and the reason for their
17 decision to buy everything from McWane is simple.
18 They have no choice. If McWane were to cut off one of
19 these large distributors, the distributor would have
20 no alternative source because no importer or group of
21 importers has the capacity or resources to supply
22 their high volume needs.

23 In addition, the three largest distributors
24 cannot use imported merchandise for the Buy American
25 portion of their business.

1 In the end, McWane is assured of the ductile
2 iron waterworks fitting business of the three largest
3 distributors in this country since McWane is their
4 only option.

5 Even small distributors find themselves
6 falling into line behind McWane precisely for the same
7 reasons that steer the large distributors toward
8 McWane as well.

9 My second point is that McWane uses an
10 excessively large loyalty rebate, currently as high as
11 17 percent. That is not necessary given McWane
12 dominance in the market. By offering an overly large
13 loyalty rebate to its customers McWane depresses
14 market prices and succeeds in squeezing its
15 competitors -- foreign and domestic.

16 Third, we have concluded that year after
17 year the remainder of the U.S. ductile iron waterworks
18 industry is struggling financially as a direct result
19 of McWane's aggressive behavior in the market.

20 As the Commission tries to determine whether
21 relief is justified in this case, it is useful to look
22 not only at how McWane behaves in the marketplace but
23 also how McWane behaves towards its employees, the
24 communities within which it operates, and even towards
25 the federal agencies that are charged with protecting

1 our well-being.

2 McWane's corporate behavior reveals the same
3 "winner take all" approach to doing business. We wish
4 to get into some of these painful details only to
5 point to a common denominator in McWane's approach
6 that has hurt us all.

7 McWane is so focused on maximizing profit at
8 any cost the company over the years has amassed an
9 unenviable record of environmental and occupational
10 safety violations unmatched in the foundry industry.
11 Here are a few key points.

12 Number one, since 1995 McWane has been fined
13 roughly \$10 million by OSHA, the EPA, and various
14 state level agencies.

15 Number two, over 4,000 McWane foundry
16 workers have been injured on the job.

17 Three, nine McWane foundry workers have been
18 killed on the job.

19 Four, in 1995 McWane purchased its Tyler,
20 Texas foundry and within two years had eliminated two-
21 thirds of the foundry's workforce without any drop in
22 output and without any threat from imports.

23 This record suggests that McWane is a
24 company willing to put profitability ahead of
25 everything and every one -- its customers, its

1 neighbors, its own workers included.

2 With the filing of this market disruption
3 petition McWane is now using our trade laws in an
4 effort to eliminate imports from China and elevate its
5 current dominant position to a total monopoly over the
6 U.S. ductile iron waterworks fitting market.

7 Let me give you the snapshot of how McWane
8 has reinforced its dominant position, even with
9 respect to other U.S. producers.

10 Each of the three major distribution chains
11 is aligned with a major ductile iron pipe producer.
12 National Water is with McWane. Ferguson with ACIPCO,
13 and Hughes Supply with U.S. Pipe and Foundry. In 1999
14 Pipe reached an understanding with Hughes Supply for
15 Hughes to increase its ductile iron waterworks fitting
16 purchases from U.S. Pipe to complement existing pipe
17 business between the two companies. Responding to
18 this new arrangement U.S. Pipe increased its own
19 ductile iron waterworks fitting manufacturing capacity
20 and also sourced additional fittings from Brazil.

21 When U.S. Pipe started delivering the
22 imported fittings to Hughes, McWane objected. McWane
23 threatened to cut off its supply to Hughes and Hughes,
24 who relied on McWane for some of its ductile iron
25 waterworks fittings was forced to withdraw from the

1 arrangement with U.S. Pipe.

2 McWane's success in derailing the Hughes-
3 U.S. Pipe plan left U.S. Pipe with lost market share
4 and as a result excess inventory of imported fittings
5 and newly added production capacity that now stands
6 idle. Instead of looking behind him, Mr. Murray
7 should have looked to his left to find out what the
8 problems are at U.S. Pipe and Foundry.

9 The financial cost of this lesson was not
10 lost on U.S. Pipe. They realized that the only way to
11 keep their Hughes business was to buy ductile iron
12 waterworks fittings from McWane and sell this
13 merchandise to Hughes, even if it would mean lower
14 profit margins.

15 Given McWane's powerful position in the U.S.
16 market we are at a loss as to why McWane filed this
17 petition. WE think that the Commission also should
18 question McWane's motivations for filing this market
19 disruption case especially given the company's total
20 control over the market and its demonstrated ability
21 to limit the portion of the market that is open to
22 imports.

23 It is also instructive to note that the
24 other U.S. ductile iron waterworks fitting producers
25 did not join McWane in filing this petition possibly

1 because they felt that McWane's tactics, not imports,
2 are the biggest threat to their long-term position in
3 the ductile iron waterworks fittings market.

4 This concludes my testimony.

5 SIGMA is confident that after the Commission
6 reviews all of the facts in this case you can
7 determine only that Chinese ductile iron waterworks
8 fitting imports are not a case of injury and do not
9 threaten to injure the U.S. ductile iron waterworks
10 fitting industry in any way, shape or form.

11 Thank you for your time and this opportunity
12 to present our case.

13 MR. McCUTCHEON: Good afternoon, Madame
14 Chairman, members of the Commission, and Commission
15 staff. My name is Dan McCutcheon and I'm the Vice
16 President of Star Pipe Products in Houston, Texas.
17 I've been in the pipe fittings business for more than
18 20 years and currently have direct day-to-day
19 involvement in the ductile iron waterworks fittings
20 market. Consequently I am familiar with the marketing
21 practices of McWane and the dynamics of the market.

22 Star Pipe is one of the largest U.S.
23 importers of ductile iron waterworks fittings from
24 China, Brazil, India and Korea. Our primary role is
25 to provide the waterworks industry with a viable

1 alternative to the McWane monopolistic business model.
2 Without Star Pipe and other similar distributors the
3 U.S. waterworks industry would be entirely dependent
4 on a source that has proved itself to be unreliable as
5 a full service provider and attempting to control the
6 very customers it should be serving.

7 I understand that the Petitioners must show
8 that the imports from China have increased rapidly.
9 In 2001 we did show an increase in imports from China.
10 However, the Commission should note that there was a
11 prohibitive antidumping duty of 127 percent that
12 covered many of the products now subject to this
13 investigation that we had imported from China prior to
14 the dumping case.

15 The availability of Chinese product
16 permitted us to replace certain of our imports from
17 other countries with the Chinese products.

18 Moreover, the pre-2000 imports were tainted
19 by the existence of the antidumping order, thus
20 skewing the natural market circumstances.

21 In fact the public data before the
22 Commission show that imports from China have attained
23 an equilibrium since that time with a flat market
24 share.

25 It has to be noted that we have not taken

1 volumes away from McWane in this market. ACIPCO, a
2 U.S. producer, has historically been a McWane
3 customer. However two year ago ACIPCO left McWane in
4 favor of sourcing almost exclusively from Brazil.
5 This resulted not only in McWane's loss of ACIPCO's
6 very large volume of purchases, but ACIPCO also went
7 into direct competition with McWane for a number of
8 large distributor customers and ACIPCO has been
9 successful in its competition with McWane in many
10 cases.

11 Similarly, Griffin Pipe moved its domestic
12 DIWF production to Mexico in 2000, a plant it closed
13 earlier this year. Recently we have been told that
14 McWane has refused to sell any DIWF to Griffin because
15 Griffin is sourcing certain of its requirements from
16 import services.

17 Additionally a few years ago U.S. Pipe also
18 dropped McWane and shifted to a Brazilian supplier.
19 After purchasing a lot of tonnage they recently
20 recanted, dumped the imported inventory in the U.S.
21 market, and resumed their relationship with McWane.

22 Based on the data it is pretty clear that
23 since 2001 imports from China have been relatively
24 slack. It is just as clear that the U.S. volumes have
25 been affected by the U.S. industry's, particularly

1 McWane's, own business judgments, entirely unrelated
2 to the Chinese imports.

3 Now I'd like to introduce Pete Lisowski.
4 Pete's a sales manager with Star Pipe and he will
5 address more of the fittings market dynamics.

6 MR. LISOWSKI: Good afternoon Madame
7 Chairman and members of the Commission. My name is
8 Pete Lisowski. Since 1996 I've been a sales manager
9 for Star Pipe and responsible for sales of fittings
10 and pipe products to waterworks customers.

11 From 1991 to 1996, after five years as
12 district sales manager with McWane's Atlantic states
13 pipe company, I was employed by McWane as the
14 Assistant General Sales Manager at Clow Water Systems.

15 In early 1996 while I was still at McWane,
16 McWane instituted what is known as its loyalty rebate
17 program in its pricing policy to customers. At the
18 same time McWane began aggressively lowering its
19 multipliers for fittings. Initially the loyalty
20 rebate was seven percent and was granted to only those
21 customers that purchased 100 percent of their
22 requirements from McWane.

23 The rebate was canceled and the multiplier
24 was increased if a customer purchased imported
25 fittings and McWane found out about the purchase.

1 This morning McWane categorized its rebates
2 and multiplier adjustments as effective price
3 reductions to meet subject import prices in order to
4 retain sales. However, I can uncategorically state
5 that when it was instituted the purpose of McWane's
6 loyalty rebate program and the region-specific
7 multiplier differentials was to drive importers --
8 specifically Star and SIGMA -- completely out of the
9 U.S. market. It attempted to do this by aggressive
10 reduction in multipliers in those regions where
11 importers attempted to market their products, and by
12 punishing customers not 100 percent loyal to McWane.

13 In fact in 1996 when I was with McWane's
14 Clow Pipe Company, a Clow manager repeated on several
15 occasions that McWane "has deep pockets and intends to
16 drive the importers out of the fittings market."

17 I compete with McWane in the market today
18 and based on what I see as McWane's marketing
19 practices I do not think this policy has changed.

20 This may appear to be a subtle distinction
21 but I think it is important for the following reasons.
22 When I am evaluating selling fittings to a potential
23 customer from whatever of the several foreign sources
24 we procure from. We procure from Brazil, India,
25 Korea, and China. Our pricing into the U.S. market is

1 identical for all products made to the same
2 specification, no matter the source.

3 I look to the McWane multiplier in that
4 region and then the McWane rebate. The McWane and
5 Star List prices are identical. Over the years my
6 pricing of Star Fittings into the U.S. market has
7 always keyed off the McWane price and I have lowered
8 my price only in response to McWane's adjusting its
9 base list price, a reduction in its multiplier, or an
10 increase in its rebate.

11 Over the 1996-2003 period McWane has
12 increased its loyalty rebate from seven percent to 17
13 percent. McWane is clearly the price leader in the
14 fittings market and their lost profits are due to
15 their own actions of lowering prices and increasing
16 rebates.

17 Also I disagree with McWane's testimony that
18 price is the only factor behind why a purchaser buys
19 fittings from Star rather than McWane. Many of our
20 customers are from distributors being thrown off the
21 McWane program for not following McWane's arbitrary
22 rules. These customers feel violated and choose never
23 to go back on the McWane program. A substantial share
24 of our sales is a result of the customer not being
25 able to obtain from domestic producers the specific

1 fittings in the required quantity at the required
2 time.

3 Keep in mind that there are more than 1500
4 different configurations of fittings and when a
5 specific fitting is needed for an ongoing project a
6 delay in procuring the product can result in
7 significant cost overruns for the project.

8 For logistical reasons a particular
9 supplier, importer or domestic producer cannot always
10 meet a customer's spot requirements and many of our
11 sales are because we have the right fitting product at
12 the right time in the required volumes.

13 Many buy from Star for better quality,
14 better service, and the fact that they do not want to
15 put up with the arrogance of being told who they must
16 buy from.

17 In fact McWane's policy when it acquired
18 Tyler in 1995 was to trim away what was perceived as
19 the fat in the operation in order to cut costs.
20 Unfortunately for Tyler and for McWane's customers,
21 the first constant to be cut was quality control. Not
22 only were many people put out of work but their
23 product quality suffered.

24 As I noted above, my experience in the
25 market is that this cut throat approach to production

1 and marketing, to the disregard of quality and
2 service, is still McWane's business model.

3 Thank you. I would be happy to answer any
4 and all of your questions.

5 MR. MORRISON: Good afternoon. My name is
6 Ed Morrison and I'm President of the CI Thornburg
7 company based in Huntington, West Virginia. We are a
8 family-owned waterworks distributor employing 85
9 people and our warehouse and truck driver personnel
10 are members of the Teamsters Union.

11 In addition to ductile iron waterworks
12 fittings, we also sell ductile iron pipe, valves,
13 hydrants, and many other products. I have 30 years of
14 experience in the industry.

15 Our company purchases imported ductile iron
16 waterworks fittings and also purchases ductile iron
17 waterworks fittings from Tyler Union. In fact our
18 company has been a Tyler distributor for many years,
19 even before Tyler was purchased by McWane.

20 A few years after Tyler's purchase we were
21 introduced to the loyalty rebate program under the new
22 McWane management. This McWane loyalty program is a
23 volume rebate plan with a twist. McWane requires the
24 distributor to buy 100 percent of their ductile iron
25 waterworks fittings from McWane. It gives McWane the

1 power to deny the accumulated rebate to a distributor
2 if the distributor has broken the 100 percent purchase
3 commitment by purchasing imported or domestic product
4 from another supplier.

5 In our business, however, it is impossible
6 for a distributor to service ductile iron waterworks
7 fitting customers completely through only one
8 supplier. The large range of fittings, the need to
9 have every configuration in stock, and customer
10 service issues can be optimized only when we have
11 multiple sources of supply.

12 For example, we have a pipe fabrication shop
13 that makes full pieces and other items for use in
14 water and sewer plants. Since McWane does not make
15 flanges or ductile iron waterworks fittings above 36
16 inch we have to find another supplier to source such
17 product. It is difficult, however, for us to deal
18 with one supplier just for large size fittings and
19 flanges and not give them any of the other ductile
20 iron waterworks fitting business.

21 I want to explain further how McWane's
22 loyalty rebate is hurting distributors.

23 First, McWane's insistence that distributors
24 buy solely from them contradicts what is demanded by
25 the needs of our business. Moreover, McWane is

1 selective about enforcing this compliance.

2 In our own market McWane has allowed Hughes
3 Supply to quote and sell imports, yet has continued to
4 give them the top loyalty rebate because they were
5 part of a large national chain. I could not compete
6 with Hughes Supply due to the double standard, nor
7 could I buy imports for fear of losing my loyalty
8 rebate.

9 In addition, our company lost business to
10 Clow, a McWane company, when Clow sold ductile iron
11 waterworks fittings direct to contractors below our
12 McWane cost.

13 McWane thus created a situation that forced
14 me to choose between McWane and imports. I was forced
15 to give up my loyalty rebate and buy imports in order
16 to remain competitive in the marketplace. Not because
17 I wanted to, but because when you decide to leave
18 McWane you have no other domestic option.

19 In our market if you cannot buy from McWane
20 you have to buy imports in order to source the
21 product. We have not come across this restrictive
22 situation with any other products we distribute --
23 ductile iron pipe, valves, or hydrants, where there
24 are a number of supply options.

25 In the ductile iron waterworks fitting

1 market McWane is the only full service supplier and
2 our only alternative to McWane is to buy from a
3 combination of importers.

4 McWane might have lost some of our business
5 but it is not because I prefer to buy Chinese imports.
6 McWane has lost some of our business solely because of
7 McWane's restrictive loyalty demands.

8 The role of the imports is crucial and there
9 is a need in place for them. If China gets banned or
10 restricted I am sure another country will supply the
11 same ductile iron waterworks fittings.

12 Thank you.

13 MR. GROENIGER: Good afternoon. My name is
14 Mike Groeniger. I am President/Owner of Groeniger &
15 Company. We service the waterworks distribution in
16 northern California with 14 branches. WE are a third
17 generation family-owned company and I have personally
18 been in the business for over 40 years.

19 WE buy ductile iron water fittings from all
20 the major suppliers that service the California market
21 including Tyler, U.S. Pipe, ACIPCO, SIGMA and Star.

22 In early 2002 the Tyler management
23 approached me and asked to supply the ductile iron
24 fitting business that we were giving to SIGMA, fully
25 aware of the service and support commitments that

1 SIGMA was giving us. Tyler stated that they would
2 earn their way.

3 With the Tyler program, our business with
4 Tyler increased but was limited because of delivery
5 and service concerns -- not price. Tyler was not
6 happy with that return and abruptly canceled our
7 program. It also canceled our earned rebate --
8 retroactively -- and increased our prices 25 percent,
9 in effect denying us access to the Tyler fittings.

10 We successfully responded by putting
11 together a package from U.S. Pipe and Foundry Company
12 and SIGMA that would take care of our sourcing needs
13 both domestic and imported.

14 Months later Tyler reassessed their decision
15 and requested to get back the domestic part of our
16 ductile iron fitting business. At the same time,
17 however, Tyler lowered the normal pricing in northern
18 California by 15 percent across the board. There was
19 no other low pricing from any import or U.S. fitting
20 manufacturer that Tyler needed to match. This price
21 drop was totally unnecessary and it was also expensive
22 for us as it immediately discounted our inventory
23 value.

24 Tyler has persisted in keeping the pricing
25 levels down even when it did not increase Tyler's

1 market share in our area.

2 Throughout this time Tyler's pricing in
3 southern California where we do not have as much
4 presence remains considerably higher.

5 WE feel it is important and necessary for us
6 to have multiple suppliers of ductile iron fittings.
7 Since the range is so wide there is no one supplier
8 that can possibly supply everything that we need when
9 we need it.

10 We prefer to have Tyler as one of those
11 suppliers but we have been forced to go elsewhere
12 because Tyler is not a reliable supplier.

13 Fortunately for us U.S. Pipe and Foundry, a
14 domestic manufacturer, has been more than supportive
15 during this period and our business with them has
16 increased ten-fold. Today it is a strong, growing
17 partnership in the millions of dollars.

18 In conclusion, it is my belief, and I have
19 told the management of Tyler numerous times that if
20 Tyler would only adopt a customer-friendly business
21 philosophy coupled with the overall value of what they
22 offer -- quality, range of product, and service --
23 with competitive and stable prices, without threats
24 and intimidation, they will stand to retain and even
25 grow their current large market share with healthy

1 profitability.

2 The American waterworks industry is known
3 for its stability, yet even when dominating most of
4 the market Tyler doesn't seem to be satisfied and it
5 is this dissatisfaction and short-sightedness, not
6 Chinese imports, that has led to any of the alleged
7 financial difficulties.

8 I sincerely appreciate the opportunity to
9 address this Commission. Thank you.

10 MR. LINDQUIST: Good afternoon. My name is
11 Elliot Lindquist.

12 Prior to June 13, 2003 I was a 50 percent
13 owner of Public Works Supply Company in Danvers,
14 Mass., one of the leading waterworks distributors on
15 the New England area with annual sales over \$20
16 million. Public Works Supply Company has maintained an
17 ongoing relationship with both domestic and foreign
18 producers of ductile iron fittings. I have 30 years
19 of experience in this industry and it's safe to say
20 that I've been deeply involved in the purchase and
21 sales of ductile iron fittings in the New England
22 market.

23 Public Works has been a distributor for U.S.
24 Pipe and Foundry for their entire range of ductile
25 iron pipe fittings, valves and hydrants. If Public

1 Works had to rely solely on U.S. Pipe for our ductile
2 iron fittings, Public Works could not solicit many
3 projects because U.S. Pipe does not manufacture an
4 entire range of ductile iron fittings.

5 Moreover, because Public Works is a
6 distributor for U.S. Pipe, McWane has refused to sell
7 Public Works at market competitive pricing. Public
8 Works therefore needs imported fittings in order to
9 maintain a competitive place in the market.

10 In the last few years U.S. Pipe's commitment
11 to the ductile iron fitting market has diminished and
12 we have had to rely on imports more than ever before.

13 I also believe that a major factor in U.S.
14 Pipe's diminished interest in selling to customers
15 like Public Works reflects their loss of significant
16 market share following McWane's acquisition of Tyler.

17 As McWane has aggressively targeted all of
18 its competitors and taken market share away from other
19 U.S. producers, U.S. Pipe has not been able to
20 maintain its position or justify continued investment
21 in their plants.

22 With regard to Tyler and Union, they are the
23 only manufacturers that can consistently sell through
24 distributors. Clow basically is a pipe company that
25 sells direct to end users and concentrates on plant

1 jobs.

2 Distributors buying from Tyler and Union
3 need access to large fittings that McWane does not
4 manufacture. Since imported fittings are the only
5 attractive alternative to McWane, most distributors
6 need to buy at least some portion of their
7 requirements from importers.

8 In my opinion, McWane is the clear industry
9 leader that is followed by all other manufacturers,
10 domestic or imported. But their large size and
11 inherent advantages as being the only credible
12 supplier of domestic ductile iron fittings, McWane can
13 set any price levels it deems appropriate and let the
14 market follow them. They have this power and
15 opportunity as all other manufacturers are of modest
16 capacity and do not threaten McWane in any face of its
17 business.

18 However, McWane has displayed highly
19 irresponsible pricing policies designed mostly to
20 intimidate customers and competitors alike. McWane
21 has steeply dropped pricing in regional markets like
22 New England to lure distributors, and then has raised
23 pricing dramatically once they feel secure.

24 Distributors are reluctant to revert to
25 other manufacturers when McWane's prices go up because

1 they are constantly uneasy about McWane's readiness to
2 drop price again if they do.

3 McWane's price volatility is also unhealthy
4 for distributors because they incur inventory losses
5 when the market drops.

6 It is my position that rather than harming
7 the domestic industry, Chinese ductile iron import
8 fittings actually have helped support the U.S.
9 industry by complementing the product lines offered by
10 non-McWane producers. Chinese imports are therefore
11 performing a valuable service by enhancing non-McWane
12 producers as a credible alternative in the U.S.
13 market.

14 Thank you for your time. I'll be glad to
15 answer any questions.

16 MR. SAHA: Good afternoon. My name is Steve
17 Saha. I'm the Vice President and part owner of
18 Pipeline Components Inc., PCI, located in Houston,
19 Texas.

20 PCI is an importer of several ductile iron
21 waterworks fittings from China and India. It is
22 important for the Commission to understand the role of
23 PCI as well as Star Pipe and SIGMA in the U.S. market
24 place. We are marketers and master distributors. We
25 do not manufacture DIWF. We buy it from foundries in

1 China and India. We import it. We store it in our
2 warehouses and we sell it to waterworks distribution
3 houses. We deliver to our customers.

4 Our sales activities in the United States
5 require us to employ warehousemen, drivers, clerical
6 staff and salesman. We employ 59 people at PCI and I
7 believe that altogether Star Pipe, SIGMA and PCI
8 employ more than 500 people.

9 We have overhead and selling expenses that
10 we must cover like any other distributor. As a
11 consequence the price at which we sell DIWF are
12 substantially higher than our cost of acquisition.

13 While our selling activities do make a
14 significant contribution to the U.S. economy, my point
15 this afternoon is different. The relationship between
16 prices for domestic DIWF and prices for China or India
17 DIWF can only be analyzed accurately by looking at the
18 average unit value of the U.S. producers' shipments
19 and the average unit value of the importers'
20 shipments, not the average value of imports.

21 There are two reasons why this is important.
22 First, prices should be compared where competition is
23 actually taking place. McWane does not compete with
24 China for my business. McWane competes with me for
25 the business of the waterworks supply houses.

1 Also my selling expenses and the ocean
2 freight are not reflected in the average value of
3 imports. They are accounted for in my price to my
4 customers.

5 Second, the average unit value of shipments
6 takes into account the segmentation of the DIWF market
7 by size which defies so-called representative products
8 for which we were asked to give price data do not.

9 I know that the Commission concluded in its
10 critical circumstance determination that the U.S.
11 industry as a whole produces a full range of DIWF but
12 there clearly is a segmentation in the U.S. industry
13 based on size with McWane overwhelmingly dominant in
14 smaller sizes which ACIPCO, American Cast Iron Pipe
15 and U.S. Pipe do not make; and the larger fitting
16 segment dominated by ACIPCO and U.S. Pipe.

17 DIWF from China is sold in both size
18 segments. The five products that McWane claims are
19 representative all have diameters of only six or eight
20 inches. Therefore, the quarterly prices for these so-
21 called representative products generate only limited
22 information concerning price relationships between
23 domestic and imported DIWF.

24 At the critical circumstance conference I
25 listened to Mr. Waugaman from Tyler Pipe confirm that

1 McWane raised prices in October 2002. I also heard
2 him testify that McWane had suffered 20 different
3 multiplier point decreases. What I did not hear Mr.
4 Waugaman say is what the entire industry knows --
5 McWane has different multipliers for different parts
6 of the country and McWane commonly raises it
7 multipliers in some areas at the same time that it
8 reduces them in others. McWane can reduce its
9 multipliers in a number of states but still achieve an
10 overall price increase.

11 At PCI we will obtain and provide to the
12 Commission evidence showing that McWane's most recent
13 price increase in August 2003 raised multipliers in
14 substantially more areas than it reduced them.

15 There is no doubt that prices are
16 increasing. In addition to McWane's August 2003 price
17 increase we at PCI announced a price increase on
18 September 8th which has taken effect. SIGMA has also
19 announced a price increase which has taken effect.
20 Sales call reports submitted by myself document that
21 McWane's August price increase has been successful.

22 The claim that DIWF from China severely
23 undercuts domestic producers' prices omit. For
24 example, my salesmen's call reports document McWane's
25 underselling of prices in at least three states and

1 our import competitors' prices in at least two more
2 states. In a fourth state the results of bid
3 tabulation -- namely El Paso Water Utility Board dated
4 only a few weeks ago showed the distributor offering
5 Tyler/Union DIWF captured most of the bid by
6 substantially underbidding distributors offering DIWF
7 from PCI.

8 The water project is not the only case in
9 which PCI has lost sales to domestic manufactures. As
10 part of our pre-hearing brief we submitted internal
11 PCI documentation tabulating the sales for water
12 treatment plan jobs we have lost to domestic
13 competition in 2003.

14 From PCI's perspective the domestic industry
15 members are strong competitors. The trade restraints
16 requested by McWane are unnecessary. Thank you.

17 MR. FLICKER: Good afternoon members of the
18 Commission. My name is Scott Flicker. I'd like to
19 start my very brief remarks today with a riddle. The
20 riddle is, when is a Section 421 case not a Section
21 421 case? The answer is when it should have been
22 brought under Section 201.

23 I think the evidence is overwhelming in the
24 record that the non-subject imports in this
25 marketplace are a significant player and that the non-

1 subject imports will not only continue but stand to
2 benefit and increase if relief is granted against the
3 Chinese imports. In other words, the relief that
4 would be granted in this case would have absolutely no
5 effect on non-subject imports and it appears that the
6 non-subject imports would be the beneficiary here.

7 So why did the Petitioner file a Section 421
8 type case instead of the Section 201 case?

9 We think that the answer lies in the lower
10 burden of proof that the Petitioner faces under
11 Section 421. The Petitioner need show in this case
12 material injury, not the serious injury that is
13 required under Section 201 which this Commission has
14 said is a higher standard.

15 Furthermore, in this proceeding, and perhaps
16 this is the more salient point, the Petitioner need
17 only show that Chinese imports are a significant cause
18 which this Commission has found to be one of many and
19 not even the largest cause of injury, as opposed to
20 the substantial cause requirement under Section 201
21 which precedent has shown has to be the largest cause
22 or at least one of several of the largest causes of
23 injury.

24 Now it's a bedrock principle under the WTO,
25 and after all, Section 421 is essentially implementing

1 a WTO accession agreement. It's a bedrock principle
2 under WTO that measures that are imposed by a party
3 not discriminate.

4 The global safeguard provision of Section
5 201 does derogate from this in the sense that it
6 discriminates against imports and domestically
7 produced products, but it is internally non-
8 discriminatory.

9 Section 421 on the other hand picks out one
10 country for special treatment -- China. In other
11 words it's a derogation from a derogation principle.

12 So in the presence of a large volume of non-
13 subject imports how can a Petitioner consistent with
14 the WTO non-discrimination principles sustain a
15 Section 421 case when it should have brought a Section
16 201 case?

17 The answer is it shouldn't and it can't.

18 If you examine the statute, the President's
19 authority to impose relief under Section 421 requires
20 that the remedy be necessary to remedy the injury
21 suffered by the domestic industry. The evidence on
22 this record shows that the relief that the Petitioners
23 ask for not only would not remedy any injury that they
24 claim, it's totally unnecessary. This Commission, of
25 course, must render a report to the President which

1 recommends a remedy that would be effective and also
2 must include in that report the effects if the remedy
3 were not imposed.

4 When the effects if the remedy were imposed
5 and the effects if the remedy were not imposed are the
6 same, the answer is there should be no relief under
7 Section 421. We believe this is what principle the
8 President recognized in ultimately deciding that no
9 relief should be granted in the garment hangers case.

10 Here the presence of non-subject imports is
11 substantial, it's significant, it is essentially
12 capacity on the ground.

13 In the garment hangers case, the presence of
14 non-subject imports was small. It was only the
15 likelihood that the Chinese production could shift to
16 another market and come in that inspired the President
17 in that case to decide that no remedy should be
18 imposed. We think this is a far more compelling case
19 and we thought it was important to bring to the
20 Commission's attention that this is in fact a Section
21 201 case at best.

22 MR. LOEB: Let me just make one final point
23 and then we'll conclude our presentation.

24 I don't want to leave it unsaid in the
25 direct part of our presentation at least speaking for

1 the Chinese Respondents here.

2 There was considerable commentary from Mr.
3 Girard when he was here with respect to differences
4 between U.S. labor conditions, Chinese labor
5 conditions, and comments about what's in, as he
6 described, the Chinese Respondents' briefs.

7 I just want to call the Commission's
8 attention to pages 28 and 29 of our brief. The three
9 paragraphs where we touch on quotations from McWane's
10 President, quotations from the New York Times, and
11 that's the sole extent of our commentary in that
12 respect.

13 And more importantly, as page 28 says, this
14 is not a case about the Petitioners' workplace
15 practices, although we think there are some analogies
16 and you've heard them drawn by the importer sitting
17 here. This is a case about the data. This is a case
18 about the numbers. This is a case about the usual
19 information that the Commission collects and has
20 collected here. And on the basis of that data, with
21 or without regard to workplace safety issues, we think
22 this Commission should and we hope will come down
23 negative on the market disruption determination.

24 With that I think we are ready for
25 questions.

1 CHAIRMAN OKUN: Before we begin our
2 questions let me take this opportunity to thank all
3 the witnesses for being here. Again, we very much
4 appreciate all the industry witnesses from the various
5 parts of the country who are here today to testify. I
6 think it's very important to hear from you.

7 One other thing, just to remind you as well,
8 that when you respond if you could help us out by
9 repeating your name. It's very hard to see all the
10 way back, so we'll be looking to see who's responding.

11 With that, Commissioner Miller will begin
12 our questioning this afternoon.

13 COMMISSIONER MILLER: Thank you, Madame
14 Chairman, and thank you to the witnesses as well for
15 being here and being willing and wanting to share your
16 story with us. We do appreciate that.

17 That said, I've been trying to decide
18 exactly where to go with the questioning. Because as
19 I listened to essentially a litany of complaints about
20 McWane and their business practices, Mr. Loeb, I'm
21 trying to understand how I consider that in light of
22 the factual record that I have before me.

23 The factual record I have before me shows me
24 large margins of underselling by the Chinese, contrary
25 to what I'm hearing regarding pricing from the

1 distributors here, so you can tell me what I'm missing
2 there.

3 It shows the growing volumes of imports from
4 China and lost market share by the domestic industry.
5 So you can tell me how that fits with what you're
6 hearing.

7 And definitely a declining financial
8 performance, and not a good financial performance by
9 any means.

10 So I don't really know how those things that
11 I see in this factual record fit with the complaints
12 that I was just hearing and some of the comments I was
13 just hearing about pricing and business practices,
14 whatever. I don't even really quite know where to
15 begin. So anybody's welcome to comment on that.

16 MR. REILLY: Commissioner Miller, John
17 Reilly.

18 Thank you for previewing my in camera
19 testimony.

20 COMMISSIONER MILLER: All right.

21 MR. REILLY: We do address in the in camera
22 testimony specifically the pricing issue that you
23 mentioned, the apparent underpricing. We also address
24 specifically the financial performance issues that you
25 mentioned. I guess I'll leave it at that until we go

1 in camera.

2 COMMISSIONER MILLER: You're telling me that
3 you're going to tell me that it's something different
4 than what I see on our factual record and I will look
5 forward to your testimony.

6 MR. REILLY: Thank you.

7 COMMISSIONER MILLER: Then in all honesty,
8 I'm trying to decide how to pursue with the
9 distributors and importers -- Let me start with the
10 pricing.

11 Our record clearly indicates that the
12 pricing of subject imports is considerably lower than
13 the pricing of the domestic product. I don't think
14 that's consistent with what I heard you saying. So
15 tell me again your basis of knowledge and what you
16 understand of pricing in the market.

17 MR. LOEB: Could I comment on that before
18 the importers get into it?

19 COMMISSIONER MILLER: Sure.

20 MR. LOEB: I just want to kind of set the
21 framework and give you one layer of detail more than
22 Mr. Reilly feels comfortable talking about in public,
23 but I'm quite sure we can say the following.

24 One is that there is a significant
25 difference between what you see when you look at AUV

1 data across the full spectrum of products and what you
2 see in the pricing products with respect to
3 underselling issues. More on that in the APO Session,
4 but there is a significant lack of fit between the
5 products that the Petitioner selected for pricing
6 product analysis and what the aggregate data seems to
7 show.

8 Secondly, a large portion of what you will
9 hear I'm sure from those who can talk about it, I
10 don't know if the importers can really link this up.
11 But certainly when you talk about issues like the
12 declining financial performance or lost market share
13 and particularly on declining financial performance,
14 what we think you see when you look at the data, as
15 will be explained in the APO session, is that
16 financial performance declines are traceable directly
17 to things that are not import related, in fact almost
18 by definition cannot be import related. There's a
19 variety of the Commission's standard variance analyses
20 that Mr. Reilly has done that he'll be presenting in
21 the APO to show the lack of a link between the
22 pricing, or the link between the declining financial
23 performance and these allegations about pricing.

24 Now with that said, let me turn it over to
25 importers and see if they've got comments.

1 MR. REILLY: Commissioner Miller, I just one
2 to jump in for one, just very briefly on the issue of
3 what I will call the apparent underpricing. I guess
4 there is something I can say in public so I'll get it
5 out there.

6 You heard this morning that the McWane
7 multiplier goes from 50 percent discount to 71 percent
8 discount. You remember that?

9 COMMISSIONER MILLER: Uh huh.

10 MR. REILLY: That's off list price. And
11 let's assume for a moment that the list price is \$100.
12 That means that the lucky low price buyer gets a price
13 of I think it's \$29 and the unfortunate high price
14 buyer gets a price of \$48. So you have some buyers
15 from McWane paying \$48 for their product, some paying
16 \$29.

17 The price of \$48 is 65.5 percent higher than
18 the price of 29. That's discriminatory pricing. I
19 don't know any other way to describe it.

20 What you see in the pricing data is the
21 effect of discriminatory pricing by the domestic
22 producers.

23 MR. RYBACKI: My name's Larry Rybacki with
24 SIGMA Corporation.

25 I'd like to address two issues, Commissioner

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1 Miller. One is the negative financial performance. I
2 think I'd like to talk about how U.S. Pipe was
3 represented today, and Mr. Murray made that point very
4 clearly.

5 First of all, U.S. Pipe owned by Walters
6 Industry, a publicly-traded company. It's no secret
7 that U.S. Pipe has had a tough year. Why have they
8 had a tough year, or why have they had a tough last
9 couple of years?

10 I think one has not to look at ductile iron
11 waterworks fittings, it has nothing to do with it. I
12 think you have to look at it two ways. One is a
13 botched program to modernize a facility in Chattanooga
14 that was ineffectual and cost U.S. Pipe an inordinant
15 amount of money. And more importantly, the reason for
16 the decline in financial performance by the majors in
17 the waterworks industry was a pipe price war started
18 between McWane and ACIPCO that U.S. Pipe had to
19 participate in. And because of the disagreement
20 between McWane and ACIPCO that started in the
21 Portland-Seattle area and worked its way into Florida
22 and other markets, U.S. Pipe's comfortable profit
23 margins that had normally carried the company in the
24 pipe business declined drastically, and Walter
25 Corporation reported that U.S. Pipe had a tough year.

1 That pipe market is now stabilized and
2 Walters Industries is looking forward to a good 2004.

3 As far as pricing goes, I don't have all the
4 data that you have, Commissioner Miller, but I run the
5 pricing for SIGMA Corporation, and like Pete at Star
6 Pipe, we follow, as the second largest supplier of
7 fittings in North America, we follow McWane in every
8 way, shape or form. They lead in every marketplace in
9 this country.

10 Also when you're talking about pricing it is
11 not, as I said the first time in my testimony weeks
12 ago, that you have to look at the bottom line. I'm
13 not so sure 17 percent is as high as -- I think McWane
14 goes higher than that to certain distributors. We
15 have never gone anywhere near that. Because we're
16 concerned with bottom line performance and we're also
17 concerned with where the marketplace is headed and
18 keeping the market stable and strong.

19 So our incentive program or rebate program
20 is much different than that of McWane's. When you're
21 looking at a price, if something's \$5 and something's
22 \$4 and somebody's given 20 percent off, it's the same
23 thing.

24 So what we're doing is we're trying to get
25 to the net number. As Pete so eloquently said, we're

1 trying to get to the net number where the marketplace
2 is and we follow the leader. Where the leader goes,
3 we go. That's true from New England to California.
4 It doesn't make a difference. WE follow McWane
5 wherever because they are the undisputed market
6 leader.

7 CHAIRMAN OKUN: I see a hand in the back. I
8 think that must be Mr. Bhattacharji?

9 MR. BHATTACHARJI: That's right, Siddharth
10 Bhattacharji.

11 CHAIRMAN OKUN: I can't see your name plate
12 but I have another way.

13 You wanted to comment?

14 MR. BHATTACHARJI: Yes, I'd like to add to
15 this apparent anomaly on the pricing which John will
16 address and we are certainly going to back it up with
17 more information in the post-conference.

18 But it's again the dynamics of the market.
19 McWane in its dominant position is able to assure
20 itself a lion's share of the routine business, and by
21 that I mean they're going to all the major chains and
22 they're getting, as we have said, almost all their
23 business. They're getting to the distributors and in
24 most cases they're able to enforce their loyalty. And
25 overall, they're able to get a lion's share of the

1 market.

2 Now suppose theoretically speaking McWane
3 has 60 percent of the market on the whole. When you
4 are coming to a fast-moving item like the ones they
5 have picked up, like the six inch 90 degree bend,
6 their share of a six inch 90 degree bend in the whole
7 country is much more than their 60 percent national
8 average for the entire DIWF.

9 It could be as high as 70, 75 percent simply
10 because they are getting the routine business and a
11 lion's share of the routine business.

12 I think it suits their model because they
13 would like to run thousands and thousands of the six
14 inch 90 at one shot to keep their production costs
15 down.

16 What it does is, and we'll give you a little
17 mathematical model in the post-conference brief. What
18 it does is this six inch 90, they're able to sell for
19 example all the way from \$78 or whatever down to \$40
20 depending on the sensitivity of the market in which
21 they service it.

22 Since they're offering the \$40 price where
23 there is imports and they want to keep the pressure on
24 the imports so the imports can't make money, they are
25 not obliged to give the same pricing in the markets

1 which are domestic only or have a domestic preference,
2 so they can charge a much higher price.

3 Now what happens is in a product which is
4 like 70 percent of the market share, effectively for
5 that item they are getting a much larger revenue
6 because they're able to sell correspondingly more of
7 the high multiplier pricing than the lower.

8 When you look at the import mix, the imports
9 are selling much less in that area for that item.

10 COMMISSIONER MILLER: Mr. Bhattacharji, I'm
11 sorry to interrupt you but I know you're way back
12 there and you can't see how long the red light has
13 been on.

14 MR. BHATTACHARJI: I'm sorry.

15 COMMISSIONER MILLER: Unfortunately, my
16 colleagues can.

17 I appreciate your answer. You're welcome to
18 add anything more in the post-hearing brief if you
19 would like and I may have further questions in the
20 next round.

21 Thank you.

22 CHAIRMAN OKUN: Commissioner Koplan?

23 COMMISSIONER KOPLAN: Thank you, Madame
24 Chairman.

25 I too want to thank the witnesses for their

1 testimony this afternoon and also for their pre-
2 hearing submissions.

3 Let me just start, Mr. Reilly, I share the
4 same concern that Commissioner Miller expressed and I
5 know you all are going to be getting into this in the
6 in camera session, but my recollection is that this
7 morning Mr. Waugaman and Mr. Blair of Tyler Pipe, I
8 think they made the statement or said that SIGMA and
9 Star Pipe price their products similar to the way that
10 McWane does. I thought I heard that. If so, I'd like
11 to hear from SIGMA and Star Pipe on that now.

12 MR. RYBACKI: Larry Rybacki again, SIGMA
13 Corporation.

14 I answered it I think a little bit before,
15 but Commissioner Koplan, we do price everything off of
16 what they do. Every marketplace we find out where
17 they are. WE follow their list, we follow their
18 marketing condition, and everything is, every deal we
19 make, everything we do, is followed by the leader. So
20 we follow the leader no matter what.

21 COMMISSIONER KOPLAN: Go ahead.

22 MR. McCUTCHEON: My name is Dan McCutcheon,
23 Star Pipe.

24 To keep it brief, I share the exact same
25 sentiments and comments that Mr. Rybacki had. They

1 are the market leader. WE price off of them. WE use
2 similar list pricing multiplier systems, et cetera.
3 We follow. We don't lead.

4 While I've got you, just one more topic that
5 came up this morning that appeared to be a little
6 confusing.

7 The marketplace receives a pipe fitting.
8 Whether that fitting is from China, India, Korea,
9 Mexico, it's sold at the same price by the importers.
10 We don't draw a distinction between which country we
11 purchased it from.

12 COMMISSIONER KOPLAN: Thank you.

13 This morning I explained to Mr. Rosenthal
14 that I intend to use the year 2000 as my base year in
15 focusing on the alleged rapid increase in subject
16 imports. I believe that is consistent with the
17 position I took with Chairman Okun on the brake drums
18 and rotors Section 421.

19 I acknowledge your reading of our joint
20 footnote differs from my interpretation. I want to
21 give you this opportunity now to make any further
22 argument you want to on this issue, or if you prefer,
23 in the post-hearing. Whichever works best for you.

24 MR. LOEB: Thank you, Commissioner Koplan.
25 Hamilton Loeb again.

1 I appreciate your flagging that so
2 prominently in the questioning to both sides. That's
3 certainly very helpful to us in our briefing and our
4 response here. Of course we will respond post-
5 hearing, but let me just give you the key two themes
6 here.

7 Number one, if you go that route then I
8 think you still come out the same place under Section
9 421. That is to say Section 421 not only requires you
10 to look at some form of base year or multiple base
11 years as your reference, and then it says you must
12 take the period most recently adjacent to the moment
13 we sit here before the Commission and determine
14 whether imports are rapidly increasing.

15 So to say that imports rapidly increased in
16 the year 2001 relative to 2000 and then thereafter
17 flattened out, that still is not a case of "are
18 rapidly increasing imports" as I read the statute, and
19 certainly as I read both the purposes of the statute,
20 the language of the statute, and the legislative
21 history which was referred to in your footnote.

22 Secondly, I do think the point in the
23 footnote -- I took the point in the footnote to --

24 COMMISSIONER KOPLAN: Can I jump in for a
25 second on that?

1 MR. LOEB: Go ahead, I'm sorry.

2 COMMISSIONER KOPLAN: Thank you.

3 I hear what you said and I know you said
4 that earlier, actually, but I'd like you if you would
5 to reconfigure the analysis that you have on page 11
6 of your pre-hearing brief using the BPI data available
7 to under APO, tailored to 2000 as the base year, and
8 provide me with the appropriate modified tables post-
9 hearing and advise us in detail as to the effect that
10 has on your current position with respect to the issue
11 of rapid increase.

12 I understand what you're saying, the result
13 would be the same, but I'd like you to quantify it
14 because when you used the tables, assuming that 2000
15 would not be in that mix, you had some rather detailed
16 tables of analysis that followed that initial
17 argument. So I'd like you to, if you would, to go
18 back and give me these as an alternative so that I can
19 weigh the specifics of what you're saying.

20 MR. LOEB: We certainly will do that in the
21 post-hearing submission.

22 COMMISSIONER KOPLAN: Thank you. I'm sorry
23 for interrupting, but I wanted to get that in now.

24 Go ahead.

25 MR. LOEB: The second point was just to say

1 that I think the analysis that at least I saw in the
2 footnote as I read it, is the correct one. That is to
3 say the relevant imports for purposes of determining
4 whether a rapid increase has occurred are those that
5 occur after China's accession to the WTO. That
6 accession occurred in December 2001, so as a practical
7 matter as we see it you're looking at 2002 and forward
8 imports for determining whether the increase is
9 occurring at a rapid rate.

10 Obviously you collect data all the way back
11 in this case to 1998. That gives you context, that
12 gives you background, but our view is that to be
13 consistent with the objectives of the Article 16 of
14 the accession agreement and the statute, that the 2001
15 imports are outside the period of rapid increase.

16 COMMISSIONER KOPLAN: I thank you for that.
17 I completely understand your position. I just don't
18 happen to agree with it in terms of interpreting my
19 own footnote.

20 Thank you, though.

21 You heard the response of both the domestic
22 industry and Mr. Girard with regard to your
23 allegations that the Petitioner enjoys protection from
24 import competition in certain geographic markets
25 because of what you referred to as the Buy American

1 factor.

2 I'd appreciate your response to this
3 morning's testimony since you've used that argument as
4 a principal basis to explain away the substantial
5 market of underselling of the five DIWF products that
6 were included in the Commission's questionnaires.

7 MR. LOEB: Let me, I think we want to hear
8 principally from the importers who know considerably
9 more, have direct experience with Buy America than we
10 do. I have a comment to make on it but I think it
11 would be more useful if the importers respond first.

12 COMMISSIONER KOPLAN: I would appreciate
13 that. Thank you, Mr. Loeb.

14 MR. RYBACKI: Larry Rybacki again.

15 In the United States there are certain areas
16 that we're precluded from selling. I was surprised
17 Mr. Girard, his own union didn't realize that the
18 Pennsylvania Steel Act, it's almost impossible to sell
19 our products in the state of Pennsylvania. I would
20 imagine that McWane has 98 percent better market share
21 in the state of Pennsylvania. There are Buy American
22 provisions in the Department of Transportation. On
23 jobs from coast to coast that are Department of
24 Transportation there is Buy America provisions.

25 On all military bases, which is a lot of

1 business that goes on in military bases from coast to
2 coast, military bases have a Buy American preference.

3 So there is a good portion of the market,
4 and there is actually six states --

5 COMMISSIONER KOPLAN: Can you quantify how
6 much of the market you think that might be? Because
7 the estimate I've heard was no more than ten percent.

8 MR. RYBACKI: Commissioner Koplan, I think
9 Don Waugaman or Joel said it was ten percent. I think
10 it's 15 percent maybe, 10 to 15. But I think that's a
11 fair number.

12 COMMISSIONER KOPLAN: Okay.

13 Thank you. I see my yellow light's come on
14 so I'll wait for the next round. Thank you very much.

15 CHAIRMAN OKUN: Commissioner Lane?

16 COMMISSIONER LANE: I want somebody to run
17 through an answer that you gave a little bit ago about
18 how you set your prices. That you take McWane prices
19 and then you set your prices according to that.

20 Could you just give me an example of how you
21 do that and what the effect is?

22 MR. MORRISON: I'm Ed Morrison from
23 Huntington, West Virginia, the CI Thornburg Company.

24 Commissioner Miller, I know Commissioner
25 Lane asked the question and I will answer it, and you

1 asked a similar question earlier that is relatively
2 simple to answer but seemed to get complicated.

3 Every one currently uses the same list
4 price. From that list price we have, as a
5 distributor, we have multipliers. We have a location
6 in Bolling Green, Kentucky, that has a 29 multiplier
7 from Tyler Union. In Lexington, Kentucky where we
8 also have a branch, our multiplier on Tyler Union is a
9 31. In Huntington, West Virginia and Bridgeport, West
10 Virginia where we have locations, it was a 31 and was
11 raised to a 34.

12 Now I trust that tomorrow, after being here
13 today, those multipliers will still be the same as
14 they are today.

15 Our multiplier from SIGMA is a .275 and our
16 multiplier from Star is a .27. That's the net price
17 of the fitting.

18 Now on top of that from both Star and SIGMA
19 we would qualify for a ten percent rebate. So if you
20 do the arithmetic, that gives you your bottom line
21 figure.

22 From Tyler Union up until the time that we
23 voluntarily resigned from the loyalty program we would
24 have received a 17 percent rebate, 10 percent from
25 Tyler Union and seven percent through a buying group.

1 So if you do the arithmetic, that gives you
2 your bottom line net cost for any item we would buy.

3 Does that answer your question?

4 COMMISSIONER LANE: I think.

5 MR. MORRISON: I'll be glad to expand on it
6 if you need clarification.

7 COMMISSIONER LANE: No, I think I understand
8 how it works.

9 MR. RYBACKI: Commissioner Lane, can I help
10 clarify?

11 COMMISSIONER LANE: Yes.

12 MR. RYBACKI: If an item is \$100, what Eddy
13 was saying, if an item is \$100. From McWane it would
14 have been \$29, you get the 29 multiplier, so it's \$29,
15 less the rebates, which is 17 percent. So it's 29
16 less 17.

17 Our multiplier was 275 which is less than
18 McWane, but our rebate to them was ten percent. So
19 it's \$27.50 less ten percent as opposed to \$29 less 17
20 percent which is relatively in the ball park. That's
21 how we price.

22 COMMISSIONER LANE: Okay. So if someone is
23 buying a product from you at your price and somebody
24 buying something from McWane at its price, the same
25 product, is there a difference in price?

1 MR. RYBACKI: We try to factor in the
2 rebate. With McWane they have different rebates, but
3 let's just say it's 17 percent with somebody. Because
4 our rebate is not going to be anywhere near that,
5 let's say if ours is ten percent, what we try to do is
6 get the net number down as close as we can to
7 McWane's. That's our goal.

8 MR. REILLY: Commissioner Lane, this is John
9 Reilly. Just to make it simple.

10 If you're at a 29 multiplier with McWane and
11 you qualify for the 17 percent rebate, you get the low
12 price.

13 The price of 27.5 or 27, less a ten percent
14 rebate, will be higher than the net price that you'll
15 be paying McWane. If McWane kicks you off the rebate
16 program, the price would be slightly higher than the
17 importer price.

18 COMMISSIONER LANE: Thank you.

19 MR. McCUTCHEON: Commissioner Lane? Could I
20 add one thing to that?

21 COMMISSIONER LANE: Yes.

22 MR. McCUTCHEON: My name's and McCutcheon.
23 I'm with Star Pipe.

24 Back to your question is the pricing
25 different. In most cases yes, the pricing is

1 different. Not necessarily lower. Not necessarily
2 higher. There are markets that McWane is below Star
3 Pipe and below SIGMA in pricing. Texas is a perfect
4 example.

5 If you take into consideration, and I can
6 only speak to Star Pipe and what I'm assuming with
7 SIGMA, but Star Pipe's multipliers less our rebate,
8 McWane's price to the customer is lower than Star
9 Pipe's. They are the low provider in the state of
10 Texas.

11 So back to your question, is there a
12 difference? Yes, ma'am. There is a difference. Not
13 necessarily always lower.

14 COMMISSIONER LANE: Thank you.

15 Mr. Rybacki, I think in your initial
16 statement you were making, you said something about
17 Tyler not being a reliable source for product. Would
18 you mind expanding on that?

19 MR. RYBACKI: That was not in my testimony.

20 COMMISSIONER LANE: You're right, It's Mr.
21 G-R-O-N-A-T-E-R.

22 MR. GROENIGER: Yes, Commissioner, that was
23 me. When I say reliable I mean -- My name is Mike
24 Groeniger.

25 Is the fact that we rely on service on a

1 continuing basis, a daily basis. We're sending orders
2 from multiple sites and demanding a delivery that
3 allows us to finish the projects.

4 We are the largest supplier of ductile iron
5 fittings in the state of California and we have a
6 tremendous demand for service. And if we cannot rely
7 on a consistent pricing or availability then we have
8 to designate that manufacturer and non-compliant.
9 Over the past several years with the ups and downs
10 going through Tyler, they have been non-compliant.
11 That's why I say that.

12 COMMISSIONER LANE: Are you still doing
13 business with them today?

14 MR. GROENIGER: Yes, on a reduced level, but
15 yes, ma'am.

16 COMMISSIONER LANE: Are they reliable today?

17 MR. GROENIGER: At a reduced level, yes,
18 ma'am.

19 MR. LISOWSKI: Ma'am, Pete Lisowski with
20 Star Pipe.

21 To add into what Mike was saying as far as
22 reliability goes, Star Pipe and some of the other
23 importers, SIGMA, PCI, we do what Tyler and Union
24 cannot do. WE're smaller and more flexible and more
25 ready to serve the customer and get them the product

1 they need even if it's not 10,000 pounds.

2 Getting back to pricing, much of what we do,
3 a lot of our fittings that we sell are shorts that
4 maybe the big domestic producer will not get to the
5 customer, but we get it to them. And normally they
6 pay a premium because those customers normally aren't
7 getting a rebate from us.

8 COMMISSIONER LANE: Okay.

9 Another few statements were made about the
10 safety record of Tyler, and Mr. Rybacki, that may have
11 been you.

12 You said that in 1995 Tyler paid \$10 million
13 in OSHA fines, that 4,000 people have been injured and
14 nine people have been killed.

15 Could you give me a timeframe on the 4,000?
16 Were those 4,000 people or just 4,000 incidents of
17 safety violations?

18 MR. RYBACKI: I do believe those are 4,000
19 incidents. Those numbers are since 1995 and those
20 numbers came from the Frontline/New York Times
21 investigation.

22 COMMISSIONER LANE: That's your sole source
23 of the information?

24 MR. RYBACKI: And other public records that
25 have been listed. From other news articles,

1 Birmingham papers, and Tyler papers and -- It's been
2 from the public record.

3 COMMISSIONER LANE: Thank you.

4 That's all I have, Madame Chairman.

5 CHAIRMAN OKUN: Commissioner Pearson?

6 COMMISSIONER PEARSON: Thank you, Madame
7 Chairman.

8 This morning I had the opportunity to ask
9 Petitioners about the flexibility of the world
10 marketplace, so now let me do the same with you.

11 In the event that a trade remedy is imposed
12 here and there's a restriction on the imports from
13 China, what types of adjustments can we expect to see
14 in the world market and the domestic market? Let's
15 talk a little bit about whether sourcing of imports
16 might change. What would happen to pricing levels in
17 the domestic market? What would happen to market
18 share, that sort of thing? I would love to hear from
19 several of you, so please go ahead.

20 MR. PAIS: I'm Victor Pais from SIGMA.

21 Without question in the short term there is
22 always going to be disruption. Let's not sit here and
23 think that fluidity is all night. But that said, this
24 is a basic foundry product and as a long term strategy
25 some of us have already got a diversified production

1 base spreading to India, Mexico, Korea, and some of
2 them even to Brazil. So there are multiple sources.

3 They're all competitive in their own way.
4 They have, each one has their own advantages and
5 disadvantages.

6 All these manufacturers were driven by
7 someone like SIGMA or Star. They're not off-the-shelf
8 product which are available like in the case of nails
9 or fasteners or something.

10 So it depends on the ability of a
11 manufacturer, and we consider ourselves a
12 "manufacturer" because our responsibilities as such,
13 our liabilities as such.

14 We have garnered over the years with the
15 professionals that we have, over 20-25 years of
16 experience, that we have guided them to produce
17 fittings to AWW standards, and then some. And then
18 some, only because we knew from day one that we had to
19 be better, not just equal.

20 Things like traceability on every casting to
21 have an outstanding quality record beyond any
22 question. And things like that. And it doesn't cost
23 anything more to introduce these quality measures.

24 So we already have a base in India, we have
25 a base in Mexico and Korea. Needless to say, there

1 are existing configurations scheduled and should this
2 happen there is going to be a disruption. But
3 inventory of the pipeline helps. And as you have
4 heard from our customers, they have been through this
5 before, the disruption, even within the domestic
6 supply sector. They will work with us. We know this
7 is a long term industry, but in a relatively short
8 time we can get an alternative base going.

9 MR. REILLY: Commissioner Pearson, John
10 Reilly. Let me try to address some of the market
11 price issues you raised.

12 I'd kind of like to set some parameters on
13 the analysis because I think there might have been an
14 unspoken assumption by some of the folks who were
15 speaking this morning that the scenario would entail
16 the elimination of imports from China. I don't think
17 that's basically what we're concerned with here.

18 Strictly as a counter-factual kind of
19 analysis, let's suppose that one took 2000 as a base
20 period. That seems to be a popular base period. That
21 means that the amount of product to be replaced in the
22 neighborhood, looking at the volume of imports over
23 the 2001-2002 and this year, is approximately 10,000
24 short tons. So basically what you're really asking is
25 how difficult would it be for the importers to replace

1 10,000 short tons of products by increasing imports
2 from other foundries in other countries where they
3 already have relationships.

4 My answer to that question is it wouldn't,
5 in the overall stream of things it would not be very
6 difficult at all. It could probably be pretty well
7 accomplished within the period of a year or so.
8 Considering that the importers have in place product
9 in the pipeline and also have in place inventories
10 which they can use to sustain themselves for a period
11 of time until production can be ramped up.

12 Those countries where they do have
13 relationships, do have foundries that are competent to
14 produce the specific product.

15 The other point I think which is important
16 and perhaps some of the importers will elaborate on
17 this, the price that they will pay is for the imports
18 from the third countries, is not necessarily
19 substantially higher than the price that they would
20 pay for imports from China.

21 For example, there's a general consideration
22 that India is in fact cost and price competitive with
23 China in this particular field in general. If you
24 give them additional orders and they can produce at a
25 higher level of utilization and increase their

1 efficiency, you'd expect their costs to go down as
2 well.

3 Given this kind of a scenario and the
4 substantial presence of non-subject imports in the
5 marketplace, and the substantial availability of non-
6 subject imports, I would expect the price effect from
7 that angle alone to be relatively insignificant.

8 Moreover, the Commission staff has estimated
9 that the elasticity of supply in the United States
10 from the domestic producers is highly elastic to
11 price. That means it would not take a significant
12 price increase to draw a significant additional supply
13 into the marketplace. There goes the assumption that
14 we're going to get rid of Chinese imports and get
15 prices up. It just doesn't work.

16 MR. McCUTCHEON: Dan McCutcheon, Star Pipe.

17 I just wanted to reiterate what John said.
18 I believe that it would take some time, it would cause
19 more work of course on our part to shift capacities.
20 But we could do that. WE are also established in
21 other countries with people and relationships.

22 There's a parallel there, I believe. What
23 happened between 2000 and 2001? It took us time after
24 the antidumping, it took us time to reestablish
25 ourselves, to set up our QA and our QC programs, to

1 bring in test product and test it and put it through
2 the throes that we have to do as manufacturers.

3 So I do think it would take some time.
4 Would there be changes in the price to the consumer?
5 Very unlikely because our price is heavily determined
6 right now not on country of origin, it's based on the
7 market and what McWane is doing in pricing and where
8 the net price is to the customer.

9 MR. RYBACKI: Commissioner Pearson, I want
10 to make a point that, I may be the only one able to
11 make it here. Actually two points.

12 One is, you keep mentioning other countries.
13 Everybody mentions other countries and nobody mentions
14 the United States. Why not source it there?

15 I'm one of the only people here that tried
16 to build a foundry in the United States. I was
17 associated with a company and we tried to build a
18 foundry in 1987 in Warrenton, Georgia. Because of
19 OSHA, EPA and other things, other blockades, we were
20 not able to complete our mission.

21 The reason I bring this up is because I want
22 to quote Mr. Girard today who said, "On the best of
23 days it is a hot, dirty, and dangerous business to be
24 in." On the best of days.

25 When I first joined SIGMA in late 1990,

1 early 1991, one of the possibilities for our sourcing
2 was the good old USA. We found because of continued
3 problems in the environment and safety conditions and
4 so forth, that the foundries were no longer able to
5 keep up with the standards. That's the reason why we
6 started sourcing 100 percent overseas. We actually
7 had an ongoing foundry at the time, SIGMA did,
8 affiliation with Russell Pipe and Foundry in Alabama.
9 But it could also not keep up with the continued
10 pollution problem, the worker problems, safety
11 problems, and as a result we decided it was best for
12 us to go overseas. So that's one point I think I
13 wanted to make.

14 Number two, as far as pricing. What would
15 happen if in fact the commission did rule and throw a
16 95 percent number at us? Obviously we would be forced
17 to be nimble enough to go other places, whether it be
18 the countries talked about today -- India, Brazil,
19 Mexico, Korea, and there are others, by the way, that
20 we could go to in a heartbeat that could be
21 competitive with China.

22 But what would happen to the marketplace?
23 Well, you saw the great disparity today, over 40
24 percent difference I think it was from Mr. Waugaman or
25 Mr. Blair that said that some of the market share at

1 29 and others are at a 48. You see a lot of 48's.
2 You might see a lot of 55's and 60's and 62's.

3 If we're gone and China's gone as a major
4 supplier to this industry, you're going to see
5 tremendously higher prices every where, not only to
6 our friends the distributors here, but to the ultimate
7 end user and the consumer.

8 MR. REILLY: Commissioner Pearson, my
9 comments notwithstanding, my confidence in my
10 analysis stands.

11 I do not believe that there would be
12 significant price increases in the absence of imports
13 from China. Once the logistical issues associated
14 with sourcing from other locations had been sorted
15 out.

16 In addition, the high elasticity of supply
17 from the domestic industry that's indicated by the
18 staff report, would also help to keep prices down.

19 COMMISSIONER PEARSON: Thank you. with the
20 red light --

21 MR. RYBACKI: I just want to make one last -
22 - I agree with Mr. Reilly. The difference is I said
23 short term. The short term before we could get over
24 to and get our full production over to India and the
25 other countries, Mexico and so forth. The short term

1 prices would go up and then they would stabilize.

2 COMMISSIONER PEARSON: Thank you all very
3 much.

4 With the red light on let me turn it over to
5 Madame Chairman.

6 CHAIRMAN OKUN: Let me ask, well whoever
7 want to answer. As I listened to your testimony and
8 responses to questions in describing the environment
9 you operate in and kind of the focus that I've heard
10 from all of you on McWane and the rebates and the
11 loyalty program and I think as many of you have
12 described, you've used words like dominance and a
13 number of things about McWane.

14 Why in a market period, and again I'm
15 focusing on the most recent but I think I heard
16 Commissioner Koplan looking at 2000 as a base year.
17 Why wouldn't McWane have been able to force rising
18 prices into this market when there was increasing
19 demand and rising costs from the domestic producers?
20 That's a disconnect for me in listening to this.

21 If McWane is driving all this, why isn't it
22 driving it up in this market?

23 Back row. Mr. Pais?

24 MR. PAIS: That's correct. Victor Pais from
25 SIGMA.

1 In a way I wish to answer Commissioner
2 Okun's and Commissioner Miller's similar concern. If
3 McWane had a business model which quantified a certain
4 level of business, just like any other business, and
5 went about their marketing and other management plans
6 to reach those goals, we would not be sitting here.

7 All this has happened because their model is
8 just one thing. It's 100 percent market share.

9 If you ask not just us for on the other side
10 of the equation, but customers and anyone in the
11 industry, if you ask one thing about McWane they would
12 say market share. They are so driven by it.

13 So when you have this goal or desire or
14 obsession about 100 percent domination, so you could
15 control the distributors, you can charge whatever
16 price you want, any time you want. Anything less is
17 not good enough, and this is the reason where they
18 have got the three big chains as many of us have
19 attested and as the facts bear out, they pretty much
20 have the business, they've had it for the last several
21 years. In spite of that they gave a preventive 17
22 percent, just to lock them up, out of any kind of
23 imaginary erosion to the smaller suppliers. And time
24 and again we have said none of us have the capacity
25 even to manage them.

1 Now they have the fights with the smaller
2 customers. They depend on McWane even more. And you
3 mentioned earlier about what is the percentage of the
4 domestic preference. Theoretically it could be ten
5 percent or eight percent or 20 percent, and who knows?
6 Because a lot of towns, hundreds of towns because of
7 various reasons have specified domestic needs.

8 But all these distributors have multiple
9 locations. They cannot have dual inventories. So if
10 they know they cannot have access to the domestic,
11 however small the content may be, whether it's five
12 percent or ten percent, then they fear losing the
13 access to their whole product, very critical product
14 line.

15 That is the reason, McWane knows that, and
16 in a way just to prevent us from growing even by one
17 percent. And unfortunately that's kind of backfired
18 because it has put such a lot of pressure and mostly
19 on themselves.

20 You can see, 17 percent of let's say \$100
21 million, that is some \$10 million they are giving away
22 for no rhyme or reason.

23 CHAIRMAN OKUN: Okay, I'd welcome others to
24 comment on that as well. Although I guess I would
25 just comment, you focused on the market share, and

1 again we're talking about a growing market so to that
2 extent I view market share a little bit differently.

3 But U.S. shipments have declined as well.
4 I'm having a hard time seeing -- Again, either you
5 could say all right, in this market why didn't they
6 give price increases if they were the dominant, if
7 they were controlling it in the way that it's been
8 described. Or why didn't they lock up big shipments.
9 What I think you're describing is market share, but I
10 don't see that in the data either. I guess that's
11 what I'm still trying to understand, what you're
12 describing with this data.

13 Mr. Reilly, and then if there are others.

14 MR. REILLY: There is a nature of pricing, a
15 type of pricing called limit pricing. Limit pricing
16 is a situation that can take place when there is a
17 dominant producer that does face competition. That
18 producer will price to prevent new entrants from
19 coming into the market and to prevent competitors
20 already in the market from expanding. And basically
21 limit pricing is one of the functions, by the way, of
22 price leadership. Or one of the signs of limit
23 pricing is price leadership.

24 When one is price cutting and becoming
25 aggressive on price, one then engages in what I will

1 call cut-throat competition and that is the kind of
2 competition that discourages competitors from
3 remaining in business and attempts to drive people out
4 of business.

5 I don't think that McWane has been engaging
6 in that kind of competition with respect to its
7 foreign competitors, but I do believe that the data
8 show that there is limit pricing by McWane taking
9 effect.

10 The other point has to do with rising costs
11 -- You raise the question with rising costs why can't
12 they simply increase prices?

13 There are two kinds of cost increases. One
14 is factor cost increases. For example, the price of
15 scrap goes up, the price of other raw materials goes
16 up, the price of electricity goes up. Those are costs
17 that are beyond the control of a producer and the
18 producer would attempt to increase price to pass on
19 those costs. Within an industry, even among
20 competitors, if those costs all increased there
21 probably would be a general price increase.

22 As I will explain in more detail during my
23 in camera testimony, that doesn't seem to be the
24 situation we have here. Those kind of cost increases
25 don't seem to be the issue.

1 CHAIRMAN OKUN: Were there others who wanted
2 to comment on that question of why, if this is the
3 situation, that McWane either can't get price
4 increases or doesn't have growing shipments in a
5 growing market.

6 MR. McCUTCHEON: Yes, ma'am. Dan
7 McCutcheon, Star Pipe.

8 CHAIRMAN OKUN: Yes.

9 MR. McCUTCHEON: A couple of quick points.
10 First of all, on the pricing issue why not
11 use the control that they have to move up, and I'm as
12 confused as you are on that topic. I've wondered that
13 ever since I've been in the market. They clearly
14 dominate. I would challenge someone to figure out
15 when they moved prices up did they lose business, and
16 when they moved prices down did they gain business. I
17 don't think either of those things happened.

18 I'm confused.

19 The only thing that I've been able to come
20 up through the years is their desire to dominate and
21 control. It's the only logic that I've ever been able
22 to come up with. I've asked people year after year
23 why would someone behave this way? Because they're
24 clearly, clearly giving away tens of millions of
25 dollars year after year. I'm confused.

1 So I don't have a real good answer for you,
2 but I've been confused by the same question for years.

3 Secondly on the volume question, I'll make
4 it quick. Is the light on?

5 CHAIRMAN OKUN: That's fine.

6 MR. McCUTCHEON: I'm using Figure 4 that we
7 all looked at this morning that was passed out by the
8 Petitioners. There is not any volume numbers or unit
9 numbers on it so I don't know exactly what the
10 declines are, but I do have a comment for you.

11 I said it in my testimony, not as directly
12 as I'm getting ready to say it, but McWane lost some
13 customers in the last couple of years that had very
14 little to do with China. Substantial customers that
15 chose to source their product in other countries on
16 their own. We mentioned it but I'll bring it up
17 again. American Cast Iron Pipe chose to drop McWane
18 and go to Brazil. That had nothing to do with China.

19 U.S. Pipe chose to make some rather large
20 purchases from Brazil. That had nothing to do with
21 China.

22 And Griffin Pipe chose to set up their own
23 foundry in Mexico. That had nothing to do with China.

24 All three of those volumes, substantial
25 volumes, substantial tonnage, all came out of McWane's

1 revenue. It did not have anything, or very little, to
2 do with China.

3 I think that's the reason there's a blip on
4 the screen, but without the units I can't put two and
5 two together.

6 CHAIRMAN OKUN: I appreciate all those
7 comments. I see that my red light is going to come on
8 so I will turn to Vice Chairman Hillman.

9 VICE CHAIRMAN HILLMAN: Thank you, and I
10 would join my colleagues in thanking you very much.
11 It's been an extremely helpful testimony.

12 I guess I'm going to try one last time
13 because I obviously share a lot of my colleagues'
14 concern. I mean I've heard you loud and declare all
15 describing uniformly, I would say, McWane as the price
16 leader in the market. I presume by that you're saying
17 they are the low price leader in the market, not the
18 high price leader in the market.

19 And yet I'm struggling because I have a
20 record in front of me which we priced five products
21 and got apples to apples comparisons of five products.
22 Again, I don't want to go into the specific numbers
23 but it's fair to say that in all of those comparisons
24 the Chinese price was considerably below, not above,
25 considerably below the domestic price.

1 So help me understand why do you feel, to
2 the extent that you can. why do you think the domestic
3 product is the low-price product in the market when we
4 don't, again, we don't see that in any of the data
5 before us.

6 So anybody that can help me understand how
7 it is that you feel that that's what's going on in the
8 market and it's not what we see.

9 MR. LOEB: Vice Chairman Hillman, can I just
10 comment on that first before we hear from the
11 importers?

12 I think it's very important, these importers
13 don't know what the pricing product data shows so let
14 me just state for their, I'm not going to state that
15 it shows, but just let me emphasize that the pricing
16 products are national data on each product. You've
17 heard from these witnesses that there are markets in
18 which the imports are competitive, they can compete,
19 they can get there, they compete. Bowling Green has a
20 29 multiplier, and there are other markets where the
21 multiplier is in the high 40s. Including markets
22 where there is not going to be import competition.

23 So you are looking at pricing graphs which
24 show a combination of pricing results where there are
25 competitive pricing being reported and non-competitive

1 pricing being reported. I think if you were looking
2 at the same graphs, eliminating the areas where
3 there's not any import competition what you'd see is
4 the McWane bar being quite close to the import bar.
5 If you looked at the areas where McWane has no import
6 competition, you'd see the McWane bar at the top of
7 their multiplier list. And what you have in front of
8 you is the aggregated numbers from that, which
9 remember, you're dealing with a producer here that, as
10 Mr. Green testified himself, dominant, very high
11 market share percentage, and imports that are well
12 under the 20 percent level.

13 So when you blend all that together you're
14 looking at a chart that has blended effects that's not
15 describing where these people live every day in the
16 markets where they compete.

17 Having said that, let me ask the importers
18 to elaborate.

19 MR. SAHA: This is Steve Saha from PCI. I
20 agree with Mr. Loeb.

21 McWane is not the low price leader, by the
22 way . They are the high price leader. And where the
23 importers are basically in the regions, where McWane
24 has kept the prices low, they have kept the prices so
25 depressed that we have no other choice but to be at

1 their level.

2 So if you take the total market, if you take
3 the entire U.S., 100 percent, if they are 60 percent
4 at the higher multiplier where imports are not even
5 competing or in very little quantity, and if you take
6 the rest of the market where imports are big, where
7 they have kept the prices down, the overall import
8 prices does come out way lower than compared to
9 McWane's overall pricing nationwide.

10 VICE CHAIRMAN HILLMAN: But you're saying in
11 a particular market, is it your view that the McWane
12 price is higher than or lower than the import price?

13 MR. SAHA: In many parts of the country the
14 McWane pricing is way higher than any import pricing.
15 And in some parts of the country where inherently the
16 importers have been strong, for example Texas,
17 Georgia, Florida, California, Tennessee, McWane has
18 lowered the prices, have kept the prices depressed for
19 the last five years that I know of --

20 VICE CHAIRMAN HILLMAN: Have they lowered
21 them below the import price?

22 MR. SAHA: In some cases they have lowered
23 it below the import prices. As of today, as we speak,
24 PCI's pricing in North and South Carolina is at 30.
25 If I remember correctly, SIGMA was also at a 30 or is

1 at a 30, where McWane is at a 29. I'm sorry. That's
2 Tennessee. At 29, and Mississippi.

3 VICE CHAIRMAN HILLMAN: Mr. McCutcheon?

4 MR. McCUTCHEON: Yes, ma'am. Dan
5 McCutcheon, Star Pipe. I'm going to try to say the
6 same thing but in just a little bit different way.

7 There are large parts of the country that we
8 do not participate for a variety of reasons. That was
9 not, in my view, I don't know exactly how the numbers
10 look, but what I believe is there was not a weighted
11 average taken.

12 If you were to segregate the parts of the
13 country where importers compete and parts of the
14 country where importers do to compete, the disparage
15 between the number is very significant.

16 If you were to go to the northwestern part
17 of the United States. If you were to go to
18 Washington, Oregon, Montana, et cetera, importers do
19 not participate in that part of the country for a
20 variety of reasons. The distributors in that part of
21 the world have chosen to, as a whole almost, buy from
22 McWane.

23 We don't participate there. Consequently
24 their multiplier is a 48. We're not there.

25 If you take that quadrant of the United

1 States that may be 20 percent, and you use a weighted
2 average and mash it together, then our numbers would
3 be closer.

4 But if you take all parts of the country
5 where we're not and don't use a weighted average,
6 which I think is what has happened here, it gets
7 confusing because it shows a large difference in the
8 average unit price.

9 Did I make it worse?

10 VICE CHAIRMAN HILLMAN: No, I understand
11 what you're saying. I'm not sure, I'm going to have to
12 think about what that tells me in terms of the degree
13 to which it is import competition that is pushing the
14 prices down.

15 If you're saying that in the markets where
16 there are no imports the prices are high and in the
17 markets in which there is import competition the
18 prices are low, it is suggesting to me that it's the
19 imports pushing the prices down more so than something
20 else.

21 But in any event, I heard your answer, I
22 appreciate it.

23 I may want to go to a little bit of a
24 different issue since we've spent a lot of time on
25 this price issue. That is to try to understand truly,

1 a lot of you have commented, particularly in response
2 to Commissioner Pearson's question, on this issue of
3 how readily could you switch to other sources. Which
4 makes me want to make sure I understand how easy it is
5 to produce product for the U.S. market.

6 It's my understanding, and this is where I
7 need some help from you all in the industry, that
8 everything that's sold in the U.S. market must be to
9 AWWA standards. That's correct? Okay.

10 But are there other markets in which you
11 sell fittings that are not made to AWWA standards? ISO
12 standards or something else?

13 MR. RYBACKI: Commissioner Hillman, yes
14 there are. We do participate in markets that are ISO,
15 international standards.

16 But getting back to your point on how fast
17 and so forth, every one of us, we've been through this
18 before. SIGMA's been around, Star's been around, so
19 we've been around a little longer than PCI, so we've
20 been through this before. As a result, back in the
21 '90s when we faced this, then it was an ADD type
22 situation, which our friends were unsuccessful. We
23 moved our production just in case something were to
24 happen.

25 So you ask how long would it take, it would

1 take -- To really run the way we're running now it
2 would take a little bit of time but not a lot because
3 we have duplicate patterns other places already. My
4 friends at Star Pipe have duplicate patterns other
5 places already.

6 VICE CHAIRMAN HILLMAN: Is that the primary
7 distinction between something made to an AWWA standard
8 or an ISO standard is the pattern itself?

9 MR. RYBACKI: Yes, it's the pattern. It's
10 just the way the configuration is. ISO is used in
11 different parts of the world, mainly in Europe, uses a
12 lot of ISO. Some of the South American countries and
13 Middle Eastern countries use ISO, international
14 standards. We follow the AWWA.

15 VICE CHAIRMAN HILLMAN: Does any other
16 market follow the AWWA besides the United States?

17 MR. RYBACKI: Canada is AWWA.

18 VICE CHAIRMAN HILLMAN: So basically you use
19 the same equipment, same employees, same everything.
20 It's just the mold itself or the pattern itself that
21 would be different --

22 MR. RYBACKI: You're absolutely right.

23 VICE CHAIRMAN HILLMAN: That's it. No other
24 distinction.

25 MR. RYBACKI: That's right.

1 VICE CHAIRMAN HILLMAN: So it's switch in
2 one mold, switch out another one and you've switched
3 from AWWA.

4 MR. RYBACKI: Yes. WE have ISO patterns at
5 the same place we have AWWA. ISO quantities are much
6 less because those are, we only ship those to Europe
7 and so forth.

8 VICE CHAIRMAN HILLMAN: That's very helpful.

9 MR. McCUTCHEON: Ms. Hillman, Dan
10 McCutcheon, Star Pipe.

11 Just one quicky to add onto the back of what
12 Larry said. It takes time. It would in my view, it
13 would take us a year maybe longer to transition. WE
14 could transition, we do have duplicate patterns, but
15 there's more to it than duplicate patterns. Testing,
16 quality control. There's a lot more that goes into it
17 before either one of us would bring the product in and
18 sell it. It's not instantaneous.

19 VICE CHAIRMAN HILLMAN: But presumably there
20 is non-subject imports as we've heard from Brazil,
21 India, Mexico, Korea I believe were the countries that
22 were mentioned. Presumably all of those are already
23 being made to AWWA standards?

24 MR. RYBACKI: Yes, ma'am.

25 VICE CHAIRMAN HILLMAN: That's very helpful.

1 Thank you.

2 CHAIRMAN OKUN: Commissioner Miller?

3 COMMISSIONER MILLER: There's just one issue
4 I want to clarify a little bit.

5 I think Mr. Rybacki, you may have just
6 referred back to it again.

7 In your initial testimony there were some
8 references to the import increase, and this may have
9 been you, Mr. Reilly, as much as anything else. The
10 import increase that occurred after the antidumping
11 duty was, the order was lifted.

12 I wonder if the industry, and if I'm right
13 and you just referenced it, Mr. Rybacki, or if SIGMA
14 has any experience I would welcome --

15 MR. RYBACKI: I think the testimony was from
16 Dan that referenced after the duty.

17 COMMISSIONER MILLER: I just want to clarify
18 the circumstances and your view of the circumstances.
19 As I understood it in part you discounted the increase
20 in imports after 2000 because it was the result of the
21 lifting of the antidumping duty order. Did I hear you
22 correctly on that? Is that what -- Mr. Reilly, did
23 you make that or was it somebody else?

24 MR. REILLY: No. I think I simply noted
25 that the increase between 2000 and 2001 followed the

1 lifting of the antidumping duty and that subsequently
2 imports became quite flat.

3 COMMISSIONER MILLER: All right. I'm not
4 sure there's anything I need to clarify about this. I
5 understand what Petitioners say in terms of why they
6 didn't pursue it. I just thought you were referencing
7 it in some way as something that was relevant and I
8 just wanted to make sure I understood if you thought
9 so.

10 Mr. McCutcheon, was there something you
11 think we need to be aware of with reference to that?

12 MR. McCUTCHEON: I'm not sure I'm answering
13 your question, but --

14 COMMISSIONER MILLER: I'm not even sure what
15 my question is.

16 MR. McCUTCHEON: I'll try to answer what I
17 think I'm hearing.

18 COMMISSIONER MILLER: Maybe I should ask
19 this question. Was the antidumping order effective in
20 1999? As of 1999, did any importers here have
21 experience with importing under that antidumping
22 order?

23 MR. McCUTCHEON: Was it effective to keep us
24 from --

25 COMMISSIONER MILLER: Did it restrain

1 imports?

2 MR. McCUTCHEON: Absolutely.

3 MR. SAHA: Steve Saha from PCI.

4 I agree with Dan, but in some ways it was
5 not very effective, in the way that SIGMA, the largest
6 importer, was continuing to import because they won
7 the ADD hearing. Star Pipe had shifted completely to
8 Brazil at that point. So really they had no interest
9 of going back to China at that point.

10 So the total imports coming into the country
11 did not decrease by one single fitting, to the best of
12 my knowledge at that time.

13 MR. LOEB: Commissioner Miller, could I just
14 add a point on that?

15 COMMISSIONER MILLER: I'm not sure this is
16 particularly relevant. I just thought I'd heard some
17 comments about it in the course of these discussions
18 so I wanted to make sure I understood if you felt it
19 was.

20 MR. LOEB: I have a view that it does have
21 some relevance, not a huge amount but the following
22 relevance.

23 The principal Chinese importers were down to
24 zero in terms of the rate that they had in annual
25 reviews. Therefore they were able to bring their

1 material in without having any dumping duty assessed
2 on it and the Petitioners have said we just didn't
3 think it was worth bothering over at the Commerce
4 Department and before the Commission to try to defend
5 that order given that it really was not helping us
6 very much. The main producer had gotten down to zero.

7 I think what you heard Mr. McCutcheon say
8 earlier was for everybody else there was 137 percent,
9 one of those wonderful kind of best information type
10 big time rates. So nobody else could come in because
11 if you started coming in, even if you were not really
12 dumping and it was going to get down to zero, you'd
13 have to float two or more years worth of paying those
14 huge duties before you got an annual review that would
15 drop you down.

16 So it was an impediment in the sense that
17 people who otherwise could have been in the market and
18 might well have been in the market the same way the
19 other large Chinese producer was in the market with no
20 dumping rate at all, simply had the impediment of the
21 way the statute works as a deterrent to them.

22 I think when you hear Mr. McCutcheon say it
23 did work as a deterrent, that's what's been explained
24 to me as to where the deterrent effect of that order
25 was. When the order went away in 2000 then after a

1 period of, when they did their QC and so on then you
2 saw the increase and the increase shows up principally
3 in 2001. That's one of the reasons why I think even
4 if Commissioner Koplan is going to look at the year
5 2001 as part of the increase, there's not a causation
6 element there. It's really a response to the
7 Petitioner's failure to keep that order in place. They
8 made that choice themselves.

9 COMMISSIONER MILLER: I have no further
10 questions. I appreciate all your testimony. Any
11 other questions I may have will arise in the in camera
12 session. Thank you.

13 CHAIRMAN OKUN: Commissioner Koplan?

14 COMMISSIONER KOPLAN: Thank you, Madame
15 Chairman.

16 I don't want to beat this to death, but Mr.
17 Rybacki, I just want to come back for a moment to the
18 Buy American testimony that you gave in answer to my
19 question on my first round.

20 I just want to point out to you, and I don't
21 know that you would be necessarily aware of this, that
22 pages 32 to 35 of Mr. Rosenthal's brief provides
23 details with regard to Buy America provisions. Most
24 of that is not bracketed. It's headed "Buy America
25 requirements and/or preferences do not shelter the

1 domestic industry from import competition."

2 Frankly, when I called on Mr. Girard I was
3 curious as to whether he would be providing any
4 additional information not otherwise contained here.
5 So I would just say to you that you might want to take
6 a look at that.

7 Also in Exhibit 3 to the Petitioners brief,
8 they provide a detailed analysis of jurisdictions
9 claimed by PCI to have state-wide Buy American
10 requirements. Pennsylvania, which you mentioned, is
11 also mentioned in the brief as are other states.

12 So my request is simply if you can get
13 together with Mr. Loeb and perhaps, Mr. Loeb, if there
14 are any additional citations other than what I've
15 looked at in Petitioners brief, if you can provide
16 that post-hearing I'd appreciate it.

17 MR. LOEB: Commissioner Koplan, we'd
18 certainly be happy to do that. I would just
19 emphasize, because I know you did ask this question
20 earlier, I don't know if you were referring to page 36
21 of our pre-hearing brief.

22 We put in Buy America for two reasons. One
23 because the staff report does include a specific
24 discussion of it at page B-10 and that's what we cited
25 when we wrote a Buy American factor, we were citing

1 the staff report's discussion, not anything that came
2 from somewhere outside the Commission.

3 Secondly we've emphasized that the
4 geographic protection that that would provide, whether
5 it's limited, ten percent or whatever the range is,
6 plus as we say on page 36, the other conditions of
7 competition. By there I'm referring to the point I
8 made a minute ago to Commissioner Hillman that there
9 are many sectors where there is no competition from
10 the imports. I'm saying that might explain why when
11 you look at the pricing products you see what you see.

12 Thank you.

13 COMMISSIONER KOPLAN: Thank you for that
14 addition. I appreciate it.

15 Let me stay with you if I could, Mr. Loeb.

16 You've heard the detailed questions that we
17 asked Mr. Rosenthal this morning about his remedy
18 request, and we now have far more definition to that
19 proposal than was contained in the pre-hearing brief.

20 I would make the same request of you that I
21 did of him. I don't expect that you would agree with
22 any of what he said on this, but I'd like you to
23 quantify the effects of what we have before us now as
24 best you can, realizing that I'm going to get
25 additional information post-hearing. But if you could

1 quantify its effects for purposes of the post-hearing,
2 take into account not only the effect it would have on
3 the domestic industry but also on the Chinese
4 Respondents.

5 Of course I realize the Commission must
6 first finding the affirmative with regard to injury
7 and causation. But in the event that that happens I
8 would no longer have the opportunity to make this
9 request of you because this is the time for me to make
10 it.

11 MR. LOEB: Commissioner, I understand that.
12 We'll do our best in the post-hearing submissions. Of
13 course all the information we have is what's
14 essentially in the confidential record that we've
15 gotten from the Chinese Respondents, they don't have
16 the perspective on the market that might assist
17 somewhat in that. We'll do the best we can with that.

18 I would say --

19 COMMISSIONER KOPLAN: I'm asking you because
20 you do have access to the proprietary information.

21 MR. LOEB: Right. Obviously that's what we
22 will use in making our best effort there and that's
23 obviously going to be a task for Mr. Reilly, sitting
24 to my right.

25 I don't want to use your time but I do have

1 two points that would respond to the specifics that
2 you asked Mr. Rosenthal related to his remedy proposal
3 that I think are worth making.

4 I can --

5 COMMISSIONER KOPLAN: I didn't hear the last
6 thing you said. You have two what?

7 MR. LOEB: Two points that relate to the
8 remedy proposal to the questions that you asked Mr.
9 Rosenthal when he responded. So I can make them now
10 or I can make them in closing, but --

11 COMMISSIONER KOPLAN: You can make them now
12 if you like.

13 MR. LOEB: Thank you, I appreciate that.

14 Point number one is that you asked how long
15 would any remedy last, and I think he told you five
16 years.

17 COMMISSIONER KOPLAN: That's right.

18 MR. LOEB: I would just point out that the
19 WTO safeguard agreement specifically limits safeguards
20 measures to four years maximum.

21 COMMISSIONER KOPLAN: I don't think such a
22 limit applies to 421.

23 MR. LOEB: I don't know if it does apply
24 but --

25 COMMISSIONER KOPLAN: I don't believe it

1 does.

2 MR. LOEB: I would suggest that there's some
3 good reason why that's in the WTO agreement and I
4 think that would be pertinent to any evaluation of
5 what would be an appropriate length.

6 My second point is, I'd just like to remind
7 the Commission that what you do if you're an officer
8 at USTR when you have a truly horrendous trade
9 agreement violation is you say to the violating
10 country, hey Japan, you haven't kept up with your
11 bargain to let our automobiles into your market.
12 We're going to put a 100 percent tariff on you and
13 that is going to shut you down. That is going to shut
14 out imports because we calculate at the U.S. side that
15 the trade that we've lost because of your failure to
16 abide by the specific agreement is X million.
17 Therefore we're going to use the eye for an eye
18 principle of international trade law. We're going to
19 retaliate against you and eliminate X million of your
20 incoming trade. The way we're going to do that is by
21 putting 100 percent duty on your imports of Lexus
22 luxury vehicles, for example. That's the 1995
23 example. That's what 100 percent duty does. It shuts
24 down imports. Everybody knows that.

25 In this case you're dealing with a statute

1 that says the remedy can only be that which is
2 necessary to restrain the market disruptive effects.
3 It cannot be a remedy that will eliminate all imports.
4 It can only be a remedy that will eliminate effects of
5 that rapid increase that the Commission finds.

6 So the notion that you could do a remedy of
7 the kind that Mr. Rosenthal has proposed and do it
8 consistent with the statute and/or consistent with the
9 WTO agreement strikes me as entirely impractical.

10 MR. REILLY: Commissioner Koplan, I'd like
11 to add one analytical note about the 100 percent
12 tariff being very close to a 95 percent tariff.

13 I've looked at this and we'll provide some
14 detailed calculations in our post-hearing brief, but
15 my conclusion is that the tariff as requested would be
16 preclusive. It would essentially eliminate imports
17 from Japan from the United States market. It would
18 also make alternative sources of supply in India,
19 Korea, Mexico and so forth significantly more price
20 and cost competitive than the Chinese, much to their
21 benefit.

22 I think you'd find that there would be a
23 significant fill-in behind the eliminated Chinese
24 there.

25 We'll elaborate in our post-conference

1 brief.

2 COMMISSIONER KOPLAN: Thank you. I would
3 just point out to both of you that I did remind Mr.
4 Rosenthal that he used the term practical several
5 times in discussing his remedy and I had a sense that
6 he wasn't finished with his remedy proposal yet. So
7 I'm sure that I'll be seeing some additional detail on
8 all of this.

9 MR. REILLY: Mr. Koplan, may I ask you a
10 question? Does that qualify as going further down the
11 yellow brick road?

12 (Laughter)

13 COMMISSIONER KOPLAN: Possibly.

14 I have one more for you. It's always good to
15 see you, Mr. Reilly.

16 You've heard the response of the industry
17 witnesses to the argument made by Pipeline Components
18 Inc. at page nine of your pre-hearing brief, that the
19 domestic manufacturers consider DIWF a secondary
20 product merely used to complement their sales of
21 ductile iron pipe and other waterworks. PCI argues
22 that it is common knowledge in the industry that
23 ductile iron pipe is a major if not the major
24 component of each company's product line. Each
25 company sells a full menu of water distribution

1 components.

2 That's at page 15 of the brief.

3 The domestic industry this morning told a
4 very different story on that. I'd like you to respond
5 to that in as much time as my yellow light permits.

6 MR. SAHA: Steve Saha again from PCI.

7 PCI does a lot of treatment plant jobs
8 which, and we only sell to distributors like Ed
9 Morrison or Groeniger Supply.

10 When we sell jobs through this distribution
11 they are constantly competing against Clow, U.S. Pipe,
12 that sell directly to the contractors and that package
13 their pipe, the valves and the fittings together. And
14 any job which is more pipe intensive, valve intensive,
15 we end up losing those jobs to them. That was my
16 point.

17 COMMISSIONER KOPLAN: Thank you.

18 MR. BOGARD: Commissioner, this is Lawrence
19 Bogard From Neville Peterson. I recognize the red
20 light's on but can I just clarify that for one second?

21 COMMISSIONER KOPLAN: My colleagues are
22 saying that you can.

23 MR. BOGARD: Thank you.

24 The reason I wanted to do that was because I
25 think that while you correctly characterized this

1 morning the argument made at page nine of our brief,
2 that wasn't the argument that was addressed by the
3 domestic industry. They very clearly were reacting to
4 an argument we didn't make which was I believe the
5 idea that they were tying product. That I think Mr.
6 Waugaman denied vehemently that his sales people had
7 ever demanded that people buy Product A in order to
8 get DIWF, and that was not the argument clearly we
9 made at page nine of the brief.

10 So to the extent that you're observing that
11 you heard a different story this morning I'd say
12 that's because they were addressing a different
13 question.

14 COMMISSIONER KOPLAN: Thank you.

15 And I thank you, Madame Chairman, for
16 letting me conclude my questioning.

17 CHAIRMAN OKUN: Thank you.

18 Commissioner Lane?

19 COMMISSIONER LANE: Mr. Reilly, in response
20 to a question by Commissioner Koplan you said that the
21 95 percent tariff would preclude imports from Japan.
22 Did you mean China?

23 MR. REILLY: Yes I did, I misspoke. And
24 thank you for the correction.

25 COMMISSIONER LANE: I only understand what

1 people say and sometimes I wasn't sure whether you
2 really meant Japan or whether you meant China.

3 MR. REILLY: Suddenly I was back in the late
4 1980s. I'm sorry.

5 COMMISSIONER LANE: Thank you.

6 COMMISSIONER KOPLAN: Thank you,
7 Commissioner Lane.

8 COMMISSIONER LANE: Now I have a real
9 question.

10 I want to make sure that I understood a
11 bunch of the answers that we heard earlier about
12 pricing.

13 From looking at the staff report it's my
14 understanding that the domestic industry and the
15 importers sell most of the product through
16 distributors or what's called waterworks houses. Then
17 the additional people today who are the actual
18 distributors, and that includes the Huntington Company
19 and Mr. Groeninger and Mr. Lindquist.

20 Now when you were telling me about the
21 prices and how you do your prices and based upon the
22 McWane list and then doing the factor, is that pricing
23 done to your ultimate consumer or is that how you get
24 what you pay for your product from the importers and
25 from McWane?

1 MR. MORRISON: Ed Morrison from CI
2 Thornburg.

3 Those numbers we went through are our net
4 costs to us the distributor. We mark up, use a
5 different multiplier to sell to the consumer, to the
6 contractor or the municipality.

7 COMMISSIONER LANE: So that's the price, the
8 price you were talking about earlier is what you would
9 pay if you bought your product from either McWane or
10 from SIGMA or Star?

11 MR. MORRISON: Correct.

12 COMMISSIONER LANE: Thank you.

13 Madame Chairman, that's all I have.

14 CHAIRMAN OKUN: Commissioner Pearson?

15 COMMISSIONER PEARSON: Just one, perhaps
16 quick.

17 Respondent Beijing has suggested that the
18 Commission should look at average unit values rather
19 than product specific pricing data in order to
20 determine underselling.

21 How can we tell what influence changes in
22 the product mix might have had on average unit values?
23 Is there anything in the record that would indicate
24 that product mixes of both the subject imports and the
25 domestic like product were stable over time?

1 MR. REILLY: Commissioner Pearson, John
2 Reilly. Thank you for asking that question because I
3 would like to put some information on the record now.

4 The Petitioner, McWane, testified at the
5 conference, the critical circumstances conference,
6 that the product mix has been stable during the period
7 of investigation. I have also conferred with the
8 various importing companies and they have indicated
9 that their product has also been stable throughout
10 the period of investigation.

11 The second issue is whether there's a
12 substantial identity product within that mix. Are
13 they all on the same segment and so forth?

14 The bread and butter product for both McWane
15 and the importers are compact fittings in the under 30
16 inch category, actually under 24 inch, with the vast
17 majority of product moving in 12 and under.

18 The profile of the importers and the profile
19 of McWane in that particular segment is quite similar.

20 So we do have a situation in the AUVs of
21 very similar products and very stable product mixes.

22 COMMISSIONER PEARSON: Thank you.

23 Madame Chairman, back to you.

24 CHAIRMAN OKUN: Maybe I could just follow up
25 on the AUV question, Mr. Reilly. I heard the response

1 and I did want to hear that because I spent some time
2 on it this morning with Petitioners.

3 But even if we were to look at the AUVs as
4 they've been argued in terms that this somehow shows
5 that the pricing is, what it means for underselling.

6 I look at those figures and you still -- we
7 can't talk about the specific figures, but it doesn't
8 seem to me that it shows there was no underselling by
9 the Chinese.

10 MR. REILLY: I'm going to be previewing a
11 little bit what I'll be saying during the in camera
12 session. Part of my discussion in the in camera
13 session will be on the dynamics of competition and
14 what's comparable to what.

15 Actually in order to get comparable AUV data
16 you have to break the data down somewhat. I'll go
17 through that in camera.

18 CHAIRMAN OKUN: Then in light of that, we
19 can just leave it for in camera on that.

20 Another question that I'm curious about,
21 having heard the discussion about the non-subject
22 imports again. When I look over the questionnaire
23 data that we have here, it appears to me that we have
24 pretty complete coverage in this room for both subject
25 and non-subject imports currently, for what's

1 currently coming in.

2 I wondered for those who have noted today
3 that they sell both subject and import whether they
4 could talk about both the prices, let's take Brazil,
5 India, whatever you want to pick, what those prices
6 are coming in are relative to the Chinese. Then what
7 you sell those products for, whether it be Chinese,
8 whether those prices are different or not.

9 Can anyone help me out on that here? Mr.
10 Rybacki?

11 MR. RYBACKI: I would just echo what Dan
12 McCutcheon said. If it's from Brazil, if it's from --
13 which we don't get from Brazil. WE used to a little
14 bit but not any more. But whether it's from India,
15 Mexico, Korea, China, we have no distinction and I
16 don't think our friends at Star or PCI, there's no
17 distinction. They're sold in the marketplace at the
18 same price.

19 CHAIRMAN OKUN: How about what are they
20 purchased at?

21 MR. RYBACKI: They're purchased at a little
22 different price depending. With Korea being high and
23 India and China being on a par. Mexico and Korea
24 being a little higher and India and China being on a
25 par, relatively close.

1 CHAIRMAN OKUN: Any of the other
2 distributors want to comment on that?

3 MR. SAHA: Steve Saha from PCI.

4 We are buying from China and India, and
5 India, as a matter of fact, is probably slightly lower
6 than China.

7 CHAIRMAN OKUN: Lower when it comes in. How
8 about your prices for what you sell it at?

9 MR. SAHA: WE sell it at the same price.

10 CHAIRMAN OKUN: Okay.

11 One final note on the period and Mr. Loeb I
12 just wanted to go back to you on what data we're
13 looking at.

14 One of the things that had struck me when I
15 read your argument about what period we should be
16 looking at, was this projection of the 2003 data. And
17 I was trying to look back at some of the other cases
18 we've done ever, where if we have a full year of data,
19 why we would ever rely on projected data. In other
20 words we have full year 2000. We don't have full year
21 2003. Regardless of what the correct period is, that
22 concerned me and I wanted to give you a chance to
23 address that here.

24 MR. REILLY: In terms of the projected
25 import figures, for example, I really don't think it's

1 necessary to project subject imports for the full year
2 2003 because we do have half year data for 2002 and
3 half year data for 2003 and basically what it shows is
4 there's been no increase. That's not a projection,
5 that's the fact. Subject imports during the first
6 half of 2002 were at 13,800 tons. During the first
7 half of 2003 they were 200 tons higher. Basically I
8 think you can conclude that through the end of the
9 period of investigation, from 2001 through the end of
10 the period of investigation, imports in fact have been
11 flat.

12 Now where you might get into issues of
13 projection is on issues of threat of injury. The
14 Chinese exporters, for example, producer exporters,
15 have been requested and have complied with projections
16 of what they expect to ship during the latter part of
17 2003 and also into 2004. I believe those projections
18 are relevant for threat of injury. As in all cases.

19 CHAIRMAN OKUN: My final point, Mr. Flicker,
20 this would be for you on, I always have one legal
21 argument I get to take issue with I think for
22 everybody. And that was, I heard you make the case of
23 whether this should have been a 201 or whatever. What
24 is the legal relevance?

25 I can sit and debate that with my colleagues

1 of what kind of case law are we going to face, or is
2 the industry going to come in on a 421 or a 201 or
3 antidumping countervailing duty. But my job as a
4 Commissioner is not, I don't think, my view is we
5 don't have a legal right to second guess what they
6 come in on. We have the facts before us and we say do
7 they meet the statutory guidelines for the 421.

8 So I wanted to give you a chance to address
9 that argument again. It seemed to me you were trying
10 to say that was somehow relevant to how we viewed this
11 case.

12 MR. FLICKER: I think there are two legal
13 bases in addition to the fact that what we have here
14 is the ability to cherry pick, but let's talk about
15 the legal issues.

16 First, the statute itself does require that
17 for presidential action you must have a circumstance
18 in which a remedy would be effective in remedying the
19 problem. That's actually I think in Subsection A of
20 Section 421. The definition of when a President can
21 take action requires not just the elements of rapid
22 increase in the constituencies of market disruption
23 but also that the President be able to take action to
24 impose a remedy which would in fact be effective in
25 remedying the injury.

1 So I think that there's actually a statutory
2 basis and definition in Subsection A of 421, right out
3 of the box that says you have to look at whether or
4 not in fact you've got a circumstance or condition in
5 which you could remedy the alleged injury through the
6 relief that's being asked. That's number one.

7 Number two, this has to be set in the
8 context, we believe, of the WTO non-discrimination
9 mandate. Where you have a circumstance in which
10 you're trying to essentially punish one country, one
11 source, because you have a statute that allows you to
12 do it. Yet there's another statute there that would
13 essentially be non-discriminatory. I think there's an
14 obligation to follow the non-discriminatory statute,
15 especially where there's a little bit of a higher
16 standard on you to be able to meet the non-
17 discriminatory level. Otherwise what you'll have is a
18 constant state of essentially being able to pick on
19 and pick off China first, and then go after the other
20 imports. We think that would be a violation of the
21 WTO non-discrimination principle.

22 Finally, I think you have the practical
23 issue which is that the statute mandates that in your
24 report you assess the effects of imposing the
25 requested relief or the recommended relief, and the

1 effects of not imposing the recommended relief. I
2 think as a matter of law if those effects are the
3 same, I don't think you can recommend relief in a case
4 like that.

5 CHAIRMAN OKUN: Mr. Loeb?

6 MR. LOEB: I neglected to respond to your
7 prior question which Mr. Reilly responded on. But I
8 would like to just make one additional comment if
9 you'd permit it.

10 I sort of lost the train of thought on the
11 comment though, as I was listening to what Scott said.
12 Let me come back to it in a moment.

13 CHAIRMAN OKUN: That would be fine.
14 Actually, I don't have any other questions.

15 VICE CHAIRMAN HILLMAN: Actually, I have
16 three questions in terms of three issues that I
17 wondered if you could address in the post-hearing
18 brief. Although after listening to Mr. Flicker I may
19 add a fourth one to it.

20 The first, I think I know the answer to the
21 question but I need to know your legal briefing in
22 terms of why. And the question is this:

23 In determining whether imports are
24 increasing rapidly should the Commission use the data
25 on imports or the data on shipments of imports?

1 Because there are distinctions.

2 I obviously heard Mr. Reilly's answer and I
3 know which set of data he was looking at so I know
4 which one, you know, he's relying on. But I need you
5 to brief for me why I should look at one versus the
6 other.

7 Second is I wondered if you could brief us a
8 little bit of the discussion that Mr. Rosenthal and
9 Commissioner Koplan among others had this morning on
10 this issue of the period that we should be looking at.
11 And I'd ask you to brief it in light of two things:
12 one, I think you heard the argument that Mr. Rosenthal
13 made about whether or not the United States made any
14 tariff concessions as a result of China's accession
15 and therefore whether there was anything that we
16 should be looking at as a circumstance that would have
17 caused an increase in imports and whether that's
18 relevant?

19 But I would also secondly ask you is to
20 address the issue of how we should look at it in light
21 of the fact that Section 421 completely superseded
22 Section 406, presumably a statute under which the
23 Commission would have traditionally used a 5-year
24 period of review. I mean it strikes me that it's a
25 little bit of a Catch-22 to say you can no longer file

1 a 406 case, you now must file a 421 case but you now
2 can't use data that you would have traditionally
3 relied on in bringing a 406 case.

4 So if you want to address that, that aspect
5 of this issue of what is the appropriate period of
6 review under Section 421?

7 Third thing would be I understand the answer
8 is probably going to be nothing, but I nonetheless
9 want you to brief should the Commission find market
10 disruption to exist what is an appropriate, you know,
11 what is an appropriate remedy? I understand your
12 going into this and it's going to be there is none but
13 nonetheless I would ask you to at least look at if you
14 don't like the Petitioners' remedy recommendation is
15 there something else that you think more appropriately
16 fits with the facts and the circumstances and the
17 circumstances of this case?

18 And I guess last but not least and to some
19 extent prompted I think a little bit, Mr. Flicker, by
20 your response to Chairman Okun would be this issue of
21 you seem to be reading into the statute this
22 requirement that the president is only entitled to
23 impose a remedy if you in essence can know or prove
24 ahead of time that will in fact be an effective
25 remedy. And I A) am not sure exactly where in the

1 statute you see this kind of requirement and then B)
2 how is it that you are supposed to know ahead of time
3 whether a particular remedy is or is not going to be
4 effective?

5 I mean how is it that we are supposed to
6 prejudge the effect of a remedy such that we're
7 telling the president he has no authority to do
8 something unless we can prove up front that this is
9 going to be an effective relief?

10 So if you could address those issues in the
11 post-hearing brief I would be very appreciative.

12 Thank you.

13 CHAIRMAN OKUN: Commissioner Miller?

14 COMMISSIONER MILLER: Madam Chairman, in
15 light of the in camera sessions to come I have no
16 further questions at this point. Thank you.

17 CHAIRMAN OKUN: Commissioner Koplan?

18 COMMISSIONER KOPLAN: Thank you, Madam
19 Chair.

20 Just one comment. I'm reading subsection A,
21 Mr. Flicker, and I don't see that requirement written
22 in there either so I would be interested in your post-
23 hearing response to that as well.

24 And I have nothing further, thank you.

25 CHAIRMAN OKUN: Commissioner Lane?

1 COMMISSIONER LANE: No questions.

2 CHAIRMAN OKUN: Mr. Loeb, did you have --
3 did you remember, did you want to say something?

4 MR. LOEB: Yes, I did.

5 CHAIRMAN OKUN: Okay.

6 MR. LOEB: Thank you. And it also actually
7 tied into one of the sub-items on Vice Chairman
8 Hillman's request list. So I will just make the point
9 quickly because I know you want to get to the closed
10 session. And that is on a number, on the use of the
11 2003 data.

12 I know the Commission has in dealing with
13 this issue, this rapid increase issue previously used
14 language the lines of we'll look at the last two to
15 three years. And I would suggest that using even half
16 your 2000 -- hard half of your 2003 data you also have
17 the ability to project on a fairly reliable basis
18 given what we know about the way this industry works
19 but even if you don't do that you've still got a hard
20 half year of data. And what you had, I think you have
21 the same thing here you had in almost all of the 406
22 cases as well as prior 421 cases in the following
23 sense:

24 This case is different than all of the
25 others that I can remember because here -- because in

1 all the other ones, 421 and 406 as I recall it, you
2 had a pattern of steadily increasing imports through
3 your 5-year period. And then if you sliced off the 2-
4 year period at the most recent end and looked at that
5 you would have steadily increasing imports.

6 If you looked at Brake Drums you saw a
7 significant increase in the most recent period over
8 the previous period before that within the 2-year
9 window.

10 This case is different than all of those.
11 This is whether you go back to a 2000 base year or use
12 2001 as a base year and don't count those numbers you
13 still have the same problem, you have an increase that
14 occurred in 2001 and then flat 2002 and 2003. And I
15 think no matter how you draw the line to say what's a
16 base year, what's in, what's out, you end up at the
17 same place which is we do not have currently rapidly
18 increasing imports.

19 CHAIRMAN OKUN: I appreciate those further
20 comments.

21 I have no further questions. Let me turn to
22 staff to see if staff has questions for the panel.

23 MS. MAZUR: Diane Mazur. Staff has no
24 questions.

25 CHAIRMAN OKUN: Counsel for Petitioners have

1 questions for this panel?

2 MR. ROSENTHAL: No, we don't.

3 CHAIRMAN OKUN: Okay. Well, then I want to
4 thank these witnesses very much for your appearance
5 and for the answers you have given this afternoon. We
6 are going to go to our closed session.

7 We will take a few moments. The room must
8 be cleared of all parties other than those under the
9 APO. And I note that both of the sessions will follow
10 each other so that we will try to avoid some of the
11 movement. So we will take a probably 5-minute recess
12 until the Secretary declares it cleared.

13 (Whereupon, at 4:25 p.m., the Commission
14 recessed to reconvene in closed session.)

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O P E N S E S S I O N

(5:39 p.m.)

1
2
3 MR. ROSENTHAL: As you know, we firmly
4 believe this is an appropriately case for 421 relief,
5 and we believe we satisfied the standards, even the
6 impossible standards or semi-impossible standards that
7 some might have imposed on us. I was happy to hear
8 the discussion earlier about not having 421
9 interpreted in a way that is more onerous than the
10 Section 406 statute that preceded it.

11 Let me just make a couple points. One, too
12 bad Commissioner Miller isn't here, but I understand
13 this reference. I believe we've answered the
14 questions concerning health and safety and the
15 environment, and I, as much as anyone else, enjoy
16 getting down in the gutter, but when I do it's usually
17 to look at manhole covers.

18 In this particular case, I want to focus
19 below ground on waterworks fittings. If you look at
20 the data in this case, you'll see every one of the
21 statutory factors has been satisfied. Interestingly
22 enough, the Respondents here, in talking about manhole
23 covers and manholes, have ignored the first rule of
24 holes, which is when you're in a hole stop digging.

25 What you heard as the testimony went on was

1 more and more in the way of admissions after the
2 denial of underselling, of price competition, and
3 ultimately the notion, as admitted to by the question
4 by Commissioner Pearson, that they price identically,
5 they see the price list, they have similar or
6 comparable multipliers, and there's competition at
7 every level. There can be no denial of that.

8 The Respondents have apparently abandoned
9 what appeared to be an argument that they were making
10 in the prehearing brief, which is that somehow this is
11 a segmented market. As we recently discussed, the
12 Respondents have apparently abandoned the notion that
13 somehow there's a large segment of the market that is
14 off limits to imports because of Buy America. We cite
15 in our prehearing brief figures of 10 to 15 percent.
16 Mr. Rybacki basically acknowledged that today.

17 We talked about the admission by Mr.
18 McCutcheon concerning how when imports are present in
19 the marketplace McWane's prices are lower. I think
20 it's true with respect to every domestic industry
21 participant here. When imports are competing, they
22 undersell, and the domestic industry prices have to go
23 down.

24 I was struck by the discussion by Mr.
25 Rybacki about how he explored at one point the

1 establishment of a foundry in the United States and
2 abandoned that effort because of the, in his words,
3 OSHA, EPA and other blockades.

4 We call those protections for workers and
5 the environment, and McWane has been happy to invest
6 in that, as we talked about. Those investments have
7 been extensive. Yes, they have increased cost
8 somewhat, but those are the costs of doing business in
9 the United States, and what the statute is about is
10 permitting companies and workers to continue to do
11 business in the United States in a safe way.

12 The notion that no remedy should be applied
13 because if we don't want to protect the U.S. industry
14 and its workers from imports from China that other
15 countries will supply that imported product, other
16 countries that don't similarly employ environmental
17 and safety and health standards, I think makes a
18 mockery out of the statute.

19 I want to talk a little bit about remedy for
20 a minute. We had some good discussion earlier today.
21 I was just shown a recent APO release, which is your
22 economists' analysis of the effect of different tariff
23 levels, and I urge you to look at that. We will
24 comment on it as well. All I can say is it makes me
25 feel ever more practical.

1 I was happy that Mr. Loeb talked about Japan
2 and the 100 percent tariff on Lexuses. In fact, we
3 were involved in the case trying to get U.S. autos
4 into Japan when the Clinton Administration proposed a
5 100 percent tariff on Lexuses. My recollection is
6 that Lexuses have a slightly higher average unit value
7 entering the U.S. than do ductile iron waterworks
8 fittings.

9 In that particular instance, I'm pretty sure
10 a 100 percent tariff would have been preclusive of
11 Lexus automobiles. I'm not sure, and you'll see for
12 yourself, whether a 95 percent tariff would foreclose
13 the U.S. market to imports from China, given the FOB
14 prices that China is able to ship out.

15 We talked a little bit about the alternative
16 theories that have been presented by Respondents in
17 this case. In fact, none of them make any sense. In
18 fact, every one of them is contradicted by these data
19 in the record.

20 Again, I'll refer you to your exhibit in
21 your publication on critical circumstances, Exhibit
22 V-5, where it talks about what the factors are that
23 cause purchasers to buy U.S. versus Chinese or other
24 imports. Price is the predominant one where the
25 Chinese have an advantage. All these other arguments

1 about availability, supply, willingness to supply, all
2 that are debunked by your data on your record.

3 I'd like to just close by saying that I know
4 these cases are difficult for you, and I very much
5 appreciate the time and effort that you put into this,
6 including the time of the Commissioners who came down
7 and visited the plant in Alabama and the staff. I
8 know not everyone could make it, but, believe me, in
9 an industry that is bleeding as it is it makes a real
10 difference to them to know that you've all taken the
11 interest that you have in trying to learn about this
12 industry, learn about the problems and do the right
13 thing.

14 I'll close with that statement because one
15 of the watch words of Rufner Page, who is the
16 president of McWane, who you've heard about a little
17 bit today from Leo Gerard and Mr. Green and others at
18 McWane, has been do the right thing.

19 Despite the bad publicity, despite all the
20 problems that they've had, that has been their watch
21 word. That's why they've invested. That's why they
22 continue to care about the workers and the
23 environment. That's why they continue to care about
24 employment in this country.

25 The easiest thing for them to do, the

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1 easiest thing and a path taken by many others, is to
2 stop producing in the United States and start
3 importing from elsewhere. They can do it tomorrow, or
4 at least very quickly, if they wanted to. They don't
5 want to. They're here. They've chosen this remedy
6 for a reason. It's one that promises the possibility
7 of quick relief at least compared to the other
8 statutory provisions.

9 They are trying to do the right thing by
10 keeping production, employment, workers in the United
11 States in good paying jobs, and I hope that this
12 Commission will do the right thing yourselves. I
13 trust you will. Make an affirmative determination
14 here and provide and recommend a strong and effective
15 remedy.

16 Thank you.

17 CHAIRMAN OKUN: Thank you.

18 We will now hear from Mr. Loeb.

19 MR. LOEB: Thank you, Madam Chairman,
20 members of the Commission. I come back to where Mr.
21 Rosenthal started with the Wizard of Oz. I have the
22 feeling I've sort of been through Oz for most of the
23 day here.

24 We have here a Petitioner whose head man,
25 Mr. Green, comes to the Commission and testifies, and

1 these are his exact words: "We are the predominant
2 manufacturer and player in the DIWF market."

3 In fact, it really can't be disputed even if
4 it didn't come out of his own mouth, and yet we have
5 repeated references to the fact that or to the
6 assertion that this is an industry, a domestic
7 industry that is about to disappear.

8 Again looking for the precise language that
9 was used at several points this morning by the
10 Petitioners, Mr. Murray I believe of U.S. Pipe
11 essentially said the industry would disappear. We
12 heard Mr. Rosenthal say that the industry is headed
13 for oblivion, headed for extinction. This industry
14 won't be around if you don't provide it relief here.
15 In five years, there will be nobody to come into this
16 room and sit to talk about the DIWF business in the
17 U.S.

18 A rather operatic set of suggestions when
19 we're talking about a company that has a huge market
20 share. I don't recall whether it's APO or not, but
21 everybody knows that it's quite large. The notion
22 that this company and this industry is about to
23 disappear absent relief here is phenomenally
24 overstated.

25 As we wander through that variety of Oz,

1 several things have been said about Respondents'
2 position that are cartoon characterizations that are
3 incorrect, and at least in a couple of respects I want
4 to make sure the Commission knows exactly what's being
5 suggested here.

6 It was suggested, for example, that it was
7 Respondents' assertion that U.S. Pipe was just doing
8 hunkey-dorey, but all of a sudden we now know that
9 that's not the case. I certainly don't think you'll
10 find that in anything that we've said. I don't know
11 about the other importer briefs. There are three
12 different importers that have been filing briefs.

13 The fact is that U.S. Pipe has been a
14 disaster case from 1998, from the earliest data that
15 you have. It has not been affected by Chinese
16 imports. It's been affected by a variety of its own
17 other factors that relate to its own business
18 operation strategy and product mixes.

19 It's been suggested that the Respondents
20 propose that it was important to segment this into a
21 large and non-large, over 30 and under 30 market. One
22 of the importers did, PCI. Nobody else that I recall
23 on Respondents' side thought that would make any
24 difference one way or another.

25 Finally, and this is I think the one that's

1 most important, it's been suggested that the
2 Respondents' case with respect to these pricing issues
3 focuses entirely on Buy America. We certainly do not,
4 have not, and if you read our briefs you'll see that
5 we haven't, and Mr. Riley, as he said directly today,
6 said that it is not a particularly critical part of at
7 least the Chinese Respondents' case.

8 I understand that the importers feel
9 emotional about being precluded from certain
10 customers, whether it's Pennsylvania or many others,
11 but that's not the key point. You heard these people
12 talking about the loyalty rebate program not because
13 they were trying to slam McWane; because they were
14 trying to make the point that there's substantial
15 areas where they just can't get in the door and have
16 not gotten in the door. There are customers and
17 purchasers who are not subject to competition.

18 Ask yourself this. Ask yourself the most
19 fundamental question. How is it that you have a
20 product like a fitting that goes to connect elements
21 of a sewer system and the Petitioner, McWane, can
22 maintain differential pricing all across the U.S. with
23 the dramatic differential that you see?

24 Wouldn't you expect from all the cases that
25 you normally see in front of this Commission that

1 you'd see uniform national pricing with some fairly
2 minor differences that might relate to accessibility
3 in the market?

4 I mean, this is clearly a market where
5 McWane controls, sets the price arrangements, sets the
6 distinctions between the low percentage and the high
7 percentage sectors of the market, and the suggestion
8 that the importers take, the importers' suggestion
9 that what you've got is a bundle of mixed pricing data
10 that comes in sometimes from competitive markets,
11 sometimes not, and when it's aggregated mixes the two
12 up I think is belied simply by the fact that they
13 maintain the famous McWane map.

14 I think the last thing I want to say is that
15 I do believe that the Commission has good grounds for
16 making the determination here entirely on the basis of
17 the absence of a rapid increase. You know our
18 position on that. You'll see it again in the post-
19 hearing brief.

20 I don't want to leave underemphasized the
21 weakness of what I think is the market disruption case
22 here. There's an awful lot about the information that
23 the Petitioners have put in and are attempting to ask
24 the Commission to rely on to take this rather
25 extraordinary step that, as you heard in the testimony

1 today, is at least uncertain or confused.

2 We're in a setting where we're dealing with
3 a statute that requires this Commission to act on the
4 fastest track of any and all the trade laws. I would
5 suggest that on the basis of the record that the
6 Petitioners have assembled here there is not a grounds
7 for reaching a determination of market disruption and
8 certainly not a grounds for reaching a determination
9 that the condition of the U.S. producers has been
10 caused by the Chinese imports in a significant
11 fashion.

12 Whether there is a small element or not is
13 not the question before the Commission. It has to be
14 significant causation, and I don't think the record
15 that's been assembled here establishes that.

16 Of course, we've heard a lot about other
17 options. We've emphasized these Petitioners could use
18 other routes. I heard Dennis Rosenthal say they're
19 thinking about that, so maybe they will do the right
20 thing, as he says his client always says.

21 Maybe they will revert to doing a dumping
22 case where we wouldn't be here on this day. We would
23 be here after an extensive preliminary investigation
24 and then a full Commerce Department determination as
25 to whether the Chinese products are fairly or unfairly

1 priced and then a full Commission investigation on
2 injury where a lot of these things could be sorted
3 out.

4 To suggest that this case ought to go to the
5 Oval Office to the President to make a decision on on
6 the basis of the information that McWane has put in I
7 think would be a significantly irresponsible
8 recommendation to the Commission.

9 We ask the Commission, therefore, to enter a
10 negative determination on market disruption and on
11 causation and on rapidly increasing, and we appreciate
12 the Commission's attention. We appreciate the
13 opportunity to have the in camera session, and we
14 appreciate, as usual, the extensive hard work of the
15 staff to get this material together.

16 Thank you.

17 CHAIRMAN OKUN: Thank you, Mr. Loeb.

18 Just so that I can note this analogy for all
19 it's worth, the time has come for me to click my heels
20 together and say there's no place like home, but
21 before doing so I will tell you that post-hearing
22 briefs, statements responsive to questions, requests
23 of the Commission and corrections to the transcript
24 must be filed by November 12, 2003. Final comments on
25 market disruption are due November 26, 2003.

1 With no other business to come before the
2 Commission, this hearing is adjourned.

3 (Whereupon, at 6:02 p.m. the hearing in the
4 above-entitled matter was concluded.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Certain Ductile Iron Waterworks
Fittings From China

INVESTIGATION NO.: TA-421-4

HEARING DATE: November 6, 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: November 6, 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: Donna J. Kraus
Signature of Court Reporter