UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of: 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from China

) Investigation Nos.: 701-TA-558 and 731-TA-1316 (FINAL)

Pages: 1 - 145
Place: Washington, D.C.
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BEFORE THE

INTERNATIONAL TRADE COMMISSION

IN THE MATTER OF: ) Investigation Nos.:
1-HYDROXYETHYLIDENE-1, 1-DIPHOSPHONIC ) 701-TA-558
ACID FROM CHINA ) 731-TA-1316 (FINAL)

Main Hearing Room (Room 101)
U.S. International Trade Commission
500 E Street, SW
Washington, DC
Thursday, March 23, 2017

The meeting commenced pursuant to notice at 9:38 a.m., before the Commissioners of the United States International Trade Commission, the Honorable Vice Chairman David S. Johanson, presiding.
APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

Vice Chairman David S. Johanson (presiding)
Commissioner Irving A. Williamson
Commissioner Meredith M. Broadbent
Commissioner F. Scott Kieff

Staff:

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Raymond Cantrell, International Trade Analyst
Aimee Larsen, Economist
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Elizabeth Haines, Supervisory Investigator
APPEARANCES:

Opening Remarks:

Petitioners (Jeffrey Levin, Levin Trade Law, P.C.)
Respondents (Matthew T. McGrath, Barnes, Richardson &
Colburn, LLP)

In Support of the Imposition of Antidumping and
Countervailing Duty Orders:
Levin Trade Law P.C.
Bethesda, MD
on behalf of
Compass Chemical International LLC ("Compass Chemical")
   Daniel McCaul, Chief Executive Officer, Compass
Chemical
   Mark Allen, Plant Manager, Compass Chemical
   Cara Groden, Economist, Economic Consulting Services,
   LLC

In Opposition to the Imposition of Antidumping and
Countervailing Duty Orders:
Barnes, Richardson & Colburn, LLP
Washington, DC
on behalf of
Shandong Taihe Water Treatment Co., Ltd.
   Joanna Cheng, Regional Sales Manager, Shandong Taihe
   Water Treatment Co., Ltd.
   Matthew T. McGrath – Of Counsel
Rebuttal/Closing Remarks:

Petitioner (Jeffrey Levin, Levin Trade Law, P.C.)

Respondent (Matthew T. McGrath, Barnes, Richardson & Colburn, LLP)
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MR. BISHOP: Will the room please come to order.

VICE CHAIRMAN JOHANSON: Good morning on behalf of the U.S. International Trade Commission, I welcome you to this hearing on investigation number 701-TA-558 and 731-TA-1316 (Final) involving 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from China.

The purpose of these investigations is to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of imports of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from China.

Schedules setting forth the presentation of this hearing, notices of investigation, and transcript order forms are available at the public distribution table. All prepared testimony should be given to the Secretary. Please do not place testimony directly on the public distribution table. All witnesses must be sworn in by the Secretary before presenting testimony. I understand that parties are aware of the time allocations. Any questions regarding the time allocations should directed to the Secretary.

Speakers are reminded not to refer in the remarks or answers to questions to business proprietary information. Please speak clearly into the microphones and
state your name for the record for the benefit of the court reporter.

If you will be submitting documents that contain information you wish classified as business confidential, your requests should comply with the commission Rule 201.6.

Mr. Secretary, are there any preliminary matters?

MR. BISHOP: Mr. Chairman, there are no preliminary matters.

VICE CHAIRMAN JOHANSON: Very well, let's begin with opening remarks.

MR. BISHOP: Opening remarks on behalf of Petitioner will be given by Jeffrey Levin of Levin Trade Law.

OPENING REMARKS OF JEFFREY LEVIN

MR. LEVIN: Good morning, Mr. Chairman, Commissioners. My name is Jeffrey Levin. I'm with Levin Trade Law. I have the privilege of representing the Petitioner in these investigations, Compass Chemical International, the sole U.S. manufacturer of 1-Hydroxyethylidene-1, 1 Diphosphonic Acid, which thankfully is referred to in the industry and in the market by the acronym HEDP.

I am honored to be joined today by Compass Chemical's CEO Danny McCaul and the company's plant manager
Mark Allen. These gentlemen know, as well as perhaps anyone in this country, the product, the manufacturing process, and the market. And they know all too well what is happening to this industry, their company, at the hands of cheaply priced, directly competitive imports from China.

During the period of investigation, U.S. imports of HEDP from China have substantially increased in volume and have captured a significant share of the U.S. market at the expense of the domestic industry. Since HEDP from China is fully interchangeable with domestically manufactured HEDP, with competition among the several sources predominantly rooted in price, there is every reason to believe that cheaply priced and unfairly traded subject imports will continue to increase at a rapid pace in the absence of pricing discipline.

Indeed, because of significant underselling by subject imports, Compass Chemical confronts inexorable downward price impressions and has lost a substantial volume of sales, resulting in significant declines in the industry's trade and financial indicia.

Moreover and perhaps more ominously, spurred by the enormous and expanding production capacity of the Chinese HEDP industry, these unfair trade practices present a fundamental obstacle to the domestic industry's ability to recover its competitive footing.
We believe that the evidence of record will illustrate that the volume of subject imports is significant, that subject imports have had and continue to have a pronounced adverse impact on the U.S. prices of the product, and that trade -- and that the trade and financial posture of this industry is being and will be severely undermined by the rising tide of cheaply priced, directly competitive, completely interchangeable, and as we now know from the Commerce Department's final determination announced Tuesday, wildly unfairly traded imports.

Furthermore, we respectfully submit that the presence of nonsubject imports in the U.S. market during the period of investigation does not mitigate, let alone negate, the impact of dump and subsidized Chinese imports.

On behalf of Compass Chemical, we respectfully submit that the evidence of record will demonstrate that the domestic industry is suffering material injury by reason of unfairly traded imports from China and is threatened with further and continuing material injury by reason of these imports. Thank you.

MR. BISHOP: Opening remarks on behalf of Respondent will be given by Matthew T. McGrath of Barnes, Richardson & Colburn.

OPENING REMARKS OF MATTHEW T. MCGRATH

MR. MCGRATH: Good morning, Mr. Chairman,
members of the Commission. I'm Matt McGrath, Barnes, Richardson & Colburn, appearing today on behalf of Tyco, Incorporated of Cherry Hill, New Jersey. They are the importer and subsidiary of its -- and I'm also appearing on behalf of the parent company Shandong Taihe Water Treatment Technologies of Zaozhuang, China.

We submit that the issue before the Commission today is relatively straightforward. It's one of lack of causation. There are three main points, but several other subsidiary points that we'll talk about through the day.

First, it's important to note that the Petitioner does not manufacturer only HEDP. That's one of a group of phosphonate chemicals which by its own admission is a supporting player in its portfolio. So I just want to be clear at the outset, we're not talking about the last gasp of one -- a company industry. Basically, we're looking at a supporting player of a producer of phosphonate chemicals.

Second, because it has other production priorities, the Petitioner here has not moved forward to enhance its own manufacture of HEDP by implementing the kind of technology that Taihe and Chinese manufacturers have implemented and utilized, continuous reaction production processes using lower cost inputs that result in higher value byproducts which is a very important part of Taihe's production.
They continue to use obsolete technology, which yields a low value byproduct, which increases their cost of goods sold, thus increasing their cogs to net sales ratio, a factor that is often looked at by the Commission. This can only damage their bottom line. That's their decision. And that's not caused by low cost imports.

Third, there's no doubt that nonsubject imports had a significant and an increasing impact on the U.S. market during the POI. Indian HEDP, which was once a target of Compass concerns, there was a previous anti-dumping order, has been set aside by them for now because they prefer to focus on China. India's supply to the U.S. is increased much more rapidly than Chinese, and its pricing has become much more challenging to Compass than China's. As India rises, Compass' profitability falls.

In the meantime, China's production has focused on its domestic sales and other third country demand and their U.S. sales have remained flat. India is clearly the cause of any damage to Compass bottom line, not Chinese sales.

We look forward to presenting testimony in these issues. And we submit that there should be a negative decision in this case. Thank you.

MR. BISHOP: Would the panel in support of the imposition of anti-dumping and countervailing duty orders please come forward and be seated? Mr. Chairman, all
witnesses on this panel have been sworn in.

MR. LEVIN: Good morning, again, Mr. Chairman, Commissioners, we'd like to begin our presentation this morning with Compass Chemical's plant manager Mr. Mark Allen. Mark?

STATEMENT OF MARK ALLEN

MR. ALLEN: Thank you, Jeff and good morning Commissioners. My name is Mark Allen and I am the plant manager for Compass Chemical. I have Bachelor of Science degrees in Chemistry and Chemical Engineering from Clemson University and I've been with Compass Chemical since 2009.

Prior to my employment with Compass, I was employed by the Dow Chemical Company from 1988 to 2005 and Velsicol Chemical from 2005 to 2009. Altogether, I've been in the chemical industry for about 28 years.

As a plant manager of Compass Chemical, I am responsible for the daily operations of the HEDP production plant, including the methods of production and sourcing of raw material inputs. As part of my responsibilities, I track and record input units, production cycle times, energy requirements, and the like. I'm very familiar with the production of HEDP as defined in the petition and this investigation, as well as the production of other phosphate -- phosphonate products including those produced by Compass Chemical.
I would like to begin this morning by describing what HEDP is, how it's produced, and how it is used. HEDP belongs to a class of chemicals known as phosphonates, which are added to water to increase the solubility of certain ions and to inhibit the precipitation of certain mineral compounds. It is the only phosphonate that combines these critical functional properties. First, it can sequester heavy metal ions that color water supplies or heavy metals that interfere with the cleaning function of laundry soap or body soap.

Second, they connect as a scale inhibiting agent to prevent scale formation in commercial heating and cooling systems such as steam boilers, air conditioners, and cooling towers.

And third, it can prevent the breakdown of oxidizing agents such as peroxide bleach. It is a well-defined chemical product and it is assigned a CAJS, Chemical Ax Jack Service registry number of 2809^21^4.

HEDP is an odorless liquid and is colorless or pale yellow in appearance. It is generally produced and sold as a 60 percent nominal aqueous solution, meaning that HEDP can constitute 60 percent of the final product weight, the balance being water.

Based on my knowledge of the production processes for HEDP and information from the market, it is my
understanding that 60 percent nominal aqueous solutions of
HEDP also accounts for the vast majority of imports of HEDP
from China.

The applications for HEDP include industrial
water treatment, specifically to treat cooling water, which
is by far the biggest end use of the product. HEDP is used
as an anti-scalant in reverse osmosis desalination processes
which are and have been a growing end use application,
particularly as raw water quality deteriorates and demand
for clean drinking water increases in the U.S. and around
the globe.

It is used for municipal water treatment to
control red water, which indicates the presence of iron or
black water, which indicates the presence of manganese. And
it has a limited but important role in the alkaline peroxide
bleaching of textiles, which has a much larger end use here
in the United -- which was a much larger end use here in
the United States before much of the textile manufacturing
industry moved abroad.

Excuse me. There are generally two commercial
methods for producing HEDP. One method involves reacting
phosphorus trichloride or PCL3 with acetic acid which then
produces hydrochloric acid as a byproduct and may also
produce small volumes of acetyl chloride.

The second method involves reacting phosphorus
acid with acidic and hydride, which produces acetic acid as a byproduct. The balance chemical equations for both methods of manufacture were detailed in our petition. We believe that most if not all Chinese producers of HEDP employ the first production method, that is production that begins with phosphorus trichloride.

Compass Chemical uses a second production method described above, that is production that begins with phosphorous acid and which results in acetic acid as a byproduct.

Prior to the Compass ownership of the Smyrna facility, the company began production of HEDP in the 1980s using PCL3 to make phosphorous acid and reacting phosphorous acid with acidic and hydride. Towards the end of 2006, the company reevaluated whether or not it should use PCL3 rather than the phosphorous acid and concluded that it would be advantageous from a cost of production view to switch its production methodology away from the PCL3, route since that raw material was more expensive and more difficult to handle.

Since then, the company has manufactured HEDP, starting with imported phosphorous acid crystal.

Both production methods whether beginning with phosphorous acid or with PCL3, result in identical products with the same chemical formulation and end uses. In fact at
the point of first sale, the HEDP, which we produce and 
imported HEDP, are chemically identical. And assuming the 
products have the same level of purity, that is 60 percent 
aqueous solution, they can be comingled and sold as one 
product.

HEDP is packaged in a variety of ways. It can 
be sold in bulk tank trucks or in the case of imported HEDP, 
international standards organization or ISO containers, 
which are essentially bulk import containers. They can be 
sold in 55 gallon drums and what we refer to as totes. 
These are typically 275 gallon, which is roughly equivalent 
to about 5 drums.

These are often referred to as tote bins or 
sometimes intermediate bulk containers or IBCs. Both 
Compass Chemical and U.S. importers of HEDP sell to 
distributors or compounders. It is also sold to formulators 
and large end users such as utility companies and large 
water treatment companies.

As I said earlier, so long as a product is at 
the same level of purity, for example as a 60 percent 
aqueous solution, and meet certain baseline standards 
uniformly recognized throughout the industry, HEDP from 
different sources is completely interchangeable whether it's 
HEDP manufactured by Compass, by a Chinese producer, or in 
India, or in Europe.
Customers will often comingle domestic and imported HEDP in their bulk tanks. They assign the same raw material codes to both imported and domestic HEDP. And importers and customers can and often do switch suppliers of HEDP, depending on price and availability.

Although Compass manufacturers a range of phosphonates, our HEDP production process is the only one that yields acetic acid as a byproduct. If we did not manufacturer HEDP, we would not produce acetic acid. That of course is not the point of our being in the business of HEDP production, but considering the fact that sales of this byproduct significantly contributes to the continuing commercial viability of our HEDP production under current market conditions, it is as of now an important element to our overall company's operations.

As Danny will mention in his testimony, it is truly ominous from a business perspective that not only is there a notable decline in what we can charge for HEDP due to unfair competition from China, but market conditions are also resulting in declining prices for sales of the byproduct.

While we make a range of phosphonates at the Smyrna facility, HEDP is by far our largest volume production. And its production requires specially designated reactors as well as related production equipment.
not used for the production of other chemicals.

So if we discontinue production of HEDP, a distinct possibility under prevailing market prices and market conditions in the absence of relief from the impact of dumped and subsidized Chinese imports, several dominos would fall. The HEDP reactors and related production equipment would sit idle. They can't currently be used for production of other products without some retrofitting capital investments.

Any revenue that is derived from the sale of acetic acid disappears. As I mentioned, HEDP is the only product which we manufacture, which yields us byproduct. And perhaps most importantly, our relationships with customers suffer since we would no longer be in a position to provide this critical phosphonate within our aggregate of U.S. manufactured product offerings.

Compass Chemical as the only full range phosphonate producer in the United States is well positioned to compete with other manufacturers in China and around the world if we're able to do so on a fair and level basis. But in the absence of relief from dumped and subsidized Chinese imports, continued production of HEDP becomes economically tenuous.

Compass was once an importer of HEDP and we no longer are and we have not been for many years. It is our
intention to keep it that way, but only if we return -- if our return on investment is reflected in fair market pricing.

Thank you for the opportunity to you to present this testimony. And I look forward to answering any questions you may have. Thank you.

MR. BISHOP: Thank you, Mark. Our next witness will be Compass Chemical's CEO, Mr. Danny McCaul. Danny?

STATEMENT OF DANIEL MCCAUL

MR. MCCAUL: Good morning, gentleman. Good morning, Mr. Chairman and Commissioners, gentleman and lady, I'm sorry. I am Danny McCaul. I am the CEO of Compass Chemical International, LLC. I thank you for the opportunity to present our case.

For a quick word about my background, although originally from Ireland, I have lived and worked in the United States for the past 41 years. I became a U.S. citizen 35 years ago. I have a Mechanical Engineering degree from Portsmouth University in England. I have worked in the chemical industry for about 47 years. I guess I'm an old guy.

I have since 1996 been involved with the manufacturing facility in Smyrna, where Compass produces HEDP. Compass Chemical was formed in 1999 and arrived and acquired the phosphonate manufacturing facility in Smyrna,
Georgia from Links Chemical Group in 2006.

The Smyrna manufacturing plant began making phosphonates in the 1980s and has had different ownership at different times. One Rock Capital Partners, for example, a private equity group based in New York City, acquired Compass in March of 2015. And then subsequently last year, Compass was sold to Italmatch Chemicals, which is a chemicals manufacturer based in Italy.

However, Compass effectively operates as a separate company within Italmatch in conducting our day-to-day operations as we have throughout the various changes in ownership.

In addition to the plant in Smyrna, Compass owns and operates a plant in Huntsville, Texas. Texas plant is a blending facility. It's a large warehouse. We ship manufactured products from our Georgia plant down to Texas for distribution.

Compass manufacturers a range of specialty chemicals and some products, which are probably more correctly defined as commodity chemicals. The markets we serve are primarily industrial water treatment, oil and gas production, industrial and institutional compounding for such things as cleaners and sanitizers, recreational water treatment such as swimming pool chemicals, and chemical distribution.
Compass has a total of about 200 customers in North America of various sizes. Some customers are multinational water treatment service companies, while some are small formulators or compounders. Mark Allen has explained a little about HEDP. And I would like to explain why it is an important product for Compass Chemical.

MR. MCCAUL: HEPD is the largest volume product we manufacture. It is the most widely used phosphonate throughout the world and is a very important part of our product offering. Because we make HEPD we are often provided the opportunity to supply other products to our customers. We are the only full line phosphonate manufacturer remaining in the United States and in fact, we are the only remaining producer of HEDP in this country.

We hope to remain a U.S. Producer of HEDP but that is becoming more and more difficult as we continue to battle unfairly traded imports from China.

Acetic acid, as Mark mentioned, is an unavoidable byproduct of Compass's current method of HEDP production and the quantity produced is roughly the same as the HEDP volume. If we are forced to shut down the HEDP production line we lose not only that portion of our overall business attributable to HEDP which is about 20 percent but we would lose the portion of our overall business attributable to acetic acid as well.
Compass competes with imported HEDP from China, from Europe and from India. The HEDP produced by compass is completely interchangeable with Chinese HEDP and with imports from other foreign sources. There are no quality or purity issues that limit the interchangeability of HEDP from various sources. While domestic manufacturing provides some benefits in local service and responsiveness, these benefits are insufficient to overcome significantly lower prices from Chinese Imports.

There are several Chinese producers and I understand that only one Shandong Taihe is participating in this investigation but in addition to Shangdong Taihe other major Chinese Producers include the other mandatory respondent to the Commerce Department in the Investigation, Nantong Uniphos and Wujin Water as well as Henan Qingshuiyuan, Hebe Longke Water Treatment companies is another producer in China.

A significant amount of capacity for phosphonate production in general and for HEDP in particular had been added in China over the past few years. We believe that the current stated capacity of the Chinese companies known to Compass is in excess of 200 million pounds per year. While the worldwide market for HEPD is perhaps 150 million pounds per year.

Based on available data, we estimate the market
in the United States at roughly 25 million pounds per year. Our believe is that China has significantly overbuilt production capacity in recent years and now many companies are lowering prices below normal value in order to keep their production units operating. One example and perhaps the most ominous is the manufacturer that is opposing this petition, Shandong Taihe.

The company announced in July 14 that it has installed new production capacity solely for HEPD with a projected annual output of sixty thousand metric tons. That's over 130 million pounds more than 5 times the estimated size of the U.S. Market by this one producer alone and to the best of our knowledge that company was not a producer during the period examined in prior investigations of HEDP from China.

To put this in a slightly different perspective, during the prior investigation the ITC calculated combined HEDP production capacity in China and India as 67.5 million pounds combined. So the new production capacity represented by Shandong Taihe is twice the combined capacities of the Chinese and Indian HEDP industries from a few years back.

Simply stated, the Chinese HEDP industry built far more production capacity than needed and now it has to do something with it in order to validate investments, maintain employment and lower per unit production costs.
Unfortunately, that something has meant turning to the U.S. market and turning it into a dumping ground for HEPD production. As a result, imports of HEPD from China have jumped by our calculations from about 6.7 million pounds in 2013, the first year evaluated by the Commission in its preliminary phase investigations and the last full year before the prior antidumping order on China was revoked to 10.2 million pounds in 2016.

The 2016 total from China would have been even higher to a likely all time record high of approximately 12 million pounds if the Chinese imports did not decline substantially in the 4th quarter as a result of the Commerce Department's preliminary determinations.

At the same time, our shipments have decreased. Compass has submitted several examples of lost revenues. We are now under constant pressure to reduce our prices in order to have the opportunity to compete against cheaply-priced dumped imports from China. In fact, with respect to one major customer we have determined that the participation in that company's bid process could no longer be justified as we stood no chance of getting the business in the face of Chinese prices.

As another customer stated to us and I quote "A previous supplier of ours has rejoined the competition for this product and is currently beating everyone by 20 cents a
pound. I don't know if they've made a math mistake in calculating profit or their supplier is just that cheap but I'm rolling with it." We know and have identified in the Petition that the supplier which this person mentions is a U.S. Importer sourcing product from China.

The situation has been rapidly deteriorating. Prior to the filing of our Petition, we were seeing a Chinese price at or about 40 cents a pound. That's not a guesstimate. We have received numerous offers to buy from Chinese producers at or around that price and you can see from our response in the Commission's questionnaire how the Chinese price compares to what we are able to offer. The price which we are able to get for Domestic Produced HEPD has declined over the Period of Investigation.

As had been stated previously, without revenue from the byproduct of acetic acid, Compass' HEPD business would be operating at an even greater loss and could not be sustained. Unfortunately as well as lower HEPD pricing in the marketplace, acetic acid pricing is also deteriorating after having remained stable for a number of years. On a per pound basis, price which we were able to recover through sales of the byproduct dropped by about 35 percent over the Period of Investigation and that has dropped further still in the new year.

Acetic acid is the byproduct, not the object of
our HEDP production. It has been a bit of a lifeline for us in terms of helping to maintain the viability of our HEDP production but one that cannot be sustained. As the Chinese price for HEDP drops and the price which we are able to obtain for the byproduct drops our competitive position for HEDP is in jeopardy.

We cannot continue to produce what is our largest phosphonate product by volume by relying on a revenue stream from its byproduct. That is a poor business model. One that we did not intend when we decided to cease imports from China and wholly invest in the U.S. Manufacturing and one that we cannot rely upon or sustain over the short, medium or long term.

HEDP is an important, really a critical product for us. We understand the need to be competitive but we have to be on the break-even to the positive side with the product. The overall phosphonate business is important to Compass and it has been estimated that HEDP represents about 30 to 40 percent of all phosphonate consumption in North America.

We could stop making HEDP and just make the other phosphonates. Without HEDP volume to absorb some of the plant's fixed costs, it would force the other phosphonates to carry more costs and make them less competitive. We also believe that if we don't offer HEDP as part of our
portfolio, if we don't have that product along with the others then it would be difficult for us to be a major player and to grow our business.

In 2008, Compass filed an antidumping petition against HEPD from China and India. When the order was implemented, Compass saw some short term relief. Unfortunately one of the major Chinese Producers, Wujin Water Quality Stabilizer Factory was assessed as zero dummy margin and we believe that HEDP continued to be exported to the United States through that company, possibly from other producers.

Recently Wujin Water combined forces with two other Chinese manufacturers to form an even larger company, Nangtong Uniphos. In time, the antidumping duty became ineffective in the face of this exclusion. Therefore, we made a decision that filing a new Petition could bring a justified and sustainable result and we are very encouraged by Final Determinations announced by the Commerce Department earlier this week.

On behalf of Compass Chemical I want to express my appreciation to the Commission and the investigation staff and urge an affirmative finding in this investigation. I look forward to answering your questions and providing additional information in our brief. Thank you very much.

MR. LEVIN: Thank you, Danny. Our next witness
will be Ms. Cara Groden. Cara is an Economist with Economic Consulting Services.

STATEMENT OF CARA GRODEN

MS. GRODEN: Good morning, Mr. Chairman and members of the Commission. My name is Cara Groden and I'm an Economist with Economic Consulting Services. My testimony will address the adverse impacts Subject Imports of HEDP have had on the U.S. Producers' volume, pricing and overall condition over the POI.

Although I am somewhat limited in what I can say today due to the confidential nature of the record, we submit there is ample record evidence that Subject Imports have caused material injury to the domestic HEDP industry and as MR. Levin will discuss later, threaten to cause future injury.

Firstly, the volume of Subject Imports is and has been significant over the POI. As shown at page 8 Petitioner's prehearing brief, data called from peers demonstrate that imports from China constituted a distinct majority of U.S. Imports of HEDP in every year of the POI. Furthermore, Subject Imports increased significantly over the POI.

Although the annual import figures collected by Staff from Importer Questionnaires may show a decline in imports from China between 2014 and 2016, when broken down
by month or quarter the data tell a very different story. Monthly Peers data are presented at Exhibit 1 to Petitioner's Prehearing Brief.

I have one exhibit to my testimony today which you should have in front of you. This chart shows Peers Quarterly Import from China from 2014 through the end of 2016. The Peers data for HEDP are consistent with annual volume trends demonstrated in the questionnaire data though Peers data shows slightly higher import volumes every year. These quarterly data show that Subject Imports spiked in the 2nd quarter of 2016, then fell off significantly in the 3rd and 4th quarters. These declines in Subject Imports volume coincide precisely with key dates in this investigation; the filing of the Petition on March 31, 2016 led to a sharp decline from the 2nd to 3rd quarters and Commerce's affirmative prelim CDD determination on September 8th, an affirmative prelim determination on November 4th caused imports to fall off even further in the 4th quarter.

In the first three quarters of 2016, Subject Imports were 2.4 million pounds higher than in the same period of 2015. That's an increase of 35 percent or if you were to annualize those first three quarters of 2016 to assume no effect of the filing of the Petition and Commerce's preliminary determinations, Subject Imports were
on track to reach 12.3 million pounds in 2016. A 20 percent increase over full year 2014 and a 28 percent increase over 2015. These are significant volumes and represent a significant increase in the volume of Subject Imports.

Even considered on an annual basis as presented in Staff Report when the volume of Subject Imports appear to decline between 2014 and 2016, U.S. shipments of those imports in fact increased. The growth in U.S. Shipments of Subject Imports occurred commensurate with an increase in apparent U.S. Consumption of HEPD over the POI. However, the sole U.S. Producer, Compass Chemical captured no part of that growth in demand.

As Subject Import volumes grew in the U.S. Market Compass' production and shipment volumes declined. Instead of Compass sharing in the increase in demand, Subject Imports captured market share at the expense of the Domestic Industry.

Second, Subject Imports were able to capture this market share because HEDP is a commodity product traded on the basis of price and pricing pressure by Subject Imports has been relentless. As shown on Table 2-8 of the Staff Report, a clear majority of purchasers found U.S. and Chinese HEDP comparable on all factors except for price. Those same purchasers almost universally consider Chinese HEDP to be lower-priced.
This pricing relationship is borne out in the underselling data collected by the Commission which showed that Subject Imports undersold U.S. Produced HEDP in 24 of 36 quarterly comparisons by an average margin of 10.7 percent. Chinese prices for each of the three pricing product fell over the POI. This in turn drove down prices of U.S. HEDP in each product as well.

The Staff Report provides an annual count of instances of underselling at page 5-11 footnote 2. The increase in instances of underselling by Subject Imports over the POI shows that not only are Subject Imports priced lower than HEDP, but their prices fell faster. Instances of underselling increased from 5 instances in 2014 to 7 instances in 2015 until finally Subject Imports undersold the U.S. Producer in all 12 quarterly comparisons in 2016 when according to Peers data, imports from China reached their highest quarterly volume.

Staff notes at page 5-4 of the Staff Report that the pricing data account for approximately 100 percent of U.S. Producer shipments of HEDP and 98.8 percent of U.S. shipments of Subject Imports from China in 2016. This is unusually comprehensive coverage for the Commission's pricing data. It shows that every pound of HEDP Compass sells must compete directly with imports from China.

Therefore, every sale is adversely impacted by
the depressing and suppressing effects of low-priced unfairly traded Subject Imports. I will note briefly that we believe these underselling figures are understated, particularly in the early part of the POI. This is due to certain aberrational data included in the questionnaire record. The relevant confidential discussion is provided at pages 14 to 15 and confidential exhibits 2 and 3 to Petitioners Prehearing Brief.

We submit that the analysis prevented there should be taken into consideration in weighing the results of the underselling analysis as it stands. Not only did Compass' pricing product AUVs fall but data show that averaging at values for commercial shipments and net sales were also depressed with each exhibiting declines over the POI. Furthermore, when prices and sales values fell Compass' ratio of cogs-to-net sales increased showing that Compass was prevented from increasing prices for HEDP which it sorely needed to do.

The pricing pressure by Subject Imports has led to a significant volume of lost sales and lost revenue by Compass Chemical. Six purchasers reported switching their purchases from Compass to Subject Imports because the imports were lower priced. The details of those switches are provided at Table 5-9 in Staff Report and discussed at Page 15 to Petitioner's prehearing brief. Additionally, one
purchaser confirmed that Compass reduced its price by three percent to compete with Imports from China resulting in a loss of revenue.

Finally, the increased presence in the U.S. Market of low-priced Subject Imports has had an adverse impact on the overall condition of the Domestic Industry. The increase in U.S. shipments of Subject Imports over the POI mirror declines in essentially all of Compass Chemicals' trade and financial indicia. Commercial shipments and net sales declined in both quantity and value. Production volumes fell, leading to a decline in capacity utilization.

These factors contributed to the loss in market share by the U.S. Producer even as apparent consumption increased over the POI. The declines in production volume and sales values particularly due to pricing pressure by Subject Imports in turn had a significant adverse effect on Compass' operations on HEDP. Productivity fell while unit labor cost increased and gross profit, operating income and net income all declined both in absolute terms and as a share of net sales.

By any measure, the industry's condition has declined. There is no question that the increased presence of Subject Imports over the POI and the pricing declines of already low-priced HEDP from China in that same period have distinctly and adversely impacted every facet of the
domestic HEPD industry. We respectfully submit therefore that an affirmative finding of current material injury is warranted. Thank you.

MR. LEVIN: And thank you, Cara. Good morning again. My name is Jeff Levin. I am with Levin Trade Law and I am Counsel for the Petitioner. I would like to complete this morning's witness Panel by touching on a few issues presented in this Investigation.

First, Subject Merchandise and domestic like product. In its prior investigations of HEDP from China and India and in its preliminary determinations in the current investigations the Commission found that the domestic like product was properly defined as coextensive with the definition of Subject Merchandise, that is HEDP.

No arguments have been raised during these final phase investigations for defining the domestic like product otherwise. In the Preliminary Phase Investigations one U.S. Purchaser Envirotech Chemical Services made certain claims regarding so-called "high purity HEDP which it now sources from China. In its preliminary determination the Commission evaluated the claims presented by Envirotech Chemical Services and found that such high purity HEDP does not constitute a separate domestic like product.

Since to the best of my knowledge there have been no arguments presented by Envirotech in further support of
their argument and since the information detailed by the Commission in its preliminary determination remains equally accurate now, we respectfully submit that the domestic like product should be defined as it was previously HEDP. Compass Chemical is the only domestic manufacturer of HEDP and therefore constitutes the entire Domestic Industry as defined in 19 USC Section 16-77 4A.

Second, material injury and threat of material injury. Because this is a single company Domestic Industry I am of course limited in what I can say in a public forum. Ms. Groden has reviewed the material injury factors as we have discussed in our prehearing brief, but generally production has declined over the Period of Investigation as has Compass' capacity utilization rate and shipments. Sales prices have declined, as has revenue. Subject Imports have had a depressive and suppressive effect on the price for HEDP which Compass was able to attain during the Period of Investigation and the company's financial bottom line for HEDP has deteriorated. The company has lost market share. There is lost sales. There are customers which Compass has lost and may very well never see again. There are significant margins of underselling. A manufacturing line confronting these indicia cannot long endure at least insofar as U.S. based production is concerned.
In sum, unfairly traded imports from China have had an adverse impact on every facet of the U.S. HEDP industry and therefore we respectfully submit an affirmative determination of culling material injury by reason of Subject Imports is warranted. Moreover the record evidence clearly demonstrates that the Domestic Industry is threatened with further and continuing material injury by reason of Subject Imports.

The factors as a whole suggest that further dumped and subsidized imports from China are imminent and that further injury by reason of Subject Imports will occur absent the issuance of an antidumping and or countervailing duty order. In its affirmative preliminary threat determination, the Commission made a serious of findings which we sited page 21 of our prehearing brief and which remain as applicable now as they did last spring.

MR. LEVIN: Namely, the Commission determined as follows: That there was a likelihood of a substantial increase in the volume of subject imports in the imminent future, from the already significant volume of subject imports prevailing during the POI; that subject imports are likely to continue underselling the domestic like product to a significant degree, and enter at prices that are likely to have a significant depressing effect on domestic prices and that are likely to increase demand for further imports; and
that a substantial increase subject import volume is likely
imminent, and that significant subject import underselling
will likely continue, causing a significant depressing or
suppressing effect on domestic prices and the likely
increase in demand for further imports.

As Mr. McCaul referenced in his testimony,
imports of HEDP from China have jumped by our calculations
from about 6.7 million pounds in 2013 to 10.2 million pounds
in 2016, and the 2016 total from China would have been even
higher to a likely all-time record high of approximately 12
million pounds if the Chinese imports did not decline
substantially in the end of the third quarter and fourth
quarter of 2016 as a result of the Commerce Department's
preliminary determinations.

And, as Mr. McCaul also discussed in his
testimony, production capacity in China has exploded in
recent years. The resulting production is coming here.
Again, confidentiality rules limit discussion in an open
forum, but the evidence of record in both the preliminary
phase investigations, where the Commission had access to
data from a few Chinese manufacturers as well as in these
final investigations clearly demonstrate the efficiency of
the Commission's findings during the preliminary
investigation.

Mainly, "the subject HEDP industry in China is
very large and growing, possesses significant unused capacity and exports significant amounts of HEDP. Both HEDP producers in China and U.S. importers hold substantial and increasing inventories of the subject merchandise.

In light of the factors, the increase in subject import volume and market penetration that occurred during 2000 to 2015 will likely accelerate."

Lastly, non-subject imports. As is well-settled and noted by the Commission, the Federal Circuit in addressing the causation standard of the statute has directed that "as long as its effects are not merely incidental, tangential or trivial, the foreign product sold at less than fair value meets the causation requirement." And, as has been noted in the preliminary determination in these investigations, the Commission is not required to apply the so-called replacement/benefit test that was included in Commission opinions subsequent to the federal court's decision in Brackiz v. United States.

But for present purposes, I will note that yes, HEDP has become commoditized. It is a commodity. But we do not believe that imports from India or from Europe are generally price competitive with subject imports. Moreover, non-subject imports are for purposes of these investigations fairly traded, while subject imports are not. This is a critical distinction.
As detailed in Exhibit 1 of our prehearing brief, in the vast majority of months during the Period of Investigation preceding the fourth quarter of 2016, that is, in 28 of 33 months, the volume of Chinese HEDP imports exceeded and more often than not greatly exceeded the volume of Indian HEDP imports. As detailed in the staff report, in most quarterly comparisons the price of imports from India was actually higher than the price for domestically manufactured HEDP, and also higher than the price for subject imports in many instances.

These data strongly indicate that the injury suffered by Compass Chemical during the Period of Investigation and the looming threat of further and continuing injury is predominantly the result of the deleterious impact of unfairly-traded subject imports, not of fairly traded imports from India. In this case, the domestic industry is faced with a high volume of subject imports, all of which have been unfairly traded in the extreme, produced and exported by an industry in China which has the present capacity to continually flood the U.S. market.

Compass Chemical is not looking to eliminate competition in the U.S. marketplace. Rather, it is looking to eliminate the unfair advantage gained by unfair trade practices. Compass is perfectly willing to compete for
sales in the U.S. market against fairly traded imports, much
as it would face competition from another domestic producer.

Therefore, we respectfully submit that the
evidence of record in these final investigations, as will be
further supported in our post-hearing brief, strongly
supports an affirmative determination. With that, and on
behalf of Compass Chemical and our witnesses, we thank the
Commission for the opportunity to testify before you this
morning, and we look forward to the Commission's questions.

Thank you.

VICE CHAIRMAN JOHANSON: Thank you Mr. Levin
and thank you to the witnesses and to Ms. Groden for
appearing here today.

MR. LEVIN: Excuse me Mr. Chairman. If I may,
just a quick procedural point. May we reserve our remaining
time for rebuttal if necessary?

VICE CHAIRMAN JOHANSON: Yes.

MR. LEVIN: Thank you very much.

VICE CHAIRMAN JOHANSON: Thank you, and once
again I appreciate y'all appearing here today. It sounds
like y'all are keeping quite busy. I know being a plant
manager is not an easy job, and running a company is not an
easy job. So we appreciate you providing us with your
expertise today. I'm going to begin with a question for Mr.
Levin, and this regards the prior order which expired in
During the preliminary staff conference, as noted at the transcript at page 35, Mr. Levin you explained the plan regarding the previous order as "let the thing expire, die a natural death, see what happens in the marketplace," and to refile "if things go awry." Compass refiled at the end of March 2016, based I would imagine on data from 2015.

Looking at measures like U.S. producers' market share, U.S. shipment quantity, production workers and operating margin in 2015, is it accurate to state that those had gone awry when compared to 2015, and what as the biggest factor in early 2016 that led Compass to refile?

MR. LEVIN: Thank you, Mr. Chairman. What we were hearing from Compass Chemical, the domestic industry, is that the AD order on China and India had some beneficial effect when it first went -- when it was first implemented. But the benefits of that faded over time, and although there was some relief from pricing pressures in the years following the issuance of the orders, the pricing pressures became exacerbated over 2014, 2015 and significantly into the beginning of 2016, which as to the second part of your question, why the filing was done at that point.

The exclusion of the one major Chinese manufacturer did leave a major hole in the prior order. We
were thankful for the Commission's final determinations in those investigations. We were thankful for the orders. We were thankful for the temporary relief. But as time went on and especially in light of the fact that Jen Dum Tae He or Taico, I guess is the correct pronunciation began manufacturing the middle of 2014 and really ramped up what they were sending over to the United States, those were the precipitating factors.

VICE CHAIRMAN JOHANSON: So I think what you're stating, and correct me if I'm wrong, is that a major producer was excluded from the prior order and that Taihe has in effect supplanted what was being sent by the other producer?

MR. LEVIN: I don't think the -- generally speaking, yes, with a slight twist. Shandong Taico did not supplant the excluded producer. It was added on to the excluded producer. Now that excluded producer subsequently went through some ownership changes and closures and all of that, and has morphed into Nantong Uniphos.

But what we were talking about or what we were looking at was a brand new producer, Shandong Taico, who was not in the market, did not produce during the initial Period of Investigation, came online with an enormous amount of production capacity, we've quoted the figures, which are not inconsistent with data collected by the Commission. It was
the threat as well as the actuality of this new company's
exports to the U.S. that became a trigger point.

VICE CHAIRMAN JOHANSON: Thank you Mr. Levin, and also in the preliminary staff conference, as noted at page 35 of that transcript, you explained the decision not to seek continuation of the previous order as based on the previous order having a large hole, and I assume that was the other producer being not included in the order; is that correct?

MR. LEVIN: That is correct.

VICE CHAIRMAN JOHANSON: Okay. Thanks for clarifying that. As far as any threat analysis is concerned, do we not have a natural experiment here? Can't we look at what happened when the orders were revoked in 2014? There were no orders on during the calendar year 2015 and no petitions were filed during that year. So isn't 2015 a clean year upon which to form some judgment on how producers in China will react?

MR. LEVIN: Yes and no. It was not totally a clean year because it is the first year in which you've had the market participation by a new major Chinese producer.

VICE CHAIRMAN JOHANSON: That being Tae Hee?

MR. LEVIN: Correct.

VICE CHAIRMAN JOHANSON: All right. Thank you, Mr. Levin. I'm getting into a more technical matter,
which I assume Mr. McCaul and Mr. Allen might want to address. I would like to get the Petitioners' take on the argument of the Respondents at pages five to six of their brief, specifically how the two different production methods have different raw material costs and byproduct values that are advantageous to the Chinese process that is contended by the Chinese producers?

MR. ALLEN: Yes thank you. The processes that were referred by Shadong Taico we're familiar with of course, the PCL3 being the primary raw material versus phosphorous acid. We look at this process on a regular basis. In fact, as I said in my testimony, we in the past have manufactured HEDP using phosphorous trichloride, and we choose not the less glamorous method. We choose the best economic method that results in the lowest cost of producing HEDP.

So our movement to that method of production would actually increase our net costs. So that's why we choose to make it the way we choose to make it.

VICE CHAIRMAN JOHANSON: And my apologies if this was addressed in the briefs. I just don't recall. Is the Chinese process a newer process? Is it more -- and in that way could it be seen as perhaps more efficient? Well, they do highlight in their testimony, in their brief I believe that they can generate the acetyl chloride, as
another additional product.

That is of course possible, and in the United States the key drivers for the economics are the purchase price of the phosphorous trichloride raw material, and the relative pricing of acetic acid and hydrochloric acid in the United States. We monitor this on a continuing basis, and if the economics were to shift in the favorable direction based on purchasing and sales of these byproducts, we also could shift to a phosphorous trichloride methodology. But we choose not to, again based on the economics. Does that answer your question?

VICE CHAIRMAN JOHANSON: Yes, it does.

MR. McCaul: Can I add to that a second? Yes, the comment that they make, that our method is -- I think they said outdated and inefficient, you know, respectfully that isn't true. Our method is different yes, but we did, as Mark was saying, we used PCL3 in our HEDP process for many years, and then we switched because it was -- it was more cost effective to do it the way we do it today.

The process that they use and that most Chinese use, they start with PCL3 and glacial acetic acid, and they can, with the process, manufacture a byproduct or co-product called acetyl chloride. There's a good market for that in China. There's very little market for that in the United States.
For example, that's another reason why it makes sense for us to use the process that we use. However, we're constantly monitoring the cost of PCL3, the cost of phosphorous acid crystal that we use, and if it switches, we will switch our production method back to using the PCL3 again. So the method that they're using has been around for many years, just like the method we use has been around for many years. It's simply a matter of economics. We would use the method that Shadong Taico uses if it made economic sense for us, and we could convert our plant quite easily to make that -- use that production method if it made sense.

VICE CHAIRMAN JOHANSON: Thank you for your responses. And my time has expired, so we will now turn to Commissioner Williamson.

COMMISSIONER WILLIAMSON: Thank you, and I do want to express my appreciation for the witnesses coming today and taking time away from their businesses. Continuing along that -- Commissioner Johanson's questions, you started talking about the advantages, the Chinese use the methods they use because it's advantageous in terms of the byproduct they produce. Is there anything about the inputs that give them an advantage using that versus another method?

MR. McCaul: I would say maybe the fact that PLC3 in China, the cost for PCL3 in China is lower than the
cost of PCL3 in the United States, would also push them to that production method. But I don't know in terms of phosphorous acid crystal whether or not they would -- there would be a financial advantage. I would say though that the byproduct of acetic acid would be an issue in China as well, whether or not they could in manufacturing these large quantities of product, whether they could consume an acetic acid byproduct if they used the alternative method of production.

It's just a matter of economics, the total picture, which process that you decide to use, which method. In the end, you're making the same product, HEDP, and the biggest driver really is what does the market for HEDP look like and can you make a good profit, a reasonable profit producing HEDP by one method versus the other.

COMMISSIONER WILLIAMSON: And to round out the picture, what's the situation in India? Do they use one method versus the other in their --

MR. McCaul: In India, the -- I'm just going to make some general comments about India and Indian production. India, the situation that we saw in the marketplace was that Indian shipments to the United States were declining somewhat. In fact, fairly significantly, and then when the Chinese -- the Indians were having difficulty in competing with the Chinese costs and the Chinese pricing
in the United States.

And so their volume was declining and actually since the preliminary order went into place, the Indian imports to the United States have jumped back upwards, and the Indian product now is -- their volume coming into the United States has gone up quite significantly. The only good thing I would say about that is that the average pricing that we're seeing in the marketplace from the Indian product is higher than we were seeing with the Chinese product.

So that we are able to move our pricing upwards versus what it was, not to the extent that we would like, of course, but because we have to compete with the Indian product and that's the sort of situation that we see today. The Indian production methods, if that's what you were asking about, I'm honestly not certain what process the Indian manufacturers use today. I would have to investigate that but --

COMMISSIONER WILLIAMSON: Well, the reason I was asking was did that have anything to do with the price at which they're selling in the U.S. market?

MR. McCAUL: No. The price that we're selling in the U.S. market is totally driven by the general market price and what's available and, you know, whether the Indian product is fairly priced or not, I can't sit here and tell
you that I know that. All I know is that the average price
from the Indian product is higher than where the Chinese
were at, and I'm hopeful that when things settle down, our
average pricing will be better than it was.

If it isn't, then I don't know what -- excuse me, I don't know why we went through this whole process to
begin with. It would have been a costly and wasted
exercise. But I really do think that we'll settle out in a
better place as a result of this. The last time around,
there was a question about that. I would just add to it
what Jeff had to say. In the end, at first the order was
very helpful to us but, you know, it seemed like people
were able to circumvent it and the pricing got really bad
and eventually when we decided to file again this last time,
it was --

I mean the prices from China were unbelievably
low and lots of people offering product at very low prices.
It just reached the point where we said my God, we need to
do something here. We need to file again.

COMMISSIONER WILLIAMSON: Okay, good. Sort of
kind of a related question. Are most countries depending on
China for many of their raw materials, feedstocks for HEDP
production such as elemental phosphorous and other
phosphorous chemicals?

MR. McCaul: Yes. Both countries you are asking
about, the Indian manufacturers use phosphorus from China, but from other parts of the world as well. There's more than just Chinese phosphorus available.

COMMISSIONER WILLIAMSON: Okay. It would be fine post-hearing about this, part of the reason I'm raising the question is because--I've forgotten exactly what Mr. McGrath said, but it was sort of like, you know, if India is your problem, or something like that, it might get--and so I'm trying to sort of evaluate that statement. And so if you have anything post-hearing that would kind of clarify the basis on which the Indians are competing it would be helpful.

MR. LEVIN: We'd be happy to, Mr. Commissioner. I'll just add the remark--I'll add two things. First of all, why we didn't file against Indian again would be a natural question. Two basic reasons for that. First of all, Compass was not really seeing from India at that time the pricing pressures, the injurious pricing pressures, that they were from China.

Second, just to put things sort of like in a real-world context, because it's true, these things are expensive, these investigations.

COMMISSIONER WILLIAMSON: I understand.

MR. LEVIN: And they eat up a lot of time and resources. And especially for a company like Compass,
there's nobody else to share the bill with. And therefore
the question is: Okay, you know, what is doable within a
realistic budget? And if we're going to take the budget,
where are we going to aim the budget--

COMMISSIONER WILLIAMSON: No, no, I understand.
You don't have to justify why--

MR. LEVIN: I just wanted to add that context to
it.

COMMISSIONER WILLIAMSON: I'm just thinking of the
Respondents' statement, and also sometimes we get one
country and the next thing you know it's--

MR. LEVIN: And I understand. And the second part
of what I was going to add to it is, in this instance, in
this marketplace you have Chinese imports that greatly
outnumber the Indian imports, and the pricing comparisons
are in the staff report.

COMMISSIONER WILLIAMSON: Okay. One--

MS. GRODEN: Mr. Commissioner, could I add one
more thing to that?

COMMISSIONER WILLIAMSON: Sure. Go ahead.

MS. GRODEN: Within the context of Indian imports,
or imports from India being an issue throughout the POI, I
don't think that's quite the case, and I don't think that's
what the data show right now.

If you look at the monthly Piers data provided at
Exhibit 1 to the Petitioner's prehearing brief and compare that to the pricing data for India available at Appendix D to the staff report—

       COMMISSIONER WILLIAMSON: Yes, I'm aware of that.
       MS. GRODEN: Yeah, you do see a distinct linkage between pricing trends, particularly as pricing fell for HEDP throughout the period for all sources. And when the increases in volume occurred for those producers. And I think there's a clear trend of price being linked with volume in this industry.

       COMMISSIONER WILLIAMSON: Okay. Thank you. My time has expired. Thank you.

       VICE CHAIRMAN JOHANSON: We will now turn to questions from Commissioner Broadbent.

       COMMISSIONER BROADBENT: Ms. Groden, why are you all focusing on the Piers data as an alternative to the data set that we use in the investigation?

       MS. GRODEN: The Piers data offer more nuance. They offer more granularity, and also if you look at the quarterly data that I provided today it's linked a little bit more closely with the under-selling data.

       The apparent consumption tables, looking at it on an annual basis, lose out on the petition effects and the effects of the determinations by Commerce. And particularly with the arguments that Respondents are making in terms of
Indian impact in this industry and we felt it was important that the volumes of subject imports from China during this POI be made particularly clear to the Commission, and the insight from those observations included in your analysis.

COMMISSIONER BROADBENT: Okay.

MR. LEVIN: Which is—Madam Commissioner, not to discount the data that are in the staff report, the importance of the data of U.S. importers shipments, et cetera, et cetera. But as Cara had indicated, there is nuance and detail in the Piers report that just is not captured in annual data, or even quarterly data in the staff report.

COMMISSIONER BROADBENT: Okay, are we disagreeing that the nonsubject imports were higher priced and were capturing market share from both the domestic industry?

MS. GRODEN: This is Cara Groden. From both the domestic industry and from imports from China?

COMMISSIONER BROADBENT: Yes.

MS. GRODEN: I think we are disagreeing to that extent, because the big increase in imports from India shown at Exhibit 1 to the Petitioner's prehearing brief occurred when Chinese imports left the market after Commerce's prelim determinations.

So to say that China—that imports from India were capturing market share throughout 2016 is simply not
the case. And we can try to expand on that in post-hearing if you'd like.

COMMISSIONER BROADBENT: Yes.

MS. GRODEN: With other confidential information that we have on the record.

COMMISSIONER BROADBENT: Okay. Compass was sold a couple of times in the last several years. Can you kind of describe to me what was going on with those changes in ownership?

MR. McCAUL: Yes. Compass was owned by a couple of individuals, one of them being me, and we--I was a minority owner of the company, and the majority owner basically decided he wanted to sell the company.

So we went through a process of selling the business, and there were a lot of companies interested in acquiring us. We were obviously privately held. And in the process we chose to--a purchaser called One Rock Capital that I mentioned in my testimony, and One Rock was a private equity company from New York. This other company, Italmatch were interested in buying us, but they lost out in the process of bidding for our business for our company. But the continued to stay interested, and One Rock decided to sell to them, but kept a part of the ownership in their portfolio.

So although we're owned by Italmatch, One Rock
has a substantial portion of the ownership, we well.

   COMMISSIONER BROADBENT: And has that--have those changes affected your production abilities, and just kind of the general operation of the plant?

   MR. McCaul: They haven't had any major effect on our plant so far, except in a positive way in that because we are now part of a larger company we are working to expand our plant and our product line, and hopefully we'll become a more substantial company as time goes by.

   COMMISSIONER BROADBENT: Okay. Mr. Allen, do you agree with that?

   MR. ALLEN: Yes, I do. The only extent of they have not had significant impact on our phosphenate production. It's been generally operating in the same manner. With respect to HEDP and other phosphenates, but other product lines that Danny's referred to, yes, we're working on those projects as we speak.

   COMMISSIONER BROADBENT: Okay. Several purchasers reported that Compass has been unable to supply their firms with HEDP during the POI, and half of responding purchasers who reported that they purchased imported HEDP from China instead of U.S. produced product reported that they did so for reasons of availability.

   Has Compass been able to fully supply its contract and spot sales?
MR. ALLEN: Yes. We produce whatever we're being asked to produce. Danny, did you want to jump in on that?

MR. McCaul: Yeah, I mean we have additional capacity. And I'm not sure actually where this is coming from, but, look, our supply position is very good. We typically respond to customers and they get used to getting product from us in a very short lead time.

In other words, we can ship product like the next day, or within two days. Typically I would say we're supplying product in certainly less than five business days on average. So customers get used to this, and they take it for granted at times, and I suppose it's possible that in a couple of cases here or there a customer might have wanted to order some product and some temporary situation where our inventory was maybe not quite what it normally is and maybe we told them we would have to wait a little longer for it. I honestly don't know, Ms. Broadbent. I couldn't tell you that. But I'd have to investigate the individual cases where somebody is alleging that they couldn't get the product from us.

But in general, that would be a complete distortion of the situation, to suggest that we could not supply several customers, or a significant volume, and that's why they had to go somewhere else.

COMMISSIONER BROADBENT: But when you have one
producer in the country, and then you get a sense that, you
know, your supply may be a little shaky. You know, we see
oftentimes in cases where the imports come in just as, you
know, any general purchaser feels like he needs to diversify
just to protect himself.

MR. McCaul: Yes, and I understand that
completely. But when you, for example, say the supply may
be shaky, if you look at the volume that we've produced over
the years, year after year, you'll see that the volume is
pretty flat, pretty steady. There's nothing shaky about it.
And what I'm saying, and we can prove, is that we have the
capacity to supply a great deal more of the product than we
normally do.

So the allegation that we couldn't supply
somebody and that's why they went to buy it from China is,
you know, just to be frank, I would say that's nonsense.

Commissioner Broadbent: Okay. Alright, let's
see. Several purchasers reported that due to environmental
regulations demand for HEDP is decreasing as end-users
switch to non-phosphate solutions.

When were these environmental regulations put
into place? And do they impact specific end users more than
others?

MR. McCaul: I have to be honest and say I don't
know what they're talking about. There's no changes that
have affected the use of HEDP that I'm aware of.

COMMISSIONER BROADBENT: Is that right?

MR. McCaul: Correct.

COMMISSIONER BROADBENT: And that's your understanding, Mr. Allen?

MR. ALLEN: That's also my understanding. I'm not aware of anything, and I think the volume data for domestic HEDP purchasing supports that.

COMMISSIONER BROADBENT: Okay, thank you very much.

MR. McCaul: Perhaps, let me just add one thing about that. In Europe, phosphenates are used in detergents, and there's a large market for phosphenates in detergents in Europe. But in the United States, phosphenates are not used. There's an issue about the P content, the phosphorous content in the detergents that limits the amount of phosphenates that can be used. Detergent manufacturers in the United States chose a few years ago, because of the regulations on the phosphorus content, to eliminate the use of phosphenates in the detergent formulations in the U.S.

So there's a difference in the marketplace there. Whether somebody is referring to something like that, that's the only stretch I could make to address what you were asking about, Commissioner Broadbent.

COMMISSIONER BROADBENT: Okay. Alright, I see my
light is blinking so I'll yield to my colleagues.

VICE CHAIRMAN JOHANSON: We'll next turn to Commissioner Kieff.

COMMISSIONER KIEFF: Thank you. I join my colleagues in welcoming you.

A few follow-ups for maybe each of you. Mr. Levin, if I could just start with you: To the extent you're comfortable discussing the economics of the business realities that you were describing earlier about how to file a case, I just wanted to invite you for a minute or so to just briefly give a little bit of understanding. It would help me not just in this case but in a bunch of cases. I am genuinely curious.

What is, roughly speaking, the marginal cost of adding a country like India to a case like this focused on China?

MR. LEVIN: Considerable.

COMMISSIONER KIEFF: But so in percentages is it like 2X, 1.5X, is it another 10 percent kicker, or what are we talking about?

MR. LEVIN: It would certainly be more than 10 percent. I mean, there's additional work, not a huge amount of additional work, but some additional work on the ITC side of stuff. The really costly aspect is the Commerce Department investigation. And the Commerce Department
investigation to add a country--

    COMMISSIONER KIEFF: Basically doubles it?

    MR. LEVIN: I wouldn't go so far as saying double, because it's not double the whole budget--

    COMMISSIONER KIEFF: Okay, so there are some economies of scope--

    MR. LEVIN: --right, but it would be a 50 percent increase.

    COMMISSIONER KIEFF: Okay, that's helpful. Just that ballpark is helpful. For me, one of the things I have often discussed with parties during hearings is this question about how seriously we should consider starting and ending cases, recognizing that at least for me I care a lot about data and grounding my decisions in data, and so my feeling is, especially in cases where we're very focused on hypothesizing future states of the world, one of the factors that I often weigh in my mind is: Well, gosh, how hard is it on a business to wait a little bit and see what happens? And your answer helps me understand that that's a nontrivial cost. So I appreciate it.

    MR. LEVIN: Thank you.

    COMMISSIONER KIEFF: The other, or the second follow up I think is for the two industry witnesses. Can you briefly give me a little bit better understanding of what is happening in China with respect to the market for
the particular byproduct that you identified as having a
special demand in China? Can you just tell me a little bit
about what industries use that byproduct?

MR. LEVIN: And if I may--

COMMISSIONER KIEFF: Whoever would like to.

MR. LEVIN: Just a prefatory remark. Compass
doesn't produce that byproduct. We don't have that market
here in the United States for that byproduct. So, yes, this
would be based on whatever industry knowledge they have from
contacts with China.

COMMISSIONER KIEFF: Correct. And if it turns out
you don't have that at your fingertips, it's not a quiz. I
don't mean to--I mean, if you happen to have any information
about that, that would be helpful.

MR. LEVIN: Danny or Mark, do you want to say
anything about it?

MR. McCaul: We can possibly provide a wee bit
more information about the market for that co-product. We
think it's used in the pharmaceutical industry, but I'll be
honest and tell you I don't know exactly what it's used for.
I just know that we have in the past examined and looked for
data on is that a product that we should be making in the
United States? Is there a large enough market for it? And
it's minuscule. It just--

COMMISSIONER KIEFF: So in effect your decision to
not use the process your opponents have described, you're
telling us your decision was reached after deliberate
consideration of alternatives, including that process, and
it was noneconomic for you in the U.S. market to do that?

MR. McCaul: That's what I'm telling you. And I'm
telling you also that the market for that product in China,
if you look at the other Respondent here, Shandong Taihe,
they manufacture this byproduct, acetyl chloride on purpose
from the process that we use.

Now please understand that that process is such
that you can make more or less of that material. But if you
look at the data that they've provided in their
publications, you will see that they describe the capacity
for producing that byproduct and it's very, very much lower
than the capacity for making HEDP.

And what I'm telling you is that the market even
in China for that byproduct versus HEDP is a very small
portion of the HEDP market. So that byproduct that they are
professing to be a big deal and, you know, it's very
valuable and all that, I'm not disputing that it's a
valuable byproduct, but the volume is tiny compared to HEDP
volume.

So in the overall economics, it plays a part but
I'm suggesting to you that it's not a major part.

COMMISSIONER KIEFF: Sure. And I take it the
reason they're raising it, if I understand it, is not so much to explain their motivation. They have--they have, if I understood their opening remarks, and of course I'll be asking them to explain this during their panel, no secrets here, as I understand it they're saying that we the Commission have to make a determination about causation with respect to your decisions--sorry, your experience as a company trying to thrive, and they are attributing any lacking of thriving on your part to I think, in their words, your decision to not use their process.

Your answer I think is already a complete answer to that, which is you researched their process and the math, the economics don't add up. So the question I'll be asking them this afternoon is, do they somehow think they understand your business better than you do? And can they please educate us all about why you would be making more money if you decided their way?

If it turns out they're right, one side benefit is you can take notes.

(Laughter.)

MR. McCaul: That's true. I'm always willing to learn.

COMMISSIONER KIEFF: Of course. I guess I don't think we have to belabor it any more than that. You've provided at least a prima facie complete answer.
MR. LEVIN: If I may, in highlighting the rule of
once you get to the answer you should just shut up, but they
not only evaluate. They evaluate on a continuing basis.
And I asked Danny and Mark this a few days ago: Okay, let's
just take the use of PCL fully as the primary raw material
input, which they used to do many, many years ago before
they switched, and Danny and Mark both testified that, yeah,
they look at it from time to time.

And I said, okay guys, what do you actually do?
Okay? And he said, we sit in Danny's office, about every
six months, and we go through the numbers, and we figure is
there anything here that should give us consideration to
switch the production methodologies?

COMMISSIONER KIEFF: That's helpful. For Ms.
Groden, if you could just briefly try to either now or in
the posthearing give us a better understanding of what you
think is going on with the nonsubject import volume.

We certainly, at least I have heard the panel
discuss a lot about nonsubject import price, but I'm still
trying to understand the volume effect, and in particular
I'm just trying to understand why there is--why India is in
this market, I guess. And in particular whether the
volumes, if you will, lost from China are not replaced by
India?

MS. GRODEN: Sure thing. Yes. I think, due to
the nature of most of the data on this record, we will have
to look at this posthearing.

COMMISSIONER KIEFF: Sure.

MS. GRODEN: And as for why India is in this
market, I might ask Danny and Mark to hop in. Because my
understanding is that they've been a player for a long time,
especially as they were included in the prior case.

I think with respect to nonsubject imports in
this situation and their interplay with the volumes of
subject imports, I think the price is really important,
which is why it keeps coming up. And I understand you're
asking particularly about volumes in this instance. But
what we see from just the public accounts of underselling,
it's that prices from India were higher than China but in
some instances still lower than the U.S. producer. And so
they were able to increase volumes more than they had been
at other periods of the POI, which we see in the Piers data,
and which is reflected to a certain extent in the
confidential data, but I obviously won't get into that here.

And the pricing that they were able to get in the
market--trying to be delicate with the data, you understand—
was able to influence their volumes within the market. But
this is really something we'll have to touch on posthearing.

COMMISSIONER KIEFF: That's very helpful. Totally
understood. And the time is up, and obviously we look
forward to your counterparts fleshing out a little bit more their take, because they seem to hang their hat on these two points, and that may be where the rubber hits the road, is these two points.

MS. GRODEN: Sure. We'll be happy to expand on that for you.

COMMISSIONER KIEFF: That wraps up my questions for the panel. Thanks so much.

VICE CHAIRMAN JOHANSON: Alright, I'm going to turn back to the question I started with this morning, or rather the issue that I started with this morning, and that deals with the prior order.

Can the instances of over-selling on this record be tied to the existence of the previous order?

MR. LEVIN: If I may, Mr. Chairman, I'd like to address that in the post-hearing brief.

VICE CHAIRMAN JOHANSON: Alright, certainly. I look forward to reading that.

The staff report at page VI-2 notes that "from a marketing perspective, HEDP reportedly plays an important role in terms of allowing Compass to offer a full range of phosphates to its customers."

Are there other aspects of the company's operations that benefit directly or indirectly from the presence of HEDP manufacturing? Conversely, are there areas
of the company's overall operations that would be negatively
impacted by the discontinuation of HEDP manufacturing?

MR. MCCaul: So HEDP, as we mentioned, it's the
largest phosphate that's manufactured that is used and if
you think about somebody who's buying phosphates, not just
HEDP, but other phosphates customers you know they shop
around, of course, but especially I would say medium-size or
smaller customers they like to one-stop shop. You know they
like to go somewhere where they don't have to place lots of
different orders with different suppliers, but they can get
from one supplier the range of phosphates that they use. So
being able to provide HEDP as well as the other phosphates
is important. It's a great benefit.

And you can imagine too it's a switch from us to
buy HEDP from somebody else. You know it's a short step to
find them deciding to buy other products and so we would
lose even more volume if we didn't have HEDP in the
portfolio. So that's a big thing and very important to us.

The second thing about HEDP is that it is a
large volume product. And even though we don't -- you know
the numbers come out and it looks like it doesn't make any
money for us the situation would be even worse if we stopped
producing it because none of the fixed costs that are
absorbed by making HEDP are not being absorbed anywhere and
then you know you find what am I going to do? I'm going to
have to cut costs somewhere else and I'll probably have try
to cut back on other resources -- labor and what have you.
So to stop making HEDP, yes, we could stop, but it would be
I think even worse for our business than it is today if we
stopped producing it.

I also happen to believe that I know what's
happened in the industry over the years. There used to be
other people that made the product here and made other
phosphates here in the United States. They've all basically
fallen by the wayside. We're the sole survivor. I think
it's good to have a U.S. producer of the product and so I'll
just leave it at that.

MR. ALLEN: Just along the lines of what Danny
mentioned is we also get possibly some purchasing leverage
on the phosphorus acid because the amount of purchased
phosphorus acid HEDP is quite significant versus the rest of
our phosphates. So if we lost our -- if our volume
decreased in half or some other similar magnitude we may be
facing possibly higher prices due to our lower volume
purchases, so that's also a possibility.

MR. MCCAUL: I want to add one comment here too.
You know I hate to sit here and appear like we're whining
about our situation. We're not whiners. You know we're
just trying to deal with the facts and you know the people
from China that are manufacturing these products are good
people, but you know it's got to be a level playing field
and if it is we're very good. We're very good at what we do
and our customers really like us and we can -- the thing is,
though, we can't compete if the playing field isn't level.

VICE CHAIRMAN JOHANSON: Thank you Mr. McCaul
and Mr. Allen.

And following up on that question, to what
extent, if any, does your firm's price of the byproduct
affect the sales price of HEDP?

MR. MCCAUL: It doesn't affect the sales price
of HEDP because the HEDP is competing in the market with
HEDP produced by various people. There's European, there's
Indian, there's Chinese. The customers who buy HEDP
couldn't care less about what our byproduct situation is.
They're only dealing with HEDP and pricing.

VICE CHAIRMAN JOHANSON: On page 7 of the
Respondent's brief, they characterize the byproduct that
results from Compass's product process as "low margin, low
quality acidic acid." Do you know what they mean when they
state "low quality"?

MR. MCCAUL: I'm trying not to be insulted by
that. The quality of our acidic acid byproduct is excellent
and I don't know what they're talking about. Now it is a
byproduct material. I will admit that. It's not glacial
product, but it is excellent and it gets used by some large
customers in the United States where they use it to make
inks. You know inks that are used in computer printers and
magazine production ink and so and so forth and it's used in
the textile industry, carpet industry and so and so forth
and the quality is excellent. So those comments are --
they're just not correct.

VICE CHAIRMAN JOHANSON: Thank you Mr. McCaul.

Mr. Allen do you want to add something? Alright.

Respondents argue that pricing is not an
important factor in purchasing decisions and that
underselling by subject imports did not affect the condition
of the domestic industry. As evidence of this, Respondents
point to two trends. First, the volumes of non-subject
imports experienced the greatest increases over the period
of investigation even though price comparisons show that
non-subject imports oversold both the domestic-like product
and subject imports in most quarters.

And second, when subject import volumes and
underselling increased in 2015 the financial condition of
the domestic industry improved. How do you respond to these
arguments, which can be found at pages 3 to 4 of the
Respondent's pre-hearing brief?

MR. LEVIN: If we may, we'll discuss this in
detail using the confidential information in the
post-hearing brief with the Chairman's leave, but I will
make one point.

Again, skirting around confidential information, the lost sales and revenue findings in the staff report would indicate that there is serious price competition.

MS. GRODEN: This is Cara Groden.

One more thing that I would add is that the vast majority of purchasers noted that price was one of their more important purchasing factors, that HEDP from the U.S. and China are comparable in all factors, except for price, that U.S. pricing was inferior to Chinese pricing because it was higher. So I think that any assertion that price is not an important factor in this industry is not supported by the evidence.

VICE CHAIRMAN JOHANSON: Thank you Ms. Groden and Mr. Levin. I'll look forward to reading the post-hearing brief. My time is about to expire, so we will turn to Commissioner Williamson.

COMMISSIONER WILLIAMSON: Okay, thank you.

Mr. McCaul, you made reference to the fact that a lot of the other companies have gotten out of this business and you're the only one. I don't think you actually answered the question why did it happen. Why did the others get out? Why are you the only one left?

MR. MCCAUL: It basically it was advent of China getting into the marketplace and Chinese production over the
years. I mean when I first got involved with the phosphate business, the HEDP business, in particular, that was about -- I don't know, 20 years ago, something like that. It was little stuff -- there was very little product coming in from China at that point, but you know it just grew tremendously and it just killed a lot of the industry in the U.S. as far as phosphate production is concerned.

So why were we able to survive? You know we're pretty good at what we do. Our plant is efficient. It's not outdated and inefficient as has been suggested. We have excellent people. They really know what they're doing and we're very efficient. We don't have a lot of employees that aren't needed. We're lean and a good team, so we've been able to source raw materials properly, efficiently, and effectively. We've got good operations and we've been able to compete with China and India and Europe. And it's not been easy and it has gotten really tough lately and that's why we decided we had to take this step because it was just incredible the way prices were falling coming from China. They were just unbelievably low and so that's why we're here today.

COMMISSIONER WILLIAMSON: So before you made your last few statements, I was going to say it was really not so much the product -- others didn't get out because of the product, but because of the market. But I guess you
could also say you're very good with working with the product and maybe the others weren't as good.

    MR. MCCAUL: Yes, I'm saying that too I mean there's a level at which you can stay manufacturing a product and some people make a judgment that you know this is just not worth it and others could say, well, although we're making a very small margin we could still survive with making this margin. So I mean that's the determination we made and so we're still making this product today. I don't know what the future's going to bring, but I'm hopeful we can continue to make this product and stay in business, but maybe in a different form. I don't know. We'll see.

    COMMISSIONER WILLIAMSON: That leads to a question. Did the domestic demand for HEDP increase during this period of investigation?

    MR. MCCAUL: It has increased a little bit, I think, but it's not a huge growth. I think the growth of HEDP is kind of tied to the general GDP growth to the extent it's a widely used product in a lot of different industries, so if we get more growth in the U.S., I think the market's going to grow for HEDP.

    COMMISSIONER WILLIAMSON: Is that the way you would describe your expectations for the future?

    MR. MCCAUL: Yes, it is, I mean for HEDP. I'm not seeing some area where the demand could explode for
HEDP. I think it's going to be tied to the general economy more than anything else. There are some products that you can look at, not HEDP. There are other products, phosphates that we manufacture that are more tied to oil and gas production. And when oil product you know spikes upwards the demand for those, but not HEDP.

COMMISSIONER WILLIAMSON: This is sort of across the board more.

MR. MCCAUL: Yes.

COMMISSIONER WILLIAMSON: Good, thank you.

Mr. Levin, I think you sort of partially answered this. I had a question about the affects of the duties on Compass and you talked, I think -- you said you were going to answer part of the price question later, but I was curious if there was any other positive effects the temporary duties have had that you can address here or else do it all post-hearing.

MR. LEVIN: I'd prefer to do it in post-hearing, but it allowed the company to survive a little longer.

COMMISSIONER WILLIAMSON: Okay, thank you.

I was wondering and we've talked a lot about switching between the different methods of production and I was wondering what kind of capital investment is involved in doing that?

MR. MCCAUL: That is a good question. We have
equipment in place already that allows us to use the PCL-3, 
so since we haven't used PCL-3 in quite a few years now, I 
will admit that we would have to refurbish some of that 
equipment and make sure that it's useable. In fact, we are 
currently refurbishing some part of the plant that will 
allow us to use PCL-3. Already we've decided to take that 
step for other reasons, I'll say. I'll put it that way, but 
as far as dollar-wise you know to be able to get back into 
using PCL-3 in the plant we've made some estimates about 
what our capital investment would be there and it's not a 
huge number. I'd rather not quote the number.

COMMISSIONER WILLIAMSON: No, that's fine.

MR. MCCaul: But I would tell you it's not a

number that -f-

COMMISSIONER WILLIAMSON: It's not a prohibitive

ing.thing.

MR. MCCaul: No, definitely not, definitely not.

COMMISSIONER WILLIAMSON: Okay, good. Thank

you.

You mentioned something about I guess the
detergent manufacturers stopped using phosphorous. Was it
you said a few years ago or was it quite a bit longer than
that? I thought it was quite a while ago.

MR. MCCaul: It was quite awhile ago that the
American producers of detergents stopped using phosphates.
You know it's a fact too that even though there were restrictions on the amount of -- they could use phosphates in detergents in the United States if they really wanted to. And of course, I wish they would, but it's interesting to me that the regulations are such that they're not forbidden entirely from using phosphates, but they made the decision some years ago.

COMMISSIONER WILLIAMSON: We're talking about in the eighties, the nineties?

MR. MCCaul: I'm not sure when. It could've been eighties, but it was certainly in effect in the nineties, that's for sure.

COMMISSIONER WILLIAMSON: I've been doing trade policy for a long time and I remember this issue coming up when.

MR. MCCaul: Yes, yes.

COMMISSIONER WILLIAMSON: Okay, thank you. We'll just settle it at that.

Respondents have noted that Compass uses the acidic anhydride that you use is I guess controlled in the U.S. because it also can be used to produce certain narcotics. Does Compass incur any regulatory burdens or costs associated with using this material?

MR. MCCaul: No, no, absolutely not. I read that too and I was puzzled by those comments. I mean acidic
anhydride, yes, some of the comments they're making are
correct as far as what it could be used for, but honestly,
there's no special costs involved because you know we use
acidic anhydride. You know the cost of acidic anhydride has
been pretty steady for a long time too. I mean, Mark, do
you have any comments on that?

MR. ALLEN: No, it's just an initial making sure
that your plant records are adequate to maintain inventory
and ensure that there are no losses, so it's part of our
normal MRP system anyway and so it's not particularly
burdensome at all. In fact, a phosphorous trichloride is a
much more difficult material to handle than acidic
anhydride, in my opinion.

COMMISSIONER WILLIAMSON: Okay. MRP
manufacturing process or what?

MR. ALLEN: Typical acronym used for just an
overall ^^^^ like you've heard of SAP we can patch these
systems with all your contractual data is stored in those.

COMMISSIONER WILLIAMSON: Okay, thanks.

MR. MCCAUL: MRP stands for Material Resource
Planning.

COMMISSIONER WILLIAMSON: Okay, I just wanted to
know. I'm always learning new acronyms here, and thank you
for those answers.

VICE CHAIRMAN JOHANSON: Commissioner Broadbent.
COMMISSIONER BROADBENT: Okay, thank you.

Let's see, Mr. Allen, this product appears to be highly interchangeable and the price appears to be really important in the market. Given that it's surprising that there's much of a price different -- you know a difference in price at all really between imports and the domestic product or between individual firms why are there price differences? Is this an issue of sort of imperfect information in the market or some attenuation I'm not seeing?

MR. LEVIN: If I could jump in before Mark speaks.

Well, first of all, the Chinese are dumping.

MR. ALLEN: Ms. Broadbent, I don't really have anything to do with pricing. I just make the material at the lowest possible cost.

COMMISSIONER BROADBENT: Mr. McCaul.

MR. MCCAUL: I have something to do with pricing. The product itself is interchangeable, of course, as you point out. Now why would somebody sell product at a lower price than somebody else? I mean there's a lot of reasons for that.

COMMISSIONER BROADBENT: It's really why would somebody buy it at a higher price?

MR. MCCAUL: Why would you buy at a higher
price? That's the problem we have all the time. We can't get people to pay a higher price, you know, because they compare us. And what happens -- no, I mean this is a fact. I mean you go into a customer and you say, look, we need to charge you so much for this product and they immediately tell you, well, wait a minute, we had some people in from a Chinese supplier last week and they're offering this price, you know, and this is much lower.

And then we say, well look, here's all the benefits you get from dealing with us. First of all, we're great people and you know -- but no, we provide good service and follow up and you know we've got inventory and we can supply your emergency requirements right away and all of this kind of stuff. And you hope to differentiate yourself by that and you can get maybe a few cents, but you can't get a whole big difference. So what happens is that someone comes in with lower pricing it drives the market down and that's the problem we have to deal with.

COMMISSIONER BROADBENT: Do they cite the Chinese prices to you when they're negotiating?

MR. MCCaul: Yes, oh yeah. Oh yeah.

COMMISSIONER BROADBENT: And do you have any -- you might want to put some of that on the record if you could.

MR. MCCaul: I think we have submitted some
information about quotes from China that we've had to deal with, you know, and that's an everyday situation.

COMMISSIONER BROADBENT: Okay.

MS. GRODEN: If I may add, briefly.

I mentioned this in my testimony that the pricing products account for almost 100 percent of both Chinese shipments and the U.S. producers' shipments, which is frankly uncommon in the cases that I've been involved in and I think does show that there is no segment of those sales that isn't going into exactly the same market. So just to address your point on the attenuation quickly, I don't think we see any evidence of that.

COMMISSIONER BROADBENT: Okay.

Page VI-2 of the staff report includes a statement by a Compass company official stating that while HEDP pricing does not contain a specific pass-through mechanism or pricing formula for changes in its primarily inputs "There is an expectation from customers that we might achieve lower costs. We would be expected to adjust our prices accordingly." Do you agree with this quote?

MR. MCCAUL: Yes, I do.

COMMISSIONER BROADBENT: Okay, do you know who said it?

MR. MCCAUL: It was probably me. I don't know. I'm not sure.
COMMISSIONER BROADBENT: Okay.

Alright, both the average per pound HEDP sales value and raw material costs declined throughout the period. To what extent do raw material prices affect prices for HEDP? Do your customers analysis the prices for key raw materials and do they reference those in your price negotiations?

MR. MCCAUL: Depends of how sophisticated the customer is. But some customers who are aware how products are made, not just HEDP but other products they would site evidence of, the price of phosphorus for example, has declined so you think that your cost should have gone down, and therefore you should be lowering your price to us. That sort of thing happens. And then you have to respond to that with facts, but you can support your position for perhaps asking for a price increase, or for perhaps defending perhaps you want to keep the price where it is.

That's sort of an everyday occurrence that we deal with too. I would have to tell you though, that at the end of the day, what matters is, what's the market for this HEDP product? You can run to a customer and say, hey my cost have gone up, because this raw material is more expensive, than it ever was, and they're often not interested in that, they're only interested in the fact that they can buy HEDP from somebody else at a lower price.
COMMISSIONER BROADBENT: Okay. In assessing whether there has been a cost price squeeze we normally look at cogs to net sales ratio. Over this period the cogs to net sales ratio increased. However, cogs is calculated by including byproduct revenues, which are based on the industries sales of a product, that's unrelated to the merchandise, in the scope of this investigation. To what extent should we take into account that changes in the industries byproduct revenues as we accessed the cogs to net sales ratio and whether the industry did actually experience a cost price squeeze.

MR. LEVIN: If we may commissioner we'd like to address that in our post hearing brief, especially since we're getting very close to confidential information.

COMMISSIONER BROADBENT: Okay. Mr. Chairman that concludes my questions. I want to thank the panel for appearing here today, it was really helpful.

VICE CHAIRMAN JOHANSON: Commissioner Kieff?

COMMISSIONER KIEF: I have nothing.

VICE CHAIRMAN JOHANSON: I am next up. Do Commissioner Williamson, or Commissioner Broadbent have any further questions?

COMMISSIONER BROADBENT: None from me.

COMMISSIONER WILLIAMSON: I have one question. Are there differences in the types of purchasers, that purchase
through contracts, and those that purchase through spot
sales?

MR. MCCaul: In this industry, and I'm referring
to the sales of the types of products that we sell. The
number of contracts that we have are miniscule. Most of the
business we do is simply -- you would probably describe it
as spot business. It's more than that. I would say there's
an understanding and a relationship, and a goal that you
make with a customer to supply to them and they usually stay
with you, unless something changes. You know, somebody
comes in and offers them a lower price, they often give you
the chance to respond and lower your price to match, that
happens a lot. But contract -- we have very few sales
contracts.

COMMISSIONER WILLIAMSON: Okay. Good. Thank
you for that. Thank you for your answers.

VICE CHAIRMAN JOHANSON: We would like to thank
you all for appearing here this morning. We will now take a
-- we will recess -- oh, I apologize. I'm new at this
business. Do staff have any questions?

MR. CHANG: Calvin Chang. Staff has no further
questions.

VICE CHAIRMAN JOHANSON: Do respondents have
questions?

MR. McGrath: We have no questions.
VICE CHAIRMAN JOHANSON: We will now break for lunch. But first, I would like to thank the witnesses for appearing here today and their counsel and their economists. We found it quite informative. So we will now take a break for lunch. We will return at 12:45. And please be sure to remember that you should not leave confidential business information in the hearing room, because this room is not secure.

MR. LEVIN: Thank you, Mr. Chairman, and thank you Commissioners.

VICE CHAIRMAN JOHANSON: Thank you.

(Whereupon, at 11:45 a.m., the hearing was adjourned to reconvened at 12:47 p.m., this same day.)
AFTERNOON SESSION

VICE CHAIRMAN JOHANSON: Mr. Secretary, we are prepared to begin with the Respondent's testimony. Are there any preliminary matters?

MR. BISHOP: Mr. Chairman, I would note that those in opposition to the imposition of the anti-dumping and countervailing duty orders have been seated. All witnesses have been sworn.

VICE CHAIRMAN JOHANSON: Thank you.

MR. BISHOP: Mr. McGrath, you may begin when you're ready.

MR. MCGRATH: Thank you and good afternoon. And it's a pleasure to appear before you today. I'm going to introduce our witness here, Ms. Joanna Cheng, to present testimony on behalf of Taihe Water Technology.

I wanted to just offer a few opening comments first and then she will discuss the production process that we heard about this morning in some more detail, explain some of the issues that we were raising.

I did want to apologize for any misperception on the part of Mr. McCaul that we had characterized his byproduct, acedic acid, as poor quality. Irishmen don't usually insult each other unless there's drinking involved. What I meant to refer to -- what we were referring to in the brief was simply the fact that it is a byproduct. There are
impurities. It's not likely to have the same sort of value in the market as a first-quality product like, as he said a glacial acedic acid or other pure forms of acedic acid that might be used as used for inputs for production.

So I did want to introduce Ms. Cheng. She is going to discuss the production process and I believe it was Commissioner Kief who suggested that Mr. McCaul might want to take notes. I can assure everyone there's no need to. Mr. McCaul has been to the plant. He has seen it. The company welcomed him there and he had a good visit, so he knows how this is done and so now she will explain it to the Commission. Ms. Cheng.

STATEMENT OF JOANNA CHENG

MS. CHENG: Good afternoon Mr. Chairman and members of the International Trade Commission. I'm Joanna Cheng. I'm the North American Regional Sales Manager of Shandong Taihe Water Technologies.

I'm here to today to explain why Taihe and the Chinese producers of HEDP do not cause injury to the U.S. industry. Taihe is able to sell the HEDP globally as a profit because China has the complete industrial chain from yellow phosphorous to the finished product. And in our company, Taihe, has regional industrial advantage and advanced production technologies. The details are as follows.
There are many process routes to produce HEDP and the producers all over the world are using cheaper material phosphorous trichloride and acidity acid as raw materials, which are further reacted together to form phosphate ester by one step esterification, then the subjected HEDP will be generated after hydroxylation and distillation. During this process, acedic chloride is also produced as a byproduct in Taihe's production process, which is widely used as intermediate in pharmaceuticals and pesticide industries, as well as hydrochloric acid is produced as byproduct, which has wider applications.

Taihe uses its own advanced, independent research and has developed a continuous high-pressure production process, which reduces the production time to less than one-tenth of the traditional technology. This reduces energy consumption greatly and enhances the utilization rates of raw materials to almost 100 percent. Taihe continues the process has achieved the complete automatic operation and uses very few workers, so there's an innovative production road.

Compass's plant is in the United States like other industries in recent decades the U.S. or American chemical industries have moved to some other countries, especially the high-risk and high-pollution industries. Now America does not have the industrial chain related to
phosphor to produce HEDP, phosphorous trichloride as the raw material of HEDP is made from chlorine and yellow phosphor.

As we all know, chlorine is a very hazardous chemical and was once used to make chemical weapons. It is very hazardous during transportation. Another raw material, yellow phosphorous, is almost only produced in China. Even India is importing yellow phosphorous from China, so it is impossible for Compass to produce the phosphorous trichloride by U.S. material only, so they use the inefficient production technology, which using phosphorous acid and acedic anhydride.

First, Compass purchase phosphorous acid solid from China, which is extracted from chemical waste or produced through crystallization centrifugal separation process after hydroxylation and the distillation from phosphorous trichloride. It is a complete production process.

Second, they use expensive acetic anhydride instead of the low-priced acetic acid and the two parts of acetic anhydride in the production process will produce one part of acetic acid with low value.

So it is significantly and cheaper to use phosphorous trichloride and acedic acids, like Taihe, to produce HEDP rather than to use acedic anhydride and phosphorous acid like Compass because the raw materials
itself are much cheaper. Acetic acid cost half as much as
the acetic anhydride. In addition, it is a chemical
procedure to illegal production of heroin and
methamphetamines. Acetic anhydride is strictly controlled,
thus, Compass is likely to face additional costs involved in
handling this chemical under the narcotics regulations.

One reason Taihe changed to its production
method is was the needs applied to Chinese public security
department every time they need to procedure acetic
anhydride due to the tighter anti-drug controls. And also
when phosphorous acid reacts with acetic anydride it is in a
high temperate will create a chemical called acetyl chloride
which is a high toxic and inflammable. It can be dissolved
in byproduct acetic acid, which is not good for the workers.

And another point is the advantage of the raw
materials in China. The HEDP production chain is not
functioning enough in the United States. Phosphorous
trichloride is made from chlorine gas and yellow
phosphorous. Chlorine gas is highly toxic and unsuitable
for long term and long distance transportation. Yellow
phosphorous cannot be obtained from U.S. source. Both the
raw materials are hard to get and Compass is unlikely to
produce the PCL-3, which is also called phosphorous
trichloride.

The factory site of Compass is neither close to
the production site of chlorine gas or phosphorous trichloride. Transportation requirements are relatively strict. It is very difficult for Compass to import phosphorous trichloride directly. Even the purchasing cost of phosphorous trichloride is higher. They cannot obtain it. The only way is to import the phosphorous acid, a crystal from China. There is abandoned phosphorous resource in China. The phosphorous trichloride source around the Taihe plant is very plentiful, so the procurement cost is very low. We have a list of all the nearby suppliers of phosphorous trichloride, so I can provide the list in post-hearing.

Compass has no advantage of phosphorous serious products since there is no such cheap raw material in U.S. the only way to buy raw materials from China in a high price by hydrolyzing phosphorus trichloride to get phosphorous acid liquid and then after crystallization to make the new product, phosphorous acid or solid. Compass cannot manage the low cost for raw material directly.

Also, the advantage of the production processing Taihe helps. When Taihe produce HEDP, acedic chloride is produced as a byproduct, which is used as a pharmaceutical intermediate with high value. It can share the production cost of HEDP. HEDP makes continuous innovation production technologies with the rapid continued production
technologies instead of slow, single-batch production way which can reduce the energy consumption. Compass does not have such advantage comparing with Chinese producer.

Injury of the anti-dumping for U.S. customer

Compass action is very harmful for the American market and to the customers, which also can be the user of these chemicals in the United States, which will legally increase the cost of the U.S. users. China had ready-made, low chemicals; however, Compass insists to produce by themselves with no advantage and they are actually buying raw materials from China.

Finally, as Compass capacity cannot meet the needs of U.S. market, India will import a large amount of HEDP from China and then resell to United States market. It is the cost just to increase the cost of American users.

The defense of no existing dumping behavior from other company. To sum up really the advantage of raw materials and the advanced production technologies. Other production costs are significantly lower than that Compass Company.

The sales price is lower than that of the Compass Company in the United States. It is a result of a full market competition rather than malicious dumping. As a person ran in the company regularly, we cannot understand why Compass used such high-cost methods to produce HEDPA. They just are serving by using anti-dumping waste.
We believe that under the circumstance of raw material, different production process, and even finished products it is not suitable to make comparison and to say that Chinese manufacturers has done any damage to the interest of Compass. It is like earth has abandoned resource. You can easily to grow fruits in here. For somebody to make the raw materials to month-to-month and use the space to produce it and then say the fruit in earth damaged the fruit in moon.

We have nothing to say if you insist in considering it is a damage. The train of the industrial chain is gathering to the place where the resource is easy to obtain. Meanwhile, some high cost and high pollution industries transfer from developed countries to the undeveloped countries and/or undeveloped areas. All the countries origins without any strict environmental production policy. The United States has shifted the very dangerous and high pollution raw material out from the country. China may do the same thing a couple years later.

In addition, the development of the production company consistently challenged themselves by optimizing the production technologies; otherwise, no materials how good a protection it is, it cannot allow the enterprise to survive easily.

MR. MCGRATH: Thank you, Ms. Cheng.
We had a written version that had to be revised and I apologize for not having that in front of you. I'll work with the transcriber to make sure that all of the testimony is correct. And we had to make a number of last-minute changes based on input from folks in the management chain and China, who are up at 1:00 a.m. making changes.

Just to summarize a bit, the point the company would like to make very clear is that their choices about production technology, the fact that they're located in the place in the world where all the phosphorous is made and sold to the other producers around the world, the fact that they are using a continuous production process rather than a batch-processing system, a lot of these things -- and the fact that they're producing a fairly high value acetyl chloride byproduct, which brings in additional income, reduces their overall costs as well. All of those things taken together put them in a superior position to be able to produce at a fairly low cost and make a reasonable profit.

I did want to add one thing that I knew would come up either now in this direct presentation on in rebuttal or at some point since it always done and that is the presumption that is laid forth usually on your desk that because there is a high dumping margin against Chinese producers that means that there's a very high margin of
unfair pricing practices that are going on. I think everyone knows by now, but I'd like to say it for the record, when dealing with China in an anti-dumping case margins mean very little.

Dumping margins are calculated based on surrogate values from six or seven other countries, a selection gets made, the margin can go from 10 percent to 500 percent just by choosing a different country for a financial ratio. It really doesn't mean very much. For market economies, those calculations are done on the basis of what is the fair value for the producers' exports versus their home market sales and a calculation is done, assuming that their costs are their costs, but that's not done with China.

So I would just simply point out the fact that their might be a high margin against any Chinese company in any case is not necessarily an indication that they're selling at that percentage below their actual costs. As a matter of fact, in the countervailing duty case found a very low percentage for subsidies, actual direct subsidies to these companies.

So with that being said, I would like to add a few other things and then open up the questions. With respect to like product issues, we take no issue with what's been decided previously in the preliminary and the previous
cases and we're not suggesting that it should be different.

I know this came up in the preliminary and there was discussion about it this morning, so I'll go ahead and discuss it myself, and that is the use of data. In some instances, you might refer to Peer's data or publicly available data of some sort as a surrogate for using actual numbers where you have a situation with like this with only one domestic producer and only one reporting foreign producers and perhaps a limited number of importers.

We've done the same thing in trying to analyze what is the import volume. We looked at Data Mine. We looked at Peers. The Petitioner's have used Peers. There's some significant differences between the numbers they come up with and what the staff comes up with. And I would urge you, if at all possible, I think the staff data should be the gold standard. They usually are for me. If there's a real serious problem with them, I think the staff usually provides alternatives as well, but I think from, what I've seen; the Peer's data that they've been using is overstating the volume of imports. And the public information that they have that they're talking about with this massive growth of capacity overseas I think is overstating the capacity in China.

Yes, there was some additional capacity that was created by Taihe a few years ago. They became a player in
the market with a new facility, a new plant, but the amount
of the volume that's attributed to that new facility is
definitely not what they're capable of producing. We would
urge you to look at and question us, if necessary, on our
questionnaire answer. We put that data on the record.

And then with respect to the issues that are at
the heart of the causation discussion, we submit that there
are some counter -- not countercyclical. There are some
contrary implications from different data that's on the
record here that suggest that there might be a break in the
causation, the causal nexus between the imports -- the
subject imports and the domestic industry's financial
situation.

They seemed to have improved their financial
situation when subject imports increased, but one thing that
is fairly clear I know that there were statements a few
times from the Petitioners that the subject imports from
China greatly outnumbered or outpaced Indian imports,
exceeded Indian imports. The staff's Table C-1 suggests
otherwise. It shows that during the period the subject
import volume was higher than Indian volume, but it also
shows a change in the relationships during the period of
investigation and it shows that sales of imports from
subject imports from China seemed to be fairly even
throughout the period. When there was a movement, an
adverse movement by the domestic industry, there was an
equivalent increase from India. It seems pretty clear that
there's a direct relationship between Indian sales and the
domestic industry's volume of sales.

MR. McGRATH: So with that, I will save the rest
of my comments I guess for rebuttal, or perhaps offer them
in answer to your questions, and we're both available for
questions. Thank you.

VICE CHAIRMAN JOHANSON: Thank you, Ms. Cheng and
Mr. McGrath. We will now begin our questioning.

COMMISSIONER WILLIAMSON: Thank you. Thank you
for being here this afternoon.

Ms. Cheng, I'm not sure, are you based in the
U.S.? Or are you based in China?

MS. CHENG: Excuse me. I'm basically located in
China, and sometime forth and back from China and here for
business.

COMMISSIONER WILLIAMSON: Okay. Thank you for
traveling so far and being here today. I guess the
question, Mr. McGrath, due to a large part of your argument
is based on the use of different production processes,
saying that Compass process is less efficient. Also, even
if we accept this as true, how should this affect our
material injury analysis?
I was going to add that, you know, Commerce has found the imports to be unfair but you've already addressed that question, so I won't add that, but what do we make of--how should that change your argument, or analysis? And also, Petitioners this morning spent a lot of time talking about how they analyze the two different processes, and they regularly review them, and are you questioning their business judgment about what is the most--what seems to make the most sense for their market?

MR. McGRAH: No, I have no doubt that as rational business people they're making a decision that is best for them, but it's starting from a static point of what are they doing now? And it could well be, the description we heard Mr. McCaul give of what would be necessary to start using a different input, PCL-3, took as a given that the basic, the reactors that they have in place and the process for production is not really going to change dramatically. What they would do is make adjustments, what adjustments were necessary to switch to a different raw material input, and that's only one of the assertions that we're making about the production process differences.

The major one, one of the major ones certainly has to be the fact that we have a continuous reaction process. So the period of time that it takes for a product to go from start, from raw materials to finished product
takes much less time, and it's on a continuous basis, and it
uses less energy.

So those are all elements that I don't think,
when they sit down and try to analyze whether they would
change their production process, yes, this is probably a
very expensive thing for them to do. It would be more than
the capital expenditure that I think Mr. McCaul was talking
about in order to really make this kind of a change.

COMMISSIONER WILLIAMSON: I mean you're talking
using not only the different input, but their whole
production process.

MR. McGRATH: Perhaps different reactor vessels,
other kinds of production. Instead of having a batch
reaction process, to change to--

COMMISSIONER WILLIAMSON: Okay, understood. I
will invite Petitioners to respond to that in posthearing.
Posthearing will be fine, thank you.

The--

MR. McGRATH: But--excuse me?

COMMISSIONER WILLIAMSON: Yes?

MR. McGRATH: But you started to ask the question
about how should it affect your analysis.

COMMISSIONER WILLIAMSON: Yes.

MR. McGRATH: One of the things that I tried to
point out at the beginning was that this issue of a higher
value byproduct that reduces the cost of production quite a bit is one way that it would have an impact on your analysis. You often look at the ratio of COGs to net sales, and if it's going up that's an indication of a cost/price squeeze and that is part of your analysis.

We're suggesting that a reason for that is their selection of their choice of production process, and their lack of having a higher value byproduct. There is in fact--

COMMISSIONER WILLIAMSON: I didn't talk to you about the byproduct--I forgot the name of it--

MR. McGRATH: Acetyl chloride is the byproduct that--they make acetic acid.

COMMISSIONER WILLIAMSON: Yes. And I think they said that that market was not that large. So do you disagree with that? And what's the basis?

MR. McGRATH: That's what we heard this morning. We're not sure exactly how big the market is, but I talked with Ms. Cheng. They have done some exports of Acetyl chloride to the United States. I'll let her comment on other markets.

MS. CHENG: We export Acetyl chloride, a large quantity to India because it's a really important pharmaceutical intermediate. So China is a big market, and also India is a big market. And also another part of the world use it. It's used widely. So we don't think the
market is really small.

COMMISSIONER WILLIAMSON: What about the U.S. market for that?

MS. CHENG: In the past few years I did saw U.S. company do have the amount of it. Well, it's not our only way to sell it to United States. It can offer globally. Why only say U.S. is only market?

COMMISSIONER WILLIAMSON: Okay. Are there any export taxes, export restrictions on exports of the raw materials that you talked about?

(Pause.)

MR. McGRATH: We'll have to check on that, but I'm not aware of there being specific export taxes to try to restrict the exports of phosphorus. It's also exported to other countries that want to obtain it to make their own HEDP. So India gets all their phosphorus acid from China. I think that was discussed this morning.

COMMISSIONER WILLIAMSON: Yes. No, I"m trying-- because what you're implying is that one's more efficient effects, and also the fact that China is the source of a lot of the raw materials is why you have a cost advantage. And so I just wanted to make sure that, at least in terms of the cost of the raw materials to other countries, whether or not there was--

MR. McGRATH: Understood. We'll check to see if
there's any restriction.

MS. CHENG: And I also want to add one point. Because the phosphorus acid is somehow the downstream chemical, which is more cost added. For example, India import yellow phosphorus which is lower cost compared to import of the phosphorus acid, because it's upper stream, it's cheaper. The downstream chemical is more expensive.

COMMISSIONER WILLIAMSON: But then it has to be converted.

MS. CHENG: Yes, it's need to concentrated to solid first in China, and then shipped to U.S., and then diluted again. So it's kind of added cost for the process.

COMMISSIONER WILLIAMSON: Okay. So taking all of those costs into effect, how should that affect our analysis of the profitability of the domestic industry in terms of—I mean, when you've got the imports—you say, okay, if you do a different process it's going to lower your cost, but then the inputs cost.

MR. McGRATH: Well, to a certain extent there are natural advantages of being in China. I think I heard Petitioners this morning indicate that everything changed when China came into the market. But it begged the question, why did China come into the market? China has some pretty major natural advantages of being located in China, and one of them is the availability of the
phosphorus acid. It's not available here, so it has to be purchased from China and has to be bought from China.

That creates just a difference in the relative--they're not playing on the same ball field to start with, I guess. I mean, to level the playing field thing doesn't really apply here if there are just certain natural advantages of location that exist. And that's something that has to be considered.

It's--if there's a reason to think that the Chinese industry is dumping its product because it has too much of it, which I don't think is the case. I think what they're doing is selling it at a profit, at a cheaper price, because they have some advantages. Some of them are advantages they've developed through technology, and some of them are availability of raw material. It's a combination of the two.

COMMISSIONER WILLIAMSON: Okay, thank you for those answers.

VICE CHAIRMAN JOHANSON: Commissioner Broadbent?

COMMISSIONER BROADBENT: Okay. Mr. McGrath, several Petitioners reported that due to--this is not the one I wanted. I'm going to retract that just a second.

Here we go. Okay, in assessing--this is for Mr. McGrath--in assessing whether there has been a cost/price squeeze in the industry's COGs in its sales ratio, over the
period the COGs net sales ratio increased. However, COGs is calculated by including the byproduct revenues which are based on the industry's sales of a product that is unrelated to the merchandise corresponding to the scope.

To what extent should we take into account changes in the industry's byproduct revenues as we assess the COGs to net sales ratio, and whether the industry actually did experience a cost/price squeeze?

MR. McGrath: Well, I think that is an issue that the Commission has to look at because it affects the cost of goods sold in terms of what that number is and what it looks like.

One of the points we're making is that, is that byproducts are an issue in both types of production. It's just that they are different byproducts. And one reason that Taihe and others choose that particular production process is because it does have that higher value byproduct. And it's more likely to stay high than what has been happening to acetic acid, which is the byproduct that is made by compass.

So I think it should simply be taken into account in terms of how byproduct revenues affect the cost of goods sold when you make that calculation. We're not suggesting that it should be treated differently, but that's a fact of byproduct--or of cost-of-goods sold calculation, reduced by...
the byproduct revenue.

COMMISSIONER BROADBENT: Right. Okay. Can you talk to me about the market share shift? The imports from China did come at the expense of the domestic industry. Why should we not see this as injury?

MR. McGRATH: Well I think there are a couple of different databases you can look at for that, and in looking at the sales of imports in the United States that did not appear to be the case. I didn't see a shift, a decline of U.S. sales at the expense directly of Chinese sales.

The Chinese sales, imports and sales appear to be fairly steady. It's not a huge increase over the POI. It sounded from what Petitioners said that that's not the case with their Piers data, but it seems to be the case with the ITC's--with the staff information.

So I don't see that there was a correlation there. We'll take a look at the other data, at the various databases and try to compare them, but it looked a lot more obvious to me that there was a shift, a decline in domestic market share that mirrored an increase in Indian market share.

Now why that is, I'm not sure. They did talk a great deal about how the Indian product was--on a price basis was overselling both China and the domestic. But for whatever reason we're not saying that price is not a factor
in the marketplace. It apparently is. I'm not challenging the notion that this is a commodity article. But something other than purely price had to have an impact with respect to the growth of China back in the marketplace.

If we're assuming that, you know—I'm sorry, I misstated. The growth of India back in the marketplace. If we're assuming that India, because they're not covered by this investigation, are fairly traded, they seem to have increased their market share.

COMMISSIONER BROADBENT: Okay. How were the nonsubject imports able to capture market share if they were generally priced higher than both subject imports and domestic product?

MR. McGRATH: So we were discussing that a bit earlier, as well, trying to figure out how that happened, but it seems to be what the numbers suggest. We don't know. We will try to get as much intelligence as we can from all those at the company in the marketplace to offer some explanations in a posthearing brief, but at the moment we don't have one.

COMMISSIONER BROADBENT: Okay.

MR. McGRATH: One possibility might be simply seeking multiple suppliers. There might be more companies, when they see that there's an antidumping case going on, it could be that they're seeking multiple sources of supply.
We didn't for the year see a big drop in Chinese product, but we did see a drop in some domestic and an increase in Indian. And perhaps it has to do with supply around for those who need to buy volume. And they would normally maintain two sources of supply anyway. Some of the bigger ones buy from all three.

COMMISSIONER BROADBENT: Okay. If Compass's financial support--financial performance is affected by its production process, if it's production process hasn't changed over the POI, what factors led to changes in the industry's financial performance over the period 2014 to 2016?

MR. McGRATH: One of the things that they have highlighted was a decline in the price that they received for acetic acid over the period. So that was definitely a decline. Their--let me just ask a question...

(Pause.)

Well part of it has to do probably with what you've heard from many industries who have come in. The economy globally over the last few years was in the doldrums and sales declined, and fuel costs increased.

There were various other explanations. We don't really have a prepared theory on why their performance went the direction that it did, but we'll be happy to offer that. Again, it's difficult to talk about on the record with just
one company.

COMMISSIONER BROADBENT: Right. Let's see. I think you referred in your brief to about 16 companies that have closed in China that produce HEDP or did produce it, due to--the closing was due to environmental laws in China. Can you discuss these laws further? Are they new laws, or are they existing laws that are being more strictly enforced? What is the outlook for the Chinese industry with respect to the regulatory environment?

MR. McGRATH: Yes, Ms. Cheng I think has pretty much enforced what I heard from other officials at the company, that the laws themselves haven't changed all that much, but the enforcement policies have. And the enforcement has become much stricter in the last few years. And of course Chinese enforcement of environmental law is quite different than we might see anywhere else. And that is, if you're not following the law the way that they've decided that it should be followed, the business can be closed, and it has been. Not just for producers of these chemicals, but producers of a lot of chemical products that we've seen as well.

And one reason that Taihe felt that it was justified to build significant capacity was because of the fact that a lot of the other smaller producers were going out of business. That's one of the things that we talked
about in the preliminary, as well. Their intent was to
replace a lot of capacity; it wasn't to over-run the market
with capacity.

COMMISSIONER BROADBENT: Okay. For purposes of
analyzing the Chinese industry, should the Commission
analyze data from the preliminary phase which included
questionnaire responses from three additional Chinese
producers? Or should we focus our analysis on this final
phase in which we received only a single foreign producer
questionnaire response?

MR. MCGRATH: That's a good question. I think
that my immediate reaction to that would be that you should
use what data's available. They submitted data that was --
didn't cover the full POI you're looking at now, but unless
it seems contradicted by other information you received, I
would suggest that it be looked at and evaluated.

Those companies did participate throughout the
Commerce Department side. So they had been involved. They
just chose not to participate in the final ITC phase.

COMMISSIONER BROADBENT: Okay. Thank you.

VICE CHAIRMAN JOHANSON: Commissioner Kieff?

COMMISSIONER KIEFF: Thank you. And I join my
colleagues in thanking you for coming and presenting. And I
just also want to make a special note of appreciation to
both Mr. McCaul and Mr. McGrath for taking the good
opportunity to not take the bad opportunity to find conflict where it didn't need to be found, so that we could focus on the core legal issues for us to decide. I think that that reflects very well on each of you and your teams and reflects very well on the community of the Commission's bar. And I just want to congratulate that.

Let me -- if I could shift, Mr. McGrath, to a kind of a conceptual question. As I heard a lot of your discussion Commissioner Williamson in particular, as well as your presentation on this panel, you seemed to be focusing a lot of attention on what I'm going to summarize as pricing advantages that your client might have that would be totally unrelated to a dumping margin. Did I at least hear that right?

MR. MCGRATH: I -- it's not an unfair characterization. I think I -- what I was trying to focus on was -- is cost advantages.

COMMISSIONER KIEFF: Okay. I'm sorry. That's what I meant.

MR. MCGRATH: That could translate into price advantages or not. The company could choose to sell at a higher price if the market would bear and make a higher profit.

COMMISSIONER KIEFF: Very, very fair distinction. And I wasn't trying to suggest otherwise. So
that's very helpful. With that in mind, let's assume that you are 100 percent correct, could the -- let me ask a few questions.

One question is could the other side win at the ITC even if you are 100 percent correct? And could you win at the CIT if you're 100 percent correct to reverse an ITC decision?

Put differently, isn't your quibble really with Commerce's determination of the margin? And don't we have to take the margin as given by Commerce and make our determination about whether that given margin is causing or likely to cause harm or injury to the domestic industry, which would then put you in position to appeal to the courts to argue that causation might be irrelevant to your victory in those courts because the margin is in fact wrong? I mean, it sounds to me like you're basically saying your costs are largely due to things like a continuous process instead of a batch process and a low cost of inputs because you're located very near source of materials. But that's all of about margin, not about injury, isn't it?

MR. MCGRATH: I'm thinking.

COMMISSIONER KIEFF: That's okay. And I don't mean to put you on the spot either. You're welcome to follow up post hearing. I just --

MR. MCGRATH: No.
COMMISSIONER KIEFF: -- I wanted to confess to you as someone who has to decide the case you put before me what I heard from you and what it meant to me and what significance I'm drawing from it, so that you can tell me why I'm wrong in whatever medium is fairest to you to make that argument. I -- the goal is not to put you on the spot.

MR. MCGRATH: Well --

COMMISSIONER KIEFF: The goal is to be transparent in the decision making.

MR. MCGRATH: I only point out the margin argument, the size of the margin and how it's uniquely calculated for China, because of the nonmarket economy methodology. I point that out because it's often pointed out by the other side as being indicative of some large percentage of unfair pricing behavior. But that's not really -- you don't really need to look at that. And you gather enough information about underselling to look at the comparison of the prices between the imported product, the domestic product, and the subject imports and nonsubject imports to make decisions about the relationship without having to really focus on the size of the margin that is calculated by the Commerce Department. Yes, I take issue with their margin calculation as I do in every Chinese case. It's just the nature of that methodology. But I think your
analysis really doesn't have to rest on that.

    COMMISSIONER KIEFF: Yes, sir.

    MR. MCGRATH: All you need to do is take from them a finding that there was dumping.

    COMMISSIONER KIEFF: Okay. But then given all of that, does your -- I'm trying -- does your case here win or lose on -- well, I'm trying to find the touchstone factors here. So it sounds to me like --

    MR. MCGRATH: I --

    COMMISSIONER KIEFF: -- the discussion about different production procedures may not ultimately drive our conclusion one way or the other in this case?

    MR. MCGRATH: It might not. I see -- I mean, I don't disagree with that. I've done enough work here to see how this is done and what the courts have said about the approach.

    COMMISSIONER KIEFF: Got you.

    MR. MCGRATH: That you have a record that you develop of standard elements that are in the statute and you're evaluating them and --

    COMMISSIONER KIEFF: So it is the --

    MR. MCGRATH: If there had been a different methodology calculating the margin, we might not be here because --

    COMMISSIONER KIEFF: Got you.
MR. MCGRATH: -- we might not even -- we might have been excluded from the case. So --

COMMISSIONER KIEFF: I see.

MR. MCGRATH: There is a separation between the two. I don't disagree with that, but I'd like to develop that a little better for the --

COMMISSIONER KIEFF: No problem at all. Take your time in the post hearing. Let me just briefly then ask to -- so that I know where to focus my thinking. Does the best shot at a win for you then come from our thinking about a nonsubject import analysis as a replacement benefit argument in effect? So that, you know, India is hurting them. Sorry, China is irrelevant to the behavior they are observing in their market because China and India are swapping off with each other?

MR. MCGRATH: I think what I'm trying to get across is that there's a combination of considerations here. You are directed, I believe, by the statute to consider not only whether imports are significant, and what's the effect of price and all the various elements of domestic industry performance, but also as part of that, domestic industry's decisions and choices that they made on whether or not injury might somehow be related to those. I'm pointing that out in addition to the fact that there is a nonsubject import presence in the market that --
COMMISSIONER KIEFF: Okay.

MR. MCGRATH: -- the two of them combined I think.

COMMISSIONER KIEFF: Got you.

MR. MCGRATH: Any one of them alone, perhaps not.

COMMISSIONER KIEFF: Okay.

MR. MCGRATH: That's why I'm raising both of them and I think they're both important to consider.

COMMISSIONER KIEFF: So let me just suggest because I'm about to run out of time and I apologize that I also have to run, but I will be reviewing the transcript. Let me just invite in the posthearing to try to highlight. And again, I'm offering this in the spirit of transparency that for me, one of the concerns I have about our statutory framework is it lists so many factors. So multifactor tests are for me as a decision maker especially uncomfortable precisely because I like my decisions to -- I like to highlight exactly what drove my decision so that then reviewing courts in Congress can tell me, hey, yay, we're happy with that, and here's why. Or hey, boo, we're sad with that and here's why.

So it will help me make a decision either way if we can focus in on maybe a top one, two, or three hit list of which of the many long list of factors is really driving
our analysis in this case because I think we're all at our
best when we stand or fall on a few factors. I think it
just actually helps with democracy and transparency and
predictability overall. So to the extent you can do that --

MR. MCGRATH: But it gives people like me and
Mr. Levin so many more things that we can argue about.

COMMISSIONER KIEFF: I know, I know.

MR. MCGRATH: Not argue, place before you on the
record.

COMMISSIONER KIEFF: That's fair. I appreciate
-- I'm just trying to gently steer.

VICE CHAIRMAN JOHANSON: Thank you very much.

We will discuss it further in our brief.

MR. MCGRATH: That's great.

COMMISSIONER KIEFF: I have no further questions
for the panel, too.

VICE CHAIRMAN JOHANSON: Thank you, Commissioner
Kieff. And I would like to thank both of you for being here
today. In particular, Ms. Cheng, thanks for coming such a
long, long way to educate us further on the situation
involving this product.

This morning, Petitioners stated that they
sought this new order because a previous order, which was
allowed to expire in 2014, had holes in it. Petitioners
explained that several Chinese exporters were either exempt from the order or not subject to duty deposits. During the period covered by the previous order roughly 2008 and 2014, was Shandong Taihe required to pay antidumping duties or make duty deposits?

MR. MCGRATH: We'll find out how much. I know that they were shipping some to the U.S. It was -- and it was before they had modified their production process. So they would have been subject to dumping deposits at the time.

VICE CHAIRMAN JOHANSON: Okay, if you could make just provide a little bit more background --

MR. MCGRATH: Sure.

VICE CHAIRMAN JOHANSON: -- on that in your posthearing brief, I would appreciate it.

Compass argues that domestically produced HEDP and subject imports are highly substitutable and that price is a primary deciding factor in sales. Yet you all argue in your briefs that price is not an important purchasing factor. Please describe what factors other than price you believe to be important for purchasing decisions and why underselling by subject imports would not affect prices of domestic HEDP?

MR. MCGRATH: Well, one of the issues would be that a lot of purchasers want to have multiple sources of
supplies. So they're willing to pay higher prices for some
and lower prices for others. I think the reference in our
brief to price not having an impact was really in the
context of trying to evaluate those Indian sales and why
they were being sold at higher prices. I think it was more
speculation than a conclusion that obviously price must not
be the only thing that is in the mind of the purchasers.

We don't take exception to the argument. We
don't disagree with the argument that it is basically a
commodity that's -- that is substitutable for each other.
There are other products that are not HEDP that are
substitutable for HEDP, but HEDP's pretty standardized
product. And they are -- they can be substituted.

So price, it can't be denied that price is going
to be an issue, but whether it's the most important is now
subject to question and that India seems to have been so
successful coming in with apparently higher priced product.

MS. CHENG: And also, as a supplier, I saw a lot
of our customers evaluate us whether we can supply the
chemical long-term and stably and the qualities, every
batch is similar. And also, whether we can serve them
globally. That's another concern. So that's just one
point, but it's not a whole thing. A lot of other things
needs to consider. And also whether it focus on
environmental protection law, whether it's good for the
workers, all the things combined together.

MR. MCGRATH: Which also, I guess, an issue I should have pointed out, Taihe is a global supplier. Some of the Chinese -- other Chinese producers supply globally. And it doesn't appear from the data that Compass is -- has that particular element in their price negotiations. I'm not looking at global supply and a domestic producer.

VICE CHAIRMAN JOHANSON: Thank you, Mr. McGrath and Ms. Cheng. On page 14 of Petitioner's brief, it cites the ITC staff reports table 5-7 for an average selling margin of 10.7 percent. Do you think that this high value -- that this is a high value given that we are dealing with a commodity product?

MR. MCGRATH: I'm sorry, so the question is whether or not the margin of underselling is a --

VICE CHAIRMAN JOHANSON: Is significant?

MR. MCGRATH: -- is significant.

VICE CHAIRMAN JOHANSON: In particular, given that this is a commodity product?

MR. MCGRATH: Well, it's indicative of the fact that probably something more than just price is involved. There's not a need to have a 10 percent or more, you know, range of underselling or marginal underselling unless there's some reason for that. It seems to be a fairly significant difference. So given the fact that it is
commodity product, there may have been reasons for that level of margin to be there.

There also seemed to be some fairly high margins of overselling from time to time. And given the fact that, as you say, it is a commodity, there probably are some of the other issues that Ms. Cheng just mentioned that might be involved in the purchasing decisions.

VICE CHAIRMAN JOHANSON: Thanks. On page 10 of your prehearing brief, you state that the difficulties of the U.S. industry "are of its own making" and that "will not be remedied by the imposition of AD and CBD orders".

To the extent, however, that duties act to raise import prices and lessen the frequency of underselling, won't this allow the domestic industry to obtain higher prices for its output? Wouldn't this provide a remedy?

MR. MCGRATH: Long-term, no. Short-term, yes, it probably would give them an opportunity to sell some quantity of product at a higher price, but I would not be surprised to see them back here in the hearing room again in a year with the case against India. They had an order against India and China both in the past, would likely be back here again.

So long-term, our view is as we've posited here today that the technology's moving on and there are certain advantages that a producer who wants to stay in this
business should be taking advantage of and utilizing. And that's modern technology, continuous process bulk production, high value byproduct sales, global sales. Other issues like that I think are really more likely to give it a longer term resolution.

I did also notice that I think both Mr. McCaul and Mr. Allen indicated that they had imported HEDP originally and switched from importing it to producing it here. There probably were reasons for that, good reasons. And they decided that they wanted to expand their phosphonate line and it made sense to have HEDP if you're going to have an expanded phosphonate line. But whether that makes sense without also adapting production technology as you go is a different question. I think that's it.

VICE CHAIRMAN JOHANSON: All right. My time is about to expire, so we will now turn to Commissioner Williamson.

COMMISSIONER WILLIAMSON: Thank you. Ms. Cheng, when did Shandong Taihe introduce this new continuous process in technology?

MS. CHENG: This new -- you means the production technology, right?

COMMISSIONER WILLIAMSON: Yes, what you said, allowed you to guess to -- what do in 10 percent of the time or?
MS. CHENG: Yes. It's been developed in years. But start from which year, I need to double check back to --

COMMISSIONER WILLIAMSON: Is it within the last two or three years or is it more than five years ago?

MS. CHENG: It's even longer term. We start to --

COMMISSIONER WILLIAMSON: Possibly 10 --

MS. CHENG: -- searching and collect the information and do the test. It's not just made suddenly. It's long time preparing.

COMMISSIONER WILLIAMSON: Okay.

MS. CHENG: Uh-huh.

COMMISSIONER WILLIAMSON: Do other company -- producers in China use the same technology?

MS. CHENG: I don't think so.

COMMISSIONER WILLIAMSON: Okay. Is it --

MS. CHENG: It's quite a unique design by ourselves.

COMMISSIONER WILLIAMSON: Is there a proprietary technology?

MS. CHENG: It's -- yes, it's kind of --

MR. MCGRATH: A lot of it is -- it's proprietary, but not necessarily patented.

COMMISSIONER WILLIAMSON: Okay.
MR. MCGRATH: There are trade secrets involved and --

COMMISSIONER WILLIAMSON: Sure.

MR. MCGRATH: -- but it's -- it has developed over a period of time. They started I believe in 2008 in HEDP. We're not sure of the exact time that they started, but we'll clarify that. And then they improved it and perfected it over the last several years in order to get to the point where they are now. But as was reported and certainly it was public. It was on the website that they increased the size of the plant. They incorporated and perfected a lot of their continuous production process and put it into the new plant in 2014, 2015.

MS. CHENG: The new plant is 2014, but before that, we start to test and use it.

COMMISSIONER WILLIAMSON: Okay. What about what production processes are you -- what do you know about the production processes in India?

MS. CHENG: I'm sorry, I'm not a production people. I better to answer the later then to let our technical people to answer it. But I'm not 100 percent sure.

MR. McGRATH: We'll provide what information we can about the Indian process.

MS. CHENG: I'm not 100 percent sure.
COMMISSIONER WILLIAMSON: Okay. Others have asked you about the under-selling, and as noticed the price of the domestic product declined over the POI for each of the three pricing products. And since you're saying it's not the subject—under-selling by subject imports, what caused these price declines?

MS. CHENG: From our understanding, and this past several years is kind of the worst after 2008 crisis, so the entire chemical industry the prices dropped to the bottom, and we can find out that the crude oil prices dropped as well. So it's all linked together. So the globally all the prices dropped.

COMMISSIONER WILLIAMSON: Okay--

MS. CHENG: If that makes sense.

COMMISSIONER WILLIAMSON: This is--

MS. CHENG: It's kind of the global market trend.

COMMISSIONER WILLIAMSON: Going back to the unique production technology, ultimately somebody has that. They often will under sell the competition but make as much profit as they can off it. And that raises the question why that isn't happening in this case, why there is so much under selling given that the other suppliers who may be under selling but not as much.

MR. McGRATH: I think the first answer to that would be the fact there are other suppliers, other people
who are also out in the marketplace. And there is competition. We don't doubt that. But the fact that we have a more efficiently produced product allows us to have more flexibility with pricing and still make a profit because of that efficiency from that unique process.

And the process is known. You know, the details of it and the exact mixtures of chemicals at what point and at what temperature, et cetera, is not widely known, but the methodology just as we're explaining here. It's known that it's out there, and in fact it was one of the reasons why the company welcomed Compass to come and see their process.

They felt that there was more to be gained by having this--some of this knowledge spread around than to be hiding it. But they no doubt are taking advantage of it not by slashing prices but by making profits.

COMMISSIONER WILLIAMSON: Okay. Let me go to some other subjects. Are certain types of customers or industry sectors more likely to purchase HEDP that's domestically produced and others more likely to purchase subject and nonsubject imports? If so, can you identify these customers or provide some information on their relative shares of the U.S. market? I assume some of this would have to be done posthearing.

MR. McGRATH: I guess we'll have to look into that and provide what information we can get.
COMMISSIONER WILLIAMSON: Okay. And you've argued that the U.S. is simply not an important market for the Chinese industry. And I was wondering why this is the case. Given the Chinese unused capacity, which exceeds the U.S. market, why wouldn't China significantly increase exports to the U.S.?

MS. CHENG: Honestly, U.S. markets for us is a relatively small market. The big gap, or big needs in the globally is not just the U.S. So even we have a big capacity, however some time chemical is really tight to supply. So we're not intend to sell low price or something. If a customer asks for chemical from us, so we will like to supply for reasonable price. We're thinking U.S. market is not that big.

COMMISSIONER WILLIAMSON: Is there a potential for the U.S. market to be a bigger market for you in the future?

(Pause.)

MS. CHENG: Well, you talk HEDP product only, right?

COMMISSIONER WILLIAMSON: Yes.

MS. CHENG: Well, its really depends. If the HEDP cost of use is really high, people may thinking to buy other chemicals instead of it. I'm not sure how to evaluate whether it's gonna be a bigger market of HEDP, but it all depends.
MR. McGrath: I think it's an issue that we haven't done a lot of thinking on because it's been traditionally a fairly small--total production, percentage of total sales for Taihe. The fact is, if there is a barrier to entry here because of a dumping duty that would have to be paid, this company will likely be selling elsewhere. I mean, it's not that big that losing 2 percent of their export sales is likely to cause them to rethink how can the market grow in the U.S. down the road. If it does grow, that will be fine and they'll be back.

Commissioner Williamson: Okay, thank you. Are there other global HEDP producers that you're aware of who are using the same production method, or a similarly efficient production method that Taihe uses?

Ms. Cheng: You mean the importer, or just the process of manufacturing it?

Commissioner Williamson: Yes, that achieves the same kinds of efficiencies that you've been talking about.

Ms. Cheng: If talk about production process, I think Taihe is only use it globally from our knowledge. If talk about the two main chief chemicals, which is phosphorus trichloride--

Commissioner Williamson: I'm thinking about--you put a lot of weight on how much more efficient the process is.
MS. CHENG: Right.

COMMISSIONER WILLIAMSON: And what that gives you in the ability of pricing. And I'm asking, are there other companies who either use this or some other technology that are producing the same kind of efficiencies? The same kind of competitive advantages.

MS. CHENG: We can double check, but from right now knowledge no, we're kind of unique technology for it.

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

VICE CHAIRMAN JOHANSON: Commissioner Broadbent?

COMMISSIONER BROADBENT: No questions.

VICE CHAIRMAN JOHANSON: Thank you, Commissioner Broadbent. I'm now going to ask a question which I also posed to the Petitioners this morning.

As far as any threat analysis concerns, don't we have a natural experiment here? Can't we look at what happened when the orders were revoked in 2014? There were no orders on during calendar year 2015, and no petitioners were filed during that year. So isn't 2015 a clean year upon which to form some judgments on how producers in China will react?

MR. McGRATH: It certainly presented different conditions, I guess, to look at. But in order to find a single clean year you'd also want to find something that
didn't otherwise have other changed conditions from the year
before and the year after such as economic conditions, or
some demand factors that are involved there.

In our case, I think 2015 was when some of the
additional product was available from the--at the end of
2015. I think the additional product was available from
Taihe. It may not be the most comparable--or it might not
be the perfect experimental year to be looking at. I had
not--I guess I didn't hear the question earlier, so I would
have thought of an answer. But we'll take a look at it and
provide what ideas we might have about whether that would be
a useful exercise.

VICE CHAIRMAN JOHANSON: Thank you, Mr. McGrath.
On pages 10 to 11 of your prehearing brief, you argue that
many Chinese producers of HEDP have closed in recent years,
and you provide a list of producers who no longer ship HEDP
to the United States.

Please provide supporting information for this
argument in your posthearing briefs, including the
information on which this list of companies is based and why
it supports your contention that producers of HEDP have
closed in China in recent years.

MR. McGRATH: Okay, we'll be happy to do that.
This information came from the people in the marketing and
production groups at the company in China, and they have--
that's their job is to know who's opening and who is
closing, and who the competition is. So we'll provide any
source information we have for that.

VICE CHAIRMAN JOHANSON: Okay. Thank you. And
this is another question which I asked the Petitioners this
morning but I'm going to raise with you also.

To what extent, if any, does your firm's price of
the byproduct affect the sales price of HEDP that you
produce?

MR. McGRATH: I think our answer is pretty much
the same. HEDP has its own demand profile, and its own
market. The byproduct is sold to a narrow, specific market
like pharmaceuticals and pesticides, as an intermediate for
production of those products, and its demand is going to be
driven by other factors for the acetyl chloride.

VICE CHAIRMAN JOHANSON: Okay, thank you, Mr.
McGrath. On page 15 of Petitioners brief it cites our staff
report's Table 5-9 for the existence of six confirmed lost
sales. For posthearing, could you please comment on the
commercial significance of those lost sales allegations?

MR. McGRATH: I think I did look at them. We
didn't really have a way to confirm or deny anything because
it's APO material. So we will provide what information we
can. That's Exhibit 5-9? Or is it page 5-9?

VICE CHAIRMAN JOHANSON: That's Table 5-9.
MR. McGRATH: Table 5-9, okay.

VICE CHAIRMAN JOHANSON: And that's also, once again, discussed at page 15 of the Petitioners brief. They are citing our staff report.

And also for the posthearing, I would appreciate it if we could receive an explanation for Shandong Taihe's capacity utilization figures for 2014 through 2016 as displayed in Table 7-3 of the staff report.

I don't want to characterize them publicly, but I do find them interesting, especially in the context of the trend in capacity in this investigation.

MR. McGRATH: I understand what you're talking about, and we will provide that.

VICE CHAIRMAN JOHANSON: I look forward to seeing that.

Okay, this is kind of an interesting subject here that caught my attention. Respondents have argued that one of Compass's inputs, acetic anhydride, is a controlled substance in the United States due to its use in certain narcotics. So that's kind of interesting, right?

On page 6 of Respondent's brief, they admit that the raw material they use in their process, phosphorus trichloride, is a toxic and corrosive chemical that is difficult to transport. And a check on the Internet also shows that this chemical is listed as controlled by the
Chemical Weapons Convention, which is also very
interesting, as it can be used in chemical weapons.

And I imagine that the use of this product
requires additional cost in handling. From a cost and
logistical standpoint, which raw material would you rather
deal with? The one that is a controlled--that is controlled
as a chemical weapon, or the one that is controlled as a
precursor of narcotics? I mean this sounds like pretty--it
sounds like something you'd have in a movie, right?

MR. McGRATH: It will make you think twice before
you dive into a swimming pool.

VICE CHAIRMAN JOHANSON: Right.

(Laughter.)

MR. McGRATH: I'll pick door number two with the
narcotics--

VICE CHAIRMAN JOHANSON: It's kind of interesting.

This is my last question, and I'm asking it because--

MR. McGRATH: I had the same questions myself when
I first found out about these products. Well, this is
highly corrosive, and this explodes, and the product
anhydrous anhydride that you were talking about there, Ms.
Cheng was telling me that there are precursors to that which
resulted in explosions and deaths in chemical plants in
China. So the point being, in pointing that out, we were
just trying to say that certain types of products add
additional costs.

If you're going to use them and you have to transport them, they add additional costs to the manufacturing process. And that has to be taken into account. We heard this morning that the precursor to the narcotic product did not add additional cost that they would recognize, and I'll just take that at face value, but the reason why we point it out is that when Taihe used to use that chemical, as Ms. Cheng said in her testimony, they had to get special approvals from the state security authority, and from police in order to even transport product into their facility, and they had to engage in separate storage, and separate kinds of protection in order to have the product.

So it was something they wanted to get out of their production stream and out of their cost profile in order to have a more efficient production. But, yeah, there seem to be some restrictions on these chemicals, which are going to add to the headaches of using them in the production process.

VICE CHAIRMAN JOHANSON: That's what it sounded like. I guess it's kind of a risky business, but somebody's got to do it to make the products.

Alright, that concludes my questions.

Commissioner Williamson?
COMMISSIONER WILLIAMSON: I just have one question, Mr. McGrath, for posthearing. Take a look at Table C-1, looking at Shandong's exports, and take a look at Table C--I mean Table 7-1, and then you look at the C-1 Table, and I was wondering, when you take a look at that, if Shandong is the only one that's using its processes, the super efficient process? And even taking that into account, don't you still--wouldn't you still have injury from subject imports here?

MR. McGRATH: I'm sorry, I don't have those tables--

COMMISSIONER WILLIAMSON: I'm not asking you to answer it now, because--

MR. McGRATH: But what they show is what?

COMMISSIONER WILLIAMSON: If you look at what percentage of the market Shandong accounts for of the exports, and they're the only ones that have the super efficient process which you've kind of sort of said that's why the Chinese are beating the U.S., I assume those other exports don't benefit from that. And so I'm raising the question: Don't you still have injury?

MR. McGRATH: The other exports to the U.S. are using the less expensive inputs, similar to what we're using. They're not using the same product, or process that we're using.
COMMISSIONER WILLIAMSON: You may want to take a
look at it posthearing.

MR. McGRATH: Okay. Well I'll have to take a look
at the tables and see. But your question has to do with
just given the fact that others are shipping from China to
the United States, even if we say that our process is such
that it couldn't be causing injury, others are likely
causing injury simply because of the volume of imports? Is
that--

COMMISSIONER WILLIAMSON: The value of the pricing
of imports, yes.

MR. McGRATH: I'll take a look at it and we'll
respond.

COMMISSIONER WILLIAMSON: Okay. That's all I
have. Thank you.

VICE CHAIRMAN JOHANSON: Thank you, Commissioner
Williamson. And that concludes Commissioners' questions, so
thank you all for appearing here. We appreciate you
informing us on this subject..

Does staff have any questions?

MR. CHANG: Calvin Chang. Staff has no further
questions.

COMMISSIONER WILLIAMSON: Do Petitioners have
questions for the Respondents?

MR. LEVIN: Mr. Vice Chairman, no, we do not.
COMMISSIONER WILLIAMSON: Thank you, Mr. Levin.

Okay, we will now have the Petitioners rebuttal and closing, and you will have 16 minutes for direct, and 5 minutes for closing, for a total of 21 minutes.

Mr. Levin, you may come to the front.

MR. BISHOP: Rebuttal and closing remarks on behalf of petitioner will be given by Jeffrey Levin of Levin Trade Law. Mr. Levin, you have a total of twenty-one minutes. You may begin when you're ready.

CLOSING REMARKS OF JEFFREY LEVIN

MR. LEVIN: Thank you, Mr. Bishop.

Commissioners, I promise to take far less than twenty-one minutes. Unless you want me to. In any case, I want to make just a couple of quick points here.

First of all, respondents' panel and respondent counsel, Mr. McGrath, indicated that there was actually no real increase in subject imports over the period of investigation. He characterized it more or less as flat over the period of investigation. The data do not show that to be the case, and that's about as far as I will go at this point. But the record is pretty clear on that.

Second point, Mr. McGrath understandably is trying to minimize the significance or the importance or even the real-world basis of the anti-dumping margins. Say what you want about the methodology that results in dumping
margins. Say what you want about the non-market economy methodology that often results in higher margins for subject imports from China, as is the case here.

We could quibble on all of those fun things, but at the end of the day, the margins are large first of all. But second of all, the anti-dumping margins are, by statute, one of the factors that the Commission needs to take into consideration in its injury and causation analysis. Not just the fact that it was dumping, but the margins as well.

Number three, we've skirted around this a little bit, both in this morning's panel, this afternoon's panel, but let me be clear about one thing. Shandong Taihe, Taihe, who is appearing and doing what they can to present their position and their investigation. But they're the only people, the only Chinese companies that have showed up for the final phase investigation.

We will go into this in a little bit more detail in the post-hearing brief, but let me make a couple of points. First of all, please recognize Shandong Taihe Taihe production and shipments as a percent of the total production and shipments when you look at companies in addition to Shandong Taihe Taihe. And you can get that data from the preliminary staff report in the preliminary determination.

So all of the arguments that they are
presenting--I shouldn't say that--the principle argument that they are presenting about their proprietary production process and all the advantages and all of that, and why Compass is inferior and outdated, to the extent that that is true at all with regard to Taihe's production process, that only applies to Taihe.

And in fact, I believe Ms. Cheng and Mr. McGrath both said this afternoon that to their knowledge, Taihe is the only Chinese company that uses this particular production process. Now, other companies have decided not to participate in the final investigation after participating in the preliminary investigation. The issue was raised, "Well, what do we do? What does the Commission do for the final? What data do we look at?"

As we indicated in our prehearing brief, and we'd be too happy to expound in our post-hearing brief, the Commission is permitted, by statute, to apply adverse facts available and to make adverse inferences where respondent parties do not cooperate with the Commission's request for information.

Obviously, any secondary information needs to be corroborated or in most instances, it needs to be corroborated. You do have data on the record here from the preliminary investigation. You do have just one company showing up for the final. We urge the Commission to
consider where and how to apply adverse facts available and adverse inferences in their analysis in the final determination here.

Fourth, and lastly, Shandong Taihe essentially has two major arguments. One is about the advantages of their production process and everything that they claim stems from that. The second is knowing subject imports.

So, with margins like this, with volumes like this, with adverse price effects like this, with injurious indicators for the domestic industry, basically what the respondents are asking the Commission to determine is that the country whose imports are at about maybe half the level of subject imports.

The country who is actually overselling the domestic industry in the majority of instances, twenty-seven out of thirty-six. The country that is, for purposes of these investigations, shipping fairly-traded imports to the United States, according to Shandong Taihe, any injury that's being suffered is by reason in large part of those imports, not the country that is responsible for about twice the level of the Indian imports. Not the country that has, based on record evidence, impressed upon the U.S. industry adverse price effects. Not the country that has now been found to be dumped and subsidized. It's not them.

It's the lower volume, more expensive
fairly-traded imports. That does not quite match up to reality, at least in my mind. On behalf of Compass' byproduct, acetic acid, I appreciate Mr. McGrath's clarification that he didn't really mean that it was low-quality. I've spoken to the acetic acid. They feel a lot better about that now.

In any case, in sum and substance, we do believe that in this investigation, in these investigations, the evidence of record, the legal analysis, the economic analysis, all strongly support an affirmative determination in the final investigations.

On behalf of Compass Chemical, we very much appreciate that Commissioners' attention, the questions today, the questions that we'll follow-up with in the post-hearing brief. We appreciate very much the work of the Commission staff, Mr. Boyland, who made the verification trip down to Smyrna, Georgia. Thank you for doing that. And we look forward to addressing those questions and issues that still remain in our post-hearing brief. Thank you very much.

MR. BISHOP: Rebuttal and closing remarks on behalf of the respondents will be given by Matthew T. McGrath of Barnes, Richardson & Colburn. Mr. McGrath, you have thirty-four minutes remaining from your direct, and five minutes closing, for a total of thirty-nine minutes.
1 You may begin when you're ready.
2
3 CLOSING REMARKS OF MATTHEW T. MCGRATH
4
5 MR. McGRATH: Thank you. Likewise, I won't need
6 thirty-nine minutes. But thanks to all who asked some very
7 penetrating questions, I think every time I come here, it's
8 another lesson in all of the ways you can hold up the
9 multi-sided glass ball of anti-dumping law and try to see it
10 in a different perspective, in a different light.
11
12 Thanks also to the staff. As always, they do a
13 tremendous job and under deadline pressures often. And we
14 appreciate that. Which is why I urge the Commission to not
15 put too much attention on the PIERS data or other outsources
16 of data and use the staff's data, because they're usually
17 the most accurate and the most reliable.
18
19 There were just a couple of issues that I did
20 not -- and most of the rebuttal commentary that I wanted to
21 say, I included during our direct discussion, our direct
22 presentation. But it raised a new issue in my mind as Mr.
23 Levin just said that the ITC is required to consider the
24 amount of the margin in doing its analysis.
25
26 And I thought back to Mr. Kieff's question about
27 looking for a single element to hang your hat on, that
28 raises a question. If I'm right about the margin and I go
29 to court and the court says, "You're right. The margin
30 should've been calculated this way." And it ends up going
to Commerce and is calculated in that way, and it's suddenly
2% instead of a much higher rate. What does that do to your
analysis if you've relied heavily on that factor? That may
be one reason why the Commission doesn't often rely heavily
on the size of the margin in doing their analysis.

And again, I have the -- harking back on the
volume of imports from India, our entire case is not resting
on the fact that India happens to be in the market. We are
pointing out that it should be considered very carefully
that India's volume, it's not less than half of -- maybe it
is in the PIERS data or something -- but it's not less than
half of the subject merchandise.

It's rising and it seemed to have risen more
than just something that happened in the fourth quarter
because there was a preliminary decision. It's a
substantial player in the marketplace. And I get to win a
prize or something if they're back here a year from now with
a case against India.

I also wanted to highlight the fact that the --
we heard some discussion this morning about what changed in
the market, what changed with production, what changed in
the market in the United States, that changed the profile
and perhaps the financial fortunes of domestic production of
HEDP. And that was proposed to be the entry of China, the
appearance of China in the market.
And I ask again, the real question is, "Well, why did China get in the market at that point?" "Were they there before? Or not there before?" And why is it that when Compass bought the predecessor company, they were importing HEDP. They weren't making HEDP. There was a reason for that.

And many of the reasons were all of the facts that Ms. Cheng testified to about the natural advantages of being based in China, having the access to the phosphorus acid, having the ability to handle certain toxic chemicals, which are expensive to handle. And there may well be a reason why there is only one producer.

And the reason why that producer decided to go back into the production of HEDP in the United States might've been because of other chemicals that it decided were important to make in the United States rather than the HEDP that it had previously been importing to that point.

So I just wanted to leave it at that. We're not resting entirely on an argument that India caused the injury. We are pointing out that there are advantages to this process. Some of the advantages are not just advantages -- or some of the advantages are unique to Taihe, but there are advantages that other Chinese producers have as well in using cheaper inputs.

So we ask that you consider all of this. We
will respond to all of your very pertinent questions in the
post-hearing brief. And we ask that you return a negative
decision in this case and not have to go through another
case against -- I hope that you don't have to go through
another case against India next year. Thank you very much.

VICE CHAIRMAN JOHANSON: Thank you, Mr. McGrath.
I will now make the closing statement. Post-hearing briefs,
statements responsive to questions and requests of the
Commission, and corrections to the transcript must be filed
by March 30th, 2017. Closing of the record and final
release of data to parties occurs on April 14th, 2017, and
final comments are due on April 18th, 2017. This hearing is
adjourned.

(Whereupon at 2:34 p.m., the hearing was
adjourned.)
CERTIFICATE OF REPORTER

TITLE: In The Matter Of: 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from China

INVESTIGATION NOS.: 701-TA-558 and 731-TA-1316

HEARING DATE: 3-23-17

LOCATION: Washington, D.C.

NATURE OF HEARING: Final

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

DATE: 3-23-17

SIGNED: Mark A. 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: Duane Rice
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: Larry Flowers
Court Reporter

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