

THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
) Investigation No.:
 MALLEABLE IRON PIPE) 731-TA-1021 (Final)
 FITTINGS FROM CHINA)

Thursday,
 October 23, 2003

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

The hearing commenced, pursuant to notice, at 9:33 a.m., before the Commissioners of the United States International Trade Commission, the Honorable DEANNA TANNER OKUN, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

DEANNA TANNER OKUN, CHAIRMAN
 JENNIFER A. HILLMAN, VICE CHAIRMAN
 MARCIA E. MILLER, COMMISSIONER
 STEPHEN KOPLAN, COMMISSIONER
 CHARLOTTE R. LANE, COMMISSIONER
 DANIEL R. PEARSON, COMMISSIONER

APPEARANCES: (cont'd.)

Staff:

MARILYN R. ABBOTT, THE SECRETARY
WILLIAM R. BISHOP, STAFF ASSISTANT
DEBORAH A. DANIELS, LEGAL DOCUMENTS ASSISTANT
CYNTHIA TRAINOR, INVESTIGATOR
NORMAN VAN TOAI, INDUSTRY ANALYST
JOSHUA LEVY, ECONOMIST
CHAND MEHTA, ACCOUNTANT
MARK REES, ATTORNEY
GEORGE DEYMAN, SUPERVISORY INVESTIGATOR

In Support of the Imposition of Antidumping Duties:

On behalf of Anvil International, Inc. and Ward Manufacturing:

THOMAS E. FISH, President, Anvil International, Inc.
WILLIAM STROUSS, Vice President, Finance, Anvil International, Inc.
ROBERT KIM, Vice President, Manufacturing, Anvil International, Inc.
JOHN MARTIN, Vice President, National Accounts, Anvil International, Inc.
TOM GLEASON, Vice President, Marketing and Sales, Ward Manufacturing
KEVIN BARRON, Manager of Operations, Ward Manufacturing
A.J. MALONEY, Executive Vice President, Coburn Supply
CHARLES KAFENSTOCK, President, Kast Marketing
MICHAEL MCINERNEY, Chairman and Chief Executive Officer, Thos. Somerville Company
JOSEPH MITCHELL, SR., Secretary and Treasurer, Glass, Molders, Pottery, Plastics and Allied Workers International Union (AFL-CIO-CLC)

ROGER B. SCHAGRIN, Esquire
Schagrín Associates
Washington, D.C.

APPEARANCES: (cont'd.)

In Opposition to the Imposition of Antidumping Duties:

On behalf of B&K Industries, Inc.:

PETER BERKMAN, President, B&K Industries, Inc.

MICHAEL E. ROLL, Esquire
JOHN P. SMIRNOW, Esquire
Katten, Muchin, Zavis & Rosenman
Chicago, Illinois

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P R O C E E D I N G S

(9:33 a.m.)

1
2
3 CHAIRMAN OKUN: Good morning. On behalf of
4 the United States International Trade Commission, I
5 welcome you to this hearing on Investigation No.
6 731-TA-1021 (Final), involving Malleable Iron Pipe
7 Fittings From China.

8 The purpose of this investigation is to
9 determine whether an industry in the United States is
10 materially injured or threatened with material injury
11 by reason of less than fair value imports of subject
12 merchandise.

13 Schedules setting forth the presentation of
14 this hearing and testimony of witnesses are available
15 at the Secretary's desk. I understand the parties are
16 aware of the time allocations. Any questions
17 regarding time allocation should be directed to the
18 Secretary. As all written material will be entered in
19 full into the record, it need not be read to us at
20 this time. All witnesses must be sworn in by the
21 Secretary before presenting testimony.

22 Copies of the notice of institution, the
23 tentative calendar and transcript order forms are
24 available at the Secretary's desk. Transcript order
25 forms are also located in the wall rack outside the

1 Secretary's office. Finally, if you will be
2 submitting documents that contain information you wish
3 classified as business confidential, your requests
4 should comply with Commission Rule 201.6.

5 I would also note that we welcome
6 Commissioner Pearson here for his first hearing today
7 with all six Commissioners who will be participating
8 in this hearing.

9 Madam Secretary, are there any other
10 preliminary matters this morning?

11 MS. ABBOTT: No, Madam Chairman.

12 CHAIRMAN OKUN: Very well. Let us proceed
13 with opening remarks.

14 MS. ABBOTT: Opening remarks on behalf of
15 the Petitioners will be made by Roger B. Schagrín,
16 Schagrín Associates.

17 CHAIRMAN OKUN: Good morning, Mr. Schagrín.

18 MR. SCHAGRIN: Good morning, Chairman Okun.
19 Good morning to everyone on the Commission. Special
20 welcome to Commissioner Pearson to your first hearing.
21 Lord willing, we'll see a lot of each other over the
22 next eight years. As I explained to Commissioner
23 Lane, that's one of the downsides of being on the
24 Commission. You may have to see a lot of me. It will
25 hopefully all work out.

1 For the record, my name is Roger Schagrin.
2 I am counsel to Petitioners, Ward and Anvil. The U.S.
3 industry producing malleable pipe fittings is
4 literally being destroyed by dumped imports from
5 China. Despite a flat demand, imports from China
6 increased by 50 percent over the POI. Their market
7 share is now so huge that the Chinese fittings
8 literally dominate the U.S. market.

9 The U.S. industry is clearly suffering
10 injury. At the beginning of the POI, capacity
11 utilization was poor, but passable, and the industry
12 was quite profitable. The industry cut capacity
13 significantly over the POI, but capacity utilization
14 still plummeted to levels that will not sustain
15 continued industry operations for long.

16 Production, shipments, revenues and
17 employment all fell dramatically over the POI. Profit
18 levels plummeted and are now on the verge of
19 disappearing. Despite significant cost increases for
20 this industry, prices have not increased since 2001.

21 There is one overwhelming cause of this
22 injury. Dumped imports from China. They have
23 increased their market share dramatically over the
24 POI. While Respondents claimed at the preliminary
25 conference that Chinese prices were increasing over

1 the POI, I see product pricing that indicates that
2 Chinese prices have been declining over the POI.

3 Underselling margins, high even at the
4 outset of the POI, have grown over the POI. This
5 underselling has caused both price suppression and
6 depression. There are no conditions of competition
7 that can explain this industry's dismal performance.
8 The imports from China are not focused exclusively on
9 the retail market. In fact, most imports from China
10 go to the distributor market, the same place that most
11 domestic shipments go.

12 The prehearing staff report has now verified
13 the blurring of the lines between the wholesale and
14 retail markets consistent with the Petitioners'
15 testimony at the preliminary conference. Thus, injury
16 to the domestic industry occurs through dumping to
17 both distributor and retail markets.

18 Regarding claims that Ward is cannibalizing
19 the market for malleable fittings with flexible
20 stainless tubing, it is clear that only a tiny
21 fraction of the market has been affected. In fact,
22 demand over the POI has been flat. It is not
23 increasing as the economy rebounds, but the domestic
24 industry is receiving no benefit because of the
25 Chinese dumping.

1 Buy American preferences of northeast
2 building trades may account for 10 to 15 of the U.S.
3 market, but is not enough to keep this industry in
4 business. The Commission should make an affirmative
5 critical circumstance determination based on the
6 massive post filing imports that occurred.

7 In February/March of this year, over 3,000
8 tons per month were imported. That's twice the
9 monthly average before the petition was filed.
10 Compare that to the industry's monthly shipments in
11 the first half of this year, and you can see how
12 devastating the surge in imports was for the industry.

13 If the Commission finds it necessary to
14 consider threat, there is strong evidence supporting a
15 threat determination. A 50 percent surge in imports
16 in 2002 was an astounding increase and demonstrates
17 the ability of the Chinese to use dumped prices to
18 undersell the industry and rapidly increase their
19 market share.

20 Capacity in China has grown rapidly and,
21 most importantly, the amount of excess capacity
22 available for the Chinese industry has grown
23 tremendously over the POI. Numerous major other
24 export markets are beginning to say no to dumped
25 Chinese imports of malleable fittings, including the

1 EU, Mexico, Argentina and Brazil, among others.

2 To paraphrase Congressman Visclosky's
3 testimony during the Steel 204 hearings, if the
4 Commission does not make affirmative injury
5 determinations in this case, in a year or two we will
6 say we used to make malleable pipe fittings in
7 Pennsylvania. We used to make malleable pipe fittings
8 in the United States of America.

9 Please don't let that come to pass. Please
10 make an affirmative injury determination in this
11 investigation. Thank you.

12 CHAIRMAN OKUN: Thank you.

13 MS. ABBOTT: Opening remarks on behalf of
14 the Respondent will be made by John P. Smirnow,
15 Katten, Muchin, Zavis, Rosenman.

16 CHAIRMAN OKUN: Good morning, Mr. Smirnow.

17 MR. SMIRNOW: Good morning. Good morning,
18 Madam Chairman, Vice Chairman, Commissioners, members
19 of the Commission staff. For the record, my name is
20 John Smirnow, and I'm counsel for Respondent, B&K
21 Industries.

22 Upon review of the record in this
23 investigation, it appears that there is a single issue
24 which will likely control the Commission's resolution
25 of these proceedings: Does the domestic like product

1 continue to be sold primarily into a distinct segment
2 of the U.S. malleable fittings market, a segment which
3 is unoccupied by subject imports. We believe the
4 clear answer to this question is yes. As a result,
5 there is no causal nexus between declining domestic
6 industry performance and subject imports.

7 To provide the proper context for the
8 consideration of this issue, the Commission should
9 consider the following: In the 2000 sunset review of
10 Malleable Fittings from Brazil, Japan, Korea, Taiwan
11 and Thailand, which was issued at the beginning of
12 this period of investigation, the Commission found
13 that the U.S. fittings market was generally segmented
14 between a wholesale market and a retail market.

15 Several Commissioners further found that the
16 wholesale market was even further segmented between a
17 primary wholesale market and a secondary wholesale
18 market. The primary wholesale market was found to
19 include, and I quote, "those selling to large
20 commercial, industrial and government projects," which
21 account for roughly 80 percent of fittings sold in the
22 U.S. market.

23 In contrast, secondary wholesalers were
24 identified as "small wholesalers who generally supply
25 residential plumbing contractors." Importantly, these

1 Commissioners also concluded that: "The domestic
2 producers mainly sell to primary wholesalers."

3 In contrast, the Commissioners concluded
4 that with respect to Thai imports, the Thai product
5 was sold mainly to secondary wholesalers and to even a
6 lesser extent retailers. The record in this sunset
7 review also indicated that while Thai imports
8 consistently undersold the domestic product, prices
9 for the domestic fittings actually rose over that
10 period of investigation.

11 Given these findings, the Commission
12 concluded that: "The lack of correlation of prices
13 between domestic and imported fittings from Thailand
14 appears to reflect the different market segments in
15 which these products are sold." In large part based
16 upon these findings, the Commission rendered a
17 negative determination with respect to Thai imports.

18 In the instant investigation, the Commission
19 is faced with nearly identical facts. First, there is
20 nothing in the record which indicates that the
21 domestic like product is no longer primarily sold into
22 the primary wholesale market.

23 Second, subject imports are mainly sold to
24 either secondary wholesalers or retailers for
25 residential end use.

1 Third, the subject imports consistently
2 undersold the domestic like product by double digit
3 margins throughout the period of investigation.
4 Nonetheless, even in the face of these considerable
5 margins prices for the domestic like product generally
6 improved over the period.

7 The record in this investigation, therefore,
8 indicates that there is no causal nexus between
9 subject imports and any declines in domestic industry
10 performance. The facts in this record also indicate
11 that there is no likelihood that these current
12 conditions are likely to change in the imminent
13 future. We, therefore, respectfully request that the
14 Commission render a negative determination in these
15 proceedings.

16 Thank you very much for the opportunity to
17 appear before you today.

18 CHAIRMAN OKUN: Thank you.

19 Madam Secretary, will you please call the
20 first panel?

21 MS. ABBOTT: The first panel is in support
22 of the imposition of antidumping duties. If it would
23 please come forward?

24 All members have been sworn.

25 (Witnesses sworn.)

1 CHAIRMAN OKUN: Mr. Schagrin, it looks like
2 your panel has all found a seat now. You may proceed.

3 MR. SCHAGRIN: Thank you again, and good
4 morning, Chairman Okun, other members of the
5 Commission.

6 This morning we have a very broad cross
7 section of representatives of the domestic industry.
8 We have executives from really the only two producers
9 of this product in the United States covering
10 marketing functions, financial functions and technical
11 aspects and operations of the companies.

12 We have representatives of major purchasers
13 of the product, major wholesalers. You'll have to
14 figure out probably with your questions whether these
15 wholesalers are primary wholesalers or secondary
16 wholesalers. I'm not aware of whether they are.
17 We'll have to maybe figure out through the hearing.

18 I guess that's an issue for Mr. Smirnow
19 today if we can find out from these wholesalers what
20 they believe they are. I don't think it makes a
21 difference, but that's another issue that we'll
22 address today during the hearing.

23 We have a marketing representative for one
24 of the domestic producers who markets in the midwest,
25 and then we're also fortunate to have a representative

1 of the union, the secretary and treasurer of the
2 Glass, Molders, Pottery, Plastics and Allied Workers
3 Union, which represents all of the workers, production
4 workers at the domestic industry's two production
5 facilities.

6 Now let me introduce Tom Fish, the president
7 of Anvil, to present his testimony. Mr. Fish?

8 MR. FISH: Good morning, Chairman Okun and
9 members of the Commission. For the record, my name is
10 Tom Fish. I am president of Anvil International. I'm
11 joined today here by several of my key managers,
12 including John Martin, who is my Vice President of
13 National Accounts, Bill Strouss, my Vice President of
14 Finance, and Bob Kim, our Vice President of
15 Manufacturing.

16 I have 22 years of experience with iron
17 fittings, having started with Grinnell, which is now
18 known as Anvil, in 1982. With Anvil, I am responsible
19 for our manufacturing and supply businesses which
20 package together various products such as pipe
21 fittings, pipe nipples, pipe hangers, couplings and
22 other assorted products for the sprinkler, mechanical
23 and industrial distributor market. We act as both a
24 manufacturer and a master distributor.

25 Anvil was sold to private investors in 1999,

1 and as part of this sale we were required to change
2 our name from Grinnell to Anvil. It has been argued
3 by B&K that this name change has harmed our business.
4 Nothing could be further from the truth. We are
5 selling the same offerings of manufactured products to
6 the same customers with the same sales force. It's
7 the low-priced dumped Chinese products that have hurt
8 our business, not our name change.

9 If B&K's theory was correct, Ward, who has
10 had the same name since 1924, would have also
11 benefitted and picked up some of this business. If
12 this were true, I'm not sure Ward would be here today
13 with us. Again, the problem is dumped Chinese imports
14 underselling us, not our name change.

15 Anvil has four regional distribution centers
16 nationwide located in Chicago, Dallas, Reno and
17 Philadelphia. All of our centers are 100 percent bar
18 coded and use RF, which is radio frequency,
19 technology. We compete directly with companies such
20 as Matco Norka, Smith Cooper, B&K, which largely offer
21 imported product.

22 Let me tell you about the foundries that we
23 had at Anvil. The Columbia, Pennsylvania, foundry
24 goes back to World War II, while our foundry in
25 Statesboro, Georgia, was established in 1973.

1 Statesboro's main product line was non-malleable or
2 cast iron pipe fittings, and Columbia's main product
3 line was malleable pipe fittings.

4 As the Commission is aware from the Non-
5 Malleable Pipe Fittings case, Anvil sold its
6 Statesboro foundry in August of 2001 and combined the
7 production of non-malleable and malleable pipe
8 fittings in the Columbia, Pennsylvania, foundry.

9 This combination of facilities required an
10 additional capital investment of approximately \$17
11 million. This strategic business plan, which was
12 designed to adjust our manufacturing capacities to be
13 in line with the reduced demand for domestic product,
14 has not met our expectations.

15 Our combination of two different product
16 lines from two foundries into one foundry did reduce
17 our capacity for both non-malleable and malleable
18 fittings, and this is reflected in our questionnaire
19 response. However, our hope of running one foundry at
20 full utilization instead of two foundries at partial
21 utilization was short lived. Within six months of our
22 consolidation, our utilization rate at Columbia began
23 to fall, again because of large volumes of imports of
24 non-malleable and malleable fittings from China.

25 Even after a reduction of approximately 25

1 percent in our capacity, production has plummeted so
2 much that our utilization rate in our Columbia foundry
3 is now less than 50 percent. As part of our
4 consolidation, we laid off over 400 workers in
5 Statesboro when we sold the foundry, and we had hoped
6 to be able to increase our workforce in Columbia by
7 approximately 150 to 200 workers since they would be
8 producing two product lines.

9 Unfortunately, instead of hiring these
10 additional workers we've actually reduced employment
11 in Columbia since 2001. Even after adding the non-
12 malleable product equipment and production, employment
13 has fallen. In malleable alone, our employment is
14 down by over a third.

15 Because of reduced shifts, the hours worked
16 and wages paid to our employees had declined by an
17 even larger percentage than one would expect based
18 purely upon the head count reduction. Skilled workers
19 who have been with our company for 15, 20, 25 years
20 are concerned if they will have a job next month or
21 earn enough to take care of their families.

22 We are far and away the largest employer in
23 Columbia and one of the largest in the county. Thus,
24 our aggressive efforts at cost cutting and
25 consolidation have been unsuccessful as we have lost a

1 huge amount of market share to imports from China. As
2 shown in our questionnaire responses, profits on
3 malleable sales are declining rapidly.

4 We believe that the pricing data the
5 Commission has gathered will show that Chinese prices
6 are as much as 50 percent below our prices. Because
7 the prices of Chinese malleable fittings are often at
8 our raw material cost, much less our cost of
9 production, we can't lower our prices to compete with
10 Chinese products or we'd be out of business.

11 On the other hand, as we have consistently
12 lost market share to the Chinese, we've had to reduce
13 capacity. This has had a negative effect on
14 employment. As utilization of the foundry falls, unit
15 costs increase and profits also fall. Mr. Martin will
16 specifically address our loss of market share and
17 pricing issues.

18 As a foundry company, we have no more room
19 for retrenchment. Having gone from two foundries to
20 one foundry, our next line of retreat will be to exit
21 the foundry portion of our business and focus only on
22 our distribution business.

23 Let me conclude with two important points.
24 Number one, our owners, who are a large U.S.
25 investment company that purchased us four years ago

1 from Tyco, put us up for sale early in 2003. They
2 were unsuccessful in selling us, and the major reason
3 and issue was the continued loss of market share to
4 China. Loss of share has resulted in loss of profits.

5 Number two, if the volume at the Columbia
6 plant continues to decline, we're going to be forced
7 to either shut down this operation or move it out of
8 the country. Foundries, as you know, require large
9 capital investments and carry high overhead.
10 Continued volume losses will make it uneconomical to
11 operate the Columbia plant.

12 On behalf of the 2,700 employees at Anvil,
13 of which approximately 900 work in our Columbia
14 foundry, we ask that this Commission make an
15 affirmative injury determination so that we can keep
16 our Columbia foundry operating. We need volume, and
17 stopping the Chinese dumping is the only way that
18 we're going to regain this volume.

19 Thank you very much.

20 MR. SCHAGRIN: Thank you, Mr. Fish.

21 MR. Gleason?

22 MR. GLEASON: Good morning, Chairman Okun
23 and members of the Commission. For the record, my
24 name is Tom Gleason. I am Vice President of Sales and
25 Marketing for Ward Manufacturing in Blossburg,

1 Pennsylvania, and I've been in the pipe fitting
2 industry for more than 30 years.

3 I have been with Ward Manufacturing since
4 1989. Accompanying me today is Mr. Barron. Kevin is
5 the Manager of Operations. Mr. Barron has a B.S. in
6 Chemistry from RIT and is a member of ASME and ANSI.
7 Mr. Barron will not testify today, but is here to
8 address any technical issues that you may have.

9 Ward Manufacturing was founded in 1924 in
10 Blossburg, Pennsylvania, as a cast iron pipe fitting
11 producer beginning with the production of non-
12 malleable pipe fittings. Ward added the manufacturing
13 of malleable pipe fittings to the product line in the
14 1930s. Ward has always been a one foundry operation
15 in Blossburg and previously employed more than 1,000
16 employees. Hitachi Metals America purchased the
17 company in 1989.

18 Let me explain a little bit about the
19 malleable pipe fitting business and the differences
20 between malleable and non-malleable fittings. The
21 difference between non-malleable and malleable
22 fittings is chemistry, microstructure and material
23 strength. The fittings are also different in size,
24 such as wall thickness, and weight because malleable
25 iron pipe fittings have different material strengths.

1 This, in combination with heat treatment or annealing
2 required for malleable fittings, makes the malleable
3 iron pipe fittings a stronger product than non-
4 malleable fittings.

5 Malleable iron pipe fittings are primarily
6 used for natural gas lines, water lines, chemicals,
7 oil lines, oil drilling equipment and mechanical
8 service lines, as well as for furnaces and boilers and
9 other critical applications.

10 As distinct from non-malleable, which is
11 overwhelmingly a commercial fire protection market,
12 much of the malleable market is used for natural gas
13 hookups in residential construction. Every time a new
14 house is built and has a natural gas line installed, a
15 boiler for heating or other HVAC systems such as hot
16 water heaters, et cetera, numerous malleable fittings
17 are used. That is why the market has been strong.

18 The problem is that our production and
19 shipments have been weak because of a surge of imports
20 from China. Ward sells malleable pipe fittings
21 through distributors or wholesalers on a nationwide
22 basis. These distributors in turn sell to plumbers,
23 HVAC contractors, OEM equipment manufacturers or
24 natural gas or water utility companies. The Chinese
25 sell using the same distribution system, only they

1 utilize U.S. agents or a broker to sell these
2 distributors.

3 Over the past few years, we have seen a
4 surge of Chinese imports, and we have lost volume at
5 almost all of our major customer accounts. Just as
6 Mr. Martin will testify later for Anvil, Ward also has
7 all the equipment for bar coding our fittings for
8 chain hardware stores. We are losing this business,
9 as well as distributor business, because of price, not
10 service.

11 Unfortunately, as our malleable fittings
12 sales and production have declined, we've had to lay
13 off a number of our production workers. In April of
14 2001, we were forced to lay off 57. In January of
15 2002, we laid off an additional 38. In October of
16 2002, we laid off an additional 45. We laid off 35
17 additional workers in 2003. Attrition accounted for
18 another 51 positions, which meant that during this
19 period we lost a total of 230 production jobs.

20 Most of these jobs were lost in the
21 malleable production, the rest in non-malleable.
22 During the same period, 2000-2002, we also laid off 24
23 white collar workers in our office. Ward is the only
24 major employer in Blossburg. We are the largest
25 employer in Tioga County, Pennsylvania. Our layoffs

1 have had a major impact on the city and our county's
2 economy.

3 At the preliminary conference, B&K argued
4 that Ward was cannibalizing our own malleable market
5 with WardFlex, a flexible stainless steel gas piping
6 system. This is not true. We estimate that WardFlex
7 and its competitor sales of flexible stainless pipe
8 account for only one to two percent of the malleable
9 fittings.

10 In fact, much of our WardFlex doesn't
11 replace fittings at all. For example, if you were to
12 build a three story house and you wanted six natural
13 gas fireplaces or fireplaces, before WardFlex was
14 available you would put in a woodburning fireplace.
15 WardFlex is used now because now you can pipe those
16 fireplaces with stainless steel pipe, a process you
17 could not do were you to use steel pipe and malleable
18 fittings.

19 B&K's substitution claims simply do not
20 explain why we've lost more than a third of our
21 production. It's not WardFlex. On the contrary, our
22 production declines are the direct results of imports
23 from China being up by over 50 percent. B&K should
24 also stop being apologist for dumped products, which
25 are gobbling up market share through unfair trading.

1 In addition to the normal capital costs of a
2 significant piece of equipment such as an iron
3 foundry, producers in the United States also face
4 tremendous environmental costs which are not
5 shouldered by the Chinese foundries.

6 Ward has always had extensive emission
7 control equipment to comply with the Clean Air Act.
8 However, with recent changes being made to the Clean
9 Air Act, Ward was told by the Pennsylvania EPA that we
10 must install a \$6.9 million emission control system
11 for a cupola to continue to be in compliance with the
12 Clean Air Act. We are about halfway through this
13 expenditure. Our increased capital expenditures are
14 not a sign of confidence in our business. Rather,
15 these environmental expenditures must be made or else
16 you're forced to shut down.

17 These significant capital expenditures and
18 the additional expense of operating the equipment will
19 again increase Ward's cost of doing business. Without
20 relief from unfair imports from China, the present
21 dangerous decline in our utilization rate raise
22 serious questions about our ability to continue in the
23 pipe fitting business.

24 Therefore, on behalf of Ward's remaining 700
25 employees in Blossburg, I ask that the Commission make

1 an affirmative injury determination.

2 MR. SCHAGRIN: Thank you, Mr. Gleason.

3 Mr. Martin?

4 MR. MARTIN: Good morning, Chairman Okun and
5 members of the Commission. For the record, my name is
6 John Martin, and I am Vice President of National
7 Account Sales for Anvil International. I have 35
8 years' experience in marketing pipe fittings for Anvil
9 and its predecessor, Grinnell Company.

10 All malleable iron pipe fittings for the
11 U.S. market are made to the same ASTM specifications
12 and threaded to the same ANSI specifications
13 regardless of where they are produced. Therefore,
14 these commodity products are sold on price, delivery
15 and service.

16 There are several national master
17 distributors and many regional distributors of these
18 products. These distributors sell in turn to the
19 national or regional retail hardware chain, the
20 plumbing supply wholesale distributors and the
21 industrial pipe, valve and fittings wholesale
22 distributors.

23 Anvil, and previously Grinnell, have
24 historically been a supplier to all of these markets.
25 Not surprisingly, the retail hardware chains are

1 aggressive, price conscious buyers. As an example, we
2 have already lost most of this type of business at
3 Home Depot, and while we are currently a major
4 supplier to other chains such as Ace, United and
5 TruValue, we stand to lose the bulk of that business
6 very soon if conditions with imports don't improve.
7 The only reason we don't presently supply Home Depot
8 and stand to lose this other business as well is
9 price. It's not our inability to service the business
10 requirements that they have.

11 As the ITC staff witnessed at our Columbia
12 plant, we have all the necessary automated equipment
13 for bar coding and packaging fittings just the way the
14 retail hardware stores want them and the wholesalers
15 want them. In 1994, Grinnell bought U-Brand, which
16 was the leading domestic supplier to the retail
17 hardware chains, just so we could in fact expand that
18 segment of our business.

19 I think it is also important for the
20 Commission to understand that with the exception of a
21 few strong trade union cities, some distributors sell
22 Chinese and domestic fittings interchangeably.
23 Similarly, when Home Depot buys Chinese instead of
24 domestic fittings, they do so to increase their profit
25 margins.

1 The Commission should understand that there
2 are few dividing lines between wholesale and retail
3 anymore in this business. Generally speaking,
4 contractors are just as comfortable buying fittings
5 from Home Depot as they are from any of the wholesale
6 distributor customers that we have. We lose business
7 from our wholesale distributors for the same reasons
8 we lose our retail volume, and that is due to dumped
9 Chinese prices.

10 In my 35 years' experience, I have seen lots
11 of changes in this pipe fitting business. I have seen
12 the Japanese, the Koreans and Brazilians enter the
13 market, and I have seen many domestic competitors exit
14 the business permanently, but I have never seen
15 anything like the unbelievably low prices and
16 unlimited availability of Chinese pipe fittings.

17 If nothing is done about these dumped
18 fittings, I truly fear that another segment of our
19 U.S. manufacturing will soon disappear. I ask that
20 you prevent that from occurring. Thank you.

21 MR. SCHAGRIN: Thank you, Mr. Martin.

22 Mr. Kafenstock?

23 MR. KAFENSTOCK: Good morning, Commissioner
24 Okun and members of the Commission. For the record,
25 my name is Chuck Kafenstock, and I am president of

Heritage Reporting Corporation
(202) 628-4888

1 Kast Marketing.

2 We are a manufacturer's representative
3 servicing the plumbing, heating, pipe, valve and
4 fittings industries. I've sold malleable pipe
5 fittings for over 30 years, representing first U-Brand
6 and then Ward for the past 17 years.

7 We sell to wholesale distributors, and our
8 territory for Ward are the states of Illinois,
9 Wisconsin, northwest Indiana and the upper peninsula
10 of Michigan. Not only is this a heavily populated
11 area, but, given the climate, most houses and
12 buildings have gas lines or boilers that require
13 malleable fittings in addition to the plumbing
14 requirements.

15 My sales of Ward malleable pipe fittings
16 have been devastated over the past two years by
17 increasing imports of Chinese fittings. I could give
18 you dozens of examples, but I will give you just a few
19 in the interest of time.

20 Two years ago, I sold a major plumbing
21 distributor in Illinois \$150,000 of malleable
22 fittings. In 2003, I will sell them \$25,000 worth of
23 the same fitting. At another plumbing supply
24 distributor, my sales have fallen from \$100,000 to
25 less than \$10,000 a year. At an industrial OEM

1 supplier, my sales of malleable fittings have fallen
2 from over \$150,000 three years ago to only \$20,000
3 this year.

4 It's also important for the Commission to
5 understand that my direct competitors are sales
6 representatives for importers of Chinese products like
7 Matco Norka, Smith Cooper and B&K. Just as Ward
8 stands behind the products that I sell, Matco Norka,
9 Smith Cooper and B&K stand behind the Chinese
10 products. These sales reps are doing the same thing I
11 do, calling on the same customers and selling this
12 same product with the same delivery schedules, only
13 their prices are 30 to 50 percent below mine.

14 Sixty percent of Kast Marketing's revenues
15 come from our sales of Ward products. Imports of
16 malleable pipe fittings from China have devastated my
17 malleable business over the last few years. I ask
18 this Commission to make an affirmative injury
19 determination so that Ward and I can remain in this
20 business.

21 Thank you.

22 MR. SCHAGRIN: Thank you, Mr. Kafenstock.

23 Now I'd like to ask Mr. Maloney to present
24 his testimony.

25 MR. MALONEY: Good morning, Chairman Okun

1 and members of the Commission. For the record, my
2 name is A.J. Maloney. I am Executive Vice President
3 of Coburn Supply Company located in Beaumont, Texas.

4 We are a family owned company and have been
5 in business since 1934. We are a distributor of
6 products for the plumbing, heating, air conditioning
7 and waterworks industries. I have personally been in
8 the business for 28 years.

9 Coburn has 34 sales outlets located in 30
10 cities in east Texas and Louisiana. Even though we
11 are a large distributor in our region, we are a small
12 distributor in comparison to the national distributors
13 like Hughes and Ferguson, as well as national hardware
14 chains like Home Depot and Lowes.

15 In order to increase our competitiveness
16 with these national chains, we are part of a buying
17 group called the Embassy Buying Group, Ltd., which is
18 composed of 60 small and medium sized distributors
19 like ourselves. This gives us an opportunity to get
20 better prices and to share in volume rebates for
21 malleable pipe fittings.

22 Our buying group has negotiated volume
23 incentive programs with both Matco Norka for Chinese
24 fittings and with Anvil for domestic fittings. We do
25 our own buying from these two companies, but the

1 prices and volume discounts have been worked out by
2 the buying group.

3 Because the prices of Chinese malleable
4 fittings cost so much less than domestic fittings, we
5 have increased our purchases of Chinese fittings
6 significantly in the past several years. Four or five
7 years ago, I would say that 50 percent of our outlets
8 sold Chinese product and 50 percent sold domestic.
9 Today, more than three-quarters handle only Chinese
10 product, and only one-quarter sell domestic. While at
11 one time there was a quality difference between the
12 Chinese malleable fittings and domestic fittings, I
13 would say that those quality differences have largely
14 disappeared.

15 Given the significantly lower pricing of
16 Chinese products, fewer contractors are going to ask
17 us for domestic fittings. Therefore, in my opinion,
18 if something is not done about the pricing of imports
19 from China I would guess that we will be selling 100
20 percent Chinese fittings in all of our outlets within
21 the next few years.

22 I think it would be a shame for the
23 contractors that we sell not to have the option of
24 purchasing domestic fittings, but it is unlikely that
25 the domestic industry can survive with the pricing

1 disparity that exists today.

2 Thank you for the opportunity to appear here
3 today.

4 MR. SCHAGRIN: Thank you, Mr. Maloney.

5 Mr. McInerney?

6 MR. MCINERNEY: Good morning, Chairman Okun
7 and members of the Commission. For the record, my
8 name is Michael J. McInerney. I'm chairman of the
9 board and CEO of Thos. Somerville Company.

10 We are a family owned wholesale plumbing and
11 heating distributor housed with 21 outlets in
12 Washington, D.C., Maryland, Pennsylvania, Virginia and
13 West Virginia. The company was founded in 1861, and
14 I've been with the company since 1986.

15 We sell steel nipples and malleable fittings
16 as part of a package to plumbers and hydronic
17 installers that may include pipe, valve, hangers,
18 boilers and other products that are to be used to
19 install heating systems, gas lines, boilers and water
20 heaters.

21 As recently as 1999, we sold only domestic
22 fittings. However, in recent years we began
23 purchasing imported Chinese fittings from a national
24 master distributor. Our purchase of Chinese fittings
25 has grown in the past year because the price

1 differential of 30 plus percent are too much to
2 forego. These Chinese fittings meet the same ASTM
3 specifications as domestic fittings, and they're thus
4 completely interchangeable with domestic fittings for
5 our plumbing and hydronic customers.

6 Recently, eight of our 21 branches started
7 buying only foreign fittings. When I got into this
8 business in 1986, there were half a dozen U.S.
9 producers. Now there are two, Ward and Anvil. To be
10 honest, I think demand for those products has probably
11 increased over the past 15 years with the growth in
12 construction. However, imports have taken this
13 growth.

14 The Thos. Somerville Company is a major
15 regional distributor and must compete with national
16 distributors who are in our region, such as Ferguson,
17 Hughes and Nolan. We must also compete with national
18 retailers, such as Home Depot, Lowes and Ace Hardware.
19 Our customers can just as easily buy from these
20 retailers as they can from a wholesaler. These
21 retailers have aggressively marketed to contractors.
22 If our competitors buy Chinese fittings, we have to as
23 well.

24 My perception is that if the government
25 doesn't level the playing field, the last two U.S.

1 producers will also go out of business, and our
2 company's 141 year history of selling domestic
3 products will end.

4 Thank you for the opportunity to testify.

5 MR. SCHAGRIN: Thank you, Mr. McInerney.

6 I would just like to interject. I know that
7 the Commission will find it very helpful that we have
8 representatives of major distributors probably that
9 fall into this category of primary distributors
10 because most of their sales are to large, non-
11 residential contractors.

12 As you'll hear from these witnesses, they
13 also sell a lot of products to residential contractors
14 as well. As you heard in their testimony, all these
15 contractors are buying from distributors or from
16 retailers. There really are no lines left in this
17 industry, and I think you'll discover that today.

18 It's so important to this industry, given
19 the issues you've had in your past cases, to have
20 representatives of distributors here. As you heard in
21 their testimony, they're either buying most of their
22 products as Chinese imports or a lot of their products
23 as Chinese imports, so they really don't have much
24 financial gain to make from being here except their
25 past personal relationships with these domestic

1 producers and, to be quite honest, a sense of
2 patriotism to support the continuation of a domestic
3 industry in this country instead of it just going out
4 of business. We are very appreciative of their
5 showing up here today even at some risk to their
6 business interest in supporting the domestic industry.

7 We're also very glad that Mr. Mitchell was
8 able to appear today because, as this Commission
9 knows, the union representatives and the union workers
10 are really in every case. That's where the rubber
11 meets the road. These are the unions who represent
12 the workers who make these products.

13 I'd like to introduce Mr. Mitchell, the
14 secretary and treasurer of the union. Joseph?

15 MR. MITCHELL: Good morning, Madam Chairman
16 and other Commissioners. My name is Joseph Mitchell,
17 Sr. I'm employed by the Glass, Molders, Pottery,
18 Plastics and Allied Workers International Union, AFL-
19 CIO-CLC, and my current position with our union is
20 that of international secretary/treasurer. I work out
21 of our international headquarters in Media,
22 Pennsylvania.

23 I'm here today speaking on behalf of our
24 international president, James H. Rankin, and our
25 membership who work in the following industries across

1 America and Canada. These industries are glass,
2 plastics, molten cast metals, fiberglass, television
3 products, vitreous china, tableware, plastic closures,
4 sand mixes and related products. In other words, our
5 union represents workers in a host of manufacturing
6 sectors.

7 Our union has been representing workers for
8 over 125 years. Obviously I'm here today because of
9 the issue of jobs and meaningful benefits that are at
10 risk by unfair trade practices that exist today,
11 especially from China.

12 As most of you know, America has lost 2.7
13 million manufacturing jobs in the last three years and
14 no end in sight for the return of these lost jobs.
15 Eighty-one percent of competition for American jobs
16 are from developing countries with low cost labor, no
17 benefits and safety work rules or concern for our
18 environment.

19 Seventy-two percent of Americans believe
20 unfair competition comes from countries that abuse
21 their workers and damage the environment. Sixty-seven
22 percent of Americans believe our trade policies are
23 unfair and not balanced. Sixty-two percent of
24 Americans blame our government. Sixty percent of
25 Americans blame American corporations.

1 Sixty-eight percent of Americans strongly
2 believe and are in favor of enforcing fair trade,
3 especially with countries like China. The trade
4 deficit with China has moved from \$39 billion to \$137
5 billion and is growing.

6 What's happening to our GMP membership? I
7 would point out that in this particular industry, the
8 foundry industry, the organized plants across this
9 country, our union represents the lion's share. The
10 other organization is the steelworkers.

11 What's happened to our GMP membership as a
12 result of unfair trade? Since 1999, 43 metal cast
13 shops have closed their doors, good paying jobs that
14 also provided meaningful benefits like health care for
15 themselves and their families, holidays, pensions.
16 They're all gone and gone for good in the metal cast
17 industry.

18 Think about the economic impact on thousands
19 of displaced workers. Let me tell you. I work in our
20 international headquarters. Unfortunately, most
21 recently there isn't a week goes by that we don't get
22 a call from an employer indicating that they cannot
23 compete with products being shipped in, and I'm
24 specifically referring to the foundry industry.
25 Shipped in from China. It's a very, very serious

1 problem.

2 With the issue before you for consideration
3 malleable iron pipe fittings, there are only two
4 domestic manufacturers left, Ward Manufacturing and
5 Anvil. I want to compliment those employers for doing
6 the right thing. They're here today protecting jobs,
7 good paying jobs that have meaningful benefits for our
8 membership. Quite frankly, we need more of that.

9 Without a positive and affirmative ruling
10 against China, these plants are in real jeopardy of
11 closing. Ward Manufacturing, as noted earlier,
12 started in 1924 and has been progressive in the
13 manufacturing process, providing significant wages and
14 benefits to our membership. Nevertheless, because of
15 dumped imports, they've already lost well over 250
16 hourly jobs and 24 salaried jobs. With these
17 unemployed workers went wages and benefits I addressed
18 earlier.

19 Anvil, which was formerly Grinnell, has
20 experienced the same job loss as a result of
21 importation of malleable iron pipe from China. The
22 issue with China has also impacted the raw material
23 prices for scrap metal that is recycled and is used to
24 make new products. China is on a buying binge, and
25 scrap prices are going through the ceiling. Again,

1 this makes American manufacturers less competitive.

2 I had an opportunity to appear before the
3 International Trade Commission back in the 1970s. At
4 that time, while it was for a different purpose,
5 unfortunately the result ended up being the same.
6 Back in the 1970s, we petitioned, along with 11
7 manufacturers in this country, for some relief for the
8 television products market.

9 The ultimate result of the decision by the
10 Commission at that time was to develop an orderly
11 marketing agreement that allowed the importers from
12 overseas to import various sizes of television sets
13 over a period of years. Guess what? That industry is
14 gone from this country. It was the American idea, and
15 it was stolen by foreign employers. With that went
16 hundreds and thousands of good paying American jobs.
17 I trust that the Commission's decision in this
18 particular matter will not come back and revisit us
19 the way that issue did.

20 Finally, given the crisis in the matter
21 relative to jobs, clearly the Trade Commission should
22 impose the appropriate penalties in the matter of
23 malleable iron pipe fittings or 731-TA-1021.

24 Thank you very much.

25 MR. SCHAGRIN: Thank you, Mr. Mitchell.

1 Chairman Okun, members of the Commission,
2 that completes our direct presentation. We'd be happy
3 to answer your questions.

4 CHAIRMAN OKUN: Thank you. Before we begin
5 our questions this morning, let me take this
6 opportunity to thank all the witnesses for being here.
7 Welcome back to many of you who have appeared on other
8 occasions. We appreciate your willingness to be here
9 and to answer our questions and also not only from
10 industry, but a representative from labor for being
11 here as well.

12 I'd like to remind witnesses that when
13 you're answering questions if you could just repeat
14 your name. It's easier for the court reporter, and we
15 can't see everyone's name plate in front, so that
16 would help all of us.

17 COMMISSIONER MILLER: Thank you, Chairman
18 Okun. And let me join in welcoming all of the
19 witnesses to the representative from Ward and Anvil.
20 I think everyone of you were here in February, so
21 welcome back. Sorry you had to be here again, but we
22 appreciate your willingness to do, and welcome to the
23 new group of distributors, and we appreciate your
24 participation because your testimony, I think, as Mr.
25 Schagrin already indicated, is important to us.

1 I think I want to begin by trying, to make
2 sure I understand the market, and how it has evolved
3 over time, the changes that have occurred and when
4 they occurred, and the role of imports from China in
5 that evolution.

6 So actually in some ways this came off from
7 Mr. Schagrin a moment ago. I think he said there are
8 no lines left in this industry, and the Commission has
9 seen lines in the past. So what I would like to ask
10 perhaps those who -- the distributors, let me start
11 with the distributors -- about how the industry has
12 evolved on the distribution side, the markets, the
13 wholesale and retail markets, and their separation, or
14 the blurring of that separation in the last -- well,
15 in whatever time you have seen that blurring occur.
16 That's really what I want to understand.

17 So it's kind of a big open-ended question.
18 Mc. McInerney, you were last, do you want to be first
19 now? You were last of the distributors at least.

20 MR. McINERNEY: Sure. My name is Michael
21 McInerney.

22 What we have seen over the last four or five
23 years is a consolidation in the wholesale industry. I
24 don't know what the numbers, but the small wholesaler
25 has basically been gobbled up or gone out of business,

1 and the industry is consolidating from that point of
2 view.

3 Four or five years ago, we didn't consider
4 our competitor to be Home Depot or Lowes or any of
5 those people. That industry had many more hardware
6 stores, the local hardware stores, and you all know
7 what happened there. Home Depot comes in, and builds
8 a 120,000 square foot store. The local hardware store
9 guy goes out of business. And Lowes comes in and puts
10 a store right next to Home Depot, and they battle it
11 out.

12 With that happening, our plumbers can go to
13 Home Depot or to Lowes and essentially buy a lot of
14 the products or all of the malleable fittings that we
15 have in our inventory.

16 So also, if you read any of the plans of
17 Home Depot especially, they are having a major push in
18 the contractor area, to get the contractor to buy more
19 products from them. They have set up special
20 contractor-only desks. It's a major part of their
21 growth plan if you read part of their growth plan.

22 So I would sum up and say that there are a
23 number of things that have happened. You have had a
24 consolidation within the wholesale business. The
25 smaller guy is having a tough time.

1 In that consolidation you have had two major
2 wholesalers, which one is Woolsley Hughes, which owns
3 Ferguson, an English company, and the other is Hughes
4 Supply, which is listed on the New York Stock
5 Exchange. They have bought a lot of the small
6 wholesalers, and are using imported fittings. So we
7 have to compete with them also at the same time.

8 So you have had a consolidation, and you
9 have another new major competitor, and that would be
10 the big bucks retailers.

11 COMMISSIONER MILLER: So let me make sure.
12 What I hear you saying is a little bit of two parts.
13 One is consolidation among the wholesalers themselves.

14 MR. McINERNEY: Right.

15 COMMISSIONER MILLER: With the smaller
16 wholesalers that might have been your customers
17 dropping out?

18 MR. McINERNEY: No, no. I'm a wholesaler.

19 COMMISSIONER MILLER: You are a wholesaler.

20 MR. McINERNEY: I'm a wholesaler.

21 COMMISSIONER MILLER: Smaller organizations
22 like yourself dropping out.

23 MR. McINERNEY: Yes.

24 COMMISSIONER MILLER: The smaller ones. And
25 then on the other side, on the retail side

1 consolidation as well, to the extent that the large
2 box stores, and it's not consolidation, I don't know
3 what I want to call the --

4 MR. McINERNEY: That's not consolidation
5 because Home Depot and Lowes don't buy anybody. They
6 just put them out of business.

7 COMMISSIONER MILLER: Exactly. Exactly.
8 Exactly. But in both sides what you're talking about
9 is a dominant of the large players.

10 MR. McINERNEY: Right.

11 COMMISSIONER MILLER: Whether it's retail or
12 wholesale.

13 MR. McINERNEY: Right.

14 COMMISSIONER MILLER: Okay.

15 MR. McINERNEY: But you're also talking
16 about new competition for the wholesaler --

17 COMMISSIONER MILLER: Yes, I was --

18 MR. McINERNEY: -- which he never had
19 before.

20 COMMISSIONER MILLER: -- going to go to
21 that. That's what I was going to go to next.

22 MR. McINERNEY: Right.

23 COMMISSIONER MILLER: Okay. On retail and
24 wholesale in terms of where I could go in and buy, you
25 know, you have the larger stores taking over, the

1 customers of the wholesalers versus the retailers,
2 you're also saying that's where there is another
3 blurring if I hear you, because for the most part the
4 customers -- who are the customers of the wholesalers,
5 the large wholesalers?

6 MR. McINERNEY: They are the plumbers,
7 mechanical contractors, very little retail. We do
8 very little retail.

9 COMMISSIONER MILLER: But are they -- the
10 plumbers that are putting something into, the plumbing
11 at my house or are they plumbers that are installing
12 the waterworks for the major --

13 MR. McINERNEY: Both, both, both.

14 COMMISSIONER MILLER: Okay. Both. All
15 right, that's useful.

16 Mr. Maloney, do you want to try to give me
17 your sort of time line on the same kind of questions?

18 MR. MALONEY: Well, I think Mr. McInerney
19 made set it out in an excellent fashion. I think he's
20 hit all of the major points. I think the only thing I
21 would add to it is that the pressure that we get, and
22 again I'll echo his statements in that we sell to both
23 the contractors that do the commercial building and
24 the contractors that do residential building. All of
25 those contractors are our customers.

1 And the price pressures that our customers
2 are under to be competitive in their job bids to gain
3 work cause them to keep looking at all of the material
4 prices in order to make sure that they can stay
5 competitive and they can get the work that's out
6 there.

7 And so whether the pricing is in a big box
8 retailer or in a wholesaler, they are still comparing
9 the same prices, okay, if they perceive it to be the
10 same product. And I think the information that we
11 have that it's all manufactured to the same
12 specifications, and the contractor is more and more
13 establishing in his own mind that if it's an equal
14 product then I have to buy what's the least expensive
15 so I can gain the work to be able to employ my people,
16 et cetera, et cetera.

17 COMMISSIONER MILLER: Okay. Now, are you
18 selling -- if you're selling to the large industrial
19 contractor and to the contractor that is selling into
20 residential, are you selling the same product to both?

21 MR. MALONEY: Sure. Yes.

22 COMMISSIONER MILLER: Or are they -- they
23 are buying the same product.

24 MR. MALONEY: Right.

25 COMMISSIONER MILLER: Okay.

1 MR. MALONEY: Concerning malleable fittings.

2 COMMISSIONER MILLER: Right. Right.

3 MR. MALONEY: It is the same product,
4 exactly the same.

5 COMMISSIONER MILLER: Okay. Mr. Kafenstock?
6 Yes, Mr. Kafenstock?

7 MR. KAFENSTOCK: Chuck Kafenstock, yes.

8 COMMISSIONER MILLER: Same question, and let
9 me add this element to you. How do the imports from
10 China and in what kind of time frame did you begin to
11 see them in the markets that you sell into?

12 MR. KAFENSTOCK: The imports from China I
13 would say really started to catapult in '99 - 2000,
14 and they did so because, frankly, their quality became
15 compliant, and they had distribution centers
16 throughout the United States.

17 Prior to '99, in the Midwest there were no
18 redistribution centers of the foreign product at the
19 wholesale level. We start at the retail level sort of
20 peripherally, but didn't see at the wholesale level.

21 Currently, in Chicago, there are four
22 distribution centers for Chinese fittings, and there
23 are two distribution centers for domestic. So as the
24 availability got easier the price spread is
25 compelling, essentially the marketing companies who we

1 compete with went directly to the contractor and said
2 go to your wholesaler, wink-wink, there is a huge
3 price difference.

4 The wholesalers were compelled to say yes, I
5 can sell you this one for a dollar, this one for 50
6 cents. Well, how is that 50-cent one? Pretty good.
7 Now we have erosion.

8 COMMISSIONER MILLER: Okay, I probably will
9 have some follow up but the red light is on. I
10 appreciate all of your answers to me. Thank you.

11 CHAIRMAN OKUN: Commissioner Koplan.

12 COMMISSIONER KOPLAN: Thank you, Madam
13 Chairman. I want to thank the witnesses for their
14 direct presentations. You have touched on a lot of
15 areas that I have particular interest in.

16 Let me just start, if I could, Mr. Schagrin,
17 with you. I should say also that we probably should
18 have put a card in here for you this week, because
19 we're going to be seeing a lot of you, I take it.

20 MR. SCHAGRIN: I enjoy it here at the
21 Commission very much. I hope the feeling is mutual.

22 COMMISSIONER KOPLAN: Well, I will deal with
23 that later. Thank you.

24 I just wanted to touch on something that was
25 in your opening statements, two things that you said.

1 One, you said that the profit levels for the domestic
2 industry are on the verge of disappearing; and the
3 other was that the Chinese imports dominate the
4 market.

5 I just want to call your attention to Table
6 C-1 of the staff report which you are privy to but
7 your clients aren't because it's basically all
8 bracketed. But that table for the record is headed
9 "Malleable Iron Pipe Fittings: Summary Data
10 Concerning the U.S. Market, 2000 to 2002, January -
11 June 2002, and January - June 2003."

12 And I would just direct your attention to
13 that portion -- I'm trying to do this without getting
14 into numbers -- that portion of the table that deals
15 with U.S. consumption quantity, and has the Chinese
16 importers' share during those periods.

17 And I would simply ask you, do you disagree
18 with the numbers that appear there that staff have
19 provided?

20 MR. SCHAGRIN: No, I don't disagree,
21 Commissioner Koplan.

22 COMMISSIONER KOPLAN: Okay. And the also
23 with regard to the bottom of that page, operating
24 income or loss as a percent of sales, do you disagree
25 with those numbers?

1 MR. SCHAGRIN: No, I don't disagree.

2 COMMISSIONER KOPLAN: Okay. Need I say
3 anymore?

4 MR. SCHAGRIN: No, I'll answer your question
5 now.

6 COMMISSIONER KOPLAN: I think you just
7 answered my question.

8 MR. SCHAGRIN: No, I think that your
9 question was how does my opening statement --

10 COMMISSIONER KOPLAN: Right.

11 MR. SCHAGRIN: -- comments on profits in the
12 industry be on the verge of disappearing and the
13 Chinese dominating the market comport with the
14 information in the staff report.

15 And I think that that data, which I'll just
16 characterize, shows the large growth in Chinese market
17 share over the POI, to a point where, combined with
18 their extremely low pricing, anyone in this room on
19 this panel would say it is now the Chinese product
20 that is beginning to dominate the U.S. marketplace.

21 That doesn't mean that there is not market
22 share of the domestic industry that's still quite
23 significant. It doesn't mean that there is not non-
24 subject import market share that's significant. I
25 means that the growth in Chinese market share to the

1 extremely high levels that it's at now, combined with
2 their pricing, makes them, based on my analysis and
3 work in this industry and conversations with
4 distributors and analyses of all of the information in
5 the staff report, means that those Chinese imports are
6 now the dominant force in the U.S. marketplace, both
7 the combination of the high value and their low
8 prices.

9 COMMISSIONER KOPLAN: I appreciate what you
10 are saying.

11 MR. SCHAGRIN: Okay.

12 COMMISSIONER KOPLAN: I was asking you the
13 question because obviously we went threat initially.

14 MR. SCHAGRIN: Correct.

15 COMMISSIONER KOPLAN: And you have touched
16 on where I am coming from. When I look at the
17 combination of non-subject imports and the share of
18 the market that the domestic industry has, I am
19 struggling to find telling domination as such. I
20 understand the increase that's taken place, and I
21 understand the trends that are going on. But when I
22 look at the current operating income figure and the
23 current combined share of non-subjects and domestic, I
24 don't come out at this point quite the same way.

25 If you want to elaborate on that in a post-

1 hearing, but that's not really the standard here
2 either.

3 MR. SCHAGRIN: Correct, and we will
4 elaborate, and I know that.

5 COMMISSIONER KOPLAN: But you understand why
6 I raised it.

7 MR. SCHAGRIN: I certainly do.

8 COMMISSIONER KOPLAN: Thank you.

9 Because the Commission made an affirmative
10 threat determination, I'm particularly interested in
11 the role, still interested in the role that flexible
12 tube being a corrugated a stainless steel tubing has
13 in this industry, not only now, but prospectively.

14 The Commission indicated that it was going
15 to explore this issue further at the time of our
16 preliminary determination, and you all have been
17 addressing that this morning in your direct
18 presentation.

19 Mr. Gleason, I believe you said that it
20 represents one to two percent of malleable fittage
21 uses in your direct presentation.

22 Ward's website states, I have a copy of this
23 here, that you premier product, Ward Flex, is a
24 corrugated stainless steel gas piping system.

25 I know that you have downplayed the role of

1 flexible tubing earlier as well in your estimate of
2 approximate domestic consumption that would
3 characterize as minuscule. That figure was BPI in
4 your submission so I can't get into that.

5 However, if it is a substitute product in
6 the wholesale market, and if I agree with your
7 argument that the lines have become blurred between
8 the retail and wholesale markets for malleable iron
9 pipe fittings, I need to know in practice whether
10 flexible tubing has been qualified for use in most of
11 the same applications as malleable fittings.

12 I would like to hear from not only Ward and
13 Anvil, but from our other industry witnesses as well,
14 and I would like you to tell me in responding whether
15 you can provide me for the record with marketing
16 materials, your current business plan, you know, where
17 you see this product going in the near future with
18 you, and what percentage of your sales today are
19 flexible tubing.

20 Why don't I start with you, Mr. Gleason.

21 MR. GLEASON: That's a whole bunch.

22 COMMISSIONER KOPLAN: Do you want me do it
23 over it again?

24 MR. GLEASON: No.

25 COMMISSIONER KOPLAN: Okay. You understand

1 what I'm looking for.

2 MR. GLEASON: Yes.

3 COMMISSIONER KOPLAN: Documentation.

4 MR. GLEASON: What I would like to do is I
5 did prepare some very confidential information that I
6 can leave with you. It is extremely confidential. It
7 gives a three-year history of where our business is.
8 It makes -- I have been with this product for 20
9 years. I consider myself an expert on it. In fact,
10 wrote the ANSI standard for it.

11 The product was developed in Japan. It was
12 primarily developed for earthquake zones, and elevated
13 pressure systems.

14 The market in the United States, quite
15 honestly, the American Gas Association and the Gas
16 Research Institute in the 1980s latched onto this
17 product line primarily because they needed a way to
18 compete with electrical -- for electrical jobs.

19 You have got, I don't want to get into the
20 gas industry, but the gas industry is in the business
21 of selling gas. When you have a retrofit or a
22 rehabilitation process, it's a pain in the butt in
23 steel pipe and fitting to run steel pipe in an
24 existing building.

25 The electrical contractor always got that

1 work because you can run wire in a retrofit and rehab
2 project.

3 With CSST, corrugated stainless steel
4 tubing, what it gave the gas companies was an
5 opportunity now to compete. I can put a gas water
6 heater in instead of an electric water heater. So the
7 basic growth or the major market for this has been
8 retrofit and rehab.

9 And also does it compete with steel pipe
10 and elbow fittings? Sure, and I've got numbers here,
11 you know, that will show what percent of our market I
12 honestly feel that it has affected. But what it has
13 done is created more market. It has given the gas
14 industry opportunities to go places they have never
15 gone before, so it's not that CSST is a substitution,
16 it basically created a market for itself.

17 Can it be used in lieu of steel pipe? Yes,
18 if you want to pay the price, which I have shown here
19 between CSST and steel pipe.

20 So I will provide you this but it's
21 extremely confidential.

22 COMMISSIONER KOPLAN: I appreciate that and
23 it will be held that way.

24 MR. SCHAGRIN: We'll provide it all in the
25 post-hearing brief.

1 COMMISSIONER KOPLAN: I appreciate that.

2 Mr. Fish, did you want to comment?

3 MR. FISH: Mr. Koplan, I don't have anything
4 to add to that. From my standpoint, we do not
5 manufacture that product, and we have not seen it as a
6 serious threat to our business.

7 Again, I don't think from a cost-
8 effectiveness standpoint in new construction it can
9 complete with the steel pipe and fittings. But again,
10 I would defer to Mr. Gleason since they make it and
11 are focused on that market.

12 COMMISSIONER KOPLAN: Thank you.

13 Do the other industry witnesses want to add
14 anything to that from your own experience?

15 MR. McINERNEY: I guess, from our experience
16 since --

17 COMMISSIONER KOPLAN: Would you identify
18 yourself again for the records, sir?

19 MR. McINERNEY: My name is Michael
20 McInerney.

21 We don't sell any Ward Flex. We sell
22 another product, but -- Mega Flex.

23 COMMISSIONER KOPLAN: I hope I haven't
24 started a problem.

25 MR. McINERNEY: Get myself in trouble here.

1 I think the big replacement factor has been
2 in steel pipe. It's labor saving from that point. If
3 you are putting a gas line into a residential house,
4 you're not putting in steel pipe from the corner, from
5 the -- you know, the street to the house. You're
6 unrolling a coil of Ward Flex or whatever it is, and
7 it's reduced dramatically our steel pipe sales for
8 that type of business.

9 COMMISSIONER KOPLAN: Thank you. Thank you
10 for indulging me, Madam Chairman. I appreciate your
11 responses.

12 CHAIRMAN OKUN: Commission Lane.

13 COMMISSIONER LANE: Thank you. I appreciate
14 all of you being here today. I do have a few
15 questions.

16 The quality of the Chinese product, if it
17 meets the U.S. standards, the ASTM standards and the
18 ASME standards, are there still quality differences
19 between the domestic product and the Chinese imports?

20 MR. SCHAGRIN: I'll probably let the
21 distributors answer that, Commissioner Lane, because
22 domestic producers always believe their product is
23 better, but the fact is they are exactly the same
24 products. Maybe I'll let the distributors answer, and
25 maybe Kevin or Bob can talk about the standards a

1 little bit.

2 Can the two distributors answer if there is
3 any difference between the quality.

4 MR. MALONEY: A. J. Maloney. Right, okay.

5 I think that the standards are the same for
6 both in that both have been -- meet those standards
7 and the ISO-9002 standards, and et cetera.

8 The key issue is in the perception of our
9 customer as to whether or not they prefer a domestic
10 only or they're looking for a product that only --
11 that does meet the exact specifications, and I think
12 we are seeing more of that as time moves along, is
13 that if it meets the specifications and the price is
14 right, then that's the product that they select.

15 MR. MCINERNEY: I really have nothing to
16 add. I mean, the foreign manufacturers tell us that
17 it meets all the standards. You know, I -- but we
18 don't test anything, or we don't -- we don't test
19 anything, and I would assume it's certified by the
20 testing agencies, and we rely on them. But you would
21 have to look at their literature, and that literature,
22 I believe, will say that it meets all the various
23 standards.

24 MR. BARRON: My name is Kevin Barron, and I
25 am the operations manager at Ward Manufacturing.

1 And to answer your question, they are very
2 similar products. There is essentially no difference.
3 They are manufactured to ASTM material standards. The
4 geometries for the product are specified by the ASME
5 as is the treading specifications, so they are
6 perfectly interchangeable.

7 Often, these are also -- the qualities of
8 these products are verified by third parties such as
9 UL or FM, Underwriters Laboratory, and Factory Mutual.
10 So they are interchangeable and there is virtually no
11 difference.

12 MR. KAFENSTOCK: My name is Chuck
13 Kafenstock.

14 Recently, in northern Illinois there was a
15 trade show for contractors only, and at the trade show
16 one of our foreign competitors had a weight scale, and
17 on that scale he had a Ward fitting and a Chinese
18 fitting, and the point of the scale was to impress the
19 contractors with the weightedness of the fitting and
20 that theirs was not only equal, but superior quality.

21 So I would say that they are attacking the
22 quality issue quite well.

23 COMMISSIONER LANE: Okay, thank you.

24 In looking at the customers, do industrial
25 users and I'm talking about the people that use -- the

1 natural gas industry as opposed to the construction
2 industry, do they get their fittings from the domestic
3 industry or the Chinese industry?

4 MR. SCHAGRIN: Both. Maybe Mr. Martin might
5 want to --

6 MR. MARTIN: Yes, John Martin.

7 We see more and more inquiries and/or
8 project bids or annual contracts, if you will, that
9 will take domestic or import, either one, or Chinese.
10 It's back to the quality issue, and the quality stays
11 pretty well the same.

12 COMMISSIONER LANE: Are the fitting sold in
13 the residential market different from those sold in
14 the commercial industrial markets? And if so, how are
15 they different?

16 Mr. Gleason, I see you shaking your head?

17 MR. GLEASON: Excuse me. I do that a lot.
18 I'm getting old.

19 But, Commissioner, there is absolutely no
20 difference in the fitting at all what's sold into any
21 market. They are identical. We don't make two grades
22 of fittings for different markets.

23 COMMISSIONER LANE: In looking at the staff
24 report, there are eight products that are compared.
25 Which of those products had the largest retail market?

1 MR. FISH: Typically the smaller sizes are
2 more predominant in the retail market, you know, below
3 two inch. Also, the retail market is a larger
4 galvanized market.

5 COMMISSIONER LANE: So it would be less than
6 two inches for the retail market?

7 MR. FISH: Yes, that is true.

8 COMMISSIONER LANE: Okay. And so then the
9 wholesale market will be over two inches?

10 MR. FISH: No, the wholesale market uses all
11 products as well, but I'm just saying if you wanted to
12 focus on which products were sold into primarily the
13 retail market, you have customers, consumers coming
14 in, and they're not going to be replacing a three or a
15 four-inch line. They are going to be hooking up a gas
16 stove or doing, you know, some minor things like that.

17 MR. GLEASON: Commissioner, as far as these
18 eight items, these eight items are popular in both the
19 whole and the retail market equally.

20 COMMISSIONER LANE: Going to the flexible
21 tubing or whatever it's called, I understand that that
22 is creating a new market, and it is not necessarily
23 competing with the existing market of the malleable
24 fittings, but is there a difference in the useful like
25 of the two products?

1 MR. GLEASON: There is quite a few
2 differences in the product. One, flexible tubing,
3 whether it's Ward Flex or my competitors, is only
4 rated for 5 psi systems. Malleable fittings are rated
5 for up to 300 psi. So there is a lot of substitution
6 that can happen just by the nature of the product
7 itself and its rating.

8 As far as costs are concerned, it costs a
9 lot more in materials to install corrugated stainless
10 steel tubings as much as three times, and I will enter
11 this into -- you will see the numbers of a comparison
12 that I have done.

13 COMMISSIONER LANE: Okay, I don't have any
14 further questions.

15 CHAIRMAN OKUN: Commission Pearson.

16 COMMISSIONER PEARSON: Thank you, Madam
17 Chairman. I appreciate you being here today. Your
18 statements have been --

19 CHAIRMAN OKUN: Commissioner Pearson, will
20 you make sure your red light on your microphone -- it
21 hasn't been used for awhile -- but on?

22 COMMISSIONER PEARSON: Is it on?

23 CHAIRMAN OKUN: Just pull it closer then so
24 they can hear.

25 COMMISSIONER PEARSON: One of the joys of

1 being a new commissioner.

2 At any rate, I have been learning things
3 from your statements. Yet I still obviously have some
4 learning to do.

5 I particularly would like to understand a
6 little bit more about the pricing in the marketplace.
7 The price data that the Commission has available
8 indicate that, as you look at comparisons between
9 specific malleable fittings, that the domestic product
10 seems to be consistently priced at a level above the
11 imported product. And if I understood correctly in
12 your open statement, Mr. Schagrin, you indicated that
13 perhaps 10 to 15 percent of U.S. demand is accounted
14 for by American preferences, okay.

15 But my understanding is that U.S. domestic
16 production is larger than 10 to 15 percent of total
17 demand.

18 Am I correct in understanding that the
19 relatively higher price earned by domestic production
20 applies not just to the 10 to 15 percent that has a
21 Buy American requirement, but rather that it applies
22 to all the domestic production?

23 MR. SCHAGRIN: That's correct, and I'll
24 invite representatives of the producers to speak to
25 that issue as well as maybe the distributors.

1 But, Commissioner Pearson, one thing is just
2 to clarify. I was talking about Buy American
3 preferences, not Buy American statute, which would
4 only apply to Department of Defense, or this product
5 is rarely used in transportation which has all of it's
6 Buy America. That would probably only account for two
7 to three, maybe five percent of the market.

8 What we do have is a strong Buy America
9 preference, particularly by plumbing trade unions in
10 certain northeast cities like New York City where they
11 will tell contractors that they will only install
12 American products, and so that's a Buy America
13 preference of the trade unions that are installing
14 these products. We would estimate that that would
15 account for 10 to 15 percent of the market.

16 The remaining market -- the price date,
17 obviously, applies to all sales by the domestic
18 industry so that higher price compared to the imports
19 applies to the entirety of their sales, and
20 unfortunately, as you can see from the data, because
21 of the price differentials that's a dwindling market
22 for the domestic industry. They are unable to
23 continue to compete at significantly higher prices
24 than the imported product.

25 Some of these distributors keep selling

1 domestic products, and they are selling them at higher
2 prices presumably than the Chinese products, and are
3 also making a fortune on the Chinese products. But
4 that's why they are turning, I like Mr. Maloney said,
5 he's gone from 50 percent of his sales being Chinese
6 to 75 percent over this POI, and it will be 100
7 percent soon unless something changes.

8 Mr. Martin, are you going to continue selling
9 at higher prices than the Chinese or the inability to
10 do that?

11 MR. MARTIN: Well, yes -- John Martin -- we
12 continue to do that, but the volume obviously is what
13 we are here about continues to dwindle. For us to
14 make an acceptable margin, we can't -- we don't want
15 to sell lower than the prices that we do today.

16 COMMISSIONER PEARSON: So I hear what you're
17 saying, but still it's not completely clear to me.
18 What's going on in this particular marketplace which,
19 you know, I am not terribly familiar with it, but it
20 seems to me unlike the markets that I am quite
21 familiar with where I would have an expectation that
22 prices might converge. And yet here, and to your
23 considerable credit as marketers, okay, you're
24 maintaining what appears to be price advantage.

25 Could I have comments both from the

1 producers and from the wholesalers on this?

2 MR. GLEASON: Commissioner Pearson, Tom
3 Gleason.

4 When you look at competition, I can compete
5 with Anvil. I can compete with Japan, Germany,
6 France, Italy, Spain, any country that's got
7 comparable costs that I have: environmental costs,
8 worker protection costs. Bring them, on, let's go at
9 it. I cannot compete with countries that don't have
10 comparable costs associated with their production
11 process.

12 When you look at the price of the Chinese
13 product, not necessarily what they are selling it into
14 the market for, but what B&K and Matca-Norca are
15 buying it for, and you see that range, and you look at
16 it and say, sure, I can drop my price 60 percent and
17 compete. Not. There is just no way.

18 The best you can do is hold onto what you
19 have in terms of price. We haven't had a price
20 increase in a couple of years. So I can't go down.

21 We're a capital-intensive consuming
22 industry. We're sand, we're molten iron. We are
23 wearing our equipment out every day that we use it.
24 We have to save our money three places. I have to
25 save my money to put in \$7 million worth of

1 environmental equipment, and shame on me if I'm
2 looking badly upon by this Commission for being
3 profitable. That's what I'm in business for.

4 Unfortunately, to be profitable it has done
5 two things. I have had to reduce my production force,
6 and we have had to increase our productivity, and
7 we've had to control our costs. That's what business
8 is about, and there is just no way that we could take
9 our price down to where it was, where the Chinese are
10 playing.

11 COMMISSIONER PEARSON: And I understand
12 that, but there must be something on the demand side
13 of the market that allows two different prices to be
14 sustained in the marketplace.

15 MR. GLEASON: In terms of sales and
16 marketing, businesses are relationship business. We
17 have had relationships with wholesalers since 1924,
18 and some of them just want to support us, and some of
19 them are making a nice margin when they resell a
20 domestic product. You know, it's their cost plus.
21 You know, others want to make a bigger margin by
22 exploiting the difference in the costs that they can
23 buy their product for.

24 But we have had loyalty, but I mean the
25 pricing is getting so bad that they are saying, love

1 ya, but see ya.

2 MR. SCHAGRIN: By the way, Commissioner
3 Pearson, I should add in, since I know this is your
4 first case, and I have done a lot of these cases,
5 you'll be happy to know that your perception is that
6 this is very different from the norm. This Commission
7 is used to seeing in most cases that when imports
8 undersell the domestic industry the industry responds
9 by reducing its prices to try to maintain volume
10 because in most basic industries there is a real close
11 relationship between volume and costs, and there
12 should be a relationship between the prices you sell
13 at and their ability to get volume.

14 And I would say what makes this case unusual
15 is that the amount of underselling is much larger than
16 the normal case, so that these two domestic producers
17 don't have the normal choice that this Commission sees
18 in the normal case, in fact, they saw it in the case
19 that you voted on yesterday, where producers think if
20 I cut my price by five percent, I can maintain volume
21 and keep my costs steadier, if I cut my price by 10
22 percent.

23 Here they say if I cut my price by five or
24 10 percent, all I do is reduce profit. I can't regain
25 any volume from the Chinese because the Chinese prices

1 are 30 or 40 percent less than mine.

2 So it does make it an unusual situation. It
3 has prevented them from increasing their prices, and I
4 think, you know, you see a dramatic fall-off in volume
5 over this POI by the domestic industry. So what's
6 happening is as the domestic industry tries to hold
7 price, the Chinese are just gobbling up market share
8 and the domestic industry is seeing volumes go down by
9 as much as a third or more, and that in turn is
10 causing them problems on the cost side. It's just
11 causing their profits to fall dramatically even as
12 they hold price.

13 Any comments by the distributors about your
14 ability to sell domestic at higher prices versus the
15 Chinese at lower prices versus just changing to all
16 Chinese at your distribution?

17 MR. McINERNEY: We don't want the --

18 COMMISSIONER PEARSON: Your name, please?

19 MR. McINERNEY: Michael McInerney.

20 Obviously, if we can establish say with the
21 mid-size and smaller customers a domestic price
22 relationship, and sell them foreign product at that
23 price, right, our margin is greater. So there is no
24 interest on our side in bringing down the domestic
25 prices.

1 Now, obviously, we're selling much more
2 foreign -- we didn't sell any foreign product in 1999.
3 And it's growing substantially. So there is no
4 impetus on our side to bring the market down because
5 just for the reason I stated; and secondly, it
6 devalues all of our inventory, and devalues our -- if
7 we were to bring it down, we couldn't afford to buy
8 any domestic stuff. We would forget about it.

9 COMMISSIONER PEARSON: I would just note in
10 closing that Commission price data do indicate that
11 prices for domestic malleable fittings increased
12 during the period of investigation whereas prices for
13 subject imports declined in some instances.

14 Now, you have indicated that there has not
15 been a price increase, and perhaps that an issue that
16 could be dealt with in the post-hearing briefs, if not
17 here in public. Thank you.

18 COMMISSIONER PEARSON: Well, I'll just add,
19 Commissioner, we will address it in the post-hearing,
20 but I think you will see, and we will address in more
21 detail, but that the entire price increase over the
22 POI, it all occurred between the first and second year
23 of the POI, and then prices were level in the last
24 year and a half of the POI.

25 CHAIRMAN OKUN: Mr. Schagrin, you will have

1 an opportunity to continue more during this hearing
2 because I'm just going to continue along the same line
3 of questioning, although I can say that I have heard a
4 lot of helpful testimony in terms of the market
5 dynamics and the responses you have given to my
6 colleagues. So I appreciate all those responses.

7 But I am going to just continue along
8 Commissioner Pearson's final questioning, and what you
9 ended with, Mr. Schagrín, and I read it in the briefs,
10 I've heard it from you, and I've heard it from Mr.
11 Gleason about, you know, there has not been a price
12 increase. And the pricing data for the eight products
13 that we collected data on, it shows price increase. I
14 mean, you have the data before you. Obviously, it's
15 business proprietary so we can't discuss it here.

16 But I'm having a hard time reconciling the
17 statements I'm hearing with the data that we collected
18 on these products, and I'm trying to figure out is it
19 the pricing data, is it the products, what's going on
20 here that we don't see what you're telling us.

21 MR. SCHAGRIN: Both these gentlemen will
22 respond to your question. We will obviously do a lot
23 of analysis of that in our post-hearing brief because
24 that way we can address the confidential information.

25 But in general, we believe the first half of

1 '03, the first two quarters of '03, and the latter
2 quarters of '02 don't show increases in prices on the
3 eight products as compared to the previous time
4 periods. But we will address that in our post-hearing
5 brief where we can actually discuss the confidential
6 data.

7 In the meantime, Mr. Gleason, do you want to
8 talk about general price increases or how you
9 establishing your pricing in terms of percentage?

10 MR. GLEASON: Generally speaking, prices --
11 it's hard for us to, because there is many elements to
12 the marketplace. Both of the witnesses here today are
13 parts of buying groups.

14 Now, buying groups in part of the contract
15 have a price -- period of time where prices, you might
16 announce the price increase in January, but it doesn't
17 take effect until June where other wholesales where
18 that contract isn't worked out they might take effect
19 immediately, so there is various timings.

20 So I think some of the pricing increases
21 that you saw early on under the POI were from price
22 increases that were taking as long as a year prior,
23 and then might have kicked in over a period of time.
24 That's the best I can explain.

25 We have not announced a price increase, I

1 think, since 2000, but there is a phasing in of an
2 announced price increase.

3 CHAIRMAN OKUN: Okay, I want to hear from
4 the industry representatives and from the distributors
5 on this, so maybe just help me understand when you say
6 you announce a price increase. When you're saying you
7 announce a price increases, is that to cover a certain
8 category of products? Is it everything?

9 In other words, I'm trying to figure out is
10 there disconnect in the products, the specific
11 products for which we collected pricing is different
12 from what you're talking about when you say the
13 industry has going to announce a price increase.

14 MR. GLEASON: Well, Ward will go out and we
15 will issue a new price list with an effective date,
16 and basically you've changed every single item.

17 CHAIRMAN OKUN: And that would change
18 everything. Okay.

19 MR. GLEASON: That would change everything.

20 CHAIRMAN OKUN: So to the effect that -- and
21 the same, I mean, would it be the same if demand is
22 great in residential but not good in commercial? Do
23 you make any distinction on that?

24 MR. GLEASON: Because we sell to wholesalers
25 and not directly to end-users, I don't know his

1 customer. I don't know whether it's a mechanical
2 contractor or plumbing. So our price increase would
3 affect the wholesaler level, the distributor level.

4 CHAIRMAN OKUN: Okay. Mr. Fish or Mr.
5 Martin?

6 MR. FISH: Again, from my standpoint, we
7 have not had a price increase in 2003 or 2002. I
8 don't remember if it was 2000 or 2001 when the last
9 one was issued. But again, as that happens what you
10 see is that we will announce it, but for certain
11 buying groups that will be delayed. We have certain
12 customers that we have agreements with where we might
13 lock them in for a year, because they have possibly a
14 gas contract, another contract that they're locked
15 into. So that's really all I have on pricing.

16 CHAIRMAN OKUN: Okay. How about from the
17 wholesalers. Is your perception any different of
18 pricing over the POI?

19 I mean, I heard what you were saying about,
20 you know, your incentive is to maintain the margin. I
21 understand that. But just in terms of price increases
22 on domestic products. Mr. McInerney.

23 MR. MCINERNEY: I have no idea when the last
24 price increase was. But announcing a price increase
25 in our industry means nothing. The first thing is

1 probably half of the announced price increases don't
2 occur because, you know, the competition won't let
3 them occur.

4 Secondly, and I can't speak to what we might
5 have done in 2000 or 2001. But in a very competitive
6 marketplace that exists today we will try to get
7 protected, or have a buy-up opportunity. The words
8 "get protected," and say we're going to give you an
9 extra six months that you can buy at the old prices,
10 or you can buy -- we'll go out and buy our next -- you
11 know, depending, it's a mathematical computation -- I
12 would buy their next six months, what we're going to
13 need for the next six months,

14 So you know, when it really gets into the
15 market is very fuzzy, I guess, that I would say.

16 CHAIRMAN OKUN: Mr. Maloney or Mr.
17 Kafenstock, any comment from your perspective on price
18 increases over the POI?

19 MR. MALONEY: No, I have no additional
20 comments.

21 CHAIRMAN OKUN: Okay.

22 MR. KAFENSTOCK: Neither do I.

23 CHAIRMAN OKUN: Okay. Well, then, let me
24 just stay with pricing for a minute, but maybe get
25 some more information.

1 In response to Commissioner Lane, you talked
2 a little bit about the products themselves and, you
3 know, the different sizes and what that might mean.

4 For these products, would there be a -- you
5 know, as I'm looking at them I see that Product 3 is a
6 very, this half-inch malleable black thread standard
7 pressure unit is an expensive product. Among the --
8 well, tell me about that.

9 I mean, just tell me about how these
10 products are in relation to each other. And then
11 within the produce is there a differential? I mean,
12 are these products capturing different variations of
13 products that would be priced differently, or would
14 Product 1 be, you know, it's Product 1, something that
15 would be price standard.

16 MR. GLEASON: Generally speaking in terms of
17 pricing regardless of the items, it's a list price
18 plus the discount which would affect all of the
19 pricing.

20 With specific regard to a union, that is
21 priced much higher. A union is composed of three
22 separate castings that are then machined, and then
23 also you have a brass base that's put in, so the cost
24 production of union is significantly higher than an
25 elbow or a T or the other products in this category.

1 CHAIRMAN OKUN: Okay. But for these process
2 for these products, Product 1, 2, 3, those should be
3 just the same product and so the pricing should
4 reflect, not a widespread among the pricing itself,
5 okay.

6 Okay, then in terms of -- well, I'm still
7 struck by the pricing that we have here so I'm trying
8 to figure out what else -- how to ask this. What
9 about in terms of -- well, let's talk about volume,
10 and I think what I have heard consistently is the
11 comment that it's been a volume loss, that you haven't
12 been able to go down, Mr. Schagrín, how you described
13 this case as being somewhat different from many that
14 we see where you didn't see prices going down because
15 they couldn't meet them, but that you saw volume
16 losses. And I can look through these products that
17 we have and I can see some of that.

18 Should it matter, and obviously this will be
19 in your post-hearing analysis as well, Mr. Schagrín,
20 but when I look at the different products being sold
21 to retailers versus wholesalers, you can obviously
22 look at products where there is a higher volume of
23 domestic product being sold, what should I be looking
24 for in particular in the volume?

25 I mean just -- in a high-volume product

1 where you have lost volume, is that the most important
2 one to look at? Or how about these where the United
3 States domestic product is not selling that much to
4 begin with, and so the decrease is very small to me,
5 but I'm trying to figure out it's still important what
6 I need to look at?

7 MR. SCHAGRIN: To be honest, Chairman Okun,
8 I think in this case the Commission should focus on
9 the overall volume levels, overall volume of imports,
10 overall volume of the domestic industry, and that's
11 because while we endeavor to the choice of these eight
12 pricing products they are all popular to prime
13 products that were representative, the fact is that
14 there is something in the order of seven or eight
15 hundred combinations of fittings between the different
16 sizes, the elbows, the T's, the unions, the reducers,
17 the black and galvanized products. I mean, of all the
18 products I deal with one of the widest ranges of
19 products.

20 So that all you can do for pricing products
21 is try to pick products that are not unrepresentative
22 of pricing trends in the industry. But I think when
23 you are really looking at volume in this case, I think
24 the key is, because these eight products I would doubt
25 would represent more than five to 10 percent of their

1 total production, probably more in the neighborhood --
2 well, we will focus on that. We have the data, and so
3 we will analyze that.

4 But I think the key is how much volume over
5 this POI in a static to now increasing market, how
6 much just volume the domestic industry has lost, and
7 in comparison to the 50 percent in volume of imports
8 from China, and then, of course, the effects of those
9 volume losses on employment, costs, profitability, et
10 cetera.

11 CHAIRMAN OKUN: Okay. Appreciate those
12 comments. My red light has come on.

13 Vice Chairman Hillman.

14 VICE CHAIRMAN HILLMAN: Thank you, and I too
15 would join my colleagues in thanking you all for
16 taking the time to be with us this morning. It's been
17 extremely helpful to hear your testimony.

18 I guess I want to focus a little bit also on
19 the issue of exactly what your price case is here, Mr.
20 Schagrin, because I'm trying to make sure I understand
21 it, so let me start with the basics.

22 I understand the arguments that you're
23 making very clearly with respect to underselling. The
24 data is very clear, your testimony has been very clear
25 on that. It's the issue of price depression and price

1 suppression where I want to make sure I understand
2 what you're arguing.

3 I thought I heard you say, Mr. Schagrín, in
4 your opening statement that there was evidence on the
5 record of price depression. Is that true? Did I hear
6 you correctly that you think there has price
7 depression over the POI?

8 MR. SCHAGRIN: There is a little bit in the
9 latter part of this record, and really in the 2003
10 where it appears that in certain products that there
11 has been some decrease in pricing, but the main thrust
12 of the industry's case is really a price suppression
13 case because of the fact that the costs have been
14 increasing, but prices cannot increase.

15 VICE CHAIRMAN HILLMAN: Okay, then let me
16 turn to the issue of price suppression, and let me
17 start, obviously we look at price suppression cases in
18 part in relation to what's going on in demand and part
19 in relation to what's going on in costs.

20 On the demand side, Mr. Schagrín, you
21 characterized in your testimony the fact that demand
22 has been flat over the POI. I guess I would like to
23 hear from the industry folks what your sense of demand
24 has been because quite honestly, I mean, we look in
25 our data at what we call consumption, which is a mix

1 of domestic sales, you know, plus imports minus
2 exports as to some extent a proxy for demand. And it
3 shows, quite honestly, pretty significant
4 fluctuations.

5 So, first, let me start with from the
6 industry's perspective. What has demand been over the
7 last -- over the POI for this product? And sort of
8 looking forward, do you expect any significant changes
9 in demand?

10 MR. GLEASON: Generally speaking, speaking
11 Vice Chairman, I think demand -- there is a
12 fluctuation in demand. Our industry has a
13 seasonality, so you might see such a thing as a sine
14 curve where in what we consider the heating season
15 demand goes up, and then in the summer, or January
16 through April period of time that the demand is slow.
17 There is a definite seasonality factor to our
18 industry.

19 And I assume that the importers know that
20 seasonality, might load up during the particular
21 period in time in anticipation of a larger demand
22 period.

23 As far as demand in general, residential
24 construction through this period of time has been very
25 strong. It really becomes an issue of how successful

1 the utilities are of convincing the builder to go
2 either gas or electric. I think the statistics in the
3 industry, I think 60 percent of your housing starts
4 are now utilizing natural gas. Natural gas consumes a
5 lot of fittings.

6 So in that segment of the market if you
7 weigh the commercial side versus residential side, you
8 know, the best you could say it's flat, it might be
9 slightly up with the demand on the residential side.

10 VICE CHAIRMAN HILLMAN: Okay. Would anybody
11 disagree with that? Overall, I'm seeing everybody say
12 you would generally agree with that.

13 Then I want to try to understanding this
14 issue of price suppression, I mean, you are clearly
15 arguing that prices would have, should have, could
16 have, you know, gone up but they didn't. And maybe I
17 want to start by understanding it from the distributor
18 end.

19 Mr. McInerney, you responded, I think, in
20 response to Commissioner Koplan that there is really
21 no incentive for you all in terms of prices. I want
22 to make sure I understand it.

23 If you purchase both a domestic product at a
24 higher price, and a Chinese product at a lower price,
25 when you then sell to your downstream customers do you

1 average those prices? I mean, do you offer a lower
2 price to your consumer by blending the prices that
3 you've paid for the product?

4 MR. McINERNEY: The way we sell to the
5 consumer depends on the type of consumer, how much he
6 buys, and everything like that. But we would
7 basically, we want to use the domestic price, where we
8 start pricing our product from. But where we sell to
9 a particular customer would depend on, you know, any
10 number of factors.

11 VICE CHAIRMAN HILLMAN: Mr. Maloney, I'm
12 trying to recall, your testimony was that you also
13 source both Chinese product and domestic product?

14 MR. MALONEY: Yes, and we would not blend.
15 Presently, at a particular sales location we would
16 either have domestic product or import product. We
17 consider them to be, at this point in time to be two
18 different products.

19 VICE CHAIRMAN HILLMAN: Okay, so you would
20 say to your customer I can tell you, you know, this
21 particular specification of fitting domestic at X
22 price, imported at Y cost?

23 MR. MALONEY: Well, generally out of one
24 sales outlet they will only have one of those products
25 available. We will not -- we don't inventory domestic

1 and imports at the same locations. That's why in my
2 testimony I indicated that at one point 50 percent of
3 our -- five years ago, 50 percent of our outlets had
4 domestic and 50 percent import. And today that has
5 changed to 75 percent of our outlets sell stock
6 inventory and sell imports, and only 25 percent are
7 stocking, selling domestic product.

8 VICE CHAIRMAN HILLMAN: Okay. I mean,
9 obviously what I'm trying to understand is sort of
10 where and to what degree the Chinese product is
11 competing in terms of price with the domestic product.

12 I mean, I have heard Mr. Gleason and Mr.
13 Fish both say basically we can't go there, we cannot
14 lower our price in order to meet or match or come
15 close to the Chinese price. So I understand from the
16 producer's end of it they are saying, you know, we're
17 not trying to.

18 I'm trying to understand from your end or
19 even from your customers' end, I mean, does your
20 customer then, if they are purchasing from one of your
21 outlets that's sourcing domestic product, are they
22 saying to you you have to lower your price or I'm
23 going to go to a different wholesaler, because I know
24 I can find another wholesaler that sells, you know,
25 the imported product?

1 I mean, do you see price competition at your
2 end between the Chinese product and the domestic
3 product?

4 MR. MALONEY: I think it goes to the heart
5 of the question that we're discussing. As best I can
6 understand what's happening in the marketplace is that
7 to a certain degree it's going against basic laws of
8 economics, okay. And I think that part of what is
9 happening is that typically in a job where the
10 contractor is installing steel pipe, and malleable
11 fittings, the malleable fittings end up being a
12 relatively small dollar-wise part of that purchase;
13 that the bigger dollars are in the steel pipe.

14 So my inclination is to believe that at this
15 point in time that in many cases the contractor
16 doesn't have the pricing on the radar screen. But
17 that has been changing. I mean, that's part of what's
18 happening. That the radar screen, that now the
19 contractors are starting to look at, I guess, every
20 aspect of their pricing to make sure that they are
21 competitive whereas before that they either had a Buy
22 American preference or that part of their job pricing
23 was of such a -- was not a significant part of the job
24 so it didn't -- if we had domestic, that was fine with
25 them, but those are the shifts that we're seeing in

1 the marketplace now.

2 VICE CHAIRMAN HILLMAN: Mr. Kafenstock, did
3 you want to add something on that?

4 MR. KAFENSTOCK: This is Chuck Kafenstock.

5 In Chicago, over the last three years the
6 largest of the five contractors doing residential
7 construction, three of them are now specifying Chinese
8 product because they have become aware of the price
9 spread, and between those three they represent almost
10 12,000 starts. The other two are trying to hold onto
11 the Buy America.

12 One of the things that we have done to
13 combat this is giving our distributors, as Mr.
14 McInerney stated earlier, giving our distributors
15 longer term protection. So if they say, well, we'll
16 try to shift towards your stuff, we're protecting a
17 price for a year, six months, 15 months, whereas in
18 the last nineties and early two thousands, you know,
19 price protection was a 30-day, 60-day, sometimes on a
20 contract as much as a year. So we definitely have had
21 to combat these issues.

22 VICE CHAIRMAN HILLMAN: Okay. And would you
23 do any of this pipe funding. I mean, in other words,
24 try to average out if you're buying some domestic and
25 some Chinese products, sell to the end-user at a

1 blended price that's somewhere between the two?

2 MR. KAFENSTOCK: My position is as a
3 representative of Ward, so I can only choose to sell
4 this product.

5 VICE CHAIRMAN HILLMAN: I apologize.

6 MR. KAFENSTOCK: No problem.

7 VICE CHAIRMAN HILLMAN: I recall that now.
8 I apologize.

9 Last question real quick, and Mr. McInerney,
10 you said that these price increases come out. I mean,
11 that Ward or Anvil will send you a price increase list
12 but it doesn't stick, it doesn't take. That to me
13 implies that there is some kind of negotiation between
14 you and them. They say, we need a price increase, and
15 you have some method of coming back to them to say, no
16 way, I'm not paying it.

17 How does that work?

18 MR. McINERNEY: No, what happens is one
19 manufacturer will go in price, and the other
20 manufacturers won't follow. That's what I'm talking
21 about the price increase.

22 VICE CHAIRMAN HILLMAN: Okay, so it isn't a
23 face-to-face kind of price discussion that you're
24 saying?

25 MR. McINERNEY: We don't have the power of

1 the Home Depot or somebody like that to say, you know,
2 to be able to effect the whole market, so it's not --
3 I was talking about an industry pricing structure
4 where Ward might go up and test the market, see
5 whether they get a price increase, and Anvil wouldn't
6 go up, so that it gets rescinded. That happens a
7 number of time.

8 Our negotiation would come in saying, well,
9 we want to be -- we're a good customer of yours, we
10 want to be protected over a period of time from that
11 price increase, and that would be the best method we
12 could use, or we want to be able to purchase a certain
13 percentage of our last year's purchases at the old
14 price before the price increase actually takes effect.

15 VICE CHAIRMAN HILLMAN: Okay, I appreciate
16 your answers. Thank you.

17 CHAIRMAN OKUN: Commissioner Miller?

18 COMMISSIONER MILLER: Thank you, Madame
19 Chairman.

20 All of the discussion, and it may not be
21 done yet, I know Vice Chairman Hillman referenced the
22 cost side. I'm not going to try to go there at this
23 point because I know most of that data is
24 confidential.

25 I was interested in the issue as well, and I

1 appreciate all of the questions of my colleagues and
2 your answers to them. I remember a similar discussion
3 at the hearing on non-malleable pipefittings --

4 MR. SCHAGRIN: A lot of similarities.

5 COMMISSIONER MILLER: Yes, there are.

6 Looking at that case there are similarities,
7 there are differences. Every case -- The fact is it's
8 unusual, however, to have exactly the same
9 manufacturers in two cases making two different
10 products that have some relationship obviously on the
11 supply side between them.

12 Anyway, Mr. Schagrin, as you know for
13 purposes of the present injury in non-malleable we
14 didn't find price effects. There are a lot of
15 similarities.

16 So I look forward to your post-hearing
17 brief. I'm not going to go into any further questions
18 at this point but your analysis of the price issues
19 and the price data in this case and whether there are
20 any distinctions --

21 MR. SCHAGRIN: I would point out two major
22 differences between this case and non-malleable.
23 First, in non-malleable because the product only went
24 into sprinkler systems which were mostly oriented
25 towards just non-residential construction, we had a

1 big decline in demand in that case. In this case we
2 don't have a decline in demand. We have flat demand.
3 You would think that would mean the domestic industry
4 would be doing relatively better.

5 The other big difference is that in that
6 case we didn't have such a large increase in Chinese
7 imports. They were kind of slightly increasing in a
8 market where demand was falling.

9 Here we have over the POI about a 60 percent
10 increase in Chinese imports so we have a huge increase
11 in import volume, a huge increase in import market
12 share. I think the indicators of injury other than
13 price in this case are much stronger.

14 I'm struck by the amount of decline in a
15 flat to slightly increasing demand market. The steep
16 decline in domestic production, shipments, capacity
17 utilization, employment and absolute profits are to me
18 so dramatic that they would require an affirmative
19 injury determination rather than threat because you
20 have the whole panoply of factors in the statute.
21 It's not just about the prices and price suppression,
22 price depression, it's what's the overall impact on
23 the domestic industry.

24 What these folks are doing is, they're
25 holding onto profit margins on revenues that are

1 plummeting. If I did that in my law business, or Mr.
2 Smirnow's firm, if I make ten percent on a million
3 dollars in billings versus 20 percent on five million
4 in billings, my wife's going to say why don't you get
5 into a different line of work?

6 It's the same thing for these producers.
7 They're really seeing that the volumes are declining
8 so much that they may be holding some profit margins
9 but the revenues are declining so much, I think the
10 owners of their companies are saying why don't you
11 guys get into a different business? Why should we
12 stay in this high environmental cost, high worker
13 safety cost, high insurance cost business when we
14 could put these assets into other businesses?

15 COMMISSIONER MILLER: I recognize you're
16 making your case primarily on volume. Actually I
17 think that's what we're trying to confirm in some
18 sense, because we heard some comments about price
19 effects from you in your opening statement and also by
20 the company representative. That doesn't necessarily
21 square with the record book that we have before us.

22 So I see the volume issues that you're
23 discussing. At least for me and I think my colleagues
24 questions suggest they weren't seeing the price
25 picture you were describing. I appreciate their

1 questions to try to clarify that side of the equation.

2 MR. SCHAGRIN: Let me also enter, I think
3 here the producers will be helpful to you. When you
4 look at the price effects, which is mostly price
5 suppression, you have to understand the cost situation
6 here. A, it's related to declining capacity
7 utilization, but then if you look at their main cost
8 factors -- Ask these gentlemen about the increase in
9 scrap costs, their main raw material, over the past
10 three years. It's almost double. That's a
11 significant cost increase. Their insurance costs have
12 gone up. Their health insurance costs have
13 skyrocketed. I think Mr. Gleason told me it's gone up
14 by several hundred percent, their cost of insurance
15 for their employees.

16 A lot of these things apply to manufacturing
17 as a whole. Some things are unique to this product
18 because scrap is their main input. Zinc costs are up.
19 You would think with the world market with the prices
20 of their finished products falling in the marketplace,
21 at least Chinese imports, you would think their other
22 costs would be going down, not going up. But
23 unfortunately in their business all of their costs are
24 going up and none of their costs are going down. So
25 they, if they're going to stay in the business they're

1 going to need price increases and that's not going to
2 be possible without an antidumping duty on China.

3 Mr. Gleason?

4 MR. GLEASON: Just to try and clarify the
5 issue of price you really have to look at where are
6 the battle lines being drawn? Where are we competing
7 with the Chinese?

8 We're not competing with the Chinese
9 necessarily at the contractor level. I have no control
10 over that. Our wholesalers control that pricing
11 level.

12 Where we're competing is for that
13 wholesaler's business or that retailer's business.

14 I'll walk into Thomas Summerville Company
15 and solicit his business, and this is my price and
16 this is my program. Nacko Norka, Ms. Cooper, they
17 walk in the same way through the same door with the
18 same purpose. And price is, that is really where the
19 battle ground on price is, is for my customer as the
20 wholesaler or the retailer. What he does and what
21 effects it has on the marketplace I really have no
22 control over. Whether he's offering a cheaper price
23 because he has both to a contractor, I don't know.
24 That's his business.

25 So I can't control the pricing, let's say,

1 to the ultimate end user at all. The battle that we
2 fight is for the wholesaler business. The Chinese
3 product is being sold the same way I sell my product
4 to the exact same customer base because they're
5 fighting for that wholesaler's business too.

6 COMMISSIONER MILLER: I'm going to go back
7 to the issue I started with. If my colleagues hadn't
8 done all these questions on price I would have.
9 That's why we're all here and we often benefit from
10 each other's questions.

11 Let me go back to the market question and
12 what I just heard you say about your selling to the
13 wholesalers and the retailers, to some extent you are
14 at least.

15 I know you didn't agree with that
16 determination but in any event I still want to go
17 back.

18 We talked in our sunset determination, as
19 Mr. Smirnow referenced in his opening statement, about
20 primary and secondary wholesalers. Was there a time
21 in which you saw primary and secondary wholesalers?
22 If so, well, you don't really care who their customers
23 are.

24 Did you at one point in time see primary and
25 secondary? And how and when did that change?

1 MR. GLEASON: Our customers could answer
2 this maybe a little better than I can.

3 I think during the sunset review the issue
4 was made that well, I think the Thais made it, Ward
5 doesn't sell into the retail market. Well, Anvil
6 does. So if we're talking as an industry, our
7 industry sells all levels. It doesn't matter which
8 one of us does.

9 The issue of primary and secondary
10 wholesalers, I never consider it that. I don't look
11 at my market and my customer base as primary or
12 secondary. They're either a wholesaler or they're
13 not, they're either a retailer or they're not. They
14 all have different businesses. Some are stronger in
15 heating, ventilating, air conditioning. Some might be
16 stronger in plumbing. Some might be stronger in
17 mechanical piping. Some might be stronger in
18 whatever, the oil field industry, per se. But again,
19 that's where the distinction stops. Because are they
20 a wholesaler or not? Right? What type?

21 I have a product that meets a standard
22 that's sold in all of those industries. So there
23 really is no distinction between primary and
24 secondary. Where is my product being sold? My
25 product's being sold to wholesalers who cover the

1 entire range of end use applications.

2 COMMISSIONER MILLER: And just to confirm,
3 you're saying that has not changed at all in the last
4 five years?

5 MR. GLEASON: What you've seen, really what
6 has changed is probably five or six years ago Ace
7 Hardware never really competed against wholesalers.
8 Did they have it? Yeah. But what you've seen in the
9 marketplace is the big boxes -- the Home Depots and
10 the Lowes. A hardware store never generally carried
11 maybe a water heater or a spa. You can go to Home
12 Depot now, you can get a spa, you can get water
13 heaters, you can get a boiler. They'll make
14 arrangements for a contractor to install it for you.
15 You can go to the pro counter and if you show your
16 card, oh, you're a contractor, you get a 30 percent
17 discount.

18 The whole nature of this industry in the
19 last five years with the growth of the big boxes, have
20 changed.

21 COMMISSIONER MILLER: Okay.

22 MR. FISH: Tom Fish.

23 COMMISSIONER MILLER: Mr. Fish, if my
24 colleagues are interested in your answer -- My red
25 light is on, Mr. Schagrin. I can come back to you the

1 next round.

2 CHAIRMAN OKUN: Mr. Fish, go ahead.

3 MR. FISH: I just think it's very important
4 for the Commissioners to understand that if you look
5 at the top 100 wholesalers in this country, our
6 customers, they are all selling both foreign and
7 domestic product. Colburn Supply, Mr. Maloney. He
8 happens to be number 35 on that list. We'd be happy
9 to give you a copy of that list of how many locations
10 and how many employees they have. Selling both
11 product lines.

12 Ferguson, Hughes, every single major
13 wholesaler in this country offers both products.

14 So back to the whole boring concept, it's
15 there. They're offering both sides. And they will
16 sell you either. They will try to sell domestic when
17 they can. They will sell foreign when they have to.

18 No one will ever admit to this, but if I
19 were a major wholesaler and I could sell foreign at
20 domestic pricing, I'd do that too because I'd make
21 more money.

22 It happens. It's out there.

23 So again, when you talk about this primary
24 and secondary, it's just not there any more. It's not
25 there.

1 COMMISSIONER MILLER: Let me come back to
2 you, because that's what I'm trying to understand.
3 You just said "any more". I'm trying to understand
4 when it changed. But my colleagues have indulged so
5 I'll come back to you. Thank you.

6 CHAIRMAN OKUN: Commissioner Koplan?

7 COMMISSIONER KOPLAN: I have the same
8 question, and although I didn't join with
9 Commissioners Hillman and Miller in their separate
10 views in the sunset review, I always pay the greatest
11 attention to their views.

12 I actually had a question I was going to ask
13 you about all this. Let me just pick up on that. I'd
14 like to hear what you were about to say. But I'm also
15 trying to understand, does a customer needing to
16 purchase pipefitting for a residential application,
17 for example, have the option of purchasing such
18 fittings from either a wholesaler or a retailer?

19 I'm asking the question because I observed
20 that price differences exist that don't to me follow a
21 logical pattern and I'm trying to understand why.

22 For example, wholesale prices may be higher
23 than retail. This was raised by Lynn Featherstone at
24 the staff conference with Mr. Smirnow. I read that
25 exchange. But the exchange at that time still leaves

1 me wondering what's going on here.

2 So could you pick up on that?

3 MR. FISH: Tom Fish.

4 Just to clarify your question, what you're
5 saying is that the pricing to the retailers is lower
6 than the pricing to some of the wholesalers.

7 COMMISSIONER KOPLAN: Right.

8 MR. FISH: Generally --

9 COMMISSIONER KOPLAN: I would think it would
10 be the opposite. I don't quite understand how that
11 works.

12 MR. FISH: Generally speaking what you'll
13 see is that as our costs go up and we find it
14 necessary to increase prices we will have a price
15 increase announcement. The bigger organizations --
16 Ace, True Value -- the bigger retailers are all system
17 driven and usually it takes us longer to make that
18 happen on the retail side of the business.

19 In other words they lock in their prices.
20 We only change our system once a year. That's fine,
21 but if you want to do something it's not going to
22 happen until this date.

23 COMMISSIONER KOPLAN: Mr. McInerney
24 testified I thought earlier that price increases get
25 announced but nothing happens. They don't --

1 MR. FISH: Yes, Mr. McInerney did say that.
2 I think in certain cases when price increases occur
3 that if competitors don't follow, yeah, that is true.
4 But generally speaking price increases happen. If
5 there's good support for them, there's reason for them
6 in the industry, they will happen eventually. It may
7 take some time. You may announce three percent and
8 get a percent and a half. Some of it gets discounted
9 away. Again, we work off a list and a discount, so
10 some of that may go away. There may be an extra one
11 percent cash discount in certain circumstances. There
12 may be a change in the rebate structure.

13 Our pricing is very complex. You have your
14 list price you have your discount, you have your cash
15 discount, you have your rebate, and then you have your
16 freight terms. You have to take all of that and say
17 what's my net/net price. And Mr. Koplan, I didn't
18 develop this system because it took me ten years to
19 understand it myself, but it is complicated.

20 COMMISSIONER KOPLAN: I wonder if you could
21 do what Mr. Schagrin apparently did, preparing a table
22 that anticipated a question I asked on the first
23 round, and put some kind of a table together that
24 shows me what has happened during the period that
25 we're looking at.

1 MR. SCHAGRIN: We'll do that, Commissioner
2 Koplán.

3 COMMISSIONER KOPLAN: You're responding to
4 me in general terms. I'd like to see specifically
5 what has occurred during the period that we're looking
6 at. Not only what was announced, but what went into
7 effect for what and for whom, the who, what, where and
8 when.

9 MR. SCHAGRIN: We'll do that in the post-
10 hearing, Commissioner Koplán.

11 I would also like to add, you started your
12 question and I don't think Mr. Fish answered it, a
13 residential plumber, does he have the choice of either
14 going to a wholesaler or retailer, a big bucks
15 retailer or not.

16 I can only tell you from my personal
17 experience, I think Commissioner Miller might have
18 asked this question earlier and it also didn't get
19 answered.

20 I recently had a hot water heater in my
21 house in Annapolis changed. The old one rotted out
22 after 18 years and I had to put a new one in. My
23 plumber, who is just a residential plumber, not part
24 of a big plumbing company, he's an independent
25 plumber, he had a choice of going to either Thomas

1 Summerville in Annapolis or Home Depot in Annapolis.
2 He went to Thomas Summerville only because as Mr.
3 McInerney testified here, he's a good guy, but those
4 are his choices. That is the choice of any
5 residential plumber really throughout the enter United
6 States. To either go and buy a hot water heater and
7 the malleable fittings that go with it and the piping
8 that goes with it from a hardware store, primarily a
9 big box retailer, because the local hardware stores
10 don't sell big appliances like the big box folks do.
11 Or to go to a wholesaler. Because anybody who's got a
12 plumbing license, whether they be an independent or
13 part of a plumbing company with a thousands plumbers,
14 they all can shop at wholesalers or they can shop at
15 the big box retailers.

16 That's why in this marketplace now there
17 really is just perfect competition. I personally feel
18 that the reason that the prices are lower at the
19 retail level than at the wholesale level is just the
20 buying power of a company like a Home Depot. They are
21 so big now, I don't think malleable fittings are the
22 only area. I think this Commission will see in
23 product after product that prices to retailers are no
24 longer higher than prices to wholesalers where the
25 retailers are the Home Depots or the Walmarts. Their

1 buying power is so big that they've changed the normal
2 kind of three-tier relationship -- producer,
3 wholesaler, retailer.

4 COMMISSIONER KOPLAN: Thank you, Mr.
5 Schagrin.

6 Mr. Gleason, I'd like to come back to
7 something you said to Commissioner Lane at the end of
8 her first round. You talked about with regard to CSST
9 that it's approved for operating pressures normally up
10 to five pounds per square inch.

11 MR. GLEASON: That is correct. Malleable
12 fittings can be used for oil, water or gas. CSST can
13 only be used for natural gas or propane.

14 COMMISSIONER KOPLAN: Let me just jump in
15 for a second. The reason I'm asking this question is
16 I'm looking at an exhibit to Mr. Smirnow's brief. And
17 by the way, just as a housekeeping matter it's
18 Smirnoff, not Smirnow. Mr. Schagrin, I'm aware of
19 that. AT one time I was involved with Joseph Seagram
20 & Sons. There is a difference between the vodka and
21 Mr. Smirnow.

22 MR. SCHAGRIN: It's my background in spirits
23 as well. I'm trying to climb out of the bottle but --

24 COMMISSIONER KOPLAN: All right.

25 Anyway, I'm looking at this exhibit and it's

1 by gas type corrugated stainless. And it's a reader's
2 column by Dan Roberts, Manager of Applications
3 Engineering, for that company.

4 The question is, "What is the maximum
5 pressure CSST can handle?" The answer that he gave is
6 this, "In accordance with the ANSI standard all brands
7 of CSST are approved only for operating pressures up
8 to five pounds per square inch."

9 Then he goes on to say, "The system can be
10 pressure tested up to 150 pounds per square inch if
11 desired, and you should be aware that the ANSI
12 standard is currently under review to determine
13 whether all brands of CSST can be safely tested and
14 lifted to higher operating pressures, up to 125 pounds
15 per square inch."

16 Now this article appeared in the fall of
17 2001. It's now two years later. Can you tell me what
18 the status of that is?

19 MR. GLEASON: Work flex is not approved for
20 elevated pressures systems above 5 psi. There's one
21 of my competitors, I believe it might be, maybe it is
22 Gas Tite and Omega Flex, which can list for certain
23 conditions, they can go up to 25.

24 As far as test pressure is concerned, a
25 malleable fitting you usually test at 1.5 times its

1 pressure. Working pressure. So if you've got a
2 malleable fitting at 300 psi you can test at 450 psi.

3 It's not necessarily what the working
4 pressure of the system is. When a contractor installs
5 CSST to make sure, just like he would a malleable
6 fitting, he's going to put a pressure test. If CSST
7 are malleable they'll put 50 to 60 psi and walk away
8 and see if he's got 50 or 60 pounds in the morning
9 when he comes back. So test pressure versus operating
10 pressure are two different things.

11 COMMISSIONER KOPLAN: Okay.

12 MR. BARRON: I'm also very familiar with
13 Ward Flex, and we know that pressures above 50 pounds
14 will begin to distort the tubing and you actually can
15 damage the tubing after 100 psi. What happens is it
16 begins to elongate, relatively thin material that if
17 you --

18 COMMISSIONER KOPLAN: But up to 50 there's
19 no distortion?

20 MR. BARRON: We can test up to 50. But that
21 doesn't mean you want to operate at 50. You can test
22 at 50. For half an hour or even overnight. But you
23 would not want a sustained operating pressure at 50.

24 COMMISSIONER KOPLAN: Thank you, I
25 appreciate that.

1 I see my yellow light's on. I don't want to
2 go over again. Thank you. I'll save the rest for my
3 next round.

4 CHAIRMAN OKUN: Commissioner Lane?

5 COMMISSIONER LANE: I want to first go back
6 to an answer that Mr. Fish gave. We were talking
7 about products being sold to wholesalers and then the
8 wholesalers in turn selling to their customers, and I
9 think Mr. Gleason said something about you had no
10 control over what happens, or what the wholesalers do
11 with their customers as far as price.

12 Then I think you said that if you could get
13 away with it, why wouldn't you sell the domestic
14 product the same as the imported product, thus
15 increasing your profits.

16 My question is does that happen on a regular
17 basis? I mean do wholesalers generally then sell to
18 their next level of customer and sell the domestic and
19 the imported product at the same price?

20 MR. FISH: Again, any answer that I would
21 give you would be a guess on my part.

22 COMMISSIONER LANE: That's what I want. A
23 guess.

24 MR. FISH: I have heard that in certain
25 instances that does happen, that a wholesaler, if

1 malleable fittings are ordered and nothing is
2 specified, it gets quoted at a domestic price.
3 Sometimes they might ship Chinese product. Does that
4 happen? Yes, it does.

5 I think a perfect example of what I'm
6 talking about here is over the years, going back into
7 the late '90s as Home Depot moved from some domestic
8 product to all Chinese product, I know their selling
9 price did not change. Which means they made more
10 money.

11 No one in the industry has margined heroin.

12 COMMISSIONER LANE: Maybe, I don't care who
13 answers this question. As I understand it, the
14 products now, either domestic or from China, are
15 basically the same, they meet the same qualities, and
16 they, probably the availability is about the same. So
17 basically all that we are talking about is the price.
18 And we're really talking about the first level price
19 from either the importers or the domestic producers to
20 the wholesalers who then in turn distribute all of
21 that.

22 So if the product is the same and everything
23 is the same except the price, does it really matter
24 whether we're talking about secondary markets or
25 primary markets or whatever?

1 MR. SCHAGRIN: Not any more because of the
2 fact that there has been this blurring, to use the
3 term, of the fact that the contractors who are the end
4 users can buy the products from either distributors,
5 be they large or small. These two gentlemen who
6 testified here today from Colburn and Thomas
7 Summerville, they are large regional distributors.

8 There are I guess three large national
9 distributors who are in almost all 50 states, but they
10 perform the same functions as the large regional
11 distributors here, and all of those distributors, be
12 they national or regional, compete in turn with the
13 "big box" retailers. The Home Depots and Lowes who
14 are also pretty much becoming nationwide.

15 So the only thing that really matters is the
16 price the domestic producer is going to charge the
17 wholesaler or retailer and the price the importer is
18 going to charge the wholesaler or retailer at this
19 point in time.

20 MR. FISH: Tom Fish.

21 I think also you should, I think we've made
22 this point before, but as the Home Depots expand they
23 have also purchased a wholesaler. I believe it is
24 their intent to be in that business as well. So even
25 those lines blur even further as we move through this

1 consolidation and acquisition process.

2 COMMISSIONER LANE: If I am a residential
3 end user, can I go and buy fittings at the contractor-
4 only section of Home Depot and Lowes? Do you know
5 whether or not they actually say to individuals even
6 though they say they're contractors only?

7 MR. GLEASON: The contractor only would
8 refer to your checkout line. You can buy anything in
9 the store just like the contractor can. You go and
10 you're going to pay a higher price than he is. That's
11 the only difference. That's the contractor only.

12 COMMISSIONER LANE: Okay.

13 MR. MARTIN: Commissioner Lane? John
14 Martin.

15 Just to further the point Mr. Fish made
16 about Home Depot acquiring a wholesaler, in some parts
17 of the country they have actually opened larger
18 locations and they have a name called HD Supply.
19 That's purely -- And in their regular store there's
20 big signs hanging that say "All contractors go to so
21 and so address to our new contractor supply company."
22 So they are without question blurring the line
23 tremendously.

24 COMMISSIONER LANE: Okay.

25 On page 2-3 of the staff report certain

1 companies were listed as the largest purchasers of
2 fittings. Could you provide me, Mr. Schagrin, in a
3 post-hearing brief, I guess, were these purchases from
4 the domestic industry or were these purchases from
5 China?

6 MR. SCHAGRIN: I think on page 2-3 the
7 commission staff has addressed purchasers in a variety
8 of manners in terms of their size, being wholesalers,
9 retailers, and also they addressed the list of
10 purchasers that they were given by both the domestic
11 industry and the importers.

12 I think for me the key is not the question
13 of the overlap of lists of top customers but the fact
14 that the purchaser responses themselves in this case
15 confirm just how many purchasers are buying both
16 Chinese and domestic fittings. That seems to be the
17 largest group of all purchasers. There are some
18 purchasers who purchase only domestic, some purchasers
19 who purchase only import, but the vast majority of all
20 purchasers who submitted purchaser responses purchased
21 both domestic and Chinese, and that just shows why
22 there's price and volume competition here. Of course
23 those purchaser responses overwhelmingly show that
24 over this period of investigation those purchasers
25 bought more Chinese and less domestic. Therefore I

1 think in addition to the overall information you have
2 on your record, you have a lot of support which is not
3 anecdotal, because actually in purchaser questionnaire
4 responses that support the overall data showing how
5 purchaser after purchaser changed their buying
6 patterns over the POI to buy more Chinese and less
7 domestic.

8 We'll address it confidentially so we can
9 use the confidential information in our post-hearing
10 brief.

11 COMMISSIONER LANE: Right. I was interested
12 in those four purchasers as to what percentage they
13 were buying domestic and what percentage they were
14 buying foreign, or from China.

15 MR. SCHAGRIN: And because information on
16 those four is confidential, Commissioner, we'll
17 address that in our post-hearing submission.

18 COMMISSIONER LANE: Thank you.

19 Mr. Schagrin, you might not know the answer
20 to this but I'll ask anyway. You said that the
21 domestic producers had seen an increase in their raw
22 material costs. Substantial increases.

23 If you know, what about, is China
24 experiencing any increase in their raw material costs?
25 And do they produce those raw materials or do they

1 have to get them from other countries?

2 MR. SCHAGRIN: AS Commissioner Koplan will
3 tell you, if I didn't know the answer I'd probably
4 answer it anyway. But --

5 COMMISSIONER LANE: I wasn't going to say
6 that.

7 MR. SCHAGRIN: -- I happen to know the
8 answer. Luckily, usually I know the answer.

9 The fact is, not unlike, as a student of
10 history, not unlike Japan pre-World War II, the United
11 States is the largest producer and exporter of scrap
12 in the world, and the reason that scrap costs have
13 gone up for Ward and Anvil has been only one reason
14 and that's because over the last three or four years
15 the Chinese as their manufacturing has grown, they
16 have tremendously increased their purchases of scrap
17 from the United States. That's a commodity product,
18 so if the Chinese want to buy more and are willing to
19 pay more that causes the prices here to go up.

20 Of course that does mean, Commissioner Lane,
21 the price for scrap in China has also gone up
22 tremendously over the past several years because they
23 are paying us and maybe the Europeans or a little bit
24 from the former CIS, they are paying everybody on a
25 worldwide basis more for scrap as well. So everyone's

1 cost, scrap is pretty much a commodity product.

2 It would actually cost them more than it
3 costs us because they have the additional
4 transportation to take it over. These folks might buy
5 it from Philadelphia, and the Chinese are buying from
6 Philadelphia and putting it on a ship and taking it
7 from Philadelphia through the Panama Canal to China,
8 which is why we really don't understand how they can
9 price the way they do. Other than labor, there's a
10 lot of similarities in production costs. Labor, and
11 to be honest, environmental costs. These gentlemen
12 have significant environmental costs and the Chinese
13 do not.

14 COMMISSIONER LANE: Thank you.

15 CHAIRMAN OKUN: Commissioner Pearson?

16 COMMISSIONER PEARSON: This is a question
17 primarily for the distributors but if the producers
18 wish to comment that's also fine.

19 Could you please address the argument that
20 the increase that we've seen in Chinese imports has
21 come not so much at the expense of domestic fittings
22 but rather more at the expense of non-subject imports?
23 Imports from other countries than China.

24 MR. MALONEY: A.J. Maloney.

25 I think our own history, which is the only

1 thing I can address from fact, is that the import
2 purchases we had I guess five years ago were spread
3 out between Chinese, Thailand, and etc., and those
4 have stayed import and have gone almost primarily to
5 the Chinese.

6 What has shifted has been what we purchase
7 domestically. From 50 percent of our locations
8 handling import to 75 percent of our locations
9 handling import.

10 So there has been some shift within the
11 import market from other countries to China, but the
12 most significant shift in our opinion, in our
13 experience, is from the domestic to the import. To
14 Chinese import.

15 MR. MCINERNEY: Michael McInerney.

16 I have no information where the importer
17 gets his product from. You'd have to ask him from
18 that point of view. I just assume that right now it's
19 coming from -- I mean common wisdom is it's mostly
20 coming out of China right now because of the price
21 advantages there. But I can't tell you.

22 COMMISSIONER PEARSON: I appreciate --

23 MR. SCHAGRIN: We can address it from a data
24 perspective, Commissioner Pearson.

25 COMMISSIONER PEARSON: Mr. Kafenstock?

1 MR. KAFENSTOCK: Chuck Kafenstock, Kast.

2 From the Midwest, as I stated earlier, we
3 had a loss of \$400,000 of volume. I can definitively
4 tell you that none of those distributors in '99 and
5 2000 spent any money on foreign product. All of those
6 came from myself and some from Anvil.

7 I will also tell you that at the OEM level,
8 which is another sector, as little as two years ago
9 that was an almost all Buy America, and today the
10 price pressure has forced that into a Buy China.

11 COMMISSIONER PEARSON: I appreciate that the
12 Chinese have certain advantages in the production of
13 these fittings, I understand that.

14 The question that I'm wondering now is, is
15 there anything the Chinese are doing that couldn't be
16 done in some other developing country? For instance
17 if the duties are put in place on Chinese product does
18 that really help your situation, or will there be
19 other shifts in the marketplace that would soon offset
20 whatever is done?

21 MR. SCHAGRIN: In terms of time period,
22 stressing it from a legal perspective in terms of the
23 potential shift to non-subject imports from subject
24 imports, first foundries even in China are a longer
25 lead time manufactured product than a lot of other

1 manufactured. To install a cupola, to make up all the
2 molds with casting equipment, so it wouldn't be likely
3 that there would be a quick shift. We don't think
4 that in other countries, for example in the past we
5 have had antidumping duty orders in effect on these
6 same products from Korea, Japan, Taiwan, Brazil, and
7 Thailand and the Commission sunset some of those
8 orders two years ago.

9 To the extent that some country with
10 existing capacity were to try to take advantage of a
11 decrease in imports from China, I think it would be
12 the duty of the domestic industry and their counsel to
13 determine whether that replacement was being done at
14 dumped prices and was injurious to the industry and
15 whether other trade litigation should be filed.

16 The pricing data demonstrates that other
17 countries have not been able to sell at prices as low
18 as the Chinese and that's why the Chinese have been
19 gobbling up a market share. So we don't see any
20 competitors in the world market that are as
21 significant a problem at the present time as the
22 Chinese.

23 COMMISSIONER PEARSON: At least some of the
24 Chinese production is relatively new, I understand.
25 Do they have some technological advantages that come

1 from being a recent construction compared to some of
2 the facilities that might exist elsewhere?

3 MR. FISH: Tom Fish.

4 I visited over there. They have no
5 technological advantages. They are molding and
6 pouring a lot of this stuff in the ground, as we did
7 in the '20s back in this country. Their advantage is
8 their labor costs, which you're talking about \$100 a
9 month for a worker; the fact they have no workman's
10 compensation costs, no health insurance costs. If
11 someone gets hurt they go home. Environmentally,
12 there's no issue for them. There's a 17 percent
13 stipend to the manufacturer just for making the
14 product. The yan is fixed to the dollar. We have
15 about seven or eight different reasons why their
16 pricing is where it's at, all of which unfortunately
17 we have very little control over.

18 But we manufacture product with automated
19 machines, state of the art technology, yet when you
20 look at some of the statistical data that comes back
21 from China it will tell you they're more cost-
22 effective than we are. Excluding labor.

23 MR. SCHAGRIN: They do have one advantage,
24 Commissioner Pearson, you're right, there have been
25 recent additions to capacity in China. In the United

1 States, whether you have an electric cupola or a coke-
2 based cupola as Ward has, I'm going to guess that you
3 probably have a minimum of two -- If someone wanted to
4 install a new foundry in the United States you'd
5 probably have a two to three year permitting process
6 in the United States just to get through all the state
7 and federal environmental.

8 In China if somebody wants to install a new
9 cupola, I don't think they have a two to three day
10 environmental, they just go ahead and do it. If the
11 Chinese Bank will loan them money which they'll do,
12 they don't care if it gets repaid or not, they're
13 going to create more employment, they're just going to
14 add another foundry. So that is a large difference.

15 We do have, for social reasons in this
16 country, we do have certain barriers to entry in
17 manufactured product that have air or water emissions
18 and that would not be the same in China.

19 MR. GLEASON: Press the button. We're
20 learning.

21 COMMISSIONER PEARSON: You have more
22 experience here at the Commission than I do, you
23 understand.

24 MR. GLEASON: I do. Pay attention.

25 (Laughter) Sorry. I just killed myself. (Laughter)

1 MR. SCHAGRIN: Clearly a marketing guy, not
2 a CEO. (Laughter)

3 MR. GLEASON: From what we understand of the
4 situation in China it's match plate molding, which is
5 basically one man sitting in front of a flask, filling
6 it by hand, tamping it by hand, making one mold at a
7 time.

8 We have all automated equipment. We run the
9 fastest molding lines in the world. I mean we can
10 compete toe-to-toe with them in terms of productivity,
11 efficiency, equipment, whatever. We pay less for our
12 steel than they do. The latest number I have which
13 I'm trying to get is they're close to \$200 a ton just
14 for their raw material steel scrap. Sand, coke, a lot
15 of the basic ingredients of what goes into these
16 products are commodity and you can either find out
17 exactly what they're paying in China or in this case
18 use India as a surrogate country. But our costs are
19 going up tremendously, but so are theirs.

20 Whatever delta where we had, because we
21 generate the raw materials here in terms of steel, if
22 we're 20 percent less in cost than they are, that
23 delta's going to remain the same because you still
24 have to ship it over there.

25 COMMISSIONER PEARSON: Thank you.

1 CHAIRMAN OKUN: We've covered a lot of
2 ground. I want to go back on just a couple of things
3 for completeness of the post-hearing submission and
4 then try to cover a couple of things that I wanted
5 some further information on.

6 With regard to the demand issues that Vice
7 Chairman Hillman was asking you about, especially with
8 regard to a price suppression argument, for your post-
9 hearing if the producers, and distributors if you have
10 it, if you could supply your future demand projections
11 as well. And Mr. Gleason, I guess if you could also
12 do that for your flexible tubing if that's not already
13 in that paper you prepared just to make sure that we
14 have future projections as well.

15 Then Commissioner Miller had, I covered with
16 you, Mr. Schagrín, addressing the non-malleable
17 pipefittings case and the similarities and
18 differences, and I did want to note to make sure that
19 you also look at the financial information and talk
20 about that as well.

21 And the other issue which hasn't been raised
22 today but which was addressed there and which you've
23 raised in your brief which is the Commission's
24 treatment of the consolidation costs of Anvil and how
25 we treated it there, and you're arguing I think how

1 you argued it the first time, but whether there's
2 anything else we should be looking at or any further
3 arguments with that.

4 MR. SCHAGRIN: Chairman Okun, I hate to
5 disturb you, but just to clarify now, I'm not sure
6 that I am going to be able based on Commission rules.
7 I would have to look. The non-malleable ITC decision
8 was not appealed. Whether it was or not wouldn't make
9 a difference here. It's just, those records have all
10 been destroyed.

11 I obviously have Anvil and Ward's
12 information. There were other producers, jobbers,
13 others, whose information -- So I can probably get
14 their approval to use their two companies'
15 confidential information on non-malleable and to
16 compare it with this record, but I can't use anything
17 from -- Because once again in that case all the
18 financial data was made confidential.

19 There are large portions of the record in
20 non-malleable that were confidential. I don't know to
21 what extent I can utilize public information or try to
22 replace it with just confidential information from
23 these two domestic producers to make comparisons. I
24 just want to point that out. We'll do our best.

25 CHAIRMAN OKUN: I appreciate what you're

1 saying on that. We can look at one thing which is
2 different than what you're saying. I guess I would
3 just say in terms of trends and what the Commission
4 focused on, I think you can address it generally.

5 MR. SCHAGRIN: We'd be happy to do that.

6 CHAIRMAN OKUN: But we are sensitive to what
7 record is available on that.

8 Let me then go back, again, about the
9 changes in the marketplace and maybe something that
10 Commissioner Miller had ended up.

11 Mr. Gleason, at one point I had heard you in
12 response to one of the questions in this retail versus
13 wholesale and the blurring, I thought I heard the
14 comment that well, since Anvil sells to the retail,
15 the industry as a whole, so it doesn't matter that we
16 don't. Is that still accurate? Do you still see
17 yourselves as you are in a different market? I guess
18 that's the question.

19 MR. GLEASON: No. We've always had the
20 opportunity to sell the retail market and in our
21 history we sold hardware stores and Ace and True Value
22 and those guys. Over the last more than few years
23 with our resources, and purely as a marketing
24 strategy, not for any reason, anything else, we
25 decided to concentrate on the wholesalers.

1 Ward has survived with our customer since
2 1924. Flag, Stockem, Uburn, Coons, Graber, you name
3 the other manufacturers of pipefittings that have died
4 over these years, there's still this left. And what
5 distinguishes us, we've lived by wholesalers, we'll
6 die by wholesalers and their decisions they make.

7 It doesn't mean I can't or have not in the
8 past sold to the retail market. It's more of a
9 strategy than anything else.

10 CHAIRMAN OKUN: Mr. Fish, maybe you could
11 respond in terms of with Anvil. Having just heard what
12 Mr. Gleason said, what about for you?

13 MR. FISH: Again, the product that's sold
14 into both markets is the same product. One of our
15 strategies was to get into the retail market. The
16 difference between a fitting in the retail market and
17 a fitting in the wholesale market is there will be a
18 bar coded sticker on them. So we had to invest in
19 some packaging and bar coding equipment.

20 We purchased a company by the name of Ubrend
21 that was going out of business because of
22 environmental issues, not because of quality or any
23 other issues, and basically tried to increase our
24 market share there. And we did that for awhile. We
25 sold the Home Depots, we sold some of the big stores.

1 Over the past seven or eight years that
2 market has basically all gone foreign. They've all
3 gone based on price. And quite honestly, the
4 contractors will ask certain questions about product.
5 Consumers going in for a malleable fitting, there's no
6 questions.

7 So that market for us is a valuable market.
8 You make the product on the same machines, same
9 molding machines, same threading machines, to the same
10 specifications. So it was a natural extension of what
11 we were doing.

12 CHAIRMAN OKUN: You reminded me, Mr. Fish,
13 that was what I wanted to go back to, the additional
14 equipment, what it was and whether that made any
15 difference. I now understand that.

16 To the extent that a great deal of your
17 testimony and your answers have been focused on where
18 the blurring has, and we've talked about what's on the
19 record with regard to the purchasers, and then we
20 talked -- There's been a lot said about the big box
21 stores.

22 I guess it strikes me in listening to that,
23 and I guess the reason I want to hear some more
24 information about what that means, and I guess from
25 the Respondent's side what they're arguing is that

1 then has created this sub-sector, and what you're
2 saying is no, what's meant is the purchasers had to
3 purchase Chinese. I've heard that part.

4 But I guess the one thing I'm still curious
5 about is this kind of the indictment of the big box
6 stores generally. It's not the first case that this
7 happened and I think it's unfortunate we don't usually
8 get the big box stores here to give us their view of
9 it.

10 But I guess the reason I ask it is, to the
11 extent you're talking about price -- I understand the
12 volume part of it. To the extent you're talking about
13 price suppression, when you're talking about the role
14 of the big boxes is this a market where regardless of
15 Chinese imports, would you all be getting price
16 increases in this market or have they fundamentally --
17 Because what I hear you saying is the big box stores,
18 because of their buying power, that's what I heard you
19 say, their concentrated buying power. I think it was
20 you, Mr. Gleason. They've changed the market
21 dynamics.

22 My question is, so for us the causation of
23 by reason of subject imports. Help me out with what
24 this market environment is now and how it's changed.

25 MR. SCHAGRIN: I think I'm going to invite

1 the distributors to also chime in later because they
2 are the ones who are really competing with the Home
3 Depots, not an Anvil and a Ward.

4 But I think the other key thing which we
5 haven't mentioned today, we did in the conference in
6 answers to questions but for some reason we haven't
7 raised it today, is the Home Depots haven't created
8 more demand for a "do it yourself" home plumber to
9 install malleable pipefittings, because the "do it
10 yourselfers" weren't going to go to a Thomas
11 Summerville. They're not contractors.

12 This is not, unlike other products, I mean
13 more people are painting their houses and putting down
14 flooring and doing everything than they used to, but
15 they're not installing, at least nobody I know, is
16 installing their own hot water heater at home. I
17 mean, I don't know what -- A natural gas line. I mean
18 my God, the natural gas companies would go crazy if
19 you decided to hook up your own hot water heater or
20 HVAC system to their natural gas system. You just
21 don't do it.

22 So the folks who are shopping at Home Depot
23 are plumbers and contractors. Not the "do it
24 yourselfers" for 99 percent of these applications.

25 So now the question really for the

1 distributors to answer, like Mr. McInerney, is he
2 competing with Home Depot for contractors and
3 plumbers? Have they changed the market dynamic?

4 MR. McINERNEY: Everything else being equal,
5 a contractor is going to go to the place that's going
6 to give him the lowest price. So to say we're not
7 competing with Home Depot when they tell us they're
8 trying to compete with us is craziness. Sure, we're
9 competing with them. And it's very discouraging if
10 you go to Home Depot and one of your contractors says
11 well I can buy it less at Home Depot than we can buy
12 it from you. Then we really, you know, the price is
13 out there.

14 CHAIRMAN OKUN: I can't even use my mike and
15 I've been here awhile.

16 I did see the exchange from the conference
17 but I guess I would invite you to discuss it in post-
18 hearing.

19 I may come back. I'll just end it there.

20 Vice Chairman Hillman?

21 VICE CHAIRMAN HILLMAN: Thank you. A couple
22 of follow-ups.

23 Mr. Schagrín, in this post-hearing brief
24 that you're providing us on exactly what your case is
25 on the price effects, I would invite you to also think

1 about helping us understand. I mean if I'm looking at
2 a market of sort of flat demand, my first question is
3 okay, so how realistic is it to expect an increase in
4 prices if you're not looking at any increases in
5 demand? That strikes me as what this market is.

6 I understand you have some arguments to make
7 on the cost side. I'm happy to hear them.

8 But just say that at the end of the day I
9 look at this market and I say I don't see any price
10 depression, it's not clear how much price suppression
11 I can see in a market in which there's no clear
12 demand.

13 Is there enough volume here, if I look at
14 the indicators related to volume, to say that you can
15 make your case for present injury on volume alone? I
16 would ask you to just take a look at whether you think
17 that case is there and if so kind of what parts of it
18 you would highlight for us. More, again, for the
19 post-hearing brief.

20 That is not to say that I don't want to hear
21 what you really think is your best case on the price
22 side, but if we end up looking at this case
23 fundamentally as a volume case, I want you to sort of
24 take a look at whether it falls as a purely volume
25 case.

1 MR. SCHAGRIN: Two points.

2 First, we believe just on volume alone it's
3 an easy case for the Commission.

4 But secondly, you start out by saying if I
5 look at a product area where there's flat demand I
6 wouldn't expect producers to get price increases. You
7 spent all summer studying the steel industry. We had
8 flat demand in steel and there were plenty of price
9 increases in steel despite a flat demand. Why?
10 Changes in supply.

11 Here what we've had is flat demand, but
12 we've had big increases in import supply and these
13 producers, as in the steel industry would have --
14 Obviously in steel the change in supply was a
15 reduction in supply. We had reduction in domestic
16 supply as companies shut down and that enabled in a
17 period of flat demand the other producers who stayed
18 in the market to increase their prices.

19 Here we've had an increase in supply. Big
20 increases in supply. What this Commission normally
21 sees is when you have increases in supply you have
22 falling prices. Your big question is, why don't we
23 see falling domestic prices here? That's the norm.
24 Increased supply, flat demand, falling domestic
25 prices.

1 We submit to you that would be a zero sum
2 game for these producers given levels of underselling
3 and broad ranges -- 30, 40, 50 percent, to try to cut
4 their prices and think that they're going to gain
5 volume. All they're going to do is go into an
6 immediate significant loss situation by reducing their
7 prices.

8 VICE CHAIRMAN HILLMAN: I understand --

9 MR. SCHAGRIN: Then that goes back to the
10 volume case which is their volumes drop, their costs
11 go up, and they can't pass along those cost increases
12 or others.

13 So hopefully we'll wrap it up in a nice,
14 neat bundle for you in our post-hearing. If we didn't
15 do it in our pre-hearing we'll do it certainly in a
16 neater bundle in our post-hearing.

17 VICE CHAIRMAN HILLMAN: Okay.

18 Mr. Fish, if I can follow up just quickly
19 with one of the comments that you made I think in
20 response to a question from Commissioner Miller. That
21 was your sense that there is this tremendous overlap
22 in where everybody is getting their product. I think
23 your description was if I looked at the top 100 list
24 or some description of it that you would see large
25 chunks of that list purchasing both domestic product

1 and Chinese product.

2 Maybe to some extent, Mr. Schagrín, this is
3 a question that you're going to have to weigh in on as
4 well. Obviously our staff report did ask everybody to
5 say who are your top ten customers and everybody
6 supplied them. And yet when I look at those lists and
7 the degree of overlap it's pretty modest, if not very
8 modest, in terms of the number of your top customers
9 that are purchasing both domestic product and Chinese
10 product, on both sides.

11 MR. SCHAGRIN: Vice Chairman, I have to
12 correct you. You said the number of their top
13 customers who are buying both domestic and foreign.
14 That's not what the Commission staff found and what
15 the Respondents are trying to say. It's that the top
16 ten lists were different. But the fact is that their
17 top ten is certainly buying imports, they're just
18 maybe not on the importers' top ten. That's a
19 difference.

20 VICE CHAIRMAN HILLMAN: That's what I want
21 to understand. I'm obviously looking at what the
22 numbers are and trying to make sure I'm understanding
23 whether it squares with this notion that Mr. Fish had
24 described in terms of sort of everybody out there
25 purchasing both -- not everybody, but the majority of

1 the industry is purchasing both products.

2 Mr. Fish, I don't know whether you want to
3 expand on that.

4 MR. FISH: From my standpoint we go out and
5 talk to our customers all the time and we know that a
6 lot of them, just like Colburn Supply, will offer both
7 foreign and domestic malleable fittings. There's no
8 doubt about that.

9 In trying to invite some of those fairly
10 large customers here, most of them declined. The
11 reason, because they did not want to offend their
12 foreign suppliers.

13 VICE CHAIRMAN HILLMAN: Again, I'm not so
14 much concerned about who is here. We're obviously
15 very grateful to have distributors here. It always
16 helps immensely to understand the market dynamics.
17 It's more the data in the staff report of your top ten
18 customers, Mr. Gleason's top ten customers, and then
19 the importers' top ten customers.

20 If I look at those lists -- Your top ten,
21 Mr. Gleason's top ten, and the importers' top ten --
22 there is very limited overlap in terms of the
23 companies. So very limited overlap.

24 So I'm trying to understand how that squares
25 with this notion that there's been this tremendous

1 blending of these lines between wholesale and retail
2 and how there is this competition between the Chinese
3 product and your product if your customers, at least
4 your top ten customers, do not appear to be the same.

5 MR. SCHAGRIN: Vice Chairman -- You can
6 address it, Tom, if you like, but I think we'll
7 address it in our post-hearing brief. I think the
8 Commission staff report concluded that the fact that
9 there was an overlap of top ten customer list
10 indicated a "fragmented marketplace" for malleable
11 fittings. There is no question that that conclusion
12 is the right conclusion to draw from that information
13 because there are hundreds of distributors. Even with
14 the consolidation there are still hundreds of
15 distributors. There are still in addition to the big
16 box stores several other national chains of hardware
17 retailers and still, believe it or not, some small
18 hardware, many thousands of small hardware retailers.
19 So it is a fragmented market.

20 I think once again the point that Mr. Fish
21 was trying to make is that he doesn't know anything
22 about the top ten importer customer list, of course.
23 But if he went through his top ten, and I'll invite
24 him to do this and proffer whatever information he and
25 Mr. Martin have, and the same for Ward. If he goes

1 through his list of top ten customers that he's pretty
2 certain almost all of them are buying Chinese fittings
3 as well. Even if they may not be on an importers' top
4 ten list.

5 That's where there is competition --

6 VICE CHAIRMAN HILLMAN: I would invite you
7 to do that because, like I said, obviously the way the
8 data is presented would suggest that there is more
9 market segmentation than what your testimony is
10 suggesting. So perhaps that would be a good idea for
11 the post-hearing brief, Mr. Schagrin.

12 Both Mr. Gleason and Mr. Fish have already
13 submitted to us their top ten customers. What I don't
14 have is the information about whether those top ten
15 customers, I guess what I'm hearing you say, and again
16 I don't want to go into specific customers and
17 confidential information, but I'm hearing you say that
18 they are purchasing both domestic and imported
19 product. And perhaps that would be good information
20 to have on the record in the post-hearing.

21 MR. SCHAGRIN: We'll do that and we can, of
22 course, confidentially in the confidential brief use
23 their purchaser responses as well to give the
24 Commission that type of information.

25 One overarching issue when it comes to

1 market segmentation, everybody, whether they're the
2 big box retailers or the distributors, they're all
3 selling to the same end users. So at some point all
4 the competition meets up at the contractor/plumber
5 level.

6 So all these products, totally exact same
7 commodity products, all meet at the bottom of the
8 stream. Start out with producers or importers, they
9 go to wholesalers or retailers, they all wind up at
10 contractors or plumbers.

11 I'm not really sure that market segmentation
12 between imports and domestic at any particular points
13 in the middle really means much when you all get to
14 the same place at the bottom of the channel of
15 distribution which is the same contractors and
16 plumbers, just choose between buying it retail or
17 buying it wholesale, they choose between domestic or
18 Chinese.

19 VICE CHAIRMAN HILLMAN: I want to make sure
20 I understand the argument in your brief about the
21 effect of the filing of the petition. You in your
22 brief in just a quick footnote comment on it, but I'm
23 just trying to make sure I understand.

24 Do you think the filing of this petition had
25 a significant effect on volume, price or any of these

1 other trends such that we should give it significantly
2 less weight, or not?

3 MR. SCHAGRIN: I think what will help, and
4 I'm trying to remember. I think we did put the data
5 in an exhibit in our brief. It's one of these
6 situations with filing cases in October where we had a
7 prelim in June. If you look at the monthly data the
8 filing of the petition brought on a huge surge in say
9 February and March, and then by May/June as the
10 preliminary duties were about to be imposed the
11 imports started going down dramatically.

12 Over the whole first half of the year
13 imports were actually up, versus the first half of
14 last year. But it's kind of an odd shape in the curve
15 in that they just skyrocketed up those three to four
16 months after the filing of the petition, and then they
17 rocketed back down. So we'll try to address that.

18 VICE CHAIRMAN HILLMAN: Given that the red
19 light is on it's really a yes or no question. Should
20 we give less weight to the period post-filing or not?

21 MR. SCHAGRIN: Not really.

22 VICE CHAIRMAN HILLMAN: I'm going to let you
23 answer that --

24 MR. SCHAGRIN: Not really, but we'll put it
25 in our post-hearing.

1 VICE CHAIRMAN HILLMAN: Thank you.

2 CHAIRMAN OKUN: Commissioner Miller?

3 COMMISSIONER MILLER: Thank you, Madame
4 Chairman, and thank you to the witnesses. You've
5 answered many many questions and it's all been very
6 helpful. I just would try to finish up a little bit
7 since I sort of ended last time with Mr. Fish on the
8 question, again to use that sort of phrase about you
9 said those distinctions aren't there any more.

10 I completely understand the blurring that
11 you all have been talking about between retail and
12 wholesale and the big box issue. It's not there that
13 I want to go so much.

14 But when you say that "any more", Mr. Fish,
15 is that what you were referring to? The
16 retail/wholesale difference or changes because of the
17 big box? Or what I'm just not 100 percent sure I
18 understand -- A moment ago Mr. Schagrin was talking
19 about it all ends up with the same contractor or
20 plumber.

21 But you all sell to oil refineries, you sell
22 to industrial users, you sell to the big construction
23 companies, and you sell to the contractor or plumber
24 that's going into a home. Whether those lines have
25 blurred is what I'm trying to understand.

1 Which one were you referring to first, Mr.
2 Fish, before? Do you remember?

3 MR. FISH: From my standpoint as far as if
4 you look over the history of this business, malleable
5 iron fittings and maybe several other types of
6 businesses as well because we sell hundreds of
7 different products. But if you look at what's
8 happened is that historically there's been a demand
9 for domestic products especially with the higher end
10 contractors. They would only sell domestic products.
11 And I think they tried some foreign products and they
12 had some problems. Whether they were quality problems
13 or delivery problems.

14 During our sunset reviews we tried to make
15 the same case that the blurring was occurring and that
16 different people, different wholesalers were offering
17 both product lines, and I think it has increased over
18 the years. Especially in the last four.

19 We've seen more and more of our customers,
20 wholesalers, that will offer both products.

21 You have to realize that since 2000 non-
22 residential construction has not been that strong, and
23 when times get tough people have to do what they have
24 to do. Again, I think the quality of the product from
25 China has improved.

1 So I think you have all those things
2 happening.

3 I don't know if I've answered your question.

4 COMMISSIONER MILLER: That's good enough.

5 Mr. McInerney, I want to come back, the same
6 kind of line. Earlier you said in response to a
7 question on this, and I think, I'm not completely
8 sure which of my colleagues it was to. I think it
9 might have been to Chairman Okun. The contractor says
10 he's going to go to Home Depot.

11 That may be true of the contractor, again,
12 the plumber. But do you sell to the oil refinery or
13 the industrial user as well? They're not going to go
14 to Home Depot.

15 MR. McINERNEY: We don't sell to -- no oil
16 refineries, we don't sell to the industrial user per
17 se. Just because of our market.

18 COMMISSIONER MILLER: Large construction?
19 Or are you basically in the residential --

20 MR. McINERNEY: We would sell to the large
21 mechanical contractor. Home Depot would love to get
22 him as a customer. That's what they're trying to do.
23 But they're not going to Home Depot, at least to our
24 knowledge, at this stage of the game.

25 They might go to Home Depot if they have to

1 pick up a small amount of stuff just because of the
2 convenience, to a certain extent. But there's no way,
3 at least in my opinion, that a large mechanical
4 contractor who's doing a major job is going to go to
5 Home Depot at this stage of the game in our market.

6 COMMISSIONER MILLER: But you're selling to
7 him and you're also selling to the smaller contractor
8 that's selling residential --

9 MR. McINERNEY: Yes.

10 COMMISSIONER MILLER: The one that you do
11 see going to Home Depot.

12 MR. McINERNEY: Right.

13 COMMISSIONER MILLER: You as a wholesaler
14 are selling to both of those. You're not selling to
15 the industrial market, but you are selling to large
16 construction and small construction or whatever.

17 MR. McINERNEY: Right.

18 COMMISSIONER MILLER: The one that you see
19 that you're losing is the smaller construction market.

20 MR. McINERNEY: The potential loss is the
21 smaller guy at this stage of the game.

22 COMMISSIONER MILLER: Okay.

23 But are you selling imported products to
24 your large construction customer?

25 MR. McINERNEY: Yes.

1 COMMISSIONER MILLER: And has that changed
2 over time?

3 MR. McINERNEY: Yes. We didn't sell any
4 imported product in 1999.

5 COMMISSIONER MILLER: Okay.

6 That was very helpful. That's actually what
7 I'm trying to do with each of you and it's taken me
8 three rounds in order to do it, and I apologize.
9 (Laughter) But I'm going to go ahead and do it with
10 Mr. Maloney as well.

11 I understand, Mr. Kafenstock, you're a
12 little bit different as a manufacturer's
13 representative.

14 Mr. Maloney, do you sell to industrial
15 projects?

16 MR. MALONEY: No.

17 COMMISSIONER MILLER: You do sell, you told
18 me before I'm quite sure, to the large construction
19 and to the smaller construction that might be more
20 residential.

21 MR. MALONEY: That's correct.

22 COMMISSIONER MILLER: You don't see your
23 large construction guys going to Home Depot.

24 MR. MALONEY: No, I think that's a labor
25 cost issue. In other words, they want us delivering

1 their things on the job. That doesn't mean that
2 somebody such as Home Depot can't provide that service
3 sometime in the future.

4 COMMISSIONER MILLER: But they're not doing
5 it.

6 MR. MALONEY: At this point in time we do it
7 better than they do, I guess.

8 COMMISSIONER MILLER: So Home Depot's not
9 getting that part of your market, but are imports
10 getting that part of your market?

11 MR. MALONEY: Sure.

12 COMMISSIONER MILLER: When did that start
13 occurring?

14 MR. MALONEY: Well, it's one of those
15 blurring issues I think we talk about. It's a slow
16 erosion that was occurring and it tends to I guess
17 become a focus point when our customers are having
18 trouble competing for jobs. And they need to do
19 everything they can to reduce their costs in order to
20 be competitive on their jobs and that's when the
21 imports tend to come into the marketplace.

22 COMMISSIONER MILLER: Okay.

23 I'm sorry it took me so long to try to get
24 that question straight, but in the end I appreciate
25 your answers and all of your testimony. It's been

1 very helpful.

2 Thank you.

3 CHAIRMAN OKUN: Commissioner Koplan?

4 COMMISSIONER KOPLAN: Thank you, Madame
5 Chairman. I just have a few matters I want to cover.

6 First, for you Mr. Fish, you I think stated
7 in your direct presentation you'd been with the
8 company since 1982?

9 MR. FISH: Yes, that is true.

10 COMMISSIONER KOPLAN: This comes from
11 Respondent's pre-hearing brief. According to the
12 Respondent, and I'm quoting, "An important condition
13 of competition during the period of investigation was
14 the name change of domestic producer Grinnell to
15 Grinnell Supply Sales and Manufacturing and then to
16 Anvil in early 2000."

17 It claims that created disruption in the
18 domestic market that caused purchasers to reassess
19 their relationship with their suppliers. They cite as
20 an example a customer of Anvil who's identity is
21 bracketed in their brief that they claim pulled nearly
22 all of its business from Anvil in 1999. Although the
23 cited example, in fact, preceded Grinnell's name
24 change to Anvil.

25 I'd still like you to address what negative

1 effect, if any, the name change had on Anvil's
2 business.

3 MR. FISH: As part of when we were sold,
4 Tyco had two divisions -- Grinnell Supply, Sales and
5 Manufacturing; Grinnell Fire Protection. They wanted
6 to keep the name. As part of the deal, they kept the
7 Grinnell name. We were allowed to use it for a period
8 of time.

9 When any change happens in the marketplace
10 like that, different owners. Tyco, at that point in
11 time, they were -- They couldn't do anything wrong.
12 They were the perfect company. They were the next GE.
13 They were the next Cummings. What was going to happen
14 out there. Things have changed a little.

15 COMMISSIONER KOPLAN: The Chairman will be
16 happy to hear that.

17 MR. FISH: The concern that existed in the
18 marketplace was, well will you have any capital? Will
19 you have any money? Are you going to be able to keep
20 your foundries running? Et cetera, et cetera. And
21 changing the name at the same time. All of those
22 things had an impact, whether the name was changed or
23 not.

24 I think during the first year if you go back
25 and look at our sales record, you did not see a

1 decrease in sales. In fact what you saw was probably
2 a little increase and during our first year of
3 operation you saw a significant increase in
4 profitability. We changed many things, we did some
5 things that Tyco wouldn't let us do.

6 COMMISSIONER KOPLAN: Which year was that?

7 MR. FISH: The first full year was, we're on
8 a fiscal year basis, was the year ending September of
9 2000.

10 COMMISSIONER KOPLAN: Okay.

11 MR. FISH: That's why my reaction to that is
12 that yeah, did people ask us about the name change?
13 Yes, they did. Did it have an impact on some of our
14 business? Yes. If anything, I would say maybe some
15 of that business went to Ward as opposed to going to
16 us because they were concerned about our ability to
17 supply. And as we actually supplied and did a better
18 job, I think that totally went away.

19 I can't see that as being the reason for --
20 I don't see that as an issue. I really don't.

21 COMMISSIONER KOPLAN: All right, thank you
22 for that answer.

23 Next, on page 18 of their pre-hearing brief
24 they state, and I quote, "It has also been argued that
25 antidumping duty orders currently in place on

1 malleable iron pipefittings in several third country
2 markets likewise create an incentive for Chinese
3 producers to ship sharply increased volumes of
4 malleable fittings to the U.S. market. However, with
5 respect to the largest of these third country markets,
6 the European Union and Turkey, the antidumping duty
7 orders were imposed in 2000. Thus, to the extent
8 Chinese producers have an incentive to shift sales
9 from the European Union and Turkey to the United
10 States, such shifting would presumably have already
11 occurred.

12 "Similarly with respect to the more
13 contemporaneous orders in place in Brazil and
14 Argentina, as we have recognized, the interim 2003
15 import data evidences some increase in the volume of
16 subject imports but certainly no surge in the volume
17 of subject imports."

18 I'd like to hear from Mr. Gleason and Mr.
19 Fish on that. Do you agree with that?

20 MR. GLEASON: As far as --

21 COMMISSIONER KOPLAN: The interim period.

22 MR. GLEASON: In the interim period when
23 China lost the dumping case in Europe, I believe that
24 we did see a surge. Obviously one follows -- If they
25 can't sell and there's no obstacle in the U.S. they're

1 going to come here. They're going to change their
2 capacity.

3 The only thing they had to change in the
4 European market was to go from a DIN threat to an ANSI
5 thread to come to the U.S. market.

6 COMMISSIONER KOPLAN: Let me just point out,
7 I referred earlier to this Table C1, most of which is
8 bracketed that has summary data for the U.S. market
9 including the interim period. The portion I'm going
10 to refer to is not bracketed, one of the few things
11 that's not bracketed.

12 In the interim period the quantity of
13 Chinese imports, that's January to June 2002, compared
14 to January to June of 2003, the quantity went up 6.2
15 percent. But for all other sources, which would be
16 non-subjects, the quantity went up 66.9 percent.

17 So when I look at those respective numbers
18 I'm having a problem seeing the surge in that interim
19 period.

20 Mr. Schagrin?

21 MR. SCHAGRIN: No question the import data
22 does not show a surge in the interim period,
23 particularly 2002 compared to 2001 where there's a 50
24 percent increase. At some point --

25 COMMISSIONER KOPLAN: I'm talking about

1 2002 --

2 MR. SCHAGRIN: I know. But in the interim
3 period there was not a surge from China.

4 We have some concerns which we have raised
5 in the brief and we're raising with Customs now. I
6 know the Commission doesn't like to hear people come
7 up here and say oh, we've got problems with
8 transshipment mismarking, et cetera. But we have
9 taken certain evidence to Customs after the U.S.
10 dumping case was filed. Some fittings from China have
11 been going to other countries to be threaded, which is
12 not a substantial transformation, well established
13 Customs law, and then sent to the United States as
14 production from those other countries and not being
15 subject to dumping duties. That's something the
16 Customs Service will now be working on.

17 We think that that --

18 COMMISSIONER KOPLAN: You think that
19 explains the numbers?

20 MR. SCHAGRIN: There is no question that
21 part of, and I just can't nail it down for the
22 Commission, part of the increase in the non-subject
23 imports in the interim period are unquestionably
24 Chinese product that has gone through third countries.
25 There's just no question about that.

1 What we can't do is tell you what share. We
2 just know that Canada, there's not even, why this
3 hasn't been worked on in the past I have no idea, but
4 the last malleable fitting producer in Canada shut
5 down about 10 or 12 years ago, and yet we're
6 importing, it's a duty-free country. We're importing
7 1,000, 2,000 tons of malleable fittings from Canada.
8 That doesn't make any sense. There's no production.

9 COMMISSIONER KOPLAN: But absent your being
10 able to do that, then the numbers I just cited are the
11 best evidence available.

12 MR. SCHAGRIN: No question, and there has
13 not been an import surge in the interim period from
14 the subject country.

15 COMMISSIONER KOPLAN: Thank you.

16 I have one other. This is on pages 15 and
17 16 of their pre-hearing brief. Respondent argues that
18 there is no threat of material injury because they
19 believe that the domestic industry is "well positioned
20 to take advantage," and I'm quoting, "of the next up-
21 turn in the business cycle for commercial and
22 industrial sales where the domestic industry faces
23 little competition from subject imports."

24 Respondent cites as authority for its
25 argument a number of purchaser questionnaire

1 responses. The identity of them is business
2 proprietary information, Mr. Schagrin, but you do have
3 access obviously to that.

4 I'd like to hear, though, from the industry
5 witnesses on this argument now, and then for purposes
6 of the post-hearing if you could take into account the
7 questionnaire responses that they're referring to and
8 respond further.

9 So Mr. Fish and Mr. Gleason, could I hear
10 from you on that issue?

11 MR. GLEASON: One would have to,
12 Commissioner Koplan, if I understand you right, one
13 would have to assume that you're buying the argument
14 that we're not in the residential business to begin
15 with and therefore are waiting anxiously for the
16 industrial/commercial market to turn around.

17 Obviously I don't think you're ever going to
18 see the industrial market turn around. Investment's
19 gone off-shore. You're not going to build a refinery
20 or chemical plant in this country any more.

21 The commercial market is showing strength in
22 certain parts of the country. It's on the way back in
23 certain areas. It's still stagnant in other areas.
24 But a large portion of product goes into the
25 residential market that they say we're not in.

1 So in order to say we're waiting for
2 something to happen means you have to buy off on the
3 argument that they're correct and we're not in the
4 residential market. We are.

5 COMMISSIONER KOPLAN: Thank you. It wasn't
6 that I'm buying into the argument, it's that this is
7 an argument that I'm going to be hearing this
8 afternoon and I wanted to give you an opportunity to
9 respond to it.

10 Mr. Fish?

11 MR. FISH: Mr. Koplan, it's my opinion that
12 given a rebound in the U.S. economy in construction in
13 general that you will continue to see at best from the
14 domestic producers of malleable iron fitting, it's
15 flat unit sales.

16 I see more and more of our customers
17 offering both product lines and I do, quite honestly,
18 I do not think that as part of this recovery some of
19 this business is going to be there.

20 A lot of our customers and a lot of the
21 business that we've sold went into industrial uses in
22 other manufacturing companies which quite honestly
23 aren't here any more. They're gone.

24 My concern is that when business does come
25 back you're still not going to see a rebound in our

1 malleable iron business.

2 COMMISSIONER KOPLAN: Thank you, Mr. Fish.

3 I want to thank you all for your answers to
4 my questions. I have nothing further.

5 Thank you, Madame Chairman.

6 CHAIRMAN OKUN: Commissioner Lane?

7 COMMISSIONER LANE: I just have a clarifying
8 question.

9 Mr. Fish and Mr. Gleason, do you sell
10 directly to end users at all? Or are you mostly
11 selling to the wholesale market?

12 MR. GLEASON: Ward sells to the wholesale
13 market, Commissioner. We do not sell directly to the
14 contractor or to the Exxons, Mobils, Doves of the
15 world. We sell to the wholesalers/retailers.

16 MR. FISH: Ninety-five percent of Anvil's
17 business is sold through the wholesalers. It may be
18 up to 97 percent.

19 For a period of time we did sell certain
20 sprinkler contractors, who typically do not use
21 malleable iron fittings, they use some but typically
22 not a lot. But we have moved away from that business.
23 Our business right now is to sell through wholesale
24 distribution.

25 COMMISSIONER LANE: Thank you.

1 That's all I have.

2 CHAIRMAN OKUN: Commissioner Pearson?

3 COMMISSIONER PEARSON: Just a quick question
4 for the post-hearing brief.

5 Could you please provide an estimate of what
6 percentage of domestic production eventually finds its
7 way into the residential sector, the commercial
8 sector, and the industrial sector?

9 Thanks.

10 If you want to comment now, that's fine.

11 MR. SCHAGRIN: Let me comment now,
12 Commissioner Pearson, so you're not disappointed in
13 the post-hearing brief. We find it's best to explain
14 to a Commissioner if he asks a question and then says
15 gee, he didn't answer my question in the post-hearing
16 brief and I said answer it. That is because as Ward
17 and Anvil have testified, because they sell through
18 wholesalers they don't in turn know, they can make
19 some guesstimates, but they'll be just wild
20 guesstimates. They don't know about who the
21 distributors are then selling to, how much of that is
22 industrial, commercial or residential. But we can
23 make some just wild guesstimates and I'll ask for some
24 help from our distributor customers because we think
25 these two distributors are pretty representative of

1 distribution nationwide. I'll ask them for their
2 estimates as well and we'll combine those and put them
3 in the post-hearing submission.

4 COMMISSIONER PEARSON: Thank you.

5 CHAIRMAN OKUN: I have no further questions
6 for this panel. The follow-up question I wanted to
7 ask I think was answered in response to Commissioner
8 Miller.

9 Vice Chairman Hillman?

10 VICE CHAIRMAN HILLMAN: I have no further
11 questions either, but would thank you very much for
12 your testimony.

13 CHAIRMAN OKUN: No other questions from my
14 colleagues. Let me turn to staff to see if staff has
15 questions of this panel?

16 MR. DEYMAN: I'm George Deyman, Office of
17 Investigations. I have two very quick questions to
18 clarify the record and confirm the accuracy of the
19 data in the staff report.

20 The first question is, there is some
21 information on the record that there are some other
22 domestic firms that are possibly capable of producing
23 the malleable fittings or maybe even have produced
24 them.

25 Is it your contention, Mr. Schagrin, and the

1 others on the panel, that the data we have in the
2 staff report for the domestic industry are essentially
3 complete and for the entire domestic industry?

4 MR. SCHAGRIN: Yes, we believe the data that
5 Commission staff has is complete and covers the
6 entirety of the industry. To the extent that either a
7 Ward and Anvil might purchase a small amount of
8 product from a jobber that they then thread, it would
9 all show up in Ward and Anvil's data.

10 So we think you've covered 100 percent of
11 the domestic industry data.

12 MR. DEYMAN: My second question is, you have
13 indicated that there are antidumping and possibly
14 countervailing duty orders in some other countries
15 such as Mexico, Brazil, Argentina, et cetera.

16 We as a staff tried to independently confirm
17 things of that nature and we haven't been able to
18 confirm all of those orders. So in your post-hearing
19 brief could you provide us with the evidence that you
20 have that these orders are still in effect?

21 MR. SCHAGRIN: We'll provide you with what
22 we have. I think we found the Argentina order. We
23 haven't even found a Brazilian preliminary
24 determination even though that investigation started
25 two years ago. Obviously under our WTO system the

1 notification system is not working as quickly or
2 efficiently as it's supposed to, but in our post-
3 hearing we'll provide you with everything we can find,
4 both from those countries' web sites as well as WTO on
5 those orders.

6 MR. DEYMAN: Okay, the staff has no further
7 questions. Thank you.

8 CHAIRMAN OKUN: Thank you, Mr. Deyman, for
9 those follow-up question.

10 Does counsel for Respondents have questions
11 for this panel?

12 (No audible response)

13 CHAIRMAN OKUN: Mr. Smirnow has indicated
14 there are no questions for this panel.

15 Before we break for lunch let me just do two
16 things. One is really just to thank the witnesses
17 once again for your testimony, for all the answers to
18 questions, for your patience on a long morning into
19 afternoon. Again, we appreciate you being here and
20 for the information you'll be helping gather for post-
21 hearing.

22 And second, the room is not secure during
23 the lunch break so please take any confidential
24 business information with you.

25 With that, we will take a lunch break. We

1 will resume at 2:00 o'clock.

2 (Whereupon, at 12:59 p.m. the hearing was
3 recessed, to reconvene at 2:00 p.m. this same day,
4 Thursday, October 23, 2003.)

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1 Industries. To give you a brief background, I've been
2 in the imported plumbing business since 1989, full
3 time since 1989 and B&K imports malleable iron pipe
4 fittings, plumbing valves, faucets and other plumbing
5 specialties.

6 In 1998, our company was purchased by Mueller
7 Industries, a U.S. manufacture of copper tube, copper
8 fittings, plastic fittings and brass rod. We are
9 listed on the New York Stock Exchange under the ticker
10 symbol MLI and we are a \$1 billion revenue company.

11 I appear here today to discuss what I
12 believe is the single most important issue in this
13 investment, the continued segmentation of the U.S.
14 malleable fitting market. I'll make a brief
15 presentation on the issue, respond to some of the
16 testimony you've heard earlier this morning and then
17 we'll be happy to answer any questions you have.

18 One thing I do want to mention is that the
19 two wholesalers that were here today are also
20 customers of Mueller Industries, so I want to be as
21 careful as possible not to upset them in any way,
22 because we thank them very much for their purchasers
23 of our U.S. copper tube and copper fittings, so I hope
24 what I say today will not upset them.

25 As you are aware, B&K is one of the largest

1 U.S. importers of malleable iron pipe fittings from
2 China. Although we primarily sell large volume
3 retailers, we have also increased our sales to
4 plumbing wholesalers. I would like to point out,
5 however, that generally in my experience, only the
6 largest plumbing wholesalers such as Fergusson and
7 Hughes supply both the large volume commercial and
8 industrial projects and the smaller residential
9 projects and I think that some of the questions Ms.
10 Miller was asking about the different wholesalers in
11 the room what they sell, I believe there's a
12 difference with the larger national chains, their
13 customers selling residential versus commercial
14 industrial.

15 Other smaller sized plumbing wholesalers
16 generally supply local plumbing contractors and, in
17 some instances, local retailers who sell to the
18 residential market. This is particularly important
19 because most domestic industry fittings are sold for
20 commercial and industrial end users.

21 Some of the earlier testimony this morning
22 is therefore in my opinion not indicative of the
23 experience of the commercial and industrial segment of
24 the U.S. fittings market. Someone pointed out how if
25 the products are the same why are people willing to

1 pay double or whatever percentages more that was said
2 and that's my question also. To me, they're only
3 willing to pay double because that's all they look at.

4 When we heard this morning that I think the
5 gentleman from Anvil said we compete with B&K and
6 other import distributors, I don't think we compete
7 with Anvil or Ward. I think that the wholesaler or
8 the retailer decides whether they want an imported
9 malleable fitting or a domestic malleable fitting and
10 if it's domestic Anvil and Ward go at it and if it's
11 import, B&K, LDR and the others that you're familiar
12 with compete.

13 It seems to me for the most part the
14 purchasers testifying early today are referring only
15 to the secondary segment, the residential segment, of
16 the U.S. wholesale market not the primary wholesale
17 market, which is the commercial and industrial market.

18 To avoid any confusion regarding the two
19 segments of the U.S. fittings market relevant to
20 domestic sales, we have referred to the residential
21 end use segment the wholesale market as secondary
22 wholesale market. At the other end of the wholesale
23 market, which we have referred to as the primary
24 wholesale market, are sales for use in commercial and
25 industrial projects. In my opinion, it is at this

1 higher end of the wholesale market where the domestic
2 industry has concentrated their sales.

3 This is particularly true with respect to
4 Ward Manufacturing, as Ward Manufacturing, to the best
5 of my knowledge in the last ten years, has not
6 attempted to provide quotations or sales presentations
7 to the growing retail channel. Importantly, to my
8 knowledge, Chinese imports do not compete in the
9 primary wholesale market.

10 I think now is an important time for me to
11 try to explain to you the experience I have because
12 I'm in the unique situation where I sell imported
13 products when it comes to malleable iron pipe fittings
14 and other B&K products like faucets and valves, but I
15 also sell made in the U.S.A. products that our parent,
16 Mueller Industries, manufacturers, namely, copper tube
17 and copper fittings, plastic fittings and brass rods.

18 For some reason, there is no scientific
19 answer, it's partly due to tradition, partly due to
20 brand, but certain wholesalers will only take U.S.A.
21 copper tube, copper fitting and I believe the same
22 with malleable fittings. For instance, just two weeks
23 ago, there was a national plumbing show in Las Vegas
24 called the ISH North American Show, and I was working
25 the booth with other Mueller and B&K colleagues, and

1 there was a wholesaler that came in the booth that I
2 knew and I thanked him very much for his valve and
3 faucet business, but I handed him a nice B&K malleable
4 fitting.

5 And I said, "Thank you for all your other
6 business, I was wondering if we could provide you a
7 quotation on this item."

8 He said, "Absolutely not."

9 I said, "Why?"

10 He said, "Because we only buy domestic."

11 I said, "Why? Why don't you try ours?"

12 "No, absolutely not." He says, "I buy your
13 copper tube U.S.A., I buy your copper fittings U.S.A.
14 and I buy U.S.A. malleable."

15 I further questioned him, "Why do you buy
16 our imported valves and faucets?"

17 "That's the way it is."

18 I didn't get a good answer. That's
19 tradition. The plumbing industry is a very old
20 industry that goes on tradition.

21 In trying to further understand the
22 segmented nature of the U.S. fittings market, it helps
23 to focus on end use. On the one hand, you have large
24 volume commercial and industrial projects which would
25 include public and private office buildings as well as

1 industrial gas projects. These large volume projects
2 are primarily supplied by domestic producers which
3 receive a considerable price premium for this segment
4 of the market.

5 On the other hand, you have fittings sold
6 for residential construction and remodeling projects
7 as we well as repair maintenance projects. Although
8 domestic producers do sell into the secondary segment
9 of the U.S. fittings market, domestic fittings are
10 concentrated in sales to commercial and industrial end
11 users. In contrast, nearly all Chinese fittings sold
12 in the U.S. market are destined for residential
13 construction and/or repair maintenance end use.

14 Further, the market for imported fittings is
15 broken into what I call two markets: the B&K level
16 quality and another level quality. There are other
17 importers out there that I believe are importing to
18 this country a malleable fitting that is not at the
19 same level as the B&K fitting and it depends on the
20 wholesaler, who it is, what they buy. Are they buying
21 strictly on price or are they buying on quality, brand
22 and service? It's up to these wholesalers not only to
23 decide should I buy a U.S.A. fitting or should I buy
24 an import, but what type of import.

25 The commission should further recognize the

1 demand for fittings used in residential applications
2 has increased over the past few years as a result of
3 strong growth in residential construction. Everyone
4 knows that there's been very low mortgage rates and
5 record housing starts. Our Chinese malleable fittings
6 go to this market and therefore demand for these
7 fittings has increased. However, demand for fittings
8 used in commercial and industrial applications where
9 most domestic fittings are sold has declined.

10 We therefore witness growth in the markets
11 serviced by Chinese imports coinciding with the
12 decline in the markets serviced by domestic producers
13 and I further know this is true because I know it's
14 happening to the Mueller manufactured copper tube and
15 copper fittings, the decline we had, because, again,
16 it's a U.S.A. product so we're selling it to the
17 commercial, the primary wholesale market, those
18 products, the demand over the last three years has
19 been down significantly.

20 Given this background, I would now like to
21 address the issue of the blurring retail and wholesale
22 market.

23 First, I agree there's been an increase in
24 sales of Chinese fittings to plumbing wholesale. I
25 also agree that plumbing wholesalers which sell to

1 residential end users are facing increased competition
2 from large volume retailers. At this point, without
3 giving out competitive information, I must tell you
4 that Home Depot is a very major customers of ours and
5 there's no secret that we are one of the biggest
6 vendors, not just for malleable fittings but for all
7 the other products I said, to Home Depot. So we know
8 Home Depot very well and I think it's important for
9 the commission to understand Home Depot as well also
10 to understand the market that they're going after
11 because if you listened this morning, you'll believe
12 that there's an exact market that every person that's
13 potentially buying from the plumbing wholesaler is
14 sitting in this room and other plumbing wholesalers
15 shop at Home Depot. That is not true.

16 Number one, there is no discount for
17 contractors at Home Depot. They may have a contractor
18 check out column so they don't have to wait in line,
19 but there's no discount. They might have a credit
20 card with extended dating, but there's no discount.

21 Home Depot's target customers, besides the
22 do-it-yourselfer, is the small residential contractor,
23 what they call one to ten truck, meaning that if I'm a
24 contractor and that I'm going to fix someone's house
25 in the neighborhood and I'm a small contractor, I have

1 my own truck, I go to Home Depot at six a.m., I pick
2 up what I need for the day and I go do it. Anything
3 that is a small, local contractor that has one to ten
4 trucks.

5 The larger contractors, ten trucks plus,
6 typically do not shop at the Home Depot because of
7 some of the reasons you heard this morning: they like
8 their goods delivered to the job site, they don't like
9 to park and walk in a parking lot and wait in a check
10 out line even if they have a special check out line.
11 They don't like to walk through light bulbs to get to
12 plumbing or HVAC or whatever they need.

13 So there is definitely a difference on the
14 wholesale side, on these residential contractors that
15 shop both at the wholesaler and at the retailer, it's
16 only the small guys, the one to ten truckers. And I
17 believe if Home Depot published that information, and
18 they talk about it a little bit, but they're a little
19 secretive about their customer segmentation. You only
20 see them talking about one to ten truck contractors,
21 not all the contractors that would purchase from
22 plumbing wholesalers.

23 And, remember, these are only the
24 contractors that we call residential. The other part
25 of the market that the larger wholesalers are

1 servicing, the commercial guys, they won't even look
2 at a Home Depot because they want a U.S.A. brand
3 product that they can only get from their traditional
4 plumbing wholesaler. And now the larger plumbing
5 wholesalers like Fergusson and Hughes, they have more
6 of the commercial jobs because they're national chains
7 with hundreds and hundreds of branches and they have
8 the buying power and the purchasing power to compete
9 with everyone and then pass those prices on to their
10 large commercial contractors.

11 One other comment about pricing that I heard
12 this morning that I do not believe to be true. Home
13 Depot does not pay less than small or medium
14 wholesalers like Colburn and Somerville. I could
15 speak certainly for B&K, I can't speak for everyone,
16 but Home Depot even though they have substantially
17 higher buying power, their product takes more to get
18 to their store. Number one, it needs to be bar coded.
19 Number two, it needs to be in a retail ready box, a
20 special box we call a bin box. Number 3, it's smaller
21 freight minimums. So when you look and add all these
22 costs together, the invoice price or even the dead net
23 price, that Home Depot pays after all their discounts
24 and rebates, they are paying more for B&K -- and if
25 they read this testimony, they're going to kill me --

1 they are paying more for B&K than a wholesaler would
2 pay on these fittings. We try to keep it as close as
3 possible, we try to have parity in all the markets we
4 sell, and it's very close, but Home Depot certainly
5 does not have a price advantage on B&K malleable
6 fittings compared to the wholesalers we sell to.

7 Another reason why Home Depot likes to buy
8 from someone like B&K besides the good quality that I
9 have to thank my domestic competitors for telling us
10 about and our distribution is that Home Depot likes
11 the one-stop shop concept. Home Depot has 16,000
12 stores. Not every Home Depot store can meet the
13 freight minimum to buy, let's say, \$500 worth of
14 malleables. That's a lot of fittings. So because B&K
15 Mueller has the capability and wherewithal to sell them
16 valves, faucets, malleable fittings, nipples. plumbing
17 specialties, copper fittings, copper tube, et cetera,
18 when a store needs to buy from B&K, if they're out of
19 one item, one malleable fitting item, let's say a
20 half-inch elbow, they don't have to write a \$500
21 minimum to get all these fittings in because you know
22 they're going to need some valves and copper tubes and
23 copper fittings, the other things we supply them. So
24 that is a huge factor which Home Depot looks at when
25 assessing their vendors and making their purchase

1 decisions.

2 The next part of the retail market place I'd
3 like to discuss is the cooperatives. These are Ace
4 Hardware, True Value Hardware and two or three others,
5 Stuart Best, Handy and our own. There's five
6 traditional hardware co-ops left. And what a hardware
7 cooperative is, let's take Ace Hardware, Ace Hardware
8 is approximately 5000 independent retailers, they own
9 the stores themselves. And to be a member and to wave
10 the Ace banner, they have to buy a certain amount of
11 their purchases through Ace Corporate.

12 Ace Corporate has decided, way before B&K
13 ever got into the picture, probably way before China
14 ever got into the picture, Ace Corporate decided that
15 they needed to offer their members a choice. They
16 need to offer a domestic fitting and they need to
17 offer an import fitting.

18 Obviously, when that decision was made way
19 back when, there was still a significant price
20 separation for this master wholesaler, Ace Hardware,
21 to double stock all their products in all their
22 warehouses and offer an imported fitting and a
23 domestic fitting and leave it up to the individual
24 hardware store which one to purchase.

25 Well, through the years, we believe there to

1 be a shift of these purchases away from the U.S. to
2 the imports, but the U.S. still has substantial sales
3 to these customers. And why do you ask? Why would
4 they continue buying the U.S.A. fitting if it's priced
5 higher, that we heard this morning, and our quality is
6 the same?

7 It's because the Ace retailers need a U.S.A.
8 product to sell to the customers in the area that
9 they're selling. You can't believe what you heard
10 this morning that every Ace Hardware store competes
11 with Home Depot. In some of the rural areas, the Ace
12 Hardware store or the True Value hardware store, acts
13 as a plumbing wholesaler because they're in a rural
14 area and every hardware store that I've ever been in
15 has water heaters and appliances. They don't have the
16 big appliances like Home Depot would have with
17 refrigerators and stoves, but they all have water
18 heaters, okay? And we know that malleable fittings
19 are used to connect water heaters.

20 So these Ace Hardware stores and other
21 cooperative companies purchase the domestic malleable
22 at their choice because their parent co-op, Ace
23 Corporate, could offer you the import fitting or the
24 U.S. fitting. They buy the import fitting if they
25 want or they buy the U.S. fitting. They buy the U.S.

1 fitting for a reason: because their market demands
2 it, because it's in a union town, because it's in an
3 old traditional town, because they're competing with a
4 plumbing wholesaler that has it, because they're
5 selling commercial jobs, because they're selling
6 industrial jobs, because they're selling MRO. So
7 that's the difference between Ace and the co-op market
8 and Home Depot and plumbing wholesaler.

9 So I believe there is a blur on the
10 residential contractor side between the plumbing
11 wholesaler, Home Depot and Ace Hardware, but I believe
12 there isn't a blur when it comes to the market for
13 U.S. fittings. For instance, the wholesalers that
14 sell, the Exxons, Mobiles, Dows that you heard this
15 morning, they would never consider an import fitting.
16 Ever. Wouldn't even consider it. So it's not a
17 question of Chinese import or U.S., it's a question
18 then of two: Anvil or Ward.

19 These changes in the nature of competition
20 between the retail and wholesale markets have been
21 limited to fittings sold for use in residential
22 applications. The so-called blurring of the line
23 between the retail and wholesale markets has not
24 extended to the commercial and industrial end use
25 segment of the market. And I think the best people to

1 tell you that would be the Fergussons and the Hughes
2 of the world because they're a different type of
3 wholesaler.

4 I therefore believe there is currently and
5 will continue to be only limited competition between
6 Chinese and domestic fittings. Other factors that we
7 believe explain the decline in the domestic industry
8 are alternative products, as we heard this morning,
9 they are taking up some of the market, albeit small,
10 but also Ward has competitors on the stainless steel
11 Ward flex. They're not the only person in the market.

12 And you also heard about the Granelle name
13 change. Well, I could tell you from my side, the
14 Granelle name change definitely affected the market
15 because as Granelle changed their name, I think they
16 changed it twice, first it was Granelle, then it was
17 Supply Sales and then it was Anvil, it was very
18 confusing to the customers and the customers would
19 call us up and whenever you confuse a customer, it's
20 opportunity. So I do believe that was a factor.

21 Other issues I'd like to point out, we heard
22 this morning that our domestic competitors have 700 to
23 800 items or SKUs, stock keeping units, different
24 parts, and they also have products that go up to 300
25 PSI. To further evidence that the import fittings

1 just go to this residential segment of the market, our
2 fittings only go up to 150 PSI, we don't have a 300
3 PSI fitting, and we don't have 700 or 800 items, we
4 have 200 or 300 items, because our items primarily go
5 to retail and retail is not half to two-inch like you
6 heard this morning, retail is 80 to 85 percent half
7 and three-quarter-inch. That is true on malleable
8 fittings, on steel pipe nipples, on copper fittings,
9 on valves, anything I know in plumbing on Home Depot
10 is half and three-quarter-inch.

11 I would now like to take the opportunity to
12 respond to some of the testimony you heard today to
13 ensure the commission receives a more balanced view of
14 the facts and I did most of that intertwined, so I'd
15 like to turn it over to Mr. Smirnow.

16 MR. SMIRNOW: Thank you very much, Peter.

17 As set forth in my opening statement and as
18 evidenced by Peter's testimony, there's no
19 relationship between prices for the subject imports
20 and prices for the domestic like product. Subject
21 imports were priced well below the domestic like
22 product throughout the period of investigation, yet
23 prices for the domestic like product actually improved
24 over the period.

25 The domestic industry's response to this

1 lack of price correlation is that domestic prices were
2 nonetheless suppressed over the POI and in support of
3 this position, the domestic industry selectively cites
4 two questionnaire responses. As we will discuss in
5 greater detail in our post-hearing brief, there are
6 other questionnaire responses not cited by the
7 domestic industry which clearly refute the domestic
8 industry's price suppression claim. In addition, and
9 more importantly, the reported data itself refutes the
10 domestic industry's price suppression claim.

11 The commission should also recognize that
12 the domestic industry reported no, not even one, lost
13 revenue allegation. In my experience, if there is in
14 fact price suppression lost revenue would naturally
15 follow. The absence of even one report of a lost
16 revenue allegation therefore says much about the
17 credibility of the domestic industry's price
18 suppression claim.

19 The domestic industry also claims that it
20 has elected to hold the line on prices and that it has
21 thereby lost substantial volume, lost sales due to
22 subject imports. The questionnaire responses quoted
23 on page Roman numeral 531 of the staff report pretty
24 much tells the story on this issue, which is there
25 really weren't any lost sales.

1 For those few instances in which lost sales
2 allegations were confirmed, it is first impossible to
3 discern whether the sales were lost before or during
4 the POI. What we do know, however, and as we
5 addressed in our pre-hearing brief, is that the single
6 largest lost sale allegation made by the domestic
7 industry clearly pre-dates the period of
8 investigation.

9 Furthermore, in those few instances in which
10 the lost sales allegations were confirmed, the volumes
11 at issue spread over a three-year period, even though
12 they were reported over a four-year period, are
13 minuscule. These confirmed lost sales allegations
14 were also limited to the retail market. The absence
15 of confirmed lost sales allegations in the wholesale
16 market again speaks to the credibility of the domestic
17 producers' case.

18 As to any threat of material injury, we
19 believe the pre-hearing report discussion of foreign
20 producers' capacity, inventories and home market
21 demand makes clear that there is no imminent threat of
22 material injury by reason of subject imports.

23 The record in this investigation is also
24 devoid of any indication that subject imports either
25 have entered or are likely to enter the primary

1 wholesale market in the imminent future, as Peter
2 testified to today,

3 The current absence of any causal nexus
4 between subject imports and domestic industry
5 performance will therefore continue to persist.

6 We therefore respectfully submit that only a
7 negative determination is warranted in this
8 investigation.

9 Thank you very much for the opportunity to
10 appear here today. We would be happy to answer any
11 questions you may have.

12 CHAIRMAN OKUN: Thank you very much for
13 those comments.

14 Mr. Berkman, thank you very much for your
15 testimony today. We appreciate you being here and
16 your willingness to answer our questions.

17 Commissioner Koplan is going to start the
18 questioning this afternoon.

19 COMMISSIONER KOPLAN: Thank you, Madam
20 Chairman. I, too, want to thank you all for your
21 testimony.

22 Let me ask first, Mr. Berkman, you
23 referenced the name change for Granelle to Anvil and
24 you said that you heard the testimony this morning and
25 that your experience with that is different, that

1 there were customers who called you and were confused
2 by it and problems resulted as a result of that name
3 change. Is that right?

4 MR. BERKMAN: Yes, sir.

5 COMMISSIONER KOPLAN: So your testimony is
6 directly inapposite to the testimony I heard this
7 morning?

8 MR. BERKMAN: Yes, sir.

9 COMMISSIONER KOPLAN: Could you for the
10 post-hearing provide us with the names, identify the
11 names of those customers who did in fact contact you,
12 when that occurred, what was the amount of product
13 that they were seeking, what the result was? In other
14 words, if you could document during the period of our
15 examination, document what you're talking about. I
16 assume you kept some records of that.

17 MR. BERKMAN: I have some of those answers
18 now that I'd like to share with you and then we'll
19 follow up in the post-hearing brief. I think the most
20 substantial part of the name change that led to our
21 increased market share was specifically with the Home
22 Depot and let me tell you what happened.

23 Before the POI, in January of 1999, Home
24 Depot had what is called a core review and Home Depot,
25 before Mr. Nardelli came and consolidated the buying,

1 they used to have seven or eight regional buying
2 offices.

3 COMMISSIONER KOPLAN: That's the footnote
4 reference that's in your brief, to 1999. That's
5 before the name change.

6 MR. BERKMAN: Right. But I'm going to tell
7 you what happened. So at this core review, and I'll
8 be quick, at this core review, they decided to take
9 most of the business away from then Granelle, they
10 gave some of it to B&K, some of it to LDR, some of it
11 to a competitor that is called Southland Pipe.

12 Now, they didn't take it all away from
13 Granelle, they left Granelle in some of the city
14 markets, Chicago, Detroit, some of the markets where
15 they thought if they pulled it out of the city markets
16 that the unions and the contractors would not be happy
17 that a Home Depot was switching from a U.S.A. fitting
18 to an import. So they left it in certain stores. And
19 I will have the data on which stores it's left in
20 because I know when we got it, so we'll add that to
21 the post-hearing brief.

22 COMMISSIONER KOPLAN: But can you quantify
23 all this, though?

24 MR. BERKMAN: Yes. And then what happened
25 is when they started changing the name, that was the

1 opportunity when they confused the marketplace, they
2 confused the Home Depot stores, and that's when they
3 said, well, wait a second, what is Supply Sales? Why
4 don't we get the fitting from B&K? What is Anvil?
5 Let's get the fitting from B&K because we know when we
6 go to our regional store meeting that a store 20 miles
7 from here is buying the B&K fitting at substantially
8 less and if it's working up there and there's no name
9 recognition, why not -- now is a good time to switch.
10 So that's when we finished switching. Because they
11 changed the name, we got the city stores in Chicago
12 and Detroit that Home Depot didn't give us in the
13 January 1999 review, they left it with Granelle.

14 COMMISSIONER KOPLAN: Buying at
15 substantially less, you said?

16 MR. BERKMAN: Yes. I don't know what prices
17 they sell Home Depot, but I assume one of the reasons
18 besides all the reasons I told you why Home Depot
19 would prefer to buy from us, price was also certainly
20 a major factor.

21 COMMISSIONER KOPLAN: Well, I look forward
22 to getting, as I say, some quantification of that
23 because I heard their response this morning and, of
24 course, yours is quite different. Thank you.

25 With regard to causation, on page 28 of

1 their pre-hearing brief, petitioners state, and I
2 quote, "Thus, importer questionnaire responses as well
3 as the testimony of distributors at the staff
4 conference established that imports from China are
5 competing with domestic producers for sales and
6 Chinese producers are willing sales with low prices.
7 The distributors' testimony on large margins of
8 underselling is confirmed by the collected
9 product-specific import data from the questionnaires.
10 Underselling was substantial throughout the period of
11 investigation on all products, with underselling
12 occurring in every comparison but one of the POI for
13 all eight products."

14 Petitioners further state at page 29, and I
15 quote, "The imports from China are not creating new
16 uses and are not increasing demand. Demand for
17 malleable fittings is price inelastic. Thus, the
18 Chinese fittings are completely substituting for
19 domestic fitting sales to meet pre-existing demand."

20 I heard you, Mr. Smirnow, say there's no
21 relationship and that you were going to supply details
22 on this issue for purposes of the post-hearing. Was I
23 right?

24 MR. SMIRNOW: Yes.

25 COMMISSIONER KOPLAN: Okay. This is my

1 question: this is not a new issue, this issue has
2 existed since the inception. I think this was
3 discussed at the staff conference and all the way
4 through. I'm just curious, why didn't you include
5 that information in your pre-hearing brief? Why am I
6 not going to see it until post-hearing?

7 MR. SMIRNOW: We have included that
8 information in our pre-hearing brief. That issue
9 really goes to end use and I don't want to identify
10 any of the importers that are listed in those
11 questionnaire responses, but what we're going to
12 discuss --

13 COMMISSIONER KOPLAN: But you have the same
14 access to that that I did.

15 MR. SMIRNOW: I do. Yes.

16 COMMISSIONER KOPLAN: Yes.

17 MR. SMIRNOW: And there's a distinction, as
18 we said, there's a commercial end use, commercial
19 industrial and there's also a residential. Many of
20 the questionnaires, if not most of the questionnaires,
21 which the domestic industry is relying on we believe
22 most of their product -- of those purchasers, most of
23 that product ends up in the residential segment.

24 COMMISSIONER KOPLAN: My point, and I
25 understand you don't want to get into the details of

1 those questionnaires, you can't, in this session, but
2 that was available to you prior to the hearing and you
3 didn't walk through it. That's my point, you didn't
4 walk through that in your brief.

5 MR. SMIRNOW: Could you restate the
6 question? I guess I didn't walk through the fact
7 that --

8 COMMISSIONER KOPLAN: You said the
9 questionnaire responses that the petitioners are
10 referring to, that you can't get into the details of
11 that here, and my point is that those questionnaire
12 responses were discussed in some detail in their
13 submissions.

14 MR. SMIRNOW: Right. Sure.

15 COMMISSIONER KOPLAN: And were available to
16 you and you could have dealt with that.

17 MR. SMIRNOW: Maybe this will answer the
18 question.

19 COMMISSIONER KOPLAN: Go ahead.

20 MR. SMIRNOW: We do not dispute that in the
21 secondary wholesale market and the retail market that
22 the domestic industry has lost some sales to subject
23 imports.

24 COMMISSIONER KOPLAN: Okay.

25 MR. SMIRNOW: Peter stated that today. We

1 don't dispute that. So if we don't dispute that, then
2 I saw no need to go through and respond to each of
3 those questions because our point is that those lost
4 sales are for residential, the residential end use, a
5 smaller portion of the domestic industry sales. Our
6 focus is therefore going to be on what are the people
7 in the larger portion of the market, the larger
8 purchasers, what are they saying, and that's what
9 we've elected to focus on. But given that we accept
10 that with respect to smaller purchasers, more regional
11 wholesalers, in some instances, the domestic industry
12 lost sales to subject imports.

13 COMMISSIONER KOPLAN: Let me stay with you,
14 if I could. There are four named Chinese manufacturer
15 exporters listed in Commerce's final determination:
16 Genan Meade Casting Company, Ltd., and I'm going to
17 ask as to each of these, does B&K receive imports from
18 them?

19 MR. SMIRNOW: From one of the named
20 respondents on the Commerce side --

21 COMMISSIONER KOPLAN: Which one?

22 MR. SMIRNOW: Genan Meade.

23 COMMISSIONER KOPLAN: From Genan Meade?

24 MR. SMIRNOW: Yes.

25 COMMISSIONER KOPLAN: But not from the other

1 three?

2 MR. SMIRNOW: Correct.

3 COMMISSIONER KOPLAN: Not from the other
4 four, I'm sorry.

5 MR. SMIRNOW: Correct.

6 COMMISSIONER KOPLAN: Okay. And there's no
7 one representing them here today and there's no
8 representative of the Chinese exporters here today, so
9 it's just B&K.

10 MR. SMIRNOW: Yes.

11 COMMISSIONER KOPLAN: Now, with regard to
12 Genan, Genan reported its production of malleable
13 fittings and what percent of total fittings production
14 in China that accounted for. The number is business
15 proprietary, but does B&K have any knowledge of its
16 own as to the accuracy of the information given to us
17 by Genan?

18 Let me simplify this for you, because I'm
19 asking this of you, Mr. Smirnow. I'm looking at a
20 paragraph that's in Chapter 7 of our staff report on
21 page 3, okay? Where the staff summarizes the
22 information that we received from Genan, okay?

23 MR. SMIRNOW: Okay.

24 COMMISSIONER KOPLAN: I can't get into the
25 numbers, but our information in at least one instance

1 in that paragraph that I consider significant is
2 different and what I'm wondering is whether you are
3 able to walk through the information that was given to
4 us in that paragraph and whether you have the
5 knowledge to tell us how these numbers that I'm
6 looking at that are bracketed were arrived at.

7 MR. SMIRNOW: Right here, today, no, I do
8 not.

9 COMMISSIONER KOPLAN: No, no. Post-hearing.

10 MR. SMIRNOW: I have their questionnaire
11 response and I'll certainly look at their
12 questionnaire response and to the extent that based on
13 my review of the questionnaire response, I'll answer
14 your question. I have no other information regarding
15 Genan Meade other than what has been presented to me
16 informally by Peter about his understanding of the
17 company and the information that's included in the
18 questionnaire.

19 COMMISSIONER KOPLAN: Okay. Just to focus
20 it, it is that first full paragraph on page 3 of
21 Chapter 7 of the staff report that I'm interested in.

22 MR. SMIRNOW: I'll be happy to look at that
23 post-hearing.

24 COMMISSIONER KOPLAN: Thank you very much.
25 Thank you, Madam Chairman.

1 CHAIRMAN OKUN: Commissioner Lane?

2 COMMISSIONER LANE: Thank you.

3 The first question I have is something that
4 I forget who said it in the opening remarks but it's
5 about Mueller. Does Mueller make or sell malleable
6 fittings?

7 MR. BERKMAN: No. Mueller does not
8 manufacture malleable fittings. Mueller owns B&K. B&K
9 Industries, our parent company is Mueller, so we market
10 our products both under the B&K name and the Mueller
11 name and some things we manufacture in the states like
12 copper tube and copper fittings and plastic fittings,
13 and some things we import. We import malleable
14 fittings, valves, faucets.

15 COMMISSIONER LANE: And are those fittings
16 marketed under the Mueller name?

17 MR. BERKMAN: Yes.

18 COMMISSIONER LANE: So Mueller then does sell
19 product that are both imported and domestically
20 produced?

21 MR. BERKMAN: Absolutely. But not -- we
22 don't manufacture and import, we either make it in the
23 country or import it, it depends on the product.

24 COMMISSIONER LANE: But it's under the same
25 name.

1 MR. BERKMAN: Yes.

2 COMMISSIONER LANE: Mr. Berkman, could you
3 provide in the post-hearing brief any other
4 information you have regarding wholesalers' policies
5 and requirements for purchasing domestic malleable
6 fittings only? And the petitioners, of course, agreed
7 to address that as well.

8 MR. BERKMAN: Yes, I'll do my best, but, you
9 know, again, it's third-party information, it's just
10 based on my understanding of the market.

11 COMMISSIONER LANE: Okay. Now, Mr. Smirnow,
12 I think, said that Home Depot does not have a discount
13 for contractors.

14 MR. SMIRNOW: Peter said that.

15 MR. BERKMAN: I said that.

16 COMMISSIONER LANE: Does Lowe's have a
17 discount for contractors?

18 MR. BERKMAN: I believe not, but I'm not as
19 sure with Lowe's as I am with Home Depot, but I
20 believe that Lowe's does not have a discount for
21 contractors either.

22 COMMISSIONER LANE: Now, you explained how
23 Home Depot operates and that you were quite familiar
24 with that. How often does Home Depot evaluate its
25 vendors and how often does it determine whether or not

1 it wants to change vendors?

2 MR. BERKMAN: Excellent question. In my
3 experience, once they award you the business, if you,
4 number one, service it well without quality problems
5 or without fill problems, in other words, they order
6 100 things, you ship all 100, and if you don't raise
7 their price, then they will not review that category
8 for quite some time. For instance, on malleable iron
9 pipe fittings, Home Depot has not looked at prices
10 since January of 1999. So it depends. If there was a
11 category where one vendor fell down in service or had
12 a quality problem, then that would be the catalyst for
13 the buyer to review the program.

14 This comment may also help you understand
15 the difference between Home Depot and a retailer and
16 wholesale. Home Depot and Ace, if you get the
17 business and you don't raise their price and you
18 service it well and you keep them competitive, the
19 odds are you're going to have that business for a long
20 time. The wholesale market, every order is almost a
21 jump ball. You come in there, the wholesale market is
22 very fragmented, like you heard, and it's usually more
23 of a face-to-face versus an electronic type business,
24 and you go in trying to sell your product to the
25 wholesale market and it's more what's your price and

1 was your competitor just in and last time I didn't get
2 the malleable fitting order with the competitor, this
3 time I did get the malleable fitting with the
4 competitor, so the wholesale market in general is a
5 lot more competitive and that's one of the reasons why
6 I believe the wholesale market is paying less for
7 imported fittings than Home Depot because of this
8 competition.

9 Also, the wholesale market traditionally is
10 sold, like you heard this morning, in many
11 commodities, including malleable fittings, on a list
12 and a discount. To the best of my knowledge, Ward and
13 Anvil have the same list price sheet and they go into
14 a wholesaler and say my discount is this, so they
15 immediately know where their prices are.

16 Home Depot, the pricing was set up so long
17 ago I can't even tell you what list price is, it's
18 more of a neck to neck, they look at every item and
19 weigh it by volume, where the wholesaler moves with
20 the market. So you heard one of the gentlemen this
21 morning saying, well, we tried to get price increases
22 and sometimes we can and sometimes we can't, it's
23 because that's more of a commodity purchase. There's
24 selling off lists and discounts and if Ward goes up
25 and if the industry supports it, then they get a price

1 increase to plumbing wholesale, but that doesn't mean
2 in the best of my experience and knowledge that then
3 Anvil takes that increase and gives it to Ace because,
4 as you heard him say this morning, it's very hard to
5 get a price increase at Ace, sometimes it could take a
6 year, because it's more electronic and less of list
7 and discount.

8 That's typical across all -- in plumbing we
9 have what's called shelf items and commodity items.
10 Commodity items are bought on a list and discount,
11 what's your price, it's a jump ball, quality is the
12 same. That would be Anvil versus Ward at a wholesaler
13 or it would be copper fittings, Mueller versus
14 something else on copper fittings, what's your price.
15 That's the commodity plumbing. The shelf plumbing,
16 the valves, the faucets, there's more moving parts,
17 there's more quality features, those are sold more
18 than on just price.

19 COMMISSIONER LANE: Okay. I have a question
20 about what you are calling the primary commercial or
21 industrial market. Maybe that's the primary wholesale
22 market that refers to commercial and industrial users.
23 Does B&K sell to that market?

24 MR. BERKMAN: B&K sells to the secondary
25 wholesale market, which is residential. My knowledge

1 on the primary wholesale market is with the Mueller
2 products and because Mueller is our parent company, I'm
3 privy to all the information of the people that run
4 the plumbing wholesale division and the Mueller
5 products are sold both to the primary and secondary
6 wholesale markets, which definitely differ in Mueller's
7 head.

8 COMMISSIONER LANE: Does Mueller then sell
9 the fittings to the primary wholesale market?

10 MR. BERKMAN: The malleable fitting?

11 COMMISSIONER LANE: Yes.

12 MR. BERKMAN: No. They won't even consider
13 our product because it's not made in the U.S.A. The
14 Mueller malleable fitting is made in China and we have
15 all these Mueller customers, primary wholesalers, that
16 sell to the commercial and industrial market and our
17 salesmen are in there all the time and they say you're
18 buying our copper fittings and you're buying our
19 copper tube, it's made in the States, why don't you
20 try these malleables? And they say where's it made?
21 We say China. They say forget it, we don't even want
22 a price quote.

23 We do not sell -- some of the wholesalers,
24 like a Fergusson who has these hundreds of branches,
25 I'm sure they have some import fittings, but if you

1 look at their numbers, which I guess you have, my
2 guess -- it would be an infinitesimal part of their
3 market. It wouldn't be as high as a wholesaler
4 that's servicing more of the residential market
5 because we admit that the residential market can go
6 either way. They can go domestic or Chinese, but the
7 Fergussons, the Hughes, the guy supplying an 80-story
8 office building or a new plant, those guys are not
9 considering the Mueller or B&K imported malleable
10 fitting in their project. We don't get a chance. I
11 can quote it.

12 COMMISSIONER LANE: Okay. Thank you.

13 I don't have any other questions.

14 CHAIRMAN OKUN: Commissioner Pearson?

15 COMMISSIONER PEARSON: Mr. Berkman, the
16 petitioners state that your Chinese supplier is
17 ISO9002 qualified. Is that correct?

18 MR. BERKMAN: It's one of the ISOs, I can't
19 tell you if it's 9000, 9001, 9002, it's one of them,
20 but we could find out for you.

21 COMMISSIONER PEARSON: Okay. That's not so
22 terribly important. My question really is does this
23 give you some assurance of the quality of product
24 that's coming from that operation?

25 MR. BERKMAN: Well, between me and you and

1 everyone else reading this, you know, I've been
2 traveling overseas since 1985 and I've been to many,
3 many countries and I've been to China many, many
4 times, 50, 60 times. And, you know, what ISO9000 is
5 and what ISO9001 and 9002, all it is, it's a European
6 system where you set your own guidelines and then
7 follow it. So if you set the wrong guidelines and you
8 follow it wrong, you get a bad product. So myself, as
9 an import buyer for B&K, I don't weigh much to an
10 ISO9000 factory, no, I do not. Although many of the
11 factories we buy from are ISO9000 certified, but to
12 me, I look for other things to determine if we should
13 be buying from that factory.

14 COMMISSIONER PEARSON: And could you discuss
15 some of those other things? Particularly, I'm kind of
16 interested in the quality of the product that you're
17 buying because you indicated in your comments that B&K
18 is kind of at the higher end of the quality, for at
19 least imported products.

20 MR. BERKMAN: Yes, sir. We believe that to
21 be the case. When we visit factories, we make factory
22 assessments, we have sourcing people, and principals
23 that travel overseas that have been doing this for not
24 only me since 1985 but for 30, 35 years we have people
25 that have been going overseas. The founder of B&K is

1 still with us and he is still responsible for
2 sourcing. So when we look at factories, we look at a
3 number of different things.

4 We look at if we can form an alliance with
5 them so they won't sell to everyone in the States. We
6 look at if they'll put our name in the product. We
7 look at their production processes. We look at their
8 investment. We look at their safety. We look at
9 their quality control. We look at a number of
10 different things and price, of course, also, but price
11 doesn't always win out. We don't always buy from the
12 cheapest, but we could buy malleable fittings cheaper
13 than we're buying today from other factories and in
14 the past we have bought from other factories, but for
15 the last three or four years, it's been 100 percent
16 Genan Meade.

17 COMMISSIONER PEARSON: So the relationship
18 that you have with the supplier is much broader than
19 just a price relationship.

20 MR. BERKMAN: For sure. Most definitely.

21 COMMISSIONER PEARSON: Could you please
22 address the petitioners' contention that the foreign
23 producer questionnaire responses filed with the
24 commission indicate growing Chinese capacity and the
25 intention to increase exports?

1 MR. BERKMAN: All well managed companies are
2 looking to grow their profitable business. To my
3 knowledge, and I travel there constantly, the factory
4 that we buy from has not materially increased their
5 output. I can't speak for other malleable producers,
6 but I can speak for Genan Meade, since my last visit
7 there was March and I'm going back early November and
8 there wasn't a summer visit because of SARS, but we've
9 had someone else over there, but they have not
10 increased their capacity materially at all since the
11 period of investigation, since before that, in my
12 opinion.

13 COMMISSIONER PEARSON: Could you, given your
14 experience in other countries sourcing products, could
15 you comment on the competitive posture of non-subject
16 imports? First of all, do you handle some of those?
17 If you don't handle them, I suppose you compete with
18 them, so, please if you could comment.

19 MR. BERKMAN: We don't handle them, but we
20 know all of them because in any good business you keep
21 your friends close but your enemies closer, so we
22 visit them and we meet with them. You know, someone
23 asked the question earlier today, when I got into the
24 business or maybe even five years before that, all the
25 malleable fittings were coming from Taiwan and then

1 they went to Thailand and now they're China. The
2 Thais still make malleable fittings. Not counting any
3 potential duty, if there is a duty, on average the
4 Thais are 20 to 25 percent higher than the Chinese.
5 And while B&K doesn't import both from Thailand and
6 China, a number of our large import competitors do
7 such as Matco Norka and Smith Cooper, so they actually
8 offer the wholesalers a Thai fitting or a Chinese
9 fitting.

10 COMMISSIONER PEARSON: So what would you
11 expect would happen in the international marketplace
12 if China was to now face an import duty getting into
13 the United States as a result of this case?

14 MR. BERKMAN: I think it depends on the
15 rate. If it's a low enough rate, my guess is if the
16 market would bear it we would pass on this increase to
17 our customers and retain our market share because we
18 don't just sell on price, we sell on all these other
19 factors to the retail market, which is B&K's primary
20 business by far. And I think Home Depot is taking so
21 much market share -- I mean, Home Depot has only been
22 around for 25 years and they're \$60 billion. That
23 didn't all come from new growth. So we just happened
24 to be in the right channel at the right time. So the
25 retail channel grew by itself and the retail channel

1 happens to have the subject fittings. So it depends
2 on the rate. If it was a very high rate, I don't
3 know, we would have to strategize how to handle that.
4 Do we go to another country?

5 COMMISSIONER PEARSON: How about at the rate
6 for Genan, the preliminary duty?

7 MR. BERKMAN: I would say we would -- I
8 mean, my hope would be to go on as business as usual.
9 We would try our best to get the price increase from
10 our customers and continue to grow our business in
11 malleables because it's an important product line,
12 we're offering an excellent product and it's part of
13 our plumbing package.

14 COMMISSIONER PEARSON: But it's probably
15 not -- you probably wouldn't expect to see as one of
16 the first developments in the marketplace a bunch of
17 shifting from a different country, from China to a
18 different country, to meet the demand for the market
19 segment that B&K is serving in the United States.

20 MR. BERKMAN: Not at that rate, no. No. I
21 would think you can go to Thailand -- I think if the
22 rate would approach 15 or 20 percent, then I would be
23 on a plane to Thailand discussing with those
24 manufacturers how they would like my volume and, you
25 know, Thailand has the capacity. They could handle

1 our volume without adding capacity and we would slowly
2 switch to Thailand as long as we felt the quality was
3 good and everything we could do to continue servicing
4 our customers.

5 COMMISSIONER PEARSON: This morning I asked
6 the petitioners questions about pricing in the
7 marketplace trying to understand what seems to be
8 pricing at two different levels.

9 Could you comment on that? I'm much more
10 accustomed to commodity markets where prices tend to
11 converge pretty quickly and it's obvious to me that
12 there's differences in this market, so I'm just trying
13 to understand it.

14 Will we see out into the future always a
15 two-price structure?

16 MR. BERKMAN: In my opinion, yes. The only
17 reason, in my opinion, why Anvil and Ward get so much
18 more for what they call the same fitting, which I
19 thank them for, is because the customer is demanding a
20 U.S.A. fitting. If the customer wasn't demanding a
21 U.S.A. fitting, why would they pay whatever they said,
22 70 percent, 50 percent? Why would a customer in
23 today's day and age, when everything is competitive,
24 why would they pay double for a product unless it had
25 to be U.S.A.? So I have the same question you have.

1 To me, it makes no sense because we sell copper
2 tube -- we're the world's largest seller of copper
3 tube and copper tube is a straight commodity, you
4 could buy \$100 million of copper tube from us or \$2
5 million of copper tube from us and the price is within
6 2.5 percent. You'd be amazed at the tight span
7 because it's a true commodity.

8 COMMISSIONER PEARSON: To some extent, are
9 malleable fittings a commodity or are they
10 sufficiently manufactured as individual products so
11 that you really can't ascribe a commodity status to
12 them?

13 MR. BERKMAN: I think within the different
14 levels of the marketplace they're a commodity, so when
15 a buyer is saying I need a U.S.A. fitting, then
16 between Ward and Anvil, it's a commodity. They're
17 both made in the U.S.A., they're both good quality.
18 Then they say, okay, we're going to accept the Chinese
19 fittings for residential construction, then the
20 question is B&K, LDR, Matco Norka, Smith Cooper, then
21 it become a commodity within itself, but together it's
22 not a commodity because that's why we see such a huge
23 price variance.

24 COMMISSIONER PEARSON: Okay. Thanks very
25 much.

1 CHAIRMAN OKUN: Thank you. I enjoyed
2 listening to the comments and your responses to my
3 colleagues.

4 Let me continue on with some better
5 understanding, Mr. Berkman, of your perspective of
6 where you do business. I guess one question I have is
7 if you could describe what you think pricing has been
8 for your products over this period of investigation.
9 One of the things we explored with petitioners was
10 what we saw in the pricing data about what the price
11 trends have been and I'm just curious for where you do
12 business. I mean, I heard your testimony about Home
13 Depot, Home Depot you have a price, it's a '99 price
14 and you've never gotten a price on malleables since
15 then. Is that correct?

16 MR. BERKMAN: Correct. With retail
17 customers, there's no secret, you know, Home Depot,
18 Ace, we do not sell Lowe's, Tru Serve, we have not
19 gotten a price increase at all. And our wholesale
20 market, I'd have to look it up because, you know,
21 again, the wholesale market is so more like a
22 commodity, so my sales people have a little bit more
23 flexibility to match prices where they're competing
24 with the LDRs and the Matco Norkas, so on that small
25 percentage of B&K's business, and it is small, I would

1 have to get back to you about what happened to the
2 prices in that section of our business. But the big
3 section of our business for the retailers, the prices
4 stay the same.

5 CHAIRMAN OKUN: Okay. If you could for
6 post-hearing provide that information. I believe you
7 have already provided that breakdown, that percentage
8 breakdown?

9 MR. BERKMAN: Yes. By product.

10 MR. SMIRNOW: We have. I believe that's in
11 the questionnaire response.

12 CHAIRMAN OKUN: Okay. And you had a
13 description in your testimony about demand trends over
14 the period, if I heard, I think, your description, one
15 of things I'm interested in is also the future, but
16 for demand over the period, you described demand in
17 residential as being -- I think going up, is what you
18 said, and business being down. Was that --

19 MR. BERKMAN: Yes. Correct. Typically, the
20 contractors that shop at Home Depot and the small
21 contractors that shop at wholesalers, they're building
22 houses, they're doing repair and remodel, and housing
23 starts are up, building permits are up, that side of
24 the market, the residential construction market, has
25 been very healthy over the last three, four years,

1 where the commercial market has been hurting. We've
2 seen it come back a little bit this year, but it's
3 still down from where it was three and four years ago.

4 CHAIRMAN OKUN: And as a businessman in a
5 market where demand is going up, why couldn't you go
6 back or wouldn't you go back and ask for price
7 increases during this period?

8 MR. BERKMAN: You know, Home Depot is a very
9 unique breed and I guess the answer is that we always
10 try to raise prices to make more money, we're a public
11 company, to do whatever we can to do earn money for
12 our shareholders and grow our business. But the risk
13 with trying to raise your price with Home Depot is
14 because if you raise your price with Home Depot or any
15 other major retailer, for that matter, that will
16 generate a line review. Then they'll say, you know
17 what, you're raising my price, we haven't looked at
18 malleables since '99, we're going to look at
19 malleables now. So that opens up -- not the domestic
20 guys, because I don't think they can compete at that
21 level, like you heard this morning, it opens up B&K to
22 the other guys that have Chinese, to LDR, to Matco
23 Norka, to Smith Cooper, then they have a chance to get
24 our volume that we enjoy at Home Depot.

25 So where I would like to get price

1 increases, if we have a comfortable margin and we do
2 very detailed activity based cost accounting by
3 product line, by customer, if we're making a better
4 than acceptable margin, we don't want to rock the
5 boat. We want to keep the relationship going. We
6 want to sell them other things instead of malleable
7 fittings, we want to sell them some new product line
8 we're bringing in.

9 So giving price increases to retailers, you
10 only do it if you're willing to lose the business
11 because they're going to review the category.

12 CHAIRMAN OKUN: Okay. And how about on the
13 volume side? What's been your experience on the
14 volume of your sales during that period? Price have
15 not risen, what about the volumes?

16 MR. BERKMAN: Oh, volumes have definitely
17 gone up. Volumes have gone up because I believe the
18 Home Depots are gaining market share because they're
19 adding 200 new stores a year and also they have same
20 store growth in their existing stores and they have
21 our products, so we're going to enjoy the natural
22 growth of Home Depot gaining market share.

23 The Aces and the Tru Serve, they're
24 surviving, but at more GDP growth rates. Ace
25 Hardware, the department is up 7 or 8 percent, Tru

1 Serve, the plumbing department is up 2 percent, so
2 they're up much smaller and more traditional numbers.
3 And the plumbing wholesale market is a war. I mean,
4 it's just some months we do better than others. You
5 know, the plumbing wholesale market is like this
6 because people are buying more on price versus the
7 retailers buying the whole program, the package, the
8 quality.

9 CHAIRMAN OKUN: Okay. And in terms of,
10 again, how you've described the market and what this
11 move of the Lowe's and the Home Depots into what would
12 have been described as a wholesale market which you're
13 describing as a secondary versus a primary, just tell
14 me again in terms of those customers who are in
15 plumbing, the residential plumbing, before Home Depot
16 started targeting, as I think the petitioners called
17 it, but before contractors started -- when they
18 started going to the Home Depots of the world, they
19 were buying before, they would have been buying
20 from -- I mean, you would agree they were buying
21 before from some of the distributors we heard from
22 this morning.

23 MR. BERKMAN: I believe the small ones, the
24 one to ten truck contractors, would be buying more
25 from the medium plumbing wholesalers like we heard

1 from, meaning they're still quite large, but, you see,
2 you have Fergusson and Hughes here, and then you have
3 the numbers of the top 100 and then number 5 through
4 50, they're all quite large still, but Fergusson and
5 Hughes are much larger than everyone else and then you
6 have all these other guys which are still large, but
7 not as large as the two biggest ones.

8 Yes. I believe those type of suppliers, I
9 believe they would have grown faster than they have
10 because Home Depot is here.

11 CHAIRMAN OKUN: Okay. And then for the
12 percentage of the market that you're describing as
13 those customers in the primary wholesale who are
14 willing to pay this price premium, this gigantic
15 spread, what's your estimate of how big that market is
16 right now? I mean, do you have any idea, either from
17 the information you have from Mueller or otherwise a
18 way to estimate that?

19 MR. BERKMAN: I do not, but we could check.
20 If we can get you any information from our Mueller
21 contacts, we will gladly put it in a post-hearing
22 brief, but I don't know off the top of my head. I'm
23 sorry.

24 CHAIRMAN OKUN: Then let me turn -- this
25 information would be confidential.

1 Mr. Smirnow, I'll direct these comments to
2 you which is if we look at the volume of subject
3 imports from this market and we look at producers'
4 market share and what happened to it over the period
5 of investigation, I mean, just based on the argument
6 that I read in your brief and heard this afternoon
7 about the loss has really been in the retail section,
8 to the extent you've acknowledged losses, it's been in
9 this retail section, it's smaller; that these guys are
10 still holding their own in what is, as you've
11 described it, a primary market.

12 Are you arguing that the producers' loss of
13 market share here isn't significant? I mean, I'm
14 hearing what you're saying about retail and I'm
15 looking at this and I'm saying, okay, well, you're
16 just saying that everything on the record is --

17 MR. SMIRNOW: Chairman Okun, we are not
18 saying that they are holding their own in the
19 commercial industrial because we believe demand has
20 declined. Commercial projects, industrial projects,
21 these larger projects, given the recent recession,
22 there have just been fewer of those projects, so to
23 the extent that the domestic industry has lost volume,
24 we think it's more important that the demand declines
25 in that market is what explains their loss of volume,

1 coupled with a small percentage -- a relatively small
2 percentage of loss to corrugated stainless steel.

3 The volume that they have lost, and we've
4 accepted that they've lost some volume on the
5 residential side, we believe based on our
6 understanding of the market, is a smaller percentage
7 of the domestic industry's business.

8 Now, in the sunset review, I think the
9 commission said that roughly 80 percent of sales of
10 malleable fittings in the U.S. market total were into
11 that primary commercial industrial, so if 80 percent
12 of the market is declining and that's the domestic
13 industry's back yard, you would expect to see the
14 volume decline, then you would expect to see all the
15 performance indicators decline.

16 CHAIRMAN OKUN: What would you have expected
17 their prices to do if that were indeed the scenario?

18 MR. SMIRNOW: You would have expected the
19 prices to go down, but while Home Depot is in the
20 position of power to demand price decreases,
21 potentially or arguably the domestic industry, given
22 that they're the domestic industry and the end users
23 are demanding domestic product, so you have two U.S.
24 suppliers who are supplying this 80 percent commercial
25 industrial, so they have no incentive to say I'm going

1 to lower my price, so the competition is between Anvil
2 and Ward and neither company has any incentive to
3 undercut the other, so prices would stay the same or
4 increase a little bit, even given their loss of volume
5 in the commercial industrial segment.

6 CHAIRMAN OKUN: Okay. I see my red light
7 has come on. I'll come back.

8 Vice Chairman Hillman?

9 VICE CHAIRMAN HILLMAN: Thank you.

10 I would join my colleagues also in thanking
11 you very much for your answers.

12 I'm just trying to put your testimony into
13 some context in terms of the data that we collected
14 because it feels to me a little as though there's been
15 a slight shift, and maybe it's more in the terms that
16 we're using, but I want to make sure I understand it.
17 Because if I think about what the arguments were at
18 the preliminary stage, at least as I sort of took them
19 in, it was more that there was this segment at the
20 distributor level, that there was this wholesale
21 versus retail issue and the argument was pretty much
22 that the Chinese are in the retail segment and the
23 domestics aren't and that the domestics are in the
24 wholesale market and the Chinese aren't, and that
25 there was this divide sort of along this line of

1 retail versus wholesale.

2 It strikes me now that the argument I'm
3 hearing is much more focused on end use or, at least
4 as I hear your testimony, Mr. Berkman, what you're
5 really saying is that the Chinese are in the
6 residential market. It may be distributed to some
7 extent retail and what you're calling secondary
8 wholesale and that the domestics are in the industrial
9 commercial end use market.

10 Is that a fair assessment?

11 MR. BERKMAN: That is. And the reason why
12 we've decided to focus on end use, we believe it will
13 help the commission to understand this segmented
14 nature, that wholesale/retail, it's more complicated
15 than just wholesale/resale. You have a wholesale
16 market that is bifurcated and you have a retail market
17 that is distinct but crosses over with the lower end
18 of the wholesale market.

19 VICE CHAIRMAN HILLMAN: Then I need to make
20 sure I understand particularly what our pricing data
21 tells us. If that's the argument, which I think is a
22 little bit different than at least how I thought I
23 heard it initially and I'm trying to understand
24 whether that's different from how the data was
25 collected. So let me start -- we priced these eight

1 products, so let me start, Mr. Berkman, from your
2 experience, are the fittings themselves different that
3 are sold in the residential market as opposed to what
4 is sold into the commercial or industrial market? In
5 other words, if I'm reading along here in terms of
6 what are the standards, what are the sizes, et cetera,
7 are they different whether they're going into one or
8 the other markets?

9 MR. BERKMAN: No. One is made in China, one
10 is made in the U.S., they're not different with the
11 exception of our fittings only hold 150 PSI, which is
12 more for residential and, as you heard this morning,
13 it sounded like the gentleman from Ward said he had
14 fittings that have 300 PSI.

15 VICE CHAIRMAN HILLMAN: We didn't price any
16 products that were above 150 psi, so everything that
17 we priced was 150 PSI.

18 MR. BERKMAN: Yes.

19 VICE CHAIRMAN HILLMAN: So given that,
20 you're saying the products that we priced, you can't
21 tell from this product description where they're
22 going. Is that fair to say?

23 MR. BERKMAN: Other than generally
24 wholesale/retail and there are different perceptions
25 on that as well.

1 VICE CHAIRMAN HILLMAN: Part of the reason
2 I'm trying to make sure I understand it is obviously
3 if I look at the pricing data and I don't look at the
4 dollars of the price but I look at the quantities and
5 try to figure out whether I think there really is some
6 degree of overlap in competition, I will tell you, I'm
7 looking at all eight products and I'm clearly seeing,
8 yes, we can argue over how significant they are, but
9 there's no question there is volume of both domestic
10 product and China product in all eight of these
11 products.

12 So that to me suggests that there is a
13 greater degree of overlap in terms of actual sort of
14 competition. What it does in terms of price effects
15 is another story, but there are clearly for every one
16 of these eight products, there is some Chinese product
17 and there is some U.S. product being price.

18 MR. BERKMAN: But that's because -- that has
19 to be. They are basic products.

20 VICE CHAIRMAN HILLMAN: So you're saying
21 that you think everything that we have priced has been
22 sold into the residential market?

23 MR. BERKMAN: Since I believe we only priced
24 half through two-inch, correct? So if you were to --

25 Did we go over two-inch?

1 Yes. If you go over two-inch, then it's all
2 different because there's no two-inch in retail. Our
3 numbers will go like this. We do have some
4 two-and-a-half, three, four-inch fittings that we sell
5 into the secondary wholesale, but it's minuscule. I'm
6 talking tiny, tiny volume.

7 VICE CHAIRMAN HILLMAN: Okay. I'm just
8 trying to understand whether it's something about the
9 nature of the product that means it's sold to a
10 residential end use versus an industrial or
11 commercial. Like I said, I look at our pricing
12 products and I look at the volume and there's no
13 question there's overlap and I'm trying to understand
14 what should that tell me about whether there really is
15 a greater degree of overlap of competition than what
16 I'm hearing you describe.

17 MR. BERKMAN: No. They're distinctly
18 different sizes that go into the -- the mix-up sizes
19 that go into the retail residential post-sale, which
20 we're calling secondary, versus the commercial. And
21 those sizes are primarily half-and-three-quarter inch,
22 but some go up to two inch.

23 Now, these commercial contractors that buy
24 from the wholesalers, they, also, stock half-and-
25 three-quarter inch fittings; but if you look at their

1 mix, they might stock -- they don't have 85 percent of
2 their usage in half-and-three-quarter fittings. They
3 have 25 percent in their usage in half-and-three-
4 quarter fittings, because they sell more of the big
5 jobs. So, they sell a lot more two-inch fittings,
6 four-inch fittings, six-inch fittings, et cetera. So,
7 that's where the difference is, is the mix between the
8 customers.

9 Our customers, the retailers and these
10 wholesalers that are primarily selling residential, 80
11 percent of the volume is half-and-three-quarter inch
12 fittings, certainly of retail, half-and-three-quarter
13 inch fittings. The mix at a commercial contractor
14 buying from a wholesaler, he's going to buy a much
15 more equally mix. He's going to buy more half-and-
16 three-quarter, but a lot more two inch, more three
17 inch, more four inch.

18 VICE CHAIRMAN HILLMAN: Okay. But --

19 MR. BERKMAN: Am I explaining that okay?

20 VICE CHAIRMAN HILLMAN: No, it's very
21 helpful. But, like I said, because the specific data
22 is confidential, but let me just, again, look at --
23 for example, product one is this half inch malleable
24 black threaded standard pressure, 150 psi, 90 degree
25 elbow. And I do see, if I look at the data that we

1 collected for sales to retail, to retail, I do see a
2 set volume coming from domestic producers and a set
3 volume coming from Chinese producers.

4 So, if the market is segmented, as you're
5 describing it, why do I see U.S. product being priced
6 to retail for these kind of products? That's what I'm
7 trying to understand.

8 MR. BERKMAN: Now, I know exactly what
9 you're talking about. It's because Anvil sells to Ace
10 and True Serve and a few other small retailers. So,
11 they're numbers are showing up like I mentioned. Ace
12 Hardware Corporation, they offer both domestic fitting
13 from Anvil and an import fitting from B&K Mueller. So,
14 it's up to that individual hardware store.

15 Now, in my opinion, and I'm very close with
16 these buyers, like I am with the Home Depot buyers,
17 the only reason why Anvil still enjoyed any business
18 with an Ace or True Serve is because their independent
19 dealers demand Ace Corporation to keep a USA product
20 in their warehouse, because they're in some rural
21 area, competing with a plumbing wholesaler that's
22 selling larger jobs, or they're in a city with unions
23 that they want a domestic malleable, because they sell
24 it forever price there. When you're in a hardware
25 store, you need something, you pick it up and go;

1 whether it's 80 cents or a dollar, you're probably
2 going to buy it. So, it's not as competitive, so they
3 say, we're going to stick with a USA fitting.

4 So, that's why you're seeing the data at
5 retail. It's Anvil sells to Ace and True Value and a
6 few other hardware guys they sell.

7 VICE CHAIRMAN HILLMAN: Okay. Which, then,
8 Mr. Smirnow brings in more to this legal question, as
9 I would like you to brief, as well. Just for purposes
10 of argument, let's say the Commission were to make a
11 decision that the volume, in and of itself, and what
12 we're looking at is significant, but that we don't
13 necessarily find price effects. Just for purposes of
14 argument, I'm trying to understand what -- I want to
15 give you the opportunity to brief the same question I
16 asked to Mr. Schagrin, can this case be decided
17 affirmatively on a volume basis alone? Again, I'm
18 trying to understand, the degree to which you think we
19 have to sort of discount the volume, because of this
20 issue that a certain portion of it is attenuated
21 competition or however else you want to describe this
22 issue of market segmentation.

23 MR. SMIRNOW: We'll address that in detail
24 in the post-hearing. But, certainly, this case should
25 not be decided on volume alone, because to do that,

1 you'd have to ignore the price data. There is price
2 data on the record and the price data, it says what it
3 says: trends are diverging; subject import prices are
4 undersold; domestic prices increased. So, in order to
5 say that this is just a volume case and you're
6 basically going to throw out the price data set, then
7 I would caution the Commission against doing that.

8 VICE CHAIRMAN HILLMAN: Well, again,
9 obviously, Mr. Schagrin made a lot of arguments about
10 price suppression, et cetera, that I'm not asking you
11 to address, because they really go with some cost
12 issues, et cetera. But, it's more just trying to
13 understand the portion of the volume that you think is
14 really not competing with the domestic product, and
15 part of that goes to the same question Chairman Okun
16 was trying to get at. To the extent that you can help
17 us understand what portion of the market is sort of
18 segmented, I mean, how much of it is this residential
19 that you think does compete with the Chinese, versus
20 how much of it is the industrial commercial, where
21 you're arguing there is no overlap in competition.
22 Again, if you can help us get some sense of those, I
23 think that would be helpful.

24 MR. SMIRNOW: Okay; absolutely.

25 CHAIRMAN OKUN: Commissioner Miller?

1 COMMISSIONER MILLER: Thank you, Madam
2 Chairman, and that you, as well, to the panel for
3 being here and sharing your knowledge of your industry
4 with us. Mr. Berkman, we appreciate that. And I'm
5 trying to absorb everything I've heard, both this
6 morning and this afternoon, and try to put all the
7 pieces together.

8 Let me go back a little bit, because I think
9 you hear us trying very much to understand the nature
10 of the market as you presented, as opposed to the way
11 the Petitioners have presented it. When you were
12 speaking earlier today and you were talking about you
13 sell residential, okay, I wanted to put the question
14 to you: when you say you sell residential, what that
15 means to you, specifically. Because, this description
16 that you've given us, as secondary versus primary, I
17 want to make sure I understand what you're calling
18 secondary. When you say you sell residential through
19 wholesalers, your secondary wholesalers, what kind of
20 residential is that? I mean, is it different than --
21 is that market difference than -- well --

22 MR. BERKMAN: Our customers sell to
23 residential. So, we sell to a Home Depot and we sell
24 to a plumbing wholesaler. But, we believe that our
25 product, after they get sold through a Home Depot or a

1 plumbing wholesaler, they are then going to the small
2 contractor, you know, who has one to 10 trucks, and
3 they're going to either build one or two houses, like
4 a guy that buys a small area and decides to develop
5 four houses on his own; a person that's remodeling a
6 bathroom; a person that's adding a room; a person
7 that's building one house at a time. These are the
8 type of customers that I consider the customers that
9 our products are going to after their bought at a Home
10 Depot or a wholesaler. Where the other side of the
11 market are these -- you know, you have the National
12 Home Builders that put up 300 houses at once. Well,
13 they may spec in a domestic fitting or may use our
14 fitting. That, I don't know.

15 But, then, you have the commercial property,
16 someone building a 30-story office building; someone
17 building an industrial building; someone building an
18 office park; someone building a power plant. Those
19 people, who are building those projects, also shop at
20 the same wholesaler. You heard today from the other
21 wholesalers, they don't shop at a Home Depot; but they
22 do, also, shop at that wholesaler. So, that
23 wholesaler has got to sell to the small guys building
24 a couple of houses and he's selling to the buy
25 building a 30-story office buildings. So, they guy

1 he's selling a 30-story office building is only going
2 to buy the USA fittings. He's not going to buy the
3 Chinese fittings. And that we know from -- that I
4 know personally from trying to sell to wholesalers.

5 I've been to Ferguson, I've been to Hughes,
6 I've been to -- you know, they talked about Home Depot
7 holding a wholesaler, called Apex. Home Depot bought
8 a traditional plumbing wholesaler called Apex and we
9 have not been able to sell them made-in-China
10 fittings. A couple of their branches buy fittings
11 from one of our competitors, but they're primarily
12 domestic, and they're owned by Home Depot.

13 COMMISSIONER MILLER: Okay. Now, let me ask
14 you, again, you heard me pose a question to both Mr.
15 McInerney and Mr. Maloney today. Would you describe
16 the companies that they work for as what you call
17 primary or secondary?

18 MR. BERKMAN: They, based on their responses
19 and the little bit I know about their companies,
20 because we sell them as Mueller, more of their
21 customers are the residential contractors, than some
22 of the bigger national chains, like the Ferguson or
23 Hughes, who would sell to a company that's building a
24 power plant or sell to a company building a
25 skyscraper. So, that's the difference.

1 COMMISSIONER MILLER: Is it your impression
2 that the Ferguson and the Hughes only sell to the
3 industrial marketplace?

4 MR. BERKMAN: No, they sell both; they sell
5 both. But, my impression is the Fergusons and the
6 Hughes's, and I don't know my data, my guess would be
7 they sell many more USA fittings than import fittings.
8 They probably have both, because they -- Ferguson
9 sells to both. Ferguson will sell to the guy building
10 two houses, 100 houses, or building a commercial
11 office building.

12 COMMISSIONER MILLER: All of the above?

13 MR. BERKMAN: Right. But, that guy --

14 COMMISSIONER MILLER: You're describing both
15 what you call primary and secondary.

16 MR. BERKMAN: Yes, but that guy comes in
17 with a list and he says, okay, I'm building 10 houses
18 today, so I'll take the Chinese fittings. The guy
19 behind him says, I've got to place an order for my
20 office building, but I want the domestic fittings.
21 So, it's not up to the wholesaler, if they sell the
22 fitting from China or the fitting from USA. It's up
23 to the customer placing the order. And they're
24 driving the demand, not the wholesaler.

25 COMMISSIONER MILLER: Okay. When I posed

1 the question to the few distributors earlier today,
2 are you selling to residential markets and to the
3 commercial builders down the street, whatever, the
4 answer I got was both. And the answer to my question,
5 are you selling Chinese fittings to the commercial or
6 what I call commercial, large residential, whatever,
7 the answer I got was, absolutely, yes. That strikes
8 me as conflicting with what you're saying.

9 There may be some folks that are nice and
10 neat at one end and some folks that are nice and neat
11 at the other end; but, in between, it just doesn't
12 seem that clear.

13 MR. BERKMAN: They, obviously, know the data
14 better than I do, because they're wholesalers and they
15 sell to that market. I don't know how sophisticated,
16 I don't know -- you know, I'm sure they have some
17 commercial customers that -- you know, they said --
18 again, they're our customers. So, I don't feel as
19 comfortable as -- I feel like I'm a little bit at a
20 conflict, because they're significant Mueller
21 customers. So, I don't know if there's a way to
22 answer that in the post-hearing brief, but --

23 COMMISSIONER MILLER: Of course, you're
24 welcome to add anything you would like in the post-
25 hearing submission, if that's more comfortable.

1 MR. BERKMAN: Okay, thanks. So, that's a
2 little delicate for me.

3 COMMISSIONER MILLER: I understand. To the
4 extent you're conceding more competition in one
5 particular area, you did go to the question, which
6 you've been asked already by the Chairman and Vice
7 Chairman, to give us your ideas or thoughts on the
8 relative sizes of the markets. And I know
9 Commissioner Pearson posed the same question to the
10 Petitioners this morning and they're going to try to
11 give us some sense, understanding that one of the
12 problems we're having is this one step removed for the
13 petitioning companies, at least.

14 But, I'll be interested in whatever
15 information you can give us, because on the one hand,
16 you would -- I guess you're suggesting that the part
17 of the market where you do see this head-to-head
18 competition is fairly small. And, yet, I think Mr.
19 Smirnow, our data, which I recognize is confidential,
20 the market share information suggests a large enough
21 change that I'm having a hard time reconciling that
22 with a small part of the market.

23 MR. SMIRNOW: But, the price data shows the
24 opposite. So, even though you have volumes there, we
25 agree that with some of the retail and wholesale

1 sales, we compete. But, as Peter said, we're not
2 conceding the entire secondary wholesale market.
3 Domestic sells some product there. They sell to Ace
4 and there's a local Ace store that will only buy
5 domestic.

6 COMMISSIONER MILLER: No, you're conceding
7 that's where the competition is, is what I --

8 MR. SMIRNOW: Right. But, it went even
9 further, I think.

10 COMMISSIONER MILLER: All right.

11 MR. BERKMAN: I think to add my comment to
12 that question is, you know, to me, you guys keep
13 asking -- I think what proves to you that there's a
14 distinct market is how would anyone, if you heard
15 today the products they're saying, why would people
16 pay more for the product, unless they had to. That's
17 the question I have.

18 They're selling all these fittings, right;
19 they're selling them to someone that they won't even
20 look at my price. The guy at the show in Las Vegas,
21 he doesn't care if I'm 50 cents and they're a dollar.
22 It doesn't matter. I can't have it. I can't even
23 look at your price. There are so many customers like
24 that out there. That's the part of the market that we
25 can't compete in.

1 COMMISSIONER MILLER: Yes. But, the record,
2 also, tells me that there has been a fairly
3 significant change in relative volume of these
4 different suppliers. In other words, to answer what
5 you're saying, why would they choose to say more, the
6 record suggests to me that there's a significant
7 volume of folks out there, who aren't choosing to pay
8 more.

9 MR. BERKMAN: But, I think those folks are
10 the folks we already had. I think we were in the
11 right place at the right time. Home Depot, like I
12 mentioned, went from zero to \$60 billion in 25 years.
13 I mean, they did it at the expense of these plumbing
14 wholesalers that were offering 20 years ago only
15 domestic. And they're growing naturally in the
16 market. And residential construction is up, based on
17 housing starts and commercial construction is down,
18 which we can get you some good data on.

19 So, when you put all these things together,
20 plus the name change, plus alternative product, it all
21 adds up to something that naturally happened in the
22 marketplace, not due to Chinese dumping or Thailand
23 dumping or Brazilian dumping or stuff coming in from
24 Canada or Europe -- I've never seen an import
25 malleable fitting from Europe and I've been in the

1 business for 15 years. So, that's how it adds up to
2 me; the natural progression of the market.

3 COMMISSIONER MILLER: All right. I
4 appreciate your answer. Thank you.

5 CHAIRMAN OKUN: Mr. Koplan?

6 COMMISSIONER KOPLAN: Thank you, Madam
7 Chairman. I'm struggling right along with my
8 colleagues here. Let me approach it with you this
9 way. Mr. Smirnow, you have the staff report with you?
10 Do you have the staff report with you?

11 MR. SMIRNOW: I have the public.

12 COMMISSIONER KOPLAN: If you turn to table
13 C-1. I know most of it's bracketed, but it's not all
14 bracketed. And I can walk through this with you,
15 without getting into specific numbers, although I can
16 use some of the numbers, okay. I'll wait until you
17 get to the page.

18 MR. SMIRNOW: And I think I have the first
19 version of that, which is completely black.

20 COMMISSIONER KOPLAN: Completely black?

21 MR. SMIRNOW: Yes. I do not have one.

22 COMMISSIONER KOPLAN: Well --

23 MR. SMIRNOW: But, I do have the -- I'll
24 have to be careful, but I do have the BPI version.

25 COMMISSIONER KOPLAN: If you have that, let

1 me walk along this with you, okay?

2 MR. SMIRNOW: Okay.

3 COMMISSIONER KOPLAN: I'm looking at US
4 consumption quantity. I'm looking at the producer's
5 share and the importer's share, China and all other
6 sources and total imports. Now, I can refer to those
7 categories, because the categories aren't bracketed.

8 MR. SMIRNOW: Okay.

9 COMMISSIONER KOPLAN: I see the decline in
10 the producer's share. I see the increase and I
11 consider that significant.

12 MR. SMIRNOW: Okay.

13 COMMISSIONER KOPLAN: Okay. I see the
14 increase in total imports. The trends for both the
15 Chinese and all other sources during the period,
16 they're both going up.

17 MR. SMIRNOW: Yes.

18 COMMISSIONER KOPLAN: All right. So, it
19 does not appear that the Chinese are displacing non-
20 subjects. They're both increasing.

21 MR. SMIRNOW: Okay. I'll accept that.

22 COMMISSIONER KOPLAN: The Chinese are taking
23 the great bulk of that share and all other sources are
24 taking a much smaller amount, right?

25 MR. SMIRNOW: Up until the interim period.

1 COMMISSIONER KOPLAN: I'm looking at right
2 now the three years.

3 MR. SMIRNOW: Okay.

4 COMMISSIONER KOPLAN: Okay. Then, I go down
5 to the quantity of imports from China, all right?

6 MR. SMIRNOW: Okay.

7 COMMISSIONER KOPLAN: That is not bracketed.
8 It rises -- right?

9 MR. SMIRNOW: Yes.

10 COMMISSIONER KOPLAN: Okay. It rises from
11 13,492 in the year 2000, to 20,809 in the year 2002,
12 an increase of 54.2 percent; okay?

13 MR. SMIRNOW: Okay.

14 COMMISSIONER KOPLAN: My first question is,
15 I'd like to know what proportion of that quantity you
16 would concede is in direct competition with domestic
17 and what proportion you say is not, because I don't
18 know how to separate that.

19 MR. SMIRNOW: Okay.

20 COMMISSIONER KOPLAN: But, this is your
21 segmentation argument. I would imagine you wouldn't
22 say that all 54.2 percent is attributed to something
23 other than direct competition.

24 MR. SMIRNOW: No.

25 COMMISSIONER KOPLAN: But, this is the only

1 C table I've got, so this is what I'm working with.

2 MR. SMIRNOW: Certainly, that's something
3 I'm going to answer in the post-hearing brief. But, I
4 would --

5 COMMISSIONER KOPLAN: But, I want to walk
6 through, if I can.

7 MR. SMIRNOW: Okay.

8 COMMISSIONER KOPLAN: The quantity of all
9 other sources goes up 19.6 percent. So, again, it
10 doesn't look like the Chinese are taking away from the
11 non-subjects. They're going up together, all right.

12 MR. SMIRNOW: Okay.

13 COMMISSIONER KOPLAN: And there are
14 increases for both in the interim period. And then, I
15 look at what's happening with operating income and
16 that is bracketed. So, to me, there is a correlation
17 between what's occurring with these imports coming in
18 and what's happening with operating income, at least
19 to some extent, what's happened with operating income
20 during this period that we're looking at.

21 I put that together with Tables 18 and 19,
22 in Chapter 5, which has to do with underselling in
23 eight different products categories, underselling and
24 overselling. And there are 14 quarters being looked
25 at in those tables. And in every single instance, for

1 each of the eight products, there is underselling, all
2 right.

3 MR. SMIRNOW: Okay.

4 COMMISSIONER KOPLAN: You're saying that all
5 of this can be explained, if we simply accept your
6 segmentation argument, that there is -- I'm not
7 talking about just retail versus wholesale, but that
8 there are two primary wholesale markets and that they
9 don't compete with each other, because you all are in
10 different segments.

11 MR. SMIRNOW: Yes.

12 COMMISSIONER KOPLAN: I don't know how you
13 get there.

14 MR. SMIRNOW: Commissioner, you have to
15 place this in the context of what happened in demand
16 over the period of investigation. Think of housing
17 starts. Housings starts grew steadily over the
18 period. At the beginning of the period of
19 investigation, in February of 2000, the Commission
20 determined -- the Commission majority determined that
21 80 percent -- 80 percent of all malleable fittings
22 sold in the U.S. market were destined for commercial
23 industrial public works, 80 percent.

24 What has happened in that segment of the
25 market -- everyone in this room know about what

1 happened over the course of the past three years with
2 the U.S. economy. They went through a recession.
3 Industrial suffered; manufacturing. There haven't
4 been many new manufacturing facilities built in the
5 United States. We've heard earlier today --

6 COMMISSIONER KOPLAN: I've heard your
7 argument, because you did it in your direct
8 presentation. It's in your brief. Can you take this
9 table, for purposes of the post-hearing, and you
10 construct a table for me that shows what percentage or
11 how these numbers would translate into your argument.
12 I mean, you --

13 MR. SMIRNOW: To the extent that we can, I
14 will attempt to do that. But, I will say,
15 Commissioner, that --

16 COMMISSIONER KOPLAN: Let me just stop you
17 there.

18 MR. SMIRNOW: Okay.

19 COMMISSIONER KOPLAN: Are you asking me -- I
20 mean, otherwise, it seems to me, you're asking me to
21 take this table and ignore it.

22 MR. SMIRNOW: Not at all, Commissioner; not
23 at all. If the residential segment is growing and at
24 the beginning of the period of investigation, most of
25 the domestic industry sales are in this other market,

1 this commercial-industrial. The residential segment
2 is where the Thai imports were, where the Chinese
3 imports were. That market grew over the period of
4 investigation. Therefore, the volume of those imports
5 are going to grow. You would expect that.

6 The commercial market industrial, that
7 declined over the period. That market was soft.
8 They're going to be less sales there. Domestic
9 industry volume would be expected to decline. That,
10 in large part, explains it. We're not saying that
11 that's everything. We admitted that some portion on
12 the low end, the domestic industry does sell in the
13 retail residential, secondary, wholesale market.

14 COMMISSIONER KOPLAN: Let me tell you where
15 my struggle is here.

16 MR. SMIRNOW: Okay.

17 COMMISSIONER KOPLAN: Okay. Like product is
18 not an issue here. That's not in dispute. There's no
19 argument that this is a regional market. We're not in
20 that context. So, I'm interested, frankly, in what
21 your legal authorities are for the argument that you'd
22 like me to accept.

23 MR. SMIRNOW: Commissioner, I am just
24 relying on the claim before us.

25 COMMISSIONER KOPLAN: There is no precedent,

1 though.

2 MR. SMIRNOW: There's no precedent for this
3 argument? The precedent is the facts that we've seen.

4 MR. BERKMAN: I know through my contacts at
5 Mueller and understanding that market, I believe we can
6 get you published data, by recognized firms, that
7 track commercial and industrial buildings, and we can
8 show you in the post-hearing brief how significantly
9 these areas declined. And maybe that -- that's what
10 you're looking for, right? Would that help?

11 COMMISSIONER KOPLAN: I'm not sure whether
12 it will help. I'm interested in anything you can
13 provide.

14 MR. BERKMAN: Okay. We have the data.
15 There's national firms that tell us x amount of fewer
16 office buildings were built and x amount of fewer
17 factories were built. We have that data.

18 COMMISSIONER KOPLAN: I'd appreciate that.
19 Let me come back to something you said, maybe I
20 misunderstood you. Mr. Smirnow, did you say that I
21 had found that 80 percent went into commercial and
22 industrial?

23 MR. SMIRNOW: I said the Commission majority
24 found that, sir. If you recall in the Sunset review,
25 there was -- Commission Hillman and Miller were the

1 two one, one, one. And under precedent, the legal
2 understanding of what the Commission majority is,
3 Commissioner Hillman -- my understanding is that
4 Commissioner and Miller, if that case would have been
5 challenged at litigation, that would have been the
6 Commission's determination.

7 COMMISSIONER KOPLAN: That's a plurality?
8 You're not saying majority. Two out of five isn't a
9 majority.

10 MR. SMIRNOW: I'm saying the Commission --
11 what would have technically have been determined, the
12 Commission view. You didn't say that and I apologize
13 if I included you in that. But, Commissioner, you did
14 find and you had quite a bit of discussion about
15 market segmentation. You certainly recognized that.

16 COMMISSIONER KOPLAN: But not primary and
17 secondary.

18 MR. SMIRNOW: Okay.

19 COMMISSIONER KOPLAN: Right?

20 MR. SMIRNOW: I'm not sure. You would
21 certainly know better than I would.

22 COMMISSIONER KOPLAN: Retail and wholesales,
23 but I did not find that there were two segments of the
24 wholesale market.

25 MR. SMIRNOW: Okay.

1 COMMISSIONER KOPLAN: Okay. I see my red
2 light is about to come on. But, I would appreciate
3 anything you can do post-hearing to track --

4 MR. SMIRNOW: Absolutely.

5 COMMISSIONER KOPLAN: Thanks a lot.

6 MR. SMIRNOW: You're very welcome.

7 CHAIRMAN OKUN: Commissioner Lane?

8 COMMISSIONER LANE: I thought coming into
9 this hearing that I understood the channels of
10 distribution and all of that. But, now, I find I'm a
11 little confused. And so, I think I'm requesting both
12 the Petitioners and the Respondents, in the post-
13 hearing, to provide a graph or a chart showing where
14 the wholesalers, national master distributors,
15 regional distributors, national or regional hardware
16 chains, plumbing supply, wholesale distributors, and
17 other wholesale distributors, and retailers fit in the
18 channels of distribution and who sells to whom in
19 those channels. And I think a nice little chart would
20 be real easy for me to follow and I'd appreciate that.

21 MR. SMIRNOW: We'd be happy to do that.

22 COMMISSIONER LANE: Okay, thanks. Now, I
23 have another question of Mr. Berkman. Let's say I go
24 to a hardware store, Ace Hardware, in rural America.
25 And I go in and I ask to buy a three-fourths inch

1 American fitting and I am handed by Ace a Mueller
2 fitting. Am I going to know that that's not an
3 American fitting?

4 MR. BERKMAN: Absolutely. As required by
5 the Custom's law, each fitting is permanently marked
6 with the country or origin. So, you will clearly see,
7 not on the bag where you can rip off, clearly see
8 permanently in the fitting the mark, China.

9 COMMISSIONER LANE: Will I be able to read
10 it?

11 MR. BERKMAN: Clearly, absolutely.

12 COMMISSIONER LANE: Okay, thank you.

13 MR. BERKMAN: We've been importing products
14 for 30 years. Everything is marked very well.

15 COMMISSIONER LANE: I wasn't going to ask
16 these questions, but since I've heard about all of the
17 trips that you all have made to China and I figured
18 maybe you can answer them, how many facilities are
19 there in China that produce malleable fittings, just a
20 round number?

21 MR. BERKMAN: In excess of 25; many.

22 COMMISSIONER LANE: And are these facilities
23 that produce both malleable and non-malleable?

24 MR. BERKMAN: Typically, yes, because, you
25 know, like we've heard this morning, the major

1 difference is the annealing; so, whether or not they
2 heat treat the product. So, yes, they typically make
3 both or could make both.

4 COMMISSIONER LANE: And do you have any idea
5 as to how much switching is already happening in China
6 for non-malleable to malleable?

7 MR. BERKMAN: No, I have no idea.

8 COMMISSIONER LANE: Is it your experience
9 that the quality of the product from China is
10 consistent no matter which facility makes it in China?

11 MR. BERKMAN: Absolutely not. It really
12 depends on where you buy the fitting. And even within
13 the fields -- the sand boxes we compete, which we
14 don't think it's against the domestics, the sand box
15 that we compete is with all other importers. Some
16 importers buy a very good product, like ours; and I
17 believe some importers are buying a lower-end product
18 that is a lighter fitting, that may not thread as
19 well, that may not have the same quality controls.
20 So, it depends who we compete with. But, you had best
21 definitely buy two levels of quality from China,
22 depending on the source you choose.

23 COMMISSIONER LANE: And this will be a
24 follow-up into the question I asked the Petitioners
25 this morning: is your answer true even if all of

1 those fittings meeting the ASTM and the ASME
2 standards?

3 MR. BERKMAN: If they all meet those
4 standards, then I would characterize the fittings,
5 like the B&K fitting, as a good fitting. But, I know
6 from selling against some of my competitors, my import
7 competitors, that not all of them have fittings that
8 meet those approvals.

9 COMMISSIONER LANE: Okay, thank you.

10 CHAIRMAN OKUN: Commissioner Pearson?

11 COMMISSIONER PEARSON: I think I've just got
12 one question still. The Petitioners have
13 characterized the demand for malleable fittings as
14 being price inelastic. Would you agree with that?
15 Another way of saying it, I guess, is if all fittings
16 sold in this country were sold at the price that
17 current is demand by domestic fittings, would there be
18 any reduction in total consumption of these fittings?

19 MR. BERKMAN: No, unchanged. I think I
20 understand your first question now. If we continue to
21 lower our price, I don't believe we would get more
22 market share. Maybe a little bit at this blurring
23 wholesale, but we have the retail business. The other
24 retailers that stock both domestic and our fittings
25 are stocking it because they have to. And it was like

1 the wholesalers that I call on, they don't care what
2 the price is. We're already 30 percent cheaper or 50
3 percent cheaper. How much more cheaper does it have
4 to be. It can't get any more cheaper. So, if we
5 lowered our prices, I do not think we significantly
6 increase our business. I think we're increasing our
7 business based on our customers growing and offering a
8 full product line offering and ease of doing business
9 with and good quality and electronic commerce.

10 COMMISSIONER PEARSON: And the reverse is
11 also correct, that if the prices were, for whatever
12 reason, to rise to the higher level that applies to
13 industrial use and that price level was applied to all
14 residentials, we really wouldn't expect to see a
15 reduction in the number of fittings going into
16 residential use; or are there reasons to think we
17 would?

18 MR. BERKMAN: If the price went up 50
19 percent, then I think the retailers would have to say,
20 well, wait a second, now it's the same price; maybe, I
21 should switch back to a domestic fitting. At some
22 point, they would want to switch back.

23 COMMISSIONER PEARSON: Thank you, very much.

24 CHAIRMAN OKUN: I believe I only have maybe
25 one question. There were a number of questions to

1 Petitioners, one in particular regarding the flexible
2 tubing and the estimates of its presence in the
3 market. Ward testified that flexible pipe is
4 diminished malleable pipe fittings by only one or two
5 percent. And based on the arguments you've made in
6 your brief, I wonder if you have any further comment
7 on this piece of the market in demand. Mr. Berkman,
8 if you could comment on that.

9 MR. BERKMAN: I'm not overly familiar with
10 that market, other than there's an alternative product
11 that exists.

12 CHAIRMAN OKUN: Okay. But, you haven't seen
13 it replacing yourselves or the type of things you're
14 doing it, you haven't seen its presence?

15 MR. BERKMAN: No, I haven't.

16 CHAIRMAN OKUN: Okay. I think that was my
17 last question. I think the other things have been
18 covered in sufficient detail. But, I very much
19 appreciate all the answers you've given this
20 afternoon. Vice Chairman Hillman?

21 VICE CHAIRMAN HILLMAN: Thank you. I have
22 just a couple of follow-ups. One, just to make sure I
23 understand the testimony and, also, to get your sense
24 of whether you would agree or disagree with some of
25 the numbers that Mr. Schagrin through out. And I'm

1 trying to make sure I understand this issue of sort of
2 why the Chinese imports are more or less, as you've
3 described it, kind of relegated to the residential
4 market and the domestics are basically concentrated in
5 the commercial and the industrial. And maybe to start
6 with, I'm trying to understand what prevents the
7 Chinese from going into the industrial and the
8 commercial market.

9 As I heard your response to my earlier
10 questions, it's not about the physical fittings,
11 themselves. In other words, the Chinese are perfectly
12 capable of making fittings that would be readily
13 saleable, in terms of a quality standards testing, all
14 of that, PSI, et cetera, for the industrial and
15 commercial market; correct? So, it's not about the
16 capability of the Chinese to produce the product.

17 MR. BERKMAN: Correct.

18 VICE CHAIRMAN HILLMAN: Okay. It's solely
19 about whether the industrial or the commercial market
20 are prepared to accept the sale of the product.
21 That's your sense?

22 MR. BERKMAN: That's my sense and it's also
23 true with copper tube and copper fittings. I think if
24 someone offered the same wholesaler a copper fitting
25 for 70 percent, 50 percent, 30 percent less, then the

1 Mueller copper fitting, I think the wholesaler wouldn't
2 even look at it. It's just tradition. It's just some
3 --

4 VICE CHAIRMAN HILLMAN: Okay. And it's a
5 decision made by the wholesaler, in your view, or it's
6 the decision made by the end-user?

7 MR. BERKMAN: Ultimately, it's the end-user,
8 because the wholesaler is providing product to the
9 end-user. So, if the end-user would accept a Chinese
10 fitting or a Chinese copper tube and the wholesalers
11 could make more money selling it, the wholesaler would
12 sell it.

13 VICE CHAIRMAN HILLMAN: So, it's not
14 something about the nature of the distribution
15 network. It's not about this sort of segmenting
16 between primary wholesalers versus secondary
17 wholesalers that you think drives it. It's purely an
18 end-user preference. It's not as though the Chinese
19 don't have access to the distribution network for
20 industrial or commercial.

21 MR. BERKMAN: Correct. The actual
22 wholesaler is stocking both the products, many of them
23 today, right. So, the customer comes in and the
24 wholesaler doesn't care which one he sells. The
25 customer comes in and says, I want the domestic one

1 today or I want the Chinese one.

2 VICE CHAIRMAN HILLMAN: Okay.

3 MR. BERKMAN: That's my perception.

4 VICE CHAIRMAN HILLMAN: What I'm trying to
5 understand, when you say, "customer," we're talking
6 now industrial or commercial customer?

7 MR. BERKMAN: We're talking a contractor
8 walking into the wholesaler's backdoor, the
9 wholesaler's guest.

10 VICE CHAIRMAN HILLMAN: The contractor, the
11 commercial or industrial contractor, or residential?

12 MR. BERKMAN: Either one. The residential
13 one, we're saying, is coming in and he is less likely
14 to care about origin. The commercial contractor, in
15 our belief, strongly focuses on the USA malleable
16 fittings and other USA products.

17 VICE CHAIRMAN HILLMAN: Okay. Now, Mr.
18 Schagrin threw out some numbers. His sense was that
19 about five percent of the market, as I got the
20 numbers, has a statutory sort of buy America
21 provision, meaning that they are -- these are
22 constructions undertaken either under federal
23 government contracts or highway transportation
24 construction or military bases or other things where
25 there are statutory buy American provisions. And then

1 about 10 to 15 percent, I think, was the number he
2 threw out was the number that might be subject to kind
3 of a union preference or other buy America preference.
4 Even if I add those together, I'm still getting some
5 80 percent of the market, at least from Mr. Schagrins'
6 figures, wouldn't necessarily have any kind of a buy
7 America preference. Do those numbers strike you as
8 accurate?

9 MR. BERKMAN: I don't know where he got
10 those numbers. All that I know is that I've traveled
11 around the country, trying to sell imported fittings
12 to all types of customers and the commercial
13 customers, because we sit down not only with
14 wholesalers, but we sit down with contractors, also,
15 to do the pull through demand, and they don't want the
16 Chinese fittings. And you say, why; it's the same. I
17 don't care, I never used the Chinese fittings. But,
18 you're using my Chinese valve. It doesn't matter.

19 It's preference. It's tradition. If there
20 was an easy answer, I would tell you. I don't know
21 why they're insisting on USA fittings; I don't know
22 why.

23 VICE CHAIRMAN HILLMAN: Okay, fair enough.
24 Another question I had is, the impact of the petition.
25 When this petition was filed, was there much of a

1 reaction in the market from your perspective?

2 MR. BERKMAN: No. I think when the petition
3 was filed, the only impact in the market was the
4 customers doing their budgets, asking us what impact
5 was it going to have on future pricing. So, the
6 impact it's had is it's actually going to allow us to
7 get some kind of pricing increase, I believe. We
8 don't know if this is going to happen yet. In fact, I
9 told you earlier how hard it is to get a price
10 increase with Home Depot. But, if Home Depot is
11 buying from three people or two people I buy from
12 China, the same way a price increase sticks at
13 wholesale, you know, if Anvil goes up and Ward
14 follows, or vice versa, this is an opportunity for us
15 to raise the prices.

16 VICE CHAIRMAN HILLMAN: Okay.

17 MR. BERKMAN: That's what I would hope would
18 happen. I mean, I'll tell you next week if we have
19 the price increase through.

20 VICE CHAIRMAN HILLMAN: Okay. But, there
21 wasn't a sense of stop buying from China, because
22 there might be duties put on?

23 MR. BERKMAN: No, no, not at all. They
24 don't see it as a big issue. They just see it as us
25 continuing to supply them with a full range of

1 products.

2 VICE CHAIRMAN HILLMAN: Okay. And then, Mr.
3 Smirnow, I put two questions for you for the post-
4 hearing brief. Could you address, in your post-
5 hearing brief, the petition's critical circumstances
6 argument, and specifically what the time frame should
7 be, in terms of our making a review of the data on
8 critical circumstances? I mean, three months, six
9 months, or other.

10 MR. SMIRNOW: Absolutely.

11 VICE CHAIRMAN HILLMAN: Okay. And then,
12 secondly, in your pre-hearing brief, you made a number
13 of arguments with respect to the issue of no threat
14 material injury due to subject imports. I wondered if
15 you could go back and help me understand -- square the
16 arguments that you're making there, in terms of no
17 threat, with the reported projections for capacity and
18 production and exports to the U.S. market, that are
19 contained in Chapter 7 of the staff report? Okay.

20 And with that, I think I have no further
21 questions, but I would thank you, very much, for all
22 your answers and for your appearance this afternoon.

23 CHAIRMAN OKUN: Commissioner Miller?

24 COMMISSIONER MILLER: Thank you, Madam
25 Chairman. I don't think I have a lot of questions or

1 any further questions, at this point, because we've
2 had a lot of interesting discussion. Only, Mr.
3 Smirnow, as you respond to this question about the
4 size of the relative market segment, you have cited
5 this number that was in our Sunset decision. It was
6 80 percent of the wholesale market, not the total
7 market, that was the number that we used, which was
8 based on information that was received in the course
9 of that investigation from some of the importers. The
10 Commission did not correct any -- we didn't have hard
11 questionnaire data on the point, perhaps for the same
12 reason we don't have it now, the producers don't
13 necessarily know the ultimate end use of the fittings.

14 I just wanted to point that out to you,
15 because it's 80 percent -- even the number we used
16 then, which was based just on some information that we
17 had from some of the importers, it was just a
18 wholesale market, again.

19 MR. SMIRNOW: Okay.

20 COMMISSIONER MILLER: And I'm not sure what
21 the size of the wholesale versus the retail market is.
22 So, it sounds like there's a lot I don't know. I
23 appreciate any efforts on your part to help in the
24 course of the investigation.

25 MR. SMIRNOW: We'll do our best.

1 COMMISSIONER MILLER: Thank you.

2 CHAIRMAN OKUN: Let me see if my colleagues
3 have other questions. Mr. Koplan?

4 COMMISSIONER KOPLAN: Just a request,
5 crawling along with Commissioner Hillman's last
6 request with you, with regard to capacity and
7 production. If, in responding to that, you would
8 specifically address Table 7-1 on page 7-2 of that
9 chapter. The first two lines deal with both
10 projections of capacity and for production.

11 MR. SMIRNOW: Okay.

12 COMMISSIONER KOPLAN: And, also, would you,
13 also, take into account and comment on Exhibit 8, in
14 the Petitioner's pre-hearing brief, that shows the
15 result of their Internet search that identified the
16 names of additional Chinese producers, who export
17 subject product, and any comments that you could make
18 with regard to that Exhibit, I would appreciate it.

19 MR. SMIRNOW: Exhibit 8, you said?

20 COMMISSIONER KOPLAN: Eight, yes.

21 MR. SMIRNOW: Okay.

22 COMMISSIONER KOPLAN: Number eight.

23 MR. SMIRNOW: We would happy to respond to
24 that.

25 COMMISSIONER KOPLAN: Okay, thank you. I

1 have nothing further and I thank you all, very much,
2 for your testimony.

3 CHAIRMAN OKUN: There are no other questions
4 from my colleagues, I'll turn to staff, to see if
5 staff has questions of this panel.

6 MR. DEYMAN: I'm George Deyman, Office of
7 Investigations. I have one question. On page 2-2 of
8 the staff report, I'm looking at the public report, it
9 indicates that the importers of malleable fittings
10 from China reported that sales to wholesalers
11 accounted for blank percent, the percentage is blanked
12 out. Mr. Smirnow, could you address, in the post-
13 hearing brief, the extent to which your client B&K is
14 representative of importers from China, with regard to
15 its end-use market versus the end-use markets of the
16 other importers from China?

17 As I understand it, B&K, I guess, tends to
18 sell mainly to the residential retail market, the
19 fittings that you import. I can't address what's
20 blanked out of the report here; but, if you could deal
21 with that in your post-hearing.

22 MR. SMIRNOW: Absolutely. We'll discuss
23 that in the post-hearing submission.

24 MR. DEYMAN: And the staff has no further
25 questions. Thank you.

1 CHAIRMAN OKUN: Thank you, Mr. Deyman. Do
2 counsel for Petitioners have questions for this panel?

3 MR. SCHAGRIN: Roger Schagrin, on behalf of
4 counsel for Petitioners. We have no questions for
5 this panel.

6 CHAIRMAN OKUN: Thank you. Again, I want to
7 thank you for your testimony. Let me go over the time
8 remaining. The Petitioners have a total of 26 minute
9 remaining, this includes five for closing.
10 Respondents have a total of 37 minutes, including five
11 for closing. We'll take just a moment for Mr.
12 Schagrin to come up here and take much less time than
13 that, I'm sure. And thank you, again, for your
14 testimony, Mr. Berkman.

15 (Pause.)

16 CHAIRMAN OKUN: Mr. Smirnow and Mr. Berkman
17 and Mr. Roll, you're free to get up from that table
18 and come back up -- if you'll come up here for the
19 closing.

20 COMMISSIONER KOPLAN: Do you really need all
21 those materials with you?

22 MR. SCHAGRIN: You know, Commissioner
23 Koplan, I only brought them in case during my
24 rebuttal, you wanted to ask me a question about
25 something in the brief or the staff report. I said,

1 my God, I don't want to get up and go back to the
2 table.

3 Good afternoon, Chairman Okun, members of
4 the Commission. On behalf of the Petitioners, Roger
5 Schagrin, presenting our closing and rebuttal
6 argument. Unfortunately, or maybe fortunately, Mr.
7 Deyman really stole the opening segment of my rebuttal
8 with his question, which is, I was thinking and made
9 my first rebuttal point a couple of hours ago, that
10 it's unfortunate the Commission loves to hear from all
11 sides, to be honest, as Petitioner's counsel. I like
12 to hear from all sides in these and it is really
13 unfortunate that, in this proceeding, we did not have
14 importers, like Smith, Cooper, and Matco-Norca, which,
15 as I testified, it's almost deja vu all over again.

16 B&K made the same arguments in the staff
17 conference. And at closing arguments at the staff
18 conference, I said, but the problem is B&K is not
19 representative of the import community. Where is
20 Smith, Cooper, and Matco-Norca, the folks that would
21 focus on the wholesale market, to present their side
22 of the story. And as Vice Chairman Hillman picked up,
23 during her questioning, gee, Mr. Smirnow, it seemed
24 like you changed your arguments from the preliminary
25 conference, that then it was about retail versus

1 wholesale; now, all of a sudden, it's about market
2 segmentation and primary and secondary. He said,
3 well, I'm doing that, because I want to help the
4 Commission understand the market better.

5 We'll all advocates here, without impugning
6 that to the statement. Well, I think he changed his
7 arguments from the preliminary conference until now,
8 because the data gathered by the Commission in this
9 final investigation just in now way would have
10 supported the arguments he made at the conference.
11 Now, he didn't have access to that data then. I
12 didn't have access to the data, but I had access to my
13 client. I think one thing that comes through in this
14 investigation is that the domestic producers do know
15 this market. They know it extremely well and I've
16 been able to at least glean some of that knowledge
17 from them, during the course of a couple of years of
18 working with them.

19 And the fact is that we knew then that the
20 domestic industry was losing huge amounts of market
21 share and huge amounts of volume in the wholesale
22 market, as well as the market overall. And nothing
23 about demand in residential versus non-residential,
24 nothing can explain that. And in fact the only
25 argument that I have to admit -- I say nothing can

1 explain it, and I don't think anything the Respondents
2 have said does explain it, but I will give respondents
3 a lot of credit for trying to explain it. But, I
4 think this Commission would have to go back to what, I
5 think if I remember my college English literature
6 courses properly, would be suspension of disbelief, as
7 we analyze writing styles and novels. And you'd have
8 to suspend disbelief as to four issues.

9 First, to believe their market segmentation
10 argument, you'd have to do away with the data as
11 collected by the staff in the final staff report,
12 which said, tell us how much you sold to wholesalers;
13 tell us how much you sold to retailers. Now,
14 everybody had an opportunity. If Mr. Smirnow and B&K
15 want to argue in the final hearing that the Commission
16 really had to focus not on sales to retailers and
17 sales to wholesalers, but on sales to primary
18 wholesalers and secondary wholesalers, could have
19 suggested that that's the way the Commission should
20 gather data in the questionnaire.

21 Well, then we would have gotten in the
22 problem of defining those things, because we can ask
23 people questions in questionnaires, you need to define
24 them. I don't even think today they could really
25 define them. I know I don't have a clear

1 understanding of what their definition is. I think
2 what they'd like to say is, primary wholesalers sell
3 primarily to industrial, commercial large contractors,
4 mechanical type contractors, who do big buildings, and
5 secondary sell to plumbing contractors.

6 But, then, when you start talking to them
7 about, well, how do you differentiate -- and I think
8 it was Commissioner Miller, who asked questions along
9 these lines -- well, how do you differentiate. I
10 mean, we do have two gigantic wholesale chains in this
11 country, and we'll give you -- I don't think we did in
12 our pre-hearing brief -- we'll give you the top
13 wholesaler's ranking from Wholesaler's Magazine, and
14 Ferguson and Hughes are far and away so much larger
15 than everybody else. But, they're larger, because
16 they're nationwide. And then, there are 50 to 100
17 significant regional distributors.

18 Thomas Somerville doesn't have distribution
19 outlets out of its mid-Atlantic area. Coburn does not
20 have any distribution outlets outside of Texas and
21 Louisiana. But, I would say with quite a bit of
22 confident, that in this Washington metropolitan area
23 that Thomas Somerville has concentrated on, they are
24 every bit as big here, as either Ferguson or Hughes
25 are in this area. And the area where Coburn supplies

1 is in Texas and Louisiana. That Coburn supply is
2 every bit as big in east Texas and Louisiana, as is
3 Ferguson and Hughes.

4 The point I'm trying to get to is, all the
5 wholesalers are performing the same function, and I
6 think even B&K admitted that. Really, the questions
7 that were asked to these two wholesalers, and I think
8 if Ferguson and Hughes were here -- and by the way, we
9 tried to get them here, tried to get them to give us
10 affidavits -- they don't want to come here and help
11 us. They don't want to cut off their access to
12 Chinese product, okay. That's all right and they're
13 big customers of my clients. My clients don't want to
14 do things that hurt them. That's just the way it is.
15 But, if Ferguson and Hughes were here on the same
16 panel with Coburn and Thomas Somerville, I'll
17 virtually guarantee that they would say, they're all
18 selling to the same customers. They're selling to
19 industrial and commercial customers. They're selling
20 to plumbing contractors. They're selling to
21 everybody, except for do-it-yourselfers, because do-it-
22 yourselfers can't walk into a supply house. They're not
23 contractors.

24 So, that's the second way in which you have
25 to suspend disbelief. You have to somehow believe,

1 not based on different functions, but really comes
2 down to, oh, national wholesalers are primary
3 wholesalers and regional wholesalers are secondary
4 wholesalers and if there's more sales to one group
5 than to another, you can believe something on market
6 segmentation. But, it just doesn't pass muster,
7 because of the fact that all of the wholesales are
8 performing the same responsibilities. And even
9 Respondent admitted that Ferguson and Hughes will sell
10 to plumbing contractors. My plumber could have gone
11 to the Ferguson store, supply house that's about a
12 half a mile from the Thomas Somerville, the one in
13 Annapolis. Ferguson has got a supply house there.
14 It's no different, Ferguson is no different, other
15 than the fact that they are larger and all around the
16 country, and the same with Hughes. They're no
17 different from the other distributors. I just don't
18 believe that there really is a difference between
19 primary and secondary wholesalers, in terms of the
20 functions they're performing and who they are selling
21 to.

22 And then, of course, we had ample testimony
23 today from the distributors about the fact is that
24 maybe Home Depot is not selling to everyone equally.
25 Home Depot is not going to drop off 600 boxes of

1 fittings and a 12-story construction site at 17th and
2 K. They're not going to do it. The wholesaler is
3 going to do that for them. So, we admit, Home Depot
4 is not going to sell to everybody. But, the number of
5 contractors that can buy from either Home Depot or a
6 supply house is very significant, and that would apply
7 to virtually the entire residential portion of the
8 market, where you do have that overlap in the market.

9 The fourth area to look at is the hardware -
10 - oh, let me just get back to one other issue. I
11 apologize. Also, if you believed their arguments, you
12 would think that Ferguson and Hughes, if they're
13 exclusively primary wholesalers, and that big
14 mechanical contractors only want domestic, that they
15 wouldn't be buying imported Chinese fittings. Well,
16 these are clearly big customers of my clients. My
17 clients have been complaining from the beginning that
18 one of the big problems here is Ferguson and Hughes
19 want to buy more Chinese fittings, and that's one of
20 the way that they are losing volume. In fact, they're
21 losing volume everywhere. They're losing volume at
22 the national wholesalers; they're losing volume at the
23 regional wholesalers; they're losing volume at even
24 the hardware cooperatives, because you've heard that
25 the major four or five hardware cooperatives have

1 traditionally carried both a domestic and an imported
2 line. And so, all the members of those coops, whether
3 it be 500 stores, 5,000 stores, they're quite, quite
4 large, would give all of their member hardware stores
5 a chance, either order domestic or order imports.

6 Our point would be, over this POI, the only
7 thing we're really focused on, because of the price
8 differentials, the price differentials when that
9 import product was Chinese versus maybe 10 or 15 years
10 ago, when an import product was Korean or Japanese or
11 Taiwanese. Price differential is so large now that
12 over this POI, the share of purchases by the members
13 of these hardware cooperatives of Chinese product
14 versus domestic products has grown. I think every way
15 the Commission adds it up, this domestic industry has
16 lost volume at every single market segment that is
17 possible to divide this market into. It's really
18 probably just two: wholesale and retail, and we know
19 those lines are blurred. And I don't think you'll
20 believe all the other market segmentation argument.
21 But no matter how you segment it, the domestic
22 industry has lost volume in every market segment, no
23 matter how you segment it.

24 Also, there is no question -- we'll give you
25 our estimates on demand in our post-hearing brief --

1 there's no question there's been a decline in non-
2 residential construction over the POI and there's no
3 question there's been an increase in residential. But
4 to the extent there's been a decrease in the demand
5 for non-residential construction, which the
6 wholesalers would focus on, as well the residential,
7 you would expect imports into the wholesale level of
8 distribution to have declined over the POI. You
9 didn't see that. We saw those increasing. Once
10 again, even in that segment of the market that's
11 declining, the imports are taking volume and market
12 share away from the domestic industry.

13 One small issue: B&K has tried to argue
14 since the beginning of this case that because it sells
15 all of Mueller's products, along with the B&K imported
16 products, that it has some type of natural marketing
17 advantage, because it sells a full range of products.
18 I'd just remind the Commission, because we didn't get
19 into it at today's hearing, we did at the conference,
20 that companies like Anvil Supply, which have four
21 major distribution -- although Mr. Fish told me, he's
22 talking about consolidation -- 10 years ago, Granel
23 Supply had 60 distribution outlets. They're
24 distributing the same products, not as much volume,
25 because they've lost some to imports, but they've just

1 decided for purposes of increasing productivity, to
2 have four gigantic distribution centers instead of 60
3 smaller ones. But, through those four big Anvil
4 supply depots, they sell a complete range of plumbing
5 and HVAC. It supplies everything, just hundreds of
6 different product, mostly domestic, even if you
7 import; but, they supply a whole range.

8 Folks like Taft Marketing and Ward has 20 or
9 30 companies like Cast Marketing around the United
10 States. They're doing the same thing that B&K is
11 doing. They're combining a whole set of products
12 together and selling them. So, B&K's advantage in
13 marketing, not from offering a full range of products,
14 their advantage, at least, in marketing imported
15 Chinese fittings is price.

16 Now, let's get to the important of price.
17 Mr. Berkman testified two things as to price
18 competition in the marketplace. First, he said, as to
19 the major retailers, if you try to raise your price,
20 they're going to reevaluate whether or not you should
21 be selling to them. So, what does that tell you? If
22 a domestic supplier is going to those retail chains,
23 is facing significant cost increases, and tries to
24 increase their price, they're going to get
25 reevaluated. Now, if everyone was increasing their

1 price, you get reevaluated. If you're giving supply
2 and good service, you should get your price increase.
3 But, if you can turn around and get Chinese at a much
4 lower price, then you have no opportunity to increase
5 price, because on the reevaluation, they're going to
6 go to the lower priced product, or the folks who
7 aren't raising their prices.

8 The second point he made on price
9 competition was, I hope I'm quoting correctly, he
10 said, "it's always a jump ball." It's always price
11 competitive with wholesalers. We would agree, it is
12 always price competitive with wholesalers and that's
13 why the Chinese are winning every jump ball, is
14 because they always have the lower price. It's only
15 in those few exceptions, where folks will pay more for
16 the domestic product, that they continue to buy
17 domestic.

18 A couple of points that were made by Mr.
19 Smirnow. I do not think that in order for this
20 Commission to make findings of price suppression, you
21 have to have a loss revenue allegation. Loss revenue
22 allegations means that the domestic producer lowered
23 their price, in order to keep the volume. The
24 testimony of the domestic industry is, if they lowered
25 their price, they wouldn't keep the volume. That's

1 why we don't have loss revenue allegations. We have
2 lots of loss sales allegations. We can feel a price
3 suppression, because costs have been increasing
4 rapidly over the POI and the producers haven't been
5 able to increase their prices. That's price
6 suppression.

7 For loss sales, I would really point the
8 Commission to the purchaser questionnaire responses.
9 I think this is one of those cases, in which purchaser
10 questionnaire responses have better information on
11 loss sales and the way loss sales allegations, once
12 again, a product with hundreds of different products
13 can be transmitted and verified by somebody getting
14 contacted by the Commission staff. But, I looked at
15 the purchaser responses. I see purchaser response to
16 purchaser response saying over this POI, I increased
17 by purchases of Chinese; I decreased my purchases of
18 domestic. I did it, because Chinese prices were
19 lower. That's loss sales after loss sales.

20 Now, if B&K wants to keep its business by
21 switch to Thailand, that's fine, if the products are
22 fairly traded. If the products are not fairly traded,
23 then even in spite of the Commission, letting Thailand
24 out of the Sunset review, we'd be happy to file
25 another case; just no time soon; we're all kind of

1 tired right now.

2 Let me get to threat. Vulnerability: this
3 industry is extremely vulnerable. You look at the
4 threat factors. We have massive amounts of
5 underselling. We have lots of excessive capacity. I
6 had a chance at lunch to talk about why if the EU
7 order went into effect in 2000, did it take until 2002
8 for the imports to surge in the U.S. And Mr. Barron
9 helped me out, because he knows a lot about the EU
10 specs. The specifications are very different in the
11 EU than the U.S. They would have to completely
12 retool, because we have a band that goes across like
13 this and the EU, they have a band that goes the other
14 way. So, you have to change all of your casting
15 molds. They have different threadings. They have to
16 change all your threading machinery. It would take
17 time and we believe it did take time, until they
18 retooled, so that they could make their products to
19 American standards instead of European standards.

20 As to the other new orders, the markets are
21 not as big as the EU, but it will further incentivize
22 the -- well, Respondents to ship here.

23 I can't take up all my time. I'm going to
24 just conclude and just conclude. First, it's been a
25 gigantic increase in imports over the POI. We all

1 recognize that. And the only explanation is taking
2 volume and market share away from the domestic
3 industry, not from non-subject imports. These are
4 clearly the cause of the domestic industry's injury,
5 which is a mostly volume-oriented industry: injury,
6 production, shipment, capacity utilization,
7 employment, all plummeted revenue. They all fell by
8 in the range of a third or more. Because demand did
9 not decline during this POI, declining demand is not
10 an explanation to the loss of volume for the domestic
11 industry. The only explanation for that is the huge
12 increase in imports from China.

13 Total profits declined by more than half and
14 profit margins fell dramatically. There are some
15 folks out there in the domestic marketplace, who will
16 continue to pay more for domestic fittings. But, the
17 record shows that there's been a dramatic shift just
18 over the POI, because the shares of the market; in
19 other words, those customers and users, who are
20 willing to pay more for domestic fittings are
21 certainly declining and changing to the Chinese
22 product.

23 Again, if we don't get dumping relief within
24 a short period of time, we'll continue to see domestic
25 prices at this higher range and Chinese prices at this

1 lower range. You just won't see domestic prices at
2 all, because there won't be domestic production.
3 That's why this Commission should make an affirmative
4 injury determination. Thank you.

5 CHAIRMAN OKUN: Thank you, Mr. Schagrin.
6 You may proceed.

7 MR. SMIRNOW: Thank you. As we have said
8 from day one, and I do mean from day one, from the
9 staff conference in this investigation, this
10 investigation is about market segmentation. So, no,
11 we have not changed our story. Subject imports are
12 concentrated in one segment of the market and we'll go
13 into detail in our post-hearing brief on this. We
14 believe we have some good contacts at some of these
15 large distributors, who are primarily wholesalers,
16 and, hopefully, we'll be able to get some direct
17 information from them, to include in our post-hearing
18 brief.

19 In contrast, the domestic like product is
20 concentrated in another segment in the U.S. market.
21 If this were, in fact, not the case, then the record
22 should reveal some, any evidence of adverse price
23 effects. The complete absence of such evidence really
24 tells the story here. Subject imports undersold the
25 domestic like products throughout the period of

1 investigation by considerable margins; yet, domestic
2 prices rose. Furthermore, the domestic industry was
3 unable to provide even one meaningful lost sale or
4 lost revenue allegation. Why is that? Market
5 segmentation.

6 The record is, also, devoid of any
7 indication that these current conditions are likely to
8 change in the imminent future. The domestic industry
9 has, therefore, failed to meet its burden in this
10 investigation. We, therefore, respectfully submit
11 that the record in this investigation demands a
12 negative determination. Thank you, very much.

13 CHAIRMAN OKUN: Thank you. Post-hearing
14 briefs, statements responsive to questions, requests
15 of the Commission, corrections to the transcript must
16 be filed by October 30, 2003; closing of the record
17 and final release of data to parties is November 14,
18 2003; and final comments are due November 18, 2003.

19 If no other business before the Commission,
20 this hearing is adjourned.

21 (Whereupon, at 4:26 p.m., the hearing was
22 concluded.)

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24 //

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CERTIFICATION OF TRANSCRIPTION

TITLE: Malleable Iron Pipe
INVESTIGATION NO.: 731-TA-1021 (Final)
HEARING DATE: October 23, 2003
LOCATION: Washington, D.C.
NATURE OF HEARING: Hearing

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

DATE: October 23, 2003

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

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

SIGNED: Carlos Gamez
Signature of Proofreader

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

SIGNED: Mason Edwards
Signature of Court Reporter