In the Matter of: CERTAIN BIAxIAL INTEGRAL GEOGRID PRODUCTS FROM CHINA

) (FINAL)

Pages: 1 - 200
Place: Washington, D.C.
Date: Wednesday, December 21, 2016
UNITED STATES OF AMERICA

BEFORE THE

INTERNATIONAL TRADE COMMISSION

IN THE MATTER OF: ) Investigation Nos.:
BIAXIAL INTEGRAL GEOGRID PRODUCTS ) 701-TA-554 AND
FROM CHINA ) (FINAL) 731-TA-1309

Main Hearing Room (Room 101)
U.S. International Trade
Commission
500 E Street, SW
Washington, DC
Wednesday, December 21, 2016

The meeting commenced pursuant to notice at 9:30 a.m., before the Commissioners of the United States International Trade Commission, the Honorable Irving A. Williamson, Chairman, presiding.
APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

Chairman Irving A. Williamson (presiding)
Commissioner Dean A. Pinkert
Commissioner Meredith M. Broadbent
Commissioner F. Scott Kieff
Commissioner Rhonda K. Schmidtlein

Staff:

William Bishop, Supervisory Hearings and Information Officer
Nadiya Samon, Student Intern
Calvin Chang, Investigator
Jennifer Catalano, International Trade Analyst
Cindy Cohen, Economist
David Boyland, Accountant/Auditor
Patrick Gallagher, Attorney/Advisor
Elizabeth Haines, Supervisory Investigator
APPEARANCES:

Opening Remarks:

Petitioner (Jeffrey D. Gerrish, Skadden, Arps, Slate, Meagher and Flom LLP)

Respondents (Yohai Baisburd, Dentons US LLP)

In Support of the Imposition of Antidumping and
Countervailing Duty Orders:

Skadden, Arps, Slate, Meagher & Flom LLP

Washington, DC

on behalf of

Tensar Corporation

Mike Lawrence, President and CEO, Tensar Corporation
Scott Edgecombe, Executive Vice President and General
Manager, Grid Western Hemisphere, Tensar Corporation
Robert F. Briggs, Executive Vice President, General
Counsel and Secretary, Tensar Corporation
William Shelton, Vice President, Materials Technology,
Tensar Corporation
Bryan C. Gee, Director of Marketing, Tensar Corporation
Ann Shockley, Director of Materials and SIOP, Tensar
Corporation
Carey Witt, President, GeoSolutions, Inc.
Michael Coleman, Vice President, Coleman-Moore Company
Dave Brooks, President, ACF Environmental

In Opposition to the Imposition of Antidumping and Countervailing Duty Orders:
Dentons US LLP
Washington, DC
on behalf of
Hanes Companies, Inc.
Hill Country Site Supply
      John Dowdell, President, Hanes Companies, Inc.
      Bobby Starling, Jr., Vice President, Hanes Companies,
      Inc.
      Clay Cashatt, Vice President, Hill Country Site Supply,
an operating branch of Hanes Companies, Inc.
      Yohai Baisburd and Daniel Morris - Of Counsel
Petitioner (Jeffrey D. Gerrish, Skadden, Arps, Slate, Meagher and Flom LLP)
Respondents (Yohai Baisburd, Dentons US LLP)
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MR. BISHOP: Will the room please come to order?

COMMISSIONER PINKERT: Good morning. On behalf of the U.S. International Trade Commission I welcome you to this hearing on Investigation No. 701-TA-554 and 731-TA-1309 Final involving Biaxial Integral Geogrid Products 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 Biaxial Integral Geogrid Products from China.

Schedule 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 preparing testimony.

I understand that parties are aware of the time allocations. Any questions regarding the time allocations should be directed to the Secretary. Speakers are reminded not to refer in their 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 request should comply with Commission Rule 201.6. Mr. Secretary, are there any preliminary matters?

MR. BISHOP: Mr. Chairman, I would note that all witnesses for today's hearing have been sworn in and there are no other preliminary matters.

COMMISSIONER PINKERT: Very well, let us begin with our opening remarks.

MR. BISHOP: Opening remarks on behalf of petitioner will be given by Jeffrey D. Gerrish, Skadden, Arps, Slate, Meagher and Flom.

COMMISSIONER PINKERT: Welcome, Mr. Gerrish. You may begin when ready.

OPENING REMARKS OF JEFFREY D. GERRISH

MR. GERRISH: Thank you. Good morning. I'm Jeff Gerrish of the Law Firm Skadden Arps representing Petitioner Tensar Corporation. We are here today because the Domestic Industry has suffered severe injury as a result of a flood of unfairly-traded imports of Biaxial Geogrids from China.

As you will see, the statutory factors that the Commission normally considers have unquestionably been met here and the Commission should reach an affirmative
determination. In conducting its analysis, the Commission should find the like product to include only biaxial geogrids, not triaxial geogrids. As a result, we will focus primarily on biaxial geogrids because we think that's the right way to look at it under your like-product criteria. But let me be absolutely clear. Regardless of whether you look at biaxial geogrids only or biaxial and triaxial geogrids together, the result is the same. The Domestic Industry has suffered severe material injury and is threatened with further injury due to Subject Imports. Imports of Biaxial Geogrids from China increased dramatically over the Period of Investigation. In absolute terms, the volume of dumped and subsidized imports surged by millions of square yards from 2013 to 2014 and then grew significantly again in 2015.

The growth in Subject Imports over the Period of Investigation was massive. Subject Imports also increased relative to U.S. consumption and production. In fact, as they poured into this market, Chinese Imports quickly took sales from the Domestic Industry and seized a large amount of additional market share. This came at the direct expense of the Domestic Industry's market share which plummeted over the same period. The result was that the Domestic Industry lost millions of dollars in sales in both 2014 and 2015.

With respect to price, the record shows that
Chinese Imports seized this market share by undercutting the Domestic Industry's prices. Underselling occurred in the vast majority of comparisons. This pervasive underselling resulted in rapid and substantial gains in market share for the Subject Imports all at the expense of the Domestic Industry.

The Subject Imports also depressed and suppressed prices in this market. When the Chinese Imports first surged into the United States, they took huge amounts of sales from the Domestic Industry. As Tensar tried to stop the hemorrhaging of its market share at the end of 2014 and into 2015 it was forced to drop its prices even further to compete with the Chinese Imports.

Over the entire Period of Investigation but particularly for the third quarter of 2014 to the end of 2015, domestic prices plunged to unsustainably low levels. The impact on the Domestic Industry has been devastating. Based on favorable underlying demand for biaxial geogrids, this should have been a period of strong profits. Instead, the flood of unfairly traded imports from China caused the Domestic Industry to cut its prices drastically and to suffer declines in production, capacity utilization, sales and market share.

In turn, this caused the Domestic Industry's gross profits, operating income, operating margins and net
income to fall significantly from 2013 to 2014. In 2015, things went from bad to worse. Despite growing demand, Tensar was forced to cut prices even more in order to avoid losing sales to the Chinese. As a result, it suffered an operating loss in 2015. Tensar has had to reduce its operations, shut down its plant for extended periods and lay off workers.

The evidence here is simply overwhelming that unfairly traded Subject Imports has caused present material injury. Subject Imports also threaten additional injury. The Chinese Imports have completely stonewalled you and refuse to provide you with the data needed to conduct your analysis. As a result, you should apply adverse inferences. The evidence that is on the record shows the Chinese producers have massive capacity to produce biaxial geogrids, receive large export subsidies and are confronting difficult demand conditions in other markets.

The rapid increase in Subject Imports that has occurred demonstrates how quickly Chinese producers can increase exports to the United States and that they have a clear interest in this market. Without trade relief there is no question that they will continue to attack this market causing additional harm to the Domestic Industry.

The data you have collected are clear and compelling in showing the Domestic Industry has suffered
present material injury and is threatened with further injury. Our witnesses today will discuss their experiences in the market and shed further light on the data you've collected. As you will hear, the Domestic Industry created this produce and the market for it.

Unfairly traded Chinese Imports have quickly surged into this market and have threatened to destroy this industry almost overnight. The only way to stop this crisis is with trade relief. We ask you to grant this relief and issue an affirmative determination. Thank you.

MR. BISHOP: Opening remarks on behalf of Respondents will be given by Yohai Baisburd, Dentons US.

COMMISSIONER PINKERT: Welcome Mr. Baisburd and you may begin when ready.

OPENING REMARKS OF YOHAI BAISBURD

MR. BAISBURD: Thank you. Good morning Commissioners and Staff. I am Yohai Baisburd with Dentons, US LLP. We represent Hanes Company Inc. and Hill Country Site Supply, an operating division of Hanes. As you just heard, Tensar will likely spend the morning talking about a Domestic Industry that makes no sense. The Commission properly found during the preliminary phase that there is no clear dividing line between square, rectangular and triangular geogrids.

The record developed during the final phase
supports that determination. Triax and other biaxial
geogrids share physical characteristics and uses, are
interchangeable, are sold through the same channels of
distribution, are produced at the same facility with similar
production processes and employees and are perceived by
customers as similar. What is clear from the record is why
Tensar is trying so hard to create this artificial line.

Tensar claims that they have done everything
right, but the record shows otherwise. Heavy-handed
tactics, like announcing that they would discontinue
rectangular geogrids in favor of transitioning the market to
triax whether the market was ready for that or wanted it or
not; maintaining rigid exclusive distribution networks and
aggressively relying on private label sales left independent
distributors no other option than to look for imports.

Since this is basically an industry of one,
almost all of the information in the Staff Report is
confidential so there is only so much I can say about
volume, price effects and impact at this hearing because I
can't summarize Tensar's data the way they can, but a few
points to illustrate.

First, demand increased over the POI and so did
Tensar's U.S. Shipments. In contrast, there was a steady
decrease in their export shipments from 2013 to 2015.

Second, polypropylene prices declined 28 percent
over the period. You would expect prices to trend downward
as the cost of the main raw material is declining.

Third, the pricing data collected by the
Commission shows that Tensar is the dominant price leader
and the role played by its private label program in the
market.

Finally, Tensar's financial performance is
healthy by any standards let alone the data you typically
see in an injury investigation here.

When listening to Tensar's panel this morning, I
urge you to keep two things in mind. First, they're
probably not talking about the Domestic Industry that you
defined at the Preliminary Phase, but rather one that
excludes triax and second, until May 2012, six months before
the first year of the period here, Tensar essentially had a
monopoly. That is a key condition of competition.

When you have enjoyed a hundred percent market
share for decades it will take some time to adjust to the
new reality. Thank you.

MR. BISHOP: Would the Panel in support of the
imposition of antidumping and countervailing duty orders
please come forward and be seated?

CHAIRMAN WILLIAMSON: I want to welcome the panel
to this morning's proceedings and Mr. Gerrish you may begin
when you're ready.
STATEMENT OF JEFFREY D. GERRISH

MR. GERRISH: Great, thank you Mr. Chairman.

Again, for the record, I'm Jeff Gerrish of Skadden Arps on behalf of Tensar Corporation. Here are the key points to keep in mind in this case. Demand for biaxial geogrids was healthy and growing during the Period of Investigation. However, the Domestic Industry could not take advantage of this strong demand due to soaring volumes of unfairly traded Chinese Imports which took significant market share directly from the Domestic Industry.

The Subject Imports gained this market share by significantly underselling the Domestic Industry. As a result, the industry suffered massive declines in its production, capacity utilization, sales, gross profits, operating income and net income. In fact, the data that the Commission has collected for the interim periods of 2015 through 2016 clearly show the impact of Subject Imports. As Subject Imports began to recede from the market in 2016, the Domestic Industry's condition began to improve. No other factor explains this turn around in the industry in 2016.

Finally, the Domestic Industry remains extremely vulnerable and failure to grant relief will lead to further devastating injury because of this year's scale of the Chinese Industry, the Chinese Producers' capacity, excess capacity and inventories and their continued interest in
In your Preliminary determination you found a single domestic like product consisting of biaxial geogrids and triaxial geogrids. However, you stated that you would reexamine this issue in the final phase. The Staff has done an excellent job gathering the data and information needed to do this and you now has an extensive record with respect to each of the six factors that you consider in your like product analysis.

We will certainly be talking more about this and we have covered it extensively in our prehearing brief but an examination of each of these factors shows that biaxial and triaxial geogrids are separate like products. Among other things, the two products have different physical characteristics and uses and they are recognized as different by the foremost experts in the field and in state and local specifications.

In fact, because of their different properties and uses, customers are willing to pay significantly higher prices for triaxial geogrids. And as Vice Chairman Johanson and your Staff saw at Tensar's plant, there are key differences in the way the products are manufactured. We think the facts clearly show that you should find that biaxial geogrids and triaxial geogrids are separate like products but whichever like product definition you choose,
the evidence before you overwhelmingly shows that the Domestic Industry has suffered present material injury and is threatened with further injury if relief is not granted.

Let me turn now to the factors in your present material injury analysis. One thing to note as we move forward is that pursuant to the guidance of the staff, certain data labels have been removed from the slides on the screen to avoid revealing confidential information. Each of you should have received the confidential version of these files.

Let's start with the volume of Subject Imports. Demand for biaxial geogrids was stable in 2013 and 2014 and then grew significantly in 2015. For an industry like this that must benefit from the good times in order to survive the inevitable downturns, it is critical for Domestic Producers to be able to take advantage of this type of steady and growing demand but the Domestic Producers weren't able to do that here.

The reason was Subject Imports which absolutely exploded from 2013 to 2014. Even though demand remains steady from 2013 to 2014 Subject Imports seized a significant amount of sales and market share directly from the Domestic Industry. Subject Imports continued to flood into this market in 2015 as you can see here. There is no question that the volume of Subject Imports and the
increase in that volume were significant in absolute terms over the Period of Investigation.

The surge in Subject Imports over the Period of Investigation was also significant relative to Domestic consumption. Subject Imports also took a substantial amount of market share directly from the Domestic Industry and those millions of square yards in lost sales represent material injury to the Domestic Industry.

Next, let me address the price effects of the Chinese Imports. The record shows that Subject Imports gained market share by significantly underselling the domestic like product. The underselling analysis set forth in your pre-hearing staff report certainly shows that.

The chart on this slide takes in those data and adds in the underselling data for the private label sales to present a complete picture as we did in our prehearing brief. As you can see, underselling occurred in the overwhelming majority of quarterly comparisons and the vast majority of sales by volume. The unfairly traded Chinese Imports also created an oversupply in the U.S. Market that drove prices lower. Subject Imports soared in 2014 even though apparent consumption remained relatively flat. The result was that by the end of 2014 the market was becoming oversupplied. This oversupply in the market depressed and suppressed prices. In fact, faced with this oversupply and
in an effort to stop the bleeding and regain some of the market share it had lost at the hand of Subject Imports, Tensar was forced to slash its own prices in 2015.

Subject Import volumes continued to increase in 2015 after prices had started to decline. They did this through continued massive underselling both through their underselling and the oversupply they created, Subject Imports had a devastating effect on price but you don't have to take our work for it.

Just look at the responses to your U.S. Purchasers' Questionnaire. These U.S. Purchasers specifically told you that they shifted at least 3.2 million square yards of purchases from the Domestic Industry to Chinese Imports precisely because the Chinese Imports were lower priced. Even more purchasers testified that they had seen Subject Imports cause the Domestic Industry to lower its prices by up to 75 percent to try to match the price of the Chinese Imports. This is absolutely compelling evidence of the highly damaging price effects of the Subject Imports.

Now let's consider the impact of Subject Imports. As you've already seen, when they surged into this market from 2013 to 2014, Subject Imports took a huge amount of market share from the Domestic Industry. If Tensar could have maintained its 2013 market share in 2014 and 2015 then it would have sold millions more square yards of biaxial
geogrids.

Even if you conservatively assume that prices would have been the same as what the Chinese unfairly traded imports were selling for, those lost sales would have been worth millions of dollars more in revenues. Those additional revenues would have made a tremendous difference to the health of the Domestic Industry. On its own, this shows that the adverse impact of Subject Imports was significant, but the impact on the Domestic Industry went far beyond lost volumes.

In fact, every other indicator of the Domestic Industry's performance was negative despite strong demand. Net sales were down. Unit values were also down. Capacity utilization fell to abysmally low levels. These trends can only be explained by the impact of unfair trade. The same is true when you look at the Domestic Industry's profitability. Despite healthy and growing demand, the industry's gross profit, operating income and net income all show dramatic declines and the industry suffered an operating loss in 2015. Again, Subject Imports are the only plausible explanation.

The human cost of the Subject Imports has also been devastating. Tensar has been forced to lay off workers each year of the Period of Investigation. Even with those layoffs, the average hours worked for each worker have
declined. Even worse, at the end of 2015, a year that saw
the strongest demand growth in many years, Tensar was forced
to institute further layoffs and reduce its hours of
operation.

In short, the industry and its workers have
suffered overwhelming material injury and are now vulnerable
to even more injury. As a result of unfairly traded Subject
Imports, Tensar has had to delay, postpone or cancel needed
investments, has been unable to replace aging and obsolete
equipment and has seen its ability to invest in critical
research and development severely weakened.

To the extent you have any doubt that Subject
Imports were the cause of this injury, you need only look at
the data you have of the 2016 interim period. These data
show that as Subject Imports receded from the market in 2016
after the filing of these cases and the imposition of
preliminary duties the Domestic Industry experienced
improvement in its sales, shipments, production, capacity
utilization, operating income and net income.

However the industry is not back where it needs
to be and there are large volumes of very low-priced Subject
Imports that remain in the market and that are continuing to
suppress prices even today. In fact, these Subject Imports
overhanging the market were rushed in after the filing of
these cases in January of 2016 to try to beat the
preliminary duties. This is exactly what the Critical
Circumstances Provision of the statute was intended to
remedy and we think that you should make an affirmative
determination of critical circumstances.

As I mentioned earlier, we have been presenting
the data for biaxial geogrids only because we think it is
the right way to do it under your like product analysis but
no matter which like product definition you choose, the case
for material injury to the Domestic Industry is
overwhelming.

As you can see, even when you look at biaxial and
biaxial geogrids combined, the story is exactly the same
with virtually every measure of the Domestic Industry's
performance showing significant downward trends over the
Period of Investigation. No matter which way you look at
it, the material injury factors have clearly been met here.

We believe that the evidence of present material
injury is compelling and that you don't even need to reach
the issue of threat. If you do however, Tensar's brief
contains extensive evidence detailing why in the absence of
trade relief Subject Imports would rapidly return to this
market and cause further injury. I won't go through all
that evidence, but I do want to highlight a few critical
facts.

First, the Chinese Industry is huge. Tensar has
been able to identify over 75 producers and exporters in China and there are likely many more. However you have no questionnaire data from these producers. None. Even though they participated in the Commerce proceedings, the Chinese Producers have refused to cooperate with the Commission. This is a clear case for the Commission to use its Statutory Authority to apply Adverse Inferences.

But even setting that aside, the evidence that is on the record clearly shows that the Chinese Industry has massive capacity and excess capacity holding enormous inventories and is highly export oriented. In fact, just 7 of the Chinese Producers currently have over 400 million square yards of capacity in factories close to major ports in China.

This slide shows just how heavily concentrated the Chinese Producers are in coastal areas like Shangdong Province. It is a simple matter for them to rapidly ramp up their export to this market once again. Even assuming that only a small fraction of the massive capacity of the Chinese Producers remains unused, it is clear that the Chinese Producers maintain more than enough excess capacity to completely overwhelm the U.S. Market.

Adding to that threat, the Chinese Producers also hold enormous inventories that they can use to further increase shipments to this market if relief is not granted.
The record also shows that Chinese Producers had significant subsidies that violate the WTO agreement on subsidies and countervailing measures. Some of these subsidies even identify specific Chinese Producers that are hand-picked by the authorities for promotion.

Finally, it is clear that the size of the Chinese Producers and their many incentives to continue shipping here mean that the treat they pose to all of Tensar's operations is staggering. As you can see here, even in comparison to the U.S. Market's for biaxial and triaxial geogrids combined, the production capacity of the Chinese Industry is massive. If relief is not granted, even the small handful of the 75 Chinese Producers and Exporters can easily wipe out the entire U.S. Industry.

The threat they pose is simply overwhelming. Indeed, it would be difficult to find a clear example of the kind of market distorting practices and overcapacity that have provoked so much policy debate in recent months. This is a case of an innovative Domestic Industry that has done everything right but has nothing to show for it because all of its success has been stolen in a few short years by Chinese Producers engaged in massive unfair trade who can't even bother to cooperate in your investigation.

The future of the U.S. Industry is teetering on the edge of a complete disaster with literally nothing left
to cup. It is absolutely critical that the Commission grant
it the relief that it so urgently needs. With that, I will
turn it over to our first witness, Mike Lawrence, President
and CEO of Tensar Corporation.

STATEMENT OF MIKE LAWRENCE

MR. LAWRENCE: Good morning Mr. Chairman,
members of the Commission. I'm Mike Lawrence, chief
executive officer of Tensar, and on behalf of Tensar I'd
like to start by thanking the Commission and its staff for
all of your hard work on this case.

A perfect example of this is the time and effort
and attention that you, Vice Chairman Johanson and the
Commission devoted to your visit to our Morrow facility in
Georgia in November. I really appreciated the chance to
meet with all of you then and introduce our company to some
of the key members of your team, and some of those folks are
here today with us and I thank you for that opportunity.

As you saw when you visited our plant, Tensar is
a company founded on innovation. We're a group of
engineers and problem-solvers absolutely dedicated to what
we do, and we have succeeded by continuing to invent and
develop products by biaxial and triaxial geogrids. We not
only invents these products, we created the markets for them
literally from the ground up.

Thirty years ago, biaxial geogrids were a
completely new product on the market. They showed amazing potential for stabilizing roadways, railways and other surfaces and for the construction and geotechnical applications as well. They also offered a substantial cost savings, because they reduced the amount of stone, aggregate and other materials that must be used, and increased the life span and durability of the finished roadways and other projects.

But when they were first introduced, biaxial geogrids were a new and a novel product. We had to work with the construction industry, engineers, state transportation officials, contractors to show the benefits of using that product. Then we had to get it accepted by state departments of transportation, municipal governments, standardization bodies, federal agencies to name a few and today, thanks to all that hard work, biaxial geogrids are widely used across the country and continue to demonstrate their benefits every day.

In 2009, we introduced triaxial geogrids, a new product with new and different characteristics from biaxial grids. At our Morrow plant, you saw how these different products are used and how they are made, the physical and mechanical characteristics of each that they have and the differences in how they're used and the benefits they provide to our customers.
We believe that triaxial geogrids are an innovative new product and have worked hard to promote that product and build acceptance of it. But just because we have had to work to promote triaxial geogrids since their introduction and just because we think they are an important new product does not in any way diminish Tensar's commitment to biaxial geogrids. On this point, let me be absolutely clear. Tensar has and will be and continues to be now and in the future 100 percent committed to biaxial geogrids.

Biaxial geogrids are a vital part of our product offering. They have a host of critical applications, provide important benefits and are very important to our customers and thus to us. If you have any doubt about that, please look at the confidential slides and financial data in our submissions that we have made. Biaxial geogrids are a keystone to our future. We would not be here before you today if they were not.

Unfortunately, that future is being increasingly threatened by unfair trade. Over the past four years, our company has been devastated by a flood of low priced Chinese imports of biaxial geogrids. We were expecting competition when the biaxial geogrids came off patent in 2012, and we were prepared for it.

But we were not prepared for the surge of dumped and subsidized Chinese imports that followed. In 2013,
Chinese imports came into the U.S. market in big volumes. In 2014, they skyrocketed even more, seizing well over 40 percent of the market in that year. As they surged, the Chinese imports significantly undercut our prices. This pressure on price was relentless and overwhelming.

As a result, our U.S. shipments and sales volumes plummeted, even though demand was generally very good in 2013 and 2014. As our sales and shipments dropped, we were forced to cut production and our inventories grew. We tried to hold the line on pricing, but with our production sales and shipments all down and our inventories growing even larger, we had to take action.

So we cut our prices even more to try to recapture our lost market share. From 2014 to 2015, this drastic action allowed us to recapture some of the market share we had lost, but it came at a terrible cost. We had to slash not just cut our own prices to try to match the Chinese prices. The result was a direct hit to our bottom line.

Our financial data for 2014 and 2015 reflect the harm we suffered. Whether you look it on the basis of our operations on biaxial geogrids or on the numbers and triaxial geogrids combined, the results are plain to see. Our gross profits, operating income and net income all dropped dramatically. In fact, on biaxial geogrids in 2015,
we suffered an operating loss and an even deeper net loss. This has been an absolute nightmare for our company. But it wasn't just our finances that took a beating. Let me give you a few examples that further illustrates just how painful the past few years have been for Tensar and its workers. The first is our capacity utilization. Our plant is designed to run at very high levels of capacity utilization, but in 2014 and 2015, even as demand grew at a healthy rate, our capacity utilization remained well below where it needs to be to allow fair return on our investment.

This had a human as well as financial cost for us. In fact, as a result of the impact of Chinese imports that I just described, we have been forced to cut hours, shut down production at our plant for extended periods and lay off workers. At the end of 2015 things grew so bad that we were forced to make the very painful and difficult decision to lay off even more of our production workers.

And as if that weren't bad enough, the unfairly traded Chinese imports have increasingly affected our ability to invest in the future. Our whole business is built around continually improving our products and demonstrating their benefits to more and more customers. But because of unfairly traded Chinese imports, we've been unable to do what we need to do in that critical area to
continue to be competitive.

The capital expenditures in R&D spending that we do is to make primarily focused on keeping our operations running as efficiently as possible, and trying to cut every penny of cost that we can to match the Chinese prices. But as I appear before you today, there just isn't any room left to cut.

There's light at the end of the tunnel, but only if you grant relief. Since these cases were filed, we've seen the situation to stabilize a little. Our production capacity utilization, sales and shipments are all up somewhat, and our gross profits, operating income and net income are moving in the right direction again.

But we are still extremely vulnerable. With nothing left to cut and price still extremely low, we are fighting for every penny, and that's been especially hard despite the decline in imports in recent months, because there is still so much very low priced Chinese product in the market that is continuing to undersell us every day.

As a company built on innovation, we know that value of hard work and creative thinking. We have never and will ever ask for a handout. All we ask is that our trade laws be enforced fairly and appropriately so we can get back to work and compete again on a level playing field.

On behalf of Tensar and our hundreds of
hard-working employees and innovators, I ask you to give us that chance. Thank you very much.

STATEMENT OF SCOTT EDGECOMBE

MR. EDGECOMBE: Good morning Mr. Chairman and members of the Commission, and thank you for the opportunity to be before you today. I am Scott Edgecombe, executive vice president and general manager for the Grid Western Hemisphere at Tensar. In that role, I’m responsible for all of Tensar's sales, marketing, engineering, customer service operations throughout the United States and the rest of North America and South America.

My job requires me to have great familiarity with the conditions in the market for biaxial geogrids. I've seen and experienced firsthand the injury caused to our company and our workers by unfairly traded Chinese imports, and would like to emphasize a few key points.

The past few years have been disastrous for our company. We have lost a significant amount of sales and market share over the Period of Investigation due to the flood of dumped and subsidized Chinese imports that have hit the market. They have surged into this market in massive quantities, and at an incredibly low and ever-decreasing prices.

I constantly hear from our sales people and our distributors that Chinese material is being offered for far
below our lowest price, and that we have to match that
price or lose the sale. Customers are basing their
purchasing decisions solely on price. If we don't lower our
price to meet what the Chinese are offering, we lose the
sale.

We have done everything we can to compete with
the dumped and subsidized Chinese products. We have cut our
cost to the bone, and we have continually lowered our prices
to try to match the Chinese prices. Because as it becomes
painfully clear, that as much as we cut our prices, the
Chinese cut theirs more. The result was that from 2013 to
2014, we lost a lot of sales and suffered a huge drop in our
production, shipments and market share.

We've slashed our prices even more in 2015 to
try to regain some of our sales and market share. Although
we saw gains in our sales volumes, it came at a terrible
cost. We took a severe hit to our bottom line and had an
operating loss for the year on our biaxial geogrids product
line.

We've started to see some bright spots this year
as a result of this case, but we continue to be locked out
of a significant percentage of the market by unfair trade.
We still haven't been able to charge a true market-based
price. We have to keep our prices low enough to avoid
losing sales to dumped and subsidized imports. Even then we
continue to lose sales to ridiculously low priced Chinese material. The impact of the Chinese imports has truly been devastating.

I would also like to address a few other topics that may arise today. The first is the claim made by the other side that Tensar has somehow undermined its position to private label sales. That claim is simply ludicrous. As you've just heard from Mr. Lawrence, the prices for biaxial geogrids are being driven by the prices from the Chinese product. That is true when we were competing not only for sales to distributors and end users, but also for sales to the private label segment of the market.

Indeed, what the other side has conveniently ignored is that the Chinese producers themselves sell directly to private label customers here in the United States. These private label customers are also our customers, companies like Hanes and others. So we are competing directly with the Chinese producers on the same level of trade whenever we try to sell to those same private label customers.

Obviously, we are not going to be able to make a sale to these private label customers if we can't match the Chinese producers' own prices. That's what has been driving down the prices of our private label sales, and make no mistake about it: the Chinese are still undercutting our
prices even on private label sales today.

So the prices we have been forced to charge for our private label sales are simply another indication of the terrible toll that the unfairly-traded Chinese imports are having on this market. It's preposterous to claim that we are competing with ourselves on those sales. The fact is that the Chinese have been driving the prices lower on all of our different types of sales, sales to distributors, sales to end users, sales to private label customers.

You're also likely to hear today that our prices have declined because of declining raw material cost. I'm here to tell you that simply has not been the case. Just look at what's happened to raw material costs since 2012. The key raw material for biaxial geogrids is polymer, mainly polypropylene resin. The average price for polypropylene resin increased each year from 2012 through 2014.

So in a normal market, you would have expected biaxial geogrids prices to rise along with it. But as you've seen from our confidential submissions, we were unable to raise our selling prices for biaxial geogrids over the same time period. Instead, we were continually forced to lower our prices, even as our raw material costs were increasing.

Why? Because of the onslaught of dumped and
subsidized Chinese imports that entered and continue to
enter this market. In 2015, prices for polypropylene resins
decayed. However, we continued to face severe pricing
pressure from Chinese imports. In fact, many of the Chinese
biaxial geogrid prices have been at or below the price of
polypropylene resin.

The prices for biaxial geogrids fell faster and
to a greater degree than the price of polypropylene resin
due to the influx of unfairly-traded Chinese imports. So
even though our raw material costs improved somewhat in
2015, that didn't help our bottom line. To the contrary, we
suffered an operating loss last year because of the unfairly
low Chinese prices for biaxial geogrids. In 2016, we have
been forced to reduce prices even more to try to keep our
market share, even though our raw material costs are rising
again.

Clearly, the movement in raw material costs does
not even begin to explain what has happened with the
pricing for biaxial geogrids. The 2016 data that you have
on record are important to keep in mind as you listen to the
arguments of the other side later today, because they clear
show that the unfairly traded Chinese imports are the cause
of our injury.

As those data show, since the filing of this
case in January, we've seen the first green shoots of a
turnaround. Our sales, shipments and production volumes are all up, as is our capacity utilization rate. Our financial performance is up somewhat as well, with modest improvements in gross profit, operating margins and net income.

Is this improvement due to increased demand? No. We haven't seen an increase in demand for the product. Is it due to a decline in raw material cost? No. As I just explained, they are up this year. Is it because we've been able to increase our export sales? No. Our exports are actually lower for the first three quarters of 2016 compared to the same period in 2015.

Is it due to a greater focus in triaxial geogrids and biaxial geogrids? No. The trends I just outlined are all there, whether you look just at our biaxial geogrid operations or our biaxial and triaxial geogrid operations combined. In fact, there is only one possible explanation for the slight improvements that we've begun to see this year. Chinese imports have begun to recede from the market, and we've been able to begin to win more bids and make more sales and recapture some of our lost market share.

Are we back to where we need to be? Absolutely not. We remain extremely vulnerable. There is a massive amount of very low-priced Chinese product still in the market that is still suppressing prices. We think this is
because companies brought in a huge amount of Chinese product in the first quarter of this year in order to beat the preliminary duties, and have been sitting on it ever since.

We've heard from our sales contacts that companies selling Chinese material are going to keep prices low until January, as they await the outcome of this case. If no relief is granted, they will go right back to their Chinese suppliers and resume bringing in even more dumped and subsidized materials. In other words, the Chinese imports are going to flood back in.

So unless we can obtain relief going forward, the situation that's stabilized for the time being is only going to grow worse and worse. As Mr. Lawrence has told us, there just isn't any room left for us to cut in either our cost and our prices and remain a viable company. The other side we'd like to point our continued R&D and capital expenditures as an indication that we have not been hurt. The expenditures we have made in these areas have been necessary simply to maintain our current facilities and equipment. We use efficiencies so that we can cut costs as low as possible to try to compete with the incredibly low Chinese prices and improve our product offerings for biaxial and triaxial geogrids to meet the needs of the market.

Even so, we've been forced to make painful cuts
in our spending in these areas, and delay much-needed investment because of the harm we've been suffering at the hands of unfairly traded Chinese imports. If you look at our historical levels of R&D and Cap-X, you'll see that this is true. We've not even been able to replace aging and obsolete equipment at our plant because we cannot afford to do so.

Tensar and the rest of the domestic industry are at a critical point. We can either fail to get relief and be forced again to try to survive an onslaught of dumped and subsidized Chinese biaxial geogrids, or relief could be granted and we can be given the chance to compete on a level playing field. The choice is that stark and that simple, and the future of the domestic industry and its workers depend on it.

I urge you to grant the relief that this industry so desperately needs, and we will do the rest. Thank you for your time.

STATEMENT OF MIKE COLEMAN

MR. COLEMAN: Good morning Mr. Chairman and members of the Commission. My name is Mike Coleman and I am vice president of the Coleman Moore Company in Des Moines, Iowa. I have over 20 years in the geosolutions business, and co-founded Coleman Moore in 2004 to supply geogrids, geotech styles, erosion control and other products to
customers in Iowa and the surrounding states.

We are a distributor of Tensar biaxial and triaxial geogrids, serving the state of Iowa, western South Dakota and eastern Wyoming. Our biaxial geogrid customers are mainly earth-moving and paving companies. We also sell the triaxial geogrids, but biaxial geogrids are our core product, with a ratio of about five to one in square yard sales. The vast majority of our geogrid sales are of the biaxial geogrids to projects run by the Iowa Department of Transportation, municipal and county governments.

The Iowa DOT specifications for geogrids require biaxial geogrids and does not allow for the triaxial geogrids. We work closely with our customers on all aspects of their projects, from strategic site evaluations to consult of engineers and architects, to ensure that the delivery and installation of the products go smoothly. We don't simply just move product out the door. We are a full service supplier.

As a result, we really get to know our customers and their requirements. My extensive experience with biaxial and triaxial geogrids has given me a lot of insight into the differences between the products and their uses. In our region, I never see customers interchanging biax for a triax specification. To do that, you would have to completely redo the design of the project.
Triaxial geogrids offer other benefits that biaxial geogrids cannot provide, such as pavement optimization, a longer pavement life and substantial savings in the amount of aggregate required for a project. In terms of their characteristics and --, they really are two very different products, and the market recognizes that.

That's why we sell both, and why both will continue to be key parts of our product offerings going forward. I understand that the other side of this case has said that triaxial geogrids are really just another form of biaxial geogrids, and that the two are completely substitutable. This simply is not true. In fact, it doesn't even make sense.

If that were true, there would be no market for triaxial geogrids at all because they are so much higher-priced. Our customers are contractors and state and local government officials who are focused exclusively on the bottom line. They're smart, savvy, highly educated professionals and business people with countless years of real world experience. There is no way in the world that they would somehow be duped into paying more for a higher-priced product if a truly equivalent choice were available for less.

But that is what the Commission is being asked to believe by the other side. I strongly urge you to reject
that ridiculous notion. I also understand that the other
side would like you to believe that tensar is not committed
to selling biaxial geogrids, and that it has signaled this
to the market. That is nonsense. Tensar continues to
produce and sell significant volumes of biaxial geogrids in
my markets, and has worked hard to sell more.

Of course the real reason our sales and prices
for biaxial geogrids have been falling is the very
low-priced Chinese biaxial geogrids being sold by Hanes and
other companies. They are the price leaders in the markets
I serve, not Tensar. When I testified in this case in
February, I said that the current prices were not
sustainable.

Unfortunately, because so much Chinese product
came into this country in the early part of this year, and
continues to be quoted at rock bottom prices, pricing has
not improved. In Iowa, I continue to see Chinese product
being sold at prices below what I pay from Tensar, even when
forward delivery charges are added. For example, in May
Chinese producer and exporter Feichulienyu quoted me biaxial
geogrids at prices as low as 36 cents per square yard
delivered to Des Moines. There is no possibility of
competing with prices like that.

But the low priced Chinese offers are not
limited to Iowa. Wyoming in particular has become a dumping
ground for very low-priced Chinese biax, with prices as low
or lower than what I'm seeing in Iowa. Again, there's no
way we can compete with these prices. It is really
discouraging to be in a market where these ultra-low priced
imports have taken the profitability completely out of the
market.

There is simply no more room to cut, and the
situation is untenable. Without relief and the chance to
compete on a level playing field, the entire future of this
industry is very bleak. I urge you to grant relief in this
case. Thank you for the case to appear here today.

STATEMENT OF CAREY WITT

MR. WITT: Good morning, Mr. Chairman, and
members of the Commission. My name is Carey Witt and I am a
professional engineer and founder and president of
GeoSolutions, Incorporated, a full-service provider of
geosynthetic products and solutions, and a distributor of
biaxial and triaxial geogrids.

GeoSolutions was founded in 1999 to serve as a
solution-centric, customer-driven business and not simply a
materials warehouse. We are focused on the customer's needs
to solve site construction problems with products that will
save time and money and improve performance.

We are based in Austin, Texas, and have offices
in Oklahoma and five other locations across Texas. We are
the exclusive distributor for Tensar products in Texas and
Oklahoma, and the largest distributor of such products in
the United States.

I sell a lot of biaxial and triaxial geogrids, so
I know these products very well. Biaxial and triaxial
geogrids have different physical and mechanical properties
and different performance characteristics.

The marketplace certainly recognizes these
differences, as well. In fact, we have projects in Texas
that specifically provide structural credit for road
construction for the use of triaxial geogrids but not for
the use of biaxial geogrids because of the differences in
these products.

I also know this market very well. I have been
in this business for over 20 years. We have faced some
tough times before, but I've never seen a market as bad as
the one we've been forced to endure since 2013.

That is not because of demand. There has been
continued demand for biaxial grids from a number of
different business sectors across Texas and Oklahoma. For
example, the Texas Department of Transportation is the
largest consumer of biaxial grids in the State of Texas.

The TexDot specification requires the use of
biaxial geogrids. Texas has built a lot of roads and had a
lot of projects over the past three years. There has also
been a significant amount of private construction activity in the form of subdivisions, private roads, and other projects.

So overall, demand in the markets we serve has generally been healthy. The problem is that since 2013 there has been a huge amount of very low-priced Chinese product showing up in the marketplace. And it has been offered at extremely low prices by companies like Hanes, Hill Country, and others.

I understand that the parties on the other side of this case have been saying that we in Tensar have been driving down the prices for biaxial geogrids in Texas. That is inaccurate.

Over the last three years, it has been the companies selling Chinese products that have been the price leaders in Texas and that have continually driven down the prices. We have lost project after project in the TexDot market to Chinese biaxial geogrids being sold at unfairly low prices, and have only recently been able to win a few bids since these cases were filed and the duties were imposed.

Two years ago, Type One biaxial geogrid was selling in Texas and Oklahoma for about 90 cents a square yard. This year, we've repeatedly seen Chinese biaxial geogrids offered for less than 50 cents a square yard.
Of course when we see these low Chinese prices we ask Tensar if they could lower their price to keep us competitive. Tensar has tried to do this when they can, but that's been increasingly difficult because the prices and margins are now so low on every biaxial geogrid sale.

Just a few years ago, over 30 percent of our geogrid sales were on TexDot projects. Now, due to the low-priced Chinese biaxial geogrids we have lost more than half of that business.

As a result, our TexDot business is only 15 percent of our geogrid sales, and we get significantly less margin on those sales. Obviously, the sales that we've lost have meant a lot to our bottom line.

The loss hurts us in other ways, too. In this business, when you lose out on one sale to a customer it's that much harder to make the next one, or even learn of the opportunity to make the next one. Customers will likely call the low-priced provider the next time. If you lose a customer, it's very difficult to get them back. It is a snowball effect.

The result is that we've been forced to match or beat the Chinese product pricing just to try to maintain our customer base. The prices now are so low there's simply no more room to cut. It's simply not a sustainable sales strategy.
We cannot continue down this path. I urge the
Commission to grant relief in this case and give us all the
opportunity to compete again on a level playing field.

Thank you, very much.

STATEMENT OF DAVE BROOKS

MR. BROOKS: Good morning, Mr. Chairman, and
members of the Commission, and thank you for the opportunity
to be here today.

I am Dave Brooks, President of ACF Environmental. ACF is based in Richmond, Virginia, and serves customers on
the East Coast. We have been in the business of
distributing geosynthetics products and solutions for over
30 years.

We sell Tensar biaxial and triaxial geogrids,
along with a host of other geosynthetic products. ACF is
the exclusive distributor for Tensar in Virginia, Maryland,
Delaware, parts of New York, but we also sell Tensar
products in other areas along the East Coast including North
and South Carolina.

Our main customers are contractors. Indirectly
we work with the engineering community to help define
specifications for particular projects, which then in turn
drives our direct sales. However, all our sales go through
a base of contractors.

The driver for demand of biaxial geogrids in our
sales territory is road construction, particularly in areas where subsoils are not as stable as other areas, or where the engineers and contractors for projects want to minimize the amount of stone used in the base.

Stone can be expensive, and anything you can do to cut down on that adds to savings on the projects. Our market and our customers are very sensitive to price. Anything a project engineer, contractor, or installer can do to drive the price down, they will do.

This is often driven by contract requirements that require the sale that goes to the lowest bidder, but it's also just a simple fact of life in the market. Our customers are sophisticated and want the product that meets their requirements for the lowest possible price.

Since 2013, the lowest price in the market has come from the Chinese imports, particularly imports that are sold by Hanes, which is the biggest player in the East Coast markets that we serve.

Hanes is the price leader, and they have been driving prices only in one direction: down. And we have seen huge volumes of low-priced Chinese product in the marketplace. The unfairly traded Chinese product has become so widespread that when we try to sell Tensar product we are immediately asked to drop our prices to match a supplier selling material from China.
That continues to this day. In fact, it is widely known in the market that a huge volume biaxial geogrid was brought in from China in early 2016 after these cases were filed in order to beat the duties.

This inventory has been continuing to weigh on prices. So while we've seen prices stabilize this year, they have not gone up. The presence of so much low-priced Chinese product in the market has had a huge impact on how we sell.

Since 2013, we have repeatedly had to tell Tensar to lower its price or we will lose the business to low-priced imports. So even though demand has been good over the past few years, prices have continued to decline.

The level of pricing created by the imports from China has reached a point where it is impossible to compete to survive. We cannot continue like this. We cannot continue to lower our prices and our margins and lose sales forever. Something has to give.

Without relief from unfair trade, that something will be the U.S.; industry. I urge you to do everything in your power to prevent that from happening.

Thank you for your time.

MR. GERRISH: Mr. Chairman, that concludes our testimony. Thank you.

CHAIRMAN WILLIAMSON: Good. Thank you. I want to
again express our appreciation to all the witnesses for coming today. And this morning I will begin the questioning.

Of course you've said a lot about the differences in physical characteristics between biaxial and triaxial geogrids. How much longer is the service life? And what are the project cost savings associated with using triaxial geogrids instead of biaxial ones?

I assume it varies, but what's --

MR. LAWRENCE: Mike Lawrence, Tensar, Mr. Commissioner. The length of the life when it's in a roadbed? Is that the question?

CHAIRMAN WILLIAMSON: Yes.

MR. LAWRENCE: It depends on the requirement for the road. And each road has its own specification, but generally these products will last 10 to 20 years in an application, just depending on the weight of the use of the road and how much traffic that road has, whether it's paved or unpaved.

CHAIRMAN WILLIAMSON: So does the triaxial tend to last longer than the biaxial used in the same conditions?

MR. LAWRENCE: Under the same conditions, it will last longer with the triaxial product in the roadway, everything else being equal.

CHAIRMAN WILLIAMSON: And I assume that—and so in
thinking about the cost of the project, the payback, how
does that get factored in?

MR. LAWRENCE: Yes. Mike Lawrence again, Tensar.

Calculations are made in the engineering process up front
where all of these projects would be highly engineered to
understand, you know, how long does that road need to last?
What weight of traffic does it need to have? What's the
condition that the road needs to be in, you know, after
three years, five years, ten years? And then a
specification is drawn up and products like our triaxial
greogrid are specified because they do tend to be the lowest
cost for the entire roadbed by eliminating pavement, or
aggregate, as well as saving time on the entire project and
getting these projects to much quicker finish than others.

CHAIRMAN WILLIAMSON: Mr. Edgecombe?

MR. EDGECOMBE: This is Scott Edgecombe. I was
just going to add to that. So we have a large body of
engineering and science around both of these products, and
you can choose to reduce cost with triax, or you can go with
the same cross-section and extend the life. And so it would
be different In each case, but it's all based on engineering
and science. And we have all the tools and software to sort
through those differences.

CHAIRMAN WILLIAMSON: Okay.

MR. GERRISH: Jeff Gerrish on behalf of Tensar.
Just to add briefly to that. And there's been analyses and studies done by experts in the field. And the foremost experts in this field, including Dr. Drew who we cite in our brief, have recognized that the two products have very different physical and mechanical properties, and the triax has very different performance characteristics than the biaxial geogrid product.

So it's independent testing and analyses that have been done that have recognized the differences in the characteristics and the difference in the performance between the two products.

CHAIRMAN WILLIAMSON: So if an engineer is doing a road project, beginning and planning a road project, how do you figure this out? Of course you talk about some states require using only biaxial and others don't, but if that wasn't a consideration what would be the process like?

MR. LAWRENCE: Mike Lawrence, Tensar. The engineers will base their decision of course on their history of working with our products, and we've mostly taught the industry over the last 20 to 30 years about these types of products and the benefits that they bring.

But each engineer will bring their own expertise, and then each project will be very different. If this was a mine and they had very heavy equipment on an unpaved road, it would have a certain need for that product and the
equipment on it. If it was a farm-to-market type road, it would be very different. So the engineering is specific to each road and each project.

The triax product can eliminate paved surface. And that's something that's unique only to triax. We have a lot of data that shows that we can, and some of our states will tell you in their specifications that triax is the only product allowed to reduce paved surface in a roadway.

So that's one of the unique factors that we bring.

MR. EDGECOMBE: This is Scott Edgcombe. In many cases it's an education process. There's other competing or substitute products outside of biax, like soil cement and lime, and/or traditional methods. Just putting more rock into the roadbed to create the stiffness and the cross-section you need. So there's very clearly different methods to engineer and design a roadway, and triax happens to be one of them that competes with biax, that competes with soil-cement. That competes with traditional construction methods.

MR. GERRISH: Jeff Gerrish on behalf of Tensar. Just one additional fact to add to that. In terms of how the engineers approach this and look at it, the other factor here is of course the difference in specifications.

You know, many states have a specification for
biax and do not have one for triax. So, you know, for those particular projects, you know, triax cannot be used unless there's some sort of special use provision that's put in place.

But there's been a recognition in those states in terms of the differences in the two products with the way they treat them in the specification, with biax being provided for in many states and triax not being provided for and not being able to be used.

CHAIRMAN WILLIAMSON: Are ya'll busy teaching about triax in engineering schools nowadays?

MR. LAWRENCE: Mike Lawrence, Tensar. We try to get our message out as best we can. We're not a large company, but with the resources we have we give information on engineering support for all of our products, because we make multiple different products beyond triax and biax, but all the products are important to us in our business. And that's part of the outreach is that, as well as design seminars that we do regularly for engineers.

CHAIRMAN WILLIAMSON: Okay. Thank you.

In your prehearing brief you note that the amount of time needed to make adjustments to machines for the production of biax and triax can vary. What is the typical downtime in production as a result of these adjustments? And how often are these adjustments made each week?
MR. GERRISH: Here is Bill Shelton from a manufacturing--

MR. SHELTON: Mr. Chairman, good morning, and Commissioners. I am William Shelton. I am the Vice President of Materials Technology. The downtime varies. It depends on what you're doing.

The biax and triax process is a three-stage process from extrusion of the sheet, to punching of the sheet, to orientation of the sheet. If you're making a simple change at either one of those stages, it can vary from as short as an hour to up to almost 18 to 24 hours if you have to pull out the machinery, reset it up, reprocess it altogether, retool it altogether. So it does vary depending on what you're doing.

If you're doing a polymer change, then that takes an extensive amount of time. If you're going from biax to triax, it's complete different tooling at punching, and it's different equipment in stretching that we have to modify or retool to make that product.

So it could vary--it does vary from anywhere from one hour to almost 18 hours to make those changes.

CHAIRMAN WILLIAMSON: Okay, and I guess the cost varies with that time.

MR. SHELTON: It does, indeed.

CHAIRMAN WILLIAMSON: So is the strategy to get as
much of one thing as you can?

MR. SHELTON: We try to schedule the plant, yes, to be as efficient as possible in making a particular product type.

CHAIRMAN WILLIAMSON: Okay. How does import competition affect that, those costs?

MR. LAWRENCE: I can probably jump in on that. Thanks, Bill. Mike Lawrence, Tensar. The import competition, you know, basically has been lowering price year after year after year, even as we mentioned earlier, as our resin prices went up from '13 to '14. They did come down a little bit in '15, but across that time period the prices have just been devastatingly low. And we lose share in that process. We showed that, and you will see it in some of your confidential documents.

The share loss was massive. We've had to take down time. We've had to cut hours at our plant. We've had to cut shifts. Bill has been doing all of that hard work for us, and that's very difficult. And it's also cost us quite a bit of money when we can't run the plant.

CHAIRMAN WILLIAMSON: It makes it very unpopular, too.

MR. LAWRENCE: Yes, very unpopular and difficult on our employees, as well.

MR. GERRISH: Mr. Chairman, Jeff Gerrish on behalf
of Tensar. You know, Tensar has made great strides and
great efforts to try to just cut out as much cost in the
process, because they've had to, because they've had to
compete with these unfairly low Chinese prices.

But as much as they've cut their prices, the
Chinese cut theirs more. And they've seized a significant
amount of market share over the Period of Investigation in
the process, and by cutting those prices, and you can see
that in your underselling analysis that you have in your
staff report. And we've, you know, also done some analysis
of that in our prehearing brief, as well. I can't get into
the specifics of it because it's confidential information,
but you've shown that in your staff report, what's happened
in underselling. But as you've heard here today, there's
just no more room to cut the cost, or cut the prices for
this industry, and to help them, to keep them viable.

The other thing, just on the production process
in terms of the costs, obviously there is a lot of retooling
and other adjustments that have to be made to go from
producing one product to the other. And what they've tried
to do as much as possible is keep production of one product
on one line and, you know, vice versa, so that they--you
know, but when they have to switch over, they have to do
this significant changeover, and you have to have entirely
new equipment to be able to produce triax that you don't
need to produce biax.

CHAIRMAN WILLIAMSON: Okay. Good. Thank you.

Commissioner Pinkert?

COMMISSIONER PINKERT: Thank you, Mr. Chairman.

And I thank all of you for being here today to help us to understand the issues in this case.

I want to begin with a question about the patent on biax. Did the increase in subject imports of biax occur in response to the expiration of the patent?

MR. LAWRENCE: Yes. Mike Lawrence, Tensar. Thank you for the question, Commissioner Pinkert. We of course expected the patent to have an impact on our market. We've seen that before. We've seen it in other markets, including Canada and others. And so we knew what the typical reaction would be.

That was 2012. The patent really had no impact on what happened in '13, '14, '15, and even in '16. You know, years later we're seeing huge, huge imports and prices just dropping continually. So we don't believe there's any reaction to the patent beyond 2012 that's cause for this, but more along the lines of unfair trade.

MR. GERRISH: Commissioner, Jeff Gerrish on behalf of Tensar. And as Mr. Lawrence was just saying, they've had the product come off patent. They've had biax come off patent in other markets.
So they made adjustments based on that experience in those other markets that were not affected by unfair trade. They made adjustments to their pricing leading up to the expiration of the patent. So had reduced their prices based on what they knew was the likely reaction to the expiration of the patent.

But what of course they couldn't make any provision for is just the onslaught of these incredibly low-priced Chinese imports that came into the market, and that have continued to come in in 2013, 2014, 2015, and into the beginning of 2016, and have continued to take market share by charging these very low prices undercutting Tensar's prices and driving the prices down lower and lower and lower.

The effects of the patent are long-since over have been over for several years.

MR. EDGECOMBE: This is Scott Edgecombe, and I want to state it a different way. Again, plenty of markets where this has come off of patent and, absent subsidies, absent dumping, we're successful. We can compete. We will be able to compete here with a level playing field.

COMMISSIONER PINKERT: Now if I understood what you just said correctly, Mr. Gerrish, you were suggesting that in other markets the patent holder, when the biax comes off patent would make some adjustment for the fact that
there would be additional competition in that market, some
adjustment of price.

How should I benchmark what happened in the U.S.
market? Is there some way to look at what would be normal
in response to the expiration of the patent? And then
compare it with what actually happened in the U.S. market
subsequent to 2012?

MR. GERRISH: Jeff Gerrish on behalf of Tensar.
Commissioner Pinkert, we actually provided some information
on that in our post-conference brief, because again Tensar
was the patent holder in those other markets. And they were
able to show what their experience was in those other
markets.

And it showed exactly what they had provided for
when the patent was coming off in the United States, because
they had seen this. They had experienced it in these other
markets, and they saw what the price effects were. So they
knew what to expect and they made adjustments for that
before it came off patent.

So that does provide you with that sort of
information, but it shows you that that's what they did in
preparation for the product coming off patent in the United
States.

COMMISSIONER PINKERT: Thank you. If you could
supplement that with some sort of benchmarking exercise so
that I understand what the company would have expected in this market in the circumstances of this case relative to what actually happened, I think that would be helpful.

MR. GERRISH: Jeff Gerrish for Tensar. We will do that in our post-hearing brief.

COMMISSIONER PINKERT: Thank you very much.

Now another sort of comparison exercise. The operating margin trends for biax and triax are similar from 2013 to 2015. Why would this be the case if one is facing competition from subject imports and the other one isn't?

MR. GERRISH: Commissioner, I can start on that.

Jeff Gerrish on behalf of Tensar. You know, clearly obviously when you're putting the two products together, you know, you're going to obviously have similar trends in the data, you know, for both biax and triax. You know, with the various measures of profitability.

But also, I mean, you know, with triax there is some indirect competitive effect that, you know, what's happened with the Chinese imports has caused to not only biax but triax as well. You know, I mean you're going to have some indirect competitive effect even though the products are different. It's the same thing that you would see, and I think others can add to this, is you would see with different alternatives even to geogrid.

You know, if there's a change in pricing to, you
know, to, to other substances like additional, you know, like aggregate, or chemical stabilization, that's going to impact pricing as well, and impact the bottom line.

So, you know, I think you're seeing some of that indirect competitive effect on the— you know, on triax as well as biax because of the unfairly traded imports from China.

MR. LAWRENCE: Yes, it's the— Mike Lawrence, Tensar. As Mr. Gerrish was saying, a substitute technology of any kind that could be used instead of a biax or a triax, or a fabric, for instance, or cement stabilization soil, more aggregate, or gravel, all of those cost elements, if one were to be very cheap, if aggregate tomorrow were free, then they would probably just stack up a lot more aggregate and use that as an alternative. And that would drive prices used for the rest of the technologies in the market.

So pretty typical, if one technology starts to fall substantially then others will have to fall to some extent to match that need of a substitute product that has now taken market share.

COMMISSIONER PINKERT: So how would I develop an understanding of whether those effects are direct effects on both biax pricing and triax pricing? Or, as you characterized them, an indirect effect on the triax segment?

MR. GERRISH: Jeff Gerrish on behalf of Tensar.
You know, I think you can see in the data that's been collected for both biax and triax, you know there's been an effect, you know, on both products. You know, you've had, you know, if you look at the biax pricing, that's gone significantly down over the period. The imports have driven the prices down for that product.

Obviously they've taken market share away from Tensar throughout the Period of Investigation. The same is true on triax. The prices have been driven down, and they've taken market share away from Triax in that product as well.

So, you know, it is impacting both of their segments on both of their products here. So you can see that in your data, and certainly when you combine the data it certainly shows significant downward trends for the two products over the period of investigation across virtually every indication of the domestic industry's performance.

I think you saw that in the slides here, you know, just how much of an impact that has had, you know, across the board on both products. I'm just trying to find exactly which slide that was, but, let's see here, yes, slide 23. If you look at that slide again, you know, you can see just every indicator of the domestic industry's performance for the two products has been adversely impacted.
You know, their sales. The unit values, Capacity utilization. And, you know, of course all their indicators of their profitability. So definitely this onslaught of imports has had a big impact on both products, and certainly had a huge impact on biax but it's also had an impact on triax as well.

COMMISSIONER PINKERT: Thank you. And can you compare your projected future demand for triax with your expected future demand for biax? Is one expected to grow more than the other?

MR. LAWRENCE: Mike Lawrence, Tensar. That will really be market determinant in our minds. And, you know, biax is certain markets that we can't sell and don't sell triax. And if that market were to grow, you know, maybe a mining market or a marine application, then that would grow biax. If it was more roads and asphalt, pavement optimization as we call it, then triax would grow.

So we really grow with the markets, and it will depend on the future growth of those markets which of our products grow and take off.

MR. GERRISH: Jeff Gerrish for Tensar. You can see in 2015 demand was very strong and growing for biax. And so, you know, again as Mr. Lawrence indicated, it depends on sort of what happens in the market.

You know, I think all projections are that demand
is going to stay steady and stable for these products, and
there's always going to be a market for biaxial geogrid.
You know, many, many states have specifications that require
biaxial geogrid, and customers require it even outside of
those contexts. So this is a key part of their market.

But again, all projects are that demand looks
stable and steady going forward.

COMMISSIONER PINKERT: If you have any documented
internal projections on those two products, not
classifying them as different products or same product,
but those two different forms of the product, please submit
them with the post-hearing.

MR. GERRISH: We'll do that.

CHAIRMAN WILLIAMSON: Commissioner Broadbent?

COMMISSIONER BROADBENT: Okay. Mr. Lawrence, what
are the--I was just trying to get this difference clear in
my mind, but your target customers for the triaxial versus
the biaxial, how do you characterize the two different
groups?

MR. LAWRENCE: Mike Lawrence, Tensar. It depends
on the market that they're in. As I mentioned, some markets
are strictly biax markets. Marine applications are strictly
biaxial markets, right? While mining might be half biaxial
market half triaxial market, it just depends.

So when we approach a market segment, we would
typically look at the applications of our products and try
to design the most efficient, cost-effective, fastest
possible way for us to engineer and work with our customer
in that market. And that product could be a biax product, a
triax product. We're not discussing some of our other
products, but we have UX products as well. It will be
application-specific and we have designed help and software
that is designed to help with that application every time.
So it is market specific, and then project
specific as well.

COMMISSIONER BROADBENT: Okay. And just not being
familiar with this industry, I don't think I could get the
gist of what you just told me. What is the target market
for biaxial? I understand that's for the marine market.
Why?

MR. LAWRENCE: Mike Lawrence again. There are
many target markets—I'm sorry, maybe I'm not quite
understanding the question—we don't necessarily target just
roadways. Roadways is probably the largest market. So
perhaps that's more of an answer to your question. In
roadways we use triaxial products or biaxial. It depends on
the need and the use for that road and the design for the
customer.

But there's rail applications. As I said,
there's mining. There's marine. There's, you know,
multiple different construction methods--paved roads,
unpaved roads. Each has its own need. We don't really
target one at the exclusion of the other. We go after all
of those markets because that's what is necessary to run our
business in the proper way.

COMMISSIONER BROADBENT: Okay, but for marine why
is it mostly biaxial?

MR. LAWRENCE: Marine is almost exclusively
biaxial product just because of the nature of the use. They
use it for bridge scour and also protection of erosion
around different river and also ocean kind of applications.
And the biaxial product is specified, but it's also the best
product, engineered in the right way, to be used for the
application. Triax wouldn't be as effective a product in
that application.

COMMISSIONER BROADBENT: That's kind of what I'm
trying to get at. What makes biaxial the most appropriate
for that demand?

MR. LAWRENCE: Part of it is the shape. You know,
it's a square. It's not a triangle. There's certain
strength and needs on the way that they--we actually produce
a kind of a basket, if you will. We call it a mattress
that's filled with rocks, with a biax product on all sides,
and that application is the best use, as opposed to a
pavement optimization on a road which would be, we believe,
most of the time best used triax to reduce the--if you
wanted to reduce your asphalt layer, that would be the
product to use exclusively in that application.

COMMISSIONER BROADBENT: I'm so sorry. I'm just
trying to figure out the characteristic of the biax versus
triax and why it's better for one use than the other. So
the bridge mattress -- excuse me, the mattress application
is that dependent on the shape of the --

MR. EDGECOMBE: This is Scott Edgecombe speaking
from Tensar.

So I mean these products have different
properties, both in terms of their physical characteristics
and then the properties in use and so when you start
thinking about a marine mattress that's something where it
gets wrapped around. BX tends to be biax. It tends to be
less stiff and it allows it to be formed and formed into
this mattress where you're not going to be able to do that
with triax, so these are very different, I'll say, physical
characteristics. I'll say the property of the product and
then the property and use.

That's probably less important in the marine
application. There's other applications where the
performance and its intended use is markedly different and
so you would choose one product over the other for that
reason as well.
COMMISSIONER BROADBENT: Okay. But what is this physical characteristic.

MR. EDGECOMBE: The stiffness would be one.

COMMISSIONER BROADBENT: Of the plastic?

MR. EDGECOMBE: Correct -- of the grid. The plastic is similar.

COMMISSIONER BROADBENT: Okay.

MR. EDGECOMBE: It's the geometry of the grid and the geometry of the ribs.

MR. GERRISH: Commissioner Broadbent, if I could just add briefly to that. Jeff Gerrish on behalf of Tensar. You know I think what Scott was just talking about too with the differences and why biax is better can only -- only biax can be used for the marine mattress, the same is true with wall application. Biax can only be used for that and not triax for the same reasons.

COMMISSIONER BROADBENT: For a wall application?

MR. GERRISH: Wall application, yes, so for the same reasons. And there's differences in roadway as well.

COMMISSIONER BROADBENT: The same reasons being?

MR. GERRISH: The stiffness -- the relative stiffness between the products and being able to -- it's the same sort of concept that you wrap around the biax and therefore the stiffness makes a difference in terms of which product can be used versus the other.
And then even in roadway applications there's different reasons to use the different products. And I think Mike talked about the fact that only triax can be used for pavement optimization. And in fact, that's been recognized in state specifications. In the California Green Book, they've recognized that only triax can be used for pavement for optimization, but there's other roadway applications for which biax is a better product to use and is more applicable. It depends on the design specifications for the roadway which is the best product to use and so it just depends on the relative strengths or performance capabilities of the two products, which are very different and have been recognized to be very different by the experts in the field.

MR. BOLIN: Commissioner, Nat Bolin on behalf of Tensar.

Just to give you an example of why the triax is a stiffer product, I'd refer to page 14 of our brief. On that page you'll see a diagram showing the cross-section of the rib structure of triax and a diagram showing the rib structure of biax and you'll see from that why the structural differences in the products. In part, the very rigid structure to triax that's not present in biax.

COMMISSIONER BROADBENT: So it's thicker?

MR. BOLIN: It's not only thicker -- and others
may want to speak to this, but it's also the particular
shape and structure of the rib, which is the joining part
between each part of the overall material.

COMMISSIONER BROADBENT: Okay.

MR. GERRISH: Jeff Gerrish for Tensar.

It's the rib profile and depth for the triax
versus the biax and the rigidity of the product. You know
the triax product, based on the design of the product and
the geometry of it, has rigidity across 360 degrees of the
geogrid plane and it's demonstrated to do that and that's
what the diagrams are intended to demonstrate there as well
and so that's the difference in the stiffness and rigidity
of the product and it's just based on the design of the --
it's the geometry with the triangular and hexagonal
structure of it, also with the rib structure as well and
junction strength as well. That's also a big difference
between the two products based on the design and that's why
they rarely get a patent on it. It's a different product
and made in a different want.

COMMISSIONER BROADBENT: Okay, yes.

MR. SHELTON: This is William Shelton with
Tensar.

I just wanted to add that we use a phenomenal
word called "aspect ratio" when we talk about stiffness of
product. The triax product the width of the strain divided
by the height or depth of the strain defines aspect ratio.
And by design, it is a smaller aspect ratio than that of
biax and that's where you get your stiffness from. So it's
much stiffer per strain on triax than it is for the biax
product.

COMMISSIONER BROADBENT: Okay, yes.

MR. GEE: If I could, Brian Gee with Tensar.

I'd like to add one other thing that I don't think has been covered here and that is another reason for deciding between the two would be how critical the application is. Triax allows -- because we have a lot more data and most of the designs are predictive over a long a period of time, if you're very concerned about the application over a longer period of time you're going to want to use the product that has more data. There are other times when biaxial geogrid is good enough.

COMMISSIONER BROADBENT: Okay, Mr. Gerrish,
could you go over a couple of the Commission precedents on domestic-like product that would be most similar to the argument that you're making here?

MR. GERRISH: Sure. I think the one we've identified that I think is most applicable is the determination that's been made with respect to welded standard pipe versus welded line pipe. There are overlapping uses and I think could be argued that, okay,
while the products are generally produced in a similar manner in terms of production process, but I think there we've shown that, in fact, although there is overlapping end uses that's only because the welded line pipe is made to a higher specification and it's dual specified, dual stenciled to meet whatever the applications are for standard pipe as well as line pipe. And that case those were treated as separate like products and we think a similar situation and a similar finding should be made here.

I mean, generally yes, do triax and biax go through the same general production process? Yes, they go through extruding, punching, and stretching, but within that production process there are significant differences. You need different equipment to be able to produce triax that you don't need for biax. Tensar had to get a much larger punch press to be able to punch triax. They also had to get tension management equipment that they didn't need, a larger quench tank -- you know different equipment. They also have to retool to be able to produce both products.

COMMISSIONER BROADBENT: Thank you very much.

CHAIRMAN WILLIAMSON: Thank you. Commissioner Kieff?

COMMISSIONER KIEFF: Thanks.

Just to follow up on some of this discussion, let me see if I'm tracking what you're saying. Sounds like
you're drawing a distinction between an application in which
you're building something akin to a sheet as distinguished
from something akin to a pillar where you are in sheet
worried about two dimensions, a plane, and in a pillar
worried about three dimensions.

You use your triax for two-dimension sheets and
your biax for building three dimensional shapes like baskets
and pillars; is that a distinction you're drawing?

MR. GERRISH: Commissioner, I could start. I'm
Jeff Gerrish for Tensar again, and again, others who are
going to want to chime in on this.

There is that distinction between biax and triax
in terms of certain applications where -- you know, for
instance, where biax is being used in the marine mattress
application or in wall units, but biax is used as a sheet as
well in roadway applications.

COMMISSIONER KIEFF: I understand. But if I
understand correctly from your other testimony there the
distinction is primarily about overall cost of installation
rather than mechanical -- long-term mechanical performance.

MR. LAWRENCE: Mike Lawrence, Tensar.

No, there's an absolute difference in
performance of the biaxial versus the triaxial in the same
application in a road, absolute. And so, depending on what
you need and what your requirements are and specifications
for that road, you would look at one product versus the
other, but there's absolute differences. And the radial
stiffness is one of the largest differences between the kind
of two-directional stiffness of a biax, very different
products.

COMMISSIONER KIEFF: Okay, that makes sense.

MR. GERRISH: Commissioner, if I could just add
just one thing real quick.

You know even in the roadway surfaces now one
thing just important to point out. You know there is an
important distinction too in terms of the ability to use
triax for pavement optimization as well. That's something
that they do not use biax for, so that's something
different.

COMMISSIONER KIEFF: Sure. So as a follow up,
do you ever use this stuff in concrete instead of rebar?

MR. LAWRENCE: Mike, Tensar.

No, it's not used to substitute rebar. It is
used in concrete road surfaces to do a similar stabilization
underneath that surface, which would help, but it's not used
to replace rebar.

COMMISSIONER KIEFF: But is it used in the
aggregate layer below the concrete?

MR. LAWRENCE: Mike Lawrence.

Yes, correct. It's used in the aggregate layer
COMMISSIONER KIEFF: So you never make a concrete composite with it?

MR. LAWRENCE: We do not.

COMMISSIONER KIEFF: Okay, thanks. That's really more for my home use as I work on my driveway. Thank you.

MR. LAWRENCE: Mike Lawrence again.

Under a driveway is an excellent application, however, because it would -- and make your driveway last longer and in case a truck pulls onto your driveway you won't have any issues.

COMMISSIONER KIEFF: That's fine. I appreciate it and I'm sorry to geek out on the home repairs.

So can I then try to follow up on what seems to be -- there's a lot of effort spent by both sides to talk about the like product question and I'm trying to get an understanding of why that might matter, if at all. And I take it your point is, in effect, it doesn't and I get that as well; but to the extent it might matter, is the nature of that argument a numerator/denominator argument? The other side is, in effect, saying these are all together, so that they can then show the degree of affect summed across the entire pool is smaller.

MR. GERRISH: Jeff Gerrish on behalf of Tensar.
I believe that is, in fact, what they are doing. They're trying to show that there is a difference in the magnitude of the impact, I guess, if you will, between the two. And I think we've made very clear we have presented the facts, primarily, with respect to biaxial geogrids only because we think that's the right result and the right answer under your like product analysis. However, we've made very clear in the brief and today that, as you've said, Commissioner, it really doesn't matter.

The impact has been severe on this industry, regardless of how you slice or dice the data; you see the same devastating trends across all the different measures of this industry's performance. But I think they just are trying to say, oh well, there's a difference in magnitude. Well, no, look at the data. The trends are going down the same way either way you look at it.

COMMISSIONER KIEFF: I take it your position is even if there were differences in degree they would not be so great as to drive a difference in outcome for our legal reasoning of material injury or threat.

MR. GERRISH: Jeff Gerrish for Tensar again.

That is exactly right. It does not make a difference in terms of the ultimate result and ultimate conclusion you should reach after analyzing this.

And I think one thing they will try to say is,
well -- and I think you heard a little bit in the opening --
well, this industry had high levels of profitability. Well,
first of all, we would dispute that for either looking at it
just for biax or for biax and triax together. We don't
agree with that at all, but the fact of the matter is, as we
all know, with the change in the statute that took place a
little over a year ago, just because an industry is
profitable doesn't change the analysis.

The question is was their performance worse as a
result of unfair trade? There's no question that it was.

COMMISSIONER KIEFF: And I don't even think your
position would be different before the statute changed.

MR. GERRISH: No, absolutely not. No, I agree.
It's exactly the same. Absolutely right, but just to -- if
they are trying to make the position, okay, they're
profitable, well, it doesn't matter.

COMMISSIONER KIEFF: So what about -- and I'm
going to ask this question delicately because I get that it
triggers territory that may be confidential, so I'm going to
try to ask it vaguely in the hopes that it's clear enough to
communicate the nature of the question without trespassing
into bad territory.

I think the other side tries to point out some
elements where they think that your pricing is, in effect,
lower than Chinese pricing. Two obvious questions, one, is
that factually correct and then two, would it matter?

MR. LAWRENCE: Mike Lawrence, Tensar.

Absolutely not factually correct. I know that
there's data that we can provide many, many times to show
you that, as many times as you'd like. We actually compete
directly with the Chinese importers in the private label on
level playing field and compete and sell to the customers in
the room, Hanes included, and so we know exactly what we
hear when we give them a price about where the Chinese
prices are on a regular basis every time and we see it
through our distributors as well.

COMMISSIONER KIEFF: So for Mr. Gerrish then, if
despite that, we were of the view that there were some
elements can you help us understand why, even if they were
there, they wouldn't drive a decision against you. And
then, of course, invite your opponents to argue the opposite
in the second panel, but just to really make sure we
understand where the rubber hits the road.

MR. GERRISH: Absolutely. Jeff Gerrish for
Tensar.

Yes, I'd be happy to answer that. You know even
if there were a few examples where Tensar's prices have been
lower than the Chinese prices I mean that's why, of course,
you collect your pricing product data and you've done your
underselling analysis and it shows significant amounts of
underselling throughout the period and really it's an
overwhelming underselling case here.

COMMISSIONER KIEFF: So in effect, you're saying
that as long as there is material injury in material
segments of the market even if you weren't thoroughly
injured in every part of the market you'd still be entitled
to an affirmative determination.

MR. GERRISH: Jeff Gerrish for Tensar.

Well, I think we are and I think Tensar's
demonstrated they are thoroughly being injured throughout
the market.

COMMISSIONER KIEFF: I get that. I just mean if
it turned out we didn't agree with you on 100 percent of
that you wouldn't lose is what you're saying.

MR. GERRISH: That's absolutely right. And I
think the data also show that the underselling has resulted
in them taking huge amounts of market share. And you have
your purchasers out there that you've collected information
from them and they clearly showed you that they shifted 3.2
million square yards in purchasers because the Chinese
product was lower priced and of course, Tensar's had to try
to lower its prices to try to meet the competition and many
times not successfully. Once in a while, did they get a
sale because of that? Yes.

COMMISSIONER KIEFF: And then just a last
question, which you might prefer to answer later in the
post-hearing and invite the other side to as well, but just
to discuss if you think there's somehow some very particular
legal or policy interaction between the trade law analysis
and the patent law analysis that should shape our thinking
one way or the other in this case, both with respect to what
I understand to be in effect the turning off of the patent
protection with expiration for bilateral and the turning on
of patent protection for triaxial.

MR. GERRISH: Jeff Gerrish for Tensar.

We'd be happy to address that in the
post-hearing brief.

MR. EDGECOMBE: This is Scott Edgecombe with
Tensar.

I know you're out of time. I just wanted to add
one thing. So the example that I saw cited or the affidavit
with the pricing I think that was very specifically put
forward to mislead the Commission. I don't want to get into
those weeds, but I'd like to go through the details in the
post-hearing brief because it gets very deep into the weeds.

COMMISSIONER KIEFF: Yes, the post-hearing is
great for everybody. Thanks so much.

CHAIRMAN WILLIAMSON: Thank you. Commissioner
Schmidtlein.

COMMISSIONER SCHMIDTLEIN: Thank you. Good
morning. Thank you all for being here today. We appreciate it.

I just thought I'd let you know that I have to leave after this round of questioning, but I will definitely read the transcript from the entire day and my aide will stay throughout, so if there are questions that we wanted to ask that aren't asked, then we will submit those for the record afterwards.

So with that, I mean part of the problem when you go last in the order here is that all of the really good questions have already been asked, so let me just cover a few basic points just to make sure that I understand the position that you're taking.

The first question I had is do you agree with the Respondents that triax is competing directly against the biaxial product? I know we sort of talked around this, but I just wanted to hear --

MR. LAWRENCE: Sure. Yes, Mike Lawrence, Tensar. Thank you for the question.

Every technology competes, so definitely triax competes with biax competes with soil stabilization, cement stabilization, traditional methods, fabrics -- geo-fabrics that might be used, so all of them compete on every project. Some projects are specifically -- can't use a triax, let's say, right, as we mentioned before and then other projects
you probably couldn't use a biax, so some are more specific
like pavement optimization for triax and like the marine for
biax.

COMMISSIONER SCHMIDTLEIN: So you agree there's
a lot of substitutes?

MR. LAWRENCE: There's a lot of substitutes. There's always different methods. It requires engineering
and an entire workup each time you change from one to the
other to make sure that you've engineered that project to
last and to do what it's meant to do and meet
specifications, but all technologies compete each time you
go out.

COMMISSIONER SCHMIDTLEIN: Each time you go out?

MR. LAWRENCE: Yes.

MR. EDGEcombe: This is Scott Edgecombe.

I just want to add to that, though. So there's
a very defining difference between triax and biax,
especially when you get to I'll say the structural credit
given for triax. When we talk about pavement optimization
and reducing asphalt and/or reducing the cross-section
there's many -- there's also data to support this, not only
from Dr. Drew, but also from the California Green Book, from
examples in Texas where you are only given structural
credit for triax; in other words, the strength of the
cross-section, so that's where biax can't compete against
COMMISSIONER SCHMIDTLEIN: Okay. So when you have purchasers looking at or end users probably looking at these different products or different ways to support their project, given that that's going on, can you affect demand then by adjusting price? I know road construction has been strong, but is it also a function of creating demand. I know in the beginning you mentioned that you sort of created this market.

MR. LAWRENCE: Good question. Mike Lawrence, Tensar, again.

So to your point, creating demand isn't just a price game you know. If people aren't aware of the benefits of your product, don't know how to engineer it, don't have the software and everything else that we would provide, the training, they won't use your product at all no matter what the price because they don't understand it in use, so we have to do all of that training. We've done it for many, many years. We've trained the entire market on the uses of the products; beyond that, though, once the specification is written and it's a biax specification.

For instance, price would absolutely take over the equation, right, because it's now a straight up price-on-price. You know the design is done. They've chosen whatever technology. You know in my example, biax triax.
price becomes the determinator. It doesn't drive the
market, but it does take share from one player to another in
this case.

COMMISSIONER SCHMIDTLEIN: Maybe you covered
this already, but are you having to really educate people?
Are people still not that familiar with product?

MR. LAWRENCE: Mike Lawrence, Tensar.

Absolutely, we educate on a regular basis. It's
a big part of what we do. Engineers get trained. They go,
they retire.

COMMISSIONER SCHMIDTLEIN: I see.

MR. LAWRENCE: We have to continually educate
the market of engineers as well as contractors as well as
state bodies. And then when we have new products that we
like to innovate, we have to train on the uses and the best
characteristics of those produces as well, so it's a
continuing process that we do.

MR. GERRISH: Commissioner, if I may, going back
to your point about growing the market, I think we've heard
from the other side that, oh, all they're doing is growing
the market and they've provided a lower-priced alternative,
but if we can go back to Slide 5, you know if you just look
at the 2013 to 2014 story, the market was not growing.
Demand was stable in those two years and yet, if you flip to
the next slide you can see just this huge explosion of
imports that occurred from 2013 to 2014. So the market was not growing. The market was flat during that period. They were not growing demand. They were just coming in and stealing market share from the domestic industry by charging much lower prices.

They were undercutting them on prices across the board throughout that period. Tensar lost huge amounts of market share and sales. And obviously, it had the corresponding impact on their bottom line as well. So this was not a matter of growing the market at all. They were just coming in, in sort of a stable market, and completely taking away sales and market share from the domestic industry on this product just by charging lower prices.

COMMISSIONER SCHMIDTLEIN: And you don't think that it has anything to do with the patent having expired in 2012.

MR. LAWRENCE: No. I think by this time the patent -- getting in 2014 you're two years past the expiration of the patent at that point and again, Tensar had been selling biax for many, many years and had made adjustments to the price leading up to the patent coming off. So this was significantly past the expiration of patent in 2014 when these things were -- you know the imports were continuing to flood into the market.

COMMISSIONER SCHMIDTLEIN: Do you believe that
the Commission should consider the expiration of the patent
as a condition of competition?

MR. LAWRENCE: I don't think so because, first
of all, it's not -- I mean the patent expired before the
period of investigation that you're considering here, so I
do not think that you should consider that and I think any
price impact from the expiration of the patent in the lead
up to the expiration and certainly was wrapped up during
this period.

COMMISSIONER SCHMIDTLEIN: Okay. So going back
to the support and the education that you were talking
about, I think I read here where you were -- I think for the
branded product that you were selling that you were reducing
the level of support -- Tensar was for that product. Does
that have an impact on the price and how does that compare
to -- how does the level of support you provide your
products compared to what imports are providing -- subject
imports?

MR. LAWRENCE: Mike Lawrence.

So our level of support is -- you know it's hard
to say how much higher it is because there really is no
level of support from any manufacturing level for any of the
imported products. So Tensar support for biaxial as well as
-- biaxial as well triaxial products and all the rest of
ours is only supported in our markets from that engineering
perspective. There really isn't any. Our distributors who
would sit here on our panel also provide some of that
support to their customers as well, so between those two
layers that's what's done for the market and there really
isn't any from the competition.

COMMISSIONER SCHMIDTLEIN: Does that affect the
price that you're able to offer? I would assume that your
price would have to be higher then.

MR. LAWRENCE: Mike Lawrence, Tensar.

We look at our pricing as in end use value,
typically, of what the product is worth to our customers and
that's how we price. It also has to do with substitute
technologies and where those are. But in this case, we've
seen pricing many times in many markets. We've seen patents
come off, as Jeff has mention, and where prices go. We know
what to expect. What we didn't expect here was devastating
price decreases in our core market that we've never seen
before and continual and continuing today even, which is
just shocking to us.

COMMISSIONER SCHMIDTLEIN: So let me just follow
up on that for a second. So earlier, when you were
discussing the fact that you started selling under private
label in anticipation of the patent expiring because that
helped you prepare for the patent expiring. Can you explain
that a little bit more, given that you would expect that
prices are going to drop? You said you expected
c ompetition, so why lower your prices before the patent
actually expires through this private label exercise?

MR. LAWRENCE: Mike Lawrence, Tensar.

You know that competitors will be importing
product. We expect that when the patent came off, so we
know we'll have competition of a different sort that we've
had. The patents are given for innovative companies to try
to gain the value that we invest in capital as well as R&D
and things like that, which we do, and we appreciate that
protection, but we know when it's over -- it's done there'll
be a more competitive market prepared for that. Part of
that is to open up different channels of distribution to
broaden our reach into the market and that's the reason to
go with a private label, both before and after into this
market.

COMMISSIONER SCHMIDTLEIN: Okay. Mr. Gerrish?

MR. GERRISH: Commissioner, Jeff Gerrish, on
behalf of Tensar.

And as the period of investigation progressed,
of course, on private label as well as the other forms of
sales to end users and distributors the Chinese continued to
drive the price down on all of those different levels of
trade. So I mean Tensar made an adjustment to try to make
sure that they were competitive from day one when that
patent came off based on what they had seen with other --
you know experienced in other markets.

The did that, but then when the Chinese imports
started coming you the prices going lower and lower and
lower in all three different levels of trade for their
sales.

COMMISSIONER SCHMIDTLEIN: Alright, thank you
very much. My time is up.

CHAIRMAN WILLIAMSON: Thank you.

Just to go back to the question I'd asked
earlier about the time it takes to do adjustments, and what
I don't think I got an understanding is how often do you
actually do it in practice? And if you want to do here or
you want to do it post-hearing, that's fine.

MR. SHELTON: This is William Shelton with
Tensar. In terms of these adjustments, we try to optimize
the plant and schedule campaigns, and campaigns could run
from as little as three days to maybe a ten-day campaign of
a particular product. So we will probably do adjustments of
three to four times or a month on particular products.

CHAIRMAN WILLIAMSON: Okay, and then less
frequently on -- say if you're going from biaxial to
triaxial --

MR. SHELTON: Yes, we try to. If we're on biax,
we do attempt to stay on biax campaigns for an extended
period of time, and then we go to triax, it'd be the same thing, to try to minimize the cost associated with the changes.

CHAIRMAN WILLIAMSON: Okay, thank you. I'm trying to get an idea of how often you encounter projects where only biax is appropriate and projects where triax simply does not meet the performance characteristics required. And so can you estimate and also can you estimate the share of your total biax sales where triax would not work as well as biax? I don't know if this is clear. And again, there might be a post-hearing?

MR. GERRISH: Mr. Chairman, this is Jeff Gerrish for Tensar. I can start and I think a good portion of that we would have to do, I think in a post-hearing brief because it'll get into confidential information.

Clearly, in those states and for those standardizing organizations that only provide for biax, and I think that information's on the record. Just how many more states there are that provide for biax -- for those states that would be limited to biax.

And I think you heard from Mike Coleman that in Iowa, for instance, that's the case and with Texas DOT as well. That specification is specific to biax, and only biax is provided for under that specification.

And then of course there's certain applications
we talked about where only biax can be used with the marine mattresses and wall units as well.

CHAIRMAN WILLIAMSON: No, I understand all of that, but I guess the question is, if you're looking at the demand for the products, what percentage of the total market might you expect to be one versus the other? And as I said, if you want to do it post-hearing, that's fine.

MR. GERRISH: I think that would probably be the best thing, just because I think that is going to get into confidential information. But I just wanted to add that additional flavor to it as well. But the specifics, in terms of the percentage breakdowns, we'll provide that post hearing.

CHAIRMAN WILLIAMSON: Okay, thank you. Are geogrids widely used on projects outside of the United States?

MR. LAWRENCE: Mike Lawrence, Tensar. Absolutely the market exists around the world. We actually produce and sell in -- we produce in China and sell in Asia, we produce in Russia, we produce in Europe and sell to all those markets from those local manufacturing sects.

CHAIRMAN WILLIAMSON: Okay. What about -- how's the market in China for the use of --- is that a growing one too? Is that a growing one, too?

MR. LAWRENCE: Yeah. The market has slowed down
drastically, but there's still growth in China. But the 10% plus market conditions are no longer the norm and it's probably single digits--5% of so--I don't know the exact number these days. But still a healthy market, but much, much slower growth than it was in the last, probably five to ten years.

CHAIRMAN WILLIAMSON: Okay. Like a broader Chinese economy.

MR. GERRISH: Mr. Chairman. That's exactly right, and that's sort of the point I was going to make -- I mean this is something you've seen, obviously with other industries as well. And the Chinese, through massive subsidies, have built up these incredibly big industries, and including this product as well.

And now that the growth in China has slowed and there's difficult market conditions elsewhere, you see this flood of imports coming into the United States and it's just completely overwhelming the domestic industry. And this is sort of something, a problem we've seen in several other industries and it's certainly plaguing this one.

CHAIRMAN WILLIAMSON: Thank you. Just out of curiosity -- and you can do this post-hearing if you want -- when is the triax expected to come off patent?

MR. LAWRENCE: It's 2023 in the U.S.

CHAIRMAN WILLIAMSON: Okay, thanks. Okay, in
your prehearing brief you note that the biaxial geogrid industry in China is apprised of more than seventy-five producers and exporters, but you specifically referenced eight of -- the combined capacity of eight manufacturers. Should we view these eight companies as constituting the majority of biaxial geogrid -- of the geogrid industry capacity? And that the other seventy are just small players?

MR. GERRISH:  Mr. Chairman, we use those eight just to reflect that, in fact, just that small portion of the overall industry just obviously has just incredible amounts of capacity and excess capacity. Frankly, because you don't have the data you need to conduct that assessment, we don't know if that's, you know -- and obviously it's a small number of the overall producers.

We don't really know what the other producers have in the way of capacity. It could be multiples of what we've already provided. But just based on -- we can say this publicly because there's some information that's confidential, because it was based on what a producer provided in your preliminary phase and did not participate in your final phase, so that's a helpful piece of information, but it's on the record for you.

But just with the seven that we've talked about today we had up on our slide, it's over 400 million square
yards. That is, of capacity, that is multiples and multiples of -- not just biax -- the biax market in this country, biax and triax put together. You know, it's just incredible, and when you look at the capacity that they have versus the market here, they could completely destroy the U.S. industry many times over.

MR. BOLIN: Commissioner, Nate Bolin on behalf of Tensar. Just to add to that. To give you a sense that this list of seventy-five producers and exporters that we've provided is not the complete list, if you look at the discussion that begins on Page 72 in our brief on threat, you will see that there's an announcement reference that was posted in China soon after these cases were filed where the industry was telling its members that if you were not one of the producers named in the petition, not one of these seventy-five, some companies, that you should participate and show up and try to provide at least participation in the U.S. proceedings because these were very important to the industry.

CHAIRMAN WILLIAMSON: Thank you. What impact has private label pricing had on the prices for branded products?

MR. LAWRENCE: Private labels, a different channel, right? And but it's a specific channel to market, nonetheless prices of private label are similar to other
technologies in that way -- if they're much, much lower, then branded prices tend to be impacted and then other technologies, triax included, would tend to have an impact on their price as well. So very, very low prices in private label can drive decreases in other pricing as in the market, absolutely.

MR. GERRISH: The Chinese, of course, are making private label sales as well, and Tensar has to try to compete as Mr. Lawrence was just saying, in that channel, that separate channel. They're trying to sell to the very same customers, the importers. And so it's a separate channel, but they both are making private label sales, and once again, the Chinese are driving the prices down on those private label sales and so they're competing there on that channel as well, with the Chinese just undercutting U.S. prices and driving those prices down, and they've done that over the period. And your data reflect that. You have the data in your staff report.

CHAIRMAN WILLIAMSON: Does the level of service provided affect the price from charge for their geogrids?

MR. LAWRENCE: There's a -- from an engineering firm perspective, they need support from companies like ours. So engineering companies and some contractors that do their own engineering are very willing to pay a price that includes that service, but many, many contractors in the
market look really hard just at the bottom line price, once
it's been specified.

So there is a group of customers that may be
willing, but for the most part, customers look at bottom
line price and, if it meets the specification. That's
generally the direction they'll go.

CHAIRMAN WILLIAMSON: Okay. And do the
importers ever provide assistance?

MR. LAWRENCE: I'm not aware of any engineering
design assistance that's provided by the importers. There
may be a very small amount, but not that I've seen.

CHAIRMAN WILLIAMSON: Okay. And what type of
service is provided when it is asked for?

MR. LAWRENCE: Most of the support is around the
engineering side of the design for a project. Many projects
will look and say, here's the need that we have, or the
surface underneath a specific roadway, and we would say,
well, you can save a significant amount of time, materials,
lower carbon footprint, if you use our engineering
technology, and we will go out there and show them that and
we have design support and software and engineering services
all aligned with our customers to do that.

CHAIRMAN WILLIAMSON: Okay. Thank you.

Commissioner Pinkert?

COMMISSIONER PINKERT: Thank you, Mr. Chairman.
Does the existence of an exclusive distributor network limit
competition between subject imports and the domestic
industry?

MR. GERRISH: I can start with that, but I think
others can add to that. First of all, this is not unusual
in some of the cases you see, and you've seen other cases, I
think, where there are exclusive distributor networks. I
know we've had cases where that's been the case.

But, these distributors, and I think they've
told you here today and certainly can tell you now, they're
having to meet these Chinese prices as well. They're having
to -- these arrangements that Tensar has don't have price
terms in them. They have to try to compete on every sale to
meet the Chinese price.

And distributors are having to come back to them
constantly and say, all right, well the Chinese are charging
this price. Can you try to match that? And perpetually
driving -- the Chinese are perpetually driving that price
down and down and down. So the exclusive distributor
network and some of the distributors are exclusive, some of
them are not.

It doesn't in any way shield Tensar from the
competition. Just to the contrary. Those guys are out
there competing with the same Chinese prices and having to
try to match their prices.
MR. EDGECOMBE: This is Scott Edgecombe with Tensar. It absolutely does not limit competition on biaxial geogrid. Not only is it available from imported product, it's available from our private label, as well as our branded product. And we have national distributors on private label, and so there's -- it's readily available in all markets.

MR. GERRISH: I would add, too -- there is another domestic producer here as well. Of course no one really has talked about it -- Tenax. And there are other import sources, as well, from nonsubject countries. So there are other sources of geogrid as well. There is a lot of competition that these guys have to meet, but in the current POI, it's been the Chinese imports that have just come in and decimated the market.

COMMISSIONER PINKERT: I'm just trying to understand, to the extent that it is an exclusive distributor, I understand that they're not all exclusive. But to the extent that it is an exclusive distributor, why is it that there's that price competition with the Chinese price? You were saying they still have to meet the Chinese price. Why?

MR. GERRISH: Well, they are -- where there is this exclusive distributor relationship in place, of course, they're exclusive to Tensar. And they are competing against
in their various markets, they are competing against the
Chinese product that's being imported. I mean they're
competing against -- you'll hear from Hanes and Hill
Country, which is now part of Hanes later. They're
competing against Hanes in their market.

And as I think they've indicated, Hanes is the
price leader in their markets. But they're selling the
Chinese material, and other distributors are selling and
importers are selling the Chinese material. So those
exclusive distributors for Tensar where they're in place,
they're competing against the Chinese product that's being
sold by other distributors in that same market. That's true
across the country.

MR. LAWRENCE: And it's direct importers as
well. Even without distribution. Maybe Michael could
comment. This morning he mentioned he got a new price from
a Chinese importer last night at a very, very low level, and
that's a continuing issue.

MR. COLEMAN: Yes, that is correct. I was
solicited via e-mail last night from China by the same
company that I've talked about in my statement. Again,
really ridiculously low pricing.

COMMISSIONER PINKERT: Thank you. And as Hanes
argues that the December 2015 enactment of Fixing America's
Surface Transportation Act, or FAST Act, will stimulate
demand for biaxial grid with large investments in U.S. highways. Do you agree?

MR. LAWRENCE: We hope that the FAST Act will stimulate that demand. We haven't seen a lot of that yet, but we believe that that will help. The actual amount of money increase is about 5% in the first couple of years versus normal spend, so it's just a surety that there'll be some money there for a long period of time, which should help to get some legs under some longer term projects perhaps.

But it really doesn't decrease the fact that from 2013 through now, we've seen devastating prices, which we believe are unfair, from the Chinese, and taking significant market share, whether the market grows or not in the future. But we do see single digit growth into the future and a solid market conditions which we're well able to manage with the capacity that we have. We're highly under-utilizing our factories today.

Next year, for instance, our plans include hiring back that shift based on the case that we have here, the extra shift that we had to lay off to make more material next year, to take care of that market, that is based on the favorable result of the hearing. Thank you for that.

MR. GERRISH: Commissioner Pinkert. We've provided some information in our prehearing brief with
different analyses and studies that have been done in terms of what the impact's going to be. And I think it's similar to what Mr. Lawrence just indicated.

It's going to provide some stability and some stable, steady demand going forward, but it's not supposed to increase spending dramatically in any way. It's just supposed to provide some stability going forward and so that's the assessment that they've made. Maybe some modest growth, but just basically stability in the market.

MR. EDGECOMBE: We have a year behind us since this has been put into place, and we haven't seen -- the reality is we haven't seen any tremendous growth in the market place due to the FAST Act.

MR. GERRISH: In fact, if anything, demand is going down a little bit in 2016. And that's what we were talking about earlier. If you look at the 2016 situation, it shows you exactly the impact that the imports have had. Because in 2016, there's literally no explanation for the industry's increase in its performance, other than the fact that the Chinese imports have left the market.

And demand is not up. Raw materials haven't gone down, they've gone up. Tensar's export shipments have actually gone down in 2016. Despite all that, Tensar's performance is up in 2016. Why is that? The imports have left the market. After the duties went into effect, they
receded from the market. That's the only explanation. That
shows you then, when they're in the market, that's what was
causing their injury.

COMMISSIONER PINKERT: Thank you.

CHAIRMAN WILLIAMSON: Commissioner Broadbent?

COMMISSIONER BROADBENT: Mr. Gerrish and Mr.

Lawrence, I think we had a claim in 2011 regarding patent
infringement of triax in China. To the extent that you can
here and then maybe in post-hearing, can you identify any
claims of patent infringement of Tensar's biaxial geogrids
with regards to Chinese producers?

MR. LAWRENCE: It was the triaxial geogrid, I
believe, that you should be referring to as patents in
China. Yes, and we do have and continue to have
infringement. We have successfully prosecuted several of
those cases and we win, but at the same time, intellectual
property in China has not been something that's been
well-recognized and we're the fourth largest producer of our
own patented product in China, and three others have a
larger market share. So we continually go after them on a
regular basis. It's a very costly process, but it is one
that we continue to pursue.

MR. GERRISH: Commissioner, we can talk more
about that in the post-hearing brief. But I know that --
and just to indicate or follow up on what Mr. Lawrence said,
yeah, I mean they face continuing problems with patent infringement.

And it's interesting that one of the Chinese producers, TMP, produces triax in China despite the patent, and they themselves have touted the significant differences between the triax and biax products. It's just sort of interesting that they're producing it there and making those claims that there is this difference between the two products. But we can provide more information on the patent situation.

COMMISSIONER BROADBENT: In terms of the Chinese producers, how do we know that Chinese producers you identify are dedicated biaxial geogrid producers? Should the excess capacity be understood in the context of an ability to shift products?

MR. GERRISH: We've based our analyses on the information that they've provided through various sources, websites, and otherwise. We've also based, and this gets into confidential information, so I won't get into the specifics, but we've based part of our analysis as well on the one questionnaire response you received back in the preliminary phase, from one of the Chinese producers.

And we've taken very conservative estimates as to what we think they're capacity utilization is. In fact, at one point we've estimated that they had 90% capacity
utilization, which is a very conservative estimate based on
the information that we have, that in terms of what they are
doing in their own market.

And so we've done the analysis of their capacity
and excess capacity based on the information that's
available for them. And taking very conservative estimates
to make that determination.

COMMISSIONER BROADBENT: Okay. Mr. Gerrish,
back on the expiration of the patent, I guess I'm just
surprised that on just overall market pricing you would be
able to -- you would have such one- or a two-year effect on
market pricing in your estimation. You said you prepared
for it and it expired, and there was some effect the first
couple of years, but then everything else was the Chinese
imports. And it doesn't ring true to me--I'm not sure
why--but could you talk a little bit more about that?

MR. GERRISH: Yes, I'd be happy to, Commissioner
Broadbent. Tensar and others can jump in here as well.
That's based on the fact that, again, Tensar had this prior
experience in other markets.

They knew what to expect in terms of what they
had seen with fair competition in those other markets in
Europe, in Canada, and so they knew what to expect based on
those prior experiences and so had taken -- they were
proactive in the months leading up to the patent coming off
and bringing their prices down to a level that they thought
would be, what it would be with fair competition. So really
the change in the prices due to the patent coming off,
really occurred in that year, in 2012.

COMMISSIONER BROADBENT: Just in that one year?
MR. GERRISH: Yeah. And they had made the
adjustments leading up to the patent expiring. So the rest
of it --

COMMISSIONER BROADBENT: You mean decreasing
prices?

MR. GERRISH: Yes. And so it started in 2011
when they were making the adjustments to those prices.
Again, it wasn't just they--all of a sudden--did something
when the patent expired. They were in the months leading up
to it, and it's including starting in 2011, started to try
to bring their prices down to -- in anticipation of the
patent coming off, and knowing what they knew about market
competition in other markets where the patent had expired.
So the price effects in your period of investigation were
purely due to Chinese imports.

COMMISSIONER BROADBENT: Okay.

MR. WITT: Commissioner, I may add from a
distributor's standpoint, Carey Witt. It was really our
urging to Tensar to try to decrease prices in preparation of
the patent expiration, because what we didn't want to happen
is, the day the patent expired, we had a price and we're just going to pick a number, $2 a square yard, and then the very next project they may bid the day after the letting our competition may come in at $1.50. We didn't want to lose business because there was such a dramatic impact to that, so we really, in anticipation of that lowered prices, so that we could maintain our customer base.

COMMISSIONER BROADBENT: Okay.

MR. GERRISH: Just one additional piece on that, Commissioner Broadbent. And I think Carey Witt talked about this in his testimony. I mean you can see from their perspective, too, once you have to keep your customers. Once you lost a customer, you may lose them forever.

And so they knew that going in to the patent expiring, and so wanted to make sure they kept as much of their customer base as they could. And of course, as soon as the patent came off, the imports started flooding into the market at these extremely low prices. They were taking sales and customers away from the distributors and from Tensar, of course.

MR. EDGECOMBE: I just want to add one thing. Because on top of that, it was somewhat -- you could almost argue irrational pricing. I mean in the face of raw material prices going up, their prices continued to drop. And so you looked at this and said, we're very comfortable
with price competition, very comfortable with competing on a level playing field, but this was irrational. It was being propped up with subsidies and other things that made it impossible for us to compete.

COMMISSIONER BROADBENT: Okay. In terms of profitability and financial performance, what are the key factors related to biaxial geogrids and triaxial geogrids, the different operations, which would explain the different financial performance and profitability?

MR. LAWRENCE: Is the question, are there differences in profitability between those two --

COMMISSIONER BROADBENT: Yeah, there are, as I understand it.

MR. LAWRENCE: Sure. Almost all of it's driven by the pricing that we've seen in the biax market. Devastatingly low pricing driving margins that are very, very tight. We produce all over the world. We know the cost to produce all over the world. We're very proud of the work that we do, and the efficiency of which we run our operations and yet we're seeing pricing on those biax products out of China that's just doesn't make any sense to us at all.

And we've had to respond to that to maintain, or try to maintain even, and try to get back some of the market share that we lost. And we've responded to that. But it's
devastating. It helps run the plants and have a little bit more capacity utilization which helps, but at the prices we have, that biax market.

COMMISSIONER BROADBENT: And why do you think the pricing is so much lower in the biaxial versus the triaxial?

MR. LAWRENCE: The only thing that we've seen is Chinese pricing is just predatory in nature, to try --

COMMISSIONER BROADBENT: But why wouldn't they be doing it in the triaxial market, too?

MR. LAWRENCE: We have a patent in the triax in the U.S. They do similar things in places, other parts of the world, let's say. But we have a patent we've been protecting, and we've had to protect multiple times. Both in China where it's still being protected as we speak. There's always some, some challenge, but also in Canada, as well as Germany, in the U.S., in other parts of the world, we protect the patent vigorously.

COMMISSIONER BROADBENT: So that helps you on pricing --

MR. GERRISH: Well, Commissioner Broadbent, in terms of pricing for triax, it's a reflection of the differences in the two products, between biax and triax. Customers are paying the price for the additional performance characteristics in different applications that
triax can be used for.

    Again, if you have a situation where you're trying to use a particular product for pavement, asphalt reduction, pavement optimization, you're going to pay more for the triax product because it's a better different product and it's the only product that can be used for that particular application. So the pricing difference is a reflection of the differences in the physical characteristics and the different applications and capabilities of the different products.

    COMMISSIONER BROADBENT: Okay. My time's expired. Thank you.

    CHAIRMAN WILLIAMSON: Commissioner Kieff?

    COMMISSIONER KIEFF: I have no further questions and I just look forward to the afternoon panel bringing its perspective to these questions and to both panels providing the post hearing briefs and thank you all for coming on all sides. Thank you very much.

    CHAIRMAN WILLIAMSON: Okay. Thank you. What I was gonna say may be proprietary information, please describe the factors which would explain the relatively high level of SG&A expenses ratios reported in the staff report.

    MR. GERRISH: Mr. Chairman, most of that discussion I think is going to require getting into business proprietary information, so I think we'll reserve that for
the post hearing brief, and I think we'll be able to show that those are normal levels for this industry and so it's not in any way impacting any of the numbers that you're seeing. But we'll get into that more in the post hearing brief.

CHAIRMAN WILLIAMSON: Okay, thank you. That's all I have for right now. Commissioner Pinkert?

COMMISSIONER PINKERT: I just thank the panel.

CHAIRMAN WILLIAMSON: Thank you. All right. We have no further questions for you. So does staff have any questions for this panel?

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

CHAIRMAN WILLIAMSON: And do respondents have any questions for this panel?

MR. BAISBURD: Yohai Baisburd on behalf of the respondents. We have no questions. Thank you.

CHAIRMAN WILLIAMSON: Okay, in that case, we want to thank you very much for coming this morning and giving your testimony and we will take a recess and we'll reconvene at 12:55. And I want to remind everybody that this room is not secure, so please take any business proprietary, business confidential information that you have with you. And with that, this hearing is recessed.

(Whereupon a lunch recess was taken to reconvene
this same day at 12:55 p.m.)
AFTERNOON SESSION

(12:55 p.m.)

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

CHAIRMAN WILLIAMSON: All right. You may begin
when you're ready, and I want to welcome the panel this
afternoon.

MR. BAISBURD: Thank you Chairman Williamson,
and I know you're anxious to hear from industry, so we're
going to go right into the testimony. So John.

STATEMENT OF JOHN DOWDELL

MR. DOWDELL: Good afternoon Commissioners.

Thank you for your time today. My name is John Dowdell, and
I'm a president of Hanes GeoCompanies. I've been involved
in the geogrid and related geosynthetic and erosion control
industry for over 30 years. Hanes Geo is a national
supplier of geotech styles, geogrids and erosion control
products. We operate out of 38 stocking locations
throughout the United States and Canada.

We employ over 236 dedicated employees that
count on us for their livelihoods and to support their
families. In addition, we I believe represent a number of
other distributors within the industry that fall outside the
network of aligned Tensar distributors. Having access to a
full portfolio of products to service site development
contractors is absolutely critical to our business
stability, and that of other non-aligned distributors as well.

A couple of comments were made earlier today that I feel compelled to go ahead and respond to, that are a bit off script. So let me go there. First of all, Mr. Witt earlier today asked for a level playing field, was the exact terminology he used. That's hardly the case and has not been the case for the length of time that Tensar has had a protected position related to biaxial grids.

The question was asked earlier today, as it relates to the Petitioners' position or I'm sorry, Respondents' position on why is market definition so critical, one of the reasons goes well beyond just the numerator and denominator associated with market condition.

The issue here is that Tensar has been working for literally years, as we'll expand in our testimony, to shift the industry from biaxial and triaxial products, where they will continue to have patent protection through 2023, as we talked about earlier today, and have had tremendous success with that.

So as you look at what's happened that may be eroding the geogrid market as it relates to biaxial grids, one of the biggest factors is the fact that they've been the leading manufacturer in the industry, the company with the highest brand recognition, the company that truly does lead
pricing within this market, has been very proactively working to migrate the industry from biaxial products to triaxial products.

When we say it's important to us to consider that in total, that's the main underlying reason for that, is the fact that they've beenconcertedly using all of their resources to move the market in that direction, and I'll expand upon that by reading a letter that was put out by Tim Oliver, the Vice President for Global Marketing of Tensar, that is included in our submissions.

"To whom it may concern: Rationalization of Tensar Biax Type 2 Geogrid. Effective June 24th, 2010, Tensar will discontinue regular production of Type 2 BX 1200 and will move it from its standard list of products. This decision follows the very positive response from the market to the introduction of triax in April 2009, and it marks the next stage in our strategy to transition all of our BX markets to triax grids."

The letter goes on and you have copies of it in your file, but the point there is you can't unring that bell. They very publicly announced their intent to move from biaxial to triaxial, to discontinue supporting the biax, and the letter goes on to state specifically that the triax product is a substitute for biax in by far the largest market segment that they supply.
So from our perspective, you know, this is --
this is a critical component of looking at what's happened
to the market. To come back to script, you heard a lot this
morning about the alleged differences between triax and the
other biaxial geogrids. Tensar said the same thing at the
preliminary phase. However, we agree with your preliminary
decision to treat triax the same as other biaxial geogrids.
We'll discuss like products later in the presentation, but I
want to start with an overview of the punched and drawn
geogrid market, the role of imports and Tensar's private
label program.

Geogrids were invented approximately 35 years
ago by Netlon Limited, a British company. So one of the
underlying themes that's been coming through today is we're
an innovative American-based company. Their innovation was
to acquire the patent developed by Netlon in Britain was the
initial innovation that occurred.

Now they've done a wonderful job of developing
the brand, the market and introducing the product in the
U.S. I really believe that the team is best in class in
those regards within our industry.

Tensar then acquired the rights, creating a
monopoly in the U.S. market, and that continued until the
middle of 2012, when certain patents expired. Through 2012,
Tensar controlled who sold geogrids by creating an exclusive
As you saw at the preliminary phase, the market started to change before the patent expired, when Tensar tried to move the market from its well-established rectangular geogrids to the still patented triax products. Failing that, Tensar then destabilized the market by implementing a new low-priced private label program before imports ever arrived in the U.S.

Now one thing that's important for you to understand is when that private label program was originally initiated, it wasn't an open program. If you were to buy Tensar private label products at that point in time, their sole private label distributor was a company called Syntech. So if we wanted access to that product, we would buy from Syntech.

Now think about this from my perspective, being responsible for the 236 employees that we've got. What Tensar has done is they went out very publicly and said we're going to discontinue supporting biaxial geogrids. We're moving the market to triax. They then set up another distributor as the sole access to private label distribution. While they've kept their exclusive distribution fully aligned with them on triax and continuing to have access to biax products.
What kind of competitive position from your perspective do you think that would place our company in if we didn't look for other sources of supply? There was no other rational business alternative other than to explore other sources of supply, and that's what we did. Beginning in the middle of 2012, imports began to play a role in the market. From that point forward, there was increasing levels of competition within the U.S. market.

First, design engineers could choose between triax or square or rectangular geogrids. Second, purchasers could choose between Tensar branded or Tensar low-priced private label goods, and third, there was no longer a sole source for geogrids. So purchasers could choose between Tensar and import products.

Since 2012, we have imported grids from China and there are several reasons why. First, Tensar had an exclusive private label program with one company and it was not Hanes Geo, as I mentioned earlier. For our geogrid and fabric products, we generally rely on our own brands. So we private label in-house. We don't just sell a Tensar private label product. Our product that we take to the market is Teragrid.

We try to do this to ensure that we have a consistent national marketing program and training for our sales and marketing teams, and it also facilitates getting
state approvals for pre-approved product lines. We are a national distributor, but I probably should step back because Mr. Coleman gave us far too much credit earlier today.

We have 38 stocking locations. They're basically ranged around the outskirts of the U.S. and Toronto, and one in Montreal. That's how our organization's arranged. We were credited earlier today with leading the market down and the states given as examples were South Dakota, Wyoming and Iowa. We have no locations in those states, and this business hinges on the ability to service contractors directly. So while I'm flattered, it's unrealistic to believe for even a moment that we're driving prices down in states where we're not even located.

Having said that, we do have supply agreements that reach across multiple states with a number of manufacturers. In those instances, we've got to be able to supply them with product that we can consistently market to them. So for example, the way the Tensar sales model works right now, it's basically regional distribution-based. They have a distributor in Texas. They have a distributor in Iowa. They have a distributor in Virginia and the Carolinas. You heard from those gentlemen today.

If we were aligned solely with Tensar and they gave us access to one state, it would be very hard for us to
market to someone we serviced in multiple states just using
the Tensar product. We'd be telling them okay, we can
supply you Tensar here, but we're going to supply you
Teragrid here. So that's one of the main reasons that we
drive a private label program, so that we can have
consistency in our product offering as we take it out to
contractors that we supply.

Prior to 2015, imports were our only way to get
access to punch and drawn geogrids. We didn't have direct
access to those products through Tensar. So you know,
really that was our only option. A second point I'd make is
Tensar's tight control on triax sales continues to put us at
a competitive disadvantage to their other distributors. As
you heard this morning and as we've discussed at the staff
conference, Tensar's focus is promoting triax.

That is where they put their marketing dollars,
the attention of their technical and sales support teams and
their corporate resources. Having only limited access to
triax in two or three local markets, we're put at
significant competitive disadvantage if we were solely
reliant on the triax-branded products, because their favored
distributors can undercut our pricing and/or offer triax as
an alternative. Other distributors that are outside
Tensar's system face similar issues.

The third point I'd make is Tensar announced
their intention to discontinue the triax product, I'm sorry, the biaxial product and transition the market to triax. The Chinese producers gave us and other suppliers the ability to continue to supply rectangular and square geogrids once the market opened in 2012.

The Chinese producers worked with us to ensure that we could provide value-added service previously provided by Tensar and still demanded in the market. The comment was made earlier today Chinese provide no support. That's totally unfounded. That's not accurate. The support that they give us includes maintaining state of the art laboratories that meet our very stringent quality standards, providing technical assistance with developing our own design softwares and alternatives to Tensar's Spectrapave program, and partnering with us on joint investment for in ground testing needed to establish product equivalency in the U.S.

So they've helped us with testing; they've invested in testing in the U.S.; they've developed software programs that allow us to provide design support to contractors and engineers as it's needed, and we've vetted a handful of Chinese manufacturers that we're aware of and that we identified two that met the quality standards that we were looking for. That's not to say the others don't necessarily make quality products, but we felt like their
lab capabilities were on par with what we saw in the U.S. market, and those are ^^^^ that's where we have sourced from.

I'd also like to discuss factors that we consider when making purchasing decisions. Price is certainly a factor, but our number one consideration is quality. The geogrid we purchase must consistently meet product specifications, so we can have confidence that it will meet the design specifications of a given project. If a product doesn't perform in the field, the potential liability far outweighs the value that you get from the sale.

Said another way, if we sell a product that fails in the field, we may be held accountable for the value of the road, not just the grid that goes into it. So when we're making our buying decision table stakes to even come and have a discussion with us, it really is around being able to ensure the product quality is met.

And for that reason, we haven't purchased from the lowest cost Chinese suppliers we know. Feichang was brought up a couple of times today. They gave a low quote. They're one -- they're the third Chinese manufacturer we're aware of. It's not that their product is not a high quality product, but we certainly did not have the confidence in the testing standards that they had internally, and that would
be an example of a company that we've done absolutely no
business with in that regard, and I think I speak for the
Hill Country team coming on as well.

The next issue beside quality is availability. We look for long-term stable relationships. Not a situation
where you're saying this is not a cornerstone product for
us; we're moving the market to triax. It's not just that
you can fulfil the order today, but you have to be able to
supply our needs in the future as well. This was one of the
challenges we faced with Tensar, for the reasons I've
already stated.

It's also a shared concern within our industry
that Tensar is highly leveraged because of aggressive
refinancing activities, underperforming acquisitions and
global investments in Russia and yes China. Also, relative
to other manufacturers in our industry, their overhead level
is extremely heavy, and I say this from a position of
experience.

I was a senior manager in one of the
going synthetic manufacturers within this industry for 20 years
before joining the Hanes team over a decade ago, and the
SG&A levels that were asked about before, I haven't seen
those numbers. But I can count heads, and they're heavy.

With respect to price, our sales prices are
driven by market conditions, not our product acquisition
cost. Geogrids are generally sold on a project by project basis. The lead time between bid dates and installation can be more than a year. When bidding projects, we look at the current market and competitive conditions in that region and try to gauge where that particular -- where the market is at that particular point in time.

If we're the leader in pricing, it would surely shock me given the fact that we certainly don't close over half of the project we bid as it relates to geogrid. There's a reason that we're not closing more projects on geogrid, and that's because we're chasing pricing. We're not leading it. Tensar is the clear price-setter through their distributors in this market. They're the leader in market share, have the strongest brand recognition.

So while price may be a consideration when making our purchases, the real question we ask every day is what can sell the grids for on current projects. The price is typically driven by Tensar and what their exclusive distributors are doing at that time in the market. To give a specific example, and this hits on two important components right here. One is the pricing pressures that we're under, and the other is the interchangeability between triaxial and biaxial products.

So here's a specific example that would be confidential, other than the fact that Tensar's well aware
of it, so I'll share it with you. A recent project in Elba Island, Georgia, which was specified for triaxial products initially. We approached the project engineer and were able to flip the project, getting Type 2 bioaxial geogrid approved as an alternative. We then bid our Teragrid 1200 and secured the project.

Tensar responded by providing very aggressive pricing on their branded Type 2 product, undercutting the prices we had already bid by over five percent. It was only because of our relationship with the contractor, our ability to service the project that we kept the sale in spite of Tensar's aggressive pricing.

I'd also like to talk a bit about how imports have helped us increase demand for geogrids, and again this goes to the fact that the point being made by the Tensar team was that biaxial grid markets are flat. Well yeah, biaxial grid markets were flat 2014 to 2015, growing now. In all that while, they're trying to move the market from biax to triax.

Why do you think that the market continues to grow on biaxial during that period of time? It's because more distributors have access to it and were out actively promoting it as an industry, instead of really just having one aligned distributor in each market that's in the process of marketing the product. So we've helped to grow the
industry overall through broader access, through a broader
effort around trying to get the product specified and
approved within the market.

We've just increased the number of distributors,
working with engineers, approval bodies, contractors, and
basically rectangular and square grids are no longer sole
source products. As a result, they're much more likely to
be able to approve products lists.

One point that was made earlier also was well,
many states only have biaxial grids on their approved
product list. The reason for that typically is because
there was only one supplier, and the states are prohibited
from sole source specifications typically. So as the market
opened up and as we were able to go to the states from
another supplier perspective, we were able to get those
products typically added to specifications. It's one of the
main drivers behind that.

Demand should continue to increase going
forward. The five stats, which shows five year long term
funding for infrastructure products has stabilized the
market. The question was asked has it improved the market?
It absolutely has. Prior to that, we had passed basically,
I don't know what it was, 16-18 short term funding measures.
States can't release long term projects on short term
funding. That's why Fast Act stabilized it, and it has
improved the market overall and it will continue to do so.

The new administration, of course, has made infrastructure spending a priority, which will also help to grow the market. In addition, the ability of non-patented alternatives will also improve the market. The one other factor that I think you'll see have a major impact in overall market size as it relates to the energy sector, the downturn in the energy markets hit all of us in the industry hard, because it has reduced the utilization of these products for that segment.

As prices stabilize, as we continue to see a rebound there, we believe that we will see that also benefit us. Thank you, and I look forward to answering any questions you might have.

STATEMENT OF CLAY CASHETT

MR. CASHETT: Good afternoon. My name is Clay Cashett, and I am the former vice president and co-owner of Hill Country Site Supply, a small disadvantaged business entity in Texas, that distributes geogrid and other construction products. We're now part of Hanes Geo. I want to thank you, the Commissioners, for your time you've invested in this case, and I also want to thank the staff for your countless hours sifting through the data surrounding the global geogrid industry and analyzing how those circumstances have created the U.S. market that we
I'd like to speak to you today about my experiences in the Texas market, because our company was based in Texas. As stated by both the Petitioners and Respondents, Texas is the largest geogrid market in the United States. So it tends to draw a lot of attention. Despite what you've heard from the Petitioners, I'm happy to say that the future for geogrid looks extremely promising there. Texas continues to enjoy strong economic growth from a rapidly-expanding population.

It has many of the fastest-growing towns, cities and counties in the U.S., claiming first place in all three. The energy sector, as John just mentioned, has renewed buzz with some recent upward ticks in oil pricing, and just last month we had confirmation that the largest oil and gas, natural gas reserves in North America are right there in Texas. So not only is there direct use for oil and natural gas facilities, but its use will be critical to the rehabilitation of roads and highways that are subjected to the demands of energy exploration and production, as these 18 wheelers traffic and go back and forth to the sites.

Combined with a strong job market for a variety of other industries including high tech, Texas stands to prosper for a full generation of population growth, requiring an equally expanding road infrastructure. So
demand for geogrid is naturally on the rise there. So not only can we rely on geogrid to continue to grow organically, but we can also expect it to continue to gain market share against alternate technologies that you've heard about, such as chemical treatments of the soils or just simply adding more stone or more asphalt.

Both triangular and rectangular geogrids have substantial and identical benefits in these applications, including lower life cycle costs, a lower carbon footprint and increased performance, all of which are garnering endorsements from and support from a younger generation of historically conservative slow to change engineers. I can say that; I'm a civil engineer and I can speak to that nature.

So I hope that by the time my two sons are my age, that there's just no reason why geogrids can't be used in every single roadway that's constructed. But to get our industry to that point, there needs to be a uniform message to the market. I touched on this point in the preliminary staff conference, and I feel it's very important to convey this message directly to you here today.

I believe that the biggest event that could have united our industry was the expiration of Tensar's patents in 2012. Up until then, we all carried very differently geogrids. Woven geogrids, knitted products, bonded
products, extruded products and the punch drawn products
that you're aware of that Tensar carries.

They all had different messages. Engineers were
distributors united behind the more economic punch drawn
process, and could finally give engineers a fairly uniform
message about the benefits of this technology. The only
outlier was Tensar's stubborn message to the market, to
justify a price premium by attempting to differentiate their
their own tried and true rectangular products.

Now I think we can all agree that all geogrid
products improve road performance. None of them hurt a
road; they all help a road, and the market is growing. It's
undeniable. Tensar dominates the market. That's
undeniable. So why is Tensar claiming industry, or injury,
sorry? Why are they claiming injury? I just -- I don't
understand.

I can only guess that they're doing so because
they didn't execute the triax plan like they thought. But
they're responsible for their own missteps. Tensar made a
critical miscalculation when it tried to kill the market for
rectangular biaxial geogrids. Rather than transitioning
everyone to triax, it should have tried to expand the market
for all geogrids. But the market rejected the wholesale
The other misstep that continues to hold back huge growth in geogrid is Tensar's grip on supply, as John mentioned. At Hill Country Site Supply, our goal never was to import geogrids. I want to make that clear. We never sought out to import geogrids. We always chose domestic products for all of our line of products when at all possible.

In fact, we first obtained a private label product in 2011 from Syntech, Tensar's exclusive distributor of private label geogrids at the time. However, we quickly found we could not compete, as Tensar drove pricing down with their branded products. We adapted and later tried to again source domestically from other Tensar distributors, but we were unsuccessful.

Tensar even threatened to cut off other distributors who attempted to sell us branded products. So we were finally forced to import directly. Tensar gave us no choice. They had a monopoly on punch drawn geogrids, which is what our customers increasingly demanded. Tensar leveraged that advantage and simply refused to support us directly, instead hanging on to their exclusive distributor arrangement with others.

So when you look at Tensar's data, realize that they chose not to sell to us through the Period of
Investigation. Had they supported us, our data and the data from countless others would be in their columns. Tensar's low pricing of its branded products pushed us out of the market when we purchased their private label products.

Tensar's low pricing has also driven down the pricing of our own import products. Since 2011, I've consistently seen Tensar use its market power to undercut our prices, and in 2016, even since enacting the tariff, we've seen Tensar branded products as the lowest priced product on numerous bids in Texas.

So I urge you to look at the choices Tensar's made, to fully understand the impact of those choices and how they themselves directly affect Tensar's performance. In particular, Tensar's insistence on a closed distribution system, which forced us and many others to sell import material. Thank you for your time.

STATEMENT OF BOBBY STARLING

MR. STARLING: Good afternoon. I'd like to thank all the Commissioners for your time today. My name is Bobby Starling. I'm a vice president with Hanes Geo. I've been with Hanes for about ten years now, but in the industry for over 25. As a part of my responsibilities with Hanes, I routinely travel to our suppliers to evaluate their facilities, especially for new suppliers.

We want to make sure they're actual
manufacturers and not marketing companies. I've traveled several times to China to research the Chinese biaxial geogrid industry. Most recently I spent three weeks in 2014 and over a month in 2015 visiting geogrid plants and other plants that supply other products that we carry in our locations.

My visits to China have included travel to both Tian City and Chinghou, which is where the biaxial geogrid manufacturers are located.

During these visits I toured production and warehouse facilities, met and interviewed my counterparts at the Chinese companies producing and exporting biaxial geogrids to the United States, as well as reviewing their entire product lines. Whenever we are looking for potential suppliers, we typically evaluate as many producers as possible, to identify the right sources not only for ourselves as a company but ultimately for our customers. I'm confident that the research I've conducted over the past years that I've identified the major Chinese producers that could potentially meet U.S. specifications. To my knowledge, there are four. One is TMP, the other is BOSTD. There's a company called Feiching Leihye that was mentioned earlier and Tensar. That's it. I have heard of one other company called the CNBM, but my knowledge CNBM has a single line that runs intermittently only to small orders. Maybe
there are a few others out there, but I've not seen that. The three major suppliers I've mentioned before, other than Tensar, are likely the only companies that exported geogrids into the United States during the Period of Investigation, or would do so in the foreseeable future. All other exporters, all of the companies that's been shown on several Google maps, to the extent that there are any that actually are exporting, the numbers would be insignificant. It would be two percent or less of the total product that's brought into the United States during the Period of Investigation, based on my knowledge of the research that I've done in China. Now I know the Internet searches can certainly make it appear as though there are dozens of Chinese producers manufacturing biaxial geogrids, but the vast majority of these are sales entities or phantom companies, not stand-alone manufacturers. Many of them could probably fill an order if you gave them a call and placed it, but they would do by working out some type of arrangement with the companies that have been previously mentioned. This is really one of those cases where you shouldn't believe everything you read on the Internet that's been presented, not only today but in the preliminary hearing as well. Thank you.

STATEMENT OF DANIEL MORRIS
MR. MORRIS: Good afternoon. My name is Daniel Morris. I'm with Dentons, here on behalf of Hanes, GEO Companies and Hill Country. The Commission should retain the like product definition it found in its preliminary determination, that triax is part of the domestic like product of biaxial geogrid. I'd like to just briefly walk through how the record aligns with each factor in the Commission's analysis.

One, triax has the same physical characteristics and uses as other biaxial geogrids. Triax is made from the same materials to serve the same purpose. There's no genuine debate that the overwhelmingly predominant use of both triax and other biaxial geogrids is as a substrate for traffic surfaces. The reason this industry exists is because when you incorporate triax or another biaxial geogrid into the design of a street or a parking lot or other traffic surface, good things happen.

Depending on the design, that can mean using less asphalt or crushed rock. That can mean reduced maintenance demands or it can mean increased strength and longevity, excuse me. This is true for triax and it's true for other biaxial geogrids. Tensar has asserted that triax is different because it is "triaxially oriented," claiming that triax and biax geogrids are differently oriented at a molecular level.
But that's not accurate. Even at the molecular level, these are the same products. In both cases, they are molecularly oriented in the same direction as the lines of their grids. It is axial orientation. With triax, the molecules are oriented in line with the product's axes. With rectangular biaxial geogrid, the molecules are also oriented in line with the product's axes. Either way, it's axial orientation.

Two. Triax shares common manufacturing facilities with other biaxial geogrids. Triax is made from the same raw materials in the same machines in the same steps. Both products are made by stretching sheets of polypropylene in two directions.

Three. Triax and other biaxial geogrids are interchangeable at the design stage. Tensar's own software allows you to evaluate designs with triax or with rectangular biaxial geogrids in the same way that you evaluate whether to use a Type 1 or Type 2 bioaxial geogrid. For that matter as you've heard in 2009 and 2010, Tensar tried to force the biaxial geogrid market to switch over to triax.

Tensar announced in open letters that Tensar would be replacing its rectangular biaxial geogrids with triax, that it would no longer be making production runs of rectangular biaxial geogrids, and that customers seeking to
buy one of the Tensar's rectangular biaxial geogrids should be directed to use triax.

Tensar put in writing and announced to the world that its strategy was "to transition all of our BX markets to triax." Until a few months ago, Tensar published a single installation guide that covered both triax and rectangular biaxial geogrids. We've attached it as Exhibit 6 to our prehearing brief.

The installation guide doesn't have separate or additional steps for one or the other. For the most part in fact, the guide just refers to "Tensar geogrid," not triax, not biaxial, not -- just Tensar geogrid. Two products that are installed the same way in the same applications are by definition interchangeable. We know that flipping takes place, where one of the competitors in this market space convinces the project owner or designer to move the bid specification to include as an option a geogrid that would have originally been excluded because of the bid spec.

Flipping happens between Type 1 and Type 2 rectangular biaxials, and it happens between triax and rectangular biaxial geogrids. Indeed, it's no secret the domestic industry is telling us in its public brief that it is even now engaged in the project of flipping the specifications of various state Departments of Transportation, so that Tensar can be bid -- so that Tensar
can bid triax in place of rectangular geogrids.

Four. Triax shares common channels of distribution with other biaxial geogrids. The same Tensar distributor who sells triax sells Tensar's rectangular geogrids. The fact that some distributors don't sell triaxial ever isn't because triax has a different channel of distribution from rectangular biaxial; it's because Tensar won't sell triax to those distributors. That's not a difference in the channel of distributions. It's just Tensar's market control.

Five. Customers perceive triax to be part of the biaxial geogrid product continuum. We of course noted in our prehearing briefs some of the comments in questionnaire responses indicative of customer perception, and then included samples of bid documents from project owners and designers, the customers here, specifying triax alongside rectangular biaxial geogrids as alternatives.

Six. This is one of those cases where price doesn't help define the domestic like product. Tensar has a unique position in this marketplace, and it has leveraged that position in its price placement of triax. Triax price says more about the market's perceptions of Tensar than it does about the perceptions or characteristics of triax.

In sum, the fact that the holes in triax are in the shapes of triangles instead of being in the shapes of rectangles is not even to draw a clear dividing line between triax and
other biaxial geogrids. Biaxial geogrid is a continuum product. The Commission's preliminary determination was correct. The domestic like product includes triax. Thank you.

STATEMENT OF YOHAI BAISBURD

MR. BAISBURD: Before moving on to questions, I would like to briefly address private label sales and their impact on the pricing analysis. Tensar's sales to distributors are at the same level of trade as Hanes and other importer sales to distributors. That is true whether it's Tensar selling private label or branded product to that distributor.

Tensar wants the Commission to treat importers, purchases of imports as lost sales and compare the landed duty price paid of those imports to Tensar's prices for private label sales. But that's not how the Commission conducts its pricing analysis. You don't compare importer purchases to U.S. producer sales. In all cases, there are imports and importers. By definition, those importers purchase product from foreign exporters, not the U.S. producers.

The Commission does not compare the foreign exporters' sales price to the U.S. producers' sales price. What the Commission compares is the U.S. producers' sale to the distributor, to the importer sale to a distributor. For
pricing comparison purposes, the question is not what Hanes paid for the imports and how that compares to what Tensar would have sold private label products to them once it decided in 2015 to sell such products to Hanes.

The question is what price did Hanes sell the imports to other distributors or end users and how does that compare to Tensar's sales to the same channels of distribution? The Commission looks at the profitability of the U.S. industry, not the profitability of the importers.

As you heard in the testimony and will see in the record, Tensar is the price leader. Hanes and the other importers make bids based on prevailing market conditions. One of those conditions is that Tensar decided long before imports even entered the market to offer low price private label products that are indistinguishable from their branded product. They have continued that program throughout the POI, and those sales are significant.

I can't go into details here, but we discuss the volume and impact of Tensar's private label sales in our brief, and we're ready to answer questions. Thank you.

CHAIRMAN WILLIAMSON: Good, thank you. I want to thank all of the witnesses for coming this afternoon and giving us their testimony. This afternoon we'll begin our questioning with Commissioner Pinkert.

COMMISSIONER PINKERT: Thank you Mr. Chairman,
and I thank all of you for being here today to help us understand these issues. I want to begin with something that has been mentioned right at the end of your testimony, Mr. Baisburd, but really pervaded the testimony in the morning and in the afternoon, and that is this issue of price leadership.

How can we sort through the data that we have on the record, and determine price leadership? I understand that we can talk about specific instances and whether a particular price had to be met by a particular distributor or particular seller. But looking at the data that we have on the record, how can we sort through the price leadership issue?

MR. BAISBURD: Since you're asking about the data on the record, I'll answer first and then others may want to talk about how the market itself is structured. So there are three pricing products, and I think it's critical when looking at pricing comparisons to look at those three products and what happened with those products. Products, without going into any specifics, but Product 2 and Product 3 tell a very clear story, and in our prehearing brief we laid that story out for you and we'll develop it further in the post-hearing brief.

But that's not anecdotal evidence. That is quarter by quarter analysis of where Tensar sold and where
imports are being sold at the same level of trade, and we have to reject this notion that there's any mixing here of private label or not, because when Tensar sells to a distributor and Hanes, an importer, or Hill Country, an importer, sells to a distributor, that's the very same level of trade.

That is your traditional pricing analysis, and Products 2 and Products 3 I think are very clear in the story that they tell. I think overall in terms of leadership, look at the volume, look at the market dominance, look at the brand awareness. Everyone in this room agrees that Tensar is best in class or best in breed I think is what John said, and so they set the price. They have it in terms of market recognition, time in the market and experience. So I think with that I'll segue if others want to talk about what they see themselves.

MR. DOWDELL: John Dowdell. I look at it at a little more of a detail nuts and bolts level. But within our organization, we do a very good job of bidding projects and tracking what projects we're successful on, and what projects we fail to close, and we're very disciplined around looking at okay, who did we lose it to and why?

And one piece of anecdotal data that I can point to is as we track those product closures, grid is one of our lowest success close rates, across the market. There's a
very consistent trend of when we don't close a specific grid project that we bid, we typically have lost it to Tensar. And I shouldn't say it that way. We've typically lost it to a Tensar distributor.

In July, subsequent to the preliminary hearing, we lost major projects in the state of Texas to a Tensar-branded product, and you know, we have good feedback from the contractors. They're pretty up front about here's where you were at and here's where they were at, and we were out of step by five percent at least in each of those instances, on what was bid on branded product.

I don't have access to the data that you have access to, but I do know that if you look across the market, in spite of the fact that now, instead of having one distributor in every state, in some states maybe two that are out actively trying to market and sell the Tensar branded products, now there are multiple distributors in very state that have access to grid. I guarantee if you look at the data, whether you call it -- whether you include the triax or you exclude it, Tensar is still going to be market leader even though they're outgunned significantly with feet on the street that are out actively promoting that.

Some of that's going to be driven by the specification work they've done. Some of it's going to be
driven by relationships their sales team has in place. They would have you believe that it's all based on price. That's not the reality, but price is a component and they lead in price.

COMMISSIONER PINKERT: Okay. Well, I would ask you to do for the post-hearing, as you continue to break down this price leadership issue, is to look at the conclusions that are offered in the staff report at Roman V-25 with regard to price comparisons, and explain how your conclusion on price leadership relates to what is in that staff report at that point.

MR. BAISBURD: We're happy to do so in our post-hearing brief.

COMMISSIONER PINKERT: Thank you. Now I don't want to put words in anybody's mouth here, so if this inference or this statement is not true that's fine, and we can move on. But I want to understand. If it is your contention that the existence of the exclusive distributors for Tensar is a factor that in your view limits competition between subject imports and the domestically produced product.

MR. DOWDELL: John Dowdell. I'm not sure I'm going to answer the question you're asking me correctly, so please redirect me if I'm misunderstanding specifically what you're asking. It certainly has an impact on
competitiveness within the market. Traditionally, the market was -- for punched and drawn grids, which are the most cost effectiveness and frankly in this class or products the most effective products offered in the industry, was extremely tightly controlled.

If you wanted to buy those products, you bought only through an authorized Tensar distributor. That's how the product got to market because they were patent protected and that's how they can bring them to market. As the market opened up, now a company like Hanes, and we do a lot of business with Tensar; let's be clear on that first of all. But a company such as Hanes, if we buy solely from Tensar and don't have other alternatives, we will invariably we leveraged out of the market through pricing from them to us.

If that's our only source of supply is to buy from Tensar, they will always favor their aligned distributors that are helping them try to shift the entire market from biaxial and triaxial, where they can enjoy patent protection. That's part and parcel of this. That's why even on their private label programs, they continue to price us out of jobs. That's the quid pro quo with their line distributor partner. They're going to keep them competitive in that market segment, and they've done a very effective job of it from my perspective. Now were you asking me something different than that?
COMMISSIONER PINKERT: Well, I'm going to let Mr. Baisburd respond in a second, but I just think back to the testimony we heard earlier, where it was said look, just because it's an exclusive distributor of our product doesn't mean that they don't have to meet the so-called China price. So if you want to respond to that or if you want to respond to that, that's fine.

MR. DOWDELL: And again I'll go back to when we look at the project close rates, most of our losses track back to Tensar distributors when we're looking at projects that we don't close. It's rare that we lose a project to a competitive Chinese distributor that someone that's buying from a Chinese distributor. Most of our losses go to Tensar.

There are a number of reasons why that can occur, including the type product specification that you might not be able to flip in that particular instance because of an engineer's preference. The most prevalent reason that we lose them is on pricing, and in -- we're chasing those prices. It's not unusual at all for us to get beat on bidding a Chinese product against a Tensar-branded product, and that's the reality we operate in on a routine basis.

MR. BAISBURD: I think the exclusivity is an important condition of competition, but not because it insulates Tensar from import competition, but rather because
it insulated Tensar from competition. So until May 2012, not only did they have a patent, but within the U.S. market there's not competition amongst the distributors because they're regional-based exclusive distributors. So it's kind of two levels of a market where they have 100 percent share and pricing is based on having one authorized distributor for any given region, before the private label comes into the marketplace. So what does that do? Once the patent comes off and imports can come in, you have competition because imports are finally in the marketplace. So now in any given region, and especially with national distributors like Hanes, you have competition throughout, which the exclusivity brought in imports because people like Hill Country down in Texas couldn't get the product. They hadn't, right, as I understand your testimony. So that's why it is a relevant condition of competition, as you're looking at the impact of imports over the POI, because of the change that occurred with finally competition. I mean that's the prevalent condition of competition here, is for the first time in decades, they had to face competition in the U.S. market.

COMMISSIONER PINKERT: Thank you very much. Did you want to add something, Mr. Starling? Thank you.

CHAIRMAN WILLIAMSON: Thank you. Commissioner Broadbent.
COMMISSIONER BROADBENT: Okay. I'm hearing you, but I'm just trying to relate it to the statute that we're looking at. I mean we need to look at the effect of the imports causing material injury, and you've made a lot of arguments about the anti-competitive nature, the patent protection and the single source of supply. But are there references in the statute or in prior Commission determinations, where we've really looked closely at anti-competitive effects?

MR. BAISBURD: So when you do your volume effect, price effect and impact analysis, it's within the context of the conditions of competition of the industry. So two things. First, you have said before and we can include the site in our post-conference, in other cases that a patent doesn't create a separate like product. So in terms of just the like product analysis on triax, I would mention that.

In terms of the sole sourcing and the exclusivity and the impact of the patent, there was a natural decline in market share over the period because when you go from 100, it has to go down, and when there's a new market participant, there is competition and competition rarely leads to higher prices, you know, immediately, right.

COMMISSIONER BROADBENT: Right.

MR. BAISBURD: So and I think that those again are not -- they aren't statutory factors in the sense that
you're required to consider the conditions of competition and not attribute to subject imports the impact of other things in the marketplace. One of the other things in the marketplace is the fact that they went from having a patent protected period to one where they weren't, and that they also frankly failed to transition the market to their next patent protected product, and that is also something that happened.

I think in both of those instances, as you said earlier, it just doesn't ring true that these didn't have an impact on their own operations. I think the data shows the impact that they had, and I think a fair reading of the entire record, with those conditions of competition in mind, kind of informs in particular the price effect and impact aspects of your analysis.

COMMISSIONER BROADBENT: Okay. Why has the public acceptance of triax been so slow?

MR. CASHETT: Hi. Clay Cashett, Hill Country. Triax is another biaxial product. It's going to be marketed differently now that it's patent protected and the BX is not. In many of the DOTs, they will not accept a sole source patented product when there's an alternate product that's just as suitable. So that's probably the largest factor, is that the public sector has not endorsed it because of the proprietary nature.
COMMISSIONER BROADBENT: Okay. Assuming that U.S. purchasers wanted to diversify their sources of supply for biaxial, do you agree following the expiration of the patent and in light of Tensar being the predominantly source of supply in the U.S. market, why wouldn't producers in China look to increase production and export more to the United States?

MR. BAISBURD: In terms of timing, are you asking in 2012 or --

COMMISSIONER BROADBENT: During the Period of Investigation. I mean why aren't the incentives there for China to start really ramping up production and exporting to the U.S.?

MR. BAISBURD: Well, so you see over the Period of Investigation, the level at which imports entered the marketplace, and they had the effect of expanding demand. They didn't take -- well, they took market share away because now it went from 100 to something else.

COMMISSIONER BROADBENT: Right.

MR. BAISBURD: But overall demand expanded during the period. So what they -- it's not that they were taking market share away from the U.S. production and ramping up and destroying, as you heard alleged this morning, but rather they were being pulled into the market by people who weren't able to obtain the product from the sole U.S.
producer, Tensar.

I mean again going back to the condition of having an exclusive distributor arrangement, you could not get product outside of the Tensar family. So you had no choice but to bring in imports, and even then when the patent expired, there was growth for sure, but it's not at levels that are, you know, shocking, unless you just believe that you're entitled to 100 percent of the market. Then if you believe you're entitled to 100 percent of the market, anything less than that is I suppose shocking.

MR. DOWDELL: And I want to -- this is John Dowdell. I want to go back and make sure. I heard your question a little bit differently, so I want to respond to it a little bit differently. As I understood the question, why haven't we seen Chinese manufacturers invest to fill the void and grow their market or grow their production to support this market?

I'm not aware of any Chinese manufacturer that's put new lines in. That's not to say it hasn't happened. All I'm saying is I'm unaware of it. So I'm not seeing that investment in excess capacity. The capacity of each individual line is significant and can cover a, you know, significant amount of product.

So my perception is latent capacity within the market does exist. It's allowed them to participate in the
grand scheme of things in a relatively minor way that they have to this extent, and it does bring to mind one of the points made earlier today. When you look at the ramp-up in 2014 and the point was made everyone brought in inventory or Chinese manufacturers filled the market in 2014, but the sales weren't there to support it.

Well, the rest of that sentence was the sales were there in 2015. When you're importing product first of all from a domestic distributor's perspective, importing is not easy. So there are a lot of small regional distributors that really don't have the resources to effectively import. That's one point.

It's very capital-intensive. You have to be able to take a long inventory position because most of our orders go literally next day. When a contractor calls, you've got to have it the next day. The ramp up you saw in sales in 2014 were in anticipation of the sales in 2015. Our company and any other responsible distributor would stock their warehouses in that manner, and that's what you've seen there.

COMMISSIONER BROADBENT: Ok Mr. Starling, you mentioned your research in China during your testimony, and I wondered if in the post-hearing you could submit the production and capacity figures of the three other firms that were identified, since we I think we only have
information on one of those.

MR. STARLING: Yes. Bobby Starling. Typically our discussions revolve around our company's needs going into the future, but I do have some information that I could supply post-hearing.

COMMISSIONER BROADBENT: Okay. Is it your view that the combined capacity of those four firms is not significant?

MR. STARLING: That's confidential.

COMMISSIONER BROADBENT: Okay.

MR. STARLING: I'll share that with you post-hearing.

COMMISSIONER BROADBENT: Okay. What's going on in the export markets in this product? Why have U.S. exports of this product declined?

MR. STARLING: We don't export the product.

COMMISSIONER BROADBENT: I know you don't, but the domestic industry, Tensar, why have their exports declined?

MR. DOWDELL: Frankly, I was not aware of it. I think, speaking for the group, since we don't participate in the market we're really focused on supplying the domestic industry and, you know, people in the field doing construction projects.

It surprises me that they would have had a robust
export market beyond Canada prior to this, but they
certainly may have.

COMMISSIONER BROADBENT: So you don't focus on the
global markets?

MR. DOWDELL: No. We really are focused on the
U.S. and, in some ways, Canada as well. And that's pretty
much the extent of our reach as it relates to these
products, because we wouldn't bring value to that since
we're not a manufacturer. Our position in the value chain
is to get the product to an installer to provide that level
of service.

COMMISSIONER BROADBENT: Okay. Alright, thank
you, Mr. Chairman.

CHAIRMAN WILLIAMSON: Thank you. Commissioner
Kieff?

COMMISSIONER KIEFF: I join my colleagues in
thanking you all for coming. And just to jump right in and
try to build on some of the discussions, you've mentioned, a
couple of you, situations in which efforts to try to get
access to the other side's product was not successful and
that's why you had to in effect go with imports.

In the post-hearing, to the extent you have
contemporaneous business records to provide us that will
give us evidence of the nature and degree and frequency of
those occurrences, that would be very helpful.
MR. BAISBURD: We're happy to provide that in the post-hearing.

COMMISSIONER KIEFF: And then let me if I could just change gears, and maybe this is a bottom-line question, maybe this is a macro question, I don't know which way to think about it, but what if it turns out everything everybody has said today is true? In other words, your take on the case accurately reflects your well-informed perceptions of what you've been experiencing in the market, as has theirs, but as I think Commissioner Broadbent was getting at, as our statute is written we don't really do a broad—we're not supposed to do a broad-textured unfair competition analysis in this part of our docket.

We, by the way, have that option. Bring a 337 and we can talk about it. But here in the Title 7 part of the docket, we don't do white hat/black hat, good guy/bad guy, and we don't do unfair competition. What we do is ask ourselves whether the record supports, through a combination of analysis of the data on volume and price and impact, material injury to the domestic industry.

And even a skeptic of that side of the docket at least would see a more than prima facie case here. And I guess what I'm trying to get a sense of is what's wrong with that prima facie case? Where does it—what's the most glaring problem with that that I'm overlooking?
MR. BAISBURD: First I would say the answer will depend on how you define the like product.

COMMISSIONER KIEFF: Okay, and why?

MR. BAISBURD: Why? Right. So if you move away from your preliminary decision and somehow find there's a clear dividing line on this continuum of products, then--

COMMISSIONER KIEFF: Let's say we go with you. You want to say this is one.

MR. BAISBURD: We want to--well, we believe it's one applying the statutory factors.

COMMISSIONER KIEFF: Let's go there.

MR. BAISBURD: Then if it's one and you look at the data, the impact and the effect have to be by reason of subject imports.

COMMISSIONER KIEFF: Right.

MR. BAISBURD: And the predominant--I think I said--well, the predominant, most significant market presence for pricing, and the impact that pricing has on the volume of your sales, on your profitability, on your productivity and all of that, is Tensar. And they are setting the price.

And I think, going back to what I said earlier, if you look at product two and product three, I think the data supports what I'm saying.

COMMISSIONER KIEFF: Well, so--
MR. BAISBURD: I mean, I--

COMMISSIONER KIEFF: Right. I asked the price-leading question in the morning, and we had other—and we'll be looking very carefully at everybody's answers in the post-hearing on the pricing data, but of course that's just one of—I mean there are really three statutory factors—price, volume, and impact—and I take it their response to you, if they were to be in the business of conceding points—advocates often have a hard time doing that; that's fine—but I think they in effect said, even if there's one product, not two, and even if the price declined in large part because of the end-of-patent term on the biaxial geogrid, and even if we were unsuccessful in getting everybody to switch to our triaxial, even if, even if, there's still, gosh, an immense amount of stuff coming in. And it's materially impacting our ability to sell, to close deals. And that's why our prices are dropping,

I take it in effect that's their argument. And if that's their argument, my first question is: Is that a sufficient argument under our statute? Or have I got something wrong there?

MR. BAISBURD: Well if that was a sufficient argument under the statute, then every case that had a negative trend in certain areas would go affirmative. And that's not what happens at the Commission. Because there's
a causal link element that is critical.

And the analysis of the movement in those
performance indicators is analyzed within the context of the
conditions of competition of the industry. And I think that
that's--

COMMISSIONER KIEFF: Well I'm with you there. I
mean I'm with you there. I don't take their argument to be
the--well, we wouldn't have to agree with them that imports
are the dominant cause, or the only cause.

The statute, unfortunately for you, the statute
only demands that we find it to be a material cause. Right?

MR. BAISBURD: Yes, I would agree with that.

So there are other elements here that we've
alluded to, and I think developed in our briefs, and we can
talk to about as well, that there are other aspects here.
It's not just price. So price is one element. But the
sales are also closed based on services, and I'm sure they
would like to testify to the fact that they provide a high
level of service, which is what the market expected for
biaxial. And what Tensar has pulled back from.

So you can't have it both ways, right? You
cannot condition a market for decades to say we're going to
provide you high levels of service, hand-holding assistance,
you know, marketing support, et cetera, for projects and
then all of a sudden we want a new project. Right? We want
a new product. We want you to fire a new patented product.

We're not going to give you those services anymore.

That's going to have an impact on your sales because you're going to find an alternative who is willing to provide you those services. So it's not by reason of unfairly traded imports that those sales are being lost, it's because they're pulling back and saying we're not going to give you the service that you used to require.

COMMISSIONER KIEFF: I mean, no, I mean I really hear you. My concern is that that is an amazingly interesting, normative point for the policy debate about having antidumping law coexisting with IP law, and allowing vertical restraints in IP law under the theory that they can, at least under a rule-of-reason analysis be procompetitive, and, absent a showing of market power, et cetera, not.

But again, we have got those cases in our 337 part of our docket, and we're really --- I think we're all really jazzed up and interested in understanding that stuff, but in this part of our--I think in effect that's a reason not to have this part of Title 7. But when we have this part of Title 7, I'm not sure what we do with it.

MR. BAISBURD: Yeah, so I think we are trying---well, I am trying to ground our analysis in Title 7 statutory factors and not engage in a question of whether or
not those laws should be there, or how they should be
applied.

But in that Title 7 context, the conditions of
competition are an element of your analysis.

COMMISSIONER KIEFF: Sure.

MR. BAISBURD: And the case, you know, the market
decisions are made on a variety of factors. And I think all
of those factors go into your analysis.

COMMISSIONER KIEFF: So you think the dominant
effects --- the dominant factors are in effect their IP
oriented strategy in time one, just by the way a lot of IP
owners do this. IP expires. They roll out IP version two.
And then they try to switch their market to their new
IP-protected--and you're saying that that strategy which
happens not to, in this case in your view, have moved a lot
of the market to their new, to their three-access product is
the cause of the shortcomings they're experiencing in their
business?

MR. BAISBURD: That is certainly one of the
causes. I think other things like maintaining, as was
mentioned earlier, high levels of SGNA, declining export
sales. I mean there are a number of things happening here
that I think in the cumulative effect have the impact that
you're seeing.

And I would like to just answer, because I
started on the like-product analysis, I mean we clearly
think it's one product, and not because we want a bigger
denominator but because we actually think it's right. I
mean for me the noise here is that they kept it out, not
that we're trying to pull it in.

But that being said, if it's out then what impact
did those triax sales have on the biaxial industry that
they're defining a limited to the squares? Because, you
know, Clay can go into greater detail, but this? And this
(indicating)? The only difference is the shape of the
aperture. And both of these are going to go in the road.

So if this isn't part of the like product, then
all sales that were --- every square yard of this could have
been this (indicating), and subject imports are immaterial
at that point.

COMMISSIONER KIEFF: Thank you. And I see that my
time has expired. And I'm going to have to be leaving a
little early, but I do look forward to the rest of the
transcript and to the post-hearing for everybody. And thank
you very much, very helpful.

CHAIRMAN WILLIAMSON: Okay. Good. Continuing on
this line, when you talked about their strategy of trying I
guess use triad to get everybody to move to triad, they said
that, you know, the biaxial products that expired in 2009
and in 2012 that effect was gone, are you saying that you
think the impact of losing the patent protection and pricing impact was much longer than the period that they said?

MR. DOWDELL: I'm really not certain that it was. I think that the level of exposure of the products in the market, the number of distributors that have access to it certainly has grown during that period of time. So there is I think a natural increase in competition at a distribution level.

When we look at our ---

CHAIRMAN WILLIAMSON: The market has also grown, too, hasn't it?

MR. DOWDELL: The market has grown, as well. When we look at our pricing of imports--and, Bobby, you're closer to this than I am--but the data that we've looked at recently, it's really been fairly steady through that period at least where we're purchasing product.

Now to Yohai's point earlier, I'm not sure that's the relevant level of the market because we're going to sell at what the market will bear. So while our purchasing cost has really been relatively flat throughout it, our margins have been compressed frankly because we keep losing orders to the Tensar distributors and we're chasing those prices to try to define where the market is.

MR. BAISBURD: And if I could add just to clarify, so Triax started trying to be sold in 2009. And the
biaxial, the square and rectangle geogrid, that patent expired in 2012, in May of 2012, which was the first year of the POI at the preliminary phase. And so we are still seeing the impact in the marketplace of having competition. And there used to not be competition until May of 2012 because of the patent.

CHAIRMAN WILLIAMSON: And what would you say? Do you disagree with the arguments that they did preparatory steps lowering the price to get ready for the expiration of the patent protection? Do you think that had any impact?

MR. DOWDELL: John Dowdell. It absolutely had an impact, that they came out and introduced a single--and I think that's an important thing for the committee to recognize --- a single private-label distributor with lower prices. That rumbled through the market, that they dropped the pricing on those products in advance.

But bear in mind, at that point for us to buy we still couldn't go directly to Tensar. If we were going to buy that product, we would have had to buy it from Syntec, who was putting a margin on it. Syntec also sold direct. So Syntec was both selling direct and trying to sell to distributors. And as they sold direct, they I believe did damage the market at that point in time.

It was in the direction the market was obviously going to head as there was an increase in competition, but
again a key point to this to me is that at a producer level, you know, I'm not sure that we've seen the same magnitude of price deflection that we're talking about here.

A lot of this is, you know, project by project trying to find where the market is at a distribution level. And, you know, it's very competitive at that level just because now instead of one distributor or two having access to the product in a region, you know, you can get it from multiple sources, at least in our case, three sources.

CHAIRMAN WILLIAMSON: Okay.

MR. BAISBURD: Actually, may I also --

CHAIRMAN WILLIAMSON: Sure.

MR. BAISBURD: Let me chime in on that for a second? Because this isn't the typical private-label situation where it's a small percentage of the overall sales. I mean, you can look in the data at the volumes both from the information in 2012 and then throughout the period. The private label is a significant percentage of the sales. And it's at a very --- well, it's obviously at a much lower price than the branded product. And the conditioning of the market, these are indistinguishable as between Tensar producing something that it sells as Tensar, and producing the private label under SBX-1200 and the Tensar branded 1200. They're from the same facility at the same, you know, the same exact production process.
And they're telling the market at that point that
look at the differential you can have in pricing. So
tyre conditioning the market at that point for the first
time, as competition is starting, that their brand equity,
the value, the premium they were getting for their brand, is
not going to continue going forward.

And that's going to have a natural effect of
lowering price over time, plus the fact that you have
competition from other sources at that time.

MR. STARLING: Bobby Starling. One other point.
When I looked at the data, especially for product one during
the Period of Investigation from 2013 until fourth quarter,
excuse me, third quarter of 2016, there was absolutely no
deflation in that product between contractor sales, direct
that we took, and dealer sales that we also took.

There was some slight deflation in product two,
but it's not these dramatic--

CHAIRMAN WILLIAMSON: What do you mean
"deflation"?

MR. STARLING: Price deflation--price decline, I'm
sorry.

CHAIRMAN WILLIAMSON: Okay. Repeat your
statement, then.

MR. STARLING: For the Period of Investigation,
when you look at our average selling price for contractors
and dealers for product one, so 2013 to third quarter 2016, there was almost no price decline on an average basis.

We've all talked about specific points in time and projects, but when you look at it on the average there was no decline. There was a slight decline on product two for an average--and again, I would point there are certain instances where the price went down on a project basis--but overall, it's not the huge, drastic declines in price that we've seen in the charts presented today.

CHAIRMAN WILLIAMSON: So what's your explanation for that? What does that mean? Does that mean the in-between people, the middle people are making more money?

MR. STARLING: No, I'm telling you we're pricing to market, and we're not leading the price down the path that Tensar's been telling you about today. Our average--

CHAIRMAN WILLIAMSON: But I thought you were saying that there wasn't a decline in price?

MR. STARLING: Our average selling price has not gone down. That's what I'm trying to tell you.

CHAIRMAN WILLIAMSON: So are you saying that the stuff we're seeing in the pricing tables is not--well, you don't have that--

MR. STARLING: I'm looking at my analysis of our pricing.

CHAIRMAN WILLIAMSON: Okay. Okay. Okay, Mr.
Baisburd, I guess the Petitioners can address that, try to explain that deviation.

A question regarding type one or type two biaxial geogrids. Because, I forgot who it was, but when you were talking about their strategy in 2012 of trying to move to get out of the biaxial and move people to the triaxial, you specifically mentioned type two, which sort of says maybe they expected type one to continue.

I mean I can look at the pricing table and description of product one and product two, or type one and type two, but I'm trying to also get the understanding of why the statement, whatever statement was made, of why they were saying they were trying to get out of type two as opposed to --- and move to the triad, but maybe not type one. And I assume the specifications are different on the two products.

MR. DOWDELL: John Dowdell.

Yes, sir, the specifications are different. In layman's terms, the Type 1 is typically a lighter weight product, but that's the main difference.

And let me read that paragraph again so that I can highlight the importance end sentence of that particular paragraph. It says "Effective, June 24, 2010, Tensar will discontinue regular production runs of Type 2 BX1200 and will remove it from the standard list of products. This
decision follows the very positive response from the market
to the introduction of triax in April 2009 and it marks the
next stage in our strategy" -- and this is the important
part -- "to transition all of our biax markets to triax.

So while they're saying in this one right now
we're telling you we're going to discontinue that product,
and the reason they're do that is because people would have
bids out against that product, so they're saying we're
telling you this is the date we're stopping it. But the key
part of that sentence, in my mind, is this last segment
which says "In our strategy to transition all of our biax
markets to triax."

They're not distinguishing that it's just that
one market. They're saying we're moving them all over time.

CHAIRMAN WILLIAMSON: How does that square with
-- there was quite a bit of discussion this morning that
there were many applications. I think they talked about
marine mattresses in particular and wall projects where biax
geogrid is the superior to triax and so if there's certain
applications that are superior why -- it doesn't add up.

MR. CASHATT: Clay Cashatt here.

So the marine application I don't have the data.
I don't if they've given you the data on the quantity or the
volumes of that market and maybe you should ask for that. I
would guess it's a fraction of a fraction of a percent of
the roadway market.

    All it is, is they're taking a biax grid and
they're wrapping a rock inside of it. There's no reason why
a triax --

    CHAIRMAN WILLIAMSON: They're wrapping a what
inside of it?

    MR. CASHATT: Big rocks. They call it gabians
and they wrap the rock and tie the grid together to encase
the rock. There's absolutely no reason why they couldn't
also wrap that rock in triax and tie it together. But
again, the market is very, very tiny when you look at
volumes. It's very insignificant. I think it's just an
attempt to make it appear that there's these huge markets
out there that only biax can participate in.

    CHAIRMAN WILLIAMSON: Well, I've asked them to
provide post-hearing some kind of breakdown.

    MR. CASHATT: Perfect.

    CHAIRMAN WILLIAMSON: And you all have any
information on that or views on that that would be helpful
too.

    MR. CASHATT: Certainly. I think that you'll
see that it's very small in the scope of their volumes.

    CHAIRMAN WILLIAMSON: I think they were saying
there are other applications too.

    MR. CASHATT: That's right. And the wall
applications that you just mentioned that they also
mentioned, so we have uniaxial geogrids means that the
strength is in one predominant direction. That does not
mean that it doesn't have any strength in other directions.
In fact, uniaxial geogrids, square geogrids or biax is what
we're calling them today, or triangles all have strength in
360-degree directions, okay. So there is no magic about
this one that it has 360 degrees of strength and that the
other ones do not.

The uniaxial is the predominate product in
retaining walls. You can also use a biaxial product, so let
me clarify this. A retaining is trying to fall over or
slide you can stack layers of grid behind it and tie it back
into the soil. You just have to have a certain amount of
strength -- tensile strength. It doesn't matter how. You
just have to add up to have enough to keep it from falling
over. You can use a uniaxial. You could put this one back
there. You could put the triangles back there. There's
nothing preventing it.

In fact, they said that it has 360 degrees of
strength all the way around. By their own admission, you
could spin this from whichever direction you want to, to
reinforce that wall, so there's nothing preventing triax
from being used in every biaxial application and vice versa.

CHAIRMAN WILLIAMSON: Okay.
MR. BAISBURD: Quickly, because you had asked about precedence as well. I mean can you imagine aluminum extrusions had you drawn like product distinctions based on use or a small case about lumber that we had a while ago and you're going to have before you really soon again to decide about. I mean the bed frame component versus a 2x10, right, versus a 1x2. I mean you use things that fall within the like product for different purposes, but the overwhelming use of this is to build roads. And when you build a road at the design stage you can choose which one of these products you want, a Type 1 versus a Type 2, this type of triax versus that type of triax, this triax or that square or rectangular. In those applications, they're used the same.

CHAIRMAN WILLIAMSON: Okay, thank you. My time has expired. Commissioner? I need to take a break, but let me ask another question, then we'll wrap this up.

You mention in your testimony that there are few geogrid suppliers in China and elsewhere. Why don't we see more non-subject suppliers to the U.S. market? Do you expect to see more geogrid exports to the United States from countries, other than China?

MR. STARLING: Bobby Starling.

There are a couple of others. There are a couple of lines in Greece that produce predominately for Europe. It's a square grid. The specifications of the
products they're currently producing would not be accepted here. The only other line that I'm aware of is in Poland and they too only make a square grid, not a rectangular product, which is predominately what we sell, so it wouldn't really be suitable for the United States either.

CHAIRMAN WILLIAMSON: Okay.

MR. STARLING: Those are the only other ones I'm aware of.

CHAIRMAN WILLIAMSON: Okay. Thank you.

Mr. Cashatt, what factors go into the decision-making on whether to make domestically-produced geogrid versus imports for distribution and do your customers whether the product you supply them is domestic or imported?

MR. CASHETT: Clay Cashatt.

I am not aware of a single time where a customer has asked us specifically to source domestic product. We just always have chosen to do so. As John mentioned earlier, as a small company, it's very difficult to import product. It's a lot of cash outlay and long lead time, big inventory holds, and quite frankly, we don't have the resources to understand the complexity of the importing procedure and documentation and what not. So we were never really successful, in a large degree, in that. That's we're late in our -- you'll see in the POI that we imported very
late in the POI because of necessity.

As far as our customers asking or requiring that it be domestic; is that your question?

CHAIRMAN WILLIAMSON: Yes.

MR. CASHETT: That's not typically the case.

There are some federally-funded projects, ports and such, that require domestically-made projects, but we were unsuccessful in winning those.

CHAIRMAN WILLIAMSON: Are those a significant part of their market?

MR. CASHETT: As far as the U.S. made?

CHAIRMAN WILLIAMSON: In other words, are there significant numbers -- of the consumption of this product, does Buy America cover any significance?

MR. CASHETT: No, sir.

CHAIRMAN WILLIAMSON: Okay. I was wondering why I hadn't heard the words "Buy America" today.

I sort of kind of asked this already, but what involved in substituting one type of biax or product for another, the Type 1 and 2? I think you're almost are saying you can use one almost.

MR. CASHETT: Clay Cashatt.

Absolutely. So I'm holding here in my left hand a Type 1 by the definition of your products. And I'm holding here in my right hand the Type 2. The Type 2 is
simply heavier and stronger. So naturally, you can imagine
the stronger product is going to reinforce the rock better.
What that allows you to do is to raise it an elevation
higher -- use less rock. So where you might use 10 inches
of rock on top of this one with asphalt on top of the rock
there, you maybe could use 8 inches of rock on this one with
asphalt and maybe with no geogrid you might have to use 12
inches of rock.

So first, the engineer looks at the pavement
with no geogrids to see what the costs and performance
associated with the pavement. And maybe it's, just for sake
of argument, 12 inches of stone. And then he looks at a
Type 1 and he says, okay, I can reduce it to 10 inches of
stone and with the Type 2 I can reduce it to 8 inches of
stone. So he looks at the stones savings and costs versus
the cost of the materials in ways which one is the
economical for his client.

CHAIRMAN WILLIAMSON: And he might make one
decision in New England or New York State and something else
-- .

MR. CASHETT: Oh, absolutely. No, that is a
very good point. I'm glad you brought that up is your
proximity to a rock quarry is a big, big component of
whether these products are economical in the first place.
If you're right next to a rock quarry and rock is very
inexpensive, then the engineer tends to use what he's done
for his whole career and just use a lot of rock, but where
they're far from a rock quarry or transportation, fuel,
other factors come into play, then geogrids make more sense,
and that's for all geogrids. And so whenever I take the
triangles -- again, in my left hand I've got the weaker of
the two and in my right hand I've got the stronger. The
same holds true. They have different rock requirements.
The stronger one can use less rock than the weaker one.

The question comes in is where do you find
equivalency between the squares and the triangles. At some
point, the stronger square product will meet the triangular
product, even by Tensar's own software, even by their own
admission, there are product equivalencies where you use the
exact same amount of stone and that is where the debate
holds, so there is no difference in how an engineer looks at
these, other than those simple components. And then at that
point of equivalency, if they're both, let's say, at 8
inches of stone, which product then costs less to the end
user and that's what the engineer picks.

   CHAIRMAN WILLIAMSON: Okay.

   MR. CASHETT: Does that help?

   CHAIRMAN WILLIAMSON: Yes, that is helpful.

   So in your opinion, what is the major reason for
the geogrid price declines during the period of
investigation? I mean you're saying they didn't decline, but if they did --

MR. STARLING: Bobby Starling.

I said our average selling price of Type 1 did not decline over the POI. I don't know what the other --

CHAIRMAN WILLIAMSON: Okay. Anyone have thoughts on that or you can do it post-hearing.

MR. DOWDELL: John Dowdell.

The number of distributors having access to it, I think, to end users has impacted just the level of competition. The fact that there are now in many states half a dozen distributors that have the opportunity to bid that product line to an end user would've impacted that just through the fact that there are more people bidding that particular line on a project bid.

The question I've heard brought before the group today is "and who lead that decline?" I think there's abundant evidence that the Tensar distribution team has been more than complaisant in leading that decline. I think they're still winning the majority of projects out there. If, in fact, they were chasing a market that was on sharp decline from the back, then I don't believe that would be the case, that they're still continuing to win the majority of those projects.

CHAIRMAN WILLIAMSON: Okay, thank you.
Mr. Cashatt, thinking about a company like yours, would you say that in their sales to their customers they would charge a similar markup for, say, a domestic geogrid, one that they imported directly, recognizing that it's hard for a small company to do that, and a geogrid purchased from an importer?

MR. CASHETT: Clay Cashatt.

Are you asking if we charge the same price to our customers regardless of the source?

CHAIRMAN WILLIAMSON: Yes.

MR. CASHETT: Yes.

CHAIRMAN WILLIAMSON: Okay.

MR. CASHETT: Yes. That was our motto. It's called "Last Look." We try to match our competitor's price, which means you're selling at the highest price in the market at that time. That's about as best you can do as a small business with limited resources.

CHAIRMAN WILLIAMSON: And what role does service plan in this?

MR. CASHETT: Huge. That's everything in our business. We are a distributor of a variety of products. Without storage and service of those products, we wouldn't even exist.

CHAIRMAN WILLIAMSON: So what are the types of services? I asked this question this morning too.
MR. CASHETT: Other types of services?

CHAIRMAN WILLIAMSON: What types of services, yes, are important?

MR. CASHETT: Obviously, to facilitate the orders, alright, but we also offer the client a cost saving, so we're constantly looking for value-engineered situations where maybe the customer had no geogrid in their roadway and we then say, hey, if you use geogrid you can save stone and you can save your client money. The contractor's happy. The engineer and the owner are happy. So that's a level of service and technical ability that we provide to our customer and in return for that the customer stays loyal to our company.

CHAIRMAN WILLIAMSON: Okay, thank you.

Mr. Dowdell, you mentioned, I think, that contractors want to get the product form you the next day, but does that mean that the distributor really has to know what projects are out there or likely to be out there so that they know that they're going to have enough available for their customers who don't look that far ahead?

MR. DOWDELL: John Dowdell.

We certainly try to have that type of foresight from our customers, and in many instances we do. They'll have a production schedule that they've given us ahead when their crew is going to be out there and what their lay-down
schedule is, so it's not usual for us to have instances
where we'll have a lay-down schedule for a project that's
kind of their project plan and we'll certainly coordinate
with that.

In the field, many things go awry. You'll get
into a situation where you have softer soils than you
might've anticipated, so maybe grid wasn't in the project,
but when they hit a soft soil area, they need product to
address that condition on the site that they hadn't
foreseen. So those are the situations where we'll get a
call and say that we need something out here tomorrow
morning.

We've had instances where their measurements are
wrong. A good example, there's not a Saturday that goes by
that I don't personally release orders somewhere around the
company because our credit team's off to supply a contractor
that's come to our location and needs an order released
because they have to work over the weekend and they didn't
plan on it because they're behind on their timing on that as
well, so the service component of it is extremely critical.

To Clay's point earlier, Last Look, in many
instances is all you an ask for in this industry and a lot
of times it's providing that level of service that gets you
Last Look.

And one last point I'll make on this is
oftentimes the products we're delivering are a minor component in the overall cost of the construction projects. We deliver in Chicago, Illinois. Those are unionized workers that are being paid $65 an hour. You leave a crew sitting out there waiting on your product you can't recover that with that contractor. You better be on the spot when they call for it and have the product there and that's where we bring value in the chain.

CHAIRMAN WILLIAMSON: Okay, thank you. Thank you for all those answer. I think there are no further questions from Commissioners. Does staff have any questions for this panel?

MR. CHANG: Kevin Chang.

Staff does not have any questions. Thank you.

CHAIRMAN WILLIAMSON: Thank you.

Do Petitioners have any questions for this panel?

MR. GERRISH: Jeff Gerrish.

We have no questions.

CHAIRMAN WILLIAMSON: Okay, thank you.

Well, I want to thank this panel and dismiss you now. And it's time for closing statements and Petitioners have 16 minutes direct and 5 for closing for a total of 21 minutes.

Respondents have 20 minutes direct and 5 minutes
for closing for a total of 25 minutes. You can combine those and of course you don't have to use all the time that you have. So I want to thank you and we're going to take a four or five-minute break because the Chairman needs to and then we'll do closing statements. Thank you.

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

CHAIRMAN WILLIAMSON: Mr. Gerrish, you may begin when you're ready.

CLOSING STATEMENT OF JEFFREY GERRISH

MR. GERRISH: Jeff Gerrish for Tensar Corporation. First let me thank you all very, very much for all of your hard work on this case, and thank you to the Commissioners and the staff for all of your hard work and your patience here today. I promise I will not use my full allotted time. I know you've already been here long enough.

The biaxial integral geogrid industry in the United States is in crisis as a direct result of the surge in unfairly-traded imports from China. The question before you, of course, is whether the domestic industry is materially injured or threatened with material injury by reason of subject imports. The question is are the imports a cause of material injury to the domestic industry.

The answer is a resounding yes. It is clear that Respondents simply have no plausible explanation for
what happened to this industry. Let's go through some of
the claims they have made here this afternoon.

Respondents claim that the surge of Chinese
imports was simply a natural consequence of the product
coming off patent. But as you heard this morning, this is
not a situation where a product was priced too high coming
off patent, and the price simply came down to normal levels.
This is a situation where the Chinese have ravaged and
destroyed the market with dumped and subsidized prices that
are not sustainable.

Prices were going down year after year after
year during the Period of Investigation. We are over four
years out from the expiration of the patent, and the prices
remain very low. It has been the Chinese imports that have
been driving the prices lower and lower over the entire
Period of Investigation. If this is a simple matter of more
competition in the market, why haven't any other U.S. or
non-Chinese producers entered the market?

There are producers in different countries
around the world. There are producers in Greece, Russia,
Poland, Saudi Arabia. Where are they in the market?
They're not in the market because they know they cannot
survive at the prices the Chinese are charging. They
wouldn't be able to compete at those ridiculously low dumped
and subsidized prices.
You can't say that unfair trade and material
injury is the norm for this or any other industry. That's
why the law is here. It's set up to prevent this situation
from happening and provide a remedy to domestic companies,
domestic industries that are injured as a result of that.

Respondents have also made some claims about the
exclusive distributors that Tensar has. Again, there's no
support for any of the claims that they're making. Like
many companies, Tensar has an exclusive -- has exclusive
distributors for its products. This allows Tensar to
carefully regulate the marketing and sale and distribution
of its products. It's also because Tensar's a relatively
small company. They can't be out there doing all the
distribution. They have distributors that do that for
them, of course.

There is no evidence that Tensar somehow
couldn't or wouldn't meet demand in the market. In fact,
Tensar has had available capacity to meet all demand
throughout the Period of Investigation, and they sell to all
these companies. They sell to Hanes and Hanes has told you
that. In fact, Hanes said we do a lot of business with
Tensar. They can buy this product from whoever they want,
as long as they're doing it at fair prices. That's all
we're saying.

They can get it from Tensar, which they are
already. There is another domestic producer, Tenax. There's also the possibility of, you know, other import sources, and you know, if they were getting it from the Chinese at fair prices, of course that wouldn't be a problem. The problem is they've been buying this material at dumped and subsidized prices that have severely injured the domestic industry throughout the Period of Investigation.

Respondents claim that Tensar has signaled that it is no longer interested in biaxial integral geogrid, and instead is focused on triaxial geogrid. They said that Tensar tried to, and I quote, "kill the market" for BX. However, the facts tell a very different story. Now first of all, they're relying on letters for this claim that are from 2009 and 2010, three to four years before the Period of Investigation, and that relate to one skew of BX.

Now Tensar very clearly and very quickly realized that they couldn't even discontinue regular production of that one skew of BX, and they quickly changed course, and they established that in the preliminary conference that that was the case. The fact is, they've been completely committed to all biax products throughout the Period of Investigation, and continue to be committed to those products.

They have sold, they have produced and sold
substantial volumes of biaxial geogrids, all types of
biaxial geogrids throughout the Period of Investigation.
Again, all you have to do is look at the data that you've
collected on the record. The data plainly show that Tensar
-- they plainly show Tensar's strong commitment to the
biaxial geogrids market, and testimony you've heard from
both Tensar and its distributors overwhelmingly confirms
that.

Not only have they remained committed to biax
products, they've looked to develop additional skews of biax
products and have sold those to the market, to meet the
market demand and their customers' demands. That shows
ultimate commitment to the market, and they will continue to
do so. You heard that from Mike Lawrence, the president and
CEO of Tensar Corporation this morning.

Now you heard another claim today about price
leadership and who is the price leader, and you heard from
the Respondents that Tensar is the clear price leader in the
market. Well if Tensar is the clear price leader in the
market, then why did Tensar lose so much market share during
the Period of Investigation?

The reason is they're not the price leader. The
Chinese are the price leaders in this market, and they took
significant amounts of sales and market share from the
domestic industry during the Period of Investigation by
undercutting the domestic industry's prices, driving the prices down significantly, and significantly underselling the domestic like product.

You know, we've heard some information about specific products, and whether they're lower-priced or not in particular situation. We even heard that, you know, from one company that their average prices did not decline. Your data show completely to the contrary. The overall story here is that the underselling situation in this case, based on your own data and your staff report, is almost 60 percent of the comparisons.

This is compelling in its own right. But of course that doesn't include what happened on the private label sales. The private label sales show, you know, you can see what the private label sales show in your staff report and the underselling for those. But even on the data that you have, based on the comparisons between, you know, the domestic product and Chinese product for sales to end users and sales to distributors, almost 60 percent of the comparisons were undersold. That's a significant amount of underselling.

Your underselling data and what the purchasers told you completely contradict their claim, that Tensar is the price leader. Again, you don't have to take our word for it. You can just look at what the purchasers said. The
purchasers told you in sworn questionnaire responses that they shifted 3.2 million square yards to subject imports because they were lower priced. That's on page -- well, I'm sorry, your underselling analysis on page 5-25 of the staff report. You also have that information regarding the purchasers in your staff report as well.

What else did the purchasers tell you? They told you that the domestic producers had to reduce their prices by as much as 75 percent, to try to match the Chinese prices. That's not evidence of Tensar being price leader; that's clear and overwhelming evidence that it's the Chinese that are the price leaders in this market.

There was some discussion by the Respondent that private label sales are not a separate level of trade. Well, the facts show differently on that. The fact is these private label sales, there's private label sales being made by the Chinese, and there's private label sales being made by Tensar. They are being made to the exact same customers.

So that's where the comparison should be made. It should be made at that level, not at the level of the importers' prices to their customers. You would then be comparing the importers' prices that they charge to their customers to Tensar's prices to the importers. Those are completely different levels of trade.

So the private label sales are at a different
level of trade than any other sales that you have, the normal sales to distributors and the sales to end users as well. You have all the data for the private label sales. You have all the data that allows you to do the underselling analysis. We've provided that as well and an analysis of that in our prehearing brief, and we provided it in the confidential slides that you saw today.

Yet another claim you've heard today is that triaxial geogrid should be considered part of the same like product as biaxial geogrid, and included in the analysis in this case. The record before you, including the testimony you heard today, demonstrates very clearly that you should biaxial geogrid to be a distinct like product based on the factors you typically consider in the like product analysis. Just to summarize some of the key facts, I'm not going to get into all of them. We've discussed them at length and we'll do so in our briefs.

The triax has significantly different physical and mechanical properties and performance characteristics. The foremost experts in the field, you've heard of Dr. Drew and there's other experts as well, have recognized that triax has these different physical and mechanical properties and performance characteristics.

So this leads to different end uses and applications for the products. Now we used as examples this
morning the marine mattresses and the wall facing for walls, where biax can be used, not triax. That's one example that just shows you, it exemplifies the differences in the characteristics of these products. Once again just to emphasize, there's some dispute on that this afternoon. Triax cannot be used and is not used in that, in those applications.

We also have differences in the applications in roadway surfaces. So it is not just in these other two. Those were just used as examples. It's also in roadway surfaces, where you have different applications for triax and biax. Only triax can be used in pavement optimization, and again there are specifications which clearly recognize that.

The California Green Book. There's also a specification in Texas as well, but various specifications recognize that only triax can be used for pavement optimization, to reduce asphalt. The two products are not interchangeable. For example, many state specifications either do not allow the use of triax at all, or classify it in a separate category from biaxial geogrids.

This is not a sole source issue. You can work around that. The reason why they're treated differently in the specifications is because the products are different and the state Departments of Transportation have recognized
this. There was also some discussion about flipping between triax and biax. You cannot do that without a significant reengineering design, I'm sorry, a redesign of the engineering and the redesign of the whole project.

If you don't do that, you risk failure of the entire project. So you cannot flip between one product and the other. Third difference is in the machinery and production processes for the two products. Triax requires the installation of special and expensive equipment for the stretching line. The tools are also different and specific to each line.

Triax and biax aren't sold and marketed differently. Only biax are sold through pirate label arrangements. Triax is not. In addition, triax of course is under patent and is only available from Tensar. Customers perceive the products to be different as evidenced by the different specifications and requirements issued with respect to the two products. Of course, you will hear from those who don't sell triax that it's not different than biax. That's because they don't sell it and can't sell it. What else would they say? Of course they're going to try to say it's different.

But the perceptions of those who make it and those who buy it show that the two products are different. Lastly, triax is priced significantly higher than biax. You
heard this morning that the customers for this product would
not pay that significantly higher price if there also wasn't
a significant difference in the products.

Those facts plainly show there are significant
differences between triax and biax, and that triax should
not be considered part of the like product. But no matter
how you slice and dice the data, no matter how you look at
this, this company, this industry is injured and Respondents
cannot demonstrate otherwise.

On threat, we heard from Respondents that they
had only heard of four Chinese producers. But they have not
provided any information to rebut the information we've
provided, which clearly shows that there are over 75
producers and exporters of this product. That information
is based on the company's own websites and other publicly
available information. The information on that and the
capacity and unused capacity for those companies is based on
the same publicly available information, as well as the
information you received from the one producer in your
preliminary phase of this investigation.

There's over 75 producers and exporters of this
product. We've shown only -- if you just take seven of
those, it's more than 400 million square yards of production
capacity. That is an absolutely staggering figure, and it
is multiples of the size of the industry for this product,
and multiples of the size of the market for the product. If just a small fraction of that were to come into the United States, it would completely overwhelm this industry and completely drive it out of business. As it is now, the industry is on the brink of disaster. As these examples demonstrate, Respondents have failed to explain or even adequately address the record before you.

The fact of the matter is that the record here tells a simple and compelling story. Much of the key evidence is undisputed and all of it adds up to the fact that subject imports have caused present material injury to the domestic industry and threatened further injury going forward. This is an industry that did all the work to create and develop this product, and to create the market for it in the United States.

Please don't let the Chinese come in with their dumped and subsidized imports and take all of that away from them unfairly. We urge the Commission to effectively enforce the trade laws, and to reach an affirmative determination. Thank you.

CHAIRMAN WILLIAMSON: Thank you. You may begin when you're ready.

CLOSING STATEMENT OF YOHAI BAISBURD

MR. BAISBURD: Yohai Baisburd on behalf of Hanes and Hill Country again. Thank you again for your time
today. I promise I'm not going to use anywhere near the
time I have available now and, you know, we're just going to
try to hit some of the highlights and emphasize some of the
points that I think may have gotten lost a little bit today
in the rhetoric and in the shuffle.

So I'm going to start with like product, and the
starting point for your like product analysis is the scope
of the investigation. As we said in our prehearing brief,
the triax product would be in the like product but for the
exclusion or the way they define the aperture shape. So
they tried this morning to use these alternative
technologies, trying to spin triax as some new alternative
technology like chemical stabilization or additional
aggregate or woven coated product.

But it's not any of those things. It is a
biaxially oriented integral geogrid. It's the same as a
rectangular and square. The difference is it has a
different shape. It's on the same continuum of product and
there's no clear dividing line between it. We then offer a
truncated like product definition to try to change the
denominator there, putting forth a truncated like product in
order to make their case seem much stronger than it really
is.

I think your preliminary analysis at the
preliminary phase shows that when you apply the traditional
like product factors to the facts in this record, that triax is part of the like product. I just want to highlight one little point. There was a lot of discussion this morning about the production process and the changes that occur, and one of the precedents they cited was line pipe and standard pipe.

Well, when you're making either of those products and you want a different diameter, there's down time and you have to change the rollers and change the mills to get to the diameter that you're looking at. That's a minor change. For biaxial and triax, you extrude the product, you punch the product and you stretch the product. You might have some intermediate steps that are slightly different, but those are three things you do.

Ironically, the other producer that they identified in their petition and have tried to bring up a couple of times today, Tenax has an entirely different production process. They're not a punched and drawn geogrid; they're an extruded geogrid. So it would defy all reason and logic to suggest that that product is part of the like product, but triax, which is also extruded, punched and drawn is not.

In terms of precedents that show why it's part of the same like product, I mentioned aluminum extrusions earlier and lumber. The steel cases as well. I mean
there's a lot of down time when you're changing between grades of steel, but the Commission has not found that different grades of steel within the same physical dimensions, like in the plate case, are separate like products, and you shouldn't do so here for triax. Just fundamentally, they're completely interchangeable. You might have to design differently, but every square yard of triax that was sold during the period could have been a square yard of biaxial geogrid. They spent some time talking about the steps that they took before imports entered the market in May 2012, to try to get ready for competition.

We don't deny that they took steps, but you should look at those steps and were they effective or not? So the one, the first step they tried was to transition the entire market from a well-established product, biaxial, you know, the rectangular and square biaxial geogrids, to the new patented triax. The market pushed back. There's a space for triax. It's very successful, but it hasn't been the -- the market hasn't adopted it to the same level that they expected, and thus they were now between promoting and selling the rectangular and square biaxial and also having triax out there.

Another step that they took was the whole private label program, and it's really important to
understand what they did and how they did it. So first, the
private label program was not an open competitive private
label program. They identified one distributor in the U.S.,
Syntech, and they sold private label to them. So no one
else in the U.S. market was able to get the private label
from Tensar without buying it from Syntech first.

The private label program was high volumes at
very low prices, and it occurred before a single import ever
arrived in the U.S. They're talking about this underselling
at the private label level, and that is a complete red
herring because they would have you do a completely new
pricing analysis, because your pricing analysis always
starts from the importer sale to the first unaffiliated
customer in the U.S.

Tensar sells to a distributor. That's a sale on
the U.S. side. An importer sells to a distributor, that's
the first sale that you always consider. The fact that
Tensar sold private label to a distributor and the fact
that the importers sold its product to a distributor, those
are the same level of trade. It's the first sale to a
distributor in the U.S. market, and this notion of trying to
compare the landed duty paid price to the Tensar resell
price would be completely different from any other analysis
that you typically do.

They also told the market -- another step that
they took was that we're not going to support biaxial.
Nobody questions that they're still involved in the biaxial market. They still clearly want to defend it; they brought this case. But that's what they're doing now. But what did they do before now? What they did before now is they told the market that we're not as interested in that part of the market as we are for triax, and we'll quote later, because they said it very clearly at the staff conference at the preliminary phase, that they don't give the same level of support of services to the biaxial geogrids. They give no support and no services, they said, for their private label sales, and they give limited support for their branded sales of biaxial, and they give tremendous support for their sales of triax.

Service, as you've heard many times today and was brought up in the briefs as well, is a key component. Yes, price is important, but price is not the only main factor in purchasing. They pulled away, and that was one of the steps that they took.

In terms of pricing analysis, as I mentioned earlier, they're not consistent and the Commission generally tries to avoid looking at average unit values and looks at the pricing comparisons of the pricing products. I would urge you to do that again in this case because it's not a consistent story, and their activity and the level of
overselling, not underselling but overselling for two products in particular is quite significant and tells the story of how Tensar sets the price in the market.

So we're not just relying on anecdotal evidence, although there's plenty of that where Tensar has crashed the market and come in well below what others were bidding at the time. You cannot use the trade laws to defend your own bad pricing decisions. So if pricing, if subject imports are underselling and pulling prices down, that's something, and you know, if you meet the other statutory criteria, then an order can go in place.

But if a U.S. producer vastly misses the market and comes in completely under where the market is, that's on them. That's not on the subject imports. It's not by reason of subject imports that they crashed the Texas market. It's because they sold at prices that were well below where the market was at. The other factor to continue to consider is the decline in raw material costs over the POI, and how that impacts pricing as well.

I'd like to conclude by just focusing a little bit on financial performance, and you can't bring imports for falling exports. They had significantly decreasing sales. That's in the public staff report, export sales. You can't fault subject imports for their high SG&A. They have a high SG&A because they want to provide service, but
they're telling you that they're providing service for triax
and not biaxial. So there's a kind of inconsistency there,
and obviously maintaining high levels of SG&A will affect
profitability.

They also cannot blame imports for the impact
that not providing the services the market requires and
demands has on their volume of sales. The financial data
also shows anything but a company that's teetering on the
dge of collapse. The Commission, every domestic industry
that comes before you feels like they're struggling. You
see what this industry is doing compared to everything else
that you see, and I am not suggesting -- I know what the
statute says, that you have to have losses. We have never
argued that you have to have losses in order to find
material injury.

But you have to have injury, and that injury has
to be material, and this industry, when well-defined,
maintains healthy levels of profitability and has been able
to make consistent investments throughout the period.
Finally quickly on threat, listen. It's unfortunate the
exporters didn't respond to the questionnaires. But you
have data on this record, and we will develop more for the
post-hearing brief, that shows who the actual producers are
and what their relative size is, and you have their
behavior over the POI to give you an indication of their
likely level of activity in the foreseeable future.

So based on the entire record and when analyzed within the conditions of competition, we believe that you should not find that subject imports were the cause of material injury or threat of injury to the domestic industry. Thank you very much.

CHAIRMAN WILLIAMSON: Thank you. I want to thank everyone for participating. Time for the closing statement. Post-hearing briefs, statements responsive to questions and requests of the Commission and corrections to the transcript must be filed by December 29th, 2016. Closing of the record and final release of data of the parties, January 26th, 2017. Final comments are due January 30th, 2017.

Again, I want to thank everybody for participating in this hearing, and the hearing is adjourned.

(Whereupon, at 3:06 p.m., the hearing was adjourned.)
CERTIFICATE OF REPORTER

TITLE: In The Matter Of: Certain Biaxial Integral Geogrid Products from China

INVESTIGATION NOS.: 701-TA-554 and 731-TA-1309

HEARING DATE: 12-21-16

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: 12-21-16

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
Signature of Proofreader

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

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