

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
) Investigation No.:
SYNTHETIC INDIGO) 731-TA-851 (Review)
FROM CHINA)

Pages: 1 through 82

Place: Washington, D.C.

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THE UNITED STATES INTERNATIONAL TRADE COMMISSION

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) Investigation No.:
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Thursday,
 February 9, 2006

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

The hearing commenced, pursuant to notice, at
 9:30 a.m. before the Commissioners of the United States
 International Trade Commission, the Honorable STEPHEN
 KOPLAN, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

CHAIRMAN STEPHEN KOPLAN
 VICE CHAIRMAN DEANNA TANNER OKUN
 COMMISSIONER JENNIFER A. HILLMAN
 COMMISSIONER CHARLOTTE R. LANE
 COMMISSIONER DANIEL R. PEARSON
 COMMISSIONER SHARA L. ARANOFF

APPEARANCES: (cont'd.)

Staff:

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WILLIAM R. BISHOP, HEARINGS AND MEETINGS
COORDINATOR
SHARON BELLAMY, HEARINGS AND MEETINGS ASSISTANT
JOANNA LO, INVESTIGATOR
STEVE WANSER, INDUSTRY ANALYST
WILLIAM POWERS, ECONOMIST
JOHN ASCIENZO, ACCOUNTANT/AUDITOR
GRACEMARY ROTH-ROFFY, ATTORNEY
DIANE MAZUR, SUPERVISORY INVESTIGATOR

In Opposition to the Continuation of Antidumping Duty
Orders:

On behalf of Clariant Corporation:

TIMOTHY A. FRIEMARK, Vice President, Textiles
North America, Clariant Corporation
GERALD JONES, Consultant, Former Director of Denim
Sales, Clariant Corporation

MATTHEW T. MCGRATH, Esquire
STEPHEN W. BROPHY, Esquire
Barnes, Richardson & Colburn
Washington, D.C.

On behalf of Swift Galey and C.H. Patrick & Company,
Inc. (C.H. Patrick):

FORREST E. PUTNAM, Technical Director, Swift Galey
THOMAS J. REARDON, President and CEO, C.H. Patrick
VICKY ROBINSON, Marketing Manager, C.H. Patrick

WILLIAM C. SJOBERG, Esquire
BARBARA A. MURPHY, Esquire
Adduci, Mastriani & Schaumberg, L.L.P.
Washington, D.C.

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P R O C E E D I N G S

(9:30 a.m.)

CHAIRMAN KOPLAN: Good morning. On behalf of the United States International Trade Commission I welcome you to this hearing on Investigation No. 731-TA-851 (Review) involving Synthetic Indigo From China.

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

Notice of investigation for this hearing, list of witnesses and transcript order forms are available at the Secretary's desk. I understand that the parties are aware of the time allocations. Any questions regarding the time allocations should be directed to the Secretary.

As all written material will be entered in full into the record it need not be read to us at this time. The parties are reminded to give any prepared nonconfidential testimony and exhibits to the Secretary. Do not place any nonconfidential testimony

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

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

8 Madam Secretary, are there any preliminary
9 matters?

10 MS. ABBOTT: No, Mr. Chairman.

11 CHAIRMAN KOPLAN: I just have one. I would
12 say to counsel that as you see you've been allocated
13 the full 60 minutes, the traditional time. I'm also
14 aware of the fact that you both indicated you felt you
15 only wanted 20 apiece. I will not personally be
16 offended if you decide to follow your original game
17 plan.

18 With that, Madam Secretary, we can proceed.

19 MS. ABBOTT: Opening remarks in opposition
20 to continuation of the order will be by Matthew T.
21 McGrath, Barnes, Richardson & Colburn.

22 MR. MCGRATH: Mr. Chairman, if it's okay I
23 guess there's no other side to parry with, so I'll
24 make my statement from here.

25 Mr. Chairman and members of the Commission,

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1 I'm Matt McGrath of Barnes, Richardson & Colburn
2 representing Clariant Corporation. We are here today
3 with one of our competitors and one of our customers
4 to urge the Commission to reach a negative
5 determination in this sunset review and to permit this
6 antidumping order on indigo to die a peaceful death.

7 This order has become a case study in the
8 mischief that can be done by a government subsidy
9 program that requires no proof of qualification,
10 combined with an antidumping duty that only protects
11 foreign producers from one another in the U.S. market.

12 You will hear today from only one side of
13 the case because the sole domestic manufacturer
14 withdrew its representation last week and asked you to
15 continue to communicate through its bankruptcy
16 trustee. In other words, we feel that the eminence of
17 this hearing basically required Buffalo Color to admit
18 the obvious. They have ceased to exist as a domestic
19 producer.

20 The record will show that to the extent the
21 sole domestic producer continued in business after the
22 order was issued, they became an importer of subject
23 merchandise from the Chinese exporter with the lowest
24 dumping deposit rate. It will also show that the sole
25 domestic producer's operations completed a reduction

1 that was already underway before the antidumping
2 investigation took place and would have ended the same
3 way regardless of whether an antidumping order had
4 been issued.

5 It will also show that there are no
6 substitutes for indigo in the dominant market for the
7 product -- denim fabric, especially jeans -- so that
8 no other producers can benefit from the order.

9 It will also show that the cost of
10 environmental regulatory compliance, combined with the
11 inexorable pressure on denim apparel manufacturers to
12 continue to leave the United States, make indigo
13 production economically untenable in this country
14 regardless of whether an antidumping order is in
15 place.

16 So one might ask if the antidumping order is
17 irrelevant then why would anyone be appearing here
18 today to argue that it be revoked? There are three
19 very important answers to this.

20 First, Clariant's health as a manufacturer
21 and a supplier of many chemicals to the U.S. textile
22 industry, an employer of many employees in the United
23 States, is dependent on the viability of the
24 industries that it serves. This unnecessary tariff is
25 one more reason for denim manufacturers to move

1 offshore.

2 Secondly, the tariff is now being used only
3 as a shield by one importer of Chinese product against
4 other sources of Chinese product, which is clearly an
5 improper competitive impact not intended by the
6 dumping law.

7 Third, the duty that is now imposed on U.S.
8 denim manufacturers and their employees is a tax on
9 doing business in the United States, and this tax does
10 not serve any compensating benefit to any supplying
11 industry.

12 To the extent Buffalo has received Byrd
13 Amendment disbursements as an importing shell company,
14 the benefits of this tax on denim manufacturers are
15 effectively being passed through to the very foreign
16 producers whose unfair pricing behavior is supposedly
17 being remedied by the tax.

18 In summary, this is an order which is doing
19 much harm and no good, and the Commission should
20 determine that revocation will not result in a
21 continuation or recurrence of material injury to any
22 domestic industry producing a like product. Thank
23 you.

24 I guess since there's no other statement to
25 be offered, if I could proceed?

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1 CHAIRMAN KOPLAN: Without objection.

2 MS. ABBOTT: I did want to let the Chairman
3 know that all witnesses have been sworn.

4 (Witnesses sworn.)

5 CHAIRMAN KOPLAN: I thought I covered that.
6 I'm sorry.

7 You may proceed, yes.

8 MR. MCGRATH: Thank you very much. We have
9 today two witnesses, gentlemen from Clariant
10 Corporation, Mr. Timothy Friemark and Mr. Gerald
11 Jones.

12 I think Mr. Friemark can introduce himself
13 and his position and proceed.

14 CHAIRMAN KOPLAN: Welcome.

15 MR. FRIEMARK: Thank you, Mr. Chairman.
16 Good morning. My name is Tim Friemark, and I'm the
17 Vice President of the Textiles Group North America,
18 Clariant Corporation, headquartered in Charlotte,
19 North Carolina.

20 CHAIRMAN KOPLAN: Excuse me. If you could
21 move that microphone closer to you?

22 MR. FRIEMARK: That would help?

23 CHAIRMAN KOPLAN: Yes.

24 MR. FRIEMARK: Very good. All right. I
25 have been with Clariant since 1979 and have extensive

1 technical and marketing experience in the paper and
2 the textile industry. In my current position, I have
3 responsibility for the operations of the textile unit
4 in the United States, Canada and Mexico.

5 I appreciate the opportunity to testify
6 today and provide information to support the immediate
7 revocation of the antidumping order on synthetic
8 indigo from China.

9 Clariant is one of the largest U.S. and
10 global manufacturers and suppliers of chemicals, dyes
11 and related products for the paper and textile
12 industries, among others. We have 28 facilities
13 across the United States employing 2,200 people.

14 Clariant and its predecessors have been in
15 the business of providing products and services to the
16 denim industry for over 50 years and started selling
17 indigo to the denim industry in 1994 after we were
18 encouraged by our major denim customers to start
19 supplying the product.

20 Since that time, Clariant has imported or
21 purchased indigo in powder form and then converted it
22 to paste form, a process that primarily involves the
23 addition of water and various stabilizers, for sale to
24 the denim manufacturers.

25 Clariant is one of three remaining suppliers

1 of synthetic indigo to the denim market, with Dyestar
2 and C.H. Patrick being the others. The largest
3 remaining domestic denim manufacturers include Cone
4 Mills, Mt. Vernon and Avondale.

5 There is no domestic production of synthetic
6 indigo, nor is there likely to be domestic production
7 in the near future. Obviously we think our business,
8 including our employee base and dozens of other
9 textile chemicals, would benefit from the elimination
10 of this needless tax.

11 More importantly, however, I urge the
12 Commission to start looking at the impact of this
13 order on the consumer of indigo, the denim
14 manufacturers, who continue to leave the U.S. with
15 increasing frequency to seek not only lower labor
16 costs, but lower cost material such as cotton textile
17 raw material and indigo dye.

18 As the production of denim in the United
19 States has declined, the demand for synthetic indigo
20 in the United States has also declined. I would
21 estimate that U.S. demand for synthetic indigo has
22 declined 30 to 40 percent since the original
23 antidumping order was put in place in 2000 with a U.S.
24 demand in 2005 of approximately 15 million pounds on a
25 42 percent basis.

1 Clariant has been able to serve some of
2 those denim customers by following them to their new
3 locations in Mexico or Central America and import
4 indigo directly to those sites from global sources.
5 With the closing of its production facilities, the
6 only way that Buffalo would have any hope of selling
7 indigo in these transplants is by exporting the indigo
8 they have imported from their favorite supplier in
9 China.

10 As Mr. Jones will discuss further, there is
11 simply no reason to continue the antidumping order
12 since there is and will be no domestic industry to
13 protect.

14 Thank you. I would be pleased to respond to
15 any questions you may have.

16 MR. JONES: Good morning, Mr. Chairman,
17 members of the Commission. My name is Gerald Jones.
18 I was Director of Denim Dyes for Clariant Corporation
19 for over 15 years. In that position I was responsible
20 for all Clariant dye sales and service in the denim
21 industry throughout the U.S. market and some parts of
22 the NAFTA region.

23 I am currently a consultant to Clariant. I
24 have been with the company in some capacity for over
25 44 years and have been in positions servicing the

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1 denim industry for over 30 years.

2 For approximately the last three years
3 essentially all the indigo in the U.S. market has been
4 supplied from countries not subject to the antidumping
5 order against China or from one Chinese producer,
6 Liyang Skyblue, which received a low antidumping
7 deposit rate from the Department of Commerce.

8 There has been little or no domestic
9 production of synthetic indigo during that period.
10 Buffalo Color Corporation was the sole U.S. producer
11 of indigo until it went bankrupt in October of 2002,
12 faced with its own underfunded pension liabilities and
13 the high production cost of complying with U.S.
14 environmental regulations.

15 In Clariant's experience, Buffalo Color has
16 not sold or offered to sell domestically produced
17 indigo to the primary U.S. market, the denim textiles,
18 since at least July of 2003.

19 Since its bankruptcy, Buffalo Color has been
20 primarily or solely an importer of indigo from Liyang
21 Skyblue in China. Despite its inability to produce
22 the product domestically, Buffalo Color has still been
23 able to collect Byrd Amendment disbursements, which
24 essentially refunds to Buffalo Color any antidumping
25 duties it pays on its own imports, as well as

1 transferring to it antidumping duties paid by its
2 competitors or their customers.

3 They receive these funds despite the fact
4 that it no longer competes as a domestic producer, but
5 apparently as an importer. I can see no purpose to be
6 served in maintaining an antidumping order under these
7 circumstances except to give one Chinese supplier an
8 advantage over all the other Chinese suppliers in the
9 market.

10 Clariant does not believe that there is any
11 possibility that Buffalo Color will be resuming the
12 production of synthetic indigo, and especially not in
13 any meaningful quantities to serve the denim market.
14 To the best of Clariant's knowledge, Buffalo Color
15 currently has no production employees, nor has it
16 received any inquiries from anyone willing to purchase
17 its assets for use in domestic indigo synthesis.

18 It is my understanding that Buffalo has
19 actually sold or otherwise disposed of its
20 synthesizing equipment two years ago and can no longer
21 manufacture itself to process imported indigo powder.
22 This information will be consistent with the virtual
23 disappearance of Buffalo from the denim market as a
24 supplier in the last two years.

25 The fact is the production of synthetic

1 indigo involves the use of highly toxic chemicals,
2 including aniline, formaldehyde, hydrogen cyanide and
3 sodium amide, all of which are highly hazardous
4 materials and heavily regulated by the Environmental
5 Protection Agency.

6 Aniline and formaldehyde could have chronic
7 health effects. Hydrogen cyanide has acute health
8 effects, and sodium amide is a highly flammable
9 material which reacts violently with water.

10 The production of indigo using these
11 materials ultimately produces a number of effluent
12 waste streams which must be treated and disposed of,
13 significantly increasing production costs especially
14 in the United States.

15 The environmental regulatory compliance
16 costs alone ultimately make the U.S. production of
17 synthetic indigo uneconomical. In fact, Clariant
18 actually considered buying Buffalo's U.S. operations
19 when we first considered entering the indigo market in
20 the 1990s, but ultimately we determined it was not
21 willing to assume responsibility for the manufacturing
22 side, which carries both significant potential legal
23 liabilities arising from environmental regulations and
24 the high labor of pension costs of Buffalo.

25 Now, I understand that there has been some

1 discussion of whether similar products can serve the
2 indigo market in order to determine whether other
3 domestic chemical manufacturers might benefit now or
4 in the future from this antidumping order.

5 We have investigated the alternatives, and
6 there is simply no substitute for synthetic indigo.
7 Denim mills have been looking for such a substitute
8 for years and have tried to use a variety of other
9 dyes, including reactive dyes, directs, vat dyes,
10 without any success. If other forms of dyes or color
11 material would produce the same appearance as jeans,
12 that alternative would have been adopted long ago and
13 we would not be here today.

14 The difference between indigo and other dyes
15 is that the indigo plating does not penetrate the
16 yarn. The core of the yarn remains white, while the
17 outside of the yarn is blue. This surface dyeing
18 causes the indigo to impart a very unique wash down
19 characteristic typically seen in denim jeans.

20 As the jeans are washed, the indigo washes
21 off, therefore exposing a progressively lighter color.
22 The indigo dyed jean also retains the light and dark
23 color contrast around the pockets, seams and cuff
24 areas.

25 Clariant actually experimented with the use

1 of sulfur dyes as a possible substitute for indigo,
2 but these experiments failed. The sulfur dyes
3 penetrate the yarn and do not have the same degree of
4 wash down and do not maintain the tone of blue desired
5 by the retailer and the consumer. As a result, the
6 jeans dyed with sulfur dyes ended up having a solid
7 dyed appearance rather than the typical denim look.

8 In summary, there's no domestic industry
9 being protected by the antidumping order, nor is there
10 likely to be such an industry in the future. We
11 respectfully request that the Commission revoke the
12 order.

13 Thank you very much, and I'd be pleased to
14 answer any questions you might have.

15 MR. MCGRATH: Mr. Chairman, that completes
16 the testimony from Clariant. I think we're within our
17 time allocation.

18 CHAIRMAN KOPLAN: You're running hot.
19 Counsel, are you ready to proceed?

20 MR. SJOBERG: Yes, we are, Mr. Chairman.

21 Good morning, Mr. Chairman, Commissioners.
22 My name is Will Sjoberg. I'm today joined by Barbara
23 Murphy from the law firm of Adduci, Mastriani &
24 Schaumberg.

25 I'm here on behalf of Swift Galey, one of

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1 the foremost manufacturers of denim in the United
2 States, and C.H. Patrick, one of the three remaining
3 U.S. companies that convert indigo powder to paste.
4 As the Commission may be aware, the other indigo
5 converter, Buffalo Color, closed its operations in
6 2005.

7 Speaking on behalf of Swift Galey will be
8 Forrest Putnam, who will be then followed by Tom
9 Reardon of C.H. Patrick. Vicky Robinson, the
10 Marketing Manager of C.H. Patrick, will also be
11 available to respond to the Commission's questions.

12 Mr. Putnam?

13 CHAIRMAN KOPLAN: Welcome.

14 MR. PUTNAM: Good morning, Mr. Chairman and
15 Commissioners. My name is Forrest Putnam. I am
16 currently Technical Director for Swift Galey. I've
17 occupied various technical positions in the past 30
18 years and have served in my current position for 17
19 years with the corporation known as Sift Galey.

20 Swift Galey was formed in 1998 when Galey &
21 Lord, LLC, the largest North American producer of
22 twill, poplin and corduroy fabrics, merged with Swift
23 Denim, one of the largest and most recognized global
24 denim brands. Swift Galey is currently headquartered
25 in Atlanta, Georgia.

1 Swift Galey maintains production facilities
2 in Columbus, Georgia; Marion, North Carolina;
3 Cramerton, North Carolina; and Society Hills, South
4 Carolina. Swift Galey also has production facilities
5 in Canada, Mexico, Africa and the Philippines.

6 Swift Galey currently purchases synthetic
7 indigo from various U.S. converters, including
8 Dyestar, Clariant and C.H. Patrick. This unique dye
9 stock is used to produce various yarn-dyed denim
10 fabrics. The resulting fabrics are manufactured into
11 garments by our customers and after-treated with a
12 multitude of different wash procedures to give various
13 and unique appearances.

14 As of March 2003, Swift Galey was purchasing
15 100 percent of its synthetic indigo dye from Buffalo
16 Color. To put Swift Galey's purchases of synthetic
17 indigo from Buffalo Color in perspective, during the
18 period from January 2001 through March 2003, Swift
19 Galey purchased around 12.3 million pounds of
20 synthetic indigo at 20 percent paste from Buffalo
21 Color.

22 On an annual basis, Swift Galey currently
23 consumes the equivalent of 4.8 million pounds of
24 synthetic indigo, again as 20 percent paste, in the
25 production of denim fabric.

1 The reason why Swift Galey ceased to
2 purchase synthetic indigo dye from Buffalo Color in
3 2003 was because Buffalo Color insisted on significant
4 price increases beyond those set forth in purchase
5 agreements between Swift Galey and Buffalo Color.

6 In a letter dated February 26, 2003, Buffalo
7 Color raised prices 56 percent with a two-day notice
8 and informed Swift Galey that current contracts would
9 not be honored. As a result of these increases, Swift
10 Galey switched to Dyestar's indigo sourced out of
11 Germany.

12 Nonetheless, Swift Galey had attempted to
13 contact Buffalo Color in an effort to again possibly
14 purchase synthetic indigo from Buffalo Color. Buffalo
15 Color did not return voicemail messages or even answer
16 the phone. During the period of three months in
17 February to April of 2005, no less than 10 calls were
18 placed to Buffalo Color. No calls were returned
19 during this period.

20 It is my understanding that Buffalo Color no
21 longer produces synthetic indigo dye in the United
22 States for sale in commercial quantities and that
23 Buffalo Color currently employs fewer than three
24 individuals, if any at all.

25 As a result of our experience with Buffalo

1 Color, Galey & Lord sought and found alternative
2 sources of synthetic indigo dye in Germany and the
3 People's Republic of China through various U.S.
4 converters.

5 On behalf of Swift Galey and it's 2,500 U.S.
6 based employees, we hereby request the antidumping
7 order for synthetic indigo be revoked in order to
8 preserve the remaining U.S. jobs. The current
9 antidumping duties on synthetic indigo fail their
10 intended purposes because there is no domestic
11 industry producing indigo.

12 The only effect of the current duties are to
13 increase the cost of imported indigo from all sources
14 to the point of having a detrimental effect on the
15 remaining U.S. denim industry and the ultimate
16 consumer.

17 Thank you very much.

18 MR. REARDON: Good morning, Mr. Chairman,
19 Commissioners. Thank you very much for the
20 opportunity to appear before the Commission.

21 My name is Tom Reardon. I am president, CEO
22 and majority owner of C.H. Patrick & Company. I have
23 35 years' experience in the dyes and chemical business
24 and have run Patrick for 20 years. I've held
25 technical, marketing, sales and administrative

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1 positions and have a B.S. and M.S. in chemistry.

2 C.H. Patrick is a U.S. owned company based
3 in South Carolina with 60 employees. Our plant
4 operations are in Greenville and Williston, South
5 Carolina. The company has been in existence for 60
6 years and in the indigo business for over 35 years.

7 C.H. Patrick is an importer of synthetic
8 indigo powder. We convert the powder into paste. The
9 powder is milled to specific particle size and
10 standardized to a 42 percent paste. The final product
11 is evaluated by transmission and physical dyings in
12 order to meet all customer requirements.

13 From the period of 1996 through 1999, C.H.
14 Patrick was the largest supplier of indigo in the
15 United States. When the dumping duty was levied in
16 2000, C.H. Patrick was no longer competitive in the
17 U.S. market. Buffalo Color eventually held a monopoly
18 on the domestic indigo paste business. Prices began
19 to rise, and this put a tremendous economic strain on
20 an already beleaguered denim business.

21 Customers asked Patrick to find alternative
22 sources. We reentered the market in the summer of
23 2002 with sourcing from Brazil and Mexico. When
24 Buffalo filed Chapter 11 in October 2002, the industry
25 grew more nervous about supply and pricing from

1 Buffalo. Buffalo exited the U.S. denim business in
2 2003 and has not reentered.

3 In the summer of 2003, C.H. Patrick met with
4 Wego Chemical & Mineral. Wego advised us that they
5 had formed a joint venture with Liyang Skyblue of
6 China, and they were the exclusive U.S. distributor.
7 Liyang had secured the lowest dumping duty of 4.6
8 percent. Wego remains today the sole U.S. importer of
9 this Chinese indigo.

10 In 2004, we learned that Buffalo had some
11 remaining inventory of 42 percent liquid. Upon
12 contacting them, we were informed that any transaction
13 involving this inventory would be handled through
14 Wego. Up to that point we were not aware that there
15 was a business relationship between the two companies.

16 Today, Wego supplies indigo powder to all
17 the U.S. indigo converters -- C.H. Patrick, Clariant
18 and Dyestar. This situation continues to harm the
19 U.S. denim business. I purchase China indigo from
20 Wego at \$7 a kilogram. Chinese indigo is sold in
21 Mexico for \$4 a kilogram. When you translate this
22 into a 42 percent indigo paste, the U.S. manufacturers
23 are paying a 60 percent premium versus Mexican
24 manufacturers.

25 In the past decade, seven U.S. denim plants

1 have closed because they couldn't compete with
2 imports, plants in Morrisville, North Carolina;
3 Stonewall, Mississippi; Erwin, North Carolina;
4 Liberty, North Carolina; Lindale, Georgia; Cliffside,
5 North Carolina; Warrenville, South Carolina.

6 In conclusion, there is no domestic industry
7 producing indigo. The only beneficiaries of the
8 dumping duty are Wego, who essentially have a monopoly
9 on the U.S. indigo paste business; Buffalo, who is
10 still collecting Byrd money, even though they don't
11 manufacture indigo; and Liyang, which is the only
12 Chinese company that can economically export to the
13 U.S.

14 To continue the order would only further
15 injure the U.S. denim industry, an industry already
16 under severe pressure from foreign competition.

17 Thank you very much for your attention and
18 consideration.

19 MR. SJOBERG: That concludes our remarks.

20 CHAIRMAN KOPLAN: Thank you. Thank you very
21 much. I thank the witnesses for their testimony.

22 We'll begin the questioning with Vice
23 Chairman Okun.

24 VICE CHAIRMAN OKUN: Thank you, Mr.
25 Chairman, and let me also join in welcoming you here

1 this morning. I very much appreciate your
2 participation and particularly those members of the
3 industry who have taken the time to travel and be with
4 us.

5 It's always particularly important. Even
6 when one side or the other doesn't show up, I still
7 think you serve a very useful role in coming to a
8 hearing, and I often learn a lot from it.

9 We have an unusual fact situation here, and
10 I think both briefs of both parties observe that if we
11 look at Sebacic Acid there are a number of
12 similarities with that case, and I think counsel has
13 pointed us to that as the way that the Commission
14 would reach a negative determination.

15 I'm going to start my questions, and I will
16 have some questions for the industry witnesses, but I
17 am going to start with counsel for that reason because
18 I think there are some differences with the fact
19 pattern in Sebacic Acid, and I want to get a further
20 explanation from counsel on how they view the
21 analysis.

22 Let me start on the domestic industry and
23 whether the Commission is required to look for a most
24 similar like product if there's no domestic production
25 because in Sebacic Acid the Commission had noticed or

1 had noted that we had defined the domestic like
2 process to be sebacic acid, which was like the subject
3 merchandise. We do not further address the argument
4 in the absence of such a finding that we should define
5 the domestic like product of the other asalic acid.

6 In the proceeding on that we talked a lot
7 about that there was production during the period of
8 investigation and therefore we didn't have to go to
9 the next argument.

10 Now, I know, Mr. McGrath, in your brief and
11 Mr. Friemark's testimony talked about that there is
12 not a most similar. There's no substitute is the word
13 that you used.

14 I have kind of a general question first,
15 which is is the fact situation different here than in
16 Sebacic Acid where we, the Commission, spent some time
17 on that there was domestic production and therefore we
18 had a like product?

19 Do you think that's a distinction here, or
20 is it a distinction without a difference for you?
21 I'll start with you, Mr. McGrath, but, Mr. Sjoberg,
22 I'd like your counsel on that as well.

23 MR. MCGRATH: Well, Commissioner, I think
24 the fact that there is no production of the like
25 product, and in that case I guess there was some

1 production of what was determined to be the like
2 product.

3 If there still is an asset, if there's still
4 productive assets existing in the United States
5 producing the like product and they are in fact the
6 same productive assets that formulated the basis for
7 the original petition, I think the Commission is
8 obligated to take a look at whether or not those
9 productive assets are indeed productive, if they still
10 exist in such a manner that that industry might
11 produce under the right circumstances, might produce
12 the like product that's already been found to exist.

13 I think that's what you're trying to do
14 here. What we've done is I think gone a step further
15 in our presentation to indicate that if you do look at
16 the question of like or in the absence of like most
17 similar in characteristics and uses, if you went to
18 the second step you'd find that there is no product
19 that's comparable under the second step either, but in
20 the first view of it I think the question that comes
21 to mind, and I think the record is a little bit hazy
22 on this question.

23 Do those assets still exist, and do they
24 exist in such a fashion that they could be started and
25 productive once again? It's always going to be a

1 question where you have an industry that has gone into
2 bankruptcy or stopped producing for one reason or
3 another.

4 What we've done is focused in on that or
5 focused in on both issues I guess. The like product
6 assets still exist there, but we don't think they
7 exist in -- I think probably some of the information
8 is confidential, but if the Commission, the staff,
9 went and looked at the facilities I think that the
10 information available to our witnesses is that the
11 facilities that still exist are no longer complete
12 enough to be able to produce. Some of those assets
13 have been sold off.

14 It appears that the intent of the current
15 owner of those assets, the Pension Benefit Guaranty
16 Corporation, intends to sell off those assets to meet
17 whatever liabilities still exist if they haven't been
18 sold off already, and perhaps by the time you vote
19 they will have. It seems like the process is moving
20 right now as we speak.

21 What we wanted to do was cover both sides of
22 it. I think that you're not obligated to go beyond
23 the like product that existed at the time you made the
24 initial determination, but if you choose to do so we
25 want to make it very clear that this is not a very

1 finely limited definition of a scope or of an industry
2 so that there might be something else out there that's
3 serving the same purpose. This is a very unique
4 product. Indigo is used to make jeans. That's where
5 we are. There's nothing else that does that.

6 I guess the answer to your question is the
7 Commission can look to the second step in like product
8 or in the absence of like, but we feel that in both
9 cases there is nothing that meets that requirement.

10 VICE CHAIRMAN OKUN: Mr. Sjoberg, do you
11 have anything to add to that for your client?

12 MR. SJOBERG: I concur with Mr. McGrath. My
13 reading of Sebacic Acid is that the domestic like
14 product in that case was originally coextensive with
15 the scope of the antidumping duty order, much like it
16 is here. In Sebacic Acid, you always had one company
17 producing a domestic like product; maybe not the same
18 company, but there was only one company producing the
19 domestic like product.

20 Here you have that same scenario, but you
21 only have one company. There's nobody to switch off
22 with. Both in Sebacic Acid and in the present case
23 there's no longer production of that domestic like
24 product that is coextensive with the scope.

25 Now, to the extent that the domestic

1 industry included, and I'm not going to pronounce this
2 correctly, alvaic acid --

3 VICE CHAIRMAN OKUN: I once knew. I
4 couldn't remember as I just looked at that.

5 MR. SJOBERG: To the extent that the
6 domestic industry was increased or broadened for
7 purposes of the sunset review to include that, again I
8 concur with Mr. McGrath. We don't have a close
9 substitute like that in this case. There's no
10 substitute for synthetic indigo.

11 VICE CHAIRMAN OKUN: Okay.

12 MR. SJOBERG: Thank you.

13 VICE CHAIRMAN OKUN: I have one other again
14 a legal question because I think even in Sebacic Acid
15 when you have unusual circumstances trying to
16 understand how these cases should be analyzed under
17 this statute.

18 One thing that I would also be interested to
19 hear counsel comment on, and, Mr. McGrath, you touched
20 on at the very end of your remarks when you said the
21 Commission reached a like product determination in the
22 original investigation and doesn't need to go beyond
23 what it found at that point. I think that's a little
24 similar to what you're saying where it was within the
25 scope of similar.

1 The question I have in sunset is should the
2 Commission ever be going beyond the like product? In
3 other words, if an antidumping duty order is imposed
4 on a product and when the sunset comes back when we
5 have these situations where a U.S. company is no
6 longer producing if that is the answer -- if that's
7 the determination; it's no longer produced -- is the
8 Commission under the statute required to look to most
9 similar to when that wasn't what the original order
10 was brought on? Does it matter?

11 MR. MCGRATH: Well, it certainly creates
12 very troubling questions for how your decision might
13 be sustained, especially if it were looked at on
14 appeal.

15 The original decision was made presumably as
16 to whether or not there was injury to a domestic
17 industry producing a like product, and if the industry
18 at the time was the identical co-extensive product
19 producing indigo then the question that you're
20 reaching in the sunset five years later is whether or
21 not revocation of the order is likely to cause injury
22 to an industry that is not the same industry, but it's
23 most similar in characteristics and uses. Therefore,
24 it was never looked at in the first instance.

25 In finding whether the revocation of the

1 order will injure an industry that's defined in some
2 different fashion than what you found was injured in
3 the first place then, yes, that does create a problem.
4 I think that's why, and my feeling is that under the
5 statute the Commission is not obligated to go beyond
6 looking at what was the definition in the original
7 investigation.

8 Are you required to limit it to that? I
9 think there's a good argument for that, yes, because
10 if you go beyond it you're creating new questions
11 about whether the decision you make now is consistent
12 with the original determination.

13 VICE CHAIRMAN OKUN: Okay. Mr. Sjoberg, my
14 yellow light is on, but did you have anything you
15 wanted to add on that point?

16 MR. SJOBERG: I concur with Mr. McGrath.

17 VICE CHAIRMAN OKUN: Okay. Thank you very
18 much. I appreciate those answers.

19 CHAIRMAN KOPLAN: Thank you.

20 Commissioner Hillman?

21 COMMISSIONER HILLMAN: Thank you, and I too
22 would join my colleagues in welcoming you and thanking
23 you for taking the time to be with us this morning.

24 Maybe if I can start with making sure I
25 understand what your perspective is on the status of

1 Buffalo Color. Part of it is I'm trying to make sure
2 I understand what your perspective is on whether it
3 would be possible and at how much in essence time and
4 expense for Buffalo Color to resume production of it.

5 As I understand the testimony, I guess it
6 was -- I'm sorry -- you, Mr. Jones, who said that it
7 was your understanding that they have sold or disposed
8 of their synthesizing equipment. Help me understand
9 exactly what that means in terms of their ability to
10 restart production.

11 MR. JONES: It is our understanding, and the
12 textile market is like anything else. You speak
13 something in New York, and it's heard in Raleigh,
14 North Carolina. A lot of information is given from
15 mill to mill and from competitor to competitor.

16 We were told about two years ago through a
17 former Buffalo employee who still had contact with
18 Buffalo that the equipment was in the process of being
19 sold, some had been sold, and some had even been sold
20 as scrap metal and that they were ceasing all
21 manufacture of synthesizing indigo.

22 COMMISSIONER HILLMAN: Okay. In the absence
23 of that synthesizing equipment, the only thing they
24 could do if they wanted to reenter the market was to
25 take powder and convert it into paste?

1 MR. JONES: Yes, ma'am.

2 COMMISSIONER HILLMAN: And they would still
3 have the ability to do that in the absence of
4 synthesizing equipment?

5 MR. JONES: I would imagine with some very
6 minor investments in equipment for pots and things
7 like that and stain to convert. They could do it.

8 COMMISSIONER HILLMAN: Okay. Minor. Would
9 you have a sense of how long or how expensive it would
10 be?

11 MR. JONES: No, ma'am, I do not.

12 COMMISSIONER HILLMAN: Okay. Again for
13 counsel, because at least I think it is not public
14 information. There is some information in the staff
15 report with respect to some projections on how
16 expensive and how much time it would take. Again, I
17 can't recall whether that's confidential. I think it
18 may be.

19 If there is anything further that anybody
20 could add to this issue of whether that seems
21 realistic in terms of any ability of Buffalo Color to
22 reenter the market I think it would be helpful just to
23 have that on the record.

24 MR. MCGRATH: Yes, Commissioner. We're
25 trying to find a way to do that. There is a very

1 specific description of the things that your staff saw
2 when they visited the plant, and it's APO material.

3 We wanted to make sure that the testimony
4 that was being provided was at least not inconsistent
5 with what's been reported. That's why I say there's
6 some mixed information in the record.

7 I don't think it's real clear from the
8 information you have been provided in your visit to
9 the plant whether or not what's there is fully capable
10 of simply resuming production of synthesized indigo.

11 We'll review it again to see how much is
12 actually public and then maybe get some advice from
13 folks in the industry.

14 COMMISSIONER HILLMAN: Okay. And then one
15 of the other decisions that the Commission made in its
16 original determination was not to include converters
17 as part of the domestic industry.

18 Given that we have some converters here I'm
19 wondering if there is anything that has changed about
20 conversion or anything further that can be added in
21 terms of again the process itself of taking the powder
22 and converting it to a paste in terms of the amount of
23 value added that you add to it.

24 Has there been anything that has changed in
25 light of Buffalo Color not producing here that would

1 suggest that the Commission ought to relook at this
2 issue of whether the converters are included within
3 the scope of the domestic industry?

4 Anything that can be said on the record in
5 terms of how much value do you add? I mean, from the
6 time that you bring in powder to the time that you
7 turn around and sell it as paste is there a general
8 sense of how much value added there is in the
9 conversion process?

10 MR. JONES: I'll attempt to speak to that.
11 Really all we're doing is taking powder from China or
12 from other sources and converting it, diluting it to a
13 42 percent paste.

14 All you've done is changed the physical form
15 of the product, and that's quite simply all there is
16 to it.

17 COMMISSIONER HILLMAN: Okay.

18 MR. JONES: I mean, there is some grinding
19 or some processing that you get the product down to a
20 certain particle size as Mr. Reardon has alluded to.
21 There are some parameters that you need to stay within
22 to supply a consistent product, but other than that
23 it's not rocket science. It's just taking powder and
24 converting it to a 42 percent paste.

25 COMMISSIONER HILLMAN: Mr. Reardon?

1 MR. REARDON: Yes, ma'am. Thank you. I
2 concur with Mr. Jones' remarks.

3 When we bring in the powder and convert it
4 if we use \$1 as the selling price for the sake of this
5 we normally have about 70 percent of it tied up in raw
6 materials, so from a standpoint of what value added we
7 are probably putting six to 10 cents worth of overhead
8 into the product and then obtaining a margin
9 somewhere. If you don't add SG&A to it, you'll
10 probably have a 15 to 20 percent gross margin.

11 I think to answer your first question, the
12 decision that the Commission made about not including
13 the converters was exactly right. There's very little
14 value added from the conversion standpoint. When
15 Buffalo was in fact a viable supplier and synthesizer
16 of indigo there was no question about it. They were
17 the sole U.S. producer, and they were a very, very
18 good producer. Unfortunately, that situation doesn't
19 exist today.

20 COMMISSIONER HILLMAN: Okay. I very much
21 appreciate that answer.

22 Just so I understand it, Mr. Putnam, you
23 commented on this yarn dye denim fabric. I'm just
24 trying to understand it. Is the indigo applied to the
25 fabric, the finished fabric, or is it typically

1 applied to the yarn itself?

2 I'm trying to understand the customers for
3 the product. Are they yarn spinners, or are they
4 weavers, fabric producers?

5 MR. PUTNAM: The denim producers are
6 actually weavers, but the way the process works is
7 that you actually yarn dye the denim.

8 COMMISSIONER HILLMAN: Okay.

9 MR. PUTNAM: And then that warp is actually
10 what is used and woven into the denim fabric.

11 COMMISSIONER HILLMAN: Okay. So the dye is
12 being applied to the yarn itself, but it's being
13 applied by the fabric producers or by the yarn
14 spinners?

15 MR. PUTNAM: It's actually applied by the
16 fabric producers.

17 COMMISSIONER HILLMAN: All right. I
18 appreciate that.

19 Then if I can try to understand a little bit
20 about what is happening in terms of products coming
21 through Korea and Mexico? There was some discussion
22 about whether there have been in essence any
23 transshipments of product. I wondered if anybody can
24 help me understand.

25 The products that we're seeing coming in

1 from Mexico, Germany, Korea, they're all being
2 produced in those countries and directly exported into
3 the U.S.?

4 MR. MCGRATH: We have direct information and
5 knowledge about the Korean product because I think
6 most of it probably was Clariant.

7 The Korean product is made in Korea. There
8 is a plant there that manufactures indigo that
9 Clariant purchased from Korea. It does not purchase
10 from Korea any more.

11 We are aware of the fact that there was an
12 allegation about transshipment and failure to properly
13 mark as to country of origin. There was an effort in
14 the market to try to gain advantage by notifying
15 customers that there was mismarked merchandise, and
16 Clariant took some affirmative steps to try to stop
17 that information which we felt was being falsely
18 spread around.

19 As far as what Customs is doing to
20 investigate this, we've heard nothing.

21 COMMISSIONER HILLMAN: Okay. All right.
22 Anyone else? Yes? Go ahead, Mr. Reardon.

23 MR. REARDON: Yes, ma'am. Mexico. I've
24 been to the Mexican operation six times. I mean, I've
25 seen the indigo made. I've seen it run through the

1 reactors, seen it come off the filter press, went into
2 the lab and watched the quality control.

3 Actually I've taken three customers with us.
4 We've taken a group from Burlington, we've taken a
5 group from Cone, and we've taken a group from Swift,
6 so as far as the Mexican operation anybody can go down
7 and see it. It's in a town called Quantavarca about
8 an hour and a half outside of Mexico City.

9 COMMISSIONER HILLMAN: All right. That's
10 very helpful. Thank you.

11 If I could then go to this issue of the
12 relationship between Wego and Liyang Skyblue? First
13 of all, help me understand the nature of this
14 exclusive relationship.

15 I mean, is there a reason why Liyang Skyblue
16 will not sell to anyone else but Wego? Is that a
17 purely contractual arrangement? Help me understand
18 how that relationship came into being.

19 Mr. Reardon?

20 MR. REARDON: Yes, ma'am. We met with Wego
21 in 2003. They informed us that they had been working
22 with Liyang for about a year to get a lower dumping
23 duty, and I believe -- I'm not sure how the process
24 works, but they took I guess chamber of commerce folks
25 over and, anyway, got the duty down to 4.6 percent.

1 At that point we were informed that they had
2 formed a joint venture called Liyang Skyblue I believe
3 was the actual -- in fact, we get invoices, and I
4 think that's what it says, Liyang Skyblue. They also
5 made it very clear that they were the exclusive U.S.
6 importer and distributor of the product from there, so
7 essentially with the low duty they pretty well tied up
8 the entire market. We were told that they did in fact
9 have a joint venture formed.

10 COMMISSIONER HILLMAN: And then Wego in turn
11 sells to in essence all of the converters in the U.S.
12 market?

13 MR. REARDON: Yes, ma'am, as far as I know.
14 I know they sell to Clariant, and I know they sell to
15 us, and they've told us they've sold to Dyestar also.

16 COMMISSIONER HILLMAN: Okay. Other than
17 Wego's product from Liyang Skyblue, is there other
18 Chinese product coming into the market?

19 MR. REARDON: As far as we know, no, ma'am.
20 You know, I think because of the prohibitive dumping
21 duties, the 129 percent, there's really no way anybody
22 could import it and sell it against the Wego product.

23 COMMISSIONER HILLMAN: All right. I
24 appreciate those answers. Thank you.

25 CHAIRMAN KOPLAN: Thank you, Commissioner.

1 Commissioner Lane?

2 COMMISSIONER LANE: Good morning.

3 Considering the current economic environment in the
4 United States and abroad and taking into account
5 domestic industry consolidation, production, and price
6 trends, what is your view of short- and long-term
7 trends in domestic synthetic indigo and imports into
8 the United States?

9 Please address the following elements:
10 demand in the United States, including issues such as
11 competitive pressures on synthetic indigo consumers.
12 I'll take these one at a time. Mr. McGrath, do you
13 want to point the finger to whoever can answer that?

14 MR. MCGRATH: Certainly. I think Mr.
15 Friemark is best equipped to respond to that.

16 MR. FRIEMARK: Well, I think everyone is
17 well-aware that the textile industry in the United
18 States is a declining market in many aspects and
19 certainly in the apparel and garment area. It's been
20 devastated through the years.

21 And I would say that the demand today is
22 weak at best, and within five years, I would estimate
23 that it will be about half of what it is again today.
24 So it will continue to decline. It will stabilize at
25 some level, but it will be quite a small percentage

1 versus what it was 20 years ago.

2 COMMISSIONER LANE: Okay. What about demand
3 in major or growing markets such as the European
4 Union, China, and the rest of the world?

5 MR. FRIEMARK: The world is passed by the
6 European Union already. They suffer the same things
7 that we suffer. Even areas such as Turkey are
8 starting to show some declines. Already you start
9 seeing areas such as Central America that are becoming
10 a favorite area to produce garments in fabric like
11 denim. In China is certainly still a strong building
12 boom and will continue.

13 Other areas in southeast Asia, including
14 India and Pakistan, are in a growth mode at this point
15 in time. But as I say, the United States, European
16 markets are very mature and will continue to decline.

17 COMMISSIONER LANE: What about trends and
18 exchange rates and their impact on synthetic indigo
19 trade?

20 MR. FRIEMARK: I don't think the exchange
21 rates can be significant enough to make a difference.

22 COMMISSIONER LANE: Trends in raw material
23 and energy costs?

24 MR. FRIEMARK: Absolutely. Again, the raw
25 material costs are something that needs to be looked

1 at and reviewed because the raw material base has left
2 these countries like the United States and Europe also
3 because of the hazardous-type materials, so that has
4 moved also. That's moved to the more desirable or
5 underdeveloped areas. So that trends makes it more
6 difficult to produce also in our location. And what
7 was the second part of that question? I'm sorry.

8 COMMISSIONER LANE: Raw material and energy.

9 MR. FRIEMARK: Energy costs have hurt our
10 industry in the fourth quarter of 2005. It probably
11 was the worst fourth quarter in the textile industry
12 that there's ever been. We had numerous customers
13 that just completely shut down in December because the
14 energy costs were just devastating.

15 COMMISSIONER LANE: Okay. Thank you.

16 MR. SJOBERG: Commissioner Lane?

17 COMMISSIONER LANE: Yes?

18 MR. SJOBERG: I'm going to have Forrest
19 Putnam also address your question if that's okay.

20 COMMISSIONER LANE: Yes. Yes.

21 MR. SJOBERG: He represents the U.S. denim
22 fabric industry.

23 COMMISSIONER LANE: Yes. Thank you. Mr.
24 Putnam?

25 MR. PUTNAM: Yes. Thank you. From a denim

1 producer, there is no doubt. You really just have to
2 pick up any newspaper or look at any newscast that the
3 textile industry, and denim is no different, is
4 probably 50 to 60 percent of the volume that it was
5 even five years ago. It has declined very rapidly.

6 I do agree that there will be a viable
7 industry for denim in the U.S. I think it will be
8 smaller than where it is today. We will see it
9 continue to shrink, but I think it will stabilize and
10 complement the existing industry that is outside the
11 United States.

12 COMMISSIONER LANE: Okay. Did you want to
13 comment on exchange rates or what's happening with
14 your raw material and your energy costs?

15 MR. PUTNAM: I'll comment on energy very
16 rapidly. Obviously all textile plants, ours included,
17 whether it be coal, natural gas, or any energy source
18 coming into the facility, the increases have been
19 anywhere from 30 to 50 percent. Short-term, you know,
20 there has been some relaxation, but really they're not
21 returning to anywhere near where they were six months
22 to a year ago. So energy has been a very detrimental
23 part to what has occurred.

24 Raw material costs. Raw material costs due
25 to energy. A majority of the products coming into our

1 sites have increased anywhere from 15 to 50 percent.
2 Most of those raw material costs you can find as a
3 direct result of oil pricing worldwide and
4 domestically. And even the energy costs of
5 transportation has had a factor in moving products
6 from location to location.

7 COMMISSIONER LANE: Okay. Thank you. How
8 would market conditions have to change to make U.S.
9 production of synthetic indigo profitable? And in
10 your answer, please take account of the 30 percent
11 decrease in U.S. production of denim from 2000 to 2004
12 and the 90 percent decrease in the U.S. exports of
13 that dye in this period.

14 MR. MCGRATH: I think maybe I could start
15 that, or maybe Mr. Friemark could finish it. But our
16 position is that there really is no scenario under
17 which an industry like Clariant, who supplies a range
18 of chemicals to the textile industry, including denim,
19 can see that the production of indigo in the United
20 States could ever be profitable, and that's based on
21 their having taken a look at it themselves and
22 considered possibly establishing their own production
23 along with their other production plants in the United
24 States.

25 Incidentally, I think one thing that did not

1 come through in our testimony was that as the textile
2 industry has shrunk in the United States, so has
3 Clariant and various other producers who make
4 chemicals. They've lost thousands of jobs in recent
5 years. So it is something that affects them directly.
6 In terms of energy increases and other raw material
7 inputs, it affects Clariant directly not just on
8 indigo or on supply to denim but on supply throughout
9 the market.

10 MR. FRIEMARK: Yes. Speaking to that point,
11 I think since 1990, a part of my job has been to help
12 shut down plants, and certainly the dyes
13 manufacturing, chemical manufacturing scenario in this
14 country is very prohibitive.

15 And I would think that it would be very
16 difficult, very difficult for anyone to consider
17 restarting or building a green field dyes
18 manufacturing plant for the synthesis of indigo.

19 It's difficult. It's dangerous. It uses
20 hazardous raw materials. I think that the
21 environmental aspects, the waste streams, would all
22 have to be considered very carefully. And it's a
23 declining market, and there is no return on any type
24 of investment like that, so we would never consider
25 anything like that.

1 COMMISSIONER LANE: Okay. Thank you. Does
2 anybody else want to answer? Mr. Reardon?

3 MR. REARDON: Thank you, Ms. Commissioner.
4 Just a couple things. I agree with Tim, what he's
5 saying. Just to kind of get the perspective
6 correctly, there's about 6 billion yards of denim
7 produced in the world in a year. The Chinese are
8 producing 3 billion. What we're doing here in the
9 States is probably less than 500 million, so we're
10 really not a player anymore.

11 And to try to put up an indigo producing
12 plant in the U.S., not only would it be cost-
13 prohibitive, but as Tim pointed out, you can't do this
14 in the States with all the environmental regulations.

15 I've been to China numerous times, and the
16 largest producer of synthetic indigo in the world is a
17 company called Wonderful Chemical. They're in
18 Taichung outside of Shanghai. And they produce 30,000
19 metric tons a year of indigo; the whole world only
20 produces 60,000. And Buffalo on its best day was
21 producing 3,000.

22 And Taichung can put a plant up in 90 days.
23 I couldn't get the regulatory stuff off my desk in
24 probably 90 months. So there's just no way we could
25 viably put up a plant here and ever compete with the

1 Chinese.

2 COMMISSIONER LANE: Okay. Thank you.

3 I think, Mr. Chairman, I will end this
4 round. Thank you.

5 CHAIRMAN KOPLAN: Thank you.

6 Commissioner Pearson.

7 COMMISSIONER PEARSON: Thank you, Mr.
8 Chairman. Permit me to extend my welcome also to the
9 industry guests. It's a pleasure to have you here.

10 Mr. McGrath, I listened to your opening
11 statement with some interest, and I don't know the
12 exact wording, but I understood you to make an equity
13 argument to the effect that if we didn't revoke this
14 order, there would be an unfair skewing of the
15 competition that would negatively affect certain firms
16 relative to others.

17 And I found that interesting argument,
18 particularly in the context of the Commission's recent
19 deliberations involving orange juice from Brazil,
20 where we had an issue with two companies being
21 excluded from the scope of the new order and the
22 petitioning firms not having taken the steps that
23 would be required to bring them under the order.

24 And it was observed by some that that would
25 lead to a highly inequitable outcome if an order was

1 imposed because it would change the conditions of
2 competition among firms, both the Brazilian exporters
3 and U.S. producers and importers of orange juice
4 because there would be access for favored importers
5 and exporters to the U.S. market at a much lower duty
6 rate than those covered by the order.

7 So I'm rambling along a little bit more than
8 I should. But the specific question is to what extent
9 does the law allow us to ignore the clear language of
10 the statute and act instead on the basis of what we on
11 the Commission might believe to be fair and equitable?

12 MR. MCGRATH: Well, Commissioner Pearson,
13 I'm not presenting an equitable argument for why you
14 should make a negative determination here. I was
15 simply pointing out that the effect of the order
16 remaining in effect, the impact is simply one that
17 pits importers against each other and disadvantages
18 one importer versus another importer.

19 The situation that you referred to in orange
20 juice had to do with the way that the petition was
21 crafted at the beginning, the fact that there was a
22 competing sunset review covering part of the product
23 that was covered by the new petition. And so far the
24 allegation there that one set of importers might be
25 advantaged over another is speculative.

1 And with apologies to those who aren't
2 familiar with the case, that's something that remains
3 to be seen, whether or not the parties that are
4 excluded may be included in the future.

5 In this case, we're already in a position
6 where the domestic industry is getting no benefit and
7 the parties who are in the marketplace do know for
8 certain that everybody is disadvantaged unless they
9 buy from Skyblue.

10 They have to pay a duty. They have to pay a
11 much higher price for the product. And it's
12 established essentially a monopoly for one of the
13 foreign producers, which is contrary really to the
14 intent. So there are a lot of distinctions I think
15 with orange juice.

16 COMMISSIONER PEARSON: Well, yes. Of
17 course. The situations are different. But in this
18 case, we have on the record the stream of Byrd
19 revenues that have gone to the domestic industry, and
20 so we can understand why VCC would have an interest in
21 continuing the order, because it's getting a revenue
22 stream.

23 Even if that money is going to the Pension
24 Benefit Guaranty Corporation, is that a bad thing in
25 terms of what the law specifies? I mean, because I

1 don't know of guidance in the statute. I mean, why
2 should we be making some distinctions between where
3 the benefit is going as long as there is, for the
4 purpose of our investigation, a domestic industry?

5 MR. MCGRATH: The point of raising that
6 issue is the combination of factors here seems
7 especially almost pernicious in the way that there is
8 a reason for the company to remain theoretically in
9 existence on the books. That reason is to collect
10 some money under the Byrd Amendment.

11 At the same time, there is a reason for
12 importers of the product to want that porter to stay
13 on the books, because they continue to have a favored
14 position in the marketplace. There's reasons for both
15 of these companies to be acting in concert for
16 different reasons that are completely separate and
17 apart from what the dumping order is intended to do.

18 The result is whatever increased price that
19 is paid, whatever increased cost there is that is
20 caused by the imposition of the dumping order is
21 passed along downstream to the denim manufacturer, who
22 is already under great stress.

23 And my point is I'm not saying that the fact
24 that somebody is collecting Byrd Amendment funds and
25 they're not producing is a reason for you to vote

1 negative here. I'm just pointing out that the factual
2 situation really does create something that's totally
3 unintended by the dumping law and does nothing to the
4 ultimate result here, whether they collect the Byrd
5 funds or don't collect the Byrd funds. The ultimate
6 result is that the tax that's being collected is a tax
7 on the continuing existence of the denim manufacturer
8 without any benefit to any U.S. industry.

9 And I would also point out the Commission is
10 often asked to make a very difficult decision
11 basically between one industry's employees and another
12 industry's employees. People in the steel industry
13 come here all the time and say, you know, if you have
14 this dumping duty on the raw material steel product,
15 then that's going to cause us to have to go offshore
16 for the downstream products to buy the steel.

17 So a whole series of different raw material
18 cases are always asking you that question or people
19 are raising that issue. I understand that's not
20 within the legal definition of what you're supposed to
21 be doing. But in this case, I'm just simply pointing
22 out that there is no domestic employee left to try to
23 serve by keeping this order in effect. There are
24 domestic employees that stand to lose jobs. That's
25 not part of your legal decision process.

1 And I'm not saying either that it's an
2 equitable argument that should lead you to that
3 decision, but I think it's a factor that's important
4 in deciding that there is no industry to protect
5 anymore, and therefore, there can't be any injury.

6 COMMISSIONER PEARSON: Well, I could explain
7 to the panel that my background as an economist makes
8 me somewhat susceptible to equity arguments. I find
9 them to be of interest. I find myself also
10 constrained often by the law in terms of acting on
11 those interests.

12 Mr. Sjoberg, do you have anything that you
13 would add to what Mr. McGrath has said as I try to
14 muddle through this conundrum?

15 MR. SJOBERG: No. It's our position that
16 the Commission just should follow the statute as
17 written regarding the fact that there is no industry.
18 A circumstance of course is the fact that you have a
19 downstream industry that's being injured, but we think
20 that regardless of which you analyze it that the
21 result is the same.

22 COMMISSIONER PEARSON: But for the purposes
23 of this case, isn't there a domestic industry as long
24 as Commerce, the Commerce Department, decided there
25 was at the time this review was instituted?

1 MR. SJOBERG: Commerce decided that there
2 was a domestic industry because a former producer of
3 the domestic-like product submitted a response. To
4 me, the industry is defined as a producer of the
5 domestic-like product. I think the record shows that
6 the last production by Buffalo Color, and it was a
7 limited production run, was in 2004.

8 It is my position that when the submission
9 was made, I'm trying to get my dates right, I don't
10 think that there was a domestic industry when the
11 filings were made at Commerce.

12 COMMISSIONER PEARSON: See, I've worked hard
13 at learning not to look behind Commerce's calculation
14 of dumping margins. Are you saying I should look
15 behind their determination on domestic industry in
16 this sort of review?

17 MR. SJOBERG: No, I don't think that the
18 Commerce Department made a determination on domestic
19 industry, did they?

20 COMMISSIONER PEARSON: You're the counsel.

21 MR. SJOBERG: Okay. It's my position that
22 they did not address that. I mean, they addressed
23 potential margins or potential dumping margins that
24 would be in effect if the order was revoked.

25 MR. MCGRATH: Commissioner, I think that the

1 Commerce Department is simply charged with determining
2 if a domestic industry submitted an adequate response
3 to initiate the review.

4 Under the law, you're required to determine
5 whether an industry producing a like product would be
6 injured, and oftentimes your decision may define,
7 certainly can define the industry differently than
8 what industry was purporting to be injured when they
9 approached the Commerce Department in a regular
10 investigation.

11 So you may be finding that there's a
12 different industry than what they find to be, and we
13 would like you to find that the industry that exists
14 is a nonexistent factory or a nonproductive factory
15 that's not likely to be productive. I think that's
16 the bottom line in what we're saying.

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

19 CHAIRMAN KOPLAN: Commissioner Aranoff.

20 COMMISSIONER ARANOFF: Thank you, Mr.
21 Chairman. I want to join my colleagues in welcoming
22 the panel here this morning. I appreciate everything
23 that I've heard so far, and I still have a few
24 questions left for you.

25 Mr. Putnam, I wanted to start with you if I

1 could as the representative as well as the purchaser
2 who is here today. Have you ever experienced a
3 shortage of synthetic indigo, and if so, can you
4 explain how you responded?

5 MR. PUTNAM: I'll give you my perspective on
6 that. I'm in the area that actually tries to acquire
7 the product and know that we have available product.
8 We do ours typically through a bid system. With the
9 current industry, there is essentially, as was
10 testified before, there is three sources of product.
11 All three are buying the powder.

12 In this case, I'll say that all three have
13 pretty well acknowledged Dyestar originally was buying
14 using German material. The other two essentially as
15 testified were buying it from other sources.

16 Presently, Wego -- and I know they used a
17 different term, Skyblue or whatever -- appears to be
18 the only source as to what I'm actually getting three
19 converters to bid against each other using the same
20 raw material and was testified -- I mean, there's
21 little to no added value in the converters.

22 So what we've essentially ran into is I can
23 actually buy the product from Dyestar, I can buy it
24 from Clariant, or I can buy it from C.H. Patrick. And
25 the unusual case is, normally when we bid our

1 products, it's coming from various locations, sources
2 in this case. It would not come from the same Chinese
3 source or location.

4 What has happened in the last year is
5 essentially all the product that we would try to
6 purchase comes from the same source, so we feel very
7 vulnerable in that position. If Wego, for example,
8 does run short, there's not any other material coming
9 into the U.S. presently that's viable for us to really
10 use.

11 There have been shortages, but frankly, they
12 have not got to the point where they have shut us
13 down. But you are vulnerable with the situation I
14 have now with only one importer or distributor of the
15 product in the U.S.

16 COMMISSIONER ARANOFF: Well, thank you for
17 that answer. In fact, I do find it a little puzzling
18 because it's inconsistent with the Commerce import
19 statistics that are on our record which indicate that
20 there are imports coming into the country from several
21 places. So I guess I'd ask Mr. McGrath and Mr.
22 Sjoberg, is there anything that you could tell us
23 about that? Mr. Sjoberg?

24 MR. SJOBERG: Mr. Reardon will answer that.

25 COMMISSIONER ARANOFF: Thank you.

1 MR. REARDON: Madame Commissioner, thank
2 you. We know obviously, and I mentioned that earlier,
3 that we have imported products from Mexico and from
4 Brazil. But the costs coming in from there, it turns
5 out to be higher than even the marked up price that
6 we're paying to Wego.

7 Mexico, for instance, doesn't start from
8 aniline. They start from a product called
9 phenylglycine, which is about the fourth step in the
10 indigo process, so they're starting off buying a raw
11 material which is much more expensive than the Chinese
12 are starting with. So although we did import from
13 them, their pricing is at the point now where we can't
14 afford to buy anymore from Mexico.

15 And Brazil, the situation in Brazil is that
16 it's a company called SL Ban or BanChemica, and they
17 only have about 6,000 metric tons of capacity and
18 they're selling all theirs in their own domestic
19 market, mainly in Brazil or other South American
20 countries.

21 So even though I'm sure the import records
22 show that there are products coming in from other
23 countries at this point in time, I think between
24 Clariant, ourselves, and Dyestar as far as making
25 pace, it's all coming from China.

1 Now Dyestar is importing from Germany also,
2 but that's a different product. That's a prereduced
3 indigo. That's a patented product that they have, so
4 the import records would also show that as coming into
5 the U.S., but it wouldn't be sold by either Clariant
6 or C.H. Patrick.

7 COMMISSIONER ARANOFF: Okay. Thank you. I
8 appreciate that clarification. Well, let me ask you
9 this. A lot of the discussion today has been that
10 Wego, you know, and Buffalo Color went to this one
11 Chinese producer, got them through a Commerce review,
12 got them a low rate, and now they've locked up the
13 market.

14 Why wouldn't somebody else from China make a
15 shipment in here, demonstrate to Commerce that they're
16 not dumping, and get a margin, you know, get a review?
17 I mean, has anybody thought about that? If China's
18 the only place to get this stuff, why isn't someone
19 pursuing that option?

20 MR. REARDON: Yes, ma'am. I mean, you're
21 right. It's shame on us actually. I mean, I've
22 spoken with S.K. Wong, and he's the owner of Wonderful
23 Chemical, I mean, if they're making 30,000 metric tons
24 versus Liyang's 6, they ought to be able to be pretty
25 effective at coming up with lower costs.

1 And you're right. I mean, it's just a
2 matter of fact that they -- I guess us or they,
3 whoever we want to blame it on -- have just not gone
4 through the formal process of approaching Commerce and
5 having them visit the plant and try to get it lowered.
6 So it's really, it's just shame on us.

7 MR. MCGRATH: It's also the timing. I think
8 the thing is it became obvious that that's where the
9 market was going, and it was going to become pretty
10 much concentrated in one supplier. We were
11 approaching the sunset review timing, and I think
12 companies were looking at the reality that Buffalo
13 Color wasn't in existence anymore. They all knew it.

14 What they knew from intelligence in the
15 market was that they weren't going to be supplying, so
16 I think rather than putting time and effort into
17 trying to get a lower rate from one of the other
18 producers, they were hoping that the reality would
19 come through that there is no reason for the order
20 anymore.

21 COMMISSIONER ARANOFF: I appreciate that
22 answer. I certainly don't want to imply that I think
23 anyone was under any legal obligation, in our
24 proceeding or elsewhere, to pursue the matter, but I
25 did want to ask.

1 I wanted to follow up a little bit on some
2 of the questions that Commissioner Hillman was asking
3 about converters and the question of including them in
4 the domestic industry. I know the Commission didn't
5 in the original investigation, but I knew Clariant
6 argued at that time that we should. There was
7 testimony earlier that the value added is quite modest
8 from the conversion process.

9 I did want to ask, though -- you've
10 mentioned substantial environmental costs associated
11 with production. Are there environmental issues
12 associated with converters, for example, with respect
13 to waste water or something like that?

14 MR. FRIEMARK: In the conversion process of
15 taking a powder to a liquid, there really is no
16 effluent in something like that.

17 COMMISSIONER ARANOFF: And none of the
18 hazards associated with the chemicals used to make the
19 dye remain hazards once it's in the powdered form.

20 MR. FRIEMARK: No, not really.

21 COMMISSIONER ARANOFF: Okay. Thank you very
22 much.

23 I'll ask a question out of unfamiliarity
24 with the market, but there has been enough significant
25 testimony this morning that there are not substitutes

1 for synthetic indigo. Wasn't there once a naturally
2 occurring indigo product. What happened to that?

3 MR. REARDON: Yes, ma'am. Indigo was grown
4 in the U.S. in coastal South Carolina prior to the
5 revolution and was shipped back to the U.K., where
6 there was certainly a large textile industry. After
7 the revolution, obviously, we weren't the favorites of
8 the people from the U.K., so they stopped buying it,
9 and that pretty well killed the market here, and it
10 moved down into the Caribbean.

11 All of the indigo plantations in South
12 Carolina then converted over to rice plantations, so
13 that market left. And then BASF invented synthetic
14 indigo just prior to 1900, and that pretty well ended
15 all of the need for natural indigo. There is still
16 some natural indigo, but it's just a cottage industry
17 type of thing. We did have a natural indigo business,
18 but that was 200 years ago.

19 COMMISSIONER ARANOFF: I appreciate that.

20 I think that both parties in your briefs on
21 the like product issue brought our attention to this
22 Sebasic Acid case and how we handled the lack of
23 domestic production in that case, and I guess I would
24 just ask if you've seen or have any thoughts about the
25 second way that we can address the issue, which might

1 be represented by the Nephaline Cyanate case, which
2 goes back a few years. If you're not familiar with
3 it, you can feel free to take a look and discuss it in
4 your brief.

5 You know, the way the law works, we don't
6 have a choice of finding that there is no domestic
7 like product. We have to either find one that's like
8 or most similar, even if the most similar one isn't
9 very similar at all. So I wondered if you had any
10 comments on the way that we approached the issue in
11 Nephaline Cyanate and whether you think the approach
12 in Sebasic Acid of saying, well, they are not
13 producing now, but they were, so that's close enough,
14 or the one in Nephaline Cyanate of saying, they are
15 not producing, so we're going to go to the next most
16 similar product, which is more suited to this case.

17 MR. McGRATH: I am not familiar with the
18 case, so I'm going to have to take a closer look at
19 it. I think that, as we had discussed earlier in the
20 questions and answers, our view is that there would be
21 a very difficult problem posed, I think, legally if
22 you went beyond the like product that was defined in
23 the underlying investigation.

24 Given the fact that you would be finding
25 basically no production whatsoever and no facilities

1 to be injured, if you would have to go to next most
2 similar, it would be something that was totally
3 outside of any injury analysis in the original
4 investigation. It would be almost creating a new
5 order. The scope of the order would be the same, but
6 the underlying basis for it would be different.

7 COMMISSIONER ARANOFF: Okay. Thank you very
8 much for those answers, and my time is up. Thank you,
9 Mr. Chairman.

10 CHAIRMAN KOPLAN: Thank you, Commissioner.

11 Mr. Reardon, what percentage of total denim
12 production cost is the cost of synthetic indigo?

13 MR. REARDON: Mr. Commissioner, I could send
14 that down the table, I think, to Mr. Putnam because he
15 would have a better handle on the cost of cotton,
16 which is really the main cost in denim.

17 CHAIRMAN KOPLAN: Okay. Mr. Putnam?

18 MR. PUTNAM: I take it, your question is the
19 synthetic indigo cost related to the cost of the
20 produced denim.

21 CHAIRMAN KOPLAN: Right.

22 MR. PUTNAM: I think that is actually in
23 some of the documents we've already submitted, and it
24 varies anywhere from two and a half to 5 percent.

25 CHAIRMAN KOPLAN: Thank you for that.

1 Mr. McGrath, on page 1 of your brief, and
2 you've made this argument this morning as well, you
3 say that it's Clariant's understanding that today BCC
4 is primarily solely an importer and/or purchaser of
5 the subject merchandise, that BCC's only interest in
6 keeping the order in effect is either, one, to gain an
7 unfair competitive advantage as an importer over other
8 importers of the subject merchandise, or to collect
9 any disbursements through utilization of the Byrd
10 Amendment.

11 Explain to me, if you would, are you saying
12 that BCC's importing arrangement, as a legal matter,
13 is improper? I note that you simply allege that BCC
14 can import as much subject merchandise as it desires
15 from Liyang at a very low deposit rate and at prices
16 that far exceed Liyang's 4.6 percent dumping deposit
17 rate.

18 MR. McGRATH: It's certainly not an illegal
19 arrangement to have, and we would not allege that. We
20 are arguing simply that it creates a competitive
21 advantage that's not intended by the dumping statute
22 to create.

23 CHAIRMAN KOPLAN: Thanks. I just wanted to
24 clarify that.

25 Mr. Sjoberg, you state, on pages 20 and 21

1 of your brief, that in 2004 the dynamic changed for
2 the first time since the antidumping order was issued
3 in 2000. The imports of subject merchandise increased
4 for the first time in four years, and then there is
5 some bracketed material there.

6 At the same time BCC was importing the
7 subject merchandise, it conducted a limited production
8 run; however, given the high unit costs from 1999, no
9 subsequent data indicating that those costs decreased
10 in the interim, the obvious high-unit costs of a
11 limited production run. And the only reasonable
12 explanation for such an operation is that BCC wanted
13 to produce the domestic like product in order to
14 qualify for a CDSOA distribution. That's from your
15 brief.

16 Is that conjecture on your part that that
17 was their motivation, or do you have some basis of
18 documentation for that?

19 MR. SJOBERG: No, Mr. Chairman. That was my
20 assertion, and that was the only reasonable conclusion
21 that I could come up with, given those circumstances.

22 CHAIRMAN KOPLAN: Thank you. I think, with
23 that, I do not have any further questions. I want to
24 thank each of you for your responses to our questions
25 thus far, and I'll turn to Vice Chairman Okun.

1 VICE CHAIRMAN OKUN: Thank you. For post-
2 hearing, Mr. McGrath and Mr. Sjoberg, I am also still
3 interested legally in the best approach to this case,
4 and Commissioner Aranoff had followed up on some of
5 the questions I had earlier about is this a case where
6 you have to go to most similar to? We have,
7 individually, as a commissioner, a lot less experience
8 on those cases.

9 We've rarely done it, and so I would
10 appreciate you briefing it post-hearing to help me
11 understand if the statute requires us to do that in
12 this case or whether the better approach is the one,
13 Mr. McGrath, that you were talking about earlier,
14 which is one that, one could argue, makes more sense,
15 but I'm not sure whether it fits under the statute.
16 So for post-hearing, I would appreciate some further
17 analysis of that.

18 MR. McGRATH: We'll be happy to do that. I
19 did think of one other concern that might come up if
20 you were to be looking at a completely different
21 industry, something that was most similar and did not
22 include any production of the original product that
23 was looked at, there may be some WTO antidumping code
24 problems with it. I haven't looked at it specifically
25 on that issue as to whether the sunset definition of

1 like product might be treated differently, but I would
2 imagine that there would be an argument.

3 VICE CHAIRMAN OKUN: Okay. I appreciate
4 that. That would be helpful.

5 I think the other question that I had about
6 the conversion process has been answered. Mr.
7 Reardon, I also appreciated kind of the historical
8 perspective you gave us on indigo. It's always
9 interesting to learn something. It's produced
10 somewhere else, natural indigo, now.

11 MR. REARDON: Yes, ma'am. In fact, I was in
12 India recently, and they still do produce some natural
13 indigo. You know, a lot of the ecological companies
14 that are pushing the e-type environment are dying with
15 natural dyes. There are several natural dyes. There
16 is betacarotene, orange, there is an elderberry
17 extract, but they are so expensive to manufacture, and
18 you couldn't use them in a major manufacturing
19 process, but there are still several natural colors
20 that are used, again, in the cottage-type industries.

21 VICE CHAIRMAN OKUN: I see. Okay. Well,
22 very interesting to hear the historical perspective of
23 the United States as well, and with that, I don't have
24 any further questions. I'll look forward to the post-
25 hearing briefs and, again, appreciate all of your

1 participation today and your willingness to be here.

2 Thank you very much, Mr. Chairman.

3 CHAIRMAN KOPLAN: Thank you. Commissioner
4 Hillman?

5 COMMISSIONER HILLMAN: Thank you. Just a
6 couple of follow-ups, I think. I'm trying to
7 understand how easy it is to switch from one supplier
8 to another. It sounded from a lot of the testimony
9 that, in general -- I think you, Mr. Putnam, testified
10 that you basically stuck with BCC for quite a number
11 of years until the price rise in 2003. Help me
12 understand that.

13 Is a given producer's product slightly
14 different than another's such that, all things being
15 equal, you would rather stay with them, or is
16 everybody's indigo pretty much exactly the same, and
17 you just readily one day use somebody's and another
18 day use a different producer's product?

19 MR. PUTNAM: What we normally do is
20 prequalify the products through production runs until
21 we can determine if the product is viable. Now, as
22 far as the indigo itself, it is probably identical
23 between the converters that we're presently using, but
24 due to the disbursement systems, the grinding methods
25 they use, we can see subtle differences.

1 So what we do is prequalify the products and
2 normally try to have at least two suppliers, a primary
3 supplier and a secondary supplier, in this case, still
4 using the same raw material, but they are prequalified
5 to determine that they will run.

6 COMMISSIONER HILLMAN: Okay. So to the
7 extent that there are concerns about switching because
8 it runs differently, those relate to the conversion
9 process as opposed to the production process.

10 MR. PUTNAM: Correct.

11 COMMISSIONER HILLMAN: I'm just trying to
12 understand. If these orders were to be revoked, it
13 wouldn't make any difference from your end of it which
14 supplier in China -- if the order were revoked, and
15 you started seeing product coming in from any one of
16 these other Chinese producers, from your perspective,
17 that doesn't matter.

18 MR. PUTNAM: From our standpoint, we would
19 prequalify the product, whether it came from Clariant,
20 C.H. Patrick, or from Dyestar, to determine
21 runability, and I would not anticipate a problem long
22 term, no.

23 COMMISSIONER HILLMAN: Mr. Reardon?

24 MR. REARDON: Yes, ma'am. We've never been
25 a basic synthesis company for making indigo, but we've

1 purchased indigo from many, many companies. Years
2 ago, it used to be BASF. There was a Japanese
3 company, Matsui, and there's probably 10 indigo
4 manufacturers currently active in China.

5 When we go to Mr. Putnam, he gives us pretty
6 much the specification. In fact, Gerald could
7 probably do this better than me, but BASF used to have
8 a red shade of indigo. Matsui had a green shade of
9 indigo. We would go to Mr. Putnam. He would give us
10 the standard.

11 So whether it's Clariant, whether it's
12 Dyestar, or whether it's C.H. Patrick, we have the
13 ability to blend the raw materials from different
14 suppliers to hit his standard. Cone's standard is
15 different than Swift's. Swift's standard is different
16 than Mt. Vernon's. Mt. Vernon's is different -- you
17 could go on and on and on. So there is an ability to
18 tweak the final product.

19 COMMISSIONER HILLMAN: But from your
20 perspective, that tweaking is something that you do.
21 It has nothing to do with where you sourced your
22 indigo powder from.

23 MR. REARDON: Yes, ma'am, because they are
24 pretty much going to produce the same product day in
25 and day out. So I can take Wonderful's product, which

1 is essentially a green shade of product, and I can
2 take a Liyang product, which is a red shade of
3 product, and I can hit Mr. Putnam's standard.

4 COMMISSIONER HILLMAN: Okay. Mr. Friemark?

5 MR. FRIEMARK: I would say that looking at
6 the producer base that would be out there, I agree
7 exactly with what Tom says, but looking at them, we
8 would have to qualify the manufacturer of the product
9 because as they dry the material, there may be
10 different types of defoamers or dispersants or
11 something that they would be using in these products
12 that may affect the performance of the paste, liquid
13 that you're trying to make. So there are some
14 qualifications. Most certainly, we would set up a set
15 of specifications for that powder that would be made
16 that would be acceptable for our usage.

17 COMMISSIONER HILLMAN: And would you
18 anticipate, if this order were to be revoked, that
19 there would be a return to other producers in China,
20 and how long would this qualification process take?

21 MR. FRIEMARK: Well, in our case, it's
22 already qualified.

23 COMMISSIONER HILLMAN: Okay.

24 MR. FRIEMARK: There definitely would be a
25 return and that we've basically done this already

1 because we do purchase indigo from other companies in
2 China for supply around the world.

3 COMMISSIONER HILLMAN: Mr. Reardon, you're
4 nodding your head as well.

5 MR. REARDON: Yes, ma'am. I concur with Tim
6 100 percent on that. There would be a return of other
7 people, and it would happen almost instantaneously.

8 COMMISSIONER HILLMAN: Okay. I appreciate
9 those answers.

10 Mr. Putnam, more out of curiosity, you
11 mentioned that you have production facilities in
12 various places in Georgia and North Carolina and South
13 Carolina, as well as Canada, Mexico, Africa, and the
14 Philippines. Just so I understand, are those all
15 denim fabric producers?

16 MR. PUTNAM: Mexico is denim, Philippines is
17 denim, and Africa is split between denim and twills.

18 COMMISSIONER HILLMAN: Where in Africa?

19 MR. PUTNAM: Tunisia.

20 COMMISSIONER HILLMAN: Okay. Thank you. I
21 think, with that, I have no further questions but
22 would thank you all for your answers. I appreciate
23 it.

24 CHAIRMAN KOPLAN: Thank you, Commissioner.
25 Commissioner Lane? Commissioner Pearson?

1 Commissioner Aranoff?

2 COMMISSIONER ARANOFF: Thanks, Mr. Chairman.
3 I just have one follow-up on the questions that
4 Commissioner Hillman was asking. She was asking you
5 if there were differences between the synthetic indigo
6 that you get from various global suppliers, and I
7 wanted to follow up on that from the standpoint of the
8 allegations of transshipment that have been made in
9 this matter and ask you -- I understand and appreciate
10 your testimony that there are legitimate producers of
11 synthetic indigo in all of the countries where it has
12 been alleged that transshipment has occurred, but is
13 there something distinct about those producers'
14 products that you would recognize when you import it?
15 Would you know that they really made it? Go ahead.

16 MR. REARDON: The Mexican product; the way
17 they differentiated from the others was their purity
18 was much higher. It was 98 percent, so it was pretty
19 easy to determine what was the Mexican product.

20 When you start looking at 10 different
21 suppliers in China, purity varies from, say, 94 to 96
22 percent, I think you would be pretty hard pressed to
23 say this came from this plant, this came from another.
24 Some use spray driers, some use tray driers, so you
25 could differentiate there, but you would be pretty

1 hard pressed, if you put 10 samples in front of
2 somebody, and say, what plant did they come from?

3 I guess your question would be, is there an
4 analytical way to do it? I think it would be very,
5 very difficult myself.

6 COMMISSIONER ARANOFF: Okay. Mr. Friemark,
7 are you the one who is familiar with the Korean
8 product, or was that somebody else? The Korean
9 product?

10 MR. McGRATH: The answer, briefly, is that
11 the products are mostly interchangeable. Can you
12 trace it to a specific country? The answer is that
13 you can trace it to your supplier. If you qualified a
14 certain product, and it meets certain specifications,
15 obviously Clariant is going to know if the product
16 coming in is the product they feel they have qualified
17 for that plant. If someone was transshipping a
18 different product, there is no way to tell whether
19 that might be -- if it was not coming to Clariant, if
20 it was going to someone else, there is no way that
21 they could tell whose product that was. Analytically,
22 I guess there is no way to tell other than does the
23 product that Clariant qualified from the Korean plant
24 meet the specifications?

25 COMMISSIONER ARANOFF: Okay. Thank you very

1 much for clarifying, and with that, I want to thank
2 the panel, and I have no further questions.

3 CHAIRMAN KOPLAN: Thank you, Commissioner.
4 I see that Commissioner Hillman has a question.

5 COMMISSIONER HILLMAN: I just have one quick
6 question of the post-hearing briefs. I've heard all
7 of your testimony about the converters, but obviously
8 this is a very odd legal posture of a case, given
9 that, at least as I see it, we have to find a like
10 product, and we have to find a domestic industry.
11 I've heard all of this, and I look forward to the
12 briefs on this.

13 But on this issue of converters, again, I'm
14 not suggesting that we necessarily would go there, but
15 if there were to be a decision with respect to
16 converters being included in this vein of we have to
17 find a domestic industry, I would like just to be
18 clear on the record whether the converters would take
19 the view that they would or would not be materially
20 injured if the order were to be revoked.

21 I just want the record to plainly say that,
22 so if there is anything that you want to add from the
23 perspective so that we have a complete record on the
24 issue of if the converters were to be included in the
25 domestic industry, would they take the position that

1 they would be materially injured if the orders were to
2 be revoked?

3 MR. McGRATH: We would be happy to take a
4 look at that, but I do note from the data that's been
5 available from the converters, it seems to confirm
6 pretty much Clariant's view of what the conversion
7 process is. It's a process that is designed to
8 benefit its customers. Its customers need to have the
9 product delivered in a certain way so that they can
10 handle it most efficiently in dying their denim.

11 The conversion process is not one that makes
12 money. It's part of a customer service. It's part of
13 putting that product in a form that the customer can
14 best used.

15 So if the order were eliminated, I think
16 it's fair to say it won't have any on the conversion
17 process; they still have to convert the product. They
18 still have to put it in a form that a customer is able
19 to then apply to its yarn. We'll elucidate on that
20 further in the brief.

21 COMMISSIONER HILLMAN: Okay. I appreciate
22 that. Thank you.

23 CHAIRMAN KOPLAN: Are there any other
24 questions from the dais?

25 Seeing that there are none, Ms. Mazur, does

1 the staff have questions of this panel?

2 MS. MAZUR: Mr. Chairman, the staff has no
3 questions.

4 CHAIRMAN KOPLAN: Thank you.

5 Well, this panel is excused. I note that
6 you have 41 minutes remaining from your direct
7 presentation. Unfortunately, since there is no other
8 side, you don't get to use that, so we'll go directly
9 to the closing remarks, and the witnesses are excused,
10 and, Mr. Sjoberg, I believe you're the one who is
11 going to close. You can either do it from there of
12 from the podium, whichever is easiest for you.

13 MR. SJOBERG: From here, if it's okay, Mr.
14 Chairman.

15 CHAIRMAN KOPLAN: That's just fine.

16 MR. SJOBERG: The record is clear. There is
17 no longer an industry in the United States producing
18 the domestic like product as defined in the original
19 investigation, and that has been the case since 2004,
20 at the latest.

21 To the extent that the Commission determines
22 there is an industry in the United States producing
23 domestic like product, as defined in the original
24 investigation, the Commission must exclude Buffalo
25 Color from being included in that industry because of

1 its role in importing the subject merchandise.

2 To the extent that the Commission determines
3 that there is an industry in the United States
4 producing domestic like product, as defined in the
5 original investigation, there is no causal nexus
6 between any injuries suffered by that industry and
7 subject imports.

8 Last, and certainly not least important, any
9 difficulty that the Commission may encounter in
10 conducting its analysis of the impact of subject
11 imports on the U.S. industry is directly attributable
12 to the failure by Buffalo Color Corporation to provide
13 the Commission with the requested information. In all
14 instances in which the Commission determines that
15 information on the U.S. industry is lacking, we urge
16 the Commission to apply adverse inferences consistent
17 with Section 776 of the Act. Thank you.

18 CHAIRMAN KOPLAN: Thank you, Counsel.

19 Again, thank you to all of those who
20 participated this morning. It's been very helpful.

21 Post-hearing briefs, statements responsive
22 to questions and requests of the Commission, and
23 corrections to the transcript must be filed by
24 February 17, 2006. Closing of the record and final
25 release of data to parties, March 14, 2006, and final

1 comments by March 17, 2006, and with that, this
2 hearing is adjourned.

3 (Whereupon, at 11:05 a.m., the hearing in
4 the above-entitled matter was concluded.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Synthetic Indigo from China
INVESTIGATION NO.: 731-TA-851 (Review)
HEARING DATE: February 9, 2006
LOCATION: Washington, D.C.
NATURE OF HEARING: Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: 2/9/06

SIGNED: LaShonne Robinson
 Signature of the Contractor or the
 Authorized Contractor's Representative
 1220 L Street, N.W. - Suite 600
 Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

SIGNED: Carlos Gamez
 Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

SIGNED: Bernadette Herboso
 Signature of Court Reporter