UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	Investigation No.:
POLYETHYLENE RETAIL CARRIER	)	731-TA-1043-1045
BAGS FROM CHINA, MALAYSIA,	)	(Review)
AND THAILAND	)	

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Tuesday,
April 27, 2010

Main Conference Room
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 Shara L. Aranoff, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

SHARA L. ARANOFF, Chairman
DANIEL R. PEARSON, Vice Chairman
DEANNA TANNER OKUN, Commissioner
CHARLOTTE R. LANE, Commissioner
IRVING A. WILLIAMSON, Commissioner

Staff:

MARILYN R. ABBOTT, Secretary to the Commission
BILL BISHOP, Hearings & Meetings Coordinator
SHARON BELLAMY, Hearings and Meetings Assistant
NATHANAEL COMLY, Investigator
RAYMOND CANTRELL, International Trade Analyst
CINDY COHEN, Economist
CHARLES YOST, Accountant/Auditor
KARL von SCHRILTZ, Attorney
GEORGE DEYMAN, Supervisory Investigator

APPEARANCES:

In Support of Continuation of Antidumping Duty Orders:

On behalf of The Polyethylene Retail Carrier Bag Committee and its Individual Members, Hilex Poly Co., LLC; Superbag Corporation; Unistar Plastics, LLC; Command Packaging; Roplast Industries, Inc., and Genpak LLC:

ISAAC BAZBAZ, Director,
Superbag Corporation

MARK DANIELS, Vice President of Marketing
and Environmental Affairs,
Hilex Poly Co., LLC

ANTHONY RIZZO, Vice President of Sales,
Hilex Poly Co., LLC

MICHAEL G. SZUSTAKOWSKI, Consultant
King & Spalding LLP

JOSEPH W. DORN, Esquire
King & Spalding LLP
Washington, D.C.

APPEARANCES: (Continued)

In Opposition to Continuation of Antidumping DUTY ORDERS:

On behalf of The Task Force of Polyethylene Retail Carrier Bag Manufacturers of the Malaysian Plastic Manufacturers Association and its Members:

EDMUND W. SIM, Esquire
PATRICK F.J. MACRORY, Esquire
KELLY A. SLATER, Esquire
Appleton Luff Pte Ltd.
Washington, D.C.

I N D E X

P R O C E E D I N G S

(9:30 a.m.)

CHAIRMAN ARANOFF: Good morning. On behalf of the U.S. International Trade Commission, I welcome you to this hearing on Investigation No. 731-TA-1043-1045 (Review) involving Polyethylene Retail Carrier Bags from China, Malaysia, and Thailand.

The purpose of these five-year investigations is to determine whether revocation of the antidumping duty order covering polyethylene retail carrier bags from China, Malaysia, and Thailand would be likely to lead to continuation or occurrence of material injury in an industry in the United States within a reasonably foreseeable time.

Schedules setting forth the presentation of this hearing, notices of investigation, and transcript order forms are available at the public distribution table.

All prepared testimony should be given to the secretary. Please do not place testimony directly on the public distribution table.

All witnesses must be sworn in by the secretary before presenting testimony.

I understand that parties are aware of the time allocations. Any questions regarding time allocations should be directed to the secretary.

Speakers are reminded not to refer in their reports or answers to questions to business proprietary information. Please speak clearly into the microphones and state your name for the record for the benefit of the court reporter.

If you will be submitting documents that contain information you wish classified as business confidential, your request should comply with Commission Rule 201.6.

Madam Secretary, are there any preliminary matters?

MS. ABBOTT: Madam Chairman, all witnesses for today's hearing have been sworn. There are no other preliminary matters.

(Witnesses sworn.)

CHAIRMAN ARANOFF: Thank you. Then we are ready to proceed to opening remarks.

MS. ABBOTT: Opening remarks in support of continuation of orders will be by Joseph W. Dorn of King & Spalding.

CHAIRMAN ARANOFF: Good morning, Mr. Dorn. It seems like we just saw you pretty recently.

MR. DORN: It hasn't been long. It's great to be here again.

The domestic industry producing PRCBs benefitted markedly from the January 2004 imposition of preliminary duties, and the August 2004 imposition of final duties against imports from China, Malaysia and Thailand. The industry's profitability and revenues improved during 2004 and 2005, enabling the industry to invest in plant and equipment. After several years of improvement, however, the domestic industry's performance began to decline in the face of rapidly increasing imports from Indonesia, Taiwan and Vietnam.

Consequently, in March of 2009, Hilex and Superbag filed a petition against imports from those three countries. The Commission's affirmative preliminary determination in those investigations in May of 2009 reflects the declining state of the industry and that is a weaken or vulnerable state for purposes of this sunset review. Your affirmative vote in the final phase of those investigations offers the domestic industry the opportunity to continue the slight improvement that began with the filing of the petition and the imposition of preliminary duties.

That opportunity, however, would be negated if the existing importers on China, Malaysia and Thailand were revoked. With high cash deposit rates soon to be imposed on every single exporter from Indonesia, Taiwan, and Vietnam, U.S. importers and purchasers would quickly turn to China, Malaysia and Thailand if the orders were revoked.

The prehearing report makes clear that the salient conditions of competition facing the domestic industry have not changed since the August 2004 imposition of the orders against China, Malaysia, and Thailand. It is still the case that subject imports and the domestic-like product are highly interchangeable, that price is an important factor in purchasing decisions, that demand is price inelastic, that PRCB plants are designed to operate 24/7 to spread fixed costs over as many production units as possible, and that the subject foreign producers are highly dependent on exports.

The response rate to the foreign producers questionnaire is poor, especially for China. Even so, the prehearing report demonstrates that the subject foreign producers are highly dependent on exports, are growing capacity, have excess capacity, and can redirect large volumes of PRCBs from third country export markets to the U.S. market.

The 16 Malaysian producers who did respond expanded their capacity by 71 percent, or by over 6 billion bags from 2004 to 2009. Over 98 percent of their production is for export. There is no good reason to decumulate Malaysia from China and Thailand.

Moreover, Petitioners have identified almost 40 billion bags of capacity in China and Thailand that is not captured in the prehearing report.

If the orders are revoked, the subject foreign producers will be highly motivated to utilize their unutilized and growing capacity, either to resume exports or to increase export to the United States. U.S. importers and purchasers will seek out the unfairly priced imports from China, Malaysia, and Thailand, especially now that very high duties have been imposed on imports from Indonesia, Taiwan, and Vietnam.

Numerous importers, purchasers and foreign producers have admitted in their questionnaire responses that revocation of the duties would result in resumption or increase in subject imports. Those admissions are set forth in Appendix D to the prehearing report. Importers admit that that the orders caused them to reduce imports from the subject countries. For example, one importer states, "Effectively stopped all imports of PRCBs from China, Malaysia, and Thailand."

If the orders are revoked, importers admit that they will increase subject imports. For example, one importer states that, "Revocation of the existing orders would allow my company to restore my import business to where it was before, with the same two factories in China."

Purchasers also admit that imports of subject bags will increase. For example, one of them states, "Imports from the subject markets will most likely increase." The foreign producers agree. For example, one states that, "If the order is revoked, we would expect to increase our shipments to the U.S."

The Commission should find that revocation of the orders would lead to an increase in subject imports at prices that would depress and suppress domestic prices and which would lead to the declines of domestic production, shipments, employment, sales revenue, profitability and capital investments.

Given the domestic industry's weak financial condition and tepid demand prospects, the Commission should find that revocation of the orders would lead to a continuation or an occurrence of material injury within a reasonably foreseeable time. The commission should continue the orders as to all three countries. Thank you.

MS. ABBOTT: Opening remarks in opposition to continuation of orders will be by Edmund W. Sim, Appleton Luff Pte Limited.

MR. SIM: Good morning, Commissioner, staff and other participants. By the way Pte limited means private limited. It's a single point company, and I appreciate the opportunity for us to come here.

My colleagues, Patrick Macrory and Kelly Slater from our Washington office are here on behalf of the Task Force of Polyethylene Retail Carrier Bank Manufacturers of the Malaysian Plastic Manufacturers Association, and their individual members in their individual capacities as producers and exporters of subject merchandise. The acronym is MPMA.

We appreciate this opportunity to explain why the Commission should not cumulate imports from Malaysia with those from China and Thailand and why revocation of the order against Malaysia would not be lucky to cause continuation of the occurrence of material injury to the domestic industry within the foreseeable period of time.

The MPMA is participating in this proceeding to open the only market which has imposed import restrictions on its products and allow its members to compete for clients on a global basis.

Malaysian subject imports have always been and have always had a minor role in the United States market, and the record in this review proves that Malaysia remains a minor player at best, particularly when compared with China and Thailand.

Since the antidumping duty order was imposed, Malaysia has moved on to other greener pastures in Asia and European Union where, unlike China and Thailand, it is exempt for the EU antidumping duty on plastic bags, and in the European context the dumping order applies to all bags, whether or not it has a handle or not, and so it includes PRCBs.

Increases in Malaysia's production capacity in the wake of the U.S. order were designed to serve third country markets, primarily in Europe and Asia, rather than serve as a moving threat to the domestic industry as determined by its fairly increasing exports to those markets and its high capacity utilization rates during the POR.

Thus, if the order is revoked, imports from Malaysia would not be likely to have discernable impact, adverse impact to the United States industry and therefore the Commission should be bound by law to decumulate Malaysia from China and Thailand. In any event, even if the Commission were to find a likely discernable impact, it still have discretion to decumulate and it should do so under the circumstances of this case. China and Thailand, which have maintained a significant presence in the United States market, are not even appearing in this investigation, and the rationale for accumulating imports from Malaysia with those from China and Thailand therefore it does not exist.

Finally, it is clear in the absence of the order imports from Malaysia considered a loan would not be likely to cause material injury to the domestic industry and would not cause injury to the domestic industry to continue or recur in a reasonable foreseeable time given the lack of barriers to Malaysian exports to the European Union and other markets. The Malaysian industry should have no incentive to direct significant quantities of exports of PRCB to the U.S. market. It will continued to be dwarfed by exports from China and Thailand.

This is particularly the case with respect to Thailand which may soon be free from the discipline of the order only to the successful WTO challenge of zeroing by the United States Department of Commerce.

Finally, with regard to price effects, the record shows that Malaysia is constrained by the rising cost of production which prevent price increases in the United States market. For these reasons the Commission should revoke the order against Malaysia in this proceeding. Thank you.

MS. ABBOTT: The first panel in support of continuation of antidumping duty orders should come forward and be seated.

MR. DORN: Good morning, Madam Chair, Joe Dorn for the domestic industry. We were here last month. We had the same three witnesses, Mr. Bazbaz, Mr. Daniels, Mr. Rizzo. We did cite to some of their testimony in our prehearing brief and we attached pages from the transcript to the prehearing brief, and we hope to avoid undue repetition at the hearing this morning.

Mr. Bazbaz will start us off.

MR. BAZBAZ: Good morning. My name is Isaac Bazbaz. I am and have been a director of Superbag since its establishment in 1988. Superbag is a family-owned private company with headquarters in Houston, Texas. We are one of the largest U.S. producers of tee shirt style polyethylene retail carrier bags. We operate a single plant that is totally dedicated to the production of PRCBs.

On behalf of Superbag and our 250 employees, I want to thank you for you affirmative vote on our petition against imports of PRCBs from Indonesia, Taiwan and Vietnam. As I testified when I was here on March 16, our future depends on your affirmative votes both in those investigations and in this sunset review.

Now that appropriate duties are being imposed on Indonesia, Taiwan and Vietnam, it is essential that duties also be maintained on China, Malaysia, and Thailand, otherwise the importers and customers who originally switched from China, Malaysia and Thailand to Indonesia, Taiwan, and Vietnam to avoid antidumping duties imposed in 2004 would switch back to China, Malaysia, and Thailand to avoid duties just imposed in 2010.

I understand that the focus of this hearing is to consider what would happen if the orders are revoked on China, Malaysia, and Thailand. The best place to start is to recall what happened when imports from those countries were not subject to any duties. I testified before the Commission six years ago in the cases that were brought against China, Malaysia, and Thailand. At that time the U.S. industry was in a downturn due to imports from these countries even though demand was very strong.

According to the ITC findings, from 2001 and 2003, imports from China, Malaysia, and Thailand increased by 95 percent, generally undersold domestic producers' prices, and increased import share of the U.S. market from 10.5 percent in 2001 to 18.6 percent in 2003. As a result, Superbag lost sales to lower priced imports, reduced its prices in response to lower priced imports and suffered a 60 percent drop in operating income during a period in which demand was growing.

If the orders were to be revoked, I would expect imports from China, Malaysia, and Thailand to have a worst impact on domestic industry than they have prior to the imposition of the order.

The conditions of competition for PRCB have not changed in any way since 2003 that would make us less vulnerable to renewed import surge from those countries. In fact, there is more overcapacity today in 2003. The imports and domestic products are still highly interchangeable and sales are still made largely on the basis of price.

It is still true that the lower prices of imports do not create any additional demand. Our plans are still the same, to operate 24/7, to spread the fixed costs over as many units of production as possible.

In addition, the factors in China, Malaysia, and Thailand remains highly dependent on imports. According to your reports, the 16 Malaysian factories that responded to your questionnaire export over 98 percent of their production. The only reason that they ship their exports away from the United States to the European Union is that they have faced antidumping duties of 85 to 102 percent in the United States and no duties in the EU. If the duties are revoked in the United States, they will have a strong economic motivation to return to this market.

In understand in making your decision you will consider whether the orders have benefitted the industry. I can assure you that imposition of the preliminary duties in January of 2004 and the orders in August of 2004 had an immediate positive impact on Superbag. Customers who had been eager to purchase the cheap imports were reluctant to raise the payment of high duties and were more willing to pay a fair price to U.S. producers. As a result, Superbag's operating income which had declined from 2001 to 2003 increased in 2004 and again in 2005.

This gave us the confidence to expand

capacity and to purchase more efficient equipment. With these investments and the protection of the orders, we have been able to preserve over 250 jobs, supporting a number of part-time individuals in our community. We do not believe that Superbag would have remained in business without those antidumping orders. So the continuation of our entire operation and employment of our workforce are attributable to the keeping of the orders.

With the assistance of an outside advisor, we prepared a confidential financial memorandum in the spring of 2006, which we used to seek equity and debt financing to support capital investments. A copy of that document is attached to our questionnaire response. As indicated in that document, we achieved profits in 2005 and expected even higher profits in 2006 and succeeding years.

Therefore, those forecasts with the antidumping duties remain in place against imports from China, Malaysia, and Thailand, but we do not foresee, of course, the surge of dumped imports from Indonesia, Taiwan, and Vietnam which eroded much of the benefit of the order.

If the antidumping orders are revoked, I am sure that imports from China, Malaysia, and Thailand will once again rapidly increase by using low prices to take micro share from Superbag and other U.S. producers.

We know that there is huge excess capacity in the three countries and they could redirect their exports from other markets to the U.S. market. As explained in your prehearing report, recently imposed regulations has caused a sharp drop in consumption in China. That means that there must be a lot of excess capacity that could be exported to the United States if the duties were removed.

In addition, we know that China's PRCB companies, several factories in Vietnam when duties were imposed against China in 2004, now those Vietnamese factories face high duties in the United States. That production could be moved back to China if duties are revoked against China. In addition, API could ship sourcing from its plants in Vietnam to its plants in Thailand if the duties are revoked against Thailand.

The prehearing report indicates that the 16 responding Malaysian producers increased their PRCB by over 6 billion bags or 71 percent from 2004 to 2009. Those plants exports over 98 percent of the production. If the orders are revoked, and they no longer face antidumping duties of 85 to 102 percent, they will no doubt resume exports to the United States.

In addition, Sido Bangun Indonesia now faces high duties in the United States. If the orders were revoked, its sister plant in Malaysia could easily replace the plant's exports to the United States.

Finally, Europlastics Malaysia has several administrative reviews to try to get its dumping margins reduced to export to the United States, but its current cash deposit rate is 56 percent and it will soon get even higher rate because it has withdrawn from the pending administrator review. If the order against Malaysia were revoked, Europlastics Malaysia will be able to resume exports to our market.

The public version of your prehearing report does not reveal any data about five Thai producers who respond to your questionnaire, but we know that Thai Plastic Bags is a competitor in the United States. Its current cash deposit rate 22 percent. King Pac is another major type of producer and its cash deposit rate is 123 percent.

As explained in our prehearing brief, King Pac has stated that it is investing to expand capacity to become one of the top bag plastic makers in the world.

In short, if the orders were revoked, imports from China, Malaysia, and Thailand would rapidly increase. Superbag will lose sales and production output which would make your plant less sufficient. This will force us to reduce our prices to avoid the loss of further sales. We would also be unable to raise our price enough to cover the increasing cost of rent. Raising prices are likely to continue to rise over the next couple of years as the global economy recovers from the great recession.

The lost sales and downward price pressure would adversely affect our operating income, cash flow and return on investments. We would have no incentive to invest in our plant. We would have to lay off workers. All of this will happen at a time when we are trying to recover from the recent financial difficulty due to increased imports from Indonesia, Taiwan, and Vietnam, and when demand trends are flat at best.

Keep in mind that the injury we are suffering from 2001 to 2003 happened when demand was increasing, and increase of unfairly priced imports in the next couple of years would be more injurious because it will happen during a period of flat demand at best.

As I testified at the hearing in March, as a result of the loss of much of our business at a major customer we were forced to curtail production and lay off workers starting in the third quarter of 2008. Some of that business returned after we filed a petition against imports from Indonesia, Taiwan, and Vietnam, however the loss of existing antidumping orders would result in a rapid shift to imports from China, Malaysia, and Thailand. Loss of the orders would be extremely detrimental to our operations. Our existing capacity is state of the art and very cost-effective, but we cannot compete with the dumped imports that will certain to enter the U.S. in large volumes if the orders were revoked.

Increasing imports from China, Malaysia, and Thailand will cost at a worst time for this industry. U.S. demand may stagnate or decline as a result of imposition of various tax and regulatory measures. In addition, some of our major customers, including Wal-Mart, are promoting usable bags and in some cases the elimination of PRCBs. Thus we are fighting to preserve the size of the pie at the same time that foreign producers are trying to increase their share of the pie.

As a result, our future truly depends upon your affirmative votes in this sunset review. If fair trading is continued for China, Malaysia, and Thailand, I am confident that we will be able to compete to maintain our existing factory and to maintain our 250 jobs.

Thank you for the opportunity to appear before you today.

MR. DANIELS: Good morning. My name is Mark Daniels and I'm the vice president of marketing and environmental affairs for Hilex Poly Company. I have executive-level marketing responsibility for all of Hilex products, including PRCBs. I am also involved in the legislative arena surrounding PRCBs in the United States as the chairman of the Progressive Bag Affiliates, which is our industry association.

In late 2003, Hilex entered the plastic bag and film business with the purchase of the high-density films products division of Sunoco Products Company. In October of 2005, Hilex purchased Vanguard Plastics, which is one of the largest -- the country's largest manufacturers of PRCBs. I joined Hilex-Vanguard where I served as director of marketing and the general manager of Vanguard's packaging and films division.

Hilex is based on Hartsville, South Carolina. We have eight manufacturing facilities that make PRCBs, which are strategically located throughout the United States. We also have a packaging and films plant and the first plant in the United States devoted to recycling most consumer plastic bags and wraps. Hilex is the largest producer of PRCBs in the United States and we believe that we are the largest manufacturers of PRCBs in the world.

To begin with, I would really like to thank you for your affirmative vote on the petition against PRCBs from Indonesia, Taiwan, and Vietnam. Relief against unfairly priced imports from those three countries will make a tremendous difference to Hilex and our over 1,200 associates. It will give us the confidence to maintain and invest in our U.S. production assets and recycling capabilities, and to preserve good jobs in communities where our plants are located.

I understand you determined that the domestic industry is threatened with material injury by reason of imports from Indonesia, Taiwan, and Vietnam. I can assure you that imports from China, Malaysia, and Thailand pose an equal or greater threat of material injury if the existing orders are revoked against those three countries. Thus we must ask for your help again today.

The imposition of duties against China, Malaysia, and Thailand was critical to the continuation of Hilex in the PRCB business. Imports from these three companies more than doubled from 2001 to 2003. They used low prices to grab market share. They have forced Hilex, Vanguard and other U.S. producers to either lower prices or to suffer lost sales. As a result, Hilex and Vanguard suffered financial declines and operating income from 2001 to 2003. Hilex was forced to lose a plant in Santa Maria, California, and Vanguard was forced to close a plant in Compton, California.

The filing of the petition in 2003 helped us in negotiations with major customers and allowed us to obtain additional volume and higher prices with major accounts. After the duties were put in place imports from these countries were significantly constrained. Customers were nervous about relying on imports that could be assessed high antidumping duties. The duties allowed Hilex and other U.S. producers to regain lost market share and allowed market prices to stabilize at higher prices.

Given the protection of the antidumping

orders, Hilex had enough confidence in the PRCB business that it acquired Vanguard Plastics in October of 2005, creating the largest PRCB producer in the United States. That acquisition would not likely have happened if duties had not been in place. One of the things that made Vanguard attractive for Hilex was the performance of Vanguard's PRCB business had improved substantially as a result of the antidumping petition against China, Malaysia, and Thailand, the imposition of preliminary duties in January of 2004, and the imposition of the orders in August of 2004.

There is no doubt in my mind, however, that if the orders are revoked from imports from China, Malaysia, and Thailand will rapidly penetrate the U.S. market and use low price to take business away from Hilex and other U.S. producers.

Prior to the March 2009 filing of our recent antidumping petition U.S. importers and purchasers were shifting their sourcing to Indonesia, Taiwan, and Vietnam to obtain lower prices and to avoid the duties imposed against China, Malaysia, and Thailand. Now that very high duties are in place against imports from Indonesia, Taiwan, and Vietnam, the same importers and purchasers would be highly motivated to shift sourcing back to China, Malaysia, and Thailand if the orders were revoked.

If the orders are revoked, we anticipate the imports from these countries will return to the U.S. market and take substantial market share from us and other U.S. producers. In fact, as evidenced by an exhibit to our questionnaire response, we were contacted by a Chinese manufacturer in June of 2009, stating that it wants to supply us tee shirt bags if the duties were revoked. We know that these countries still have enormous bag-making capacity. They are eager to sell into this market, especially since demand is declining in other countries which have been more aggressive than the United States imposing bans and taxes on plastic bags.

In addition, imports from China and Thailand face antidumping duties that were imposed in the European Union in September 2006. If the duties are revoked, imports in these countries will quickly gain market share by underselling our products as they did from 2001 to 2003, because price is the only means they can use to take market share. We would lose sale and market share and we would also suffer lower profit margins as we reacted to the lower import prices.

We would have no economic motivation to invest in U.S. production assets, instead we would need to consider contracting capacity and replacing some of our domestic production with cheaper imports. Revocation of the orders would be especially harmful now for several reasons.

First, due to injurious competition from Indonesia, Taiwan, and Vietnam, Hilex's financial condition has been very weak over the last several years. Second, our resin prices, which were relatively low in 2009, have increased substantially in 2010. Third, we project that demand will be weak for the next few years. A surge in imports from China, Malaysia, and Thailand would hit us at a time when we are already in a precarious position.

As I explained during the hearing in March, in the past we were optimistic that PRCB consumption would continue to increase in tandem with increasing population and retail sales. That is no longer the case. Even if the U.S. economy is rebounding we project the demand for PRCBs will be flat at best. As indicated in the Commission's prehearing report, many industry participants expect the passage of laws regulating the use and disposal of PRCBs and believe such laws will have an downward influence on demand for PRCBs. Even if restrictive laws are not put into place. large retailers like Wal-Mart are actively promoting alternative packaging, such as so-called reusable bags to reduce PRCB consumption and generate income through new product sales.

Your prehearing report notes that Wal-Mart has already reduced PRCB usage by 80 percent in China. Our concern, however, about a shrinking or stagnant market is far exceeded by our fear that we will be competing for our share of that market in the face of increasingly unfairly priced imports. That is something we cannot like endure.

In conclusion, we value our employees and the communities where we have invested. We want to maintain our U.S. production assets, but our questionnaire responses shows you that our financial position has been very weak. Our performance has certainly improved since we filed a new position in March of last year, but if duties are removed against imports from China, Malaysia, and Thailand we would be forced to consider closing additional facilities which would cause even more harm to our workforce in the communities where they live.

Please do not let that happen. Please do maintain the orders for an additional five years. Thank you.

MR. RIZZO: Good morning. My name is Anthony

Rizzo. I am the vice president of sales for Hilex Poly. Including my tenure with Hilex Poly, I have 14 combined years of experience with plastic film and flexible packaging. In my current role with Hilex, I am responsible for Hilex's sales program and overseeing all pricing decision. I have personally managed several strategic account relationships and am often directly involved in sales negotiations with some of our major customers.

As I explained to you at the hearing in March, price is overwhelmingly the most important factor in the PRCB purchasing decision. Retailers see the product as providing little or not value added. This makes them very sensitive to the cost of the product. Because the product is given away, retailers would prefer that the cost of the product to be as close to zero as possible.

In addition, it's important for me to repeat that the domestic product and imports are fully exchangeable and sold through the same channels of distribution. That is just as true for imports from China, Malaysia, and Thailand as for imports from Indonesia, Taiwan, and Vietnam. In fact, our products sit side by side in the same distribution warehouses across the country. This is true even for products that we sell to large retailers.

When we make these sales, we negotiate the price with the retailer, but more often than not we actually ship a product to a distributor. There are several very large distributors, such as Bunzl, that ship a bundle of different products to the retailer that includes PRCBs and other items like register tape. A high percentage of import of PRCBs are sold in exactly the same way; that is, even when sales to the end user the product is sent to a distributor or it is warehoused and then packaged in a bundle with products for other shipment to the retailer.

It's also important to repeat that we frequently compete against imports in Internet bid competitions. These include reverse Internet auctions and other Internet bids that are managed by a company that specializes in conducting these bid events. Internet bids account for a large share of U.S. consumption of PRCBs. Wal-Mart, for example, which represents about 20 percent of the U.S. market, only purchases through Internet bids. Overall we estimate approximately 75 percent of U.S. consumption of PRCBs is supplied through internet bid events.

These events are designed to maximize competition among as many suppliers as possible. The prevalent offers produced in China, Malaysia, and Thailand is easy access to the U.S. market.

The prehearing report notes at page 5-4 that the supplier country of the lowest bidder won the bid in 23 of the 28 bidding events reported by purchasers responding to your questionnaire. It also notes that 15 winning bids were won, at least partially, by imports form China, Malaysia and/or Thailand, and that 12 of the winning bids were won at least partially by the U.S. producers. This demonstrate the fact that we compete head to head on the basis of price with imports from these three countries at issue in this sunset review.

As more fairly priced imports from more countries compete in bidding events, the prices of the winning bids will necessarily go down. We know that imports from China, Malaysia, and Thailand were priced lower than the domestic product during 2001 through 2003 before the duties were imposed. Your prehearing report indicates that imports from China and Thailand have continued to undersell domestic products even with the pricing discipline of the orders.

But whether or not there is underselling measured by using the Commission's quarterly shipment methodology, more unfairly priced imports will push down the price in bidding events.

Revoking the antidumping orders on China, Malaysia, and Thailand would cause more unfairly priced imports for more countries to compete, which would necessary have an inverse impact on our prices. While there may only be one winner of the bid, a greater number of credible bidders the lower will be the final price. If prices were pushed lower, we would be compelled to lower our prices as a defensive measure because we would need to maintain key accounts to keep our plants running 24/7.

In some instances we might decide that we cannot afford to match the import price, so we would lose that business. In any event, what I want to emphasize is that if you revoke the orders against China, Malaysia, and Thailand more imports from more countries will participate in these important bidding events. That would be certain to have an adverse price impact and also cause us to lose sales and market share.

As I explained in March, we have lost numerous sales to an importer called Spectrum. Headquartered in Cerritos, California, Spectrum has three warehouse distribution centers in the United States. They are located in Ceretos, Edison and South

Haven. We competed against Spectrum in all areas, including supermarket and grocery, retail, mass merchants and home goods. We compete head to head with Spectrum for all of our larger accounts and many of the intermediate and smaller accounts. Spectrum is clearly a downward price leader in the U.S. market.

Its sales strategy is to offer the lowest price, end of story. We have lost many sales to Spectrum. We have also had to lower our prices many times to compete with Spectrum.

Prior to the imposition of antidumping orders in 2004, Spectrum used to import largely from China, Malaysia, and Thailand. When duties were imposed against those countries it shifted a large share of sourcing to Indonesia, Taiwan, and Vietnam, but with high duties now in place against Indonesia, Taiwan, and Vietnam Spectrum would switch back to China, Malaysia, and Thailand if the orders are revoked.

Hilex has clearly benefitted from our filing of our new antidumping petition in March of 2009. For example, we have retained the ability to compete at certain customers where we previously could not compete. In mid-2009, we won a substantial order that had previously been supplied by Spectrum. The buyer told us that it moved a significant amount of sourcing to the United States because the impact of antidumping investigations limited the amount of available supply that is now subject to duties.

We know from market intelligence that Sido Bangun Indonesia has been an important supplier to Spectrum, but imports from Sido Bangun now faces an antidumping duty cash deposit rate of 85 percent, thus if orders are revoked, Spectrum will likely shift sourcing from Sido Bangun sister plant in Malaysia.

In conclusion, I join Isaac and Mark in thanking you for your affirmative vote on Indonesia, Taiwan, and Vietnam. For the same of Hilex and our over 1,200 associates, I hope that you will also vote affirmatively in these sunset reviews. Thank you.

MR. DORN: Joseph Dorm of King and Spalding. The Malaysian Tax Force argued that the Commission should not accumulate imports from Malaysia with those from China and Thailand. It argues that cumulation is not warranted because, unlike China and Thailand, Malaysia has all but abandoned the U.S. market and switched its focus ton Europe, Asia and elsewhere.

It argues that the Commission should make a no discernable impact findings with respect to Malaysia. The task force argument are wrong for numerous reasons.

First, it is obvious that the only reason the 16 members of the task force have not exported to the United States during 2004 to 2009 is they have faced antidumping duty cash deposit rates of 85 percent to 102 percent since the orders were imposed. This fact is made clear by the experience of Euro Plastics Malaysia, which is not a member of the task force, but which the task force identifies as a company that did continue to export to the United States.

Euro Plastics Malaysia obtained a zero cash deposit rate in the administrative review covering imports entered from August 2005 to July 2006, but it achieved that result based on a negligible volume of sales. Takes a small quantity of sales, puts a high price on it, gets a zero cash deposit.

When it obtained this zero cash deposit rate in August of 2007, then it began to ramp up large volumes of shipments to the United States. The results of the administrative review covering imports from August 2007 to July 2008, however, show that Euro Plastics' dumping margin on those sales was 56 percent. Euro Plastics experience demonstrates that Malaysian companies wants to import to the United

States but only high duties prevent them from doing so at dumped prices.

Take those duties away and their dumped imports will certainly return to this market, otherwise they would not have bothered to hire counsel and participate in this proceeding.

Second, the task force does not claim there is anything unusual about the Malaysian PRCBs that would cause them to be anything other than fully interchangeable with imports from Indonesia, Taiwan, and Vietnam. With high case deposits now imposed on imports from those three countries, importers and U.S. purchasers would seek to source from Malaysia if the order were revoked against that country, especially if the orders remained in effect against China and Thailand. This is also likely because exporters in Indonesia, Taiwan, and Vietnam will shift the large volume of PRCBs formerly shipped to the United States to the EU and other third country market served by Malaysia now that the explorers in Indonesia and Taiwan and Vietnam face very high duties in the United States. They are going to be chasing the same markets that the Malaysians had been chasing outside the United States. That is going to force the Malaysians to look more to the United States.

Third, there is no meaningful distinction between Malaysian producers and other subject producers based on conditions of a competition analysis, and imports from Malaysia do not quality for an exclusion based on the no discernable impact exception. The Malaysian industry is largely a large, highly export-oriented focused on commodity products, it has substantial available capacity, and sells in the same manner as all other participants in the U.S. market.

The Malaysian producers are making and exporting commodity bags, tee shirt bags. During the original investigation no purchases of high-end bags were reported for Malaysia.

The task force questionnaire response indicates that home market shipments accounted for only 1.5 percent of Malaysian producers shipments in 2009. The Malaysian producers could easily begin redirecting their exports to the United States. Moreover, reported capacity utilization in 2009 was only 80.1 percent, which is the lowest utilization rate recorded during the period of review for Malaysia. That excess capacity gives these reporting producers the ability to provide 2.9 billion bags to the U.S. market without shifting any of their existing shipments from other export markets to the United States.

Fourth, Sido Bangun Indonesia is a key supplier to Spectrum. Sido Bangun Malaysia is a sister company of Sido Bangun Indonesia. Based on the recent antidumping investigations, imports from Sido Bangun Indonesia now have an antidumping duty cash deposit rate of 85 percent. Imports from Sido Bangun Malaysia have a cash deposit rate of 102 percent. If the order on Malaysia were revoked, shipments to Spectrum could easily shift from Sido Bangun Indonesia to Sidu Bangun Malaysia. In this way Malaysia is similar to China and Thailand because these subject producers also have links to producers in countries just recently made subject to relief.

The Chinese presence in Vietnam is well known. You know a number of Chinese producers moved equipment to Vietnam when the orders were imposed in 2004. A major Thai exporter to the United States, Thai Plastic Bags has a subsidiary which manufactures PRCBs in Vietnam. API, which has U.S. facilities, has sister plants in both Vietnam and Thailand.

Finally, the Malaysian plastic industry directory in 2009/2010 attached to our brief as Exhibit 13 concludes that, "The increase in supply of resins and the declining prices will all go well for the plastics producers. Malaysian produces are well placed to garner enhanced export opportunities."

In sum, revocation of the orders on imports from Malaysia cannot be justified on a finding that conditions of competition are different for those imports or because revocation would likely have no discernable adverse impact on the domestic industry. The precedent cited by the task force in their prehearing brief are all readily distinguishable as we will explain in our posthearing brief.

At this point what I would like to do is show you a very, very short video depicting the plant of Euro Plastics Malaysia. It's a little dated. It's for the year 200, but the Malaysian PRCB industry at that time had highly automated , large-scale production facilities comparable to those in the United States. We know the Malaysian industry has increased capacity by 71 percent from 2004 to 2009, so we believe there would be a number of other modern factories like the one that we're going to show you.

(Video shown.)

Applying the statutory factors to the record of this review it is clear that continuation or occurrence of material injury is highly likely if the orders are revoked.

First, the orders have benefitted the domestic industry notwithstanding an increase in unfairly traded imports from Indonesia, Taiwan, and Vietnam. The orders have reduced unfair imports from the subject countries. Moreover the subject countries that have remained in the U.S. market do so under the discipline of the antidumping order. The orders have therefore provided significant benefits to U.S. producers over time.

From 2001 to 2003, subject imports increased their share of the U.S. market from 10.5 percent to 18.6 percent in quantity, but the condition of the domestic industry improved substantially from 2003 to 2004 as a result of the preliminary duties imposed in January 2004. As the subject imports receded from the market in 2004, the domestic industry regained lost market share, increased production, improved its operating income margin.

Second, the volume of subject imports will be significant and will dramatically increase if the order is revoked. The likely trend for subject imports in the foreseeable future is indicated by the import trend in the original investigations which is the most recent period in which imports of PRCBs from

China, Malaysia, and Thailand were unconstrained from a discipline of the orders.

Based on the trends exhibited during the original investigations, the Commission should find that subject import volume is likely to dramatically increase if the orders are revoked. Such a finding is strongly supported in this case by the numerous admissions by purchasers, importers and foreign producers that they would increase sourcing from the subject countries in the event of revocation. That evidence is set forth within Appendix D to the prehearing report, and I haven't seen Appendix D to the prehearing report in the sunset review. The ones I participated in had so much evidence from the importers and purchasers themselves that, yes, you take away the orders and we're going to resume or increase imports in the United States.

The data from the original investigations are almost the most probative of the likely volume of subject imports because the questionnaire rate response is poor for the foreign producers, especially for the Chinese producers. The Commission requested data from 182 firms in China believed to be producers of PRCB. Only two firms responded. You requested data from 35 Thai producers, only five responded. The

Malaysian producers who did export to the United States during the period of review did not respond to your questionnaire.

Imports from each country individually will rapidly increase if the orders are revoked. Starting with China, publicly available information and the limited information from the two questionnaire responses that you did receive established that the Chinese producers will immediately and rapidly increase exports if the order is revoked.

The prehearing report indicates that due to the impact of China's state council's notice banning certain thin film plastic bags, the reputed largest plastic bag producer in China, Sweeping Juan Quin Plastic, closed it facility which had an annual capacity of 250,000 tons of bags in May of 2009. This company, however, has to open with a capacity of 180,000 metric tons or about 32 billion bags for the production of tee shirt bags and shopping bags, and that evidence is laid out in our prehearing brief.

It is also clear the Malaysian producers will immediately and rapidly increase exports to the U.S. market if the order is revoked. The reported data indicate the Malaysian capacity grew by 71 percent from 2004 to 2009. Publicly available information and the questionnaire responses indicate that capacity expansions are continuing in Malaysia. Over 98 percent of that capacity is directed to exports.

A finding of likely increase in exports from Malaysia is further justified because the reported data grossly understates the ability of the Malaysian producers to increase exports to the U.S. market as explained in the confidential version of our prehearing brief.

Turning to Thailand, the prehearing report notes that Thai Plastic Bags has over 200 printing machines and 230 bag-making machines. TPBI manufactures a wide range of PRCBs for leading retailers, including Wal-Mart, Radio Shack, Value City and Target. In its most recently completed administrative review, TPBI received a dumping margin of 21.99 percent. This is a dramatic increase from its prior administrative review margins of 0.8 percent and 1.41 percent.

The new higher margin will restrict imports from TPBI and the domestic industry will greatly benefit unless the order is revoked.

King Pac is another Thai producer with a high dumping margin. It invested 44 million in 2008 to double its capacity to 8,000 metric tons per month. It plans to invest another $88 million to further expand capacity to 18,000 metric tons per month. King Pac says that its increased capacity is aimed at making the company "one of the top plastic bag makers in the world." This major player is excluded from the U.S. market only by virtue of its 122 percent dumping margin.

Third, subject imports will have an adverse price effect if the orders are revoked. Given the highly significant volume of subject imports, their past practice of underselling and depressing and suppressing prices of domestic-like product and the department's finding of large likely dumping margins, it is clear that severe adverse price effects will be suffered by the domestic industry if the orders are revoked.

In the original investigations, cumulated subject imports undersold the domestic product like in 72 of 84 orderly price comparisons. Notwithstanding the disciplines imposed by the orders, subject imports from China and Thailand undersold the U.S. product during the POR in 207 of 303 quarterly pricing comparisons. Absent the orders, underselling is likely to worsen substantially.

Given the general substitutability of domestic and subject import products and the importance of price, the Commission should find that underselling is likely to be significant and likely to cause negative price effects. It is also very likely that low priced subject imports would again suppress domestic prices because subject import competition would prevent domestic producers from increasing prices to cover increased production cost which is what happened from 2001 to 2003 in the original investigation.

Fourth, the domestic industry is vulnerable to material injury if the orders are revoked. Demand in the U.S. market is beginning a structural decline that will intensify competition among PRCB suppliers; that this demand decline is simultaneously occurring worldwide means that the large PRCB production industry in the subject countries will be aggressively marketing their products in the U.S. market on the basis of price.

In addition, the cost of resin is rising in 2010. According to the prehearing report, "Multiple U.S. producers noted in questionnaire responses that resin prices are trending upward in 2010." Increasing resin prices make the industry highly susceptible to a cost/price squeeze during an increase in unfairly priced imports.

The domestic industry is also highly susceptible to material injury from subject imports because the unfairly traded imports from Indonesia, Taiwan, and Vietnam materially injured the domestic industry and left it in a weakened condition and unable to withstand the renewed imports from the subject countries.

Finally, the combination of the adverse volume and price effects from the revocation would have a very negative impact on the domestic industry's sales, production, employment, and financial condition. Among other things, the industry would have no incentive to invest in U.S. production assets and preserve U.S. jobs.

In sum, the Commission should determine that revocation of the antidumping duties on PRCBs from China, Malaysia, and Thailand would be likely to lead to a continuation or occurrence of material injury within a reasonably foreseeable time.

Thank you and that concludes our direct presentation.

CHAIRMAN ARANOFF: Thank you very much. I want to welcome everyone on this morning's panel, and thank you again for taking time away from your businesses to answer our questions this morning.

We are going to begin the questioning today with Vice Chairman Pearson.

VICE CHAIRMAN PEARSON: Thank you, Madam Chairman. Welcome to all members of the panel. I think we are going to have to stop meeting like this.

For this investigation, we have the benefit of six full years of data in the period of review, and so we have a longer scope of time that we're looking at. The apparent consumption data, I believe, contain confidential business information so I won't mention specific numbers but looking at this data what we have is an increase in 2005 from the level in 2004, and then another increase in 2006, and those are relatively substantial increases.

Since 2006, the pattern is of gradual declines of consumption in the U.S. market. So my first question is, is that how you have seen the market? Is that summation, does it square with your observations of what's been going in in the U.S. market?

MR. DANIELS: If I may, Mr. Pearson. One thing that I thought was an anomaly was 2006 specifically coming out of Thailand. There is this rather large peak in both value and in quantity, and it also coincidentally comes in with a price of -- this is a public record so I think I'm okay in saying this -- $5.92. I have been in this business for 22 years and never in those 20 years have I ever seen a thousand bags sold for $5.92. Obviously, I don't have all of the data that supports this particular number, but I can just tell you from my experience, even the first category, which is very small, what we would consider to be junior tee shirt bags, don't sell at that price, so I don't know where that abnormality comes from.

VICE CHAIRMAN PEARSON: I don't either. Mr. Rizzo, do you have observations selling product in this market, about the overall level of demand?

MR. RIZZO: Yes, I mean, if you go back to your original question, in terms of anecdotally, consumption period, period, period, we've seen stagnant growth. We have seen stagnant erosion of volume just due to market pressure; just do to environmental concerns, so on and so forth.

VICE CHAIRMAN PEARSON: And what you are saying is that you know a whole lot about bags that Hilex Poly is selling and not so much about what's been consumed in the marketplace overall. Is that a correct understanding?

MR. RIZZO: Yes, except that we represent a fair share of the market. I would say that it's fair to say that we are a microcosm of the market given the number of customers we supply in each of the different segments. When I say segments, I'm talking about growth through retail, pharmacy, office goods, so on and so forth.

MR. DORN: Commissioner Pearson, I might also point out that there is a problem in the public version of the report. It's not the fault of the staff. It's the fault of one company didn't respond to the questionnaire in the sunset review that did respond in the recent investigation. So all the consumption data is not in the public version of the report for the sunset review.

So we have gone over the data, the consumption numbers that are in the other report, Indonesia, Taiwan and Vietnam, and they noted that this spike in 2006 did not comport with their experience. They didn't recall reading that there had been such a large increase in consumption in units in 2005 and 2006, and that in turn perhaps makes a decline from 2006 to 2009 greater than it really should be, and as we started getting into the data we said, well, where is the outlier, and the outlier is this one import number from Thailand which jumps up from 2005 to 2006, and you look at the unit values, as Mr. Daniels indicated, that unit value is an outlier for 2006 if you compare it with 2005 and 2007. So we think there is a problem with the quantity data which unfortunately we think skews the consumption trends somewhat.

VICE CHAIRMAN PEARSON: Okay. So the general sense is that looking over this period demand has been relatively stagnant. There has not been a lot going on and that's the condition that you expect looking forward the next year or two?

MR. DANIELS: Yeah, I think our experience has been that the demand was -- as we went through 2001 through 2005, I think there was an improvement in demand, and now that has flattened out, and as we have testified, expect a slight decline in demand based on what Mr. Rizzo said with regards to environmental considerations.

VICE CHAIRMAN PEARSON: Okay. How about globally? What is your sense of the changes on both the demand side and the supply side for these bags worldwide?

MR. DANIELS: I'll try to answer that.

There is certainly -- in Ireland, there was a bag tax that has gone up two or three times -- three times I believe now, so as the folks in Ireland get acclimated to the tax, they continue to use the products, and then the government increased that tax. So there is evidence, although I haven't seen a study, I have seen plenty of publications that said that consumption in Ireland has gone down.

In China, there is what they call a bag tax but really what it is is a Chinese retailer has to put a fee on a bag. They don't set the fee. The Chinese producers in that country that are selling into that home market has to manufacture bags of one mil or higher. Companies that are designed for export only can manufacture bags of any gauge and export into the U.K., into the United States market, into the European Union and such.

So what our concern is is that the capacity remains the same, consumption rates worldwide are going down outside the United States, and we become even more susceptible to the exports from subject countries.

VICE CHAIRMAN PEARSON: Okay. On the supply side, you indicated the capacity remains the same. So you don't have a sense that capacity to produce these bag globally has been rising over the period of review rather than the capacity has remained the same?

MR. DANIELS: As Mr. Dorn testified for Malaysia, we have seen their capacity increase by 71 percent. We have seen some reports of manufacturers shutting down in China but then reopening. I believe you said from 200,000 metric tons to 180,000 metric tons, so there was somewhat of a decline.

I would say that there is a continuation of increasing capacity worldwide as demand is shrinking.

VICE CHAIRMAN PEARSON: Mr. Bazbaz.

MR. BAZBAZ: And that's a supplier that makes 180,000 metric tons, it would be able to produce about 31 billion bags, which is one-third of U.S. consumption through that plant. So you know, the threat is huge.

VICE CHAIRMAN PEARSON: And when you the trend, the trend --

MR. BAZBAZ: The threat is -- the threat of this idle capacity on other -- the subject countries are substantially threatening the U.S. industry.

VICE CHAIRMAN PEARSON: Okay. So your view is that there has been supply expansion or capacity expansion in the subject countries we are talking about, perhaps also in the other three countries that we talked about last month, but the rest of the world has not been -- we have not seen a lot of increase in supply in Europe or in South America. The action has been in Asia. Do I understand that to be the essence of your comment?

MR. BAZBAZ: Yes, sir. The action is primarily from Asian countries.

VICE CHAIRMAN PEARSON: Okay. So you is the U.S. retail bag business adapting to the projected demand? I mean, you're talking about the demand is likely to be stagnant, maybe dropping a little bit due to environmental reasons. How is your industry planning to adjust to that?

MR. BAZBAZ: Well, during the past few years we have invested in substituting our equipment with state of the art equipment that will make us the lowest cost producer or one of the lowest cost producers, and that's how we intend to remain in business, by being very efficient.

MR. RIZZO: I would say consistent with that answer we continuously streamlining cost from a perspective of our asset base, from a perspective of our conversion costs, and we've made a decision to remain in this business. Our intention is to get to a point where we can continue to invest in fixed assets to become even more efficient and we made a decision to remain in the bag business.

VICE CHAIRMAN PEARSON: Within the period of review there have been some plant closures in the United States. Would you expect to see some of that happening as their investments in upgrading other plants?

MR. DORN: Mr. Pearson, that's very difficult to say. Any company is going to continue to look at their footprint and their asset base. To Mr. Rizzo point and to Mr. Bazbaz's point, we want to be as competitive as we can. We do not have plans on closing any other facilities. We had to reduce capacity. We closed three plants because of the unfairly priced imports that came in from subject countries in the recent action.

I would also note that with regards to legislative activity we are aggressively defending our industry that in fact the plastic bags are really quite a good environmental choice, and our voice is being heard in many states. By far the most legislation is taking place in the United States is recycling laws of plastic bags as opposed to taxes and bans. So although we know there is pressures in front of us, we are doing an incredible job to make sure that our marketplace stays whole.

VICE CHAIRMAN PEARSON: Okay. Well, thank you very much, and Madam Chairman, thank you for your indulgence.

COMMISSIONER ARANOFF: Commissioner Okun?

COMMISSIONER OKUN: Thank you, Madam Chairman, and I join my colleagues in welcoming you back to the hearing today. I appreciate again you taking the time to be with us and answer our questions.

Let me just start again in making sure I understand whether there are any differences in the data that we should be aware of from the investigation we just completed and the final investigation and this review. Of course, we have full 2009 data, which is something we didn't have, which I guess my question would be it shows the return to profitability of the industry during an economic recession, and again that might be a little different than some of the other industries we have looked at recently.

And so I guess my question, I guess the legal question would be for Mr. Dorn with respect to vulnerability, but then also for the producers just to talk about again the experience of your companies. You ended your responses to the Vice Chairman talking about some gains in efficiency, so help me understand how looking forward in this sunset review I would expect the industry to perform given that it's been able to cut costs. The merchant bankers see a number of very positive things that resulted in positive returns in 2009.

Mr. Dorn, I'll start with you just with respect to vulnerability specifically and then turn to the producers.

MR. DORN: Thank you. With respect to the 2009 data, that's not available to the gentlemen at the table because it's confidential for the reason I mentioned earlier.

COMMISSIONER OKUN: Right.

MR. DORN: It's public, but Omega did not respond in this investigation or this review so they don't have access to that. I'm going to talk about the public data from the other report, which only goes through September.

COMMISSIONER OKUN: Right.

MR. DORN: A little bit of change, but not much for all of 2009. I think the one thing to note is the capacity utilization rate for the industry was only 76 percent in January-September 2009, which was the lowest utilization rate at any point going back to

2006 at least.

I think it's comparable. I think the last time you saw a capacity utilization rate like that is back in 2003, which is the last year of the original investigation, so I would note the poor capacity utilization rate. I would note that the industry had some wind to its back in 2009 because of a sharp drop in resin prices in the fourth quarter of 2008, so resin prices were much lower in 2009.

You also know from the other investigation that they also got a lot of benefit from filing the petition and customers were leery of the prospect of high duties and so that gave them some positive benefits in the marketplace. But take away the duties on China, Malaysia and Thailand and we don't see any reason that you wouldn't have the same conditions you had from 2001 to 2003.

Keep in mind that from 2001 to 2003 you had strong growth in the market, and a surge in imports caused havoc on the domestic industry. An increase in imports going forward would happen at a time of stagnant demand, so we think the industry is very vulnerable for those reasons.

COMMISSIONER OKUN: Okay. Maybe just hear from the producers just a little more in terms of how you feel like you're positioning yourself for the future in terms of we've talked about this increasing resin cost projected for 2010. I don't know how far those projections go forward. Is there anything beyond 2010?

MR. DORN: I don't think there are any projections in the record.

COMMISSIONER OKUN: Okay.

MR. DORN: It's anecdotal evidence in responses to questionnaires and folks saying they see resin prices trending upwards.

COMMISSIONER OKUN: Okay. So producers talking. In the next year or so, how will you be positioning yourself with respect to raw material costs and prices in the market and other ways to approach your customers?

MR. RIZZO: Well, just to reinforce what Mr. Dorn just said --

COMMISSIONER OKUN: I think you might need your microphone on. I can't hear you very well.

MR. RIZZO: Sorry. Better?

COMMISSIONER OKUN: Thank you. Yes.

MR. RIZZO: Just to reinforce what Mr. Dorn just said, I mean, we definitely got popped up in the beginning of 2009 with the preliminary ruling on the newest three subject countries.

It's given us a platform to compete in customers where historically we weren't able to compete, customers who put their business out to bid every three months, as opposed to six months or every 12 months, so we're able to compete a little bit, certainly a lot more competitively.

How are we continuing to do our business? I mean, again streamlining of cost is not something that we look at on a temporary basis. It's something that we review on a monthly basis, and it's always baked into our forward looks.

We certainly do not have the market share that we have because we are uncompetitively priced, but really the punchline of the discussion remains around the fact that we're not adverse to competition. We thrive in competition.

Given our cost platform and our ability to scale in terms of raw materials, we're comfortable in the platform of competition. What we're not comfortable with is competing against unfairly priced products. That's really the issue for us.

So as we look into 2010 and we look forward to even now through 2011, because we do have a mass of volume that becomes available out of existing contracts and when we have the ability to go and compete against them. We're confident that if the orders are not revoked and they remain in place we'll be in a position to continue to thrive in 2010 as we did in 2009.

COMMISSIONER OKUN: Okay. Any other comments from producers? Mr. Bazbaz?

MR. BAZBAZ: Yes. Certainly we are very optimistic in the future if the orders are not revoked. We believe that we can grow and continue our employment back and continue in this business.

COMMISSIONER OKUN: Okay. Mr. Daniels, anything to add?

MR. DORN: No. Thank you. I think they've --

COMMISSIONER OKUN: All right. Okay. Then let me turn to some Malaysia specific questions. One thing, and I do plan to go back and look at the questionnaire responses again, but all of you have mentioned the possibility that Sido Bangun in Indonesia could shift to its sister plant in the event that we revoke the order.

And I guess I'm trying to just make sure I understand how you would characterize the Malaysian response to the order the first time around as compared to China and Thailand because I think, and just correct me if I'm wrong. I mean, I think what we saw with China and Thailand, and you've highlighted it. They did move a lot of machines around. The production capacity moved to Vietnam and the other countries that we were just looking at.

Did Malaysia producers behave in the same way when the order was imposed, the same way as China and Thailand, or are there differences just in the way they responded to the order? I guess what I'm trying to say is does that have an implication for whether I think they are likely to shift between the sister plants in Indonesia and Malaysia if this order were lifted?

MR. DORN: Well, I think that you would find that there was a shift from -- I think Spectrum, for example, was supplied by Sido Bangun Malaysia based upon what my client is telling, and then the order was imposed and then Spectrum started bringing product from Sido Bangun Indonesia, so if it can shift in that direction it can shift back.

I'm not aware of Malaysian companies setting up plants in Vietnam, but I don't think that changes the conditions of competition going forward. There's certainly no reason that they wouldn't be able to shift product they are now shifting to Europe or Asia to the United States. They're not claiming it's a different product. It's the same type of production, same production process. They've got easy access to U.S. markets through internet bidding events through Spectrum and Bunzl and other distributors.

So we don't see any condition of competition that would make them have a more difficult time reentering the United States than a producer in China or Thailand that has not been participating in the market in the last few years.

COMMISSIONER OKUN: Do you think the information that we have on the record supports the Respondents' argument that in fact they will have less incentive than the other two to shift back to the U.S. because of the fact that there is not an order on Malaysian imports into the EU, unlike China and Thailand?

MR. DORN: No. I think that what's going to happen is that exporters in Indonesia, Taiwan and Vietnam now facing large duties in the United States, they've got all this capacity. What are they going to do with it? Why wouldn't they be shipping to the EU and Asia and the obvious export markets? That's going to bump into Malaysia.

What's Malaysia going to do? If the order were revoked they'd look to the United States, which would be the largest available market.

COMMISSIONER OKUN: Yes, Mr. Rizzo?

MR. RIZZO: Also, why wouldn't they just shift their assets back to Malaysia? I mean, it sort of decoupled the existing Malaysian suppliers and the ability of other suppliers to move facilities and to move their assets to Malaysia in the event that they were decumulated.

COMMISSIONER OKUN: Okay. Yes. Two different things. I'm pretty sure that was in response to the first question, and more I'm curious about the EU as a good market for the Malaysians and whether in fact if this order were lifted that they have the same incentive as China and Thailand to reenter the U.S. market, given that they do have what looks like an established market in the EU.

MR. RIZZO: To me, the EU is Plan B, to be honest with you. I think you see environmental pressure in the United States. I think you see environmental pressure times 10 in the EU.

I think if the pie is shrinking in the United States to this degree it's shrinking to this degree in the EU. It's just going to compress the amount of available business, and it's going to be more of a compelling reason for them to come to the United States. My personal opinion.

COMMISSIONER OKUN: Okay. My red light has come on. I'll come back on a couple of those responses. Thank you.

COMMISSIONER ARANOFF: Commissioner Lane?

COMMISSIONER LANE: Good morning. Welcome to the hearing. I missed the earlier hearing so if some of my questions are redundant you'll have to bear with me, even though I know, Mr. Dorn, you don't want to mess up the record by having us ask questions that were already answered before.

Let's start with the environmental concerns which is having an effect on the demand for the product. Could you explain to me exactly what the environmental concerns are? Are they related to the use of the product? I mean, are they related to the product itself or the fact that people aren't using them properly and are disposing of them improperly?

MR. DANIELS: Ms. Lane, I think it's the latter. The product in and of itself, you can just kind of follow the Environmental Protection Agency's reduce, reuse, recycle. The product itself is a thin gauge. It weighs about five grams. It holds 1,500 tines its weight. It's a very strong product, so the reduce part is very good.

The recycle part, we're getting more and more education out into the marketplace that these products are recyclable. The reuse statistics are pretty staggering. About 60 percent of bags are being reused for trash can liners in your bathroom or if you have a pet, pet waste pickup, things like that. So between recycling and reuse it's about a 72 percent rate, which is extraordinary.

What's difficult about this product is the inadvertent litter that you would find. You know, we've all unfortunately seen a plastic bag perhaps on a fencepost or in a tree, and then because it's visible like that we have seen some environmental community groups, some NGOs, really kind of use this as a tip of the spear approach to all plastic products.

Unfortunately, plastic bags happen to be very elevated in the public discourse right now, so I would say it's the latter.

COMMISSIONER LANE: Okay. So there's nothing really in the plastic bags themselves that are dangerous to the environment?

MR. DANIELS: Oh, absolutely nothing. We

have material data safety sheets. There's no toxins. We use water based inks. There's some calcium carbonate, which is a mineral, in the bag, but there is nothing harmful whatsoever in a plastic bag.

COMMISSIONER LANE: Well, how widespread is the movement to ban or charge for these bags? I wanted to note that the scope of this investigation refers to the fact that the bags are generally free of charge. Anyway, that was just an aside.

But how widespread is the movement to ban or charge for these bags across the United States? What percentage would you say of the country is doing what D.C. is doing, which is charging for the bags?

MR. BAZBAZ: What we've seen is activity in both coasts, in the east coast and in the west coast. Washington was able to get a tax on the bags, but we have seen more localities that they are more willing to legislate and regulate in terms of recycling rather than taxing. This is not a good time for the country to start taxes on bags or any of that.

So the product is a valuable product when it's recycled. Everybody would want to get it back. We can make bags again from these bags. There is nothing wrong with the bags. They are sanitary products. Eventually the consumer, when he's educated, is going to make the right decision to continue using these bags.

COMMISSIONER LANE: Okay. Thank you. Now, Mr. Rizzo, you mentioned that Wal-Mart only purchases through the internet. Do you know which other large retailers only purchase these bags through the internet, and what percentage of the market are they responsible for?

MR. RIZZO: The percentage of end users who participate in internet-based bids is north of 75 percent.

COMMISSIONER LANE: Okay. And I think you said something about --

MR. DORN: Excuse me one second. I think you mean 75 percent of consumption. You don't mean 75 percent of all purchasers, right?

MR. RIZZO: Okay. Consumption. Excuse me.

MR. DORN: Because the larger retailers are more likely to use internet auctions than your store out here in this building.

MR. RIZZO: Correct. Excuse me.

COMMISSIONER LANE: Okay. And one of you said something. I think what you said was that you have a map available that when the contracts end and you have opportunities to bid for supplying the bags.

MR. RIZZO: Correct.

COMMISSIONER LANE: Is that in the record already?

MR. RIZZO: No. It's an internal document. It's just something that we work from to identify market opportunities, knowing when pieces of business become available outside of existing supply contracts.

COMMISSIONER LANE: Okay. And is it possible then for you to provide that for the record?

MR. RIZZO: Posthearing? Sure.

COMMISSIONER LANE: Okay. Thank you. Now, if I understand what you were saying, you were saying that if we took the orders off these three countries then they would start coming back into the market, and you also said that they might shift production or production might shift to another country. Is that correct?

MR. RIZZO: Sure. If the duties are revoked --

COMMISSIONER LANE: Yes.

MR. RIZZO: -- I anticipate that they would reenter the market.

COMMISSIONER LANE: Okay. And how difficult is it to shift production from one country to the other? Do the companies use existing facilities or do they move the facilities?

MR. RIZZO: You've probably got a combination of the two, but, I mean, if you look just at the time period post the affirmative ruling on China, Malaysia and Thailand you had a significant amount of capacity that was shifted to Indonesia, Taiwan and Vietnam, so the track record is there. It happened. So in terms of how simple it is I'm sure it's case by case, but it's doable.

COMMISSIONER LANE: Okay. Thank you. How should the Commission consider the nonsubject imports from China and Malaysia in its analysis?

MR. DORN: Well, I think the Commission should focus on the subject imports. Of course the data is confidential, but I think you'll find if you look back at the record of the original investigation, 2001 to 2003, and you look at the percentage of imports from China attributable to Nantong and Hanglong you'll see it's a very small percentage.

And the same thing with respect to Bellion for Malaysia. On the other hand, it is interesting to look at what's happening to Bellion's exports to the United States. That's confidential, of course, but according to Malaysians, Bellion shouldn't have any interest in the United States because it would want to shift to the U.K. and other markets and so forth.

But look at the experience of Bellion, which has faced a zero duty rate, and see what its appetite has been for the U.S. market since 2004. We think that that would be replicated by all the Malaysian producers if they also faced a zero duty.

COMMISSIONER LANE: Okay. Thank you. How difficult is it to shift production to PRCBs from other polyethylene film products?

MR. DANIELS: The extrusion process, Ms. Lane, is pretty much the same. We extrude a bubble, and then you can go to another converting piece of equipment so if we were to say that we wanted to go from extrusion of plastics and making PRCBs to making trash can liners we would need new converting equipment for that.

So, if you will, kind of half of the way we go through a production process you could switch, but it's not real simple. There would be a significant investment in capital to be able to convert that bubble of polyethylene into something else.

COMMISSIONER LANE: Has this sort of production shift ever occurred?

MR. DANIELS: I can only speak for Hilex. We have not done that, no.

COMMISSIONER LANE: Okay. Thank you.

MR. DORN: Commissioner Lane, I think the record of the investigation would show that this is something that happens more frequently in Asia than in the United States.

COMMISSIONER LANE: Okay. Thank you. And with that my time is up. Thank you, Madam Chairman. Ten minutes on the dot.

COMMISSIONER ARANOFF: Commissioner Williamson?

COMMISSIONER WILLIAMSON: Thank you, Madam Chairman.

I want to continue along the line of questioning that Commissioner Lane had about this impact of demand from the regulations and the question of recycling. I was wondering in particular the thing that you talked about, Mr. Daniels.

You talked about a new recycling plant that you all have opened, and I was just wondering is there any idea of what kind of impact that is going to have in the future, or what are the implications of that for demand of the PRCBs?

MR. DANIELS: Mr. Williamson, I am not sure that I can speak to the demand side. As part of the progressive bag affiliates, our industry has made a commitment to get 40 percent recycled content in plastic bags by 2015.

We are trying to create a market where more polyethylene products, whether they be bread bags and garment bags, film overwraps, can be reversed, and distributed back to recyclers to reprocess that into good polyethylene pellets that we can use back in the extrusion process.

So it is a growing marketplace. I can speak for highlights more and more of our customers, our changing into a colored film bag, like a tan bag, or a gray bag, that has elevated levels of recycled content.

So I think that the sustainability efforts from our customers is increasing. I think that is going to help us to put a bulk work against some of the onerous legislation that is out there.

COMMISSIONER WILLIAMSON: So I take it then that part of your campaign would be to get, say, municipalities or States, to give some incentives for people to bring the bags back, as opposed to the tax on the use of the bags?

MR. DANIELS: I am not sure if that necessarily has to be a public part of the process. There is value in these materials. We pay the market price, whether it is from highlights or others, is maybe 15 to 25 cents, depending on how clean the material is.

So there is incentives for the retailers to take this material back from consumers, and combine it with their other plastic scrap, like strech film, bale it, and sell it into the marketplace for us to reprocess.

So it is a market in and of itself. We would like the Legislators to help educate the consumers that this could work, but I don't know that it needs to be done on the public sector.

COMMISSIONER WILLIAMSON: Okay. I am also curious about -- as you said, the use of the PRCBs, particular for trash can liners, is really great, and --

MR. DANIELS: Thank you.

COMMISSIONER WILLIAMSON: Otherwise, you have to go out and buy those bags, and I have not seen any advertising pointing out which is more environmentally friendly. So part of asking these questions is really to wonder about -- you know, you talk about demand not increasing and things like that, but I can see a number of ways where maybe demand wouldn't go down.

MR. DANIELS: We have not seen demand go down significantly to date. The reusable bag market place, people really are not bringing them back to shop, but we would be foolish not to think that there is pressure ahead of us if this legislation continues, or if it were to wrap up.

That is our concern. How can we say that demand is going to increase if we can get this target off of our backs? Yeah, I think demand could increase in our products very well when we educate the consumers that this is an environmentally sound product.

COMMISSIONER WILLIAMSON: Okay. Mr. Bazbaz did you have anything that you want to add?

MR. BAZBAZ: Yes. I wanted to add to this that if you don't have that grocery bag, which we have researched that shows that more than 75 percent of the bags are being reused as a kitchen trash can bag, you would have to buy a bag that is twice as thick from the supermarket in order to use that as a trash can bag.

And that adds twice as much burden to the environment. So we are optimistic that the consumer, that when they hear the facts, and that bags are better than any other solution there, they will understand that this is nothing harmful to the environment.

To the contrary, it is the best solution. So I would not feel very bad about claiming all of these facts.

COMMISSIONER WILLIAMSON: You ought to advertise that more, because it sure makes me feel better, because I always have a question, you know, is this bag strong enough. Okay. Thank you. And do you see any evidence -- you talked about Europe being much more stringent and more advanced than the U.S. in some of these restrictions.

Are there any statistics from the European experience about this?

MR. BAZBAZ: I wouldn't say they are more advanced.

COMMISSIONER WILLIAMSON: Noisier?

MR. BAZBAZ: No, because they just do not understand all these facts, and at that time, in Europe, there were not a lot of manufacturers located in Europe. So most of the bags were imported and nobody defended the industry there. So that is my point.

COMMISSIONER WILLIAMSON: Okay. Good. Commissioner Lane had also asked some questions about the shifting of demand, or the shifting of facilities. If you got orders in one country, then a plant might open up in another.

I was wondering, Mr. Rizzo, that you had mentioned that, but I don't think you asked the question is it more often than not that the same production facility -- that the equipment is moved from one country to the other, or is it that they build a new plant with new equipment?

MR. RIZZO: I think you have got a mixed bag there on the answer. I mean, if they have got facilities available, with the opportunity to expand, it makes it that much more easy. For example, if Sido Bangun in Indonesia had to send some of their assets to their sister plant in Malaysia, it would be very easy for them to do, because the infrastructure is there to support the incremental capacity. It would just make it that much more seamless for them to make the move.

COMMISSIONER WILLIAMSON: Mr. Bazbaz.

MR. BAZBAZ: What I was going to say here was that the equipment lasts for many, many years in operations, and so it makes no sense to throw it away. So this equipment build up has been continuous for the last 10 years.

API that has equipment now in Vietnam cannot sell any of these bags in the United States without paying duties, high duties, and we would most likely send it to Thailand. And let's not just forget about all these equipment that is ready in China.

China uses -- the Chinese market, as stated by them, is like 2 billion bags a day, 700 and some billion bags a year, seven times or eight times larger than the U.S. consumption. And just one plant there can make one-third of the U.S. market production or rather consumption. So the equipment does not go to the trash. It is there. So it makes sense if you just move it into another place.

COMMISSIONER WILLIAMSON: And the cost of moving it may be less than the cost of buying new equipment also?

MR. BAZBAZ: Yes, sir. Yes, I would say so.

COMMISSIONER WILLIAMSON: All right. Mr. Rizzo.

MR. RIZZO: Or writing it off.

COMMISSIONER WILLIAMSON: Okay. What about in terms of when you have a producer, and let's say -- and you mentioned where they have facilities in two different countries. Is the foreigner purchaser actually dealing with that one company less concerned about which of the two facilities the product may be coming from?

MR. RIZZO: No, lots of times they don't even know where it is coming from, and they are dealing either with a distribution channel, or they are dealing with the sales rep who -- well, generally, they don't even know where it is going to be produced.

COMMISSIONER WILLIAMSON: Okay. Thank you. So as long as the price is right. What impact do you expect -- and I don't think this has been asked, but what impact do you expect the new orders from Indonesia, Taiwan, and Vietnam to have on the U.S. market? Mr. Bazbaz answered that question already.

MR. RIZZO: You are asking what impact we believe it is going to have?

COMMISSIONER WILLIAMSON: Yes.

MR. RIZZO: I would say a very positive impact. It is going to suppress a lot of what we consider unfair pricing in a competitive market with potentially shrinking demand. We are excited about it, and it is something that we think is going to contribute to our ability to reinvest in our business.

COMMISSIONER WILLIAMSON: Okay. And what impact do you think it is going to have on the imports from the subject countries that we are talking about now?

MR. RIZZO: If the orders are revoked, it will send a lot of volume right back their way. If the orders are maintained, not much.

COMMISSIONER WILLIAMSON: Okay. Thank you. Have you seen any changes in the market or in the industry since last month's hearing since the orders, since our decision and our vote?

MR. DANIELS: On the orders? Yes, I --

COMMISSIONER WILLIAMSON: Is there changes in the market industry forecast?

MR. DANIELS: As Mr. Rizzo testified earlier, Mr. Williamson, we are seeing additional opportunities come to us from retailers that would exclusively use import products. The domestic marketplace never was able to compete with, and there are significant buyers of bags in the U.S. market.

And we are now selling those bags at reasonable margin. Whereas, we couldn't touch it before. So we are seeing a positive impact with regards to the anti-dumping duties that are implemented.

COMMISSIONER WILLIAMSON: Okay. Thank you. The Respondents argue that the orders on Thailand may soon be lifted due to the WTO zeroing decision. What is your response to that, and how should the Commission take this into account?

MR. DORN: I think that argument is entirely speculative. The Commerce Department will recalculate the margins from the original investigation without using a zeroing methodology. But in the recent final determination involving PRCBs from Taiwan, the Commerce Department accepted a targeted dumping methodology that we proposed, which we think will make the significance of zeroing much less important.

So we are not sure that the implementation that the WTO decision is going to have any measurable impact on the recalculated margins, and beyond that, we haven't -- I assume that we will have access to a confidential record, and be able to assess the impact.

But we have not had access to that record for many years. So I really can't say anything more about the likely outcome.

COMMISSIONER WILLIAMSON: Thank you very much, and my time has expired. Thank you.

CHAIRMAN ARANOFF: I want to go back to the idea of internet sales. I know that you have indicated that you think that it accounts for a large percentage of domestic consumption. Now, when we are referring to internet sales, I just want folks to be a little bit more specific, and distinguish between a reverse auction, which is a very specific internet bidding event, versus what I think is referred to in the record as other internet events, which I would assume would look more like a traditional request for quotations, followed by some rounds of bidding or something.

Does anyone want to describe to me the difference between a reverse internet auction and other internet competition that may take place in this industry, and which is the more prevalent of the two?

MR. RIZZO: The internet auction is somewhat self-explanatory. You log in, and each participant is anonymous. There is a qualification process before. Effectively what they are doing is just gathering your information on what your production facilities are, and so on, and so forth. Your ability to supply.

But during the course of the auction a starting price is set, and it goes south from there, and the one who has the lowest price at the end of the auction wins the business. That is as simple as it gets, and I don't think it is a whole lot more complicated than that. On the internet --

CHAIRMAN ARANOFF: Let me just stop you because I want to ask a few more questions about that before we move on to the other. Someone mentioned in their testimony that reverse internet auctions tend to be run by companies that specialize in running those auctions. Did I hear that correctly?

MR. RIZZO: Yes, they are administrators effectively. Companies like Ariba, People Soft, and these are just effectively software mechanisms to facilitate the auction.

CHAIRMAN ARANOFF: Okay. So the starting price is set by the purchaser?

MR. RIZZO: Generally what will happen is that you will submit a pre-bid. That pre-bid generally from what our experience is, is that the lowest common pre-bid becomes the starting price at the auction. Not your price necessarily, but the lowest common price.

CHAIRMAN ARANOFF: Okay. And then there are rounds of bidding in the auction. Is it instant? You know, like the way it is on E-bay?

MR. RIZZO: Generally, yes. It is generally -- and feel free to jump in. I mean, it is generally a 15 minute event, and in the event that a price is entered in the last two minutes of the event, you get an additional two minute extension.

And it is not uncommon for a 15 minute event to last three hours with continuous incremental or detrimental adjustments to price, until people fall off effectively, and they reach a point where if there is no bid entered in the last two minutes, then the event is done.

CHAIRMAN ARANOFF: Okay. All right. Thanks. That's helpful. Now go on to what you were going to say to describe other internet bidding models.

MR. RIZZO: The other internet bidding models? I mean, the other internet bidding models are -- there is various, but I would say if you are going to lump the largest group, it is probably represented like this.

It is a one way communication effectively of information from the consumer bags, where they basically state their specifications, their requirements, the distribution channels, the terms of selling to them.

And they are asking you to enter a price, and then enter in potentially an alternative specification, or an alternative opportunity, and effectively it is just a one-way communication -- Send us your price -- and that is where it ends.

And just to tie it together, the spirit of the communication of the internet bid here is really -- again, competition is one thing. We are okay with that. We compete well and we are okay with that.

The advent of the internet based price mechanism just really takes out anything other than the economics within the decision making process. So it just makes the price -- the spirit of the pricing that much more important, because you are not factoring in value added decisions, and you are not factoring in our ability to do something that his company doesn't have the ability to do. It becomes a function of our price, their price, and their price, period.

CHAIRMAN ARANOFF: And it takes out any relationship between the salesman and the customer?

MR. RIZZO: Zero. Generally what happens in a bid scenario, you don't have access to the buyer before or during a bid, and you are only allowed to speak to them after the results of the bid have been made public. Isaac, did you want to say something?

MR. BAZBAZ: Yes. Madam Aranoff, I would like to say that there is not really a lot of difference between the bid event and the reverse auctions in this respect. When you enter a reverse auction and you have a pre-bid number, generally nobody would put their best price there to begin with, accounting for some room so you can be able to reduce the price in the auction.

Second, at the end of the day, I am surprised that the first, and the second, and the third, and the fourth, are very close to each other. So at the end the competition will tend to be to a certain price if it not unfair competition, and they will all lean within one or two percent between each other.

In the case of a bid, like in the Wal-Mart, everyone would put the best price possible to begin with, which pretty much would be the same result as a reverse auction, because you cannot go beyond your costs.

So I think that at the end these internet events are just a platform that allows everyone to participate, and allows an efficiently economic way for all the competitors to be there doing an efficient way of pricing.

MR. DANIELS: If I could add just one more commentary on this.

CHAIRMAN ARANOFF: Sure.

MR. DANIELS: The advent of reverse auction internet, you know, at the time as Mr. Rizzo said, there are companies that facilitate this, and they get a percentage of the savings, and whatever that percentage may be.

They say that I am going to take 10 percent of your savings from your pre-bid to your post-bids, and that is the way that I am going to do that. So, many companies started doing reverse auctions.

They were able to find a basis for the low -- they found the lowest cost denominator if you will for their polyethylene retail carry-out bags. Then they will say, well, I can say that I am buying my product for $10, and my independent verification on resin is at 50 cents.

They kind of know the floor of what the market is, and then they might go to an internet bid process, as opposed to an auction process, because they have gone through the experience. Now they don't have to pay those commissions, and we have seen that event happen, too. So that lowest kind of common denominator does come into play.

CHAIRMAN ARANOFF: Okay. That all helps me very much to understand. It is a way of perfecting the old process that required more people, more time, and more time, and more research on both sides.

And now a lot of that is taken out, which has to feel uncomfortable for people in the sales business. Let me ask another question. To what extent in this market is it important for purchasers to have more than one regular supplier of PRCBs?

MR. DANIELS: Never. I am just trying to be light here. We see companies that want to have multiple suppliers. It depends on the size of their company and how they want to make sure that they keep a price balance, but there is also -- we have plenty of customers that we are the sole supplier to.

CHAIRMAN ARANOFF: And is it an issue of price balance, or is it an issue of security of supply?

MR. RIZZO: I think you get both. You certainly have buyers who are of the philosophy that they need contingency in supply, but in my experience, even the largest consumers of bags still have made the leap to go to sole source, because there is just such a glut of available capacity that they have the ability to make a switch very quickly in the event that supply falls.

CHAIRMAN ARANOFF: Okay. Now we just talked about the sort of dehumanizing aspect of the way that these products are bid on the internet, and one other similar thing that I wanted to ask about is the role of distributors in the market, particularly with respect to the imported products.

Do foreign producers have direct contact with the retailers who are purchasing their product, or do they just sell to the importers, who then distribute the product? I am trying to establish whether there is any marketing, or relationship building, or sort of the kind of thing that you would traditionally call sales activity going on between the subject producers and their ultimate U.S. customers.

MR. DORN: Madam Chairman, you will recall from the testimony on March 16th from the representative from Indonesia that Super XM had no -- didn't know anything about internet auctions, and didn't have any direct contacts with any U.S. purchasers, because they were really working through trading companies and importers.

CHAIRMAN ARANOFF: I do remember that. Is that typical?

MR. RIZZO: True. Yes.

CHAIRMAN ARANOFF: All right. Well, let me come back to that in my next round and turn to Vice Chairman Pearson.

VICE CHAIRMAN PEARSON: Thank you, Madam Chairman. The period of review was an interesting time for the domestic industry. You had one firm that wrote off a significant percentage of its assets, another firm emerged from bankruptcy.

And then in 2009 the industry joyfully returned to profitability, at least the industry as a whole. What does it mean when the industry regains profitability in the midst of a recession? Should we take that as an indication that the industry is not vulnerable?

MR. DORN: Vice Chairman Pearson, I would say that if you look at the operating income margin in 2009, and return on assets in 2009, it is nothing for this industry to be pleased about. It is only good relative to an abysmal performance in 2007 and 2008.

And that is just focusing on operating income margin. Look at some of the other indicators, such as capital investment, which I am going back to the other record, because that is public.
I can't talk about this record that goes through all of 2009, but I think the trends are very similar.

You will see that capital investments, I think, were the lowest in 2009. I think net income was also, if my recollection is correct, negative in 2009. So you do have this one blip increase on operating income margin, but it is from an abysmal base.

So I don't think that shows that the industry is doing well at all. As we mentioned earlier, it had the wind to its back in 2009 by this sharp drop in resin costs relative to 2008, and the filing of the petition, which gave them the ability to get higher margins in the context of lower resin costs.

VICE CHAIRMAN PEARSON: So you don't think we should place much emphasis on the efforts of the domestic industry to restructure and to become fully competitive? I mean, those efforts, we should ignore in looking at vulnerability?

MR. DORN: No, I think that in 2001 and 2003, when the imports were not subject to the disciplinary anti-dumping order, and that was in the context of a very robust and growing demand environment, where the industry suffered declines in almost all of the performance and financial indicators.

And you have got to look forward and say what is going to happen in the next couple of years if you have a surge of imports in a context where demand is stagnant? Certainly the industry has done some good things, in terms of improving its efficiency and so forth, but I don't think that just started in the last couple of years.

I am sure that these folks have been trying to do that for many year. It is part of the business to try to keep getting more efficient, and getting leaner.

VICE CHAIRMAN PEARSON: Mr. Bazbaz.

MR. BAZBAZ: Yes. Well, we make the investment certainly not with the idea of getting an immediate return that year, because it does take a few years to enjoy the benefits of those investments.

So it is an ever growing effort all the time to become more efficient, and to save money in production. But certainly you cannot do it in a very short period of time. We are not joyous about the results of 2009. So there is still a long ways to go, but we are optimistic that we can thrive if the orders are kept against China, Thailand, and Malaysia.

VICE CHAIRMAN PEARSON: I understand the reason that you are not overjoyed about the results of 2009, but noting the swing from the results in 2008 to get to 2009, I think that I can find a little ray of light and joy in there, particularly in a market where overall consumption based on our data appeared not to have been increasing.

So you are still dealing with either a recession induced or environmentally induced reductions in consumption. So this looks to me like not entirely a bad sign.

MR. BAZBAZ: I would argue that a lot of that result was due to the incrementation of the duties against Indonesia, and Vietnam, and Taiwan.

VICE CHAIRMAN PEARSON: Okay. Int hat case, then how should we consider the vulnerability of the industry given the recent determination made by the Commission regarding bags in Indonesia, Taiwan, and Vietnam, now that we know that there will be an order in place on those bags for five years?

What does that mean for the vulnerability of the domestic industry on this other set of countries that we are looking at today?

MR. DORN: Well, I think that the history of these proceedings is pretty good evidence in that regard. We had duties in place on China, Malaysia, and Thailand in 2004, and you had a shift to Indonesia, Vietnam, and Taiwan.

And now that you have got duties on those countries, then it is back to China, Malaysia, and Thailand. I mean, it is kind of obvious to the folks on my left and my right that that is going to happen.

VICE CHAIRMAN PEARSON: But are yo arguing, Mr. Dorn, that it is essential that we make a finding of vulnerability to vote affirmative on this?

MR. DORN: No. It is never essential to make a finding of vulnerability in a Sunset Review case, of course. I am just saying that in this situation -- and I don't think that I would focus just on a weakened state.

I would also focus on the other things that we have talked about, which are the flat demand, higher resin costs, and also the fact that the industry has suffered. Certainly if you want to consider 2009 to be a good year, certainly you would agree that 2007 and 2008 were bad years.

So I think that the industry has suffered a weakened financial condition over the last several years, and they are trying to rebound from that.

VICE CHAIRMAN PEARSON: Yes, partly aided by some restructuring that we mentioned. Now, if there is more that we should know about vulnerability for purposes of the post-hearing, by all means fill us in, because this is a situation where the record shows that things are getting somewhat better for the industry towards the end of the period.

MR. DORN: Right.

VICE CHAIRMAN PEARSON: We quite often have records that show things getting worse for the industry, particularly on original investigations rather than reviews. And when things are getting worse for the industry, then it is easier to make a vulnerability argument than it is here.

And you might even want to explain to us why if we find that the industry is not vulnerable, why we still should vote affirmative if indeed that would be your position. I am guessing that it might be.

MR. DORN: Well, we will certainly take advantage of that opportunity. Thank you.

VICE CHAIRMAN PEARSON: Okay. And then, Mr. Dorn, I think this is my last question. You made a comment earlier that the capacity utilization for 2009 for the domestic industry was the lowest in the PRI.

Could you please comment on the role that capacity expansions may have played in twisting down the capital capacity utilization rate? And I know that this is all BPI stuff, but I could comment that from the standpoint of the trend, there was an increase in production by the domestic industry from 2008 into 2009, and still capacity utilization went down. So tell me as much about that if you can now, and if you need to say more in the post-hearing, then that would be great.

MR. DORN: Well, the data are confidential, but just let me say that I think in looking at vulnerability that the question is not how you got to that past utilization rate. The question is was that a sub-docile capacity utilization rate in 2009, which makes the industry more vulnerable, and that is the point that I am trying to make. It was a very low capacity utilization rate. I don't think how it matters how you got there.

VICE CHAIRMAN PEARSON: Well, I think it does, because I think it is very difficult to attribute the low capacity utilization rate to anything to do with subject imports given the information that we have on the record about -- at least from my perspective, on why it appears that the capacity utilization went down.

In fact, there is an argument that an industry that is in a position to invest in increased capacity is in a better position, and if that is what we are seeing on the record here, why shouldn't I interpret it that way?

MR. DORN: I think that you will see that the increase in capacity in 2009 is not by the addition of a plant and equipment, and we will be happy to address that based on the confidential record.

VICE CHAIRMAN PEARSON: Okay. I will appreciate that, but that has been my assumption.

MR. DORN: It is not due to capital investments in 2009, I assure you of that.

VICE CHAIRMAN PEARSON: Well, I don't care about whether the capital investment was then. Where did the capacity come from? If you pulled it out of a hat, then that is fine by me to explain that to the extent that you can.

MR. DORN: I will be glad to do that.

VICE CHAIRMAN PEARSON: Thanks. Madam Chairman, my time is about to expire, and so I am going to stop before it does. Thank you.

CHAIRMAN ARANOFF: Commissioner Okun.

COMMISSIONER OKUN: Thank you. Just a couple of things to finish up. Just with respect to global demand. Several of you remarked on the EU is going to be experiencing the same environmental reductions, and there was specific mention made of Ireland's, or Ireland in particular, that we have talked about.

For purposes of post-hearing, the record right now does not have very much specifics about any studies related to demand in the foreign markets, and I am particularly interested in the EU.

Is there anything that is available? And I understand that perhaps a lot of the statistics are on plastics as a whole, but some of the things that you referenced were much more specific.

So if there is anything that can be submitted post-hearing to explain a little bit more about what specifically is going on in demand, and in foreign countries, and in the EU in particular, I would appreciate that.

MR. DORN: We will take a look.

COMMISSIONER OKUN: Okay. That would be great. And then I meant to go back, Mr. Dorn, just to make sure that I understood the response to the question about whether the behavior of Malaysia, post-order, looked different than the behavior of China and Thailand, and what that means if the order were lifted?

And specifically just again, I am trying to make sure that I understood the response. You had said that when the order went on Malaysia, there was a shift to Indonesia, and were you saying that was the same company purchasing from the same, or just saying that we saw it coming from Indonesia that used to be coming from Malaysia? I am just trying to understand what it was in specifics.

MR. DORN: I am saying both, A and B.

COMMISSIONER OKUN: Okay.

MR. DORN: I understand that Spectrum was sourcing from Sido Bangun in Malaysia, and when the duties went into place, 85 percent duties went into place against Sido Bangun, Malaysia didn't switch to Sido Bangun and Indonesia.

So that is specific, but then otherwise, I am just talking about the aggregate data showing that there was drop in imports from China, Malaysia, and Thailand, and shifting to Indonesia, Taiwan, and Vietnam.

COMMISSIONER OKUN: Okay. I just wanted to make sure that is on the record somewhere and something that we can look at specifically for post-hearing. And then again in terms of the behavior post-order, is there an explanation for why Thailand increased so much post-order?

I mean, we have this -- the behavior is a little bit different than we would normally see.

MR. DORN: Right.

COMMISSIONER OKUN: There are obviously domestic producers who import. What else can you tell me about that and how we take that into effect in looking forward?

MR. DORN: Well, we think that the quantity number for 2006 for Thailand is an outliner. It just doesn't make sense that the unit value -- and there is also some other confidential information that was addressed in our prehearing brief that addressed that anomaly.

COMMISSIONER OKUN: Okay.

MR. DORN: So we think we just need to put that aside, but also frankly Malaysia and Thailand, every one of them faced an anti-dumping cash deposit rate of between 85 and 102 percent; whereas, in Thailand, you did have Thai plastic bags, which had I think as an initial anti-dumping duty cash deposit rate was more like 2 or 3 percent.

So you did have some lower margins for Thailand, and even more -- slightly somewhat lower for China, which perhaps permitted some of those companies to stay in the market. But for Malaysia, at 85 to 102 percent, they had to look elsewhere now. There is not a reason in the world why they wouldn't look back to the United States if they went back to zero.

COMMISSIONER OKUN: Okay. And then I think this is my final question, and someone can obviously address this post-hearing as well, but is it your argument that if I were not to exercise my discretion to accumulate Malaysia, that Malaysia on its own would return to pre-order volumes, and that alone would be injurious, or that Malaysia would have incentive to send more to the United States than it did pre-order, or that capacity indicates that it would do so?

MR. DORN: I think it would send the -- and certainly the same amount that it did pre-order, and that would be injurious, but I think it would bring in more because capacity has increased so much. Capacity increase was 71 percent in 2004 to 2009. We had a lot more capabilities and far more products in the U.S. market.

COMMISSIONER OKUN: Okay. And if there is anything specific on that with regard to putting it in the context of country's consumption and apparent consumption in the U.S. market and other markets, that Malaysia now serves, I would appreciate seeing that as well.

And with that, I don't have any further questions, but I want to thank for all those responses, and look forward to the post-hearing brief.

CHAIRMAN ARANOFF: Commissioner Lane.

COMMISSIONER LANE: I just have a couple or three questions. Mr. Dorn, if I understand the thrust of your argument, it is that the Commission has just imposed orders on this exact same product coming from Indonesia, Taiwan, and Vietnam.

And if we took the orders off China, Malaysia, and Thailand, then the industry then would be facing product coming from those three countries, and it would probably negate whatever positive effect the orders from the other three countries have had. Is that basically what you are saying?

MR. DORN: Yes, Commissioner Lane.

COMMISSIONER LANE: Okay. Now, if we revoke the order on Malaysia, what do you foresee happening to your companies within the next year or so? I am talking about such things as reduced production or capacity, but also more specific effects such as a reduction in employees or plants?

What would it mean for Hilex in particular given its fairly recent emergence from bankruptcy protection?

MR. DORN: Well, I think in that scenario that if the orders remained in place on China and Thailand, then I think that Malaysia would even have that much more incentive to ship to the United States.

I think that the U.S. purchasers and U.S.

importers who have been relying on Indonesia, Taiwan, and Vietnam, are going to be looking for the next cheapest source. They can't go to China, and they can't go to Thailand, and so they are going to go to Malaysia.

And, Malaysia, as we know, has built up its capacity with the 16 companies that did respond to your questionnaire, and we also know that there is additional capacity from Hin Shin and Euro Plastics, Malaysia, and you saw the video on the Euro Plastics, Malaysia, plant.

Their data is not even included in the capacity of the pre-hearing report. So we think that there is ample capacity in Malaysia, and for Malaysia alone to come in and cause substantial harm to the U.S. industry.

COMMISSIONER LANE: Okay. Thank you. In your earlier testimony, you talked about that you were making efforts to counteract the movement that was seen across the United States to limit the use of these bags.

Are you also stepping up your efforts to make the public aware or educate the public on the advantages and all of the positive attributes of using these bags?

MR. DANIELS: Yes, Commissioner Lane, to the best of our ability. Certainly we want to elevate our voice and educate as best we can.

COMMISSIONER LANE: Are you putting as much effort into educating the public as you are in lobbying different entities to keep them from banning or charging for the bags?

MR. DANIELS: It is a great question. In our highlights, we put together educational videos that we have put out on viral networks like You Tube. We have put one minute videos for pubic service announcements that we have presented to retailers.

The best place for us, we believe, to educate the consumer is at the cashier, basically saying that these are recyclable, and here is our recycling container over there. Please bring them back.

Or you have seen little video screens in many grocery stores that have a PSA on there about plastic bags. Sometimes we have difficulties with retailers wanting to promote message, because they are in customer service. If a customer wants to use a reusable bag, or a paper bag, or a plastic bag, they want to be neutral about that.

So, sometimes getting that educational

information out there, Commissioner Lane, is more difficult than we would like it to be certainly.

COMMISSIONER LANE: Okay.

MR. BAZBAZ: Madam, in our case, we have spent essentially more money in educating consumers than in paying for a lobbyist, and the majority of our resources are to educate consumers.

COMMISSIONER LANE: Okay. Thank you. Now, Mr. Rizzo, when you were explaining the internet bidding process, you said something about the companies are paid a percentage of the savings. Who pays that? Is it the buyer or the seller?

MR. RIZZO: The buyer.

COMMISSIONER LANE: Okay.

MR. RIZZO: The buyer generally pays a commission to the internet company in the form or either a fee or a commission as a percentage of the savings.

COMMISSIONER LANE: Okay. Thank you. And with that, I have no further questions. Thank you.

CHAIRMAN ARANOFF: Commissioner Williamson.

COMMISSIONER WILLIAMSON: I have no further questions and I want to thank the witnesses for their testimony this morning. Thank you.

CHAIRMAN ARANOFF: The Malaysia producers who are represented today have made the arguments that one of the reasons that they would not price their products aggressively in the U.S. market in the event of revocation is because they are facing a number of cost increases or cost disadvantages which they suggest in their brief are unique to the Malaysian industry.

Are there any costs that a producer in Malaysia would save that you wouldn't save, or any global producer of this product wouldn't face? Does everyone face resin costs that are the same globally, or are there other issues that could change the cost of production significantly?

MR. DORN: No, there really aren't. It is a world market for resin, and Asian manufacturers can be United States resin if it is advantageous to them, and we can buy Asian resin if it is advantageous to us.

And resin in our particular market accounts for 65 or 70 percent of the cost of the product. So we don't see any particular disadvantage. I wasn't quite sure what that testimony meant.

CHAIRMAN ARANOFF: And the next biggest cost would be energy costs?

MR. RIZZO: I would lump energy into conversion, and so within the conversion costs, if you are talking about variable costs, certainly utilities and direct labor.

CHAIRMAN ARANOFF: Okay. One of the things that happened when the Commission put these orders into effect five years ago was production moved to or expanded in several other countries, as we just saw in our recent investigation that we completed.

And in particular we saw some of the subject producers move equipment, for example, to Vietnam, and we saw that took about 2 or 3 years to get up and running. Are there countries out there on the horizon that are going to be the next ones in the event that these orders might stay in effect, and we have the other ones going into effect?

Is production equipment now going to move to somewhere else and is there another group of non-subject imports that we need to think about when we are looking forward?

MR. DORN: I would like to just highlight what Mr. Rizzo said earlier. That as an industry, we are not concerned about competition, worldwide competition. We think that we have state-of-the-art equipment. We think we can compete on a fair basis.

And that is all we are asking the Commission to view is to make sure that the marketplace remains fair and that there is no trading of unfairly priced products that we have seen. So can there be a switch into India or Sri Lanka? Of course that can happen.

And we will be diligent and watching to make sure that we are not affected by that. But as far as competition is concerned, as long as it is fair, we have no beef in the world.

MR. DORN: Madam Chairman, I recall that when we put together a case against China, Malaysia, and Thailand, we did have a couple of additional countries that we could consider adding to the list.

I think we ran into a 3 percent negligent provision with respect to Indonesia and Vietnam at that point, but they were sort of on our radar screen at least beyond these six countries now with the new orders and the old orders. If you look at the import statistics, there is nobody else on our radar screen right now if that helps.

CHAIRMAN ARANOFF: Okay. With that, I don't think I have any further questions. Are there other questions from Commissioners?

(No response.)

CHAIRMAN ARANOFF: Okay. Do the staff have questions for this panel?

MR. DAMON: I am George Damon, Office of

Investigations. The staff has no questions.

CHAIRMAN ARANOFF: Do counsel in support or opposition to have any questions for this panel?

MR. SIM: No, we do not.

CHAIRMAN ARANOFF: Thank you. it is a little early for a lunch break. So, we will break with tradition and have a second panel come up and make their direct presentation, and depending on the timing of that, we will decide whether we are going to take a lunch break, or just go through and complete the hearing.

So I do want to thank everyone on the first panel for your time this morning. We appreciate your interest very much, and the additional information that you have promised to provide us post-hearing. Thank you.

(Whereupon, at 11:45 a.m., a brief recess was taken, and the hearing resumed at 11:50 a.m.)

CHAIRMAN ARANOFF: Good morning. It is not often that I get to say good morning to the second panel. We appreciate you being here today. Please proceed.

MR. SIM: Thank you, Madam Chairwoman, and again we hope to expedite things with regard to this so that we can all go out and have our break at a reasonable time. I also hope that whoever edits this videotape is kind to me and does not show this in HD, because if not, you would break the camera.

My partner, Patrick Macrory, who is to my left, will start out with a discussion of the legal standards for accumulation that are applicable to this proceeding. I will then follow up with an explanation of why Malaysian exports would not cause material injury should an order be removed.

And then finally we would then be available to answer any questions from the Commissioners or from the staff.

MR. MACRORY: Thank you. Good morning. We submit that there is at least three reasons why the Commission should not accumulate imports from Malaysia with those from China and Thailand.

In the first place, we believe that the Commission should find that imports from Malaysia would have no discernible impact on the U.S. industry if the order against Malaysia is revoked. Malaysia has always had a tangential role in the U.S. market for this product.

In the period covered by the original investigation, imports from Malaysia were far smaller than those from China and Thailand. The U.S. just wasn't a very important market for Malaysia, and as we pointed out in our pre-hearing brief and the pre-hearing report, the staff report clearly shows that since the order the Malaysian industry has turned its attention to Europe, where it has received a huge competitive advantage in 2006, when Thailand and China were found to be dumping, but Malaysia was not because of diminimous margins.

The Court of International Trade has said that for a discernible impact finding that there must be some incentive for the country in question to sell discernible quantities to the United States.

And we submit that Malaysia really doesn't have that incentive here with its massive sales to Europe. It doesn't have a lot of spare capacity. The record shows that over the period of review that capacity utilization was really very high.

It was down a little last year, but that was undoubtedly due to the global recession, and as the global economy picks up, no doubt capacity utilization will rise again. Now even if the Commission does not agree with this undiscernible impact, we still submit that it should refuse to accumulate Malaysia with China and Thailand, because of course even where the conditions allowing the Commission to accumulate are met, discernible impact investigations began on the same day, and reviews began on the same day, and imports compete with each other and with the domestic products.

And the Commission, of course, always has discretion to accumulate, and the Court of International Trade has said that that discretion is not limited in any way by the statutes or the legislative history.

And, in fact, the Court of Appeals for the Federal Circuit confirmed the breath of this question just earlier this month in the Newcor case, and in a number of cases the Commission has found and refused to accumulate where it found that there were differences in conditions of competition with respect to the different countries.

And we submit that there are differences in conditions of competition here. One is the path of imports, which is one of the factors that the Commission frequently looks at, where it is considering conditions of competition. They are different.

In the original period of investigation, as I have already pointed out, Malaysia imports were far smaller than China and Thailand, and if you look at the path since the order went into effect, again it is different.

There is also a very stark difference in terms of exports to Europe, which represent a vast proportion of Malaysian exports, but only a very small share of Chinese and Thai exports. And Commissioner Okun, in her questioning of the Petitioners, raised another interesting point, that after the order went into effect in this case, the Chinese and Thai producers moved equipment to other countries, to Vietnam and to other countries not subject to an order at that time.

And my understanding, and Mr. Sim can confirm this, is that this did not happen in the case of the Thai producers, which I think demonstrates that they just have never been very interested in the U.S. market.

Now, of course, the Commission's discretion is completely unlimited here, and there may be other situations where accumulation is not justified, and we submit that in this case, and given the rather unusual posture, that the Commission would also be justified in not accumulating.

Now, I don't think there can be any doubt in anyone's mind that the orders against China and

Thailand will remain in effect. The Petitioners have argued very strongly against revocation, and China and Thailand have not appeared in this case to argue in favor of revocation.

So what is the purpose in accumulating Malaysia? In several cases the CIT has addressed this question of the purpose of accumulation in Sunset Reviews. In the Nina Foundry case, it said to prevent the likely continuation or recurrence of injury caused by the revocation of orders against multiple import sources, even if revocation of an order against a single import source would not be likely to cause injury.

In another case the Court said that the discretion was granted to ensure the hammering effect of unfairly traded imports from multiple countries would not be obscured if subject import levels were reviewed on a country-by-country basis.

Now, these concerns simply don't exist here, because the orders will remain in effect against the other two countries, China and Thailand, which have always been the major players. There can be no hammering effect here if the Commission decides not to accumulate against Malaysia, which has always been a bit player.

So for those reasons, we submit the Commission should not accumulate Malaysia with China and Thailand, and Mr. Sim will now explain why if you do not accumulate, the Commission should make a negative finding with respect to Malaysia. Thank you.

MR. SIM: Thank you, Patrick. When considered separately, Malaysia cannot be seen as a potential or actual cause material injury to the domestic industry. In this case the record makes it clear that if the order is revoked that imports in Malaysia will remain small, and will have no price effect on the U.S. market.

So that their impact on the domestic industry would therefore be minimal. Malaysia subject imports have always have a very minor role in the U.S. market, and therefore have never been in a position to cause material injury.

In the original period of investigation, Malaysia subject imports account for no more than a small minute market share. During the review period, Malaysia subject imports also never accounted for much market share either.

Moreover, the record in this review lacks any evidence that suggests that Malaysia's very minor role in the U.S. market would grow in the reasonably foreseeable future. Malaysia has shifted its efforts and its focus to markets elsewhere.

Thus, with or without the existence of the U.S. dumping order, imports from Malaysia will continue to be at very low levels, and as such are incapable of causing material injury to the domestic industry.

Now, as I have explained in the prehearing brief, and in the testimony, we tried to demonstrate that the Malaysia industry has been devoted to supplying to the EU, and Asian, and other non-U.S. markets.

In fact, the video that was presented by the Petitioners this morning is proof of that. The Petitioners said that the video dates back to 10 years ago, when Euro Plastics was first set up, and if you will notice none of the companies whose bags, whose customer's bags have been printed in that factory, are familiar to U.S. consumers.

There is a Tesco, and there is a Saintsbury, and these are in the U.K., which is in the European Union. So even way before even the glimmer of a dumping case ever appeared in anyone's eyes four years ago or five years ago, the Malaysians were primarily devoted to supplying the European market.

That didn't change with this case. So, Malaysia's exclusion from the E.U. dumping order covering bags give them a competitive advantage in the market against China and Thailand in a market which has always been a major focus of the Malaysian industry.

Now, as a result, the PRCB exports from Malaysia to the EU have increased by a large amount since 2004 and 2009, and most -- and I would say the vast majority of any increase in production capacity, is related to supplying the European market.

Now, as an aside, we would like to note that the MPMA members represented by us, and also within the greater group, are small family owned enterprises whose collective output is small. Regardless of what the Petitioners would have you believe, these are not -- you know, the absolute number of companies involved in the plastic bag industry is no indicia of the size of the industry. I think you can look at the staff report and see that relatively speaking Malaysia has a small PRCB industry.

Second, the production capacities which the Petitioners have portrayed as being in excess, the public information that is discussed on the websites of the MPMA members relate to all kinds of merchandise, all kinds of merchandise made from polyethylene.

These include trash bags, builders film, cotton liners for food packaging, bags on a roll, stretch film, heavy duty sacks, bin liners, freezer bags, butcher bags, zipper bags, nodding bags, bags to pick up dog poop.

I mean, it is basically all kinds of things that are not within the scope of the investigation and the scope of the proceeding. So the Petitioners characterizations of a vast and coordinated Malaysian industry lying in wait for the dumping order to be revoked is not credible.

So this review is another case of where the lack of a third-country export barrier provides little or no incentive for foreign producers to pursue the U.S. market in a substantial threatening way.

Therefore, there is no likelihood of a significant increase in imports from Malaysia or imports to the U.S. from Malaysia if the order were to be revoked. Now, the Commission did not obtain any process of its pricing data with imports from Malaysia.

However, the record shows that the Malaysian industry faces considerable pressure to maintain or increase PRCB prices due to increases in the industry's resin prices, wage rates, and costs involved in non-compliance costs.

We are not saying that this is specific to Malaysia. It is just a fact of life. We are saying that given the trend no rational producer, just like in Malaysia or anywhere else in the world, would want to sell below costs.

And so these are incentives for the Malaysian industry, which also has the benefit of an export market in the EU, unlike Thailand and China. There is no incentive for Malaysia to sell based purely on price, and to sell at price depressing levels.

So we actually have submitted information submitted by the MPMA itself -- it is available on its website -- to explain these factors of prices. So, accordingly, we believe that imports from Malaysia would have no adverse price impact on the U.S. market if there was a revocation because of these price factors affecting the competitiveness of the Malaysian industry.

In sum, in the absence of volume of price effects, there is no basis for the Commission to conclude that the order against Malaysia should remain in effect. So for the foregoing reasons the MPMA requests that the Commission determine that revocation of the order with respect to Malaysia would not be likely to lead to a continuation or reoccurrence of a material injury to the domestic industry.

We would now be pleased to take any questions from the Commissioners or from the Commission Staff. Thank you.

CHAIRMAN ARANOFF: Thank you very much, and again welcome to the Commission. We are going to begin the questioning of this panel with Commissioner Okun.

COMMISSIONER OKUN: Thank you, Madam Chairman, and welcome to this panel. We appreciate you being here and taking our questions. Let me start with you, Mr. Sim, with respect to the EU market for Malaysian products.

As I referenced in my questions to the Petitioners this morning, we don't have very good specific data on the record yet with regard to demand in the future in the EU. Is there anything specific that your client could provide with respect to internal productions for demand that would help bolster your story that the capacity increases that we see on the record are meant to be directed to the EU or Asian markets?

MR. SIM: Well, with regard to the EU market itself, we will look into that and collect information. I did serve as counsel, and I do serve as counsel, to the same industry in the EU proceedings, and Mr. Dorn's law firm served as counsel to the European industry in that proceeding as well, although that was done by a partner.

So I think between the two of us, we will try to get you all a more comprehensive picture of the European market.

COMMISSIONER OKUN: Okay. And in line with that, and the reason for today, what about prices in the EU market and relative prices in the U.S. market?

MR. SIM: Well, I think one thing to consider between the U.S. and the EU is that they are some differences between the markets, and it is mainly differences in the consumer lifestyle.

American bags generally -- when we buy plastic bags, or when we get plastic bags, we actually just take the bag and we run out to the parking lot and we stick it in the car.

So U.S. bags generally can carry more, but in terms of the stretchiness and there is a technical term for this, is not as prevalent in the EU market, because in the EU, people use public transportation. People ride bicycles.

So the bag actually has to be able to maintain elasticity and actually stretch for a longer period of time. So, my point of bringing this up is that the bags in Europe and the bags in the U.S. are not directly comparable. There are some differences between them, but they are not significant.

But they are in terms of, you know, that this is not polyethylene, or is this polyethylene. But it is different in terms that you can't take a pure pricing comparison between the two markets.

So that said, we will try to get you more information on that, because some of that is confidential, and to the extent that we have that available from clients, we will provide that in the post-hearing brief.

COMMISSIONER OKUN: Okay. And then could you help me further understand that in terms of Malaysia's increase in exports to the EU market, did that occur because of the order, or in other words, did they take market share that otherwise was China or Thailand, or I mean, are they increasing by pushing others out, or a growing EU market? Because I can't really talk on the record exactly what was going on during this period.

MR. SIM: The EU -- well, the worldwide market has you have heard from the previous panel, is pretty much as you say, you know, in a relatively stable situation. So it is not that demand is growing anywhere, at least in the current sense.

What you would see is that the growth after -- you know, after the order went into effect in 2006 or late 2005, was the preliminary determination, and at that point Malaysia had a -- the entire country had diminimous dumping.

So at that point Malaysia had a zero rate, and China and Thailand had rates. So, yes, there was a market share being taken over by Malaysia from countries which were subject to dumping. But you also had Malaysia taking on market share in general in some countries which are not in the dumping case, although to a lesser extent.

But my understanding again from having been in the EU case, and continuing to represent some companies in that proceeding, that is my understanding based on what the clients have told me.

COMMISSIONER OKUN: Okay. And then in response to a question, Mr. Dorn and the producers have noted that if the order were revoked with respect to Malaysia that Malaysia would have the U.S. market open to it again, but that also that the other countries that we just placed an order on, Vietnam and the others, will be in the EU market, and therefore, Malaysia will be fighting in the EU market.

And therefore that gives or that would indicate that there is an incentive to return to the U.S. market. How do you respond to that?

MR. SIM: Well, I mean, the point is again that Malaysia has always felt -- you know, the Malaysian presence in the EU market is a very old and longstanding presence, and by the videotape and the other information submitted on the record.

And to the extent that the longstanding relationship of the Malaysian industry with the European customers, I think will help benefit Malaysia from a competitive stance, compared to relative newcomers like Vietnam, and a lot of newcomers like Indonesia, into the EU market.

So, yes, of course, anytime you have a change in the market, you are going to have some change in competition. I don't think that that is going to be a determinative factor of what Malaysia does in the long run.

COMMISSIONER OKUN: And you may have mentioned this already, but are Vietnam and Indonesia in the EU market now?

MR. SIM: Yes.

COMMISSIONER OKUN: They are competing in the EU market now?

MR. SIM: Yes. They have been in the market for quite some time. Their presence is not new. They have been selling -- both of those countries have been selling to the EU since about the same time that the countries increased their production capability and to supply all markets.

COMMISSIONER OKUN: Okay. So, again, anything that you could supply post-hearing with respect to prices in the EU market, and with respect to the other countries in which they are competing against, anything that would help me understand the dynamics of the EU market and how that may or may not shift if the order is revoked on Malaysia, would be helpful.

One of the other issues that was discussed this morning, and again with respect to the incentive and ability of Malaysia to ship back and forth was what happens as between Indonesia and Malaysia, and specifically I discussed with Mr. Dorn Sido Bangun and

Indonesia, and the sister plant relationship.

Do you have any further comments on that and what that does or does not indicate?

MR. SIM: I think that is a unique situation. The Sido Bangun Company originated in Indonesia, and then they moved. They moved to Malaysia before anyone had a dumping case against anyone in either country.

And so the shift of investments from Indonesia actually took place from Indonesia to Malaysia. If it was in response to the dumping case, you would have seen it the other way around, where the Malaysian company had migrated and shifted its investment to Indonesia, and the history is actually the other way around.

My other point is that as far as I understand the Sido Bangun Companies are a unique situation. Malaysian companies did not in response to the U.S. dumping order, did not move to other countries by and large, mainly because they had a European Market.

They didn't have to move, and they didn't want to, and the nature and the investment in Malaysia means that they are primarily focused on staying in Malaysia and serving their various markets.

COMMISSIONER OKUN: Okay. And then just turning to Asia and other markets for a moment. There has been a lot of discussion of what is going on in China with respect to its own home market. Is there anything else that you are familiar with, with respect to demand in Asia, and again where it looks to go in the future, and what that means for Malaysian exports to that region?

MR. SIM: We can cover that in the post-hearing brief.

COMMISSIONER OKUN: Okay. That would be very helpful. Can you tell me anything about pricing in the EU market, in terms of -- we spent some time obviously trying to understand the U.S. market and what goal the internet auctions or others play. In the EU market, is it different? Are there different pricing pressors?

MR. SIM: No, you have similar pricing competition. I mean, for example, Wal-Mart is in the U.S. Wal-Mart is in the EU, and some of the pricing patterns by Wal-Mart practices are similar.
Some of the companies do rely more on personal relationships and having individual buyers come out to Asia and negotiate.

So it is similar, but different, and anyone from Europe will tell you that Europe and the United States are similar, but very different.

COMMISSIONER OKUN: Okay. Well, perhaps in post-hearing you can help us better understand that as it relates to this product. I think my time is about to expire. Thank you very much.

CHAIRMAN ARANOFF: Commissioner Lane.

COMMISSIONER LANE: Welcome to the morning panel and to the afternoon panel. Mr. Sim, I will start with you. You were talking about the difference between how Europeans use their bags, and how the bags are used in the United States.

MR. SIM: Yes.

COMMISSIONER LANE: So sticking with that concept, would Malaysian bags that are shipped to the EU also be shipped to the United States, or are the products actually different, and now difficult is it to make those changes?

MR. SIM: It is a matter of mixing or changing the mix of the resins. I am not saying that the bags are necessarily not interchangeable. Of course, they are interchangeable between their purposes to carry goods from the store to our home.

In that regard, they are interchangeable. My only point was that the nature of how people go home in Europe compared to the United States is different, because people in Europe use public transportation.

People ride buses, and people ride bikes, and people walk home, and in that regard, you actually have to have -- the bag has to be able to maintain the load for a longer period of time. So that the resin that goes in, and to put it in technical terms, there is more LLDPE in a European bag than there is in an American bag, but they are still bags.

And the reason why I bring that up about the mix is that that in-turn means that four a spec -- and let's say we did it hypothetically. We bid our four pricing products in Europe, and how they compare with the U.S., you wouldn't necessarily get the same pricing pattern you had in the United States, because the nature of the process id different.

That's why it is hard to say that in general the bags in Europe and the bags in the U.S. where they stand price wise, in terms of a per piece basis. On the per pound basis, or on a per kilo basis, it might be different or it might be the same.

I am just saying that because they are different, you are not necessarily going to get the same results by comparing two bags of the same dimension, and the same sizes.

COMMISSIONER LANE: But Malaysian producers do make both bags?

MR. SIM: Yes. Anyone who can make a retail carrier bag can make both types of bags by changing the ix of the densities of the resin.

COMMISSIONER LANE: And do the Malaysian producers simultaneously produce both types of bags, ones for the European market and ones for the American market?

MR. SIM: The American type bags, the specs, yes, you can make both.

COMMISSIONER LANE: And Malaysian producers do make both?

MR. SIM: Yes, any producer can make both.

COMMISSIONER LANE: Okay. Can you provide an explanation for the increase in subject imports from Malaysia in the most recent years?

MR. SIM: Well, without going into BPI, almost all of the increase came from one particular exporter from Malaysia, which had a relatively lower rate as a result of the review. I do note that even when that company had the low rate, it didn't ship that much relatively speaking.

But there was an increase, and so if you look at the record, you will see that the increase is due to that exporter.

COMMISSIONER LANE: So is that the explanation as to why there was an increase from Malaysia between 2007 and 2009?

MR. SIM: Yes.

COMMISSIONER LANE: How would the inclusion of data from a large importer that has not submitted a questionnaire response change the data presented in the staff report, particularly concerning imports of PRCBs from Malaysia?

MR. SIM: I would like to discuss this in the post-hearing brief because I think we are getting close to BPI here.

COMMISSIONER LANE: Okay. Thank you. Do you agree with the domestic interested parties' contention that all PRCBs constitute a single domestic like product helps with the scope of the review?

MR. SIM: We take no position on that, and we have not argued that in any of our submissions, whether there is more than one like product. So we have made arguments on the basis that there was only one like product.

COMMISSIONER LANE: Okay. If there was such little Malaysian market share during the original POI as you claim, and the Commission accumulated subject imports from China, Malaysia, and Thailand, then why should it not do so now? What has changed from the original investigation?

MR. MACRORY: With all respect, Commissioner, the original investigation I think was based on a material injury finding. In that case the Commission is required to accumulate under the statute in an investigation. Where there has been a Sunset Review, it is given complete discretion to accumulate.

COMMISSIONER LANE: Okay. And refresh my memory again as to why we should not be accumulating Malaysia with the other two countries?

MR. MACRORY: Well, we submit that there are really three reasons. One is that we believe that Malaysia. We believe that Malaysia would have no discernible impact on the U.S. industry if you do not accumulate, and under the statute, of course, you are required to find discernible impact before you have the discretion to accumulate.

And even if you don't accept that argument, we would submit that there are at least two reasons why you shouldn't exercise your discretion not to accumulate. One is the peculiar posture of this case, that you have two major exporters, and two major exporting countries.

And I think there can be no doubt in anyone's mind that you will find or you will continue the order against them, and you will not rule in favor of revocation. So we have this one very small exporter, and you won't have a hammering effect that the accumulation doctrine is designed to prevent, because the other two, as we said, there will be an order invoked against them.

Also, in exercising its discretion, the Commission looks at whether or not the conditions of competition are similar with respect to countries, and for the reasons that we have tried to explain in our prehearing brief, we think those conditions of competition are different.

The import path is different Before the investigation, we had very, very small imports from Malaysia, and much more of them from the other two countries. Since the investigation the path has been different, and as we have also emphasized, the path of exports to Europe is quite different.

Europe is by far the predominant market for Malaysia exports. It is very small compared to China and Thailand, and so we think there are at least three reasons why you should not accumulate Malaysia.

COMMISSIONER LANE: Okay. Thank you. Are there any differences among production processes used in China, Malaysia, or Thailand, than those of the United States?

MR. SIM: In terms of the availability of the production processes, no. In terms of whether you have two sets or three sets, et cetera, they differ, but in terms of what machines are used to make a bag, they are similar. It is the same machinery.

COMMISSIONER LANE: Okay. Thank you. In your response to the notice of institution, you state that the global recession has affected the U.S. PRCB market. Do you agree with the domestic interested parties' contention that the overall effect on demand for PRCBs in the United States has been modest?

MR. SIM: As you know, we agree that worldwide the growth is modest. So the world includes the United States.

COMMISSIONER LANE: Okay. Thank you. And with that, Madam Chair, I have no further questions.

CHAIRMAN ARANOFF: Commissioner Williamson.

COMMISSIONER WILLIAMSON: Thank you, Madam Chairman. I want to express my appreciation to the witnesses for coming today. I was wondering about the nature of the companies in Malaysia that are producing this product.

Are they primarily Malaysian owned companies? Are there a lot of joint ventures? What is the -- how would you describe the industry?

MR. SIM: I would say that they are family run companies that started out. I mean, historically, what you had happen was that in the '70s and '80s, due to certain policies of the Malaysian government, which led certain ethnic groups to be discouraged from entering into certain areas of the economy, Indian and Chinese companies, families, decided to go into the plastic business.

These are people who are training in plastic bags, and eventually due to the demand in Europe, or due to the demand in Malaysia, they went into the plastic bag business.

COMMISSIONER WILLIAMSON: Because they were discouraged from going into other areas of the economy?

MR. SIM: Yes, because in Malaysia, there is a policy to encourage native Malays, i.e., the people who are the indigenous population in Malaysia, to go and promote them in certain areas of the economy.

So people generally felt over the long run that they should go into other areas where they could go in and operate a small business. So generally speaking these companies in Malaysia are small family run companies.

They are not joint ventures. They are self-financed either through family money, or some companies actually are publicly listed in Malaysia. But by and large they are all family run, and by and large, they are Malaysian in nature.

There are of course exceptions to this, but there are a couple of companies that are again family run, but they are not Malaysian. In general, these are companies that are family run, and privately held.

COMMISSIONER WILLIAMSON: Is that the nature of the companies in China and Thailand and the other countries?

MR. SIM: Well, I mean, again, I have represented Thai companies before, yes. The Thai companies, with probably the major exception of API, are Thai run, and are Thai owned companies, also family owned.

The Chinese companies, I have not represented any Chinese companies in any significant way, and so I couldn't comment on that.

COMMISSIONER WILLIAMSON: The reason that I am asking is that I was wondering about the nature or why do the Malaysian companies go to the European market; whereas, the others may have been focusing more on the U.S.?

MR. SIM: That is historical. I mean, if you understand, Malaysia was a colony of Great Britain. There are historical ties. A lot of Malaysians send their family members off to university to the U.K., although that is changing in recent times.

But generally speaking the cultural ties between Malaysia and Europe are stronger than, say, Thailand and Europe, or China and Europe. It is historical and something that is a circumstance of history.

COMMISSIONER WILLIAMSON: Okay. Just switching subjects quickly. The Woolworth's that we saw in the Euro Plastics, I assume that was the British Woolworth's?

MR. SIM: I think so, yes, because if I remember right, the American Woolworth's hasn't been around for 20 years.

COMMISSIONER WILLIAMSON: It has been that long? Okay.

MR. SIM: Yes, I don't think it has been around since I was in high school. So, god, that was a long time ago. So it looks like the British Woolworth's, and I don't think it is the Australian Woolworth's, because that has the green and red symbol.

COMMISSIONER WILLIAMSON: Okay. Thanks. I was just wondering about that. Let's see. Bilian, the Malaysian producer that was excluded from the order, has continued to export to the United States. Why isn't this indicative of how other Malaysian producers are likely to behave?

MR. SIM: Well, Bilian was the largest exporter to the United States before the order took effect. It is the largest exporter after the order took effect. With regard to the trading patterns, I would need to look and refer to the staff report, which is BPI. So I think we can handle that in the post-hearing brief.

COMMISSIONER WILLIAMSON: Okay. Thank you. You heard the Petitioners' response this morning to your contention that Thailand would likely soon have its order lifted due to the WTO hearing decision. Do you have any comment on their response, and when do you think the order might be lifted if you still think it would?

MR. SIM: My own personal belief is that I think it would be. I was formerly counsel to the Thai industry. Again, it has been a while since I saw those calculations, and I am not currently counsel, and so I think that question would better be addressed to the counsel for Thailand, who will probably be showing up in the 129 proceeding. I can't answer that.

COMMISSIONER WILLIAMSON: Okay. If you could file something in the post-hearing, I would appreciate it.

MR. SIM: All right.

COMMISSIONER WILLIAMSON: Let's see. You mentioned that the Malaysian producers produce a wide variety of bags?

MR. SIM: Yes.

COMMISSIONER WILLIAMSON: Do you have any indication of what percentage of the subject bags account for in the total production?

MR. SIM: I think that this is important to give you an idea. The non-subject bags generally -- I mean, in an Asian operation, in Malaysia, just speaking from our client's experience, when you make a bag, or when you make a polyethylene retail bag, you have to punch out at the square.

You have to extrude the line in a long tube, and you cut, and then you punch out a portion, and then you have a handle. And what happens to those handles is that this punchout from the handle is then melted, and used to make other bags.

Because the bags that you are starting out with are various colors, and there is black, white, blue, whatever, generally speaking, what the people would do is take that punchout and then add some coloring -- black, or green, or whatever -- to sort of mask or get a uniform color for the bag.

That's why generally trash bags are black or dark green in color, because they are the mix of the recycled resins from the production of PRCBs. So because of that, in a company operating at full efficiency, you would have to have roughly speaking about two-thirds PRCBs, and one-third, or even up to 40 percent of the recycled bags, which are basically bin liners, your garbage bags.

Now, this ratio can change depending on whether the company is involved in making stretch film, or if it is involved in making food grade bags. Food grade bags have to have -- you know, most food grade bags by and large do not have recycled material because it comes in contact with food, or at least from our client's experience.

So you can use a rough ratio of about 60 percent PRCBs, and 40 percent non, or even up to 70 percent PRCBs, and 30 percent non. It basically depends on what the company is focused on, in terms of its product base.

COMMISSIONER WILLIAMSON: Okay. I am trying to think of what implications we should draw from that in regards to what we are going to likely see happen here. Are you saying that the demand for the other bags going to control how much might be available for shipment to the U.S. of the PRCBs or what? I am just trying to get the relationship.

MR. SIM: Well, I think the point is that there is always a demand for trash bags in the United States. That's why you still have exports from all countries in the United States, because trash bags are not subject to the order.

So that is a factor that you have to think about, but another point that in the EU, trash bags are subject to the EU dumping order. So, Malaysia can export trash bags to Europe free of dumping duties, but China cannot do that, and Thailand cannot do that.

So that gives them yet again an even greater advantage over Thailand and China.

COMMISSIONER WILLIAMSON: Okay. So in other words, the associated product in the basic PRCB product, can all go to Europe?

MR. SIM: Yes, they can all go to Europe. So in other words, there is a demand for -- I mean, garbage bags, bin liners, the various terms, do have a different market segment.

That's why they are not covered by the investigation in the United States, and they are not part of the like product, and they have a different demand base, both in Europe and in the United States.

COMMISSIONER WILLIAMSON: Okay. Any projections on demand in Europe and other non-U.S. markets in the next few years?

MR. SIM: Yes, and as I said before, we will try to get you something in the post-hearing brief.

COMMISSIONER WILLIAMSON: Okay. Good. Thank you. Well, my time is about to expire. So I want to thank you for those answers.

CHAIRMAN ARANOFF: I want to ask you some questions to help me reconcile your argument that Malaysia is likely to remain a minor player in the U.S. market if the orders are revoked, or the order on Malaysia is revoked, while at the same time the record shows that the Malaysian industry has been able to ramp up its production capacity significantly to serve the European market after that market opportunity opened up.

Those two things can only both be true if capacity in Malaysia is fully engaged in Europe, and there is no incentive to shift sales from Europe to the United States. So let's start with the first part of that, the fully engaged part.

Our record shows that there is excess capacity in Malaysia. Why wouldn't there be an incentive if the order were revoked for Malaysian producers to use up that excess capacity selling in the U.S. market? We have been told that these plants are built to run 24-7.

MR. MACRORY: I think based on the staff report, I think the capacity utilization rates were very high. Last year, they did drop a bit. I still think they are relatively high, but that I am sure was due to the global recession.

I think there is little doubt about that, and I think we will see capacity utilization rates going up again as the global economy recovers. And there may be another reason, and I think this may be confidential. Do you want to get into that?

MR. SIM: Yes, I think there is an issue regarding the one company that closed and then was reopened in 2009. It went into receivership and then was reopened, and that sort of skews off some of the capacity utilization figure that you have.

But it goes back to -- I mean, you have the data figure for the reconstituted company. We don't have data figures from the previous company. So that sort of throws off some of the production utilization numbers, and we have tried to get the data from the previous company, but those are not available.

CHAIRMAN ARANOFF: Okay. I mean, I take your point that the numbers that we may have for capacity utilization may not be exactly right, and also that the 2009 number may be affected by the recession.

But even granting both of those things, we do have six years of data, and in none of those years did capacity utilization -- you know, was it a hundred percent. We have been told by the domestic producers that the most economic way to operate one of these plants is that hundred percent, and operating 24-7.

So I guess I am saying to you is if that is true, and you don't seem to be disagreeing with it, and access to the U.S. market opens up, and there is an opportunity to fill up whatever excess capacity there is, why wouldn't there be an incentive to do that?

MR. MACRORY: I am not sure, Madam Chair, that I have ever seen a situation where a company has reported a hundred percent capacity utilization. I mean, capacity utilization figures are the ideal, assuming that you have no maintenance problems, breakdown problems.

I mean, again, in my experience, these figures are relatively high.

MR. SIM: I would say also that to the extent -- well, one thing that you do have to think about is that a plastic bag manufacturer is a plastic bag manufacturer, but the entity is also a printer.

And, yes, I know that the relative costs of the actual printing itself means that the stamp, et cetera, is not terribly high, but to shift from one to another, and to sort of abandon your -- you know, to sort of be able to shift from one step to another, it takes time.

And to be honest, I don't see how the Malaysian companies would then abandon customers in Europe just so they could supply to the U.S. The idea for us to be here was mainly for why the Malaysians are in this proceeding.

It is not to try to reclaim or to run, and try to expand market share in the United States at a breakneck pace. It is mainly so that they can supply customers that have operations in Europe, and Asia, and in the United States.

They would like to be able to supply all those markets at the same time, and so to the extent that they can do so, they will do so within the natural capability, and the natural market condition.

Now, in terms of all the production capacity going off to the United States, again my point is that there are incumbent reasons for the companies not to do that, in terms of what the customers demand in Europe, and in Asia, and in terms of the pricing levels that they have to live with, in terms of the costs in Malaysia.

CHAIRMAN ARANOFF: Okay. Well, let me just stop you there, because I know that my colleagues have already asked you for the pricing and any differences in the specifications.

MR. SIM: Right.

CHAIRMAN ARANOFF: But customer relationships. We have been told that customer relationships between foreign producers and their customers certainly in the U.S., and I don't know if this is also true in Europe, but there really aren't any relationships.

That the retailers whose names they are printing on the bags, you never talked to them. They don't know you. So are there customer relationships? What customer relationships in the European Union are there that would present or create a disincentive for producers in Malaysia to just shift to whoever is buying?

MR. SIM: Well, the prevalence of the internet bidding system is not as much in Europe as it is in the United States, and from my own experience, some of the companies that you saw in the video -- like, for example, Tesco, or Saintsburys, they rely more negotiating on a personal basis rather than bidding.

And I think a lot of that is because there is a reliability issue in terms of European bags, and in terms of -- again, it is a cultural difference. I think that it is a market difference, and that would mean that Europe is similar, but different, as I was saying before.

And it is not quite -- I mean, the internet conditions that we see in the United States are there, but they express themselves in a different way.

CHAIRMAN ARANOFF: Okay. But is the

customer that the factory in Malaysia is selling directly to Tesco or Saintsbury, or is it done through a New England port or distributor who is actually the buyer?

MR. SIM: For the large companies -- I mean, the larger exporters to Europe, they deal directly with the European customer. And to some extent -- I mean, you know, that happens in the United States as well, but not from Malaysia, because they haven't sold them much.

But in terms of generally, some of the companies that do sell to the United States do go directly to the U.S. customer, and that is why we have seen from some of the import data that there is a direct contact. Some of the major consumers are also the major importers. You have seen that in the staff report.

CHAIRMAN ARANOFF: Okay. Oh, Mr. Macrory. I'm sorry.

MR. MACRORY: I was wondering if I could add one more point on this question of the likelihood of Malaysia shifting to the United States. I think it is important to keep in mind that even with the order in place against the other three countries, you have still got significant competition from -- in the case of Malaysia, there is one company that was excluded from the order, and the same with China.

And there are quite a number of Chinese exporters which have very, very low margins, in the order of one percent, and several Thai companies which also have very low margins. And it is clear from the record that does not seem to be inhibiting them from competing.

So it is not a situation where Malaysia would be only -- if you revoke the order against Malaysia, that they would be the only country with no appreciable barrier.

CHAIRMAN ARANOFF: Okay. Well, I have just been trying to run through the various factors that we look at for whether or not more volume would be likely to come into the U.S. market on revocation.

So we talked about excess capacity and whether that creates an opportunity, and we have talked about shifting from other customers to U.S. customers, and of course the third one is increases in capacity.

And the record shows that the Malaysian industry has increased its capacity -- and to use your adjective -- more than little bit over the period that we are looking at in this review.

Even if we were to conclude that that is pretty much fully occupied, and it is selling to Europe, and that volume is not coming here, are there barriers to their increasing capacity more?

They seem to be able to ramp up quite expeditiously.

MR. SIM: Well, again, we are talking about the nature of the Malaysian industry. Based on the history of Malaysia, you are not likely to have companies coming in from Vietnam, from Indonesia, and moving into Malaysia.

And again it is historical that what you saw happen to Vietnam, and to China, and to Thailand, moving off to other markets, did not happen with the Malaysians. So in other words, you are constrained in Malaysia by the access to capital, and the access to financing in Malaysia.

And you are not going to have a large number of people just popping up from China and showing up in Malaysia, because that is not historically how it has been.

CHAIRMAN ARANOFF: Well, I understand what you are saying, but we did see Malaysian producers adding lines to their production facilities, and so if there is anything that you want to add to the record post-hearing that would tend to support the claim that

that's finite, or that is limited in some way that we should be taking into consideration, that would be helpful.

MR. SIM: Yes.

CHAIRMAN ARANOFF: Okay. My time is up, and so let me turn to Vice Chairman Pearson.

VICE CHAIRMAN PEARSON: Thank you, Madam Chairman.

Greetings to this panel which is now an afternoon panel, so we're getting closer to a normal schedule. I had a question about Slide 37, the attachment to your pre-hearing brief, and this deals with resins, "The intended resins increase supplies, lower prices," and then it goes on to read, "Substantial increase in supply of certain resins, particularly from the Middle East, these new supplies would be from several large-scale plants that would benefit from substantially cheaper feed stock by 2010 to '12." What's the significance of that slide?

MR. SIM: People have been waiting for that capacity in the Middle East to appear for several years. What has happened is that the various Middle Eastern countries have invested in polyethylene plants, mainly in the UAE, I think Qatar and Saudi Arabia, and these plants are still in the process of being commissioned, but we have not seen that capacity come online, and this capacity, a lot of it is linked to petroleum supplies in the Middle East.

When this slide was presented earlier in the year, this was sort of a hopeful hope that there would be an increase availability from the Middle East, but if you look at some of the industry publications such as *Platts* and *ICIS*, the volume has not come out from there yet, and that's why you haven't seen that have an impact on the market for resin.

VICE CHAIRMAN PEARSON: Okay. And if that volume comes forth, is it expected that there would be some disproportionate benefit to the industry in Malaysia, or would it give a benefit to the industry globally?

MR. SIM: More than likely it would be for the benefit of the industry globally. It's a market effect because you're basically talking about having a polyethylene producer right near the source, and that theoretically, if it ever comes about, would have a major effect worldwide.

VICE CHAIRMAN PEARSON: Okay. Mr. Macrory, I know that other Commissioners have asked you questions about cumulation, but could you either now or maybe in the post-hearing elaborate a bit more on how the differing trends in regard to Malaysia would support a decision to cumulate China and Thailand, but not Malaysia?

MR. MACRORY: Could we leave that for post-hearing brief because some of this gets into BPI?

VICE CHAIRMAN PEARSON: Okay. That would be fine. Just a specific question that may be public, is Malaysia a net importer of these retail carrier bags or net exporter?

MR. MACRORY: I'm going to turn to Mr. Sim. He's much more of an expert on the industry than I am.

MR. MACRORY: Yes, it is a net exporter.

VICE CHAIRMAN PEARSON: Okay.

MR. MACRORY: It's a net exporter.

VICE CHAIRMAN PEARSON: Well, I might suggest if you have a chance to go back and look at some of the previous decisions where the Commission or at least some subset of Commissioners has chosen not to cumulate all countries in a review and look at how we have waived the various factors in reaching those decisions and see if we can get there with this set of facts.

MR. SIM: Okay.

VICE CHAIRMAN PEARSON: This record shows that the firm or firms from Malaysia that were not subject to the orders have increased their exports to the United States over the period of review. Given that, why wouldn't we expect similar increases from other Malaysian companies if we were to revoke the order?

MR. SIM: Well, as I said that company was the major exporter before the order, is the major exporter after the order. They already had the customers in the United States. They already had relationships and already knew how to operate in the U.S. market. If you look at other companies that have tried to go in through various orders and such, you see they come and they leave, whereas Bil Lian historically was supplying the U.S. for many years.

The fact that they received a de minimis margin in the commerce-side investigation, it sort of allowed it to expand its ties with the existing customers in the United States. In other words, it knew the market, so I could not necessarily say that about the rest of the Malaysian industry.

VICE CHAIRMAN PEARSON: Okay. But some of those other Malaysian companies do indeed have expertise exporting, exports to Europe.

MR. SIM: Yes, in exports. Yes, but not the United States, correct.

VICE CHAIRMAN PEARSON: Okay. Well, if you could tell us more about that in the post-hearing, that would be great.

MR. SIM: Okay.

VICE CHAIRMAN PEARSON: I note that there was a meaningful increase on the part of the non-subject exporters.

MR. SIM: Yes, yes.

VICE CHAIRMAN PEARSON: Madam Chairman, I think that concludes my questioning for the panel. I would thank them very much for their participation.

CHAIRMAN ARANOFF: Let's see. Commissioner Okun is indicating she doesn't have any further questions. Commissioner Lane?

COMMISSIONER LANE: I do have one question, and, Mr. Sim, I apologize if this is covered in the brief, but I just can't remember. How much of the industry is represented by the Task Force?

MR. SIM: We believe that we account for a very large proportion of current available production capacity in Malaysia, and I think we have tried to provide that in the previous submission and in the pre-hearing brief.

COMMISSIONER LANE: Okay. Thank you. We haven't gotten responses to the questionnaires from all of your members. Would you be able to provide that post-hearing?

MR. SIM: Yes, we have tried to get that from the members, and to the extent we can, we'll provide them in the post-hearing.

COMMISSIONER LANE: Okay. Thank you. Madam Chair, that's all I have.

CHAIRMAN ARANOFF: Commissioner Williamson?

COMMISSIONER WILLIAMSON: Thank you, Madame Chairman, just a couple of questions. In the original investigation, subject imports from Malaysia undersold domestic product in a majority of comparisons. Why should we not expect to see a similar pattern if the orders are revoked?

MR. SIM: Well, I mean, again what we try to explain is that the situation now in Malaysia, and given the nature of production situation, in other words the factors affecting the pricing, and given also the fact that Malaysia does not view the U.S. as a major market, so we don't think that these factors would mean that we believe that these factors taken as a whole would mean that hypothetically, which we have to do in a sense a review, hypothetically we don't think that the Malaysian product would undersell to the extent we had in the previous investigation.

Again, unfortunately, because of the lack of coverage, we don't have pricing data from Malaysian imports, so it has to remain a hypothetical exercise, but in our belief, we don't think that would occur hypothetically.

MR. MACRORY: I'm sorry. I just want to add that of course volume is also important, and if you look at the volume of Malaysian imports during the period of the original investigation, it was tiny, absolutely tiny compared with domestic consumption. It was below two percent. I think I can say that without violating BPI, very, very tiny.

COMMISSIONER WILLIAMSON: Okay. Good, but I'm more curious about you said there are factors regarding the pricing, and that's what I wasn't clear about.

MR. SIM: Right. Right. It's in the last part of the brief, and the statement, "factors such as resin price increases, labor costs, energy costs going up," I agree this effects everyone in the world.

COMMISSIONER WILLIAMSON: Yes.

MR. SIM: The Malaysian companies by and large because you have smaller companies and they're family run, they can't operate for a long period of time at a loss. No one could, but for a small family company, it's even more imperative to be able to sell at a profit, so in that regard, with the costs going up, the export prices would go up as well. That's what I was referring to.

COMMISSIONER WILLIAMSON: Okay. And are you saying it might be different than what would happen with China or with Thailand or Vietnam?

MR. SIM: Well, again, they're different operations, and I'm not talking about them. I'm just specifically talking about what the Malaysians feel would be their experience.

COMMISSIONER WILLIAMSON: Okay. If there's anything further you could add on that post-hearing, it would be helpful because I'm not sure I quite get it.

MR. SIM: Yes.

COMMISSIONER WILLIAMSON: In our most recent final investigation regarding Vietnam and Indonesia and Taiwan, we gave some weight to price comparisons involving deliberate prices for purchasers' direct imports.

MR. SIM: Yes.

COMMISSIONER WILLIAMSON: Is there any reason why we shouldn't do the same thing here?

MR. SIM: We'll have to address that in the brief because I haven't reviewed that part of your decision.

COMMISSIONER WILLIAMSON: Okay. Good. It will be a matter of looking at where you're shipping directly to the company that's going to use it.

MR. SIM: Yes, I understand. Yes.

COMMISSIONER WILLIAMSON: Now going to Malaysian Plastic Manufacturers Association statistics, Malaysia exports a significant percentage of its plastic resin production.

MR. SIM: Yes.

COMMISSIONER WILLIAMSON: And also imports significant quantities. Is Malaysian resin feed stock for PRCBs production source primarily from Malaysia or from imports?

MR. SIM: Both. I wouldn't say that one predominates over the other, but historically my understanding it's from both domestic and imports for the feed stock.

COMMISSIONER WILLIAMSON: Okay.

MR. SIM: I mean, the resin. Sorry. The PE resin.

COMMISSIONER WILLIAMSON: Okay. Is this such a globally traded commodity that it doesn't really matter in terms of the price of PRCBs from

Malaysia?

MR. SIM: Now, are you talking about the PRCBs or the resin?

COMMISSIONER WILLIAMSON: No. I'm saying is the resin such a globally traded commodity and available that a domestic producer doesn't get any particular advantage from sourcing locally?

MR. SIM: Well, there is an advantage in that just in time delivery and having a supplier that's next door. They do have an advantage. On the other hand, if you're buying a large enough volume, you can buy imported resin from various sources around the world, so that's why it tends to be a mix of both. Most companies will buy some domestic and some imported to try to achieve a balance.

COMMISSIONER WILLIAMSON: And I take the domestic price is similar to the other world market pricing?

MR. SIM: By and large with of course various adjustments for freight and other costs, yes.

COMMISSIONER WILLIAMSON: Okay. Good. Okay. I have no further questions, and I want to thank the witnesses for their testimony.

CHAIRMAN ARANOFF: Are there any additional questions from Commissioners? Do the staff have any questions for this panel?

MR. DEYMAN: I'm George Deyman, Office of Investigation. The staff has no questions.

CHAIRMAN ARANOFF: Do counsel for the domestic producers have questions for this panel?

MR. DORN: No, Madame Chairman.

CHAIRMAN ARANOFF: Okay. Then let me say thank you again to the panel representing Malaysian producers. We appreciate your being here today to answer our questions. Time remaining for those in support of continuation of the orders is 14 minutes from the direct presentation and five minutes for closing for a total of 19, and for those in opposition to continuation 48 minutes from the direct presentation plus five minutes for closing for a total of 53 minutes.

We generally combine those times and do a combined rebuttal and conclusion. If that's acceptable to everyone, that's what we'll proceed and do, so we'll ask the panel who's up here to take your seats in the back, and then we'll invite Mr. Dorn up to begin his closing whenever he's ready. Thank you. Whenever you're ready, Mr. Dorn.

MR. DORN: Thank you, Madame Chairman. All parties in the room seem to agree, at least on this side of the desk, seem to agree that orders should be continued as to China and Thailand. We hope that you agree with that as well, so I'm going to focus my comments on Malaysia, and I'd like to start by emphasizing one thing that I think is important to remember is who appeared before you today representing Malaysia.

I've known Patrick Macrory for many years. He's an able advocate. Mr. Sim is an able advocate, but we had no one here from Malaysia who has firsthand knowledge about anything, about how the product is produced in Malaysia, how it's sold from Malaysia, what their export markets are, how it's priced, had absolutely no testimony from anyone with personal knowledge. All we have is hearsay from advocates.

You asked a lot of good questions, and counsel did what they could, but none of them were testifying from personal knowledge about the industry in Malaysia or about export markets or about what's going in in the European Union. Now, one thing that I know you will do as suggested by Madame Chairman's questions is look at the statutory factors in terms of whether imports are likely to increase upon revocation, and you go down the list, and it's kind of hard to see why they would not increase.

There's excess capacity. There's a very sharp increase in capacity in Malaysia. There's certainly the ability to ship exports from other third country markets to the United States, and there's no dispute that they have tremendous extrusion capacity to make film that can be shifted from all types of products to make PRCBs if the U.S. market were to open up to them by the elimination of 85 to 102 percent duties that now face them.

Mr. Macrory began by talking about the discernable adverse impact issue, and just to repeat the obvious, the standard for that is very low. According to the Federal Circuit a "discernable adverse impact presents a relatively low threshold." The CIT has said even a modest likely volume may satisfy the statutory standard. The CIT has also said the discernable impact standard is relatively easy for the ITC to satisfy, and I believe it would be very easy to satisfy on the facts of this case.

Now, we saw the response of the Malaysian Task Force, the notice of institution in which they made their decumulation argument, and so naturally we address that in our pre-hearing brief beginning at page 18, and I'm not going to repeat all of our arguments. I would like to point out there's some confidential information in the brief. In particular with respect to comments regarding a particular large purchase in the United States and Malaysia that you'll want to take into consideration.

We've had no testimony from anybody with personal knowledge about what the intention of any producer is in Malaysia. We haven't had anybody come in here and say under oath they have no intention to ship to the United States or that they have these long-term relationships in the UK, and if they have no motivation or desire to ship to the United States. All you've heard is argument of counsel, but remember that what you're doing here is making a counter-factual assessment.

What would the world be like if the order were revoked? The order right now imposes a duty of 102 to 85 percent on every member of the Task Force that exports to the United States. Now, Euro Plastics, who you saw the video for, very sophisticated large company, they made an attempt to get their margin down. They got it down to zero, remember? Then, in August of 2009 when they got their margin down to zero, they started ramping up shipments to the United States, and that shows you the uptick I think that one of the Commissioners mentioned in questioning.

From 2007 to 2009, imports from Malaysia went up. It's probably largely due to Euro Plastics, but we asked for review of those sales, and the margin was 56 percent, so now they're facing a duty of 56 percent, but it shows you there's the desire to ship to the United States if they can only get rid of the darn duty. Euro Plastics tried and succeeded for a while but then failed.

Using a counterfactual analysis, I think you have to conclude as a matter of simple logic that these companies in Malaysia are going to want to ship to the United States if the duties are revoked, especially now that you have these high duties imposed on imports from Indonesia, Taiwan and Vietnam. I mean, a board of directors would fire a CEO in Malaysia that didn't look to the U.S. market if its duty were reduced to zero in a context where the imports from Indonesia and Taiwan and Vietnam had just been hit with a duty that keeps them out of the market.

It's just a matter of simple business logic that tells you that you revoke the duty on Malaysia, and you're going to have resumed imports to the United States, even more so if you keep the orders in effect on China and Thailand as the Malaysian counsel thinks you should. One thing I'd like emphasize, I mean, in all these cases you have folks making projections, it's very interesting to go back and look at the projections that were made back in 2003 by the Malaysian industry, and this is in your record.

If you go back to the final staff report, June 30, 2004, which is in a sunset review record, you have Table 7-3 at page 7-6, and it gives you the information that you're familiar with in the format you always set it forth on capacity production, exports and so forth for the Malaysian industry for 2001, 2002 and 2003, and then you have projections for 2004 and 2005.

I've got the confidential version. Frankly, I'm not sure whether this was made public or not, so I'm not going to mention any numbers, but it's very interesting to look at the projections for capacity that they made in June 2004. What were they telling the Commission was going to happen to their capacity back then? Compare that with what actually happened. They say they've always had this long cozy relationship with the European Union. That's where they really were always interested in sending their exports.

Look at what they told you back in June 2004. Look at their export trends to other markets from 2001 to 2003, and then look at what they said was going to happen in 2004 and 2005 to markets outside of the United States. Take a look at that. When you do that, I think you'll see that this picture that's being painted that they've never had interest in the U.S. market, and they have no interest in returning to the U.S. market just doesn't make sense when you look at those projections and compare those to what was said today.

I think if you look at the precedence, Commissioner Pearson, that you referred about when the Commission has decumulated and when it's cumulated in sunset reviews, and you apply those precedents to the facts of this case, I think you'll find there are no conditions of competition that you have generally looked at that would justify decumulating Malaysia in this case, and we'll certainly go through those in detail in our post-hearing brief and address a few of the cases that are cited in the pre-hearing brief of the Malaysians.

The counsel for Malaysians talked about the fact that yes, you have a discretionary cumulation decision to make in the sunset review, and it was mandatory in the original investigation back in 2004, but what's changed since that decision in 2004? We know that capacity is increased. We know that there is excess capacity. We know there are even higher dumping margins today, so I think when you go through the precedence, and you apply the record of this case that you'll find that this is a specific case where you do need to cumulate.

A couple of other points have been handed to me. Significant data is missing from Malaysian data. We don't have the full information on the amount of capacity in Malaysia even though the existing record is very strong for us in terms of showing excess capacity. There's a lot more there that's not in the record, and while there was talk there might be some different between the product that's shipped from Malaysia to the European Union versus the United States, push come to shove I think counsel did recognize that they are interchangeable products.

Any producer in Malaysia can make a product, meet a spec in the United States and the European Union if there are minor differences, so I have a lot of time remaining. It's not my style to stop short of all my time, but I'm going to make an exception today and not repeat the obvious. We appreciate your time very much. We appreciate your vote in the case against Indonesia, Taiwan and Vietnam, and we look forward to your vote in this case. Thank you very much.

CHAIRMAN ARANOFF: Thank you. Mr. Sim, I'm very impressed you don't have a note pad in front of you.

MR. SIM: Yes. Well, no, I always found that, especially since I always represent respondents, it was very difficult to come in and try basically to go in and talk more about something which we had just talked about 10 minutes ago or a short period of time, so I think we'll try to make it short, and I will not use all my time obviously and try to make it short and succinct in saying that we believe that in terms of what we are presenting in the case is very simple and very relatively straightforward in that Malaysia has been a small exporter to the United States. It was before the order and was after the order.

CHAIRMAN ARANOFF: Mr. Secretary, could you reset the clock, please?

MR. SIM: Okay.

CHAIRMAN ARANOFF: Sorry for the interruption.

MR. SIM: That's okay, and so we feel that we have presented that in detail in the pre-hearing brief, and we'll present that in the post-hearing comments, and so we appreciate the opportunity to present these arguments to the Commission and to the staff, and thank you for this opportunity.

CHAIRMAN ARANOFF: Well, thank you again to everyone who's participated in today's hearing. We appreciate your input, and we know we've asked you for a good deal more before the record closes, so we look forward to receiving that from you. Post-hearing briefs, statements, responses to questions and requests of the Commission and corrections to the transcript must be filed by May 6, 2010.

Closing of the record and final release of data to parties takes place on May 28, 2010, and final comments are due on June 2, 2010. With that, I don't believe there is any more business before the Commission, and this hearing is adjourned.

(Whereupon, at 1:10 p.m., the hearing in the above-entitled matter was adjourned.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Polyethylene Retail Carrier Bags from China, Malaysia and Thailand

INVESTIGATION NO.: 731-TA-1043

HEARING DATE: April 27, 2010

LOCATION: Washington, D.C.

NATURE OF HEARING: Review

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: 4/27/10

SIGNED: David W. Jones
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: Micah J. Gillett
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: Dave W. Jones
Signature of Court Reporter