

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:

HYDRAULIC MAGNETIC CIRCUIT BREAKERS
FROM SOUTH AFRICA

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)

) Investigation No.:
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) 731-TA-1033
)

(Preliminary)

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Monday,
May 5, 2003

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

The conference commenced, pursuant to Notice, at 9:30 a.m., before the United States International Trade Commission, ROBERT CARPENTER, Presiding.

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P R O C E D I N G S

2 (9:30 a.m.)

3 MR. CARPENTER: Good morning and welcome to the
4 United States International Trade Commission's conference in
5 connection with the preliminary phase of antidumping
6 investigation No. 731-TA-1033 concerning imports of
7 hydraulic magnetic circuit breakers from South Africa. My
8 name is Robert Carpenter. I am the Commission's Director of
9 Investigations and I will preside at this conference.

10 Among those present from the Commission staff are
11 from my far right: Jim McClure, the supervisory
12 investigator; Fred Ruggles, the investigator; on my left,
13 Michael Diehl, the attorney/advisor; Gerry Benedict, the
14 economist; John Kitzmiller, the industry analyst, and David
15 Boyland, the accountant.

16 The purpose of this conference is to allow you to
17 present your views with respect to the subject matter of the
18 investigation in order to assist the Commission in
19 determining whether there is a reasonable indication that a
20 U.S. industry is materially injured or threatened with
21 material injury by reason of imports of the subject
22 merchandise.

23 Individuals speaking in support of and in
24 opposition to the petition each have one hour to present
25 their views. Those in support of the petition will speak

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1 first. The staff will ask questions of each panel after
2 their presentation, but no questions from opposing parties
3 will be permitted. At the conclusion of the statements from
4 both sides, each side will be given 10 minutes to rebut
5 opposing statements and make concluding remarks.

6 This conference is being transcribed and the
7 transcript will be placed in the public record of the
8 investigation. Accordingly, speakers are reminded not to
9 refer in their remarks to business proprietary information,
10 and to speak directly into the microphones. Copies of the
11 transcript may be ordered by filling out a form which is
12 available from the stenographer.

13 You may submit nonconfidential documents or
14 exhibits during the course of your presentation. These will
15 be accepted as conference exhibits and incorporated into the
16 record as attachments to the transcript.

17 Speakers will not be sworn in. However, you are
18 reminded of the applicability of 18 USC 1001 to false or
19 misleading statements, and to the fact that the record of
20 this proceeding may be subject to court review if there is
21 an appeal.

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

25 Are there any questions?

1 (No response.)

2 MR. CARPENTER: If not, Mr. Smirnow, please begin.

3 MR. SMIRNOW: Thank you. Good morning, Mr.

4 Chairman, members of the Commission's investigative team.

5 My name is John Smirnow and I'm with the law firm of Katten,
6 Muchin, Zavis, Rosenman.

7 I appear before you today on behalf of the sole
8 domestic hydraulic magnetic producer, Airpax. We will also
9 refer to these products today as HMCBs or hydraulic
10 magnetics.

11 With me today are Dennis Karr, Airpax's president
12 and CEO; Mike Rabasca, Airpax's chief financial officer;
13 Steven McDonald, Airpax's executive vice president and
14 general manager; and Mark Zolno and Myron Barlow also of
15 Katten, Muchin, Zavis, Roseman.

16 You will hear presentations today from Steve
17 McDonald, who will address like product, volume and price
18 issues, and Mike Rabasca, who will discuss export sales by
19 the sole South African produce of HMCBs, Circuit Breakers
20 Industries, Limited, and imports by this company's related
21 U.S. subsidiary, CBI, Inc., which collectively we will refer
22 to these two entities as CBI.

23 Mr. Rabasca will also address the adverse impacts
24 CBI's imports have had on U.S. HMCB production, as will as
25 the imminent threat of injury these imports pose. I will

1 then conclude our presentation with a brief discussion of an
2 antidumping duty determination issued by the South Africa
3 Board on Tariffs and Trade with respect to industry circuit
4 breakers from France, Italy, Spain and Japan.

5 As you may be aware, in a submission last week to
6 the U.S. Department of Commerce CBI relied upon this report
7 to support its contention that the domestic like product
8 should be expanded beyond the proposed scope of this
9 investigation to include full and thermal magnetic circuit
10 breakers. As I will discuss later, we believe the Board of
11 Tariffs and Trade Report is irrelevant to the current
12 proceedings.

13 Before we begin with Mr. McDonald's presentation,
14 I would also like to underscore the ITC's statutory mandate
15 that the impact of dumped imports be considered only in the
16 context of U.S. domestic production. Our Mexican HMCBs
17 operations should therefore not factor into the Commission's
18 analysis in this investigation.

19 The fact that our Mexican operations are also
20 being harmed by CBI's dumping in the U.S. market should in
21 no way negate the fact that the domestic industry is
22 materially injured by reason of subject imports.

23 We now turn to Mr. McDonald.

24 MR. McDONALD: Good morning, Mr. Chairman and
25 members of the Commission's investigative team. My name is

1 Steve McDonald and I am the executive vice president and
2 general manager for the Power Protection Products Division
3 of Airpax.

4 I would first like to thank you for the
5 opportunity to testify here today in support of Airpax's
6 antidumping duty petition. As Mr. Smirnow has stated, my
7 testimony this morning will focus on like products and the
8 role of subject imports in the U.S. market, including a
9 discussion on volume and price effects.

10 As background, I have worked in the circuit
11 breaker industry for 20 years, and all of these years with
12 Airpax. I therefore have personal knowledge regarding all
13 aspects of HMCB production and sales in the North American
14 market.

15 I would now like to walk through what I understand
16 to be the six factors the Commission traditionally relies on
17 in determining which domestic products like the hydraulic
18 magnetic circuit breakers imported from South Africa. I
19 have brought some samples and displays that may be helpful.

20 In front of me I have got five different breakers
21 which within the industry are representative of different
22 frame sizes; the smallest being a B frame which Airpax would
23 sell; C, the next largest; D, E, and F. We offer numerous
24 configurations, but they typically will fall within one of
25 those frame sizes.

1 The types of circuit breakers that are in the
2 market are the hydraulic magnetic circuit breakers which
3 have numerous components and a key feature of the hydraulic
4 magnetic over two others is the component which we call a
5 delay tube assembly.

6 The delay tube assembly will fit within the
7 circuit breaker and run through the center of the coil.
8 It's sensing an overcurrent place and protecting overcurrent
9 situations in that when too much current is going to a piece
10 of equipment there is a magnetic flux generated around that
11 coil, and this green portion of this delay tube will begin
12 to rise. That's where the hydraulics and the magnetics join
13 forces. When it goes to the top the magnetics fully are
14 energized. The blue moving component comes down and the
15 mechanism will collapse, allowing the contacts to cease, so
16 it's a hydraulic in the movement of the synthetic -- the
17 components within the synthetic work that we inject within
18 this delay assembly and hydraulic magnetic, because the
19 magnetic kicks the mechanism out.

20 Differing are the thermal magnetic circuit
21 breakers and the thermal circuit breakers, and I will detail
22 some of the differences as I continue.

23 MR. CARPENTER: Do you happen to know if we have
24 copies of the charts you are holding up? Or if not, could
25 you submit those to your post --

1 MR. SMIRNOW: We can provide those in our post-
2 conference submission.

3 MR. CARPENTER: Okay. But you don't happen to
4 have any with you right now, do you?

5 MR. SMIRNOW: Other than this copy, no, we don't.

6 MR. CARPENTER: Okay, thank you.

7 MR. SMIRNOW: We could supply these for the
8 record.

9 MR. CARPENTER: That's okay. What I would prefer
10 you to do, if you could put them on the table there so
11 respondents could take a look at them, and then you could
12 submit copies in your brief.

13 MR. SMIRNOW: Okay.

14 MR. CARPENTER: Thank you.

15 MR. McDONALD: As general manager for the
16 hydraulic magnetic business, I personally review hundreds of
17 quotes each year. As we're competing in the marketplace for
18 such quotes, our competition is always limited to other
19 hydraulic magnetic circuit breaker manufacturers.

20 In this context, hydraulic magnetics possess
21 physical characteristics and uses distinct from either
22 thermal or thermal magnetic circuit breakers. I would like
23 to share eight examples of these differences.

24 First, and the most important distinguishing
25 features, hydraulic magnetics provide for precise,

1 customized response time to an overcurrent condition.
2 Unlike thermal or thermal magnetic circuit breakers, HMCBs
3 incorporate a sophisticated trip time delay mechanism called
4 a delay tube.

5 And essential and unique aspect of the delay tube
6 is that it allows for a customized precisely calibrated trip
7 time ranging from milliseconds up to minutes of time. In
8 contrast, thermal circuit breakers do not contain a
9 customized delay tube. Rather, thermal circuit breakers
10 utilize a thermal sensing element.

11 When the predetermined temperature of a thermal
12 circuit breaker is reached, the thermal sensing element,
13 which is a piece of by-metal material, is warped or
14 displaced, triggering a release mechanism that disconnects
15 the circuit from the electrical source. Thermal circuit
16 breaker are therefore susceptible to nuisance tripping
17 associated with changes in ambient temperature -- heat
18 sensitive.

19 It should also be recognized that there is a heavy
20 de-rating of the thermal circuit breakers as the ambient
21 temperature increases.

22 A good example of an application that we are
23 designed in would be if we walked over to a local Wal-Mart
24 on the rooftops the odds are you're going to see a Trane or
25 Carrier type rooftop air conditioner. They would use a

1 hydraulic magnetic circuit breaker there for a number of
2 reasons; one being the temperature that they are going to be
3 exposed to with that equipment on that rooftop is extreme,
4 and they would have nuisance tripping if they used others;
5 and then again, their motor start protections, they need
6 delay curves and coil ranges that can go in tenths of an
7 amperage, and only the hydraulic magnetics offer that in the
8 marketplace.

9 Although thermal magnetic circuit breakers possess
10 a magnetic trip mechanism, this mechanism is much less
11 sophisticated than the hydraulic magnetic circuit breaker
12 delay tube. The magnetic trip mechanism with magnetic
13 circuit breaker, or thermal magnetic circuit breaker is a
14 three-sided piece of metal surrounding the by-metal plate,
15 and does not include either the core, the tube, damping
16 fluid, which is included within the hydraulic magnetic
17 circuit breaker.

18 Therefore, as with thermal circuit breakers,
19 thermal magnetic circuit breakers are also susceptible to
20 changes in ambient temperature.

21 Secondly, hydraulic magnetics are offered in
22 amperage ranges in increments of a tenth of an amp.
23 Contrast, thermal and thermal magnetic circuit breaker are
24 generally offered in limited amperage ranges. Thermal and
25 thermal magnetic breakers are typically offered in five- or

1 10-amp increments with some thermal manufacturers going as
2 low as a half-amp range but still very limited. They cannot
3 go to the tenth of an amperage across the range of amperage
4 offerings.

5 Certainly industries require circuit breakers with
6 a amperage rating increments of one-tenth, and thus use only
7 hydraulic magnetics, especially for compressor and motor
8 control protection.

9 Third, hydraulic magnetics also offer better DC
10 short circuit ratings in thermal or hydraulic magnetic
11 circuit breakers.

12 Fourth, hydraulic magnetics handle and terminal
13 configurations far exceed the termination configurations
14 seen in thermal or thermal magnetic circuit breaker.

15 Fifth, hydraulic magnetics also have much lower
16 handle force ranges than do thermal magnetic circuit
17 breakers. The forces on the hydraulic magnetic compared to
18 a thermal magnetic are roughly half on the turn-on and turn-
19 off force.

20 Sixth, in certain applications hydraulic magnetics
21 can utilize a single pole while the thermal magnetic product
22 would require a double pole unit. This would allow for
23 additional features such as an auxiliary switch within a
24 smaller amount of space, which is certainly preferred within
25 our industry.

1 Seventh, hydraulic magnetic circuit breakers are
2 made up of a larger number of components than thermal or
3 thermal magnetic circuit breakers. The examples that I used
4 here, these are representative samples of these frame sizes.
5 The hydraulic magnetic circuit breaker would have as many as
6 48 components on average. You would see an average of about
7 28 components on the thermal magnetic, and on the small
8 thermal breakers only about 18 components.

9 And eighth, unlike thermal magnetic circuit
10 breakers, hydraulic magnetic circuit breakers can be used as
11 a switch in conjunction to providing overcurrent protection.
12 The handle force, the on and off pressures of thermal
13 magnetics is not viewed as such by our customers.

14 With respect to use in the United States, which we
15 believe differs from the hydraulic magnetic circuit breaker
16 used in South African markets, hydraulic magnetic circuit
17 breakers are primarily used by original equipment
18 manufacturers in equipment applications. Specific end uses
19 include telecom, power equipment, base transceiver
20 stations, uninterruptible power supply systems, data com
21 server markets, heating, ventilation and air conditioning
22 systems, railway equipment, marine panels and power
23 generators.

24 In contrast, thermal circuit breakers are
25 primarily used as supplementary protectors, and are

1 generally not capable of brand circuit protection. And with
2 respect to thermal magnetic circuit breakers, these products
3 are primarily used in wire protection applications, sensing
4 the heat and therefore protecting that wire.

5 On the issue of interchangeability in the United
6 States, purchasers do not use thermal or thermal magnetic
7 circuit breakers in applications for which HMCBs are used
8 because doing so would require major re-engineering of the
9 equipment. As stated earlier, hydraulic magnetic circuit
10 breakers are used to provide customized protection to
11 expensive business equipment. Purchasers are willing to pay
12 a premium for the hydraulic magnetic circuit breakers to
13 obtain the highest degree of protection available, and not
14 risk what the industry refers to as nuisance tripping.

15 As to pricing factors, although there is still
16 some price premium for hydraulic magnetic circuit breakers
17 as compared to thermal and thermal magnetic circuit
18 breakers, this premium has been severely eroded by unfairly
19 traded imports from South Africa.

20 On the issues of channels of distribution,
21 hydraulic magnetics are generally sold in different channels
22 of distribution than thermal or thermal magnetic circuit
23 breakers. For example, we estimate that 80 percent of
24 hydraulic magnetic circuit breaker are sold directly to OEMs
25 with about 20 percent being sold through distribution.

1 In contrast, we estimate that 40 percent of
2 thermal circuit breakers are sold at OEMs, and 60 percent
3 through distribution.

4 And with respect to thermal magnetic circuit
5 breaker, nearly all of these products are sold directly
6 through distribution, large retailers such as Lowes or Home
7 Depot or limited high use direct OEM accounts, such as
8 housing industries where they will place a large bid.

9 I would like to next point out that both customers
10 and producers view hydraulic magnetic circuit breakers as
11 distinct from either thermal or thermal magnetic circuit
12 breakers. As I noted earlier, although hydraulic magnetic
13 circuit breakers could be used in applications where thermal
14 or thermal magnetics are used, thermal and thermal magnetics
15 couldn't move up and be utilized in most hydraulic magnetic
16 circuit breaker applications.

17 Regarding the issue of common manufacturing
18 facilities, production processes and production employees,
19 our company is the sole manufacturer in the United States of
20 commercial quantities of hydraulic magnetic circuit breakers
21 and producers no other type of circuit breaker.

22 In the United States, HMCBs therefore do not share
23 common manufacturing facilities, production processes or
24 production employees with thermal or thermal magnetic
25 circuit breakers.

1 I would also note that the manufacturing processes
2 for HMCBs is more labor intensive than the manufacturing
3 process for either thermal or thermal magnetic circuit
4 breakers. While thermal and thermal magnetic circuit
5 breakers can be produced by automated production processes,
6 the same is not true for hydraulic magnetics. Although some
7 components in a HMCB are manufactured by an automated
8 process, final assembly of the HMCB must be done by hand and
9 by skilled workers.

10 We therefore believe that each of the six factors
11 relief upon by the Commission in performing its like product
12 analysis clearly supports the conclusion that the like
13 product should be defined consistent with the proposed scope
14 of the investigation, and therefore only include hydraulic
15 magnetics.

16 I would now like to turn to a discussion on the
17 volume of imports. As background to the volume discussion,
18 it should be recognized that CBI and its parent company,
19 Roynard Limited, have decided upon a long-term strategy to
20 grow CBI's business increasing exports to the United States.
21 Having adopted this export growth strategy in 1999, CBI
22 began to realize the benefits of its aggressive pricing as
23 early as the year 2000.

24 Unfortunately, for the domestic industry, as a
25 result of this aggressive pricing, CBI has been able to both

1 increase its exports into the United States and grow its
2 share of the U.S. market during a period of declining U.S.
3 demand. It should also be recognized that as the volume of
4 subject imports increase so too has the range of hydraulic
5 magnetic circuit breakers offered for sale in the U.S.
6 market by CBI.

7 CBI initially targeted the U.S. market with it's D
8 and the small B frame, but now imports the C, E and F frame
9 products as well. Clearly the competitive pressure upon the
10 domestic industry by CBI are unsustainable. These facts
11 therefore indicate that both the volume of CBI imports and
12 the increase in that volume is significant both in absolute
13 terms and relative to the domestic production.

14 What we have experienced is a decline in subject
15 import prices. What we have seen in the U.S. hydraulic
16 magnetic circuit breaker market is an attempt by CBI to buy
17 U.S. market share. Most recently CBI has been offering for
18 sale in the United States most of its product at the lowest
19 prices we have ever seen in the U.S. market.

20 As the Commerce and Census Bureau statistics
21 indicate, average unit values for the subject imports
22 dramatically declined from approximately \$7.68 per unit in
23 year 2000 to \$2.72 per unit in year 2002.

24 Based upon our experience in competing with CBI in
25 the U.S. market, we can confirm the accuracy of the Census

1 data. Unfortunately, CBI continues to force prices even
2 lower. As I understand it, CBI is able to offer such low
3 prices in the U.S. market because CBI accounts for more than
4 90 percent of South African hydraulic magnetic circuit
5 breaker production. It is also relatively insulated from
6 foreign competition.

7 CBI therefore has the ability to demand high
8 prices for its HMCB sales in South Africa while selling the
9 product in the United States at dumped prices. This is
10 evidenced by what we believe are triple digit dumping
11 margins for CBI imports.

12 I would next like to state that although the
13 recent decline in apparent U.S consumption may explain of
14 the decline in U.S. HMCB prices, the sharp fall in prices
15 brought on by subject imports is clearly in excess of the
16 price declines associated with falling demand.

17 What we currently see in the marketplace are price
18 offerings by CBI that are so low that we are increasingly
19 unable to compete without losing money. In fact, the CBI
20 pricing at several Airpax key accounts are now at or near
21 our production costs. In addition, the decline in demand
22 over the period of investigation is largely the result of
23 falling demand in the telecommunications sector.

24 In contrast, demand in other end use markets and
25 sectors such as lightening and industrial equipment have

1 either been stable or even improved over the period.

2 Nonetheless, even these non-telecom sector price has
3 declined that were brought on by CBI have been severe.

4 In our post-conference submission, we will submit
5 for your review a list of each account we believe we compete
6 with CBI, and we will specifically note the end use.

7 I have personally had the unfortunate job of
8 reducing 250 Airpax associates in the Cambridge facility
9 over the last two years as a result of the pricing issues
10 that I have been speaking to. This is the most painful part
11 of my management role. I saw part of Airpax leaving, its
12 associates and many were close friends walk out our doors.
13 I am determined not to have to continue such reductions
14 moving forward, and hope this is clear in my statements
15 today.

16 I do thank you for your attention, and I'm happy
17 to answer any questions you may have at the conclusion of
18 our presentation.

19 MR. SMIRNOW: Thank you very much, Steve.

20 We will now hear from Mike Rabasca.

21 MR. RABASCA: Good morning, Mr. Chairman and
22 members of the Commission's investigative team. I would
23 like to thank you for the opportunity to appear here today.
24 I have worked in the circuit breaker industry for nine years
25 and have been employed in various aspects of Airpax and its

1 parent company's operations for 19 years. I therefore have
2 personal knowledge regarding all of the aspects of HMCB
3 production and sales in the North American market.

4 As Steve McDonald has discussed, the volume of
5 subject imports in the United States market continues to
6 increase while the prices at which these products are sold
7 and offered for sale continue to fall. As a result of this
8 unfair competition, we have been forced to lower our HMCB
9 prices for both new and existing customers.

10 We have also been forced to dramatically reduce
11 U.S. employment and source an increasing percentage of our
12 U.S. sales from Mexico. As evidenced in both our petition
13 and questionnaire response, we have experienced declines in
14 shipments, production, sale values, operating incomes, net
15 income, employment, capital expenditures, and research and
16 development spending. We therefore believe it is apparent
17 that Airpax is materially injured by reason of unfairly
18 priced imports from South Africa. In fact, these imports
19 now even threaten the very existence of our U.S. HMCB
20 production plant.

21 As noted previously, subject imports have forced
22 the domestic industry to sharply curtail production and
23 increasingly rely on lower cost Mexican imports, therein has
24 resulted in domestic industry profitability declining to
25 unsustainable levels.

1 However, the most important adverse impact on U.S.
2 HMCB production as a result of South African imports has
3 been the need to dramatically reduce our workforce. The
4 loss of these jobs has had a huge impact on the local
5 community as Airpax has historically been an important
6 manufacturing employer on the eastern shore on Maryland.

7 In the increasingly competitive market of
8 hydraulic magnetics, we must continue to invest in research
9 and development. However, given the injury caused by CBI
10 imports, Airpax has been unable to increase investments and
11 product development.

12 For example, we had considered investing in an
13 DIN-rail mounted circuit breaker. But because of the low
14 price at which CBI was offering a similar product, we
15 concluded that such an investment was not economically
16 feasible.

17 Dumped HMCB imports from South Africa have also
18 resulted in lost sales and lost revenues across a broad
19 spectrum of customers. Although as Steve noted earlier,
20 some price reductions are attributable to declines in
21 apparent U.S. consumption. The domestic industry has lost
22 sales and has been forced to reduce prices with respect to
23 customers less affected by the recent U.S. economic
24 downturn.

25 In addition, even with respect to those

1 industries, we have been more directly affected by the
2 economic downturn. The price reductions forced upon the
3 industry by CBI have been well in excess of price reductions
4 related to the declining demand.

5 Another important factor relevant to this
6 investigation is the fact that Airpax is a sole domestic
7 supplier of certain military spec hydraulic magnetics.
8 These HMCBs are used in the M-1 Abrams tank, the M-2 Bradley
9 armored fighting vehicles, and various military aircraft and
10 ships. In recent years, Airpax was granted permission by
11 the U.S. Department of Defense to supply military spec
12 hydraulic magnetics from its Mexico facility as well as its
13 U.S. facility. This is to ensure that the product would be
14 available in the event the U.S. facility was unable to meet
15 demands due to a catastrophic loss, limited capacity due to
16 labor reductions in Cambridge, Maryland, or any other
17 reason.

18 I also note that our U.S. facility is the only
19 approved facility for testing our military spec product.
20 Our U.S. facility also manufactures 100 percent of the
21 sealed can assembly component for our military HMCBs whether
22 that final assembly occurs in Mexico or in the United
23 States.

24 As I alluded to previously, the domestic HMCB
25 industry is now faced with extinction as a result of surging

1 volumes of unfairly priced imports from South Africa. The
2 increased volume of imports from South Africa have
3 significantly reduced sales prices. This is reflected in a
4 number of declining performance indicators during the period
5 of investigation. Although we have lost sales to CBI over
6 the period of investigation, CBI has more importantly forced
7 us to reduce prices by up to 40 percent at many existing
8 accounts in order to retain this business.

9 On the issue of threat of subject imports, with
10 over 1400 employees producing subject HMCBs at four research
11 and development and manufacturing facilities in South
12 Africa, CBI certainly has the ability to dramatically
13 increase its volume of imports into the United States. CBI
14 is therefore well positioned for ongoing growth and remains a
15 core asset of its South African parent, Roynard. With a
16 strong base in its captive South African market, CBI has a
17 solid foundation from which to launch its international
18 expansion program.

19 As noted earlier, CBI is increasingly export
20 oriented with the company's exports growing from six percent
21 of sales in 1986, to an estimated 20 percent of sales in
22 fiscal year 2002. In this context, it should be recognized
23 that CBI has stated that over the longer term CBI can only
24 achieve significant growth by increasing exports with future
25 exports anticipated to account for more than 70 percent of

1 CBI's business.

2 CBI has also stated that the company's current low
3 market share in the United States offer significant growth
4 potential, and penetration of the North American market
5 remains a priority even despite the recent downturn in
6 demand.

7 Having driven the domestic industry to the
8 financial breaking point, subject imports now threaten the
9 domestic industry's very survival as Airpax is the sole
10 remaining U.S. manufacture of hydraulic magnetics. One need
11 only look at the current pricing by CBI imports to
12 understand the lengths to which CBI is willing to go to gain
13 U.S. market share.

14 What is particularly worrisome is that because of
15 its dominant share in the South African home market, and
16 recognizing the incredibly high margin of dumping by CBI,
17 the subject producer appears to be insulated from any
18 meaningful competition in its home market. Because of its
19 high prices in the South Africa market, CBI has the ability
20 to subsidize increasing volumes of extremely low-priced
21 imports into the United States for the immediate future.

22 As the foregoing domestic industry performance
23 data indicates, in such an environment the very existence of
24 domestic HMCB production is at stake. The domestic industry
25 requires immediate relief from the adverse effects of

1 unfairly traded HMCBs from South Africa.

2 Airpax has been producing circuit breakers in
3 Maryland for over 50 years. We have seen good times and we
4 have also experienced difficult periods, but this South
5 African threat is different than the cyclical economic
6 periods we have worked through. When a foreign competitor
7 uses its monopolistic home market to destroy our own U.S.
8 industry, I become angry.

9 Two weeks ago I brought my seven-year-old daughter
10 to work as part of the National Bring your Sons and
11 Daughters to Work Day. As I proudly walked her through our
12 factory, I quietly wondered how many more years will I be
13 able to this.

14 Today, I respectfully ask the Commission's
15 investigative team to please help save our industry. Thank
16 you for allowing our presence here today. I am happy to
17 answer any questions you might have at the conclusion of our
18 presentation.

19 MR. SMIRNOW: Thank you very much, Mike.

20 As I noted earlier, as part of its request that
21 Commerce expand the like product determination beyond
22 Airpax's proposed scope, and therefore beyond the intent of
23 the petition, CBI primarily relied upon a South Africa Board
24 of Tariffs and Trade determination regarding industrial
25 circuit breakers from various countries.

1 Upon our review of this report, however, it is
2 evident that this report provides no instructive value. It
3 should first be recognized that the scope of the board's
4 investigation was defined much more broadly than the scope
5 of the current investigation.

6 Specifically, the proposed scope of CBI's
7 antidumping petition in South Africa included HMCBs and
8 thermal magnetic circuit breaker. Consistent with this
9 broader scope, the board defined the like product to include
10 HMCBs and thermal magnetic circuit breaker. However, it
11 appears that the like product determination in the board's
12 decision did not include thermal circuit breaker.

13 We don't have more specifics as to the -- the
14 board's report is fairly -- has a fairly general discussion
15 of thermal magnetic. It never says "thermal." It always
16 says, "thermal magnetic." So based on our review we don't
17 think that thermals were included in that. At Commerce,
18 respondents have suggested that the like product
19 determination in fact included thermal, but we question
20 that.

21 In contrast, CBI now requests that the like
22 product definition in this investigation be expanded beyond
23 the proposed scope to include not only HMCBs, but thermal
24 and thermal magnetic circuit breakers.

25 The Commission should also recognize that the

1 analytical methodology relied upon by the South African
2 board in performing its like product analysis differed
3 significantly from the Commission's traditional six-factor
4 like product test.

5 For example, distinctions in the board analysis
6 included reliance upon -- as a factor -- raw materials used
7 in the manufacture of product. There is another factor,
8 tariff classification; and another factor, any other issues
9 raised by an interested party.

10 In contrast, as you know, distinctions in the
11 Commission's traditional analysis include
12 interchangeability, channels of distribution, customer and
13 producer perceptions, common manufacturing facilities, and
14 common production employees. Each of those factors I listed
15 for the Commission are distinct from the factors relied upon
16 in the board's report.

17 Given these differences in methodology alone, it
18 would be inappropriate for the Commission to place any
19 reliance upon the board's report.

20 I also note that the board specifically concludes,
21 and I quote, "All the breakers under investigation are used
22 in the same application." However, it is indisputable that
23 in the U.S. market HMCBs and thermal and thermal magnetic
24 breakers are in fact generally not used in the same
25 application. These differences in use between the South

1 African and U.S. markets therefore undermine the relevance
2 of the board's report to the current proceeding.

3 Finally, we observe that in its recent submission
4 to Commerce, CBI also argued that both industry standards
5 and the relevant harmonized tariff schedule of the United
6 States subheading breakouts further support a like product
7 determination broader than Airpax's proposed scope.

8 However, neither industry standards nor tariff
9 classifications is one of the traditional six factors the
10 Commission relies upon in performing its like product
11 analysis.

12 In contrast, the South African board decision did
13 in fact rely upon tariff classification as one of the
14 factors in reaching its decision.

15 Given the foregoing, we believe it would be
16 inappropriate for the Commission to rely in any way upon the
17 board report.

18 This concludes our presentation. However, before
19 we go to questioning, I would like to state that given
20 Airpax's position as the sole domestic producer I anticipate
21 that some of our responses to your questions will include
22 business proprietary information, and will therefore have to
23 be answered in our post-conference submission although we
24 will do our best to answer each of your questions during
25 today's conference.

1 Thank you very much for your attention.

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

4 MR. RUGGLES: Good morning. Thank you very much
5 for your presentations. I would like to get a little bit
6 into the U.S. market.

7 Basically, the consumption of HMCBs here in the
8 U.S. market, are they -- how would you rate -- not rate, I'm
9 sorry. How would you say it is done? Is there a
10 preponderance of U.S. production going into the U.S. market,
11 or is there a preponderance of South African product going
12 into the market? Or is it a combination of both? Or is
13 there other markets that are coming into -- other countries
14 coming into the United States market?

15 Could you address that?

16 MR. McDONALD: I would say that the majority
17 probably comes from Mexico, not just from Airpax, from
18 competition, but certainly the domestic market Airpax has a
19 solid supply of product within the states, and we do see CBI
20 servicing some of that.

21 As Mike had referenced, we have seen our prices be
22 impacted more than our loss of business, because we have
23 fought to keep that business even at lower prices.

24 MR. RUGGLES: So you are saying a majority of
25 what's consumed in the United States comes from Mexico?

1 MR. McDONALD: I would have to say the numbers
2 would show that, certainly.

3 MR. RUGGLES: Okay, if you could, if you want to
4 do it here, please do it, but if you want to do it in your
5 post-hearing, could you give me what your estimation of the
6 U.S. production to consumption, what the Mexican imports in
7 the United States is to consumption, and what you consider
8 to be South African, and then all other?

9 MR. SMIRNOW: We will do that in the post-hearing.

10 MR. RUGGLES: Okay, thank you.

11 What other countries other than South Africa and
12 Mexico would be contributing to the U.S. market?

13 MR. McDONALD: We see very little from China.
14 Most manufacturers of HMCBs are servicing the local market
15 in China. So really, I would have to look at import data.
16 I do know Mexico is the dominating, and then the domestic
17 industry being second as well as South Africa. Those three
18 are the primaries.

19 MR. RUGGLES: Okay, would this be the same for the
20 thermals?

21 MR. McDONALD: To a large degree, except that you
22 may see some from India, the thermals, and some other
23 countries; possibly any low labor markets for their low
24 thermals.

25 MR. RUGGLES: Okay, that's all I have at this

1 point.

2 MR. CARPENTER: Mr. Diehl.

3 MR. DIEHL: This is Michael Diehl. Thank you,
4 gentlemen, for your presentations. Let me start just with
5 some very basic questions. Mr. McDonald was talking about the
6 importance of the trip-time calibration, that it can be
7 customized. Can you explain why the user of the breaker,
8 why the trip-time calibration is important to the user?

9 MR. McDONALD: Yes. We build in the course of the
10 year upward of forty to 50,000 different configurations.
11 It's a niche market, and each of these breakers are designed
12 for a marketplace and will tailor that trip based on their
13 application. For example, some may have it in equipment
14 that's going to power up a facility in the morning, and they
15 have heavy, what they call, "in-rush current," where if we
16 didn't tailor a delay specific to a window, overload current
17 coming in would seem like an overload condition or a fault
18 and try to make the breakers' contact separate. They don't
19 want that to happen. That would happen very morning when
20 they turned it on.

21 So we design a breaker, and with a delay in
22 conjunction, it will pause, but if it senses that overload
23 current for more than, let's say, two seconds, it is a true
24 overload condition, and they want it to trip. So those
25 types of applications for the equipment -- that's probably

1 one of the most expansive configuratives within the product,
2 the delay assembly.

3 Sometimes they want an instant trip because they
4 cannot handle any overload, and other times they want some
5 delay, and they need to define to us exactly what it is. If
6 it's not in a catalog, we'll design it specifically for that
7 customer application, and about one-third of our business or
8 so is specific to one customer or so. That's how we get so
9 many configurations.

10 MR. DIEHL: Okay. And you also talked about the
11 amperage sensitivity that's also described in the petition.
12 I know it's very basic for you, but can you just explain why
13 the sensitivity to amperage is important in a breaker?

14 MR. McDONALD: Sure. Sometimes they will design
15 equipment -- Trane and Carrier are very good examples. They
16 have to equipment for what they call "lock-rotor specs."
17 That equipment, combined with the delay, they have tenths of
18 an amperage, 62.3 amp circuit breaker. They can't use
19 larger. They can't fit in larger, and they don't want to
20 use smaller because the amperage can't handle it.

21 So the range from a 20 amp up to a 400 amp circuit
22 breaker, the industry always wants to use as small of a
23 product as it can, typically for price and for space to save
24 in their cabinets and so forth, but they don't want to
25 oversize. Therefore, they have to go to increments, where

1 the thermal mags -- you can go to Home Depot and buy a 10,
2 20, or 30 amp, but you're overpaying and oversizing
3 sometimes.

4 MR. DIEHL: Okay. Thank you. Again, very basic.
5 The bi-metal device in the thermals; as I understand it,
6 you've got two different sorts of metal on a strip, and as
7 one expands more rapidly than the other as it heats up, it
8 twists it in one direction or the other. I don't understand
9 the very basic question of how is the heat applied to that
10 in the thermal when it's operating properly? I don't mean
11 changes in ambient temperature, but just how does that work
12 when it's operating properly?

13 MR. McDONALD: The current path of either of the
14 three circuit breakers is to come through a line terminal
15 and a load terminal. It goes in one side and comes out the
16 other. So with a hydraulic-magnetic, it's following that
17 coil, which is welded to cable, going across contact bars
18 and mount. With the thermals, it's going through a similar
19 path; it's just heating up that bi-metal as it's going
20 through.

21 MR. DIEHL: Does it actually pass through the bi-
22 metal like it would a wire?

23 MR. McDONALD: Yeah. It crosses right through
24 that.

25 MR. DIEHL: Okay. All right. Thank you for

1 bearing with my very basic questions. You also talked about
2 -- I think you used the phrase or the term, "handle force."
3 Did I understand correctly? Is that sort of the jarring or
4 the ability to withstand a push or a jar?

5 MR. McDONALD: We've measured the force it
6 requires to turn the breaker on and to disengage and turn
7 the breaker off. The thermomagnetics have almost double the
8 amount. They are resident, so they are in your houses in
9 your panels, and they are there for a reason, the force, but
10 because of that, they are not preferred as in a typical
11 switch, whereas our product is also used as a switch and
12 provides overcurrent protection because users don't want to
13 have to force the breakers on and off.

14 MR. DIEHL: Okay. Thank you. The fluid in the
15 hydraulic products; I think you described it as a synthetic
16 oil. I think that the petition described it as a silicon.
17 Is that the same thing?

18 MR. McDONALD: It's a silicon oil, yes.

19 MR. DIEHL: Okay. All right. Thank you. On the
20 military sales, I don't know if this is something you want
21 to discuss in public, but if you could address, either here
22 or in your post-conference brief, the percentage of your
23 sales that go to the military purchaser.

24 MR. SMIRNOW: That would be post-hearing.

25 MR. DIEHL: Okay. I think Mr. Rabasca mentioned a

1 product that had a sealed-can component, and I think you
2 indicated that some of the products that have that are
3 assembled in the United States, and some are assembled in
4 Mexico. The product that has sealed-can components made in
5 the States, and then when that breaker is assembled in
6 Mexico, how is that treated for purposes of looking at that
7 breaker when it reenters the States? Is that a product of
8 Mexico, then?

9 MR. McDONALD: Yes, it would be.

10 MR. DIEHL: Okay. Now, there is a point in the
11 petition that I'm not sure I follow. It suggests that the
12 subject imports are a threat to the military contract
13 because, I guess, the problem is if you shut down your U.S.
14 facility, you may no longer be able to supply that. Can it
15 also be argued that, in a sense, that's shielding you from
16 competition? If you're the only party that's allowed to
17 supply that, can't it be argued that you're shielded from
18 competition for those sales?

19 MR. SMIRNOW: Sure.

20 MR. DIEHL: Okay.

21 MR. SMIRNOW: But nonetheless, at the end of the
22 day, if you have no U.S. manufacturing facility that can
23 certify those products, what good is it to have been
24 shielded from competing with those directly on sales? The
25 indirect effect of that -- I guess there is an indirect

1 effect there.

2 MR. DIEHL: Okay.

3 MR. SMIRNOW: A potential indirect effect.

4 MR. DIEHL: But the effect has to be on your U.S.
5 manufacturing.

6 MR. SMIRNOW: Right. If the U.S. manufacturing
7 goes away, then we won't be able to make that product in the
8 United States. The product is also made in Mexico, but
9 still, nonetheless, some of that product is made in the
10 United States as well.

11 MR. DIEHL: Right. Okay. I think both parties
12 should address the question of negligible imports and the
13 standard that the Commission applies in your post-conference
14 briefs?

15 In Exhibit 4 of the petition, there is a reference
16 to derating, and I would like somebody to explain what that
17 concept means.

18 MR. McDONALD: On a catalog for the thermal-magra,
19 thermal circuit breakers, they actually will publish
20 derating curves. That's because of this nuisance tripping,
21 if you do not spec and plan for that to happen.

22 MR. DIEHL: If you could be even more basic, does
23 that mean that when you fall outside a certain temperature
24 range, you no longer vouch for the product?

25 MR. McDONALD: They are basically having to put a

1 more powerful product in a smaller application because they
2 know they are going to experience heat issues and ambient-
3 sensitive issues that would cause nuisance tripping if you
4 don't plan for it.

5 MR. DIEHL: Okay.

6 MR. SMIRNOW: Mike, just to clarify, the
7 negligible imports, now that is more traditionally when they
8 are dual countries. So are you suggesting that we address
9 negligibility in the context of volume?

10 MR. DIEHL: Yes. You know, unless I'm pulling a
11 brain freeze, which does happen to me on occasion, I think
12 you have to have more than three percent of all of the
13 imports being subject imports. That's a threshold to look
14 at. As I understand it, the test used to be relevant to
15 cumulation, but that's been modified some years back.

16 MR. DIEHL: All right. Thank you. Those are all
17 of the questions I have now. Thank you.

18 MR. CARPENTER: Mr. Benedick.

19 MR. BENEDICK: Thank you and again, thank you for
20 your testimony. I have a couple of requests of Mr. Smirnow
21 first.

22 In Airpax's questionnaire response, where they
23 responded to the question, IV-E2, and they identified the
24 top three U.S. end-use markets for the HMCBs that they
25 produced in the United States, would you report in your

1 post-conference brief the total number of poles and the
2 total net FOB value of shipments of the HMCBs to U.S.
3 customers in each of those top-three U.S. end-use markets
4 during the period of investigation, January 2000 through
5 March 2003, but report only for your firm's U.S.-produced
6 HMCBs?

7 In addition, could you report in your post-
8 conference brief the volume and value of the shift of U.S.
9 production of Airpax's products to Mexico in the time period
10 1996 to 1999 and then in the time period from January 2000
11 through March 2003?

12 MR. SMIRNOW: Okay.

13 MR. BENEDICK: And also, would you please provide
14 the contract terms for the contractor and the subcontractor
15 for the military sales of the HMCBs and identify how much of
16 Airpax's U.S. production is for the military and how much
17 its imported Mexican production is for the military, again,
18 during the period of investigation?

19 And last, for the post-conference, with the lost-
20 sales/lost-revenue allegations made by Airpax in their
21 petition, if they could detail for each quantity that they
22 allege, how much was U.S. produced and how much was imported
23 from Mexico, and if they imported from any other country, how
24 much that was and which country. And if you made an initial
25 quote and then a subsequent quote, could you be specific for

1 each of those two quotes separately, --

2 MR. SMIRNOW: Okay.

3 MR. BENEDICK: -- especially if, maybe the initial
4 quote, if you had one, was U.S. product, and maybe the
5 second quote was Mexico, and I'm just throwing that out.
6 I'm not necessarily saying that happened.

7 Does Airpax consider itself to be the only U.S.
8 producer of HMCBs of any commercial quantities?

9 MR. SMIRNOW: As far as we know, yes.

10 MR. BENEDICK: Okay. How has competition between
11 Airpax and other producers in Mexico, and this would be
12 competition in the U.S. market involving the HMCBs, affected
13 price?

14 MR. McDONALD: I would say, in general, it's been
15 that way for 10 or 12 years, so the competition has been in
16 Mexico for that long. The competition has been what you
17 would expect in any industry.

18 MR. BENEDICK: You moved to Mexico, and I presume
19 some other firms are producing in Mexico, because of the
20 labor advantage, since you cited this was a labor-intensive
21 product, especially as you go further down towards the
22 completed product. Has that impacted selling prices at all
23 in the U.S. market? In fact, if producers are able to
24 produce, I presume, at a lower total cost as a result of the
25 lower labor in competing in the U.S. market, has that

1 affected, i.e., lowered, prices in the U.S. market?

2 MR. McDONALD: Certainly, not under the period of
3 investigation.

4 MR. BENEDICK: Okay. Prior to that?

5 MR. McDONALD: It would have to go back to the
6 late-eighties, when this started, but because of the labor
7 cost alone, I would say competition was able to lower, as
8 was Airpax when we into the lower labor market.

9 MR. BENEDICK: Have any new products been
10 developed, any new HMBC products been developed, over that
11 period of time?

12 MR. McDONALD: The period of investigation?

13 MR. BENEDICK: Yes.

14 MR. McDONALD: Yes.

15 MR. BENEDICK: Okay. Have any production of those
16 products shifted to Mexico?

17 MR. McDONALD: Yes, they have.

18 MR. BENEDICK: Has that had an impact on the
19 selling price here in the United States?

20 MR. McDONALD: No. The reason they went to Mexico
21 was the price was already being taken down, either by
22 subject imports or other.

23 MR. BENEDICK: And who would the other be?

24 MR. McDONALD: It started with subject imports,
25 and then, as we understand, a competitor came out with a

1 similar product.

2 MR. BENEDICK: Also produced in Mexico, I presume.

3 MR. McDONALD: To our understanding, yes.

4 MR. BENEDICK: Okay. Prior to the period of
5 investigation -- you had mentioned the last 10 or 12 years,
6 but now we'll look at 10 or 12 years prior to the POI,
7 period of investigation -- were new products developed, and
8 was production of those new products shifted to Mexico, and
9 how did that impact the selling price in the U.S. market?

10 MR. McDONALD: Yes. They were developed. Labor
11 is a small percentage of the total cost, so it would have an
12 impact, but you can only go so far with the labor cost
13 before you're essentially not going to make any gains, and
14 now you're taking margin.

15 MR. BENEDICK: But the impact was significant
16 enough for you to move production and for others to move
17 production to Mexico to get the lower wages, so it's not an
18 insignificant savings.

19 MR. McDONALD: I agree. We were forced to
20 essentially follow competition.

21 MR. BENEDICK: Okay. And, again, for Mr.
22 McDonald, if you could describe the trends in U.S. demand
23 for the HMCBs in the U.S. during the period of
24 investigation, which would be January 2000 through March
25 2003, and what factors affected these trends.

1 MR. McDONALD: Certainly, the most noticeable was,
2 in the year 2000, the telecommunications bubble. The
3 inflated demands and so forth that we were seeing were very
4 high. We were pressed to supply with the lead times and the
5 capacities from our vendors and so forth to us, so that was
6 a challenge, and by the end of the year 2000, that demand
7 had left, and somewhat of an overcorrection was started, but
8 certainly we're back at, and have been through 2002 and
9 going into 2003, more numbers that are comparable to what
10 our growth trends had been prior to the 2000 year.

11 MR. BENEDICK: Well, when the telecom sector in
12 the U.S. was robust, was that for several years prior to
13 2000 also? Was that demand there?

14 MR. McDONALD: Not to the level it was in that one
15 year, no. It was certainly a growth market, as were some
16 others in the past that we targeted, but it wasn't what I
17 would call a bubble at that point --

18 MR. BENEDICK: You're saying that, starting in
19 2002, the telecom sector has recovered, and it's --

20 MR. McDONALD: It's not recovered, but it's not --
21 they have used up extra inventory. Their buying patterns
22 are back to a normal level again. The volume of product
23 that we're shipping now is what we had planned to ship.
24 It's the prices that are dramatically impacted now.

25 MR. BENEDICK: Would you have any information you

1 could provide, perhaps in a post-conference brief, looking
2 at the level of investment in the U.S. telecom sector, and,
3 again, look at the period 2000 through the end of the POI,
4 March 2003?

5 MR. BENEDICK: Okay. I have no further questions.

6 MR. SMIRNOW: Nothing comes to mind immediately
7 that we have that, but we'll look into -- and come up with
8 that.

9 MR. BENEDICK: Okay. Thanks for making the
10 effort.

11 MR. CARPENTER: Mr. Kitzmiller.

12 MR. KITZMILLER: Thank you. Good morning, and
13 thank you for appearing here with us, and thank you for the
14 opportunity to tour your facility in Cambridge.

15 Prices aside, how difficult is it to substitute an
16 HMCB for a thermal or a thermomagnetic circuit breaker?

17 MR. McDONALD: Typically, if you're looking to go
18 up, and I say "up" because that's the way they are on my
19 chart, we can design a hydraulic-magnetic into applications
20 that a thermal may be into, but these are because of 18
21 components, they sell very cheaply, and typically it's
22 beyond the business scope to do so. For them to go up, the
23 customer and, more importantly, the engineering group would
24 have to approve that they are not going to have an issue
25 with that ambient temperature and the nuisance tripping

1 associated or that they don't need special amperages or
2 handle configurations or the handle pressure -- all of the
3 factors that I spoke to. If all of those conditions are
4 present, they could, but obviously we do not see that;
5 therefore, it's not very easy to do so.

6 MR. KITZMILLER: I believe you said there were
7 something in the realm of forty or 50,000 different --

8 MR. McDONALD: -- part numbers that we will ship
9 within a year.

10 MR. KITZMILLER: Okay. You have a catalog. Are
11 there certain HMCBs that are "standard," things that the
12 industry expects are going to be out there, or is every
13 single switch done on a custom basis?

14 MR. McDONALD: You'll have common amperages.
15 Let's say, 10, 15, 20 seem to be a fairly common range, but
16 then they want unique colored handles or terminal
17 configurations or delay assemblies. Therefore, while if you
18 look at the possibilities to build a catalog part number,
19 most of those catalog part numbers are probably still only
20 purchased by one customer of ours. It's just that
21 expansive. You could have some duplication. Distribution
22 tries to do that a little bit. Twenty percent of our
23 business, we try to buy a 20 amp and sell that into an
24 application and convince them they don't need a blue handle;
25 use the white; that's what we have on the shelf.

1 MR. KITZMILLER: This is going to sound sort of
2 silly. When was the technology for a hydraulic-magnetic
3 circuit breaker first developed? When did they enter the
4 market?

5 MR. McDONALD: It had to be the early forties.

6 MR. KITZMILLER: Okay.

7 MR. McDONALD: We introduced the first circuit
8 breaker in about 1952, in that area, and we weren't the
9 first.

10 MR. KITZMILLER: And the thermal and thermal-
11 magnetic, I presume, were around, certainly the thermal,
12 long before.

13 MR. McDONALD: Honestly, I can't speak to their
14 periods of introduction without doing a little more
15 investigation.

16 MR. KITZMILLER: Have there been major changes in
17 the technology for HMCB, or has the theory behind it not
18 changed at all over that --

19 MR. McDONALD: Essentially, the core concepts are
20 that delay assembly that's going through that coil providing
21 different sizes for the amperage. The only trend that you
22 see or change that certainly all HMCB manufacturers would
23 like to do is to provide more power in a smaller package, so
24 you see us pushing the envelope a little more in frame
25 sizes, but, in general, the way a circuit breaker is

1 manufactured and the way it's designed is very common to
2 what it was back in the 1950's.

3 MR. KITZMILLER: When speaking to you earlier, you
4 said a run might be one switch, maybe just the one --

5 MR. McDONALD: That's correct.

6 MR. KITZMILLER: -- one circuit breaker. What
7 might be considered a large run?

8 MR. McDONALD: You may have an order for, let's
9 say, 5,000 pieces.

10 MR. KITZMILLER: Okay. That would be a large run.

11 MR. McDONALD: I would consider that a large run,
12 yes.

13 MR. KITZMILLER: Is there any way of estimating
14 what the range of price difference might be from just a
15 onesey-twosey type of order versus a large run?

16 MR. McDONALD: Yes. We could certainly share at
17 the post-conference our pricing book, and it shows volume
18 discount opportunities.

19 MR. KITZMILLER: If you would, please. Those are
20 all of the questions I have. Thank you.

21 MR. CARPENTER: Mr. Boyland.

22 MR. BOYLAND: Good morning. Thank you for your
23 testimony and the information you've already provided in
24 response to questions that I've asked prior to the
25 conference.

1 One question. Mr. McDonald, you mentioned that
2 production costs are now close to the prices that CBI is
3 offering. What production costs are those? Is that the
4 United States or Mexico or a combination?

5 MR. McDONALD: It certainly would be the United
6 States, and if you're looking at Mexico, it would be not at
7 but even close to theirs in some cases.

8 MR. BOYLAND: So you weren't specifying one.

9 MR. McDONALD: No.

10 MR. BOYLAND: Okay. I have no further questions.
11 Thank you.

12 MR. CARPENTER: Mr. McClure.

13 MR. McCLURE: Jim McClure, Office of
14 Investigations. Mr. McDonald, one question. You talked
15 about the tens of thousands of varieties that have been
16 produced over the years, and, in particular, you said
17 approximately one-third of your production runs are specific
18 to things. I assume that meant both U.S. and Mexico -- is
19 that correct? -- or would that be specific to the Cambridge
20 operation?

21 MR. McDONALD: I, again, wouldn't want to quote
22 numbers for the individuals. I would comfortably say
23 Cambridge does more variety because they are typically the
24 one-piece, two-piece.

25 MR. McCLURE: Now, in that one-third, is that an

1 area where you're going to experience competition from CBI,
2 or is the competition you experience with them more in, for
3 want of a better term, I would refer to as the generic
4 market. I think, what, that's the BCs?

5 MR. McDONALD: The B and Ds.

6 MR. McCLURE: The B and D. Okay.

7 MR. McDONALD: Certainly, where we've seen them
8 initially have been accounts that had low variety, high
9 volume, but if you win that customer, and they need a low-
10 volume application, you supply the low-volume application,
11 too. They don't want multiple suppliers, typically.

12 MR. McCLURE: That's all I have for right now.

13 Thank you.

14 MR. CARPENTER: Mr. Diehl has a follow-up
15 question.

16 MR. DIEHL: Okay. Just a couple of follow-up
17 questions. I remember Mr. Smirnow mentioned at the
18 beginning of the presentation that you are not denying that
19 subject imports have also entered your Mexican operation,
20 but that's just not something to be considered in the case.
21 Could somebody on the panel just extrapolate a little bit
22 about competition between the subject imports from South
23 Africa and the product that you make in Mexico?

24 MR. McDONALD: In what terms?

25 MR. DIEHL: Well, just what are the products that

1 subject imports are hurting your Mexico production on? What
2 are the uses that they are directed to? Anything that just
3 can fill out a little bit the notion of competition between
4 those two.

5 MR. McDONALD: I would say regardless of what
6 we've seen, whether it impacts our Cambridge facility or our
7 Mexico facility, B, the smallest, and then the D frame are
8 the two that they introduced into the U.S. first, so those,
9 across the board, we've seen the most pressure on. We do
10 know they are selling some of these, we do know they have
11 had some business for these, and we do know they are quoting
12 more of those.

13 MR. DIEHL: Okay.

14 MR. MCDONALD: -- the E frame and the F frame. To
15 some degree I think the reason that these others haven't
16 sold as well is not due to a lack of their sales efforts.
17 It's the product could not match the quality requirements in
18 some of the applications, and the B and D products can so
19 they lended themselves well. Certainly with engineering
20 enhancements to those, they're becoming more of a
21 competitive threat on the other frames as well.

22 MR. DIEHL: Okay. Thank you. Just a few
23 questions for the briefs. I would ask the lawyers to brief
24 whether the Commission should consider non-commercial
25 quantities made by any U.S. producers be part of U.S.

1 production, whether any producer like that should be
2 considered a U.S. producer.

3 Finally, as to these -- sorry. I'm losing my
4 notes here. Mr. Rabasca I think talked about the sealed can
5 component, and I think you mentioned that when that's
6 assembled in Mexico you treat it as a product of Mexico.

7 If also the lawyers could address whether the U.S.
8 production of a component such as that should be considered
9 U.S. production. I'm assuming no, but I'd like that
10 addressed in briefing.

11 MR. SMIRNOW: We'll address that in the post-
12 hearing.

13 MR. DIEHL: Okay. Thank you.

14 MR. CARPENTER: Are there any other staff follow
15 up questions?

16 (No response.)

17 MR. CARPENTER: If not, I want to thank the panel
18 for your enlightened testimony and response.

19 We'll take a recess until about 10:45 on the clock
20 in the back of the room, and I'll ask Respondents to come up
21 to the table at that time.

22 Thank you very much.

23 (Whereupon, a short recess was taken.)

24 MR. CARPENTER: Mr. Silverman, please proceed
25 whenever you're ready.

1 MR. SILVERMAN: For the record, my name is William
2 Silverman. I'm with the law firm of Hunton & Williams, and
3 we are counsel to Circuit Breaker Industries, Ltd., or CBI.

4 I just want to start by welcoming the Petitioners
5 to the Respondents' side of the room. I've been practicing
6 here for many years. It's sort of a new thing for the
7 Petitioners to sit on the Respondents' side. I think it may
8 tell you a little bit about their role as importers. Since
9 they may be a major importer from Mexico, we welcome them to
10 the importers' side.

11 At any rate, in preparing for this hearing one
12 word came to my mind as I studied the data, and that word,
13 Mr. Chairman, is bupkus. Bupkus. If you're not familiar
14 with this Yiddish word, Mr. Chairman, let me translate it
15 for you. The literal meaning of bupkus in Yiddish is goat
16 droppings. Figuratively, it means nothing of value,
17 trifling, or, as we say today, peanuts.

18 That's what the subject imports are in this case.
19 Bupkus. I can't tell you the exact import penetration level
20 in public, but I'm sure you've seen the percentage in the
21 APO data. I can tell you I know of no single case where the
22 Commission has made an affirmative injury determination on
23 such a small number.

24 Why is that? The reason is we have statutory
25 standards. You didn't hear any reference to statutory

1 standards in the earlier presentation, so I'll talk about
2 them for a second. The statutory standard requires the
3 Commission to determine whether the volume of imports is
4 significant. With regard to price, the statutory standard
5 requires the Commission to consider the effect of imports
6 and whether they depress prices to a significant degree or
7 whether their price increases have been postponed or blocked
8 to a significant degree.

9 Sorry. I'm speaking too loud. That's rare.

10 Anyway, the important point to emphasize in the
11 statutory standards, Mr. Chairman, is the word significant.
12 It's used repeatedly, and the Commission has abided by that
13 when it's made its other determinations.

14 Contrast that clear standard under the statute to
15 CBI's imports of about \$1 million in a market where the
16 apparent domestic consumption we estimate, CBI estimates, to
17 be in the range of \$80 to \$120 million. \$1 million is just
18 not significant, and it's baseless to assert that that level
19 of imports can meet the statutory test of significant.

20 Long before CBI entered the market, all the major
21 U.S. players -- Airpax, Carling and Eaton -- decided it was
22 too expensive to perform labor intensive production of
23 circuit breakers in the United States, so what did they do?
24 They moved their production to Mexico where labor costs are
25 bupkus. Remember that word from the beginning?

1 Carling and Eaton moved all of their production to
2 Mexico, and our client has told us that Airpax retained a
3 small assembly facility in Maryland, but only for small jobs
4 and perhaps sales to the military. The bulk of their real
5 production takes place in Mexico. This is a very
6 significant condition of competition when the Commission
7 does its analysis.

8 What drove Airpax to Mexico? It wasn't imports
9 from South Africa. Airpax made its big move long before CBI
10 began its commercial level shipments to the United States.
11 So did Carling, and so did Eaton. In addition, Airpax
12 expanded its production in Mexico, perhaps in 1999 or 2000,
13 thereabouts, as part of its overall business plan to create
14 jobs in Mexico and reduce jobs in Maryland.

15 You might ask the people who were here before how
16 many times they've been to Mexico and how much they've
17 invested to build up the Mexican operation in case they're
18 worried about where the jobs are shifting and who caused the
19 jobs to shift. Airpax cannot claim that its reduced
20 production and reduced jobs in Maryland were caused by lost
21 sales to CBI when in fact it made its own business judgment
22 to capture the benefit of those low wage workers long before
23 we entered the market.

24 There may be lost production and lost jobs in
25 Maryland, but not by reason of CBI's imports of \$1 million

1 approximately in 2002. Instead, Airpax aggressively took
2 advantage and repeatedly takes advantage of low cost labor
3 in Mexico. They took advantage of it before we entered the
4 market, they took advantage of it while we were in the
5 market, and they will continue to take advantage of it even
6 if we stop shipping from South Africa.

7 Perhaps, and you heard the reference to it in
8 their testimony, Airpax has no choice because Carling and
9 Eaton took advantage of those low wage rates from Mexico,
10 and they are dominant by quantity and value in the U.S.
11 market with their imports from Mexico.

12 In addition, when Airpax makes allegations of lost
13 sales or lost revenue, the Commission should consider
14 whether Airpax allegedly lost the sale or had to reduce its
15 price from its Maryland facility or whether in fact it's
16 injury to their Mexican facility that they're worried about.
17 Maybe they had to lower their price or they lost the sale to
18 Carling's Mexican production or Eaton's Mexican production.

19 We will also show in our testimony that not only
20 is Airpax competing against a bupkus level of imports from
21 South Africa, but only a fraction of the South African
22 imports arguably compete with Airpax. I think the
23 Commission uses the word attenuated competition when it sees
24 this case.

25 You heard them say 40,000 to 50,000

1 configurations. You'll find out from us how few we have.
2 If we don't have their configuration, we don't have their
3 type, it's very hard to persuade a customer, and, therefore,
4 there's no competition. It's attenuated competition. It's
5 not real competition.

6 South Africa mainly serves the low voltage
7 lighting sector of the U.S. market, and our client tells us
8 that Airpax focuses mainly on the telecom sector. CBI sells
9 nothing or next to nothing in that sector. Our testimony
10 will show that any financial difficulties experienced by
11 Airpax are the result, first and foremost, of the crash in
12 the telecom sector.

13 Imports from South Africa cannot be blamed because
14 South African imports are trivial, averaging over the three
15 year period approximately \$700,000 per year, and the bulk of
16 those are serving a market segment that they don't serve.

17 To test Airpax's theory that CBI's sales have
18 caused lost jobs in Maryland while they increased their
19 production in Mexico, let's ask them this. What are the
20 chances that Airpax will move its manufacturing back to
21 Maryland if CBI disappears? Well, regardless of the South
22 African imports Airpax still has to compete with dominant
23 Mexican imports made by Carling and Eaton, and that's where
24 the real price pressure is.

25 In the next year or two, even the Mexican imports

1 may have a hard time competing because all the major players
2 currently have or will soon have manufacturing facilities in
3 China, another important condition of competition, and so
4 what are the chances an affirmative determination against
5 South Africa will help what's left of the U.S. industry that
6 hasn't been moved to Mexico by the Petitioners? What are
7 the chances? You guessed it, Mr. Chairman. The chances are
8 bupkus.

9 Our first witness is Mr. Fischer.

10 MR. FISCHER: Gentlemen, my name is Helmuth
11 Fischer. First I'd like to apologize for my non-traditional
12 African outfit. The bomber jacket is also no expression
13 that we will put up a fight here.

14 I just arrived yesterday from South Africa, but my
15 luggage didn't, so I had to make due with what I was
16 wearing, but I also injected a little bit of money into the
17 local economy by buying some clothing, although I did not
18 check whether it was imported or a local manufacturer.

19 I am the managing director of Circuit Breaker
20 Industries, Ltd., the only South African producer of circuit
21 breakers, including high quality magnetic circuit breakers
22 or HMCB for short. I'm also president of the North American
23 operation. I'm 19 years with the company, of which I served
24 13 years as managing director.

25 Initially I found it hard to believe that Airpax

1 could credibly argue that it was injured by CBI because our
2 CBI sales are just so small. I also found it puzzling that
3 Airpax would claim to represent "U.S. industry" in this case
4 since Airpax and the other U.S. domiciled corporations that
5 produce HMCB long ago transferred nearly all of their
6 production operations to Mexico, long before CBI entered the
7 picture.

8 Moreover, I was surprised that Airpax excluded
9 from the U.S. industry the major producers of thermal
10 magnetic circuit breakers such as General Electric since
11 these products do compete with HMCBs in many situations.

12 I actually checked the dates of the petition to
13 see if this was an April Fool's joke. It wasn't, so here I
14 am defending my company against charges of injury to the
15 U.S. industry where Airpax, Carling and Eaton control the
16 hydraulic magnetic portion of the U.S. circuit breaker
17 market through their imports from Mexico.

18 Before I rebut the ridiculous charges lodged
19 against us, let me give you a little history of the HMCB
20 portion of the circuit breaker industry. In the 1930s, a
21 company named Heineman Electric Company in New Jersey
22 invented the hydraulic magnetic circuit breaker.

23 Incidentally, it was done by a German physicist with the
24 name of Burkins, whose nephew was put in charge of the South
25 African operation, and I took over from him 13 years ago.

1 In 1947, Westinghouse invented the thermal magnetic variety
2 of circuit breakers.

3 Heineman focused on production of HMCBs to the
4 original equipment manufacturer, OEM -- you have already
5 realized in our business we love buzz words; OEMs -- while
6 Westinghouse licensed its thermal magnetic technology to
7 producers worldwide, including a small South African company
8 called Hooks Electrical Industries.

9 In 1949, Heineman, now owned by Eaton Corporation,
10 established a joint venture of Heineman Electric South
11 Africa, which was acquired by Reynaud, Ltd. in 1986 and
12 merged with Hooks Electrical Industries. The company was
13 then named Circuit Breaker Industries.

14 CBI continued the tradition of producing and
15 selling HMCBs and thermal magnetic circuit breakers at the
16 same plants from its space in South Africa using the
17 technology invented by its ancestors, Heineman and
18 Westinghouse. Up until the 1970s, Heineman in the States
19 led the market for HMCBs until a strike disrupted Heineman's
20 production, and then Airpax became a major player.

21 Another company called Carling Technologies got
22 into the business by hiring Heineman's engineers and copying
23 its products. This is, incidentally, a trend in this
24 particular industry that after Heineman every new entrant
25 into this market only copied the already existing versions

1 of Heineman, which you will appreciate. Every new entry of
2 the same product puts pressure on price.

3 Heineman eventually was purchased by Eaton
4 Corporation, and Eaton continues HMCB production to this
5 day, but Carling and Eaton continue the production in
6 Mexico, not the United States. Airpax also continues to
7 produce the vast majority in Mexico.

8 Over the past two decades, the U.S. industry was
9 conformed by two events: The shift of production to Mexico
10 since the 1980s and the focus of certain producers, such as
11 Airpax, on the telecommunications market at the end of the
12 1990s.

13 In the 1980s, the U.S. producers realized they
14 could save a lot of money and manufacturing costs by moving
15 their labor intensive operations to Mexico. By the late
16 1990s, all of the U.S. producers moved; that is, Airpax,
17 Carling and Eaton. Airpax expanded its Mexican facility
18 further around 2000 to meet the then increasing demand in
19 the telecom sector.

20 Airpax retained a small assembly capability in the
21 United States. Our customers tell us that Airpax's U.S.
22 operation is quite small compared to their Mexican operation
23 and that the U.S. assembly is limited to prototype
24 development, production of and filling of small rush orders.

25 Normally all of the Airpax large scale

1 manufacturing is done in Mexico, not in the United States,
2 because of the enormous cost savings by using Mexican
3 instead of U.S. labor. For example, a former Eaton employee
4 told us that in 1998 when Eaton moved to Mexico wage rates
5 in the U.S. were approximately \$8 per hour compared to \$8
6 per day -- I repeat, \$8 per day -- in Mexico.

7 Airpax's customers now know that when they buy
8 from Airpax they can expect the product to come from Mexico
9 because the country of origin has to be shown on each part.

10 During 1999 and 2000, the industry was conformed
11 by the telecommunications market. As you probably know, at
12 the end of the 1990s the telecommunications industry in the
13 United States and globally experienced an enormous boom in
14 production and sales. The telecom sectors demanded
15 enormous, unheard of quantities of circuit breakers to meet
16 its needs. Airpax, Carling and Eaton acted quickly to
17 position themselves to meet the huge spike in demand by
18 Lucent and other telecom producers.

19 With its Underwriter Laboratories approvals in
20 place, Airpax was one of the producers that was well
21 positioned to seize this opportunity. CBI, which was only
22 beginning to enter the U.S. circuit breaker market in the
23 1999 to 2000 period, was not in a position to service the
24 telecommunication sector in the United States because it was
25 not known in the industry, and, more importantly, CBI did

1 not have the necessary approvals of Underwriters
2 Laboratories for its product.

3 During the 1990 and 2000 boom years, Airpax must
4 have experienced a tremendous spike in sales. We do not
5 have access to Airpax's confidential data, but we understand
6 at the time from public sources that Airpax had actually
7 doubled its sales of circuit breakers. We also know from
8 some of our customers that during this period Airpax
9 neglected many of its smaller customers so it could focus
10 its limited capacity on the more lucrative telecom market.
11 Lead times for those customers went out at times to 50
12 weeks. I repeat, five zero weeks.

13 We understand that Airpax had not quite finished
14 its expansion in Mexico by this time, so the demand
15 overstretched Airpax's capacity. During this period, Airpax
16 may very well have been forced to make up production
17 shortfalls in its Mexican factory by increasing production
18 at its high cost facility in Maryland.

19 As we all know, by 2001 the telecom industry moved
20 from boom to bust. Unfortunately for Airpax, the bust must
21 have occurred just about the time that its expanded
22 operations in Mexico became functional. Our own estimates
23 of total U.S. demand for HMCBs show that 2001 demand was cut
24 in half from 2000, returning to about the same demand level
25 that existed prior to the telecom boom.

1 Given that turn of events, it's easy to see why
2 Airpax's financial performance decreased after the telecom
3 bust. In contrast, CBI did not experience the same drop in
4 sales because CBI did not compete in the telecom market
5 during the boom years.

6 Since its entry into the United States market, CBI
7 has focused primarily on lighting applications. For these
8 lighting applications, we compete only on a limited extent
9 with Airpax because Airpax has focused its attention on
10 other markets that are larger and more lucrative, such as
11 telecoms. Airpax's focus on these market segments, I might
12 add, predated CBI's entry into the U.S. market.

13 Instead, CBI competes more against Mexican HMCB
14 imports from Carling and Eaton. In some cases we compete
15 against Airpax, but it is against their imports from Mexico,
16 not their small U.S. facility. CBI also competes against
17 the many producers of thermal magnetic circuit breakers
18 because many of our lighting customers can and do switch
19 from the hydraulic to thermal circuit breakers if it makes
20 economic sense.

21 I would also like to point out that the vast
22 majority of our sales are in different product designs than
23 Airpax. Circuit breakers come in a variety of sizes and
24 shapes in order to meet the needs of different customers
25 with different requirements for the physical placement of

1 circuit breakers in their electrical products.

2 About half of the value of CBI's sales consist of
3 B frame products, which are mainly for lighting
4 applications. As I said before, Airpax does not concentrate
5 on lighting applications, so you would expect that a
6 relatively small percentage of theirs would compete with our
7 B frame products. The vast majority of our B frame products
8 are 25 amp, which generally compete with thermal and thermal
9 magnetic circuit breakers, not hydraulic magnetic circuit
10 breakers.

11 About one-quarter of the value of CBI's sales
12 consist of half-inch Q frame products, which are rail
13 mounted, many for lighting applications. The Q frame
14 products compete mainly with thermal magnetic circuit
15 breakers.

16 As I said earlier, copying was the order of the
17 day for new entrants into the market. CBI is the only
18 company in the hydraulic magnetic circuit breaker field who
19 has brought real innovation into the field. You were told
20 earlier on that a hydraulic magnetic circuit breaker has to
21 be more expensive. We produce a mass produced circuit
22 breaker, 22,000 units a day in a lot, than the equivalent
23 thermal magnetic circuit breakers.

24 It has less parts, contrary to what you were told
25 before. It is manufactured in the same production

1 facilities, contrary to what you were told before. It has
2 less components, and it allows, because of the design, a
3 higher degree of automation. Copying, as I said, leads to
4 price reduction. Users are always open for innovation. In
5 particular, innovation brings lower size and higher
6 performance.

7 On the technical side, as I said, in our industry
8 we tend to use buzz words. I always tell people that I'm a
9 mechanical engineer, so there's no danger in an electrical
10 company. In our company, mechanical engineers get promoted
11 to the top because that's the place where they can do the
12 least harm in an electric company.

13 It's easy to confuse people in our industry, in
14 particular if you leave out information. For example, we
15 always liked it that our customers believed that hydraulic
16 magnetic circuit breakers are insensitive to ambient
17 temperature and the thermal magnetic circuit breakers are
18 not. That's partially true because you have a term like
19 compensating
20 bi-metal in a thermal magnetic circuit breaker, which does
21 exactly this trick. You will find if you study some of the
22 epic literature that they actually point that out.

23 The other thing is I have seen circuit breaker
24 manufacturing all around the world from Japan to China to
25 Germany to the United States to Mexico, et cetera. I can

1 tell you that if you compare similar complexity in terms of
2 fitting accessories and all kinds of bells and whistles to a
3 thermal magnetic circuit breaker, this product becomes also
4 labor intensive, and it becomes very sensitive to hourly
5 wage rates. The point is there may be a facility as in
6 Germany where the girls do exactly what they do in Mexico
7 and what they do in South Africa.

8 In the public version -- by the way, the other
9 technical confusion can come in. You've been told that
10 there is a certain F and E frame where we heavily compete in
11 this market. I must say we don't have these products. Our
12 product is neither form nor fit nor function identical to
13 what you have in the States, so very little would a customer
14 let themselves in single sourcing, which they hate like the
15 plague.

16 The E frame doesn't have UL approval. It is,
17 therefore, a non-event. In the public version of the
18 petition, Airpax says that they have been especially injured
19 with respect to competition regarding E frame products.
20 This makes no sense whatsoever. CBI sold an average of
21 approximately \$65,000 per year. I repeat, \$65,000 per year.
22 That is 2,000 times what I spent on my clothing.

23 MR. SILVERMAN: For today.

24 MR. FISCHER: Yes. During the period of
25 investigation, with \$67,000 in sales during 2002. It is

1 beyond my understanding how sales that low of a level could
2 possibly injure Airpax.

3 Given all of this, it's hard to understand how
4 Airpax can tell the International Trade Commission with a
5 straight face that it is a U.S. producer injured by HMCB
6 imports from CBI. CBI is a minor player in the U.S. market.
7 The major players make their products in Mexico, not in the
8 United States.

9 All of the purchasers know that the products come
10 from Mexico. As a result, if there's injury to an industry
11 in the United States, it happened long ago, well before CBI
12 entered the market at the hands of the U.S. producers
13 themselves when they moved their production to Mexico to
14 take advantage of the cheap labor there.

15 These companies to this day continue to dominate
16 the U.S. market. I'm actually looking forward to speaking
17 to Eaton to find out how they think not to be regarded as a
18 U.S. producer.

19 Sales from CBI, by contrast, represents such a
20 small share of the U.S. market that it just is incredible to
21 assert that South African imports could be injuring Airpax.
22 The charges are even more absurd when you take into account
23 the fact that most of our sales are in market segments and
24 product in which there's very little or no competition from
25 Airpax.

1 In addition, CBI does not compete against most of
2 Airpax's products in part because CBI does not have the
3 necessary UL approvals, UL again standing for Underwriter
4 Laboratories. Even where we do compete with Airpax, low-
5 priced imports from Mexico dominate the market clearly.
6 Even if CBI were not selling in the United States, various
7 import sources in Mexico would be competing at prices below
8 Airpax's prices at its high cost U.S. operation.

9 The Commission should, when it asks customers to
10 verify lost sale or lost revenue allegations, ask the
11 customer to check to see whether the product is purchased
12 from Airpax and made in Mexico or made in the United States.

13 As a final thought, because of the cost advantage
14 in Mexico, the U.S. players will not return their production
15 to the U.S. in the future, even if South African imports
16 were reduced to zero. The hourly wages of Mexican wages
17 have affected them and will continue to deter the three
18 companies from returning production to the United States,
19 even if there are no imports from South Africa.

20 We understand that the major U.S. players,
21 including Airpax, have started new production facilities in
22 China, not in the United States. Carling and Eaton have
23 already begun production in China, and I understand that
24 Airpax has set up a facility there, but has not yet
25 commenced production only because the components are stuck

1 in Customs clearance in China, according to a knowledgeable
2 industry source.

3 At some point there will be a legitimate argument
4 that Mexican imports are being assaulted by imports from
5 China, but there's no case to be made that U.S. produced
6 product is injured by imports from South Africa.

7 Looking to the future, imports from South Africa
8 will not pose any threat in the future either because CBI
9 already is operating near full capacity, so there's a limit
10 on what we can do in the U.S. market in the short run. We
11 also have a strong and stable market in South Africa and
12 several third countries. By the way, we supply into every
13 continent with the exception of --.

14 These markets will continue to be strong in the
15 near future because HMCBs are more widely accepted there
16 than in the United States. For example, in the United
17 States residential builders tend to use only thermal circuit
18 breakers, but in South Africa residential builders use
19 almost exclusively HMCBs, so somebody is making a mistake.
20 The residential market in South Africa is particularly
21 strong right now and will continue to be strong in the near
22 future with huge, new housing projects being built or
23 planned.

24 By the way, CBI has almost no sales of OEM related
25 products in South Africa because the market does not produce

1 equipment. Therefore, the issue of dumping is already
2 questioned from that point of view. The majority of what
3 CBI produces in South Africa is not saleable in the U.S.
4 because it doesn't fit, it doesn't comply with the
5 standards, and it doesn't have any UL approval.

6 To prove the point that CBI is not a threat, we
7 have provided the Commission with a complete list of booked
8 orders for the next year. As you can see, our booked orders
9 for the next 12 months are actually less than our 2002 sales
10 and continue to focus on B and Q frame products.

11 Although CBI has recently expanded its capacity,
12 about 95 percent of that expansion is for product types that
13 CBI cannot sell into the United States. Only about five
14 percent of CBI's expansion is for product types that could
15 be used by the OEM market in which Airpax concentrates its
16 sales. CBI could not change its product mix for the
17 expanded capacity without significant retooling and time.

18 Regarding CBI's inventory, again only five percent
19 of CBI's inventory in South Africa is suitable for the U.S.
20 market. Approximately 80 percent of CBI's inventory in the
21 United States consists of presold products. Nearly all of
22 the remaining U.S. inventory consists of half-inch Q frame
23 product, which do not compete with Airpax product.

24 Finally, even if CBI had the capability and intent
25 of focusing all of its inventory and capacity expansion on

1 the U.S. market, the Commission should remember that it
2 would be displacing Mexican product.

3 MR. FISCHER: understand how CBI's sales, which
4 averaged less than \$700,000 U.S. over the last three years,
5 could generate any pricing pressure in the U.S. market for
6 HMCBs that we estimate to range from 80 to \$120 million.
7 CBI's sales focus on the outer -- segment, whereas the U.S.
8 market as a whole is dominated by the telecom sector and
9 also includes computers, marine, and other market sectors.

10 Airpax's allegation about injury inflicted by CBI
11 makes no sense at all. The market just does not work that
12 way. I thank the Commission staff for allowing me to speak,
13 and I'm glad to answer any questions you may have.

14 MR. SILVERMAN: Our next witness is a customer.

15 MR. TREMAINE: Good morning. My name is John
16 Tremaine, and I am the founder, owner, chief executive
17 officer, and the director of design of Q-Tran, Inc. Q-Tran
18 is located in Bridgeport, Connecticut, and is a producer and
19 national supplier of a patented, low-voltage-lighting, power
20 supply center. We employ roughly 40 people, and we are
21 honored by Inc. magazine in its current issue as one of the
22 top 100 fastest-growing, inner-city companies in the country
23 from an applicant pool of 5,000 companies, and we were
24 similarly honored by the State of Connecticut in 2002 as one
25 of the fastest-growing, inner-city companies in the state.

1 And I would like to add that this is the second year in a
2 row that we've received this honor, and I have a copy of
3 that for you.

4 We manufacture power supply centers and purchase
5 hydraulic-magnetic circuit breakers for use in our products
6 from both Airpax and CBI. Prior to mid-2000, we purchased
7 circuit breakers exclusively from Airpax. We purchase and
8 continue to purchase C-frame circuit breakers from Airpax
9 today.

10 Last week, I had one of my employees check our
11 stock, and every Airpax circuit breaker we have in stock was
12 made in Mexico. I've brought samples for you. We do not
13 have a single Airpax product in stock that was made in the
14 United States.

15 In mid-2000, Airpax informed me that delivery time
16 for new Q-Tran orders for their breakers would be 50 weeks
17 or longer, and, going further, they could not even guarantee
18 that delivery time. I have to repeat that. It's 50 weeks.
19 I was shocked at the time. I sort of was so taken aback, I
20 said, My God, that's a year. How could one ever plan that
21 far in advance? And they said that that was my issue to
22 handle, but they could not help me. They said that they
23 would hopefully be able to provide shorter lead times in the
24 future because they are expanding their capacity and their
25 facility in Mexico to meet growth and demand.

1 A reliable supply of circuit breakers is crucial
2 to Q-Tran's ability to produce our power supply centers.
3 Every power supply center we produce has an average of three
4 circuit breakers. We obviously cannot wait a full year for
5 delivery of circuit breakers.

6 In August of 2000, we were very, very close to
7 being put into a line-down situation where we could not ship
8 our product to our customers. We understood that Airpax was
9 at that time stretched to the limit due to the boom in the
10 telecommunications industry, but that does not change the
11 fact that we need circuit breakers In order to stay in
12 business. Airpax apparently did not care that a 50-week
13 lead time could put us out of business. They were too busy
14 chasing big telecom orders. We felt abandoned by Airpax,
15 and goodwill between the companies no longer existed after
16 this event.

17 We continued to purchase a limited quantity that
18 we could get from Airpax, but we also began purchasing
19 circuit breakers from ETA, another manufacturer, actually,
20 that hasn't been mentioned in this proceeding, to meet our
21 needs. We had a major technology issue with the ETA
22 breakers, however, and we had to throw many of the circuit
23 breakers purchased from ETA away, and I could explain that
24 in more detail later. Because of problems with ETA, we
25 continued to purchase from Airpax.

1 The lead time for Airpax products began to improve
2 in the middle of 2001, after the telecom collapse earlier
3 that year. We continued to purchase this product, which is
4 the C-frame product, from Airpax and will continue to
5 purchase the product until the existing generation of Q-Tran
6 products, our power supply centers in which it is used, is
7 phased out completely over the summer of this year, in the
8 next three or four months.

9 Q-Tran began designing an entirely new product
10 line in the fall of 2000. The new Q-Tran product requires a
11 circuit breaker that is smaller than the products offered by
12 Airpax. We consulted with Airpax regarding their possible
13 supply of this breaker but were advised that they could not
14 offer a smaller breaker. The breaker that they do offer, as
15 you will see, physically does not fit in our product.

16 The Airpax Snap Pack product, which is their B-
17 frame, which they offer is taller than the CBI B-frame
18 product and will not allow the connection wire to have
19 enough room to fit in our designs. Also, I could not
20 increase the size of my product to accommodate Airpax's
21 product because my product must fit in a wall enclosure
22 between two-by-four studs because of an industry standard.
23 These standards fix the depth of my product to four inches
24 and the width to 14 and a half inches.

25 This basic incompatibility would prevent us from

1 using the Airpax product regardless of price. I could not
2 use the Airpax product in my product, frankly, if they gave
3 it to me; it doesn't fit. Airpax could not supply a product
4 to meet our needs. We sought out CBI to supply a product
5 upon the suggestion of an OEM account of ours, who highly
6 recommended CBI and specifically mentioned that they
7 supplied a smaller breaker. It was clear that CBI could
8 offer everything that we needed. CBI supplied a circuit
9 breaker that was not only small enough but had the sensitive
10 trip curve that we needed to meet a new UL standard called
11 UL-2108.

12 As you will see in a moment, the CBI product fits
13 in the Q-Tran enclosure, and we have been pleased with CBI's
14 product and the willingness of its engineers to meet our
15 needs. We continue to purchase from Airpax today the
16 products that we always purchased from them, but our new
17 products require a B-frame circuit breaker smaller than
18 anything Airpax is able to supply to us. We purchase this
19 product from CBI because the CBI circuit breaker is
20 physically shorter than the Airpax product.

21 In summary, I did not switch to CBI because of
22 price. CBI was a more suitable-sized product for our needs.
23 If I could just take a moment, I have some samples here. I
24 would ask, is this appropriate to do this at this point?
25 Could I come forward? These are circuit breakers that came

1 out of our stock, every one marked "made in Mexico." This
2 is a part of our product, and I have engineering drawings to
3 show you -- we build --

4 A PARTICIPANT: That's actually the exhibit that
5 we left there, is the engineering drawings and how it fits.

6 MR. TREMAINE: And in here you can see that these
7 three circuit breakers here are made by Airpax, and this
8 circuit breaker here is the CBI breaker, and you'll see that
9 it's a little more than a quarter-inch shorter. And the
10 problem is that when we put our lead wires on, and I
11 couldn't actually put this into the enclosure because you
12 cannot get this down into the enclosure because of the
13 length of the Airpax breakers, and we have a drawing that
14 has been handed out, and the drawing shows another issue as
15 well. This is a larger version of that eight-and-a-half-by-
16 eleven drawing. These two drawings across the top --

17 MR. SILVERMAN: Mr. Chairman, just to clarify,
18 what he is showing is a slightly larger, a blown-up version
19 of what we gave the Commission staff, and we would like that
20 to be entered into the record, if possible.

21 MR. CARPENTER: Okay. Thank you. We will enter
22 this into the record as Respondent's Exhibit 1, and also,
23 David, would you mind passing the extra copies out to the
24 Petitioners? Thank you.

25 (The document referred to was

1 marked for identification as
2 Respondents' Exhibit 1 and
3 received in evidence.)

4 MR. SILVERMAN: Can we also leave those samples
5 with you? In other words, the samples that he went from his
6 records that were Airpax's product that were all made in
7 Mexico, not in Maryland, we would like to leave that with
8 the Commission as another exhibit.

9 MR. CARPENTER: Okay. We would rather not accept
10 it as an exhibit, but if you want to leave it with us as a
11 sample, and then we'll return it to you at the end of the
12 preliminary phase, if that's okay.

13 MR. SILVERMAN: Okay.

14 MR. CARPENTER: Thank you.

15 MR. TREMAINE: I just would like to explain this.

16 The two drawings across the top are the CBI breakers, and
17 the ones on the bottom are Airpax's, and they are labeled as
18 such. And what you see in the upper left-hand drawing is
19 that the wires coming off the CBI breaker have enough room
20 to be able to fit into our enclosure, and on the right it
21 actually shows that we could possibly, if necessary, replace
22 the breaker if it needed replacing in the field. This is
23 important because our products are recessed in a two-by-four
24 stud wall where sheetrock has been put in place, and you
25 cannot disassemble the product in the field to be able to

1 get to these breakers. They have to be removed in this
2 fashion.

3 The Airpax breaker is a little more than a
4 quarter-inch taller in height, and you'll see that the wires
5 just don't fit and clearly cannot be removed. This product,
6 because of its extra quarter of an inch -- it's a little
7 longer than a quarter of an inch -- it's 280 thousandths --
8 made a big difference to us in this design. This bracket
9 has been incorporated, and I can leave this material with
10 you -- this is an entire QX series, which is our new product
11 line that goes through 750 watt, and then our new QT series,
12 and this bracket is incorporated in both of these designs.
13 I did not bring with us our new surface-mount unit, which
14 comes in three different sizes, and this breaker is required
15 in the smaller size. The other two could accommodate
16 Airpax, but, you know, the volume of those doesn't warrant
17 to have two different stocks in house. I can elaborate on
18 this as you would like in the question period.

19 MR. SILVERMAN: Okay. Our next witness is Bruce
20 Malashevich.

21 MR. MALASHEVICH: Good morning, Mr. Chairman,
22 members of the staff. May I ask how much time remains?

23 MR. CARPENTER: Excuse me. Seventeen minutes.

24 MR. MALASHEVICH: It will be much shorter than
25 that. Thank you.

I hope everyone has before them a series of five exhibits that are public and which were passed out earlier and made available to the parties.

4 MR. SILVERMAN: Mr. Chairman, if we could enter
5 those as an exhibit for Respondents, please.

6 MR. CARPENTER: We'll accept this. The testimony
7 of Bruce Malashevich is Respondents' Exhibit No. 2.

8 (The document referred to was
9 marked for identification as
10 Respondents' Exhibit 2 and
11 received in evidence.)

12 MR. MALASHEVICH: Thank you. I would basically
13 like to make three points, which have been made in part by
14 the previous witnesses earlier today and from our panel, and
15 they concern conditions of competition. Unlike most cases
16 before the Commission, where you have multiple subject/non-
17 subject countries, dozens of competitors, it's important to
18 point out that for decades now practically all U.S. demand
19 has been supplied by three U.S.-based companies. Their
20 names have changed over the years, but they are the same
21 companies, and they are Airpax, Eaton, and Carling
22 Technologies. The parties agree there are practically no
23 nonsubject import from countries other than Mexico.

24 So the U.S. industry, or what had been the U.S.
25 industry, controls practically all of the market. The only

1 discussion is that two of the three source all of their
2 products from Mexico, and in Airpax's case, they source most
3 of their products from Mexico. But the same three players
4 have controlled this market for 50 years. It is not easy
5 for anyone to penetrate this market from outside those three
6 players as a practical matter, as you can see from the
7 extremely small volume of imports from South Africa; in
8 fact, nobody has, including South Africa. So there is the
9 structure of the market.

10 Second, you have heard earlier that there are
11 various segments of demand, and if you would please turn to
12 my Exhibit 1. Exhibit 1, on the right-hand side you'll see
13 activity, if you will, that drives demand in the various
14 sectors. In the case of construction, for example, it's a
15 driver because heating and ventilating systems use the like
16 product. Also, lighting applications in industrial settings
17 use the like product. Appliances, primarily industrial
18 appliances, such as vacuum cleaners for industry, use the
19 like product; marine craft, because even though there aren't
20 that many yachts and power boats manufactured and sold in
21 the United States, they are extremely electronics intensive
22 because the navigation systems have to be redundant two or
23 three times in case one fails, so they are filled with
24 circuit breakers; power-distribution units and, of course,
25 telecommunications.

1 You heard earlier the CEO, in effect, of CBI
2 saying they sold practically nothing at all in the United
3 States to the telecoms applications, whereas the industry's
4 understanding is that that is where Airpax's production has
5 been concentrated during the POI.

6 What we did is search our financial data bases for
7 publicly traded companies that describe themselves as
8 selling primarily into these various activities that are
9 circuit-breaker intense, if you will, and we will be
10 submitting all of the data and lists of the samples with the
11 post-conference brief. This is a summary of what we found
12 in our financial data bases. We will also provide the
13 business descriptions for each of those units.

14 But it's very interesting. You'll see that most
15 of the segments were affected in a negative way by the
16 recession that formally began in the United States in the
17 middle of 2000, but look at the difference in how the
18 segments behaved if you were serving appliance or lighting
19 applications, whereas if you had the misfortune of being
20 concentrated in telecoms, your customers would have seen a
21 decline in their sales approaching 70 percent in the course
22 of two years.

23 We have a few clients outside the trade area in
24 the telecoms business, and one executive told me just a few
25 months ago that the extent and abruptness of the crash in

1 the telecom sectors after 2000 was the biggest contraction
2 of any industry in the United States since the Civil War,
3 and that's borne out in the other indicators. If you look
4 at Exhibit 2 -- this is the weighted average earnings per
5 share of companies in our samples, and, once again, you can
6 see earnings per share, of course, not only reflect the past
7 but also the current period, and you'll see the telecoms
8 were brutally battered relative to the other industries.

9 With earnings doing what they did, if you move to
10 Exhibit 3, you'll see what happened to the stock prices.
11 Unfortunately, they look very much like the performance of
12 my 401-K plan, I'm sorry to say. Once again, though, you'll
13 see the extremes of the telecom sector.

14 And what I think is really the most impactful of
15 all of the exhibits is Exhibit 4, market capitalization,
16 basically stock price multiplied by total number of
17 outstanding common shares. This is important to me because
18 it's a measure not only of investors' evaluation of the past
19 and present but also how they are evaluating the future
20 prospects of these various segments, and you can see
21 something -- it's so incredible, it really amazed me --
22 something like 98 percent of the capitalization of the
23 telecom sector was wiped out in the course of two years.

24 We will be submitting voluminous information about
25 the collapse of telecoms demand with the post-conference

1 brief, but Exhibit 5 just shares with you a few snippets of
2 that information. Outlays for telecom gear plunged 31
3 percent from the end of 2000 to the end of 2001. This goes,
4 Mr. Benedick, to your question concerning investment in the
5 industry.

6 As examples, Level 3 Communications, an advanced
7 segment of technology, lowered its capital spending from
8 \$1.1 billion in the first quarter of 2001 to \$47 million in
9 the first quarter of 2002. Sienna, a telecom equipment
10 maker, had revenues of \$87 million in the second quarter of
11 2002, down from \$425 million in the same period of 2001.
12 Major telephone companies announced capital spending on
13 equipment for 2003 are down "only" 15 percent versus 2002's
14 drop of 30 percent. Year-to-date through July 5, 2002, the
15 Standard & Poor's telecom equipment industry subindex fell
16 45 percent, on top of a 61 percent collapse in 2002.
17 Combined, the decline was 78.5 percent in a year and a half.

18 Even with 30 percent growth projected in 2003,
19 revenues for project component vendors are expected to be
20 \$2.1 billion, far below the \$9.1 billion peak in 2000.
21 Eleven telecom companies listed in Fortune magazine's Global
22 500 in July 2002 lost, combined, \$107 billion in 2001 alone,
23 and that sum does not include losses that they still can't
24 calculate at WorldCom, owing to the series of accounting
25 scandals there. So this is about as brutal a picture of an

1 industry and demands collapse that I've ever seen anywhere.

2 My last point simply concerns, once again, the
3 analysis of pricing out of Mexico. Considering that there
4 are only three players controlling practically all of
5 demand, and then there is South Africa, selling what I view
6 as obviously an inconsequential volume here, it should go
7 for certain that the source where most of demand is being
8 satisfied from, i.e., Mexico, has to be driving the price.

9 So as you evaluate relative prices that that South
10 African importer has submitted, that the U.S. industry has
11 submitted, that other responding players have submitted, I
12 would urge you to look at the relative volumes involved in
13 pricing of Products 3 and 4 and consider, if the South
14 African product had not been in the market, would that
15 purchaser have bought from Mexico or the United States? So
16 I urge you to look at the second question, not only what the
17 South African price was relative to the U.S. price, but what
18 was the Mexican price of that same product?

19 That completes my testimony today. I would be
20 happy to answer any questions.

21 MR. CARPENTER: Okay. Thank you, gentlemen, for
22 your very informed testimony, and we will begin the
23 questions with Mr. Ruggles.

24 MR. RUGGLES: Good morning. Thank you for your
25 testimony. A quick question on the U.S. industry. What is

1 the U.S. industry? Is it just the small production up in
2 Eaton and maybe some test facilities, or is it components
3 made in the United States, taken to Mexico, assembled,
4 brought back, and then sold in the United States? What
5 constitutes the U.S. industry, in your mind?

6 MR. SILVERMAN: For purposes of the preliminary
7 investigation, we are willing to accept the definition that
8 the Petitioners have put forward, that is, they are the
9 producer. If there is incidental production at Carling or
10 in the United States, it's not even big enough to be called
11 trivial.

12 With respect to the question of assemblies and
13 subassemblies and that sort of thing, I think the Commission
14 has to defer to the judgments of the Customs Service. If a
15 product is marked as manufactured in Mexico, it's a Mexican
16 product.

17 MR. RUGGLES: What would you estimate the U.S.
18 volume or U.S. share of the consumption in the United
19 States?

20 MR. SILVERMAN: To give you an answer, we would
21 rather do that in an APO setting.

22 MR. RUGGLES: Thank you. That concludes my
23 questions. Thank you.

24 MR. CARPENTER: Mr. Diehl.

25 MR. DIEHL: Good morning. Let me start with Mr.

1 Tremaine. Can you tell me, are you using mostly Q-frame
2 breakers in your products? I think there was a description
3 that a lot of the lighting sector is supplied Q-frame. Is
4 that correct?

5 MR. TREMAINE: I don't have a sample of a Q-frame.
6 I believe that's a DIN-rail-mounted assembly, and that does
7 not fit in our product. It's the B-frame.

8 MR. DIEHL: Okay. Your company is using B-frame.

9 MR. TREMAINE: Correct. We are currently using C-
10 frame, but the product that C-frame did fit into is being
11 phased out due to changes that are being required by
12 Underwriters Laboratories to our product.

13 MR. DIEHL: Okay. Mr. Fischer, could you just
14 elaborate on the use of Q-frames in the lighting sector? I
15 think I heard that from you, and I want to understand that a
16 little better.

17 MR. FISCHER: The Q-frame has different
18 performance characteristics. It is also rather a slim
19 product, in particular, if you are squeezed for space. If
20 the company has been using a DIN-mountable product -- "DIN"
21 actually stands for "Deutsche Industrie Norm." That's a
22 German industrial standard. It only fits a certain
23 dimension of the product.

24 MR. DIEHL: Actually, could you spell the Deutsche
25 thing for our person who has to transcribe this?

1 MR. FISCHER: It's like a German-industry standard
2 or industry norm.

3 MR. DIEHL: If you could just spell out that word
4 because the person who has to do the transcript might not
5 know that.

6 MR. FISCHER: It's D-E-U-T-S-C-H-E.

7 MR. DIEHL: Okay.

8 MR. FISCHER: I-N-D-R-I-E-S-T-Y N-O-R-M.

9 MR. DIEHL: Okay. We can also read it in a post-
10 conference submission. Thank you. Thank you. But I
11 interrupted you. You were explaining the --

12 MR. FISCHER: -- different performance
13 characteristics, different sizes. In addition, it's
14 hydraulic magnetic. It is mass produced. As I mentioned
15 earlier, between 20,000 and 30,000 units per day. It has
16 been designed to compete with European, lower-cost-type,
17 thermal magnetic circuit breakers; and, therefore, it's more
18 automated than traditional electromagnetic circuit breakers
19 due to innovation; and, therefore, it offers a significant
20 advantage in performance, in form, and at times in price to
21 the various customers.

22 MR. DIEHL: Okay. Even though Mr. Tremaine's
23 company doesn't use a lot of these, still you're saying that
24 a lot of the demand in the lighting sector for breakers is
25 filled by Q-frame. Is that correct?

1 MR. FISCHER: Yes, yes. Correct.

2 MR. DIEHL: Okay. All right. Thank you.

3 You're saying you use the B and the C breakers,
4 phasing out the C. Are you using thermal magnetic or
5 thermal in your products as well?

6 MR. TREMAINE: Our first product that we designed
7 10 years ago used a thermal breaker, and in 1996, the
8 National Electric Code brought out a new Article 411 in the
9 code, which was specifically written for lighting systems
10 operating at 30 volts or less. The product that we
11 manufacture is a step-down transformer that steps the
12 voltage down generally from 120 volts AC to 12 or 24 volts
13 AC. And the code, as it was adopted across the United
14 States and then as Underwriters wrote a standard to that
15 code, it required us to change from a thermal breaker to a
16 magnetic breaker, and currently our designs our hydraulic-
17 magnetic circuit breakers.

18 MR. DIEHL: Okay. That UL change, was it, that --

19 MR. TREMAINE: Underwriters, just to be technical,
20 writes a standard to the National Electric Code articles,
21 and so what drove this was the National Electric Code.

22 MR. DIEHL: Okay. When you moved from thermal to
23 magnetic -- you said magnetic, but I want you to clarify.
24 Does the include thermal magnetic and hydraulic magnetic or
25 --

1 MR. TREMAINE: Just hydraulic magnetic.

2 MR. DIEHL: Did you have the option, and you chose
3 to use hydraulic magnetic, or the standard required
4 hydraulic magnetic?

5 MR. TREMAINE: No. It was our choice.

6 MR. DIEHL: Okay. I hate to be painfully pedantic
7 about this. So the standard would permit thermal magnetic
8 or hydraulic magnetic, but your company chose just to use
9 hydraulic magnetic. Do I understand correctly?

10 MR. TREMAINE: We need to different types of
11 trips. The breakers that we choose to put on the primary
12 side of our product are subject to in-rush current, and the
13 trip times need to be slower for the primary side of our
14 product, and thermal or hydraulic could be used there. We
15 have chosen to use hydraulic on the primary side, but we
16 could have used thermal magnetic breakers.

17 MR. DIEHL: You said "thermal" a second ago. Did
18 you mean "thermal magnetic"?

19 MR. TREMAINE: Thermal magnetic. We could use
20 thermal or hydraulic-magnetic breakers on the primary side,
21 but they would have to have slow tripped curves because of
22 in-rush current.

23 On the secondary side of our product, because of
24 some other new standards that are coming in as a result of
25 Article 411 and the new UL Standard, 2108, which is yet to

1 be adopted but close to being adopted, which does require
2 very quick trip times on the secondary side of our product,
3 and the reason for that is that there are new lighting
4 systems, which are called "live-conductor lighting systems."

5 I don't know if you've seen installations of
6 lighting where there are two cables that are strung wall to
7 wall, and little tiny light bulbs are attached to it. You
8 can see this in restaurants and stores and, in some cases,
9 high-end residential applications and whatnot. This is
10 called a live-conductor part, and in order to be UL
11 compliant, they have to be able to trip very quickly. That
12 is the hydraulic-magnetic breaker.

13 MR. DIEHL: Does it have to be under the standard,
14 or you just choose to use hydraulic magnetic?

15 MR. TREMAINE: The only way in which a product has
16 been listed without a thermal magnetic or a hydraulic-
17 magnetic breaker is with something called a current monitor,
18 which is a printed circuit board with a computer chip on it.
19 It's very expensive, and it monitors current rise and has a
20 lot of difficulty in being compatible with dimming systems
21 because no electronic part wants to talk to another part
22 unless they have been designed together, and that isn't the
23 case because the dimming companies are not providing this.
24 It's lighting companies trying to build this part to satisfy
25 some concerns at Underwriters. But I don't think you want

1 to get into this whole story. It's very convoluted.

2 MR. TREMAINE: Okay. Our hope in the industry is
3 that fast acting circuit breakers will satisfy the U.S
4 requirements.

5 MR. DIEHL: Okay. I think Mr. Sullivan wanted to
6 add something.

7 MR. SILVERMAN: I think we'll give you a clearer
8 answer. You said, with respect to the first use, that it
9 was your choice, not the regulations. What about with
10 respect to the second use? Is it your choice, or is it
11 required by the regulations? That was his question, and you
12 got into a little more technical. Is that correct?

13 MR. DIEHL: Yes. I would like to hear Mr.
14 Tremaine answer what you just --

15 MR. TREMAINE: Well, to be totally honest, in our
16 UL file, a primary circuit breaker is not required, and it
17 is my choice, as the owner of the company, to add this. We
18 do not add it to our low-cost product because of cost
19 concerns, but in our specification-grade product we do have
20 a circuit breaker on the primary side of our choosing, and
21 our choosing is a hydraulic-magnetic circuit breaker.
22 However, we don't even have to have it there, or we could
23 have a thermal magnetic breaker instead of. But in either
24 case, they would have to have a slow trip time because of
25 the in-rush current.

1 On the secondary side of our product, we do need
2 to have a hydraulic breaker because we have to have a very
3 quick trip.

4 MR. DIEHL: Okay. Thank you. Going back to Mr.
5 Fischer, I think you said that for the Q-frame, which is not
6 what Mr. Tremaine is using, but for the Q-frame there is
7 competition between the thermal magnetic and the hydraulic
8 magnetic, and that accounts for a quarter of your sales. If
9 you could just expand on that, in the situations in which
10 there really is competition.

11 MR. FISCHER: This is the sort of question I would
12 rather pass on to Mr. Oliver, --

13 MR. DIEHL: Okay.

14 MR. FISCHER: -- who is in charge of this
15 division. He is also an electric engineer, and he is very
16 familiar with all of these applications.

17 MR. DIEHL: Thank you.

18 MR. SILVERMAN: Identify yourself for the record.

19 MR. OLIVER: I'm Chris Oliver. I'm based in South
20 Africa, responsible for all exports into OEM markets.

21 The best way to answer this question is to realize
22 that apart from imports from Mexico, there is still a huge
23 quantity of thermal magnetic circuit breakers being imported
24 from other countries into this country, specifically focused
25 on OEM applications. These are typically the markets where

1 we compete with a Q-frame, which is a DIN-rail-mounted
2 circuit breaker. We have a few examples here, which we can
3 pass around.

4 In terms of component costs, component count, it
5 competes favorably with the DIN-rail, thermal magnetic
6 circuit breaker. Performance-wise, it's the same, and this
7 market is also driven by ruling market prices, which, if you
8 want to get business, you have to be in line with those
9 market prices.

10 The big advantage of the circuit breaker is the
11 size. Instead of a three-quarter-inch, which is the
12 standard for other DIN-rail-mounted circuit breakers, ours
13 is only a half-inch.

14 MR. DIEHL: Okay. Thank you. There has been
15 reference by several people at the panel with regard to
16 production in China and facilities there. Is there anything
17 you want to put in your post-conference brief to back that
18 up would be supported and would be appreciated.

19 One last question for Mr. Fischer. I'm trying to
20 understand the picture here. You stated that you're doing
21 no F-frame, no E-frame because you don't have UL approval.
22 You said you are at near capacity production. You say you
23 have very little inventory that's suitable for shipment to
24 the United States, but yet there is an exhibit to the
25 petition where it's stated that penetration of the North

1 American market remains a priority for CBI. Could you
2 explain where you anticipate growth in the North American
3 market?

4 MR. FISCHER: First, I would like to say that our
5 export has grown from traditionally around five to six
6 percent of sales to nearing now 25 percent of sales, but
7 this is worldwide. We sell into China. We sell into Japan.
8 We sell into Australia, into Asia, per se, Europe, the rest
9 of Africa, and also into the United States. The statement
10 was made that it's one of the priorities because it's such a
11 huge market, and when you consider that we have innovative
12 solutions, not just the me-too at better price, then it
13 remains, indeed, a priority. So does the Far East. So does
14 Europe.

15 MR. DIEHL: I must say that North America is
16 specifically identified in this Exhibit 21 of the petition
17 and not the other markets, but if you could be more specific
18 about what are the new inroads you hope to make in the North
19 American market, what type of products, because you've
20 indicated some sort of products that you don't anticipate --

21 MR. FISCHER: For example, what Mr. Oliver
22 mentioned, we have something in the region of 415 million
23 U.S. dollars worth of imports of thermal magnetic circuit
24 breakers into the United States market, the majority of
25 which is of the DIN-mounting type. These products are not

1 the typical residential-type application because the North
2 American residential, thermal magnetic circuit breaker is a
3 very cheap, low-cost, mass-produced product. I would say,
4 Westinghouse, in its heyday, produced probably something
5 like a million a day of these products.

6 MR. DIEHL: If I can steer you into the hydraulic
7 magnetic, that product, where do you look at increases in
8 that product?

9 MR. FISCHER: But the imports, the imports in
10 thermal magnetic products are aimed at the OEM market
11 because they cannot compete price-wise with the residential
12 market. So, therefore, this is a huge pool of accessible
13 replacements of our better-sized hydraulic-magnetic product
14 for a European-type, thermal magnetic product in the United
15 States.

16 MR. SILVERMAN: Just let me clarify. Are you
17 saying that you are intending to compete with imports of the
18 thermal magnetic product?

19 MR. FISCHER: This is a large thrust of our export
20 drive in the States.

21 MR. DIEHL: Okay. So apart from your plans to
22 increase the thermal magnetic product --

23 MR. SILVERMAN: He is going to import hydraulic to
24 compete with the thermal that's in the U.S. market. I think
25 that's what Chris's testimony was about. I just got a

1 little off on a tangent here. Would you clarify that point?

2 MR. FISCHER: Can I just illustrate? Maybe,
3 Terry, if you raised this, a typical import-type, DIN-type,
4 circuit breaker product; we have it in a transparent form,
5 but this is a typical DIN-type one. This is on the left
6 hand thermal magnetic, and on the right hand is the
7 equivalent of CBI.

8 MR. DIEHL: Okay. So you're hoping to bring in
9 more hydraulic magnetic breakers that would compete with
10 what is now being supplied by thermal magnetic breakers.

11 MR. FISCHER: Yes, yes.

12 MR. DIEHL: Okay. How would you describe these
13 new, hydraulic magnetic? Tell me about the frame, the
14 amperage.

15 MR. FISCHER: It's Q-frame. They range from one
16 amp to 25. Lighter versions will go far higher to, let's
17 say, 63 amps, potentially 100 amps.

18 MR. DIEHL: Okay. Outside of the Q-frame, are you
19 hoping to have other inroads with using hydraulic?

20 MR. FISCHER: The Q-frame is a range of products
21 with different sizes. The one you see here is typically
22 ranging from one to 25 amps. For physical design
23 characteristics like 100 amps, it has to be wider, in the
24 same way like it has to be wider for the thermal magnetic
25 side. The cable is just much --

1 MR. DIEHL: Am I correct that Q-frame is mostly
2 directed toward lighting applications?

3 MR. FISCHER: At the moment, yes, but it could
4 also be used in other applications.

5 MR. DIEHL: Okay.

6 MR. FISCHER: We have even seen designs where a
7 traditional, let's say, D-frame was replaced by a Q-frame
8 because the product as per design is cheaper. For example,
9 industry is looking always for cost reductions. They want
10 to have the characteristics of the hydraulic magnetic, but
11 at the same time also like to have a lower price. It has
12 happened that instead of using a D-frame, they rather said,
13 okay, I'll make my arrangements, and I'll use the Q-frame.
14 So it was not -- unlike this price competition, there was a
15 Product A versus B at different prices competition, and the
16 designer could make arrangements to accommodate the Q-frame.

17 MR. DIEHL: So is it fair to say that although
18 you're focusing on lighting applications now with the new
19 uses of Q-frame, that you might be supplying breakers used
20 for other applications?

21 MR. FISCHER: Yes, of course.

22 MR. DIEHL: Okay. In the United States?

23 MR. FISCHER: Yes.

24 MR. DIEHL: Are there particular target areas like
25 telecom or marine or other areas that you're looking to

1 expand in?

2 MR. FISCHER: We sell across the board, but it so
3 happened that the products which we have available are
4 suitable for particular sectors at present.

5 MR. DIEHL: Okay. All right. Thank you. Do you
6 want to add something, Mr. Silverman?

7 MR. SILVERMAN: I want to add -- you're asking
8 questions about the future -- we have supplied, in response
9 to the questionnaire, a complete list of 12 months of sales
10 in the future. The statutory standard is a real and
11 imminent threat, and we think by giving you such complete
12 data of all of our sales, we've met that standard pretty
13 clearly as opposed to what we could call as salesmen's
14 projections about uses over time.

15 MR. DIEHL: Okay. Let me take that back to Mr.
16 Fisher. You're talking about these hoped-for projections
17 that are referenced also in the attachment to the petition.
18 When do you think these increases, you will start to really
19 see them?

20 MR. FISCHER: Which increases are you referring
21 to?

22 MR. DIEHL: The new applications of the Q-frame.

23 MR. FISCHER: We have seen them already. We have
24 seen them already. That's why you have seen our sales of
25 the Q-frame in the North American market actually

1 increasing, and we've made other, more powerful versions of
2 that same outer shape because the DIN standard only refers
3 to the outlying shapes. There is not technology specified.
4 And we will, over time, add other, more powerful versions of
5 those to it.

6 MR. DIEHL: Thank you.

7 MR. CARPENTER: Mr. Benedick.

8 MR. BENEDICK: Good morning, and thank you for
9 your testimony. I just have a couple of questions, one for
10 Mr. Silverman.

11 If, in your post-conference submission, you could
12 include, and this would reference to your questionnaire
13 response III-E-2, where you identify the top three U.S. end-
14 use markets for the HMCBs that Airpax imports from South
15 Africa, would you please report the total number of poles
16 and the total net U.S. FOB value of HMCB shipments to U.S.
17 customers in each of these top-three U.S. end-use markets
18 during the period of investigation, January 2000 to March
19 2003? And it would just be for those HMCBs imported from
20 South Africa.

21 MR. SILVERMAN: We'll prepare that data for you.

22 MR. BENEDICK: Thank you. And, Mr. Malashevich,
23 thank you very much for preparing this, and I presume, and I
24 just want to understand, from your testimony that you will
25 be including in a post-conference brief more detailed

1 information. Particularly, what I'm looking for is the
2 level of investment by year in the U.S. telecom sector from
3 January 2000 through March 2003, and if you have any
4 projections for the future, that would also be helpful.

5 MR. MALASHEVICH: We're trying to assemble data to
6 that effect as we speak, literally. But just to make sure
7 you understand that these are from the published financial
8 statements of publicly traded companies serving these
9 businesses, and what we'll provide is all of the underlying
10 data that went into the construction of these charts by
11 company, so you can see the companies identified in each
12 segment and the business descriptions that appear in their
13 10-K or annual report.

14 MR. BENEDICK: That would be helpful, but it would
15 also be helpful if you could sum it up and give me a total
16 figure for the U.S. telecom sector.

17 MR. MALASHEVICH: Okay. We'll try to do that.

18 MR. BENEDICK: Thank you. No more questions.

19 MR. CARPENTER: Mr. Kitzmiller.

20 MR. KITZMILLER: Thank you. Are HMCBs required in
21 the South African housing market?

22 MR. FISCHER: No. They are not required. Neither
23 standard, neither UL nor the International Electrical
24 Commission, IEC, nor North American Electrical
25 Manufacturers, NEMA, standards differentiate between the

1 technologies.

2 MR. KITZMILLER: Also, you had mentioned there is
3 at least one model of HMCB you produce on an automated line,
4 22,000 units per day.

5 MR. FISCHER: Yes. This is exactly this one.

6 MR. KITZMILLER: That's automated production and
7 fewer parts.

8 MR. FISCHER: Mr. Kitzmiller, we must clear up a
9 bit of a confusion here. We always talk of production. We
10 have to segment this production into the part of raw
11 material conversion to a component subassembly and final
12 assembly. Now --

13 MR. SILVERMAN: Could you repeat the question?

14 MR. KITZMILLER: What I would like to know is, I
15 suppose, the number of parts. Why is there such a
16 difference in the rate of production, we'll say, for at
17 least this model in South Africa versus the HMCBs I saw
18 being produced in Cambridge?

19 MR. FISCHER: With the exception of the final
20 assembly, many stages in between have been automated [sic].
21 Then large volume, the simple design, and also the limited
22 versions we offer, so we do not offer in this regard a five-
23 legged camel. There will be reasonably standard products,
24 which allows us to reduce the cost.

25 MR. KITZMILLER: Thank you. I have no further

1 questions.

2 MR. CARPENTER: Mr. Boyland.

3 MR. BOYLAND: Good afternoon. Thank you for your
4 testimony. I have no questions.

5 MR. CARPENTER: Mr. McClure.

6 MR. McCLURE: Thanks for your testimony. I have
7 no questions.

8 MR. CARPENTER: I do have one question I would
9 actually like to ask the Petitioners to respond to in their
10 post-conference brief, in light of Mr. Malashevich's
11 testimony about the telecom sector. I was wondering if you
12 could give us the quantity and value of Airpax's sales or
13 shipments to the telecom sector in 2000, 2001, and 2002 on a
14 confidential basis. Thank you. Mr. Diehl.

15 MR. DIEHL: Just one final question. If both
16 sides could address in post-conference briefs the extent to
17 which the different frames can be substituted for one
18 another. That's something that's not clear in mind, whether
19 the market for C-frames, to what extent that's insulated
20 from competition from the market for Bs. That's just an
21 issue everybody could address in their post-conference
22 briefs. That would be helpful to me. Thank you.

23 MR. CARPENTER: That concludes the direct
24 testimony from both sides. We will take a break until
25 twelve-fifteen on the clock in the back, and then we will

1 have a 10-minute closing statement from the Petitioners
2 followed by a 10-minute closing statement from the
3 Respondents. Thank you.

4 (Whereupon, at 12:06 p.m., a brief recess was
5 taken.)

6 MR. CARPENTER: Please proceed.

7 MR. SMIRNOW: Thank you, Mr. Chairman. I would
8 first like to note that the Commission pay particular
9 attention to post-hearing briefs in this case. There are so
10 many instances of misstatements and inaccuracies by
11 Respondents that it's impossible for us to address each of
12 these right now in this brief 10 minutes.

13 The first thing I want to address is Respondents'
14 reference to the million-dollar volume in the context of an
15 \$80 million consumption. What Respondents failed to do was
16 to attach a unit to that million dollars, over 300,000
17 units. As we said, one large order is 5,000 units.
18 Therefore, that 300,000-unit number could represent over 60
19 individual accounts. In addition, consider that over
20 300,000 unit volume as the statute requires to U.S.
21 production. It's not just U.S. apparent consumption. The
22 statute says "either or." The figure compared to U.S.
23 production is severe, and the trend from 2000 to 2003 is
24 dramatic.

25 It was also interesting to see absolutely no

1 meaningful discussion regarding price and the prices at
2 which CBI's products are sold and offered for sale in the
3 U.S. market. As Mr. Malashevich noted, it is not easy to
4 penetrate the U.S. market. There are established
5 individuals here with accounts and relationships and
6 whatnot.

7 So how would you penetrate the U.S. market during
8 a period of declining demand? You would drastically
9 undercut the competition, which is exactly what CBI has
10 done, again, as demand fell. On this point, with regard to
11 price, CBI's million-dollar figure relative to 300,000 units
12 shakes out to a unit value in the area of under \$3. That
13 average unit price for a hydraulic-magnetic circuit breaker,
14 as you look at all of the pricing information in its report,
15 is breathtaking.

16 Another point to remember on this is that in many
17 instances Airpax reduced its price, given competition from
18 CBI, to retain business. We can only imagine what that
19 volume number would be if we decided to hold the line on
20 prices and let the business go away.

21 Regarding Mr. Malashevich's discussion on the
22 telecom sector, we don't dispute that there was a decline in
23 the telecom sector. I would also note, however, that Mr.
24 Malashevich's chart, in fact, supports our position that
25 industries other than the telecom sector were either not

1 affected or have been relatively less affected by the
2 overall economic downturn.

3 Mr. Helmut said that based on the open orders
4 lists provided by CBI in its questionnaire response, the
5 volume is small, no threat of material injury. Again, look
6 at the prices at which those products are being offered.
7 Also, look at the different frame types in there. Compare
8 all of the frame types in those offerings. Consider end
9 use. Where are those frames going? Also, please consider -
10 - the customers on that list; compare that to the
11 information that we supplied regarding our customers.

12 As to the Q-frame product, we do produce a DIN-
13 rail product. Therefore, CBI's statement today that they
14 are seeking to expand sales of this product in the U.S. is
15 not comforting to us and is further evidence of CBI's threat
16 of material injury with regard to this product, that we
17 believe we are, regarding the Q-frame, are feeling some pain
18 from them. Absolutely, in the B, D we're getting hammered
19 by CBI on pricing.

20 With respect to Q-Tran's contention that we only
21 sell Mexican products to them, selective presentation. In
22 our post-hearing submission, we will supply information that
23 clearly contradicts the position that we only sell Mexican
24 product to Q-Tran.

25 I was also intrigued by the date of the document

1 supplied by Q-Tran. It looked pretty good. It was dated
2 May 1st, only four days ago. I think there is some value in
3 that date.

4 Regarding Carling and Eaton, and I believe ETA was
5 also referred to, carefully review any questionnaire
6 responses you may have received from any of these entities
7 and see what some of those questionnaires might say. I
8 suspect there may be some contradictions to what is being
9 offered today by CBI.

10 CBI also suggested that they do not sell F-frame
11 product, or they aren't able to offer an F-frame product in
12 the U.S. because of UL approvals. While that could be true
13 with respect to some accounts, not all F-frame end uses
14 require UL approval.

15 Finally -- well, two more points. I would also
16 note that the sole purchaser testifying here today confirmed
17 our position that you cannot substitute thermal and thermal
18 magnetic circuit breakers in hydraulic-magnetic circuit
19 breaker applications.

20 Finally, there was quite a bit of discussion about
21 what's going on in South Africa and what's happening in the
22 South African market, both in the context of like product,
23 as well as in the context of threat. With respect to
24 threat, please review our statements in the petition, our
25 quotes in the petition, of CBI, that they put in their

1 financial reports that we've also downloaded off of their
2 Web page regarding their intentions in the North American
3 market as well as their intentions in the U.S. market. A
4 CBI news breaker, which is something that they had posted on
5 their site, touts that they have doubled their sales in the
6 U.S. market. If the U.S. market is not important to them,
7 why would they promote that?

8 Also, on like product, the South African market is
9 irrelevant. If anything, we gleaned from their discussion
10 that end use in the South African differs dramatically from
11 end use in the United States. The Commission's focus is on
12 the product which is the like, or in the absence of like,
13 more similar in characteristics and uses to the imported
14 product. The domestic product is the like product, and that
15 is the standard which the Commission should look at. Look
16 at like product in the context of U.S. apparent consumption.
17 Thank you very much.

18 MR. CARPENTER: Thank you. Mr. Silverman.

19 MR. SILVERMAN: Okay. Mr. Chairman, I'm prepared
20 to give the summary and conclusion. A couple of small
21 responses to the rebuttal we just heard.

22 I think the term was the pricing is breathtaking.
23 If the pricing is so breathtaking, and the products are so
24 interchangeable and substitutable, why hasn't South Africa
25 taken over the U.S. market? If price is the only variable,

1 then you would expect market share to skyrocket. It simply
2 hasn't, and the reason is there is attenuated competition.
3 They said 40,000 to 60,000 different configurations. Price
4 doesn't function the way it did. If we have underpricing,
5 and we're not gaining market share, it tells you that
6 competition isn't there.

7 On the reference to the DIM-rail product, the Q-
8 frame, it's a different size. Ours is half-inch, and that's
9 why it works, and that's why theirs doesn't, and that's why
10 there is not competition. Don't let them try to slide that
11 by you.

12 Now, in a more systematic way, let me just go
13 through what I think the Commission has to do. They have to
14 look at the statute. Number one: Is there a significant
15 impact? I said before that Bupkus is not a significant
16 impact. They haven't done anything, and there is no data in
17 the record to show that. Saying it's so doesn't make it so.

18 I think you may remember, Mr. Chairman, in 1992,
19 the famous steel case involving 19 countries, when the
20 domestic steel industry came in here and said, "When a boat
21 leaves India with plate, all the prices change in the United
22 States." It was laughable then, and it's even more
23 laughable now. We have to have data on the record. We
24 can't just make these statements about a drop in the bucket
25 will cause the ocean to move. It doesn't work that way.

1 Secondly, they expect you to say there is enormous
2 impact from imports from South Africa when it's a trivial
3 quantity, and yet no impact with regard to Mexico, where the
4 volumes are enormous and the price pressure is enormous.
5 Something doesn't fit there if they want to do a price
6 analysis.

7 We talked about attenuated competition. I don't
8 think they rebutted any of that. There are some products
9 that we sell that they don't and vice versa. If they have
10 problems in product areas where we don't sell, then there is
11 no impact. If they have moved product from Maryland to
12 Mexico for various price reasons, and we don't make that
13 product, my goodness, how can they claim that we caused it?

14 And in the one product where they say we had the
15 greatest impact -- I'm referring to page 28, footnote 87 --
16 they say: "Subject imports of the D-frame continue to have
17 the most significant adverse impact on the domestic
18 industry." That's their petition. That's their sorest
19 point. That's what really hurts them: \$67,000 of imports
20 during the year 2002. Is that credible?

21 Attenuated competition. We saw the one customer
22 witness who was here who said he was basically turned away
23 by the domestic producers when they put him on 50 weeks of
24 lead time. Now, they did make reference in their testimony
25 today that they are going to provide a list in their post-

1 hearing brief of customers that they compete with where we
2 compete with them. That's not fair. It's not fair, Mr.
3 Chairman.

4 I thought you were supposed to provide that kind
5 of information with your petition or with your response to
6 the domestic producer questionnaire. We don't have any
7 opportunity to respond when they don't turn it on time, and
8 I thought that's why the regulations that the Commission
9 used asked for lost sales and lost revenue customers with
10 the petition. So I think the commissioners should give less
11 weight to that.

12 Let's talk a minute about -- how much time do I
13 have?

14 MR. McCLURE: Great. I can talk faster.
15 Conditions of competition. The 800-pound gorilla, the
16 8,000-pound gorilla is nonsubject imports. Nonsubject
17 imports have dominated this market for a long time, and
18 these are not just any old nonsubject imports; it's theirs.
19 It's theirs and Carling's and Eaton's. How they can come in
20 and say, We're sorry that my daughter may not be able to
21 walk through this factor at a time in the future, when they
22 are the ones themselves that have invested and continue to
23 invest abroad, particularly in Mexico, and in China? They
24 say they are faced with extinction, but they are the ones
25 doing it because the lower wage rates in Mexico are why they

1 do it.

2 Let me just read for you -- I don't often find
3 myself quoting with support and affection Chairman Bragg,
4 but in a case very similar to this -- it's Nitro Rubber from
5 Korea, Publication 3210 -- there was the same issue:
6 American companies moving production to Mexico and yet
7 complaining about imports from Korea. Very similar. In
8 that case, the Korean import penetration level was 3.4 or
9 3.5 percent. We're nowhere near that, however you count it.
10 And here is what she said: "Chairman Bragg determines --"
11 this was a unanimous, negative, preliminary determination
12 "-- that subject import volume and increases in that volume
13 over the period of investigation are not significant in
14 conjunction with the determination that subject imports have
15 not caused price suppression or depression of the domestic
16 markets."

17 No case is identical, but this is one that's
18 awfully close, and we hope you'll look at that and hope the
19 Commission looks at it to value this condition of
20 competition. When nonsubject imports, particularly a very
21 large volume of nonsubject imports and particularly when
22 it's the Petitioners themselves who are doing it as well as
23 other major American companies that have moved their
24 production.

25 Now, on threat, let's go back to the statutory

1 standards. Let's not talk about annual reports, salesmen's
2 suggestions, and the rest that the Commission can't make its
3 determination based on; it has to do it on statutory
4 standards. The reports; are they up or down? It says it
5 right in the importer's questionnaire. Do we have inventory
6 overhang? Absolutely not. Are we operating at high levels
7 of capacity utilization? We certainly are.

8 And we've done something that's very rare in
9 cases. We've given you every single sale for the next 12
10 months. It's not speculation. The Commission often talks
11 about mere speculation when it has to make its determination
12 of real and imminent. We've given you all of the sales.
13 We're not hiding anything.

14 If you talk about statutory standards, they are
15 not there, regardless of what salesmen would say, regardless
16 of what's in annual reports. We're talking about data on
17 the record in our questionnaire response and the statutory
18 standards. In this case, a couple of numbers to remember.
19 Fifty weeks' lead time. Is that a lost-sale price
20 suppression?

21 The second number: \$700,000 a year has been our
22 average during the period of investigation, \$700,000 worth
23 of imports. If you want to count poles, you can count
24 trees. The fact of the matter is it's lost revenue and lost
25 sales with only \$700,000 per year, and if that isn't Bupkus,

1 I don't know what would be. And in their biggest product,
2 the one they claim, on page 28, is the one where they have
3 the most injury, the most injury, if you can believe this,
4 65, \$67,000.

5 I hate to do this to you, but I'm going to use
6 another Yiddish word. Let's put it this way. I think that
7 this case is so lacking in merit, it should be quickly
8 evaluated, and negative is warranted. Thank you very much.

9 MR. CARPENTER: Thank you, Mr. Silverman.

10 A few concluding remarks. The deadline for both
11 the submission of corrections to the transcript and for
12 briefs in the investigation is Thursday, May 8th. If briefs
13 contain confidential business information, a nonproprietary
14 version is due on May 9th.

15 The Commission has scheduled its vote on the
16 investigation for Thursday, May 29th, at 11 o'clock, and it
17 will report its determination to the secretary of commerce
18 later that day. Commissioners' opinions will be transmitted
19 to Commerce a week later, on June 5th.

20 This conference is adjourned.

21 (Whereby, at 12:35 p.m., the hearing was
22 adjourned.)

23 //

24 //

25 //

CERTIFICATION OF TRANSCRIPTION

TITLE: Hydraulic Magnetic Circuit Breakers from South Africa

INVESTIGATION NO.: 731-TA-1033 (Preliminary)

HEARING DATE: May 5, 2003

LOCATION: Washington, D.C.

NATURE OF HEARING: Public

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: 5/5/03

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Authorized Contractor's Representative
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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).

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