

UNITED STATES

INTERNATIONAL TRADE COMMISSION

In the Matter of:) Investigation Nos.:
POLYETHYLENE TEREPHTHALATE (PET)) 701-TA-531-533 AND
RESIN FROM CANADA, CHINA, INDIA,) 731-TA-1270-1273
AND OMAN) (FINAL)

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Main Hearing Room (Room 101)
U.S. International Trade
Commission
500 E Street, SW
Washington, DC
Tuesday, March 1, 2016

The meeting commenced pursuant to notice at 10:31
a.m., before the Commissioners of the United States
International Trade Commission, the Honorable Meredith M.
Broadbent, Chairman, presiding.

1 APPEARANCES:

2 On behalf of the International Trade Commission:

3 Commissioners:

4 Chairman Meredith M. Broadbent (presiding)

5 Vice Chairman Dean A. Pinkert

6 Commissioner Irving A. Williamson

7 Commissioner David S. Johanson

8 Commissioner Rhonda K. Schmidtlein

9

10

11 Staff:

12 Bill Bishop, Supervisory Hearings and Information

13 Officer

14 Sharon Bellamy, Program Support Specialist

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16 Joanna Lo, Investigator

17 Jennifer Catalano, International Trade Analyst

18 John Benedetto, Economist

19 Mary Klir, Accountant/Auditor

20 Michael Haldenstein, Attorney/Advisor

21 Elizabeth Haines, Supervisory Investigator

22

23

24

25

1 APPEARANCES:

2 Opening Remarks:

3 Petitioners (Paul C. Rosenthal, Kelley Drye & Warren LLP)

4 Respondents (Matthew M. Nolan, Arent Fox LLP)

5

6 In Support of the Imposition of Antidumping and

7 Countervailing Duty Orders:

8 Kelley Drye & Warren

9 Washington, DC

10 on behalf of

11 DAK Americas, LLC

12 M&G Chemicals

13 Nan Ya Plastics

14 (collectively "Petitioners")

15 Jon McNaull, Vice President and General Manager, PET

16 Resins, DAK Americas, LLC

17 Mark Adlam, North America Commercial Manager, M&G

18 Chemicals

19 John Freeman, Assistant Director of Sales, Nan Ya

20 Plastics Corporation, America

21 John Cullen, Director of PET Resin Sales and Marketing,

22 DAK Americas

23 Gina Beck, Economic Consultant, Georgetown Economic

24 Services, LLC

25

1 In Support of the Imposition of Antidumping and
2 Countervailing Duty Orders (continued):

3 Paul C. Rosenthal, Kathleen W. Cannon, Grace W. Kim,
4 Brooke Ringle and David C. Smith - Of Counsel

5

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

8 Arent Fox LLP
9 Washington, DC

10 on behalf of

11 Reliance Industries, Ltd. ("Reliance")

12 Anil Rajvanshi, Senior Executive Vice President,
13 Reliance

14 Rajinish Jayaswal, General Manager, Reliance

15 Matthew M. Nolan and Nancy A. Noonan - Of Counsel

16

17 Alston & Bird

18 Washington, DC

19 on behalf of

20 Premium Waters, Inc. ("Premium")

21 Bernie Zarda, Senior Vice President, Supply Chain,
22 Premium

23 Jonathan Fee and Chunlian Yang - Of Counsel

24

25

1 In Opposition to the Imposition of Antidumping and
2 Countervailing Duty Orders (continued):

3 Curtis, Mallet-Prevost, Colt & Mosle LLP
4 Washington, DC

5 on behalf of

6 OCTAL SAOC-FZC ("Octal")

7 Joe Barenberg, Chief Operating Officer, OCTAL Inc.

8 Daniel L. Porter, James P. Durling and Matthew P.

9 McCullough - Of Counsel

10 Rebuttal/Closing Remarks:

11 Petitioners (Paul C. Rosenthal, Kelley Drye & Warren LLP)

12 Respondents (Matthew M. Nolan, Arent Fox LLP and James P.

13 Durling, Curtis, Mallet-Prevost, Colt & Mosle LLP)

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24

25

	I N D E X	
		Page
1		
2		
3	Opening Remarks:	
4	Petitioners (Paul C. Rosenthal,	
5	Kelley Drye & Warren LLP)	9
6		
7	Respondents (Matthew M. Nolan, Arent Fox LLP)	13
8		
9	Paul C. Rosenthal, Kelley Drye & Warren LLP	17
10		
11	Jon McNaull, Vice President and General Manager, PET Resins,	
12	DAK Americas, LLC	25
13		
14	John Freeman, Assistant Director of Sales, Nan Ya Plastics	
15	Corporation, America	30
16		
17	Mark Adlam, North America Commercial Manager,	
18	M&G Chemicals	36
19		
20	John Cullen, Director of PET Resin Sales and Marketing,	
21	DAK Americas	40
22		
23	Kathleen W. Cannon - Of Counsel	45
24		
25	Matthew M. Nolan - Of Counsel	131

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

	Page
Joe Barenberg, Chief Operating Officer, OCTAL Inc.	136
Anil Rajvanshi, Senior Executive Vice President, Reliance	148
Bernie Zarda, Senior Vice President, Supply Chain, Premium	157
Jonathan Fee - Of Counsel	160
Rebuttal/Closing Remarks:	
Petitioners (Kathleen W. Cannon, Kelley Drye & Warren LLP)	241
Petitioners (Paul C. Rosenthal, Kelley Drye & Warren LLP)	243
Respondents (James P. Durling, Curtis, Mallet-Prevost, Colt & Mosle LLP)	249
Respondents (Matthew M. Nolan, Arent Fox LLP)	253

1 PROCEEDINGS

2 (10:31 A.M.)

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

4 CHAIRMAN BROADBENT: Good morning. On behalf of
5 the U.S. International Trade Commission, I welcome you to
6 this hearing on Investigation No. 731-531 to 533 and
7 731-1270 to 1273, involving PET resin from Canada, China,
8 India and Oman. The purpose of these investigations to
9 determine whether an industry in the United States is
10 materially injured by reason of imports from Canada, China,
11 India and Oman that are sold by less than fair value, or by
12 reason of imports that are subsidized by the governments of
13 China, India and Oman.

14 Documents concerning this hearing are available
15 at the public distribution table. Please give all prepared
16 testimony to the Secretary and do not place it on the public
17 distribution table. All witnesses must be sworn in by the
18 Secretary before presenting testimony.

19 I understand that parties are aware of the time
20 allocations, but if you have any questions about time,
21 please ask the Secretary. Speakers are reminded not to
22 refer to business proprietary information in their remarks
23 or in answers to questions.

24 If you will be submitting documents that contain
25 information you wish classified as business confidential,

1 you're requested to comply with Commission Rule 201.6.
2 Finally, I would like to request that all witnesses and
3 counsel state your name for the record before delivering
4 testimony and responding to Commissioner questions. This
5 helps the court reporter to know who is speaking at any
6 given point.

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

9 MR. BISHOP: No, Madam Chairman.

10 CHAIRMAN BROADBENT: Very well. Let's proceed
11 with opening remarks.

12 MR. BISHOP: Opening remarks on behalf of
13 Petitioners will be given by Paul C. Rosenthal, Kelley, Drye
14 and Warren.

15 CHAIRMAN BROADBENT: Welcome Mr. Rosenthal. You
16 may begin when you're ready.

17 OPENING REMARKS BY PAUL C. ROSENTHAL

18 MR. ROSENTHAL: Good morning Madam Chairman and
19 members of the Commission. I'm Paul Rosenthal of Kelley,
20 Drye and Warren, appearing on behalf of the Petitioners.
21 This case involves a product that is somewhat familiar, PET
22 resin, the plastic that goes into water bottles and soda
23 bottles and other similar products. You can see some of the
24 examples on the table in front of you.

25 Even more familiar than the products themselves

1 is the injury caused to domestic producers by dumped and
2 subsidized imports that have aggressively attacked the U.S.
3 market. Our witnesses this morning will focus their
4 testimony primarily on the statutory factors that the
5 Commission must base its determination on, volume, price and
6 impact.

7 Regarding volume, you will hear and the record
8 of the Commission will show that imports increased
9 significantly during the 2012 and 2014 time frame. While
10 U.S. demand was growing modestly during this period, the
11 surging imports vastly exceeded the small increase in
12 demand. Subject imports displaced U.S. producers' shipments
13 on an almost one to one basis.

14 Now Respondents attempt to ignore this very
15 crucial fact, and instead try to blame the domestic
16 industry's injury on non-subject imports. Yet as the record
17 shows, non-subject imports gained only a tiny fraction of
18 share from domestic producers, as subject imports' market
19 share jumped significantly.

20 Similarly regarding price, the record shows the
21 primacy of price in purchasing decisions in this high volume
22 business. Producers, purchasers and importers all report
23 how price is one of the principle drivers of who gets the
24 business. The information on underselling confirms that the
25 subject imports undersold the domestic industry in the vast

1 majority of comparisons.

2 The underselling information confirms that
3 subject imports gained market share at the expense of the
4 domestic industry for one reason only, price. Our witnesses
5 and other record information explain how offers of low
6 prices from subject imports have caused domestic producers
7 to lower their prices to maintain production volumes in this
8 very capital-intensive industry, an industry that has to run
9 at high capacity utilization rates in order to be
10 profitable.

11 The result of lower volumes unfortunately has
12 been lower capacity utilization, and constant pressure to
13 lower prices to meet subject import competition. The result
14 has also been shown in the rapidly declining financial
15 condition of the domestic producers.

16 Indeed, the domestic industry's financial
17 condition has declined to an unsustainable level because of
18 subject imports. As you will hear, it is only the filing of
19 these cases in 2015 that caused some easing of the import
20 pressure, with declining import volumes and a slight
21 improvement in the industry's financial condition.

22 Still, low import pricing remains a problem and
23 the industry remains in a precarious position. Faced with
24 overwhelming evidence on adverse volume and price effects of
25 subject imports, Respondents raise the usual arguments about

1 cumulation and lack of competition and those arguments have
2 no support in the record.

3 Our witnesses will make that very clear and the
4 record makes that very clear. Respondents also repeat
5 arguments that were raised in another PET resin case decided
6 over ten years go, which involved many different facts, not
7 the least of which was a different group of respondents.

8 Of course, Respondents ignore aspects of the
9 earlier case that contradicts their arguments today.
10 Lacking information that directly addresses the volume,
11 price and impact, Respondents demonstrate an unerring
12 instinct for the vascular, as they argue about non-subject
13 imports from Mexico which will soon be displaced by new U.S.
14 production.

15 Whatever the Respondents want to say about the
16 past, there's no ignoring the threat of injury posed by the
17 subject imports. The foreign producers have large amounts
18 of unused capacity. They are export-oriented, incredibly
19 so, and the data support that statement.

20 The United States is one of the top one or two
21 targets for their exports, and they're increasingly being
22 shut out of other markets because other countries have found
23 those imports to be injurious to their own domestic
24 producers. So there's no place else for them to go with
25 their large excess capacity.

1 I'm confident when this testimony is complete,
2 when the record is complete the Commission will be convinced
3 that it should render an affirmative determination in all
4 these investigations. Thank you.

5 MR. BISHOP: Opening remarks on behalf of
6 Respondents will be given by Matthew M. Nolan, Arent Fox.

7 CHAIRMAN BROADBENT: Welcome Mr. Nolan.

8 OPENING REMARKS BY MATTHEW M. NOLAN

9 MR. NOLAN: Good morning Madam Chairman
10 Broadbent, Vice Chairman Pinkert, members of the Commission
11 and staff. If I squint a little bit this morning, it's
12 because the one thing I forgot to do was bring my reading
13 glasses with me, but fortunately this is in big type, so I
14 think can get through it.

15 Of course, my name is Matthew Nolan with Arent
16 Fox. On behalf of the responding companies and in
17 particular our client Reliance Industries for India and the
18 countries before you today, thank you for the opportunity to
19 be heard. This case presents several unusual factors for
20 the Commission to consider.

21 First, as we discussed in the preliminary phase,
22 the entire U.S. industry consists of four foreign
23 multi-national entities, three of whom brought this case.
24 Now we realize that concentration, industry concentration
25 and competitiveness is not necessarily in the immediate

1 purview of the Commission. But this is an important
2 condition of competition that needs to be considered in this
3 case.

4 All are large foreign-based multinationals with
5 significant foreign operations. They have the ability to
6 source PET from operations abroad and indeed have done so
7 significantly during the POI. There is no doubt that they
8 control the U.S. market, and there is no doubt that they
9 account for a more than significant share of the world
10 market. They control pricing.

11 They claim injury from subject countries, and
12 yet they have maintained high capacity utilization rates and
13 have undertaken major expansion projects during the POI, not
14 the least of which is the \$1 billion, one million metric ton
15 plant in Corpus Christi, Texas, which I just read is being
16 expanded even more.

17 They have increased imports from their
18 affiliates in Mexico and then more recently Taiwan. If the
19 U.S. industry had decided not to produce or had decided to
20 produce in the U.S. instead of buying from their Mexican and
21 Taiwanese operations, what would their capacity utilization
22 actually have been? Much higher than is being recorded
23 before you.

24 The U.S. industry claims that low import prices
25 are driving prices down, and yet the quarterly pricing data

1 that the staff has collected indicates that subject imports
2 over-sold U.S. producers more often than not during the POI,
3 with no sustained pattern of underselling.

4 There are quite simply no observable price
5 effects due to subject imports. Instead, falling raw
6 material costs are the key to any decline in prices in PET,
7 which after all is manufactured from base petrochemicals
8 that are part of a petrochemical and refinery process, crude
9 oil and natural gas.

10 The facts demonstrate that the domestic
11 producers in this industry absolutely dominate the market.
12 They enjoy significant advantage over most of the subject
13 imports. For example, rail transportation and long-term
14 contracts with Tier 1 customers. In particular, rail is a
15 demand and requirement for Tier 1 customers and most imports
16 do not offer that option.

17 The exceptions are Canada, which is subject, and
18 Mexico, which the Petitioners have affiliations with, which
19 is non-subject, who both ship by rail and consequently are
20 the largest importers into this market. That is a
21 significant fact. Subject imports other than Canada do not
22 compete on these grounds. They do not have the option of
23 direct rail shipment.

24 Subject imports have not adversely affected U.S.
25 producers. Subject imports have been present in this market

1 for a long, long time. And what of Canada and China? They
2 are not here today, and no doubt Petitioners are going to
3 complain to the Commission that you should apply some form
4 of adverse inferences as a result.

5 Of course that then begs the question why aren't
6 Canada and China appearing today? China has a habit of
7 diving out of these things in the final when they're not
8 happy, but Canada is our closest neighbor and the largest
9 single importer of subject merchandise.

10 Why are they not here? They were here at the
11 preliminary. One would think Canada has a lot to lose by
12 not appearing here today. But if the Commission is to make
13 any type of inference by the non-appearance of Canada and
14 China, we urge you not to carry that inference over to India
15 and Oman, who here today, have presented testimony, have
16 filed briefs and are fully ready to answer all of your
17 questions.

18 Thank you for your time. We appreciate the
19 opportunity to be here and we look forward to our main
20 presentation.

21 MR. BISHOP: Would the panel in support of the
22 imposition of anti-dumping and countervailing duties please
23 come forward and be seated. Madam Chairman, our witnesses
24 on this panel have been sworn in.

25 (Pause.)

1 CHAIRMAN BROADBENT: I want to welcome the panel
2 to the ITC, and you may begin when you're ready.

3 STATEMENT OF PAUL ROSENTHAL

4 MR. ROSENTHAL: Thank you, Madam Chairman. For
5 the record, I'm Paul Rosenthal again. This morning I will
6 start with an overview of the case, to be followed then by
7 the testimony of the industry witnesses and then my partner
8 Kathleen Cannon will conclude with a discussion of the legal
9 issues in these cases.

10 The Commissioners and others under APO will have
11 confidential versions of these public slides, so I'm not
12 going to differentiate when I go through this testimony.
13 You'll see from this first slide how the imports increased
14 over the period 2012 to 2014. Imports started at
15 significant levels at the beginning of the period and
16 increased rapidly.

17 It's worth noting that the subject imports
18 represent the vast majority of total imports. As a result
19 of the increase in subject imports, their market share also
20 increased quite significantly. At the same time, the U.S.
21 market share dropped, the producers' market share dropped
22 and you can see from this chart right here that the
23 increased market share of the subject imports displaced U.S.
24 producers by almost the identical amount.

25 This chart is worth looking at. As we all know,

1 having done these cases for a long time, when you've got
2 this perfect X you should probably stop talking, but I have
3 more slides. But again, subject imports displaced U.S.
4 production, U.S. producers' market share on an almost one
5 for one basis, and the foreign producers have no explanation
6 for this, other than price. That's the only way it can be
7 explained.

8 I will ask you once again too to take a look at
9 this slide worth studying. This shows that non-subject
10 imports, despite the claims of Respondents, were not the
11 problem. The tiny sliver down at the bottom of this chart
12 shows that the gain in market share by non-subject imports
13 over the period of investigation were microscopic.

14 Slide 7 shows what happened to import volumes
15 after these cases were filed about a year ago. They
16 declined significantly. I noticed some conversation because
17 we looked at the transcript from your hearing on PET resin,
18 where the Respondents came up with some claim that the
19 import declines in the last year had something to do with
20 the GSP proceedings.

21 That's ridiculous. You can see when the decline
22 started, well after anything involving GSP took place. We
23 have more data on that if you want to ask questions later.
24 Of course, what this shows you, as you consider the volume
25 decline over the 2014-2015 interim periods, is the effect of

1 the petition filing in this case and the subsequent
2 activities by the agencies, and it corroborates the
3 importance of price in these cases, because they declined,
4 the volumes declined when the importers were facing
5 increased duties to offset the unfair trade practices of the
6 foreign producers.

7 Next slide is confidential, but and I want to
8 refer -- well discuss it with the Commissioners who have it
9 in front of you and the staff. You can see, before we leave
10 the topic of subject import volumes, that while U.S. demand
11 was growing slowly, the subject imports surged into the
12 United States.

13 That surge was totally unrelated to demand. It
14 wasn't as if there were some unmet needs, unfulfilled
15 applications that the U.S. producers couldn't fulfill. This
16 is a total surge unrelated to any demand needs in the United
17 States. Ms. Cannon will discuss some of the Respondents'
18 claim about transportation and market segmentation shortly,
19 but it's fair to say that the foreign producers and
20 importers are able to pump product into this market
21 regardless of their alleged obstacles, and regardless of the
22 competition by domestic producer which they kindly but
23 unjustifiably aggrandize.

24 Slide 9 actually highlights the promineny of
25 price in purchasing decisions, and we give you some quotes

1 here. I'm not going to read all these to you. They're all
2 from your record, but it's important to note that the all
3 the respondent purchasers say that price is very important
4 in purchasing decisions, and that the vast majority of those
5 responding found differences other than price either
6 sometimes or never significant in sales of PET resin from
7 any source.

8 Slide 10 is confidential, but again, here are
9 some quotes, excerpts from experts who follow this industry,
10 and while I can't read these out loud, they make it very,
11 very clear that they understand, as people in the industry
12 understand, that low import prices are used by both large
13 and small purchasers to leverage lower prices by domestic
14 producers.

15 So even when the U.S. producers are not giving a
16 volume because of the low-priced imports, they are forced to
17 lower their prices in order to get the sale in the first
18 instance.

19 Slide 11 summarizes the record on the issue of
20 underselling, and it's amazing how Mr. Nolan in his five
21 minute opening managed to get so many facts wrong. Among
22 the facts wrong was the facts on underselling. If you look
23 at the complete record, you will see that underselling is
24 rampant, and the vast majority of comparisons, the foreign
25 producers, the subject producers undersold the domestic

1 industry.

2 That holds the same whether you're looking at
3 Slide 11 or Slide 12, which happens to deal with direct
4 import price comparisons. You might -- let's see. We've
5 had some discussions in the past in other cases about the
6 value of looking at direct import pricing.

7 As this case shows, there are a lot of
8 purchasers, large purchasers with buying power and are
9 sophisticated and that are able to import directly and they
10 have, and this is another case in which you ought to be
11 looking at these direct imports for comparison purposes.
12 Not surprisingly, the margins of underselling are larger
13 there than through distributors.

14 Slide 13 shows the quarterly price declines for
15 the U.S. prices, and it involves all products throughout the
16 Period of Investigation. You might note that even after the
17 filing of these cases, as import volumes receded, low-priced
18 subject imports were still present in the market and
19 affecting price negotiations, as the information in our
20 prehearing brief indicates.

21 Slide 14. Throughout the proceeding, the
22 Respondents have claimed that the decline in U.S. prices are
23 the result of declines in raw material costs, mainly due to
24 declining petroleum costs. As Slide 14 demonstrates,
25 however, domestic industry prices have declined much more

1 than the decline in raw material costs or overall cost
2 declines. These price declines have been driven by
3 aggressive pricing by subject imports.

4 Slide 15 summarizes the performance indicators,
5 I'd say the so-called trade indicators, and you can see that
6 all of the indicia of injury are met for the capacity,
7 production, shipment volumes, shipment value AUV,
8 production, related workers and hourly workers. The
9 confidential version of this chart shows you the actual
10 dimensions of those declines, but as you can see, the arrows
11 are all pointing downward, very bad news for this industry.

12 The next slide has a similar summary of the
13 declines in the financial indicators for the industry. You
14 ought to take another minute to take a look at these,
15 because the volume, value, AUVs, gross income, every way you
16 look at income, every way you look at the financial analysis
17 is dismal for this industry.

18 There are steep declines for this industry, and
19 by the way, Mr. Nolan tries to paint this industry as big,
20 multinational companies that control this industry. He's
21 made some allusion to some anti-competitive conduct. But if
22 these are people acting in anti-competitive way, they're
23 doing a terrible job of keeping their profits up.

24 So they're either the worse conspirators in the
25 world or something else is going on, and I think that

1 something else is the subject imports.

2 You can see on Slide 17 that there's more detail
3 on the financial performance of the industry, or I should
4 probably refer to this as lack of performance, because from
5 relatively low profits to start, they've now managed to get
6 to losses over the Period of Investigation.

7 Even with a slight improvement in the financial
8 condition of the industry following the case filings in
9 2015, the industry remains in an injurious and unsustainable
10 condition.

11 Page 18, I'm sorry Slide 18
12 begins a few slides dealing with the question of threat, and
13 you'll see that the graphic indication that the capacity of
14 the subject producers far exceeds U.S. demand, and Slide 19
15 in a similar vein shows that just the excess capacity of
16 foreign producers is enough to supply a large portion of
17 U.S. demand.

18 By the way, the excess demand slide, is that not
19 just an interesting statistic? If you look at how the
20 foreign producers, the subject imports like to use their
21 excess demand, is the target of the United States market.
22 The U.S. is either the number one or number two target for
23 the subject producers. They may claim we've got all these
24 other places to go in Asia or elsewhere, but it's the U.S.
25 where they prefer to go and where they have been going.

Slide 21 will explain to you that this is just

1 not because they don't have a lot exported or are not export
2 oriented generally. This is a confidential slide. But you
3 can see what proportion of their shipments really are used
4 for export, and you can also see from this slide in the last
5 column to the right how they project even more reliance on
6 exports going forward.

7 I know we're moving quickly, but I hope you'll
8 take your time to read this slide during the course of this
9 proceeding and the rest of this case.

10 You can see from the public Slide 22 that there
11 are a lot of countries out there who have been hurt by the
12 subject imports, particularly imports from China and India,
13 who have a representative here today. Those countries have
14 said we are not going to allow the unfairly-traded imports
15 from the subject producers to continue to injure our
16 industry and have closed their markets.

17 It's important for us to consider this because
18 it means that the export opportunities for the subject
19 importers are fewer and all this does is make it more
20 important for their production to be headed to the U.S.
21 market.

22 So to just summarize the threat real quickly
23 before I turn it over to Ms. Cannon, the producers are
24 heavily export-oriented. They have diminishing
25 opportunities for their exports. They regard the United

1 States as one of the top one or two destinations for their
2 exports, and they have plenty of excess capacity to send
3 here if there are not affirmative final determinations in
4 all these investigations.

5 So not only is the U.S. industry suffering
6 present material injury by reason of subject imports, the
7 subject imports also represent an imminent threat of further
8 material injury to the domestic industry. I'll conclude my
9 testimony now and turn it over to Mr. McNaull to begin with
10 the first of the industry testimonies.

11 STATEMENT OF JON McNAULL

12 MR. McNAULL: Good morning. My name is Jon
13 McNaull. I'm the Vice President of the PET resin business
14 for DAK Americas. I've been with DAK Americas for almost 25
15 years. I started in the polyester staple fiber business
16 before moving to the resin business in 2012. My
17 responsibilities have included working as an engineer in the
18 manufacturing operation as well as working in technical
19 marketing, sales, and supply chain management.

20 In my current position, I'm responsible for the
21 sale, manufacture and financial operations of DAK Americas
22 PET resin business. Today, I'm here today -- I'm appearing
23 here today because my company and the domestic PET resin
24 industry as a whole are in a tenuous position, due to the
25 surge of unfairly low-priced imports of PET resin from

1 Canada, China, India and Oman.

2 We are continuously faced with low-priced offers
3 by subject imports during our customer negotiations. We
4 have lost and continue to lose numerous sales as well as
5 revenue as a result of unbelievably low prices offered from
6 each of the subject countries.

7 Over the 2012 to 2014 period, imports from these
8 four countries have surged into the U.S. at unprecedented
9 rate. By selling at dumped and subsidized prices, the
10 imports have undercut our prices, causing us to reduce
11 prices to unprofitable levels. We provided numerous
12 examples of lost sales and lost revenue from each of the
13 subject countries for the Commission's record.

14 These low-priced quotes are very real and have
15 resulted in our declining sales volume during the Period of
16 Investigation. Although we have seen some improvement in
17 the prices offered by subject imports after the case was
18 filed, we are still faced with low-priced offers from the
19 subject countries.

20 The underselling by subject countries was the
21 most extreme in 2014, based on my experience in the market.
22 In one contract negotiation, DAK lost over half of a
23 substantial volume of sales to a major customer due to
24 low-priced imports from Oman.

25 For the other half of the volume, we had to

1 lower our price significantly to meet the import price in
2 order to keep that part of the sale. The depressed prices
3 we have suffered due to subject imports are directly hurting
4 our bottom line. From 2012 to 2014, we watched our
5 financial position erode and our market share plummet as
6 subject imports penetrated this market.

7 Only after these trade cases were filed did
8 subject imports begin to back off, allowing us to regain
9 some sales and see some improvement in our bottom line. But
10 even that improvement is insufficient, leaving us still with
11 minimal profits and with the subject imports still present
12 in the market, hoping to surge to prior levels if trade
13 remedies are not imposed.

14 As Mr. Cullen can attest, when he and I meet
15 with customers, they make clear to us that we must be
16 competitive with the low import prices to keep their
17 business. Our customers are very sophisticated and they
18 present details and comparative offers they have received so
19 that we know prices we have to compete with to get business.

20 Customers will say things like if you don't
21 adjust your price to beat the import price, you will lose
22 our business. When confronted with these low-priced offers,
23 we either have to lower our price or we have to let go of
24 the business. It's hard for me to imagine that DAK would
25 ever have faced PET resin import prices that are so low.

1 Although we can adjust to many factors, we
2 cannot remain in business when we're forced to compete with
3 companies that price below cost and are willing to undercut
4 our prices however low we reduce them.

5 And let me be clear, that price is a driving
6 force in purchasing decisions when comparing our product to
7 subject imports. We are not losing business to subject
8 countries for reasons of quality or an inability to supply
9 product. DAK has been able to meet all its customer supply
10 needs during this Period of Investigation.

11 Subject import increases were not due to any
12 shortage of supply of PET resin in the U.S. market. In
13 fact, we would have liked to sell more product than we have
14 but for the import competition. The capital-intensive
15 nature of the PET resin industry makes it important that
16 producers maintain high operating rates to maximize
17 efficiencies.

18 If we cannot run our lines at optimal efficiency
19 levels, significant costs are incurred and production
20 curtailments or shutdowns are often are only alternative.
21 The increased volumes of subject imports leading to reduced
22 production and shipments of U.S. producers have not only
23 cost us market share but have also affected our production
24 efficiencies.

25 The effects of subject import competition have

1 been severe. DAK Americas was forced to shutter its
2 facility in Cape Fear, North Carolina in 2013, costing 600
3 workers their jobs and reducing our production operations.
4 I understand Respondents have argued that our Cape Fear
5 facility was closed because it was obsolete and built in
6 1961. That is wrong. The Cape Fear PET resin facility,
7 built in 2007 and contained state of the art technology, but
8 we were forced to close it just six years later.

9 Respondents are also wrong that imports have
10 nothing to do with facility closure or layoffs, as we will
11 document in our post-hearing brief. I should add that our
12 Cape Fear facility used the melt to resin technology that
13 Omanian producer Octal has claimed is a superior process
14 that yields a superior product.

15 DAK's Cape Fear facility was the world's first
16 melt to resin plant using the same technology that Octal
17 uses today. If this technology truly yielded a superior
18 product, we should have been able to sell more of the
19 product and earn a premium on those sales.

20 Instead, we were forced to shutter this plant in
21 part due to the unfair competition from the subject imports.
22 The problems our industry has suffered cannot be blamed on
23 anything but unfair traded imports. We have seen increasing
24 demand trends, but subject imports have captured those
25 demand increases at our expense.

1 subject product and production process, understanding the
2 product is important to address some of the issues that have
3 been raised in this investigation. The bottom line is that
4 Nan Ya and other domestic producers compete directly with
5 unfairly priced imports from Canada, China, India and Oman,
6 across all end uses and throughout the United States,
7 because those imports are exactly the same as our U.S.
8 product.

9 PET resin is a polyester, polymer resin that is
10 sold in the form of small, white, lightweight chips or
11 pellets. I brought some samples for you to examine. The
12 PET resin that is the focus of this case has an intrinsic
13 viscosity or IV of 0.70 or more, but not more than 0.88
14 deciliters per gram.

15 IV is a measure of the PET resin's molecular
16 weight, and reflects the material's melting points,
17 crystallinity and tensile strength. The industry uses the
18 IV to establish the right grade of PET resin for a
19 particular application. But there is also significant
20 overlap in the IV ranges that work best for particular end
21 uses.

22 PET resin chips are melted to form a wide range
23 of consumer and industrial products. The main uses for
24 packaging grade PET resin include beverage bottles for
25 carbonated soft drinks, water and other beverages, clam

1 shell containers for products you'll find in the deli or
2 produce section of your grocery store, like fruits, cakes,
3 pies and salads, and for peanut butter, jams and dressings.
4 I brought some examples of these as well.

5 PET resin goes into packaging for household,
6 chemical, personal care, automotive, pharmaceutical and
7 other consumer products requiring sterile and stable
8 packaging. It is also used for strapping on large bulk
9 substances such as lumber and in the production of rugs and
10 carpet. As noted, these different end uses may require PET
11 resin with different IVs, but all fall within a fairly
12 narrow range that is encompassed by this case.

13 PET resin used for all these applications has
14 the same basic physical characteristics. PET resin is sold
15 to both distributors and to end users who melt the resin and
16 mold it into a finished bottle packaging shape.
17 Increasingly, we are seeing large brand owners buying PET
18 resin that either have their own conversion operations or
19 they'll send our product to their converters.

20 Regardless of the customer, we experience direct
21 competition with subject imports. Respondents have
22 presented a couple of arguments about the product and its
23 production that are not consistent with my experience in the
24 market. First, Respondents claim that hot-fill versus
25 cold-fill bottling applications differentiate sales and

1 competition in the PET resin industry.

2 I disagree. Such a distinction does not really
3 fit with the technical or commercial reality of the PET
4 resin industry. All PET resin is made from the same two
5 primary inputs, purified terephthalic acid or PTA and
6 monoethylene glycol or MEG, which are subject to the same
7 manufacturing processes to create PET resin.

8 The IV ranges for hot-fill and cold-fill end
9 uses also overlap considerably. Nan Ya's PET resin is sold
10 for both hot-fill and cold-fill end uses, and those sales
11 are not divided by customer. We sell to bottling customers
12 who run conversion process for both hot- and cold-fill end
13 uses, and the supply qualification process is the same
14 regardless of the application. We also compete in the U.S.
15 market with PET resin from the subject countries for both
16 hot-fill and cold-fill uses.

17 Another issue Respondents raise relates to the
18 production process, and whether one type of process is
19 superior to another. Nan Ya, like many other domestic and
20 foreign PET resin producers, utilizes the solid state
21 polymerization process to produce its product. Once PTA and
22 MEG are processed into amorphous PET, the chips are
23 crystallized in the solid-stating process.

24 We remove impurities, increase the product's IV
25 and cool the PET resin chips and store them for delivery.

1 Some PET resin producers use a melt to resin or MTR
2 technology instead of the solid state polymerization process
3 to manufacture their product. Omani producer Octal has
4 claimed that their process is more efficient and produces a
5 better PET resin product. That is simply not true.

6 The two types of manufacturing processes produce
7 the same quality PET resin products that are entirely
8 interchangeable. We have never lost a sale of our product
9 because of a preference for a PET resin produced with the
10 MTR technology. Nor do customers distinguish products based
11 on the manufacturing process.

12 Notably products made from the MTR technology do
13 not garner a price premium in the market, showing there is
14 no perceived product superiority resulting from this
15 process. The PET resin production process, regardless of
16 which type of technology is used, is capital-intensive and
17 expensive. It requires sophisticated equipment and
18 controls.

19 Additionally, breaks in production, given the
20 nature of the chemical processes, are extremely disruptive.
21 PET resin producers aim for continuous, high volume
22 manufacturing and high capacity utilization to maintain
23 efficiencies. Unfair imports have injured Nan Ya's ability
24 to maintain necessary production levels.

25 PET resin is a highly price sensitive product.

1 Margins are extremely tight. So pricing pressures from
2 imports of even a penny or two per pound less than our
3 prices have a significant impact on our bottom line. Across
4 our sales and to all end uses, the lower prices offered by
5 foreign producers in all four subject countries have had and
6 continue to have a very damaging effect on our ability to
7 obtain or retain business.

8 We have lost sales despite price reductions,
9 simply because we cannot compete with the prices the subject
10 foreign producers are offering. We have lost significant
11 revenue and profits as a result. Recently, we have heard
12 rumors that a domestic producer may be acquiring Canadian
13 producer Selenis.

14 From our vantage point, it doesn't matter who
15 owns Selenis. Nan Ya remains very concerned about imports
16 from Canada because we compete head to head with those
17 imports for sales in the U.S. market. Imports from Canada
18 have significantly undercut Nan Ya's prices over the past
19 few years, and I fully expect that they will continue to do
20 so without the discipline of a dumping order.

21 All the lost business and price reductions
22 caused by subject imports have had a direct and harmful
23 effect on Nan Ya's financial position. Nan Ya has also
24 experienced major declines in production since 2012 and
25 reductions in our PET resin workforce.

1 Without relief against unfair imports from the
2 subject countries, where producers have huge capacity and
3 room to grow, Nan Ya and the other U.S. producers face
4 ongoing and substantial business losses. If the Commission
5 does not impose orders, we cannot remain competitive in the
6 PET resin market. Thank you very much.

7 STATEMENT OF MARK ADLAM

8 MR. ADLAM: Good morning Madam Chairman and
9 members of the Commission. My name is Mark Adlam, and I am
10 the North America Commercial Manager of M&G Polymers USA.
11 I've been involved in the production and sales of PET resin
12 at M&G for the past 15 years, and I've worked in the PET
13 industry for over 20 years. It is a pleasure to appear
14 before you today.

15 M&G produces PET resin at our facility located
16 in Apple Grove, West Virginia, where we have two production
17 lines. We manufacture and offer the full range of PET
18 grades suitable for a wide array of end use applications,
19 including soda and water bottles and other containers.

20 In addition, as we reported to the Commission,
21 M&G is currently constructing a new vertically integrated
22 PTA-PET plant in Corpus Christi, Texas, which is scheduled
23 to open during the third quarter of 2016. Notably, this
24 investment project was first announced back in 2011, before
25 subject imports began to wreak havoc in the U.S. market.

1 The new state-of-the-art facility is being built
2 to increase efficiencies and to supply the increasing demand
3 from our U.S. customers. We saw early on that U.S. demand
4 would be growing in the future, and it was important to our
5 company to keep up with that growth, rather than cede the
6 growth to unfairly traded imports.

7 When a decision is made to expand capacity, it
8 must be done on a large scale, because it is both
9 inefficient and impractical to add incrementally.
10 Importantly, a significant portion of the new capacity will
11 be used to displace M&G's current imports from Mexico, and
12 to increase our exports to other markets such as to Europe
13 or South America.

14 You may hear today that imports from Mexico play
15 a key factor in this case. But let me tell you, imports
16 from Mexico are not the problem. Although M&G has imported
17 from PET resin from our affiliate company in Mexico, M&G
18 Polymeras Mexico to supplement our U.S. production, our
19 imports have been sold in the U.S. market prices at or above
20 the prices at which we sell PT resin from our West Virginia
21 facility.

22 These imports from Mexico have not been priced
23 at lower levels to gain market share at the expense of the
24 U.S. production as is true of the subject imports. Indeed,
25 the prehearing report demonstrates that imports from Mexico

1 have generally been priced higher than subject imports
2 during the Period of Investigation.

3 Further and in contrast to the Respondents'
4 claim, M&G will no longer import PET resin from Mexico once
5 our facility in Texas is up and running, as it simply would
6 not make economic sense to do so. As a result, we expect
7 import volumes from Mexico to be very minimal in the near
8 future.

9 We note that Indian producer Reliance, one of
10 the largest companies in the world, has made a number of
11 allegations concerning our Corpus Christi operations. But
12 Reliance has mischaracterized the facts. There is no joint
13 venture and there is no joint manufacturing arrangement
14 between M&G and DAK.

15 M&G is the sole owner of the Corpus Christi
16 plant. DAK will merely be an arms-length purchaser of PET
17 resin from M&G. This purchase agreement has been completed
18 vetted by our antitrust attorneys, and they have advised us
19 that this agreement is pro-competitive, not
20 anti-competitive.

21 In contrast to the fairly traded imports from
22 Mexico, large volumes of unfairly priced imports from
23 Canada, China, India and Oman have surged into the U.S.
24 market over the past few years, and have captured an
25 increasing share of the U.S. market. These market share

1 gains occurred solely by consistently underselling our
2 prices.

3 M&G has experienced significant underselling
4 from the subject producers by substantial margins throughout
5 the period of the investigation, and we have provided
6 documentation of numerous instances of lost sales and lost
7 revenues to the Commission.

8 The only we have been able to compete with
9 subject imports is by drastically reducing our prices, often
10 to levels that have been below our cost of production. You
11 can see the impact this has had on our financial performance
12 in our questionnaire response. As a result of the
13 competition with low-priced subject imports, you will see
14 that our sales volumes have declined, our prices have
15 plummeted, employment has decreased and our financial
16 performance has deteriorated.

17 All of these declining trends are tied directly
18 to the presence of low-priced subject imports in our market.
19 As we have detailed in our prehearing brief, each of the
20 subject countries maintain significant excess capacity well
21 above their home market demand, and additional capacity is
22 projected to come on stream in the near future.

23 Each of the subject industries is heavily export
24 oriented. In addition, most subject producers face import
25 barriers in other major markets such as the EU, Argentina,

1 Malaysia, South Africa and Turkey, making the U.S. market
2 even more attractive. M&G and other U.S. producers can
3 compete fairly with any producer in the world, but we should
4 not be required to compete for sales our home market with
5 dumped and subsidized imports.

6 Despite substantial investments in our
7 facilities, we simply cannot compete with the irrationally
8 low prices of these subject imports. The sales that M&G has
9 managed to retain has been the result of us reducing our
10 prices by more than our raw material costs to compete with
11 the low prices of the subject imports. This has caused a
12 cost price squeeze and a dismal financial performance for my
13 company.

14 In summary, if dumped and subsidized imports
15 continue to flood the U.S. market at the low price levels we
16 have seen in the recent years, there is no doubt our company
17 will continue to lose sales and market share to subject
18 imports. While we recognize that there is a place for
19 imports in the market, they must be fairly traded.

20 We are confident that if import relief is
21 provided to our industry, M&G can effectively compete again
22 and achieve a healthy return on our investment. Thank you
23 very much for your attention.

24 STATEMENT OF JOHN CULLEN

25 MR. CULLEN: Good morning. I am John Cullen,

1 Director of PET Resin Sales and Marketing at DAK Americas.
2 I have served in my current position since 2012 and have
3 been with DAK Americas for 16 years. Today, I will discuss
4 some of the conditions of competition we face in the U.S.
5 PET Resin Market. I will also describe some of the changes
6 that have occurred since the Commission conducting its prior
7 PET Resin investigation in 2005.

8 The first competitive factor is demand. Demand
9 for PET Resin in the United States has increased in recent
10 years at a modest pace. PET Resin is used in a variety of
11 end uses as discussed by Mr. Freeman. Demand for these end
12 uses drives demand for PET Resin. In recent years demand
13 for certain end uses like bottle for carbonated beverages
14 has declined while demand for other end uses such as water
15 bottles, beverage cups and salad trays has increased leading
16 to an overall increase in demand for PET Resin. The
17 lightweight and recyclable nature of PET resin products make
18 them a popular choice in packaging over other materials such
19 as glass and aluminum. The industry projects that the
20 demand for PET Resin will remain steady and continue to show
21 modest growth in the future. In terms of supply, the U.S.
22 Market is currently supplied by four U.S. Producers along
23 with imports from a number of countries. Domestic capacity
24 to produce PET Resin is now larger than it was ten years
25 ago. Domestic Producers are able to supply demand for PET

1 Resin in the United States. The Domestic Industry has
2 available capacity through the last three years. Nor have
3 there been any supply shortages over the past three years.
4 In fact, we would like to increase sales to our customers
5 further but have been prevented from doing so due to the
6 unfairly low prices offered by the Subject Countries.

7 Another important competitive condition is the
8 high degree of substitutability of PET Resin regardless of
9 source. PET Resin produced in the United States is fully
10 interchangeable with PET Resin produced in the Subject
11 Countries. As a result, we operate in a highly
12 price-sensitive market with price driving purchasing
13 decisions and where lower prices at just a penny a pound can
14 have a profound effect on our sales and profitability.

15 The low prices offered by the Subject Importers
16 have allowed them to increase their penetration of our
17 market, forcing us to cut our prices to maintain sales or
18 lose sales and customer accounts to Imports. A factor on
19 which the Commission focused extensively in the 2005 case
20 was the effect of changing raw material costs on U.S.
21 Producer prices due to customer contracts that did not take
22 raw material cost fluctuations into account.

23 Fortunately, the industry has changed its pricing
24 approach in the intervening decade. Our contracts with
25 customers now take into account raw material costs through

1 mechanisms that can be adjusted on a monthly basis. Over
2 the past three years, raw material costs have fluctuated and
3 the new pricing contracts have allowed our prices to change
4 as well. So we are not locked into contractual obligations
5 to sell at a price independent of cost changes. This change
6 is important to the PET Resin industry and differentiates
7 the current case from the 2005 case.

8 The Domestic Industry is not, however, insulated
9 from the effects of import pricing. We have to negotiate
10 with our customers for the overall price of the product.
11 Subject Imports regularly undercut our prices, causing us to
12 reduce our prices to try to keep the sale. Even when
13 contracts are involved, customers come back to us during the
14 renewal period to seek a lower price, which could implicate
15 a much greater volume of PET Resin than that quoted import
16 was to supply.

17 Another condition of competition I want to
18 mention this morning is the increasing nature of direct
19 imports by PET Resin purchasers. Most of the purchases of
20 PET resin are very large companies that have eliminated the
21 middleman and directly source PET Resin either from U.S. or
22 Foreign Producers. This level of competition should not be
23 ignored and is extremely injurious to our operations.

24 Next, there is the hot-fill issue, or non-issue I
25 should say. The foreign producers suggest that the market

1 is segmented into hot-fill and cold-fill components and that
2 certain imports don't compete for hot-fill end uses but that
3 is not accurate. That competes with Subject Imports for
4 sales of PET Resin to both hot-fill and cold-fill end uses
5 and we compete on price.

6 As Mr. Freeman has stated, PET Resin IB ranges
7 for hot-fill and cold-fill end uses overlaps significantly.
8 Once qualified, Foreign Producers have the ability to sell
9 to all end uses including hot-fill applications and there
10 are non quality characteristics that would compel hot-fill
11 converters to prefer Domestic PET Resin over imports.
12 Consequently, it is simply inaccurate to suggest that
13 imports do not compete across all end uses.

14 The Domestic Industry also competes with imports
15 in all en uses throughout all geographic areas of the United
16 States. There is no geographic portion of the U.S. PET
17 Resin market that is served exclusively by imports or
18 exclusively by the Domestic Industry. We compete head to
19 head with imports every day and every reach into the United
20 States.

21 Finally, I would like to address the Foreign
22 Producers that U.S. Producers have an advantage to shipping
23 PET Resins to customers by rail or that imports can't
24 compete for sales to customers that require shipment by
25 rail. The fact is, that competes with Subject Imports in

1 every geographic region in the United States. Delivery by
2 rail does not preclude import competition and various import
3 sources also take advantage of shipments by rail. Customers
4 make purchasing decisions on the basis of price regardless
5 of the delivery method. Customers that can only accept rail
6 shipments are a small part of the market. Thank you for
7 your attention.

8 STATEMENT OF KATHLEEN CANNON

9 MS. CANNON: Good morning. For the record, I am
10 Kathleen Cannon and I will conclude our testimony by
11 addressing a few legal issues. Let me start with
12 cumulation. Our brief details the record support for
13 finding that each of the factors the Commission
14 traditionally considers to show a reasonable overlap in
15 competition is met here.

16 As you see in this slide, in terms of
17 fungibility, the large majority of U.S. Producers, Importers
18 and Purchasers reported that PET Resin from all sources is
19 always or frequently interchangeable. Purchasers further
20 reported that PET Resin from the United States and from each
21 of the four Subject Countries had been offered to them in
22 all of their firms end uses showing sales overlap. These
23 and other record facts led the Commission Staff to conclude
24 that there is a moderate to high degree of substitutability
25 between U.S. PET Resin and PET Resin from each of the

1 Subject Countries.

2 These facts disprove Respondents contentions that
3 there is a lack in overlap in sales to the same end uses
4 between the Subject Imports and the U.S. Product.
5 Respondents have focused in particular on the alleged
6 difference between PET Resin sold for hot-fill versus
7 cold-fill applications. They claim that Subject Imports
8 don't compete for sales for hot-fill uses. Even if that
9 contention were true, there would still be a reasonable
10 overlap of competition in sales for cold fill application
11 and other end uses that the respondents do not contest. But
12 there is also evidence of Subject Producers' sales for
13 hot-fill uses.

14 Subject Producers in every target country
15 advertise that they have PET Resin for sale to hot-fill
16 applications as shown in Exhibit 5 to our brief. Further,
17 Respondents raised the same issue in the 2005 trade case and
18 the Commission rejected it there. The Commission found that
19 competition for sales to hot-fill end uses was not impeded
20 for Subject Imports because it was possible for the Foreign
21 Producers to manufacture all grades of PET Resin. Here, the
22 record shows not only the capability but actual offers of
23 sales of the hot-fill product by the Foreign Producers.

24 Finally, OCTAL argues that its production process
25 makes a higher-quality product but as you heard our

1 witnesses attest, that technology is also used in the United
2 States and the PET resin produced using either process is
3 interchangeable. In sum, none of the arguments Respondents
4 raised regarding the lack of substitutability or fungibility
5 has merit and this criterion is met.

6 In terms of geographic overlap, while respondents
7 presented extensive arguments about a lack of geographic
8 overlap preliminarily, those arguments are not borne out by
9 the record. As this slide shows, Subject Imports from each
10 source overlapped geographically throughout the United
11 States. This chart does not show a lack of geographic
12 overlap or isolation of certain import sources or the U.S.
13 Producers in a specific region. Further, most responding
14 purchasers report that the U.S. Product and imports from
15 each target country were available in their geographic
16 region. So the geographic overlap factor is satisfied here
17 as well.

18 I would add that Respondents' somewhat related
19 argument about transportation methods and transportation by
20 rail in particular somehow limit competition between the
21 U.S. Product and the Subject Imports is unfounded. They
22 cite statistics as the various percentages of the U.S.
23 versus imported product that were shipped by rail but
24 different modes of transportation don't preclude
25 competition. Please focus on this fact because Mr. Nolan

1 also when he was discussing rail transport this morning
2 alluded to this particular issue.

3 The question is not which mode of transportation
4 you use but what do the customers require. Even though
5 there was a mischaracterization in one of the briefs, it
6 said the customer, a high percentage of the customers
7 actually require rail -- that's not true. It's just the way
8 the product happens to be shipped. There is not evidence
9 showing there are significant customers that require rail
10 delivery. A very important distinction. In fact, the
11 purchasers reported when you asked them about this issue
12 that PET Resin from both the U.S. and the Subject Countries
13 was comparable in terms of availability and in terms of
14 transportation costs.

15 With respect to distribution channels, both the
16 U.S. Product and the Subject Imports are sold to the same
17 channel to end users. Further, both U.S. and Subject Import
18 sources largely targeted even the same end uses, the soda
19 bottlers or the water bottlers. So this factor is met as
20 well.

21 And finally, imports from each Subject Country
22 and the United States were simultaneously present in the
23 U.S. Market in every year and even in every month the staff
24 examined. These factors collectively show more than a
25 reasonable overlap in competition to support cumulation.

1 Despite the strong evidence, Indian Producer Reliance urges
2 the Commission not to cumulate imports because it has
3 cooperated in this final stage of the case and other Subject
4 Producers specifically those in China and Canada have not.

5 There is no exception to the statutory cumulation
6 mandate based on diversion degrees of cooperation where, as
7 here, the statutory criteria supporting cumulation are met.
8 In fact, even where this cumulation is discretionary the
9 Commission has rejected this argument. In a recent case
10 last year involving cut-to-length plate in a Sunset Review,
11 the Commission decided that it should cumulate imports not
12 withstanding divergent degrees of cooperation. A failure
13 to cumulate imports when the statutory criteria are met
14 would penalize the Domestic Industry that is cooperating in
15 the case. Decumulating imports on this basis on the other
16 hand would reward respondents because certain respondents
17 refuse to cooperate. That outcome is inconsistent with law
18 and harmful to the cooperating U.S. Industry as well as
19 providing a perverse incentive to Foreign Producers to be
20 selectively uncooperative. Respondents' final attempt to
21 cast dispersions on the U.S. Industry's actions in an
22 apparently desperate effort to block cumulation of imports
23 is erroneous and unwarranted as we will address further in
24 our brief.

25 A second important issue here is Direct Imports.

1 It is crucial that the Commission recognize and analyze the
2 price-related injury that imports sold directly to end-users
3 caused U.S. Producers. As Mr. Cullen testified, many U.S.
4 Purchasers are now buying PET Resin directly from the
5 Foreign Producers, bypassing the middle man and obtaining
6 very low prices for these imports at the Domestic Industry's
7 expense. The Commission has gathered pricing data on direct
8 imports in this case but has not compared those prices in
9 its report to U.S. Prices.

10 A large part of the volume of sales by Subject
11 Imports of PET Resin is through this direct import channel.
12 As the Commission recognized in examining these direct
13 import prices in the Sugar Case, where significant volumes
14 were also sold through the direct import channel, a failure
15 to account for underselling in direct import transactions
16 would ignore significant underselling by imports and we urge
17 you to analyze the direct import prices here as well for
18 that reason.

19 The third legal issue I will address is causal
20 nexus. As you saw on the slides that Mr. Rosenthal
21 presented and heard our witnesses describe, the Domestic PET
22 Resin Industry has lost market share directly to Subject
23 Imports and has experienced significant underselling and
24 resultant price depression by reason of Subject Imports and
25 has consequently suffered serious erosion of its trade and

1 financial performance including the idling of facilities and
2 layoff of workers.

3 This injury correlates with the increasing
4 volumes and adverse price effects of Subject Imports within
5 the legal framework that the Commission has adopted and the
6 courts have approved. The slight uptick in the industry's
7 condition once the volume of Subject Imports dropped due to
8 the case-filing in 2015 is further confirmation of the
9 causal nexus between the Subject Import behavior and the
10 U.S. Industry's performance.

11 Other factors that are often identified as cause
12 of the industry's problems cannot be cited here as the cause
13 of the PET Resin Industry's injury. Demand for PET Resin
14 has increased over the past three years which should have
15 led the Domestic Industry's shipments to increase and
16 allowed for healthy prices but the opposite occurred.
17 Demand cannot be blamed for the Industry's injury.

18 While Respondents have tried to point to raw
19 material costs as the explanation for price and profit
20 declines, the Commission Staff's variance analysis shows
21 that U.S. prices fell to a greater degree than cost so
22 declining costs also cannot be blamed for the Industry's
23 poor financial results. Respondents then cite non-Subject
24 Imports as the cause of the problem, but as the chart Mr.
25 Rosenthal presented shows, the Industry's lost market share

1 is directly to Subject Imports not to non-Subject Imports.
2 Respondents site imports from Mexico in particular but
3 pricing data the Commission gathered shows that imports from
4 Mexico are priced higher than Subject Imports and generally
5 higher than the U.S. Product as well so imports from Mexico
6 are not the cause of the Industry's price declines and
7 financial injury.

8 The final legal issue I would like to mention is
9 critical circumstances as discussed in our brief, the
10 statutory factors supporting a finding of critical
11 circumstances as to India are met here. As you see in this
12 last slide, once the Petition was filed, the volume of
13 imports from India surged to a level well above what it had
14 been prior to the filing of the Petition. So this compares
15 five months before the Petition was filed in March of 2015
16 to the next five months. Based on these official import
17 statistics as opposed to the erroneous data on which Premium
18 Waters relies, the imports from India jumped from roughly 20
19 million pounds in the months preceding the Petition filing
20 to over 33 million pounds in the five months after the
21 Petition was filed but before the preliminary duties could
22 be imposed.

23 That's an increase of 67.7 percent, a massive
24 surge by any measure. The behavior of the imports by India
25 here is precisely the type of behavior the Critical

1 Circumstances Provision was designed to address and we urge
2 you to reach an affirmative finding on that issue here as
3 well. Thank you for your attention. That concludes my
4 statement.

5 MR. ROSENTHAL: That concludes our direct
6 testimony. We will be glad to answer questions. I just
7 should add that also available to answer questions in
8 addition to the witnesses you have heard are our colleagues:
9 Gina Beck from Georgetown Economic Services, David Smith,
10 Grace Kim and Brooke Ringel from Kelley, Drye and Warren in
11 the 2nd row.

12
13 CHAIRMAN BROADBENT: Okay. I want to thank all
14 the witnesses for coming today. I will begin the questions.
15 I think I'll try Mr. McNaull, if you wouldn't mind. One of
16 the biggest, if not the biggest economic stories of the past
17 year has been the massive decline in oil prices. I read
18 today in the Wall Street Journal that natural gas prices
19 have fallen to a seventeen year low. If your prices are
20 explicitly linked to raw material prices, how would we not
21 expect a substantial decline in PET Resin prices over the
22 POI?

23 MR. MCNAULL: Madam Chairman. You would expect,
24 basically the way we manage our business is we manage the
25 price we get for PET versus the costs we pay for raw

1 materials so any decline in crude oil price globally will
2 impact the cost of raw materials. The prices will move
3 commensurate with that and our objective is to manage the
4 spread between our sales price and the raw material cost in
5 any given period.

6 CHAIRMAN BROADBENT: There's a chart on page 25
7 of OCTAL's prehearing brief showing a strong correlation
8 between PET Resin prices and raw material prices. Are you
9 comfortable with that chart?

10 MR. MCNAULL: I've not analyzed that chart per
11 say. I'm a little ignorant of exactly what trend it's
12 showing. I wouldn't be surprised if there is a strong
13 correlation between the cost of raw materials and the price
14 of PET.

15 CHAIRMAN BROADBENT: Okay.

16 MR. ROSENTHAL: Chairman Broadbent, we readily
17 concede there is a correlation. The key in this case, and
18 also that the petroleum costs have been going down. The key
19 in this case is that prices have been going down faster than
20 costs. That is not explained by anything that OCTAL has
21 presented. Our concern has been now that the Commission
22 knows that the industry is able to pass through increases in
23 cost and must pass through declines in cost that you think
24 in the area or the time there is declining costs they should
25 be making more money, but they are making less and that's

1 because prices are falling.

2 Prices of the finished good, the PET resin is
3 falling faster than the petroleum or the raw material cost
4 and that is the key to this case. That is the key to
5 finding properly injury because of the pricing pressures by
6 imports on the PET product.

7 MS. BECK: Madam Chairman, if I could just add
8 table 5 of our prehearing brief gives comparison of what the
9 declines in unit/net sales prices are compared to not only
10 unit/raw material prices but costs and I think it is very
11 indicative of how the price has dropped at a much faster
12 pace than raw materials over the entire 2012 to 2014 period.
13 So even though there are contracts how the price mechanism
14 that takes into account raw materials but what it doesn't
15 take into account is something they can't control which is
16 the low import-pricing.

17 CHAIRMAN BROADBENT: Is there anything in the
18 Staff Report that would illustrate that?

19 MS. BECK: Yes. The variance analysis is very
20 supportive of that as well and also the table that we drew
21 the information from for Table 5 of our Prehearing Brief is
22 in the Prehearing Report at Section 6-3 and 6-5.

23 MR. ROSENTHAL: It's fair to say that all of this
24 information comes from your prehearing staff report.

25 CHAIRMAN BROADBENT: Okay. Let's see, maybe Mr.

1 Freeman. Can you discuss whether you think the trend
2 towards light-weighting of bottles is counteracting any
3 increased production of bottles in the United States in
4 terms of growth and demand for PET Resin.

5 MR. FREEMAN: Right. The light-weighting is
6 where you are removing the PET from the actual product. The
7 bottle actually has less PET content. In my experience, the
8 majority of the light-weighting in the Industry occurred
9 prior to 2012. That's why you still see demand growth in
10 the 2012-2014 period. It still exists today. There are
11 still applications, bottles that can light-weight but it's
12 not a major issue at present day as it has been in the past.

13 MR. CULLEN: John Cullen from DAK. Can I just
14 add that unit growth of the packages that our customers make
15 out of the PET that we provide is up significantly versus
16 the actual consumption of PET so we've seen good growth from
17 the downstream customers, the consumers prefer PET so it's a
18 very good, vigorous market. There is still some
19 light-weighting that goes on that modifies the growth rate
20 for PET Resin.

21 MR. ADLAM: Mark Adlam from M&G. I would also
22 add that over the investigation period the market was
23 significantly up. There was growth in the market and some
24 of that can actually be driven by lightweighting. The cost
25 of the package comes down because of lightweighting that

1 causes increased demand and we actually can end up selling
2 more and I think over the investigation period and even
3 today we are seeing some good growth in our market.

4 CHAIRMAN BROADBENT: Are there new uses for this
5 product that are growing significantly?

6 MR. ADLAM: Mark Adlam again from M&G. Yes,
7 there are some new uses. You'd be quite surprised at the
8 range of products that PET is in, anything from movie film
9 to carpet fiber. In the last few years carpet fiber has
10 been growing pretty strongly. Probably our biggest grower
11 is still water bottles. That's growing at quite a good
12 rate.

13 CHAIRMAN BROADBENT: Yes, Mr. McNaul?

14 MR. MCNAULL: Yes, this is John McNaul. For
15 example, you see on the center table here that clamshell
16 packaging? You see a lot of this in grocery stores for
17 packaging of food and dry goods. That's growing very
18 rapidly outpacing a lot of the container growth. Mark
19 mentioned carpet is also an area where the growth is pretty
20 dramatic compared to similar product in beverages. But I
21 also wanted to mention in the case of consumer product
22 companies that are making these beverages you see on the
23 table here, when you compare plastic, particularly PET to
24 aluminum and glass as alternatives for consumer product
25 companies they prefer PET and PET is outgrowing those

1 materials also from a packaging perspective. So the overall
2 growth rate is steady, it's modest. It's in the 2-3 percent
3 range but it's steady and very consistent and we expect it
4 to continue to be.

5 CHAIRMAN BROADBENT: Why did the growth in carpet
6 uses...

7 MR. MCNAULL: This is John McNaull. From a
8 carpet perspective for the carpet producer it's a route to
9 low-cost manufacturing. They are able to use PET as a raw
10 material compared to nylon polyethylenes which is more
11 efficient in terms of raw material and the inherent
12 manufacturing process is more efficient than manufacturing
13 with those polymers as well. So the carpet manufacturer is
14 able to make a high-quality product at very low cost. They
15 prefer PET and it's growing at a much more rapid rate than
16 the other polymer alternatives.

17 CHAIRMAN BROADBENT: Okay. What are the
18 recycling issues around this product? It seems to me there
19 are concerns about a lot of clamshells ending up in
20 landfills and so forth. How do you guys discuss that?

21 MR. MCNAULL: This is John McNaull again. I
22 happen to be an executive chair of NAPCOR which is a
23 recycling organization for the industry and I think the
24 biggest challenge for recycling is collection of the
25 material. We have people who are willing to invest in

1 reclamation. We have people who are willing to invest,
2 companies willing to invest in converting recycled PET into
3 consumer products but the biggest challenge we face is the
4 U.S. System of collection and its inability to deliver the
5 supply stock needed to grow that industry. It's more of a
6 policy issue for the country than it is private sector's
7 willingness to invest or options to invest to grow
8 consumption of our PET material.

9 Polyester inherently from a recycling standpoint
10 is very robust. I mean, it can be recycled readily and
11 there are many processes to do that.

12 CHAIRMAN BROADBENT: But is it true you can't
13 reuse it in a food or a medical use, you have to use it in
14 something different? MR. MCNAULL: No, again, John
15 McNaull. You can collect any of those polyester materials
16 and there are processes that are certified from a food
17 safety perspective that allow you to put it into any of
18 those products again.

19 CHAIRMAN BROADBENT: Ms. Beck from Georgetown.
20 Should we actually be looking at a comparison of your costs
21 versus market prices or should we be looking at a comparison
22 of raw material price indices versus market prices?

23 MS. BECK: Could you repeat the question?

24 CHAIRMAN BROADBENT: Sure, should we actually be
25 looking at a comparison of cost versus market prices or

1 should we be looking at a comparison of raw material price
2 indices versus market prices?

3 MS. BECK: I think the actual cost as presented
4 in the Staff Report are very indicative in using either the
5 raw material costs or the total costs. I think also I know
6 that Respondents were trying to push the issue of whether it
7 was that raw material costs were causing the price declines
8 and even requested that the raw material data was broken out
9 by both MEG and PTA and even that information. So if you
10 want to know the level of the individual raw materials it
11 still shows that price decline was greater than the decline
12 of raw materials.

13 CHAIRMAN BROADBENT: Vice Chairman Pinkert.

14 VICE CHAIRMAN PINKERT: Thank you Madam Chairman
15 and I thank all of you for being here today to help us to
16 understand these issues. I want to pick up with that issue
17 that is reflected on confidential slide 14 which is a
18 discussion of the sales values versus the raw material costs
19 on a unit basis. What I see there is I see some evidence
20 that the absolute amounts were different in the way that you
21 are talking about, but when you described it, Mr. Rosenthal,
22 you said that the prices are falling faster than the raw
23 material costs. What I want to ask you is to take a look
24 either now or for the post-hearing at whether the percentage
25 changes are different or whether it's just the absolute

1 amounts that are different in the way that you said?

2 MR. ROSENTHAL: We'll do that and I understand
3 the distinction you're talking about and I may have
4 misspoken about that. The most important point, however, is
5 that one would expect in a time of declining costs that a
6 producer would be able to make more money. Their inputs are
7 costing them less. Something has happened in this industry
8 that has prevented that from being the case.

9 Instead of making more money, they're making less
10 money and again, you compare the price -- whether it's
11 percentage or over time -- the price has dropped much lower
12 than the cost of the goods sold or the raw material and the
13 question then is why? Our answer, and one that has not been
14 contradicted, there has been no explanation by Respondents
15 as to why price is dropping more than raw material costs.
16 Our answer and the only answer that this record allows you
17 to reach is because of the Subject Import pricing.

18 VICE CHAIRMAN PINKERT: Thank you, very much.

19 Now does M&G's construction of a large new
20 production facility in Corpus Christi indicate the domestic
21 industry's confidence in the U.S. market going forward?

22 MR. ADLAM: To a degree, yes. This is Mark Adlam
23 from M&G. As we've stated, I think we're confident that
24 there will be steady growth in the U.S. market. And that
25 was a large part in our decision to make the investment in

1 Corpus Christi.

2 But I would say that, you know, the investment
3 decision was made back in 2011 before the Subject Imports
4 were really surging, and we are concerned about our
5 investment. I mean, it's a big investment we're making, and
6 when we see these prices coming in it makes it a very
7 difficult situation for our company.

8 VICE CHAIRMAN PINKERT: Thank you. Now either
9 here or in the post-hearing, is there anybody on this panel
10 who is aware of any motivations that may have contributed to
11 Canadian producer Selenis's strategic decision not to
12 cooperate? That's the phrasing that you used at page 7 in
13 your brief.

14 MR. ROSENTHAL: We will supply whatever
15 information we have in our post-hearing brief. I do note,
16 however, that there was a submission made by Selenis's
17 counsel on Friday, served on all parties and on the
18 Commission, which will provide some--as good a background as
19 any, but we will give you what we have to supplement that.

20 VICE CHAIRMAN PINKERT: Thank you, very much.

21 MR. ROSENTHAL: I will add one thing. From a
22 domestic petitioner's point of view, and if you saw the data
23 that were submitted by the Canadian Producers in the prelim,
24 you understand why we would like to see that for the final;
25 and that we've been very clear about that.

1 VICE CHAIRMAN PINKERT: Thank you.

2 Now is a supplier's ability to supply PET resin
3 in bulk versus supersacks, a competitive factor in making
4 sales to U.S. purchasers?

5 MR. ADLAM: This is Mark Adlam from M&G. To my
6 knowledge, most producers are able to produce resin in
7 either bulk or package. And the customers can take the
8 material in either. So different customers have different
9 preferences, but by and large both can be used to supply the
10 market.

11 Importers, by the way, can use sea bulk so they
12 can also deliver into sea bulk, and there's a lot of trans
13 shipping that goes on between supersacks, trans shipping it
14 into bulk trucks. So really it's a very interchangeable
15 type of process and suppliers have that capability.

16 MR. CULLEN: Mr. Pinkert, John Cullen from DAK.
17 I'll add that most of our customers have been smart enough
18 to add the capability to unload sea bulks, bags, boxes,
19 whatever the Subject Imports are available in, so that they
20 can take advantage of the low price.

21 So if they couldn't unload those types of
22 packaging modes, they couldn't use that material. So
23 they've made the investment so that they can take advantage,
24 and there is no distinction between receiving rail cars,
25 bulk trucks, or any other method.

1 MR. McNAULL: This is Jon McNaull, DAK Americas.
2 We send every transportation mode to every region of the
3 country. And ultimately when we negotiate a price it is on
4 a delivered basis.

5 So, you know, whatever the situation is at a
6 particular account, if we're competing with Subject Imports
7 we will have to negotiate the outcome of price on a
8 delivered basis, independent of what the mode is.

9 MR. FREEMAN: John Freeman, Nan Ya Plastics. We
10 have the ability to bag our resin, or deliver in bulk, and
11 we see the imports as stated in all three delivery
12 mechanisms. We have not--we have not lost a sale due to a
13 preference of how the PET is delivered.

14 VICE CHAIRMAN PINKERT: Thank you. Now is the
15 decline in the domestic industry's net sales during the
16 period mainly attributable to declining export shipments?

17 MR. ROSENTHAL: We'll let the companies answer
18 individually as they can, and there are some issues there,
19 but collectively I don't know if Ms. Beck wants to add
20 something as a whole, because I think--I don't think every
21 company is an exporter here.

22 MR. BECK: I think the one point that can be made
23 publicly is that in looking at the overall volume of
24 exports, as compared to the volume of U.S. shipments, it's
25 much--the U.S. shipments is far, far greater than exports.

1 So although there may have been some decline in U.S.--excuse
2 me, in exports, it was not to the level when you're looking
3 at in comparison of what the total market encompasses, which
4 is U.S. shipments.

5 MR. McNAULL: This is Jon McNaull, DAK Americas.
6 We've seen two things happen. We had a significant export
7 business. The same countries that are dumping products here
8 in the U.S. are also competing very vigorously in some of
9 our export markets. And we export--we in the past exported
10 primarily to Central and South America.

11 And as these countries came in with very
12 unreasonably low prices, we had to cut back significantly
13 the export of PET into those regions.

14 At the same time, we saw domestic market share,
15 which you've seen in some of the data that Paul has shared
16 here, you see that we've lost share also inside the United
17 States as well for these Subject countries. And their
18 pricing practices have put us in a position where we've not
19 been able to retain all the market share that we've had in
20 the past.

21 MR. ADLAM: This is Mark Adlam from M&G. Our
22 plant is in West Virginia, and we're pretty far from the
23 Coast. So we've never had an export strategy, and any
24 losses that we've had are more directly related to these
25 Subject Imports.

1 VICE CHAIRMAN PINKERT: Alright, my last question
2 this round is whether the panelists believe that switching
3 over to Subject Imports may be a reasonable choice for some
4 purchasers who need to maintain alternative sources of
5 supply?

6 MR. McNAULL: This is Jon McNaull, DAK Americas.
7 I mean we have more than adequate capacities. We have an
8 industry that's investing in capacity to meet the needs of
9 the domestic consumer. So there's really no reason from a
10 supply perspective that this industry won't do an excellent
11 job of supplying the material needed for customers.

12 For us, I mean it's just an issue of competing
13 fairly from a price perspective. And if we are in a
14 marketplace environment where people can compete fairly,
15 then we'll invest and we'll make the supply product needed
16 available.

17 MR. FREEMAN: John Freeman, Nan Ya Plastics. Our
18 domestic industry has already been characterized today as
19 four large domestic producers. So there are options
20 domestically versus having limited sources.

21 So the reason that we feel that we lose of course
22 the business to the imports is more due to the pricing
23 behaviors that damage our industry from the Subject Imports.

24 There are multiple options domestically available
25 to customers.

1 MR. ADLAM: This is Mark Adlam from M&G. I would
2 almost say the reverse is true from your question. I mean
3 one of our best defenses from M&G's perspective is the
4 domestic supplier is our reliability of supply. And,
5 frankly, the supply reliability from Subject Imports is not
6 as good.

7 They've got a long way to bring their product,
8 and other things. So one of our strongest defenses is to
9 say we have a better supplier approach, and that's believed
10 by a lot of customers. But still it can get overwhelmed
11 with the very low prices that are being offered.

12 MR. ROSENTHAL: One last point, Commissioner
13 Pinkert. Nothing in this case prevents the purchasers from
14 having an alternate supply option, either from a different
15 member of the domestic industry, or nonsubject imports. Or,
16 how about this as an idea: Buying Subject Imports at fair
17 prices?

18 If the pricing weren't dumped or subsidized, we
19 wouldn't be here. And there would be no problem whatsoever.
20 We're not saying you can't buy it now; just pay a fair
21 price.

22 VICE CHAIRMAN PINKERT: Thank you.

23 CHAIRMAN BROADBENT: Commissioner Williamson?

24 COMMISSIONER WILLIAMSON: Thank you, Madam
25 Chairman. I too want to express appreciations to all the

1 witnesses for coming today.

2 Commissioner Pinkert already addressed the--asked
3 questions on the transport issue, and this is just a few
4 questions on the margin of that.

5 Mr. Cullen, you mentioned that most of the
6 industry I guess, or many of your customers have already
7 made an investment so that they could receive shipments
8 either by rail, or in bulk, or by truck. I was wondering,
9 were those investments primarily made before the Period of
10 Investigation? Or is this something that's been going on
11 during this Period of Investigation?

12 MR. CULLEN: I would say that we saw, let's say,
13 increased activity in terms of investment in unloading of
14 overseas containers during the Period of Investigation. And
15 I'll go as far as to say that some of the importers
16 subsidized the investment in order to facilitate getting
17 those assets in place to make it easier for their customers
18 to use their preferred method of transportation--not the
19 customer's preferred method, but their preferred method.

20 So I'd say the answer is: Much more activity
21 between 2012 and 2014.

22 COMMISSIONER WILLIAMSON: Okay. Thank you.

23 MR. McNAULL: John McNaull, a follow up to that.
24 Our customers are very sophisticated. I know John Cullen
25 and I have experienced at least two instances where

1 customers would make investments to bring this capability so
2 that Subject Import threat would be credible. And then they
3 compel the lower price from us, and then we continue to
4 supply.

5 So they've often used this as a tactic to put us
6 in a position where we're absolutely forced to meet a
7 subject importer's pricing.

8 COMMISSIONER WILLIAMSON: Okay. In general is
9 there some advantage of--does rail offer certain advantages
10 to producers versus say truck transport?

11 MR. McNAULL: Jon McNaull. It's structurally
12 dependent. For example, if DAK has a customer that's very
13 close by, one mode may be more efficient than another. If
14 we have a customer that's a very long distance away, it
15 could be that rail is the advantage. So it depends on which
16 of our manufacturing facilities we're shipping from, and
17 which of our customer locations we're shipping to.

18 We use all transportation modes to deliver,
19 depending on the situation we're in. And you have to
20 evaluate that situation literally lane by lane in terms of
21 where you're delivering PET.

22 COMMISSIONER WILLIAMSON: Okay.

23 MR. ADLAM: This is Mark Adlam from M&G. Just to
24 supplement, I would say somewhere around 400 miles rail
25 tends to be more efficient than trucking directly. But it

1 does depend on individual locations and where we're shipping
2 from. But it can offer some efficiencies, for sure.

3 COMMISSIONER WILLIAMSON: Does this also--is there
4 a comparable situation in terms of imports? I mean, when it
5 comes into the port in how far they have to ship to the
6 destination? In other words, if some of this--and obviously
7 some of the imports are packed in a way to be intermodal and
8 go straight there in a container or not?

9 MR. McNAULL: This is Jon McNaull. I mean,
10 absolutely. It's just dependent on how far it has to be
11 delivered and what the options are for logistics. And
12 again, I'm sure they're in a very similar situation where
13 they have to evaluate each of those deliveries to see what
14 the most efficient mode would be. And they are capable of
15 accessing the same modes of the delivery as we are.

16 COMMISSIONER WILLIAMSON: Okay. And they could do
17 it on an intermodal basis so that you--

18 MR. McNAULL: Jon McNaull. I mean they can--for
19 example, they can bring an ocean container with sacks. They
20 can dump those sacks into a rail car. And then they can
21 form a contract with the railroad to deliver in rail cars.

22 They can take supersacks, put them in a bulk
23 truck. Or they can send those sacks directly. So they're
24 able to distribute product in the same way that domestic
25 producers would be.

1 MR. CULLEN: And John Cullen from DAK. Just to
2 add, the subject importers can deliver their material to
3 ports all around the United States--the coastal ports, the
4 inland ports. We've seen activity in all different parts of
5 the country. So they can use the global logistics to
6 deliver their products in all geographic regions, including
7 ones that they might suggest they don't, which is the
8 Midwest.

9 So every day we see transactions coming into the
10 ports along the Great Lakes from Subject Import countries.

11 MR. ROSENTHAL: Paul Rosenthal. Just to
12 supplement, Commissioner Williamson, if you go back to the
13 slides from Ms. Cannon's presentation, a slide taken
14 directly from the staff report, it shows that the Subject
15 Imports are in every region. It doesn't show every mode of
16 transportation, but they get their sales to whatever region,
17 whatever customer is necessary, and through whatever means
18 necessary.

19 You don't gain market share that rapidly if you
20 don't know how to transport your product.

21 COMMISSIONER WILLIAMSON: Okay. Thank you for
22 those answers. The Staff Report notes that the Commission
23 did not receive any questionnaires from purchasers that
24 described themselves as distributors.

25 What kind of firms are distributors? And how

1 significant are they in the market?

2 MR. ADLAM: This is Mark Adlam from M&G. Most of
3 our customers in PET are fairly large in size, and so the
4 role of a distributor is somewhat limited. They do exist.
5 There are a couple of them, but by and large the role of
6 distributors in the PET industry are pretty small.

7 COMMISSIONER WILLIAMSON: Okay. Thank you.

8 The Staff Report notes at page 5-2 that some
9 market participants report that the U.S. industry is
10 vulnerable because it's highly dependent on raw material
11 from a single supplier, PP. How do you respond to these
12 assertions?

13 Mr. Freeman?

14 MR. FREEMAN: John Freeman, Nan Ya Plastics. Yes,
15 PTA is one of our important chemicals into our process as we
16 described. Nan Ya Plastics is the only I guess 100 percent
17 merchant purchaser of PTA today. So the other companies in
18 the industry have their own, or are developing, or are
19 building their own plant to product PTA.

20 MR. CULLEN: Well--John Cullen, DAK. I would add
21 that PTA is available in the U.S. from three different
22 producers, one of which is BP. There are other producers
23 that are in Canada and Mexico, which can ship PTA into the
24 United States under the Free Trade Agreement so there are no
25 penalties in terms of duties to access PTA from non-BP

1 sources.

2 MR. ADLAM: This is Mark Adlam from M&G. We don't
3 buy any PTA from BP. So we manage to source our product
4 very comfortably from other sources. So BP doesn't have any
5 monopoly control whatsoever on the U.S. market with PTA.

6 MR. FREEMAN: John Freeman, Nan Ya Plastics. We
7 are a customer of BP. And when BP did have their issue and
8 Cooper River Plant, Charleston, South Carolina, in Q-4 2014,
9 we did continue to meet our customers' orders, and we met
10 all of our demands.

11 At that point we did import some PTA for our
12 operation.

13 COMMISSIONER WILLIAMSON: Okay. Good. Thank you
14 for--

15 MR. McNAULL: Jon McNaull, I'm sorry, briefly--

16 COMMISSIONER WILLIAMSON: That's okay. Go ahead.

17 MR. McNAULL; --we manufacture some of our own
18 PTA, and we purchase from multiple sources within the
19 region.

20 COMMISSIONER WILLIAMSON: Okay. Thank you. For
21 M&G, we're already discussed your Corpus Christi plant, but
22 I was wondering if you could go into more detail about the
23 time line and when you're going to ramp up in terms of
24 production and employment at the plant.

25 MR. ADLAM; This is Mark Adlam. Yeah, we've

1 already started the hiring process. We were interviewing
2 extensively over the last few weeks. The plant is scheduled
3 to come up on line in Q-3 of 2016. There's actually two
4 parts of the pant. The second part will probably start up
5 in 2017.

6 But, yeah, everything is moving for Q-3 of 2016.

7 COMMISSIONER WILLIAMSON: Okay. And will the PTA
8 and PET resin production units commence production at the
9 same time? If you want to, you can--

10 MR. ADLAM: That's what I was hinting at. The PET
11 part of the plant will start up in Q-3 of this year. The
12 PTA may be a little longer, towards the beginning of 2017.

13 COMMISSIONER WILLIAMSON: Okay. Thank you. You
14 mentioned that the decision to build the plant was in 2011.
15 I was wondering, was there some--you know, sometimes people
16 decide to build something and then they stop. Was there any
17 point sort of after the Period of Investigation you may have
18 decided, well, maybe we won't do this after all?

19 MR. ADLAM: I think once you're actually
20 committed, you know, there really is no stopping. I mean,
21 there's a huge amount of work that goes involved. I mean,
22 it's a huge decision for our company. I mean, I know we've
23 been represented as a multi-national company. We're
24 actually a family company, family-owned company. This is
25 the single biggest investment decision that has been taken

1 in the company's history.

2 It was through an awful lot of thought. So I'm
3 sure there was, amongst the family some indecision making
4 such a huge commitment to the U.S. market. But once you
5 have started on this road, I mean you can't just pull out.
6 I mean you've already sunk, you know, literally hundreds of
7 millions of dollars.

8 We're very heavily invested in this project, and
9 we will see it through, for sure.

10 COMMISSIONER WILLIAMSON: Okay. Thank you for
11 those answers.

12 CHAIRMAN BROADBENT: Commissioner Johanson?

13 COMMISSIONER JOHANSON: Thank you, Chairman
14 Broadbent. I would like to thank all of you for appearing
15 here today.

16 You all say at page 53 of your brief that the
17 causal connection between Subject Imports and the condition
18 of the domestic industry is unassailable. But in the first
19 two years of the Period of Investigation, the trends in the
20 domestic industry's production, capacity utilization,
21 employment of labor, average unit value, unit COGs--cost of
22 goods sold--and capital expenditures are not moving in a way
23 that would be expected given the trends in Subject Import
24 volume and Subject market share.

25 If the causal link is very strong, shouldn't we

1 see a clear causation in every year of the Period of
2 Investigation?

3 MR. ROSENTHAL: Paul Rosenthal. No. The answer
4 is no. We have to start with the fundamentals of this
5 industry. You're not going to see it with respect to import
6 volumes all the time. Again, big capacity--excuse me, big
7 investment, capital investment, and a requirement in this
8 industry, the goal is to run these plants 24/7, if you can.
9 You don't want to shut these down.

10 And this is, not even like a steel plant which
11 you want to run at high capacity, too, given the capital
12 investment. These are high capital investment operations,
13 and you want to run them 24/7.

14 When you're faced with Subject Imports who are
15 pricing below you, the first thing you're going to do is to
16 suspend your sales. And so you may not see an increase in
17 market share that great in the first year or two, if you
18 decide to say we're not going to give up our production
19 because we want to keep our operations running as highly
20 efficiently as we can. Instead, what we're going to do is
21 reduce our prices and have our financial results decline.

22 Now as you can see, over time, over the course of
23 this, at some point they said we can't accept certain
24 prices. We'd rather give up that sale, give up that volume,
25 and not have a loss-inducing sale in that instance.

1 And so what I'm saying--and this goes on every
2 day. This is why in these cases it's very important not to
3 look at this as some kind of linear operation. Every day
4 these guys are saying do I make this sale at a lower price?
5 Or do I give it up and accept this loss in revenue?

6 And that's why you cannot see a steady
7 progression on volume as the sine qua non of injury. I
8 would like to have the industry witnesses expand, if they
9 will.

10 MS. CANNON: Well, Commissioner Johanson, if I
11 could just supplement for a minute, I'm a little constrained
12 by the confidentiality of the data to actually discuss the
13 specifics, but I would beg to differ in terms of the
14 premise. Because I am seeing pretty steady declining trends
15 of the domestic industry's performance from 2012 to 2013 as
16 the Subject Imports go up. It may be a matter of degree,
17 but you're seeing as the imports started to penetrate this
18 market the financial performance of the industry
19 deteriorate. You're seeing under selling. You're seeing
20 the domestic industry's market share in shipments tail off,
21 and some of the beginning variables that you would expect to
22 see, and then it worsens considerably in 2014.

23 And then, conversely, in 2015 when the import
24 behavior backs off a bit, when the volumes start going down
25 because we filed this case, we start turning up a bit. So I

1 think the correlations actually work pretty closely.

2 And we can give more specifics on the actual
3 numbers in the brief, but just looking at the Staff Report
4 I'd say there is a relatively good correlation over the
5 entire period.

6 COMMISSIONER JOHANSON: Alright, thank you. Any
7 clarification would be appreciated.

8 Mr. Adlam?

9 MR. ADLAM: Yes, this is Mark Adlam from M&G. I
10 think Paul gave a good description of how our business can
11 be. It's a tough business to be in. We invest a lot of
12 capital, as you can tell from the Corpus Christi project,
13 but also the assets that we also have on the ground are
14 highly capital intensive.

15 And basically to, you know, just break even you
16 have to keep a very high utilization rate just to keep that
17 capital turning over. So basically, you know, in a
18 day-to-day basis that translates to people coming to you
19 saying, you know, who are your customers? Are you going to
20 keep selling this? And you need to be at this lower price?
21 Or are you going to give up business?

22 If you give up the business, you start hurting
23 the utilization number. If you match the price, you hurt
24 that number as well. So you're kind of in a very difficult
25 dilemma, and we make those decisions individually on a

1 day-by-day basis. And it's very hard to translate the
2 day-to-day back into the macro of how does that impact your
3 overall business results.

4 And, you know, whether or not you take the
5 business at a lower margin, or whether you let the business
6 go, either way hurts you. So it's like a steady decline
7 each way, and that's what we've really been seeing between
8 2012 and 2014. And, true, in 2015 things got a little
9 better, but most of that I attribute to this case. I mean,
10 basically the imports backed off and gave us a little bit
11 more opportunity.

12 MR. McNAULL: This is Jon McNaull, DAK Americas.
13 I think structurally it takes time, right? Subject Imports
14 come in. They put some egregiously low prices on the table.
15 And then things like we described earlier: people make
16 investments in logistics.

17 You have a folio of sales. It takes time for it
18 to turn over. So the full impact takes time for itself to
19 kind of structurally and systemically work its way into the
20 final results. It takes multiple quarters. It doesn't
21 happen immediately.

22 So you wouldn't expect to see competitive
23 behavior change at the beginning of the period, and
24 necessarily see the full impact of that change during that
25 initial period.

1 COMMISSIONER JOHANSON: Alright. Thank you for
2 your responses.

3 On pages 18 to 19 of OCTAL's prehearing brief,
4 global demand is described as very strong. The coming
5 addition of U.S. capacity certainly would seem to be
6 consistent with strong U.S. as well as global demand.

7 Do you all agree? And if you could focus on the
8 global demand part, as I understand Commissioner Pinkert has
9 already touched somewhat on the U.S.; demand.

10 MR. ADLAM: I think the overall--this is Mark
11 Adlam from M&G--I think the overall demand for PET globally
12 is somewhere around 20 million tons. So I don't know if you
13 described that as strong or not.

14 I think the thing you have to look at, too, is
15 what is the overall global capacity for PET. And that is
16 actually 30 million tons. So we have 20 million tons of
17 global demand, and 30 million tons of global capacity. So I
18 think we're in a global, very much in a global over-supply
19 situation.

20 The market situation in the U.S. is much more
21 balanced than that overall global picture, which makes it an
22 even more attractive target for these importers to look at,
23 because the balance is better here than it is in the rest of
24 the world.

25 COMMISSIONER JOHANSON: I'm sorry, Mr. Adlam?

1 What do you mean by "balance"?

2 MR. ADLAM: The balance between supply and demand.

3 COMMISSIONER JOHANSON: Okay. Thanks.

4 MR. McNAULL: Jon McNaull. I agree with Mark's
5 comments. I think globally PET consumption is growing, 4 or
6 5 percent year over year. And in the United States it's
7 growing closer to 2 to 3. In terms of balances, globally
8 the capacity utilization globally is probably in the
9 mid-60s. And capacity utilization in the United States is
10 in the low to mid-80s. And I think that's Mark's comment
11 about the balance.

12 We have a better match between the demand and the
13 production in terms of the way we utilize the assets we've
14 invested in.

15 COMMISSIONER JOHANSON: Will capacity utilization
16 in the U.S. get lower as the big plant in Corpus Christi
17 opens up?

18 MR. McNAULL: U.S. market is roughly 3-1/2 million
19 tons, growing 3 percent per year. So this market
20 organically is growing 100- 120,000 tons a year. So that
21 capacity expansion should be absorbed in 7 to 8 years on
22 paper.

23 And then, you know, basically the capacity is
24 going to be needed for the long term to supply the customer
25 base. So from that perspective, it's I think welcomed by

1 the customers as a source of supply.

2 MR. ADLAM: This is Mark Adlam from M&G as well.
3 I mean one of the difficulties when you come to make an
4 investment in PET is that you can't just make the investment
5 equal to the incremental demand that the market needs for
6 the next one, or two, or three years.

7 If you do that, basically you don't build an
8 efficient plant. So you have to build a world-efficient
9 plant, which means the PET capacity comes on in slugs. And,
10 you know, while we would love to have built just the
11 incremental capacity that was needed, you know, what we took
12 was a decision to make the most efficient capacity that was
13 in the right direction in terms of what the market needed,
14 as well.

15 And, you know, we believe it was a sensible
16 decision, given those two kind of factors that you have to
17 balance.

18 MR. ROSENTHAL: I would add, too, based on Mr.
19 Adlam's testimony earlier, that one way to address that and
20 make sure that there is not too much excess capacity, is to
21 do what they've announced: stop importing from Mexico, and
22 also use that as an export platform.

23 And I'd like to add one more thing, because
24 Respondents have made an argument here that I don't think is
25 well founded. Yes, demand in the U.S. is growing.

1 Respondents complain, or they argue there's something wrong
2 when DAK or somebody else closes a facility which really
3 could compete against fairly traded imports, and then
4 suggest that somehow the domestic industry shouldn't make
5 the investment to supply its own market over time.

6 I think it makes perfect sense for the domestic
7 industry to invest in a growing market and not have that
8 investment undermined, or to suggest that only Subject
9 Imports are appropriate to fulfill the increased demand in
10 the marketplace.

11 COMMISSIONER JOHANSON: Alright. Thanks for your
12 responses. My time has expired.

13 CHAIRMAN BROADBENT: Commissioner Schmidtlein?

14 COMMISSIONER SCHMIDTLEIN: Thank you. Good
15 morning, and thank you to all the witnesses for appearing
16 here today.

17 So I want to start with a question that I think
18 is best for the lawyers. And that is on this issue of
19 adverse inferences.

20 Ms. Cannon, I know you talked about that in your
21 opening, or in your direct, if you will. Can you spell out
22 more specifically what that would look like in an opinion
23 here in terms of exactly what are you asking the Commission
24 to do?

25 Because I thought I understood you to say that we

1 shouldn't decumulate China and Canada from the other two
2 countries. So are you saying that we just assume the
3 ultimate conclusion adversely based on those two, and that's
4 how the opinion would go? Can you just explain a little
5 more how you would suggest that the Commission address that?

6 MS. CANNON: Thank you, Commissioner Schmidtlein.
7 I think that you have various options there. Certainly
8 within the gambit of the statute, the adverse inference
9 provision would allow you to automatically issue a negative
10 decision, I believe, against Canada and China--or an
11 affirmative decision, ruling adversely to them, a decision
12 in our favor, because they haven't cooperated here.

13 And then you would move on from that and decide
14 as to the other two countries based on a more fulsome
15 analysis that would ascribe whatever the best information
16 you had at your disposal, which is typically what the
17 commission does.

18 So as a first step, to say these people haven't
19 shown up and cooperated. This is basically the way the
20 Commerce Department approaches this task. Somebody doesn't
21 show up, so you lose. You get the highest margin we have
22 available on the record that the Petitioners have alleged
23 and that we can, you know, document.

24 So to the extent that we've given information
25 that is more than documented here of injury and significant

1 volume of imports, and the price effects that you've heard
2 our witnesses testify to, I believe the Commission could
3 simply accept that and stop there for countries that don't
4 cooperate at all. And then move on to the second part of
5 the analysis.

6 And alternatively, the Commission could decide to
7 do the more comprehensive analysis it normally does, but
8 take adverse inferences as to information that isn't
9 supplied to you and say when this information hasn't been
10 submitted, then let's look, rather than taking for example
11 here the limited information that just a handful of Chinese
12 producers gave you and saying that's our best information,
13 looking at more comprehensively information we have given
14 you and that's available that shows how massive the Chinese
15 industry is.

16 So I think at a minimum you would be looking at
17 that type of information. And where there's a question of
18 what's their utilization like, and one of their
19 questionnaire responses says, for example--and this isn't
20 APO so I don't remember--said something like, oh, we're at
21 maximum capacity utilization, you wouldn't assume that. You
22 might have referred instead to testimony of Mr. McNaul who
23 just said globally you're looking at more like 60 percent
24 capacity utilization. So making those judgment calls I
25 think is part of it.

1 But then the last point I would make--and this is
2 I think really critical--even if you are not in the adverse
3 inference land, at a bare minimum here it is critical that
4 the Commission use the information that is available to it
5 that was provided to you preliminarily from the Canadian and
6 Chinese producers on all aspects of the case, pricing
7 information, sales information, all the information, and not
8 ignore that information simply because they haven't shown up
9 at this point, to the extent that going that route of
10 ignoring information would help the Respondent's cause.

11 So I think there's sort of a series of analysis
12 that could be done from sort of the most extreme to a more
13 balanced approach, if you will, but to not even use
14 information that's available to you in a way that hurts the
15 domestic industry because people are not cooperating is
16 really the part I was focusing on in my testimony today.

17 COMMISSIONER SCHMIDTLEIN: Okay. I guess in
18 general the Commission usually sort of builds the record our
19 self, right, based on information that we are able to
20 gather, based on information provided by the parties, the
21 petitioners, and you don't really need to draw an adverse
22 inference if you're just analyzing the record as it's been
23 presented.

24 Now maybe using the information from the prelim
25 if they didn't participate now, and so forth. So I guess

1 it's maybe a big part of your argument and I just wondered
2 how--because otherwise don't you really get into penalizing
3 the countries that have come forward and participated who
4 don't control whether or not these other countries also
5 participate?

6 I mean, you know, if we're just going to assume
7 the case away and cumulates--

8 MS. CANNON: Right. No, I understand your
9 question. And obviously we're asking and urging you, and my
10 testimony today did mention adverse inferences because we
11 are urging you primarily to cumulate and use the information
12 that we've pointed to in the brief first and foremost, which
13 is from them, as the basis of your analysis, which I don't
14 even think gets into the adverse elements of it.

15 COMMISSIONER SCHMIDTLEIN: Right.

16 MS. CANNON: We are not abandoning the adverse
17 point, which we've raised many times in other cases. I
18 think, as I said, it's a series of analyses.

19 You have cases before the Commission where
20 there's one country that doesn't show up. And even then the
21 Commission hasn't used adverse inferences where it penalizes
22 nobody, for example.

23 So, you know, it's not always a matter of
24 balancing it, I think, when we've made this presentation in
25 the past, which we started there and said when you've got

1 nobody else that's harmed, and they haven't shown up, can't
2 you make more adverse inferences?

3 So that's been the starting point. But in a case
4 like this, at a minimum I think using the information that
5 is more comprehensive to do an analysis of companies that
6 are not cooperating is not even adverse. It's just the more
7 comprehensive information available to you

8 COMMISSIONER SCHMIDTLEIN: Okay.

9 MR. ROSENTHAL: If I might?

10 COMMISSIONER SCHMIDTLEIN: Sure.

11 MR. ROSENTHAL: Just to supplement that, I think
12 one of our--we certainly understand the lack of desire on
13 your part to penalize folks who are participating, and I
14 don't think we were suggesting that if two countries don't
15 show up you automatically make an adverse inference against
16 all four.

17 But we are a little bit concerned that even in
18 cases, as Ms. Cannon has described, when there's information
19 on the record about a country or those producers who haven't
20 shown up, you simply rely on what's presented by them at
21 some stage and don't even go to what you've got in the
22 record to rely on. If you don't use everything in the
23 record for some reason--and I think Ms. Cannon is urging a
24 more fulsome approach: Rely on everything there, even though
25 it might not have been submitted in your questionnaires.

1 And that is probably ultimately what I want to
2 come to, which is: There's a lot information in the record
3 that is not from questionnaires, and sometimes you don't
4 want to deviate from questionnaire responses, and we want
5 you to go far beyond that.

6 When we submit information about Chinese capacity
7 and the 30 companies who haven't come in to participate, we
8 want you to look at that and rely on that, as opposed to the
9 one or two who have supplied you with information.

10 One last point here, and I don't want to take all
11 your time, but you have a representative here from Reliance.
12 As described, a very large global company. But in terms of
13 this product and this market, they are a very, very small
14 player. And the two major producers who refused to
15 cooperate at the Commerce side of the case and therefore got
16 adverse tax available there, aren't represented here.

17 You're going to hear testimony from them from
18 Reliance, and it makes it sound like they're the industry
19 and you should rely on everything they've got, and we're
20 saying no, no, no, don't forget all those other people who
21 are not cooperating and not providing the information.

22 COMMISSIONER SCHMIDTLEIN: Well I think that's
23 sort of the follow up, of doesn't it get more tricky when
24 you've got not the entire--you know, you've got all the
25 small players on the other side participating, but not the

1 bulk of the industry, and then what do you do?

2 MR. ROSENTHAL: Yes, it does.

3 COMMISSIONER SCHMIDTLEIN: And build the record
4 and look at whatever we have to analyze the case, rather
5 than just assuming, you know, some fact adversely without
6 any basis in what data we have. I mean, maybe this is a
7 legal distinction, but--

8 MS. CANNON: Well, no, actually I think the point
9 is fair only because in the past there have been situations
10 where I think we've said you should use adverse inferences,
11 and probably use that word mistakenly, because what we were
12 really asking the Commission to do was simply not--

13 COMMISSIONER SCHMIDTLEIN: Draw a conclusion,
14 yeah.

15 MS. CANNON: --the questionnaire responses and
16 look more broadly at all of the data that's available on the
17 record.

18 COMMISSIONER SCHMIDTLEIN: Okay. Alright, so I
19 don't have much time left but I do have a question about the
20 direct imports and the table in your brief on page 38.

21 I wonder if you could explain a little bit more.
22 I mean, I know you have a footnote and it's bracketed, so
23 maybe you have to do this in post-hearing, about where you
24 get these numbers, and the number of quarters. Because
25 obviously when you look in the pricing data, and I can see

1 that you've included other things, it's not just--it looks
2 like preliminary information that was provided.

3 So where do you get those numbers? And then the
4 second question is in how you categorize these different,
5 you know, the number of quarters that were undersold, and
6 the number of quarters that were oversold. Does that
7 include the costs that we asked the direct importers to
8 estimate that would be in addition to the purchase costs
9 numbers.

10 So when you conclude like, oh, there's X number
11 of quarters underselling, did you based that on a comparison
12 that included that estimate of the additional costs?

13 MS. BECK: The data in Table 4 is based on the
14 actual purchase costs that were reported by the importer,
15 and the questionnaire without any adjustments to it.

16 COMMISSIONER SCHMIDTLEIN: No adjustments--

17 MS. BECK: Correct.

18 COMMISSIONER SCHMIDTLEIN: Have you done that?
19 Have you run those numbers?

20 MS. BECK: We're happy to present that as well,
21 because that will still show instances of underselling--

22 COMMISSIONER SCHMIDTLEIN: Okay.

23 MR. BECK: --to back up to your question about
24 exactly what information was used, just to say generally
25 certain information was used in the staff report that may

1 not have included all of the preliminary information that
2 was on the record. And we're working with the staff to make
3 sure that what we used was useable.

4 Because in what we present we want to make sure
5 that it is the best information--

6 COMMISSIONER SCHMIDTLEIN: Okay--

7 MS. BECK: --even if only the examples used in
8 the staff report, in the prehearing staff report were used,
9 it still shows a majority of underselling. There isn't an
10 exact table in the staff report that compares the U.S.
11 prices to the direct import prices. We're happy to put that
12 in even as another table for our post-hearing brief.

13 But even that shows a vast, vast majority of
14 overselling compared to underselling. The other element is
15 the volume--excuse me, of underselling. And the other
16 important point is just using the information in the staff
17 report for the direct import comparison, if you look at for
18 certain products the volume for the direct imports compared
19 to the selling price it's a much greater volume for the
20 direct imports.

21 So on so many levels we want to make sure that--

22 COMMISSIONER SCHMIDTLEIN: Just based on the staff
23 report?

24 MS. BECK: Just what's in the staff report. So we
25 can also do a comparison in our post-hearing brief. But

1 just even using the data in the staff report for the direct
2 import comparison--

3 COMMISSIONER SCHMIDTLEIN: Because it looked like,
4 I mean there was one country that played in that area, you
5 know, in the staff report, but it looked like they were also
6 sending a lot through importers, to me. But you can line it
7 up.

8 MS. BECK: Right. So we're happy to. But again
9 we're working with staff so that for the post-hearing brief
10 the information is as accurate. But again just using the
11 bare minimum of the direct import data, it still shows and
12 supports our conclusions.

13 COMMISSIONER SCHMIDTLEIN: Okay. Alright, thank
14 you. Sorry.

15 CHAIRMAN BROADBENT: Okay. Mr. Adlam and Mr.
16 McNaull, why is DAK entering into a purchase agreement with
17 M&G for PET resin produced in Corpus Christi?

18 MR. McNAULL: This is Jon McNaull, DAK Americas.
19 I think the opposition is going to describe the arrangement
20 in a nonfactual and a way that's not the truth, which we
21 take great offense with, by the way, due to the integrity of
22 our company.

23 This is simply a PET purchasing agreement. It
24 allows DAK Americas to get a quantity of PET that we need to
25 continue to support our customers and maintain our share of

1 the market in the industry. And it was a very efficient way
2 to have that supply of PET.

3 And again, it's simply a supply agreement, or a
4 purchasing agreement, and nothing more.

5 MR. ADLAM: This is Mark Adlam from M&G. From
6 our perspective, it obviously is an arms' length sales
7 agreement. And, you know, we would do it--I think
8 Commissioner Johanson was asking questions about why such a
9 big plant, and this type of thing.

10 For us, this offsets the risk by knowing we have
11 a customer to take some volume from us. That offsets some
12 of the risk.

13 MR. McNAULL: And Paul reminded me, I've been a
14 little bit distracted by the accusations made against our
15 company, so I haven't been totally objective, and I forgot
16 the other motivation is the fact that, you know, spending a
17 billion dollars in capital independently to build such a
18 facility, given the kind of conditions that we're in and the
19 financial results we've had as a result of the subject
20 imports and the pressure they're putting on the market and
21 their unfair trading activities makes it difficult to lay
22 out a billion dollars to build such a facility alone.

23 CHAIRMAN BROADBENT: Okay. Mr. Rosenthal, looking
24 at your confidential chart number 15, and I'm not asking you
25 to go into specifics, but to what extent are some of these

1 trends related to the industry's export shipments over the
2 POI?

3 MR. ROSENTHAL: There has been a decline in export
4 shipments as indicated earlier in the testimony, and the
5 reasons for that were also indicated. But as Mr. McNaull
6 and others have pointed out, the major reason for the
7 declines has to do with the shift in market share that you
8 saw earlier on the table, that X, where this industry lost a
9 significant amount of market share overall directly to the
10 Subject Imports.

11 So that's where the majority of the volume loss
12 took place. And also the pricing pressure on the imports
13 where the domestic shipment AUV, for example, were directly
14 affected by that.

15 MS. BECK: And, Madam Chairman, if you look at the
16 summary table, and you just look at the percentages and you
17 compare the percentages of the exports decline compared to
18 the U.S. shipment decline, it may show that the export
19 decline is larger. However, if you look on an absolute
20 basis, you will see that the volume is so high for the
21 decline in the U.S. shipments on an absolute volume basis as
22 compared to what it is on a--for the exports.

23 MR. ROSENTHAL: I appreciate that. That's a very
24 good point. We're not talking about percentages on the load
25 basis. We're talking about absolute volumes.

1 CHAIRMAN BROADBENT: Okay. I know we've been
2 talking a bit about the investment in Corpus Christi, but
3 oftentimes, very often we're told that an industry's
4 inability to invest in itself, or take advantage of
5 increasing demand, is a sign of vulnerability.

6 So would you agree that the kind of Green field
7 investment in Corpus Christi demonstrates a lack of
8 vulnerability for the U.S. industry?

9 MR. ADLAM: No. Absolutely not. I mean we made
10 this investment decision back in 2011 when things were
11 better than they are, or were, or have been since. And, you
12 know, I don't think it shows any sign of strength. It's
13 been a very tough investment decision for my company.

14 It's one we need to make to support the growth in
15 the market. We want that volume because we're a domestic
16 producer. We don't want to cede the volume to unfairly
17 traded imports.

18 On the other side, it's do-or-die, basically,
19 from our perspective. It absolutely does not represent
20 strength from our perspective.

21 MR. McNAULL: Jon McNaull. The only thing I would
22 say is I think anyone who is subject to these type of
23 competitive practices is going to be in a situation they
24 didn't expect to be in. And not vulnerable, per se, but
25 certainly having results that you didn't expect.

1 MR. ROSENTHAL: Paul Rosenthal. I just wanted to
2 supplement on what basis. I know we're looking at, and
3 you're looking at the domestic industry as a whole. The
4 investment that we're talking about at Corpus Christi is
5 made by M&G, which is the smallest player in the domestic
6 market, who has the least amount of capacity to supply
7 demand. And their decision made in 2011 was, we want to be
8 a bigger player and to supply demand that we expect to be
9 growing, and use that to displace our imports from Mexico.

10 All rational decisions, and all based on this
11 notion that the U.S. market would continue to grow. But
12 it's a one-company decision. Just as DAK may have made
13 decisions to say, hold on, we know there's another big
14 facility coming onstream, and because these come on in big
15 slugs it doesn't make sense for us to invest our own billion
16 dollars in this. The market is not going to support that.
17 And the best thing to do in the short term until the market
18 grows enough is to buy some of that product and save the
19 billion dollars and maybe if the market supports it we'll
20 make our own investment later on.

21 But again, I know you want to look at an
22 investment on behalf of the industry as a whole, but you
23 have to look at this one company which has a, I want to say
24 one of the smallest domestic presences as making their
25 decision as to what they're going to do to be a player in

1 the U.S.; market.

2 CHAIRMAN BROADBENT: Okay.

3 For Mr. Adlam, when you make deliveries under
4 contract are you required under those contracts to provide
5 materials from the United States, specifically? Or can you
6 supplement with imports from Mexico as you see fit?

7 MR. ADLAM: We supply from both locations. So we
8 don't specify normally in our contracts for a particular
9 location, as supply from either.

10 CHAIRMAN BROADBENT: Okay. And the purchasers
11 don't have a preference, particularly?

12 MR. ADLAM: We usually deliver from what makes the
13 best logistics sense for us. Our West Virginia plant is
14 very, very well located for the strongest demand in the U.S.
15 market. It's in a great location. And so, you know, we try
16 to supply from Apple Grove whenever we can, because freight
17 costs are lower.

18 CHAIRMAN BROADBENT: Okay I guess this kind of
19 raises the question: Do suppliers have advantages based on
20 their geographic location?

21 MR. ADLAM: I think typically in the domestic
22 market you tend to see sort of one price nationally. It's
23 not like there's regional pricing or anything else on that.
24 But clearly if you're closer to a customer, you know, you
25 can deliver a little bit cheaper than you can further away.

1 So you can sometimes see that as a trend, the
2 closer to one of our domestic plants tends to be where you
3 see the supplier. But there's no set rule. We supply all
4 over the U.S., you know, West Coast, East Coast, North,
5 South. We're everywhere and, you know, there's no
6 particular rule about being close.

7 CHAIRMAN BROADBENT: But wouldn't you say there
8 are areas where imports are more--it's more cost-effective
9 to supply with imports than domestic?

10 MR. ADLAM: When you say "cost effective," that's
11 kind of a--you know, it doesn't make sense to me from, you
12 know, the basic argument. We have customers in every single
13 region. I think from their perspective they do have some
14 lower costs of delivery. So, you know, if they're close to
15 the Coast they have lower costs of delivery. That does help
16 them out.

17 But we see them in all geographic regions of the
18 U.S., as well. So it may be more prevalent towards the
19 Coast, but they're in all locations.

20 CHAIRMAN BROADBENT: How do you all respond to the
21 statements that U.S. producer's capacity is older and less
22 efficient than the new plants that are built outside the
23 U.S. within the last five years?

24 MR. McNAULL: DAK Americas, we bought Eastman
25 Chemicals and Tegrex Technology, which is unique. It's a

1 melt-to-resin technology. It's recent in its investment.
2 It's efficient. It's productive. So I think you could
3 completely debunk that theory, right? It's probably a
4 globally leading technology both in scale and the inherent
5 technology itself. So I don't think that argument holds any
6 water.

7 MR. FREEMAN: John Freeman, Nan Ya Plastics. In
8 my testimony, we compared the two technologies, the solid
9 stating and the NTR. We employ the solid stating, but we do
10 study, you know, competitive alternatives. But it is our
11 opinion that there's not a competitive advantage versus the
12 solid stating for the melt-to-resin.

13 MR. McNAULL: Jon McNaull, DAK Americas. We run
14 traditional PET technologies in the one I mentioned earlier,
15 and it's our opinion that traditional PET technology can be
16 very competitive compared to melted resin technologies. And
17 again we employ both, and we use both commercially in our
18 assets. So I think North America has very competitive
19 technologies, and I think all of the industry here is
20 capable of having assets that are in fact globally
21 competitive.

22 MR. ADLAM: Mark Adlam from M&G. We are obviously
23 building in Corpus Christi, which will be a state-of-the-art
24 facility. It will be a very low-cost facility. There's no
25 question. That doesn't mean we've ignored our other

1 facilities, and we've made substantial investments in our
2 Apple Grove, West Virginia plant to modernize it as it goes
3 on.

4 And we believe that plant to be a very efficient
5 plant. And there's no reason for obslescion because there's
6 a new plant going up, that's for sure.

7 MR. ROSENTHAL: I know your red light is on,
8 Commissioner Broadbent, but I just want to add one thing
9 because I'm always interested in this argument by
10 respondents arguing that their plants are more efficient
11 than domestic plants.

12 As a legal matter, I would say that's irrelevant.
13 So what? If you're so efficient, why can't you get your
14 product here without dumping it? And if you're so
15 efficient, why can't you sell here without being subsidized?

16 So this is not a question of a 201 case where the
17 domestic industry may need relief to be able to invest to
18 get more efficient. This is a question--it's a nice
19 academic thing of who's better and who isn't, but in the
20 antidumping law, like in tort law, you take your victim as
21 you find him. Even if they're the most inefficient industry
22 in the world, you may not like to reward them for their
23 inefficiency and give them import relief, but as a practical
24 matter if they were being injured by imports that are
25 unfair, it doesn't matter how efficient they are compared to

1 their foreign competitors. That's the law.

2 CHAIRMAN BROADBENT: Okay. Vice Chairman
3 Pinkert.

4 VICE CHAIRMAN PINKERT: Thank you. I recognize
5 that you have made a presentation about underselling and
6 characterize the evidence as showing substantial
7 underselling. But hypothetically speaking, let's say that
8 we found a mix of underselling and overselling in this case.

9 You have highly price-sensitive product. You
10 have a highly interchangeable product. Would it be
11 necessary for us to find predominant underselling in order
12 to find that there was injury by reason of the pricing and
13 competition from these imports?

14 MR. ROSENTHAL: Commissioner Pinkert, the answer
15 is no, it would not be necessary and I appreciate the
16 question because I think sometimes we hear on the
17 petitioners' side, and sometimes Commissioners overemphasize
18 this notion of having a predominant amount of underselling
19 and overselling when you have a very highly price-sensitive
20 product.

21 I have to say, whenever we have, like, a 100% of
22 product undersold or some hypothetical thing, what's going
23 on? There must be something wrong with the data when you
24 have a very competitive market, because sometimes, as you
25 hear, you get the price and you have to lower your price to

1 compete against imports. You have to undersell them.

2 And so it's not surprising to have a mixed
3 pattern of underselling or overselling. You've seen that in
4 many, many cases, the courts have upheld the Commission when
5 you've made an affirmative determination, even though there
6 is a mixed pattern of underselling and overselling. So even
7 if we had less underselling than we do in this record, you'd
8 be perfectly justified to make an affirmative determination
9 because it is a competitive situation and one day you may
10 oversell, one day you may undersell and that is a very
11 expected thing when you've got this kind of industry.

12 MS. CANNON: Commissioner Pinkert, if I could
13 supplement. I agree with your proposal that we certainly
14 don't need predominant underselling and we can provide some
15 case cites where the Commission has recognized and other
16 cases that have a similar price-sensitive product that
17 didn't have predominant underselling, that there still could
18 be adverse price effects.

19 But I would add that the other critical variable
20 here, separate and apart from the underselling table, is
21 that X slide that we showed you, where we showed the market
22 share shift. The market share shift is pretty indicative of
23 where most of the underselling is going on. If the imports
24 weren't predominantly at the lower prices, it wouldn't be
25 getting the gains that you are seeing in that chart.

1 So you have anecdotal examples. They're not
2 complete, they're not comprehensive here for all the
3 countries. But when you look at the overall macro data for
4 the industry, you see a pretty significant shift in a
5 price-sensitive industry, and I think that's very indicative
6 of the price effects and who's grabbing sales at the expense
7 of who in this market with the imports versus the U.S.
8 industry.

9 VICE CHAIRMAN PINKERT: Thank you. Now, given
10 again the price-sensitive nature here and the high degree of
11 interchangeability, does that create concerns with respect
12 to the role of nonsubject imports potentially replacing the
13 impact of the subject imports. You're smiling, Mr.
14 Rosenthal, you knew it was coming, so please go ahead.

15 MR. ROSENTHAL: Do I have to keep reading that
16 footnote? I'm going to let Ms. Cannon answer that question.
17 But I will just say, Number One, the biggest nonsubject
18 import talked about today by the respondents interviewed is
19 Mexico, whose pricing is at much higher levels than the
20 subject imports and so, the answer is we don't have to worry
21 about them.

22 And there's none other than are present in the
23 marketplace that represent the same threat and to our
24 knowledge, are engaging the same behavior. That's not to
25 say that there may not be some sources out there that aren't

1 capable, but we don't see them right now. I'll let Ms.
2 Cannon go ahead.

3 MS. CANNON: Happy to opine on the legal issues,
4 although I'm sure that we've briefed those enough to have
5 you be quite aware of our views on that subject. With
6 respect to these specific facts, though, to the extent that
7 you're looking at a replacement benefit test a la
8 Bratsk-Mittal, I would say a couple of things.

9 First, there's a question about how fungible a
10 product is, whether it's really a commodity product in the
11 nature of those court case holdings. And there's some
12 testimony by respondents preliminarily that it was not, that
13 there were these differences.

14 Number Two, part of the Bratsk-Mittal test, as
15 you know, is whether the other imports are at the same price
16 levels. And the main other import source here, Mexico, is
17 not. And many of the other ones are not, so the pricing
18 factor, if you will, is not met here.

19 But there's a third variable here that's not one
20 you normally see, and that is that the major source of
21 nonsubject imports that could be coming in to replace is
22 specifically -- you've heard testimony -- will not be coming
23 in any longer, because of the M&G facility. And that itself
24 is a very strong variable showing a lack of replacement, and
25 in fact, the opposite -- imports are trading from the market

1 that could be ones that you might be looking at as
2 substitute product.

3 VICE CHAIRMAN PINKERT: Thank you. Now, turning
4 to your critical circumstances' discussion, I know you're
5 asking for the five-month benchmark, and obviously, that's
6 something that we would have to take a look at. But how
7 does the magnitude of the surge that you're alleging compare
8 with the magnitudes of the surges in cases where at least
9 some Commissioners have made affirmative critical
10 circumstances' finding?

11 MS. CANNON: Well, the cases are so limited that
12 it's kind of hard, frankly, for me to use those as a
13 benchmark and I guess I would submit that the surge that we
14 have here is a 67.7% surge. 70% is an awfully big surge.

15 Look at the Commerce Department in critical
16 circumstances. Their benchmark is 15%. They see a 15%
17 increase; they think they've got a surge. Now, obviously
18 you're not constrained to follow the Commerce Department
19 exactly on this issue, but I would submit that 70% surge
20 under any circumstances is awfully big and I would encourage
21 you to look beyond the few past cases where the Commission
22 has reached affirmative findings.

23 Because those are so limited that they really
24 aren't, I think very indicative of what the Commission
25 should be considering based on the statute, based on the

1 intent of Congress in this area, 70% surges are awfully big
2 and if you track that monthly and I don't -- do we have that
3 monthly chart available here? No.

4 Okay, if you track the imports, you see a very
5 strong correlation between their behavior when we filed the
6 case, how they came flooding in, and then once the orders
7 went into effect, how they dropped off. So you see behavior
8 that's exactly what this provision was designed to prevent.
9 Coming racing in, and then stopping as soon as the
10 provisional duties are imposed.

11 VICE CHAIRMAN PINKERT: Thank you. Just to
12 clarify, I try to be careful in my question to not reference
13 when the Commission as a whole has made an affirmative
14 finding, but to take a look at cases where, perhaps some
15 Commissioners have taken a different view.

16 MR. ROSENTHAL: We will definitely do that in a
17 posthearing brief. Thank you.

18 VICE CHAIRMAN PINKERT: Thank you. And then
19 also, how sensitive is that number that you've come up with,
20 67% to the choice of the period that you're advocating?

21 MS. CANNON: We put this chart together so you
22 could kind of get a sense of what we were looking at over
23 the period. Now, this doesn't go back to the 2014 period.
24 But I think that we've seen cases where people have played
25 around with what months you pick, and the reason for doing

1 that.

2 I think here the months that we picked, which
3 were March, when the case was filed, April, May, June and
4 July, are reasonable because we had a CBD case that was
5 filed and the prelim duties were going on in August. So you
6 wouldn't put August in your period reasonably, because,
7 obviously that's when you got to stop, before those
8 provisional duties hit.

9 And we started with the month that the petition
10 was filed, so it seems to me without doing much thought
11 about what other months you might pick, that's going to be
12 the most representative period, from petition filing to
13 right up to the month before the preliminary duties were
14 imposed and that's why we selected that period here.

15 MR. ROSENTHAL: Commissioner Pinkert, if you
16 don't mind this interjection, because I'm pretty sure the
17 Indian respondents are not going to want to pull up this
18 chart, so while it's up, just note -- I know that we've made
19 arguments that the decline in imports has something to do
20 with GSP proceedings. And we know the GSP went away in
21 2013.

22 You can see what their imports were doing in the
23 first half of this year, until the relief began, and so I
24 just want you to note this for, if and when they make that
25 argument about GSP somehow being the reason why imports are

1 going to be a decline.

2 VICE CHAIRMAN PINKERT: Thank you very much.

3 CHAIRMAN BROADBENT: Commissioner Williamson.

4 COMMISSIONER WILLIAMSON: Okay, thank you. Just
5 two questions. U.S. prices for all four pricing products
6 declined by over 25% from the first quarter to the last
7 quarter of the POI. The quantity of imports we reported by
8 importers differs substantially between the different
9 pricing products.

10 If subject imports were a key factor putting
11 downward pressure on prices, wouldn't we expect to see
12 variations in the trends between the products, based on
13 differing prices and quantities in subject imports? Knowing
14 there are some products where the imports were, you know,
15 much more important than others, so I'm asking, why is it
16 that the pricing products also declined by the same amount?

17 MS. CANNON: Commissioner Williamson, let me
18 start with that. I think part of the answer to your
19 question is the data is not completely indicative of where
20 the competition is occurring.

21 This is the data that's been provided to you on
22 those pricing products. It doesn't mean that you don't have
23 data from a number of companies that we wish you would have
24 data from, and when that data's missing, you're seeing that
25 our prices are falling there. You're just not seeing what

1 their volumes and prices are.

2 As our witnesses have attested, and they can
3 certainly elaborate, they see import competition in all of
4 those pricing products. That's why we selected and provided
5 those to you and they're feeling the pressure from imports
6 on all of them, so even though you may have smaller volumes
7 in some of those products and in others, based on who
8 reported data to you, it isn't indicative of the fact that
9 imports aren't in those market areas because they see them
10 everywhere.

11 COMMISSIONER WILLIAMSON: Do they see them to
12 the same degree in all of those market areas? And wouldn't
13 that affect the price change.

14 MR. ADLAM: This is Mark Adlam from M&G. I
15 would say that it doesn't necessarily matter the quantity of
16 imports that come in. It's the price that they're actually
17 being quoted at. Because, you know, we're not necessarily
18 asked to change our price on the quantity, so sometimes even
19 a very small quantity can be used to leverage a large amount
20 of our pounds to reduce the price.

21 And, you know, we're asked to meet offers then -
22 - you know, we're often asked to meet prices on larger
23 quantities as well, and so even a small amount of import
24 resin can create the same effect as a large amount of import
25 resin on the pricing.

1 COMMISSIONER WILLIAMSON: Okay. Thank you. If
2 there's anything further that you have posthearing to
3 illustrate that, that would be helpful. And this last ---

4 MS. CANNON: I'm sorry. We'd be happy to do
5 that. I just wanted to add that the offers, especially in
6 the hot-filled product, which I know is an area where
7 respondents have focused, is something we have some
8 information on, we can add in posthearing.

9 COMMISSIONER WILLIAMSON: Okay. Thank you. And
10 this last one will probably be best posthearing. It deals
11 with the relationship of PET resin and raw material costs,
12 which we've already discussed, but if you look particularly
13 at Octal's brief, Pages 21 to 27, it's includes a data
14 analysis that concludes that moving them U.S. prices of PET
15 resin and the industry's raw material cost are highly
16 correlated. And so I wanted you to respond to that specific
17 analysis. Because they're quite detailed there.

18 MS. CANNON: We'll be happy to do that.

19 COMMISSIONER WILLIAMSON: Good. Thank you.
20 With that, I have no further questions. I want to thank the
21 witnesses for their testimony.

22 CHAIRMAN BROADBENT: Commissioner Johanson.

23 COMMISSIONER JOHANSON: Thank you, Chairman
24 Broadbent. I'd like to discuss your assertion that the one
25 and one reason only for approved financials in interim 2013

1 is the imposition of preliminary trade relief. And I
2 apologize, but I don't have the page number for that. But I
3 did read it.

4 Is it possible that low raw material prices
5 played a part in this?

6 MR. MCNAULL: Again, I don't believe that is a
7 correct conclusion to reach, based on the information we
8 have on the record, because what the information shows is
9 that the prices for the finished product, the PET resin, are
10 still lower than the raw material cost, and there is a
11 spread between those two.

12 You would think, as I said, the lower raw
13 material cost would lead to higher profit for the industry,
14 when the opposite has been the case. So that's why we put
15 in that statement that the only thing we can ascribe to the
16 lower profit is lower prices caused by the subject imports.

17 In any other industry, if you didn't have this
18 dynamic, -- if you were in the airline industries and you
19 had lower jet fuel prices, you'd be making billions of
20 dollars. That's exactly what's happened. And there isn't a
21 drop in your fares. You can keep your fares up and your
22 petroleum costs go down, you make a lot of money.

23 Here, their petroleum-based costs went down a
24 lot, but their prices for the product they're selling went
25 down even more. And then the question is, why did their

1 prices proceed to go down? The only explanation is the
2 import pricing that they've been facing.

3 COMMISSIONER JOHANSON: Okay, I'd like to get
4 back to the Cape Fear plant, which has discussed, I believe,
5 some today. Respondents note in their prehearing brief that
6 the Cape Fear plant had been opened in 1961. But was that
7 plant making PET back in 1961?

8 MR. CULLEN: This is John Walt --

9 COMMISSIONER JOHANSON: Did that product even
10 exist?

11 MR. MCNAULL: No, it did not. DuPont started
12 that facility basically as a textile fiber facility and
13 there was no PET production at all. At that plant, or for
14 the most part, anywhere else in the United States at that
15 point.

16 COMMISSIONER JOHANSON: When did PET come into
17 existence? And do you know when it began to be produced in
18 Cape Fear?

19 MR. CULLEN: PET was first used in a commercial
20 sense to make packages in the late 1970s, so prior to that,
21 if anybody's old enough, you got everything in glass and in
22 the late 1970s, DuPont and others developed PET grades of
23 polyester, so that you could make bottles out of them
24 obviously, with the advantage of unbreakability and
25 lightweight.

1 The plant at Cape Fear made PTA and polyester
2 fiber from 1961 until 2013. The PET plant was built there
3 in 2007, and operated until September of 2013.

4 COMMISSIONER JOHANSON: So it was a pretty
5 modern plant, then?

6 MR. CULLEN: It was the same technology that's
7 in Oman.

8 COMMISSIONER JOHANSON: Okay.

9 MR. CULLEN: So just before their plant was
10 built.

11 COMMISSIONER JOHANSON: Okay. Thanks for your
12 clarification there. And in considering cumulation for
13 threat purposes, Reliance discusses trends in Indian home
14 market and the capacity utilization in India. I'd
15 appreciate it if you all could discuss Reliance's discussion
16 of this issue and if you can't do it here, if you could
17 please address it in the posthearing brief.

18 MS. CANNON: We'll be happy to expand upon it in
19 the posthearing brief, but I would just say that they're
20 reaching for anything that they can come up with as far as I
21 can tell to try to differentiate themselves and get out of
22 being cumulated when the factors clearly show that with
23 respect to all the factors that I went through in my
24 affirmative testimony, they're met for cumulation,
25 fungibility, geographic overlap, the channels of

1 distribution and the simultaneous presence, and the other
2 factors that the Commission has often looked at in a threat
3 context are met as well, which tend to be trends.

4 The trends of the imports. Are they the same?
5 Yes. The imports trends from India are exactly the same as
6 other countries. Their volumes have gone up. Their prices
7 have gone down. So, you know, to start coming up with other
8 types of factors, anybody could come up with something to
9 try to differentiate their product or their country, but
10 those are not typically factors that the Commission has
11 considered as appropriate to analyze when exercising its
12 discretion to cumulate in a threat context. And we can
13 expand upon that further, Commissioner Johanson.

14 COMMISSIONER JOHANSON: That would be helpful.
15 Thank you, Ms. Cannon. And Mr. McNaull, I think this
16 question is probably, maybe appropriate for you to answer.
17 The ITC recently held a hearing regarding polyethylene
18 retail carrier bags, and one factor that kept coming up was
19 an issue involving demand trends.

20 And that is a movement to reduce the use of
21 plastic bags, and it's my understanding, from what I've
22 read, and I can't recall exactly where, but there has been a
23 similar case provided regarding water bottles, people saying
24 these are causing pollution or litter.

25 Are you all under pressure, regulatorily to

1 reduce the use of PET?

2 MR. MCNAULL: No, I mean, we as an industry are
3 advocates of recycling. As I mentioned earlier, I'm on the
4 NAPCOR organization --

5 COMMISSIONER JOHANSON: Right, that's why I
6 thought you'd be appropriate here.

7 MR. MCNAULL: Yeah, exactly. So, I mean, again,
8 we have a solution as an industry to constructively place
9 PET that's been used by consumers in the past and we would
10 encourage an outcome that would collect more material and
11 make it available for investment and conversion back into
12 PET.

13 We'd like to see that as the outcome, because we
14 like to resolve any social or governmental concerns around
15 PET as waste, and that's we take a position in recycling
16 that's favorable towards it, and encourages more of it.

17 COMMISSIONER JOHANSON: And I ask that once
18 again. Due to demand trends, and also involving demand
19 trends, I see that you have a small water bottle there and
20 y'all have them in your desks as well. They're very small
21 these days. I mean, you can -- I'm amazed they don't fall
22 apart when I pick them up. Has that not reduced the amount
23 of PET used? And once again, looking towards the future as
24 far as demand goes, is there an effort to try to make
25 bottles smaller or even smaller for other products that,

1 say, like that orange juice sitting there in that can?

2 MR. MCNAULL: I share your observation there.
3 They're a bit flimsy. I'd like to see them use a little
4 more PET and be a little more substantial, frankly.
5 Particularly if we're going to recycle them.

6 John Cullen mentioned it earlier -- the growth
7 of water consumption on a unit basis is very high. And
8 companies are lightweighting bottles, which is offsetting
9 some of that growth, But net of both effects, there's still
10 a pretty robust growth for PET water bottles.

11 COMMISSIONER JOHANSON: And when you say
12 lightweight, you just mean, making them thinner?

13 MR. MCNAULL: I mean for example, this
14 particular water bottle probably has 8 grams of polyester in
15 it, so polyester as a packaging is extremely efficient. I
16 mean you've see the unit price of polyester. You can make
17 this bottle with only 8 grams of polyester. So it's a very
18 efficient way to get water to the consumer that's safe,
19 that's sanitary and consumers are buying into that, and
20 therefore the unit sales of these bottles, as a category is
21 nearly 10%.

22 COMMISSIONER JOHANSON: Okay, and I apologize
23 for bringing up lightweighting again. I thought for some
24 reason that was something to do with the manufacturing
25 process?

1 MR. MCNAULL: No, I mean, again --

2 COMMISSIONER JOHANSON: It's just the --

3 MR. MCNAULL: The lightweighting --

4 COMMISSIONER JOHANSON: -- the material?

5 MR. MCNAULL: -- is a term is our customers
6 deciding how much material to put --

7 COMMISSIONER JOHANSON: Okay.

8 MR. MCNAULL: -- from an engineering perspective
9 in this bottle. So when we say lightweighting, if this
10 bottle is 10 grams in the past, is 8 today, the phenomenon
11 of lightweighting is the idea of taking that amount of
12 material out to make the package.

13 COMMISSIONER JOHANSON: All right, and I have
14 another issue involving demand, which kind of falls along
15 the same lines. In another case before the Commission, that
16 involving lightweight thermal paper from China and Germany,
17 there was quite a bit of discussion about BPA content of the
18 paper, and I hear a lot about BPA these days. I was really
19 surprised reading through the briefs, and also the staff
20 report. I don't think I saw that mentioned once. Is that
21 impacting the sales of these products.

22 MR. ADLAM: The reason you didn't read it is
23 there's no BPA in our product.

24 COMMISSIONER JOHANSON: Oh, is that right?

25 MR. ADLAM: Not at all. Never has been.

1 COMMISSIONER JOHANSON: Okay. Huh.

2 MR. ADLAM: Yeah. It's actually something that
3 can be found in polycarbonate. It can also be found on the
4 linings of cans, but it's absolutely not in PET, and never
5 has been. Now sometimes you may read some misinformed
6 articles, which might sometimes --

7 COMMISSIONER JOHANSON: I think I've read some
8 of those.

9 MR. ADLAM: Yeah, you might have seen, sometimes
10 they write the article and you read the article, and then
11 they have a picture of a PET water bottle when really they
12 should have a picture of a polycarbonate, so one of those
13 big jugs that you might see in the office. They should have
14 had that picture, but you know, the graphic guy wasn't
15 really paying attention to the articles, so they will put a
16 picture of a PET water bottle, and then in that situation,
17 we have an industry organization called PETRA.

18 We will write them a letter to say, you know,
19 this is factually incorrect. There is no BPA in PET. And
20 usually we get a favorable response, but unfortunately in
21 the minds of the readers, they still remember the picture
22 and so, we often get that confusion with what you're asking
23 about, for sure.

24 COMMISSIONER JOHANSON: I thought there was some
25 increased demand for glass products, packaging glass and

1 part duty concerns about BPA?

2 MR. ADLAM: Maybe in certain areas, but we also
3 can say it's also a reason for buying more of our product,
4 because there is no BPA and we say it's a positive thing.
5 We're not in the business of trashing other plastics,
6 because I mean we're aware of, you know, there's often a lot
7 of concerns, which are sometimes founded, but many times are
8 not founded about other plastics as well. And so we don't,
9 in the business of promoting our plastic over another one,
10 but in reality, BPA is something that we don't have and
11 we're proud of that fact.

12 COMMISSIONER JOHANSON: All right, thanks for
13 your responses. My time has expired.

14 CHAIRMAN BROADBENT: Commissioner Schmidtlein.

15 COMMISSIONER SCHMIDTLEIN: Alright, thank you.
16 I just had a couple of questions, but I wanted to follow up
17 and ask, do you expect these bottles to become thinner?
18 Just out of curiosity? Because the retail carrier bags
19 are --

20 MR. CULLEN: I hope not.

21 COMMISSIONER SCHMIDTLEIN: -- super thin. They
22 do not hold my groceries anymore.

23 MR. CULLEN: There's probably a limitation.
24 It's getting to the point where there's just enough material
25 to actually the content and stand up straight when it's

1 full. And I will also defer to the premium -- person who
2 can attest, because they're the ones that make the bottle,
3 so he can tell you where the future lies.

4 COMMISSIONER SCHMIDTLEIN: Yeah, okay. All
5 right.

6 MR. ADLAM: Back before the time period of
7 investigation, there was actually a regulatory change or it
8 was a change to the net finish of the bottle, and at that
9 point, it was very possible to take out quite a lot of
10 weight --

11 COMMISSIONER SCHMIDTLEIN: I see.

12 MR. ADLAM: -- by changing the neck finish and
13 many people in the industry took advantage of changing that
14 neck finish to also make adjustments in the design of their
15 bottles, to take out a little bit more weight, but you know,
16 as you were testifying to, we're at the point now where
17 things get squeezed out of bottles rather quickly instead of
18 staying in them and that type of thing, so I think most of
19 the bang for the buck has already been had on taking the
20 lightweighting out. And we've seen some moderate growth
21 since that period.

22 COMMISSIONER SCHDMITLEIN: Okay. All right.
23 Thank you. So I had a couple questions about pricing. One
24 is, is there a way that price information is known
25 throughout the market? Is this just word of mouth, is there

1 a trade publication that tracks this, or --

2 MR. ADLAM: There are several publications that
3 track the historic pricing in the industry. So there's a
4 sense of historic pricing can be looked at.

5 COMMISSIONER SCHMIDTLEIN: And what is that, on
6 a yearly basis? Or how timely is it?

7 MR. ADLAM: It's usually published on a monthly
8 basis, so there's a number of publications that publish at
9 least references on pricing on a monthly basis.

10 COMMISSIONER SCHMIDTLEIN: And they are serving
11 producers, purchasers for that information? Is that how
12 they get it?

13 MR. ADLAM: Well, that's one of the mysteries of
14 the industry, I guess, is how do they get that pricing and
15 how does that work? We certainly don't talk to them about
16 prices. We only talk to our customers, so we're never sure
17 how they get the prices, but nonetheless they publish on a
18 monthly basis, reference type numbers.

19 COMMISSIONER SCHMIDTLEIN: And do you all find
20 that reliable? Is it relatively accurate or are they wildly
21 off?

22 MR. ADLAM: I wouldn't say -- I wouldn't
23 characterize in either of those two things. I wouldn't say
24 they're wildly off, and I wouldn't say they're accurate. So
25 it's somewhere in between, really, I guess.

1 COMMISSIONER SCHMIDTLEIN: Okay. Yes? Go
2 ahead.

3 MR. CULLEN: I was just going to add that, for
4 most of us here, sales people, and the best source of
5 information is our customers. They have access to all the
6 producers, all the suppliers. They get quotes from
7 everybody and for us, we will see them, sit with them. They
8 will share that information. Very rarely electronically or
9 in any kind of hard copy, but they do share information and
10 if we're in their office, they might show us something on
11 their computer or they might strategically leave something
12 on their desk so we understand what the competitive nature
13 of their particular count is, so that's a very typical way
14 for information to be shared.

15 COMMISSIONER SCHMIDTLEIN: Okay.

16 MR. MCNAULL: The other comment, too, is these
17 consultants also will render their opinion on the pricing of
18 the raw materials of PTA and MAG for manufacturing
19 polyester.

20 COMMISSIONER SCHMIDTLEIN: And who are the
21 consultants?

22 MR. MCNAULL: There's a number of them. We
23 could provide a list, I guess, in posthearing brief.

24 COMMISSIONER SCHMIDTLEIN: So producers consult
25 with outside consultants on what they think the prices of

1 raw materials is going to do? Is that what you --

2 MR. MCNAULL: No, I said they will give their
3 opinion on what they think the prices of raw materials are
4 for a given period. The consultants, independent of the
5 producers.

6 COMMISSIONER SCHMIDTLEIN: To give their opinion
7 to who?

8 MR. FREEMAN: Some consultants will have a
9 newsletter.

10 COMMISSIONER SCHMIDTLEIN: I see. Okay.

11 MR. FREEMAN: Some sort of publication that
12 they'll issue on a monthly basis. Sometimes it'll be an
13 estimate, and then they'll revise that price a month later,
14 but there's several, there's not just one that employed us.

15 COMMISSIONER SCHMIDTLEIN: I see. Okay.

16 MR. ROSENTHAL: In our prehearing brief and in
17 the preliminary, we provided excerpts from some of these
18 consultant reports that are published monthly and they're
19 subscriptions that members of the industry all take.

20 COMMISSIONER SCHMIDTLEIN: Okay. And in terms
21 of the other industry representatives in your negotiations
22 with customers where you're learning about the other prices,
23 is that also done mostly verbally or do you exchange any
24 information like that through e-mail or other types of
25 documents that you could provide to corroborate your

1 assertions that you're facing this competition and
2 purchasers are using it to drive down your prices?

3 MR. ADLAM: The vast majority of discussions are
4 just that. They're discussions. We rarely receive things
5 in writing, although we often will ask for that. It's not
6 something that is readily offered to us.

7 COMMISSIONER SCHMIDTLEIN: Okay. And the same
8 answer, I assume, from Mr. Freeman, Mr. McNaull?

9 MR. FREEMAN: Plastics, yes. I mean I would
10 agree the vast majority is verbal, yes.

11 MR. MCNAULL: I mean, again, and John Cullen
12 mentioned it a few minutes ago, it's discussions with and
13 interactions with customers primarily that gives you the
14 context of what you're dealing with competitively.

15 MR. MCNAULL: And again, to reiterate, they do
16 show us documents. They just generally don't allow us to
17 have a copy of it to use, perhaps --

18 COMMISSIONER SCHMIDTLEIN: Right. And in terms
19 of prices across segments of the market, do people who are
20 buying PET resin for bottles, pay a similar price if you're
21 making carpet out of it? Do these prices generally -- are
22 they generally the same or do they at least track in terms
23 of movement?

24 MR. CULLEN: The answer is generally yes,
25 there's a narrow range of prices across the different

1 markets and, like I say, more specifically associated with
2 the customers' ability to negotiate versus a specific
3 market, so a very knowledgeable customer who has access to
4 lots of competitive price information may be a better buyer
5 than some other people in the same market, but again, I
6 think we probably have provided evidence that the price
7 range across markets is very narrow, and that's been my
8 experience for the last ten years.

9 COMMISSIONER SCHMIDTLEIN: Okay. All right.
10 Anybody else like to add anything to that? Mr. McNaull?

11 MR. MCNAULL: The other thing I would mention,
12 too, is you might have a buyer that buys across the market
13 segments. You might have a buyer that buys heat-set resin
14 at the same time they buy water-grade resin, the same time
15 they buy resin for CSD.

16 COMMISSIONER SCHMIDTLEIN: How often does that
17 happen? Is that typical? Or is that more the exception?

18 MR. MCNAULL: I would defer to Mr. Cullen, maybe
19 to give you a sense of how frequent that is.

20 MR. CULLEN: The largest buyers from a
21 percentage or volume are people that buy all products across
22 the three of the four categories that we talked about. They
23 buy hot-fill, cold-fill and they buy -- so when they ask
24 their suppliers to provide prices, they ask for a price on
25 all the different products, and again, generally speaking,

1 those prices are very similar for all the products. There's
2 no differentiation between grade or segment.

3 COMMISSIONER SCHMIDTLEIN: Okay, Mr. Freeman?

4 MR. FREEMAN: Just to emphasize, we see the
5 imports products from the subject countries in all of these
6 different entities, so that also leads to the fact that it's
7 basically very narrow pricing across the different entities.

8 COMMISSIONER SCHMIDTLEIN: One other question I
9 had, sort of related to this, is the -- how prices are
10 modified in the contracts, and I don't know if you want to
11 address this in posthearing, but, and I think I read it's on
12 a monthly basis. It can be done -- is this a -- is there a
13 one-to-one relationship. Again, you can address this in
14 posthearing. Is there a one-to-one relationship between the
15 cost of raw materials and how a price would be adjusted in a
16 contract?

17 MR. ADLAM: I can address a little bit. I think
18 we've said before, and I'll re-emphasize it again. I mean
19 it's like a pass-through of the costs of the raw materials,
20 so you know, when that goes up, that can be helpful because
21 it's an automatic pass-through, so we're not left in the
22 same situation as we had back in 2005 when we couldn't pass
23 through price increases, but on the other way, is when the
24 prices come down, it's just a straight pass-through, so
25 there's no advantage to us when the price comes down, so I

1 know some of the questions were asked, shouldn't that be an
2 advantage if the oil price comes down, which might be
3 logical, except with passing through all of that advantage
4 to our customers through our pricing mechanism. It is like
5 a one-to-one.

6 MR. CULLEN: Just to add, the reason we do that,
7 is because of the competitive nature of the business. So we
8 go to bed at night dreaming of holding onto those savings,
9 right? But it doesn't usually happen, because if we don't
10 pass through, the subject imports will pass through, our
11 domestic competitors will pass through, so it is very
12 typical for cost reductions to be passed to the buyer.

13 COMMISSIONER SCHMIDTLEIN: And I guess that's
14 true for all of the producers, for the record.

15 MR. FREEMAN: Yes, I agree.

16 COMMISSIONER SCHMIDTLEIN: Mr. McNaul? I see
17 you shaking your head.

18 MR. MCNAULL: Yes, John Cullen and I are on the
19 same team, so yes, I agree.

20 COMMISSIONER SCHMIDTLEIN: Okay.

21 MR. CULLEN: I do whatever he says.

22 COMMISSIONER SCHMIDTLEIN: Alright, thank you
23 very much. I don't have any other questions.

24 CHAIRMAN BROADBENT: I just had one other
25 question. Are there any price adjusting mechanisms within

1 your raw material supply contracts?

2 MR. ROSENTHAL: Chairman Broadbent, just to
3 clarify. So you're asking whether the contract with the
4 suppliers of raw materials such as BP, whether there are
5 adjustments in pricing based on overall petroleum prices,
6 for example? Or --

7 CHAIRMAN BROADBENT: Just any kind of mechanism
8 that's in the contract.

9 MR. ROSENTHAL: I wanted to make sure everyone
10 understood.

11 MR. ADLAM: Yes. I mean basically there are
12 sort of monthly pass-throughs for the formulas in a lot of
13 raw material contracts. So yes, I would say the answer is
14 yes.

15 CHAIRMAN BROADBENT: So how would that be -- how
16 would they say that in the contract?

17 MR. ADLAM: For example, PTA, which is one of
18 our big raw materials that we've talked a lot about, is made
19 from paraxylene, which is the next molecule up the chain, if
20 you like, back towards the oil well. And so you may have a
21 formula that relates to the monthly price of paraxylene,
22 that would get you the PTA price.

23 CHAIRMAN BROADBENT: Okay. All right. Let's
24 see if the Commissioners have no more questions. Does the
25 staff have any questions of this panel?

1 MS. HAINES: Elizabeth Haines. Staff has no
2 question.

3 CHAIRMAN BROADBENT: Okay. Do the respondents
4 have any questions? No. Okay. All right. In that case,
5 it's time for our lunch break. We will return here at ten
6 minutes after 2:00. The hearing room is not secure, so
7 please don't leave your confidential business information
8 out. And I want to thank you again to all the witnesses for
9 coming today.

10 (Whereupon a lunch recess was taken to reconvene
11 at 2:10 p.m.)

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1 going to turn it over to the witnesses because you want to
2 hear from them not from the lawyers too much.

3 So first item. What is PET? PET is one of
4 several different plastic resins. There are a whole host of
5 different codes. (A slide presentation follows:)

6 The first slide up on the screen indicates that
7 PET is number one. It's the number one on the hit parade.
8 But it's followed by things like high-density polyethylene,
9 low-density polyethylene, polypropylene, polystyrene, et
10 cetera, et cetera. So there's lots of different kinds of
11 plastics.

12 These are representations, and I think the
13 Petitioners this morning talked about this a little bit.
14 Low-density polyethylene tends to be more opaque products.
15 The heavier stuff, then we get into the EPA issues with
16 these large water containers, containers used for detergents
17 and things like that.

18 Then you have your polystyrene, which everybody
19 knows if you buy a hot lunch at Jack's Fresh, or whatever,
20 you come back with a hot polystyrene container. And of
21 course at the end of the scale here is PET, which is used in
22 a host of different things. And we always associate it with
23 water or carbonated beverages like Coca-Cola, et cetera.

24 This is the product when it comes out in chip
25 form there are different manufacturing--I think OCTAL has a

1 different process that they're going to go into in a little
2 bit. But this is a typical process with these cylindrical
3 shaped pieces that come out of the PET chip process.

4 They can be colored, obviously, and then you can
5 make all sorts of different fancy things from the colors.

6 But the basic building blocks of polyethylene
7 terephthalate, or monoethylene glycol, and terephthalic acid,
8 MEG and PTA. Both of those are petrochemicals.

9 Here is a representation of what Reliance likes
10 to call the polyester tree chain. You can see on the one
11 side the intermediate products--PTA and MEG. And those
12 intermediates go into a whole host of different polyester
13 products, PET among them. But you also have tetra darn,
14 filament yarn, staple fibers, fiber fill, et cetera, et
15 cetera.

16 It's a complicated process and product, so I just
17 want to make sure you guys are grounded in the different
18 permutations of this so we don't get confused, because I
19 was.

20 Here are just the types of PET. There are three
21 different groupings. There's a fiber-grade PET. There's a
22 film- grade PET. And then there's a bottle-grade PET. And
23 all we are talking about here is the bottle-grade PET.

24 Now you can use the same facilities to make all
25 three, but we're only talking about the bottle-grade at the

1 bottom.

2 This (indicating) is a quick representation of
3 the world change in demand for PET. There was a discussion
4 this morning that demand for PET in the world is not growing
5 all that fast--at least not as quickly as one would think.
6 This is from PCI. This is the world change in PET demand
7 over the last seven or eight years, and it's growing quite
8 quickly relative to other plastics.

9 This is a representation of the evolution of PET
10 plastics. You will note from the slide that we started it in
11 the 1970s, as the Petitioners discussed this morning, with
12 basic carbonated beverages. We moved into juice bottles,
13 water bottles, et cetera, during the 1980s.

14 And it has expanded ever since into ever more
15 different kinds of applications. And as those applications
16 that expanded, so have the number and types of customers
17 that buy this product. It is not simply Coke and Pepsi
18 anymore.

19 There are a number of smaller companies, a lot of
20 different types of companies, much more regionalized
21 companies that buy this product. And those companies ask
22 for some degree of diversity of supply source because they
23 are concerned that there is too much concentration.

24 `If one plant goes down like the BP plant, the
25 PTA plant did, it will cause a disruption. And so

1 alternative sources of supply are sought in this business.
2 Those tend to be imports. And I would also note that with
3 all of this additional information that comes out with these
4 applications, customers have gotten a lot more sophisticated
5 about it.

6 Everybody gets daily or weekly price reports on
7 PTA, MEG, and PET prices around the world. You get it from
8 ISIS. You get it from Platts. When I was at verification
9 with Reliance, we had to produce weekly pricing reports so
10 that we could compare the published prices with what they
11 were paying for internal raw material prices. It's readily
12 available and most people in the business get it.

13 This (indicating) is again a representation of
14 the different products you can make with it beyond just
15 bottles. Carpeting, clothing, insulation, et cetera, et
16 cetera. I won't belabor that.

17 Here's (indicating) a listing of the products in
18 your pricing series that the staff collected. Bottles are
19 at the top, and you have the carbonated beverages in the
20 middle. Hot fill, which tends to be juices and things that
21 have hot liquids going in that need to be sanitized or
22 protected. So any kind of tomato juices, things like that,
23 will enter a bottle hot and then be sealed and cooled down.
24 That's why it's "hot fill."

25 The one that's a little less obvious is

1 strapping. Strapping is an alternative to say metal
2 strapping. You can use that to hold pallets together. You
3 can use it, also the sheeting for some types of applications
4 for protecting products and things like that.

5 So, again, there's no end to the uses. They keep
6 growing and growing with different things. But these are
7 the ones that you focused on in the pricing series.

8 Finally, I would like to just mention--oh, we
9 want to go back to that. I'll leave it at that and then
10 turn it over to the OCTAL witness and talk about other
11 things later. Thanks.

12 STATEMENT OF JOE BARENBERG

13 MR. BARENBERG: Good afternoon. First of all,
14 thank you for having us here today. I appreciate the
15 opportunity to speak to you.

16 My name is Joe Barenberg. I am the Chief
17 Operating Officer of OCTAL, Inc., which is OCTAL-Oman's U.S.
18 marketing organization, OCTAL-Oman being the only PET resin
19 producer in Oman.

20 Let me begin my testimony with an introduction to
21 OCTAL. OCTAL was established to meet the growing demand for
22 PET sheet and resin. OCTAL's factory in Oman was first
23 built in 2006, with production capacity expanded in 2012.

24 OCTAL manufactures and sells only two products:
25 PET resin and PET sheet. PET resin being of course the

1 merchandise under consideration in this investigation.

2 PET sheet is a separate product that is not
3 within the scope of the investigation, and OCTAL does not
4 produce any PDT film, which is a much thinner product of
5 course even than sheet.

6 These two products, PET resin and PET sheet are
7 manufactured in a single facility in Salalah, Oman, which is
8 a southern town in the Sultanate, not far from the border
9 with Yemen. All the production of the merchandise under
10 consideration takes place at this one facility.

11 OCTAL-Oman itself doesn't product any other
12 products. You heard earlier this morning Petitioners and
13 their counsel repeatedly emphasizing that U.S. imports from
14 targeted countries have increased over the past three years,
15 suggesting that there is something inherently damaging about
16 this increase, when in fact there is nothing damaging at all
17 inherently here.

18 Today I am going to explain the reasons behind
19 the increase in PET resin imports produced by us in Oman.
20 Very simply, OCTAL was able to increase sales to the U.S.
21 market because OCTAL was able to offer a next-generation
22 resin product based on a world scale new technology that
23 provided enhanced attributes only available in limited
24 volumes by other suppliers, including the Petitioners.

25 The first key attribute is that OCTAL's PET resin

1 sold from 2012 to 2014 is produced using the absolute
2 state-of-the-art technology at that time, with specific
3 benefits to the end user.

4 This is important because this innovative
5 technology provided significant advantages over older
6 established PET resin-making technology.

7 Over the past 10 years in particular, PET
8 manufacturing technologies have advanced in various areas
9 and continue to do so. The two most important for OCTAL
10 included the production of the melt-to-resin about which
11 you've heard quite a bit this morning, and its ability to
12 function without solid-state polycondensation or SSP
13 technology.

14 And, two, our incorporation of a chip
15 manufacturing technology that allows for spherical shaped
16 chips, and we'll get into that a little bit later.

17 MTR is an important development in PET resin
18 making because it allows for faster processing of the raw
19 materials with less energy, with less capital, especially
20 capital per installed ton of capacity, and that's a very
21 important number. When installed at world scale, the result
22 is a lower cost but with a very high quality finished
23 product.

24 The process eliminates several steps, avoiding
25 potential degradation of the polymer due to heat and

1 residence time. This can be seen graphically in two pages,
2 and I do think this was included in the package that you
3 have. I just want to point out these two. There's really
4 only one takeaway.

5 They're not there, so you have to read all the
6 words. But the whole point is that there's a certain number
7 of steps, and this being the old technology, and this being
8 the MTR technology. You can see how many steps have been
9 removed in the process. And it's just to illustrate that
10 point, that it was a leap in technology that allowed for a
11 great simplification in the manufacturing process.

12 So MTR compresses what was a four-reactor process
13 into two essentially, and allows for developing the targeted
14 intrinsic viscosity, which you heard about earlier today,
15 which is the--called IV, which is the spec that's very
16 important to bottle makers and others who use the resin.
17 And they do that in the melt phase, as opposed to finishing
18 the resin in the solid state phase--that is, in the pellet.

19 Compared to conventional SSP technology, MTR
20 offers several advantages. One, as I said, it saves
21 equipment costs due to a simpler configuration. It has
22 operating cost reductions through the use of latent heat and
23 other technical advantages. And it allows significant
24 reduction in the overall converting costs.

25 Additionally, and very importantly, it is a

1 technology that delivers a lower overall carbon footprint.
2 And this enhances PET status as one of the most sustainable
3 and recyclable packaging materials.

4 So equally important is our incorporation of
5 technology to produce a different type of pellet. OCTAL's
6 state-of-the-art facility production utilizes an underwater
7 pelletization process. Essentially, in such a process the
8 liquid melt is flowing through cutters under water. And,
9 once cut, the spheres form through the surface tension as
10 they float through the water, and the water is gradually
11 removed and the pellet is allowed to cool.

12 It turns out that the spherical PET chips deliver
13 tangible benefits to the customers over the more common
14 cylindrical shaped chips. First, the perfect sphere
15 provides better air flow around the PET chip to reduce
16 drying time and the amount of energy required to dry the
17 chip, which is very important right before the chip is
18 processed through injection molding or some other process.

19 Second, the chips in this shape allow the
20 customer to enjoy faster remelt time in their process, which
21 reduces their cost.

22 And third, it generates less dust. So when you
23 have these chips that have corners on them and they get
24 airveyed through vents or there are tiny pieces that chip
25 off and dust does accumulate.

1 `And finally, the chip enhances what we call the
2 bulk flow of the resin during conveyance either from vessel
3 to vessel in a customer's facility, or from a vessel to the
4 process. And our customers have given us specific positive
5 feedback on all of these performance attributes.

6 They are things that do matter to them. These
7 advantages from OCTAL's resin manufacturing process are an
8 important condition of competition because the overwhelming
9 majority of the U.S. pet resin production through 2012 and
10 2014 was based on conventional SSP technology, rather than
11 the newer MTR.

12 In short, it has been OCTAL's use of innovative
13 technologies that has allowed us to increase our sales to
14 the U.S. market over that time period. And this should not
15 be a surprise to the Petitioners.

16 Indeed, one of the Petitioners, M&G, made this
17 point explicit in its November 2013 global offering. M&G
18 stated, quote, "Unlike the typical commodity chemical
19 industry where products manufactured by all suppliers have
20 the same formulation and are fungible, product innovation is
21 very important to this industry"--that is, the PET resin
22 industry. And this describes OCTAL's participation in the
23 U.S. market to a tee.

24 While our PET resin allowed us to gain access--
25 some access to the U.S. market from 2012 to 2014, I can tell

1 you from a real-world experience that our future success has
2 definite constraints. I have two very important points to
3 make.

4 First, we are no longer the new kid on the block.
5 We are no longer all alone in having the latest technology.
6 Other suppliers have started to adopt newer technologies,
7 some ostensibly improved since our investment.

8 The other reason for our limited ability to
9 increase our presence in the U.S. is structural. Namely,
10 the vast expanse of the U.S. combined with particular
11 customer needs.

12 Specifically, in the U.S. market there are two
13 critical logistical facts. Many U.S. PET large resin
14 customers, contrary to what you have heard this morning, are
15 not located close enough to a port, and will not receive
16 significant quantities of resin via any mode of delivery
17 other than rail.

18 These rail customers have established their
19 entire production operation around receiving PET by rail,
20 often using the rail cars as standing inventory, and simply
21 cannot receive the product in any other form.

22 However, the logistics in the U.S. market are
23 such that it is not feasible to arrange delivery of PET by
24 rail car from our ports of entry. And so OCTAL is
25 effectively excluded from all customers that require this

1 type of service.

2 Given that these customers are the larger tier
3 one customers, this means OCTAL is excluded from supplying a
4 significant fraction of the U.S. market.

5 The next topic I'd like to discuss is an
6 important dynamic of selling PET resin. Namely, the fact
7 that most U.S. selling prices are tied to a formula pricing
8 mechanism that is based on changes in prices of the two
9 primary raw materials about which you've heard a fair bit
10 this morning, PTA and M&G.

11 It is my view that there are two critical aspects
12 of this reality for your understanding of this market.
13 First is that the raw material pricing is indeed the primary
14 driver of PET resin pricing. If raw material prices
15 decrease, PET resin prices decrease as well.

16 This is a fact. Supply constraints are set up--
17 supply contracts are set up to reflect this. This is
18 important because it is therefore very difficult if not
19 impossible to claim that import pricing caused U.S. market
20 prices to go down. Rather, all suppliers in the U.S. market
21 must follow the demands of the customers which require PET
22 resin pricing to change with the changes in raw material
23 pricing.

24 The other important point about this pricing
25 dynamic is how it affects profitability. Because PET resin

1 prices are literally tied to changes in raw material prices,
2 the PET resin prices must change immediately. Indeed, we
3 have several U.S. customers for which we did not invoice
4 until after the end of the month for shipments made during
5 that month. The reason for this is that the customer
6 demands that our PET resin prices in March, for example,
7 reflect the latest changes in raw material prices--namely,
8 what happened in March.

9 So why is this important? This is important
10 because we are required to adjust our prices immediately
11 even though our costs have not yet been adjusted. Simply
12 put, in a market of declining raw material prices the PET
13 resin shipped to the customer in March was made with raw
14 materials purchased in February or even January when the raw
15 material prices were higher.

16 Or, stated differently, by definition when raw
17 material prices are falling, the formula pricing may
18 require--required by many U.S. customers requires that PET
19 resin suppliers absorb the price difference until their
20 actual costs can reflect the benefit of the falling raw
21 material prices.

22 This fact exists for every single PET resin
23 producer. I respectfully request that you take this into
24 account when examining the profitability of resin producers.

25 The final comment I'd like to make is about OCTAL

1 as a company. My understanding is that the Petitioners have
2 argued that any foreign supplier with excess capacity will
3 definitely seek to increase its U.S. shipments in the
4 future, absent antidumping or countervailing duties.

5 I can tell you categorically that this is not
6 true with OCTAL. I respectfully submit that our own data
7 proves this point. As you can see from OCTAL's Foreign
8 Producer Questionnaire response, during 2015 we had quite a
9 bit of excess capacity to produce PET resin.

10 However, contrary to the insinuation of
11 Petitioners' arguments, we did not simply pump out resin and
12 ship it regardless of price. In fact, compared to 2014, in
13 2015 the volume of our shipments to all other markets in
14 which we have no trade barriers actually decreased
15 significantly.

16 That is, even though we had plenty of excess
17 capacity, we did not increase PET resin production or
18 shipments. Indeed, it is for this very reason that we have
19 recently decided to migrate significant resin production to
20 sheet production, reducing our effective resin capacity.

21 At our Salalah, Oman, facility, we operate a
22 total of four what we call complexes. In Pearl, which is a
23 combinations of two reactors, called Pearl I and Pearl II,
24 they produce only PET bottle resin. In Sapphire, we have
25 Sapphire I and II, we can produce either PET sheets or PET

1 resin.

2 It is important that you know that we actually
3 closed PET resin production in 2015 in Pearl. Specifically
4 for several months we shut down our production lines across
5 both Pearl reactors. This information about closing down
6 production during 2015 was provided in our questionnaire
7 response as well.

8 Temporarily closing down production lines rather
9 than producing and shipping regardless of market conditions
10 is who we are. It is part and parcel to our business model.
11 We are not about capturing market share for the sake of
12 capturing market share.

13 Our objective, rather, is to do the best job we
14 can at earning a return that is sustainable and acceptable
15 to our investors. And so, if it is not profitable to ship,
16 we will not ship. Given current and anticipated PET resin
17 market conditions, including the expected start up of the
18 huge PET resin production facility later this year in Corpus
19 Christi, Texas, and the fact that the PET sheet business is
20 a more attractive long-term opportunity, we have decided to
21 increase our proprietary sheet-making capacity using our
22 Pearl resin lines.

23 Again, such plans reflect our business model.
24 Contrary to Petitioners' insinuation, we have not in the
25 past and we will not in the future reduce ourselves to

1 producing and shipping PET resin simply to fill capacity.

2 This is not who we are, and it is not what we do.

3 OCTAL is a company committed to PET as a leading
4 polymer for what we refer to as clear, rigid packaging. We
5 are also a company that takes seriously its responsibility
6 to investors. We are continuously assessing our business to
7 ensure that our approach to investment, operations, and the
8 market reflects this.

9 I want to make one final note about available
10 capacity in Oman. I saw that the Petitioners' prehearing
11 brief asserted that we, OCTAL, might have another PET resin
12 competitor in Oman in the near term, specifically
13 Petitioners cited a press article that there would be a new
14 PET resin production facility in Oman built by Oman Oil, in
15 conjunction with LG International.

16 Petitioners attempted to portray an impression
17 that this new PET resin facility would be built soon and
18 therefore there would be even more capacity in Oman
19 available to export to the United States. I am here to tell
20 you that this impression is absolutely wrong.

21 Needless to say, OCTAL-Oman has been following
22 this project since it was initiated in 2006, and officially
23 announced in 2012. Given OCTAL's potential as a major off
24 taker of the project's PTA capacity, it is understandable
25 why we would follow it so closely.

1 I can tell you with certainty that this new PET
2 resin production capacity will not be built any time in the
3 foreseeable future. It is common knowledge that the
4 purported PET project has been shelved and there have been
5 recent reports about any project milestones having been
6 started, or restarted, or having been completed, including
7 financial closure, EPC bid package, et cetera.

8 And I can tell you categorically that the
9 financing has disappeared for this project at this time, and
10 so the production facility will not be built in the
11 foreseeable future.

12 Again, thank you for your attention.

13 MR. NOLAN: This is Matt Nolan again. I'm just
14 going to introduce Anil Rajvanshi, our Senior Executive with
15 Reliance Industries.

16 STATEMENT OF ANIL RAJVANSHI

17 MR. RAJVANSHI: Good afternoon, Madam Chairman,
18 Vice Chairman, and members of the Commission. My name is
19 Anil Rajvanshi. I am Senior Executive Vice President of
20 Reliance Industries Limited.

21 I have been working in the petrol industry for
22 over 18 years. I appreciate this opportunity to provide you
23 with our views about the petrol industry and market.

24 Madam, I want to start by assuring you that India
25 is a responsible exporter. We have been a reliable presence

1 in the U.S. market for over 10 years. We are not the only
2 supplier, but one of the large investors in the U.S., having
3 invested close to \$5 billion in the shale gas.

4 We are a known reliable producer in certain
5 narrow sectors of the U.S. market. As Petitioners have
6 said, we are a large company but we are a very small share
7 of exports to U.S.

8 Our export levels are modest by any standard, and
9 in no way can be considered as harming the U.S. industry.
10 In fact, Indian imports were lower in 2014 than before the
11 financial crisis.

12 We are quite concerned with the actions of the
13 U.S.; industry in this present case. At one point of time,
14 they accused Reliance of not reporting all U.S. sales of
15 PET, only to concede later that the product shipped was not
16 PET.

17 DAK has also failed to disclose that it has a
18 commercial agreement with my company for selling PET in
19 North and South America.

20 DAK has also not correctly used the data which
21 was given to them, or which was provided to them as a
22 partner by taking them to our plant, by giving them the
23 information which has been misused.

24 The U.S. producers are all huge foreign-owned
25 multinationals with operations in multiple countries. There

1 is no doubt that they control the U.S. and indeed North
2 American market and have aggressively sought to remove any
3 form of foreign competition that they do not own or control.

4 Interesting to note here that one-third of the
5 PET imports come from Mexico. And it is DAK and M&G.
6 There are subsidies in Mexico which exports to U.S. They
7 don't have any injury. They haven't claimed any injury from
8 the one-third of the total imports coming from Mexico,
9 because they own those plants.

10 They bought out other U.S. producers and are
11 affiliated with Mexican producers. Indeed, it is our view
12 that this case is in part about protecting Mexico, as the
13 Petitioners principal outside U.S.

14 M&G is creating demand for the new one billion
15 plant they are building in Corpus Christi. We do not
16 believe that free market and open competition are enhanced
17 when two of the largest producers which the Petitioners have
18 and can work to cooperate to build the largest single source
19 of PET in the United States, exclude other producers and
20 essentially control the market.

21 It is difficult to believe that the Petitioners
22 claim that North America is on record by saying that they
23 wasted \$350 million in the M&G Corpus Christi plant with the
24 exclusive right or exclusive share of 400,000 tons out of 1
25 million tons.

1 And they still call it, it's not a joint venture?
2 So DAK is principal investor in M&G's Corpus Christi plant,
3 and they invested over \$350 million to control around 40 to
4 50 percent of the production share.

5 This was taken in 2011. But if you see the
6 actual capital which has been invested later on in 2013 and
7 2014, and it is difficult to believe that a company whose
8 revenue is going down, whose sales have gone down, whose
9 profits have gone down, and are investing this kind of
10 money.

11 Indeed, we are so concerned with the
12 concentration of control that our company has registered a
13 complaint with the Federal Trade Commission. We agree with
14 the concept of free and fair trade, but we will not be
15 bullied by the companies like DAK and M&G.

16 What is talking about the customers? Imagine
17 what happens to the consumers. It is incumbent upon the
18 Commission also to look into the common interest. And we
19 cannot help but ask how is it possible that the domestic
20 industry who controls at least 50 percent of the United
21 States market could be injured by a country like India which
22 accounts for perhaps one percent of the exports.

23 And the number gets even smaller if you include
24 the domestic industries affiliated production from Mexico
25 and Taiwan. Indeed, the material Petitioners bring in from

1 Mexico alone is many times larger than India shipment
2 effects.

3 We understand, however, that the Commission must
4 concern itself with whether India imports in Europe or just
5 domestic industry.

6 First I can assure you the United States has
7 always been a relatively minor market for Reliance and other
8 Indian exporters. We have sought to provide a high quality
9 production in these sectors and are known as a small, stable
10 supplier to the United States.

11 I also know that demand is increasing in the
12 United States, as well, though at a slower growth rate as
13 compared to India and certain other countries.

14 There has also been mention about the increased
15 capacity that Reliance has put in. I would like to inform
16 the members here that the per capita consumption of India of
17 PET is not even a kilogram. It's half a kilo. Whereas, the
18 United States consumes 9 kg per capita. So you can imagine
19 how much is the good where we are leading to.

20 We mentioned about these water bottles on each
21 table. If 1.2 billion people of India wanted to have a
22 bottle of water, we don't have PET resin in India. Such is
23 the growth, and such is the prospect of growth.

24 Second, we are a disadvantage to U.S. producers
25 and some other subject countries in a number of ways. For

1 example, the U.S. and Canadian producers, and even the
2 Mexico producers, are able to deliver product by rail which
3 we are not able to do so.

4 We are limited in our ability to sell to
5 customers who require rail delivery. We also do not compete
6 with U.S. product for hot-fill applications, which is about
7 17 percent of the domestic producers production of subject
8 product. Essentially we concentrate in the bottle market.
9 We price our product in line with the market and try not to
10 underprice.

11 I have read the public version of the staff
12 report and was not surprised to find that we oversold U.S.
13 products, we oversold in U.S. production 18 quarters of the
14 Petitions quarters. And only undersold U.S. production 10
15 quarters.

16 How it is called injury is yet to be seen. That
17 does not sound like price undercutting. As I've said, yes,
18 we increase our capacity and we are proud of our new plant
19 in the Hage, which is meant to cater to the younger
20 population of India.

21 India has been growing consistently at a growth
22 rate of between 5 to 7 percent, and that is creating demand
23 in India. Demand of PET in India is extremely strong and
24 expect to remain as strong for at least the next five years,
25 because we have to grow from half kg to at least 5 kg, if

1 not 9 kg like the United States.

2 In my testimony at the preliminary conference I
3 admitted--I identified a number of key features for India
4 which is driving consumption of PET resin, which is expected
5 to continue to grow by 20 percent a year in the next 5
6 years.

7 I will briefly recap that information now. India
8 has one of the fastest growing GDPs in the world. It is
9 expected to increase almost 7 percent per year from 2015-16
10 onwards. Our younger, and more prosperous, and growing
11 middle class consumes more PET bottles, more PET products
12 for all types, including carbonated beverages for which we
13 project huge growth.

14 Packaged water is becoming more common and there
15 is increased demand for packaged water. Further, Reliance
16 and other Indian producers are also serving several regional
17 markets. We call them PET resin deficient markets. These
18 include the rest of South Asia, Africa, and South America.

19 Demand is also increasing rapidly in those
20 markets due to the economic growth and other reasons. We
21 already have a history of supplying PET resin into those
22 markets, and we fully expect to continue to grow our exports
23 to those markets. And we have shown this to the
24 investigators who had come there for a site verification.

25 It seems that the real competition for the U.S.

1 producers is Mexico, where they ship more PET resin into the
2 U.S. market in 2014 than three years' worth of shipment from
3 India.

4 I would like to say that U.S. producers suffer
5 due to high cost of production. If you see, about 15 years
6 back the average per capita wage per annum in China, India,
7 and Vietnam was \$500. Today it has gone up to \$8,300 in
8 China. It has gone to \$1,300 in Vietnam. India is still
9 remaining at \$1,000 or lower than that. As compared to U.S.
10 with its \$50,000.

11 Raw material like PET, if you see the history in
12 the last five years, take out any leading journal like
13 Platt's, ICIS, PCI, or CME, you will find that the PET sold
14 in U.S. markets or the North American market at \$100, or 10
15 percent more than what it is sold in Asia.

16 Thus, I would say that the efficiency of
17 production, the old plants, old technology, is the basic
18 reason for the injury to the domestic industry.

19 Now as M&G CEO has put in their paper on January
20 2016, they say that we decided to increase our investment in
21 order to make it more efficient, more efficient production
22 at Corpus Christi. As far as the capacity utilization is
23 concerned, I would like to read these three lines from the
24 CEO's statement of M&G.

25 This is not the first time that M&G chemical

1 facility exceeds its planned capacity. It already happened
2 in Altimer, Mexico, and Swabi, Brazil. We have the current
3 capacity increase well in excess of 13 percent of the
4 initial design capacity. So the capacity utilization is not
5 an issue.

6 With such a high capacity utilization, selling
7 the entire product into the U.S. market, or the other
8 market, they are not able to export for the reasons as I
9 mentioned about the high cost of production. You need to be
10 competitive to sell in the international market.

11 Antidumping is a fair trade mechanism, but it
12 cannot be used for eliminating the competition, or it cannot
13 be used if it is not in the interest, in the community
14 interest.

15 In conclusion, I would like to say that India is
16 a very minor player in the U.S. PET resin market, with very
17 little overlap in competition between imports from India and
18 other countries, as well as from the products produced by
19 the large multinational producers.

20 Again, thank you for allowing me to present our
21 views on this. Thank you.

22 MR. FEE: Good afternoon Madame Chair and members
23 of the Commission and staff. My name is Jon Fee I am with
24 the Alston and Bird law firm and I represent Premium Waters.
25 Allow me to introduce Bernie Zarda, Premium Waters

1 Vice-President to offer his testimony this afternoon.

2 STATEMENT OF BERNIE ZARDA

3 MR. ZARDA: Thank you. I am appearing today in
4 opposition of the Petitions. My company particularly
5 objects to the affirmative critical circumstances
6 determination as to India. Such a determination would
7 punish my company and other importers for an alleged massive
8 surge in imports and an alleged stockpiling of India PET
9 resin that in fact did not occur.

10 Premium Waters is a privately owned U.S. company.
11 We are a bottled water company, we are the only buyers of
12 PET resin in the room. We operate production and
13 distribution facilities in 8 states and we employ 850 U.S.
14 workers.

15 We sell bottled water to retail outlets
16 throughout the United States and under our brand names and
17 our customer's private labels. We buy PET resin from U.S.
18 and foreign suppliers for use in production of the molded
19 clear plastic bottles that we use to package our products.
20 Our suppliers include the above Petitioners and Respondents
21 in these investigations.

22 We purchase substantial quantities of PET resin
23 but by no means are we among the largest in the U.S. We
24 place orders for PET resin to meet our expected production
25 needs. We choose among reliable domestic and foreign

1 suppliers according to quality, delivery, price, payment
2 terms and previous experience with those suppliers.

3 We believe the reasons for our sourcing decisions
4 are consistent with those considered by other members of our
5 industry. Premium Waters generally supports the position
6 that the imposition of anti-dumping or countervailing duties
7 is unjustified and unnecessary but the purpose of appearing
8 today is to express my company's opposition to the finding
9 of critical circumstances as to imports from India.

10 Shortly after the Commerce Department's
11 preliminary determination Premium Waters was notified by CBP
12 that it had to pay countervailing duties on PET resin that
13 it previously imported from India. We promptly complied and
14 we made the required payment. I had some explaining to do
15 at corporation that we made the payment.

16 Premium Waters understands the purpose of
17 retroactive applications of these duties is to prevent
18 people from circumventing the intent of the law by
19 increasing imports and stockpiling affected goods before the
20 Commerce Department imposes provisional measures.

21 Premium Waters did no such thing. We paid
22 retroactive duties on India PET that we ordered in the
23 normal course of our business before we found out about the
24 Petitions. In other words, we did not increase purchases or
25 stockpile India PET resin during the critical circumstance

1 period.

2 After the Petitions we purchased PET resin from
3 other sources for reasons unrelated to circumvention. As
4 always our reasons were quality, delivery, price, payment
5 and our previous experience with our suppliers. We also
6 believe that other importers did not increase purchases or
7 inventories of India PET resin during the relevant period.
8 We base our belief on publically available data that our
9 council retrieved from the U.S. ITC website and included in
10 our pre-briefing -- pre-hearing brief excuse me.

11 The data compares U.S. imports from India for 6
12 months before and after the Petition. Imports in dollars
13 slightly decreased from 13 million to 12 million. In kilos
14 these imports slightly increased from 11 million kilos to 13
15 million kilos. But I think it's important to note in the
16 beverage industry our busy season is the period that we are
17 comparing to so the fourth quarter and the first quarters
18 are much smaller demand for us in bottled water sales than
19 they are in the second and third quarter.

20 And while we are not privy to the sourcing
21 decisions of other importers we think this national data
22 merely reflect the fulfillment of orders like ours placed in
23 the ordinary course of business before anyone knew about the
24 Petitions and placements of orders for reasons unrelated to
25 circumvention.

1 to 6 months after the Petition with the earlier period
2 including the month in which the Petition was filed.

3 We followed the Commission's practice in
4 compiling the data in our pre-hearing brief. The
5 Petitioners did not. They selected 5 month periods and they
6 put the month during which the Petition was filed in the
7 later period rather than the earlier as the Commission
8 prefers.

9 We followed Commission practice for better or
10 worse and we think we developed more reliable and objective
11 data about pre-petition and post-petition imports from
12 India. Moreover as Mr. Zarda pointed out plastic bottles
13 are seasonable. People drink more bottled water and cold
14 beverages in warm weather than they do in cold.

15 Any increase measured by either methodology is
16 correlative with this seasonality not with circumvention of
17 the order. I would add, finally, that in certain folding
18 metal tables and chairs from China the Commission considered
19 market share as well as an additional factor considered in
20 circumvention -- I mean in critical circumstances
21 consideration.

22 In that case, despite a significant increase in
23 imports from China, China only accounted for a very small
24 percentage of U.S. imports and domestic consumption and as
25 the witness from Reliance indicated only a few minutes ago

1 the same is true of India. India only accounts for a very
2 small percentage of U.S. imports and U.S. consumption and in
3 those circumstances an affirmative determination as to
4 critical circumstances is just unwarranted, thank you that
5 concludes my comments.

6 MR. NOLAN: Alright this is Matt Nolan again. I
7 just realized when I was doing the other slides that I think
8 a couple of slides got taken out of the deck but they are in
9 your handout versions. One of the ones that I wanted to
10 make sure that you took a look at was this picture. This is
11 the production manufacturing process for making PET. This
12 is also the same process that is used to make about a
13 hundred other different products.

14 You start from the bottom of the chart, you start
15 with oil and gas. You move up the chart in the middle you
16 will see NAPTHA. From NAPTHA you go up through the cracker
17 where you go right to PX. PX is paraxylene. When you make
18 paraxylene you go up and that then is made into PTA, the
19 principle ingredient in PET.

20 The other principle ingredient is NEG which
21 should go through the NAPTHA, up through the cracker, go
22 left, go to ethylene and over ethylene oxide and then right
23 and you are at MEG. Those are the two products that go into
24 making resin and the resin that we are making is PET in this
25 case although the other resins are also poly-stapled fibers

1 and what is POI? Polyester yarn, so that's important to
2 understand.

3 I only put that in there because this illustrates
4 quite cleanly that this is a product made from oil and
5 natural gas or petrol chemical products and the main driver
6 for price decreases in our theory is the declining raw
7 material cost.

8 The price of oil in January of 2014 was about
9 \$110.00 a barrel. By the end of the year it was \$55.00 --
10 it had gone down 50%. And that price went down to \$30.00 as
11 we know it now. There was a very steep decline in raw
12 material prices and that very steep decline accounts for the
13 price differentials that we see in the market so we want to
14 make sure that you understand that.

15 The other point that I wanted to make is this is
16 a picture of a petrol chemical plant this is actually one of
17 the Indian plants, the Zera plant and the thing that is
18 circled is actually the PET chem plant. Just to illustrate
19 to you that this is one of the number of products that
20 Reliance makes but also that the Petitioners make at the
21 same facilities which is an important consideration.

22 Now a quick couple of items while we have time in
23 the PET market -- first here is an indication of the
24 concentration level in the PET market for U.S. production.
25 In 2010 we had a large number of producers. There was

1 Eastman, you had Invista, you had Wellman, you had a number
2 of different producers well who is left at the end of this
3 game -- DAK is almost half the market. Indorama is a
4 sizeable share and M&G as you heard wants to get a bigger
5 share.

6 What we have is a very significant increase in
7 the industry concentration that is taking place and as I
8 said before while we understand that it is -- that industry
9 concentration is not within the purview of the Commission as
10 a specific factor to consider because you have dealt with
11 this before, to us it's an indication of the conditions of
12 competition.

13 This is not an industry that is vulnerable to
14 import competition, these are very large corporations,
15 foreign-based multi-nationals with operations all over the
16 world and are very sophisticated in how they plan and
17 execute strategies and in fact they just -- the decision to
18 build a 1 billion dollar plant was not something that wasn't
19 taken lightly, they have the cash and the capital to do it.

20 And notwithstanding the fact that they say that
21 the two parties are completely independent of each other,
22 DAK and M&G have cooperated in the building of this plant
23 from the start. There was a technology transfer agreement,
24 there was an investment agreement and there is a supply
25 agreement, there are three different things going on here,

1 this isn't just a simply supply operation. M&G and DAK are
2 cooperating in a very material way in the building and
3 concentration of this industry in the United States, we
4 believe that is significant.

5 Here's a quick snapshot of our producers. DAK
6 America is a subsidiary of Mexican company. M&G is an
7 Italian company, Nan a is a Taiwanese company and Durama is
8 an Indonesian company. Together these four producers
9 account for 100% of U.S. production and over 80% of the U.S.
10 market and if you add their foreign supply sources that
11 number goes up significantly.

12 There is no doubt that they control the market
13 and therefore control pricing in the market. Here is a
14 concept that we talked about about the K Fear plant. Much
15 has been talked about that this morning about the tech plant
16 being relatively newer. The K Fear plant was initially
17 commissioned in 1961 and it was closed and if you read the
18 actual press reports that were issued by the company when
19 they closed that plant they quoted the inefficient old
20 operation as the rationale for closing it.

21 Now the PET production facilities may have been
22 somewhat newer but they closed that plant because it was
23 old, outmoded and was being replaced with much more
24 efficient new capacity. This is an indication of increase
25 of capacity just for DAK where they closed one plant, K Fear

1 in the purple and managed to acquire or build a significant
2 amount of additional capacity, mostly acquired from other
3 sources.

4 But of course that capacity is now being
5 supplemented with the Corpus Christi plant. It is hard for
6 me to believe that their increases in capacity and their
7 desire to concentrate the industry isn't part of a broader
8 strategy to control the North American market and this is an
9 indicator of that.

10 Very quickly on imports we talked a little about
11 India and Arman together are a very small percentage of the
12 overall market, particularly in relation to for example
13 Mexico. If you look at Indian imports they have been in
14 this market for a long, long time and they were higher in
15 the past than they are now so there is a question mark in my
16 mind about why there is a sudden surge from India going on
17 here when in fact they have always been present in this
18 market.

19 Overall if you look at the parties that are
20 missing I purposely did not include Canada and China in this
21 slide. I will admit, those are the two largest subject
22 import sources in this investigation and as Commissioner
23 Schmidlein had indicated in her question and answer they
24 are not here, what are we supposed to do with that. I am
25 sure you are going to ask us about that in due course.

1 Finally I wanted to give you another illustration
2 -- this is the historical pattern for Indian imports coming
3 into the United States going back to 2005. I could have
4 gone back further but this seemed to be far enough. You
5 will see a pattern of ups and downs and in fact it really
6 never reached the highest point that it could have simply
7 because Indian PET capacity is running at a pretty high clip
8 and they don't have the ability to ship more into the U.S.
9 market.

10 There is the concept of a new plant that the
11 Petitioners have regaled us with in Dahej but that plant
12 will be occupied very quickly with increasing demand from
13 India. This is the chart that shows the relative
14 consumption patterns in various parts of the world for PET.
15 As Anil had indicated in his testimony, the U.S. is way up
16 here, India is way down here. India is rapidly moving up
17 the curve this direction as are a number of these other
18 countries down here.

19 This is where India's primary markets are. And
20 this is where the growth is going to come, this is where you
21 would expect double digit growth rates. When you build a
22 PET plant you don't build it and have the demand sitting
23 there waiting -- you build it and the demand comes into the
24 plant over time. You can never time that perfectly because
25 if you wait until the demand is already there, somebody else

1 will have built the plant so you want to be ahead of demand
2 and let demand come and build consumption into that plant.

3 So it is not unusual in this environment for
4 plants to start and then gradually ramp up to 100% right, it
5 doesn't -- you can't build a million dollar or billion
6 dollar plant and expect it to be 100% utilized from the day
7 you started, it doesn't work that way unless of course you
8 knock all of the competition out of the market. So some of
9 the growth drivers for the Indian market, disposable income
10 is going up, population and GDP growth is very high -- over
11 7% a year, food and lifestyle habits, there is a growing
12 middle class, all of these things indicate that demand for
13 PET in India will go up. These are the projections in India
14 for the growth drivers.

15 As Anil said if every person, every one of the
16 1.2 billion residents of India were actually to drink one
17 bottle of water a day, India does not have the capacity to
18 produce it with everything that they have got going on now.
19 That's how quickly the demand curve could go up for them or
20 will go up.

21 And this quickly finally is a picture of a new
22 type of bagging that they are trying to put under
23 development to improve their logistics and I would just note
24 on the concept of the logistics issue there was a lot about
25 yes we could ship intermodally, yes we could ship by rail,

1 this is not demand, there are other ways you can ship this
2 product but think of this from an economic standpoint.

3 The U.S. industry has invested in infrastructure
4 for rail shipments. They can put stuff in a railhead right
5 at their factory and they run it right to the customer on
6 the rail. They have built an entire infrastructure
7 including railcars to do exactly that. It is the most
8 streamline way of shipping the product, that's great.
9 That's a competitive advantage for them.

10 A product coming in from overseas has to come in
11 by ship, it has to unload from the ship, it goes on to a
12 truck, it goes from the truck to the railhead, from the
13 railhead it goes back onto a truck and then goes to the
14 customer. Tell me which way is a more competitive, less
15 costly form of transportation, that is the essence of the
16 advantage that we are talking about and thank you. Does
17 anybody else have anything to say? Alright we will take
18 questions, thank you very much.

19 CHAIRMAN BROADBENT: Okay this afternoon I want
20 to thank all of the witnesses for coming today and I think
21 we will begin the questioning this afternoon with Vice
22 Chairman Pinkert.

23 VICE CHAIRMAN PINKERT: Thank you Madame Chairman
24 and I thank all of you for coming a short ways and long ways
25 to get here. I want to begin where Mr. Nolan left off,

1 talking about the advantages that domestic producers may
2 have and I am wondering why more shipments of subject
3 imports are not made by rail.

4 There was a reference in the testimony to
5 logistics but I would like to understand better what's going
6 on here. Do importers lack complete access to rail or is
7 there something else going on?

8 MR. BARENBERG: Hi this is Joe Barenberg with
9 OCTAL. I would be happy to go into that. You know
10 accessing rail transport, as you know rail is a very fixed
11 asset. Rails are where they are and a railcar is a big
12 piece of equipment, it is big, it is expensive and the way
13 you access that equipment is much different than if you went
14 say and if you had -- if you have a moving van and you are
15 moving from Maryland to Idaho you call up, you get a truck.

16 Trucks are available they come, they run your
17 route, they go on and do something else for somebody else.
18 Railcars are much, much different. First of all to have
19 access to a railcar you have to commit to that piece of
20 equipment so we are talking 5 and 10 year leases, you can
21 get them for shorter but it is very expensive. So if you
22 want to have cost effective access to this piece of
23 equipment you have to make significant commitments to it,
24 both financially and with respect to time.

25 And so if you are going to use this equipment you

1 have to know that whatever you are going to use it for is
2 going to be there for quite some time or that you have some
3 sort of flexibility which is not often the case. So as was
4 mentioned in the morning session there was an acceptance
5 that you know after 400 miles give or take, let's just use
6 that number for the sake of argument, rail really starts to
7 deliver the kind of economic benefits that you need to be a
8 competitive supplier.

9 So if you take our situation for instance, when
10 we come into a port, let's say along the east coast, a lot
11 of our stuff comes in via Newark, New Jersey, you know 400
12 miles doesn't get you very far, it just doesn't get you very
13 far. So unless we have large tier 1 customers with
14 long-term contracts for us to commit to that kind of a
15 financial obligation over that period of time is just -- is
16 just not a responsible thing to do. Our customers are not
17 going to tell us don't worry we will make good for as long
18 as you need to use that railcar.

19 And switching them around and moving them around
20 is not a practical or economic way to go about business.

21 MR. NOLAN: This is Matt Nolan I would add that
22 it makes a whole lot more sense to invest in that degree of
23 expensive infrastructure when you are shipping 5 million
24 pounds a year in the U.S. market which is the U.S. size.
25 You know we are talking very sizable quantities. I keep

1 harping on this, they control the mass part of the market.
2 There are so many aspects of this that are important. When
3 you have that much of the market it makes economic sense to
4 invest in railcars, to invest in the facilities, to ship it
5 the most efficient way.

6 When you are an importer that is more on the
7 fringes the economics of that investment don't make sense
8 and so you are stuck with a higher cost of transportation
9 which is it a competitive disadvantage which you cannot get
10 around and that's the essence of the distinction we are
11 trying to draw here.

12 MR. BARENBERG: If I might add one more comment
13 during the subject period and as you probably know it was a
14 very, very big time for the tight oil, tight gas business
15 and that business consumed for years the capacity of the
16 United States to even manufacture railcars and the price and
17 the ability to get these cars was also extremely difficult.

18 The prices were very high and just to get access
19 to one to have for your use and in numbers one -- the lead
20 time was significant and two -- it was just difficult.
21 Railcars are absolutely consumed you know from soup to nuts
22 across the country.

23 VICE CHAIRMAN PINKERT: Okay now you have
24 emphasized the economics of using the railcars but do the
25 purchasers express a preference for shipment by railcar?

1 MR. BARENBERG: I'll take that again, yeah
2 absolutely. You know when I mentioned in my statement that
3 you know that one of the big points of appeal for using
4 railcars is that they hold you know, 70 - 70 plus tons of
5 resin at a time and the cost and the efficiency -- and it's
6 a very good mode of transport, it's a very good mode of
7 delivery, it is very efficient and it enhances the
8 customer's ability to move that kind of resin in and out of
9 their operation with the least amount of cost and it also
10 allows them should they want to make some changes in their
11 production -- they have agreements where they are allowed to
12 part these things for a period of time agreed to in whatever
13 contracts that they have got.

14 So is there a strong preference on the part of
15 large scale producers I would say absolutely there is a
16 strong preference and in some cases it is physically not
17 possible for -- and we have been told this time and time
18 again that if you cannot bring it in a railcar either we
19 can't take anything from you or the amount we can give you
20 isn't going to be interesting to you at all.

21 VICE CHAIRMAN PINKERT: Mr. Nolan do you have
22 anything to add to them?

23 MR. NOLAN: No I think our witness did a great
24 job.

25 VICE CHAIRMAN PINKERT: Okay and are the subject

1 producers not able to manufacture certain grades or types of
2 PET resin?

3 MR. BARENBERG: Yeah well we are not involved in
4 the hot-filled market. We primarily make the standard
5 carbonated soft drink grades and just two or three grades,
6 that's what we are involved in. We have not developed the
7 hot-filled grade at this time.

8 MR. NOLAN: Anil you can correct me if I am wrong
9 but Reliance does make hot-filled but they don't ship it to
10 the United States, at least Reliance does not and that's
11 just a business decision.

12 MR. RAJVANSKI: Anil from Reliance. Actually
13 manufacturing different grade is not a problem. Anybody --
14 because the manufacturing process remains the same, it may
15 increase or decrease the -- a little bit with the intrinsic
16 velocity but it is not a problem because the process remains
17 the same.

18 The only thing is like hot-filled juice may have
19 different characteristics and different specifications as
20 compared to the cold-filled or added. All of the new
21 applications coming in the PET there is a large pressure of
22 bearing capacity in the PET bottles which is being created
23 to bottle the beer inside the PET bottle which is a new --
24 like in India we already started packaging the liquor, the
25 alcoholic drinks in the PET bottle.

1 But still that pressure technique to contain that
2 beer pressure is still being worked on, but any kind of
3 grade can be produced by any producer, it depends on this
4 thing, if you want to be the normal bottling business or the
5 hot-filled business, that depends on the business it is in,
6 thank you.

7 VICE CHAIRMAN PINKERT: Thank you now is
8 operating income a better metric for measuring impact on the
9 domestic industry in this case than operating income margin
10 given the shifts in market share that we were talking about
11 in the earlier panel?

12 MR. BARENBERG: Joe Barenberg interesting
13 question, I want to make sure that I understand the
14 question. Did you say operating income like an ebitda above
15 any depreciation?

16 VICE CHAIRMAN PINKERT: What I am talking about
17 is in other words the amount of profit rather than the
18 profit expresses a ratio over sales.

19 MR. BARENBERG: I see, I see -- okay so kind of
20 an aggregate gross number, absolute number versus like a
21 percent margin, I got you. Well it's an interesting -- it's
22 a very interesting question and I'm not sure I would have an
23 absolute number either way but I would tell you that you are
24 going to have to take into account at some point -- for
25 instance we talked about the Cape Fear facility that had

1 been shut down.

2 You have to take into account a lot of factors
3 when you look at why is a facility competitive and why is it
4 not competitive so you have on the one hand you can dig deep
5 and say look on a variable cost basis you know -- and like
6 the MTR we like it a lot. I mean let's be honest we are not
7 a new company any more we always say we are but we are
8 really not that new anymore.

9 But when we got it I mean MTR was the leading
10 technology in terms of variable cost and so that's great and
11 we structured our company in such a way that we said look on
12 a variable cost basis we are going to leverage that
13 advantage by not staffing up and creating huge amounts of
14 overhead and other extraneous costs that don't add value to
15 the customer and I think when you look at any asset that is
16 in the industry you have to take these types of things into
17 account because some of these facilities are older, they do
18 more than one thing, they have certain support staff and
19 infrastructure that if you were to build it from scratch as
20 M&G is doing in Corpus Christi you wouldn't put it in, you
21 wouldn't configure this.

22 So your variable cost may not -- I'm sorry your
23 margin and as you said percent margin on variable cost may
24 not be a very good indication of the competitiveness of that
25 particular facility and you would have to look at what is

1 allocated to this facility as an overhead charge to see if
2 it can even support all of the things that it has to
3 support.

4 So I am sure that that is being taken into
5 account at Corpus Christi which is why I have no doubt it is
6 going to be a highly, highly competitive facility.

7 MR. DURLING: This is Jim Durling but just to
8 underscore whether you are looking at the amount of the
9 operating income or the percentage of operating income what
10 we would say is it is important to take into account the
11 condition of competition that costs were falling and that as
12 you heard in the morning testimony, or the afternoon
13 testimony simply looking at the dollars or the percentage in
14 that period of time is misleading in a situation when the
15 costs are declining because it is not taking into account
16 the difference between sales prices at the new lower price
17 and cost inventory that has been accumulated at the higher
18 price.

19 So unlike some cases where raw material costs may
20 have been fluctuating only slightly in which case kind of
21 the traditional approach of looking year by year would in
22 fact be a reasonable approach in this case because of the
23 magnitude of the cost declines we think it is necessary for
24 the Commission to kind of step back and just understand that
25 and look at the numbers from that perspective.

1 VICE CHAIRMAN PINKERT: Thank you. For the
2 post-hearing if you could respond to the argument that the
3 prices fell by more than the costs of raw materials I think
4 that would be helpful, thank you.

5 CHAIRMAN BROADBENT: Commissioner Williamson?

6 COMMISSIONER WILLIAMSON: Okay I would like to
7 express our appreciation to the panelists for coming today
8 and presenting especially those of you who have traveled
9 from a long way, coming and presenting your testimony today.
10 Mr. Barenberg I was very impressed you talked about the
11 technical advantages of your product and yet when I was
12 looking at the staff report, this is table 2-8 comparing
13 products from Oman with U.S. -- I see no reflection of any
14 indication that purchasers considered it to be a superior
15 product from the things that you are describing.

16 So I was wondering what is the basis -- or what
17 documentary evidence that this does make a different to
18 purchasers?

19 MR. BARENBERG: What I would go back to is that
20 when we went to market with the resin, when we took share
21 too -- because when we bought this technology keep in mind a
22 little bit about what I call was and is you know, our call
23 is a company that these other gentlemen and I started as an
24 idea and when we took a chance on NTR technology you know it
25 was a serial number 002 in the world and we were basically

1 betting the farm that this thing was going to deliver the
2 goods and deliver the value to the customer.

3 So when we went to market with the customers we
4 went with the message that we would -- these are the things
5 we figured or experienced and we wanted to measure them with
6 you and so as customers took delivery of resin we actually
7 spent time with them in their own facilities talking about
8 energy consumption, talking about re-heat properties,
9 talking about all of these types of things and it goes to
10 cumulation et cetera.

11 COMMISSIONER WILLIAMSON: Question when did you
12 start doing -- when did you come to market in the U.S.?

13 MR. BARENBERG: Well a lot of this type of
14 activity was starting in you know mid to late 2009 and on
15 from there.

16 COMMISSIONER WILLIAMSON: The purchaser
17 questionnaires don't reflect at least -- you haven't
18 convinced the purchaser or else they don't seem to say
19 anything that indicates that your product is superior in
20 these things and so that's my question. What's the
21 document, what's the evidence to support that -- that it
22 makes a difference to the purchasers and if you want to do
23 it post-hearing that's find.

24 MR. DURLING: We'll happily provide documentation
25 post-hearing but it is a real phenomenon but what I think

1 is important to understand is that your questionnaire is
2 going out to all of the purchasers and you are asking kind
3 of generic questions and this particular question is kind of
4 like a check the box right?

5 And so you are seeing a lot of data which is
6 people just kind of checking the box. You may be getting
7 check the box for Oman whether they were actually purchasing
8 any product from Octal or not. So we will give you the
9 actual documentation to show that at a granular level
10 customers value these physical differences and then you will
11 have two sources of information but I would submit that
12 specific documentation from customers confirming yes your
13 product performed in a way that's different than others
14 would be the more probative evidence on this point.

15 COMMISSIONER WILLIAMSON: And then you might
16 suggest why it is not reflected I mean because these are
17 pretty specific questions, okay that's fine, but
18 post-hearing I would appreciate that. The other question
19 that -- another question I had is the shipping by rail
20 averse to shipping by surface and does any of your -- when
21 your product comes in does it come in containers?

22 MR. BARENBERG: Yes it does, it's in containers
23 and within the container you have super sacks approximately
24 1 ton per super sack.

25 COMMISSIONER WILLIAMSON: Okay and what -- I take

1 the bus to New York every Friday night and I go past the
2 Newark Airport and I look over there to see the port
3 facilities and I see the railcars and the double stacks. So
4 Matt, since you built the port in Newark, and I used to work
5 at the Port Authority in New York/New Jersey which is why
6 these things are interesting -- why is it that you can't use
7 that -- those facilities to ship by rail?

8 MR. BARENBERG: Okay yeah and there's nothing
9 that would stop us from actually taking our container and
10 putting it on a flat bed of a trailer shipping it anywhere,
11 that wouldn't be an issue. The difference here is that when
12 the service to these customers occurs by rail there are very
13 specific railcars that are bulk chemical, bulk resin
14 railcars so they are not like what you see with the
15 containers, they are actually the ones that you see they are
16 kind of -- they have grade in them or whatever so they are
17 very specifically manufactured for this purpose and you
18 don't have the ability to grab the next train out so to
19 speak, you have to have your car, the one you have leased or
20 have access to available and then have it filled and then
21 move it out.

22 COMMISSIONER WILLIAMSON: Okay.

23 MR. PORTER: And Commissioner if I could just
24 ask, a little more fine point on this -- again when we speak
25 quite honestly like when we are all I try to do the 5 minute

1 opening with trying to condense and idea to a phrase and of
2 course we don't ship by rail, others do is a nice sound bite
3 but as you correctly are identifying that's you know we need
4 to get a little bit more specific.

5 And what Mr. Barenberg is saying is it is not
6 just rail, it is the rail cars that are designed to feed
7 into the customer's manufacturing complex -- and that's what
8 they can't get access to. So we are not talking about just
9 rail in general, it's the rail cars that the customer has
10 built infrastructure you heard it this morning -- a lot of
11 infrastructure building is capacity to make it the most
12 efficient to go from the U.S. producer's plant in a special
13 rail car to the customer's plant where they have special
14 equipment to take it from the rail car into the
15 manufacturing complex.

16 COMMISSIONER WILLIAMSON: Mr. Cullen this morning
17 said that during the period of investigation a number of
18 purchasers had invested in new capital so that they can
19 receive the product a number of different ways, do you
20 disagree with that or you don't --

21 MR. PORTER: Again the information that Mr.
22 Cullen has from OCTAL sales people is that they are being
23 told by the tier 1 customers if you can't put into these
24 special rail cars then I can't take the large volume. And
25 maybe I can take a small volume but I can't take the

1 majority of the volume that we consume because we need it in
2 those specialized rail cars.

3 COMMISSIONER WILLIAMSON: Okay post-hearing if
4 you can take a look at table 4-6 on the Oman shipments and
5 the ways that they go and address the numbers, the numbers I
6 am seeing there and the ratios what I am seeing there with
7 your argument that you can't compete by rail. And there is
8 also I guess another category other ways, other modes and I
9 was kind of curious what those are. When you talk about
10 rail, truck, there are shipments by other modes too.

11 MR. BARENBERG: You can ship in a super sack
12 which is about a one yard cube of resin in a bag on a pallet
13 typically, that's one mode. The other mode is you can ship
14 by what's called a bulk sea-bulk container which is a
15 container that --

16 COMMISSIONER WILLIAMSON: But the super sack has
17 to go in a truck or something to get there.

18 MR. BARENBERG: It goes in a container and then
19 if you want to ship it on from there then you have to put it
20 in a truck and then ship it to the customer. On a sea-bulk
21 container that is typically transferred as a container.
22 Sea-bulk meaning the container has a liner in it, it is just
23 a bladder full of pellets and then that is shipped onward to
24 the customer typically on a truck or it could be railed
25 nearby but you are going to have to deliver it on a truck

1 because it can't be handled off a rail. You have to tip
2 them, you have to tip them up to pour it out and it is only
3 20 tons at a time versus 70 tons at a time for a rail car.

4 And then you have got the rail car which we
5 discussed which is 70 tons at a time and it comes over a
6 grate at the customer, opens up the doors and the grain
7 falls -- oh I'm sorry the resin falls down into the
8 receiving vessel.

9 COMMISSIONER WILLIAMSON: Okay post-hearing you
10 could address those categories.

11 MR. PORTER: Commissioner I am now seeing the
12 number that you and we will address that the best I can
13 because this is BPI and what I will do is I will ask OCTAL
14 for a comprehensive sort of for identification of the
15 transport mode for their shipments and then we will provide
16 that.

17 COMMISSIONER WILLIAMSON: Okay because this seems
18 to be a point that you have been making. Another question
19 -- this is about pricing data for imports from Canada -- do
20 you agree with Petitioner's argument that the Commission
21 should use prices reported by Salinas in the preliminary
22 phase? If you want to think about it --

23 MR. PORTER: We're going to address in our
24 post-hearing the issue of why there is not information in
25 the final proceedings from Canada. This issue has been

1 addressed in the BPI submissions and we intend to set forth
2 in a sworn affidavit by counsel the underlying factual
3 information that led to the statements in our brief and I
4 think that will address your question.

5 COMMISSIONER WILLIAMSON: Okay thank you and it
6 seems my time has expired so thank you.

7 CHAIRMAN BROADBENT: Commissioner Johanson?

8 COMMISSIONER JOHANSON: Thank you Chairman
9 Broadbent and also thanks to all of you for appearing here
10 today. Could you all please comment on the argument of the
11 Petitioners that the reason for improvements in the
12 condition of the domestic industry in the interim 2015 is
13 due to the imposition of preliminary trade relief and
14 moreover what role do raw material prices play here?

15 MR. BARENBERG: Well I will tell you this. The
16 raw materials are obviously a major factor I will address
17 that. Raw materials have been on quite a move over a
18 significant amount of time given the large numbers in the
19 petroleum market which we are all quite aware of. And you
20 know as these prices decrease -- as I have stated earlier
21 there is a lead time when you order your raw materials and
22 when you consume them and for us it is probably a little bit
23 longer than for the domestic guys but I don't think it's
24 that much longer -- we have got 30 to 45 days.

25 But the value of these raw materials has changed

1 substantially in that time period and what happens is that
2 your price that has in the raw materials market that has
3 declined usually that's announced a few days before the end
4 of the month. Very often the first of the next month is
5 when that triggers the price for the resin to the customer.
6 So if the price of the raws went down let's say 2 cents a
7 pound and the price of the resins to the customer would move
8 in a commensurate amount but the raw materials that you are
9 consuming on your site are going to be at least 2 or more
10 cents a pound more expensive than what your pricing reflects
11 to your customer.

12 And therefore you are going to have margin
13 compression at that time and as I stated earlier until such
14 time as it becomes a stable atmosphere for raw material
15 pricing, you are going to see that margin compression then
16 it goes to reason that in an upward ticking market for raw
17 materials you will enjoy the opposite effect but that wasn't
18 the case during this time period.

19 MR. NOLAN: This is Matt Nolan, I would just add
20 that the steepest decline in raw material prices occurred in
21 2014 and 2015 oil prices and raw material prices continued
22 to decline but not at the rate at which they were in 2014.
23 So you basically have a curve that's going like this right.
24 It starts to level off and because it is starting to level
25 off the impact of that decline is not nearly as pronounced

1 and allows the U.S. industry to catch up essentially.

2 And if oil prices are -- when oil prices start to
3 go up you will see the opposite effect occur and their
4 profitability will go quite nicely I would think as a result
5 of that because the margins will be affected just as the raw
6 material prices go up, their margins are going to go up
7 again.

8 I do not subscribe to the idea that the start of
9 the case itself, I mean obviously there was a contributing
10 factor to it, the buyers get scared and of course they are
11 going to be shy from buying material from producers that are
12 under investigation but I would point to the return of
13 non-subject imports in the immediate aftermath of the
14 retreat of subject imports as an indicator, particularly
15 coming from Taiwan which had extremely low unit values and
16 we will get further into that.

17 But clearly the Petitioner's own foreign
18 operations were quick to grab market share back.

19 MR. PORTER: Commissioner Johanson if you don't
20 mind I would like to use your question to answer a question
21 asked by Commissioner Pinkert at the very end. Commissioner
22 Pinkert asked to respond to the argument by Petitioners that
23 prices fell faster than the raw material prices and kind of
24 anticipating that we went back to our sort of data people
25 over lunch and they reported that the data that the

1 Commission has as compiled show that subject import pricing
2 from India and Oman completely consistent with the sort of
3 declining raw -- the published raws prices.

4 And I would like to take this opportunity to make
5 a very important sort of distinction okay because quite
6 honestly I think Petitioners, whether intentionally or not,
7 were sort of confusing two very different concepts okay.
8 One concept is are prices going down faster than the indices
9 -- the raw material price indices from which the change in
10 pricing is being developed okay and since -- I did a lot of
11 work on the Commerce Department side and a lot of work with
12 how OCTAL has to price its product with customers and I can
13 tell you there's a very you know, process by you look at the
14 change according to the indices as we heard today there are
15 a couple of different indices.

16 You see the change in raw material prices and
17 then you calculate the PET resin price according to the
18 change in the indices. So one is how did the indices change
19 compared to price but then the other is did prices fall
20 faster than the individual producers cost of raw materials
21 and that is where you get into two things connected to take
22 into account.

23 First you know your own individual cost of
24 materials may or may not follow the indices and second they
25 may have higher raw material costs than others and if you

1 look at our brief we quoted a respected trade periodical --
2 there's a colorful quote that said the pink elephant in the
3 room is why are PET prices in the United States 14% higher
4 than the rest of the world.

5 So you need to take that into account as well.
6 What we are saying is that the raw -- the changes in the raw
7 material prices as reported by the indices are in line with
8 the decline in the actual subject import pricing as seen in
9 your pricing product data.

10 COMMISSIONER JOHANSON: Thank you I do indeed
11 recall the pink elephant part that was very colorful. Thank
12 you for your responses there. Looking at page 71 of
13 Petitioner's pre-hearing brief and also is demonstrated in
14 the staff report, I note how many third country measures are
15 in place on this product.

16 What is it about this industry that has so many
17 countries seeking to protect their own domestic industry
18 from imports?

19 MR. PORTER: If I can -- there are no measures
20 against Oman.

21 MR. NOLAN: With respect to India I would only
22 comment that there are a number of small older plants that
23 domestic countries would like to protect at some level and
24 those are what are doing and the types -- we are not talking
25 major consuming countries here we are talking relatively

1 small markets if I remember correctly like South Africa so
2 they are not major.

3 And a company like Reliance ships to dozens -- 20
4 -- 30 different countries not any one of which is you know,
5 a significant chunk of their overall business.

6 COMMISSIONER JOHANSON: Is this due to
7 over-capacity around the world? Largely with regard to
8 China who is not here?

9 MR. NOLAN: Anil do you want to say anything
10 about the Chinese capacity?

11 MR. RAJVANSHI: China has some plus capacity that
12 is because there is a lot of BPA and this number would just
13 come down. That is important outpost because the BPA is 85%
14 of the PET because the combination is 85% of BPA and 35% of
15 MG, mix any polyester including the PET.

16 China having invested large amounts in the PET so
17 they have to invest further in the downstream. So they have
18 invested in the downstream like in polyester and PET to
19 consume the BPA which has been produced at.

20 COMMISSIONER JOHANSON: Alright anything else?

21 MR. NOLAN: No I think there is a distinction and
22 China is -- I would draw a distinction between China and
23 countries like India and their circumstance.

24 COMMISSIONER JOHANSON: I understand I didn't
25 mean to put you on the spot. Regarding the formulas that

1 are used by purchasers to index PET resin prices to raw
2 material prices which you all have discussed this afternoon,
3 can you elaborate on the type of situation in which the
4 formulas might cause PET prices to fall faster than raw
5 material prices for a certain period of time?

6 MR. BARENBERG: Well I think in general it is
7 based on a change. I mean I think more and more people are
8 selecting the region in which the business is being
9 conducted. I think that if somebody were to make an
10 assumption about other regions and selecting indices from
11 other regions which I think is highly unlikely then you
12 would just this 14% that was just mentioned could get
13 factored in but I do not think that that is the case today,
14 I can't speak for the Petitioners.

15 However I can certainly speak for us and we will
16 try to match the region raw materials with the pricing in
17 the region so that it is competitive and that makes sense to
18 everybody.

19 COMMISSIONER JOHANSON: Did you want to add
20 something Mr. Porter?

21 MR. PORTER: I guess you are asking if in fact it
22 is true that PET resin pricing fell faster than the
23 published indices --

24 COMMISSIONER JOHANSON: It can fall faster or did
25 fall faster.

1 MR. PORTER: If it is true then obviously there
2 is something else, something else going on and you know I
3 think the Commission sort of looks at this a lot, there are
4 factors affecting pricing other than just sort of import
5 competition and one of the biggest things that I would say
6 would be sort of intra-industry competition, DAK, M&G, you
7 know all competing and that may be a contributing factor as
8 well.

9 COMMISSIONER JOHANSON: Alright thanks for your
10 responses my time has expired.

11 CHAIRMAN BROADBENT: Commissioner Schmidtlein?

12 COMMISSIONER SCHMIDTLEIN: Thank you good
13 afternoon. So as Mr. Nolan predicted I wanted to come back
14 to this question about not necessarily adverse inferences
15 specifically but more what should we do about the fact that
16 Canada and China did not participate in the final?

17 So I know that you just responded that you want
18 to put something on the record which I presume goes to why
19 Canada didn't respond but what should we do about the
20 record? Do we just leave it blank, do we cumulate what do
21 you think we should do?

22 MR. PORTER: Commissioner a question understood.
23 I -- it is our view that why someone did not show up is
24 important.

25 COMMISSIONER SCHMIDTLEIN: It is important.

1 MR. PORTER: Well it is our view that if the law
2 is going to be kind of applied consistently there is only
3 one facts available provision applied both the Commerce
4 Department and the International Trade Commission and the
5 question that is asked is why don't you have the
6 information, okay. If it is the case that a particular
7 party sort of is responsible for not -- for the reason for
8 the absence of the information then under the law the
9 Commission is allowed to take adverse inferences against the
10 party who caused the information not to be on the record.

11 Now how do you do that.

12 COMMISSIONER SCHMIDLEIN: Is that correct under
13 the law? So it doesn't matter if it is the party's
14 information you are saying if there is a third party who is
15 responsible for it then we would take an adverse inference
16 against that third party?

17 MR. PORTER: We are saying that's the natural
18 conclusion you would get from many, many paths in this
19 Commerce Department applications of facts available and that
20 in fact is the basis of the law right. I mean you -- both
21 the Commerce Department and the Commission want factual
22 information to do their job, okay.

23 Most often okay when and quite honestly we have
24 this situation for China, okay there is no other information
25 except China did not participate -- well you are allowed

1 under the law if you want to say well we are going to assume
2 that they didn't give the information because the
3 information was harmful to their position in the case,
4 otherwise they would have given you the information, okay.

5 We're taking that concept and we are saying if
6 the reason that the information is not there is because of a
7 party in the case then you have the authority and the
8 ability to say well we are going to sort of punish which is
9 really facts available, adverse facts available, punish the
10 party who caused the information to be absent from the
11 record and that's the legal argument that we made in both
12 the Reliance brief and the OCTAL brief with respect to
13 Canada.

14 COMMISSIONER SCHMIDTLEIN: So do you have an
15 objection to using the prelim data for China?

16 MR. PORTER: We do not have an objection to using
17 the prelim data for China.

18 COMMISSIONER SCHMIDTLEIN: Do you think the
19 Commission's legally precluded from using the prelim data
20 for Canada?

21 MR. PORTER: It will be our position when you see
22 the sort of factual information that you will see in the
23 post-hearing brief as to why the Canada information wasn't
24 provided. Our argument is yes, you would have at least --
25 put it this way -- those of us that have been dealing with

1 the Commission a long time hate to say the Commission is
2 required to do anything, but we'd say that you at least have
3 the discretion to say "I can take into account and I can
4 actually apply adverse inferences to sort of the
5 information".

6 We are discussing today about going one step
7 further, "well, what does that mean?" and we would say that
8 in this situation if it's going to be shown that the reason
9 the information is not there is because of another party and
10 that party did that in order to compel cumulation then our
11 response is then you shouldn't cumulate Canada with Oman and
12 India who did show up. So that's how that's going to fall
13 out.

14 MR. DURLING: Commissioner Schmidtlein, Jim
15 Durling. Just to clarify that at the end of the day the
16 Commission has the discretion to either consider or not
17 consider any information it has on its record. Out point is
18 if you have information it goes to the question of why is
19 the information better? Why isn't it more complete? Why
20 isn't it more reason? When you're looking at the
21 information that you have and you're deciding what weight to
22 give to that information, what inferences to draw from that
23 information, it is well within the Commission's discretion
24 to take into account, okay, if it's not exactly what we
25 needed or asked for, why is that? So it's really less do

1 you consider it or not consider it but in what way do you
2 view it. That's really the point we are trying to develop.

3 MR. NOLAN: I would concur with my colleagues. I
4 don't have a lot to add other than this puts you all in a
5 bit of a sticky situation depending on kind of how it
6 evolves because you know, we're talking about protecting the
7 integrity of the proceedings here and is this really, truly
8 a properly fully-vetted, fully information laden environment
9 and does the Commission have the information at its
10 fingertips that it needs to make a complete decision. If it
11 doesn't why doesn't it and if the reason it doesn't has some
12 less than savory components to it then what do you do about
13 that?

14 I would say to you, just for the sake of making
15 sure that you're compelling people to come when they should
16 as much as possible you ought to think carefully about
17 whether you decumulate some of these parties because what
18 else, what is your other remedy? Other than to say you got
19 into this with the Petitioners this morning. Well, do we
20 just evaluate the data that we have?

21 You're almost forced into that situation because
22 that's all you've got, right. You either ignore the data
23 that's there or you take the data that's there. How are you
24 going to interpret that data knowing that the reason why you
25 don't have complete data is not necessarily what you would

1 want to see from responding parties?

2 MS. NOONAN: Commissioner, Nancy Noonan. If I
3 may add perhaps a clean solution to Canada would be to not
4 cross-cumulate. It's my understanding that the Commission
5 is currently doing a Section 129 Consistency Determination
6 which is stemming from WTO Dispute Settlement Body decision
7 where I believe the U.S. has agreed to stop cross cumulating
8 imports where only antidumping allegations were made as to
9 one country and antidumping and countervailing duty
10 allegations were made to the other. This is the hot-rolled
11 steel products from India case, so that could be another
12 option for the Commission to at least separate Canada from
13 everyone else.

14 Then, just generally speaking on the issue of
15 cumulation of course under both the material injury
16 cumulation standard and threat standard what the Commission
17 is looking at is whether the imports compete with each other
18 and with the Domestic-like Products in the U.S. Market. So
19 again, could the Commission maybe take an adverse inference
20 as to whether there is the competition there against the
21 countries that are fully participating. Again, it might be
22 a path for the Commission to consider.

23 COMMISSIONER SCHMIDTLEIN: And if the Commission
24 does look at the prelim data for Canada and China what does
25 that do to you all's case in the price effects?

1 MR. PORTER: We'll take a look at that, quite
2 honestly because we didn't have sort of full information we
3 sort of if you will, we did most of our analysis looking on
4 of course India and Oman because that was we had complete
5 data, final data with pricing and so forth. We will look at
6 China and Canada in that regard.

7 MR. DURLING: This is Jim Durling. The one thing
8 that we can say now and we can say publicly is that where
9 you to take Canada out of the mix it would dramatically
10 affect the volume analysis because Canada, it's been stated
11 publicly and you can discern this from the publically
12 available data, Canada was very, very large relative to the
13 other Subject Imports so the volume case is very different.
14 I mean, we start with the Domestic Industry that
15 collectively controls most of the market anyway. The volume
16 effects here are smaller than many of the cases that you see
17 and you take Canada out of the mix and the already small
18 volume of effects become even smaller than they are.

19 COMMISSIONER SCHMIDTLEIN: Alright. So before my
20 time is up, do you have any objection to the Commission
21 looking at the direct import data and if you do what's the
22 problem with that data in your view?

23 MR. NOLAN: I think that's something we're going
24 to want to look at in the post-conference and address. I'm
25 not prepared right now to talk about it.

1 COMMISSIONER SCHMIDTLEIN: Alright. Well since
2 my time is up I will save my following questions for the
3 next round.

4 CHAIRMAN BROADBENT: Thank you. Okay. Let's
5 see. Mr. Nolan or Mr. Porter, so as I understand it, what
6 is your response to Petitioner's slide No. Five that perfect
7 X that they had up there, as referred to by Mr. Rosenthal?
8 He thought that this is a pretty strong point in their
9 favor. Do you think that the industry's loss of market
10 share is a particular weakness in your case?

11 MR. NOLAN: There's lies, damn lies and
12 statistics. You know X marks the spot. That's what I got
13 out of that slide. You could have a slide that goes from
14 one to two and it's going to look like this and if it's one
15 thousand to one thousand and one but you only have the
16 metric for one little piece you can manipulate it. I don't
17 put much stock in a chart like that because it doesn't
18 really represent the actual trends that occurred in the
19 market. You need to look at what's going on in the imports
20 rather than a miscellaneous slide. Jim?

21 MR. DURLING: I would agree with that point. I
22 guess the other two points we would emphasize is that you
23 should always be skeptical of a graphic that isn't showing
24 you the scale so that you can evaluate the scale and kind of
25 where it's starting and where it's not starting. The other

1 is, what time periods are being compared. The perfect X
2 looks nice when you compare 2012 to 2014 but the perfect X
3 isn't a very good explanation of the shift from 2013 to
4 2014, right.

5 And so under the logic of "oh, well what
6 inference do you draw from the perfect X" you really need to
7 look at not just the change over the entire period but
8 what's happening from year to year and is it telling you a
9 consistent story? Because when you break down the shifts
10 from year to year, you will see a different pattern and a
11 different relative role of Subject and non-Subject Imports
12 so absent the ability to go into the actual specific numbers
13 I guess that's where we are for the public hearing.

14 MS. NOONAN: This is Nancy Noonan, if I may.
15 From public data again to Mr. Durling's point about what
16 exactly are the years that they are covering here, if you
17 look at the import volume coming in from Mexico, the change
18 from 2013 to 2014 shows a tremendous increase which would
19 certainly should be taken into consideration too.

20 CHAIRMAN BROADBENT: Okay, I would like some
21 advice on how to consider public price data for raw
22 materials. Should we be more focused on the price of MEP or
23 should we be more focused on the price of PTA when trying to
24 get a sense of whether U.S. prices should have fallen to the
25 extent that they did?

1 MR. RAJVANSHI: It's a PTA which is the main raw
2 material because if you make one unit of PET 1kg, you need
3 850 grams of PTA and 350 grams of MEG to make 1kg of PET.
4 So predominantly the main raw material is PTA, not MEG.

5 CHAIRMAN BROADBENT: Okay.

6 MR. BARENBERG: But there are certainly times
7 then it is quite common to factor in these raw materials,
8 both of them into the impact of the final product and
9 because the ratio is quite well understood it's a very
10 simple process.

11 MR. PORTER: Can I add, Commissioner? If you
12 happen to have a, if you could look at Exhibit 4 to our
13 prehearing brief and this is a PDF we got from the OCTAL
14 kind of research department and this is how they get the
15 data. If you look at the very last line, it's the "Major
16 RAWs" and that's the acronym. That is a combine of PTA and
17 MEG and there's a specific formula and quite honestly the
18 ITC Staff called the other day and we went over it. It was
19 buried in the record so we showed them where in the record
20 it was so basically you take the PTA price times it by I
21 think it's 8.6 or something, then you take the MEG price,
22 you times it by something, add something and you get this
23 RAWs price.

24 It's the RAWs price that we use to sort of do the
25 comparison of the industry's raw material and the PET Resin

1 because this is what the Industry uses in the ordinary
2 course of business. So I would submit that, actually the
3 Industry itself is giving you the combined PTA and MEG
4 pricing you don't really need if you don't want to, just try
5 to decide which is more important because you have the
6 combined right here in front of you.

7 CHAIRMAN BROADBENT: Mr. Barenberg, are price
8 adjusting mechanisms based on publically available price for
9 raw materials or are they based on something linked to your
10 inherent costs?

11 MR. BARENBERG: We use strictly published data.

12 CHAIRMAN BROADBENT: Okay. This is for Mr. Zarda
13 from Premium Waters. Does Premium Waters sign contracts in
14 which raw material cost adjusting mechanisms are part of the
15 price paid? What data is used in the material
16 cost-adjusting mechanism?

17 MR. ZARDA: We used, this is Bernie Zarda. We
18 used formula pricing on domestic purchase up until probably
19 about a year, year and a half ago and since then we've been
20 buying more spot market. So in that we will negotiate a
21 price and a quantity and we will firm up that price until
22 that quantity is used up and then negotiate a new price.
23 I'd say in our case we've not used a formula for probably
24 eighteen months.

25 CHAIRMAN BROADBENT: Okay. Mr. Rajvanski,

1 looking at the slide that you have called "PET Per Capita
2 Consumption" doesn't this indicate that the U.S. Market is
3 among the most attractive in the world given our high per
4 capita consumption of PET Resins? I take your point that
5 India and other markets have strong growth potential but
6 still the U.S. remains a pretty attractive market I would
7 say.

8 MR. RAJVANSHI: I would say, interesting
9 question. It's like, I will just give you an example.
10 There was a shoemaking company in England. They sent their
11 two salesman to Africa. The one gives a report "No
12 potential because nobody wears shoes". The other one gives
13 "Tremendous potential because nobody wears shoes". So what
14 is happening is we have to look at the market because it is
15 really deficient but in India's own market still too
16 deficient we just haven't any consumption.

17 As you know we have been talking about logistics
18 and material by rail or trucks and all that, the first
19 priority is always to supply within the country because you
20 can supply rail and you can supply by truck transport. The
21 main priority is always the domestic market rather than the
22 exports.

23 CHAIRMAN BROADBENT: But how to U.S. prices
24 compare with other global prices such as the EU prices and
25 Asian prices?

1 MR. RAJVANSHI: U.S. prices are normally, we
2 exported it's always higher as compared to third country
3 prices. Because here the Domestic Industry gets a better
4 delta as compared to the other markets. Predominantly as I
5 mentioned early exporting PTA costs high in the U.S. and
6 North America.

7 CHAIRMAN BROADBENT: Why is that?

8 MR. RAJVANSHI: I really don't know. It's a fact
9 that one has to look into but maybe because of the higher
10 cost that I was pointing out. There is a higher cost of
11 labor but in PTA plant you don't need so much of labor but
12 historically we see it lasts many years. You pick up any
13 leading journal whether it's Platt, CMIA or PCIA or Technon
14 or anything, every time you see that every month or even on
15 a fortnightly basis. The price quoted in North America is
16 always 10% higher than Asia. Maybe the delta is higher,
17 it's 10% higher due to the higher conversion costs, the
18 plants are old, the plants are not efficient with the
19 technology is in an evolving pattern. Every year the
20 technology evolves.

21 So this PTA plant or BB I think is 1975. It is
22 something like forty years old plant. So efficiency in the
23 older plant is not comparable to the new plant.

24 CHAIRMAN BROADBENT: Okay, but just playing
25 devil's advocate, but the raw material cost of the petroleum

1 and the natural gas is so much lower here than in Asia.

2 MR. RAJVANSHI: You see, crude oil price or
3 petroleum price is one factor but then you have, and anyone
4 will factor in, you have one in the fixed cost, one in the
5 variable costs. Your variable costs will be raw material
6 but your fixed costs will remain there and variable costs
7 also one factor is paraxylene. In PTA, when we make the
8 PTA, the paraxylene is usually only 2/3, 67%. The rest is
9 other chemicals and catalysts. So those prices may not be
10 you know falling in line with the crude prices. Those are
11 static.

12 So 67% of that paraxylene which is directly from
13 ethylene and -- may affect your prices, raw material price
14 but the remaining 33% is 34% is a static price. We don't
15 have a lot of variation. Then it depends also on how much
16 is your fixed cost and then what kind of delta, what kind of
17 margins you are keeping. So that basically affects

18 CHAIRMAN BROADBENT: Okay, yes.

19 MR. PORTER: Commissioner Broadbent, thirty
20 seconds if I may. Just to, the question you just asked
21 "why" is white honestly a very interesting question that the
22 industry itself is scratching its head about. Hence the
23 colloquy I had with Commission Johanson about a noted expert
24 which again we put it in our brief that it's the pink
25 elephant in the room. Why are PTA costs 14% higher in North

1 America than anywhere else? Essentially the industry is
2 saying that makes no sense but yet it exists.

3 In some sense what I'm saying is you ask a very
4 good question. I'm not sure there is a ready answer that we
5 can give.

6 CHAIRMAN BROADBENT: Okay. Vice Chairman
7 Pinkert.

8 VICE CHAIRMAN PINKERT: Thank you. Given that
9 Mexico is not Subject, what should we do or how should we
10 factor into our analysis the affiliation between the U.S.
11 Producers and Mexican Producers?

12 MR. NOLAN: This is Matt Nolan and I'll start us
13 off. I'm sure Dan will have a few things to say as well.
14 It is my view that because the U.S. Industry essentially
15 treats Mexican production as an adjunct to its U.S.
16 Production that you ought to treat it as part of the U.S.
17 Industry, as part of the Domestic Production.

18 What we have going on here, without getting into
19 too much detail is a U.S. Industry that basically is
20 controlled by or has control over the production coming from
21 Mexico. We also have some information that was put out this
22 morning that a Domestic Producer may be in the process of
23 acquiring the Canadian production. Which means the entire
24 North American Network could theoretically be under control
25 of one of four parties, right.

1 As it stands now Mexican production is viewed by
2 the Petitioners' own admission as a supplemental source of
3 supply. If they did not have those plants operating in
4 Mexico would they have been producing it in the United
5 States? Why wouldn't they? They chose not to produce it in
6 the United States but produce it in Mexico. Would it be
7 because there's a price advantage in Mexico or a cost
8 advantage in Mexico? I don't know. I actually don't really
9 care.

10 The fact of the matter is that they've chosen to
11 self source their material from Mexico and I view that as an
12 adjunct to U.S. Supply by their own admission and therefore
13 you should treat it as an equivalent part of the U.S.
14 production and capacity utilization numbers.

15 MR. PORTER: This is Dan Porter. Let me offer
16 similar I guess vein, just a little different take. I
17 believe, no disrespect to the passion of my colleague
18 Commissioner Pinkert that you're kind of troubled actually
19 writing a decision saying we're going to treat imports from
20 Mexico as part of U.S. Production. I sense that.

21 VICE CHAIRMAN PINKERT: You can assume it as a
22 hypothetical.

23 MR. PORTER: Okay, but so what we're trying to do
24 is what do you do with this admittedly somewhat unusual fact
25 that the entire imports from Mexico are controlled by

1 Petitioners and so what I do want to pick up is that it's
2 how you view the data that you have so in ordinary course as
3 Mr. Nolan said, the Commissioners say "look at my low
4 capacity utilization but for those Subject Imports I could
5 have sold more".

6 Well Mr. Nolan is correctly identifying well
7 you've got to say some of that's your own fault because
8 you're choosing to bring in imports where if M&G that's
9 production of DAK America or vice versa so you do have to
10 sort of look at data that you have that is low capacity
11 utilization where your normal reaction is to say "oh but for
12 the Subject Imports the capacity utilization would have been
13 higher". Here you could say well "no, I actually have to
14 kind of inch it up a little bit higher because it's their
15 own fault that they're not using a full U.S. Production."

16 So again, it's how you interpret the data but to
17 me the overarching point is a subject Mr. Nolan mentioned
18 which is control and dominance gets to vulnerability. Okay,
19 so we're saying is it a hypothetical? At what point,
20 Commissioner Pinkert are you going to say well they have so
21 much control of the U.S. Market maybe they don't need the
22 U.S. Government to give them extra relief here. You know,
23 is it 75%, it is 85, is it 90?

24 I would like to think at some point the
25 Commission will say you know these guys are actually fine.

1 They control a sufficient quantity of the U.S. Market that
2 we are not so sure that they need relief regardless from the
3 little mixed underselling here and there. That's what I
4 think that we're overarching, our overarching point is about
5 the Mexican supply.

6 MR. NOLAN: And if you go back to your
7 traditional analysis, at the very least what is the role of
8 non-Subjects in this case? And I would say there is a much
9 more significant role of non-Subjects that you need to
10 consider in your analysis. How do you consider it? There
11 are traditional factor analysis you could look at. There's
12 the Bratsk analysis.

13 There are all these other things you can consider
14 but I think it's a significant condition of competition
15 factor. I think it's a significant replacement factor. I'm
16 not buying the concept "well we price it higher than other
17 product." They're self-contained. They're business units,
18 right? The Mexican production is part of the U.S. fabric
19 and so how do you view that? So it has to come in the
20 analysis someplace and I guess the struggle you all it's
21 worth the appropriate place. At the very least it's in
22 non-Subjects and we would argue it goes further than that.

23 VICE CHAIRMAN PINKERT: Thank you, now I'm not
24 trying to put words in your mouth but I'm just trying to
25 understand what the argument is about the Mexican production

1 and one thought is that you might be saying that the
2 shipments from Mexico maybe more vulnerable to Subject
3 Import competition than the U.S. Domestic shipments and
4 therefore we shouldn't be as concerned about the impact of
5 the Subject Imports given that circumstance. Is that what
6 you're saying.

7 MR. PORTER: This is Dan Porter. I would like to
8 say that's not all we're saying. Because you're the
9 Commissioner, I agree with you at least I agree with what I
10 believe is the premise of your point that it's not the
11 purpose of the law to essentially favor non-Subject Imports.
12 Okay and I think that is at least at some level part of the
13 consideration. If in fact you looked at all the analysis
14 and you said; just as you say "well, gee the Subject Imports
15 are really harming the imports from Mexico" I'm sorry, we
16 win. Under the law, we win because you're required to
17 define that the Domestic Production has been harmed by
18 Subject Imports.

19 So if you in fact find that Subject Imports only
20 harmed imports from Mexico, the case is over so I think that
21 is one part of it. I don't think that's the only part but I
22 do agree with you that is one consideration.

23 VICE CHAIRMAN PINKERT: Thank you, now turning to
24 issues related to cumulation in the context of a threat
25 determination, if you take a look at divertible capacity

1 country by country and divide that by the capacity plus
2 end-of-period inventories. Are there differences in the
3 degree to which divertible capacity is dominant in that
4 ratio from country to country?

5 MR. PORTER: I'm sorry Commissioner, I don't have
6 that data right before me. I know what you're saying but I
7 don't have it right before me. I can't comment on that
8 particular ratio especially with respect to the inventories.
9 I do just want to make a comment though that the meaning of
10 excess capacity and trying to reiterate Mr. Barenberg's
11 testimony that just because there is excess capacity doesn't
12 mean the company is actually going to use it and I think the
13 Commission has often said you know the excess capacity by
14 itself doesn't mean a propensity to ship to the United
15 States.

16 That's something that Mr. Barenberg felt very
17 strongly about and wanted to come here and say "that's not
18 who we are. That's not what we do" and so we want to make
19 that point.

20 MR. NOLAN: We would only comment that we believe
21 there are distinctions with India.

22 VICE CHAIRMAN PINKERT: I appreciate those
23 answers. Let me just give you a one definition of
24 divertible capacity that I think is useful. That would be
25 excess capacity plus end of period inventories plus total

1 exports and then if you divide that by capacity plus the end
2 of period inventories you get some sort of measure of how
3 capacity could be used. I understand your point but you get
4 some sort of measure of how it could be used within a
5 particular industry and given the fact that there was some
6 discussion in the briefs about capacity and whether some
7 countries were more able to divert capacity than others I
8 thought it would be useful to take a look at those numbers
9 for the post-hearing.

10 MR. NOLAN: We will do so.

11 VICE CHAIRMAN PINKERT: Thank you very much.

12 CHAIRMAN BROADBENT: Commissioner Williamson.

13 COMMISSIONER WILLIAMSON: Thank you. Mr. Zarda,
14 you had made the point about that your imports were really
15 seasonal. I guess tied to the should we say "drinking
16 season" or no? So there is a water drinking season in the
17 U.S. and so I was wondering whether or not you had data, I
18 could look at data from prior years to show that the pattern
19 of imports in 2015 were similar?

20 MR. ZARDA: That might be a little deceptive but
21 we could probably provide that information but when we buy
22 imports there generally is about a 45-day lag time from the
23 moment we purchase the product to the moment that the
24 product actually arrives at our facilities to be converted.
25 So our buying patterns don't necessarily match up with our

1 using pattern all the time so it's because there's a lag in
2 foreign material.

3 So if I go from domestic material, I'm buying it
4 on a daily basis or a weekly basis for use in my facilities.
5 When I'm buying foreign material I'm actually buying ahead
6 45 days sometimes 60 days.

7 COMMISSIONER WILLIAMSON: We're getting into this
8 argument over critical circumstances, if you did the pattern
9 of your purchases 2014/2013 same as you did in 2015, I think
10 you're making the argument that we shouldn't consider filing
11 the Petition a reason for the surge, that this is a known
12 pattern. I'm just trying to get some evidence from your
13 purchasing patterns that might shed some light on this
14 question, if the data is available.

15 MR. ZARDA: We know when we're made every
16 purchase and we can probably discern when all of those were
17 delivered to our locations. I will say that we are very
18 careful and I want to make sure I make this point correctly
19 but we are very careful because Resin is 50% of our raw
20 material cost and you can look at a bottle of water and
21 there's not much cost in the contents. It's in the package
22 and so we're very keen on the cost of our raw materials so
23 when we see an opportunity to buy and in a rising market we
24 may buy ahead and stockpile Resin so a purchase might be
25 made in February that we won't plan to use until June just

1 because we think it's the proper time to buy so that we can
2 reduce our cost the most.

3 COMMISSIONER WILLIAMSON: Okay and those factors
4 might make that, what I'm asking for not meaningful.

5 MR. ZAYDA: It could. I mean I could give you
6 more general terms on, we could give you a list of our
7 purchases when they're made.

8 COMMISSIONER WILLIAMSON: Is there anything
9 post-hearing that can help us deal with this that would be
10 helpful but I realize there are a lot of factors going
11 there.

12 This has nothing to do with this case, really,
13 but Mr. Barenberg you talked about all of the technological
14 improvements, are you ever going to be able to make these
15 thin bottles as they get thinner and thinner, less noisy?

16 MR. BARENBERG: That is a very interesting
17 comment because you know there was a major product change in
18 the market for potato chip bags and there was a bio-based
19 PET-like substrate it was made out of and there were so many
20 complaints by the consumer, a la what you are saying here
21 that it was actually swapped out. In terms of PET, if we
22 can dream that one up you'll be the first to know.

23 COMMISSIONER WILLIAMSON: Thank you.

24 MR. ZARDA: If you don't mind, I'll comment on
25 that. We just went through a pretty lengthy consumer

1 preference test with Wal-Mart on bottle design and they were
2 very interested in bottles that made "crinkle noises" is
3 what they called it. I've never seen a test with crinkle
4 but that's what we did. Really, a lot of the engineering
5 that goes into bottles is for the side rigidity and top-load
6 of the bottle and so horizontal rings typically give you
7 better side load, vertical lines give you better top-load so
8 there's a lot of engineering that goes into it but the more
9 ribbing you put in it the more crinkling you actually create
10 so it is a topic. You're on the cutting edge.

11 COMMISSIONER WILLIAMSON: Okay. I'm not using
12 any more of my time for that topic. This is under
13 distributors of PET Resin. The Staff Report notes that the
14 Commission did not receive any purchaser questionnaires from
15 purchasers that describe themselves as distributors. What
16 kind of firms are distributors and how significant are they
17 in this market? That's the question I asked this morning
18 too.

19 MR. BARENBERG: Sure, you know I think the
20 similar question was asked in the morning and I think my
21 answer will be similar in that very large, highly
22 sophisticated users are typically direct sales and they know
23 what they want. They have very specific needs and they have
24 the capability to handle shipments in larger volumes, such
25 as railcars. Distributor does serve a need in certain parts

1 of the market where two things could be true. One, the size
2 of each delivery is actually reasonably small or two, the
3 creditworthiness of a customer may not be suitable for let's
4 say our company to take that risk and they are able to
5 provide some kind of a financial buffer between us and an
6 end-user.

7 COMMISSIONER WILLIAMSON: Are they significant
8 players in the market at all?

9 MR. BARENBERG: Excuse me?

10 COMMISSIONER WILLIAMSON: Are they significant?

11 MR. BARENBERG: I think they do have a
12 significant presence in the market for sure but again I
13 think it's sequestered to customers that have the profile
14 that I'm describing.

15 COMMISSIONER WILLIAMSON: Okay, thank you. This
16 is a question of cost data on direct imports. How should
17 the Commission evaluate the data it has collected for the
18 four pricing products on the cost of PET Resin reported
19 directly by end users. Are these data relevant for an
20 analysis of underselling? If you want to do this
21 post-hearing you can.

22 MR. PORTER: Commissioner, I would like to take
23 an opportunity to do it post-hearing because it requires a
24 little bit more thought than I can do right now. I think
25 it's getting late.

1 COMMISSIONER WILLIAMSON: Okay. I can understand
2 that. This is a question on the decline in the industry's
3 financial performance. Does the decline in the Industry's
4 financial performance, the data collected by the Commission
5 appears to indicate that Industry's financial performance
6 declined in 2012 and 2014. In a market with growing demand
7 what would explain this decline other than the rising volume
8 and market share of Subject Imports. Don't repeat all your
9 arguments but

10 MR. DURLING: In a nutshell, we think it has more
11 to do with the timing of raw material price declines than
12 the role of Subject Imports and we can develop that at the
13 post-hearing brief.

14 COMMISSIONER WILLIAMSON: Thank you. Those are
15 all the questions I have for now.

16 CHAIRMAN BROADBENT: Commissioner Johanson.

17 COMMISSIONER JOHANSON: Thank you, Chairman
18 Broadbent. On page 24 of Reliance's brief, Reliance states
19 that eleven of fourteen responding purchasers said that they
20 did not shift purchases from U.S. Purchasers to imports.
21 What can we conclude from that? Can we conclude that most
22 of the increase of Subject Import volume came from increased
23 purchases by the same purchasers?

24 MR. NOLAN: I'd have to go back and look at that
25 again.

1 COMMISSIONER JOHANSON: That's on page 24.

2 MR. NOLAN: So this is the imports during
3 2013/2014 or?

4 COMMISSIONER JOHANSON: Let me take a look here.
5 I looked at this last night, sorry. I'm sorry, that's on
6 page 24. Did I give you the right number?

7 MR. NOLAN: Right. Okay, I'm looking at it now.
8 So most purchased really specific -- . They did not switch
9 to Canadian prior to '14, did not switch in '13 -- . I
10 think the answer is there is a great deal of stability in
11 the market. I think that came right, that's almost a
12 quotation right out of the Staff Report if I'm not mistaken.
13 That's an indication that a large number of purchasers are
14 not interested in switching over their supply sources or at
15 least not switching most of it.

16 I think the larger driver from our perspective
17 has been just expanding the number of sources' options
18 available for supply. If you only have four suppliers and
19 one of them is absolutely the largest single supplier in the
20 market you kind of want to make sure you have some
21 alternatives lined up in case something happens to that
22 source of supply. India has been a long-term supplier to
23 the U.S. Market. It's been there for a long time. It can
24 handle a certain volume but you'll notice it never kind of
25 breaks a ceiling here and so it's an alternative.

1 MR. PORTER: Permission to talk?

2 COMMISSIONER JOHANSON: Go ahead Mr. Porter.

3 MR. PORTER: I think that is taken directly from
4 the Staff Report and the Commission Staff asked that
5 question for a very simple reason. It goes at kind of at
6 least one core of the case. Did the pricing or did the
7 presence of Subject Imports cause purchasers to switch, to
8 stop buying U.S. Produced and switch to Subject Imports, so
9 they simply asked purchasers "did you switch". It appears
10 from the statement that most did not. So that's one piece
11 of information that you have.

12 To me, you tie that with, and I can't do
13 publicly, but you tie it with the loss/sale, loss/revenue
14 analysis done by the Commission Staff and I think you start
15 to see a bit of a, at least a bit of a pattern that we do
16 think is significant and that we did comment in the brief.
17 Really, the issue is -- is there substantial evidence that
18 Subject Imports, the presence of Subject Imports, the
19 pricing of Subject Imports caused U.S. Producers to lose
20 sales? Look at our brief, we analyze the information
21 compiled by the Commission Staff and we said we think that
22 answer is clear.

23 COMMISSIONER JOHANSON: Alright. Thanks for your
24 responses. I'm going to jump around here a little bit now,
25 jump into the whole issue of Mexico which I know you all had

1 addressed some today but I had a particular question. On
2 page 33, note 33 of the Petitioner's brief they state that
3 Mexico is not included in these investigations because among
4 other reasons imports from Mexico were priced higher than
5 Subject Imports. Would you all like to address that issue
6 and if you can't do it now, if you do that during the
7 post-hearing. Also, you might want to discuss during the
8 post-hearing whether that was true for all Subject Countries
9 throughout the Period of Investigation.

10 MR. PORTER: We will look at that data and
11 address it. We gave quite a long response in general about
12 the, if you will, the significance of the imports from
13 Mexico and as Commissioner Pinkert pointed out the
14 affiliation with the U.S. Producers. We would sort of
15 reiterate that but we will look at your specific question
16 and address that.

17 COMMISSIONER JOHANSON: Okay.

18 MR. DURLING: Just to underscore, the affiliation
19 means these are transfer prices. They are being set by the
20 Petitioners themselves and it would be a truly unusual case
21 for the Petitioners to bring an action against prices that
22 they themselves had set but we can go into more detail about
23 the other countries post-hearing.

24 MR. NOLAN: I would also just like to just one
25 last piece of this puzzle. You know, we talked about the

1 advantages of rail shipment. There's only two other parties
2 that cans ship by rail, Mexico and Canada.

3 COMMISSIONER JOHANSON: Right. Okay, thanks for
4 your responses there. I had a general question dealing with
5 the way these products are treated. Are there any widely
6 broadcast standards for these products such as ISO or ASTM
7 Standards?

8 MR. BARENBERG: Generally what happens is that
9 the number one attribute of the product when it is sold is
10 intrinsic viscosity and so there are standard tests that are
11 used to determine the as they call it IV of a particular
12 resin and then you have other attributes of the product that
13 are typically contained in a data sheet like color and
14 things such as that. Each of those types of tests where
15 it's determined what type of color or whatever it is, there
16 are broadly accepted test methods used in the Industry, yes.

17 COMMISSIONER JOHANSON: Okay. Well thank you all
18 for your questions today. That concludes my questions.

19 CHAIRMAN BROADBENT: Commissioner Schmidtlein.

20 COMMISSIONER SCHMIDTLEIN: Alright. I just want
21 to go back very quickly on an answer that someone just gave
22 to Commission Johanson about the Mexican Imports being
23 transfer prices and being set by the U.S. Affiliate and so
24 my question is are the buyers in the United States
25 controlled by the U.S. Company or are those buyers at arm's

1 length? So I mean literally are you saying these are
2 intercompany transfers or they are just like intercompany
3 transfers?

4 MR. DURLING: I stand corrected. I was using it
5 in the looser sense, as a corporate policy and the
6 presumably the, at a corporate level a U.S. Company that's
7 the subsidiary of a U.S. based company. The pricing from
8 Mexican production and U.S. Production are going to be
9 coordinated in whatever way best serves kind of the broader
10 corporate interests. So it's not transfer price in that
11 narrow sense.

12 COMMISSIONER SCHMIDTLEIN: But the buyers are at
13 arm's length here in the United States.

14 MR. DURLING: I would caution, one cautionary
15 note. No, I'm just saying that the price levels being
16 set by the corporate entity and

17 MR. PORTER: I'm sorry, I'm not sure if the
18 record has this information. I will defer to the Commission
19 Staff. We don't know whether this is going into the U.S.
20 Producers' inventory. If it's going to the U.S. Producers'
21 inventory then it is a transfer price by definition.

22 COMMISSIONER SCHMIDTLEIN: Correct. Do you have
23 evidence of that?

24 MR. PORTER: No. So then I think Mr. Durling's
25 comment is appropriate.

1 COMMISSIONER SCHMIDTLEIN: But do you have
2 evidence of that?

3 MR. PORTER: No, I don't. I simply don't know.
4 I'm asking. I'm sort of asking the question.

5 COMMISSIONER SCHMIDTLEIN: Well I was asking
6 because you all were the ones asserting that it was a
7 transfer price and it wouldn't really be a transfer price
8 unless it was not at arm's length but you are not saying
9 you've provided evidence of that.

10 MR. PORTER: Sorry. It was an assumption that
11 and we actually stand corrected that it was an assumption
12 that we were making that the imports were coming into the
13 U.S. inventory, U.S. warehouses of U.S. Producers and then
14 shipping out to their customers. You heard this morning
15 that there's no difference, the customers don't know where
16 it's coming from so presumably the U.S. Producer is
17 controlling, if you will, the shipment to the U.S.
18 Customers. It's not going directly from Mexico. I said
19 presumably.

20 COMMISSIONER SCHMIDTLEIN: But that's still not
21 answering the question about whether the price is at arm's
22 length with that buyer. Right? I mean

23 MR. NOLAN: Right. I take your point. There is
24 a sort of a corollary to that which is a twist and that is
25 to the extent and the U.S. Producers do buy a lot of their

1 PTA from their affiliate in Mexico. That is a transfer
2 price. That cost is a transfer price cost which in our
3 brief we ask the Commission to try to discount that and go
4 back to the supplement or the appendix E data which takes
5 out and looks at actual costs so I think when you are
6 looking at this, be careful about that because there is
7 going to be a potential issue. I'm not going to say there,
8 but there's this potential issue transfer pricing between
9 actual costs and we actually had this big issue with the
10 Commerce Department who asked us to trace back to the price
11 of crude oil in determining the actual cost of making that
12 for the dumping determination.

13 COMMISSIONER SCHMIDTLEIN: I understand that.
14 Alright. So the question I want to, the remaining question
15 I had has to do with pricing across market segments and so
16 this is probably best answered by one of the industry
17 witnesses. Which is, can you tell me in your review how are
18 prices impacted across segments? So does the price to a
19 bottler affect the price to a distributor or in your view
20 are these things isolated or insulated I should say from one
21 another?

22 MR. BARENBERG: There is a broad, you know, let's
23 just say a large user pricing that's in the market and these
24 are actually what a lot of these indices are based on. In
25 fact, some of them are called large user price indexes.

1 COMMISSIONER SCHMIDTLEIN: So it includes
2 different segments?

3 MR. BARENBERG: It would include different
4 segments but it's really the biggest driver of the ability
5 of the user to negotiate is obviously volume and a large
6 quantity of users will tend to have better pricing and
7 different conditions. So in that sense, yes. It is more
8 drive by that factor than any other. Then, obviously if you
9 have a distributor who also must compete in that market, if
10 he is competing in the same segments then obviously there is
11 a cost to having that distribution in between the customer
12 and the producer.

13 COMMISSIONER SCHMIDTLEIN: So I guess
14 distributors sell to all of these different end users,
15 bottlers, carpeting

16 MR. BARENBERG: They do. They do. I mean they
17 have to provide value obviously in the market and in the
18 view of the large sophisticated user he won't tolerate
19 having somebody in between him and the producer but in cases
20 where some people can get things that they value such as
21 very frequent deliveries or different credit terms. In that
22 case, the distributor can have value and would indeed fit in
23 that equation.

24 COMMISSIONER SCHMIDTLEIN: Okay. And Mr.
25 Rajvarshi? Do you agree with that or do you have a

1 different view?

2 MR. RAJVARSHI: I think I agree with that.

3 COMMISSIONER SCHMIDTLEIN: Okay. So if I
4 understand correctly and Mr. Porter and Mr. Nolan you can
5 correct me if I'm wrong, one of the arguments you are making
6 is that there is attenuated competition and this is
7 demonstrated by one thing, which is the channels of
8 distribution, right?

9 MR. NOLAN: I'd say that that's a significant
10 factor.

11 COMMISSIONER SCHMIDTLEIN: Significant factor.

12 MR. NOLAN: I would also say that imports and
13 it's going to vary somewhat by particular country but not
14 all imports are participating in all segments. So for
15 example, Reliance doesn't really ship into the hot-fill
16 sector. Now is it possible? Do they make hot-fill? Yes.
17 Have they chosen not to ship to the U.S.? Yes, that's a
18 business decision but what you're going to find is
19 segmentation in what areas. They participate predominantly
20 in the water bottle markets and actually if you look at the
21 pricing series that's the most popular area but you won't
22 see them in other sectors. So they are not going head to
23 head

24 COMMISSIONER SCHMIDTLEIN: Okay, well let me ask
25 you two questions. One is, if there is price effects across

1 segments then why is that relevant? In other words, the
2 fact that India is participating in one sector of the bottle
3 market but if there is price effects across these sectors so
4 if you're driving down the price in that segment then why is
5 it relevant that they are not actually directly
6 participating in this other segment of the market?

7 MR. NOLAN: I guess that begs the question, does
8 one segment automatically translate into a decrease into the
9 other segment of the market? I would say that's not a
10 correct assumption to make.

11 COMMISSIONER SCHMIDTLEIN: But that was the
12 question I just asked Mr. Barenberg, do these products have
13 price effects across segments and I understood his answer to
14 be generally yes because these things are based on combined
15 index. You can correct me if I'm wrong Mr. Barenberg, but
16 is it your view that the prices aren't across segments? In
17 other words so if, and can you let him answer with it?
18 Let's let him answer without being coached, okay?

19 Do you think there are cross-cutting price
20 effects across the different segments? I'm talking about
21 bottlers, carpeting, sheeting, distributors, right. And I
22 guess if you wanted to distinguish between hot-filled and
23 cold-filled too.

24 MR. BARENBERG: Okay. I mean when the products
25 do have different performance attributes. They will have

1 their own different prices. They may have different cost
2 structures and they cost slightly more or less to produce a
3 hot-filled resin versus a standard bottle resin, etc. Or if
4 you have to produce a very high IV resin for strapping or
5 something that requires it that will certainly have a
6 different cost structure than do some of the other resins.
7 So in that sense, yes indeed. I didn't quite get your
8 question before so I didn't

9 COMMISSIONER SCHMIDTLEIN: So just to put a fine
10 point on it, if the prices are being driven down in one
11 segment of the market that's heavily dominated by say one
12 imported product, do you think, is it your view that that
13 would affect another segment or not?

14 MR. BARENBERG: I would say not necessarily. I
15 really don't think so. There's a unique product that's
16 being used in a certain segment that is not really
17 applicable in another segment then I would tell you that
18 there is

19 COMMISSIONER SCHMIDTLEIN: But this is resin.
20 You're selling resin to a bottler. So if that price of that
21 resin is dropping for some reason, let's say India and
22 product two or product one is driving down the price because
23 they are selling resin very cheaply to bottlers, is that
24 going to effect a different segment of the market?

25 MR. BARENBERG: Well, I would say if a different

1 segment of the market is requiring a different specification
2 of resin, then I would say it's fairly isolated at that
3 point.

4 COMMISSIONER SCHMIDTLEIN: Okay.

5 MR. PORTER: Commissioner, I think, I very much
6 understand your question, it's a very good question but I
7 guess I would say that we need to just broaden it a little
8 bit and say there are a lot of things going on. For
9 example, I don't think we did it in our prehearing brief but
10 in our brief at the conference stage we did an analysis of
11 just what you are sort of talking about, looking at these
12 different segments and looking at pricing and seeing, are
13 there any sort of -- what can you tell from the pricing?

14 Well, there was one particular segment, I think
15 it was hot-fill that had very little at least off-shore
16 supply. They had no India, had no Oman and I'm pretty sure
17 it didn't have much China either. So we said it had no
18 offshore supply, so what were happening to prices? I
19 believe there was no discernible difference in the pricing.
20 Well, if there is no discernible difference in the pricing
21 then at least offshore imports can't be said to be causing
22 the decline. There are declines anyway and if the declines
23 are the same magnitude as happening elsewhere then at least
24 arguably something else is going on in the market causing
25 that price decline.

1 We said well we think yes it is. It's the
2 rapidly declining raw material cost. So your question is
3 definitely good but it just sort of highlights the
4 difficulty of sort of saying can one thing be attributed to
5 another then there are several different things going on
6 affecting pricing.

7 COMMISSIONER SCHMIDTLEIN: Okay. I see my time
8 is up. I do have a couple more questions but I will come
9 back to them.

10 CHAIRMAN BROADBENT: Let's see. Mr. Zarda. To
11 what extent do you have to rely on having multiple sources
12 of supply.

13 MR. ZARDA: We have several different plants that
14 use resin, actually six currently and a 7th one will be
15 introduced about one year from now. So we have different
16 suppliers in different regions because of logistics so if I
17 have a plant that's near one of the domestic plants, that's
18 a plant I generally try to work with because it's convenient
19 and the freight costs are less. Generally the pricing is
20 better. I think we generally have three to four different
21 suppliers at any one time at our six plants.

22 CHAIRMAN BROADBENT: Okay. One point I was still
23 trying to clarify, what is the primary upstream raw material
24 used in PET resin. Is it natural gas or oil? I should know
25 this, I just didn't

1 MR. BARENBERG: In PET resin directly the two raw
2 materials, you have purified Terephthalate acid or the PTA
3 and that is most of the weight of the polyester. Upstream
4 from that the next level up you have paraxylene. Paraxylene
5 is a liquid, it's an aromatic. It comes right off the
6 refinery site stream typically so you have paraxylene plants
7 so that takes you back before that right into the refinery.
8 So you're talking in this case, the refining of oil.

9 CHAIRMAN BROADBENT: So it's for petroleum oil?
10 Okay. Alright. Got it. Mr. Zarda, again does your firm
11 source directly from foreign exporters or do you only source
12 from Domestic importers and producers? If you do source
13 from foreign exporters, why? If not, why not? Are there
14 any additional costs associated with doing your own
15 importing other than ocean transport and duty costs?

16 MR. ZARDA: We do buy from both domestic
17 suppliers and from foreign suppliers so we do both. There
18 are some different costs associated but sometimes it's
19 advantageous so if we get packaging in super-sacks which is
20 typically from a foreign supplier, there is a cost
21 associated with unloading those super-sacks that we don't
22 have when we get product in bulk. But generally there could
23 be an advantage too because we can warehouse super-sacks in
24 our warehouse and accumulate inventory when we think the
25 price is, when it's advantageous to us to accumulate resin

1 or increase our inventory levels.

2 Where it's very difficult to do that in bulk
3 because you can, you're limited to what your silos can hold
4 or a tanker truck that might be delivering to us. I don't
5 really, we buy most of our product at either FOB the Port or
6 FOB our plant. On imported material, all of our domestic
7 material is delivered to our plant so it's priced delivered
8 to our plant.

9 CHAIRMAN BROADBENT: Okay, but in your -- say
10 again, when you're purchasing imports you're purchasing
11 directly from the exporter or is there an importer involved?

12 MR. ZARDA: Sometimes we do it directly and
13 sometimes we will use a broker. It kind of depends on, we
14 use a lot of different avenues in search of the best price
15 that we can find and sometimes different suppliers like to
16 work with brokers and sometimes they are willing to work
17 directly with us. Fortunately we've got a good reputation
18 in the marketplace and we find some suppliers that don't
19 mind working directly with use because we pay promptly and
20 we are fair and a good company to work with.

21 CHAIRMAN BROADBENT: So if you are directly
22 importing do you have any additional costs yourself that you
23 wouldn't have if you bought from a broker.

24 MR. ZARDA: In the aggregate, no because all
25 those costs are there whether we imported or not. We might

1 be responsible to pay some costs that generally a broker
2 might pay. They now become our costs. So we have to factor
3 that in. We have to be very careful that we understand all
4 the costs associated with bringing product in directly
5 versus we get a delivered price to our dock. All those
6 costs are included so when we buy direct, we have some extra
7 costs. Import fees, drage costs, other things that we might
8 have to pay for.

9 CHAIRMAN BROADBENT: Okay. Alright. Then this
10 would be for Mr. Porter and Mr. Nolan. If the Commission is
11 persuaded that there are no adverse price effects, what are
12 we supposed to do about the market share losses. Is this
13 sort of, we got to this earlier today but the market share
14 losses during the POI, while market share is not by itself
15 determinative of an affirmative determination it certainly
16 is an issue that can lead to an adverse impact finding. As
17 mentioned it was the case in rebar from Mexico where the
18 Commission did not find adverse price effects but found that
19 the underselling facilitated a shift in market share and
20 found adverse affects on that account.

21 MR. NOLAN: I will get started. I mean number
22 one, obviously a lack of adverse price effects is a pretty
23 compelling case for ditching the case at the end of the day
24 because there is no adverse price effects to the U.S.
25 Industry. The second part on the market share is look at

1 the relative size of the market share as it exists today and
2 again I'd hate to come back to the idea of whether Mexico
3 gets included in part of the U.S. market share for some
4 context of this analysis, but if you don't then you see some
5 variations in the import levels coming in from Mexico which
6 are not insignificant.

7 In particular, market share was pretty stable
8 early on in POI and towards the latter half when imports
9 from Mexico went up the most. There was some change. So,
10 how does that effect the aggregate analysis in this case. I
11 find the market analysis to be less compelling when the
12 market is so dominated by the Domestic Industry.

13 MR. DURLING: This is Jim Durling. I would just
14 add market share by itself, you need to look at the
15 magnitude of the market share loss. You need to see what,
16 if any, connection is there between the market share and
17 volume loss and financial performance of the industry. I
18 think what your variance tablet shows in this particular
19 case basically volume effects are not having a significant
20 impact on the financial performance of the industry. The
21 variance analysis shows that it's all about changes in price
22 most of which the overwhelming majority of which is
23 explained by changes in raw materials.

24 So really, based on the variance analysis we
25 really just have to help you understand the residual effect

1 on price not otherwise explained by the raw material, by
2 kind of the static raw material price change, right.
3 Because your variance analysis simply compares one year to
4 the next year and isn't taking into account the timing of
5 the raw material price declines which we talked about in
6 some of the earlier answers. So when you put all of that
7 together we would submit that the mere loss of a few points
8 of market share given everything else in this case would not
9 be enough to warrant an affirmative determination in this
10 case.

11 CHAIRMAN BROADBENT: Okay. Commissioner
12 Williamson? Okay. Commissioner Schmidtlein.

13 COMMISSIONER SCHMIDTLEIN: I just had a couple
14 more. If you could look at table 2-1, roman number 2-1 in
15 the Staff Report which is on page 2-4. Roman numeral 2-4.
16 So this is the Channels of Distribution table. My question
17 is as a factual matter, if either one of the witnesses could
18 talk about this a little bit right now but when you look at
19 the imports from India and the imports from Oman you see
20 that at least a percentage of their imports shifted pretty
21 dramatically in a couple different categories. Where you
22 know you went in terms of distributors and then you look at
23 what they were doing in the sheet packaging and scrapping.
24 I'm looking in India and even the difference in the interim
25 period between those two numbers. So I guess my first

1 question is can you talk about why those changed? So it's a
2 pretty dramatic shift. If not, maybe you can do that in the
3 post-hearing?

4 MR. PORTER: Should I do India first? Or Oman
5 first?

6 COMMISSIONER SCHMIDTLEIN: Either one. India's
7 fine. We were looking at that one. If it's too
8 confidential we can do this in the post-hearing.

9 MR. PORTER: Let me give a general answer and
10 it's just every once in a while, Commissioner the data
11 itself is kind of not as robust as at sometimes it appears
12 and for Oman, that's the situation. Just the way how the
13 Commission collects the data and the unique manner in which
14 OCTAL did its shipments. So what you're looking at here is
15 by definition from the importer questionnaire responses,
16 okay.

17 The trouble with taking sort of a lot of
18 inferences from Oman is that OCTAL had kind of a different
19 situation. They did not ship a hundred percent through
20 OCTAL, Inc. They didn't. They had some direct shipments,
21 okay, and that shifted a little bit over time. So simply
22 the way in which they chose to sometimes they go through
23 OCTAL Inc., sometimes they don't. That itself is distorting
24 the Oman data.

25 So what we would like to do is to answer that

1 question but from OCTAL as a whole because you are, it's not
2 someone's fault, you start making the assumption that this
3 is Oman as a whole with respect to the distribution at least
4 the percentages when it's not because the fact of how they
5 shipped it and how the Commission collected the data created
6 this. So what we will provide for you is that table for
7 OCTAL as a whole and then you will be able to see whether in
8 fact there was this shift that you're seeing now.

9 COMMISSIONER SCHMIDTLEIN: So you think that's
10 going to show something significantly different than what we
11 are seeing here in terms of trends?

12 MR. PORTER: I'm saying that the, if you will,
13 the magnitude of the other shipments that's not there is
14 sufficiently large that I'm saying it possibly could so
15 that's why I'm hesitant to say this data means something
16 until I see all the data together. I would like permission
17 to give you all the data and then discuss what it means
18 rather than trying to look at what honestly is most likely
19 less than half a loaf here.

20 COMMISSIONER SCHMIDTLEIN: For Oman, okay.

21 MR. PORTER: This is just for Oman.

22 COMMISSIONER SCHMIDTLEIN: Okay. Does India
23 have any -- would you like to comment on, remember my second
24 question is if we can get to it is when you look at this
25 given the argument about the channels of distribution and

1 that there is attenuated competition because we are only
2 selling in this channel, but when you look at this chart and
3 you see India and Oman shifting pretty dramatically between
4 channels right?

5 When you look at India and you see in the interim
6 2015 the shift to sheet packaging and strapping from
7 distributors does that undercut your argument about
8 attenuated competition being based on you know channels of
9 distribution and that they seem to be changing year to year?

10 MR. NOLAN: I think the first point is we need to
11 go back because this was in the confidential version of the
12 staff report. I've been very circumspect about discussing
13 some of this with the clients, we are going to have to
14 figure out a way that we are going to brooch this topic and
15 I think the data is somewhat anomalous. I am not sure I am
16 trusting what I am seeing there from what I know of the
17 company and what we have been discussing with them in the
18 past.

19 I do think there has been some trend towards
20 using distributors more but there are limits to what you can
21 you know with intrinsic viscosity differences. There are
22 limits to what you can change applications for for some of
23 this.

24 COMMISSIONER SCHMIDTLEIN: I'm surprised to see
25 --

1 MR. NOLAN: I hear what you are saying. I
2 definitely hear what you are saying.

3 COMMISSIONER SCHMDITLEIN: These are big shifts.

4 MR. NOLAN: And I hear what you are saying and I
5 guess what I am saying is I don't really trust it and we
6 need to dig into it a little bit.

7 COMMISSIONER SCHMIDTLEIN: Okay I don't have any
8 other questions thank you.

9 CHAIRMAN BROADBENT: Okay if the Commissioners
10 have no further questions does the staff have any questions
11 for this panel?

12 MS. HAINES: Elizabeth Haines, staff has no
13 questions.

14 CHAIRMAN BROADBENT: Okay and I understand the
15 Petitioners may have a question for this panel, Mr.
16 Rosenthal?

17 MR. ROSENTHAL: We do very quickly I have a
18 question for Mr. Nolan. You represent Reliance who based on
19 publically available data shipped about 345 tons of product
20 to the U.S. this last year which was a very small amount,
21 the two largest Indian producers, Dhunseri and JPW are not
22 here and they haven't filed pre-hearing briefs, should the
23 Commission make an adverse inference against the Indian
24 exporters based on the failure of the largest producer by
25 far not to be appearing here today?

1 MR. NOLAN: Dhunseri filed questionnaire
2 responses unless I am mistaken. The other major producers
3 filed questionnaire responses so the data is present in
4 front of the Commission. Whether they choose to argue the
5 case is one thing but they did provide data to the
6 Commission so I think a) there's your first distinction.

7 Second Reliance feels very strongly about this,
8 it's not a significant market for them but they are a proud
9 company shall I say and feel like they have been taken
10 advantage of by certain relationships with some of the
11 domestic producers and are here today to fight about it and
12 I think the Federal Trade Commission complaint is another
13 indicator of just how upset they are with the way things
14 have been going on in certain parts of this industry.

15 So the fact that my client is more aggressively
16 defending its position is its right. I don't think there is
17 any lack of information on the record upon which the
18 Commission to base a decision.

19 MR. ROSENTHAL: Thank you.

20 MR. NOLAN: Unlike Canada.

21 CHAIRMAN BROADBENT: Okay and in that case I
22 would like to thank the panel for their testimony and I will
23 dismiss you now. With that we will come to closing
24 statements and those in support of the Petition have 7
25 minutes from direct and 5 for closing for a total of 12

1 minutes. And those in opposition have 4 minutes from direct
2 and 5 for closing for a total of 9 minutes. As is our
3 custom we will combine those and you do not need to take all
4 of your time.

5 We will start when you are all ready with those
6 in support of the Petition.

7 MS. CANNON: Thank you Chairman Broadbent I would
8 just like to -- this is Kathy Cannon on behalf of the
9 Petitioners. I would just like to briefly address the issue
10 of critical circumstances. Mr. Fee said that he was shocked
11 by our data and arguments on critical circumstances. I'm
12 not sure why, the data are official import statistics that
13 we relied on and they are the same data that we presented in
14 our brief but they are not the same data that Premium Waters
15 used as I believe he stated.

16 They used volume data from the ITC price
17 descriptors that were set forth in the staff report that
18 they themselves admit accounted for only about 13% of the
19 imports. We have used official census statistics. They
20 used data for months after the preliminary duties were
21 imposed and we used data that stopped right before they were
22 imposed for the reasons I gave earlier.

23 They say that the Commission used a 6 month data
24 and we were wrong to use 5 month data but the problem is if
25 you start in March when we started and you go up until when

1 provisional duties were imposed because there's a
2 countervailing duty case here that is only 5 months of data
3 you have to stop when we stop or else you are running into a
4 time period after provisional duties were imposed which kind
5 of defeats the purpose of the provision.

6 They also complained that we shouldn't have put
7 March in the post-petition period for critical circumstances
8 because it was the month the Petition was filed. We filed
9 early in the month so we included it but we also included it
10 frankly because the Commission tends to like to look at more
11 months and by putting it in the post-petition period that
12 allowed us to do a 5 month versus a 5 month spread but while
13 we were listening to the Respondents I pushed it back and
14 just did the calculation and if you did a 4 month versus 4
15 month spread so that you would again end the period before
16 provisional duties were imposed you would still get a very
17 massive surge this time of about 41% but a sizable surge
18 anyway.

19 And then the last thing that I wanted to say was
20 simply they mentioned the seasonality issue and I know
21 Commissioner Williamson asked about that. I didn't really
22 hear in their response them defending that that would
23 corroborate anything in the data and in fact our examination
24 of the 2014 data doesn't appear that it would be related to
25 that so we continue to believe the data support the massive

1 surge in imports that we just discussed and urge you to find
2 critical circumstances, thank you.

3 MR. ROSENTHAL: Paul Rosenthal. Respondents have
4 been obliquely suggesting that the Canadian Respondents
5 Salinas didn't supply questionnaire responses to the ITC
6 because they were encouraged not to either by Petitioners
7 counsel or Petitioners. I can state publically that I am
8 not aware of anyone on or on behalf of the Petitioners
9 suggesting that questionnaire responses not be supplied by
10 Salinas and we will supply more information about that in
11 confidential affidavits in the post-hearing brief.

12 I also at this point want to correct a
13 misstatement that we on behalf of Petitioners made earlier
14 today concerning export volumes which have in fact exceeded
15 the decline in U.S. shipments on an absolute basis. I think
16 we stated the contrary earlier and I don't want to have a
17 misimpression in the record, but the significance of that
18 fact in your analysis is minimal.

19 The change in export shipments has nothing to do
20 with the change in market share that you saw earlier today
21 or anything having to do with the market share changes. The
22 industry lost significant market share to imports and that's
23 been a significant cause of the volume effects and injury
24 suffered therefrom.

25 And in fact the U.S industry also suffered a

1 decline in the U.S. shipments even when demand rose
2 notwithstanding the export shipment change so the U.S.
3 industry still experienced declines in production if you
4 adjust for the export shipments. And of course you can't
5 ignore whatever hypotheticals you use, the actual price
6 declines.

7 I know the Respondents are going to try to come
8 up with some alternative theories to account for why the
9 prices declined faster than costs. We haven't heard
10 anything further yet. We have heard of pink elephants but
11 so far no concrete evidence as to why that might be the case
12 or why the industry is losing money at this time.

13 They have failed to want to of course make a
14 connection between the declining prices, the increased
15 market share and the losses suffered by the domestic
16 industry. We will await their explanation about that in the
17 post-hearing brief because we haven't heard it today.

18 I will also want to talk about Mr. Barenberg's
19 testimony saying he didn't know anything more about a plant,
20 another plant coming online and honestly we don't know
21 anything more than we read the newspapers. We do have one
22 more updated article from 2015 which talks about another
23 plant coming on in Oman in 2018 we will supply that for the
24 record.

25 Similarly speaking of what we read counsel for

1 the Respondents included in their pre-hearing brief an
2 article quoting a DAK official about the shut-down at Cape
3 Fear and that article didn't mention imports, they made a
4 big deal out of that in their pre-hearing brief. The
5 Respondents did not find or include a contemporaneous
6 article in U.S. Manufacturing News which talks extensively
7 about imports as a cause of the shut-down of that Cape Fear
8 plant and the loss of the numerous jobs there.

9 We included that manufacturing technology news
10 article in our preliminary briefs and will enclose another
11 copy in the final. I do want to say also with respect to
12 Cape Fear we talked about the technology and that the reason
13 that discloses, not because it is a 1961 plant as we know
14 were making PET resin bottles in 1961 PET resin wasn't even
15 a product then.

16 I think I was drinking bottles made out of wood
17 in 1961 so if you really focus on what happened here, a
18 plant that had the same technology that OCTAL is claiming
19 was world-class was effectively forced to go out of business
20 and for six years in large part not entirely, in large part
21 due to imports.

22 By the way that plant also produced polyester
23 staple fiber, it wasn't simply a PET resin plant so I just
24 want to make clear, everyone knows about that fact. There
25 are a number a misstatements made by the Respondents here.

1 They are conflating M&G and DAK in many instances. DAK
2 doesn't import PET resin from Mexico, M&G does.

3 DAK and M&G are vigorous competitors. Again,
4 they continue to argue that somehow these U.S. producers are
5 all working together to keep the imports out of the U.S.
6 market and that can't be further from the truth. I will
7 come back to that in one more second.

8 On the alleged superiority of the technology by
9 OCTAL as you heard earlier that technology was used at the
10 Cape Fear facility. Mr. Adlam has mentioned in the past
11 that the M&G folks when they were looking at the plant in
12 Corpus Christi actually considered using that technology and
13 decided not to use it. They knew how to do it and they
14 decided it wasn't any better than any other product and
15 frankly as Mr. McNaull stated when DAK was using that they
16 couldn't get a premium for that product which begs the
17 question if this product is so great as OCTAL claims it to
18 be, why are they not getting a premium for it?

19 Why are they selling it at low prices and
20 undercutting U.S. producers?

21 One of the last things that I want to talk about
22 is their theory because they don't have the facts here, they
23 are theory and we haven't heard any references to any grassy
24 knolls quite yet but if we went on a little bit longer we
25 might get there, but the theory is that there is -- because

1 there is control of the U.S. market by these big 4 companies
2 that are losing money by the way that they are not
3 vulnerable to import competition or import injury.

4 First of all vulnerability is not a concept that
5 really is relevant in virtual anti-dumping investigation
6 under Title 7. Vulnerability is really a concept that you
7 employ here at the Commission when talking about Sunset
8 reviews and we have had a lot of discussions about
9 vulnerable industries in Sunset reviews. What you really
10 are looking at are imports coming in, unfairly traded,
11 either dumped or subsidized and causing injury to the
12 domestic industry.

13 Yes you are looking at the condition of the
14 industry, you are looking at how well they are doing and
15 what the future will bring but you are not doing a
16 vulnerability analysis. What you are looking at really are
17 the three factors that we have urged you to look at from the
18 very beginning, the volume, the price and the impact and on
19 this record you have very clear evidence of increased
20 imports, you have very clear evidence of increased market
21 share by the subject imports, you have very clear evidence
22 of underselling and going to Commissioner Pinkert's point
23 you don't have to show underselling in 100% of the
24 incidents, mixed pattern is enough although we have more
25 than a mixed pattern if you take a look at the record as a

1 whole.

2 You have evidence of falling prices, falling
3 revenues and if you use your traditional variance reports
4 rather than some pink elephant approach that is yet to be
5 explained -- if you use your variance reports as you always
6 do when you show that the prices are falling more than
7 costs, there is something else going on and that something
8 else can only be explained by imports.

9 The bottom line is seen in the profitability of
10 this industry. It went from modest profit to losses and
11 this is an industry that you heard where there is high
12 capacity -- high capital needs, you need to make money here,
13 year in and year out in order to be able to have the latest
14 technology, in order to invest in the next plant, in order
15 to supply the man that has projected the future.

16 And one of the things that is so disturbing about
17 hearing Respondents today, I mean we hear in other cases, is
18 the notion that you should not provide import relief if the
19 industry is investing in the future because that shows that
20 they are optimistic about it.

21 If you don't invest as a domestic industry then
22 you get criticized because you are not doing that and you
23 are not keeping up. So either way on the Respondent's
24 theories you can win. Here under the facts we should win
25 and we urge you to reach an affirmative determination in

1 this case, thank you.

2 MR. DURLING: Thank you it's been a long day. I
3 wanted to add a special thanks to Mr. Barenberg because he
4 actually is a resident of Texas and by coming here today he
5 gave up his right to vote in the Texas Primary today so I
6 think he made more of a sacrifice than most of us did, just
7 coming in to have kind of a regular day.

8 I think when the Commission analyzes this
9 industry it is important to keep everything in context.
10 There are a lot of moving parts and the starting point of
11 the context is the dominant concentrated nature of these
12 U.S. producers, they are international companies with
13 cross-border operations and they are vertically integrated.

14 That becomes a very important point because as
15 you are looking at this one little part of their operation
16 right which is what you are doing pursuant to this case, yes
17 you focus on their performance on PET resin but your
18 evaluation of their performance on PET resin should be in
19 the context of the company more generally, okay.

20 And it is important to take that into account
21 especially since so much of their case is based on the
22 argument that oh basically we are losing money because
23 imported PET resin drove down the prices now more about that
24 a bit later.

25 When you are looking at this record I think at

1 the end of the day you have to decide we'll wait to put on
2 different kinds of evidence but I think there's an important
3 distinction to be drawn between actions which provide more
4 concrete evidence for the Commission to consider than the
5 positions being taken by parties in the context of this
6 administrative litigation.

7 So what are the actions that the Commission has
8 before on this record? A major investment in a new state of
9 the art billion dollar facility -- now you heard this was a
10 decision made in 2011 and then after 2011 everything went to
11 hell in a hand basket and absent relief from the Commission
12 that basically the investment is going to be at risk and
13 terrible things are going to happen.

14 But if you look at your record, and if you look
15 at this aggregated financial performance of the various
16 domestic producers and we won't get into the details because
17 that's proprietary but if you look at the disaggregated
18 results -- so a decision in 2011 look at the disaggregated
19 results for 2012, 2013, 2014 and does that record support or
20 is it consistent with the story of a domestic industry or a
21 particular company saying oh we are being battered and
22 brutally crippled by these threatening imports?

23 You heard this morning that oh well projects
24 don't get cancelled that once you have made the decision the
25 decision is irrevocable. Well that's just not true projects

1 get cancelled all of the time. In fact you have a concrete
2 example of that in this industry because the alleged second
3 factory in Oman was a concept that was started and announced
4 but was ultimately cancelled because the fundamental
5 economics changed.

6 That didn't happen with this Corpus Christi
7 plant, even in the fact of all of this import competition,
8 even in the face of price levels that allegedly generate
9 inadequate returns it's been full steam ahead and I submit
10 that the actions of establishing the plant and continuing
11 ahead with the plant investment is a very, very probative
12 and compelling piece of evidence.

13 What other action do you have here? We have
14 heard testimony about the likely acquisition by the Canadian
15 producer by a U.S. company. Again if this were an industry
16 facing all of these problems why would you be investing in
17 acquiring other assets in the same industry?

18 Or you heard testimony this morning about
19 additional investments in existing production assets in the
20 United States. All of this investment, all of these
21 acquisitions, all of this tangible action indicating that
22 this industry is not worried about its future, this industry
23 is quite bullish about its future and these are actions that
24 are happening even in the fact of the modest presence of
25 subject imports.

1 Now much of the testimony you heard this morning
2 was about pricing. We have also heard a lot of testimony
3 about the effect of raw materials on pricing. It's always
4 complicated to disentangle a lot of things happening at the
5 same time. Just doing the traditional analysis the raw
6 material pricing explains the overwhelming portion of price
7 declines and declines in operating performance over the
8 period.

9 So most of what you are seeing can be explained
10 by the raw material prices. Mr. Rosenthal would have you
11 believe ah well there is something left and so the something
12 left must be because of subject imports but there are lots
13 of other factors at play here and we have talked about some
14 of them today, we will develop in the post-hearing brief as
15 well.

16 But the most important one is this notion it is
17 not just the prices were declining, it's the prices were
18 declining at an extremely sharp rate until they tapered off
19 at the end of the period and that phenomina alone explains
20 both the declines you are seeing in 2014 and the
21 improvements that you are seeing in 2015.

22 So once you take into account the rate at which
23 raw material prices are changing that in fact explains the
24 missing piece of it. So in other words raw material price
25 trends really do explain pretty much everything the

1 Commission has on this record.

2 Finally I want to come back to the alleged second
3 factory in Oman. We had seen the same newspaper article
4 that Mr. Rosenthal just quoted from query why would pulling
5 newspapers articles in the first instance he didn't include
6 that article as well, I suspect it was because that more
7 recent article pushed the start date not in 2016 which is
8 within the period of time you would normally look at for
9 purposes of threat, but pushed it to 2018.

10 But that article that he was quoting from was
11 almost a year ago and you have heard from Mr. Barenberg and
12 we will try to find additional documentation of this fact to
13 submit into the record that in fact that project is dead.
14 It hasn't obtained any financing. It's not going to start
15 in 2018 if it ever starts at all, it is just a project that
16 is completely gone so we are left with one producer in Oman
17 who has been here, is cooperating fully to the best of its
18 ability and we submit that on this record it would be
19 appropriate to decumulate the various subject import sources
20 and make decisions about each foreign producer based on the
21 circumstances related to that foreign producer, thank you.

22 MR. NOLAN: Alright I'm just going to follow-up
23 very quickly on a couple of things. One India is a very
24 small part of this equation. It's a minor producer or at
25 least a minor participant in the U.S. market and as you have

1 seen from the direct testimony and our slides they have been
2 here for a long, long time. There is no reason to suggest
3 that they have suddenly decided to wake up some morning and
4 let's flood the U.S. market. They are a long-term steady
5 participant and they are an alternative supply source in a
6 market that is dominated by very few producers where any
7 purchased in their right mind will want some variety of
8 supply sources if for no other reasons than for security and
9 insurance.

10 With respect to the idea that these are fierce
11 competitors -- their either are fierce competitors or they
12 are not and maybe they are a little bit of both because if
13 they are fierce competitors and they compete with each other
14 for 85% plus of this market maybe they are competing with
15 each other on price a little bit here, isn't that more
16 likely?

17 And in the sense of building this M&G plant I am
18 not denying the fact that M&G and DAK are not working
19 together. One party -- DAK has put in 350 million dollars
20 into this plant, they have a technology agreement, there's
21 an off-take agreement for a guaranteed supply source -- that
22 is not the indicator of two independent parties, they are
23 working together to build a plant.

24 I'm not saying that that is wrong but it is an
25 indication of further concentration in this market and an

1 indicator that they feel pretty bullish about this market.

2 Finally a comment on Canada just to close it out
3 -- if the Canadian company is at risk, especially because of
4 this proceeding and a U.S. company wants to buy it anyways
5 then I have to ask why because the cost, the price and the
6 value of this company would seem to be diminished with the
7 prospect of being hit with a trade action and yet there
8 seems to be an indication that a U.S. party may be in the
9 process of buying the Canadian company.

10 All I can take from that is -- is that the U.S.
11 industry wants to take control of the North American market.
12 The market needs some alternative supply sources to those
13 dominant forces and we view India as a restrained option to
14 that supply that is not price suppressing or depressing,
15 thank you.

16 CHAIRMAN BROADBENT: Okay thank you. I would
17 like to again express the Commission's appreciation to
18 everyone that participated in this hearing today. Your
19 closing statement, post-hearing briefs, statements
20 responsive to the questions and requests of the Commission
21 and corrections to the transcript must be filed by March 8,
22 2016.

23 Closing of the record and final release of data
24 to the parties will be on March 24th. Final comments are
25 due March 28, 2016 and with that this hearing is adjourned,

1 thank you.

2 (Whereupon the hearing was adjourned at 5:17

3 p.m.)

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CERTIFICATE OF REPORTER

TITLE: In The Matter Of: Polyethylene Terephthalate (PET) Resin from Canada, China, India,
And Oman

INVESTIGATION NOS.: 701-TA-531-533 AND 731-TA-1270-1273

HEARING DATE: 3-1-2016

LOCATION: Washington, D.C.

NATURE OF HEARING: Final

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

DATE: 3-1-2016

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Signature of Proofreader

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

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Signature of Court Reporter