

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:) Investigation Nos.:
POLYETHYLENE RETAIL CARRIER BAGS) 701-TA-462 AND 731-TA-1156-1158 (REVIEW)
FROM CHINA, INDONESIA, MALAYSIA,) AND 731-TA-1043-1045 (SECOND REVIEW)
TAIWAN, THAILAND, AND VIETNAM)

Pages: 1 - 165
Place: Washington, D.C.
Date: Thursday, February 18, 2016



Ace-Federal Reporters, Inc.
Stenotype Reporters
1625 I Street, NW
Suite 790
Washington, D.C. 20006
202-347-3700
Nationwide Coverage
www.acefederal.com

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

THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:) Investigation Nos.:
POLYETHYLENE RETAIL CARRIER) 701-TA-462 AND
BAGS FROM CHINA, INDONESIA,) 731-TA-1156-1158 (REVIEW)
MALAYSIA, TAIWAN, THAILAND,) AND 731-TA-1043-1045
AND VIETNAM) (SECOND REVIEW)

Thursday, February 18, 2016
Main Hearing Room
U.S. International
Trade Commission
500 E Street, S.W.
Washington, D.C.

The meeting commenced, pursuant to notice, at
9:30 a.m., before the Commissioners of the United States
International Trade Commission, Vice Chairman Dean A.
Pinkert, presiding.

APPEARANCES:

On behalf of the International Trade Commission:
VICE CHAIRMAN DEAN A. PINKERT (presiding)
COMMISSIONER IRVING A. WILLIAMSON
COMMISSIONER DAVID S. JOHANSON

1 APPEARANCES (Continued):

2 COMMISSIONER F. SCOTT KIEFF

3 COMMISSIONER RHONDA K. SCHMIDTLEIN

4

5 STAFF:

6 ELIZABETH HAINES, SUPERVISORY INVESTIGATOR

7 KEYSHA MARTINEZ, INVESTIGATOR

8 JENNIFER CATALANO, INTERNATIONAL TRADE ANALYST

9 CRAIG THOMSEN, ECONOMIST

10 CHARLES YOST, ACCOUNTANT/AUDITOR

11 MARY JANE ALVES, ATTORNEY

12

13 BILL BISHOP, SUPERVISORY HEARINGS AND

14 INFORMATION OFFICER

15 SHARON BELLAMY, PROGRAM SUPPORT

16 SONIA PARVEEN, INTERN

17

18

19

20

21

22

23

24

25

1 APPEARANCES (Continued):

2 In Support of Continuation of the Antidumping and

3 Countervailing Duty Orders:

4 King & Spalding LLP

5 Washington, DC

6 On behalf of:

7 Polyethylene Retail Carrier Bags Committee ("the Committee")

8 Isaac Bazbaz, Director, Superbag Corporation

9 Laura Ledbetter, Sales Vice President, Superbag

10 Corporation

11 Mark T. Daniels, Senior Vice President, Sustainability

12 and Environmental Policy, Novolex Holdings, Inc.

13 Frank Lawson, Vice President, Sales, Novolex Holdings,

14 Inc.

15 Jennifer Lutz, Senior Economist, Economic Consulting

16 Services, LLC

17 OF COUNSEL: Stephen A. Jones, J. Michael

18 Taylor, Joshua M. Snead

19

20

21

22

23

24

25

1 APPEARANCES (Continued):

2 In Opposition of the Continuation of the Antidumping and

3 Countervailing Duty Orders:

4 Appleton Luff PTE Ltd.

5 Washington, DC

6 On behalf of:

7 Task Force of Polyethylene Retail Carrier Bag Manufacturers

8 of the Malaysian Plastics Manufacturers Association)"Task

9 Force")

10 OF COUNSEL: Edmund W. Sim, Kelly A. Slater

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

I N D E X

1		
2		Page
3	OPENING REMARKS:	
4	In Support of Continuation of Orders (Stephen A. Jones,	
5	King & Spalding LLP)	9
6		
7	In Opposition of Continuation of Orders (Edmund W. Sim,	
8	Appleton Luff PTE Ltd.)	12
9		
10	Isaac Bazbaz, Director, Superbag Corporation	13
11		
12	Mark T. Daniels, Senior Vice President, Sustainability and	
13	Environmental Policy, Novolex Holdings, Inc.	24
14		
15	Joshua M. Snead, King & Spalding LLP	41
16		
17	J. Michael Taylor, King & Spalding LLP	48
18		
19	Edmund W. Sim, Appleton Luff PTE Ltd.	119
20		
21		
22		
23		
24		
25		

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

INDEX (Continued)

Page

CLOSING REMARKS:

In Support of Continuation of the Orders: J. Michael Taylor,
King & Spalding, LLP 156

In Opposition of Continuation of Orders: Edmund W. Sim,
Appleton Luff PTE Ltd. 162

P R O C E E D I N G S

9:32 a.m.

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

VICE CHAIRMAN PINKERT: Good morning. On behalf of the U.S. International Trade Commission I welcome you to this hearing on investigation No. 701-462 and 731-1156-1158 Review as well as 731-1043-1045 Second Review involving Polyethylene Retail Carrier Bags from China, Indonesia, Malaysia, Taiwan, Thailand and Vietnam.

The purpose of these five-year review investigations is to determine whether revocation of the Countervailing Duty Order on Polyethylene Retail Carrier Bags from Vietnam and the Antidumping Orders on imports from all six countries would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. Documents concerning this hearing are available at the public distribution table. Please give all prepared testimony to the secretary. Do not place it on the public distribution table.

All witnesses must be sworn in by the Secretary before presenting testimony. I understand that parties are aware of time allocations but if you have any questions about that, please ask the Secretary. Speakers are reminded not to refer to business proprietary information in their remarks or answers to questions. Please, speak clearly into

1 the microphones and state your name for the record so that
2 the court reporter knows who is speaking.

3 If you will be submitting documents that contain
4 information you wish to have classified as business
5 confidential your request should comply with Commission Rule
6 201.6. I would like to request that all witnesses and
7 counsel state your name for the record before delivering
8 testimony and responding to Commissioner questions.

9 Finally, we are trying a change with this hearing
10 in our procedures specifically in regard to the
11 Commissioners' questioning of the Panels. Commissioners
12 will have the opportunity to follow up on each others'
13 questions after the ten minute period is up for each
14 Commissioner. The follow up questions should be brief and
15 should be related to the responses that were given by the
16 witnesses. Follow up questions will not count toward the
17 allotted time for each Commissioner.

18 Mr. Secretary, are there any preliminary matters?

19 MR. BISHOP: No, Mr. Chairman.

20 VICE CHAIRMAN PINKERT: Very well. Let us now
21 proceed with opening remarks.

22 MR. BISHOP: Opening remarks on behalf of those
23 in support of continuation of the orders will be given by
24 Stephen A. Jones, King and Spaulding.

25 OPENING REMARKS OF STEPHEN A. JONES

1 MR. JONES: Good morning Vice Chairman Pinkert
2 and members of the Commission. The Domestic Industry
3 producing Polyethylene Retail Carrier Bags, or PRCBs, has
4 benefitted substantially from the orders. Since the first
5 set of original investigations in 2004 and especially after
6 the 2nd set of investigations in 2009, high cast posit rates
7 on Subject Imports have enabled the Industry's condition to
8 stabilize and improve facilitating new investments in plans
9 and equipment to improve the industry's competitiveness.
10 Continuation of all seven Orders is absolutely essential to
11 the industry's ability to survive and grow.

12 Vice Chairman Pinkert and Commission Williamson
13 are likely to experience a sense of d j vu this morning
14 because very little has changed since the last time the
15 Commission has reviewed this industry six years ago. It is
16 still the case that Subject Imports and the domestic like
17 product are highly substitutable. The price is an important
18 factor in purchasing decisions. Lower prices do not
19 increase demand for PRCBs, that PRCB factories are designed
20 to operate 24/7 to spread fixed costs over as many
21 production units as possible, that maintaining high-capacity
22 utilization rates is critical to maintaining profitability
23 and that the Subject Foreign Producers are highly export
24 oriented and highly motivated to increase their exports to
25 the United States.

1 The prevailing conditions of competition continue
2 to make the Industry vulnerable to injury caused by dumped
3 and subsidized imports. Demand for PRCBs in the United
4 States has been essentially flat for the past decade, which
5 is primarily the result of regulations designed to reduce or
6 eliminate the use of PRCBs. While those regulations have
7 impacted demand to a small degree and are likely to continue
8 to do so, the adverse impact on demand for PRCBs has been
9 less significant than the industry expected several years
10 ago.

11 In fact, the imposition on environmental
12 regulations outside of the United States has limited
13 consumption much more significantly in those markets. The
14 relative effectiveness of such regulations outside the
15 United States will make the U.S. Market that much more
16 attractive if the orders are revoked and will motivate
17 Subject Producers to increase exports to the United States.

18 As in the prior Sunset Review, the response rate
19 to the Foreign Producers questionnaire in this review is
20 very poor. Even so, the prehearing report demonstrates that
21 the Subject Foreign Producers are highly dependent on
22 exports, are increasing capacity, have excess capacity and
23 can redirect large volumes of PRCBs from third country
24 export markets to the U.S. Market. The ten Malaysian
25 producers that responded have collectively expanded their

1 capacity during the Period of Review.

2 Like the other Subject Producers and consistent
3 with conditions during the prior review, a high percentage
4 of their production is for export. The record evidence
5 demonstrates once again that the factors for cumulation are
6 met. Imports from Malaysia are not likely to have no
7 discernible adverse impact if the Malaysia order is revoked
8 and imports from Malaysia satisfy the fungibility, channels
9 of distribution, geographic overlap and simultaneous
10 presence tests.

11 Furthermore, the conditions governing competition
12 among all six Subject Countries are not significantly
13 different. Accordingly, the Malaysian producers have
14 offered no compelling reason to decumulate imports from
15 Malaysia in this review. If the orders are revoked, the
16 Subject Foreign Producers will be highly motivated to
17 utilize their unused and growing capacity to increase
18 exports to the United States. U.S. Importers and purchasers
19 will seek out low-priced imports from the Subject Countries.
20 They already seek out non-Subject Imports from companies
21 that were excluded from the original investigation,
22 including Bee Lian in Malaysia.

23 The desire by the non-Subject Producers to ship
24 to the United States since the Orders were imposed is
25 indicative of the likely behavior of Subject Producers if

1 the Orders are revoked. Responding Importers in this review
2 admit that the orders cause them to reduce imports from the
3 Subject Countries and that revocation of the duties would
4 result in a resumption or increase of Subject Imports.
5 Responding purchasers also admits that imports of the
6 Subject Bags would be likely to increase.

7 Therefore the Commission should find revocation
8 of the orders would lead to an increase in Subject Imports
9 at prices that would depress and suppress domestic prices
10 and would lead to decline in domestic production, shipments,
11 employment, sales revenue, profitability and capital
12 investment. Given the Domestic Industry's weak financial
13 condition and likely continued stagnant-to-declining demand
14 for PRCBs, the Commission should find that revocation of the
15 orders from all six countries would lead to a continuation
16 or recurrence in material injury within a reasonably
17 foreseeable time. Thank you.

18 MR. BISHOP: Opening remarks on behalf of those
19 in opposition to the continuation of the orders will be
20 given by Edmund W. Sim, Appleton Luff.

21 OPENING REMARKS OF EDMUND W. SIM

22 MR. SIM: Commissioners, my name is Edmund Sim of
23 the Law Firm Appleton Luff, together with my partner Kelly
24 Slater we appear here on behalf of the task force of
25 Polyethylene Retail Carrier Bag manufacturers as Malaysian

1 Plastic Manufacturers Association, a group of Malaysian
2 producers and exporters of subject merchandise Polyethylene
3 Retail Carrier Bags or PRCBs. In our prehearing brief and
4 in our presentation today we explained a continued
5 application of Antidumping duties on Polyethylene Retail
6 Carrier Bags from Malaysia is no longer warranted.

7 Malaysian Subject Imports have always had a very
8 minor role in the U.S. Market. In the original
9 investigation, Malaysia was the smallest source of exports
10 and its largest exporter Bee Lian was found not to have
11 engaged in dumping further reducing the volume and value
12 effects of Malaysian Imports on the U.S. Market. Malaysian
13 Subject Imports continue to remain absent from the U.S.
14 Market. Imports from Malaysia in general are limited to
15 non-Subject Imports from Bee Lian. The major export market
16 for Malaysia continues to be the European Union which has
17 never imposed any antidumping or countervailing duties on
18 PRCBs from Malaysia.

19 Malaysian Subject Imports would not threaten the
20 U.S. Market. Capacity utilization as remained relatively
21 high. Moreover, the low volumes of Malaysian Subject
22 Imports of both before and after the imposition of duties as
23 well as the lack of dependency of the U.S. Market at any
24 point in time indicate that the Malaysian Subject Imports
25 would not flood the U.S. Market. In addition, the current

1 condition of the U.S. Domestic Industry is relatively
2 healthy and would not be affected by the small quantity of
3 Malaysian Subject Imports that could reenter the U.S.
4 Market.

5 Thus, if the Order against Malaysia were revoked
6 Imports from Malaysia would not be likely to have a
7 discernible adverse impact on the U.S. Industry and as such
8 the U.S. should decumulate Malaysia from the other
9 exporters, e.g. China, Indonesia, Taiwan, Thailand and
10 Vietnam. Even if the Commission were to find a likely
11 discernible adverse impact, it still has the discretion to
12 decumulate and it should do so in the circumstances of this
13 case where the other exporters are not even arguing that the
14 Orders against them should be revoked and as such the Orders
15 are therefore certain to remain in place such that the
16 rationale for cumulation does not exist.

17 Finally, it is clear that in the absence of the
18 Order imports from Malaysia considered alone would not
19 likely cause material injury to the Domestic Industry to
20 continue or recur within a reasonably foreseeable time given
21 the lack of barriers to Malaysian Exports in the EU and
22 other markets the Malaysian Industry would have no incentive
23 to direct significant quantities of Subject Merchandise to
24 the United States Market. For all these forgoing reasons
25 the Commission should revoke the order against Malaysia in

1 this proceeding. Thank you.

2 VICE CHAIRMAN PINKERT: Thank you. MR.

3 BISHOP: Would the first Panel of those in support of
4 continuation of the Antidumping and Countervailing Duty
5 Orders please come forward and be seated. Mr. Chairman, all
6 witnesses on this Panel have been sworn in.

7 VICE CHAIRMAN PINKERT: Thank you Mr. Secretary.

8 I want to welcome this Panel to the ITC and you may begin
9 when you're ready.

10 MR. JONES: Thank you, Vice Chairman and members
11 of the Commission. My name is Stephen Jones from King and
12 Spaulding and I'm here today representing the Polyethylene
13 Retail Carrier Bag Committee. Our first witness today is
14 Mr. Isaac Bazbaz from Superbag.

15 STATEMENT OF ISAAC BAZBAZ

16 MR. BAZBAZ: Good morning. My name is Isaac
17 Bazbaz. I am and have been a Director of Superbag since its
18 establishment in 1988. Superbag is a family-owned private
19 company with headquarters in Houston, Texas. We are one of
20 the largest U.S. Producers of t-shirt Polyethylene Retail
21 Carrier Bags. We operate a single plant that is totally
22 dedicated to the production of PRCBs. The process for
23 making PRCBs is generally the same everywhere in the world.
24 It is a five-step process.

25 First, polyethylene resins and color concentrates

1 are blended and injected into an extruder. Second, the
2 mixture is extruded into film. Third, the film is wound
3 into rolls and fed into a printer where custom design is
4 printed on the film. Fourth, the film is converted to bags
5 by cutting the film into the desired shape and size of the
6 bag by heat-sealing the top and bottom. And finally, the
7 finished bags are inspected, packaged and placed in the
8 inventory.

9 Our operations require a set volume in order to
10 have any changes of operating successfully. This base
11 volume consists in large part in service to major retailers.
12 Prior to imposition of the orders, Subject Imports from
13 China, Malaysia and Thailand and then later Subject Imports
14 from Indonesia, Taiwan, and Vietnam aggressively sought to
15 take over our base business by charging very low prices.

16 Manufacturers of PRCBs in China, Indonesia,
17 Malaysia, Taiwan, Thailand and Vietnam use the same raw
18 materials, employ generally the same production processes
19 and use similar production machinery as producers in the
20 United States. Imported bags from these countries and PRCBs
21 made in the United States are perfect substitutes. In fact,
22 in most cases the imported and domestic products are
23 identical. Many retailers buy t-shirt bags from U.S.
24 Producers like Superbag and they also buy PRCBs from other
25 countries, from Subject Countries. They are domestic and

1 imported products, interchangeable.

2 As a result, competition is based on price. The
3 Commission found in its prior determinations that imports
4 from the six countries were highly substitutable for the
5 Domestic Products. The facts are no different in these
6 investigations. There are no significant physical or other
7 non-price differences between the t-shirt bags that we and
8 other Domestic Producers make and the t-shirt bags that are
9 being imported from any of the Subject Countries.

10 This is why these products are commonly purchased
11 by major retailers through internet bids. In these internet
12 events, all suppliers are prequalified to bid and you
13 wouldn't see such bidding procedures if the retailer viewed
14 this as anything other than a commodity-like product. This
15 reality is also reflecting on the fact that some of the
16 Domestic Producers are using blended sales programs, that is
17 a domestic producer will sell to a customer both higher end
18 and higher priced domestic bags and lower priced imported
19 bags at an average price.

20 This approach works only because the customer
21 sees imported and domestic products as identical and the
22 only way that we can try to compete with imports from
23 Subject Countries is on the basis of price. It is critical
24 that duties be maintained. Has the Commission considered
25 what would happen if the orders are revoked? The best place

1 to start is to recall what happened when imports from those
2 countries were not subject to any duties. In short, Subject
3 Imports from all six countries increased rapidly and took
4 market share from Domestic Industry through underselling.

5 The Commission found that from 2001 through 2003,
6 Subject Imports from China, Malaysia and Thailand increased
7 by one hundred and one percent, generally undersold Domestic
8 Producers' prices and increased the import share of the U.S.
9 Market from 10.5% in 2001 to 18.6% in 2003. As a result,
10 Superbag lost sales to lower-priced imports, reduced its
11 prices in response to lower-priced imports and suffered a
12 50% drop in operating income during the period in which
13 demand increased by fourteen percent.

14 Superbag benefitted from the imposition of the
15 orders on China, Malaysia and Thailand and our operating
16 performance improved immediately. We have been faced with
17 the challenge of increased dumped imports from Indonesia and
18 Taiwan and increased dumped and subsidized imports from
19 Vietnam. Imports from these three countries doubled from
20 2006 to 2008 despite declining U.S. consumption during this
21 period. Under share of U.S. Consumption surged from 6.7
22 percent in 2006 to 14.4 percent in 2008.

23 Our operating and financial performance declined
24 and we suffered operating losses in 2008 and 2009 due in
25 large part to this flood of additional unfairly traded

1 imports. I understand that in making your decision you will
2 consider whether the others have benefitted the Industry. I
3 can assure you that imposition of the orders on Imports from
4 China, Malaysia, and Thailand in August of 2004 and the
5 orders on imports on Indonesia, Taiwan and Vietnam in May of
6 2010; each had an immediate positive impact on Superbag.

7 In both instances, customers who had been eager
8 to purchase the cheap imports were now more willing to pay a
9 fair price to U. S. Producers. Our operations have
10 benefitted tremendously from imposition of both sets of
11 orders. As a result of the orders, we were able to increase
12 our capacity every year from 2005 to 2009. Our investments
13 in new capacity and continued investment in productivity
14 improvements have made operations much more efficient in
15 terms of output per employee. The benefit of the
16 orders is also clearly reflected in our improved
17 profitability. After imposition of the orders, the biggest
18 positive impact was in our ability to increase our selling
19 prices to reflect increase for material cost, leading to
20 substantial improvement in our profitability. Superbag's
21 operating income which had declined from 2001 to 2003
22 increased every year from the period immediately following
23 imposition of the orders on China, Malaysia, and Thailand in
24 2004 through 2007.

25 Our operating income dropped in 2008 and 2009 due

1 to the surge of low priced imports from Indonesia, Taiwan
2 and Vietnam and improved dramatically in 2010 immediately
3 after the imposition of the orders for Indonesia, Taiwan and
4 Vietnam and remained much healthier from 2010 through 2014.
5 Imposition of the orders on imports from China, Malaysia and
6 Thailand gave us the confidence to expand capacity and to
7 purchase more efficient equipment.

8 The imposition of the orders on imports from
9 Indonesia, Taiwan and Vietnam allow us to continue making
10 investments in productivity improvements when increasing our
11 capacity utilization thereby preserving over 270 jobs and
12 supporting a like number of families in our community. We
13 do not believe that Superbag would have continued
14 manufacturing in the United States without the orders on all
15 six countries so the continuation of our entire operation
16 and employment of our workforce are a direct result of the
17 orders.

18 During the current period of review, we continue
19 to face intense competition from imports from subject
20 countries. For example, Spectrum is a major importer that
21 routinely bids against us to supply PRCBs to major purchases
22 at very low prices. I know that Spectrum imports from
23 Malaysian Bee Lian and I believe that they also source from
24 other countries. Spectrum has workhouses in the United
25 States in which it keeps PRCBs in large inventories allowing

1 it to offer similar lead times to U.S. Producers and compete
2 solely on the basis of price.

3 The continuing presence of non-subject imports in
4 the U.S. Market confirms that the manufacturers of Subject
5 Imports also would ship to the United States were it not for
6 existing antidumping and countervailing duties. If the
7 orders were to be revoked, I would expect imports from
8 Subject Countries to have an even more adverse impact on the
9 Domestic Industry that they had prior to the imposition of
10 the orders. The condition of competition of PRCBs have not
11 changed. If anything, we are more vulnerable to a renewed
12 import surge from those countries.

13 Available information indicates that there is
14 more overcapacity today than in 2003 or in 2008. The
15 imports and domestic products are highly interchangeable and
16 sales are still made largely on the basis of price. It's
17 still true that lower prices on the imports do not create
18 any additional demand. Our business plans are still the
19 same to operate 24/7 in order to spread the fixed cost of
20 operating our plant over as many units of production as
21 possible.

22 In addition, all available information indicates
23 that the factories in the Subject Countries remain highly
24 dependent on exports. The only reason that subject foreign
25 products shift their exports away from the United States to

1 the European Union and the other markets is existence of the
2 orders. If the orders are revoked in the United States,
3 manufacturers and importers from Subject Countries will have
4 a strong economic motivation to return to this market. If
5 any of the orders were revoked, I am sure that Subject
6 Imports would once again rapidly increase by using low
7 prices to take market share from Superbag and other U.S.
8 Producers.

9 All available information indicates that there
10 continues to be huge excess capacity in the six Subject
11 countries and that PRCB producers in each of the countries
12 could redirect their exports from other markets to the U.S.
13 Market. As explained in the prehearing report, loss of
14 regulations regarding the use of disposable PRCBs have
15 curtailed demand of PRCBs in major markets, including China
16 and the European Union. That means that the U.S. Market has
17 become all the more attractive in comparison to these other
18 markets if the duties are to be removed.

19 The revocation of the orders would trigger a
20 surge of low price Subject Imports and as a result Superbag
21 would lose sales and production output which would make our
22 plant less efficient. In addition, this would force us to
23 reduce our prices to avoid the loss of further sales.
24 Furthermore, it is possible that we will be able to raise
25 our selling price and not have to cover any increases in the

1 raw materials.

2 Our business is only sustainable if we are able
3 to maintain adequate capacity utilization, running our plant
4 24/7 year round while selling PRCBs at a fair price. If the
5 orders were revoked both our capacity utilization and our
6 pricing would be insufficient to justify continued
7 production. We would either shut down our operations
8 completely or transition to become a distributor of imported
9 PRCBs.

10 Therefore, instead of supporting 270 employees in
11 manufacturing activities, we would require only a handful of
12 employees as an importer and distributor. Keep in mind that
13 the injury we suffered in 2001 through 2003 happened when
14 demand was increasing. An increase of unfairly priced
15 imports in the next couple of years would be even more
16 injurious because it would happen during a period of flat
17 demand, at best. We are filing to preserve the size of the
18 pie at the same time foreign producers are trying to
19 increase their share of the pie.

20 Our future as a manufacturer of PRCBS absolutely
21 depends upon your affirmative vote in this sunset review.
22 If fair trading is to continue for imports from China,
23 Indonesia, Malaysia, Taiwan, Thailand and Vietnam, I am
24 confident that we will be able to compete, to maintain our
25 existing factory, and the 270 jobs it supports. Thank you

1 for the opportunity to appear before you today.

2 MR. JONES: Our next witness is Mark Daniels from
3 Novolex.

4 STATEMENT OF MARK T. DANIELS

5 MR. DANIELS: Good morning. My name is Mark
6 Daniels and I am the Senior Vice President of Sustainability
7 and Environmental Policy at Novolex, which since November of
8 2004 is the name of the holding company for Hilex Poly.

9 For the sake of simplicity, I will use the name
10 Novolex to refer to the company. I have executive-level
11 marketing responsibility for all Novolex products, including
12 PRCBs.

13 Additionally, I am actively involved in the U.S.
14 legislative arena surrounding PRCBs as Chairman of the
15 American Progressive Bag Alliance, which is our industry
16 association.

17 The American Progressive Bag Alliance promotes
18 the responsible use, re-use, recycling, and disposal of
19 plastic bags and advocates for American-made plastic
20 products as the best environmental choice at checkout for
21 both retailers and consumers.

22 I have a degree in business administration from
23 Villanova University. So if I may, I'll probably never have
24 the chance to say this publicly on the public record,
25 Villanova is the number one basketball team in the country,

1 although we do have high respect for my father's alma mater,
2 Georgetown Hoyas. So please don't use that against me,
3 okay?

4 Novolex is an industry-leading manufacturer of
5 plastic bags and film products. We're based in Hartsville,
6 South Carolina. We have seven manufacturing facilities that
7 make PRCBs strategically located throughout the United
8 States, and our Hilex Poly Division has over a thousand
9 associates.

10 Additionally, we have a packaging film plant, and
11 the first plant in the United States that is dedicated to
12 recycling plastic bags and wraps.

13 Novolex is the leading producer of PRCBs in the
14 United States, and we believe that we are the leading
15 producer of PRCBs in the world. All the PRCB that we
16 produce and sell are die cut handle bags. While we focus on
17 T-shirt style bags, we also produce other styles of die cut
18 handle bags which are called merchandise bags and header
19 bags.

20 In late 2003, Novolex entered the plastic bag and
21 film business with the purchase of high density film
22 products division of Sunoco Products. In the fall of 2005,
23 Novolex purchased Vanguard Plastics, which was one of the
24 original petitioners and one of the country's leading
25 producers of PRCBs.

1 I joined Novolex from Vanguard where I served as
2 Director of Marketing and then the General Manager of
3 Vanguard's Packaging Films Division.

4 The imposition of duties against imports from
5 China, Malaysia, and Thailand in 2004 was critical to the
6 continuation of Novolex in the PRCB business. Imports from
7 these three countries more than doubled from 2001 to 2003.
8 They simply used low prices to grab market share.

9 They forced Novolex and Vanguard and other U.S.
10 producers to either lower prices or to suffer sales losses.
11 As a result, Novolex and Vanguard suffered declining
12 operating incomes from 2001 to 2003. Novolex was forced to
13 close a plant in Santa Maria, California, and Vanguard was
14 forced to close a plant in Compton, California.

15 After the Orders were imposed in August of 2004,
16 subject imports from these countries were significantly
17 constrained. The Orders allowed Novolex and other U.S.
18 producers to regain lost market share and allowed market
19 prices to stabilize at higher prices. This happened almost
20 immediately.

21 As I just noted, Novolex acquired Vanguard
22 Plastics in October of 2005. This acquisition created the
23 leading PRCB producer in the United States. One of the
24 things that made Vanguard attractive to Novolex was the fact
25 that the performance of Vanguard's PRCB business had

1 improved substantially as a result of the imposition of
2 Orders on China, Malaysia, and Thailand in August of 2004.
3 The acquisition would not have taken place if the Orders to
4 the subject countries had not been in place.

5 After that acquisition, however, Novolex saw the
6 benefits of the Order dissipate because of imports from
7 Indonesia, Taiwan, and Vietnam. They were surging. From
8 2006 to 2008, the quantity of dumped imports from Vietnam,
9 Indonesia, and Taiwan, and subsidized imports from Vietnam
10 increased by 114 percent.

11 These unfairly traded imports also more than
12 doubled their market share in the United States during that
13 time. The only way to explain this was the fact that
14 imports from these countries undercut our prices by
15 substantial margins.

16 Absent the Orders, there's no doubt in my mind
17 that the imports from these countries would have continued
18 to increase rapidly. Foreign producers in these countries
19 certainly maintain the capacity and the motivation to
20 continue to penetrate the U.S. market.

21 This was extremely frustrating to Novolex because
22 we had hoped that the antidumping duties on imports from
23 China, Malaysia, and Thailand would allow us to retain the
24 market share we had lost from imports from those countries.
25 Instead, the market share was simply sifted to Indonesia,

1 Taiwan, and Vietnam.

2 The surge of unfairly traded imports from
3 Indonesia, Taiwan, and Vietnam severely harmed our business
4 operations in numerous ways, including forcing Novolex to
5 close three of our production facilities in 2007 and 2008.
6 Each of those plants was dedicated to the production of a
7 wide range of PRCBs as defined in these reviews.

8 But even this large reduction in capacity did not
9 enable us to align our capacity with demand. Our reduction
10 in capacity was matched by an equivalent drop in our sales
11 and production due to the surge of imports from subject
12 countries Indonesia, Taiwan, and Vietnam. That left us with
13 as much excess capacity as we had before we closed those
14 three plants. This of course was a major problem.

15 Our facilities, like those of other U.S.
16 producers, are designed to operate continuously. The film
17 extrusion process cannot economically be shut down at night
18 and restarted in the morning. The plant is designed to
19 operate 24/7.

20 Equipment cannot be switched off and then back on
21 without sacrificing a significant amount of raw materials.
22 For this reason, we only ordinarily close about four or five
23 days around the Christmas season.

24 Our plants are designed to run 360 days a year,
25 but during the 2006 to 2008 Period of Investigation

1 regarding imports from Indonesia, Taiwan, and Vietnam, we
2 were forced to shut down operations on many occasions beyond
3 our normal holiday shutdown.

4 During the several years just prior to the
5 imposition of the Orders on Indonesia, Vietnam--Taiwan and
6 Vietnam in 2010, we also came under increasing pressure to
7 match extremely low prices on the sales that we made.

8 Our only way to compete with the imports was
9 pricing, because purchasing decisions are overwhelmingly
10 decided on price.

11 Purchase orders can be won or lost on a price
12 difference of one percent. When we reduce our prices to
13 retain business, we suffer lower margins. When we lose a
14 customer to unfairly priced imports, the foreign producers
15 become the incumbent suppliers and it's hard to get that
16 business back unless we undercut the foreign producer's
17 prices.

18 The surge in imports from Indonesia, Taiwan, and
19 Vietnam subjected us to severe cost price squeeze,
20 especially in 2008. The filing of the Petition in 2009 and
21 the Petition and Orders on Indonesia, Taiwan, and Vietnam in
22 2010 alleviated that cost/price squeeze allowing our
23 operations to stabilize and our profits to improve.

24 The imposition of the Orders on imports from
25 Indonesia, Taiwan, and Vietnam, and the continuation of the

1 Orders on China, Malaysia, and Thailand in 2010 helped us in
2 contract negotiations with major customers.

3 The Orders on all six countries have allowed us
4 to compete in a fairer trade environment, obtaining higher
5 volumes in price for major retailers than we would have
6 otherwise achieved.

7 Because of the AD and the CVD Orders, imports
8 from all six subject countries were significantly
9 constrained during this Period of Review. Customers remain
10 hesitant to rely on imports that could be assessed high
11 antidumping duties. The duties stop the surge of imports at
12 less than fair value and allow Novolex and other producers
13 to gain lost market share. Prices stabilized at higher
14 levels. This has allowed Novolex to increase both its
15 capacity and capacity utilization while remaining
16 profitable.

17 There is no doubt, however, that if the Orders
18 are revoked imports from the subject countries will rapidly
19 penetrate the U.S. market and use unfairly low prices to
20 take business away from Novolex and other U.S. producers.

21 We know that producers in all six countries still
22 have enormous bag making capacity. They are eager to sell
23 into the U.S. market, especially since the EU has been more
24 aggressive than the United States in imposing bans on taxes
25 on plastic bags, which likely is causing PRC demand to

1 decline more rapidly in the EU than is happening in the
2 United States.

3 If the Orders were revoked, we would have no
4 economic motivation to invest in U.S. production assets.
5 Instead, we would still need to consider contracting our
6 U.S. capacity and replacing some of our domestic production
7 with cheaper imports.

8 Revocation of the Orders would be especially
9 harmful now for two main reasons.

10 First, although our profitability has improved
11 and stabilized due to the effectiveness of the Orders, our
12 level of profitability remains low and would not insulate
13 our business from negative impact of a surge of subject
14 imports.

15 Second, demand for PRCBs has been stagnant in the
16 last 10 years, and is likely to remain flat for the
17 foreseeable future. Historically, we were always optimistic
18 that PRCB consumption would continue to increase in tandem
19 with increase in population and retail sales. That is no
20 longer the case.

21 As indicated on pages II-14 and II-15 of the
22 Commission's prehearing report, many industry participants
23 expect the passage of additional laws and regulations
24 regarding the use and disposal of PRCBs and believe such
25 laws will inhibit growth in demand for PRCBs.

1 Similar laws, regulations, and initiatives by
2 retailers to limit consumption already were common in 2010,
3 which is the last time I testified before this Commission.
4 I anticipated at that time that the result of such measures
5 would be stagnant or declining demand for PRCBs in the U.S.
6 market.

7 This has occurred in the long term as demand in
8 the U.S. market has been essentially flat for the last
9 decade, albeit with a decrease during the Great Recession,
10 and some recovery in 2009.

11 In many instances, the measures undertaken in the
12 United States are not as encompassing as the measures taken
13 in Europe. Thus, while measures taken in the United States
14 will still have a significant effect, the impact on U.S.
15 demand was smaller than I anticipated five years ago.

16 Some jurisdictions only banned thinner gauged
17 T-shirt bags but allow thicker-gauge which are considered
18 reusable. Increased sales of thicker-gauged PRCBs, which
19 are also in the scope of these Orders, can compensate for
20 reduced sales of thinner-gauge PRCBs.

21 Moreover, the demand impact of such measures
22 would surely have been worse absent the active engagement by
23 our industry. The American Progressive Bag Alliance works
24 to educate government officials and consumers about the true
25 environmental impacts of plastic bags in comparison to other

1 options.

2 Going forward, uncertainty continues. Various
3 jurisdictions within the United States surely will enact
4 bans and taxes on PRCBs in the coming years. California
5 voters will decide in November of this year whether to enact
6 a state-wide ban on single-use plastic bags as noted in the
7 prehearing report.

8 It is unclear what the outcome of that referendum
9 will be and what the demand impact would be if the ban were
10 enacted. It would likely be negative impact on overall
11 demands for PRCBs.

12 To be clear, our concern about stagnant demand
13 for PRCBs is far exceeded by our fear that we will be
14 competing for a share of that market against rapidly
15 increasing low-priced imports from subject countries. That
16 is something we will likely not endure.

17 In conclusion, just as the industry needed your
18 help in 2004 and 2010, we need it again today. Novolex has
19 world-class manufacturing facilities. Our highly automated
20 state-of-the-art equipment allows us to be cost competitive
21 with both our domestic competitors, and fairly traded
22 imports.

23 We have a highly skilled and loyal workforce. We
24 cannot, however, compete with unfairly low-priced dumped and
25 subsidized imports that take away our sales and production

1 that forces us to reduce our prices on remaining sales.

2 We want to maintain our U.S. production assets,
3 but our financial position remains weaker than we would
4 like. Our performance certainly has improved since 2010,
5 but if duties are removed on subject imports from any of the
6 six subject countries we would be forced to consider closing
7 additional facilities, which would cause even more harm to
8 our workforce and the communities in which they live.

9 Please do not let this happen. Please maintain
10 the Orders on all six countries for another five years.
11 Thank you, very much.

12 MR. JONES: Our next witness is Mr. Frank Lawson
13 from Novolex.

14 MR. LAWSON: Good morning. My name is Frank
15 Lawson. I am the Vice President of Sales for Novolex. Like
16 my colleague did, for the sake of simplicity I will use the
17 name Novolex today.

18 Including my tenure with Novolex, I have 26
19 combined years of experience in film and flexible packaging.
20 In my current role with Novolex, I am responsible for
21 Novolex's sales programs and overseeing all pricing
22 decisions. I have personally managed several strategic
23 account relationships, and am often directly involved in the
24 sales negotiations with our major customers.

25 Previously I served a similar function as the

1 Vice President of Sales for EuropacKaging, a major Malaysian
2 PRCB producer. Price is overwhelmingly the most important
3 factor in PRCB purchasing decisions.

4 This makes our customers very sensitive to the
5 cost of the product. Because the product typically is given
6 away for free, retailers would prefer that the cost of the
7 product be as close to zero as possible.

8 In addition, it is important to note that the
9 domestic product and imports are fully interchangeable and
10 sold through the same channels of distribution. That is
11 equally true for imports from China, Indonesia, Malaysia,
12 Taiwan, Thailand, and Vietnam. In fact, our products sit
13 side by side with imports in the same distribution
14 warehouses across the country.

15 This is even true for products that we sell to
16 large retailers, for example. Mr. Daniels has examples of
17 very similar PRCBs that were manufactured by Novolex and
18 imported.

19 MR. DANIELS: These are imported products from
20 various countries (indicating), and then very similar
21 product, identical if you will, are products manufactured by
22 Hilex Poly. And if you'd like to see these, I'd be happy to
23 bring them up.

24 VICE CHAIRMAN PINKERT: Please hand them to the
25 Secretary.

1 (Pause.)

2 MR. LAWSON: When we make PRCB sales, we negotiate
3 the price with the retailer. Or, more often than not, we
4 actually ship the product to a distributor. There are
5 several very large distributors such as Bunzl, that ship a
6 bundle of different products to the retailers that include
7 PRCBs and other not-for-retail supplies like register tape.

8 A high percentage of imported PRCBs are sold in
9 exactly the same way. That is, even when a sale is made to
10 the end user, the product is sent to a distributor to be
11 warehoused and packaged in a bundle with other products for
12 shipment to the retailer.

13 This practice only intensifies the importance of
14 price to PRCB purchasers who ultimately will receive the
15 PRCBs from the same distributor regardless of the supplier.

16 As my colleague Mr. Daniels noted, we frequently
17 compete against imports in internet bid competitions.
18 Internet bids account for a significant share of U.S.
19 consumption of PRCBs. Walmart, for example, which
20 represents a significant portion of the U.S. market, only
21 purchases through internet bids. Overall, we estimate that
22 at least 75 percent of U.S. consumption of PRCBs is supplied
23 through internet bid events.

24 These events are designed to maximize competition
25 among as many suppliers as possible, and they provide PRCB

1 producers and subject countries easy access to the U.S.
2 market.

3 We know that imports from China, Malaysia, and
4 Thailand were priced lower than the domestic product during
5 2001 through 2003 before Orders were imposed on those three
6 countries.

7 Likewise, imports from Indonesia, Taiwan, and
8 Vietnam were priced lower than domestic product during 2006
9 through 2008 before Orders were imposed on those three
10 countries.

11 Table V-12 of the Commission Staff Prehearing
12 Report indicates that subject imports from China, Indonesia,
13 Taiwan, Thailand, and Vietnam have continued to undersell
14 domestic products even when the pricing discipline [sic] of
15 the Orders. And it appears that no quarterly price data
16 were available for subject imports from Malaysia.

17 But whether or not there currently is
18 underselling measured by using the Commission Quarterly
19 Price Comparison methodology, if the Orders were revoked--or
20 are invoked, an increase in unfairly priced imports
21 certainly will push down the prices in bidding events.

22 Revoking the Antidumping Orders on any of the six
23 subject countries or the Countervailing Duty Order on
24 Vietnam would cause more unfairly priced imports from more
25 countries to compete in the U.S. market. This would

1 necessarily have an adverse impact on our prices.

2 While there may only be one winner of the bid, a
3 greater number of participating credible bidders leads to a
4 lower final price. If prices were pushed lower, we would be
5 compelled to lower our price as a defensive measure because
6 we would need to maintain key accounts to keep our plants
7 running 24/7.

8 In some instances we might decide that we cannot
9 afford to match the import price, so we would lose that
10 business. In any event, if you revoke the Orders against
11 subject countries, more unfairly traded imports from these
12 countries will participate in these important bidding
13 events.

14 This would be certain to have an adverse price
15 impact, and also would cause us to lose sales and market
16 share. We have lost numerous sales to an importer called
17 Spectrum, both prior to imposition of the Orders and during
18 the current period of review. Headquartered in
19 Cerritos, California, Spectrum has three distribution
20 centers in the United States. They are located in Cerritos,
21 California, Edison, New Jersey, and Arlington, Texas. We
22 compete against Spectrum in all areas, including in grocery,
23 retail, and mass merchants.

24 We compete head-to-head with Spectrum for all of
25 our large accounts, and many of the intermediate and smaller

1 accounts. Spectrum is clearly a downward price leader in
2 the U.S. market. Its sales strategy is to offer the lowest
3 price. End of story.

4 We have lost many sales to Spectrum. We have
5 also had to reduce our prices many times to compete with
6 Spectrum and avoid losing sales.

7 Prior to the imposition of Antidumping Orders in
8 2004, Spectrum used to import largely from China, Malaysia,
9 and Thailand. When duties were imposed against those
10 countries, it shifted a large share of its sourcing to
11 Indonesia, Taiwan, and Vietnam. But with high Antidumping
12 and Countervailing Duties also now in place against subject
13 imports from those countries, my understanding is that
14 Spectrum currently focuses primarily on importing from
15 nonsubject sources.

16 Spectrum's history of adjusting its sourcing
17 after the imposition of Antidumping and Countervailing Duty
18 Orders indicates that it very likely would resume high
19 volumes of low-priced imports from any of the subject
20 countries if any of the Orders are revoked.

21 Novolex clearly benefitted from the filing of the
22 Petitions against imports from Indonesia, Taiwan, and
23 Vietnam in March of 2009. For example, we regained the
24 ability to compete for certain customers where we previously
25 could not compete.

1 In mid-2009, we won a substantial customer that
2 had previously been supplied by Spectrum. The buyer told us
3 that it moved a significant amount of sourcing to the United
4 States because the impact of the Antidumping investigations
5 limited the amount of available supply that is now subject
6 to duties.

7 I have personal experiences regarding the high
8 level of interest that Malaysian producers have in the U.S.
9 market. From 2006 to 2009, I was employed by Euro
10 Packaging, a major Malaysian producer and exporter of PRCBs.

11 I was responsible for Euro Packaging's U.S.
12 sales. I can assure you that Euro Packaging was very
13 interested in increasing its exports to the U.S. market.
14 Otherwise, there would be no reason to hire me. I was
15 selling many of the same PRCB products to many of the exact
16 same customers when I worked for Euro Packaging as I
17 currently sell for Novolex.

18 Euro Packaging sought to make sales almost
19 exclusively on the basis of price. Predictably, when Euro
20 Packaging offered the cheapest price, I made sales. When it
21 did not, I typically was unable to make a sale.

22 I visited Euro Packaging's Malaysian plant in
23 2007. It is modern, efficient, and larger than any
24 individual plant that Novolex has here in the United States.
25 I understand that Euro SME purchased the assets of Euro

1 Packaging shortly after I left the company. To the best of
2 my knowledge, the plant and its equipment remained in
3 operations for Euro SME. And I understand that Euro SME
4 remains interested in the U.S. market.

5 For example, I know that Euro SME has recently
6 requested an administrative review at the Department of
7 Commerce in an effort to lower its cash deposit rate.

8 In conclusion, for the sake of Novolex and the
9 1000 associates employed by our Hilex Poly Division, I hope
10 that you will vote affirmatively in these sunset reviews and
11 keep the Orders in place for five more years on all six
12 subject countries.

13 Thank you.

14 STATEMENT OF JOSHUA M. SNEAD

15 MR. SNEAD: Good morning. My name is Joshua
16 Snead, counsel to the Polyethylene Retail Carrier Bag
17 Committee. I will be addressing cumulation.

18 The Commission has cumulated all subject imports
19 in each of its three prior determinations on PRCBs. It
20 should exercise its discretion to do the same in this
21 review. All statutory factors for cumulation are once again
22 satisfied, and nothing has changed with respect to
23 conditions of competition or the likely overlap of imports
24 from each subject country that would justify decumulating
25 any of the subject countries.

1 First, the reviews on all six subject countries
2 were initiated on the same day, April 1st, 2015. Second,
3 imports from each of the six subject countries would have a
4 discernable adverse impact on the domestic industry if the
5 Orders were revoked.

6 As we set forth in our brief and will summarize
7 today, imports from each subject country likely would
8 increase significantly and have significant negative price
9 effects.

10 Third, there likely would be a reasonable overlap
11 of competition between and among imports from all six
12 subject countries and the domestic like product.

13 Available evidence on the four factors the
14 Commission typically considers with respect to reasonable
15 overlap confirms that this is the case.

16 First, fungibility. The Commission has found a
17 high degree of substitutability among PRCBs from all subject
18 countries and the domestic like product in each of its prior
19 determinations. This continues to be the case.

20 As reported on page II-29 of the Prehearing
21 Report in response to the Commission's questionnaires in
22 these reviews, a large majority of U.S. producers and
23 importers, as well as a majority of purchasers, reported
24 that PRCBs from any source are always interchangeable.

25 Second, overlapping geographic markets. Domestic

1 producers and importers of subject PRCBs from five out of
2 the six subject countries sold PRCBs in all geographic
3 markets in the contiguous United States during the Period of
4 Review.

5 Upon revocation, the geographic overlap likely
6 would be even more extensive as it was prior to imposition
7 of the Orders.

8 Third, channels of distribution. PRCBs produced
9 in the United States and subject PRCBs imported from most
10 subject countries were sold to both distributors and end
11 users during the period of review.

12 If the Orders were revoked, imports from all
13 subject countries would return to the U.S. market and again
14 be sold in overlapping channels of distribution with each
15 other and the domestic like product.

16 And fourth, simultaneous presence. Subject
17 imports from each of the six subject countries entered the
18 United States during every year of the Period of Review.
19 Imports from all six subject countries likely would again
20 enter the United States routinely as they did during both
21 original Periods of Investigation if the Orders were
22 revoked.

23 And finally, the conditions of competition remain
24 unchanged and support cumulation of all subject imports.
25 The Commission found during the period Sunset Review that

1 subject imports from China, Malaysia, and Thailand would be
2 likely to compete under similar conditions of competition in
3 the U.S. market after revocation.

4 The record of this review strongly supports the
5 same conclusion as to all six subject countries. All
6 available evidence confirms that foreign producers in each
7 of the six subject countries remain at least as capable and
8 motivated to export to the United States as they were in
9 2010.

10 I will now briefly respond to arguments made by
11 the Malaysian Task Force in its prehearing brief to support
12 its position that imports from Malaysia should be
13 decumulated from imports from the other five subject
14 countries.

15 The Malaysians made very similar arguments for
16 decumulation six years ago. Essentially they argue that they
17 are different and should not be cumulated because they focus
18 on the European market and do not intend to refocus on the
19 U.S. market like other subject countries will.

20 To be sure the Malaysian industry has
21 historically focused some of its sales efforts on Europe.
22 Unfortunately for the Malaysians, during the POR they lost
23 two of the key advantages that they argued in 2010 supported
24 their focus on Europe.

25 In 2014, they lost their preferential GSP

1 benefits into Europe and the EU's antidumping orders on
2 PRCBs from China and Thailand which had provided the
3 Malaysians with indirect protection in Europe from some of
4 its competitors, were rescinded in 2012.

5 Thus, the Malaysians now face a 6.5 percent
6 tariff and increased competition in Europe. Moreover, the EU
7 has enacted environmental regulations that ensure it is a
8 declining market for PRCBs.

9 The data on the record of this review tell the
10 real story. One would expect the data would show a
11 continuous increase in Malaysian exports to Europe. I
12 encourage you, however, to review Table 4-12 of the
13 Confidential Prehearing Report on page IV-29, and compare
14 the Malaysian export shipments to the EU early in the Period
15 of Review and later in the Period of Review to see when
16 those exports peaked both in absolute terms and as a share
17 of total shipments.

18 The Malaysian Task Force argues that the data on
19 the record of this review confirm that the Malaysians have
20 doubled down in Europe and, accordingly, have no interest in
21 returning to the United States.

22 As this Commission evaluates this argument, it is
23 important to consider the validity of the comparisons that
24 counsel for the Task Force made on this point. There was a
25 comparison throughout their brief of 2009 and 2014 data as

1 reported in the Prehearing Staff Report.

2 The 2009 data on the Malaysian industry, however,
3 are incomplete and may not provide an appropriate point of
4 comparison to 2014 data. I believe you have our set of
5 confidential exhibits. If you would, please turn to our
6 confidential exhibit one which includes much more complete
7 2009 data that were on the record of the last sunset review.

8 And the quotations at the bottom of that page of
9 confidential exhibit one are from the proprietary record and
10 explain why the two sets of 2009 data differ. Suffice it to
11 say that at least one significant Malaysian producer's data
12 is not included in the 2009 data but is included in 2010
13 through 2014 data, making any comparison of 2014 data to
14 this 2009 data an apples-to-oranges comparison that is
15 likely to reflect actual industry trends.

16 When we instead consider the Malaysian shipments
17 using the more complete 2009 data from the prior Sunset
18 Review or, alternatively, as we set out in that same
19 confidential exhibit one, if we use the more complete 2010
20 data from this review as the base year, the trends relied
21 upon by counsel for the Task Force simply disappear.

22 When appropriately evaluated, the data and all
23 other evidence on the record of this review reflect the
24 reality that Malaysian Producers likely would shift a large
25 volume of exports to the United States if the Order on

1 Malaysia were revoked.

2 In fact, we already are starting to see a shift
3 in focus back to the United States. As Mr. Lawson just
4 testified, Euro SME, a Malaysian producer of subject
5 merchandise, recently filed a review that the U.S.
6 Department of Commerce conduct an administrative review of
7 Euro SME's exports to the United States during the most
8 recent annual review period.

9 Euro SME's attempt to obtain a lower dumping
10 margin clearly indicates its interest in increasing exports
11 to the United States market.

12 The Malaysian industry itself has already
13 articulated its view on the U.S. market. I refer you now to
14 our confidential exhibit two which quotes the Malaysian
15 producers questionnaire responses with respect to whether
16 they have the ability and the motivation to increase exports
17 to the United States.

18 And, similarly, the highlighted statements on
19 pages 2 and 3 of our confidential exhibit number three
20 confirm the importance of the U.S. market to Malaysian
21 producers.

22 In sum, the Commission should exercise its
23 discretion to cumulate all subject imports. Nothing changed
24 after 2010 with respect to the relevant conditions of
25 competition or the likely degree of overlap among the

1 domestic like product and subject imports from China,
2 Indonesia, Malaysia, Taiwan, Thailand, and Vietnam.

3 Thank you.

4 STATEMENT OF J. MICHAEL TAYLOR

5 MR. TAYLOR: Good morning. I'm Michael Taylor
6 and one of the lawyers for the Polyethylene Retail Carrier
7 Bag Committee. In our principal case, I intend to briefly
8 apply the statutory factors to the record of this review
9 with respect to all six countries.

10 First, the Orders have benefited the domestic
11 industry. As shown in Exhibit 2 of our pre-hearing brief,
12 the domestic industry's operations and financial condition
13 were deteriorating prior to the imposition of the Orders in
14 China, Malaysia and Thailand in 2004, and again, prior to
15 the orders on Indonesia, Taiwan and Vietnam in 2010.

16 The improvement in the state of the domestic
17 industry is directly attributable to the relief provided
18 under these Orders. As explained by Mr. Bazbaz, his company
19 would not likely be manufacturing a domestic like product,
20 but for the Orders.

21 The Orders have had a restraining effect on the
22 volume and pricing of subject imports from all six
23 countries. During the period of investigation, the quantity
24 of shipments of subject imports from China, Malaysia and
25 Thailand increased 101.2%. The Orders, however, reversed

1 this trend.

2 Similarly, during the POI for imports from
3 Indonesia, Taiwan and Vietnam, subject imports increased by
4 100.3%. Since those Orders were imposed, the trend was also
5 reversed, and subject imports from those countries declined
6 significantly.

7 Moreover, as explained in the proprietary
8 portions of our pre-hearing brief, both sets of Orders have
9 been effective in reducing the frequency of underselling by
10 subject imports.

11 In light of these declines in import volumes and
12 unfair pricing, the domestic industry experienced limited
13 growth. Capacity utilization has increased, even while the
14 domestic producers added capacity.

15 The domestic industry's operating profit margin,
16 however, has fluctuated over time, and even though the
17 financial condition of the industry is healthier now than it
18 was during each of the original periods of investigation,
19 2001 to 2003 and 2006 to 2008, the domestic industry is
20 still vulnerable.

21 Second, the volume of subject imports will be
22 significant and will dramatically increase if the orders are
23 revoked. The likely trend for subject imports in the
24 foreseeable future is indicated by the import trend in the
25 original investigations, which are the most recent periods

1 in which imports of PRCBs were not constrained by the
2 discipline of the orders.

3 For both Orders, shipments of subject imports
4 more than doubled during the periods of the original
5 investigations. The Commission concluded in both
6 investigations that the volume of subject imports and the
7 increase in the volume of subject imports were significant.
8 In its original investigation of China, Malaysia and
9 Thailand, the Commission recognized that foreign producers
10 in those countries are "highly export-oriented," and in the
11 original investigation of Indonesia, Taiwan and Vietnam, the
12 Commission similarly concluded that subject producers
13 "reported a similar dependence on exports to the U.S. market
14 and lack of a significant home market." Nothing has
15 changed.

16 The Commission should again find that subject
17 imports and subject import volume is likely to increase
18 dramatically if the orders are revoked. Such a finding is
19 supported in this case by the numerous submissions from the
20 importers and purchasers that they will increase purchases
21 from the subject countries if the orders are, in fact,
22 revoked.

23 Some of these statements are provided on Pages
24 35 to 37 of our pre-hearing brief. The limited data
25 provided by the foreign producers in this review confirms

1 that subject producers remain at least as export-oriented as
2 they were during the original investigations.

3 With respect to capacity utilization, it also is
4 clear that the substantial excess capacity that was
5 determined to exist in the original investigation of China,
6 Malaysia and Thailand remains, as does the significant
7 unused capacity found to exist in the original
8 investigations of Indonesia, Taiwan and Vietnam.

9 For example, five Malaysian producers reported
10 capacity expansions during this period of review, which
11 included the addition of a factory and the addition of
12 production machinery. Thus, the Malaysian producers have
13 even more ability now to increase exports. Their unutilized
14 capacity increased during the POR, making it even more
15 essential that they find new export markets.

16 Although most of the foreign producers in
17 subject countries, other than Malaysia, failed to cooperate
18 with the Commission's investigation, record evidence, which
19 we summarized on Pages 41 and 42 of our pre-hearing brief,
20 also confirm the addition of production capacity in China,
21 Thailand and Vietnam during the period of review.

22 It also is important to recognize; the subject
23 producers are motivated to increase exports to the United
24 States. Some plants, like in Vietnam, were built before the
25 imposition of the orders, solely to serve the United States

1 market.

2 Public information demonstrates that demand
3 conditions in key world markets have also worsened since
4 2009, in turn making the U.S. market even more attractive.
5 For example, in the EU, which traditionally has been one of
6 the major markets for producers of PRCBs, including the
7 Malaysians, is mandating a significant reduction in
8 consumption of PRCBs over the next several years.

9 Every country in the EU must either impose a fee
10 for plastic bags by the end of 2018, or bring down the
11 number of lightweight plastic bags used to 90 bags per
12 capita by 2019 and to 40 bags per capita by 2025. Demand in
13 EU for PRCBs is therefore likely to decline rapidly in the
14 foreseeable future, as all EU members implement these
15 measures intended to reduce consumption of plastic bags.

16 Circumvention of the orders similarly confirms
17 the high degree of interest that the subject producers
18 continue to have in the U.S. market. In one case, a federal
19 grand jury indicted an alleged importer of PRCBs from China
20 in March 2011 for conspiracy, smuggling and making false
21 customs entries and for falsely classifying goods in
22 connection with a scheme to smuggle PRCBs into the United
23 States without paying anti-dumping duties.

24 In another case, two defendants in the Chicago
25 area entered plea agreements in June 2010, admitting to a

1 conspiracy to avoid any dumping duties on PRCBs through the
2 use of false invoices, resulting in monetary forfeitures and
3 jail time for the defendants.

4 Congress found in October 2014 that imports of
5 unfinished PRCBs from Taiwan were circumventing the order by
6 being completed and then sold in the United states without
7 the payment of required anti-dumping duties.

8 Also, the fact that nonsubject producers
9 continued to ship to the United States is evidence the
10 likely behavior of subject producers if the orders were to
11 be revoked. In the first Sunset review on China, Malaysia
12 and Thailand, the Commission found that the significant
13 presence in the U.S. market of nonsubject imports from
14 Malaysia, contradicted the respondents' arguments, that the
15 Malaysian producers had always been minor players in the
16 U.S. market.

17 The Commission recognized that the continued
18 interest of excluded producers in the U.S. market, provides
19 evidence itself that if the orders were revoked, subject
20 producers in China, Malaysia and Thailand would exhibit a
21 similar degree of interest in serving the U.S. market, and a
22 similar capability of doing so.

23 In addition, with respect to the likely volume
24 of subject imports, despite the limited data on the record,
25 due to the lack of participation on most subject producers,

1 the proprietary record confirms, which is also summarized on
2 Pages 51 to 54 of our pre-hearing brief, that subject
3 producers had the ability to ship some exports from other
4 markets.

5 Third, subject imports will cause adverse price
6 effects if the Orders are revoked. As you just heard from
7 Mr. Bazbaz, Mr. Daniels and Mr. Lawson, price is the
8 differentiating sales factor for PRCBs. And subject
9 importers differentiate their products with low prices.
10 Given the likely significant volume of subject imports,
11 their past practice of underselling and depressing and
12 suppressing prices of the domestic like product, plus the
13 Department of Commerce's findings of large likely margins,
14 it is clear that the domestic industry will suffer severe
15 adverse price effects if the orders are revoked.

16 As already discussed during both the original
17 investigation, the Commission found that underselling
18 occurred in the majority of quarterly pricing comparisons.
19 The underselling data in this review also show underselling.
20 Even so, the Commission should recognize that subject import
21 pricing is affected by the disciplines of the orders, and
22 for the reasons set forth in our pre-hearing brief, the
23 reported data are flawed and unreliable.

24 Thus, the Commission should rely, primarily on
25 the underselling data and trends from the two original

1 periods of investigation when analyzing underselling.

2 The same conditions of competition that resulted
3 in significant underselling during both original
4 investigations continue, and would swiftly lead to
5 underselling again, if the Orders were to be revoked. In
6 proprietary responses of the U.S. producers and purchasers,
7 summarized on Pages 61 and 62 of our pre-hearing brief,
8 confirm that they would expect underselling to resume in
9 significant quantities, causing extreme price pressure in
10 the United States.

11 It is also very likely that low price subject
12 imports would again suppress domestic prices, because
13 subject import competition would prevent domestic producers
14 from increasing prices to cover increased production costs.
15 This happened from 2001 to 2003 in the original
16 investigation on China, Malaysia and Thailand, and the
17 Commission recognized in the first Sunset review, it would
18 be likely to happen if the Orders were to be revoked.

19 Four, although it is not necessary for an
20 affirmative determination, it is notable that the industry
21 remains in a vulnerable state. During the last review, the
22 Commission found that the domestic industry was vulnerable
23 to material injury based on the factors, including domestic
24 industry's "anemic" operating profit margin of 4.2% and the
25 stagnant declining U.S. demand for PRCBs.

1 The Commission is aware of the domestic
2 industry's current operating profit margin, which is
3 summarized by year in Exhibit 2 of our pre-hearing brief.
4 Because the domestic industry uses production equipment that
5 is dedicated to the production of PRCBs, and because it has
6 a limited ability to switch production from PRCBs to other
7 products, U.S. producers have no choice but to reduce their
8 prices as required to avoid lost sales to unfairly priced
9 imports in order to keep their equipment operating
10 continuously.

11 Also, just as importantly, demand for PRCBs is
12 stagnant to declining currently in the United States. As
13 summarized in Exhibit D of the pre-hearing report,
14 producers' responses to the Commission's questionnaires
15 confirm that revocation of the Orders would, in fact, be
16 devastating.

17 Finally, the combination of the adverse volume
18 and price effects from the revocation would have a very
19 negative impact on the domestic industry's sales,
20 production, employment and financial condition. Among other
21 things, the industry would have no incentive to invest in
22 U.S. production assets and to preserve U.S. jobs, and the
23 industry survival would, in fact, be in question.

24 In sum, the Commission should determine that
25 revocation of the Orders would be likely to lead to

1 continuation or recurrence of material injury within a
2 reasonably foreseeable time. Thank you, and we will reserve
3 the remainder of our time for rebuttal.

4 VICE CHAIRMAN PINKERT: Thank you. And I want
5 to thank all the witnesses for coming here today, and taking
6 time away from your work and your businesses to help us
7 understand these issues.

8 This morning, we will begin the Commissioner
9 questioning with Commissioner Williamson. And I remind you
10 that there may be that additional questioning at the end of
11 each round.

12 COMMISSIONER WILLIAMSON: Thank you, Mr.
13 Vice-Chairman. I, too, want to welcome the witnesses here
14 today and express an appreciation for your coming and
15 presenting your testimony. I have a number of questions,
16 but there's some things that you've said that I'm very
17 curious about, so I'm going to start off with those.

18 Mr. Lawson, you talked a lot about the internet
19 bid process. But I was wondering, is this is a one -- are
20 they usually one-time bids or are they usually -- or
21 multiple rounds? Consider briefly, how does the process
22 work? Because I see one driving down prices more than the
23 other.

24 MR. LAWSON: So -- Frank Lawson. So internet
25 bids are done during a contract period. We normally submit

1 pricing. All suppliers are qualified to submit a price or
2 submit information about their qualification and capacity.
3 It is normally a price submission and then it's an auction
4 at that point. And then see pricing just spiral.

5 COMMISSIONER WILLIAMSON: Also, it may go
6 through several rounds?

7 MR. LAWSON: Yes, and we could see several
8 rounds of internet bids, yes.

9 COMMISSIONER WILLIAMSON: Okay. And are those
10 for, like, a year-long -- fixed term contract? Or is it a
11 fixed quantity? How does that work?

12 MR. LAWSON: It could be both. It's more term
13 than it is quantity. It's normally one or two years.

14 COMMISSIONER WILLIAMSON: Okay. How long does
15 this usually take, this process? One day? Or do they go
16 through a week?

17 MR. LAWSON: Well, we've seen a couple. There's
18 a couple that we've seen that were two hours and we've some
19 that goes as long as -- not completing in a day and then
20 continuing the next day.

21 COMMISSIONER WILLIAMSON: Okay. Thanks. That's
22 very helpful, because I can see how that can really drive
23 down prices.

24 MR. DANIELS: If I may.

25 COMMISSIONER WILLIAMSON: Sure.

1 MR. DANIELS: This is Mark Daniels, Mr.
2 Williamson. Also, in these auctions, you get that contract,
3 you know, for a specific time period, but not in quantity.
4 So there's -- and the contract stipulate terms. There might
5 be payment terms of 2%, 10 net 30 or net 30 days. It'll
6 also quantify resin escalation/de-escalation clause, and
7 that's one of the things these -- the orders have really
8 benefited -- we have gotten the ability to change the
9 marketplace to resin escalator/de-escalator, so when resin
10 goes up, our price goes up, when resin goes down, our price
11 goes down.

12 Prior to that, the importers would have six
13 months' price guarantee, twelve months' price guarantee,
14 which is -- it's playing Las Vegas odds, it's not good. And
15 the other thing is, all these contracts do have a meter
16 release, so the contracts -- the end-user can just say, you
17 know, we found a lower price. Thank you, the contract is no
18 longer valid. So it's kind of an unusual set of
19 circumstances that way.

20 COMMISSIONER WILLIAMSON: Wow. Okay. Thank
21 you. Mr. Daniels, I was struck by -- you talked about a
22 true environmental cost. There was a lot of talk about the
23 regulations and all, but I was just wondering, how does the
24 industry see it, if you're being environmentally
25 responsible, but --

1 MR. DANIELS: We educate government officials,
2 different city council members, at state levels, at local
3 level and certainly with -- through social media to the
4 consumers to the best of our ability -- of the facts of
5 plastic refill bags.

6 Number one, they're, you know, the vast majority
7 are manufactured in the United States, about 70%. That it
8 is a derivative of natural gas, so when you split natural
9 gas to make home heating fuel, that the effluent from that
10 material is now being manufactured and captured into
11 polyethylene products, that the reuse and recycling rate for
12 plastic refill bags is about 85%.

13 The biggest competition to recycling is the
14 reuse factor. So if you have a dog, if you have kitty
15 litter, if you want to line your trash cans and things like
16 that, litter rates are very low, you know, less than 1%. So
17 we -- and all of this is cited independent scientific
18 studies, so we try and pit clients against some of the
19 emotional imagery that is out there in the internet world,
20 and we're very successful doing that.

21 That's why we do know it's a stagnant
22 marketplace because of some environmental concerns if you
23 will, specifically on the west coast where is kind of the
24 center of these arguments. But we do a very good job
25 throughout the United States of educating consumers on the

1 environmental attributes, especially as compared to some of
2 the other -- I mean, a reusable bag at 2.25 mil, that's five
3 times thicker than the bags that I had shown earlier, so
4 source reduction, reuse, recycling, all of the things that
5 we grew up with, we are very aggressively trying to educate
6 folks of that.

7 Our company -- we've invested in two Greenfield
8 recycling facilities that we do fifty million pounds a year.
9 The industry itself does 1.17 billion pounds of recycling of
10 bags and wraps annually. That was as of 2014. So we're
11 proud of what we do.

12 COMMISSIONER WILLIAMSON: Okay. Does that have
13 the impact on the success of those efforts -- does that have
14 any impact on demand for your product?

15 MR. DANIELS: Well, I think everybody in the
16 industry in the United States is doing similar things,
17 putting recycling containers out with our retail partners.
18 I think it is beneficial to the environment and, you know,
19 when we can displace virgin resin with recycled resin, that
20 helps, but any manufacturer has the capabilities of doing
21 those things.

22 COMMISSIONER WILLIAMSON: Okay, thank you. Mr.
23 Bazbaz, you talked about a blended approach, where you might
24 mix imports with domestic product to get this more
25 competitive price. But I was wondering, wouldn't it always

1 be cheaper to go with the all-imports if they're cheaper?

2 MR. BAZBAZ: Yes, it is true. However, this was
3 going on with a U.S. producer that has operations also in
4 Thailand. So the reason why they did that is, you know,
5 just to lower the price of the offering in the United States
6 because we doubt the bags entirely wouldn't be able to do
7 that.

8 So the point is that, to the customer, you know,
9 he sees no difference between the Thai bags and the bags
10 made in the United States. It's completely the same,
11 interchangeable, and that was basically the point.

12 COMMISSIONER WILLIAMSON: Okay.

13 MR. BAZBAZ: So would it be -- is that enough
14 competition, let's say, as -- would it be against an
15 importer like Bee Lian, probably not, because Bee Lian would
16 have a lower price than the blended price. But this is
17 somehow, you know, a manner that they've been doing
18 business.

19 COMMISSIONER WILLIAMSON: Okay, thank you. Mr.
20 Taylor?

21 MR. TAYLOR: I was just going to say,
22 Commissioner Williamson that sometimes, you know, there are
23 imports from domestic producers, you know, and particularly
24 before the orders, now you sometimes have to import --
25 manage your product offering so that you can compete on

1 price. And when you have the blended rate, that allowed
2 some people to do that.

3 But the only reason they're able, as Mr. Bazbaz
4 said, to offer these blended products is because there is no
5 differentiation of product, so it truly comes down to a
6 pricing game, because you can't tell the difference except
7 for the stampings, as to where it's made.

8 COMMISSIONER WILLIAMSON: Okay, thank you.
9 You've argued that there are 23 firms that produce PRCBs in
10 Malaysia. Respondents here represent about half that
11 number. I was wondering, do you have any further
12 information on the remaining firms? If you want to do that
13 posthearing, you can.

14 MR. JONES: Commissioner Williamson, this is
15 Steve Jones. We'll look for purposes of posthearing. I
16 think there were a few more producers who submitted
17 questionnaire responses in the previous Sunset review, and
18 in this Sunset review so we may be able to find out some
19 information on them, but I don't think we have anything we
20 can offer at the hearing today.

21 COMMISSIONER WILLIAMSON: That's fine. Good.
22 Thank you. Given the market share of the subject Malaysian
23 producers during the original investigation, were they
24 really the problem in this market?

25 MR. JONES: I'll start there. Steve Jones

1 again. The imports from Malaysia were clearly part of the
2 problem before. Of course we were disappointed that Bee
3 Lian was not found to be dumping. We did not agree with
4 that decision by the Department of Commerce. Nevertheless,
5 the Malaysian industry has substantial capacity then and
6 that capacity has grown.

7 And so we would regard the Malaysians as, I
8 think, even though we regarded them as a threat then, I
9 think the industry would regard them as even more of a
10 threat today.

11 COMMISSIONER WILLIAMSON: Okay. And --

12 MR. DANIELS: If I may -- this is Mark Daniels.
13 Right now, if I'm not mistaken, the Malaysians have about 8%
14 of the U.S. marketplace and with revocation of the orders
15 and in light of the testimony that was made earlier that
16 they have lost their beneficial areas in the EU, the EU's
17 demand declining because of taxes in Great Britain, in
18 Ireland, bans in Italy, differences in Spain, that market is
19 shrinking and they have a lot of incentive to come to the
20 United States where it's one of the better markets for them.

21 So with the revocation of orders, I think they
22 would go to a very competitive priced, even anti-, in
23 dumping into the United States because they have such
24 capacity and losing capacity in their other markets.

25 COMMISSIONER WILLIAMSON: Thank you for those

1 answers.

2 VICE CHAIRMAN PINKERT: Do you have a follow up,
3 Commissioner Johanson?

4 COMMISSIONER JOHANSON: No, I'm next in line.

5 VICE CHAIRMAN PINKERT: Okay.

6 COMMISSIONER JOHANSON: May I proceed?

7 VICE CHAIRMAN PINKERT: Please do.

8 COMMISSIONER JOHANSON: Thank you. I appreciate
9 it. I'd like to begin by thanking all of you for appearing
10 here today. When looking at the prehearing report at Page
11 134, I was surprised at the list of companies making this
12 product and how long that list is. What are the factors
13 that enable so many manufacturers to remain in business?

14 Is this related to the optimal scale of
15 production or the capital intensive nature of this business?
16 In short, there are a lot of domestic producers of these
17 products.

18 MR. JONES: Commissioner Johanson, Steve Jones.
19 I'll start and maybe our industry witnesses will have some
20 comment as well. I think certainly the imposition, the
21 orders had something to do with that. I'm not sure if the
22 number of producers today is the same as it was before. I
23 think it's probably comparable to the number back in the
24 early 2000s.

25 And there are -- it's a diverse industry. There

1 are producers like Novolex and Superbags who are here today
2 who operated at tremendous scale and provide PRCBs to
3 grocery stores in really high quantities, very high quantity
4 business.

5 And then there are some smaller producers that
6 focus on specialty products, don't have nearly the scale or
7 the capacity to compete for business at Home Depot or
8 Walmart, but nevertheless, provide a valuable service in a
9 local market to restaurants or other smaller specialty type
10 markets like that.

11 All of those products are within the scope of
12 the orders, so they receive protection from the orders and
13 some of those producers are members of our committee. And
14 now we're petitioners back in the first original
15 investigation.

16 So I would say that the reason why there are so
17 many still is because there are orders on the six countries
18 and the orders have been effective.

19 COMMISSIONER JOHANSON: I still remain a little
20 perplexed because not only in the U.S., but around the
21 world, there are so many producers of this product, in so
22 many different countries. I don't know how relevant that is
23 to our investigation, but it does strike me.

24 MR. TAYLOR: Commissioner Johanson, on that
25 point, which relevant too is the over, the capacity

1 worldwide, and I think you'll see the capacity numbers, some
2 of which are proprietary and some of which are public, in
3 the six countries in particular, there's significant
4 overcapacity.

5 And through the testimony you've heard, there's
6 also a, while the United States has environmental
7 regulations that are being implemented on a state-wide or a
8 county- or city- basis and other places like Europe, they're
9 being instituted country-wide or union-wide.

10 And so markets are shrinking in other places of
11 the world you have overcapacity, and the United States is
12 flat. Or slightly stagnant. As a result of that, the U.S.
13 market is the focus and everybody wants to come to the
14 United States.

15 I think that's the relevance of how many
16 producers are out there. It really goes to the
17 vulnerability and the likely injury that we'd be facing.

18 COMMISSIONER JOHANSON: All right. Thanks for
19 your responses, Mr. Jones and Mr. Taylor. And I'm going to
20 stick on that whole issue of capacity. Mr. Bazbaz, you're
21 in Houston, is that correct?

22 MR. BAZBAZ: Yes, sir.

23 COMMISSIONER JOHANSON: You know, I'm from
24 Austin. I was back there Christmas and you all just lost a
25 lot of customers there. Because bags have been banned in

1 the city of Austin. I was actually at my sister's house. I
2 had a pair of shoes I wanted to put in my suitcase and I
3 asked her for a, like, Safeway bag, and she said we don't
4 have any. And I was very surprised. They no longer exist.
5 I guess maybe there's some clandestine ones somewhere, but
6 my sister was not hoarding them.

7 But given that, in sticking with the issue of
8 capacity, I see that the domestic industry has actually
9 increased capacity somewhat over the period of review. And
10 this is a bit surprising, giving the demand forecast that
11 you all present in your pre-hearing brief. I will note that
12 according to Section 4 of our staff report, capacity
13 expansion seems to be the rule, rather than the exception
14 around the globe, which is once again surprising giving new
15 environmental regulations involving bags and ones which will
16 probably come into place in the near future.

17 I'd be happy to hear any observations from you
18 all, either now or during the posthearing about trends in
19 the U.S. and also in other countries regarding capacity.

20 MR. BAZBAZ: In regards to the amounts of
21 participants of manufacturing plants in the world of PRCBs,
22 that is also showing that it is truly a commodity and
23 anybody can come in and start making this bag. In regards
24 to our increasing capacity, we increased capacity after the
25 first set of orders from China, Thailand and Malaysia, but

1 then afterwards, our investment remained specifically to
2 improve productivity and increase our labor and amounts of
3 bags per hour work.

4 So we understand that the market is not growing,
5 but also I think we have been somewhat successful in making
6 sure that we can educate the people, the consumers about the
7 bags being the most environmental friendly product there is
8 now. So we don't see any further deterioration.

9 And on the other hand, for instance in Austin,
10 they allow the thicker bags to be sold or to be used as
11 reusable.

12 COMMISSIONER JOHANSON: I'm sorry. The which
13 bags?

14 MR. BAZBAZ: The thicker bags. So it is pretty
15 much the same bag, but instead of being half a mil thick,
16 it's like 2.25 mils thick. So it can be reused many, many
17 times. Of course, our bags are reusable, they're reusable
18 for other purposes, but these bags could be reused as a
19 reusable bag coming in from China, you know, of canvas or
20 polypropylene.

21 So these new regulations still permit certain
22 locations to use these type of bags and those bags replaced,
23 have replaced somewhat the other bag, lots of the other
24 bags.

25 MR. BAZBAZ: So the market has not been, you know,

1 a very fast declining market because of regulation.

2 MR. TAYLOR: And, Commissioner Johanson, just to
3 be clear, the thicker bags are still in scope PRCBs. So we
4 have the range of products, as well.

5 COMMISSIONER JOHANSON: Alright. I guess I
6 shouldn't have commented on the losses. I don't know much
7 about it. But I just know that bags are hard to come by.

8 MR. DANIELS: If I may, Mark Daniels, there's a
9 couple of things with your question regarding capacity
10 expansion. Novolex closed five plants prior to this Period
11 of Review. And then we were able to deploy some of those
12 assets underneath different routes. So you would see, you
13 know, the numbers of capacity increase, but in totality we
14 had a capacity decrease prior to the Period of Review.

15 I don't know if your daughter's going to like
16 this or not, but--

17 COMMISSIONER JOHANSON: It's my sister.

18 MR. DANIELS: Oh, your sister? Excuse me. In
19 Austin, it's actually against the law what they did. There
20 is preemption in the state. There's an appellate court case
21 going on right now in Laredo, Texas, that will probably
22 happen in the Fall determination. If that becomes positive,
23 it's -- Boston was not allowed by state law to ban plastic
24 bags. So we're kind of hopeful that that will be reversed.

25 COMMISSIONER JOHANSON: This is all kind of funny

1 to me. A very good friend of mine, a guy I went to school
2 from 1st grade to high school with, 1st through 12, was on
3 the City Council. So he's left of center, I guess you could
4 say. I assume he voted for it. We never talked about it.

5 But, anyway, I had no idea I would be here today--
6 -actually, he lost his seat--

7 (Laughter.)

8 MR. DANIELS: Because he banned bags.

9 (Laughter.)

10 COMMISSIONER JOHANSON: No, it's a whole other
11 thing -- yeah, well, I won't get into it.

12 MR. SNEAD: Joshua Snead. Could I just add one
13 thing to the capacity question?

14 COMMISSIONER JOHANSON: Yes.

15 MR. SNEAD: Following what Mr. Daniels was saying
16 about Novolex sort of rationalizing their capacity, moving
17 some around, I think it's important to look at the trends,
18 too, during the Period of Review. The domestic industry
19 increased its capacity utilization at the same time it did
20 add a small amount of capacity during the POR. And that
21 does kind of show that it's following market conditions
22 during this period.

23 COMMISSIONER JOHANSON: Okay. But still there is
24 a secondary decline in the use of bags, right?

25 MR. SNEAD: Yes. Long term, we characterize it as

1 flat to declining, and it is--yeah, long term the trend is a
2 decline. But in the United States, what we have seen is
3 it's relatively flat. And so as you have market share
4 change the domestic industry--market share has fluctuated
5 somewhat. So they can justify a slightly different amount
6 of capacity at different periods over time, but, yeah, long
7 term certainly the industry sees it as declining and
8 challenging.

9 And we would say we are not seeing significant--
10 we're not seeing new facilities. We're not seeing
11 significant additions of new capacity. But at times there
12 are some efficiencies they've gained in capacity.

13 COMMISSIONER JOHANSON: Alright, my time is
14 expired. I guess I have to say, my friend who lost his seat
15 on the City Council, they went from at-large seats to
16 districts, and so he basically got districted out. So,
17 anyway, just to make the record clear in case he ever reads
18 it.

19 (Laughter.)

20 COMMISSIONER JOHANSON: So thank you for your
21 responses.

22 VICE CHAIRMAN PINKERT: Okay. Commissioner Kieff?

23 COMMISSIONER KIEFF: Well I am just so tempted to
24 use this opportunity for follow up to ask so many more
25 questions about David's friend--

1 (Laughter.)

2 COMMISSIONER KIEFF: -- and I wish him well, and
3 his competitors well, and everybody well. But I'll try
4 instead to move forward, unless someone wishes to follow up--
5 -

6 VICE CHAIRMAN PINKERT: We could get into the
7 whole history of single-member districts in Austin, which
8 involved a lot of litigation, but I think we can pass on
9 that, as well.

10 (Laughter.)

11 COMMISSIONER KIEFF: So I join my colleagues in
12 thanking all of the counsel and witnesses on both sides for
13 coming and traveling and preparing, and then of course
14 following up.

15 And so I wanted to ask some questions that I
16 recognize really are most likely better answered in the
17 post-hearing, and this really is for both sides:

18 But in the prior proceeding, Commissioner Pearson
19 had written essentially a dissent, and I wanted to ask both
20 sides to take the opportunity to go through Commissioner
21 Pearson's dissent and discuss with us, in your post-hearing
22 submission:

23 Is there anything factually about it that you
24 think is either wrong or has changed?

25 And is there anything to its analysis, or its

1 legal reasoning that you think is either compelling or
2 incorrect? And, please explain.

3 Again, I recognize that mining prior proceedings'
4 dissenting opinions is not necessarily one does before
5 coming to a hearing, so this is not designed to spring upon
6 you a pop question. It's just to give you the opportunity
7 later to go through and make your best case in contrast to
8 that. It's a fairly brief dissent, as well.

9 MR. JONES: Steve Jones, Commissioner Kieff. We
10 would be happy to do that in the post-hearing brief.

11 COMMISSIONER KIEFF: That's great.

12 Can I ask any of the industry witnesses, we
13 always love samples. It gives us a chance--maybe it's my
14 background at a technical school, but the touch and the feel
15 is so real. So I just wanted to ask, if you could, how does
16 one distinguish between domestic and import through
17 observation? Or is it through the happenstance that you
18 know certain brands have certain deals with certain
19 suppliers? And so by looking at the markings on the bag you
20 can tell who's who?

21 MR. DANIELS: Mark Daniels. Commissioner, all of
22 our bags are manufactured with a Hilex Poly logo, a date
23 code, and a line number so that we have a quality control.
24 And that is pretty much the standard for all domestic
25 manufacturers.

1 Importers of products, some like Spectrum will
2 have--they have a flower design that they put on their bags.
3 Other ones, quite honestly, you don't have to put a marking
4 on a bag. What you saw on the Home Depot bag, there were no
5 markings of made in wherever, China, what have you. That
6 marking would be on the corrugated carton that the
7 containers come in, and that's the only identification that
8 we would see.

9 COMMISSIONER KIEFF: So a blind touch and feel
10 test wouldn't yield any particular--

11 MR. DANIELS: No. Not at all. Like products.

12 COMMISSIONER KIEFF: Makes perfect sense.

13 MR. JONES: Commissioner Kieff, Steve Jones. I
14 think one of the samples that we handed up to you actually
15 does say "Made in Thailand" on it. So Mr. Daniels may be
16 correct that oftentimes the bag itself will not be marked
17 with the country of origin, but sometimes it will be.

18 COMMISSIONER KIEFF: I totally get it. I was just
19 really getting at, you've already answered it, getting at in
20 a sense the like-product question. And it sounds like they
21 are so alike that, absent a label, once would have a hard
22 time distinguishing.

23 I avoided the opportunity to use our brief
24 follow-up technique to Mr. Daniels' discussion with
25 Commissioner Williamson because I recognize that this would

1 not be a brief follow up. But I would like to follow up
2 with you, Mr. Daniels.

3 Can you kind of in a nutshell lay out the way in
4 which environmentalism--right? Your job title is not "I'm
5 the salesperson, or I'm the manager, or I'm the engineer,"
6 you're the environmental guy, or the environmental
7 regulatory guy.

8 Can you help lay out the ways in which those
9 environmental regulatory concerns are impacting the types of
10 products in the industry, with a particular focus on whether
11 that is changing in any way, or likely to change in any way,
12 what you and your peer, peers in the domestic industry, will
13 be doing, and what importers will be doing?

14 In other words, it may be that that's just all
15 too complicated and we would never be able to get to some
16 concrete, predictive answer on what the markets will look
17 like say three to five years from now, but--or even two to
18 three years from now--but I'm asking because we're all aware
19 that there are shifts being discussed. But what we, or what
20 I at least have very little traction on is whether those
21 discussions of shifts are actually happening in the real
22 world.

23 You know, are people likely going to buy less
24 brand-new polyethylene product, and drastically more
25 recycled product? Or are they going to be buying more

1 polyvinyl alcohol potato starch, corn starch, biodegradable
2 plastics, et cetera, et cetera?

3 MR. DANIELS: This is Mark Daniels. That's a very
4 difficult question, and it's very difficult to track. We
5 do, as any business does, look at metrics. Here in
6 Washington, D.C., there's a nickel tax on polyethylene
7 retail carryout bags. But the statistics show from
8 government reporting that every year plastic bag re-usage
9 has increased. That is, everybody is paying their nickel
10 and every single year since 2010 to present bag usage has
11 gone up.

12 So, you know, what does that mean? Is that just
13 you become acclimated to the tax and you like your plastic
14 bag and you're willing to pay a nickel because you have a
15 dog, or something, and it's good?

16 In California, for instance, there's been several
17 studies that there's a tremendous displacement of commerce.
18 Or in Austin, Texas, your sister might not like the fact
19 that she can't get a plastic bag, so she'll go shop in
20 Georgetown.

21 So there's people that are shopping--you know, if
22 you're within a mile of an area where, you know, a Ralph
23 Store has a ban and a Walmart does not, you change your
24 shopping habits to go to Walmart because, for whatever
25 personal reason, you don't like government over-reach, you

1 like your plastic bags, conversely people now are using
2 nonpolypropylene bags, and they do re-use them. And that's
3 a customer choice.

4 But they're coming into the United States at
5 about 500 million every year. There's enough reusable bags
6 in the United States in just the last few years for 25 bags
7 per family. So how many of those bags are really being
8 reused? Or are they just being used once because of
9 you-are-required, and you wanted to buy a bag and then use
10 it one or two times and then dispose of it?

11 So it's very difficult. All we can do from a
12 manufacturing perspective is see how many pounds did we make
13 in 2013, '14, '15? What are our sales forecast looking
14 like? What is our sales and operating plan to get our
15 forecasting? Things like that.

16 That's why we're kind of anticipating a flat to
17 slightly declining marketplace. We don't know what's going
18 to happen with the vote in California. We know if that
19 happens a third of California is under regulation. You
20 know, what happens if another two-thirds go into regulation?

21 COMMISSIONER KIEFF: Well and again I recognize
22 this is a very, very open-ended question. And so I just
23 want to make sure to give really both sides the opportunity,
24 and especially in the post-hearing, if you have actual data,
25 or evidence, or you can cite to other studies that will tell

1 us something about how we should make evidence-based
2 predictions about what's happening in the market, and why
3 that either increases or decreases the case for maintaining
4 the Order, by all means please submit it.

5 If you think that's all, you know, ultimately
6 interesting but not outcome-determinative to this process,
7 please say so, as well. Because it may be the case that all
8 of the uncertainty around all of those things turns out to
9 just be a net wash on the legal question we're asked to
10 decide.

11 So I'm very aware that this is actually a
12 complicated question, and I'm also aware it might not be
13 outcome-determinative. So please in the post-hearing when
14 you have time, let us know whether you want us to focus on
15 that or not. And then if so, why, and how?

16 MR. TAYLOR: We'll be pleased to do so,
17 Commissioner Kieff -- and this is Michael Taylor.

18 Also, Commissioner Kieff, one of the things you
19 mentioned, and one of the industry experts can talk about
20 this, that the recycle product and biodegradable nature,
21 PRCBs that are made with recyclable product and that do have
22 biodegradable characteristics are still in scope, as well.

23 And maybe one of you can talk about some of the
24 shifts that are happening--

25 COMMISSIONER KIEFF: Well I recognize my time is

1 up, so I don't want to--we can follow that up next round, or
2 I leave it to others, but at least I'll just say that my
3 time is up and I'll leave it to others to decide where to
4 go.

5 VICE CHAIRMAN PINKERT: With no follow up, we'll
6 then turn to Commissioner Schmidtlein.

7 COMMISSIONER SCHMIDTLEIN: Alright, thank you.

8 Good morning. I'm sorry that I missed the
9 testimony this morning, but I'm glancing through it. It's
10 very handy when the witnesses provide it in writing, as
11 well.

12 So I don't know if this is the--this question is
13 really for you, Mr. Jones. The industry witnesses may be
14 able to add something, as well. But I wondered if you could
15 respond--and maybe you spoke this morning and I apologize if
16 you already have covered this--but could you respond to the
17 Malaysian's argument that their focus has really shifted to
18 other markets?

19 And when you look at their imports to the EU and
20 Asia, you see them increasing over the period of review--
21 notwithstanding the fact that they lost their GSP preference
22 in the EU, and notwithstanding the fact that other Orders on
23 third countries in the EU were sunsetted?

24 So when you look at that, and you look at the
25 small market share that they had in the original

1 investigation, and the fact that they are not currently in
2 the market as subject imports, does all of that add up to a
3 basis to say there would be no discernable adverse impact if
4 we revoke the Order on Malaysia?

5 MR. JONES: Steve Jones. Thank you, Commissioner
6 Schmidtlein. I'd be happy to start out. I'm sure some
7 others will have some comment.

8 In preparing for the hearing I read the
9 transcript from the last time around, and it's remarkable to
10 me how similar, if not identical, the arguments are that the
11 Malaysian industry is making this time to the arguments it
12 made last time.

13 It really is striking that they are virtually the
14 same arguments, and they really haven't shown, in our view,
15 how the facts have changed. Or how the law has changed. Or
16 how the Commission's practice has changed. Or how anything
17 has changed that should compel the Commission to reach a
18 different conclusion this time around than it did last time.

19 We think, looking at the record, that the--
20 notwithstanding the Malaysian's argument--that the record
21 demonstrates a high ability and a strong motivation on the
22 part of the Malaysians to increase their exports to the
23 United States.

24 The record reflects that they themselves have
25 said that. And it also reflects that the European market is

1 becoming less attractive relative to the U.S. market, and
2 will be less attractive within the reasonably foreseeable
3 future.

4 In addition to the loss of GSP--well, the loss of
5 GSP is part of it, but the normal tariff rate in the EU is
6 6.5 percent. It's 3 percent in the U.S. So there's already
7 a tariff difference. But if the TPP agreement is ultimately
8 approved in the United States, the tariff rate on imports
9 from Malaysia will go to zero and there will be a 6.5 versus
10 0 difference in normal tariff treatment for polyethylene
11 bags from Malaysia.

12 So in addition to all of the other evidence,
13 that's something I think to keep in mind. Again, none of us
14 knows that's going to happen with TPP. It's going to be
15 interesting to see this year. But if that agreement were--
16 did enter into force, that's what would happen.

17 So there's we think overwhelming evidence in the
18 record showing the Malaysian ability and desire to export
19 bags to the United States. And as I believe I responded in
20 response to Commissioner Williamson, we think they are even
21 more of a threat today than they were at the time of the
22 original investigation.

23 COMMISSIONER SCHMIDTLEIN; So you all believe that
24 they would come back in the market at a larger number than
25 in the original investigation?

1 MR. JONES: Again, Steve Jones. I'll be happy to
2 defer to the industry witnesses on that for what they
3 believe, but again just echoing what Mr. Snead said in our
4 prepared testimony,. One of the Malaysian producers
5 requested administrative review in August of this year, and
6 clearly is interested in exporting to the United States.

7 They can't do it right now based on the high cash
8 deposit rate they have under the Order, but they're looking
9 to get a lower rate, or eliminate their rate and resume
10 exports to the United States.

11 So we think the interest and motivation is very
12 clear.

13 MR. BAZBAZ: My name is Isaac Bazbaz. The
14 motivation exists in Malaysia, as from any other of the
15 subject countries, to stay out of the Order, and still look
16 at the United States as the most attractive market in the
17 world.

18 Because even though the demand is flat, I'm
19 actually quite surprised that it is flat. Because in 2008
20 we were a lot more pessimistic looking at the environmental
21 efforts to ban the bags. You know, we were just coming out
22 of, in 2007, of San Francisco banning plastic bags. And we
23 were very aggressive in making sure that we kept our
24 industry alive and in better condition.

25 So in relative conditions in the United States

1 versus the rest of the world, this is the best country there
2 is for exports.

3 COMMISSIONER SCHMIDTLEIN: Well do you think they
4 would have to give up their customers in these other
5 countries in the EU and Asia? Are you saying they would
6 divert from those countries to here?

7 And I guess my question is: I noticed in part of
8 someone's testimony here as I was glancing through there was
9 a statement about once you lose a customer, you know, that
10 supplier becomes an incumbent. And so if they are the
11 incumbent supplier in the EU and Asia, you know, and their
12 sales are going up in those countries, why would they give
13 those up? What could we base that on to say that they would
14 give those up to come here?

15 MR. BAZBAZ: You know, I don't believe that the
16 demand in other countries is going up. There is still a
17 tremendous excess capacity in all these countries. And on
18 the other fact, if it becomes incumbent, he became the
19 incumbent just for the price, and he can take it--you know,
20 we can take it out with price.

21 So, you know, really there is no relationship
22 anymore. You know, more than 75 percent of the sales are
23 events in the internet. That makes this available to
24 everyone. And everyone can participate. And I'm going to
25 even argue that the balance of the 25 percent is not--that

1 business is not done based on relationships with friends.
2 They are simply asking you to submit your proposal in an
3 Excel file, and they'll tell you a week or two after you got
4 the business or you didn't.

5 So I don't see, you know, any condition that
6 changed from the last investigation to now. Although,
7 again, there was surprise that, you know, it's not worse.

8 COMMISSIONER SCHMIDTLEIN: Mr. Taylor?

9 MR. TAYLOR: Yes, Commissioner Schmidtlein, just a
10 couple of points as well.

11 The capacity is expanding actually in Malaysia as
12 well. And the public record shows that there were five
13 Malaysian producers that reported capacity expansions during
14 the Period of Review.

15 And what's happening in Europe, as well, and the
16 arguments that are being made, this review again is very
17 similar to what they argued five years ago, but the trend
18 data as was testified to by Mr. Snead, is actually--the
19 trend analysis that was relied on by the Malaysians is
20 actually based on some incorrect 2009 data. And there are
21 some confidential exhibits which we provided to you. In the
22 first exhibit you will see that, if you look at the 2009
23 data from the last sunset review, which is more wholesome
24 data, or the 2010 data from this review, you can see the
25 trends for exports to the EU. And you can also see the

1 capacity utilization.

2 COMMISSIONER SCHMIDTLEIN: Which one was that?
3 Which exhibit are you looking at?

4 MR. TAYLOR: It's confidential Exhibit One.

5 COMMISSIONER SCHMIDTLEIN: Oh, it's one. Okay.
6 Yeah.

7 MR. TAYLOR: So I think one of the unstated
8 aspects of your question was that the trends that were being
9 relied on by the Malaysians were based on some data which,
10 actually if you look beyond, there's other data, raises
11 questions about that. And we have quotations at the bottom
12 of that exhibit that explain that, without getting into
13 proprietary information, at least one of the significant
14 producers didn't provide data.

15 Exhibit Two is a summary of the statements from
16 the Malaysian exporters and producers about their intent.

17 And in Exhibit Three, which is also telling, and
18 you can see from what it is, and we won't explain on the
19 public record what that is, but there's some highlighted
20 statements that demonstrate the motivation and activity of
21 the Malaysian industry, as well, and the focus on the United
22 States market and why that is the case.

23 So I think all of this together shows that,
24 although our clients haven't seen this, their instinct about
25 the concerns about Malaysia have a strong basis, and then

1 what they're seeing with EU on and excluded producer
2 continuing to focus on the United States, and also a
3 shipper, the Malaysian SAE who is coming--I'm sorry, excuse
4 me, EuroPackaging, or EuroSAE, they've requested a new
5 administrative review recently. And so they're challenging
6 the cash deposit rate to try to access the United States
7 market once again.

8 COMMISSIONER SCHMIDTLEIN: Okay. My time is up.
9 I just wanted to take an opportunity to put a plug in for
10 not-so-thin bags. The bags have gotten so thin. I don't
11 mind paying the 5 cents for the bags, but now I can't reuse
12 them. So I have to use the other ones.

13 MR. DANIELS: If I may--this is Mark Daniels--you
14 have to ask Safeway to increase their gauge for the bag. We
15 make it to the specification of the customer, not the other
16 way around.

17 COMMISSIONER SCHMIDTLEIN: I'm going to do that.

18 COMMISSIONER KIEFF: Can I just ask a follow up
19 on that?

20 MR. DANIELS: Please do.

21 COMMISSIONER KIEFF: And recognizing that
22 probably we should not have a long discussion of it, but
23 I'll just ask it, recognizing that it may be easy to answer
24 for both sides in follow up in the post-hearing. But can
25 you provide, to the extent you have it, information about

1 whether your understanding of the, let's call it the five
2 cent effect, is to shift demand or to raise revenue for the
3 governmental organizations who make the choice to enact it.

4 MR. DANIELS: I think it would probably be best
5 to do that post-hearing brief. It's a bit of a complicated
6 question and there's probably some politics involved.

7 COMMISSIONER KIEFF: I'm not -- I'm just --
8 there's also an immense amount of data, so if you've got the
9 data, we would love to see it.

10 MR. DANIELS: We can provide something.

11 VICE CHAIRMAN PINKERT: All right. There've
12 been some references this morning to nonsubject imports in
13 the U.S. market, and I want to ask you if they have a niche,
14 if they have a role that you can articulate in the U.S.
15 market at this point?

16 MR. JONES: Steve Jones, Vice Chairman Pinkert.
17 Just to clarify, are you referring specifically to imports
18 from the companies that were excluded from the original
19 investigation? Or all subject imports generally?

20 VICE CHAIRMAN PINKERT: Just generally.

21 MR. BAZBAZ: Well, I don't believe any of the
22 imports have any special markets or any special attributes
23 that will enable them to have a reason to be here other than
24 just competing on the base of price. Is that an answer to
25 your question?

1 VICE CHAIRMAN PINKERT: Sure. I think one of
2 the things that I'm interested in hearing about is the ease
3 with which production can shift from country to country in
4 response to actions of the U.S. government. In other words,
5 if an order goes on Country A, does production shift to
6 Country B, and if so, how do you get in front of that as an
7 industry?

8 MR. DANIELS: This is Mark Daniels. If I may
9 answer that. We did see that happen with the original
10 orders and then a transfer of manufacturing into the second
11 set of order countries, but after that, I think when the
12 international community knew that the plastic retail bag
13 commission that has requested this with the Department of
14 Commerce and the International Trade Commission, it's put a
15 big halt for a transfer of additional equipment into other,
16 you know, the Philippines or Cambodia or India.

17 Those places we still compete, but we've found
18 that we can compete on a fairly traded basis. I think that
19 the actions that this committee has taken and you know, our
20 group, if you will, has really influenced other countries
21 not to try and penetrate this market at less than fair
22 value.

23 MR. TAYLOR: And Vice Chairman Pinkert, this is
24 Mike Taylor. Just to be clear. They are watching import
25 statistics, but we're not coming before you today, like the

1 last Sunset review where it was a situation of a
2 Whack-A-Mole, where it popped up somewhere else.

3 You know, India, there have been some import
4 increases and we're looking at the data, but nothing like
5 what we've had before. And if things become injurious and
6 if they're unfairly priced, then obviously that's something
7 that the committee and the industry could look at, but right
8 now, you know, the orders themselves, I think partly because
9 of what Mr. Daniels said, people are aware that the
10 industry's watching us, and as an active industry and making
11 sure that unfairly priced products will be responded to.

12 VICE CHAIRMAN PINKERT: But as an economic
13 matter, is it the case that it's not so hard to establish
14 new production in a new country if that's deemed to be
15 advantageous by folks in that country?

16 MR. BAZBAZ: If I may, this is Isaac Bazbaz. I
17 mean we are clearly not afraid of competing against anybody
18 in the world. It's just that it's impossible to compete
19 with people that they are subsidized or dumping. So I think
20 that we have very efficient facilities that will allow us to
21 do so in the United States. I think I'm speaking for all
22 the producers here.

23 MR. DANIELS: I would also add -- this is Mark
24 Daniels again -- that, you know, we have the capability as
25 well to invest in a foreign country and bring products in.

1 There are domestic manufacturers that have done that.

2 VICE CHAIRMAN PINKERT: And either now or in the
3 post-hearing, can you give me some idea of whether that is
4 advantageous for a U.S. company? Is it more advantageous to
5 produce here or to outsource, if you will?

6 MR. DANIELS: This is Mark Daniels. We find it
7 as our company, it's more advantageous to manufacture here
8 in the United States. It shortens lead times. You can
9 rotate your inventories more rapidly. Your cash management
10 is very clear. Very clearly in this industry of importance.
11 You know, we have to manage our inventories. We don't want
12 to manufacture bags in January that we're going to sell in
13 April or May.

14 Our equipment is extraordinarily state of the
15 art. We can manufacture extrusion at high rates. Our
16 conversion rates are extraordinarily high. Our packaging
17 rates are automated, so on a fair market, we can sell
18 anywhere in the world and be competitive. And that's what
19 we're very happy about.

20 And we would continue to invest in the U.S.
21 market, as opposed to going overseas, where you have still
22 fluctuation in resin, you still have now -- but you have
23 much longer lead time. You got to get ship's containers in,
24 you have to have warehousing and things like that. So, from
25 our perspective, and we have looked at investing overseas,

1 but we have chosen to remain here in the United States.

2 MR. TAYLOR: Commissioner Pinkert, I think -- at
3 the start of your question, you asked is there a high bar to
4 somebody investing. You have obviously the plant expenses,
5 but Mr. Bazbaz, as he testified earlier, that it's a
6 commodity product and the technology is not such that
7 anybody could not be able to -- if they had to capital
8 invest, they could put up a plant and start making PRCBs,
9 which helps explain the large capacity throughout the world.

10 VICE CHAIRMAN PINKERT: Thank you. Now if you
11 look at the trend in pricing, from 2009 to 2014, it looks
12 like there's a general increase over that period. Did this
13 trend change in 2015? And is 2015 an adequate predictor of
14 what's going to happen going forward?

15 MR. DANIELS: Mark Daniels again. Pricing --
16 the vast majority of price changes always is dependent upon
17 the price of raw materials, about 70% or more of the price
18 of a polyethylene retail carrier bag is resin.

19 So in the period of review, you know, you'll see
20 a --- I don't know if it's in the record -- but you'll see a
21 volatile resin and it went increased to, I think in CDI it
22 almost hit eighty cents a pound. So you'll see a trend of
23 increased revenue, of increased sales prices and things like
24 that, but that's based on our ability to change on a monthly
25 basis what happens with the price of resin.

1 If resin goes up a nickel, we take that nickel,
2 multiple it by the case weight and apply that to the new
3 price for that month. And we continuously do that in an
4 escalating or de-escalating market.

5 Because of what's happened in the world market
6 with energy prices, natural gas in the United States, oil
7 prices in 2015, there's been a significant decline in the
8 price of resin. Therefore, a significant decline in the
9 price of our products. Our gross margins are going to stay
10 the same, but you're gonna always see fluctuations in the
11 revenue line with regards to plastic retail carrier bags.

12 MR. BAZBAZ: This is Isaac Bazbaz. Basically
13 the big difference before 2003 and 2004 orders, now we are
14 able to increase or decrease our prices according to the
15 variation raw materials. We were not able to do that before
16 the imposition of the orders on China, Thailand and
17 Malaysia.

18 This ability, if you will, it gives us the
19 margin to convert from raw material into the plastic bags.
20 So if you see the prices in 2015 lower than '14, that just
21 means that the raw material base went down, but the margin
22 in absolute numbers stayed the same.

23 So the -- I think that you should consider --
24 you know, it's not for me to say what you should consider,
25 but I think you should focus on the number of bags rather

1 than the price.

2 VICE CHAIRMAN PINKERT: Thank you. And
3 following up on some of the questions from the other
4 commissioners, do you think that demand in this market is
5 moving toward those thicker gauge bags, that perhaps can
6 avoid some of the criticism that has been leveled against
7 the thinner bags?

8 MR. DANIELS: This is Mark Daniels. The
9 domestic marketplace has the capacity to manufacture 2.25
10 mil relatively. There's some adjustments that have to be
11 made in the extrusion and converting departments; however,
12 from our perspective and what our sales are showing that
13 it's less than a half of 1% switch from lighter gauge to
14 thicker gauge retail bags. So we're not seeing any
15 particular movement downward on the lighter weight gauge or
16 particularly upward on the heavier gauge bag.

17 MR. BAZBAZ: This is Isaac Bazbaz. Those
18 heavier bags are really in competition with the reusable
19 bags that are now being imported. So they're not being
20 imported in high quantities, but this is a substitution. So
21 we can make those bags and we are actually making those bags
22 for certain markets right now.

23 And the more, the thicker the bags are, also it
24 allows us to have more recycled product inside. It is
25 important to note that the -- we have always pushed for

1 recyclability and the industry has been able to set up an
2 infrastructure of recycling bins throughout the, all the
3 grocery stores and retailers.

4 And that has enabled a lot of consumers to bring
5 the bags back to the store, not just the grocery bags, but
6 laundry bags, newspaper bags, all sort of polyethylene
7 films. And the stores bring them back to the back of the
8 store and from the back of the store they also put in there
9 the shrink-wrap that they receive from other shipments and
10 these go back to the distribution center where we can pick
11 up those bails of polyethylene and get them back to our
12 place, grind them, wash them and make pellets again, use
13 them again to make plastic bags. So the thicker bags, there
14 is more ability to reuse and also to have more recycled
15 product inside.

16 VICE CHAIRMAN PINKERT: Thank you very much.

17 MR. BAZBAZ: You're welcome.

18 VICE CHAIRMAN PINKERT: All right, Commissioner
19 Williamson.

20 COMMISSIONER WILLIAMSON: This is a follow up to
21 that. Does that mean that we're not gonna have paper, cans
22 and metals and then the recycled polyethylene containers out
23 there?

24 MR. BAZBAZ: Well, in the recycling bins, they
25 are specifically for plastic, for polyethylene, and so for

1 certain people still put cans in there or some other things,
2 but we go through a process of washing and drying and
3 separating all the contaminants and end up with only
4 polyethylene that can be used again to make plastic bags.

5 COMMISSIONER WILLIAMSON: Okay. Thank you, I
6 was curious about that -- before, but if the order in
7 Malaysia is revoked, and Malaysian subject import market
8 share increases to that in the original investigation, would
9 that be injurious? I think before you talked about
10 expecting them -- some of the witnesses talked about
11 expecting the Malaysian imports to actually seize more
12 market share. What if they don't?

13 MR. JONES: Steve Jones, Commissioner
14 Williamson. I think we'd like to address that question in
15 our post-hearing brief. You know, my initial reaction to
16 this is yes, we think it would be, but I think it deserves a
17 more fulsome analysis and we'd be happy to give you that in
18 our post-hearing brief.

19 COMMISSIONER WILLIAMSON: Okay, thank you.
20 We've talked a lot about what does the loss of GSP status,
21 the environmental regulation in Europe say about Malaysia's
22 exports to the EU, what's going to happen, and since there's
23 still substantial --

24 I was just wondering if there were any
25 additional points you wanted to make on that, either now or

1 post-hearing? About why we should take this as meaning they
2 want to come to the U.S.?

3 MR. DANIELS: Yeah, I believe, Commissioner,
4 this is Mark Daniels, that we can do that in post-hearing.
5 You know, we do know that what Mr. Taylor testified to
6 before with the EU having a specific regulation to decrease
7 plastic bags by a certain timeframe, 2019, and by 2025.

8 But we also know that right now in Wales, in
9 Switzerland, in Scotland, in England, there's taxes, there's
10 fees in China, there's bans in France and Italy. These are
11 all the marketplaces that the Malaysian producers say that
12 that is what their strong suit is.

13 They've lost their preferential treatment, if
14 you will, in those areas. So I think it's more immediate
15 right now and we'll have to see from other areas, what kind
16 of statistics that we can get. I don't have them at my
17 fingertips, but it's certainly happening right now. And we
18 know it's going to be happening in the future.

19 COMMISSIONER WILLIAMSON: Okay. Thank you.

20 MR. SNEAD: Joshua Snead, on that as well. We
21 just emphasize, for us, those factors help explain the data
22 we're seeing. We wouldn't lead with -- none of us claim,
23 the industry witnesses or the council claim to be experts on
24 demand for PRCBs in the EU market, but we see the trends,
25 and we start with the data on the record, whether the

1 European market is becoming more or less important to
2 Malaysian producers over time.

3 And again, I just point you to Table 4-12 of the
4 prehearing report, just to see both as a portion of their
5 total shipment and total volume of when the European market
6 peaked, whether at the end of the period of review or
7 earlier in time. But also we find it pretty compelling
8 looking at the Malaysian industry's own perspective, and
9 that's our confidential Exhibits 2 and 3 --

10 COMMISSIONER WILLIAMSON: Yes, I saw that.

11 MR. SNEAD: -- we think their interpretation of
12 what's happening in the European market and how it will
13 affect their future operations is the most compelling aspect
14 to look at there.

15 COMMISSIONER WILLIAMSON: Yeah, okay. Any data
16 to support that view, that that's they have a realistic
17 assessment. Okay, thank you. You argue in your brief on
18 Page 18, footnote 92, that for price comparisons that show
19 high margins of overselling by imports, we should
20 investigate whether the comparisons are apple to apple. And
21 I was wondering if you have any particular data in mind?
22 And you can either do it now or post-hearing.

23 MR. JONES: Steve Jones. Commissioner
24 Williamson, I'm not looking at the data, but my recollection
25 is that there were some comparisons with China in particular

1 that were -- that seemed to us completely unreliable. And
2 when we tried to dig into that and find out what was going
3 on, we learned that the respondent there was basing the
4 reported pricing on estimates. And it just looked to us to
5 be --

6 COMMISSIONER WILLIAMSON: Okay.

7 MR. JONES: -- not accurate at all. And the
8 product that they were pricing was not specified. So it's
9 what -- for a product that really is a commodity like
10 product and for the specific pricing product where we saw
11 those really bizarre comparisons, those are really commodity
12 like products, and if they were truly reporting accurately,
13 we would not expect to see differences of that magnitude.

14 So that's where we were coming from on that and
15 Mr. Taylor, Mr. Snead might have an additional point to
16 make.

17 COMMISSIONER WILLIAMSON: Okay. All right.

18 MR. TAYLOR: Commissioner Williamson, we'd
19 probably, because of the way things were bracketed in the
20 questions and responses, we probably ought to provide a more
21 fulsome response in our written summary, but we agree. I
22 agree with Mr. Jones that the ranges, when you look at them
23 on the face or covering, we look behind that, we have some
24 explanations which seem to make sense.

25 COMMISSIONER WILLIAMSON: Okay. Good, yeah.

1 And particularly what should we make of that, I mean, how
2 should that affect our decision, I was just curious.

3 MR. TAYLOR: I would say this, Commissioner
4 Williamson. You know, the data themselves, the volumes were
5 proprietary, but you would expect in a second review, at
6 least in one of the instances with China, you would expect
7 that the order would have affected pricing practices, and
8 so, as we testified earlier, I think one of the more
9 reliable points on underselling/overselling is probably
10 looking at the pre-order activities.

11 We still see underselling in this review based
12 on the data, but the data themselves draw on the exact
13 number of correlations that the Commission did. It's a
14 small subset to begin with and so we were -- we had a hard
15 time drawing too much from that data ourselves.

16 COMMISSIONER WILLIAMSON: Okay, all right.
17 Thank you. You talked about significant condition
18 restrictions on PRCBs in California and of course, we've
19 talked about Austin, Texas, today. And also you've talked
20 about what's happening in Europe, and I think there was one
21 mentioned of China. Are there any other areas where you see
22 significant environmental restrictions, that we should take
23 into account?

24 MR. DANIELS: This is Mark Daniels again,
25 Commissioner Williamson. We focus on the domestic

1 marketplace and really focus on what happens in California,
2 what happens in Austin, Texas, and things like that. You
3 know, we don't do a deep dive into other areas other than
4 what we read in the periodicals, what we read in the
5 plastics news internationally and things like that.

6 So besides the areas that what we've spoken to
7 before, you know, we'll read an article that Bali passed a
8 ban on plastic bags, so I don't have real detailed
9 information that I can give you statistics on what's
10 happening there, but it's certainly an issue that has taken
11 root in Europe and in Asia, much to a great extent than it
12 has taken in the United States.

13 COMMISSIONER WILLIAMSON: Okay. Thank you. And
14 one last question, Mr. Daniels. I think in a response to a
15 question of Commissioner Kieff, I think you were talking
16 about, or beginning to talk about biodegradables, and I just
17 wanted if you wanted to finish that thought?

18 MR. DANIELS: The industry association really
19 wants to get the facts out about biodegradable plastic bags.
20 So biodegradable plastic bags, you put cornstarch or
21 polylactic acid into the blend, and with the intention that
22 microbes in the landfill are going to attack it.

23 However, in the United States, landfills are
24 sanitary. So they're packed down every single night to stop
25 microbial activity, stop biodegradation, so that methane gas

1 is not released into the atmosphere. So the typical
2 disposition of a plastic retail bag is, it's filled with
3 garbage and goes to a landfill. And so when it's entombed
4 in the landfill, it doesn't biodegrade.

5 Secondly, biodegradable additives going into the
6 polyethylene contaminate the recycling stream, so as a
7 consumer, if you don't know that this bag is compostable or
8 biodegradable and you put it in the recycling stream, it has
9 a tendency to corrupt the recycling stream and we, as
10 recyclers, can't identify it as it goes through the system.

11 COMMISSIONER WILLIAMSON: Okay, thank you. And
12 I want to thank the witnesses for their testimony.

13 VICE-CHAIRMAN PINKERT: Commissioner Johanson.

14 COMMISSIONER JOHANSON: Thank you, Commissioner
15 Pinkert. I find it interesting that so many responses to
16 our questionnaires, such as shown at Pages 216 of the staff
17 report, indicate that there are no substitutes for these
18 bags.

19 Are paper bags no longer thought of as feasible
20 subjects? Or I'm sorry, feasible substitutes? It doesn't
21 seem that long ago that we were asked whether we wanted
22 paper or plastic, and now it appears there's just plastic in
23 the market? Or predominantly plastic in the market,
24 correct?

25 MR. DANIELS: Yeah, the paper bag marketplace is

1 about 7% in the United States, as opposed to 93% plastic.
2 We looked at the substitutability of plastic bags to plastic
3 bags, and I think we were looking at this through the prism
4 that an import of a plastic bag is perfectly substitutable
5 for a plastic bag that is manufactured domestically. And
6 that's the way, at least, I answer that question.

7 COMMISSIONER JOHANSON: I'm surprised the paper
8 bag market is 7%. That seems quite high.

9 MR. DANIELS: 7%.

10 COMMISSIONER JOHANSON: 7, yeah. Okay. Mr.
11 Jones, did you want to add to that?

12 MR. JONES: Mr. Johanson, my understanding --
13 correct me if I'm wrong, Mr. Daniels -- is that paper bags
14 are higher priced than plastic bags. And so, you know, the
15 way I think many respondents would answer that question is,
16 you know, while plastic bags and paper bags can both carry
17 groceries, can paper bags really substitute for plastic at a
18 similar price point and have the same performance
19 characteristics and a lot of those things that go into the
20 notion of whether there's a substitute from an economic
21 perspective.

22 And I think many respondents believe that PRCBs
23 really don't have any substitutes, from a design and
24 performance standpoint, and from a cost standpoint.

25 MR. DANIELS: Cost perspective is about five to

1 one. Four or five to one. So --

2 COMMISSIONER JOHANSON: That's pretty
3 significant.

4 MR. DANIELS: It's significant and that's why
5 retailers prefer a plastic retail bag as a complementary
6 carry out product for their goods.

7 COMMISSIONER JOHANSON: Okay. Environmentally,
8 it's somewhat of a conundrum, isn't it? Because the paper's
9 clearly biodegradable.

10 MR. DANIELS: Again --

11 COMMISSIONER JOHANSON: You don't have to get
12 into this, I'm just kind of thinking off the top of my head.

13 MR. DANIELS: Both are recyclable. Paper will
14 biodegrade in a litter situation, but it will not biodegrade
15 in a landfill environment. It will in a compostable
16 environment. It's up to the consumer to determine what is
17 the best application for that particular household.

18 You know, again, plastic retail bags are very
19 highly reused and many times for trash cans, or picking up
20 after pet waste, or if you have a baby, for putting baby
21 diapers in, those kinds of things, which are applications
22 that paper bags are not designed for.

23 You know, in a food situation, when you go to
24 McDonald's, you want your French fries in a paper bag
25 because of it's wicking properties, right, so you don't want

1 your French fries soggy. That's a much better application
2 than a plastic retail bag would be.

3 COMMISSIONER JOHANSON: Right. All right.
4 Thanks for your responses there. In the 2010 proceedings,
5 there was some discussion that subject imports had an
6 advantage in the high end bag segment, especially for bags
7 that required any degree of manual labor.

8 I recognized that these were a very small
9 segment of the total market for bags, but I'm curious.
10 Since the imposition of the 2010 orders, has the domestic
11 industry seen an increase in the high-end bag business? Or
12 have subject imports maintained that niche, even with the
13 trade remedies in place?

14 MR. DANIELS: I will try to answer that
15 question. From our perspective, Commissioner, we do not
16 track that because our manufacturing capabilities are really
17 designed towards the high-volume T-shirt bag style and
18 merchandise bag style. So we do not compete particularly in
19 that marketplace, so we, as far as Novolex, is not tracking
20 the high-end, you know, plastic retail carry-out bag.

21 MR. JONES: Steve Jones, Commissioner Johanson.
22 We would be happy to talk to some of our members of the
23 committee who are not present today, but who are more
24 knowledgeable about those segments of the market, and get
25 you some information on that for our post-hearing brief.

1 Unfortunately, we don't have any of those folks here today
2 and we can't answer that question really with Mr. Daniels,
3 Mr. Bazbaz and the others are really not as knowledgeable
4 about those areas as some of our other committee members, so
5 we'd be happy to answer that in a post-hearing for you.

6 COMMISSIONER JOHANSON: I'd appreciate it. I'm
7 bringing it up because it was an issue five or six years
8 ago. But the -- in the domestic industry here today is
9 predominantly or solely the T-shirt bags?

10 MR. BAZBAZ: This is Isaac Bazbaz --

11 COMMISSIONER JOHANSON: Is that correct?

12 MR. BAZBAZ: No, we have in our part of the U.S.
13 producers, Command Packaging in California and some others,
14 that they are making strictly the thicker, heavier gauge
15 retail bags for high-end retailers. So they are still in
16 business and I believe they're doing fine.

17 So they are also benefited from this order for
18 sure.

19 COMMISSIONER JOHANSON: All right, thank you.
20 And in going back -- the whole issue -- the 2010
21 investigation, some of the discussions from in the
22 Commissioner's vulnerability findings in 2010 had to do with
23 raw material price volatility and trends in the ratio of raw
24 material costs to net sales. My impression, just based on
25 my reading the newspapers, is that raw material costs are

1 probably moving in a favorable direction for your industry.

2 Do y'all have a forecast that might indicate an
3 imminent return of volatility?

4 MR. BAZBAZ: This is Isaac Bazbaz. The market
5 remains volatile and it would be very difficult to predict
6 if the volatility is going to be changed. The prices of
7 bags are really shielded from this volatility since the
8 establishment of the order. So for us, it really doesn't
9 matter if the plastic raising is one dollar a pound or if
10 it's fifty cents, because we have to add a certain amount of
11 absolute number of dollars or cents to convert from a raw
12 material into finished goods.

13 So if the sales go down, the absolute number
14 stays the same, and it's not the same percentage, but it's
15 absolute number. So it may appear that -- it might benefit,
16 it might worsen in certain periods of time, you know when
17 the price of raw materials is higher or it might be, in
18 percentage of the total sale price, bigger as in margin for
19 the finished goods. But it's still just the number of cents
20 you would require to make a bag. Is that answering your
21 question?

22 COMMISSIONER JOHANSON: It does, but I guess
23 what I'm getting at is I assume and from my recollection of
24 the staff report, the highest input cost for you all is the
25 petroleum product. And --

1 MR. BAZBAZ: Sorry. It is the highest --

2 COMMISSIONER JOHANSON: And then you have the
3 energy costs, which is also petroleum product.

4 MR. BAZBAZ: Yes, it is the highest cost, but
5 it's not made out of petroleum. It's made of natural gas.

6 COMMISSIONER JOHANSON: Okay, well a petro
7 chemical.

8 MR. BAZBAZ: Yeah.

9 COMMISSIONER JOHANSON: If that's -- you know
10 what I'm getting at there?

11 MR. BAZBAZ: Yes, sure. Sure. So it -- the
12 volatility would stay there in the foreseeable future, and
13 it's very important that we preserve our ability to increase
14 or decrease the prices according to the changes of the raw
15 material. So the volatility to us is not a factor after the
16 imposition of the order.

17 COMMISSIONER JOHANSON: All right. Did anyone
18 else want to add to that?

19 MR. JONES: Steve Jones, Commissioner Johanson.
20 Just to add to what Mr. Bazbaz said, and hopefully it's
21 clear. I think Mr. Daniels testified to this earlier that
22 after the first set of orders were imposed, the industry was
23 able to have included in its contracts escalation or
24 de-escalation cost based on the cost of resin.

25 That was not something that they were able to

1 get with their purchasers before the orders were imposed.
2 The importers were offering flat prices at something that
3 the customers preferred, but after the orders were imposed,
4 the industry was able to include those provisions in their
5 contracts and thereby protect them to some degree from
6 volatile raw material costs and the threat of that.

7 The concern is if the orders were revoked, even
8 on one country, they would lose the ability to protect
9 themselves against the price volatility, so I think going
10 back to the 2010 review, the Commission's focus as it, and I
11 think it was correct, was on what happens if the order is
12 revoked, and based on the data then, it seemed very clear
13 that a cost price squeeze would be likely given that the
14 current condition then.

15 Today it's certainly correct that as Mr. Daniels
16 just testified that raw material prices are down this year
17 based on energy costs being lower. But the threat and the
18 danger of really being hurt by an inability to adjust prices
19 based on volatile resin costs is something the industry is
20 concerned about and believe that revocation would cause them
21 to lose the ability to protect themselves from that economic
22 phenomenon.

23 COMMISSIONER JOHANSON: So the bottom line of
24 what you're stating is that the order has dampened
25 volatility? That's correct? Thank you. My time has

1 expired.

2 VICE CHAIRMAN PINKERT: Commissioner Keiff.

3 COMMISSIONER KIEFF: Thank you so much. Just I
4 think really a question for both sides and most likely
5 elaboration in post-hearing submissions. Can you just, and
6 I think this is least implicit in some of the other
7 questions I have asked and others have asked but I am just
8 going to try to make it explicit, can you specifically focus
9 in on what you think will happen to product mixes over the
10 next few years with attention to how Malaysian Imports will
11 operate in view of those product mixes and whether there
12 will be substitution if any available from Subject and
13 non-Subject imports depending on whether we maintain the
14 order on Malaysia or not? Does any of that then inform or
15 should any of that inform our thinking about whether, with
16 respect to Malaysian Imports we should decumulate and go
17 negative?

18 I take it that's a big part of the Malaysian case
19 and so just want to be very explicit in giving both sides
20 the opportunity to write about that in the post-hearing.

21 MR. JONES: Steve Jones, Commissioner Kieff. We
22 would be happy to answer that question post-hearing. I
23 would say though that we don't see any evidence of any
24 difference in product mix in production in Malaysia than any
25 of the other subject countries and we don't think the

1 Malaysians have offered any evidence of that so while the
2 Commission sometimes will look at differences in product mix
3 among countries that are potentially to be cumulated as a
4 factor in decumulating one or more countries, we don't see
5 any evidence of that here.

6 COMMISSIONER KIEFF: And do you, along those
7 lines is it in effect your position that if you leave
8 Malaysia in, in other words if we go negative on Malaysia
9 but positive on the other countries that that alone will be
10 material adverse effect? I know you've claimed that but I
11 take it that there's at least something in the record that
12 Malaysia is trying to hang its hat on to say "well, look we
13 think there is substitutability going on and Malaysia will
14 be in the U.S. Market but in non-Subject ways" or they will
15 be in the U.S. Market in ways that are not really adverse or
16 materially adverse to you.

17 I take it your response is "they're wrong". I
18 get that and so I'm, just please explicitly joint issue with
19 that in the post-hearing and again I invite Malaysia to do
20 the same. That allows us to focus on the so-called "point
21 of contact" in the legal arguments.

22 MR. JONES: Steve Jones. Commissioner Kieff, we
23 certainly will. I will add that the rationale in the
24 Malaysian brief and also on Counsel's opening statement
25 today that cumulation that there should not be cumulation of

1 Malaysia with the other Subject Producers because the other
2 Subject Producers are not seeking revocation of the orders
3 is an argument that I just don't understand. I don't see
4 any legal basis for that argument and I don't think it's
5 consistent with anything that the Commission has said in a
6 Sunset Review or any other case for that matter and I just
7 don't think there's any legal basis for that position.

8 COMMISSIONER KIEFF: Well, yes that's a different
9 point and so I'll just echo that back to you and your
10 counterparties by saying please provide any legal support for
11 the proposition that that distinction does or doesn't matter
12 so that we then can make a decision with citation or lack
13 thereof to that support. So I invite you to, I get, I
14 really do get what you're saying. Please show us that and I
15 invite your opponent to show us that in some way you or we
16 would be overlooking something if we reached that view.

17 MR. JONES: We would be happy to do so.

18 COMMISSIONER KIEFF: That's great. Thank you
19 very much and that concludes my questions for the panel. I
20 really appreciate the witnesses each of you, for coming and
21 Counsel as well. Thank you.

22 VICE CHAIRMAN PINKERT: Commissioner Schmidtlein.

23

24 COMMISSIONER SCHMIDTLEIN: Well, I don't have any
25 further questions. I just wanted to thank all the witnesses

1 for traveling here today and assure you that I will go back
2 and look at the transcript for those comments that I missed
3 earlier this morning so thank you very much.

4 VICE CHAIRMAN PINKERT: Okay, if you could look
5 at table Roman IV-XXV in the Staff Report which is on page
6 4-52. Does the film and sheet column provide a reasonable
7 proxy for the relative sizes of the various global markets
8 for retail carrier bags?

9 MR. BAZBAZ: Can you repeat the question please?

10 VICE CHAIRMAN PINKERT: Is the film and sheet
11 column, that's the column on the left as you're looking at
12 that table, does that provide a reasonable proxy for the
13 relative sizes of the various global markets for retail
14 carrier bags? If you can't answer it here perhaps you can
15 take a look at it and answer in the post-hearing.

16 MR. BAZBAZ: I would like to think about it.
17 this high-density polyethylene is also used to make produce
18 bags and some other wrappings around the world so it's not
19 strictly high-density polyethylene bags or PRCBs but I'd be
20 glad to dig into this and answer it later.

21 VICE CHAIRMAN PINKERT: Thank you.

22 MS. LUTZ: Vice Chairman Pinkert, Jennifer Lutz
23 from ECS. I would just add that given the high export
24 orientation of the Subject Countries it seems unlikely that
25 consumption in those markets of film and sheet would reflect

1 their consumption of bags because they're consuming it to
2 produce these bags that they are then exporting.

3 VICE CHAIRMAN PINKERT: Thank you, that's helpful.
4 Then, more broadly as you look to Asia, where do you think
5 the Market for retail carrier bags is going? Is it the same
6 dynamic that we've been talking about for the U.S. Market or
7 is it quite different given the economic development in
8 Asia?

9 MR. BAZBAZ: Well, we understand that there have
10 been efforts in China to reduce the amount of bags used
11 there and we also know that the Chinese economy has been
12 slowing down, we really don't know how much but it's been
13 slowing down and therefore all the trading partners in the
14 area have been slowing down so the total consumption of bags
15 probably is down or most likely is down and the capacity
16 besides the increasing capacity, the remaining capacity is
17 ready to ship anywhere. So I would say that in comparison
18 the United States remained the best market there is to find
19 an exit for this product from there. That's my
20 understanding.

21 VICE CHAIRMAN PINKERT: Any other comments on
22 that issue from the panel?

23 MR. DANIELS: No, I agree with Mr. Bazbaz. This
24 is Mark Daniels. We talked about the European Union to Mr.
25 Bazbaz' point, China is likely declining because of the

1 efforts they have taken to put a tax on polyethylene retail
2 carrier bags and this is the most attractive market for
3 those Asian Producers to try and make entry.

4 VICE CHAIRMAN PINKERT: Thank you very much.

5 MR. BAZBAZ: One more thing. I believe that the
6 deterioration in the market in European Union came so fast
7 because there were no manufacturers in the European Union
8 left after all these imports came very quickly to Europe so
9 everybody became a distributor or broker of imports.

10 VICE CHAIRMAN PINKERT: Thank you. No additional
11 questions? Commissioner Johanson?

12 COMMISSIONER JOHANSON: Thank you, Commissioner
13 Pinkert. Following up on the last question I asked about
14 raw material cost, do U.S. Producers have advantages over
15 producers in Malaysia and other countries given the abundant
16 supply of natural gas here which is both the input and the
17 energy source for much of what is produced?

18 MR. BAZBAZ: Let me try to answer that. There is
19 ample supply of natural gas but the polyethylene is made out
20 of ethylene and there is not a lot of ethylene plants build
21 through this period of time. There just recently has been
22 an additional plant built up but the price of the ethylene
23 which is the precursor of polyethylene is the same here as
24 it is overseas with the difference of the freight. So it's
25 a commodity that's traded in Asia and the Asian ethylene is

1 based out of crude oil so the ethylene here is mirroring the
2 price of the ethylene in Asia so the polyethylene in Asia or
3 in any other place and the United States are the same prices
4 with the exception of the freight. So it's like buying
5 corn, you know number two corn here versus number two corn
6 in Europe or wherever else. It shows the difference of
7 freight.

8 COMMISSIONER JOHANSON: How about energy costs?
9 I assume the cost of natural gas, I assume the cost of
10 electricity is cheaper here in the United States due to the
11 natural gas situation?

12 MR. BAZBAZ: I don't know, sorry.

13 COMMISSIONER JOHANSON: That's fine. I have just
14 one more question. Do you all agree with the Respondents at
15 pages 11 and 12 of their brief that the Domestic Industry's
16 condition is healthy?

17 MR. DANIELS: Commissioner, this is Mark Daniels.
18 We would like to see the state of the Industry get more
19 healthy. I mean it is certainly improved with the
20 imposition of the duties on the six other countries. There
21 is no doubt about that and that Mr. Bazbaz' point, it also
22 gave us the ability to escalate and deescalate what the
23 cost, what the primary cost of our raw materials. But
24 certainly we still have import pressures. We have
25 competitive pressures domestically and that's the way we

1 have to compete. We just have to get better at our jobs and
2 we have to be more efficient and do all the things that
3 businesses do to be world class manufacturing organizations
4 but we would certainly believe with the continuation of the
5 orders that we can continue to improve as opposed to if the
6 orders are rescinded on any of the countries that we would
7 again be under tremendous pressure from a price/cost
8 standpoint.

9 MR. BAZBAZ: I'd like to add, the industry in the
10 United States wouldn't be here were it not for the order so
11 it's not a matter of being better or worse. It's the
12 difference between being here and not being here. So the
13 others have allowed us to remain in business and hopefully
14 we can continue doing so.

15 MR. JONES: Commissioner Johanson, Steve Jones.
16 I would just add we will be happy to address this
17 post-hearing. We of course agree with what industry
18 witnesses have said and the industry is certainly doing
19 better than it would otherwise have been doing and as Mr.
20 Bazbaz said it wouldn't be here. But on the legal point of
21 vulnerability we will address that fully in our post-hearing
22 brief for you. The fully aggregated data is not yet
23 available and that probably won't be available until the
24 final Staff Report so it's a little bit difficult to get
25 into a good discussion of that here in a public forum but we

1 will certainly address it post-hearing.

2 COMMISSIONER JOHANSON: Alright, thank you for
3 your responses. I appreciated hearing from you all today.

4 VICE CHAIRMAN PINKERT: If Commissioners have no
5 further questions does Staff have any questions for this
6 Panel?

7 MS. HAINES: Elizabeth Haines. Staff has no
8 questions.

9 VICE CHAIRMAN PINKERT: Thank you. Do those in
10 opposition to continuation of the orders have any questions
11 for this panel?

12 MR. SIM: This is Edmund Sim, no we don't have
13 any questions.

14 VICE CHAIRMAN PINKERT: Just for the record. In
15 that case, I think it's time for our lunch break. We will
16 resume at 1:10. I want to remind you that the hearing room
17 is not secure so please do not leave confidential
18 information out and I want to thank all the witnesses once
19 again for coming in today and answering our questions.

20 (Whereupon a lunch recess was taken to reconvene
21 at 1:10 p.m.)

22

23

24

25

1 A F T E R N O O N S E S S I O N

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

3 VICE CHAIRMAN PINKERT: Mr. Secretary, are there
4 any preliminary matters for the afternoon session?

5 MR. BISHOP: Mr. Chairman, I would note that the
6 Panel in opposition to the continuation of the antidumping
7 and countervailing orders have been seated. All witnesses
8 have been sworn.

9 VICE CHAIRMAN PINKERT: Thank you. Mr. Secretary.
10 I want to welcome the afternoon Panel to the ITC. I would
11 like to again remind all witnesses to speak clearly into the
12 microphones and state your name for the record for the
13 benefit of the court reporter. You may begin when you are
14 ready.

15 STATEMENT OF EDMUND W. SIM

16 MR. SIM: Thank you, Vice Chairman. I, again for
17 the record, am Edmund Sim of the Law Firm of Appleton Luff
18 and with me is my law partner Kelly A. Slater. We
19 appreciate this opportunity to present the arguments on
20 behalf of our client, the Taskforce Polyethylene Retail
21 Carrier Bag Manufacturers. In Sunset Reviews, the
22 Commission is required to examine the likelihood of whether
23 the revocation of an antidumping duty order or in this case
24 a countervailing duty order, would lead to the continuation
25 of recurrence of material injury to the Domestic Industry

1 within a reasonably foreseeable time. In so doing, the
2 Commission is to examine the likely volume, price effects
3 and the impact of imports of Subject Merchandise on the
4 Domestic Industry if the order were revoked.

5 Before making this determination however the
6 Commission must decide whether to cumulate imports from
7 Malaysia with imports from other sources subject to trade
8 remedy measure, e.g. imports from China, Indonesia, Taiwan,
9 Thailand and Vietnam. Our prehearing brief explained why we
10 believe why imports from Malaysia should be cumulated. The
11 Commission should exercise discretion not to cumulate
12 Subject Imports from Malaysia because such imports are
13 likely to have very little, if any, impact on the Domestic
14 Industry within a reasonably foreseeable time if the order
15 covering Malaysia were to be revoked.

16 Import volumes from Malaysia were extremely low
17 during the recent investigation period. Since the
18 imposition of duties, Subject Imports from Malaysia have
19 never accounted for any meaningful quantities. By contrast,
20 exports of PRCBs from Malaysia to the European Union have
21 increased significantly. This growth was mainly the result
22 of Malaysia being the only country to receive a negative
23 determination in an EU antidumping investigation. I also
24 say anti-subsidy investigation countervailing duty
25 investigation covering plastic bags including PRCBs from

1 China, Thailand, and Malaysia in 2006.

2 Now, we do acknowledge that the EU terminated the
3 antidumping duties in 2012 with regard to China and
4 Thailand. We also note that this termination was the result
5 of a Sunset Review conducted by the European Commission
6 after a full investigation of the state of the European
7 Domestic Industry and imports into the European Union.
8 Exports to Asian markets have also increased. Export
9 volumes of PRCBs from Malaysia to the EU and Asia are
10 therefore increased by a significant factor during the
11 review period.

12 The Malaysian industry's increased production
13 capacity was designed to keep up with increased demand in
14 non-U.S. Markets as demonstrated by the fact that capacity
15 utilization rates were made high during the POR. During the
16 same period when Malaysia's market share in the U.S. Market
17 shrank to insignificant levels, imports from the other
18 Subject Countries, both subject and non-subject as well as
19 imports from non-Subject Countries were significant. This
20 is summarized in our prehearing brief.

21 The data indicate that the U.S. Domestic Industry
22 has maintained and has even increased its market share since
23 2009 meaning that the imposition trade remedy measures have
24 really resulted in a shifting of sources from one set of
25 foreign sources, Subject Imports to another set of foreign

1 sources, non-Subject Imports and imports from non-Subject
2 Countries.

3 Given that these extremely low volumes and the
4 much greater incentive on the part of Malaysian producers to
5 focus on maintaining commercial relationships and increasing
6 and maintaining market share in other markets like the EU,
7 the Commission should determine that if the order against
8 Malaysia were to be revoked, the imports from Malaysia would
9 not be likely to have a discernible adverse impact on the
10 Domestic Industry and they should therefore decline to
11 cumulate such imports with imports from the other countries.

12 Even if the Commission were not to make a no
13 discernible adverse impact finding with regard to imports
14 from Malaysia, it should still exercise the discretion not
15 to cumulate. The other countries under review in this
16 proceeding have chosen not to participate, i.e., they are
17 not here and they still have a significant presence in the
18 U.S. Market. Moreover, non-Subject Imports from China,
19 Malaysia and Thailand have now taken significant shares in
20 the U.S. Market with imports from non-subject countries
21 having done the same.

22 Meanwhile, the Domestic Industry has had a stable
23 market share since 2009 which indicates that the imposition
24 antidumping countervailing duties really resulted in a
25 shifted market share from Subject Import sources and

1 no-Subject Import sources. Cumulation of imports from
2 Malaysia which has always been a minor player in the U.S.
3 Market with those from the other countries would therefore
4 not serve the purpose of preventing the hammering effect of
5 imports from multiple sources.

6 The Commission should therefore exercise
7 discretion not to cumulate imports from Malaysia with those
8 of the other countries. Furthermore, if the order were to
9 be revoked, imports from Malaysia would not be likely to
10 cause continuation or recurrence of material injury to the
11 Domestic Industry. As explained earlier, Malaysian Subject
12 Imports have always had a very minor role in the U.S. Market
13 and therefore have never been in a position to cause
14 material injury to Domestic Industry. Moreover, the record
15 in this review lacks any evidence to suggest that Malaysia's
16 extremely minor role in the U.S. Market will grow in the
17 reasonably foreseeable future.

18 Malaysia has clearly shifted its focus to markets
19 elsewhere and has focused on elsewhere. Thus, with or
20 without the existence of the U.S. Dumping Order, imports
21 from Malaysia will continue to be at very low levels and as
22 such we are simply incapable of causing material injury to
23 the Domestic Industry. Finally, the information before the
24 Commission shows the U.S. Domestic Industry has improved its
25 financial performance since the initial imposition

1 antidumping duties in 2003. This is in our prehearing
2 brief. I won't go into too much detail with that.

3 In sum, Malaysia has diversified its export
4 markets. This diversification will be enhanced by
5 Malaysia's participation in various free trade agreements.
6 Malaysia was the first country to ratify the Trans-Pacific
7 Partnership. It is leader in the ASEAN economic community
8 and in Regional Comprehensive Economic Partnership talks
9 with Australia, New Zealand, China, India, Japan and Korea.
10 It is also negotiating a free trade agreement with the
11 European Union.

12 Given this potential, we put forth that Malaysia
13 will not be dependent on the U.S. Market and will not
14 threaten the U.S. Domestic Industry. The Taskforce hereby
15 requests that the Commission determine that revocation of
16 the order with respect to Malaysia would not be likely to
17 lead to continuation or recurrence of material injury to the
18 dom. That concludes our presentation. I will be happy to
19 take questions from the Commission and the staff.

20 VICE CHAIRMAN PINKERT: Thank you, and I want to
21 thank both of you for coming today and being willing to
22 answer our questions and explain the issues from your point
23 of view in this case. This afternoon we are going to begin
24 our questioning with Commissioner Johanson.

25 COMMISSIONER JOHANSON: Thank you Commissioner

1 Pinkert and thanks also to Counsel for being here today.
2 I'm going to begin with just a very kind of broad question,
3 or an overarching question but at this point in history, the
4 U.S. Economy is really leading the world in growth. That's
5 not saying a whole lot because the world economy is pretty
6 stagnant right now but given growth in the U.S. economy,
7 visa vi other countries, can we expect to see more product
8 coming into the United States?

9 MR. SIM: I think, Edmund Sim, I think for
10 purpose of the transcript I assume if you hear a masculine
11 voice from this side it would be me, so I'm not going to
12 repeat my name every time. Commissioner, I would say that
13 requires looking at a crystal ball and if I had that crystal
14 ball I would be on CNBC with a TV show. I don't think I can
15 do that. I would say yes, if you follow that trend on to
16 its logical conclusion then everything would show up in the
17 United States, not just polyethylene retail carrier bags.

18 My point to you would be, when we're talking
19 about other markets, we have to include other markets such
20 as Japan, such as Australia, such as other parts of the
21 world and although we have in the brief and all that talk
22 about Europe, the U.S. and China to some extent from the
23 other side, I think you have to look at the overall demand
24 for Malaysian bags or why. Malaysia traditionally has
25 supplied Japan. It has not traditionally supplied China

1 because as you know, Petitioners will point out, China has a
2 relatively robust bag industry and can supply their own
3 demand.

4 So Malaysia has traditionally gone to developed
5 markets and the developed markets have been Japan, Europe,
6 Australia and United States. So, in other words you do have
7 increased demand in the developed world which I just
8 mentioned but you also have increased demand in the
9 developing world. If I read it one way, yes you can have
10 more product coming in but you would have more product for
11 everything so it would be a greater demand so the question
12 is whether we have a growing market that requires more
13 supply or we have a shrinking market that in general which
14 demand for all bags would be decreased. So again, it
15 depends on how you foresee the next two to five years. I
16 don't know that.

17 COMMISSIONER JOHANSON: I believe you just said
18 that Malaysia has focused on markets in Japan, Australia and
19 the European Union?

20 MR. SIM: Correct.

21 COMMISSIONER JOHANSON: Well, the Japan economy
22 is struggling and Australia, they're not doing too well
23 either and that's only like maybe twenty million people
24 something like that. Europe is a very large market but as
25 we have read and as we heard this morning there are a number

1 of restrictions there which go beyond I think what's going
2 on in the United States so I would think there would be,
3 once again, the most robust market I've seen this year in
4 the United States.

5 MR. SIM: Well, again when you look at its
6 relative size, the Malaysian industry is relatively small
7 compared to, especially if you look back to the original
8 data collected in the original investigation and the
9 subsequent review, Malaysia's industry has been small
10 relative both to the industry here, industry in the EU and
11 such. So even though overall the markets in terms of they
12 are large and some of them are larger than others, even
13 Australia is a significant market for Malaysia. Even
14 though, yes, it's only twenty million people but it is a
15 developed market, it's a consumer market where people
16 consume bags and have a high usage of retail carrier bags
17 and Malaysia geographically is closer to Australia and has a
18 free-trade agreement with Australia. I would say, yes, if
19 you look at the aggregate Australia is smaller than the
20 United States but if you look at relative to the industry
21 size of Malaysia it's a significant portion of their
22 exports.

23 COMMISSIONER JOHANSON: Going back to the
24 European Union, do you know where Malaysia ranks as far as a
25 source to the EU compared to other countries?

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

MR. SIM: I believe there is something in the Staff Report where you looked at trade map data or GTA data and I would say Malaysia would be one of the top two or three sources. It might be, the Malaysian producers historically for a lot of reasons have had major customer relationships with Europe mainly because of Colonial ties and because of the closeness to the market.

COMMISSIONER JOHANSON: Okay, thanks. Yes, I assume that's in the Staff Report somewhere. I don't recall it. I will take a look at that when we're done. In sticking with the EU, what has been the effect of Malaysia's loss of GSP eligibility in the EU? On imports in the EU from Malaysia as well as other countries?

MR. SIM: Okay. Well first of all you know the effect, this took effect in late 2014. You do have record data I believe from interim 2015 which shows some of the effects. I would say they still maintain market presence, the market share that he had before their loss of GSP. The second thing I would note is this is not expected to be a permanent condition. The EU and Malaysia have been negotiating a free trade agreement for quite some time and the EU and ASEAN the Association of Southeast Asian Nations, which includes Malaysia are resuming FTA talks between the two regional blocks.

1 So I would say that within a reasonably
2 foreseeable time the GSP loss will not be noticeable but
3 there has been an effect, I would say that the effect that
4 they would block Malaysia completely from the market is
5 overblown. I don't think it's significant to block Malaysia
6 completely from the EU market.

7 COMMISSIONER JOHANSON: Okay, I understand. Help
8 me get back to one of my favorite topics of this morning and
9 that is capacity. On page 427 of the Staff Report, there is
10 discussion of increasing production capacity in Malaysia.
11 Given what we have read about global demand trends, I'm
12 curious as to what might be causing the growth and capacity
13 in Malaysia.

14 MR. SIM: Well, I think there is an indication
15 that the regional market would increase. I think there is
16 also to consume plastic bags. I think the other things we
17 have to understand is that the industry has changed over
18 time and this goes back to one of the questions I believe
19 was asked like why do we have ten producers now instead of
20 twenty-three and in Malaysia in particular the industry was
21 made up of relatively small players because there was a lot
22 of, the Malaysian market in and of itself is relatively
23 small but you have lots of retail establishments, the
24 equivalent of the mom and pop drug store on the main street.

25 And so these folks wanted immediate supply and so

1 you have plastic bags being used all around Malaysia, not
2 just for carrying good but if you go to Southeast Asia you
3 will see the plastic bags are even used to carry drinks.
4 Like if you ordered a cup of coffee, you won't get that cup,
5 they will pour it into that plastic bag and you will carry
6 that plastic bag with a straw. That's the predominance of
7 plastic bags.

8 So there is in Asia, particularly because paper
9 is relatively expensive, even like this folder I have here
10 is made from plastic because I got this from my other house
11 in Singapore, you have more usage of plastics so you have
12 more increased demand and you also have industry
13 consolidation. So what you are seeing in the figures that
14 you have at the staff report, it reflects in the
15 consolidation between the entities that were there in 2010
16 and the entities that we have now.

17 Based on a comparison of what you had then and
18 then now, those ten companies have increased capacity
19 because they were smaller in 2010 and now they're larger
20 because they've had consolidation. They bought out some
21 units. We've had a couple where some companies have gone
22 out of business.

23 COMMISSIONER JOHANSON: Okay. Thanks for your
24 response. And this might be, just might touch on BPI data
25 so if it does feel free to not answer it and get back to us

1 in the post-hearing brief. What does the level of U.S.
2 Imports from non-Subject Malaysian producer Bee Lian over
3 the period of review tell us about the likelihood of no
4 discernible adverse impact from subject Malaysian Producers
5 should the order be revoked?

6 MR. SIM: It's under BPI and I'd prefer to
7 address that in the post-hearing brief.

8 COMMISSIONER JOHANSON: Alright I understand.
9 Okay, my time is about to expire so I'm going to end there
10 but I appreciate you all being here today.

11 VICE CHAIRMAN PINKERT: Commissioner Kieff.

12 COMMISSIONER KIEFF: Thank you very much. I join
13 my colleagues for thanking you for coming in, preparing,
14 presenting and following up. I'm trying to best understand
15 the nature of your disagreement with your colleagues. Is it
16 that there are discreet facts that you think they are
17 getting wrong or is it the significance of the facts that
18 they are getting wrong or both?

19 MR. SIM: I would say, Commissioner that it's
20 both but I think predominantly they have made the point that
21 we made the same argument in three proceedings. It is
22 roughly the same argument. Malaysia has always been small.
23 Malaysia was small in the original investigation. It's the
24 point that we made in the negligibility argument in which we
25 -- thought had justification on the record of the case.

1 Now, that was not accepted by the Commission in the original
2 investigation so that's why we are not arguing that here
3 now. I mean, we're not disagreeing with that at this
4 proceeding I'm just saying we didn't make that argument.

5 Fundamental to the argument on negligibility was
6 that this was a minor source before the investigation, it
7 was a minor source during the investigation, it will be a
8 minor source after the investigation. That is the
9 fundamental issue. Now, their point is that they have
10 emphasized other facts and what they believe shows that this
11 is Malaysia would be a major source. But our point is that
12 if you look at the time before the investigation, Malaysia
13 was the smallest source. Malaysia was the smallest source
14 even if you were to take that pre-2003 imposition measures,
15 take that quantity and I believe you can compare to the new
16 sources that came in, still would be the smallest source.

17 So we are the smallest, Malaysia is the smallest
18 source and we believe that if the duties would be revoked we
19 would still be a minor player.

20 COMMISSIONER KIEFF: So if you're the smallest
21 source in would stay the smallest source and stay the
22 smallest source that presumably still, let's call it
23 smallness, matters enough to you to be here to make the
24 argument.

25 MR. SIM: Yes.

1 COMMISSIONER KIEFF: I guess what I'm trying to
2 ask is why then can't it equally matter to them and if this
3 is a zero-sum switch, if it matters to you doesn't it then
4 by definition matter to them in a material way that's
5 adverse to them?

6 MR. SIM: But Commissioner, if you look at the
7 data especially with the Subject and non-Subject, the
8 non-Subject Merchandise has taken over the market share of
9 the Subject Merchandise so we would say that there might be
10 some effect on Domestic Industry but the predominant effect
11 would be on other imports because for various reasons as I
12 just said in Malaysia itself you need just-in-time delivery.
13 In the United States you need just-in-time delivery.

14 The Domestic Industry will always remain the
15 primary source of this product to the consumer. That's not
16 going to change. Our point is that, yes. If we had an
17 increase in market share by Malaysian source, it would be at
18 the expense of non-Subject Merchandise both fairly traded
19 imports from China, Thailand, and Malaysia and non-Subject
20 imports from countries which are not currently subject to
21 any form of trade remedy.

22 COMMISSIONER KIEFF: Well, I guess so just
23 whatever you can provide to the record in the post-hearing
24 to support the factual inferences that you want us to make
25 on that would be very helpful and then whatever you can

1 provide to explain why legally that should then drive a
2 favorable determination for you would also be helpful. I'm
3 not yet sure I'm actually following it though so in a word
4 you're saying keeping Subject Imports from Malaysia out of
5 the U.S. Market would merely leave whatever volume effects
6 and price effects in the U.S. Market being caused by a
7 factor other than Malaysia.

8 So exclusion of the Malaysian Imports will have
9 no change on the Domestic Industry. Is that what you're
10 saying.

11 MR. SIM: Yes, because it would be, we believe if
12 you look at the period of review you have a displacement of
13 not buying non-Subject Imports but Subject Imports so if you
14 simply increase the number of non-Subject Imports by
15 Malaysia it would displace Subject Imports and also other
16 non-subject imports. In other words, the exempt producers
17 in China, Thailand and so on.

18 COMMISSIONER KIEFF: And why would they disagree
19 with you on that?

20 MR. SIM: I think they view, like you said, it's
21 an absolute, they view that any effect on the Industry would
22 be negative. Our point is that of course there would be
23 effect because we have a growing market which we are on
24 behalf of the industry we are happy that there still is a
25 growing market for this industry. We have a growing market

1 and if you have that and you have decreased influence from
2 the non-Subject Suppliers like other countries that are not
3 subject to the order, that the effect on the Domestic
4 Industry is lesser than what the Petitioners are arguing
5 their arguments.

6 COMMISSIONER KIEFF: Okay, but what is you're
7 right, that the effect that they're arguing will play out to
8 be less than they are arguing it. Will it be so much less
9 that they are not entitled to an Order?

10 MR. SIM: I would say so, yes. Again, we are
11 talking. This is the point where in the sense of the review
12 you do have to have some assumptions going in. I guess it
13 goes back to our assumptions and their assumptions are
14 different. They are assuming a greater effect by even a
15 small presence of the Malaysian Product. Our assumption is
16 that it's not, the effect is much less. Now you ask me to
17 quantify it in terms of like ninety percent, eighty percent
18 less, that's difficult to do because of course we are
19 engaged in forecasting at this point.

20 COMMISSIONER KIEFF: I get that. I also think
21 that we, as I understand my job I'm supposed to find factual
22 evidence in the record and legal precedent to support so
23 I'll just ask both sides to provide factual evidence and
24 legal precedent to support that whatever the degree of the
25 likely effect that that degree is for you too little and for

1 them too much. Sounds to me like that will then drive the
2 decision. Is that what you're saying?

3 MR. SIM: Again, if you assume, if you base it on
4 a certain set of assumptions you will get the one set of
5 results. If you look at another set, you get another set of
6 results.

7 COMMISSIONER KIEFF: Sorry, I'm not ...

8 MR. SIM: No. I mean I'm essentially agreeing
9 with you.

10 COMMISSIONER KIEFF: Gotcha. Well, again at
11 least for me I don't really want to make, I would prefer not
12 to make my decision based on assumptions. I would prefer to
13 have legal precedent or evidence so if you could give me
14 those that would help me for both sides probably I think I'd
15 get then the gist and I'd just look forward to the
16 post-hearing submission so that we can find that. Thank you
17 very much.

18 VICE CHAIRMAN PINKERT: Commissioner Schmidtlien.

19 COMMISSIONER SCHMIDTLIEN: All right, thank you.
20 And thank you to Counsel for appearing here today. If you
21 look at table 412 in the Staff Report, which is the section
22 reporting on Malaysia's production capacity and so forth, it
23 shows that Malaysia has a fair amount of capacity that's
24 unutilized. It's confidential so we can't repeat the
25 numbers here. I guess my question is how would you suggest

1 we consider that?

2 MR. SIM: Well, this goes back in my view to a
3 fundamental issue about how data is collected in these
4 investigations and how companies actually go through the
5 analysis of how they produce goods. My clients and I've
6 represented Malaysia, I've represented Thailand, I've
7 represented pretty much every exporter in this case although
8 again here I only represent Malaysia. They base their
9 analysis on tonnage of metric tons.

10 One of the problems we have had, we've always had
11 is how to convert from tons to pieces, thousands of bags
12 because your thousands of bags figure can go any, it could
13 be a large number, it could be a small number based on what
14 we assume is the conversion rate between number of bags and
15 the tonnage. So one of the problems we have had over the
16 years is how to translate that figure. So my point is that
17 a lot of figures you have, not just from us but from
18 everybody is distorted by this. Now, you have what you
19 have. You have thousands of pieces. My point is simply
20 that it can be overstated. It can also be understated but
21 it can be distorted by what you assume is the conversion
22 ratio from tons to pieces and you know, I would say that the
23 quantum of the excess capacity to me, given the access to
24 other markets, given the access to domestic market and given
25 historical trends of Malaysia before and after the

1 imposition of duties that one cannot assume that all of the
2 capacity would go to the United States.

3 The second would be that even if you did assume
4 that some of the capacity goes to the United States,
5 historical trends would show that it would be a minor part
6 of the U.S. Market.

7 COMMISSIONER SCHMIDTLIEN: But do you think that
8 if the order was revoked, Malaysia would reach the level it
9 was at in the original investigation?

10 MR. SIM: As I said in the answer to the previous
11 question, in the quantity in the original investigation we
12 thought was negligible, the Commission disagreed. But on
13 that basis we would say it would be at that level or less
14 and we thought that was negligible. Again, that was due to
15 a difference of agreement on measurements. We definitely
16 don't see there would be any sort of major role in the U.S.
17 Market.

18 COMMISSIONER SCHMIDTLIEN: Well, I'm just trying
19 to get a sense of the order of magnitude but you could see
20 it reaching the number that was in the original
21 investigation?

22 MR. SIM: Not likely given the consolidation of
23 the industry. At the time of the original investigation,
24 there were thirty to forty export producers of plastic bags
25 in Malaysia. We are now down to like ten to fifteen, twenty

1 so there is consolidation.

2 COMMISSIONER SCHMIDTLEIN: But the capacity has
3 gone up?

4 MR. SIM: The capacity as I said, the capacity is
5 one of those ten companies that participate in the review.
6 So that's, as I'm trying to explain why the capacity has
7 gone up but I would say at the most it would be at the level
8 of the market share before the investigation. I don't think
9 it would get to that level.

10 COMMISSIONER SCHMIDTLEIN: And how should we
11 consider those statements that Petitioners pointed out from
12 the Malaysian producers in the questionnaire responses
13 indicating they were interested in coming back?

14 MR. SIM: Well, I mean the fact that we are even
15 here shows that the industry is interested in coming back.

16 COMMISSIONER SCHMIDTLEIN: It is a bit of a tough
17 position.

18 MR. SIM: Yes, that's right. This is -- from the
19 point of making this argument that you're small but you're
20 not too small to hire a lawyer--

21 COMMISSIONER SCHMIDTLEIN: That is right.

22 MR. SIM: --is true, but, you know, everyone
23 deserves to have a lawyer in this country. But I would say
24 it's a conundrum. I mean, it's a logical inconsistency of
25 this process. And so I think what you're seeing from those

1 statements is consistent with that.

2 There is interest in the market. The real
3 question is what would they do with it? If you took away
4 the Order, would these countries be able to increase their
5 shipments to a level that would cause injury to the domestic
6 industry?

7 We don't think so. We argue in our brief and
8 here today that it wouldn't. But the fact that they're
9 interested? Yes, of course they're interested.

10 COMMISSIONER SCHMIDTLEIN: Well how would they be
11 able to do that? I mean, since they are interested in
12 coming back, given that it's a commodity like-product, how
13 are you going to do that without coming in at a lower price?

14 MR. SIM: Well, again the question would be what
15 is your volume effect? Our volume effect is relatively
16 small. And the nature--the industry is relatively small,
17 but even if they wanted to come in, they wouldn't have that
18 much effect.

19 A second point at which I--you know, I don't want
20 to play up too much, but I would like to explain that the
21 bags that are sold to Europe, and Japan, and the U.S., they
22 are polyethylene carrier bags. They also have garbage bags,
23 and such. But one thing that's very different, I believe I
24 touched on this in the first review, is that the bags that
25 go to Europe are different from the bags that go to the

1 United States to some extent based on the ratio of
2 high-density low linear and linear density polyethylene.
3 And that's simply because of the nature of how people buy
4 groceries and goods in Europe compared to the United States.

5 Most people here drive. So the bags in the
6 United States basically have to be rigid. And so they have
7 a higher concentration of calcium carbonate, otherwise
8 chalk. Whereas the bags that go in Europe or Japan, people
9 buy groceries to put them in the bag, and then they either
10 take the subway home, or they walk home. So it has to have
11 higher tensile strength.

12 So my point is that, yes, you can reformulate the
13 mixtures and all that, but that takes time. So it's not
14 that people who are used to supplying a European market, you
15 can adjust the supply to the U.S. market, and you can do
16 that by adjusting the ratios, but technically speaking the
17 people who are more focused on the European market are going
18 to be more focused on the European market. And people who
19 are interested in the U.S. market, they may have interests
20 in it, but it takes time to get qualified. It takes time to
21 have a sample come over and show that you actually could
22 make the product.

23 Because the companies that are in Malaysia might
24 be able to supply like small things like the small
25 consumers, like the people who buy food from a Chinese

1 restaurant, or people who go to a local store, but their
2 ability to actually go in and credibly bid for a large
3 Walmart, or a Target, or whatever bid, is relatively
4 limited.

5 COMMISSIONER SCHMIDTLEIN: Okay. And I think this
6 was touched on earlier, but just so I'm clear, are there any
7 differences in terms of the facts, or the conditions of
8 competition, in this review from the last review?

9 MR. SIM: We don't believe so, no.

10 COMMISSIONER SCHMIDTLEIN: Okay. Thank you, Mr.
11 Sim. That's it.

12 VICE CHAIRMAN PINKERT: Okay, now I'm just trying
13 to understand the economic logic here. And if retail
14 carrier bags from Malaysia were not subject to an Order, but
15 the bags from the other subject countries were subject to an
16 Order, wouldn't that create an incentive for producers in
17 Malaysia to ship more to the United States?

18 MR. SIM: In an absolute term, all things--let's
19 say all things being equal, there is a motivation to do
20 that. That's true. My point, our point is simply that
21 based on historical data, and based on how Malaysia has
22 behaved in the past in other words, even if they had that
23 opportunity they would be a minor presence in the U.S.
24 market.

25 VICE CHAIRMAN PINKERT: And does the logic of that

1 argument hinge on the need to continue to ship to the
2 alternate markets even if the United States market becomes
3 more attractive to Malaysia?

4 MR. SIM: Not necessarily. I think you still -- I
5 mean, you do have to -- again, based on the historical
6 trends about where people were shipping, and you saw that
7 they were shipping to Europe and Asia, they're not going to
8 walk away from those markets just because they might have a
9 new customer in the United States.

10 You remember, these companies have been absent
11 from the U.S. market for 13 years. So it's not like if you
12 decide on a negative determination for Malaysia, it's not
13 like they're going to all show up en masse and get customers
14 within a month or so. This business doesn't work that way.

15 VICE CHAIRMAN PINKERT: But again I'm trying to
16 understand the economic logic. So let's say that you've got
17 existing customers in Europe or elsewhere, and then we've
18 got the situation that changes in the U.S. market where
19 Malaysia is not subject to an Order even though the other
20 countries that are currently subject continue to be subject.
21 Do we have to do an A-B comparison? In other words, how
22 advantageous is it to continue to ship to that existing
23 customer versus shipping to the United States? Or would you
24 suggest that we just more or less allocate the shipments
25 where they're currently going because there wouldn't be a

1 desire to shift over to the U.S. market?

2 MR. SIM: Yeah, especially given historical
3 trends, like you know that you would impose duties again.
4 And I would say that you're not going to just abandon
5 existing customers just because you have an opportunity in
6 the United States.

7 I mean, there are values to commercial
8 relationships.

9 VICE CHAIRMAN PINKERT: Thank you. Now what
10 happened with Malaysian exports to Europe after antidumping
11 measures were revoked in 2012 with respect to other
12 countries?

13 MR. SIM: Right. From the data that we have on
14 record, I would say there wasn't much effect. I mean there
15 was of course some effect because you have new competitors
16 in the market, but also understand that some of the
17 countries that were in this--that are in this review also
18 were able to export to Europe--i.e., Vietnam, Taiwan,
19 Indonesia--and they were always in the market at all times.

20 So the absence of Thailand and China from the EU
21 market and their return to the EU market had some effect on
22 Malaysian exports, but it's not as great--it's not a
23 complete like displacement, in other words.

24 VICE CHAIRMAN PINKERT: Thank you. Now if you
25 look at imports into the European Union right now, do we

1 have a Malaysian market share of the--I should say, import
2 share relative to the total amount of imports going to the
3 European Union?

4 MR. SIM: I think the closest thing you have right
5 now is in the staff report where you looked at the trade--
6 GTA, I keep calling it Trade Map because that's the same
7 UNTED source. You have some information there.

8 That does include film and other bags, but again
9 in the EU market you are talking--again, because they went,
10 the petitioners there went for relief on everything,
11 including bags with no handles. So to some extent how the
12 government people looked at that market was different
13 because they had a different scope.

14 So I think from there you could see Malaysia as
15 a--I think that's a useful proxy, although again as
16 Petitioners point out that does include other products. But
17 I think it's a useful proxy to see what the market share is
18 of Malaysia into the EU market.

19 VICE CHAIRMAN PINKERT: Thank you. That's
20 helpful. And what are your projections--I know you're not
21 an economic forecaster--but what are your projections for
22 demand in the European Union in the near future?

23 MR. SIM: Well, I would defer that to the
24 post-hearing brief because I'm not an economist.

25 VICE CHAIRMAN PINKERT: Thank you. And finally,

1 do you agree with the domestic industry that demand for
2 retail carrier bags is highly price inelastic?

3 MR. SIM: I would like to save that for the
4 post-hearing brief. That gets into some technical points.

5 VICE CHAIRMAN PINKERT: That's fine. And with
6 that, I will turn it over to Commissioner Williamson.

7 COMMISSIONER WILLIAMSON: Thank you. Thank you,
8 Mr. Sim, for being here today.

9 I was wondering. Since nothing has really
10 changed from the last report, why should I change my vote in
11 this proceeding?

12 MR. SIM: Because we're just as small.

13 (Laughter.)

14 COMMISSIONER WILLIAMSON: Okay, but you know the
15 result.

16 MR. SIM: No, I know. But my point is that, well,
17 I think if you look at it again in more detail and you now
18 have another five years of data to show that we still are
19 small, then, you know--again, it goes back to the nature of
20 the proceedings.

21 I mean, if you were to follow that logic, then no
22 order would ever be revoked.

23 COMMISSIONER WILLIAMSON: Well can you point to
24 cases where a majority of the Commission has decumulated a
25 country in a review due to its relatively small size?

1 Either now or post-hearing.

2 MR. SIM: Yes, I'd like to handle that on
3 post-hearing brief.

4 COMMISSIONER WILLIAMSON: Okay. Thank you. Does
5 the Malaysian Plastics Manufacturers Association, or any
6 other group, maintain data on Malaysian PRCB capacity
7 production or shipments?

8 MR. SIM: Other than what was submitted to the
9 Commission, no.

10 COMMISSIONER WILLIAMSON: Okay. Thank you. What
11 about the competition that Malaysian producers face from
12 other countries in their home market? And what about the
13 competition they face from other countries in their export
14 markets? If you can address those questions--

15 MR. SIM: In the past, Malaysia was--did face
16 competition particularly from other countries that had
17 better or more advanced recycling processes, so that those
18 countries--I'll give you Thailand. Thailand, 12 or 15 years
19 ago Thailand was already recycling bags at retail stores.
20 So they actually had pretty good recovery rates for the
21 pellets, and they were manufacturing more, using those
22 pellets to manufacture garbage bags. So they have higher
23 efficiency.

24 That's why Thai bags in those days were lower
25 priced, because they had higher efficiencies. They could

1 recover recycled bags.

2 Malaysia wasn't like that. Malaysia, I think
3 because it was a more fractured industry, or you had many
4 more producers, it was hard for them to cooperate. And so
5 13, 14 years ago they did have problems. They had more
6 competition from outside suppliers.

7 Now the Malaysians do have active recycling. And
8 again this goes hand in hand with being a more developed,
9 more economically advanced country. You have more recycling
10 going on at the grocery stores, at the equivalent of Target,
11 Cosco, to the point that now recycled pellets are being used
12 in the Malaysian industry and so costs have gone down.

13 So they are better able to compete against bags
14 from Thailand. It is true, you have other suppliers from--

15 COMMISSIONER WILLIAMSON: You mean because they
16 can be as low-cost as--

17 MR. SIM: Yes, yes, they are more efficient.
18 Yeah, the Free Trade Agreements in Southeast Asia and Asia
19 do mean that bags from China, bags from Japan, et cetera,
20 this is all becoming one, particularly for goods, a single
21 market. It has been a single market for some time with
22 regard to certain products, and this is one of them. That's
23 why if you have bags from Thailand you can sell in Malaysia
24 without duty; the same with China. So there is competition.

25 But again because the Malaysia producers are

1 local, they are better able to supply customers. So again
2 it's the converse of the situation you have here. There
3 will always be a Malaysian industry. It'll be primarily
4 focused--a lot of the focus will be on the domestic market.
5 But in order to, for efficiencies of scale, they also
6 service the EU market and other Asian markets.

7 COMMISSIONER WILLIAMSON: Now what about the
8 competition with Asian producers based in their export
9 markets? We know about the U.S.

10 MR. SIM: Right. Right. Well, again in Europe
11 they do face competition from Thailand. I also note that
12 Thailand also doesn't have GSP. And China doesn't have GSP.
13 So they are all on an equal basis there.

14 Vietnam does have a Free Trade Agreement going
15 into effect with the EU. And actually Vietnam already has--
16 still has GSP. So you do have competition from other major
17 suppliers. I would say Vietnam and Indonesia are relatively
18 small suppliers to the EU market. Indonesia does also--
19 Indonesia also does not have GSP for the European market.

20 COMMISSIONER WILLIAMSON: Okay. Do you know how
21 fast the duties on bags are going to be phased out under
22 TPP? Do you know?

23 MR. SIM: I have another client that asked me this
24 question, so I haven't gotten around to researching that
25 yet.

1 COMMISSIONER WILLIAMSON: I was just curious.

2 MR. SIM: I'll take a look at that.

3 COMMISSIONER WILLIAMSON: Because it was mentioned
4 this morning.

5 MR. SIM: Yeah.

6 COMMISSIONER WILLIAMSON: What does the fact that
7 the Malaysian producers have gotten more efficient in terms
8 of recycling, how has that affected their competitiveness on
9 the global market?

10 MR. SIM: It's made them more competitive, but I
11 do note that being more--when you recycle a polyethylene
12 bag, you can't make certain bags because the colorant is
13 there. So you can't make a clear bag, or a white-colored
14 bag. You're going to have to make something either of a
15 darker material or such, and usually darker materials are
16 used to make things such as garbage bags.

17 So what they've been able to do is, by increasing
18 production of garbage bags, you are able to increase your
19 efficiencies, much like the Thais have. The Thais, the
20 major Thai producers, produce both PRCBs and garbage bags.
21 And the garbage bags basically use the waste product from
22 the PRCBs, and they also use recycled resin.

23 So by being able to do the same things the Thais,
24 the Malaysian producers have increased their efficiency.

25 COMMISSIONER WILLIAMSON: Their overall

1 efficiency?

2 MR. SIM: Their overall efficiency, yes.

3 COMMISSIONER WILLIAMSON: So there has been
4 change.

5 MR. SIM: Yes, that's a positive change.

6 COMMISSIONER WILLIAMSON: It's a positive change.

7 MR. SIM: It took a while, but again it comes with
8 being--with economic development. When you become more
9 developed, you have more effective recycling.

10 COMMISSIONER WILLIAMSON: Okay. How does Malaysia
11 compare to say Indonesia, Taiwan, some of the other
12 countries in Asia, on this score?

13 MR. SIM: I would say compared to Taiwan it's
14 fairly comparable. Taiwan, also they--I believe Taiwan has
15 some environmental restrictions. So the industry has
16 encouraged recycling there. Indonesia, not so much.

17 COMMISSIONER WILLIAMSON: Okay. Thank you for
18 those answers. The domestic industry points to several
19 statements in the questionnaire responses indicating that
20 market participants should expect increased imports and
21 adverse price effects if the Orders are revoked.

22 Do you have any response, either now or
23 post-hearing, to these comments, other than the ones you've
24 already made?

25 MR. SIM: Yes, I'll reserve further comment for

1 the post-hearing brief.

2 COMMISSIONER WILLIAMSON: Okay. I just raised
3 this question this morning, and investing, as you pointed
4 out, that with the Orders in effect they were now able to I
5 guess put in price escalators and de-escalators. And I was
6 wondering whether the Malaysian producers have these kind of
7 clauses relating to their raw material prices?

8 MR. SIM: From my understanding, they do,
9 especially the ones that--this is a world-wide industry
10 phenomenon, so I believe for Europe they have this. I think
11 for Japan these have this.

12 If you're talking about local sales, that's more
13 difficult. It depends on the nature of the customer. So if
14 it's a large company that buys a lot of resin, you will have
15 this kind of de-escalation clause. If it's somebody who
16 just wants like 20 boxes of bags for a Chinese restaurant,
17 no.

18 COMMISSIONER WILLIAMSON: I understand. But in
19 terms of your major export customers, you do have?

20 MR. SIM: Yes, that's my understanding.

21 COMMISSIONER WILLIAMSON: Would you address what
22 other global markets are likely to see significant
23 environmental restrictions in the next few years?

24 MR. SIM: To paraphrase the Petitioner, that's a
25 difficult question to answer and I'll have to go back to my

1 clients on that. I'm not in this--I've worked with this
2 industry for 13 years, but I'm not a plastic bag salesman.

3 COMMISSIONER WILLIAMSON: Okay. Good. Well thank
4 you for those answers.

5 VICE CHAIRMAN PINKERT: Commissioner Johanson.

6 COMMISSIONER JOHANSON: Thank you, Commissioner
7 Pinkert.

8 Do you all agree with domestic industry parties--
9 and this can be found at pages 4 and 49 to 50 of their
10 prehearing brief--that the large and growing share of the
11 U.S. market accounted for my nonsubject imports from China,
12 Malaysia, and Thailand undercuts your arguments about the
13 relative attractiveness of the U.S. market and the
14 likelihood that subject imports will not increase in the
15 event of revocation?

16 MR. SIM: Well as your other question did, this
17 goes into BPI data. So we would like to handle that on the
18 post-hearing brief.

19 COMMISSIONER JOHANSON: Okay. Thank you.

20 And we've spoken at some length today, or all
21 parties have spoken at some length today about regulations
22 that are currently on the books, or ones that might be on
23 the books soon, regarding the use of plastic bags, with all
24 that has been said, are there differences in the
25 attractiveness of certain global markets in the reasonably

1 foreseeable future due to variances in environmental
2 restrictions on plastic bags?

3 MR. SIM: Well, again to follow up on the previous
4 question before Commissioner Williamson, I would say that I
5 think we should handle that in the post-hearing brief.

6 COMMISSIONER JOHANSON: Okay. I understand. I
7 have no further questions. Thank you all for being here
8 today.

9 VICE CHAIRMAN PINKERT: Commissioner Kieff?

10 COMMISSIONER KIEFF: I have no further questions.
11 Thank you very much.

12 VICE CHAIRMAN PINKERT: Commissioner Schmidtlein?

13 COMMISSIONER SCHMIDTLEIN: I have no further
14 questions. Thank you.

15 VICE CHAIRMAN PINKERT: I just have one additional
16 question. Is your no-discernable argument basically the
17 same argument as your conditions of competition argument for
18 decumulation? Or are they different in some way?

19 MR. SIM: The statutory provisions are different,
20 but in terms of the basic argument they are the same.

21 VICE CHAIRMAN PINKERT: Thank you, very much.

22 I have no further questions. Do any other
23 Commissioners have questions?

24 (No response.)

25 VICE CHAIRMAN PINKERT: If not, then does staff

1 have any questions?

2 MS. HAINES: Elizabeth Haines, staff has no
3 questions.

4 VICE CHAIRMAN PINKERT: Thank you. Do those in
5 support of continuation of the Orders have any questions for
6 this panel?

7 MR. JONES: Steve Jones, counsel for Petitioners,
8 no, Vice Chairman Pinkert, we have no questions for the
9 Malaysian industry's counsel.

10 VICE CHAIRMAN PINKERT: Thank you. In that case,
11 I want to thank this panel for the testimony, and I will
12 dismiss you now.

13 And with that, we will come to closing
14 statements. Those in support of continuation of the Orders
15 have six minutes from direct, and five for closing, for a
16 total of eleven minutes.

17 Those in opposition have 53 minutes from direct,
18 and 5 for closing, for a total of 58 minutes.

19 And as is our custom, we will combine those for
20 each side. You do not have to take all the time, and I am
21 not directing that to just one side with 58 minutes. You
22 don't have to take all the time, regardless of which side
23 you're on.

24 We will start with those in support of
25 continuation of the Orders, and you may begin when ready.

1 CLOSING REMARKS BY J. MICHAEL TAYLOR

2 MR. TAYLOR: Good afternoon, Commissioners. My
3 name is Mike Taylor and thank you again for your time today,
4 and for having us come. And Mr. Sim, we'll make a deal. If
5 I don't take all my time, if you won't take all of your
6 time, we'll all be happy. So, and I'll try not to take all
7 of my time.

8 It appears today that all of the parties agree
9 or at least appear to agree that the order should be
10 continued with respect to China, Indonesia, Taiwan, Thailand
11 and Vietnam. We understand you'll do your own analysis, but
12 because of that, I'll focus on Malaysian issues today.

13 To quote Mr. Sim, the fact that he is here
14 today, and this is a partial quote, because I was writing
15 quickly, but the fact that he is here today demonstrates the
16 Malaysian producers are in fact interested in coming back to
17 the United States. That's a pretty significant statement.

18 At the end of the day, and going to questions
19 from Commissioner Williamson and Commissioner Kieff, Mr. Sim
20 is today arguing that the Malaysians are putting -- you
21 know, they're coming in and saying our size is important,
22 and because our size is important, then you should
23 decumulate us.

24 That really puts the cart before the horse. The
25 fact that they are small isn't necessarily reason to

1 decumulate and I'd refer the Commission to the June 2010
2 Publication 4160. This is the review from the first Sunset
3 review. And on Page 18, there's a footnote. The Malaysian
4 interested parties assert that subject imports from Malaysia
5 could not possibly contribute to any "hammering effect"
6 after revocation, which is the primary purpose of cumulation
7 in their view because it is inconceivable that the
8 Commission would revoke the orders on PRCBs from China and
9 Thailand.

10 So they're saying, essentially, "we're small",
11 therefore "we wouldn't have any hammering effect, we
12 wouldn't have any follow up effect. We couldn't impact the
13 market." Going on, the Commission analyzed, thus, the
14 Malaysian interested parties' hammering effects argument
15 would have the Commission engage in a circular analysis and
16 perform its Sunset analysis backwards, first determining
17 that revocation of the orders on PRCBs from China and
18 Thailand would likely result in the continuation recurrence
19 of material injury. And then determining, on that basis, to
20 exercise its discretion to decumulate subject imports from
21 Malaysia.

22 Under the statute however, the Commission must
23 consider the issue of cumulation first before considering
24 the likelihood of the continuation recurrence of material
25 injury after revocation. So with that said, I think what we

1 ought to do is possibly walk through some of the statements
2 that were made, some of the arguments through here, and as
3 Mr. Bazbaz testified, during -- before the original orders
4 were put in effect, there was a real problem with the
5 industry. They were not able to capture all of their costs.
6 So they had a cost price squeeze.

7 And the reason is, because any small amount of
8 unfairly traded product has a significant impact on the
9 prices of PRCBs. We also heard testimony today that all of
10 the contracts, on these long-term contracts are supposed to
11 provide some protection. They have meet or release
12 provisions. So at any time the customer can come and say,
13 here's the price we've been offered. It's a bona fide
14 offer, you'd either have to meet it or you walk away.

15 So because of that, there's no guarantee,
16 there's no way to wall-off the price impact of somebody
17 small coming in, taking market share and the orders -- one
18 of the principal reasons that the domestic industry has been
19 able to sustain its position and get to the point where it
20 is, although it's still vulnerable, is that they've been
21 able to insert these price escalation and de-escalation
22 clauses.

23 And those are not possible with unfair imports
24 coming in. We know that there's unfair trade happening from
25 Malaysia. The Commerce Department has already told us that.

1 So even a small amount of product coming into the United
2 States from Malaysia could have significant price
3 implications. Volume is important, but price drives the
4 decision to buy and it also drives the ability to sell. And
5 if anybody comes in with a lower price, very quickly the
6 market bottoms out.

7 Also, what we know today from the hearing and
8 also from the testimony is that there's no dispute as to
9 like product, the fact that the PRCBs from all sources are
10 highly substitutable, that the U.S. market is stagnant or
11 declining and likely to remain at best that way in a
12 reasonably foreseeable future, flat at best.

13 The demand for PRCBs is inelastic, that raw
14 materials account for a large portion of cost of goods sold.
15 That price is the most important consideration of
16 purchasing, and that's been historic underselling, there's
17 current underselling and the likely margins of dumping and
18 subsidization were found to exist by the Commerce
19 Department.

20 So with that in mind, the only thing that really
21 appears to be in dispute is that there potentially is a
22 condition of competition in that the Malaysians say "we're
23 different" because we're really focused on Asia. We're not
24 focused on the United States. But in fact, that's not the
25 case.

1 If the orders were revoked, we know that the
2 Malaysian producers, like other importers, would re-enter
3 the United States. And also quoting Mr. Sim, "They're here
4 today, he's here today because they have an interest in the
5 U.S. market."

6 We've provided the confidential exhibits that
7 have the statements from the Malaysian producers and the
8 importers as to their desire to -- and what they believe
9 what happened with respect to shipments if the orders were
10 lifted. And you've also seen the 2009 demand trend data
11 that we put on the record and our Exhibit 3, which we won't
12 get into, but I think it's self-explanatory.

13 The demand trends, there was no clear statement
14 on that opposing our statements. We don't know if they
15 implicitly agree or we'll see in the record and in their
16 final briefs whether or not they disagree with that. But I
17 think the record is fairly clear that you actually -- if
18 you're going to look at trends, you have to take the
19 starting point was validated to start with, and then go from
20 there.

21 The only person who testified today with
22 personal knowledge of the Malaysian process and the business
23 practice was Frank Lawson. Mr. Sim is a very capable
24 lawyer, but in his own words, he's not an economist. He's
25 not a salesman for bags. And Mr. Lawson made clear that the

1 Malaysians are highly interested in the United States from
2 his personal experience and what he's seen.

3 They do have large plants. In fact, the Euro
4 SME plant is larger than any plant that Novolex has in the
5 United States. They sell using a low pricing strategy. We
6 know Euro SME is trying to re-enter the U.S. market right
7 now. And we know that capacity utilization has grown. We
8 know that there has been capacity expansion.

9 Publicly we know that there's been at least five
10 Malaysian producers in an expanding capacity during the POR.
11 And we heard there's been a lot of consolidation, so because
12 of that it's not -- the capacity is not just buying smaller
13 players. They're building capacity as well.

14 The European market is shrinking or is likely to
15 shrink. And with that in place, they got to have a place to
16 sell. The U.S. market is the attractive market and in order
17 to insure that the industry is not harmed, the orders need
18 to stay in place because if the orders were lifted, with
19 respect to any country, including Malaysia, a small amount
20 of unfairly priced imports would have just a devastating
21 effect on price.

22 Price drives everything and we heard Mr. Bazbaz
23 very eloquently say if the orders weren't in place, we
24 wouldn't have a business. And for the sake of the workers,
25 for the sake of the plants and for our committee, we thank

1 you for your time and thank you for your patience with us.

2 VICE CHAIRMAN PINKERT: Thank you. You may
3 begin when ready.

4 CLOSING REMARKS BY EDMUND W. SIM

5 MR. SIM: Again, I'm Edmund Sim, counsel for the
6 Malaysian producers. I'd like to thank Commission for its
7 time and also the staff for having put in the hours of
8 having dealt with folks who are all around the world trying
9 to collect information on this case.

10 I'm not going to go through all the arguments --
11 you just heard me 15 minutes ago, so I'm not going to
12 repeat those arguments. I will say this though. Our point
13 is simply that there has to be -- one exchange I had with
14 one of the Commissioners said, there has to be some meaning,
15 some value to the Sunset review process.

16 And I say this having gone through the Sunset
17 review process previously and also have been counsel to
18 Thailand in the EU Sunset review. And there some of the
19 same arguments were made against my client, like, well he
20 hired a lawyer, so therefore they're going to flood the
21 market when they come in and --

22 But the point remains that the EU terminated the
23 order, even though there was suspicion, particularly from
24 counsel to the petitioner, who was also counsel to
25 petitioner here, that the presence of law firm meant that

1 well, they must be planning and there must be masses of
2 people behind the great big wall that we've built to keep us
3 out, that's going to come in and take over the European
4 market.

5 The point -- that's all conjecture. What you
6 have to look at is what does the historical data before,
7 during and then to some extent, extrapolation of the future
8 show about the nature of the industry?

9 You have gone negative on countries in Sunset
10 reviews. Typically, either, of course, there's no domestic
11 industry which is not the case here. Or whether it's an
12 insignificant source. Our point simply is, for whatever
13 reason, a variety of reasons, the fact that you're an
14 insignificant source I think should matter. I think, you
15 know, we were an insignificant source, Malaysia was an
16 insignificant source before the order, it's an insignificant
17 source now.

18 And we believe based on what we've presented and
19 based on historical trends that Malaysia would not be a
20 major source in the future. So again, as you go about your
21 considerations of the information and the arguments made by
22 both sides, we are focused -- we want you to focus on
23 particularly on this argument. It is a relatively simple
24 argument. It's the same argument we made in 2003. The law
25 has changed, particularly because we're in a different stage

1 of proceeding. It's still the same argument. We're not
2 going to be a major source. We never have been. And we
3 hope that, if you understand that, that you would let
4 Malaysia let out from the anti-dumping order. Thank you.

5 VICE CHAIRMAN PINKERT: Thank you. And again, I
6 express the Commission's appreciation to everyone who has
7 participated in today's hearing, and for not using up all of
8 your time in closing.

9 Your closing statement, posthearing briefs,
10 statements responsive to the questions and requests of the
11 Commission and corrections to the transcript must be filed
12 by February 29th, 2016. Closing of the record and final
13 release of data to the parties will be on March 24th, 2016.
14 Final comments are due March 28th, 2016. And with that,
15 this hearing is adjourned. Thank you.

16 (Whereupon the hearing adjourned at 2:19 p.m.)
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

TITLE: In The Matter Of: Polyethylene Retail Carrier Bags from China, Indonesia, Malaysia,
Taiwan, Thailand, and Vietnam

INVESTIGATION NOS.: 701-TA-462 AND 731-TA-1156-1158 and
731-TA-1043-1045

HEARING DATE: 2-18-16

LOCATION: Washington, D.C.

NATURE OF HEARING: Review and Second Review

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

DATE: 2-18-2015

SIGNED: Mark Jagan

Signature of the Contractor or the
Authorized Contractor's Representative

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

SIGNED: Gregory Johnson
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.

SIGNED: Gaynell Catherine
Signature of Court Reporter

Ace-Federal Reporters, Inc.
202-347-3700