

**D** ORIGINAL

# UNITED STATES INTERNATIONAL TRADE COMMISSION

---

In the Matter of: )  
REFILLABLE STAINLESS STEEL ) Investigation Nos.:  
KEGS FROM CHINA, GERMANY, ) 701-TA-610 and  
AND MEXICO ) 731-TA-1425-1427 (Final)

Pages: 1 through 232

Place: Washington, D.C.

Date: August 14, 2019

---

HERITAGE REPORTING CORPORATION

*Official Reporters*

1220 L Street, N.W., Suite 206

Washington, D.C. 20005

(202) 628-4888

[contracts@hrccourtreporters.com](mailto:contracts@hrccourtreporters.com)

AUG 15 2019

## THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of: )  
REFILLABLE STAINLESS STEEL ) Investigation Nos.:  
KEGS FROM CHINA, GERMANY, ) 701-TA-610 and  
AND MEXICO ) 731-TA-1425-1427 (Final)  
 )

Wednesday,  
August 14, 2019

Main Hearing Room, 101  
U.S. International  
Trade Commission  
500 E Street, S.W.  
Washington, D.C. 20436

The meeting commenced, pursuant to Notice, at  
9:30 a.m., before the Commissioners of the United States  
International Trade Commission, the Honorable  
JASON E. KEARNS, Commissioner, presiding.

## APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

JASON E. KEARNS, COMMISSIONER

Staff:

WILLIAM R. BISHOP, SUPERVISORY HEARINGS AND  
INFORMATION OFFICER  
TYRELL BURCH, MANAGEMENT ANALYST  
SHARON BELLAMY, RECORDS MANAGEMENT SPECIALIST  
CELIA FELDPAUSCH, INVESTIGATOR  
ALLISON THOMPSON, INTERNATIONAL TRADE ANALYST  
NATALIA KING, INTERNATIONAL ECONOMIST  
DAVID BOYLAND, ACCOUNTANT/AUDITOR  
MICHAEL HALDENSTEIN, ATTORNEY/ADVISOR  
DOUGLAS CORKRAN, SUPERVISORY INVESTIGATOR

In Support of the Imposition of  
Antidumping and Countervailing Duty Orders:

Picard Kentz & Rowe LLP  
Washington, D.C.  
On behalf of:

American Keg Company, LLC

SCOTT BENTLEY, Owner, American Keg Company, LLC  
PAUL CZACHOR, Chief Executive Officer,  
American Keg Company, LLC  
STEVE RUBEO, Controller, American Keg Company, LLC  
BRIAN LUZZI, Director, Sales and Marketing,  
American Keg Company, LLC

Of Counsel:

ANDREW W. KENTZ, Esquire  
WHITNEY M. ROLIG, Esquire  
NATHAN MAANDIG RICKARD, Esquire

In Opposition to the Imposition of  
Antidumping and Countervailing Duty Orders:

Hogan Lovells US LLP  
Washington, D.C.  
On behalf of:

THIELMANN Mexico S.A. de C.V.  
THIELMANN US LLC

RAFFAEL BECK, Senior Corporate Counsel,  
Heritage B.V.  
TERRY PARKER, Advisor to the THIELMANN  
Executive Committee, THIELMANN

Of Counsel:

CRAIG A. LEWIS, Esquire  
MICHAEL G. JACOBSON, Esquire

In Opposition to the Imposition of  
Antidumping and Countervailing Duty Orders (Cont'd):

Pepper Hamilton LLP  
Washington, D.C.  
On behalf of:

Blefa GmbH  
Blefa Kegs, Inc.

ALEXANDER BRAND, Chief Executive Officer,  
Blefa GmbH  
DINAH QUIST, Controller, Blefa Kegs, Inc.  
JUSTIN WILLENBREINK, Sales Director, North America,  
Blefa Kegs, Inc.  
CHRIS SAPYTA, Chief Executive Officer,  
Keg Logistics, LLC  
JAMES P. DOUGAN, Vice President, Economic  
Consulting Services, LLC  
GILLIAN PRIDDY, Staff Economist, Economic  
Consulting Services, LLC

Of Counsel:

GREGORY C. DORRIS, Esquire

Trade Pacific PLLC  
Washington, D.C.  
On behalf of:

Penglai Jinfu Stainless Steel Products Co., Ltd.  
Ningbo Major Draft Beer Equipment Co., Ltd.  
Qingdao Henka Precision Technology Co., Ltd.

STEVEN SYZDEK, Managing Partner, NDL Keg LLC  
BRIAN KEYSER, President, Krew Kegs, Inc.,  
d/b/a G4 Kegs

Of Counsel:

WARREN E. CONNELLY, Esquire

In Opposition to the Imposition of  
Antidumping and Countervailing Duty Orders (Cont'd):

Covington & Burling LLP  
Washington, DC  
On behalf of:

Anheuser-Busch, LLC

JOHN HOFFMEISTER, Vice President, Packaging  
Procurement, North American Operations, AB InBev  
SETH J. HAWKINS, Senior Associate General Counsel,  
Anheuser-Busch Companies, LLC

Of Counsel:

JAMES M. SMITH, Esquire

REBUTTAL/CLOSING REMARKS:

Petitioner (Whitney M. Rolig, Picard Kentz  
& Rowe LLP)  
Respondents (Craig A. Lewis, Hogan Lovells US LLP;  
and Gregory C. Dorris, Pepper Hamilton LLP)

I N D E X

	<u>PAGE</u>
OPENING REMARKS BY COMMISSIONER JASON E. KEARNS	7
OPENING REMARKS FOR PETITIONER, ANDREW W. KENTZ, PICARD KENTZ & ROWE LLP, WASHINGTON, D.C.	9
OPENING REMARKS FOR RESPONDENTS, WARREN E. CONNELLY, ESQUIRE, TRADE PACIFIC, PLLC, WASHINGTON, D.C.	14
WHITNEY M. ROLIG, ESQUIRE, PICARD KENTZ & ROWE LLP, WASHINGTON, D.C.	18
SCOTT BENTLEY, OWNER, AMERICAN KEG COMPANY, LLC, POTTSTOWN, PENNSYLVANIA	27
STEVE RUBEO, CONTROLLER, AMERICAN KEG COMPANY, LLC, POTTSTOWN, PENNSYLVANIA	33
BRIAN LUZZI, DIRECTOR, SALES AND MARKETING, AMERICAN KEG COMPANY, LLC, POTTSTOWN, PENNSYLVANIA	40
PAUL CZACHOR, CHIEF EXECUTIVE OFFICER, AMERICAN KEG COMPANY, LLC, POTTSTOWN, PENNSYLVANIA	45
JOHN HOFFMEISTER, VICE PRESIDENT, PACKAGING PROCUREMENT, NORTH AMERICAN OPERATIONS, AB INBEV	115
TERRY PARKER, ADVISOR TO THE THIELMANN, EXECUTIVE COMMITTEE, THIELMANN	118
BRIAN KEYSER, PRESIDENT, KREW KEGS, INC., D/B/A G4 KEGS	126
ALEXANDER BRAND, CHIEF EXECUTIVE OFFICER, BLEFA GMBH	129
DINAH QUIST, CONTROLLER, BLEFA KEGS, INC.	133
CHRIS SAPYTA, CHIEF EXECUTIVE OFFICER, KEG KEG LOGISTICS, LLC	137
GREGORY C. DORRIS, ESQUIRE, PEPPER HAMILTON LLP, WASHINGTON, D.C.	142

I N D E XPAGE

JAMES P. DOUGAN, VICE PRESIDENT, ECONOMIC CONSULTING SERVICES, LLC	144
WARREN E. CONNELLY, ESQUIRE, TRADE PACIFIC, PLLC, WASHINGTON, D.C.	158
CRAIG A. LEWIS, ESQUIRE, HOGAN LOVELLS US LLP, WASHINGTON, D.C.	159
JAMES M. SMITH, ESQUIRE, COVINGTON & BURLING LLP, WASHINGTON, D.C.	175
MICHAEL G. JACOBSON, ESQUIRE, HOGAN LOVELLS US LLP, WASHINGTON, D.C.	176
CLOSING REMARKS FOR PETITIONER, WHITNEY M. ROLIG, PICARD KENTZ & ROWE LLP, WASHINGTON, D.C.	224
CLOSING REMARKS FOR RESPONDENTS, GREGORY C. DORRIS, PEPPER HAMILTON LLP, WASHINGTON, D.C.	227

## P R O C E E D I N G S

(9:30 a.m.)

3                   COMMISSIONER KEARNS: Good morning. On  
4 behalf of the U.S. International Trade Commission, I  
5 welcome you to this hearing on the final phase of  
6 Investigation Nos. 701-TA-710 and 731-TA-1425-1427,  
7 involving Refillable Stainless Steel Kegs from China,  
8 Germany, and Mexico.

9                   Some of you may be wondering where my  
10          colleagues are. As you may know, the Senate recently  
11          confirmed Amy Karpel and Randolph Stayin to serve as  
12          Commissioners. Once they are sworn in, they will  
13          replace Commissioners Williamson and Broadbent,  
14          respectively. Commissioner Williamson and Broadbent  
15          therefore will not be participating in these  
16          proceedings.

17 Now, I'll read a statement on behalf of  
18 Chairman Johanson and Commissioner Schmidlein:

19                   "We would like to thank all of the witnesses  
20       for appearing here today. We apologize that we could  
21       not be here in person, but each had a conflict with  
22       today's date that could not be avoided. We plan to  
23       review the transcript from today's proceedings and may  
24       have some follow-up questions for the parties in the  
25       coming days."

1                   Commissioner Schmidlein also wanted to  
2 thank American Keg for hosting her in Pottstown last  
3 month.

4                   The purpose of these final investigations is  
5 to determine whether an industry in the United States  
6 is materially injured, or threatened with material  
7 injury, or the establishment of an industry in the  
8 United States is materially retarded, by reason of  
9 imports of refillable stainless steel kegs from China,  
10 Germany, and Mexico.

11                  Schedule setting forth the presentation of  
12 this hearing, notices of investigation, and transcript  
13 order forms are available at the public distribution  
14 table. All prepared testimony should be given to the  
15 Secretary. Please do not place testimony directly on  
16 the public distribution table.

17                  All witnesses must be sworn in by the  
18 Secretary before presenting testimony. I understand  
19 the parties are aware of the time allocations. Any  
20 questions regarding the time allocations should be  
21 directed to the Secretary.

22                  Speakers are reminded not to refer in their  
23 remarks or answers to business proprietary  
24 information. Please speak clearly into the  
25 microphones, and state your name for the record for

1       the benefit of the court reporter and those seated in  
2       the back of the room.

3             If you will be submitting documents that  
4       contain information you wish classified as Business  
5       Confidential, your request should comply with  
6       Commission Rule 201.6.

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

9             MR. BISHOP: Mr. Chairman, the witnesses for  
10      today's hearing have been sworn in. There are no  
11      other preliminary matters.

12            COMMISSIONER KEARNS: Very well. Let's  
13      begin with opening remarks.

14            MR. BISHOP: Opening remarks on behalf of  
15      Petitioner will be given by Andrew W. Kentz, of Picard  
16      Kentz & Rowe.

17            Mr. Picard (sic), you have five minutes. I  
18      apologize. Mr. Kentz, you have five minutes.

19            MR. KENTZ: That's fine. Good morning, I am  
20      Andrew Kentz, of the law firm Picard Kentz & Rowe LLP.  
21      I am here this morning on behalf of the American Keg  
22      Company, LLC, to request that the Commission make an  
23      affirmative determination in the final phase of this  
24      investigation of refillable stainless steel kegs.

25            American Keg Company is the only domestic

1 manufacturer of refillable stainless steel kegs. As  
2 you will hear directly from company officials later  
3 this morning, American Keg has, in a few short years,  
4 built a world-class operation that supplies a high-  
5 quality product into the U.S. market for kegs.

6 Over the last two months, the Commission's  
7 staff has done tremendous work obtaining and compiling  
8 information about this market. American Keg officials  
9 cannot see much of the results of the staff's efforts,  
10 and it is important for me to emphasize how much we  
11 appreciate the staff's thorough approach under  
12 incredible resource and time constraints.

13 This is a new market for the Commission to  
14 be evaluating, and the investigative work of the staff  
15 provides an excellent guide to the market and its  
16 participants.

17 The record of this investigation supports a  
18 finding that the domestic industry is materially  
19 injured by reason of subject imports from China,  
20 Germany, and Mexico. Ironically, this is amply  
21 demonstrated by the arguments presented in the pre-  
22 hearing submissions of the parties opposed to trade  
23 relief.

24 Their beliefs spend much of their time  
25 arguing for what the record should say, rather than

1 what it does say. They argue that the Commission  
2 should disregard, or discredit, the evidence in the  
3 record regarding massive underselling, the evidence  
4 regarding lost sales, and the evidence regarding lost  
5 revenue.

6 They assert that the Commission should  
7 evaluate pricing trends based on different beginning  
8 points for some products from some countries, but not  
9 for others. They argue for massive changes in the way  
10 that sales of kegs are reported, regarding their  
11 channels of distribution because the record does not  
12 support their preferred narrative.

13 But the record is clear. Purchasers told  
14 the Commission that American Keg produces kegs that  
15 compete with subject imports in the marketplace;  
16 purchasers have told the Commission that the domestic  
17 like product is on par with subject imports in  
18 everything but price; and purchasers have told the  
19 Commission that they have purchased subject imports,  
20 rather than the domestic like product because of lower  
21 prices.

22 The record also shows that dumped and  
23 subsidized imports increased in volume over the period  
24 of investigation. The volume of subject imports, both  
25 in absolute and relative terms, was significant

1 throughout the period.  
.

2                 The record demonstrates that unfairly traded  
3 imports massively undersold the domestic like product.  
4 It shows that this underselling suppressed prices for  
5 the domestic like product, such that American Keg was  
6 unable to make sales at prices and volumes necessary  
7 to return a profit.

8                 American Keg increased its capacity, its  
9 production, and its sales over the period of  
10 investigation. Over the period, American Keg grew its  
11 customer base, and the domestic like product was sold  
12 through new channels of distribution, becoming less  
13 concentrated in sales to small craft brewers. As a  
14 ratio of its net sales value, American Keg reduced its  
15 costs of goods sold over the last three years.

16                 Yet, even with these positive developments,  
17 American Keg maintained massive amounts of unused  
18 capacity and could not make sales for the kegs they  
19 were producing. American Keg lost money over every  
20 part of the period investigated.

21                 On this record, there can be no question  
22 that dumped and subsidized imports have adversely  
23 impacted American Keg's operations. As the Chinese  
24 Respondents have told the Commission, the dumping and  
25 subsidization rates found by Commerce are massive.

1 Without the ability to engage in unfair trade, few of  
2 the Chinese exporters can participate in the U.S.  
3 market.

4                 Although importers have built huge  
5 inventories of subject imports in advance of the  
6 imposition of cash deposit requirements in these  
7 cases, a market free of the distortions of unfairly  
8 traded imports is on the immediate horizon for the  
9 American Keg Company.

10                In their brief, Chinese Respondents state,  
11 "Since non-subject producers do not have the ability,  
12 or desire, to replace subject Chinese imports,  
13 American Keg will obtain a windfall in terms of  
14 increased future shipments that vastly exceeds the  
15 reasonable expectation of a small start-up".

16                This statement acknowledges the unavoidable  
17 facts of this record. The overwhelming presence of  
18 unfairly traded imports has prevented American Keg  
19 from making sales. But for dumped and subsidized  
20 imports, Petitioner would be able to grow its business  
21 in a fair market.

22               With trade relief, American Keg would, as  
23 the Chinese Respondents state, obtain a higher number  
24 of sales at fair market prices. This precisely  
25 describes the material injury our laws intend to

1 remedy.

2                 If dumped and subsidized imports are  
3 permitted to once again enter the U.S. market without  
4 discipline, there will be no domestic industry. This  
5 is not hyperbole. The Commission has American Keg's  
6 data before it. Commission staff has verified the  
7 numbers. The company's losses are not sustainable.

8                 A negative determination that reintroduces  
9 unfairly traded imports means the shuttering of an  
10 American manufacturing plant.

11                 The record of this proceeding does not  
12 support such a finding. Instead, the record here  
13 strongly demonstrates that the domestic industry is  
14 materially injured by reason of subject imports, and  
15 we ask that the Commission make an affirmative  
16 determination. Thank you.

17                 MR. BISHOP: Thank you, Mr. Kentz.

18                 Opening remarks on behalf of the Respondents  
19 will be given by William Connelly, of Trade Pacific  
20 PLLC. Mr. Connelly, you have five minutes.

21                 MR. CONNELLY: Good morning. We don't have  
22 a typical investigation scenario in this case. The  
23 Commission rarely considers the factors that affect  
24 the start-up's efforts to break into a mature  
25 industry, much less whether its expectations are

1 reasonable under all other circumstances.

2 AKC knew from its inception that it could  
3 not hope to compete for sales to large or medium-sized  
4 brewers, or to keg leasing companies, or to  
5 distributors. Its lack of skill and its cost  
6 structure put these market segments out of reach. AKC  
7 does not really contest this fact.

8 But it had a different plan, which was to  
9 start a small scale, niche business that would sell  
10 made-in-the-USA kegs to small craft brewers. To be  
11 profitable, it would need to sell those kegs at a  
12 significant premium over the prevailing market price,  
13 and the company believed that a sufficient pool of  
14 customers would be willing to pay that premium.

15 It sounded like a good idea at the time, but  
16 their game plan had at least six serious flaws.  
17 First, they really didn't know how many small brewers  
18 would actually pay the type of premium that they  
19 required.

20 It turned out that far fewer would do so  
21 than they had projected. Small brewers operate on  
22 small margins, so paying more than the going price  
23 reduces the amount of capital that's available for  
24 more important projects.

25 Second, they did not know how many small

1       brewers had already turned to leasing and renting  
2       kegs, or that many more would do so in the coming  
3       years.

4                 Third, they did not appreciate how much they  
5       would need to spend to market and advertise a new,  
6       higher priced brand in order to reach thousands of  
7       small brewers who purchase kegs irregularly, if at  
8       all.

9                 Fourth, they didn't realize that lower  
10      price, lower profit sixtels, not one-half-barrel kegs,  
11      were the preferred size. Also, they may not have  
12      known that other sizes accounted for a significant  
13      percentage of overall demand. Suppliers who could  
14      also provide those other sizes were preferred by many  
15      buyers.

16                 Fifth, they had to import substantial  
17      volumes from China, to serve customers who were not  
18      interested in paying more for an American-made keg.  
19      They deliberately undercut their own prices for their  
20      domestic product by doing so.

21                 Finally, and most important, they could not  
22      have anticipated the devastating financial impact of  
23      the Section 232 duties on their cost of stainless  
24      steel. Their economics as a start-up were marginal,  
25      like all start ups, but the 25 percent duty guaranteed

1       that they could not achieve their financial  
2       objectives.

3                 None of these problems had anything to do  
4       with subject imports. Having said all this, AKC's  
5       production, sales, prices, market share, and financial  
6       condition have all shown steady improvement. But for  
7       the Petitioner to blame subject imports for not  
8       allowing it to achieve even better results, is a  
9       bridge too far.

10          Import relief should not be granted merely  
11       because a domestic producer contends that its prices  
12       and sales volumes should have rapidly increased, just  
13       because it entered the market with what it thought was  
14       a promising idea.

15          AKC claims it has been injured by  
16       underselling, but substantial evidence of underselling  
17       does not exist. It broke into the market with the  
18       express purpose of selling at higher than prevailing  
19       market prices, and it deliberately undersold itself  
20       when it imported kegs from China.

21          The Petitioner did not complain about import  
22       prices when it entered the market in 2016, with full  
23       knowledge of the prevailing market price levels, and  
24       it did not complain about those prices throughout most  
25       of 2017. It was only after the Section 232 duties

1       crushed its financial projections, that it began to  
2       blame imports.

3                  Moreover, the Commission's data confirm what  
4       we already know. American Keg has succeeded in  
5       breaking into an established market and in increasing  
6       its sales volume, despite choosing to price at the top  
7       of that market.

8                  In conclusion, AKC has successfully carved  
9       out a niche in the small brewer segment, which is the  
10      only segment in which it is equipped to operate. But  
11      excluding foreign competitors from both that segment  
12      and the far larger segments in which AKC does not  
13      compete, and cannot hope to compete, will penalize  
14      those purchasers that have depended, and must continue  
15      to depend, on subject imports. Thank you.

16                  MR. BISHOP: Thank you, Mr. Connelly.

17                  Would the members of the panel in support of  
18      the imposition of antidumping and countervailing  
19      duties please come forward and be seated.

20                  Mr. Chairman, this panel has 60 minutes  
21      worth of direct testimony.

22                  COMMISSIONER KEARNS: Thank you. You all  
23      may begin when you're ready.

24                  MS. ROLIG: Good morning, my name is Whitney  
25      Rolig, a partner at Picard Kentz & Rowe, and I

1 represent the U.S. industry in these investigations.

2 As my colleague stated earlier, we are  
3 extremely grateful for the effort put forth by  
4 Commission staff, as they've compiled a record for a  
5 new industry under very tight deadlines. The  
6 information they were able to put together is thorough  
7 and broad, and we appreciate their good work.

8 The record demonstrates that American Keg,  
9 which represents the entirety of the domestic  
10 industry, has been injured by subject imports. The  
11 record of this final phase demonstrates that American  
12 Keg should have been able to grow and profit.

13 The fact that they have not been able to do  
14 so, and, in fact, have lost money over the entirety of  
15 the POI, comes down to the fact that they cannot sell  
16 enough kegs at a fair price in the face of a massive  
17 volume of dumped and subsidized imports.

18 I want to start with the observation that  
19 the Respondents are attempting to hold unfairly traded  
20 imports harmless, by arguing a record that largely  
21 doesn't exist. The record we have is not only the  
22 result of extensive work by Commission staff to get a  
23 comprehensive understanding of the industry, it is the  
24 result of what the Respondents themselves asked for.

25 The Respondents wanted the questionnaires to

1 distinguish shipments to specific brewery sizes,  
2 leasing companies, and distributors. They wanted  
3 purchasers to report on the importance of minimum  
4 purchase quantities. They wanted additional details  
5 regarding perceptions of domestic quality and services  
6 versus imports.

7 Now, faced with facts that don't support  
8 their narrative, the Respondents insist that the data  
9 are actually inaccurate, incomplete, and unreliable.  
10 They don't like the proprietary record regarding  
11 channels of distribution, so they argue that small  
12 craft brewers buy too few kegs to really matter.

13 They don't like that American Keg's capacity  
14 has been verified, and that the company should be able  
15 to make a profit if it operates at that level, so they  
16 argue that this is really about the normal struggles  
17 of a start-up, who can't achieve the true economies of  
18 scale that have entrenched foreign suppliers.

19 They don't like that most purchasers either  
20 don't care about minimum volume, or capacity  
21 requirements, or ranked American Keg as comparable to  
22 subject imports, or that purchasers overwhelmingly  
23 approved of American Keg's quality, lead time, and  
24 services. So they point to American Keg's incremental  
25 progress in the face of a market dominated by unfairly

1 traded kegs as proof that there's no real problem at  
2 all.

3                 But the Respondents can't change the fact  
4 that American Keg competes for sales in a majority of  
5 the market for refillable stainless steel kegs. Even  
6 if we were to limit our discussion to small craft  
7 brewers, they are an important and dynamic area of the  
8 keg market, where all of the Respondents compete for  
9 sales with American Keg.

10                Respondents can't change the fact that  
11 whatever asserted competitive advantage they may  
12 claim, they are all dumping their kegs in the U.S.  
13 market, and that Chinese kegs are massively  
14 subsidized. And they can't change the fact that, even  
15 as American Keg has fought for every sale, and has  
16 looked for every opportunity to cut costs and up their  
17 efficiency, they are still losing money. And the  
18 reason that they are losing money is because they  
19 cannot make enough sales. American Keg has been  
20 unable to sell enough kegs at a sustainable price to  
21 survive in a market dominated by unfairly traded kegs.

22               Given the significant noise that the  
23 Respondents have introduced, I want to walk the  
24 Commission through a few conditions of demand and the  
25 basic indicators that American Keg has been injured.

1                   Keg demand is driven, largely, by the demand  
2       for beer, but it's not a 1:1 relationship. Within  
3       that demand for beer, you have different factors that  
4       affect who buys kegs, and in what quantities.

5                   First, most beer is packaged in bottles and  
6       cans -- the TTB reports that this covers about 85  
7       percent of beer consumption -- but draft beer has  
8       maintained a consistent presence over the POI.

9                   Bottles and cans are the packaging utilized by larger  
10      brewers who have distribution channels for their beer  
11      into retail. Small craft brewers may not be equipped  
12      to use these same channels, and instead rely on kegs.  
13      Accordingly, while much of the beer produced in larger  
14      brewing companies is packaged in bottles and cans  
15      rather than kegs, craft brewers rely more on kegs.

16                  Second, overall beer consumption is down  
17      slightly over the POI; however, the craft sector is  
18      actually growing, with volume increasing by about four  
19      percent annually and accounting for about 13.2 percent  
20      of total beer volume in 2018. That level of growth  
21      has continued in 2019.

22                  As craft brewers have proliferated, their  
23      on-site sales also increased throughout the POI, and  
24      draft beer's shares of those sales grew, as well,  
25      accounting for nearly two-thirds of on-site

1       consumption. In fact, the majority of craft beer's  
2       growth is driven specifically by micro breweries, tap  
3       rooms, and brew pubs.

4                  The takeaway is that craft brewers,  
5       particularly new, small craft brewers, not only drive  
6       growth in the beer industry, but are particularly  
7       attractive consumers for kegs. The keg industry  
8       understands this. That is why all keg producers  
9       devote significant resources to winning those  
10      customers.

11                 This is a map of the vendors at this year's  
12       Craft Brewers Conference in Denver, Colorado. So, as  
13       you can see in this zoom-in, all of the producers  
14       appearing before you today, as well as importers NDL  
15       and G4, were practically within throwing distance of  
16       each other, and with American Keg.

17                 And in this photo from Blefa's promotional  
18       blog you can see the company's impressive investment  
19       in signage, with Chinese competitor Ningbo Major in  
20       the very large booth just behind them, see, with that  
21       black sign.

22                 These producers' and importers' interest in  
23       craft brewers is not just limited to the CBC, however.  
24       As you can see in this slide, Thielmann attended the  
25       Illinois Craft Brewers Convention, just one month ago.

1       In fact, Thielmann has been a sponsor for other state-  
2       level craft brewer events, and their sales  
3       representative gave an interview last year about the  
4       brand's commitment to supplying small craft brewers.  
5       So, if you want to watch this.

6                     (Whereupon, a video was shown.)

7       MS. ROLIG: So, the Commission can see for  
8       itself the fruits of these efforts. When you look at  
9       the sheer volume of subject imports over the POI, and  
10      at the sales of those imports that went to small  
11      brewers, the importance of these particular customers  
12      is undeniable, especially for a producer like American  
13      Keg who needs to move more volume.

14                  So, given these opportunities in the market,  
15      why is American Keg continuing to struggle? The  
16      Respondents insist that it can't be imports, and that  
17      American Keg is either fatally flawed as a business,  
18      or, incredibly, that they are doing exceptionally  
19      well, given other challenges in the market.

20                  But the legal factors for finding injury  
21      paint a much different picture. This is a young  
22      company that has established itself as a viable  
23      supplier for important portions of the keg market, but  
24      it cannot survive against subject imports because  
25      those unfair imports have made it impossible to sell

1 domestic kegs at a sustainable volume and price.

2 We detail these factors in our brief, but I  
3 want to emphasize a few of these considerations,  
4 because they get to the essence of our case.

5 First, the volume of subject imports has  
6 been massive. The Commission recognized this in the  
7 preliminary phase, and it remains true now. Moreover,  
8 subject import volumes, shipments, and share of  
9 imports increased between 2016 and 2018. And while  
10 subject shipments declined in interim 2019, following  
11 the filing of the petitions, American Keg now faces a  
12 massive increase in importers' inventories.

13 Second, price is important, and subject  
14 imports have consistently undersold the U.S. industry.  
15 The Respondents have pointed to certain capacity or  
16 production requirements that a handful of larger  
17 purchasers impose, but the record is clear that those  
18 purchasers are in the minority, and a significant  
19 number of purchasers either don't care or have  
20 requirements that American Keg can meet. The record  
21 is also clear that American Keg rates well on a  
22 variety of other purchasing considerations.

23 Instead, the only factor where the U.S.  
24 industry consistently loses to imports is price. As  
25 you'll hear today, American Keg regularly faces

1 pressure to lower their own prices to match those  
2 unfairly traded imports, and they have been unable to  
3 sell a sufficient volume of kegs as a direct result.

4 Finally, American Keg lost money on its  
5 sales in every period. Its commercial sales value  
6 never exceeded its COGS. It's true that American Keg  
7 is now losing less money on each sale than at the  
8 beginning of the POI, but those improvements come from  
9 cost-cutting efforts and an attempt to maintain price,  
10 to the detriment of sales volume. That strategy can  
11 only take them so far. If they can't increase the  
12 volume of their sales at a sustainable price, the  
13 company will fold. They cannot achieve that goal  
14 without trade relief.

15 The keg market presents a number of  
16 challenges for any producer, and American Keg has done  
17 its best to address those challenges and position  
18 itself for success. The company reasonably expected  
19 that it could be profitable, given the enormous  
20 opportunities created by the explosion of craft  
21 brewing throughout the country, and given American  
22 Keg's ability to scale up quickly to serve customers  
23 in other channels. And American Keg has grown its  
24 sales base, reducing its reliance on customers in just  
25 one sales channel throughout the period of .

1 investigation, but, as Scott, Paul, Steve, and Brian  
2 will share with you today, the sheer volume of  
3 unfairly traded imports that entered the market over  
4 the POI has been insurmountable.

5 They have an incredible team in Pottstown.  
6 They know the industry, they know how to make a  
7 quality keg, and they know how to sell that keg, but  
8 the successes they've been able to achieve over the  
9 last three years cannot, and will not, sustain their  
10 company for much longer. Trade relief is imperative  
11 for American Keg's survival.

12 Thank you again for your time this morning.  
13 I will now turn it over to Scott Bentley, the owner of  
14 American Keg.

15 MR. BENTLEY: Good morning, my name is Scott  
16 Bentley, and I am here to address the Commission  
17 staff, with respect to the petitions filed by American  
18 Keg Company. I want to thank the Commission for its  
19 work, and we are extremely grateful that they took the  
20 time to visit our plant and speak with our staff.

21 I am the owner of American Keg, which I  
22 formed from the assets of a previous company,  
23 Geemacher, in 2016. I created American Keg because of  
24 my belief in the people and the business plan that was  
25 presented to me. I also wanted to save jobs of the

1 smart, hardworking people that I met in my home of  
2 Pottstown. These people have worked very hard to re-  
3 establish the keg industry here, in the United States.

4 As Thielmann points out in their written  
5 brief to the Commission, American Keg is about an  
6 hour's drive south of Allentown, Pennsylvania.  
7 Allentown is about five miles due west from Bethlehem,  
8 Pennsylvania. Our region bears the scars from what  
9 unfair trade can do to American manufacturing. I did  
10 not know that Allentown was, as Thielmann contends,  
11 the fourth worst place to start a small business in  
12 America. I've been there about as many times as I've  
13 been to Mexico, though I know that Billy Joel wrote a  
14 kind of downer song about it.

15 However, Montgomery County, where Pottstown  
16 is located, currently has 1,406 manufacturers, second  
17 in Pennsylvania, behind Allegheny County with 1,780.  
18 I have never tried to start a business in Allentown.  
19 Instead, over the course of my professional life, I  
20 have had the great fortune of working with several  
21 close friends, and my brothers, to start successful  
22 businesses in the Pottstown area.

23 In the mid-1980s, I was the second employee  
24 of Bentley Systems, Inc., a company that now has more  
25 than 3,300 employees and hundreds of millions of

1        dollars in annual revenue.

2                  I left Bentley Systems in 1999, to start  
3        VideoRay, a business which has moved several times as  
4        we grew. It is now headquartered in Pottstown, just  
5        down the road from American Keg. Today, VideoRay is  
6        the largest volume producer of observation-class,  
7        underwater remotely-operated vehicles in the world,  
8        employing about 45 people.

9                  These successes have allowed me to give back  
10      to my community in a number of ways. I have been  
11      involved with Big Brothers/Big Sisters since 1981. I  
12      am now on the Board of Directors of Big Brothers/Big  
13      Sisters' Independence region, including several  
14      counties in Pennsylvania and New Jersey.

15                 I'm the Vice President on the Board of  
16      Directors of our local theater company, a volunteer  
17      for the local tourist railroad, and a major  
18      contributor to many charities, of both my money and my  
19      time.

20                 In 2016, when I was presented with the  
21      opportunity to purchase what is now the American Keg  
22      Company, I acted on what I considered a good  
23      opportunity, based on my years of business experience.  
24      Through the purchase of Geemacher's assets, I would  
25      own the nation's only stainless steel keg producer at

1       a time when the market for stainless steel kegs was  
2       growing. I was drawn to this prospect of having  
3       Pottstown become the home of the only American keg  
4       manufacturer using American steel, American  
5       engineering ingenuity, and American factory floor  
6       labor.

7                 This is important to me, as Pottstown, over  
8       the last several decades, has experienced many of the  
9       same challenges faced by countless other manufacturing  
10      cities across the country, including idle factories  
11      and high unemployment for manufacturing labor.

12               When I bought the company after carefully  
13       reviewing its business plan, I had confidence in  
14       American Keg's ability to produce high-quality,  
15       refillable stainless steel kegs and generate a profit,  
16       all the while generating meaningful employment  
17       opportunities for the people of Pottstown.

18               I knew I was not going to make money  
19       immediately, but I did not enter the business to lose  
20       money over the long term. I did not intend to create  
21       a niche market, nor one limited in scope. We had, and  
22       have, a plan to gradually and progressively increase  
23       our sales, and the companies to which we can do  
24       business.

25               I initially invested over \$4 million in

1 American Keg, anticipating that the company would  
2 break even and maintain a profit. Since then, I have  
3 continued to invest millions in American Keg's  
4 facilities and people.

5 The staff report shows what happened after I  
6 started American Keg in 2016. Keg imports from China,  
7 Mexico, and Germany increased by 110,000 kegs, up by  
8 over nine percent from the year before. The unit  
9 value of those imported kegs fell from \$79 to \$73,  
10 dropping by over seven percent.

11 Unfair competition from dumped and  
12 subsidized foreign imports has a large and direct  
13 impact on us. These unfair trade practices have cost  
14 American Keg Company dearly, creating an environment  
15 that makes it impossible to make a sustainable profit.

16 The Commission's determination in this case  
17 decides American Keg's future. An affirmative vote  
18 means a level playing field, and we will expand. We  
19 anticipate that other domestic competitors will join  
20 the market, and we will welcome the challenge from  
21 fair competition. I believe American Keg will thrive.

22 A negative vote means a return to unfairly  
23 traded imports. American Keg will be forced to close,  
24 and the U.S. industry will die.

25 If the Commission returns an affirmative

1 determination, we will immediately embark on a plan  
2 with our existing factory that will roughly double our  
3 production and significantly increase our capacity.  
4 This will require a few million dollars in investment  
5 on areas where we have specific plans involving  
6 increasing throughput and efficiency. Within a year  
7 or so, we expect to start a brand new factory,  
8 designed for a large multiple of our current  
9 production.

10 There are a number of things I want to  
11 emphasize that I am particularly proud of at American  
12 Keg. First, our CEO and our management team. We have  
13 world-class manufacturing management.

14 Second, our engineers and our production  
15 technicians. We are not the most efficient  
16 manufacturer in the world, but we are making steady  
17 progress, and can make a profit on a level playing  
18 field.

19 Third, our workers on the factory floor.  
20 They have frequently had challenges in life, and this  
21 work is not easy. Saving and creating more of these  
22 jobs is one aspect of American Keg that I am most  
23 proud.

24 Fourth, the quality of our product, and our  
25 customer support. Again, we are world-class in both

1 areas.

2                 In closing, I would like to explain what it  
3 will take to address the problems American Keg has  
4 with profitability and sustainability.

5                 First, we need to increase our volume. We  
6 are currently spreading our fixed costs, CEO and other  
7 salaries, much of our depreciation, and plant costs,  
8 over far too few kegs. As I mentioned, we have both  
9 long and short term plans to address this.

10               And we need to make sure that unfairly  
11 traded kegs do not depress our prices below the level  
12 where we can earn a fair return on capital.

13               As with everyone at American Keg, I would be  
14 happy to answer your questions.

15               MR. RUBEO: Good morning, my name is Steve  
16 Rubeo, and I am the Controller of the American Keg  
17 Company. American Keg Company is located in  
18 Pottstown, Pennsylvania, in the heart of the rust  
19 belt. We are the only manufacturer of stainless steel  
20 kegs in the United States. Today, we are proud to  
21 have 32 employees.

22               I began working with American Keg Company in  
23 November 2013, when the company was started as  
24 Geemacher. Geemacher was founded by John  
25 Giannopoulos, the owner of Sly Fox Brewery, also

1 located in Pottstown.

2 At that time, there were no stainless steel  
3 kegs manufactured in the United States, and there was  
4 a limited supply of imports. As a result, small  
5 brewers were struggling to obtain stainless steel  
6 kegs, and John founded Geemacher to address that  
7 shortage.

8 While Geemacher began by importing kegs, the  
9 company decided in 2011 that it would start producing  
10 kegs in the U.S., and eventually started production in  
11 2014. When Geemacher began manufacturing, we started  
12 by manufacturing kegs to order. Then we grew to  
13 marketing our own kegs rather than only selling  
14 imported ones, since our plan was always to keep  
15 making American kegs.

16 We currently manufacture the one-sixth-  
17 barrel and one-half-barrel kegs, because they are  
18 universally the most popular sizes.

19 We started out by marketing to small and  
20 craft breweries. We focused on them, because we were  
21 started by a craft brewer ourselves, and we felt that  
22 as we built up our inventory, focusing on craft  
23 breweries made the most sense. We also recognized  
24 that craft breweries often have a preference for  
25 American-made products. They want to support the

1           country's only stainless steel keg manufacturer.

2           We have customers located across the  
3        continental United States, serving customers in the  
4        Northeast, Southeast, Midwest, and out West, including  
5        such places as California, Nevada, and Oregon. While  
6        most of our customers are breweries, we also sell to  
7        wineries, cideries, and coffee houses.

8           Aside from our website, we attract customers  
9        at trade shows, such as national and regional craft  
10       brewers conferences, brewery trade shows, and winery  
11       conferences. We also advertise in trade publications.

12          As I mentioned, we are both a manufacturer  
13        and importer of stainless steel kegs, and we've always  
14        been committed to producing American kegs. We are  
15        able to witness firsthand how customers make their  
16        decisions about which kegs to purchase.

17          At the end of the day, one stainless steel  
18        keg is the same as another, and many breweries have  
19        kegs from multiple suppliers. Unless a customer has a  
20        strong preference for a product that's made in  
21        America, they will go for the cheaper keg every time.

22          And frankly, that gets to the crux of our  
23        problem here today. Chinese, German, and Mexican kegs  
24        are distinguished from American-made kegs, only by the  
25        fact that they are much, much cheaper. These imported

1       kegs are unfairly traded, making it impossible for  
2       American Keg Company to compete on a level playing  
3       field.

4                 Until late 2016, we were very optimistic  
5       about our business. We were a growing company, with  
6       plans to expand our operations and sales in the  
7       future.

8                 Our plans to grow, and even our ability to  
9       survive as a company, have been thwarted by the  
10      unfairly traded kegs which have been priced too low  
11      for us to sell our kegs at a sustainable price and in  
12      the volume we need. Imports from China, Germany, and  
13      Mexico are the primary culprit for these low prices,  
14      and the losses that we've experienced as a result.

15               Given these challenges, our company has  
16      always looked for ways to reduce our costs and  
17      maximize our efficiency. For example, steel is one of  
18      our biggest costs. Even though we only buy American  
19      steel, we've had to cope with real volatility over the  
20      past year, so as of last September, we've picked up  
21      two additional steel suppliers, and now buy from all  
22      four certified stainless steel mills in the U.S. This  
23      helps us get a more competitive pricing for our steel  
24      imports.

25               We've made other small changes, as well,

1 because we know that we can't take this investigation  
2 for granted. If we're going to survive as a business  
3 in a fair market, we have to be as cost efficient as  
4 possible.

5           But even our best cost-cutting efforts  
6 haven't been enough, in the face of the unfairly  
7 priced imports. As steel prices have gone up, we  
8 absorbed those costs, but we also had to pass some of  
9 them along to our customer. This puts us in a tough  
10 position when we are in a head-to-head price war with  
11 the foreign manufacturers.

12           When we were selling both American and  
13 imported kegs, we always quoted American kegs first,  
14 but the customers invariably asked for quotes for the  
15 imported kegs, as well. Now that we've stopped  
16 importing, we continue to hear from our customers who  
17 want us to match importer prices. Those imported kegs  
18 are much, much cheaper.

19           We can't blame our customers for this. Most  
20 of them would love to purchase an American-made  
21 product, and we know this because they tell us.  
22 However, most of our customers are cost-conscious.  
23 They are not going to pay for more for American-made  
24 kegs, when comparable ones are available for  
25 significantly cheaper prices due to unfair trade

1 practices by the foreign manufacturers.

2                   Of course, I am worried about what this  
3 means for American Keg Company's business, but my  
4 worries are compounded by my concern what this  
5 situation means for our employees and the families who  
6 depend on them.

7                   As I said, we are a small business, and, as  
8 often the case with small businesses, I wear many  
9 hats. In addition to serving as Controller, I also  
10 handle the human resources. We went through two  
11 layoffs last year, which included about a third of our  
12 entire workforce. This is really difficult for us,  
13 because we are located in a community that really  
14 needs those jobs.

15                  Pottstown is a steel town, and while it used  
16 to be thriving, most of its mills have shut down and  
17 they aren't coming back, so we take our responsibility  
18 as an employer seriously. We pay a living wage,  
19 starting at over \$12 per hour.

20                  We're also a second-chance employer. We  
21 will hire and train people who have had criminal  
22 records or have had problems in their life. We give  
23 them a chance to make a decent living, while learning  
24 skills that apply to a mid-level manufacturing job,  
25 fabricating and welding stainless steel.

1           When we lay off employees, there's a good  
2 chance that these people will have no other place to  
3 go find a decent job that provides them a living wage.  
4 We do everything we can to avoid layoffs. Management  
5 has not received a raise in three years. We have  
6 eliminated production bonuses, to allow us to meet  
7 payroll instead. And we continue to look ways to  
8 reduce our costs.

9           If we don't receive help to allow us to  
10 compete on a level playing field, we won't be able to  
11 survive much longer. We'll have 32 more people out of  
12 a job, which is a loss not just for them, but for  
13 their families, and the greater community as well.

14           At the same time, if we receive some help  
15 that allows us to compete on a level playing field, we  
16 have plans to further grow our business that would  
17 allow us to expand our workforce.

18           Most recently, we brought on an additional  
19 engineer, and upgraded one of our employee's positions  
20 to a plant manager position. And, as you heard from  
21 Scott, we are ready to add more employees and  
22 machinery as soon as the market supports it.

23           A level playing field will allow us to  
24 become even more cost efficient. For example, if we  
25 can sell more kegs at a sustainable price, we can buy

1 and store larger volumes of steel. This would help us  
2 further manage those costs, and be better equipped to  
3 deal with the changing market conditions.

4 I am optimistic that American Keg Company  
5 can grow and thrive, if given a chance to compete in a  
6 fair environment. Thank you for allowing me the  
7 opportunity to tell you about American Keg Company,  
8 and why this investigation is so important to us, our  
9 employees, and our community. Thank you.

10 MR. LUZZI: Good morning, my name is Brian  
11 Luzzi. I am the Director of Marketing and Sales for  
12 American Keg Company, a position I've held since 2016.

13 I am intimate with the impact of unfairly  
14 trade kegs on our company, because I have been  
15 competing with most of the groups represented here  
16 today, on a daily basis for the last three years.  
17 Whether I'm at an industry trade show and see their  
18 promotional pricing, or negotiating with potential  
19 customers who reach out to us for quotes, I am  
20 constantly reminded of the lower prices that our  
21 foreign competitors offer.

22 American Keg Company offers a high-quality  
23 product, coupled with first-class service to our  
24 customers, but the reality is that we have not been  
25 able to sell enough of our kegs to survive as a

1 business, because there is too much of a price  
2 differential between our domestically-produced kegs  
3 and these imported kegs.

4 Our company has worked very hard over the  
5 past three years to promote our brand and build our  
6 customer base. We are regular attendees at industry  
7 trade shows like the Craft Brewers Conference, and we  
8 run ads in important industry publications like the  
9 Brewery Association's *The New Brewer* magazine. But we  
10 also rely very heavily on our website, where  
11 prospective customers can learn about our company and  
12 products, and request product quotations.

13 My team follows up on these requests  
14 immediately, and if a customer is serious, they'll  
15 respond, and we can work towards building our  
16 relationship. We've received thousands of inquiries  
17 from both large and small purchasers, alike. Some  
18 customers make an immediate purchase decision and we  
19 move forward; however, many customers are just doing  
20 their due diligence as new or small business owners,  
21 and shopping around for the best price, period.

22 I make it a point to follow up and learn  
23 everything I can about these inquiries, so I can  
24 maintain contact, but when I can't get a return  
25 response, it's pretty obvious the sale was lost and

1       they went with an imported keg, which happens quite  
2       often.

3                  There has been a lot of talk about keg  
4       leasing and logistics companies in the industry. And  
5       it's true that some brewers have chosen to outsource  
6       the management of their keg fleet so they don't have  
7       to invest the capital to keep track of their own kegs,  
8       but leasing and logistics products and services can  
9       have real disadvantages for brewers, especially when  
10      they're new and still trying to find their place in  
11      the market.

12                 A lot of these arrangements involve complex  
13       contracts with lots of paperwork, and customers end up  
14       locked into long-term commitments with very high  
15       interest rates. This makes leasing much more  
16       expensive over the long term, which can make buying a  
17       keg outright a more attractive option.

18                 Keg logistics and leasing companies may also  
19       offer rental models or paper-free (phonetic) models,  
20       but the brewers using that option tend to be larger  
21       and more well-established, and their business model is  
22       such that they wouldn't be buying a keg outright  
23       anyway.

24                 This is why we think there is plenty of  
25       opportunity for us with both smaller craft brewers,

1 and logistics, leasing, and distribution companies.  
2 Even with overall beer consumption down, there is  
3 still a ton of growth in craft beer, with hundreds, if  
4 not thousands, of new small breweries opening up every  
5 year.

6 And while much larger brewers tend to just  
7 replenish lost and damaged kegs every so often, rather  
8 than significantly adding to their fleet, especially  
9 when you're losing market share to new craft brewers,  
10 small brewers will remain a dynamic and growing area  
11 for keg sales.

12 The feedback we get from American Keg  
13 customers is really positive. They've expressed great  
14 satisfaction with our quality, and have commented that  
15 our keg is "built like a tank." It's a quote that  
16 we're very proud of.

17 Customers also love that we are made in  
18 America, and use domestically-sourced, American steel.  
19 The truth is that once we get a customer we can  
20 usually keep them because they trust our product and  
21 appreciate the service we offer.

22 But while we've succeeded in growing our  
23 customer base over the last three years, the reality  
24 is that we haven't been able to expand our sales  
25 volume at the level we need to. The reason for that

1       is imported kegs.

2                   We know that we meet customers' quality  
3       expectations, and we know that we can meet most  
4       customers' volume requirements. We also know that a  
5       lot of customers just won't buy from us, when they can  
6       get a comparable imported keg at a lower price. We do  
7       what we can to minimize that price differential, but,  
8       at the end of the day, we can't realistically compete  
9       when the imported kegs are unfairly priced so low.

10                  I love working in this industry, and, more  
11       importantly, love the people that I sell to. They are  
12       extremely hard working, creative, and driven small  
13       business owners, all qualities that I greatly admire,  
14       which makes them easy to build a rapport with. Plus,  
15       they all make amazing beer, which I happen to also  
16       love.

17                  I have come to learn that craft brewers  
18       value community and supporting local vendors, as much  
19       as possible. Though the industry is very competitive,  
20       they also support each other in many ways, including  
21       talking to each other about the best products out  
22       there for their business. That's a big part of why I  
23       know there's room for an American producer with a  
24       high-quality product to grow and succeed in a fair  
25       market.

1           Customers like our product, they like our  
2 company, they like what we're all about, and I know  
3 that American Keg is fully capable of supplying a lot  
4 more of these customers, but when I see on a daily  
5 basis, the import prices that we're up against, I also  
6 know that we won't have a real shot of making it if we  
7 can't put a stop to our competitors' unfair trading  
8 practices.

9           I very much appreciate the opportunity to  
10 speak before you today, and I'd be happy to answer any  
11 questions.

12           MR. CZACHOR: Good morning, my name is Paul  
13 Czachor, and I am the Chief Executive Officer for  
14 American Keg Company, a position I've held since 2016.

15           I wanted to start my comments today by  
16 showing you some examples of refillable stainless  
17 steel kegs. We brought four kegs with us this  
18 morning. For the purposes of convenience, we brought  
19 one-sixth kegs, because they are smaller and were  
20 easier to bring in today than half kegs.

21           All of these kegs look extremely similar to  
22 one another. They are made from stainless steel, they  
23 have similar dimensions, with the same height of  
24 approximately 23 and a quarter inches, and they all  
25 use a D Sankey spear.

1           We also brought a D Sankey spear with us, as  
2 well. This spear goes in the keg and is used to move  
3 liquid in and out of the keg. The kegs that work with  
4 this spear are interchangeable, and you can see that  
5 in the different types we have here today.

6           The first keg here, is an American-made keg  
7 from American Keg. The second keg is a German-made  
8 keg from manufacturer Blefa. The third keg is from  
9 China, from the manufacturer Major Keg Company. The  
10 fourth one is a Mexican manufacturer, made by  
11 Thielmann. As I mentioned, the spear goes inside the  
12 keg to extract the liquid in and out.

13          I have read the comments from the parties  
14 opposed to trade relief and understand that they are  
15 arguing that kegs are not commodity products sold on  
16 the basis of price; however, it is difficult to  
17 believe that argument when you look at the product.

18          The fact that all these kegs are all  
19 interchangeable is why importers have been able to  
20 build huge inventories of dumped and subsidized kegs  
21 after we filed our petition. The public staff report  
22 states that at the end of March, importers were  
23 holding over 400,000 Chinese, German, and Mexican kegs  
24 in inventory. That is an incredible number of kegs,  
25 equal to about one-third of the total shipments of

1       these kegs in the U.S. market.

2                 These importers can sell a commodity product  
3                 out of inventory because there are no special  
4                 requirements in our market for how a keg is produced.  
5                 Like the importers, we also maintain inventory of kegs  
6                 to facilitate a quick turnaround time for orders. The  
7                 difference is importers turn their inventory at a lot  
8                 more rapid rate than we can, because unfairly traded  
9                 keg prices are well below our prices.

10               The interchangeability of kegs is also why  
11               keg producers use a variety of different suppliers to  
12               meet their needs. Keg buyers, whether they are small,  
13               medium, or large, are not married to one brand of  
14               kegs. They will switch to get the best deal out  
15               there.

16               The players in the market change, the volume  
17               of kegs they sell into the market in any given year  
18               changes. In the preliminary conference, I described  
19               the tools American Keg uses to monitor shipments of  
20               kegs into the United States. Through this monitoring,  
21               we saw new Chinese companies jump into the market.  
22               This happens because kegs are interchangeable.

23               The existence of keg leasing and rental  
24               companies are a reflection of the commodity nature of  
25               kegs. The fact that kegs are a commodity product

1 allows keg leasing and rental companies to build their  
2 capital stocks and service customers based on what  
3 they have on hand, as opposed to needing to tailor  
4 their purchase to a customer's individual specialized  
5 needs for a keg with a unique weld or proprietary  
6 shape. This is also why we are confident that we can  
7 supply anyone in the market for kegs.

8 Brian talked about what American Keg has,  
9 and continues, to do to market our product and grow  
10 our customer base. In addition to that marketing,  
11 American Keg is actively working with leasing and  
12 rental companies to move even further into the market.

13 At the end of this month, we are sending  
14 samples to two of the largest leasing and rental  
15 companies in the country. We have a meeting set up in  
16 September with one of those companies to discuss their  
17 needs and our capabilities. Additionally, we have  
18 worked on a quote for a wine logistics company that  
19 also has expressed an interest in our kegs.

20 I do not know if any of these efforts will  
21 pan out, but we are actively competing for sales in  
22 all markets. Our experience indicates that leasing  
23 and rental companies are interested in our product.

24 American Keg has been manufacturing and  
25 selling kegs since 2016, and I have been with the

1 company from the beginning. My responsibilities are  
2 to grow American Keg's business, while making the  
3 company's operations more efficient and effective.

4 . We are constantly working to get better.  
5 We've reduced our lead times, we have increased our  
6 production capacity, and we expanded our customer  
7 base. We supply high-quality, American-made kegs to  
8 customers throughout the country.

9 American Keg is an example how manufacturing  
10 remains not only possible in this country, but how it  
11 can thrive. However, the United States market for  
12 kegs is dominated by unfairly traded imports.

13 I have read the comments from those opposing  
14 trade relief that say our problems are self-inflicted  
15 or caused by other things, other than imports. They  
16 frequently quote myself or someone from American Keg  
17 to support their arguments, implying that we agree  
18 with their position that imports do not significantly  
19 affect our operations. But, however much they seem to enjoy  
20 twisting our words, the facts do not support them.

21 In 2017, we, and everyone else in the  
22 market, saw a large increase in the amount of imported  
23 kegs coming into the United States. With that volume,  
24 prices for kegs fell. With the price decline,  
25 American Keg had to become even more cost-sensitive

1 just to mitigate losses. The prices for these imports  
2 were crazy. The numbers did not work. What foreign  
3 producers were asking for their kegs made no sense.

4 As we thought about the future of the  
5 company, we realized that we had to do something about  
6 unfair trade. We looked at what options existed under  
7 Federal law to combat dumped imports. Eventually, I  
8 called the Commission on November 29, 2017, and spoke  
9 with an attorney about filing a possible petition.

10 Steve and I then put together a few drafts  
11 of a sample petition, which I sent to the attorney at  
12 the Commission. The attorney was helpful, and  
13 eventually introduced us to the Department of  
14 Commerce's petitioning counseling unit.

15 At Commerce, Whitney Schablik and her team  
16 patiently worked with us over several months, as we  
17 obtained new information to get our case off the  
18 ground, but by the summer of 2018, we hit a wall and  
19 were advised that American Keg was going to need to  
20 engage an attorney in order to bring a case forward.

21 We did not wait until after the steel  
22 tariffs to raise our concerns about unfairly traded  
23 keg imports. We realized the problems that unfairly  
24 traded imports were causing in the market well before  
25 any steel duties went into effect.

1           When steel costs increased, they did so  
2 after dumped and subsidized imports had forced keg  
3 prices down. It is simply not true that American Keg  
4 has sought to make unfairly traded imports the  
5 scapegoat for increases in our raw material costs.

6           I have seen in the written submissions a lot  
7 of reminders that there is pretty extensive record of  
8 me complaining about increases in American Keg's steel  
9 costs. Imported keg prices have dropped throughout  
10 the market. Our raw material costs went up, while  
11 what customers were willing to pay was declining.

12           We were actively working to get this case  
13 off the ground, but it did not seem like we were close  
14 to having that happen. The circumstances were  
15 desperate. We wanted the American public to know that  
16 we were on the brink, and I actively spoke out about  
17 what steel tariffs meant for our business, but we  
18 never lost sight of the dominance of dumped and  
19 subsidized imports in the market.

20           I asked for help, American Keg asked for  
21 help anywhere, and everywhere, it might have made a  
22 difference.

23           It has taken us a long time to get here. We  
24 have actively pursued trade relief for almost two  
25 years now. The legal requirements for initiating a

1 trade case like this are incredibly difficult for a  
2 company like American Keg to meet on its own.

3 Throughout the process we were encouraged  
4 and asked by staff both at the Commission and  
5 Commerce. In answering their questions, I became even  
6 more aware of the harmful impact unfairly traded  
7 imports were having in this market.

8 Since the case was formally initiated and  
9 the investigation began, we have been incredibly  
10 impressed by the work at the Commission staff in their  
11 efforts to understand this industry and the market.  
12 They have done a tremendous job in seeking out and  
13 confirming information provided to them.

14 One of the lasting impressions we have of  
15 this case is Mr. Boyland, with a stopwatch, verifying  
16 the underlying production facts that are built into  
17 our capacity calculations.

18 We are grateful that the Commission has  
19 taken our petition for relief as serious as we take  
20 our business. The information that the staff has  
21 compiled establishes how dumped and subsidized imports  
22 have prevented American Keg from making sales at the  
23 prices and volumes necessary to make a profit within  
24 our business.

25 American Keg is now an established keg

1 producer in the United States, with a strong brand.  
2 As we have grown since 2016, we have expanded our  
3 customer base and supply customers beyond small craft  
4 breweries with high quality, American-made kegs. Our  
5 progress can only be sustained if we are not forced to  
6 compete with dumped and subsidized imports.

7 Thank you for your time and consideration  
8 today.

9 MS. ROLIG: And that concludes our  
10 affirmative presentation, so we would welcome your  
11 questions.

12 COMMISSIONER KEARNS: Great.

13 Thank you all for appearing here before us  
14 today. We appreciate your input, and thank you for  
15 appreciating our staff's hard efforts. I've now got  
16 the image of Mr. Boyland more as a high school gym  
17 coach with a stopwatch, rather than as an accountant.  
18 But that's kind of a good image. I like that.

19 I'm going to start off with a few questions  
20 for counsel, so just bear with me. I'll have plenty  
21 of others for American Keg's folks, as well.

22 But in reading your pre-hearing brief, I was  
23 struck by your emphasis on American Keg as a new  
24 entrant to the U.S. market and that losses would be  
25 expected. Nevertheless, you argue the Commission

1       should examine whether its performance was worse than  
2       could be expected at the startup. Aren't you in  
3       essence urging us to conduct a material retardation  
4       analysis?

5                 In prior investigations where the Commission  
6       has applied a material retardation analysis, it was  
7       framed in the same manner whether, "the performance of  
8       the industry reflects mainly the normal startup  
9       condition of a company entering an admittedly  
10      difficult market, or is the performance worse than  
11      could have been reasonably expected?"

12               Can you explain your positions on that?

13               ATTY: Commissioner, this is Nathan Rickard,  
14       with Picard Kentz & Rowe.

15               Our belief in this particular issue is that  
16       it doesn't matter in what way the Commission does its  
17       analysis. Whether on the material injury facts -- or  
18       on material injury factors -- or on the material  
19       retardation factors. The record supports an  
20       affirmative vote.

21               We have gone through the difference in the  
22       material retardation tests the Commission has applied  
23       and the material injury test in the post-conference  
24       brief, and we're happy to go through that again in a  
25       post-hearing brief.

1               One of the issues that is a concern about  
2 material retardation was just the lack of a  
3 significant history from the Commission in making  
4 those determinations. And, as we have seen, we  
5 believe the pre-hearing submission that was filed by  
6 Blefa, they're making an argument that because there  
7 is a lack of reference to material retardation in the  
8 parts of 1677 that discuss cumulation, that cumulation  
9 is not possible in the material retardation setting  
10 analysis.

11              The part that's true about that is there  
12 isn't any reference one way or the other to what the  
13 Commission would do, with respect to cumulation in a  
14 material retardation analysis.

15              What we don't accept is that the Commission  
16 is therefore required to not cumulate, and that the  
17 Commission is bound, if it makes a determination that  
18 a domestic industry is not established, to only do a  
19 material retardation analysis. And, you know, one of  
20 those points that we need to go into further in post-  
21 hearing brief is that under 1677.11, the Commissioner  
22 Statute sets out how affirmative determinations are  
23 analyzed by individual Commissioners, and it sets  
24 forth the possibility that Commissioners may make  
25 different decisions about material injury, threat of

1 material injury, and material retardation. We think  
2 that that is one of the acknowledgments within the  
3 Statute, that we can do different types of analysis  
4 and still reach the same results.

5 An affirmative vote for material retardation  
6 and an affirmative vote for material injury is two  
7 affirmative votes, and that there is no support for  
8 the argument that once the Commission does a material  
9 retardation analysis vote, that that's the only thing  
10 that the Commission can do, in terms of its  
11 investigation. It cannot look at material injury.

12 COMMISSIONER KEARNS: Okay, thank you.

13 Mr. Rickard, it seems like there might be  
14 reason for us to focus more on material retardation.  
15 In a typical material injury analysis you look at  
16 often worsening trends, maybe even in an expanding  
17 market, coupled with loss of market share, and that  
18 would indicate subject imports are causing injury to  
19 U.S. industry.

20 Here the trend is to be improving for the  
21 U.S. industry, even in a declining market, coupled  
22 with a gain in market share. As some of the absolute  
23 values suggest, the industry has not yet reached a  
24 sustainable level.

25 Do you agree? And if so, doesn't that

1 suggest material retardation is the right framework?

2                   And let me just give you an example of,  
3 maybe, how I'm looking at this, to tell me if you  
4 think this is a right approach. While it may be the  
5 case that this industry's market share increased,  
6 which might tend to suggest no material injury in an  
7 ordinary investigation, an industry that is  
8 establishing itself will almost necessarily see its  
9 market share increase, because it's starting from  
10 zero. But the question is whether unfairly traded  
11 imports retarded that growth in market share.

12                  It seems like that's the right way for us to  
13 be looking at this, and the reason why material injury  
14 analysis could be misleading. But I'd appreciate your  
15 thoughts on that.

16                  MR. KENTZ: Thank you, Commissioner. Andrew  
17 Kentz, from Picard Kentz & Rowe.

18                  I think that the main point in us doing that  
19 is to take into effect sort of what happened clearly  
20 in a determination, when there is a condition in which  
21 all the factors are evaluated, that you're looking at  
22 a company that has been recently started and is moving  
23 forward.

24                  Specific factors have become significant in  
25 terms of whether an industry is established. The

1 record is mixed. There are a lot of things that would  
2 point towards whether it's established or not.

3 But I think it would still be possible to  
4 evaluate the amount of market share increase, the  
5 increase in shipments, increase in capacity, the level  
6 of things have happened in the domestic industry in a  
7 material injury analysis, provided that the condition  
8 of competition that's being evaluated undermines the  
9 fact that the company had started in 2016.

10 COMMISSIONER KEARNS: Okay, thank you.

11 I'd appreciate any further thoughts you have  
12 on that post-hearing, and including anything you would  
13 like to add further about Blefa's argument on  
14 cumulation. But I appreciate your comments on that,  
15 as well.

16 I wanted to turn to capacity constraints. I  
17 think this is sort of the elephant in the room, or  
18 maybe it would be better to call it the Clydesdale  
19 horse in the room. The Statute does not require any  
20 finding that the U.S. industry can satisfy all demand  
21 for the product in the United States.

22 On the other hand, if there are huge swaths  
23 of the market that American Keg has never really  
24 expected to serve and realistically could not possibly  
25 serve during the POI, Period of Investigation, or in

1       the foreseeable future, but that are served by subject  
2       imports, shouldn't that affect how we think about  
3       whether subject imports are causing injury to the  
4       domestic industry? And, again, this is I think more  
5       of a legal question.

6                  MS. ROLIG: Thank you, Commissioner. This  
7       is Whitney Rolig from PKR.

8                  In general, yes, that can be true, but  
9       that's simply not what's going on here. When you look  
10      at the channels of distribution, yes, American Keg is  
11      much smaller than its competitors. But it does have  
12      significant room to grow within its existing capacity  
13      and it is competing head-to-head with all of the  
14      Respondents in this case, and losing sales to those  
15      Respondents in a very important portion of the market.

16                 That's why I focused on the small craft  
17      segment in my presentation, because the Respondents  
18      would have you believe that the only ones that really  
19      matter for a sustainable business are large brewers  
20      and the leasing companies. And, of course American  
21      Keg hopes to supply them in the future, as their  
22      capacity grows. But they don't need to supply them  
23      right now to be a viable business, and the purchaser  
24      questionnaire responses that the Commission got made  
25      very clear that the kind of capacity or availability

1 requirements that some of the large purchasers have  
2 are limited to those large purchasers. There are  
3 literally thousands of other customers available to  
4 American Keg that American Keg advertises to, tries to  
5 sell to, and they are losing significant sales to  
6 those customers.

7 I understand that a large company such as  
8 Thielmann doesn't think craft brewers are terribly  
9 important, but you can see the amount of effort  
10 they're putting into courting those customers, because  
11 they still view them as extremely important, in  
12 reality.

13 The way that translates for American Keg,  
14 what may look like a small portion of sales for the  
15 larger guys is huge for American Keg. And as they're  
16 able to make inroads with that industry in the volumes  
17 they need, and the volumes they're getting right now  
18 are not enough. The volumes that have been taken by  
19 foreign competitors could sustain this business.  
20 That's what matters. That's why they're injured.

21 It is a significant market available in  
22 small craft brewers, and as we've pointed out, they're  
23 not limited to just that part of the market. They are  
24 actively engaged with leasing companies. They do sell  
25 to larger customers. So, they're able to supply those

1 other parts of the market. They just had a very hard  
2 time doing so, when everything they're running up  
3 against is dumped or subsidized.

4 MR. RUBEO: Mr. Kearns, I just wanted to  
5 add, just on the legal question that you were asking.  
6 We also, Picard Kentz & Rowe also represents the  
7 United States shrimp industry, and in cases when  
8 that's been before the Commission, the U.S. shrimp  
9 industry accounts for about 10 percent of all  
10 consumption in the United States.

11 The question you're looking at is that it  
12 cannot be possible for that 10 percent to be able to  
13 compete for every possible sale in the United States.  
14 It's whether or not there is competition between  
15 imports and the domestic industry, sufficient enough  
16 so that there is -- the material injury factors are  
17 met.

18 One of the complications that we have in  
19 this, about the facts, is that we cannot talk about  
20 where the client, how the channels of distribution  
21 information came out. That's not public. But we  
22 think that it's fair to say that some of the things  
23 that have been said about the way the market is  
24 divided are overstated, in terms of where sales are.  
25 And, again, there's a lot of emphasis on trying to

1 talk about the large purchasers and these many foreign  
2 requirements. But again, on the public record,  
3 there's not a lot of evidence that that's a huge  
4 demand in the market.

5 And I'd state that the analysis that you're  
6 looking at is, is there competition between the  
7 domestic product, when it's selling in the market  
8 place for foreign imports. And the record  
9 overwhelmingly shows that that's true here.

10 One of the references that was made by  
11 opposing counsel, Thielmann's attorney, was to a case  
12 called Silica Bricks, the Commission looked at, where  
13 the sales were very distinct. We're talking about  
14 sales that related to steel mills or to glass furnace  
15 manufacturers, and there were totally different  
16 channels of distribution where imports were going into  
17 one market; domestic market products were going into  
18 another. That is nothing like what this case is.

19 What you have here is imports of domestic  
20 product going in the same market, same channels of  
21 distribution. There are some places where they set on  
22 product type and size, and on certain types of  
23 customers, but the domestic industry is not yet  
24 present. But that's not relevant, I think, for the  
25 purposes of the legal analysis.

1                   COMMISSIONER KEARNS: Okay, thank you.

2                   And just to follow up on that, that was one  
3 question I had, was your view on Silica Bricks.

4                   So, your position is even if a U.S. industry  
5 can't serve, let's say 95 percent of the market, just  
6 throwing out a number, and that it's like in the  
7 Silica Bricks case, it might be just a very different  
8 segment. I think that's arguable about whether or not  
9 that's here, and I hear what you're saying on that.  
10 And within the remaining five percent of the market,  
11 the U.S. industry is present and is facing  
12 competition, unfair competition from subject imports.  
13 That that, even if there's a complete dividing line  
14 between those two segments, the huge segment and the  
15 small segment, if the U.S. industry is not doing as  
16 well off in that five percent of the overall market,  
17 that's a material injury, nevertheless. Is that your  
18 argument?

19                  MR. RICKARD: Commissioner, Nathan Rickard.  
20 I'm not going to answer the question, because I don't  
21 think that's what's present on the record here. I  
22 mean, it is not something, again, in the shrimp cases  
23 that you got in the past, you've got an industry that  
24 produces 10 percent of what apparent consumption is.  
25 And that 10 percent can be sold into every market

1 channel that exists out there. There were claims that  
2 because of the way that seasonality worked, that large  
3 purchasers could not, would not consider domestic  
4 product, and only importers could serve that market.  
5 But there was nothing that prevented importers from,  
6 or those large purchasers from changing their  
7 requirements and purchasing, and certainly not the  
8 intent of the industry, not to sell to certain  
9 markets.

10                 Here, there are claims in some of the briefs  
11 that the divide is something like, I think it's 97 to  
12 three percent, in terms of where the stuff goes in the  
13 markets. But that is not supported by the record.

14                 The record here shows that the domestic  
15 industry not only sells just to small craft brewers,  
16 which are much more significant in terms of keg  
17 purchases in the data that the Commission collected,  
18 but also that they were selling into other channels of  
19 distribution and that those sales increased over the  
20 period of investigation and the alliance of small  
21 craft brewers decreased over time.

22                 But I hear what you're saying. If we have  
23 that fact pattern, I think I could answer it, but I  
24 don't think that's the fact pattern at all. I think  
25 it's what's being presented as what the facts would

1       be, but that's not on the record, where American Keg  
2       is competing for three percent of the market for kegs.  
3       They're competing for the majority of the market  
4       demand for kegs.

5                   COMMISSIONER KEARNS: Okay, well that goes  
6       back to my question before, that Ms. Rolig was  
7       answering. I mean, even if you were maxed out on your  
8       capacity utilization, you know, we're not talking  
9       about being able to serve all those customers. You're  
10      talking about even if you could convince every  
11      purchaser to do away with its minimum capacity  
12      requirements, you won't be able to serve the lion's  
13      share of this market. Right? So, where does that  
14      leave us? How should we think about that?

15                  MR. RICKARD: Commissioner, again, I think  
16      this is -- this is Nathan Rickard. I don't think  
17      we've gone through all of it, in terms of where we do  
18      an internal injury analysis, but as you've heard,  
19      there are plans for American Keg to increase its  
20      capacity, and they fully anticipate that other  
21      companies will then invest in manufacturers, domestic  
22      kegs. The amount of capacity of the domestic  
23      industry's capacity will grow beyond just American Keg  
24      in a market that has fair prices.

25                  And again, the material injury analysis is

1 looking at what the impact is on the domestic industry  
2 as it exists now and whether you can say that the  
3 volume and price impacts of the imports are  
4 materially, are having an adverse impact on the  
5 domestic industry. And under that part of the  
6 Statute, the way that you look at it, what happens to  
7 the rest of demand doesn't really enter into it.

8 We do understand that there are a lot of  
9 arguments, and you'll hear from the second panel about  
10 what the impact level of this would be on purchasers,  
11 but the law doesn't protect purchasers to have access  
12 to unfairly traded imports at unfair prices. That's  
13 not part of the way that the Statute is set out.

14 COMMISSIONER KEARNS: Okay. Thank you.

15 And I'm going to turn to Vice President of  
16 Operations. Mr. Bentley, I think you -- but, before  
17 I turn there, if you all can tell us post-hearing.  
18 You cited shrimp. I'd love to hear more about that  
19 case, and any others that you think are helpful here,  
20 and further arguments as to why the Silican Brick case  
21 is not analogous would be helpful. Thank you.

22 So, yes, as Mr. Bentley, I think you  
23 suggested that if a remedy were put in place, that you  
24 all could build a second factory, is that right?

25 MR. BENTLEY: That's our plan.

1                   COMMISSIONER KEARNS: Okay.

2                   And what can you tell us about how you would  
3                   finance a capital -- it sounds like a pretty major  
4                   capital expansion. Would it double your production?  
5                   Or what are you thinking that way?

6                   MR. BENTLEY: We'd probably increase by a  
7                   factor of 10. I have three ways that I could finance  
8                   it. I'm talking to a couple of companies or groups  
9                   that I can't divulge about doing it, or I could do it  
10                  myself. It's about, order of magnitude is tens of  
11                  millions of dollars.

12                  COMMISSIONER KEARNS: Okay, okay, thank you.

13                  So, just taking a step back, kind of along  
14                  the same lines, though. You were responding somewhat  
15                  at least to have asserted that you have never  
16                  intentionally targeted large breweries. Is that a  
17                  fair statement?

18                  MR. BENTLEY: I think it's a fair statement  
19                  about the past. I don't think it's a fair statement  
20                  about the future. It's certainly not a true statement  
21                  about our intentions.

22                  COMMISSIONER KEARNS: Okay. And even when  
23                  you were beginning the company say in 2015, 2016, you,  
24                  at that period, did you think that eventually you  
25                  might serve the large breweries? Or --

1                   MR. BENTLEY: Certainly.

2                   COMMISSIONER KEARNS: Okay, okay, thank you.

3                   Several purchasers indicated -- this may be  
4                   for Mr. Luzzi -- several purchasers have indicated in  
5                   their questionnaire responses that they were not aware  
6                   of a domestic source for kegs. Can you please  
7                   describe your firm's marketing efforts in acquiring  
8                   more purchasers and expanding your customer base?

9                   MR. LUZZI: Sure. This is Brian Luzzi,  
10                  Sales and Marketing Director, American Keg.

11                  We have identified some of the larger  
12                  outlets, publications, industry trade shows, working  
13                  through state guilds that most of the small brewers  
14                  are members of. I think we've identified as having  
15                  the most visibility at Craft Brewers Conference for  
16                  the markets that we serve right now, which is the  
17                  largest trade show gathering every year. All the  
18                  Respondents here participate in that, as well.

19                  Our online visibility is a big part of our  
20                  marketing strategy, using all the resources that we  
21                  can do over the web to gain customers.

22                  Locally, word of mouth, especially, is huge  
23                  for us. Like I mentioned in my testimony with the --

24                  MR. BUSH: Can you pull the mic a little  
25                  closer? They can't hear you in the back.

1                   MR. LUZZI: Yeah, sorry.

2                   Word of mouth in this industry is very big.

3                   Like I mentioned in my testimony, there's a lot of  
4                   competition between them. They do talk with each  
5                   other a lot about products they buy that help make  
6                   them successful, so that's another big one for us.

7                   So, I would say those three avenues are  
8                   where we try to gain the most visibility from.

9                   COMMISSIONER KEARNS: Okay. And I guess, I  
10                  mean, we know how your sales have increased over the  
11                  period of investigation. What can you tell us about  
12                  your customer base, how much that's changed over the  
13                  period?

14                  MR. LUZZI: Of course, with our abilities  
15                  we've started with small brewers. As they've grown  
16                  over the last three years, we've watched them grow, so  
17                  we've grown with them as their keg needs grow. That's  
18                  one way.

19                  I believe that's it.

20                  COMMISSIONER KEARNS: Do you have more  
21                  customers now, than you did in 2016, 2017?

22                  MR. LUZZI: We do. Yes, we've grown our  
23                  database, our customer base, as well, and it's through  
24                  all the channels that I've mentioned.

25                  COMMISSIONER KEARNS: Yeah. Anything you

1 can tell us about estimating how much the customer  
2 base has grown, and what kinds of customer? I hear  
3 you say that you started off with some small customers  
4 who have grown. Besides those, are you serving other  
5 medium-sized brewers more than you did in the past?  
6 And anything about the kind of customer and the number  
7 of customers over the last couple of years.

8 MR. LUZZI: Well, we anticipate we've talked  
9 to over half of the people in the industry. We've had  
10 thousands of inquiries. We sell to very few, but we  
11 do sell to people in the top 50, what would be  
12 considered top 50 barrel producers in the country.  
13 And some regional breweries around us, that have  
14 bought our product.

15 So yes, those have grown. Though, as small  
16 as that number is, they have grown over the last three  
17 years. We love, when we talk to somebody that's in  
18 the big barrel producers, giving them detailed  
19 proposals on our product, giving them samples,  
20 visiting with them. We love those. We want so many  
21 more of those.

22 It's just really hard when it comes down to  
23 offering a quote to them and you're talking about a  
24 six-figure difference in between what they're getting  
25 and what we have to offer for them.

1                   So, yeah, the goal has always been to --

2                   COMMISSIONER KEARNS: Okay. Thank you.

3                   I guess post-hearing, if you all can just  
4 provide us with maybe a customer list from 2016, and  
5 those who you're reaching out to. That might be  
6 harder, but who you've sold to in 2016, versus 2018,  
7 2018, just to get a better sense for us of how things  
8 are going that way, would be helpful.

9                   MR. LUZZI: Sure.

10                  COMMISSIONER KEARNS: Thanks.

11                  Do certain customers demand sizes other than  
12 the half and one-sixth keg produced by American Keg?  
13 How do you respond to Blefa's argument that other  
14 sizes are becoming more popular in the U.S. market?

15                  MR. LUZZI: From what we see on a daily  
16 basis, the quarter barrel is probably the one question  
17 where -- there's a little bit of demand for a 50  
18 liter, which is a little bit smaller capacity than the  
19 half barrel that we sell.

20                  The quarter barrel has been a very, very  
21 small part of what we see in demand. We don't offer  
22 it. It's not something we manufacture right now,  
23 though it is something we'll absolutely take a look  
24 at, if we see a return on the investment for that  
25 size.

1                   COMMISSIONER KEARNS: And can you give us  
2 some sense of how difficult it would be to start -- I  
3 mean it seems to me there wouldn't be a huge  
4 difference if you can produce a half barrel and a  
5 sixth barrel, that you could probably split the  
6 difference, more or less, into a quarter barrel.

7                   MR. CZACHOR: This is Paul Czachor speaking.

8                   In terms of making a quarter barrel, we  
9 already have the technical drawings and the concepts  
10 on how to do it.

11                  In terms of the overall production, it's  
12 relatively simple. We just need to add some minor  
13 tooling.

14                  COMMISSIONER KEARNS: Okay.

15                  MR. RICKARD: I'm sorry, this is Nathan  
16 Rickard. I just want to add one thing, which maybe  
17 they can fill out a little bit more, just so we're  
18 clear on it.

19                  The domestic industry produces sixth and  
20 half kegs, but because they import them, they also  
21 sold kegs in other sizes. So, when you're asking  
22 about what the demand would be for quarter kegs and  
23 for other sizes beyond that, they do have a sense of  
24 that, because they were putting that out. And I think  
25 the point has been, at least in conversations with us,

1       that there wasn't market demand there, in the way that  
2       Blefa seems to be characterizing it.

3                   COMMISSIONER KEARNS: Okay, thank you.

4                   By the way, this is more of an aside, but  
5       what do they have in pony kegs, and what size is a  
6       pony keg?

7                   MR. LUZZI: A quarter barrel.

8                   COMMISSIONER KEARNS: You said a quarter  
9       barrel? Okay, okay. All right, just curious.

10                  So, this is an issue I think you all touched  
11       on before, but maybe we can talk a little bit more  
12       about. Certification or qualification.

13                  According to the staff report, 10 of the 23  
14       Respondent purchasers require their suppliers to  
15       become certified or qualified to sell kegs to their  
16       firm. Of the 10, seven purchasers indicated that  
17       American Keg has not even attempted to certify its  
18       product over the POI. Can you explain why that's the  
19       case?

20                  Also, maybe post-hearing, can you further  
21       reconcile the discrepancy between the two producers  
22       that indicated American Keg was unable to successfully  
23       certify with them, and your assertion that you have  
24       not failed any certifications?

25                  MR. CZACHOR: In terms of certification,

1 . there is no one certification that customers are  
2 asking for. They vary from maybe one simple piece of  
3 paper to another customer asking to follow the BA spec  
4 -- or the Brewers Association specs. So,  
5 certification or specifications can vary.

6 We have been certified with some customers,  
7 and again, that could be in terms of they would try a  
8 few kegs and test them out and measure them. We have  
9 also went to some of the larger leasing companies, in  
10 fact we're working with one right now, in terms of  
11 certification. We are unaware of failing any  
12 certifications in the past. We have sent sample kegs,  
13 but have not, to our knowledge, failed a certification  
14 process.

15 MS. ROLIG: And, if I could jump in, this is  
16 Whitney Rolig.

17 We did address the two purchasers that you  
18 mentioned in our pre-hearing brief. Obviously, it's  
19 all confidential. But we would be happy to provide  
20 more comment on that in the post-hearing brief.

21 COMMISSIONER KEARNS: Okay. Thank you.

22 MR. RICKARD: Sorry, Commissioner, just to  
23 set the stage, too. We have a little bit of a  
24 difficulty in that we can't relay to American Keg what  
25 the purchasers said. So, what we've tried to do is

1 just go through circumstances, where there have been  
2 sales that haven't gone forward. But, I think that  
3 from what we've seen, there's just a disconnect  
4 between what people are claiming as a certification  
5 process, and then what really is something where it  
6 was can you do this at this particular price, and the  
7 answer back was, well, we can't do that at that price.  
8 That's too much of a loss.

9 COMMISSIONER KEARNS: Okay, thank you.

10 And can you tell us more about how often it  
11 happens that you approach a potential customer and  
12 they tell you, just flat-out, regardless of your  
13 price, regardless of the quality of the product, we  
14 just aren't going to purchase from such a small  
15 producer? Just how often does that happen?

16 MR. LUZZI: I haven't come across that.  
17 That's not, not something I've been told.

18 COMMISSIONER KEARNS: Okay, okay.

19 All right, okay, I wanted to turn to some  
20 questions about sales volumes. Respondents argue any  
21 increase in subject imports came at the expense of  
22 non-subject imports. Not domestic products. The  
23 domestic industry was also growing in a declining  
24 market.

25 Can you address this argument from the

1           Respondents?

2           MS. ROLIG: This is Whitney Rolig. I'll  
3       start, and I think Brian's got some thoughts about  
4       this, as well.

5           As I mentioned, when you're looking  
6       particularly at the small craft, there's a lot going  
7       on there. A lot of openings. So, that's where you  
8       see growth within the beer industry. That's where  
9       you're going to see a lot of keg purchases. And  
10      again, maybe it's not the individual order sizes of a  
11      large brewer or a leasing company, but you do see a  
12      lot of activity within that part of the market.

13       So, that's why I think all keg producers  
14      want to sell there, because instead of the larger  
15      purchasers just replenishing their fleet, as Brian  
16      mentioned, you have a lot of people starting their  
17      fleet. And as they expand, adding to that fleet. Not  
18      just trying to replace the kegs that get beat up over  
19      a couple of years.

20       MR. RUBEO: That's good, yeah.

21       But Commissioner, I'd just add to that that  
22      what we're looking at, in terms of the way the market  
23      looks, and the impact on non-subject imports, we think  
24      it supports the understanding that American Keg has of  
25      the market place where there are multiple suppliers

1       that are going in and trying to compete for sales.

2       And that they change over time because of price.

3           It is the argument that many subject imports  
4       have lost market share to unfairly traded imports is  
5       what you would anticipate in the marketplace.

6           We do appreciate the point that American Keg  
7       has grown its production over time, while subject  
8       imports have gone up, but that is another indicia of  
9       the impact, growth on price and volume, that subject  
10      imports are having. If you can look at non-subject,  
11      and see what happens to a fairly traded product.

12           COMMISSIONER KEARNS: Okay, thank you.

13           I want to turn to pricing and underselling.  
14       I guess my first question is, and again, I think this  
15       is probably for Mr. Bentley or Mr. Czachor.

16           When you decided to begin producing kegs,  
17       what did you think about the market prices at that  
18       time? Were they too low then? Or were they adequate?

19           MR. CZACHOR: When the business plan was  
20       first put together, it was based on present-day market  
21       conditions in 2015, and we would consider those  
22       adequate.

23           COMMISSIONER KEARNS: Okay. And, in your  
24       view, how have prices changed from 2015 to 2017 and  
25       2018?

1                   MR. CZACHOR: The subject import pricing has  
2 eroded.

3                   COMMISSIONER KEARNS: Okay, thank you.

4                   And 2015 to 2016, the prices in 2016, what  
5 was that?

6                   MR. CZACHOR: I don't have that data. We'll  
7 have to follow up with that.

8                   COMMISSIONER KEARNS: Okay. We appreciate  
9 that.

10                  Okay, so, Respondents pointed out, and I  
11 guess they can cite to things that you all have said,  
12 that there is a premium for American-made kegs. Can  
13 you, I guess just, first of all, can you tell us how  
14 much is that premium, and how we should take that into  
15 account in our underselling analysis? And also, as  
16 part of that, one thing we're going to look at of  
17 course is, in our staff report, what we've heard from  
18 purchasers and others about how much of a preference  
19 there is for American-made product.

20                  And I'll ask the same questions to  
21 Respondents this afternoon, but from what our staff  
22 has seen from the way I've read it, it doesn't look to  
23 me like that is a huge issue for many purchasers.

24                  If you can just speak to us about how to  
25 sort through all this, where you all have said there

1       is a premium; Respondents think there's a premium.  
2       There already are, I think, some estimates of what  
3       that premium is, but we also have some data suggesting  
4       this doesn't really seem to matter, at least to most  
5       purchasers.

6                   So, how should we think through that?

7                  MS. ROLIG: This is Whitney Rolig.

8                  Without trying to get into any BPI  
9       information about pricing, we don't accept the  
10      Respondents' characterization of the size of that  
11      premium, or how that should affect the underselling  
12      analysis.

13                 I think, as these guys discussed at the  
14      conference, there is a willingness to pay a little bit  
15      more for a made-in-America keg, but they have  
16      recognized, well, since Paul started looking into this  
17      in 2017, that only goes so far. And they understand  
18      that, and they're not pricing their kegs out of reach  
19      simply because they think they can do so on the  
20      strength of the brand. They're pricing their kegs to  
21      try not to lose money.

22                 So, the idea that they're somehow inflating  
23      the price to the point that they're going to lose  
24      money on every sale, just because they think they can  
25      get that extra price, that's not what's going on

1 here --

2 MR. RUBEO: I'd just add onto what Whitney's  
3 saying, that the argument about a premium in the  
4 market is difficult to support or substantiate when  
5 the prices that American Keg is selling at are below  
6 what their cost of goods sold are. It's not, you  
7 know, it's not around someone's ability to get, the  
8 prices are established by what they can take in terms  
9 of their losses.

10 And so, what the --

11 COMMISSIONER KEARNS: This seems to be  
12 arguable they're not an established industry, you  
13 might have sales below cost of goods sold.

14 MR. RUBEO: You may have sales below the  
15 cost of goods sold, but the whole goal of this was to  
16 try and limit how much those losses are, instead of  
17 make volume sales that can keep you as an operating  
18 enterprise. So, it's not as if you're walking in  
19 saying they'll be able to charge much more for those  
20 kegs, but anything else isn't part of the business  
21 model.

22 Instead, if there's a price that's below,  
23 and this is I think borne out by the record. If  
24 there's a price offer from imports that are below what  
25 the domestic industry can absorb in terms of losses,

1       it loses that sale. They have a price point that they  
2       just can't go below. That price point is higher than  
3       the unfairly traded imports are.

4                 And what we've struggled with is trying to  
5       understand the argument that you get to wipe out the  
6       unfair trade, not only in terms of price impact, we're  
7       not talking about efficiencies or different ways that  
8       they're structured. We're talking about an ability to  
9       come in with subsidized imports that allow them to set  
10      lower prices. That lower price point is not something  
11      the domestic industry can compete with.

12               And so, they are asking for the prices that  
13      they can get back that allow them to survive. Even  
14      though structurally, I don't understand how you can  
15      have a concept of a premium.

16               COMMISSIONER KEARNS: I'm sorry, but why  
17      not? You can have a premium, right? You can have an  
18      American-made premium.

19               MR. RUBEO: I'm sorry. I meant that we  
20      could potentially get to a point where we'd have a  
21      price premium, but the record as it's set, I mean, the  
22      argument is that this is what the domestic industry's  
23      goal is and how it's -- but that's not the domestic  
24      industry.

25               I mean, what American Keg's experience is,

1 and you've heard is, their view is they need to make  
2 more sales at the same price and to be able to spread  
3 their costs over those sales to be able to make a  
4 profit. But there's no part of it where they're  
5 saying whatever the import price is, we're going to  
6 get some percentage more than what that import price  
7 is. That's certainly not one of the aspects that's  
8 gone into the business plan, or how American Keg  
9 operates.

10 COMMISSIONER KEARNS: Okay. But it would be  
11 helpful, I think, for us to figure out what, if, if,  
12 imports were fairly traded, you know, in an ideal  
13 market, what would be the premium? And it seems to me  
14 that there's a few that you would want to look at.

15 And one is, I think Respondents have pointed  
16 out that when American Keg acquired Geemacher, that  
17 one of the first decisions that was made was to  
18 increase the price. So, that does seem to suggest to  
19 me that that's something that we would take an  
20 interest in, in terms of figuring out what is the  
21 "right" price, with the premium possibly built in.

22 Also, during the period of investigation, if  
23 your position is that imports were not unfairly traded  
24 at the beginning of that period, and then you all  
25 decided to ramp up production, if you were operating

1 under the assumption that those were prices you could  
2 deal with, how much higher were your prices? That  
3 would be a good way for us to figure out whether or  
4 not, you know, what the premium is.

5                 Also, I would think we would want to look at  
6 non-subject imports. If those are fairly traded, as I  
7 think you have said, Mr. Rickard, then would we want  
8 to look at the difference between the price of those,  
9 to the price of the U.S. product, and determine that  
10 that's probably what the U.S. premium is, given as  
11 you've said, that on other issues, I guess, besides  
12 potentially American-made, in terms of quality and  
13 other things, we think those appear to be comparable.

14                 So, any further thoughts on what kind of --  
15 what we should use for a benchmark to determine what  
16 the premium is?

17                 Because I take your point. And I think your  
18 point is if it seems that the other side is simply  
19 saying any time you see a difference between the U.S.  
20 price and the dumped and subsidized price, that's the  
21 premium, that's obviously kind of circular.

22                 So, then how do we determine what the fair  
23 market premium might be for the U.S. product?

24                 MS. ROLIG: We will be happy to provide  
25 extensive analysis of that.

1                   COMMISSIONER KEARNS: Okay. Anything from  
2 the business folks, though, about what you all thought  
3 going into this when you priced your product at the  
4 beginning of the POI, or otherwise?

5                   (Pause.)

6                   MR. BENTLEY: Scott Bentley.

7                   When you talk about what people are willing  
8 to pay for a keg, in our case, it's thousands of  
9 individual decisions by thousands of different people.  
10 Some will give us a little more leeway than others. A  
11 few dollars. Always, or almost always, we'll win in a  
12 tie. So, you can't say a uniform level that people  
13 make their decision at.

14                  Craft breweries are businesses, too. We  
15 understand that. Several of them will go Chinese for  
16 50 cents a keg. Most of them won't.

17                  So, I think Whitney's analysis you'll get  
18 post-conference, can give you the data on that.

19                  But you can't look at this as a uniform  
20 decision by thousands of people looking at a line on a  
21 chart. It's not done that way.

22                  And other factors, like our ability to  
23 deliver rapidly, high-quality customer support, they  
24 like Brian, those are all factors, too.

25                  COMMISSIONER KEARNS: And what about leasing

1        companies versus small craft brewers? Is there -- do  
2        leasing companies, are they less concerned about  
3        buying American, or not?

4                    MR. LUZZI: Brian Luzzi.

5                    In our limited experience with them, just  
6        given the nature of how most of the leasing companies  
7        out there tend to have one brand that they use, we  
8        were fortunate enough to meet a couple of folks down  
9        south that really kind of believed in what we were  
10      doing, and formed their business around offering an  
11      American-made product only. And we've seen success  
12      with them over the last two years. Sales have  
13      increased, their awareness has increased. So, they're  
14      kind of our little leasing companies.

15                  COMMISSIONER KEARNS: So, if I'm hearing you  
16      right, you're saying that the leasing companies  
17      traditionally might just source from one supplier, but  
18      increasingly you are able to persuade them that they  
19      may want to have a second supplier that can offer an  
20      American-made product?

21                  MR. LUZZI: That's correct.

22                  COMMISSIONER KEARNS: Okay, okay, thank you.  
23                  So, we want to talk bout the 232 steel  
24      tariffs. And what I find kind of interesting is I  
25      think I'm hearing kind of two seemingly somewhat

1 contradictory things on the record here, including  
2 from Respondents. One is the 232 steel tariffs have  
3 driven up your costs, and that's where the harm is  
4 coming from.

5 On the other hand, we look at cost of goods  
6 sold, where your cost of goods sold is declining. So,  
7 I hear both that there is no cost/price squeeze here.  
8 Costs are going down. Or maybe there is a cost/price  
9 squeeze here, because your raw material costs are  
10 going up.

11 What's the right way for us to look at this?  
12 And it seems to me that regardless of what's happening  
13 with steel, I would want to look at the cost of goods  
14 sold to see whether or not there's any kind of  
15 cost/price squeeze here.

16 MS. ROLIG: This is Whitney Rolig.

17 Steel prices have just been volatile in  
18 general. There was a spike, the spring of last year,  
19 obviously, when the 232's -- and that was the case for  
20 U.S. prices. Because, I want to emphasize there was  
21 some confusion about this at the conference. American  
22 Keg buys U.S.-made steel. So, they were not paying  
23 directly the 232 tariffs. And the same price  
24 pressures on steel were also affecting Thielmann,  
25 because you heard from them, they also buy U.S. steel.

1       So, any steel cost trends are not exclusive to just  
2       American Keg.

3           To the extent there's been volatility in the  
4       market, of course that affects them, because steel is  
5       such a huge input for kegs. But they've done their  
6       best to manage that.

7           As you heard in the testimony, they've  
8       expanded to all four certified U.S. steel producers as  
9       suppliers. This allows them to try to manage those  
10      costs, because there's more competition there.  
11      They've made other adjustments within their plants.  
12      They have a really great plant manager that's been  
13      able to up their efficiency. So, they've made  
14      adjustments where they can, recognizing that they're  
15      going to have to be kind of lean and mean to make it  
16      as a small company right now.

17           That said, we recognize the cost of steel  
18       has gone up over the POI. And they need to be able to  
19       pass some of those costs on to their customers. To  
20       the extent that they are consistently and  
21       significantly undersold by their foreign competitors,  
22       that gets tougher. But the improvements you see in  
23       their cost ratio, they've done what they can to be a  
24       very competitive business. And so, that's kind of  
25       explaining the trends you see. We can provide more

1 analysis, but there's just a lot of ways in what the  
2 statistics mean, and certainly the Respondents are  
3 placing way too much emphasis on that.

4 As Paul explained, he started looking at  
5 trade relief almost two years ago. To the extent that  
6 volatility in the steel market was introduced in the  
7 midst of that process, of course he was going to look  
8 at every avenue to try to save the business.

9 COMMISSIONER KEARNS: Okay. Thank you.

10 A couple of follow-up questions and then I'm  
11 going to take a short break to confer a little bit  
12 with staff, here.

13 But I guess the first question is, putting  
14 aside steel, shouldn't I just look at this and say  
15 sales, on average, values are going up and your costs  
16 are going down. And so, that doesn't seem to suggest  
17 that subject imports are suppressing prices.

18 MS. ROLIG: We disagree with that.

19 Again, they're losing money on every sale  
20 and it's unsustainable. We know that subject imports  
21 are dumped and subsidized. The final for Mexico, from  
22 Commerce came out yesterday. They're dumped. Those  
23 prices are not fair.

24 American Keg has had to compete against  
25 those lower prices. We've put proprietary information

1       on the record about customers asking Brian, can you  
2       please drop your price? Can you please match this  
3       importer price? And it's a significant differential.  
4       We know that they're losing sales to lower priced  
5       imports, and when they lose those sales, as you heard  
6       Scott say, they can't spread their costs over enough  
7       kegs. And that's injury.

8                   COMMISSIONER KEARNS: So, I guess this goes  
9       back to what I was saying in the beginning. That,  
10       even if the trend might show costs are going down,  
11       prices are going up, you have to ask yourself,  
12       starting from where? And if costs start from way  
13       above your sales costs, then you would want to take  
14       that into account, as well?

15                  MS. ROLIG: Sure. And again, as Nate  
16       Rickard was saying, it is a mixed record on the  
17       question of material retardation versus material  
18       injury, but we think under either analysis it shows  
19       that our client is being injured by subject imports.  
20       They cannot become profitable. They cannot be  
21       profitable as long as they're competing against unfair  
22       imports.

23                  COMMISSIONER KEARNS: Okay.

24                  And then, one question before I take a short  
25       little break.

1                   Can you describe American Keg's current  
2 stainless steel procurement process, and the extent to  
3 which it might have changed following the 232 tariffs?  
4 Do you agree with Thielmann's assertion that, unlike  
5 the domestic industry, large producers of raw  
6 material, purchasing power mitigates input costs?

7                   MR. CZACHOR: Regarding the procurement of  
8 stainless steel -- this is Paul Czachor, by the way.

9                   Regarding the procurement of stainless  
10 steel, as Whitney mentioned, we have four stainless  
11 steel mills in the U.S. that can supply product to us.  
12 We can periodically bid those mills against each other  
13 to make sure that we're getting a competitive price.

14                  In addition, we subscribe to market services  
15 out there that are published weekly, to give us a good  
16 indication what the remainder of the country in the  
17 U.S. is paying for stainless steel. So, we have tools  
18 available to us to ensure that we're competitively  
19 priced every time we place an order.

20                  COMMISSIONER KEARNS: Thank you. And you  
21 don't hedge or anything like that in order to try to  
22 get a more constant price?

23                  MR. CZACHOR: We do not hedge.

24                  And just to clarify one point on stainless  
25 steel, and I believe this applies to all the

1 manufacturers. When you purchase stainless steel,  
2 there's two components of your price. There's a base  
3 price, which is your negotiated price with that  
4 particular supplier, and then there's a surcharge  
5 that's published monthly by these suppliers. That  
6 surcharge takes into account basically world  
7 commodities, such as the price of nickel.

8 So, as world commodities pricing is  
9 changing, that surcharge is going up or down.

10 COMMISSIONER KEARNS: Okay.

11 MR. CZACHOR: Which impacts the overall  
12 price.

13 MS. ROLIG: Sorry, I'd like to jump in with  
14 one more thing. Whitney Rolig.

15 When American Keg purchases steel, they are  
16 buying coil. They do their own stamping within their  
17 plant to get the shapes that they need for the kegs.  
18 So, they're not like outsourcing that part of the  
19 steel processing. They do that all in-house.

20 COMMISSIONER KEARNS: Okay. Thank you.

21 MR. CZACHOR: Paul Czachor. One last point.

22 In addition, when we purchase our steel, we  
23 purchase our steel in what we would call at least full  
24 truck loads, or order quantities, that the steel mills  
25 are efficient at. So, we do not buy smaller

1       quantities that would cost more. We do not use any  
2       kind of distribution. We buy direct, and as Whitney  
3       just stated, we stamp our steel directly, in-house, to  
4       keep that cost lower.

5                   COMMISSIONER KEARNS: Okay, okay, thank you.

6                   And just give me one second to confer with  
7       staff.

8                   (Pause.)

9                   COMMISSIONER KEARNS: Okay, thank you.

10                  So, somebody touched on a bit earlier kind  
11       of your plans in 2016, and how things may have turned  
12       out differently. And one point I heard in the  
13       opening, and also in your briefs, was that I think in  
14       2017, that's when you really saw a big growth in  
15       imports. And I think it was Mr. Bentley, you referred  
16       to, I think, 110,000 increase. Is that, we're looking  
17       at 2016 to 2017? Is that right?

18                  MR. BENTLEY: I have to confess that my  
19       lawyers wrote that part. So, I'll let them answer.

20                  COMMISSIONER KEARNS: Sure.

21                  But my question is going to be, basically  
22       we'd like to know, especially from 2016 to 2017, I  
23       think you all have pointed to the most dramatic  
24       change, in terms of imports. How did what happened in  
25       2017 differ from what you expected when you were

1       putting together the business plans from 2016? Both  
2       in terms of volume of imports, and also pricing? And  
3       on pricing, if you could provide anything post-hearing  
4       that will help us see that prices were not what we  
5       would have expected, and that you're beginning to see  
6       more pricing competition, that would be helpful.

7                    MR. RICKARD: Commissioner, just a point of  
8       clarification. Paul was talking about work that they  
9       did to try to bring the petition at the end of 2017.

10                  And one of the things that we have talked to  
11      American Keg about, which may be why there's a little  
12      bit of a disconnect at the moment, is the data is  
13      based off of bill of lading data and the pricing that  
14      they saw in the marketplace. And so, they have used  
15      that anecdotal data in terms of, or that data to do  
16      their evaluation of what market trends look like.

17                  We have kept on saying to them that's very  
18      helpful and it's great that you have that, but there's  
19      also the data that's on the record from the  
20      Commission, and you may want to just reference the  
21      Commission data back overall.

22                  So, we can provide you the analysis of the  
23      Commission data that was collected that we think  
24      supports what they saw in the marketplace. But we can  
25      also provide you with what they've been looking at, if

1       that's, in terms of the analysis that they were doing,  
2       as to what changed for them in 2017, based off the  
3       data they had available at that point, if that's the  
4       point that you're getting to.

5                   COMMISSIONER KEARNS: Yeah, I think so.  
6       Part of that I think is also what, in the business  
7       plans, it would be one thing if the business plan said  
8       well, we think the price in the market and the price  
9       for imports will be X in 2016, and then we're  
10      expecting a 20 percent decline in 2017, for whatever  
11      reason. Maybe you've seen companies overseas ramping  
12      up production, or whatever, maybe you thought -- you  
13      know, that versus no, we thought prices were going to  
14      stay the same from 2016 to 2017. So, maybe you can  
15      tell us about, you know, what your expectations were  
16      at the beginning of the POI, and how that did or did  
17      not sort of pan out, in terms of both price and  
18      volume.

19                  And then, also, on a separate point, we had  
20      talked a little earlier about projections going to the  
21      future. Mr. Bentley, I think you said that you think  
22      if an order were put in place that you could maybe see  
23      your capacity expand ten-fold. Anything you can send  
24      to us that would help, you know, solidify that? Yeah,  
25      I've given that some thought and those numbers are

1 reasonable, you know, something we can rely upon.

2 That would be helpful, as well.

3 MR. BENTLEY: So, we'll send you that.

4 COMMISSIONER KEARNS: Okay, thank you.

5 I guess, while we're on the subject of  
6 business plans, there's a few points that the  
7 Respondents raised I want to talk to you about. The  
8 business plan estimates that future production and  
9 financial performance, certain estimates about that.

10 How did you arrive at those estimate of production  
11 levels? How do you respond to Respondents' contention  
12 that these production estimates were not reasonable?

13 MR. CZACHOR: This is Paul Czachor.

14 In terms of capacity and reasonability, in  
15 terms of can we meet those numbers, I think we've  
16 presented to the Commission three years of capacity  
17 and the assumptions that we had. And, as we've told  
18 Mr. Boyland, we are confident that we can meet those  
19 capacity numbers.

20 COMMISSIONER KEARNS: Okay.

21 Kind of in a different vein, Blefa compares  
22 your expected profitability with your actual  
23 performance. How do you respond to those arguments?

24 MS. ROLIG: This is Whitney Rolig.

25 I know exactly which page of the brief

1       you're talking about --

2                   COMMISSIONER KEARNS: Thirty-two?

3                   MS. ROLIG: -- yeah.

4                   So, it's really hard to discuss this in a  
5       public forum, so we're happy to address that, but --

6                   COMMISSIONER KEARNS: Absolutely.

7                   MS. ROLIG: -- yeah, we couldn't even show  
8       that part to our client, even though it's their BPI.  
9       So, yeah.

10                  COMMISSIONER KEARNS: Okay. Fair enough.

11                  Thank you.

12                  Another issue that Respondents have raised  
13       is the extent that subject imports are serving larger  
14       customers, you would expect to see some volume  
15       discounts in that.

16                  So, kind of again going back, it's different  
17       from the premium issue, because I think there we were  
18       more focused on whether or not it's an American-made  
19       product. But what can you tell us about volume  
20       discounts that we can expect from subject imports?

21                  In other words, is the fact that subject  
22       imports are a lower price, is that simply a reflection  
23       of the fact that there's large volume discounts and  
24       they serve large volume customers more than you do?

25                  MR. RICKARD: Commissioner, the experience

1 I've been talking about in terms of volume discounts  
2 would be from those who say that they're claiming  
3 these discounts. So, the Commission's collected  
4 information on that. The Commission has also collected  
5 information on the averaging of values off to those  
6 different sales journals, so there can be comparisons  
7 done throughout to try and demonstrate what that is.

8 There may be volume discounts that are  
9 present in the marketplace, but it's not, again,  
10 that's not something that they would see, but it is  
11 something that the Commission has collected data on,  
12 that can be evaluated. We can go through that in the  
13 post-hearing brief, in terms of the confidential data.

14 COMMISSIONER KEARNS: Okay.

15 And I guess also, I mean, I believe you all  
16 grant volume discounts or some sorts of discounts if I  
17 remember right, as well. And you can tell us, and  
18 this may be proprietary, so post-hearing, but maybe  
19 you can tell us about, and if it's not already on the  
20 record, about what those discounts look like. How  
21 much volume there needs to be for you to grant a  
22 discount, if you do grant volume discounts, and what  
23 the difference is. That would be helpful.

24 MS. ROLIG: This is Whitney Rolig.

25 In conferring with Paul, they can provide

1       those numbers confidentially, so we'll be happy to do  
2       so. Brian, did you want to add anything? Okay.

3                   COMMISSIONER KEARNS: Okay, thank you.

4                   And then, I want to turn to lost sales. Can  
5       you respond now or post-hearing to Blefa's argument, I  
6       think it's in the brief, pages 44 to 45, that the lost  
7       sales information from two key purchasers may not be  
8       reliable. I don't know if there's something you can  
9       say about that now, but if not, at least post-hearing?

10          MS. ROLIG: This is Whitney Rolig.

11          We'll be happy to address that post-hearing.

12                  I would just note that this is yet another  
13       instance of the Respondents asking you to reject the  
14       record that the Commission has put together, and that  
15       we think is well-supported. And I do not agree with  
16       their characterization of that.

17          COMMISSIONER KEARNS: Okay.

18          A little bit more on keg leasing. How do  
19       you respond to Thielmann's argument that keg leasing  
20       is becoming a more popular option for the small brewer  
21       segment of the market?

22          MR. LUZZI: This is Brian Luzzi.

23          I do see some customers, especially those  
24       just starting up, you know, they don't have the  
25       capital up front to purchase kegs outright, so, of

1 course, that's going to be a viable avenue for them to  
2 take. We do see that quite often. And, one second --

3 So, to that extent, in the last few years,  
4 we have begun doing our own sort of financing  
5 arrangement with them, just so we don't lose yet  
6 another sale to the leasing companies. So, we've  
7 started, it's called lease-to-own, or, basically, it's  
8 a financing option where it's a smaller monthly  
9 payment, nothing up front, so they're paying over time  
10 to own their kegs outright.

11 COMMISSIONER KEARNS: You do that?.

12 MR. LUZZI: We do offer that.

13 COMMISSIONER KEARNS: Interesting. Okay.

14 MR. LUZZI: We had to.

15 COMMISSIONER KEARNS: Yeah:

16 MR. BENTLEY: We love to.

17 MR. RICKARD: Commissioner, can I just add  
18 something about Thielmann's argument? The reference  
19 is a page in the staff report, on page 201, and it's  
20 the part of the staff report that says that 4,000  
21 craft brewers out of the 6,000 to 7,000 are, lease or  
22 rent kegs. And then, the citation was to my  
23 colleague, Mr. Kentz, who did not say that, in the  
24 transcript.

25 I just want to make clear that that comes

1 from Thielmann itself. That's an estimate that there  
2 is no support for, on the record, other than the  
3 statement. They're asking you guys if you think that  
4 that number is correct, and they chime in on that  
5 part.

6           But I also think that on the record you can  
7 look at the companies that are leasing, that are doing  
8 that, and see who they say that they're serving, and  
9 we, and whether or not that's consistent with that  
10 representation that's in the staff report.

11           That's just to say really nice things about  
12 how the Commission staff, and all this stuff was put  
13 together. I think that would be the one complaint,  
14 that that number showed up, without a reference or any  
15 support.

16           COMMISSIONER KEARNS: Okay, okay. Thank  
17 you.

18           MR. CZACHOR: This is Paul Czachor.

19           If you do the statistics on the number of  
20 customers that are out there, and you look at the  
21 quotes that we do over time, and our database, we've  
22 touched over 5,000 people either asking for quotes, or  
23 we're selling product to them now. And we estimate  
24 that there's potentially 7500 to 8,000 customers that  
25 can buy kegs out there. We totally do not believe, no

1 way close, are these keg logistics companies serving  
2 4,000 of those customers. It's not possible.

3 COMMISSIONER KEARNS: Okay, thank you.

4 The Section 301 tariffs. Respondent  
5 Thielmann argues that those tariffs are having a  
6 significant impact on the market, citing firms that  
7 have stopped importing from China, or going out of  
8 business due to the 301 tariffs.

9 Respondents also point out that American Keg  
10 told USTR how effective the 301 would be. How should  
11 the Commission evaluate the effect of the 301 tariffs  
12 on the keg market?

13 MS. ROLIG: Thank you, Commissioner. This  
14 is Whitney Rolig.

15 So, as we put in our brief, I mean, there  
16 has been an effect from the 301 that has been somewhat  
17 delayed. Because I laid out the time line in the  
18 brief. They were announced at 10 percent last fall,  
19 and then there was talk of going up to 25 percent  
20 January 1, but that got put off at the last minute.

21 If you look at the confidential data, you  
22 can see some very clear volume trends going on around  
23 all that. So, that got put off until March. And then  
24 it got put off indefinitely. And then all of a sudden  
25 in May, suddenly it was in effect, but if your stuff

1       was on the water, it wasn't going to apply until June  
2       1st. So, there was a lot of confusion about how big  
3       that impact was going to be and when it would take  
4       effect.

5                   American Keg has said they didn't see a lot  
6       of movement in the market initially. It was only  
7       later this year, when the tariff was actually going to  
8       go up and when people's inventory started to run out,  
9       that they were going to see actual price relief.

10                  But we think it's important to note that  
11       this demonstrates clear price sensitivity for kegs,  
12       and when unfairly traded kegs from China have to pay  
13       more to access the market, you are going to see a  
14       change in consumption patterns there. And that's  
15       exactly what American Keg has been saying. If they're  
16       not having to compete with those extremely unfair  
17       prices, they will have a chance to make more sales.

18                  COMMISSIONER KEARNS: Okay.

19                  MS. ROLIG: So, if I can just add, the idea  
20       that having the 301 tariffs in place is a good enough  
21       remedy for American Keg, that's not accurate. The law  
22       entitles them to relief from unfair trade with the  
23       antidumping duties and countervailing duties. That's  
24       why we're here today.

25                  We don't know what's going to happen with

1       the 301's, but the idea that that should be enough for  
2       them is simply not supported by the law.

3                   MR. RICKARD: Commissioner, I'll just add to  
4       what Ms. Rolig was saying. We were talking about this  
5       morning, they can't make investment decisions based  
6       off of the section 301 tariffs staying in place. They  
7       have no idea whether or not those, to whatever extent  
8       that they have an impact on the market, whether that's  
9       going to last, or whether there's going to be  
10      something that relieves those tomorrow.

11                  And so, it is, as Ms. Rolig says, it's a  
12      very different thing than what you would get from a  
13      trade remedy action, where you could be reasonably  
14      sure that you'll have fairly traded imports in the  
15      market going forward.

16                  COMMISSIONER KEARNS: Okay, thank you.

17                  I don't think I have too many questions, but  
18      I do have maybe a couple.

19                  So, one question I have is, as you know, and  
20      as we've talked about, Respondents assert that this is  
21      really all about the 232 tariff, and that's what's  
22      really causing the harm.

23                  How do you respond to that? I mean,  
24      normally what we would do in a case is we would ask,  
25      well, was the U.S. industry really able to pass on

1       those costs to its customers, and if not, then was it  
2       because of subject imports or was it for other reasons  
3       that it was not able to pass on those additional costs  
4       to its customers? Can you answer those questions?  
5       Any further thoughts on how much would the 232 impact?

6                    MR. RICKARD: Commissioner, I think that's  
7       exactly the way we described it. That's the way the  
8       Commission has looked at it in the past. Again, in  
9       the shrimp cases the argument was that the real damage  
10      to the domestic industry was because fuel costs have  
11      gone up during the POI, and the point of it is what  
12      happens with those costs? If there's a cost increase,  
13      for whatever reason, is the domestic industry able to  
14      pass on those costs to customers? And that's, again,  
15      kind of the crux of how the 232 -- the only relevance  
16      of the 232 is that it impacted costs and that's in  
17      American Keg's reporting, and whether or not that  
18      impact on cost is reflected in the prices they were  
19      able to get in the marketplace.

20                  COMMISSIONER KEARNS: Okay.

21                  Whitney was talking about some of those  
22      cases, too, sometimes it seems as though there is some  
23      time lag from the time where costs might go up and a  
24      company might not want to immediately raise prices for  
25      a variety of reasons, either long term contracts or

1       really just more customer relations, whatever it might  
2       be. So, any thoughts on that, in terms of, is this  
3       really just an issue of a time lag, where eventually  
4       we can expect that these costs will be passed on to  
5       consumers and that it's not related to their companies  
6       and that it's not really realistic to expect  
7       otherwise? Any thoughts on that?

8                    MR. RICKARD: Commissioner, we'll have to  
9       deal with that in the post-hearing. I think that's  
10      where really the volume stuff comes across. The  
11      volumes of sales are important, and how those trends  
12      work over time.

13                  It also goes to, again, the concept of a  
14      premium. If you could charge prices that reflected  
15      what your costs were, your cost increases were, you  
16      would anticipate to have a certain level of sales that  
17      would allow you to operate closer to what your  
18      capacity is.

19                  And when that's not present, we think that  
20      it's an indication of the fact that they've not been  
21      able to pass costs along; that their losses have  
22      increased and they're not able to charge anything like  
23      what this concept of a premium has been alleged.

24                  COMMISSIONER KEARNS: Okay, thank you.  
25                  And I don't believe Respondents have pointed

1 to too many other potential causes for inability to  
2 raise prices, but one thing that they have talked a  
3 little bit about was plastic kegs. Do plastic kegs  
4 compete against stainless steel? What impact have  
5 they had on prices?

6 MS. ROLIG: This is Whitney Rolig, and I'm  
7 sure Brian can jump in on this.

8 But, I, too, was very interested in plastic  
9 kegs, because I didn't know what they were. Those are  
10 one-way kegs. And they're used, I put some pictures  
11 on the record as part of our brief. They look, it's  
12 hard to describe how they look. Kind of like giant  
13 soda bottles with chimes around them. But they're  
14 used for one-way shipping. For either exporting beer  
15 in kegs when you don't want to pay extra shipping  
16 costs from the weight of a keg. These guys have told  
17 me they're really good at festivals, where you don't  
18 have to worry about keeping your kegs.

19 So, these sort of compete for very  
20 specialized applications, but in the day-to-day  
21 running of a brewery, that's just not a viable  
22 alternative. They can't be cleaned in the same way  
23 that a steel keg can. They can't be cleaned full  
24 stop. They're not nearly as durable.

25 So, do you have anything else, Brian?

1                   MR. LUZZI: No, I think that's pretty good.

2                   As far as if they have any impact on our  
3 pricing, I would say no.

4                   COMMISSIONER KEARNS: Okay --

5                   MR. LUZZI: I'm sorry, Commissioner, just  
6 the last thing. One of things we had asked for in  
7 terms of, as to the draft questionnaires, was to ask  
8 importers whether or not they are actually importing  
9 plastic kegs, to the extent, just a little bit more on  
10 whether or not these products were in fact competing  
11 in the workplace or having an impact on them. And so,  
12 I'd just encourage you to look at that. And we did  
13 put that in the post-hearing brief.

14                  COMMISSIONER KEARNS: Thank you.

15                  And I was confused by something I had read,  
16 that I thought I had read that it's just kind of the  
17 inner lining that is one use, but that the plastic keg  
18 can be reused. Is that right? Or is the entire  
19 product just disposable?

20                  MR. LUZZI: It's disposable and it's  
21 recyclable. I think that's one of the big things that  
22 they tout about that product.

23                  COMMISSIONER KEARNS: Okay, so, it's not --  
24 and I think, as you said, Mr. Bentley, you can't just  
25 clean this thing out in any sense. It has to be sort

1       of reconstructed from --

2                    MR. LUZZI: Yeah. And it's just a one-way  
3                    kind of single-use --

4                    COMMISSIONER KEARNS: Okay.

5                    MR. LUZZI: There's a couple of different  
6                    varieties of it. If it's the one I believe you're  
7                    referring to, then yeah --

8                    COMMISSIONER KEARNS: I know the prices are  
9                    lower, but I also know that steel kegs can be used for  
10                  20 to 30 years, right? So, I guess in terms of  
11                  comparing the pricing just from that basis, is kind of  
12                  hard to compare the two.

13                  MR. LUZZI: That's correct, yeah.

14                  COMMISSIONER KEARNS: Okay.

15                  (Pause.)

16                  COMMISSIONER KEARNS: One other question  
17                  that came up from Respondents, in terms of the trends  
18                  in half-barrel kegs versus sixth-barrel kegs. And  
19                  whether or not things are moving in a direction that  
20                  you all, I guess, didn't really anticipate, and  
21                  whether or not that's been affecting your profits.

22                  If you can tell us anything, I think this is  
23                  all fairly proprietary, so it would be great if you  
24                  could say something now, that would be great. But  
25                  also post-hearing about that, that would be helpful.

1                   Mr. Czachor, did you want to say anything?

2                   MR. CZACHOR: Yes, Paul Czachor.

3                   Year-to-year, month-to-month, the product  
4                   mix does vary. Overall, because of smaller breweries,  
5                   there's probably more, sixth-barrel keg, the one you  
6                   see in front of us, is a growing trend. For us, it's  
7                   no impact whether we make a sixth keg or a half keg.  
8                   We price the raw materials and the cost of labor  
9                   appropriately.

10                  COMMISSIONER KEARNS: Okay, okay.

11                  I think that's all the questions I have.

12                  Does staff have any questions?

13                  MR. CORKRAN: This is Douglas Corkran,  
14                  Office of Investigations. Thank you, Commissioner  
15                  Kearns. Staff has no additional questions.

16                  COMMISSIONER KEARNS: Okay, great. Then I  
17                  think we will recess until 12:45. Then we'll come  
18                  back here.

19                  Please remember that the room is not secure,  
20                  so any business proprietary information should be kept  
21                  with you and not in the room.

22                  And we'll see you at 12:45.

23                  (Whereupon a recess was taken at 11:45 a.m.,  
24                  to reconvene at 12:45 p.m. this same day, Wednesday,  
25                  August 14, 2019.)

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

(12:45 p.m.)

3 MR. BURCH: We will hear now from the  
4 parties in opposition to the imposition of antidumping  
5 and countervailing duty orders. They have been sworn  
6 in and are seated. They have 60 minutes to deliver  
7 their testimony.

22 Our witnesses will share with you the  
23 structure of this market and the role of American Keg  
24 within it. While American Keg has strived very hard  
25 to paint this as a conventional case, where an

1       established U.S. producer is facing an unexpected  
2       surge of competition through foreign suppliers,  
3       causing price declines and lost sales, that is not the  
4       case.

5                   American Keg is a newcomer to the market, a  
6       startup company which has 30 employees using high-  
7       cost, small-scale, hand-operated machinery. You will  
8       hear from our witnesses that th established foreign  
9       manufacturers, on the other hand, have longstanding  
10      operations and scale that dwarfs American Keg, and  
11      with modern automated machinery that can be used to  
12      produce kegs at a significantly lower cost and with  
13      well-established reputations for quality and  
14      reliability.

15                  And you will also hear American Keg knew all  
16      of this but chose a different strategy. American Keg  
17      chose to embrace its small-scale, high-cost production  
18      to leverage its unique made in the U.S.A. brand, to  
19      manufacture and sell a high-priced premium keg to any  
20      craft beers who were located close enough to their  
21      Pennsylvania facility and were willing to pay above-  
22      market prices for an American made keg.

23                  American Keg officials have openly and  
24      repeatedly acknowledged that under the best of  
25      circumstances, they would be able to sell these kegs

1 at a premium that was \$10 to \$15 over the current  
2 market price in order for these sales to be  
3 profitable. The company gambled that there would be  
4 a sufficient number of small craft brewers willing to  
5 make these payments, but how many craft beers actually  
6 care about buying kegs made in America?

7 As our witnesses will tell you, the rapid  
8 growth and prevalence of keg rentals and the use of  
9 plastic kegs as alternatives confirms that small craft  
10 brewers generally prefer not to tie up their limited  
11 capital buying specialty premium priced kegs. Most  
12 are looking, instead, for a reliable supply of quality  
13 kegs and related after-sales services, not a made in  
14 the U.S.A. label.

15 American Keg is now bringing import  
16 competition for its failure to meet its financial  
17 goals. But American Keg was telling a very different  
18 story to the public before it filed this case. Before  
19 filing this case, American Keg repeatedly pointed the  
20 finger at the Trump Administration's Section 232  
21 Tariffs. American Keg's CEO claimed on national  
22 television that the Section 232 duties on steel raised  
23 their material costs to a level that threatened to  
24 destroy their ability to sell kegs.

25 Subject imports have nothing to do with

1       these raw material tariffs. With this backdrop in  
2       mind, let's examine the Commission's standard injury  
3       factors. On volume, this is not by any stretch of the  
4       imagination a volume case. American Keg's volume  
5       indicators, including market share, production of  
6       shipments, shows strong, positive trends during the  
7       investigation period, particularly, the segment where  
8       it was singularly focused on small craft brewers.

9           Meanwhile, cumulative subject import volumes  
10      were declining since 2017, including by 33 percent in  
11      the interim period. This is also not a price case.  
12      There is no evidence of price depression or  
13      suppression. Claims of price depression are negated  
14      by the simple fact that domestic prices rose across  
15      the board during the investigation period. And as our  
16      economist will explain, key financial indicators  
17      traditionally considered by the Commission do not  
18      support a finding of price depression.

19           American Keg's lawyers have, nevertheless,  
20      seized upon the pricing comparison data to claim  
21      injurious underselling by subject imports. However,  
22      the pricing data show a persistent pattern of pricing  
23      differences, which is consistent with product  
24      differentiation, not price competition, particularly  
25      as there's also noticeable evidence of price erosion.

1       Indeed, the pricing comparison is also entirely  
2 predictable, given American Keg, again, by its own  
3 admission, has sold its products at a significant  
4 premium over market prices based on patriotic appeal.

5              On impact and causation of imports, our  
6 witnesses will again note that American Keg, by its  
7 own public admission, was fully "on plan" until the  
8 Section 232 Tariffs took effect in 2018.

9              Notwithstanding the shock of the 232 duties, American  
10 Keg expanded capacity, production, shipments and  
11 market share. Any downturn, therefore, was entirely  
12 on the cost side of the ledger and subject imports,  
13 again, cannot be blamed for rising steel costs. As a  
14 startup company, American Keg's financial performance  
15 was not good, but the key point is the company  
16 continued to improve its pricing and its financial  
17 operations performance, despite the challenges, as one  
18 would hope to be the case for a startup business.

19              Finally, the Commission should take into  
20 account the Section 301 Tariffs that are currently  
21 being imposed on imports and subject kegs from China.  
22 American Keg lobbied heavily for these tariffs to be  
23 imposed. The tariffs went into force in September  
24 2018, and have increased from 10 percent to 25 percent  
25 in May 2019. American Keg has already received a

1       strong and effective measure of tariff protection that  
2       it was looking for.

3                  With that, we will turn this over to our  
4       first industry witness.

5                  MR. HOFFMEISTER: Good afternoon. My name  
6       is Jon Hoffmeister, and I am currently vice president  
7       of packaging and procurement for Anheuser Busch North  
8       America. In this position, I am responsible for three  
9       primary functions: sourcing all packaging materials,  
10      including kegs, either directly or with our global  
11      procurement office in Switzerland; working with our  
12      company's integrative supply chain in developing and  
13      executing global sourcing strategies for aluminum can  
14      sheet and folding carton containers. I have worked  
15      for Anheuser Busch for 24 years, with previous roles  
16      in sales, marketing, business development, and  
17      finance.

18                  Anheuser Busch has operated in the United  
19       States for almost 160 years. We have more than 18,000  
20       employees at 121 facilities, all focused on making and  
21       distributing iconic American beers. Our family of  
22       independent Anheuser Busch distributors includes  
23       another 40,000 plus employees. We are proud of our  
24       company's contribution to the U.S. Economy, and I am  
25       grateful for the chance to appear before the

1       Commission and provide a U.S. purchaser's perspective  
2       on the market for kegs. In particular, today, I would  
3       like to explain our keg procurement process.

4                          Anheuser Busch purchases kegs on an annual  
5       basis. We do not buy kegs sporadically throughout the  
6       year. Instead, our purchases are typically  
7       concentrated just before the summer months when demand  
8       for beer is at its -- when demand for beer is at its  
9       peak. Our annual keg purchases are extensive. The  
10      central procurement office of our parent company  
11      negotiates for the procurement of kegs on a global  
12      basis.

13                         Suppliers must have both the total annual  
14       capacity to satisfy our global demand, and also  
15       sufficient line availability throughout the year to  
16       fill large individual orders from specific regional  
17       business units in a timely fashion. There are only a  
18       handful of keg producers with this kind of scale.  
19                         Suppliers must also be able to manufacture kegs to our  
20       demanding quality specifications. Durability is  
21       crucial, because new kegs float and circulate in use  
22       for years and sometimes decades.

23                         In terms of key purchasing factors for  
24       Anheuser Busch, a supplier's capacity and quality are  
25       far more important than the prices charged. If a

1 supplier does not have the capacity to cover our  
2 annual demand, we will not consider them. All of our  
3 suppliers have to undergo an extensive certification  
4 process. We review the potential suppliers'  
5 operations and we test trial kegs in a production run.  
6 So to put the point simply, keg producers that cannot  
7 meet our capacity, quality and timeliness requirements  
8 will never earn our business, no matter what price  
9 they offer.

10 Currently, there is no keg producer in the  
11 United States that meets our purchasing criteria. AKC  
12 is not certified to sell to Anheuser Busch and has  
13 never attempted to become certified as a supplier.  
14 This is presumably because AKC does not have the  
15 capacity to produce at the volumes or rate required to  
16 be one of our suppliers. Some of our procurement  
17 strategies for other products do rely on local  
18 suppliers. Corrugated boxes is an example. This,  
19 however, is not the case for kegs. It simply would  
20 not be practical or efficient for a large brewer, like  
21 us, to buy modest number of kegs from local producers  
22 in each market where we sell beer.

23 The logistical difficulties, and more  
24 importantly, the quality control challenges would be  
25 far too great. In the United States, as in most

1 markets where we sell beer, we rely on importing kegs  
2 from our handful of certified global suppliers. In  
3 our experience as a purchaser or kegs, AKC does not  
4 compete against our global keg suppliers in the U.S.  
5 market. And even if duties are imposed on kegs from  
6 Germany, Mexico and China, this situation will not  
7 change at all for Anheuser Busch.

8 There will be no viable domestic producer  
9 for our keg needs, and we will still have to rely on  
10 the same international suppliers. Thus, for Anheuser  
11 Busch and many other similar brewers in the United  
12 States, the only result of these duties will be  
13 increased cost.

14 For all of these reasons, we were surprised  
15 to see the petition in this case, and we hope the  
16 Commission will recognize that any difficulties faced  
17 by AKC are not the result of competition from kegs  
18 from our global suppliers.

19 MR. PARKER: Good afternoon, and thank you  
20 for the opportunity to testify today. My name is  
21 Terry Parker. I'm an advisor to the Thielmann  
22 Executive Committee and formerly managing director of  
23 Thielmann U.K. Thielmann is a global manufacturer of  
24 stainless steel containers, including refillable  
25 stainless steel kegs covered by this investigation. I

1 have worked for Thielmann for 12 years. While at  
2 Thielmann, I was responsible for the sales of beverage  
3 containers in the United Kingdom and Ireland.

4 Before that, I had a long career working in  
5 the beer and container industry, including over 20  
6 years for Carlsberg, and throughout their supply  
7 chain. More recently, I worked for Transtar  
8 (phonetic), a local leasing company of which MicroStar  
9 was a subsidiary of this company.

10 The Thielmann container business, which  
11 includes our keg business, has been in continuous  
12 operation since 1924. In the more than 90 years of  
13 our existence, we have grown to include six factories  
14 in the United States, Mexico, Spain, Chile, and the  
15 United Kingdom. Our portfolio includes more than  
16 stainless steel kegs. We also produce many other  
17 types of tailor-made industrial containers and special  
18 tank containers serving many other industries. The  
19 stainless steel tank production facility in San Luis  
20 Potosi, Mexico, in order to produce kegs economically,  
21 and on the scale of manufacturing lines like those of  
22 all of the other global keg producers are highly-  
23 automated and efficient.

24 Our Mexican market has historically been our  
25 large and dynamic market for us. Many of the world's

1       most famous brands, such as Corona and Heineken are  
2       produced in Mexico, which creates a steady demand for  
3       our kegs. The two largest beer companies in the  
4       world, Anheuser Busch and Heineken, are present in  
5       Mexico with more than 15 breweries.

6               Given our location and longstanding business  
7       relationships, our monthly sales in Latin America are  
8       also very important. Over the last few years, we have  
9       seen very strong growth and demand for our products in  
10      South America, including Brazil, Argentina, and Chile,  
11      and we expect to see our sales continue to grow at  
12      healthy rates. We are increasingly looking to China,  
13      Korea, and India, as countries where we see a very  
14      significant growth potential. We have been  
15      responsibly serving the U.S. market since the 1980s by  
16      building our reputation of both quality of our  
17      products and the level of our service, including the  
18      reliability of our supply and short lead times.

19               The U.S. market can be roughly divided into  
20      two industry market segments. The large purchaser  
21      segment consists of a relatively small unit of very  
22      major customers. The companies operating in this  
23      segment demand fleets of hundreds of thousands or even  
24      millions of kegs. These various purchasers of kegs  
25      have always been our principal customers. In fact,

1       only the largest keg producers, like Thielmann and a  
2       handful of other global companies, currently have the  
3       production capacity and dissolution capabilities to  
4       supply and service these types of large volume buyers.

5                 Now, we've never encountered American Keg in  
6       the U.S. market. My feeling there is that American  
7       Keg lacks the capacity necessary to sell into this  
8       large volume segment of the market.

9                 The other segment of the United States  
10      market consists of small, independent craft brewers  
11      producing American-made small qualities. Initially,  
12      the industry saw an explosion of craft brewers in  
13      America. However, the segment has several challenges.  
14      To be frank, it is not our principal or most  
15      attractive market segment.

16                 On volume, craft brewer customers have a  
17      very small demand. It is ordinarily not economical  
18      and, therefore, less attractive for a large scale keg  
19      producer to work to meet small volumes sales to  
20      hundreds of customers.

21                 Rental leasing companies also serve  
22      customers in this market segment. We estimate that  
23      over half of the U.S. craft breweries are choosing to  
24      rent kegs, rather than buy new kegs. In other cases,  
25      they are choosing to buy cheaper single-use plastic

1       kegs at perhaps 10 to 15 percent of the price of a  
2       stainless steel keg.

3                 Both of those options are attractive to  
4       small craft brewers because leasing ties up less money  
5       in the short term. Rental leasing companies also  
6       offer a range of specialized services to the small  
7       craft brewers, such as purchasing older kegs and then  
8       renting the same kegs back to the brewer. They also  
9       are redone and customized unwanted kegs and sold to  
10      the other brewers at a lower rate.

11               Attempting to serve the craft brewer market  
12      is also challenging due to logistics. For example,  
13      shipping small orders to small brewers around the  
14      country is more difficult and more expensive per unit  
15      than shipping large orders to Anheuser Busch or  
16      MicroStar.

17               Stainless steel kegs are engineered and  
18      among the products that should compete principally on  
19      the basis of quality, durability, availability,  
20      service, logistic services and brand. Customers,  
21      particularly the large ones, prefer to purchase kegs  
22      from companies they know and trust. Thank you.

23               MR. SYZDAK: Good afternoon, my name is  
24      Stephen Syzdak, and I'm the managing partner of NDL  
25      Keg, LLC. We're a small Michigan-based company that

1 has been an importer and reseller of kegs and cask  
2 produced in China throughout the period of  
3 investigation until recently.

4                 However, mainly as a result of the Section  
5 301 duties, we have halted the importation of  
6 containers in April of this year. The prospect of an  
7 indefinite continuation of these duties, which are now  
8 at 25 percent, makes it impossible for my company to  
9 earn a reasonable profit.

10               The prospect of additional anti-dumping and  
11 countervailing duties makes our distribution business  
12 untenable. Currently, we're in the process of closing  
13 our keg distribution business in the U.S.A, selling  
14 off our remaining inventory, and disposing of our  
15 warehouse properties. Most unfortunately, we've lost  
16 two employees on this news, and another five staff  
17 will be laid off once the stock is gone. It's been  
18 very difficult to understand the rationale of American  
19 Keg's petition, given their weak position in the  
20 market. One company in the United States with limited  
21 capacity does not make an industry.

22               With close to 7,000 craft breweries in the  
23 U.S.A., volumes are significant, and yet, American Keg  
24 only offers two production versions of stainless  
25 containers: one half-barrel and one six-barrel kegs.

1       For many years, they, themselves, were an importer of  
2       Chinese kegs from China major and Penglai Jinfu.  
3       Since purchasing the assets of Geemacher, LLC, in 2016  
4       in a distressed assets sale, American Keg has not  
5       developed any further production capabilities beyond  
6       what it purchased. Further, which is indisputable,  
7       Geemacher, LLC was sued by Penglai Jinfu for debts  
8       amounting to \$1.4 million. Despite winning a summary  
9       judgement, Penglai Jinfu was not able to collect on  
10      this debt. That's because Geemacher's secure lender  
11      negotiated a fire sale of the assets to American Keg,  
12      who ironically pledged to purchase kegs from Jinfu on  
13      a going forward basis at a premium in an attempt to  
14      make good on its debt to Jinfu.

15           No purchases ever materialized, although we  
16          understand that American Keg has purchased additional  
17          Chinese Kegs to add to its inventory. NDL offers more  
18          than 10 styles of containers, and within that, 16  
19          variants, such as stacking and non-stacking kegs.  
20          Given the market space within the U.S., we almost  
21          never hear that we're competing with AKC when we  
22          market our products to small and independent craft  
23          brewers.

24           One reason for this is that we can supply  
25          keg sizes that American Keg does not make, such as a

1       10-liter, quarter barrel, 9-gallon cask, 4.5 gallon  
2       cask, 2-liter growlers, and other keg styles within  
3       that range, such as European DIN and Euro.

4           When you make your living selling kegs to  
5       small craft breweries, you accept that your profit  
6       margins are going to be small, because these brewers  
7       operate on thin margins themselves. They have very  
8       little ability to absorb significant price increases,  
9       even though sales to craft brewers are predicted to  
10      increase in the aggregate, the fact is that each  
11      brewer purchases a relatively small amount of kegs at  
12      any one time. And they may go years without buying  
13      any kegs, since typically, kegs can last more than 10  
14      years.

15           In fact, the only reason a brewer needs  
16      additional kegs is to accommodate an increase in  
17      production, distribution and loss. In this  
18      environment, sales and marketing costs are going to be  
19      high, since your goal is to find craft brewers who are  
20      ready to buy and volumes vary. In the top 10 list of  
21      brewers that we identified in our questionnaire, the  
22      average order for the No. 9 and 10 brewers was just 86  
23      kegs.

24           It's hard to make significant money when you  
25      have to search hard to sell so few kegs. Large beer

1       orders are difficult to come by and usually capacity,  
2       delivery time and service are major factors for  
3       winning a bid. Small independent distributors, such  
4       as NDL, are not equipped to make these sales, and  
5       Given American Keg's size, location, range of  
6       production and output, neither are they equipped to  
7       support larger projects.

8                   I'm convinced that American Keg filed its  
9       petition because it was hurt by the 25 percent duty on  
10      imported steel. So when the steel duties hit American  
11      Keg's finances, I'm sure it was quite painful. It was  
12      just as painful when the Section 301 duties hit our  
13      own finances, but by seeking relief from the ITC from  
14      imports, by alleging unfair trade, American Keg is  
15      trying to avoid the consequences of its own decision  
16      to enter a very difficult and complicated market.

17                  Granting them relief in the circumstance  
18      would damage the market as a whole. That concludes my  
19      testimony.

20                  MR. KEYSER: Good afternoon, I am Brian  
21      Keyser, the President of G4 Kegs. We believe G4 is  
22      the largest independent keg distributor in the  
23      country. Our office is located just outside of  
24      Portland, Oregon, and we maintain warehouses in  
25      Virginia Beach, Oklahoma City, and St. Petersburg.

1 Our warehouses allow us to quickly serve our customers  
2 throughout the country. G4's mission is to serve  
3 predominantly craft brewers and other beverage makers.  
4 Our company was established back in 2012, just as  
5 craft brewing began to take off.

6 At that time, many small brewers had  
7 difficulty buying kegs because they were not big  
8 enough to purchase directly from manufacturers. G4  
9 served a need because we were willing to sell smaller  
10 volumes. Small craft brewers are typically not the  
11 best planners, so being able to deliver quickly from  
12 our inventory is a major comparative advantage.

13 Our clients include a wide variety of craft  
14 beverage makers, from small nano breweries up to  
15 companies producing nearly 100,000 barrels per year.  
16 Due to our team's hard work, our business has expanded  
17 significantly. We have invested in more equipment;  
18 moved to a warehouse in Tualatin, Oregon; and we have  
19 developed relationships with keg producers who support  
20 our mission with quality keg products. We've also  
21 spent a significant sum on marketing activities, as  
22 well as on branding, a new website, and advertising.

23 These types of expenses are essential to  
24 reach small craft beverage companies around the  
25 country. The keg producers we work with share our

1 commitment to the craft industry in the U.S. We vet  
2 all of our business partners on their dedication to  
3 service and quality.

4 Over the years, our Chinese supplier, Ningbo  
5 Major, has continued to hit high marks across all of  
6 our requirements. We offer a 30-year warranty, which  
7 is an industry leader. We offer a diversified product  
8 line that also includes kegs from European suppliers.  
9 Our products also include kegs of various sizes,  
10 besides the two sizes that American Keg produces.

11 Our customers know the keg sizes they need,  
12 and different keg sizes serve different purposes for  
13 each beverage maker. We did not include our  
14 competition with American Keg. They are just not a  
15 significant player in the industry. When G4 competes  
16 with another distributor, we make it a priority to  
17 fill orders based on customer service, product  
18 quality, and product availability. We have kept  
19 prices for our customers nearly constant between 2016  
20 and 2019.

21 Making sure price is predictable is  
22 especially important for smaller craft beverage  
23 makers, which not always have the resources to plan  
24 around variable costs. G4 kegs offer volume-based  
25 discounts pricing to customers, which is typical in

1       the market. For example, we offer a few dollars off  
2       per keg for customers who order over three pallets of  
3       kegs at a time. Our average shipment to our top 10  
4       customers exceeded 2,500 kegs in 2018.

5                 As you know, the Section 301 tariffs imposed  
6       a 10 percent duty on our products last September,  
7       which increased to 25 percent this spring. We could  
8       not absorb a 25 percent increase to our cost and have  
9       had to pass on some of the tariff to our clients. Our  
10      price increase is impacting our sales, despite that  
11      summer is typically our best season. Craft brewers  
12      will not be able to purchase as many kegs as they have  
13      in the past as a result of our price increase, which  
14      is substantial. That means we may soon suffer cutbacks  
15      in labor hours and warehouse space.

16               In conclusion, we can only hope that the  
17      Section 301 tariffs do not undercut all of our team's  
18      efforts. Additional tariffs and duties could  
19      seriously injure not only G4 kegs, but also the entire  
20      craft beverage industry, impacting thousands of small  
21      businesses in this country. Thank you.

22               MR. BRAND: Good afternoon, Commissioner  
23      Kearns and staff. I'm Alexander Brand, CEO of Blefa  
24      GmbH and president of Blefa Beverage Systems. I've  
25      been in my current position for 10 years now and have

1       been working for Blefa for 15 years, starting as a  
2       sales selector in 2004. I'm very proud of our company  
3       and its people. We've worked hard together over the  
4       past years to build a state-of-the art tech production  
5       facility.

6                  The production plant is in Kreutzal,  
7       Germany, not too far from Frankfurt or Cologne. Our  
8       plants currently employ 156 people, including those in  
9       the plant and those in the front office. On average,  
10      we are capable of producing 9.5 million kegs per year  
11      and have been utilizing that capacity at close to 100  
12      percent in the previous years. We can make many sizes  
13      of kegs, including full stainless steel kegs, kegs  
14      with different chine (phonetic) materials or even  
15      completely covered with polyurethane foam to make it  
16      look like a wooden barrel.

17                 We can individualize these kegs in a  
18      variety of ways to meet our customer's needs,  
19      including embossing, silk screening, RFID and specific  
20      laser markings. Germany, as our home market, and  
21      other European countries are important markets to us,  
22      but we also sell to sites in Central America, Africa,  
23      Australia and the emerging Asian markets.

24                 We serve international corporations around  
25      the world that purchase mainly annually through their

1 head offices for all of their breweries around the  
2 globe. We first entered into the U.S. market in 1999,  
3 many, many years before AKC was even an idea. At that  
4 time, there were just the local manufacturers,  
5 Spartanburg Industries and Thielmann from Spain, as  
6 well as the supplies in the U.S.

7 Spartanburg Industries sold their assets for  
8 keg production to us in 2006 because they wanted to  
9 focus on the automotive segment. Blefa established a  
10 foothold in the United States 20 years ago by the  
11 certification of Anheuser Busch, Coors and Microsoft.  
12 We then grew our presence in the U.S. market by  
13 offering very specific services that were unique at  
14 that time, such as keeping stock in the United States  
15 and being able to customize those kegs in small  
16 quantities.

17 We are also committed to servicing used  
18 kegs, as it was important to us to maintain the  
19 ability and to protect the value of the assets of our  
20 customers. These capabilities, in combination with  
21 the highest product quality in the industry, were also  
22 the starting point of our long-lasting partnership  
23 with keg lenders and approving companies who formed  
24 the backbone of our business today, both for new keg  
25 sales, as well as for servicing of used kegs.

1           Today, I'm proud to say that we employ, on  
2 average, around 60 people in the United States; about  
3 40 in our facility in La Vergne, Tennessee and about  
4 20 in our facility in Vancouver, Washington. While we  
5 do sell to small and craft -- to small and craft  
6 breweries, our target always has been to make high  
7 volume sales to the large and mid-sized breweries and  
8 to the keg leasing and rental companies.

9           We can serve these larger customers well by  
10 providing them timely delivery of large volumes of all  
11 sizes of kegs essentially made to order for their  
12 needs. My company takes our presence in the U.S.  
13 market as one of the largest, if not the largest  
14 supplier, very seriously. We understand that due to  
15 the methodologies employed by the U.S. Department of  
16 Commerce, we have been found to have made some sales  
17 at less than -- a very small amount of what is thought  
18 to be fair value.

19           Believe me that this was never our intent,  
20 as we consider ourselves to be the quality and price  
21 leader in the United States. Let me say that we have  
22 never intended any ill will to AKC. In fact, we  
23 really are not being impacted by their entry into the  
24 U.S. market, as we rarely, if ever, directly compete  
25 with them for customers. Because we've been producing

1       kegs since 1986 -- '68, which is over 50 years of  
2       experience, we can provide the most consistent quality  
3       in the industry, not just a few good test kegs  
4       (phonetic), but also kegs -- but all kegs that we  
5       make.

6                  We have four well-established quality  
7       control systems that ensure that every keg leaving the  
8       factory has passed all checkpoints and deserves the  
9       permanent laser marking that carries our 30-year  
10      warranty.

11                 Now, I will turn over the microphone to  
12      Dinah, who will further explain our operations in the  
13      United States.

14                 MS. QUIST: Good afternoon. My name is  
15      Dinah Quist. I am the controller for Blefa Kegs, Inc.  
16      I have been working for Blefa Kegs since September  
17      2013 and prior to that, I worked several years for  
18      Frankfurt Service Systems. I handle the financial  
19      data and various other daily operations of our two keg  
20      locations in the United States. I work out of our  
21      main location in La Vergne, Tennessee, but I'm also  
22      responsible for our second location in Vancouver,  
23      Washington that was opened in January 2016.

24                 Blefa is unique in that at both of our U.S.  
25      locations, we maintain equipment and personnel for

1 servicing kegs. Our keg servicing is one of our  
2 strengths and one of the key benefits that we provide,  
3 both to customers who purchase our kegs and to anyone  
4 who has kegs that need servicing, regardless of who  
5 made the kegs or where they were purchased. Our  
6 servicing ranges from simple valve maintenance to  
7 retrimming of handles. We can completely overhaul an  
8 old keg, totally cleaning it out.

9 You would be surprised what a peanut butter  
10 beer can do to the inside of a keg. We also can get  
11 any dents out and even repair any leaky areas and  
12 repair or replace kegs when necessary. We believe  
13 that when our servicing is complete, that the keg is  
14 like new again. In addition to keg servicing, our  
15 U.S. locations handle keg sales made by our sister  
16 company, Blefa GmbH in Germany. We do consignment  
17 sales, we do call off stock and we do quick keg sales.  
18 For consignment sales, we purchase kegs from Blefa  
19 Germany, which are drop-shipped to our customer  
20 location.

21 The customer is invoiced as the kegs are  
22 drawn down. For call off stock, we purchase large  
23 qualities of embossed kegs from Blefa Germany for  
24 future use of our major customers. We can silk-screen  
25 design these kegs according to customer specification.

1       For big kegs, we purchase plain blank kegs from Blefa  
2       Germany. We emboss and silk screen design these kegs  
3       by customer specification. At present, we do have a  
4       significant build up of kegs in inventory, but these  
5       kegs were needed in order to comply with contractual  
6       demands and -- and suspected needs of our large keg  
7       leasing and rental company customers.

8                     Justin Willenbrink can better explain our  
9       sales and customers. Justin?

10          MR. WILLENBRINK: Good afternoon. My name  
11       is Justin Willenbrink, and I'm the sales director for  
12       Blefa Kegs in North America. You've heard today from  
13       my colleagues about Blefa's production of Kegs in  
14       Germany and the further customization of these kegs in  
15       the United States. The majority of our keg sales in  
16       the United States are to large customers, either to  
17       larger breweries or keg leasing and rental companies.  
18       We sell tens of thousands or more kegs a year to these  
19       customers, after passing very strict and involved  
20       qualification testing prior to the initial sale.

21                     If we are to continue doing so, especially  
22       as we see the keg leasing and rental market expand,  
23       the small breweries are choosing this option over  
24       investing their capital in the purchasing of new kegs  
25       themselves. We provide almost all possible kegs

1 around the world, including many varieties outside of  
2 the one-half and one-sixth barrel dimensions. Many of  
3 the customers prefer this because we can provide this  
4 full range of keg sizes that they can't purchase from  
5 the U.S. keg supplier.

6 We've seen a shift recently to greater  
7 purchases of smaller kegs, such as six-barrel and  
8 quarter barrel, as restaurants and bars prefer to  
9 offer a greater variety of beers to give customers  
10 choices and to be able to change out unpopular beers  
11 without absorbing the cost of the larger keg. This  
12 point is just one of the many reasons why kegs are not  
13 sold on the basis of price. When I sell to customers,  
14 I'm offering them a high quality keg at a fair price  
15 from our German company that has been making kegs  
16 since 1968.

17 Having been established for over 50 years,  
18 we can stand behind the 30-year warranty you provide,  
19 which distinguishes us from other suppliers offering a  
20 much shorter warranty. Our warranty is a part of  
21 our price but requires that the customer pay to have  
22 their keg serviced by us every seven years to maintain  
23 its validity. The Blefa brand is well-known and well-  
24 respected due to our quality. And in this industry,  
25 keg service is just as important. Our customers have

1 piece of mind knowing that when they do need keg  
2 service on their kegs, they have a partner suitable to  
3 provide every possible service needed to maintain a  
4 health keg flow.

5 Keeping a well-maintained keg flow can be  
6 just as good as buying new kegs in some instances. As  
7 I stated the first time I was in this room at the  
8 preliminary staff conference, our full service  
9 capabilities tie into our sales philosophy that we  
10 want to grow with our customers and not just sell them  
11 kegs but sell them solutions. Being a provider that  
12 can do all of this is invaluable. We work everyday to  
13 make sure our customers are aware that Blefa can  
14 consistently provide high-quality kegs that exceed  
15 industry standards and that Blefa will be here as a  
16 reliable partner, both now and in the future.

17 I know that our customers value us and not  
18 just to look to buy low-price kegs offered to them.

19 MR. SAPYTA: My name is Chris Sapyta. I'm  
20 the CEO of Keg Logistics, LLC. Thank you for allowing  
21 me to be here today to give you the basic details  
22 about keg management, leasing and the rental  
23 businesses in the U.S. beer industry. I know all of  
24 these concepts very well. I was a founder of  
25 Microstar Keg Management in September of 1996. I

1       served as its president until January of 2005.

2                   Microstar is currently the largest keg  
3       management company -- keg pooling manager in the  
4       world, with over 3.5 million kegs in play. I am now  
5       the CEO of Keg Logistics, a company I started in  
6       November of 2011. Today, we have over 2,100 customers  
7       in the U.S.; another 350 in the U.K., with over 1.3  
8       million kegs in play. I'm going to start with  
9       discussing keg management or keg pooling. This is the  
10      model I established in 1996 at Microstar. The key to  
11      this model is that the brewers do not own the kegs;  
12      they will never own the kegs direct, the management  
13      company does.

14                  The keg management company owns the kegs;  
15       takes full responsibility of the purchase and the  
16       maintenance and absorbs the loss of the kegs. The  
17       brewer or customer simply orders the kegs needed each  
18       month to fill to support their sales; then they fill,  
19       ship and forget. The keg management company then  
20       takes it from there. That is the pooling model that I  
21       pioneered with Microstar from 1996 until I left in  
22       2005.

23                  Microstar continues to be the leader in  
24       volume, providing this model today, just like it was  
25       designed in 1996. While I was absent from the beer

1 and keg industry for about six years, the U.S. beer  
2 industry had changed dramatically. Small local  
3 brewers were opening up at the rate of one per day in  
4 the U.S., and the need for a different solution to keg  
5 ownership was now apparent to me. The pooling model  
6 did not apply, in most cases, to the new U.S. brewing  
7 industry, the craft industry.

8           This new breed of brewer was focused on  
9 producing and selling their beer locally with very  
10 little interest in the needs of outsourcing, logistics  
11 and management. This need or opportunity was a  
12 catalyst for me starting Keg Logistics in late 2011.  
13 Now, let me explain how Keg Logistics operates. While  
14 we offer today the same pooling services as Microstar,  
15 we also offer other options for brewers, primarily the  
16 rent-to-own or straight rental model.

17           We counsel and let the brewer determine  
18 which solution best fits their immediate need. We  
19 give our brewers the option to obtain many sizes of  
20 kegs and casks. These include, in the U.S., one-half,  
21 one-sixth, quarter barrel kegs, plus 50-liter, 30-  
22 liters and 9-gallon casks. The brewer has the option  
23 to finance the keg over time, with the option to buy  
24 or in a straight rental, they pay a lower rate per  
25 month but do not have the option to own or buy the keg

1 out of the lease.

2           Whether it is by leasing or by renting or on  
3 a per use model, our customers would rather work with  
4 us than purchasing kegs direct. Keg Logistics' main  
5 role is to provide the capital to buy the kegs in  
6 large quantities, keep kegs in stock in the U.S. so  
7 that any one of our customers can add kegs to their  
8 fleet on very short notice. And on short notice, I  
9 mean in many cases with less than seven business days  
10 of notice, and provide the logistic support where  
11 needed.

12           The alternative for our customer is to buy  
13 the kegs outright. Purchasing any volume of new kegs  
14 can be expensive, not just for a new craft brewing  
15 startup, but even for an established brewer. By  
16 leasing and renting, brewers can avoid this up front  
17 cost and still get the highest quality keg on the  
18 market at an affordable rate. This gives them an  
19 operational advantage over a brewer who may be buying  
20 lesser quality kegs because of their limited access to  
21 capital.

22           Aside from the financial aspect, the other  
23 reason for leasing and renting from Keg Logistics is  
24 that we provide, in our legal contract, a warrantee of  
25 every keg for performance. We -- also, we are

1 required to pay for the kegs to be professionally  
2 serviced by Blefa after three years of use. This  
3 service guarantee allows us to ensure that the kegs  
4 that we provide to our customer will perform without  
5 fail.

6 If there is failure, Keg Logistics has to  
7 pay to replace the keg, as well as the cost or value  
8 of any product loss because of keg failure. This  
9 could become very expensive, so it is Keg Logistics  
10 number one goal to provide only the best keg in the  
11 market. We simply are not willing to take a chance of  
12 not providing the best keg. Every keg that we have  
13 serviced is then under a 30-year warranty from Blefa.  
14 We could not get this comfort level from any other  
15 source at the moment. I'm here today with Blefa  
16 because we do work closely with them to meet the  
17 personal needs of my company's customers quickly and  
18 efficiently. We can direct Blefa to customize a keg  
19 to our customer's specific request, be it embossing,  
20 silk screening or other labeling.

21 We also are able to offer them Blefa's  
22 highest quality, well-made kegs at a price they can  
23 afford, with the servicing from us that they desire.  
24 We can do this because of the very large volume we  
25 purchase from Blefa and because Blefa maintains that

1 stock we need for us at all times at their facilities.  
2 We have seen the future for the U.S. keg market in the  
3 growing reliance on leasing, renting and pay-per-fill.

4 We expect that our company will continue to  
5 grow and our 2,100 small business owners will continue  
6 to rely on our speed of service and the ability to  
7 deliver kegs just in time. Keg Logistics and all of  
8 our customer base do not want unwarranted anti-dumping  
9 duties imposed on Blefa now or any time in the future.

10 MR. DORRIS: I am Greg Dorris from the law  
11 firm of Pepper Hamilton, representing Blefa. You  
12 already have heard considerable testimony here today  
13 about material injury and threatened material injury.  
14 But Blefa has a very different legal approach than the  
15 other parties in this investigation. As detailed in  
16 its prehearing brief, Blefa contains that the domestic  
17 industry here is not established and that its  
18 establishment is not materially retarded by the usage  
19 of imports from Germany. To Blefa, this threshold  
20 question is not even that close a call. Please keep  
21 in mind that it is not a subjective analysis of  
22 whether AKC is committed to becoming established, but  
23 an objective analysis of whether it is established  
24 based on the criteria traditionally examined by the  
25 Commission.

1               When carefully examined, all of the  
2 historical criteria favor a finding that the domestic  
3 industry is not established. AKC is still a startup  
4 company and only has been in operation since mid-2016.  
5 Because AKC has elected from the start to make only  
6 two sizes of kegs, which again, it produces only in  
7 small quantities, it cannot serve the majority of the  
8 industry. As a startup, it only has a tiny part of  
9 the U.S. keg market and lacks the capacity to achieve  
10 much more any time soon.

11               AKC still has not reached a reasonable  
12 financial breakeven point, a fact it admitted this  
13 morning and recognizes in Page 92 of its prehearing  
14 brief. And it admits publically that it experienced  
15 loses throughout the POI and continues to operate in a  
16 loss position.

17               AKC does not have the expertise or support  
18 of any affiliated companies to help it change its loss  
19 position. When the domestic industry is not  
20 established, the statute does not provide for  
21 cumulation in determining whether its establishment is  
22 materially retarded by subject imports. It is clear  
23 from careful examination of the record evidence that  
24 the German imports alone have not in any material way  
25 retarded the establishment of the domestic industry.

1       Indeed, there is no support for the conclusion of  
2       AKC's performance would've been better in the absence  
3       of the subject imports from Germany.

4                  The imports from Germany do not display  
5       volume or price trends that could have prevented AKC  
6       from achieving its modest goals. Simply put, the  
7       establishment of the domestic issue was not materially  
8       retarded by imports from Germany. Should the  
9       Commission not agree with Blefa, however, despite the  
10      overwhelming evidence, and find instead that the  
11      domestic industry is established, Jim Dougan will now  
12      explain why it is not materially injured by the  
13      subject imports frm China, Mexico and Germany, and  
14      certainly not threatened of material injury by subject  
15      imports from Germany.

16                  MR. DOUGAN: Good afternoon, I'm Jim Dougan  
17       from ECS. I'd like to begin by discussing some  
18       important conditions of competition that should inform  
19       the Commission's analysis. First, the domestic  
20       industry is, as you've heard, at best, in a startup  
21       phase, if it's even established at all. And AKC has  
22       only been producing kegs since May of 2016 when it  
23       purchased the assets of Geemacher. In comparison, for  
24       example, Blefa GmbH has continuously produced kegs  
25       for over 50 years.

1                   The Commission recognized this in its  
2 preliminary determination, and you can see the quote  
3 here on Slide 1 -- several quotes, I should say. And  
4 even though the Commission analyzes a well-established  
5 domestic industry that claims to have been injured by  
6 new entrance from subject countries, the reverse is  
7 true in this investigation. It is the domestic  
8 industry that is the new entrant.

9                   Second, the domestic industry has very  
10 limited ability to serve the U.S. market. This arises  
11 from three factors. Its small capacity, which limits  
12 the customer base to which it can sell. Its lack of  
13 certification or qualification with large brewers,  
14 distributors and leasing companies and its limited  
15 product range, which is one-half and one-sixth barrel  
16 kegs only.

17                  Slides 3 to 7 provide some additional  
18 supporting information that we can talk about, but  
19 let's skip those for now. Third, price is not the  
20 driving factor for purchases of kegs in the U.S.  
21 market. As you can see here on Slide 8, price was  
22 ranked 8th among factors that purchasers considered to  
23 be very important. And then 15 of 23 purchasers said  
24 that quality is the first factor used in their  
25 purchasing decisions, while only two purchasers cited

1       price or cost. Most strikingly, 18 of 23 purchasers  
2       either never or only sometimes purchased the lowest  
3       price product.

4                  This statistic is rare, if not unique, in my  
5       experience with the ITC. Fourth, domestically  
6       produced kegs and subject imports are not fully  
7       interchangeable. The Commission recognized this in  
8       the staff report, as you can see on Slide 10. Fifth,  
9       the Section 232 and Section 301 tariffs have had an  
10      impact on the U.S. marketplace.

11                 The 232 tariffs have led to increases in the  
12       price of stainless steel, which is, of course, AKC's  
13       primary raw material, and these were unanticipated at  
14       the time it entered the market in 2016. The Section  
15       301 tariffs have also affected the U.S. market by  
16       causing a sharp decline in the value of imports from  
17       China, including those by AKC itself.

18                 Sixth, and final of the demand conditions,  
19       apparent consumption for kegs fluctuated over the POI,  
20       increasing from 2016 to 2017 and then declining in  
21       2018 and between the interim periods. In their  
22       prehearing brief, Petitioners discussed how the small  
23       craft breweries are becoming an increasingly important  
24       source for demand for refillable stainless steel kegs.  
25       Notwithstanding their presentation, the apparent

1       consumption data show that the small brewery channel  
2       has fallen as a share of consumption over the POI. As  
3       you can see on the chart, its share has been replaced  
4       almost exactly by the keg leasing and rental channel.

5                  You've heard the industry witnesses that  
6       leasing kegs rather than purchasing them outright is  
7       an attractive option for smaller breweries for a  
8       number of reasons. This shift in the demand  
9       landscape, in addition to the overall decline was not  
10      fully anticipated as AKC developed its business model  
11      in 2016. Moreover, the leasing and rental companies  
12      purchase on a scale that AKC cannot meet, and for this  
13      reason, AKC cannot compete for their business.

14                 Moving on to volume. Notwithstanding the  
15      weak demand, AKC's volume indicators improved over the  
16      POI. Most positive was the growth in AKC's market  
17      share. Slide 15 shows how AKC's share of the overall  
18      market grew, but its share -- its share grew even more  
19      significantly in segments of the market that it was  
20      actually equipt to address. That is sales of one-half  
21      and one-sixth barrel kegs to the small brewery  
22      segment.

23                 It doesn't follow that AKC would've been  
24      able to increase its shipments by even more absent any  
25      effect of subject imports. As discussed in our

1 confidential prehearing brief, the reported volume of  
2 loss sales is significantly overstated.

3                 Turning to price effects. There is no  
4 evidence of price depression during the POI. AKC's  
5 shipment interviews and its pricing data all show  
6 increases over the POI. And only one of 23 responding  
7 purchasers indicated that AKC had lowered its prices  
8 to compete with subject imports. And even that  
9 purchaser had only a general impression, rather than  
10 any hard number. There was no price suppression  
11 during the POI.

12                 In its prehearing brief, petitioner states  
13 that, "The record in the proceeding establishes that  
14 the domestic industry was unable to raise its prices  
15 commensurate with the increase in its production  
16 costs." But this is not true, AKC's cost-to-net sales  
17 ratio improved dramatically over the POI and was  
18 steady, even between 2017 and 2018 when the Section  
19 232 tariffs were imposed. This ratio improved again  
20 between the interim periods, as AKC's prices increased  
21 in nearly every quarter from the middle of 2017, even  
22 though stainless steel prices peaked in mid-2018 and  
23 then declined thereafter.

24                 The pricing data do not reflect underselling  
25 as such, but rather the premium charged for domestic

1       kegs, varying levels of volume discounts and  
2       perceptions of quality. At the staff conference, Mr.  
3       Bentley testified that American made kegs should be  
4       able to command a premium of \$10 to \$15 per keg and  
5       they priced their kegs accordingly at the outset.  
6       Contrary to statements from Petitioner's counsel this  
7       morning, charging a premium is explicitly part of  
8       AKC's business strategy, not only from their own  
9       public statements but from the projections provided  
10      with the business plan.

11           AKC charged the premium for its domestic  
12      related kegs over the kegs that it imported from  
13      China. Now if the pricing data are adjusted to  
14      reflect this premium, it eliminates all of the  
15      underselling from Germany and nearly all of the  
16      underselling from Mexico. And while some underselling  
17      from Mexico and China remains, this can be explained  
18      by two other factors. First, since the pricing data  
19      do not collect pricing on the basis of channel, there  
20      are volume discounts essentially baked into the data.  
21      They reflect the volume discounts of importers'  
22      shipments to large customers, while AKC's prices would  
23      basically only reflect small orders to small  
24      breweries.

25           Second, at least some purchasers perceive

1 there to be quality issues with kegs from China. This  
2 means that at least some purchasers would not be  
3 willing to pay the same prices as they would for U.S.,  
4 German or Mexican kegs. Thus, we submit that because  
5 of all of these factors, the underselling observed in  
6 the data is not significant.

7 Now turning to impact. As summarized in  
8 Slide 29, AKC's performance indicators all increased  
9 from 2016 to 2018 and between the interim periods,  
10 with the exception of U.S. shipment volume that  
11 declined modestly between the interim periods  
12 reflecting a decrease in demand. AKC's employment  
13 also generally increased over the POI, and while AKC  
14 unfortunately experienced some layoffs in 2018 that it  
15 now blames on subject imports, at the time of the  
16 layoffs, AKC publically attributed them to the  
17 imposition of the Section 232 tariffs. All of these  
18 improvements occurred, despite the fact that subject  
19 imports held a dominant and increasing market share  
20 from 2016 to 2018.

21 Although, that share declined somewhat in  
22 entering 2019 to approximately its 2016 level.  
23 Petitioner's claim to have been injured by subject  
24 imports because they've been unable to achieve the  
25 improvements that they had projected when entering the

1 market in mid-2016. At the staff conference in  
2 October 23018, Mr. Bentley testified that, "I'd just  
3 like to reiterate that we had a plan. Until the last  
4 few months, we were on that plan." What happened in  
5 the last few months before October 2018? That would  
6 be the Section 232 tariffs. This is echoed by a  
7 similar statement formerly appearing but since removed  
8 on AKC's website under it's FAQs, where they said that  
9 they planned on increasing production to achieve  
10 profitability and that they were making great progress  
11 on this until the fourth quarter of 2017 when their  
12 domestic sale producers started increasing their  
13 prices because of these new tariffs.

14 It is clear that the Section 232 tariffs  
15 were the key to implementing AKC's fortunes. It was  
16 also adversely affected by another market factor  
17 that's discussed in Blefa's confidential brief at 61  
18 to 63. But notwithstanding these difficulties, AKC's  
19 financial performance, given the level of output that  
20 it was actually able to achieve, was ahead of  
21 projections, the relevant data presented at  
22 Confidential Slide 23 and discussed further in our  
23 prehearing brief. Thus, even by its own projects,  
24 AKC's current condition really reflects the normal  
25 startup condition of the company entering a difficult

1 market.

2 AKC did would not have performed  
3 significantly better absent any effect of subject  
4 imports. The U.S. industries petition the Commission  
5 for trade relief typically present one of two  
6 scenarios that allegedly demonstrate injury by reason  
7 of subject imports. One, that they had to cut prices  
8 to compete with lower priced imports in an attempt to  
9 maintain the market share. Or, two, that they  
10 maintained their prices to preserve their profit  
11 margins, but by doing so lost market share. Neither  
12 scenario applies here. AKC both raised its prices and  
13 gained market share over the POI. And at the same  
14 time, it reduced its operating losses as a startup.

15 The fact that AKC did not meet its  
16 projections was not because of subject imports but  
17 because it overestimated the portion of the market  
18 that was willing to pay a premium to a producer with  
19 limited production capabilities and no track record in  
20 the marketplace, especially as small breweries were  
21 increasingly shifting to the renting model.

22 It's not entirely unrealistic to think that  
23 some customers would be willing to pay premium prices  
24 for kegs. Blefa charges prices that are generally  
25 higher than those of imports from China and Mexico and

1       it ships significant volumes, but its ability to  
2       charge higher prices is predicated on the long track  
3       record of the highest quality and service levels. AKC  
4       is a startup company with only a few years in the  
5       market and no prior manufacturing experience.

6               Many purchasers weren't even aware that it  
7       existed and others thought of it primarily as an  
8       importer from China. So while there were demonstrably  
9       a growing number of customers that were willing to  
10      purchase AKC's kegs at a premium, there weren't as  
11      many as they had projected. This is not the fault of  
12      subject imports. And AKC was well-aware of subject  
13      imports dominant position in the marketplace and of  
14      import pricing as well, considering that they,  
15      themselves, imported significant qualities from China.

16               AKC claims in its brief that there was a  
17      surge in imports in 2017 which, "disrupted the  
18      market," and "upended its plans." But this is not  
19      supported by the record. While there was an increase  
20      in subject import volume from 2016 to 2017, subject  
21      market share actually fell. It's not clear how this  
22      could've disrupted the market, given the dominant  
23      share already held by subject imports. The statement  
24      presented in the brief is not even supported by their  
25      own prior statements where they state that they are

1 making great progress until the 4th quarter of 2017  
2 when their domestic suppliers began to raise their  
3 prices because of the tariffs.

4 It's also telling that AKC's response to  
5 what it perceived as increased import competition in  
6 2017 was to raise its prices further, above and beyond  
7 the premium that it was trying to command when it  
8 entered the market. Again, having been in independent  
9 operation for only a year and holding just a tiny  
10 fraction of the marketplace, it isn't surprising that  
11 they were unable to push these increases through to  
12 the market more broadly. Nevertheless, their cost to  
13 sales ratio held steady from 2017 to 2018. Their  
14 operating margin improved, and they gained market  
15 share. That their production and profitability did  
16 not improve by even more was not attributed to subject  
17 imports.

18 Turning now to threat. Blefa submits that  
19 the Commission should exercise its discretion to de-  
20 cumulate Germany for purposes of its threat analysis.  
21 As discussed by the witnesses from Blefa, it has a  
22 unique position and approach in the U.S. marketplace,  
23 characterized by high-quality and service levels and  
24 what is regarded as purchasers as price leadership at  
25 the high end of the market. And unlike China, it is

1       not subject to the 301 tariffs. Imports from Germany  
2       do not pose a threat to the domestic industry.

3                  As shown in Slide 25, the volume and market  
4       share of imports from Germany had declined over the  
5       POI, and not only has the overall volume declined, but  
6       as shown in Slide 26, the portion of imports from  
7       Germany that have arguably the greatest competitive  
8       overlap with AKC have been declining as well. That  
9       is, the share of imports from Germany shipped to the  
10      small brewery channels declined, and the share of  
11      imports from Germany in the one-half and one-sixth  
12      sizes also declined. Prices of these imports were  
13      high and steady, and capacity utilization in Germany  
14      is very high.

15                  For all of the foregoing reasons, the  
16      Commission should make a negative threat determination  
17      with respect to Germany. And I'll make one more  
18      observation in the short time that I have left. There  
19      was some back-and-forth this morning about the  
20      premium, what it means, and I'm sure there'll be  
21      questions about that this afternoon, but when  
22      analyzing Petitioner's claims that the price of  
23      subject imports took them by surprise and undermined  
24      their plans, the Commission should keep in mind two  
25      statements made by this morning's panel. One, that

1       the market price when they entered -- when they formed  
2       their business plan was adequate, and number two, that  
3       now subject imports are fairly traded.

4                   So if we invite the Commission to compare --  
5       I invite the Commission to compare the average year of  
6       values of subject and non-subject imports in Table C1  
7       of the prehearing report. And so if the non-subject  
8       imports are fairly traded, how does AKC's price -- how  
9       do AKC's prices represent anything other than a  
10      premium? Also, how does subject import pricing  
11      reflect unanticipated injurious pricing behavior?  
12      There may be some -- some product mix in that, but,  
13      you know, we could get into that a little bit further  
14      in, you know, our confidential solution. And with  
15      that, I conclude my remarks. Thank you.

16                  COMMISSIONER KEARNS: All right. Thank you  
17      all very much. Really appreciate you all appearing  
18      here today. This is usually helpful, lots of issues  
19      to discuss. Also, just thank you for -- I think as  
20      some of you pointed out in your briefs, some of you  
21      had very good coverage of foreign producers and so  
22      forth, and appreciating the help that you all give us  
23      to get there as well.

24                  Let's see. As I said, I think there is an  
25      issue of where to begin. I guess I'll begin on the

1 issue of material retardation versus material injury.  
2 obviously Blefa has pointed out why it believes that  
3 this is a material retardation case. Can the other  
4 Respondents, I guess their counsel, speak to this  
5 today, disagree with that? Do they think, as I think  
6 I heard this morning, it doesn't really matter one way  
7 or the other. The analysis is similar.

8 How does that analysis differ? Can you just  
9 speak to that, please?

10 COMMISSIONER KEARNS: Commissioner Kearns,  
11 this is Craig Lewis for Thielmann. I think I would  
12 agree, ultimately, that it doesn't really matter. I  
13 think that this case is a causation case, and whether  
14 the injury analysis is conducted in terms of material  
15 retardation or material injury, either way, this  
16 record overwhelmingly lacks or is devoid of any kind  
17 of evidence of the causal relationship between the  
18 condition of Thielmann -- sorry, the condition of  
19 American Keg and subject imports.

20 That said, I think our position is that this  
21 case should be looked at from the perspective of  
22 material injury, because we do believe that American  
23 Keg, while it certainly is still in the start-up  
24 condition, was established, as is evidenced by its  
25 performance data that's on the record.

1                   COMMISSIONER KEARNS: Okay. Anyone else?  
2                   MR. CONNELLY: Warren Connally for the  
3                   Chinese Respondents. We essentially agree with what  
4                   Craig just said on behalf of Thielmann. I think the  
5                   only other thing I'd say is while we take the  
6                   position, and still take the position, it's a current  
7                   material injury case, if you evaluate this on the  
8                   material retardation criteria, you come out the same  
9                   way, with a negative determination.

10                  COMMISSIONER KEARNS: Okay. Thank you.

11                  MR. DORRIS: Mr. Kearns, I would just add  
12                  that Blefa does not agree, in the sense that this  
13                  analysis is similar under the two approaches because,  
14                  under material retardation, obviously there is no  
15                  cumulation. That decision is made up front. And  
16                  also, there is no threat analysis under material  
17                  retardation. And finally, the manner in which you  
18                  analyze the various trend factors is influenced by the  
19                  material retardation case, as you yourself pointed out  
20                  this morning, when you look at the trends of the  
21                  domestic industry.

22                  So ,I think there are very significant  
23                  differences between them. I do actually agree with  
24                  Petitioners in the end, that the results are the same,  
25                  there would be a negative determination under both

1 approaches.

2 COMMISSIONER KEARNS: Okay. Thank you.

3 MR. LEWIS: Commissioner Kearns, if I could  
4 just clarify on that point. What I mean by saying  
5 that -- the ultimate outcome, I think, is the same  
6 under either framework. And what I meant by causation  
7 is I think that the ultimate question under either  
8 standard -- if you look at what the Commission  
9 concluded at the preliminary stage, it was, well, the  
10 American Keg evidence suggested it's possible that  
11 American Keg would have done better, were it not for  
12 subject imports.

13 We strongly disagree with that because there  
14 isn't the causal relationship. That wasn't what was  
15 the factor at the preliminary phase. It is my  
16 understanding -- and I think everyone's experience  
17 with material retardation is pretty limited -- but  
18 that's a similar question, I think, of material  
19 retardation. The question being whether the U.S.  
20 producer would have done better --

21 COMMISSIONER KEARNS: Yeah.

22 MR. LEWIS: -- but for --

23 COMMISSIONER KEARNS: Okay. Yeah, and I  
24 guess that's consistent with what I was -- my example  
25 this morning. I mean, it seems to me that if it's a

1 retardation case, we might -- the fact that, you know,  
2 if you look at market share, I think that's a good  
3 example. And market share going up, normally that  
4 would be pretty strong evidence of a negative material  
5 injury case.

6           But we would want to ask an additional  
7 question in the retardation case. Well, should we  
8 have expected it would go up more, but for imports?  
9 And so in that sense, I think the way you phrase it,  
10 it is sort of similar either way. I suppose you can  
11 even in a material injury case still sort of ask  
12 yourself, but would it have been better, you know, but  
13 for subject imports. I guess that's where I'm hearing  
14 what you're saying. Okay. Thank you.

15           (Pause.)

16           COMMISSIONER KEARNS: Okay. I guess, I think  
17 this question is for Mr. Dorris. You just mentioned  
18 cumulation and material retardation. So, we took a  
19 look at the factual witness. As Mr. Lewis pointed  
20 out, I think we're all not fully familiar with how  
21 best to consider these retardation cases. But it  
22 looks to us -- that said, and I've got to condense  
23 this a little bit.

24           But if you look at 1671(d)(b), it provides  
25 for material retardation analysis in its final

1 determination, in addition to material injury and  
2 threat. That we all know. If you then go to  
3 1677(7)(b) -- and I apologize to the industry  
4 witnesses here, because we kind of get a little bit  
5 deep here in some of the legal questions.

6 But if you go to 1677(7)(b), it provides the  
7 definition of material injury, which includes a  
8 determination made under 1677(d)(b). That is material  
9 retardation. So, that appears as if, even though the  
10 statute at first distinguishes between material  
11 retardation and material injury, it then seems to  
12 define material injury as including material  
13 retardation. And then, after that, if you go to  
14 1677(7)(g), it says you shall accumulate for  
15 determining material injury. But since we just now  
16 defined material injury as apparently including  
17 material retardation, it looks to us as though the  
18 upshot of this may be that we are not required to not  
19 cumulate.

20 Now, whether or not we are permitted to or  
21 not, I think that's another question. But anyway, I  
22 guess I would ask all of the sides, and Petitioners as  
23 well, to comment on, you know, that analysis. And if  
24 you have any other thoughts now, in terms of  
25 cumulation, we'd be happy to hear them. But my

1 understanding of where you went in your brief was  
2 really more than the statute very clearly says  
3 material injury shall cumulate threat, you know, may  
4 silence with respect to material retardation. And so,  
5 in that case, silence should be read as not allowing  
6 cumulation.

7           But if you have any other thoughts on that  
8 now, I'd be happy to hear them.

9           MR. DORRIS: Surely I won't go into the  
10 details and the intricacies of the statute at this  
11 point for any pleasure this afternoon. But I would  
12 point out that the Commission itself has noted that  
13 material retardation is separate from material injury  
14 and threat of material injury. And, therefore, it  
15 doesn't lump those two together for the statutory  
16 purposes. There is clear indication in the statement  
17 I think I quoted in the prehearing brief from the  
18 Commission, in the 53-foot containers case, where it  
19 was clear that the Commission said, if you have  
20 material retardation, you don't do material injury or  
21 threat of material injury.

22           And I would say the statute does not provide  
23 for cumulation with material retardation. And as you  
24 just pointed out, do you choose shall cumulate or do  
25 you choose discretionary cumulation, because it's very

1 clear from material injury and threat of material  
2 injury, but does not use the word material retardation  
3 anywhere in the statute. And I don't necessarily  
4 agree with that link that you're drawing.

5 COMMISSIONER KEARNS: Okay. Well, again I  
6 just appreciate any further thoughts on that post-  
7 hearing.

8 Let's see. We covered that. I guess  
9 also -- I think this is probably also for you, Mr.  
10 Dorris. In your analysis, you said the Commission's  
11 determination -- never a determination in the dry  
12 containers case. In that case, the Commission relied  
13 on lack of causation to find that it was not subject  
14 to imports, but the domestic industry's own well-known  
15 problems with order and inability to meet the  
16 specifications and requirements of major customers,  
17 such as preferring a fully-welded container. How did  
18 you address causation under a material retardation  
19 analysis in this case?

20 MR. DORRIS: I think the causation analysis  
21 would be similar. I don't think the cases are  
22 identical. I'm not claiming that. But I think there  
23 is also some overlap in the analysis that the  
24 Commission did, and I think in the sense of causation,  
25 it's very similar to the causation you do or look at

1 from material injury, but your overall analysis is  
2 whether or not the U.S. industry would have done  
3 better without the subject imports, which is different  
4 than what you look at, although I do hear what Mr.  
5 Lewis is saying and what you were talking about with  
6 the overlap between material injury analysis and the  
7 material retardation analysis as the but-for the  
8 imports.

9                 But I think it's very clear, when you do it  
10 under material retardation, and that that's the  
11 standard that you've applied in cases, our cases.  
12 There has been several material cumulation cases.  
13 It's not that unique. It's just that it's interesting  
14 that there has never been one with multiple countries.

15                 COMMISSIONER KEARNS: Well, although what we  
16 found is there have been some with multiple countries,  
17 although though that was, I think, back in the early  
18 '80s, and it was before the statute was changed with  
19 respect to cumulation, so --

20                 MR. DORRIS: Right, right.

21                 COMMISSIONER KEARNS: -- we're going to have  
22 to look at that some more, as well.

23                 Okay. Well, getting on with the legal side  
24 of this a little bit, but also a question for Blefa.  
25 And I think that you touched on this in your direct

1 presentation. But in 2006, your firm purchased the  
2 only U.S. producer of kegs at that time, Spartanburg  
3 Stainless. Can you explain your rationale for this  
4 purchase, and can you estimate how much of the U.S.  
5 market was served by domestic production versus  
6 imports at that time?

7 MR. BRAND: Yes. This is Alexander Brand  
8 speaking. I was not really in charge at that time, so  
9 I was just a sales director. But I got involved with  
10 the results of that purchase. So, Spartanburg  
11 Industries has been setting the standards, especially  
12 together with Anheuser-Busch at that time. So, the  
13 majority of the keg sizes in the U.S. have been  
14 developed, together with AB, at that time. And that  
15 was a smart development to say all keg sizes are  
16 exactly the same height, so that has a logistical  
17 benefit.

18 And so, that was the root cause. So, the  
19 differences in volume were the diameter differences,  
20 not as in the rest of the world the heights of the  
21 keg.

22 MR. BURCH: Thank you, Mr. Brand. You had a  
23 question?

24 MR. BRAND: Again, so this is strange.  
25 Okay. So, the difference in diameter determined the

1       volume of the kegs, and that has a really big  
2       logistical benefit. So, at that time, Spartanburg,  
3       together with a company called Huntville (phonetic),  
4       who has also been manufacturing kegs for the U.S.  
5       market before, but they have been concentrating on  
6       aluminum kegs, and so the aluminum has been prohibited  
7       after they found out that aluminum reacts with the  
8       citric acid of the beer. So, aluminum kegs are not  
9       allowed anymore, and that also applies for the U.K.  
10      market that Terry referenced, too, so it's a phase-out  
11      also in other parts of the world for aluminum kegs.

12           So, that turned to be a situation that  
13       Spartanburg Industries were kind of the only local  
14       manufacturer left.

15           COMMISSIONER KEARNS: The only U.S.  
16       manufacturer left.

17           MR. BRAND: U.S. manufacturer left, and then  
18       the business with kegs had a slowdown at that time,  
19       and they also have based the competition from European  
20       manufacturers at that time. So, they decided that  
21       they go for by far more profitable area in the  
22       automotive industry, so they could use their know-how  
23       of working with stainless steel for mufflers for BMW.

24           So, that was the root cause of why they  
25       decided to sell to us. So, they have really asked

1       others to buy their assets.

2                   COMMISSIONER KEARNS: Okay, okay. Thank  
3       you.

4                   (Pause.)

5                   COMMISSIONER KEARNS: Okay. All right.

6       Thank you, that's helpful.

7                   Okay. So, I wanted to turn to market  
8       segmentation, an issue I've discussed with Petitioners  
9       this morning. And as you probably heard, you know, I  
10      think they didn't think my hypothetical -- well,  
11      anyway, manufacturers in markets over here, and five  
12      percent of the markets in a different place, and  
13      complete segmentation between the two sides.

14                  But let's just play with it anyway, if you  
15      all would, because I think it's similar to what you  
16      all are arguing. What I'm hearing from them is, you  
17      know, if the U.S. industry is only in the five percent  
18      segment of the overall market, it doesn't really  
19      matter what is going on in this 95 percent segment of  
20      the market. All that matters is in that segment where  
21      the U.S. is present, if subject imports are causing  
22      injury in that segment, then that's material injury,  
23      and that's your answer.

24                  Do you all have any responses to that? Is  
25      that the way I want to look at this?

1                   MR. DOUGAN: Jim Dougan from ECS. I guess  
2 I'll start. I think the way that we were -- certainly  
3 the way that I tried to approach the market share  
4 analysis, was to say, look, there are segments of the  
5 industry where AKC cannot serve. They can't serve the  
6 scale of the large brewers. They can't serve the  
7 scale of medium brewers, really, for the most part.  
8 They can't serve the scale of the keg leasing and  
9 rental companies.

10                  So, and there are also distributors who have  
11 requirements. And also, I would actually take issue  
12 with Petitioners' characterization of the purchasers'  
13 responses on this. They said, well, it's only a  
14 handful of them who said that they have minimum  
15 quality -- sorry, minimum capacity, or quantity  
16 requirements.

17                  But those purchasers who even responded  
18 account for like the overwhelming majority of reported  
19 purchases. So, they are significant now. They may be  
20 a fragmented number of purchasers who don't, and, you  
21 know, that's relevant perhaps to AKC's ability to  
22 address those customers in that segment of the market.  
23 But when you're looking at consumption overall, there  
24 is a very, very large portion of it that is accounted  
25 for by purchasers who have these requirements that

1       they can't meet.

2                   So, when you're looking at volume effects,  
3       when you're looking at something like market share,  
4       and trying to assess whether AKC has either been  
5       materially retarded in its establishment, or whether  
6       it is materially injured, it's really -- you shouldn't  
7       be judging this on the basis of the market as a whole,  
8       because it's just not addressed at this time. And we  
9       recognize that they don't have to be able to serve the  
10      whole market to be eligible for trade relief. That's  
11      not what we're arguing.

12                  We're just saying, look, if they can't even  
13      touch this market, let's look at the portion of the  
14      market that they can. And their market share went up  
15      fairly significantly in the markets they were actually  
16      able to address, that is, the small brewery segment  
17      and in the one-half and one-sixth size kegs.

18                  So, if that's the case -- and I can't get  
19      into the -- I mean, there is a slide up there with the  
20      numbers removed. But if you look at the numbers in  
21      our brief, that what the increase in that market share  
22      in the segment or sort of the cross-section of the  
23      segment of the small brewers and the one-half or one-  
24      sixth barrel kegs, they had a very significant  
25      increase in their market share that is -- so, their

1       absolute level is higher, and the increase is quite  
2       significant.

3                 And so, you know, the argument that even if  
4       you do boil it down to the area where they can  
5       reasonably address the market, the evidence don't  
6       support the fact that they were materially retarded or  
7       that they were injured in terms of their ability to  
8       penetrate that market, especially when you consider  
9       that their prices went up, and demand was declining,  
10      and that when -- you know, when these small brewers  
11     are, as you've heard from some of the witnesses,  
12     increasingly considering keg logistic -- I'm sorry,  
13     keg -- well, keg logistics, but also keg leasing and  
14     rental operations.

15                 So, there's things that --

16                 COMMISSIONER KEARNS: I'm sorry. When you  
17       say the price is going up, you're referring to over  
18       the POI overall, and for small customers specifically?

19                 MR. DOUGAN: So, I'm talking about AKC's  
20       prices. And so --

21                 COMMISSIONER KEARNS: Right.

22                 MR. DOUGAN: -- who they're selling to.  
23       Their prices went up.

24                 COMMISSIONER KEARNS: Okay. Over the POI?  
25                 MR. DOUGAN: Over the POI, yeah.

1                   COMMISSIONER KEARNS: Yeah, yeah.

2                   MR. DOUGAN: And so, if the market share is  
3                   going up to that segment, and the prices they charge  
4                   to that segment are going up, to us there is no  
5                   causal -- like there is no material retardation and no  
6                   injury:

7                   So, even if you do boil it down to here is  
8                   the area where they can play, and you look at what  
9                   happened, there is no evidence that there is adverse  
10                  effects by reason of imports. And then, they're left  
11                  with, well, we didn't improve our profitability by as  
12                  much as we wanted. And that's where we get into the  
13                  thing to say, well, if you actually compared our  
14                  business plan to our actual results for the level of  
15                  output that they were able to achieve, it's shockingly  
16                  similar. Actually, it's better.

17                  COMMISSIONER KEARNS: Which is what we  
18                  raised this morning, I think, where --

19                  MR. DOUGAN: Yeah.

20                  (Simultaneous discussion.)

21                  MR. DOUGAN: Sure. And we can't get into  
22                  the details in this public setting, but -- so if you  
23                  put all those things together, you know, even if you  
24                  argue about -- if you want to sort of shrink the  
25                  market down to this bite-sized thing that they can

1 actually address, the volume trends, the price trends,  
2 the profitability trends all go the other way from  
3 what they're arguing.

4 COMMISSIONER KEARNS: Okay. Thank you.

5 Anyone else? Mr. Lewis?

6 MR. LEWIS: Yes, if I could. I subscribe to  
7 what Jimmy just said. But I would just add that if  
8 you're looking at that market segment, that, you know,  
9 we're talking small craft brewers, I think is what  
10 we're talking about here. The thing that needs to be  
11 kept in mind always, I think, and this really unique  
12 future of this investigation is this pricing premium.  
13 You know, it comes back to the original business plan  
14 of this company, which was okay, given our scale. The  
15 large volume customers are out of reach. We're not  
16 even going to try. And I can point to in a lot of  
17 briefs the public statements they made where they  
18 acknowledged that we're not even going to attempt to  
19 go into that market segment.

20 So, we're going to focus on the small craft  
21 brewer segment, yes. And our, you know, is Theilmann  
22 in that market segment to some extent, very small  
23 today, small proportion of their sales. But I think  
24 most of these companies are in there, you know, to a  
25 limited degree.

1           But what is their strategy for going in  
2 there? Was it I'm going to have a cost structure  
3 that's similar to those who are already in this  
4 market, like the leasing companies? No. They  
5 recognize that they had a large problem, which was  
6 that they're a small-scale craft producer, which is  
7 the seller's manual production, you know, equipment.  
8 Their costs are high. They said, okay, fine, we can  
9 deal with that because what we'll do is we'll leverage  
10 the fact that we're selling American-made, branded  
11 American-made keg, and we'll command \$10 to \$15, I  
12 think was the figure they stated publically, more per  
13 keg as a premium, and that way we'll squeak by and  
14 kind of grow our market on with this premium.

15           And the evidence shows that actually, to  
16 their credit, that strategy was working reasonably  
17 well, up until 2018. And then they went on television  
18 and explained to the world what happened in 2018,  
19 which was the material costs blew that business model  
20 off-course.

21           And so, my point being, to come back to when  
22 we're focusing on that market segment of craft  
23 brewers, you've got to always keep in mind how were  
24 they planning to and how did they actually compete in  
25 that market segment, and they didn't do it the same

1 way as anybody else, but other players, established  
2 players -- and I'm speaking probably primarily of like  
3 leasing companies. They did it with a model that  
4 relied on a premium based on a made-in-the-USA label  
5 on their products, and that wasn't enough to sustain.

6 Now, the short-term -- although who knows,  
7 longer term, if they stick with it, maybe it will.

8 COMMISSIONER KEARNS: Okay. Thank you.

9 Anyone else?

10 MR. CONNELLY: Warren Connally for the  
11 Chinese Respondents. Just one slight thing, the  
12 shrimp case was mentioned as a precedent earlier this  
13 morning. Actually, the most recent shrimp case was a  
14 negative determination by the Commission. And a key  
15 factual difference in the shrimp case, was that the  
16 shrimp producers could only produce 10 percent of  
17 apparent consumption. They can sell it, however, to  
18 anybody.

19 The difference here, is that American Keg  
20 can't sell to everybody, for all the reasons our  
21 testimony has covered.

22 COMMISSIONER KEARNS: Right, okay. Thank  
23 you. And just to be clear, I remember that counsel  
24 this morning did not buy into my idea that it's 95  
25 percent over here, and five percent over there. So, I

1 think that would be their response on shrimp. But I  
2 appreciate that.

3 Anyone else?

4 MR. SMITH: James Smith for Anheuser-Busch.

5 I would just add to that that the relevant kind of  
6 segmentation is not just by channel distribution,  
7 which is how the data are organized, but also by just  
8 size of purchaser. So, the fact that AKC may have  
9 some contacts or attempts to sell outside of the small  
10 brewer to wherever they are currently focused, does  
11 not mean that they are actually penetrating or have  
12 any basis or ability to penetrate the large purchaser,  
13 you know, component of other channels.

14 Just as in the brewer channel, the large,  
15 medium, and small, that may be true, as well, in  
16 others.

17 COMMISSIONER KEARNS: In others, I'm sorry.

18 MR. SMITH: Other channels, so that you  
19 could have large distributors --

20 COMMISSIONER KEARNS: Okay.

21 MR. SMITH: -- or small distributors.

22 COMMISSIONER KEARNS: Okay. I see.

23 MR. SMITH: The fact they're selling to a  
24 small distributor does little to, you know, contradict  
25 the argument that they're not positioned to compete in

1       vast swaths of the market --

2                   COMMISSIONER KEARNS: I see.

3                   MR. SMITH: -- represented by large  
4                   purchasers.

5                   COMMISSIONER KEARNS: Okay. Got you, okay.

6                   Thank you.

7                   MR. JACOBSON: Commissioner Kearns, Michael  
8                   Jacobson, briefly.

9                   COMMISSIONER KEARNS: Yeah.

10                  MR. JACOBSON: Hogan Lovells. You also  
11                  mentioned the Silica Bricks case this morning, so I  
12                  wanted to address that. One of the hallmarks of the  
13                  Silica Bricks case are indeed present in this case,  
14                  where the Commission has looked at a similar  
15                  circumstance. In that case, the U.S. industry sales  
16                  were, "overwhelmingly concentrated in one market  
17                  segment," which is what we have here. And the  
18                  Commission found that there was not price depression  
19                  or suppression, in part, because domestic prices were  
20                  increasing, despite the price levels of the subject  
21                  imports.

22                  And in that case, they also addressed the  
23                  fact there was little head-to-head competition. We  
24                  don't have the confidential numbers of exactly how  
25                  much there was. We've heard from a number of industry

1       witnesses today. They universally say they rarely, if  
2       ever, encounter American Keg head-to-head in the  
3       market.

4                   COMMISSIONER KEARNS: Okay. Thank you.

5                   So, I'm going to turn just a little bit to,  
6       you know, how big of a -- I don't love using the word  
7       segments in this market. I'm not entirely convinced,  
8       maybe as you might have suggested, Mr. Smith, that  
9       these are best viewed as segments of a market,  
10      necessarily. But in any event, this -- let's just  
11      call it segment of the market that is the small  
12      producers, question and responses confirm, it seems to  
13      us, that the significance of the small brewers to the  
14      kegs market, yet most Respondents argue that a few  
15      large breweries and/or keg leasing companies command  
16      the majority of the purchasers and imports of the  
17      market.

18                  How do I square this argument with the data  
19      on Tables 4-11 through 4-17? And you can address that  
20      post-hearing, if you like. But, basically, what I'm  
21      seeing there is a lot of kegs are purchased by the  
22      small brewers as opposed to the big brewers, very  
23      surprisingly. I don't know if you have any further  
24      thoughts on that?

25                  MR. CONNELLY: Yeah. Warren Connnelly for

1       the Chinese Respondents. On behalf of the Chinese, we  
2       would argue that the small brewer segment is a small  
3       segment. That's not our argument. Our argument is  
4       that there are large segments out there besides the  
5       small brewer segment, obviously, that American Keg  
6       can't reach. As to the small brewer segment, however,  
7       the indicia of causation are far weaker when you just  
8       make it the small brewer segment.

9                  I think that was one of the points that you  
10         did in slides.

11                COMMISSIONER KEARNS: Okay. Thank you.

12                MR. DOUGAN: Commissioner Kearns, if I could  
13         just add to that. Jim Dougan here. It certainly -- I  
14         think the data support the fact that it's not a small  
15         share of the market. But it is a declining share of  
16         the market.

17                COMMISSIONER KEARNS: Because of the  
18         leasers.

19                MR. DOUGAN: Because of the leasers, right.

20                COMMISSIONER KEARNS: Yeah, yeah.

21                MR. DOUGAN: So, there is a shift there, and  
22         given that the leasers are the ones who have  
23         requirements based on, you know, capacity and  
24         quantity, that's a segment of the market --

25                COMMISSIONER KEARNS: Yeah.

1                   MR. DOUGAN: -- that they're here seeking to  
2 address. So anyway --

3                   COMMISSIONER KEARNS: Right.

4                   MR. DOUGAN: -- in my view, that's the  
5 significance.

6                   COMMISSIONER KEARNS: Okay. Thank you. And  
7 I will get to the leasers here in a minute.

8                   Okay. So, this, I think, is for Anheuser-  
9 Busch. So, your firm, I think you just testified,  
10 does have minimum product capacity requirements. Is  
11 that right?

12                  MR. HOFFMEISTER: Jon Hoffmeister. Yes,  
13 that's correct.

14                  COMMISSIONER KEARNS: And can you tell us  
15 what the capacity requirements are?

16                  MR. HOFFMEISTER: Well, let me maybe explain  
17 sort of the broader process, and hopefully that'll  
18 help answer the question. As I stated in my  
19 testimony, North America, in particular the U.S., is  
20 part of a broader global buy that we try to do on an  
21 annual basis. So, our role in that process is to  
22 articulate our needs, so that they can be aggregated  
23 and essentially sourced at the same time.

24                  Our requirements vary on an annual basis, as  
25 we're replenishing loss to our flow. Any specifics,

1       in terms of numbers, probably need to be addressed in  
2       the post-hearing.

3                   COMMISSIONER KEARNS: Okay.

4                   MR. HOFFMEISTER: Does that answer the  
5       question?

6                   COMMISSIONER KEARNS: It does, yes. Thank  
7       you.

8                   MR. SMITH: And I believe those numbers are  
9       in our questionnaire responses.

10                  COMMISSIONER KEARNS: Yeah. And I was  
11       trying to see if there was something you were willing  
12       to say publically, or not. I guess in post-hearing if  
13       you all can help us understand. I mean, I guess my  
14       question would be, first of all, how many global keg  
15       producers can meet those requirements, and do you ever  
16       purchase from any keg producers who don't meet those  
17       requirements? And then the third question would be --  
18       and maybe this you could answer now. I mean, it seems  
19       to me -- well, I understand why you need to have some  
20       pretty large suppliers.

21                  But it seems to me that, I would have  
22       thought that you would want a little more flexibility  
23       than you seem to have with this requirement, just to  
24       have more competition, so that you can have -- you  
25       know, you can get better prices, I would have thought.

1       So, I don't know if that's something you can address  
2       at all. Because it just seems like, I mean, you know,  
3       if you can find, you know, a few suppliers who can all  
4       together meet the requirements, that that would work  
5       just as well as finding one or two or three or four,  
6       you know, who can do it as well.

7                  I don't know if you can speak to that. And  
8       in other words, why do you have to have such a high  
9       capacity requirement?

10                 MR. HOFFMEISTER: Okay. Yeah, again Jon  
11       Hoffmeister. I think one important consideration here  
12       is that this is beer contact material. So, unlike  
13       other forms of packaging which don't touch the beer,  
14       our bottles, our cans, and our kegs obviously come  
15       into direct with the beer. So, the process of getting  
16       qualified and making sure that the taste of the beer  
17       is consistent, so that we can sell our brands on an  
18       ongoing basis, is really critical for any aspect of  
19       the production process that touches the beer.

20                 So, while I agree with you that I would like  
21       to have more supply option as a buyer -- I always want  
22       more supplier options. But that has to be in balance  
23       with the quality considerations, and then on top of it  
24       some of the capacity considerations that we've  
25       described.

1                   COMMISSIONER KEARNS: Okay. I guess you  
2 don't want -- I think Ms. Quist referred to a peanut  
3 butter beer having been previously in a keg. I guess  
4 you might not want that?

5                   MR. HOFFMEISTER: Correct.

6                   COMMISSIONER KEARNS: Yeah. I've not heard  
7 of peanut butter beer, so I'll get my mind around that  
8 one.

9                   Okay. So, this is for Thielmann.  
10                  Petitioner provided a statement in some video this  
11 morning from a trade show indicating that your company  
12 has recently expanded from selling primarily to large  
13 brewers, to offering options for small brewers with  
14 quick delivery and customization. When did this  
15 transition take place for Thielmann, and how do your  
16 sales to small brewers differ from those of large  
17 brewers?

18                  MR. LEWIS: This is Craig Lewis. I'd  
19 obviously like our industry witnesses to speak to  
20 that. But I did want to mention that we will need to  
21 address this partially in our confidential submission.  
22 But I can state publically that the quantities we're  
23 talking about are small. You know, we stand by our  
24 position that the company's focus is in, and remains,  
25 the large customers.

1                   But I don't know, Terry, if you want to  
2 comment further.

3                   MR. PARKER: Yeah. As I mentioned this  
4 morning -- this is Terry Park. As I mentioned this  
5 morning, our concentration is on our larger brewers.  
6 And so, we do see to supply some of the smaller craft  
7 brewers as well through -- because there are -- the  
8 small brewers tend to be entrepreneurial, and so on.  
9 They do have specifications and things that they ask  
10 for at the time. We have the facilities and the  
11 capability to provide specialist requests for them --  
12 we can supply on a small basis.

13                  But it's not something we get involved in  
14 too much, because the costs tend to be prohibitive  
15 anyway for them. But they chose to do that because  
16 they are, in one situation, indifferent to the design  
17 of their keg, and so on, then we can do it on a small  
18 basis. But it's not something that we would go out  
19 and strive to look for, or to encourage for them to  
20 come to us.

21                  COMMISSIONER KEARNS: Just trying to  
22 understand your answer. Are you talking about all  
23 small brewers, are you talking about small brewers  
24 that want something special on their product? Or is  
25 that the same thing?

1                   MR. PARKER: That's the small brewers  
2 usually have different requirements for different  
3 uses, time scales are very short, which do mean we  
4 meet our specifications for the production plants,  
5 where instead of the usual production plan, you need  
6 to be ready for one day, two days, three days.

7                   COMMISSIONER KEARNS: I'm sorry, so it it  
8 like the logos on the product, or what?

9                   MR. PARKER: That's correct, yes.

10                  COMMISSIONER KEARNS: Okay.

11                  MR. PARKER: We do extra specialist. In  
12 other words, we have the means within our system to do  
13 things, whether it be on a laser basis, maybe on a  
14 printing basis. And some of them, because they're  
15 entrepreneurs, or not just -- beer lovers -- they like  
16 to see something different, and they come along with  
17 that specification and ask for certain things.

18 Generally, it's not very big numbers, maybe 100, 200.  
19 It may only be 50. But we have the -- we've got the  
20 specialist requirements to do that, I would say AKC  
21 maybe not have. So, the comment was whatever product  
22 we give you, when they ask for a special specification  
23 to their keg, we can do that.

24                  It's not something we actually go looking  
25 for, it's something they request us to do.

1                   COMMISSIONER KEARNS: Okay. Yeah, I'm  
2 hearing this. But, I mean, we did see this morning  
3 what Thielmann said and, you know, the layout of  
4 the -- I think it was American Craft Brewery meeting  
5 in Denver, where, you know, you all do run into each  
6 other. I mean, maybe not you specifically, but  
7 someone in Thielmann, someone out there must have, you  
8 know, come across AKC before.

9                   And so, I mean, I know this isn't an  
10 important part. But you are in that market, and it  
11 may not be as important, you know, to you relative to  
12 the large segment. I mean, AKC doesn't have a  
13 monopoly in the small brewer segment of the market,  
14 and its main competitors are the subject imports,  
15 right?

16                  MR. PARKER: Correct. And I'm a little bit  
17 aware of AKC in that format, as we saw this morning.  
18 I'm aware of them, anyway, because they produce kegs.  
19 But it's not something that -- the small craft brewers  
20 more tend to approach us, rather than the other way  
21 around.

22                  COMMISSIONER KEARNS: Okay, okay. Thank  
23 you.

24                  So, for the Chinese producers, let me ask  
25 Mr. Connally. You are aware that competition between

1       72 parts and the domestic like product is attenuated,  
2       as they do not participate in the same channels.  
3       Isn't this contradicted by the record evidence,  
4       specifically if we look at Table 2-2 of the prehearing  
5       staff report?

6                    MR. CONNELLY: Okay. We agree that there is  
7       competition in the small brewer channel. It's the  
8       other channels that that remark was directed towards.

9                    COMMISSIONER KEARNS: Okay, okay.

10                  (Pause.)

11                  COMMISSIONER KEARNS: Hold on a sec. Okay.  
12       I guess where I would like to turn next is to leasing.  
13       I mean, so I think it's clear, and I think you all  
14       have made that very clear in your opening, leasers  
15       typically sell to small breweries, right?

16                  MR. SAPYTA: Yes, sir.

17                  COMMISSIONER KEARNS: Okay. And the large  
18       keg producers typically sell to you, the leasing  
19       companies?

20                  MR. SAPYTA: Yes. Chris Sapyta with Keg  
21       Logistics. We buy directly from, I believe, 99  
22       percent of our kegs, the market that is being  
23       discussed here. Everybody in this room was a  
24       competitor against me.

25                  COMMISSIONER KEARNS: Right, right.

1                   MR. SAPYTA: We're selling to the craft  
2 brewing industry, not solely, but the majority of our  
3 sales are the small brewer.

4                   COMMISSIONER KEARNS: Right. Everyone in  
5 the room, AKC and Blefa --

6                   MR. SAPYTA: And Thielmann, and every  
7 Chinese keg manufacturer versus Keg Logistics.

8                   COMMISSIONER KEARNS: Right, right. And we  
9 heard this from -- I guess, American Keg is also  
10 leasing, themselves, now. So, you're competing both  
11 with a sold product and with a leased product, at  
12 least from them.

13                  MR. SAPYTA: Absolutely.

14                  COMMISSIONER KEARNS: Yeah. And then I  
15 guess -- well, a few questions about this. But one  
16 is, I mean, this is maybe more of a legal question.  
17 But given that the end customer is the same, the small  
18 brewer, isn't it a mistake to draw a bright line  
19 between sales to the leasing companies that are made  
20 by the bigger producers, and sales directly to the  
21 small brewers, that might be made by American Keg?

22                  I mean, in other words, American Keg, when  
23 it is competing and doing kegs made by the subject  
24 imports that flow through the leasing companies,  
25 aren't they? I think that's what we just heard. This

1       is not a surprise. This is my question, anyway. Any  
2       thoughts on that?

3                    MR. DOUGAN: Jim Dougan. I'm not a lawyer,  
4       so someone else --

5                    COMMISSIONER KEARNS: No. You're close  
6       enough. Sorry.

7                    (Laughter.)

8                    MR. DOUGAN: We'll see. And I think my  
9       attorney colleagues can help address this, too. But  
10      from my point of view, just in thinking about it, what  
11      would constitute competition -- if you are the small  
12      brewer, you are, I mean, these are entirely different  
13      models, and there are entirely different ways to meet  
14      your needs for beer containers, right, for kegs.

15                  And so, some of it has to do with just  
16      purely, you know, availability of capital. But it  
17      also has to do with flexibility and, you know, the  
18      servicing and all those other things that go with it.  
19      Now, some of that, it may be available for a purchase.  
20      But there are, especially considering that these  
21      companies themselves are startups, there are  
22      considerations that go into sort of not just to  
23      purchase and the competition among purchasers, but  
24      whether to purchase at all, or whether to lease.

25                  COMMISSIONER KEARNS: Yeah.

1                   MR. DOUGAN: And so, you know, and what they  
2 get charged for a lease or to rent the keg, or for a  
3 paper filler, or water services that are provided by  
4 Keg Logistics or MicroStar or people like that, is,  
5 you know, sort of an entirely different calculation.  
6 Obviously, it's all money. But it's a different  
7 calculation than a head-to-head price comparison in  
8 sales. So --

9                   COMMISSIONER KEARNS: Right.

10                  MR. DOUGAN: I mean, to say that there's,  
11 you know, that there is absolutely no relationship  
12 between those things is not a credible thing to say.  
13 But to say that it's direct competition, I don't think  
14 I'd agree with that statement, either.

15                  COMMISSIONER KEARNS: Yeah. But, now,  
16 you're looking at from a small brewer's perspective.  
17 If you look at it from American Keg's perspective --  
18 and last week, they were selling, if this were the  
19 case -- if they were selling a keg to a small brewer  
20 in Milwaukee, and the next day they say, hey, can you  
21 sell another keg, and you look over and you see a  
22 Blefa keg that's provided by the leasing company, I  
23 think they would say that kind of feels like  
24 competition to them, though, right?

25                  MR. DOUGAN: Well, but that sort of thing

1       might -- you know, Blefa might lose sales that way,  
2       too --

3                   COMMISSIONER KEARNS: Right.

4                   MR. DOUGAN: -- you know, to someone who is  
5       going to enter a paper sale for MicroStar or otherwise  
6       obtain that keg that they need.

7                   So, I mean, there is an absolute shift, if  
8       you look at the consumption numbers, to that model.  
9                   And, you know, so the volume is going to decline  
10      whether you're AKC, or Thielmann, or Blefa, or  
11      whoever. So, that is an impact. That's a condition  
12      of competition that's affecting everyone in the  
13      marketplace.

14                  COMMISSIONER KEARNS: Okay. One --

15                  MR. SMITH: This is James Smith from  
16      Anheuser-Busch. One additional point, I think, is  
17      that while it may be true that AKC is now, you know,  
18      starting a lease-to-own model, that is not necessarily  
19      comparable to the other services that Mr. Saptyta  
20      described, one being provided by leasing and rental  
21      companies, which include the one MicroStar and he  
22      pioneered, this management model where you never own  
23      it, or to a straight lease model. And differences  
24      between those different types of rental and leasing,  
25      you know, programs are worth considering when you

1 think about whether there really is apples-to-apples  
2 competition --

3 COMMISSIONER KEARNS: Right.

4 MR. SMITH: -- in that segment.

5 COMMISSIONER KEARNS: Yeah.

6 MR. DOUGAN: Commissioner, if I could just  
7 add one addendum to my remarks. The other thing is;  
8 too, you know, if there is lack of ability, let's say,  
9 for AKC to sell directly additional kegs to a customer  
10 who has now shifted to a leasing model, you know, that  
11 wasn't a sale that was really lost on the basis of  
12 price, right, because they never had the option to  
13 sell to the leasing company because they had those  
14 large capacity requirements.

15 So, now, if they were displaced at the  
16 logistics company or the leasing company, that may be  
17 a different story. Then they were displaced in both  
18 places. But if a small brewer decided to shift how  
19 they procure their beer containers, and AKC was never  
20 in the running for that business model, then you can't  
21 really be sure it is a lost sale, in my view.

22 COMMISSIONER KEARNS: Okay. Right, okay.

23 Thank you.

24 MR. JACOBSON: Commissioner Kearns, just  
25 to -- this is Michael Jacobson, Hogan Lovells, for

1 Thielmann. Building on what Mr. Smith said, American  
2 Keg Company, their goal is to sell kegs. Mr. Luzzi  
3 made clear this morning that the rent model is a  
4 financing model. And I believe he said they have to  
5 offer this as an option, because their customers can't  
6 necessarily afford to pay upfront for the keg.

7                 These large keg logistics companies are  
8 leasing and renting kegs. Their value add is really  
9 that they offer a different model, and their logistics  
10 capabilities, their ability to distribute kegs around  
11 the country in an efficient way.

12                 It's an entirely separate model than  
13 American Keg's financing model.

14                 COMMISSIONER KEARNS: Okay. Thank you.  
15 And, Mr. Sapyta, I had a couple of more questions for  
16 you. One, hopefully isn't too much of a tangent. But  
17 I'm just curious, when you were describing -- I guess  
18 you call it the pooling method you had, especially at  
19 MicroStar, right? I'm not really sure I understand  
20 that. So, you give the keg to the small brewer. The  
21 small brewer fills it. It, I'm guessing, then ships  
22 it to a bar somewhere, and then you pick it up from a  
23 bar. Is that how that works?

24                 MR. SAPYTA: How the pooling model works in  
25 the United States, is part of what they call the

1       three-tier system. So, you have a producer that goes  
2       to a distributor or wholesaler, and they take it to  
3       the on-premise account.

4                   COMMISSIONER KEARNS: Okay.

5                   MR. SAPYTA: So, it is filled by the brewer.

6                   COMMISSIONER KEARNS: Yeah, yeah.

7                   MR. SAPYTA: The wholesaler delivers to the  
8       pub.

9                   COMMISSIONER KEARNS: That makes sense.

10                  MR. SAPYTA: The pub delivers -- or, the  
11       wholesaler brings it back the empty, and then that's  
12       where it's picked up by the management company, Keg  
13       Logistics or MicroStar in turn.

14                  COMMISSIONER KEARNS: Is that the  
15       distributor?

16                  MR. SAPYTA: The empty keg, once it's drank  
17       (sic) at the Chili's. It's empty. It returns back to  
18       the wholesaler, distributor, it's the same name.

19                  COMMISSIONER KEARNS: Yeah, okay.

20                  MR. SAPYTA: Or the same entity.

21                  COMMISSIONER KEARNS: Okay.

22                  MR. SAPYTA: That's the middle man. And  
23       then we, or MicroStar, would pick up that empty --

24                  COMMISSIONER KEARNS: Yeah.

25                  MR. SAPYTA: -- from that location and take

1       it, maybe not back to the same brewer that had filled  
2       it --

3                   COMMISSIONER KEARNS: Right.

4                   MR. SAPYTA: -- but to fill another order  
5       somewhere in the country.

6                   COMMISSIONER KEARNS: Right, okay. But you  
7       first shipped it to the small brewer.

8                   MR. SAPYTA: Directly to the brewery.

9                   COMMISSIONER KEARNS: And that's your  
10      customer, and then you retrieve it from a distributor.

11                  MR. SAPYTA: Right. They let us know where  
12      the kegs went, and then we pick them up, regardless of  
13      where they're at in the country.

14                  COMMISSIONER KEARNS: Yeah, that's very  
15      interesting. Okay. So, getting a little bit closer  
16      to a relevant question. I'm just real fascinated on  
17      how that process might work.

18                  But so, have you considered buying American  
19      Keg? I mean, you know, we heard this morning that  
20      they are talking to some leasing companies, and that  
21      it sounds to me like one reason some leasing companies  
22      might want to work with them, even though, you know,  
23      they may not be able to provide huge quantities, but  
24      that there might be some demand for American-made  
25      kegs.

1                   Can you speak to that? Have you  
2 contemplated working with American Keg, either because  
3 of the made-in-America characteristic, or otherwise?

4                   MR. SAPYTA: I guess a couple of answers.  
5 No, we have not purchased kegs or considered  
6 purchasing kegs from AKC, mainly because of just  
7 really not knowing the company, but knowing the  
8 reputation of Geemacher. And I still don't know  
9 really that relationship, but from the perception in  
10 the industry, it was a company that had Chinese kegs  
11 with a German name. And we don't buy Chinese kegs.

12                  COMMISSIONER KEARNS: And why not?

13                  MR. SAPYTA: The quality doesn't meet our  
14 standard.

15                  COMMISSIONER KEARNS: Okay, okay. Thank  
16 you.

17                  MR. SAPYTA: And now, things have changed.  
18 They make their own kegs. But our brewers are looking  
19 for the highest quality keg made, and that's what we  
20 provide.

21                  COMMISSIONER KEARNS: Okay, okay. Thank  
22 you. And while I'm addressing this, I was asked to  
23 raise one question. It seems like our staff has not  
24 received a purchaser's questionnaire from you. Your  
25 information would be beneficial to our investigation.

1       We'd appreciate if you could provide that information  
2       to us.

3                    MR. SAPYTA: Yes, sir. I'm aware of that.

4                    COMMISSIONER KEARNS: Okay. Will you be  
5       able to provide a response?

6                    MR. SAPYTA: Well, I think we provided a  
7       partial response. A lot of the data that -- the way  
8       it was laid out in the questionnaire -- I'd be happy  
9       to open up our entire books. It's just not, I'll say,  
10      conducive to fit that format. But maybe with the help  
11      of the staff, they could extract the data that they  
12      would want.

13                  COMMISSIONER KEARNS: Okay, okay. Thank  
14      you.

15                  Okay. So, I want to turn to 232 and its  
16      impact. So, you all heard this morning Petitioner say  
17      that we already approached ITC and the Commerce  
18      Department well before the 232 relief with concerns  
19      about subject imports. Maybe this is a Chinese issue,  
20      but can you speak to, you know, that argument? And  
21      maybe you don't have the information about when they  
22      first approached the ITC, but can you help us respond  
23      to that?

24                  MR. LEWIS: This is Craig Lewis. Yeah, I  
25      would like to go back and look exactly at the time

1 line. But I think what's important is it's not even  
2 necessarily the actual date that the President issued  
3 the proclamation he should be getting this from. The  
4 232 investigation, I think, took 270 days to be  
5 completed. And the uncertainty that created in the  
6 market was already being felt, and I will quote  
7 here -- and this is from the FAQs of American Keg's  
8 web site, which they took down before this hearing,  
9 where they had said -- and I'll read the relevant  
10 portion:

11 "We are making great progress on this -- "  
12 This is their effort to maintain a premium and a small  
13 profit, " -- until the fourth quarter of 2017 -- " I  
14 think the 232 tariffs were subsequent to that, " --  
15 when our domestic steel producers started increasing  
16 their prices substantially. These price increases are  
17 directly related to steel tariffs -- " and here is the  
18 relevant portion, " -- the anticipation, announcement,  
19 and imposition."

20 So, I think the -- again, I don't have the  
21 time line. Clearly be able to address this in a post-  
22 hearing. But I think that where you should be  
23 measuring it from is not the date of the President's  
24 proclamation, but prior to that, as AKC themselves  
25 suggested.

1                   COMMISSIONER KEARNS: Okay. Thank you. I'd  
2 appreciate hearing that post-hearing in August. And  
3 also timing it to stainless steel prices, tying it to  
4 stainless steel prices at that time before March 2018,  
5 or whatever, the 232. I guess that would be something  
6 you'd want to include in your answer, as well.

7                   MR. LEWIS: Right.

8                   MR. CONNELLY: One point on that, the  
9 testimony this morning was that -- I think I heard  
10 this right -- that American Keg made its first call to  
11 the ITC on November 29, 2017. So, before, in the  
12 summer of 2017, that's when the President started  
13 threatening the 232 duties. We have given several  
14 exhibits quoting the President to that effect.

15                  The duties took effect March of 2018. So,  
16 it's only four months later. And there really wasn't  
17 much of a lag in there. And one other small point,  
18 maybe. American Keg used the word "volatility" to  
19 describe their stainless steel costs. I would say  
20 that's not exactly the trend in their costs. We'll  
21 save the rest for the post-hearing brief.

22                  COMMISSIONER KEARNS: Okay.

23                  MR. JACOBSON: Mr. Kearns, just to follow  
24 on. Michael Jacobson, Hogan Lovells, for Thielmann.  
25 The timing is interesting, in part, because Mr.

1 Czachor, under a sworn testimony in the section 301  
2 hearing, which was in May of 2018, stated, and I  
3 quote, "European and Mexican suppliers' kegs are not  
4 subsidized or dumped, low-cost products." They were  
5 focused on achieving tariffs for Chinese kegs, but  
6 told us that they were not concerned with European and  
7 Mexican kegs.

8 In fact, it was in response to a question of  
9 what would happen to the keg market if the Chinese  
10 kegs could not be in the market anymore. Of course,  
11 there are Mexican and European fairly traded imports  
12 for that supply. And indeed, they did achieve their  
13 goal of 10 percent of a net increase to 25 percent  
14 tariffs on Chinese imports, as well.

15 So, the three subject countries are, well,  
16 taken care of at least, according to their own words.  
17 And then the President's action that led to the 301.

18 MR. DOUGAN: Commissioner Kearns, Jim  
19 Dougan. If I could just add to this. The staff  
20 report at figure 5-1 has a time series of stainless  
21 steel prices. And you can see that, while it's true  
22 that it is proprietary because it's subscription-  
23 based. But I can talk about the trends. And while  
24 you see the sharpest increase beginning in early 2018,  
25 it didn't just start in March 2018, right? So, there

1       was a run-up that began in late 2017, that would seem  
2       to fit with the response from AKC's FAQ web site,  
3       where it said that the domestic steel producers began  
4       increasing their prices in anticipation of the  
5       imposition of the tariffs, and not only with the  
6       actual proclamation in March of 2018.

7                   COMMISSIONER KEARNS: Okay. Thank you.  
8       And, yeah, on this point of the 301 proceedings in  
9       Mexico, in June, I will -- and I saw that in the  
10      briefing, and if Petitioners could respond to that  
11      post-hearing, that would be appreciated.

12                  So, okay. So, if this is all about them  
13       increasing their stainless steel costs, why didn't  
14       they just increase their prices to, you know, passing  
15       it on to the consumer? And, you know, this isn't a  
16       novel question I'm asking, right? This is something  
17       we look at in every single case, where we say, you  
18       know, well, what stopped them from doing that, as I  
19       mentioned this morning?

20                  MR. DOUGAN: Commissioner Kearns, Jim  
21       Dougan. I want to steer clear too much of, again,  
22       proprietary information. But if you look at the  
23       pricing product data for domestic shipments -- this is  
24       in Section 5 of the Prehearing Report -- there was an  
25       increase for each of the pricing products by AKC in

1       nearly every quarter, beginning in the second quarter  
2       of 2017, all the way to the end of the POI, even when  
3       the stainless steel prices started coming back down.

4                   COMMISSIONER KEARNS: But then, first of  
5       all, then how did it hurt their business, if they were  
6       able to pass on all of the costs? Or was it that  
7       their costs increased more than their prices could be  
8       increased?

9                   MR. DOUGAN: Well, I think their raw  
10      material -- so their -- as we pointed out, their  
11      overall cost-to-sales ratio was down from '16 to '18,  
12      and then, between the interim periods. And it was  
13      pretty much flat between '17 and '18, which means that  
14      they had other cost reductions. That, in combination  
15      with the increase in prices, allowed them to sort of,  
16      you know, not have the cost-price squeeze.

17                  But the raw material component of that, I  
18       think, did go up. So, you know, again, I think the  
19       idea they were able to continue to increase their  
20       prices from what was already established as a premium.  
21       I think, as we mentioned, because they were newly  
22       entering the market, with limited capacity, limited  
23       track record, and already, from the day that they  
24       started selling kegs, selling at a significant premium  
25       over any other market participant, including non-

1       subject imports, by the way. The ability to then --  
2       and their willingness to increase their prices another  
3       quarter to get even more, you know, it was probably  
4       harder to justify at that stage.

5                    MR. LEWIS: Yeah. This is Craig Lewis. And  
6       I, of course, agree with those comments, based on them  
7       as I understand that. AKC was able to do that and did  
8       raise its prices. It did handle that. And I think  
9       there is an element here of there is a bit of the sky  
10      is falling when this was happening, that they were --  
11      and this is where the public statements were coming  
12      in. They were telling PBS, et cetera, what am I going  
13      to do now? This is going to -- you know, we're not  
14      going to find a way to handle this.

15                  And I think their panel said this morning  
16      that they took efforts to cut costs, and I'm not sure  
17      what other measures they did. But I think the COGS-  
18      to-sales ratios that you look at for price  
19      suppression, which is relevant to what we're talking  
20      about, were actually kind of favorable, that they were  
21      able to actually digest this change in markets.

22                  So, that's one positive side. Now, they're  
23      saying on the other hand that they wanted to sell at  
24      large volumes. But I think that's a separate  
25      question. And, you know, my assessment of the record

1       is that that's chiefly attributable to the fact that  
2       the -- assumption that there were sufficient numbers  
3       of craft brewers who cared enough about a made-in-USA  
4       label was an overly-optimistic assumption, and that  
5       that wasn't as significant a factor in the market as  
6       they had hoped it would be. And that's what they've  
7       been struggling against, pretty successfully.

8                 They've been increasing their shipments and  
9       volumes and capacity, but maybe not as quickly as  
10      they'd like. But I think the reason for that is there  
11      really just isn't the market for a made-in-USA labeled  
12      product that they anticipated.

13                MR. DOUGAN: If I can just add to that --  
14       Jim Dougan from ECS. They also increased their  
15       shipments between 2017 and 2018. So they were, you  
16       know, were getting price increases, and were getting  
17       increased shipping volume. Did it increase by as much  
18       as they wanted it to, or as they projected to? It  
19       doesn't appear so, although, again, looking at their  
20       financial performance and what they projected for  
21       their level of output versus what they actually  
22       achieved, strikingly similar.

23               So, they had a business plan of, you know,  
24       we're going to hit the loop shoot and hit the moon.  
25       And they may not have achieved that. But, you know,

1                   But does that mean it's a failed strategy?  
2   I don't think so. I don't think any of us are saying  
3   that they weren't making progress towards achieving  
4   profitability and volumes. But the fact that it  
5   wasn't at the pace that they anticipated, that had to  
6   do with their assumptions, not to do with import  
7   competition.

8                   MR. DOUGAN: Commissioner, actually an  
9   aside. This just reminded me of one other thing.  
10   This morning you asked the panel what, essentially,  
11   were the assumptions that underlay the production  
12   numbers that you had in your business plan that was  
13   printed. You didn't get an answer to that question.  
14   You had an answer to our capacity was this, and we  
15   could have hit this capacity if we made these  
16   investments.

17                  There is no justification for the level of  
18   production that they predicted, which is really the  
19   key question, right? It's how much do you think you  
20   can make and sell into the marketplace. And there are  
21   numbers in there, obviously proprietary, that we can  
22   get into. But I didn't see any assumptions that went  
23   into the justification for achieving those numbers.

24                  Now, they may exist. Maybe their excerpt  
25   that we received as part of their questionnaire

1 response didn't include that. But they're not in  
2 there. And, you know, in a prior life, I used to  
3 build business plans for people to bring to private  
4 equity and investors. We spent 10 times as much on  
5 the assumptions as we did on the calculations, because  
6 it's the assumptions, how do you justify the fact that  
7 you would think you would get this level of market  
8 penetration with this price level, given your  
9 addressable market and what the customer segment you're  
10 trying to get into. And really the math is the math.

11 And, so far, really what we see in their  
12 business plan is just the math. We haven't really  
13 seen the assumptions that underlie it and the due  
14 diligence and the homework that went into it on the  
15 front end. Surely they did some, but we haven't seen  
16 it.

17 COMMISSIONER KEARNS: Okay. Thank you. And  
18 so, I think this next question I have -- I think you  
19 have just addressed it, but in case there is any more  
20 you all want to say. You know, I'm struggling with  
21 are we supposed to be looking at the raw material  
22 costs, which went up, or the overall cost of goods  
23 sold, you know, cost of goods sold, which went down in  
24 terms of MOIs, and so, I guess the answer you all are  
25 sort of saying is both.

1           But, I mean, it seems to me that the simpler  
2 part of the answer is you would start the with unit  
3 COGS went down, and prices went up, and that that  
4 wouldn't seem to suggest price suppression in a normal  
5 case. And again, because this is, you know, material  
6 retardation, conceivable, and not, maybe we would look  
7 at it a little bit differently. Maybe that, you know,  
8 COGS went down because as input survey data become  
9 more efficient or something, and -- but anyway, it  
10 would seem to me that we would want to start with unit  
11 COGS.

12           I don't know if you have any further  
13 thoughts on that.

14           I think that's kind of what you said, Mr.  
15 Lewis, about the sky is falling. I mean, you know, I  
16 heard a lot of things in the press that I don't  
17 necessarily think that's necessarily what is going in  
18 the world, but any other thoughts on that, or is that?  
19 Okay.

20           MR. DOUGAN: I agree that that's a helpful  
21 way to look at it. I'm cautious about opining too  
22 much on it in a public forum, because I fear I'd slip  
23 too closely into proprietary information. But I'm  
24 able to address it at more length in confidential  
25 post-hearing.

1                   COMMISSIONER KEARNS: Okay. Thank you. And  
2 I was hoping that my next question would get away from  
3 Mr. Dougan and Mr. Lewis and some of the other lawyers  
4 and other experts in the room. But alas.

5                   Mr. Dougan, you mentioned the volume changes  
6 in terms of -- subject import volume changes from 2016  
7 to 2017, that they, I think you pointed out, that they  
8 lost market share during that time. But AUVs, though,  
9 also went down pretty dramatically, I would say  
10 significantly, over that period. And I think American  
11 Kegs went down somewhat, as well. Can you speak to  
12 that? You know, does that suggest that there was more  
13 of a price impact it was a volume impact, or no?

14                  MR. DOUGAN: Well, I'm going to obviously  
15 disagree with the idea that this is what sort of upset  
16 their -- or upended their plans. And I think some of  
17 it might have to do with product mix. Some of it  
18 might have to do with trends. I would take a look at  
19 that, because I think the AUV of subject imports writ  
20 large is public, but individual countries is  
21 different, and in the trends of, say, the quarterly  
22 prices within each country are different.

23                  So, I would like to, you know, maybe address  
24 that more fully in post-hearing. But I think this is  
25 all getting back to the idea -- and sort of the

1 concept that I'll establish in my testimony was they  
2 already knew that they had a very, very small share of  
3 the market, and subject imports were most of what was  
4 out there. And they already knew that the market  
5 price for those imports, for imports writ large, not  
6 just from the subject countries, but from everyone,  
7 was a lot lower than theirs.

8 And so, the idea to me, that there was this  
9 massive change in the conditions of competition  
10 between 2016 and 2017, just really isn't supported by  
11 the record. There are trends that you observe. There  
12 is an increase in volume. There is a decrease in at  
13 least the aggregate AUVs. And if you're someone who  
14 is already in a market position that's established,  
15 and you're seeing your market share erode, and those  
16 are the trends you're seeing, you know, that's a  
17 different kind of argument.

18 If you're going into the market, you know  
19 what it is. You know you're going to place yourself  
20 at a premium above this, and you know your penetration  
21 is already tiny. It just doesn't follow to me that  
22 this is some sort of surprise, this is a condition of  
23 competition or trend in the market place that was  
24 completely unanticipated or should have been  
25 completely unanticipated. And then, in part, the

1 trend went kind of the other way in 2018, and we can  
2 talk about that.

3                 But this is also relevant to your question  
4 about the comparison of subject and non-subject, so  
5 change in behavior of subject, and so on. But if  
6 we're talking about pricing levels, and we're talking  
7 about the ability to justify the premium in this  
8 marketplace when you're a new entrant. That's a  
9 relevant question. And I don't think that they have  
10 provided a good answer for that.

11                 COMMISSIONER KEARNS: Okay. Thank you.

12                 COMMISSIONER KEARNS: Okay. So, Mr. Dougan,  
13 again, sorry, but --

14                 MR. DOUGAN: I thought you said you wanted  
15 stop here.

16                 COMMISSIONER KEARNS: I do. I do not really  
17 want to ask you anymore questions.

18                 MR. DOUGAN: I'm not going to stop talking  
19 if you do.

20                 COMMISSIONER KEARNS: But you on the slides  
21 you presented a moment ago really pointed out that a  
22 lot of other things are more important than price, but  
23 isn't it also the case that with the possible  
24 exception of being able to -- availability sorts of  
25 issues for large customers that American Keg -- and I

1 guess this isn't just for Mr. Dougan, actually, and,  
2 Mr. Hoffmeister, you provided some insight into this  
3 in terms of explaining why you have the quantity  
4 requirements that you do, but, I mean, I think our  
5 report seems to suggest that American Keg was  
6 comparable on all levels more or less other than maybe  
7 price and availability issues. That's been flagged,  
8 but in terms of quality of product and so forth, is  
9 there really any argument that American Keg makes a  
10 good product, and not just on that, but I think it  
11 also talks about lean times and things like that? I  
12 mean, do those other characteristics really  
13 distinguish subject imports from American Keg other  
14 than they have some, I think, when it comes to Chinese  
15 products that there are quality concerns? I think it  
16 was maybe Mr. Sapyta had suggested that, but any  
17 thoughts on that?

18 MR. SAPYTA: I think I can speak to the  
19 question about the perception of the quality of  
20 American Keg. I think unfortunately it just takes  
21 time. When you're building an asset that should last  
22 25 to 30 years, it's hard to establish that my keg can  
23 last that long if you're only two or three years into  
24 the process, so for a large purchaser such as us, we  
25 just can't take the chance and hope that it meets

1       those requirements. We have to go with something  
2       that's proven.

3                   COMMISSIONER KEARNS: Okay. Anyone else?

4                   MR. CONNELLY: Warren Connally -- I think  
5       one way to look at that is the length of a warranty  
6       that's offered by American Keg versus other companies.  
7       There's a very significant difference in the length of  
8       the warranty. I think that goes to quality. Another  
9       issue, which I kind of talk about here, involves a  
10      particular customer that American Keg was interested  
11      in serving and we discussed what that customer's  
12      reaction was. We did a qualification test.

13                  COMMISSIONER KEARNS: Okay. Anyone else?

14                  MR. PARKER: Terry Parker, Thielmann. One  
15      little issue on quality, at this point we have seen a  
16      producer point of view. We have to submit ourselves  
17      international standards on various things. There's  
18      testing, production, steel, foreign steel. From my  
19      point production, I think we have a product that sells  
20      itself off. So we're subjected to very stringent  
21      examination by the brewer. We also have specification  
22      of the brewers as well.

23                  When they give us those we have to date them  
24      and make sure with the quality of work product, and so  
25      on. And that was open to every single customer that

1       would come to Thielmann for a container, whether it be  
2       one or 100,000. And so because we have that system in  
3       place and we got traceability back. The issue from  
4       what I heard this morning that that is easy to place  
5       in terms of AKC, and I just wondered what the -- it  
6       may not be necessary. They want to have that in place  
7       but we can assure them that from our systems we can  
8       offer that to ever single brewer that buys from us,  
9       and I'm sure that's the same for the others.

10           Complaintive side is subjective anyway  
11          because with -- I've seen kegs arrive at a brewery and  
12          within 24 hours they're all scrapped because there's a  
13          problem with it, and you've found it's been drilled  
14          into or something, so that wouldn't take him -- you'd  
15          be disappointed. But in terms of standards, we've all  
16          been subjected to that over the years and we have  
17          standards. We've had systems in place to make sure  
18          that the product is not affected at the brewer.

19           MR. DOUGAN: Sorry. I know I'm supposed to  
20          stop talking, but you did start with me, and you did  
21          refer to my slides, so in slide A, I think with regard  
22          to things that are more important than price, it's not  
23          just about quality, right? I mean, ranked ahead of  
24          price is also customer service and business historical  
25          relationship, and so again, it's not about AKC making

1       a poor quality keg. I mean, maybe some people have  
2       had a very great experience with them. Some have had  
3       difficulty qualifying them, but again, it's as Mr.  
4       Sapyta said, they've been in the market for a couple  
5       of years.

6                   So even if it is a great quality keg, are  
7       you going to go with the new entrant versus your  
8       established supplier of many years who you know is  
9       able to not just supply you with a high quality keg  
10      but also service it and will back you up all the way,  
11      and certainly that's what the customers like Mr.  
12      Sapyta are getting from Blefa.

13                  COMMISSIONER KEARNS: Okay. Thank you, and  
14      I guess that is helpful, and I guess it's really more  
15      of a question for purchasers than it is from most of  
16      the folks in this room, so I appreciate that, Mr.  
17      Dougan.

18                  MR. HOFFMEISTER: Commissioner, maybe to  
19      that end, as a large purchaser, we're going to buy on  
20      five criteria, and I think it applies to us for sure,  
21      perhaps for other larger purchasers. First, we're  
22      going to buy on availability and then quality, price,  
23      sustainability, innovation, but in that order, so if  
24      the availability, if I can't get what I need when I  
25      need it, I never end up answering the other four

1       questions regarding quality, price, innovation,  
2       sustainability, and that would be the case here.

3                   COMMISSIONER KEARNS: What do you mean by  
4       sustainability?

5                   MR. HOFFMEISTER: Well, in this case how are  
6       the kegs made? Are they made in a responsible way?  
7       Can we measure their impact on the environment, so  
8       from a --

9                   COMMISSIONER KEARNS: Environmental?

10          MR. HOFFMEISTER: Exactly, yes.

11          COMMISSIONER KEARNS: Okay. Okay. So  
12       turning subjects here, I had asked Thielmann a minute  
13       ago about Spartanburg -- that's right, Blefa. I'm  
14       sorry. Blefa was the one who had -- but some of you  
15       sitting over there, and some of you are sitting over  
16       here, so it confused me, but so I guess this is not  
17       yet on the record but I think it will be on the  
18       record, that we have an article *Global Atlanta* from  
19       1998.

20          It says "Atlanta-based Caltech Mental  
21       Disciplinary Management and Consulting Firm is  
22       assisting the world's largest beer keg manufacturer,  
23       Blefa, to take on Spartanburg Stainless Steel, a  
24       Spartanburg, South Carolina-based and sole keg manager  
25       which currently controls three-fourths of the national

1 market", so we're just curious if you all could in the  
2 post hearing go back and see if you can corroborate  
3 that. We're just curious how big of a -- was this  
4 market back in 1998 three-quarters U.S. dominated,  
5 U.S.-producer dominated or not, so anyway, we're just  
6 curious about that.

7 MR. DOUGAN: Yes, sir. We'll do that.

8 COMMISSIONER KEARNS: Okay. Thank you. All  
9 right. Not too many more questions here, but I do  
10 have a few, talk a little more about pricing and  
11 under-selling, and this is definitely a question for  
12 Anheuser Busch, but I think it may be more generally.  
13 You argue that the pricing products in this case have  
14 significant limitations and are not an accurate  
15 presentation of the market. I believe you did not  
16 address our proposed pricing products in your comments  
17 on the draft questionnaires. Is that right? Again,  
18 it's not just for Anheuser Busch. I'd like to hear  
19 from you all, but --

20 MR. SMITH: I believe that's correct.

21 COMMISSIONER KEARNS: Okay. So did any of  
22 the parties comment on -- because I know we've heard,  
23 for example, that it would have been helpful to have  
24 broken out large purchasers from small purchasers. I  
25 guess that's the main thing both because of quantity

1 requirements but maybe also discounts and so forth,  
2 but you haven't proposed any breakdown like that.

3               Okay. I guess for the record I'm not  
4 hearing any, so if they did propose anything different  
5 from what we had. Mr. Connally?

6               MR. CONNELLY: Yes. To be honest, I don't  
7 remember exactly what we said. We said something  
8 about the breakdown. It certainly wasn't the  
9 breakdown that I thought was very helpful that the  
10 staff came up with, the breakdown about the six  
11 channels of distribution. We didn't go that far, but  
12 we did ask for some type of further breakdown than  
13 just all prices to all customers.

14               COMMISSIONER KEARNS: Okay.

15               MR. CONNELLY: Now, the problem was the  
16 Chinese Respondents did not enter an appearance in the  
17 prelim, and so when we submitted our comments, it  
18 wasn't until, I think, June, and so maybe it was two  
19 late because enough questionnaires had come out. I  
20 put the comments in anyway with my fingers crossed,  
21 but the breakdown we got I thought was pretty good all  
22 things considered.

23               COMMISSIONER KEARNS: Okay. Thank you.

24               MR. JACOBSON: Commissioner Kearns, my name  
25 is Michael Jacobson for Thielmann. The quote under

1 pricing products according to American Keg's public  
2 statements including here they only sell two kegs.  
3 There's no pricing competition for the rest of the  
4 market out of it.

5 COMMISSIONER KEARNS: So the question is if  
6 the argument is that there's a very different price  
7 when you supply Anheuser Busch versus when you supply  
8 a small brewer versus when you supply a leasing  
9 company, and then if we had actually -- I thought the  
10 argument I was hearing was that if we distinguished  
11 those things, you might see a very different picture  
12 there.

13 MR. JACOBSON: Commissioner, because that  
14 may be relevant for distributors segment and leasing  
15 segment, but given what data is -- it's confidential  
16 data and the competition that you guys listed,  
17 published statements of Anheuser Busch and their  
18 purchasing patterns. I'm not sure it would have made  
19 a difference in a lot of the --

20 COMMISSIONER KEARNS: Yes, but what I'm  
21 hearing is if you're purchasing -- I thought I saw  
22 this in one of the briefs. If you're purchasing lots  
23 -- hundreds of thousands of kegs, you know, the price  
24 you may get might be discounted, but I thought you  
25 also listed in your direct this afternoon it would be

1 different than, if you're providing 10 kegs to a  
2 supplier somewhere else, so I thought that you all  
3 were criticizing the pricing data on that basis, but  
4 maybe I have that wrong.

5 MR. DOUGAN: Sorry. That was in my  
6 testimony, and I can talk about it a little bit more  
7 in post hearing. It's not in the pricing data. I  
8 sort of say it's baked in, but I can give some  
9 examples from the trade data that get at it a little  
10 bit about what the impact of that might be and how it  
11 might explain what's observed as being under-selling.

12 COMMISSIONER KEARNS: Okay. That would be  
13 helpful, and any other way apart from the pricing data  
14 we have -- any other way to kind of help us figure out  
15 whether or not the apparent under-selling that we're  
16 seeing in the pricing data may not be reliable and  
17 that if you looked closer at, for example, say a  
18 particular small supplier, small purchasers, that you  
19 would see that there is maybe less underselling. What  
20 I would need, sort of if you can tell us, apart from  
21 the pricing data, if there's another way of going  
22 about this, we're hoping to hearing that as well.

23 MR. DOUGAN: We'll do our best. Thank you.

24 COMMISSIONER KEARNS: Okay. I had a couple  
25 of questions about demand and how purchases tend to be

1 lumpy I think is the term that we've been using a few  
2 times. This may be for Blefa. I know they argued  
3 that. There might have been a number of craft brewers  
4 and over 7,000 potential purchasers in the market in  
5 2018. Does that really make a difference? Doesn't a  
6 lumpy sale from a bunch of small producers over time  
7 end up being not so lumpy or any thoughts on that?  
8 And while you're at it, I guess, too, and this is for  
9 all of you, I mean, apart from demand, I'm kind of  
10 surprised.

11 If you look at our capacity utilization for  
12 all of the producers that I can think of, it seems  
13 pretty stable from year to year, which seems to be  
14 inconsistent with what you'd expect with lumpy usage  
15 swings and purchases from various large purchasing  
16 brewers, so any thoughts on that? Wouldn't we expect  
17 to see very different capacity utilization figures  
18 from year to year?

19 MR. LEWIS: This is Craig Lewis. I can give  
20 one partial answer to that, that I just know from our  
21 questionnaire response and prior testimony for  
22 Thielmann which is that there is a seasonality to keg  
23 sales with higher sales in the summer and one of the  
24 things that Thielmann has successfully done to try to  
25 address that, that type of lumpiness is that they are

1 leveraging sales to the southern hemisphere, Latin  
2 America, so that it balances out, the seasonality, so  
3 that's one way they've managed that issue.

4 COMMISSIONER KEARNS: Okay. Okay. Thank  
5 you.

6 MR. CONNELLY: There's one other thing --  
7 Warren Connally -- on this lumpy thing. It may be  
8 lumpy as to a particular customer that as you say may  
9 be spelled out when you look at the entire customer  
10 base, but the problem, if there is one, is that you've  
11 got to chase that customer. You've got to make the  
12 investment to get that customer. You get him for a  
13 year or two, and then he's gone. Now you got to  
14 replace that customer, so your cost of acquisition of  
15 customers becomes your gravel, particularly if you're  
16 a small craft brewer with limited financial resources.

17 COMMISSIONER KEARNS: Okay. Thank you.  
18 Let's see. All right. Okay. So this may be my last  
19 question. The Petitioners point out some pretty large  
20 inventory swings both with respect to importers and  
21 foreign producers in 2019. Can you tell us anything  
22 about that? I mean, why are we seeing such massive  
23 increases in inventories in 2019?

24 MS. QUIST: I'd rather answer this one. I'm  
25 Dinah Quist.

1                   COMMISSIONER KEARNS: Please, go ahead.  
2                   MS. QUIST: Yes, we've had pretty high  
3                   inventory in 2019, but it's nothing special. It's  
4                   just to meet the need of a specific customer, and we  
5                   can provide more information on that in our post-  
6                   hearing submission.

7                   COMMISSIONER KEARNS: Okay. So that's  
8                   proprietary? You can't share more than that right  
9                   now?

10                  MS. QUIST: No.

11                  COMMISSIONER KEARNS: Okay. Thank you.  
12                  Anyone else?

13                  MR. CONNELLY: Warren Connally. We'll  
14                  address specifically as to the Chinese Respondents. I  
15                  mean, I think everyone has a different story to tell  
16                  about that, but I think one thing I can say is that  
17                  the implication by the American Kegs repeated  
18                  stressing in their brief of the inventory built is  
19                  that this inventory built is going to flow into the  
20                  market at distressed prices. That's not what the  
21                  record shows. It doesn't show that, so the inventory  
22                  build, per se, if there is one, and there is some  
23                  doubt about that, is not I think a real strong  
24                  causation factor.

25                  MR. DOUGAN: Commissioner, if I could just

1 add? I know this is going to be addressed in  
2 confidential terms, but just to put a little context  
3 about it -- because this is inventory that is intended  
4 for a particular customer's needs, this is essentially  
5 pre-sold. This is not rebar sitting on the docks in  
6 the port that people are going to sell off at cheap  
7 prices. It's already intended for somebody. This is  
8 not a lost sale or potential future lost sales to the  
9 domestic industry.

10 COMMISSIONER KEARNS: Okay. And, Mr.  
11 Connally, if you could just flesh out a little bit  
12 more when you said the record doesn't support the  
13 notion that this is actually flooding the market?

14 MR. CONNELLY: I think I better comment on  
15 that in the post-hearing brief.

16 COMMISSIONER KEARNS: Okay. Okay. That's  
17 great. I don't think I have any further questions.  
18 Does staff have any questions?

19 MR. CORKRAN: Douglas Corkran, Office of  
20 Investigations. Thank you, Commissioner Kearns. The  
21 staff has no additional questions.

22 COMMISSIONER KEARNS: Okay. Great. Then, I  
23 think in any case we can move to closing statements  
24 and I just want to point out that -- we'll take just a  
25 couple minutes before the closings, but before

1 closings, Petition has 15 minutes from direct and then  
2 five minutes from the closing for a total of 20  
3 minutes, and Respondents have one minute from direct,  
4 five minutes for closing for a total of six minutes.

5 (Whereupon, a short recess was taken.)

6 MS. ROLIG: Good afternoon. Again, my name  
7 is Whitney Rolig on behalf of American Keg. The  
8 Respondents began today by characterizing this as a  
9 case of a new small entrant trying to use these  
10 investigations as a means to take more of the market  
11 than they deserve. That is simply incorrect. This is  
12 the case of a currently small company that is being  
13 crushed by unfair competition. They're not asking for  
14 a handout, and they're not asking for a special carve-  
15 out for a niche product. They're asking for a fair  
16 market, and the law says that they are entitled to  
17 just that. The statutory factors make this clear:

18 (1) The volume of subject imports, that is  
19 the volume of dumped and subsidized imports, is  
20 massive.

1       The record is clear that all of these countries  
2       compete with each other. Rather, this is a case of  
3       American Keg being unable to match import prices  
4       because those prices are unfair. That fact had clear  
5       and devastating implications for American Keg's  
6       viability as a business.

7                     (3) Those implications have one result  
8       without trade relief. American Keg will close. In  
9       fact, they'd be gone already if they hadn't brought  
10      this case. The promise of gaining sales once they can  
11      get past dumped and subsidized imports is literally  
12      the only thing justifying Scott's continued investment  
13      in the business.

14                  The Respondents want the Commission to find  
15      that American Keg is almost there, the sales and  
16      profitability are just around the corner because it's  
17      certainly not unfair imports holding them back, but we  
18      know they're wrong. American Keg has already made  
19      investments that should have allowed them to achieve  
20      profitability, and the reason they're not hitting that  
21      point is because they can't make enough sales, and  
22      those buyers are there. All of the producers here are  
23      fighting for those buyers and are fighting for them  
24      with unfair prices.

25                  I'm struck by one of the Respondents

1 insistence that they simply don't go after sales that  
2 American Keg can make to small brewers.

3                 The Commission should query why they  
4 continue to sit to the scenario that small brewers  
5 just aren't important to them because we know that's  
6 not true, but actually the Respondents themselves have  
7 already told you why they don't want to focus on that.  
8 They've told you that when subject imports are priced  
9 fairly, that benefit is going to go to American Keg.  
10 That means that but for imports, American Keg does  
11 better as a business. That's not an unfair windfall.  
12 It is the remedy for a U.S. manufacturer that our laws  
13 are designed to provide.

14                 That's why we have come before the  
15 Commission today to ask for your affirmative vote. An  
16 affirmative vote let's the U.S. industry progress and  
17 compete and prove itself on fair terms. A negative  
18 vote ends the industry altogether.

19                 We appreciate your time and excellent  
20 questions and interest today.

21                 Thank you.

22                 MR. BURCH: Thank you, Ms. Rolig.

23                 The closing or rebuttal remarks will be  
24 given by Gregory C. Dorris, with Pepper Hamilton, and  
25 Craig A. Lewis from Hogan Lovells.

1 minutes. You may begin when ready.

2 MR. DORRIS: As discussed this afternoon,  
3 the threshold question of this investigation with the  
4 Commission is whether the domestic industry is  
5 established or not, and Blefa has explained here today  
6 and its pre-hearing brief why AKC is not established,  
7 and let's be clear. AKC is not Geemacher. Geemacher  
8 went out of business early in the POI for reasons  
9 wholly unrelated to subject imports, so AKC is not the  
10 predecessor company to Geemacher. AKC own all assets  
11 of Geemacher and started a new keg company in the mid-  
12 2016, not that long ago.

13 It appears Blefa, unfortunately is the only  
14 one to speak true to the emperor in his new clothes.  
15 AKC is not established applying the historical  
16 criteria that the Commission considers in making this  
17 decision on establishment. I believe strongly that  
18 the Commission, too, will speak true to the emperor  
19 here and find AKC is not established based on this  
20 historical criteria. When it does, the Commission  
21 will consider whether German imports alone have  
22 materially targeted AKC from becoming established  
23 during the early POI.

24 The statute does not allow for cumulation to  
25 subject imports to make materially retardation

1 decision, and, of course, we will address this further  
2 in our post-hearing brief. As discussed in  
3 confidential detail in our pre-hearing brief, the  
4 establishment of the domestic industry was not  
5 materially targeted by imports from Germany, and, of  
6 course, there is no concept of threat under material  
7 retardation either, so based on the determination of  
8 looking at the factual information with respect to  
9 material retardation, the Commission should reach a  
10 negative determination as to Germany.

11 In conclusion, AKC is a tiny company in a  
12 very large, established industry, but serving a  
13 smaller segment of the larger industry fairly well at  
14 this point. The question is whether we allow to have  
15 anti-dumping and counter-veiling duties imposed on  
16 this entire industry serving so many different  
17 customers just because of AKC's problems with its cost  
18 and its getting started as a new company. This really  
19 isn't even the tail wagging the dog; this is the flea  
20 on the tail trying to wag the dog, and the Commission  
21 should not let that happen.

22 COMMISSIONER KEARNS: Thank you very much to  
23 the Commission and the staff. This case deserves a  
24 negative determination on material injury and threat.  
25 There is absolutely no basis for claiming that subject

1 imports have caused material injury to American Keg.  
2 Let's look briefly at the statutory factors of volume.  
3 Despite what we've heard from the other side, this is  
4 not a volume case. The evidence shows that this  
5 company, a sole producer in the U.S. market, increased  
6 its capacity, increased its production, increased its  
7 market share over the period of investigation, so to  
8 claim that volume is an issue is a non-starter.

9 Price, same thing. There is no evidence of  
10 price depression. Price has raised over the period of  
11 investigation. That's in complete negation of any  
12 claimed price depression. There's no evidence of  
13 price suppression. Applying the standard criteria  
14 that the Commission looks at price suppression, it's  
15 not on the record of this case.

16 Under-selling fully explained by the price  
17 premium that American Keg has repeated stated publicly  
18 that it sought and obtained in the market, and then  
19 finally impact.

20 While this is a start-up company, they're  
21 still in start-up phase, and their proper measure of  
22 the impact, and I'm not talking about material  
23 retardation, but it could be applied there as well, is  
24 whether the company is making progress in its  
25 profitability and its operations, and the record again

1 shows that that is the case, that over the period of  
2 investigation, the company has steadily improved its  
3 operation results and all that a start-up company can  
4 reasonably expect and that is evidence of lack of  
5 impact.

6 Now, if the company has any complaint, they  
7 only need to turn to themselves to learn what it is  
8 that has been the cause of their concerns, and I note  
9 again the company had a market plan to sell at a  
10 premium price, and I'm quoting again from their  
11 website, "really making great, great progress" not  
12 just progress, "great progress on this" with that  
13 being their plan until the fourth quarter of 2017 when  
14 what happened? We'll continue the quote, "when our  
15 domestic steel producers started increasing their  
16 prices substantially, these price increases are  
17 directly related to steel tariffs, the anticipation,  
18 announcement and imposition". There's not a single  
19 breath referencing subject imports.

20 The Commission's record is strong. It's  
21 complete. This is a case where there isn't a  
22 causation. This is one of the rare cases where the  
23 Commission should reach a negative determination  
24 whether it's on a theory of material injury, threat of  
25 injury or material retardation. Thank you very much.

1                   COMMISSIONER KEARNS: Okay. Thank you.  
2     We'll now issue the closing statement. Post-hearing  
3     briefs, statements responsive to questions and  
4     requests of the Commission and corrections to the  
5     transcript must be filed by August 21. Closing of the  
6     record and final release of data to the parties by  
7     September 10 and final comments are due on September  
8     12, 2019. Thank you very much. This hearing is  
9     adjourned.

10                  (Whereupon, at 3:35 p.m., the hearing in the  
11    above-entitled matter was concluded.)

12                  //

13                  //

14                  //

15                  //

16                  //

17                  //

18                  //

19                  //

20                  //

21                  //

22                  //

23                  //

24                  //

25                  //

**CERTIFICATION OF TRANSCRIPTION**

**TITLE:** Refillable Stainless Steel Kegs from China, Germany, and Mexico

**INVESTIGATION NOS.:** 701-TA-610, 731-TA-1425-1427  
Final)

**HEARING DATE:** August 14, 2019

**LOCATION:** Washington, D.C.

**NATURE OF HEARING:** Commission Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

**DATE:** August 14, 2019

**SIGNED:** Lee Shone, Jr.

Signature of the Contractor or the Authorized Contractor's Representative  
1220 L Street, N.W. - Suite 206  
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

**SIGNED:**

M. J. S.  
Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

**SIGNED:**

D. W. F.  
Signature of Court Reporter

