

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
)
CERTAIN WAX AND WAX/RESIN) Investigation No.:
THERMAL TRANSFER RIBBONS) 731-TA-1039-1041 (Final)
FROM FRANCE, JAPAN, AND)
KOREA)

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Tuesday,
 March 9, 2004

Room 101
 U.S. International Trade
 Commission
 500 E Street, S.W.
 Washington, D.C.

The hearing commenced, pursuant to notice, at 9:30 a.m., before the Commissioners of the United States International Trade Commission, the Honorable Deanna Tanner Okun, Chairman, presiding.

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On behalf of the International Trade Commission:Commissioners:

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 JENNIFER HILLMAN, VICE CHAIRMAN
 MARCIA E. MILLER, COMMISSIONER
 STEPHEN KOPLAN, COMMISSIONER
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Staff:

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I N D E X

	PAGE
OPENING STATEMENT OF CHAIRMAN OKUN	7
STATEMENT OF RICHARD O. CUNNINGHAM, OF COUNSEL, STEPTOE & JOHNSON LLP	8
STATEMENT OF DAVID J. LEVINE, OF COUNSEL, McDERMOTT, WILL & EMERY	12
TESTIMONY OF THOMAS J. TRENDL, OF COUNSEL, STEPTOE & JOHNSON LLP	15
TESTIMONY OF VINCE DOWELL, CHIEF OPERATING OFFICER, IIMAK	17
TESTIMONY OF LANCE BOEHNKE, EMPLOYEE, IIMAK	24
TESTIMONY OF LOUIS BAEZ, EMPLOYEE, IIMAK	25
TESTIMONY OF RICHARD O. KINGDON PRESIDENT, IIMAK	25
TESTIMONY OF INELL WATKINS, EMPLOYEE, IIMAK	25
TESTIMONY OF DANIEL W. KLETT, CONSULTANT, CAPITAL TRADE, INC.	30
TESTIMONY OF RICHARD MARSHALL, CHIEF EXECUTIVE OFFICER AND CHAIRMAN OF THE BOARD, IIMAK	38
TESTIMONY OF DAVID GOLUB, CONSULTANT, CENTRE PARTNERS MANAGEMENT, LLC	49
TESTIMONY OF RICHARD O. CUNNINGHAM, OF COUNSEL, STEPTOE & JOHNSON LLP	55
TESTIMONY OF TINA POTUTO KIMBLE, OF COUNSEL, STEPTOE & JOHNSON LLP	61

I N D E X

	PAGE
TESTIMONY OF JIM LANDRY, VICE PRESIDENT AND GENERAL MANAGER, ITWTF	186
TESTIMONY OF PETER GALLETTE, GENERAL MANAGER, ITWTF	195
TESTIMONY OF BRUCE MALASHEVICH, PRESIDENT, ECONOMIC CONSULTING SERVICES, LLC	201
TESTIMONY OF CHRIS WALKER, VICE PRESIDENT AND GENERAL MANAGER, ARMOR USA, INC.	208
TESTIMONY OF ALAN H. PRICE, OF COUNSEL, WILEY REIN & FIELDING LLP	208
TESTIMONY OF RITCHIE T. THOMAS, OF COUNSEL, SQUIRE, SANDERS & DEMPSEY L.L.P.	218
TESTIMONY OF HAMILTON LOEB, OF COUNSEL, PAUL HASTINGS, JANOFSKY & WALKER LLP	223
TESTIMONY OF DANIEL B. PICKARD, OF COUNSEL, WILEY REIN & FIELDING LLP	274
CLOSING STATEMENT OF RICHARD O. CUNNINGHAM OF COUNSEL, STEPTOE & JOHNSON LLP	280
CLOSING STATEMENT OF DAVID J. LEVINE, OF COUNSEL, MCDERMOTT, WILL & EMERY	284

P R O C E E D I N G S

(9:30 a.m.)

CHAIRMAN OKUN: Good morning. On behalf of the United States International Trade Commission, I welcome you to this hearing on the Investigation Nos. 731-TA-1039-1041(Final), involving certain wax and wax/resin thermal transfer ribbons from France, Japan, and Korea.

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

Schedules setting forth the presentation of this hearing and testimony of witnesses are available at the secretary's desk. I understand that parties are aware of the time allocations. Any questions regarding the time allocations should be directed to the secretary. As all written material will be entered in full into the record, it need not be read to us at this time.

All witnesses must be sworn in by the secretary before presenting testimony. Copies of the notice of institution, the tentative calendar, and transcript order forms are available at the

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1 secretary's desk. Transcript order forms also are
2 located in the wall rack outside the secretary's
3 office.

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

8 Madam Secretary, are there any preliminary
9 matters?

10 MS. ABBOTT: Yes, Madam Chairman.

11 With your permission, we will add Phillip S.
12 Dallosto, Associate General Counsel, Illinois Tool
13 Works, Incorporated, to the calendar on page 3.

14 CHAIRMAN OKUN: Without objection.

15 Let us proceed with opening remarks.

16 MS. ABBOTT: Opening remarks on behalf of
17 petitioners will be made by Richard O. Cunningham,
18 Steptoe & Johnson.

19 CHAIRMAN OKUN: Good morning, Mr.
20 Cunningham. Make sure your microphone is on, Mr.
21 Cunningham.

22 MR. CUNNINGHAM: Good idea. Even with my
23 voice, it's a good idea.

24 I am counsel to IIMAK, the petitioner in
25 this proceeding, on all matters except as to Korea,

1 which will be handled by Mr. Leiman.

2 As many of you know, I have been doing these
3 Title VII cases for 35 years. And my experience is
4 that in many cases there is a single factor that once
5 you clear away the extraneous arguments, the debris,
6 that factor turns out to be dispositive, and that is
7 certainly the case here.

8 What is dispositive in this case and what is
9 indisputable on the record is a drastic decline in
10 certain TTR prices throughout the period covered by
11 this investigation, a decline that began, and here
12 again the evidence is clear and there is no evidence
13 to the contrary, with sharp underselling by the
14 subject imports. No one disputes the degree of price
15 deterioration. It's very large, 10 percent, 20
16 percent, 30 percent in some of the larger categories.

17 No one disputes that the price decline has
18 taken place in a period of rising U.S. consumption,
19 nor can the finger be pointed at excessive U.S. supply
20 since U.S. firms' production is simply parallel to the
21 rise in U.S. consumption.

22 What caused this price collapse is obvious
23 from even the most cursory reading of the staff
24 underselling analysis. Throughout 2001, and well into
25 2002, subject imports deeply and consistently

1 undersold U.S. producers in all the major product
2 categories. That's clear in the staff tables and no
3 respondent has presented any evidence to the contrary.

4 Then in late 2002 and 2003, the price gap
5 narrows and in some cases the underselling almost
6 disappears. But this happened because the U.S.
7 companies were forced to lower their prices to be
8 competitive with the dumped imports. That's clear in
9 the tables.

10 That's not evidence that injurious dumping
11 disappeared late in the period as certain of the
12 respondents would have you believe, it's evidence that
13 the continued dumping produced an injurious decline in
14 U.S. firms' prices. That's the core of this case.
15 It's clear, it's not contradicted, and I am unaware of
16 any case in which this Commission, confronted with
17 such a large price decline clearly caused by import
18 underselling, has reached a negative conclusion.

19 And finally on this point, there is dramatic
20 evidence that at least one of these companies intends
21 to continue aggressive pricing in this market, and I
22 urge each of you to look at Exhibit 1 to petitioners'
23 prehearing brief.

24 Now, what on earth do respondents argue
25 then? Well, they throw a lot of mud at IIMAK, and we

1 are going to rebut that, and indeed, one of the
2 shareholders of IIMAK was so incensed by that he has
3 come to us and asked for time to make his own
4 presentation on that issue. You will hear from Mr.
5 Golub later.

6 But even if it was true that IIMAK were
7 mismanaged, made bad decisions, it's irrelevant for
8 two reasons.

9 First, whatever internal problems IIMAK
10 might have had, it's clear that the import caused
11 price collapse made IIMAK's condition work.

12 And second, the U.S. industry as a whole,
13 not just IIMAK, has suffered from the import caused
14 price decline.

15 The respondents also want you to include
16 slit fax TTR in the like product. We will make clear
17 to you today why it's not appropriate to do that. But
18 even if you did include slit fax, it doesn't alter the
19 central dispositive fact here that dumped import
20 prices have caused a drastic price decline throughout
21 the larger market for other types of certain TTR.

22 Finally, respondents would like you to
23 simply ignore competition at the slit TTR level and
24 focus only on the very limited competition that
25 occurs, less significant but limited, at the jumbo

1 roll level. Nice try, but as we will show you today,
2 totally inconsistent with uniform Commission
3 precedence and with the logic of this law.

4 Moreover, the Commerce Department has
5 eliminated the basic premise of respondents' argument
6 on that point by ruling that for antidumping law
7 purposes slitting does not produce a substantial
8 transformation.

9 In short, this case turns on a dramatic
10 price decline undeniably caused by import
11 underselling. You should reach an affirmative
12 determination on that basis.

13 MS. ABBOTT: Opening remarks on behalf of
14 the respondents will be made by David J. Levine,
15 McDermott, Will & Emery.

16 CHAIRMAN OKUN: Good morning, Mr. Levine.

17 MR. LEVINE: Good morning.

18 My name is David Levine. I am with the law
19 firm of McDermott, Will & Emery, representing Illinois
20 Tool Works, Inc. and its Korean subsidiary, ITW
21 Specialty Film Company, Limited.

22 The Illinois Tool Works group of companies,
23 which we call ITW, includes divisions that produce
24 TTR, namely, ITW Thermal Films, and ITW Coating
25 Products. ITW thermal films is a U.S. importer and

1 converter of TTR, and of jumbo rolls from Korea, and
2 ITW Coating Products is a U.S. coater and converter of
3 TTR and other similar products.

4 ITW has built a global TTR business through
5 a combination of acquisitions, highly efficient
6 production, and equally efficient marketing policies
7 based on its corporate-wide 80/20 philosophy. Its TTR
8 business in Korea, Europe and the United States are
9 all profitable in their own right, and their sales,
10 pricing and practices are fair.

11 For this reason, ITW management were
12 dismayed when IIMAK alleged that it was injured by
13 unfair pricing if ITW and they vowed from the outset
14 of this case to defend their interests vigorously.

15 ITW was been fully vindicated by the
16 Commerce Department's preliminary negative
17 determination, and we have every expectation that the
18 Commerce Department will affirm that finding of sales
19 at not less than fair value in its final determination
20 on March 22nd, in which case this injury investigation
21 will be terminated for Korea.

22 You might therefore ask what are we doing
23 here. Well, ITW is here for two primary reasons.

24 First, notwithstanding our fair pricing in
25 all market, ITW cannot be 100 percent assured how the

1 Commerce Department will make its determination.

2 And second, and more importantly for your
3 purposes, regardless how Commerce rules the facts
4 simply do not justify an affirmative injury
5 determination. Moreover, ITW believes that an
6 affirmative injury ruling in resulting dumping orders
7 would be bad for the industry as a whole, probably
8 even for IIMAK.

9 IIMAK obviously does not see it this way.
10 With its poorer financial performance and saddled with
11 what ITW believes to be huge debt, IIMAK desperately
12 seeks relief from its troubles, and it has targeted
13 imports as the cause.

14 IIMAK is wrong for a number of reasons, and
15 we will address those in our presentations this
16 afternoon.

17 In summary, we will show that whatever harm
18 IIMAK might be suffering is unique to IIMAK. The
19 industry as a whole is neither injured nor threatened
20 with injury by reason of imports of TTR. This fact
21 becomes even more pronounced when the Commission
22 properly defines the domestic products to include slit
23 fax TTR, and properly defines the domestic industry to
24 include converters of TTR.

25 Thank you very much.

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1 CHAIRMAN OKUN: Thank you. Madam Secretary,
2 are we ready to seat the first panel?

3 MS. ABBOTT: Yes. Will the first panel in
4 support of the imposition of antidumping duties please
5 come forward? And Madam Chairman, the witnesses have
6 been sworn.

7 (Witnesses sworn.)

8 (Pause.)

9 CHAIRMAN OKUN: Mr. Cunningham, it looks
10 like all your witnesses are seated and ready to go.
11 Welcome to all of you.

12 MR. CUNNINGHAM: Thank you, Madam Chairman.

13 My partner, Tom Trendl, will act as master
14 of ceremonies for this rather extensive group of
15 performers today. I want to make one introductory
16 statement, however.

17 On the subject of critical circumstances we
18 have reviewed the evidence now available to us and we
19 do not continue to maintain that DNP is an appropriate
20 subject for the critical circumstances.

21 MR. TRENDL: Good morning, Chairman Okun,
22 Commissioners, and to staff. My name is Tom Trendl.
23 I am with Steptoe & Johnson, and I am counsel to
24 International Imaging Materials, Inc., IIMAK.

25 With me today and presenting testimony are

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1 Vince Dowell who is behind me. He is COO of IIMAK.
2 He will describe the TTR production process, including
3 that relating to jumbo rolls, slit TTR, and non-scope
4 slit fax TTR.

5 With him are three of our factory workers,
6 and Mr. Dowell will introduce them in due order.

7 Next to speak will be Richard Kingdon who is
8 sitting in the front row. He is President of IIMAK
9 and he will describe the sales process and competition
10 in the TTR market.

11 The third speaker will be Dan Klett to my
12 right of Capital Trade, who will address price,
13 volume, market share, and the impact of dumped TTR in
14 the domestic industry.

15 Dick Marshall, sitting in front of me in the
16 first row, is CEO and Chairman of IIMAK. He will
17 explain the effect of these imports on IIMAK, the
18 company.

19 Following Dick Marshall, also in the front
20 row, is David Golub who, as Mr. Cunningham said,
21 requested to appear today. He is with Centre
22 Partners, and he will address some of the issues
23 related to IIMAK management process and processes.

24 Finally, but not least, Dick Cunningham and
25 Tina Potuto Kimble, who his sitting behind me, who

1 will address some of the legal issues.

2 Working the computer over there, and also
3 available to answer questions is John Heimback, who is
4 senior marketing analyst with IIMAK.

5 With those introductions, I will now turn it
6 over to Vince Dowell.

7 MR. DOWELL: Thank you, Tom.

8 Good morning, everybody. My name is Vince
9 Dowell. I am Chief Operations Officer for IIMAK. I
10 have been with IIMAK for approximately 12 years,
11 starting in July of 1992. I would like to take a few
12 minutes to describe the process involved in the
13 production of thermal transfer ribbons that we will
14 refer to as TTR.

15 There are four basic steps in the
16 manufacturing cycle, two of them major steps and two
17 of them fairly minor steps. The four steps are ink
18 making, coating, slitting, and packaging as described
19 on our first slide.

20 All four of these processes are required for
21 the completion of the manufacturing cycle. However,
22 the first two, ink making and coating, they are in
23 fact quite unique to the TTR industry. It's in these
24 two processes that IIMAK puts to use its 20 years of
25 experience and employs the vast majority of its

1 intellectual property and its more sophisticated and
2 costly equipment.

3 In contract, while the slitting and
4 packaging processes are important to the completion of
5 the manufacturing cycle, they tend to use more generic
6 equipment and generic technologies that are used in
7 many other industries where rolled materials need to
8 be cut to specific widths and lengths.

9 I would like to go back to the beginning of
10 the process and describe in a bit more detail what
11 happens in each of the four processes.

12 Starting at the top of the slide, the ink
13 making process consists of several different
14 operations: mixing, melting, dispersing and particle
15 size reduction. Sophisticated equipment such as small
16 media mills, Attritors, are used to accomplish this.
17 During this process raw materials, such as waxes,
18 resins, pigments and solvents are blended together to
19 make a uniform mixture or solution that will later be
20 applied to the polyester film.

21 The ink making process requires very
22 detailed instruction and it's performed by skilled
23 operators requiring a significant amount of training
24 and experience.

25 These solutions are then applied to the

1 polyester film during what we call the coating
2 process. This is done on very costly and complex --
3 put the first slide down. This is done on very costly
4 and complex high-speed, multi-station coating
5 machines. Raw polyester film is unwound and passed
6 through multiple coating stations. A number of
7 coating technologies are used to apply the ink to the
8 polyester film. These technologies include direct
9 gravure, offset gravure, slow tube and wire rods.
10 Each of these processes employs the science of fluid
11 dynamics to properly deliver extremely thin and
12 uniform coatings to the base film.

13 Process design of solution pumping and
14 delivery systems, cellular patterns on gravure
15 cylinders, roller configurations, and many other
16 elements are critical to producing a quality TTR
17 product.

18 Again, these processes are extremely
19 sophisticated and require technicians or operators
20 that have significant amounts of training and
21 experience. Both ink making and coating require the
22 attention of our most senior production people.

23 The next step is the slitting process. This
24 is the step that I referred to earlier as being less
25 unique to the TTR industry, and somewhat generic in a

1 technology that it employs. While certainly necessary
2 to produce a slit product, this technology is used in
3 many different industries and is the process where we
4 take jumbo rolls and we convert them to specific
5 widths and lengths based on our customer specification
6 that will be used in the actual printing device.

7 Once the ribbon has been slit, they have to
8 be packaged, which is usually done by placing the slit
9 roll in a bag. IIMAK uses what we refer to as auto
10 bagging machines which also have a printer which then
11 prints the specific information based on our customer
12 specification on each individual bag.

13 Before I leave this slide, I would just like
14 to point out again it's step one and step two that are
15 the most critical in the process. In the ink making
16 and coating, it could be as much as eight to 12
17 million dollar investment to get started to be a true
18 TTR manufacturer and get started in the process.

19 And in contrast, the slitting process, No.
20 3, could be done for as little as 100 to 200 thousand
21 dollars, and essentially require very little
22 infrastructure. In fact, you could open up a slitting
23 operation in your garage. It requires no more
24 infrastructure than an electric range in a house.

25 We have got some slides that will help show

1 some of the different pieces of equipment that we
2 talked about in the four processes, and the first one
3 I will start with is our R&D laboratory.

4 IIMAK has proprietary formulations. We have
5 got Ph.D. chemists on staff, and we have got a well
6 equipped analytical wet lab, pilot lab, and print labs
7 to help us develop ribbons. That is somewhere between
8 to two to three million dollar investments.

9 The next picture down on the left, bottom
10 left, is our small media mill. This is a piece of
11 equipment that is used to make our back coats and
12 solvent inks. As you can see from the picture, not
13 overly clear here, but it requires a lot of
14 infrastructure to support the mill, and it's very
15 highly refined and controlled operating procedures.
16 It also has extremely strict environmental controls,
17 and the investment to get into solvent ink making is
18 somewhere around \$2 million.

19 The picture on the right is another piece of
20 ink making equipment. It's a ball mill or a triter.
21 It's used to make what we call hot melts or wax things
22 which are more viscus. This is large vat system.
23 It's been ergonomically engineered, and again a very
24 significant investment, somewhere around a million
25 dollars.

1 The next slide -- by the way, none of these
2 pieces of equipment are required for slitting so far.
3 The next slide is what we call our MSCs or multi-
4 station coating machines. This is a state-of-the-art
5 wide web high-speed machine that does slice-on-the-
6 fly. It applies extremely thin and uniform coatings
7 to both sides of the web, and has very sophisticated
8 tensioning controls, and as you see, requires a lot of
9 supportive infrastructure to set it up. Somewhere
10 between three to five million dollar investment.

11 On the bottom right-hand corner is what we
12 refer to as a thermal oxidizer. That takes the
13 solvent emissions coming off the coater and burns them
14 very efficiently in what's called a recuperative
15 system. This again, another significant investment
16 that's required only if you are a coater of TTR, not
17 required in the slitting operation. This is somewhere
18 around a million dollar investment.

19 So again, the developing your ink
20 formulation, the ink making, coating, and thermal
21 oxidizer could be as much as eight to 12 million
22 dollar investment.

23 These are pictures of what we call our
24 slitting machines. IIMAK uses manual, semi-automatic
25 and fully automatic machines. They can range between

1 100 to 800 thousand dollars. Most of the industry
2 uses semi-automatic pieces of equipment, which are 200
3 to 250 thousand dollars.

4 We size the master rolls to very specific
5 widths and length, and require essentially very little
6 infrastructure, supportive infrastructure in the
7 factory to set up.

8 The last step is bagging. This is a picture
9 of the auto bagging, the primary method that we
10 package our bar code ribbons with. Basically the
11 ribbons are dropped in the top of the bag and then
12 heat sealed. Additionally, it prints the unique
13 information based on our customer specifications on
14 each ribbon.

15 The pictures on the right helps to show the
16 difference between a standard bar code ribbon and a
17 fax ribbon. I also have examples here if you would
18 like to look at them.

19 IIMAK does produce fax ribbons as well. The
20 ink making and coating processes of these ribbons are
21 similar to the bar code ribbons, but the converting
22 and packaging processes are actually quite a bit more
23 complex. These products are much short lengths,
24 requires small cores, take-up cores. In addition, a
25 take-up core has to be put on, hubs and rotational

1 mechanisms. Most of the fax products that we produce
2 also require the additional assembly process of
3 placing them in a proprietary cassette, as well as in
4 some cases the addition of a silver stripe, or what's
5 called an end mark which is applied in the slitting
6 department.

7 Fax ribbons are also typically packaged in
8 more costly multicolored packaging boxes due to the
9 merchandising and distribution channels that they are
10 sold through. All of these additional steps just make
11 the converting and finishing of the fax ribbons quite
12 a bit more complex and costly than a standard bar code
13 ribbon.

14 I have got three more slides, and I will use
15 these slides by way of introduction to three of
16 IIMAK's very capable production operators. We will
17 put them up one at a time, and let the individuals
18 introduce themselves, and of course, they can be
19 available for questions later.

20 MR. BOEHNKE: Good morning. My name is
21 Lance Boehnke, and I have been with IIMAK for the past
22 12 and a half years. I began working as a slitter
23 operator at wage grade 23 for the first seven years.
24 I have since been promoted several times to my current
25 position as an inkmaker 2, and my current wage grade

1 is 26.

2 MR. BAEZ: Good morning. My name is Louis
3 Comos-Baez. I am a multi-station coater operator,
4 grade 28. I have been employed at IIMAK for nine and
5 a half years. In total, I have 18 years experience in
6 coating.

7 MS. WATKINS: Good morning. My name is
8 Inell Watkins. I am a grade 25 slitter operator at
9 IIMAK for nine years.

10 MR. CUNNINGHAM: That concludes the section
11 on the manufacturing processes.

12 MR. KINGDON: Good morning. My name is
13 Richard Kingdon. I am the President of IIMAK, and I
14 am responsible for day-to-day commercial operations
15 and decisions within the company. I would like to
16 take a few minutes just to tell you how certain TTR is
17 sold in the U.S. and to help you fully appreciate the
18 vulnerability of the U.S. TTR industry to dumping.

19 The key question I would like to address is
20 who is the customer, and in our business that is not
21 quite as obvious as it might seem.

22 We provide consumables that are sold to
23 support a system that provides an end user with a
24 digital imaging system, and the end user, the bottom
25 of my graphics here, has the goal of having a process

1 that gives them sustainable performance at the lowest
2 possible price.

3 To do that they invariably go to what we
4 would call a reseller, an auto ID expert, who would
5 give them some guidance as to what combination of
6 hardware and software in consumables -- consumables
7 being either TTR or the receiver to meet the specific
8 end user application.

9 Essentially all TTR products reach the end
10 user through these resellers. You can see that about
11 90 percent of the TTR is sold in slit form, in narrow
12 ribbon maybe 110 millimeters wide that fit into
13 industrial printers.

14 The remaining 10 percent is sold to
15 converters. These are independent companies that slit
16 the ribbon down into the same size and sell them
17 downstream to the end user or to distributors.

18 You will notice that there is one OEM who
19 does a little bit of converting.

20 For slit TTR, the resellers are primarily
21 distributors. These are independent companies, five,
22 10, 15, 20 million dollars, some of them are bigger,
23 but on average they are that sort of size. They
24 operate regionally and they sell through one set
25 distribution. They take orders from the end users,

1 they place those orders on IIMAK, one step of
2 distribution to the end users.

3 Some of them resell to small distributors so
4 there would be two-step distribution, and similarly,
5 some of them buy products through OEM, which is OEM-
6 branded products, essentially the same TTR but with an
7 OEM brand and seal of approval on, and sell it to the
8 end users.

9 With this structure, I would assert that TTR
10 is particularly susceptible to damage by dumped
11 imports for three reasons.

12 Firstly, the market, despite its apparent
13 size and diversity, all these different end users and
14 all these different industries using the product,
15 despite this, the market is relatively concentrated.

16 If you look at it in terms of stock keeping
17 units, SKU, greater than 80 percent of the volume sold
18 is actually sold in the form of 20 percent of
19 different stock keeping units, a classic 80/20.

20 Similarly, if you look at of all the
21 distributors that buy the products, by our
22 calculations and experiences, 80 percent of the volume
23 is sold to 20 percent of the distributors. In other
24 words, about 70 percent of certain of TTR is sold to a
25 finite number of distributors, and a finite series of

1 SKUs.

2 You will hear ITW talk again and again about
3 its 80/20 focus. ITW fully understands this
4 philosophy and how it can be exploited in the U.S. TTR
5 market.

6 Secondly, you have to understand that within
7 a certain TTR category the primary product is what we
8 would call a wax product that has the widest
9 application, and within the wax products the top
10 suppliers have similar offerings, and these offerings
11 are very fungible.

12 What this graphic shows is it depicts the
13 performance of the lead wax TTR formulations of four
14 different competitors that I have deliberately left
15 anonymous.

16 Our print lab took the same printer for the
17 same receiver and they substituted each of these four
18 ribbons, and then they scored them on a one to five
19 scale, which is typically how the industry looks at
20 the gradings of print performance, and they picked
21 attributes that the customer typically uses to select
22 a ribbon: how dark is it, does it perform at 12
23 inches per second, how durable is it, how much energy
24 does it take to print the image.

25 You can see that the purple pattern and the

1 blue pattern and the green pattern and even the yellow
2 pattern are essentially identical. There might be a
3 minor grade between the different products, but you
4 can see that on a technical basis they are equivalent,
5 they are interchangeable. We hate to use the term,
6 but they are essentially a commodity.

7 Thirdly, price is critical. You will recall
8 that in the ITC questionnaire the receivers of the
9 questionnaire were asked to rate the top three
10 purchase criteria. There were 19 first votes and 18
11 second votes for quality. Dan Klett will address
12 this. Quality is essentially a given in our industry.
13 And the next biggest vote getter was price. Ranked
14 first by three questionnaire respondents, second by
15 11, and eight respondents ranked it third.

16 Price is very important. And given the
17 consecutive years of price declines, the resellers
18 have learned that there is no value in entering a
19 long-term contract in this industry. Rather, the
20 resellers have learned that the most economically
21 advantageous approach is to split their TTR sourcing
22 between several suppliers.

23 So you will see that they have perhaps a
24 primary supplier, 60 - 70 percent of their needs, they
25 have a second supplier, and even a third supplier, and

1 they will be using these suppliers to support their
2 various end users.

3 The resellers can then orchestrate iterative
4 price negotiations by capitalizing on the desire of
5 the TTR manufacturers to expand their position.

6 The new profit/price reports points are
7 secured from one supplier that relayed back to the
8 other suppliers, and the downward price spiral
9 continues.

10 I would be happy to answer any particular
11 questions. Otherwise, I would like to turn the podium
12 over to Dan Klett of Capital Trades who will talk a
13 little further about the price dynamics as secured by
14 the ITC questionnaire responses.

15 MR. KLETT: Good morning. My name is Daniel
16 Klett with Capital Trade. I am testifying on behalf
17 of IIMAK.

18 Mr. Marshall will describe the effects of
19 subject imports on IIMAK operations. I will address
20 the overall issues of price effects, volume effects,
21 and impact, as well as some issues raised by the
22 respondents.

23 The market for subject TTR is highly
24 competitive with price differentials between
25 individual suppliers often within a hundredths of a

1 cent for MSI for the largest volume products sold to
2 distributors, reflecting the commodity nature of this
3 product.

4 As shown in this slide, purchasers generally
5 rank U.S. and subject import TTR comparable with
6 respect to quality. Given this market reality, I
7 would expect to see the following:

8 First, there should be no individual company
9 price leaders as all suppliers compete aggressively to
10 maintain their sales and product volumes. As noted in
11 the prehearing report, purchasers "reported large
12 number of different price leaders in each of the years
13 and some firms reported more than one price leader in
14 any particular year."

15 Second, when measured at the level the
16 competition occurs, that is, slit TTR, subject import
17 market share increased. Market share changes have
18 not, been even greater, because individual U.S.
19 suppliers have all followed the market price down to
20 avoid even greater volume losses.

21 For these reasons, adverse effects in this
22 investigation are primarily manifested through price
23 effects.

24 Although I cannot discuss specific quarterly
25 price trends, in general, prices for resin, wax, and

1 wax/resin products fell in all channels of
2 distribution and by significant amounts. The average
3 unit value sales to the U.S. market fell by 21 percent
4 over the entire POI. My review of quarterly price
5 data show a high degree of correlation between price
6 changes of U.S. producers and subject imports.

7 Regarding underselling, also as shown on
8 this slide, in 17 of 45 comparisons subject imports
9 were categorized as lower priced by purchasers, and in
10 only three instances were imports higher priced. In
11 25 instances, U.S. and subject import prices were
12 rated as comparable, consistent with the commodity
13 nature of this product.

14 The staff report also found significant
15 margins of underselling based on the actual price data
16 collected.

17 As you have heard previously, quality is an
18 important purchasing factor. However, as shown in
19 this slide, U.S. and subject imports were often, 83
20 percent of the time, rated as comparable with respect
21 to meeting minimum quality standards.

22 Regarding import volume and market share,
23 the nature of how subject TTR is imported and sold in
24 the U.S. market must be considered when evaluating
25 competitive effects. The following conditions mean

1 that simply looking at U.S. shipments from importers'
2 questionnaires does not capture when or where
3 competition has occurred.

4 First, virtually all subject imports enter
5 the United States in jumbo roll form. Second, a very
6 large share of imports are transferred to affiliated
7 U.S.-based converters, and consequently a large share
8 of U.S. shipments reported in the importer
9 questionnaires does not compete with U.S. producers at
10 this level. And third, after conversion by their
11 affiliated converter slitters, some slit TTR is
12 exported and does not directly compete with U.S.
13 coaters in the U.S. market.

14 Direct competition occurs in the United
15 States between subject imported TTR and U.S.-produced
16 TTR at the first arm length sales level. For those
17 subject imports and U.S. coaters, this is primarily
18 slit TTR sales which, for imports, are sales by
19 related party converters. There are also some arms-
20 length sales of jumbo rolls, but this is a small
21 market.

22 The market share tables in Exhibit 9 of our
23 prehearing brief are calculated on this basis.

24 All U.S. producers experience significant
25 price declines over the POI, and the prices are

1 reflected in lower operating profit margins and
2 declining cash flow for the industry as a whole.

3 While profitability declines may not be as
4 dramatic as the Commission sees in other
5 investigations, they nevertheless reflect material
6 injury for the following reasons:

7 First, U.S. producers were able to prevent
8 their profitability from deteriorating more sharply
9 than actually appears by cutting employment, and
10 making investments to increase their productivity and
11 lower their costs.

12 Second, as shown in this slide, the
13 operating profits for coaters were generally lower
14 than those of converters, and coaters' profitability
15 declined while the profitability of converters
16 increased significantly. For APO reasons, I was able
17 to use only public data in the staff report for
18 certain TTR and slit fax TTR combined. However, the
19 same general relationship exists for certain TTR
20 alone.

21 Why the difference in cost between
22 converters and coaters? The raw material for
23 converters is subject jumbo rolls of TTR while for
24 coaters it is the components to make jumbo rolls such
25 as film. Unit raw material costs for converters,

1 dominated by those that relied on LTFV-imported jumbo
2 rolls, declined more than the raw material cost
3 declines for coaters.

4 As shown in this slide, had U.S. coaters'
5 unit raw material costs declined at the same rate as
6 converters relying on LTFV jumbo rolls, their
7 operating profits also would have increased over the
8 POI, rather than decline. These same general
9 relationships hold for certain TTR only as shown in
10 Exhibit 6 of our prehearing brief.

11 This has important implications for
12 causation and threat. The relative raw material cost
13 advantage of converters relying on lower cost LTFV
14 jumbo rolls has increased over the POI relative to
15 coaters. While coaters have managed over the last
16 three years to offset this disadvantage by reducing
17 labor costs and investing in automated slitting
18 machines to reduce their unit operation costs, the
19 remaining cost cutting strategies are limited.

20 Respondents have alleged that factors other
21 than subject imports explain any adverse effects being
22 experienced by the U.S. industry. In every
23 investigation, factors other than imports affect the
24 market in an industry. Here, however, these other
25 factors can not fully or even largely explain the

1 significant price declines observed over the POI.

2 Much has been made of a December 2002
3 article with quotes from Mr. Oliverio who was later
4 employed by Sony. I would like to make the following
5 points to respond to the allegation that Sony is the
6 price leader, and is accountable for price decreases
7 over the POI.

8 First, as an economic matter, this market is
9 highly competitive, and each participant in the market
10 has an effect on price. No single dominant market
11 participant exists, and there is no single price
12 leader. Subject imports in the aggregate accounts for
13 about a third of the U.S. market. I don't see how
14 their competitive actions in the market could not have
15 contributed to the declining prices over the POI,
16 particularly in light of the pronounced and pervasive
17 import underselling, which forced U.S. producers to
18 lower their prices.

19 Second, Sony also sells TTR in the U.S.
20 market from Japan for its jumbo rolls. Even if the
21 Commission were to conclude that Sony is a company
22 with a price leader at certain points of the POI, you
23 made clear in DRAMs that you do not evaluate price
24 effects on a company-specific basis, but on the basis
25 of a weighted average U.S. price versus import price.

1 Price data from the producer and importer
2 questionnaires are specific regarding country of
3 origin from each supplier, and show widespread
4 underselling.

5 Another allegation raised by ITW and Armor
6 is that the quarterly price data --

7 MR. CUNNINGHAM: Dan, before you do that,
8 let me just note for the Commission that Sony has also
9 responded in its submission to the allegation that
10 it's the price leader, and I would direct the
11 Commission's attention to that.

12 MR. KLETT: Thank you, Dick.

13 Another allegation raised by ITW and Armor
14 is that the quarterly price data reported in response
15 to the Commission questionnaires are not reliable.
16 ITW will assert that significant price variances among
17 the product formulations within product one distort
18 comparison, and it provided its own price comparison
19 analysis, which we will comment on in our posthearing
20 brief.

21 I have obtained from IIMAK the quarterly
22 volume and value of sales for each ink formulation
23 within the product one grouping for each channel of
24 distribution. For IIMAK, the resin-enhanced products
25 in this group that compete most directly with ITW's

1 W90 and the basket of Armor resin-enhanced products
2 collected in the questionnaire, RSI-28, I-35, I-45,
3 and GP-725 in formulations.

4 Depending on channel or customer, IIMAK
5 sells each of these products at the same price. I
6 have calculated IIMAK aggregate average price for
7 these four formulations only. The difference from
8 IIMAK average price for all product one products is
9 essentially nil.

10 I substituted this subset of IIMAK product
11 one formulations into the price data, and there is
12 virtually no change in degree of underselling or price
13 trends.

14 Finally, please look again at the first
15 slide that I discuss, the apples to apples price
16 comparisons reported by purchasers. Consistent with
17 the commodity product, most purchasers reported U.S.
18 and subject import prices to be comparable. However,
19 when price differentials were reported, underselling
20 outweighed overselling by a factor of five to one.

21 Thank you.

22 MR. MARSHALL: Good morning, Chairman Okun,
23 Commissioners, and staff. My name is Dick Marshall
24 and I am Chairman and CEO of IIMAK.

25 I thank you for the opportunity to talk with

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1 you today and to have recently welcomed several of
2 your staff to our facilities in Amhurst, New York.

3 I am proud to be here today with several of
4 our co-workers representing all the hard-working men
5 and women of IIMAK who have struggled in recent years
6 in the face of unfairly traded imports to produce and
7 sell our high-quality wax and wax/resin TTR in the
8 United States.

9 During the preliminary phase of this
10 investigation, I provided extensive background on the
11 TTR industry, including how the respondents have
12 positioned themselves to cause the material injury at
13 issue today.

14 I am happy to address that again here if you
15 would like, and I continue to think it is important.
16 But as this information is in the record, today I
17 thought I would focus instead on three main issues.

18 First, where IIMAK and the industry as a
19 whole stands today; second, the impact of the unfairly
20 traded imports on IIMAK; and third, the future of the
21 U.S. TTR industry without application of our trade
22 remedy laws.

23 Let me address the first issue, where IIMAK
24 and the industry stands today. Unlike some of our
25 competitors, IIMAK's principal business is the

1 production of TTR, and we are the largest producer in
2 the United States with our primary operations and
3 costs, including R&D, being in the United States.

4 Our future is fundamentally dependent on
5 this product. The livelihood of hundreds of our
6 employees depend on this TTR business and this
7 investigation is extremely important to our company.

8 We are dedicated to produce TTR products our
9 customers want, working with them to ensure they get
10 what they want, when they want it, and at a fair
11 price. To this end, we have invested in the best and
12 most efficient equipment to produce TTR in a highly
13 cost-effective manner. We have made these investments
14 not only to compete today, but for many, many years
15 into the future.

16 I don't think it can be disputed that IIMAK
17 is a world class TTR producer. We are qualified to
18 sell to every major purchaser and we are not afraid of
19 competition. For years, we have competed for the
20 sales in this market with each of the respondents.
21 They know our products and we know theirs.

22 Other U.S. producers, and by this I mean
23 coaters of TTR, include two companies with both import
24 and -- which both import and produce TTR. Those are
25 namely Sony and Dynic. While these two companies are

1 somewhat shielded via their imports from respondents'
2 unfair trade practices, I am confident that all of us
3 who produce TTR and have realized these pricing
4 reductions here in the United States have experienced
5 the negative effects of this pricing.

6 One other company, Chemicraft, went out of
7 business in the fall of 2001, no doubt in large part
8 due to unfair import competition.

9 Although IIMAK holds the leading share of
10 the U.S. market, it is one of the smallest companies
11 to produce this product. The respondents, in
12 contrast, include several multibillion dollar,
13 multinational, highly diversified conglomerates that
14 produce a wide array of products. The respondents'
15 TTR production is thus only a small component of their
16 total operations, giving them the ability to sustain
17 years of underselling and unfairly low prices. They
18 have demonstrated this ability quite remarkably during
19 the period of investigation.

20 The second issue I would like to address is
21 the impact of unfairly traded imports on IIMAK. In
22 the last several years, the respondents, with more
23 than ample production capacity, and their shrinking
24 limited home market consumption, have increasingly
25 focused on the United States as the most open and the

1 largest consumer of TTR. They have done so in a most
2 damaging fashion by slashing prices, underselling and
3 continually bidding for business at extremely low
4 prices.

5 As quality amongst suppliers is generally
6 equal, these competitors have marketed their U.S.
7 position for the subject product on the primary
8 dimension of price.

9 I don't see this as fair competition. It is
10 more like a concerted effort to take over the U.S.
11 market and eventually put IIMAK out of business. In
12 our prehearing brief we detailed how companies like
13 DNP have attacked the U.S. market, and I believe my
14 colleague, David Golub, will describe ITW's methods.

15 The effects of respondents' tactics
16 individually and collectively is readily apparent in
17 our financial statements, our sales experience, and
18 our production data. During the last three years I
19 have had the painful experience of telling
20 approximately 20 percent of my workforce that I could
21 no longer employ them, and I note that the 2001
22 baseline level for the period of your investigation
23 was down from the 2000 period you examined in the
24 preliminary phase.

25 Any executive dreads this part of the job,

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1 but I have to tell you it really hurts in Buffalo, New
2 York, where we have a nearly eight percent
3 unemployment rate, and there is little choice for
4 those furloughed employees.

5 While some of the folks would have lost
6 their jobs as we became more cost efficient, most of
7 them would be working for us today if respondents had
8 competed fairly.

9 Let me talk about production costs for a
10 moment. IIMAK is cost competitive with other coaters,
11 and we have made several deliberate and strategic
12 decisions to be so. We have displaced older, less
13 efficient production equipment and installed and run
14 state-of-the-art machinery as you saw demonstrated by
15 Vince Dowell.

16 It is important for the Commission to
17 understand the capacity increases reported in our
18 questionnaire reflect investment in highly efficient,
19 multi-stage coaters which displace older coaters. We
20 made these investments to reduce our variable cost
21 more so than to increase our capacity.

22 At today's prices, the older coaters could
23 not provide certain TTR profitably, and are therefore
24 commercially obsolete.

25 Respondents' assertions that we hurt

1 ourselves by overexpanding in relation to demand, to
2 demand changes, is 180 degrees wrong. Without these
3 investments, our condition would be much worse.

4 IIMAK is a privately held company, and we do
5 not publish our financial statistics, so I cannot get
6 into the details here. However, we have included all
7 data on our questionnaire response, and this has been
8 verified recently by your staff. As you will see, the
9 results are unambiguously clear. Declining financial
10 performance in any major indicator you want to look at
11 I do not exaggerate when I say the injury we have
12 already suffered is far beyond material. I would also
13 challenge any manufacturer that realizes over 20
14 percent price reductions over three years to show
15 otherwise.

16 It also is clear that IIMAK is not alone in
17 this regard, as I can fully understand the staff's
18 findings in the public version of their report that
19 "per unit profitability decreased due mainly to
20 decrease in the average unit selling price despite
21 continuously decreased per unit total cost."

22 And it follows quite clearly why, as the
23 staff found, that the industry's operating income
24 decreased over the period of investigation. These
25 decreases were clearly tied by the staff to the

1 negative effects of decreased sales prices.

2 What is most frustrating to my company and
3 its employees is that we are in peril despite our
4 diligent efforts to meet the competition in every
5 dimension. Our product performance fully meets or
6 exceeds industry standards. Our customer service is
7 the industry's high water mark. Our investments in
8 plant and equipment are unequalled in the United States
9 along with our employees' willingness, ability, and
10 attitude to generate the productivity gains expected
11 from these investments, and permit IIMAK to compete at
12 a cost level with the world's best, yet our very
13 existence is challenged by the actions of the
14 respondents.

15 Finally, I want to take a minute to voice my
16 anger with the respondent ITW. This is my first
17 experience with the process of antidumping petitions.
18 While I understood that respondents would take the
19 gloves off, I was not prepared for a respondent like
20 ITW to submit a brief that goes far behind the biasing
21 of facts. I have thoroughly reviewed ITW's public
22 briefing to this Commission, and it contains
23 statements that are blatantly wrong.

24 In some cases, I believe they know certain
25 statements are wrong, and in others, they have no

1 access to information. Yet they draw conclusions
2 about IIMAK management, and they paint a graphic
3 picture of our incompetence based upon imagination and
4 misrepresentation.

5 For example, ITW makes a point that IIMAK
6 invested in two Italian manufactured coating machines
7 for processing colored TTR. They contend these
8 machines sit idle as the color market did not develop,
9 and hence contribute to IIMAK's financial woes.

10 I showed ITW these machines during a due
11 diligence process that was conducted during the fourth
12 quarter of 1999. I explained their utility, their
13 full functionability. In fact, these machines are
14 running seven by 24, producing certain TTR virtually
15 all the time. They are the machines described by
16 Vince and operated by Louis.

17 I will not grace ITW's brief with further
18 rebuttal, but let me say this. ITW tried very hard to
19 purchase my company. It liked IIMAK's business, and
20 was eager to add it to ITW's portfolio. IIMAK is and
21 has been a deserving leader, and ITW knew this to be
22 true. I am sure of this. I lead the sale of IIMAK.

23 Now, let me address issue number three, the
24 future of the domestic TTR industry. The U.S. TTR
25 industry is in a vulnerable state, and the near future

1 for TTR from today's vantage point is not good, to say
2 the least. Bleak perhaps is a better word.

3 Given the past years of insidious pricing
4 attacks, IIMAK's concentration in TTR business,
5 IIMAK's relative size, and the need for it to operate
6 with reasonable profit for its lenders and its
7 investors, IIMAK is in peril. As the largest producer
8 in the United States, this is also important for the
9 industry as a whole. We are a great target.

10 We have had to curtail and cancel important
11 long-term plans for additional strategic investments.
12 We also have had difficulty in securing financing
13 which has had other significant but confidential
14 implications which are outlined on pages 57 through 59
15 of our brief.

16 Respondents, on the other hand, appear
17 poised to pass on the U.S. market to an even more
18 aggressive degree. Exports to the United States will
19 almost certainly increase absent an antidumping order.
20 Respondents collectively have substantial available
21 capacity. The western European TTR market is fairly
22 saturated, particularly France, as is Japan and Korea.
23 So it is highly likely that at least some portion of
24 this material will be destined for the United States,
25 which remains the largest TTR market with homogeneous

1 distribution, and little barrier to entry.

2 There already has been a substantial
3 increase in volume of exports to the United States and
4 there is nothing stopping them from increasing. For
5 the last three years the respondents have led prices
6 deeply down and increased market share. They have
7 demonstrated not only a staggering willingness to
8 undersell, but an ability to do it over an extended
9 period of time.

10 The staff report finds that, "Prices for
11 certain TTR clearly fell over the period of
12 investigation, and there was a clear pattern of
13 subject imports underselling domestic TTR."

14 There is every reason to believe that will
15 continue. They will continue these practices. The
16 Armor brief states that U.S. industry price decreases
17 reflect raw material cost increase and productivity
18 increases, and for this reason subject import
19 competition is not the cause of depressed prices.

20 With respect to IIMAK operations, this is
21 just simply not true. First, declines in units raw
22 material costs accounted for only 25 percent of total
23 unit operating cost declines from 2001 to 2003. And
24 in the case of polyester film, which is the most
25 significant raw material, prices were driven down

1 clearly by the need of TTR manufacturers who were
2 themselves under severe price pressure.

3 Second, while there were some decreases in
4 cost due to productivity improvements, most of our
5 cost-cutting measures were in response to declining
6 prices. We were forced to reduce employment, scale-
7 back overhead, and defer capital and research
8 investments, measures that were not a reduction, but
9 in fact the effect of jeopardizing our long-term
10 competitiveness.

11 Finally, I urge you to take a look at our
12 financials, and particularly consider the details of
13 the vulnerable position we are in. The real and
14 imminent effect of respondents' actions on IIMAK is
15 not in doubt. Without the discipline of antidumping
16 duties, our existence as a company and the jobs of our
17 employees are at grave risk.

18 I thank you for your time and I will welcome
19 any questions you might have.

20 I would like to turn this over to my
21 colleague, David Golub.

22 MR. GOLUB: Good morning, Commissioners. My
23 name is David Golub. I am a senior advisor of Centre
24 Partners, a New York-based private investment firm and
25 the largest shareholder of IIMAK. I have been

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1 employed by Centre and its affiliate since 1988, and
2 from '95 through last year I served as managing
3 director.

4 Centre Partners acquired IIMAK early in
5 2000, and I held the position of chairman of IIMAK
6 from then through December of 2003. Frankly, I hadn't
7 planned on being here today. But over the weekend I
8 read ITW's brief, and decided that the lies and
9 misrepresentations in it needed to be rebutted, and I
10 asked to be here and prepared this testimony.

11 Let me begin with some background. During
12 my 16 years in the investment business, I have
13 personally been involved with several dozen companies
14 in a wide range of industries. Centre Partners
15 investments have historically done very well,
16 generating very attractive returns.

17 In my business, there are two drivers of
18 success; the first is understanding the changing
19 dynamics of industries; and the second is evaluating
20 the strength of management teams. Both of these skill
21 sets are extremely relevant to my perspective on this
22 case.

23 With respect to the TTR industry, it is very
24 clear to me that over the last few years a series of
25 offshore producers have been dumping product at ever

1 lower prices to gain market share, and I believe, to
2 eliminate or acquire cheap U.S. competitors.

3 I have particular insight into the behavior
4 of the Korean respondent, ITW. ITW was Centre's
5 competition in our effort to buy IIMAK from PAXAR in
6 late 1999, and early 2000. In the course of our due
7 diligence, we learned how vast ITW's corporate empire
8 is, and how it's been built through an acquisition
9 strategy. We learned how, in 1997, ITW displaced DNP
10 as a supplier to Advent, to enhance their U.S.
11 position in TTR, a business they subsequently
12 purchased in 2000.

13 We learned how they developed a joint
14 venture with SKC in Korea in 1999 to backward
15 integrate into TTR film coating, and we learned how
16 they wanted to buy the U.S. market leader, IIMAK.

17 In fact, we learned that they made an offer
18 to PAXAR at the same time that we made ours that was
19 actually comparable to the winning bid that we
20 presented.

21 As a consequence of this, I find the
22 following statement, and I am going to quote it
23 verbatim in ITW's brief, to be completely
24 disingenuous. ITW states, "It learned firsthand about
25 IIMAK's business and management deficiencies during a

1 number of private business negotiations, and as a
2 consequence rejected opportunities to partner with
3 IIMAK in 2000 and earlier."

4 The fact is that ITW was and is a frustrated
5 and jilted suitor. They were rejected by Arthur
6 Hershaf, chairman and CEO of PAXAR, and later, and
7 I'll relate this story in a few moment, they were
8 rejected by me.

9 Let them assert, you are in this hearing
10 under oath, that they didn't submit a proposal to buy
11 IIMAK in late 1999, early 2000.

12 Post Centre's agreement to buy IIMAK, ITW
13 used tactics completely consistent with the sleazy
14 lies and misrepresentations in their brief. They used
15 the confidential information gleaned from their review
16 of the IIMAK operation, including as Dick Marshall
17 alluded to, site visits and management interviews, to
18 weaken the company in ways that have gone far beyond
19 fair competition.

20 This has taken the form of aggressively, and
21 as we assert, illegally reducing U.S. slit roll
22 pricing, targeting IIMAK customers known to ITW as a
23 consequence of its due diligence, repeatedly leaking
24 confidential information or misinformation about
25 IIMAK, including at one time misinformation that ITW

1 was buying the company, the leveraging of below market
2 film contracts through the profit sharing agreement
3 with SKC, and the unprofessionally abrupt termination
4 of a supply arrangement with IIMAK in Europe.

5 The net effect has been extremely injurious
6 to IIMAK's financial health.

7 A second dimension of ITW's claims that I
8 would like to address is the soundness of IIMAK's
9 management team. Centre Partners is the largest
10 shareholder of IIMAK. As chairman, I have full
11 authority to hire and fire all of IIMAK management.

12 The claims asserted by ITW's counsel in
13 their brief related to IIMAK purported mismanagement
14 rank right up there in credibility with statements by
15 Martha Stewart.

16 Apparently ITW has not yet learned that the
17 era of corporate lying is behind us.

18 Let me make two points on this.

19 First, ITW makes a series of claims
20 pertaining to what they call "avoidable marketing
21 disasters." These claims are just plain wrong.
22 Through a series of acquisitions and partnerships
23 during the POI, with Acucote with Precision Ribbon and
24 others, IIMAK's management succeeded in personally
25 mitigating the impact of dumping by ITW and other

1 foreign respondents.

2 All of the acquisitions and partnerships ITW
3 references, I know all the facts about these, I would
4 want IIMAK to do again if we could roll back the
5 clock. The fact is that ITW did not and does not view
6 IIMAK as a disaster waiting to happen. In fact, as
7 recently as last spring one of the senior executives
8 of ITW called me, and I still have the message slip on
9 this, to inquire about Centre's interest in selling
10 IIMAK to ITW.

11 Because of our faith and confidence in
12 IIMAK's management, our faith and confidence in the
13 likely success of an antidumping action based on the
14 facts, and our continuing distrust of ITW for all the
15 reasons I mentioned previously, we decided not to
16 pursue the discussions ITW was so eager to renew.

17 The second point I would like to make is
18 very recent, in December 2003, I stepped down as
19 chairman of IIMAK, and in recognition of Dick
20 Marshall's extraordinary leadership, I personally
21 nominated Dick to succeed me.

22 The board carried the motion unanimously. I
23 would respectfully suggest to you, the Commission,
24 that this is not typical recognition for "gross
25 underperformance." It is my view that IIMAK

1 management team is among the strongest I have worked
2 with in over 16 years as an private equity investor,
3 and my colleagues at Centre Partners agree.

4 Thank you very much.

5 MR. CUNNINGHAM: I want to follow that with,
6 I guess, somewhat more boring view of some legal
7 issues here.

8 I want to address two particular legal
9 issues. One is the definition of the U.S. industry,
10 and in particular, the question of whether slitters
11 should be included in the same industry. We have what
12 we call coaters by which we mean fully integrated
13 companies that do the ink making and the coating of
14 the jumbo rolls as well as the slitting operations.

15 I'm not going to spend a lot of time on the
16 facts of this because I think Vince Dowell's
17 presentation today was pretty dramatic on all of the
18 criteria that the Commission normally looks to to
19 determine whether one company should or should not --
20 one type of company should or should not be in the
21 industry.

22 Coating is a vastly more costly, vastly more
23 complex, and employment-heavy operation than is
24 slitting. Contrast that to capital investments, the
25 fact that the Commissioners have given particular

1 weight to in the past, research and development, where
2 there is essentially no research and development in
3 the slitting end, and employment are especially
4 striking.

5 A short word of question about the value
6 added data. Remember, the value added data are
7 somewhat distorted by two factors here. One is that
8 all the slitters that you are talking about -- that
9 gave information to the Commission -- are related
10 companies to the companies from which they acquire the
11 coated jumbo rolls. Therefore, you're looking an
12 intra-company transfers.

13 And moreover, the premise of this case and
14 the Commerce Department's findings is that those jumbo
15 rolls are being dumped, and some of them at very
16 substantial margins, and that distorts the value added
17 comparison.

18 Here, when you look at this, the traditional
19 Commission practices are so straightforward, I think
20 you will find this is at least a stronger case for
21 finding U.S. slitters not to be in the domestic
22 industry as was presented with respect to the U.S.
23 converters in the recent indigo case, 1999 indigo
24 case.

25 I would also urge you to look at the

1 Commerce Department's analysis of many of these same
2 factors in its discussion of who should be in the
3 scope in the sense of substantial transformation.

4 Looking at those factors, they found that
5 slitting did not constitute for antidumping purposes a
6 substantial transformation.

7 Now, the other aspect of this who is in the
8 industry issue is the related party question. I'm not
9 going to spend much time on that because, of course,
10 here the slitters who are related to the foreign
11 exporters are related parties both in the sense of
12 corporate relationship and in the sense of exclusive
13 supply relationship.

14 These U.S. companies are in fact the arms by
15 which the foreign companies participate in the U.S.
16 market at the level at which competition really
17 occurs; namely, in the sales of slit material. It is
18 as integrated operators in which the predominant locus
19 of profitability is at the coating end, and the
20 slitters simply provide the tag end, binder
21 manufacturing and marketing.

22 The slitters, therefore, are -- essentially
23 they live to make the corporate entity profitable and
24 they are not really separate companies.

25 Including them as U.S. producers in any part

1 of the Commission's analysis will be terribly
2 distorted. They benefit from the dumping. They are
3 not injured by the dumping. They get the cheap
4 material you saw. Mr. Klett's charts dramatically
5 showed that fact.

6 So you should eliminate them from financial
7 performance, market share, underselling or whatever
8 just as we have done in our figures.

9 Let me turn now to the second issue I want
10 to cover which is one that appeared to trouble
11 Commissioner Miller in particular at the preliminary
12 stage, namely, whether competition should be evaluated
13 at the jumbo roll stage or at the slit stage, the
14 finished TTR stage.

15 The facts here are not in dispute. The
16 imports are or substantially all in the form of jumbo
17 rolls, but the only use of the jumbo rolls, the only
18 use of the jumbo rolls is to make slit TTR.
19 Incidentally, both ITW and Armor acknowledge this in
20 their brief.

21 The vast majority of imported jumbo rolls
22 are slit and packaged for sale as finished TTR by the
23 U.S. affiliates of the foreign respondents.

24 And finally, the Department of Commerce has
25 determined, as I mentioned a moment ago, that a jumbo

1 roll made in a respondent country is not for
2 antidumping purposes substantially transformed when it
3 is slit and packaged in another country.

4 Thus, imports from France of finished TTR
5 that was slit and packaged in France from a jumbo roll
6 made in Japan is a Japanese import of subject
7 merchandise. The same logic applies to the Commission
8 staff, which is to determine where the locus of
9 competition is. It is in the sale of the finished
10 product.

11 This set of facts is not a new one for the
12 Commission. You have considered similar, but not
13 quite as strong from my side of the argument, facts in
14 three recent cases: in synthetic indigo from China in
15 1999, DRAMs from Taiwan in 1999, and DRAMs in 2003.

16 In each of these cases you took the position
17 correctly where the semi-finished and finished
18 products were both in the scope, which is true of all
19 three of those cases, and where the predominant, in
20 the case of indigo, or only in the case of DRAMs use
21 of the imported semi-finished product was to make the
22 finished product, then competition should be evaluated
23 at the level of sales of the finished product.

24 And the sales of imports, sales of
25 merchandise slit from subject imported merchandise was

1 the same of imports.

2 Here, you are looking at the level of
3 finished TTR. Note also that these cases do not turn
4 on whether the finishing companies were found to be
5 members of the domestic industry.

6 In Taiwan DRAMs, the assemblers were found
7 to be part of the U.S. industry, while in indigo the
8 converters were not. In each case product made from
9 subject imports was deemed a sale of imports.

10 Indeed, this case is stronger for that
11 conclusion than indigo because here the only use of
12 the imported product is to make the finished or more
13 processed product, and it's stronger than both indigo
14 and the DRAM cases because here the finishing, that is
15 the slitting and packaging operations, are performed
16 in the U.S. by affiliates of foreign producers of the
17 imported less finished merchandise.

18 And of course, this is the only way to
19 sensibly analyze these markets. All of these
20 companies, whether U.S. or foreign, ultimately serve
21 the finished TTR market as you saw in the marketing
22 charts displayed by Mr. Kingdon.

23 The only meaningful competition occurs at
24 that level. Those are sales of imports at that level
25 by your past decisions. That's where you analyze the

1 competition. That's the way our data are all set up.
2 To the extent that the staff data is configured
3 differently, we will be happy to work with the staff
4 to get them on the same wavelength as we are if you
5 agree.

6 Let me turn now to Ms. Kimble for another
7 legal issue.

8 MS. KIMBLE: Good morning, the final two
9 issues we would like to discuss are like product and
10 negligibility. The Commission correctly decided in
11 the preliminary phase that certain TTR in jumbo roll
12 form belongs in the same like product as slit fax TTR.
13 No information developed in this final phase
14 undermines that finding.

15 The more detailed record now before you
16 demonstrates, however, that slit fax is not part of
17 the same like product.

18 At the outset, I would like to make clear
19 that slit fax TTR is not in the scope of the
20 investigation. Facsimile TTR are mentioned in the
21 scope merely to illustrate that one end use is -- what
22 one end use is for TTR in general. It's not an end
23 use for certain TTR.

24 The question thus before you is whether to
25 extend the like product beyond the scope to include

1 slit fax TTR.

2 Since the preliminary phase of this
3 investigation, you have issued an opinion in aluminum
4 plate from South Africa, which is highly instructive.
5 As you noted in that investigation, when reaching out
6 beyond the scope, the question is not whether a
7 continuum of products exists, but rather where any
8 continuum ends.

9 Respondents' reasons for including slit fax
10 TTR in the like product could easily justify including
11 a myriad of other TTR products, and indeed other
12 pricing products not limited to TTR in the like
13 product. The scope, as accepted by Commerce, draws a
14 reasonable demarcation between TTR products and you
15 should not extend the like product.

16 Whether the Commission uses in its
17 semifinished product analysis or looks at this
18 question by comparing slit products, the outcome
19 should be the same. Slit fax TTR is not part of the
20 like product. Jumbo rolls are not dedicated to the
21 production of slit fax TTR, but overwhelmingly go to
22 make slit certain TTR. Slit certain TTR is used in
23 bar coding equipment while slit fax TTR can only be
24 used in fax machines, and as demonstrated by Mr.
25 Dowell, only after it undergoes significant processing

1 that slit certain TTR does not use, and we have some
2 examples for you.

3 Moreover, the price of slit fax TTR is
4 substantially higher than slit certain TTR and
5 dramatically higher than TTR in a jumbo roll form.
6 Keep in mind that the price of slit fax TTR is
7 artificially inflated by the presence of patents
8 protecting its design.

9 Thus, the factors that the ITC traditionally
10 considers in evaluating the question of like product
11 show that slit fax TTR does not belong in the same
12 like product as the in scope merchandise.

13 But we are not the only ones who should be
14 speaking on this subject. In particular, counsel for
15 DNP, the largest producer and importer of slit fax TTR
16 will be testifying this afternoon. As the largest
17 player in this market, DNP clearly has a good
18 viewpoint for evaluating this question. We suggest
19 that you ask them how they testify as to slit fax TTR.

20 Should you disagree with our assessment,
21 however, we respectfully submit that you must not
22 allow this decision to cloud your negligibility
23 analysis. The statute instructs the Commission to
24 assess the negligibility of merchandise corresponding
25 to a domestic like product. The like product is

1 defined by reference to the scope; in other words, by
2 definition, the imports in the scope are the
3 merchandise corresponding even to an expanded like
4 product.

5 You should reject respondents boot-strapping
6 by which they expand the like product beyond the
7 scope, and then use that extended like product to
8 enlarge imported merchandise that you consider. Such
9 an approach would encroach upon questions decided by
10 Commerce.

11 In short, the in-scope imports are not
12 negligible. Even if you look at a broader category of
13 imports, however, the data collected by the Commission
14 indicates that these rapidly increasing French imports
15 likely have already passed the negligibility
16 threshold. If not, they will do so imminently.
17 Therefore, none of the imports are negligible for
18 purposes of this final phase of the investigation.

19 Thank you.

20 CHAIRMAN OKUN: Thank you.

21 MR. CUNNINGHAM: That concludes our
22 presentation. I would only --

23 CHAIRMAN OKUN: Just in time.

24 MR. CUNNINGHAM: Pardon?

25 CHAIRMAN OKUN: Just in time.

1 MR. CUNNINGHAM: Just in time, and that
2 brings me to the one thing I want to say to you. Any
3 criticism of IIMAK management must run head on into
4 the amazing managerial accomplishment you have seen
5 today, which is bringing this multifaceted panel in on
6 time.

7 CHAIRMAN OKUN: All right, we will give you
8 points for that.

9 Before we begin our questioning this
10 morning, I do want to thank all the witnesses for
11 being here, for all the members of the industry,
12 employees, and you, Mr. Golub, for being here, taking
13 time from your business to help us better understand
14 this industry, and I very much appreciate your
15 testimony.

16 And I am going to begin the questioning this
17 morning. I would like to ask witnesses when you
18 respond if you could just please state your name,
19 there is a lot of tables of you, and it helps the
20 court reporter as well if you can just restate your
21 name for us.

22 So many issues, so little time as we have
23 found. It's hard to even decide where to start.
24 There has been very interesting dynamics going on in
25 the industry which I'm sure we will spend a lot of

1 time on, but let me try to clear up a couple of little
2 under-brush items before I start.

3 And Mr. Cunningham, I appreciate your
4 responses in the beginning on critical circumstances.
5 I just want to make sure I understand.

6 Are you saying you are not alleging critical
7 circumstances with regard to either of the two
8 companies? You said DNP, and I wasn't sure.

9 MR. CUNNINGHAM: Oh, we have only taken that
10 position as to DNP.

11 CHAIRMAN OKUN: Okay, so for Union?

12 MR. CUNNINGHAM: For Union, the statistics
13 are different than DNP, and we would maintain that
14 it's still appropriate for you to consider critical
15 circumstances as to them.

16 CHAIRMAN OKUN: Okay. So for purposes of
17 posthearing you will be providing information on --

18 MR. CUNNINGHAM: Correct.

19 CHAIRMAN OKUN: Okay, okay. I wanted to
20 make sure I understood what your position was on that.
21 Okay, that's helpful.

22 Then let me, I guess, then turn to the
23 issues of the slitters and converters, and again we
24 noted in our preliminary that we regard it as a close
25 call. Commissioner Miller came down differently. You

1 have provided some more information this morning. But
2 I just want to make sure that I understand this, Mr.
3 Cunningham, in terms of the value added, your position
4 on that, because I know you said both today and in
5 your brief that you believed those figures to be, I
6 guess, inflated because of how they are positioned?

7 MR. CUNNINGHAM: Yes, remember that whatever
8 one may say about the data, the data nevertheless show
9 in every case that the value -- that the cost of
10 coating and ink making is greater, and in most
11 companies quite substantially greater than the
12 slitting.

13 Secondly, value added does impress -- has
14 not been the primary issue to which the Commission has
15 looked. The Commission has placed more emphasis on
16 investment for example, capital investment.

17 Thirdly, as to the value added data coming
18 to your specific question, there is always difficulty
19 in evaluating intra-company data, and unfortunately
20 here all of the slitters who reported in response to
21 your questionnaire were affiliates of the foreign
22 respondent coaters. And so put a question mark there.

23 Secondly, there is an inherent distortion to
24 the extent that the value of the coated jumbo roll is
25 understated because it's -- it's understated as a cost

1 to the slitters because it gets it at a dumped price.
2 And it would be an interesting exercise for you to
3 look at the margins of dumping and see whether the
4 slitters that have the higher margins of dumping have
5 the lower proportion of coated cost, and -- well, I
6 will just leave it at that because I don't want to get
7 into confidential information.

8 CHAIRMAN OKUN: Okay. Well, perhaps in
9 posthearing briefing we can address that. And what I
10 plan to look at it and have been trying to look at is
11 this in other cases, and I know you cite synthetic
12 indigo, but we have had other cases where I think we
13 have some similarly situated industries doing
14 something, converting something --

15 MR. CUNNINGHAM: Right.

16 CHAIRMAN OKUN: -- where, you know, think
17 value added number is pretty high in relation -- I
18 mean, it's up there in relation to --

19 MR. CUNNINGHAM: Right.

20 CHAIRMAN OKUN: -- these other cases, so I
21 guess for posthearing I would like to see you look at
22 that analysis.

23 MR. CUNNINGHAM: Yes.

24 CHAIRMAN OKUN: Understanding that you think
25 this is important.

1 MR. CUNNINGHAM: Right, the value added, and
2 I acknowledge the value added relationships are higher
3 here than in some of the cases in which you found the
4 finishing part of the industry, finishing companies
5 not to be part of the industry.

6 On the other hand, the other categories are
7 at least as disparate in this case, capital investment
8 for example, or more disparate, research and
9 development for example, than in other cases you have
10 looked at. We always do balancing. We always do
11 balancing on this issue.

12 CHAIRMAN OKUN: Right.

13 MR. CUNNINGHAM: And our job to you is to
14 point out, you know, where the various factors are and
15 then you do the balancing.

16 CHAIRMAN OKUN: Okay. Well, again, I will
17 continue to work out --

18 MR. CUNNINGHAM: Could I say one thing on
19 this --

20 CHAIRMAN OKUN: -- of the obvious one.

21 MR. CUNNINGHAM: This issue is of somewhat
22 diminished importance in this case because of the
23 particular way in which the injurious impact is felt
24 in this case. This case is a 21 percent price decline
25 over the period. When you are looking at a price

1 decline that has occurred in the market for certain
2 TTR, not in the market for slit fax, then the fact
3 whether you slit fax in or out of the industry doesn't
4 really affect the major thing you need to look at in
5 this case, which is in the certain TTR market you have
6 had a 21 percent price decline and there is no other
7 explanation for it than that imports at least
8 contributed very substantially, and we would maintain
9 is the major cause, of that.

10 CHAIRMAN OKUN: Okay. Well, we are
11 obviously going to spend a lot of time on that
12 particular issue. But let me just -- one other
13 question that I am trying to make sense of with regard
14 to slit fax TTR, and I guess I will turn to your
15 industry folks who testified on this, which is, for
16 the jumbo rolls that are in the scope, and again the
17 scope references facsimile, those jumbo rolls, does a
18 jumbo roll become slit fax TTR at its assemble roll
19 stage, or by virtue of the processing?

20 Because, again, I mean, as I understood it,
21 or thought I understood it, the jumbo rolls can be
22 made either into certain TTR or into slit fax --
23 certain slit TTR or certain slit fax TTR -- slit fax
24 TTR, there we go, but it's the processing and whatever
25 that is added to it that imparts the fax TTR, and I

1 just want to make sure I understood whether it's the
2 same jumbo rolls that get cut into either of these,
3 but it doesn't matter. So help me out, Mr. Marshall.

4 MR. MARSHALL: Chairman Okun, I am Dick
5 Marshall. The answer to that is -- let me start with
6 the jumbo rolls.

7 In certain TTR there are several ink
8 formulations that each of the companies that compete
9 have. Those ink formulations are determined at the
10 ink manufacturing stage that Vince Dowell had pointed
11 out, and then those properties of inks are laid down
12 in the coating process, and so what that jumbo does
13 from a print performance point of view is determined
14 through formulation, and then subsequently coating.

15 How that ink is then used is dependent upon
16 how you slit it and for what machines it's used in. A
17 certain part of certain TTR are ink formulations that
18 can print on label stocks that are used in bar coding
19 imaging, that tend to be a little rougher surface
20 stocks, and plain paper, which is the media used
21 almost exclusively in thermal transfer fax machines.

22 So the surface characteristics of those two
23 materials are similar. However, one is a label,
24 generally adhesive back, have some kind of
25 identification on demand put on some kind of an image,

1 and the other is a fax machine sitting waiting to
2 produce text on plain paper.

3 Because those inks can perform on either of
4 those two, that's why we included that jumbo type as
5 certain TTR.

6 Once you take a jumbo and slit it for either
7 that label manufacturing purpose or for the fax
8 purpose, they are no longer fungible.

9 CHAIRMAN OKUN: Okay, I understand that
10 point. But when someone is purchasing the jumbo roll
11 --

12 MR. MARSHALL: Right.

13 CHAIRMAN OKUN: -- do they purchase a jumbo
14 roll from a particular manufacturer because they know
15 that that is -- its ink formulation is for -- better
16 for slit fax TTR as opposed to buying this set of
17 jumbo rolls for certain TTR, certain slit TTR?

18 MR. MARSHALL: I hope I heard the question
19 right.

20 All of the respondents have the capability
21 of producing an ink that can serve the common purpose.
22 I don't know that they would all know that a buyer is
23 going to use it for one reason or another. However,
24 generally I would think we would. I can't answer for
25 them. But I know that if somebody were buying jumbo

1 rolls from us for slit fax, that I would understand
2 that.

3 In the United States, we don't sell jumbos
4 for conversion into fax. In other parts of the world,
5 we do sell jumbos that can be converted into fax, and
6 I can identify the customers that do that.

7 MR. CUNNINGHAM: Are you saying that some
8 jumbos can't --

9 CHAIRMAN OKUN: Mr. Cunningham, using your
10 microphone.

11 MR. CUNNINGHAM: Are you saying some jumbos
12 can't be converted into fax?

13 MR. MARSHALL: Some jumbos you wouldn't
14 convert into fax because the ink characteristics
15 wouldn't print in a fax machine, and of the certain
16 TTR we have identified there are wax/resin products
17 that would not work in a fax machine because of the
18 melt characteristics of the ink and that sort of
19 property.

20 CHAIRMAN OKUN: Okay. Mr. Kingdon, you
21 wanted to add something?

22 MR. KINGDON: Chairman, could I add one
23 comment?

24 I think, as Dick Marshall said, the wax
25 formulation for fax, for plain paper, very few bar

1 code TTR applications use the plain paper equivalent.
2 So in our business the fax formulation that we use is
3 essentially dedicated to fax.

4 Okay, there is a tiny, very small single
5 percentage degree of overlap because that formulation
6 is not used in bar codes. But when you ask us could
7 you use the same formulations in the two applications,
8 it can be done, okay, and some of the respondents do,
9 and we have a very minor overlap, but simplistically
10 no, they are not the same.

11 CHAIRMAN OKUN: Okay, I appreciate that, all
12 those answers. I see that my time has come up before
13 I got out of the weeds, I would say.

14 Vice Chairman Hillman.

15 VICE CHAIRMAN HILLMAN: Thank you very much,
16 and I would join the Chairman in thanking you all for
17 taking the time to be with us this morning.

18 Let me just, if I could, stay for a minute
19 with this just to make sure I understand it.

20 As I understood your testimony then, Mr.
21 Kingdon, what you are saying is that yes there are
22 certain ink wax formulations that would go on that
23 would be specific to fax TTR and certain ink wax
24 formulations that would be specific to bar code, or
25 something other than fax?

1 MR. KINGDON: That's correct.

2 VICE CHAIRMAN HILLMAN: Okay. So that when
3 I look at a particular jumbo roll with this particular
4 ink wax formulation I, in essence, know that it is
5 likely to be or dedicated for fax use, and that there
6 are certain others over here that are going to be for
7 bar coding?

8 MR. KINGDON: If you're sitting in the
9 United States.

10 CHAIRMAN OKUN: Okay.

11 MR. KINGDON: The issue that in less
12 sophisticated markets, we sell into South America,
13 into Europe, they use more uncoated paper, and so they
14 use some of those formulations for bar code
15 applications. But in the United States the vast
16 majority, 90 plus percent is resin-enhanced wax, which
17 is a different formulation from the pure wax
18 formulation. It needs more head, and the TTR fax
19 printer simply cannot -- it will not work well in the
20 TTR fax.

21 VICE CHAIRMAN HILLMAN: Okay, so the portion
22 of the jumbo rolls that you produce that would be
23 produced with this wax/resin formula that is suitable
24 for --

25 MR. KINGDON: Resin-enhanced wax. Wax

1 formula.

2 VICE CHAIRMAN HILLMAN: That is suitable for
3 use in a fax machine, again I'm not trying to ask for
4 proprietary information, but there would be a certain
5 portion of all of the jumbo rolls that you produce --

6 MR. KINGDON: Yes.

7 VICE CHAIRMAN HILLMAN: -- that are
8 basically dedicated to fax?

9 MR. KINGDON: That's essentially correct .

10 VICE CHAIRMAN HILLMAN: Okay.

11 MR. KINGDON: Yes.

12 VICE CHAIRMAN HILLMAN: Okay. And again,
13 I'm not asking -- if you can in the posthearing want
14 to put some numbers on that in terms of the jumbo
15 rolls that you produced, I just want to make sure I
16 understand how it works, the portion that are of a
17 ink, wax/resin formulation that means that they are to
18 be used on the fax side.

19 MR. CUNNINGHAM: We'll give you that.

20 VICE CHAIRMAN HILLMAN: Okay. All right,
21 thank you.

22 Then I guess if I can sort of go on with
23 this just sticking a little bit on trying to
24 understand the like product issues on the fax side.

25 Mr. Dowell, you had testified about the

1 product that ultimately is slit and used for fax
2 purposes. I now understand that it comes from a
3 particular kind of jumbo roll, but if I then go on
4 from there.

5 Do you have a sense of the portion of it
6 that is then ultimately put into a plastic cassette
7 as opposed to the portion of which is sold just with
8 the, if you will, the cardboard tubes or whatever you
9 call them on either end that a consumer would
10 themselves put into their own, you know, fax machine?
11 What portion of it do you add a plastic cassette to
12 it?

13 MR. DOWELL: I would like to go back and
14 confirm the numbers.

15 VICE CHAIRMAN HILLMAN: Okay.

16 MR. DOWELL: We can get you those numbers.

17 VICE CHAIRMAN HILLMAN: Okay.

18 MR. DOWELL: Because I don't have the -- I
19 mean, I have a rough sense, but I think it might be
20 better if we could --

21 VICE CHAIRMAN HILLMAN: And is it most of
22 them or --

23 MR. DOWELL: Most, more than half, yes.

24 VICE CHAIRMAN HILLMAN: More than half.

25 Okay. I mean, you mentioned if you had the silver

1 strip it tells the machine that it's reached the end
2 of the row. Do you have a sense of what portion you
3 have that added to it?

4 MR. DOWELL: That would not be that
5 significant.

6 VICE CHAIRMAN HILLMAN: Okay. Okay. And
7 are the same slitting machines used to produce fax
8 product versus bar code product?

9 MR. DOWELL: Yes, they can be. They need to
10 be tooled slightly different, but essentially you can
11 use the same equipment.

12 VICE CHAIRMAN HILLMAN: Okay.

13 MR. DOWELL: The only exception is in the
14 end mark. It takes an additional piece of equipment
15 added onto it to be able to do the end mark.

16 VICE CHAIRMAN HILLMAN: Okay. You are
17 saying you can?

18 MR. DOWELL: You can.

19 VICE CHAIRMAN HILLMAN: Do you do that?

20 MR. DOWELL: We can do it, yes.

21 VICE CHAIRMAN HILLMAN: You do, you do use
22 the same slitting machines to produce fax product and
23 bar code product?

24 MR. DOWELL: Yes, we do.

25 VICE CHAIRMAN HILLMAN: Okay. And give me a

1 sense of the number of employees. Do you have a sense
2 of the portion of your employees involved in coating
3 as opposed to the portion of employees involved in
4 slitting?

5 MR. DOWELL: Yes, it's --

6 MR. MARSHALL: Vice Chairman.

7 VICE CHAIRMAN HILLMAN: Yes. Mr. Marshall,
8 go ahead.

9 MR. MARSHALL: Before we answer that, the
10 one thing that would, I think, be important to do is
11 there are entire departments that are not part of the
12 direct labor function that would not be required if
13 you didn't coat. For example, our R&D department is
14 there to invent formulations, and all the laboratory
15 people are there to prove them out and test them out.

16 So perhaps in a post briefing we should
17 itemize all of those for you so that you get a feel
18 for the entire population of IIMAK that's dedicated to
19 the front-end of that business.

20 VICE CHAIRMAN HILLMAN: I understand. I
21 mean, obviously one of the things I am trying to
22 understand is, if you will, the relative labor
23 intensity of coating as opposed to slitting, and
24 that's what I am trying to get a better feeling for.

25 Of those two operations, which would you --

1 again sort of stepping back and looking at it, which
2 is more labor intensive?

3 MR. MARSHALL: There is actually a bit more
4 labor on a per MSI basis slitting than there is in
5 coating because the key performance functions of the
6 coater are designed into the automation of the
7 machine.

8 VICE CHAIRMAN HILLMAN: Okay. I mean, I
9 will be honest, and part of it is I would like, if you
10 can, you were talking about sort of generally overall
11 trends in the industry. I will say this. Things have
12 come to us a little bit differently than what we
13 normally see in industries in which there is some
14 production done overseas and some done in the United
15 States. It is more typical that the labor intensive
16 work is done in the overseas market, and the less
17 labor intensive, you know, production typically ends
18 up being done in the United States.

19 And here we are looking at something that
20 looks to us to be the reverse of that.

21 MR. MARSHALL: Yes, I think a bit of --

22 VICE CHAIRMAN HILLMAN: Why is that?

23 MR. MARSHALL: A little explanation on that
24 is if you look at the production planning models of a
25 business like ours that coats and then slits, it's an

1 inverted pyramid when you look at part numbers. You
2 start with a relative few chemicals that make up inks,
3 and then it gets coated onto a polyester film, and you
4 end up with the number of jumbo rolls that have
5 different characteristics because of the ink and the
6 width and the length of the jumbo rolls.

7 When you slit, you can convert a jumbo roll
8 into many, many, many SKUs, and so the primary reason
9 you regionalize slitting is to provide better customer
10 service without having scads of inventory of finished
11 SKU that you are trying to forecast that's very
12 difficult to do.

13 So at the jumbo roll level you may have tens
14 to fifties of SKUs. At the SKU level for slit
15 ribbons, it's in the thousands. So it's really for
16 the customer service, the management.

17 VICE CHAIRMAN HILLMAN: Inventory.

18 MR. MARSHALL: Inventory and that reason
19 that you more regionalize slitting.

20 VICE CHAIRMAN HILLMAN: Okay, okay. I
21 appreciate that. I understand the answer. I would if
22 you can give me some sense of this employment
23 breakdown because I think it does go both to
24 understanding why we see this jumbo roll production
25 overseas and all of the slitting done here, but also

1 where do we put the converter in that.

2 And Mr. Cunningham --

3 MR. CUNNINGHAM: Could I just say one thing?
4 When you say all the slitting done here, in the course
5 of this case one of the foreign respondents said,
6 okay, we've got this dumping case. We will simply
7 take slitting back overseas. Another said, okay,
8 we'll go to another country to do the slitting.
9 Slitting processes move around all the time, it's like
10 DRAMs on that, it's the same thing.

11 VICE CHAIRMAN HILLMAN: No, I understand
12 that, but Mr. Cunningham, you have to understand the
13 cases that you're -- you are wanting us to draw these
14 analogies on certain cases. The trouble for us here
15 is that the slit bar code fax is included in the
16 scope, and the fax product is not, and that is what is
17 making it not work exactly like the case that you are
18 describing.

19 I mean, you have chosen to file this case
20 with some slit products included in the scope, and
21 other slit products not included in the scope, which
22 does make the Commission have to go through an
23 exercise of trying to understand how it is if this
24 product is included in the scope and this one is not,
25 why we should be drawing such a distinction between

1 slit bar code as something different from slit fax. I
2 mean, you are asking us to make that distinction, and
3 that's -- you know, that is not the same as a DRAMs
4 case where you didn't have some portion of it included
5 within the scope.

6 MR. CUNNINGHAM: My man wants to respond to
7 that.

8 VICE CHAIRMAN HILLMAN: Okay, Mr. Kingdon.

9 VICE CHAIRMAN HILLMAN: Okay, Mr. Kingdon.

10 MR. KINGDON: Thank you. We will respond to
11 everything, sorry, and anything.

12 Let me explain a bit about the fax business.
13 The fax business is really an OEM business. There are
14 Brother, Panasonic and Sharp, and they manufacture the
15 fax machines, and they actually import the fax ribbons
16 as elements of the machine. That's how they declare
17 them on their customs imports, okay?

18 We manufacture compatible fax products. So
19 there is a very finite number of fax SKU, and the
20 reason the math is totally different on the fax
21 business, the slit fax business versus a slit bar code
22 business, is that there is intellectual property that
23 brought the price of the fax products up. So they
24 sell on an MSI basis at a much higher level because of
25 the cassetting and the hubs and the gears that we have

1 designed around without infringing patents. So they
2 are totally different distribution, and they work in a
3 different market.

4 And I think if you appreciate that, you
5 would understand why we feel slit fax is quite
6 different versus slit bar code. But when you go up to
7 the -- because there is some interchangeability at the
8 jumbo level, we petitioned that both sets of jumbos
9 would be included. So that's the underlying logic of
10 the way it was structured.

11 VICE CHAIRMAN HILLMAN: Okay. Many
12 questions to come back to but I see that the red light
13 is on. Thank you very much.

14 CHAIRMAN OKUN: Commissioner Miller.

15 COMMISSIONER MILLER: Thank you, Madam
16 Chairman, and let me join in welcoming all of our
17 guests here. Despite the fact that I was negative in
18 the preliminary, I appreciate your testimony. I still
19 feel the need to educate myself on the issues related
20 to the industry. And as I said at the time, my
21 decision at that point was driven by my conclusions on
22 the legal issues, so they are important for me to
23 continue to be comfortable with my conclusions on
24 this.

25 The issue of the like product and the slit

1 fax question was one that I found to be a very close
2 call at the preliminary, and I, as I usually do,
3 decided to stick with the like product consistent with
4 the scope. But I think the questions that my
5 colleagues have asked are quite relevant, and I want
6 to make sure that I am comfortable on that issue
7 before I go on to anything else.

8 And mostly, they have asked the questions
9 that I was interested in. There is one thing I still
10 want to understand and in some way Ms. Kimble's
11 testimony in some ways referenced it.

12 You know, I understand that the basis for
13 excluding the slit fax from the scope was size. I
14 mean, that's how you defined your scope.

15 MR. CUNNINGHAM: I'm sorry. I didn't hear
16 the word. Was?

17 COMMISSIONER MILLER: Was by size.

18 MR. CUNNINGHAM: By size?

19 COMMISSIONER MILLER: Well, in terms of
20 excluding the slit fax TTR from the Commerce's scope,
21 it was essentially done in terms of the way you
22 defined your size. No?

23 MR. CUNNINGHAM: No, that's not accurate.

24 COMMISSIONER MILLER: I mean, in the scope
25 it says sort of, for example, facsimile TTR, so is

1 that not correct? Mr. Kingdon?

2 MR. KINGDON: The scope had a -- fax only
3 comes in 212 to 220 millimeters in width.

4 COMMISSIONER MILLER: Right.

5 MR. KINGDON: Because that covers an eight
6 and half by 11 sheet of paper, which is what it's used
7 in. However, there is bar codes that is sold within
8 that range, and we did not exclude that. The
9 dimensions were not a critical element of the way we
10 petitioned.

11 COMMISSIONER MILLER: Okay. Well, I'll have
12 to make sure I understand that because that was my
13 impression from reading it. I'm trying to decide
14 whether or not that answers the second part of my
15 question. But given something that Ms. Kimble said, I
16 think there is still a question there, and that is, if
17 we were to include the slit fax, what other -- are
18 there other products that we would be picking up as
19 well? No?

20 MR. MARSHALL: I don't think so.

21 COMMISSIONER MILLER: Okay. It's just a
22 matter of slit fax being in or out. Okay. All right,
23 well, I'll work on that to make sure I understand, but
24 you have answered that question, including it does not
25 mean that you start picking up anything else. Okay.

1 MR. MARSHALL: It does not.

2 COMMISSIONER MILLER: Okay, good enough.

3 Now, then, Mr. Cunningham, I listened to
4 your comments about the issue of the slitters and the
5 coaters and the relationship.

6 One thing I want to understand in this. You
7 are trying to diminish the value added and the degree
8 of priority the Commission has placed on that in the
9 past, and you know, I guess for me it's been a little
10 more important than you would suggest.

11 You are right, it's always a balancing of
12 the different issues. I recognize the R&D and the
13 capital expenditures and the investment in production
14 facilities and those being ones that weigh in favor of
15 not including the slitters, the number of employees
16 and the value added to me kind of goes the other way.

17 Today you have made some comments that
18 suggest you are not -- you are kind of taking issue or
19 you are trying to give us reasons not to rely on the
20 value added data. But in our preliminary
21 investigation, and I'm sure the data this time would
22 be, I suspect it would be consistent. The value added
23 in the slitting process by virtue of the data
24 submitted by this company, the companies that are the
25 integrated coater, slitter producer was also fairly

1 high. It was like 35 percent, I think, 34 percent.

2 That suggests to me that the numbers that we
3 are seeing now, they are not that different. I mean,
4 if you are trying to diminish it and suggest, well,
5 it's not really quite as high as it sounds, the
6 information submitted by these companies suggests to
7 me yes, it is every bit as high as that.

8 Mr. Kingdon?

9 MR. KINGDON: I don't think we have ever
10 taken the position that the data we originally entered
11 has been modified to materially change those
12 percentages. We have never denied that percentage
13 because there is more labor involved.

14 COMMISSIONER MILLER: Right.

15 MR. KINGDON: And you have U.S. paid labor
16 complemented with offshore capital, so you are getting
17 an aggravated delta in the total cost.

18 COMMISSIONER MILLER: Okay. Okay, I
19 appreciate that.

20 MR. CUNNINGHAM: Let me explore --

21 COMMISSIONER MILLER: Yes.

22 MR. CUNNINGHAM: -- because it seems to me
23 that you shouldn't look at these things entirely from
24 a quantitative standpoint. If you had one product
25 that was all labor and the other product that was all

1 capital intensive, it seems to me that would be a
2 factor for saying the two shouldn't be in the same
3 category together.

4 COMMISSIONER MILLER: Well, I --

5 MR. CUNNINGHAM: Right?

6 COMMISSIONER MILLER: You might be right
7 about that. Some people might differ with you on
8 whether you should give more weight to labor versus
9 capital. You want to give more weight to capital than
10 labor. That I'm not sure I want to get to that world.

11 MR. CUNNINGHAM: No, I'm not saying -- I'm
12 not saying what you give weight to. I'm saying that
13 where the two are entirely different for the two
14 different products, one is labor intensive, the other
15 is capital intensive. That suggests to me it
16 shouldn't be in the same industry together, doesn't
17 it?

18 It's not a question of how much value the
19 labor is and how much value the capital is. Doesn't
20 that follow as the right away?

21 COMMISSIONER MILLER: No, I think we -- I
22 think we basically try to get away from making that
23 judgment by just looking at the dollar value added as
24 opposed to the nature of the dollar you add.

25 MR. CUNNINGHAM: Don't you have to ask what

1 are we trying to do here. We are trying to see
2 whether the two are sufficiently similar to be in the
3 same industry. It's not just a quantitative analysis.
4 It must be a qualitative analysis in the type of
5 situation that you are talking about there.

6 When you have got two products that
7 everybody admits don't compete with each other at all,
8 and you've got one very capital intensive and one very
9 labor intensive, I mean, I don't see the -- if the
10 dollar amount of labor in one were equal to the dollar
11 amount of capital in the other, you would say, oh, the
12 dollar amounts are the same. I guess we would put
13 them in the same category.

14 I think it would go exactly the opposite
15 way. I don't know what the rationale would be --

16 COMMISSIONER MILLER: I want to think about
17 that. I want to think about that.

18 MR. CUNNINGHAM: Yes, I don't know what the
19 rationale would be for putting them in the same
20 category.

21 COMMISSIONER MILLER: Okay. I hear you. I
22 have to think about that a little bit more.

23 Let me take it to -- make another point or
24 ask you, and I'll ask you perhaps for posthearing
25 purposes to address this. Mr. Klett, you referenced

1 the value added information. I'm going to go to a
2 couple of tables we have in the report on value added,
3 and those are the tables at Roman VI-8, and Roman VI-
4 3. Actually, VI-3 being the information related to
5 the U.S. coaters, and it says U.S. coaters, but we are
6 talking coater/slitter, right, doing all of this
7 process versus just the coating.

8 And when you look at the information here, I
9 see this kind of value added on an industry-wide basis
10 in terms of cost. That the U.S. coaters were taking
11 their raw materials and just in terms of cost of goods
12 sold adding like 44 percent to it, not going to SG&A,
13 which you could do, the analysis holds up. But adding
14 44 percent.

15 The converter slitter is adding 26 percent.
16 So you want me to basically say an industry that has
17 44 percent makes an industry, but an industry that
18 adds 26 percent, that's not enough to be part of the
19 industry, and I may not be making any sense here, but
20 I'm just looking at, you know, taking the raw
21 materials and what you do to get to the product that
22 you then sell.

23 MR. KLETT: I understand, but I think in
24 terms of the coaters, the raw materials are at a much
25 earlier stage of the process. In other words you are

1 talking pet film and you're talking ink, and
2 essentially for the converters the raw materials are
3 the jumbo rolls, and implicit in the jumbo rolls
4 essentially are a lot of the cost that the coaters
5 have such R&D, other types of overhead.

6 So that I don't think you can make that kind
7 of -- I don't think you can compare one versus the
8 other, raw material versus everything beyond the raw
9 materials because the nature of the raw materials are
10 quite a bit different for the coaters versus the
11 converters.

12 In other words, for the coaters, essentially
13 they are, you know, adding more beyond the raw
14 material stage just by virtue of the nature of their
15 operations. And I think also --

16 COMMISSIONER MILLER: Well, you know, I
17 don't want to spend anymore time on just the value
18 added issue, it's not --

19 CHAIRMAN OKUN: You don't have anymore.

20 COMMISSIONER MILLER: Right, exactly. It's
21 one of many, and so I shouldn't. But you hear my
22 point and you are welcome to address this further.
23 You can tell me why this analysis is not a legitimate
24 kind of analysis in your posthearing submission.

25 MR. KLETT: Okay. Thank you.

1 CHAIRMAN OKUN: Commissioner Koplan.

2 COMMISSIONER KOPLAN: I'll be careful.

3 First of all, I want to compliment the panel
4 on what I consider to be a very efficient use of your
5 time. I hope to do the same in my questions.

6 Mr. Cunningham, I am still examining, as are
7 my colleagues, whether we should now include slitter/
8 converters as part of the domestic industry.

9 A lot of the emphasis in your argument has
10 been, you know, urging us to compare their operations
11 to the production-related activities of coaters. I am
12 leaning toward relying on whether slitter/converter
13 production activities is significant in the absolute
14 sense. If I do that, then in taking into account the
15 value that their operations add to the finished
16 product, the numbers of employees needed, the
17 technical expertise involved, et cetera, I am leaning
18 toward including it, okay.

19 But it would be helpful to me, picking up on
20 the Chairman's request, on the legal side as far as
21 the cases are concerned, it would be helpful for me if
22 the purposes of your posthearing submission you would
23 compare for me this issue as it was presented in three
24 earlier Commission investigations which we haven't
25 touched on this morning, and these investigations in

1 which I previously participated.

2 I am referring to pure magnesium from China
3 and Israel, and that's USITC Pub. 3467, November of
4 2001, page 9 to 11; and honey from Argentina and
5 China, and that was a final investigation USITC Pub.
6 3470, also November of 2001; and certain color
7 television receivers from China and Malaysia, and that
8 was preliminary, and that was Pub. 3607 in June of
9 2003 at pages 6 and 7.

10 In those three cases, in the first one,
11 magnesium, we were looking at grinding. In the second
12 one, honey, we were looking at packers; and in the
13 third one, color television, we were looking at
14 assembly.

15 And so if you could discuss those for me for
16 purposes of the posthearing, comparing it to what I am
17 looking at it, I would find that most helpful.

18 MR. CUNNINGHAM: We will be happy to do
19 that. I hope we will also in the panel questions, get
20 the question of whether we should exclude as related
21 parties.

22 COMMISSIONER KOPLAN: That's my next
23 question. I have it right here.

24 Assume that I do include the slitters and
25 converts as domestic producers of certain TTR and

1 slitter fax TTR, I will need to assess each of them
2 separately to determine whether they should be
3 excluded as related parties. So for purposes of your
4 posthearing submission because much of that data will
5 be PBI, please provide me with a related party
6 analysis taking into account the traditional factors
7 we must consider for each of the U.S. slitter/
8 converters that are related to foreign producers
9 regardless of whether they have coating operations in
10 the U.S.

11 Does that cover your request?

12 MR. CUNNINGHAM: Brilliantly.

13 COMMISSIONER KOPLAN: I'm not going to cut
14 you any slack on that one.

15 Now let me turn if I could to Mr. Marshall.
16 On the issue of whether slit fax TTR should be
17 included with certain TTR as part of a single domestic
18 like product, respondent Armor argues at pages 6 to 10
19 of its brief that the Commission got it right when we
20 included slit fax TTR with certain TTR in the
21 preliminary phase of this investigation.

22 It argues six traditional points: One, that
23 both have similar physical characteristics and end
24 uses; two, that they are interchangeable; three, that
25 there is considerable overlap in the channels of

1 distribution; four, the customer perception there is
2 no bright line between them; and five, that the same
3 manufacturing facilities and employees are used; and
4 six, that their prices significantly overlap.

5 In part, their counsel bases their argument
6 on business confidential information provided by a
7 company that I am prevented from using in the public
8 session.

9 However, I can give you one example from
10 their brief, which is public information, and relates
11 to the issue of interchangeability.

12 At the staff conference last June Armor's
13 pre-hearing brief quotes you as having said, and I
14 quote, "A waxed jumbo that is a good wax for printing
15 on plain white paperback is very able to be slit into
16 a bar code ribbon configuration and print well on a
17 regular uncoated tag. I guess that there is very
18 little formulation differences, and you would be able
19 to do that." That's at page 56 of the staff
20 conference.

21 Mr. Kingdon is also quoted as having said
22 that, and I quote, "Certain TTR can be used in fax
23 printers," and that's at page 90 of the staff
24 conference.

25 Tell me where you differ with Armor on any

1 or all of the six factors I just listed. Mr. Kingdon,
2 of course, is free to jump in as well. I would be
3 interested in hearing from the two of you.

4 MR. MARSHALL: Where I agree with Armor is
5 that there are ink formulations that are designed to
6 print well on less surface stocks like plain paper.
7 There is some labeling applications, more so in Europe
8 than in the United States, where that kind of surface
9 characteristic of the label is used a lot in bar code
10 labeling. So if the ink was designed to print on
11 those two stocks at the jumbo level, at the jumbo
12 level you would have the ability to make a bar code
13 ribbon or the ability to make a fax ribbon.

14 Once you have converted to make a ribbon for
15 a bar code printer as compared to a ribbon for a fax
16 printer, there is virtually no fungibility. A
17 finished fax ribbon cannot be used in a bar code
18 ribbon, and a finished bar code ribbon can't be used
19 in a fax machine.

20 So the converting operation is where the
21 differentiation is made, and only in certain ink
22 formulations is there a commonality which is why we
23 introduced this obviously confusing issue of why are
24 they included at the jumbo level and not at the slit
25 ribbon level.

1 Armor's position is that there is
2 substantial overlaps between distribution, I would
3 take exception to. The primary distribution for bar
4 code is as was described by Richard Kingdon's
5 presentation on how the market sets up with OEMs and
6 distributors and resellers and the like.

7 There are few but very few resellers that
8 actually do both in any substantial amounts. The vast
9 majority of slit TTR for the purpose of fax machines
10 is sold through very large office product
11 distributions channels, Staples, Office Depot, Office
12 Max, catalogue houses, and they are starting to think
13 about selling some bar code, but a very finite level
14 of bar code, infinitesimal compared to the
15 marketplace.

16 So the vast majority of the distribution
17 channel is office retail and the vast majority of the
18 bar code channel is a distribution network unique to
19 the auto identification marketplace.

20 The overlap is a bit, but it is very
21 insignificant relative to the total market. So in
22 that particular case I disagree entirely.

23 From a unit price point of view, at the
24 jumbo level if you can't determine if it's going to be
25 used for bar code or for fax, but the ink has the

1 characteristics that can be used for either, there is
2 probably similarity in the unit price at the jumbo
3 level.

4 Once you have made the conversion and you
5 have a slit fax ribbon and you finished it into form
6 that has the supply roll, the take-up roll, the hubs,
7 the gears, the cassette that generally has
8 intellectual property associated with it, packaging
9 gets designed for retail generally with color type
10 packaging, that value add, and the amount of technical
11 property that's involved in it has allowed the pricing
12 of fax ribbons to be substantially higher on a per MSI
13 basis than on a per MSI basis for bar code because it
14 doesn't have all of that other differentiation that
15 takes place and value added takes place. That is why
16 we separated the two of them.

17 So I disagree on those two points.

18 COMMISSIONER KOPLAN: Thank you very much.
19 That's very helpful.

20 Did you want to add anything while my yellow
21 light is still on, Mr. Kingdon?

22 MR. KINGDON: Thank you. I would only add,
23 reaffirm the channels of distribution are totally
24 different and that the pricing is also driven part by
25 the this intellectual property that provides a price

1 umbrella controlled by the OEM in the fax business
2 which does not exist in the bar code business because
3 there is no intellectual -- essentially there is no
4 intellectual property on consumables within the bar
5 code printers with one or two minor exceptions.

6 MR. CUNNINGHAM: When we talked this over
7 for the preparation of the hearing the closest that we
8 thought that they were right on any of the factors is
9 on, you know, manufacturing operations could overlap;
10 that is, they could be produced by the same workers,
11 could be produced by the same workers using similar
12 equipment.

13 In fact, there are many operations that are
14 not produced using the same equipment, but it could
15 be. That the closest they were to being right. The
16 others we concluded they are all wrong, and we will
17 address that posthearing.

18 COMMISSIONER KOPLAN: Thank you. Thank you,
19 Madam Chairman.

20 CHAIRMAN OKUN: Commissioner Lane.

21 COMMISSIONER LANE: Good morning. Yes, I
22 guess it is still morning. Welcome to this hearing.
23 I have a few questions and I apologize if some of them
24 are repetitive. At this point I couldn't tell you if
25 they are repetitive or not.

1 As you know in the preliminary determination
2 the Commission found that finished wax TTR was part of
3 the domestic like product, finding that its physical
4 characteristics and uses, interchangeability and
5 common manufacturing facilities and processes
6 warranted its inclusion.

7 In your pre-hearing brief and today I
8 believe you are arguing that like products should be
9 defined co-extensive with the scope.

10 Now, if the Commission does expand the
11 domestic like product as we heard today, and if the
12 slitters and converters are also included, does that
13 or how does that affect your argument and what sort of
14 argument would you make then as to whether or not
15 there is injury in this case? Mr. Cunningham.

16 MR. CUNNINGHAM: Yes, let me first say that
17 one thing that it clearly doesn't affect by your past
18 decision is the level of competition that you look at
19 or whether the imported -- whether you consider as
20 import sales the sales of slit, certain TTR made from
21 imported subject jumbo rolls, because you faced
22 precisely that issue in DRAM where you determined that
23 the -- that the finishing process people were part of
24 the domestic industry, but nevertheless you considered
25 properly the sales by those members of the domestic

1 industry of material made from imported subject
2 merchandise to be import sales.

3 So that's the most fundamental point in this
4 case because the case turns and manifests itself in
5 terms of pricing effects.

6 Now, the issue -- the predominant effect,
7 call a spade a shovel, I left out an adjective there,
8 but we are in a civilized hearing here, of putting the
9 fix -- the slit fax into the domestic industry and
10 like product may relate to the negligibility issue,
11 because it changes, arguably changes and we don't
12 think it should, and we think that even if it did then
13 you should look at the imminent of the French, now
14 rapidly increasing French imports, that they would
15 surpass the imminent level.

16 But just on a pure numbers basis, if you do
17 the math, and you do change the denominator to reflect
18 your like product rather than the scope, then you have
19 a number that's lower than the negligibility for
20 France, but we don't think that's where you stop in
21 the analysis even if you do that. So that's the
22 biggest issue that it affects in the case. It doesn't
23 affect the overall issue of -- in our judgment -- the
24 overall issue of is there injury caused -- material
25 injury caused by imports, because even if you put slit

1 fax in, you still have a 21 percent price decline
2 caused by imports as to a part of your overall market
3 and industry that constitutes, what is it, 90 percent
4 or something like that of the overall volume of the
5 market even as we defined.

6 So you have not changed the parameters of
7 the case on an is there material injury, is there no
8 material injury, but you may affect -- we think it
9 shouldn't affect, we will argue that it doesn't
10 affect, and we will win that argument, on the
11 negligibility issue as to France.

12 MR. KLETT: Commissioner Lane, this is Dan
13 Klett. If I could just amplify on a few points.

14 With respect to expanding to include the
15 slit fax, I mean, in other cases where the industry
16 has been expanded beyond the scope, such as grapes or
17 tomatoes, and the expansion has been so great that the
18 effects of the imports have been diluted, that has
19 essentially resulted in a negative determination.

20 Here the slit fax as a percentage of the
21 total slit fax in certain TTR does not expand the
22 industry that much so that the adverse effects are
23 still material.

24 With respect to expanding the industry to
25 include converters, I think the first step is do you

1 exclude the converters as a related party. And I
2 think that the jumbo rolls account for roughly 75
3 percent of the manufacturing cost for the converters,
4 so they are benefitting substantially by virtue of the
5 lower cost jumbo roll raw material. And as one of my
6 graphs showed in large part that explains why their
7 profitability is much better than the profitability of
8 the integrated coaters slitters.

9 When you -- they are still part of -- I
10 guess they are still -- and that's the producers, you
11 exclude them as related parties, I think there are
12 still adverse effects because the imports have allowed
13 the converters to price in a way that they would not
14 have been able to price but for the advantage they
15 have from the purchases of the jumbo roll.

16 So I would submit at least indirectly the
17 imports through that mechanism have suppressed and
18 depressed U.S. prices, and has adversely affected the
19 domestic industry, i.e., the coaters, that you have
20 not excluded.

21 COMMISSIONER LANE: Okay, thank you.

22 Could one of you explain to me how much of a
23 market there will be for the slitted fax product?
24 Because I thought that the technology had changed, and
25 that wasn't being used in the current fax machines.

1 MR. KINGDON: Commissioner, if I could --
2 Richard Kingdon, if I could answer that.

3 The statistics indicate that the new
4 installation of the fax TTR machines is beginning to
5 decline. But you are actually right, it's being
6 substituted by other technology, injector laser.
7 However, the install base is substantial, and our
8 understanding of the market is that as a consequence
9 of that people will go to compatible product which is
10 why Staples and Office Depot and Office Max are
11 selling these branded products in competition against
12 the OEMs, so the compatible business will stay solid
13 or perhaps grow in the next three to five years while
14 the OEM business will decline.

15 COMMISSIONER LANE: Okay, thank you.

16 Respondents argue that the U.S. converters
17 have made sufficient capital investment in their
18 slitting operations over the period of investigation
19 to be included in the domestic industry. They further
20 contend that the data does not correctly represent the
21 capital investments.

22 How do you respond to that?

23 MR. CUNNINGHAM: This is Dick Cunningham.

24 I think the figures speak for themselves in
25 the staff report and the questionnaire responses. The

1 capital investment is very, very low compared to the
2 coating.

3 As to the second point, I guess I would
4 defer to somebody else as to -- I'm not sure I quite
5 understood the argument made as to why the figures
6 allegedly understate the investment.

7 MR. TRENDL: This is Tom Trendl.

8 I think as Mr. Dowell indicated in his
9 slides up there, I think when you look at capital
10 investment and you look at the total capital
11 investment to have a coating operation, I think it had
12 numbers in the eight to 10 million dollar range, and
13 you have the slitter which does not include -- you
14 know, which is not requiring by your mental controls
15 and a lot of the other parameters required to coat and
16 ink the product.

17 And when a semi-automatic slitter is 200 to
18 250 thousand dollars in a room that could be run by
19 pretty much anybody, and we have already presented
20 evidence to the Department of Commerce that
21 respondents are now slitting in China and India and
22 other places, that that sort of capital investment --
23 I mean, that is a fair comparison.

24 In some ways, you are looking at eight to 10
25 million dollars versus a few hundred thousand dollars.

1 MR. DOWELL: Yes, this is Vince Dowell, if I
2 could just comment on that a little bit.

3 Just to get started in the ink making and
4 coating side, the least it can be, you can't do it for
5 less than four to five to six million dollars. It
6 just can't be done. And in slitting, you can buy a
7 used piece of equipment for a little as \$100,000. And
8 as I mentioned in my explanation earlier, it
9 essentially takes no additional infrastructure.

10 If you have a 220 volt line, you can turn on
11 a slitter and start slitting in a week.

12 COMMISSIONER LANE: Okay, thank you. My
13 time is out and we had better stop before somebody
14 yells at me.

15 CHAIRMAN OKUN: Not me.

16 Well, thank you. I have enjoyed all the
17 answers you have given us. You have covered a number
18 of issues, but I am sure, as Mr. Cunningham has
19 explained to all the industry folks what the
20 Commission has to work through in order to get to its
21 analysis. But I know that given the testimony you
22 gave this morning that you are all anxious to talk a
23 little bit more about what's going on in the industry
24 with regard to the price and impact of the subject
25 imports.

1 So let me turn to that, and I guess I would
2 note, I think for the issues that the Commission
3 identified in the preliminary, I think that a lot of
4 your testimony, you spoke to those issues, so some of
5 these questions are going to just allow you to
6 elaborate on some of the things that you have already
7 said on the road.

8 And on that, I guess I would start with in
9 terms of what's going on. Mr. Cunningham, you
10 described this as everyone agrees on prices and the
11 question we have raised is, well, what else is going
12 on with regard to prices in relation to subject
13 imports. So some of the issues that we identified and
14 that you talked about this morning were intraindustry
15 competition, domestic oversupply and sluggish demand.

16 The respondents have also noted PAXAR, which
17 I know has been discussed, Fujicopian's entrance into
18 the market, and intraindustry price wars.

19 So I wanted to kind of go back, maybe to
20 you, Mr. Golub, because you came down, and Mr.
21 Marshall, to talk about this industry and how you see
22 subject imports in relation to these other issues.
23 And maybe we could just start with intraindustry
24 competition. I know you have all commented on, you
25 know, the Sony statements were in everybody's briefs,

1 I think, and you talked a little bit about them.

2 But maybe I will pose it this way, Mr.
3 Golub. Obviously, you have taken issue in this front
4 row with ITW's brief, and what they said, and you are
5 getting a lot of responses on it.

6 At this point, Koreans have been found, the
7 Korean product is not -- Commerce has said it's not
8 dumped. So if this is out, and let's say the final
9 commerce preliminary or final commerce determination
10 Korea continues to be out. Is the injury you have
11 suffered due to the Japanese and France alone?

12 I mean, I have heard so much about Korea and
13 ITW. I want to have you talk about everyone other
14 than Korea if you could. Maybe I will start there.
15 Mr. Golub, I will start with you, and then just work
16 down this front row.

17 MR. GOLUB: I certainly didn't mean by my
18 comments with respect to ITW to imply in any way that
19 the Japanese and French imports have not been critical
20 in the price declines that have taken place over the
21 course of the POI.

22 In particular, you know, I think it's quite
23 apparent in the information that I have reviewed that
24 price competition from respondents in both of those
25 countries have been very material in both individual

1 circumstances that we can detail for you because they
2 confidential in a post brief, and in a macro sense.

3 So I certainly don't want to leave you with
4 the impression that this is only an issue between U.S.
5 manufacturers and Korean respondents.

6 MR. MARSHALL: The way I see the market is
7 that, and I have been with the industry going on 13
8 years now, it has changed dramatically. It was much
9 more regionalized; it was a new growing, robust
10 industry and probably all of us, if not -- again, I am
11 sure most of us at some point in time or another ran
12 out of capacity. So what drove the industry was
13 increasing utilization of the auto-ID technology, we
14 all refer to as: bar code. The adoption of that in
15 retail and manufacturing and shipping and distribution
16 caused great demand and the U. S. was a very adoptive
17 marketplace.

18 So, in the early stages, it was everything
19 we could do to kind of keep up with demand. That
20 started to slow down a little bit and there were other
21 dynamics of other industries that caused capacity to
22 increase fairly rapidly. For example, the magnetic
23 tape industry started to lose its footing and declined
24 worldwide. The magnetic tape industry coats, if you
25 will, a formulation on polyester thin film. So there

1 was a lot of utilization of that equipment that could
2 be readily converted to TTR; and TTR appeared to be
3 the industry that was up and coming and we could
4 employ that kind of technology to it. Many of the
5 Japanese did that and, in similar ways, some of the
6 European companies did that.

7 So it brought upon the industry a lot of
8 capability that had prior to been involved in other
9 marketplaces.

10 CHAIRMAN OKUN: Mr. Marshall, I want you to
11 continue but could you just help me with one thing.
12 When you talk about the slowdown are you talking about
13 a slowdown that happened prior to the period of
14 investigation we are looking at; or are you talking
15 now about some investigation going on in --

16 MR. MARSHALL: The investigation before that
17 introduced some players who I am not sure would have
18 ever looked into the TTR industry because they had a
19 manufacturing capability that could be employed to do
20 it. So by the time that we got to the latter part of
21 the '90s, we ended up with a bunch of dynamics
22 happening. One is: the adoption rate of the bar code
23 was going down. It was still growing but it was going
24 down.

25 Two is: there was a lot of capacity and I

1 think overreached by the collective group of
2 manufacturers worldwide. Thirdly: the standard of
3 performance of inks started to converge to where there
4 was a commodity. What drove that dynamic was that the
5 marketplace was largely satisfied originally by the
6 OEMs who produced the bar code printers with their own
7 brands that were usually different in some way or
8 another and they wanted it that way so that they could
9 protect the after-market ribbon business.

10 As the industry got smarter and clever and
11 as the printers got more robust, we could design inks
12 that could be used in anybody's printers, so an after
13 market developed and that is where the largest part of
14 the distribution is today.

15 If you take those couple of dynamics, you
16 have got over capacity worldwide; you have got the
17 largest marketplace in the United States; you have
18 fungibility of the core products used in the majority
19 of applications. The U. S. is the easiest marketplace
20 for a foreign competitor to compete because it is a
21 monolithic marketplace. You don't have to know 15
22 different languages; you don't have the regionalness
23 that you do in Europe; you don't have the massive
24 differences of culture that you might have in some of
25 the other regions of the world, like in the Far East.

1 So the U. S. was a targeted market and everybody saw
2 it as: a place to go and sell our products.

3 I would say that alternatively, under that
4 happening, many of the companies that were in the
5 marketplace have no inhibitions to compete all in one
6 place. There wasn't any price; there wasn't any
7 service that they could perform; there wasn't any
8 differentiation of product; there wasn't any value
9 added to an OEM that they were bringing to the party,
10 so it became the marketplace of choice for capacity to
11 be dumped. And I would say that generically for world
12 capacity, the U. S. market is pretty much barrier free
13 to come in and compete.

14 CHAIRMAN OKUN: Mr. Cunningham?

15 MR. CUNNINGHAM: On the questions that you
16 raised about what happens if ITW is not subject to
17 imports, Korea is not subject to imports and what
18 about intraindustry competition. Let me give you a
19 couple of analytical tools that you can use. First of
20 all, as to ITW's role versus the others, look at your
21 staff charts and see which country is the underseller
22 at which times and how much? I think that will give
23 you quite a good analysis of what the situation would
24 be like if ITW wasn't considered a dumper.

25 Secondly, as to the intraindustry

1 competition, as you know there are two things. One,
2 there is Exhibit 1 to our brief and I urge you to look
3 at that. Two, there is the material submitted by
4 SONY. I can't quote that because it is confidential.
5 But in Mr. Oliverio's interview that everybody quotes,
6 the language they don't quote that he says is: We
7 didn't start this price war but we can sure as heck
8 finish it. I don't think he said heck. But we can
9 sure as heck finish it.

10 That is exactly consistent with the pattern
11 that we all see here, that through the first half of
12 at least -- maybe more than the first half of 2002,
13 clearly, it is the importers that are selling all the
14 domestic producers. And only then does it narrow us
15 to: do domestic producers come down, that is SONY and
16 others moving in to "finish the price war." And the
17 rebuttal that a couple of the producers tried to give
18 to the underselling is based on price comparisons only
19 in last five quarters of the period, where the price
20 gap certainly has narrowed.

21 It has narrowed because, by that time, they
22 have dragged the U. S. industry prices down. These
23 are analytical tools that I think will answer the
24 questions that you have raised.

25 CHAIRMAN OKUN: I appreciate that. Mr.

1 Klett, I will come back to you since my red light has
2 come on.

3 VICE CHAIRMAN HILLMAN: Thank you very much.
4 I would return a little bit to sort of a related issue
5 to some of the discussion you were having Mr.
6 Cunningham with Commissioner Lane. And that gets to
7 the issue of: What does our data look like if we were
8 to determine that the converter slitters are part of
9 the domestic industry? And I understand very clearly
10 the issue of the related parties.

11 So, let's leave aside what the financial
12 data may look like because at some level, on the
13 financial side, it is not clear to me how much of a
14 difference it makes given that you bring everybody in
15 as a part of the domestic industry and then try and
16 take the data out as a related party, so let's leave
17 that aside.

18 But the issue that is troubling me very much
19 is: What do we do on price comparisons? As you know,
20 we have priced three products. Two are then are slit
21 products and one of them is a jumbo product. If we
22 now were to just include the slitter converters as
23 part of the domestic industry, I am then troubled
24 about whether we can or should place much reliance on
25 the pricing data that we have collected in products

1 one and three since that would now be deemed to be
2 domestic production, not foreign production, for
3 purposes of price comparisons.

4 But think about it. In DRAMs, we priced
5 only cased and module product. We had no subject
6 imports of an uncased product to the extent it was.
7 The issue of what to do with an uncased DRAM and how
8 to treat it was only non-subject product; and it was
9 then deemed to be domestic production for purposes of
10 the data. And in terms of pricing products, we don't
11 have anything analogous in DRAMs because we only
12 priced cased and module product and we only had
13 subject imports of cased or module product here.

14 You are asking us to include, as a price
15 comparison, a product that if we say that the slitter
16 converters are part of the domestic industry, we are
17 now counting, at least to some degree, domestic
18 production as part of a price comparison between an
19 import and a domestic price. Again, I am focusing on
20 the price-comparison issue.

21 MR. CUNNINGHAM: All I can say about DRAMs
22 is what you said you did in your opinion. What you
23 said in your opinion was that where there was a sale
24 by a member of the U. S. industry of a product
25 assembled from subject imports, that sale is an import

1 sale. You say that in both DRAM cases.

2 VICE CHAIRMAN HILLMAN: You are focusing on
3 that on the volume side and I am saying that I am now
4 looking solely at the issue of: What is a fair price
5 comparison for purposes of our analysis of
6 underselling and of price effects? What I am saying
7 is: If -- I am just wanting to hear you out --

8 MR. CUNNINGHAM: Yes.

9 VICE CHAIRMAN HILLMAN: In other words, I
10 don't think, in just purely looking at price
11 comparisons, that DRAM tells us very much because, to
12 me, the fact pattern there is very different. So,
13 let's start just with this case alone. How do I look
14 at prices if we were to determine that the slitter
15 converters are part of the domestic industry? Then,
16 presumably, the pricing information that I have for
17 products one and three reflects, at least to some
18 degree, domestic production, which, to me says: Okay,
19 I should be really focusing on the jumbo rolls because
20 that is where we have actual import data. And yet, as
21 we have said, that is a small portion of the amount of
22 commercial market sales in jumbo rolls, which is
23 obviously very small.

24 So, in many ways, the pricing issues are very
25 different from where they were in DRAMs.

1 MR. KLETT: Commissioner Hillman, this is
2 Dan Klett.

3 VICE CHAIRMAN HILLMAN: Yes.

4 MR. KLETT: I understand your dilemma
5 because if you define converters as domestic producers
6 then what you are saying is that the prices of the
7 converters that slit imported jumbos are domestic
8 prices. But I think ultimately the question is: Have
9 subject imports suppressed U. S. producers' prices?
10 And I think notwithstanding the fact that, I guess
11 legally the prices from the converters will be
12 domestic if you conclude that the converters are
13 domestic producers.

14 I think that their pricing into the U. S.
15 market and the price levels at which they sell into
16 the U. S. market and their price trends are affected
17 by their procurement of LTFV jumbo rolls from
18 offshore. So I think that the converters' pricing
19 into the U. S. market, by virtue of their procurement
20 of LTFV jumbo rolls, has depressed the market
21 generally and the depressed prices can be tied, even
22 if indirectly, back to the subject imports.

23 VICE CHAIRMAN HILLMAN: I appreciate that
24 answer.

25 MR. CUNNINGHAM: I don't think that is the

1 right way to analyze it.

2 VICE CHAIRMAN HILLMAN: I understand
3 everything that Mr. Klett has said. I would ask you,
4 in your posthearing brief, to help us think about
5 whether there is precedent for doing this issue of
6 sort of indirect price-affects' analysis, where again
7 I am looking at a direct price. Obviously, we
8 normally do these direct price comparisons. But, for
9 sake of argument, if we determine that the converters
10 are part of the industry and, therefore, the prices of
11 products one and three are, in fact, domestic-to-
12 domestic comparisons and, therefore, really don't tell
13 me very much about the underselling of imports.

14 Again I am wanting you to walk through both
15 the legal precedent and the evidence on the record
16 that would help me understand where I can see price
17 suppression or depression by reason of subject
18 imports, if the slitted product is considered domestic
19 production.

20 MR. CUNNINGHAM: Let me add one thing to
21 your --

22 VICE CHAIRMAN HILLMAN: Yes, Ms. Kimble?

23 MR. CUNNINGHAM: I'm sorry.

24 VICE CHAIRMAN HILLMAN: Go ahead.

25 MS. KIMBLE: I just wanted to refer back to

1 something that you started by saying that you wanted
2 to exclude the issue or not discuss the issue of
3 related party because you said that means for the
4 financial conditions then that is a separate issue.
5 But I just wanted to make sure that we are clear on
6 the point that the related parties' provision of the
7 statute says that you may exclude them from the
8 domestic industry, period.

9 So that it doesn't only pertain to the
10 financial condition, if you were to exclude them as
11 related parties, they get excluded as to everything.

12 VICE CHAIRMAN HILLMAN: Then I just need to
13 make sure that I understand. Again it may be that you
14 want to look at the data before you tell me the answer
15 to: Whether I shall be pulling all of the related
16 parties' data out of the pricing comparisons? Then my
17 assumption is that I left with nothing. I don't know
18 whether there might be any pricing data from anybody
19 who would not be excluded.

20 Again, since I haven't gone through whose
21 data is exactly where and who would be deemed a
22 related party. But my concern is if I do what you
23 just said Ms. Kimble, I am left with no comparisons,
24 no price comparisons for slitted product because I
25 don't have any data from anybody that wouldn't be

1 deemed a related party.

2 I don't know but I am saying that I am
3 concerned that, at a minimum, the coverage is going to
4 be exceedingly small.

5 Mr. Cunningham?

6 MR. CUNNINGHAM: I am going to preface this
7 saying that I do know that you are not bound by
8 decisions that the Commerce Department makes. But
9 here the issue that you are analyzing are conceptually
10 the same issues that the Department of Commerce
11 analyzed, which is: When I look at the price charged
12 by a converter, should I deem that to be the price of
13 sale by the foreign respondent?

14 Commerce looked at that and considered
15 pretty much the same factors that you are talking
16 about here. They reached the conclusion that that is
17 exactly what they should do. Now, if -- you are
18 administering the same law here. I understand that
19 there may, and indeed in lots of cases there are
20 situations in which your issue is a different issue
21 than the Commerce Department and you may only even
22 have to explain why you drew a different analysis.

23 Here I don't think that that is the case.
24 If you were to analyze this differently and by
25 differently, I mean you were not to look at the prices

1 in the United States by the converters that are
2 affiliated to the foreign respondents and are
3 assembled from, or slit from subject merchandise.

4 If you weren't to look at that as prices of
5 imports in the United States, you would be doing
6 exactly the opposite of what Commerce is doing in
7 saying: Is that a sale that we are looking at, a sale
8 of subject merchandise into the United States? I
9 think that you would need to explain just on the
10 matter of making the statute work right and having the
11 two agencies work in harmony, you need to explain why
12 there are different considerations that would govern
13 your analysis and I don't see any.

14 VICE CHAIRMAN HILLMAN: All right. Given
15 that the yellow light is on, I will not turn to a
16 different topic. Thank you, Madame Chairman.

17 CHAIRMAN OKUN: Commissioner Miller?

18 COMMISSIONER MILLER: I appreciate
19 Commissioner Hillman taking care of the things that I
20 was most concerned of out of my preliminary, as you
21 referenced Mr. Cunningham in your opening. The
22 discussion you just had was very useful. I do want to
23 see what you will have to submit in the post-
24 transmission.

25 I will point out that I think that Vice

1 Chairman Hillman is right about the fact pattern in
2 DRAM being different. If the fact pattern was the
3 same or similar here, we would be looking at imports
4 of the slit product. That would make this fact
5 pattern like DRAMs. That is the problem, okay. It is
6 always the problem with precedent here. Every case we
7 see, although we look to precedent, you know every
8 case is so unique that oftentimes those precedences
9 don't work.

10 That is why the DRAM precedence is
11 problematic I think in this case because the imports
12 were the equivalent of the slit product, not the jumbo
13 product. So you have the prices of that equivalent of
14 a slit to compare with the U. S. price. And then you
15 had to figure out what was in your U. S. price basket.
16 But, anyway, enough said. It is a difficult issue. I
17 can understand from the company's perspective fully
18 why they see the competition at that level.
19 Obviously, they do and I understand exactly what the
20 company is saying in terms of the price competition.
21 It is just one of these things I have struggled with.

22 MR. CUNNINGHAM: The last things I will say
23 on this are two points. One is you really do have to
24 think about economic reality here and the economic
25 reality of the marketplace is that organizations

1 headed up by the foreign coaters are selling in
2 principal competitions, the U. S. integrated companies
3 at the slit level. And they are financing the price
4 underselling at the slit level by the low pricing of
5 the imported jumbos.

6 Now, if you say that the dumping law can't
7 reach that, you are saying something very, very
8 profound.

9 COMMISSIONER MILLER: I appreciate that.

10 MR. CUNNINGHAM: And I think you ought to
11 think --

12 COMMISSIONER MILLER: That is why --

13 MR. CUNNINGHAM: -- long and hard before
14 doing that.

15 COMMISSIONER MILLER: That is exactly why we
16 are struggling with it.

17 MR. CUNNINGHAM: You could do it either on
18 Mr. Klett's theory, or on an extension of DRAMs, or on
19 getting rid of them as affiliated parties and then
20 essentially looking at the sales in the United States
21 at the slit level as being made by foreign
22 respondents. Those are three ways that you can get
23 the economic reality here but I would say to you that
24 you are doing something very, very profound with the
25 dumping law if you say that we can ignore that

1 economic reality.

2 COMMISSIONER MILLER: Okay. Let me touch on
3 a couple of other issues. I want to go back to one
4 thing and just clarify why my understanding of the
5 scope of this case was because it is still -- I look
6 back at the scope language again and I am going: It is
7 delineated here, the exclusion? It says that the
8 petition does not cover product with greater than 212
9 meters but not greater than 220. It is essentially
10 8.35 to 8.66 inches in length. And then it says: i.e.,
11 slit fax.

12 So I just want to make it absolutely sure
13 all that is in that little exclusion, that you
14 delineated by virtue of references to size, is slit
15 fax.

16 MR. KINGDON: Commissioner, I think that I
17 misspoke. It was defined in that way. There is a
18 very, very small amount of bar code that is within
19 that span: the 212 to the 220. It is inconsequential.
20 What is the right word: The coaching that the DOC said
21 they did not want to define as scope with application?

22 COMMISSIONER MILLER: Exactly.

23 MR. KINGDON: So they said: Is there a way of
24 physically defining it?

25 COMMISSIONER MILLER: Exactly.

1 MR. KINGDON: So I am afraid that I gave you
2 a practical definition rather than a --

3 MR. CUNNINGHAM: But we did get him to use
4 i.e. instead of e.g. How about that for a lawyer's
5 remark.

6 COMMISSIONER MILLER: You take it --
7 wherever you say it is successful, you can find it,
8 Mr. Cunningham. Okay.

9 Now, let me ask just one more question. I
10 think it is another thing that we often struggle with
11 in cases and we do in this one, I think, as well.
12 When we look at the impact and issue of the industry
13 as a whole versus that the company that is represented
14 here today and is the Petitioner -- I am going to let
15 you address this also in a posthearing submission.
16 But it is another issue that I think clouds the result
17 in this case. There are a lot of differences in terms
18 of the impact, or the financial performance of
19 different companies in the industry. I know there are
20 reasons for that.

21 At moments I look at it and I think: Are
22 these companies all in the same industry? I don't
23 know that you can address it here but we have to make
24 our decision based on the industry as a whole, not
25 specific company performances. But they do vary? I

1 don't know if you have guidance for us on that point.

2 MR. KLETT: We spoke about this a little bit
3 just in general yesterday. I think the nature of
4 IIMAK's operations, being that is a strictly a U.S.
5 company, it incurs certain costs that some of the
6 other coaters being multinationals may incur offshore,
7 for example: R & D expenditures. So that when you
8 look at the cost structure of IIMAK versus some of the
9 others, just by virtue of the type of company it is
10 and its operation, there are certain costs that are
11 going to be domestic based versus foreign based.

12 When you control for these kinds of things,
13 the disparity in financial performance narrows a bit.
14 There are some other things going on with IIMAK in
15 terms of its capital expenditures to make itself more
16 competitive on a variable-cost basis that I think are
17 very important to consider. And just generally, even
18 when you look at the industry as a whole, the
19 operating profits are declining for coaters compared
20 to the converters.

21 COMMISSIONER MILLER: Okay.

22 MR. KINGDON: Commissioner, if I could add
23 to that?

24 COMMISSIONER MILLER: Yes.

25 MR. KINGDON: If you look at the domestic

1 industry, we are a one-trick pony, a relatively small
2 NCR manufacturer. The other household name, NCR, is
3 part of a clearly broader company, a multinational and
4 a subdivision within a division. Two other members of
5 the domestic industry are Japanese-American
6 multinationals, so, as Dan made the point, much of
7 their development in infrastructure is located
8 offshore relative to the domestic. And then, of
9 course, we know PAXAR pretty well and that really TTR
10 is a small fragment of what they do in a specialized
11 application. So we can certainly, in the brief,
12 address the "definiators" of those.

13 MR. CUNNINGHAM: And remember whatever any
14 individual company's level of performance is that
15 company's performance must have been adversely
16 affected by a 21% price decline during the period of
17 investigation. It is implausible to say that it
18 wouldn't have been making substandard -- the more
19 profitable companies would have been making
20 substantially greater profits than they did if prices
21 hadn't declined 21%.

22 That is the elephant in the room in this
23 case: 21% price decline. Your staff's analysis shows
24 crystal clear that subject imports had the major role
25 in that.

1 COMMISSIONER MILLER: Okay. I appreciate
2 that and I appreciate all of your answers to my
3 question. Thank you very much.

4 CHAIRMAN OKUN: Commissioner Koplan?

5 COMMISSIONER KOPLAN: Thank you, Madam
6 Chairman. I have three matters that I would like to
7 cover. I think we can probably do it in this round.
8 First, Mr. Cunningham, you indicated this morning, in
9 response to the Chairman, that you no longer wish to
10 pursue critical circumstances with respect to DNP.
11 But on March 5th, last Friday, the Commerce Department
12 found that critical circumstances exist with respect
13 to both DNP and Union in their final determination.

14 As a legal matter, how does the Commission
15 address the fact that Commerce has made its finding
16 and that we, therefore, have a statutory duty to
17 address the issue with respect to DNP. The second
18 part of the question is: Are you planning to make any
19 supplemental filing with Commerce respecting DNP's
20 critical circumstance issue before we make our
21 determinations in these investigations?

22 MR. CUNNINGHAM: I don't know the answer to
23 that yet. I don't know whether there is a procedure
24 for doing that.

25 COMMISSIONER KOPLAN: I don't either. That

1 is why I was asking.

2 MR. CUNNINGHAM: Yes. But our position is
3 very clear that we do not have an interest in that we
4 do not believe, based on the more recent data that we
5 have seen and based upon the issues that we think are
6 properly affiliated, that we don't think DNP warrants
7 it and we have no problem with telling the Department
8 of Commerce that if there is a vehicle to do that.

9 COMMISSIONER KOPLAN: I appreciate that. If
10 you could make that decision and advise us in your
11 posthearing what you are going to do on that point
12 that would be appreciated.

13 MR. CUNNINGHAM: I have been known to make
14 decisions and we will do so and advise you.

15 COMMISSIONER KOPLAN: Thank you very much.
16 Let me stay with counsel. On December 22, 2003,
17 Commerce issued its preliminary determination that
18 included a finding that: with respect to Korea,
19 Illinois Tool Works Inc. and all others, the dumping
20 margin was 1.27%. That is *de minimis*. With regard to
21 allegations of lost sales and lost revenue, certain of
22 the specified transactions lumped together more than
23 one subject country as the alleged source of imported
24 product.

25 I am referring to Tables V, IX and X of the

1 confidential staff report; and I can't get into that
2 here because it is confidential. I would appreciate
3 it if you resubmit those transactions without any
4 Korea in the equation. I am making this request now
5 in the event that Korea retains a *de minimis* margin in
6 Commerce's final determination, which has just been
7 postponed until March 22nd.

8 I note that in a IIMAK brief, at page 51,
9 you state that and I quote: "Identifying the sources
10 of the competing bids is difficult because customers
11 generally do not reveal the names of the companies
12 offering them lower prices" and "purchasing agreements
13 are given multiple suppliers," making it "difficult to
14 identify precise lost sales and revenue allegations."

15 However, since I am trying to evaluate the
16 significance of what I regard as relatively few
17 confirmed transactions, I would appreciate it if you
18 were able to break out Korea in your posthearing
19 submission.

20 MR. CUNNINGHAM: Yes. We will do our best
21 on that. In some instances that may require judgment,
22 hopefully rising above the level of speculation on our
23 part. Where it does so, we will clearly label it as
24 such in case we turn out to be -- well, wrong.

25 COMMISSIONER KOPLAN: Thank you. I

1 appreciate that.

2 MR. KLETT: Commissioner Koplan, you
3 mentioned that there were relatively few confirmed
4 lost sale/lost revenue allegations.

5 COMMISSIONER KOPLAN: That was in my
6 opinion, yes.

7 MR. KLETT: Conversely, there were
8 relatively few categorical-denied lost sales/lost
9 revenue allegations. A lot of the allegations in
10 terms of the table, anyway, say: see discussion. When
11 you see the discussion and you go back to the
12 purchaser's questionnaires for the same customers, I
13 would say that some of those come very close to being
14 confirmed; and then for a number of allegations there
15 was no response.

16 So, I guess my only point is that the lack
17 of categorical-confirmed lost-sale allegations, I
18 don't think means that it would suggest a lack of
19 competition.

20 COMMISSIONER KOPLAN: I was not suggesting
21 that. I am just trying to fill in a gap for myself in
22 the event that this stay is *de minimis* on March 22nd.

23 MR. KLETT: I understand.

24 COMMISSIONER KOPLAN: I wasn't drawing an
25 ultimate conclusion here but I appreciate the fact

1 that you are bringing that up. Thank you.

2 MR. KLETT: Thank you.

3 COMMISSIONER KOPLAN: Ms. Potuto, if I could
4 come back to you for a moment. Respondent Armor
5 contends that imports from France, that correspond to
6 the domestic-like product, found by the Commission in
7 the preliminary phase amounted to a negligible percent
8 of all imports during the most recent 12 months for
9 which data was available preceding the filing of the
10 petition.

11 They also argue that there are new non-
12 subject sources of certain TTR, certain specific
13 countries that are PBI and that I can't get into here,
14 that are not captured in the Commission's data and
15 that, consequently, the French percentage of imports
16 is actually overstated. That is at page 15. I am
17 specifically referring to Footnote 55 on that page.

18 In our preliminary reviews, we stated that
19 because we included finished faxed TTR within the
20 domestic-like product, along with jumbo TTR and
21 finished bar code TTR, the domestic-like product is
22 broader than the scope, as defined by Commerce,
23 therefore raising an issue with respect to
24 negligibility of French-subject imports. You have
25 covered this well I think in your earlier

1 presentation.

2 If the calculation includes all imports
3 corresponding to the expanded domestic-like product,
4 as Armor contends, subject imports from France would
5 be negligible. Your discussion of negligibility
6 included the statement that you are unable to locate a
7 case which examined the like product beyond the scope
8 affected by the question of negligibility. It appears
9 that Armor could not find such a case either.

10 I tend to agree with your analysis but how
11 do you respond to Armor's additional argument that new
12 non-subject country sources of certain TTR caused the
13 French percentage of imports to be overstated? I
14 can't get into the specifics of the basis for that
15 claim on their part, but I note that there was a
16 question asked in the questionnaires, just the
17 question I can get into. The question was: Are you
18 aware of any new suppliers, either foreign or
19 domestic, that have entered the market in the last
20 three years? Okay. So that is apparently behind this
21 that is alleged by Armor.

22 I would like you to respond if you would?

23 MS. KIMBLE: My name is now Ms. Kimble. I'm
24 not Ms. Potuto.

25 COMMISSIONER KOPLAN: I was about to correct

1 myself and I hadn't gotten to that point, yet. That
2 was going to be my last comment to you. Sorry I
3 missed that.

4 MS. KIMBLE: That's okay.

5 COMMISSIONER KOPLAN: Okay.

6 MS. KIMBLE: With regard to non-subject
7 imports, it's important to note that the Commerce
8 Department has now issued a decision that says that
9 any material coated in one of the subject countries,
10 but slit in a third country, is still subject imports.
11 We are not aware of any coating facilities anywhere,
12 except in the subject countries.

13 MR. TRENDL: And this is Tom Trendl, and
14 I'll add to that. In fact, we have submitted evidence
15 to the Department of Commerce of exactly this
16 occurring, where we had subject imports, subject
17 jumbos being slit in third countries. And it's one of
18 the reasons we believe that the Department of Commerce
19 wrote its determination the way that it did. And we'd
20 be happy to submit that information, as well, to the
21 Commission, because, frankly, we believe it's probably
22 Japanese material going through third nations or other
23 subject material.

24 COMMISSIONER KOPLAN: Thank you. I
25 appreciate that. And I'll just close by saying to Ms.

1 Potuto Kimble, welcome back.

2 MS. KIMBLE: Thank you.

3 COMMISSIONER KOPLAN: Sure.

4 CHAIRMAN OKUN: Commissioner Lane?

5 COMMISSIONER LANE: I'm not sure who to
6 address these questions to, but I'm sure that somebody
7 will volunteer an answer. The definition of slitted
8 fax TTR is based on a width of 8.5 inches and not end
9 use, meaning not using for fax. Does there exist in
10 the market a label printer or other machine that uses
11 or could use 8.5 inch width TTR for an end use other
12 than fax?

13 MR. KINGDON: Richard Kingdon, yes; yes,
14 that does exist such a printer, in very, very small
15 utilization. We could -- in our posthearing brief, we
16 could give you a distribution of our certain TTR cells
17 for non-fax applications within that -- in that width
18 frame.

19 COMMISSIONER LANE: Okay, thank you. Is
20 there a range of wax chemical specifications that are
21 used specifically with slit fax TTR and not certain
22 TTR?

23 MR. DOWELL: This is Vince Dowell. Could
24 you just repeat the question again?

25 COMMISSIONER LANE: Yes. Is there a range

1 of wax chemical specifications that are used
2 specifically with slit fax TTR and not certain TTR?

3 MR. DOWELL: First of all, let me say, I'm
4 not a chemist. But, I don't believe that there are
5 specific chemicals or specific ranges of chemicals
6 that could be used to identify non-slit or certain TTR
7 versus fax TTR. They're generally the same raw
8 material components that are used to develop the two
9 types of formulas.

10 COMMISSIONER LANE: Okay, thank you. If it
11 were possible to cut a slit fax TTR into a smaller
12 size, could you place it in a printer that uses TTR,
13 which has similar chemical wax composition?

14 MR. DOWELL: Sorry, could you ask that
15 question one more time?

16 COMMISSIONER LANE: Do you want me to repeat
17 it? If it were possible to cut a slit fax TTR into a
18 smaller size, could you place it in a printer that
19 uses TTR, which has a similar chemical wax
20 composition?

21 MR. DOWELL: I'm afraid, Commissioner, it's
22 the last four or five words that just throw me. The
23 printer doesn't have a -- a printer is mechanical.
24 One could take a slit -- one could take a fax ribbon,
25 one would have to re-roll it onto a spool that fit the

1 bar code printer, one could then run that bar code
2 printer and on a certain subset of receivers, that
3 ribbon would print, most likely. It wouldn't be
4 optimum, though. Again, these -- in response to both
5 of your last two questions, these formulations are
6 adjacent, if you think in Venn diagrams, and they
7 overlap; but, their degree of overlap is minimal in
8 the United States.

9 COMMISSIONER LANE: Okay, thank you.

10 MR. MARSHALL: Let me take one last
11 clarification shot at that one. From an economic
12 point of view, you have all this value added in a
13 finished slit fax ribbon. It generally runs in length
14 between 30 and 100 meters long, which by most
15 standards in bar code would be considered a very short
16 length ribbon. So to take that slit fax ribbon out of
17 its packaging and that value added, put it on some
18 mechanism to re-spool it, generally a different both
19 diameter size spool and width size spool, and spool up
20 a new bar code ribbon from what was 30 to 100 meters
21 long in the first place, it's just economically not
22 feasible. You would never produce something that you
23 could possibly make any money out of doing.

24 Jumbo rolls that are slit for either fax or
25 for bar code purposes generally are 20,000 to 30,000

1 meters long and the economies associated with setting
2 up a jumbo and getting a lot of drops of ribbons off
3 of it are what helps make your economics viable to
4 compete in this marketplace. To do what you suggested
5 is physically possible, but it's economically very
6 impractical.

7 COMMISSIONER LANE: Okay, thank you. In
8 your pre-hearing brief, you stated that slitting and
9 converting did not require substantial technical
10 expertise. However, it has been argued that
11 converting jumbo TTR into slitted TTR requires careful
12 coordination by a trained professional staff and that
13 the unique and specific needs of the consumers require
14 the converters to possess a high degree of technical
15 expertise. How do you respond to this claim?

16 MR. DOWELL: This is Vince Dowell.
17 Certainly, slitting is a technical job. I mean, it
18 requires some amount of training and it's a large
19 piece of machinery and there's a lot of safety
20 conditions that need to be understood. But, in
21 comparison to the ink making and the technical know
22 how required to make thermal transfer inks and code
23 them on to polyester film with these large high-speed,
24 multi-station coating machines, in comparison to that,
25 the slitting side of this is relatively simple.

1 And it's also not necessarily unique to the
2 TTR industry. It's fairly generic technology. Any
3 company that needs to convert rolled materials to
4 specific widths and lengths understand what it takes
5 to slit and understand that technology. So, it's not
6 that it doesn't require some technical expertise; just
7 relative to the ink making and the coating side, it's
8 not necessarily significant. It's not the essence of
9 being a TTR manufacturer.

10 MR. MARSHALL: Commissioner, I'll expand a
11 little bit. Vince and I have worked together for
12 many, many years and this is the latest that the
13 industries would work together in. So, we've been
14 exposed to all kinds of manufacturing operations, from
15 electronics, to DoD system support for the World
16 Fleet. And we're seeing lots of complicated
17 operations, lots of value-added operations, and I
18 would say that slitting would fall in the category of
19 a machining operation.

20 It's not a low-skilled job; it's a medium-
21 skilled job. It takes a couple good months to get a
22 slitting operator trained and up to speed. A slitting
23 operator can induce a lot of scrap and waste, because
24 you have so much value added in the jumbo roll, so you
25 want to make sure they're trained well and they know

1 how to run the machines. And there are things that
2 you can do to help them, like have set-up people set
3 the machine up, so the operator is dealing with a
4 smaller element of the job. But, that's about where
5 that would fit.

6 In contrast, an ink maker, I would say, is
7 -- If we were talking to our colleague back here, who
8 is an ink maker, he was with IIMAK for a number of
9 years, as a slitting operator, went into training as
10 an ink manufacturer. He's been at that now a couple
11 of years. He's gone through one step of a promotion.
12 And if you were to ask him, and I would encourage you
13 to do so, he'd probably say, well, I've been at it two
14 years and I'm still learning something everyday. This
15 is hard, comparatively.

16 And so, that value added resource is very
17 rare to find and we have to train them. It's very
18 hard to find somebody from the marketplace that can
19 come in and do that kind of a job. Yet, somebody with
20 a machining background, we can have them in a couple
21 of months be productive.

22 In coating, it's even far more extreme than
23 that. It takes virtually years to get to what I would
24 consider to be a coating operator, whom we would
25 entrust with these multimillion dollar machines. They

1 have lots of process capability. They can ruin
2 literally hundreds of thousands of dollars worth of
3 materials, if they don't operate the machine
4 correctly. There's a lot of environmental factors to
5 take into account. And the training, I would say, is
6 a three- to five-year period of time before you have a
7 coating operator, who is really valuable.

8 And so, there's lots of progressions to get
9 there. And, generally, at IIMAK, our people tend to
10 go through slitting and then ink manufacturing and
11 then coating, and they tend to learn a lot about the
12 industry and the nuances of the chemistry. And by the
13 time they get to coating, they have a very high-
14 skilled job.

15 COMMISSIONER LANE: Better stop right there.
16 The red light is on.

17 MR. MARSHALL: Okay.

18 COMMISSIONER LANE: And I'll come back to
19 you. But, thank you.

20 CHAIRMAN OKUN: Commissioner Lane, if he
21 wants to just finish his thoughts --

22 COMMISSIONER LANE: Oh, okay. I'm sorry; go
23 ahead.

24 MR. MARSHALL: I think that's sort of the
25 explanation. And I think about my broad background in

1 manufacturing and I would say we're dealing with a
2 mid-level skilled job in slitting and a higher level
3 skilled job in coating and a very skilled
4 manufacturing job in coating. And technically, the
5 resource and the technical support required is equally
6 as complicated in exponential.

7 COMMISSIONER LANE: Okay, thank you.

8 MR. KINGDON: Commissioner, could I point
9 out one -- of course, you've got a red light.

10 CHAIRMAN OKUN: Got a red light; but, is it
11 short?

12 (Laughter.)

13 CHAIRMAN OKUN: If your lawyer would have
14 taken that, we would have never - no, I appreciate
15 that. We'll try to keep moving and if we need to come
16 back, we'll do that.

17 Mr. Klett, I'm going to come back to you.
18 If you recall, at the end of my questioning, we were
19 talking a little bit about pricing and intra industry
20 competition and some of the things going on. And Mr.
21 Marshall, I think, had given me a lot of helpful
22 information about what's been going on in this
23 industry. But, you had wanted to add something, as
24 well.

25 MR. KLETT: I think Mr. Cunningham covered

1 just about everything I wanted to say. I would just
2 point you to Table 2-3 in your staff report, where it
3 actually gives price comparisons on a country-by-
4 country basis.

5 And the other point I'd like to make, in
6 terms of responding to that it's intra industry
7 competition, not imports, and that is that they're
8 essentially -- to follow that logic, you're
9 essentially segmenting the market and saying, U.S.
10 producers compete among themselves and don't compete
11 with imports. And I just don't think that's the way
12 the market works. Thank you.

13 CHAIRMAN OKUN: Okay, I appreciate those
14 comments. Well, let me -- I want to continue on with
15 what's going on with the industry and the different
16 factors that can affect pricing in the market. And
17 let me now turn, if I could -- well, actually, Mr.
18 Marshall, maybe you could just continue where you were
19 and talk a little bit about the global nature of this
20 product and whether that's been a change. In other
21 words, you referenced, I think, kind of global over
22 supply. This is an industry with a fair amount of
23 exports of its own. And I wondered if you could just
24 talk about what's been going on globally, other than
25 over capacity, which you mentioned, that might be --

1 whether it's changed of all, I guess, over the period
2 of investigation, I think you pointed us to. And if
3 you could just use your microphone, please.

4 MR. MARSHALL: Let me get my thoughts
5 together on that one a little bit. I would say, first
6 of all, America was the first market to develop.
7 Europe was behind it. And that adoption rate is still
8 a little bit more developing, because you have Eastern
9 Europe still in an adoption state. And so that part
10 of the marketplace actually has more attraction to it
11 from a growth point of view, than the U.S. market
12 does. And then you have Asia, which is a very
13 difficult market for especially U.S.-based companies
14 to compete in and it's emerging, especially China, at
15 this stage.

16 And the way I see what's happened, and
17 especially influenced shortly before the period of
18 interest of this investigation, is that several of us
19 were related by way of a license agreement for a long
20 time, from 1983 until 1998. And that was Armor IIMAK
21 and Fujicopian. And Fujicopian was the licensor and
22 Armor and IIMAK were licensees. And as a result of
23 that agreement, we were trade restricted from each
24 other's marketplaces. And Armor and IIMAK paid
25 royalties to Fujicopian, in return for technical

1 sharing. And, actually, it's how we both started in
2 the TTR business back in the 1980s.

3 When that license agreement was not renewed
4 by Armor, it put Armor in position where it could
5 compete freely in the rest of the market, including
6 our own, and it caused us to have a need to do the
7 same thing. So, Armor is the market share leader in
8 Europe; we're the market share leader in the United
9 States. And it took those two market share leaders
10 and it had them -- it gave them the ability late in
11 the game and the maturity of these markets to compete
12 in each other's market.

13 So, the market started to get global. And
14 what Armor and us, and although we're on the opposite
15 sides of the table here today, but, at that point in
16 time, I think we both agreed that we needed to look at
17 it globally, because all of the other companies in the
18 TTR business, but for our license agreement team, all
19 had global access, and a lot of the customers needed
20 us to have global access. So, it was a restriction
21 that was actually hurting us relative to our
22 competitiveness with other competitors throughout the
23 world. So, it kind of opened things up quite a bit
24 and made the market more competitive.

25 I think, also, a very interesting change was

1 Dai Nippon. Dai Nippon was not very much into the bar
2 code industry at all, but they were the world dominant
3 leader in fax TTR and they supplied their fax TTR to
4 the fax OEMs, most of whom are Japanese. And so, the
5 OEMs sell their fax ribbons under their brand name and
6 that's where Dai Nippon was largely supplying their
7 TTR.

8 What had happened with them is that, as
9 Richard Kingdon described earlier, the new
10 installations have peaked and are actually starting to
11 go down, and that has had a direct impact on the
12 capacity utilization of Dai Nippon. And so, Dai
13 Nippon made a decision that they were going to use
14 that capacity and put it towards bar code, and the
15 only market that they found really plausible to do
16 that in was the U.S. marketplace. The Japan market is
17 substantially smaller and it's pretty saturated.
18 Europe is much harder to approach, because it's not a
19 monolithic market. And so, they came to the U.S.
20 market and were pretty egregious at it. It was a
21 fairly well supported market with supply and demand
22 and reasonable balance. They had a lot of resource
23 and a lot of capability and they came to the market
24 with products. And, in our opinion, the way they went
25 to market is with price. So, Dai Nippon was a very

1 large contributor to this over capacity and a new
2 player in the market, as compared to the earlier years
3 of the business.

4 MR. CUNNINGHAM: As a footnote to that, the
5 Commission is familiar with that sort of circumstance;
6 that is, the breakdown of interlocking licensing
7 arrangements, leading to dumping. I refer you to
8 EPGTS from Japan a few years back.

9 CHAIRMAN OKUN: Mr. Trendl?

10 MR. TRENDL: Yes. Mr. Marshall actually
11 touched on something relevant to a question, I think,
12 all of you asked at some point, regarding the relative
13 weight of coating versus slitting and the importance
14 of these two things. Interestingly, you have
15 licensing agreements for coating operations that
16 really governed the industry for many years. There
17 aren't licensing agreements -- there's no need for a
18 licensing agreement to be a slitter. And although
19 somewhat off topic, it is something Mr. Marshall
20 mentioned, so I wanted to note it.

21 CHAIRMAN OKUN: Okay. And then just in
22 terms of global prices, in relation to the U.S., do
23 you have any sense of that, Mr. Marshall, in terms of,
24 are they global supply arrangements, where it's keyed
25 off a particular price?

1 MR. MARSHALL: Well, I can speak from our
2 experience. I think the U.S. has been hyper
3 competitive, highly contested by all of the key
4 manufacturers worldwide. They've all come into this
5 marketplace. It is the largest marketplace. I think
6 Europe is seeing more competition today. And, again,
7 I think that -- and I would say, I've noticed a
8 difference in Europe, even as a result of us filing
9 this petition last May, that we find Europe more
10 contested today than it was a year ago.

11 Europe, also, has a substantially different
12 set up as to how manufacturers go to market. Armor is
13 still the largest, by far, manufacturer and supplier
14 market share leader in Europe. The last time we
15 looked at it, we had them nominally at 40 percent of
16 the market and nobody holds that kind of share here in
17 the United States. And it is a harder market to go
18 to. You really have to address country-by-country how
19 you're going to approach that marketplace. And as a
20 result of that, there are a lot of regional converters
21 in Europe. There are very, very few competitive
22 coating companies in Europe and I would argue maybe
23 the only one of substance is Armor.

24 And so, converters, slitting operators,
25 slitting companies are much, much more prolific in

1 Europe, as a way of going to market, than they are in
2 the United States, because it's more regional and they
3 satisfy the cultural differences from country-to-
4 country that way, and it seems to work over in Europe
5 in a way that it would not work here in the United
6 States. So, it is pretty different.

7 Brazil is a pretty small market,
8 comparatively. And Asia hasn't defined itself yet;
9 but, I would say Asia is mostly contested with the
10 Japanese and somewhat Armor were there, but just a
11 teensy bit. It's a hard market for us to compete it.

12 CHAIRMAN OKUN: Okay. Mr. Kingdon?

13 MR. KINGDON: Richard Kingdon. Could I just
14 add a comment about the global supply agreements?
15 There are certain key OEMs in this industry and they
16 do operate globally with differing levels of success.
17 And it has been asserted by certain parties, I've
18 read, that there are sort of universal global supply
19 agreements.

20 In our experience, these OEMs do prefer to
21 have a global source of supply when they can; but
22 often, or, in fact, invariably, the ones that we deal
23 with, they all have -- they have differing regional
24 pricing. We do not have global pricing. We have
25 different pricing in Europe, different pricing in the

1 United States, and that's the pattern we see. And we
2 have no such agreement selling into Japan and Korea,
3 because we have just no access into those markets.

4 CHAIRMAN OKUN: Okay. I appreciate that. I
5 do have some more questions, but maybe they'll be
6 covered. Vice Chairman Hillman?

7 VICE CHAIRMAN HILLMAN: Thank you. I guess
8 I would like to follow up a little bit on both what
9 Commissioner Miller was asking and what the Chairman
10 has been talking about, to understand more about the
11 competition in the market. Commissioner Miller had
12 been asking you to help understand, explain for us --
13 I mean, we, obviously, have heard from all of the
14 IIMAK people very clearly, your sense of your sort of
15 financial position. And, obviously, we are required
16 by law to look at the industry as a whole. And I
17 think as Commissioner Miller's questioning suggested,
18 your position is not the same as a number of the other
19 players in the industry. So, we're struggling with
20 what do I make of those differences.

21 And I guess I'm trying to understand whether
22 any of them relate to product mix. Is it more
23 profitable to sell fax TTR or to sell bar code? I
24 understand the IPR issues related connected to the
25 fax. But from a manufacturing standpoint, do you make

1 more money in one market versus the other?

2 MR. KINGDON: They're very comparable.

3 VICE CHAIRMAN HILLMAN: They're very
4 comparable.

5 MR. KINGDON: In some of the non-certain
6 TTR, like color or like resin, there are specialty
7 products that are more profitable. So, there are
8 issues of mix across the different companies, but not
9 between fax and bar codes.

10 VICE CHAIRMAN HILLMAN: Or any of the other
11 product that is subject to this investigation.

12 MR. KINGDON: I get confused on who has
13 which data, but there are different price points for
14 wax resin products. I think product three versus
15 product one, product three is a more sophisticated
16 product. It's a different market. It could be
17 different mixes between different companies. But,
18 primarily, the market is 75 to 80 percent product one.

19 Another factor that you might see is that
20 certain respondents -- certain domestic players sell
21 at different points in the value chain. For instance,
22 NCR, while I said before that very few people sell
23 direct, NCR does a little bit of selling direct, so
24 they get the value of the additional step in the value
25 chain, because they have broader relationships with

1 certain very large U.S. companies.

2 VICE CHAIRMAN HILLMAN: Okay. No, I was
3 trying to understand from looking at the data whether
4 some of these very wide differences in operating
5 income and other financial data were at all a function
6 of either what the actual product that they're selling
7 and the cost to produce it versus the price you can
8 sell it for, as opposed to these issues of
9 distribution and other things.

10 MR. KINGDON: I think there's also for the
11 two parties that are transnational, Japan to the
12 United States, I think if you look, their pattern of
13 imports over time has not been totally uniform and I'm
14 absolutely convinced that there is an element of cross
15 subsidy that they can bring those products in and get
16 profit from those products, while subsidizing
17 domestic.

18 VICE CHAIRMAN HILLMAN: And I understood the
19 point you were making to Commissioner Miller, in terms
20 of where the R&D, both costs and actual research, is
21 occurring. But, I will look forward to any of the
22 answers, Mr. Cunningham, that you're giving on helping
23 us to understand how we look at this, given the
24 requirement to look at the industry as a whole.

25 If I can then go on a little bit to touch on

1 these issues of the competition on the foreign side.
2 And maybe I'll use, as a way of going through some of
3 this, the arguments that Armor has made in its brief
4 that its imports should not be cumulated with those
5 from others, and they make a number of arguments, in
6 terms of why we should look at their imports
7 differently. And I guess I wondered if I could have
8 you help me understand that. I mean, one of the
9 things that they're arguing is this issue that they
10 are -- the relationship between selling to OEMs, as
11 opposed to selling to distributors. And you touched
12 on this to some degree in your testimony, but I'm
13 trying to make sure I understand how much of a
14 distinction you think it is whether you're selling to
15 an OEM, as opposed to through a distributor.

16 MR. KINGDON: In general, the OEMs are very
17 attractive customers, because they are single-point
18 customers that control relatively large volume of
19 product and they pre-specify, it's an engineering
20 level, and then they build that product and sell it
21 versus the resell of it, they said, has more of an
22 iterative play one versus the other.

23 VICE CHAIRMAN HILLMAN: And if you get a --
24 I mean, presumably, when you sell to an OEM, it's on a
25 contract rather than a spot basis?

1 MR. KINGDON: It's more typically on a
2 contract basis or a period of commitment. There are
3 very few contracts in this industry over the last few
4 years, because people have been so hurt by them. The
5 customers perceive they've been hurt by them. So, it
6 doesn't mean much. They have re-openers. You might
7 have a commitment to purchase, but re-price it fairly
8 regularly. So, there is some element of difference.
9 Armor has probably -- I'll defer to what they said,
10 they have more global relationships with certain
11 critical OEMs that they operate national - that they
12 operate around the world. But, again, I'm familiar
13 with some of those agreements, because we bid against
14 them.

15 VICE CHAIRMAN HILLMAN: Okay.

16 MR. KINGDON: And there were carves out by
17 region, the fact that Armor won that business
18 globally, but when they were solicited -- when bids
19 were solicited, there was an option to bid on the
20 European element or the U.S. element or both
21 concurrently. We have, in the last 15 months, secured
22 a contract in Europe that we didn't secure the U.S.
23 side of a U.S. supplier. So, it's a little overrated
24 to say that it's a global -

25 VICE CHAIRMAN HILLMAN: No, that's very

1 helpful, because, obviously, that was one of the
2 things I was trying to understand, because what
3 they're arguing is that for these contracts to global
4 companies, where it's kind of a global supply
5 contract, if you will, the competition is not
6 occurring here in the United States and, therefore, we
7 should not consider the French imports to be
8 cumulated, because the competition wasn't really
9 occurring here in the United States.

10 MR. MARSHALL: Commissioner -

11 VICE CHAIRMAN HILLMAN: So, I appreciate
12 your point. Mr. Marshall, you wanted to add
13 something?

14 MR. MARSHALL: Yes. Commissioner, I'd like
15 to just build upon this just a little bit. Armor has
16 been an excellent supplier to OEMs historically and
17 it's been a solid part of their market strategy, as
18 we've competed against Armor and as we've now with
19 Armor throughout the years. When the license expired
20 and they came to the United States, what was certainly
21 easy for them to do was to take advantage of their
22 European developed relationships with those OEMs and
23 build on them with a base of critical mass here for
24 the U.S. marketplace. I mean, very logically, they
25 would do that. I would have done the same thing had I

1 been in their position.

2 But, I would point out to you that that's
3 how they started. The marketplace here in the United
4 States is largely determined today by distribution.
5 And so, Armor's share of the United States grew very
6 rapidly, very quickly, because they had the step
7 function global agreements that they were referring to
8 with OEMs that they established the relationships with
9 in Europe first and then built on them here. But, the
10 future of the market in the United States, if you're
11 going to do anything in the United States, it's more
12 with distribution, because the OEMs really have a much
13 smaller share today than they did 10 years ago. This
14 is a distribution business today.

15 VICE CHAIRMAN HILLMAN: Now, all of your
16 comments have been extremely helpful in terms of the
17 overlap between the French and the U.S. market. Help
18 me understand what you think there is to point to, in
19 terms of overlap between the Japanese and the French.
20 How do you see those two players, in terms of
21 competition in the U.S. market, between the French and
22 the Japanese.

23 MR. MARSHALL: I would -- I'll just kind of
24 wing this one, because it's more the way I feel, based
25 on my impression as running a company in this industry

1 for a lot of years.

2 MR. CUNNINGHAM: Lawyers always love it, at
3 this point.

4 MR. MARSHALL: Yes. This is where he's
5 going to cringe. I would just tell you, I think Armor
6 has a basis of a market strategy that was built around
7 OEMs and I've watched how they've built on that over
8 years and less than arms length understanding. I
9 would say that the Japanese companies that have given
10 us the most gas on a pricing basis are companies that
11 had relationships with Japanese OEMs, still retain
12 Japanese OEM supplies, and came to the United States
13 to try to get into that market and they're trying to
14 get into a distribution marketplace today, which is
15 very difficult to do on dimensions, when the
16 marketplace is already serviced fully. So, what
17 dimension do you use, if you want to build market
18 share on a market that's already fully supported?

19 And I don't think the Japanese had a plan.
20 Some of this is based on conversation with my
21 competitors and times that we've met with one another
22 that I don't think they had a plan on how they would
23 go into the market and differentiate with price or
24 services or some other dimension. You know, they came
25 in and they differentiated with price. They tried to

1 get market that way. And I would say that that's the
2 largest difference that I see between the way the two
3 competitors have come at the marketplace.

4 VICE CHAIRMAN HILLMAN: Okay. Now, Mr.
5 Cunningham, you know that part of the reason I'm
6 asking this is Armor is basically saying, don't
7 cumulate us, because we are different from the
8 Japanese. And to some extent what I just heard Mr.
9 Marshall tell me is, in fact, there are some
10 differences, in terms of the focus, et cetera. So, I
11 guess I would ask you for the posthearing, to respond
12 to the arguments that Armor made, in terms of
13 distinguishing themselves, both from domestic
14 production, as well as from the Japanese imports.
15 There are a number of specific items in their brief
16 that speak to this issue to sales to OEMs, versus
17 distributors, to global contracts, et cetera. If you
18 could respond to those and then help us understand the
19 evidence that relates to any overlap between Japan and
20 France.

21 MR. CUNNINGHAM: We'll be happy to do that.

22 VICE CHAIRMAN HILLMAN: Okay, thank you.

23 CHAIRMAN OKUN: Commissioner Miller?

24 (No questions asked.)

25 CHAIRMAN OKUN: Commissioner Koplan?

1 (No questions asked.)

2 CHAIRMAN OKUN: Commissioner Lane?

3 COMMISSIONER LANE: First, I want to start
4 off by asking Mr. Kingdon if he remembers the question
5 that he wanted to answer a little bit ago and do you
6 still want to answer it?

7 MR. KINGDON: Thank you, very much, if I
8 could. I think we were talking about the skills of
9 slitting and I did read in certain respondent briefs
10 the complexity of laying out the web. You have a one
11 meter web and then you are trying to optimize your
12 yield out of that and there's much made of the
13 complexities of that. I just wanted to add that there
14 are very simple computer programs that do that.
15 There's precedent in the garment industry and other
16 industries. It's very simple. The slitter operators
17 don't do that. They're given a pattern that they are
18 given instructions to what they will slit off one
19 jumbo and the computer has already calculated what's
20 the optimum width of the jumbo and the optimum slit
21 ribbon configurations to get the maximum yield out of
22 that jumbo.

23 So, it's always struck me as somewhat
24 misleading to focus on that element as being part of
25 the key value added process with regard to slitting in

1 this country. It can be done easily.

2 COMMISSIONER LANE: Okay, thank you.

3 (Pause.)

4 COMMISSIONER LANE: In the pre-hearing
5 brief, you stated that competition for slit certain
6 TTR is fierce among domestic producers. How can you
7 be sure that the state of the domestic industry is the
8 result of subject imports, as opposed to this
9 competition among domestic producers?

10 MR. KLETT: Commissioner Lane, this is Dan
11 Klett. Imports represent roughly, just in general
12 terms, 30 percent of the market. I would characterize
13 the market as highly competitive among all competitors
14 in the market, domestic producers and importers. And
15 I think your little -- there was a question asked in
16 the purchaser's questionnaire about who is the price
17 leader and all the companies pop up at one point or
18 another, domestic and import.

19 So, I don't think you can attribute the
20 price decline that you observe during the POI to just
21 intraindustry competition. I think it's a function of
22 competition among all the suppliers. And that,
23 overlaid with the fact that when you look at your
24 pricing data, you have consistent underselling, I
25 think you have to conclude that the importers, as a

1 whole, contributed materially to the price decline
2 that you observed over the POI. So, I don't think it
3 can be laid totally to intraindustry competition.

4 MR. CUNNINGHAM: And I would just -- this is
5 Dick Cunningham -- I would just add as a footnote to
6 that, it's worth reading the affidavit submitted by
7 Sony on that, their take on how that, in fact, worked
8 from their standpoint.

9 (Pause.)

10 COMMISSIONER LANE: The data in this matter
11 shows that the per unit cost to producing certain TTR
12 and slitted fax TTR has decreased over the period
13 examined. What are the reasons for this decline and
14 per unit production costs? And do you perceive this
15 decline in per unit cost continuing and why?

16 MR. DOWELL: This is Vince Dowell.
17 Certainly, the per unit costs has decreased due to
18 several reasons. One of them is, you know, IIMAK had
19 a very aggressive program to reduce our costs, in
20 order to remain competitive. We've modernized our
21 facility. We've added new equipments that run much
22 wider and faster. We've worked very hard to come up
23 with ways to, in some cases, redesign our products, to
24 reduce the raw material costs by going to different
25 types of materials that essentially can accomplish the

1 same thing with little different chemistries. We have
2 improved our modernization in the ink-making
3 equipments. We've added the higher speed coaters.
4 We've added fully automatic slitting equipments. And
5 we've worked very hard to partner with many of our
6 suppliers, to reduce the raw material costs.

7 There's a point in time, though, when you
8 run out of rope. And I think we're certainly getting
9 to that. The cost line becomes somewhat asymptotic,
10 as there's just not that much left anymore. I think
11 we've worked really hard over the last few years to
12 continue to bring that cost down, but it certainly
13 can't go on forever. You can't cost reduce yourself
14 into profitability.

15 COMMISSIONER LANE: Okay, thank you. That's
16 all the questions I have.

17 CHAIRMAN OKUN: You all have provided a lot
18 of information. I have a couple of other things that
19 I can hopefully wrap up with. One would be just to
20 pricing in general and the Vice Chairman, of course,
21 has raised an issue with regard to how we deal with
22 these converters and slitters pricing, which I will,
23 obviously, be looking for, for posthearing.

24 Mr. Klett, in your presentation, you had
25 addressed at least one of the allegations about the

1 quarterly pricing data and its reliability and you did
2 that with respect to product one and said you're
3 providing additional information on that. As I
4 understood, there were the same allegations made or
5 similar allegations made about product three and I
6 wondered if you intend to address those in a similar
7 fashion or whether it can be addressed.

8 MR. KLETT: Well, I obtained the detailed
9 data from product three from IIMAK, as well, and I can
10 provide some analysis in our posthearing brief,
11 looking at both product one and product three, in
12 response to the allegations of Armor and ITW, that the
13 price data are flawed.

14 CHAIRMAN OKUN: Okay. I'd appreciate you
15 doing that. And then I just want to make sure, Mr.
16 Cunningham, that I understand. With regard to product
17 two, you've asked us to put less emphasis on it. But,
18 you're not arguing that it's not an - are you arguing
19 that it's not an indicator of competition or
20 appropriate -

21 MR. CUNNINGHAM: No. I said there is
22 competition of some sort at that level. It's a bit of
23 a side show. It shows something of the same pattern
24 as what's going on with the rest of the market. It
25 might be viewed - it's not quite -- could be viewed as

1 a microcosm. That's not right, because the real
2 competition is at the slit level. But, it's not
3 irrelevant and it shows some injury and the injury
4 there is not insignificant. It's more than, say,
5 immaterial.

6 CHAIRMAN OKUN: Okay. And then one final
7 question with regard to what's going on with prices.
8 And, again, we've talked a lot about the intraindustry
9 competition. And Mr. Klett, you described this as a
10 highly competitive market. If we say that, okay,
11 highly competitive market, what about the other
12 issues? And I know you talked a little bit about why
13 you added capacity and the reasons for that. Could
14 you, also, address -- and, I guess, maybe, Mr. Dowell,
15 you may have just addressed this, in terms of, we've
16 seen costs come down -- I guess what I would say, is,
17 okay, put intraindustry competition aside, would you
18 expect costs to be -- prices to be going down in the
19 market where you've got capacity that's come on line,
20 you've got declines in costs, and you've gains in
21 productivity? Why wouldn't I expect there to be a
22 decline in that market in prices? Mr. Klett?

23 MR. KLETT: I think a lot has to do with --
24 well, it's kind of a chicken or egg question, to the
25 extent that -

1 CHAIRMAN OKUN: I love those kinds.

2 MR. KLETT: Yes. Respondents are claiming
3 that the cause of the price decline is the cost
4 decline and I don't think the market is near that
5 simple. I mean, you can't say that cost declines
6 don't affect price. But, I think in this situation,
7 IIMAK, in response to the price pressure it was
8 facing, took some clear steps to reduce its costs and
9 I think some of the other producers did, as well. So
10 that to a certain extent, I would say that cost
11 declines -- or a good chunk of the cost declines are
12 in response to the price declines. They've managed,
13 to an extent, when you look at the operating profit
14 level, to mitigate the adverse affects of the price
15 declines through positive actions they've taken.

16 But, as Mr. Dowell said, you reach a point
17 in the road where your options to further reduce costs
18 become more and more limited over time. For example,
19 they've reduced employment. That's reduced their pre-
20 unit labor costs, part of which was productivity
21 increase, but part of which were reductions they
22 otherwise wouldn't make. And when you're looking long
23 term, in terms of your long-term competitiveness, I
24 think Mr. Marshall explained the training that went
25 into a skilled worker. You let somebody like that go,

1 there's a cost to try to rehire somebody later on, if
2 you need to. And Mr. Marshall, Mr. Kingdon, can
3 probably expand upon that a bit, in terms of their own
4 experience with the motivations for the cost declines
5 and whether - which was driving which.

6 CHAIRMAN OKUN: Mr. Marshall, Mr. Kingdon,
7 you can comment on that. And, then, maybe if you can
8 take it one step further, which is, I mean, this point
9 being, if you can only cut costs so much and then you
10 have to do something else. I guess the question I
11 have is, you know, one thing that strikes me about
12 looking at the data is that you did see prices go
13 down. But, you didn't just hold your volume, I mean,
14 you've got an increase in shipments. So, I'm just
15 trying to figure out when -- how do those relate? I
16 mean, how do you make that call of -

17 MR. CUNNINGHAM: Remember that consumption
18 was increasing during this period, too. One was
19 expecting -

20 CHAIRMAN OKUN: But, you didn't make -
21 that's what I want to hear from these industry guys,
22 how they see their market.

23 MR. MARSHALL: Let me start on the cost down
24 side of it. In the early years of our participation
25 in this business, every time we bought a coater, we

1 bought it because demand kept increasing. It wasn't
2 until the very late 1990s that we, like I think all
3 good companies introspectively look at ourselves and
4 size us up against our competition, and when you look
5 at some of the later entrance into the market, they
6 were coming into the market with what was newer,
7 commercially viable, developed throughout time, highly
8 productive equipment that our Legacy equipment did not
9 have. And so, we understood that we were going to
10 have to really get moving, in order to stay
11 competitive with what some of the entrance, and a
12 particular one would be ITW. They have a good cost
13 model. And so, we would target that and say, we have
14 to figure out how to compete, especially in the
15 markets where they're at. And they talked about their
16 80/20 rule, so they're right in the wheelhouse of the
17 commodity market that we're largely playing in.

18 So, we've made those investments. Unlike
19 the past, for the purposes of capacity, we made them
20 for cost reduction. And the commercial availability
21 of the equipment in the late 1990s was there and the
22 commercial availability of equipment like coating
23 machines and small medium mills was not there in the
24 late 1980s. We just couldn't find it. But, some
25 companies did rise to the occasion and figure out how

1 to develop stuff that was really very, very productive
2 comparatively and that's what our investments were in.

3 I think what we would have thought back then
4 is that at a certain point in time, we'd still be able
5 to use our Legacy equipment, either for non-certain
6 TTR, other types of products, and maybe if we had a
7 capacity crunch, we could use them. At today's
8 prices, they're obsolete. I could not use that Legacy
9 equipment and compete in certain TTR. There just
10 wouldn't be any profitability to it.

11 MR. CUNNINGHAM: Could I make a point about
12 that with respect to capacity data? We agonized over
13 this a bit in our questionnaire response. The
14 question asked you to include in your capacity, all
15 the equipment that is, in fact, usable. Well, this is
16 usable, but not usable. We included it all. We did
17 not crank out of our capacity data the machines that
18 he's talking about, what he calls the Legacy machines.
19 They're there. They are usable, as he says, in a
20 crunch for overflow production. But, they're not
21 basically - and once in a while, they do use them.
22 But, basically, they're not used. They're not
23 competitive in the marketplace.

24 So, when there's a lot of talk by the
25 respondents about, ah, there's a big increase in

1 capacity by IIMAK and that drove down prices, that
2 simply has no relation to reality whatsoever. If you
3 look at IIMAK's production and look at the industry's
4 production, it essentially tracks consumption in the
5 marketplace. And the capacity might have been better
6 stated if we had cranked that stuff out; but, frankly,
7 we wanted to be conservative and maybe we should have
8 put a footnote or something. But, I want you to
9 understand it now, I guess, is what I'm saying.

10 CHAIRMAN OKUN: Okay. Mr. Kingdon, did you
11 have anything else that you wanted to add to Mr.
12 Marshall's comments?

13 MR. KINGDON: If I could add a couple of
14 things. Ms. Chairman, I think that the data you
15 stated is perhaps not quite correct. That includes
16 the slit fax data. If you look at certain TTR without
17 slit fax, IIMAK has had its hat handed to it and
18 volumes are down and revenues are down substantially.
19 And having been instrumental in moving the company
20 into the fax business, that was a response to the fact
21 that we couldn't hold our own in the certain TTR, as
22 we defined it.

23 I think as we move along, there's an
24 insidious consequence to what is happening in this
25 marketplace, in that we are forfeiting R&D. We are

1 forfeiting new product development. And when I look
2 across the competitors, no one else has put the
3 capital investment that IIMAK has put into this
4 industry and, yet, all their prices are going down.
5 Well, what's the economic basis for that? Where we've
6 made the process improvement and reduced our costs,
7 but we still can't keep up with the price reductions
8 in the marketplace through our cost reductions and,
9 hence, as Vince Dowell has said, we're reaching the
10 end of the road.

11 Finally, there's a huge knock-on effect with
12 this business, in that the resellers essentially take
13 our product and mark it up. If they were buying it
14 for 12 cents before and they marked it up by 25 or 30
15 percent, they could make a reasonable return. Today,
16 they're buying that product for 8-1/2 or nine cents,
17 whatever the price is, and they are getting a much
18 smaller markup. So, a number of the resellers are
19 just moving away from the technology. So, this price
20 competition, while it's an immediate donut, in terms
21 of, wow, I can buy the product for a cheaper price,
22 someone else with low overhead, a reseller not adding
23 any value, also, gets the same price, they take it to
24 the end user and so the pricing goes straight through
25 from us to the end user. It doesn't make the end user

1 more competitive, because it is simply not a big
2 enough cost element. It doesn't appear on their bill
3 and materials. And now, the resellers are saying, I
4 really don't want to carry this product anymore. So,
5 we are losing the whole basis of our industry through
6 this.

7 CHAIRMAN OKUN: I appreciate all those
8 comments. Vice Chairman Hillman?

9 VICE CHAIRMAN HILLMAN: Thank you. I hope
10 just one follow-up. You have, obviously, testified a
11 bit about your reaction to some of the things in the
12 ITW brief. And the one issue that we haven't really
13 talked about, that I wanted to at least get your
14 reaction to, was their statement that in March of
15 2000, when Paxar sold IIMAK to its current owners,
16 IIMAK became the most heavily indebted TTR producer.
17 And I wondered if you could comment just on, is that
18 true and how would you say that it affected your
19 operations.

20 MR. MARSHALL: Well, when IIMAK was sold, we
21 had, at that time, two finalists vying for the
22 company. One of them was ITW. ITW buys companies for
23 their business. That's what they do. They have
24 hundreds of businesses within ITW. They had the
25 ability to pay for it in cash and so if we became a

1 division of them, you wouldn't have any of those
2 things on a P&L and you wouldn't have that on a
3 balance sheet and, you know, that's kind of the way
4 you become part of a corporation like that. You don't
5 have your own board. You don't have to pay your own
6 D&O insurance. You don't have to do all of those
7 other things that a stand-alone business does.

8 When that did not happen, we became -- we
9 were purchased by Centre Partners. What happened
10 there is there was a capital structure put together,
11 led by Centre Partners, where they put an equity stake
12 in -- they financed the business with a structure of
13 bank debt, both senior and mezzanine bank debt. And
14 the management team, all my direct reports, invested
15 in the company, as equity members of the capital
16 program.

17 And so, we went to market that way with
18 plenty of room to meet our obligations to our lenders.
19 And in all of our mind's eyes, from the largest equity
20 stakeholder to the smallest equity stakeholder, we
21 felt that we had a very strong business with a very
22 good market position and a lot of opportunities to
23 grow. So, the capital structure seemed to be well
24 suited for the business we had and our ability to
25 generate profits from it and satisfy our lenders and

1 our investors.

2 What was, I think, the most shocking
3 difference of what happened is that even with -- when
4 Centre was arm's length from us and in the process of
5 purchasing us, they go through excruciating detail to
6 understand the market. They hired a very reputable
7 company to take a look at it. I mean, we argued for
8 days over whether the pricing is going to flatten out
9 or it might still go down by two percent a year. I
10 don't think anybody would have expected eight to 10
11 percent continuing for three, four years at a time.
12 And that's where the crunch came from. It just was
13 unrealistic that a market would continue to do that.

14 That put our capital structure under some
15 squeeze and that's where we've made our statements to
16 you about what we've had to do and the hardships that
17 that put us under. And, you know, did it make the
18 investment less attractive? Of course, it did. Take
19 prices top line; it's also bottom line. It's the
20 toughest problem for a business to battle with,
21 insidious pricing.

22 I would go one step further. We're the only
23 company in the entire industry that's TTR and we stand
24 alone. And so, you don't have to be a rocket
25 scientist and sit down and say, who might be the most

1 vulnerable, if we can go for an infinite period of
2 time with aggressive pricing, who is the most likely
3 candidate to fall? Well, it's not going to be Sony.
4 It's not going to be D&P. It's not going to be these
5 multibillion dollar corporations. If it sounds a
6 little paranoid, I think that if you looked at a
7 strategic plan of who is the most vulnerable in the
8 marketplace, it would have been IIMAK. And who is the
9 best plum? Well, we had the leading market share.

10 So, you know, being paranoid doesn't mean
11 they're not going to get you, but there was reasons to
12 feel that way and the attack on us and our customer
13 base was insidious. And where I think we became very
14 alarmed and caused us to come at this from this type
15 of an action is that we did everything we knew how to
16 do. And I would define myself as an expert in
17 manufacturing operations. I've done it for 33 years.
18 I was trained to do it and I've done it well all my
19 life. And we were very successful at reducing costs.
20 We're running out of road and the pricing just kept on
21 going.

22 And so, that's the way this whole thing
23 manifested itself. And you both -- all of you have
24 asked questions about the dimension of cost and the
25 dimension of pricing. You know, for quite a while, we

1 thought we had the plan that we could stay right with
2 it and we could develop the company and remain
3 successful doing it. We just never expected the
4 pricing to be as insidious and as deep as it was.

5 VICE CHAIRMAN HILLMAN: Thank you for your
6 answers.

7 MR. CUNNINGHAM: And I would just keep all
8 of that testimony in mind, when you look at Exhibit 1
9 to our brief.

10 VICE CHAIRMAN HILLMAN: I appreciate that.
11 I think with that, I have no further questions, but I
12 thank you all, very much, for your answers. It's been
13 extremely helpful. Thank you.

14 CHAIRMAN OKUN: Let's see if there are any
15 other questions from my colleagues. Commissioner
16 Lane?

17 COMMISSIONER LANE: I have a follow-up to
18 something that Mr. Cunningham said. I think you said
19 that in the capacity numbers, you were using old
20 machines that weren't necessarily being used all the
21 time, because you wanted to give an accurate
22 reflection, even including old machinery. Can you
23 provide, if it's not already in the record, the
24 numbers and take those old machines out, to reflect
25 the capacity?

1 MR. CUNNINGHAM: We can do that and we will.

2 COMMISSIONER LANE: Okay, thank you.

3 CHAIRMAN OKUN: With no other questions from
4 my colleagues, let me turn to staff to see if staff
5 has questions of this panel.

6 MS. MAZUR: Diane Mazur, Office of
7 Investigations. Staff has no questions.

8 CHAIRMAN OKUN: Thank you, Ms. Mazur. Do
9 respondents have questions for this panel?

10 MR. LEVINE: This is David Levine. I have
11 three questions. The first is, we've heard mention of
12 verification of IIMAK's questionnaire response and we
13 just wondered when we're going to be able to see a
14 verification report. So, that's a question to staff.

15 The second question has to do with, and I
16 don't know if there's an answer -

17 MS. MAZUR: Diane Mazur, again from Office
18 of Investigations. As soon as practically possible,
19 we will make it available to all parties under APO.

20 MR. LEVINE: Thank you. The second question
21 goes to IIMAK and Mr. Klett, in particular. As the
22 parties may know, when we commented on the draft
23 questionnaires, we suggested that staff include a
24 question, so that the pricing data be segregated by
25 particular model numbers, because we expected that

1 there would be baskets of categories in the various
2 pricing products. And that is what happened and we've
3 commented on it, in our brief. Pardon me one second.

4 (Pause.)

5 MR. LEVINE: Mr. Klett has said that he's
6 already collected the information on a product-
7 specific basis and we would like to be able to see
8 that, as soon as possible, so that we could comment on
9 it, as well. And that would be for product one and
10 product three.

11 MR. KLETT: Mr. Levine, I'd just make two
12 points. Number one, as you well know, in terms of the
13 product specifications that are collected by the
14 staff, it's a balancing act between specificity and
15 coverage. And I think that the products that were
16 collected -- the product categories that were
17 collected were the right product categories, in terms
18 of good coverage, were not of significant variance in
19 terms of variability for the particular product specs.
20 In terms of proving you with the data, I'll just have
21 to talk with the attorneys in terms of the proper
22 mechanism for that. I mean, Chairman Okun asked that
23 we provide the detail in our post-hearing briefs and
24 we will do so.

25 MR. CUNNINGHAM: Yes. I was just going to

1 say we've made commitments to the commission on that
2 and we'll follow through with those.

3 CHAIRMAN OKUN: Did you hear that answer?

4 MR. LEVINE: We won't have a chance to
5 comment on it if it's provided only in the
6 post-hearing brief, is my real concern.

7 CHAIRMAN OKUN: Do you want to say
8 something, Mr. Trendl?

9 MR. TRENDL: Yes. I believe in your final
10 comments you'll be able to make additional comments on
11 that information.

12 CHAIRMAN OKUN: That's what I was going to
13 say, but there you go. We have final comments, too.
14 Does that finish your questioning?

15 MR. LEVINE: I suppose so. I would just
16 reiterate that it seems that the data is already
17 available, it wouldn't be additional work to collect
18 it and provide it. I'll just leave it there.

19 My final question is with regard to the last
20 round of questioning on the level of debt incurred by
21 IIMAK, if IIMAK could provide information on their
22 level of debt during the POI, that would be
23 informative.

24 CHAIRMAN OKUN: Mr. Cunningham, did you want
25 to comment?

1 MR. CUNNINGHAM: We'll give the commission
2 anything the commission deems appropriate on that.

3 CHAIRMAN OKUN: I appreciate that comment.
4 Anything further?

5 MR. LEVINE: That's all. Thank you.

6 CHAIRMAN OKUN: Before we break for lunch, a
7 much needed lunch, I do want to again thank all the
8 witnesses for being here on this panel. It's been an
9 extremely informative morning and we very much
10 appreciate your time and all the answers that you've
11 given.

12 With that, we will take an hour break for
13 lunch, so we will come back at 2:20. With that,
14 I will remind everyone the room is not secure, so
15 please take any confidential business information with
16 you.

17 We are adjourned.

18 (A recess was taken from 1:16 p.m. until
19 2:18 p.m.)

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1 of the U.S. industry as a whole and through some
2 serious manipulation of data has attempted to show
3 that imports have caused or threaten to cause harm to
4 the U.S. industry. IIMAK is wrong for a number of
5 reasons.

6 First, IIMAK's poor performance is unique in
7 the industry and the commission should not treat its
8 anomalous results as representative. This is not a
9 case like the recent hand truck investigation where
10 the commission found that the impact of imports on the
11 largest U.S. producer would be representative of the
12 impact on the rest of U.S. producers. We urge the
13 commission to scrutinize all of the criteria for
14 injury in this case with and without IIMAK. The
15 contrast is striking.

16 Measuring the U.S. industry condition with
17 IIMAK included is analogous to testing the buoyancy of
18 styrofoam while tied to a lead weight. The industry
19 as a whole is not injured.

20 Second, IIMAK has caused its own troubles
21 through questionable business strategies and
22 mismanagement. Several witnesses at the preliminary
23 conference recounted, as we did in our post-hearing
24 brief, not for the first time, but as we did in the
25 preliminary conference, a litany of miscalculations

1 and failed marketing choices by IIMAK over the past
2 several years.

3 As directed by the statement of
4 administrative action, the commission should consider
5 how these factors other than imports have caused
6 IIMAK's troubles.

7 Third, IIMAK crafted its scope of subject
8 imports to seek protection only from specific TTR
9 products. The reasons for IIMAK's exclusion of slit
10 fax TTR from the scope and its arguments for excluding
11 slit fax from the domestic like product is clear:
12 IIMAK does not want the commission to consider
13 producers' activities and performance regarding this
14 particular TTR segment.

15 The commission should reaffirm its
16 preliminary finding that slit fax TTR is part of the
17 like product and producers of slit fax are part of the
18 domestic industry.

19 The record in this final investigation
20 provides ample support for your preliminary
21 determination based on the standard six-factor test
22 that no clear distinction exists between slit fax TTR
23 and the balance of the TTR included in the scope.

24 IIMAK defends its exclusion of slit fax by
25 arguing alternatively that the commission generally

1 does not include the domestic like product downstream
2 products made from subject merchandise or that under a
3 semi-finished product analysis slit fax does not
4 belong in the same like product as jumbo rolls. These
5 arguments and the cases IIMAK cites lack any relevance
6 to the facts of this case.

7 Slit fax TTR is no less like the in scope
8 jumbo rolls from which it is finished than any other
9 slit TTR is like its corresponding jumbos and slit fax
10 TTR bears the same likeness to other slit TTR as the
11 various widths and formulations of in scope slit TTR
12 bear to one another.

13 The record dictates that the commission
14 should affirm its preliminary determination to include
15 slit fax TTR in the domestic like product.

16 Fourth, IIMAK wants the commission to
17 exclude from the domestic industry U.S. producers that
18 perform the finishing operations that convert jumbos
19 into the form slit TTR required for the product to be
20 used in all of its intended purposes. The facts in
21 this case demonstrate, however, that converters
22 satisfy the standard commission criteria for inclusion
23 in the domestic industry.

24 In the fair value investigation, IIMAK
25 itself urged Commerce to pay particular attention to

1 ITW's converting operations because, and I quote, "In
2 this particular case, the further processing
3 constitutes a very significant part of the total
4 finished cost of the product sold in the United
5 States."

6 IIMAK was correct: the U.S. Customs Service
7 officially ruled that TTR converting constitutes a
8 substantial transformation conferring origin on the
9 finished TTR. The questionnaire responses in this
10 investigation also confirm this fact, indicating very
11 substantial levels of value added in the converting
12 process.

13 IIMAK cannot discredit these facts in the
14 record and I don't believe this morning it even tried
15 to, nor can it cite to any cases where the commission
16 excluded from the domestic industry U.S. producers
17 with levels of capital investment, production
18 expertise, value added, employment, U.S. inputs and
19 activities similar to the U.S. TTR converters.

20 In fact, the case upon which IIMAK primarily
21 relies for this purpose, the synthetic indigo from
22 China case, bears no similarity to this TTR case.
23 Unlike this case, converters of synthetic indigo added
24 little domestic value, they had low capital
25 investment, they required minimal technology and

1 expertise and number of employees.

2 Moreover, respondents in that case did not
3 even bother to address the factors examined by the
4 commission in deciding whether a firm qualifies as a
5 domestic product.

6 Here, the record shows the opposite and the
7 commission should rule that converters are part of the
8 domestic industry, as Commissioner Miller found in the
9 preliminary phase.

10 When converters are properly included in the
11 domestic industry, the absence of injury by reason of
12 imports becomes even more profound.

13 With that, I will turn to the experts who
14 can fill in the details, starting with Jim Landry.

15 MR. LANDRY: Good afternoon. My name is
16 Jim Landry and I am Vice President and General Manager
17 for ITW Thermal Films Division of Illinois Tool Works.
18 ITW is a Fortune 200 American company with annual
19 sales of approximately \$10 billion and employees over
20 23,000 Americans. I've been involved in the TTR
21 industry and related products for over eight years.

22 ITW has both TTR coating and processing
23 operations in the United States located at Kalkaska,
24 Michigan and Romeo and Bruce, Michigan. These
25 operations collectively represent \$34 million in

1 capital investment and employ a total of 127
2 Americans.

3 In Korea, our TTR operations employ
4 approximately 70 people. We own and operate a Korean
5 producer of TTR, ITW Specialty Films Company, Limited,
6 and believe we account for 100 percent of imports from
7 Korea. But it is important for the commission to
8 understand that we consider our imports to be of an
9 intermediate product, so-called jumbo TTR rolls.

10 Practically none of these imports is resold
11 in this intermediate state. This focus on making and
12 selling intermediate product is an excellent example
13 of our 80/20 business philosophy.

14 We believe in separating and focusing our
15 business activities into long run and short run
16 operating units to achieve operating efficiency.
17 Continuing the example, jumbo rolls are further
18 processed at our U.S. production operations and sold
19 in transformed form, i.e., slit rolls, at a
20 substantially higher sales value, approximately double
21 in value.

22 As a result of our U.S. processing, nearly
23 all of our U.S. market share is supplied with U.S.
24 produced material that is either produced at Kalkaska,
25 Michigan, our short run customs niche coating

1 operation, or further processed at Romeo and Bruce,
2 Michigan.

3 I was surprised when IIMAK brought this case
4 because even though I am not a trade lawyer, I always
5 thought unfair imports had to be the reason for
6 obtaining antidumping relief. Imports are not the
7 cause of IIMAK's troubles.

8 I can also tell you that IIMAK's troubles
9 are unique among U.S. producers and that explains why
10 it is the only U.S. producer petitioning for relief.

11 Before the period of investigation, IIMAK
12 utilized an M&A firm to solicit ITW with regard to
13 potentially acquiring their business. From the
14 perspective of a previous significant customer of
15 IIMAK and from my general understanding of the
16 industry, I am uniquely aware of IIMAK's
17 self-inflicted problems.

18 The next largest U.S. producer, Sony, out of
19 its Pittsburgh operations boasted recently that it
20 imports only a small amount of TTR and is in very good
21 health. For Sony's U.S. production to benefit from
22 antidumping relief would truly be an injustice.

23 Leveraging its substantial U.S. production
24 operations, Sony has relentlessly been driving prices
25 downward for some time in a well publicized campaign

1 to reduce the number of TTR suppliers active in the
2 U.S. market from 19 or 20 down to five.

3 Recently, IIMAK just lost a multi-million
4 dollar account for wax to Sony with product produced
5 at Sony's Pittsburgh, Pennsylvania facility.

6 What are the reasons for IIMAK initiating
7 this trade action?

8 Based upon customer feedback and general
9 industry knowledge, we believe the reasons may be as
10 follows:

11 In March 2000, Paxar agreed to sell almost
12 all of its interest in IIMAK for a substantial capital
13 gain. IIMAK's management bought the company in a
14 highly leveraged buyout financed by the venture
15 capital firm Center Partners Management LLC. The
16 buyout was announced to the marketplace in early 2000,
17 right at the beginning of the period of investigation
18 in this case.

19 The new IIMAK began life in its current form
20 as the most heavily indebted TTR producer of any
21 significance with debt we believe to be very large,
22 the specific amount which the commission has just
23 requested confirmation. At the same time, recession
24 hit the U.S. market and the rate of growth for TTR in
25 the U.S. fell to about zero. Over capacity in the

1 U.S. industry and competition from other technologies
2 such as direct thermal printing, ink jet printing and
3 laser printing added to the general downward pricing
4 pressure. ITW owns and operates businesses that use
5 these technologies.

6 What did IIMAK's management do in response
7 to the more difficult market environment?

8 Within the industry, it is common knowledge
9 that IIMAK spent a lot of capital seeking to expand
10 market share through a variety of means that failed or
11 backfired.

12 In July of 2000, IIMAK attempted to buy a
13 distributor with an estimated annual sales volume of
14 \$17 million, Acucote Imaging. It then effectively
15 lost a portion of this business by substituting a
16 cheaper TTR product to the Acucote channel which
17 created ribbon breakage problems with Acucote's
18 customers' printers. A large portion of the Acucote
19 Imaging business had been supplied with wax products
20 from Union Chemicar, UCA. The marketplace reports
21 that IIMAK was forced to direct its representative to
22 take various remedial measures in order to prevent
23 customer desertion.

24 It appears that the efforts failed and
25 customers left in droves. They did not come to us

1 because of a lower price. They simply wanted a
2 product that worked as represented and expected.

3 As you continue to investigate claims of
4 lost sales and revenues to our products and to those
5 of other TTR producers, ask the customers if they had
6 previously purchased from Acucote.

7 IIMAK's management also invested heavily to
8 develop and serve the market for TTR colors and other
9 specialty TTR products. It purchased two new
10 multi-head coating machines from Italy that were
11 designed to coat these particular products, but the
12 market and U.S. demand failed to develop as expected.

13 Today, the great majority of demand is still
14 for standard black wax, wax with some resin and
15 wax/resin TTR products. According to industry
16 experts, it is my understanding that the two
17 multi-head TTR coaters are greatly under utilized,
18 adding to their depreciation expense, but ill suited
19 for the manufacture of certain TTR.

20 During the period of investigation, IIMAK
21 also invested in a company called T-2 Solutions in
22 Plymouth, Minnesota. IIMAK's hope was to expand sales
23 of color TTR through developing a systems integration
24 solution; that is, bundling of color TTR with labels
25 and printers in a single system. This was a direct

1 selling effort into the market by IIMAK as T-2 was a
2 wholly owned subsidiary.

3 IIMAK management admitted to me personally
4 that the effort has not achieved their plans, as the
5 business has been closed and relocated to Amhurst, New
6 York.

7 Other marketing disasters befell IIMAK
8 during the period of investigation which helps to
9 explain why its average pricing might have eroded more
10 rapidly than those of its competitors. One such event
11 involved ID Images, which was a major Sony and IIMAK
12 distributor during the period of investigation.

13 ID Images allegedly owed a large amount on
14 accounts payable to IIMAK. To resolve this issue, ID
15 Images' ribbon business was transferred to IIMAK in
16 January of 2001. However, before the transfer, ID
17 Images significantly reduced prices to the end user
18 market using Sony products. This action produced a
19 panicked response from IIMAK management which
20 communicated to the marketplace that it would meet its
21 distributors' lower prices immediately and guarantee
22 such prices for a period of months.

23 IIMAK also invested in a company named
24 Precision Ribbon Technologies, an offshoot of
25 Chemicraft, which according to industry knowledge had

1 not paid off for IIMAK as planned. Initially, IIMAK
2 was toll coating for this company, but eventually
3 absorbed the company into IIMAK in January 2002.

4 Another offshoot from Chemicraft emerged,
5 Ribboncraft Associates, which effectively reduced the
6 business volume IIMAK had anticipated absorbing.

7 In short, any erosion you might find in
8 IIMAK's financial performance and prices are linked to
9 the foregoing self-generated events, not to some
10 sudden low-price strategy of importers. The fact is
11 that prices have been declining on a worldwide basis
12 for everyone for more than five years now, but IIMAK's
13 strategies in response have been uniquely
14 counterproductive, which explains why IIMAK, unlike
15 other U.S. producers, has chosen to file this case.

16 Nothing else has worked, despite IIMAK
17 enjoying the industry's largest share of the large
18 U.S. TTR market. Why now?

19 Given the outcome from failed strategies
20 identified earlier, I suspect IIMAK has filed this
21 case as a last resort to validate their failed
22 management leveraged buyout plan. IIMAK's obsessed
23 focus on imported TTR versus Sony overlooks the impact
24 on the market by their biggest competitor. Sony as
25 the number two market share holder with aggressive

1 pricing and a strong parent company would suggest a
2 big threat.

3 IIMAK's failure to acknowledge this imminent
4 threat and continued focus on imports would appear to
5 be another failed strategy by IIMAK.

6 I would like to clarify a couple of points
7 from the brief submitted by IIMAK and also from the
8 earlier testimony.

9 In IIMAK's brief, they indicate that the
10 Korean domestic market is for all intents and purposes
11 closed to imports. Please be advised to our ITW's
12 market share in Korea has decreased from approximately
13 75 percent to approximately 50 percent market share
14 over the past two years with the balance served by
15 imports.

16 To clarify earlier testimony by Petitioner,
17 Petitioner has alleged that there is a joint venture
18 between SKC and ITW. This is far from the truth and
19 the facts. ITW acquired SKC's converting business in
20 1999. ITW is not affiliated with SKC, we have no
21 joint venture partner relationship with SKC. SKC is
22 the third largest chaebol in Korea.

23 Next point: Petitioner also alleged that
24 Advent, which was the distributor for DNP, was
25 acquired by ITW back in 1997. For the record, Advent

1 was purchased by Thermal Transfer, Inc., not ITW, in
2 1997. The new company, Advent TTI, was acquired by
3 ITW in July of 2000.

4 Petitioner also alleges that we have
5 breached our confidentiality agreements with them.
6 I am here to testify today on the record ITW has not
7 breached any of their confidentiality agreements with
8 IIMAK. Common industry knowledge and plant visits as
9 a significant former customer of IIMAK are the basis
10 for our assertions.

11 In addition, I would also like to question
12 Mr. Marshall's comments about his 7/24 operation of
13 these multi-headed coaters to make certain TTRs made
14 up of wax or wax/resin products. Typically these
15 products are two or three layer composite TTR
16 products. These multi-headed coaters having four and
17 six coating heads would be a very inefficient way to
18 manufacture certain TTR for anyone in the industry
19 that understands coating technology and costs.

20 Thank you very much.

21 MR. GALLETTE: Good afternoon. My name is
22 Peter Gallette. I am the General Manager of ITW
23 Thermal Films in Romeo, Michigan. I am one of many
24 ITW employees in the TTR businesses in the United
25 States and I note that we employ more people in our

1 TTR businesses in the U.S. than in South Korea.

2 I have been involved in this industry for
3 eight years and I am intimately familiar with all
4 aspects of the industry, the market and TTR products.

5 Since May of last year when IIMAK filed its
6 petition, I have also become an amateur antidumping
7 expert and I now know that the factors considered by
8 the ITC in its investigation. I want to make sure you
9 understand the products at issue here. I will answer
10 any questions that you may have.

11 Mainly, I want to explain why slit fax TTR
12 that IIMAK has excluded from the imports under
13 investigation should continue to be included within
14 your definition of the domestic like product.

15 The U.S. TTR market is served by both in
16 scope products, I'll use your term, certain TTR, and
17 those products expressly excluded from the petition.
18 IIMAK excludes some TTR such as types of wax/resin,
19 colors, and resin products.

20 I have to say that IIMAK's attempt to
21 include some formulations but to exclude others makes
22 no sense at all to the marketplace.

23 I understand that IIMAK can exclude whatever
24 types of products it wants from subject imports and it
25 has chosen to exclude slit fax TTR and other specific

1 types of TTR.

2 As you found in your preliminary decision in
3 this case, no clear dividing lines exist between slit
4 fax TTR and other types of slit TTR and there is
5 definitely no reason to distinguish slit fax TTR from
6 fax jumbos while ignoring any distinction between the
7 slit certain TTR and certain TTR jumbos.

8 You already found in your preliminary
9 decision a discernable line between color and resin
10 TTR on one hand and all other TTR, including slit fax
11 TTR, on the other hand. No such discernable line
12 exists between slit fax TTR and certain TTR.

13 All of the reasons you cited in support of
14 your preliminary decision are confirmed by the
15 industry and the market. The record supports this and
16 we provided significant details on this topic in our
17 questionnaire responses. Please review our
18 information carefully.

19 There is a significant overlap in the
20 channels of distribution for TTR products that are
21 within the scope of the petition and slit fax TTR.

22 Nearly all TTR sold by producers through
23 distributors and/or directly to OEM printer
24 manufacturers such as a company called Zebra.

25 I know that the same distribution network

1 could represent both fax and non-fax TTR products.
2 For example, we have sold fax and non-fax jumbos to a
3 single customer and that customer markets both fax and
4 non-fax TTR.

5 We also know that IIMAK markets fax and
6 non-fax together, as the homepage of their website
7 makes clear. You should look at that homepage and see
8 ribbons for tag, label and office fax machines all
9 promoted on the same page. In fact, with rare
10 exceptions, all major thermal transfer ribbon
11 manufacturers market both fax and non-fax TTR.

12 Producers and customers likewise perceive
13 various TTR products within the scope and slit fax TTR
14 to serve common purposes and to have common features.
15 Educated customers and distributors understand that
16 common technology is used in the printing methods of
17 certain TTR and slit fax TTR. The only significant
18 difference among all of the various slit TTR products
19 including slit fax but not exclusive to slit fax is in
20 the format of the slit roll used, that is, length,
21 width and, in some cases, use of plastic cartridges.

22 You should understand that the packaging of
23 some slit TTR in plastic cartridges occurs for some
24 non-fax TTR as well as for fax TTR. In short, the
25 same differences that exist among all slit TTR within

1 the scope apply between those products and slit TTR.

2 Also, as I mentioned already, there is a
3 notable overlap in the distribution channel for fax
4 and non-fax.

5 Pricing among all TTR products is heavily
6 influenced by the relative volume and demand for
7 individual products. We included a chart as Exhibit
8 19 to our pre-hearing brief that displays the relative
9 price of representative products across the broad
10 spectrum of all TTR products.

11 You can see that the pricing is organized in
12 what I am told the commission would call a continuum.
13 The continuum includes all forms of TTR, specifically
14 including fax TTR and other TTR products.

15 I urge you to look carefully at the Exhibit
16 19 chart. You will see that the average pricing for
17 fax TTR falls between the average pricing for various
18 products included in the scope of subject TTR.
19 Whereas the average pricing for other non-subject TTR
20 lies at the high end of the chart, the average pricing
21 for fax TTR lies within the range of subject TTR
22 pricing.

23 I would add that the price of excluded fax
24 TTR seems to be developed based on the same
25 characteristics as certain TTR and other TTR. In the

1 actual marketplace, the unit pricing of fax TTR and
2 non-fax TTR is very similar. For ITW, recent pricing
3 for certain fax jumbo products differs from that for
4 certain other TTR jumbo sold to the same customer by a
5 fraction of one cent per MSI.

6 We have included in our proprietary
7 questionnaire response more details in support of this
8 point.

9 In closing, I would like to make a personal
10 comment about how frustrating this proceeding has been
11 for me personally. As general manager of ITW Thermal
12 Films, I'm responsible for responding to our
13 customers' concerns and also ensuring that the
14 business is accurately represented in the marketplace.
15 I have been forced to respond numerous times to
16 publications and market accounts distributed and
17 created by IIMAK, some published on their website.

18 IIMAK has tried to capitalize on this in
19 every possible way against ITW. On their website,
20 they made a statement regarding the products that we
21 produce were made in North Korea. Obviously, that is
22 not true. But the comments leave an impression that
23 we have to respond to with our customers and that
24 impression we are constantly clarifying to our
25 customers over and over because it continues to be

1 ongoing mistakes and misrepresentations.

2 While this example pales in comparison to
3 the overall defense that we have been forced to mount
4 in this case before the commission and the Commerce
5 Department, it does illustrate how wrong we think
6 IIMAK has been all along.

7 Thank you and I will be happy to answer any
8 questions.

9 MR. MALASHEVICH: Good morning, Madam
10 Chairman, members of the commission. I am Bruce
11 Malashevich, President of Economic Consulting Services
12 LLC. I am accompanied by Ms. Jennifer Lutz, a senior
13 economist with our firm.

14 My testimony today focused on rebuttal of
15 what are really just a few economic arguments made in
16 IIMAK's 80-page pre-hearing brief. I say few because
17 it is a brief largely dedicated to arguing points of
18 law. As you know, I'm not a lawyer, but it reminds me
19 of the old adage, if you don't have the facts, argue
20 the law, et cetera. But a good portion of IIMAK's
21 brief is dedicated to a purported showing that
22 converters should not be considered domestic
23 producers. However, almost all of the argument is
24 based on the experience at IIMAK, not on the
25 experience of the domestic industry as a whole as

1 reflected in the pre-hearing brief.

2 The fact that converters are very much a
3 part of the domestic industry is based on the informed
4 views of industry experts and finds ample support in
5 the record. In particular, if you have before you our
6 APO pre-hearing brief, that is the brief of ITW,
7 please turn to Exhibit 17, which is a summary of the
8 statistics in the record supporting the inclusion of
9 converters under the commission's traditional
10 standard.

11 From an economist's perspective, the value
12 added in the United States is the difference between
13 what the subject imports cost and what the finished
14 product sells for. In ITW's case, as you heard
15 earlier, roughly 50 percent, that is five-zero, of the
16 value of product is added in the United States. This
17 is not, as IIMAK wrongly contends, because of dumped
18 imports.

19 The commission sometimes has considered the
20 value added more narrowly, measuring labor and
21 material and other costs expended in the United States
22 after the goods are imported. Even by this measure,
23 the value added is quite substantial and I call your
24 attention to page I-16 of the public pre-hearing
25 report.

1 Petitioners downplay the data collected by
2 the commission by saying that the total cost of
3 foreign imports is distorted downward due to the
4 determination that imported jumbos are entering the
5 U.S. at dumped prices. This is a stretch in general
6 in this case, but once again I note that it cannot
7 apply to ITW's imports of jumbo rolls from Korea so
8 ITW's experience serves as a useful guide of the
9 relationships of value added to the cost of the goods
10 in the United States.

11 Most interesting, Petitioners really made an
12 admission against interest in the testimony today and
13 in the brief because as they disclosed today, U.S.
14 coaters reporting to the commission instinctively
15 included their own products converted for imported
16 jumbos as U.S. production throughout the data so the
17 perspective of the U.S. coaters clearly show that
18 converted products are U.S. production.

19 They tried to back away from their tactical
20 error in the brief and their testimony today, but
21 I think the damage to their case has been done.

22 As important as the industry definition
23 issue is, it's not case determinative. Whatever the
24 commission decides in this regard, the fact remains
25 that most subject imports are converted into U.S.

1 production before being sold in competition with other
2 domestically produced TTR.

3 At this point, I would like to reveal my
4 attempt at fairly abstract art here. Basically, this
5 sums up the competitive structure of the industry.

6 This is the universe of jumbos produced in
7 the United States, of which, as you heard in testimony
8 earlier --

9 CHAIRMAN OKUN: Mr. Malashevich?

10 MR. MALASHEVICH: Yes?

11 CHAIRMAN OKUN: Because the parties need to
12 look at this, let's just hold the time for a second so
13 we can look at it.

14 MR. MALASHEVICH: Sure. Of course.

15 CHAIRMAN OKUN: If you could turn this a
16 little bit more this way?

17 MR. MALASHEVICH: Of course.

18 CHAIRMAN OKUN: We'll let the parties have a
19 chance to look at it.

20 MR. MALASHEVICH: I'll even let them have it
21 after the hearing is over. It is sort of like
22 Salvador Dali.

23 But any event, this is intended to be the
24 universe of jumbos produced in the United States by
25 coaters. As you heard earlier, in, I believe, Mr.

1 Marshall's testimony, a very small percentage, less
2 than 10 percent, are sold as jumbos in the open
3 market.

4 This is the universe of subject imports,
5 including, to be conservative, imports from Korea.
6 Only a small sliver of subject imports are resold as
7 is in the open market and only a small sliver of the
8 small sliver of domestic jumbos sold as jumbos in the
9 open market.

10 This little slice which we measure in our
11 brief is the only competitive overlap between what's
12 imported and what's in fact sold in the United States.

13 These conditions of competition mean that
14 the great majority of imports are not imports at all,
15 as the commission has observed in the hearing earlier
16 today.

17 And I ask you to examine the pre-hearing
18 brief of ITW and ask yourselves are there any subject
19 imports of finished TTR? For those sales of jumbos
20 where imports and domestic production compete, there
21 is currently no evidence of injury by imports, the
22 numbers are too small and the imports oversold the
23 domestic industry in every instance.

24 So the issue becomes whether imports of
25 intermediate jumbos somehow cause material injury to

1 the industry as a whole. IIMAK's brief for the most
2 part talks about injury to IIMAK, not the domestic
3 industry as a whole.

4 It's very important to note on volume effect
5 that the pre-hearing brief establishes that the
6 domestic industry gained market share over the POI.
7 Under Mr. Klett's view of the competitive conditions
8 in the U.S. market, where all these products are
9 interchangeable and there's a lot of competition, how
10 can you expect imports from Korea which allegedly
11 undersold the domestic product during most of the
12 period, how come they lost market share?

13 Mr. Klett's view of the market simply does
14 not hold water when placed against the facts.

15 IIMAK attempts to get around this by making
16 a fairly convoluted recalculation of market share in
17 the pre-hearing report. We were not able to duplicate
18 the numbers, but it involves at least a dozen or so
19 modifications, rather unconventional, from what the
20 pre-hearing report shows.

21 I also would like to address IIMAK's and
22 Mr. Klett's argument that access to subject imports of
23 intermediate jumbos allows converters to underprice a
24 limited number of other U.S. producers. As tenuous as
25 this alleged link is, considering the degree of value

1 added in the United States prior to sale, the argument
2 could easily be shown as incorrect. Please look at
3 Exhibit 7 in ITW's pre-hearing brief which is based on
4 the numbers in the pre-hearing report.

5 The exhibit compares the average unit net
6 prices reported by the so-called coaters as a group to
7 the evolution of the average unit net sales prices
8 reported by the converters as a group.

9 Now, you could see who is underselling whom
10 in general in the marketplace. Now, I think that's
11 one of the simplest ways to cut through a lot of the
12 argument you heard earlier today to the effect that
13 conversion operations somehow are distorted by virtue
14 of their access to dumped imports.

15 The coaters as a group primarily rely little
16 on subject imports, converters as a group much more
17 so. Look at the average unit values and form your own
18 conclusion.

19 In the end, the commission must assess the
20 impact of subject imports on the domestic industry as
21 a whole. Volume indicators and productivity are all
22 moving strongly in the upward direction. Although
23 prices are down, the U.S. producers have cut per unit
24 costs through labor, raw materials, factory overhead,
25 selling expenses and G&A expenses. Therefore, the

1 profitability of domestic producers, no matter how
2 that is measured in the various permutations found in
3 the pre-hearing report, has remained quite healthy,
4 even in Petitioner's calculations or is even trending
5 upward in some scenarios.

6 These are not the facts that warrant an
7 affirmative determination in this case.

8 Thank you.

9 CHAIRMAN OKUN: Does that conclude your
10 presentation?

11 MR. LEVINE: We yield the balance of our
12 time to the rest of the panel behind us.

13 CHAIRMAN OKUN: Okay. Thank you.

14 You may proceed, Mr. Price.

15 MR. PRICE: Good afternoon. I am Alan Price
16 with Wiley, Rein & Fielding, here today on behalf of
17 Armor, S.A., the French producer of the subject
18 merchandise. I am joined this afternoon by my
19 colleague Dan Pickard and Mr. Chris Walker, Vice
20 President and General Manager of Armor U.S.A.

21 I would like now to introduce Mr. Walker.

22 MR. WALKER: Good afternoon. My name is
23 Chris Walker. I am the Vice President and General
24 Manager of Armor U.S.A., Inc.

25 Armor is a small privately-owned participant

1 in the U.S. market. Our shipments of subject products
2 are negligible and will remain negligible. We are
3 neither injuring the U.S. industry nor are we a threat
4 to the U.S. industry. Armor is small and will remain
5 small because of our specialty focus.

6 The overwhelming majority of our TTR sales
7 are of specialty, non-subject products, including
8 near-edge, corner-edge and resin products for
9 technically demanding applications that are not
10 covered by the current investigation.

11 Most of our subject product imports are
12 either for reexport from the United States or sold to
13 OEMs and do not directly compete against the standard
14 mass-produced products sold by IIMAK and Sony.

15 Armor's basis for competing in the U.S.
16 market is completely different from other domestic and
17 foreign producers. We focus on unique technologies
18 and market niches. Armor is in the U.S. as a
19 commitment to our customers' demand for global
20 service. The heart of our business is involved in
21 global contracts with the OEMs who we supply with
22 global solutions that are also tailored to meet their
23 logistical needs.

24 Armor focuses its sales to OEMs, a distinct
25 channel of distribution that makes our company unique.

1 This business approach of Armor in selling TTR has
2 been consistent for the 14 years that I have been in
3 the industry and a member of the Armor group.

4 The overwhelming majority of Armor sales are
5 to OEMs, as confirmed by the Petitioner this morning.
6 This strategy is extremely demanding to follow. We
7 have worked with several OEMs, including Avery
8 Dennison and Markem, to develop proprietary subject
9 and non-subject products. These products combine
10 special printing technologies under ribbon
11 formulations that are interdependent upon one another.

12 We excel at establishing centralized global
13 account management, covering commercial, technical and
14 service aspects. Then, to a small team, we roll this
15 out globally, adapting to the local market needs.

16 In short, mass market distribution of
17 standard products is not the basis of Armor's success.
18 We principally sell to OEMs on quality and
19 performance, where other domestic and foreign
20 producers are not able to compete for technical
21 reasons.

22 We do not plan on changing our focus or
23 growing our business in the mass distribution market
24 in which IIMAK and Sony, the price leader, vigorously
25 compete with each other.

1 I would like to now address Armor's future
2 in the U.S. under the markets in order to dispel any
3 argument that Armor's imports were or are likely to
4 imminently exceed 3 percent of the imports
5 corresponding to the domestic like product including
6 slit fax TTR.

7 First, for the like product subject to
8 investigation, I understand that there is no dispute
9 that Armor's imports are less than 3 percent of total
10 imports for the 12 months preceding the filing of the
11 petition. This doesn't surprise me, as Armor has had
12 a tiny share of the market from 2001 to the present
13 day. This will not change.

14 Second, Armor will remain negligible as a
15 U.S. supplier. Our questionnaire projects essentially
16 stable production for 2004 and 2005 and, frankly,
17 I believe that a decline in our U.S. market share is
18 more likely, which I would like to elaborate.

19 As the commission knows, a large portion of
20 our imports were slit in the U.S. to serve foreign
21 markets. Specifically, we exported significant
22 quantities of slit products to Latin American. Global
23 supply contracts are a core part of Armor's sales
24 strategy. Through 2003, we served Latin American
25 orders from the United States. In 2004, the Armor

1 Group will start to slit products in Brazil in order
2 to serve the Latin American market.

3 As our Brazilian operation comes up to
4 speed, we will stop exporting from the U.S. As a
5 consequence, jumbo rolls from France that were
6 imported to the U.S. for slitting and reexport will in
7 future be sent directly to Brazil. Under no
8 circumstances will we continue to slit in the U.S. to
9 serve Latin America. This will reduce our imports.

10 I would also like to point out to the
11 commission that our certain TTR business with OEMS
12 including Avery, Markem, and Norwood, is based on old
13 flathead printer technology for apparel and packing
14 applications. These printers and therefore the
15 associated TTR products are leaving the market at
16 approximately 50 percent per year. The consequent
17 decreased sales of certain TTR is leading to overall
18 decreased imports of subject merchandise in 2004.

19 Further, the global market is growing much
20 faster outside the U.S.A. than in it, as Exhibit 11 to
21 Petitioner's pre-hearing brief shows. Demand is
22 growing faster in Europe, Eastern Europe, Asia and
23 Latin America than in the U.S. The growth and
24 openness of the non-U.S. market is shown by IIMAK, who
25 is seizing share in Europe, Brazil and elsewhere. As

1 the U.S. market increases, Armor's stable
2 participation in it will be even smaller.

3 Just for the record, concerning the matter
4 of DNP and a joint venture with Sagem in France, this
5 business is limited solely to slit fax TTR,
6 non-subject merchandise. Further, this is not a new
7 market entry into France, but rather is a transfer of
8 the location of slitting from Japan to France. This
9 will not affect either the French or the European
10 markets. And, lastly, Armor does not produce slit fax
11 in France.

12 In sum, imports from France will not
13 imminently increase. The U.S. market is growing
14 rapidly and any change in Armor's sales will therefore
15 be insignificant.

16 Finally, high growth rates to TTR markets in
17 Asia, Latin America and Eastern Europe indicate that
18 Armor's French exports will not be diverted to the
19 U.S. In conclusion, imports from France are
20 negligible and do not threaten the U.S. industry.

21 Thank you.

22 MR. PRICE: Thank you, Mr. Walker.

23 The first issue I would like to address is
24 the proper domestic like product definition. The
25 commission got this right at the preliminary stage.

1 The evidence demonstrates that slit fax TTR should be
2 included within the domestic like product. There are
3 several inherent contradictions in the Petitioner's
4 arguments and they also have a lot of facts wrong.

5 First, the Petitioner wants semi-finished
6 and finished products to be in the same like product.
7 Now, the Petitioner used chemistry as the principal
8 scope definition here and then excluded slit fax TTR.
9 Based upon that alone, it doesn't even matter that
10 some companies may predetermine the use of some jumbos
11 at coating. All subject jumbos meeting their
12 chemistry are in the like product, whether ultimately
13 used for bar codes, fax, apparel or other
14 applications.

15 Now, the ITC has fairly clear precedent on
16 including semi-finished and finished products in the
17 same like product. Generally, all or virtually all of
18 the subject jumbos must go into the finished or, in
19 this case, slit product for there to be a single like
20 product.

21 Since IIMAK wants slit product in the like
22 product, all of the slit products must come into the
23 investigation or none of them can.

24 If a line is drawn between jumbos and slit,
25 this case must go negative. Those are basically

1 divided up as like products and there are a variety of
2 reasons which I think Mr. Malashevich largely
3 explained, although not explicitly and I'll save time
4 and explain them later.

5 But whether the Petitioner realizes it or
6 not, its only theoretical chance of an affirmative
7 determination is if slit fax TTR is swept up in the
8 like product.

9 Second, what makes no sense is if the
10 Petitioner wants slitting to be deemed inconsequential
11 for the purposes of defining the domestic industry,
12 but they want slitting only as to fax TTR to be so
13 significant as to be the basis for a domestic like
14 product definition. This just makes no sense.

15 We also believe that many of their
16 representations regarding clear bright lines and the
17 traditional six-factor like product test were just
18 wrong. We brought a variety of samples here which we
19 would be happy to discuss. They go to specific
20 issues, they go to use, they go to distribution and so
21 forth, so we would be happy to answer questions about
22 those.

23 Now, let me turn to negligibility. Imports
24 from France are negligible. There appears to be a
25 novel issue in this case as to whether the commission

1 should use the Commerce Department's scope or the
2 ITC's own domestic like product determination in
3 determining negligibility.

4 Well, here the statute is pretty
5 straightforward. The negligibility statute reads,
6 "Imports from a country corresponding to a domestic
7 like product identify by the commission are negligible
8 if imports account for less than 3 percent of the
9 volume of all such merchandise imported into the
10 United States in the most recent 12-month period for
11 which data are available the precedes the filing of
12 the petition."

13 The plain wording of the statute indicates
14 that the commission must examine those imports
15 corresponding to the like product. There is no need
16 to go beyond the plain meaning. However, the FAA, the
17 House report and the antidumping agreement all support
18 our interpretation. Any other interpretation will not
19 withstand scrutiny at the Court of International Trade
20 or at the World Trade Organization. Subject imports
21 from France are negligible and this investigation
22 should therefore be terminated as to France as a
23 matter of law.

24 With regard to threat, there is no basis for
25 concluding that imports were likely to imminently

1 exceed 3 percent at the time of the preliminary
2 determination or today. In this regard, the
3 negligibility determination is rather unique because
4 all aspects of it are actually linked in time to the
5 filing of the petition.

6 As a result, the commission must ignore
7 subsequent effects of the antidumping investigation as
8 some importers from Korea or Japan may reduce their
9 shipments or modify the shipments from levels that
10 they otherwise would be at. In this case, the
11 decision is easy because French imports have never
12 exceeded the 3 percent threshold, so there is no
13 current basis for concluding that imports would have
14 imminently exceeded 3 percent soon after the filing of
15 the petition; nor, as Mr. Walker just explained, will
16 they exceed the 3 percent level going forward. In
17 fact, they are likely to decline.

18 Should the commission not terminate this
19 investigation as to Armor, it is appropriate to
20 decumulate French TTR from other subject imports. Due
21 to the unique nature of Armor's business there is no
22 reasonable overlap and competition with imports from
23 Korea or Japan. The overwhelming majority of Armor
24 sales were either exported from the United States or
25 sold directly to OEMs through global supply contracts.

1 These OEMs insisted on one global source. There was
2 no option to supply geographically as the Petitioner
3 has claimed.

4 CHAIRMAN OKUN: Mr. Price, while you're
5 looking up, are you also seeing that your red light is
6 on?

7 MR. PRICE: I'll wrap up in one second.
8 I appreciate that.

9 CHAIRMAN OKUN: One sentence. How about
10 that?

11 MR. PRICE: Okay. In sum, Armor produces
12 specialty products which it sells in a distinct
13 channel of distribution and they should be cumulated.
14 The commission should make a negative determination as
15 to France and overall in this case.

16 Thank you.

17 CHAIRMAN OKUN: Thank you.

18 MR. THOMAS: Madam Chairman, before we
19 start, could I confirm how much time is left for us?

20 Mr. Secretary?

21 BI: ** Eight and a half minutes.

22 MR. THOMAS: Thank you. Mr. Loeb and
23 I intend to split this, five minutes that I will take
24 and he will take three and I'll do my best to stay
25 within my five minutes. Thank you.

1 I am Ritchie Thomas of the law firm of
2 Squire, Sanders & Dempsey, counsel for Union Chemicar
3 Company, a Japanese producer of TTR, and its U.S.
4 subsidiary, Union Chemicar America, the importer and
5 converter of subject TTR from U.C. Japan.

6 U.C. is concerned with a single issue.
7 That issue is whether imports of subject TTR from
8 U.C. Japan and Dai Nippon Printing Company, the two
9 Respondents as to which the Commerce Department has
10 made an affirmative critical circumstances finding,
11 surged in the post-petition period such that they are
12 "likely to undermine seriously the remedial effect of
13 the antidumping order to be issued and thereby warrant
14 a retroactive application of any antidumping duties
15 that may be ordered."

16 It should be noted that the statute directs
17 the commission to address "The imports subject to the
18 affirmative critical circumstances determination" and
19 it is Commerce that identifies imports that are
20 included in that determination. Petitioner is not
21 empowered to modify Commerce's determination, as
22 Petitioner's counsel seems to have attempted in his
23 remarks this morning that Petitioners are no longer
24 interested in critical circumstances as to DNP.

25 Data submitted by U.C. and DNP show that

1 imports of subject TTR from U.C. Japan and DNP did not
2 surge in the post-petition period, but in fact
3 declined. Consequently, the only possible answer to
4 the retroactive application question before the
5 commission is in the negative.

6 I could stop here, but at the risk, indeed,
7 the virtual certainty, of belaboring the obvious,
8 I will continue briefly to explain why this is true.

9 Before doing so, I feel constrained to note
10 that the reason for the retroactive application issue
11 is before the commission at all is attributable to a
12 defect in the Commerce Department's procedures.
13 Although Commerce apparently recognizes that its
14 critical circumstances determination is legally and
15 factually distinct from its sales at less than normal
16 value determination, Commerce has taken the position
17 that information relative to the critical
18 circumstances determination will not be accepted
19 unless Respondents previously had submitted all of the
20 information Commerce has demanded for the purpose of
21 the LTNV determination.

22 Commerce thus effectively has taken the
23 position that its own failure to make appropriate
24 provision for collection of data relevant solely to
25 the discrete critical circumstances determination

1 warrants in this case an adverse facts available
2 critical circumstances determination with respect to
3 U.C. and DNP.

4 For the record, the facts available input
5 data on which Commerce relied in this case have
6 nothing whatsoever to do with U.C.'s imports of
7 subject product, nor, we understand, the subject
8 product imports of DNP.

9 The inadequacy of Commerce's procedures is
10 no direct concern to the commission. The commission's
11 inquiry is wholly independent of Commerce's
12 deliberations and is based on the commission's own
13 record. Aside from identifying the imports to be
14 considered by the commission, Commerce's determination
15 that critical circumstances exist does not in any
16 regard bind the commission's determination, a fact the
17 statute makes abundantly clear by expressly directly
18 the commission independently to consider the timing
19 and volume of the imports.

20 When account is taken in this case of the
21 timing and volume of the imports at issue, it is clear
22 there was a substantial decrease in U.C.'s and DNP's
23 imports in the post-petition periods typically
24 considered by the commission. We submit the
25 substantial decrease in imports at issue mandates a

1 negative retroactive application determination in this
2 case.

3 As the commission recently noted in Refined
4 Brown Aluminum Oxide from China, the FAA indicates
5 that the commission is to determine "whether by
6 massively increasing imports prior to the effective
7 date of release the importers have seriously
8 undermined the remedial effect of the order."

9 If the predicate "massively increasingly
10 imports" are not present, the inquiry logically is at
11 an end and any other factors the commission might
12 consider in other circumstances can be of little or no
13 probative weight.

14 In those circumstances, any increase in
15 inventories or other adverse trends must be the result
16 of exogenous factors such as a decrease in demand or
17 other factors that adversely affected sales of a kind
18 that bear no relation to the effectiveness of an
19 antidumping duty order.

20 Finally, if it were appropriate to consider
21 facts other than the decrease in imports concerned,
22 those typically considered by the commission would not
23 in the face of declining imports in the post-petition
24 period support a finding in this case that U.C.'s and
25 DNP's imports are likely to undermine substantially

1 the effectiveness of any antidumping duty order that
2 may be issued.

3 For these reasons, we submit that the record
4 before the commission will support only a negative
5 retroactive application determination.

6 Mr. Loeb?

7 MR. LOEB: Thank you.

8 Madam Chairman and members of the
9 commission, I am Hamilton Loeb with the firm of Paul
10 Hastings. We represent DNP.

11 I had been allocated the final three
12 minutes. In light of events this morning, I don't
13 think that I'll need them.

14 Let me just endorse Ritchie Thomas' comments
15 with respect to what the record provides on the
16 retroactivity point. Mr. Cunningham this morning made
17 comments both at the outset of his presentation and in
18 questioning, responding to commissioner questioning,
19 that indicates that the Petitioner is no longer
20 asserting critical circumstances or a need for
21 retroactivity, at least with respect to DNP. That
22 should pretty much close the chapter.

23 If the Petitioner doesn't want it and
24 doesn't think it's justified on the record and the
25 commission rarely finds retroactivity anyway in these

1 critical circumstances cases, I don't think we need to
2 spend much time on it.

3 I did hear another challenge this morning
4 put down by Ms. Potuto Kimble with respect to the slit
5 fax point. Let me just say to respond to what
6 I understood the request to be, it is a fact that DNP
7 is, as we understand it, the principal supplier of
8 slit fax material that comes into the U.S. market. It
9 may be useful to say the following. The way that
10 occurs is that DNP in Japan provides finished slit
11 material to the three principal remaining fax
12 producers or OEMs, those are Canon, Brother and
13 Panasonic, and those entities then supply their
14 customers worldwide, including the U.S. market, with
15 the material they bought in Japan from DNP.

16 I notice on the like product question that a
17 good deal of attention has been paid to specifics that
18 relate to one of the factors, which is the
19 characteristics of the material, the physical
20 characteristics of the material. It seems to me the
21 commission has preliminarily focused principally on
22 that in reaching the conclusions it did and I would
23 say that as the representative of the principal party
24 involved in dealing with channels of distribution,
25 there are certainly facts about the way that the slit

1 fax, that is F-A-C-T-S about the way the slit F-A-X,
2 material ultimately reaches the U.S. market that do
3 suggest there are some differences in the channels of
4 distribution and the customers and the uses of the
5 material.

6 And, finally, I think if you do look at
7 pricing you need look only at page 118 of the staff
8 report which provides a pricing average unit value for
9 the slit fax material that you'll see is considerably
10 different than the average unit values that have been
11 provided on the record for bar code material.

12 With that, I will conclude my comments.

13 Thank you.

14 CHAIRMAN OKUN: Thank you and thank you to
15 all of you. I believe that concludes all the
16 testimony from this panel.

17 Before we begin our questioning, I want to
18 thank all the witnesses for being here this afternoon,
19 for your willingness to answer our questions and to
20 help us better understand the industry.

21 Two preliminary things before we start our
22 questions. One, just to remind all witnesses if you
23 can just restate your name for the court reporter,
24 that would be very helpful to us.

25 And, then, second, Mr. Levine, at the end of

1 the first panel, you had asked three questions. Your
2 last question was to Mr. Cunningham relating to
3 information on IIMAK's indebtedness. Mr. Cunningham
4 had replied that he would provide whatever information
5 the commission requested. I would note that the
6 commission has taken that request under consideration.

7 Any commissioner can ask you either in this
8 forum or in post-hearing questions for that
9 information, but it has not been done so yet, so
10 I just wanted to clarify where we were and I apologize
11 I didn't do that at the end of your question.

12 With that, Vice Chairman Hillman will start
13 the questioning this afternoon.

14 COMMISSIONER HILLMAN: Thank you.

15 My welcome to all the members of the panel.
16 We very much appreciate your willingness to be here
17 for this relatively long day and to present your
18 testimony and all of the information in the
19 pre-hearing brief.

20 Let me start with making sure -- I want to
21 see whether there's any difference in terms of
22 understanding the products from your perspective as
23 opposed to what we heard this morning.

24 Maybe, Mr. Landry, if I can start with you
25 in terms of the ITW product and then move back.

1 I was trying to understand this morning the
2 degree to which a jumbo roll when it's produced
3 whether there is something about the ink resin wax
4 composition of it that makes it uniquely used for and
5 dedicated to, if you will, fax as opposed to bar
6 coding or another use.

7 Mr. Landry, from your perspective, when you
8 see a jumbo roll and/or when you bring it in from
9 Korea, do you know already that this jumbo roll is
10 going to go for fax purposes and this other one over
11 here is going to go for something else?

12 MR. LANDRY: My name is Jim Landry.
13 Commissioner Hillman, the answer to that is when we
14 import the jumbo roll, we know --

15 COMMISSIONER HILLMAN: Can you pull that
16 microphone just a little bit --

17 MR. LANDRY: I'm sorry.

18 COMMISSIONER HILLMAN: It's more for the
19 court reporter. I want to make sure they're picking
20 it up.

21 MR. LANDRY: When we import the jumbo roll,
22 due to the product numeration system we use, we know
23 that that product, for instance, if it's wax, B220, it
24 will be used for a bar code application. If it's fax,
25 F220, it will be used for a fax application. So the

1 answer is yes, when we import the jumbo, we know 99.9
2 percent what use that jumbo will be used for.

3 COMMISSIONER HILLMAN: Okay. And are there
4 jumbos that are used either way? Are there some that
5 you can do whichever application you want?

6 MR. LANDRY: Yes, Commissioner. It is
7 possible to use in some instances fax jumbos for bar
8 code printing provided that the material is slit to
9 the proper specifications for the bar code printer and
10 the corresponding label stock will accept the wax ink
11 chemistry. For most uncoated wax labels, the fax
12 product will in fact work. Based upon our belief, our
13 B220 is a better use, but, yes, they will both work.

14 COMMISSIONER HILLMAN: Okay. And, if you
15 can, sort of what share of the fax -- again, the fax
16 TTR, the ink formulation, the specific jumbos that are
17 unique only to fax, would you say is what portion of
18 your jumbo rolls coming in are really solely dedicated
19 to fax?

20 MR. LANDRY: Commissioner Hillman, we do not
21 participate actively in the fax business.

22 COMMISSIONER HILLMAN: Okay.

23 MR. LANDRY: We imported in the period of
24 investigation, I believe, one container of fax jumbos
25 for resale into the U.S. market. We do sell into the

1 Asian market fax jumbos.

2 COMMISSIONER HILLMAN: Okay. But then in
3 terms of the jumbos that you are going to slit into
4 slit fax product, again, do you have a sense -- are
5 virtually all of the jumbo rolls dedicated for fax
6 purposes? I'm trying to get how big is this overlap
7 of ones that could go either way?

8 MR. LANDRY: Commissioner Hillman, we do not
9 participate in the slit fax business in the U.S.
10 market.

11 COMMISSIONER HILLMAN: Okay. I'm sorry.
12 I thought you were making a distinction between
13 participating in the commercial jumbo market. Okay.
14 Fair enough.

15 Moving back, if I could, Mr. Walker, on the
16 French side, and it wasn't clear to me whether you're
17 even in this exact business, but help me understand
18 from your perspective, if I'm looking at a jumbo roll
19 of TTR, from your perspective, is it on the basis of
20 its ink composition, wax/resin composition dedicated
21 to a particular end use or is that determined by the
22 slitting process?

23 MR. WALKER: What I have brought is maybe
24 some samples that could explain the possibility to
25 overlap the two grades.

1 The answer is in the U.S.A. Armor doesn't
2 offer a fax TTR ribbon, but the Armor group is
3 involved in the office printing consumables market
4 worldwide. We do have a fax TTR range, so I have a
5 certain amount of knowledge that I used to be involved
6 in that market before I moved to the U.S.A.

7 What I have got here is some samples printed
8 on a Zebra printer, on one hand with a fax ribbon
9 which just immediately fitted onto a Zebra printer
10 which is a bar code printer, and then using a fax
11 ribbon we've produced exactly the same format labels
12 on the same Zebra printer with what's sold as a
13 specialty fax ribbon. So we have these samples here
14 of the ribbon and the printer samples.

15 A further answer would be that we have, as
16 Mr. Landry, a very limited experience of the fax
17 market in the U.S.A. but we have participated in one
18 reexport and the film grade, we use a wax grade, our
19 very standard entry level wax TTR product that we
20 would normally supply for a bar code application, so
21 in my opinion the same product could be used in either
22 technology and if the slitting process is compatible,
23 which in this case it absolutely was, you can even use
24 the same ribbon across onto one printer or another.
25 It is rather unusual, but in this case it did work.

1 COMMISSIONER HILLMAN: Okay. Okay. It can
2 be done, but as a practical matter, is it done?

3 MR. LANDRY: I believe it probably is done,
4 yes. I can't believe people would duplicate
5 inventories of the same standard wax products.

6 COMMISSIONER HILLMAN: Okay. And then,
7 Mr. Landry, just to make sure I understand the
8 operations here versus in Korea, do you do slitting in
9 Korea? I mean, obviously you're bringing into the
10 U.S. just jumbo product and doing all the slitting
11 here for the U.S. market, but in Korea are you doing
12 slitting?

13 MR. LANDRY: Again, this is Jim Landry.
14 Commissioner Hillman, we do a small amount of slitting
15 at our ITW Specialty Films operation in Chonon.

16 COMMISSIONER HILLMAN: And where is that
17 slit product then sold?

18 MR. LANDRY: It is sold into the domestic
19 Korean market or exported for resale into the
20 Asia-Pacific market.

21 COMMISSIONER HILLMAN: Okay. Okay.
22 Thank you.

23 I think it was you, Mr. Gallette, who
24 commented on this issue of prices and you noted that
25 there has been worldwide a downward trend in prices

1 over the last couple of years. I believe that was
2 your testimony -- I'm sorry, Mr. Landry's testimony.
3 Excuse me.

4 I'm just trying to understand the degree to
5 which you in the industry perceive there to be a
6 worldwide price. In other words, does what's
7 happening in terms of prices in Europe or in some of
8 the Asian markets have a direct effect on the price
9 for TTR in the U.S. market?

10 MR. LANDRY: Again, this is Jim Landry.
11 Commissioner Hillman, I believe the price that has
12 been decreasing in Europe and in the Asia-Pacific
13 market. Those price determining factors are specific
14 to those markets and not specific to the North
15 American TTR market.

16 COMMISSIONER HILLMAN: Okay. And do they
17 affect one another? If people know the prices are
18 going down in Europe, does it have any effect on
19 what's going in the U.S.?

20 MR. LANDRY: Most of the resale of product
21 in Europe and in Asia, to the best of my knowledge,
22 does not have any effect on the prices in North
23 America, i.e., a customer of ours in Germany, France,
24 or Italy that we sell product to would not have any
25 impact on the prices to an American customer that we

1 sell product to here.

2 COMMISSIONER HILLMAN: Mr. Walker, would you
3 have a sense of that? Would you agree with that?

4 MR. WALKER: I think that Armor's answer has
5 to be on my side quite limited. Our involvement is on
6 a global contract basis with an OEM and with perhaps
7 some minor consideration for currencies. Generally,
8 our products are not following a particular individual
9 market, they're agreed on a global basis, on a
10 contract basis, as I think the Petitioner mentioned
11 this morning.

12 COMMISSIONER HILLMAN: Okay. Now, in your
13 brief, you are obviously making an argument both with
14 respect to cumulation with respect to your overlap of
15 competition with the U.S. industry as well as the
16 degree of overlap with products from Japan in terms of
17 a cumulation argument. And yet when I asked the
18 Petitioners this morning a little bit about this issue
19 of the contract, their response was that they were in
20 direct competition with you bidding for those for a
21 number of those contracts and therefore that suggests
22 at least an overlap between their production and your
23 sales. I wondered if you wanted to comment on that.

24 MR. WALKER: Certainly. This is Chris
25 Walker again. My understanding of the Petitioner's

1 answer this morning was perhaps more of an indication
2 of that inadequacy at managing a global contract and
3 addressing the needs of a global OEM where you have to
4 disconnect yourself from local markets somewhat and
5 address the bigger picture of logistics, service,
6 quality and finally price and you have to bring a
7 complete solution to them.

8 So in some ways I think we're probably not
9 in that mass market that the Petitioner was discussing
10 this morning and if history was to repeat itself they
11 themselves destroyed the distribution channels of the
12 American market by falling out with their single
13 biggest OEM in America, which was Zebra, in fact.

14 COMMISSIONER HILLMAN: Okay. I may need to
15 come back to that issue, but I see the red light is
16 on.

17 Thank you, Madam Chairman.

18 CHAIRMAN OKUN: Commissioner Koplan?

19 COMMISSIONER KOPLAN: Thank you, Madam
20 Chairman.

21 I, too, want to thank the panel for its
22 testimony. It was detailed and very informative.
23 I appreciate it.

24 I wasn't going to get into this first
25 question this afternoon, but it was referenced by

1 Mr. Cunningham not only in his brief, but in his
2 opening statement, so let me see if I can stumble
3 through this because there's business proprietary
4 information involved.

5 In the opening paragraph of Petitioner's
6 brief, in the introduction, I'll read the part that's
7 not bracketed. It says, "This is the declared
8 unambiguous and bold goal of" and then there's a
9 bracket, and then it says towards Petitioner IIMAK,
10 I'm paraphrasing that part of it, "data collected by
11 the International Trade Commission strongly suggests
12 the reality that Respondents' pricing and marketing
13 practices are entirely consistent with" bracket
14 "stated goal."

15 There is a footnote that says "See
16 Exhibit 1." Exhibit 1 was referenced this morning.

17 I know counsel can't get into this in the
18 public session, but I would like to understand what
19 I'm looking at for purposes of the post-hearing,
20 unless somebody wants to get into that now, but when
21 you respond to that, I'd like to know whether
22 Exhibit 1 refers to an isolated point in time, whether
23 there are similar or identical documents for the
24 period of investigation that I'm looking at, and what
25 the background of this is. I'd like as detailed an

1 explanation of this as possible because, as I say,
2 it's highlighted not only in the brief, but it was
3 also highlighted in the opening statement.

4 If I could hear -- I don't want to target a
5 particular counsel, obviously, but I would like to
6 just have counsel on the record say that I will get
7 some kind of an explanation post-hearing.

8 MR. LOEB: This is Hamilton Loeb. I'll
9 volunteer to respond on that one and I certainly can
10 provide -- to the extent it relates to my client,
11 I can provide a response to all of the questions or
12 all of the factors, Commissioner Koplan, that you've
13 just described.

14 COMMISSIONER KOPLAN: Thank you.

15 Mr. Price?

16 MR. PRICE: Given Mr. Loeb's statement,
17 I think it's important --

18 COMMISSIONER KOPLAN: Could you move your
19 microphone a little closer?

20 MR. PRICE: Excuse me. Given Mr. Loeb's
21 statement, I think the commission would be very
22 interested in knowing sources of underlying supply for
23 jumbo rolls.

24 COMMISSIONER KOPLAN: Fine.

25 MR. PRICE: For the relevant period in time.

1 COMMISSIONER KOPLAN: Fine.

2 Any other counsel?

3 (No response.)

4 COMMISSIONER KOPLAN: That covers it.

5 All right. Thank you very much. I look forward to
6 getting that information.

7 On March 5th, Commerce issued its final
8 determinations with respect to Japan and France and
9 found in part that for purposes of U.S. Customs and
10 border protection jumbo rolls produced in Japan or
11 France in unslit form and then slit in a third country
12 does not change the country of origin if its for
13 antidumping purposes because slitting does not cause a
14 "substantial transformation."

15 Commerce expressed concern that a slitting
16 operation could be established in a third country for
17 circumvention purposes with far greater ease than a
18 coating and ink making operation because the primary
19 costs involved in a slitting and packaging operation
20 is not its capital cost, but labor cost, which
21 Commerce noted might be hired cheaply in a third
22 country.

23 They also referenced as a factor the
24 sophistication or lack thereof of the third country
25 processing.

1 Is this treatment by Commerce consistent
2 with DRAMs and DRAM modules from Korea? And that's a
3 final investigation, Publication 3616, that was in
4 August of 2003. That you can respond to in the
5 post-hearing if you would prefer, but if so how does
6 this affect our finding in the preliminary phase of
7 these investigations not to include slit or converted
8 at that time as part of the domestic industry?

9 MR. LEVINE: This is David Levine. I'd like
10 to --

11 COMMISSIONER KOPLAN: Could you move that
12 closer?

13 MR. LEVINE: I'd like to take you up on your
14 invitation, Commissioner Koplan, to address it in our
15 post-hearing brief. I would add, however, that the
16 Commerce Department's decision on substantial
17 transformation, as I believe even the Petitioner's
18 panel this morning admitted, is a lot different than
19 the decision on substantial transformation offered by
20 the U.S. Customs Service.

21 COMMISSIONER KOPLAN: That's why I was
22 asking the question. Yes.

23 Mr. Price?

24 MR. PRICE: We will address this is in the
25 post-hearing brief also.

1 COMMISSIONER KOPLAN: Okay. Thank you.

2 Mr. Walker, your company has argued both
3 today and in your pre-hearing brief at pages 16 to 18
4 that if the commission continues to find subject
5 imports from France are not negligible, we should not
6 cumulate Armor's imports with other imports because
7 there is not a "reasonable overlap of competition"
8 between Armor, the domestic industry and other subject
9 imports.

10 We considered such arguments in the
11 preliminary phase of our investigation and rejected
12 them for the following reasons. In our confidential
13 views, it's pages 27 and 28, but the reasons that I'm
14 listing were public, not bracketed, in our views.

15 First, that four out of five responding
16 domestic producers reported that imports from all
17 three subject countries were either always, frequently
18 or otherwise interchangeable with each other and with
19 the domestic like product. Additionally, all
20 responding importers gave similar responses.

21 Next, pricing data indicated the existence
22 of French product for the general purpose black wax
23 finished TTR for which we sought information. These
24 pricing categories represent common wax and wax/resin
25 products that are not used in niche or specialty

1 applications.

2 We also found that subject merchandise from
3 all three countries and the domestic like product are
4 sold primarily to end users through distributors or
5 OEMs and compete in the same geographic market.

6 Lastly, our data indicated that subject
7 imports from all three subject countries were
8 simultaneously present in the U.S. market during the
9 period examined.

10 Your brief did not, in my opinion, refute
11 the evidence in the record that I just referred to and
12 I would appreciate it if you could address cumulation
13 further, first now and to the extent that you feel you
14 need to in your post-hearing submission.

15 MR. WALKER: Chris Walker speaking. The
16 part of the question you'd like me to address now is
17 the distribution channels for the product?

18 COMMISSIONER KOPLAN: As much of that as
19 you're comfortable doing now, I would appreciate.
20 Otherwise, you can detail it in the post-hearing, but
21 I feel I need more information on the issue of
22 cumulation.

23 MR. WALKER: Sure. I understand. I'll
24 address as much as I can and I'll leave the rest for
25 Mr. Price in the post-hearing brief.

1 COMMISSIONER KOPLAN: Okay.

2 MR. WALKER: The thermal transfer market
3 from Armor's side, as I mentioned before, is that --

4 COMMISSIONER KOPLAN: Excuse me. Could you
5 just move that a little closer?

6 MR. WALKER: Absolutely.

7 COMMISSIONER KOPLAN: Okay.

8 MR. WALKER: From Armor's point of view of
9 the U.S. market, we're certainly involved in certain
10 parts of the channel with standard certain TTR by
11 nature of our relationship with the OEMs. And it's
12 true you will find a whole package of products which
13 will include that product which will be distributed
14 through the OEM and find its way into the normal
15 channels. I've not much more to say. I mean, we are
16 on the market because of our partnerships and the
17 whole range of Armor is available because of that
18 relationship with the OEMs.

19 COMMISSIONER KOPLAN: Thank you.

20 Since my yellow light is on, I think you've
21 said enough and I'll look for the rest of it in the
22 post-hearing submission.

23 CHAIRMAN OKUN: Commissioner Lane?

24 COMMISSIONER LANE: Good afternoon.

25 In arguing that the slitters converters are

1 not part of the domestic TTR interview, Petitioner
2 spent some time going into detail about the high cost
3 of capital investment that is required in the ink
4 making and coating processes. Petitioner argued that
5 when compared to ink makers and coaters, slitters
6 converters do not have significant capital
7 expenditures. Specifically, Petitioners stated that
8 in order to get started in ink making and coating, one
9 must invest four to six million dollars, but in order
10 to get started in slitting TTR, one only needs to
11 invest \$100,000.

12 Do you disagree or agree with those
13 assertions of Petitioner's and why or why not?

14 MR. MALASHEVICH: This is Bruce Malashevich.
15 I'll answer that globally and perhaps Mr. Landry and
16 Mr. Gallette would like to chime in.

17 I do suggest you turn to Exhibit 17 of our
18 APO brief. The manner in which the data were reported
19 by coaters permit the segregation of capital spending
20 on slitting conversion from capital spending on the
21 front end, so to speak, of the operation, but they
22 weren't quite set forth that way in the pre-hearing
23 report.

24 We did the calculations and you get a very
25 different result than was claimed this morning by

1 including the capital spending by the coaters on their
2 own conversion operations with the capital spending of
3 the independent converters. That's the only way you
4 could properly look at the relative shares of capital
5 spending at the front end versus the back end.

6 I also noted from the testimony that one
7 point of comparison was for a used secondhand, in
8 effect, slitting operation. I don't think it was a
9 fair comparison of the capital involved in coating
10 versus slitting, but I defer at that level of detail
11 to Mr. Landry and Mr. Gallette.

12 MR. LANDRY: This is Jim Landry.
13 Commissioner Lane, my responsibility is global for ITW
14 Thermal Films for our coating and slitting operations.
15 My comments would be directed that in theory you could
16 set up a slitting operation in your garage, i.e., one
17 slitter, but the only place I know of anyone doing
18 that and they are not very successful is in China.

19 Slitting with only one slitter will not
20 allow you to be competitive in the markets that I am
21 aware of on a global basis. I think you would need
22 significantly more capital investment to have a
23 profitable slitting and distribution business than the
24 number provided by Petitioner this morning.

25 With regard to ink making investments of

1 four to six million dollars, I believe that was the
2 number. I think unless you talk about the capacity,
3 the number of coaters, the products you intend to
4 make, I think that number could be certainly looked at
5 and questioned.

6 Within ITW, we probably would come up with a
7 number that would be less than that, but it would be
8 certainly targeted to produce a certain amount of
9 volume and without that information it's difficult to
10 verify or deny whether or not that's an appropriate
11 number.

12 MR. LEVINE: This is David Levine. I also
13 invite you to look at the comments in our pre-hearing
14 brief on this issue and I believe it came up during
15 the discussion this morning. We suggested that the
16 collection of capital investment information just
17 during the POI understates the capital invested in
18 slitting operations, at least for ITW, most of which
19 occurred prior to the POI. I think in response to a
20 question on that point Mr. Cunningham said the data in
21 the record should speak for itself and, frankly,
22 looking at that data, that's fine with us.

23 MR. WALKER: This is Chris Walker. I would
24 like to echo some of what Mr. Landry just said, that
25 it really depends on apples and apples conversation.

1 I wasn't quite certain this morning if the Petitioner
2 was speaking about something like a Rolls Royce of
3 coating machines or whatever.

4 What I will say is that a slitting machine
5 in my recent experience, researching them, it's the
6 best part of \$350,000 if it was a brand new machine.
7 On the other hand, I can imagine a used coating
8 machine for limited applications such as Mr. Landry
9 was suggesting could be perhaps less than \$200,000.
10 So I would say it depends what job you want to do with
11 which machine you want to buy how much it would
12 actually cost to set up a particular coating or
13 slitting operation wherever. I would say it's a
14 matter of scale and a matter of need and objective.

15 COMMISSIONER LANE: Okay. Thank you.

16 Going back to some other questions this
17 morning, the Petitioners also argued that the
18 technical expertise and experience of slitters
19 converters is minimal compared to coaters and ink
20 makers. Do you agree with that?

21 MR. LANDRY: This is Jim Landry.
22 Commissioner Lane, we absolutely do not agree with
23 that. While we will acknowledge that it certainly
24 takes technical capabilities to make ink and to coat
25 jumbo rolls, we would also note that without the

1 technical expertise in slitting the jumbo into the
2 usable finished roll TTR for all practical purposes is
3 useless, therefore, the value add occurs in the
4 slitting operations. The technical competence to
5 understand specific product performance features
6 needed for the printer and the substrate, I think,
7 indicate that there is additional technical competence
8 required for effectively slitting and distributing the
9 product.

10 COMMISSIONER LANE: Okay. Thank you.

11 Did anybody else have a response to that
12 before I go to my next question?

13 MR. WALKER: Commissioner Lane, this is
14 Chris Walker. I would say I disagree with the
15 comment. I think coating can be broken down into very
16 simple processes. It's machine minding. I would
17 think setting a slitting machine to within tolerances
18 of .01 of a millimeter and a specific length and
19 hardness of the roll is equally demanding in its own
20 area of expertise. I would like to think I could
21 train a slitter -- I think it was quoted in two
22 months. I would be delighted if I could train a
23 competent slitter within a two-month period. It would
24 save me an awful lot of time and money, but we spend a
25 huge amount of time, effort and resources training

1 slitting staff and personnel to slit correctly within
2 very fine tolerances, to formal specifications. I
3 don't see it as a meaningless exercise. I think it's
4 a very important, competent job.

5 COMMISSIONER LANE: How long does it take to
6 train?

7 MR. WALKER: I would say our best machine
8 operators reach their absolute performance of speed
9 and quality after perhaps eight months.

10 MR. GALLETTE: This is Pete Gallette,
11 Commissioner. I would also agree that it's much
12 longer than the two months of training. We spend
13 ongoing effort to train them. I would have answered
14 the same question roughly around six months. We feel
15 confident of their capabilities, but we also have
16 programs where we're constantly enhancing their
17 abilities, cross-training among different machines
18 within our facility in Romeo and teaching them about
19 different set-ups and how to handle the products. So
20 it is longer than the two months stated this morning.

21 COMMISSIONER LANE: So in two months time,
22 they're not able to start on the job.

23 MR. GALLETTE: After two months, they
24 certainly can operate the machine, but we may have
25 supervisors watching them, checking the work, coming

1 back and taking a look at the process they're doing on
2 a daily basis on the set-ups.

3 COMMISSIONER LANE: Okay. Thank you.

4 I see my yellow light is on, so I'll stop.

5 CHAIRMAN OKUN: Well, thank you again to the
6 witnesses for all the answers you're giving.

7 Let me turn to you, Mr. Price, in terms of
8 the negligibility argument, just so that I understand.
9 I read your brief, I read the argument that you've
10 made. The one thing that I would ask you to respond
11 to, I guess, post-hearing is in terms of the court's
12 review of the negligibility decision, I didn't see in
13 your brief and I'm not sure if you're aware of In
14 Co-Steel Raritan v. United States, the Federal
15 Circuit, in January of this year had upheld the
16 commission's applicability of the negligibility
17 provision and in that, and I'm quoting here, it says,
18 "In order to make a determination with respect to
19 negligibility in a given case, the commission examines
20 official import statistics for the subject merchandise
21 for the most recent 12-month period for which data is
22 available."

23 Do you have any response to that in terms of
24 what it means for your argument of how we should apply
25 the negligibility provision?

1 MR. PRICE: We did look at this case. We'll
2 address it more in post-hearing. I think it's fair to
3 say that it is not definitive on this issue. I think
4 it is fair to say the statute has a very plain
5 meaning, it is fair to say that the Congress intended
6 to implement the antidumping agreement. That
7 agreement has a very express requirement and I think
8 that it's appropriate for the commission to follow the
9 plain meaning of the statute, but we will address it
10 in greater detail. Thank you.

11 CHAIRMAN OKUN: Okay. But fair to say from
12 your perspective as well this is not another
13 contradictory court opinion on your application or the
14 way you would have us apply it.

15 MR. PRICE: We don't view it as being a
16 contradictory interpretation in any way, shape or
17 form.

18 CHAIRMAN OKUN: Okay. All right. Well, you
19 can expand on that post-hearing if you would like.

20 And then I'm also interested in any further
21 information that you're going to supply in response to
22 Commissioner Koplan's cumulation questions, but one
23 thing that I either wanted to make sure you include in
24 there or to ask if you could give some sense of it now
25 is just in terms of what you've testified to regarding

1 global contracts and the percent of your sales that
2 are made under those, can you, Mr. Walker, give us any
3 sense of how much -- in a public setting, can you talk
4 about how much of your business is under what you
5 would regard as these global contracts as opposed to
6 what was referenced earlier by the Petitioners and
7 I believe Vice Chairman Hillman may have asked this as
8 well.

9 MR. WALKER: This is Chris Walker. Without
10 going into specifics, perhaps I could answer it and
11 say that over half of the Armor Group business
12 worldwide is with the OEM, whether it be a U.S.-based
13 OEM or in a different country, but it's a significant
14 part of our business, as I indicated, and that is the
15 way we choose to make our business in the world and
16 the U.S. is an example of that where we're dedicated
17 to rather large customers.

18 CHAIRMAN OKUN: Okay. For post-hearing,
19 I would appreciate any additional information or
20 specifics that you can provide and how you define that
21 and what a global contract is, I think would be
22 helpful, in light of the arguments we've heard this
23 morning.

24 There were arguments made and I think
25 Petitioners this morning talked about what the effect

1 of the end of the Fujicopian licensing agreement was
2 and, as I understood the Petitioners' testimony, it
3 was prior to the end of that agreement everyone kind
4 of had their certain markets and when that ended it
5 meant that companies who had not been here, including
6 Armor, began to focus on the United States.

7 Is that a fair characterization of how you
8 see it?

9 MR. WALKER: This is Chris Walker again.
10 Without going into too many specifics and some of it
11 is proprietary, the chain of events that led to Armor
12 leaving that particular three-company agreement was
13 Fujicopian and IIMAK started with losing our
14 geographical protection within the license, which was
15 part of the protection. The other part was technical.
16 The geographical protection which fell away without
17 reference or notification was one where by Paxar
18 Corporation purchase IIMAK. That meant geographically
19 the Fujicopian product manufactured under license by
20 IIMAK in North America was able to filter into the
21 marketplace in all markets worldwide through the Paxar
22 sales channel and Paxar is an OEM able to distribute
23 globally without any issue.

24 Therefore, for that particular reason as one
25 of the major reasons, it was not appropriate for Armor

1 to remain inside that agreement. It was bringing no
2 protection or any benefit particularly and so we chose
3 to withdraw.

4 CHAIRMAN OKUN: Okay. All right.
5 I appreciate those answers.

6 Let me now turn to pricing issues and I know
7 that both in your statements today and in your briefs
8 you spent a fair amount of time on the pricing
9 information and I guess I will start off in the front
10 with the ITW representatives.

11 We understand that the Petitioners had
12 replied that they had looked at these issues and would
13 prepare some additional responses. I would be
14 interested in anything else you want to say with
15 regard to the product specifically and then also, and
16 I'm sure Vice Chairman Hillman might cover this in
17 more detail, just to respond to her question earlier
18 this morning which is if we are in a situation where
19 we include the converters, the slitters in the
20 domestic industry and then exclude whatever related
21 parties are appropriate, how do we look at this
22 pricing data?

23 And I wondered if there was anything that
24 you wanted to -- maybe, Mr. Malashevich, you might be
25 the right person to comment on this at this point, but

1 also pricing in general I would be interested in.

2 MR. MALASHEVICH: I'll take a stab at
3 beginning and perhaps my colleagues would add whatever
4 remarks that they would like, but let me start here.

5 In our post-conference brief, we identified
6 certain aspects of the official questionnaires used in
7 that proceeding which had a tendency to bias upward
8 the weighted average domestic price. Having made that
9 point, when the time came to provide written comments
10 on the draft questionnaires for the final phase, we
11 submitted a fairly detailed letter essentially making
12 the same point. The new draft questionnaires had been
13 improved, but still reflected a tendency for an upward
14 bias in domestic prices. And it's for that reason we
15 provided the wealth of pricing data that we've been
16 able to retrieve from ITW's archives kept in the
17 normal course of business and you have that thick
18 volume as part of our filing.

19 However, it's very difficult to come to
20 closure on this issue without having the knowledge of
21 this new quarterly prices which Petitioner having
22 resisted and opposed our suggestion for more detailed
23 data now to generate that data and not be in a
24 position to comment on it in our post-hearing brief
25 puts us at a considerable disadvantage, as you can

1 imagine because it appears to be the data we were
2 asking for originally as part of our post-conference
3 brief. So I leave that for the commission to
4 consider.

5 I also suggest you study the actual
6 transaction prices that we provided and documented in
7 that thick volume as another piece of information in
8 sorting out the pricing data that's been provided.

9 And two final brief things. One is looking
10 again at my dubious work of art, looking at the
11 proportions, it's only a tiny sliver of the market
12 that overlaps in Commerce between what actually is
13 imported and what is actually sold by the domestic
14 industry. Tiny. It doesn't matter.

15 So if you conclude that the converters are
16 part of the domestic industry, it does two things,
17 regardless of who you exclude on the basis of related
18 parties. It means that a very tiny amount of subject
19 imports have a share of apparent consumption. Almost
20 all of them were captively consumed by U.S. producers.
21 So there practically are no subject imports by volume.

22 In addition, you have all the excluded
23 pricing data, and I don't know exactly what you
24 include. We literally are crunching those numbers as
25 we speak and we will address that in the post-hearing

1 brief.

2 Having said all that, I defer to my
3 colleagues if they have additional comments.

4 MR. LEVINE: This is David Levine. I have
5 only one additional comment, which is to add to my
6 question at the end of Petitioner's presentation. One
7 of the reasons why we feel disadvantaged not seeing
8 this information is, as Mr. Malashevich pointed out,
9 we can't know what the prices really reflect on a
10 product-specific basis instead of on an average for
11 the whole group that the domestic producers provided.

12 Moreover, even on the breakouts which they
13 claim to have and have done their analysis on, I think
14 they referenced that they were done on the products
15 which they determined were most comparable to ITW's
16 W90. We'd like the opportunity to tell if those truly
17 are the most comparable.

18 CHAIRMAN OKUN: I see that my red light has
19 come on, Mr. Price. I'll come back. WE'll have more
20 time to talk about price with you, Mr. Price.

21 All right. Vice Chairman Hillman?

22 VICE CHAIRMAN HILLMAN: Thank you.

23 Let me then, I guess, try to go to some of
24 the issues that I was trying to explore with the
25 Petitioners this morning, if I could, but let me start

1 first with the issue of sort of whose data are we
2 really going to be looking at.

3 If the commission were to determine that
4 we're going to include the slitter converters within
5 the domestic industry, what is your position on
6 whether there are any related parties that should be
7 excluded from the definition of the domestic industry?

8 I would, I guess, direct that to counsel,
9 since it is fundamentally a legal issue.

10 Mr. Levine?

11 MR. LEVINE: I honestly don't have any
12 specific comment on the related party issue.

13 I certainly know what the commission decided in the
14 preliminary determination. We make no illusions about
15 the fact that ITW is an importer of jumbo rolls from
16 Korea, but we have focused our attention instead on
17 what truly constitutes U.S. production.

18 VICE CHAIRMAN HILLMAN: The commission
19 majority did not address this in its preliminary
20 determination because we preliminarily determined that
21 the slitter converters were not part of the domestic
22 industry, which doesn't therefore raise the same
23 related party issue. I'm just saying if we were to
24 now make that determination, I think the preliminary
25 determination made it very clear that we regarded this

1 as a very close call as to whether or not the better
2 argument was that the converters should be part of the
3 industry or should not be and I'm suggesting that if
4 we determine that they are in fact part of the
5 industry, then we must address the issue of if so are
6 there related parties, are there any related parties
7 and should they be excluded. So I guess I would ask
8 if either now or in the post-hearing to make sure that
9 that issue is addressed.

10 MR. LEVINE: Well, first of all, let me
11 admit that I misspoke. In the preliminary
12 determination, I believe it was with respect to the
13 ITW division which actually is a coater of TTR that
14 the commission determined was a related party. That's
15 ITW's coating products division. And then with regard
16 to your real question, I would like to take the
17 opportunity in the post-hearing brief to address that.

18 MR. MALASHEVICH: I would only add a
19 non-legal point and that is regardless, it almost
20 doesn't matter who you exclude as a related party
21 because you have to include their shipments in
22 measuring the relevant market and when you examine
23 what actually came in and was resold of subject
24 imports in relation to apparent consumption, you have
25 to include -- whoever you decide to exclude as a

1 related party,
2 their shipments still have to go into the calculation
3 of the relevant market as opposed to the indicia of
4 performance. And imports just don't matter. They're
5 negligible.

6 VICE CHAIRMAN HILLMAN: I'm not sure that
7 answers the related party question. I understand the
8 point you're making.

9 Go ahead, Mr. Price.

10 MR. PRICE: For the record, we'll answer in
11 the post-hearing brief, but let me just say one thing,
12 which is the issue that you've raised earlier today or
13 a number of you did and that is almost no matter how
14 you cut the facts in this case, no matter how many
15 ways you try to re-slice and dice this industry, this
16 case is a case where there's no injury and no
17 causation to the industry as a whole and there are a
18 lot of steps that the Petitioner is trying to go
19 through in an attempt to salvage a terrible set of
20 facts, even with those steps it's still a negative.

21 VICE CHAIRMAN HILLMAN: I understand your
22 point. Again, I'm trying to get back to what kind of
23 pricing data am I looking at and, obviously, to some
24 extent that matters whether I'm pulling out related
25 parties' data and looking at what do we see. I mean,

1 I obviously have in front of me our pricing on
2 products 1 and 3, among others, where this issue was
3 relevant and if some of those providing the pricing
4 data are deemed to be related parties, it's not clear
5 whether I'm going to have any of that data to be
6 looking at. So I do need your sense of do you think
7 there are related parties that should be excluded.

8 MR. PRICE: I will answer in the brief, but
9 what I will say is that if you look at that pricing
10 data, and it's really almost a response to where
11 Commissioner Okun was going to go, this pricing data
12 is just these two huge pools of slit product at this
13 point. There are massive differences within those
14 pools. It's really a valueless set of data.

15 VICE CHAIRMAN HILLMAN: But that's still not
16 the answer to the question I'm trying to understand,
17 which is, again, if I deem the slitter converters to
18 be members of the domestic industry, then at least one
19 could argue that all of that data is in fact domestic
20 production, domestic prices.

21 MR. PRICE: Absolutely.

22 VICE CHAIRMAN HILLMAN: And no longer
23 imported prices. So the question is what am
24 I comparing? I have one column over here of domestic
25 price which arguably could now include all of what is

1 currently listed in those tables as an import price
2 and I'm trying to figure out do I have anything left
3 on the import price side which does get to whether or
4 not I've taken any of the data out. And I guess
5 I would like you all to think about whether that's
6 what we should do, even if we determine that the
7 converters are part of the domestic industry, what
8 then do I look at in terms of pricing data to do a
9 price comparison between imported product and domestic
10 product?

11 MR. PRICE: We will answer that in the
12 post-hearing brief but I just want to make sure that
13 there's no illusion, even though it's very small,
14 there is the sliver of direct competition for
15 commercial sales of jumbos.

16 VICE CHAIRMAN HILLMAN: I understand that.
17 I've got product 2 data, I understand that. But
18 obviously, on the other hand, I'm trying to make sure
19 we're overlaying this with the point that there's no
20 question the domestic industry was making that where
21 the competition is occurring in the market is in the
22 slitted product and so what I'm trying to get at is
23 within the scheme of what we're looking at where do we
24 look at that data and some of that comes back to this
25 related party issue.

1 Let me just make I get counsel for the
2 Japanese on this issue of related parties.

3 Do you have a view now as to whether or not
4 any of the Japanese respondents should be viewed as
5 related parties and excluded under those provisions?

6 MR. THOMAS: This is Ritchie Thomas. I have
7 no view at this time.

8 VICE CHAIRMAN HILLMAN: But you will address
9 it in your post-hearing brief?

10 MR. THOMAS: Yes, ma'am.

11 VICE CHAIRMAN HILLMAN: Thank you very much.
12 Mr. Loeb?

13 MR. LOEB? Hamilton Loeb. The same applies
14 to us.

15 VICE CHAIRMAN HILLMAN: Okay. Thank you.

16 MR. PRICE: Let me just respond and say that
17 if there is an exclusion of the slitter converter,
18 I don't think you can look at any of the pricing data
19 and I think you're right, there is a problem here and
20 you're going to have basically say there's not a lot
21 of evidence on pricing that's usable in this
22 investigation.

23 VICE CHAIRMAN HILLMAN: Okay. Then let's go
24 to the sort of broader issue of the price declines.
25 I mean, obviously whatever data we have in terms of a

1 comparative basis or anything else, there's no
2 question that what we can clearly see on this record
3 is a very substantial decline in prices. Some of you
4 have touched in your testimony as to why you think
5 that may be the case, we've talked a little bit before
6 about this issue of whether there's global prices, but
7 I guess there's no question that we see these
8 declines; whether we can look at them on a comparative
9 basis or not and whose data is in or out, there's no
10 question about the fact that prices have gone down
11 very substantially.

12 I guess I'm trying to get your sense --
13 obviously you're telling me that you don't think this
14 is related in any way to imports and a lot of the ITW
15 testimony went to this issue of other business
16 problems with respect to IIMAK. I'm struggling with
17 where in the record do I link up your sort of concerns
18 or your statements about what IIMAK did or did not do
19 on the business front with performance indicators as a
20 way of separating out from any of this what happened
21 with respect to import prices. I mean, again, you're
22 telling me a story that the price declines, as I heard
23 it, were not related to imports, they were related to
24 these other things and I guess I'm wanting to hear
25 little bit more about how you link up other things as

1 causing the price declines.

2 I think everybody is in agreement that
3 prices went down and went down pretty substantially
4 during this period of investigation and I'm trying to
5 make sure I understand from your perspective what you
6 attribute those price declines to.

7 Mr. Landry?

8 MR. LANDRY: This is Jim Landry.

9 Commissioner Hillman, I would answer your question by
10 stating that, again, my responsibility is on a global
11 basis and as I look at price declines in North America
12 and in Europe and Asia-Pacific, to the best of my
13 knowledge, I do not believe they are linked together.

14 What I believe has occurred in North America
15 that as precipitated the continued downward pressure
16 on price are several factors. Before the period of
17 investigation, price was falling in North America even
18 as demand was increasing. As both domestic producers,
19 coaters, added capacity to the market, they sought
20 places to fill that capacity up and drove the price
21 down. And as we have already --

22 VICE CHAIRMAN HILLMAN: Can I stop you right
23 there? Because if I look at this data, there has
24 been -- the coaters have operated throughout this
25 period of investigation at very low levels of capacity

1 utilization, so to the extent that we think an
2 overhang in excess capacity is pushing down prices,
3 I'm having trouble comparing it to why now? I mean,
4 there's been this excess capacity, arguably, if it's
5 really excess capacity, out there for a long time, so
6 why now would it produce this decline in prices?

7 I'm not sure I think that just this capacity
8 overhang can show me a 20 percent decline in prices
9 over a three-year period.

10 MR. LANDRY: Commissioner Hillman, again, my
11 comments were that the price declines started before
12 the period of investigation and have continued onward
13 through the period of investigation. I believe that
14 in addition to excess coating capacity domestically we
15 also have the threat to our industry of competing
16 technologies, of which ITW happens to own and operate
17 businesses in those technologies.

18 VICE CHAIRMAN HILLMAN: Okay.

19 MR. LANDRY: I.e., ink jet printing and
20 direct thermal and I would suggest from our viewpoint
21 on the market that in the AIDC market, we believe
22 direct thermal has at least or greater a market share
23 than thermal transfer does and the price of direct
24 thermal has been falling continuously through this
25 period also.

1 VICE CHAIRMAN HILLMAN: Okay. Thank you.

2 CHAIRMAN OKUN: Commissioner Koplan?

3 COMMISSIONER KOPLAN: I have no further
4 questions.

5 CHAIRMAN OKUN: Commissioner Lane?

6 (No response.)

7 CHAIRMAN OKUN: I was interested in the
8 answer that you were just giving, Mr. Landry, so did
9 you have anything else? You had said there were a
10 couple of other things, so if you just wanted to
11 finish your train of thought there, I would appreciate
12 it.

13 MR. LANDRY: Thank you, Madam Chairman.

14 Again, my name is Jim Landry. And the point I was
15 making was -- and I'm not going to go back and beat
16 the dead horse again, but I was talking about
17 competing technologies. As those technologies have
18 continued to refine their products to become more
19 competitive with our product TTR, the price has come
20 down on those products which has put pressure on our
21 product for the prices to be depressed downward in our
22 marketplace and, again, we believe as stated in some
23 of the industry journals that there is a consistent
24 strategy by a domestic producer, i.e., Sony Chemicals,
25 to try to drive the price down to a point where this

1 is an industry that a fair rate of return cannot be
2 earned by those companies that are not as financially
3 stable as others.

4 CHAIRMAN OKUN: Yes, Mr. Levine?

5 MR. LEVINE: I wanted just to clarify what
6 maybe I misheard, but when Commissioner Hillman asked
7 the question I had the impression that there may have
8 been a misunderstanding that our discussion of factors
9 relating to IIMAK's business had something to do with
10 the price declines. Those factors discussed by
11 Mr. Landry were intended to demonstrate why IIMAK is
12 in the condition it's in, not that that's what caused
13 the price decline.

14 CHAIRMAN OKUN: Okay. Well, that's
15 interesting. All right. So you're saying -- I guess
16 I read it to mean that the things you were arguing
17 generally, intra-industry competition, domestic
18 oversupply, that those were related to prices, but
19 what you're saying is you've focused on IIMAK's
20 management issues that you've raised as being related
21 to their bottom line and not related to pricing,
22 although Sony, I guess you're saying, you, Mr. Landry,
23 are saying you think the prices have come down because
24 of the issues that you just enumerated.

25 MR. LANDRY: Yes, that's correct, Madam

1 Chairman.

2 CHAIRMAN OKUN: Okay. All right.

3 MR. WALKER: Chris Walker. May I speak?

4 CHAIRMAN OKUN: Yes.

5 MR. WALKER: As a relatively new and small
6 player on the U.S. market, I can't say how much I've
7 been enjoying the improved efficiency of
8 manufacturing, the reducing of costs and the reduction
9 in raw materials that we've seen for the first time
10 for many years in thermal transfer. Thermal transfer
11 has been treated as a rich market by the polyester
12 players who at last have realized that they have to be
13 competitive and for the last three years combined with
14 manufacturing efficiency improvements, which is a
15 habit in America today for lean manufacturing
16 especially. We've seen manufacturing costs reduced
17 significantly towards the slitting and the coating.
18 But it is, to be at an old horse, as Mr. Landry said,
19 I can't say how much I've been horrified by the
20 reaction of Sony towards IIMAK. They have had some
21 sort of vendetta, a public statement that they have a
22 problem with IIMAK and are prepared to reduce the
23 price not by 10 percent, a further 10 percent, which
24 mathematically equals exactly the price erosion of the
25 market. This was quoted in this very famous trade

1 magazine or electronic publication.

2 So a combination of domestic competition
3 plus natural reduction in manufacturing costs which as
4 manufacturers it's all our jobs to do has led to an
5 overall price reduction, I would say, and to keep the
6 technology competitive against, as Mr. Landry said,
7 the competing technologies such as ink jet and its our
8 job, and IIMAK are included, in making sure that
9 thermal transfer is competitive for the future so
10 we're around to have a future.

11 CHAIRMAN OKUN: Okay. And is your response
12 that Mr. Cunningham in responding to the exhibit that
13 everyone had regarding Sony was saying that the part
14 of the article that they're not quoting is the one
15 that said that they didn't start the price war, that
16 the Petitioner is arguing that were it not for these
17 low prices driving down the price already Sony
18 wouldn't be forced into this price war, that it's not
19 domestic competition but subject imports that leave it
20 where it is and that that would be consistent with
21 what Sony is --

22 MR. WALKER: I'll address that. This is
23 Chris Walker again. Again, as a more recent entrant
24 to the U.S. market for our own specialty reasons,
25 I couldn't ignore the fact in the mid '90s for their

1 own purposes the major protagonist, the major player
2 on the market, chose to compete head to head with Sony
3 in the distribution channel by leaving their major OEM
4 partner, as I said before.

5 When you take your price capability and your
6 strength into a lower part of the distribution channel
7 with an ambition to take market share from the other
8 major player in the market, which was Sony, IIMAK
9 surely pushed the prices down. It's a natural
10 phenomenon with specifically Zebra's policy of having
11 "me too" product. So whenever they found the same
12 product, Sony or IIMAK or Zebra with IIMAK product
13 would reduce the price.

14 I would say from the mid '90s through to the
15 late '90s there was a phenomenon of low pricing being
16 created by competition, by ambition to fill spare
17 capacity. What I would say is the economy, as it
18 turned out, in 2001 was dramatically reduced and to
19 stay ahead I saw the U.S. coaters again fighting to
20 retain market share or retain capacity or fill
21 capacity on the coating machines. I didn't see
22 anything strange outside and thankfully reduced
23 manufacturing costs have been able to keep the prices
24 competitive.

25 MR. PRICE: I just have one observation

1 which is there is this phenomena of odd petitions out
2 there where the majority of the domestic industry
3 isn't present to testify, okay? And I think that says
4 a lot and my simple question is where is Mr. Oliverio
5 at this point? Where is Sony? I think that says more
6 than anything else. Thank you.

7 CHAIRMAN OKUN: All right. Thank you for
8 all those answers.

9 Vice Chairman Hillman?

10 VICE CHAIRMAN HILLMAN: Okay. Just a couple
11 of quick follow-ups.

12 Mr. Levine, I appreciate your clarification,
13 but just so I make sure I understand Mr. Landry's
14 testimony, because I will concede there were sort of
15 two issues going on here and I just want to make sure
16 I get them straight.

17 If I'm trying to understand your
18 explanation, if it wasn't imports why did prices go
19 down, as I heard your testimony, Mr. Landry, it was
20 over capacity by the U.S. coaters, this new technology
21 of other things that are competing with it, and Sony's
22 prices. Is that a fair sense of what you said?

23 MR. LANDRY: This is Jim Landry again.
24 Commissioner Hillman, I think that's a fair summary.
25 I would like to add one other point. During this

1 period, the period of investigation, we have also seen
2 almost everyone in the industry reducing their product
3 lines. For example, the Petitioner used to have five
4 or six different waxes that fall under certain TTR and
5 as the second largest market share company Sony had
6 multiple numbers of waxes in the marketplace. As
7 these companies have reduced their product line,
8 shrunk it from five or six or three or four down to
9 one or two, in order to transition in the marketplace,
10 in order to get customers to accept that new product,
11 in most cases, those companies had to offer an
12 incentive for the customer to switch to the new
13 product. I would like to also add that to my
14 explanation.

15 VICE CHAIRMAN HILLMAN: And when you say
16 customer in that instance, are you here referring to a
17 distributor? I'm trying to understand how -- it's not
18 clear to me as someone going into Staples, it's not
19 clear to me that I'm seeing any need to do any of this
20 switching, I'm not even aware that we've gone from
21 five to three to one or whatever, I just want to know
22 whether it's going to fit in my fax machine. So I'm
23 trying to make sure I understand who's doing this
24 pushing on price.

25 MR. LANDRY: Please allow me to clarify.

1 I'm sorry, sometimes we forget that what we take as
2 common knowledge not everyone knows about our ind.

3 The sales channels that have been spoken of
4 would be to the OEMs, to the distributors and to some
5 cases to the end users or resellers, as you have seen
6 in some of the charts that were provided today.

7 Why is there a reduction in the breadth of
8 the product lines? We have heard Petitioner talk
9 about reduced costs to manufacturing. Part of what we
10 propose as a corporation, our 80/20 strategy, is any
11 time you make six products, you're going to have
12 poorer efficiencies than if you make one or two
13 products, i.e., the more focused and concentrated you
14 are on making one or two products that serve 80
15 percent of the market you're going to be a lot more
16 efficient at doing that.

17 When you then take that product into the
18 marketplace and try to resell it or to get the
19 customer, if it's an OEM, a distributor or another
20 reseller, in order to get that customer to switch from
21 a product that they may be happy with today a lot of
22 times the number one and number two market share in
23 companies in America had to provide an incentive for
24 their customers to switch to the new product. Not in
25 all cases, but in some cases.

1 VICE CHAIRMAN HILLMAN: Okay. All right.

2 Then the sort of second issue that was sort
3 of implicit in some of the things I was trying to
4 understand are these other claims that, Mr. Landry,
5 I think you made in your testimony about IIMAK's
6 problems were the result of a series of poor business
7 decisions and you went through a number of customer
8 accounts and specific issues.

9 I'm trying to make sure I understand what
10 evidence there is in the record that would link up
11 these events that are again not related to the price
12 decline but they're otherwise related to what you've
13 described as poor business decisions. I'm trying to
14 think about where in the record I'm seeing that these
15 events that you've described here were the cause of
16 IIMAK's problems as opposed to the imports.

17 MR. MALASHEVICH: You've actually hit on
18 another source of our frustration. Obviously,
19 Mr. Landry is not privy to the APO record of the case
20 and there's a limited amount I could discuss here, but
21 the events Mr. Landry enumerated and the documentation
22 we had available from the public domain to back up
23 those events were recited in almost precisely the same
24 words as our post-conference brief and I recall for
25 the commission I think it's the majority's

1 determination you enumerated a number of those events
2 for further investigation in terms of its impact on
3 the industry.

4 We expected to receive some sort of analysis
5 or additional information from the APO record that
6 would allow us to make the demonstration that you're
7 asking about. Basically, nothing was received. So
8 what we have out there is Mr. Landry's experience and
9 the documents we were able to provide in support of
10 our point that IIMAK's situation was unique in this
11 industry and that it was affected by events that had
12 nothing to do whatsoever with subject imports.

13 VICE CHAIRMAN HILLMAN: All right.

14 MR. PICKARD: Commissioner, if I could?

15 VICE CHAIRMAN HILLMAN: If there is anything
16 further that could link these up to what we have, sort
17 of the causal link, the temporal link and everything
18 else, it's not so clear to me that at least I'm seeing
19 on this record.

20 Mr. Pickard?

21 MR. PICKARD: Commissioner Hillman, I think
22 there was testimony introduced at the preliminary
23 phase by a former IIMAK official, Jim Groh, an
24 executive, who testified as to a causal link between
25 mismanagement, poor decisions and their current

1 problems, as were, I think, one or two customer
2 witnesses who testified along those same lines.

3 VICE CHAIRMAN HILLMAN: Okay. Again, it's
4 this issue of linking it, then, to what we have in the
5 record that I'm trying to do, but I appreciate that.

6 Mr. Gallette, if I can come back to you, you
7 had indicated that ITW sells to distributors that
8 carry both fax and non-fax TTR and, again, this is an
9 issue of whether there's much overlap in these
10 distribution chains and you obviously heard Plaintiffs
11 this morning.

12 I'm wondering if you can tell me what
13 portion or what percentage of your sales would go to
14 distributors that carry both fax and bar code or other
15 non-fax TTR?

16 MR. GALLETTE: Commissioner, in trying to
17 answer that question, I can give you my best estimate
18 and then try to clarify it in the post-hearing brief
19 after I think through it a little bit longer.

20 With our experience, as Jim Landry mentioned
21 earlier, we had sold fax jumbos into the marketplace
22 to a common customer that we also sold certain TTR wax
23 jumbos to, so we clearly saw that customer overlap,
24 that they represented both products.

25 VICE CHAIRMAN HILLMAN: And here you're

1 referring to jumbo?

2 MR. GALLETTE: Jumbos.

3 VICE CHAIRMAN HILLMAN: I want to make sure
4 I understand your testimony because I guess I thought
5 I had heard it that there was an overlap in terms of
6 the distribution of the slitted product.

7 MR. GALLETTE: In addition to that since we
8 sell slit certain TTR to distributors in the U.S., we
9 do through sales communications and conversations with
10 our distributors hear about that they also are selling
11 slit fax TTR but we do not sell slit fax TTR to the
12 same distribution channel. We see it in their product
13 lines, in the mind share of the salespeople that
14 they're out promoting it, that they represent it in
15 their product lines, their catalogs, their brochures,
16 but from an overlap standpoint, from the distributors
17 that we sell to, it is our knowledge of the
18 marketplace not the fact that we are selling to the
19 same distributors both products.

20 VICE CHAIRMAN HILLMAN: Okay.

21 Mr. Walker?

22 MR. WALKER: Commissioner Hillman, thank
23 you. Although it seems to be a small part of this,
24 I would say Stables is distributing both product lines
25 which are easily searchable on a simple search engine

1 and our findings just this week, just off the web, we
2 found in Staples Zebra bar code printing ribbons next
3 to fax dedicated ribbon, both ordered, both delivered
4 from a traditional easily available source, although
5 not a participant in the fax market or indeed in the
6 mass market, that would appear to be an IIMAK product
7 in an IIMAK type bag sold alongside whatever it was
8 produced, I have no idea.

9 MR. PRICE: It actually says "Made in the
10 U.S.A." on it.

11 MR. WALKER: It says "Made in the U.S.A."
12 What I would say is that a significant part of the
13 market for industrial bar code and I think somebody
14 mentioned NCR today, which is a major corporate type
15 stationer, it's not to be confused with a regular
16 distributor, Corporate Express, NCR, these are people
17 who service organizations like the Ford Motor Company,
18 like General Motors, end users who have a job to
19 supply everything they need. All their thermal
20 transfer needs, whether it's a fax or whether it's a
21 bar code. And I would say from our observations,
22 although we don't participate in this particular end,
23 it's pretty easy to find a source of both where the
24 client is just ordering up a consumable for a printer,
25 he has no idea or she has no idea what it's going for.

1 VICE CHAIRMAN HILLMAN: No, I appreciate the
2 testimony and I understand the point. On the other
3 hand, I'm trying to understand how significant is this
4 overlap because I will say from just listening to the
5 testimony it's not clear to me that there is this
6 large overlap. I'm not suggesting that you couldn't
7 go to some distributors and some Office Depot type
8 places and find it, but I'm trying to make sure
9 I understand the portion, the percentage of sales that
10 in fact actually go to a distributor that does both
11 because at least from the data I'm looking at, it's
12 not clear to me that there is much of an overlap
13 between bar code and fax slit product at the
14 distribution end, if you can give me some sense of
15 portion of sales that would go to a distributor that
16 does both.

17 MR. PRICE: We will address that in the
18 post-conference brief, but we'll come back to the
19 other argument that there are really two issues on the
20 like product. One is this whole six-factor test and
21 one is the semi-finished analysis. They defined the
22 basic scope here by chemistry that go into fax, it
23 includes jumbos that go into slits and TTR. Big
24 package of jumbos, okay? Once they did that, in order
25 to get the products in, they either all have to go in

1 or almost all have to go in or none of them go in. If
2 none of them go in, then what happens is all of the
3 imports are going into captive consumption with no
4 harm on the domestic industry because they're being
5 sold in a downstream market where there's no harm and
6 on the slit side there are no imports.

7 So the only way they get there is all slit
8 products come in. It wasn't my choice in defining
9 this scope, obviously.

10 CHAIRMAN OKUN: Mr. Price, the red light has
11 been one and it sounds sort of like rebuttal than an
12 answer to the Vice Chairman's question, so we're going
13 to move on.

14 I don't think there are any other questions
15 from my colleagues. Let me turn to staff to see if
16 staff have questions of this panel.

17 MS. MAZUR: Diane Mazur from Office of
18 Investigations. In response to any question you
19 raised this morning, Mr. Levine, there will be an APO
20 release tomorrow which will include the commission's
21 verification report of IIMAK and the secretary's
22 office will contact you when it is available.

23 Staff has no questions.

24 CHAIRMAN OKUN: Thank you.

25 Mr. Cunningham, do you have any questions

1 for this panel?

2 (Pause.)

3 CHAIRMAN OKUN: The record will reflect
4 Mr. Cunningham has no questions for this panel.

5 Before thanking this panel, let me just tell
6 you the time remaining. Petitioners have a total of
7 five minutes for their closing and rebuttal and
8 Respondents also have a total of five minutes for
9 their closing and rebuttal.

10 We will take a couple of moments for this
11 panel to excuse itself, but before they do I want to
12 thank all of you for your testimony today, for the
13 information you have provided and for all the answers
14 you've given this afternoon.

15 With that, we'll take a couple of moments
16 before we hear from Mr. Cunningham.

17 (A recess was taken from 4:28 p.m. until
18 4:32 p.m.)

19 CHAIRMAN OKUN: Okay. We are ready to
20 proceed.

21 MR. CUNNINGHAM: Thank you, Madam Chairman.

22 I want to spend my time today addressing the
23 issue which I really think is the most fundamental
24 issue here, which is the one that Commissioner Hillman
25 and Commissioner Miller have grappled with in

1 discussions with us, namely, what do we do about price
2 comparisons here and what do we do about the assembly
3 in the United States of imported subject merchandise,
4 can we look at the sales of the assembled subject
5 merchandise as being imported sales.

6 Let me suggest three rationales for finding
7 that under those circumstances the imports of the
8 semi-finished product cause material injury to the
9 U.S. industry making the finished products.

10 Let's do DRAMS first because DRAMS is clear
11 on this insofar as volume goes. It's probably easier
12 to see it in Taiwan DRAMS than Korean DRAMS although
13 Korean DRAMS cites Taiwan DRAMS at page 11 with
14 approval.

15 In Taiwan DRAMS, you have the unassembled --
16 just as you have here, the exact fact pattern you have
17 here, the unassembled DRAMS called DICE fabricated in
18 Taiwan and then shipped to the United States, some of
19 them as assembled DRAMS, some of them as the
20 unassembled DICE. And then you had assembly in the
21 United States of those DICE.

22 The commission said that assemblers were
23 members of the domestic industry, did not exclude
24 assemblers on the basis that their operations weren't
25 the type of operations that are included in the

1 domestic industry. But they qualified that in a very
2 important way. They said a product of assembly in the
3 United States was a domestic product if it was an
4 assembly of domestic DICE or of imported but not
5 subject DICE. In other words, subject unassembled
6 product was an imported product.

7 Now, in both of those cases, you could do
8 the price comparisons without having to deal with that
9 because you had lots of assembled stuff imported, but
10 in your volume analysis, as you pointed out,
11 Commissioner Hillman, you use the assembled DICE that
12 were assembled from subject Taiwan or in the later
13 case Korean DICE, the assembled finished product as
14 imports.

15 I submit to you it makes no sense to say
16 we're going to analyze the volume effect of those
17 sales as imports but we're not going to analyze the
18 price effects of those sales as imports.

19 Now, let me turn now to the second
20 rationale, which is exclusion of the assemblers.
21 There are two bases on which you can exclude the
22 assemblers here. One is they don't meet the various
23 factor tests that you use. If that's what you do, you
24 have an absolute clear precedent in indigo because
25 that's exactly what you did in indigo, you excluded

1 the finishers as not being part of the domestic
2 industry but you said we're going to treat their sales
3 to the extent that there were sales of stuff that --
4 in this case, it was powdered form and they converted
5 it into damp or moist form or something like that,
6 we're going to consider those sales if they were
7 processing subject merchandise as being sales of the
8 imported product.

9 Let's suppose you exclude them instead as
10 related parties. If you're excluding a producer as
11 related to a foreign subject producer, what you're
12 saying is it's not a U.S. producer because by
13 relationship it's a member of the subject foreign
14 industry, of the respondent foreign industry. That is
15 a necessary consequence of that. That logic also
16 leads you to say the prices of the sales by that
17 producer should be import prices.

18 The final rationale you can use is
19 Mr. Klett's rationale which is here you have an import
20 of a product, a semi-finished product that is by far
21 the largest cost element of a finished product
22 conferring an advantage on the sales of the finished
23 product and thus indirectly causing injury to domestic
24 producers.

25 On any of those three you have to reach

1 those sales as causing injury or you've said something
2 very profound and damaging about the antidumping law.

3 Thank you.

4 CHAIRMAN OKUN: Thank you.

5 MR. LEVINE: Good afternoon. Prices have
6 declined, I don't think there is any dispute about
7 that and, in all honesty, I'm not sure I've got the
8 perfect answer for how to measure what the impact of
9 those price declines may have been. I'm not sure it's
10 relevant.

11 Pricing pressures that Mr. Landry spoke
12 about I think are to blame for the downward trend and
13 I would add one that we spoke about after our
14 presentation and that is the demand by big purchasers,
15 auto companies in particular, demanding lower prices
16 for this commodity product. There are lots of pricing
17 pressures. I don't think the evidence indicates that
18 those pricing pressures are caused by imports.

19 We spoke at length about the conditions of
20 the domestic industry as a whole and this is why we
21 focused on the various aspects of IIMAK's business,
22 not to indicate that those aspects of its business
23 were the cause of price declines, but to indicate that
24 those were the reasons for its condition.

25 Slit fax is a domestic like product. It's

1 like the subject TTR and I think there's evidence on
2 the record from today that the jumbos in many cases
3 can be used for both slit fax and for certain slit
4 TTR.

5 Finally, the converters or the slitters are
6 part of the U.S. industry. They are true U.S.
7 producers. The value added to the U.S. product is
8 significant. ITW in fact, as we told you, employs
9 more workers in its U.S. operations than in its Korean
10 operations.

11 Mr. Price?

12 MR. PRICE: Thank you. This is a price case
13 according to opposing counsel. Well, this is a very
14 profitable industry no matter how you cut it. There
15 is little if any operating profit margin decline under
16 any set of scenarios here. We have a case where there
17 frankly is no usable pricing data for several reasons.

18 In this case, we believe the pricing
19 declines are due to lower costs and domestic price
20 competition from Sony and now DNP using domestic, we
21 believe Sony, raw materials. So there is no evidence
22 of imports causing injury or causation.

23 On the issue of negligibility, the CAFC has
24 not definitively addressed the negligibility
25 calculation directly and we point the agency to the

1 Supreme Court's decision in Chevron and the dictates
2 of following the plain meaning of the statute in this
3 case.

4 Finally, I just want to state for the record
5 that Armor is negligible as a matter of law and as a
6 matter of fact. The commission should reach a
7 negative determination in this case as to France, but
8 it should also reach one overall.

9 Thank you.

10 CHAIRMAN OKUN: Thank you.

11 Post-hearing briefs, statements responsive
12 to questions, requests of the commission, and
13 corrections to the transcript must be filed by
14 March 16, 2004. The closing of the record and final
15 release of data to parties is March 31, 2004 and final
16 comments are due April 2, 2004.

17 With no other business to come before the
18 commission, this hearing is now adjourned.

19 (Whereupon, at 4:41 p.m., the proceedings in
20 the above-captioned matter were concluded.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Certain Wax and Wax/Resin Thermal Transfer Ribbons
INVESTIGATION NO.: 731-TA-1039-1041
HEARING DATE: March 9, 2004
LOCATION: Washington, D.C
NATURE OF HEARING: Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: 3/9/04

SIGNED: LaShonne Robinson
Signature of the Contractor or the
Authorized Contractor's Representative
1220 L Street, N.W. - Suite 600
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

SIGNED: Carlos Gamez
Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

SIGNED: Renee Miskell
Signature of Court Reporter