

THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
) Investigation No.:
AMMONIUM NITRATE FROM RUSSIA) 731-TA-856 (Review)

Thursday,
January 19, 2006

Room No. 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 STEPHEN
KOPLAN, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

CHAIRMAN STEPHEN KOPLAN
VICE CHAIRMAN DEANNA TANNER OKUN
COMMISSIONER JENNIFER A. HILLMAN
COMMISSIONER CHARLOTTE R. LANE
COMMISSIONER DANIEL R. PEARSON
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APPEARANCES: (cont'd.)

Staff:

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ROBERT HUGHES, ECONOMIST
CHARLES YOST, ACCOUNTANT/AUDITOR
MARK REES, ATTORNEY
GEORGE DEYMAN, SUPERVISORY INVESTIGATOR

In Support of Continuation of Antidumping Duty Order:

On behalf of Committee for Fair Ammonium Nitrate Trade
(COFANT):

MATT GREEN, Director, Agricultural Sales, Terra
Industries, Inc.
GARY ELLIOTT, Consultant to Terra Industries, Inc.
PAUL RYDLUND, President, El Dorado Chemical
Company
PHIL GOUGH, Senior Vice President, El Dorado
Chemical Company
DANIEL W. KLETT, Senior Economist, Capital Trade,
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ANDREW SZAMOSSZEGI, Economist, Capital Trade, Inc.

VALERIE A. SLATER, Esquire
ANNE K. CUSICK, Esquire
CARRIE A. RHOADS, Esquire
Akin Gump Strauss Hauer & Feld, LLP
Washington, D.C.

APPEARANCES: (cont'd.)

In Opposition to Continuation of Antidumping Duty
Order:

On behalf of MCC EuroChem, JSC Azot Nevinomyssk, JSC
Novomoskovsk, JSC Minudobrenya, JSC Dorogobuzh and JSC
Acron:

NICHOLAS ADAMCHAK, Managing Director, Ameropa
North America

MIKE WARD, Regional Sales Manager, Ameropa North
America

FRANK H. MORGAN, Esquire
JAY C. CAMPBELL, Esquire
White & Case, LLP
Washington, D.C.

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P R O C E E D I N G S

(9:30 a.m.)

CHAIRMAN KOPLAN: Good morning. On behalf of the United States International Trade Commission I welcome you to this hearing on Investigation No. 731-TA-856 (Review) involving Ammonium Nitrate From Russia.

The purpose of this five-year review investigation is to determine whether the revocation of the antidumping duty order covering ammonium nitrate from Russia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Notice of investigation for this hearing, list of witnesses and transcript order forms are available at the Secretary's desk. I understand the parties are aware of the time allocation. Any questions regarding the time allocation 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. Parties are reminded to give any prepared non-confidential testimony and exhibits to the Secretary. Do not place any non-confidential testimony or

1 exhibits directly on the public distribution table.
2 All witnesses must be sworn in by the Secretary before
3 presenting testimony.

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

8 Mr. Secretary, are there any preliminary
9 matters?

10 MR. BISHOP: No, Mr. Chairman.

11 CHAIRMAN KOPLAN: Very well. Let us proceed
12 with the opening remarks.

13 MR. BISHOP: Opening remarks in support of
14 continuation of the order will be made by Valerie A.
15 Slater, Akin Gump Strauss Hauer & Feld.

16 CHAIRMAN KOPLAN: Good morning.

17 MS. SLATER: Good morning. Good morning,
18 Mr. Chairman, members of the Commission, Commission
19 staff, and Happy New Year. My name is Valerie Slater.
20 I'm appearing this morning on behalf of the Committee
21 for Fair Ammonium Nitrate Trade. It's a pleasure to
22 be here this morning in this five-year sunset review
23 of the suspended investigation of ammonium nitrate
24 from Russia.

25 In a sunset review, as you know, the

1 Commission is asked in effect to predict the future.
2 You're supposed to look in your crystal ball and
3 determine as best as you possibly can what's likely to
4 happen if relief from unfair imports is removed.

5 You look at what happened in your original
6 investigation period, you look at what has changed,
7 and you look at what's likely to happen with respect
8 to the volume pricing and then the impact of the
9 subject imports. Of course, you know this because by
10 now the Commission has carried out more than 400
11 sunset reviews or reviewed orders covering more than
12 400 different cases. Thankfully, many of them have
13 been grouped.

14 I think that in this sunset review of a
15 rather remarkable suspended investigation, you're
16 going to find that very little has changed in terms of
17 the factors and conditions that led you to vote
18 unanimously in favor of relief only five years ago.
19 This should be a relatively straightforward sunset
20 review, in our view.

21 Russia is by far the world's largest
22 exporter of ammonium nitrate and has tremendous
23 unutilized capacity. That's true no matter how you
24 measure that unutilized capacity. All the different
25 slicing and dicing the Respondents will ask you to do

1 really don't change the bottom line.

2 During the investigation, Russian exports
3 were found to significantly undersell U.S. producers
4 and other imports and to depress U.S. prices. The
5 suspension agreement, which is a relatively novel
6 exercise, has imposed pricing and quantity
7 requirements on Russian exports to the market, but
8 Russian exports elsewhere have continued to undersell
9 in those markets and have continued to depress prices
10 there.

11 In addition, Russian exports continue to be
12 shut out of China, which is one of the world's largest
13 consumers. They are now excluded by antidumping
14 measures from the expanded European Union, and they
15 are severely restricted in Brazil.

16 The United States remains one of the largest
17 importing markets for ammonium nitrate, and without
18 relief it would be the largest market completely open
19 to those products. Prices here are also much stronger
20 than in other markets where Russia can freely export.
21 This continues to be an extremely attractive market.

22 You know, Albert Einstein once said that
23 insanity is defined as doing the same thing over and
24 over again, but expecting different results. If we
25 were to terminate the suspended investigation here and

1 take us back right where we were and expect that
2 anything different would happen, that would be frankly
3 -- well, I'll leave that to Professor Einstein to
4 describe the results.

5 In some respects the results today would be
6 even worse than in the investigation period. The
7 industry is faced with high and volatile natural gas
8 prices and has been reduced to the two core producers
9 while the rest have exited the industry in the face of
10 a rapidly shrinking market.

11 Apparent consumption during this period of
12 review has declined dramatically. It was almost 2.5
13 million tons during your period of investigation. By
14 the end of this review period, it was somewhere in the
15 neighborhood of 1.5 million tons, and it's predicted
16 to drop further to about a million tons in the short
17 term. Nevertheless, the suspension agreement has
18 allowed this industry to improve its financial results
19 over this period and to become profitable despite
20 higher costs.

21 Russian Respondents are faced with a set of
22 facts which are not favorable, and they've come up
23 with a pretty creative set of arguments, arguments
24 that are based on an utterly erroneous premise. You
25 know, I had a great law school professor who said

1 once, and this is probably the only thing I remember
2 from law school, let me make the premise, and I'll
3 beat you every time.

4 Well, in this case the Russian Respondents
5 have come up with a premise that is just so wrong
6 we're not going to let them get away with making it.
7 It's just wrong. They suggest there's a shortage of
8 supply in the U.S. market that can only be filled if
9 more Russian imports are permitted. It's the
10 foundation for their entire case in this review.

11 You're going to hear today that there is not
12 and has not been any type of a shortage despite the
13 contraction of the domestic industry. U.S. producers
14 continue to have substantial underutilized capacity,
15 imports continue to flow from the variety of non-
16 subject sources and from Russia, and the market is
17 shrinking. In addition, your questionnaire responses
18 from purchasers, producers and importers make clear
19 that there's no shortage of product.

20 Ladies and gentlemen, you know a market
21 involving a shortage when you see one, and this case
22 does not involve a shortage of any sort. Not even
23 close.

24 You will hear today from our industry
25 witnesses about the state of the market, about the

1 very positive effects of the suspension agreement and
2 why a resumption of the price depression caused by
3 Russian imports in the original investigation period
4 would be so devastating for the remaining producers at
5 this time.

6 We believe you can reach one reasonable
7 conclusion in this case, and we urge you to do so.
8 Thank you.

9 CHAIRMAN KOPLAN: Thank you.

10 Mr. Secretary?

11 MR. BISHOP: Opening remarks on behalf of
12 those in opposition to continuation of the order will
13 be made by Frank H. Morgan, White & Case.

14 CHAIRMAN KOPLAN: Thank you.

15 Good morning, Mr. Morgan.

16 MR. MORGAN: Good morning, Chairman Koplan,
17 Commissioners, Commission staff. My name is Frank
18 Morgan. I'm with White & Case. I'm joined by my
19 colleague, Jay Campbell. We represent EuroChem and
20 its affiliated Russian AN producers, Nevinnomysk and
21 Novomoskovsk, along with JSC Acron and its affiliated
22 company, JSC Dorogobuzh, and finally JSC
23 Minudobrenyia.

24 We're pleased to have Nicholas Adamchak and
25 Mike Ward of Ameropa here with us today. Ameropa is a

1 Russian importer of ammonium nitrate.

2 The case for termination is a simple one.
3 It does not involve a great deal of facts, and it does
4 not require a deep gaze into a crystal ball. A
5 significant gap exists between U.S. AN supply and U.S.
6 demand. I have no doubt that my friends on the other
7 side, as we've already heard, will do a wonderful job
8 of brushing this issue aside, but at bottom make no
9 mistake. Perpetuation of the suspension agreement
10 jeopardizes supply to the growers whose crops require
11 nitrate nitrogen.

12 On this I note at the outset that the
13 distinction between consumption and demand is
14 meaningful, and the terms cannot be used
15 interchangeably in this case. While there may have
16 been a slight decline in consumption, none of the
17 exogenous factors that would show a decline in demand,
18 such as acreage planted for crops that use AN,
19 indicate that there has been any decline.

20 In terms of U.S. produced supply, I don't
21 think you'll hear any disagreement today from the only
22 two domestic AN producers. U.S. supply falls short of
23 demand. This is not new. Imports have been a vital
24 part of the U.S. market since well before the original
25 investigation.

1 What is new and what is clear from the
2 import statistics, no matter how you slice and dice
3 them, is that non-subject imports have declined and
4 cannot be expected at previous levels. Even when
5 prices were rising in the U.S. market, non-subject
6 imports declined, and they did so rapidly.

7 Why? Would your non-subject import volume
8 shrivel in the face of increasing prices? The answer
9 is simple. Security regulations, logistical
10 limitations and limited offshore availability of
11 supply.

12 As you'll hear from Mr. Adamchak this
13 afternoon, measures designed to safeguard ammonium
14 nitrate have had a dramatic impact on the market.
15 Many of these measures are recent, and all postdate
16 the original investigation. Altogether, these
17 measures have had a disproportionate impact on imports
18 because they severely restrict access to the domestic
19 distribution system.

20 Domestic producers, on the other hand, have
21 escaped a great deal of this impact because they ship
22 the majority of their AN by rail or truck. There's
23 nothing exceptional about Russian AN that will allow
24 it to escape these same impediments should the
25 Commission terminate the suspended investigation.

1 Like all other imported AN, Russian product
2 primarily moves through the Mississippi River system
3 via barges. Consequently, even if importers had an
4 incentive to increase their volume of AN shipments, of
5 Russian AN shipments, there are insurmountable
6 impediments to their ability to do so.

7 I do not think you will hear anyone today
8 dispute the fact that the security measures on AN are
9 here and will last indefinitely. If anything, I think
10 you'll find general agreement that more measures are
11 coming, primarily with the likely passage by Congress
12 of the Secure Handling of Ammonium Nitrate Act.

13 In such an environment, a niche product like
14 AN is sure to command a price premium in the U.S.
15 market. Without intending to, I believe the U.S.
16 industry has proven this point in its prehearing
17 brief. The domestic industry's general theme is that
18 Russian AN prices to every other market in the world
19 are lower than they are to the United States.

20 We intend to examine the underlying data
21 further in our posthearing brief because there seems
22 to be some gross distortions and internal
23 inconsistencies, but for the moment and for the sake
24 of argument we will accept that the United States
25 market offers the most attractive pricing.

1 Why? Why does a commodity product command a
2 higher price in the U.S. than anywhere else in the
3 world? Lack of adequate supply, logistical
4 limitations and security regulations. These three
5 factors combine to ensure that AN is and will remain a
6 price premium product in the U.S. market irrespective
7 of termination.

8 As you will hear from Mr. Adamchak later,
9 importers that handle this product have no incentive
10 to undercut prices to move volume on the one hand
11 because the market is undersupplied and on the other
12 because security regulations restrict the volume of
13 imports that can be sold. Absent a neater incentive
14 to undercut prices to move volume, importers that do
15 continue to handle the product thus can be expected to
16 command a price premium.

17 In an undersupplied market, even with the
18 U.S. industry operating at full capacity where limited
19 incentives and ability to increase volume by
20 underselling exists, it does not require a crystal
21 ball to see that termination will not have an adverse
22 impact on the domestic industry.

23 Thank you.

24 CHAIRMAN KOPLAN: Thank you.

25 Mr. Secretary?

1 MR. BISHOP: Would the first panel, those in
2 support of continuation of the antidumping duty order,
3 please come forward and be seated?

4 Mr. Chairman, all witnesses have been sworn.
5 (Witnesses sworn.)

6 CHAIRMAN KOPLAN: Thank you.

7 I can definitely see the light. You may
8 proceed.

9 MS. SLATER: Good morning, Mr. Chairman,
10 members of the Commission. Once again, my name is
11 Valerie Slater of Akin Grump Strauss Hauer & Feld
12 representing the domestic ammonium nitrate industry,
13 the Committee for Fair Ammonium Nitrate Trade.

14 We've brought before you this morning
15 representatives of the two remaining ammonium nitrate
16 producers who are the largest core producers in this
17 industry. Let me introduce them briefly, and then
18 we'll have testimony.

19 On my left, Mr. Gary Elliott and Mr. Matt
20 Green from Terra Industries. On my right, Mr. Phil
21 Gough of El Dorado Chemical. Behind me is Mr. Paul
22 Rydlund, the president of El Dorado Chemical Company.

23 We'll also hear testimony this morning from
24 our economist, Dan Klett, and we also have my
25 colleagues, Anne Cusick and Carrie Rhoads, and Andrew,

1 whose last name I can't pronounce, who works with Mr.
2 Klett.

3 Let's start this morning since I think
4 before you heard my opening remarks, I think we'll go
5 right to the witnesses. I'd like to open with some
6 testimony from Mr. Green.

7 MR. GREEN: Good morning, Mr. Chairman,
8 members of the Commission and the Commission staff.
9 My name is Matt Green. I'm the Director of
10 Agricultural Sales at Terra Industries, a U.S.
11 producer of ammonium nitrate.

12 I have been with Terra for 11 years and have
13 held my current position since 2000. I'm responsible
14 for North American sales and marketing of Terra's
15 fertilizer grade ammonium nitrate, all of which is
16 produced at Yazoo City, Mississippi. Terra has owned
17 and operated the Yazoo City plant since it acquired
18 Mississippi Chemical Corporation in December 2004.

19 I appreciate the opportunity to appear
20 before you today to discuss the ammonium nitrate
21 market and why it is so important to Terra that the
22 Commission permit the suspension agreement on Russian
23 ammonium nitrate to continue for another five years.

24 First I'd like to start with a description
25 of ammonium nitrate and how it differs from other

1 nitrogen fertilizers. First, it is important to
2 recognize that ammonium nitrate serves a niche market
3 and has characteristics that make it extremely
4 desirable in certain regions and applications.

5 Ammonium nitrate is distinguished from other
6 nitrogen fertilizers such as urea because of two
7 characteristics. One, it rapidly delivers nitrogen to
8 the soil. Secondly, there is less risk of
9 volatilization, meaning the loss of nitrogen into the
10 air, when AN is applied directly to the soil.

11 Ammonium nitrate is especially popular in
12 the southeastern part of the United States where its
13 qualities are particularly well-suited for the warmer
14 climates and the type of crops planted, such as grass
15 or citrus, or where no-till methods are used.

16 In no-till applications, fertilizer is
17 applied on top of the soil and not tilled into the
18 soil. Because the fertilizer sits on top of the soil,
19 the qualities of ammonium nitrate are particularly
20 desirable. In regions or in applications for which
21 ammonium nitrate is preferred, special qualities of
22 ammonium nitrate mean that there is a limited
23 substitution between ammonium nitrate and other
24 nitrogen fertilizers.

25 AN is used as a single source fertilizer, or

1 it is blended with other fertilizers such as phosphate
2 and potash and is broadcast to the soil surface.
3 Because it is most frequently applied at time of
4 planting, farmer demand for ammonium nitrate is
5 concentrated in the spring months, but we are
6 producing and shipping to customers in the
7 distribution system year-round.

8 An important aspect of the ammonium nitrate
9 market is that ammonium nitrate is a commodity product
10 that is produced using essentially the same process
11 regardless of where it is produced. Russian produced
12 ammonium nitrate is a perfect substitute for U.S.
13 produced ammonium nitrate of quality and uses.

14 Last year when our production was
15 temporarily interrupted -- our gas supplies were cut
16 off due to Hurricanes Katrina and Rita -- we made a
17 one-time purchase of some Russian nitrate. The
18 product was of excellent quality, and we delivered it
19 to some of our customers without any problems.

20 Russian product is also identical to U.S.
21 produced ammonium nitrate in terms of marketing and
22 distribution. Importers bring vessels into the Gulf
23 Coast ports, including New Orleans and Tampa, and
24 distribute this product through these ports. Like
25 U.S. producers, they barge ammonium nitrate up the

1 Mississippi River and either distribute the product
2 directly in barge quantities to distribution
3 warehouses or distribute by rail and truck.

4 Both domestically produced and imported
5 nitrate are sold to the same distribution channels and
6 would compete for the same business. U.S. producers
7 and imports typically sell to distributors who then
8 resell to dealers, although some product we sell is
9 sold directly to dealers.

10 It is important for the Commission to
11 realize that competition in the ammonium nitrate
12 market is almost entirely based on price. While we
13 also strive to provide good customer service and
14 reliability, they will not buy our product if they can
15 get an equivalent product for less.

16 Our customers read weekly publications such
17 as *Green Markets* which publish prices of ammonium
18 nitrate at various locations. They are also aware of
19 imported product on its way to the United States
20 market and can typically get quotes from importers who
21 are bringing product well before it arrives.

22 We change our prices according to our
23 assessment of the marketplace in which we sell and the
24 season and the competitive conditions, and these can
25 be changed daily or monthly. It is also important to

1 keep in mind that every other producer or importer of
2 ammonium nitrate has access to the same information we
3 use to determine price, so the prices of one producer
4 or importer affect the entire market.

5 Today the U.S. industry faces some difficult
6 challenges. As you are certainly aware, natural gas,
7 which is a principal raw product in making ammonium
8 nitrate, is at historically high prices. We can only
9 remain profitable if our prices can rise to a level
10 that reflects our increased cost.

11 In addition, U.S. demand for nitrate is
12 unquestionably declining. While the market is
13 shrinking, at Terra we strongly believe that there
14 will always be a core market for ammonium nitrate.
15 Especially in the southeastern United States, ammonium
16 nitrate will remain the nitrogen fertilizer of choice
17 for no-till crop agriculture because its particular
18 qualities are suited both to the climate and farming
19 methods in that region.

20 However, particularly because the demand is
21 declining, additional large volumes of unfairly priced
22 supply will seriously disrupt the market. Because
23 Russia has such a huge producer with the capacity of
24 shipping large volumes, the suspension agreement has
25 been extremely beneficial since the market knows that

1 only a fixed volume of ammonium nitrate from Russia
2 will enter the market during a given year at a price
3 that is tied to the market.

4 Even though it has given Russian producers a
5 growing quota in a declining market, the suspension
6 agreement has prevented the market disruption and
7 price declines that led to the initial request for
8 relief.

9 I want to briefly address some of the
10 incredible arguments that the Russians are making. As
11 someone who is in the ammonium nitrate market every
12 day and every week, I know that there is no shortage
13 of ammonium nitrate in the United States.

14 There are always times in the height of the
15 season particular customers may not have the product
16 when and where they want it largely as a result of
17 inability to predict weather patterns, distribution
18 and logistics issues and planning the schedule with
19 accuracy. There is not an insufficient amount of
20 supply of ammonium nitrate in the United States.

21 We at Terra have capacity that is
22 significantly underutilized. Ammonium nitrate finds
23 its way to our markets with a variety of sources, and
24 trading companies who handle ammonium nitrate make
25 sure that import supply is available. The notion that

1 there's not enough supply in the shrinking market is
2 just not correct.

3 I also want to comment briefly on Terra's
4 turnaround of our ammonia plant at Yazoo City and our
5 addition of capacity for low-density, industrial grade
6 ammonium nitrate. The ammonia plant at Yazoo City is
7 currently down for what we call a turnaround. This is
8 routine maintenance that is normally done every year
9 or two.

10 While the turnaround had been scheduled for
11 February, given high natural gas prices we decided to
12 extend the time of the turnaround and begin in
13 January. This has resulted in cost savings as we were
14 able to perform the turnaround using our own workers.

15 It has not stopped our production of
16 ammonium nitrate because our plant at Yazoo City has
17 the ability to bring in ammonia from elsewhere in the
18 Terra system to produce ammonium nitrate. Let me
19 emphasize this. We have never stopped producing
20 ammonium nitrate during this turnaround.

21 In that regard, I must tell you that the
22 suggestion by the Russian producers that Terra will
23 only be selling ammonium nitrate to customers who we
24 already committed to sell is incorrect. We are
25 producing nitrate and selling it today to all

1 customers and will continue to have product for sale.

2 Our turnaround is scheduled to be completed
3 in late February, and we expect our Yazoo City ammonia
4 plant to be up and running at that time. The addition
5 of some low-density capacity to one of the prilling
6 towers in Yazoo City does not reduce or diminish our
7 capacity to produce fertilizer grade ammonium nitrate.

8 Particularly given that the market for
9 fertilizer grade ammonium nitrate is shrinking, having
10 the capability to produce some explosive grade nitrate
11 provides us with an option which we hope will allow us
12 to more fully utilize our capacity and improve the
13 economics of our production of fertilizer grade
14 nitrate in this extremely competitive market.

15 Finally, I must comment on the argument of
16 the Russian producers that they will not lower their
17 prices if the suspension agreement is removed. I know
18 from personal experience this past summer that this is
19 not the case.

20 The ammonium nitrate market in eastern
21 Canada is similar to the U.S. market. Normally prices
22 in eastern Canada are somewhat higher than in the U.S.
23 due to logistics and transportation expenses. Last
24 summer we offered some ammonium nitrate for sale in
25 the eastern Canada market. We found ourselves

1 competing with an importer selling Russian product
2 that was priced below the prevailing U.S. market.

3 As compared with prices of Russian product
4 brought into the U.S. under the suspension agreement,
5 this product was offered at a substantially lower
6 price. We were forced to walk away from several
7 sales. One which we did make gave us one of our
8 lowest net backs for the fall season. I have no doubt
9 that the trading companies will behave in the same way
10 in their sales of Russian nitrate to the U.S. market
11 without this suspension agreement.

12 Thank you.

13 MS. SLATER: We're now going to hear from
14 Gary Elliott.

15 MR. ELLIOTT: Good morning. My name is Gary
16 Elliott. I'm currently a marketing and distribution
17 consultant --

18 CHAIRMAN KOPLAN: If you could move that
19 just a little closer to you? Thank you.

20 MR. ELLIOTT: Is that better?

21 CHAIRMAN KOPLAN: That's better.

22 MR. ELLIOTT: I was previously Vice
23 President of Marketing and Distribution for
24 Mississippi Chemical Company. I held that position
25 for three years.

1 I've worked in the ammonium nitrate market
2 in various capacities and was involved in the market
3 at the time of the Commission's original investigation
4 and for most of the period since that time. One of
5 the items I currently advise Terra on concerns the
6 ammonium nitrate market. I appreciate the opportunity
7 to appear here today to briefly share with the
8 Commission my perspective on the suspension agreement
9 and why it continues to be so important.

10 When Russia ammonium nitrate first appeared
11 in significant quantities in the U.S. market in 1997
12 and 1998, product that had almost never before been in
13 the market, prices were so low that U.S. producers
14 were stunned. We were forced to meet the Russian
15 prices or lose sales.

16 I personally participated in many of the
17 transactions in which we were forced to lower our
18 prices in response to offers of Russian product. We
19 did this because we had no choice, and our
20 profitability was negatively affected. We had always
21 had imports in our market, but never imports priced
22 like the Russian product and in such large and growing
23 quantities.

24 All of this material was offered by trading
25 companies who wanted to move as much volume as they

1 could. For them, any margin represented a profit, and
2 underselling the market was irrelevant. We had just
3 not experienced anything like this in marketing AN.

4 The decisions of the Commerce Department and
5 the Commission were extremely helpful.
6 Notwithstanding the second wave of dumping of
7 Ukrainian product, the suspension agreement, while
8 allowing the Russian producers significant and growing
9 quotas, tied the price of Russian product to the U.S.
10 market.

11 Russian product quickly came back into the
12 market, but at prices that reflected the market and in
13 volumes that were defined and known. We were,
14 frankly, skeptical about whether the agreement would
15 work and whether the Russian government would really
16 cooperate in carrying out their agreement and the
17 licensing scheme it set up. We were pleasantly
18 surprised at how well it has worked. In particular,
19 after the Ukrainian issue was addressed we saw our
20 prices recover. Profitability has improved in every
21 year since 2001.

22 More importantly, I can tell you one thing
23 that I believe to be absolutely true. Given the
24 volatile and increasing natural gas prices we have
25 experienced since we were last before the Commission,

1 U.S. production would not have survived at all without
2 the suspension agreement. It allowed our prices to
3 rise to cover increasing costs, something that would
4 not have been possible if Russian prices had continued
5 to depress the market as they did in 1998 and 1999.

6 Given what I see in the market and our
7 interactions with traders handling Russian product,
8 there is no question that the situation would be no
9 different today if the suspension agreement were
10 terminated. There is still an enormous amount of
11 Russian ammonium nitrate available to export to the
12 United States. Russian producers would love to send
13 it here, and traders would love to take it.

14 ConAgra's attempt to bring in so-called
15 33-3-0 outside of the agreement is just one example.
16 Today, the Russians want to bring in 27-5-0, another
17 effort in our view to work around the agreement.

18 Let me add one more thought. The market
19 does not need more Russian nitrate. In a market which
20 is shrinking, the closure of some of the smaller U.S.
21 plants has given the market an opportunity to finally
22 come into balance.

23 U.S. capacity will be closer to balancing
24 U.S. demand, and in any event imports will continue to
25 come from many countries, including places like

1 Bulgaria, Romania and now Georgia. There have been no
2 shortages, and there are not likely to be shortages.

3 The U.S. market is a very attractive market
4 with the Central Gulf port locations and the easy
5 access to the river system and other forms of
6 transportation. In Tampa, Ameropa has opened an
7 office and established its own marketing distribution
8 capability. Trading companies have arrangements with
9 some of the largest distributors and will bring them
10 products.

11 The challenges faced by our industry make it
12 just as important today, if not more important, than
13 it was five years ago to be granted relief from
14 unfairly traded Russian imports. I hope you'll take
15 these factors into account.

16 Thank you.

17 MS. SLATER: Thank you. I especially want
18 to thank Mr. Elliott for coming today since it's his
19 birthday, and I know there were just a couple of other
20 things he'd prefer to be doing.

21 We'll now hear from Mr. Gough of El Dorado
22 Chemical.

23 MR. GOUGH: Good morning. My name is Phil
24 Gough, and I am currently the Senior Vice President of
25 Marketing for El Dorado Chemical Company. I have held

1 this position for 22 years. I have been in the
2 ammonium nitrate market for almost 25 years. I am
3 very pleased to be here today.

4 CHAIRMAN KOPLAN: Could you move that
5 microphone closer to you?

6 MR. GOUGH: I am very pleased to be here
7 today to describe how the suspension agreement has
8 benefited the U.S. ammonium nitrate industry and my
9 company.

10 As you have heard from Matt Green, ammonium
11 nitrate is a commodity product sold primarily on the
12 basis of price. Most sales are spot sales or very
13 short-term contracts. Because of that market dynamic,
14 information concerning pricing offers is quickly
15 spread through the market by word of mouth and through
16 trade publications that track the market closely.

17 Before the suspension agreement was put in
18 place, a single shipment of Russian ammonium nitrate
19 could enter the distribution system and have a major
20 impact on prices as word of the availability of the
21 product and its pricing spread.

22 One of the reasons that Russian nitrate
23 imports had such a negative impact on our industry is
24 the very nature of the industry. Even though demand
25 for ammonium nitrate is seasonal, we produce ammonium

1 nitrate year round in order to fully utilize our
2 plants. We therefore must move product into the
3 distribution chain in order to continue to produce
4 efficiently.

5 We have limited storage facilities, so we
6 sell product to our customers, who are usually
7 dealers, in the off season and transfer product to
8 their storage facilities. This is also beneficial to
9 the market and end users as a whole since nitrate will
10 be already in place and available to the farmers when
11 the spring planting season begins, which can vary from
12 year to year according to weather patterns.

13 Because all ammonium nitrate is sold through
14 the same channels of trade and stored in the same
15 facilities, the large volumes of Russian product that
16 were shipped to the U.S. market before the suspension
17 agreement was entered quickly disrupted the market.
18 First, the Russian product was offered for sale at
19 extremely low prices. We had to lower our prices to
20 meet Russian competition just to maintain market
21 share.

22 Second, since the influx of large volumes of
23 Russian ammonium nitrate were stored in the same
24 facilities as U.S. produced ammonium nitrate, storage
25 was quickly filled with Russian product, and U.S.

1 producers had difficulty moving their product into the
2 distribution chain and thus maintaining production
3 efficiencies.

4 Third, the huge volumes of Russian imports
5 had a damaging psychological impact on the market. We
6 found that because they expected large volumes of
7 dumped Russian nitrate to be available, our customers
8 did not buy as they usually did in advance of the
9 season.

10 There was a sense in the market that prices
11 would fall when the Russian product arrived and so
12 purchasers were hedging their bets and not buying
13 since they were sure that all prices in the market
14 would decline further. This disrupted our normal
15 production patterns even further.

16 The situation with Russian ammonium nitrate
17 was fixed once the suspension agreement was put in
18 place, but, as you know, large volumes of cheap
19 Ukrainian nitrate quickly followed in 2000 and
20 continued to disrupt prices and production. However,
21 after the antidumping duty order on Ukrainian ammonium
22 nitrate was in place prices began to strengthen, and
23 we got back to our more typical production and sales
24 patterns.

25 Although the suspension agreement has been

1 incredibly helpful to us during the past five years,
2 the situation has not been easy. We have had to deal
3 with extremely volatile and high natural gas prices,
4 which increased our cost significantly. Also, as Matt
5 Green just mentioned, our market is shrinking. This
6 is an unfortunate but true fact of life.

7 We have also had to deal with competition
8 from imports from other countries. Although these
9 imports have not been priced as low as Russian or
10 Ukrainian imports were, they have nonetheless
11 challenged the U.S. industry and contributed to
12 continuing oversupply.

13 In this regard, I want to speak just briefly
14 to two points raised by the Russian producers. They
15 suggest that imports from other countries have dried
16 up and won't be coming back. Well, they know better
17 and so do we. Imports did slow down in late 2004 and
18 early 2005, but imports at the end of 2005 were higher
19 than the same period in 2004, and 2006 promises to
20 continue an upward trend.

21 Fertecon reported in its world fertilizer
22 review for 2006 that ConAgra has loaded two ships in
23 the Republic of Georgia and two from Bulgaria. Key
24 Trade was sending a third Bulgarian vessel. Yara was
25 bringing a shipload from the Netherlands, and

1 Transammonia was bringing product from Romania. Seven
2 boatloads, and it's only January.

3 I wish the Russians were right about the
4 other imports, but they are not. This fits with my
5 experience in the market. There has been plenty of
6 import supply, and the traders are resourceful. It is
7 also simply incorrect to say there has been a shortage
8 of any sort. Nothing could be further from the truth.
9 There has been no shortage.

10 El Dorado Chemical has always had product to
11 sell, and we have not turned anyone away for lack of
12 product to deliver. The fictional shortages that the
13 Russians suggest are just that.

14 Thank you for your attention, and I would be
15 pleased to answer any questions.

16 MS. SLATER: Thank you, Mr. Gough.

17 We will now hear from Mr. Rydlund, president
18 of El Dorado Chemical.

19 MR. RYDLUND: Good morning. My name is Paul
20 Rydlund. I am the president of El Dorado Chemical
21 Company, a wholly owned subsidiary of LSB Industries.
22 I have been with the company for 22 years.

23 I am very familiar with the production and
24 marketing of El Dorado Chemical's fertilizer grade
25 ammonium nitrate. I am grateful for the opportunity

1 to speak to the Commission today and to explain some
2 of the factors that make our continuing relief from
3 unfairly traded Russian imports so important to our
4 company.

5 El Dorado Chemical is today one of the two
6 remaining producers of fertilizer grade ammonium
7 nitrate in the United States. We produce fertilizer
8 grade ammonium nitrate presently at our plant in El
9 Dorado, Arkansas, and serve customers throughout the
10 ammonium nitrate market in the United States.

11 We also own and operate a plant in Cherokee,
12 Alabama. This plant, which was owned by LaRoche
13 Industries at the time of the Commission's original
14 investigation, was purchased by El Dorado Chemical in
15 November 2000.

16 Today I would like to address some important
17 factors about the ammonium nitrate production and the
18 ammonium nitrate market, which I believe will be
19 helpful for this Commission to understand. I also
20 want to discuss with you the status of our plant in
21 Cherokee, Alabama.

22 First, ammonium nitrate plants, like most
23 nitrogen plants, are capital intensive and are
24 designed to run at or near full capacity. Even though
25 demand for ammonium nitrate is somewhat seasonal, we

1 run our plants year round in order to ensure adequate
2 supplies in the planting season, but also to maximize
3 our efficiency. Ideally we would be running our
4 plants all year at close to capacity.

5 In this regard, I noted with some interest
6 the suggestion that somehow running at 75 percent of
7 capacity or lower is normal for an ammonium nitrate
8 plant. This is not true. The utilization rate is not
9 optimal for running efficiently, and no producer in
10 the U.S. or elsewhere would choose to run its plants
11 at this rate.

12 Our two plants have the capacity to produce
13 421,000 tons of fertilizer grade ammonium nitrate
14 annually, but presently that capacity is only about 50
15 percent utilized. We have shifted all of our ammonium
16 nitrate production to our El Dorado plant for the time
17 being in order to maximize production there.

18 While we are producing other product at
19 Cherokee, our capacity to produce fertilizer grade
20 ammonium nitrate remains idle. The capacity to
21 produce fertilizer grade ammonium nitrate at Cherokee
22 is not limited by our production of other products.
23 It is not an either/or proposition. If market
24 conditions warrant, we could and would produce solid
25 fertilizer grade nitrate to capacity without

1 diminishing our production of other products.

2 I also must comment on the suggestion that
3 our recent decision to temporarily suspend producing
4 ammonia at Cherokee somehow suggests that we will not
5 resume ammonium nitrate production. This could not be
6 further off the mark. As an initial matter, the
7 Commission should know that ammonia production at
8 Cherokee has already restarted. Our decision to cease
9 ammonia production was related to a number of factors,
10 including inventory control for an industrial product.

11 Most important, that decision had no impact
12 at all on our ammonium nitrate production and has no
13 relationship whatsoever to our ability to resume
14 ammonium nitrate production at Cherokee. We can and
15 will and are anxious to produce ammonium nitrate at
16 Cherokee if and when market conditions permit us to do
17 so.

18 The other aspect of ammonium nitrate
19 production that I want to mention to you today is the
20 importance of natural gas prices. Natural gas is the
21 raw material used to make ammonia, which in turn is
22 used to make ammonium nitrate. We purchase ammonia as
23 an input at El Dorado and produce it at Cherokee, but
24 for both plants the price of natural gas is the
25 principal determining factor in our cost.

1 While gas costs have been at historic highs
2 over the last five years and certain producers have
3 exited ammonium nitrate with a rapidly declining
4 market, with the relief from the price impacts we have
5 seen in the past from Russian imports we have been
6 able to move toward profitability, and our prices have
7 been able to rise to cover our costs.

8 In our shrinking market, a return to the
9 unfair pricing of Russian imports would be devastating
10 for us. We believe there will continue to be a market
11 for ammonium nitrate and that it will be largely in
12 the core consuming states, but we know that in the
13 next five years it is likely to continue to decline.

14 While we had a good year in 2005, we are in
15 a tough spot with record high raw material costs and
16 the shrinking demand. We ask the Commission to be
17 mindful of the effect that unfairly traded ammonium
18 nitrate had on this industry in the period before the
19 suspension agreement and to recognize how devastating
20 the impact of removing this relief would be.

21 Thank you.

22 MR. KLETT: Good morning, Mr. Chairman,
23 members of the Commission. My name is Daniel Klett.
24 I'm an economist with Capital Trade, Inc. testifying
25 on behalf of COFANT.

1 I will address six issues. First, the
2 suspension agreement has reduced ammonium nitrate
3 import volume from Russia with positive effects on
4 U.S. ammonium nitrate prices;

5 Second, that Russia continues to have
6 significant excess capacity available for export to
7 the United States;

8 Third, that the United States will be an
9 attractive market for Russia's excess capacity because
10 of its size, U.S. price levels being higher relative
11 to alternative markets and import restraints and other
12 markets;

13 Fourth, that demand increases in Russia will
14 not absorb enough excess capacity in Russia to
15 eliminate the threat;

16 Fifth, I will address the arguments stated
17 by the Russian Respondents that there will be no
18 adverse volume or price effects if the suspension
19 agreement is revoked;

20 Finally, adverse financial effects for the
21 U.S. industry.

22 The suspension agreement has both volume and
23 price elements, which have contributed to Russia's
24 ammonium nitrate volumes being lower and import prices
25 higher into the United States since the investigation

1 period.

2 As shown in Exhibit 1, in the last year of
3 the period of investigation, 1999, the import volume
4 of Russian AN into the United States was about 261,000
5 short tons, an increase of 30 percent over 1997
6 levels.

7 Moreover, the Department of Commerce's
8 preliminary determination was in September 1999, which
9 constrained the subject imports in the last four
10 months of that year. In the first half of 1999 alone,
11 AN imports from Russia were 200,000 short tons, more
12 than two and a half times higher than import volumes
13 in the first half of 1998.

14 The quota element of the suspension
15 agreement restricted imports from Russia to 110,000
16 short tons in the first full year of the suspension
17 agreement, 2001, and this has increased to 165,000
18 short tons in 2005.

19 Because of carryover and carryback
20 provisions, the actual quota can be higher or lower in
21 any particular year. However, as shown in Exhibit 2,
22 from 2000 to 2004 the quota has been close to 94
23 percent filled based on a comparison of Census imports
24 and quota levels.

25 Russian Respondents reported in May of this

1 year that they have exported 93 percent of their quota
2 level, so our analysis comports with the ammonium
3 nitrate volumes Russia itself says that it has
4 exported.

5 Regarding the effects of the suspension
6 agreement on price, as shown in Exhibit 3, during the
7 period of investigation the average unit value of
8 imports from Russia had decreased significantly. In
9 each year since the suspension agreement has been in
10 effect, the import price from Russia has exceeded this
11 level by a wide margin.

12 I recognize that this increase cannot be
13 attributed only to the suspension agreement since
14 other supply/demand factors, including rising natural
15 gas prices, have contributed to higher ammonium
16 nitrate prices.

17 However, the following fact demonstrates
18 that there has been a positive effect on price from
19 the suspension agreement. As shown in Exhibit 4,
20 Russia's average export price to the United States was
21 only slightly higher than to alternative export
22 markets in the last year of the period of
23 investigation by about \$6 a metric ton based on
24 official Russian export statistics.

25 After the suspension agreement there was a

1 significant increase in Russia's export price to the
2 U.S. relative to other export markets with the price
3 premium at the foreign port at about \$50 a metric ton
4 or \$45 a short ton in 2004 and 2005.

5 I note the data collected through your
6 foreign producer questionnaires for a subset of the
7 Russian AN industry reported at page IV-7 of your
8 staff report also shows significant price premiums for
9 Russian exports to the U.S. relative to alternative
10 export markets and the home market.

11 That Russian exporters would revert to pre-
12 suspension agreement behavior is supported by the fact
13 that those Russian producers responding to the
14 Commission questionnaire have roughly the same amount
15 of excess capacity now as was reported in the original
16 investigation as shown in Exhibit 5 with the same
17 financial pressures to export.

18 You have heard testimony from our witnesses
19 regarding the production economics for ammonium
20 nitrate and why operating at capacity utilization
21 rates of 75 percent or below is not normal from an
22 operational perspective as claimed by Respondents.

23 The United States will be an attractive
24 market for Russia's excess capacity regardless of how
25 imports are calculated, the questionnaire responses or

1 Census data, and despite a reduction in U.S.
2 consumption the U.S. continues to be one of the
3 largest import markets for ammonium nitrate in the
4 world. Moreover, as you saw in an earlier exhibit,
5 the U.S. ammonium nitrate price is significantly
6 higher for Russian producers than in alternative
7 export markets.

8 Import restrictions in important export
9 markets, particularly in the EU, will make the U.S.
10 that much more attractive as an export market for
11 Russia. Respondents claim that the EU undertakings
12 have had no significant effects because Russia
13 continued to export over 508,000 metric tons to the EU
14 in 2004.

15 As shown in Exhibit 6, Russia exported
16 significant volume to the EU-15 countries in 2001, but
17 the EU increased the duties significantly in April
18 2002, and AN imports from Russia into the EU-15
19 decreased significantly in this year and have remained
20 at low levels thereafter.

21 The EU continued to import significant
22 quantities from countries that were to be included in
23 the EU-10, and these volumes remained large through
24 2004, in part explaining the 2004 508,000 tons.
25 However, only starting in May 2005 were the AD duties

1 applied to AN imports from Russia into the EU-10
2 countries.

3 As you can see from this exhibit, imports of
4 Russian ammonium nitrate into the EU-25 total just
5 36,000 metric tons, less than two boatloads, over the
6 five month period May to September. This compares to
7 imports from Russia totaling over 650,000 metric tons
8 as recently as 2004 based on Eurostat import
9 statistics. This was a major export destination for
10 Russian exports that has been virtually eliminated.

11 Respondents assert that home market demand
12 is a priority for Russian producers and that growth in
13 home market consumption will act as a constraint on
14 exports to the U.S. However, as shown in Exhibit 7,
15 for those Russian producers that responded to the
16 Commission's questionnaire, sales to the home market
17 increased by only 152,000 metric tons between 2000 and
18 2004 or about 38,000 metric tons annually and declined
19 slightly in interim 2005.

20 To put this growth into perspective, these
21 same Russian producers reported excess capacity of
22 1.65 million metric tons in 2004. For these
23 producers, growth in home market demand did not put a
24 dent in their excess capacity.

25 For the entire Russian ammonium nitrate

1 industry, Fertecon projects growth of about 124,000
2 metric tons annually between 2005 and 2010. Russian
3 producers responding to the Commission questionnaire
4 accounted for just 38 percent of home market sales,
5 and if the growth in home market demand is prorated on
6 this basis there will exist over 1.3 million metric
7 tons of excess capacity for these producers as far out
8 as 2010.

9 Exhibit 8 shows that Russian excess capacity
10 exceeds total U.S. apparent consumption based on 2005
11 data annualized. Russian Respondents assert there
12 will be no adverse volume or price effects if the
13 suspension agreement is revoked.

14 Key to their position is that U.S. ammonium
15 nitrate demand will exceed available supply from U.S.
16 producers and non-subject imports so that the U.S.
17 market can absorb additional volume from Russia with
18 no adverse effects to the U.S. industry.

19 There are serious flaws with the facts,
20 methodology and economics of their argument. First,
21 Respondents' calculation excludes the El Dorado
22 Cherokee plant capacity, stating that resumption is
23 unlikely to recur. However, you heard from Mr.
24 Rydlund that this assumption is incorrect.

25 Second, they use 2004 apparent consumption

1 as a proxy for 2006 demand, even though demand is
2 declining.

3 Third, they assert that unavailability of
4 supply led to the reduction in U.S. apparent
5 consumption in 2004 and 2005, yet your purchaser
6 questionnaires contradict this assertion.

7 In response to Question to Question III-8,
8 only six of 15 purchasers who responded reported
9 having difficulty procuring U.S. produced ammonium
10 nitrate, and of these six one said its difficulty was
11 resolved when Terra took over Mississippi Chemical.
12 Two reported only short-term seasonal availability
13 problems.

14 Conversely, eight of 14 purchasers who
15 responded to Question III-11 said they expected future
16 declines in U.S. demand for ammonium nitrate with six
17 of these citing to increased security regulations.

18 Your questionnaires demonstrate that any
19 observed reductions in U.S. apparent consumption were
20 more the result of a decrease in demand for ammonium
21 nitrate rather than purchasers being forced to buy
22 other nitrogen fertilizers because of unavailability
23 of supply from U.S. producers.

24 Respondents assert that the decreased non-
25 subject import volumes in 2003 is the result of 2004

1 Coast Guard regulations. However, there is no solid
2 evidence of a reduction in non-subject import supply.

3 As shown in Exhibit 9, most of the reduction
4 in non-subject import volume in 2005 was in the first
5 four months of this year. From May through November,
6 non-subject import volume was higher than in 2004 over
7 the same period. In addition, PIERS reports through
8 December of this year show an additional 80,000 metric
9 tons of non-subject ammonium nitrate not yet reported
10 in the Census data for 2005.

11 Also I think you should look at the
12 responses to Question III-B-20 of your importer
13 questionnaires regarding what they say about
14 availability of non-subject import supply.

15 Regarding the economics, at any point in
16 time in a competitive market the intersection of
17 supply and demand determines the equilibrium between
18 market price and volume. There is no such thing as a
19 persistent supply/demand gap. Absent the quota
20 restrictions, there will be additional import volume
21 into the U.S. market, and there must be a
22 corresponding price effect.

23 We provide an analysis of underselling in
24 our prehearing brief at Exhibit 23, the results of
25 which are summarized in Exhibit 10. The analysis

1 starts with Russia's average export price to non-U.S.
2 markets, adds ocean freight from Census statistics and
3 an importer mark-up from your questionnaire data for
4 an estimate of a landed Russian price to the U.S.
5 without the discipline of the suspension agreement
6 pricing formula.

7 We compare this price to *Green Markets'* NOLA
8 price. As you can see, if the Russian producers'
9 price to the U.S. market is anywhere near the pricing
10 levels to non-U.S. markets, there will be significant
11 underselling, and, as we've shown earlier in Exhibit
12 4, prior to the suspension agreement Russian
13 exporters' price to the U.S. market was only slightly
14 higher than to non-U.S. markets.

15 Russian Respondents contend that they have
16 no incentive to price below the levels now set by the
17 suspension agreement price formula because they assert
18 they will maximize profits by selling at prevailing
19 U.S. price levels. These assertions contradict their
20 pricing behavior in other markets where trade
21 restrictions are not in place.

22 Also, Russian producers carry significant
23 excess capacity so there is a financial incentive to
24 reduce prices for sales to the U.S. to move volumes as
25 long as the price covers their variable cost. Because

1 Russian ammonium nitrate producers have access to low-
2 cost regulated natural gas from Gazprom, these
3 variable costs are likely to be relatively low, which
4 explains why Russian producers sell at such low prices
5 in all other unrestricted export markets.

6 In addition, Russia's assertion that it will
7 not price below the prevailing market price in order
8 to maximize profits is at odds with your staff's
9 elasticity estimates. Based on the staff's aggregate
10 demand inelasticity and inelasticity of substitution
11 estimates and market shares, the demand elasticity for
12 Russian ammonium nitrate in the U.S. can be
13 calculated, and it is elastic ranging from negative
14 2.9 to negative 4.8.

15 This is significant because it means that
16 even at the low end of this range for every one
17 percent reduction in their export price to the U.S.
18 their export volume will increase by 2.9 percent.
19 That is, Russian exporters can significantly increase
20 their sales revenue by lowering their price.

21 If Russian producers are profit maximizers
22 as they claim in their brief, they would have every
23 incentive to cut prices to increase their sales
24 volumes, revenues and profits. Price maximization is
25 not the same as profit maximization.

1 Moreover, in September 2003, Russia exported
2 to the U.S. into the Port of New Orleans 22,000 metric
3 tons of what is known as 33-3-0 ammonium nitrate,
4 which is stabilized ammonium nitrate. At the time of
5 exportation, Russia assumed this product was outside
6 the suspension agreement scope, and the price charged
7 was outside the suspension agreement price formula
8 discipline. Subsequently the Department of Commerce
9 determined that this product was within the suspension
10 agreement's scope.

11 The Commission should look at the price
12 charged for this entry as compared to non-subject
13 ammonium nitrate imports entered through the same port
14 in the same month and the price for subject ammonium
15 nitrates that were set by the suspension agreement in
16 the following month.

17 Finally, the adverse price and volume
18 effects described above will have a devastating impact
19 on the U.S. industry's profitability. Although U.S.
20 producers' financial position has improved steadily
21 since 2001, its operating income was positive only in
22 2005 at just 2.3 percent of sales.

23 In the original investigation, U.S.
24 producers' prices declined in tandem with the decline
25 in ammonium nitrate prices from Russia, and purchasers

1 confirmed multiple lost revenue allegations. As the
2 income statement model in our brief demonstrates, if
3 U.S. producers' prices decline at only 50 percent of
4 the expected decline in import prices from Russia with
5 revocation, their fragile profitability will be
6 reversed to significant growth in operating losses.

7 As discussed by our witnesses, high natural
8 gas prices have been a challenge to the industry over
9 these last few years and have constrained profits. In
10 this regard I'd like to comment on the assertion in
11 Respondents' brief that, "The impact of termination on
12 the domestic industry is not connected to natural gas
13 costs." This is just not true.

14 In considering the impact of termination,
15 the Commission also considers the vulnerability of the
16 industry. High natural gas costs make the U.S.
17 industry's financial condition that much more
18 sensitive to any adverse effects of depressed prices
19 that will result if the suspension agreement is
20 eliminated.

21 Thank you.

22 MS. SLATER: Thank you, Mr. Klett.

23 I want to just comment very briefly on a
24 couple of points and then maybe reserve some other
25 comments and observations for questions and rebuttal.

1 Picking up on where Mr. Klett left off, one
2 of the things that I think is very important for the
3 Commission to keep in mind in this investigation is
4 the particular adverse impact that was found in the
5 investigation period, and that was largely a pricing
6 impact.

7 The Russian product had depressed the prices
8 of domestic product. It had actually not had a
9 significant impact on market share so much or a large
10 impact on market share, but it was principally a
11 pricing effect, and it had a very serious, negative
12 impact on profitability.

13 I have found it very interesting to look at
14 some of the arguments that the Russian producers are
15 making, keeping in mind what the impact was of the
16 imports during the investigation period. Keep in mind
17 that the financial performance of the industry was
18 hurt at a time during the investigation when U.S.
19 producer costs were significantly lower, to the tune
20 of \$2 to \$3 a unit for natural gas.

21 Today, with gas prices somewhere in the \$8
22 or \$9 range -- I haven't looked at it since yesterday
23 morning -- the industry, as you've heard from some of
24 our witnesses, is highly vulnerable to price
25 depression, and in this regard I find it astonishing

1 that the Russian producers are arguing at the same
2 time that the U.S. industry is not vulnerable because
3 it's been able to operate profitably with high gas
4 costs, but in the very next argument suggest that the
5 industry is not going to be viable if gas costs remain
6 high.

7 Take a look at page 35 and 16 of their brief
8 and the two arguments which are actually juxtaposed.
9 How is it that you can be on the verge of not being
10 viable if gas prices remain high, but yet you're not
11 vulnerable?

12 I submit to you that this is a very strange
13 combination of positions, and it's a result of the
14 Russian Respondents not recognizing that the health of
15 this industry depends, like every industry, frankly,
16 on the ability of prices to cover sufficient operating
17 cost.

18 The U.S. industry has been able to operate
19 profitably, especially in the last year, despite high
20 natural gas costs. Why? Because prices have been
21 able to rise to cover those costs. There has not been
22 the suppression of the Russian product.

23 The suspension agreement, while giving very
24 generous quotas, and I'd be happy to talk to you about
25 how that agreement works, has made sure that the

1 export prices from Russia are connected and tied to
2 the U.S. market and will not suppress.

3 If that discipline is removed, there will be
4 absolutely nothing to constrain Russian prices from
5 being set exactly as they are to other export markets,
6 and with gas prices high the result will be
7 devastating. The Russian statement that, "The impact
8 of termination is not connected to natural gas costs,"
9 and that's a quote, is simply amazing in this context.

10 There are a number of arguments that the
11 Russian producers have made that I would like to
12 address. I think I'll have the opportunity during
13 questions and rebuttal and so I will conclude my
14 comments, and we'll be happy to take your questions.

15 Thank you.

16 CHAIRMAN KOPLAN: Thank you all very much
17 for your testimony. I also appreciate the fact that
18 you had provided us with copies of your statements in
19 advance of your testifying.

20 We'll begin the questioning with
21 Commissioner Hillman.

22 COMMISSIONER HILLMAN: Thank you, and I
23 would join the Chairman in thanking all of you very
24 much for taking the time to be with us this morning.
25 We very much appreciate it, as well as all the

1 information in the brief.

2 Let me start first with trying to understand
3 what's going on in terms of demand for the product.
4 All of you have commented that demand is down, and if
5 we look at that we see that. On the other hand, Mr.
6 Green, your comments in your testimony to the effect
7 that there is limited substitutability into other
8 nitrogen based fertilizers

9 I'm trying to put those together. Maybe if
10 I could just hear from the industry's perspective. If
11 AN provides unique things that farmers need, why is
12 demand down?

13 MR. GREEN: Commissioner, the demand for
14 ammonium nitrate has continued to decrease we believe
15 because of security reasons. We have customers,
16 dealers, distributors that handle small quantities of
17 the product who have got out of the business due to
18 regulations by state and federal levels. Mainly it's
19 a cost issue.

20 COMMISSIONER HILLMAN: Okay. Help me then
21 to understand and to quantify, if you can, the
22 increased cost and to whom. I mean, what are the
23 increased costs as a result of the security
24 regulations, and who really bears them?

25 If you can add into that, help me understand

1 whether the new requirements affect the domestic
2 producers the same as they affect imports, or is there
3 any distinction in how the security regulations affect
4 different parts of the overall chain of sales and
5 distribution of the product?

6 MR. GREEN: Commissioner, as far as
7 distribution expenses, as a domestic producer we
8 encounter the same Coast Guard regulations that
9 importers encounter when they import vessels into the
10 U.S.

11 We also encounter the higher truck freight
12 and rail freight the same as importers that bring the
13 product into the U.S. It's just a continuation of
14 higher costs that are trying to be passed on to the
15 marketplace.

16 COMMISSIONER HILLMAN: Okay. Help me
17 understand when these various regulations went in and
18 how different they are for barge traffic.

19 The argument to some extent that we hear is
20 that there is a differential cost, if you will, for
21 barge traffic than there is for rail or truck, or
22 maybe it's differing levels of enforcement, but there
23 is something different in terms of the nature of the
24 transportation system and the degree of the cost or
25 burdensome nature of the regulation.

1 Maybe you could sort of walk me through when
2 these regulations came on, when you first felt them,
3 how they got implemented for each of the various modes
4 of production and distribution.

5 MS. SLATER: Do you want to take a crack at
6 that?

7 COMMISSIONER HILLMAN: Any of you. Mr.
8 Elliott?

9 MS. SLATER: We have a little bit of a
10 problem in that we've got largely marketing people
11 here who are a little bit different than some of the
12 plant personnel, for example, who would be dealing
13 with some of these things, but maybe let me give you a
14 background.

15 COMMISSIONER HILLMAN: I had understood that
16 the majority of the implications of the regulations
17 were not on the production as much as it is on the
18 sale and distribution of the product, but perhaps I'm
19 wrong.

20 At a minimum let's start with were there
21 significant changes in production -- I mean from a
22 producer standpoint -- imposed as a result of the
23 security regulations?

24 MR. GREEN: Commissioner, I'll make a
25 comment on that. As a U.S. producer, we load barges

1 at our plant in Yazoo City just like vessels discharge
2 into barges at New Orleans with imported product.

3 We have invested to meet Coast Guard
4 regulations at our plants with cameras, wire fence,
5 better tracking of all personnel in and out of the
6 facility. Those were costs that we absorbed.

7 COMMISSIONER HILLMAN: Okay. And those were
8 as a result of Coast Guard regulations?

9 MR. GREEN: That is correct.

10 COMMISSIONER HILLMAN: Again, if you were
11 only complying with railroad or truck regulations,
12 would you have done the same thing?

13 MR. GREEN: As far as for Terra, we
14 encounter rail freight, and we have seen significant
15 increases in the past year of rail freight across the
16 country on ammonium nitrate shipments.

17 To say that we have strict regulations, we
18 don't have. We have taken steps on our own measure to
19 ensure all the openings on rail cars to secure that
20 they are in good condition and safe when leaving our
21 plants, but it's mainly a --

22 COMMISSIONER HILLMAN: But anything in the
23 last year? So the rail issue in terms of increased
24 security for rail transport has been within the last
25 calendar year? When are we talking?

1 MR. GREEN: My involvement goes back to
2 December 2004.

3 COMMISSIONER HILLMAN: Okay. So rail,
4 December 2004.

5 Mr. Gough, did you want to add something?

6 MR. GOUGH: I was just going to mention on
7 the trucking side of the industry there is, and I
8 think it was put in place six to eight months ago that
9 anybody that is going to handle or be a driver for
10 HAZMAT material now has to go through extra stringent
11 filings to sit there and get a HAZMAT endorsement on
12 their license.

13 In fact, I know we had one driver that when
14 this was first implemented he spent three months
15 waiting to get his license before he could get behind
16 the wheel of a truck, so there have been numerous.

17 COMMISSIONER HILLMAN: And that is a HAZMAT
18 requirement for all hazardous material, not unique to
19 AN?

20 MR. GOUGH: No.

21 COMMISSIONER HILLMAN: But am I not correct
22 that in light of Oklahoma City and other things that
23 there are specific security regulations that are
24 unique to AN that would not be affecting other
25 nitrogen-based fertilizers? Again, help me understand

1 the breadth of these security regulations.

2 MR. RYDLUND: Commissioner, let me try.
3 Many of the costs that are incurred with respect to
4 security have been voluntary, taken on by the company;
5 voluntary to the extent there was no regulation in
6 place to do this. I believe Mr. Green spoke to that.

7 Yes, with respect to the Coast Guard
8 ammonium nitrate was placed as certain dangerous cargo
9 and there were regulations that happened with that,
10 but many of the production regulations, whether it be
11 fencing, whether it be recordkeeping, whether it would
12 be tracking the trucks, identifying the drivers, many
13 of those were voluntary, and many of those came into
14 place after 9/11.

15 COMMISSIONER HILLMAN: After 9/11?

16 MR. RYDLUND: Yes.

17 COMMISSIONER HILLMAN: Okay.

18 MR. RYDLUND: But again there is no set
19 schedule because they were voluntary by the different
20 companies.

21 COMMISSIONER HILLMAN: Okay. And from your
22 perspective are they different -- more stringent, more
23 lenient -- in terms of what you feel the need to do if
24 it's voluntary, whether you're moving the goods on
25 water or whether you're moving the goods by either

1 rail or truck?

2 MR. RYDLUND: The regulations as with
3 respect to how we distribute the product, I think the
4 regulations in all cases -- whether by water, by
5 truck, by rail -- carry the same stringency. Can I
6 say that? Carry the same stringency as far as being
7 effective.

8 There is not a material difference between
9 the effort that has to go in between barge, rail or
10 truck.

11 COMMISSIONER HILLMAN: Okay. Let me get
12 back to how this has affected demand because that's
13 really what I'm trying to understand is obviously I'm
14 hearing you that this resulted in both cost and, if
15 you will, hassle to producers, I presume also to your
16 distributors. I assume.

17 I'm trying to understand again sort of when
18 this happened and what do you think that meant for
19 demand? I mean, at what point and does whom decide
20 it's just too much hassle. I'm going to use urea.
21 I'm going to use liquid. I'm going to do something
22 else other than using AN.

23 That's what I'm trying to understand. Is it
24 the individual farmer? Are they the ones that are
25 feeling this is too much hassle; I'm switching? I'm

1 trying to understand. You know, did that happen? Who
2 went through this thought process and when in terms of
3 shifting out of AN into something else?

4 MR. GOUGH: Commissioner, you know, I think
5 it's more so individual dealers. You know, as they
6 see what's coming down from individual states and
7 what's being proposed and they're going to have to sit
8 there and do more recordkeeping, get identity, keep a
9 record of a person's driver's license.

10 I mean, it's like Agrium in their
11 announcement. They said they're not going to handle
12 it. They quickly took 30,000 tons out of the
13 marketplace, Simplot's, and some others.

14 You know, there are some big companies that
15 have made the decision for basically a liability
16 standpoint not to handle the product, and we have the
17 same thing day in and day out with numerous
18 independent dealers that are going through the same
19 process.

20 COMMISSIONER HILLMAN: So it's the
21 distribution in essence --

22 MR. GOUGH: It's more the distribution.
23 Yes, it is.

24 COMMISSIONER HILLMAN: -- that is saying
25 this is too much hassle?

1 MR. GOUGH: Yes.

2 COMMISSIONER HILLMAN: And this hassle is
3 unique to AN, or are there any other nitrogen
4 fertilizers that are subject to this same kind of
5 security restriction?

6 MR. GOUGH: At this point in time, you know,
7 it's just strictly AN.

8 COMMISSIONER HILLMAN: Okay. All right.
9 Given that the red light is on, I will come back to
10 other issues on this. Thank you very much.

11 CHAIRMAN KOPLAN: Thank you.

12 Commissioner Lane?

13 COMMISSIONER LANE: Good morning, and
14 welcome to the Commission. I have a few questions.

15 Ms. Slater, I'll start with you. Maybe I
16 misunderstood what one of your witnesses, and maybe it
17 was you, said. I thought I heard several references
18 to this being a profitable industry, and the staff
19 report indicates otherwise.

20 Could you tell me what I should be looking
21 at to determine if this is a profitable industry?

22 MS. SLATER: Interim 2005, Commissioner
23 Lane. I think we're seeing things looking much better
24 in interim 2005 in your data than previously.

25 We can see a consistent increasing financial

1 picture. Not necessarily profitability, but, if I'm
2 not mistaken, by the time we get to the interim period
3 we're actually showing a number of producers in the
4 black.

5 As to the industry as a whole, I believe Mr.
6 Klett can comment.

7 CHAIRMAN KOPLAN: You need to stay with your
8 microphone, Ms. Slater.

9 MR. KLETT: The industry as a whole had a
10 positive operating result in interim 2005.

11 COMMISSIONER LANE: Okay. Is that all that
12 you think we should be looking at?

13 MS. SLATER: No. I think the key, and we've
14 gone into some detail on this in the brief. I want to
15 be careful because I'm never sure of what's public, so
16 I apologize if I appear to be vague, but I think the
17 key really is -- two. There are two things.

18 One is what's happened to prices in the
19 interim? The ability of prices to actually rise and
20 begin to cover costs I think is very important, and
21 you can see not only in the absolute price increase,
22 but when you look at the variance analysis that the
23 staff did and a slightly different one which we did
24 covering a little bit different period of time, I
25 think you can see very clearly that the suspension

1 agreement made a huge difference in the cost/price
2 relationship.

3 COMMISSIONER LANE: Okay. Thank you for
4 clearing that up.

5 In Mr. Klett's testimony he argued that
6 Russia continues to have significant excess AN
7 capacity available for export to the U.S. However, on
8 page 27 of the Russian Respondents' prehearing brief
9 they state that, "Although capacity utilization rates
10 suggest available capacity exists, as a practical
11 matter it is evident that full capacity is not
12 attained in the manufacture of ammonium nitrate in
13 Russia or the United States."

14 Can any industry witness or anyone else
15 explain to me whether it is possible and practical to
16 attain full capacity utilization rates when
17 manufacturing AN and what is the ideal capacity
18 utilization rate?

19 MS. SLATER: I'm going to ask Mr. Rydlund,
20 who touched on that in his testimony, to maybe give
21 you a more complete response.

22 COMMISSIONER LANE: Okay. Thank you.

23 MR. RYDLUND: It is practical to expect to
24 achieve full capacity utilization. We would expect a
25 capacity of 95 percent.

1 Many of the costs to manufacture ammonium
2 nitrate are fixed and so typically in the chemical
3 industry high utilization rates at those levels are
4 what is necessary to achieve efficiency.

5 COMMISSIONER LANE: Okay. Thank you.

6 MR. SZAMOSSZEGI: I'd like to make a brief
7 comment for the record.

8 COMMISSIONER LANE: Okay.

9 MR. SZAMOSSZEGI: My name is Andrew
10 Szamosszegi.

11 COMMISSIONER LANE: Thank you.

12 MR. SZAMOSSZEGI: I think if you look at the
13 individual questionnaires -- we'll go into this more
14 posthearing, but if you look at the individual
15 questionnaires -- on the Russian side you'll see that
16 it is certainly not impossible to achieve reasonable
17 capacity utilization rates for individual companies in
18 this industry.

19 MS. SLATER: Let me just add to that,
20 Commissioner Lane. I think we've got a situation
21 where facing a capacity utilization rate which is very
22 low for an industry of this type, the Russian
23 Respondents have no choice but to come up with
24 something, which was basically that two sentence
25 argument which says well, that's what it is, and

1 that's how this industry operates.

2 That is certainly not the case. You've seen
3 that in other nitrogen cases where significantly
4 higher capacity utilization can be achieved. And the
5 Commission actually in some of its earlier decisions
6 has recognized that these plants need to or are
7 designed to and need to operate at relatively high
8 utilization rates to achieve maximum efficiency and to
9 really cover their full costs.

10 COMMISSIONER LANE: Okay. Thank you.

11 I'm not sure who should answer this one, but
12 as I understand natural gas pricing in Russia, gas is
13 delivered to the domestic market at state-controlled
14 regional prices. Is there any public data that shows
15 what those government-controlled regional prices are
16 for industrial customers in Russia?

17 MS. SLATER: There is information, and we'd
18 be happy to supply it for the record. There is some
19 information included in our prehearing brief, and
20 we'll see if we can supplement that for you. It's
21 presently slightly over about \$1 a unit, minimum BTU,
22 which has increased. It has been increasing, but it's
23 still quite low.

24 I would refer you to the Fertecon study that
25 was attached to our prehearing brief, and I'll also

1 endeavor in the posthearing to see what additional
2 information we can supply.

3 COMMISSIONER LANE: Okay. Thank you. Now
4 let's continue on natural gas prices here.

5 It's a recurring theme that natural gas
6 prices are increasing. Information published by the
7 Energy Information Administration shows that the
8 average wellhead price of natural gas has gone from an
9 average of \$5.49 per decatherm in 2004 to \$7.05 per
10 decatherm average for the first 10 months of 2005, and
11 futures prices into next winter remain in excess of
12 \$10.

13 Where do you see gas prices going over the
14 next year or two?

15 MR. RYDLUND: I am not an expert in the
16 natural gas market, but nevertheless the advent of the
17 hurricanes took out some natural gas production and
18 contributed to the current levels of natural gas.

19 As we look to natural gas with respect to El
20 Dorado Chemical over the next few years, we do not
21 believe natural gas will return to the earlier levels
22 of \$3, \$4, \$5 or even \$6 that we had seen before.

23 COMMISSIONER LANE: Okay. Thank you.

24 How much of the AN that is produced in
25 Russia is used in Russia? Then I want you to explain

1 to me why in this country AN is used primarily in the
2 southeastern warmer states, and my recollection of
3 what Russia is like, it's not exactly warm so would
4 you please clarify that for me?

5 MR. KLETT: This is Dan Klett, Commissioner
6 Lane. In terms of how much Russian production is
7 consumed in Russia, at page IV-6 of your staff report,
8 and these are public numbers, home market consumption
9 in 2004 was 1.4 million. Total production was 3.8
10 million, so that's the relationship in terms of total
11 production and how much of that total production is
12 consumed internally.

13 By contrast, total exports were 2.2 million,
14 so even though the home market is not insignificant
15 they still export more than they import.

16 COMMISSIONER LANE: Okay. Now would
17 somebody explain to me why it is conducive for use in
18 Russia in their climate and it's confined to the
19 warmer southeastern states in this country?

20 MR. ELLIOTT: The benefits of nitrate, the
21 chemical benefits of nitrate, have great bearing on
22 the volatility of it under high temperatures. That's
23 primarily why it's used in the core area in the
24 southeast.

25 To go back to one of the earlier questions,

1 as you get away from that core area where the
2 temperature tends to be more moderate, that's the area
3 that probably will switch to another product because
4 of security reasons and additional cost.

5 As far as the temperatures in Russia, I'm
6 obviously not going to be an expert on that. A lot of
7 that production was built under the Soviet era, and
8 why they picked ammonium nitrate versus urea or other
9 products, I'm unable to answer that.

10 MS. SLATER: If I could follow up,
11 Commissioner? You've raised a very interesting
12 question. Part of it we can answer today, and part
13 maybe we'll offer to follow up with posthearing.

14 Ammonium nitrate has been the fertilizer of
15 choice, the most popular, widely used fertilizer first
16 in the Soviet era, as Mr. Elliott mentioned, when a
17 very large number of plants were built throughout the
18 Soviet system in essence to service that market.

19 The oversupply that we've experienced in the
20 world market has been by and large, and this is
21 something we discussed in the original investigation,
22 a result of the tremendous fall off of the
23 agricultural economy in Russia and in the rest of the
24 Soviet Union.

25 Some of that has begun to return, which is a

1 very good thing both for the nitrate market and for
2 the Russian economy, but there still remains this
3 tremendous capacity out there which has been directed
4 outward.

5 Much of it was going into the EU, which also
6 has a strong preference --

7 COMMISSIONER LANE: Okay. My time is up,
8 and nobody has still answered my temperature question.

9 MS. SLATER: But we're going to get you an
10 answer to that because I don't know.

11 COMMISSIONER LANE: Okay. Thank you.

12 CHAIRMAN KOPLAN: Thank you, Commissioner.
13 Commissioner Pearson?

14 COMMISSIONER PEARSON: Thank you, Mr.
15 Chairman. I also am pleased to welcome the panel.

16 I'll put confessions out there right at the
17 start. Although I have some direct experience with
18 urea and UAN solutions and my favorite, anhydrous
19 ammonia, I don't believe I've ever directly worked
20 with ammonium nitrate, so let me just confess my
21 ignorance, which then licenses me to ask questions.

22 There's been some discussion that
23 Commissioner Hillman began regarding the demand
24 situation for ammonium nitrate, and I think I
25 understood correctly that more than one of the

1 panelists has said that apparent consumption for this
2 product is falling; that demand is falling.

3 Yet just looking at the information that we
4 have on apparent consumption during this period of
5 review, it's not at all clear to me that that's the
6 case. We see a pattern of some ups and downs in
7 consumption.

8 If we had been having this hearing early in
9 2002 following a 300,000 drop between consumption in
10 2000 and 2001 you could have said the same thing.
11 Demand is disappearing. The world has changed, and
12 yet in agriculture weather events can have a
13 tremendous effect on the consumption of a product like
14 anhydrous. Ammonium nitrate. Excuse me. I've got
15 the wrong habits.

16 For instance, right now we have quite dry
17 weather in the hard red winter wheat belt, in a big
18 chunk of it. I don't know whether ammonium nitrate is
19 used on hard red winter, but certainly if it is that
20 would be affecting demand.

21 Can you comment in more depth than you have
22 so far why you think demand for this product is going
23 down?

24 MR. GOUGH: Commissioner, I think this is
25 something if need be we can set there and supply

1 numerous dealers that have already made the switch, so
2 it's not just a weather pattern or anything like that.
3 Back to the main and the fringe area, when we talk
4 about nitrate is used maybe back to the cooler
5 climates it's because of the fact that half of the
6 nitrate nitrogen is in the nitrate form.

7 So usually like urea or any other source it
8 has to have micro-organisms to break down the
9 ammoniacal nitrogen into nitrate form for the plant to
10 use, so its temperatures are cooler this activity is
11 slowed. That's why in some areas to the northwest,
12 these fringe areas, nitrate has set there and had a
13 presence. Not a big presence, but has a presence.

14 We can supply numerous dealers that have
15 made the switch and would be happy to do so in the
16 posthearing.

17 COMMISSIONER PEARSON: Mr. Green, did you
18 want to add?

19 MR. GREEN: I think that with the ammonium
20 nitrate as we talked about the security issues that's
21 one of them, but in this country urea is coming in and
22 we had more people promoting the sale and distribution
23 of urea to this country than what you do with nitrate.

24 As you can see you've got two producers and
25 maybe a handful of importers that are selling nitrate,

1 but it's much more of a magnitude in the marketplace
2 of the promotion of urea to gain market share and to
3 gain market share on ammonia, nitrogen solution and
4 ammonium nitrate where those cropping patterns are
5 such that you can use those products in lieu of
6 nitrate.

7 COMMISSIONER PEARSON: Ms. Slater?

8 MS. SLATER: Commissioner Pearson, if I can
9 follow-up on that just for a moment. You raise a very
10 good question. How do we know that this is just not
11 some short-term seasonal fluctuation? I would comment
12 on a couple of things.

13 One is start with the apparent consumption
14 levels that we saw during the original period of
15 investigation which were roughly I think in the 2.5
16 million ton range, and Mr. Klett will correct me on
17 numbers if I'm wrong. We're now looking at
18 consumption that's somewhere in a million tons less,
19 1.6, 1.5, something like that and shrinking.

20 In 2004 we were looking at that. We also
21 have data that tracks very carefully by state and then
22 we can aggregate it the use of nitrogen in different
23 forms. So in any given year we can look back at the
24 data collected by USDA and see of all the nitrogens --
25 and I'm sure you're very familiar with this -- and put

1 down how much was as ammonium nitrate, how much was as
2 urea, how much was as ammonia.

3 Over the years, as the Russian Respondents
4 have recognized and tried to use I think incorrectly,
5 it's been a very consistent market share in part
6 because it is a niche market. The fact that you
7 hadn't dealt with it I think is symptomatic of the
8 fact that it's this little niche market that is pretty
9 limited, but it's been fairly consistent over the
10 years.

11 We have seen a tremendous drop-off in that
12 data. For the first time it was well under five
13 percent. I think four and a half percent of total
14 nitrogen consumption in 2004?

15 MR. KLETT: Fertilizer year 2004.

16 MS. SLATER: Fertilizer year 2004. It had
17 never been below about five or six percent, typically
18 six to seven, over the last several years, so we know
19 there's something dramatic that started happening in
20 fertilizer year 2004.

21 In addition what we're seeing is -- and
22 you've seen this very interestingly at confirmation in
23 all of your questionnaires -- you see purchasers --
24 and these purchasers are not the farmer, these
25 purchasers are the dealers or the distributors -- are

1 telling you this in the questionnaires: people are
2 getting out. People are moving away from those
3 products largely because of the hassle.

4 These regulations and the liability
5 associated with having storage of ammonium nitrate
6 where they've got to track who buys it, you know,
7 who's taking it, where are they taking it, have they
8 been sold to before?

9 It's not worth it, not for everyone. As Mr.
10 Green just said in those areas where you can really
11 switch and not lose that much that's where people are
12 moving away. So you get out of these core consuming
13 states and out in less damp and hot regions, people
14 are switching away.

15 We see that, these fellows see it in the
16 market. As Mr. Gough said we could give you a list of
17 dealers if it would be helpful and there's other
18 evidence of that as well that we'll be happy to supply
19 you.

20 COMMISSIONER PEARSON: My impression is that
21 retail fertilizer is a fairly competitive market and
22 in most communities there's more than one supplier,
23 well, a community of any size. I would think that if
24 a smaller distributor decides to stop handling this
25 product that his competitor would happily go ahead and

1 make the needed investments to handle it and take some
2 of the other guy's business.

3 Aren't those pressures likely to work in
4 such a way to provide more support to the demand base
5 for ammonium nitrate than might be anticipated based
6 on the statements so far?

7 MR. GOUGH: Commissioner, we would hope some
8 of what you're saying is true, but the fact is as you
9 get in some of these areas -- now, if you're talking
10 the Midwest or heavy cropping areas you may have two
11 or three dealers within 15 miles of each other, but as
12 you get into other states be it Montana, some of these
13 fringe areas, there may be one dealer within 40 miles.

14 So geographically it depends on what part of
15 the country you're talking.

16 COMMISSIONER PEARSON: That's fair enough.
17 That's well taken. Well, let me ask a related demand
18 question. There are people who think that the world
19 is warming up. If we do see a trend toward global
20 warming would that have implications for the demands
21 for ammonium nitrate perhaps not within the reasonably
22 foreseeable future, but looking forward a little bit
23 beyond that?

24 Is that something that's been considered
25 within the industry?

1 MS. SLATER: I wonder as a result of that
2 question whether anyone's stock prices will go up.

3 Mr. Rydlund, did you want to take it?

4 MR. RYDLUND: Well, really the gentleman up
5 front would be better prepared to answer that with
6 respect to the use of ammonium nitrate in warmer
7 climates even though I guess as we do experience
8 global warming it probably will take quite a while for
9 that to occur.

10 COMMISSIONER PEARSON: Okay. So we
11 shouldn't worry about it for purposes of this review?

12 (No response.)

13 COMMISSIONER PEARSON: Okay. It was
14 mentioned that some firms voluntarily have taken steps
15 to improve security and as I understood that those
16 were steps not required by some specific government
17 regulation or requirement. Were those steps taken in
18 part due to concerns about legal liability?

19 MR. RYDLUND: Those steps were taken I just
20 think with respect more so to the care of the ammonium
21 nitrate, to the threat of an illegal bombing. I guess
22 you could say that legal liability might be an issue,
23 but I don't think it went that far. It was just a
24 case of trying to prevent misuse of ammonium nitrate,
25 preventing ammonium nitrate from getting into the

1 wrong hands.

2 COMMISSIONER PEARSON: That really took
3 place according to the testimony following
4 September 11, 2001 --

5 MR. RYDLUND: Yes, it did.

6 COMMISSIONER PEARSON: It surprised me just
7 a little bit that we didn't see some affect after the
8 bombing Oklahoma City some years earlier which I
9 believe that was a device built around ammonium
10 nitrate wasn't it?

11 MR. RYDLUND: Well, there were some --
12 excuse me. Yes. That is correct. The Oklahoma City
13 bombing, ammonium nitrate was -- it wasn't
14 agricultural ammonium nitrate by the way. Yes, there
15 was a lot of incentive and many of the programs began
16 after the Oklahoma City bombing. You are correct.

17 COMMISSIONER PEARSON: Thank you very much.
18 Mr. Chairman, my time has expired.

19 CHAIRMAN KOPLAN: Thank you, Commissioner.
20 Commissioner Aranoff?

21 COMMISSIONER ARANOFF: Thank you, Mr.
22 Chairman.

23 I want to join my colleagues in welcoming
24 the panel here this morning. I wanted to start with a
25 few questions following-up on some of the testimony

1 that we just heard.

2 First I wanted to ask Mr. Elliott, you were
3 testifying about the stabilized ammonium nitrate
4 product which had come into the country and then been
5 classified by Congress as falling within the scope and
6 then you mentioned another product. I think you said
7 like a 21-5-0. Could you go back to that and explain
8 to us what that product is and whether we've seen it
9 in the market?

10 MR. ELLIOTT: Yes. I would like to turn
11 that answer over to Phil Gough. I think he's been
12 more affected by that product and has actually seen --

13 COMMISSIONER ARANOFF: Okay. Mr. Gough?

14 MR. GOUGH: Commissioner, it's a 27-5-0.
15 Again, another high nitrogen content based off nitrate
16 nitrogen and so our feeling is this is just another
17 attempt to try to bring ammonium nitrate in with an
18 additive. I don't know where that one stands right
19 now. I think there's been a request to try to bring
20 it in.

21 MS. SLATER: Just to clarify, Commissioner,
22 when the 33-3 came in -- and we can talk more about
23 those products if it's helpful -- a shipment just came
24 in and at that point we requested a scope ruling from
25 the Commerce Department. In the case of 27-5 the

1 Russian Government has made a request for a ruling
2 prior to importation, we understand.

3 So that is currently pending there and the
4 product we understand has not yet actually been
5 imported.

6 COMMISSIONER ARANOFF: Okay. So the
7 Russians are waiting to hear from Commerce about
8 whether they think it would be within the scope?

9 MS. SLATER: We hope so.

10 COMMISSIONER ARANOFF: Okay. Is that
11 product, the 27-5 product, this is something brand new
12 that the market hasn't seen before?

13 MS. SLATER: Yes. Actually, the industry
14 witnesses I think can testify to this. The market has
15 been very familiar for many years with what we call
16 nitric phosphates or NPs, but those products tend to
17 have much, much lower nitrogen content and much higher
18 phosphate content.

19 These little bits of phosphate that are
20 being added into basically ammonium nitrate are
21 designed in our view to get around these trade
22 measures. They cropped up just as the Russian
23 producers were beginning to face trade measures in
24 Europe, and Brazil and here.

25 The market, that little bit, three percent,

1 four percent, five percent, is so small it doesn't
2 have much agronomic affect, so people would have to
3 add other phosphate anyway if they were trying to put
4 down phosphate.

5 COMMISSIONER ARANOFF: As far as you know
6 these products with the small amounts of phosphate in
7 them are only being made by the Russian industry or
8 are they shipped elsewhere in global commerce?

9 MS. SLATER: As far as we know that's where
10 it's coming from. I would see if anyone else knows
11 differently. There are certain very specialty
12 products that are produced in bags for use in kind of
13 home and garden and things like that, but not bulk
14 products like this.

15 COMMISSIONER ARANOFF: Because my
16 understanding from looking at our staff report was we
17 were under the impression that at least the stabilized
18 product actually is being sold by the Russians in
19 other export markets other than the United States.

20 MS. SLATER: Yes, but again, this came up
21 only after the orders were put in place in Europe, and
22 following on the Commerce Department the European
23 Commission has also included most of that product now
24 within their measures, so it has been a reaction and
25 then a counter-reaction I think on the part of the

1 regulators.

2 COMMISSIONER ARANOFF: Is there any validity
3 to the claim that the product has been made more
4 stable and less hazardous and that these changes were
5 made to make the product more attractive in light of
6 the security atmosphere?

7 MS. SLATER: There are many, many pages of
8 filings at the Commerce Department I think debating
9 this topic. The industry witnesses maybe can talk
10 about the fact that years ago phosphate was actually
11 used as an additive in certain domestic production as
12 a stabilizer, so this is not anything new.

13 More recently I think other stabilizers and
14 preferred stabilizers have been used.

15 COMMISSIONER ARANOFF: Okay. Let me --

16 MR. RYDLUND: With respect to the
17 stabilization of phosphate into ammonium nitrate at
18 low levels the affect of reducing the ability of
19 ammonium nitrate to explode, the difference would be
20 very slight; not at these low levels of phosphate.

21 COMMISSIONER ARANOFF: Thank you. I
22 appreciate that answer. Let me turn to some other
23 questions that have to do with non-subject imports.

24 We recently had a hearing here reviewing our
25 order on urea and one of the things that we discovered

1 about urea is that the non-subject imports were
2 largely coming in from countries that have substantial
3 natural gas reserves and in fact had lower cost
4 natural gas than Russia or Ukraine.

5 In this case by contrast it doesn't seem as
6 though that's true. If you look at some of the non-
7 subject countries I think that are listed: Bulgaria,
8 Romania, the Netherlands, I think someone mentioned
9 Jordan which I'm not sure we saw -- Georgia. Okay,
10 Georgia. Do any of these countries have low-cost
11 natural gas, and if not what has brought them into the
12 AN business?

13 I'm particularly interested also in are
14 there actually AN producers in the European Union? I
15 know we've seen shipments coming from the Netherlands.
16 I don't know if there's a producer there.

17 MR. KLETT: I can take a first cut at that.
18 You're right that the non-subject countries are
19 largely Romania, Bulgaria, Estonia, Georgia. They
20 don't have the low natural gas prices or costs that
21 Russia has or that the non-subject producers in the
22 urea investigation had which were primarily Middle
23 Eastern sources.

24 In terms of why they produce even if they
25 don't have the low natural gas I think these are

1 plants that have been around many, many years and so
2 their decision to produce or to put that capacity in
3 place goes back a way and they want to continue to
4 produce and fill that capacity notwithstanding that
5 perhaps their natural gas prices have increased
6 recently.

7 With regard to Europe, Yara is I think the
8 largest producer, it's a Dutch company. But I think
9 there was and I don't know if there still exists, but
10 you've also seen imports from countries like Spain. I
11 don't know if they any longer produce, but we can look
12 at Fertecon data and we can tell you specifically who
13 still produces in Europe in our posthearing brief if
14 you wish.

15 COMMISSIONER ARANOFF: Okay. I guess my
16 question obviously ties back into Commissioner Lane's
17 question of trying to figure out just what the allure
18 is of ammonium nitrate in the former Soviet Union and
19 how we got to where we are. To some extent the same
20 question applies to western Europe.

21 Why are there AN producers there? Why is it
22 popular there? I guess in the southern parts of
23 Europe maybe they have the same climate issues that we
24 do, but maybe there's some other factors going on
25 there as well, so anything that you can add on that in

1 your brief will be helpful.

2 Mr. Klett, in your Chart No. 9 where you're
3 showing us the pattern in non-subject imports and
4 saying look they're not really declining there is of
5 course that really big spike right in late 2003/early
6 2004 and I guess I have two questions for you. One is
7 what accounts for that spike, and the second is if I
8 looked at a longer time series of data on non-subject
9 imports what would I see as the pattern?

10 MR. KLETT: With respect to the spike I
11 think Mr. Elliott can comment on that because we
12 actually did discuss that yesterday, but in part I
13 think it has to do with the timing of the MissChem
14 bankruptcy and uncertainties in the market at that
15 time.

16 With respect to longer term trends I will
17 have to look at that. I'll have to look at data going
18 back a few more years and I can give you that
19 information in the posthearing brief in terms of what
20 the longer term trends have been for non-subject
21 imports.

22 COMMISSIONER ARANOFF: Thank you. I'd
23 appreciate that.

24 Before my time runs out did anybody else
25 want to talk about the spike?

1 MR. ELLIOTT: Maybe I can help a little bit
2 in that regard. Mississippi Chemical, who owned the
3 facility at Yazoo City at that point in time, declared
4 bankruptcy in May of 2003 and actually shut production
5 down in June and did not restart until late September
6 or October, so the marketplace perceived an
7 undersupply that we believe was filled by a spike in
8 the imports.

9 COMMISSIONER ARANOFF: I appreciate that
10 answer. So there was a perceived supply shortage that
11 brought that in?

12 MR. ELLIOTT: During that time because of
13 the shut down and the bankruptcy.

14 COMMISSIONER ARANOFF: Okay. Thank you very
15 much.

16 Thank you, Mr. Chairman.

17 CHAIRMAN KOPLAN: Thank you.

18 Ms. Slater, the Respondents argue at pages
19 16 to 18 of their brief that the domestic industry as
20 a whole is not vulnerable to subject imports. They
21 argue that the Commission was focused on the two
22 remaining U.S. producers, Terra and El Dorado, to
23 evaluate future vulnerability and in support of their
24 argument they provide a bracketed table at page 17 of
25 Terra's and El Dorado's key performance indicators.

1 I also refer you to Table III-6 at pages
2 III-13 and III-14 of the prehearing staff report which
3 reports the results of operations of U.S. firms by
4 firm for the POR. Table III-6 contains BPI
5 information available to you but not to your clients
6 obviously, but without revealing the details it does
7 appear to me that it reflects a disparity in financial
8 performance among the five domestic firms.

9 How do you respond to their argument?

10 MS. SLATER: I think, Mr. Chairman, that no
11 matter how you view this industry even if you do look
12 at the two remaining producers, which is not an
13 unreasonable approach frankly, the others were
14 smaller, were more marginal or have dropped out of the
15 industry, there still is a serious vulnerability issue
16 and I would harken back to my comments of just a
17 little while ago.

18 The Russian producers are arguing this
19 industry is not vulnerable because these remaining
20 producers were doing well in the interim period, but
21 on the other hand they say let the imports in because
22 the industry might not even be viable if natural gas
23 prices go up again.

24 The vulnerability is not determined by the
25 financial performance in the last period, but I think

1 vulnerability can be found in the very important
2 effect of natural gas pricing on the ability of the
3 industry to be profitable, and the important
4 relationship of prices to costs and affecting
5 profitability and your previous finding that the
6 impact of Russian imports was price depression.

7 CHAIRMAN KOPLAN: Thank you for that
8 response.

9 Mr. Green and Mr. Rydlund, on pages 30 and
10 31 of their brief Respondents argue that subject
11 imports are not likely to have adverse price effects
12 if the order is revoked. I know you all have dealt
13 with this issue in your direct presentation by
14 pointing to their export practices in other markets
15 such as Canada, but I'm wondering if there's anything
16 else you might want to add?

17 I'm asking because they point out that
18 during the period under review Russian AN oversold the
19 U.S. product in a large majority of possible
20 comparisons 26 out of 39 by margins as high as 34
21 percent. There are tables that break that down, but I
22 can't get into that with you because they're BPI, but
23 your counsel has access to that.

24 I'm asking the question because I see what
25 the trend is on those tables. So I'm just wondering

1 is there anything else you want to add besides the
2 anecdotal response that you gave in your direct
3 presentation?

4 MS. SLATER: If I can repeat your question
5 just for the witness. I think the question is, "Is
6 there anything else you would like to add about your
7 knowledge of Russian pricing other than the data
8 that's been gathered by the Commission?"

9 CHAIRMAN KOPLAN: Well, their argument is
10 that they're not going to come back if the orders are
11 lifted. You have been dealing with talking about
12 their pricing practices elsewhere and I'm wondering if
13 there's anything else.

14 MS. SLATER: You're talking about the
15 volumes then?

16 CHAIRMAN KOPLAN: Yes.

17 MS. SLATER: Sorry. I misunderstood as
18 well, Chairman Koplan.

19 CHAIRMAN KOPLAN: That's my fault.

20 MS. SLATER: I think in our brief there is,
21 and again, so much of this is confidential, but there
22 is substantial evidence of the likely volume impacts
23 that will occur and you see it in light of what's
24 happened under the suspension agreement with
25 everything from quota requests to the export behavior

1 that's happened elsewhere, the underutilized capacity
2 that's there, the exercises that have been happening
3 in this country and worldwide with these attempts to
4 circumvent orders.

5 I think also, and maybe I'll ask that of the
6 other witnesses, what we've been seeing in other
7 markets and what for example Mr. Green has experienced
8 in Canada is a pretty good example.

9 There are also, and you'll hear it from your
10 witnesses this afternoon, importers that are setting
11 themselves up here with permanent offices, and
12 distribution facilities and setting themselves up to
13 be long-term suppliers of this product on a large
14 scale basis.

15 MR. GOUGH: Well, I think they talk on one
16 hand about how hard it is to get this product into the
17 U.S., but in just the past two years we've seen two
18 importers start bringing product into the Tampa market
19 which was not an access point before; we've got
20 another importer that is opening a new facility, a
21 river terminal, in Blytheville, Arkansas; we know of a
22 facility in Catoosa that is either opening, has
23 opened, or is going to open shortly, so we hear one
24 thing, but that's not what we're seeing.

25 CHAIRMAN KOPLAN: Thank you.

1 Mr. Klett, were you reaching to your
2 microphone?

3 MR. KLETT: I just wanted to make one
4 comment in terms of responding to their argument that
5 because you see in your data overselling that they
6 have no incentive to price below those levels.

7 I think if you look at their behavior for
8 the 33-3 with respect to pricing that tells you a lot
9 about what their behavior would be absent the
10 suspension agreement price discipline because that was
11 not subject to the pricing mechanism.

12 I think just the basic economics that when
13 you have such a large amount of excess capacity and
14 the pricing in your other markets there's a huge
15 financial incentive to price below where they're
16 pricing now to maximize volume, revenue and
17 profitability.

18 CHAIRMAN KOPLAN: Thank you.

19 Ms. Slater, if I can come back to you. On
20 pages 21 and 22 of Respondents' brief they indicate
21 that "Although the Russian Government regulates the
22 prices of the Gazprom Russia's state run natural gas
23 firm may charge on the domestic market the government
24 is expected to liberalize Russia's natural gas sector
25 as a condition for excision to the WTO."

1 "As a result Russian AN producers will incur
2 a higher natural gas cost." They claim on page 22
3 that the excision is likely to happen this year. How
4 should I factor that into my analysis? Is it likely
5 that would happen this year?

6 MS. SLATER: Well, it's like gas prices. If
7 I knew the answer to that question I probably wouldn't
8 have to sit here, but seriously I think that there
9 have been a number of deadlines at which we would have
10 expected the excision to be completed. My
11 understanding is that's the latest target. Whether it
12 will actually happen or not remains to be seen.

13 There are many very substantial issues that
14 are outstanding on a whole range of things in addition
15 to gas pricing. Very fundamental market access
16 questions on aircraft and chickens, issues dealing
17 with branch banking services and IP is still a
18 tremendous issue as it always has been.

19 So whether this will get done or not this
20 year I think is anybody's guess. More importantly it
21 is less than certain what types of commitments will be
22 obtained on the gas pricing.

23 The EU agreement which has been cited is a
24 separate bilateral agreement between the EU and the
25 Russian Federation, it is not my understanding and

1 will not be at this point anyway part of the excision
2 documents.

3 So I think that agreement was very good, I
4 think it is important recognition by the Russian
5 Government that the current situation is not in line
6 with commercial considerations, but whether we get
7 firm and forcible commitments in the excision remains
8 to be seen, so I wouldn't yet take it to the bank.

9 CHAIRMAN KOPLAN: Thank you. Let me stay
10 with you.

11 MR. SZAMOSSZEGI: Can I make, I'm sorry,
12 just one quick comment? Andrew Szamosszegi. The
13 Russian pricing agreement with Europe is such that
14 it's not really promising a liberalization of natural
15 gas prices, it's basically trying to ensure that
16 internal prices at the very least cover Gazprom's
17 costs with little in there for profit.

18 Even if that agreement comes to fruition it
19 doesn't require Gazprom to charge the same level of
20 prices in Russia that Gazprom would charge on exports
21 of gas to Europe or that those internal gas prices
22 would exactly reflect the world market price points
23 for gas.

24 CHAIRMAN KOPLAN: Thank you. Thank you for
25 that. I have one short one I think I can get in.

1 Ms. Slater, Respondent interested parties
2 state in their brief on page 25 that ocean freight
3 rates that transport AN from Russia to the United
4 States have risen dramatically particularly in the
5 last few years. Further down the page they add these
6 trends indicate that ocean freight rates at such
7 levels will limit the volume of Russian AN likely to
8 enter the United States. How do you respond?

9 MS. SLATER: I think two responses. One,
10 Mr. Chairman, is that freight rates vary over time as
11 you know. More recently they've come down again, so
12 that's one thing. Secondly, what we experienced
13 previously is that the extreme flexibility of Russian
14 exporters -- and you'll see this when you look at the
15 export data -- from Russia to other countries don't
16 seem to vary tremendously with freight rates.

17 The Russians are significantly and
18 surprisingly insensitive in terms of their general
19 export activity to freight rates to third countries.
20 They have flexibility I think to adjust their FOB
21 export price to allow the traders to take it.

22 They have been complaining to the Commerce
23 Department about wanting to redo the suspension
24 agreement pricing formula to allow them to lower their
25 export prices here under the suspension agreement at

1 those points in time when the freight rates have
2 gotten high indicating a willingness to do that. In
3 other words to lower the prices to keep shipping.

4 That's what they'd like to do here and
5 certainly are doing it elsewhere.

6 CHAIRMAN KOPLAN: Thank you.

7 Vice Chairman Okun?

8 VICE CHAIRMAN OKUN: Thank you, Mr.
9 Chairman.

10 I join my colleagues in welcoming all of you
11 here today, and appreciate your willingness to answer
12 our questions.

13 Ms. Slater, let me start with you and what
14 you described as the false premise of the Russian
15 Respondents with regard to whether there would be a
16 supply shortage in the market.

17 I just want to make sure I understand your
18 argument on that which is, again, I understand the
19 supply shortage number that the Respondents calculate
20 in their brief is based on different demand
21 projections than what you use, so I understand where
22 the different spread is, but my question is is it your
23 view then that the two remaining producers would be
24 able to produce for the entire U.S. market going
25 forward without non-subjects in or just that you don't

1 think they need anymore Russian above what they've had
2 with the quota level?

3 MS. SLATER: I think frankly you can do a
4 calculation which shows a very close balance between
5 U.S. capacity and demand, but what I've heard from
6 these witnesses and I'll ask them to supplement if
7 they disagree is that there have always been non-
8 subject imports in this market. There have always
9 been imports in the market and the market will
10 probably always need imports to some extent.

11 There has always been too much in the way of
12 imports frankly, but I don't think that the issue is
13 we don't need any.

14 If anyone would disagree with that pop in,
15 but the calculations that the Russians have undertaken
16 are so extremely wrong and out of line both with
17 respect to domestic production and supply capacity and
18 with respect to what will come from outside. The
19 premise is just silly. The gap that they posit is
20 just not realistic.

21 VICE CHAIRMAN OKUN: Okay. I wanted to make
22 sure that I understood that.

23 Then if I could turn to the company
24 witnesses just to help me a little bit on capacity
25 utilization numbers and the amount of product that you

1 have and one thing that I would ask you to comment on
2 which is are you facing any further environmental
3 restrictions on plant production at any of your
4 facilities? If you could comment on that?

5 MR. RYDLUND: With respect to El Dorado
6 Chemical the answer is no.

7 VICE CHAIRMAN OKUN: For Terra?

8 MR. ELLIOTT: I believe it's the same for
9 Terra that no, we're not.

10 VICE CHAIRMAN OKUN: Then, Mr. Green, if I
11 could just go back because I wanted to understand one
12 thing on Terra's capacity utilization rate.

13 If it's anything you needed to do for
14 posthearing please do it there, but in terms of -- I
15 understand that it's public information that Terra is
16 currently importing ammonia from Trinidad to use as
17 feed stock and it's AN production rather than
18 producing the ammonia directly from natural gas.

19 I want to make sure that I understand that.
20 Does that affect the capacity utilization rate you're
21 reporting for AN? Use your mic, please.

22 MR. GREEN: Excuse me, Commissioner. We'd
23 have to report that to you in the posthearing.

24 VICE CHAIRMAN OKUN: Okay. I appreciate
25 that.

1 MS. SLATER: I'm not sure that's absolutely
2 correct in terms of the source of the ammonia. What
3 is public is that Terra does have the ability to
4 produce nitrate either from its self-produced ammonia
5 at Yazoo City or with ammonia that's imported meaning
6 carried there, brought into the plant from another
7 place within the Terra system that may or may not be
8 from Trinidad, so I just want to be clear about that.

9 VICE CHAIRMAN OKUN: That's fine, and I'm
10 using a public source which may not have accurate
11 information as opposed to the information you're
12 giving me. If you can just be sure that for
13 posthearing that I understand how the capacity
14 utilization rate is figured on that I appreciate that.

15 Then I wanted to just ask a few further
16 questions regarding the security restrictions.

17 I think a lot of it was covered by
18 Commissioner Hillman, but with regard to the pending
19 legislation -- and pieces of not the actual
20 legislation, but references to it were included in
21 both briefs -- is there anything, and I'm not sure
22 there are any more reasonably foreseeable than the
23 global warming of whether such legislation would pass,
24 but the question was whether that legislation if
25 you're aware of it impacts imports any more than it

1 would domestic?

2 Is there anything in there that would affect
3 the imports differently than it would domestic
4 production?

5 MR. RYDLUND: The answer from El Dorado
6 Chemical's standpoint is no. We don't see a
7 significant difference whether it be on the impact of
8 security regulations, whether it be imports or product
9 produced domestically.

10 VICE CHAIRMAN OKUN: Anyone else have
11 comment from the legislation?

12 MR. ELLIOTT: Terra would concur with that.
13 It's the same for everything.

14 VICE CHAIRMAN OKUN: Okay. Then just so
15 that, again, we have a complete record for this final
16 staff report you talked a lot about the fact that it
17 is the distribution network that is reacting and maybe
18 deciding not to handle the material which is affecting
19 in your view the demand and apparent consumption and
20 you reference what the purchasers had to say.

21 There had been in Green Markets October 11,
22 2004, a report on two St. Louis-based suppliers who
23 were getting Lang Stedman who had been involved in
24 transportation and warehousing had decided to stop
25 handling AN and that Nemco Barge Line also in St.

1 Louis had also cut back its handling of AN except for
2 a customer willing to pay a premium.

3 My question is if there's any other
4 information out there that you could submit in terms
5 of who has stopped handling it and where they're
6 located? Again, I'm just trying to understand whether
7 that's an advantage for someone in Yazoo or is it
8 equally affecting everybody running these things. You
9 can comment here, but any specific thing put in the
10 posthearing brief.

11 MR. GOUGH: Well, first of all in the case
12 of Lang Stedman, and they did get a lot of press out
13 of this, they are the marketers of a product called
14 Agrotain, which is an additive that you put with urea
15 in UAN to reduce volatilization. So I will say they
16 did a good job. They did get a lot of press.

17 As far as the other locations they're very
18 limited. In fact like I said we're actually seeing
19 some places handle nitrate on the river and in Tampa
20 that didn't handle it two years ago. So yes, we can
21 sure come up with a list of places that do not handle
22 it anymore, but it's not near what people thought it
23 might have been two years ago when the Coast Guard
24 regulations were initially being put in place.

25 VICE CHAIRMAN OKUN: Okay. I appreciate

1 that. I think that would be very helpful for
2 posthearing to make sure we understand how you view
3 that in the market.

4 Now, Ms. Slater I guess or Mr. Klett, I
5 guess it might be a question for you with regard to
6 you talked about the original investigation and the
7 focus that there was on prices, and you've talked
8 about where you think prices would be absent the
9 discipline of the suspension agreement.

10 I guess one of the questions I have is
11 whether you view looking forward that the bigger issue
12 would be the volume or the price because I might be
13 wrong in this and producers can tell me, I'm sure the
14 producers would have liked to have seen lower quotas
15 for the Russians than what you got out of the
16 suspension agreement.

17 I don't know that, but it seems like it
18 might be likely. While I want to ask some questions
19 about the quota fill rate because I understand they're
20 varied numbers on what the quota fill rate is my
21 question is looking forward you've cited to the third
22 country export restrictions, the quota requests that
23 exceed what they've actually shipped, the
24 circumvention issue, tell me about what you see volume
25 going for?

1 You see the Russians coming in in a very big
2 way or you think that they're coming in at the numbers
3 of Mr. Klett's chart? Are they going to be up here
4 replacing non-subjects, or down here, or both?

5 Mr. Klett? He looks like he wants to jump
6 in there.

7 MR. KLETT: Well, I think in terms of
8 relative volume and price affects we believe that as
9 in the original investigation there's going to be more
10 of a price effect than a volume effect in terms of the
11 impact of revocation.

12 With regard to the likely volume that will
13 come in, I mean, at least in the original
14 investigations import volumes peaked in 1999 even with
15 Commerce having a preliminary determination in
16 September of 1999 to 260,000 tons. So I think
17 something more than 260,000 tons, maybe 300,000 tons,
18 is a conservative estimate of the additional volume
19 that might come in.

20 In other words roughly double what the quota
21 level is now. There's a few things that have changed
22 since the original investigation and that is there's
23 roughly 900,000 tons in Europe that Russia had been
24 exporting to that they no longer export to because of
25 the restrictions, and I had a chart on that, as well

1 as China and Brazil.

2 So the increased exports to the U.S. could
3 exceed 300,000 tons just because some of their other
4 markets are no longer there and that they have excess
5 capacity. At least the producers that reported to you
6 have excess capacity of roughly 1.5 million tons. I
7 don't know if that's responsive to your question, but
8 just in terms of the relative price volume and the
9 likely volumes that's my best estimate.

10 VICE CHAIRMAN OKUN: Okay. That's very
11 helpful. Thank you.

12 Thank you, Mr. Chairman.

13 CHAIRMAN KOPLAN: Thank you.

14 Commissioner Hillman?

15 COMMISSIONER HILLMAN: Thank you. I hope
16 just a couple of quick follow-ups on this issue of
17 these security regulations and how they've affected
18 demand for the product.

19 First, Ms. Slater, if you can and I'm not
20 asking for an entire encyclopedia on this, but just if
21 you can help me in a posthearing walk through a little
22 bit of a timeline of sort of who did what in terms of
23 these security regulations. I mean, who promulgated
24 them?

25 Again, I realize that a lot of this is state

1 and even local and I'm not asking you to drill down in
2 that level of detail, but I'm trying to understand
3 from market participants sort of what were the big
4 things that required you to do something to come into
5 compliance with this, and was it you or was it the
6 distribution system that had to do the complying?

7 Then, again, whether any of this had any
8 impact on the actual farmer? I mean, was the farmer
9 having to do anything in order to continue to use AN?
10 Again, I'm just trying to ask for a little bit of a
11 timeline and a general sense of help me put this issue
12 of security regulations into some perspective so that
13 we can figure out sort of more broadly what was going
14 on with this.

15 MS. SLATER: We will endeavor in
16 posthearing, Commissioner Hillman, to provide you not
17 only this timeline but a summary of the requirements
18 and upon whom they were imposed at each particular
19 time.

20 COMMISSIONER HILLMAN: Again, I'm not asking
21 for absolutely every little thing as much as just to
22 get it from a perspective of what moves the market.

23 MS. SLATER: Absolutely.

24 COMMISSIONER HILLMAN: Okay. Then more to
25 the industry participants is it your view that it is -

1 - again, I appreciate the data in Exhibit No. 3 of
2 your brief.

3 It helps us understand what was happening to
4 AN versus the other nitrogen fertilizers and they are
5 as you describe, Ms. Slater, a downward percentage of
6 the total amount -- I mean, that AN is a decreasing
7 percentage, again, dipping in the end below five
8 percent of the total of the nitrogen fertilizers out
9 there.

10 From the industry's perspective is that
11 totally a response to these security issues or is
12 there something in terms of the crops, the price of
13 the crops for which various fertilizers would be used?
14 I mean, it's my understanding that of the nitrogen
15 fertilizers this would be among the high-priced ones.

16 Was there something out there in terms of
17 what was happening to farm prices for the products for
18 which you would use this versus other things or
19 something else that would have contributed to this
20 downward percentage of the amount of nitrogen
21 fertilizer that is consumed in the form of AN as
22 opposed to urea, or liquid, or anhydrous ammonium?

23 MR. ELLIOTT: As pointed out both in this
24 brief and the original brief ammonium nitrate has
25 always or does command a premium per unit of nitrogen.

1 That has always been the case and crop price
2 volatility has always been there and nitrate has been
3 able to maintain that difference.

4 So I don't think there's anything that you
5 can identify in crop prices or anything like that that
6 has any basic affect that hasn't been there
7 historically.

8 COMMISSIONER HILLMAN: So your sense is that
9 all of the shift out of AN and arguably into urea
10 liquid, AA is all due to the security requirements?

11 MR. ELLIOTT: I'd say very definitely the
12 bulk of it is security.

13 COMMISSIONER HILLMAN: All right. Anybody
14 else have any differing view on that?

15 MR. GOUGH: Commissioner Hillman, I would
16 have to concur that I think the majority of it is
17 because of regulations.

18 COMMISSIONER HILLMAN: Okay. If I can then
19 go to a couple of data issues. One of the issues that
20 we're struggling with is the best way to look at
21 imports. Because as you know, Ms. Slater, we do not
22 have a clean HTS number here our census data would
23 include the liquid product as well as the LDAN product
24 as I understand it. Wait a minute. There's some non-
25 subject product within the same --

1 MS. SLATER: The industrial grade.

2 COMMISSIONER HILLMAN: The industrial grade.
3 What would be your sense of the best way to look at
4 this data? Questionnaire data or official import
5 statistics?

6 MS. SLATER: Let me answer briefly and then
7 I'm going to ask Mr. Klett --

8 COMMISSIONER HILLMAN: Part of it is I'm
9 trying to understand whether there has been any shift
10 over time in terms of how much industrial grade would
11 be included within the statistics. Low-density
12 product.

13 MS. SLATER: This is an issue that was
14 presented in the original investigation and your very
15 excellent staff some of whom we have the benefit of
16 also having on this review very carefully took a look
17 at this and figured out I think what was the right
18 thing.

19 Basically there is low-density -- I'm going
20 to qualify this in one second -- meaning the
21 industrial grade product comes from almost nowhere
22 outside the United States other than Canada and so the
23 real question in terms of the mix of the HTS numbers
24 is how much in that Canadian category is low-density?

25 We were able actually in the original

1 investigation to come up with -- we meaning all of the
2 parties collectively -- a reasonable way of estimating
3 the amount of that. We've done that as well in our
4 brief and I suggest that methodology is the same one
5 that probably ought to be used in this review.

6 As to the other source countries everything
7 that's reflected in your data should be to the best of
8 our knowledge -- and Mr. Rydlund, who is very involved
9 also in the industrial market has confirmed this --
10 high-density ag grade product. Explosive grade
11 product is generally not imported. Now, I do want to
12 --

13 COMMISSIONER HILLMAN: So is a liquid AN
14 also part of the same HTS?

15 MS. SLATER: No. I believe it's only the
16 solid product which is in that, and we will confirm
17 that.

18 COMMISSIONER HILLMAN: Okay. You're saying
19 there is no low-density product made in any of the
20 other countries --

21 MS. SLATER: No, no, no. None imported into
22 the United States. I do want to qualify that because
23 Mr. Rydlund provided in our posthearing brief an
24 affidavit saying that he was unaware of anything
25 particularly with respect to Russia.

1 We have learned in the last few days that
2 there has been actually a very unusual shipment of
3 some bagged low-density explosive product from Russia
4 to an explosives producer. This was apparently a one
5 time deal. Very unusual. We have the information on
6 that particular product which we'll supply.

7 That would be relevant only -- it hasn't
8 been reflected in the census data yet, but that was an
9 unusual sort of one time thing.

10 COMMISSIONER HILLMAN: I would appreciate
11 anything you want to add on that for the posthearing,
12 but then let me go to the pricing issue because, Mr.
13 Klett, you priced several comparisons of Russian
14 product in the U.S. market versus Russian product in
15 other markets.

16 As I understand it you're relying on
17 shipment AVs to do those price comparisons. I'm just
18 trying to make sure that they are in fact a valid
19 proxy for market prices because if some of the Russian
20 shipments to other markets, not to the United States
21 but to other markets, were this low-density product or
22 were a liquid AN presumably that would affect the
23 validity of those comparisons.

24 So do we have any reason to believe that all
25 of the Russian shipments to non-U.S. markets are

1 basically all subject product?

2 MR. KLETT: The reason I relied on the
3 Russian export statistics for that analysis is that I
4 needed to go back to 1999 or pre-POI levels so that I
5 could see what that relationship was during the
6 original investigation and this investigation to see
7 whether that relationship had changed.

8 In the original investigation as opposed to
9 this investigation the Commission did not collect from
10 your questionnaires in your foreign producer
11 questionnaires volume and value data, so you cannot
12 calculate an AUV for the POI for exports to the United
13 States from your original questionnaires.

14 You did that in this investigation, so you
15 can see during the POR what Russia's export prices to
16 the United States versus other export markets and you
17 see a substantial price differential. The price
18 differential is not exactly the same, but it's similar
19 to the price differential from the Russian --

20 COMMISSIONER HILLMAN: Do you know or have
21 any way of knowing whether the Russian sales to the
22 non-U.S. markets which are significant in volume
23 include non-subject product?

24 MS. SLATER: I think the answer,
25 Commissioner Hillman, to that is that if you look at

1 the data in our Fertecon report, which I believe
2 counsel for the Russian producers should be able to
3 confirm for you, there is very, very little commercial
4 production in Russia of a low-density product and so
5 we believe that everything that's included there and
6 exported into those markets is high-density.

7 Now, if in fact some of those exports were
8 low-density they're in a position to actually tell you
9 exactly to which market and what -- so I think they
10 should be asked probably.

11 COMMISSIONER HILLMAN: Last quick sort of
12 data question. Would you agree with Respondents that
13 in evaluating the condition of the industry that we
14 should focus on the data for the two remaining
15 producers rather than focus on all responding
16 producers that have during this period of review
17 ceased production? Which data set do we focus on?

18 MS. SLATER: I frankly think that for
19 different purposes you need to be looking at both. I
20 think that the experience of the industry as a whole
21 can be very instructive for you, and I think that the
22 experience of the remaining producers can also be
23 instructive, and I'll in the posthearing be happy to
24 sort of outline in which circumstances it would be
25 relevant.

1 COMMISSIONER HILLMAN: Appreciate those
2 answers.

3 CHAIRMAN KOPLAN: Thank you, Commissioner.
4 Commissioner Lane?

5 COMMISSIONER LANE: Thank you.

6 Ms. Slater, I think that I heard Mr. Morgan
7 say in his opening remarks that consumption was down,
8 but there was no decrease in demand. I'm having a
9 hard time reconciling that with the data that I have
10 looked at. Do you agree with that statement, and if
11 so or if not would you care to elaborate on that?

12 MS. SLATER: I would care to. Thank you,
13 Commissioner Lane. I hate to disagree with my friend,
14 Mr. Morgan, but I think --

15 COMMISSIONER LANE: Did I hear him right?

16 MS. SLATER: You heard him right.

17 COMMISSIONER LANE: Okay.

18 MS. SLATER: It's sort of symptomatic I
19 think of the very difficult argument that they're
20 trying to make. Consumption is down, but no decrease
21 in demand.

22 The premise of his argument is that the
23 demand is really out there, there just hasn't been
24 adequate supply to provide it which aside from
25 problems of general economic theory would suggest that

1 there would be U.S. producers running full out, that
2 there would be purchasers who are tearing their hair
3 out looking for products, that there would be all
4 kinds of things happening.

5 There is no demand that's simply gone away
6 because the product's not there. That's their
7 premise. Consumption is down they say, but it's
8 really not because demand is gone. It makes no sense.
9 In fact demand is declining and there's really no
10 evidence otherwise.

11 COMMISSIONER LANE: So there is no data in
12 the records that would support that statement?

13 MS. SLATER: None whatsoever. In particular
14 your purchaser questionnaires I think are very helpful
15 in that regard.

16 COMMISSIONER LANE: Okay. Thank you.

17 Mr. Green, I want to talk about your company
18 switching from producing ammonia at its, is it the
19 Yazoo City, and bringing it in then to your Cherokee
20 facility or maybe it's vice versa. How much money per
21 unit are you saving by buying the ammonia rather than
22 producing it yourself, and what is the affect upon the
23 employees at your facilities when you do this?

24 Are you having to lay off employees because
25 you're doing this switch or what is the affect on your

1 company?

2 MR. GREEN: Commissioner, let me explain.

3 Terra has only the Yazoo City --

4 COMMISSIONER LANE: Okay. I'm sorry.

5 MR. GREEN: Terra has only the Yazoo City,
6 Mississippi, production facility, not affiliated with
7 the Cherokee plant. As far as savings and what we're
8 doing at the present time is we're importing ammonia
9 into the Yazoo City production site.

10 That product can be from our Donaldsonville
11 facility and we can bring product from Trinidad, which
12 is their own, we can also purchase product or we can
13 bring product from one of our other existing
14 facilities to meet the needs at Yazoo City on ammonia.

15 COMMISSIONER LANE: Have you done a
16 calculation that you are actually saving money by
17 doing that rather than producing it yourself at the
18 same facility that you're using it?

19 MR. GREEN: We haven't ceased producing
20 ammonia at the facility in the long-term. It's just a
21 turnaround for January and February here that the
22 ammonia plant is down. So once the plant repairs are
23 done to the ammonia plant it will be up and operating
24 as it was in December.

25 COMMISSIONER LANE: At the same level as

1 before?

2 MR. GREEN: We hope to. Yes. No reason to
3 believe that it would be less.

4 COMMISSIONER LANE: Okay. Thank you.

5 MR. GREEN: You made comment regarding
6 employees.

7 COMMISSIONER LANE: Yes.

8 MR. GREEN: What we're doing is we're
9 utilizing Terra's own employees to do the maintenance
10 during this turnaround. We're not hiring outside or
11 third-party contractors to come in to do this required
12 work as a cost saving measure.

13 COMMISSIONER LANE: Thank you. Since the
14 level of non-subject imports of ammonium nitrate is
15 well-above that of subject imports to what extent
16 would imports of the Russian product simply displace
17 non-subject imports if the suspended investigation
18 were terminated?

19 MR. KLETT: Commissioner Lane, this is Dan
20 Klett. I mean, there will be displacement of non-
21 subject imports as well as domestic production in my
22 view and typically the best way to evaluate how much
23 of non-subject is displaced versus domestic production
24 is the relative shares of both during your most recent
25 period.

1 So based on those shares that would be my
2 expectation of the relative displacement. I think
3 there's another element and that has to do with the
4 pricing. To the extent there's displacing of non-
5 subject imports we believe it will come in at prices
6 lower than non-subject imports in order to attain that
7 end, so there will be pricing affects in the market as
8 well.

9 COMMISSIONER LANE: Thank you.

10 I'd like to go to the industry
11 representatives to talk about your natural gas
12 purchasing practices. How important are spot and
13 futures prices of natural gas to your operations, and
14 what share of your gas costs depend upon long-term
15 contracts?

16 MR. RYDLUND: With respect to El Dorado at
17 El Dorado the production of ammonium nitrate comes
18 from ammonia that we purchase, so the natural gas
19 impact on what we purchase at El Dorado is not as
20 great. With respect to Cherokee, Alabama, we do
21 purchase natural gas to manufacture ammonia. Again,
22 at this point because of the lack of demand we do not
23 produce ammonium nitrate at Cherokee.

24 I will tell you, though, that our natural
25 gas purchases at Cherokee for other industrial

1 products are a combination of futures or hedges and
2 spot pricing as well some of which is hedged against
3 long-term sales contracts, but to effect we have no
4 long-term commitments other than, for instance, one,
5 two, three years out as far as purchase of natural
6 gas.

7 COMMISSIONER LANE: Does anybody else care
8 to respond to that?

9 Mr. Green?

10 MR. GREEN: Commissioner, regarding Terra's
11 gas purchasing and indexes we use hedges, swaps and
12 other financial tools to secure gas to cover our
13 obligations. I think it best that we supply you with
14 more detail for the posthearing of those tools and our
15 parameters and covenants of the company.

16 COMMISSIONER LANE: Thank you. To what
17 extent do Russian and U.S. producers have the ability
18 to produce alternative products with the same
19 equipment and workers that they use to manufacture AN?

20 MS. SLATER: We certainly can't speak for
21 the Russian producers, but Mr. Rydlund can answer for
22 EDC. Could you repeat the question, though,
23 Commissioner, for his benefit?

24 COMMISSIONER LANE: To what extent do
25 Russian and U.S. producers have the ability to produce

1 alternative products with the same equipment and
2 workers that they use to manufacture ammonium nitrate?

3 MR. RYDLUND: I will speak of course to the
4 U.S. producers and particularly El Dorado. The
5 equipment that we have in place to manufacture
6 ammonium nitrate cannot be used to manufacture other
7 products.

8 Now, that's equipment to produce. Ammonium
9 nitrate is made from ammonium nitric acid and
10 obviously nitric acid can be used for other products,
11 but with respect to the ammonium nitrate equipment per
12 se, no. It can only be used to make ammonium nitrate.

13 COMMISSIONER LANE: Thank you.

14 Anybody else have a response to that?

15 (No response).

16 COMMISSIONER LANE: Okay. Thank you, Mr.
17 Chairman.

18 CHAIRMAN KOPLAN: That question knocked the
19 lights out. Okay. They just came back on. Thanks.

20 Commissioner Pearson?

21 COMMISSIONER PEARSON: Thank you, Mr.
22 Chairman.

23 Mr. Gough, in your prepared statement you
24 indicated that there were seven vessels currently
25 being loaded in combination of Georgia, Bulgaria,

1 Netherlands and Romania. Do you know the destinations
2 for those vessels? Are they expected to come to the
3 United States?

4 MR. GOUGH: Commissioner, yes. These are as
5 Fertecon has reported destined to come to the United
6 States.

7 COMMISSIONER PEARSON: Okay. I know in some
8 bulk commodities it's not unusual for a vessel at sea
9 to have its destination changed. Is that something
10 that happens with some degree of frequency in the
11 ammonium nitrate marketplace?

12 MR. GOUGH: I'm not going to say it's never
13 happened, but it would be probably fairly unlikely.
14 Unlike urea, UAN and some other sources, in the end
15 there's very limited places that ammonium nitrate is
16 traded in the world today.

17 COMMISSIONER PEARSON: Well, but our staff
18 report indicates it's quite a number of countries that
19 use ammonium nitrate as part of their fertilizing
20 programs. Clarify if I'm wrong.

21 MR. GOUGH: Well, I think when we see --
22 it's not a world traded commodity like urea, so I
23 guess when you look at the destinations -- I don't
24 know. I mean, it's just been our experience that if
25 something is reported to come to the United States I

1 would say that this is going to be the final
2 destination.

3 COMMISSIONER PEARSON: Ms. Slater?

4 MS. SLATER: I wanted to add two thoughts.
5 One is that these reports are generally very reliable
6 and these are specific loadings headed for the United
7 States now.

8 I mean, these are real time reports, but
9 more importantly there's been confirmation -- and I'll
10 see how much these fellows are willing to say -- in
11 the marketplace that some of this is showing up
12 because the people who are bringing it are already
13 actively marketing some of it.

14 COMMISSIONER PEARSON: Mr. Gough?

15 MR. GOUGH: I guess one other comment.
16 Typically what we've seen on a lot of the importers is
17 that they will not usually bring a vessel unless at
18 least probably half of it is already committed. I
19 mean, they're not in the market to just speculate
20 bringing a vessel this direction, so a lot of times a
21 portion of these cargos are already presold before
22 they head this direction.

23 COMMISSIONER PEARSON: Okay. Good. Thanks
24 for that clarification. You made a reference to the
25 urea market and I think you were making the point that

1 there are differences between the global market for
2 urea and the global market for ammonium nitrate.
3 Could you elaborate further?

4 MR. GOUGH: Well, I think one of the things,
5 around the world there's been a growth of nitrogen
6 consumption and of course urea has been the main
7 leader in that market, so you'll see cycles where
8 there may be a shortage of urea for a year or two,
9 some more plants get built, all of a sudden there may
10 be excess capacity, so you have some cycles on the
11 urea side where there's a limited number of countries
12 that do utilize ammonium nitrate in comparison to
13 urea.

14 So we really have never seen those cycles in
15 the past decade or two because basically the world at
16 this time has overcapacity of ammonium nitrate and
17 really that I'm aware of there has been no new
18 ammonium nitrate capacity come on in the world.

19 COMMISSIONER PEARSON: Without going back
20 and looking at the relatively recent staff report on
21 urea are you suggesting then that there's a smaller
22 tonnage of ammonium nitrate trading in global commerce
23 than there is for urea?

24 Mr. Klett? Mr. Gough?

25 MR. KLETT: I think that's fair to say. We

1 can confirm that, but I believe there is significantly
2 less ammonium nitrate traded globally than urea.

3 COMMISSIONER PEARSON: Those of you who work
4 commercially in the market do you see ammonium nitrate
5 as a less liquid market, more of a specialty product?

6 MR. ELLIOTT: It has a much more limited
7 market than urea, and urea as far as volume -- world
8 traded urea volume is many multiples of world traded
9 nitrate.

10 COMMISSIONER PEARSON: Okay. Good. So
11 we're talking as you say many multiples, so several
12 times more urea being traded than ammonium nitrate?

13 MR. ELLIOTT: Yes.

14 COMMISSIONER PEARSON: Okay. Thank you for
15 that clarification. Why didn't more of the Russian
16 quota for shipment to the United States to get used.
17 It would appear the Russian exporters would be able to
18 obtain a relatively favorable price in the United
19 States compared to other countries when they're
20 selling under the suspension agreement.

21 What was it that kept the quotas from being
22 filled 100 percent every year?

23 MS. SLATER: The way that the suspension
24 agreement works, Commissioner Pearson, it's very
25 difficult to look at the quotas annually. They are

1 what we call carryforward. Only the Commerce
2 Department could design such a creature, but there are
3 carryforward and carryback provisions each year which
4 allow tonnages that are unused to be carried forward
5 and similarly to be borrowed from the year to follow.
6 So we tend to look at it over time rather than year to
7 year.

8 As Mr. Klett mentioned, we are calculating
9 about 94 percent of the quota has been used to date.
10 The Russians have carried over a portion of last
11 year's quota into this year, so at the end of the day
12 when this is all done, how much will be used is hard
13 to say.

14 It's been a fairly high utilization rate.
15 What we did see was a small drop in the Russian
16 shipments at the same time that we saw other imports
17 drop off, which was right after that tremendous jump
18 in imports that you saw on the chart that was there
19 and in large part we think that the drop off in
20 imports generally had something to do with the fact
21 that the market was fairly well saturated and the
22 distribution situation was saturated from that big
23 bump that you saw.

24 Whether it's related to that, the Russians
25 have complained that at that particular time they were

1 having trouble because of the freight rates but,
2 frankly, all importers are subject to issues of
3 freight rates and so for them to have been sensitive
4 at that particular point in time to the same
5 commercial concerns would have made some sense, but by
6 and large it's been a very successful exercise and the
7 Russians have generally filled or actually on an
8 annual basis exceeded the quotas.

9 COMMISSIONER PEARSON: From the staff report
10 I get the impression that we're looking at about
11 85 percent utilization of the quotas. You're saying
12 93. I won't quibble about the difference.

13 MS. SLATER: The Russians also say about 93,
14 94 percent.

15 COMMISSIONER PEARSON: The real question is
16 what are the economics behind a decision by someone in
17 the marketing system to leave either 7 or 15 percent
18 of the potential earnings on the table from what must
19 be one of the highest priced markets available to the
20 Russians?

21 MS. SLATER: I think what's interesting is
22 that the decisions are being made, and I have to be a
23 little bit careful. If you don't mind, I'd like to
24 answer some of this post-hearing with reference to
25 some of your questionnaire responses, but I think if

1 you look at how this market is working and how the
2 Russian producers are dealing in the market, it's
3 still through trading companies.

4 You've heard this story before, but traders
5 are moving this product, and so the decision of the
6 trading company whether to purchase -- and it's the
7 trading company's decision whether to purchase from
8 the Russian producer that makes the producer able to
9 sell or not sell for shipment to the United States --
10 depends on the trader's ability to place this product
11 into the market.

12 There was a period, I think, when everything
13 was falling down, suggesting that not only was demand
14 falling here but the marketplace here was somewhat
15 saturated.

16 The patterns that we see with Russian
17 imports, as they should be, given a properly
18 functioning suspension agreement, reflect not a
19 decision of Russian producers to walk away because
20 they would have liked to lower their prices, we know
21 that from public statements they've made, we would
22 like to lower our prices to be able to fill the quota,
23 but because of the pricing restraints, they, like
24 other exporters, couldn't make the sale to the trading
25 companies.

1 COMMISSIONER PEARSON: Now, at the end of
2 your comment, I think you got to a point that might be
3 relevant.

4 Are you asserting that the reason that they
5 did not fill the quota is that they were unable at the
6 reference price to find someone in the United States
7 to purchase the product?

8 MS. SLATER: They were unable to find a
9 trading company, right, to purchase the product for
10 bringing it here.

11 MR. KLETT: Commissioner Pearson, this is
12 Dan Klett. There is a floor price in the suspension
13 agreement and I think early on in this period, and I
14 don't know if it was 2000 or 2001, the market price
15 actually fell below the floor so that the floor price
16 put a pricing constraint on what they could ship here,
17 just because it was priced uncompetitively out of the
18 market. I can give you the exact periods when that
19 occurred, but that would have been another element of
20 why they didn't fill the quota.

21 COMMISSIONER PEARSON: That would explain
22 why the fill rate in 2001 was the lowest of any year
23 during the period.

24 MR. KLETT: Either 2000 or 2001. I'll have
25 to go back and look at when that occurred. Since

1 2001, the fill rate has been significantly higher.

2 COMMISSIONER PEARSON: My time has expired.

3 Mr. Chairman?

4 CHAIRMAN KOPLAN: Thank you, Commissioner.

5 Commissioner Aranoff?

6 COMMISSIONER ARANOFF: Thank you,

7 Mr. Chairman.

8 I wanted to follow on with Commissioner
9 Pearson's questions and ask another question about the
10 operation of the suspension agreement.

11 In particular, my understanding -- and this
12 is probably based on what I learned when we were doing
13 the urea review recently -- was that the Russian
14 producers sell their product to the trading companies
15 and don't necessarily know what market it's going to
16 end up in and yet my understanding in this case is in
17 order to get the export license the Russian producer
18 has to actually know where it's going, if it's coming
19 to the United States, and has to make some
20 representations about complying with the terms of the
21 suspension agreement.

22 Can you explain how that works as between
23 what the Russian producer has to do and what the
24 trading company does?

25 MS. SLATER: That's a terrific question and

1 I think you've hit on a really important point. The
2 suspension agreement really does change things up
3 quite a bit and it was one of the, I think, very
4 positive aspects of it for the industry, even though
5 the quotas got fairly hefty.

6 The operation of the suspension agreement
7 requires an export license to be issued by the Russian
8 government. The Russian producer, as I understand it,
9 and I think probably our witnesses this afternoon,
10 your witnesses, will be able to tell you a little more
11 from their end how much they really have to do, but
12 our impression, looking through the curtain there, is
13 that there is a process in Russia.

14 Actually, you have a very good example of
15 what's happening, the Russian producers have given you
16 the public version of Commerce's verification of their
17 processes under the agreement.

18 Russian producers will apply for a quote,
19 they get quota allocated. We don't know a lot about
20 that, exactly who's applied and how the decisions are
21 made for allocations, but once they have secured a
22 sale, they must get an export license. They must
23 present, as we understand it, copies of all the
24 documentation showing that the reference price, the
25 appropriate reference price, which is issued weekly by

1 the Commerce Department, attaches to that sale.

2 Once that export license is granted, then
3 I assume the producer working in conjunction with the
4 trading company, the exporter, will schedule the
5 shipment to leave and it has to leave -- there is only
6 a limited amount of time between getting your contract
7 done and getting your export license and shipping it
8 out.

9 Why? You wouldn't want all the contracts to
10 be made at a point in the season when the prices are
11 typically lowest and then shipped at the height of the
12 season. These reference prices are determined weekly
13 based on what's happening here in the U.S. market.

14 So they are applying for the license,
15 getting the export license and then promptly arranging
16 for exportation.

17 It is definitely a different type of
18 arrangement than I think we have seen in the past with
19 any of the products that are coming out of Russia.

20 COMMISSIONER ARANOFF: So is this a change
21 from what the pattern was like in terms of the
22 relationship between the Russian producer and the
23 trading company prior to imposition of the suspension
24 agreement? It sounds as though the producers have to
25 become much more involved in the part about figuring

1 out what market the product is going to and on what
2 terms than they may have been previously.

3 MS. SLATER: I'm not sure that's true. I do
4 know that they would have to be aware that this was
5 coming into the U.S. market. In other words, there
6 would be no way that they would be able to make a sale
7 for the U.S. market or have product wind up in the
8 U.S. market legally without knowledge of its
9 destination.

10 Whether they generally know the destinations
11 of other exports, Commissioner, I just couldn't tell
12 you.

13 COMMISSIONER ARANOFF: Okay. I will
14 certainly ask Respondents this afternoon.

15 If by some chance I forget or don't get
16 around to it, I still invite you to answer the
17 question in your post-hearing brief, Mr. Morgan.

18 Let me turn to another issue which I don't
19 think anyone has touched on, some questions about
20 capacity and the ways that we are measuring capacity
21 and capacity utilization, both domestic and Russian,
22 in this case.

23 First, with respect to the Russian industry,
24 one of the arguments that Respondents make in their
25 brief is that some of the Russian producers are

1 located too far from a port to be viable exporters.

2 They don't appear to be exporting now, but
3 do you have any comment on that argument?

4 MS. SLATER: The argument that Russian
5 producers are located too far from the port I think
6 says a little too much. If you look at the distance
7 from the port of some of the producers who we know are
8 exporting, it gives you a clear indication --
9 I believe this is not in the public staff report, but
10 you have a chart which lays out the distance from the
11 port -- it's clear that producers who are substantial
12 distances from the port are managing to export, so
13 I wouldn't accept the premise that because you are far
14 from the port, particularly given what we know about
15 continuing subsidized rail transportation and so on
16 within Russia that that would not be possible.

17 More importantly, there's no affirmative
18 evidence that those producers absolutely do not
19 export, so I think that's something to take into
20 account.

21 The produces who have responded to your
22 questionnaire do account for a significant portion of
23 Russian exports, but they also do not account for a
24 very significant portion of Russian exports to the
25 rest of the world.

1 We couldn't tell you precisely which
2 producers are exporting into where. I think that
3 I would be reluctant to accept the distance from port
4 as any reason to discount that capacity.

5 More importantly, though, even if you take
6 the best argument concerning capacity, the under
7 utilized capacity from the responding producers and
8 the core producers they would like you to look at,
9 it's so great compared to the size of this market that
10 I think it doesn't even -- you can take the argument
11 on their best light and they still have tremendous
12 unutilized capacity to direct here.

13 COMMISSIONER ARANOFF: Okay. That sort of
14 answers my next question, which was going to be to
15 have you comment on what you think is the best source
16 of data that we should be relying on in our final
17 staff report to measure capacity in Russia and I guess
18 you're telling us it almost doesn't matter which we
19 choose, whether we use the questionnaire data or some
20 public source.

21 MS. SLATER: I think if you look at it
22 properly, what you see is even these responding
23 producers, and I believe this number is public,
24 account for capacity that is unutilized capacity at
25 the moment that's large enough to basically fill

1 demand in the U.S. market. So we're not quibbling
2 here over small slices of capacity. There's
3 tremendous under utilized capacity out there.

4 COMMISSIONER ARANOFF: Okay. Let me turn
5 then to some capacity questions about the domestic
6 industry.

7 We obviously have an unusual situation in
8 this case where there is a certain amount of domestic
9 capacity to produce this product which is on the
10 ground, but has been closed, people have exited the
11 business, announced their exit from the business but
12 not disposed of the assets. Some of them may be being
13 used to produced other products, but some of them
14 clearly are just sitting idle.

15 Since we are making a determination looking
16 forward to the reasonably foreseeable future, how
17 should we be considering that capacity?

18 Should we be considering that as unutilized
19 domestic capacity that lowers the capacity utilization
20 for the whole industry? Or should we be simply
21 discounting that because the owners of that capacity
22 have said that they've permanently exited the
23 business?

24 MS. SLATER: Let me answer and then maybe
25 you can ask some other witnesses to respond.

1 I think you almost would have to take it
2 plant by plant. It's a little bit difficult to
3 generalize. There are a number of plants which have
4 been down for quite some time and there are others
5 which are just out and I think, unless I am
6 misunderstanding your question, I don't think you can
7 generalize with that. But I do think that, again,
8 there is so much unutilized capacity, even in the
9 operating plants with the producers held by the
10 producers who are before you that the issue is really
11 not whether some of those other plants might come back
12 into operation.

13 We could certainly go through post-hearing
14 and give you an indication of whether we think any of
15 those plants could be once again operating, but you
16 probably don't need to go that far to see how much
17 under utilized capacity is here.

18 COMMISSIONER ARANOFF: I appreciate that
19 answer and I would in fact appreciate in your
20 post-hearing if you could look plant by plant and give
21 us some sense of the extent to which capacity which
22 has been nominally removed from production is still
23 there and what effect, if any, you think that has on
24 the market, that would be helpful.

25 I'm particularly interested in if I'm

1 looking, let's say, at interim 2005 and I want to look
2 at what is capacity utilization in the industry in the
3 most recent period, should I only be counting the
4 capacity utilization rates of the two companies that
5 are present here today, or is there anything else that
6 I should be looking at?

7 And I take your point that it may not matter
8 to the outcome, but it's still worth considering.

9 All right. Since my yellow light is on,
10 I won't ask another question.

11 Thank you, Mr. Chairman.

12 CHAIRMAN KOPLAN: Thank you, Commissioner.

13 I have one very short question remaining
14 that I don't think will take much of our time on this
15 round and it's this:

16 When acknowledging the fact that consumption
17 has declined significantly at pages 10 and 11 of your
18 brief, you state as a reason, and I'm quoting this
19 sentence, "One frequently cited reason for this
20 decline is the increase in security requirements
21 associated with handling ammonium nitrate in the
22 United States."

23 I am not going back into a discussion of the
24 security requirements because I think that's been
25 covered fully this morning, but my question is do you

1 have any other reasons contributing to the decline in
2 current domestic demand for AN other than that one?

3 If not, I'm done, but I wanted to make sure
4 I hadn't missed something that you had included in
5 your materials.

6 Mr. Gough?

7 MR. GOUGH: Commissioner, you know, I guess
8 we ourselves have not participated and I can't speak
9 for Terra, but when you get out to the fringe areas,
10 say, the northwest, the Pacific Northwest, California,
11 you know, I'm not sure if there's a different
12 underlying factor there.

13 We have vigorously -- we're pursuing
14 customers in that area, El Dorado Chemical Company
15 ourselves. We have acquired more rail equipment, we
16 have put on more trucks in our trucking fleet to cover
17 potential sales, but I guess it's too early at this
18 point to say in the fringe area if there's an other
19 underlying factor.

20 CHAIRMAN KOPLAN: Yes, Mr. Rydlund?

21 MR. RYDLUND: My only comment would be that
22 we've talked about security regulations in place, but
23 there is a sizeable amount of apprehension regarding
24 what will be new security regulations and how will
25 they affect insurance and things like this. So when

1 we talk about the decline and demand because of
2 security, some of it may be what's in place, but much
3 of it is apprehension.

4 CHAIRMAN KOPLAN: I appreciate that.

5 Mr. Klett, were you reaching?

6 MR. KLETT: No, Mr. Chairman, I was not.

7 CHAIRMAN KOPLAN: Okay. Well, then, I think
8 that covers it for me. I have no further questions
9 and I'll turn to Vice Chairman Okun.

10 Thank you all very much.

11 VICE CHAIRMAN OKUN: Thank you,
12 Mr. Chairman. I think I just have a couple of things.

13 I wanted to return briefly, Ms. Slater, on
14 the issue you were discussing with Commissioner
15 Pearson and Commissioner Aranoff on the fill rates of
16 quotas and what that does or doesn't mean in looking
17 towards future volume.

18 The other thing I had wanted to ask on that
19 is just in terms of you've asked us to look more to
20 the rate overall, the fill rate overall, as opposed to
21 each year, as I understand it.

22 MS. SLATER: Well, I think that's probably a
23 better way to view the agreement and certainly in
24 their submission to the Commerce Department and
25 possibly even something that was submitted here, the

1 Russians have done the same thing. It's the operation
2 of the agreement itself that makes it a little bit
3 difficult to look year by year.

4 VICE CHAIRMAN OKUN: And the only reason
5 I ask that is it struck me when looking at Exhibit 9,
6 Mr. Klett's exhibit, and the industry talking about
7 there was a perceived shortness in the market in this
8 period which drew in non-subjects and if that is also
9 the case for the Russians whether I should be looking
10 to that as what volume will do in the normal case or
11 that the Russians would behave the way other
12 non-subjects would behave, which is more would come in
13 when market conditions demanded it as opposed to just
14 sending stuff in regardless of what's going on in the
15 market. That would be my specific question, to look
16 at that period.

17 MS. SLATER: Obviously, that's a good
18 question, but I want to be clear about the comment
19 concerning how the Russians are shipping. There have
20 been efforts to fill this quota throughout and it's
21 not so much the market conditions. Only two things
22 have in our experience, and Mr. Klett has a better
23 memory, he's just a little bit younger, so if he wants
24 to add anything, but what we've seen is with the
25 exception of very early on when -- and I had actually

1 forgotten that period of time, it's bad memory -- the
2 floor price kicked in, the agreement has a floor
3 price, so if the reference price falls below a certain
4 point it's basically you've got to stick with the
5 floor price.

6 When that floor price kicked in early in the
7 agreement, which frankly was a period of time during
8 which we were coping with the Ukrainian problem, there
9 were no shipments and it was simply a price, the
10 reference price set by the agreement at the floor was
11 too high to be attractive, given what was happening
12 here to the traders. And that happened again for a
13 very brief period of time because of freight issues.

14 But other than that, we've never seen a
15 reluctance of the Russians to ship and they've
16 repeatedly made submissions to the Commerce Department
17 that their feeling is that they need to be able to
18 ship the full quota all the time, every day, every
19 year, and that's been the approach, I think sort of --
20 I don't want to say entitlement, but we should be able
21 to fill the quota and something is wrong if we can't,
22 as opposed to realizing that the market may have
23 differences there.

24 VICE CHAIRMAN OKUN: I appreciate those
25 comments and I had noted Mr. Klett's comments about

1 the floor price and that period as well.

2 And then just finally, with regard to
3 prices, and I know we just had the urea case as well,
4 so we're all thinking about that, but I just want to
5 make sure, we know this is another product where we
6 have seasonality and I just wondered if you could
7 comment at all in looking at the pricing over the
8 period where we have a fair amount of material in the
9 market whether seasonality, whether we should get
10 those same trends on seasonality in judging pricing or
11 is there something else going on in this market that
12 we didn't see in urea that I should think about when
13 looking at the pricing data we have collected.

14 Mr. Klett, you could do that post-hearing.

15 MR. KLETT: I'd be happy to do that
16 post-hearing, Commissioner Okun.

17 VICE CHAIRMAN OKUN: I appreciate that.

18 With that, I have no further questions.

19 Mr. Elliott, I want to wish you a happy
20 birthday. I hope you will get out of Washington in
21 time to celebrate it.

22 CHAIRMAN KOPLAN: Commissioner Hillman?

23 COMMISSIONER HILLMAN: I have just a couple
24 of follow-ups.

25 One, Mr. Klett, you had asked the commission

1 to consider, as you term it, low price of the Russian
2 exports of the stabilized AN to the U.S.

3 I just wanted to make sure, could you submit
4 the price data for this product if it hasn't been
5 submitted yet?

6 MR. KLETT: Commissioner Hillman, we will do
7 so.

8 COMMISSIONER HILLMAN: All right.
9 I appreciate that.

10 Secondly, Ms. Slater, just to follow up on
11 the question I was asking earlier about import
12 statistics versus the use of official statistics for
13 import data versus questionnaire data, I didn't want
14 to say because I wanted to check, I think our staff
15 views that included within the HTS is this liquid AN,
16 which I understand is imported to then convert into
17 UAN.

18 I would only ask for post-hearing if you
19 could just clarify whether you think that's the case
20 and whether it has any impact on the data. In other
21 words, if there isn't any actually being imported,
22 then it doesn't make any difference to me, but whether
23 it would change in any way your sense of how
24 comfortable we should be looking at official
25 statistics understanding the Canadian situation or

1 whether there's anything that you would add on this
2 issue, if I'm right that liquid AN is included within
3 this single HTS number.

4 MS. SLATER: We'll definitely do that,
5 Commissioner Hillman.

6 COMMISSIONER HILLMAN: Okay. Then I guess
7 the third issue for the post-hearing for me would be
8 whether just stepping back from it whether there is
9 anything about the fact that this period of review
10 covers a time in which there was a suspension
11 agreement in effect as opposed to an antidumping order
12 that would cause us to look in some way at what our
13 task is in assessing whether revocation of the order
14 would result in a recurrence of material injury, given
15 we haven't had an order, we've had a suspension
16 agreement, we've talked a lot about how it's been
17 administered, but as a sort of legal policy matter, is
18 there anything about the way in which the commission
19 should approach its task here that you would think is
20 different in light of the fact that what we're looking
21 at is a suspension agreement that has had very
22 specific controls on the volume that were knowable in
23 advance -- everybody knew ahead of time what the
24 volume and, to some extent, what the prices would need
25 to be for the imports, whether that affects how we

1 should look at.

2 MS. SLATER: That's something I would love
3 to also have the opportunity to respond more fully to
4 post-hearing, but I think it is an important question
5 because, unlike a situation with an order where the
6 foreign producers and exporters and importers have had
7 the opportunity to interact differently in the market,
8 in theory, this is not a punitive antidumping order,
9 it's not a punitive exercise. The idea is to bring
10 about fair pricing and we sometimes see how exporters
11 adjust their pricing and actually can eliminate
12 dumping margins and develop fair pricing. That's not
13 what's happened here.

14 In this situation, we do have this imposed
15 discipline, which is, I think, the best way to think
16 of it, both in terms of volume and price, and I think
17 you do need to look at it in terms of, number one,
18 understanding that the experience with the Russian
19 producers has been a result that discipline. The
20 pricing data that you have, for example, is not going
21 to tell you anything what will happen absent the
22 agreement because every price every week has been
23 dictated by the suspension agreement, those are
24 reference prices.

25 Unlike a dumping order then, you really

1 can't look and see how the foreign producers and
2 exporters and importers and approach the market, so I
3 think that's not an insignificant piece of it.

4 COMMISSIONER HILLMAN: If there are further
5 comments in the post-hearing, I would welcome them as
6 well to help us understand how to look at this.

7 Another issue that I would ask again for you
8 to discuss a little bit in your post-hearing brief and
9 I would welcome comments from the producers here,
10 I remember being struck in your opening statement that
11 very little has changed and on the other hand I look
12 at this and say, okay, we've gone from 10 producers
13 down to two, we've gone to production at the level of
14 whatever it was, 2.7 million tons, down to something
15 closer to a little over one something.

16 I'm curious from the domestic producers'
17 perspective how much you change you feel in terms of
18 price competition, given that in the original
19 investigation you were competing with imports and with
20 nine other competitors; you are now down to competing
21 with only two, you've got a domestic duopoly here.
22 How do we take that into account in terms of thinking
23 about the nature of the market today and how different
24 it is from the nature of the market at the time of the
25 original investigation in terms of sort of

1 intra-domestic competition?

2 Do you want to answer that in the
3 post-hearing?

4 MS. SLATER: I think it's such a good
5 question that everyone is either getting hungry or
6 wanting to think about it.

7 COMMISSIONER HILLMAN: Okay. My last, and
8 I hope very quick question.

9 For those farmers who had been using AN, I'm
10 still trying to make sure I understand it, whose
11 distributors who are no longer carrying AN because of
12 the security hassle factor, what are they doing for
13 their nitrogen?

14 MR. GOUGH: Commissioner, where we run into
15 these cases, you know, it's a sad fact, there's
16 farmers that do not have access to AN that would like
17 to have it and we don't see this in a wide area, it
18 happens to be like one of my workers that he's from
19 Oklahoma, you know, you happen to be back home, talk
20 to a guy. You know, they've either had to switch in a
21 lot of cases, mainly probably more to urea than UAN
22 because a lot of times when a person makes a switch,
23 he's a dry blender that also handles phosphate and
24 potash. So the typical switch is usually to urea,
25 but, you know, it get backs to as you get out into

1 some of these areas where you don't have two or three
2 dealers, say, within a 15, 20 mile radius, where they
3 may be 30 miles apart, 40 miles, the guy gets resigned
4 to use what's available from his dealer.

5 COMMISSIONER HILLMAN: Mr. Green or
6 Mr. Elliott, would you have a comment on that?

7 MR. GREEN: Commissioner, my comment on that
8 is that the retail dealer sells programs to farmers
9 that usually align with his business and with supply
10 or distribution or another mode of application. So he
11 is the middle person that is able to swing the demand
12 at the farmer level. He can either stop selling
13 ammonium nitrate and convert them to some other
14 product that suits his system or he might lose the
15 business. But in most instances, they've converted to
16 some other product.

17 COMMISSIONER HILLMAN: Okay. All right.
18 I appreciate those responses.

19 With that, I have no further questions, but
20 I would like to thank this panel very much for your
21 answers. Thank you.

22 CHAIRMAN KOPLAN: Thank you.
23 Commissioner Lane?

24 COMMISSIONER LANE: Commissioner Hillman
25 asked the one question that I wanted to ask, but I'm

1 not sure that I understood the answer and that is if
2 you are a user of AN and it's not available, what are
3 the substitutes for that product that are available
4 out there for the people to use.

5 I understood what Mr. Gough said, but
6 I wasn't quite sure what Mr. Green said.

7 MR. GREEN: Commissioner, the alterative
8 nitrogen sources at the farm level would be anhydrous
9 ammonia, nitrogen solution or urea. There's also
10 ammonium thiosulfate, but to a lesser extent would
11 farmers convert to that product.

12 COMMISSIONER LANE: Okay. Thank you.

13 Anybody else want to respond to that?

14 MR. ELLIOTT: Just a little more detail.
15 Mr. Green mentioned anhydrous ammonia, UAN, which take
16 different application equipment than the switch to
17 urea, which is a dry product similar to ammonium
18 nitrate.

19 As Mr. Gough said earlier, I suspect most of
20 that switch is to urea just for the simple fact that
21 it's the same type of application equipment as was
22 needed for ammonium nitrate.

23 COMMISSIONER LANE: Okay. Thank you.

24 That's all I had, Mr. Chairman.

25 CHAIRMAN KOPLAN: Thank you.

1 Commissioner Pearson?

2 COMMISSIONER PEARSON: I'd like to ask the
3 industry witnesses a question to try to understand how
4 important to your support for this continuation of
5 this suspension agreement, how important is the low
6 pricing of natural gas in Russia?

7 Let me ask the question this way. If during
8 the period of review Russia had made policy changes to
9 allow natural gas for the production of ammonium
10 nitrate to be priced at market levels, commercial
11 levels, something related to what they're selling gas
12 into Western Europe for, if that had happened, would
13 you still be here supporting continuation of this
14 agreement, of this suspension agreement?

15 Mr. Green, do you want to start?

16 MR. GREEN: Commissioner, if that would have
17 been the case, we would have seen those prices change;
18 there would have been a direct relationship of
19 increased prices of ammonium nitrate from Russia
20 throughout the world that we haven't seen today.
21 Therefore, we have cause here or reason to believe
22 that prices would not increase to those levels. So
23 the world market is what it is and until we see higher
24 prices coming out of the Black Sea, we would have
25 hesitation.

1 COMMISSIONER PEARSON: I'm not criticizing
2 you for being here in any sense, I just was trying to
3 set up a hypothetical situation in which we could talk
4 about how important is the natural gas pricing in
5 Russia to this whole case.

6 Mr. Rydlund, do you have anything to add?

7 MR. RYDLUND: I believe the issue is that
8 where we're at is the price of the Russian products
9 being brought into the United States. What effect the
10 price of natural gas would have on the price that the
11 product is sold into the United States, that I am not
12 sure of. Granted, you would think it would have to be
13 higher, but to what extent?

14 COMMISSIONER PEARSON: Okay. Well, then let
15 me approach it this way. What other factors are there
16 about the Russian industry that would give you an
17 expectation that they would continue to dump
18 aggressively if they were having to pay a market price
19 for their natural gas?

20 MR. RYDLUND: They have a large amount of
21 excess capacity and so there is a need to run those
22 plants.

23 MS. SLATER: Let me, if I may, just follow
24 on. It's something that we actually talked a little
25 bit about yesterday. In addition, in this particular

1 sector of ammonium nitrate, in addition to the gas
2 pricing problem which I think as Mr. Green sort of
3 recognizes, if gas prices in the next five years or in
4 the last five years had been reformed and we saw an
5 impact in product prices, I do think the industry
6 would feel differently.

7 There's an additional factor and that is
8 Gazprom has a very substantial ownership in Russian
9 ammonium nitrate production, both directly and
10 indirectly.

11 Now, what does that mean?

12 That means that in addition to the
13 government, and this is laid out very nicely in the
14 little Fertecon report that's attached to our brief,
15 in addition to the state control of gas pricing,
16 Gazprom has in addition the ability to manipulate some
17 of the gas supply and pricing into its affiliated
18 plants.

19 Whether that would be reformed, you could
20 make an argument for why that would happen, although
21 I could argue it either way. Whether that would also
22 happen with general domestic industrial gas pricing
23 reform in Russia, Commissioner, I don't think we know,
24 but I don't think that anyone here based on
25 discussions we've had previously would disagree that

1 that's the root of the problem, the tremendous
2 capacity which continues to exist because production
3 is still economic with quotes around it, based on the
4 pricing of gas there today.

5 COMMISSIONER PEARSON: Let me put the
6 question in the context of what we heard a number of
7 weeks ago from the U.S. urea industry.

8 There, they had come in in support of a
9 continuation of the agreement in regard to Russia and
10 Ukraine and they had made a conscious decision to
11 exempt several countries that previously had been
12 under the order from still having the order apply and
13 they made that decision, based on my understanding of
14 their testimony, largely on the basis that those
15 countries had in the preceding years adjusted to a
16 more market based pricing for natural gas and so they
17 said if they're going to have to pay world price for
18 their gas, then let them compete.

19 So what I'm trying to understand is is the
20 situation different for ammonium nitrate than for urea
21 in terms of the importance of natural gas and, if so,
22 I'd like to understand why a little better than I do
23 right now.

24 MS. SLATER: My impression, and I apologize
25 for jumping in, I think that some of the other company

1 people I would want to consult with and maybe also
2 answer you post-hearing, but my impression is very
3 strongly that it's the same. The root of the issue is
4 very much the same and it really does relate to gas
5 and real gas pricing reform with the footnote of that
6 troubling Gazprom control of such a high portion of
7 the industry, understanding that Gazprom is still
8 controlled by the Russian government, really is the
9 root cause of this problem and getting reform of
10 Russian gas pricing is going to help in this regard as
11 well.

12 COMMISSIONER PEARSON: Well, please go ahead
13 and think about this a little bit and respond in
14 post-hearing because I'd be curious to know what your
15 views might be.

16 One other quick question. In 1998, the
17 commission did a Section 332 study regarding ammonium
18 nitrate and I wasn't here to participate at the time,
19 but I've had a chance to review it briefly. A couple
20 of issues that were kicked around in that study had to
21 do with the relatively higher regulatory burdens on
22 U.S. producers compared to the Russians and so maybe
23 for purposes of the post-hearing, unless you have
24 something you want to say extemporaneously, how would
25 you contrast the regulatory burden in the U.S. now

1 with the regulatory burden in Russia?

2 And we should look at that, I think, in the
3 light of what new investments or new costs would be
4 required in the United States to meet the changing
5 regulations here compared to what new outlays might be
6 required by the Russians to meet whatever change they
7 might have in their standards.

8 MS. SLATER: We'll certainly take a look at
9 that, Commissioner. I'm not sure how much information
10 we will have today on the requirements for the Russian
11 industry. It's our understanding that the types of
12 legal and regulatory schemes that we have pervasively
13 in this country are not yet in place in the Russian
14 Federation, but we'll do our best to look it up and
15 I'm sure the Respondents will also be able to help
16 with that.

17 COMMISSIONER PEARSON: Okay. Because it's
18 at least plausible that the U.S. industry is much
19 better positioned to deal with whatever additional
20 tightening of the regulatory environment we might have
21 here than the Russian industry might be to deal with
22 whatever they might have to do to come up to what we
23 might see as a world standard in terms of the
24 operation of their plants.

25 Mr. Green, you're shaking your head. Is it

1 at least a reasonable question?

2 MR. GREEN: Commissioner, I believe so.

3 COMMISSIONER PEARSON: Okay. Thank you.

4 Ms. Slater, anything final?

5 MS. SLATER: Well, I do want to note that
6 the Russian -- and I sort of hark back to this and it
7 really relates to your question about gas pricing and
8 what's happening with the Russian industry. That
9 industry is not -- relic is the wrong word, but it
10 gives you the right impression. It is really a relic
11 of the Soviet agronomic system which set up these
12 plants in all kinds of places, as you've seen from
13 your own listing of locations, places that I have had
14 trouble finding, frankly, on a map in some cases. I
15 know Mr. Morgan will repeat that back to me. But the
16 existence of this industry which continues to this day
17 is really a function of the absence of not only the
18 gas pricing, but a need of these plants to modernize
19 and compete on a world basis. And so your questions
20 go really to the heart of it.

21 What's happening there to date? Not a lot
22 is happening, other than to the extent particular
23 Russian producers have chosen to modernize themselves
24 and to try and compete on a world stage, but even
25 those producers benefit from this wonderfully priced

1 gas.

2 So it's a matter of still dealing with
3 something which is capacity with a very large C headed
4 to our market, which is right at the top of the list
5 of imports. No matter what changes eventually will
6 take place there, it's not going to be tomorrow and
7 it's not going to be next year. This is something
8 that is going to have to work itself out over time,
9 involving legal policies, regulatory policies of the
10 Russian Federation.

11 Thank you.

12 COMMISSIONER PEARSON: Thank you very much.

13 Mr. Chairman, I have no further questions.

14 CHAIRMAN KOPLAN: Thank you.

15 Commissioner Aranoff?

16 COMMISSIONER ARANOFF: One very brief
17 follow-up.

18 We've discussed at some length this morning
19 some of the arguments concerning whether or not
20 there's a shortage in the market and I would just
21 note -- I note your generalized response that that's
22 just not true. There are some particular purchasers'
23 comments that are quoted in the Respondents' brief and
24 I would just ask in your post-hearing if you would
25 look at those specific purchasers' comments on

1 shortages and respond with what you think was going on
2 there and whether it signifies anything more broadly
3 in the market.

4 MS. SLATER: We'll absolutely do that and
5 I do want to note that I think you had something
6 like -- the numbers are in the ballpark of 15
7 purchaser responses. They were asked a very specific
8 question which I believe the Russian counsel may even
9 have suggested concerning availability of supply. The
10 overwhelming majority of those answers were that there
11 was no problem. As to the ones which have been sort
12 of highlighted by the Russian producers in their
13 brief, I think we could very easily deal with those in
14 post-hearing.

15 COMMISSIONER ARANOFF: I appreciate that.
16 That would be very helpful.

17 With that, I want to thank the panel and
18 I have no further questions.

19 CHAIRMAN KOPLAN: Thank you.

20 Vice Chairman Okun?

21 Commissioner Hillman?

22 COMMISSIONER HILLMAN: Only one quick slight
23 follow-up on a broader level on this issue.

24 You cite a number of figures from Fertecon
25 in your brief. Particularly, on page 11 of your brief

1 you're talking about Fertecon's numbers for domestic
2 consumption of AN, both now and going forward. I just
3 want to make sure I understand from you whether you
4 think it is valid for us to compare Fertecon's
5 projections of domestic consumption with the projected
6 production or capacity levels of the two domestic
7 producers, Terra and El Dorado, in terms of how we
8 should assess whether there is or is not adequate
9 domestic supply of the product.

10 MS. SLATER: Well, let me answer that in two
11 ways. There are a number of projections out there and
12 the way that I believe Fertecon has probably built up
13 their projections -- you're talking about for the U.S.
14 market?

15 COMMISSIONER HILLMAN: Correct.

16 MS. SLATER: It may be, and we'll try and
17 confirm this, those numbers are not consistent for the
18 U.S. market with others that we have seen. They may
19 be looking, as the Commission might do, without
20 looking in detail, looking at imports into the market
21 which would include the Canadian non-subject
22 merchandise, so we'll try and look at that, but we
23 think probably that number is a little bit on the high
24 side.

25 One of Terra's senior executives has

1 projected moving forward a million ton market. That's
2 looking a little more like some of the other numbers
3 that we see. It's very difficult. Fertecon is
4 probably on the high side for reasons having to do
5 with their methodology and I probably would suggest
6 that that's not the best and most realistic number to
7 use.

8 COMMISSIONER HILLMAN: Well, if there is
9 more that you want to add in the post-hearing on those
10 particular Fertecon numbers, that would be helpful.

11 MS. SLATER: We'll do that.

12 COMMISSIONER HILLMAN: With that, I have no
13 further questions.

14 Thank you.

15 CHAIRMAN KOPLAN: Anything else from the
16 dais?

17 (No response.)

18 CHAIRMAN KOPLAN: If not, Mr. Deyman, with
19 the amount of material you have in front of you,
20 I have to assume you've got some questions.

21 MR. DEYMAN: No, Mr. Chairman. I have no
22 questions and the staff has no questions.

23 CHAIRMAN KOPLAN: All right. Thank you.

24 Mr. Morgan, do you have questions of this
25 panel before we excuse them?

1 MR. MORGAN: No, Chairman Koplan.

2 CHAIRMAN KOPLAN: With that, I want to thank
3 you all for your testimony.

4 Mr. Elliott, I hope you have enough time
5 left to celebrate today in a fashion other than this.

6 We will come back here at a quarter of two.

7 I would remind you that the room is not
8 secure, so that anything that's BPI you should take
9 with you.

10 The commissioners will be back here 15
11 minutes prior to that because we have an
12 administrative matter to take care of here.

13 I will see you all back here at a quarter
14 of two.

15 (Whereupon, at 12:48 p.m., a recess was
16 taken.)

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

(1:45 p.m.)

CHAIRMAN KOPLAN: We will come back to order.

Mr. Secretary, have the witnesses been sworn?

MR. BISHOP: Yes, Mr. Chairman.

Panel 2, those in opposition to continuation of the antidumping duty order, has been seated. All witnesses have been sworn.

CHAIRMAN KOPLAN: Thank you.
You may proceed, Mr. Morgan.

MR. MORGAN: Thank you, Chairman Koplan.
Good afternoon to the commissioners and staff. I am happy to announce that our testimony should be short, to the point and maybe deliver an early birthday present to Mr. Elliott and get him out of here.

Nicholas Adamchak of Ameropa will begin our presentation by discussing his experience in the U.S. AN market.

My colleague, Jay Campbell, will follow with a discussion of changes in the conditions of competition that have occurred and what they mean going forward and I will conclude with some brief

1 remarks.

2 With that, Nick?

3 MR. ADAMCHAK: Good afternoon, Commissioners
4 and commission staff. My name is Nick Adamchak. I'm
5 the managing director of Ameropa North America.

6 Ameropa is a global manufacturer and
7 distributor of chemical fertilizers and the company is
8 headquarters in Basel, Switzerland.

9 Founded in 1948, Ameropa today employs over
10 1100 people and has 28 offices in 19 countries around
11 the world. We handle and distribute roughly
12 10 million tons globally.

13 In the United States, we import and sell all
14 major fertilizer types, including ammonium nitrate,
15 which we supply primarily to the southeast and mid
16 south.

17 I've been in this position for two years. I have
18 worked in the fertilizer business for 23. My
19 colleague, Mike Ward, joins me today. Mike is the
20 regional marketing manager of Ameropa North America
21 and Mike has been in the fertilizer business for 26
22 years. Mike and I thank you for the opportunity to
23 share our views today.

24 I understand that the commission's task is
25 to decide whether termination of the suspension

1 agreement would be likely to lead to increased volumes
2 of low-priced imports that would injure U.S. producers
3 of ammonium nitrate.

4 For three key reasons, I believe the reason
5 to this question is a resounding no.

6 The first of these issues that I'm going to
7 speak to is logistical constraints.

8 In the post-9/11 environment, federal and
9 state officials have issued strict regulations on the
10 sale and distribution of ammonium nitrate. The Coast
11 Guard issued regulations in 2004 that require vessels
12 and warehouses along the river system to put
13 substantial security measures in place for the
14 handling of ammonium nitrate. These and related
15 measures have increased the cost of handling and
16 distributing AN, as have rising insurance and
17 liability costs.

18 As a result, there is less infrastructure to
19 enable importers to bring in and distribute ammonium
20 nitrate from offshore.

21 We believe that ammonium nitrate can now
22 enter this country through only two ports, those being
23 New Orleans and Tampa. Of these two ports, only Tampa
24 is certified to warehouse ammonium nitrate in the
25 port.

1 Conversely, all ammonium nitrate that goes
2 through New Orleans has to be loaded directly onto
3 barges for distribution, but because of the costs and
4 liability stemming from the security issues, there are
5 only two barge lines that continue to transport
6 ammonium nitrate and the prospect of additional barges
7 coming into that service is remote.

8 As a result, our ability to import through
9 New Orleans is limited. In fact, one of the two barge
10 lines involved is involved in Chapter 11 proceedings
11 and has been wholly unresponsive to our calls and
12 inquiries to barge our nitrate.

13 The other of the performing barge lines will
14 commit to contracting only 40 percent of our projected
15 import requirement.

16 In addition, numerous warehouses along the
17 river system have opted not to take the necessary
18 steps to obtain a permit from the Department of
19 Homeland Security that would allow them to store
20 ammonium nitrate. As a result, many customers that
21 used to take product from New Orleans via barge are
22 now taking product predominately by truck and rail, if
23 at all.

24 At the same time, we cannot supplement our
25 New Orleans distribution system through Tampa. The

1 Tampa port has approved only one terminal for the
2 storage of ammonium nitrate. That terminal has a
3 capacity of 30,000 tons, which is shared by ourselves
4 and one other importer and together we are maximizing
5 the throughput of that facility.

6 Moreover, we cannot economically supply New
7 Orleans based customers with product imported through
8 Tampa because inland delivery costs are prohibitive
9 and rail service has been unreliable.

10 Because of these constraints, both related
11 to security and otherwise, we could not import
12 substantially greater amounts of ammonium nitrate even
13 if market conditions warranted. I am confident that
14 this holds true for the other fertilizer importers as
15 well.

16 The second reason a termination in our
17 opinion will not lead to an increase in volume that
18 will harm U.S. producers is because we believe any
19 increase in Russian imports will likely come at the
20 expense of non-subject imports. This is likely
21 because the Russians offer higher quality, superior
22 loading capabilities at their ports and better
23 opportunities to combine ammonium nitrate shipments
24 with other products to reduce overall freight costs.

25 The third reason that we think that

1 termination of the suspension agreement would not
2 injure U.S. producers is that the U.S. market is
3 significantly under supplied by domestic production.

4 At the time of the original investigation,
5 there were ten U.S. producers. Now, we are down to
6 two. This rationalization represents the loss of more
7 than half of the U.S. nitrogen capacity and has
8 occurred after the inception of the suspension
9 agreement and thus could not be driven or contended to
10 be driven by Russian imports.

11 In the southeast alone, PCS, Nitram and Air
12 Products have all discontinued ammonium nitrate all
13 together or have directed their efforts elsewhere.

14 Agrim and Simplod have exited the business
15 as well. some of these producers have shut down
16 because they could not contend with high U.S.natural
17 gas costs. Others have exited because of security
18 concerns.

19 Putting the loss of U.S. capacity into
20 context, even before the suspension agreement, U.S.
21 production was unable to meet total U.S. demand. The
22 U.S. market has always relied on imports.

23 Now, with just two U.S. producers, the need
24 for imports has become even more important, but
25 unfortunately imports are insufficient to make up the

1 shortfall in supply. Despite the decline in U.S.
2 capacity over the years, the imports of ammonium
3 nitrate have generally been static and even have begun
4 to decline because of logistical constraints we spoke
5 to before.

6 Unlike urea, ammonium nitrate is not
7 produced all over the world. For the most part,
8 ammonium nitrate can be sourced from a few countries
9 in Western Europe, such as the Netherlands and Spain,
10 and from Eastern European countries like Bulgaria and
11 Romania. That's basically it.

12 Although consumption has decreased due to
13 the decline in availability, core demand remains
14 stable. As Matt said earlier, ammonium nitrate
15 remains an important nitrogen source for farmers
16 because it offers performance that other nitrogen
17 fertilizers cannot match.

18 Compared to other nitrogen fertilizers,
19 ammonium nitrate is more stable in hot, humid climates
20 and is better suited for the specialty crops and for
21 no-till farming.

22 Unfortunately, during the past five years,
23 available of ammonium nitrate has decreased
24 dramatically and therefore is no longer sufficient to
25 meet the demand from American farmers.

1 Because of the insufficient domestic supply
2 and what we perceive to be stable core demand, I do
3 not think that the termination of the suspension
4 agreement would harm U.S. producers as they will still
5 sustain significant pricing power in the marketplace.

6 The minimum FOB price that Russian exporters
7 must charge under the suspension agreement has
8 recently become too high for Russian ammonium nitrate
9 to be economically viable in the United States. The
10 suspension agreement requires Russian exporters to
11 charge a minimum FOB price called the reference price.
12 Over the past few years, ocean freight and U.S. inland
13 transportation costs have increased sharply, yet the
14 formula for calculating the reference price has not
15 been adjusted to account for these increased costs.

16 Simply stated, if we had consistent
17 competitive access to either Russian or non-subject
18 imports, we would not be here.

19 Now, if the suspension agreement were
20 removed, Russian FOB values could be adjusted to the
21 distribution variables and remain competitive the
22 United States, but this does not mean that Russian
23 product would be sold aggressively at low prices into
24 this market and therefore harm U.S. producers.

25 To the contrary, Russian producers are well

1 aware of the conditions in the U.S. market and will
2 take advantage of any U.S. price premium, much the
3 same way they have done with UAN and ammonia.

4 In addition, importers would seek to
5 maximize their returns and since the U.S. market is
6 tight they would have zero business incentive to
7 undercut U.S. market prices.

8 The fact that the U.S. market is tight is
9 underscored by the fact that according to
10 TFI statistics, the inventory for the domestic
11 manufacturers at the end of December which is on the
12 threshold of the start of the domestic season was just
13 35,000 tons. This is 60 percent reduced from what it
14 was a year ago and a long way away, in our opinion, of
15 being able to service the capacity that is out there.

16 We have what we consider to be an excellent
17 relationship with Terra and to a lesser extent with
18 El Dorado and a great deal of respect for both of
19 them. I strongly believe that the American farmer
20 should have a domestic source of supply and I am
21 confident that U.S. farmers will continue to support
22 that production.

23 From our perspective, this is more about our
24 customers, particularly those in Florida, who have
25 seen their three largest suppliers of ammonium nitrate

1 go out of business or discontinue production in the
2 last few years. They grow a significant share of this
3 country's citrus, strawberries, cucumbers and the like
4 and desperately need ammonium nitrate to do so. Any
5 prolonged irregularity of supply could mean that they
6 will soon be growing condominiums.

7 I am also here today because the suspension
8 agreement no longer works and no longer serves the
9 intended purpose that it was originally put in place
10 for.

11 With so many U.S. producers dropping out of
12 the ammonium nitrate business, American farmers need
13 access to offshore product. In the aftermath of
14 Katrina and Rita, this country went several months
15 without domestic production of any kind. AN is too
16 important and too strategic to have its supply subject
17 to such vulnerability.

18 Russian ammonium nitrate is critical to
19 maintaining the supply balance in the United States
20 and there is no longer any sound justification for
21 restricting its trade.

22 Thank you again for the opportunity to share
23 my views. Mike and I will be happy to answer any
24 questions that you may have.

25 CHAIRMAN KOPLAN: Mr. Campbell?

1 MR. CAMPBELL: Thank you, Nick.

2 Good afternoon, Commissioners. My name is
3 Jay Campbell. I am a lawyer at White & Case and I am
4 here today on behalf of the Russian respondents.

5 In their pre-hearing brief, the U.S.
6 producers argue that market conditions have not
7 changed significantly since the original investigation
8 and thus that Russian imports would again injure the
9 U.S. industry if the discipline of the suspension
10 agreement were removed.

11 We disagree. The record shows that several
12 fundamental changes have occurred since the commission
13 first investigated the ammonium nitrate market and we
14 submit that these changes support a negative
15 determination in this review.

16 I will briefly discuss four of these changes
17 and how they affect the commission's perspective
18 analysis in this review.

19 The first major change, the supply of
20 ammonium nitrate available to the U.S. market has
21 decline markedly since the original investigation.
22 Now and going forward, supply is not sufficient to
23 meet U.S. demand. Mr. Adamchak addressed this earlier
24 and I will not go into detail, but I would like to
25 reiterate the main points.

1 Again, at the time of the original
2 investigation, there were ten U.S. producers of
3 ammonium nitrate. There are now only two. Notably,
4 U.S. producers have exited for reasons unrelated to
5 Russian imports such as the desire to reduce exposure
6 to security issues.

7 Because of the shutdowns, U.S. demand now
8 and going forward greatly exceeds the remaining U.S.
9 producers' capacity to produce ammonium nitrate.

10 At the same time, the availability of
11 imports has also declined. Mr. Adamchak discussed the
12 logistical constraints on importing the ammonium
13 nitrate, particularly those resulting from the new
14 security measures, and data compiled by the commission
15 staff support his assertions.

16 Table C-1 of the pre-hearing staff report
17 shows that U.S. shipments of all imports decreased by
18 over percent when comparing interim 2004 to interim
19 2005. Notably, this reduction occurred while U.S.
20 prices for ammonium nitrate were increasing.

21 This evidence supports the notion that in
22 today's marketplace and going forward there is only so
23 much ammonium nitrate that can be imported into the
24 United States, even when the U.S. market is attractive
25 relative to other markets.

1 Together, the reduction in U.S. capacity and
2 imports has created a shortage such that available
3 supply no longer meets U.S. demand, today and going
4 forward.

5 In Sections 2-A and 5 of our pre-hearing
6 brief we have estimated the supply gap and, as
7 explained in the brief, we believe that our estimate
8 is conservative.

9 Questionnaire responses supported by
10 purchasers also support the finding that there is a
11 supply gap and we cite these responses at page 5 of
12 pre-hearing brief.

13 The existence of the supply gap weighs
14 strongly against the determination that ending the
15 suspension agreement --

16 CHAIRMAN KOPLAN: Excuse me. I believe what
17 you referred to in C-1 is bracketed.

18 MR. CAMPBELL: No, Commissioner. I don't
19 believe so. It's the public version. I'm referring
20 to total imports. I'm looking at page C-3 of the
21 public version of the pre-hearing staff report.
22 There's a line, U.S. shipments of imports from all
23 sources and it has quantity. That's what I'm
24 referring to.

25 CHAIRMAN KOPLAN: All sources, the quantity

1 line on all sources?

2 MR. CAMPBELL: Right.

3 CHAIRMAN KOPLAN: I stand corrected.

4 I apologize for that.

5 MR. CAMPBELL: To conclude, the existence of
6 the supply gap weighs strongly against a determination
7 that ending the suspended investigation would be
8 likely to lead to material injury.

9 While on the subject of a supply gap,
10 I would like to encourage the commission not to
11 confuse declining consumption for declining demand.
12 The pre-hearing staff report shows that U.S. apparent
13 consumption of ammonium nitrate is declining and we do
14 not dispute that finding, but the existence of a
15 supply deficit means that the decline in consumption
16 reflects a decline in availability more than a decline
17 in demand.

18 Although several importers and distributors
19 have reported that U.S. demand for ammonium nitrate is
20 declining, as have the U.S. producers, we believe that
21 they are confusing consumption for demand.

22 Ultimately, farmers determine the level of demand for
23 ammonium nitrate and because of its unique
24 characteristics, demand historically has been steady.

25 The considerable drop in U.S. consumption

1 from 1999 today is thus largely the result of less
2 availability. For instance, none of the crops that
3 use ammonium nitrate have had correspondingly
4 significant declines in the acreage planted that would
5 explain the decline in consumption.

6 Nevertheless, in estimating the supply gap,
7 consumption is a proxy for demand and this is just one
8 of the reasons we believe the true gap is even larger.

9 The second major change is that Russian
10 consumption of ammonium nitrate has increased
11 considerably since the original investigation and this
12 has led to a decrease in Russian exports. Ammonium
13 nitrate has always been the fertilizer of choice in
14 Russia and Russian production was primarily designed
15 to serve Russia's vast agricultural sector. But after
16 the dissolution of the Soviet Union, Russia's
17 agricultural production collapsed and Russian
18 producers turned to export markets.

19 In it's Section 332 report, the commission
20 concluded that the pressure on Russian producers to
21 export could soften as the Russian economy improved
22 and domestic consumption of ammonium nitrate
23 increased. Although this had not occurred by the time
24 of the original investigation, the outlook has
25 improved since then. The Russian economy has been

1 growing at a high rate and Russian consumption of
2 ammonium nitrate has increased considerably. I refer
3 the commission to Section 2(e)(2) of our pre-hearing
4 brief for the supporting figures.

5 With Russia's ammonium nitrate market
6 recovering, we're beginning to see Russian producers
7 reduce exports in favor of shipments to the home
8 market, just as the commission predicted in its 332
9 report. Table 4-4 of the pre-hearing staff report
10 shows that over the course of the period of review,
11 the responding Russian producers reduced exports by
12 12 percent while increasing home market shipments by
13 12 percent.

14 Recent trade reports also support the
15 conclusion that Russian producers are limiting exports
16 in favor of home market shipments and we provide
17 examples of these trade reports in Exhibits 14 and 15
18 of our pre-hearing brief.

19 This trend of increasing shipments to the
20 Russian home market is likely to continue as Russian
21 home market demand is projected to increase. Thus,
22 the recovery of Russian's ammonium nitrate market
23 reduces the likelihood that subject import volume
24 would be significant after termination of the
25 suspended investigation.

1 The third major change, that the cost of
2 shipping ammonium nitrate from Russian ports to the
3 United States has increased considerably over the past
4 two years. Ocean freight rates increased 21 percent
5 from 2003 to 2004 and another 42 percent in 2005.

6 The fourth major change, that the U.S.
7 industry is leaner and stronger than it was during the
8 original investigation. In the original
9 investigation, the U.S. industry consisted of ten
10 producers. Today, the U.S. industry consists only of
11 Terra and El Dorado and those companies' performance
12 is reflected at page 17 of our pre-hearing brief.

13 Without getting into specifics due to BPI,
14 we submit that the U.S. industry that exists today and
15 going forward is healthy. U.S. producers argue that
16 the domestic industry is vulnerable, however, pointing
17 to high and volatile natural gas costs and declining
18 demand, but the record facts refute this contention.

19 Regarding natural gas costs, the record
20 shows that the U.S. industry can perform well, despite
21 higher costs, as it did through the first nine months
22 of 2005. During this period, the U.S. industry was
23 able to raise prices to cover rising gas costs.

24 Notably, U.S. producers were able to raise
25 prices largely because of the reduced availability of

1 ammonium nitrate, not because of the suspension
2 agreement.

3 Looking ahead, all parties expect natural
4 gas costs to decline somewhat in 2006, which suggests
5 that the remaining U.S. producers of ammonium nitrate
6 will continue to be able to deal with gas costs. The
7 rapid and recent decline in natural gas spot prices to
8 \$8.55 per million British thermal units as of the week
9 ending January 12th supports this declining trend.

10 Regarding demand, we disagree that the
11 demand is declining at a significant rate. The U.S.
12 producers point to declining U.S. consumption as
13 evidence of declining demand, but, again, the
14 consumption numbers for the most part reflect the
15 reduced availability of ammonium nitrate and not
16 declining demand.

17 Another point here is that U.S. producers
18 today discussed at length how the U.S. market is
19 declining. They described a shrinking market,
20 shrinking demand. But if demand is shrinking, you
21 would expect prices to fall as well. That's Economics
22 101. But we haven't seen that. Instead, in fact, in
23 the past year, U.S. prices have been increasing quite
24 a bit. The most reasonable explanation for that is
25 that there is reduced availability to the market.

1 The reduced availability in turn explains
2 why the U.S. industry has been able to raise prices
3 and return to profitability. Contrary to the U.S.
4 producers' claim, then, the declining consumption data
5 actually show why the U.S. industry is strong and not
6 vulnerable to subject imports.

7 Frank will now conclude our panel's
8 presentation by discussing a few miscellaneous issues.

9 Thank you very much.

10 MR. MORGAN: Thank you, Jay.

11 I'll just touch on a few issues, hopefully
12 very quickly.

13 With respect to likely volume, there are a
14 few points we urge the commission to keep in mind.

15 First, the size and available capacity in
16 Russia must be taken in context. As we discussed at
17 pages 22 to 25 of our pre-hearing brief, only a subset
18 of the Russian industry might export to the United
19 States upon termination and this still depends upon
20 favorable pricing, ocean freight and so forth.

21 The distances for the two producers that
22 Commissioner Aranoff mentioned earlier which appear in
23 confidential Table 4-3 are simply on a different order
24 of magnitude than distances of other Russian producers
25 in terms of how far they are from the port. There is

1 just not even a comparison.

2 And I heard testimony about capacity
3 utilization rates, but when you look at the record
4 over the course of eight years, you do not see full
5 capacity utilization. It's in the original
6 investigation report as well as in the report from
7 this review. There is just not 100 percent
8 utilization rates ever report.

9 CHAIRMAN KOPLAN: Can you move that
10 microphone a little closer to you?

11 MR. MORGAN: Certainly.

12 And, again, and I believe that Ms. Slater
13 mentioned this in her testimony, the Russian producers
14 that have responded to the commission's questionnaire
15 account for the overwhelming majority of Russian
16 exports worldwide, not just the U.S.

17 Second, the Russian industry is far more
18 oriented towards domestic consumption since the
19 restructuring of the Russian agricultural sector. We
20 provided information on this issue as Exhibit 20 of
21 our confidential pre-hearing brief, which in turn was
22 taken from information the domestic industry itself
23 provided. The domestic producers provided additional
24 information at page 5 of Exhibit 2 to their
25 confidential pre-hearing brief, which, again, we view

1 as supporting our position this issue.

2 As Jay addressed in his testimony, and as
3 I believe you'll hear in questions, AN is the dominant
4 fertilizer in the Russian home market. It will
5 continue to be and we believe the evidence shows that
6 demand for it is continuing to strengthen.

7 Third, while some third country measures on
8 Russian AN exist, we do not believe they will result
9 in a significant shift in exports to the United
10 States. Notably, despite imposition of these
11 measures, the Russian industry's capacity utilization
12 rates have remained fairly steady, owing primarily to
13 increases in home market shipments.

14 In the context of these factors, the gap
15 between U.S. supply and demand and the limitations on
16 volume resulting from U.S. security regulations, we
17 submit that any increase in the volume of any Russian
18 AN would not be significant upon termination.

19 Just commenting on a few miscellaneous
20 issues that were present in the domestic industry's
21 pre-hearing brief, they alleged under selling based on
22 levels that we just don't believe are plausible. As
23 Mr. Adamchak testified to, in a market that is under
24 supplied, there is no incentive to undercut prices to
25 move volume.

1 These incentives are further constrained by
2 security regulations which have increased the cost of
3 distributing ammonium nitrate.

4 Those companies still willing to handle
5 ammonium nitrate are likely to respond to prevailing
6 prices and market conditions.

7 Finally, on impact, we believe that the
8 domestic industry's model is deeply flawed and we'll
9 comment on that in our confidential post-hearing
10 brief. Without getting into BPI, suffice it to say
11 that we view it as highly defective, a model that
12 still projects an adverse change in the domestic
13 industry's condition even when no change in the volume
14 or price of Russian AN is input into the model.

15 This concludes our presentation.

16 Thank you.

17 CHAIRMAN KOPLAN: Thank you. We very much
18 appreciate your presentation and we will begin with
19 Commissioner Lane.

20 COMMISSIONER LANE: Thank you for being with
21 us this afternoon and bearing with us while we had our
22 picture taken.

23 Mr. Morgan, I would like to start with you.

24 The same question that I asked Ms. Slater
25 that refers to your opening statement where you said

1 that consumption is down, but that does not mean that
2 there is a decrease in demand. What statistics do you
3 point to to support this assertion and what exhibits
4 can you refer me to that are already in the record or
5 would you like to provide additional information?

6 MR. MORGAN: We will be providing additional
7 information in terms of the exogenous factors. The
8 crop acreage plan that uses and has not seen the kind
9 of significant declines that warrant making a
10 conclusion that demand has declined. When we point to
11 the consumption figures, we're pointing to the
12 Plaintiffs' own pre-hearing Exhibit 9, where they
13 include in consumption the volume that should have
14 been present in the commission's report but for Agram
15 not having responded to the commission's
16 questionnaire.

17 You see very different consumption figures
18 when you correctly account for the fact that part of
19 the reported domestic shipments is missing from the
20 pre-hearing staff report. Staff provided an estimate
21 of what that figure was, but that's confidential.

22 That is where we are taking the consumption
23 figures, as well as from the Fertecon report that the
24 domestic industry provided, which had projections of
25 consumption.

1 We view the consumption figures that the
2 domestic industry itself provided, and now they appear
3 to be backing away from because they don't seem to
4 support their case, as the relevant information on
5 projected consumption going forward in the U.S.
6 market.

7 With respect to the decline in demand, it's
8 a little bit more difficult to point to what demand
9 is, but if you look at the data, the time when
10 availability of ammonium nitrate is greatest
11 corresponds with the greatest periods of apparent
12 consumption, so if you look back in 1999, the
13 availability was at its highest, imports were at their
14 highest and you also had greater apparent consumption.

15 Absent any declines in the basic needs of
16 farmers who use this product, which there haven't
17 been, and you've heard it's mainly been due to
18 security regulations and that's impacted the
19 distribution system, not the ultimate end user's need
20 for this product.

21 COMMISSIONER LANE: Do any of the rest of
22 you want to comment on that point?

23 Mr. Adamchak?

24 MR. ADAMCHAK: I would just say,

25 Commissioner Lane --

1 COMMISSIONER LANE: You've got to pull your
2 microphone a little bit closer.

3 MR. ADAMCHAK: Excuse me. I would just say
4 that there is, in my opinion, more than just a
5 coincidental relationship between the fact that since
6 the inception of the suspension agreement, U.S.
7 domestic production has declined roughly a million
8 tons and U.S. domestic consumption has declined by
9 roughly a million tons. I think there is a causal
10 relationship there.

11 COMMISSIONER LANE: But do we have anything
12 in the record that shows that people are demanding AN
13 and can't get it?

14 MR. MORGAN: Commissioner Lane, I would
15 point to -- and I take great umbrage with the fact --
16 six out of fifteen purchasers responded that they
17 encountered shortages in the market, that's over
18 40 percent of all responding purchasers. Mr. Klett
19 referenced that and said it wasn't significant.
20 I think 40 percent is a pretty significant number when
21 they're saying there were shortages. I would cite to
22 that evidence.

23 COMMISSIONER LANE: Mr. Ward and
24 Mr. Adamchak, do you use only Russian imported AN?

25 MR. ADAMCHAK: No, ma'am, we don't.

1 COMMISSIONER LANE: So you use domestic
2 production also?

3 MR. ADAMCHAK: We are a customer -- yes, we
4 do use domestic and we also use imports from
5 non-subject countries as well.

6 COMMISSIONER LANE: Have you tried to get
7 domestic AN and been refused?

8 MR. ADAMCHAK: The answer to that question
9 is no, but it's simply because in the market it is
10 fairly well known that the domestic manufacturers are
11 multiple months behind in their shipping, still really
12 recovering from the effects of the storms, and there's
13 no realistic ability -- we've actually sold one of the
14 domestic manufacturers some nitrate. So on the basis
15 of our knowledge of what the supply/demand scenario
16 is, it would be unproductive to specifically formally
17 request domestic ammonium nitrate.

18 COMMISSIONER LANE: Mr. Ward?

19 MR. WARD: The critical part of your
20 question is the first, have we tried, the answer is
21 no, we haven't tried, because of the reasons that Nick
22 just pointed out. We've actually been selling to the
23 domestic industry.

24 COMMISSIONER LANE: Are you familiar with
25 Russian facilities?

1 MR. ADAMCHAK: In what way? Just the
2 factories themselves?

3 COMMISSIONER LANE: Yes.

4 MR. ADAMCHAK: Yes.

5 COMMISSIONER LANE: How much modernization
6 has taken place with the Russian facilities?

7 MR. ADAMCHAK: I think it's been
8 considerable. The Russians have much of what we've
9 seen here in the United States. The Russian industry
10 has made substantial amounts of money and in the case
11 of the two largest exporters, they have made
12 substantial improvements, refurbishments to all of
13 their production facilities, both in terms of
14 enhancing their efficiency and in terms of
15 standardizing the products. The two large guys have
16 multiple production units and it's a real goal for
17 them to sort of standardize the quality of the product
18 coming out of those facilities.

19 COMMISSIONER LANE: What price are the
20 Russian industries paying for natural gas?

21 MR. ADAMCHAK: I can't say I honestly know
22 the answer to that question.

23 MR. WARD: None of us could say we know the
24 answer to that question. We simply don't know. I can
25 tell you what we think we know.

1 COMMISSIONER LANE: Okay. That would be
2 fine.

3 MR. WARD: We think that that price varies
4 with the price of the commodity and it was pointed out
5 earlier that Gazprom does have various equity
6 interests in producers and it would be obviously in
7 their interests -- they're not going to strangle their
8 own consumer, it would be in their interests to vary
9 the price of the feedstock according to what the net
10 back is on the product.

11 COMMISSIONER LANE: Do you know, are any of
12 the Russian facilities on curtailment because of lack
13 of natural gas.

14 MR. WARD: None that I know of.

15 MR. CAMPBELL: Commissioner Lane, I don't
16 mean to interrupt. I just wanted to add that
17 I believe -- I can't remember the specific question
18 off the top of my head, but I believe in the Russian
19 producers' questionnaire response, I am pretty sure
20 that at least a couple of the Russian producers
21 specifically state how much they have been paying for
22 Russian natural gas and what the trends have been in
23 terms of the costs they've incurred for natural gas.
24 So I would direct you to the questionnaire responses
25 for the Russian producers.

1 COMMISSIONER LANE: Okay. Thank you.

2 The other question that I asked this morning
3 and maybe you all could answer it, if AN is the
4 product of choice in the southern eastern states in
5 this country because of climate, what is there about
6 the Russian environment that is conducive to AN?

7 MR. ADAMCHAK: I think the industry reps
8 earlier this morning started to get to it. Simply, it
9 is a product of the Soviet system and Mike can speak a
10 little bit more knowledgeably to this, but basically
11 the natural form of nitrogen available to the plant is
12 nitrate and the logical initiative, at least in a
13 Russian sense of the term, is to try to replicate that
14 synthetically and that's why initially when they set
15 their industry up they set it up to produce ammonium
16 nitrate.

17 It was after World War II that there was a
18 change in Europe to move away or to supplement or to
19 create an alterative to ammonium nitrate and still
20 maintain nitrate availability, the availability to the
21 plant in nitrate/nitrogen form, and that's how you
22 derive products like calcium ammonium nitrate, for
23 instance, which is basically an ammonium nitrate that
24 has substantial amounts of calcium in the product to
25 stabilize it.

1 MR. WARD: The Russian industry didn't
2 develop an ammonium nitrate program based on the
3 agronomic values to the plants that are growing in
4 southern climes. They developed it because that was
5 the form of nitrogen for everything. In other words,
6 it wasn't considered a specialty product, it was the
7 manufactured nitrogen and that derives largely from
8 the original nitrogen that was supplied before it was
9 manufactured and it was taken out of the atmosphere in
10 the form of nitrate. Agronomically, that's what
11 farmers grew up on, that's what they used. Ships used
12 to take sodium nitrate from South America back to
13 Europe and it was a nitrate-based nitrogen source.

14 So when the era of manufacturing nitrogen
15 came in, they sought to replicate that initial product
16 and so then it grew up around nitrate.

17 At that point in time, there wasn't urea and
18 there wasn't anhydrous ammonia as a direct application
19 product. I hope that gets to your question.

20 COMMISSIONER LANE: Yes. Thank you.

21 MR. WARD: It wasn't meant to be a specialty
22 product.

23 COMMISSIONER LANE: Okay. Thank you.

24 CHAIRMAN KOPLAN: Thank you, Commissioner.

25 Commissioner Pearson?

1 COMMISSIONER PEARSON: Thank you,
2 Mr. Chairman.

3 Let me extend my welcome to the afternoon
4 panel.

5 To what degree has the suspension agreement
6 made it difficult to import Russian ammonium nitrate?
7 Has it been a system that works or are there problems
8 with it?

9 MR. ADAMCHAK: I can really only address
10 that issue, Commissioner Pearson, in terms of where we
11 are within the last 12 months. Really, I guess as
12 much as we said there's a pre-9/11 and a post-9/11,
13 there's almost a pre-Katrina/post-Katrina cause and
14 effect sort of thing going on here, too. The reality
15 is since Katrina, the suspension agreement price has
16 risen over 40 percent and I think the flaws in the
17 system are endemic, but we can't recapture that in the
18 marketplace right now.

19 So consequently, looking forward, the
20 situation being as it is today, we are planning around
21 importing any product from Russia and, as a matter of
22 fact, we just purchased a cargo the other day from
23 Bulgaria.

24 We believe right now that the suspension
25 agreement as it's constituted will for the foreseeable

1 future, anyway, effectively embargo Russian ammonium
2 nitrate from the U.S. market, which in part explains
3 why we see product coming from Georgia and places like
4 that. Georgia is a long ways away from deepwater and
5 the quality of that material is -- well, put it this
6 way, we've handled that product at the company in
7 Europe and we are not allowed to handle it again, just
8 from a quality point of view.

9 COMMISSIONER PEARSON: So the point you're
10 making is that currently the reference price is set
11 high enough so that U.S. customers aren't willing to
12 pay that amount or more for the Russian ammonium
13 nitrate?

14 MR. ADAMCHAK: It's set significantly higher
15 than the current prevailing marketplace in the United
16 States, yes. I'm saying exactly that.

17 COMMISSIONER PEARSON: Mr. Ward, did you
18 have any observations on the operation of the
19 suspension agreement in its earlier years?

20 MR. WARD: I was aware of the suspension
21 agreement and how it worked. Would you ask a specific
22 question on that? I'm not sure what you're getting
23 at.

24 COMMISSIONER PEARSON: Well, just following
25 up on the question that Mr. Adamchak has answered,

1 just to what degree the suspension agreement has made
2 it difficult to import ammonium nitrate from Russia
3 over the life of the suspension agreement.

4 MR. WARD: Only when those values get upside
5 down does it become a problem. There's no logistical
6 implications about the suspension agreement. All that
7 kind of stuff has worked okay, it's worked fine. And
8 while we had a more robust domestic supply base, the
9 lesser quantities under the quota system didn't seem
10 to be a problem either, but that has changed in recent
11 years, especially the recent two years.

12 MR. ADAMCHAK: I'd like to add something.
13 We promise not to keep tag-teaming you like this, but
14 the other part of the suspension agreement that makes
15 it a bit cumbersome from a trader's point of view is
16 that you don't set the price. Typically, we negotiate
17 our price. When we commit to purchase the cargo, we
18 know what we're committing to. We know what the price
19 is.

20 In the case of the suspension agreement, you
21 do not. You are committing to take the tons and then
22 you're basically at the hands of the gods in terms of
23 what your price is. And that is, from our
24 perspective, a very significant disincentive to
25 committing too much production there because the risks

1 are simply too high. You don't know.

2 We committed to taking product under the
3 suspension agreement from the Russians prior to the
4 hurricane and I've had to live up to that commitment
5 and deal with the price consequences of that.

6 I think that feature of the suspension
7 agreement is a bit difficult.

8 COMMISSIONER PEARSON: Are you able to say
9 in public whether that product that you just
10 referenced actually entered the United States or did
11 you end up having to find another home for it?

12 MR. ADAMCHAK: No, no, no. The product will
13 enter the United States. It has not entered it yet,
14 but will. The vessel is on the water.

15 COMMISSIONER PEARSON: Okay. Given the
16 uncertainty that the suspension agreement causes for
17 traders, is the price risk shared by the Russian
18 producers or assumed entirely by the Russian producers
19 or are you paying a flat price to the Russians and
20 absorbing all of the risk that the suspension
21 agreement might trip you up?

22 MR. ADAMCHAK: By definition, we are paying
23 the suspension agreement price and absorbing the
24 consequences of those prices.

25 COMMISSIONER PEARSON: Okay. All right.

1 MR. ADAMCHAK: Living with that price. Yes.

2 COMMISSIONER PEARSON: In theory, there
3 could be some sharing of the risk with the Russian
4 producers, but as a practical matter that's not
5 happening?

6 MR. ADAMCHAK: That is not happening.

7 COMMISSIONER PEARSON: Why didn't more of
8 the quota get used during the period of review?

9 We've had discussion that somewhere between
10 perhaps 85 and 93 percent of the quota got used and
11 the remainder wasn't used.

12 MR. ADAMCHAK: Again, I think the morning
13 panel addressed that relatively accurately. I just
14 think it was a period of time when, for whatever
15 reason, the price as determined by the suspension
16 agreement could not be supported in the prevailing
17 domestic marketplace at that time.

18 COMMISSIONER PEARSON: If you feel that the
19 reference price is out of touch with what's actually
20 happening in the U.S. market, is there a process for
21 discussing that with Commerce, to try to adjust the
22 reference price?

23 MR. ADAMCHAK: I'm not aware of that.
24 I would assume the answer to that question to be yes,
25 but I am not specifically party to any of those

1 discussions.

2 COMMISSIONER PEARSON: Mr. Morgan, are you
3 familiar with that process?

4 MR. MORGAN: Yes, Commissioner Pearson. In
5 fact, we have been trying to work on that with the
6 Commerce Department. The agency is slow moving and,
7 in fact, the quantity of the agreement is capped at
8 150,000 metric tons, so that gradually progressed
9 since the inception of the agreement but now that
10 quantity is no longer going to increase, it will stay
11 at that level as long as the agreement is in place.

12 Also, part of the problem is that the costs
13 of transport are set based on the mechanism that was
14 put in place in 2000, so there is, I believe, a
15 delivery component that's \$54 and that's what it is,
16 that will never change. Freight rates could go up to
17 \$100 a metric ton and what happens is they calculate a
18 U.S. price and then they simply back out \$54. So if
19 it costs you \$60 just to move the product here, maybe
20 \$60 is not a fair example, but \$40 just for the ocean
21 freight, you're looking at maybe only having \$10 there
22 to account for everything else. So that's been a
23 major sticking point because it's not -- I think the
24 Russian producers would prefer if they could have a
25 price that actually reflected market conditions

1 vis-a-vis all the movement expenses that occur.

2 Nick maybe can fill in any details on it,
3 but it basically puts the prices as uncompetitive in
4 the U.S. market when those fluctuations occur.

5 MR. ADAMCHAK: Yes. The cost of ocean
6 freight, for instance, when the suspension agreement
7 was first into place, I had my broker look at a
8 nitrate shipment in January of 2000 and the cost of
9 moving 25,000 ton cargo of ammonium nitrate from
10 Usnia, the main Russian port, to New Orleans was
11 \$16.75. Our experience in the last 12 months has
12 ranged between \$34 and \$43. That's one segment of it.

13 The other segment is barging and, as we
14 referenced, the fact that the barge lines, with the
15 exception of two, have abandoned the haulage of
16 ammonium nitrate has been significantly reflected in
17 the cost of barging the product. Specifically, in
18 2000, you're talking \$8, \$9 a ton to go from New
19 Orleans to Tulsa, for instance, which is a main using
20 area. Right now, the spot rate for doing that is
21 \$28.50, roughly that. So you can see how quickly --
22 and then there are the costs for terminaling the
23 product, for stevedoring the product, have gone up
24 significantly as well, so you can see that the numbers
25 that were originally put in place no longer come close

1 to reflecting the actual costs of moving the product
2 around.

3 COMMISSIONER PEARSON: Both ocean freight
4 rate and barge rates tend to fluctuate fairly widely.
5 Are those rates currently trending up or have they
6 turned and are starting to come down a little bit?

7 MR. ADAMCHAK: Well, the barge rates are as
8 of yesterday. The process is such that, as I say, we
9 have probably on any given shipment that's coming to
10 New Orleans maybe 40 percent of our tonnage covered by
11 contracted barge. The rest of the time, you're out
12 spot. This ship was supposed to arrive on the 22nd,
13 today is the 19th, until yesterday, we weren't sure we
14 had barges to cover the product that we have coming
15 in. So I don't think that part of it is going to
16 change unless some of the other barge lines get back
17 into the handling of ammonium nitrate.

18 As far as ocean freight is concerned, yes,
19 you get ebbs and flows in the marketplace and, as
20 Ms. Slater pointed out this morning, we're currently
21 in a bit of a down tick, but clearly not going down
22 anywhere near to the levels -- I think we've seen a
23 fundamental quantum leap because there's been so much
24 bulk capacity taken out, the global bulk fleet for
25 what we call Handimax vessels and this is a little bit

1 of conjecture, I've seen these numbers, but I'm going
2 to say it's down about 20 percent. The high price of
3 steel, there's a number of other factors that have
4 taken a lot of the bulk cargo capacity out.

5 Now, that will be presumably regenerated;
6 that coupled with the fact that you're seeing
7 significantly increased demand from places like China
8 and India for bulk commodities and you've got the
9 energy component as well that have driven the freight
10 rates up and, again, it will continue to trade within
11 a range but we won't again approximate what we saw in
12 2000, in my opinion.

13 COMMISSIONER PEARSON: That's those nasty
14 electric arc mini mills that want those old vessels
15 for scrap. That's part of the problem.

16 MR. ADAMCHAK: That's been a big part of it.

17 COMMISSIONER PEARSON: Mr. Chairman, my
18 light changed some time ago.

19 CHAIRMAN KOPLAN: Thank you.

20 Commissioner Aranoff?

21 COMMISSIONER ARANOFF: Thank you,
22 Mr. Chairman.

23 I join my colleagues in welcoming the
24 afternoon panel.

25 Mr. Adamchak, I wanted to go back with you

1 over some of your testimony and just ask you to
2 clarify a few things that I think I heard you say.

3 You had indicated that there were currently
4 only two ports of entry available for this product and
5 I just wanted to go back to that and ask you is that
6 some kind of a practical limitation or is that a legal
7 limitation that under the security regulations in
8 effect you have to bring this product into these two
9 ports?

10 MR. ADAMCHAK: I don't know for sure,
11 Commissioner. I think in certain jurisdictions,
12 you're just not going to get approval unless it's kind
13 of grandfathered into the system, you're not going to
14 get approval to handle ammonium nitrate.

15 COMMISSIONER ARANOFF: Who has to grant
16 approval?

17 MR. ADAMCHAK: I believe it's the Department
18 of Homeland Security. I don't know if that's -- the
19 Coast Guard, which is under the auspices of Department
20 of Homeland Security.

21 COMMISSIONER ARANOFF: Okay. So the Coast
22 Guard has to approve bringing product into a certain
23 port and on what basis do they grant that approval,
24 that you can demonstrate to them that you've got some
25 kind of secure facility to it in?

1 MR. ADAMCHAK: Well, I think they look at
2 various factors. They look at the proximity to
3 populated places. They look at the likelihood like in
4 New York or Washington, the terrorist exposure. And
5 then for you to petition -- and we wouldn't do this, a
6 company like Kinder Morgan or a terminaling company
7 would be the one that would petition the Coast Guard
8 to handle this product. So I think those are the
9 criteria that they would look to evaluate.

10 In this kind of environment, you're really,
11 really fighting an uphill battle, unless you're
12 grandfathered in, that they're going to allow you on
13 a greenfield project, despite complying with the
14 regulations, with 24-hour surveillance and
15 fully-enclosed storage and all of that, that has got
16 to be a given. That is a precondition. Your
17 willingness to do that has got to be a precondition of
18 your request to the Coast Guard to consider it, but
19 even with that, it's very, very unlikely that there's
20 going to be any new facilities or there don't appear
21 to be any new terminals that are going to be permitted
22 to handle ammonium nitrate.

23 COMMISSIONER ARANOFF: Now, is this a
24 change? Prior to 9/11, was ammonium nitrate being
25 brought routinely into other U.S. ports or has it just

1 always been these two ports?

2 MR. ADAMCHAK: Well, again, a lot of its
3 driven by where the usage is. The lion's share of all
4 fertilizer comes into the port of New Orleans and then
5 you fan out into the river system. In the case of
6 nitrate, we've got kind of a Florida, deep southeast
7 specific case. So, yes. I don't think it's something
8 that's recent, there was just never a need. Again,
9 the expanded geographical reach of what at that point
10 in time was the domestic industry, there wasn't the
11 need except for very, very specific geographies to
12 import ammonium nitrate to places other than New
13 Orleans where you can put the product into barges
14 antidumping move the product around.

15 COMMISSIONER ARANOFF: Right. I'm trying to
16 understand, I guess, from your testimony about all
17 these sort of logistical difficulties in moving the
18 product into the U.S. what's new and what's always
19 been there and of what's new which of it is required
20 by government regulation and which of it has been the
21 individual actors in the marketplace acting on their
22 own.

23 MR. ADAMCHAK: What's new is the fact that
24 there are only two barge lines that will handle it
25 and, as we heard earlier today, there are quite a lot

1 of the river terminals that have not been willing to
2 make the expenditure to comply, again, with the Coast
3 Guard regulations on 24-hour surveillance. There's an
4 expense part of it and then there's the liability part
5 of it, too, and the security part of it. But that is
6 definitely new, both in terms of the barge capacity
7 that you've got and the inland river warehouse
8 capacity.

9 The other thing that is part and parcel of
10 that is that you've got -- back in 2000, the cost to
11 fleet barges was maybe \$100 a day. The cost today to
12 fleet barges is \$300 a day. So the ability to import
13 big vessels, relatively big vessels, 25,000-ton
14 vessels, break them down into 17, 18 barges and store
15 them, effectively floating storage, that is becoming
16 cost prohibitive. So that, again, is a disincentive
17 from an importer's point of view to bring
18 significantly more ammonium nitrate than what you can
19 really see.

20 As Ms. Slater said earlier today, most
21 importers will have some portion of their vessels
22 sold, so you want to know where you're going with this
23 product. You hope like hell you're going to get
24 enough barges and then you pretty well -- unlike urea,
25 for instance, where you'll kind of fleet and float and

1 store the material, with nitrate, for a lot of
2 reasons, you want to get the product loaded and you
3 want to get it where it's going. And the
4 infrastructure, the bandwidth, the inbound bandwidth
5 to do that has been sharply reduced.

6 COMMISSIONER ARANOFF: And just so
7 I understand you, it's not that there's actually been
8 a reduction in the number of companies that are
9 barging other fertilizer products, it's just this
10 product?

11 MR. ADAMCHAK: That is correct.

12 COMMISSIONER ARANOFF: Now, is it that
13 everyone except these two companies doesn't want to
14 handle it or they can't get licensed by the Coast
15 Guard?

16 MR. ADAMCHAK: I think in most cases they
17 made a commercial decision not to do it. Mind you,
18 the barge rates on other products have gone up. We've
19 had the sort of attrition that we've seen in the bulk
20 fleet we've seen in the barge fleet in this country,
21 probably even more dramatically, so barge rates are
22 up. If you're a barge owner, you're making real good
23 money right now and I think a lot of these guys have
24 decided that they don't want to fool with nitrate.

25 COMMISSIONER ARANOFF: Okay. Thank you.

1 I appreciate those clarifications.

2 Let me ask you because you were speaking
3 with one of my colleagues about this, I had asked this
4 morning about the suspension agreement and how the
5 licensing works. If you want to go and buy Russian
6 product and bring it into the U.S. under the
7 suspension agreement, how does that process work? Who
8 approaches whom? Are you approached by the Russian
9 company? Do you approach them for product? Who goes
10 and gets the license? What order is that done
11 relative to when the product is on the water?

12 MR. ADAMCHAK: Typically, we would approach
13 them, although it doesn't have to be that way. They
14 would apply for the export license and they would do
15 all the paperwork on that side and we would then get
16 the export license. We would get a copy of the
17 invoice along with the shipping documentation and then
18 submit those documents to clear Customs and do all
19 that. I hope that spoke to your question.

20 COMMISSIONER ARANOFF: Yes, it does. Is
21 that different from the way you would do business with
22 another nitrogen product that you were taking out of
23 Russia?

24 MR. ADAMCHAK: Not materially, no. You
25 still have to clear Customs, you still have to provide

1 shipping documentation. The export license, the need
2 for the export license submission to clear Customs I
3 think is unique to the suspension agreement, but
4 otherwise, no. And the other thing that is a little
5 bit different, as I said earlier, is that you're not
6 working off of a negotiated price. You're working off
7 of a suspension agreement price.

8 The other thing that's different is that
9 you've got specific time lines with which to ship the
10 product. You've got 25 days from issuing a contract
11 to actually shipping the product and then you've got
12 35 days from shipping that product to its arrival at
13 destination. So there are very specific time lines
14 involved in shipping Russian material that don't
15 necessarily apply for non-subject countries.

16 COMMISSIONER ARANOFF: Okay. Thank you.
17 That's helpful.

18 Normally, when you buy a nitrogen product,
19 either a non-AN product from a Russian producer or any
20 product from a producer in another country, when you
21 buy it, do you know for sure what country you're going
22 to ship it to and does the company that produce it
23 know for sure or is that unique to this situation?

24 MR. ADAMCHAK: It's unique to this
25 situation. We can purchase other commodities for a

1 specific country at a specific time. We can also, if
2 we feel like the market is undervalued or that
3 particular commodity is undervalued at the time, we
4 can buy it. As a group, we've got a global system and
5 we'll from time to time buy a cargo of Russian urea.
6 We know it can't come to the United States, but it can
7 go virtually anywhere else and we do that more in a
8 speculative sort of scenario or we'll decide among the
9 various markets that we're involved in that might need
10 that product where it goes.

11 COMMISSIONER ARANOFF: The licensing scheme
12 that we have under the suspension agreement, there's
13 nothing like that in the other markets where Russian
14 product is restricted, right? It's antidumping duties
15 in the other market?

16 MR. ADAMCHAK: I believe that to be the
17 case. The suspension agreement is a little bit
18 different than the antidumping duties, although I
19 don't have firsthand knowledge of going through a
20 Customs clearance process or any such thing in Europe,
21 for example.

22 COMMISSIONER ARANOFF: Okay. Thank you very
23 much.

24 MR. ADAMCHAK: You're welcome.

25 COMMISSIONER ARANOFF: I appreciate your

1 answers.

2 CHAIRMAN KOPLAN: Thank you, Commissioner.

3 This is for Mr. Morgan and Mr. Campbell.

4 Looking at Table 4-4 of the pre-hearing
5 staff report, it's on pages 4-6 and 4-7, which lists
6 the unit values of Russian AN supplied to export
7 markets during the POR, I notice that the Russian
8 subject product is sold at lower unit values in third
9 country markets than in the United States.

10 Much of the data in the table is BPI, but
11 you have access to it. I'll just reference on segment
12 that is public on page 4-7 to give you an idea of
13 where I'm coming from here.

14 In 2004, AUVs for Russian exports to the
15 United States was \$141.81 per metric ton. However, to
16 the EU, it was \$111.22. In that same year, the AUVs
17 for all of their exports was \$104.62.

18 And just one other part of the table that
19 I can refer to, in interim 2005, to the U.S., it was
20 \$167.62, but for all other exports, it was \$135.11.

21 Now, I understand that Asian markets have no
22 price restrictions on Russian exports of AN and
23 Petitioners this morning discussed low-priced Russian
24 exports to Canada.

25 How should I factor the comparative Russian

1 export patterns into my analysis?

2 I can't get into all of it, as you know,
3 because it's bracketed, but the parts that I did
4 should give you an idea of why I'm asking the
5 question.

6 MR. MORGAN: Commissioner Koplan, we will
7 get into the confidential parts of that in our
8 confidential post-hearing brief, but while we have the
9 benefit of Mr. Adamchak and Mr. Ward, they actually
10 have some experience in how export pricing works for
11 various markets, so having the benefit of them being
12 able to speak to the issue of different export
13 pricing, I think we'll supplement, then, on the
14 confidential record in terms of the confidential data.

15 CHAIRMAN KOPLAN: Okay. Sure.

16 Who's going to start?

17 MR. WARD: The question is how are these
18 prices adjusted for various markets? Is that --

19 CHAIRMAN KOPLAN: I was asking how should
20 I factor these differences in, the export patterns,
21 into my analysis of this investigation.

22 MR. WARD: Why would the Russians sell at X
23 price for some market and a different price for
24 another market? Is that --

25 CHAIRMAN KOPLAN: Higher here than there.

1 MR. WARD: Higher here?

2 CHAIRMAN KOPLAN: Yes.

3 MR. WARD: Quite frankly, I think it's as
4 simple as that's what the market will bear. This is a
5 higher cost market, a higher value market, the United
6 States, and they can achieve a much higher net back
7 and that's not unique to ammonium nitrate. The United
8 States right now, this year especially, is, I guess,
9 the best market in the world for nitrogen products.

10 CHAIRMAN KOPLAN: Mr. Adamchak, do you want
11 to add anything to that?

12 MR. ADAMCHAK: Not really, Mr. Commissioner.

13 CHAIRMAN KOPLAN: That's your response?
14 Thank you.

15 Mr. Morgan, you were about to say something.
16 I know you're going to elaborate on this in the
17 post-hearing.

18 MR. MORGAN: Yes. And just in the sense
19 that the notion that Russian AN will be shipped to the
20 U.S. and that the export AUVs for other countries that
21 the Petitioners have put forward would be the same in
22 the absence of the suspension agreement just simply is
23 not correct as a matter of fact.

24 CHAIRMAN KOPLAN: It would be the same in
25 the absence of it? I thought you might be making that

1 point.

2 MR. MORGAN: Yes.

3 CHAIRMAN KOPLAN: Or sort of attempting to
4 do.

5 MR. MORGAN: But it's a little bit different
6 than the urea case in the sense that there is
7 different pricing to different markets and so that's
8 what I think you're seeing reflected in that as well.
9 But we will get into that in more detail.

10 CHAIRMAN KOPLAN: I would appreciate that.
11 Thank you.

12 MR. ADAMCHAK: Excuse me, Mr. Chairman.
13 I've rethought that. I will throw something in here.
14 I think in that particular situation, one of the
15 things that we had going on as well is that the
16 combination freight economics kind of work into this
17 and it really is a function in terms of how a trader
18 will apply his freight costs. Those types of cargo
19 that end up in Canada typically come along with
20 product destined for the United States as a parcel, so
21 if you want to take all the freight and apportion it
22 to the U.S. portion and then take a sharply reduced
23 freight and apportion it to the Canadian piece, that's
24 one of the reasons why you may see distortions that
25 aren't necessarily a function of varying prices.

1 CHAIRMAN KOPLAN: Thank you.

2 MR. ADAMCHAK: You're welcome.

3 CHAIRMAN KOPLAN: I thank each of you for
4 your response to that question.

5 Mr. Adamchak or Mr. Ward, the domestic
6 parties note on page 18 of their brief, and I'm
7 quoting, "Domestic demand in Russia cannot be expected
8 to absorb excess AN capacity in the future."

9 They go in that paragraph and conclude by
10 saying, "Russia's relatively stagnant domestic
11 consumption will not absorb the significant excess
12 capacity that currently exists, further support for a
13 finding that Russian producers would likely export
14 greater quantities to the United States if the
15 suspended investigation were terminated."

16 Please respond to that.

17 MR. ADAMCHAK: There is a clear trend line
18 here that domestic consumption in Russia is improving,
19 but I would not dispute that. I would not
20 conceptually or in principle dispute that contention.

21 CHAIRMAN KOPLAN: You agree with that
22 contention?

23 MR. ADAMCHAK: I think so. More or less,
24 yes. You've got a situation where they're producing
25 three and a half million tons roughly, they're

1 consuming one and a half million tons, there will
2 still continue to be ammonium nitrate exports
3 available. I don't think we would dispute that.

4 I would think that any increase in Russian
5 exports would be at the expense of non-subject
6 countries. I think it's telling that --

7 CHAIRMAN KOPLAN: I'm just curious about
8 something.

9 MR. ADAMCHAK: Go ahead.

10 CHAIRMAN KOPLAN: A moment ago you said why
11 are they selling higher here, because they can get the
12 price.

13 MR. ADAMCHAK: Correct.

14 CHAIRMAN KOPLAN: Now, if they can get the
15 highest price here, why wouldn't I expect to see more
16 come if the investigation is terminated? Am I missing
17 something?

18 MR. WARD: No, I think you're seeing it
19 right on. I think there is a likelihood that we will
20 see more Russian product, but Nick just mentioned a
21 moment ago, that's going to be at the expense of the
22 non-subject exporters. It's not going to be more
23 product in the United States, but I agree with you,
24 I think there's a likelihood that there will be more
25 Russian product coming into the United States.

1 CHAIRMAN KOPLAN: And you don't see any of
2 it at the expense of U.S. product? Only non-subject?

3 MR. WARD: If you look at what the
4 non-subject producers that are currently shipping to
5 the United States, they're marginal producers and
6 I think that they will be pushed aside.

7 CHAIRMAN KOPLAN: Okay. Thank you.

8 Mr. Morgan, on page 19 of the domestic
9 interested parties' brief they argue, and I'm quoting,
10 "For producers," they're referring to the Russian
11 producers, "capacity utilization between 2000 and 2004
12 never exceeded 75.6 percent and was only 72.1 percent
13 in January to September 2005. What is most telling,
14 however, is that Russian producers responding to the
15 commission questionnaires have an even greater level
16 of capacity and excess capacity now than was reported
17 during the original investigation."

18 It appears from page 27 of your brief that
19 you are using similar percentages; that is, and I'm
20 quoting, "70 to 75 percent during the POI."

21 Doesn't this indicate an ability to export
22 more subject product to the United States if the
23 United States market is made more attractive by
24 terminating the suspension agreement and revoking the
25 order?

1 MR. MORGAN: One thing I would like to just
2 point out is that when they say there's more excess
3 capacity available now, it's because you have more
4 producers responding, so the additional excess
5 capacity argument is not comparing apples to apples.
6 But, yes, there is excess capacity in Russia, but we
7 believe that the very real significant constraints on
8 distribution in the U.S. basically offset the fact
9 that there is excess capacity in Russia.

10 There just are very real and meaningful
11 limitations on the ability to move increased -- from
12 any country -- ammonium nitrate through the U.S.
13 distribution system. You have to get barges, you have
14 to go through all kinds of hurdles that did not exist
15 at the time of the original investigation. So even
16 taking the excess capacity that exists I do not
17 believe would lead to an increase in total imports and
18 if it leads to some increase in Russian exports,
19 I still think with the security restrictions and also
20 the gap between supply and demand it will not be
21 significant in terms of any impact on the domestic
22 industry.

23 CHAIRMAN KOPLAN: Do you want to add
24 anything to that, Mr. Adamchak?

25 MR. ADAMCHAK: Yes, I would, Mr. Chairman.

1 I think it's telling that since the
2 inception of the suspension agreement prices in the
3 United States against that agreement have increased
4 160 percent and yet imports into the country, Russian
5 or otherwise, have remained virtually unchanged. So
6 I think that tells you that there is a lot more
7 involved here in getting product into this marketplace
8 than just who's got excess capacity. There is excess
9 capacity in Spain and Spain used to be a primary
10 exporter to this country and now for a variety of
11 reasons they don't export at all. Again, there is
12 some question as to whether they're still even
13 manufacturing, but there are other reasons or other
14 issues than just the excess capacity that play into
15 how much product flows into this country of ammonium
16 nitrate.

17 CHAIRMAN KOPLAN: Thank you.

18 Vice Chairman Okun?

19 VICE CHAIRMAN OKUN: Thank you,
20 Mr. Chairman. I join my colleagues, I welcome you to
21 this panel this afternoon. I appreciate your being
22 here and your willingness to answer our questions.

23 Mr. Adamchak, let me just back on one of the
24 things that I heard you say in response to the
25 Chairman with regard to: you say if the Russians come

1 back, then they would be pushing out what you call
2 marginal non-subject.

3 The push-out by the Russians, you see that
4 because these non-subjects aren't comparable on
5 quality, aren't comparable on price? I mean why the
6 push-out of non-subjects?

7 MR. ADAMCHAK: The quality issue is
8 certainly one. It's ironic for ammonium nitrate that
9 while its primary use, as we have already talked
10 about, is in warm, humid climates. Characteristic of
11 the product itself is that it is very hygroscopic and
12 cannot easily tolerate hot, humid climates. It has
13 got to be very, very good quality.

14 So if you are going into Florida, or you are
15 going to into Norwalk (ph), by definition you are
16 going into a hot, humid environment, so quality is
17 significant. There are definite variances in quality
18 out there and I think the consensus is that the
19 Russian is the best quality import that you can get.
20 That is number one.

21 Number two is: loading rate. I made a
22 reference to load rates. You know when you go to
23 Bulgaria or Romania, you are loading a ship that is
24 roughly a 1,000 tons a day. When you go to Russia,
25 you are loading at 4,000 to 5,000 tons a day. So that

1 makes a difference both in terms of the effective
2 freight that you have to pay but also your ability to
3 plan into the marketplace.

4 If you get significantly delayed, then it is
5 sort of throws your program off. As I mentioned, we
6 are importing into Florida. WE have a 10,000 ton
7 space. So the planning is critical. We have to try
8 to get it so that we can maximize the amount of
9 product that we give it without running out. So
10 dialing in that timing is critical, and I think that
11 that is another reason that the Russian product will
12 be preferred.

13 The other thing is that you can combine
14 Russian product with phosphates. So there are
15 combination freight opportunities that could have an
16 advantageous effect on your overall freight costs.

17 VICE CHAIRMAN OKUN: Okay. The clarification
18 was helpful with regard to which ports were open and
19 whether it was really that the closure of the port to
20 AN or whether it was just the barge line. So now I
21 understand what you were talking about: the barge
22 lines that were willing to carry the AN.

23 Does it matter in terms of non-subject
24 versus subject who gets in on the barge lines or the
25 inlet transportation that you talked about? Does it

1 makes any difference there?

2 MR. ADAMCHAK: Not that I'm aware of, no. I
3 think, from a barge line's perspective, nitrate is
4 nitrate is nitrate. It is almost first-come-first-
5 served. They will, I think, grant a little bit of
6 preference to their contract carriers, but, for the
7 most part, I think that is insignificant.

8 VICE CHAIRMAN OKUN: Okay. Mr. Morgan or Ms.
9 Campbell, this might be a question for you. But I
10 appreciate it if the other two would like to comment
11 as well, which is: One of the things that you talked
12 about in your testimony was the changes in the
13 domestic industry. You had an industry where you had
14 ten producers and now we have two, and the capacity
15 taken out of the U. S. industry.

16 Now, I wanted to go to the Russian side and
17 see what you would describe in terms of changes since
18 the original investigation that you would have us
19 point to in looking for in determining what the volume
20 and price would be? What would be a significant
21 change from the original investigations?

22 MR. ADAMCHAK: Commissioner Okun, I think the
23 main one would be: the Russians' improved economy and
24 its improved home market for ammonium nitrate. This
25 is a major change since the original period of

1 investigation.

2 Of course we are not alleging that the
3 Russian producers aren't going to export at
4 significant levels. I mean it is clear that certain
5 Russian producers can export and they are going to
6 continue to do that. But there is no question that
7 Russian's home market has consumed more ammonium
8 nitrate. The trends have been increasing and the
9 forecast is for continued improvement in Russia's home
10 market for ammonium nitrate. For that data, I would
11 point to I believe our Exhibit 3 to our prehearing
12 brief.

13 Why that is significant: I think it does
14 reduce the likelihood that you are going to have a
15 significant increase in Russian's exports to the
16 United States if the suspension agreement were moved.
17 In fact, that is what the ITC, at least in my
18 understanding, they found in their Section 332 Report,
19 where they noted that there is pressure on Russian
20 producers of ammonium nitrate to export product
21 because of the collapse of Russia's agricultural
22 sector. But they noted that if things change, if
23 Russia's economy improves and Russia's home market for
24 ammonium nitrate improves, then you would see less
25 pressure on Russian producers to export.

1 I think we are seeing that. I would point
2 you to Exhibits 14 and 15. These are trade reports
3 that actually show that, even with excess capacity, a
4 Russian exporter deciding; Nope, I am going to limit
5 my exports. I am going to favor the home market
6 instead. I think that is a major difference from the
7 period of the original investigation. I don't think
8 you would see that. I think that is the main change
9 in difference. I don't think we would allege that
10 there have been any other major changes on the Russian
11 side.

12 VICE CHAIRMAN OKUN: Okay. I appreciate
13 that.

14 Yes, Mr. Ward?

15 MR. WARD: I think there are two other
16 significant changes that I would just comment on. One
17 is the ownership structure. Back on the onset of the
18 suspension agreement, I think some of the ownership of
19 these plants were not necessarily in Russian hands.
20 We had guys that were based in Switzerland, based in
21 Cypress, or wherever else, and the money necessarily
22 didn't come all the way back to the economy.

23 But now these plants have largely been
24 rolled up. You have got two predominant entities that
25 are Russian controlled and there is a difference in

1 the level of enforcement in terms of where the money
2 goes and how it gets there. That is number one.

3 Number two, I think the ruble is actually
4 worth something now; and back at the onset of the
5 suspension agreement, I am not sure that was the case.

6 VICE CHAIRMAN OKUN: I appreciate those
7 comments. You were talking about home-market demand
8 in Russia. I know that in the Staff Report, they have
9 probably collected some information and just have to
10 decide that different export markets are markets for
11 Russian product currently goes and who the big
12 consumers are.

13 I wondered if you would point us to where
14 you think would be the best global demand and where
15 the growth is in addition to the Russian home market
16 that you have cited? Where are the other growth
17 markets out there, and if we see the U. S. as -- we
18 might have different numbers on apparent consumption,
19 but where else is this product going to go?

20 MR. WARD: There really aren't any.
21 Ammonium nitrate, for most applications, you can't
22 improve upon that, is being replaced by urea in most
23 markets. So you can't say no. There is a little new
24 capacity that came on stream in Egypt about five years
25 ago. That is the only new ammonium nitrate capacity

1 that I am aware of and I am sure that I am up to date.

2 VICE CHAIRMAN OKUN: I do remember that you
3 have commented on this.

4 MR. WARD: In the world, so nobody is
5 building to increase the ammonium nitrate demand.

6 VICE CHAIRMAN OKUN: Okay. Then I want to go
7 back just briefly again on what is going on in the U.
8 S. market and the impact of the security regulations
9 vis-a-vis what the farmers want? One of the things
10 that I am still trying to understand is and you have
11 talked about it: the farmer still wants the stuff.
12 It's whether he can get it.

13 The panel this morning, I thought in
14 response to similar questions was saying: Well, the
15 farmer may or may not want it but the one who really
16 controls what apparent consumption ends up being is
17 the distributor. If the distributor is saying: Way
18 too much paper work and video cameras and whatever
19 else is going on. I am going to tell my farmer to do
20 something else and he doesn't have much choice.

21 I amy be overstating what the panel said,
22 but I am just trying to understand if you think that
23 the case as well, or does the farmer still have some
24 authority to say: No, I want AN and I can get it if I
25 go see someone else?

1 MR. ADAMCHAK: I think the description was
2 largely accurate there. The farmer, to some extent,
3 is beholden to the programs that the dealer put in
4 place. If the dealer just comes back to him and says
5 there is no way in available, then okay, what is Plan
6 B? that is going to be the logical response of the
7 farmer. They don't have the infrastructure. They
8 typically can't take sufficient volumes that you can
9 get even a truck, let alone a rail car, to a given
10 farm. So they have to buy from their dealers, and if
11 the dealer says it is not there, then, from a farmer's
12 point of view, it is not there.

13 VICE CHAIRMAN OKUN: And then once they would
14 make that switch, would they ever go back if all of a
15 sudden someone said oh, yes? In fact, would they then
16 just switch back if the dealer says it is?

17 MR. ADAMCHAK; Well, there are different
18 levels of demand, if you will. Some of the nitrate
19 demand was -- like with the agrarian plant for
20 instance out in Nebraska. The agronomic benefits of
21 nitrate are a little bit marginalized, but it is right
22 there. It is literally in the corn fields. Then you
23 get down to cost per unit of AN and distribution. So
24 it made sense for a lot of those guys to use ammonium
25 nitrate.

1 That demand is likely gone and it is not
2 coming back. But the differences are very much. We
3 both talked about in the citrus areas, the vegetable
4 areas, and the southeastern areas where there is a
5 significant perceived difference. For instance,
6 Florida is a market for about 220,000 tons of ammonium
7 nitrate, and ag use for urea is virtually nonexistent.

8 VICE CHAIRMAN OKUN: I appreciate having your
9 perspective on that. Thank you very much.

10 MR. ADAMCHAK: You're welcome.

11 VICE CHAIRMAN OKUN: Thank you, Mr. Chairman.

12 COMMISSIONER KOPLAN: Thank you.

13 Commissioner Hillman?

14 COMMISSIONER HILLMAN: I, too, would join my
15 colleagues in welcoming you this afternoon.

16 If I could follow-up a little bit on the
17 discussion you were just having with the Vice Chairman
18 on this issue of the dealers. Just help me get your
19 perspective. To the extent that you can help me
20 quantity it: How many fewer dealers do you think are
21 out there servicing AN to their farmers?

22 MR. ADAMCHAK: Chairman, I would be guessing.

23 COMMISSIONER HILLMAN: A five-percent cut
24 back, ten, fifteen?

25 MR. ADAMCHAK: Do you have a guess on that?

1 MR. WARD: I don't know the number of
2 dealers --

3 COMMISSIONER HILLMAN: Yes.

4 MR. WARD: -- that had formally --

5 COMMISSIONER HILLMAN: Yes, that had been
6 servicing it and that are currently not?

7 MR. WARD: I'm sorry, I --

8 COMMISSIONER HILLMAN: But you would say that
9 there is some reduction isn't there?

10 MR. WARD: Well, I think the drive is even
11 further down stream than that. It started at the
12 warehouse level. The dealers are served by the
13 warehouse and the warehouse guy says: I can't stand
14 the liability of this product. I can store all kinds
15 of other things and still make a living. I don't have
16 to put my entire livelihood at stake by storing
17 ammonium nitrate. If it is simply not there, then it
18 may be whether the dealer is willing or not, it
19 doesn't much matter. Availability --

20 COMMISSIONER HILLMAN: Okay. You are saying
21 that it is more actually at the warehouse level where
22 there is a reluctance?

23 MR. WARD: It could be both but the step
24 ahead of the dealer would be the warehouse.

25 COMMISSIONER HILLMAN: Okay. Would you say

1 at the wholesale level then? We are going to step
2 back to the wholesale level. Again, do you have a
3 sense of whether there has been a significant
4 reduction in the number of wholesalers willing to
5 carry AN than used to carry it?

6 MR. WARD: My sense of it is that that
7 number is significant.

8 COMMISSIONER HILLMAN: Significant, 10
9 percent, 15 percent, 20 percent?

10 MR. WARD: No, I would say that of those
11 that routinely carried ammonium nitrate, historically
12 carried ammonium nitrate say in the '90s, I would say
13 that probably has been reduced by 50 percent.

14 COMMISSIONER HILLMAN: Fifty, okay. That is
15 very helpful.

16 Then if we go to the issue, and we didn't
17 talk a whole lot this morning, but I am curious to get
18 your take on it. As I understand it, this product can
19 be used either as a single-source nitrogen product or
20 blended.

21 If you blend it, does that, in any way,
22 change the security regulations on it? We had some
23 discussion about this one particular statewide product
24 that was coming in from Russia. But, as a general
25 matter, if you blend it into the standard blends that

1 you would blend AN into, does that change the security
2 regulations, or the willingness of either wholesalers
3 or distributors to carry it?

4 MR. WARD: The product would be blended at
5 the dealer level. It would be very, very unusual for
6 it to be blended at the wholesale or the warehouse
7 level. So it is going directly to farm at that point.

8 COMMISSIONER HILLMAN: I had not appreciated
9 that, so I thank you for that answer.

10 MR. ADAMCHAK: But I think there is a
11 distinction between the 33-3 that we were talking
12 about earlier. That is not a blended product; that is
13 a chemically homogeneous product.

14 In that case, you have to pass certain
15 detonation tests and stabilization tests. But, in
16 terms of what we are talking about, in the market
17 blending ammonium nitrate with phosphate, that does
18 not in any way change the chemical composition or the
19 characteristics of ammonium nitrate.

20 COMMISSIONER HILLMAN: Thank you. I
21 understand that.

22 All right, if we go to this issue of timing
23 in terms of when these security regulations really
24 started kicking in and affecting things, as I heard
25 you, Mr. Adamchak, I think you said that the Coast

1 Guard regulations kicked in in 2004. So this issue of
2 which barge lines were willing to carry AN that was
3 pretty much a 2004 onward issue?

4 MR. ADAMCHAK: That is correct.

5 COMMISSIONER HILLMAN: Okay. But then if we
6 go to the warehousing issue and I don't mean the port
7 warehouses. I mean, in general, the wholesalers out
8 there. What regulations and when were they affected
9 by this issue of I don't want to put up with security
10 cameras, and the perimeter fence, and the liability,
11 and all of that? When would you say that really hit
12 the market?

13 MR. ADAMCHAK: That was a 2004 phenomenon as
14 well. This all kind of happened in tandem, and there
15 was tremendous uncertainty about what was going to
16 happen. There was speculation about all sorts of
17 things, and both, so far as the barges were concerned
18 and as far as the warehouses, those were interrelated.

19 COMMISSIONER HILLMAN: And the barge
20 restrictions came out of Coast Guard regulations.
21 What drove the warehouses?

22 MR. ADAMCHAK: The Coast Guard as well. You
23 know, Homeland Security.

24 COMMISSIONER HILLMAN: Okay. Again, so there
25 isn't a distinction in terms of the regulations for

1 the warehouses at the ports versus the warehouses.
2 That would be inland somewhere and not connected with
3 a port?

4 MR. ADAMCHAK: In this case, that is
5 correct. In the context of your question, that is
6 right. I don't know in terms of in-field storage --
7 again, I think they are all subject to the same
8 regulations, although there may be a federal versus
9 state component. It may be the case that the
10 warehouses in-field as it were, are affected by state
11 regulations as opposed to federal regulations. But I
12 am not totally sure about that.

13 COMMISSIONER HILLMAN: Okay. All right, how
14 would you though then take that back to the data with
15 respect tot he shift out of AN, if you will, into
16 other nitrogen products? Again, if we look at the
17 data, and Petitioners put a lot of this in their
18 brief, just generally, what percentage, if you will,
19 of all of the nitrogen products laid down or in the
20 form of urea what form are in liquid, what are in AA
21 versus AN?

22 If you look at that -- I think they gave us
23 12 years worth of data, you would see -- well, there
24 is some change. It would be a fairly consistent
25 decline, in order of seven some percent going into and

1 to now less than five; and certainly not a precipitous
2 drop after 2004. So part of me looks at those numbers
3 and listens to your testimony and says that there is
4 something else going on here if the decline in
5 willingness of the wholesalers and/or distributors to
6 carry AN, the 2004 phenomenon, why the shift out of or
7 away from AN in 1993, 1994, 1995 and 1996, et cetera,
8 before any of this would have happened, even before
9 Oklahoma City. So it is not just a post-9/11, Mr.
10 Ward?

11 MR. WARD: The regulations that Nick spoke
12 to came into effect in 2004, but I think this
13 morning's panel addressed this a little bit as well.
14 There was a voluntary component to this. Insurance
15 rates got too high. You want insurance for your
16 location, you have got to put up a fence or I can't
17 get you insured. Okay, well, what are my choices?

18 Well, don't carry AN any more.

19 This has been a growing phenomena. It
20 didn't just start in 2004 and then it all fell off
21 the table. So, the decline and usage of AN, in my
22 opinion, was driven by a more gradual way by the
23 heightened awareness of the liabilities of handling
24 and storing AN.

25 COMMISSIONER HILLMAN: Okay. Would that have

1 come about post-Oklahoma City or --

2 MR. WARD: That was a big jump start. If
3 you had asked me when did this start, I would have
4 said post-Oklahoma City. You told me that you
5 recognized this in the statistics even earlier than
6 that. I would guess that the amount of AN that has
7 been rationalized, in terms of usage, from 1996 on has
8 been a lot greater than the ten years prior to that.
9 But you were looking at the statistics.

10 COMMISSIONER HILLMAN: All right. That is
11 extremely helpful. If I can then go again to a couple
12 of data questions perhaps for you, Mr. Morgan.

13 You heard my discussion with Ms. Slater this
14 morning. When we are thinking about import data here,
15 should we be looking at questionnaire data, or should
16 we be looking at official import statistics?

17 MR. MORGAN: I think we need to look into
18 the issue of whether there is the liquid AN? I simply
19 don't know whether or not that is included. If it
20 isn't, I think they both show the same trends, just in
21 different magnitudes perhaps. It wouldn't be
22 inappropriate to use it provided we are all satisfied
23 that there is no --

24 COMMISSIONER HILLMAN: Are there significant
25 exports of Russian product other than subject product?

1 In other words, are there significant exports of
2 either a liquid product or of a lesser low density
3 product?

4 MR. MORGAN: No, not that I am aware of.
5 The one issue you have sometimes with the statistics
6 that Ms. Slater has pointed out is that you have some
7 misclassification between Ukrainian and Russian
8 merchandise but barring those kinds of issues and
9 barring it being a vaster category, I think you still
10 see the same kind of trends with the imports either
11 way you look at them.

12 COMMISSIONER HILLMAN: Okay. Mr. Ward, if I
13 can come back, I apologize, on another issue connected
14 to this shift out of AN. Would you ascribe 100
15 percent of the shift to these security liability
16 handling concerns, or was there anything in the
17 farming community that certain farmers once they have
18 invested the money in putting nitrogen down in the
19 liquid basis would rather do that, or something about
20 the way in which farmers used p;rice purchased by that
21 would have contributed in any way to this? Or it just
22 100 percent security handling concerns?

23 MR. WARD: No, it is not just 100 percent.
24 It is unarguable that availability drives demand, all
25 other things being equal, and I don't care whether

1 that is granularly urea which is now driving the
2 demand for granular urea over here or whether it is
3 UAN solutions in some pocket, or whether it happens to
4 be a plant in Hawaii or Nebraska, the people in the
5 environs of that plant were using an ammonia nitrate.
6 As the availability withdrew then the consumers began
7 to use other products. that is a very big part of
8 this picture. It is not the only part but it goes
9 hand in hand with the security and liability issues.

10 COMMISSIONER HILLMAN: But not something
11 about the nature of the nitrogen or --

12 MR. MORGAN: No.

13 COMMISSIONER HILLMAN: Or it is delivering
14 nitrogen?

15 MR. MORGAN: No.

16 COMMISSIONER HILLMAN: Whether it is liquid
17 or something else, you know.

18 MR. MORGAN: Universities will promote one
19 source of nitrogen over another in some combination.
20 They are constantly studying these issues. I have
21 never heard an argument, and I think this will answer
22 your question: I have never heard an agronomical
23 argument against the use of ammonium nitrate.

24 COMMISSIONER HILLMAN: All right, I
25 appreciate those answers. Thank you.

1 CHAIRMAN KOPLAN: Commissioner Lane?

2 COMMISSIONER LANE: The domestic interested
3 party's prehearing brief on pages 2 and 3 and 19 and
4 20, and 44 and 47, states that Russia is the world's
5 largest exporter of ammonium nitrate, that its exports
6 are among the lowest priced in the world, and that it
7 has significant excess capacity. do you dispute any
8 of those statements by the domestic interested party,
9 and if not what is to prevent the resumption of
10 export to the United States if the suspended
11 investigation were terminated?

12 MR. WARD: No is the simple answer. We
13 don't dispute that. They are low-cost producer and
14 they do have that, the highest capacity. I don't like
15 to use the term of excess capacity but it is the one
16 that is popular today. So we will go ahead and use
17 it. I am not sure how to quantify that excess but
18 anyway we would agree with that.

19 Trinidad is the largest exporter of hydric
20 symonium (ph), and they also enjoy tremendous net
21 backs on the hydric symonium that they sell. The
22 Arabian Gulf is a huge exporter of granular urea (ph),
23 the Gulf States together are the world's largest
24 exporter of granular urea and are enjoying very nice
25 net backs in granular urea. I am going to get to your

1 answer. I expect, and I said it earlier, that exports
2 from Russia will increase. I expect them to increase
3 at the expense of non-subject export origin and I do
4 not expect them to cannibalize their pricing.

5 And I use those other three examples of huge
6 exporters of very low-cost products to defend that.

7 COMMISSIONER LANE: Does anybody else want to
8 respond to that? Mr. Morgan?

9 MR. MORGAN: Just to add to -- I will
10 actually ask Jay to chime in because he has looked at
11 this more closely, but the data that they have used to
12 come up; with these export figures, it's this GTIS
13 data. It conflicts with, and is lower than Futercon
14 (ph) data which they have used elsewhere. So I think
15 that there has been -- and because some of this is
16 confidential, I think we will get into it further in
17 our prehearing brief by way of rebuttal. But I have
18 no reason to trust in the total accuracy of this GTIS
19 data. It is not transparent to us how it has been
20 formulated or otherwise put together. It shows prices
21 to the U. S. market which we know what those export
22 prices are because the suspension agreement sets them
23 and somehow the GTIS data consistently understates
24 that by a significant amount. so we will get into it
25 more in terms of the actual data that has been relied

1 upon to come up with those claims and those exhibits.

2 I think the experience that we see with UAN
3 solution is interesting as well. It speaks as to how
4 the Russians market their product and they are very
5 good at this. They will definitely play one importer
6 against another; and they will demand, extract the
7 highest possible price they can. They are not
8 terribly interested in whether the importer makes
9 money. They are just interested in whether they make
10 money.

11 MR. CAMPBELL: Commissioner Okun, just to
12 comment further on what Frank was talking about, just
13 to give you a sense of the magnitude of the flaws we
14 think exist in the GTIS data, Petitioner's Exhibit 17
15 has, and I quote these prices on a metric-ton basis.
16 Exhibit 17 to the Petitioner's prehearing brief for
17 September 2005 for that month, GTIS quotes the price
18 of \$102.00 per metric ton. Meanwhile, in their same
19 submission at Exhibit 17, Futercon gives a price for
20 September 2005 of \$137.00 per metric ton. These are
21 Russian port FOB prices.

22 Clearly the GTIS data is aberrational low,
23 and this exists not just for these months but across
24 the board, and we will discuss that further in our
25 posthearing brief. but I just wanted to give you a

1 sense of how flawed we think the data is.

2 COMMISSIONER LANE: Okay. Mr. Adamchak, do
3 you also carry urea?

4 MR. ADAMCHAK: Yes, we do.

5 COMMISSIONER LANE: Okay. Have you seen a
6 ship in usage by your customers from going from AN to
7 urea, or vice versa.

8 MR. ADAMCHAK: In certain circumstances, we
9 have seen customers shift from ammonium nitrate to
10 urea, and the adverse would not be applicable.

11 COMMISSIONER LANE: I'm sorry.

12 MR. ADAMCHAK: There is no movement from
13 urea to ammonium nitrate.

14 COMMISSIONER LANE: Okay. Why are your
15 customers shifting from AN to urea?

16 MR. ADAMCHAK: Again, not to belabor the
17 point, but it is an availability issue. It is a
18 security issue.

19 COMMISSIONER LANE: Now, let me just follow
20 through on that. If a customer comes in and you have
21 got AN and urea, are you saying that you have some
22 customers who used to buy AN and are now buying urea?

23 MR. ADAMCHAK: No, I am not saying that at
24 all. I misunderstood your question. I am addressing
25 the question in sort of a macro sense. In a micro

1 sense, where we have ammonium nitrate, we have not
2 seen any switching at all, no.

3 COMMISSIONER LANE: Maybe you can clarify
4 something for me. If I were a farmer, would I be just
5 as happy with urea as AN? Does it do the same thing?

6 MR. ADAMCHAK: Again, it depends where you
7 are and what you grow but in certain cases, the answer
8 to that question may be yes. If you are a farmer,
9 typically you are going to be happy with what is the
10 lowest price. I say that somewhat facetiously ??

11 COMMISSIONER LANE: Is urea lower priced than
12 AN?

13 MR. ADAMCHAK: On a per-unit event basis
14 that is typically the case. But in certain
15 environments for certain crops, there is no perceived
16 substitute ability and AN will drive a significant
17 price premium, will command a significant price
18 premium to urea.

19 COMMISSIONER LANE: Okay. If you know this:
20 To what extent do Russian producers have the ability
21 to produce alternative products with the same
22 equipment and workers that they use to manufacture AN?
23 Are you aware of any Russian producers switching
24 production from the subject product to other products
25 over the period of review?

1 MR. MORGAN: We addressed this in our
2 prehearing brief, and I don't think that it is
3 something that the domestic industry --

4 COMMISSIONER LANE: I am sorry. I can't hear
5 you, Mr. Morgan.

6 MR. MORGAN: Certainly, Commissioner Lane.
7 We went over this in our prehearing brief. I don't
8 have the pages in front of me but I don't think that
9 there is any dispute on the domestic side, either that
10 there isn't very much potential for product shifting.
11 I believe that one of producers may make a small
12 amount of the low-density, which is the explosive
13 grade, but it is a very small percentage. To my
14 understanding, that would be about it. so you don't
15 have the ability to shift from producing AN to
16 something else, or from something else to AN.

17 COMMISSIONER LANE: Mr. Ward?

18 MR. WARD: On a permanent basis, I think
19 what Frank just said is correct. You would have to do
20 a lot of changing to change your product mix. But
21 there is a lot of fine tuning amongst -- these plants,
22 you rarely find an ammonium nitrate plant, a proving
23 plant in isolation. It is in a complex; it is making
24 other nitrogen products by and large.

25 A plant can change its product mix depending

1 on how markets ebb and flow. The two swing products
2 are ammonium nitrate and urea ammonium nitrate
3 solution. so if the market for ammonium nitrate were
4 to be soft or stagnant for whatever reason, and there
5 are literally hundreds of reasons why that might be
6 the case, a producer might attempt to take the
7 pressure off if there is a need to sell more ammonium
8 nitrate by producing more UAN solution, then the
9 opposite would be the case.

10 COMMISSIONER LANE: Okay, thank you.

11 In your prehearing brief, you argue that the
12 Russian industry is not export oriented. However,
13 that, in this investigation, seems to contradict that
14 assertion. Please explain how the Russian industry is
15 not export oriented despite fact that the data on
16 Table 4-4 of the prehearing Staff Report indicate the
17 opposite?

18 MR. MORGAN: Commissioner Lane, I don't have
19 the exact exhibit in front of me, but we were basing
20 that on one of the exhibits that the domestic industry
21 submitted in terms of percentages. The exhibit itself
22 was confidential I believe in its entirety, so I don't
23 want to disclose it but based on the figures presented
24 in that exhibit, that is the reason we concluded as we
25 did and we can certainly address that for you on the

1 posthearing and point out to you the figures that we
2 were relying on to make that statement.

3 COMMISSIONER LANE: Okay, thank you.

4 Mr. Chairman, that is all that I had.

5 CHAIRMAN KOPLAN: Thank you.

6 Commissioner Pearson?

7 COMMISSIONER PEARSON: I have enjoyed
8 listening to both sides today. In some hearings, we
9 have really different perspectives on what is going on
10 in the world. Here there are different views but my
11 sense is that it is not as divergent as we sometimes
12 see.

13 Let me just summarize briefly and then
14 perhaps take some liberties with both sides. The
15 domestic industry sees declining consumption, poor
16 financials, and a decreased number of U.S. producers.
17 Any additional competition understandably causes them
18 some concern.

19 In your perspective, you are seeing a demand
20 base that is shrinking but still wants to be served
21 and may no longer have nearby U.S. production. Thus,
22 that demand could be served most effectively by
23 imports. You are seeing, I am guessing, as a trading
24 company limited possibilities to obtain supplies from
25 exporters. I mean the number of exporters who you can

1 really work with is finite.

2 Since the Russians have good quality and
3 good logistics, it is reasonable to want to work with
4 them. And you are also seeing that without additional
5 investments, there are genuine logistical limits on
6 importing ammonium nitrate into the United States and
7 moving it to the farmers who need it.

8 Am I close with that description? What
9 would be your reaction to my characterization?

10 MR. ADAMCHAK: I think you are very close
11 except you characterized the need for additional
12 investment to increase the true growth or the band
13 width. I think that it is more than just investment.
14 It is permitting. There may be obstacles that you
15 can't overcome to increase the infrastructure, the
16 import infrastructure. Just dollars and cents aren't
17 necessarily going to get it done. but other than
18 that, I think you have a pretty good grasp of where
19 both sides are coming from.

20 COMMISSIONER PEARSON: And as you see the
21 logistical constraints in the United States, it is
22 like I'll funnel it. You can dump as many imports in
23 at the top as you might want, but you can only get a
24 certain quantity actually to enter the United States
25 and effectively enter the distribution system.

1 MR. ADAMCHAK: I think that's true. There
2 was an observation made earlier about seven vessels
3 that come into this country. On the surface that
4 sounds like a lot, but when you consider the fact we
5 are again on the front end of the Spring season, there
6 is virtually no domestic inventory to speak of and
7 there is a 500-ton import demand here. And seven
8 ships is roughly 140,000 tons. This is the time of
9 annual cycle when this product will have to arrive
10 into the marketplace.

11 So that volume is not as large and alarming
12 as it might sound at first I think is a point that is
13 worth making.

14 COMMISSIONER PEARSON: There is some
15 seasonality in the arrival of import shipments?

16 MR. ADAMCHAK: Very definitely, and in the
17 usage of the end product. Typically, I think rule of
18 thumb is that most of manufacturers -- you would
19 expect to sell to the farmers 70 to 80 percent,
20 depending on the product in the Spring season.

21 COMMISSIONER PEARSON: So, unlike the
22 domestic industry, which is as I understand from the
23 testimony is to run the plants throughout the year and
24 move product down into the marketing chain and have
25 someone else store it.

1 MR. ADAMCHAK: Correct.

2 \ COMMISSIONER PEARSON: The Russian producers
3 have some considerable capacity to hold inventory so
4 that you can a lot of the shipment now in the winter
5 and move into the U. S. marketing system not quite on
6 a logistic time basis, but on a much shorter time
7 frame than the U. S. --

8 MR. ADAMCHAK: That is true, Commissioner,
9 but to some extent, it is also a function of how the
10 suspension agreement works. As Ms. Slater said
11 earlier today, of the 150,000 tons, you can export
12 75,000 tons in the first half, and then there is a
13 kind of a 60-day period I believe where you can make
14 up unused allocations or you can hold back
15 allocations. I think it is a 60-day factor. But, on
16 balance, the way that it is structured, you should
17 have half in the first six months and half in the
18 second six months. But, again, certainly for the non-
19 subject imports, it is not unusual that a majority of
20 those imports would take place in advance of the
21 Spring season.

22 COMMISSIONER PEARSON: Now, earlier you had
23 discussed various risks that you deal with in
24 importing Russian ammonium nitrate having to do with
25 freight availability and costs and the uncertainties

1 dealing with the suspension agreement. In that case,
2 as a practical matter, are trading companies finding
3 it necessary to build in a higher margin for Russian
4 product than they would for other product?

5 As you are wrestling with: Okay, where do we
6 find the supply, do the margins widen out for Russian?

7 MR. ADAMCHAK: You know there is pricing
8 power in this market but there is a prevailing level
9 to the market as well. So the notion of building in
10 margin, you have to make a projection about what you
11 can sell for and you contrast that to what you feel
12 like you can buy for and what your costs are.

13 But, yes, certainly I would think that for a
14 lot of reasons we hope to and anticipate making more
15 money on ammonium nitrate than we might on urea, for
16 instance, because of the risks, because of the
17 commitments, you make a five-year commitment to a
18 warehouse base for instance. Those are things that
19 you try to build a risk premium in, but at the end of
20 the day it is not like we are making widgets and we
21 are not making the market either. We have to operate
22 within that market. But, certainly, there is an
23 incentive for us to maximize the revenue that we can
24 obtain for our product, whether it be nitrate or
25 anything else for that matter.

1 COMMISSIONER PEARSON: As we look at the
2 information on the record over the review, if we see
3 some instances in which the underselling in the United
4 States might be pronounced, could that be an instance
5 in which a trading company, where everything went
6 right for a trading company and some of the
7 anticipated costs simply weren't there, Mr. Ward?

8 MR. WARD: It is more likely that everything
9 went wrong. It is more likely that they are upside
10 down and they are trying to get out. We can plan it
11 as best we can. We can buy products and then our wits
12 tell us that this is the inclination. The market is
13 on an incline and this is where it ought to be by the
14 time that product gets there and there can be who
15 knows how many intervening factors that the wrong
16 decision.

17 So, no, in the scenario you just described
18 everything went right. That guy is trying to maximize
19 because he knows that there will be a time when it is
20 all wrong. So when he is really on the right side, he
21 is trying to make a good margin.

22 MR. ADAMCHAK: You know even if you budget a
23 five-percent margin, if you have the opportunity to
24 make a ten-percent margin, you will take that
25 opportunity.

1 COMMISSIONER PEARSON: Okay, I guess that's
2 rational enough.

3 Okay, you have discussed this earlier to
4 some degree but let's go back again to the question
5 of: If the suspension agreement is lifted, what would
6 drive the shift back to Russian product and away from
7 non-subjects? You are making the argument that you
8 would expect to see a shift but it would be away from
9 non-subjects rather than away from domestic
10 production. Could you talk about that a little bit
11 more. I mean is that based on decisions that trading
12 companies would make for their own good reasons or are
13 there other issues that would drive that?

14 MR. ADAMCHAK: No. I think you hit it right
15 on the read. Those are decisions that would be driven
16 by trading companies. You know the flow of this
17 [product, whether it be Russian product or non-subject
18 product, the flow of that material is not really
19 driven by the Russians or the Bulgarians or the
20 Rumanians but they are driven by the traders. These
21 guys all operate through trading companies and the
22 global wholesalers into this market are all trading
23 companies.

24 So, yes, either those would be projected
25 decisions. We feel like f other trading companies are

1 using the same criteria that we would use, those are
2 the factors that would drive that shift.

3 COMMISSIONER PEARSON: So, what would happen
4 then to non-subject product that currently is
5 available to some extent from non-desirable suppliers?
6 You mentioned the Bulgarians have a slow load out
7 rate, and Georgia isn't on deep water et cetera, et
8 cetera. What would happen to product produced at
9 those plants, or would it simply not be produced, Mr.
10 Ward?

11 MR. WARD: There wouldn't be a market for
12 it. That product in Georgia would never come here
13 unless there was an obvious void. Con Agra is making
14 a trading play. They see a void in this market and
15 they are bringing a very, very marginal product into
16 it that otherwise wouldn't come.

17 COMMISSIONER PEARSON: Right.

18 MR. WARD: Most Rumanian product wouldn't
19 come and the decision upon the trading companies to
20 focus on one origin of product versus another is
21 driven largely by the customer base. There is an
22 established preference for a Russian product in the
23 United States.

24 COMMISSIONER PEARSON: Okay. But the
25 specific question would you expect that that non-

1 subject product would go somewhere else? I mean would
2 the Rumanian product go to Turkey or would it just
3 never get produced in Rumania because there would not
4 be a demand for it?

5 MR. WARD: Rumania is an erstwhile producer.
6 They are up, down, sideways. Georgia never exports.
7 These are just very opportunistic situations. Yes,
8 the answer to your question is no, although some
9 Rumania product will go to Turkey. It always has but
10 that capacity would just be throttled back.

11 COMMISSIONER PEARSON: Okay. So they would
12 run at a lower capacity utilization.

13 MR. WARD: They would run and they have, and
14 they historically have, especially in the winter
15 months. Again, not to be flippant, but they are up,
16 down, who knows. You buy a cargo for January, you get
17 loaded in March. You just never know.

18 COMMISSIONER PEARSON: Just one follow-up
19 question: If there anything that you could put on the
20 record regarding fluctuations in exports and
21 production in some of those marginal supplying
22 countries that might be helpful.

23 MR. ADAMCHAK: The other point that Mike
24 just touched on is also the availability of natural
25 gas. Natural gas availability in places like Bulgaria

1 and Rumania will fluctuate, and typically in Georgia
2 for that matter, and typically in the winter months,
3 much more of the gas will get diverted for home
4 heating and power generation and that sort of thing.

5 So you will have a normal seasonality in
6 production and that seasonality coincides with the
7 most desirable time to import from an U.S. importer's
8 point of view as we have just discussed. Right about
9 now in the dead of winter is the most opportune time
10 to bring product into the United States in advance of
11 the Spring season. That is typically the time when
12 the Bulgarians, and the Rumanians, and whoever else
13 have the most cyclical issues on gas supply, and the
14 difficulty of being in a port.

15 When you know that you are only going to get
16 loaded at a 1,000 tons a day, you plan on being in
17 that port for two weeks or three weeks. In the
18 wintertime, you can only load in good weather
19 conditions. You can't load during rain or snow or
20 whatever. So, again, that contributes to what Mike
21 was saying that you really don't know when you are
22 going to get that bill of lading cut.

23 COMMISSIONER PEARSON: And I know how much
24 you love to pay demerits. I am going to start paying
25 demerits now if I don't turn the microphone over to

1 the Chairman.

2 COMMISSIONER ARANOFF: Thank you,
3 Commissioner. I just want to follow from where
4 Commissioner Pearson left off. As among the other
5 global producers of this product, my understanding is,
6 you've indicated that the quality of the U.S. product
7 and the Russian product are pretty much comparable and
8 are on the high end. What other producers are out
9 there that are comparable and where are their main
10 markets? And then, there's this second tier that I
11 guess you were describing of sort of marginal
12 producers.

13 MR. ADAMCHAK: We believe that the Bulgarian
14 product quality-wise is right in that same echelon.
15 But, we feel like that's pretty well where it stops
16 and starts. The remainder of those guys are producing
17 largely - again, this is old production, largely to
18 satisfy their domestic market. That's why that
19 production was originally put in place.

20 COMMISSIONER ARANOFF: What about European
21 producers, western European producers?

22 MR. ADAMCHAK: The Dutch material is, again,
23 high quality, a little bit different. It is a
24 granular product, as opposed to a prilled product.
25 So, you have a granulating aid, which takes the

1 nitrogen content from 34, down to 33, for instance,
2 and that may cause some problems in terms of
3 commingling and so on. And the Lithuanian material is
4 also quite good; but, typically, gets earmarked for
5 Europe. Typically, they - and, you know, we have a
6 similar phenomenon going on in the United Kingdom, for
7 instance, where gas supply has reeked havoc - or gas
8 prices have reeked havoc with domestic manufacture in
9 the United Kingdom. And there are products -- and
10 that has largely gone from a market that was satisfied
11 by domestic capacity only to - and I don't know what
12 the numbers are, but I would think that the production
13 rates on domestic capacity in the United Kingdom are
14 something far away from 100 percent right now and much
15 of that void is being filled increasingly by imports -
16 or much of that market is being supplied increasingly
17 by imports.

18 COMMISSIONER ARANOFF: And you didn't
19 mention in your list of countries you were discussing,
20 you didn't mention Ukraine. Where do they fit in?

21 MR. ADAMCHAK: I can honestly say, I don't
22 know if I have any direct experience with Ukranian
23 ammonium nitrate, in terms of handling it and seeing
24 the quality of the material. No, I don't want to
25 assume it's comparable to the Russians, because, as we

1 stated before, part of the increase in Russian quality
2 has been a function of investment in Russian plant and
3 equipment and I don't know that we've seen the same
4 level of reinvestment in Ukrainian plants and
5 equipments, as we have in Russia.

6 COMMISSIONER ARANOFF: Okay. Thank you,
7 very much. Anything that any side can put on the
8 record in their posthearing to just help us narrow
9 down. We don't have that much information on capacity
10 or capacity utilization in these third countries. And
11 then, of course, on the quality comparable issue, we
12 have some questionnaire data on that, but it's not
13 really country specific. It refers to non-subject
14 imports as a group.

15 Turning to a different question that would
16 be related, I raised the question with domestic
17 producers this morning about your argument that there
18 are certain Russian producers, who are just located
19 too far from a port to be viable exporters. If you
20 put those aside and if you put aside the ones, who we
21 already know are exporting, that leaves a group in the
22 middle, who are closer to a port, but it's not clear,
23 based on the data that we have on the record, whether
24 or not they're actually exporting now. How should we
25 treat the capacity and excess capacity and excess

1 capacity of those producers, when we look at the
2 potential for what could happen to imports, if the
3 suspension agreement were terminated?

4 MR. MORGAN: Commissioner Aranoff, I think
5 the group in the middle, with maybe one exception,
6 because the exhibit, itself, is confidential, but with
7 one exception, I think you can look to what you had in
8 the original investigation. And, again, our point in
9 making this was not to say, as a legal matter, the
10 Commission can exclude these companies, but to put in
11 context the fact that you have a Russian industry that
12 is the largest in the world. But, that doesn't
13 translate into two million tons of exports to the
14 United States. It doesn't translate into a million
15 tons of exports to the United States. So, it's within
16 that general context that we made the argument. But,
17 for the producers in the middle, I would say to
18 reference back to the original investigation, which
19 does provide an indication of who is likely to export.
20 And we can perhaps uncover some more information for
21 you about what those companies do, in terms of their
22 export behavior. But to our knowledge, the companies
23 in the middle, with I guess one exception, have not
24 exported to the United States and have no history of
25 doing so.

1 COMMISSIONER ARANOFF: Well, I take your
2 point there; but, I, also, take Mr. Adamchak's point
3 that neither has Georgia got a history of exporting to
4 the United States. But if there's a perceive shortage
5 and if there's available capacity, it's going to come.
6 I'm trying to boil down your argument that you can see
7 that there's capacity out there. You don't know if it
8 has experience in the U.S. market; but, arguably, not
9 any worse or less experience than some of the stuff,
10 which sometimes comes into the market. Does your
11 argument that imports may increase if the agreement is
12 terminated, but not to a level we would consider
13 significant within the statutory meaning, it depends
14 entirely on your assessment of the logistical problems
15 with being product into the U.S. market, or is there
16 more there?

17 MR. MORGAN: I think Mr. Adamchak and Mr.
18 Ward can speak to this. But, there's a total of,
19 whether it's Russian or Lithuanian or Bulgarian, of
20 imported product that makes sense in the market and
21 the triggers are willing to bring to the market. And
22 that the reason you've had such an off situation with
23 Georgian product coming in is because you have, I
24 believe it's 34,000 tons or something like that in
25 inventory right now - 34,000 tons in inventory with

1 the spring planting season about to begin, at the
2 producer level. So, that just supports the idea that
3 where there's a perceived shortage in the market,
4 they'll go to whatever lengths there are, because
5 there is demand for the product.

6 Now, when you can go to Russia, though, and
7 get the supply from the producers that Mr. Adamchak
8 has been discussing, they can provide the product
9 without having to go outside to unknown suppliers in
10 Russia, who have not had experience with the U.S.
11 market. And I don't know if I'm overstating that or
12 if that's accurate.

13 MR. ADAMCHAK: I think the other thing that
14 we must bear in mind is that there are differences
15 within the quality of the Russian manufacturers. You
16 know, we're kind of using that as sort of a generic
17 term and it really isn't. That's number one.

18 Number two, I think there's some insight on
19 how the suspension agreement has been executed and how
20 product has been exported under the suspension
21 agreement. And I think predominantly, you've got the
22 two major manufactures, that being EuroChem and Acron,
23 that effectively supply the product. The allocations
24 may, you know - you know, you've got 8,000 or 10,000
25 tons allocated by Versnick for instance. These

1 allocations are prorated against capacity. And it's
2 not viable, it's not economic to ship 8,000 tons, if
3 that's all your allocation is. So, what you do is you
4 commingle that allocation with Akron, who's got a
5 60,000 ton allocation and EuroChem, who's got a 80,000
6 allocation. You want to make these shipments happen
7 in 20,000 to 25,000 ton lots.

8 So, in terms of looking at the capacity, I
9 think it's almost fair to say that you've got the two
10 majors and everybody else following in. And they
11 don't have any experience, direct experience in
12 shipping to the United States and executing under the
13 suspension agreement and really lining up the traders
14 to - that's maybe a little bit of an
15 oversimplification, because some of these traders are
16 dealing in Europe and dealing in other areas, where
17 these guys can ship smaller ships. But in terms of if
18 there is going to be additional Russian volumes coming
19 in, it will predominantly be coming from the two big
20 guys.

21 MR. CAMPBELL: Commissioner Aranoff, I would
22 just add that in addition to the logistical
23 constraints, a major component of our argument is as
24 to why the likely volume of Russian ammonium nitrate
25 imports into the United States would not be

1 significant is because of the supply gap. We believe
2 our estimate of the under fall, the shortfall between
3 supply and demand is conservative, we'll defend it to
4 the hills, and we think because of that, there's not
5 going to be - the volumes will not be significant,
6 because it's not going to result in material injury to
7 the United States industry.

8 COMMISSIONER ARANOFF: Well, I take your
9 point, except it's a little bit inconsistent, I think,
10 with your argument that any additional subject imports
11 that come in are going to displace non-subject
12 imports, as opposed to adding to the total volume of
13 imports in the U.S. market.

14 MR. CAMPBELL: I see what you're saying.
15 There's a couple of layers here.

16 COMMISSIONER ARANOFF: Okay. Thank you,
17 very much.

18 CHAIRMAN KOPLAN: Thank you, Commissioner.
19 I don't want this to come across as argumentative, but
20 I'm struggling with something here, based on my first
21 round. This is for the panel. When I asked on my
22 first round how I factor into my analysis the data in
23 the record that shows the Russian producers are
24 exporting subject products to the U.S. at prices
25 higher than to other countries, your answer was, if I

1 recollect correctly, your answer was that this is
2 because they can get higher prices for subject product
3 in the U.S., if they're selling at what our market
4 will bear; correct? Microphone.

5 MR. ADAMCHAK: I think the reason that the
6 Russians are selling higher in the United States than
7 they are elsewhere is because they are selling under
8 the suspension agreement and for the reasons we talked
9 about. The suspension agreement, because of the
10 distortions we talked about, the suspension agreement
11 demands a certain price level and that's not
12 necessarily consistent with the prevailing level in
13 the United States and it's certainly not consistent
14 with the prevailing level elsewhere in the world.

15 CHAIRMAN KOPLAN: Well, I'm still
16 struggling. This is a sunset review and not an
17 original investigation, which I, also, happened to
18 have participated in. Five years ago, the Russian
19 producers were underselling here at what was
20 determined at unfair prices, rather than sell at
21 higher prices than what the U.S. market would bear.
22 I'm trying to reconcile your response this afternoon
23 to that phenomenon with your answer to me today.

24 MR. CAMPBELL: Chairman Koplan, I think,
25 again, it comes back, there have been significant

1 changes that cannot be overlooked. One, the main one
2 is - one of them is the logistical constraints.

3 CHAIRMAN KOPLAN: But once the constraints
4 come off now, why would I not expect to see a
5 resumption of this in the future? That's my point. I
6 mean, five years ago, you know what happened. And I
7 hear your response to me on the first round and I'm
8 asking myself, why wouldn't I expect to see a
9 resumption of that, if we revoke the orders and the
10 suspension agreement is lifted?

11 MR. ADAMCHAK: Mr. Commissioner, I think the
12 answer lies largely in the change in the structure and
13 the ownership of the Russian industry. I think it's -

14 CHAIRMAN KOPLAN: You're saying the Russian
15 industry?

16 MR. ADAMCHAK: Absolutely, absolutely. The
17 ownership has changed. The quality of the marketing
18 and - these guys, you know, they did not leave Moscow
19 and now they're - you know, we have a southwest
20 fertilizer conference in San Antonio and there's 10 of
21 them there. I mean, they're a lot more - they're just
22 a lot more worldly. They're a lot more sophisticated.
23 And back in the old days, as I say, the money did not
24 go through proper corporate channels in a lot of it.
25 So, these guys were - they were ripping off the

1 government. That does not happen now, as Mr.
2 Korticofsky can attest. So, they really didn't care.
3 You know, as long as they got the money in their Swiss
4 account and it was in U.S. dollars, they weren't
5 terribly concerned about it. That is significantly
6 different now and I think that's the biggest change
7 that we can effect, you know, that will be brought to
8 bear in this situation on the event of a revocation of
9 the suspension agreement.

10 CHAIRMAN KOPLAN: So, there are different
11 subject producers now than I had five years ago; is
12 that it?

13 MR. ADAMCHAK: You have different
14 principles. You have different ownership.

15 CHAIRMAN KOPLAN: Different principles. I
16 thank you for that. Mr. Campbell, if there is
17 anything else you want to add to that, though,
18 posthearing, I would appreciate it on that question.
19 Counsel? Thanks.

20 Mr. Campbell, on page one of your brief, you
21 state, 'a significant deficit exists between
22 domestically-produced AN supply and U.S. demand, even
23 if the domestic industry operates at full capacity.'
24 Further down the page, you add, 'unless the Commission
25 terminates the suspended investigation, it is likely

1 that there will continue to be insufficient AN supply
2 to meet demand in the U.S. market.' Your statement,
3 though, does not match data from the prehearing staff
4 report. And, of course, this morning, the parties
5 disputed your premise.

6 U.S. apparent consumption in 2004, found on
7 Table 1-6, at page 119 of our staff report, is
8 1,602,184 short tons. On Table 3-1, at page 33 of our
9 staff report, 2004 capacity for domestic producers is
10 1,592,573 short tons. These numbers reflect that
11 domestic capacity was over 99 percent of consumption.
12 I think it was 99.4. In interim 2005, domestic
13 capacity appears sufficient to supply the entire U.S.
14 market. In addition, there are other non-subject
15 countries that currently supply AN. How do you
16 respond to the argument that the domestic market can
17 be fully supplied without Russian imports, that the
18 domestic industry is shedding capacity in line with
19 decreases in demand?

20 MR. CAMPBELL: Chairman Koplan, we would
21 refer you to our prehearing brief at Section 2(a) and
22 Section 5, where we explain in detail how we come up
23 with our estimate of the supply gap. Delving into it,
24 we're using some confidential data, so I can't explain
25 it as specifically as I'd like. So, we will certainly

1 address that in the posthearing brief. But to try to
2 answer a couple of your questions, to try to respond
3 to your question a little bit here, first of all, as
4 for consumption, we realize that what the staff report
5 states, it states about 1.6 million short tons. But,
6 again, I think as Commission staff would concede, that
7 figure is definitely -

8 CHAIRMAN KOPLAN: That's of apparent
9 consumption.

10 MR. CAMPBELL: Yes, sir. That figure is
11 understating apparent consumption, because Agrium did
12 not report its shipments and the consumption figure is
13 based on reported import - reported shipments of U.S.
14 imports - reported shipments, U.S. shipments of
15 imports and reported shipments by the U.S. producers.
16 So, already, the number is understated. We use a
17 higher figure for consumption, based on our estimate
18 of what Agrium's likely shipments during 2004 were.
19 In addition, for secondary support to our figure of
20 2004 consumption, we point to Exhibit 3 of our brief,
21 which is independent information put on - is the
22 estimate by Ferticon of consumption for the United
23 States for 2004 and going forward. And, again, we
24 believe that using 2004 consumption levels is a
25 conservative estimate, because, again, we posit that

1 that level of consumption reflects the availability of
2 ammonium nitrate more than the level of demand, that
3 the demand would be higher.

4 Getting to the capacity of the U.S.
5 producers, again, yes, the staff report - I'm going to
6 quote the table wrong - quotes around 1.6 million
7 short tons. But -

8 CHAIRMAN KOPLAN: What I have here from the
9 table was 1,592,573.

10 MR. CAMPBELL: Okay, okay, roughly 1.6;
11 right. But, again, we're taking our argument that the
12 Commission - because the likelihood determination
13 requires a perspective analysis, in terms of the
14 capacity that's going to be available from U.S.
15 producers, the Commission should look at only Terra
16 and El Dorado. In addition, we argue that the
17 Commission should look at El Dorado's El Dorado's
18 plant, and not its Cherokee plant, because it is
19 suspended production at the Cherokee plant. It did
20 that in favor of other products and it did that even
21 with the suspension agreement in place. And we would
22 submit that unless the Commission believes that it's
23 likely that El Dorado is going to resume production of
24 ammonium nitrate at Cherokee -

25 CHAIRMAN KOPLAN: Cherokee is now open,

1 isn't it?

2 MR. CAMPBELL: Yes, but it's not producing
3 ammonium nitrate, at least to my knowledge. We can
4 ask El Dorado. But, it's my understanding that El
5 Dorado is producing other products, but it's not
6 producing ammonium nitrate. And barring evidence of
7 which there is none in this review so far that we have
8 seen, that that production is likely to be resumed, we
9 believe the Commission should use as U.S. capacity,
10 Terra's full capacity and the El Dorado plant for El
11 Dorado and not its Cherokee plant. And, again, we
12 think we're being generous by using - building into
13 our supply gap estimate U.S. production capacity,
14 because U.S. producers have never operated to full
15 capacity. It is normal.

16 Yes, you know, given fixed costs and
17 efficiencies, certainly, probably U.S. producers would
18 like to be closer to 95 percent, which they argued
19 they would like to be. But, in the period of the
20 original investigation and the period of review,
21 they've never been close to that level. So,
22 nevertheless, we're giving them 100 percent of their
23 capacity. So, we think we're being generous in our
24 estimate.

25 And, finally, as far as non-subject imports,

1 we built into our estimate, I believe, the levels for
2 2004. But, again, I refer you to our prehearing brief
3 for the exact estimate, which, we, again, believe it's
4 a conservative estimate.

5 CHAIRMAN KOPLAN: Okay. I appreciate your
6 response. I would also appreciate, though, for
7 purpose of the posthearing, if you could expand on
8 this using BPI information.

9 MR. CAMPBELL: Certainly, Chairman, we will
10 do so.

11 CHAIRMAN KOPLAN: Take into account the
12 numbers in the tables that I referred to. I just have
13 a quick one, simply for posthearing, and that's Mr.
14 Morgan, beginning on page 39 of the domestic parties'
15 brief, they state, 'Petitioner notes that, in any
16 event, the pricing data reflected in the prehearing
17 staff report, which apparently shows significant
18 margins of overselling, particularly in 2004 and 2005,
19 are not accurate.' The specific reasons that follow
20 are BPI. But, can you respond to this in your
21 posthearing submission?

22 MR. MORGAN: We will do so, Chairman Koplan.

23 CHAIRMAN KOPLAN: Thank you, very much.
24 Vice Chairman Okun?

25 VICE CHAIRMAN OKUN: Thank you. And I just

1 have one question and that is, if you see in the
2 foreseeable future, if you could give me your sense of
3 what you think the pricing environment would be, if
4 the order were lifted, and I want you to comment on a
5 couple of things. Mr. Adamchak, you had commented on
6 the kind of the post-Katrina shock in the prices, I
7 think is how you described it, there was shortages and
8 production out and how prices respond to that. And if
9 you could talk about how long that takes, even now if
10 it has evened out and whether that would be something
11 that we should take into account.

12 And the second would be to get your sense of
13 where natural gas prices will be. I know, we all say
14 that's one of the hard things to guess, but as
15 someone, who follows it, I think you're in a better
16 position to give us your advice - or your view of
17 where they are. And so, I'd like to hear that, as
18 well, as you talk about pricing. Thank you.

19 MR. ADAMCHAK: Commissioner, I'll try to
20 answer the second question first, since I think it
21 probably relates to the original question. Because, I
22 think to a large extent, the price level - nitrogen
23 price levels in the United States will continue to be
24 seriously impacted by gas price levels. Like
25 everybody else, I missed the fight as to how gas

1 trades and how we get to the levels that we get to. I
2 think it's interesting that when you look at gas right
3 now and you look at the future, the lowest price on
4 the board for the foreseeable 12 months is the price
5 that - it's the month that we're in right now, which
6 is very, very unusual. Typically, as you know, we've
7 got a price premium through the winter months and then
8 it sort of hollow out during the summer and then it
9 picks back up in the fall. But right now, we're -
10 even though the gas has come down to 8.50, and I think
11 maybe about, back earlier in this week, to back above
12 nine. But, even when we were at least low at 8.50, by
13 September, I believe, or certainly October, we were
14 back \$10 forward. So, that tells me that the people
15 that actually make a living doing this think that
16 we're going to continue to be in a firm gas
17 environment. I don't know if we're going to see \$14-
18 \$15 again, but I think - and this is, I think, pretty
19 consistent with the domestic industry response. I
20 don't think that we can plan on seeing six dollars.

21 But that said, we've had a situation where
22 consistently the inventory levels of natural gas for
23 the last four or five months have been comparable to
24 where they were year over year and ahead of the five-
25 year average, and, yet, there was a complete

1 disconnect between relative prices. Last year in the
2 month December, the average price may have been \$6.50.
3 This year, the average price may have been \$13.50 and,
4 certainly, that kind of differential cannot be
5 explained or justified given the inventories. I think
6 that we, like everybody else, I think we feel like
7 we're going to be between eight dollars and \$10 in
8 gas, although we could - again, I say that knowing
9 that the fundamental would argue for a case that they
10 would be lower. You know, maybe we'll get to seven to
11 10. But, we don't get back to the five- and six-
12 dollar levels. I would agree with Mr. Gough on that.

13 In terms of the pricing for ammonium nitrate
14 going forward, we are in the mix right now of a pretty
15 significant price correction in urea and largely a
16 function of - you know, we've got a lot of import
17 coming in right now and I think the gas situation has
18 fooled a lot of people. A lot of people loaded up on
19 imports or went out and bought imports with the
20 anticipation that gas would continue to render the
21 U.S. domestic industry incapable of producing it at
22 these prices and they anticipated a lot of shut downs
23 and anticipated selling a lot of these import cargoes
24 back to the domestic industry. As it turns out, it's
25 looking more and more likely that the domestic

1 manufacturers will continue to produce. So, there's
2 an inevitable price correction to that, because I
3 think the market misjudged how much domestic
4 production we were going to see in the first quarter.

5 VICE CHAIRMAN OKUN: You're referring to
6 urea?

7 MR. ADAMCHAK: I'm referring to urea.

8 VICE CHAIRMAN OKUN: Okay. I just wanted to
9 make sure -

10 MR. ADAMCHAK: Yes, absolutely. And the
11 price response to ammonium nitrate will be less, but
12 we anticipate that there will be some. We feel like
13 nitrite, as we've talked about today, is less elastic
14 to price than virtually all the other fertilizer
15 commodities, because some of its unique
16 characteristics that we've talked about before. So,
17 we will see a little bit of price erosion, I would
18 think, in ammonium nitrate, but we're not conceding
19 that yet and we're not planning on it. Our posted
20 price out of our Florida warehouse is firm and our
21 next move is going to be up, as opposed to down.

22 VICE CHAIRMAN OKUN: Okay. I appreciate,
23 very much, those perspectives on price. And my last
24 request would just be for posthearing and, Mr.
25 Campbell, I guess that would relate just in terms of

1 the capacity that you've looked at when determining
2 what you view to be the supply gap. As I understood
3 the testimony this morning from Mr. Rydlund was that
4 the Cherokee plant had started producing ammonia again
5 and that his statement about ammonium nitrate was just
6 we can and will and are anxious to produce ammonium
7 nitrate at Cherokee, if and when marketing conditions
8 permit us to do so. But, he did talk about the
9 shutdown of that. So, I know you'll have a chance to
10 see whatever else they put for posthearing and I would
11 take that into account when you do your response, as
12 well.

13 MR. CAMPBELL: Okay, Commissioner, we'll do
14 so.

15 VICE CHAIRMAN OKUN: Thank you, very much.
16 And thank you for all of your answers this afternoon.

17 CHAIRMAN KOPLAN: Thank you. Commissioner
18 Hillman?

19 COMMISSIONER HILLMAN: Thank you. I guess a
20 couple of things I wanted to follow up a little bit
21 on, one is this issue of price and the effect of the
22 referenced price. Mr. Adamchak, I thought you said
23 during your testimony that always when the Russian
24 product came in during this last period, it came in
25 basically at the reference price. Did it ever come in

1 above the reference price?

2 MR. ADAMCHAK: Yes.

3 COMMISSIONER HILLMAN: Okay.

4 MR. ADAMCHAK: In certain situations, again,
5 you know, the Russians would say, it's got to be
6 referenced price plus five, I think was - I think
7 there were two cargoes that came in, in excess of the
8 referenced price.

9 COMMISSIONER HILLMAN: Okay. So, two times
10 above and the rest of the time pretty much at the
11 referenced price?

12 MR. ADAMCHAK: As far as I know.

13 COMMISSIONER HILLMAN: In response to
14 similar questions, my sense from your answers was that
15 it was the referenced price that was pushing the
16 Russians to where they came in at, as opposed to
17 market forces or other things in Russia. In other
18 words, they were very much looking to and guided by
19 that referenced price.

20 MR. ADAMCHAK: Yes. There's no other - I
21 mean, there's no discretion in the pricing.

22 COMMISSIONER HILLMAN: Right. Do you have a
23 sense, in the absence of the referenced price, what
24 the prices of the Russian product would have been?

25 MR. ADAMCHAK: It's going to be as high as

1 they can get away with. As I say, you know, it speaks
2 to the - I don't want to use the term 'gall'
3 necessarily, but, again, you've got a mechanism and
4 these guys are asking you all, it's got to be higher
5 than that mechanism. And that price would be as high
6 as it could possibly be, as far as the Russian - you
7 know, they've gotten pretty good on UAN solution,
8 absolutely extracting. They see what's going on in
9 the marketplace and they will extract value.

10 And the other thing that's a little bit
11 different is they used to be strictly an FOB seller.
12 They are more and more a CNF seller. So whereas
13 before, maybe traders could make some money on the
14 freight, they can't do that. They're a lot sharper, a
15 lot more astute in the ocean freight market than they
16 ever used to be. And just speaking to Chairman
17 Koplman's observation about what - that's another part
18 of what has changed within the Russian marketing
19 dynamics since the inception of the suspension
20 agreement.

21 COMMISSIONER HILLMAN: Okay. But if they
22 only tried it twice above the referenced price and you
23 were to take away the referenced price, your
24 presumption is they would be selling it as high as
25 they can get it for, because then that would be

1 somewhere at or below the referenced price. Would it
2 be -

3 MR. ADAMCHAK: It would be -

4 COMMISSIONER HILLMAN: You would have seen a
5 lot more so above the referenced price over this time
6 period?

7 MR. ADAMCHAK: It would clearly be below the
8 current referenced price.

9 COMMISSIONER HILLMAN: Okay.

10 MR. ADAMCHAK: I mean, part of our argument
11 here is the referenced price is skewed. And that's
12 another reason why the Russians, I think, are
13 interested in at least negotiating or re-negotiating
14 the mechanics of the referenced price, because I think
15 they see accurately that right now, barring something
16 we can't see, they're just not going to make their
17 allocation in 2006.

18 The other point that we haven't yet made in
19 terms of - we've talked about the freight and the
20 barge freight and all that. The other thing that's
21 interesting as it relates to the specifics of the
22 referenced price is that the focal point, the trigger
23 price is an FOB Midwest price. And I think that price
24 was originally put in place when Agrium was operating
25 at Hoague. Agrium is not operating there. So, that

1 price, that trigger price has significantly less
2 relevance now than it ever did and is potentially
3 subject to manipulation with the - we call them rags;
4 I guess we should be a little more formal here with it
5 - with the intelligence magazines, the guru markets
6 and what not, that's not necessary as meaningful now,
7 because there's no production there, as it was in
8 2000, when the suspension agreement was put in place.

9 COMMISSIONER HILLMAN: Okay. You heard
10 questions this morning about the issue of, okay, a
11 number of these domestic plants have been closed, but
12 the assets are still sitting there. To the extent
13 that you have a view of whether there is any bars out
14 there in the market from rags or not, as to whether or
15 not these plants could, would, at a certain price
16 point come back on line or whether when they say
17 they're closed, they really are not coming back.

18 MR. ADAMCHAK: You know, I don't know that
19 there's any buzz per se. You know, never is a long
20 time. We've seen certain people that were
21 representing that they may get out of the market, like
22 ConAgra - well, I don't want to name names, but either
23 we've seen people change their mind on this issue, as
24 the economics kind of shift around. So to say that
25 those plants would never come back on stream, I think

1 the people that made those decisions are typically -
2 they're not making a decision like that based on three
3 months, four months, six months. I would think that
4 it's safe to say that those plants are gone, certainly
5 in the case of several of them, they are. I think as
6 Ms. Slater said earlier today, to some extent, you
7 might need to evaluate it on a case-by-case basis.
8 But for the most part, those plants, in my opinion,
9 are gone.

10 COMMISSIONER HILLMAN: All right. Mr.
11 Morgan, a couple questions to you. We've heard this
12 discussion this afternoon on this issue that on the
13 wholesale level, that there are these large number of
14 warehouses that have basically said, I'm out of it;
15 I'm not going to carry AN, because it has all of this
16 panoply of extra costs associated with it. If there
17 is anything that you could help us document - again,
18 we heard a figure in the order of 50 percent - but if
19 there's anything that could help us get our arms
20 around some documentation of this issue of these
21 warehouses that at the wholesale level have decided I
22 don't want to be in this business anymore, I think it
23 would be very helpful.

24 MR. MORGAN: We will see what we can try to
25 find out for you.

1 COMMISSIONER HILLMAN: And, similarly, if
2 there's anything at the port level. I mean, we've
3 heard that it's only Tampa and New Orleans that have
4 the ability, again, that have the certifications. If
5 there's anything further on that issue of the
6 certification of the ports, in terms of what we might
7 look at to understand that issue, again, that would be
8 helpful.

9 And then two other more legal questions that
10 I had posed to the panel this morning that I would ask
11 you to address, as well, and that is whether there is
12 anything about the fact that this is a suspension
13 agreement that's been in place, as opposed to an
14 antidumping order, which is normally what we would be
15 looking at, in terms of our legal analysis of whether
16 revocation of the order would result in a recurrence
17 of material injury, does it matter, as a legal matter
18 or in how we evaluate the factors that the Commission
19 is required to look at, that we've had this suspension
20 agreement in place, which does make the market operate
21 differently than it might had there been a straight
22 forward dumping order and how would you have us look
23 at this case differently, if at all, as a result of
24 that?

25 MR. MORGAN: I would like to think on that

1 and respond in writing.

2 COMMISSIONER HILLMAN: Okay. And then the
3 last question that I also posed this morning that I
4 would ask you to address is this issue that at the
5 beginning of the original period, we had 10 domestic
6 producers. And so, we did have a fair amount of
7 intra-domestic industry price and volume competition
8 that was at work in the market. Now that we're down
9 to two players, I'm wondering what you would have us
10 think about, in terms of how do we assess, again, sort
11 of how prices get set, how we should assess pricing
12 data generally, and the degree of competition between
13 domestic production now that it is a much different
14 number of players out there setting prices than there
15 was in the original investigation and what that should
16 say to us about price effects, if any, of Russian
17 imports in the absence of the suspension agreement.

18 MR. MORGAN: We would be happy to look at
19 that in the posthearing, as well.

20 COMMISSIONER HILLMAN: Okay. I appreciate
21 that. And with those questions, I have no further
22 questions. I want to thank you, very much, for the
23 answers. It's been extremely helpful.

24 CHAIRMAN KOPLAN: Thank you, Commissioner.
25 Commissioner Lane?

1 COMMISSIONER LANE: I have no further
2 questions.

3 CHAIRMAN KOPLAN: Commissioner Pearson?

4 COMMISSIONER PEARSON: A couple of hopefully
5 quick ones. Mr. Adamchak, you had mentioned that
6 you're moving ammonium nitrate in handy-sized vessels,
7 30,000 tons, maybe some smaller than that. Why is
8 this product moved in handy maxes, rather than in pana
9 maxes?

10 MR. ADAMCHAK: It's a function of a couple
11 of things. In our case, it's a function, to some
12 extent, of the limitations of the port of Tampa. The
13 way our specific transactions normally move is that we
14 have two ports. We'll go to Tampa first and then
15 we'll, you know, discharge as much as we can, and then
16 go to New Orleans. And there are limitations, in
17 terms of how much product you can discharge in Tampa.

18 And the other limitation, as I've already
19 mentioned, is just the barge availability is a major,
20 major constraint to us. We're really wrestling with
21 trying to, you know, accumulate a vessel of
22 significant enough size, so that you maximize your
23 freight economics without causing some of the
24 complications on the other side, just in terms of
25 being able to move the product around. And,

1 typically, I think - and that has a lot to do with the
2 demand in the marketplace. It has something to do
3 with how, again, the suspension agreement allocates
4 the timing and allocates the - I've talked a little
5 bit about the major manufacturers. One major
6 manufacturer ships from a Black Sea port. The other
7 major manufacturer ships from a Baltic Sea port. So,
8 you can't aggregate those volumes very easily.

9 And the other part of it is just the demand
10 and the desire, I guess, to maintain some order in the
11 marketplace. A pana max on nitrate would - at any
12 given time, given what other importers might be doing,
13 would have consequences to the market.

14 COMMISSIONER PEARSON: Too much of a good
15 thing.

16 MR. ADAMCHAK: Probably so.

17 COMMISSIONER PEARSON: Different in the
18 urea, then? Is urea more easily handled in the larger
19 vessels?

20 MR. ADAMCHAK: And, again, bigger demand.
21 It's just more of a marketplace.

22 COMMISSIONER PEARSON: That's a perfectly
23 logical explanation. The last question, you talked
24 about this a little bit before, you normally would
25 have a commitment from U.S. customers on some

1 percentage of a shipment even before the vessel is
2 loading. Can you give me some idea of how much
3 normally would be committed in advance and how much is
4 the flow down sold?

5 MR. ADAMCHAK: And, again, we probably
6 compartmentalize this. In terms of supplying our
7 warehouse in Florida, we've got customers that are -
8 you know, that's just an ongoing deal and it just
9 will. We really literally don't have to sell the
10 product. We have to put it there and post a price.

11 COMMISSIONER PEARSON: So, you would
12 consider shipments into Tampa as pretty much
13 committed?

14 MR. ADAMCHAK: Yes. That's basically
15 captive volume. And then it would go into New Orleans
16 and New Orleans is a little bit different than that.
17 We would probably, on any given ship, of the New
18 Orleans volume, we'd like to have at least 50 percent
19 of that, probably any higher, 75 percent, knowing
20 where we're going with it.

21 COMMISSIONER PEARSON: Okay. Thank you.
22 It's been a very interesting afternoon, to have a
23 chance to visit with people, who are actually trading
24 in this market. We generally get to hear from
25 producers, as we did this morning. But to talk to

1 merchants, who are living day-to-day with ups and
2 downs of moving stuff of where it's produced in some
3 abundance, to where it's in short supply, is very
4 interesting. So, I appreciate that. Mr. Chairman, I
5 have no further questions.

6 CHAIRMAN KOPLAN: Thank you, Commissioner.
7 Commissioner Aranoff?

8 COMMISSIONER ARANOFF: Thank you, Mr.
9 Chairman. Just one question. This morning, I had
10 asked the domestic industry to talk about some of
11 these variance on the AN product that had started to
12 be seen in the U.S. market, that 33-3 and the 27-5
13 product. And I guess I wanted to give you your chance
14 to address those products, in the sense of are these
15 sort of serious commercial products that you're
16 seeing? Do you see a demand for them, aside from any
17 motivation of trying to get around the suspension
18 agreement here or the dumping orders in other
19 countries? Do they really meet a commercial need to
20 have a more stable product? Are you aware of them
21 being sold in any other markets?

22 MR. MORGAN: The EU, the product that's
23 referenced, the 27-5, has already found that that's
24 outside of the scope of the EU suspension agreement.
25 I don't want to say anything more on that, because, as

1 Ms. Slater noted, and I think in less than a week now,
2 we'll be submitting things to the Department of
3 Commerce, arguing our positions on why that's not
4 properly considered within the scope. And I'm sure
5 she will be taking the opposite position.

6 On the 33-3, I'm going to turn it over to
7 Nick, because he had some very interesting
8 observations on this supposed shipment that would be
9 representative of pricing, in the absence of a
10 suspension agreement.

11 MR. ADAMCHAK: First of all, the 33-3 is -
12 or 33-3, 32-5, there's different variations of that.
13 They are viable products. They are - I guess the
14 Russians are attempting to come up with a product that
15 will pass certain detonation tests and be able to
16 ideally be non-yellow label classified for handling
17 purposes. So, yes, and their shipments go to other
18 markets. We've actually had a cargo of that material
19 come into the United States, Bulgarian material, and
20 it's a fine product. I think the DOC ruled properly
21 in the case that it had to rule on, in terms of it
22 being a circumvention of the suspension agreement.
23 But, it's interesting in that that cargo that
24 eventually came to the United States was originally
25 one of three cargoes that were bought simultaneously

1 and I think those cargoes - that cargo was originally
2 destined to Mexico. So, the mechanics of that and how
3 it was reported, I think it probably came from
4 Customs' documents and I don't think it necessarily is
5 a reflection of how the Russians would price for the
6 United States, nor is it a reflection of how that
7 product would ultimately get sold into the U.S.
8 market, in terms of how it would be priced.

9 COMMISSIONER ARANOFF: Okay. So, if I take
10 your answer, the Russian industry is not the only
11 industry that are producing these modified forms of
12 AN?

13 MR. ADAMCHAK: That is correct.

14 COMMISSIONER ARANOFF: Okay. And any
15 information that you can provide us posthearing on who
16 else might be making these products and who might be
17 buying them, that would be really helpful.

18 MR. ADAMCHAK: It's very - it's increasingly
19 popular, I guess, in Mexico, Peru. We're seeing a lot
20 more demand for stabilized material in Central and
21 South America. Now, they've got - you know, they've
22 been trying to get more of a premium for the
23 stabilized material in South America. So, they're
24 going to have to find an appropriate premium level
25 over AN for that material ironically enough, because

1 of the P205 content and the stabilized attributes. In
2 certain markets, it's commanding a premium.

3 COMMISSIONER ARANOFF: Okay. Thank you,
4 very much.

5 MR. ADAMCHAK: You're welcome.

6 COMMISSIONER ARANOFF: I want to thank the
7 panel for all of your answers this afternoon. And,
8 Mr. Chairman, I have no further questions.

9 CHAIRMAN KOPLAN: Thank you, Commissioner.
10 I have one. Mr. Morgan and Mr. Campbell, on page 21
11 of your brief, you indicate that 'although the Russia
12 government regulates the prices of Gazprom, Russia's
13 state run natural gas firm, they charge on the
14 domestic market, the government is expected to
15 liberalize Russia's natural gas sector, as a condition
16 for accession to the WTO. As a result, Russian AN
17 producers will incur a higher natural gas cost.' I
18 noted this quote of yours in a question this morning
19 and added to the question your prediction that WTO
20 accession will occur in 2006. You've heard the
21 domestic response. Do you really believe that
22 accession is likely this year? Mr. Campbell?

23 MR. CAMPBELL: I would say, yes. I think we
24 do think it's likely that it is - we submit it is
25 likely that Russian accession will occur in 2006.

1 Again, we base that on the exhibits we included in our
2 prehearing brief. In those exhibits, there are
3 reports from DNA International Trade Daily. I
4 believe, both Russian - both the Russian trade
5 official and the USTR, at the time, Robert Zelick,
6 expressed optimism that they would have WTO accession
7 for Russia agreed to by the end of 2005. That
8 obviously hasn't happened, but I would speculate,
9 based on that, it's arguable that it's likely that the
10 goal will be achieved in 2006.

11 CHAIRMAN KOPLAN: As of now, have the
12 Russians done everything they need to do, in order to
13 get this issue resolved?

14 MR. CAMPBELL: No, Chairman, that's
15 definitely -

16 CHAIRMAN KOPLAN: Not the case.

17 MR. CAMPBELL: - not the case. But, at the
18 same time, that was not the case at the time that
19 Russian and U.S. trade officials expressed optimism in
20 a bilateral agreement between the United States and
21 Russia would be agreed to in 2005. At the end of the
22 day - well, I'll just leave it at that.

23 CHAIRMAN KOPLAN: Okay. Well, thank you.

24 MR. MORGAN: Chairman, I can't help
25 interjecting some bad trade humor here. I mean, it

1 depends on what you mean by probable.

2 CHAIRMAN KOPLAN: I was going to ask if -
3 actually, I crossed out - I was going to say how would
4 you define likely, but I decided I wouldn't do that.
5 But, how do you define probable?

6 MR. MORGAN: I'm not going on the record
7 with that. The other important thing, I think, to
8 note, and you have it in the questionnaire responses,
9 is that gas prices already have started to creep up.
10 I mean, it's not a huge part of our argument. It's
11 not what we're resting on, in any respect. But, you
12 have had increases in the cost of natural gas to the
13 Russian producers. So, irrespective of accession,
14 that underlying point still holds.

15 CHAIRMAN KOPLAN: Thank you. Vice Chairman
16 Okun?

17 (No questions.)

18 CHAIRMAN KOPLAN: Are there any other
19 questions from the dais?

20 (No questions.)

21 CHAIRMAN KOPLAN: Seeing that there are
22 none, Mr. Deyman, does staff have questions of this
23 panel?

24 MR. DEYMAN: The staff has no questions.
25 But, I do have one observation and one request. My

1 observation is that you've mentioned that our apparent
2 consumption data in the prehearing report were
3 understated, because they excluded the U.S. shipments
4 of Agrium. The observation is that that's true, but
5 our capacity data for the domestic industry were also
6 understated, because they excluded the capacity of
7 Agrium. We now have data on capacity and consumption
8 fro Agrium. So, in the final report, we will address
9 those numbers. Unfortunately, they may end up being
10 business proprietary, because it's only one company.
11 But, that's my observation.

12 My request is, as stated earlier, I urge you
13 to, in your posthearing brief, to indicate in your
14 opinion what the best numbers are for import
15 statistics: questionnaires, official statistics, or a
16 combination of both and your reasons why you believe
17 that, because we want to have the best possible data.

18 MR. MORGAN: We'll be happy to do that, Mr.
19 Deyman.

20 MR. DEYMAN: Staff has no further questions.
21 Thank you.

22 CHAIRMAN KOPLAN: Thank you for that, Mr.
23 Deyman. Before I release the panel, Ms. Slater, do
24 you have questions of this panel? You have 38 minutes
25 left - oh, I'm sorry, you have 11 from your direct.

1 MS. SLATER: You scared me for a minute
2 there. I have no questions for the panel. Thank you.

3 CHAIRMAN KOPLAN: Okay, thank you. Well,
4 with that, then, I want to thank you all, very much,
5 for your testimony, your answers to our questions, and
6 I look forward to your posthearing submissions. And
7 we'll go to rebuttal and closing. This panel is
8 excused.

9 (Panel excused.)

10 MS. SLATER: Mr. Chairman, may we take a
11 five-minute break before rebuttal?

12 CHAIRMAN KOPLAN: Yes.

13 MS. SLATER: Thank you.

14 (Whereupon, a brief recess was taken.)

15 CHAIRMAN KOPLAN: Let me review the
16 remaining time, as you're approaching, Ms. Slater.
17 You have 11 minutes left from your direct and
18 Respondents have 38 minutes remaining, plus five
19 minutes for closing for either side. So, how do you
20 want to proceed? Do you have rebuttal?

21 MS. SLATER: I'm going to combine my
22 rebuttal and closing, if it pleases the Commission,
23 and also try very hard not to use close to the amount
24 of time that's left.

25 CHAIRMAN KOPLAN: Okay. Because, they have

1 a total of 43 minutes.

2 MS. SLATER: I would be very interested to
3 see what they have to say.

4 CHAIRMAN KOPLAN: All right, okay. Proceed.

5 MS. SLATER: Let me just start by saying
6 that I think we have also found the comments by the
7 panel this afternoon to be very interesting. I think
8 Commissioner Pearson was correct, there are many
9 things on which - many fundamental points on which the
10 two sides in this sunset review are in agreement and
11 that is not the norm.

12 Some of those things really are key to this.
13 I mean, what we heard today is that there is
14 significant excess capacity today in Russia. I think
15 that's been conceded. We have heard an agreement that
16 security issues have been a contributing factor, a
17 significant contributing factor to the reduced
18 consumption here in the United States. And we've also
19 heard a recognition that the price of Russian exports
20 are going to be lower without the suspension
21 agreement, something that we certainly know to be the
22 case.

23 There are another set of facts, however,
24 which are in dispute and I want to take a few minutes
25 this afternoon just to make sure the record is crystal

1 clear in a couple of key points.

2 CHAIRMAN KOPLAN: If you could move that mic
3 a little bit closer.

4 MS. SLATER: Sorry, late in the day. There
5 was a comment made toward the end of the panel this
6 afternoon in the discussion about domestic capacity,
7 about El Dorado's Cherokee plant. And you heard
8 detailed and direct and very clear testimony from the
9 president of El Dorado Chemical this morning, who told
10 you, in no uncertain terms, that Cherokee capacity is
11 available. They would love to run it. They want to
12 run it. It has been down only because the market will
13 not take that product. The market has been in
14 oversupply. They moved the production over to the El
15 Dorado plant, to help the efficiencies there. They're
16 serving the markets that they can served out of El
17 Dorado. They are absolutely dying to get Cherokee up
18 and running again.

19 He, also, told you, in absolutely no
20 uncertain terms, that that Cherokee facility can
21 produce nitrate to capacity with no effect on -
22 nothing effected by the other products that are being
23 produced there. Those are separate capacities and all
24 of those capacities -- all of those products can be
25 produced to their capacity. So, the notion that

1 somehow Cherokee should be written off, while it
2 certainly helps the numbers analysis that you've seen
3 in the Respondents' brief, it's just not consistent
4 with the facts. And, frankly, one of the reasons that
5 Mr. Rydlund came here today was to make sure that this
6 Commission understood that point.

7 Now, I want to just also briefly address the
8 suggestion that I heard on the panel this afternoon
9 about U.S. producer inventories being low. It's
10 really important for this Commission to understand
11 that U.S. producer inventories are typically low; that
12 in the best of all cases, you don't want to be storing
13 a lot of product at your plant. Inventories are
14 typically held in the distribution system. And so
15 part of getting fertilizer made year round, and not
16 just getting somebody else to hold it, but getting it
17 in place to where it needs to be when the farmer puts
18 it on the ground, so he can make hay while the sun
19 shines, because you never quite know when the sun is
20 going to shine, is to get that product made and move
21 it out of the plant. And that's a reason that in the
22 best of all worlds, the holding bins and the
23 distribution - sorry, the inventory holding spots that
24 you'll see around producer plants, some of which are
25 quite large, will never be very full for very long.

1 They are sometimes quite full, but very briefly. And
2 I think this is not confidential to say that your
3 staff visited the Yazoo City plant last week and saw
4 the holding facilities, the inventory - just the
5 warehouses where normally the finished product would
6 be kept being fairly empty. Ninety days before, they
7 had been full. Now, in preparation for the season,
8 everything has been moving out through rail cars and
9 trucks and, as soon as the river has water in it
10 again, on barges.

11 The correct way to look at this, in terms of
12 supply capability, is not what inventories are sitting
13 within U.S. producer plant. The correct way to look
14 at it is what capacity does our industry have, what
15 real capacity does the industry have. And what I
16 didn't really hear this afternoon was any serious
17 discussion about why that capacity has been
18 underutilized. So simply say, well, 75 percent is
19 what they run at is just silly. This market has been
20 oversupplied for a long time and we are now getting to
21 a point where perhaps, as demand is declining and
22 supply is declining, maybe it will have the
23 opportunity with domestic supply and certainly some
24 imports to come more into balance. But, to somehow
25 say that that's the right or normal running rate is

1 simply not correct. And we didn't really hear any
2 more than an assertion on that particular score.

3 Mr. Rydlund, also, gave you some very core
4 testimony concerning what's normal operating rates.
5 And you know that, yourselves, from other nitrogen
6 products you've looked at.

7 I'd like to also take a minute and address
8 this notion that Russian imports, although they will
9 increase and they will be at lower prices, what you
10 heard this afternoon, that ending the suspension
11 agreement are not going to be a problem, because
12 they're just going to displace other non-subject
13 imports. Well, first of all, it doesn't make much
14 sense to assume that. I mean, there's no magic line
15 out there in the market. This is a commodity product
16 and there's nothing that says that we'll stop it from
17 displacing U.S. production. You've seen enough
18 commodity products to know that's true.

19 But more importantly, even if you accept the
20 premise, which I hate to let them do, but accept the
21 premise that you would only be displacing non-subject
22 imports, think back to what you found in your
23 investigation. You found that the impact of the
24 imports was a price impact. And so, how are those
25 Russian imports going to get into this market and

1 displace non-subject imports in a commodity market?
2 It's going to be on the basis of price and that price
3 throughout the market is going to have an impact, as
4 it did in 1998 and 1999 and 2000 on the domestic
5 industry. So, I think the argument that we would only
6 see non-subject imports displaced proves just a little
7 bit too much.

8 Finally, I wanted to just take a second and
9 talk about the issue of Russian capacity. You know,
10 there's been a lot of slicing and dicing and we'll
11 certainly respond to this, although there's been, I
12 think, quite a bit brought out today, but respond to
13 this posthearing, a lot of slicing and dicing of
14 Russian capacity and how you should really look at it.
15 As I mentioned in response from a question from
16 Commissioner Aranoff, I think you have to realize that
17 even when you do the slicing and dicing, you're left
18 with some pretty hefty available capacity there,
19 slicing it and dicing it the way they'd like you to
20 do. But more importantly, I would urge you not
21 disregard the producers that the Russian Respondents
22 claim, and I don't know whether it's true, but claim
23 only would be available to serve the domestic market.
24 Because to the extent those producers are serving the
25 Russian domestic market, that means they would have a

1 disproportional share of any growth in that market and
2 they would then make the exporting producers' capacity
3 even more likely to be available for shipment here and
4 elsewhere. So, it's not an either or situation. I
5 mean, if there are producers, who are not exporting
6 and they have excess capacity, something is happening
7 to that capacity. It's not going to sit idle for the
8 long run.

9 Finally, I want to take just a minute and
10 mention to you, I know that the Commission will be
11 receiving today a letter from the Agricultural
12 Retailers Association. You had received a letter from
13 them previously in the urea sunset review. This is a
14 group, which is a representative of agricultural
15 retailers and distributors, including, I understand, a
16 couple of significant importers. And the ARA letter,
17 which objects to the continuation of this measure and
18 would like to see the investigation terminated, when
19 the draft letter was sent out to their members
20 yesterday, explained why there were simply sending a
21 letter and not appearing at the hearing or do anything
22 more. And they said from discussions with our
23 members, it appears as if many ag retailers and
24 distributors are getting out of using this product or
25 handling it in smaller, more limited amounts. They

1 said, well, we support a free trade policy and we're
2 going to send this letter as a matter of precedent.
3 We don't basically intend to do anything more than
4 that.

5 The Agricultural Retailers Association
6 recognizes that their members, the retailers, the
7 dealers, the distributors, are moving away from this
8 product. It's not a happy fact unfortunately for my
9 clients, but it is a fact. It's a fact in this
10 marketplace. And I urge you to recognize it. I'll be
11 happy to put this correspondence in for the record
12 with our posthearing. This is a fact of life. People
13 are moving away from it. It's just become an issue of
14 difficulty and hassle, I think Commissioner Hillman
15 said, more than anything. The regulations, which
16 we'll do our best to detail for you posthearing, are
17 not terribly onerous regulations. They really have to
18 do more with notifications. When vessels come in,
19 you're supposed to notify the Coast Guard, so they
20 know when you're arriving with a dangerous substance.
21 And it applies, by the way, to a whole range of
22 hazardous materials. It has to do with keeping
23 records, who's buying the stuff, who's taking it away
24 from your plant, making sure you know who you're
25 turning it over to, and security measures, logging in,

1 logging out, things like that, certain fencing,
2 certain security.

3 But these are not terribly onerous things.
4 But, if you're in the area of the country, as you
5 heard today, where people really don't - aren't really
6 clamoring for ammonium nitrate and you're a dealer,
7 you just might not want to bother, and that's what's
8 happening. People are walking away. And that
9 includes numbers of the Ag Retailers Association, as
10 well, and they recognize this.

11 So, I want to close by saying to you, I
12 think you need to be very skeptical of the suggestion
13 that it's sort of the build it and they will come. I
14 think the Russians are saying, let us tell you what's
15 best for the domestic industry. Let us bring this
16 product here and the demand will magically appear;
17 again, the demand will appear and we will have people
18 back. It's not that it's disappearing. There are
19 very real things happening in this market, which have
20 nothing to do with availability. There's plenty of
21 supply available, plenty of domestic capacity, plenty
22 of other imports. And we urge you to make sure that
23 this suspension agreement stays in effect. Even
24 though it has a quota based on an older, much larger
25 market, allow it to stay in effect. Allow this

1 industry to get through this next five years of its
2 transition period. Thank you.

3 CHAIRMAN KOPLAN: Mr. Morgan?

4 MR. MORGAN: Chairman Koplan, I promise not
5 to use any minutes I have left. But a few points by
6 way of rebuttal in response to the recent facts. I
7 thought I was going to not have to burn CDs for this
8 proceeding, but it looks we're going to have to put on
9 the record LSB Industries third quarter conference
10 call, because in that conference call, there have been
11 statements that put Cherokee, Alabama facility in a
12 much different light than what we just heard.

13 Cherokee, based on that conference call,
14 sounds like it's a fairly marginal plant. It's not
15 just ammonium nitrate that's driving the decision or
16 drove the decision to stop ammonia production there.
17 And based on what Mr. Rydlund said in the conference
18 call, that company is using all the ammonia that it
19 had to produce urea ammonium nitrate solution, rather
20 than dedicating any of that to ammonium nitrate.
21 There are also some other statements in general in the
22 conference call that talked about the marginal nature
23 of Cherokee and having to monitor the economics of
24 running the plant on a day-to-day basis. So, we think
25 that's inconsistent with the representations that have

1 been made on viability of Cherokee. It was, in part,
2 the basis for why we did not include them in our short
3 supply calculation. But, we think even if we include
4 Cherokee's full ammonium production, at the end of the
5 day, you're still going to see a shortage between
6 domestic ability to meet demand and what demand is.
7 But, we'll provide the full conference call for the
8 Commission's benefit and allow you to judge for
9 yourself the statements made therein.

10 There is a statement about inventories that
11 Ms. Slater just made that I think is interesting, but
12 it doesn't look at the year-to-year comparison, which
13 I think is important. And based on TFI numbers, the
14 inventory levels are 60 percent off of what they were
15 last year. So, it's not that this has moved into the
16 distribution system or is somewhere different than it
17 was. Unless there's something different between this
18 year and last year, at this time, the year-to-year
19 comparison shows 60 percent inventory drop.

20 Production, again, based on TFI, for 2005,
21 total domestic production 1.1 million tons. That's 16
22 percent off of what it was year-on-year comparison.

23 You've also heard - just heard from Ms.
24 Slater that non-subject imports would be displaced
25 because of price. I think it is abundantly clear from

1 the testimony that price factor actually had nothing
2 to do with it. You have marginal suppliers in
3 countries like Georgia and Romania and that those -
4 and that for a host of reasons, nothing to do with
5 price, you would have displacement of non-subject
6 imports by Russian product.

7 And just in terms of the closing, I think it
8 is interesting to see a domestic industry attempt to
9 say that they can meet demand; but, yet, at the same
10 time, recognize that imports are always in the market.
11 I think what they're trying to do is a little bit of a
12 smoke and mirrors. They want to say that demand has
13 declined to the point where now they have the capacity
14 to supply full demand. We don't think the data bears
15 that out. We will certainly elaborate on that in our
16 posthearing brief. And, unfortunately, because their
17 data is confidential, I don't think we can get into
18 the level of detail in this public forum that we,
19 otherwise, would have been able to. But when we
20 address it in our posthearing brief, we will do so.
21 We will include Cherokee, we'll include El Dorado, and
22 we'll include Terra, and we'll see what that data
23 shows.

24 The domestic industry said, no shortages in
25 this market. But, Mr. Klett, in the same breath, said

1 six out of 15 purchasers, that' snot significant
2 reported shortages. We disagree with the
3 characterization that that's not significant.

4 With respect to the disparate impact that
5 the security regulations have had on imports, I think
6 it's extremely telling when asked about the security
7 regulations, most of the domestic producers were
8 unable to provide much detail. I don't think that
9 was, in any way, reflective of them not trying to
10 answer the question. I think it reflects the fact
11 that these security regulations fall most heavily on
12 imports and on the river distribution system. Terra,
13 in its 10K, has reported that, in fact, it ships the
14 majority of product by truck and by rail. Those are
15 not effected by the Coast Guard regulations governing
16 barges, warehouses, et cetera. So, it doesn't
17 surprise me that they weren't able to speak to the
18 security regulations and the restrictions on
19 distribution within the U.S. that now exists as of
20 about 2004. But, I think it does illustrate very well
21 the very different impact that those have had on
22 imports and the ability to supply the market by
23 imports relative to domestic production.

24 And then it's just reiterating a point on
25 the differences between consumption and demand and

1 what that really means. You can get acetonetic, I
2 suppose, but we do think it's important that the
3 distinction be made that there is demand for the
4 product, consumption may have declined, in part due to
5 security regulations, but that the demand exists and
6 there's no reason why it isn't there except for supply
7 availability. Setting aside - you know, once you take
8 into account the impact that the security regulations
9 have had, it's our understanding that those are
10 already reflected in the data; that what you see, in
11 terms of the decline in consumption, as a result of
12 the security regulations, is what remains going
13 forward, that the shakeout has already happened, in
14 essence.

15 So, when you take all of this in
16 combination, what does it mean for the future of the
17 U.S. industry? You have two remaining producers. You
18 have non-subject imports that have declined. And it
19 doesn't matter if you look at the import stats or if
20 you look at the data in the staff report, either way
21 you look at it, the trend is towards declining non-
22 subject imports and huge declining non-subject
23 imports.

24 The price reflects the important
25 consideration making the U.S. market so attractive, I

1 would hesitate to see how that reflects itself in the
2 data with respect to the non-subject imports. We
3 believe, and you heard testimony today, that it's not
4 exactly not correct, that price is not what
5 necessarily drives the imports in terms of security,
6 than other factors, but that there is no likelihood of
7 a significant increase in volume. It's because of the
8 significant limitations you have on the distribution
9 system. And to the extent you have increases, it will
10 offset other marginal non-subject supply.

11 In this environment, there's no incentive
12 for - and I believe the statement was that the
13 referenced price would have been - the price by the
14 Russian producers would have been lower but for the
15 suspension agreement. We're going to take a look at
16 the data and try to give you a clean way of looking at
17 that, in the absence of the suspension agreement.
18 But, we think that, in fact, the levels of overselling
19 you have seen are reflective of what the importers are
20 selling the product into the U.S. market for. They
21 pay x price, referenced price, then they ultimately
22 sell that product into the U.S. market. And you've
23 heard where there was underselling now is because the
24 market was upside down. Somebody made a mistake.
25 But, it wasn't a situation where underselling was the

1 intended result of the transaction by the importer,
2 who is the one that sets the price, in terms of where
3 it enters the stream in the U.S.

4 So, in this environment, we strongly urge
5 the Commission to dig deep into the numbers. It's not
6 the most exciting exercise, but we think, at the end,
7 you will find that there is a huge inability of this
8 industry to meet demand. There's a huge amount of
9 demand that still exists that's not going to be
10 served, if the suspension agreement is not terminated.
11 Thank you, very much.

12 CHAIRMAN KOPLAN: Thank you, Mr. Morgan.
13 Again, I want to thank all those, who participated in
14 this investigation today. Your testimony, your
15 answers to our questions was most helpful and look
16 forward to your posthearing submissions. I, also,
17 want to thank staff, who assisted us in this
18 investigation. Thank you, very much.

19 Posthearing briefs, statements responsive to
20 questions, and request of the Commission and
21 corrections to the transcript must be filed by January
22 30, 2006; closing of the record and final release of
23 data to parties by March 3, 2006; and final comments
24 are due March 7, 2006. And with that, this hearing is
25 adjourned.

1 (Whereupon, at 4:50 p.m., the hearing was
2 concluded.)
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CERTIFICATION OF TRANSCRIPTION

TITLE: Ammonium Nitrate from Russia
INVESTIGATION NOS.: 731-TA-856
HEARING DATE: January 19, 2006
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: January 19, 2006

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: Bernadette Herboso
Signature of Court Reporter