

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
CERTAIN BRAKE DRUMS AND) Investigation No. :
ROTORS FROM CHINA) TA-421-3
)

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THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
) Investigation No.:
 CERTAIN BRAKE DRUMS AND) TA-421-3
 ROTORS FROM CHINA)

Friday,
 July 18, 2003

Room No. 101
 U.S. International
 Trade Commission
 500 E Street, S.W.
 Washington, D.C.

The hearing commenced, pursuant to notice, at 9:35 a.m., before the Commissioners of the United States International Trade Commission, the Honorable DEANNA TANNER OKUN, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:Commissioners:

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 MARCIA E. MILLER, COMMISSIONER
 STEPHEN KOPLAN, COMMISSIONER

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APPEARANCES: (cont'd.)

Congressional Appearances:

THE HONORABLE DONALD A. MANZULLO, U.S.
Congressman, 16th District, State of Illinois
THE HONORABLE PHIL ENGLISH, U.S. Congressman,
3rd District, State of Pennsylvania

In Support of Relief:

On behalf of Coalition for the Preservation of American
Brake Drum and Rotor Aftermarket Manufacturers:

JOE LAVARRA, Vice President, Manufacturing, Brake
and Chassis Division, Dana Corporation
DAN EASLEY, Plant Manager, Federal Mogul
Corporation
MILTON JAFFE, President, Certified Automotive
Warehouse
CONWAY HERZOG, CEO, Herzog Automotive Parts, LLC
KENNETH BUTTON, Senior Vice President, Economic
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LESLIE ALAN GLICK, Esquire
Porter, Wright, Morris & Arthur, LLP
Washington, D.C.

On behalf of International Brotherhood of Teamsters
AFL-CIO, Washington, D.C.:

ROLAND LEWIS, Business Agent at Teamsters Local
688, International Brotherhood of Teamsters
AFL-CIO
LOUIS MALIZIA, Assistant Director, Office of
Corporate Affairs, International Brotherhood of
Teamsters AFL-CIO

APPEARANCES: (cont'd.)

In Opposition to Relief:

On behalf of Laizhou Luyang Automobile Fitting Co., Ltd.; Longkou Haimeng Machinery Co., Ltd.; Shandong Jiuyang Enterprise Corporation; Shandong Laizhou CAPCO Industry; Yantai Import/Export Corporation; The China Chamber of Commerce for Import & Export of Machinery & Electronic Products:

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Washington, D.C.

On behalf of Qualis Automotive:

MARVIN J. FUDALLA, President, Qualis Automotive
STEVEN S. WYLIE, CFO, Qualis Automotive

WILLIAM J. MORAN, Esquire
FRANK H. MORGAN, Esquire
White & Case, LLP
Washington, D.C.

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P R O C E E D I N G S

(9:35 a.m.)

1
2
3 CHAIRMAN OKUN: Good morning again. On
4 behalf of the United States International Trade
5 Commission, I welcome you to this hearing on
6 Investigation No. TA-421-3, Certain Brake Drums and
7 Rotors From China.

8 The Commission instituted this investigation
9 under Section 421(b) of the Trade Act of 1971 to
10 determine whether brake drums and rotors from China
11 are being imported into the United States in such
12 increased quantities or under such conditions as to
13 cause or threaten to cause disruption to the domestic
14 producers of like or directly competitive products.

15 Before we begin, I note that Section 421
16 investigations impose extremely tight deadlines on
17 parties and the Commission. Indeed, the Commission
18 has only 60 days from the date the petition is filed
19 to the date of the market disruption vote. In
20 between, staff must send out questionnaires, compile
21 data, prepare for the Commission hearing, finalize the
22 staff report and assist the Commission with last-
23 minute requests. In other words, we must go through
24 many of the same steps that apply to a Section 201
25 safeguard investigation, but in half the time.

1 The only party in an investigation that can
2 do its homework before the case is filed is the one
3 requesting relief. That is why I'm particularly
4 troubled today because the prehearing staff report
5 makes clear that the Petitioner and other domestic
6 producers have not provided full data or have not
7 responded satisfactorily to staff questions.

8 The staff report also notes that the
9 domestic industry recently supplied completely new
10 pricing data without explanation. Staff went to
11 extraordinary efforts to incorporate the new
12 information, but this exercise raises questions as to
13 whether the information could not have been submitted
14 in a timely manner.

15 While I want to note the Commission's
16 gratitude to the staff for their efforts, I am
17 disappointed with the lack of cooperation our staff
18 has received. Therefore, I want to take this
19 opportunity to remind the Petitioner, other domestic
20 producers and the parties in opposition to relief that
21 it is incumbent upon them to assist the Commission in
22 its investigation by being forthcoming with answers to
23 questions and requests for information, including
24 requests made by the Commission in the course of
25 today's hearing.

1 Schedules setting forth the presentation of
2 this hearing and testimony of witnesses are available
3 at the Secretary's desk. I understand the parties are
4 aware of the time allocations. Any questions
5 regarding the time allocations should be directed to
6 the Secretary. As all written material will be
7 entered in full into the record, it need not be read
8 to us at this time. All witnesses must be sworn in by
9 the Secretary before presenting testimony.

10 Finally, if you will be submitting documents
11 that contain information you wish classified as
12 business confidential, your requests should comply
13 with Commission Rule 201.6.

14 Madam Secretary, are there any preliminary
15 matters?

16 MS. ABBOTT: Yes, Madam Chairman. With our
17 permission, Louis Malizia, Assistant Director, Office
18 of Corporate Affairs, International Brotherhood of
19 Teamsters AFL-CIO, will be placed on the calendar in
20 lieu of Jennifer Esposito.

21 CHAIRMAN OKUN: Without objection.

22 Will you please announce our first
23 congressional witness?

24 MS. ABBOTT: The Honorable Donald A.
25 Manzullo, United States Congressman, 16th District,

1 State of Illinois.

2 CHAIRMAN OKUN: Commissioner Koplan? I'm
3 sorry. There is a preliminary matter.

4 COMMISSIONER KOPLAN: Just very briefly,
5 Madam Chairman. I just want to join with the concerns
6 you expressed in your opening statement.

7 CHAIRMAN OKUN: Thank you.

8 Welcome, Congressman Manzullo.

9 MR. MANZULLO: Good morning. I've been here
10 so many times, and when I come out of there, you know,
11 this is the lady or the tiger. It's just amazing.

12 It's good to be here this morning. We broke
13 at midnight last night, spent too much money, and I
14 trust that if my thoughts are a little disjointed it's
15 because of the lack of sleep and not the fact that I
16 have sided with one side or the other. I appreciate
17 your attentiveness, even if mine is not up to yours
18 this morning.

19 Madam Chair and distinguished members of the
20 International Trade Commission, again thank you for
21 the opportunity to appear before you this morning.
22 For 11 years now I've had the privilege of
23 representing Brake Parts of McHenry, Illinois. Brake
24 Parts is now owned by the Dana Corporation. It's now
25 just outside the boundary of our new congressional

1 district, but many employees who work at the facility
2 still live in the congressional district that I
3 represent.

4 I am extremely interested in your plight.
5 Since I've been working on the issue since 1994, I
6 testified before this group in 1997 in connection with
7 the antidumping petition filed by Brake Parts and
8 other brake drum and rotor manufacturers. The
9 Commission then correctly determined injury for brake
10 rotors in that case, and I understand you recently
11 decided to maintain the antidumping Order in the
12 sunset review of that case.

13 I'm here today because, unfortunately, our
14 antidumping laws do not always work as effectively as
15 they should. I'm a strong supporter of our
16 antidumping and countervailing duty trade laws because
17 they insure that free trade works by making sure that
18 nations play by the rules of the game. However,
19 antidumping and countervailing duty laws are based on
20 technical calculations and margins and often can be
21 evaded by clever importers.

22 American drum and rotor manufacturers are
23 now in worse shape than when the dumping case was
24 originally filed. The cause is primarily due to the
25 surge of imports of brake drums and rotors from the

1 People's Republic of China. Brake drums were 1.2
2 million Chinese units imported into this country in
3 1998. Last year that more than doubled to 2.8 million
4 units.

5 The same holds true for brake rotors. In
6 1998, China exported 10.8 million units of brake
7 rotors. In 2002, four years later, that more than
8 doubled to 25.5 million units. If this trend
9 continues, there will be no after brake market drum
10 and rotor manufacturers left in the United States.

11 If I could just throw in something
12 parenthetically? This past week, the Chinese released
13 their economic data. Their GDP grew at 8.3 percent.
14 I am the chairman of the United States-China
15 Interparliamentary Exchange. I deal with the Chinese
16 almost on a daily basis. The Chinese have a
17 450,000,000 man work force. Their economy has to grow
18 by eight percent a year to accommodate the 10,000,000
19 people each year that come into that work force, so
20 they are under tremendous pressure to do whatever they
21 can, even if it gets involved in dumping, in order to
22 keep their work force employed.

23 Their manufacturing this year is up 16.9
24 percent. Their exports to the United States are up
25 34.7 percent, and in this country we continue to lose

1 manufacturing jobs at the rate of 57,000 manufacturing
2 jobs for the last consecutive 35 months. We are being
3 cored out on the inside. I don't know how much more
4 of this that we can take.

5 Congress passed Section 421 to fit into the
6 niche in areas like this where it may be hard to
7 quantify what the loss is. It's always difficult to
8 do that. Section 421 of the trade laws is in there
9 because Members like myself who support normal trade
10 relations with China recognize the potential damage to
11 the U.S. producers that could be caused by market
12 disruption resulting from rapidly increasing Chinese
13 imports in certain industry sectors.

14 In the furniture market, the Chinese now
15 have a 30 percent market share of all case goods.
16 That's the stuff that we have in our homes. Forty-
17 seven percent of all furniture that's imported in the
18 United States is coming from China. That's going to
19 be the subject of another petition that's going to be
20 before you.

21 But, we are here not as a matter of
22 happenstance or people that are complaining because
23 there's lack of sales. This is a concentrated effort
24 on the part of the Chinese to dump these things in the
25 United States to help out their economy, but at the

1 same time look what it's doing to the jobs that are
2 here in the United States.

3 This rapid increase has been going on for
4 several years. As a supporter of Section 421, it is
5 certainly my interpretation that this provision
6 applies to increases that have been growing over a
7 sustained period of time not just limited to a deluge
8 of imports over a very short period of time.

9 This is particularly important as Chinese
10 brake drum and rotor manufacturers have adopted to our
11 whack-a-mole approach and antidumping trade laws.
12 Once we identify and penalize one offender, whack-a-
13 mole, another one pops up in its place under a
14 different name, different city, same product coming
15 in, same problems, and we're back here again. We try
16 to whack the new offender with another antidumping
17 law. This is very inefficient and why a favorable
18 ruling on behalf of Brake Parts in this 421 case is
19 extremely important.

20 I know that the Dana Corporation had to lay
21 off workers in northern Illinois. This is a county of
22 18,000 people, and we lost several hundred jobs just
23 this past week. I lost two factories in one week in
24 an area with 11 percent unemployment, one an
25 automotive parts and the other one because of roller

1 bearings. Guess where that stuff is coming from?

2 Dana had to do this because of increasing
3 imports from China. Dana has worked hard to be
4 competitive. The funds received under the Byrd
5 amendment are appreciated, but that's still not enough
6 to stem the rising tide of Chinese imports of brake
7 drums and rotors.

8 One reason is that since 1994, China has
9 pegged its currency to the U.S. dollar. China has
10 experienced economic growth, gains in productivity, a
11 large export sector, increased foreign markets, which
12 are all factors that would cause its currency to
13 appreciate if it were allowed to freely move. This
14 amounts to a 40 percent tariff on U.S. goods going to
15 China and to a 40 percent reduction in the cost of
16 Chinese goods coming into the United States.

17 I queried Chairman Greenspan on Tuesday as a
18 Member of the Financial Services Committee with regard
19 to this very issue, to the loss of manufacturing jobs,
20 and other members as to why the Administration was
21 refusing to do something about this imbalance in the
22 currency. The next day, before the Senate Committee,
23 Chairman Greenspan came out and said well, you know, I
24 guess we're going to have to take a look at this and
25 do something about the imbalance in the trade caused

1 in part by the currencies don't float against each
2 other.

3 Treasury Secretary Snow five weeks ago came
4 out and said that these currencies should float, and
5 two weeks ago Commerce Secretary Evans came up with a
6 stronger statement when he said that he's going to
7 send somebody to China once a month to put pressure on
8 the Chinese so that they could make these currencies
9 float.

10 Because the currencies do not float against
11 each other, this is not an issue of free trade. This
12 is an issue of manipulation of trade done purposely by
13 the Chinese to get those parts over here at predatory
14 prices. Because they are manipulating the rules on
15 it, we come here to try to find relief because the
16 people refuse to let their currencies float.

17 Last May, I sent a letter to the Premier of
18 China urging him to let the RMB float. Last month, as
19 Chairman of the Small Business Committee, I held a
20 hearing on this issue. We personally brought this up
21 with the Treasury Secretary.

22 Brake Parts cannot wait until our government
23 negotiates some kind of arrangement with the Chinese
24 to fix this problem. They can't do that. I can't
25 lose any more employees. They can't lose any more

1 employees.

2 We need you to recommend to the President
3 some relief of the American brake drum and rotor
4 industry to offset the current advantage China has due
5 to its undervalued currency. We know in past cases
6 you've not always considered a change rate is
7 important. However, an undervalued Chinese RMB has
8 become so important that it is now the number one
9 trade issue for the National Association of
10 Manufacturers.

11 This nation's industries, particularly small
12 manufacturers, cannot effectively compete with China
13 due to pegging their currency to our dollar, combined
14 with an aggressive export policy that has resulted in
15 China surpassing Japan as the number one country with
16 which we have the largest trade deficit,
17 \$103,000,000,000.

18 The ITC is the federal agency that was
19 specifically designed by Congress to deal with this
20 problem. Many of us in Congress saw the potential for
21 rapid increases from China and wrote Section 421 into
22 the law to tackle, to safeguard the American
23 manufacturing base against these tough issues.

24 I urge you to use your powers in this case
25 to prevent the destruction of yet another vital U.S.

1 industry, one that is important to the national
2 interest and to the workers of Brake Parts who live in
3 my congressional district.

4 This case differs from the Steel issue. I
5 was here two weeks earlier arguing that we should not
6 have any type of help. Brake drums and rotors are not
7 basic raw material used by thousands upon thousands of
8 manufacturers in the United States. The cost of any
9 tariff increase in this case will be borne directly by
10 the consumer.

11 At auto repair shops you have a very minor
12 amount, as opposed to small steel using manufacturers
13 caught in a price squeeze between their steel
14 supplier, who continues to raise prices of raw
15 material, and their larger manufacturing customer
16 demanding lower prices and their larger manufacturing
17 customer buying the part offshore when the small steel
18 using manufacturer is not competitive because of the
19 increase in raw material. That's how it's different.
20 The steel user gets sandwiched with the Big Three on
21 top saying you must lower your prices by five percent,
22 while at the same time their steel prices were going
23 up.

24 This case here is totally different because
25 these parts go onto an automobile. These are

1 completed parts. If there's any increase in price,
2 that's passed along to the consumer. It wouldn't be
3 that much. Dana Corporation tells me that the
4 consumer is now already paying a higher price because
5 the installers buy the cheaper Chinese product, but
6 charge the higher price of the U.S. product, keeping
7 the difference as profit.

8 The price of steel has gone up way beyond
9 original expectations. If the price of steel at the
10 higher tariffs kept within the eight to 10 percent
11 rate as anticipated and that was explained to you and
12 promised to this body here a short two and a half
13 years ago, even the steel users were willing to pay
14 that additional duty if it meant the U.S. steel
15 industry would recover.

16 With price increases in steel averaging
17 around 25 percent, according to a survey my committee
18 undertook earlier this year, it's very difficult for
19 these steel users to maintain their global
20 competitiveness.

21 Finally, the brake drum and rotor industry
22 is also important to our national security as no
23 soldier can drive a Humvee or any army supply truck
24 without being able to stop with adequate brakes. It's
25 also vital to our national interest to have a healthy

1 and stable brake and drum industry to supply superior
2 quality and safe replacement of brake drum and rotor
3 products to prevent accidents on our nation's
4 highways.

5 The aftermarket brake drum and rotor
6 industry is in danger of becoming extinct in the U.S.
7 if the Commission does not act to impose additional
8 duties under Section 421 for an extended period of
9 time to give the industry an opportunity to regain its
10 position in the market.

11 I appreciate the time that you've taken to
12 listen to my remarks. If you have any questions. I'd
13 be more than happy to entertain them.

14 CHAIRMAN OKUN: Let me check with my
15 colleagues.

16 (No response.)

17 CHAIRMAN OKUN: Seeing no questions, we want
18 to thank you very much for appearing today --

19 MR. MANZULLO: Thank you very much. I
20 appreciate it.

21 CHAIRMAN OKUN: -- and for your written
22 testimony, which was provided in advance.

23 MR. MANZULLO: Thank you.

24 CHAIRMAN OKUN: Thank you.

25 Madam Secretary, will you please announce

1 our next congressional appearance?

2 MS. ABBOTT: The Honorable Phil English,
3 United States Congressman, 3rd District, State of
4 Pennsylvania.

5 CHAIRMAN OKUN: Welcome back, Mr. English.

6 MR. ENGLISH: Thank you, Madam Chair. May I
7 say the frequency of my appearances here I think you
8 can take as an index on how important I think the work
9 you are doing is, particularly the issue before you
10 this morning.

11 For the record, I want to say that my name
12 is Phil English, and I represent Pennsylvania's 3rd
13 Congressional District. I am particularly pleased to
14 appear on behalf of the third industry to seek relief
15 under Section 421.

16 As you know, the Committee on Ways and
17 Means, of which I'm a member, included this China
18 specific market disruption mechanism in the U.S.-China
19 Relations Act of 2000. This provision was added to
20 replace Section 406 of the Trade Act of 1974, which is
21 not applied to China since it acceded to the WTO in
22 2001.

23 Section 421 is a critical element of our
24 trade remedy arsenal because it augments the
25 antidumping and countervailing duty laws by providing

1 domestic producers with a way to respond to absolute
2 or relative increases of imports over periods of time
3 that result in a market disruption. Accordingly, I
4 ask the Commission to take into consideration
5 increases of imports over a period long enough to
6 provide a reasonable comparison to historical levels.

7 This unique trade remedy mechanism was
8 included in the U.S.-China Relations Act precisely to
9 respond to cases such as the one before you today.
10 May I say as someone who was part of the development
11 of that legislation, this specific case was in the
12 front of my mind when we developed this language.

13 As you may know, I testified before the
14 Commission in 1997 when the aftermarket brake drum and
15 rotor producers successfully sought relief under the
16 antidumping laws. In that particular case, the
17 Commission found injury caused by dumped imports of
18 rotors from China. However, despite this Order, the
19 structure of the harmonized tariff system made this
20 Order particularly easy for the Chinese to circumvent.

21 Additionally, the use of surrogate country
22 product data by the Department of Commerce greatly
23 diminished the potency of the Order by way of yielding
24 unrealistic low margins. Between circumvention of the
25 dumping Order on brake rotors by Chinese producers and

1 insufficient margins on the Order, this industry is
2 now on the verge of extinction five years after the
3 Order was imposed.

4 I am very familiar with this industry's
5 struggle because the Dana Brake Parts Erie plant is
6 located within my congressional district, and I've
7 enjoyed a good working relationship with them
8 virtually since my service began here nine years ago.
9 This industry, and particularly this plant and its
10 workers, have suffered severely as a result of Chinese
11 drum and rotor parts imported at absurdly low prices.
12 It has impacted the entire community.

13 Sadly, I have seen this pattern in other
14 sectors and the devastating effect illegally traded
15 imports have on employers, workers and indeed entire
16 communities. As the Commission is acutely aware, this
17 is particularly the case in the steel sector.

18 If relief against market disruption is not
19 implemented immediately, the U.S. aftermarket brake
20 drum and rotor industry will simply disappear.
21 Currently there are only four domestic companies still
22 in operation. They have consolidated, contracted and
23 gone out of business. All of this has happened at a
24 time when there have been surges of low-priced Chinese
25 brake drum and rotor imports into the United States

1 market.

2 The brake drum and rotor industry is an
3 important industry to the national economic interest
4 of the United States. This industry has important
5 military and industrial applications. We cannot let
6 this vital industry be destroyed by surges of low-
7 priced brake drums and rotors.

8 Also, I think it's worth noting the
9 companies we are dealing with here are small
10 companies. This is a small sector of our overall
11 manufacturing sector. Looking at it from that
12 perspective, may I suggest that it is particularly
13 important that these antidumping and countervailing
14 duty laws, including the China specific mechanisms,
15 work for smaller companies, not just larger ones.

16 It is absolutely critical that we make these
17 laws available to provide remedies to small
18 manufacturers, and this particular group of
19 manufacturers are a case study of the ones that we
20 would want these laws to be applicable to.

21 I ask the Commission to find affirmatively
22 in this case and thank you for the opportunity to
23 appear.

24 CHAIRMAN OKUN: Thank you again.

25 Let me see if my colleagues have any

1 questions or comments.

2 (No response.)

3 CHAIRMAN OKUN: Thank you again for your
4 appearance here today.

5 MR. ENGLISH: Thank you so much.

6 MS. ABBOTT: Opening remarks in support of
7 relief will be made by Leslie Alan Glick, Porter,
8 Wright, Morris & Arthur.

9 CHAIRMAN OKUN: Good morning.

10 MR. GLICK: Good morning. Thank you, Madam
11 Chairman and members of the Commission.

12 My name is Leslie Glick, and I'm a partner
13 in the law firm of Porter, Wright, Morris & Arthur and
14 testifying today as counsel to the Petitioner, which
15 is a coalition of three U.S. domestic producers -- the
16 Rotor, Drum and Foundry Division of Dana Corporation,
17 the Federal Mogul Corporation and Alpaca Foundry.

18 Our coalition, with a slightly different
19 group of members, was back here before you in 1996 to
20 state our case concerning dumping of drums and rotors
21 from China. The Commission found the existence of
22 injury in that case on rotors and decided to maintain
23 that Order last year in the sunset review.

24 Madam Chairwoman, we are truly sorry to have
25 to be back before you again seeking relief, but even

1 the relief that was granted by the Commission in the
2 antidumping case on rotors has not stemmed the rising
3 flow of low-priced Chinese imports. Since drums were
4 not included, the drum industry has had no relief at
5 all.

6 I'd like to observe that the fact that there
7 was a previous dumping Order on rotors does not, as
8 opposing counsel suggests in their prehearing briefs,
9 in any way affect the need for or the appropriateness
10 of relief under Section 421. While the issue of the
11 impact of outstanding antidumping Orders has not
12 arisen in the context of a Section 421 case, it has
13 arisen in the Section 201 cases which the Commission
14 has relied on in such cases as Garment Hangers and
15 Pedestal Actuators as a source of reference for
16 Section 421.

17 In the most recent 201 investigation in
18 Steel, the Commission acknowledged the existence of
19 antidumping Orders on steel but observed that such
20 "antidumping Orders do not detract from our
21 conclusions concerning increased imports, serious
22 injury to the domestic industry or the linkage between
23 that injury and increased imports."

24 Commissioner Bragg noted in that case that:
25 "As a fundamental matter, antidumping and

1 countervailing duty Orders eliminate dumping or
2 subsidies. They are not a remedy mechanism."
3 Therefore, it should be clear that from a legal
4 standpoint the prior decision of this Commission on
5 dumping of rotors is in no way a bar to further relief
6 under Section 421.

7 The other legal issue that I wish to discuss
8 concerns the issue of rapidly increasing imports. The
9 opposition has distorted this issue and taken the
10 position not supported by the clear language of the
11 law itself that there must be some type of emergency
12 situation with tremendous increases in imports
13 concentrated in the most recent year for there to be
14 relief under 421.

15 However, neither the statute nor the
16 legislative history support opposing counsel's
17 interpretation. In fact, a review of prior cases
18 under Section 406, which are also frequently looked at
19 by the Commission as a source of reference in 421
20 cases, clearly indicates that rapid increases can
21 indeed take place over a period of several years.

22 In fact, the legislative history of Section
23 406 in the House conference report states the
24 conferees were concerned that an unduly restrictive
25 approach to the rapidly increasing requirement under

1 Section 406 had been taken and suggested an increase
2 of over a two to three year period will provide a
3 "more stable basis for comparison and may show a
4 steady trend toward higher import levels that meets
5 the rapidly increasing requirement." The report goes
6 on to say that "in the latter situation, the increase
7 need not be as sharp or as dramatic as that required
8 over a shorter period."

9 In addition, the two distinguished
10 congressmen here today have testified that 421 does
11 not require an increase in the short period, but can
12 be satisfied by increases that are over an extended
13 period of several years.

14 We'll discuss the remaining legal issues in
15 our post-hearing brief, but we wanted to address at
16 the outset two of the clearly erroneous legal
17 positions opposing counsel have raised so that these
18 incorrect interpretations do not divert the
19 Commission's attention from the important factual
20 information we'll be presenting today in our witness
21 testimony, which will establish market disruption to
22 the U.S. aftermarket brake drum and rotor industries.

23 Today we will present testimony that
24 demonstrates that the U.S. aftermarket brake drum and
25 rotor industries urgently require the relief that is

1 provided by Section 421 to adjust to the high volume
2 of low-priced imports from China.

3 Dr. Button of ECS will discuss the overall
4 economic condition of the U.S. industries and will
5 also further address the rapidly increasing imports
6 issue. We will then present witness testimony to show
7 how rapidly increasing imports of Chinese brake drums
8 and rotors have disrupted the U.S. market, causing
9 injury to companies and workers in the U.S.

10 You'll hear from two U.S. drum and rotor
11 manufacturers about plant closings and increased
12 volume and product mix of Chinese imports at low
13 prices. You'll hear from two U.S. warehouse
14 distributors who are customers or former customers of
15 the U.S. plants about how and why they switched to
16 imported Chinese drums and rotors and why they would
17 like to switch back to the U.S. product, but are
18 prevented from doing so by market pressures caused by
19 low-priced Chinese imports.

20 Finally, you will hear from a former Federal
21 Mogul worker who is now a union official about the job
22 losses incurred at the Federal Mogul plant and its
23 impact on workers and their community.

24 The testimony will demonstrate that there
25 is --

1 CHAIRMAN OKUN: Mr. Glick, you understand
2 your red light is on?

3 MR. GLICK: Is that my red light? Okay.
4 Thank you, Madam Chairman.

5 CHAIRMAN OKUN: Do you have a concluding
6 sentence? I didn't know if you were going to another
7 page.

8 MR. GLICK: Okay. Well, perhaps I might add
9 that my complete opening statement I could submit for
10 the record.

11 CHAIRMAN OKUN: You may.

12 MR. GLICK: Thank you, Madam Chairman.

13 CHAIRMAN OKUN: Thank you.

14 MS. ABBOTT: Opening remarks in opposition
15 to relief will be made by Hamilton Loeb, Paul,
16 Hastings, Janofsky & Walker.

17 CHAIRMAN OKUN: Good morning.

18 MR. LOEB: Good morning. Madam Chairman,
19 members of the Commission, I am Hamilton Loeb. I
20 represent the Chinese Respondents here and the CCCME,
21 the group of Chinese companies that produce mechanical
22 and electrical products of various kinds.

23 My theme this morning is drawn from last
24 Tuesday night's All-Star game. You may remember that
25 last year the All-Star game ended in a tie. That was

1 quit dissatisfactory, so it was determined that this
2 year the winner of the All-Star game would get home
3 field advantage in the World Series. The theme of the
4 All-Star game was this one counts.

5 I say to you this morning that this case
6 counts. This case is critical not just for the
7 Section 421 standards of injury and causation and
8 rapid increase. It's also critical for the factors of
9 respect for the Commission and its processes, and it's
10 critical for the way that trade between the U.S. and
11 China will operate across the spectrum of HTS U.S.
12 products and categories over the period while Section
13 421 is operative.

14 That predicate said, let me start with the
15 simplest point. To enter a negative market disruption
16 determination here, the Commission does not need to go
17 any further than its ordinary methods of analysis of
18 the three statutory factors -- rapid increase, injury
19 and significant causation. If the Commission follows
20 its regular pathways on each of those three factors,
21 it will go negative on each.

22 But, this is more than just an ordinary or
23 routine case. It is the third Section 421. The first
24 two did not involve, as this one does, significant
25 trade volumes, and they did not involve experienced

1 Petitioners. Pedestal Actuators, you'll recall, was a
2 one Petitioner/one Respondent case. Garment Hangers
3 involved small trade volumes, a fraction of what's
4 involved here.

5 As Commissioner Miller said then, that was a
6 Petitioner that this Commission had never seen, unlike
7 today. This industry has been here. It's been to
8 USTR repeatedly on Japanese and other auto parts
9 issues, and it is supposed to know what it's doing.
10 Here we deal with significant volumes and a long and
11 established history of Chinese participation in the
12 market. That's why I say this one counts. What the
13 Commission does here will have a direct and immediate
14 impact.

15 If this Petitioner on this record with these
16 facts regarding rapid increase and injury and
17 significant cause is enough to get past the Commission
18 to get a recommendation for intervention in the
19 ordinary operations of this market and to reach the
20 President's desk, then we can all count on being here
21 on these 60-day fire drills time after time after
22 time.

23 There are large sectors of bilateral U.S.-
24 China trade that will be lifted out of fair trade
25 principles, will be lifted out of the regularization

1 that the WTO accession contemplated for China and will
2 be subject to an ad hoc array of managed trade
3 regimes. Of course, the President, who does have a
4 day job, will be working a second shift.

5 We'll show in our hour why none of the three
6 Section 421 standards have been met here, and you'll
7 hear from 25-year veterans of the brake parts
8 industry, including witnesses who worked for one of
9 the Petitioners and senior management until fairly
10 recently. As I said at the outset, when you finish
11 looking at the evidence on the three factors I believe
12 you'll see a negative determination as the only
13 possible outcome.

14 So far I've said nothing about the factors
15 that are unique to the way this case has been
16 developed in front of the Commission. The Chairman
17 has already addressed those in her opening remarks.

18 I will say that I want to comment that the
19 sentence that appears at the very end of the
20 Petitioners' brief which says to the effect that the
21 Petitioners lack the stay-up necessary to submit an
22 adjustment plan seems to me to be entirely insensitive
23 to the burden that the statute puts on U.S.
24 Commissioners to evaluate the very serious issue of
25 whether a claim can be made that will cause a remedy

1 recommendation to go through the President of the
2 United States on products that are certified by the
3 Commerce Department as fairly traded because they've
4 been through numerous new shipper reviews.

5 I think to enter this room without an
6 adjustment plan is an act of remarkable presumption by
7 the Petitioners. As I say, this one counts. We'll
8 look forward to showing you why during our
9 presentation.

10 CHAIRMAN OKUN: Thank you.

11 Madam Secretary, will you please call the
12 first panel?

13 MS. ABBOTT: The first panel is in support
14 of relief. The witnesses have been sworn.

15 (Witnesses sworn.)

16 CHAIRMAN OKUN: It appears that all the
17 witnesses are seated and ready to proceed, Mr. Glick.

18 MR. GLICK: We're ready to proceed, Madam
19 Chairman. Our first witness will be Dr. Kenneth
20 Button.

21 MR. BUTTON: Good morning, Madam Chairman,
22 members of the Commission. I am Kenneth Button,
23 senior vice president of Economic Consulting Services,
24 LLC.

25 I'm appearing today on behalf of the

Heritage Reporting Corporation
(202) 628-4888

1 domestic industry to discuss the evidence that
2 aftermarket brake drums and rotors from China are
3 being imported in such increased quantities as to
4 cause market disruption to the domestic producers of
5 these products. The evidence indicates that imports
6 of these products are increasing rapidly so as to be a
7 significant cause of the material injury to the
8 domestic industry.

9 Let me first discuss certain of the
10 conditions of competition in this market that are
11 relevant to the Commission's investigation. As the
12 Commission has previously found, aftermarket brake
13 rotors and drums represent distinct products produced
14 by separate industries.

15 Furthermore, aftermarket brake rotors and
16 drums are differentiated from original equipment or OE
17 brake drums and rotors based on several factors.
18 First, their physical characteristics are distinctly
19 different.

20 Second, their uses are different in that
21 aftermarket products are used for the replacement,
22 non-warranty segment of the automotive part market,
23 while OE parts are used in the original production of
24 new vehicles and for warranty repair purposes.

25 Third, their different physical

1 characteristics and uses lead to aftermarket drums and
2 rotors having significantly lower prices than original
3 equipment drums and rotors.

4 As to demand, the total size of U.S. demand
5 for aftermarket drums and rotors increased over the
6 POI as the total number of vehicles in operation
7 increased. An important condition affecting the
8 economics production is that per unit production costs
9 for a particular product model decline rapidly as the
10 volume of the production of that model increases. In
11 other words, long production runs of the more widely
12 used models permit important economies that result in
13 lower production cost.

14 Related to that point is the fact that in
15 order to provide a full range of models, a U.S.
16 producer needs to produce the high volume, widely used
17 models, as well as the small volume, infrequently
18 demanded models. Therefore, the composition of a
19 company's product mix, the proportions of high volume
20 models versus low volume models, is important to the
21 company's financial health.

22 Finally, imported Chinese aftermarket brake
23 drums and rotors are interchangeable with domestic
24 brake drums and rotors as indicated most obviously by
25 the rapidity with which the Chinese products have

1 taken sales and market share away from the U.S.
2 produced products.

3 Given this economic context, let me now note
4 the rising levels of imports. We have provided two
5 exhibits to the Commission for its use, and they will
6 be shown on the screen. As shown in our Exhibits No.
7 1 and 2, which are based on public staff report data,
8 first, the absolute volume of imports of subject
9 products from China has greatly increased. From 1998
10 through 2002, the volume of subject Chinese drum and
11 rotor imports each rose by 135 percent and increased
12 by a further 19 percent in part year 2003 for a total
13 1998 to annualized 2003 increase of 179 percent.

14 In their prehearing briefs, Respondents make
15 an assertion that there are no rapid increases
16 relevant to this investigation because there were
17 especially large increases during the first two years
18 of the POI, while the increases more recently were not
19 of the same extraordinary magnitude.

20 Their economical logic does not hold. Even
21 the recent increases must be considered rapid. As
22 shown in Exhibits 1 and 2 for both rotors and drums,
23 the percentage rates of increase from 2000 to 2001 and
24 from 2001 to 2002 were each a rapid 13 percent. In
25 part year 2003, the increase was even more rapid at 19

1 percent.

2 Although I believe that there is only
3 limited utility in focusing on Respondents' semantic
4 analysis of the phrase rapidly increasing, it is
5 perhaps useful to point out that a "massive" increase
6 certainly appears to be bigger than a "rapid" increase
7 and that under the critical circumstances regulations
8 of the U.S. Department of Commerce a "massive"
9 increase is defined as an increase of 15 percent or
10 more. Therefore, the part year 2003 increase of 19
11 percent would appear to qualify not only as a rapid
12 increase, but also as a massive increase as well.

13 Furthermore, as a share of total imports
14 from all sources, the imports from China are also
15 increasing. Chinese drums constituted 35 percent of
16 total aftermarket drum imports in 1998, but 58 percent
17 of the total by part year 2003. The Chinese share of
18 the aftermarket rotor imports rose from 49 percent in
19 1998 to 69 percent in part year 2003.

20 Finally, as the confidential data in the
21 staff report make unequivocally clear, imports from
22 China of both products are increasing rapidly relative
23 to U.S. production and U.S. consumption of these
24 products. Therefore, it is clear that the subject
25 product imports from China are increasing rapidly in

1 both absolute and relative terms

2 As to material injury, the confidential data
3 in the staff report and the U.S. producers'
4 questionnaires indicate the domestic industry
5 producing aftermarket brake drums and rotors are
6 suffering material injury according to essentially all
7 of the injury indicia. The industry representatives
8 present today will describe the deteriorating
9 circumstances faced by their companies. Petitioner
10 Alpaca's rapidly deteriorating situation is reflected
11 in its questionnaire response and in the staff report.

12 The Commission should keep in mind that the
13 domestic industry drew no benefit from the increase in
14 the size of the total U.S. demand during the POI as
15 imports from China took not only the market growth,
16 but also took ongoing sales away from the domestic
17 producers.

18 In this public forum, I would only highlight
19 the following points. The decline in capacity
20 utilization rates for both the aftermarket drum and
21 rotor industries was especially great. The shipments
22 volume have fallen with further declines estimated for
23 2003. The composition of the U.S. producers'
24 shipments has shifted in a severely negative way.

25 As described in the prehearing brief, the

1 proportion of U.S. industries' total shipments that
2 are high volume models has declined compared to the
3 proportion of shipments that are low volume specialty
4 models. The result is higher production costs not
5 only for the higher demand models, but also across the
6 whole spectrum of the models.

7 Nonetheless, the U.S. producers have taken
8 extraordinary measures to reduce their cost and to
9 prevent their financial condition from worsening
10 further. The company representatives will describe
11 the plant closures and other reductions in operations
12 that they have experienced, one effect of which has
13 been a significant decline in employment in these
14 industries. They will also comment on the decline in
15 the financial performance of their companies.

16 With respect to causation, the nexus between
17 the domestic industry's injury and the rising imports
18 from China is very clear. First, the confidential
19 data show that imports of Chinese aftermarket brake
20 drums and rotors have increased their market shares by
21 large magnitudes fundamentally at the expense of the
22 U.S. producers.

23 Second, Chinese prices are indeed far below
24 U.S. producers' prices. The staff report shows large
25 margins of underselling by Chinese products in every

1 quarter for which a comparison is possible. Given
2 that the Chinese and domestic products are highly
3 substitutable, the low Chinese prices have led U.S.
4 consumers to switch from U.S. product to the Chinese
5 product.

6 Third, faced with the choice of fruitlessly
7 following the Chinese prices in an ever downward
8 spiral, some U.S. producers have elected to maintain
9 prices wherever they can, even though it has meant
10 losing sales volume to the Chinese competition on
11 these models.

12 Moreover, given the necessity of presenting
13 a complete model line to customers, some U.S.
14 producers have been forced themselves to sell Chinese
15 produced products in order to have a price competitive
16 product to offer customers in the model areas where
17 the Chinese competition is most intense. As you will
18 hear, this is not a desirable situation for a domestic
19 producer.

20 Not surprisingly, the imports from China
21 entered the U.S. market by first concentrating on the
22 sales of the high volume, large demand models. This
23 group of high volume models is generally termed the A
24 group of part numbers. Over time, the Chinese
25 producers have expanded their model offerings downward

1 into the B group, the C group and the D group of lower
2 volume models such that the Chinese producers are now
3 offering essentially all the models of aftermarket
4 drums and rotors that are consumed in the U.S. market.

5 The Chinese progressive expansion through
6 the model range had a particularly damaging effect on
7 the U.S. producers. The early takeover of the high
8 volume A group models reduced the U.S. producers'
9 production of just the high volume models, which the
10 U.S. companies needed to keep low the per unit fixed
11 production cost of these and all models that they
12 produce. The U.S. producers were forced to rely
13 increasingly heavily on their sales of the low volume
14 models and, in some cases as noted, to substitute
15 Chinese products for sales of the certain high volume
16 models.

17 We urge the Commission and the staff to
18 examine closely the additional lost sale information
19 provided to the staff and included in the prehearing
20 brief. These data show a pattern in which the
21 customers have switched from U.S. aftermarket drum and
22 rotors to the Chinese product.

23 With respect to threat, for the domestic
24 industries we would say the past is prologue. The
25 imports from China are increasing and are likely to

1 continue to increase. Capacity in China is expanding
2 and is likely to continue to do so. All of these
3 traditional threat indicia point to the likelihood
4 that without relief the domestic industries will
5 suffer ever greater injury in the future.

6 Rising import penetration, large
7 underselling margins in every quarter and increasing
8 inventories of Chinese product in the United States
9 foretell additional serious future consequences for
10 U.S. producers. The threat is all the greater
11 because, as the staff report notes, some analysts
12 believe that the Chinese government policy may have
13 resulted in the Chinese won being undervalued by as
14 much as 40 percent.

15 Moreover, production capacity in China of
16 aftermarket drums and rotors had increased
17 substantially over the POI, more than doubling for
18 drum and increasing by 83 percent for rotors. As
19 capacity has risen, so, too, have the production and
20 shipments exported to the U.S. market.

21 The U.S. market accounts for over half of
22 the Chinese producers' total shipments of drums and
23 almost 75 percent of their rotor shipments. It is
24 clear that the United States is the priority market
25 for the Chinese industry. Therefore, as the Chinese

1 producers have significant unutilized capacity to
2 produce still more rotors and drums, there is little
3 doubt that their additional output would be directed
4 at the U.S. market.

5 Thank you. That completes my testimony.

6 CHAIRMAN OKUN: Thank you.

7 MR. LAVARRA: Good morning. My name is Joe
8 LaVarra, and I'm the general manager of the Rotor,
9 Drum and Foundry Division of Brake Parts, Inc., which
10 is part of the Dana Corporation.

11 My goal today is to give this Commission an
12 overview of a situation that has been adversely
13 affecting the stability, prosperity and
14 competitiveness of the U.S. aftermarket brake drum and
15 rotor manufacturers and threatens to destroy our
16 industry if not remedied.

17 The situation is the growth of imports of
18 low-priced drum and rotors from China. Let me begin
19 this discussion by briefly defining the two major
20 segments of our market which we believe are separate
21 and distinct industries -- the original equipment and
22 aftermarket.

23 Basically, the original equipment
24 manufacturers supply parts directly to the auto maker
25 assemblies into new vehicles. These parts, in which

1 most cases have the name and a logo of the
2 manufacturer embedded, are built to high tolerances on
3 designated equipment to run high production volumes of
4 single part numbers supplied just-in-time.

5 Aftermarket manufacturers supply parts to
6 the replacement market because these are replaced
7 after the vehicles has been in service for some number
8 of years. These parts generally have some looser
9 tolerances, and they don't have OEM part numbers or
10 logo identified inside. They are manufactured on
11 equipment that enables the rapid change from one part
12 to another since the demand of the aftermarket
13 requires many different part numbers in lower volumes.

14 Once the aftermarket drum and rotors are
15 manufactured, they are generally supplied to a
16 warehouse distributor, who then redistributes these
17 parts to part stores, and they are ultimately provided
18 to the auto service centers where the parts are
19 installed.

20 With that overview, let me focus
21 specifically on my area of expertise, the aftermarket
22 rotors and drums. At this point, let me say that
23 although there are different and distinct differences
24 between the OE and aftermarket that make them separate
25 markets, the aftermarket is one market and one market

1 only.

2 You may hear some testimony later today from
3 some former employees of our company whose jobs were
4 eliminated due to consolidation in operations. They
5 have since started their own company, who claim that
6 the aftermarket consists of two markets, one for an
7 economy line product and one for premium. This simply
8 is not true. Our principal product is our U.S.
9 premium product. We would sell that only if we could.
10 We offer an economy line because of the low-priced
11 Chinese imports.

12 According to the Automotive Manufacturers
13 Research Council, the drum and rotor segment of the
14 brake replacement market has an average annual growth
15 rate of approximately two percent. Comparatively, in
16 1998, there were 12,000,000 aftermarket drums and
17 rotors imported from China. In 2002, imports reached
18 an estimated 28,000,000 units, which is a growth of
19 two and a half times or 135 percent in five years.

20 Clearly, this growth has displaced North
21 American production. As the largest manufacturer in
22 the U.S. aftermarket, our business has suffered. In
23 1999, we closed a drum and rotor machining facility in
24 Amhearst, New York, and a rotor machining facility in
25 Bedford Mines, Canada, in 2002.

1 This 2002 plant closing was the direct
2 result of our extremely poor year in 2001, and by
3 closing the plant and moving our equipment to our
4 McHenry facility plus devoting some more resources to
5 brand identification advertising, this resulted in a
6 temporary recovery in 2002, but still below the 1998
7 to 2000 level. In addition, the first quarter of 2003
8 is down, so it cannot be viewed as a significant
9 change.

10 Even with this reduction in capacity, our
11 volumes to our customer base continue to decline as
12 our customers succumb to the lure of low-priced
13 imported drums and rotors from China. Our two
14 remaining aftermarket facilities within the United
15 States are currently running at 68 percent of
16 capacity.

17 As a result of these volume decreases, we
18 have not made any investment in new capital for
19 growth. We have been forced to permanently remove 337
20 people from our payroll since 1998, which is a 44
21 percent reduction.

22 To meet this competitive threat, we continue
23 to find ways to be more competitive, including working
24 with our suppliers to identify waste and remove costs
25 from all areas of our business, including everything

1 from raw material acquisition, engineering,
2 manufacturing, to the cost associated with marketing
3 and distributing our product. These efforts include
4 improving throughput through automation, innovation
5 and technology and manufacturing and better trained
6 employees.

7 We have and will continue to diligently find
8 ways to compete with the low-priced volume
9 competition. However, the challenge is significant.

10 MR. LAVARRA: Five years ago low priced
11 rotors and drum manufacturers supplied only high
12 volume part numbers. Today, they are rapidly becoming
13 full-line suppliers, within some cases over 1500 part
14 numbers in their offering. This is equal to the
15 product line offering we have in our line today.

16 Five years ago a warehouse distributor could
17 be buy a Chinese rotor for \$8. Today, you can buy
18 them for between four and five dollars which, I should
19 add, includes the shipping and freight cost from
20 China. Our products sell for an average of \$23.
21 Clearly, the Chinese capacity has increased while
22 their prices have declined even though material costs
23 continue to rise globally.

24 The impact has been sizeable. The after-
25 market suppliers have been forced to reduce prices to

1 protect and defend the market share that we have
2 already earned, which has negatively affected our
3 margins and therefore our profitability.

4 We welcome competition and we believe it's
5 our obligation to find ways to continue to reduce cost
6 associated with our products. We also believe that
7 the growth of the Chinese drum and rotors across the
8 U.S. has harmed our business, which, in turn, has
9 harmed the communities in which we live and which we
10 work.

11 The Chinese clearly have a competitive
12 advantage in price as our customer base feels
13 compelled to utilize, to remain competitive, to
14 maintain their own customers who are pushing them for
15 lower priced product. Although we have taken many
16 steps to become more efficient, this huge price
17 differential between drums and rotors imported from
18 China and the United States-made product is not
19 something we can overcome by traditional means of
20 removing cost from our business.

21 We need your help, help to help us adjust
22 for this competition through high tariffs on Chinese
23 drums and rotors for a substantial period of time.

24 While we are and will continue to be
25 diligent in our efforts, we fear that we are fighting

1 a battle for our company and for our people that
2 ultimately cannot be won unless this Commission
3 attempts to help stop this market disruption caused by
4 low-priced Chinese imports of drums and rotors. By
5 imposing sizeable tariffs on drums and rotors will
6 give us the time to adjust our position and to become
7 more competitive with the Chinese product.

8 Thank you very much.

9 CHAIRMAN OKUN: Thank you.

10 MR. EASLEY: Good morning, Madam Chairwoman,
11 and members of the Commission.

12 My name is Dan Easley. I'm the plant
13 manager for Federal Mogul brake drum and rotor plant
14 in St. Louis, Missouri. Today I would like to
15 describe the negative effects the imports of after-
16 market brake drums and rotors from China have had on
17 Federal Mogul and U.S. domestic brake drum and rotor
18 industries.

19 I would like to begin by highlighting the
20 increase in imports from China relative to domestic
21 production and consumption, and the detrimental
22 effects that increased product line coverage by the
23 Chinese have had on the domestic industries.

24 The imported Chinese products have increased
25 at a very rapid pace over the last five years. They

1 first entered the market by offering low-price
2 products to the highest volume part numbers, we refer
3 to as our A class models. Although the Chinese
4 initially provided a low number of part numbers, the
5 initial offering covered 80 percent of the total
6 volume in the U.S. market, which enabled them to
7 increase their market share very quickly.

8 Now that they have increased the part number
9 offering to cover 100 percent of the product line we
10 carry, as a direct correlation our production of the A
11 models dropped drastically. The effect was
12 devastating, and our ability to cover invested capital
13 and overhead with only the remaining small volume
14 parts.

15 Today, we still find ourselves in a state of
16 crisis management because we were forced to quickly
17 reduce production outputs and reduce spending to
18 minimize the impact. The penetration of volume caused
19 the need for further restructuring and reduction in
20 cash flow and lower production volumes resulted in
21 lost profitability and huge negative plant cost
22 variances.

23 The effects of increased imports of high
24 volume part numbers from China led to an overall
25 inability for Federal Mogul to operate at a reasonable

1 profit level. The decreased volume is causing
2 operational losses due to our inability to cover these
3 fixed costs. Capital equipment is left sitting idle
4 while depreciation costs continue.

5 Although we made offsets to labor and
6 spending, we could not cut enough variable costs to
7 keep the variances from occurring. Our plant
8 continues to suffer large profit losses.

9 During my first weeks as the plant manager
10 in 1998, we experienced a shutdown of the entire
11 operation for six weeks because of slow sales caused
12 by imports of drums and rotors from China. Inventory
13 was available at quantities that could service our
14 customers' needs without any production output.

15 At the end of the shutdown I was forced to
16 lay off 50 percent of our workers, or one entire shift
17 at our foundry. I closed one entire high volume
18 machining department that was devoted to making
19 products that were being imported from China.

20 The remaining machining operations were
21 downsized to one-third of their original size. Only
22 one of three shifts continued producing the products.
23 In order to compete with the Chinese brake and rotor
24 imports, drum and rotor imports we continued to bleed
25 off inventories through the next few years. We were

1 forced to have multiple four-day work weeks, and
2 extended holiday shutdowns as a result of soft demand.
3 Today, we continue to operate with excess capacity.

4 In 2001, as a result of the Chinese drum and
5 rotor imports things were so bad that we were ready to
6 close the plant and even negotiated a plant closing
7 agreement with the union. We were only saved by a
8 contract we received with Ford. The Ford contract
9 resulted in a recoup of our operating income for 2002.
10 However, this is by no means a permanent solution for
11 our problem of the market erosion from Chinese
12 imports. Even these sales are vulnerable to the
13 continual increasing imports and low prices from
14 China.

15 We are currently producing at half the
16 capacity that we were in 1998. In addition to the
17 substantial decrease in capacity utilization, it is
18 vital to remember that during the last five years we
19 have shut down and disposed of equipment that was
20 designed and devoted to make high volume production.
21 What is left at our facility is only operating at 60
22 percent utilization for machining and 50 percent
23 utilization for foundry operations.

24 A compounding negative effect of high volume
25 -- of the high volume Chinese imports coming into the

1 U.S. is that the domestic industry cannot afford to
2 invest anything towards research and development. The
3 reason for this as our volumes decrease cost variances
4 increase and product costs rise, which decrease
5 margins. The reduction in profit does not allow for
6 the development of improved products.

7 In conclusion, the Chinese continue to
8 penetrate the American drum and rotor after-market to
9 the detriment of the domestic producers. The U.S.
10 market has provided a perfect entry point into the
11 after-market drum and rotor business for the Chinese.
12 Domestic producers had already developed all of the
13 drum and rotor products, rationalized distribution,
14 and had part numbering systems and cataloguing in
15 place. Therefore, the Chinese have been able to
16 cherry pick this established market by contacting
17 existing customers and offering a copied product which
18 is cross-referenced to our part number by the use of
19 our cataloguing at extremely low prices.

20 Since the Chinese first entered the after-
21 market drum and rotor market in the U.S. their part
22 numbering offering has quickly expanded to have full
23 coverage equal to our own. Federal Mogul's share of
24 after-market brake drum and rotor markets has
25 decreased drastically and is continuing to fall while

1 market demand of after-market drums and rotors is
2 slightly increased overall due to the growth of
3 vehicle population.

4 Our sales are decreasing to nearly half of
5 what they once were in the traditional after-market.
6 Nearly every Chinese-made brake drum and rotors sold
7 in the U.S. market displaces a unit from the United
8 States industry.

9 Thank you for your time.

10 CHAIRMAN OKUN: Thank you.

11 MR. JAFFE: Good morning, Madam Chairwoman,
12 and members of the --

13 CHAIRMAN OKUN: I'm sorry. If you could
14 pull you microphone just a little closer so we can
15 hear you better.

16 MR. JAFFE: Good morning again, Madam
17 Chairwoman and members of the U.S. International Trade
18 Commission.

19 My name is Milton Jaffe, and I am President
20 of Certified Automotive Warehouse. We are a warehouse
21 distributor of after-market auto parts. Brake drums
22 and rotors are a major item in our product
23 distribution. The area we service is Chicago and the
24 State of Illinois. We are the largest independent
25 distributor in this area with over 50 company-owned

1 stores and 250 independent jobbers that sell both
2 U.S.-made and Chinese-made drums and rotors for the
3 after-market.

4 I have been in this business since the early
5 1950s, and consider myself quite knowledgeable
6 concerning the after-market sales of drums and rotors
7 in the U.S. market.

8 Historically, if we go back to the last
9 sixties, there was mostly U.S.-made drums and rotors
10 in the after-market. We were buying a premium line
11 from Enco, a company that was a predecessor of Dana
12 Brake Parts. In the 1970s, we were paying around 45
13 to 50 dollars per unit. Recently, the Chinese after-
14 market drum and rotor manufacturers entered the U.S.
15 market with low-priced products. The most notable
16 surge of these imports has been in the last few years.

17 Originally, the Chinese product entered the
18 market with a limited product line, targeting only
19 select U.S. products that were the most popular
20 models. However, over time they have added more and
21 more models and expanded their product mix, at the
22 same time they have lowered their price and improved
23 their quality.

24 There is only one market. There are only so
25 many rotors needed, and the lower-priced Chinese

1 product competes with the higher-priced U.S. product,
2 and takes sales away from the U.S. products. It's no
3 different than when you may purchase a six-year
4 battery or a three-year battery for your car. No
5 matter what you decide you only buy one battery, so
6 there is only one market.

7 As I have noted, we originally purchased
8 only U.S.-made after-market drums and rotors. But as
9 price pressure from our jobbers and their installed
10 increased, we started purchasing imports. At first
11 these included Mexican, South American as well as
12 China. However, none of those countries' prices were
13 nearly as low as the Chinese brake drums and rotors.

14 The facts are that price is the most
15 important, and that is why we are now using Chinese
16 products for our entire economy line. Much of this
17 comes from AIP Dura. We buy on the average of two
18 containers a month direct from China. We also carry a
19 premium U.S.-made line from Dana Rebestos, but their
20 price is much higher. There is a small but
21 diminishing group of buyers that prefer U.S.-branded
22 products, but the vast majority of our customers are
23 really only interested in price. In other words, the
24 marketplace is changing from the U.S. products to the
25 Chinese products.

1 The market is driven by price and customers
2 rarely ask about anything except price.

3 We sell seven times as many units of Chinese
4 product than U.S. product, but our Chinese dollar
5 sales are only twice as much as our domestic sales,
6 yet we produce a gross profit much, much larger per
7 unit on the U.S. products than on the Chinese
8 products.

9 So what would we prefer to sell, Chinese or
10 domestic product? Obviously, we would prefer to deal
11 only with the U.S. products.

12 I mentioned previously that at one time we
13 sold only U.S.-made products. The low prices of the
14 Chinese product drove the demand for imports by our
15 customers who are the jobbers and installers that work
16 on your car. The benefits are not going to the
17 ultimate consumer. People like yourselves that may
18 buy drums and rotors for their vehicle, it doesn't go
19 to you. The reason for that is that the installer may
20 buy the cheaper Chinese drum and rotor but he is not
21 likely to inform the customer, and he may charge the
22 customer close to the same price as the customer would
23 have paid for the premium U.S. products. Thus the
24 benefits are going to a very small group of installers
25 and not to the consumers where they should go.

1 Since the installers are asking for the
2 lower-priced product, we are forced to carry more of
3 them. In my opinion, it is disrupting the rationality
4 of the U.S. market for drums and rotors. If prices of
5 the Chinese product keep falling, the few remaining
6 U.S. producers are likely to go out of business as
7 several have done in the past. Then there will be no
8 U.S. industry and the Chinese will be able to increase
9 their prices and there will be no competition in the
10 U.S. after-market.

11 I certainly hope this doesn't happen, and I
12 believe that your Commission has the power to prevent
13 it, and I hope that you will take action in this case
14 to ensure the survival of the remaining U.S. producers
15 by imposing the additional tariffs requested.

16 Thank you for hearing.

17 CHAIRMAN OKUN: Thank you.

18 MR. HERZOG: Madam Chair, and members of the
19 U.S. International Trade Commission, my name is Conway
20 Herzog, and I am the CEO of Herzog's Automotive parts
21 in New Orleans, Louisiana.

22 I am testifying here today to support the
23 request of the petitioners for relief caused by the
24 market disruption resulting from rapidly increasing
25 imports of low-priced drum and rotor imports from

1 China.

2 Herzog's Automotive Parts is an after-market
3 distributor of brake drums and rotors. We were buying
4 the U.S.-produced drums and rotors from Federal Mogul.
5 At one time this constituted 60 percent of our total
6 brake part sales. However, due to the pressure from
7 our customers for the lower-priced and large available
8 of Chinese products we had to start purchasing lower-
9 priced drums and rotors imported from China from
10 Universal Brake Parts Company.

11 Eventually, Federal Mogul came out with an
12 economy line consisting of imported Chinese products,
13 and we began switching some of our purchases back to
14 Federal Mogul for their economy Chinese line, but not
15 to their premium U.S.-produced line.

16 However, due to the financial limitations of
17 Federal Mogul was not able to match every economy
18 part number that the Chinese importers were selling.
19 While Federal Mogul's premium U.S. parts line covered
20 every part number, it was difficult for them to do
21 this for both the premium and the Chinese line.
22 Eventually we dropped Federal Mogul entirely and
23 started buying Chinese rotors and drums imported from
24 China from Dura International.

25 Our company would prefer to buy the Federal

1 Mogul premium line product and sell it to our
2 customers. This enables us to get more sales of
3 related products that go with the brake drums and
4 rotors such as friction. Since we lost the Federal
5 Mogul sales of drums and rotors, it has also hurt
6 other parts of our business so we are anxious to start
7 buying again from Federal Mogul.

8 However, the price pressure from China is
9 tremendous. The difference is not in the magnitude of
10 a few cents or a few dollars, but often 10 to 12
11 dollar more per rotor. However, the Chinese-made drum
12 and rotor still clearly compete the same marketplace
13 with the U.S. premium product.

14 While it might seem strange to you for a
15 purchaser to want to pay more for a product, it is my
16 sincere wish that the Commission impose a very high
17 duty on the Chinese products so that the price would
18 again go up toward the Federal Mogul U.S. product so
19 that the U.S. producers can take the necessary
20 adjustment steps.

21 I would then very happily switch back to
22 purchasing the U.S.-made product from Federal Mogul.
23 It would be better for my company, better for Federal
24 Mogul, better for its workers, and better from
25 America, and it would not make any difference to the

1 ultimate consumer since most of the installers are
2 charging the U.S. price to customers for the Chinese
3 rotors and drums, keeping the large profit spread for
4 themselves.

5 Thank you for your time.

6 CHAIRMAN OKUN: Thank you.

7 MR. LEWIS: Madam Chairwoman, and members of
8 the Commission, my name is Roland Lewis, and have
9 served as the business representative for Teamsters
10 Local 688 for the past 11 years.

11 Teamsters Local 688 represent nearly 10,000
12 members throughout eastern Missouri, including more
13 than 2100 members working in industrial trades, which
14 is mostly manufacturing. As a business
15 representative, I represent nearly 800 Teamster
16 members, including the 200 that worked who works at
17 the Federal Mogul plant in St. Louis. They are
18 producers of after-market brake drums and rotors.

19 Before becoming a business representative at
20 the union, I worked in the plant for 19 years,
21 beginning as a metal pourer, and leaving as a stock
22 room clerk, so I know the after-market brake drums and
23 rotor industry as well.

24 Teamster Union as represented workers at St.
25 Louis after-market brake drum and rotor facility since

1 1965. The wide varieties of jobs we represent include
2 semi-skilled jobs such as machine operators,
3 computerized mili-machine operators, stock room
4 clerks, high-skilled jobs that include electrical
5 technicians, tool and dye makers. It is a diverse
6 group of more than 15 types of jobs that produces the
7 final product, the after-market brake drums and
8 rotors.

9 Workers at this facility have seen firsthand
10 the challenges Federal Mogul management faces through
11 actual Teamster job losses. The trend since 1998 is
12 one of a decreasing Teamster workforce at the plant.
13 In fact, in 1998, an average of 307 Teamster members
14 worked at the facilities.

15 Today, just 201 workers are there, a 35
16 percent job loss. The trend has been a consistent job
17 loss since 1998. Figure A graphs that trend and it's
18 included in the handouts. These job losses can be
19 directly correlated to the large amount of import of
20 low-priced drums and rotors from China. Teamster job
21 losses at the plant provide a good snapshot of what
22 Missouri has been facing during the most recent
23 economic downturn.

24 In fact, from May 2002 to May 2003, Missouri
25 has lost more jobs as a percentage of its total

1 employment than any other state, more than 52,000 jobs
2 or 1.5 percent of its total employment.

3 Manufacturing has been hit hardest in this
4 downturn, and has taken the brunt of those job losses,
5 nearly 12,000. Except for the public sector, no other
6 industry matches those job loss.

7 From a manufacturing perspective, what is
8 particularly disconcerting is that while less than 12
9 percent of Missouri's population works in
10 manufacturing, 22 percent of the state's job loss has
11 been in that industry. Missouri's manufacturing
12 corporate citizens and employees have taken than their
13 fair share of economic pain in the last year.

14 As you know, Federal Mogul is located in St.
15 Louis City. The neighborhood surrounding Federal
16 Mogul is a community that needs a thriving plant and
17 the jobs that it can provide. Since this tract 1186,
18 an area that runs about four miles around the
19 facility, tells the story of a struggling community
20 that has a 74 percent minority population compared to
21 the state's overall of 16.2 percent, \$12,3000 per
22 capita income compared the state's overall of \$19,336,
23 and 26 percent of all persons falling below the
24 poverty level compared to the state's overall of 11.6
25 percent.

1 It is estimated that 46 percent of all
2 individuals in this census tract are eligible for
3 public assistance. Since unemployment rates from
4 small tracts of data can often be inaccurate, I did
5 not use that tract's unemployment rate.

6 But a clear indicator is St. Louis City's
7 overall unemployment rate which is nine percent,
8 significantly higher than Missouri's overall rates of
9 4.9 percent.

10 Jobs at Federal Mogul provide at least some
11 economic activity and hope for our community that is
12 very much in need. The 2001 medium hour wage for all
13 Missouri workers is about \$12.20 per hour while the
14 medium wage for Federal Mogul, a Teamster Federal
15 Mogul is \$13.27 per hour. These are the kind of jobs
16 Missouri must retain to grow its economies.

17 In China, where low-priced import drums and
18 rotors are made workers can make as little as \$25 a
19 month, and be forced to live in dormitories and
20 restricted from leaving without government permission.
21 They are often a little more than indentured servants.

22 Thank you, Madam Chairwoman and members of
23 the Commission for this opportunity to provide this
24 brief testimony, and on behalf of the 201 remaining
25 Teamster workers at the Federal Mogul plant, I hope

1 you will act to combat the market disruption caused by
2 the Chinese brake and rotor imports. Thank you.

3 CHAIRMAN OKUN: Thank you.

4 MR. GLICK: Thank you, Madam Chairwoman.
5 That concludes our presentation.

6 CHAIRMAN OKUN: Okay, thank you. Before we
7 begin our questioning this morning, let me thank all
8 the witnesses for being here this morning, for your
9 willingness to answer our questions, particularly
10 thank the industry witness and the witnesses here from
11 the Teamsters for your participation and for making
12 the effort to be here today.

13 We will begin our questioning this morning
14 with Commissioner Koplan.

15 COMMISSIONER KOPLAN: Thank you, Madam
16 Chairman.

17 I have listened to the opening statement and
18 your direct presentation and I have wrestled with
19 whether my simply joining with the Chairman in the
20 issue she raised in her opening statement is
21 sufficient.

22 The question has been answered for me by the
23 fact that at no time today have her concerns been
24 addressed, rather they have been ignored. So I will
25 now proceed in a fashion that gives me no pleasure,

1 but at the outset I want to make clear that my next
2 comments are not directed to Mr. Jaffe, Mr. Herzog or
3 Mr. Lewis.

4 As a preliminary matter, I want to follow up
5 on the remarks made by the Chairman in her opening
6 statement with regard to what I consider to be rather
7 egregious deficiencies in the information provided by
8 members of this coalition to our staff.

9 I am very concerned about the status of the
10 record in this investigation. While I recognize that
11 Section 421 safeguard petitions impose short time
12 lines for all those involved as the Chairman noted,
13 you knew that when you chose the timing for the -- you
14 knew that when you chose the timing for the filing of
15 your petition.

16 Since you have experienced counsel, I do not
17 see that as the basis for any excuse for what
18 followed. I am referring to the lack of cooperation
19 given to Commission staff by the petitioners and
20 certain of those in support of the petition, and that
21 includes counsel.

22 In preparing for this hearing, I became both
23 angry and very troubled when I learned of the number
24 of times that petitioners and supporters clearly have
25 failed to provide timely and sufficient information

1 necessary for the Commission to successfully conduct
2 this investigation.

3 For example, I point to the agency's
4 certified public accountant assigned to this
5 investigation who raises grave concerns about getting
6 data in usable form. I refer counsel to footnote 2 on
7 page 4 of respondent's pre-hearing brief that relates
8 to document 186949, an e-mail, the content of which I
9 cannot reveal here because it contains BPI.

10 Among other instances, the specifics of
11 which I cannot describe without revealing confidential
12 business information, were other failures to provide
13 essential company data, the revision of such data
14 after its submission, and its late submission without
15 prior notification. The result of such happenings
16 creates doubt in my mind about the accuracy of the
17 information that was or ultimately will be provided.

18 For example, I refer counsel to footnote 144
19 on page 83 of Chapter 1 of the confidential staff
20 report. That footnote concludes by warning that the
21 data referred to should be used cautiously because of
22 extensive last-minute changes made to the price tables
23 and discussion.

24 I cannot discuss the portion of that
25 footnote which preceded that caution because it is

1 bracketed as BPI, but counsel has full access.

2 It is also particularly troublesome for me
3 to learn that staff has raised concerns about the
4 possibility of double counting of sales. I refer
5 counsel to footnote 82 on page 44 of Chapter 1, and
6 that staff has made numerous references to failures to
7 receive responses. I refer counsel to footnote 79 on
8 pages 36 and 37 of Chapter 1.

9 In my opinion, there has been created a
10 substantial and totally unnecessary burden on staff
11 who are working extremely hard to provide the
12 Commission the necessary information to render an
13 informed determination unless you turn things around,
14 I don't see how that it is possible.

15 In light of the concerns that I have
16 described, I want to hear first from the industry
17 witnesses about what they intend to do about the
18 current situation, and then from counsel, and finally
19 from Dr. Button, a respected economist who, in
20 addition to counsel, has access to confidential
21 business information.

22 For openers, I would like the domestic
23 producers to start by telling me whether your most
24 recent revisions to your price data provided staff
25 have now rendered that data accurate. Thank you.

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1 Mr. LaVarra?

2 MR. LAVARRA: Yes, sir. The price data that
3 we have submitted to you, to the best of our
4 knowledge, is accurate and has been confirmed, sir.

5 MR. EASLEY: I would agree, sir, that what
6 we have recently submitted is, to the best of our
7 knowledge, accurate.

8 COMMISSIONER KOPLAN: Mr. Glick?

9 MR. GLICK: Mr. Chairman, I intended to
10 comment on the Chairwoman's remarks maybe in my
11 rebuttal, but I'm happy to do so now.

12 COMMISSIONER KOPLAN: I don't think this is
13 a matter for rebuttal.

14 MR. GLICK: Okay. We're not -- okay.

15 First, I would like to sort of distinguish
16 between what may be characterized as a lack of
17 cooperation which connotes some wilful desire to
18 perhaps impede the staff and a desire for candor, and
19 in fact, an obligation that we have that when we find
20 data is changed and corrected, to immediately present
21 it to the Commission.

22 And I believe we certainly agree with you
23 that the staff is working hard and faces a hard
24 burden, and our desire has been as soon as we
25 discovered that there was any corrections or changes

1 in data, to bring it to their attention immediately.

2 I might note that there has been corrections
3 on both sides.

4 COMMISSIONER KOPLAN: Let me just -- if I
5 could interrupt you for a second --

6 MR. GLICK: Okay.

7 COMMISSIONER KOPLAN: -- and make this
8 comment. I have served here for five years. I have
9 served with two other chairmen and I have been
10 privileged to be chairman myself. This is the only
11 time in those five years that I have felt compelled to
12 make a statement like I just did.

13 So I hear the road you're going down, but I
14 want to tell you that, as I said at the outset, I take
15 no pleasure in what I'm saying, but the end result I'm
16 seeking here is to get sufficient information on this
17 record that's accurate, that I feel that I can rely on
18 so that I reach a fair determination in this case, and
19 that's my only purpose in this.

20 MR. GLICK: And that is our desire too, and
21 we certainly apologize for any delays and
22 inconvenience that we have caused. And some of this
23 the individual people that provided the data may be
24 able to explain to you. There are reasons.

25 But I would like to note that the changes

1 were done out of a desire to be complete, not out of a
2 desire to delay or impede. And I do want to note for
3 the record that as of yesterday we received amendments
4 and supplements from other parties on the other side.
5 I can't reveal from who. But I think, you know, we
6 certainly will pledge to work harder and to make sure
7 that in the future all of our responses are more
8 timely and more thorough.

9 COMMISSIONER KOPLAN: Dr. Button.

10 MR. BUTTON: Thank you, Commissioner Koplan.

11 First, as simply as a factual matter, I was
12 asked to assist in this case at a time substantially
13 after the submission of the questionnaire data.

14 COMMISSIONER KOPLAN: I'm aware of that, and
15 I apologize for not noting that.

16 MR. BUTTON: And I would probably say that
17 some of the revisions that you have faced perhaps
18 result from some our review of the data and
19 discussions with counsel and discussions with the
20 staff that perhaps corrections would be appropriate in
21 an effort of making sure the data comply with the
22 Commission's requirements.

23 COMMISSIONER KOPLAN: If that explained away
24 the depth of the problems that I have described, I
25 would be happy to accept that. I appreciate what

1 you're saying, but as you can understand what I'm
2 talking about goes far beyond that.

3 MR. BUTTON: I understand.

4 COMMISSIONER KOPLAN: Your estimates and
5 your testimony is only as good as the data that you
6 have.

7 MR. BUTTON: That's correct, sir.

8 COMMISSIONER KOPLAN: Thank you.

9 Mr. Easley, have I heard from you?

10 MR. EASLEY: Yes, sir. I did testify that I
11 believe that the information we have given you is
12 accurate.

13 COMMISSIONER KOPLAN: All right. Thank you.

14 The Commission requested U.S. producers to
15 provide in their questionnaire responses instances of
16 lost sales and/or lost revenues that the domestic
17 industry suffered as a result of competition with the
18 imported Chinese after-market brake drums and rotors
19 during January 1998 to March 2003.

20 The after-market brake drums and rotors
21 during that period, the reason we asked for that
22 transaction data was so that staff could follow up
23 with the purchases cited to obtain confirmation or an
24 explanation of the assertions. General sales data is
25 insufficient for the staff to conduct meaningful

1 follow ups.

2 In addition, these follow ups by staff
3 require several days to weeks for the purchasers to
4 research their records and comment on the allegations.
5 As a result, reports of lost sales and/or lost
6 revenues should be reported in a timely manner.

7 I would like you to explain why U.S.
8 producers generally reported information that was
9 often insufficient in this regard, and in at least one
10 instance reported more than two weeks late.

11 I see my red light has just come on. Should
12 I want for the response for the next round, Madam
13 Chairman?

14 CHAIRMAN OKUN: Well, do you think this is -
15 - if it can be done quickly, go ahead and respond now.
16 And if not, we can have a more thorough response.

17 MR. GLICK: Mr. Chairman, we're not entirely
18 sure that --

19 COMMISSIONER KOPLAN: I'm not the chairman,
20 but I appreciate that.

21 MR. GLICK: Commissioner Koplan, we're not
22 exactly sure which of this data you're referring to,
23 but in our post-hearing brief we did submit -- pre-
24 hearing brief -- some fairly extensive data on lost
25 sales that was not made available to us prior to that,

1 which the companies developed, which I do think makes
2 the record complete.

3 We regret we didn't have all this data in
4 time for the questionnaire. I think some of this came
5 from Dana, which may want to explain some of the
6 problem they had in getting the data together.

7 COMMISSIONER KOPLAN: If there is confusion,
8 perhaps you could get together with staff post-hearing
9 and have that resolved, and then respond to it post-
10 hearing if you would. Can you acknowledge you will do
11 that, Mr. Glick?

12 Thank you. Thank you, Madam Chairman.

13 CHAIRMAN OKUN: Okay. Thank you, and again
14 thank you to the witnesses. I would just note, I
15 guess, Mr. Glick, that I think the point has been made
16 clear by Commissioner Koplan that when you go back for
17 your post-hearing if you can note those instances that
18 he cited, and address them, and work with the industry
19 to do that, I think that will help address some of the
20 issues that we have raised this morning.

21 Let me turn to the industry witnesses to go
22 back to some of the things that I'm trying to
23 understand about the market. One of the things that I
24 was struck by in reading the pre-hearing briefs was --
25 it was that point where I saw this description of what

1 were referred to as different models, A, B, C, D
2 models, and I believe, Mr. Easley, you mentioned that
3 as well in your testimony today being what you have
4 seen as the different volume. Some of them being high
5 volume and lower volume; that the Chinese started on
6 high volume and moved to the lower volume if I
7 understand the argument.

8 I wonder, and this might be something that
9 the purchasers can comment on too, if you could help
10 me better understand that part of the market; you
11 know, what this is relative to each other; you know,
12 what kind of cars and what is described as high
13 volume.

14 And then as part of that if you can tell me
15 about pricing data, and perhaps Mr. Button can help
16 here, whether that ties up, whether when I look at the
17 pricing data I am looking at an A, or a B, or a C, or
18 a D.

19 But just start generally with this volume
20 issue and the A, B, C, D, if you could.

21 MR. EASLEY: For the entire after-market,
22 you will find that there is various models that we
23 service from a Ford truck to an Audi 400, okay. And
24 obviously because of the production of those vehicles,
25 the replacement market is a direct reflection of how

1 many original vehicles were built.

2 So what you find is as you look at the
3 aggregate of what we build and you would classify and
4 look at what parts are of the highest volume because
5 of the vehicles were produced at higher volumes, we
6 then look at them in those groupings, because when you
7 go to manufacture them you will choose more efficient
8 ways to manufacture the part that are of higher volume
9 because you know that you're going to not have to set
10 up the job as often.

11 For instance, you know that there is going
12 to be a constant replenishment going on of those
13 parts. So we choose those classifications for
14 purposes of determining the inventory sizes that's
15 needed to keep constant replenishment going. We also
16 look at those in the way of what lot sizes and how
17 often we will be changing those over, and what type of
18 equipment that we will use and designed to use to make
19 those parts based on the volume of those.

20 So the A vehicles would be your mainstream
21 applications that you see readily on the road by the
22 Big Three, okay, and Ford trucks, Ford Taurus, General
23 Motors applications, Chrysler, Toyota, Honda, the
24 mainstream.

25 The smaller volume parts is what we classify

1 as D and C models, and those are the ones that we
2 would not want to make as many at one time because we
3 know the time supply that we will be building will be
4 a much longer time supply and there is a lot of
5 holding costs, obviously, to do that in the way of
6 inventory.

7 Some smaller volume applications could be,
8 like I mentioned, Audis, they could be older
9 applications that just have -- most of them have died
10 and went to the junk yard so there is not many left.
11 It could be Porches. I mean, we cover everything
12 basically on the road, so, you know, it could be from
13 a high-profile vehicle to like a Corvette that not
14 many are sold even down to some that have very minimal
15 populations on the road.

16 CHAIRMAN OKUN: Okay.

17 MR. EASLEY: Does that answer your question?

18 CHAIRMAN OKUN: That helped. Mr. Button?

19 MR. BUTTON: Yes, with respect to the
20 pricing data that you have on the four models
21 contained in the questionnaires and in the staff
22 report, with respect to the petitioner companies here
23 today, and I would simply note as to those four
24 models, that I would ask you to take a look, you would
25 see the prices, and you refer to my comments earlier

1 about their desires to maintain price stability where
2 they can, but I would ask you to look at the
3 quantities, and you will see with respect to these
4 models that it was the volume injury that is in fact
5 most evident.

6 Thank you.

7 CHAIRMAN OKUN: Okay. And ago so I
8 understand, if it's a model of A, if it's the high
9 volume, that would be normally a lower priced product
10 because you're running a lot of volume on it?

11 MR. EASLEY: That's correct.

12 CHAIRMAN OKUN: Okay. And then the C and D
13 would be higher priced because you're not running very
14 many?

15 MR. EASLEY: That's correct.

16 CHAIRMAN OKUN: Okay. So in terms of, and
17 maybe I could turn back to the purchasers as well, Mr.
18 Herzog, Mr. Jaffe on this, the Chinese entry into the
19 market and the competition that you see, you've
20 described as coming in originally in the A volumes.

21 And then when did they move into what you
22 describe as these lower volumes?

23 MR. JAFFE: They --

24 CHAIRMAN OKUN: If you can just pull your
25 microphone real close so we can hear you.

1 MR. JAFFE: I would say they continued to
2 add right shortly after they really came into the
3 marketplace. They kept adding more and more part
4 numbers. As people like ourselves, Mr. Herzog and
5 myself may have been requesting them, and it was
6 harder for us to order large quantities in those days
7 of just the small -- you know, the smaller offering of
8 part numbers.

9 So it advanced to the point now where our
10 coverage is as good as the two major suppliers.

11 CHAIRMAN OKUN: Okay.

12 MR. JAFFE: The place that the major
13 suppliers have over them is they come out with the
14 newer models faster than the replacements, than the
15 Chinese.

16 CHAIRMAN OKUN: Okay. Mr. Herzog, is there
17 anything different you would add from your
18 perspective?

19 MR. HERZOG: I think, to try to put it in
20 perspective, when they first started, the Chinese did,
21 they came in with like 600 part numbers. The
22 manufacturers, of course, give them most of the
23 information that those 600 part numbers will probably
24 support 75 percent of what's needed.

25 What happened in that instance, the two

1 major manufacturers only brought in six or seven
2 hundred part numbers, but it left a void for the other
3 1200 part numbers. Even if they were slow movers, we
4 still had to have those for our customer who didn't
5 want to go back to another brand or go someplace else.

6 So the Chinese rotors added another 1200
7 part numbers, and I don't want you to misunderstand
8 me. I'm not exactly sure of the exact number that
9 they produce today, but it is in excess of 1800 part
10 numbers. So in essence, we had to put the 1800 part
11 numbers into our inventory even if they were slow
12 movers, and even those 600 part numbers represented 75
13 percent of our movement.

14 CHAIRMAN OKUN: Okay. And that number that
15 you just gave us, I think I heard earlier but I'm
16 trying to make sure I understand it, the 75 percent is
17 in a certain range of part numbers that you sell? I
18 mean, these would be the A, model A type numbers; is
19 that -- am I understanding that correctly?

20 MR. HERZOG: That's probably what it falls
21 into, but it's the popularity of the part is what we
22 stock. If we sell 10 or 15 or 20, then that falls
23 into what we call the 75 percent factor of what we
24 sell. We have an idea of like 90/10 rule. Ninety
25 percent of our parts -- 10 percent of our parts is the

1 biggest major part of our business, 90 percent of the
2 parts are the very slow movers.

3 CHAIRMAN OKUN: Okay. Okay. Well, that
4 helps, I think, better understand a little bit what
5 you're talking about in terms of the volume.

6 Okay, let me go back and ask some other
7 questions regarding the premium versus the economy
8 line and what the perception is. Did I understand, I
9 think this is mostly from the purchasers, although
10 producers may have said this as well, that there was
11 not an economy line prior to the Chinese entry? Or
12 was that -- I think it was you, Mr. Herzog, who had
13 referenced -- or no, I'm sorry, maybe you, Mr. Jaffe,
14 who had referenced that you had started bringing in
15 imports from South America in response to what the
16 jobbers and individuals had asked for.

17 I'm just trying to understand kind of the
18 economy line concept, when it came in, and how you
19 would describe it.

20 MR. JAFFE: I'm not sure of the timing but
21 it was probably 10 - 12 years ago that it came in. Up
22 to that point we were selling rotors for 40 -- they
23 were costing us 40 - 50 dollars, and now we buy some
24 of them in the \$2 range, and you know, if you make 20
25 percent on \$2 or 20 percent on \$50, there is quite a

1 difference. So we would like to sell the branded
2 product, and in a branded product price is not the
3 determining factor. But in an economy market one, two
4 and three is all price. That's what they are
5 interested in.

6 CHAIRMAN OKUN: Okay. And again, when you
7 say the brand, that would be that we think about,
8 that's the premium line?

9 MR. JAFFE: Yes.

10 CHAIRMAN OKUN: Mr. LaVarra's company.

11 MR. JAFFE: Right.

12 CHAIRMAN OKUN: Stamper --

13 MR. JAFFE: Correct.

14 CHAIRMAN OKUN: Okay.

15 MR. JAFFE: I would like to say one thing
16 about the earlier conversation. The questionnaire was
17 very hard for distributors to fill out because it
18 asked a lot of information that we don't readily have.
19 I just thought I would mention it.

20 CHAIRMAN OKUN: Okay. No, I mean, of
21 course, we have developed a report, and that's what we
22 have to base our decisions on the data that we
23 collect, and we understand very much, I know these
24 questionnaires, we know what they ask, that it is
25 sometimes difficult, but that is the nature of how we

1 do our business, and you know, we know it puts a
2 burden on companies coming here. We just ask that
3 people realize that that is something that has to be
4 done in order for to have a complete record, and so.
5 But again, I understand what you are saying with that
6 regard.

7 And with that my red light is on so I will
8 turn to Vice Chairman Hillman.

9 VICE CHAIRMAN HILLMAN: Well, thank you, and
10 I too would thank your witnesses for being here this
11 morning, and would only just note at the outset that I
12 certainly share the concern and the displeasure
13 expressed by the Chairman and Commissioner Koplan over
14 the situation that we find ourselves in in terms of
15 the data.

16 But that goes to my first question, which is
17 to try to make sure I understand the pricing data as
18 we have it in front of us, and I appreciated the
19 exchange that you just had with the Chairman. But let
20 me start first just to make sure.

21 It is my understanding that this, again,
22 that all of this data was basically wholesale revised
23 very late in the process. I just want to make sure I
24 understand why. What caused the revisions in the
25 price data from what we were originally looking at to

1 what came in, you know, just a couple of weeks ago?

2 MR. LAVARRA: If I can answer for our
3 behalf. We certainly wanted to get the most accurate
4 and detailed data for the Commission that we could.
5 We have a marketplace where product is sold in
6 different varying deal with different consumers based
7 on the size of the account, the amounts that the
8 purchase, and the different programs, rebates, return
9 privileges and so forth.

10 So we were trying to make sure that we
11 netted those down to a net number that was accurate
12 that reflected the marketplace. There is no excuse
13 for inaccuracy. I don't mean to make any in that
14 respect, but it was our effort to make sure that we
15 were trying to get to the most representative answer
16 that we could, and the time of submission, we wanted
17 to get it in.

18 And in going through with Mr. Button found
19 that there were some inconsistencies that we wanted to
20 correct, and we wanted to get those to the Commission
21 as soon as we could.

22 VICE CHAIRMAN HILLMAN: Okay. Mr. Easley?

23 MR. EASLEY: Our facility operates as a cost
24 center. We don't have profit and loss visibility. I
25 simply made a budget and expect to make the product to

1 that level. So the questions that came in were really
2 something that I don't have any data on. I don't know
3 what we sell our product for. I don't know what
4 rebates, returns there are, but there is other people
5 that do, but there is also -- it takes digging into,
6 who has that information, can we run reports to get
7 it, and then there is reports that people would look
8 at and they weren't even sure what some of the line
9 items meant.

10 So we were digging into those trying to go
11 line by line, and say what does this mean. You know,
12 it's coded as a certain way and we don't really
13 understand it. So it took a lot of time, and our
14 business, as we spoke earlier, has been very
15 dynamically changing over the last few years. So a
16 lot of things have changed and that we have
17 rationalized, and changed distribution methods. Those
18 changed those same numbers as well, and where they are
19 shipped from.

20 And so it wasn't a lack of wanting to get
21 the data. It's just as matter of as things have
22 changed over the years the history is not there. The
23 people that would know what happened three years ago
24 may not be there anymore, so they can't look at the
25 reporting and say, oh, I know why that changed, you

1 know.

2 So we've had to do a lot of homework and try
3 to catch up with people that could help us get the
4 answers to those that I never had visibility to in the
5 past.

6 VICE CHAIRMAN HILLMAN: All right. If Mr.
7 Glick or Mr. Button, there are things you want to add
8 on this in the post-hearing just to make sure we
9 understand the genesis of all of these changes, that
10 would be helpful.

11 MR. BUTTON: I would simply note that I
12 believe that the issues that the gentlemen have been
13 describing relate to ensuring that the -- with respect
14 to freight, whether it is in or out; with respect to
15 ensuring that only U.S.-produced products are in the
16 data; and ensuring that the prices are truly net of
17 all discounts, rebates and returns and things of that
18 nature. There were, I believe, the three areas that
19 we're about to reexamine to make sure that the data
20 were proper.

21 VICE CHAIRMAN HILLMAN: That's extremely
22 helpful. Thank you.

23 If I can then go specifically to the four
24 products that we priced. I'm not sure I heard the
25 response to the Commissioner Okun, and I apologize if

1 you did. Are these four products what you would put
2 in the A category, the high volume products?

3 MR. LAVARRA: Yes, those would be included
4 in there but those would be representative of four of
5 what could be a couple hundred parts.

6 VICE CHAIRMAN HILLMAN: No, I understand
7 that. I just wanted to make sure that I understood
8 that this data was -- that the products that we chose
9 to collect pricing data on are what you would put into
10 that A, high volume category.

11 MR. EASLEY: Yes, I would consider them
12 mainstream.

13 VICE CHAIRMAN HILLMAN: Then help me
14 understand this. You step down in these products A,
15 then going down to B, C, D, you know. Is it purely a
16 volume or is there something else about the nature of
17 either the drum or the rotor that makes it a B, a C, a
18 D, an E? Is it purely volume?

19 MR. EASLEY: Yes, it is purely volume.

20 VICE CHAIRMAN HILLMAN: And do you know when
21 you start producing it whether it's going to be in
22 each of these categories or, you know --

23 MR. EASLEY: Not necessarily because what
24 can happen is a new platform, like for a new Taurus
25 will come out, and we're not sure how long they will

1 carry that rotor. They may change it in three years
2 when they change the platform to the new generation.
3 Sometimes they carry it forward for four or five
4 generations.

5 So when you start to tool it, you start off
6 saying, well, I'm going to go this direction with it,
7 but it could shift.

8 Now, after a period of time you will find
9 that there are certain part numbers that they have
10 stuck with, and they will use on various models, and
11 General Motors, Chrysler and Ford are good examples of
12 those, and then you start to address let's start
13 looking at ways to run these and tool these more
14 efficiently so that you can take advantage of large
15 replenishments that you will be seeing on those parts.

16 VICE CHAIRMAN HILLMAN: And is there an
17 industry standard of how much the volume changes in
18 order to move from an A to a B to a C on down? I
19 mean, is it a set understanding in the industry?

20 MR. LAVARRA: No, Commissioner. And if I
21 can add, the popularity codes are set mainly by the
22 vehicle registration. So certainly a new vehicle
23 coming out this year, you may guess that it will be a
24 popular vehicle somewhere down the road, but it
25 actually may increase and decrease over the life of

1 that part, or the application.

2 So a part may come out and go to an A
3 classification, high popularity, and then as it goes
4 in its life cycle it may go down the chain by vehicle
5 population on the road, and the popularity code
6 change.

7 VICE CHAIRMAN HILLMAN: Okay. And when you
8 say popularity code, who sets those? I mean, is that
9 a published figure that you could look at, a
10 popularity code?

11 MR. LAVARRA: There are -- well, I would
12 rather defer to our marketing guy who is more in the
13 know to that, and then give you an answer with that.
14 I'm not trying to not give you an answer.

15 VICE CHAIRMAN HILLMAN: No, I was just
16 curious, how do you know whether it's an A, a B,
17 whatever?

18 MR. LAVARRA: We would be happy to give you
19 our coding method in our post-hearing brief.

20 VICE CHAIRMAN HILLMAN: Okay, that would be
21 helpful. Mr. Easley as well?

22 MR. EASLEY: Yes, we can do that.

23 VICE CHAIRMAN HILLMAN: Okay. And then help
24 me understand, if it's just a volume issue, obviously
25 that affects that your cost because obviously it's a

1 lot cheaper to produce a high volume than a low
2 volume.

3 Give me a sense of the range in cost. If
4 you move from an A to a B, how much do your costs go
5 up? And again, is it a fairly set kind of ladder type
6 progression that as you go lower and lower volume it's
7 a certain cost increase to produce the lower volume?

8 MR. LAVARRA: Commissioner, I can only say I
9 can't say that there is a set popularity in which the
10 cost change, but certainly tooling, six tooling cost
11 is the same, for the most part, for low volume parts
12 versus a high volume part. There is a part that you
13 make 20,000 a year, and you have an X tooling cost,
14 and you amortize that tooling over 20,000 pieces.

15 Or you have a part that might make 300,000
16 pieces a year with the same kind of X tooling cost.
17 The amortization changes there as well.

18 VICE CHAIRMAN HILLMAN: Okay.

19 MR. LAVARRA: I hope that --

20 VICE CHAIRMAN HILLMAN: My problem is I'm at
21 a disadvantage of understanding how much tooling
22 represents as a portion of the total cost of the
23 product, so that's what I'm trying to understand is,
24 you know, as you step down in these volumes how much
25 difference does it make to your cost.

1 MR. LAVARRA: We would be happy, again, in
2 the post-hearing --

3 VICE CHAIRMAN HILLMAN: Okay.

4 MR. LAVARRA: -- to provide you with some
5 data to give you a basic outline, but it would not
6 necessarily be standard in the industry.

7 VICE CHAIRMAN HILLMAN: Okay. I mean, part
8 of the reason that I'm asking this is to try to
9 understand it, and Dr. Button touched a little bit on
10 it in response to the Chairman. I have heard you all
11 describe, you know, these tremendous price declines
12 that you have experienced or that you have felt.

13 My problem is when I look at the four
14 products that we have priced, I have to tell you I
15 don't see anything resembling a significant price
16 decline. So I am trying to understand how it is that
17 you're telling me you've experienced these big price
18 declines in the market, and my data is not showing me
19 that, and so I'm trying to understand whether it's the
20 nature of the products that we've priced, or whether
21 there is something else going on here.

22 MR. LAVARRA: I would suggest that as well
23 as the price data that you're looking at, price isn't
24 the only thing. I would suggest you may want to look
25 at the volume perhaps to explain this.

1 VICE CHAIRMAN HILLMAN: I heard that point,
2 and there is no question about it. I can see the
3 volume for these products. But, you know, sort of
4 independently of what was happening in terms of volume
5 I heard both of you in your testimony say, you know,
6 that you are experiencing significant price declines,
7 and like I said, I'm looking at a record where I don't
8 see price declines.

9 MR. LAVARRA: We're looking at a short
10 period of time where in the past you probably, or
11 certainly would have seen higher price increases than
12 you're seeing. So we had price depression, if not
13 price reduction, on those part numbers.

14 VICE CHAIRMAN HILLMAN: Okay. So what
15 you're saying is you would have expected a price
16 increases?

17 MR. LAVARRA: We would have expected
18 traditionally in our market that those prices would
19 have traditionally increased over the period of time
20 where we saw them either remaining the same or slight
21 increases, but you saw significant volume drops.

22 VICE CHAIRMAN HILLMAN: Okay. Given that
23 the red light is on, I will come back to this issue of
24 the price increases. Thank you.

25 CHAIRMAN OKUN: Commissioner Miller?

1 COMMISSIONER MILLER: Thank you to the
2 witnesses and the panel for being here.

3 Mr. LaVarra, I believe you were here in
4 1997, so welcome back. We appreciate your being
5 willing to be here again and through this proceeding.
6 I'm not going to add anything more on the data
7 problems we've had. I appreciate your responses to
8 Vice Chairman Hillman. I think they were informative.
9 I just have to say bottom line, the problem for us is
10 it creates a credibility issue for us, a credibility
11 problem.

12 We have to be sure we're making our decision
13 based on a reliable record and that is a problem for
14 us, in my view, to make sure that we are making our
15 decision, recognizing the burden. We know that there
16 is an enormous burden, particularly on small
17 companies.

18 I appreciate, Mr. Jaffe, your comments, I
19 believe it was you who made your comment about the
20 burden of the questionnaires. Believe me, we have
21 looked at and tried to figure out if there's a way we
22 can reduce them in half and if the courts weren't
23 reviewing our decisions perhaps we could, but they
24 are. Our decisions have to withstand that kind of
25 scrutiny and so we have to ask for a lot of

1 information and I appreciate the problem it presents.

2 Because I was here in '97 and it was
3 actually one of my first cases, as I recall, and I
4 remember feeling like I learned a lot in between this
5 case and the windshields case, I have a whole
6 different perspective on my automobile than perhaps
7 I've done in the past. I've learned a lot about
8 understanding what was going on with my brakes the
9 last time around.

10 I do want, even though the earlier record
11 isn't part of this investigation, I do kind of want an
12 update or to update my understanding of the market as
13 a whole and what's been going on.

14 When I look back just at the public report
15 from the earlier -- where the industry was in the mid
16 '90s and I see where it is now, I see consumption
17 really looks like it's grown a lot and I'm thinking
18 explain that to me. Is it just a lot more autos on
19 the road or are people replacing their brakes faster
20 these days? What prompts an increase in consumption
21 for brake drums and rotors?

22 MR. LAVARRA: Again, as I think we've
23 pointed out and I tried to point out in our testimony,
24 the industry average shows the brake rotor consumption
25 going up by approximately 2 percent per year in

1 growth. When you see the volume changes that you're
2 saying, I don't know that you're seeing consumption
3 changing or deterioration of our market as much.
4 That's what I believe the case to be.

5 COMMISSIONER MILLER: Well, you know, Dr.
6 Button, I'll let you try to answer that question
7 because it looks to me that the market's gotten
8 bigger, more than a 2 percent per year rate. I mean,
9 I don't know where all of the rotors and drums are
10 going, but it looks like it's getting bigger.

11 MR. JAFFE: I would like to say that the
12 life of the import rotors is not as good as the
13 domestic rotor.

14 COMMISSIONER MILLER: Okay.

15 MR. JAFFE: And that, I'm sure, is causing
16 an increase in the volume and --

17 COMMISSIONER MILLER: This is where we all
18 get back to personal experience, Mr. Jaffe, but is
19 that it?

20 Dr. Button, you were shaking your head in
21 agreement. Are we replacing them more often that we
22 have in the past? Is there anything that tells us
23 that?

24 MR. BUTTON: I'm basically working from the
25 data and the data that we have provided basically is

1 domestic production and the import statistics to go
2 with that and they do indeed show a rise in the
3 market.

4 Analytically for this proceeding, I've been
5 less concerned about the precise rates of increase,
6 but noting where as the growth gone and I believe that
7 it's in that respect that the import market share
8 becomes particularly important, that the participation
9 of this industry in the growth, there has not been any
10 participation in that growth. The expansion of the
11 market has indeed been in the form of imported
12 product.

13 Now, the imported product growth is at two
14 places. One is simply by the respondents importing
15 and selling the product. The second is the reaction
16 by the domestic producers in making increases of
17 imports themselves in order to be able to at least get
18 the margin in selling those. It is not a desirable
19 outcome, of course, because they would prefer to sell
20 their own product which has been in this investigation
21 termed a premium product, in which they had the issues
22 of, of course, lost sales and prices.

23 So I can just interject with a response to
24 Commissioner Hillman's request a few moments ago
25 having to do with pricing, both companies will be

1 pleased to provide you in a post-hearing brief some
2 data with respect to those model numbers for which
3 they can give detailed price reduction data if that
4 would be useful to you.

5 MR. HERZOG: If I may?

6 COMMISSIONER MILLER: Sure, Mr. Herzog.

7 MR. HERZOG: I think you've got two factors.
8 One is when the Chinese rotors first came in, they
9 were very inferior in quality. We were having so much
10 trouble with Chinese rotors, we were putting them on
11 as fast as we were taking them off. They were cut
12 thin, they were warped, and a few other things. And I
13 think some of this -- even if some of the people
14 bought them, they didn't come back and get them
15 replaced right away. So I think we're talking
16 thousands of rotors and drums back in those days and I
17 think those are coming back. Second, I think we're
18 keeping our cars a lot longer, which is causing us to
19 put more drums and rotors on these vehicles than we
20 did in the past because the cars are extending three
21 or four more years longer than we normally anticipate
22 that they're going to be here. So you buy somebody's
23 car and it needs drums and rotors and then you put it
24 on for them, so there's two factors I think that enter
25 into the field of why it's increasing.

1 COMMISSIONER MILLER: Well, I asked the
2 question partly because, Mr. LaVarra, I did hear your
3 comment about that slow growth and yet then I kind of
4 looked back at what we knew in the mid '90s and what I
5 see here and it wasn't quite holding together. The
6 respondents make an argument that they've actually
7 stimulated demand and that's where you, the industry
8 folks, I want say how do we do this? But I've heard
9 your answer, I understand your point about keeping the
10 cars longer perhaps or the earlier -- well, actually,
11 let me make sure I understand.

12 Mr. Jaffe, your comment about the Chinese
13 products wearing out faster, Mr. Herzog you were
14 talking about that used to be the case. How would you
15 characterize the product today? Is that an issue
16 still today, do you think Mr. Jaffe?

17 MR. JAFFE: I think it's still an issue, but
18 it's not as much of an issue, as Mr. Herzog said, when
19 we first started importing, we had a lot of trouble,
20 the packaging was bad, everything was a problem, you
21 had the wrong part number on it, but they've made big
22 improvements now, but I still think that just from my
23 everyday business experience I would say that the life
24 isn't as good as the life that we have with what we
25 call the branded rotors, the more expensive line.

1 COMMISSIONER MILLER: Okay.

2 MR. JAFFE: You can't stimulate people to
3 buy rotors.

4 COMMISSIONER MILLER: That's why I asked the
5 question. It was a bit counter intuitive.

6 MR. JAFFE: You can stimulate people to buy
7 an oil filter or get their oil changed, but I don't
8 think you can stimulate them to buy a rotor.

9 COMMISSIONER MILLER: When I look at the
10 data we have over the period of this investigation, I
11 do see a particular drop in 2001 and I think both
12 Mr. Easley and LaVarra, you referred to that, but I
13 guess I want to make sure we have fully in the record
14 your view of events in 2001 and since.

15 MR. LAVARRA: If I may?

16 COMMISSIONER MILLER: Please.

17 MR. LAVARRA: Again, our data, I think
18 you'll see, shows that we had significant volume
19 losses. Again, keep in mind we're looking at a
20 request for data of U.S. made product and sold in the
21 United States. We have operations that make premium
22 product in Canada, of which one I closed. So when I
23 close that plant and move the volume in, the U.S. data
24 changes only because it wasn't included in the data
25 before that. So that has part of the data difference

1 that I think you see in our data.

2 COMMISSIONER MILLER: Okay. I'll have to
3 think about that and make sure I understand.

4 MR. LAVARRA: But, yes, still in danger as
5 the volumes continue to fall off.

6 COMMISSIONER MILLER: Okay.

7 Mr. Easley?

8 MR. EASLEY: The significant shift you see
9 in our volumes during that time period is a direct
10 result of Ford coming to us and saying that their new
11 car sales were diminishing, their profitability was
12 reducing and they were trying to enter the after
13 market because they had pretty much shied away from it
14 and said we didn't want that, it's somebody else's
15 forte, and they came to us and said can you build an
16 after market program for Ford, can you help us do
17 that, because you have this quick change, small lot
18 size reactability type of manufacturing.

19 So we literally had a closure agreement and
20 were 30 days away from turning the lights off and
21 Roland and I had closure agreements, it was all
22 negotiated, everything was a done deal, we were going
23 to exit the business because we couldn't sustain our
24 existence with the volume we had.

25 If we would put aside what Ford brought to

1 us, we wouldn't be here right now. You'd have him,
2 that's it in the business. So Ford came to us and
3 kind of saved our facility, if you will, and said help
4 us build an after market program and we'll try to give
5 you enough volume to keep you in business and they
6 did. Obviously, if they sell an after market rotor,
7 though, that displaces a sale from somebody else,
8 right? And so that's the shift in volume that you
9 see.

10 If we would exclude that volume, you would
11 see almost an exponential drop in volume at our plant.
12 And even the Ford business, I know, is not excluded
13 from the competition of what's coming over, so
14 basically that doesn't give us a guarantee for the
15 future. And over half of our business in our facility
16 is still dependent on our traditional after market,
17 not dependent on Ford, which is shrinking. So we
18 could still get to the same point, just only with the
19 Ford business left.

20 COMMISSIONER MILLER: Okay. I appreciate
21 your answers. Thank you.

22 CHAIRMAN OKUN: Commissioner Koplan?

23 COMMISSIONER KOPLAN: Thank you, Madam
24 Chairman.

25 Let me start, if I could, with you,

1 Mr. Lewis. I note that the chart that you submitted
2 that was prepared by your research and education
3 department on June 11th, it reflects that the number
4 of teamster members at Federal Mogul has remained
5 constant over the past two years, that is, since June
6 of 2000.

7 Is that trend consistent with the total
8 number of plant employees at Federal Mogul during that
9 same period? There are workers there who are not
10 necessarily members of the Teamsters as well, right?

11 MR. LEWIS: Yes, but my graph doesn't
12 reflect that. My graph reflects the bargaining unit.

13 COMMISSIONER KOPLAN: No, I understand that.
14 What I'm trying to ask is outside the bargaining unit,
15 has the trend been the same amongst employees? In
16 other words, has it been stable since the beginning of
17 2001?

18 MR. LEWIS: Outside the bargaining unit?

19 COMMISSIONER KOPLAN: Yes.

20 MR. LEWIS: I'm not real sure. You mean for
21 management itself?

22 COMMISSIONER KOPLAN: At this plant.

23 MR. LEWIS: I can't answer that.

24 COMMISSIONER KOPLAN: You don't know.
25 I'm sorry, yes, Mr. Easley?

1 MR. EASLEY: The salaried workforce in our
2 facility is non-union, so they are not reflected in
3 his numbers. It has stabilized as well. Again, it's
4 a direct correlation to the Ford business that was
5 brought in.

6 COMMISSIONER KOPLAN: Thank you. I
7 appreciate that.

8 MR. EASLEY: Basically, all the blue collar
9 workers are Teamsters and all the white collar workers
10 are just salaried, non-represented employees.

11 COMMISSIONER KOPLAN: Thank you for that.

12 The respondents' pre-hearing brief argues
13 that subject imports do not satisfy the statutory test
14 "are increasing rapidly" because they allege there is
15 no rapid increase occurring in the latter part of the
16 period examined. They claim that the increase has
17 proceeded slowly to moderately since the year 2000.
18 That's at page 9 of their brief.

19 I realize you can't discuss the actual
20 numbers with regard to the period examined because
21 that's BPI, but do you agree that a rapid increase
22 needs to be ongoing in the latter part of the period,
23 that is, during 2001 to 2002 and the first quarter of
24 2003?

25 Mr. Glick?

1 MR. GLICK: Commissioner Koplan, I think I
2 addressed that a little in my opening remarks and we
3 intend to address it in much more detail in our
4 post-hearing brief, but we believe that the
5 legislative history and some other cases under Section
6 406, which, as you know, is an analogous statute to
7 this one, have indicated that the increases can be
8 over a longer period, spread out through the period of
9 investigation and not necessarily in the last two
10 years.

11 COMMISSIONER KOPLAN: Okay. How do you
12 interpret the fact that increasing rapidly is preceded
13 by the word are? Doesn't that sound like it's
14 supposed to be an ongoing increase?

15 MR. GLICK: Yes. Well, we do think we have
16 an ongoing increase, it's just a question of where you
17 put the emphasis, but we believe the most recent
18 period shows a significant increase, which, as Dr.
19 Button has shown, meets, we believe, the test of the
20 statute and perhaps a more difficult test even in the
21 Commerce Department.

22 COMMISSIONER KOPLAN: Okay. Thank you.

23 Section 421(d) lists several factors that
24 the commission shall consider in rendering its
25 determination. One is the volume of imports of the

1 product which is the subject of the investigation, two
2 is the effect of imports of such product on prices in
3 the United States for like or directly competitive
4 articles and three is the effect of imports of such
5 product on the domestic industry producing like or
6 directly competitive articles. It goes on to say that
7 the presence or absence of any factor under those
8 three subparagraphs are not necessarily dispositive of
9 whether market disruption exists.

10 Now what I'd like to do is turn to material
11 injury under the statute and, in your brief, you cite
12 Section 202(c)(1)(a) of the act and state that it's
13 the commission's practice to look at broad factors
14 such as idling of productive facilities, inability to
15 operate at a reasonable level of profitability and
16 unemployment or underemployment as measures of injury.
17 That's page 15 of your brief.

18 And you assert that there is abundant
19 information that demonstrates that producers are
20 struggling just to keep their facilities open at page
21 16 and I'd like to ask this, because it appears to me
22 that since the 1997 antidumping investigation, for the
23 most part the domestic industry has had rather solid
24 operating margins and has engaged in a series of
25 mergers and acquisitions as detailed in Chapter 1 at

1 pages 14 and 15 of the staff report which may not be
2 attributed to subject imports.

3 I'd like the industry witnesses to comment
4 on whether the consolidation was simply to rationalize
5 production, eliminate old or outdated capacity,
6 address environmental constraints and thus make
7 yourselves more efficient and competitive.

8 I would also ask whether for the record you
9 could provide copies of your business plans that were
10 created for each of the five years that we are
11 examining.

12 Mr. LaVarra?

13 MR. LAVARRA: Well, certainly the
14 consolidations that we had within our operations were
15 totally due to loss of volume. The closure of our
16 facility in New York was due to loss of volume, it
17 consolidated into our other operations. The volumes
18 continued to reduce after several other years. The
19 closing of our plant in Canada was to consolidate as
20 well.

21 I would be happy to go through whatever
22 archives we have to provide you with closing
23 documents, restructuring plans, the reasons for that,
24 what we thought the overhead costs would be, and that
25 was the reason for the reductions, to reduce our fixed

1 costs and make us more profitable. I'd be happy to
2 give you anything that exists in those archives for
3 your review.

4 COMMISSIONER KOPLAN: I would appreciate
5 that and I appreciate your offer to do that. If you
6 would do that for the post-hearing, I would appreciate
7 it.

8 MR. LAVARRA: Certainly. We'll do so.

9 COMMISSIONER KOPLAN: Thank you.

10 Mr. Easley?

11 MR. EASLEY: The downsizing and
12 restructuring that we did was a direct result of
13 volume reducing. Both the rationalization of shutting
14 down equipment, I had one -- I mentioned earlier a
15 complete machine department that was devoted to making
16 high volume machines, we got rid of those and
17 basically had no -- the little bit of high volume that
18 we had we couldn't justify this type of equipment
19 because it was designed to not be set up readily and
20 be used as a captive type equipment. The
21 rationalization to go from two shifts in the foundry
22 down to one again is in direct relation to -- the work
23 just wasn't there, we didn't have it to support two
24 shifts, and so we had to do the restructuring, the
25 reorganization, to basically try to cut the variable

1 costs that we could to offset the fixed costs that we
2 couldn't offset.

3 COMMISSIONER KOPLAN: Let me pick up on that
4 you and ask a follow-up. I ask whether your current
5 financial situation is due primarily, and I'm quoting,
6 "to storing asbestos litigation expenses and slumping
7 sales."

8 As the basis of this question, I reference
9 footnote 60 in Chapter 1 at page 16 of the staff
10 report. I note that publicly available consolidated
11 financial statements for the period ended December 31,
12 2002 at Exhibit 2 of respondents' pre-hearing brief
13 reported that Federal Mogul took an asbestos charge of
14 \$184 million against earnings in 2000. Could you
15 comment on that?

16 MR. EASLEY: I want to make sure I'm clear.
17 You're asking if our operation contributed to their
18 financial situation? Is that what we're --

19 COMMISSIONER KOPLAN: Excuse me?

20 MR. EASLEY: You're asking if our plant or
21 our product lines situation is a result -- is it
22 reflected in their financials?

23 COMMISSIONER KOPLAN: Yes.

24 MR. EASLEY: Yes. It is reflected in it.
25 Their situation on asbestos is isolated from our -- it

1 has nothing to do with our facility, however, as they
2 were going through that turmoil of trying to manage
3 that, we were turning in huge negative variances that
4 sure didn't help them pay for the charges that they
5 were having on them. And, again, we'd love to show
6 you that information over the last five years because
7 you'll see the timing of when they were going through
8 that turmoil we were turning hundreds of thousands of
9 dollars worth of cost variances at our plant. So we
10 sure weren't helping their cause.

11 COMMISSIONER KOPLAN: I would appreciate
12 your submitting that as well.

13 MR. EASLEY: We will do that. Thank you.

14 COMMISSIONER KOPLAN: Thank you very much.
15 Thank you, Madam Chairman.

16 CHAIRMAN OKUN: Thank you. Let me return
17 for a moment to pricing. Well, actually, before I go
18 to pricing, the conversation Commissioner Miller was
19 having regarding what has gone on with regard to
20 apparent consumption during this period and this issue
21 of whether you can stimulate demand. One of the
22 things that I have seen in the record and I just
23 wondered if it's different than what you, Mr. Jaffe,
24 or you, Mr. Herzog, are saying is that with the
25 availability of an economy line or lower priced rotors

1 and drums, that people would choose to actually
2 replace the drums and rotors as opposed to machine
3 them, as I think it's called. And that that would in
4 fact be an increase, at least in that economy line.

5 Is that consistent with what you were
6 saying? Because you're saying you couldn't stimulate
7 demand, but I thought I read what was in the record
8 from some of the purchasers at least as saying that in
9 fact is a way to stimulate demand.

10 Mr. Herzog, you're shaking your head no.

11 MR. HERZOG: Well, the reason I say no to a
12 point is that the installers are still charging the
13 U.S. price, so to me that's not going to stimulate
14 that -- if I read what you're asking correctly. I
15 guess the competition in our industry dictates what we
16 do. I have probably four or five competitors in my
17 area. If I stay with one brand and it doesn't sell,
18 then I'm forced to go do something so I can compete
19 with the others. Since we deal with -- we cover
20 Louisiana, Mississippi, Alabama and the pan handle of
21 Florida and we have about 525 customers who in turn
22 have 30,000 customers. So if I don't have the product
23 to give to my customer, then my competition does and
24 that's how we all lose that flow of businesses. And,
25 again, maybe I don't understand exactly what you're

1 saying.

2 CHAIRMAN OKUN: No, I think it is -- well,
3 let me hear from Mr. Jaffe and then I'll get my other
4 view.

5 MR. JAFFE: Well, we read something about
6 disposal rotors, I think, yesterday in some of the
7 opposition's -- we've never heard about disposable
8 rotors. They have rebuilt parts that you have that
9 sometimes can be disposable, but I don't think that
10 has -- what your question, I don't think that has any
11 effect. You can't really promote somebody to put on
12 rotors. You know, there's certain parts and certain
13 things in a vehicle, like you mentioned before, that
14 advertising or promoting or the service station -- if
15 you get somebody to pump your gas instead of you doing
16 itself could talk you into doing, but I don't think
17 anybody's ever asked anybody in this room to change
18 their rotors.

19 CHAIRMAN OKUN: I thought I understood it --
20 again, I'm interested in more of what the industry
21 says -- I thought I understood it as being you, a
22 consumer, going in being told your brakes need work
23 and them giving you different quotes and saying we can
24 re-machine your pads for X amount or we can replace
25 them all for this amount and that that spread, if you

1 will, has become such that a consumer would choose the
2 replacement. That's what I thought I read into these
3 responses and I'm just trying to get some
4 understanding from where you are of whether that --
5 and it was the consumer, Mr. Herzog, I thought they
6 were saying people could choose between that because
7 of the presence of this other product.

8 MR. HERZOG: I think maybe sometimes the
9 installer makes that decision for the consumer who
10 left their car there and the consumer doesn't
11 really --

12 CHAIRMAN OKUN: Do you think -- I mean,
13 again, my example is a bad one, but I had a Ford
14 Explorer that had -- the thing I wanted to know was
15 what are your volume A things because that thing
16 needed new brakes all the time and I remember having
17 this conversation but not knowing -- because you're
18 always in the shop saying they're just trying to rip
19 you off anyway, but anyway, but I remember this
20 conversation about this machining, that's why I'm
21 just -- I was curious when I read it because it
22 reminded me of some bad experience I had.

23 MR. HERZOG: If I can answer that, in other
24 words we have different portions of our business, one
25 which is called retail and one which is called the

1 wholesale end. Autozone, which you're very familiar
2 with the name, is more of a retailer than a wholesaler
3 and what happens is you as an individual go into an
4 Autozone, you go into the garage and you want to find
5 out what to do with your drums and your rotors and he
6 says, well, I can turn the drum and rotor but it's
7 going to cost you \$8 apiece for me to turn them. To
8 turn them means to cut them down so that he can get
9 the pad to go against it.

10 He goes to Autozone, they say I'll sell you
11 the whole drum and rotor for \$12. So there's where
12 the difference is. The retailer, such as yourself,
13 will say why would I get my old one turned and now
14 it's gotten thinner when I can buy a brand new one for
15 \$12? So there's where the difference is, that comes
16 in, if you're talking about turning drums and rotors.

17 CHAIRMAN OKUN: Okay. And my question was
18 does that mean you have increased demand because of
19 that?

20 MR. HERZOG: Sure. That has increased
21 demand because at the retail end, they'd rather pay
22 that rather than pay \$8 to turn it.

23 MR. JAFFE: If you were turning the rotors,
24 you wouldn't have increased demand. You're not
25 selling new rotors, you're just charging for labor.

1 So there's not a sales opportunity at that point.

2 CHAIRMAN OKUN: Right. I think I understand
3 at least what the difference is out there.

4 The respondents had put in a number of
5 reports on what's going on in the after market for
6 brakes and rotors and one of them was fairly dated, I
7 believe it's Frost & Sullivan, and we had found that
8 they had an updated report from 2002, which we don't
9 have access to right now. I wondered if the industry
10 folks are familiar with that. I thought it had an
11 interesting description of the after market, the old
12 one that was submitted by the respondents, the 1998
13 one. I wonder if you are familiar with the 2002 one.

14 MR. LAVARRA: I'm not sure of the one that
15 you're referring to specifically. There are many
16 different industry information vehicles. Frost &
17 Sullivan is certainly one that charges for their
18 information and in many cases, depending who you talk
19 to in the industry, whether that data is reputable, is
20 reflective of the real industry or not, it's
21 preferences. But I'm not sure particularly of the
22 report that you're referring to, but we'd be happy to
23 update that report if you could let us know which one
24 it is or verify what we believe its accuracy to be.

25 CHAIRMAN OKUN: Okay.

1 Mr. Glick?

2 MR. GLICK: I guess we're not sure -- the
3 Frost & Sullivan report was something that we had used
4 earlier. The respondents referred to some magazine
5 articles on brake preferences having to do with how
6 important price was and they referred to a rather old
7 1998 article. I'm not sure if that's what you're
8 referring to, but that deals with pricing at the
9 installer level, not at the wholesale distributor
10 level, which is what we're dealing with. But we have
11 found some more recent articles in that area that seem
12 to contradict their 1998 article and we'd be glad to
13 provide those.

14 CHAIRMAN OKUN: Well, there was the
15 article -- I was interested in the actual -- the Frost
16 & Sullivan report because at least the other one had
17 this description of what had happened in the after
18 market, it talked about the economy versus premium
19 line and so I was just curious whether you had it
20 available to you, if any of you had it where we could
21 get it.

22 MR. GLICK: We'll look for it. I think it's
23 a proprietary report that you have to buy.

24 CHAIRMAN OKUN: Right.

25 MR. GLICK: We'll see if we can obtain it.

1 CHAIRMAN OKUN: Okay. If you have it.

2 Okay.

3 I'll also ask the respondents as well, but I
4 wanted to know also just your reaction to its
5 description.

6 Okay. Let me go back on the pricing
7 question, I want to explore those in a little more
8 detail. I think Vice Chairman Hillman was maybe
9 ending on this point during her round which is if we
10 look at the pricing products and, again, the spread,
11 we can't talk about the exact data but if we can
12 characterize it, the huge spread in between the
13 Chinese price and the domestic price, and the U.S.
14 price holds -- I think that's an accurate way -- and
15 even goes up in some instances, and what I thought you
16 were saying at the end was that there's this volume
17 decrease and I don't see -- I mean, I think the volume
18 trends for both the Chinese product and the U.S.
19 product are somewhat consistent during the time
20 periods and I wanted to know if you could respond to
21 that in terms of the volume trends for the pricing
22 products that we have here.

23 MR. EASLEY: So you want to know what the
24 effect of the volume has been on the pricing?

25 CHAIRMAN OKUN: Why we don't see in these

1 pricing products -- I mean, it seems like U.S. prices
2 have held, so I guess one example would be you have
3 this huge spread in prices, why didn't it just
4 converge where Chinese product went way up, the U.S.
5 price either went down or volume; either volume or
6 price meeting. And I don't see that in the trends
7 here and that's what I'm curious about.

8 MR. EASLEY: Okay. Keep in mind that,
9 again, we need to provide you with information that's
10 a little bit broader than the four parts or five parts
11 that were sent in because there's a lot of factors
12 that go into how prices are set in the market, okay?

13 The other thing to keep in mind is as the
14 volumes were going down, our costs -- we were doing
15 our best to try to maintain our old costs. In most
16 cases, we weren't. We were doing worse, okay?

17 So what was happening is we're trying to
18 hold the fort with less volumes and our costs were
19 rising, even though we're making our best effort to
20 take out inefficiencies and waste and, as a result,
21 internally our margin is going down because they're
22 struggling, marketing is struggling, with I need to
23 bring the price down to react to market pressures, but
24 there's nothing there, There's nothing left because
25 you guys can't make the product less expensive because

1 you don't have the volume to cover your overhead.

2 But I do think we need to show -- I thought
3 that Les had submitted in the petition a graph that
4 showed overall pricing as an average, a weighted
5 average, what had happened to our pricing.

6 CHAIRMAN OKUN: Well, I do have some
7 questions about how reliable the AUV data is, but my
8 red light has come on, I will probably have some other
9 questions, so I contract come back. Thank you very
10 much for those responses.

11 Vice Chairman Hillman?

12 VICE CHAIRMAN HILLMAN: If I can, I'm just
13 going to pick up right where the chairman has left
14 off, because this is -- again, I'm struggling hard
15 with this as well because, again, I'm trying to square
16 your perceptions that you think these prices are going
17 down and I have the same concern.

18 We obviously see a lot of these cases where
19 we do have this -- you know, here's the U.S. price,
20 here's the Chinese price and the industry makes a
21 decision I'm not going down there, I'm not going to
22 try to meet those Chinese prices, that gap is so big I
23 can't go that low so I'm not going to try.

24 Normally, in those instances what we would
25 see is the Chinese volume increasing because it's

1 taking your market share because the Chinese are way
2 down here in price and they're taking your share.

3 And I have to say I share the chairman's
4 concern. When I look at these products, these four
5 products that we've priced, I don't see the Chinese
6 coming up in volume. I see here's the U.S. price,
7 here's the Chinese price, they're not moving towards
8 each other at all, they're not moving. And similarly
9 the volumes are not -- you know, it's not as though I
10 think that it looks as though the Chinese volumes are
11 coming up and taking away your volume. So that's why
12 I'm not understanding how these prices on the products
13 that we've priced and the data that we have square
14 with your overall sense of losing share and losing
15 volume because, again, for these prices, we're not
16 seeing it.

17 So that's what I'm trying to understand, is
18 there something about these particular products or is
19 there something else that you want us to know? Maybe
20 start with when did you think you perceived prices
21 going down and were there price declines in particular
22 products?

23 MR. LAVARRA: If I can try to answer that,
24 again, we have the pricing data on four part numbers
25 in particular, those four part numbers, I believe,

1 were the same ones we used back at the initial hearing
2 some five, six years ago. The popularity of those
3 part numbers, the volume, the popularity code of those
4 go through that normal bath tub progression that I
5 spoke about so the longer a part may last the volumes
6 do fall off.

7 You have information certainly that I have
8 not seen and wouldn't want to. I don't know what the
9 Chinese imports on those particular part numbers are.
10 I can only say to you for the data that we supplied
11 where we normally would have probably increased the
12 selling price of those parts because of the lower cost
13 price from China we did not reduce and, as a result,
14 our volume dropped off on those part numbers sold,
15 which makes our fixed costs for the balance of the
16 parts that we produce go up unless we downsize our
17 operations, as we did in two different steps in our
18 plant.

19 VICE CHAIRMAN HILLMAN: Okay.

20 Mr. Easley, maybe you could just start
21 generally with this. I'm trying to understand a
22 perception. When did you perceive -- you said you
23 lowered prices, when? And was it on any particular
24 products or was it on everything?

25 MR. EASLEY: I think we submitted some

1 documentation that we took across-the-board price
2 reductions in a couple of different situations, but
3 generally what you find is that it's based on the
4 customer, their perception of I've got to go to this
5 retail line and you guys are too high, so you've got
6 to come down in price, so individually you attack each
7 customer as they come to you and say let's work out
8 something so we don't lose our business here.

9 The marketing guys that are behind me would
10 be able to tell a lot more about it. They're the ones
11 that are in that negotiation constantly. I'm not, I'm
12 at the plant making the product, but I do know that
13 they provided some information to you that showed that
14 they had made -- I don't even remember the percentage,
15 but an across-the-board percentage reduction to our
16 price to basically try to combat the pressures that we
17 were seeing.

18 When did it start? I can't answer that. I
19 would have to have them answer that question. I'm not
20 sure.

21 VICE CHAIRMAN HILLMAN: Okay. Well, on
22 that, let me come back.

23 Mr. LaVarra, you mentioned this issue of
24 expecting price increases and just help me understand
25 why. Is it typical in this industry that over time

1 prices always go up? Certainly we hear on the OEM
2 side this issue that the Big Three are pushing down
3 every single year the notion that every single part
4 has to be reduced three, four, five percent in price.
5 Obviously, this is the after market, it's different,
6 but I'm just trying to understand, is it typical, is
7 it expected in the industry that prices would go up
8 every year? And, if so, why?

9 MR. LAVARRA: Well, again, I'll point out as
10 a new vehicle comes out on the road, the application
11 of part number that fits that vehicle, it goes up in
12 popularity. You see a normal reduction in price as
13 more vehicles are on the road, the more it's used and
14 re-used. But as it starts to drop off in popularity,
15 drop in the classification codes, those prices as it
16 goes out towards to the end because the volumes
17 decrease would normally have price increases for
18 carrying the inventory of a lesser volume and so
19 forth.

20 VICE CHAIRMAN HILLMAN: All right. And
21 you're saying that's -- that's why you're saying that
22 you would have expected price increases.

23 MR. LAVARRA: Correct.

24 VICE CHAIRMAN HILLMAN: Purely this issue of
25 the volume and the popularity of the product.

1 MR. LAVARRA: That's correct.

2 VICE CHAIRMAN HILLMAN: Okay. It's not
3 something else going on. Okay.

4 Then let me understand what happened in
5 2001. Again, I'm trying to understand looking at our
6 data and squaring it with your testimony. I mean, if
7 I look at the numbers that we've got, you're saying
8 throughout the period a slight increase in consumption
9 between 2000 and 2001, but domestic shipments down
10 very slightly and yet your operating income is much
11 lower in 2001 than it is in the other periods, your
12 costs are up, your SG&A is up. There seems to be
13 something going on in 2001. I would say across the
14 board the numbers look different than they do for the
15 other years in this period. Help me understand why
16 that is. What was happening in 2001?

17 MR. LAVARRA: I guess, Commissioner, I'm not
18 sure if you're talking about individual data from one
19 of our companies or the other or the consolidated data
20 of the two.

21 VICE CHAIRMAN HILLMAN: Again, I'm sorry,
22 this is difficult because the actual numbers
23 themselves are confidential.

24 MR. LAVARRA: I understand. Again, I can
25 only restate our story. In 2001, we had a very

1 difficult year. We had decided to close a plant in
2 our Canadian operations, consolidate that into our
3 plant in the U.S., which would change the fixed cost
4 structure of that operation as a result of more volume
5 coming in. We would be happy to give you more detail
6 privately in our post-hearing brief.

7 VICE CHAIRMAN HILLMAN: That would be
8 helpful.

9 I mean, obviously, Dr. Button, this is hard
10 because, again, I'm looking at confidential data, I
11 understand that, and I'm trying to not discuss any
12 particular numbers, but I think you would see that the
13 2001 numbers as a general matter look different than
14 the rest of the years and I'm trying to understand
15 whether there was something going on there that I
16 should know about.

17 MR. LAVARRA: I'm sorry, I guess I didn't
18 understand. I explained the volume losses, the plant
19 shutdowns. We started to put some more emphasis, as I
20 mentioned in my statement, on advertisement, market
21 brand strategy based to the consumer. That seems to
22 have been of short term help, but not sustaining going
23 forward. And then there is more reasons that I'd be
24 happy to provide in written post-hearing brief
25 explanation.

1 VICE CHAIRMAN HILLMAN: Okay.

2 Mr. Easley, does anything stand out for you
3 in terms of 2001?

4 MR. EASLEY: Ours would definitely be the
5 Ford business that we were in the process of ramping
6 up. This was a program that you had to build an
7 amount of inventory to support the launch of this
8 program because they didn't have an after market
9 program, so we were in the process of trying to ramp
10 up for that and you learn through a lot of
11 inefficiencies that happen while you're in a process
12 of bringing in new people, training, learning how to
13 do that, so that was a lot of that that caused that.

14 VICE CHAIRMAN HILLMAN: Okay. I appreciate
15 that.

16 Dr. Button, if there's anything you want to
17 add, again, speaking directly to the confidential
18 numbers, in the post-hearing, I would welcome that.

19 MR. BUTTON: I would be happy to do so. The
20 short answer for Federal Mogul is that a downward
21 trend in the P&L results, in operating income, through
22 2001 would have continued had it not been for what
23 turned out to be an extraordinary development, that is
24 the entirely new business with Ford. Of course, as he
25 noted, they had already made an agreement to close the

1 plant. That particular business permitted the P&L to
2 improve substantially in 2002 and thereafter. But for
3 that, they would be perhaps not here and the issue of
4 concern for them is that that business which is sold
5 into the after market, it's not OEM, faces the same
6 competition from imports from China as the rest of
7 their business, thus, their concern is that that
8 performance increase would become temporary. That's a
9 big worry.

10 Thank you.

11 VICE CHAIRMAN HILLMAN: I do have another
12 question, going back to this question of the economy
13 line versus the premium line. I am trying to
14 understand what you would do differently. I mean, if
15 you want to make economy rotors, what do you
16 do differently than what you do to make the ones that you
17 currently make?

18 MR. EASLEY: If you're asking do I want to
19 make an economy rotor?

20 VICE CHAIRMAN HILLMAN: Yes. Just say you
21 do want to do that. How do you do that? What do you
22 do differently than what you do to make your current
23 rotors?

24 MR. EASLEY: The design of the part itself?

25 VICE CHAIRMAN HILLMAN: Yes. Again, how

1 would you make it if you were going to make it?

2 MR. EASLEY: The part itself would not be
3 any different in the way we make the part. I'm not
4 saying we wouldn't strive towards more efficient ways
5 constantly, but I'm saying the physical size, shape
6 and make of the part is exactly the same.

7 MR. LAVARRA: We have and are submitting in
8 our post-hearing brief a detailed action plan to make
9 us competitive with what we're seeing as competition
10 from China today and you'll see in there the detail
11 which covers everything from different equipment,
12 training of people, automation in equipment, reducing
13 fixed overhead cost, working with suppliers on
14 negotiated better pricing, all of those things. There
15 isn't one magic key, there isn't one thing that would
16 turn this thing that makes it, it's a combination of
17 all the things we do everything in the manufacture of
18 product.

19 VICE CHAIRMAN HILLMAN: Thank you for those
20 responses.

21 MR. GLICK: Commissioner --

22 VICE CHAIRMAN HILLMAN: The red light has
23 been on, Mr. Glick, so I will come back to this.
24 Thank you.

25 CHAIRMAN OKUN: Commissioner Miller?

1 COMMISSIONER MILLER: Thank you, Madam
2 Chairman.

3 I, too, am interested in your post-hearing
4 brief addressing on a company-specific basis the
5 reason for the industry's -- well, I'll describe the
6 industry's general trends but obviously the
7 information to be provided will be company specific
8 for the financial declines in 2001 and rebounds in
9 2002, okay? So it's just the same following on why I
10 asked you the earlier questions and I think Vice
11 Chairman Hillman put this question to you already and
12 asked you, but I also am interested in understanding
13 how 2001 relates to 2002, not just the whole -- that
14 three-year period, basically, the trends in terms of
15 the company specifics.

16 Mr. LaVarra, something you said, you've had
17 a lot of discussion here already about our pricing
18 data and making sure we're understanding our pricing
19 data. Something you said a few moments ago caught my
20 attention. You said that the pricing products that
21 we've used this time are the same that we used in the
22 '96-'97 investigation, right?

23 MR. LAVARRA: I believe the part numbers for
24 comparison are the same.

25 COMMISSIONER MILLER: The part numbers?

1 MR. LAVARRA: Yes.

2 COMMISSIONER MILLER: But that makes me
3 think about your comments about the life cycle and if
4 we see declining volumes, you just referenced that in
5 your discussion with Vice Chairman Hillman, wouldn't
6 that be the norm, if these part numbers have been
7 around that long?

8 MR. LAVARRA: The declining volumes can come
9 to us as a manufacturer naturally in one of two ways:
10 either the life cycle of the part and I think there's
11 industry data that shows that the average vehicle on
12 the road today has gone to an average of 11 years on
13 the road up from seven years just a few short years
14 ago. So that would traditionally mean that you would
15 be replacing that product, in our case, the brake
16 product more often.

17 Secondly, then, because the volume would be
18 up, it would be there longer but we're seeing more
19 volume taken away from what we've been producing due
20 to the low cost import stuff, we see the decline that
21 way as well.

22 COMMISSIONER MILLER: Okay. But if we're
23 using a part number that we were looking at seven
24 years ago, I mean, almost ten years ago because we
25 would have gathered a three-year window of data, I'm

1 wondering does that make sense? Is the part number --

2 MR. LAVARRA: The parts in question are
3 still A class part numbers.

4 COMMISSIONER MILLER: Okay.

5 MR. LAVARRA: Somewhere in that bathtub
6 curve, if you will, either on the up side, the top,
7 but still in the A class numbers.

8 COMMISSIONER MILLER: I guess the question
9 is how do I tell whether any volume loss is due to
10 where it is in that product curve versus --

11 MR. LAVARRA: The application in question or
12 those in question are, again, still A class movers,
13 very popular vehicle on the road, and my perspective
14 would be that the volume loss that you're seeing, in
15 our case, again, I only saw the numbers we've
16 submitted, are definitely due to loss of volume due to
17 the low cost products coming in from China.

18 COMMISSIONER MILLER: All right.

19 MR. JAFFE: There's something that I think
20 has been missed and that's the thing that we call
21 parts proliferation. There are a lot more parts that
22 Mr. Herzog and I have to carry. I mean, we're not
23 like a grocery store with 3000 or 4000 items, we carry
24 over 100,000 different part numbers in our inventories
25 to keep the cars in our areas running.

1 There's more and more as all the car
2 manufacturers have come out with new models and
3 changes and changes in platform, every time they do
4 that, the parts change and sometimes the parts change
5 four months after they start building the car because
6 they see they had a problem or whatever, so we have a
7 lot more parts that we have to stock today to fill
8 more vehicles but not in the same proportion.

9 So when a part was the most popular part in
10 a product line ten years ago, it's not as popular
11 today even though it may be a new part, maybe number
12 one, but that doesn't have the same volume that that
13 one had before because now we have twice as many
14 parts.

15 MR. LAVARRA: And that I think affects some
16 of the numbers.

17 COMMISSIONER MILLER: Okay.

18 Mr. Easley, do you want to add anything?

19 MR. EASLEY: I would concur with Joe. I
20 can't tell you where it was on the bell curve, but I
21 can tell you that we can prove that our volume on
22 those parts went down and I do believe we stated that
23 our prices had gone down, even with reduction in
24 volume. Our company. So that we have done that, even
25 though I'm sure that our costs did not go down on the

1 parts that the volume was shrinking.

2 COMMISSIONER MILLER: Mr. Jaffe, your
3 comment just now about the parts proliferation reminds
4 me of an article that I just read recently about the
5 proliferation of models, that the auto companies are
6 expected to start coming out with a lot more variety.
7 That sort of raises some interesting questions about
8 the future, doesn't it, in terms of both your business
9 and perhaps the after market brake industry as well.
10 How much commonality is there?

11 MR. JAFFE: Not as much as there used to be.
12 And we have to make a living selling the slower moving
13 parts because the more popular parts are sold by the
14 Autozones and discount auto parts, but we need the
15 breadth of the line to stay in business.

16 COMMISSIONER MILLER: Could I ask the
17 producers, there was some comment, I think Mr. Jaffe
18 referenced earlier carrying Federal Mogul's Chinese
19 line, correct? I'm not sure if we've heard you,
20 Mr. Easley, address the question of your company's
21 imports and where and why you participated in doing
22 that.

23 MR. EASLEY: What our company ran into was
24 our current customers have come to us and said, hey,
25 the guy across the street is selling this Chinese line

1 and you're not offering me that and I'm not sure where
2 this is going, but I know I've got to offer those
3 products, so you're either going to have to provide
4 that for me or I'll have to go elsewhere to get it.

5 So we were struggling with we didn't want to
6 be in that business, but we had to provide something
7 to that customer to try to retain the amount of
8 product they would continue to buy from us and hope to
9 continue to buy from us, so we basically developed a
10 short offering similar to what they did when they came
11 into the market of high volume parts that we brought,
12 just like Dana did, and offered it to our customers so
13 that they could say the guy across the street doesn't
14 have something now that I don't have. But at the same
15 time, we didn't want to do it, we were forced to do
16 it. We were given ultimatums that said if you don't
17 offer that, I'll go to your competitor and buy the
18 Chinese product and then you risk the door opening for
19 them to buy everything from them. So it's kind of a
20 way to say I want to keep them out of my customers
21 business and so we'll offer them something to keep
22 them happy.

23 COMMISSIONER MILLER: Okay. Okay.

24 Mr. LaVarra, you referenced your firm's
25 production operations in Canada and the closing of

1 that and I think otherwise as well? Could you talk
2 about whatever foreign operations?

3 MR. LAVARRA: We acquired a premium North
4 American machining facility in Canada, actually, two
5 small facilities, one in Toronto, one in Bedford
6 Mines, in about -- if memory serves me right -- 1995
7 or 1996. It's a producer of premium product.

8 We also have an operation in Venezuela which
9 was our attempt to reduce the cost of the product and
10 compete at a lower cost product where we were
11 concerned at the time about the quality and safety of
12 the product. We would never compromise, nor am I
13 suggesting that others necessarily work, but our
14 company would never compromise the vehicle safety of
15 product, so our answer at the time was we acquired
16 what was a lower cost producer in Venezuela to be our
17 answer for the economy line.

18 When Dana merged -- when the old Eckland
19 Brake Parts Company merged with the Dana Corporation
20 some five years ago, Dana had an operation in
21 Argentina that is a producer of OEM brake product for
22 the South American market and they established that
23 with our brake group because of the foundry and brake
24 affiliation, so as there were assets there, we've
25 tried to utilize those as well. So those are the

1 places that we have and that we own for the machining
2 of brake product.

3 COMMISSIONER MILLER: Okay. Okay.

4 To Castle, I would just ask as an issue in
5 your post-hearing brief to address as a legal matter
6 how we consider imports by U.S. producers, both in our
7 assessment of increasing imports and perhaps to the
8 extent it arises as an issue in causation or material
9 injury as well.

10 MR. GLICK: Okay.

11 COMMISSIONER MILLER: Thank you.

12 I have no further questions at this point,
13 which is good because my red light is on.

14 CHAIRMAN OKUN: Commissioner Koplan?

15 COMMISSIONER KOPLAN: Thank you, Madam
16 Chairman.

17 Let me pick up, if I could, on part of
18 Commissioner Miller's line of questioning. I'm
19 looking at the staff report with regard to price data.

20 Mr. LaVarra, with regard to the four pricing
21 products that are listed on page 82 of Chapter 1 of
22 our staff report, I have it in front of me and it's
23 not BPI, there are four products listed, two for
24 drums, two for rotors, the part numbers are 8939, 8940
25 for drums and 5115 and 5329 for rotors.

1 It's my understanding that only the first
2 product, part number 8939, is the same as what was
3 before the commission in the 1997 antidumping case,
4 but beyond that, I'm looking at the footnote in our
5 staff report, footnote 141, and it says, and this is
6 public, "These products were suggested by the
7 petitioner," referring to the four products that we're
8 looking at now, "as large volume products encompassing
9 representative competition between the U.S. produced
10 and imported Chinese after market brake drums and
11 rotors." And there's a reference to petitioners'
12 letter to commission staff dated June 9, 2002 and
13 e-mails to staff from Mr. Glick on June 26 and June
14 27, 2003.

15 So I'm just trying to stumble through this
16 with you, but if these aren't representative products,
17 then what should we do given the fact that it was the
18 petitioners that selected them for us to look at for
19 pricing data?

20 MR. LAVARRA: Commissioner, I understand.
21 First of all, if I'm incorrect on the four part
22 numbers comparison, I apologize. I knew some of them
23 were the same from the previous one.

24 COMMISSIONER KOPLAN: Believe me, I didn't
25 have them memorized.

1 MR. LAVARRA: Okay. Nor did I.

2 COMMISSIONER KOPLAN: So no need to
3 apologize.

4 MR. LAVARRA: Nor did I with 1500 parts in
5 the line. And I understand what you're saying. I
6 would only ask that you remember there are three
7 petitioners here and the average of the three may
8 be -- you know, an average is that -- high one time,
9 low one time to make it something in the middle.
10 There's three of us represented here, we tried to pick
11 something representative, but certainly we have and
12 intend to provide --

13 COMMISSIONER KOPLAN: Let me just stop you
14 one second. I appreciate that and I've only got two
15 of the three in front of me, so in getting a final
16 response to this question, if you all can get together
17 and give me something that's what I'd call your final
18 answer for purposes of the post-hearing, but I'd like
19 to go ahead and hear what you have to say, but I just
20 wanted to say that.

21 MR. LAVARRA: I was going to get there.

22 COMMISSIONER KOPLAN: I know I don't have
23 Opaca here.

24 MR. LAVARRA: What I was going to get at is
25 we plan after all of the questions regarding the

1 differences in the pricing to provide to this council
2 the top A classification part numbers, all of them,
3 for years 1998, 1999 and so on and our pricing
4 comparison for the post-hearing brief, so you can see
5 the whole breadth of the parts that changed.

6 COMMISSIONER KOPLAN: Thank you for that.

7 Mr. Easley?

8 MR. EASLEY: We would also like to provide
9 that.

10 COMMISSIONER KOPLAN: I would appreciate it.

11 And, Mr. Glick, will you try and incorporate
12 in the response Opaca's response as well? Could you
13 for the record just use your microphone to respond to
14 me?

15 MR. GLICK: Yes, we'll talk with Opaca.
16 Their part numbers may be different because they
17 produce unfinished and semi-finished rotors which are
18 slightly different products than we were just talking
19 about, so we'll discuss that and try to provide
20 whatever we can.

21 COMMISSIONER KOPLAN: Okay. But my frame of
22 reference for the question is the four products that
23 are in our staff report on the page I cited. Did you
24 get that when I said it? It's page 82 of Chapter 1
25 and they're listed there and the footnote is footnote

1 141. I think you might have missed that when I said
2 it. And that's what I'm centering on, the fact that
3 those four products were suggested to us, came to us
4 from your side, and that's why we're looking at those
5 four. And only the first one, 8939, was before us in
6 the original antidumping case in '97. Okay?

7 Mr. Glick? Thank you.

8 All right. Now, then, respondents note that
9 in safeguard cases periods of relief typically last
10 approximately three years. As a result, they argue,
11 any adjustment plan should be designed to achieve
12 results within that timeframe. They claim your plans
13 are "incomprehensible and totally non-responsive" and
14 that's their brief at page 43 and in the opening
15 statement today, respondents' counsel brought up the
16 subject of adjustment plans as well.

17 Now, I note that under 421, adjustment plans
18 aren't required, it's not like under 201, but I also
19 note that I do not have any usable adjustment plans
20 for the domestic industry in this investigation. And,
21 of course, you realize that to date relief has not
22 been granted under Section 421 by the President,
23 despite the fact that the commission has voted twice
24 in the affirmative.

25 Now, it's your choice, but if I were sitting

1 where you are, I would pare down what I have seen thus
2 far to something workable within the context of 421
3 and submit the equivalent of an adjustment plan that
4 addresses the period of examination. What you've
5 provided goes way beyond this timeframe that we're
6 looking at and what I'm looking for and, as I say,
7 you're not required to do it, but I think it would be
8 in your best interests to do something like that for
9 purposes of the post-hearing.

10 Could you respond to that request?

11 I'll start with the industry witnesses.

12 MR. LAVARRA: Yes, sir, we have developed
13 what we feel is a very detailed one and not having
14 much sample to go by, being the third one we, me, I
15 can't talk about our counsel, we were unsure of the
16 detail and provided lacking detail. I can assure you
17 you will get all the detail needed and required in our
18 post-hearing brief.

19 COMMISSIONER KOPLAN: I think Dr. Button can
20 probably help you in that regard.

21 MR. EASLEY: Yes, sir. We had put together
22 a plan and Dr. Button had commented that it had some
23 industry jargon that other people might not understand
24 as well, so I do need to clarify what the end results
25 or what the goals of those things are, but we do have

1 a plan.

2 COMMISSIONER KOPLAN: Thank you.

3 Do you accept that responsibility, Dr.
4 Button? For the record.

5 MR. BUTTON: I will certainly do my best,
6 Commissioner Koplan.

7 COMMISSIONER KOPLAN: All right. Thank you.

8 How do you respond to the allegations by
9 those opposed to relief that profits from your
10 importation and non-subject imports are not reflected
11 on financial tables reporting the industry's results
12 from operations related to drum and rotor production?
13 I'm referring to the Chinese respondents' brief at
14 page 26.

15 Mr. Glick?

16 MR. GLICK: I'd prefer on any areas dealing
17 with profits if we could perhaps comment in our
18 post-hearing brief on it, since it's confidential
19 information.

20 COMMISSIONER KOPLAN: That's fine, but for
21 now, do you agree or disagree? Can you say that?

22 MR. GLICK: That profits are not reflected
23 from non-subject imports? I'm not sure that I can
24 answer that on the public record.

25 COMMISSIONER KOPLAN: You want to save that

1 for the post-hearing? Okay.

2 I understand that many U.S. producers import
3 brake drums and rotors from China. For those products
4 you import, do you pay the same prices as U.S.
5 importers? And, if not, could you explain?

6 Also, do you use the same packaging or do
7 you repackage these products, assuming you do import
8 them, and do those of you who purchase Chinese product
9 find that these products are comparable to brake drums
10 and rotors you produce domestically?

11 Mr. Lavarra and Mr. Easley, can you respond?

12 MR. LAVARRA: I do not import brake drums or
13 rotors from China, sir, so I can't respond.

14 COMMISSIONER KOPLAN: All right.

15 MR. EASLEY: We also do not import brake
16 drums and rotors from China.

17 COMMISSIONER KOPLAN: You do not?

18 MR. EASLEY: No.

19 MR. LAVARRA: Well, I do not import them, I
20 buy them landed from an importer, but I do not import
21 them.

22 COMMISSIONER KOPLAN: Okay. So then do you
23 pay the same -- what price do you pay? Is it the same
24 price as the importers?

25 MR. LAVARRA: I'm sure that as I buy them

1 from an importer they have some profit built in that I
2 always try to keep to a minimum.

3 COMMISSIONER KOPLAN: Are they comparable to
4 the products that you produce domestically?

5 MR. LAVARRA: Comparable in price, sir?

6 COMMISSIONER KOPLAN: In quality.

7 MR. LAVARRA: I would say that the quality
8 of the product coming in from China has improved over
9 the years. Quality --

10 COMMISSIONER KOPLAN: But it's low end?

11 MR. LAVARRA: Beauty is in the eye of the
12 beholder.

13 COMMISSIONER KOPLAN: Low end compared to
14 what you produce, isn't it?

15 MR. LAVARRA: It's improving year after
16 year. I think we're seeing, as you heard, the folks
17 who are selling to the installers that the installers
18 are finding them to be comparable. It's hard for me
19 to address the quality of the product because, again,
20 I'm a manufacturing guy and get into the detail of
21 micro structures.

22 COMMISSIONER KOPLAN: I'm only asking
23 because you said you do purchase them.

24 MR. LAVARRA: We purchase them and sell them
25 in our lower cost line. We never sell them in a

1 comparable line.

2 COMMISSIONER KOPLAN: Okay. If I can just,
3 Madam Chairman, make sure.

4 Mr. Easley, are you saying that you don't
5 purchase them from importers?

6 MR. EASLEY: No, we do purchase from
7 importers.

8 COMMISSIONER KOPLAN: You do?

9 MR. EASLEY: We just do not import the
10 product ourselves.

11 COMMISSIONER KOPLAN: Okay. Is the quality
12 similar to what you produce domestically?

13 MR. EASLEY: The quality --

14 COMMISSIONER KOPLAN: I'm asking high end,
15 low end.

16 MR. EASLEY: Yes, I understand. The quality
17 is perceived by the customer currently, in my opinion,
18 to be comparable. Fit and function.

19 COMMISSIONER KOPLAN: All right. Thank you.
20 With that I have no further questions, Madam
21 Chairman. Thank you.

22 CHAIRMAN OKUN: Thank you.

23 Let me just ask a few more questions about
24 the premium versus the economy line. In terms of -- I
25 think I'll both ask the producers and the purchasers,

1 but for the other products, I think, Mr. LaVarra, you
2 talked about product you brought in from other
3 countries, Venezuela and Argentina, I think were the
4 two. And you may have said this and I just don't
5 remember it, did you say you brought in both of those
6 as economy lines? I mean, do you market those as
7 economy line?

8 MR. LAVARRA: We bring those in from those
9 countries as our alternative, our company owned
10 alternative, to the lower cost line. The product that
11 we make in our Canadian North American operation is
12 made from the same materials and types of processes
13 and is a premium product. I think -- and I don't mean
14 to speak for the folks in the market -- anything
15 coming from outside of North America many times is
16 viewed as an economy type area.

17 CHAIRMAN OKUN: And just so that I
18 understand, on the premium and how that relates to
19 branding, for the ones that you have in Canada, would
20 those also be considered a branded product?

21 MR. LAVARRA: Those would be in our premium
22 branded product. That is correct.

23 CHAIRMAN OKUN: Okay. But not the ones that
24 are coming in from South America?

25 MR. LAVARRA: Our processes in Venezuela and

1 from Argentina we market in our lesser cost line, the
2 economy lines.

3 CHAIRMAN OKUN: Okay. So for Mr. Jaffe and
4 Mr. Herzog, they would get that product separately?
5 Would it be marketed or put out separately?

6 MR. LAVARRA: They would not carry the same
7 brand names, for example, they might be versions of a
8 brand name, and they would be sold off of different
9 price sheets.

10 CHAIRMAN OKUN: Okay. Off different price
11 sheets.

12 MR. LAVARRA: Correct.

13 CHAIRMAN OKUN: Okay. And, Mr. Easley?

14 MR. EASLEY: We have no operations other
15 than the one in St. Louis, Missouri.

16 CHAIRMAN OKUN: Okay. And so -- but you
17 still do an economy line now?

18 MR. EASLEY: Yes, that's the product that we
19 buy from importers.

20 CHAIRMAN OKUN: Okay. And it's the same,
21 it's not your branded product.

22 MR. EASLEY: That's correct.

23 CHAIRMAN OKUN: Okay. And so are there
24 other ways -- the same thing, different price sheets
25 on how it's marketed?

1 MR. EASLEY: Yes. That's correct.

2 CHAIRMAN OKUN: Okay. And the pricing
3 reflects that?

4 MR. EASLEY: Yes, ma'am.

5 CHAIRMAN OKUN: Okay. Let me just -- on
6 pricing, Mr. Easley, I think at the end of my -- or I
7 don't know if it was my question or someone else's,
8 you had asked whether we had seen the chart which
9 would be, I think, referred to as an average unit
10 value chart of what prices have done overall and I
11 guess my question might be best put to you,
12 Mr. Button, although I think the industry has the
13 perspective on it, which is whether this is an area
14 where AUVs are a very reliable source of pricing when
15 you have these hundreds of products and this A, B, C,
16 D.

17 And I would ask both industry and the
18 economists, so, Mr. LaVarra, maybe I'll start with
19 you.

20 MR. LAVARRA: Well, again, I'll point out,
21 I'm not an economist, but I would think that any time
22 you use an average over a small proliferation of
23 parts, the numbers may be one set of meaningful and
24 the more widespread the proliferation is would make
25 the average perhaps less reliable. But probably Dr.

1 Button, the economist would -- math was never my main
2 suit.

3 CHAIRMAN OKUN: I'm always interested in the
4 industry's perspective, but we also then have these
5 certain factors that Mr. Button is well aware of, so I
6 will ask him as well.

7 MR. BUTTON: As a general statement, product
8 mix has to be examined and the quality of the average
9 depends on the distribution of the values in the
10 product mix. With respect to the chart that's being
11 referred to, before I could comment on it, I'd have to
12 examine the chart, please.

13 CHAIRMAN OKUN: Okay. If you could and put
14 that for post-hearing, I would appreciate it.

15 I guess I will just make this comment in
16 reference to kind of the offers that have been made to
17 provide other pricing series for other pricing
18 products and, Mr. Glick, I'll direct this to you,
19 which is to me that doesn't allow us -- we cannot
20 recreate at this point the pricing that's in the staff
21 report so I would not ignore what's in the staff
22 report and instead rely on new data that's going to
23 come out because we won't have Chinese prices, we
24 won't have all the things that would be in the
25 questionnaire data, we would not have these pricing

1 series.

2 You can certainly submit them and point us
3 to what you think that means in terms of life cycle or
4 anything else, but you've talked about it, it may be
5 relevant for that, but I think -- I just wanted to
6 make that point about what the staff report has and
7 what we can, I think, reliably look to in doing that.

8 MR. GLICK: If I could just make one point
9 on that?

10 CHAIRMAN OKUN: Yes, Mr. Glick.

11 MR. GLICK: Mr. Koplan had mentioned this, I
12 hope my recollection is correct, but I think
13 originally we submitted five models for comparison but
14 then we were told that they would only be able to do
15 two, so I think when we started with the five we were
16 thinking of a bigger universe, but because of the time
17 period the staff said they would only be able to use
18 two. So maybe that's why we wound up with maybe a
19 smaller sample.

20 CHAIRMAN OKUN: Okay. Again, I mean, as I
21 understand it, and maybe we can go back, but my
22 understanding is, though, that they were the products
23 that you chose. We didn't have to go outside that
24 universe, if that's correct.

25 Okay. Let's see. This may be a question

1 that our representative from the Teamsters can help
2 discuss as well, but I'll as the producers as well as
3 Mr. Lewis, which is in terms of when we look at what
4 went on during this period, in terms of wages for the
5 period, what's your -- can you talk about wages for
6 your company and where they were relative to the
7 beginning of the period and the end of the period and
8 what movement we would have seen and why?

9 Mr. Lewis?

10 MR. LEWIS: Well, we point out an average in
11 my statement. I don't have those numbers in front of
12 me. We have about 15 different classifications and
13 the wage for each one varies from the high end for
14 non-skilled up to the skilled jobs and I don't have
15 that data in front of me at this point.

16 CHAIRMAN OKUN: Okay.

17 Mr. Easley?

18 MR. EASLEY: The wages from the beginning of
19 the period to the end of the period, I believe if we
20 looked at it, would show a downward trend, primarily
21 because what's happened is even though we laid off the
22 least senior people which are generally not making the
23 same wages as the higher senior people, we also have
24 recently negotiated a change in the way people are
25 paid and, as a result, the new hires that are being

1 brought in are being brought in at a lesser rate that
2 is allowing us to pull our average down.

3 CHAIRMAN OKUN: All right.

4 How about for Dana, Mr. LaVarra?

5 MR. LAVARRA: I don't have the absolute
6 dollar detail in front of me. As we downsized our
7 operation, the absolute dollars would have changed by
8 the number of people. We would still have been
9 consistent with a percentage increase of wages for our
10 employees consistent with the areas that we have our
11 facilities in, so that wages are competitive in those
12 areas. So there were no wage reductions taken by all
13 employees.

14 We tried to make sure that we paid our
15 people competitively for the areas that they were in
16 and you would see, if you look at the average hourly
17 wage or the incremental hourly, a percentage increase
18 consistent with those areas each year.

19 CHAIRMAN OKUN: Okay. And I believe
20 Commissioner Miller had asked the question or asked
21 for post-hearing to look at the financial condition
22 and comment on the '01 period versus what happens in
23 '02 and '03, which I'm also interested in looking at.

24 Let me then -- Mr. Glick, you had mentioned
25 in your testimony how we should consider the

1 antidumping order in this investigation or the sunset
2 that was continued. And I wondered if you -- I heard
3 your testimony and I've heard respondents' but I guess
4 my question is does that make any difference in terms
5 of the different -- the earlier part of the period and
6 the later part of the period, given that we have the
7 1998 and 1999 data on here, is that in any way
8 influenced by the AD order? What do you think?

9 MR. GLICK: Well, I'm not sure in this case.
10 In some of the other cases, I think there was an
11 argument that there was perhaps improvement as a
12 result of the antidumping order and that should be
13 taken into account in the second proceeding.

14 In our case, we really didn't experience any
15 real improvement in the results of the antidumping
16 order, so we don't think it should really be a factor
17 at all in terms of the analysis in this case, whether
18 early years or later years, to be honest.

19 CHAIRMAN OKUN: Okay. I see my yellow is
20 on.

21 Vice Chairman Hillman?

22 VICE CHAIRMAN HILLMAN: Thank you.

23 I'd like to make sure I understand exactly
24 the nature of the argument that I'm hearing in terms
25 of the relationship between economy line product and

1 the premium product. As I understand it, you're
2 arguing that -- are all of the Chinese product in your
3 view the economy line product? All the Chinese
4 imports would be economy, none of it is what you would
5 consider premium?

6 MR. LAVARRA: That is correct.

7 VICE CHAIRMAN HILLMAN: Okay. And your
8 production, your domestic production, is entirely
9 premium product? You are not making domestically any
10 economy line product?

11 MR. EASLEY: That's correct. We do not make
12 any domestically produced economy product.

13 VICE CHAIRMAN HILLMAN: Okay.

14 MR. LAVARRA: There may be those times when
15 service levels become an issue that we might put
16 what's considered to be a premium part in an economy
17 box just so we don't have service delivery problems to
18 our customers. So I don't want to mislead you to say
19 we never put one in a box.

20 VICE CHAIRMAN HILLMAN: Okay. But you're
21 not actually producing it.

22 MR. LAVARRA: Not in the United States.

23 VICE CHAIRMAN HILLMAN: So then I'm trying
24 to understand, again, how we should view the
25 competition from the Chinese product with the

1 domestically produced product. I mean, that is
2 fundamentally what we're trying to figure out, is the
3 degree to which and where the Chinese product is
4 competing and is having an effect on your production.
5 And that's what I'm struggling with because I'm
6 hearing that the Chinese are entirely over here making
7 the economy product and you are all here making
8 premium product and it's not clear to me, again, where
9 the competition meets.

10 You're suggesting to me that these price
11 differentials are very great. Do you see price -- I
12 mean, are the prices of the Chinese economy product in
13 your view having an effect on the premium product
14 prices? If they're this far apart, I mean, a consumer
15 presumably is deciding, you know, do I want premium
16 product or do I want Chinese or do I want economy
17 product, where are the two meeting, in your view?

18 MR. EASLEY: Yes. We believe that the price
19 pressures from the Chinese product are affecting our
20 price.

21 VICE CHAIRMAN HILLMAN: Okay. How?

22 MR. EASLEY: By basically we're constantly
23 seeing our volume and our market share being shifted
24 to their product.

25 VICE CHAIRMAN HILLMAN: Volume I understand.

1 The volume part, that I understand.

2 MR. EASLEY: Okay.

3 VICE CHAIRMAN HILLMAN: It's the price part
4 that I am --

5 MR. EASLEY: Right.

6 VICE CHAIRMAN HILLMAN: Again, I'm seeing
7 these Chinese prices down here, I'm seeing your prices
8 up here, yours is a premium product, theirs is an
9 economy product. Where is the price competition?

10 MR. EASLEY: The price competition comes in
11 us going to the customer and saying we need to sell
12 you this product and what we have to offer you is this
13 premium product. And they'll say the price
14 differential is so great that I'm not going to buy
15 that product from you, so if you could get your price
16 closer to the economy line, I could sell more of those
17 parts, but as long as there's that big a gap, the
18 customer that's paying \$10 for a part and your part is
19 at \$23, they won't make that change. They won't make
20 the choice to buy your product. So you have to bring
21 your price down if you want to get closer to the point
22 at which they feel there's a value there, it's worth
23 it to them to buy the product.

24 VICE CHAIRMAN HILLMAN: Okay. All right.
25 Then I guess maybe if I can go back to the purchasers.

1 You know, we've talked a lot and both of you
2 mentioned, you, Mr. Jaffe, and you, Mr. Herzog, in
3 your testimony that from a consumer going into a
4 garage to have rotors put on, they don't really know
5 whether they're getting an economy product or
6 whatever.

7 Talk, though, a little bit about the pure
8 retail end, the consumer that goes into the Trak Auto
9 or whatever the store is, they're going to do their
10 brakes themselves, they're not going to an installer,
11 they're going to go in and purchase. From that end of
12 it, what do you see as the competition between these
13 Chinese economy products versus Mr. LaVarra's product
14 being sold at retail to the consumer that's going to
15 do their own brake work?

16 MR. JAFFE: One thing, I'm sorry to say that
17 Trak Auto is out of business and I lost a lot of money
18 selling --

19 VICE CHAIRMAN HILLMAN: I'm sorry. Whoever
20 has taken over from them. You can tell I am not doing
21 my own brake work, so I apologize.

22 MR. JAFFE: But most of the retailers are
23 selling an economy type rotor. So their price, the
24 price that they sell retail, that they sell a rotor
25 for is in most cases much less than what we sell a

1 premium rotor to our customer, to our wholesale
2 customer.

3 VICE CHAIRMAN HILLMAN: When you say most,
4 when you say most, you're saying -- again, for this
5 consumer that's going to do their own brake work, is
6 it half, the vast majority, almost all of what they
7 would see available to them in whatever has become
8 Trak Auto, on the retail side of it, is that all
9 that's available or is there still Mr. LaVarra's and
10 Mr. Easley's product out there at the retailers?

11 MR. JAFFE: No, there still is because like
12 our company stores, 25 percent of our sales are
13 retail, so in our stores we carry both products. We
14 carry Mr. LaVarra's products and we carry the Chinese
15 products, so there is --

16 VICE CHAIRMAN HILLMAN: And when you try to
17 sell Mr. LaVarra's product, what are your marketing
18 arguments for why someone should buy his product as
19 opposed to the economy product?

20 MR. JAFFE: I tell them Sara Fisher drives
21 the Raybestos car and it's got DE3A and we give them a
22 lot of marketing stuff. And we hope they'll buy that
23 rotor and we show them the two rotors and the box
24 probably on the premium rotor is a little nicer box
25 than what's on the import rotor and we hope we can

1 make that sale because we make a lot more money
2 selling that premium rotor than we do the other
3 rotors.

4 VICE CHAIRMAN HILLMAN: And from your
5 perspective, have you seen the prices of, again, they
6 strike me as fairly different markets on a price
7 perspective. Have you seen the prices of the economy
8 product affecting the prices of the premium product?

9 MR. JAFFE: I haven't seen it, but I'm sure
10 it probably has because anybody that's selling the
11 premium product and quoting the price on a premium
12 product is more liable to reduce the price below what
13 he would normally sell it for because he knows he's
14 got to compete in a lot of cases with the imported
15 product.

16 VICE CHAIRMAN HILLMAN: Mr. Herzog?

17 MR. HERZOG: Just to give you an example, we
18 just started selling 50 Goodyear stores direct and
19 they were carrying branded rotors and drums. And the
20 regional manager came in the other day and he says
21 we're going to stop selling branded because we're
22 losing the jobs to the other people with the Chinese
23 rotors.

24 So I said what do you want to do?

25 He says we want to take all the branded out

1 and put all Chinese drums and rotors in all of our 50
2 stores so we can compete with the guy down the street.

3 Now, what does that mean?

4 It means they'll get the other part of the
5 brake jobs which they weren't getting before and they
6 were losing it.

7 The other thing is, you know, we do sell to
8 government, U.S. and the states, and they only demand
9 branded, they don't take Chinese at all. Must be some
10 reason there, too.

11 VICE CHAIRMAN HILLMAN: Probably Buy
12 America, but let me stay, if I can, with this issue of
13 the economy versus the premium.

14 At the end of my last round of questioning I
15 was saying, you know, can you make, could you make if
16 you wanted to an economy rotor in your U.S.
17 facilities. Could you do that?

18 MR. LAVARRA: Well, first of all, and I'd
19 ask for permission, I do have an economy rotor and a
20 premium rotor for your review at any time, for you to
21 look at and see whatever differences you might see, if
22 that would be helpful to the commission.

23 VICE CHAIRMAN HILLMAN: Yes. Yes.

24 MR. LAVARRA: If the question could I
25 physically put the part into our machine and make

1 them? If that is the question --

2 VICE CHAIRMAN HILLMAN: Could you make it?
3 What would you do differently? If I said to you,
4 okay, I want you to make for me economy rotors, what
5 would you do differently than what you do to make your
6 premium rotors?

7 MR. LAVARRA: Well, again, the cost would be
8 similar to make the premium rotor and the economy
9 rotor because we wouldn't sacrifice the quality by
10 changing the materials because we feel very strongly
11 that materials are what stop the vehicle. We wouldn't
12 change the tolerances because we feel very strongly
13 that it's the tolerances that help make it do what it
14 does.

15 So for us to make an economy rotor today in
16 our plant, in my plant, it would cost me exactly the
17 same. We have, though, and are putting together our
18 adjustment plan that if tariffs are imposed we have a
19 formidable plan, we feel, that over a period of time
20 would help us be able to improve what we do and bring
21 our prices in line cost competitively.

22 VICE CHAIRMAN HILLMAN: Okay. But basically
23 what you're telling me is you're not going to be
24 physically producing what would be sold in today's
25 market as an economy product. You're just not going

1 to do that.

2 MR. LAVARRA: My cost to produce it would be
3 the same, so I could only do it and expect less --

4 VICE CHAIRMAN HILLMAN: You're not going to
5 be producing a product that's going to sell at the \$6
6 or whatever we're talking about price ranges.

7 MR. GLICK: I think what he's saying is he
8 can't do it now, but if we get the relief and his
9 adjustment plan, he hopes to be able to do it in the
10 future.

11 Is that correct?

12 MR. LAVARRA: That was the point I was
13 making but I'm not sure if that was the question.

14 VICE CHAIRMAN HILLMAN: My red light has
15 come on, but I need --

16 Thank you, Commissioner Miller. I
17 appreciate it.

18 Mr. Easley, I need to come to you also. As
19 I heard your answer to me at the very end, it was
20 basically the same issue, that you're not saying you
21 would -- you know, that there are things that you can
22 do readily to your plant to actually produce these
23 economy style rotors that are in the \$6 range.

24 MR. EASLEY: There are things that we can do
25 to decrease the price of our part if given time and

1 cash flow to do it, but we would not physically make
2 the part any different than we do right now.

3 VICE CHAIRMAN HILLMAN: Okay.

4 Dr. Button?

5 MR. BUTTON: There is a semantic issue here.
6 I think that the essence of it is premium equals U.S.
7 made, economy equals imports from China. There is no
8 U.S. produced quote economy line because by definition
9 it's the imported stuff, it's simply a term, a
10 terminology, it's a name. The domestic industry
11 product is at a higher price, they could not compete
12 with the Chinese product of the same model number.
13 The domestic industry then creates an economy line
14 comprised of, in this case, an import from China of
15 the same model.

16 If the domestic industry were to produce
17 something they want to call an economy line, it's
18 still the same equipment, the same materials and
19 roughly the same technology as to make the premium
20 one. The cost would be the same, so please be aware
21 of the semantic difference. The premium model and the
22 imported model, called the economy line, are competing
23 in the same market for the same customers and that's
24 why the volume of premium equaling U.S. sales are
25 being lost to the imports.

1 VICE CHAIRMAN HILLMAN: Okay. Now I need to
2 come back on how close you can get to something that
3 would be price competitive in the economy market, but
4 thank you.

5 CHAIRMAN OKUN: Commissioner Miller, your
6 time is running.

7 VICE CHAIRMAN MILLER: I'm quite happy to
8 let Vice Chairman Hillman keep using it. She's doing
9 a great job. I listened to the exchange and basically
10 what I hear is, Dr. Button, at least for you, the only
11 difference between premium and economy is -- for the
12 producers, the only -- well, it's the price. I'm not
13 hearing any difference, at least in terms of the
14 product, for a U.S. producer between what you would
15 call premium and what you would call economy except
16 for price.

17 MR. EASLEY: The producers, we have insight
18 to a lot of knowledge of how things are made, okay?
19 So when we look at a product, we could probably say,
20 well, I see this as different and this is different.
21 However, our customers are coming to us and saying we
22 don't see it, we don't see the difference, we perceive
23 these as like products; I know you're telling me yours
24 is better, I know you're saying that you're doing
25 something better than they are, but we don't see it,

1 and we sure don't see the value in paying that extra
2 dollar for that product given the price I can get it
3 for.

4 COMMISSIONER MILLER: Yes. Yes. Okay.

5 I actually was not -- after Commissioner
6 Hillman finished that round, basically, other than
7 listening to the rest of it, I had no further
8 questions. I appreciate all your answers and
9 testimony today.

10 CHAIRMAN OKUN: Commissioner Koplan?

11 COMMISSIONER KOPLAN: Thank you, Madam
12 Chairman.

13 Let me -- I might be a little confused here.
14 On my last round, following up on this, I asked
15 whether you all purchased Chinese product and you
16 both, Mr. Easley and Mr. LaVarra, said that you do
17 purchase it from importers, okay?

18 Then I asked whether the quality of the
19 import is comparable to the quality of the product
20 that you produce domestically and I was referring to
21 your premium product. And you both said that it is.

22 And then I'm hearing that the only
23 difference between the two is that you charge a far
24 greater price for the premium product. And I'm
25 wondering why if the quality is the same and people

1 can't distinguish them, why would anybody buy the more
2 expensive premium product if the economy end is
3 available and there's no difference in quality? I'm
4 missing it.

5 Mr. Herzog, help me.

6 MR. HERZOG: I think both of the gentlemen
7 said they couldn't answer you on the quality because
8 they were both manufacturers and don't get down to the
9 installer level. That was the remarks I think I
10 heard.

11 Second of all, I think the only one that's
12 going to give you an answer is someone who installs
13 the Chinese rotor on a period of time on an automobile
14 that he does. We do sell installers and I would say
15 that the business is -- they do buy it only because of
16 being selfish because of the profit they're making.
17 But for you to ask me what is the quality difference,
18 I couldn't even tell you that unless I had the
19 installer tell you on his own experience of what he
20 did with it.

21 COMMISSIONER KOPLAN: Thank you. That is
22 helpful. I appreciate that.

23 MR. LAVARRA: Commissioner, may I add --

24 COMMISSIONER KOPLAN: You sure can.

25 MR. LAVARRA: Certainly if you would ask me

1 as a manufacturer, I tried to allude to that about the
2 metal differences, the tolerance differences. I
3 believe that there is a quality difference between the
4 product that we make in the U.S. market and a quality
5 difference between that product imported from China.
6 But the consumer doesn't feel that there is a
7 difference.

8 COMMISSIONER KOPLAN: Okay. I didn't get
9 that on my last round. I hear what you're saying.

10 MR. LAVARRA: That's the big difference.

11 MR. EASLEY: I concur with that exactly.

12 COMMISSIONER KOPLAN: Thank you both.

13 Finally, I note in your pre-hearing brief on
14 page 21 that we are lacking employment related
15 indicators for certain domestic producers. I can't
16 get into the details that you provide on that in terms
17 of who they are because it's BPI, but my question is,
18 Mr. Glick, has this information that we were lacking
19 now been provided? And, if not, when can we expect to
20 see it?

21 MR. GLICK: May I defer to Dr. Button on
22 that?

23 COMMISSIONER KOPLAN: Yes. Dr. Button?

24 MR. BUTTON: The other company in question,
25 Opaca, I conferred with Opaca this morning. They have

1 indicated that they would provide the data today to
2 the commission.

3 COMMISSIONER KOPLAN: Today? Okay. Thank
4 you very much for that.

5 And with that, I have no further questions.

6 CHAIRMAN OKUN: I want to go back to the
7 competition argument just a little bit because -- and
8 I've heard the responses and I guess my question is
9 looking at this record, looking at responses that we
10 received from other purchasers, unlike some products
11 that come before us and I think the answers are all
12 kind of consistently yes, you can use the Chinese
13 product, you can use the U.S. product, it's all the
14 same, they're substitutable, but here, both because of
15 the branding element and -- and I don't know if it
16 flows, one of the things that's always struck me about
17 this is it flows from, you know, you have the
18 warranty, the OEM, and then you all are not doing --
19 that's not what you're selling, but it's very close to
20 that, but there is still in this market distinctions
21 among either it's the person installing saying, you
22 know, I've used Dana Corporation products and they're
23 good and it's worth the premium and we ought to pay
24 it, I guess I still see that on this record, which I
25 think is not consistent with what you're telling me

1 and I'm wondering what else you can point me to
2 because I don't think the pricing data reflects that
3 yet either. In other words, if they are so
4 substitutable in economic terms, there would be a lot
5 more -- what we were talking about before, the
6 crossover, the Chinese volume going up with U.S.
7 prices going down.

8 I'm still struggling with that because what
9 you're saying about it, it's the same product, we're
10 selling it here, the Chinese are selling it here and
11 no one cares. No one cares, they just want to buy the
12 cheapest product. I'm still trying to find that,
13 whether that's consistent with the record we've
14 developed here.

15 And, Mr. Easley, you look like you're
16 grabbing your microphone, I don't know if you want to
17 try to respond, but I'm still struggling with this.

18 MR. EASLEY: I think the issue is that we
19 could have lowered our prices more and more to try to
20 get those equalized, but we wouldn't have been in
21 business, okay?

22 There's a point at which we were struggling
23 to manage the costs that we had, given less volume and
24 our costs were increasing as a result of trying to
25 take the fixed costs that we have and put those over

1 less volume parts, because our volume was definitely
2 going down.

3 So the struggle that you run into is why
4 don't you see the price continue to go down? Well,
5 because the costs weren't continuing to go down.

6 CHAIRMAN OKUN: What I'm trying to get
7 across is that we've certainly seen records where
8 we've had the domestic industry say we've chosen to
9 stand and fight on price, we're going to cede volume,
10 but we had to keep price to keep us running. But in
11 those cases, you see the imported product spike up to
12 take that. And here, it seems like there is at least
13 something else going on in this market that's
14 allowing -- I don't know if it's still the product
15 line, I can't tell what it is, it's that part because
16 I hear you, I hear what you're saying and I don't
17 see -- and I'm not sure I think it's consistent with
18 some of the other remarks from purchasers, not the two
19 that are here today, but others who are saying the
20 branding, this ability of the premium producers to
21 still attach value to their product is present in this
22 market. And that's my --

23 MR. EASLEY: And there's no argument that
24 there's certain people that have that history in them,
25 to say I've bought this product before and I would

1 like to stick with it, there are some of them that
2 hang on, right? But little by little, they get into
3 the greed motive, wow, I can buy that part for that
4 much less, I can sell the product at the old price,
5 and I can make my huge margins, and it's hard to
6 overlook that. And so it continues to shrink, that
7 group of people that's loyal is continuing to say I
8 just can't do it any more.

9 Because the other side of it is if they do
10 feel price pressures because the guy across the street
11 will sell them a brake job for less than them, they
12 have some room to move with the Chinese. With us,
13 they don't have a lot of room to move.

14 CHAIRMAN OKUN: Okay.

15 Mr. LaVarra?

16 MR. LAVARRA: Madam Chairman, I was just
17 going to say, as you pointed out, there is a brand
18 loyalty out there, but I think Mr. Jaffe mentioned
19 that brand loyalty market share is shrinking and
20 shrinking every day and going by the wayside to the
21 lower priced product from China. So although there is
22 a brand loyalty and we do everything we can to protect
23 that and support it, there is a shrinking market that
24 is looking at those marketing views and they're moving
25 to the other side.

1 CHAIRMAN OKUN: Okay. I appreciate those
2 further comments.

3 Let me just turn for a moment to remedy.
4 Again, one of the unique features of the 421 is that
5 the time table does not allow us time for a separate
6 hearing if there were to be an affirmative vote on
7 market disruption.

8 You've proposed a very, very, very large
9 tariff. I understand how you got it. I guess I'm
10 just curious if there was something else out there
11 that you would suggest as an alternative, if it's just
12 the price alone. I mean, quotas won't help you, it's
13 you have to turn the price around completely.

14 I mean, I guess in part that's consistent
15 with the adjustment plan, Mr. Glick, that you were
16 describing or, Mr. LaVarra. You know, are you trying
17 to bring your price down or is it what your effort
18 really is focused at and whether that's consistent
19 with the tariff level that you would recommend as a
20 remedy.

21 MR. LAVARRA: Well, again, we're asking for
22 the tariffs to give us the time to be able to make the
23 adjustments in our plants and operations, to bring our
24 costs down, to be more competitive with where the
25 Chinese are today.

1 As Mr. Easley had pointed out and as I said
2 in my written testimony, that as our volume continued
3 to drop over the course of these last years and
4 particularly the years of investigation and even a
5 little before that, we have done no investment for
6 growth in our operations, so it has been very
7 difficult to justify the cost investments in
8 automation and other things we need to make the
9 substantial improvements to help narrow the gap on the
10 cost side of our business.

11 CHAIRMAN OKUN: Mr. Easley?

12 MR. EASLEY: Likewise, I would say that we
13 have improved as a result of the competition. We have
14 seen things that we could do and many of them we could
15 do, but there's a point at which you run into I have a
16 list of things I could do, but as I go to our parent
17 company and say -- some of them require money, I can't
18 do everything just with smarter and more efficient
19 ways, non-capital requiring things, and they look at
20 it as, well, yes, but your volumes are going down and
21 we're continuing to have to shrink our profits, so I
22 can't really afford to make any long-term investments
23 in some of these better measures that you've got, so
24 we're looking to say we've got to stabilize for a
25 while so that we can make some adjustments to the

1 things we have learned to do better.

2 CHAIRMAN OKUN: And do you believe that for
3 you to be able to do that the Chinese imports have to
4 be completely out of the market or the price needs to
5 come up to something equal? What is it?

6 MR. EASLEY: We absolutely do not think --
7 we're not looking for no competition. We're looking
8 for stability for us to be able then go to our
9 management and say now you've got some relief that
10 guarantees you if you make that investment that's a
11 five or ten-year investment that there's a payback
12 there, it's not going to fall off and you'll be back
13 to where we have been, which is you've got this fixed
14 overhead and shrinking volume so your costs are going
15 up and your margins are going down.

16 CHAIRMAN OKUN: Okay.

17 Mr. LaVarra?

18 MR. LAVARRA: I agree with what Mr. Easley
19 said. We're not looking to close the borders to
20 import product. As a matter of fact, as I said, we
21 welcome competition. All we're asking for is a level
22 playing field.

23 CHAIRMAN OKUN: Okay.

24 And for the purchasers back there, if there
25 were a very large tariff put in place that had the

1 effect of limiting the number of Chinese imports, do
2 you think you would see an increase in other
3 non-subject imports, the South American ones that
4 you've talked about before, to continue in this
5 economy line or not? I guess that would be my
6 question. I'll give that to Mr. Herzog and Mr. Jaffe.

7 MR. JAFFE: Would there be more product
8 coming in from other countries? Most probably. But
9 when the imports first came into the marketplace, the
10 difference between the premium product or the U.S.
11 made product and the import product wasn't as great as
12 what it is today because the U.S. producers haven't
13 been able to respond to the import market by lowering
14 the price of the product they make. You hear that the
15 only way they can compete is to also import or buy
16 from an importer.

17 CHAIRMAN OKUN: So you'd say it would be
18 non-subject but it would be at a higher price, then.

19 MR. JAFFE: It would be at a higher price
20 and I think that's really all that we'd all like to
21 see. I mean, we don't want to see it disappear and
22 there is somebody that can only pay \$20 instead of
23 \$50, which you do have to be able to take care of as
24 long as the product is safe, because we're dealing
25 with brakes now, that's a safety factor. But I think

1 that it's just a question of bringing the price up so
2 that the difference -- it's bringing the import price
3 up and bringing the U.S. producer price down so they
4 get a little closer together and then may the best man
5 win.

6 CHAIRMAN OKUN: Okay.

7 Mr. Herzog, anything you would add to that?

8 MR. HERZOG: That's what I just said to him
9 just now, I said as long as the price would be
10 comparable, then you're giving your customer a choice
11 of what he wants to buy.

12 CHAIRMAN OKUN: Okay. I appreciate those
13 comments. I did want to make sure that the two
14 products that you had brought up have been -- okay.
15 They're all right. We can look at those.

16 Let me turn to Vice Chairman Hillman.

17 VICE CHAIRMAN HILLMAN: Thank you. I hope
18 just a couple of quick follow-ups.

19 First, I just wanted -- I had some questions
20 relating to remedy as well.

21 Maybe to you, Dr. Button. Is it your
22 expectation that if the commission were to adopt the
23 tariffs at the level that you have suggested that that
24 would be entirely preclusive of all imports?

25 MR. BUTTON: I'd like to respond to that in

1 the post-hearing brief, please.

2 VICE CHAIRMAN HILLMAN: Okay. All right.

3 And part of that goes to this issue of,
4 again, as I've heard the testimony, this is largely
5 about the volume effect. I keep pushing on this issue
6 of where do we see the price competition, but the
7 answers that have come back to me, at least as I hear
8 them, are where you're feeling the effects is on the
9 volume side. I mean, that's -- everybody is telling
10 me, you know, you've got so much fixed assets and the
11 issue is largely a volume side.

12 So my other question for you is is a tariff
13 measure designed to increase price as opposed to have
14 a significant restriction in volume the appropriate
15 remedy in a case which is, at least as it presents
16 itself to us, is largely a volume case? In other
17 words, why should that be my goal? If the problem
18 here is volume, why are you proposing a remedy that
19 you're suggesting you're doing for price reasons?
20 It's those two issues in combination with, you know,
21 this level of a tariff increase that you're proposing,
22 what is your expectation in terms of the level of
23 imports?

24 MR. BUTTON: Likewise, I'd like to respond
25 in the post-hearing brief.

1 VICE CHAIRMAN HILLMAN: Okay. Fair enough,
2 and then I guess, too, just to make sure I understand
3 the magnitude of these issues, I think you, Mr. Jaffe,
4 in response to Chairman Okun talking about this issue
5 of consumers deciding not to have their brakes or
6 rotors turned, is I think the term you used, and
7 instead to just go ahead and replace them, I was just
8 trying to get a sense from you of how much of that is
9 happening. In other words, if you had a sense that,
10 you know, five years ago 100 customers would go in and
11 have their product turned, how many of those are now
12 buying new rotors because they are so low priced?

13 MR. JAFFE: I think a lot of them --

14 VICE CHAIRMAN HILLMAN: Just how big a
15 phenomenon this is.

16 MR. JAFFE: I think that maybe the consumer
17 isn't even involved in it, but the installer is the
18 one that makes that decision and rather than take the
19 time -- because what he normally does, the installer
20 has to take the old rotors, he has to send them to the
21 wholesaler that he buys the rest of the brake parts
22 from, and they have to wait and get them turned and
23 then they have to deliver them back again and then
24 they charge them \$7, \$8, \$9 apiece unless they buy the
25 pads from them, then maybe it's a little bit less.

1 It's just as easy for him to put on -- it's easier for
2 him to put on two new rotors.

3 VICE CHAIRMAN HILLMAN: Okay. So basically
4 100 percent of what used to be turned is now being
5 just simply replaced?

6 MR. JAFFE: No, no. There's still some.
7 They're still turning them, but not as much as they
8 used.

9 VICE CHAIRMAN HILLMAN: Okay. Any sense of,
10 again, the size of that phenomenon?

11 MR. JAFFE: I don't know. We still sell a
12 lot of equipment that goes for turning, so -- I mean,
13 it does go on, but not like it used to.

14 VICE CHAIRMAN HILLMAN: Okay. Mr. Herzog,
15 would you have a sense of that, of how big this
16 phenomenon of, again, what they used to, when they saw
17 this level of wear and tear on brakes that folks would
18 have done turning that are now doing replacing? Can
19 you give me a sense of how big that is?

20 MR. HERZOG: Only from hearsay, from the
21 jobbers that we do sell that turn rotors. They say
22 their business is down 75, 80 percent because now
23 they're selling the new one rather than turning it, so
24 they're getting to the point where they're not even
25 maintaining their equipment any more.

1 VICE CHAIRMAN HILLMAN: Okay. Okay.

2 And, then, again, I'm just trying to get a
3 sense from your perspective of the relative portion
4 of, again, the product sold at retail, where the
5 do-it-yourself brake folks are out there. What
6 portion of that product would you say is in this
7 economy versus what portion is in the branded U.S.
8 product? If I'm going to go into a retail store, what
9 portion of it would you say is the economy versus --

10 MR. HERZOG: A hundred percent economy.

11 VICE CHAIRMAN HILLMAN: A hundred percent
12 economy?

13 MR. HERZOG: Right.

14 VICE CHAIRMAN HILLMAN: Okay. Mr. Jaffe,
15 would you have a sense of that?

16 MR. JAFFE: I think there's a few retailers
17 that do sell a U.S. produced product, but not too
18 many. I don't know if it's 100 percent, but I'm sure
19 it's 85 or 90.

20 VICE CHAIRMAN HILLMAN: Okay. Okay. All
21 right. I appreciate that.

22 I think with that I have no further
23 questions, but I would thank you all very much for
24 your answers. We appreciate it.

25 CHAIRMAN OKUN: I see no other questions

1 from my colleagues. Let me turn to staff to see if
2 staff has questions of this panel.

3 MR. GEARHART: There are a couple of staff
4 questions. First of all, my name is Bill Gearhart
5 from the Office of the General Counsel.

6 CHAIRMAN OKUN: Mr. Gearhart, could you just
7 move your mike a little closer?

8 MR. GEARHART: Okay. Or I'll move closer to
9 the mike.

10 I just wanted to touch on a couple of the
11 like or directly competitive issues. I think these
12 were fairly well covered in the earlier questions, but
13 what is the like or directly competitive domestic
14 article? How would you define it? For example, would
15 it include OES sold in the after market or not?

16 MR. LAVARRA: I'm sorry, I couldn't hear the
17 question.

18 CHAIRMAN OKUN: Mr. Gearhart, is that other
19 mike working better? Because I'm having a hard time
20 hearing you, too.

21 MR. GEARHART: The other mike is not
22 working.

23 (Pause.)

24 MR. GEARHART: This one works a lot better.

25 CHAIRMAN OKUN: Much better.

1 MR. GEARHART: The question has to do with
2 the like or directly competitive domestic article.
3 How would you define the like or directly competitive
4 domestic article. For example, would it include OES
5 brake drums and rotors sold in the after market?

6 MR. LAVARRA: We would define the market, as
7 I tried to state, in two positions: one is the
8 original equipment market going right to the vehicle
9 manufacture and the work that's done under warranty in
10 the dealer. After that dealer level, we would
11 consider that to be after market, after the warranty.

12 So if you had a 1995 Jeep and it had a
13 two-year warranty, the Chrysler dealer would cover
14 that for a two-year period. After that, if you went
15 back to the dealer, he would not likely use the OEM
16 manufactured product, but an after market product,
17 whether it had been private branded for him or
18 purchased from a local parts store around the corner.

19 MR. GEARHART: What is the difference
20 between an OES brake drum and rotor and a premium
21 brake drum and rotor? Are there any physical
22 differences between them, other than a logo?

23 MR. LAVARRA: I'm not sure, sir, of your
24 definition of OES and I just need to understand that.
25 If you are talking about OE warranty work versus

1 service done at an original equipment dealer, those
2 are viewed as two different things. If it's OE
3 warranty work, then those products would typically
4 have been made to tighter tolerances, the same as the
5 automotive vehicle manufacturer requires.

6 After that for service work at a dealer, if
7 OES is defined as OE service, it would typically be
8 made to the typical after market tolerances that I
9 spoke of earlier.

10 MR. GEARHART: So in other words, in
11 virtually all cases there would be a difference in
12 tolerances between a premium rotor and an OES rotor?

13 MR. LAVARRA: If OES again is defined as
14 either to the vehicle builder or warranty work, then,
15 yes, there would typically be different tolerances
16 between that and premium.

17 MR. GEARHART: What about differences in
18 price?

19 MR. LAVARRA: There would certainly be
20 differences in price.

21 MR. EASLEY: I agree.

22 MR. GEARHART: Which would be higher?

23 MR. LAVARRA: The dealer price would be
24 significantly higher.

25 MR. GEARHART: You've testified earlier that

1 you both purchase and sell the Chinese economy type
2 brake drums and rotors and, of course, you
3 manufacturer and sell the premium as well. How do you
4 market them? Do you market them in the same way? Do
5 you advertise one as being better than the other?

6 MR. LAVARRA: We market them as different
7 products, one premium made in the U.S. and the other
8 an economy product. And, as I mentioned earlier,
9 they're sold off of different price sheets and, in
10 fact, distributed in some cases differently.

11 We carry the premium product at all of our
12 warehouses for easy delivery. The economy product,
13 because the prices are different, we try to take as
14 much distribution cost out of them as we can and may
15 only stock those in some of our warehouses, not all of
16 them.

17 MR. GEARHART: So when you market them
18 differently, do you make certain claims with respect
19 to one in terms of the qualities of it as being better
20 than the other?

21 MR. LAVARRA: As I had mentioned earlier, we
22 would certainly make the claim and advertise that our
23 premium product would have superior performance to
24 that of the after market -- or the economy line, I'm
25 sorry.

1 MR. GEARHART: But you would still argue
2 that the domestic premium product that you produce is
3 like the imported economy product?

4 MR. LAVARRA: I need to understand the
5 definition of the word like, sir.

6 MR. GEARHART: Well, this would be the
7 statutory term.

8 MR. LAVARRA: Okay. I don't know that term.

9 MR. GEARHART: This you may want to address
10 further in your briefs.

11 MR. LAVARRA: The product is the same, if
12 that's your question. The form, fit and function of
13 the vehicle application would be the same.

14 MR. GEARHART: But the price would be three
15 or four times as high?

16 MR. LAVARRA: The price would be different.
17 Again, I'm not as well versed in the detailed pricing
18 of every one of 1500 part numbers, but the pricing
19 would be different. That's true.

20 MR. GEARHART: That's all the questions I
21 have.

22 MR. BENEDICK: This is Gerry Benedick with
23 the Office of Economics. I have one question and then
24 one request.

25 The question is for Mr. LaVarra. You had

1 indicated earlier that the price products for which we
2 got pricing data are all the A volume category and you
3 described the time path of adjustment for these
4 volumes is it first rises, probably stays at a high
5 level for a while and then descends and as the volume
6 descends that the price generally goes up, reflecting
7 the smaller volume, you want to cover your fixed
8 costs. Were these products on the rising part of that
9 time path or on the falling part?

10 MR. LAVARRA: Mr. Benedick, yes, these are A
11 class part numbers as we've mentioned and I'm not sure
12 where they are in the life cycle on those particular
13 parts.

14 MR. BENEDICK: If we see rising prices for
15 them over the period that we're looking at, would we
16 then assume that they were on the falling part and
17 that the volumes were falling off somewhat and you
18 wanted to maintain or at least cover your fixed costs?

19 MR. LAVARRA: Typically, that would be
20 correct. If you're talking about my pricing data in
21 particular.

22 MR. BENEDICK: Okay. The request goes to
23 Mr. Button.

24 If in the post-hearing brief you could
25 discuss the effect of the recession in 2001, the first

1 three quarters, I believe, were in recession, it was a
2 rather mild one and the recovery in the fourth quarter
3 of 2001, but what effect did that recession have which
4 lasted for three quarters of the year on pricing and
5 on the volume of U.S. produced brake drums and rotors?

6 MR. BUTTON: I will do that.

7 MR. BENEDICK: Thank you.

8 I have no further questions.

9 MS. MAZUR: Diane Mazur, Office of
10 Investigations. Madam Chairman, the staff has no
11 further questions.

12 CHAIRMAN OKUN: Thank you very much.

13 Do counsel for respondents have questions of
14 this panel?

15 MR. LOEB: No questions here, Madam
16 Chairman.

17 CHAIRMAN OKUN: Then I want to thank all of
18 our witnesses very much for their testimony, for all
19 the answers they've given; it's been a lot of them.

20 It's been a long morning, it would be a good
21 time to take a lunch break. We will come back at
22 2:30.

23 I want to remind everyone that this room is
24 not secure, therefore, any information that is
25 business confidential information you should take with

1 you. And with that, we are adjourned until 2:30.

2 (Whereupon, at 1:26 p.m., a recess was taken
3 until 2:30 p.m.)

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

(2:30 P.M.)

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CHAIRMAN OKUN: Good afternoon. This hearing of the United States International Trade Commission will please come back to order.

Madam Secretary, I see the panel of witnesses of those in opposition to the relief are seated. Have all the witnesses been sworn?

MS. ABBOTT: Yes, Madam Chairman.

(Panel sworn en bank.)

CHAIRMAN OKUN: Very well then, you may proceed.

MR. MORGAN: Good afternoon, Madam Chairman. May name is Frank Morgan. I am joined by my colleague William Moran of White & Case. We are here today on behalf of Qualis Automotive, a U.S. aftermarket distributor of brake drums and rotors.

With us today from Qualis are Mr. Marvin Fudalla and Mr. Steven Wylie. They will be presenting testimony to you this afternoon that I believe is picking up where things left off and will present a somewhat similar view in the sense of a distinction between the premium brand segment of the market and the economy line segment. In fact, it's a quite real segmentation.

1 You will also hear from Mr. Fudalla about
2 the consolidations in the industry and the fact that
3 they are unrelated to the presence of Chinese imports
4 in the U.S. marketplace.

5 Following their presentations will be Mr.
6 Hamilton Loeb of Paul Hastings followed by Mr. John
7 Reilly of Nathan Associates. And closing things out
8 will be Mr. Scott Flicker of Paul Hastings.

9 And with that I would like to turn the
10 microphone over to Mr. Fudalla.

11 MR. FUDALLA: Good afternoon. My name is
12 Marv Fudalla and I am the president/CEO of Qualis
13 Automotive. Qualis is the second largest distributor
14 of brake drums and rotors in the United States. Only
15 Dana, one of the petitioners and my former employer,
16 is larger.

17 Qualis primarily sells and distributes
18 Chinese brake drums and rotors, although we do also
19 sell a small amount of domestically produced drums and
20 rotors. Today I would like to provide my insights in
21 response to what I have heard earlier today and read
22 in the petitioners' public filing.

23 Firstly, the notion that Chinese products
24 compete with the premium branded products that Dana
25 and Federal Mogul manufacture in the U.S. is

1 incorrect. Raybestos and Wagner brand drums and
2 rotors sell in a completely different segment of the
3 market than the economy line products. This is also
4 true of the OES drum and rotor market which I consider
5 to be part of the premium aftermarket.

6 When I evaluate who my competitors are I
7 look to who the other suppliers of economy line
8 products are. And when I compare the quality of my
9 product to competitors I do it relative to other
10 economy line supplies. Dana promotes its U.S.-made
11 product as superior to Chinese product both in terms
12 of quality and performance.

13 Consider the following statements made from
14 recent advertisements and press releases that we have
15 excerpted. There's probably 10 or 12 bullet points
16 I'm going to go through so bear with me because it
17 does help to underscore my points.

18 Point: Economy rotors by design cost less
19 than premium quality rotors. Raybestos brand premium
20 rotors match the OE configuration. Our adherence to
21 OE design parameters and metallurgy helps to ensure
22 that the stopping performance of the vehicle is
23 restored to its original state. VSM rotors, which
24 means vehicle specific metallurgy, features 67
25 different OE vein configurations to maximize

1 performance and minimize noise. Raybestos is the only
2 aftermarket manufacture to offer these features in its
3 product line.

4 Point: Raybestos line of PG-plus quality
5 rotors matches original equipment design and material
6 composition for all vehicle applications.

7 Point: By providing brake parts that
8 conform to the original equipment design Raybestos
9 installers offer high quality, safety tested products.

10 Point: Our rotors are D3EA certified to
11 assure vehicle owners that their replacement brake
12 parts provide the braking performance originally
13 designed in by the manufacture.

14 Point: Raybestos brand premium rotors have
15 outperformed the economy rotors in independent testing
16 by a third party.

17 Point: Our Raybestos brand premium rotors
18 are designed specifically for the particular brake
19 system application. It costs more money to
20 manufacture a rotor that matches the OE design.

21 Point: Manufacturers account for this
22 disparity in performance between Raybestos brand
23 premium and economy rotors.

24 Point: We are finding that our customers
25 are choosing premium rotors.

1 Final point: Independent tests have shown
2 that economy rotors can cause 100 percent more brake
3 noise, 30 percent more pad wear, and 20 percent less
4 stopping ability than premium quality rotors.

5 I believe Federal Mogul positions their
6 product similarly.

7 Such statements by their own admission mean
8 that Dana and Federal Mogul are manufacturing premium
9 aftermarket drums and rotors. Manufacturing a premium
10 product significantly increases the price at which
11 such drum and rotors can be sold.

12 Similarly, Dana's pursuit of D3EA
13 certification increases costs and ultimately the end
14 selling price. These efforts are not designed to
15 provide a product that competes with economy lines but
16 one which differentiates the premium brand totally
17 from the economy brand.

18 Economy line products have been available in
19 the U.S. since 1992. Approximately 95 percent of the
20 economy line drums and rotors are sourced from
21 offshore. Primarily they come from China but they can
22 also come from Venezuela, Taiwan, Mexico and some
23 other locations.

24 These products meet an unfulfilled need,
25 replacement drums and rotors that are affordable to

1 price sensitive consumers. Before economy line
2 products existed it was quite common to replace one's
3 brakes less frequently but instead to have the rotors
4 turned or machined.

5 Although they were very slow to react to the
6 growing demand for economy line drums and rotors,
7 eventually both Dana and Federal Mogul recognized the
8 need for such products. By my estimation they now
9 collectively purchase over six million units from
10 China for their economy line. In fact, Dana is now
11 one of the largest purchaser of Chinese drums and
12 rotors in the United States. Dana also purchases
13 economy line drums and rotors from Venezuela or
14 imports them from Venezuela which is their own
15 facility.

16 Despite claims of losing business to Chinese
17 drums and rotors, Dana and Federal Mogul recently
18 obtained new business awards selling these Chinese
19 products at large retailers such as CSK, O'Reilly's
20 and Pep Boys. These were on economy line drums and
21 rotors.

22 But supplying economy line is not any
23 assurance at all of total success. Many economy line
24 suppliers have gone out of business recently such as
25 Brake Headquarters, MCI, Asantric and California Drum

1 and Rotor.

2 Price also does not account for the success
3 of an economy line supplier. On a number of occasions
4 and for a number of different accounts Qualis, our
5 company, and Dana have completed head to head to
6 supply Chinese drums and rotors. These accounts were
7 companies as large and varied as Auto Zone, Car Quest,
8 Firestone and Mighty Distributing. Qualis and Dana
9 were offering the same Chinese drums and rotors
10 purchased from the same importer and manufactured at
11 the same factories in China. Qualis obtained this
12 business not because of some unfair price advantage.
13 Qualis received the business because it offered
14 superior turnaround time, great order fill and were
15 very responsive to our customers' needs.

16 I would now like to address the petitioners'
17 claims about using U.S. production capacity because of
18 Chinese imports. Domestic manufacturing efforts by
19 Dana and Federal Mogul are increasingly directed
20 towards great production of OEM and OES products.
21 This is evident despite Dana's and Federal Mogul's
22 claims about industry consolidation.

23 To my knowledge none of the so-called
24 consolidation we saw on the chart resulted in
25 aftermarket production going away.

1 I would now like to direct the Commission's
2 attention to the Exhibit 3 in Dana and Federal Mogul's
3 prehearing brief. When you look at this hierarchy of
4 consolidations it starts with ITT Automotive.

5 ITT Automotive was sold to Eckland
6 Corporation because ITT Aftermarket Group, the one
7 sold to Eckland Corporation, it was sold by ITT
8 Automotive because the aftermarket group of ITT was
9 150 million in sales and ITT was 8 billion. ITT
10 Automotive determined that it was a non-strategic fit
11 for them. So they sold the assets to Eckland
12 Corporation.

13 The Iroquois Tool was purchased by Eckland
14 back in 1996 to 1997. They were a very small company
15 at that time. I can't recall their capacity. Their
16 prime capabilities were they could tool up products
17 very, very quickly in a short period of time because
18 they used soft tooling I believe. And that was
19 something that Eckland found very attractive. So they
20 bought them and just took their capacity.

21 Eckland ended up being purchased by Dana but
22 that was because FTS had a hostile takeover bid for
23 them. Dana looked for -- Eckland looked for a white
24 knight and they went to Dana and Dana ended up being
25 the white knight.

1 Kinetis was the manufacturing arm of a
2 company called Auto Specialty that was essentially a
3 distributor or chassis and engine and brake components
4 into the independent aftermarket. Back in the mid-
5 '90s Chelsea Hayes owned Auto Specialty and then Lucas
6 Verity bought Chelsea Hayes and then TRW bought Lucas
7 Verity. In all those transactions Auto Specialty just
8 kept going along with each deal that was done. Again,
9 no capacity was ever lost and there was no
10 consolidation.

11 Then Cooper Wagner, Wagner was purchased by
12 Federal Mogul. And at that point in time Federal
13 Mogul might have had some small friction capabilities
14 but essentially found Wagner attractive enough and
15 their drum and rotor manufacturing attractive enough
16 to purchase them.

17 And that's basically it.

18 I guess in summary after all that the point
19 I guess I wanted to make was none of those facilities
20 ever was closed except for one along the way called
21 Amherst that was closed in 1999. I think that was
22 brought up earlier today. Back then I was president
23 of AAMCO and Amherst was one of my facilities. It
24 manufactured drums and rotors.

25 The Amherst facility was closed due totally

1 to productivity and inefficiency problems. They had a
2 two way system there that didn't work and that plant's
3 productivity kept going down and down and down. And
4 eventually it wasn't worth keeping it open. It was
5 totally unrelated to Chinese imports. All of the
6 equipment at Amherst just shifted to other Dana
7 manufacturing locations.

8 Additionally, in 2001 Dana built an OE
9 facility in Wapaca to supply OEM parts.

10 Not only have Dana and Federal Mogul been
11 unresponsive to market trends overall but they have
12 turned away business that Qualis had sought to give
13 them. Newer part numbers, and that I mean drums and
14 rotors for new model cars that have just been
15 released, are usually not available from Chinese
16 producers immediately. I need to have these parts to
17 meet my customers' needs.

18 On a number of occasions I have tried to get
19 these new part numbers from Dana and Federal Mogul but
20 I have been unsuccessful. Just recently we spoke to
21 Federal Mogul and were told that they were operating
22 at close to full capacity and may be unable to supply
23 us with any of the new parts we'd asked about.

24 The result of this is that instead of making
25 these purchases through a domestic producer I am

1 forced to have the part reverse engineered and then
2 have it made in China. If I could get these parts
3 from a domestic supplier I would because it would be a
4 lot quicker than going the Chinese route.

5 The fact that Federal Mogul is close to full
6 capacity surprises me relative to the claims in the
7 petition. If this is the case I don't see how the
8 Petitioners could make up for any significant amount
9 of the shortfall that would occur if Chinese imports
10 were restricted. My belief is that the Petitioners
11 would have to supply the U.S. market from other
12 offshore sources.

13 To conclude I have one final thought that
14 should be part of this tribunal's consideration. From
15 talking to my customers I know that some consumers
16 will not replace worn-out drums or rotors when they
17 should, or in the case of rotors will attempt to have
18 them turned if the Chinese aftermarket products are
19 not available at this current price point.

20 Not replacing drums or rotors is simply an
21 unacceptable safety risk. Having a rotor turned is no
22 longer acceptable because the thickness of the rotors
23 has decreased over the last several years. I am
24 confident, as are my customers, that consumers will be
25 forced to make such choices if Chinese products are

1 unavailable at current prices.

2 Thank you. I am available for questions.

3 My college Steve Wylie will now present a
4 specific example to you on the safety issue. Thanks.

5 CHAIRMAN OKUN: Thank you.

6 MR. WYLIE: Good afternoon. My name is
7 Steve Wylie and I am the CFO of Qualis. I would like
8 to speak briefly about a subject ignored by the
9 Petitioners in the public version of the petition.

10 If prohibitive tariffs are imposed on brake
11 rotors from China U.S. consumers and highway safety
12 will suffer. Our consumers, such as Auto Zone, have
13 told us that for some consumers the cost of replacing
14 rotors is painful and sometimes prohibitive. Auto
15 Zone has told of instances where a consumer will come
16 into their store and buy a single rotor telling the
17 Auto Zone clerk that they can only afford to buy one
18 rotor. They come back after the next paycheck to buy
19 the second rotor and so on. Obviously, it is
20 recommended to replace both rotors at the same time so
21 that they would wear evenly.

22 The Automotive Aftermarket Industry
23 Association has determined that more than 5 percent of
24 all vehicle accidents result from underperformed
25 vehicle maintenance. According to the AAIA these

1 accidents result in 2,600 deaths, 100,000 disabling
2 injuries and a financial cost of over \$2 billion every
3 year.

4 On its website Dana makes even stronger
5 statements. "Over half of the complaints registered
6 by the NHTSA, National Highway Traffic Safety Administration,
7 concern brake systems and brake-related accidents.
8 These accidents cost society almost \$3 billion a
9 year."

10 Any cost increase in the economy rotor
11 segment would only make the problem worse.

12 Thank you. I am available for questions.

13 CHAIRMAN OKUN: Thank you.

14 MR. LOEB: Thank you, Madam Chairman.
15 Hamilton Loeb for the Chinese respondents. I stepped
16 aside for a moment so you would have a direct line to
17 Mr. Fudalla and I will do the same to some degree
18 during questioning if that facilitates the back and
19 forth.

20 We have heard from him on how competition
21 works in the brake drum and rotor segments and how the
22 attenuated competition between the Chinese economy
23 product and what the U.S. producers declare in turn is
24 their premium product is limited. In a moment you
25 will hear John Reilly testify on how the economic

1 evidence that the Commission staff has gathered
2 reinforces this point that there is no significant
3 causal link between the challenged imports and the
4 production of the U.S. producers here. And you will
5 also hear how the economic evidence shows that the
6 U.S. industry is not injured and also shows that
7 imports are not increasing rapidly.

8 After Mr. Reilly testifies my colleague
9 Scott Flicker will touch in more detail on the rapid
10 increase standard which we think is particularly
11 important in this case and then I will add a few
12 specific points to fill in some gaps.

13 So next we will turn to John Reilly.

14 MR. REILLY: Thank you.

15 Good afternoon, Madam Chairman and members
16 of the Commission. For the record I am John Reilly of
17 Nathan Associates appearing on behalf of the Chinese
18 producers and the China Chamber of Commerce.

19 In my testimony this afternoon I'll
20 demonstrate that subject imports have not recently
21 surged, that the domestic producers of brake drums and
22 rotors have in fact done quite well in recent years,
23 that brake drums and rotors from China have actually
24 expanded the domestic market for replacement parts
25 and, finally, that there is no economic basis for a

1 finding of threat of material injury.

2 Imports of aftermarket brake drums from
3 China have grown at a decreasing rate since 1998 -
4 1999. Now, between 1998 and 1999, long before China
5 acceded to the WTO, subject brake drum imports
6 increased by nearly 47 percent. This was a phenomenon
7 related to pipeline filling.

8 By 2002 the annual rate of increase had
9 fallen to about 12.7 percent. And based on five
10 months' data for 2003, that's imports through May,
11 compared with the same period last year the projected
12 rate of increase is 11.2 percent and that's
13 substantially lower than the first quarter rate of
14 increase of 18 percent. So the 18 percent figure is
15 basically a reflection of obsolete data.

16 The absolute volume increases have also
17 declined since 1998. Between 1998 and 1999 volume
18 increased by 565,000 units. By 2002 the increase had
19 declined to 318,000 units. And based on five months'
20 data should remain at the same, the rate of increase
21 or the increased volume should remain at the same
22 level for 2003, on the order of 300,000 units.

23 And clearly the pattern well before China's
24 accession to the WTO has been relatively stable
25 increased growth, not sudden or rapid increases.

1 Now, based on the Commission's methodology
2 for distributing total imports between rotors and
3 drums the imports of rotors show exactly the same
4 pattern. So the conclusions that I've drawn
5 concerning rotors -- I'm sorry, concerning brake drums
6 apply equally to imports of the subject brake rotors.

7 Now, in assessing the growth of imports from
8 China one must also be mindful that the volume of
9 Chinese brake drums and rotors going to the U.S.
10 producers has by no means been inconsequential. Mr.
11 Fudalla mentioned a figure of 6 million units.

12 U.S. producers sell these products into the
13 economy's brake drum and rotor segment. And as I will
14 shortly explain, any competition between the U.S.
15 producers' branded premium lines and the economy line
16 Chinese product is highly attenuated. Accordingly,
17 the Commission should exclude the U.S. producers' take
18 of imports from China in its assessment of changes in
19 subject import market shares.

20 All of the numerical information concerning
21 the performance of the domestic industry is
22 confidential. Nevertheless, it's possible to make
23 some general statements about what the data show.

24 Now, the Petitioners would have the
25 Commission focus on a snapshot that compares the

1 present day to 1998. Yet, if one begins in 1999 which
2 is still well before China's accession to the WTO, one
3 finds that U.S. production and shipments of
4 aftermarket brake drums and rotors has been steady.
5 And this is all the more remarkable in view of the
6 U.S. producers' significant take of both subject and
7 non-subject imports during this period.

8 In addition, U.S. producers' dollar profits
9 and profit margins can only be described as healthy.
10 And in my quarter century of appearances before the
11 Commission I don't recall any petitioners' profits as
12 robust as reported by the domestic producers in this
13 case. I may be wrong, I just don't recall any.

14 Petitioners have claimed that their import
15 take is defensive in nature, yet their data put a lie
16 to this claim. And I refer the Commission to Exhibit
17 2 of our prehearing brief which details the
18 profitability of the U.S. producers' non-subject
19 imports. It's not inconsiderable. No doubt they are
20 also making money from their sales of Chinese brake
21 drums and rotors. These profits do not appear
22 anywhere in their financial statement.

23 On page 25 of our prehearing brief we show
24 that the employment and wage data for brakes and drums
25 reflects the combined effects of steady output since

1 1999 and productivity gains. These data do not add up
2 to material injury.

3 Now, central to causation in this case is
4 product differentiation in what is a 3-tiered
5 aftermarket for brake drums and rotors. At the top is
6 the automotive manufacturers' certified brand name
7 products. That the auto makers compete for out-of-
8 warranty customers in the aftermarket is clear from
9 GM's longstanding Mr. Goodwrench campaign and it's
10 also apparent to anybody who would take a look at
11 their website.

12 The second tier consists of branded OES
13 equivalent products. These are differentiated
14 products and the U.S. producers certainly treat them
15 so, as Mr. Fudalla made plain. On the one hand the
16 producers advertise these products as OES equivalent
17 which suggests to the consumer that they are an
18 equivalent quality, lower priced alternative to the
19 automotive manufacturers' brand.

20 On the other hand, the producers stress that
21 their OES equivalent products substantially outperform
22 economy line products, thus they are making quality,
23 performance and safety a reason to prefer the OES
24 equivalent brand over the economy line product.

25 The bottom tier consists of the economy line

1 replacement brake drums and rotors which include the
2 subject imports from China. These products normally
3 carry a producer's second brand or a distributor's or
4 installer's private label. As I will detail in a few
5 minutes, the economy line products appear principally
6 to provide budget-conscious customers with replacement
7 alternatives to remachining already worn brake parts.

8 The low cost of the economy line products
9 makes them cost competitive with remachining. And the
10 "better safe than sorry" logic for replacing a worn
11 brake part makes them an easy sell.

12 The OES products put a ceiling on the
13 pricing of U.S. producers' branded OES equivalent
14 products. Although the Commission collected no data
15 on OES brake drum and rotor price trends it's safe to
16 assume that the pricing of such products has reflected
17 the longstanding non-inflationary natural economic
18 environment. That is, one can reasonably assume that
19 the auto makers' aftermarket prices have not risen
20 appreciably in any recent period. This being the
21 case, one would expect the prices of U.S. producers'
22 branded OES equivalent products to be similarly
23 stable.

24 Were the U.S. producers of the OES
25 equivalent products to attempt to raise their prices

1 they would be in danger of losing volume and market
2 share to the OES products.

3 Were there any significant price competition
4 between the U.S. producers OES equivalent products and
5 the economy line subject imports one would expect the
6 domestic price to decline in response to the lower
7 price subject imports. The pricing product data
8 collected by the Commission indicate that there is no
9 apparent relationship between the U.S. producers'
10 average prices and the subject import prices.

11 Alternatively, were U.S. producers to
12 determine not to compete on price with the Chinese
13 imports and were they directly competitive equivalent
14 products then there would be no line on that chart for
15 domestic producers' prices. Chinese imports which
16 have been in the market for 12 years or more would
17 have run the U.S. producers out of the market by now.

18 The data for brake rotors tell the same
19 tale. There is no apparent relationship between U.S.
20 producers' prices and subject import prices. I'll
21 also note that U.S. producers' prices actually appear
22 to have risen at a moderate pace during the POI. In
23 short, the pricing data collected by the Commission
24 did not indicate any causal relationship between U.S.
25 producers' prices and subject import prices.

1 Now remachining, also called turning, has
2 been a traditional method of repairing worn brake
3 parts. While the advent of thinner drums and rotors
4 has limited the amount of turning that can be done
5 it's still quite feasible to do at least one time.
6 The economy line drums and rotors, however, appear to
7 be attractive substitutes for remachining. Their low
8 cost provides the installer with the opportunity to
9 earn an equal or better margin than from remachining
10 and the retail customer with a new part rather than a
11 re-worked part.

12 And to the extent that the installers are
13 getting high margins from the Chinese products there
14 is an incentive to tell a customer that your brake
15 rotors are shot and need to be replaced rather than
16 presenting the customer with a remachining option.

17 An analysis of the growth of demand for
18 aftermarket brake work supports this role for economy
19 line drums and rotors. We had some questions about
20 what was going on in the market so we tried to develop
21 some numbers to assess what demand should look like
22 were there no remachining -- were remachining not to
23 go down. And this is most clearly seen in the market
24 for rotors.

25 Aggregate demand for aftermarket brake

1 rotors expanded quite substantially during the POI and
2 far beyond the levels supported by underlying forces.
3 And apparently the data the Commission collected is
4 contrary to what the Petitioners have as an impression
5 of how the market should be growing.

6 Now, in any period aftermarket demand is
7 determined by several independent variables, including
8 the number and age distribution of vehicles on the
9 road, the average miles driven per vehicle per year,
10 the number of vehicles coming off warranty and into
11 the rotor service mileage zone, and the rate of OEM
12 disk brake installation on those vehicles at the
13 factory and, of course, the choice between buying a
14 new rotor or having it machined.

15 Now, total cars in operation and trucks
16 increased from 201 million units in 1997 to 217
17 million units in 2001. That's a cumulative growth of
18 7.8 percent or less than 2 percent per year. The
19 average number of vehicles entering the fleet by a
20 slight margin exceeded the number of vehicles being
21 scrapped. That's why the population was increasing.

22 Now, clearly this modest growth of the
23 vehicle population would support at best only modest
24 growth in aftermarket brake part demand. Federal
25 Highway Administration data show that average miles

1 driven per vehicle remained remarkably stable from
2 1997 through 2001. The FHWA has not yet published
3 mileage data for 2002 but based on this latest
4 available data it's apparent the demand for brake
5 rotor service during the POI has been unaffected by
6 changes in average vehicle mileage.

7 Now, in a relatively short period such as
8 the POI the greatest influence on rotor service demand
9 growth will come from the number of new vehicles
10 coming off warranty and into the service zone and the
11 number of brake rotors on those vehicles. Data
12 indicate that new vehicles would on average enter the
13 brake rotor service zone in the fifth year after
14 purchase with the accumulated driving of roughly 50 to
15 50 thousand miles.

16 I take it that Chairman Okun's experience
17 with her Explorer is a bit different from that.

18 Data from Law's Automotive Yearbook indicate
19 that the total number of vehicles entering the service
20 zone fluctuated somewhat during the POI but showed no
21 increased trend. Accordingly, it appears that the
22 number of vehicles entering the service zone during
23 the POI itself has not caused any significant increase
24 in demand for brake rotor service.

25 Changes in factory installation rates for

1 disk brakes during the 1994 to 1998 model years would
2 also affect rotor service demand during the 1998 to
3 2002 period. Front disk brakes have been a standard
4 feature on practically all cars and light trucks sold
5 in the United States for well over 20 years. Thus the
6 growth of new rotor service demand during the POI
7 would depend on the growth of factory installed 4-
8 wheel disk brake systems during the 1994 to 1998 model
9 years.

10 Nathan Associates analyzed model by model
11 production and sales data from Ward's from 1994 and
12 the 1998 model years. And by the way, I'm now an
13 authority on standard and optional equipment on all
14 1994 vehicles sold in the United States.

15 The analysis included all domestically
16 produced and imported cars and light trucks.
17 Considering both installation rates and product mix
18 the number of rotors per thousand new vehicles in the
19 U.S. market increased from 2,415 in model year 1994 to
20 2,638 in model year 1998 or by about 11 percent.
21 Since the annual number of vehicles entering the
22 service zone has not increased during POI, the 11.1
23 percent figure provides a rough and reasonable
24 approximation of the cumulative rate of increase in
25 U.S. demand for rotor service between 1998 and 2002.

1 This growth is far less than the cumulative rate of
2 increase and apparent consumption of aftermarket brake
3 rotors recorded by the Commission for the same period.

4 The data therefore support the conclusion
5 that the recorded expansion of apparent aftermarket
6 demand during the POI reflects change in the economy
7 market segment due to the substitution of low cost
8 replacement rotors for remachining of worn rotors.
9 The analysis of brake installation rates for the 1994
10 to 1998 model year indicates a 17 percent cumulative
11 decline in new brake drum usage. This reduction
12 should have resulted in declining demand for
13 aftermarket brake drums during the POI, however, no
14 such decline occurred.

15 It also appears, therefore, that the
16 availability of economy line brake drums has caused
17 demand for that product to grow.

18 The issue of threat of injury in this case
19 is simple, the domestic producers of aftermarket brake
20 drums and rotors are doing quite well as both
21 producers and importers. And there is no sign that
22 this performance will change appreciably in the
23 foreseeable future. Since there is no causal link
24 between the subject economy line imports from China
25 and the U.S. producers' performance in making and

1 selling their branded OEM equivalent products there
2 can be no threat of injury. The subject imports have
3 expanded the domestic aftermarket for brake drums and
4 rotors, they have no taken significant sales from the
5 domestic industry.

6 Thank you for your attention.

7 CHAIRMAN OKUN: Thank you.

8 MR. FLICKER: Madam Chairman, members of the
9 Commission, my name is Scott Flicker. I am an
10 attorney with Paul Hastings representing the Chinese
11 respondents in this case. And I thank you for the
12 opportunity to address you today.

13 You have seen both in the briefing and in
14 the testimony what can only be characterized as
15 overwhelming evidence against a finding of market
16 disruption here. We ask that the Commission spend a
17 few more moments on the element of 421 requiring that
18 imports from China be increasing rapidly either
19 relatively or absolutely.

20 This increasing rapidly requirement has not
21 necessarily proved determinative in prior country-
22 specific safeguard cases either under Section 406 or
23 Section 421 as negative determinations have tended to
24 pass over this issue in favor of findings that the
25 domestic industry suffered no injury or that the

1 subject imports were not a significant cause of
2 injury.

3 And the Commission can still find in this
4 case as well. However, the facts in this case make it
5 appropriate for the Commission to examine the import
6 volumes closely and to conclude that the low levels of
7 increase reflected here fail to satisfy the standards
8 or the purpose for which the safeguard remedy was
9 enacted in the first place.

10 I think it was in response to a question
11 from Chairman Koplan that the Petitioners did agree
12 and all parties do agree that the most recent two- to
13 three-year period is the relevant one. Did I just
14 elevate Chairman, I mean Commissioner Koplan to
15 Chairman again?

16 COMMISSIONER KOPLAN: You know, this time
17 I'm going to accept it.

18 MR. FLICKER: Yes, I think it's one of these
19 things that if nominated you shall serve.

20 In any event, I think both parties agree
21 that the two- to three-year period is the relevant one
22 to examine for this issue of rapid increase. I refer
23 you to Petitioners' prehearing brief at page 2 to 3
24 for their view on that.

25 What is not appropriate is to take the early

1 years in the period of investigation and to use those
2 years as the measure of whether or not there has been
3 a rapid increase in the case.

4 And as Mr. Reilly testified, two
5 characteristics of the importing activity in this case
6 are particularly critical. First, imports from China
7 have been a significant and steady presence in the
8 market dating back prior to the start of the period of
9 investigation and well prior to the end of 2000 when
10 China joined the WTO. And this fact distinguishes
11 this case from the previous 421 cases, Pedestal
12 Actuators and Garment Hangers, which were both cases
13 in which the Chinese imports began at or near a 0
14 percent level during the POI and only grew to levels
15 considered significant by the Commission in the most
16 recent years.

17 Second, the rate of increase of brake drum
18 and rotor imports from China has actually decelerated
19 during the recent period and its growth as a
20 percentage of U.S. demand has been almost non-
21 existent. This factor causes two additional features
22 of this market to become quite important in assessing
23 whether the increase in this case satisfies Section
24 421's rapid increase requirement.

25 Feature one is that the evidence strongly

1 indicates that the Chinese imports are riding an
2 increasing level of U.S. consumption that they
3 themselves created. And due to the clear segmentation
4 in the market here between the economy line and the
5 premium line products and the fact that the Chinese
6 producers occupy only the one segment while the U.S.
7 producers' domestic production occupies only the other
8 demonstrates that virtually none of the increase in
9 Chinese imports have filled in this growth in the
10 demand that was created by those products comes at the
11 expense of the domestic injury.

12 Feature two is that the U.S. producers sell
13 imported Chinese drums and rotors in volumes that are
14 part of the confidential record, must be taken into
15 account, and we submit must be subtracted from the
16 Chinese imports totals when examining the rate of
17 increase of the Chinese imports overall.

18 Now, we recognize that the Commission has
19 declined to do this in prior cases, including the
20 Garment Hangers case, instead electing to consider the
21 so-called captive imports under the causation part of
22 the analysis. And, of course, we will cover the legal
23 standard in our post-hearing brief on this issue. But
24 we submit whereas here the rate of increase is already
25 quite marginal to begin with and, thus, where the

1 captive imports can allegedly make the allegedly
2 injurious imports look larger than they actually are,
3 it's appropriate for the Commission to take notice of
4 the captive portion of the import volume when
5 assessing whether there is in fact a rapid increase.

6 We want to underscore that Section 421 is in
7 essence a crisis intervention mechanism. And this
8 requires that first and foremost the import levels
9 have to be sufficiently critical and immediate to
10 warrant extraordinary intervention. The rapidly
11 increasing requirement must serve a gatekeeping
12 function in this context, especially where here the
13 safeguard is erected as a barrier to fairly traded
14 imports from a trading partner that was recently
15 welcomed into the WTO and with whom the United States
16 has a policy of active engagement and free trade.

17 Brake drum and rotor imports from China have
18 been present in the market in steady and significant
19 numbers for many years. The period following China's
20 accession to the WTO, and thus the enactment of
21 Section 421 itself, is marked by incremental and
22 decelerating levels of growth in those imports. On
23 this record the Commission can and should find that
24 imports from China are not increasing rapidly in a
25 manner requiring intervention or any extraordinary

1 remedy.

2 Thank you.

3 MR. LOEB: Madam Chairman, could I ask the
4 Secretary for a time check?

5 MR. BOGARD: You have 18 minutes remaining.

6 MR. LOEB: Eighteen minutes. Thank you.

7 I have five quick points that I want to make
8 just to fill in several of the corners and
9 interstices. And the first one I will make ties to
10 the comments that my colleague Scott Flicker just made
11 with respect to rapid increase.

12 Of course, you heard the Petitioners'
13 argument that the record here supports a finding of
14 rapid increase. And I think they are wrong on each of
15 the features that are each of the bases on which they
16 state that the legal standard is consistent with their
17 argument. That is to say the plain language of the
18 statute supports our position not theirs.

19 Commissioner Koplan pointed that out referring to the
20 present tense "are rapidly increasing" language.

21 The legislative history of the statute
22 supports our version not theirs, as is clear I think
23 from page 6 of our brief, the point or the language
24 with which the Congress specifically instructed how
25 the Commission was to apply the term "rapidly." And

1 it's also Petitioners' position is inconsistent with
2 the Commission's consistent methodology in 406 cases
3 and in the previous 421 cases where the Commission is
4 looking at what's been happening in the last year, the
5 last two years, maybe in some cases the last three
6 years.

7 But I want to also take on a new point that
8 I heard for the first time today that my good friend
9 Ken Button suggested which is that the standard for a
10 critical circumstances finding which he suggests
11 should be even stricter than the standard because it
12 refers to the term massive should be even stricter
13 than the standard for a rapid increase finding somehow
14 is indeed more relaxed because it's a 15 percent
15 standard applied by Commerce for massivity.

16 Let me remind the Commission that in a
17 critical circumstances situation what you're looking
18 at is five months. You're looking at the period from
19 the time a petition is filed to the time Commerce
20 issues its first preliminary determination. That's
21 the point at which imports could increase rapidly and
22 significantly in a circumvention effort in order to
23 beat the deadline that Commerce is coming in with.

24 So by definition in critical circumstances
25 you already have rapidity. You have a maximum five-

1 month period involved. And in critical circumstances
2 you must demonstrate both rapidity and massiveness.
3 So I don't think the standard that Mr. Button referred
4 to with respect to the massiveness from the Commerce
5 Department regulations helps their argument at all.

6 My second point I just want to touch on two
7 items that you heard from the congressional delegation
8 this morning. Congressman English referred to these
9 small companies, it's public information in the record
10 here that one of the Petitioners, Dana, is a \$9.5
11 billion company with a \$2.2 billion aftermarket
12 division. That doesn't meet anyone's definition of
13 small.

14 And both congressmen referred to the what I
15 think it was Congressman Manzullo may have been
16 referring to, circumvention of the dumping order and
17 what was subscribed as insufficient margins. And
18 there were references to the Commission's affirmative
19 sunset determination on the rotors antidumping order.

20 With respect to the sunset determination I
21 just want to stress that that was an expedited review.
22 And, in fact, the Commission in that determination,
23 this is page 13 of the sunset determination on the
24 rotors order, said that the record in this expedited
25 review contains limited current information concerning

1 the condition of the domestic industry. Therefore,
2 our conclusions again are based primarily on the
3 record in the original investigation and on the
4 information submitted by the Coalition.

5 In other words, there was no investigation
6 connected with the more recent continuation of the
7 antidumping order on rotors.

8 With respect to circumvention the point
9 simply needs to be made that anybody who brings in one
10 of these Chinese products pays 43.3 percent. And they
11 pay that until the day they demonstrate at a new
12 shipper review that they're entitled to something
13 different.

14 Almost everyone if not every one of the new
15 shippers that's come into the U.S. market from the
16 Chinese have done that, has demonstrated a 0 percent
17 rate. And so I took some interest in Congressman
18 Manzullo's "whack-a-mole" analogy. But this is a
19 situation and a system where it's not like a "whack-a-
20 mole" game. These people begin shipping, have to ship
21 for several months before they can build enough of a
22 record to ask for a new shipper review and then have
23 to wait several months, many months actually while
24 Congress goes through the new shipper review.

25 I can't imagine the circumstance where you

1 can get your 0 rate and a new shipper review in less
2 than about 12 months. And I therefore think it's by
3 no means the equivalent of a "whack-a-mole" game, what
4 it really is is proof that the Chinese in this product
5 area are trading fairly.

6 My third point. There were two things that
7 were not mentioned this morning either at all or until
8 very late. What was not mentioned at all was that
9 Dana, one of the Petitioners, is subject to a hostile
10 takeover bid right now. Somebody thinks that one of
11 these producers is undervalued and that the prospects
12 for its competitiveness are quite good and might be a
13 little surprised to think that they're buying a
14 company that's so desperate that it needs safeguards
15 relief from the Commission.

16 Secondly, I watched the clock and it was not
17 until 12:24 in the morning presentation that we heard
18 any mention from the Petitioners' side about the
19 safety aspect of this case. This after all is the
20 single most important safety feature of an automobile,
21 whether the brake system works correctly or works
22 reliably or not. There is a significant role for the
23 economy line in improving auto safety. More brake
24 drums and rotors are available now as the data shows.
25 The market size has increased, as the data shows. And

1 that's because of this economy option.

2 The economy option allows someone who has a
3 1992 Honda Accord with 100,000 miles on it to replace
4 the brakes rather than try to stretch another 3,000 or
5 5,000 miles out of them before the car goes to its
6 grave or before they sell it off. If it's true that
7 the average age, as you heard Mr. LaVarra testify, of
8 vehicles on the road is moving up toward 11 years then
9 it is particularly important that a market for
10 accessible, usable and economically feasible rotor
11 replacement be maintained, otherwise we're talking
12 about an awful lot of vehicles whose value is going to
13 go down fairly significantly, that is it's going to be
14 in the low four digits or they will be asked to pay
15 the Petitioners' premium prices if they want to keep
16 their cars on the road should the industry get the
17 relief that it's asking for here.

18 You heard it said a couple of times that you
19 can't stimulate rotor sales. I think the data before
20 the Commission as well as the logic of any of us who
21 like the Chairman have ever had to go out and get
22 brake jobs and evaluate the credibility of the people
23 in the service uniforms who are telling us that are
24 brakes were shot recognizes that you can stimulate
25 demand in this area if you provide a cheaper way to do

1 it.

2 My fifth point or my fourth point relates to
3 the injury items. As we said in the brief, as you
4 heard this morning and this afternoon, all of the
5 indicia are up, all of the indicia are favorable. The
6 data that the Commission, the categories of data that
7 the Commission normally looks at pretty much all cut
8 in favor of the Respondents in this situation.

9 I'd suggest the Commission look at the way
10 the brief was put together by the Petitioners starting
11 on page 16 which is where their injury argument
12 starts. You know, usually you start with production,
13 then you do shipments, then you do profits, then you
14 do employment. Eventually you get around to idling of
15 plants. In this case they start with idling of
16 plants.

17 But notice that the only plant that's been
18 idled that they indicate in the briefing is Amherst.
19 And you heard Mr. Fudalla a moment ago say at a time
20 when he was personally responsible for the Amherst
21 plant that it was unrelated to imports that that plant
22 ultimately was mothballed. And I'd emphasize
23 mothballed after a series of acquisitions wherein Dana
24 bought Eckland. Eckland had bought that plant from
25 ITT Automotive. All within the space of about two

1 years as the staff report indicates on I believe page
2 16.

3 Moreover, that was the idling of a plant
4 that occurred in 1999. A little hard to understand
5 how the idling of one plant which occurred in 1999
6 makes out a case of potential immediate market
7 disruption sufficient to justify a Section 421 request
8 here.

9 I will go to my last point which is I think
10 can simply be summarized in the following. We think
11 the system has been gamed here by the Petitioners.
12 And it's not just the lack of an adjustment plan,
13 whether the statute requires one or not it certainly
14 is clear that down the road if you want to get relief
15 you need to persuade someone that you're ready to
16 provide adjustment activity that will be consistent
17 with the purposes of the statute.

18 Here you were first told in a prehearing
19 brief that one of the Petitioners, the \$9 billion one,
20 does not have the resources to prepare an adjustment
21 plan. Today you have been told that you are going to
22 get pricing data but on different products, not the
23 ones the Petitioners originally proposed, and you'll
24 get that in the final submissions, that you'll get a
25 comprehensive adjustment plan in the final submission,

1 that you'll get an explanation of non-subject imports
2 and the profits that they generate for the Petitioners
3 and that will come in the final submission, that
4 you'll get employment data for Wapaca who after all is
5 a Petitioner but you still have no employment data for
6 it, and that will come in the final submission.

7 So what you really have here is the
8 Petitioners using the tight deadlines of Section 421
9 to insulate their case from appropriate review and
10 scrutiny by the staff and by the Commission. We
11 suggest the Commission has institutional interests
12 here that are being tested and they are being tested
13 not by an unsophisticated and small petitioner.
14 Sometimes one might provide latitude to petitioners in
15 that category but here we have a multi-billion dollar
16 company, experienced petitioners who are savvy in
17 dealing with the trade agencies. Any affirmative
18 determination here on market disruption from this
19 Commission we think can only serve to encourage such
20 conduct and to set an intolerably low threshold for
21 Section 421 petitioners.

22 That concludes our affirmative presentation.
23 We, of course, are happy to take the Commission's
24 questions.

25 CHAIRMAN OKUN: Thank you very much. And

1 before we begin those questions I do want to thank all
2 the witnesses for appearing here today and for your
3 willingness to answer questions and to reiterate from
4 my comments this morning that we look to your
5 cooperation as we attempt to put this record together
6 to answer our questions quickly and as thoroughly as
7 possible. And we will obviously look to that.

8 I am going to begin the questions this
9 afternoon. And I think I want to start on the volume
10 point. And I think I'll say before I begin my
11 questions just say I know you're making the argument,
12 Mr. Flicker, I heard you make it again today and I
13 read it in your brief on asking us to exclude U.S.
14 producers' shipments when we calculate the market
15 share and the rate of market increase. I'm not
16 inclined to go down there. I think, you know, I did
17 evaluate that in Garment Hangers. So that's not where
18 I'm looking to go for a number of reasons.

19 But I do want to then turn to the volume in
20 this case just looking at it in terms of the rate of
21 increase and some of the arguments you made. And
22 that's what I'm interested in is I understand, I
23 understand the argument you're making and that Mr.
24 Reilly has presented in his charts about that the rate
25 of increase has slowed over the period. But you've

1 still got double-digit increases.

2 So I'm having a hard time reconciling. The
3 purpose of the statute, you know, does it mean you had
4 to get to this, you know, 0 to 25 somehow would make
5 it if it were in the last two years but 0 to 20 or 10
6 to 20 doesn't make it for purposes of the statute even
7 though I think the impact would be the same. I guess
8 that's what I'd like some further discussion on, what
9 is it about, you know, to try to take this slow rate
10 of increase just at the end even though the numbers in
11 your double-digit increases somehow doesn't meet the
12 statutory guidelines?

13 MR. FLICKER: Chairman Okun, I'll take a
14 crack at that.

15 There's a couple of points I think can be
16 made. The first is that the statute and Congress
17 intentionally avoided imposing on the Commission any
18 kind of numerical standards. And I think it's
19 precisely for the reason that you have to take a look
20 at the volumes of imports in the context of each
21 particular case. And so therefore you're not going to
22 have a rule of thumb that says, for example, whenever
23 you have double digit volume increased in any given
24 year in the period of investigation you have satisfied
25 the rapidly increasing requirement.

1 And I think our first point is we want to
2 underscore that fact, that there is really no magic
3 number that the Commission or anyone else can point to
4 and say that's a rapid increase and that is not in an
5 absolute manner.

6 The second point is that when you have, as
7 we do here, a period of investigation that straddles
8 the pre-WTO period and the post-WTO period and you
9 find that in fact in the post-WTO accession period for
10 China the imports are actually decelerating, which is
11 the point that Mr. Reilly illustrated and that we're
12 making, that something is going on here other than
13 that the floodgates have opened to China as a result
14 of WTO accession. And it is therefore we think useful
15 for the Commission to bear in mind that the Section
16 421 remedy was imposed as an emergency safeguard as a
17 bulwark against, as the congressman mentioned, the
18 possibility of a flood to the market of imports once
19 China joined the WTO.

20 And we think that the data here illustrates
21 for you quite clearly that that is not what's going on
22 here.

23 So those are two points simply from the
24 volume issues that we wanted to make.

25 I think a third point is, yes, volumes are

1 increasing. And if increasing volumes were sufficient
2 to satisfy the rapidly increasing requirement I think
3 you'd probably find that requirement satisfied in
4 every case because, as you know, China is a growing
5 economy, China did join the WTO and the U.S. and China
6 are engaged in a process here right now of engagement
7 in trade relations. And so if your threshold for the
8 rapidly increasing requirement is going to be do I see
9 them going up or not in the recent year you're always
10 going to move past that immediately and you're going
11 to be into what I submit is a much more complicated
12 analysis of injury and causation.

13 And the staff has struggled mightily with
14 the issue. The Commission and all parties do that in
15 every case. But it's pretty clear that in order to
16 get an accurate picture of injury and causation you
17 have to rely very heavily on the data that is
18 submitted to you by the Petitioners in the case
19 because a Section 421 case is such a compressed
20 proceeding. And so really when you think about it the
21 import numbers are the only objective data you've got
22 that isn't coming directly from the Petitioners that
23 you can glean from other data that will tell you
24 whether or not in the first instance you've got a case
25 that should pass go.

1 And, therefore, the gatekeeping function of
2 the rapidly increasing standards is one that we think
3 though not important in prior cases is becoming more
4 and more important. And it's another point we wanted
5 to make sure that we highlighted for the Commission.

6 CHAIRMAN OKUN: Okay, I understand that
7 argument and I will continue to look at some of those
8 statutory and other information you've submitted. And
9 I may have another question I might come back to. But
10 let me turn to something else I'm interested in.

11 And I guess I would like to put this to Mr.
12 Fudalla, I guess in the best position, and that is
13 just to try and get a sense of one of the arguments
14 made in the prehearing brief and that we talked a
15 little bit about this morning goes to the issue of the
16 high volume products described by the Petitioners as
17 the ABCD models on the lower volume runs and the entry
18 of China starting in the A models and moving in. And
19 I wanted to give you a chance to talk about that and
20 give me your impression of the Chinese presence and
21 whether that's an accurate description of the case,
22 including whether you think, whether you agree that
23 the products that we've picked for pricing would be A
24 products, which is I think what we heard from
25 Petitioners this morning.

1 MR. FUDALLA: Okay. I think directionally
2 the discussion this morning on ABCD was correct. For
3 my example I probably, I have approximately 1,400
4 numbers in my mind of which I might get 1,000 out of
5 China and then the others I try to buy from North
6 America or other sources to backfill. I would say
7 then every company though I think looks at ABCD
8 differently, uses different mix characteristics to bin
9 then into ABCD.

10 For us because we're a fairly small company
11 we will take one of our major customers and ask him
12 because he has 3,500 outlets to give us his sales mix
13 for drums and rotors for '02, '01, '00 and we'll deem
14 from that what the representative mix is and what an A
15 item is and what a B item is and what a C item is and
16 what a D item is. So that's essentially how we do it.

17 CHAIRMAN OKUN: Okay. And then, okay --

18 MR. FUDALLA: If I could just add one
19 thought, want to finish my thought. As the Chinese
20 started manufacturing C items and then maybe a few D's
21 their cost advantage is decreasing significantly
22 because they're essentially in the same hole as the
23 North American manufacture in that it's smaller
24 volume, it's smaller runs, it's more changeovers. So
25 the cost advantage deteriorates significantly vis-a-

1 vis North America.

2 CHAIRMAN OKUN: Okay. And so, okay so it's
3 individual to the producers of that product or you
4 would need first to look at those and decide whether
5 they are an A product, yours would be a different set
6 of A products then?

7 MR. FUDALLA: It could be. I would say what
8 are the top numbers that make up 25 or 30 percent of
9 my overall volume and say those are A items. Somebody
10 might say what are the top numbers that make up 20
11 percent of my overall volume or 40 percent. So
12 everybody's got their own definition.

13 CHAIRMAN OKUN: Okay. And what about for
14 the pricing products where we collected pricing
15 information, could you comment on that in terms of?

16 MR. FUDALLA: You know, during the break I
17 made a call. And for our mix, and here again our mix
18 is based on one customer though that customer is very
19 large in the U.S., the 5115 in 2002 it ranked fifth
20 for us and in '01 in ranked seventh in popularity. So
21 that's right up, that's an A item for sure.

22 The 5329 this year, last year it was a nine
23 in popularity, so it's the ninth most popular number.
24 The year before it was four. So it's an A item.

25 The 8939 drum it's 35th in '02 and it was 28

1 in '01. I think that's an A item no matter which way
2 you slice it.

3 And the only one I would maybe have an
4 argument might be the 8940 which in '02 was 190 in our
5 popularity and in '01 was 144. Obviously it's started
6 to deteriorate popularity wise. You may classify that
7 maybe as a B item. It depends on how you bend it
8 again.

9 CHAIRMAN OKUN: Okay. That's helpful.

10 What about in terms of where these products
11 are in their life cycle? I mean do you have any sense
12 of that?

13 MR. FUDALLA: I think you can tell a lot by
14 their popularity. Like the ones I first mentioned,
15 the 5115s and the 5329s I think they're still at the
16 top of their life cycles and showing a lot of volume.
17 That's why obviously they're so high in popularity.

18 And I would think maybe that 8939 drum if
19 you looked at it on a graph, looking at your way I
20 guess versus mine, it's just maybe starting to come
21 down a little bit.

22 And then definitely the 8940 is starting to
23 deteriorate as popularity is concerned.

24 CHAIRMAN OKUN: Okay, thank you very much.

25 I may have some other ones than that but I see the red

1 light come on so I will turn to Vice Chairman Hillman.

2 VICE CHAIRMAN HILLMAN: Well thank you. And
3 I too would join the Chairman in thanking you all very
4 much for your testimony and for all the information
5 that was provided in the brief which is extremely
6 helpful to us, so we appreciate it.

7 Mr. Fudalla, if I guess I can just stay with
8 you and follow up a little bit more because I'm trying
9 to make sure I understand it. Do your customers tend
10 to know whether something is an A, B, C, D? I mean it
11 struck me in listening to this that this is much more
12 of an issue of the cost of production because it
13 relates to the length of the production run without
14 having to change the tooling as opposed to kind of a
15 pricing/volume discount issue from a customer
16 perspective.

17 I'm trying to understand. Again, if I'm
18 buying from you do I know whether a product is A, B,
19 C, D or do I care?

20 MR. FUDALLA: You do care and you probably
21 should know because you're going to try to set your
22 inventory in a way that you're ordering patterns from
23 me are maybe going to replicate the popularity of
24 those part numbers.

25 In other words, you don't want to be caught,

1 if you're a large railer that has three or four
2 thousand stores out there that carry these drums and
3 rotors you don't want to be caught in a position where
4 you think an 8940 is a very popular number and you're
5 ordering a lot of it in significant quantities and
6 they're going to the stores and all of a sudden six or
7 nine or 12 months later it starts to drop and you're
8 stuck with all this inventory. So you're going to
9 want to be aware where that is in the popularity, in
10 the mix popularity.

11 VICE CHAIRMAN HILLMAN: I can understand
12 that.

13 MR. FUDALLA: Right.

14 VICE CHAIRMAN HILLMAN: But I'm trying to
15 make sure I understand how it translates into the
16 price that you pay for it. I mean that's what I'm
17 struggling with is, you know, is there this kind of
18 general notion that, you know, once an item moves from
19 A to B its price goes up by 5 percent or 10 percent or
20 some kind of generally accepted number as it becomes a
21 less ordered item, smaller volume, theoretically
22 higher price?

23 MR. FUDALLA: When I ran manufacturing and
24 ran Inco and I had these drums and rotors and I had
25 many part numbers there was not a chance that I could

1 ever go to a customer and say because this is less in
2 popularity now I get a price increase. That wouldn't
3 -- he would have just laughed at me. They would have
4 just laughed at me.

5 VICE CHAIRMAN HILLMAN: So it does not
6 happen that price goes up as the volume goes down?

7 MR. FUDALLA: In my experience.

8 VICE CHAIRMAN HILLMAN: Does not?

9 MR. FUDALLA: Correct; does not.

10 VICE CHAIRMAN HILLMAN: Okay. So when we
11 talk about this life cycle if you will of the product
12 it is only affecting the volume end of it?

13 MR. FUDALLA: Correct.

14 VICE CHAIRMAN HILLMAN: Having no effect on
15 the price?

16 MR. FUDALLA: Correct. In my experience,
17 yes.

18 VICE CHAIRMAN HILLMAN: Okay. So even if
19 things get way out there and there's only a few of
20 them out there, they're rare or they're hard to find,
21 you're still not getting any price premium for it?

22 MR. FUDALLA: I think maybe as you get down
23 into the last hundred numbers of 1400 somebody could
24 probably make a case that if you're going to sell or
25 have to procure or manufacture one or two you probably

1 should get a price increase. And your customer then
2 would not necessarily argue. I think maybe at that
3 point you could make that statement.

4 VICE CHAIRMAN HILLMAN: Okay.

5 MR. FUDALLA: But, quite frankly, at that
6 point if you're selling 20 of them a year and you use
7 to have them priced at \$15 and you raise the price to
8 \$25 you'd probably do more harm with the customer in
9 public relations in negotiating the price increase on
10 that than what you're going to gain in bottom line.

11 VICE CHAIRMAN HILLMAN: Okay. All right.

12 Then another issue I wanted to get your take
13 on. You know, we heard testimony this morning from
14 again from the purchasers that not for the product
15 sold into the retail market but the product that's
16 going into the garages to be installed on those of us
17 that are not going to put the brakes in ourselves. I
18 mean I'm going to drive into a garage and get somebody
19 to put brakes in, I'm not likely to be out there doing
20 it myself. For folks like me at least as I heard the
21 testimony I'm not necessarily going to pay less
22 because I got a Chinese product because the installer
23 is in their words going to eat all that difference in
24 profit or in markup between the two products.

25 MR. FUDALLA: Right.

1 VICE CHAIRMAN HILLMAN: I want your sense of
2 that. I mean do you have a sense again from a
3 consumer perspective for those that are not going to
4 retail, --

5 MR. FUDALLA: Right.

6 VICE CHAIRMAN HILLMAN: -- that are going to
7 the garage, is there a difference in what you would
8 pay if you're having what we're going to call economy
9 line or however we're going to describe it --

10 MR. FUDALLA: Right.

11 VICE CHAIRMAN HILLMAN: -- product put in?

12 MR. FUDALLA: You know, I think there's all
13 kinds of different various examples and different
14 types of installers out there. Some may in fact do
15 that, try to sell a Chinese product and try to give
16 you a North American made price. But that's the same
17 type of mechanic who's probably going to tell you you
18 need, you also need brake pads and hydraulics and by
19 the way maybe your tie rod needs fixing at the same
20 time. And you bill can be \$1,200 when you walk out of
21 there.

22 My experience is that a lot of them give
23 you, they will offer you two options. They will offer
24 you a premium. They'll say I can get you a Raybestos
25 brand product or I can also get you -- in a lot of

1 cases they don't say Chinese, they say I can get you a
2 value brand or a more economic part which will cost
3 you X dollars less, and they give you the choice.

4 VICE CHAIRMAN HILLMAN: Okay. Now, that's
5 helpful.

6 I guess maybe to come back a little bit to
7 you, Mr. Flicker, or perhaps on this issue I guess I'm
8 trying to, I'm sharing some of the Chairman's concerns
9 over this issue of your argument. And part of my
10 concern I would share a lot of the concerns that the
11 Chairman raised but would be this issue of focusing so
12 much on the percentage change. I mean clearly Mr.
13 Reilly chart and Mr. Flicker as I heard your testimony
14 there's this tremendous emphasis on looking at this
15 percentage change number.

16 Part of me is a little reluctant to do that
17 because every percentage change obviously depends on
18 the size of the base. I mean if the Chinese had been,
19 you know, basically down here putting in two products
20 and then all of a sudden went to, you know, 200 we
21 would say, gee, look at that percentage change
22 increase, it's huge, it's rapid, when their market
23 share is down nowhere. And so I'm having trouble with
24 why I should place so much reliance on this issue of
25 the percentage change when there is no question that

1 the market share that the Chinese have, you know, in
2 both drums and rotors is more in the 50 percent level,
3 in other words their base is very high.

4 So, you know, I'm not sure that I shouldn't
5 assume in that instance, in that fact pattern where
6 you have a very high base that even a relatively small
7 percentage change should still be considered, you
8 know, rapid and significant given that it's on a much
9 higher, much higher base. So why is it that you think
10 I really should just hone in there and look almost
11 exclusively at this issue of the percentage change
12 from one year to another in assessing the volume?

13 MR. FLICKER: I think that what the
14 percentage change information, data tells you it gives
15 you a lot of information, some of which you just
16 picked up on, which is in this case what it
17 illustrates is that you are talking about a market
18 share that has been present and steady for a long
19 period of time and while it is growing it is growing
20 at a rate which is not very fast. And I think there
21 is a fact that you have a steady market presence here
22 is important information for you.

23 This is a statute which asks you look
24 whether in current periods imports are increasing
25 rapidly. There's a temporal element to that. There's

1 a speed element to that. And there's a size element to
2 that.

3 So I'm not asking you to focus solely on one
4 element here, what I'm telling you is that the rate of
5 change data gives you an important piece of
6 information about this particular set of import
7 numbers. It gives you the information that you're
8 talking about, import numbers that have been in the
9 market and that while they are growing the rate of
10 growth is slowing and the amount of growth is not
11 overwhelming.

12 And I think that all of those pieces of
13 information are things that the Commission can take
14 into account when evaluating whether you are dealing
15 here with imports which are of a surge variety or
16 imports which have been a steady part of the market, a
17 substantial presence and yet they're growing. And if
18 the answer always is that if they are growing they are
19 rapidly increasing then you are going to find yourself
20 moving past the rapidly increasing prong perhaps a bit
21 more quickly than makes sense to do so under these
22 circumstances.

23 So that's the basis of the argument.

24 VICE CHAIRMAN HILLMAN: Mr. Loeb?

25 MR. LOEB: If I could just add to that. I

1 think there are three reasons why that's an important
2 indicator, certainly not the only one, and we're not
3 saying it is. The first is simply that the Commission
4 usually does, if you look at the prior decisions, you
5 can look at the 406 decisions for example, to the
6 extent there is analysis of the rapidly increasing
7 element in those cases and it's not fairly quickly
8 passed over in the Commission's opinion, the point
9 that seems to be emphasized frequently is the rate of
10 growth in market share. How fast are they growing
11 from what kind of base market share to what kind of
12 second year and third year and first year out, second
13 year out, third year out from the current
14 investigation period?

15 Secondly it's important because the
16 legislative history says it's important. The
17 legislative history says that the Commission has to
18 look at whether imports are increasing rapidly. And
19 it indicates in a quote that the Petitioners have used
20 but that we like just as much it says if there is a
21 two- to three-year time window being looked at then
22 you have to check to see, then the increase doesn't
23 need to be as dramatic as it is if it's just a one-
24 year increase. So you could have a one-year curve
25 like that or a two- or three-year curve like that but

1 our point is that you really can't have a two- or
2 three-year curve that's looking almost flat off of
3 your base.

4 And I guess my third point would be simply
5 to respond to the fundamental premise here. If the
6 Chinese -- the understanding at the time this statute
7 was adopted was that China had certain market share.
8 There was no suggestion that it has a fallback
9 mechanism built into this statute. And there was no
10 suggestion that it was a freeze mechanism saying,
11 well, if the Chinese stay pretty much where they are
12 even if they have a 25 or 30 percent share of the
13 market that's good enough, but boy if they inch up
14 every year by year that can be an increase.

15 That seems to me to be entirely inconsistent
16 with the objectives that the Congress was trying to
17 achieve, inconsistent with the way it's been looked at
18 in the prior safeguards cases, inconsistent with the
19 whole WTO safeguards provisions. So for that reason I
20 would say those incremental increases, low single-
21 digit increases in market share really are a key
22 factor in your analysis.

23 VICE CHAIRMAN HILLMAN: Okay, I appreciate
24 those answers. Thank you.

25 CHAIRMAN OKUN: Commissioner Miller.

1 COMMISSIONER MILLER: Thank you, Madam
2 Chairman. And thank you to all of the witnesses for
3 being here today and participating in the hearing.

4 Mr. Loeb, I just want to follow up on this
5 last question and on your point here because when you
6 talk about you just referenced the Commission
7 precedents in the 406 cases for example on this point
8 and what the Commission typically in your view has
9 looked at there. And I guess my question to you, and
10 you can address this in the post-hearing brief if you
11 like, is did the Commission discuss it that way
12 because that was a fact pattern presented as it has
13 been as you've referenced in the two 421 cases we've
14 done before? Or did the Commission see a fact pattern
15 like this one, a more gradual increase that it said
16 no, that does not meet the standard?

17 MR. LOEB: Right. I'll have to go back. We
18 of course will deal with this in the post-hearing but.

19 COMMISSIONER MILLER: Okay. I know you
20 cited a number of cases but.

21 MR. LOEB: Yeah. I'm hesitating because I'm
22 remembering honey that precisely. But I do know that
23 many of the 406 cases are a situation like the one
24 that we and the Commission had in Garment Hangers, for
25 example, where the Chinese share was over the period

1 of investigation was going from 0 or very small up to
2 a share which was either rapidly increasing or not.
3 So you were seeing, you know, very significant steps
4 up, particularly at say in Garment Hangers over the
5 last year in the period of investigation where the
6 market share got doubled.

7 So in the prior cases I think that those,
8 the prior cases, I'm sorry, in the prior cases that I
9 recall the fact pattern before the Commission was not
10 as it is here that you had a market share that was,
11 you know, substantial double digits and then there was
12 incremental move up off of that. In fact, you
13 couldn't have had that because during the 406 era you
14 were dealing with a set of market conditions including
15 the tariffs on Chinese goods which would have made it
16 incomprehensible for them to obtain a very substantial
17 market share except in some very specialized products.

18 And I think one of our whole points here is
19 we urge the Commission please be careful here, if you
20 apply the increasingly rapidly standard in a relaxed
21 way, in a more relaxed way than we think it could, and
22 certainly a more relaxed way than the law permits you
23 to, then we will see cases like this in product area
24 after product area because that's what's happened out
25 there in the market. After WTO, Chinese market share

1 in various areas is, you know, stepping up
2 incrementally.

3 Some of those areas that might get to the
4 level where it would be increasing rapidly but an
5 awful lot of them are going to be like this case where
6 the rate of increase is by no means at an escalated
7 incline sufficient to trigger safeguard concerns.

8 COMMISSIONER MILLER: Okay. I appreciate
9 that. And if you do find that any of the earlier
10 cases show a similar fact pattern I think that would
11 be of interest.

12 Let me go if I could, to go back again as I
13 did this morning to talk about some of the consumption
14 issues here. Mr. Wylie, I found your different charts
15 on the things that you would suggest we look to or
16 that are indicators of rotor replacement, rotor and
17 drum replacement interesting and they do confirm what
18 the domestic producers are saying in terms of their
19 own perception of the market growing fairly slowly,
20 you know, 2 percent growth or whatever. But at the
21 same time I think we have in this record and even if I
22 look back at what we've done in the past a much
23 greater increase in consumption. So your comment
24 about why you perceive that to be the case, the
25 substitution, maybe I heard you say this was

1 substitution of economy rotors for machining was kind
2 of interesting. I mean we've heard a little bit of
3 that idea. And so I just want to explore it a little
4 bit more.

5 Mainly I'm wondering if there's anything,
6 I'd like to have the industry witnesses that you have
7 with you, Mr. Fudalla or Mr. Wylie, comment on it or
8 whether there is anything else out there that sort of
9 whether it's industry publications or something else
10 where this idea comes through. Because I guess I'm
11 looking for something else that discusses it. If it
12 is going on you would think there would be something
13 out there that would talk about .

14 Mr. Fudalla, does it make sense to you?

15 MR. FLICKER: I just want to point the
16 Commission and Commissioner Miller to I believe it's
17 Exhibit 12 of the petition which is a chapter of the
18 2002 Frost and Sullivan report which is one of the
19 industry data sources where this phenomenon of a
20 growing demand for a product as a result of lower
21 prices as a substitute for turning is discussed. So
22 it's there.

23 COMMISSIONER MILLER: All right. If I
24 missed that I'm sorry and I'll take a look at it.
25 Okay, I will take a look at it.

1 Mr. Fudalla, could you -- and, you know, I'm
2 going to ask you the question this way too because how
3 much of the cost of replacing rotors is actually
4 attributable to the rotor itself? I mean we sit here
5 talking about the \$6.00, \$7.00 unit Chinese rotors.
6 And the last time I had to replace my brake rotors I
7 can tell you the bill was a whole lot more than that.

8 MR. FUDALLA: Right. Right.

9 COMMISSIONER MILLER: So that makes me
10 wonder when it comes to the overall operation really
11 how much of it is attributable to the physical rotor
12 as opposed to the labor involved in the replacement?

13 MR. FUDALLA: We were looking at data the
14 other day on this actually, trying to go through and
15 there are some publications that show this. They're a
16 little dated though.

17 For example, let me take you through the
18 stream. If I sold a rotor for let's say \$10.00, okay,
19 to a traditional warehouse distributor he might in
20 turn sell that rotor for \$14.00 or \$15.00 to the
21 jobber who then might in turn sell that rotor for
22 maybe \$25.00 to the installer who then might put his
23 own markup on that and then charge you his labor cost.
24 So, you know, everything is different. Every example
25 is different. But directionally that's probably the

1 type of dynamic that's in that transaction.

2 COMMISSIONER MILLER: Okay.

3 MR. FUDALLA: And labor costs are what now,
4 60, 70 bucks an hour.

5 COMMISSIONER MILLER: Mr. Fudalla, that kind
6 of scenario doesn't really fit with the idea that it's
7 a lot cheaper to replace your rotors than machine
8 them. Because I don't think the machining, maybe the
9 labor in machining is comparable but I don't think so.

10 MR. FUDALLA: Sure, the labor is quite
11 expensive --

12 COMMISSIONER MILLER: Okay.

13 MR. FUDALLA: -- to turn a rotor. Because I
14 think what they do is they sell you on the fact that
15 you can pay \$60.00 or \$70.00 or \$80.00 to have these
16 turned but if you do, but if you buy the new ones it
17 will cost you X amount more. But it's a safety issue
18 at the same time, you'll be able to drive this thing
19 for X number of more miles or years and you won't have
20 to worry about any safety problems. I think that's a
21 good sell for a lot of people as well when they come
22 in to an installer.

23 MR. REILLY: I'd also like to stress that
24 it's not necessarily the consumer that gets the
25 benefit of this. If the installer could get a better

1 margin from selling an economy rotor then the
2 installer can get the turning service or the
3 remachining service then the installer can simply sell
4 the rotor.

5 Now, the rotor doesn't have to give you a
6 choice because I don't think there are very many
7 consumer who can eyeball a brake rotor and assess the
8 wear on it. So all the installer has to do is to say
9 you need new brake rotors rather than I can turn these
10 for you.

11 So it's not so much what the consumer, you
12 know, the savings to the consumer as it is the fact
13 that the installer can end up making more money.

14 COMMISSIONER MILLER: And that's why the
15 installer would choose to replace rather than machine?

16 MR. REILLY: Right. And the other thing is
17 if the cost, if the prices, you know, are reasonably
18 close and let's say the installer does have some
19 concerns for the consumer's welfare the installer can
20 simply say, well, as Mr. Fudalla indicated, well this
21 will cost you a few dollars more to replace than to
22 install -- than to turn but you get two benefits from
23 it. Number one, you get a safety benefit because
24 you've got a new, you know, new equipment which is
25 inherently safer than holder equipment. And you get

1 longer service life on this new equipment, you won't
2 have to have the brake job done again for a long
3 period of time.

4 COMMISSIONER MILLER: But all of those
5 arguments apply whether you're using an economy rotor
6 or a premium, a U.S.-made rotor?

7 MR. REILLY: Actually they don't because the
8 premium rotor's going to cost more, a lot more.

9 COMMISSIONER MILLER: But in the overall
10 scheme of the operation, you know, I go back to my
11 question, it strikes me that in the overall scheme of
12 that operation the rotor is relatively small pricewise
13 as compared to everything, you know, to the labor
14 involved.

15 MR. REILLY: A premium rotor will cost the
16 installer a lot more than an economy rotor will. And
17 the installer makes money where the installer can. If
18 the installer can make 5, 6, 7 or 10 bucks more on a
19 \$150.00 brake job that's a significant increase in the
20 installer's margins, okay, and it's a strong motive to
21 push the product or the service that provides the
22 largest profit margin.

23 And by the way, on the cost of a brake job I
24 was reviewing some articles looking for the same kind
25 of information you've been looking for and came across

1 an article on the Consumer's Union website, "Consumer
2 Reports." And they said replacing two front rotors
3 would cost on the order of \$150.00, Consumer.

4 Now, that average is very inexpensive cars
5 and very expensive cars that can vary greatly
6 depending on what kind of vehicle you have. But
7 that's the number that "Consumer Reports" came up
8 with.

9 COMMISSIONER MILLER: Okay. All right, well
10 my red light's on so I won't continue. But one of the
11 reasons I keep coming back to it is because the issue
12 of the overall apparent consumption in the market
13 share strikes me as a fairly important issue in
14 assessing, you know, the injury here. And so that's
15 why I keep coming back to it. Probably will continue
16 to do so.

17 Thank you.

18 CHAIRMAN OKUN: Commissioner Koplan.

19 COMMISSIONER KOPLAN: Thank you, Madam
20 Chairman. And I want to thank the witnesses for their
21 testimony.

22 First, Mr. Reilly, as just a housekeeping
23 thing if you could help me out. As to Exhibits 6 and
24 7 of your submission I don't believe that they contain
25 yearly dates and quantified price data, any price

1 data. And I'm wondering whether you could resubmit
2 them so that the annual, you know, the yearly
3 information is there and also some quantification on
4 the prices you're referring to.

5 And then finally, only because when you
6 describe U.S. producers' subject imports and linear
7 subject imports, a straight line, if those particular
8 tables if you could use color so we can figure out
9 what you're referring to on the charts themselves.

10 MR. REILLY: I would be happy to. And just
11 as the upper line you might guess is the domestic
12 producers' prices and the lower line is the import
13 prices. And we'll be happy to supply the complete
14 information under APR.

15 COMMISSIONER KOPLAN: I figured that out.

16 MR. REILLY: I thought you might.

17 COMMISSIONER KOPLAN: For the record I
18 thought perhaps you could do that for me.

19 MR. REILLY: Certainly.

20 COMMISSIONER KOPLAN: Thanks a lot.

21 Mr. Loeb, in your direct presentation you
22 indicated that the Commission should not take anything
23 into account from the sunset review because it was
24 expedited and that we need to look to the original
25 determination although the coalition did show up. Am

1 I correct in basically that's what you said?

2 MR. LOEB: That's right. I'm not
3 necessarily saying you shouldn't take anything into
4 account from it. But I think it doesn't tell you very
5 much that that decision was recently made.

6 COMMISSIONER KOPLAN: Well, let me just ask
7 you this question. What was the reason that we went
8 expedited, do you recall?

9 MR. LOEB: I don't know. I was not involved
10 at the time. My guess is going to be, and I think
11 you're leading me there, that --

12 COMMISSIONER KOPLAN: Yes, I am.

13 MR. LOEB: -- that the Chinese, there was no
14 request by the Chinese industry to have the order
15 reviewed. And if that's where you're going then I
16 have a further comment.

17 COMMISSIONER KOPLAN: Yes, I am.

18 MR. LOEB: Okay, well I have a further.

19 COMMISSIONER KOPLAN: I think to make your
20 argument and not put that on the record as well
21 because in fact the Commission determined that the
22 coalition's response to our notice was adequate. But
23 there was no response from the other side. That's why
24 we went expedited. So I just thought I'd put that on
25 the record.

1 MR. LOEB: I'm not disagreeing. I
2 appreciate that. That's entirely accurate.

3 COMMISSIONER KOPLAN: Right.

4 MR. LOEB: I'm not disagreeing at all.

5 COMMISSIONER KOPLAN: Okay.

6 MR. LOEB: I think from the Chinese side I
7 wasn't involved but I assume that their answer would
8 be we had zero margin rates on almost everybody so why
9 bother.

10 COMMISSIONER KOPLAN: Well, I wouldn't
11 dispute the fact that if you had been involved that,
12 you know, they probably would have shown up full
13 force.

14 But let me move along with you if I could.
15 You, and I'm looking at pages 4 and 5 of your brief,
16 and you have this statement that "Section 421
17 petitioners should not be permitted to obtain a relief
18 recommendation when they have made no meaningful
19 effort to formulate and include with their petition a
20 comprehensive adjustment plan designed to document the
21 changes that they will make were the Commission and
22 president to grant them the temporary unlimited relief
23 that Section 421 permits. The Commission should use
24 this case not only to address the substantive
25 shortcomings of this petition but to make clear that

1 the prospective league of Section 421 supplicants who
2 are watching the Commission's action on these early
3 cases with exception care that the Commission will not
4 act favorably where petitioners thumb their nose at
5 development of a complete, credible and accountable
6 adjustment plan."

7 I would say to you that Section 421(f) does
8 not refer to the filing of industry adjustment plans
9 or commitments or an obligation of the Commission to
10 propose a remedy that would facilitate industry
11 adjustment to import competition.

12 I would also say that one of the reasons why
13 at least in my opinion we are instructed to do this in
14 60 days and a 201 gives us far more time obviously is
15 because not all of the requirements that exist in a
16 201 exist in a 421. For example, in a 201 we not only
17 have one hearing we have two hearings. We have a
18 hearing on injury, we have a hearing on remedy. And
19 201 requires that adjustment plans be submitted by
20 people who file such petitions.

21 So, you know, I said this morning to
22 Petitioners that I know they're not required to submit
23 one under the statute. If I were sitting in their
24 place I would be doing that because of the fact that
25 there has never been an affirmative determination by

1 the administration thus far. And so I've loaded my
2 record I suppose.

3 But there is no requirement to do that. And
4 for you to suggest that everybody is waiting to see
5 whether we would drop this because they didn't file
6 one I don't think that the law is with you on that.

7 MR. LOEB: If I can respond to that.

8 COMMISSIONER KOPLAN: Sure.

9 MR. LOEB: I recognize that the statute does
10 not specifically require it as it does in 201.

11 COMMISSIONER KOPLAN: You think impliably it
12 does?

13 MR. LOEB: I think the Commission has the
14 authority given the task that's been given to the
15 Commission, that is to make the determination on, to
16 make the determination on market disruption and if it
17 makes that determination affirmatively to make, then
18 make a recommendation on remedy, I think the
19 Commission has the complete discretion under the law
20 to instruct petitioners that we require and we expect
21 to see adjustment plans, we don't feel as though the
22 statute for good reason, for what appears to Congress
23 to be good reason, gives any of us any extra time.
24 And, therefore, we can't get to the point, we can't
25 even have a separate hearing on remedy, as you pointed

1 out, so we can't get to the point where we can
2 seriously respond to your request for relief and make
3 serious recommendation, considerate recommendation to
4 the president if you're not going to come in here with
5 an adjustment plan.

6 I think that's entirely within the
7 Commission's discretion under the statute. I'm not
8 saying the statute requires it.

9 COMMISSIONER KOPLAN: If I could just stop
10 you for a moment. I would appreciate it if you could
11 show me for purposes of the post-hearing anywhere in
12 the legislative history of 421 where there is anything
13 that would give me such authority. Because I can't
14 find it.

15 MR. LOEB: Okay. I certainly will make that
16 effort. And I hope I'm more successful than you've
17 been with that.

18 COMMISSIONER KOPLAN: I mean I have no
19 problem suggesting it to someone. But I'm asking for
20 --

21 MR. LOEB: Right.

22 COMMISSIONER KOPLAN: -- legislative history
23 on that because I've searched it and I can't find it.

24 MR. LOEB: Yeah, I might just, one other
25 point I'd make is that 421 is short. It's short for a

1 couple of reasons. One is because in 201 you're
2 talking about global safeguards and, you know, you
3 frequently are talking about dozens of respondent
4 countries rather than one. So my belief is that the
5 Congress determined that in its wisdom 60 days was
6 sufficient if you're only dealing with one country,
7 China, and therefore set that into the statute.

8 Our position has been, I think you've seen
9 it in previous briefs, that wasn't required by Section
10 16 of the Cheshen agreement. Congress overshot we
11 think in that respect. And in that regard, you know,
12 we flag that as a potential issue down the road. But
13 I do believe the reason there's not a separate remedy
14 hearing is in part that the feeling was all this could
15 get done in the 60-day period because it's only one
16 country.

17 We certainly will respond in post-hearing
18 brief.

19 COMMISSIONER KOPLAN: I do agree that that
20 is another significant difference between the 201 and
21 the 421, no question about it.

22 Thank you.

23 This is for Qualis counsel. In your brief
24 at page 30 you make the statement the safeguard
25 measures in this case are particularly in appropriate

1 given the Petitioners' failure to exhaust
2 administrative remedies allowed under the existing
3 antidumping order on brake rotors from China. After
4 the initial antidumping order was imposed Petitioners
5 were unwilling or unable to attempt to take all
6 available actions to enforce the antidumping order.

7 My question is do you have any legal
8 authority for that argument?

9 MR. FLICKER: The coalition is maybe I
10 wouldn't say legal authority per se but it gives some
11 indication of what the coalition has done to ensure
12 that at least imported rotors from China are coming in
13 at a fairly traded process.

14 By neglecting to even request an
15 administrative review which only amounts to a 2-page
16 letter that you on the particular date specified in
17 the regulations request the administrative review and
18 list all the exporters that you would like to review
19 conducted by the Department of Commerce under its
20 regulations and under statute automatically for, all
21 you have to do is put that letter in and you bear no
22 further expense. And then you can test on a yearly
23 basis retrospectively whether or not the rotors coming
24 in from China were fairly traded.

25 The fact that the coalition neglected to do

1 this for a number of years, they did request the
2 administrative reviews in the first several
3 administrative reviews of the companies, the exporters
4 that were originally excluded from the order but did
5 not request them for the most part, there were
6 occasional companies here or there, did not request
7 them for companies that were included in the order.

8 So if there is a belief that there is a lack
9 of price discipline as part of the order or some
10 concern for that, the fact that the Chinese exporters'
11 feet weren't held to the fire suggest that the
12 coalition believes that the prices coming in were
13 fairly traded.

14 And it's just something the coalition could
15 have taken on its own to ensure that its own interests
16 were defended.

17 COMMISSIONER KOPLAN: Thank you for that.

18 I see my red light is on. I'd just like to
19 correct myself on one point that I had made earlier.

20 CHAIRMAN OKUN: Okay.

21 COMMISSIONER KOPLAN: Coming back to you,
22 Mr. Loeb. Actually, I might have come on too strong
23 with regard to Section 202. 202(a)(4) states that a
24 petitioner under paragraph 1 may submit to the
25 Commission of the United States Trade Representative

1 an adjustment plan. So even that does not actually
2 require it, it strongly suggests it. But I don't have
3 language like that in 421. I just wanted to correct
4 myself on that.

5 Thank you. And thank you, Madam Chairman.

6 CHAIRMAN OKUN: Thank you.

7 I wanted to ask the parties, I know
8 Commissioner Miller had has some demand questions for
9 you in asking whether there was other information out
10 there. And the one interesting document, not the one
11 but one of the interesting documents in your brief was
12 Exhibit 5 which is this Foster and Sullivan report
13 which is the proprietary. That's, I can't refer to
14 it, but I did think in terms of what it had in
15 predictions for demand, where demand was going as well
16 as its description of the market was very interesting
17 but it was a 1999 report.

18 We understood from going on their website
19 that there was a 2002 report available. And I
20 wondered if anyone here, counsel or companies, has
21 that available to the Commission that they could
22 submit for the post-hearing brief?

23 MR. MORGAN: Madam Chairman, we've asked
24 Qualis about that. It's, as I think staff knows, a
25 fairly extensive report. And Qualis does not have a

1 2002 version which is why we submitted a 1999.

2 CHAIRMAN OKUN: Okay. Could you tell me or
3 can Qualis tell me is this a, you know, I had asked
4 Petitioners just to get a sense of what this, and it
5 looks like a market research document, I'm just trying
6 to get a sense of how widely used it is in the
7 industry.

8 MR. MORGAN: The first thing I would note is
9 that Petitioners it was included as a source in the
10 petition. So that was one reason we thought it was a
11 legitimate source to use. But I will let Marv speak
12 on the actual industry.

13 MR. FUDALLA: I'm maybe a little unclear on
14 the question exactly.

15 CHAIRMAN OKUN: What this Frost and Sullivan
16 document or Frost and Sullivan type research I mean do
17 you have a sense of is it widely used in the industry?

18 MR. FUDALLA: Oh, very much so. It's a very
19 respected research firm in the automotive industry and
20 it's probably the elite of research.

21 CHAIRMAN OKUN: Okay. Okay, that's what I
22 was trying to touch on.

23 MR. LOEB: Madam Chairman, could I just
24 point out that Petitioners obviously do have it
25 because they have included a chapter of the 2002

1 version in their petition. I'm not sure if they were
2 squarely asked if they would produce the comparable
3 chapter from the 2002 version into the one that's here
4 in Exhibit 5 in the 1998 chapter. But in any event,
5 if there is a comparable chapter the Commission
6 certainly could ask the Petitioner for it.

7 We don't, none of the Chinese respondents
8 have this document.

9 CHAIRMAN OKUN: Okay. I will ask staff to
10 work with Petitioners to see if we can come up with
11 the relevant chapters and an updated version because I
12 think it was very interesting.

13 Mr. Fudalla, I wanted to go back. One thing
14 you had said about product line I wanted to ask a
15 couple of questions about. And one is one of the
16 things the Petitioners said today and had in their
17 briefs was just that the Chinese while they came in in
18 limited product lines in the beginning now I think
19 both Dana and Federal Mogul testified that essentially
20 the Chinese produced almost or all of their entire
21 product line now. Is that, do you have any sense of
22 whether that's accurate?

23 MR. FUDALLA: Essentially if you look at it
24 as far as A, B and C items -- maybe it's easier to
25 say, maybe it's easier to go back and talk about the

1 complete, total, full line definition in terms of
2 drums and rotors is probably around, I think I
3 mentioned this earlier, 1,400 part numbers. The
4 Chinese are quite capable now of manufacturing 1,000.
5 And that's give or take, you know, since numbers
6 always change and go away and new numbers come. But
7 approximately 1,000 of the 1,400.

8 Now, when they started early on in '92 it
9 was significantly lower obviously, it was the high
10 runners, they call it the hot licks in the aftermarket
11 industry, it was maybe 40 or 50 or 60 part numbers and
12 then it just evolved from there.

13 CHAIRMAN OKUN: Okay. And in your testimony
14 when you were I think referencing that you had tried
15 to get part numbers from Federal Mogul and were not
16 able to, is that your testimony?

17 MR. FUDALLA: Correct.

18 CHAIRMAN OKUN: Okay. And is that
19 information that has been presented in the record?

20 MR. FUDALLA: Let me just clarify. I find I
21 can get the back end of the line. When I mentioned
22 the 1,000 number versus 1,400, the other 400 I'm able
23 to get from North American supplies. But those are
24 the back end of the line.

25 What I'm having trouble getting is the new

1 part number introduction. Like the new model year
2 2003 Cadillac CTS, for example, if that rotor has been
3 tooled right now I can't get that from them.

4 CHAIRMAN OKUN: Okay. And so when a new
5 product line, product model number comes on would you
6 traditionally or would you usually go to both a U.S.
7 source and a Chinese source to try to -- or a U.S. and
8 another source to try to get it?

9 MR. FUDALLA: I would try, would endeavor to
10 try to get it from a U.S. source so because it's
11 there, it's available, if they have it I could put it
12 in my line. If I then if I have to go and reverse
13 engineer it, go through the whole process of tooling
14 it up and then testing the part before you introduce
15 it, it's quite a long series that you have to go
16 through to introduce a part from China, that would
17 take me months. And it's a heck of a lot easier for
18 me to just buy it from a Federal Mogul or Dana or
19 somebody else in North America.

20 CHAIRMAN OKUN: Okay. So when you were
21 talking about not being able to get it from whatever
22 the particular ones you were trying to get from
23 Federal Mogul I mean is that surprising? I mean in
24 other words do you normally when you have a new model
25 number come on would the U.S. domestic companies be

1 the first, is that what you're saying, they'd be the
2 first to produce that and then the Chinese would come
3 in later?

4 MR. FUDALLA: Correct. Traditionally the
5 North American, Dana and Federal Mogul have always
6 been very, very good at introducing new part numbers
7 and new applications. They call it being first to
8 market. And they've been excellent at that.

9 CHAIRMAN OKUN: Okay. All right, Mr.
10 Reilly, I wanted to come back to you on just kind of
11 the points that you were ending in response to
12 Commissioner Miller about what's going on at the
13 installer level. Because one of the things, and you
14 were talking I know about what their incentive was of
15 whether to turn it or to replace it. But the one
16 thing that I thought I heard in that seemed to support
17 what I believe our distributors here were testifying
18 to this morning which they were saying, you know, if
19 we're talking about the installer level it's all about
20 margin so they're going to buy, I mean it will be the
21 U.S. premium product and the U.S. economy are really
22 not the distinction because it's installers that's
23 going to want to go with the cheapest one because he's
24 going to make the margin and so in that sense that's
25 where you would see competition.

1 And I thought given what you were just
2 saying in response to Commissioner Miller that that
3 sounded like what you were saying, that's the
4 installer's incentive is the margin.

5 MR. REILLY: Well, two points to keep in
6 mind. I should mention that the Petitioners during
7 the earlier session actually contradicted themselves.
8 Basically they said that the installers are simply
9 charging their customers the same that they would
10 charge if they had a North American rotor installed.
11 And then I forget which gentleman it was but it was
12 one of the distributors told a story about what
13 appeared to be intense competition between Firestone,
14 I think it was Firestone or Goodyear, and their
15 competitors.

16 My view of the market as an economist is
17 nobody is free from competition. So the installers
18 are of course trying to get the best margin they can.
19 But they have to keep in mind that they're not, you
20 know, an individual installer is not the sole provider
21 of a product so they have to be conscious of price
22 competition among the installers.

23 So, sure, margin has a bearing on it. But I
24 would be flabbergasted if the installers were simply
25 taking a Chinese product let's say using the numbers

1 that the Petitioners cited this morning that sells for
2 \$6.00 versus the U.S. product that sells for an
3 average of \$23.00 and then marking the \$6.000 product
4 up the same level that they would mark the \$23.00
5 product up. That sounds just simply absurd. The
6 installers would all have retired by now to very, very
7 large estates somewhere if they were getting those
8 kind of margins.

9 When I'm talking about margin I'm talking
10 from the installer's viewpoint taking a rotor
11 replacement versus rotor turning, is the relative cost
12 to the installer of those two. And let's talk numbers
13 a little bit using the numbers that the Petitioners
14 cited and also using some markups that Mr. Fudalla
15 cited. Now, the Petitioners cited an average price
16 for the Chinese product of \$6.00. I presume that is
17 the average selling price. The markup by the time it
18 gets to the installer using the markup rates that Mr.
19 Fudalla mentioned would be about \$15.00. So the
20 installer's cost for those Chinese rotors would be
21 \$15.00.

22 The cost of machining versus that \$15.00
23 cost is basically what the installer is looking at.
24 If the installer can provide a lower cost service and
25 mark it up -- I'm sorry, lower cost product and mark

1 it up a bit, say a little bit better than the markup
2 that the installer can get by turning, then the
3 installer is going to prefer to sell the rotor. And
4 the low price of the Chinese rotor is what makes it a
5 feasible tradeoff.

6 It's not feasible with the North American
7 rotor because using the same markup that Mr. Fudalla
8 noted which is about a 2.5 times markup going from
9 manufacturer to installer, \$23.00 would mark up to
10 57.50. So basically you're talking a \$57.50 rotor
11 cost to say an installer versus the turning service.
12 There there's really no comparison, the turning
13 service would be much less expensive.

14 CHAIRMAN OKUN: Okay. I understand that
15 part.

16 Vice Chairman Hillman. Thank you.

17 VICE CHAIRMAN HILLMAN: Thank you.

18 Mr. Fudalla, if I can come back to you on
19 this issue of your efforts to purchase, you know,
20 these just recently on the market products from the
21 U.S. industry, help me understand that. They're
22 saying they simply will not sell to you at all? Or is
23 it an issue that you can't work out a price that
24 everybody agrees on or other terms?

25 MR. FUDALLA: Well, it never has gone as far

1 as price yet. This is, let me explain because I
2 understand their rationale and reasons for not doing
3 it.

4 When they go through all the effort of
5 tooling it, drawing, manufacturing prototype, testing
6 the prototype, they immediately have a competitive
7 advantage in the market. Because being first to
8 market's a big deal. They now can introduce a new
9 part number and they're the only guy that has it and
10 the customers just love that.

11 So what they essentially say is they want to
12 protect that right and give them some competitive
13 advantage over a period of time. All it does though
14 for me it forces me to tool the number up in China
15 because I have no choice, my customers want the part
16 number, they won't, they the North American guys won't
17 sell it to me so I have to get it somewhere.

18 VICE CHAIRMAN HILLMAN: And they won't sell
19 it to you because they think you're going to turn
20 right around and give it to the Chinese and have them
21 reverse engineer?

22 MR. FUDALLA: No, I'd --

23 VICE CHAIRMAN HILLMAN: Or they won't sell
24 it because you won't pay them?

25 MR. FUDALLA: For going through all the

1 effort of being the first guy, first company to
2 develop the number, the part number they want some
3 period of time of having a competitive advantage and
4 having they're the only company that has that part
5 number to offer the customers out there. If they sell
6 it to me I also can offer it to the customers out
7 there. So they lose their competitive advantage of
8 being first to market.

9 VICE CHAIRMAN HILLMAN: I mean let me just
10 make sure I understand it. Again, assuming you're not
11 going to buy it from them and turn around and ship it
12 immediately to China --

13 MR. FUDALLA: Right.

14 VICE CHAIRMAN HILLMAN: -- for reverse
15 engineering.

16 MR. FUDALLA: Right.

17 VICE CHAIRMAN HILLMAN: Assuming you're
18 buying it in volume in order to turn around and sell
19 to your customers.

20 MR. FUDALLA: Right.

21 VICE CHAIRMAN HILLMAN: I don't understand
22 how that's not treating you as a distributor, in other
23 words maybe it's I don't understand enough of the
24 channels of distribution here, but my understanding
25 is, I mean and that's what they're doing with this

1 part, they're sending it out into the distribution
2 channels, so that's what they do.

3 MR. FUDALLA: But to their customers. They
4 have their customers, I have my customers. We have
5 different customers. They might have customer X and I
6 have customer Y and they would see --

7 VICE CHAIRMAN HILLMAN: Okay, and customer X
8 and customer Y are different because they are simply
9 different companies --

10 MR. FUDALLA: Correct.

11 VICE CHAIRMAN HILLMAN: -- or actually
12 different levels in the distribution chain?

13 MR. FUDALLA: Different companies. Yes,
14 different companies.

15 VICE CHAIRMAN HILLMAN: Okay. Now, has it
16 always been thus? I mean have you never been able to
17 get these kind of parts from them or is this a more
18 recent phenomenon?

19 MR. FUDALLA: Not right away. Not the first
20 to market parts. After a period of time if those part
21 numbers have been available then they're more than
22 willing. But then I've essentially probably already
23 tooled it in China.

24 VICE CHAIRMAN HILLMAN: Okay. And how long
25 a period is this typically?

1 MR. FUDALLA: To?

2 VICE CHAIRMAN HILLMAN: I mean you're saying
3 the tooling in China was I think you said two to three
4 months?

5 MR. FUDALLA: No, it takes a little longer
6 than that. It takes probably up to six to seven
7 months. And the first time you send them a part and
8 they reverse engineer it and then they send you the
9 drawings and the part and you have to check the
10 dimensions. And then you get back to them and they
11 tool it. And then they run some small production
12 runs. And they send you the small production runs and
13 you check all those against the drawing and the
14 tolerances. And there's sometimes some issues so you
15 have to get back to them.

16 It's an iterative process and it sometimes
17 takes some time.

18 VICE CHAIRMAN HILLMAN: Okay. I guess, you
19 know, I'm still -- if there is anything that you have
20 in terms of, you know, correspondence or
21 communications with the domestic industry that would
22 document this issue of them not selling to you, I'm
23 still not sure I quite am following how I mean in
24 essence I don't see why they are not viewing you as a
25 customer as opposed to a competitor. That, it's that

1 part of it.

2 I mean you are not a producer. You are one
3 step down in the distribution channel. Theoretically,
4 you know, you compete, your competition is in theory
5 with their other customers not with them directly. So
6 I'm still a little --

7 MR. FUDALLA: No, on the economy line I
8 compete with them directly. Federal Mogul and Dana on
9 the economy line are my direct competitors. We sell
10 to the same customers.

11 I'm a purchaser of Chinese product just like
12 them. That's --

13 VICE CHAIRMAN HILLMAN: All right.

14 MR. FUDALLA: Yes.

15 VICE CHAIRMAN HILLMAN: I guess. But I'm
16 still with these new out of the box parts, I mean
17 these brand new parts I'm still I guess if there's
18 anything you could put on the record that would help
19 me understand this. Is it pretty much, you know the
20 distributors are you're an import distributor or
21 you're a domestic distributor and, you know, nobody
22 crosses over that boundary?

23 MR. FUDALLA: No. See, I want the part
24 number to put in my -- I'll put that in my economy
25 line. Even though it's North American made I would

1 put that in my economy line so I don't have to tool it
2 in China. And so now I will have an economy line that
3 has an expanded part number offering with a brand new
4 part number that nobody else --

5 VICE CHAIRMAN HILLMAN: You would price it
6 at what?

7 MR. FUDALLA: Well, they'd charge me a
8 number and I'd price it so I could make a small profit
9 and the customer would be willing to buy it.

10 VICE CHAIRMAN HILLMAN: Okay. All right.
11 Okay, thank you.

12 Mr. Reilly, if I can come to you. I mean
13 you showed us this chart of your sense of this three-
14 tiered aftermarket. And in the brief you make this
15 argument that the products that the domestic industry
16 is making, what we called the premium product this
17 morning, competes more with the OES product than it
18 does with the economy line Chinese product is how I
19 read the argument in the brief. Help me get again a
20 relative sense of this.

21 Do you have a sense of the if you looked at
22 the ADS in toto of what percent of it would be in the
23 OES, what would be in this medium, you know, premium
24 product and what portion would be in the economy?

25 MR. REILLY: In the OES, no. Because we

1 have been able to locate no data on what the
2 automotive manufacturers' brand and products going
3 into the aftermarket, out of warranty aftermarket on
4 what that volume would be. We've just been unable to
5 locate that data.

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23 (End Tape 19)

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1 VICE CHAIRMAN HILLMAN: In the split between
2 the premium product and the economy, would you suggest
3 that in order to come up with those numbers that we
4 treat all imports, all imports from all sources, as
5 going into that third tier?

6 MR. REILLY: I don't believe you could do
7 that for a couple of reasons.

8 I've inspected the import average unit
9 values, and clearly imports, for example, from some
10 European countries appear to be OE related imports
11 because the average unit values are in the high \$20s,
12 \$30s and ever \$50 ranges. I'm assuming those are
13 brake equipment for very high value cars, probably
14 BMWs, Mercedes and so forth.

15 The average unit values on imports coming
16 from some other locations are ambiguous. It could go
17 either way. For example, products coming in from
18 South America, say Venezuela and Argentina. Those
19 AUVs would suggest they are not premium products, but
20 rather economy, so you would almost have to take it on
21 a case by case basis.

22 VICE CHAIRMAN HILLMAN: Do you have a sense
23 of the split between the second tier as you're
24 describing it and the third tier? What portion of the
25 market? I mean, how big?

1 MR. REILLY: We haven't tried to quantify
2 that. The issue there is you've identified exactly
3 correctly. It's how you allocate the non-subject
4 imports.

5 We can take a stab at that and respond in
6 the post-hearing brief.

7 VICE CHAIRMAN HILLMAN: All right. I don't
8 know that I have to have it. It's more trying to
9 understand then the issue of the competition between
10 the --

11 MR. REILLY: Okay.

12 VICE CHAIRMAN HILLMAN: Your brief clearly
13 asserts that, you know, again the second tier competes
14 more with the first tier than it does with the third
15 tier.

16 MR. REILLY: Right.

17 VICE CHAIRMAN HILLMAN: I understand, as I
18 read the brief, you're basing that on sort of
19 marketing brochures, and I'm trying to understand it
20 more from a relative size, as well as price.

21 Do you have a sense of the relative size
22 between the first tier, the second tier and the third
23 tier? Obviously we've got data in our record between
24 second and third to some degree. I'm trying to
25 understand.

1 Again, you're telling me these compete more
2 with the OES product. Do you have a sense of --

3 MR. REILLY: Yes. Mr. Fudalla might have a
4 better sense of it than I do. My rough guess would be
5 that the products that are being sold through
6 automobile dealerships, the top tier products, are
7 priced considerably higher than the premium
8 aftermarket products, but I don't think the premium
9 they're getting on a percentage basis is as high as
10 the premium of the Raybestos brand over a Chinese
11 product. I'd guess maybe double.

12 VICE CHAIRMAN HILLMAN: Mr. Fudalla, do you
13 have a sense of the relative price of a product in the
14 OES market, the premium market and then the economy
15 market?

16 MR. FUDALLA: Yes. I think this data was
17 based on Pep Boys. I think I called them a week ago
18 or so. I asked for the four part numbers that are in
19 the petition. The 8939, the economy is \$30, the
20 Raybestos is \$50, and the OES -- I called the dealer
21 for the OES obviously. The OES is \$87. The 8940, the
22 economy was \$22, the Raybestos was \$47, and in this
23 case it's a Ford, so the Ford dealer's selling price
24 was \$80.

25 The 5115, the economy is \$22, Raybestos is

1 \$42. It's a Chrysler vehicle. The OES dealer cost or
2 dealer price is \$89. On the 5329, that's also a
3 Chrysler. The economy is \$13, the Raybestos is \$30,
4 and the dealer price is \$58.

5 VICE CHAIRMAN HILLMAN: Okay. I appreciate
6 those numbers very much.

7 MR. FUDALLA: Okay.

8 VICE CHAIRMAN HILLMAN: Unfortunately, my
9 red light has come on. I want to come back to this
10 issue of, you know, again whether those numbers really
11 suggest to us that the second tier is more competitive
12 with the first than with the third, given that the
13 differentials, you know, at first blush look to be
14 about the same.

15 I mean, the numbers don't look closer
16 between the first tier and the second than they do
17 between the second and the third, but I'll come back.

18 CHAIRMAN OKUN: Commissioner Miller?

19 COMMISSIONER MILLER: Thank you. Let me
20 stay with that for a minute; not necessarily the point
21 that Vice Chairman Hillman was just asking about, but,
22 Mr. Fudalla, if I call Pep Boys and I don't know to
23 ask for economy, if I just called Pep Boys, and I can
24 do this so I know you're going to give me a straight
25 answer.

1 If I call Pep Boys and I say I need an 8930,
2 you know, and I say it the right way, okay, what are
3 they going to say to me?

4 MR. FUDALLA: You're going to hate this
5 answer.

6 COMMISSIONER MILLER: Are they going to give
7 me three prices?

8 MR. FUDALLA: It depends. It really does
9 depend.

10 COMMISSIONER MILLER: Yes. Whatever
11 salesperson I'm talking to.

12 MR. FUDALLA: The guy at the counter
13 answering the phone, you know, if he's busy or he's
14 got a problem.

15 In most cases, they will quote you two
16 numbers. They'll say I've got a premium product here
17 at whatever I said -- I put it away already -- and
18 then I've got they'd probably call it they'd put it
19 under their brand name. They'll call it the such and
20 such. It's got this value rotor, and the price is Y.

21 COMMISSIONER MILLER: Okay.

22 MR. FUDALLA: In a lot of cases, because
23 you'll try it tomorrow probably, and you can call Pep
24 Boys. You'll get one price.

25 COMMISSIONER MILLER: If I do that tomorrow,

1 I've got to put it on the record.

2 MR. FUDALLA: Sometimes you'll get the low
3 price. Sometimes you'll get the high price. We do
4 these tests all the time --

5 COMMISSIONER MILLER: Sure.

6 MR. FUDALLA: -- just to find out what the
7 competition is doing and that kind of thing. It's all
8 over the map. I would say in general from my
9 experience you'll get two prices.

10 COMMISSIONER MILLER: Two prices, and I'll
11 get two names for it --

12 MR. FUDALLA: Yes.

13 COMMISSIONER MILLER: -- on whatever day it
14 is. They might use the word economy. They might use
15 the word premium. They might not.

16 MR. FUDALLA: It depends. That's correct.
17 Mostly they'll say -- often times they will compare
18 their premium product and say well, we've got the OE
19 replacement or the OES replacement. They'll make
20 that --

21 COMMISSIONER MILLER: They wouldn't say that
22 to me because they'd think --

23 MR. FUDALLA: No, they wouldn't. They might
24 think you're a car person. You're calling Pep Boys.
25 You must know something.

1 COMMISSIONER MILLER: Okay.

2 MR. FUDALLA: They might give you that.
3 They'd say this is the OE replacement, but I can also
4 sell you our value rotor for \$20 instead of \$45.

5 COMMISSIONER MILLER: Okay. Earlier in
6 response to one of the questions here when
7 Commissioner Hillman was asking you about your efforts
8 to buy the U.S. product, a Dana or a Federal Mogul
9 product, you said you would buy it, and you would put
10 it in your economy line at, you know, this price or
11 whatever.

12 I listened to that, and I thought you'd put
13 it in your economy line. Do you carry a premium line?

14 MR. FUDALLA: No.

15 COMMISSIONER MILLER: Okay.

16 MR. FUDALLA: I was just making sure that it
17 was understood that I just have an economy line.

18 COMMISSIONER MILLER: Okay. You just meant
19 I would put it in my --

20 MR. FUDALLA: In my line.

21 COMMISSIONER MILLER: Meaning my economy?

22 MR. FUDALLA: Correct.

23 COMMISSIONER MILLER: Okay. I still kind of
24 struggle. I know you talked about what you perceive
25 as a difference in the market segments between premium

1 and economy.

2 In your initial testimony you cited a lot of
3 what you provided in your brief regarding what I would
4 in many ways describe as the domestic producers'
5 efforts to explain why their product cost, you know,
6 twice as much or whatever as much as the value
7 product. I mean, they've got to have something to
8 sell to explain why it sells at a higher price. It
9 sells at a higher price bottom line because it costs
10 more to make.

11 Okay. Their point this morning was those
12 differences, while they as manufacturers believe in
13 them, market them, push them, to the customer, you
14 know, often times the installer is really caring more
15 about what his mark up is on it rather than whether it
16 is -- I'd have to go find whatever the, you know,
17 noise dampening iron is or whatever. Isn't that true?

18 MR. FUDALLA: There continues to be a market
19 for premium product. Many retailers, as well as some
20 traditional WDS, will carry three lines. Often
21 they'll carry a good, better, best kind of scenario.

22 For example, Auto Zone. They carry a
23 Raybestos line, then they carry a middle line, which
24 is maybe a blend of North American and Chinese
25 product, and then they carry a third line, which is

1 purely Chinese, very few part numbers, and they call
2 that their good, better, best; good being the economy
3 and better being the middle and best being the
4 Raybestos.

5 The way they kind of try to market it and
6 segment it is they figure the good and the best is
7 going to be 20 percent each of the volume, and then
8 the middle, the better, is probably going to be around
9 60 percent. That's kind of how they go to market and
10 how they plan and that kind of thing.

11 The same with some traditional WDs like Car
12 Quest. They have a Car Quest Gold, they have a Car
13 Quest Blue, and then they have a third line, which is
14 Proven Value, which is the economy line. They are
15 offering all three to their customers just like Auto
16 Zone.

17 COMMISSIONER MILLER: Okay. So they're
18 offering all three. It must be because they perceive
19 some demand for all three.

20 MR. FUDALLA: Correct.

21 COMMISSIONER MILLER: Okay. Who is their
22 customer that only wants the better and best?

23 MR. FUDALLA: I guess it's a matter of
24 choice. You know, there's people out there like a Car
25 Quest might have 3,000 jobbers around the U.S. located

1 in all kinds of different parts of this country, and
2 there's some that are in pockets of the country that
3 just perceive anything but buying a pure, American
4 made, Raybestos product would be blasphemy for them.
5 They'd never do it.

6 There's other pockets where I can attest
7 that New York and Florida and California are just
8 very, very, very tough markets to sell in, and they
9 tend to gravitate toward that economy value line
10 constantly. It depends on the market area that you're
11 in and where you are in the country and who you're
12 trying to sell to.

13 COMMISSIONER MILLER: They're just servicing
14 a wide range of customers that have --

15 MR. FUDALLA: Correct. They'd rather have
16 the product I think in most cases than lose the sale,
17 so they carry it, you know, to the detriment of the
18 inventory costs. It's not inexpensive to carry three
19 lines. It's difficult.

20 MR. REILLY: Commissioner Miller, I'd like
21 to supplement that just very briefly.

22 COMMISSIONER MILLER: Mr. Reilly?

23 MR. REILLY: The fact that the domestic
24 producers are selling their premium lines in
25 significant volume more than 10 years after Chinese

1 products have entered the market in volume and the
2 domestics are making pretty good money doing it makes
3 it self-evidence that this market is segmented.

4 Were the market not segmented, were there no
5 significant difference between these products and were
6 they to sell solely on price, the Chinese products
7 would have run the domestic products out of the market
8 long since. That's clearly not happened.

9 One other point. The issue of at the
10 consumer level how is this market segmented and why is
11 it segmented. One hypothesis would be that there may
12 be a relationship between the type of car you drive
13 and how new it is and what your preferences would be
14 for brake work.

15 For example, somebody who drives a new
16 Mercedes or a new Lexus or a new Cadillac would
17 probably prefer the higher priced item, as opposed to
18 somebody driving an older car who may have a greater
19 income elasticity of demand because while brake work
20 relative to the cost of a new car is not that
21 expensive, it's not cheap relative to a week's pay.

22 MR. MORGAN: Commissioner Miller?

23 COMMISSIONER MILLER: Although I also think
24 if they're driving that new car it's probably under
25 warranty, and they're not paying for it anyway.

1 MR. REILLY: After three years they would
2 be.

3 MR. MORGAN: Commissioner Miller?

4 COMMISSIONER MILLER: Mr. Morgan?

5 MR. MORGAN: Mr. Fudalla also had a point in
6 terms of whether Chinese products can be sold as value
7 products. As premium. I'm sorry. As premium.

8 COMMISSIONER MILLER: Premium.

9 MR. FUDALLA: I guess I was going to add
10 that never can you sell a Chinese product as a premium
11 product or an OES product. They just never would buy
12 that.

13 COMMISSIONER MILLER: Actually, I'm glad you
14 mentioned that because I wanted to ask you that
15 question; whether there is anything that the Chinese
16 can do to their product to present it as the better or
17 best, you know, if they can put in that noise
18 dampening iron or whatever else the domestic industry
19 tries to claim.

20 If there is a difference, is there any
21 reason they can't meet that difference?

22 MR. FUDALLA: I think you have a perception
23 problem in the marketplace too. I don't know. Maybe
24 over time that goes away, but right now there's a
25 perception that the Chinese product is not as good as

1 the North American made product. I don't know how you
2 change that. I guess time.

3 COMMISSIONER MILLER: Okay. All right.
4 Very interesting. I appreciate your helping me
5 understand. Thank you.

6 CHAIRMAN OKUN: Commissioner Koplan?

7 COMMISSIONER KOPLAN: Thank you, Madam
8 Chairman.

9 Mr. Fudalla, let me ask you this. I'm
10 looking at Petitioners' brief at page 30, and they
11 make the following statement. They say:

12 "Petitioner is not aware of any restraints
13 on the exploration of aftermarket brake drums and
14 rotors from China to other countries. However,
15 Argentina, Brazil, Canada, Chile, India, Mexico and
16 South Africa and the European Union all impose a
17 higher import duty on imports of brake drums and
18 rotors than the United States, ranging from 4½ percent
19 to 30 percent." They have an exhibit on that.

20 "Therefore, third countries' high import duties give
21 Chinese producers another incentive to export to the
22 United States."

23 They go on to say: "There is no doubt that
24 the United States is the largest market for
25 aftermarket brake drums and rotors from China; in many

1 cases, the only export market for Chinese aftermarket
2 brake drums and rotors."

3 I'd like to know if you'd just comment on
4 that?

5 MR. FUDALLA: Which part?

6 COMMISSIONER KOPLAN: Well, let me start
7 with the fact that the countries that they listed have
8 higher tariffs, import duties, than the United States
9 and that that would be an incentive to come here
10 rather than to go to those third countries. Does that
11 seem like a logical --

12 MR. FUDALLA: I think they come to this
13 country because we have 207,000,000 cars in our car
14 park. We're the biggest market out there. I'm not
15 familiar with whether those duty rates are correct or
16 not.

17 COMMISSIONER KOPLAN: Assuming that they
18 are --

19 MR. FUDALLA: Yes.

20 COMMISSIONER KOPLAN: -- for places like the
21 European Union.

22 MR. FUDALLA: Bill's got the sheet, but some
23 of those countries -- China would maybe sell to them
24 if they could, but if a country and an industry is
25 going to focus on something it's going to be the U.S.

1 for sure or North America for sure.

2 I'm not sure China is even aware that some
3 of these countries have rates like that. I don't
4 know.

5 COMMISSIONER KOPLAN: Okay.

6 MR. MORAN: Just to follow up on the rates,
7 I believe, although we'll have to check this, that the
8 current just general tariff on brake rotors --

9 COMMISSIONER KOPLAN: I can't hear you, Mr.
10 Moran.

11 MR. MORAN: The general tariff on brake
12 rotors coming into the United States is around three
13 percent or less.

14 I think the European Union, and Alex is
15 checking through to Exhibit 1 in Petitioners'
16 submission, is about 4.5 percent, so I don't think a
17 different in tariff rate of that amount would have a
18 substantial diversionary effect --

19 COMMISSIONER KOPLAN: Okay.

20 MR. MORAN: -- from the Chinese rotors,
21 considering that the EC would be the second largest
22 market for product. I mean, if Chile has a duty of 40
23 percent that's fine, but actually the EC market would
24 be much more attractive to the Chinese than Chile
25 would.

1 COMMISSIONER KOPLAN: Were you able to
2 check, and is that right? Is the EU's 4½? If not, I
3 can check that afterwards.

4 MR. MORAN: In Exhibit 21 of Petitioners'
5 non-confidential brief it lists the tariff for the
6 European Union as 4.5 percent.

7 COMMISSIONER KOPLAN: It is? Okay. Thank
8 you for that.

9 This morning we discussed the two segments
10 of the brake drum and brake rotor market and pursued
11 with the Petitioners which segments of the market in
12 which they were concentrated. While it would appear
13 that their emphasis is on the premium lines in the
14 market, they also import and sell economy line
15 products.

16 Do the Chinese make any brake drums and
17 rotors for export to the U.S. for sale to the OEM, OES
18 or aftermarket premium lines?

19 MR. FLICKER: You guys might know this as
20 well. This is Scott Flicker. I think the answer to
21 that is no, we're not aware of any Chinese producer
22 that sells to the OE manufacturers.

23 COMMISSIONER KOPLAN: Okay. Thank you, Mr.
24 Flicker.

25 Mr. Fudalla, if I could just come back to

1 you for one last thing?

2 Do you know if Dana and Federal Mogul are
3 paying comparable prices for the imports they are
4 purchasing to those you pay? Are you buying from the
5 same Chinese producers as they are?

6 MR. FUDALLA: Dana and us, Qualis, we are
7 buying a good deal of our brake drums and rotors from
8 the same manufacturer and factory in China. I hope
9 I'm getting as good a price as they are.

10 COMMISSIONER KOPLAN: You don't know that?

11 MR. FUDALLA: Well, I ask the question to
12 get the answer. I think you know what the answer
13 always is.

14 COMMISSIONER KOPLAN: Yes.

15 MR. FUDALLA: Yes.

16 COMMISSIONER KOPLAN: Okay. All right.
17 Thank you. I have no further questions.

18 CHAIRMAN OKUN: I have no further questions.
19 Vice Chairman Hillman?

20 VICE CHAIRMAN HILLMAN: I guess just one
21 quick one to follow up.

22 Mr. Fudalla, in response to Commissioner
23 Miller you did posit something that I think was a
24 little bit different than what we've been hearing,
25 which is this kind of three tiers within the

1 aftermarket, as opposed to the way that the case --

2 You know, this morning I heard sort of a
3 description that there's the OE market, and that's
4 often its own separate world, if you will. Then there
5 is the aftermarket, you know, outside of OE, which was
6 always described as the premium product and the
7 economy product. You're now positing this middle,
8 somewhere in between.

9 MR. FUDALLA: Right.

10 VICE CHAIRMAN HILLMAN: You said it was some
11 amalgam of Chinese and American production.

12 Help me understand that because it looks
13 from again our pricing data and everything else like
14 there's really two tiers. As Mr. Reilly's price
15 charts would show, there seems to be this big
16 difference between, you know, the premium product and
17 the Chinese product with not a lot of movement between
18 them.

19 Now it seems to me that you're describing
20 something in the middle, and I have to say I'm not
21 sure where I'm seeing that in the data. I just want
22 to make sure I understand it.

23 MR. FUDALLA: Yes.

24 VICE CHAIRMAN HILLMAN: Who is producing
25 this product? Who is selling it? How is its price

1 blended between the premium product and the economy
2 product?

3 MR. FUDALLA: It's so complicated. I'm not
4 sure we can deal with it.

5 VICE CHAIRMAN HILLMAN: Okay.

6 MR. FUDALLA: Anyway, I'm going to try. Our
7 customers, the WDs, the retailers, they go through
8 iterative processes of how they're going to market
9 these lines, and it changes constantly. It's we're
10 going to have a good, better, best, and then it's just
11 going to be a best and a good, and then it's just
12 going to be the best and the better. It goes, and
13 it's constant.

14 Right now everybody is different. There's a
15 lot of customers out there that have the premium and
16 just a value line. There's a lot of customers out
17 there that have the three lines because they weren't
18 really sure what they wanted to do. As I think I said
19 earlier, heaven forbid. They don't want to miss a
20 sale.

21 I think over time what they learn is you
22 can't live with three lines. You've got to have a
23 premium line and an economy line, and that's the only
24 way because otherwise the inventory will eat you
25 alive. Right now there are some customers that

1 because they're in the middle of this iterative
2 process have three lines, but I'd say the traditional
3 is --

4 VICE CHAIRMAN HILLMAN: Made where? You
5 said it's an amalgam of Chinese and American product?

6 MR. FUDALLA: Yes. I'm trying to look at
7 you at the same time. Ham, you're in my way.

8 It is a mix between -- because it is a full
9 line mostly. That middle line is all 14 numbers.
10 What they'll do is they'll buy sometimes from one or
11 two different suppliers as well. It will be a mix of
12 North American made and Chinese made. It will be
13 marketed as a blue, which is like kind of a middle of
14 the road kind of thing.

15 VICE CHAIRMAN HILLMAN: I'm trying to
16 understand that in relation to this.

17 You know, in response to Commissioner Miller
18 again it was this issue that the Chinese are only in
19 the economy. Now you're telling me they're in the
20 economy and also in whatever this middle blue category
21 is.

22 Similarly, again the testimony this morning
23 was that the Americans are only in the premium, and
24 now I'm hearing well, but they're sort of in this blue
25 or whatever this middle is. Is that right? Am I

1 hearing your right?

2 MR. FUDALLA: Just at certain customers.

3 VICE CHAIRMAN HILLMAN: Okay. How big would
4 you say this blue market is?

5 MR. FUDALLA: Well, blue is a term that one
6 WD uses.

7 VICE CHAIRMAN HILLMAN: Okay. Fair enough.
8 How big is the middle between economy and premium?

9 MR. FUDALLA: It's hard to judge. I would
10 say in the order of magnitude it's probably not very
11 big relative to the --

12 VICE CHAIRMAN HILLMAN: Five percent of the
13 total market? Ten?

14 MR. FUDALLA: Yes, I'd say five.

15 VICE CHAIRMAN HILLMAN: Okay.

16 MR. FUDALLA: Versus the customers that
17 carry a premium and an economy line.

18 VICE CHAIRMAN HILLMAN: Okay. All right. I
19 appreciate those answers.

20 MR. FUDALLA: Okay.

21 VICE CHAIRMAN HILLMAN: Thank you.

22 MR. REILLY: Commissioner Hillman, I'd like
23 to make one additional comment.

24 To start, I knew Wal-Mart was going to come
25 up sooner or later, but it's not necessarily the case

1 that a small volume of blended product would show up
2 in the price data simply because, and I'd ask Mr.
3 Fudalla to correct me if I'm wrong, but let's say a
4 retailer, a larger retailer, might blend a line by
5 buying some part numbers from the Chinese at the
6 Chinese price and some part numbers from North
7 American manufacturers at the North American price and
8 then blend those to come out with an average profit
9 for the line.

10 MR. GLICK: I'm sorry. I was talking to Mr.
11 Fudalla.

12 One of the things I was asking him was
13 whether the U.S. producers, when he's saying that
14 there's the domestic mix with the Chinese, whether
15 it's just to fill additional -- I'll let you.

16 MR. FUDALLA: Right. It's mostly that
17 middle ground domestic made would be to fill the back
18 end of the line. The predominant portion of say 1,000
19 numbers of that middle line would be Chinese made
20 product. That's a general statement, but it's pretty
21 accurate.

22 VICE CHAIRMAN HILLMAN: Okay. Mr. Loeb?

23 MR. LOEB: Could I just add something? It's
24 really important not to get the three categories
25 confused here.

1 As I understand, two different things about
2 three tiers. One is that there are certain retailers
3 that will blend to create a middle pricing tier and so
4 they'll blend Chinese, which is the low price.
5 They'll blend North American, which is the high price.
6 As a result, they can create what you're hearing
7 described as a blue line at least in one retailer that
8 accounts for a small percentage of the market.

9 It doesn't contradict the key point that
10 there is the premium line and then there's the value
11 or economy line. It's just that there are certain
12 marketers that decide that they want something in the
13 middle from a price point and so they'll blend the
14 two.

15 I understand that to be telling me that I
16 might go in there and buy a blue product -- it might
17 be a North American made; it might be a Chinese made
18 -- in which case I'm probably paying a whole lot above
19 what the Chinese price was, or I might be paying below
20 what the North American price was, but to that
21 retailer he's getting his blend, and he's happy with
22 it.

23 There's another three tier distinction,
24 though, that I think is really important to emphasize,
25 and that's the one Mr. Reilly had on the board because

1 this is one where I think the data that the Commission
2 has got, there's a great deal of uncertainty about it.

3 Above the premium and above the economy line
4 there is the OE replacement line, the line that is
5 produced by some of the domestic producers here for
6 sale to the OE manufacturers in their service unit,
7 the OES products.

8 You can see from the pricing information
9 that you just heard Mr. Fudalla give you where he had
10 a price for each of the three, and the third one was
11 the OES price, that that's a separate and very high
12 priced line, and that is an area where the Petitioners
13 are actively courting and doing business with the OEs
14 that is not reported in the data here at least as we
15 understand it.

16 We're unclear on this as to whether all of
17 the Petitioners are not reporting that. None of the
18 Petitioners have reported OES data.

19 VICE CHAIRMAN HILLMAN: But just to finish
20 this point, it was my understanding, and maybe I
21 should just clarify with counsel here, that there is
22 not an argument that the OE product should be
23 considered a like or directly competitive product with
24 the imports, which is why again we're not looking at
25 the domestic industry that is producing OE product

1 because if we're going to decide that they are not
2 part of the product that is like or directly
3 competitive with the Chinese imports, then we're not
4 going to be looking at those producers or their data
5 for purposes of determining whether there's been
6 injury because they're not part of the industry
7 producing that.

8 Just so I clarify, it was not my reading of
9 your brief that you're arguing that the OE product
10 should be considered like or directly competitive with
11 the Chinese product. Is that a fair reading of what
12 you're saying?

13 MR. LOEB: That's right. That is what our
14 brief said. I'm just referring to the fact that in
15 the sort of three tier element we're looking only at
16 what is the middle tier, the premium tier, and the
17 economy tier.

18 VICE CHAIRMAN HILLMAN: Correct.

19 MR. LOEB: But there is another tier above
20 that, which happens to be a very profitable one.

21 VICE CHAIRMAN HILLMAN: I understand that.
22 but again my sense of it was that everybody was in
23 agreement that that upper tier, that OE tier, is again
24 sort of not part of this case. Production of that
25 product is not considered product that is like or

1 directly competitive with the imports. Is that
2 correct?

3 MR. LOEB: Yes, that's correct in terms
4 of --

5 VICE CHAIRMAN HILLMAN: Mr. Morgan, would
6 you agree with that?

7 MR. MORGAN: I would agree to the point of
8 the original equipment manufacturers, but in talking
9 with Mr. Fudalla he made a very strong distinction
10 between what an OEM part, which is what goes into the
11 original automobile, is and what an OES part is, which
12 is what goes in after the warranty expires.

13 Based on my conversations with him and some
14 earlier discussion that staff had with the
15 Petitioners, it is something that we would potentially
16 want to take a look at because there is a distinction
17 between the OEM and OES, and that has not been made
18 clear in the Petitioners' submissions to date. It was
19 only something in finally sitting down with Mr.
20 Fudalla that we really learned there is a distinction
21 between OEM and OES.

22 MR. FLICKER: I'd like to speak to this also
23 -- Scott Flicker -- because I'm one of the authors of
24 the part of the brief that you're referring to there.
25 What we said in the brief was that we don't expect to

1 turn the Commission around on its like product
2 determinations made all the way back in 1996 and 1997.

3 We've been in this case now for I think
4 about six weeks. We've been able to see confidential
5 data for I think three and a half to four weeks.
6 Based on what I've heard here today, I'm a little less
7 certain as to whether the like product definition as
8 it's been provided to the Commission by the
9 Petitioners is accurate or not at least with respect
10 to this segment we're talking about, which is OES.

11 There appears to be a clear phenomenon in
12 the market now that the branded auto manufacturers, in
13 addition to getting the part made and installing it in
14 the car when it's being manufactured and using that
15 part for warranty work, are now entering the portion
16 of the market where they're going to use parts, some
17 of which may be made by the Petitioners here, in non-
18 warranty aftermarket work.

19 I think we're starting to see, and I think I
20 ever heard the Dana representative say this. Those
21 sales are also part of the aftermarket. If that's
22 true then we need to know whether the Petitioners have
23 reported financial data and production data that
24 includes that portion of their lines that are making
25 those products because there may be a substantial

1 portion of the economic activity of the Petitioners
2 which would contribute to their bottom line, which
3 might explain capacity numbers that are hidden from
4 this proceeding because of perhaps an overly narrow
5 definition of like product.

6 When we wrote our brief, we did so with the
7 recognition that, number one, the Commission has made
8 a determination on this issue before in a case with a
9 lot more time, and, number two, we are in a case with
10 a lot less time. It didn't seem realistic to try to
11 take on the Commission's view of that in light of the
12 data we had and the time we had.

13 VICE CHAIRMAN HILLMAN: But we're trying to
14 do it at 5:00.

15 MR. FLICKER: That's a good point. I think
16 at the end of the day that's why Mr. Loeb --

17 VICE CHAIRMAN HILLMAN: It is the end of the
18 day.

19 MR. FLICKER: That's why Mr. Loeb is, as
20 usual, probably right that we're not going to make the
21 argument.

22 I think that it might be an important
23 consideration here for the quality of the record we've
24 got and possibly the injury issue in this case.

25 CHAIRMAN OKUN: Are you done, Vice Chairman

1 Hillman?

2 VICE CHAIRMAN HILLMAN: I am done.

3 CHAIRMAN OKUN: Commissioner Miller?

4 (No response.)

5 CHAIRMAN OKUN: All right. I'm not going
6 down there.

7 Does staff have questions for this panel?

8 MR. GEARHART: Bill Gearhart of the General
9 Counsel's Office. Just two quick questions.

10 We were talking just in the recent testimony
11 about sort of this middle area, and you indicated, and
12 I just want to make sure we're clear on numbers, that
13 there was something like five percent in the middle,
14 but earlier you had talked about 20 percent being
15 premium, 60 percent in the middle and 20 percent
16 economy.

17 Could you clarify the numbers in terms just
18 so we --

19 MR. FUDALLA: Right. The question I was
20 answering on the five percent was what amount of all
21 the customers that are out there carry that middle
22 line, you know, and that would be about five percent.

23 The other question was when somebody carries
24 three lines, how do they go to market with it? That
25 would be 20 at the top, 20 at the bottom and 60 in the

1 middle within the customer.

2 MR. GEARHART: So the five percent that
3 carry the three lines, for that five percent about 60
4 percent of what they sell is probably the middle line?

5 MR. FUDALLA: Correct.

6 MR. GEARHART: Okay. The second question is
7 again dealing with this like product question.
8 Perhaps the Petitioners could address this also in
9 their brief, but I'll just ask the question.

10 Are we dealing in essence with these
11 products? Is there sort of a continuum of brake drums
12 and rotors that are sold in the domestic market where
13 you start with the economy, you go up into the middle,
14 you go up to the premium? Should we view it in terms
15 of like product as being like a continuum?

16 If that is the case, where do we stop?
17 Would it include OES as well as the premium? Should
18 the continuum include OEM?

19 MR. FLICKER: This is Scott Flicker. Mr.
20 Gearhart, let me take a first cut at this, having
21 opened the can of worms at 5:00 on Friday.

22 MR. GEARHART: And you're welcome to
23 continue in the brief, too.

24 MR. FLICKER: Thank you. I appreciate that.
25 Let's start by saying that there appears to be a clear

1 segmentation between the economy line and the premium
2 line, and that appears to be shown by the data that we
3 have.

4 Given the magnitude of this kind of blending
5 phenomenon that Mr. Fudalla was testifying about, a
6 small magnitude of that, I don't think that you're
7 looking at a continuum. I think you're looking at two
8 discrete segments there between the economy line and
9 the premium line. This notion of a middle or blended
10 phenomenon strikes --

11 CHAIRMAN OKUN: Mr. Flicker, can you just
12 pull your microphone closer?

13 MR. FLICKER: Sure. I'm actually not
14 talking into it. I think that's the problem.

15 The phenomenon of a blend or a middle
16 appears to be too small in terms of percentage of the
17 market to reach a conclusion that there's a continuum
18 between those three items. I think our position would
19 be that there's clearly two segments here and not a
20 continuum.

21 With respect to the OE piece, there appears
22 to be a clear distinction between OEM and aftermarket.
23 Where the distinction is starting to break down based
24 on the testimony that we've heard today is between
25 this non-warranty OES product and the aftermarket.

1 It's beginning to look like, and we will
2 look at this and address it in our post-hearing brief,
3 that there's a basis for including the OES non-
4 warranty parts in the aftermarket, and our position
5 would be that those compete most directly with the
6 premium line segment of the market and not the economy
7 line.

8 MR. MORGAN: Mr. Gearhart, I'll do all my
9 speaking in the brief, but Mr. Fudalla definitely does
10 I think have something valuable to add to the
11 Commission's understanding of this that I would, while
12 he's here, like him to have an opportunity to say on
13 the OES products.

14 MR. GEARHART: I think as part of the
15 answer, too, if there are segments if you could
16 indicate if there are clear dividing lines.

17 Please go ahead.

18 MR. FUDALLA: It's clear to us that there's
19 three dividing lines. As I say, there's the OEM, and
20 there's the premium, and in the premium I will lump
21 the OES product, and then there's the economy line.
22 To us, there's always been those three demarcations.

23 MR. GEARHART: Can you in the post-hearing
24 brief indicate what the clear dividing lines are, you
25 know, whether it's price, certain physical

1 characteristics, where they're made and so forth?

2 MR. FUDALLA: Relative to the OES?

3 MR. GEARHART: Wherever there are segments
4 and there are clear dividing lines.

5 MR. FUDALLA: Fine. Yes.

6 MR. GEARHART: Indicate what is in and what
7 is out and what divides it and why.

8 MR. FUDALLA: Sure.

9 MR. GEARHART: The same for Petitioners if
10 they could do that.

11 Thank you. I think there are no further
12 staff questions.

13 MS. MAZUR: Diane Mazur. Madam Chairman,
14 there are no further staff questions.

15 CHAIRMAN OKUN: Thank you. Do counsel for
16 Petitioners have questions for this panel?

17 MR. GLICK: No, Madam Chairman.

18 CHAIRMAN OKUN: Okay.

19 MR. LOEB: Madam Chairman, the Respondents
20 are willing to waive rebuttal if the Commission
21 wishes.

22 CHAIRMAN OKUN: I'm going to go to the time
23 right now, but I just also wanted to make sure that
24 the last question that staff asked of counsel for
25 Petitioners. I believe you were asked to respond to

1 that as well.

2 If you heard that, Mr. Glick? Did you hear
3 the last question from staff?

4 MR. GLICK: Yes. We understand the
5 question, and we're going to respond to it.

6 CHAIRMAN OKUN: Okay. Thank you very much.

7 All right. The time remaining, the domestic
8 industry has a total of 22 minutes, which includes
9 five for closing. Respondents have a total of 11
10 minutes, which includes five for closing.

11 Before we shift tables and go to that, I do
12 want to thank this panel of witnesses very much for
13 your testimony, for your patience. I know it's been a
14 long afternoon. We've had lots of questions. It is
15 very important for our record, and we will look
16 forward to your post-hearing information as well.

17 With that, Mr. Glick, we'll take about two
18 minutes just to let this panel get out of the way, and
19 you can come up here.

20 (Whereupon, a short recess was taken from
21 5:07 p.m. to 5:09 p.m.)

22 CHAIRMAN OKUN: All right, Madam Secretary.
23 I believe we are ready to proceed.

24 You may proceed, Mr. Glick.

25 MR. GLICK: Okay. Thank you, Madam

1 Chairman. Mr. Easley is going to be the first
2 speaker.

3 MR. EASLEY: One of the issues that we've
4 continued to talk about, and Ms. Miller has talked
5 quite a bit about it, is the growing demand theory and
6 what's causing that.

7 Fourteen years ago, before I was the plant
8 manager, I was the guy that did the reverse
9 engineering at our plant, and so I have a little
10 insight as to what's happened over the years in the
11 design of the product. It really didn't occur to me
12 until just a little bit ago that this has caused some
13 effect in the market.

14 As original equipment manufacturers have
15 tried to meet ongoing cap standards to lower their
16 miles per gallon, they've been forced to take heavy
17 objects like rotors and reduce their size. The
18 challenge is that when they do that, they lose their
19 torsional advantage, if you will. Because it's
20 smaller, they can't stop the vehicle in the same
21 distance, which they're required to do.

22 As a result, what they had to do was come up
23 with a higher coefficient of friction to allow them to
24 meet those standards and meet the stopping distance.
25 That coefficient wears the braking surface out much

1 more quickly. We refer to it as closer to a one to
2 one replacement. It used to be rotors lasted longer
3 as a result of using different types or bigger rotors,
4 but now that they're smaller and the coefficient of
5 frictions went up, the rotors are wearing much faster.

6 One of the phenomena I believe that we're
7 seeing is that the shift in the market is taking place
8 as a result of this design change that's happened over
9 the years. The weight of the rotors on average are
10 going down, and the coefficient of friction is going
11 up to accommodate the torsional advantage that you
12 have to have to get that stopping distance. I just
13 wanted to bring that up.

14 One of the other points that was made
15 earlier is this in between line. The customer, whose
16 name I won't reveal, the line that they offer is their
17 biggest line, and they are one of the largest
18 retailers in the United States. This line comprises
19 of a full line of offering, but the top volume parts,
20 the top 200 parts, are sourced from Qualis. The
21 remainder of the line is sourced from Dana.

22 They are convinced, and Qualis was
23 successful in convincing them, that their strict
24 specifications at their plant in China allows them to
25 call this a premium Chinese product, so they can then

1 put it into what they call their blue line and blend
2 it with the North American program and basically come
3 up with what they consider to be a premium line.

4 If it really wasn't clear before the
5 difference, now it should be even less clear because
6 things like that are going on in the market. It's not
7 a small line for them. It's their absolute biggest
8 line that they have.

9 One of the comments that was made earlier is
10 that we won't sell product to Chinese importers. One
11 of our competitive advantages is that we've invested
12 in engineering and in tool and die capability and that
13 we can introduce and reverse engineer new products
14 very quickly.

15 Keep in mind that the bell curve that we
16 used to enjoy on a model, a new introduction, has been
17 shrunk tremendously because, as he mentioned earlier,
18 within eight months to a year when a new model is
19 offered there's a Chinese part that comes in at a
20 significantly reduced price, which then takes that
21 bell curve that was this wide and shrinks it into this
22 wide.

23 What we want to do is after we've made this
24 investment in developing this product we want to try
25 to get something out of it. We want to sell

1 something. What we're asked to do is fill the front
2 end of their line so that they can go in with our
3 customers and say I can offer you everything they can
4 now. I will offer you their full line.

5 If I charged him what I would have to to
6 amortize that tooling over that very small bell curve
7 that we're realizing now, and it would even get
8 smaller if he was selling the product, and he is a
9 competitor. This isn't just a distributor. It's a
10 competitor. They displace business from us. What
11 would happen is the price would be astronomical. It
12 would be more expensive than the original equipment
13 price.

14 The reason that we don't is because, one,
15 it's all we have left. You know, we don't get to sell
16 the high volume parts anymore. They're gone. What we
17 get left is the advantage we have in trying to develop
18 some of the new parts as quickly as possible. Keep in
19 mind, the sales on these is not significant. It
20 doesn't become significant until after a vehicle has
21 had like 40,000 or 50,000 on it and it needs that
22 brake job.

23 A lot of this is being able to show full
24 coverage, even though it's not really realizing a
25 tremendous amount of sales until the volume starts to

1 pick up on those applications.

2 Again, the cost that they want or the price
3 that they want to pay us for that new product is
4 basically near what our cost is, so we wouldn't get
5 anything for all the development that we've done on
6 that part. We just chose to say it's not worth it to
7 us to sell at that price.

8 MR. LAVARRA: Thanks, Dan.

9 Just for the record, I wanted to make
10 mention on the new product releases. To the very best
11 of my knowledge, we have not received or been asked to
12 quote product to Qualis, but certainly if they wanted
13 to request a quote we'd be happy to give one to them.

14 As it relates to what I hope to clarify in
15 the OE versus non-OE area just for clarity perhaps, in
16 my written testimony we stated that we believed there
17 in fact is two market channels, the OEM market that
18 goes directly to the automotive parts manufacturer,
19 and the warranty work that's done in the dealer.
20 After that, we believe that there is one aftermarket
21 and one aftermarket only for which as U.S. producers
22 we manufacture premium product and sell in that
23 aftermarket.

24 I believe I heard the other side question
25 whether our OE sales, my OE service product for which

1 we do provide one major customer, AC Delco, their non-
2 warranty brake product, and was that information
3 included in our data.

4 I confirmed with my colleague from Federal
5 Mogul, who supplies the same kind of service parts to
6 the Ford Motor Company. In fact, they are in our data
7 as the data asked us to provide this Commission with
8 the product manufactured in the U.S. and sold in the
9 U.S., and those data are clearly included in the
10 numbers which we've provided to you.

11 I hope that I've added some clarity to the
12 two different market segments that we believe exist in
13 our market. Thank you.

14 There was one other issue that was brought
15 up in the testimony earlier on about a closing of a
16 facility that we had after an acquisition in Amhearst,
17 New York. We acquired a business from ITT Aimco
18 Company and had a plant, as I had indicated in my
19 written statement to you, that we closed in 1999.

20 The volume in that plant over the time that
21 I dealt with it was in an average number that I'll be
22 glad to put in the record. It required production
23 volumes of about, and this goes by memory, so it's not
24 exact to the piece. About 19,000 pieces required per
25 day.

1 Sales continued to drop. Our production
2 needs out of that facility dropped to 16,000 over
3 time, 13,000 over time, and at the time that we closed
4 that facility due to loss in volume in our traditional
5 aftermarket product we were producing about 10,000
6 pieces at a time or in a day, and we consolidated that
7 facility into other existing facilities that we have
8 so that we could reduce our overhead cost to keep us
9 more competitive.

10 MR. GLICK: All right. Thank you, Madam
11 Chairman. I may make a few remarks and not take up
12 too much of your time, but there are a few issues here
13 that seem to be left over maybe into the legal area.

14 One is the what I consider totally
15 irrelevant references by opposing counsel to the Dana
16 parent company and its takeover. As the Commission
17 knows, you define the industry specifically by the
18 particular product line and the company that
19 manufactures it. By bringing in the parent company,
20 there is little reference particularly in this case.

21 Mr. LaVarra has told me that the parent
22 company produces many, many products. Of these, only
23 about 25 percent would be considered aftermarket, and
24 of these only about half of those would be in the
25 brake drum and rotor division, so we're down to about

1 12 percent. That would also include friction
2 material, which is not a brake and rotor.

3 Maybe out of the total Dana operations,
4 maybe less than 10 percent of it may be involved with
5 the companies here. Certainly it's very hard to make
6 any conclusion from that, particularly about its stock
7 being undervalued or whatever.

8 I might point out that the risk doesn't
9 differ. Maybe large parent companies are very willing
10 to close an unprofitable division, and the company can
11 still go out of business whether or not it's part of a
12 big company or not.

13 Another issue has to do with some of the
14 data here. I believe that opposing counsel seemed to
15 indicate that even a growth rate, using his numbers,
16 of 11 percent or something was marginal. I think Mr.
17 Flicker. We certainly don't consider that marginal.

18 The way they calculate their numbers, we
19 came up 18 percent using a three month period. This
20 is the period that the Commission itself uses as the
21 interim period. They sort of decided to use a five
22 month period very selectively, even though it's
23 actually seven months into the year, so we think there
24 may be some selective choosing of the data that they
25 come up with an 11 percent figure.

1 If we used a different month, you know,
2 perhaps it would be different, but we used the period
3 that the Commission used for the interim period, which
4 showed 18 percent, and believe that that's a relevant
5 figure.

6 The other point, and I'm not going to
7 belabor this -- Commissioner Koplan had very astutely
8 raised this point -- had to do with this comment by
9 opposing counsel that somehow the data in the sunset
10 review was not very useful because it didn't contain
11 very much information. Now, it's clear that it didn't
12 contain very much information.

13 To use a term that they use against us in
14 their brief, the Chinese thumbed their nose at the ITC
15 proceeding, decided not to participate, not to submit
16 any data, so we can assume that they did this because
17 the data that they would have submitted might have
18 enriched the record to show even more threat of
19 injury, and they decided they were better not to
20 participate.

21 We think it's very disingenuous for them now
22 to criticize that proceeding when they themselves had
23 an opportunity to enrich the record and participate,
24 and they didn't.

25 Thank you.

1 CHAIRMAN OKUN: Does that conclude your
2 rebuttal and closing?

3 MR. GLICK: That concludes our remarks. I
4 apologize. Thank you.

5 CHAIRMAN OKUN: Okay. Thank you very much
6 then.

7 We will now hear closing remarks from the
8 Respondents, unless Mr. Loeb is telling us he's
9 waiving those, too.

10 MR. LOEB: We are happy to waive both
11 rebuttal and closing remarks.

12 If the Commission has questions, we'd
13 certainly entertain them. We somewhat doubt that
14 that's the condition.

15 CHAIRMAN OKUN: I don't know. Actually,
16 that's fine. If that's the case then, I believe we
17 have come to the end of our hearing.

18 Under Section 421(b) of the Trade Act of
19 1974, the post-hearing briefs, statements responsive
20 to questions and requests of the Commission and
21 corrections to the transcript must be filed by
22 July 22, 2003. Final comments on market disruption
23 are due July 31, 2003.

24 With no other business to come before the
25 Commission, I again want to thank everyone for their

1 participation this afternoon, and this hearing is
2 adjourned.

3 (Whereupon, at 5:22 p.m. the hearing in the
4 above-entitled matter was concluded.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Certain Brake Drums and Rotors
INVESTIGATION NO.: TA-421-3
HEARING DATE: July 18, 2003
LOCATION: Washington, D.C.
NATURE OF HEARING: Public 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: July 18, 2003

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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).

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