

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:) Investigation No.:
POLYETHYLENE TEREPHTHALATE (PET)) 731-TA-1387-1391
RESIN FROM BRAZIL, INDONESIA, KOREA,) (FINAL)
PAKISTAN, AND TAIWAN)

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1 THE UNITED STATES INTERNATIONAL TRADE COMMISSION

2 In the Matter of:)
 3 POLYETHYLENE TEREPHTHALATE (PET)) Investigation Nos.:
 4 FROM BRAZIL, INDONESIA, KOREA,) 731-TA-1387-1391
 5 PAKISTAN AND TAIWAN) (FINAL)

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Thursday, September 13, 2018
 Main Hearing Room (Room 101)
 U.S. International Trade Commission
 500 E Street, S.W.
 Washington, D.C.

The meeting, commenced, pursuant to notice, at 9:33
 a.m., before the Commissioners of the United States
 International Trade Commission, Chairman David S. Johanson,
 presiding.

1 APPEARANCES:

2 On behalf of the International Trade Commission:

3 Commissioners:

4 DAVID S. JOHANSON, CHAIRMAN (presiding)

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6 MEREDITH M. BROADBENT, COMMISSIONER

7 RHONDA K. SCHMIDTLEIN, COMMISSIONER

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12 INFORMATION OFFICER

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14 SHARON BELLAMY, RECORDS MANAGEMENT SPECIALIST

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16 MARY MESSER, INVESTIGATOR

17 JENNIFER CATALANO, INTERNATIONAL TRADE ANALYST

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22 CRAIG THOMSEN, SUPERVISORY INVESTIGATOR

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2 EMBASSY APPEARANCE:

3 THE EMBASSY OF THE REPUBLIC OF INDONESIA

4 WASHINGTON, DC

5 REZA PAHLEVI CHAIRUL, COMMERCIAL ATTACHE

6

7 OPENING REMARKS:

8 Petitioner (Kathleen W. Cannon, Kelley Drye & Warren LLP)

9 Respondents (Susan G. Esserman, Steptoe & Johnson LLP)

10

11 In Support of the Imposition of Antidumping Duty Orders:

12 Kelley Drye & Warren LLP

13 Washington, DC

14 on behalf of

15

16 DAK Americas LLC

17 Indorama Ventures USA, Inc.

18 M&G Polymers USA, LLC

19 Nan Ya Plastics Corporation, America

20 Jon McNaull, Vice President, PET Resin, DAK

21 Americas LLC

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24 John Freeman, Assistant Director of Sales, Nan Ya

25 Plastics Corporation, America

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3 of Sales and Marketing, Indorama Ventures USA, Inc.

4 John Cullen, Director, PET Resin Sales, DAK

5 Americas LLC

6 Gina E. Beck, Economist, Georgetown Economic Services

7 Brad Hudgens, Economist, Georgetown Economic Services

8 Paul C. Rosenthal, Kathleen W. Cannon, Brooke M. Ringel

9 - of Counsel

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11 In Opposition to the Imposition of Antidumping Duty Orders:

12 Steptoe & Johnson LLP

13 Washington, DC

14 on behalf of

15 Graham Packaging Company

16 Pactiv LLC

17 The American Beverage Association

18 iResin LLC

19 Clinton Berry, Senior Director of Global Resin

20 Procurement, PepsiCo, Inc.

21 Sarah Ryan, Senior Legal Director, PepsiCo, Inc.

22 Stephen Ream, Senior Director Global Sourcing, Graham

23 Packaging Company

24 Bruce Malashevich, President and Chief Economist,

25 Economic Consulting Services

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4 - of counsel

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6 Sidley Austin LLP

7 Washington, DC

8 on behalf of

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11 G-Pac Corporation

12 Rizwan Diwan, Executive Director, Novatex Limited

13 Kafeel Zehri, Senior Manager, Finance, Novatex Limited

14 Aziz Abdul Malik, Senior Manager, Marketing and

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16 Yousuf Sattar, Chief Financial Officer, G-Pac

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3 New York, NY

4 on behalf of

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6 Niagara Bottling LLC ("Niagara")

7 Shawn Safieddin, Vice President of Procurement,

8 Niagara

9 John M. Peterson - of counsel

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11 REBUTTAL/CLOSING REMARKS:

12 Petitioner (Paul C. Rosenthal, Kelley Drye & Warren LLP)

13 Respondents (Joel D. Kaufman, Steptoe & Johnson LLP; and

14 Brenda A. Jacobs, Sidley Austin LLP)

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9:33 a.m.

MR. BISHOP: Will the room please come to order?

CHAIRMAN JOHANSON: Good morning. On behalf of the United States International Trade Commission, I welcome you to this hearing in the final phase of investigation nos. 731-TA-1387 to 1391 involving polyethylene terephthalate or PET resin from Brazil, Indonesia, Korea, Pakistan and Taiwan.

The purpose of these investigations is to determine whether an industry in the United States is materially injured or threatened with material injury or the establishment of an industry in the United States is materially retarded by reason of imports of PET resin from Brazil, Indonesia, Korea, Pakistan and Taiwan.

Schedule 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 no place testimony directly on the public distribution table. All witnesses must be sworn in by the Secretary before presenting testimony.

I understand parties are aware of the time allocations. Any questions regarding the time allocations should be directed to the Secretary. Speakers are reminded

1 not to refer in their remarks or answers to questions to
2 business proprietary information. Please speak clearly into
3 the microphones and state your name for the record and for
4 the benefit of the court reporter.

5 If you will be submitting documents that contain
6 information you wish classified as business confidential.
7 Your request must comply with Commission Rule 201.6. Mr.
8 Secretary, are there any preliminary matters?

9 MR. BISHOP: Yes, Mr. Chairman. With your
10 permission we will add the following witnesses to Page 2 of
11 the Witness List: Sarah Ryan Senior Legal Director with
12 PepsiCo and Kerek Rhodan with Economic Consulting Services.
13 There are no other preliminary matters.

14 CHARIMAN JOHANSON: Alright Mr. Secretary, will
15 you please announce our Embassy Witness.

16 MR. BISHOP: Embassy Witness is Reza Pahlevi
17 Chairul, Commercial Attach with the Embassy of the Republic
18 of Indonesia.

19 STATEMENT OF REZA PAHLEVI CHAIRUL

20 MR. CHAIRUL: Chairman Johanson, Vice Chairman and
21 Members of the Commission, good morning. I am Reza Pahlevi
22 Chairul, Commercial Attach for the Embassy of the Republic
23 of Indonesia and on behalf of the Government of Indonesia,
24 thank you for the opportunity to speak today regarding the
25 U.S. investigation of PET Resin from Brazil, Indonesia, The

1 Republic of Korea, Pakistan and Taiwan.

2 On this hearing, let me convey several points.
3 First, Indonesia is an insignificant supplier, based on
4 prehearing report page 2-2. Purchase from Indonesia was
5 only 0.08% which is very small compared to the purchasing
6 from U.S. Producers and other Subject Countries. Import
7 from Indonesia was the lowest compared to the other Subject
8 Countries.

9 Import from Indonesia is only to capture the over
10 demand in the U.S. Thus the Government of Indonesia
11 believes that the import from Indonesia could not harm the
12 U.S. Producers.

13 Second, inability to supply the domestic market
14 thus on the report from 2015 to 2017 the production of PET
15 resin by the Petitioners were lower than domestic
16 consumption. For instance, in 2017 the production was only
17 5.6 billion pounds while consumption was almost 7 billion
18 pounds. This clearly indicates that the U.S. Producers
19 could not meet the domestic demand.

20 Moreover, as stated in the report page 2-12 that
21 most purchasers 18 of 24 reported supply constraints.
22 Purchasers reported that M&G bankruptcy caused supply
23 disruptions. Eleven purchasers reported that suppliers were
24 unable to provide the PET resin they wished to purchase, are
25 refusing to bid on business, or are providing short

1 shipments.

2 The prior antidumping and countervailing ruling
3 for imports from Canada, China, India and Oman in 2016 have
4 placed a burden for the U.S. consumers because of the
5 limited source and higher cost of PET resin. If measures
6 are to be enforced it will worsen supply problems for a wide
7 range of downstream industry in the U.S. and enforce a
8 significant burden on downstream industry whose ability to
9 compete would be severely impaired.

10 In light of the above fact, the Government of
11 Indonesia believes that import of subject merchandise is not
12 competing with the U.S. Industry as it supplements the
13 supply gap which the U.S. Domestic Industry is unable to
14 cover due to its supply constraints. As such, imports
15 especially from Indonesia will not be attributable to any
16 injury claim by the Petitioners.

17 Further, the injury of the U.S. Domestic Industry
18 is caused by other factors. The Government of Indonesia
19 believes that there are other factors that caused the injury
20 of the U.S. Domestic Industry such as the bankruptcy of M&G
21 in 2017 is the main cause of injury suffered by one of the
22 Petitioners.

23 In terms of price, the price of PET resin in the
24 U.S. is the highest in the world. It causes the consumer to
25 find other sources by importing from other countries. The

1 price of PET resin is affected by crude oil as the raw
2 material. WTO antidumping agreement article 3.5 stated that
3 "the authority shall also examine any nonfactors other than
4 the dumped imports which at the same time are injuring the
5 Domestic Industry and injuries caused by these other factors
6 much not be attributed to the dumped imports".

7 Therefore, the Government of Indonesia
8 respectfully requests the Commission to consider all the
9 views submitted from as well as the Indonesian producers or
10 exporters. Thank you, Mr. Commissioner.

11 CHAIRMAN JOHANSON: Do any Commissioners have
12 questions for the witness? Actually Mr. Chairul I do have a
13 question, actually I have two questions and if you would
14 like I will pose these to you and if these are not something
15 you can readily answer I will get them to you in writing.

16 Is that okay?

17 Alright.

18 The first one is this. I understand that there
19 are currently antidumping proceedings in Indonesia
20 concerning PET resin exports from Korea and this is
21 discussed in the Commission Staff Report at page 750. Korea
22 is a Subject Country in our investigations. Could you
23 please update the Commission on the status of these
24 antidumping proceedings in Indonesia?

25 MR. CHAIRUL: Yes, Commissioner Johanson. Again,

1 I will report to Jakarta and we will reply in writing.
2 Right now, there is an organization in Indonesia who takes
3 care of antidumping. It's name is GADI and the process is
4 already finished but the results were sent to the Ministry
5 of Finance because the Industry of Finance in Indonesia will
6 impose the duty whether or not it will be imposed but the
7 process is already finished and sent to Ministry of Finance
8 for deciding whether it will be imposed by duty or what.
9 These are the things that I know.

10 CHAIRMAN JOHANSON: Okay, I appreciate that. I
11 have one more question. Petitioners in these investigations
12 have argued that the Commission's data on the PET resin
13 industry in Indonesia is missing information from three
14 firms identified in the petitions and these firms are MCN
15 Polyurethane Indonesia, PT Mitsui Indonesia and PT Petonesia
16 Resindo.

17 This is discussed in pages 58-59 of the
18 Petitioners prehearing brief and also in the Commission
19 Staff report at page 710, footnote 9. It would be helpful
20 if the Embassy were able to confirm whether or not these
21 firms are producers of the subject PET resin in Indonesia
22 and to also provide if possible the contact information for
23 these companies.

24 MR. CHAIRUL: Yes, Chairman Johanson. I have to
25 report to Jakarta about this and probably there is also an

1 answer in the questionnaire but I will double check with
2 Jakarta whether these three companies, as you mentioned are
3 producers or not.

4 CHAIRMAN JOHANSON: Okay, thank you Mr. Chairul.
5 We appreciate you being here today. Any other questions?
6 Okay. That concludes the Commissioners' questions.

7 MR. BISHOP: Thank you very much, Mr. Attach .
8 We will now continue with opening remarks. Opening remarks
9 on behalf of Petitioner will be given by Kathleen W. Cannon
10 of Kelley, Drye and Warren. Ms. Cannon, you have 5 minutes.

11 STATEMENT OF KATHLEEN W. CANNON

12 MS. CANNON: Good morning. Chairman Johanson and
13 members of the Commission. I am Kathleen Cannon of Kelley
14 Drye appearing on behalf of Petitioners. The case before
15 you today documents the injurious effects that yet another
16 wave of unfairly traded imports has had on U.S. Producers
17 and workers in the PET resin industry.

18 We appeared before you in March of 2016 to
19 describe the injury inflicted on this industry by imports of
20 PET resin from Canada, China, India and Oman. At that time,
21 preliminary duties had been imposed against each of those
22 countries, their imports had declined, prices had turned up
23 and the industry was starting to recover.

24 Unfortunately, that uptick in the industry's
25 condition was short-lived. As soon as those imports began

1 to recede from the U.S. Market imports from the 5 Subject
2 Countries surged into the United States. From 2015 to 2016
3 unfairly traded imports from Brazil, Indonesia, Korea,
4 Pakistan and Taiwan quickly moved in to replace the other
5 unfair imports and to grow even further. While the
6 volume of imports subject to the earlier case dropped by
7 about 330 million pounds between 2015 and 2016. Subject
8 Import volumes increased by almost 500 million pounds in
9 that one year. They increased by another 130 million pounds
10 from 2016 to 2017 so over that 2015 to 2017 period, Subject
11 Imports shipments grew by a phenomenal 280 percent.

12 Their market share increased by 8.3 percentage
13 points while the U.S. Industry's share dropped by 5.1
14 percentage points and the non-Subject Import market share
15 also fell, dropping by 3.2 percentage points. So the
16 unfairly traded imports subject to this case not only
17 captured all of the market share held by the unfairly traded
18 imports targeted by the last case, they captured additional
19 market share at the U.S. Industry's expense as well.

20 Simply put, they made an already bad situation
21 even worse. This surge in imports occurred for a product
22 that the Commission has repeatedly found is highly fungible
23 regardless of source and where price drives purchasing
24 decisions. The remarkable gains in market share by Subject
25 Imports in this case as in the prior case were accomplished

1 by undercutting U.S. Producer prices. There is no other
2 explanation for these huge market share gains.

3 We will explain in further detail the significant
4 degree of import underselling based on record data that is
5 not fully captured in the prehearing report. The surge in
6 Subject Imports had a devastating effect on the Domestic
7 Industry. Increasing imports caused the improvements we
8 were beginning to see in early 2016 to quickly reverse.

9 The industry declines over the 2015 to 2017
10 period are particularly noteworthy because they occurred in
11 a period of strong and increasing demand. Demand growth
12 should have allowed the industry to increase sales and to
13 earn reasonable profits but the opposite occurred. Domestic
14 industry capacity sat idle as Subject Imports took U.S.
15 Market share.

16 Only after this case was filed and the
17 Respondents faced preliminary duties in the first quarter of
18 2018 did Subject Imports volumes decline. That, in turn
19 finally allowed the U.S. Industry to increase its market
20 share sales and profitability.

21 So how do Respondents try to explain away these
22 compelling facts? Their main response is that an acute
23 supply shortage drove the import increase. These supply
24 shortage claims are overstated and misleading as they are
25 based primarily on the temporary closure of a facility of

1 the smallest U.S. Producers, M&G. More importantly the
2 supply issue they site didn't even occur until the 4th
3 quarter of 2017.

4 The Subject Imports volume surge long preceded
5 that claim supply need. And notable, in the first quarter
6 of 2018 when the Respondents claim that there was a
7 particularly acute supply shortage, Subject Imports actually
8 declined. There is no correlation between the Subject
9 Import volume trends and the claimed supply situation in the
10 United States.

11 What is also notable here is what Respondents
12 don't challenge. They don't contest cumulation or argue
13 against fungibility or the price sensitive nature of sales.
14 In fact, they concede much of that. So you have to ask
15 yourself, what's wrong with this picture? How did Subject
16 Imports grow by over 600 million pounds and displace U.S.
17 Producer market share by overselling? The answer is, they
18 didn't.

19 Subject Imports undersold U.S. Producers
20 significantly and captured sales on the basis of unfair
21 prices just as the prior unfair imports had, causing the
22 Domestic Industry's trade and financial declines. We are
23 confident that when you listen to our testimony and review
24 the record data as a whole you will agree that the statutory
25 factors are met and that an affirmative injury finding is

1 warranted in this case. Thank you.

2 MR. BISHOP: Thank you, Ms. Cannon. Opening
3 remarks on behalf of the Respondents will be given by Susan
4 G. Esserman of Steptoe and Johnson. Ms. Esserman, you have
5 five minutes.

6 STATEMENT OF SUSAN G. ESSERMAN

7 MS. ESSERMAN: Chairman Johanson and Members of
8 the Commission, I am Susan Esserman of Steptoe and Johnson.
9 This highly unusual case comes before the Commission at a
10 time of an acute supply shortage in the U.S. PET resin
11 market. In September and October of last year a large
12 volume of PET supply disappeared from the U.S. Market.

13 This unprecedented supply shock has forced U.S.
14 PET customers to scramble to find PET resin supply to
15 prevent disruption in their own plants. As you will hear,
16 large PET customers have been engulfed in 24/7 crisis
17 management to address the serious shortage situation.

18 In response to the shortage, U.S. prices are
19 soaring with spot prices rising by 37 percent over the last
20 year. U.S. Producers have placed customers on allocation,
21 reduced volumes supplied and in some cases cut off customers
22 entirely. The tight supply conditions continue today as
23 reported by 75 percent of responding purchasers.

24 This supply shock arose largely because of the
25 bankruptcy of M&G which had nothing whatever to do with

1 Subject Imports. Rather, as M&G's own sworn statement
2 documents, M&G's bankruptcy and closures resulted from
3 massive cost overruns and extended delays at its Corpus
4 Christi Plant.

5 As a result, M&G's Applegar, West Virginia Plant
6 and its Mexico Plant closed, the latter of which accounted
7 for half of M&G's supply to U.S. customers, and the huge
8 Corpus Christi Project was abandoned which meant that an
9 expected, additional 2.4 billion pounds of U.S. PET supply
10 would not come on-stream. The combined effect equivalent to
11 a loss of supply a staggering half of U.S. consumption in
12 2017, created a panic in the market.

13 The supply shock already exacerbated tight U.S.
14 resin supply conditions. In September of 2017, even before
15 the M&G bankruptcy, one of the U.S. Petitioners here today
16 stated, and I quite, "tightness of product is ridiculous
17 now". Against this backdrop, three critical facts of record
18 demonstrate conclusively that Subject Imports have not
19 caused volume or pricing injury.

20 First is the unusual nature and degree of U.S.
21 Petitioners' reliance on both subject and non-subject PET
22 resin imports to supply an increasing portion of U.S.
23 customers' orders. Most extraordinary though is that
24 Petitioners unilaterally decided to meet U.S. customers'
25 needs from their affiliated import sources often without

1 even informing the customer.

2 Where Petitioners have chosen to import rather
3 than to supply from their U.S. Production there is no basis
4 for blaming Subject Imports for any volume related injury.

5 Second, and this is important in light of Ms.
6 Cannon's opening, the Prehearing Report shows a clear
7 preponderance of overselling by Subject Imports so no market
8 share was gained through underselling.

9 Third, the final record makes clear that the
10 cost-price squeeze in the first half of 2017, upon which the
11 preliminary determination is premised is not attributable to
12 imports. Rather, the price of a raw material input, IPA had
13 unexpectedly resurged and could not be immediately recouped
14 because it was not included in the raw material price
15 formula to which U.S. PET resin prices are indexed.

16 In closing, it is astonishing that Petitioners
17 benefiting from soaring prices and profits as a result of
18 continuing shortage seek to cut off their U.S. Customers
19 from imports when PET producers themselves are turning to
20 their foreign affiliates to meet U.S. Customer needs.

21 There is no factual or legal basis for the
22 Commission to deprive PET resin customers of access to
23 imports they so desperately need in this time of shortage.

24 Thank you.

25 MR. BISHOP: Thank you, Ms. Esserman. Would the

1 Panel in Support of the Imposition of Antidumping Duty
2 Orders please come forward and be seated. Mr. Chairman, all
3 witnesses on this Panel have been sworn in.

4 (Pause.)

5 MR. ROSENTHAL: Good morning, Mr. Chairman,
6 members of the Commission. Paul Rosenthal on behalf of the
7 Petitioners. We'd like to start our testimony this morning
8 with the testimony of Mr. Jon McNaull of DAK.

9 STATEMENT OF JON McNAULL

10 MR. McNAULL: Good morning Chairman Johanson,
11 Commissioners. My name is Jon McNaull, and I am the vice
12 president of PET Resin Business for DAK Americas. I've been
13 with DAK Americas for more than 17 years. I started in the
14 polyester staple fiber business, before moving to the resin
15 business in 2012.

16 I'm responsible for DAK Americas' PET resin
17 sales and financial performance of the business. I
18 testified before you in March of 2016 as part of the
19 Commission's final injury investigation of PET resin imports
20 for Canada, China, India and Oman. I described the tenuous
21 position that my company and our industry as a whole faced
22 during -- due to the surge in unfairly low-priced imports of
23 PET resin from those four countries.

24 As the Commission found in reaching an
25 affirmative decision as earlier cases, unfairly traded

1 imports used low prices to take sales and market share from
2 the domestic industry in this price-sensitive market,
3 causing significant injury to our industry. Once duties
4 were imposed on imports from those four countries, we
5 started to see some benefits. For a very brief period we
6 regained some sales and customers and were able to increase
7 our prices and profits.

8 But that upturn was short-lived. Hardly had the
9 ink dried on the published orders against the four countries
10 before these new unfair imports began surging into the
11 United States. Imports from Brazil, Indonesia, Korea,
12 Pakistan and Taiwan increased significantly in 2016 and '17,
13 to grab the sales and the market share that had been
14 captured by the other unfairly traded imports.

15 In fact, it was even worse than that. The new
16 import sources were even larger in volume than the prior
17 sources, so they took additional market share at our
18 expense, and they hit us at a time that we were already weak
19 and just starting to recover, leading to a quick reversal of
20 our upturn and a further loss of sales as well as erosion of
21 profits.

22 Thus, this new surge did more than arrest
23 improvement we were beginning to see from the previous
24 cases. The low-priced imports continued and added to the
25 injury that we had experienced. Remember, we have had

1 inadequate profits for several years, and our financial
2 condition deteriorated even further as the new wave of
3 imports hit.

4 So now as we appear before you, we are another
5 couple of years into a lengthy period of import caused
6 injury. Respondents had attempted to blame the surge of
7 subject imports on a supply shortage. Make no mistake,
8 there was no supply shortage in 2016 when the subject
9 imports surged into this country. That import surge in 2016
10 was not in response to U.S. supply need.

11 The subject imports simply saw an opportunity to
12 grab U.S. sales through the use of unfair trading practices,
13 when the other unfairly traded imports declined. One group
14 of unfair imports was just replaced by another, and when the
15 subject import surge continued and grew further to the first
16 half of 2017, there wasn't any supply shortage.

17 We had plenty of excess capacity to increase
18 sales in both 2016 and '17. Only in the fourth quarter of
19 2017, after M&G closed its Apple Grove facility was their
20 supply tightness. But the unfair import surge started well
21 before M&G's problems. Respondents are trying to blame some
22 non-existent supply need for their behavior in increasing
23 their sales and expanding the inroads they had made with
24 U.S. customers at our expense.

25 In fact, the first quarter of 2018, when there

1 continued to be some tightness of supply in the U.S. as
2 M&G's facility remained closed, subject imports declined.
3 In reaction to this trade case, they backed off precisely
4 when U.S. supply was tighter than it had been in earlier
5 years when they were surging.

6 Those earlier import surges and the later
7 declines had nothing to do with U.S. supply needs. I should
8 also point out that when the subject imports declined in the
9 first quarter of 2018, my company able to increase
10 production sales significantly. The imports subject to this
11 case have used exactly the same tactic to gain market share
12 as the other unfair imports used, low price.

13 That of course is not surprise. As the
14 Commission has recognized, PET resin products are
15 interchangeable with one another. The only way a company
16 can gain market share is by offering a lower price, and the
17 subject imports that surged into this market more recently
18 did so not because they had any special characteristics or
19 were a better quality of U.S. product.

20 In fact, I have not even heard any such claims
21 by purchasers or importers in this case. They simply are
22 offering low and unfair prices. I've heard Respondents
23 assert that your database shows over-selling by the subject
24 imports. I can tell you from my experience in the
25 marketplace every day that's not the case.

1 These imports have been undercutting our prices
2 consistently for the past several years, every time we
3 compete against them for sales. Selling at low prices is
4 how they grab and increase their U.S. market share. The
5 subject imports are certainly not gaining market share in
6 this price-sensitive market by over-selling us.

7 The low import prices from the five subject
8 countries have had the same effect as the imports targeted
9 by the previous case, lost sales from our company, constant
10 pressure by our customers to lower our price to compete with
11 the imports, and inadequate and declining profits. We
12 cannot continue to sell PET resin in the U.S. market under
13 these unfair conditions.

14 DAK is extremely grateful for the staff of the
15 Commission's work on the previous case, and of course for
16 the affirmative determination. We hope the previous case
17 would be enough to eliminate the injury caused by unfair
18 imports, but we need your help again. I'm certain the
19 evidence you collect will show that this recent surge of
20 unfairly-traded subject imports is injury the domestic
21 industry. We need relief. Thank you.

22 STATEMENT OF JOHN FREEMAN

23 MR. FREEMAN: Good morning. My name is John
24 Freeman, and I'm assistant Director of Sales for Nan Ya
25 Plastics Corporation of America. Nan Ya is a domestic

1 producer of PT resin and a petitioner in this case. We have
2 been manufacturing PET resin in Lake City, South Carolina
3 for 23 years. I have been with Nan Ya for 18 of those
4 years, and in PT sales for nearly 12 years.

5 I testified before the Commission in the last
6 PET resin investigation on imports from Canada and China,
7 India and Oman, and at the staff conference during the
8 preliminary phase of this case. At this point, I realized
9 the Commission has a good understanding of the PT resin
10 product and production process, which has not really changed
11 in any significant way over the past several years.

12 That said, I have brought some samples with me
13 today to jog the Commissioner's memories, and I'll provide a
14 very brief overview as these samples get passed around. PET
15 resin is a form of saturated polyester that creates a
16 general purpose plastic. PET resin is sold in the form of
17 small chips or spherical pellets, which will be coming
18 around to you now.

19 PET resin is transformed by end users into
20 bottles, containers and other packaging, virtually any shape
21 for a wide range of consumer and industrial products. I am
22 also passing around some samples of these downstream
23 products. PET resin is also used in industrial strapping
24 and in carpet fibers. PET resin production requires
25 sophisticated chemical processing and reactor equipment,

1 making this a very capital intensive business.

2 Nan Ya and other PET resin producers, including
3 those in the subject countries, must run a large-scale
4 continuous polymerization process to optimize efficiencies.
5 It is very expensive and disruptive to interrupt production
6 of PET resin, so maintaining a high level of capacity
7 utilization is critical.

8 I cannot overstate how vital it is to the
9 viability of our company to be able to run as much capacity
10 as possible. Even what may seem like a minor reduction in
11 output has tremendous effects on our efficiencies and costs.
12 The nature of PET resin production is such that we cannot
13 just cut a shift. If we do have enough orders coming in,
14 our next step typically is to idle an entire line.

15 We have in effect had to take such drastic
16 measures since 2015. To this point, U.S. market conditions
17 in the past couple of years have really challenged our
18 production operations and kept our production costs high,
19 because we have not been able to utilize our capacity at
20 optimal levels.

21 After years of losing sales to imports from
22 Canada, China, India and Oman, the unfair trade orders gave
23 us some relief, but only for a short time. The imports from
24 the five countries subject in this case came rushing into
25 the U.S. market at the first opportunity to replace the

1 prior imports. They were able to replace that volume and
2 then some.

3 There are several aspects of this most recent
4 wave of unfairly traded PET resin imports that mirrors Nan
5 Ya's experience with the previous surge of PET resin
6 imports. First, PET resin is highly price sensitive because
7 the PET resin we produce and the same product from other
8 source countries is largely interchangeable.

9 Nan Ya is constantly facing head to head
10 competition with imports of PET resin, and price is the
11 critical factor determining sales. Further, sales of PET
12 resin can be and have been lost over just pennies per pound.
13 Second, we have been hit by an onslaught of surging volumes
14 of low-priced subject imports over a period of years in each
15 of these cases.

16 Nan Ya has responded the best we could. Often,
17 we've taken a hit on our margin just to keep production up
18 in our facility and our workers employed. Other times, the
19 subject import price has just been too low to match, and
20 we've lost the sale altogether.

21 Third, we've experienced a near-immediate effect
22 on subject import behavior as a result of the prior trade
23 case on PET resin, as imports backed off and raised their
24 prices in response to the petition, in anticipation of the
25 provisional duties. Here, since the preliminary

1 determination in this case, I have seen that pattern play
2 out again.

3 By the end of 2017 and going into the first
4 quarter of 2018, PET resin import volumes from subject
5 countries declined dramatically. Nan Ya has not only
6 experienced less pressure to reduce our prices and cut our
7 margins to get sales, but we have regained business. In
8 several cases, customers that we once supplied but lost to
9 imports during the Period of Investigation have come back to
10 us for the same volume and in some cases higher volumes in
11 2018.

12 I have no doubt of the importance of this trade
13 case in bringing out this improvement. Without continued
14 relief, the subject imports will rush back into the United
15 States. After all, the subject foreign producers must
16 maintain high capacity utilization rates just like we do in
17 the United States.

18 Finally, I would like to make two more imports
19 in response to the arguments the Respondents have made in
20 their prehearing briefs, and will surely focus on today.
21 Respondents seem to spend a lot of time talking about
22 non-subject imports of PET resin, often lumping them
23 together with subject imports.

24 Of course, there are non-subject imports in the
25 U.S. markets. PET resin producers exist in many countries

1 around the world, and the United States is an attractive
2 market given its large and open nature. There is a reason,
3 however, why Nan Ya decided to support petitions on the five
4 countries that are the subject of this case.

5 These are the countries that are exporting
6 massive volumes of dumped product to the United States. The
7 import from these subject countries are the ones that have
8 flooded in and beaten us in sale after sale because of their
9 unfair pricing. They are the ones who have taken market
10 share at our expense.

11 Respondents' primary complaint is about the
12 supply in the U.S. market. It's not secret that M&G's
13 facility in Apple Grove, West Virginia closed in October of
14 last year. Nan Ya had excess capacity, which it used to
15 supply some of Apple Grove's customers when the facility was
16 closed. Far Eastern restarted the Apple Grove facility in
17 July, bringing more supply to the market, and by the way I
18 note that while Respondents complain about supply, some
19 customers are not even taking their contracted volumes at
20 present.

21 It is also illogical for Respondents to tie an
22 alleged supply shortage to the halt on construction of the
23 Corpus Christi facility. Nan Ya is not involved in any way
24 with that venture. I will say, however, that a facility
25 that has yet to be built cannot create a supply shortage,

1 because it never contributed to supply to begin with.

2 In fact, while Corpus Christi was under
3 construction over the past few years, Nan Ya had available
4 capacity and was trying to increase sales, but we were
5 stifled at every turn by unfairly traded imports. That is
6 why relief is needed.

7 On behalf of my company and our employees, I ask
8 the Commission to remedy the injury caused by subject
9 imports by reaching an affirmative decision in this case.
10 Thank you very much.

11 STATEMENT OF MUTHUKUMAR PARAMASIVAM

12 MR. PARAMASIVAM: Good morning Chairman Johanson
13 and members of the Commission. My name is --

14 MR. BURCH: Can you pull the microphone up?

15 MR. PARAMASIVAM: My name is Muthukumar
16 Paramasivam, and am Senior Vice President and head of Sales
17 and Marketing for Indorama Ventures USA. I have been with
18 Indorama Ventures here in the United States for 11 years.
19 In my current role, I am responsible for Indorama's North
20 American PET resin sales and marketing.

21 That includes our three U.S. PET resin
22 production facilities located in Ashboro, North Carolina,
23 Decatur, Alabama and Spartanburg, South Carolina. I
24 appreciate the opportunity to testify before you today about
25 the challenges we have faced in the U.S. market as a result

1 of unfair PET resin import competition.

2 The large and growing subject import volume
3 surged into the United States between 2015 and 2017. The
4 only reason they backed off in 2018 was because we filed
5 this trade case. These large volumes of unfairly traded
6 imports have taken sales from my company and other U.S.
7 producers, and caused us to struggle in years we should have
8 been doing well, given the strong demand in the United
9 States for PET resin.

10 Indorama Ventures is a sophisticated PET resin
11 producer that sells the subject product globally. I
12 personally have experience selling Indorama's PET products
13 around the world. My company is not unfamiliar with or
14 afraid import competition. The incredibly low-priced offers
15 from subject imports that we faced over the past several
16 years in customer negotiations were unfair and hit us hard.

17 As you have heard from the other domestic
18 producers this morning, PET resin is a very price sensitive
19 product. The quality and characteristics of the imported
20 PET resin are comparable to those of domestic PET resin,
21 making U.S. produced and imported PET resin highly
22 substitutable. As a result, price is paramount in our
23 customers' purchasing decisions.

24 Customers use the low import prices as leverage
25 in our sales negotiations. We often try to lower our price

1 to meet the import price in an effort to keep the sale, but
2 the result is the loss of much of our profit margin.
3 Alternatively, we sometimes refuse to lower our price, but
4 then we lose the sale entirely. Both options are difficult
5 and have negative effects on our bottom line.

6 I should emphasize that Indorama Ventures did
7 not lose business to the subject countries for reasons of
8 quality or an inability to supply our product. On the
9 contrary, we had excess capacity to increase our sales of
10 PET resin to supply more product to the U.S. customers. We
11 have strong customer relationships and our PET resin
12 products and salaries are excellent.

13 The reason we could not sell more product was
14 not a lack of supply, but the competition we faced from
15 unfair imports. Once imports from the subject countries
16 declined, we able to increase our sales. Although
17 Respondents complain about insufficient U.S. supply, some of
18 our U.S. customers are not even making use of their full
19 contracted volumes. I should note that despite having
20 excess capacity in the U.S., we have been forced to import
21 on occasion to compete with the prices being offered by
22 imports.

23 Our price sensitive customers tell us they don't
24 care where they product PET resin is produced; they just
25 want the lowest prices. Please also recognize that demand

1 in the U.S. market for PET resin has been very strong over
2 the past three years. Other than low-priced import
3 competition, there is no reason that we should have been
4 unable to increase sales.

5 Unfortunately, we were prevented from taking
6 advantage of the growth in demand in the United States due
7 to the surging volume of low-priced subject imports. If it
8 were not for the import relief as a result of the case
9 filing, we would not able to continue to remain in business
10 when forced to compete with companies that undercut our
11 prices.

12 As subject imports surged into this market over
13 the 2015 to 2017 period, we experienced declines in
14 production and capacity utilization. We saw profits erode
15 due to competition from the subject imports that saturated
16 the U.S. market and undersold us at every turn.

17 It was not until first quarter 2018 that we saw
18 a drop in subject imports. That subject import decline was
19 a direct result of the case filing. As a result of those
20 subject import declines, we regained several PET resin
21 customers. Our production and shipments were substantially
22 higher in the first quarter of 2018, and our profits
23 improved as well.

24 This recovery, however, will be short-lived if
25 the Commission does not make an affirmative final

1 determination. We were already battered by the earlier
2 round of imports that caused the domestic industry to file
3 the trade cases in 2015. The second onslaught of imports
4 from the countries targeted by this action has badly damaged
5 our industry.

6 We cannot remain competitive unless the subject
7 imports are forced to sell under fair trade conditions in
8 the U.S. market. Thank you for your attention.

9 STATEMENT OF JOHN CULLEN

10 MR. CULLEN: Good morning. My name is John
11 Cullen, and I am the Director of PET Resin Sales and
12 Marketing at DAK Americas. I have served in my current
13 position for 6 years, and have been with DAK Americas for 18
14 years.

15 I testified before the Commission in the previous
16 PET Resin Trade case on some of the competitive conditions
17 that we face in the domestic market. Those competitive
18 factors largely remain true today and provide an important
19 backdrop to assess the injury caused by imports.

20 A major competitive factor is the high degree of
21 substitutability of PET resin, regardless of source, and the
22 resulting price-based nature of sales.

23 Sources that offer PET resin at even slightly
24 lower prices than DAK's prices obtain sales at our expense,
25 or cause us to cut prices to keep sales, leading to reduced

1 profitability. It is this high degree of fungibility and
2 price sensitivity that has allowed unfairly priced imports
3 from the various target countries to rapidly penetrate our
4 market.

5 The price-based nature of competition explains
6 how imports from Brazil, Indonesia, Korea, Pakistan, and
7 Taiwan were able to so quickly replace the declining import
8 volumes from Canada, China, India, and Oman when we won the
9 earlier trade cases, as Mr. McNaul described.

10 A second condition of competition we are
11 increasingly facing is the shift of purchasers, particularly
12 large purchasers, towards directly importing PET resin,
13 rather than sourcing the product through a middleman
14 importer. The reason direct importation has become more
15 common is an economic one.

16 Purchasers gain a cost advantage by importing
17 directly. They avoid an importer's markup and get lower
18 prices through direct imports, as they told you in the last
19 PET Resin Trade case.

20 Unfortunately for DAK and other U.S. producers,
21 that means that we are competing against the extremely low
22 price offers by the foreign producers themselves to the U.S.
23 purchasers.

24 It is difficult enough for us to compete against
25 the prices offered by importers. It is almost impossible

1 for us to compete against the absurdly low prices offered by
2 the foreign producers who are dumping at significant levels.

3 In analyzing the competition we face from subject
4 imports, it is critical that the Commission consider prices
5 in the direct import sales channel through which significant
6 volumes of imports are sold at very low prices.

7 A third competitive condition relates to our
8 contracts and the manner in which we account for raw
9 material cost fluctuations. PTA and MEG are the major raw
10 material inputs to the production of PET resin. Our
11 contracts take into account fluctuations in these raw
12 material costs, with adjustments on a monthly basis.

13 Therefore, changes in the PTA or MEG costs won't
14 in themselves present problems. I've read in Respondent's
15 briefs that IPA costs were responsible for the decline in
16 the domestic industry's profits in 2017. This is not true.

17 Due to confidentiality concerns, I will address
18 this argument in our posthearing brief. What we cannot
19 control, however, are the low price offers by imports that
20 lead to reductions in our PET resin prices. Even where
21 contracts exist, customers have come back to us during the
22 life of the contract to seek price reductions when imports
23 offer lower prices.

24 The mechanisms to address raw material
25 fluctuations do not insulate us from this competitive import

1 pricing.

2 Finally, let me mention supply and demand.

3 Demand for PET resin is driven by demand for its end-use
4 products, which include plastic bottles, clam shells, and
5 strapping. Demand for PET resin over the last several years
6 has been strong and growing. That strong and healthy demand
7 should have allowed us to increase sales and to earn
8 reasonable profits.

9 Demand for PET resin is not responsible for the
10 declines in profitability that our industry is suffering.
11 Nor is the lack of U.S. supply. Unfortunately, despite
12 winning the earlier trade case is we continued to have
13 unused capacity throughout the period. Although our
14 capacity utilization rates may appear high in abstract, they
15 are not high for this industry.

16 As you heard Mr. Freeman testify, the production
17 of PET resin is capital intensive, and producers need to
18 maintain high operating rates. Operating PET resin
19 facilities at maximum capacity levels allows a producer to
20 spread costs over larger production runs and to improve
21 efficiency.

22 We would have liked to have run our capacity at
23 even higher levels, but could not do so until after the
24 subject imports backed off when this case was filed. The
25 need to operate at high utilization also provides incentives

1 for foreign producers to utilize their capacity as much as
2 possible. As you can see from the data, the subject
3 producers have done exactly that, leading to increased
4 exports of PET resin to the U.S. market at our expense.

5 The increasing subject imports have deprived us
6 of the benefit of strong demand for PET resin in our own
7 home market over the past few years. I have read in
8 Respondent's briefs that the supply shortage in the U.S.
9 market was the cause of the surge in imports over the Period
10 of Investigation.

11 In response to this argument, I would like to
12 first point out that during the Period of Investigation DAK
13 experienced no supply constraints whatsoever. We were able
14 to meet all of our contractual commitments and made
15 additional supply available to the market.

16 The shortages Respondents describe are limited to
17 a very recent development surrounding the temporary closure
18 of Apple Grove that occurred in the fourth quarter of 2017.
19 Notably, this facility was restarted in July of 2018. In
20 response to this recent development, DAK worked with its
21 customers and other U.S. purchasers to supply product in a
22 manner that managed this anomalous situation as reasonably
23 as possible for everyone.

24 Importantly, however, the Commission should
25 recognize that DAK operated with considerable unused

1 capacity throughout the Period of Investigation, and the
2 surge in subject imports from 2015 to 2017 had nothing to do
3 with the U.S. producers' supply constraints. That surge
4 resulted from the low prices offered by the dumped imports
5 that caused customers to buy imports instead of PET resin
6 produced by DAK and other U.S. manufacturers.

7 Thank you for your attention. That concludes my
8 statement.

9 STATEMENT OF PAUL C. ROSENTHAL

10 MR. ROSENTHAL: Paul Rosenthal on behalf of the
11 domestic industry.

12 This morning I will provide an overview of the
13 key data, and I plan to spend some time on a few themes that
14 deserve attention.

15 The first issue I would like to discuss is the
16 phenomenon of serial dumping--whoops, that's the wrong
17 slide. Let's start instead with this next slide where I
18 attempted to define "serial dumping."

19 It's a phenomenon which the Commission has seen
20 more of recently, including the recent wire rod cases.
21 Unlike cumulation, which involves the collective hammering
22 effect of imports in investigations that are commenced
23 simultaneously, the concept of serial dumping involves waves
24 of dumped or subsidized imports.

25 The first wave causes injury, and the second wave

1 hits an already weakened industry. Not only does the second
2 wave of imports extend the period of injury, it hits a
3 domestic industry that has been made more vulnerable to
4 further harm. Often the effect is swift and severe. You
5 have that phenomenon in this case.

6 The next slide, four, is confidential. But you
7 see that imports from China, Oman, Canada, and India surged
8 into the market from 2012 to 2014. During this time period,
9 imports from those countries skyrocketed from 504- to 725
10 million pounds. As you well know, the domestic industry
11 filed antidumping and countervailing duty petitions against
12 those countries in March of 2015.

13 In the spring of 2016, the Commission made
14 affirmative injury findings for all those countries. Among
15 the Commission's findings were that PET resin is highly
16 substitutable, with price being an important consideration
17 to purchasers. The subject import volumes were significant
18 and were achieved on the basis of significant price
19 underselling. And, among other injurious impacts, the
20 Commission found that the domestic industry had the ability
21 to increase its shipments commensurate with growing demand
22 but that imports prevented that from happening.

23 As a result of that trade action, beginning in
24 the second half of 2015 imports from those countries started
25 to decline, ultimately dropping by 330 million pounds by

1 2016. One might think that with a decline of that magnitude
2 that the domestic producers would be able to increase their
3 shipments significantly and enjoy reasonable profits.

4 Alas, the domestic industry did not get much
5 relief from those cases because that first import surge was
6 followed by a second wave of imports from Brazil, Indonesia,
7 Korea, Pakistan, and Taiwan.. Those are the subject imports
8 in our current case.

9 As you can see from the next slide, five, from
10 2014 to 2016 subject imports had jumped to almost 735
11 million pounds, higher than the injurious peak of imports
12 from the previous case.

13 By interim 2017, subject imports had exceeded the
14 previous interim year and were on track to surpass the 2016
15 levels.

16 The next slide, six, shows that the subject
17 import market share growth is significant. Now Respondents
18 contend that subject imports by Petitioners accounted for a
19 large portion of that, but that is not true. So it provided
20 this next slide, seven, which removes the subject imports by
21 domestic producers and show that the subject imports
22 accounted for most of the market share and most of the
23 growth over this period.

24 Confidential slide eight shows how the subject
25 imports replaced and exceeded the volumes of imports from

1 the previous case. Stated differently, the import volumes
2 in this case are higher than the injurious levels found by
3 the Commission just two years ago.

4 I must note in passing that the Respondents in
5 this case do not mention, much less discuss at length, that
6 recent case. Isn't that extraordinary? Ms. Esserman used
7 the word "astonishing" in her opening statement, having to
8 do with imports and the Petitioners' views about those, and
9 I'll talk more about those views later, but isn't it
10 astonishing that a case that was just concluded two years
11 ago on this very topic is not discussed at all? None of the
12 factors that you found there were discussed at all by the
13 Respondents in their briefs.

14 Here is another interesting fact. Respondents
15 want you to reaffirm your conclusion in the Preliminary
16 Determination in this case--well, at least they read that--
17 concerning price suppression. At the same time, they want
18 you to ignore your statement in the Preliminary decision as
19 follows, and I quote, "Even Respondents recognize that the
20 idling of MNG's Apple Grove facility occurred after the POI,
21 and consequently cannot explain the significant subject
22 import volume increase that occurred during the POI."
23 That's in your preliminary report at 26, footnote 156.

24 Respondents have attempted to manipulate or
25 mischaracterize much of the data in this case, but they

1 can't change one thing. And that is, the calendar. As
2 slide nine shows, this case was filed before, number one,
3 the MNG bankruptcy and the closure of the Apple Grove
4 facility. And the surge in imports took place before this
5 case was filed, and before the MNG closure at Apple Grove.
6 So please make note of that as they try to obscure the
7 arguments concerning supply tightness and shortages which
8 took place after the Apple Grove closure.

9 In fact, this case was contemplated well before
10 MNG's closure, and also filed before then, as mentioned.
11 The other data on record show--and this goes to slide ten--
12 other data on record show why this case was filed. And I
13 mentioned this extended period of injury, and the second
14 wave of imports extending the time of injury.

15 You can see that throughout the period 2014
16 through 2017 there were anemic profits. That slight uptick
17 in 2016, as a result of the previous case. Obviously it
18 didn't last long, and the profits didn't get very high
19 during this period.

20 I will say, also, we don't have this because it's
21 not part of the confidential record here, but the anemic
22 profits began before 2014. And it means that the extended
23 period of injury was really over close to six years.

24 The next summary slide, eleven, shows the other
25 key variables that were declining just as demand was

1 increasing. Domestic industry production was down.
2 Capacity utilization was down. Shipments down. Gross
3 profits down. Operating income down. And net income down.
4 This is all prior to the closure of MNG.

5 The industry suffered declines in everything, all
6 the factors that the Commission looks at, as you can see
7 from slide eleven. But, say Respondents, those bad results
8 are due to MNG's problems with the Corpus Christi Plant.
9 That's wrong.

10 As you can see from slide 12, if you take the MNG
11 data out of the analysis, the rest of the industry, which
12 accounts for the vast majority of the industry and, frankly,
13 this number doesn't need to be bracketed. Everyone knows
14 what the percentages are, basically testified to by the MNG
15 witness. But I'm going to maintain the confidentiality of
16 these profitability numbers. You can see the decline in
17 gross profits, the decline in operating profits were
18 tremendous in the first half of '16 to '17, and very, very
19 large from the entire period of 2015 to 2017.

20 Please note that these data do not include any of
21 the extraordinary expenses or net losses by any other
22 company due to MNG's bankruptcy, which is one of the issues
23 that the Respondents raise in their brief. This does not
24 include anything having to do with the MNG experience.

25 I'll come back to some of these points later, but

1 for now it's fair to summarize the data prior to the filing
2 of this case as showing rapid increases in volume which
3 caused severe declines in the domestic industry's trade and
4 financial conditions.

5 Next I'd like to talk a little bit about pricing,
6 underselling, and grits, but not necessarily in that order.
7 Take a look at slide 13, which begins to confirm all of what
8 you'd heard and concluded in previous investigations, which
9 have to do with price driving purchasing decisions.

10 You have recognized that before. The vast
11 majority of responding purchasers said they always sought
12 out the lowest price, with 14 stating they "always" or
13 "usually do," and 10 say they do at least sometimes.

14 Note how in slide 14, one of your witness's
15 companies today basically reports what everyone else
16 reports, which is they leverage volume to get the best
17 possible price. And they noted that subject imports are
18 lower than domestically produced PET resin, and that this
19 company usually purchases PET resin offered at the lowest
20 price. This is not a news flash. This is consistent with
21 everything the Commission has learned over the last several
22 years.

23 And, not surprising, shown in slide 15, is that
24 many purchasers admitted to buying lower priced subject
25 imports instead of domestic products.

1 Slide 16 just summarizes some of the statements
2 by the purchasers corroborating these data. And while not
3 every purchaser admitted to buying lower priced imports to
4 substitute for domestic product, a couple of them did say,
5 you know what? We didn't buy the product, but we did force
6 the U.S. producer to lower their price in order to maintain
7 their sale. Not, again, an unusual phenomenon in a very
8 price-competitive business where people are trying to
9 maintain their capacity utilization and increase or
10 maintain their profits that way.

11 So in the previous case, the Commission found
12 that, given price is such an important consideration in
13 purchasing decisions, given facts supporting a preponderance
14 of underselling, the Commission found that the cumulated
15 underselling of imports were significant.

16 The Respondents in this case, relying on an
17 incomplete staff report, assert that there is no evidence of
18 underselling here. No evidence. That's what they said, and
19 their brief is filled with very black-and-white declarative
20 statements like that. No evidence of significant
21 underselling.

22 Before we examine this claim, though, I would
23 like to recall a scene in the wonderful movie "My Cousin
24 Vinnie," in which Vinnie, my hero as a lawyer,
25 cross-examines a witness about whether he could have

1 witnessed a robbery at the Sack of Suds Store given the
2 time it took him to make his breakfast grits. And I have a
3 little excerpt here in slides 18 and 19. But in the scene,
4 where the witness claims it took him five minutes to cook
5 his grits, Vinnie says, "How could it take you five minutes
6 to cook your grits when it takes the entire grits-eating
7 world 20 minutes? Are we to believe that boiling water
8 soaks into the grit faster in your kitchen than any place on
9 the face of the earth? Well, perhaps the laws of physics
10 cease to exist on your stove."

11 Well, I have similar skepticism about the claims
12 by Respondents in this case concerning underselling. Are we
13 to believe that, while purchasers admit that price is the
14 primary reason for buying PET resin, and they acknowledge
15 that they bought imports because they're priced lower than
16 domestic products, purchase 500 million pounds of imports to
17 replace those that were found by the Commission to surge
18 into the market by means of underselling, and yet were able
19 to do that without substantial underselling themselves?

20 I don't know much about the grits-eating world,
21 but I know something, and so does this Commission know
22 something about the PET resin purchasing world. And there's
23 no way that purchasers are buying subject imports that
24 they're overselling. That defies credulity, if not the laws
25 of physics. But I know more about the marketing of PET

1 resin than I do about physics, obviously.

2 I acknowledge the staff report understates the
3 amount of underselling, but there is still plenty of
4 evidence--there's not "no evidence"--there's plenty of
5 evidence on the face of the staff report. And once the
6 staff report is corrected, there will be overwhelming
7 evidence of underselling.

8 Take a look at slide 20. This summarizes our
9 concerns about the staff report as presented. The amount of
10 underselling in the staff report is understated because,
11 one, the staff report did not contain information on
12 underselling provided by certain importers at the
13 preliminary stage of this investigation but not the final
14 stage.

15 So you've got this on the record. Importers gave
16 you data at the preliminary stage. It showed underselling,
17 but it's not in the staff report because they didn't report
18 in the final. You've got the record information. It should
19 be part of the final calculations here. Just because the
20 importers decide not to submit damaging information about
21 themselves concerning underselling in the final, doesn't
22 mean it should be ignored.

23 Second, there are additional pricing data that
24 have been put on the record since the staff report was
25 compiled, and we believe that will show more underselling

1 than the staff report was able to do because the staff
2 didn't have it.

3 MR. ROSENTHAL: -- is direct import data which
4 the Commission has acknowledged as increasing in importance
5 and in which Mr. Cohen just talked about were not included
6 in the underselling analysis.

7 Please take a look at page 33 of our prehearing
8 brief where you can see in that chart on that page how much
9 has changed in the world of marketing of PET resin. You can
10 see that there's a big shift to underselling in this period
11 by direct imports and if you exclude those from your
12 underselling analysis you're missing a very, very important
13 part of the picture, so those direct imports have to be
14 included in your underselling analysis.

15 The point on Slide 20 gives you a summary of
16 what the underselling analysis looks like if you actually
17 use the record you've got to correct the underselling
18 analysis and you'll see that there's a very substantial
19 percentage of instances and a majority of volume was
20 undersold by the subject importers.

21 By the way, we also think that certain importers
22 reported their data incorrectly, overstating their reported
23 pricing. But even you don't adjust for that problem, the
24 record shows a clear pattern of underselling and
25 overselling, which is what you would expect in a price

1 competitive market like this. Everyone trying to get a sale
2 to increase their capacity utilization and sometimes you win
3 and sometimes you lose. Sometimes you're over and sometimes
4 you're under, but this is exactly the sort of pattern you'd
5 expect to see.

6 The next few slides, 21 through 23, explain our
7 math. If you dwell on 23 for a minute, you'll see how we
8 get to this conclusion, bullet point at the bottom of page
9 20.

10 Okay, so let's turn to Slide 24 where we not
11 again the surge in subject imports. In this case, displaced
12 the subject imports from a previous case, but as Chart 24
13 shows, U.S. producers share was also displaced. And 25
14 shows this more clearly and raises the obvious question if
15 M&G shutdown did not occur until the fourth quarter of 2017
16 why were U.S. sales being displaced throughout the period of
17 investigation? Really, why were they being displaced? If
18 there's a shortage -- if demands were going up, why weren't
19 the U.S. sales going up too.

20 Slide 26 shows moreover that all the other key
21 trade and financial indicators were declining. Why were
22 those going down in time of strong demand and allegedly
23 tight market conditions? Industry's fortunes changed
24 dramatically after this case was filed, as Slide 27 shows.
25 Production, shipments, and capacity utilization all

1 increased substantially.

2 I urge you to take a look at the "C" Table and
3 the Capacity Utilization Table there. The first quarter of
4 2017 capacity utilization was at 69 percent. By the first
5 quarter of -- I'm sorry. The first quarter of '17 the
6 capacity utilization was 69 percent. First quarter of '18
7 capacity utilization was at 89 percent, a 20 percent
8 increase in capacity utilization. Not a surprise.

9 This is what you had to say about this kind of
10 phenomenon in the previous case, which was cited by the
11 Respondents. "Because the domestic industry, despite having
12 the ability to increase its production shipments was unable
13 to increase its shipments commensurate with growing demand,
14 had lost revenues it would've otherwise obtained."

15 Well, here because of this case the industry was
16 able to increase its capacity utilization, make substantial
17 increase in shipments, and basically obtain revenues it
18 would otherwise wouldn't have obtained had we not had this
19 case. So, Commissioners you were right, not to mentioned
20 presiant. You weren't here Commissioner Kearns, but we'll
21 attribute some presiance for other things.

22 Subject imports began to decline after this case
23 was filed and U.S. producers' production shipments and
24 capacity utilization improved just as you suggested it could
25 and so did profitability, as shown in Slide 28.

1 In my remaining time, I'd like to discuss some
2 of the Respondents' arguments, so I take a look at Chart 29,
3 which is simply a reproduction of the famous New Yorker
4 Magazine cover that depicts a Manhattan centric view of the
5 world. I'm sure you're all familiar with this. Frankly,
6 that view of the world is mirrored by the Respondents in
7 this case, who think that M&G you happen to be the center of
8 the universe and the rest of the domestic industry and the
9 subject imports were relatively insignificant in
10 comparison. And I just, for fun, on this next slide gave
11 you the alphabet and depicted in that slide the letters "M"
12 and "G" because those letters, "M" and "G" are to the
13 alphabet what M&G's production an capability was to the
14 domestic industry overall, very small, 10 percent or less of
15 the U.S. industry.

16 In Respondents' brief they quote the
17 restructuring officer of M&G company's bankruptcy claiming
18 that M&G's bankruptcy was caused by cost overruns at the
19 Corpus Christi facility. And by the way, we're not
20 overstating this. We want to be very clear. The Corpus
21 Christi overruns were a very significant reason for the M&G
22 bankruptcy. We do not dispute that at all, but take a look
23 at the next couple of slides, 32 and 33.

24 This is not My Cousin Vinny here. This is Fred
25 Fournier, who basically ran the M&G operations at Apple

1 Grove, who testified at the preliminary conference in the
2 case. It was actually before the bankruptcy and he's
3 talking about the effect of imports on M&G. He acknowledged
4 that the overruns were a real problem at Corpus Christi, but
5 he said, as you see here, that the low prices of subject
6 imports caused the revenues of M&G to decline and hurt them
7 and it made it harder for them to pay their suppliers. So,
8 while we're not saying M&G went in bankruptcy because of
9 subject imports. We are saying that subject imports
10 contributed to the injury that they suffered.

11 By the way, on Slide 34, despite all the
12 excitement and arm waving about the M&G closure, ultimately,
13 in the Respondents' brief they admit that the M&G plant at
14 Apple Grove was small. They have other things to say about
15 it, but they finally admit that that wasn't that big a
16 facility in the overall scheme of things.

17 Please take a look at Slide 35. The staff
18 remembers the sky is falling hyperbole used by Respondents
19 at the preliminary hearing about the dire effects of the
20 Apple Grove facility or the closure of the Apple Grove
21 facility. The next slide shows you what happened when the
22 Apple Grove facility closed in the fourth quarter of 2017.
23 Just as you predicted they could do, they did. The U.S.
24 producers increased their production. And in fact, by the
25 first quarter of 2018 the increased production by the

1 remaining three U.S. producers more than offset the decline
2 in shipments due to the closure of Apple Grove by a large
3 portion.

4 Not only were they able to do that, your other
5 data on the record will show you that the increased
6 production by the U.S. producers in that first quarter of
7 2018 also mostly offset the decline in subject imports in
8 the first quarter of 2018. So, that positive case effect
9 where the U.S. industry was able to supply a large portion
10 of the decline in subject imports should be noted.

11 Okay, I want to turn next to a slide or a chart
12 from the Respondents' brief. And I'm sorry to say this, but
13 this is one of the more misleading slides I've seen in many
14 a case. You heard Ms. Esserman suggest, and I think it's
15 reflected in this slide here, that as a result of this M&G
16 bankruptcy 3.6 billion pounds of capacity were taken out of
17 the market.

18 Well, the first thing that the Respondents'
19 slide and their brief are that Alta Mura closed. That was a
20 Mexican facility that was supplying imports into the U.S.,
21 non-subject imports into the U.S., and that cut off a large
22 amount of capacity available to the U.S. Well, this is what
23 happened. For six to seven weeks, Alta Mura closed, but
24 since then Alta Mura has been able to supply the U.S. market
25 under different ownership, so that was a very temporary

1 phenomenon.

2 We talked about Apple Grove. That closed in
3 October of 2017. What you don't hear much about from
4 Respondents is the reopening of Apple Grove. It's not
5 permanently closed. FENC bought it and now that capacity is
6 back on stream, supplying the purchasers sitting in this
7 room behind us. So, a large portion of the 3.6 billion not
8 a problem any more.

9 Then go to Corpus Christi, 2.4 billion pounds
10 that's a tremendous amount. It was never online. It was
11 never supplying the market, so this argument that somehow
12 there's a supply shortage and imports are needed to make up
13 for that because of Corpus Christi, as you heard from Mr.
14 Freeman, Corpus Christi never produced.

15 And finally, this M&G Palomaris Brazil argument
16 this obviously is not a domestic producer, number one.
17 Number two, to the extent that it supplied the U.S. market
18 because of its big capacity it was supplying much smaller
19 amounts of capacity and it's subject merchandise, but it's
20 producing and it never stopped producing. So, with all
21 respect, this 3.6 billion pound supply shortage that Ms.
22 Esserman talked about -- I think she called it -- and by the
23 way check how many times in the Respondents' brief you see
24 the words like "astonishing" or "staggering" is the word
25 that was used this morning. It was staggering; trying to

1 suggest that there's been this tremendous disruption with a
2 large volume involved; and more important, suggesting that
3 it was anything other than temporary. That is the
4 misleading part of their presentation.

5 Okay, a couple of additional points, first, the
6 Respondents have claimed that non-subject imports;
7 particularly, by U.S. producers have contributed to the
8 injury suffered by the domestic industry and therefore we're
9 causing this injury ourselves. As Slide 37 shows, number
10 one, non-subject imports declined over the period of
11 investigation. Number two, the import market share from
12 Mexico did not increase. The notion that the U.S. producers
13 were importing more from Mexico in order to make up for
14 their shortfalls is just not an accurate statement.

15 And last, I want to mention this IPA issue,
16 which we can't get into in great detail. Mr. Cohen briefly
17 mentioned, but they claim, the Respondents do, that the lack
18 of profitability in the first half of 2017 was due to
19 increases in raw material costs; specifically, a chemical
20 called IPA. You can see how much IPA accounts for in raw
21 material costs and we'll provide in the post-hearing brief
22 more information to demonstrate that the cost of IPA did not
23 have a material affect on the profits of the domestic
24 industry in the first half of 2017.

25 That concludes my presentation and the domestic

1 industry's affirmative testimony. We'll be happy to answer
2 question. In addition to witnesses you've heard from
3 already, you'll be able to ask questions as well of Mr.
4 Richard Lane of DAX, my colleague, Brooke Ringel, of Kelley
5 Drye, and Brad Hudgens and Gina Beck of Georgetown Economic
6 Services. Thank you.

7 CHAIRMAN JOHANSON: Thank you, Mr. Rosenthal and
8 to others on the panel as well. We will now being
9 Commissioner questions with Commissioner Broadbent.

10 COMMISSIONER BROADBENT: Thank you, Mr.
11 Chairman. I want to welcome the witnesses here today. I
12 was looking at the production locations of all your
13 facilities -- Charlotte, North Carolina, Gaskin, Lake City
14 -- it sort of reads like the Weather Channel. I think you
15 might be a little distracted. Are there facilities that are
16 really in jeopardy that we ought to think about at this
17 point?

18 MR. MCNAULL: Yeah, I mean we have facilities
19 for our company; particularly, Fayetteville, North Carolina
20 and Charleston, South Carolina where we expect a lot of very
21 heavy rain, so yeah, we're concerned about the facilities.
22 They'll be shuttered to protect property and people and then
23 we'll restart them after the storm passes. But yeah, we
24 should keep everybody in our thoughts and prayers. It's a
25 very serious storm and something we're concerned about.

1 COMMISSIONER BROADBENT: Thank you.

2 MR. FREEMAN: We're located in Lake City, South
3 Carolina, which is on those maps and those graphs. We're
4 currently monitoring the storm very, very closely and every
5 movement it makes to make a decision on what we'll do with
6 our operation. If we'll shutter, partial shutter, or you
7 know continue to run and usually when these storms hit, as
8 Mr. McNaul said, there is flooding and then there's
9 different things that you have to take into account, but as
10 far as you know what your plan of action is.

11 COMMISSIONER BROADBENT: I appreciate that.
12 Thank you.

13 MR. PARAMASIVAM: Two of our production
14 locations are in the Carolinas, but located further inland
15 away from the coast. We also have a facility a lot further
16 away from the coast in Alabama, which is actually the
17 largest of our facilities and we have been through similar
18 hurricane situations in the past, but we always try to
19 minimize any impact to our customers by doing all the
20 precautionary measures.

21 COMMISSIONER BROADBENT: Okay, thank you very
22 much. This would be for, I guess, industry witnesses. I
23 was really struck by the sort of non-uniformity and the
24 support for all of the petitions as a package in this
25 investigation. Each one of you has affiliations where I'm

1 guessing you're less enthusiastic about an Order going into
2 effect, although, I don't know. How did you all agree on
3 picking the subject countries?

4 MR. ROSENTHAL: If you don't mind, Commissioner,
5 I'll answer that without revealing any attorney/client
6 privileged information. I think it's fair to say that the
7 petitioners as a whole recognize that each one of these
8 subject countries was a problem. And to the extent that
9 there is a political problem with the domestic affiliate of
10 a foreign producer who might've been in one of these subject
11 countries, I think the decision was made, the better part of
12 valor, was to not publicly support for that particular
13 country or source.

14 But I think there is an understanding that
15 imports from all these sources were a problem and that no
16 company was gonna say we would stand in the way of
17 addressing that problem.

18 COMMISSIONER BROADBENT: Did any of the industry
19 witnesses want to comment?

20 MR. FREEMAN: John Freeman, Nan Ya Plastics. Nan
21 Ya has production in Taiwan, one of the subject countries.
22 We have not exported material from Taiwan to the U.S., so it
23 was our view that we saw lower priced selling imports coming
24 in from Taiwan. That helped make our decision about
25 petitioning in a case against Taiwan.

1 MR. ROSENTHAL: But I would say, I know you want
2 to hear from the industry, but in relation to an argument
3 made by the respondents, the industry as a whole said we
4 need to address these imports. They are a problem. And if
5 one of the other domestic producers happens to be importing,
6 so be it. They'll have to pay duties. Or have the same
7 consequences as any other importer.

8 So there wasn't this notion that we're gonna
9 favor one company or one import source over another. These
10 are all problems and the folks that we're not gonna say, oh,
11 we're gonna protect imports from a particular source over
12 another.

13 COMMISSIONER BROADBENT: How much would you say,
14 of all the imports that are coming in, how much are coming
15 in from nonaffiliated sources?

16 MR. ROSENTHAL: We can get you that in the
17 post-hearing brief. I think this is not the sort of number
18 -- people can do math, they can figure out which -- and we
19 actually have that and you have that. We'll summarize that
20 for you.

21 COMMISSIONER BROADBENT: And it's not something
22 you'd be comfortable talking about, probably?

23 MR. ROSENTHAL: Well, we actually do talk about
24 that in the slide that I showed you where I gave you the
25 subject market share with and without the domestic

1 producers' so-called captive imports. So we have that in
2 summary form, but not company-by-company.

3 COMMISSIONER BROADBENT: Okay. Mr. Freeman, just
4 following up. Nan Ya Plastics Corporation of America's
5 owned by a Taiwanese company called Nan Ya, based on your
6 website. To your knowledge, are there any imports from Nan
7 Ya foreign producer affiliate in Taiwan entering U.S.
8 market? Just a clear answer on that?

9 MR. FREEMAN: Not to my knowledge.

10 COMMISSIONER BROADBENT: Okay, I appreciate that.
11 Did you import subject or nonsubject merchandise from any
12 other supplier over the POI?

13 MR. FREEMAN: Nan Ya, we also have an affiliation
14 with a production site in Vietnam. I can put our specifics
15 of our affiliation with that site in the post-hearing brief.
16 They did export some material starting right at the end of
17 the Period of Investigation in March of 2018, at the end of
18 Quarter 1. But it was a very small amount, relatively
19 speaking.

20 COMMISSIONER BROADBENT: Okay. Mr. Paramasivam,
21 three firms in Indonesia provided information to the
22 Commission in response to foreign producer questionnaires,
23 all of which were called Indorama, I think, or a different
24 variation of Indorama.

25 MR. PARAMASIVAM: Yes.

1 COMMISSIONER BROADBENT: Are you affiliated with
2 all of the responding producers of PET Resin in Indonesia?

3 MR. PARAMASIVAM: Two of them are directly part
4 of Indorama Ventures. And one of the three is just owned by
5 the family, not directly owned by Indorama Ventures.

6 COMMISSIONER BROADBENT: Okay. For any of the
7 petitioners, does the producer from Taiwan, Far Eastern,
8 plan to supplant if exports to the United States from Taiwan
9 with production in the United States now that it owns the
10 M&G Apple Grove facility as of March, 2018?

11 MR. ROSENTHAL: I'll speak for this group. We
12 don't know their intentions. I can tell you that they have
13 been very active at the Commerce Department, trying to fight
14 for the lowest possible dumping margin, which suggests that
15 they would still like to export -- maybe that was before
16 they acquired Apple Grove, but I can't tell you what their
17 intentions are.

18 MS. RINGEL: Commissioner Broadbent, Brooke
19 Ringel, Kelley Drye. I will also note that Far Eastern, the
20 Department of Commerce reached a preliminary affirmative
21 critical circumstances determination for Far Eastern in
22 particular, meaning that they found that Far Eastern exports
23 to the United States were surging after the petition was
24 filed, compared to the pre-petition period.

25 So on that note, at least, shortly afterwards,

1 for several months after the filing of the petition, Far
2 Eastern continued to export significant volumes of subject
3 merchandise to the United States.

4 COMMISSIONER BROADBENT: Okay.

5 MR. ROSENTHAL: Commissioner Broadbent, may I add
6 one more thing if you don't mind. The respondents have
7 suggested that -- and I think it was, Ms. Esserman's word
8 was "astonishing" that the domestic industry seeks to cut
9 off imports to their customers when they're needed.

10 That's not true. There've always been imports to
11 this market. The domestic industry doesn't oppose imports.
12 What the domestic industry has filed cases against, as
13 you've heard from Mr. Freeman, is unfairly traded imports.
14 So there are lots of nonsubject import sources that have
15 come into this market and the domestic industry does not
16 begrudge fairly traded imports by others not controlled or
17 their own.

18 COMMISSIONER BROADBENT: Mr. DAK, who makes the
19 decision about whether to supply a purchaser with imports or
20 with domestic product in your company?

21 MR. MCNAULL: I'm sorry? Could you repeat the
22 question?

23 COMMISSIONER BROADBENT: Sure. Who makes the
24 decision in your company on whether to supply a purchaser
25 with imports or domestic product?

1 MR. MCNAULL: I'm accountable for PET sales, so
2 ultimately, I would endorse that decision if we chose to do
3 that.

4 COMMISSIONER BROADBENT: I mean, have you done it
5 during the case and so forth?

6 MR. MCNAULL: We've not done that during the
7 case, no.

8 COMMISSIONER BROADBENT: Okay. And then, Mr.
9 Freeman, same question.

10 MR. FREEMAN: John Freeman, Nan Ya Plastics. As
11 far as anything that we would bring into this country,
12 really, we have a discussion with our related party, and
13 then that related party, that production site works with the
14 customer. So we do not, we have not had any customers that
15 were getting material from Lake City that we, you know, then
16 unexpectedly switched to material out of Vietnam. But, no,
17 we don't control that material coming out of Vietnam.

18 COMMISSIONER BROADBENT: Okay, my time's up.
19 Thank you.

20 CHAIRMAN JOHANSON: Commission Schmidtlein.

21 COMMISSIONER SCHMIDTLEIN: Thank you. Does Nan
22 Ya have an affiliate in Taiwan as well? Did you say that or
23 --

24 MR. FREEMAN: Nan Ya Plastics is, as our owner,
25 is out of Taiwan, yes.

1 COMMISSIONER SCHMIDTLEIN: Okay. So are they
2 making the decisions about what's supplied or, or are you
3 coordinating with them in terms of product coming from
4 Taiwan?

5 MR. FREEMAN: They are ultimately the owner, so
6 they can make the decision on what comes out of Taiwan. But
7 we do have input and we do coordinate with them. And we
8 have not brought product in from Taiwan to the U.S. during
9 the Period of Investigation.

10 COMMISSIONER SCHMIDTLEIN: Okay. And DAK now has
11 purchasers related to an affiliate in Brazil, correct?

12 MR. MCNAULL: Yeah, this is Jon McNaull. That's
13 correct. We've acquired assets in Brazil during the subject
14 investigation, we have, correct.

15 COMMISSIONER SCHMIDTLEIN: And can you talk about
16 how the decisions are made with regard to supplying product
17 either from Brazil or from your U.S. --

18 MR. MCNAULL: We can do that. I think we should
19 do that post-hearing brief.

20 COMMISSIONER SCHMIDTLEIN: Okay.

21 MR. MCNAULL: But at this point, that facility is
22 not being used to bring any material to the United States
23 since our acquisition of the facility.

24 COMMISSIONER SCHMIDTLEIN: Okay, all right. I
25 think this might be a question for Mr. Rosenthal. In the

1 staff report -- I'm trying to be careful here, figuring out
2 what I can say publicly and what I can't -- but it indicates
3 the imports that U.S. producer affiliates had brought in
4 from subject countries, right?

5 This is around Staff Report Page 322, 320, so
6 forth. And so, when you look at those numbers, again,
7 related to subject sources--I would say not insubstantial
8 amount in certain years--and so my question is, do you
9 believe that those subject imports from subject countries
10 had an impact on the prices in the U.S. market?

11 MR. ROSENTHAL: Our answer is generally, too, but
12 number one, I would characterize those imports as relatively
13 small compared to the shipments in the U.S. and in some
14 instances --

15 COMMISSIONER SCHMIDTLEIN: But you do believe --
16 you're arguing that subject imports have had a price effect
17 in the U.S.?

18 MR. ROSENTHAL: Yes.

19 COMMISSIONER SCHMIDTLEIN: So my question is, for
20 the subject imports that were brought in by affiliates of
21 U.S. producers, did those subject imports have a price
22 effect in the U.S.? Did they contribute to the price effect
23 in the U.S.?

24 MR. ROSENTHAL: Understood. And I wanna cite
25 Mr.--I'll call him Muthu, it's easier--from Indorama, who

1 said they actually did do some importing, precisely because
2 they were needing to import lower-priced product to compete
3 with other lower-priced imports. It's a phenomenon the
4 Commission has seen in other times. And in order to be able
5 to satisfy their customers' pricing needs and overall
6 blended pricing, if you will, they did import low-priced
7 imports to compete against low-priced imports. I'm having a
8 hard time -- I just wanna explain the facts.

9 And so to reach the conclusion -- the imports of
10 those low-priced to compete against low-priced and have an
11 effect? They allowed them to get the sales versus other
12 imports. Arguably they might have had an effect on other
13 domestic industries, but this is -- the Commission has well
14 recognized this as a legitimate reason for domestic
15 producers to import.

16 There have been some other instances that we will
17 talk about in our post-hearing brief where I think some
18 higher-priced imports have been brought in for a particular
19 reason and I can't tell you the quantities of those versus
20 the imports that compete against other imports, but we will
21 --

22 COMMISSIONER SCHMIDTLEIN: But wouldn't those --
23 I mean wouldn't those, under y'all's theory of the case,
24 wouldn't those contribute to the price effects you're
25 arguing in the case, especially given, when you look at the

1 quantity of subject that was brought in by affiliates
2 related to U.S. producers?

3 MR. ROSENTHAL: Well, as we said, I think the
4 quantity is relatively small compared to the rest of the
5 imports brought in by unaffiliated producers. And so the
6 answer would be that the nonaffiliated subject imports have
7 grown more responsible for the vast majority of the growth
8 in imports and --

9 COMMISSIONER SCHMIDTLEIN: You're talking about
10 subject --

11 MR. ROSENTHAL: And the growth of subject
12 imports, yes. And so I'm not gonna say that there was no
13 low-priced imports brought in by the petitioners for the
14 reasons I've stated.

15 COMMISSIONER SCHMIDTLEIN: Well, maybe you all
16 can address sit in the post-hearing --

17 MR. ROSENTHAL: We will, but I will say that
18 there are other cases going back, at least in my experience,
19 to iron construction castings in 1986 where the Commission
20 has said, "We understand why U.S. industries import in order
21 to be able to compete against other imports and supply their
22 customers."

23 That's what happened, to a large extent, here.
24 So the respondents want to characterize this as a
25 self-inflicted wound. In this instance, for companies who

1 want to produce here as much as they can, this is a
2 defensive move to not lose more sales.

3 COMMISSIONER SCHMIDTLEIN: Well, I'm not passing
4 judgment on the business decision to do that. What I'm
5 asking is, how do we say that there are price effects? And
6 again, because we can't talk about the numbers here, so
7 that's why I would invite you to do it in the post-hearing.

8 But how do you say there are price effects from
9 this quantity of subject imports when a certain proportion
10 of that is being brought in by affiliates of the U.S. firms
11 for whatever valid business reasons there are, and I guess
12 we can get into whether or not those were controlled or what
13 not, and whether or not that makes a difference in --

14 MR. ROSENTHAL: Right.

15 COMMISSIONER SCHMIDTLEIN: -- the Commission's
16 analysis, but that's the question I'm asking.

17 MR. ROSENTHAL: Understood.

18 COMMISSIONER SCHMIDTLEIN: It's not really why
19 you did it or should you have done it. It's when you're
20 doing the price effect analysis, how will we, how should we
21 consider this and analyze it?

22 MR. ROSENTHAL: Understood.

23 MS. CANNON: Maybe if I could supplement,
24 Commissioner Schmidtlein. This is Kathy Cannon. The recent
25 case in boltless shelving, you saw a similar phenomenon. A

1 case where the company, Edsal, was bringing in imports
2 because its customers were demanding low prices that it
3 couldn't meet from its U.S. supply.

4 I think the same situation occurred in the
5 polyethylene retail carrier bags case. These were defensive
6 moves by U.S. producers. That's the same story that we've
7 been hearing is that sometimes the respondents say, "Oh,
8 well, the U.S. producers are substituting imports." So
9 often that is really in response to a customer demand for
10 low price. And that's when the imports come in.

11 We're not suggesting that should be ignored.
12 Sometimes that is part of the pricing equation. That is
13 very consistent with our contention that the reason that
14 you're seeing these increases in subject imports, regardless
15 of whose doing it, is often because of the demand for low
16 prices. And that's a position that the Commission has
17 recognized needs to be taken defensively by U.S. producers,
18 so that's a strategy.

19 But in terms of the effect, which is what I think
20 you're asking about, it's the same. If you have to contend
21 with low-price imports. And we're not suggesting that,
22 simply because the U.S. company happens to be the one
23 bringing them in for that reason, that you should ignore
24 those price effects as well.

25 But I don't think it's the same as claimed, a

1 self-inflicted wound. It's a defensive effort in an attempt
2 to stem the bleeding, where all these producers are here
3 really trying to get relief so that they can stop and go
4 back to increasing their U.S. production if they don't have
5 to contend with the low import prices they're seeing across
6 the market from the subject imports.

7 MR. ROSENTHAL: And I would say, it may be a
8 particular company says, "I've got to do this defensively to
9 make sure I don't lose more sales." That doesn't mean it
10 doesn't injure the other folks who are producing and would
11 like to get those sales, too.

12 So we're not suggesting you ignore them. We just
13 want to put them in context for the reasons why they're
14 being done, and by the same token, the reason why the
15 industry overall is petitioning is that they want relief
16 from these unfairly traded imports. And if somebody's
17 importing and having to pay more in duties because of that
18 and it makes them have to raise their prices to their
19 customers because they can't get access, so be it.

20 We want relief from the injury that's being
21 caused and if any particular import courts another company's
22 domestic industry, then that's injury.

23 COMMISSIONER SCHMIDTLEIN: Okay. I mean I
24 remember the boltless steel shelving case and the direct
25 imports in that case and the nature of how sales were made,

1 the big contracts and so forth. So there were some
2 distinctions there that, if you rely on that, I would just
3 talk about that impacts how we consider this case.

4 MS. CANNON: Right. And I wasn't really -- the
5 direct import sales were an important aspect of that case,
6 too, but I was setting it more for the proposition that one
7 of the things that the company admitted it was forced to do,
8 was simply to import low prices to try to meet customer
9 needs, because they couldn't hit those prices at their own
10 U.S. production without losing a lot of money.

11 COMMISSIONER SCHMIDTLEIN: Yeah, okay, all right,
12 thank you.

13 CHAIRMAN JOHANSON: Commissioner Kearns.

14 COMMISSIONER KEARNS: Yes. I just wanted to
15 thank all the witnesses again for being here and wishing you
16 all the best with the storm. I guess I wanted to start with
17 grits. I'm surprised Mr. Gambini didn't mention cheesy
18 grits as another possibility of grits, and I wonder if Mr.
19 Rosenthal is -- do you favor cheesy grits? I'm guessing you
20 do.

21 MR. ROSENTHAL: Well, you just -- I just did a
22 blog involving a bicycle ride and I was talking -- in
23 Switzerland, talking a great deal about cheese and my riding
24 companion being a real -- driving me crazy, just wanting
25 to do nothing but cheese. I explained that I have nothing

1 against cheese and I was a charter member of Jews for
2 Cheeses. And so to the extent that answered the cheesy
3 grits question, I favor cheesy grits.

4 COMMISSIONER KEARNS: Thank you. Okay, I didn't
5 mean to set up you up for that one.

6 MR. ROSENTHAL: You asked for it.

7 COMMISSIONER KEARNS: I wanted to talk about
8 pricing, because I think this is a real question mark for me
9 at least, and you all have done quite a bit to try to
10 explain things in the brief. But I wanted to pursue that a
11 little bit further. You note that our pricing data may be
12 flawed because subject import prices may include inland
13 transportation costs. I think you referred to one
14 importer's data to make that point.

15 Do you have reason to believe the problem is
16 more widespread and what makes you believe that and what you
17 would do about it? Is there any way we should -- should we
18 try to adjust this or do we just sort of having to accept it
19 at this point as, you know, a flaw in the data?

20 MR. ROSENTHAL: There is more than one. I think
21 there are a couple that we are concerned with, one recent
22 submission that was made after the deadline for the staff
23 report. We would love to have a verification of that, make
24 sure that their data is being reported properly. At the
25 very least, go back and confirm that it's being reported

1 properly, and get some documentary support for that
2 confirmation if there is one.

3 MR. HUDGENS: This is Brad Hudgens. I might
4 also add that this particular importer that we reference in
5 the questionnaire also indicated in their questionnaire that
6 they buy imports at a lower price than the domestic product.
7 So the information that they have other parts -- cited in
8 other parts of the questionnaire show that they were buying
9 lower priced product, even though their own pricing data
10 don't show that.

11 The other thing is that the majority of the
12 subject imports are sold on a delivered basis. So in order
13 to report the data without the inland transportation costs,
14 they have to take another step. It won't tie directly to an
15 invoice. So what importers do is to tie that back to the
16 invoices, without making that an additional step. So we've
17 notified the Commission staff that that could be a problem
18 with that questionnaire.

19 There's also another questionnaire that was
20 submitted after the staff report was finished, and we
21 believe that that -- there could be an issue with that
22 questionnaire as well. Those two importers account for a
23 huge increase of the subject imports for multiple subject
24 countries, so their pricing data are very relevant to this
25 analysis.

1 COMMISSIONER KEARNS: Okay, thank you. Also on
2 pricing, on page 31 of your brief in footnote 17, you assert
3 that there may be a product mix issue with the pricing data,
4 and that you are attempting to determine whether in fact
5 that is the case. Can you tell us if you continue to
6 believe this is a significant problem, and if it is, will
7 you address it in your post-hearing brief?

8 MR. HUDGENS: We'll address that in our
9 post-hearing brief.

10 MR. ROSENTHAL: Commissioner Kearns, Brooke
11 Ringel, Kelley Drye. I believe it's been addressed by a
12 recent revision as well.

13 COMMISSIONER KEARNS: Okay, okay, thank you. I
14 wanted to talk a little bit about direct imports. You, I
15 think you all point out that the direct importers didn't
16 indicate that they have any costs associated with -- they
17 didn't report any costs associated with direct importation.

18 But where do we go from there? I mean it seems
19 wrong to just assume that they incurred no costs connected
20 to importation. What should we do with this? Can we just,
21 really just take this data and treat it as if it's any other
22 pricing data, or can we adjust it in some way or what do you
23 suggest we do?

24 MS. CANNON: This is Kathy Cannon. We have
25 been focusing on this direct import issue for quite a while,

1 Commissioner Kearns. I think it's one of the most important
2 issues before the Commission generally at this time, because
3 so many companies have switched to direct importing.

4 I believe that for a while there was a
5 misperception that if you engaged in direct importing, there
6 were all of these other costs associated with it. But when
7 we did a deeper dive into your questionnaire, we determined
8 that a lot of those costs are already being accounted for in
9 the way that you request the pricing data.

10 So in other way, they say take this out, take
11 this out, take this out. So everything that they're
12 reporting should be accounting for on an apples to apples
13 basis the way we report our prices as the domestic industry,
14 and the way that the direct import prices are being
15 reported.

16 Then what the Commission has done to basically
17 check for that is add the supplemental question saying are
18 you incurring additional costs. In some cases companies
19 have come in and said yes, and you've said what are those
20 costs, and they try to spell them out. Sometimes,
21 frequently in fact, when they say there's an additional
22 cost, we've looked back and found out it was actually a
23 cost that was already subsumed in the database.

24 But here, you have everybody saying, no, no.
25 There's no other additional cost. In that situation, I

1 think you have a very clear record that says what they're
2 bringing in and what they're selling is directly comparable
3 without any cost adjustment needed. Frankly, that's one of
4 the real frustrations we've had in recent cases because we
5 see so many big companies coming in, eliminating the middle
6 man, which was just a markup, it was a cost markup to them,
7 taking this on, not incurring additional costs.

8 In fact often, because they're large companies,
9 they just have huge distribution networks. They don't
10 really incur the costs that you were worrying about
11 accounting for, and they're competing head to head at much
12 lower prices. That's often where the lowest prices are,
13 these direct import sales.

14 So we think it's really critical, not just in
15 this case but more broadly for the Commission to focus on
16 these direct import sales and to see the level of price
17 competition there. Even in this case, one of the countries
18 in particular, that's where you see the price competition.
19 If you ignore it, you're not even picking up the major
20 competition going on for one of these countries.

21 So I think it's a critical aspect of the
22 Commission's pricing analysis that needs to be examined, and
23 I think here in specific reaction to your question, where
24 you have no other costs reported for as being supplemental,
25 you should feel completely supported by the record in

1 comparing those prices head to head.

2 COMMISSIONER KEARNS: Okay, and just to follow
3 up on that. So you're saying with respect to direct
4 importers, we have them take out certain costs like freight.
5 You think we do the same thing with respect to indirect
6 importers, that all those exact same costs are taken out?

7 MS. CANNON: Yes, yes, exactly. Those are --
8 that's the way the landed duty paid prices that are
9 accounted for. I can give you more detail on that specific
10 issue as to how the questionnaire requests the data. But
11 the way that it's being requested now is accounting for
12 making sure it's an apples to apples basis.

13 COMMISSIONER KEARNS: Okay, thank you. Also,
14 you all suggest we take a look at AUVs as an indicator of
15 underselling, given the problems we have with the pricing
16 data. I had two questions about that. I guess the first
17 is, and this is really for your post-hearing brief I think,
18 I was looking at the AUVs divided by each individual U.S.
19 producer.

20 So I'm curious if you -- how would you describe
21 those differences? Are they significant or insignificant
22 relative to imports? And how do you explain differences in
23 AUVs between U.S. producers, given that as you say, PET
24 resin seems to be a fairly homogenous product?

25 MS. CANNON: That's probably something we need

1 to do post-hearing, so we'll be happy to address that.

2 COMMISSIONER KEARNS: Okay, thank you. When
3 also I noticed with the AUVs, that it looks like the
4 underselling margins may be declining over the POI. Why
5 would that be?

6 MR. ROSENTHAL: Let me just speculate on that.
7 But what we've seen is domestic producers lowering their
8 prices very frequently to get sales, and the referring to
9 the other question, are AUVs a good measure of underselling.
10 The answer is they're imperfect just the way the -- the way
11 you collect underselling information on the four products is
12 imperfect.

13 And so we offer that as corroboration, but there
14 are clearly issues there, and the other thing I would say
15 and I want to reiterate, and that is it is very common when
16 you've got companies competing every day for folks to say
17 I'm going to lower my price on this day because I need to
18 get that sale to keep my company or my factory or my line
19 running.

20 Then the next day the other company says -- so I
21 drop my price for that. The next day the competitor decides
22 that they need to sell more and they drop their price. So
23 you, as a domestic producer, have oversold them on that
24 particular one. So a mixed pattern is what you'd expect to
25 see in this kind of industry, and that's in fact what you do

1 see.

2 AUVs don't necessarily tell you that, because
3 they're not transactional. They're very, very broad. But
4 declining prices or declining margins there very -- not
5 surprising in a very competitive market.

6 COMMISSIONER KEARNS: Thank you.

7 MS. BECK: Commissioner Kearns, can I just add
8 one point? Gina Beck, Georgetown Economic Services. If you
9 look at the underselling margins using the AUVs from 2015 to
10 '16, for most of the subject countries you'll either see
11 similar or increasing rates, and that's when most of the
12 surge of the imports took place.

13 CHAIRMAN JOHANSON: All right. I would like to
14 begin by thanking all of you for appearing here today, and
15 my first question will deal with supply, possible supply
16 constraints. The staff report at page 212 notes that most
17 purchasers reported supply constraints, and this is a quote
18 from that page.

19 Ten purchasers reported that M&G's -- that the
20 M&G bankruptcy caused supply disruptions. Eleven purchasers
21 reported that suppliers are unable to provide the PET resin
22 they wish to purchase, are refusing to bid on business, or
23 are providing short shipments. Other purchasers reported a
24 number of issues caused by "supply constraints." How do you
25 all respond?

1 MR. CULLEN: John Cullen, DAK Americas. Mr.
2 Chairman, I'd like to say on behalf of DAK Americas that in
3 response to the crisis that was created by M&G bankruptcy,
4 Dak Americas immediately increased the production and using
5 our excess capacity that we had, we also shipped significant
6 amounts of material out of inventories that we had,
7 basically destocking our system in order to help the
8 customers in the U.S. who were impacted by the M&G
9 situation.

10 But see, the other thing I'd like to add is that
11 customers during the period from late 2017 through 2018, in
12 which customers came to us asking us to supply them, we had
13 the material to supply these customers. We offered that
14 material to those customers, and the customers rejected
15 buying the material, and they rejected it because the price
16 was too high in their opinion.

17 So we had readily available material to sell to
18 people. They rejected those offers and in some cases they
19 literally shut their operations down, rather than pay us a
20 fair market price for that material during the period in
21 which they claim there were these outstanding, amazing
22 shortages. That happened, and it happened all throughout
23 2018.

24 MR. FREEMAN: John Freeman, Nan Ya Plastics. We
25 also ramped up our production during this period. We made

1 new agreements with customers to supply additional material
2 to replace M&G. We also had similar experiences where we
3 quoted new pieces of business and the customer, for reasons
4 of price, decided not to move forward. That was basically
5 our experience in Q4.

6 MR. PARAMASIVAM: This is Muthukumar from
7 Indorama Ventures. We did the same. Whatever excess
8 capacity we had immediately, even by including additional
9 costs, we tried to get additional raw material and ramped up
10 the production in the quickest possible manner, and
11 delivered products to customers.

12 I should also emphasize that we met all of our
13 contractual obligations during that time. We never short
14 supplied any customer or put them on allocation because of
15 the closure of M&G's facility.

16 MR. ROSENTHAL: Commissioner Johanson, one thing
17 that you have to keep in mind, and I think it's kind of
18 disturbing the way the Respondents have reacted here. They
19 are taking the M&G bankruptcy, which really affected only
20 one U.S. facility, the Apple Grove facility, which they now
21 admit is a relatively small facility, and which is now open
22 and shipping, and they are trying to suggest to you that
23 this is a permanent condition.

24 They don't acknowledge that yes, we're saying
25 there was a tight supply situation. We acknowledge it.

1 We're not lying about it. There was a tight supply
2 situation in the third quarter, sorry fourth quarter of 2017
3 going into the first quarter of 2018. But tight supply
4 didn't mean that the supply wasn't available, and that whole
5 situation has been resolved. Apple Grove is up and
6 running, and even before that the domestic industry ramped
7 and supplied more than Apple Grove was producing. The
8 industry ramped up and supplied most of what the subject
9 imports' decline was.

10 So what bothers me is this notion that the
11 so-called catastrophe that took place in the fourth quarter
12 of 2017, the questionnaire responses conflate a period of a
13 few months in this Period of Investigation and make you, or
14 they want you to believe that that has permeated the market
15 from before the fourth quarter and through today.

16 As you heard from the testimony earlier, as of
17 today, these companies are sitting here with excess capacity
18 and companies' purchasers in this room not actually taking
19 all their contractual obligations. So to suggest that
20 there's still a supply shortage now or a problem now, I
21 think, is misleading.

22 MR. McNAULL: This is John McNaull with DAK
23 Americas. You know, one thing I wanted to add, when Apple
24 Grove failed, quite a number of customers where we had
25 long-term contractual commitments, you know, we had

1 engagement with them. We solicited their needs and in quite
2 a few cases we expanded the amount of volume available and
3 the commitments that we made there to try to address the
4 problem.

5 So I think it's another example of, you know,
6 getting our rates up and working our way through the
7 problems with our customers, and I think we did a pretty
8 good job of doing that.

9 CHAIRMAN JOHANSON: Thank you all for your
10 responses. Respondent I-Resin has argued that the U.S.
11 market faced a supply shortfall that predated M&G's
12 bankruptcy. According to I-Resin, "the severe shortage
13 emerged in a situation in which the U.S. market already
14 faced short supply. U.S. PET producers had foregone
15 investments and upgrades to their U.S. production in
16 anticipation that certain existing older lines would be shut
17 down after the large, more efficient Corpus Christi plant
18 was to come online.

19 "As a result, over the Period of Investigation
20 domestic PET plants ran at lower efficiencies and U.S. PET
21 producers reported routine breakdowns." That is found at
22 I-Resin's brief at page ten. How do you all respond and was
23 there a domestic supply issue predating M&G's bankruptcy and
24 throughout the Period of Investigation?

25 MR. McNAULL: So Jon McNaull, DAK Americas. A

1 lot of accusations there. Let me try to walk through them.

2 I guess first I would say we have a very rigorous
3 capital program for maintaining our facilities well, for
4 ensuring the up-time and quality is good. So that's an
5 ongoing process that we invest millions of dollars in per
6 year. So the accusation that we neglected assets and as a
7 result they underperformed, I don't think there's any basis
8 for that within our company.

9 Secondly, we still have a number of projects for
10 debottlenecking and improving the output of the existing
11 facilities that we have. That's ongoing, as well. So I
12 think the way our industry was characterized is not very
13 fair, and I don't agree, and I think we have tangible
14 programs that in fact make us perform better year over year.

15 MR. CULLEN: John Cullen. I guess from DAK the
16 data that Paul presented earlier suggests that at the
17 beginning of the Period of Investigation the U.S. industry
18 was operating around 70 percent capacity utilization. So
19 why were our customers not buying material from us when we
20 had that much excess capacity?

21 And the answer is, because they were buying
22 unfairly traded imports at lower prices. It's as simple as
23 that.

24 MR. McNAULL: Jon McNaull, DAK Americas. And
25 I'll point out, the Apple Grove capacity represents, in

1 terms of the industry, might represent 6 or 7 percent
2 capacity utilization. So if the industry can ramp itself up
3 6, 7 percent, then the Apple Grove supply is more than
4 offset. And as an industry, you know, as an industry we're
5 able to take the utilization rate of a facility that's
6 running. It can be taken up to its maximum rate in very
7 short order without any capital or anything, simply a
8 planning exercise and an execution one, which during this
9 period we demonstrated we moved to the maximum rates very,
10 very quickly.

11 MR. ROSENTHAL: Commissioner Johanson, you saw,
12 as I mentioned in the C Table, first quarter of '17 capacity
13 utilization was at 69 percent for the domestic industry.
14 Plenty of available capacity. And you saw how they ramped
15 up in the first quarter, sorry, first quarter of '17 at 69
16 percent, and at '18 they're at 89 percent to deal with the
17 MNG closure.

18 There is more room to increase capacity. That's
19 number one.

20 Number two, there's one underlying theme I want
21 to get to right here. There's this notion that in order to
22 get relief the domestic industry has to supply 100 percent
23 of purchasers. You know the Commission has never found
24 that.

25 There are many cases where the domestic industry

1 can't supply the entire market. Actually, this industry
2 comes closer than many, steel and many others, to be able to
3 supply the entire market. But we're not required to, number
4 one.

5 And number two, that was clearly not the reason
6 for the increase in imports going into the fourth quarter of
7 2017.

8 The last thing I would say is that there are
9 other nonsubject import sources that the purchasers have
10 relied upon traditionally, and rely upon today. And as I
11 said, those sources have not only been available to relieve
12 any perceived shortage, they're being taken advantage of
13 right now by the purchasers that are sitting in the back of
14 the room.

15 CHAIRMAN JOHANSON: Thank you for your
16 responses.

17 Commissioner Williamson?

18 COMMISSIONER WILLIAMSON: Thank you, Mr.
19 Chairman. I, too, want to express my appreciation to the
20 witnesses for coming today.

21 Just to continue on this theme about unused
22 capacity, so why would U.S. producers of PET resin import if
23 they have unused capacity? Do purchasers contact the U.S.
24 producers to request imports? Are these imports are the
25 same price as the domestic product you sell?

1 I know there are business decisions for doing it,
2 but I'm just--

3 MR. ROSENTHAL: I will summarize real quickly,
4 and Mister--you heard that some don't. But those who do, in
5 some instances do it because they need to be able to compete
6 with other low-priced imports. And that's a large part of
7 the reason. It doesn't account for every pound imported,
8 but that's a large part of the reason.

9 And it may be that purchasers don't specify
10 imports. Some of them say we don't know where they come
11 from, and they were unsolicited by us. We didn't ask for
12 import pricing. But in order to meet the prices that the
13 purchasers want, and you've heard them say we want the
14 lowest possible prices, in order to get those sales in the
15 first place in some instances the domestic industry says we
16 can't meet those prices in order to get a price that the
17 customer wants. We'll have to blend in some low-priced
18 imports with our domestic production.

19 COMMISSIONER WILLIAMSON: I understand those are
20 all possibilities, I'd just like to hear--

21 MR. ROSENTHAL: You heard Mr. Muthmukumar say
22 exactly that. I just was trying to summarize.

23 COMMISSIONER WILLIAMSON: Okay, thank you.

24 MR. CULLEN: Well, John Cullen from DAK
25 Americas. I hate to contradict my boss at the other end of

1 the table, but we did import some material starting in late
2 2017-2018, and this was material that we imported from a
3 non-related company, and that was the MNG operation in
4 Mexico, and this was the famous Altimera Plant which
5 caused, you know, according to the Respondents, a crisis.
6 That plant restarted, as we heard, in six to seven weeks
7 from the time it shut down. And as part of the re-start, we
8 worked with them to help the re-start, as well as to get
9 access to the production when that company was, and remains,
10 in financial distress.

11 We did so at the request of our customers who
12 literally came to our offices and said: What are you doing
13 to get that plant running in Mexico? And in response to
14 that, we did what we could to get that plant running. We
15 imported material from Mexico into the U.S. during this
16 critical period to help our customers. And what we also did
17 was sell that material in the U.S. at fair market prices.
18 We did not bring it in; we did not dump it; we did not
19 undersell; we weren't trying to displace low-priced imports.
20 We sold it for a fair price between the end of 2017 through
21 today to our customers.

22 So that's what DAK Americas did to help the
23 customers, and also to not undersell the market.

24 MR. McNAULL: If John contradicted me, it
25 wouldn't be the first time, but ultimately we try to get the

1 record straight. Yeah, what John said is absolutely true.
2 And my previous testimony was of "subject imports." I don't
3 know what I testified, but I meant to testify that we are
4 not importing subject imports. And that was in the context
5 of our Brazilian affiliation.

6 COMMISSIONER WILLIAMSON: Okay. I forgot if it
7 was Mr. Freeman or Mr. Cullen who said earlier that people
8 were not using their full contract volume in 2018. I think
9 you kind of addressed that later by saying that you were at
10 capacity in '18, but people were still not buying. But do
11 you want to amplify that?

12 MR. FREEMAN: John Freeman, Nan Ya Plastics.
13 That was in my testimony. And what we've seen, as 2018 has
14 gone is, as I talked about in Q-4 2017, we did make new
15 agreements for, in some cases for the calendar year 2018
16 with some new and already existing customers. And just as
17 the year has progressed, we've seen--looked at the rate of
18 what we expected to supply versus our contractual
19 agreements, and we've seen reductions in what we've supplied
20 against those contracts as the year has progressed.

21 And we can provide some more specifics in a
22 posthearing brief, if you would like.

23 COMMISSIONER WILLIAMSON: That would be helpful.
24 And you're saying the reason why you've seen them buying
25 less than what was expected was because they're buying

1 cheaper imports?

2 MR. FREEMAN: That's--yeah, I mean we've seen
3 them, you know, changing up their--who they buy from as the
4 year has progressed, in my view, based on pricing.

5 COMMISSIONER WILLIAMSON: Okay.

6 MR. McNAULL: So Jon McNaull, DAK Americas. You
7 know one thing that we talked about is, you know, the
8 utilization rate in the first quarter of '18 being 89
9 percent.

10 I would make a point there, at 89 percent there
11 is more production that can be generated by domestic
12 producers. That's one point. And the second point is this
13 discussion around Apple Grove. My understanding is Apple
14 Grove has now been recommissioned and is running. And that
15 in turn should make even more material available from the
16 domestic industry for transactions where a fair price can
17 be had and the industry can take the business.

18 COMMISSIONER WILLIAMSON: Yes?

19 MR. MUTHUKUMAR: This is Muthukumar from
20 Indorama Ventures. Going back to this offtake of the
21 contracted volumes, it basically shows that there is no
22 shortage of supply when they are not taking whatever is
23 available for them under the contract. It ultimately shows
24 that there is no shortage of supply. That's the point we
25 wanted to make.

1 COMMISSIONER WILLIAMSON: Okay. Just for my
2 information, what's the kind of purchasing or ordering
3 pattern in the industry? How far ahead of when a plant
4 might need material do they order it? Is there anything
5 that's consistent?

6 MR. CULLEN: So John Cullen from DAK Americas.
7 So our finest customers will give us a very accurate
8 forecast several months in advance, which is very helpful
9 for us for planning. But we also have customers who place
10 orders with a lead time of less than a week.

11 And I think the industry as a whole has developed
12 a supply system that can respond to that, but it can range
13 from as short as a week where they need material delivered,
14 and in the best case scenario we have visibility several
15 months out.

16 COMMISSIONER WILLIAMSON: Okay.

17 MR. MUTHUKUMAR: This is Muthukumar, Indorama
18 Ventures. Your question is very relevant and valid--

19 MR. BISHOP: Could you pull your microphone a
20 little bit closer, please? Thank you.

21 MR. MUTHUKUMAR: So it's a very relevant
22 question because some time the Respondents, when they say on
23 a shortage of supply they're not able to get product. At
24 times it is because the planning from their side has not
25 been done properly, and the request comes at very short

1 notice. So it becomes very difficult for the producer to
2 supply at that short notice.

3 So that does not mean there is no supply in the
4 market. It is just a planning issue.

5 COMMISSIONER WILLIAMSON: And they don't say I'm
6 sorry that this is at the last minute? They just ask?

7 MR. MUTHUKUMAR: Yes, like you said, the finest
8 customers. They try to do better, but we still have those
9 issues in the industry, yes.

10 COMMISSIONER WILLIAMSON: Okay, thank you. You
11 may have to answer this posthearing. Which producers also
12 internally produce the primary raw materials PTA and MEG?
13 And do vertically integrated producers have a competitive
14 advantage? I don't know if you can address that now, or if
15 you want to do it posthearing.

16 MR. McNAULL: This is Jon McNaull, DAK Americas.
17 I run our PET business, and I acquire PTA from an affiliate,
18 or from others, basically at a market price. So my role in
19 the company is to take raw materials that are acquired at a
20 fair market price, and in turn convert that into PET and
21 sell and operate PET in a profitable way.

22 So I would say there's no competitive advantage
23 that's extended to me in my role as running our PET business
24 and generating the PET results around profitability.

25 MR. MUTHUKUMAR: This is Muthukumar, Indorama

1 Ventures. We are integrated--Indorama Ventures is
2 integrated in PTA and MEG. But the businesses are all run
3 as separate vehicles. And we have freedom to buy either
4 from our own upstream sites, or from other merchant sellers.

5 Similarly, they have the freedom to sell to us,
6 or to sell to others. So whatever is competitively priced
7 raw material, we will buy that.

8 MR. FREEMAN: John Freeman, Nan Ya Plastics. We
9 are a merchant buyer of PTA from BP-Amoco. However, we do
10 have MEG production. It is a different division. It is
11 sold to us at a market price.

12 COMMISSIONER WILLIAMSON: Okay, thank you for
13 those answers. This will probably have to be done
14 posthearing, but Respondents discuss some difference in
15 domestic industry performance. And the Commission looks at
16 the domestic industry as a whole, but what would explain
17 these differences? And I expect you'll have to do this
18 posthearing.

19 MR. ROSENTHAL: We'll have to do that
20 posthearing.

21 COMMISSIONER WILLIAMSON: Good. Okay, thank you
22 for those answers.

23 CHAIRMAN JOHANSON: Commissioner Broadbent?

24 COMMISSIONER BROADBENT: Thank you.

25 Ms. Cannon, can the Commission reach an

1 affirmative determination if it does not make a formal legal
2 finding that there was significant underselling? I don't
3 want you to remake your underselling case, but just
4 hypothetically.

5 MS. CANNON: Yes. There's a court case that I
6 can cite to you for that proposition, exactly.

7 COMMISSIONER BROADBENT: Which one? Do you
8 know?

9 MS. CANNON: I'm really good at remembering things
10 exist, and I'm really bad at getting all the details off the
11 top of my head, but I know there's one that the court said,
12 you know, there's three statutory factors, and volume
13 impacts can be sufficient. You don't even have to have
14 underselling to be able to demonstrate a case when that was
15 a contested topic, that specific issue. So I can get you
16 that cite posthearing.

17 COMMISSIONER BROADBENT: Okay. Mr. Hudgens,
18 even with your revised underselling data, there are
19 considerably fewer instances of underselling than
20 overselling. Why is it that the pricing data, other than
21 the purchaser cost data, shows substantially more
22 overselling than underselling?

23 MR. HUDGENS: A couple of factors. One, it goes
24 back to--well, first of all I would say that if you refer to
25 slide 15 of Mr. Rosenthal's testimony, it shows that the

1 vast majority of the purchases and the growth was made by
2 purchasers who said that they purchased product from subject
3 imports at a lower price than the domestic product.

4 So that's significant evidence of underselling.
5 We believe that there are some issues with the price data,
6 as I had described earlier. There are--we believe that
7 certain major importers reported freight in their price
8 data, which would have a significant impact. Those
9 particular importers reported how much inland costs are.

10 And there, if you were to take that percentage
11 out of the pricing data, you would then get underselling by
12 those importers in the majority of their instances.

13 So we believe that there are instances there
14 where the underselling has been understated because of
15 freight, as in some of the importer responses. We also
16 believe that the direct imports are a major evidence of
17 underselling. There's a significant growth in the volume of
18 direct imports over the period. And you'll also see that
19 there's overwhelming, not just majority, but overwhelming
20 underselling in those instances.

21 COMMISSIONER BROADBENT: Okay--

22 MR. ROSENTHAL: Sorry, if I might, I just want
23 to challenge your--the premise of your question. Because
24 once you get done actually looking at the record information
25 on direct imports as Mr. Hudgens said, and you include the

1 underselling information from the Preliminary Determination
2 that was not calculated, and you look at slide 23, you will
3 see that on a volume basis there's a majority of
4 underselling.

5 And the instances might be slightly less than a
6 majority, but a majority of the volume was undersold. So--

7 COMMISSIONER BROADBENT: Okay, but we're looking
8 for instances--trying to come up with data of instances of
9 overselling versus underselling, and you guys have revised
10 data.

11 MR. ROSENTHAL: And you guys have it in your
12 record. It just wasn't included in the calculation in the
13 staff report. If you include the underselling information
14 that was provided in the prelim, and is properly included in
15 your calculations, you get a certain number. You see that
16 in slide 21. That should be in the final determination.

17 Just because the foreign producers chose not to
18 supply that information, or the importers, in the final,
19 doesn't mean that it's not on your record. It just wasn't
20 in the staff report's calculation.

21 If you also include direct imports, which wasn't
22 in the calculation, you get to this number which shows a
23 majority of volume of underselling.

24 So I appreciate the hypothetical of if you find
25 that there's no significant evidence of underselling, can

1 you make an affirmative, but in fact you do have significant
2 evidence of significant underselling. And you don't have to
3 go outside the record. You've got it in the record.

4 COMMISSIONER BROADBENT: Okay, thanks.

5 MS. CANNON: Commissioner Broadbent, I'm sorry.
6 I actually did find the court case. It's cited in our
7 brief. I just forgot that. It's on page 34 cited in
8 footnote 18 of our prehearing brief. It's Companion
9 Polyesta versus United States, also citing the CMEX case for
10 the proposition that the Commission is not required to find
11 significant price underselling to reach an affirmative
12 decision.

13 COMMISSIONER BROADBENT: Got it. Thanks, Ms.
14 Cannon.

15 Mr. McNaull, how do you respond to the argument
16 that pet resin price contracts did not cover an unexpected
17 change in the cost of the raw material IPA in 2017 which
18 caused that cost price squeeze in that year -- that's a
19 Respondent argument?

20 MR. MCNAULL: So to some extent we were
21 successful in the recouping in price, an offset to the IPA
22 costs. And for that which was left we would submit that it
23 was not very material in terms of impacting our financial
24 performance and we'd like to provide that data to you in a
25 post-hearing brief.

1 COMMISSIONER BROADBENT: Okay, does any other
2 Petitioner have a comment on that?

3 MR. PARAMASIVAM: This is Muthukumar Paramasivam
4 from Indorama Ventures. Many of our customers understood
5 the situation and we were able to pass on part or all of the
6 cost increase to them, so it did not have any negative
7 impact on our profitability.

8 MR. CULLEN: Well, on second thought, John Cullen
9 from DAK. I will mention, because the Respondents made such
10 a point of this that at the time that the IPA surcharge
11 became significant, DAK Americas did announce a price
12 increase in order to recover that IPA surcharge.

13 And we did have significant support from our
14 customers to help us through a time in which we were facing
15 an unprecedented change in the cost -- minor as it was, and
16 we had many of our formula priced customers which they
17 claimed would not have to pay that surcharge under the
18 normal contract price mechanism.

19 We had many of our contract customers modify the
20 agreements and actually include an IPA surcharge in their
21 pricing formula for 2017 and 2018 and as Jon McNaull
22 mentioned, that alone with the market price increase for the
23 IPA surcharge, allowed us to really you know, have a minimal
24 impact on our profitability as a result.

25 So we did have customers who really took the

1 approach of trying to help us and I just want to acknowledge
2 that that was part of the solution.

3 COMMISSIONER BROADBENT: Okay.

4 MR. ROSENTHAL: So the bottom line is the, you
5 know, the decline in profitability that you saw was not
6 caused by the IPA increased cost.

7 COMMISSIONER BROADBENT: Okay, either Mr.
8 Rosenthal or Miss Cannon, Petitioners counsel, okay -- in a
9 prior investigation on pet resin, the Commission did not
10 find underselling to be mixed and did not rely on the fact
11 that it was a commodity product to establish that
12 underselling was significant.

13 Underselling was clearly significant in that
14 case. Why is it that we don't see the same pattern in this
15 case?

16 MR. ROSENTHAL: I don't want to sound like a
17 broken record but I think that the -- I can't help myself.
18 If you go back and you look at the data on the record
19 properly, you will see a significant amount of significant
20 underselling. All you have to do is include the direct
21 import underselling which is in your record and the
22 importers underselling that was included in the prelim but
23 was not included in the final and the characterization of
24 underselling totally changes.

25 I mean I would argue, even before that, that the

1 amount that you have and I can't use that number publicly,
2 is a significant number, but you certainly get to a much
3 higher number if you just make those adjustments.

4 And you don't have to do anything more than that
5 to find significant underselling. The last thing I would
6 say is and we are very suspect of some of the pricing data
7 that's submitted. Commissioner Kearns asked about that and
8 we explained why we were suspect and you don't have to make
9 that adjustment to reach the conclusion that there's
10 significant underselling but if you do I think you'll find
11 even a greater amount of underselling.

12 MS. CANNON: Commissioner Broadbent, I would also
13 add looking at the other case I think one of the most
14 noteworthy things isn't necessarily the percentage of
15 underselling but the fact that the conditions of competition
16 that the Commission found identical here and that hasn't
17 been contested by Respondents, that it's a highly
18 interchangeable product driven by price.

19 So that's kind of my comment in my opening
20 statement -- what's wrong with this picture? You get these
21 same market share search here that you saw in the last case
22 -- that was driven by underselling in a price sensitive
23 market. This is also driven by underselling in a price
24 sensitive market. Why the data aren't showing that -- we've
25 given you a lot of examples, but that conclusion is really

1 inevitable.

2 And they have come up with nothing that I have
3 heard to suggest why they would gain market share by
4 overselling. They aren't claiming it's a better quality
5 product, they make something we don't, you know, many things
6 we've heard in other cases.

7 You aren't hearing anything like that so really,
8 the only explanation is underselling that's just not fully
9 accounted for yet in the database.

10 MR. ROSENTHAL: Yeah that was my weak attempt at
11 humor and reference to My Cousin Vinny, there's nothing else
12 that explains this -- unfairly traded, undersold imports
13 were replaced by unfairly traded imports. In this instance
14 they're not undersold -- can't be. It is not commercially
15 feasible to have the exchange from the previous case to
16 these cases and so it must suggest that you have got to look
17 again at the data.

18 COMMISSIONER BROADBENT: Okay, thank you.

19 CHAIRMAN JOHANSON: Commissioner Schmidtlein?

20 COMMISSIONER SCHMIDTLEIN: Okay, wouldn't the
21 Respondents argue that it was the supply shortages that was
22 causing that?

23 MR. ROSENTHAL: Well you know they've been very
24 interesting about that. They would argue it but they've
25 been inconsistent. On one hand they say the world came to

1 an end when M&G bankruptcy took place and you found, as you
2 should, at the prelim that the increase in imports surged
3 and it took place all before -- not only the Petition but
4 the M&G bankruptcy and that's why they spend most of their
5 time talking about that.

6 They did have some reference also in their brief
7 saying there was a tightness in supply before that period
8 but if you -- that information or that argument is
9 contradicted by the evidence on their record where you see
10 for example, all the unused capacity that the domestic
11 industry had during this period of investigation, including
12 the first quarter of 2017 where the industry was operating
13 at 69% capacity utilization.

14 So for them to argue that there's a tightness in
15 supply then, they can argue it and they have but it's not
16 supported by the evidence.

17 MS. CANNON: Kathy Cannon, I mean I think that
18 the disconnect here is they've said over and over that the
19 supply shortage started September/October, 2017 and yet the
20 market share surge -- the biggest market share surge was
21 2015 to 2016. They haven't talked about really any
22 particular supply shortage then so how did they explain
23 that? That's you know, 2014, 2015, 2016 and first half
24 2017 too, you have that data from your preliminary staff
25 report -- huge increases in market share that were occurring

1 long before M&G closed.

2 COMMISSIONER SCHMIDTLEIN: Okay, on the question
3 about the price effects, are you all arguing that the
4 Commission wouldn't have to find price effects to go
5 affirmative or is it just that we wouldn't have to find
6 significant underselling? And if it's --

7 MR. ROSENTHAL: You do have to find price effects
8 I think. It's volume, price and impacts, the question was
9 really in response to can we make an affirmative
10 determination if you don't find significant underselling and
11 that was the response by Miss Cannon but we do believe that
12 you have to find a price effect and you have to find, which
13 you have here. You certainly see the decline in
14 profitability, price effect, lost revenue, lost sales,
15 decline in profitability having nothing whatsoever to do
16 with IPA -- that's their only reason for their argument is
17 the IPA.

18 COMMISSIONER SCHMIDTLEIN: For the price
19 suppression argument -- the price suppression finding.

20 MR. ROSENTHAL: Yes.

21 COMMISSIONER SCHMIDTLEIN: So was there price
22 suppression other than during that period of that -- I think
23 it was two quarters of the cost price squeeze that we relied
24 on in the prelim?

25 MR. ROSENTHAL: Oh absolutely, if you take a look

1 at the -- let me give you the chart here, you can see the
2 declining profitability from 2015 through '17. It wasn't
3 just the first half of 2017 compared to first half of 2016.
4 The slide on -- slide 12, 2015 and 2017 shows a decline in
5 gross profits and a decline in operating profits that
6 obviously proceeded the IPA issue, number one.

7 And number two, it shows -- and since they're
8 able to pass through the raw material costs, the only thing
9 that was changing was the transaction cost and so-called
10 conversion cost which was due to underselling and low-priced
11 imports. Miss Beck pointed out before referencing the AUV
12 numbers and comparison, that the biggest underselling based
13 on AUV's took place in 2015 and 2016 which was when the
14 import surged.

15 COMMISSIONER SCHMIDTLEIN: But if we're talking
16 about price suppression, didn't prices start to go up in the
17 third and fourth quarter of 2017? So if the Commission
18 found prices were suppressed, in other words, price
19 increases that would have otherwise occurred were not able
20 to be implemented due to subject imports, but then prices
21 did rise, starting in the second and third or in the third
22 and fourth quarter when you look at most of the pricing
23 products at least. Is there a price suppression going on
24 then?

25 MR. ROSENTHAL: No.

1 COMMISSIONER SCHMIDTLEIN: No?

2 MR. ROSENTHAL: Because we filed the case.

3 COMMISSIONER SCHMIDTLEIN: So the price
4 suppression is really the first two quarters of 2017 that we
5 found in the prelim.

6 MR. ROSENTHAL: And prior to that.

7 COMMISSIONER SCHMIDTLEIN: Prior to that.

8 MR. ROSENTHAL: 2015 through the first half of
9 the first three quarters of 2017. In the third quarter of
10 2017 we filed the petition. In the fourth quarter of 2017,
11 a few weeks later, M&G went -- Apple Grove facility closed.
12 Prices as we testified to, spiked at that point for two
13 reasons.

14 We had the temporary problem with the dislocation
15 caused by the M&G bankruptcy and you had the Petition. So
16 what we're telling you is yeah, after you -- starting the
17 fourth quarter of 2017 prices improved quite a bit. We're
18 not arguing price suppression.

19 We're telling you that the industry did much,
20 much better after this case was filed. Imports went down
21 substantially and we're basically saying and Miss Cannon has
22 said you have to look at that as a post-Petition price
23 effect and you can't assume that there wasn't injury prior
24 to that point.

25 So yeah, we totally concede prices went up, the

1 industry is doing much better now. We're not arguing for
2 price suppression at this point because subject imports have
3 gone down quite a bit.

4 COMMISSIONER SCHMIDTLEIN: So were there price --
5 oh go ahead.

6 MR. HUDGENS: So the Commission's staff report on
7 6/4 shows that prices in the form of unit net sales declined
8 more than unit cost or unit raw materials over the three
9 year period '15 through '17, so that's evidence of price
10 depression.

11 And as Mr. Rosenthal indicated that the prices
12 did increase more than cost in interim 2018, but that's due
13 to trade effects -- the effects of the trade case.

14 COMMISSOINER SCHMIDTLEIN: So were there -- were
15 there price increases that the U.S. companies tried to
16 implement in 2016 or 2015 that you weren't able to do?

17 MR. HUDGENS: Sure.

18 COMMISSIONER SCHMIDTLEIN: Do you have evidence
19 of that that you can put on the record where you announced
20 price increases that had to be rolled back or you have
21 contemporaneous, you know, communications with purchasers
22 where you're trying to raise prices and in effect I think
23 one -- the gentleman from Indorama, I think in your
24 testimony you mentioned that subject imports were being
25 used to leverage down prices.

1 MR. HUDGENS: Yes.

2 COMMISSIONER SCHMIDTLEIN: In your experience do
3 you all have -- I don't know how you do your sales
4 negotiations, if it's all oral or if you do it by email or
5 you know, exchange of proposed, you know, contracts or what
6 have you, but can you put evidence on the record showing
7 that subject imports that you tried to raise prices earlier
8 and that you weren't because you were being constrained by
9 purchaser's citing subject imports or that they were using
10 those subject import prices to leverage down the prices you
11 were offering?

12 MR. ROSENTHAL: We've submitted that already but
13 we'll -- in our post-hearing brief we'll just highlight some
14 of that information.

15 COMMISSIONER SCHMIDTLEIN: Okay, thanks. I think
16 that would be helpful. Alright, I don't think I have any
17 further questions at this point so Commissioner Kearns?

18 COMMISSIONER KEARNS: Alright, I apologize if you
19 already addressed this. I think I may have caught the tail
20 end of this. But I had a question about operating income
21 for the various producers and this will probably be
22 something you can't speak to before your post-hearing brief.

23 But can you help me understand those numbers? I
24 was looking at page 66 of the staff report -- help us
25 understand the differences between the different producers

1 and any differences in the trends with respect to operating
2 income -- that would be very helpful.

3 MR. ROSENTHAL: Commissioner Kearns we would
4 prefer to do that in the post-hearing brief.

5 COMMISSIONER KEARNS: Sure.

6 MR. ROSENTHAL: For reasons you understand.

7 COMMISSIONER KEARNS: Yep, thank you. I want to
8 go back to the question that Commissioner Broadbent had
9 about whether it's possible to reach an affirmative if there
10 is no underselling.

11 And Miss Cannon you said you know, if there are
12 volume effects. I mean it would seem to me in most cases
13 you'll have volume effects because there's underselling but
14 that there could be other reasons for a loss of market share
15 that aren't due to the underselling, is that your thinking?

16 MS. CANNON: I mean it's virtually always the
17 case that we're seeing these market share gains because of
18 underselling and that is true in this case as well. It's
19 not showing up in your staff report for the various reasons
20 we've identified, but yes, virtually always that's the case.

21 Commissioner Broadbent asked me the legal
22 question of has it been recognized, you know, by court
23 basically that you have to make that finding and the answer
24 is no and frankly I want to go back and look at that case to
25 get a little bit more of a flavor for what the court was

1 looking at there, but very much so they were focused on the
2 fact that you know, there's three parts to the statute --
3 volume, price and impact and you know, you can find volume
4 effects.

5 Some cases have much more of that, some cases are
6 much more price effects with less volume effects. You can
7 have cases that deserve an affirmative finding without an
8 increase in import volumes simply because they're
9 undercutting U.S. prices and driving the financial condition
10 of the industry down.

11 COMMISSIONER KEARNS: Right.

12 MS. CANNON: So yes, you can have really either
13 one and some cases tend to be more one than the other.

14 COMMISSIONER KEARNS: Right.

15 MS. CANNON: But legally that's the way the
16 statute is written.

17 COMMISSIONER KEARNS: Right, and I mean I can
18 imagine how you might have a volume effect that is due to
19 something other than underselling but I would think that in
20 a case like this where you have a fairly homogenous you
21 know, fungible product that you know, and a lot of bells and
22 whistles attached to the sales, that it's probably going to
23 be --

24 MS. CANNON: Absolutely, that's why I'm trying to
25 answer the question legally but I think what Mr. Rosenthal

1 and I are both saying is that under these facts we very much
2 believe -- and there is record data to support the
3 purchasers are talking about lower priced imports, they buy
4 it for that reason, they say the imports are lower priced.
5 You have a very strong table showing a purchaser shift of a
6 large volume that they say was with lower priced imports.

7 So, and the underselling data I think with the
8 corrections we've identified gets you to significant
9 underselling so it's not that we're suggesting, there's a
10 volume in here for a reason other than underselling.

11 COMMISSIONER KEARNS: Right.

12 MS. CANNON: But legally, I think there are two
13 different statutory components.

14 MR. ROSENTHAL: And Commissioner if I might add.
15 The converse is true too. I've seen fact panels and I think
16 it might have been true even in color picture tubes in one
17 of the cases in the mid 1980's where I've seen fact panels
18 where you have very little in the way of volume effects, and
19 not big increases in imports, not big increases in import
20 market share.

21 And why is that? Because the domestic industry
22 has lowered their prices in order to make sure they didn't
23 lose that volume because it's so important to industry.
24 That happens in a number of cases, more than the ones we've
25 brought, but it happens in a number of cases.

1 And this very same phenomenon can be true in any
2 given situation where I've got a client who is losing money
3 hand over fist and I doubt you'd ever find underselling by
4 imports there because this client will not -- that's what he
5 needs to run his facility at a high rate of capacity
6 utilization.

7 He is not going to lose a sale. He's going to
8 lower his price to make sure that he gets those sales. So
9 in that instance, you may not see a lot of underselling but
10 he'd certainly be having their price effects to answer,
11 partially Commissioner Broadbents, and Commissioner
12 Schmidtlein, there are price effects in those cases even if
13 you don't see a significant amount of underselling because
14 this guy will not give up sales and he will not be
15 undersold.

16 COMMISSIONER KEARNS: Okay, thank you. I want to
17 ask a question about critical circumstances. It seems as
18 though and you seem to be arguing that the Petition has
19 provided some relief already to the U.S. industry. How can
20 we -- if we accept that argument, can we at the same time
21 find that an increase in imports is undermining the remedial
22 effect of the order that would seem to be very different
23 concepts.

24 MR. ROSENTHAL: It is and we're not actually
25 looking for a particular finding of that. What we want to

1 show is this, in my serial dumping analysis is that having
2 gotten release you did see a slight improvement of
3 profitability as a result of that first case and how quickly
4 that was eroded once the second wave of imports came in.

5 I don't think you need to find and make a finding
6 that the original order, remedial effect has been undermined
7 in order to show that the subject imports in this case have
8 caused material injury to the domestic industry. I don't
9 think you have to make a particular finding on that.

10 COMMISSIONER KEARNS: Yeah but I'm talking about
11 the filing of this Petition, not the last.

12 MR. ROSENTHAL: I'm sorry, I misunderstood. I
13 think part of what we've said in our brief is basically --
14 and I may be again, not getting your question right, but
15 what we've basically said here that once this Petition was
16 filed you've got tremendous improvements in the industry and
17 if you don't make an affirmative final determination, this
18 industry is going to go back to the status quo before the
19 filing of the Petition which is dismal. And I'm not sure if
20 I'm still quite --

21 COMMISSOINER KEARNS: I'm just not seeing how,
22 you know, critical circumstances -- how that comes in.

23 MR. ROSENTHAL: Well, I have to say that the --
24 you have this import, there's clearly this import surge and
25 you have the industry got up to a pretty high capacity

1 utilization compared to the previous levels, but they could
2 have been higher.

3 They had more capacity to supply this market.
4 They could have done better and so will it undermine the
5 relief, you know, going forward? I'm not willing to make a
6 concession in public here, hard to argue. But I will say
7 that it certainly undermined the beneficial impact of the
8 case early in this period when they could have shipped more
9 product.

10 COMMISSIONER KEARNS: Okay, thanks.

11 MS. RINGEL: Commissioner Kearns, Brook Ringel,
12 Kelley Drye. I will also note that this is a product that
13 particularly lends itself to inventory. You heard from the
14 domestic producers that after the M&G closure they used a
15 lot of their inventory to satisfy supply and make sure their
16 customer's needs were met.

17 In particular, the companies -- the foreign
18 producers where for whom Commerce found affirmative critical
19 circumstances, increased their inventories in the months
20 following the Petition filing in quite a dramatic fashion.
21 The volume increased quite significantly and you know, these
22 aren't tomatoes, they can hang around for a while.

23 And so that inventory certainly had an impact on
24 the market precisely at the time when domestic producers
25 should have been making more shipments even beyond what they

1 were already increasing.

2 COMMISSIONER KEARNS: Okay, thank you. The
3 Corpus Christi plant, Mr. Rosenthal I think you had said
4 earlier that you admit that the problems with the Corpus
5 Christi plant did contribute to M&G's closure and you argued
6 that the delays in establishing a plant in the future cannot
7 be an argument for supply shortages in the past.

8 That makes sense to me, but doesn't -- when we
9 look at M&G's financial data and you may not be able to
10 answer this here, but I'm hoping you can post-hearing. Are
11 the problems with the Corpus Christi plant kind of baked
12 into M&G's financial data?

13 MR. ROSENTHAL: They are and I want to be very
14 careful. I really don't like to overstate our arguments.
15 I'm not going to say that the major problem with M&G
16 reflected in their financials was the overruns at Corpus
17 Christi, no question. What I'm also saying -- and I'm
18 relying on the testimony of Mr. Forne from M&G is that
19 subject imports hurt M&G also, and particular the Apple
20 Grove facility and because they had lower revenues, it made
21 it more difficult for M&G to pay their suppliers, et cetera,
22 et cetera.

23 So I'm just arguing not that imports were the
24 major cause or a significant cause of the bankruptcy or
25 Corpus Christi's demise, I'm saying exactly what Mr. Forne

1 said which was that imports contributed to their problems
2 and hurt them.

3 It didn't cause the bankruptcy, but caused
4 problems for the Apple Grove facility.

5 COMMISSONER KEARNS: Right, so I'm just thinking
6 I mean if we wanted to -- going back to one point I made
7 earlier about operating income by producer and I wasn't
8 looking just at M&G, in fact I was not even thinking about
9 M&G when I made that point, but you know, to the extent that
10 M&G's data may look a little bit different and to the extent
11 that's due to Corpus Christi and to the extent that Corpus
12 Christi has nothing to do with subject imports, I think we
13 have to figure out how to deal with that.

14 MR. ROSENTHAL: Right and that's why when you
15 look at this slide and you look at our analysis, we took out
16 M&G from the rest of the domestic industry and we also made
17 sure we took out the net profit information because
18 Respondents and staff and everyone knows that there were
19 some extraordinary expenses that had to do with other
20 domestic producers relationships with M&G. And we wanted
21 not to confuse those write-offs or charges that appeared in
22 the net profit numbers, with the operating profits.

23 COMMISSIONER KEARNS: Okay, that's very helpful
24 and I take that point with M&G. That was my question
25 earlier about operating income by producer, I am still

1 curious about other producers.

2 MR. ROSENTHAL: Yes, we are going to answer that.

3 COMMISSIONER KEARNS: Okay thank you.

4 CHAIRMAN JOHANSON: I had planned to discuss
5 underselling, but a number of my colleagues have addressed
6 that issue, so I'm not gonna do that right now, although I
7 might come back to it. So I'm gonna go back and follow up
8 with what I was discussing during my first round of
9 questions. Is there an acute supply shortage of PET Resin
10 in the United States?

11 MR. ROSENTHAL: Are you asking about, is there
12 one at this time?

13 CHAIRMAN JOHANSON: During the POI.

14 MR. ROSENTHAL: There is a supply shortage for a
15 short period of time in late '17 into early 2018. It was a
16 limited period of time and it's been over for a long period
17 of time.

18 CHAIRMAN JOHANSON: Okay, thank you, Mr.
19 Rosenthal. Have any of the domestic parties ever refused to
20 supply purchasers--including those who are former M&G
21 customers--with the domestic product?

22 MR. CULLEN: John Cullen, DAK Americas. Mr.
23 Chairman, refused is a strong word, because we negotiate
24 with our customers based on the business opportunity they
25 present to us.

1 If they are ready and willing to buy from us and
2 we're ready and willing to sell to them, we make a proposal
3 to them, and it's up to them to decide if they wanna pay the
4 price that we propose in response to their inquiry. And so
5 we don't refuse to sell the people. We generally offer them
6 a reasonable proposition and it's up to them to decide
7 whether to take it or not.

8 CHAIRMAN JOHANSON: So you would say that any
9 such foregone sales are due to price and not due to
10 shortages in the market?

11 MR. CULLEN: Again, from a DAK Americas
12 perspective, we had excess capacity at the start of the M&G
13 crisis. We increased the production, we sold inventory. We
14 made deals with customers who are our existing customers,
15 and new customers, M&G customers. We did that, we helped
16 those people, and we did it at a fair price. And where the
17 customer demanded a price that was equivalent with a
18 subject import, we did not agree to sell to those customers.

19 CHAIRMAN JOHANSON: Thank you, Mr. Cullen. Did
20 the expectations of the new M&G plant in Corpus Christi,
21 Texas, have any impact on investments or on the upkeep of
22 older production facilities among the domestic industry?
23 After all, this is a major plant which has been planned.

24 MR. ROSENTHAL: Right. Mr. McNaul, who is
25 temporarily absent, but will return shortly, had answered

1 that partially before, but I'd like the other industry
2 witnesses to supplement what he had to say.

3 MR. FREEMAN: John Freeman, Nan Ya Plastics. We
4 were not part of that investment in any form, so it did not
5 impact any of our decisions on our operation as far as our
6 continued maintenance and what we regularly do to upkeep our
7 equipment and manufacturing process.

8 MR. PARAMASIVAM: This is Muthukumar from
9 Indorama Ventures. All of our facilities are running well
10 and we make the point to make regular maintenance and make
11 sure that we have achieved the best productivity and
12 efficiency. And we are planning to continue to do so. So
13 Corpus Christi does not have any impact on our existing
14 operations.

15 MR. ROSENTHAL: I'm not sure you've heard from
16 respondents was that, up until the M&G bankruptcy and the
17 Corpus Christi plant was put up for sale, there were two
18 companies that were going to take the output from that
19 Corpus Christi facility. One was M&G and the other one was
20 DAK.

21 You've heard the answer by Mr. McNaul from DAK
22 saying that M&G had nothing to do with DAK's regular
23 investment in their facilities, etcetera, etcetera, and M&G,
24 of course, is not around.

25 The other companies in the industry weren't going

1 to be involved in the Corpus Christi facility and so it
2 makes no sense to suggest that they wouldn't be investing in
3 their own facility because they anticipated benefiting from
4 the Corpus Christi facility. That just doesn't make any
5 sense whatsoever.

6 MR. CULLEN: John Cullen from DAK. Just to go on
7 record, we've spent significant amount of capital every year
8 to maintain our plants. It's critical for the operation
9 that the plants be well-maintained, that the necessary
10 capital improvements are done. Again, the industry relies
11 on all of us to be very effective and very reliable
12 suppliers. And so I think you can see in our financials
13 that we do spend a significant amount of money and that's
14 just critical for ongoing operations.

15 CHAIRMAN JOHANSON: Thank you for your responses.
16 Respondent iResin argues that there's no correlation between
17 subject import volume and any decline in the industry's
18 performance, pointing out between 2015 and 2016, when
19 subject imports increased the most, U.S. producers'
20 conditions uniformly improved. What is your response? And
21 why did we see certain improvement in the industries'
22 condition in 2016 notwithstanding subject imports' increased
23 volume?

24 MR. ROSENTHAL: It's hard to address this really
25 well using annualized data. And that's part of the problem

1 you've got here. Because at the beginning of 2016, the
2 domestic industry was actually getting some benefits from
3 the earlier trade case, you remember, that was filed in
4 March of 2015, final order was put into place in the Spring
5 of 2016. So for a period there, the domestic industry was
6 doing better.

7 And then came the surge of subject imports, where
8 they really began to ramp up more significantly. So it's
9 really hard to -- unless you're doing this on a quarterly
10 basis or a more granular basis to analyze this well, at
11 least not publicly, but clearly what happened was, there was
12 some beneficial impact. The industry started doing better
13 as a result of the first case and then imports from the
14 current subject countries kept coming in and ultimately,
15 the domestic industry had to respond.

16 MS. CANNON: Commissioner Johanson, I would also
17 urge you to be cautious about looking at only that one year
18 that they've tried to highlight, 2015 to 2016. As Mr.
19 Rosenthal said, that year is more complicated because we got
20 beneficial effects from the prior trade case and then these
21 imports surge in. So that we had kind of a mixed effect.

22 But if you look at when the subject imports hit
23 their peak market share in 2017, that was the year where the
24 U.S. financial performance went down a lot despite strong
25 demand, everything went down. And I think maybe even more

1 telling, in 2018, when those imports backed off, the subject
2 imports backed off a lot, that was when the U.S. industry's
3 performance was the best. We got the market share back, our
4 profits went up, our sales went up, our capacity utilization
5 went up. So you know, there's a lot to be said of the
6 correlations, separate and apart from just looking at 2016.

7 CHAIRMAN JOHANSON: All right. Thank you for
8 your responses. I'm gonna get back to M&G. Is it your
9 position that M&G's financial problems were caused by
10 subject imports?

11 MR. ROSENTHAL: In part. As I tried to explain
12 earlier, we're not arguing that all their financial problems
13 were caused by imports, but as Mr.Fournier testified,
14 subject imports caused them problems, lower revenues, lower
15 profits and clearly were causing them injury. It was not
16 the cause of the bankruptcy, as I made clear to Commissioner
17 Kearns. It's not the major cause, certainly not the only
18 cause, but it was a contributing cause to their injury.

19 CHAIRMAN JOHANSON: What impact did the
20 bankruptcy of M&G and the lead-up to it have on U.S. market
21 and the domestic industry as a whole?

22 MR. ROSENTHAL: Just to clarify, when you say the
23 lead-up -- one of the reasons I ask that question is because
24 it was a fairly sudden decision, at least based on what I
25 recall. A lot of people were surprised. I can tell you, we

1 were busy preparing the petition in this case and I got a
2 call saying, "By the way, I need to tell you something.
3 We're having problems and we don't know how long we're gonna
4 be able to stay in business." And that was a pretty sudden
5 thing. I think a lot of people in the industry didn't see
6 it coming. So with that understanding --

7 MS. CANNON: And with that also, and we refer
8 back to Slide 12 where we demonstrate that even taking M&G
9 out, you're still seeing very significant decline, so yes,
10 if you look at the total database, M&G has an effect on the
11 industry, but without M&G, you are still seeing injury. So
12 I think that's important to note that this case is not
13 hinging on M&G.

14 MR. ROSENTHAL: I'd also say, since the rest of
15 the industry represents 90% of the industry, if you will,
16 and you exclude M&G, you can see why the petitioners here
17 wanted to file a case against the subject imports. It had
18 nothing to do with M&G's cost overruns at Corpus Christi.
19 They were getting hurt directly by subject imports.

20 CHAIRMAN JOHANSON: All right, thank you, Mr.
21 Rosenthal and Ms. Cannon. Commissioner Williamson?

22 COMMISSIONER WILLIAMSON: Just a couple of quick
23 questions. There are a lot of things going on with this,
24 affecting the supply ability in May, 2017. To what extent
25 did Hurricane Harvey, what impact did it have on the

1 availability of supply on the operations of the industry?

2 MR. MCNAULL: Yeah, I've been through so many
3 hurricanes -- this is John McNaull, DAK Americas -- I
4 believe that's the one that impacted Houston?

5 COMMISSIONER WILLIAMSON: Yes.

6 MR. MCNAULL: Okay. We were able, as our
7 company, to work out the complications that created. And
8 most of those complications were around raw material supply.
9 But we never reduced our rates nor curtailed our production
10 during the period. So I would say from DAK Americas
11 perspective, Harvey had zero impact on our production
12 plants.

13 COMMISSIONER WILLIAMSON: Okay, thank you. We've
14 talked a lot about M&G. This is looking towards the future.
15 And if and when the Corpus Christi comes online, what is the
16 anticipated impact on the domestic industry? I know this is
17 speculative and you don't know when that's gonna happen, but
18 does anybody wanna discuss that?

19 MR. MCNAULL: Yeah, I mean, the obvious, right?
20 More capacity means the capacity utilization of the industry
21 will be lower and more material will be available for sale.
22 I mean I think that's the obvious impact. And as for the
23 transaction, I mean, we're waiting to see if a governmental
24 body's gonna approve that transaction and whether it will
25 come to pass, according to the existing proposal or in some

1 other form, I think that's still pending.

2 COMMISSIONER WILLIAMSON: Okay. Any idea how
3 long it would take for that plant to sort of ramp up?

4 MR. MCNAULL: Very interesting question. There's
5 been a lot of speculation by both the previous company that
6 had the inception of the facility. I think the -- if the
7 transaction's closed, the engineers need to assess the
8 facility, you need to do a detailed project plan and then a
9 credible number could come forth on when the facility would
10 be up and running.

11 I'd rather not be speculative because I think so
12 many people have done so, it's created a lot of confusion.
13 We would prefer to have the transaction approved and then
14 have a detailed engineering agenda put together and then
15 bring something forward that is reasonable. And I think in
16 the past, that's not been the case.

17 COMMISSIONER WILLIAMSON: Yeah, thank you.

18 MR. ROSENTHAL: Commissioner Williamson, I just
19 wanna say, because this is public testimony by the M&G
20 witnesses and this case and previously where they said that
21 one of their intentions by building the Corpus Christi
22 facility was to displace their imports from Mexico.
23 Remember they had an Apple Grove that's still relatively
24 small, and they were one of the major importers from
25 Mexico, and so they want to, they wanted to use that

1 facility to displace their imports and have domestic
2 production, too.

3 COMMISSIONER WILLIAMSON: Okay, thank you. Those
4 are all the questions I have. I wanna thank the witnesses
5 for their testimony.

6 COMMISSIONER BROADBENT: Yeah, I just had a
7 couple more questions. The M&G bankruptcy declaration
8 refers to higher raw material costs due to supply shortages
9 as one of several market forces contributing to the M&G
10 bankruptcy. Can you describe any supply shortages of raw
11 materials that occurred during the period preceding M&G's
12 bankruptcy for the industry witnesses?

13 MR. MCNAULL: John McNaull. I don't know of any.
14 And of course they're a competitor in a separate company, so
15 I really don't have any real insight into addressing that
16 question.

17 MR. ROSENTHAL: I mean we'll -- it obviously was
18 not something that was significant with respect to the other
19 domestic industry witnesses, but we'll actually look at this
20 and get back to you, Commissioner. You know, there have
21 been some suppliers, I think BP had some issues from time to
22 time, but it was not something that was, I would say,
23 remarkable in the industry. So we're not sure exactly what
24 they're referring to, but we'll try to get you an answer on
25 that.

1 COMMISSIONER BROADBENT: Okay, great. The
2 bankruptcy declaration also refers to discounts the company
3 was forced to offer to certain customers in response to a
4 competitor slashing prices as it exited the marketplace.
5 What competitor do you think M&G is referring to that left
6 the market?

7 MR. PARAMASIVAM: This is Muthukumar with
8 Indorama Ventures. It will be difficult for us to say what
9 they meant by that.

10 MR. ROSENTHAL: If they're talking about a
11 domestic competitor who left the market, I'm not aware of
12 any domestic company who exited the market in that time
13 period other than M&G, so I'm kind of at a loss to figure
14 out what was meant there. Again, we'll try to do our best
15 to define that, but it's not obvious.

16 COMMISSIONER BROADBENT: Okay. The Corpus
17 Christi plant was supposed to be operational starting in
18 late 2015 or early 2016, according to a press release. To
19 what extent did delays in the operation of the Corpus
20 Christi plant incentify purchasers to seek alternative
21 sources of supply, including subject imports as early as
22 2016?

23 MR. ROSENTHAL: I can't imagine anybody relying
24 on the building of the Corpus Christi plant in 2017 and
25 having to go elsewhere because they're relying on that.

1 There've been lots of press reports about all the delays in
2 the building of the Corpus Christi facility. All you had to
3 do is come to the International Trade Commission and hear
4 the M&G witnesses talk about how it's gonna take more time
5 or having more delays.

6 So our answer is, the delays, the ultimate
7 shutdown of the Corpus Christi facility should've had no
8 impact whatsoever on purchasers' decisions to seek
9 alternative sources of supply.

10 MR. CULLEN: And John Cullen from DAK,
11 Commissioner. All through that period, the U.S. industry
12 had excess capacity, ready and willing to sell it at a fair
13 price.

14 COMMISSIONER BROADBENT: Okay. Now that the
15 Corpus Christi investment is owned by a new joint venture,
16 including several of the petitioners, and you may have
17 answered this and I might've missed it. When do you expect
18 the Corpus Christi plant to be completed and operational?

19 MR. MCNAULL: Jon McNaull, DAK Americas again.
20 It's not owned by anyone. There's a proposition here that's
21 pending approval by the Federal Trade Commission, and until
22 that's approved, there is no ownership. And again, once
23 approved and the deal is closed, the new owners will make
24 that assessment and bring forth a date.

25 Again, M&G was notorious about predicting

1 start-up of that facility over and over and over again. And
2 it did not, in fact, come to pass. I mean, Paul, you
3 mentioned production ceased. There was never any
4 production. The construction ceased. So we think it's very
5 important for the industry to provide a credible date when
6 it'll start so that people can consider how they'll use
7 that facility for sourcing of PET. In the meantime, to
8 John's point, there's plenty of capacity and the domestic
9 industry, particularly now that Apple Grove has restarted,
10 is perfectly capable of meeting those requirements, so I
11 think people have plenty of options for domestic supply
12 while they wait for that date to emerge.

13 COMMISSIONER BROADBENT: Okay. I just had one
14 last question for the industry witnesses for Mr. McNaull,
15 Mr. Freeman and Mr. Paramasivam. Can you kind of describe
16 for me who made this decision to file this case? You or
17 your parent company? And sort of what discussions you had
18 with your parent before filing the case on countries where
19 they have affiliates?

20 MR. PARAMASIVAM: This is Muthukumar, Indorama
21 Ventures. The recommendation was made from here by me,
22 because with my responsibility, most of the decision making
23 related to the sales and marketing is done here. So the
24 recommendation to file the petition was made by me to RC and
25 approved by him.

1 COMMISSIONER BROADBENT: Okay. And what kind of
2 discussion did you have with the parent?

3 MR. PARAMASIVAM: It is basically that what is
4 the reason we need to file the petition? And the grounds
5 surrounding the petition.

6 MR. ROSENTHAL: I mean I don't think we wanna
7 talk about the internal conversations in this room, but
8 we're happy to give you a little bit more fulsome
9 explanation in the post-hearing brief, Commissioner.

10 COMMISSIONER BROADBENT: Does Mr. McNaull and Mr.
11 Freeman have anything to add?

12 MR. MCNAULL: Jon McNaull, DAK Americas, I mean
13 John Cullen represents the marketplace here in the United
14 States. He shared concerns around behavior he was seeing in
15 the marketplace and he asked for our support to make the
16 analysis thereof and decide whether we had a valid complaint
17 to bring forth. And that's in fact what we did and what
18 we're supporting here.

19 MR. FREEMAN: John Freeman, Nan Ya Plastics.
20 Domestically, we make a recommendation and then there is a
21 approval process at our parent, and we can go more into
22 post-hearing brief.

23 COMMISSIONER BROADBENT: Okay, thank you. I
24 don't have any more questions.

25 CHAIRMAN JOHANSON: Commissioner Schmidtlein?

1 Commissioner Kearns? Okay. I have a question or two or
2 three. And this is just something that came up in my head
3 when I was reading the materials. And I do think -- well,
4 impact's a threat, so it's definitely something we should
5 look at. And I was wondering, how did M&G manage to sell
6 the Corpus Christi plant if market conditions are so bad?
7 And likewise, if the market is so bad, why does the new
8 owner, or potential new owner, or owners, plan to complete
9 construction and begin production at this facility? Can
10 y'all speculate on that?

11 MR. ROSENTHAL: I think folks have -- this
12 transaction is pending at the Federal Trade Commission don't
13 want to talk too much about that, but I will tell you what I
14 can tell you --

15 CHAIRMAN JOHANSON: It seems like a bad time,
16 potentially, to bring this plant into production.

17 MR. ROSENTHAL: Well, there's no good time as
18 long as subject imports are surging into the U.S. And the
19 industry is caught between a rock and a hard place, the
20 industry as a whole. Demand is growing and there are
21 companies, first M&G, who would like to supply that demand
22 from a domestic base. And so if they don't make investments
23 in the future, they won't be able to supply that demand, and
24 you'll have purchasers in here saying, "Why didn't the
25 domestic industry expand their capacity so they could supply

1 us? Now we have to rely on imports."

2 So the decision was made, at least by M&G that
3 they wanted to supply the demand and not use imports from
4 Mexico, for example, to supply the domestic industry. And
5 DAK originally decided to participate in that because they
6 recognized that there would be need for demand would be
7 supplied there. The transaction has been announced.

8 There is, you know, whatever the FTC does, there
9 is a concern that I would have as an outside investor is,
10 how is that facility, when it gets built, going to be able
11 to have an adequate return on investment. And so, obviously
12 what is done with subject imports makes a difference there.
13 And that's all I can say.

14 From my point of view, if they don't build the
15 plant, they get criticized that they're not doing their best
16 to supply their customer. If they do build the plant, they
17 are at risk of having a bad investment if unfairly traded
18 imports come into the country unabated, without duties.

19 CHAIRMAN JOHANSON: All right, Mr. Rosenthal.
20 Thanks for your response. And that does conclude my
21 questions, so I appreciate you all being here today. And it
22 looks like no other commissioners have questions, and so
23 that will end commissioners' questions. Do staff have any
24 questions for this panel?

25 MR. THOMSEN: Yes, staff has one question for

1 this panel. So I will turn to Amelia Preece of the Office
2 of Economics.

3 MS. PREECE: One staff, two questions. The
4 questions I have, and obviously, I don't want you to answer
5 them at the hearing, but I want response to one of them
6 immediately or as soon as possible. Tomorrow's a good day.
7 And that is, if you have any problems with any of the
8 questionnaires about the price data that is in them or
9 lacking questionnaires or lacking price data or anything
10 like that, I'd like to know that as soon as possible,
11 rather than wait for the post-hearing brief. So that's one
12 of those. And that's why I wanted to ask now. And then,
13 I'd like to have the IPA price data for the whole period
14 just so that we can look at that. Thank you.

15 CHAIRMAN JOHANSON: So respondents have any
16 questions for this panel? Okay, respondents have no
17 questions. All right. With that, we will recess for lunch.
18 Why don't we come back here at 1:30. That'll give us
19 forty-five minutes. And I would like to remind people not
20 to leave confidential business information in the hearing
21 room as it is not secure. We'll see you back here at 1:30.

22 (Whereupon, at 12:44 p.m., a luncheon
23 recess was taken to reconvene at 1:30 p.m.)

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AFTERNOON SESSION

MR. BISHOP: Will the room please come to order?

Mr. Chairman, I would note that the panel in opposition to the imposition of anti-dumping duty orders have been seated. All witnesses have been sworn in, and this panel has 60 minutes for their direct testimony. You may begin when you're ready.

MS. ESSERMAN: Mr. Chairman, I am Susan Esserman of Steptoe and Johnson, and I'm joined by Joel Kaufman and Judy Wang. We are representing Graham Packaging, Pactiv, American Beverage Association and I-Resin. Our first witness will be Clinton Berry, Senior Director of Global Resin Procurement for PepsiCo.

STATEMENT OF CLINTON BERRY

MR. BERRY: Good afternoon, and thank you for the opportunity to testify today. My name is Clint Berry, and I'm the Senior Director of Global Resin Procurement for Pepsi.

MR. BISHOP: Pull your mic a little closer please.

MR. BERRY: Is that better? I've run resin purchasing at PepsiCo for eight years, and I've worked in the chemicals and resin industry for 15 years. I'm proud to testify before the Commission today on behalf of PepsiCo, one of America's biggest food and beverage companies. I'm

1 here today representing one of the largest buyers of PET
2 resin in the country.

3 PepsiCo is a leading global food and beverage
4 company, with a complimentary portfolio of enjoyable brands,
5 including Frito-Lay, Gatorade, Pepsi-Cola, Quaker and
6 Tropicana. Through our operations authorized bottlers
7 contract manufacturers and other third parties, we make,
8 market, distribute and sell a wide variety of convenient and
9 enjoyable beverages, foods and snacks, and we also make
10 grits.

11 We serve customers and consumers in more than
12 200 countries and territories. As such, PepsiCo purchases
13 huge volumes of resin every year, which we use to make
14 bottles for the many products. We run bottling plants
15 across the U.S. from coast to coast. These bottling
16 operations involve a very complex and demanding production
17 process, and a very complex supply system, and they support
18 American jobs including specialized manufacturing workers,
19 who keep our plants in continuous operation.

20 The nature of the bottling industry requires
21 that we keep our plants running 24 hours a day, seven days a
22 week. As is clear from our questionnaire responses, PepsiCo
23 buys American PET resin. Consistently throughout the period
24 of this investigation, we purchased over 99.5 percent of our
25 resin for our U.S. operations from the producers in the U.S.

1 We have almost exclusively bought PET resin from
2 producers in the U.S. because security of supply is
3 paramount to us. We need a large, consistent and reliable
4 supply of PET resin to be near to our bottling plants to
5 keep them running. If we run out of PET resin, our bottling
6 production will be impaired, risking a loss of sales. This
7 is why we spend a significant effort to ensure a constant
8 and reliable resin supply.

9 In my experience, the most reliable supply comes
10 from the suppliers with facilities that are closest to our
11 plants. They have historically been extremely responsive to
12 our needs. With the exception of the U.S. west coast, where
13 from time to time producers ship PET resin produced in
14 Mexico to the bottle manufacturers, the resin companies in
15 the U.S. are able to ship to us with very few
16 transportation risks and delays.

17 I cannot emphasize enough how important security
18 of supply is to us. In our operations, saving one or two
19 cents per pound of resin gets you a pat on the back. But
20 having to shut down a plant because you have not been able
21 to secure sufficient PET resin supply creates massive
22 interruptions to our business.

23 The shortage of PET resin in the U.S. market has
24 made this risk far too real for PepsiCo over the past year.
25 As you can appreciate, since we have almost exclusively

1 purchased from producers in the U.S., it may be surprising
2 that we're here today. But the risk to our operations is so
3 great that we simply could not afford to stay silent.

4 Last fall, an already-tight U.S. market was
5 thrown in disarray by the worldwide collapse of M&G. With
6 the M&G bankruptcy essentially overnight, all of M&G's
7 domestic supply, as well as its very substantial supply from
8 operations in Mexico and Brazil, which is used to supply the
9 U.S. market, disappeared.

10 The additional abandonment of the Corpus Christi
11 plant created a sense of panic. Customers realized that the
12 significant additional expected supply from the Corpus
13 Christi plant would not be available any time soon, despite
14 the fact that the plant was near 85 percent complete.

15 This triggered a stampede of U.S. purchasers
16 desperate to secure product wherever and however they could.
17 An already tight market became critically, became a
18 critically short market, the likes of which we have not seen
19 ever before.

20 Almost overnight, a substantial portion of
21 PepsiCo's contract supply vanished, triggering our backup
22 plans for qualified overseas suppliers to supply us resin in
23 case of a domestic default. We held daily meetings to
24 mitigate the damage to assess our supply situation, to
25 determine how much of our supply was being cut or lost, and

1 where we could obtain replacement PET.

2 We immediately took steps to try and secure PET
3 supply from producers in the U.S. to make up for our supply
4 loss and the PET resin scarcity. Across the entire U.S. PET
5 market, there was an immediate scramble of customers to try
6 to secure supply at any price, to maintain production across
7 the country. At PepsiCo, we followed our protocol to
8 maximize all of our contract with supplies in the U.S., and
9 to buy as much additional resin as they would sell.

10 Even at a premium price, the largest PET
11 producers in the U.S. could not provide us with enough
12 material, because they were already providing at maximal
13 capacity. We turned to another supplier in the U.S., the
14 only one remaining that we did not already purchase from, to
15 fulfill our additional orders.

16 They supplied us with as much product as they
17 could, but we still had a shortfall from suppliers in the
18 U.S. Within days, we had exhausted all of our available
19 supply in the U.S., and since we still needed more PET resin
20 to keep all our plants running, we concluded that the only
21 option was to look to imports to meet the shortfall.

22 So we started purchasing material volumes of
23 imported PET resin produced in Taiwan. Again, we've always
24 almost exclusively bought PET from our U.S. plants, from
25 producers in the U.S., so we were not seeking to import at

1 all. We only did so after we were told that the producers
2 in the U.S. could not supply our needs from their own U.S.
3 production.

4 The supply shortage is so massive today that we
5 have no choice but to rely on imports, even with the threat
6 of anti-dumping duties. As an additional sign of the
7 domestic supply shortage, producers in the U.S. themselves
8 are increasingly turning to imported material to fill our
9 orders. We place orders for U.S. produced PET resin with
10 PET resin suppliers in the U.S., and they ship us PET from
11 Mexico, Turkey and Thailand.

12 In fact, earlier this year, one supplier in the
13 U.S. specifically requested that we approve qualified PET
14 from Turkey and Thailand to cover U.S. supply shortfalls
15 going forward. Now I'd like to take a few minutes to
16 respond to a few of the Petitioners' assertions, as they
17 bear no relation to market reality.

18 First, it should be clear to everyone in the
19 market that the collapse of M&G had nothing to do with
20 imports. It appeared that M&G had a liquidity crisis
21 because the Corpus Christi project was never completed.
22 This caused a significant impairment to production in
23 Brazil, it caused a shutdown of its PET plants in West
24 Virginia and Mexico, and eventually led a bankruptcy filing.

25 It's also important to understand that the

1 competitive impact created by the uncertainty surrounding
2 the Corpus Christi plant. As you might expect, when the
3 largest most state of the art plant in the world was
4 projected to open in the U.S. market, there was a lot of
5 jockeying for the position among the producers in the U.S.,
6 in anticipation of this plant coming online. In order to
7 fill this expected capacity, M&G aggressively pursued large
8 sales volumes in the market.

9 M&G reduced prices in order to gain market share
10 prior to opening the Corpus Christi plant. It filled the
11 resulting new volume requirements with large volumes of
12 supply from Mexico and Brazil, not at our direction but at
13 their own, as they planned to shift those volumes to Corpus
14 Christi as soon as it was complete.

15 The PET producers in the U.S. couldn't afford to
16 lose volume to M&G's Corpus Christi plant, and had to
17 compete on price with M&G, in order to retain customers and
18 sales volumes. Second, any suggestion that PepsiCo has used
19 imports to push down prices in the U.S. market is absurd on
20 its face. Because we were not importing significant volumes
21 of PET resin, pricing competition was between U.S. producers
22 only. There was no competition from imports.

23 We do not seek out import price quotes, and so
24 import prices did not factor into our negotiation for PET
25 resin with the Petitioners. Third, despite the fact that

1 producers in the U.S. are claiming that the supply shortage
2 is over because the West Virginia plant has just reopened,
3 the startup of this small plant cannot possibly remedy the
4 current supply shortage situation.

5 The market is still very tight, and the
6 tightness will continue to worsen as PET resin demand
7 continues to grow, while the U.S. capacity remains static.
8 The Corpus Christi plant won't help the supply situation
9 either over the next two years. Even the FTC approves the
10 joint venture to purchase the Corpus Christi plant
11 immediately, the plant couldn't put PET on the market under
12 mid-2020 at the earliest.

13 There are no other new U.S. plants on the
14 horizon to alleviate this supply shortage. As a result, we
15 expect to face supply shortages for the foreseeable future.
16 Frankly, we were shocked when we first heard that PET resin
17 producers in the U.S. filed this case. At the time, the
18 U.S. PET resin industry was experiencing one of the most --
19 one of the tightest supply conditions ever, and we had been
20 in crisis mode just to ensure enough to keep our operations
21 running.

22 At this time, they do not have enough U.S.
23 producing capacity to fulfill our orders and themselves
24 import large quantities of materials. Under these
25 conditions, it simply does not make sense that they seek to

1 limit imported materials necessary to make up for this
2 domestic shortfall.

3 The producers in the U.S. already enjoy the
4 highest pricing for PET in the world. We have consistently
5 bought PET from U.S. producers, but now we're getting
6 punished for our support of the industry. We have no choice
7 but to import because the producers in the U.S. cannot fill
8 our orders. Now, these same producers are working to lock
9 us out of these critical supplies of imported PET resin.

10 Even worse, they're importing with impunity from
11 their other plants in nations where no anti-dumping petition
12 was filed. Now, producers in the U.S. are asking our
13 permission to bring in supply from additional countries
14 outside of the five named in this case.

15 PepsiCo is one of the largest consumers of PET
16 resin in the United States. We have to believe that smaller
17 customers are also suffering from this same supply problem.
18 So we urge you not to shut off supply when it's essential to
19 prevent the disruption of PepsiCo's operations. Thank you
20 for your time, for allowing me to testify on behalf of
21 PepsiCo today. I'll be happy to answer any questions that
22 you might have.

23 STATEMENT OF STEPHEN REAM

24 MR. REAM: Chairman Johanson and Commissioners,
25 good afternoon and thank you for the opportunity to testify.

1 I'm Steve Ream with Graham Packaging. I've been with Graham
2 for over 20 years, and I've been in the industry for 30
3 years. During that time, I've PET resin sourcing operations
4 for 25 years.

5 Graham uses PET resin and the production of
6 bottles for a number of industries. We are a U.S. producer.
7 We use PET resin in 21 plants in the United States. We
8 employ nearly 2,000 people including 1,764 manufacturing
9 jobs. Between Graham and our sister company Pactiv, which
10 makes containers and other products for the food service
11 industry, we employ more U.S. workers than the Petitioners
12 combined.

13 Between our two companies, we purchase over 600
14 million pounds PET annually. As you can see from our
15 questionnaire responses, we buy American. Graham only looks
16 to imported PET to fill about five percent of our overall
17 PET needs, and only for products that we can't obtain
18 domestically or to ensure a second source of supply for
19 certified products to protect against supply shortages.

20 While we seek 95 percent U.S. product, our
21 questionnaire response shows that 25 percent of our overall
22 needs have been supplied from imports. The sole reason is
23 because U.S. producers filled our orders for US PET with PET
24 imported from their foreign-affiliated companies. That
25 wasn't our choice.

1 It was exclusively the decision made by the
2 Petitioners. As M&G testified at the preliminary
3 conference, they chose whether to supply PET from Apple
4 Grove or their affiliated plant in Mexico on a basis of
5 supply availability in Apple Grove. We weren't even
6 consulted. Only since I testified here last year have the
7 U.S. producers been either telling us the source of the PET
8 resin they'll ship, or asking us in advance to modify
9 existing contracts to permit them to ship PET resin from
10 other countries to satisfy our contracted volume.

11 When I testified at the preliminary, I had
12 questions why we're here in the face of product shortages,
13 extremely tight supply, customers being placed on
14 allocation, increasing prices and the announced closures of
15 M&G's Mexico and Apple Grove plants. I question it even
16 more so today.

17 M&G's bankruptcy wasn't caused by imports. The
18 liquidity crisis was an ongoing problem stemming from the
19 massive billion dollar cost overrun and almost two year
20 delay for Corpus Christi that ultimately led to M&G's
21 bankruptcy in 2017. For example, in early 2017, the Apple
22 Grove plant was facing severe cash flow issues.

23 To help keep them afloat, you know, we agreed to
24 buy PET on a cash delivery basis. That helped M&G for a
25 while, but it sure wasn't a solution. In early September,

1 ALPEC, DAK's parent company, publicly announced that it was
2 stopping all raw material shipments to M&G plants in both
3 Mexico and Brazil.

4 And I also question the completion of M&G's
5 jumbo plant under construction in Corpus Christi. It's no
6 wonder that at the very same time that the petitions were
7 filed, I was being told by DAK, and I quote "The tightness
8 of product is ridiculous now." With the M&G bankruptcy,
9 closure of M&G Mexico and Apple Grove, cutoff of raw
10 materials to M&G's Brazil and Mexico plant, and termination
11 of construction at Corpus Christi, the U.S. market was
12 placed in crisis situation almost overnight.

13 We knew conditions were difficult, but we did
14 not expect the closures. We were left trying to figure out
15 where we were going to get almost half of our PET resin
16 requirements. If we could not fill that void, we were going
17 to have to close plants. M&G's shipments ceased with
18 bankruptcy. Every other U.S. producer limited the amount of
19 PET they offered to supply us in the last year.

20 DAK and Nan Ya placed us on volume-specific
21 allocations. We were placed on other forms of allocations
22 by all of the U.S. producers. We could not obtain
23 sufficient additional volume even at significantly higher
24 prices. We could obtain supply from other producers because
25 they had nothing available to sell.

1 We created a war room to deal with the supply
2 shortage. My whole staff worked on a non-stop basis to
3 ensure the supply to each one of our 21 plants. We also
4 hired additional people to deal with the ongoing crisis.
5 Finally, and as a last resort to keep our plants open, we
6 looked for imported PET.

7 Nothing's changed. Most of these conditions
8 exist today. The supply conditions are extremely bad, with
9 the loss of immediate PET supply from M&G, but the
10 termination of the planned Corpus Christi plant raised
11 concerns to a panic level. It is not credible to suggest
12 that simply because Corpus Christi was not producing in the
13 POI, that it did not have an impact on the market. We've
14 been told for years and as recently as just before this case
15 was filed that M&G was bringing up at 2.4 billion pound PET
16 plant, excuse me, was bringing on 2.4 billion pounds of PET
17 capacity with Corpus Christi.

18 Although delayed for almost two years by the
19 time of the bankruptcy the industry always factored that
20 capacity in their U.S. supply, and that it would be
21 available to us to meet our projected and growing demand.
22 When M&G announced that it was terminating construction on
23 Corpus Christi, we knew that this was a long-term crisis,
24 with no solution in the foreseeable future.

25 We, like so many others, found ourselves in a

1 very desperate situation. We had to get PET or close our
2 plants. It's that simple. In over 30 years I have never
3 seen a PET supply shock like that. The aftermath is almost
4 as bad. Shortage conditions continue, as supply remains
5 extremely tight. For example, Pactiv could not get a single
6 U.S. producer to quote in response to an RFQ for 2018 supply
7 for one of its plants in North Carolina.

8 Prices have skyrocketed to the highest level in
9 years. Petitioners are here today are asking us to revise
10 or supplement existing contracts to permit supply from
11 additional non-subject countries. We got a request from
12 Petitioner two days ago asking us to certify PET at an
13 additional non-subject country.

14 DAK has taken a portion of supply from Mexico
15 that we used to get from M&G. The same source of Mexican
16 supply, different U.S. supplier. In our private
17 conversations, U.S. producers are constantly telling us that
18 the U.S. supply is tapped out. Our loyalty to the U.S.
19 producers has made us extremely vulnerable to the current
20 shortages and tight supply conditions. We learned that
21 lesson well with Pactiv's inability to obtain domestic PET.

22 We're not here to attack the U.S. industry.
23 It's just that we have never seen such difficult supply
24 conditions, and we greatly fear that cutting off subject
25 imports prevent our continuing production at our plants,

1 which would be a disaster.

2 Some additional points I want to address in this
3 testimony, the industry's performance in this POI has been
4 affected by a number of other factors beyond M&G's demise.
5 Hurricane Matthew produced severe flooding in North and
6 South Carolina in October 2016. This flooding, which
7 prevented rail and truck shipments, forced DAK to declare
8 fore majeure. Industry profitability was further impacted
9 by a doubling of IPA prices.

10 IPA is an input for PET production, but not one
11 of the main raw materials. Most contracts in the industry
12 permit monthly price adjustments for movements, and only PTA
13 and MEG prices. Because adjustments for IPA price increases
14 is not permitted by the contracts until customers agreed to
15 the IPA surcharges, the industry was forced to absorb the
16 increases, which probably amounted to two cents per pound.

17 This was a contractual issue, having nothing to
18 do with imports. Finally, flooding from Hurricane Harvey
19 disrupted raw material supplies in September 2017, that
20 continued well into November. This is a major factor
21 contributing to the ridiculous tight supply conditions that
22 existed before the petitions were filed.

23 The planned opening of the world's largest PET
24 plant had additional repercussions on the U.S. industry.
25 M&G and other U.S. producers were constantly vying for

1 customers in anticipation of Corpus Christi coming on
2 stream. M&G and DAK, which had contracted for almost half
3 of Corpus Christi's output, both needed to seed customers to
4 guarantee demand for the impending 2.4 billion pounds of
5 PET.

6 That left Indorama and Nan Ya competing with M&G
7 and DAK to maintain market share in anticipation of the
8 opening. This competition for market share among the U.S.
9 producers played out in each negotiation period, driving
10 down prices. That was a domestic pricing issue, not an
11 import pricing issue. You have heard from Petitioners that
12 the crisis is over. Don't believe it.

13 The situation is still extremely tight. There's
14 no foreseeable solution in the immediate future. Our
15 industry grows each year in demand. FENC reopening Apple
16 Grove will help a bit, but it isn't enough now and can't
17 possibly supply expected future growth requirements. It was
18 too small when M&G owned it, and it's too small now.

19 M&G's own estimates and those of the industry
20 indicate that it will take years to open in Corpus Christi,
21 if it ever receives FTC approval. In the meantime, we are
22 faced with an ongoing crisis, the U.S. industry's only
23 solution being to import more PET to meet the demand. That
24 cannot be the purpose of why we are here today. Thank you
25 for your time, and I'll be happy to answer questions that

1 you might have.

2 STATEMENT OF SHAWN SAFIEDDIN

3 MR. SAFIEDDIN: Mr. Chairman and members of the
4 Commission, my name is Shawn Safieddin and I'm the Vice
5 President of Supply Chain for Niagara Bottling.

6 Founded in 1963 and headquartered in Ontario,
7 California, Niagara Bottling is the largest producer of
8 bottled water in the United States with 29 plants around the
9 Nation, and employing some 4,200 people. Responsible for a
10 significant proportion of all the water bottles sold in the
11 United States, Niagara Bottling is one of America's largest
12 industrial consumers of PET resin.

13 Last October, when I had the privilege to address
14 the Commission staff in the preliminary phase of this
15 investigation, I reported that America's industrial
16 consumers of PET resin were facing a supply emergency.

17 During the past year, the crisis intensified as
18 one of the domestic producers, M&G, declared bankruptcy for
19 reasons unrelated to imports and shut down production
20 capacity here in the United States and in Mexico.

21 As United States demand for bottle grade PET resin
22 continues to increase, it is plain that domestic production
23 cannot meet that demand. In some instances, Niagara has
24 been put on allocation, or short-shipped. Increasingly,
25 United States producers meet our orders by supplying us with

1 foreign-origin resin. Like many other industrial consumers,
2 Niagara has of necessity turned to imported material to fill
3 the gap and keep our plants running.

4 M&G's bankruptcy resulted in the abandonment of
5 that company's 1.1 million ton integrated PET and PTA
6 facility which had been under construction in Corpus
7 Christi, Texas. While a joint venture composed of three
8 domestic producers has offered to buy that plant, even if
9 antitrust regulators approve the plan, the Corpus Christi
10 plant would not come online until 2020 at the earliest.

11 For the foreseeable future, American PET consumers
12 will need imports to meet their needs. And the imports
13 which are the subject of this investigation are not only
14 necessary for that purpose but also not causing material
15 injury or threat thereof to the domestic PET producers.

16 The domestic producers are now vertically
17 integrated and globally competitive. Until mid-2015, DAK
18 Americas was the only domestic PET producer with the ability
19 to produce PTA, or Purified Terephthalic Acid, an essential
20 feedstock to PET resin. Then Indorama acquired CEPSA's
21 Canadian PTA assets in June 2015, followed by British
22 Petroleum's PX and PTA assets in Decatur, Alabama.

23 This not only has strengthened the position of the
24 domestic producers, but also has enabled them to capture
25 profits on internal sales of PTA while shifting profits away

1 from PET operations. In analyzing the financial performance
2 of the industry, the Commission should take this into
3 account as PTA prices in the United States are among the
4 highest in the world.

5 Not surprisingly, the tight supply situation has
6 created strong upward pressure on the prices for PET resin.
7 In the United States, domestic producers sell a substantial
8 proportion of their PET on the basis of long-term contracts
9 in which pricing is based on:

10 A), the cost of the major raw materials, PTA and
11 Mono Ethylene Glycol, MEG, combined referred to as "Major
12 Raws," as published by IHS plus a fixed margin; or

13 B), the prevailing market price, referred to as
14 "Market Price," as published by IHS or CDI minus a fixed
15 discount.

16 Thus, for example, public data compiled by the
17 research from IHS has traced trends in the Major Raws and
18 the Market Price for PET. Not surprisingly, the domestic
19 PET producers' margins as judged by the spread between the
20 Market Prices and Major Raws grew precipitously over the
21 period of the investigation.

22 In January, 2015, IHS reported the spread as 18.79
23 cents per pound. By the end of 2015, the spread was up to
24 19.18 cents, and by the end of 2016 it had swollen to 19.77
25 cents. There was a dramatic surge in 2017, and by the end

1 of that year the spread was reported at 23.67 cents. By
2 July of this year, the spread was 27.00 cents per pound.
3 For August 2018, the most recent period for which data is
4 available, the reported spread stood at 26.91 cents per
5 pound. Thus, PET prices based on market values have been
6 robust and growing sharply relative to the cost of Major
7 Raws. How can the domestic producers have been injured,
8 given the ever rising margins?

9 PET margins and prices have increased globally as
10 well, and it is not unusual now for Niagara and other
11 industrial consumers to pay a premium for imported material.
12 For perspective, imported PET margins as measured by the
13 spread between ICIS China Mid and IHS Asian Spot Raws grew
14 significantly from an average of \$117 per metric ton in 2016
15 and \$123 per metric ton in 2017 to \$210 per metric ton in
16 2018, with margins peaking at \$325 per metric ton.
17 Niagara's and other importers' continued importation of PET
18 at prices higher than domestic prices throughout 2018 is a
19 testament to lack of available domestic PET supply. If we
20 continue to import even at record high import margins and
21 relative prices, how could the domestic producers claim
22 imports to have been a source of injury?

23 I must mention, this is even with former M&G's
24 plants in operations today.

25 Annual PET consumption by Niagara alone grew by

1 over 200,0900 metric tons during the Period of
2 Investigation, whereas the domestic PET industry did not
3 grow at all. In fact, the domestic PET producers have
4 limited their capacity allocation to Niagara for 2019 and
5 2020. Accordingly, the sum of the maximum volumes offered
6 by the domestic producers to Niagara for 2019 and 2020 is
7 far short of Niagara's volume requirements. Needless to
8 say that Niagara will be required to import to ensure our
9 supply continuity, to satisfy United States market demand,
10 and to keep our workers employed.

11 In consideration of the supply deficits faced by
12 the industry, certain domestic producers have attempted or
13 required to supply us, at their sole discretion, from their
14 offshore plants moving forward. If the domestic producers
15 have the ability to supply us domestically, why would they
16 so insist on reserving the right to supply us with imports?

17 Niagara Bottling must also deal with problems
18 posed by the domestic PET industry's limited geographic
19 footprint. Niagara has numerous bottling plants on the West
20 Coast, located between 1,400 and 2,500 miles from domestic
21 PET plants, with an average length of haul of approximately
22 2,000 miles. Domestic producers face challenges in both
23 rail proximity and intermodal cost of transloading PET to
24 bulk trucks at rail terminals. For this reason, domestic
25 producers have supplied Niagara's plants with imported

1 material, and Niagara has been required to do so as well.

2 Niagara and other industrial consumers require
3 access to PET supplies shipped by ocean to the West Coast
4 ports. I ask the question: If the domestic producers are
5 poised to supply our West Coast plants domestically, why
6 would they themselves opt to supply our West Coast plants
7 with imports?

8 If domestic plants run at anything less than full
9 capacity, it is not for lack of demand, but due to a
10 decision by the domestic producers to fill orders with
11 subject and nonsubject imports, for logistical or other
12 reasons. The Petitioners control all Mexican and Canadian
13 PET capacity. They control subject production in Brazil,
14 Indonesia and Taiwan. They are vertically integrated here
15 and abroad. And they are currently, and for the
16 foreseeable future, in a position where they can sell every
17 pound of domestic production at strong prices. This is
18 hardly a situation where the domestic industry can
19 realistically complain about being injured by subject
20 imports--imports which they themselves largely control.

21 Imposing an antidumping duty order on the subject
22 imports will not result in an uptick in United States
23 production, employment, or sales. The principal
24 beneficiaries of antidumping duty orders will be producers
25 of nonsubject PET resin, which will continue to be

1 needed in the marketplace to satisfy our needs and those of
2 other industrial PET consumers for years to come.

3 Thank you for allowing me the opportunity to
4 testify. I am happy to answer any questions the Commission
5 or its staff may have.

6 STATEMENT OF RIZWAN DIWAN

7 MR. DIWAN: Chairman Johanson and Commissioners,
8 good afternoon. I am Rizwan Diwan, one of the owners of
9 Novatex Limited. For the past 20 years I have served as its
10 Executive Director.

11 Novatex has proudly served the U.S. PET resin
12 market since 2006 when we established G-Pac Corporation, our
13 Atlanta-based subsidiary dedicated to importing and
14 warehousing PET resin for our U.S. customers.

15 Novatex made the decision to enter the U.S. market
16 at that time because we identified it as an underserved
17 market for small and medium-sized businesses. It was
18 particularly underserved in terms of customer service.
19 While we have expanded since then from just a couple of
20 customers, we still have a very small customer list that
21 includes those original purchasers.

22 I have no doubt that a key reason for this
23 continuity is the quality of the relationships that Novatex
24 has developed with these customers. Unlike larger companies
25 with sales forces that turn over with regularity and move

1 among both companies and industries, I personally have had
2 relationships with each of our U.S. customers since day one.
3 They know that if there is a question or concern or urgent
4 need, they can call me directly and will receive immediate
5 attention. They also know that they can rely upon Novatex
6 to supply the product ordered and not renege on a formula
7 pricing agreement.

8 The U.S. market is where we obtain the highest
9 price for PET resin, but our strategy is not to depend on
10 any one market too much. The growth we experienced in the
11 U.S. market in 2017 is due to the demands of our U.S.
12 customers who pulled us into this market more than we
13 anticipated. That is mostly because of the supply
14 disruptions involving M&G.

15 The U.S. customers became concerned that even
16 though M&G was offering them the lowest prices, it might be
17 going out of business--which it did--because of the severe
18 difficulties it was experiencing in the construction of its
19 new facility in Corpus Christi. Novatex also benefitted in
20 2017 from having multiple suppliers of IPA. So while the
21 price of IPA went through the roof, we at least had supply
22 and were able to keep producing PET resin. Of course we had
23 to deal with the same cost-price squeeze that the U.S.
24 producers experienced. We had to pay more for the IPA
25 inputs, and there was a delay before we were able to pass

1 those unexpected cost increases on to our customers, but we
2 met our commitments.

3 Novatex's priority is to sell in Pakistan, our
4 home market. It is a very good market, growing at a steady
5 pace of 7 to 8 percent a year. And with a young population
6 in Pakistan, we are very bullish about the market for end
7 users for PET resin such as beverage bottles.

8 More broadly, markets around the world are strong
9 and growing, with new opportunities appearing for Novatex
10 and other producers. Our other markets include Europe,
11 Africa, and the Middle East. In Qatar, for example, our
12 business has expanded because of the embargo imposed by
13 Saudi Arabia and other Middle Eastern countries.

14 We added downstream capacity to produce PET resin
15 in 2016 as a result of our "debottlenecking" strategy. By
16 that I mean that because of our SSP--or Solid State
17 Polymerization plant was old and inefficient, we built a new
18 SSP plant that is more efficient. Some of the older
19 facility is now dedicated to producing nonsubject
20 merchandise, and it will not return to producing subject
21 goods. That was the first capacity expansion we undertook
22 since 2007, and there is no plan for additional capacity of
23 subject merchandise. In any event, to bring additional
24 subject merchandise capacity online would take at least two
25 to two-and-a-half years.

1 We also use our new SSP to produce nonsubject
2 goods. In December 2018, we will also add a production line
3 for BOPET film. At that time, we will divert over 55
4 million pounds of the amorphous grade resin we currently use
5 in the production of subject merchandise for use in the
6 production of nonsubject film resin. This will reduce the
7 quantity of subject merchandise produced at our facility in
8 the future.

9 Looking at the U.S. market, we have seen a number
10 of disruptions to supply over the last couple of years. In
11 addition to shortages in the market following the bankruptcy
12 of M&G, production also can be disrupted when key inputs are
13 unavailable. An example is what is happened recently with
14 PTA, one of the key inputs in the production of PET resin,
15 as a result of British Petroleum, or BP, declaring force
16 majeure on its PTA contracts and the shut down and
17 maintenance of Alpek's PTA facility in Mexico following a
18 fire in July.

19 It is clear that there is going to be a shortage
20 of PET resin in the U.S. market for the next couple of
21 years. The Corpus Christi plant is not expected to begin
22 production until 2020 at the earliest. We expect the plant
23 to experience starts and stops. A plant built by
24 contractors who were not being paid and whose workers walked
25 off the job cannot expect to have perfect execution. Given

1 the robust growth trajectory of demand in the United States,
2 we expect that even when the Corpus Christi plant does come
3 on line there will continue to be shortages and supply
4 disruptions on the part of U.S. producers.

5 That is not just my view. I would urge the
6 Commission to review the key industry publications which are
7 following this critically tight market. They are correctly
8 warning that this is what the market will look like for the
9 foreseeable future. As one of those publications stated,
10 "Thank Heaven for imported PET."

11 Thank you.

12 STATEMENT OF BRUCE MALASHEVICH

13 MR. MALASHEVICH: Mr. Chairman, members of the
14 Commission, I'm Bruce Malashevich, economist to those
15 opposed to the petition and I welcome becoming acquainted
16 with Commissioner Kearns for the first time. Welcome, sir,
17 to these proceedings.

18 Those of you that know me know that I've been
19 testifying in Title 7 cases for more than 40 years and I
20 continue to love every minute of it, but I want to say
21 something that's very important. There is something special
22 about this case. It's the most unusual in which I have ever
23 participated. That includes Seal Aircraft. That includes
24 all the big steel cases.

25 The fact pattern is so complicated by a variety

1 of factors, but more importantly, the database heroically
2 gathered by staff includes so much information not
3 previously available and yet very relevant to Petitioners'
4 allegations in this case that it requires all of us to think
5 out of the box because we can use new tools. We can use new
6 ways of looking at things and whenever is possible in any
7 case that I am aware of going backward in time and I commend
8 staff for that effort.

9 Let me just give you in my brief period of time
10 available examples of what I'm saying. Let's take something
11 as mundane as significance. I think we'd all agree that
12 significance in any case is a pushover. How many tons are
13 coming, what the market share is, but there have been cases,
14 at least two that I'm aware of, where the Commission has
15 dismissed a case because they found imports to be
16 insignificant, notwithstanding a substantial market share at
17 the time of the POI.

18 I submit there's enough evidence in this case to
19 find imports to be insignificant. Why in a nutshell, well,
20 they're importing through completely integrated and
21 affiliated supply chain from plant to customer. The plant
22 being in the U.S. or overseas it doesn't matter complete
23 control over the supply chain, but all major players still
24 in existence.

25 Well, there's a lot of evidence that we've

1 uncovered in this fantastic database staff has assembled
2 that the subject imports that are being imported by the
3 domestic industry either are benign or actually benefit the
4 domestic industry, which seems counter-intuitive until you
5 think about given the breath of importing that's going on by
6 the various remaining players why would they import and
7 prices those imports in a way that would injure themselves?
8 At some point, it's just obvious. What's different is that
9 in this case the breath and the extent of the importing is
10 much greater than seen in any previous case that I'm
11 familiar with.

12 Now let's take another of the topics at issue
13 here, the shortage. I'm sure the Commissioners are aware,
14 as much as I am, shortages often argue in these cases. The
15 issue, from Respondents' point of view, very rarely won for
16 failure to have one or more of three important facts. Okay.
17 One is the contemporaneous evidence for shortage. You're
18 not going to win a 2018 case by submitting 2018 American
19 Metal Market article. You have to be current. It has to be
20 here and clear and present. I submit none of the testimony
21 today, but the record is replete with exactly that kind of
22 current evidence.

23 How else is it rejected? Well, you can't
24 measure it. I've been in a lot of cases where Commissioners
25 say you know I hear you. I hear you, but it's hard for us

1 to evaluate the impact of this alleged shortage without
2 knowing how many tons where there. Well, the data collected
3 by staff allowed us to answer that question exactly so. We
4 calculated what it is. It is a very big number. It's all
5 laid out in the Steptoe & Johnson brief in excruciating
6 detail, so we cleared that hurdle.

7 Also, I could think of many cases of alleged
8 shortage where maybe one or two of the factors I just
9 mentioned were present, but the Commission still went
10 negative because they saw in the record of the day that,
11 well, supply and demand if there was a shortage you'd see a
12 price jump. But look at the staff report. There is no
13 price jump or the product is sufficiently absurd that
14 public data don't exist to get it.

15 Well, in Steptoe & Johnson brief, we've solved
16 that problem. There is, indeed, a contemporaneous spike of
17 substantial magnitude that's documented in Steptoe & Johnson
18 brief, so our case prevails on all three things missing from
19 past cases -- contemporaneous evidence of rather precise
20 measurement of the size of what's missing from the
21 marketplace and the presence of what you would expect to
22 occur to price if there was a genuine physical shortage.
23 Close case.

24 Okay, now let's talk about the imports by U.S.
25 producers from affiliates. The database we assembled is

1 unbelievable based upon what staff gathered. U.S. producers
2 importing from affiliates is nothing new in ITC cases of
3 this sort. But, typically, the data to gather exactly who's
4 doing what to whom is not gathered and it's not gathered
5 either for reasons of staff resources available or because
6 there are too many countries, non-subject countries, and so
7 we rely on trade statistics, other secondary sources.

8 Here staff gathered all the data we needed to
9 link every import into the United States, subject and
10 non-subject, and allowed us to differentiate between those
11 imports that were "controlled" -- I say in quotation marks.
12 We call them U.S. controlled because they were imported by
13 the U.S. player, but really they were controlled by the
14 supply chain from the product plants, be it domestic or
15 overseas, to the customer in the United States; but that's
16 what we mean by U.S.-controlled versus non-U.S. control.
17 And we could do that for both subject and non-subject
18 merchandise, including to the level of pricing data for
19 products one to whatever, unprecedented in my experience,
20 very comprehensive.

21 And what we found is -- as part of what we found
22 is why the domestic industry actually benefits from its
23 importing, but the enormous market power they have
24 accumulated when you add together the products that they
25 control, but happened to bring in from a foreign affiliate

1 with the market share of U.S. production. What we get is a
2 very big number and we applied some statistical science to
3 the issue of price leadership. We looked at the Herfindahl
4 Index probably familiar to all of you. Herfindahl Index
5 results is a public number and it's well above the threshold
6 of what's considered highly concentrated.

7 Okay, let's call that the abstract proof. Well,
8 the evidentiary proof is in the record. It's in the record
9 of what people had to say about who is the price leader in
10 the United States. Now in most cases it's a question that
11 basically is given little weight because you have eight
12 different players naming different people, different
13 entities the price leader. There's nobody -- here there is
14 unanimity without exception. The U.S. producers are the
15 price leaders. So, we have evidence in the record,
16 contemporaneous evidence that's clear and convincing.

17 So, what'd you get? You have market power.
18 Market power is the capability to move the price up or down
19 in a particular direction. I'm not saying it's exercised
20 necessarily. I'm saying market power is the Herfindahl
21 Index are not new techniques to the economics trade, but
22 they're new techniques in these Title 7 proceedings that can
23 give greater life and meaning to the question who is the
24 price leader. There are empirical tools that allow you to
25 identify exactly who that is and we did.

1 One point of clarification, I think I used the
2 word that U.S.-controlled means controlled by the U.S.
3 producers or its parent. It's really the U.S. supply that
4 is probably a more appropriate term, but basically an entity
5 in the supply chain. The affiliate is supply chain from
6 plant to U.S. market is in the loop all the way and
7 ultimately sets the price.

8 Now when you think about it with a market share
9 that large, with the market power they have, okay, where's
10 the room for injury? Who's out there in the marketplace
11 that's in a position to injure the U.S. industry at all? We
12 didn't know, so we went looking for them. And my wonderful
13 colleagues, sweating through Labor Day weekend, did that
14 calculation. And we segregated what was controlled by part
15 of the chain that I'm talking about, that real big number
16 that leads to the market power, and the big Herfindahl Index
17 and what we called "uncontrolled" subject imports, imports
18 that somebody else outside the chain happened -- and we
19 calculated that number precisely. It's in the Steptoe &
20 Johnson brief, full documentation.

21 So, if there's anything out there, it could've
22 caused material injury it had to have been the uncontrolled
23 subject imports. And the number we found was very small,
24 not large enough to cause material injury, not to this group
25 of players with global capacity for moving material around

1 the world. In my professional opinion, it's insignificant.

2 There's a lot more I could say on the subject,
3 but I did want to conclude with a word on the subject of
4 so-called direct imports which appears to be a large part of
5 Petitioners' case. Petitioners' position on direct imports
6 -- direct imports occur, in my professional view, at a
7 different level of trade than imports as measured in the
8 traditional price comparisons made by the Commission. And
9 at different level of trade it is, to me, irresponsible to
10 commingle data with different levels of trade in making
11 price comparisons.

12 I did not consult with staff on this issue, but
13 when I saw the staff report I did note that staff
14 beautifully reported quantity and values reported for
15 so-called direct imports, but they did not produce price
16 comparisons in the staff report and I commend them for that
17 because I really think mixing levels of trade for purposes
18 of price comparisons are just not on. A direct importer
19 assumes for itself the considerable service and other
20 expenses that's routinely embedded in the margin charged by
21 the importer or the re-seller. Those expenses represent a
22 substantial cost not reflected in the price paid for the
23 goods by the entity doing the direct importing.

24 Petitioners' well-worn argument never did and
25 does not now have merit. I'd be pleased to answer any

1 questions. Thank you all for your attention. Thank you.

2 MR. MELASHEVICH: Think out of the box in this
3 case.

4 MS. ESSERMAN: Can we have an accounting of the
5 time?

6 MR. BISHOP: 20 minutes.

7 MS. ESSERMAN: 20 minutes. Mr. Chairman if I
8 might, we are very glad to have the out of the box
9 arguments, which also translate in very conventional
10 arguments for showing there's no volume or pricing injury.
11 I would just like to briefly summarize them, that subject
12 imports' market share was not achieved through
13 under-selling.

14 As one of the Commissioners raised in 2016, in
15 which subject imports increased the most, Petitioners
16 performed the best. And during that year, this is very
17 important, that goes to what Mr. Malashevich was saying,
18 Petitioners' own imports increased by approximately the same
19 amount as subject imports not affiliated with Petitioners.
20 So clearly this was a rational non-injurious response to the
21 market, given some of the supply limitations.

22 On pricing, as the Commission found in its
23 preliminary determination, there was no price depression
24 because prices in 2015 and '16 were found to follow PTA M&G,
25 which are the raw materials are indexed to PET prices.

1 There's been a finding ion the Commission's prehearing
2 report of preponderance of over-selling by subject imports.

3 Finally, prices are surging because of the
4 shortage, and there is, as Mr. Malashevich said, there's
5 documents, documentary evidence in the record to show that
6 prices began to surge in September when we -- when there
7 were rumblings of the shortage when a number of things came
8 together. In fact, even in the prelim, Mr. Rosenthal then
9 admitted that prices were spiking, and that's when the
10 prices began to rise.

11 There are many arguments that Petitioners assert
12 that we put forward as a basis for our position. There's
13 isn't sufficient time to address those, but I hope in the
14 questions that we'll have a chance to do that. Thank you
15 very much.

16 CHAIRMAN JOHANSON: Thank you Ms. Esserman and
17 others. We will begin with Chairman -- with Commissioner's
18 questions with Commissioner Schmidtlein.

19 COMMISSIONER SCHMIDTLEIN: All right. Thank you
20 Chairman Johanson. I'd like to thank all the witnesses for
21 being here today, especially the purchasers. We don't often
22 get purchasers, so we really much -- very much appreciate
23 it. So I want to start, of course, I think with the big
24 question here, which was or is the impact of the asserted
25 supply shortages on the volume of imports.

1 And Ms. Esserman, you just referred to this. I
2 was going to point this out. So in the staff report, when
3 you look at the volume of subject imports, this is public,
4 the greatest increase occurs from 2015 to 2016, where it
5 goes from 216 million roughly pounds to 690 million pounds
6 in 2016, for an increase of 218 percent. Then from '16 to
7 '17, it goes from 690, 690 million pounds to 822, for an
8 increase of 19.1 percent.

9 So one question I have is, and we've heard a lot
10 about the M&G collapse, and when I listen to the statements
11 from Mr. Berry and Mr. Ream, where you talked a lot about
12 that Mr. Berry in your statement you actually focus on that
13 and talk about how that triggered Pepsi to look for
14 qualified import sources and so forth.

15 So my question is since this happened way before
16 the 2017, which is what the Petitioners have been arguing,
17 why did we see such a surge in imports in 2016? This had
18 nothing to do with the M&G.

19 MS. ESSERMAN: Yes, and I'm glad that you
20 raised the question, because we want to clarify exactly why
21 and how we're raising shortage. I mean it's first of all,
22 it's the issue dominating this market, now and yes, since
23 September of last year. We are not saying that all imports
24 were drawn in since 2015, because of a shortage in 2017. Of
25 course, we're not saying that.

1 So what we are saying is that for the purpose,
2 this is a major condition of competition in which to assess
3 today's situation, which is in part relevant to causation
4 for injury, but also clearly for threat. Hard to figure out
5 how you'd have a threat situation when you have such a short
6 situation.

7 Now going your question, I think again we should
8 look at what Petitioners did during that time period. As I
9 said earlier, they imported approximately the same amount
10 from their subject and non-subject sources. So clearly it's
11 necessary to have imports supplementing the market. I'm not
12 saying then that it was shortage.

13 I'm just saying that we've -- that subject
14 imports behaved rationally, just as the domestics did, and
15 you know, we want to be careful about APO information. But
16 we did put that information in our brief. So this was --
17 there was a need for volume in the market, and so this was a
18 rational response.

19 COMMISSIONER SCHMIDTLEIN: So were, and maybe
20 some of the fact witnesses can respond to this. Were you
21 experiencing shortages in 2016 from U.S. suppliers?

22 MR. SAFIEDDIN: I would like to address that if
23 I may. Shawn Safieiddin from Niagara Bottling. With every
24 successive delay in the startup of Corpus Christi, our
25 concerns over M&G's short-term liquidity and long-term

1 solvency grew, so much so that we deliberately opted to not
2 do business with M&G.

3 COMMISSIONER SCHMIDTLEIN: In 2016?

4 MR. SAFIEDDIN: And before.

5 COMMISSIONER SCHMIDTLEIN: Okay. So you were
6 then purchasing from other U.S. suppliers or other import --

7 MR. SAFIEDDIN: Or imports. Furthermore, as I
8 indicated in my testimony, Niagara's PET consumption during
9 the period of investigation grew by some 200,000 metric
10 tons. The domestic industry during the same time did not
11 grow at all. So that raises concern as to whether or not we
12 should put more and more our eggs into the domestic
13 industry's basket.

14 COMMISSIONER SCHMIDTLEIN: But were you ever
15 turned down by U.S. producers when you were soliciting
16 business from them? Were you told during that period that
17 they couldn't fill an order?

18 MR. SAFIEDDIN: The phenomena of being turned
19 down was as recently as 2018. I don't recall having been
20 turned down prior to that.

21 COMMISSIONER SCHMIDTLEIN: Prior to that, okay.

22 MR. SAFIEDDIN: 2017, I don't recall having
23 been turned down prior to that.

24 COMMISSIONER SCHMIDTLEIN: Okay. Mr. Ream.

25 MR. REAM: Steve Ream with Graham Packaging,

1 yeah. In 2016, we actually had a hurricane, and one of the
2 domestic producers, one of the petitioners did declare force
3 majeure and stopped shipping product for a period of time,
4 that significantly impacted the market.

5 And just to talk about the rational nature of
6 why you say how did it start in 2015 and how did it grow --

7 COMMISSIONER SCHMIDTLEIN: Well, let me go back
8 to that, okay.

9 MR. REAM: Okay.

10 COMMISSIONER SCHMIDTLEIN: So because we have a
11 substantial increase in subject imports, right.

12 MR. REAM: Yep.

13 COMMISSIONER SCHMIDTLEIN: And so I know that
14 you all have been focused on since M&G failed and the tight
15 supply conditions in the market, right now. But I want to
16 talk about this period, because this is where we shift in
17 market share from U.S. producers and so forth, and we see a
18 large increase in subject imports.

19 These numbers aren't public that are in the
20 staff report, but I can see how much the U.S. producers were
21 bringing from their affiliates. It doesn't account for --
22 let's just say it doesn't account for all of the increase
23 from '15 to '16, okay. So there are obviously other, other
24 importers, other purchasers that weren't buy from those U.S.
25 companies, who were bringing it in from their affiliates,

1 right?

2 So when you say there was a force majeure from
3 the hurricane in 2016, can you give us more of a sense of,
4 you know, was that a single contract that was voided? How
5 long did that supply disruption go on? Was it one U.S.
6 company that, you know. So give us more of a sense of what
7 exactly entailed.

8 MR. REAM: Yes, it was the largest producer in
9 the U.S. It declared force majeure and it was across
10 multiple plants and multiple products. We'll definitely get
11 back to you in the brief --

12 COMMISSIONER SCHMIDTLEIN: Multiple plants in
13 South Carolina or all over the United States?

14 MR. REAM: In the U.S., because it was their raw
15 material supply.

16 COMMISSIONER SCHMIDTLEIN: I see.

17 MR. REAM: That they divided up then amongst the
18 other existing plants to make the base work.

19 COMMISSIONER SCHMIDTLEIN: Okay.

20 MR. REAM: But we'll address that post-hearing,
21 because I can't speak to exactly how long it was here, but I
22 think about -- it lasted about two months.

23 COMMISSIONER SCHMIDTLEIN: Okay, all right.
24 That would be helpful, okay.

25 MS. GRODEN: If can just jump in, this is Cara

1 Groden from ECS. I would also note that between '15 and
2 '16, demand in the U.S. increased. Apparently consumption
3 increased, U.S. producers' own shipments increased and their
4 capacity utilization increased. There are other metrics
5 that I cannot, are not readily available to me on the public
6 record that also show that the U.S. industry was not
7 adversely impacted in its condition during that time period.

8 So the fact that their own shipments increased,
9 their own imports increased, along with an increase in
10 subject imports and an increase in demand --

11 COMMISSIONER SCHMIDTLEIN: Yeah, but they
12 weren't running at full capacity. So why would you expect
13 them to lose share just because apparent consumption went
14 up?

15 MS. GRODEN: Well, what I'm saying is that
16 they're making the decision to supplement their supply to a
17 certain extent with a substantial increase in imports, and
18 then I'd also point you to our Exhibit 14 in the iResin or
19 Steptoe brief, which shows that capacity utilization should
20 also be adjusted a number of ways, to account for some
21 reporting, what we feel are some reporting issues in U.S.
22 producers' data.

23 MR. KAUFMAN: But if I may add, this is Joel
24 Kaufman, and Commissioner Schmidtlein, you know, I was glad
25 to hear you say that you're looking at the imports of both

1 subject and non-subject volumes that were controlled by the
2 U.S. producers. I mean at the same time that they're
3 talking about having excess capacity, they're not filling
4 that capacity with U.S. sales.

5 They're filling that capacity, or they're in
6 lieu of that capacity, they're importing. You have to --
7 that's why we -- we're not, we don't need to argue that you
8 can't consider those imports. We don't believe to be
9 successful here. But we do think that the Commission should
10 look at those imports, because when you make choices to
11 import rather than produce domestically, you had asked
12 previously to the producers how did your imports affect
13 pricing?

14 It also affects all of the volume-related
15 indicia of injury. They weren't producing. It affected
16 their capacity utilization. It affected their number of
17 workers, and even at that they still had what they describe
18 as the best year of the three year POI. So that's why we're
19 saying, we're not denying that there was an increase here in
20 subject imports.

21 But what we're saying is that there was not
22 impact, and certainly impact that the Petitioners are
23 attributing to that increase.

24 MS. ESSERMAN: And just one further point
25 there. Again, we aren't not just saying the presence of

1 imports. I want to go to what Mr. Malashevich said. We're
2 talking about this U.S. global supply network. But it isn't
3 just that. It isn't the situation that you heard from these
4 two witnesses, that oftentimes they would seek U.S. product
5 and in return the U.S. producer would fill that order from
6 one of their affiliates without even asking them.

7 That's why you have to look at imports in a
8 different way, their own imports in a different way in this
9 case, and look at as Mr. Kaufman was saying all those volume
10 indicators. They were in control of that. They chose, and
11 we're not saying that those imports that they brought in
12 were injurious, quite to the contrary of what Petitioners
13 are saying.

14 For whatever reason, whether they didn't have
15 capacity available, whether it was on the west coast or for
16 strategic reasons, they chose to bring the product in from
17 one of their affiliates instead of supplying out of their
18 plant. And I do urge you to look at our brief and we'll
19 certainly address that more fully in our post-hearing.

20 But 2016 is really instructive in that regard,
21 because you'll see an increase in imports from imports
22 controlled by the U.S. and imports not controlled, and they
23 really are quite equivalent. So it shows that it was a
24 rational response to conditions of the market.

25 COMMISSIONER SCHMIDTLEIN: Okay, all right.

1 Thank you. My time is up.

2 CHAIRMAN JOHANSON: Commissioner Kearns.

3 COMMISSIONER KEARNS: Let me just start there,
4 Ms. Esserman. I mean if I heard the Petitioners correctly,
5 I think there was almost an admission that they were hurting
6 one another. I mean I don't know if we can just sort of
7 assume that all imports coming from the Petitioners are, you
8 know, fairly traded and non-injurious to the market.

9 What I was hearing was there's some
10 understanding that, you know, they're not all getting along,
11 which actually sounds like a pretty competitive environment
12 among the petitioning parties.

13 MS. ESSERMAN: Well let me just say we are not
14 saying that they are -- their imports are injurious, as some
15 -- as they have asserted. But if they want to say it, then
16 they are the cause. If they're injuring one another, all of
17 the other imports that come in should not be blamed for
18 that. That is a kind of an astounding assertion on their
19 part.

20 COMMISSIONER KEARNS: But again as you said,
21 there's a lot of different ways to attack this. But imports
22 that they're not -- that they do not control are rising
23 about the same level, I think you were saying, as ones that
24 they were controlling. So it's not just an issue of this is
25 all because of them. I thought you were saying before it's

1 equally because of us and because of them.

2 MS. ESSERMAN: That is what we are saying, Mr.
3 Kearns. We are saying that there is a rational -- they
4 acted rationally in their self-interest and likewise so did
5 subject imports not controlled. That is what we were
6 saying. I was frankly quite astounded by that comment, that
7 for whatever reason they have decided that it's in their
8 strategic interest to import rather than to supply out of
9 their own production.

10 It does have consequences. It means that their
11 production sales in the United States are not as good, as
12 high. But that they ultimately must have concluded that
13 this as beneficial to them.

14 COMMISSIONER KEARNS: Okay.

15 MR. KAUFMAN: Commissioner Kearns, can I just
16 add one point to that. If that's the case, if that's the
17 argument that they want to propound now, then how do they
18 explain Mexico? We're not blaming everything on Mexico, but
19 if you're going to start attributing injury to their own
20 imports, Mexico is the single largest source of imports into
21 the United States. It's all owned by the U.S. producers.
22 There's no one else there.

23 So I don't know how, if you're going to start
24 going down that road, you then stop short of looking at your
25 imports from Mexico, and other sources where they're

1 bringing it in from now from a variety of other countries.

2 COMMISSIONER KEARNS: Okay. But what I've seen
3 of imports from Mexico don't show a sharp increase, do they?

4 MR. KAUFMAN: Look at the volume.

5 MS. ESSERMAN: It's quite sizeable, and the
6 reason there wasn't an increase in 2017 is M&G plant went
7 down, and that affected a quarter's worth of production. So
8 I think you have to really take -- take a look at that.

9 COMMISSIONER KEARNS: Right. But then that
10 gets me to the other, my other trouble here is there's this
11 huge shortage caused by M&G's collapse, which affected not
12 just Apple Grove but also Mexico, etcetera. But I'm not
13 seeing a huge drop in imports from Mexico either, am I?
14 Maybe some drop, but not a huge drop. Not enough to sort of
15 send shockwaves through the market I wouldn't think.

16 MS. ESSERMAN: Well you know, I'd like to turn
17 to Mr. Ream to address this, in terms of just the impact of
18 the closure. We'll look at the numbers, but the numbers --
19 the numbers were on a trajectory of increasing, and there
20 was a dislocation as a result of the closure of M&G Mexico.
21 But and I think as we heard, that DAK ultimately took over
22 the facility. But I think they would have been -- they were
23 on a track to be much higher.

24 MR. KAUFMAN: Before Steve goes on, let me just
25 clarify something. I'm looking at data on Mexico and I have

1 to fairly careful, because I'm never sure how much of this
2 is public and how much of this is BPI, and we'll be happy to
3 address it in our post-hearing briefs.

4 But I do see an increase in 2016 to Mexico, and
5 I do see also that you need to look at the first quarter of
6 2017, because imports from all sources were increasing --
7 U.S. producer imports were increasing in that quarter. We
8 outline that in our brief, to try to show what that
9 transition was from '15 to '16 to '17.

10 We couldn't go to full year '17 data, for the
11 reason Ms. Esserman said, is that when you look at the last
12 quarter of the year, M&G -- the plant in Mexico had
13 temporarily ceased, although no one knew how temporary at
14 the time, and Apple Grove had gone down, which was a major
15 source of imports also from Mexico for its own production.

16 So the 2017 data on an annual basis gives you a
17 distorted look at the total imports. But what we did was we
18 extrapolated in our brief first quarter data for the year,
19 and you could see what the continuing impact of that was.

20 COMMISSIONER KEARNS: Okay, thank you.

21 MR. ELLIS: Excuse me. This is Neil Ellis at
22 Sidley. Just to mention, page 4-28 of the staff report does
23 in fact show exactly what Joel just said in both ways, that
24 Mexico is large, and that there was a noticeable decline
25 from '16 to '17 for executive reasons that he mentioned.

1 I mean we can infer that. The data show the
2 kind of decline that you would expect given what happened in
3 -- we've heard has happened in Mexico, but nevertheless
4 remained large and that also belies something that we heard
5 this morning, which was that Mexico was just used kind of to
6 fill in the gaps by Dak when there were supply difficulties
7 in the United States. In fact, you see that Mexico is
8 routinely a very large import source. Thank you.

9 COMMISSIONER KEARNS: Okay.

10 MR. SAFIEDDIN: Commissioner, if I may help
11 solve this mystery. So why the excessive surge in imports
12 from subject countries. Although imports occur across all
13 regions in the country, there's one region in particular
14 that is heavily dependent on imports, and that is the west
15 coast, right.

16 Just because the first set of five countries
17 receive an affirmative determination of dumping doesn't
18 necessarily mean that the systemic deficiency that the
19 domestic industry is faced with on the west coast went away.
20 We had to find a way to supply our requirements on the west
21 coast, and what's the proof of my allegation or assertion
22 that this is a systemic issue?

23 Even the domestic producers themselves opt to
24 fulfill any requirements on the west coast through the use
25 of the imports, right?

1 COMMISSIONER KEARNS: Uh-huh.

2 MR. SAFIEDDIN: So the surge that you see in
3 the imports from the subject countries is simply explained
4 by the need to fulfill that demand from somewhere.
5 Domestically, we were not poised to do so, so we had to
6 resort to alternate sources of supply.

7 COMMISSIONER KEARNS: Okay, thank you.

8 MR. REAM: I had one more thing.

9 COMMISSIONER KEARNS: Sure, please.

10 MR. REAM: I had one more. So at the end of
11 2017 when all these events took place, an M&G bankruptcy
12 went down, we had Apple Grove shut down, we had Mexico shut
13 down, and you heard the Petitioners say wow, we exhausted
14 all our inventory in the system. Well that's kind of what
15 happened. That's the surge you see at the end of '17.

16 Everybody exhausted all the inventories in the
17 system and we were still out of resin, and we had to build
18 those inventories back up to have some level of safety stock
19 in the system. So that's part of the surge in 2017 you see.
20 We had to all correct for that, because there wasn't any
21 material left anywhere. We had to bring in material and
22 inventory for safety stock and security reasons. That's
23 another big portion of why that grew.

24 COMMISSIONER KEARNS: Okay, thank you. So I
25 guess just to back up a little bit. I think when I was

1 hearing your opening, what I thought you might be saying was
2 essentially, I'm overstating it here, but you know, while
3 there may have been a surge in imports, there may have been
4 -- there might have been some issues there.

5 You can kind of forget about the rest of the
6 POI. We now have a real problem with a shortage of imports
7 because of M&G, and not just because of Apple Grove but
8 because of Mexico and because of Brazil and so forth. So
9 forget everything else you know -- not forget everything
10 else you know, but like what really matters now is going
11 forward, we have an issue with supply.

12 But now what I'm hearing is no, actually there
13 was a shortage throughout the POI?

14 MS. ESSERMAN: No. Let me be very clear. What
15 we were saying is that there were already tight supplies in
16 September, before the M&G crisis. There were some
17 reverberations of what, there were some announcements. I
18 believe DAK publicly announced that they would not supply
19 raw materials to M&G, and that caused problems.

20 There was a warn notice that went out that Apple
21 Grove was not -- that suggested they were not likely to stay
22 open. So but these, that was the beginning of the real
23 shortage, and then when everything close and it was clear
24 that Corpus Christi was going to be closed, that created the
25 supply shock, because together, first of all, the first two

1 and the way we calculate it is based -- and this is public
2 -- based on the capacity at Apple Grove plus what M&G's
3 chief restructuring officer said, that M&G used actually
4 Mexico and Brazil supply, its foreign suppliers, I think
5 Mexico supply to -- for half of its sales in the U.S.
6 market.

7 So that's 1.2 billion pounds out of the market
8 like that. Then and you heard from these gentlemen that
9 people were counting on Corpus Christi coming on stream for
10 some time. It had consequences. When you put those two
11 together that's a huge shock, and that sent -- that created
12 a panic, and so a shortage and that's continuing.

13 Now we are not saying that shortage, and that's
14 the only thing relevant to your analysis. But we are saying
15 it is relevant to current injury, at least for this period,
16 and certainly for threat.

17 What we are also saying is that as you look at
18 the other years, as I concluded our affirmative
19 presentation, there is not evidence of volume or pricing
20 injury because subject imports were not participating in the
21 market on an injurious basis, for the reasons that I noted
22 but also what Mr. Safieiddin said about the west coast as
23 well.

24 So I want to be very clear. We did not say, as
25 Petitioners asserted, we were very careful in our brief to

1 build the conditions of competition, of which the shortages
2 certainly are very, very important to your analysis.
3 Because also we were saying it was happened on top of tight
4 supply conditions. So there has been tight supply
5 conditions.

6 We are not suggesting in 2016 that there was
7 shortage and that you had imports. Absolutely not. We're
8 saying that during that period, there's no evidence of
9 injurious participation of subject imports, particularly
10 when you look at how U.S. -- well, I would just say that
11 period. I'll end with a period, that particularly when you
12 consider how Petitioners relied on imports, because our
13 participation, the subject imports not controlled by
14 imports, participated in very -- in a similar way.

15 And certainly, as Mr. Malashevich was saying, in
16 that context, if you consider here subject imports not
17 controlled by the U.S. companies, the market share is
18 certainly not significant, and especially in the context of
19 market power that Mr. Malashevich was talking about.

20 COMMISSIONER KEARNS: Okay, thank you.

21 Thank you. My time is well over. Thanks.

22 CHAIRMAN JOHANSON: All right. Thank you all for
23 appearing here today. And this whole supply issue, we have
24 petitioners saying one thing and then we have on the other
25 side, respondents saying something completely different,

1 which kind of puts us in somewhat of a bind. And so we hear
2 Mr. Berry and Mr. Safieiddin stating that they're very
3 concerns, their companies have been very concerned about
4 shortages in the market.

5 But then again, the petitioners stating no,
6 that's not the case. So I was wondering, are there any
7 independent sources which discuss this issue? Are there any
8 trade articles? Are there e-mails that you all have sent
9 among yourselves? Any business records which might raise
10 this? From what I can tell, there's nothing in the exhibits
11 which discuss this. Mr. Berry?

12 MR. BERRY: Yes. If it recognize --

13 CHAIRMAN JOHANSON: And then Ms. Jacobs after
14 you.

15 MR. BERRY: So a recognized source of information
16 in this industry which it comes to PET, is HIS and if you --

17 CHAIRMAN JOHANSON: Is that a trade publication?

18 MR. BERRY: It's a trade publication.

19 CHAIRMAN JOHANSON: Okay.

20 MR. BERRY: Pretty much all of us subscribe to
21 it. And if you would follow what they're saying and for
22 this whole period of time, they describe how the market has
23 been short. And they provide certain degrees of data, I
24 don't have the data available, but that's an unbiased source
25 of information that could be tapped to describe what

1 happened here.

2 CHAIRMAN JOHANSON: Okay.

3 MS. JACOBS: Mr. Chairman, there are a number of
4 publications that the company -- I'm sorry, this is Brenda
5 Jacobs for Sidley representing Novatex. There are a number
6 of publications that the companies follow closely. There's
7 something called KIM data that talks about what's going on
8 in the industry, and we can provide you with copies of
9 relevant pages of that, although these are proprietary
10 publications --

11 CHAIRMAN JOHANSON: Right.

12 MS. JACOBS: There's something called Technon.
13 There are at least three or four that have been provided to
14 us that provide some real perspective and some independence,
15 a third voice that I think you would find very useful in
16 evaluating what the facts are. And we'd be glad to try to
17 provide as many of those to you as possible within the terms
18 of subscriptions that these companies --

19 CHAIRMAN JOHANSON: Okay.

20 MS. JACOBS: -- have to follow.

21 CHAIRMAN JOHANSON: Yes, Mr. Safieiddin?

22 MR. SAFIEDDIN: Mr. Chairman, if I may, I would
23 like to offer a very pragmatic answer or solution to your
24 question. As I indicated in my testimony, the sum of the
25 maximum capacities offered or put forth by the domestic

1 producers combined falls far short of Niagara's requirements
2 for the years 2019 and 2020. If there are any petitioners
3 that would like to make incremental capacity available to
4 us, there's a potential buyer right here, right now.

5 CHAIRMAN JOHANSON: Okay, thank you, Mr.
6 Safieiddin. Mr. Berry?

7 MR. BERRY: If I could add one more note.
8 Basically when you look -- I mean we could provide this
9 after the post-briefing. But essentially we didn't
10 participate in imports at all. So we've got all the --

11 CHAIRMAN JOHANSON: You did not?

12 MR. BERRY: We did not.

13 CHAIRMAN JOHANSON: Okay.

14 MR. BERRY: Exactly. We imported only for Hawaii
15 simply because from a logistic standpoint, it makes sense.
16 Everything else we bought was U.S., at least intended to be
17 U.S.-based. Now where it came from, we didn't specify where
18 it was coming from. But we provide information to show that
19 we increased our imports based upon Hawaii over a hundred
20 times. Based upon just that to meet our needs. So we've
21 got empirical information and evidence to show, you know,
22 what changed.

23 CHAIRMAN JOHANSON: Okay. Mr. --

24 MR. BERRY: And that's why we went to 27/7 in
25 making sure that we had a supply in that period of time.

1 CHAIRMAN JOHANSON: Yes, Mr. Ream.

2 MR. REAM: Yeah, I mean, you know, the fact when
3 this happened, it's not normal for us to have a war room.
4 When we created a war room to handle supply and demand. And
5 God forbid, anything bad happens with this hurricane coming.
6 But it's a perfect example of the market today. And it's
7 very atypical.

8 We have over 400 customers and starting last
9 Sunday into Monday, we've been inundated by all of our
10 customers saying, "What's happening with the hurricane? Are
11 you gonna have enough PET to get through this? We know the
12 industry's short." They all know, all our customers know
13 our inventory, inventory levels and what's going on in the
14 industry.

15 I've been in this thirty years and we're never
16 inundated like this. We get a few questions from big
17 customers when this happens, but just the thought of this
18 hurricane hitting, we got inundated with customers asking
19 us, "What's going on? Are covered? What happens if you
20 don't get resin, or somebody shuts down in the USA?" So
21 it's extremely tight.

22 CHAIRMAN JOHANSON: Okay, Mr. Ream, and you're
23 talking about this war room. If you have any internal
24 documents which you could share with us which discuss the
25 situation which might've led to the situation, I'd

1 appreciate it. And that goes for any of the witnesses. And
2 that being said, for petitioners, if there's anything you
3 would like to submit which states that the market is not
4 tight, if you have something reflecting that in your
5 records, you're certainly welcome to submit that as well in
6 any post-hearing brief.

7 In sticking with this issue, the capa-, I'm
8 sorry? Yes.

9 MS. ESSERMAN: Excuse me, Chairman Johanson. I
10 just wanted to say that --

11 MR. BURCH: Can you please identify yourself?

12 MS. ESSERMAN: I'm sorry. For the record, I'm
13 Susan Esserman. I apologize. I think, you know, there --
14 we'll go back and supplement the record. But also, as was
15 acknowledged earlier by petitioners and at the preliminary
16 conference, I believe the quote was that what happened in
17 September was a price spike.

18 If you look at spot prices, they rise between,
19 really beginning in September, because of, there were rumors
20 about what was going on in the market, the announcement by
21 DAK of not providing raw materials, the war notice, all
22 those things. So I do think there is evidence of record
23 that shows that's when the prices really started rising.

24 CHAIRMAN JOHANSON: Okay, thank you, Ms.
25 Esserman. The capacity utilization data on our record

1 indicates that the domestic industry had available capacity
2 to supply the U.S. market during the period of
3 investigation. This can be seen in Staff Report at Tables
4 3-4 and C-1. Respondents have argued, however, that there
5 are prevailing shortages in the market. What explains this
6 disconnect?

7 MS. ESSERMAN: I'd like to turn to our industry
8 witnesses because certain numbers were reported in the
9 record, but I think it would be helpful for you to hear what
10 they saw, notwithstanding what's in the record on capacity
11 utilization. So what they saw when they were asking for
12 product.

13 MR. BERRY: When you're looking at capacity
14 utilization as based upon what's produced in the U.S., I
15 would assume so, if you have other resin that's being
16 brought in by these other companies, that would, I would
17 think reduce the amount of utilization. So you might want
18 to look at it that way.

19 But also from the standpoint during this period
20 of time, you know, we were desperate for, you know, to buy
21 whatever we could. We maximized our contracts, we bought
22 outside of our contracts. And when there wasn't enough, we
23 bought even more, so I can't explain what's going on, but
24 all I know is based upon what Pepsi saw. It was just not
25 enough material.

1 MR. REAM: Steve Ream with Graham Packaging. You
2 know, it's normal in these contract negotiations when you go
3 to suppliers and you say, "This is how much volume I wanna
4 get from you." In all the years past, they'd always ask for
5 more volume at the end of those contract negotiations.

6 When we got to the 2018 volume negotiations, we
7 said, "We really need this much material from you," all of
8 them said, "Yeah, I don't have that much. Here's the
9 maximum amount I'm gonna bid on and quote on for you and we
10 have for your business." And we added up the sum total of
11 it for the first time, we had to say, "Okay, I'm gonna have
12 to actually go bid import resin to get the rest of my
13 requirements filled." And that was just separate
14 negotiations and they weren't part of that.

15 CHAIRMAN JOHANSON: Yes, Mr. Kaufman and Mr.
16 Safieiddin?

17 MR. KAUFMAN: Chairman Johanson, let me just also
18 point out, we have an exhibit in our brief, Exhibit 14,
19 where we actually take the capacity numbers and we look at
20 them from the perspective of how the U.S. producers
21 responded to the capacity questions. We had several issues
22 with those. They're reflected in a recalculation of the
23 capacity and capacity utilization numbers.

24 And I would just, I can't go into them in this
25 hearing because it's a lot of BPI information. But I would

1 suggest if you or your staff would look at those, I think
2 they are realistic adjustments. They're based on
3 information that's in the record. And I think that gives
4 you a very different picture of what kind of capacity is
5 available and what kind of utilization they had or would
6 have had, had they chosen to produce in the United States
7 rather than import PET and sell PET. They imported PET in
8 place of their U.S.-produced PET.

9 CHAIRMAN JOHANSON: Okay. And Mr. Safieiddin, my
10 time's expired, but why don't you go ahead and address this
11 point?

12 MR. SAFIEDDIN: Absolutely. Shawn Safieiddin,
13 Niagara Bottling. I would like to offer three explanations
14 to help reconcile the discrepancy. One, it had to do with
15 the domestic producers' deliberate decision to fulfill
16 orders at their discretion from offshore sources of supply.
17 Two, it had to do with certain industrial consumers'
18 deliberate decision to not buy from M&G, given their
19 short-term liquidity and long-term solvency risk. And
20 third, it had to do with industrial consumers, as well as
21 domestic producers' consensus that they are not the best fit
22 supply for the West Coast of the United States. So even if
23 you have capacity, you may not necessarily be the best fit
24 for that region of the United States.

25 CHAIRMAN JOHANSON: Okay, Mr. Safieiddin, thanks

1 for your answer. And Mr. Ream, the situation you addressed
2 a minute ago dealing with discrepancy, in the Staff Report,
3 between what you've seen, if you have any business records
4 which reflect that, that would be helpful. Okay, thank you.
5 Sorry. And my time has expired. Commissioner Williamson?

6 COMMISSIONER WILLIAMSON: Thank you, Mr.
7 Chairman. I, too, wanna thank all the witnesses for coming
8 today. I'm not quite sure where to start. Let's see. Let
9 me just throw out these questions. When I was hearing you
10 talk, I remembered back in the 90s, there was this
11 discussion--or maybe it was the 80s--need a short supply
12 provision in the dumping law, think I'm remembering it
13 well, and I don't think that was ever done. Does that have
14 anything to do with this case?

15 MS. ESSERMAN: No, it was never done. In fact, I
16 was in government at the time and opposed doing it. Based
17 on the advise of Mr. Rosenthal -- again, there isn't -- I
18 think it's relevant in the sense that there isn't such an
19 exception. But beyond that, you know, but I think a lot of
20 those cases really were narrow products. You'll remember
21 from the discussions in government that they were about
22 narrowly defined products that maybe were in short supply in
23 the United States that might be accepted from an order.

24 Here we're talking about something very
25 different. A broader situation which the Commission has

1 dealt with in past cases. And as we and the refiled b
2 Sidley and Austin, we have both said, this is very relevant
3 to assessing threat of injury. If supply is so tight,
4 demand is increasing, is it hard, even without looking --

5 COMMISSIONER WILLIAMSON: Is it relevant only to
6 accessing the threat of injury or to present injury?

7 MS. ESSERMAN: Well, I think, I wanna say, it's
8 especially -- because, I wanna say it's especially relevant
9 to threat. It is also part of your assessment of injury.
10 It does not define the entire period you look at, but it's
11 part of the period. And the reason why I want to say that
12 is that I've heard many times today from petitioners that
13 we're arguing that because of shortage, imports were drawn
14 into the market in 2015, '16, '17. We're not saying that.

15 What we are saying is, there is a shortage. Now
16 it is. As you can see, Pepsi-Cola's talking about daily
17 meetings, 24/7 meetings and Mr. Ream is talking about a war
18 room. That's not normal. It is not normal, and
19 particularly in an industry where there's such vulnerability
20 because of hurricanes. You can see that happen quite
21 frequently.

22 COMMISSIONER WILLIAMSON: But even if we accepted
23 that that's not normal, and I appreciate that, and I
24 appreciate all the extra effort people have to go to feel
25 that they have an adequate supply, but does that mean that

1 there cannot be injury from subject imports?

2 MS. ESSERMAN: I think, and when you look at the
3 record here, there's not injury from subject imports. I
4 think it's fair to say that U.S. producers cannot satisfy
5 the market by themselves. Again, Mr. Safieiddin --

6 COMMISSIONER WILLIAMSON: I don't think they're
7 contending that.

8 MS. ESSERMAN: No, no, and we're not saying that
9 they should. They have to. But what that does suggest
10 there was a need for supplemental supply. And particularly
11 given some of the fit, you know, situations that Mr.
12 Safieiddin said. So what we're saying is that if you look
13 at the full record, subject imports participated in the
14 market in a noninjurious way.

15 And as you look further into the period, it's
16 hard to see, toward the end of the period, how imports could
17 be injurious because they're so needed to supply the market
18 and we've heard both of these gentleman that they're paying
19 more for imports than they are for the domestic product. So
20 hard to see in that latter period how they could be injuring
21 the industry.

22 COMMISSIONER WILLIAMSON: Latter period starting
23 from when?

24 MS. ESSERMAN: It starts September.

25 COMMISSIONER WILLIAMSON: Of 2017?

1 MS. ESSERMAN: Yes. Going forward.

2 COMMISSIONER WILLIAMSON: Which is the tail end
3 of the period of investigation.

4 MS. ESSERMAN: Well, the period goes -- it's the
5 last half here, but relevant and under Commissioner cases,
6 quite relevant. And I'd actually like to clarify that,
7 because we say it's very relevant in this way. We're not
8 saying that you look at the last period to look at volume.

9 We're not trying to get a special period to look
10 at volume levels, because we believe that no matter what
11 period you look at, our volumes have not been injurious.
12 What we are saying is, when you have such dramatic change in
13 circumstances in the market, that it's behooves the
14 Commission to be evaluating that importantly as part of
15 their overall injury look. It just makes common sense. And
16 it's consistent with your precedent.

17 COMMISSIONER WILLIAMSON: Okay. Thank you. Yes?

18 MR. SAFIEDDIN: Commissioner Williamson, Shawn
19 Safieiddin from Niagara Bottling, Inc. I'm not a lawyer, so
20 I apologize in advance if my answer is not a legal one.

21 COMMISSIONER WILLIAMSON: That may be helpful,
22 but go ahead.

23 MR. SAFIEDDIN: So in 2018, imports margins and
24 relative spreads, as compared to domestic prices, reached
25 unprecedented levels. If I and my colleagues here continue

1 to import, despite record high import prices, right? That
2 only suggests one thing. That imports cannot be a source of
3 threat to the domestic industry. Because no matter what, we
4 are going to import.

5 COMMISSIONER WILLIAMSON: That's 2018?

6 MR. SAFIEDDIN: And onwards.

7 COMMISSIONER WILLIAMSON: Okay. What about 2015
8 to '17 when you had the imports, there were subject to the
9 first order, which there hasn't been much discussion about.
10 We're going down and we had the subject imports going up.

11 MR. SAFIEDDIN: So similarly --

12 COMMISSIONER WILLIAMSON: Which is the argument
13 the petitioners were making this morning.

14 MR. SAFIEDDIN: I understand. Similarly, I can
15 outline a few reasons for which we would've imported no
16 matter what. One, we mentioned the West Coast --

17 COMMISSIONER WILLIAMSON: I understand that.

18 MR. SAFIEDDIN: -- factor. We mentioned the M&G
19 factor, and by that I mean, even in the years leading to
20 M&G's financial oust, we were well-aware of the short-term
21 liquidating and long-term solvency issues and made a
22 conscious and deliberate decision to minimize or eliminate
23 our exposure to them. So M&G is not just a Q3 2017 issue.
24 We're not blind. We see unfolding before our eyes. And so,
25 for those reasons, we would've imported no matter what.

1 COMMISSIONER WILLIAMSON: Well, the data's
2 probably proprietary, but I would be interested in an
3 assessment of M&G's behavior in the market, its imports, and
4 the other domestic producers. And what does that say about
5 the injury case? As I say, you have to do it post-hearing,
6 but I would be interested in that, as well as probably also
7 post-hearing, your assessment of the difference of the
8 performance of the other domestic producers. And any
9 differences there. As we said, this is all proprietary, so
10 you have to do it post-hearing, but that would be helpful.

11 MR. KAUFMAN: Commissioner, we'll be happy to do
12 that. I mean, we've touched on that in our case brief.
13 We'll be --

14 MR. BURCH: Can you speak into the microphone?

15 MR. KAUFMAN: I'm sorry. This is Joel Kaufman.
16 We'll be very happy to provide you with that analysis.
17 We've touched on it in our case briefs, but we'll give you
18 chapter and verse in our post-hearing brief.

19 If I could just quickly get back, I know you're
20 on a time, but to the question you were asking and Ms.
21 Esserman responded to, you look at the three-year POI to
22 inform your decision on current material injury. There have
23 been monumental changes in this industry from the beginning
24 of this period to the end. DAK has taken control of Canada.
25 DAK and Indorama have bought Brazil.

1 So there is no longer anyone producing in Brazil
2 that's not a member of the U.S. industry. DAK has acquired
3 rights to M&G's plant in Mexico. We had, FENC is now U.S.
4 producer, which is Taiwan. You had had monumental
5 structural changes in this industry. You have to look at,
6 and I believe it's appropriate with Commission precedent,
7 you have to look at the more current data to inform your
8 decision on whether or not there's current material injury
9 and also on threat.

10 Because interestingly enough, the petitioners
11 never mentioned in their threat section of their brief,
12 particularly with respect to Brazil, that they now own
13 Brazil. That seems like a glaring deficiency when you're
14 talking about whether Brazil is gonna be a threat of future
15 imports and injury to the U.S. industry, to never mention
16 that you now own it.

17 So I'm just saying, I think that in terms of the
18 past, it will inform your decision on current material
19 injury. We're not saying ignore it. We don't believe it
20 demonstrates either price or volume-based injury. But what
21 we are saying is you have to focus on this current period.

22 And it's not, as petitioners would have you
23 believe, simply because they filed a case that now Nirvana
24 has resulted. That's not the answer. There is a huge issue
25 here in terms of M&G's demise, and what that meant in terms

1 of current and future supply for the U.S. industry. And you
2 can't ignore that, even though we never saw it in the
3 petitioners' brief. You cannot ignore it.

4 COMMISSIONER WILLIAMSON: Okay. Thank you for
5 those answers. Also, post-hearing is the question of the
6 performance of the domestic industry and how does that
7 square with market power? Thank you.

8 CHAIRMAN JOHANSON: Commissioner Broadbent?

9 COMMISSIONER BROADBENT: Thank you Mr. Chairman.
10 Mr. Ream, thank you for referring to war rooms, it's much
11 more exciting than I've ever -- no trade remedy in a case
12 I've been associated with in six years has had a war room
13 related, so it sounds more glamorous than I'm used to.

14 Ms. Esserman the headline in your brief says
15 iResin but I don't see them here.

16 COURT REPORTER: Can you turn on your microphone.

17 MS. ESSERMAN: And Commissioner the principle
18 from iResin could not be here today.

19 COMMISSIONER BROADBENT: Okay, but he's still --

20 MS. ESSERMAN: Yes.

21 COMMISSIONER BROADBENT: In the mix.

22 MS. ESSERMAN: Yes, very.

23 COMMISSIONER BROADBENT: I'm very glad to be
24 joined by these purchasers which we're grateful to have.

25 MS. ESSERMAN: Absolutely.

1 COMMISSIONER BROADBENT: Good, I wanted to just
2 kind of bring me back one more time, Miss Esserman, that if
3 we agree with you that the M&G bankruptcy affected the
4 dynamics of this market after September, 2017. I still
5 don't think that you've explained the entirety of the
6 increase in subject imports in 2016 which is when the
7 industry lost, you know, the market share. You referred to
8 the industry's own imports, but those were only -- they only
9 account for a portion of the subject imports.

10 So aren't we still left with a significant
11 increase in subject imports from unaffiliated suppliers that
12 took a significant amount of market share in 2016 and held
13 it in 2017?

14 MS. ESSERMAN: Well I'm going to be careful
15 because I don't want to go into APO information here. Can
16 you find the exhibit in our brief, what number is it --
17 we're going to direct you to the exhibit in our brief. What
18 that really does, I think is very instructive because it
19 shows you their increase in imports -- both subject and
20 non-subject.

21 And the reason why that's relevant it shows why
22 and how imports are important to serving this market. And
23 what I would say here is that again, our participation --
24 and we'll also make it more explicit in a post-hearing
25 brief. It was very similar -- the subject imports not

1 controlled by the U.S. participated almost identically to
2 the imports by the U.S. companies -- subject and
3 non-subject.

4 And that suggests it's a rational response to
5 conditions in the market. And certainly consumption grew
6 quite strongly during that period and at the same time the
7 U.S. industry had its best year and they increased -- not
8 only did they substantially increase imports -- I'd like to
9 say more but I'm going to be careful because of the of APO,
10 but they also increased their production at that time.

11 And so I think they -- so I would say that and
12 also there is no evidence that subject imports participation
13 was via adverse pricing. There just isn't evidence of
14 record. I know that's asserted all the time by Petitioners
15 but there's no price depression as the Commission found in
16 their preliminary determination through 2015 and '16 prices
17 tracked indexed raw materials and therefore no price
18 depression.

19 There was this warm period in the first half 2017
20 and we have very substantially documented in the record and
21 I think one of the Commissioners asked for additional
22 information which we will provide to show that in great
23 detail that that period had nothing to do with imports.

24 In fact it's very much like the 2005 case in
25 which the Commission reached a negative determination

1 because there was a contract issue. It was at the very time
2 that IPA prices were rising, the contract did not allow for
3 an adjustment based on IPA.

4 Later in the year domestic producers were able to
5 recover that increase and renegotiate those contracts but
6 for that short period that was what the problem was and that
7 is one of the major underpinnings of the negative
8 determination in the 2005 iResin case -- that the
9 contracting did not -- there is, did not keep up with the
10 raw material adjustments here in the case of IPA.

11 MS. GRODEN: Very quickly, this is Cara from ECS
12 -- the relevant exhibit is 15A and 15B to the iResin Steptoe
13 brief.

14 COMMISSIONER BROADBENT: For the economists
15 they're continuing on. The Commission has had an occasional
16 practice of examining direct import purchased class data for
17 purposes of establishing price comparisons in cases where
18 direct imports account for a significant share of total
19 subject imports.

20 Do you agree that the underselling comparisons
21 put forward by Petitioners starting on page 33 of their
22 pre-hearing brief showing that subject imports more
23 frequently undersold the domestic-like product -- ping it so
24 I'll read that again. Do you agree that the underselling
25 comparisons put forward by Petitioners, starting on page 33

1 of their pre-hearing brief showing that subject imports
2 more frequently undersold the domestic-like product if
3 direct import purchase costs are included in the totals?

4 MS. GRODEN: This is Cara again from ECS and I'll
5 let Bruce add on to this after I'm done, but we firmly
6 disagree with that comingling of the datasets in trying to
7 approximate a new underselling analysis. Staff has a long
8 record of examining the direct import data separately from
9 the other pricing comparisons.

10 And we're not disputing that the Commission can
11 take them into consideration, but we don't think it's at all
12 appropriate to consider the datasets combined. As Mr.
13 Malashevich testified earlier, and as we -- if you'd like I
14 can quantify it to a certain extent post-hearing, there are
15 significant additional costs associated with direct imports
16 that are not necessarily captured in the way that the
17 Commission's questionnaire asks for those data because of
18 the infrastructure necessary to develop and import the
19 quantities that they do.

20 What we do see -- and Petitioners are trying to
21 take these data and absolutely twist them around in whatever
22 ways they can to try to get a different outcome. But
23 Commissioner Broadbent as you observed this morning, certain
24 of Petitioner's adjustments to the pricing it will still
25 show a preponderance of overselling throughout the POI.

1 And so we think that the very firm analysis the
2 staff has already provided in the staff report is absolutely
3 representative of the price competition that we see in the
4 market in that there is overselling throughout the POI.
5 There's an increase in instances of overselling over the POI
6 by subject imports and we don't find that that provides any
7 basis for an affirmative determination in terms of
8 significant underselling.

9 MR. MALASHEVICH: Bruce Malashevich, just to add
10 if you take a look at the plain language of the way the
11 question was asked, the language -- I have no idea whether
12 it was deliberate or an oversight, but the language
13 deliberately, excuse me -- I don't know whether it was
14 deliberate or not but the language was very restrictive in
15 terms of what is considered a cost of importing.

16 I'm going from memory but it was freight, duty
17 and not much else -- it's a stripped down notion of the cost
18 of importing. The level of trade issue that I tried to call
19 to the attention is really between what an importer does
20 very typically among other things, procure the goods,
21 inspect them, hold them for stock and not insignificant
22 expense and have them available for customer's demand.

23 In the last several days I had occasion to get
24 additional information on this that I was not in a position
25 to put into the brief at the last minute, but it goes to the

1 issue of what is involved after those costs are incurred by
2 a direct importer.

3 And it involves a very significant expense and
4 staff associated with administering to managing the
5 development of the distribution.

6 COMMISSIONER BROADBENT: I get it.

7 MR. MALASHEVICH: Services that are not covered
8 by how costs were defined in the questionnaires.

9 COMMISSIONER BROADBENT: Okay, Petitioners are --

10 MS. GRODEN: Excuse me, sorry one more thing.
11 I'd also direct your attention to page 516 of the staff
12 report which lays out a litany of non-price factors
13 associated directly with the direct imports that are at
14 issue here. And so I think there's substantial evidence on
15 the record that these were not brought in on the basis of
16 price.

17 COMMISSIONER BROADBENT: Petitioners point to AUV
18 data as a basis for stating that subject imports undersell
19 the domestic-like product. Is AUV data useful for comparing
20 prices in these investigations?

21 MS. GRODEN: This is Cara Groden from ECS again,
22 no I don't think so. The price data which we have -- we
23 state in our brief is very comprehensive as far as coverage
24 of U.S. producers on shipments.

25 It specifically organized in such a way that the

1 comparisons aren't as accurate as possible. And so if you
2 were trying to say, "Oh, well you don't look at the accurate
3 comparisons, look at the broader comparisons, look at the
4 ones that -- the shipments AUV's incorporate product mix
5 issues, they incorporate all sorts of sort of external
6 factors that the pricing data specifically are meant to
7 exclude to create an accurate comparison."

8 MR. KAUFMAN: Commissioner Broadbent, and this is
9 Joel Kaufman. If I could just add one point -- I thought
10 it's an interesting comparison from the same people who
11 question whether within the context of one of the specific
12 products that the Commission has sought pricing information
13 on that one of the products may be distorted because of a
14 product mix issue.

15 If one specific product could be distorted -- the
16 pricing because of a product mix issue, then I would suggest
17 that using AUV data has a whole host of product mix issues
18 associated with it.

19 COMMISSIONER BROADBENT: Okay my time has
20 expired, thanks.

21 CHAIRMAN JOHANSON: Commissioner Schmidtlein?

22 COMMISSIONER SCHMIDTLEIN: Okay thanks, just to
23 follow-up on that, on page 516 -- when I read that, there
24 was one importer who reported a number of reasons that are
25 preferred to import pet resin. Within the litany of reasons

1 they gave was a reason to import rather than to buy
2 domestic.

3 So the question was really like I thought you
4 were referring to, that was a litany of reasons of why they
5 would prefer to direct import rather than go through an
6 importer.

7 MS. GRODEN: Well if they're importing directly
8 then they've made that choice in their own business and in
9 their own infrastructure right?

10 COMMISSIONER SCHMIDTLEIN: Yes but so I mean the
11 question we're trying to focus on here is the argument this
12 is a different level of trade and that there are other
13 reasons that they would prefer to directly import rather
14 than to buy from an importer.

15 But when I look at this litany, it's all about
16 why they're importing and not buying from a U.S. producer
17 except for the last reason which has to do with the price.

18 MR. SAFIEDDIN: Shawn Safieiddin from Niagara
19 Bottling. As someone whose company does this day in and day
20 out, I can confirm that the primary benefit to direct
21 importing is the avoidance of the markup that would
22 otherwise be realized by the broker. Having said that,
23 there are additional cost drivers in direct importing that
24 shall be taken into consideration as you evaluate that.

25 Those are: inland drainage, storage,

1 trans-loading, bulk-truck delivery, additional cost of
2 capital among others. You add them up and they make a huge
3 difference.

4 COMMISSIONER SCHMIDTLEIN: I assume that you --
5 and you direct import, your company?

6 MR. SAFIEDDIN: Yes we do.

7 COMMISSIONER SCHMIDTLEIN: Okay, so I assume you
8 have an idea of what those costs are, I mean you've done
9 that calculation?

10 MR. SAFIEDDIN: Yes.

11 COMMISSIONER SCHMIDTLEIN: So did you put -- did
12 you include those in your answer on your questionnaire in
13 this case?

14 MR. SAFIEDDIN: We did not because the
15 questionnaire specifically refrained us from doing so.
16 However, post-hearing we would be more than happy to share
17 with you what those incremental costs are.

18 COMMISSOINER SCHMIDTLEIN: Okay, that would be
19 great. One question that I don't think has been covered yet
20 was the impact of the prior order -- the order in the other
21 case on Canada, China, India and Oman I believe was the
22 fourth country. Can some of the fact witnesses talk about
23 whether or not you saw a price and volume impact when the
24 Commission went affirmative in that case? How did that
25 impact the market here in the U.S. for pet resin? Did any

1 of you purchase from any of those countries before -- none
2 of you did Mr. --

3 MR. SAFIEDDIN: Shawn Safieiddin from Niagara
4 Bottling.

5 COMMISSIONER SCHMIDTLEIN: Okay.

6 MR. SAFIEDDIN: Yes we did.

7 COMMISSIONER SCHMIDTLEIN: You did, okay.

8 MR. SAFIEDDIN: I'm trying --

9 COMMISSIONER SCHMIDTLEIN: So did you see an
10 overall -- I mean obviously the price from, you know, with
11 the duties went up after that case went affirmative, but did
12 you see an overall affect throughout the rests of the market
13 from that order?

14 MR. SAFIEDDIN: So, I'm trying to refresh my
15 memory of -- on the sequence of events. Typically an
16 affirmative determination of dumping leads to a shock in the
17 immediate term, alright? In the case of the first ruling
18 there were plenty of origins from which we could still
19 import. Having said that, such affirmative determinations
20 often lead to the enrichment of the non-subject countries.

21 COMMISSIONER SCHMIDTLEIN: So you didn't see it
22 have an otherwise overall price affect in the market for pet
23 resin?

24 MR. SAFIEDDIN: So our contracts are negotiated
25 on an annual basis and that's why I was struggling

1 initially. So if the affirmative determination of dumping
2 occurred mid-year, by the time of our next round of
3 negotiation the effects of that might have subsided already
4 -- meaning that the market may have already identified new
5 sources of supply.

6 COMMISSIONER SCHMIDTLEIN: Okay, but if we go
7 affirmative in this case, you think that's going to have a
8 big impact on the market -- there aren't other alternative
9 sources of supply?

10 MR. SAFIEDDIN: So there is a major difference
11 between this one and the last one. According to our records
12 the combined nine origins account for over 60% of the global
13 pet resin capacity. You add to that Mexico, United States
14 -- now you're over 76%. The remaining 24% is primarily
15 account for by Europe which is dealing with a chronic
16 deficit of its own and whatever is left is mainly used to
17 fulfill the demands of the respective local markets.

18 So it will have massive, massive effects on all
19 downstream industries in the United States -- that I can
20 tell you for sure.

21 COMMISSIONER SCHMIDTLEIN: So I did notice, I
22 know that in the testimony of Mr. Berry and Mr. Ream, both
23 of your testimony you refer to being asked to accept a
24 source from a non-subject country by your suppliers? Would
25 you like to comment on that? So it seems as though they are

1 trying to -- there are other sources out there that are not
2 subject that are being offered to you?

3 MR. REAM: Yep, so we always go to the U.S.
4 producers first to try to get our volume filled and one of
5 the options that they gave us when they said they couldn't
6 give us any more material from their U.S. facilities, they
7 started to identify yeah, I can ship you material out of M&G
8 -- the M&G plant because that controls that volume. They
9 can substitute volume from that location.

10 COMMISSIONER SCHMIDTLEIN: From Mexico or --

11 MR. REAM: From Mexico.

12 COMMISSIONER SCHMIDTLEIN: Uh-huh, okay.

13 MR. REAM: Then that would be additional volume
14 that they could give me and --

15 COMMISSIONER SCHMIDTLEIN: And is there -- is
16 there an issue with that that you would --

17 MR. REAM: You know we prefer to buy from U.S.
18 producers but I think it just goes to show, they're out of
19 capacity in the U.S. I mean they service these markets with
20 -- it's not just the bottle industry, they service the
21 carpet, the strapping, the fiber markets -- all that's in
22 their capacity. They use these lines for that. When you
23 look at the total demand for all those items and we can
24 show that in the exhibits, it's like 9.4 billion pounds and
25 collectively between them you look at all their capacity,

1 it's 7.8 billion and they haven't added capacity in the U.S.
2 since 2013 -- we're growing 200 - 250 million pounds a year.

3 It's just paramount that you know, imports supply
4 some of the markets so yeah, it's had a dramatic effect and
5 it's unprecedented in this round of anti-dumping when the
6 temporary duties came out -- even when duties were assessed
7 against some of these countries in this Petition, they still
8 continued to ship into the U.S. because we have to have the
9 product and we're taking product from those companies at
10 exceedingly high prices, paying the extra duties assessed by
11 this Petition and it's very encumbering on our businesses.

12 MR. KAUFMAN: Can I just add one thing, I'm
13 sorry. I just wanted to clarify your question. When they
14 were talking about getting offers of product from other
15 countries, that was by the U.S. producers -- it wasn't
16 coming from unrelated sources, it was by the U.S. producers
17 to bring in from different countries now then the ones we
18 had been looking at before.

19 COMMISSIONER SCHMIDTLEIN: Yeah I guess I'm just
20 trying to sort out where exactly that fits in the legal
21 argument. Maybe it really goes to threat. I mean, I'm
22 trying to understand what your all's position is on -- the
23 prior order didn't really have an impact on the market
24 overall, but I know I've heard in testimony today or at
25 least in the brief, please don't shut off the supply, please

1 don't shut off our supply.

2 So then when I saw this testimony that you are
3 being offered other sources of supply from non-subject so
4 they wouldn't -- and Mexico is not under order so I was a
5 little bit confused about what -- sort of what the issue
6 with that would be but if --

7 MR. SAFIEDDIN: So, conceptually there's nothing
8 wrong with it but let me shed some light on it. The terms
9 and conditions under which pet resin is sold in the United
10 States today is highly favorable to producers.

11 So much so that if I was any of the Petitioners,
12 I would be traveling around the globe trying to identify
13 acquisition opportunities from which I can fulfill the U.S.
14 demand. It is not by a surprise that Indorama recently
15 restarted a formerly shut-down operation in Egypt so that
16 they can fulfill some of the demand in the U.S. that would
17 have otherwise been left unfulfilled, alright.

18 We appreciate the support. There's nothing wrong
19 with it, I just want you to understand the full underlying
20 dynamics.

21 COMMISSIONER SCHMIDTLEIN: Okay.

22 MR. BERRY: Clint Berry with Pepsi. I just want
23 to add a few more comments as well. So we were so desperate
24 to get supply we didn't really care where it was coming
25 from, but we know --

1 COMMISSIONER SCHMIDTLEIN: Even before right?
2 Because when you didn't know whether M&G was sending it from
3 Mexico and --

4 MR. BERRY: Well --

5 COMMISSIONER SCHMIDTLEIN: You didn't specify to
6 them?

7 MR. BERRY: Right, we didn't know. You know, we
8 figured out that M&G was going to supplement from those
9 countries. We didn't know specifically where they were
10 going to get it from at the time so we just wanted, you
11 know, to be supplied desperately, that's what Pepsi really
12 required.

13 COMMISSIONER SCHMIDTLEIN: Right, okay.

14 MR. BERRY: Then when M&G went down, you know,
15 basically we went to the other companies, to you know, to
16 max out our contracts and buy incremental and certainly it
17 was always our desire to get it locally, get it domestic,
18 because you know, we want to be secure in supply.

19 And so what happened is that some of that resin
20 -- the incremental piece that was replaced for M&G did come
21 from non-subject countries.

22 We would -- again, we would have desired it come
23 from the U.S. but we didn't care and a matter of fact when
24 we maxed out even that, we had no choice but to import from
25 Taiwan.

1 So we decided it was more important that we keep
2 our plants running rather than risk the shutdown. So when
3 we maxed out everything we could get from the domestic
4 suppliers we had no choice to go there.

5 So what we're saying to the Commission today --
6 we don't want to import. We don't want to be a part of
7 importing. We just want to be supplied and basically what
8 happened with us, we felt no choice. We had no choice but
9 to go to Taiwan to get it, even at the risk of anti-dumping.

10 And the reason we went to Taiwan because we
11 already had an established supply chain into Hawaii which
12 required like less than half a percent of what we would
13 typically buy. So we increased that by 100 fold to meet our
14 needs, basically.

15 MS. ESSERMAN: If I might just answer your
16 question Commissioner Schmidtlein, about the significance of
17 this import global supply chain -- it has far more
18 significance than threat. It has significance for
19 significance in that you -- the Commission must make a
20 determination about whether volume is significant.

21 It is very important when the Commission assesses
22 whether subject import volumes are significant. They take
23 into account this massive global supply chain that
24 controlled by Petitioners in evaluating whether or not
25 subject import volume is significant.

1 And we believe -- especially when you look at
2 Petitioners market share and the market share when you
3 consider the imports that they control and bring into this
4 country -- subject and non-subject that -- especially when
5 you that that into account. And it's such a critical
6 element of how Petitioners operate in this market as you
7 have heard from all of our witnesses that when you consider
8 that certainly the volume of subject imports is not
9 significant.

10 COMMISSIONER SCHMIDTLEIN: Okay, why don't I come
11 back. Do you mind he wants to -- okay, go ahead.

12 MR. DIWAN: This is Rizwan Kiwan from Novatex.

13 COMMISSIONER SCHMIDTLEIN: Okay.

14 MR. DIWAN: One other non-subject country would
15 be Turkey.

16 COMMISSIONER SCHMITLEIN: Uh-huh.

17 MR. DIWAN: And over there the operation is also
18 controlled by Indorama so I mean with Egypt being a
19 non-subject country, with Turkey being a non-subject
20 country, the Petitioners will have control over those
21 operations from those countries.

22 So in effect blocking out everyone else and
23 controlling imports from countries that they have their own
24 operations.

25 COMMISSIONER SCHMIDTLEIN: Okay, alright, thank

1 you very much.

2 CHAIRMAN JOHANSON: Commissioner Kearns?

3 Thank you. I wanted to turn back to AUVs. Mr. Kaufman, I
4 think you had an interesting point about the product mix
5 issue with one of the products in our pricing data. I hope
6 that the Petitioners will respond to that.

7 But I also, I'm wondering if you all can maybe
8 in your post-petition brief, come up with any other evidence
9 that would make us want to look twice at AUVs. One thing
10 I'd like to know, for example, is how do you interpret our
11 pricing data, apart from the product mix issue? In other
12 words are the prices under Product 1 sufficiently different
13 from Product 2 to suggest that, you know, you wouldn't want
14 to just sort of use AUVs.

15 And also, do you all have individual I mean data
16 for each individual importer or foreign producer that would
17 help us see the product differences and that kind of prices
18 might stem from that to make us want to question using AUVs.
19 I think that would be helpful.

20 So we talked I think this morning a bit about
21 two non-responsive importers with respect to the pricing
22 data, and the Petitioners have suggested that we use the
23 data from the prelim here. I wanted to know if you all have
24 a response to that.

25 MS. GRODEN: Hi, this is Cara Groden from ACS.

1 One quick note about the pricing data is that pricing
2 products were suggested by the Petitioners in the petition.
3 And so I would assume that they are sufficiently satisfied
4 with those definitions to feel that they are separate
5 enough, that they can be constituted different products.

6 As for using prelim data in the final, I think
7 it -- the Commission has done that with different types of
8 data in the past, in terms of whether a firm is not
9 responsive in the final phase when they were in the prelim,
10 and sometimes staff will undertake extrapolating those data
11 into the final phase POI.

12 In terms of the relevant questionnaire data that
13 Petitioners concerned with, I think most of that has to be
14 discussed confidentially, and so we can turn back to it
15 then. I understand that there might have been some
16 supplemental data provided into the record just recently
17 that we haven't seen yet, so I can't comment fully on it.

18 But I do know that at least one of the firms in
19 question submitted in their questionnaire, both in the
20 preliminary phase and in the final, that it wasn't -- that
21 they weren't able to use the data that they collected in
22 their normal course of business to sufficiently and
23 accurately break out the pricing product data.

24 So regardless of whether or not those pricing,
25 quote-unquote "pricing comparisons" become available in the

1 final record, they should be viewed with some level of
2 skepticism.

3 COMMISSIONER KEARNS: Okay, thank you. Just to
4 go back to your first -- what you first said, I think, in
5 response to my AUV question, I'm not sure if you understood
6 what I'm suggesting. I wondered if we should be taking a
7 look at Product 1 data on price and comparing it to Product
8 2 data on pricing. If there's a dramatic difference in the
9 two prices, then it's a little bit hard to answer that, I
10 think, given that you're talking about different countries
11 and so forth.

12 But you know, if you can -- I want to know like
13 what Product 1 versus Product 2 has a 30 percent difference
14 in prices. Obviously, that suggests you shouldn't just look
15 at AUVs or the opposite, there's a very insignificant
16 difference between pricing, you know, for the various
17 products.

18 So that suggests AUVs would be an appropriate
19 measure. Does that help?

20 MS. GRODEN: Sure, I take your point. I think
21 there is also a difference in coverage that we have between
22 the country sources. I think there is really substantial
23 coverage of U.S. producers' shipments in the pricing data.
24 When we calculated it, we got a different figure than staff
25 did in the report, and you can find that presented in

1 iResin's brief. I don't have the page cite available to me
2 right now.

3 But the fact that it's -- that we have high
4 coverage from U.S. producers and different coverage from
5 import sources, it's not low coverage by any means. But it
6 does suggest that there is some measure of importer product
7 that's not captured in the subject, in the pricing data,
8 which would suggest that the AUVs do include some measure of
9 product mix, even beyond what Petitioners themselves are
10 looking into, and would make those two measures not
11 comparable.

12 COMMISSIONER KEARNS: Okay, thank you. One
13 other question on pricing data. How do you respond to
14 Petitioners' argument about the flaw in the pricing data,
15 mainly that the import prices include inland transportation
16 costs?

17 MS. GRODEN: That's another issue, excuse me.
18 That's another issue that concerns one particular firm, and
19 so obviously we can't get into their proprietary information
20 in this context. But that was an issue that Petitioners
21 have extrapolated from the preliminary questionnaire, that
22 has since changed in the final. It has to do with whether a
23 company certified the basis on which they reported their
24 pricing data.

25 They certified it more completely in the final,

1 so to our minds, there's no reason to question those data
2 now that they have clearly indicated that they appropriately
3 reported the pricing data. Petitioners feel differently,
4 but to our minds the record is complete in that particular
5 regard.

6 COMMISSIONER KEARNS: Okay, thank you. Mr.
7 Ream, you had suggested, I think, that the demand in the
8 U.S. for the product is 9.4 billion pounds, is that right?

9 MR. REAM: Yeah. That would be for everything
10 they can use PET resin for. So you know, fill in other
11 voids, things not covered. It would be resin made outside
12 of what's covered under this petition's definition of resin.
13 They can use the line to make carpet, A PET resin, C PET
14 resin, other things. They use the same capacity to fill
15 other market needs.

16 MS. ESSERMAN: Outside the IV range.

17 MR. REAM: Outside the IV range.

18 COMMISSIONER KEARNS: Ahh, I see, okay. So
19 that's why -- that's why that number is very different --

20 MR. REAM: That's why my numbers are clearly
21 different.

22 COMMISSIONER KEARNS: Okay, okay, thank you. So
23 I just want to turn back to -- I don't really want to
24 actually turn back to it, but I think we need to turn back
25 to, I guess, you know, the end of the third quarter,

1 beginning of the fourth quarter of last year and what's
2 going on there.

3 To what extent is any current shortage the
4 result of these investigations and the reduction of subject
5 imports as opposed to M&G, for example? This is a question
6 for anyone that wants to answer. It wasn't necessarily Mr.
7 Ream.

8 MR. REAM: So sorry. I'll ask you to -- can you
9 repeat that one more time?

10 COMMISSIONER KEARNS: What impact do you all
11 think the filing of the petition had on, in particular,
12 subject import volumes?

13 MR. REAM: Yeah. I mean I think that speaks for
14 itself. We're still bringing material in from subject
15 imports. But you know, without being able to replace that
16 in the marketplace, we had to seek other alternatives.

17 So you know, when we look at other alternatives,
18 it takes us a long time to qualify them. We just exhausted
19 all the inventories in the system during that first quarter,
20 to make all that happen, so you could get replacement
21 material in to supplement the lack of capacity in the USA.

22 MS. ESSERMAN: If I just might supplement that.
23 Of course you see a decline in import volumes when a
24 petition is filed, of course. But the one thing I think is
25 very clear is the market conditions that we're seeing now

1 don't have anything to do with the trade case.

2 As Mr. Ream and Mr. Safieddin were saying in the
3 prelim, which was held on October 10th, they were already
4 extremely worried, projecting these very market conditions
5 that occurred because prices had already begin to increase
6 in September because of this confluence of factors,
7 including the early warning signals about M&G.

8 In fact, again much like Mr. Rosenthal, it said
9 at the preliminary conference that yes, prices were spiking
10 because of the M&G situation. So the kind of market
11 conditions that we se are not due to the imports. They are
12 due to this massive elimination of supply, of which there
13 were already fears and rumors about in September, when DAK
14 refused to supply raw materials and announced it publicly.

15 That created shock waves in the market, and then
16 things -- everything that these two gentlemen said in their
17 preliminary conference has come to past. And then when --
18 when with M&G's -- remember at that preliminary conference,
19 what was it that M&G said? Oh, it would be four to five
20 months for completion of the plant.

21 And here we are, a month or a couple of weeks
22 after that conference, two weeks, M&G declared bankruptcy.
23 The Apple Grove plant was completely closed. M&G at that
24 time, already the M&G plant in Mexico was closed. So I
25 would just say that of course imports go down when any case

1 is filed. We wouldn't be suggesting otherwise.

2 Yet there's some importing still going on
3 because of the desperation for supply that, as Mr. Berry
4 said, that they have to risk it because they don't have any
5 other sources. But the fundamental market conditions, the
6 scarcity, is due to this removal of supply from the United
7 States market.

8 COMMISSIONER KEARNS: Okay, thank you.

9 MR. KAUFMAN: Sorry. This is Joel Kaufman.
10 Commissioner Kearns, can I also point out to you that in
11 terms of one of the countries, Brazil, those acquisitions by
12 Indorama and DAK preceded any filing of the petition. That
13 started, I believe, back in 2016, possibly '17. They
14 culminated in '18, but I don't think you can look at the
15 decrease in volume coming out of Brazil and say this is
16 because the cases were filed.

17 There's issue with respect to other countries as
18 well, but particularly when you look at Brazil, given the
19 fact that the total production capacity was acquired by U.S.
20 companies, I don't think you can make that connection.

21 COMMISSIONER KEARNS: Okay, thank you.

22 MR. BERRY: Clint Berry. If Pepsi might add a
23 little bit more. So Pepsi along with other companies are
24 growing, you know. We're fortunate to be growing, and we
25 recognize that, you know, we're going to need more supply.

1 The companies that we're dealing with, we want them to grow
2 as well. We want them to expand capacity, and the absence
3 of that, you know, we have to do something about it.

4 So again, our preference is for them to, you
5 know, supply us and make sure there's enough capacity
6 around. So your question was, you know, what do you think
7 the implication of this, you know, this filing and all that?
8 What I would say is that it creates, you know, makes it more
9 difficult for us more than anything else.

10 But we've got to have this problem addressed is
11 what we're saying. We're asking the Commission to help us
12 to get addressed.

13 CHAIRMAN JOHANSON: Okay. This is something
14 which I believe Mr. Malashevich and others discussed, but
15 I'd like -- I would appreciate it if you all would delve
16 into this a bit further. If subjects imports were
17 overselling domestic product most of the time, why was the
18 domestic industry losing market share? Would you attribute
19 that again mainly to shortages in the market?

20 MS. ESSERMAN: Let me just say first, and turn
21 to both of them, that actually when they say they didn't
22 benefit from the order and they lost share, actually they --
23 again, in the year of -- in 2016, they did. But they did a
24 lot of it, a lot of their growth they chose to do through
25 imports. For whatever reason they decided to do it, they

1 did it --

2 MR. ELLIS: They being the Petitioner.

3 MS. ESSERMAN: They, the Petitioners, through
4 the imports they controlled, and again we don't want to get
5 into confidential information. But is Exhibit 15, Cara,
6 Exhibit 15. You'll see the relative sources of growth for
7 them in terms of their own market share growing, and so I
8 would just simply say and add there's not evidence that the
9 subject imports not controlled by them are injurious. There
10 just isn't any.

11 MR. ELLIS: This is Neil Ellis at Sidley. If I
12 could just add to that.

13 MS. ESSERMAN: Yeah.

14 MR. ELLIS: In our brief, we aggregate the data,
15 market share data for the subject -- I'm sorry, for the
16 subject imports that were attributable to the U.S.
17 producers, plus the U.S. producers' market share in the
18 United States, and you see that in fact it remains very high
19 and very stable.

20 So whatever they say was happening in fact, as
21 Ms. Esserman just said, it's due to internal corporate
22 decision-making. It's not because of competition with the
23 non-affiliated subject imports. Thank you.

24 MR. MALASHEVICH: If I may add please to this,
25 as you can imagine, considering the data we've been exposed

1 to, this case is a mine field of potential APO violations.
2 So I'd like to request leave to answer part of the question
3 post-hearing.

4 But what I could say now is that it's a good
5 example of the need to think out of the box, because it's
6 not enough to say, to look at imports as to whether they're
7 subject, subject, subject or non-subject. It's not enough
8 to say they're from Brazil or they're from some other
9 country. The next question is more important. By whom was
10 the import made? Was it controlled by the network or not
11 controlled?

12 Those are the additional questions that have
13 been asked in this case, that normally simply are not
14 relevant in the cases that come before the Commission, or
15 the data don't exist. So I submit it's both relevant, and
16 we have all the data. I just can't share it right now.

17 CHAIRMAN JOHANSON: Yes, Ms. Esserman.

18 MS. ESSERMAN: To that point, I would say that
19 we were struck by the grouping that Petitioners put in their
20 brief. They said there are three categories, U.S.
21 production, subject imports and non-subject imports.

22 Actually, in the context of this case with this
23 massive network of supply from all of their different
24 affiliates, the issue is their subject and non-subject
25 imports that they control. This is not an ordinary

1 situation. It's not simply that they import, and imported
2 increasingly subject imports over the Period of
3 Investigation, and that does need to be factored in.

4 It's also again how they import. As we said,
5 they were the ones in control, not the customers saying
6 okay, we'll supply your order either from our production or
7 we'll go to Mexico or Brazil or otherwise. They were the
8 ones in control of this.

9 So it does, it does seem that the Commission
10 must consider this importantly as a condition of competition
11 in assessing injury and threat.

12 CHAIRMAN JOHANSON: Thank you for your replies.
13 To what extent are purchasers, are purchases in the U.S.
14 market dominated by large purchasers? Is there a
15 concentration of purchases in a relatively few number of
16 purchasers, and how does this dynamic play in establishing
17 prices in the market, if that is the case?

18 MR. REAM: Yeah. There is a, I guess,
19 relatively controlled number of large purchasers in the
20 market, and in this market we say anybody that's purchasing
21 over 200 million pounds a year is a large purchaser of PET.

22 And you know, when you look at the market
23 dynamics yeah, over 80 percent of the market demand or the
24 purchases that are made are made by those large purchasers
25 in the market, would fit into that category.

1 The other would be 17 to 20 percent would be
2 smaller than 200 million pound purchasers.

3 CHAIRMAN JOHANSON: Okay, thank you Mr. Ream.
4 Okay. I'm going to -- now I'm going to turn to this
5 Corpus Christi plant. I'm from Texas and I've never heard
6 Corpus Christi mentioned so many times in my life as I did
7 today.

8 (Laughter.)

9 CHAIRMAN JOHANSON: It's a nice town, but you
10 don't hear a whole lot about it. So this is a very big
11 plant which is being planned. I mean I remember this well
12 from I guess a few years ago we discussed this in the first
13 investigation, from what I recall.

14 What was the anticipated effect on the U.S.
15 industry's financial performance and competition in the U.S.
16 market once the former M&G owned plant in Corpus Christi is
17 complete? Can you all maybe try to forecast that? It will
18 have a big impact, and I'm looking at possible threat
19 circumstances here.

20 MR. KAUFMAN: Yeah. You know, the question is
21 how long does it take to get online. So we contend it's
22 going to take over two years to get that plant online, and
23 it will probably take three or four years before it's really
24 competitive in the market and it's integrated. They're
25 going to have to import the raw materials to support the

1 plant until they get the site of the plant up, to make it a
2 fully integrated plant.

3 But you know if you look back and you say the
4 last time we had any kind of market supply increase in this
5 country, it was 2012. And you start looking out and saying
6 okay, is it '20, it is '21 when that plant comes online?
7 Even at moderate growth rates of 200 to 225 million a year
8 between those time frames, we've used 1.8 billion pounds of
9 new growth and that plant's only going to be 2.4 billion
10 pounds.

11 So the second year it comes online, that plant
12 would be 90 percent utilized. So yeah, we need it in the
13 market and, you know, we need that to start up when we're
14 all encouraging the domestic producers to take control of
15 that plant, get FTC approval and start it up as soon as
16 possible. We need those pounds in the U.S. market.

17 CHAIRMAN JOHANSON: Okay, thanks Mr. Ream for
18 your response. Yes Mr. Kaufman and Mr. Safieddin?

19 MR. KAUFMAN: Yes sir. Chairman Johanson, let
20 me just -- I just want to make a couple of points, and it's
21 something that Mr. Ream touched on. Our estimates on that
22 and you saw it, their estimates -- which are based on their
23 estimates, are two years to complete, and get that to begin
24 to be operational.

25 I noticed this morning that the Petitioners

1 wouldn't give you an assessment of the time frame. We
2 submitted an exhibit that was based on M&G's cost to
3 complete, and we based the time line on that. It has at
4 that point last October they were estimating July of 2019.
5 If you figure we're almost a year later, we're looking at
6 June of 2020 at the earliest, and that's assuming in their
7 estimate that a number of preconditions are met, which are
8 a little bit questionable at this point a year later, but
9 also didn't account for the FTC approval process.

10 All I'm saying to you is this seems a little bit
11 incredible to me that they could not give you that estimate
12 this morning. I don't think you make a billion dollar
13 investment without knowing what it's going to -- what it's
14 going to cost you to complete, what it's going to -- how
15 much time it's going to take you to do that. It just seems
16 somewhat incredible for them to sit here and tell you that.

17 But I can tell you from M&G's own estimate,
18 which they discredited this morning, but which seems fairly
19 realistic because it was a fairly detailed time line on what
20 it was going to take to do this step, that step and the
21 other. They were looking last October at July of 2019. I
22 think we're looking at mid-year 2020 at the earliest now.

23 CHAIRMAN JOHANSON: Okay, thank you. Mr.
24 Safieddin?

25 MR. SAFIEDDIN: I would like to add that the

1 remarks made by Mr. Ream is notwithstanding any retirement
2 or repurposing of the existing assets in the industry. So
3 it's easy to say we're going to add an additional 1.1
4 million metric tons of capacity to the marketplace.

5 That could go -- that could be consumed in a
6 heartbeat, taking into consideration the year over year
7 growth in the industry plus any deliberate retirements or
8 repurposing of the existing assets by the domestic
9 producers. Thank you.

10 CHAIRMAN JOHANSON: Okay, thank you for your
11 responses. Commissioner Williamson.

12 COMMISSIONER WILLIAMSON: Thank you. I do have a
13 question, you've talked a lot about the imports controlled
14 by the domestic producers and it often comes up on the
15 review case about the corporate affiliations and what might
16 happen in the country that's being under review.

17 But an original investigation like this -- I'm
18 not, except for when we may be looking at a threat, the fact
19 that a domestic producer is importing the subject product
20 doesn't mean that those imports can't cause injury. Am I
21 missing something here? I mean isn't it still possible that
22 those subject imports, even if they are -- some of them are
23 controlled in part by the domestic producers still could be
24 causing injury?

25 MR. REAM: So the causing injury is what -- to

1 their own manufacturing facilities, they talk about how just
2 small incremental gains in their capacity utilization make a
3 huge cost difference over a billion pounds they run in the
4 plant.

5 So you know, their effecting and controlling
6 their own capacity utilizations through those decisions and
7 if it makes such a big impact on their cost structures, it's
8 just beyond comprehension why they wouldn't take advantage
9 of that and use that capacity and produce those products in
10 the U.S.A.

11 COMMISSIONER WILLIAMSON: I mean that's a fair
12 question, why aren't they -- if you're saying but what I'm
13 saying is that -- and also, you are having competitors here
14 and it's not the first case in which the competitors don't
15 always know what other domestic producers are doing and the
16 impact that they're having. So I mean, that -- I've seen
17 that a number of times.

18 MS. ESSERMAN: But again, they're in control of
19 their own situation and I can't imagine that you want to use
20 -- it's one thing to say for an isolated thing or something
21 where you're bringing in a product to go after a low Chinese
22 priced product or something like that. It's another thing
23 --

24 COMMISSIONER WILLIAMSON: That's what we most
25 often see in the case.

1 MS. ESSERMAN: That's what you most often see.
2 This is an entirely different situation all together because
3 it's -- it's a very extensive supply chain. Indorama is the
4 largest global producer with affiliates all over the place,
5 I'm sorry, I'm sure my colleagues can name all of the
6 different places.

7 DAK, by far the largest producer here in the
8 United States, this is well-known, is the second largest
9 producer. And then you had M&G who had this affiliate plan.
10 The three of them all had this global affiliate supply plan
11 and if they make the choice -- that's the thing that I find
12 very difficult.

13 Any volume issues it seems was completely within
14 their control, particularly when -- in this situation which
15 I think is quite different from other cases, when the
16 customers were asking for the domestic product they -- the
17 Petitioners decided instead to source from their affiliates,
18 sometimes without even telling the customer.

19 I can't understand how that could -- that injury,
20 if in fact they are injuring themselves and they are the
21 cause of their own injury.

22 MR. PETERSON: Commissioner, John Peterson,
23 counsel for Niagara. I think Miss Esserman makes a good
24 point -- these controlled subject imports are not ordered by
25 any of the customers as such. It's not as if a domestic

1 customer says, "I'm going to make a conscious decision to
2 buy Mexican or to buy Brazilian instead of buying domestic."

3 They're buying domestic. They're thinking that
4 they're going to get domestic. What they wind up getting at
5 the direction of the domestic producer, is an imported
6 product. Now what you need to do, is you need to ask the
7 domestic producers, you know, who are saying oh we have
8 spare capacity.

9 Why are you not using that capacity? Why are you
10 using imports -- that's the question here. And I think what
11 you will find is they will take a look at the logistics,
12 they'll take a look at the movement costs of getting
13 something to certain locations like Niagara's west coast
14 plants, and they make the determination to supply and import
15 instead of the domestic stuff.

16 Because of that I don't see how that can be
17 causing injury. That's their choice. I mean it's not even
18 a self-inflicted injury because we have to assume the
19 domestics wouldn't do it if it didn't make economic sense
20 for them to do it.

21 MR. MALASHEVICH: If I might add Commissioner, it
22 touches on my opening remarks that how unusual this case is.
23 Answering your question as a hypothetical -- just because if
24 a company chooses to import from an affiliate, can it cause
25 injury to others hypothetically -- it certainly can.

1 But this is so off the charts in terms of the
2 circumstances that are prevailing here. I just -- I'll go
3 out and look for it again but when we looked for injurious
4 behavior from -- to the industry at large based upon imports
5 by others -- other U.S. producers, we just couldn't find
6 any.

7 COMMISSIONER WILLIAMSON: Okay, I'll ask
8 Petitioners to address that post-hearing too. Okay --

9 MR. MALASHEVICH: They may be in our brief.

10 COMMISSIONER WILLIAMSON: Okay, I think I have no
11 other questions at this point, going to the next person.

12 CHAIRMAN JOHANSON: Okay, Commissioner
13 Schmidtlein, do you have any more questions?

14 COMMISSIONER SCHMIDTLEIN: Yeah.

15 CHAIRMAN JOHANSON: Okay.

16 COMMISSIONER SCHMIDTLEIN: Alright sorry, so one
17 question that I had going back to 2016, well I have a couple
18 questions, I guess. When you look at the pricing data and
19 taking into account the testimony that I've heard which I
20 think was that supply was tight even in 2016. Am I right
21 about that -- that is what you all are telling me, okay.

22 So supply is tight in 2016, in 2016 we have an
23 increase in apparent consumption of over 10%. And when you
24 look at the pricing products -- and I've looked at the price
25 of raw materials, you know, the price of raw materials was

1 not going down in 2016, at least according to the chart in
2 the staff report.

3 But the pricing product when you look at 2016,
4 the prices are pretty steady. They certainly don't go up.
5 Pricing product two was a little bit irregular but the rest
6 of them are pretty flat. And so one question I had was
7 given that supply is tight and consumption went up a healthy
8 amount in 2016 -- 10%, why don't we see -- and while
9 material costs are not going down, I understand there's an
10 adjustment, when they're going up you might be able to tie
11 in some increases there, but I assume that market dynamics
12 affect the price here.

13 Why don't we see prices going up in 2016 given
14 the jump in apparent consumption from '15 to '16 and that
15 supply is tight?

16 MR. REAM: Yeah, Steve Ream, Graham Packaging.
17 Yeah in that time period you were already behind the
18 original announced start-up of Corpus Christi. I have to
19 say that word again and every quarter M&G was saying, "Yep,
20 three more months I'm going to have it done, yep, oh, I
21 missed it again, guess what? In three more months I can
22 start up and here's the three reasons why."

23 COMMISSONER SCHMIDTLEIN: It's a supply
24 constraint right? So they're promising to bring on extra
25 supply, they're not able to do it so why isn't that driving

1 price up a little bit more?

2 MR. REAM: I'd say every commodity market is like
3 this. Even, when you have installed capacity coming online
4 the threat of that capacity keeps price constrained. And
5 with them continuing to announce every quarter we're going
6 to start it up, the rest of the U.S. producers, they weren't
7 going to react -- hey that could come on -- really come on
8 in three months and take volume away. I've got to stay
9 status quo on some of my pricing.

10 COMMISSIONER SCHMIDTLEIN: But you all are having
11 trouble sourcing product in 2016?

12 MR. REAM: Yep.

13 MS. GRODEN: This is Cara Groden from ECS. I
14 would just add that during this period there is still a very
15 clear correlation between pet prices and the major raws as
16 Mr. Safieiddin was testifying earlier between PTA and M&G
17 and you can see that on page 30 of the iResin brief, and
18 it's shown also the same --

19 COMMISSIONER SCHMIDTLEIN: Yeah but does a trend
20 in market dynamics apply to the price in this market?

21 MS. GRODEN: Sorry, come again?

22 COMMISSIONER SCHMIDTLEIN: I mean yeah, it's
23 indexed to raw materials but don't market dynamics affect
24 the price in other words, supply and demand?

25 MS. GRODEN: Of course it does but the -- I mean

1 I would defer to the industry guys here about the relative
2 tightness in 2016 compared to the acuteness that we're
3 seeing in 2018, but what we do see is that prices for PTA
4 and M&G were low at the beginning of 2016 and increased over
5 the period and that there is very clear relationship between
6 those costs and the prices for PET resin that we see both
7 from third party sources and in the U.S. producers own
8 questionnaire data.

9 COMMISSIONER SCHMIDTLEIN: Yeah I don't disagree,
10 I'm sure that the prices correlate with -- they're indexed
11 right, by the contents? I mean it's directly tied so
12 there's a correlation. My question was really why don't we
13 see more of an impact from the market dynamic?

14 MR. SAFIEDDIN: So if I may?

15 COMMISSIONER SCHMIDTLEIN: Yes.

16 MR. SAFIEDDIN: I would like to shed some light
17 on that. Shawn Safieiddin, Niagara Bottling. So a lot of
18 this boils down to the lead-up to M&G's demise. From our
19 perspective and experience M&G was a key contributing factor
20 to the price erosion or lack of price increase experienced
21 in the marketplace.

22 They actively extended sizable discounts in an
23 attempt to pre-sell the Corpus Christi capacity with every
24 delay in the start of that facility we saw more and more
25 price erosion in the marketplace.

1 So there was -- the level of domestic competition
2 during that time -- during the months and years leading up
3 to the startup of Corpus Christi was as intensified as I had
4 ever experienced, alright.

5 COMMISSIONER SCHMIDTLEIN: And is that because
6 they were able to bring in product from outside the U.S.
7 because they couldn't get Corpus Christi up and so they were
8 using this Dakota back vault?

9 MR. SAFIEDDIN: So you cannot sell 1.1 million
10 metric tons of pet resin capacity overnight. You have to
11 pre-sell that in some shape or form so that when the
12 facility is up and running, you can run it at reasonable
13 utilizations.

14 So M&G and DAK would actively try to secure
15 business in anticipation of that startup. Indorama and Nan
16 Ya certainly wouldn't want to lose business to DAK and M&G
17 so they would take a defensive approach. And those dynamics
18 were in play for years leading to late 2017 because we had
19 repeated delays in the startup of Corpus Christi.

20 So what is now attributable to imports is nothing
21 but competition among the domestic producers themselves.

22 COMMISSIONER SCHMIDTLEIN: Mr. Ream, did you want
23 to say --

24 MR. REAM: Yeah, just one thing -- so if you're
25 looking at the dynamics in 2016 and looking for

1 month-to-month or quarter-to-quarter variation, you know,
2 the dynamics of our industry is to put together yearly or
3 multi-year contracts that lock in the amount of margin
4 that's going to be -- I guess I will choose my words
5 carefully here, so you'd lock in a price structure on a
6 yearly basis so those margins -- you wouldn't see those
7 normally increase or decrease on a monthly or quarterly
8 basis because these things are handled on a yearly or
9 multi-year basis.

10 COMMISSIONER SCHMIDTLEIN: I see, okay. Mr.
11 Berry, did you want to add something?

12 MR. BERRY: Yes, Clint Berry with Pepsi. I echo
13 the same thing without repeating what they said but
14 basically if that was what happened.

15 COMMISSIONER SCHMIDTLEIN: You had the same
16 experience?

17 MR. BERRY: Same experience, yes.

18 COMMISSIONER SCHMIDTLEIN: Okay, so I just had
19 one last question because I did pull up the questionnaire
20 that importers fill out going to this direct import issue
21 and in the questionnaire, I mean what I read is the question
22 is quite open ended, asking importers to estimate the cost
23 associated with directly importing so I'm looking at 3-20,
24 you know, that let's you basically put in any cost looking
25 at any other category, that's it.

1 So you said that this was a very limited question
2 and that it was not -- would not permit you to list costs
3 associated with directly importing and I'm just confused by
4 that.

5 MR. MALASHEVICH: No, I appreciate your confusion
6 Commissioner, I'm sorry if I caused any. The answer is the
7 way it was -- it was answered in the narrowest possible way
8 because it was open ended. In my experience people
9 sincerely try to answer the questionnaires as instructed by
10 the importing language in the questionnaires. In this case
11 they chose to answer the question very narrowly. I mean
12 that's what the evidence appears to show.

13 So to some extent the wording of the question
14 might have been improved by adding exactly what they mean.

15 COMMISSIONER SCHMIDTLEIN: Well actually there
16 are three examples.

17 MR. MALESHEVICH: Yeah.

18 COMMISSIONER SCHMIDTLEIN: So we sort of try to
19 get you to put everything in right? We've got logistical or
20 supplies chain management costs not already included in LVP
21 value, inventory carrying costs not already included in LVP
22 value, insurance costs and then we let you put other in
23 different categories.

24 So we're trying to give you examples of costs so
25 I'm just -- none of the importers identified costs

1 associated with these direct imports and I've heard in the
2 prior testimony that was because the Commission
3 questionnaire asked the question in a way that was quite
4 narrow.

5 And now I'm looking at the questionnaire and it's
6 actually quite -- it gives you examples to help you, but it
7 also let's you put anything else in, so I'm wondering do you
8 want to reconsider like why you didn't -- since you claim
9 that there are all these other costs --

10 MR. MALESCHEVICH: Yeah.

11 COMMISSIONER SCHMIDTLEIN: Associated with direct
12 imports?

13 MR. MALESCHEVICH: Yes, I've been told to defer to
14 the witness here.

15 MR. SAFIEDDIN: We'll be more than happy to
16 supplement the record to address that, okay?

17 COMMISSIONER SCHMIDTLEIN: I think that would be
18 helpful.

19 MR. SAFIEDDIN: Sure.

20 COMMISSIONER SCHMIDTLEIN: Okay, thank you.
21 Alright I don't have any further questions, thank you.

22 CHAIRMAN JOHANSON: Do any of the other
23 Commissioners have questions -- Commissioner Kearns?

24 COMMISSIONER KEARNS: Just a couple here real
25 quick. I just want to come back one last time to M&G. You

1 know I mean I just keep coming back to slide number 36 from
2 Petitioner's presentation and I just want to, I want to hear
3 your response to all this sort of put together because it
4 seems to me that you know, as they would say you know, let's
5 start with Apple Grove.

6 First of all it's a relative small U.S. producer
7 and in any event, they're producing again as of July, 2018.
8 Mexico, I take your point they say Altemera is not a U.S.
9 producer. I take your point about that, that's somewhat
10 irrelevant in your view. But in any event, they opened in
11 November, 2017 and the plant was closed for only six weeks.

12 Then you've got the Brazilian production they say
13 that there was no interruption of production there. And
14 then you've got Corpus Christi and I take your point that
15 you know, even though it was not yet in operation it could
16 have an impact on the market well before it comes into
17 operation, especially on this 2.4 billion pounds, but it
18 seems a bit much to kind of draw that much, you know, on a
19 factory that isn't open, that there's a supply shortage
20 based on the fact that there isn't yet a new plant up in
21 operation.

22 So it just -- I just want you to respond to slide
23 36. I know to some extent you have but I don't think you
24 put it all together into one explanation.

25 MR. KAUFMAN: So Commissioner Kearns let me kind

1 of just give you a quick chronology of September of 2017.
2 September 6th, Altimera closes. September 12th, DAK's
3 parent company announces that they're no longer shipping raw
4 materials to Altimera.

5 COURT REPORTER: Will you please speak into the
6 microphone.

7 MR. KAUFMAN: I'm sorry. September 6th, Altimera
8 closes. September 12th, DAK's parent company announces
9 they're no longer making shipments of raw materials to
10 Brazil or to Mexico for non-payment. In the same very
11 public notice which is a little bit extraordinary, they also
12 question the ongoing validity of Corpus Christi.

13 September, 2017 we also get Hurricane Harvey
14 hitting the Gulf Coast, flooding it for days on end and
15 disrupting all types of raw materials that go into pet resin
16 production. This is all September.

17 September 21st, Apple Grove announces more
18 notices and they're going to close the Apple Grove facility.
19 October 22nd it closes -- so within a span of three weeks in
20 September, actually two weeks in September, shock waves went
21 through the consuming industry. They lost Mexico, they
22 questioned the continuing validity of Brazil, they lost
23 Apple Grove and they know that Corpus Christi's not coming
24 online.

25 I know you're saying it's only six weeks and

1 that's what we heard this morning, but when these things --
2 these events happened, no one knew. No one knew whether
3 Brazil was going to continue producing. No one knew when
4 Mexico was ever going to come back online. No one knew if
5 Corpus Christi was -- that's what I'm trying to --

6 COMMISSONER KEARNS: Okay, but what about now,
7 why are we still in this crisis mode what, a year later?

8 MR. KAUFMAN: Well you've heard about Brazil.
9 Mexico has been in a different production formula than it
10 was before. Apple Grove only went online and only started
11 to go online in July of this year. M&G is no longer an
12 active player in this market. You know there's all kinds of
13 reasons why we're still -- I understand your question but
14 there's all kinds of reasons why there's an ongoing effect
15 of all of this that happened in September of last year.

16 And they're still suffering. They're still
17 getting requests from the U.S. producers to certify and
18 source product from other countries that are not the five,
19 they're not the U.S. production, but now they're picking up
20 other countries around the world to bring product in.

21 If there wasn't a shortage, if there wasn't a
22 problem, why would they be doing that? And Commissioner
23 Schmidtlein asked a question or it was Commissioner
24 Williamson asked a question, what is the significance -- it
25 was Commissioner Schmidtlein, of them bringing in product

1 from other countries.

2 Why are we even raising that? You know they said
3 that when China went under, you know, they lost all this
4 market share to imports. They never talked about their own
5 imports. They never talked about from subject countries or
6 non-subject countries -- it's the same issue again.

7 The crisis was created, a shortage was created,
8 it's ongoing impact and their solution to that as they said
9 in the prelim was to import more and that's exactly what
10 they're doing.

11 COMMISSIONER KEARNS: Okay, that gets to my other
12 question I guess.

13 MR. KAUFMAN: Sure, what's happening right now
14 yeah. I mean Altimera is down. They're running at partial
15 capacities today. The fire down there but them out of
16 capacity for two months and that was material we were
17 depending on the U.S. producers importing in to cover us,
18 they're bringing in 45 million pounds a month of that
19 material to subsidize the U.S. market.

20 You took two months where they couldn't produce,
21 they're going to start up at the middle of the third month,
22 but it takes 20-21 days to get that material to us. You're
23 going to take four months out of Altimera's capacity that
24 U.S. producers were using to subsidize coming in here,
25 that's a lot of material, 160 million pounds out of the

1 marketplace that we have to you know, substitute something
2 to take care of that current shortage.

3 COMMISSIONER KEARNS: Mr. Safieiddin?

4 MR. SAFIEDDIN: Shawn Safieiddin from Niagara
5 Bottling. The market in which we operate isn't static.
6 Again, for perspective, Niagara's consumption of pet resin
7 alone during the period of the investigation has grown by
8 200,000 metric tons.

9 That is equivalent to almost half of the capacity
10 of some of the pet producers. So if you have a constant or
11 diminishing supply, and ever-growing demand, eventually
12 you're going to tap out and we've had an already tight
13 market compounded by several years of no capacity expansion
14 and demand expansion.

15 COMMISSIONER KEARNS: Okay, so going with the
16 question about the fact that Petitioners are related to a
17 number of imports from other countries. I mean I think
18 normally we look at that, especially with respect to
19 non-subject imports because you want to make sure, well, you
20 know, we're not -- you wouldn't want to put an order in
21 place if the purpose is really just to benefit non-subject
22 imports vis- -vis subject imports, that's not the purpose of
23 the statute.

24 So then we look at well we're talking about
25 subject imports in this case and it seems -- and I think the

1 story I'm hearing you all tell is essentially as you said,
2 Miss Esserman, they're in control of their own situation but
3 I think that seems to suggest that there is quite a bit of
4 -- there's not a lot of competition between them, the
5 Petitioners all together.

6 Whereas it seems like another hypothesis would be
7 -- no actually, there's huge competition among themselves
8 and one says well your unfairly traded imports are injuring
9 me, my unfairly traded imports are injuring you.
10 Tomato/tomato -- let's call the whole thing off, let's put
11 in place an order with respect to unfairly traded imports
12 and that will help the U.S. market.

13 And why shouldn't I think that's what's going on
14 here, especially I think if you look at the condition of the
15 U.S. industry. I mean these guys aren't making a whole lot
16 of money. It doesn't look like to me and I know that
17 there's allegations that maybe they're pricing their inputs
18 that they also control in order to show, you know, it makes
19 it look like they've got less income than they do, but I
20 mean it looks to me like it's a fairly competitive market,
21 no -- even just among themselves?

22 COURT REPORTER: Could you turn on your
23 microphone?

24 MS. ESSERMAN: I'm so sorry. This is Susan
25 Esserman for the record. I want to be careful here in a

1 public setting, but I think it is important to note that as
2 a result of the loss of M&G, the large producers become only
3 -- you have greater control over the market.

4 They -- as Mr. Kaufman has explained over the
5 last year they've acquired a number of other, you know,
6 Brazil -- so they control completely by the way, one of the
7 subject countries -- both producers.

8 They you know, bought one of -- DAK has bought
9 Canada's Solinas. So I would say the evidence, which I
10 assume the FTC is looking at is that there is a very
11 concentrated market here and I assume that's why this whole
12 Corpus Christi plant is under extended review.

13 MR. ELLIS: This is Neil Ellis from Sidley. If I
14 could just add a point -- it's artificial given what you
15 just said that they are you know, grappling as they're
16 falling down the Reichenbach Falls in a vigorous competition
17 among themselves.

18 The competition is happening on a global basis,
19 not in the U.S. basis. So looking at just what they're
20 doing in the United States is not giving you a picture of
21 what's really happening and you're seeing kind of a
22 distorted vision of well, they say it's only "x" percent
23 capacity utilization rate but you have to look -- or "x"
24 percent of the market share, but you have to look at the
25 whole picture globally for these folks.

1 And working with the Pakistani's is the only like
2 independent country left. We're being dragged down the
3 cliff with them and yet we have nothing to do with that
4 battle if it really is just a vigorous battle among
5 Indorama, DAK and Nan Ya -- let them fight it out, but you
6 don't bring in an anti-dumping order against the people who
7 are outside, who are not causing that kind of problem on
8 one of those companies, thank you.

9 MS. ESSERMAN: I would just add to that point, I
10 think that's a very good point. It kind of goes to what you
11 were saying earlier. I can't imagine that's what the
12 drafters of the anti-dumping law thought it was for -- to
13 help foreign-owned, highly concentrated companies protect
14 their foreign sources of supply and strengthen them
15 globally. That just seems a perversion of the law.

16 MR. SAFIEDDIN: Shawn Safieddin from Niagara
17 Bottling. In any industry where two of the four market
18 participants account for 80% of the market share, I would
19 assert that there is plenty of bargaining power on the part
20 of the sellers. That's point number one.

21 Point number two -- I just want to make sure, I'm
22 not going to make any allegations or assertions, but I just
23 hope that the Commission also takes into consideration any
24 potential alternative motives. I'll give you a few
25 examples. Brazil finds itself subject to a potential

1 anti-dumping petition. What does that do to the price at
2 which the subject assets can now be acquired?

3 I'll give you another example. A number of
4 countries become subject to a potential anti-dumping ruling.
5 What does that do to the terms and conditions that domestic
6 producers can export to the U.S. out of non-subject origins?

7 So all of these decisions would have to be made
8 or at least assessments have to be made in the market in its
9 entirety. These are not isolated events or incidents.

10 COMMISSIONER KEARNS: Okay, thank you. My time
11 is up.

12 CHAIRMAN JOHANSON: Do any other Commissioners
13 have questions? Okay. Yes, Commissioner Williamson does.

14 COMMISSIONER WILLIAMSON: Okay, okay. This is
15 -- Mr. Berry, I don't know whether you can address this, but
16 as we are looking at Pepsi is a global company, along with
17 some other global producers here. And we've had -- this has
18 come up in other cases. You talked a lot about, you know,
19 sourcing in the U.S. But I was wondering since Pepsi is a
20 global company, does it come into play with more
21 relationships with other global companies around the world?

22 As I said, you may not want to answer that --
23 you're free not to answer that if you don't want to, because
24 it may getting proprietary. But I just --

25 MR. BERRY: Well, we are a global company, and

1 as I said before I run the global resin program for Pepsi.
2 But what I'll say is that we try to always buy local. We
3 always want to buy local in the U.S. We always want to buy
4 local in Europe and Asia. We run programs based upon that,
5 you know, because buying local gives you more security, for
6 one thing, and of course in other countries there's a
7 currency challenge as well.

8 So our dynamic is number one, security of
9 supply, and that's why we concentrate on making sure that we
10 can buy whatever we need locally. What we're saying in the
11 U.S., basically we would still like to do that if it was a
12 type of market where that was easily facilitated. That's
13 basically what we're saying.

14 COMMISSIONER WILLIAMSON: Okay, good. I was
15 just wondering, because we had -- we've had other cases
16 where there was a different answer coming out.

17 MR. BERRY: Right. But still again, I mean you
18 know we -- because we are global, we see opportunities, but
19 sometimes we forego those opportunities simply because of
20 the prime directive as we call it. So that's our prime
21 directive.

22 COMMISSIONER WILLIAMSON: Okay, thank you. This
23 is not a question for comment, because in law school I
24 wanted to be an antitrust lawyer and I went into trade, and
25 trade laws don't -- we're not a competition agency, but I'll

1 leave it at that. So I have no further questions at this
2 point.

3 MS. ESSERMAN: I would just say in response to
4 your question, your comment, your comment, we understand
5 that, and that's why you didn't see a word about that in our
6 brief.

7 COMMISSIONER WILLIAMSON: Okay, thank you.

8 MS. ESSERMAN: Certainly market power and market
9 power in terms of controlling prices, sources, that's
10 relevant to this analysis of dumping, significance of
11 volume.

12 COMMISSIONER WILLIAMSON: And whether or not
13 there's injury?

14 MS. ESSERMAN: Yes, thank you.

15 COMMISSIONER WILLIAMSON: Okay, thank you.

16 CHAIRMAN JOHANSON: All right. Do other
17 Commissioners have questions? None do. Okay. Do staff any
18 questions for this panel?

19 MR. THOMSEN: Craig Thomsen, Office of
20 Investigations. Staff have no questions for this panel.

21 CHAIRMAN JOHANSON: Okay, thank you Mr. Thomsen.
22 Do Petitioners have any questions for the panel? Okay, no
23 Petitioners. The Petitioners do not have questions. Okay.

24 We will now move to Petitioners' rebuttal and
25 closing. The Petitioners have four minutes of direct

1 testimony and 5 minutes of closing, for a total of nine
2 minutes. Respondents have one minute of direct, five
3 minutes for closing for a total of six minutes.

4 (Pause.)

5 MR. BURCH: Closing and rebuttal remarks on
6 behalf of Petitioner will be given by Paul C. Rosenthal,
7 Kelley Drye and Warren. Mr. Rosenthal, you have nine
8 minutes.

9 CLOSING REMARKS OF PAUL C. ROSENTHAL

10 MR. ROSENTHAL: Thank you. Sorry Commissioner
11 Broadbent isn't here now, but she expressed some degree of
12 excitement at the notion of war rooms, and I said to myself,
13 you know, these cases are not that exciting generally.
14 There's a reason why you haven't seen a TV show called "Law
15 and Order: Injurious Dumping."

16 But on the subject of crime and perhaps
17 punishment, I had to chuckle at my friend, and he is a
18 friend, Bruce Malashevich's comment that he looked for
19 evidence of injury caused by the subject imports, and he
20 simply couldn't find any. I said to myself it reminds me of
21 O.J. Simpson fruitless search for Nichole's killer. I know
22 he looked very, very hard.

23 In fact, you don't have to look that far.
24 Commissioner Johanson at one point in the proceeding said I
25 hear the Petitioners saying one thing and Respondents

1 another concerning shortage of supply. But not really. I
2 think as the hearing went on, you got to hear a consensus
3 about this. You heard the Respondents concede there really
4 wasn't a shortage before the fall of 2017.

5 You heard -- and in attempt to explain what was
6 going on before I'll say September of '17, which they focus
7 on, Ms. Esserman said it's not necessary. She conceded, as
8 we must and she must, that it's not necessary for the
9 domestic industry to supply the entire market, right? And
10 she said there is a need for supplemental supply because the
11 domestic industry can't supply it.

12 The issue before this Commission is whether or
13 not the supplemental supply is injurious. That's, you know,
14 and that's what we heard all about. Commissioner Johanson
15 properly asked why was the domestic industry losing market
16 share if there wasn't under-selling? They really didn't
17 have a good answer for that. You heard one response, which
18 was quite interesting, by the witness for Niagara, who was
19 saying there was competition between M&G and Dak to seed the
20 Corpus Christi plant, and that's what was going on in 2015
21 and 2016.

22 And that was his answer, and that's what drove
23 prices down. Well, why didn't the market share of low
24 prices priced products go up? Why didn't DAK and M&G
25 improve their market share in this time period if they were

1 competing so heavily? That didn't happen, did it? You saw
2 their market share and the domestic industry's market share
3 all go down.

4 Why was that? Because the domestic industry was
5 over-selling the foreign producers? No. Foreign producers
6 in the previous case, which you still don't hear much about
7 from the Respondents, were under-selling U.S. producers.
8 How do you get -- and you heard the purchasers say we
9 replaced those with the subject imports in this case. How
10 did that happen?

11 Not by overselling.

12 I heard a couple of very interesting things from
13 Respondents' witnesses today, and Commissioner Schmidtlein,
14 you're exactly right when it comes to the questionnaire
15 concerning direct imports. There is no reason why those
16 direct imports aren't compared as part of the under-selling
17 analysis.

18 I was fascinated by Mr. Malashevich, Bruce my
19 friend's urging you to think outside the box, and coming
20 with all these alternative theories. And again, I had to
21 laugh. He wants you to not consider direct imports, which
22 we know is big dynamic in this market now, but he wants you
23 to consider all these alternative out of the box theories,
24 including the lumping together of subject and non-subject
25 imports and this whole issue of control of non-subject

1 imports.

2 That brings me to another topic, which is the
3 schizophrenia that I think has been displayed by Respondents
4 concerning non-subject imports, and particularly Mexico. On
5 one hand they seem to be complaining that there have been
6 imports from Mexico that the U.S. obviously doesn't produce
7 but they've been importing.

8 But that's been a condition of competition for I
9 don't know about time immemorial, but since the original
10 investigation. Mexico has always been a supplier to the
11 U.S. market. U.S. industry not only has not objected, but
12 we were asked this question before.

13 We haven't filed a dumping case against Mexico,
14 which seemed to be the implication by Respondents in the
15 preliminary investigation. Why don't we go after them? The
16 answer is we don't believe they're unfairly traded. Now M&G
17 was planning to supplant the imports from Mexico with their
18 Corpus Christi plant. We know that's not going to happen,
19 at least in M&G's domain.

20 But they were the original main source of
21 imports. By the way, DAK does not own the Alta Mura plant.
22 There's an M&G entity named that does. DAK has facilitated
23 the imports and why? Because there are non-subject imports
24 from Mexico that are fairly traded, and the domestic
25 purchasers have historically needed and they've been

1 facilitated.

2 I don't understand what the complaint is there.
3 Thank you very much, Commissioner Kearns, for going through
4 Slide 36. You really didn't get an answer by the way. You
5 heard a lot about all the shocks to the supply system in
6 September of 2017. But they never really explained to you
7 that Altamura went online. Yes, there have been some
8 disruptions just like anything else.

9 But Altamura's back online. It's not the
10 cataclysmic shock that they describe in their brief and
11 hyperbole at this hearing. Apple Grove is back online.
12 Brazil, if it doesn't ship here, it's not because they're
13 not producing there. It's not because there's not the
14 quantity available. It's because of the subject producers.

15 So let's not confuse the record any further.
16 It's very clear that the imports, the subject imports came
17 into this market and that it wasn't a self-inflicted injury.
18 The subject imports, not counting the so-called controlled
19 imports, were hundreds of millions of pounds. They don't
20 explain how those got sold in here.

21 With all respect Commissioner Kearns, whatever
22 the import competition is between the domestic industry, the
23 amount of imports that came in that were not controlled by
24 domestic companies were very, very high, and were more than
25 enough to cause injury to the domestic industry. I will

1 tell you too, there are a number of things that were said,
2 and I really try not to contradict or suggest anything that
3 any of clients' customers could possibly be wrong, but
4 that's bad marketing.

5 But there's a lot -- there are a lot of
6 misstatements about efforts by the U.S. producers to sell to
7 the west coast. We'll give you plenty of information in the
8 post-hearing brief about efforts by companies to sell to the
9 west coast and being told by customers, purchasers who
10 testified today, about how they wouldn't buy them because
11 they're not going to be as low-priced as the imports they
12 could get from Asia.

13 Some of these conversations have taken place
14 very recently, and we'll give you more information about how
15 some of the customers who testified today have said we're
16 not going to buy all the contracted volumes we had talked
17 about from you because we have other sources of supply,
18 domestic and import, subject and non-subject.

19 So in my remaining time, I just want you to
20 focus on the admitted concession by them that the supply
21 issues which they want to talk about all day didn't really
22 occur until late in this Period of Investigation. After the
23 petition was filed, there's a totally different situation
24 where the domestic industry is able to make money, ship more
25 and otherwise get to be a more profitable and sustainable

1 industry.

2 We cannot return -- I understand their arguments
3 about tightness of supply. They overstate them. There is
4 much more supply available. I'm not going to say that we're
5 awash, but there is plenty of non-subject imports and
6 domestic supply available to the domestic purchasers. Their
7 arguments on that score go to threat. They do not go to
8 present injury and I think if you look at the record fully,
9 you'll find that the subject imports did increase. They did
10 undersell the U.S. producers, they did cause injury, and
11 therefore an affirmative determination is warranted. Thank
12 you.

13 MR. BURCH: Closing and rebuttal remarks on
14 behalf of Respondents will be given by Joel D. Kaufman of
15 Steptoe and Johnson and Brenda A. Jacobs of Sidley Austin.
16 Mr. Kaufman and Ms. Jacobs, you have six minutes.

17 (Pause.)

18 CLOSING REMARKS OF JOEL D. KAUFMAN

19 MR. KAUFMAN: Okay. Chairman Johanson,
20 Commissioners, we appreciate the opportunity to be here
21 today. I'm only sorry I don't have some type of a food
22 analogy or something like that to follow Mr. Rosenthal, but
23 it's not usual, I don't believe, to have the consumers and
24 customers come in here and have the time they had today.

25 We appreciate that. Part of the reason for that

1 is that most of the foreign producers are related to the
2 people sitting on that side of the room. So it's given us
3 the opportunity to present to the Commission an explanation
4 of the conditions that they've been living under for the
5 past year, and we appreciate that opportunity.

6 These are American companies. They buy
7 American, and were it not for the supply shortages that
8 they've been facing, they wouldn't be here today. There's
9 no advantage to them to come here and take on, to a certain
10 extent, their suppliers. As you heard in one case it's 99
11 percent of what they buy, in another case it's 95 percent of
12 what they buy.

13 But given the supply risks they've been
14 confronting, they just felt like they had no choice. So I
15 appreciate the opportunity for them to speak to you. I've
16 only got three minutes, so I'm going to keep it real short.

17 I just want to point out to the Commission that
18 the main reason we're hearing that U.S. producers are
19 importing is a reason that was not provided in response to
20 the Commissioner's questionnaires by any of the three
21 domestic producers that are sitting here today. Actually,
22 it would be two and M&G.

23 This is a new theory of the case as far as I can
24 see, and I encourage you to look on page III-20 of the
25 prehearing report. Another thing that I would point out is

1 that they talk about the fact that after the China case,
2 they were deprived of the market shares that they thought --
3 that they had fought so hard to earn. I just want to point
4 out to you that that's not exactly correct. If you only
5 look at U.S. production, you might be able to draw that
6 conclusion.

7 If you look at the increases in terms of their
8 U.S. production, their imports of subject merchandise, their
9 imports of non-subject merchandise, they benefitted well
10 from that case, and to sit here today and tell you to look
11 at only one piece of that puzzle is not exactly appropriate.

12 Finally, we've discussed at length the first
13 half of 2017 in our brief. You can see that I believe at
14 pages 52 to 55. So I'm not going to address them fully
15 here. But there are reasons, quarter by quarter, that
16 explain what happened there. I just want to point out to
17 you that in the cost-price squeeze one, the Petitioners were
18 constrained by their contracts.

19 Two, in the second quarter when the real
20 price-cost squeeze occurred, the market share of
21 non-controlled imports dropped, and the instances of
22 under-selling was one out of 11. There was no
23 under-selling, there was no increase in imports. The only
24 explanation is the fact that they couldn't adjust for the
25 IPA increases because of their contracts, and if this wasn't

1 a big deal at the time, then it's hard to understand why
2 they put in IPA surcharges and forced them on the
3 eventually, I guess, they were agreed to by the customers.

4 But those agreements didn't take place until the
5 third quarter of 2017, which is why you see a squeeze in the
6 second quarter. It was voluntary. It had to be, because
7 they were contractually obligated to only adjust for the
8 other two raw materials. Brenda.

9 CLOSING REMARKS OF BRENDA A. JACOBS

10 MS. JACOBS: Thank you. I want to take a moment
11 to talk about threat, which never came up in Petitioners'
12 presentation.

13 MR. BURCH: Will you turn on your microphone?

14 MS. JACOBS: Sorry. The issue of threat never
15 came up in Petitioners' discussion at all, which I find very
16 interesting to talk about how the industry is in pain and
17 needs help, yet they're showing tremendous confidence with
18 all of their investments in new production.

19 It's not one, it's not two, it's three different
20 companies are now going to be owners of Corpus Christi.
21 They all want to have a piece of the action. There are two
22 Brazilian producers out there now owned by affiliates of
23 U.S. producers. So obviously there's a lot of optimism
24 about this industry, both in the United States and globally.
25 That's not exactly what you would expect from an industry

1 that is complaining about material injury.

2 But let me take a few seconds just to go through
3 the statutory threat criteria, to note why we think there's
4 no threat either. Subject producers all have high capacity
5 utilization. As I mentioned, there are two Brazilian
6 producers now owned by affiliates of the U.S., and we don't
7 believe those producers can be harmful, the imports of those
8 can be harmful to the U.S. affiliates.

9 Look at what happened, for example, with
10 Salinas. Purchased by DAK, they're not exporting to the
11 U.S. anymore. I would expect something similar to happen
12 here. You look at whether the U.S. is a significant target
13 for subject producers. It's not these countries. They'll
14 all have plenty of business in their home market and in
15 third country markets, with more sales going to those
16 markets than to the U.S.

17 The volume of subject imports and rate of
18 increase in market penetration of subject imports into the
19 U.S. also don't indicate any threat. There's no evidence of
20 price suppression or depression here. The inventories,
21 according to the staff report, are low and decreasing, both
22 those held by subject producers and by the U.S. importers.

23 No issue of product shifting capabilities. Most
24 of the producers have other business as well that they plan
25 on using it for, and you heard about that from Nobite.

1 There's obviously nothing that has inhibited --

2 CHAIRMAN JOHANSON: Ms. Jacobs, your time has
3 expired. If you could wrap up. I appreciate it.

4 MS. JACOBS: Sure, from developing production
5 efforts. That's all the investment, and there are no
6 demonstrable adverse trends indicating material injury.
7 Instead, we have this tightness in the market. Thank you.

8 CHAIRMAN JOHANSON: Thank you all for appearing
9 here today. I will now make the closing statement.
10 Post-hearing briefs, statements responsive to questions and
11 requests of the Commission and corrections to the staff
12 report must be filed by September 21st, 2018.

13 Closing of the record and final release of data
14 to two parties occurs on October 11th, 2018, and final
15 comments are due on October 15th, 2018. With that, this
16 hearing adjourned.

17 (Whereupon, at 5:05 p.m., the hearing was
18 adjourned.)

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CERTIFICATE OF REPORTER

TITLE: In The Matter Of: Polyethylene Terephthalate (PET)
from Brazil, Indonesia, Korea,
Pakistan and Taiwan

INVESTIGATION NOS: 731-TA-1387-1391

CONFERENCE DATE: 9-13-18

LOCATION: Washington, DC

NATURE OF CONFERENCE: (FINAL)

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: 9-13-2018

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I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceedings 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 proceedings.

SIGNED: Christopher Weiskircher

Signature of Proofreader

I hereby certify that I reported the above-referenced proceedings 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 proceedings.

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Signature of Court Reporter