

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
)
CERTAIN 4,4'-DIAMINO-2,2'-) Investigation No.:
STILBENEDISULFONIC ACID) 701-TA-435 and
CHEMISTRY FROM CHINA,) 731-TA-1036-1038
GERMANY, AND INDIA) (Preliminary)

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Wednesday,
 June 4, 2003

Room 101
 U.S. International Trade
 Commission
 500 E Street, S.W.
 Washington, D.C.

The preliminary conference commenced, pursuant to notice, at 9:35 a.m., before the United States International Trade Commission, ROBERT CARPENTER, Director of Investigations, presiding.

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P R O C E E D I N G S

(9:35 a.m.)

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2
3 MR. CARPENTER: Good morning and welcome to
4 the United States International Trade Commission's
5 conference in connection with the preliminary phase of
6 countervailing duty investigation No. 701-TA-435 and
7 antidumping investigation Nos. 731-TA-1036-1038
8 concerning imports of certain 4,4'-diamino-2,2'-
9 stilbenedisulfonic acid chemistry from China, Germany,
10 and India.

11 My name is Robert Carpenter. I am the
12 Commission's Director of Investigations and I will
13 preside at this conference.

14 Among those present from the Commission
15 staff are, from my far right: Bonnie Noreen, the
16 supervisory investigator; Cynthia Trainor, the
17 investigator; on my left, Michael Haldenstein, the
18 attorney/advisor; Katherine DeFilippo, chief of the
19 Applied Economics Division; Chand Mehta, the
20 accountant; and Stephen Wanser, the industry analyst.

21 The purpose of this conference is to allow
22 you to present your views on the subject matter of the
23 investigation in order to assist the Commission in
24 determining whether there is a reasonable indication
25 that a U.S. industry is materially injured or

1 threatened with material injury by reason of imports
2 of the subject merchandise.

3 Individuals speaking in support of and in
4 opposition to the petition each have one hour to
5 present their views. The staff will ask questions of
6 each panel after their presentation, but no questions
7 from opposing parties will be permitted. At the
8 conclusion of the statements from both sides, each
9 side will be given 10 minutes to rebut opposing
10 statements and make concluding remarks.

11 Speakers will not be sworn in. However, you
12 are reminded of the applicability of 18 USC 1001 to
13 false or misleading statements, and to the fact that
14 the record of this proceeding may be subject to court
15 review if there is an appeal.

16 Speakers are reminded not to refer in their
17 remarks to business proprietary information and to
18 speak directly into the microphones.

19 Finally, we ask that you state your name and
20 affiliation for the record before you beginning your
21 presentation.

22 Are there any questions?

23 (No response.)

24 MR. CARPENTER: If not, welcome, Mr. Koenig.
25 Please proceed.

1 MR. KOENIG: Thank you.

2 I am Peter Koenig with the law firm of
3 Miller & Chevalier. With me also of our firm is Carl
4 Evenshien; From Ciba is Mike Cheek, who will testify
5 and also counsel at Ciba, Michelle Forte.

6 We will go, I guess, directly to Mike
7 Cheek's testimony.

8 MR. CHEEK: Good morning. I am Mike Cheek.
9 I'm Business Line Head of Ciba Specialty Chemicals
10 Corporation.

11 Ciba filed an antidumping and antisubsidy
12 petition. I have primary responsibility for this
13 matter. The petition involves the molecules of 4,4--
14 diamino-2,2'-stilbenedisulfonic acids referred to as
15 DAS for short. This molecule provides for
16 fluorescence; that is, it makes products brighter or
17 whiter. It is used in paper, detergents and textiles.

18 The DAS molecule is supplemented with
19 reacted filler materials such as cyanuric chlorides
20 (CC), or other products to facilitate its application;
21 that is, adhesion, to the substrate. The resulting
22 DAS applicators are called stilbenic fluorescent
23 whitening agents, or acronym SFWA for short. The SFWA
24 name itself indicates that they are DAS applicators.

25 Why? The first word "stilbene" indicates

1 the stilbene chemical bond that is in the DAS
2 molecule. The second two words "fluorescent
3 whitening" are the property that the DAS molecule
4 provides, and the final word "agent" indicates that
5 this is the agent applying the DAS.

6 SFWAs are also known in the trade at CCDAS.
7 That again indicates that SFWAs are DAS applicators.
8 For ease of this exposition from here on, I will use
9 the phrase "DAS chemistry" to refer to both DAS and
10 the SFWAs.

11 Ciba is the only U.S. producer of DAS and
12 DAS applicators, SFWAs, made from U.S.-produced DAS.
13 Ciba makes the DAS chemistry at its MacIntosh, Alabama
14 manufacturing plant. This plant is a world class,
15 global supplier. It uses the world's most efficient
16 process to make the DAS chemistry. It generates the
17 least waste, making it the most environmentally
18 friendly process in use.

19 Further, Ciba's MacIntosh, Alabama facility
20 as an enormous efficiency advantage from its
21 integrated nature. It makes the DAS, and then the
22 SFWA in a continuous production process. Those using
23 subject DAS imports without such integration incur the
24 following added costly steps that Ciba avoids; that
25 is, the DAS solution is made in the subject country,

1 the DAS solution is then converted to a solid form in
2 that country, which adds cost, but is necessary is
3 order to ship the DAS to the United States.

4 And the DAS once received, DAS solid is then
5 reconverted to a solution by the U.S. importer,
6 another costly process, and then made in the DAS
7 applicator or the stilbene whitener.

8 But for unfair trade practices, Ciba's
9 MacIntosh, Alabama operation should be financially
10 very healthy given its advantages.

11 DAS, whether it's Ciba's or subject imports,
12 is fungible and interchangeable. The same is true for
13 SFWAs of the same specifications. The DAS chemistry,
14 that is, from subject imports or Ciba, moves in the
15 U.S. market through the same narrow distribution
16 channel to the same limited group of SFWA users.

17 These users apply the DAS via the DAS
18 applicator, stilbenic brighteners, or its fluorescence
19 property to paper, to detergents and to textiles.

20 Given these narrow distribution channels,
21 there is indeed inevitably competition between
22 domestic and subject DAS chemistry imports.

23 DAS, in its application form, SFWAs, goes to
24 the same few purchasers who are focused on price for
25 this commodity product. All of DAS chemistry thereby

1 competes for the same limited business and competes on
2 price.

3 Ciba's DAS chemistry operation is
4 collectively hammered by subject imports from all
5 three subject countries. The hammering results in
6 three ways, all with the same effect.

7 It is, first, subject direct SFWAs imports
8 take SFWAs sales from Ciba; two, the subject DAS
9 imports take DAS sales from Ciba; and finally, subject
10 DAS imports converted to SFWA by U.S. importers again
11 take SFWA sales from Ciba.

12 These subject imports are injurious. The
13 subject imports are enormous. Documented in our
14 petition the subject imports have captured around 50
15 percent or more of the U.S. DAS chemistry in the
16 market. I say "or more" because the full extent of
17 subject SFWA imports is yet not known. They fall
18 within a basket tariff category such SFWA imports will
19 only be known when the Commission receives full
20 responses to its questionnaires.

21 This is a high fixed-cost industry. To
22 avoid losing yet more sales to subject imports that
23 are at already low and still falling prices, Ciba has
24 been continuously forced to reduce its prices again
25 and again. As a result, Ciba has suffered further

1 material injury from the subject imports. That injury
2 is clear from our confidential data submitted already
3 to the Commission.

4 It is a one-to-one relationship. Every
5 pound of subject dumped and/or subsidized DAS
6 chemistry sold in the U.S. is a lost pound of sales to
7 Ciba, the U.S. producer.

8 This injury to Ciba includes injury from
9 dumped and subsidized DAS imports from subject
10 countries after the U.S. processing by the importers
11 for sale as a DAS applicator, SFWA.

12 As would be expected, DAS and the price of
13 DAS applicator, SFWAs, are tied. They parallel each
14 other.

15 About 30 percent of the cost of SFWAs is the
16 DAS. The rest of the cost of SFWA is from reacting
17 filler materials that facilitate the applications of
18 the DAS molecule; that is, its adhesion to the
19 substrate, but do not change the DAS that users seek
20 for application.

21 As the petition supplements document,
22 subject DAS imports are at prices that are about 200
23 percent below fair value. That allows those in the
24 United States using subject DAS imports to process
25 them into DAS applicators, the stilbene brighteners,

1 at about 60 percent lower prices; that is, a 200
2 percent savings in what is then 30 percent of the cost
3 means a 60 percent lower price.

4 Given intense SFWA competition, those
5 savings in DAS prices are passed through in SFWA
6 prices. Subject imports, the DAS chemistry, including
7 U.S. SFWAs processed from subject DAS imports, have
8 been in a downward price spiral. That again reflects
9 the fact that the price is key and price competition
10 intense.

11 U.S. buyers can use the availability of low
12 priced dumped and subsidized imports of the DAS
13 chemistry, including the SFWAs made from these subject
14 DAS imports to force prices down, and they do. It's
15 all about price.

16 We hear concerns about the adverse impact of
17 potential deflation on the U.S. economy. Inflation
18 due to dumping and subsidies has been a condition of
19 the U.S. DAS chemistry industry for some time. Its
20 adverse impact is clear from Ciba's submitted
21 performance indicia.

22 Due to subject imports, Ciba has been forced
23 to forego capital projects to both: (1) to expand U.S.
24 production of the DAS chemistry; and (2) to shift more
25 SFWA production from abroad to the United States.

1 This too is documented in our confidential petition.

2 We have, of course, made lengthy submissions
3 on injury issues, both in our petitions, its
4 supplements, and our responses to the Commission's
5 questionnaires. We are happy to address any further
6 questions.

7 To conserve your time, it does not seem
8 necessary to repeat our prior written submissions in
9 this oral testimony.

10 In conclusion, a reasonable basis exists to
11 believe that subject imports are a cause of material
12 injury to the domestic DAS chemistry industry.

13 Thank you for your attention.

14 MR. KOENIG: I wanted to suggest some
15 questions that should be in one's mind when one
16 listens to the respondents' testimony, anticipating
17 what their testimony will be.

18 The first question is it seems that some
19 respondents are suggesting that DAS provides no
20 whitening property, and other respondents seem to
21 suggest that it provides minimal whitening property.
22 The apparent suggestion is that the whitening property
23 of SFWA is not from the DAS. If so, then what exactly
24 does provide the whitening property of the SFWA? What
25 alleged chemical or chemical reaction to make SFWA

1 makes the whitening property to get beyond their
2 generalized claims?

3 Secondly, when they talk about DAS being
4 used for other than SFWA, what percent of DAS is in
5 fact used for other than SFWA?

6 There have been claims in that regard, but
7 no significant alternative use indicated.

8 Thirdly, when you get to buyers of SFWA and
9 DAS, we have indicated that price is the most
10 important consideration. We have -- some of the
11 respondents here to sell to the same buyers. What is
12 the most important, second most important
13 consideration?

14 I think answers to those questions or
15 pursuit of them should be revealing.

16 Overall, that completes our presentation
17 since the bulk of it we provided in the petition
18 itself with a rather extensive like product analysis,
19 perhaps longer than a lot of petitions.

20 Thank you.

21 MR. CARPENTER: Thank you for your
22 presentation. We will begin the staff questions with
23 Ms. Trainor. Mr. Haldenstein?

24 MR. HALDENSTEIN: Good morning, Mike
25 Haldenstein from the Office of the General Counsel.

1 On the like product, I noticed in the
2 petition you did have some discussion of it. I would
3 like a more detailed discussion of the upstream and
4 the downstream test for whether the DAS and SFWA
5 should be on the same like product or separate like
6 product.

7 Also, I thought you suggested there weren't
8 separate markets for the two, and it seems that maybe
9 there are separate markets, and if you could get into
10 some detail on that issue, and this I would like in
11 the post-conference brief.

12 And although these are upstream and
13 downstream products, oftentimes the Commission looks
14 at the traditional criteria, the physical
15 characteristics and uses, interchangeability, et
16 cetera, in determining whether there is one like
17 product two like products, so I would like you to lay
18 out an analysis of those factors as well.

19 For purposes of the conference, I guess I
20 would just like you to comment on the relative cost of
21 the two, of the SFWAs and the DAS, if you could do
22 that right now without revealing confidential
23 information.

24 MR. CHEEK: Be sure I understand your
25 question. The relative cost of the DAS as compared to

1 the SFWAs?

2 MR. HALDENSTEIN: Correct.

3 MR. CHEEK: I guess it's our understanding
4 that when you talk about going into the SFWAs about 30
5 percent to upwards of that is due to the cost of the
6 DAS. That's the DAS in part, the essential
7 characteristics of fluorescence.

8 It's hard to compare relative cost because
9 the DAS is sold on -- typically on active substance
10 level at 100 percent assay basis, and the stilbene
11 brighteners tend to be sold on a per pound basis of,
12 you know, as used in the various trades.

13 But on an active basis --

14 MR. HALDENSTEIN: Well, let me just try and
15 make it simpler.

16 MR. CHEEK: Yes.

17 MR. HALDENSTEIN: In terms of prices in the
18 marketplace, to the extent DAS is sold in the U.S.
19 marketplace, what's the price differential between
20 them?

21 MR. CHEEK: Okay, again this is very
22 difficult. I'm not trying to avoid. DAS is sold,
23 again based on 100 percent active, and it would depend
24 on. Certainly the dumped imports come in at a very
25 low prices. The customs values have been the dollar a

1 pound range. We feel that that is well below their
2 actual value, because they are substantially below
3 what we feel the product cost should be.

4 The stilbenic brighteners themselves are
5 sold in standardized strengths that are more suitable
6 for use and tend to be much more lower in active
7 substance, but then some are liquids, some are
8 powders, and they may sell anywhere from as low --
9 well, I'd say in the paper trade, in some cases in the
10 30s, 30 cents; over into the detergent trade, in the
11 order of \$2 - \$3. So it just depends, again depending
12 on physical form and activity. So it's hard to draw a
13 direct comparison on price of the two.

14 MR. KOENIG: Maybe just one further comment.
15 I guess the respondents talked about 30 percent of the
16 cost of the whitener is DAS, and I think that
17 generally is what you see in the questionnaire
18 responses. They talk about it in the public record.

19 The dumping margin show in petitioner's
20 supplements is around 200 percent. So DAS is being
21 dumped into the U.S. at 200 percent below cost, below
22 price.

23 So the prices of DAS when you're looking at
24 in the market are actually quite low compared to what
25 they should be. So when you look at a whitener cost

1 as a percent of DAS cost, those prices have to be
2 recognized to be quite deflated by dumping.

3 MR. HALDENSTEIN: Another issue I found in
4 the petitioner's suggestion that the processes to make
5 the whiteners or brighteners from the DAS is
6 relatively minimal.

7 I was wondering if that was done in the same
8 plant or done separately after the DAS is made, and
9 then it's, you know, shipped and then transformed, or
10 how does that work?

11 MR. CHEEK: Of course, you know, in Ciba's
12 case we make it all in the same plant. The DAS is
13 produced and then it's immediately converted to the
14 brightener. It's obvious that it does not have to be
15 done in the same plant. The chemical process for
16 conversion or production of DAS is a different -- it's
17 a different process. It involves more steps.

18 And typically conversion to the stilbenic
19 brightener can be done in what we would characterize
20 as more general purpose chemical reactors, and that's
21 why, I guess, we see that that DAS can be used as a
22 starting material, and in our view, compared to DAS is
23 a relatively simple process as compared to the
24 production of the DAS.

25 Now, is it still subject to process control?

1 Yes, it is. You have to control the processes and you
2 have to ensure certain steps or monitor along the way,
3 and you come out with a final product to a fairly
4 exacting specification, but you do that with the DAS
5 as well.

6 So relatively speaking, the actual
7 conversion of DAS to the final product is a simpler
8 process chemically speaking than the manufacture of
9 DAS beginning with the starting raw material.

10 MR. HALDENSTEIN: So it is somewhat
11 expensive, is that a fair reading or not --

12 MR. CHEEK: Well, it --

13 MR. HALDENSTEIN: -- from the value added?

14 MR. CHEEK: It involves less equipment. In
15 our view, it would not be as an expensive a process to
16 make stilbenic brighteners from DAS as it is to make
17 DAS beginning with the PNT.

18 MR. HALDENSTEIN: Also, I noticed in the
19 petition you acknowledge that some of the companies
20 that are producing the SFWA appear to be importing as
21 well. And you mention that maybe -- you suggest they
22 should be excluded from the industry.

23 If you could give a more detailed analysis
24 of that, and try and explain whether you think their
25 financial performance has been benefitted by their

1 importing and whether they have been shielded.

2 MR. KOENIG: Sure, we would be happy to, how
3 do you say that, the confidential information. We
4 will do it in the post-hearing brief, and we are
5 appreciative we got their questionnaire responses
6 yesterday so we can look into that.

7 MR. HALDENSTEIN: Something you might be
8 able to comment on here is the issue of cumulation of
9 the subject imports. It appears that it's mostly DAS,
10 and it appears from the petition at least that all the
11 DAS has identical chemistry, so presumably they are
12 fungible, but also isn't there some -- some of the
13 SFWAs that's coming in, and if you could, you know,
14 discuss this cumulation factors and particularly
15 whether the extent to which the DAS is fungible with
16 the SFWA.

17 MR. KOENIG: Okay, the information available
18 to us is that most of the imports are DAS, because the
19 SFWA enters into a basket category, and all three
20 countries sell DAS to the U.S. at the same -- during
21 the same time periods. DAS is pretty much a commodity
22 product, and it goes through a few limited buyers, so
23 there is competition between the countries, and there
24 is also full competition against Ciba in the sense
25 that the import prices are so low that they precluded

1 any further sales by Ciba of DAS.

2 Further discussion on whiteners, I see that
3 the questionnaire responses that are coming in that we
4 got yesterday do have some discussion of whiteners,
5 and in our confidential submission we can discuss what
6 the questionnaire responses say on whiteners in
7 particular.

8 MR. HALDENSTEIN: Thank you. I have no
9 further questions.

10 MR. CARPENTER: Ms. DeFilippo.

11 MS. DeFILIPPO: Good morning, and thank you
12 for your testimony.

13 The first question I have deals with pricing
14 analysis. As you know, when the Commission and when
15 the staff puts together the pricing analysis, which is
16 what the economists will do is define products, we
17 request pricing data. Did I say products versus an
18 imported product.

19 And in this case it's a little unique, and
20 so I thought I would also try and get some of your
21 thoughts on it. If you are arguing that there is one
22 like product, which is the DAS and the SFWA, then the
23 converters, the U.S. firms that import the DAS and
24 make the SFWA would be U.S. producers. They would be
25 included in the concept of the domestic industry.

1 So sales by these firms would be sales by a
2 U.S. producer. And since 70 percent of the cost of
3 that SFWA is some sort of U.S. content and U.S. added
4 value it would -- I mean, I guess the bottom line, is
5 that -- is that an imported product because it's
6 starting with imported DAS even though a significant
7 portion is added here? And if not, then what would be
8 the price comparison that we should be looking at?
9 U.S. DAS processed into SFWA, which is a U.S. product
10 versus what? And just strictly imported SFWA or this
11 hybrid?

12 MR. KOENIG: The bottom line is that Ciba
13 makes the DAS in the U.S. and converts it to
14 whiteners.

15 MS. DeFILIPPO: Right.

16 MR. KOENIG: And sells it. As you say, the
17 processors import the subject DAS, convert it to
18 whiteners and sell it. The level of injury, much of
19 it is the Ciba sales of its DAS competing with sales
20 by the processors -- Ciba sales of its whiteners
21 compared to the processors' sales of their whiteners
22 using imported DAS.

23 So we would suggest for a pricing analysis
24 to compare Ciba's prices of whiteners to the
25 processors' prices of whiteners to see if there is

1 underselling, and the underselling and the injury
2 results from the processors' ability to use the dumped
3 DAS.

4 And I believe there was a Venezuelan cement
5 case where this type of analysis was done before by
6 the Commission.

7 The statute itself speaks of direct an
8 indirect injury, so the statutory scheme allows what
9 we are talking about here as far as the injury.

10 Also, there are from the questionnaire
11 responses some direct whitener imports where one can
12 do a pricing analysis there to see Ciba's prices of
13 whiteners compared to the direct subject imports.

14 And finally, Ciba used to sell DAS in the
15 U.S. until the subject import price go to low as to
16 preclude any sales.

17 And another way, as you say, there is unique
18 aspects to this case, another way to do the pricing
19 analysis is to compare Ciba's cost of production of
20 DAS, and we provided those in the petition, to the
21 import price of DAS. And when you compare those the
22 subject import price of DAS to Ciba's cost of making
23 DAS, you can quickly see whether it's viable at all at
24 current dumped prices for Ciba to sell any DAS in the
25 market. So three ways of injury.

1 MS. DeFILIPPO: You had mentioned earlier in
2 your testimony and also just now that subject DAS
3 takes sales from Ciba, and I think you just said Ciba
4 is no longer selling the DAS, is that correct?

5 MR. CHEEK: That's correct. In the United
6 States, we no longer sell the DAS directly.

7 MS. DeFILIPPO: Have you tried to make any
8 sales or are you just aware of the current prices of
9 the DAS coming in and so it's not -- you're not
10 trying?

11 MR. CHEEK: I would say within the past year
12 to year and a half we have not actively tried.

13 MS. DeFILIPPO: Okay.

14 MR. CHEEK: Before that point we did make
15 contacts.

16 MS. DeFILIPPO: Mr. Cheek, you had mentioned
17 that there are three basic markets that the SFWA is
18 used in, paper, detergents and textiles.

19 MR. CHEEK: Right.

20 MS. DeFILIPPO: Does the imported product
21 compete with the domestic product in all of those end
22 uses are there some market segments where the imports
23 are not or the domestics aren't?

24 MR. CHEEK: It competes in all three
25 segments either as DAS converted, and in some cases as

1 direct SFWA.

2 MS. DeFILIPPO: And that's true for all
3 three of the countries?

4 MR. CHEEK: That's correct. That's correct.

5 MS. DeFILIPPO: Okay.

6 MR. CHEEK: Well, yes, that's correct.

7 MS. DeFILIPPO: Okay. I believe you were
8 also mentioning that there was a relatively small
9 number of purchasers in the marketplace, or did I
10 mishear that?

11 MR. CHEEK: Yes. Relatively speaking, if
12 you look at what's going on within the industry --
13 okay, small is a relative term. But if you're looking
14 at the paper industry that buy optical brighteners,
15 you're talking probably now in the states less than
16 100 customers, and that's shrinking as the industry
17 goes toward consolidation.

18 Within the detergent business, it's even
19 smaller than that.

20 Textiles is probably the most widespread.
21 It's more widely fragmented, a lot more locations, but
22 much smaller volumes at individual locations.

23 MS. DeFILIPPO: Okay.

24 MR. CHEEK: But the buying purchases are
25 being consolidated more and more into corporate

1 purchasing functions. So in saying that the customer
2 base is shrinking as to who is actually buying the
3 product.

4 MS. DeFILIPPO: In general, do sales of
5 SFWA, are they done on a contract basis with these
6 firms or are they, you know, set for a certain period
7 of time, or do they tend to be more on a spot basis?

8 MR. CHEEK: Typically more and more they are
9 bid now either on a contract basis or a supply
10 arrangement basis for a set period of time.

11 MS. DeFILIPPO: Okay. And one last
12 question. In any of these markets do the purchasers
13 send out qualification processes before such that they
14 will qualify a certain supplier's product before they
15 purchase it?

16 MR. CHEEK: Yes, they do. They typically
17 have a qualification process for a supplier to meet a
18 specification of some type, and those specifications,
19 those are I would say fairly standard. They are
20 fairly well known, but you do have to go through that
21 process in order to become a qualified supplier.

22 MS. DeFILIPPO: And once you are qualified,
23 that's --

24 MR. CHEEK: It's considered to be
25 interchangeable with someone else's product.

1 MS. DeFILIPPO: Okay. I think that's all I
2 have right now. I appreciate your answers to my
3 questions. Thank you.

4 MR. CARPENTER: Mr. Mehta? Mr. Wanser?

5 MR. WANSER: Good morning. I just had a
6 couple of questions. I'll go back to Mr. Koenig's
7 questions that we should ask so I will start with him.

8 I'm assuming that there is some objective
9 measure of fluorescence? There would be some
10 interest? But I mean I'm going to -- so in the post-
11 hearing brief could you supply us for the DAS and for
12 the top three brighteners that you sell some
13 consistent measure of the fluorescence. And then I'm
14 sure it's part of your spec sheet, but perhaps the
15 wavelength at which it is absorbed, and the wavelength
16 at which it fluoresces so we can see what the
17 difference is among the product.

18 MR. KOENIG: Sure, we would be happy to do
19 that. And I think the petition has a little bit in
20 that direction already, but I think we can do more.

21 MR. WANSER: All right, that would be fine.

22 And also, we are going to keep hitting you
23 with the same question about the difference between
24 the stilbene versus the DAS, and I have been trying to
25 come up with some kind of a qualitative method.

1 Could you take the six steps that would go
2 from say the toluene to a stilbene brighter, and then
3 some qualitative measure, rate each one from one to 10
4 in difficulty, sophistication, environmental problems?

5 I know it's very difficult because of all
6 the different aspects of a reaction, but if you could
7 do that, that would be helpful. And if you can't just
8 said so and give us a little background why that would
9 be impossible.

10 MR. KOENIG: Okay. Sure.

11 MR. WANSER: And then more just for
12 background, how many commercial stilbene brighteners
13 How many are there? I mean, are there -- I understand
14 that DAS was made in '39 or something, and then in the
15 forties and fifties people were making hundreds of
16 thousands of them, a large number anyway, and it's
17 sort of been consolidated down to what, a couple of
18 dozen? A hundred? Fifty? Twenty?

19 MR. CHEEK: As you allude to, the chemistry
20 itself is very old and well established.

21 MR. WANSER: Yes.

22 MR. CHEEK: And yes, I think everybody here
23 would say if we look in our books and look at how many
24 stilbene molecules we have made and tried, there is
25 quite a large number.

1 MR. WANSER: Right.

2 MR. CHEEK: As far as what's evolved into
3 commercial successes for various reasons, at this
4 point in time I would say it's -- from chemical
5 moyaties, not talking about variations of strengths,
6 not talking about --

7 MR. WANSER: Right, correct.

8 MR. CHEEK: You're really only talking I'd
9 say in -- in very much commercial use today --
10 probably around 20 or less that are actually in
11 widespread use of stilbenic brighteners.

12 MR. WANSER: Okay.

13 MR. CHEEK: Not a great deal.

14 MR. WANSER: Yes, all right. I guess that's
15 all. Thank you. Thank you very much.

16 MR. CARPENTER: Ms. Noreen.

17 MS. NOREEN: Bonnie Noreen with the Office
18 of Investigations.

19 I think of a filler as being something
20 that's in a detergent to make it a little bit bigger
21 in volume. That's just the way I have always thought
22 of a filler, or something to make -- to pork something
23 up, but not to really do anything other than that.

24 And I know in your petition, at least this
25 petition, not the earlier petition, you referred to

1 fillers as being included with the DAS in order to get
2 to the stilbenic brightener stage.

3 I'm just wondering, Mr. Cheek, before this
4 petition was filed had you folks at your company
5 actually really think of whatever chemistry was
6 involved in changing the DAS to the stilbenic
7 brightener as being merely the addition of fillers?

8 MR. CHEEK: Filler in the sense that it's
9 being used here is, and I understand your comparison,
10 it is additional chemistry and chemicals and
11 processing that has to be performed, but its purpose
12 is to transfer the effect of the DAS which is the
13 fluorescence so that it can be applied into the
14 appropriate end use, and in doing so, relative to the
15 active part that the DAS provides, it is filler. It
16 doesn't contribute to the fluorescein, it doesn't
17 cause the fluorescence. It renders the fluorescence
18 capable of being applied into the end use, and in that
19 the filler, if we want to use that word, it would be
20 chemistry which would be more or less inert to the
21 process of fluorescence, but it does render it able
22 to, and you -- I guess you have seen comments about
23 the different form, different types of stilbene
24 brighteners.

25 There are variations on the theme so that

1 you can take the DAS, the fluorescence and put it into
2 formulation for size press applications and paper for
3 wetting and for coating so that you can put it into
4 textiles in a bleaching process and a resin tension
5 process, so that you can put it into detergents that
6 go into liquids, that go into powders. There are
7 subtle variations that render it suitable for those
8 end applications, but fundamentally the DAS itself has
9 not changed, and that fluorescence from it has not
10 changed.

11 So filler in this sense is used -- that you
12 do use those chemicals and that chemistry, but you use
13 it in the sense to transfer the property so it can be
14 applied.

15 MS. NOREEN: And without these "fillers"
16 could you use the DAS by itself to be a brightener or
17 does it just not work unless it has the filler?

18 MR. CHEEK: That's a good question. The DAS
19 does fluoresce. It is -- it is fluorescent. It has
20 it, and you compare that to stilbenic brighteners and
21 you have a very similar, both ignition spectra as well
22 as a light spectra, so it does fluoresce, and it would
23 provide brightness, and fluorescence.

24 The problem that you run into by itself with
25 the DAS it has no affinity. You cannot apply it to

1 whatever substrate. It doesn't retain, it doesn't
2 stick, it doesn't adhere.

3 So per se, DAS as DAS is not usable as an
4 optical brightener because you can't get it to stay in
5 place.

6 Now, we can address -- if the question is
7 could DAS be used as an optical brightener, the answer
8 is yes, it could if you could get it to apply, and we
9 have documentation on work that has been done in which
10 we have looked at ways to stick DAS as DAS to
11 substrates to impart fluorescence, and we have
12 products which would function as suitable optical
13 brighteners. However, the cost to be able to tie the
14 DAS unchanged into the molecule so that we could apply
15 it is just as expensive as doing what we are doing now
16 with the conventional processes.

17 So the answer is DAS could be used as an
18 optical brightener in the form that it exists, it's
19 just not feasible to do so. So we react it with what
20 we call the fillers, the transference chemicals to be
21 able to apply the fluorescence into the final use.

22 MS. NOREEN: You said you actually had some
23 products though that you have?

24 MR. CHEEK: These are R&D products --

25 MS. NOREEN: R&D products.

1 MR. CHEEK: -- where we explored the concept
2 to prove its viability.

3 MS. NOREEN: Okay. It's not actually being
4 sold?

5 MR. CHEEK: No.

6 MS. NOREEN: Okay. You said you used to
7 sell and you used to actively market the DAS, and you
8 stopped actively marketing it about a year ago?

9 MR. CHEEK: We stopped -- to listing to see
10 if we could sell it a year ago. We stopped selling
11 further than that.

12 MS. NOREEN: About when was the last time
13 that you sold?

14 MR. CHEEK: About '97 - '98 was the last
15 time we actually sold DAS domestically.

16 MS. NOREEN: So the steps to make the
17 brightener then just costs a lot more in the way of ra
18 material, fillers, or is it labor, or what is involved
19 that caused the cost to make these?

20 MR. CHEEK: Well, okay, you know, as we
21 said, the DAS, which provides the essential
22 fluorescence, you know that accounts for basically
23 one-third of the chemical, the inputs to it. You have
24 the other processing steps. You have the other
25 chemicals which do add cost, but those, again, you

1 know, relative to what you're applying it takes
2 applying the fluorescence downstream.

3 You know, it takes those chemicals.
4 Cyanuric chloride is one of the products, a series of
5 amines, et cetera, and again we're talking the full
6 product cost which means not all the raw material
7 cost, but that is 30 percent of the cost of
8 production, so you have cost of production associated
9 with it, and you total all of that up, and it comes to
10 about 60 to 70 percent of the cost of the SFWA or what
11 we would call in the processing and the -- we say
12 filler, it's the non-fluorescent contributory portion
13 of that final product.

14 But again, that step is necessary in order
15 to convey the fluorescence downstream so it can be
16 used. And I might add even on doing that the
17 stilbenic -- the SFWAs are still very efficient in
18 what they do. I mean, they are conveying
19 fluorescence. This is why the classes of chemistry is
20 so widely used. We're talking about this, but it's
21 still probably the most efficient way to build
22 fluorescence compared any other fluorescent type
23 molecule, and that's why it's so widespread, and in
24 these industries that are now very cost driven, paper
25 in particular.

1 MS. NOREEN: I think you lost me somewhere.

2 MR. CHEEK: I'm sorry.

3 MS. NOREEN: But the extra 70 percent --

4 MR. CHEEK: Yes.

5 MS. NOREEN: -- of the cost that's for
6 making the brightener, is that because of the raw
7 materials and the filler or is that because of the
8 processing?

9 MR. CHEEK: It's both. That cost includes,
10 when we talk about the full cost of production, that
11 would be the materials that's involved as well as the
12 energy costs, the costs associated with the equipment,
13 et cetera, and you total all that up, and the 30
14 percent is still the largest single piece that is in
15 there. But then you sum up the rest of the things
16 that go with it, and you get the 60 to 70 percent.

17 Okay, but that is -- I guess, to answer your
18 question, 30 percent comes from the DAS chemical cost,
19 the rest of it comes from the other chemicals and the
20 processing cost that you put in the reaction process.

21 MS. NOREEN: When you export the DAS, do you
22 export it as a solution?

23 MR. CHEEK: No.

24 MS. NOREEN: You export it as?

25 MR. CHEEK: We export it as -- it would be

1 the wet cake.

2 MS. NOREEN: Okay.

3 MR. CHEEK: And we say wet cake, that's the
4 DAS free acid which is collected on a filter press and
5 bagged, but as such it's about 65 or so, 67 percent
6 active substance, and the rest is moisture.

7 MS. NOREEN: Okay.

8 MR. CHEEK: But referring to it as wet cake
9 is a little bit of a misnomer. It's very dry to
10 touch. I mean, the moisture that's there doesn't
11 drain out. It actually is fairly well bound in the
12 product, and to dry it out you would actually have to
13 put it through a dryer process to dry it out. But
14 that is how we export the material as a wet cake.

15 MS. NOREEN: And presumably you would have
16 to add some value to it to get it from your solution
17 to get it to this wet cake stage where you export it?

18 MR. CHEEK: That's correct, yes.

19 MS. NOREEN: How much value would you say
20 you add to that?

21 See, what I am really still confused about
22 is this extra 70 percent. So I am just wondering how
23 much, you know, of -- well, anyway, how much would you
24 say that this wet cake, this drawing process or
25 pressing process or whatever.

1 MR. CHEEK: To move from the solution to the
2 wet cake, we're putting about 10 percent cost into it,
3 and likewise, to move it from the wet cake back to
4 solution so it could be used again, you would be
5 correspondingly probably putting in about the same
6 amount.

7 MS. NOREEN: And that's something that the
8 respondents presumably would have to do because they
9 would be importing it as wet cake then? Would that be
10 correct?

11 MR. CHEEK: That is correct.

12 MS. NOREEN: Nobody would import it as a
13 solution?

14 MR. CHEEK: Not to my knowledge.

15 MS. NOREEN: Or in any other form other than
16 wet cake?

17 MR. CHEEK: Well, there is wet cake, there
18 is also dry. I mean, much of the import -- that's how
19 we transfer it, we would ship it as wet cake.

20 MS. NOREEN: Right.

21 MR. CHEEK: It also is produced from the wet
22 cake off the filter press to take it to a dryer to dry
23 it to 96 - 97 percent dryness, and then ship it as a
24 powder.

25 MS. NOREEN: And would you happen to know

1 how the respondents are bringing it in?

2 MR. CHEEK: Both ways.

3 MS. NOREEN: Okay. You said that yours is a
4 continuous process, and that you do it all in one
5 plant. Do you actually -- is it actually a continuous
6 process or do you make the DAS, and then you have it
7 in holding bins where it sits, storage tanks, and then
8 you make the stilbenic brightener over -- maybe even
9 on different days rather than a continuous process, or
10 both?

11 MR. CHEEK: Yes, I would -- part of this
12 would be confidential, okay.

13 MS. NOREEN: Sure.

14 MR. CHEEK: But we can certainly address
15 that.

16 MS. NOREEN: In post-conference, that's
17 great.

18 MR. CHEEK: Yes.

19 MS. NOREEN: I think that's it. Thank you
20 very much for your testimony.

21 MR. CARPENTER: Thanks for your responses to
22 that last line of questions. I had some of the same
23 questions that Ms. Noreen had, and I don't want to
24 belabor it too much, but I just wondered if you could
25 expand on a couple of areas.

1 With respect to the fillers, do you produce
2 those fillers yourself or do you purchase them from
3 outside sources?

4 MR. CHEEK: They are purchased.

5 MR. CARPENTER: By the way, if the answers
6 to any of these questions are confidential, feel free
7 to respond in your brief.

8 I also was interested in the breakdown of
9 the cost of production, particularly the other 70
10 percent that's not accounted for by the DAS. You
11 mentioned raw materials, energy, you know, the cost of
12 the conversion process and so on.

13 I was just wondering in your brief, probably
14 in your brief you would want to do this, but if you
15 could break that down into either dollars per unit
16 basis or percentage basis for the various costs
17 involved in producing the stilbenic brighteners.

18 MR. CHEEK: Sure.

19 MR. CARPENTER: Okay, I think that's all the
20 questions I had too. Are there any other questions
21 from staff? Mr. Wanser.

22 MR. WANSER: Yes, just one real brief
23 question. I'm sorry about this.

24 This goes back to the submission that you
25 gave, the exhibit, and are these products that are

1 made -- that are used to make the DAS? Where do you
2 begin? Which product do you buy to start the
3 synthesis? I'm assuming you don't make toluene.
4 Somewhere along that process. If you could just let
5 us know in the post-hearing brief.

6 MR. CHEEK: Certainly.

7 MR. WANSER: Thank you. That's all.

8 MR. CARPENTER: Also, one other question I
9 forgot to ask you. With respect to the process where
10 you -- when you acquire all these various fillers and
11 you have the DAS, could you describe fairly simply
12 what the process is that's involved in converting all
13 of this into the brighteners?

14 I mean, is it essentially like a mixing
15 operation, or is it more involved than that? And if
16 you want to get into that in your brief, that would be
17 fine. I just wanted to have some understanding of
18 what's involved.

19 Okay, thank you very much for your testimony
20 and your responses to our questions.

21 We will take a break until 10:40 on the
22 clock on the back wall, and then if the respondents
23 could come up and assemble at the table, we appreciate
24 that. Thank you.

25 (Whereupon, a short recess was taken.)

1 MR. CARPENTER: Please proceed whenever
2 you're ready.

3 MR. McGRATH: Thank you, Mr. Chairman, and
4 members of the staff.

5 My name is Matt McGrath of Barnes,
6 Richardson & Colburn. I represent Clariant
7 Corporation. With me today is my colleague Stephen
8 Brophy. Our witnesses will be Tim Friemark, who is
9 vice president of the paper business; and Sam O'Neal
10 who is the superintendent of technical aspects.

11 I wanted to give just a brief introduction
12 to some of the points that we are going to cover
13 today, not just us, but as we go through our
14 witnesses, the other points that will be discussed
15 today.

16 The petition that we are dealing with here
17 is unusual, it's unique, but fundamentally it's very
18 simple. It's a dispute between and among domestic
19 manufacturers of optical brighteners between domestic
20 companies. It has only a tangential connection to an
21 imported product, mainly because the petitioner makes
22 the same product as this imported raw material, but
23 does not sell it to any of the other U.S.
24 manufacturers. It uses it, as you recognized, in a
25 continuous process in their out output.

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1 There is no indication of any injury caused
2 to Ciba by the imported raw material or injury to the
3 other manufacturers like Clariant, one of the largest
4 producers of paper whitener products in the world.

5 The petition does not directly against the
6 product or an item or an article. It is directed
7 against chemistry. This, I think, is transparently
8 designed so that the petitioners can choose any point
9 along continuum of chemical synthesis to argue that a
10 particular product is a like product or to define the
11 industry.

12 Nonetheless they have improperly invoked, we
13 believe, the related parties provision of the statute
14 to try to foreclose the opposition of the largest
15 domestic manufacturers in the country and to prevent
16 you from evaluating the alleged effects of imports on
17 all of the industry in the United States.

18 Our witnesses are going to clarify today the
19 production process for the product and the significant
20 investment that goes into SFWA, and highlight for you
21 why it is whiteners are not just an application form
22 of that, and they are not just made with the
23 additional fillers. They are a significant product
24 made by a major industry which we represent.

25 When you see all the facts about the

1 production and use of these chemicals, we believe it
2 will be obvious that Clariant and the other
3 manufacturers cannot be injured and that this case has
4 no basis.

5 I will turn it over now to Mr. Friemark of
6 Clariant.

7 MR. FRIEMARK: Thank you. Mr. Chairman and
8 members of the staff, my name is Tim Friemark, and I
9 am the vice president of the Paper Business Unit of
10 Clariant Corporation, which is headquartered in
11 Charlotte, North Carolina. I have been Clariant since
12 1978, and have extensive technical and marketing
13 experience in the paper and textile industries. In my
14 current position, I have full P&L responsibility for
15 the operations of the Paper Business Unit in the
16 United States, Canada, and Mexico.

17 I appreciate the opportunity to testify
18 today and provide information to support the immediate
19 dismissal of this petition. Ciba's allegations abuse
20 the antidumping laws in seeking to pit employees of
21 significant U.S. manufacturers of the same product
22 against one another. Ciba seeks to prevent all
23 members of our industry except themselves from being
24 heard on whether this petitioner is good for our
25 industry.

1 Obviously. Clariant is a very significant
2 producer in the relevant industry, and its U.S.
3 employees, facilities, suppliers, and customers all
4 stand to be harmed dramatically if this case goes
5 forward.

6 yet Ciba is unable to demonstrate how its
7 own fortunes have been adversely affected by the
8 activities of the 250 employees at Clariant's Martin,
9 South Carolina plant, which must rely in part on a
10 foreign-produced raw material which Ciba is unable to
11 unwilling to supply to the rest of the domestic
12 industry. We ask you to ignore their fiction, and
13 examine the truth.

14 With more than \$1 billion in domestic sales,
15 Clariant is one of the largest U.S. and global
16 manufacturers of dyes, chemicals, and related products
17 for the paper and textile industries, and others. We
18 have 28 facilities across the United States, and
19 employ over 2,200 people.

20 Our Martin, South Carolina facility employs
21 250 people in the manufacture of SFWAs, dyes,
22 chemicals, and specialty intermediates. SFWA has been
23 produced by Clariant in the U.S. since 1960, and
24 produced in the Martin plant since 1991. These
25 products account for almost a third of the plant's out

1 put. The attached chart to the presentations
2 illustrates the broad range of chemicals that Clariant
3 makes and supplies to paper customers in addition to
4 the SFWA.

5 We manufacture SFWA using a number of both
6 domestic and foreign-sourced chemical inputs. We
7 utilize imported DAS, and we use domestic sources for
8 sulfuric acid, polyethyl glycol, sodium hydroxide,
9 DEA, and acrylamide. Therefore, our suppliers of
10 other domestically produced chemicals also have a
11 stake in the outcome of this case.

12 While Ciba used to offer its domestically
13 manufactured DAS to Clariant and Bayer for use in our
14 whitener production facilities, they have not offered
15 DAS on the open market since at least 1997. In 1995-
16 1996, we used Ciba's DAS in our whitener production,
17 but the resultant SFWA was rejected due to serious
18 quality problems. Ultimately, Ciba paid a claim to
19 compensate for this deficiency, which had nothing to
20 do with cheap import competition.

21 In 1997, we again conducted a laboratory
22 test of DAS which Ciba was offering to us at well
23 below the prevailing market price. At that time,
24 after finding the sample acceptable and ordering a
25 trial run quantity, Ciba withdraw their offer without

1 explanation and have not made any DAS available since
2 that time.

3 Given the current size of the U.S. market
4 for SFWA and the differences in production techniques
5 between Clariant and Ciba -- which Dr. O'Neal will
6 discuss further -- it is doubtful that Ciba could
7 supply the U.S. demand for DAS even if they wanted to
8 do so.

9 We sell approximately 95 pe recent of our
10 SFWA output to the paper products industry, and the
11 remainder goes into the textile industry. We do not
12 sell whiteners to the detergent sector, which has been
13 contracting in recent years due to the movement of
14 customers toward enzymatic cleaning agents which do
15 not use SFWA.

16 Lower priced DAS imports have had little to
17 do with this contraction. It is in the detergents
18 market, where Clariant does not compete, that Ciba has
19 traditionally focused its marketing and sales efforts.

20 In the paper market, the trend has been
21 towards higher standards of brightness driven by the
22 Asian and European paper industries. Therefore, the
23 U.S. paper producers, which have undergone
24 consolidation and procurement centralization in recent
25 years, are seeking more specialized, higher

1 performance products.

2 Higher brightness standards require
3 different SFWA molecules and combinations of different
4 SFWAs. In addition, coated papers require different
5 SFWA than other products. We have met this diverse
6 demand by producing numerous customized SFWA
7 formulations, including disulfonated, tetrasulfonated,
8 modified tetresulfonated, hexasulfonated, and
9 formulated products, for wet end, size press and
10 coating applications.

11 We produce and market at least 25 different
12 specifications for the paper industry, while several
13 variations in paper coating and coloring applications,
14 while Ciba offers no more than five specifications to
15 the paper market, mostly, if not entirely, for
16 commodity applications.

17 Clariant has been successful in this market
18 not only by making customized SFWA products available,
19 but also because of our superior service and technical
20 expertise, since we offer a broad spectrum of paper
21 chemicals in addition to whiteners.

22 Customers have come to rely on our technical
23 consultation to maximize their own resources.

24 Since the U.S. paper industry is operating
25 in a progressively more competitive market, their

1 whitener supplies must be more versatile as well, so
2 quality and technical service become more important
3 than price.

4 It is not surprising that Ciba's petition
5 highlights their perception of a declining paper
6 market demand, since their focus in that market has
7 been on commodity grade whiteners used for common went
8 end applications.

9 Our marketing efforts in the specialized
10 segments, such as high brightener grades, size press
11 and coating applications, including injet papers,
12 indicate that new customer needs are driving growth,
13 not contraction.

14 The non-price factors are a reason why
15 Clariant, as the single largest U.S. producer of SFWA
16 in the paper market, is not only not experiencing any
17 injury, but seeing a strong and improving financial
18 performance. Production, sales, profitability and
19 employment have all improved over the period of
20 investigation. But continued success depends upon our
21 ability to meet paper customers' needs for quality and
22 technical service, rather than just offering the
23 lowest price for the whiteners.

24 In addition to the very different marketing
25 focus we have pursued versus Ciba's approach, there

1 are other reasons why Ciba's alleged difficulties must
2 be attributable to factors other than imports of
3 either DAS or SFWA. Ciba has invested in new plant
4 and equipment which have high yields and unit
5 efficiency, but also carry high fixed costs. Dr.
6 O'Neal will discuss this further.

7 By contrast, other producers' processes,
8 while have a lower yield and higher effluent factors,
9 do not have the cost burden of these proprietary
10 manufacturing processes. In addition, Ciba vastly
11 overstates the importance of their DAS production to
12 the value of the SFWA sold in the U.S. market. The
13 value of DAS accounts for less than 25 percent of the
14 total value of the whiteners. Ciba's attempt to
15 minimize whiteners by referring to them as "DAS
16 prepared for application" is a little like referring
17 to paper as "wood pulp prepared for application."

18 Ciba has also seen additional costs
19 resulting from its need to import molten cyanuric
20 chloride, since its U.S. supply source has been
21 discontinued, and its facilities requires that it use
22 the product in molten form.

23 Any and all of these internal and marketing
24 factors have caused Ciba the harm which they
25 incorrectly attribute to imports. The antidumping

1 process is the wrong vehicle to use when the company's
2 primary problems revolve around failure to fully
3 address customer demands and bad production management
4 decisions.

5 This is especially egregious when that
6 company holds a captive monopoly on the raw material
7 which it claims to be injured. Ciba's target is not
8 China and India. They are aiming their sights
9 squarely at Clariant's U.S. manufacturing
10 capabilities.

11 We strongly urge you to recommend that this
12 case be dismissed as it lacks any reasonable basis.

13 I will hand this over to Dr. O'Neal who will
14 explain further the applicable production process.

15 MR. O'NEAL: Thank you, Tim.

16 Mr. Chairman and members of the staff, my
17 name is Sam O'Neal, and I am a technical
18 superintendent responsible for paper chemicals,
19 including SFWA, at Clariant's Martin, South Carolina
20 production facility. I have a Ph.D. in inorganic
21 chemistry from Clemson University and have been with
22 Clariant for the past 12 years.

23 In my current position, I am responsible for
24 technical management of all products made at the
25 Martin facility. When I was first hired by Clariant,

1 I was in charge of the transfer of our brightener
2 production from New Jersey to Martin, and I am also
3 familiar with the comparative production processes of
4 our competitors in the United States, including Ciba
5 and others.

6 I would like to describe some of the details
7 of our production of brighteners in Martin. I will
8 also discuss some of the key distinctions in both
9 manufacturing process between SFWA product lines of
10 the two companies.

11 As Mr. Friemark testified, Ciba has not
12 offered to sell any DAS to Clariant in years.
13 Furthermore, the DAS they currently produce is
14 unsuited for Clariant's needs. Currently, Ciba only
15 produces DAS as solution for a continuous production
16 process, resulting in whiteners. Clariant requires
17 DAS in powder form. If we were to use DAS in
18 solution, it would severely decrease our batch size,
19 and we couldn't be producer as much product per batch.
20 This would be highly inefficient and would increase
21 our production costs.

22 Even when Clariant purchased DAS in powder f
23 form from Ciba in the past, we had serious problems
24 with its consistency. The product supplied by Ciba in
25 1995 hydrolyzed during production, because it was not

1 formulated in a manner necessary for our process.
2 This resulted in a product of the wrong color, which
3 could not be used by our customers.

4 With regard to the production of the SFWA, I
5 know that Ciba uses a different production process
6 from Clariant. Clariant makes SFWA in four steps.

7 The first step is a chemical condensation
8 reaction between cyanuric chloride an amine such as
9 sulfanilic acid.

10 The second step is a condensation reaction
11 between the slurry from step one with the DAS.

12 The third step is a condensation reaction
13 with another amine such as diethnolamine to remove the
14 final chlorine.

15 The final step is an adjustment of the
16 brightener to the correct strength needed for the
17 product, and in some cases, addition of other
18 chemicals to meet certain customer performance
19 requirements.

20 By contrast, Ciba's process has a different
21 order of reaction. In their first step, DAS solution
22 is reacted with cyanuric chloride, and in the second
23 step reacted with an amine such as sulfanilic acid.
24 The third step is reaction with an amine such as a
25 diethnolamine.

1 In Clariant's order of condensation
2 reaction, we are able to identify and correct for
3 possible impurities that can be formed in the
4 production process, such as polymer or one-ended
5 impurities. Ciba's order of reaction would not allow
6 it to do this.

7 The reduction of such impurities in the
8 SFWA, which makes the final product more effective,
9 has become a requirement in the higher performance
10 needs of our customers, and has allowed them to reduce
11 the volume of SFWA needed in their production.

12 Finally, there are important differences
13 between the DAS production processes used by Ciba and
14 other manufacturers. Ciba uses a patented special
15 oxidation process with anhydrous ammonia. By
16 contrast, other manufacturers use a bleach process for
17 oxidation. While this process allows Ciba to increase
18 their yield for DAS, it drives up their production
19 costs.

20 I appreciate this opportunity to describe
21 some of the relevant technical processes in our
22 industry, and will be pleased to respond to any of
23 your questions.

24 MR. WEIGEL: Good morning. My name is Ken
25 Weigel. I am with the law firm of Alston & Bird, and

Heritage Reporting Corporation
(202) 628-4888

1 with me from Alston & Bird is Lauran Fraedrich. We
2 are here today representing Bayer Chemicals
3 Corporation and Bayer AG.

4 From the companies are: from Bayer
5 Chemicals, Tom Dudman; Edward Mathews, Andreas
6 Scheurell; on the back table, Howard Goldsberry and
7 Tod Portzline. From Bayer AG is Klaus-Dieter Schultz.

8 We believe that the Commission should reach
9 a negative preliminary determination and end this case
10 now. Our testimony will consist of statements by Mr.
11 Dudman, and then Mr. Mathews, and we have some
12 exhibits and some things to show you as to
13 fluorescents, which will answer some of the questions
14 you have been asking this morning.

15 So we will start first with Mr. Dudman.

16 MR. DUDMAN: Good morning. My name is Tod
17 Dudman, and I am a manufacturing consultant with Bayer
18 Chemicals Corporations. By education I am both a
19 chemist and a chemical engineer. I have worked in
20 both the United States and Germany in the production
21 and marketing of DAS and SFWA at Bayer for over 10
22 years.

23 We have a lot of knowledge and background in
24 SFWAs as Bayer invented them in the 1940s. I am here
25 today to explain to the Commission the significant

1 differences between DAS and SFWAs. I will first
2 discuss DAS and then SFWAs to highlight these
3 differences.

4 There are various ways to make DAS, but they
5 all involve sulfonation of PNT, or para nitro coluate,
6 followed by oxidation and then other steps.

7 Bayer is the major producer of PNT, and
8 presently PNT must be imported into the United States.
9 That's all DAS and SFWAs, including Ciba's, are made
10 from imported material.

11 Ciba producer DAS at a state-of-the-art
12 facility in MacIntosh, Alabama, and has high yields,
13 but it is also very capital-intensive, and expensive
14 to operate and maintain.

15 To my knowledge, this is the only facility of its
16 type in the world.

17 We understand that Ciba's U.S. process
18 begins with a sulfonation step, which is followed by
19 an oxidation step, but this oxidation step is unique
20 to Ciba in that it involves hydrogen peroxide in a
21 sealed ammonia atmosphere. The process results in
22 high yields, but it is more technically complicated
23 and costs more than other DAS production processes.

24 The next step, which is also unique to
25 Ciba's U.S. production, is hydrogenation using a

1 catalytic process that is performed in solution such
2 that the resultant DAS, which is already in solution,
3 can be immediately used to produce SFWA.

4 Thus the DAS that Ciba produces is made for
5 use in Ciba's SFWA production process, and this
6 solution would need to be further processed to be
7 marketed to other domestic DAS users.

8 Most other producers of DAS use a different
9 process that is generally much less expensive and has
10 a slightly lower yield than Ciba's Alabama process.
11 In this process, used formerly by Bayer, and we
12 understand the Chinese and Indian producers today, the
13 oxidation process is with air.

14 At Bayer, oxidation is followed by an
15 isolation step. Then the reduction step with iron
16 powder, and a second isolation step that resulted in
17 crude DAS press cake, not DAS in solution.

18 Ciba Germany uses an older and less
19 efficient process to produce DAS where oxidation
20 occurs with bleach which results in lower yields and
21 significant waste compared to other processes.

22 There are various physical forms of DAS. In
23 the United States, Ciba produces a low active solids
24 liquid solution in process. This form is not stable
25 for the extended periods required for transportation

1 and storage and is basically usable only in a
2 continuous process such as Ciba uses to produce SFWAs.

3 In addition, DAS is available in press cake
4 form, which is approximately 60 percent active solid,
5 which Bayer previously produced and imported, and also
6 dry form, which is approximately 95 to 98 percent
7 active solids, which is the Indian and Chinese
8 material available in the U.S. market.

9 DAS has other uses in addition to the
10 production of SFWAs. In our Bushy Park, South
11 Carolina facility Bayer uses hundreds of thousands of
12 pounds of DAS yearly to product direct dyes; for
13 instance, direct blue 279, direct yellow 4, for sale
14 directly into the paper industry.

15 In addition, Bayer produces other DAS-based
16 blue and yellow dyes so as to produce a black direct
17 dye which is a major dye utilized in the injet
18 printing industry.

19 The exhibits to my left shows a sampling of
20 paper produced with DAS-based dye stuffs for direct
21 sale into the paper industry or for shading a rainbow
22 of colors.

23 Ciba claims that DAS is not necessary for
24 the production of these dyes and claims Bayer's
25 processes are not typical. I strongly disagree with

1 this statement. Bayer is one of the few producers of
2 these dyes, and we consider their production process
3 highly proprietary. It is essential that DAS be used
4 as the core building block.

5 Bayer is not aware of any processes, as
6 stated in Ciba's petition, that used the DMS
7 intermediate to produce these dyes. These dyes cannot
8 be successfully manufactured with DAS.

9 Let me now turn to SFWA production. Unlike
10 DAS, which is made principally from PNT, SFWAs are
11 made from multiple inputs. Both DAS and cyanuric
12 chloride each represents approximately six to eight
13 weight percent of the final SFWA as sold.

14 To my knowledge, everyone uses a similar,
15 although rather complex, process to produce SFWAs as
16 indicated in the presentation for SFWA 220, the
17 largest volume paper brightener.

18 The accompanying boards behind me, the first
19 reaction combines DAS and sodium hydroxide to yield
20 the sodium salt of DAS. The second reaction combines
21 cyanuric chloride with the sodium salted DAS under
22 precise temperature and tightly controlled CH
23 conditions to produce what we term the tetrachloride
24 intermediate.

25 To do this step, Ciba uses molten cyanuric

1 chloride, and thus has a different process that uses a
2 solvent which results in a higher cost as compared to
3 everyone else's process.

4 In our third reaction, tetrachlore
5 intermediate is then reacted with sulfanilic acid to
6 produce Cloro Product S, as we term it.

7 Fourth, Cloro Product S is then reacted with
8 an aliphatic amine, in this case diethnolamine, to
9 make SFWA fluorescent brightener 220.

10 It then must be desalted in a high pressure
11 membrane process, and concentrated using this unique
12 membrane system. Finally, additive such as biocides
13 are introduced to obtain other properties and the
14 strength of the SFWA is adjusted.

15 SFWAs are used to schieve three specific
16 brightness and whiteness levels desired by the
17 customer in the paper produced, textile fabric that is
18 being treated or in the clothes being launder. DAS
19 alone cannot achieve this result because it does not
20 impart the brightness and whiteness of SFWAs.

21 DES will absorb ultraviolet light and indeed
22 will emit the blue lights known as fluorescence, but
23 it does not provide the intensity of fluorescence
24 necessary for commercial application.

25 My colleague Ed Mathews will demonstrate.

1 MR. MATHEWS: In the paper industry, there
2 are two basic ways that you can add brightener to the
3 sheet; internally as it's being produced, or applying
4 it onto the surface either later on in the production
5 process or post-production. We tried to show here the
6 demonstration of both techniques that are used.

7 And the one labeled internal addition, a
8 base substrate of fiber, of pulp, as you may call it,
9 is prepared. What we did to that is we made the base
10 substrate with no additives. The second level is
11 showing the amount of DAS that would be present in an
12 addition rate of 20 pounds per ton of an SFWA added
13 internally.

14 What I have here is a black light which emits
15 UV energy. As you can see from the shirt, it would be
16 used in the textile industry.

17 (Laughter.)

18 But what the SSA molecule actually does is
19 absorbs energy in the UV spectrum and re-emits an
20 invisible light. As you can see with the base
21 substrate, there is no fluorescence. When added
22 internally the DAS does not give any fluorescence, but
23 you can see what 20 pounds per ton it is quite nicely
24 fluorescent which is used in the criteria for the
25 paper maker.

1 To address the allegation by the petitioner
2 that it's all a matter of retention, the second method
3 that an SFWA, or as referred to, brightener is added
4 in the paper industry, is to apply it to the surface,
5 much as you would paint the wall or a piece of paper.

6 So what we have done the second one is taken
7 the same base substrate which has no additives applied
8 to the surface, and we have applied in the second
9 dyeing or second is DAS applied to the surface, again
10 with the equivalent weight percent of DAS that would
11 be in 20 pounds per ton.

12 As you can see, you do get some
13 fluorescence. However, when you look at the base
14 substrate again applied with the SFWA directly, the
15 fluorescence is even more extreme than when the same
16 amount is added internally. Hence, without the SFWA
17 is not equivalent to DAS in the manufacturing process.

18 And also, if you look at the DAS containing
19 dye stuff, they use just the normal coloration of
20 paper, it has a background which is white -- oh, what
21 came out? The white fluorescence but none of the --
22 there is no power. No power coming. No.

23 MR. WEIGEL: Anyway, let's go on.

24 MR. DUDMAN: There it is.

25 MR. MATHEWS: You can see that the dye

1 stuffs when used to produce colored paper that are
2 using DAS as a starting material do not fluoresce.

3 Thank you.

4 MR. DUDMAN: In summation, DAS is just one
5 raw material used to produce SFWA, and the products
6 are two very different chemicals. SFWAs are much more
7 than DAS with filler as Ciba erroneously alleges.

8 Thank you very much for your time.

9 MR. MATHEWS: Good morning. My name is Ed
10 Mathews. I am the marketing manager for Bayer
11 Chemicals Corporation's Business Unit Paper. I have
12 worked in many different capacities within the paper
13 industry for the last 20 years. In my present
14 position, and through my prior positions, I have been
15 involved in the selling, servicing, and marketing of
16 Bayer's line of fluorescent white agents for almost 12
17 years, and to a much lesser extent to the textile
18 industry, or excuse me, the detergent industry.

19 I am here today to discuss what is and has
20 been occurring in the U.S. market from Bayer's
21 perspective.

22 First, Bayer has never produced DAS in the
23 United States. Bayer has always imported DAS from its
24 parent company in Germany for use in the United
25 States. At the end of 2002, Bayer ceased its

1 production of DAS in Germany. Bayer has also imported
2 certain specialty SFWAs from Germany for many decades,
3 but these have not competed with Ciba's SFWAs.

4 In June of 2002, Bayer ceased all its U.S.
5 production of SFWAs to consolidate SFWA production in
6 its newer German plant. Bayer now imports SFWAs from
7 Germany as well as purchases from SFWAs domestically
8 for resale in the U.S.

9 Bayer believes it, and perhaps Ciba, are the
10 only importers of SFWA from Germany for sale in the
11 United States. We are not aware of any imports of
12 SFWAs from either India or China. We believe all the
13 Chinese and Indian SFWA production is used in their
14 own market or in other Asian countries.

15 Since Bayer ceased U.S. production, Bayer is
16 not aware of any instance in which the petitioner has
17 lost SFWA business to an imported German SFWA.

18 There are three primary market segments in
19 the U.S. for SFWAs: detergent, textile and paper
20 producers. While the detergent industry represents
21 the majority of the total U.S. demand, today Bayer's
22 participation in the U.S. SFWA market is limited
23 solely to paper and textiles, and we are not a major
24 player in either market.

25 Bayer has not manufactured or marketed

1 detergent SFWAs since December of 2000. Any issues
2 Ciba is experiencing the detergent market cannot have
3 resulted in German SFWA imports.

4 With respect to the textile market, Bayer
5 only sells specialty SFWAs to allow Bayer to market
6 its complete line of textile chemicals. Since
7 approximately 2000, Bayer has sourced nearly 100
8 percent of its textile SFWAs from the petitioner,
9 Ciba.

10 The U.S. paper market is the primary focus
11 of Bayer's SFWA business. The SFWAs imported by Bayer
12 since June of 2002 have been imported almost
13 exclusively for the paper industry. Bayer has not
14 gained any business or reduced its prices as a result
15 of these imports. Since June of 2002, any lost sales
16 of SFWAs by Ciba were to other U.S.-produced SFWAs.

17 Ciba's reasoning for its lost DAS sales to
18 Bayer to erroneous. In 1997 and 1998, Bayer decided
19 to buy its DAS from its parent company, Bayer AG, to
20 achieve greater plant utilization despite its slightly
21 higher cost.

22 Ciba claims Bayer's DAS was lower priced,
23 but fails to adjust for the fact that the imported
24 material is only 60 to 70 percent solid. With the
25 solids adjustment, Bayer pays more for the German DAS.

1 Bayer does not compete in the U.S. SFWA on
2 the market of price. We compete with a high quality
3 product line with superior technical service. When a
4 paper manufacturer desires to achieve a certain
5 whiteness in his paper, there are many ways in which
6 to attain this result. SFWAs is just one of a myriad
7 of methods.

8 Also, there are various types of SFWAs that
9 can be used to achieve this result by themselves or in
10 combination. What the customer or end user is after
11 is the end result. Although we will provide more
12 information in our written submission, Bayer has
13 obtained business by demonstrating to customers how to
14 use different and less expensive SFWAs to achieve
15 their desired result. In specific instances, Bayer
16 has been able to replace a competitor's higher overall
17 cost chemistry with a lower cost alternative. This is
18 not underselling, but selling of different products.

19 In addition, Bayer sells SFWAs as part of
20 its extensive product line of papermaking chemicals.
21 Bayer has at times obtain business due to the
22 synergies between various chemicals offered by Bayer
23 to the paper manufacturing facilities.

24 Finally, Bayer also sells to U.S. paper
25 companies based on its relationships with those

1 companies both in the U.S. and in other countries. In
2 this regard, while the overall production tonnage of
3 paper has remained somewhat constant, the number of
4 customers has decreased dramatically over the last
5 five to 10 years.

6 As the paper industry continues to contract
7 through mergers and acquisitions, larger and larger
8 volumes of products are not centrally purchased as
9 opposed to what had been purchased in individual
10 locations.

11 Still changes in the SFWA suppliers may be
12 slow because of the inertia at the plant level and the
13 time needed to switch from SFWA supplier to another
14 supplier.

15 As my colleague, Mr. Dudman, has explained
16 to you, we believe Ciba's cost to manufacture SFWAs in
17 the U.S. are very high. In addition to their high
18 cost, their high cost of DAS in SFWA conversion
19 proceeds, we believe there are two additional issues
20 contributing to Ciba's problems.

21 First, one of the basic raw materials for
22 DAS production, PNT, has become, we believe more
23 expensive to Ciba. We understand that Ciba's domestic
24 supplier and sole U.S. producer of PNT had a fire in
25 October of 2002 and could no longer produce the

1 product, but continues to supply PNT to Ciba. This
2 means all PNT must be imported from overseas, and also
3 indicates that Ciba's contract price is most likely
4 above the present market price.

5 Second, one of the critical components of
6 SFWA production, cyanuric chloride (CC), required by
7 Ciba must be in its molten state as opposed to a high
8 solid slate. While there was a local domestic
9 supplier of molten CC, it has now ceased production in
10 its U.S. facility. Without domestic production over
11 molten CC, Ciba is now forced to import molten CC and
12 thus may be experiencing increased cost for
13 transportation due in part of the molten form
14 requirements of special heated tankers at 160 degrees
15 C that are very costly.

16 To convert the molten CC to the solid slate
17 form, Ciba would need to make a considerable
18 investment in their facility.

19 In sum, we do not see the competition from
20 imported German SFWAs in the presence of Indian and
21 Chinese DAF as the cause of any injury Ciba may be
22 suffering. Ciba's competition is with U.S.-produced
23 SFWAs, and its difficulties are not from imports.

24 Thank you very much.

25 MR. ROSENTHAL: Good morning. My name is

1 Paul Rosenthal. I am with the law firm of Collin
2 Shannon Scott here in Washington, D.C. I am here on
3 behalf of 3V Incorporated, a company in New Jersey and
4 South Carolina.

5 Accompanying me this morning are my
6 colleagues, Jennifer McCadney from the law firm, and
7 also Michael Kerwin of Georgetown Economic Services.
8 In addition, Mario Gazolla of the law firm of Pavia
9 and Hartcord in New York, a long-time counsel to 3V,
10 is here to help answer any questions.

11 Our witness, however, this morning is John
12 Savoretti, who is the president of 3V and he will
13 present the testimony right now.

14 MR. SAVORETTI: Good morning. My name is
15 John Savoretti. I am the president of 3V, which has
16 production facilities in Georgetown, South Carolina,
17 and corporate offices in both Weehawken, New Jersey
18 and Georgetown, South Carolina.

19 3V Inc. is a global chemical manufacturing
20 company that also specializes in the development and
21 manufacturing of process equipment for chemical
22 plants. My company, 35 Inc., produces a wide variety
23 of chemical additives and specialties at its
24 Georgetown facility, including SFWA that is made from
25 imported DAS.

1 In the United States, 3V Inc. operates a
2 state-of-the-art facility that is outfitted with the
3 most technologically-advanced production equipment.
4 3V Inc., which has been in business for 25 years,
5 employees 250 people, of which 40 are dedicated to the
6 SFWA production.

7 Over the 25 years that the plant has been in
8 operation, 3V Inc. has made approximately \$150 million
9 worth of capital investments. These investments have
10 enabled 3V Inc. to minimize costs and increase
11 productivity. In sum, we are an extremely efficient
12 producer of SFWA.

13 The manufactured of SFWA is a highly
14 capital-intensive process. 3V Inc. believes that the
15 petition does not accurately characterize this
16 process, and in fact, purposefully downplays the
17 complexities of producing SFWA as compared to DAS.
18 Indeed, SFWA is more difficult to produce than DAS. I
19 would like to take just a few minutes to describe 3V's
20 production process of SFWA.

21 We manufacture SFWA at our Georgetown plant
22 using a three-step process. This process is driven by
23 a chemical reaction that occurs when the active
24 ingredient, cyanuric chloride, is combined with DAS
25 and the other raw material inputs required to make

1 SFWA.

2 Cyanuric chloride reacts with other
3 molecules by means of three hooks -- which,
4 scientifically-speaking, are chlorine atoms. Each
5 chlorine atom reacts under different conditions and
6 requires a separate, specific procedure.

7 Thus, the production of SFWA involves three
8 separate chemical reactions mandating three different
9 complex production steps. These three steps are
10 required to impart whitening properties to the
11 finished product, SFWA. It is important to note that
12 DAS alone is not a whitening agent.

13 In addition, a final step is required to
14 make SFWA ready for use. This final process may
15 differ depending on the form of the SFWA. For
16 example, the last step could involve a sophisticated
17 reverse osmosis process for the production of liquid
18 SFWA, it may involve the use of a granulating
19 apparatus for the production of solid SFWA, or into a
20 slurry form. 3V Inc. produces all three forms. In
21 short, the production of SFWA from DAS is far from
22 simple.

23 We import DAS and use it for our SFWA
24 production. We are unable to purchase DAS from Ciba
25 because it uses all of its DAS for internal

1 consumption, therefore, there is no DAS for us to
2 purchase in the U.S. market.

3 Interestingly enough, Ciba relies on
4 imported cyanuric chloride in order to make its SFWA.
5 As mentioned previously, cyanuric chloride is an
6 essential ingredient in the production of SFWA. In
7 fact, it can be argued that cyanuric chloride is as
8 important as DAS in the production of SFWA. It is
9 curious that Ciba's petition does not cover imports of
10 cyanuric chloride.

11 As you have heard by now, there are three
12 general end-use segments for SFWA -- detergents,
13 textiles, and paper. We have typically held
14 respectable market shares in all three shares;
15 however, the overall market for SFWA has decreased
16 over the past several years and we have had to make
17 adjustments accordingly.

18 For example, 3V Inc. had a respectable
19 market share of the SFWA paper market, but as the end-
20 market began to experience a significant decline, Ciba
21 began to aggressively lower its prices. As a result
22 3V Inc. lost nearly all of its market share as it was
23 essentially driven out of the paper segment by Ciba's
24 low prices. Ciba is the true price leader in the SFWA
25 market. From our experience, in order to compete in

1 this market, you have one of two choices: either
2 lower your prices to meet Ciba's, or get out of the
3 business.

4 While 3V Inc.'s prices are competitive, they
5 are certainly not unfairly traded. SFWA is an
6 international commodity and 3V Inc. changes the same
7 price worldwide. Indeed, price is not the only, or
8 even the most important, factor in 3V Inc.'s marketing
9 strategy. 3V Inc. has always placed an equal emphasis
10 on customer satisfaction, reliability of supply, and
11 offering a quality product.

12 For example, in the last 1990s, two major
13 US. SFWA producers -- Bayer and Clariant -- exited the
14 detergent segment leaving Ciba as the only domestic
15 manufacturer. 3V Inc. started producing for the
16 detergent segment only after being encouraged by the
17 primary purchaser, who did not want to be limited to
18 sourcing SFWA from a sole supplier. Importantly, this
19 buyer did not approach 3V Inc. for reasons relating to
20 price, but rather to ensure a reliable supply.

21 To the extent that Ciba is having problems,
22 it is due to the decline in demand by its end
23 customers and overall decline in the demand in SFWA.
24 Unfortunately, Ciba has compounded this problem by
25 aggressively lowering pricing, lowering its prices in

1 order to increase its market share in the declining
2 market.

3 As the largest supplier, Ciba has had the
4 capability to dictate prices and the rest of the
5 participants in the market follow Ciba's lead.

6 In sum, whatever injury the petitioners may
7 have suffered is due to the factors then imports of
8 DAS or SFWA. With this understanding of the facts, I
9 believe the Commission can reach no other conclusion
10 but that this case should be terminated immediately.

11 I thank you for your time.

12 MS. LEVINSON: Good morning. I'm Lizabeth
13 Levinson with the law firm of Garvey, Schubert &
14 Barer. I represent Vasant Chemicals, the largest
15 exporter of DAS from India.

16 Vasant exports DAS in dry powder form partly
17 to one customer, which is an actual user in the United
18 States, and the balance to an unrelated trading
19 company called A&D. It's also located in the United
20 States. However, A&D in turn supplies all the DAS
21 that it brings in to the same actual end user.

22 The headquarters for this U.S. customer are
23 in Switzerland, and it is the Swiss office that
24 negotiates the terms of supply and issues a supply
25 contract which is applicable for all of its affiliates

1 all over the world, including the United States. In
2 other words, there are never separate negotiations for
3 the U.S. market. In fact, for this multinational
4 customer, U.S. market represented less than one-tenth
5 of its overall purchases of DAS in the last fiscal
6 year.

7 Vasant's biggest market by far is India,
8 followed by Germany, the U.K. and Italy. A third of
9 Vasant's production during the last fiscal year was
10 sold in India. For the near future, Vasant has a
11 number of contractual commitments to continue to
12 supplying the greatest volume of its production to
13 countries outside the United States.

14 Vasant would not and legally could not
15 divert product from these valued customers to supply
16 the smaller in the United States. With our post-
17 hearing brief, we will be submitting copies of ongoing
18 supply contracts with customers in England, Germany,
19 Japan, Italy and Spain.

20 The irony is that Ciba's affiliate in India
21 is Vasant's largest customer in India.
22 Representatives of Vasant have also visited Ciba's
23 U.S.A.'s facilities in MacIntosh, Alabama.

24 Vasant believes that Ciba's basic problem is
25 not imports, but the overly expensive technology that

1 it has adopted in the United States. In Vasant's
2 views, Ciba's use of different technology, which is
3 high cost, involving the use of a solvent other than
4 water and oxidation in the absence of air makes the
5 product cost prohibitive and hence uneconomical.

6 Interestingly, Ciba's other affiliates
7 around the world do not use this more expensive method
8 of oxidation. The result is that Ciba's U.S.
9 production is so expensive that Ciba in India would
10 prefer to buy DAS from Vasant than to supply itself
11 from its United States affiliates at transfer prices.

12 Vasant produces only DAS. It does not
13 produce or export SFWA, which it regards as an
14 entirely different product for an entirely different
15 industry. The producers of SFWA are in the paper,
16 textile or detergent industries. Vasant Chemicals is
17 not.

18 I would be pleased to respond to any
19 questions you may have on behalf of Vasant.

20 MR. WISLA: Hi, I am Ron Wisla from Garvey,
21 Schubert & Barer, and we are representing PHT
22 International, and with me here is Jean Smith from
23 PHT, and she will give her testimony.

24 MS. SMITH: Good morning. I am Jean Smith.
25 I'm the vice president of PHT International, which is

1 based in Charlotte, North Carolina, and I thank you
2 for hearing my testimony today.

3 PHT is a trading company that employees only
4 about eight people. We trade many different chemicals
5 which all come from China and we sell these worldwide.

6 Today, along with representing ourselves, we
7 also speak on behalf on our joint venture in China,
8 which is Hibeil Hingsue Jenhing, a manufacturer and the
9 exporter of DAS. Our joint venture is 100 percent
10 privately owned in China and does not receive any
11 government subsidies.

12 PHT has never imported the SFWA, nor does
13 our joint venture produce the SFWA. Therefore, our
14 focus is on the DAS.

15 Our joint venture is now at about 90 percent
16 utilization of its production of DAS. It's export to
17 the United States is only about 10 percent of this
18 production. Our joint venture exports DAS not only to
19 the U.S. but also to Europe and to South America
20 through our company. It is not targeting just the
21 U.S.

22 Ciba has petitioned for dumping duties to be
23 placed on both DAS and SFWA, and we do not think that
24 these should be treated as the same. As an importer
25 of only the DAS, we are providing a raw material to

1 U.S. factories that require the type of DAS produced
2 in China, which is significantly different than which
3 Ciba has to offer.

4 If these companies cannot get the type of
5 raw material that they need, then how will their
6 production sites continue in business? Would this not
7 create a loss of more American jobs?

8 DAS already has a duty of 6.9 percent, which
9 is well above the average duty. With this regular
10 duty imposed, a basis for fair competition is already
11 in place among the other manufacturers of the SFWA,
12 each showing their own niche in either the paper, the
13 textile or the detergent industries.

14 The imposition of the dumping duties could
15 allow Ciba to create a monopoly. This is not what
16 dumping duties are intended to do. This would also
17 have an impact on downstream manufacturers who produce
18 the SFWAs.

19 The other manufacturing companies
20 represented here today spoke more clearly on the
21 differences of the material made by Ciba versus the
22 imported material. But our joint venture in China
23 fills the need in supplying the good quality material
24 that can be readily used in their U.S. production
25 sites. These companies using the imported DAS,

1 requiring the high quality product form, in the powder
2 form, and that is what we produce.

3 Does Ciba meet these needs? Can they supply
4 all the quantity required and the quality required?
5 These are our questions.

6 Also, we believe that the Byrd Amendment,
7 which gives the dumping duty to the injured parties,
8 have some companies seeking dumping duties on items
9 that they can then collect these duties. For this
10 reason, I believe that extra care and caution are
11 necessary in looking over these reviews.

12 PHT as an importer has other concern when
13 dumping duties are place on a product. As the
14 importer, we assume the risk. We noted with interest
15 the recent testimony of the Under Secretary Grant
16 Aldenall before the House Committee regarding these
17 issues. He stated that the ITC and the Department of
18 Commerce wanted to work fairly in calculating a fair
19 value for imported merchandise, but for non-market
20 economy countries, such as China, the methodology to
21 use these other like countries for surrogate values.

22 In past instances, the DOC has chosen a
23 particular surrogate value and then the next year not
24 allowed that same value. As an importer, we are at
25 their mercy and have been hurt by these whimsical

1 changes.

2 So I ask when President Bush seeks a level
3 playing field for foreign trade, we have found that
4 our government agencies can put potholes in our way.
5 So I ask for you to look at our industry as an
6 importer with fairness.

7 MR. McGRATH: I think that concludes our
8 presentations from the respondents' side. We are all
9 available for questions now.

10 Oh, there is one other introduction I needed
11 to give, I forgot. Robert Beck, who is a sourcing
12 manager for Clariant is also here. He deals with
13 purchasing DAS so if you have any questions, he's
14 available for questions.

15 MR. CARPENTER: Okay. Thank you very much
16 to the panel. I have a couple of housekeeping
17 matters.

18 First of all, I will accept Clariant's two
19 charts as Respondents' Exhibit 1, and those will be
20 made part of the transcript.

21 MR. McGRATH: Thank you.

22 MR. CARPENTER: Okay. And let me ask Mr.
23 Weigel for the various charts that you have against
24 the wall, do you have paper copies of those that you
25 would like to submit.

1 MR. WEIGEL: We have paper copies of the
2 charts on the right. We do not have any copies of
3 these exhibits. These are just for illustrative
4 purposes only to show the Commission how DAS and SFWAs
5 react.

6 MR. CARPENTER: Okay. The only thing I
7 would say is that since the commissioners are not
8 here, they will be reading the transcript and the
9 briefs, of course, but if you would like to duplicate
10 the charts, any of the charts and somehow -- those two
11 may be difficult to duplicate, but if you want to take
12 a try at that.

13 MR. WEIGEL: Right, we will take a shot in
14 our post-hearing brief.

15 MR. CARPENTER: Okay.

16 MR. WEIGEL: The only problem is we will not
17 be supplying black light.

18 MR. CARPENTER: Right.

19 (Laughter.)

20 MR. CARPENTER: Understand. Okay, thank
21 you.

22 We will begin the staff questions. Ms.
23 Trainor, do you have any?

24 MS. TRAINOR: Yes, thank you.

25 I've heard a lot of testimony today and I've

1 read a lot in the questionnaires about the differences
2 of the various DAS and the production processes for
3 SFWA. And to the extent possible for respondents,
4 could you provide a comparative analysis, not
5 necessarily in the chemical formulae, of the
6 comparative advantages and disadvantages and the
7 processes that it would go into the various SFWAs.

8 I am going here towards the
9 interchangeability, fungibility, et cetera. I am
10 hearing that Ciba's DAS was not really applicable in
11 some processes, and that some people have to have the
12 powder form, some need wet cake, dry cake, and the
13 various inputs that go into this.

14 Again, I don't see this as formulae, and I
15 will be open to any questions over the telephone on
16 this without lengthy verbiage here.

17 Does anybody have any questions of me on
18 that question actually?

19 MR. WEIGEL: So you're interested in how the
20 different forms of DAS can be used?

21 MS. TRAINOR: No. I'm interested in the
22 various, the comparative advantages and disadvantages
23 of the various production processes.

24 I heard Dr. O'Neal in particular begin to
25 describe in his testimony the differences, and I'm not

1 sure that you all are aware of everybody's practice.
2 But that's why I said to the extent possible. And I
3 realize these go into different downstream products
4 and the different further processing may require
5 different forms of DAS or different forms of the SFWA.

6 But there appear to be a non-100 percent
7 fungibility here, or interchangeability, and I'm
8 trying to sort out the various advantages and
9 disadvantages. Again, you will have my phone number,
10 and I apologize if my question is ambiguous.

11 MS. LEVINSON: Just a quick question. Is
12 that the comparative advantages and disadvantages of
13 DAS and SFWA, or just DAS?

14 MS. TRAINOR: No. The processes that
15 produce it.

16 MS. LEVINSON: Produce DAS?

17 MS. TRAINOR: Both.

18 MS. LEVINSON: Both. Okay.

19 MR. WEIGEL: Okay, so for example, in the
20 oxidation step in the production of DAS, it can be
21 Ciba's step, it can be everyone else's step using air,
22 or it can be the old bleach process which is Ciba
23 Germany's step.

24 MS. TRAINOR: Yes, exactly where I am going.

25 MR. McGRATH: But you're looking for our

1 comment on how that affects the finished product in
2 terms of fungibility?

3 MS. TRAINOR: Right, in terms of -- yes.

4 MR. McGRATH: Okay.

5 MS. TRAINOR: Basically the advantages and
6 disadvantages of what you get at the end, okay?

7 MR. McGRATH: Okay, I think we understand.

8 MS. TRAINOR: Sorry. That's it.

9 MR. CARPENTER: Mr. Haldenstein.

10 MR. HALDENSTEIN: Thank you. Mike
11 Haldenstein, Office of the General Counsel.

12 I heard, I think from a representative of
13 Bayer, that they import all the -- was it TNT, is that
14 toluene? I was just wondering why -- I guess, Ciba
15 and Bayer importing all the inputs for the production
16 of DAS?

17 MR. WEIGEL: At the present time Bayer no
18 longer produces SFWAs in the United States. When
19 Bayer produced SFWA in the United States, it sourced
20 DAS from Germany principally. It had other sources of
21 DAS as well. Going back prior to 1997-98, there were
22 some sourcing of DAS from Ciba.

23 As to the other components for SFWAs, well,
24 we can answer in our post-hearing brief where they
25 come from, or where they came from while SFWAs were

1 being produced in the United States. Bayer has never
2 produced DAS in the United States.

3 As far as PNT, let me let Tom talk about
4 that a little.

5 MR. DUDMAN: I indicated that PNT, the major
6 producer worldwide is Bayer, and we have supplied Ciba
7 in the past mostly in Europe.

8 The present situation is First Chemical was
9 the only major PNT supplier in the U.S., and it's my
10 belief that it's the only supplier. First Chemical
11 had a very extreme accident in October. Their
12 distillation column blew up, and because a six-ton
13 section of the distillation column went a thousand
14 feet and landed right in the middle of a bunch of
15 flammable storage tanks, no one was killed luckily,
16 and the tanks didn't ignite, it was fortuitous. The
17 government is still investigating that case.

18 The other difference in the strategy of
19 First Chemical, First Chemical is owned by ChemFirst.
20 In July, it was announced that duPont will be
21 purchasing ChemFirst principally for electronic
22 chemicals.

23 Before that deal was consummated through
24 antitrust, et cetera, the explosion occurred at the
25 First Chemical plant in Mississippi, and the deal

1 didn't go through until November, so duPont now has a
2 closed down PNT facility that is still being
3 investigated. And whether that's in their strategic
4 realm of interest, I cannot speak. But presently all
5 PNT, including Ciba's, that they use in their
6 MacIntosh facility plant is imported.

7 MR. HALDENSTEIN: Thank you.

8 Turning to the definition of the domestic
9 like product, as you know Commerce's scope includes
10 the DAS and SFWA, and what I have heard today from the
11 respondents is that these are very different chemicals
12 and there is a lot that goes into making SFWA from the
13 DAS. And I guess the implication of that is that
14 these should be separate like products and there
15 should be two like products, but I didn't hear anybody
16 from the respondents' side state that.

17 At least, if not today, in your post-
18 conference brief if you could address that issue and
19 look at the finished factors that the petitioners
20 describe in their petition as well as the Commission's
21 traditional factors, I would appreciate that for the
22 brief, unless you want to address that now.

23 MR. WEIGEL: We will do that in our post-
24 hearing brief, but I think the testimony that you
25 heard this morning pretty much addresses those

1 factors. We will pull it all together in our brief,
2 but if you look at it, there are two significantly
3 different products. We heard this morning 70 percent
4 by value is added to DAS to confer it into a new and
5 different product known as fluorescent lighteners.
6 And as we showed, they have different properties.

7 MR. ROSENTHAL: Just so you are not left in
8 suspense, we are going to argue that they are two
9 separate like products. I know you are wondering, but
10 there is no question.

11 MR. HALDENSTEIN: Thank you.

12 Also, a similar issue of whether -- if the
13 Commission decides there is just one like product, the
14 issue could be whether the making of the SFWA alone
15 from the DAS constitutes production. That's something
16 I raised with petitioners. If you could address that
17 in your post-conference brief.

18 MR. ROSENTHAL: Certainly. And let me just
19 get a clarification from you also on one of the
20 questions you asked petitioners. I think actually it
21 was your question and Mr. Carpenter's follow up having
22 to do with the breaking down of the additional 70
23 percent of the cost into the raw materials versus
24 energy and other components of that additional cost of
25 making SFWA.

1 Are you asking for also when it comes to raw
2 materials the country of origin of that? And if not,
3 I would urge you to ask it only because -- not that
4 we're looking for more burden, but I think it would be
5 illuminating, to use a chemical term, illuminating to
6 find out where the different sources of these
7 chemicals are.

8 If we are correct, and I am sure we will
9 hear from Ciba if we are not, that they are importing
10 a substantial portion of their raw materials but not
11 perhaps their DAS, and that accounts for a substantial
12 portion of their costs, I think it would be useful for
13 the Commission to know that.

14 MR. CARPENTER: Mr. Rosenthal since that was
15 my question, I will ask that the Petitioners supply
16 the country of origin of the raw material product.
17 Thank you.

18 MR. HALDENSTEIN: Also, in terms of the
19 definition of the domestic industry, if you could
20 address this related-parties issue if there is one
21 like product, whether you agree that some of the
22 producers should be excluded.

23 Turning to cumulation, since there doesn't
24 appear to be much of a merchant market for the DAS, if
25 you could address in your post-conference brief

1 whether there is a sufficient overlap of competition
2 among, I guess, the imported DAS and the SFWAs and how
3 you believe that all plays out, whether the imports
4 should be cumulated.

5 MR. ROSENTHAL: We'll obviously do that and
6 analyze it, both as a single like product and as two
7 like products.

8 MR. HALDENSTEIN: That would be great.
9 Thank you. That's all the questions I have.

10 MR. McGRATH: If I could just respond
11 briefly on that point, we can look it from the context
12 of the legal standards for cumulation. It's been
13 repeated a lot, but it bears repeating again: There
14 is no merchant market, and the product is not sold.
15 It is totally captively consumed, and it can't be used
16 by most of those who need it. So those of us who need
17 DAS have to buy an imported product.

18 So whether you look at this as a single
19 industry or as two industries, I think that that's a
20 critical element in the causation analysis, in either
21 way, looking at either two industries or one, is
22 looking at the fact that this imported raw material is
23 simply not available in the merchant market, and it
24 has not been since 1997.

25 MR. HALDENSTEIN: Thank you.

1 MR. CARPENTER: Ms. DeFilippo.

2 MS. DeFILIPPO: Actually, Mr. McGrath, you
3 just provided information that addressed the first
4 question I had, and I guess I'll just ask it anyway.
5 Earlier, when Ciba was discussing their sales of DAS,
6 they said they no longer sold it in the U.S. market
7 due to its inability to compete on the basis of price
8 with imported DAS. And just to make sure I've heard
9 everything correctly today, from the Respondents, it
10 seems to indicate that whether or not Ciba were
11 selling the DAS in the U.S. market, it would not be
12 acceptable or suitable for their production process,
13 and I just wanted to make sure that I had heard that
14 correct.

15 So if Ciba were selling, were to be
16 offering, DAS in the U.S. market, would you buy it, or
17 would you be able to use it?

18 MR. O'NEAL: I could just answer for
19 Clariant's point of view. No, we could not use the
20 DAS in solution form. We need it more concentrated,
21 so we need to buy the powder and then put it in
22 solution at a much more concentrated value than the
23 solution that Ciba would supply us, and that's the
24 main thing, that we put into a much more concentrated
25 version to use.

1 MR. WEIGEL: From Bayer's perspective, as we
2 said before, Bayer no longer makes SFWAs in the United
3 States, but it does make dyes that require DAS, and
4 Mr. Dudman can talk about that.

5 MR. DUDMAN: If I can address it, and I
6 apologize, a little chemically, the result of Ciba's
7 process, the last step, the reduction step, or the
8 hydrogenation, is done in solution. Hence, when they
9 are saying "a solution of DAS," that's the sodium
10 salt. So that's what comes out of their process. The
11 soluble, sodium salt of DAS comes out of their last
12 reduction step, and that's the material that feeds
13 into their SFWA. But you would have to go through an
14 additional step, and that was addressed by Mr. Cheek,
15 I think. They would have to do an additional step to
16 make the free acid, was his words, in order to
17 precipitate that material, and he said that would add
18 value.

19 Contrary to that, other manufacturers of
20 DAS, the Asian manufacturers, et cetera, they do their
21 reduction in an acid environment. The reduction is
22 done in acid with iron power, and, hence, the result
23 of that step is the free acid, and, hence, it's
24 already in the form where it will -- a solution. It's
25 a solid, and it's isolated, so do you see the

1 differences there?

2 MR. WEIGEL: And what do you need for dyes?

3 MR. DUDMAN: For dye manufacture, we need
4 the free-acid form. We need the acid, concentrated,
5 powder form, which has very low solubility, and we
6 have to then convert it to the sodium salt in the
7 proper stage. Some of the materials we actually react
8 in a slurry form, and we can get that chemistry to
9 work. But the serious thing for not only
10 transportation but for our processes is getting that
11 free acid, the DAS free acid, and that isn't what
12 comes out of Ciba's process.

13 MS. DeFILIPPO: Mr. O'Neal, in your
14 testimony, it talked about Ciba selling to -- I think
15 Clariant had used Ciba's DAS in '95 to '96. So did
16 you change your production process? You used it at
17 one point, and now you're saying technically you can't
18 use it, so was there a change in your production
19 process that made it usable then and not now?

20 MR. DUDMAN: No. There is no production
21 change in our process. It would be a change in the
22 type of DAS that we received from Ciba prior to that
23 time.

24 MS. DeFILIPPO: Okay. Actually, Mr.
25 Friemark, I had one other question for you, and others

1 chime in if you have remarks. You noted that Clariant
2 uses imported DAS, and this will probably come through
3 in your questionnaire, but do you use it from all of
4 the different sources that are subject to the
5 investigation?

6 MR. FRIEMARK: We, in the past, have used
7 before Bayer went out of business on the area. Yes,
8 we did purchase from Bayer, and we do purchase from
9 Vasant and from the Chinese also and have for years.

10 MS. DeFILIPPO: Okay. Are there any
11 differences in the imported product from the different
12 subject countries that allow only certain countries'
13 product to be used in certain applications and others
14 in other applications, or are they generally used over
15 the broad spectrum of applications?

16 MR. FRIEMARK: DAS may be treated as a
17 commodity, but for specific applications, for
18 production of fluorescent whiteners, you have to have
19 a very high quality, and you have to have a purity
20 level, and Clariant has worked for years with their
21 suppliers to establish those specifications, so it's
22 not something that we just pick off the shelf. We've
23 worked for many years on this area.

24 MS. DeFILIPPO: Mr. Matthew, I think you had
25 mentioned you deal with the marketing end in the sales

1 of the SFWAs. Is that correct?

2 MR. MATHEWS: Correct.

3 MS. DeFILIPPO: Okay. When you're selling
4 your SFWA, are your customers aware of or interested
5 at all in the country of origin of the DAS, or do they
6 generally consider the SFWA to be a U.S.-produced
7 product?

8 MR. MATHEWS: I would find it very hard to
9 find any one of our end-use customers who would even
10 know what DAS is.

11 MS. DeFILIPPO: (Laughter.) Okay. This is
12 a request for post-conference briefs. It would be
13 helpful if you all could give some kind of estimate of
14 the percentage of the SFWA that is used in the three
15 different markets in terms of your sales into
16 detergent, paper, and textiles, just to get an idea of
17 some firms -- I think I heard some information that
18 certain firms were concentrating or focusing on one of
19 the three segments. And I would also actually like to
20 pose that to Petitioners. If they could include that
21 in their post-conference brief, that would be helpful.

22 MR. WEIGEL: How would you like that, in
23 dollars or pounds?

24 MR. CARPENTER: I was going to ask the same
25 question. I was wondering if each of the parties who

1 sells SFWA could provide the quantity of their U.S.
2 shipments to each of those three markets for each
3 year: 2000, 2001, and 2002. And then also, if you
4 could note any given explanation for any significant
5 changes in the shipments to any of those markets, any
6 significant increases or decreases.

7 MR. WEIGEL: When we talk quantities of
8 SFWAs, there is an issue, I think, because of active
9 ingredient levels. Maybe you should --

10 MR. CARPENTER: I'm open to suggestions.

11 (Laughter.)

12 MR. MATHEWS: Typically, in the end-use
13 market, SFWAs, they are priced by pound, but they are
14 sold by color and strength. In other words, they are
15 sold on a wet-pound basis, and on any given
16 application, the solids can drift one way or the other
17 on an active basis because you're guaranteeing that
18 when you add one pound as received to a pulp slurry,
19 you will get X amount of fluorescence from it. So
20 typically, the solids don't vary wildly, but, as Mr.
21 Dudman referred to in the description of our process,
22 the last step is always an adjustment of shade and
23 strength.

24 MR. CARPENTER: Would value make sense?

25 MR. WEIGEL: Maybe more sense.

1 MR. O'NEAL: May I offer a suggestion?

2 MR. CARPENTER: Sure.

3 MR. O'NEAL: They should do it on an active
4 strength of product at 100 percent strength because in
5 the paper industry, the majority of the products sold
6 is liquid, whereas in the detergent industry, it's
7 sold as a powder. So if you sell it as an active
8 ingredient of aqua brightener in the liquid, make it
9 that way all throughout, and the same thing with
10 powder, that's the best way to report it.

11 MR. MATHEWS: Looking at the one species,
12 looking at a tetra or a disulfonated or a
13 hexasulfonated?

14 MR. McGRATH: If you don't mind, I think
15 let's go with value because I'm also asking the
16 Petitioners to do that, and rather than ask each party
17 individually to argue the merits of one versus the
18 other, I think value should be, at least, easy, even
19 though it might have some disadvantages.

20 MR. WEIGEL: And also what we will do, as
21 Mr. Mathews said in his testimony, our sales to the
22 textile industry are all Ciba's product. So we will
23 note that and where the product has been coming from,
24 whether it's imported or domestic, and if domestic,
25 whether Bayer made it or Ciba made it.

1 MR. CARPENTER: Thank you.

2 MS. DeFILIPPO: One last question, actually,
3 for Mr. Kerwin, and you can either talk about it here
4 or in your post-conference brief would be fine, too,
5 and that was the question that I posed to the
6 Petitioners this morning in terms of pricing analysis,
7 it being a little bit different in this case in terms
8 of looking at the competition being at the level of
9 sales of SFWA.

10 You've got a U.S. product that's a U.S. DAS
11 and U.S. SFW, imported DAS, and domestically produced
12 SFWA versus a total imported SFWA. Petitioners this
13 morning indicated that the one of the correct
14 comparisons would be the SFWA domestically produced
15 from domestic DAS versus what I'll call the "hybrid,"
16 just for ease of use, and, I guess, here in your brief
17 any comments on the appropriateness of that and how
18 that should play into our analysis of price
19 comparisons, as we traditionally do.

20 MR. KERWIN: I think my immediate reaction
21 is that the petition is structured in such a way that
22 pricing comparisons are highly unusual in this case
23 and almost meaningless because there is no merchant
24 market for DAS, so, presumably, Ciba is not going to
25 be reporting information to sales to U.S. producers

1 within the United States of that product, so there
2 would be no information there.

3 And then the SFWA product, from our
4 perspective, whether produced by 3V or Clariant or
5 Ciba or whoever, is a domestically produced product;
6 and, therefore, typically in a Commission
7 investigation, you're not comparing the selling price
8 of domestically produced products of one producer to
9 another. The intention is to compare an imported
10 product to a domestically produced product. It's
11 extremely unusual, and we can comment further on that
12 in our brief, but, I guess, my immediate reaction is
13 there shouldn't be any comparisons.

14 MS. DeFILIPPO: Thanks. I look forward to
15 your response, and to the other counsel here, any
16 thoughts on that in your brief would be helpful.

17 MR. WEIGEL: We will include it in our
18 brief, but our position is you can't say that what
19 Ciba makes is a U.S. product, and what Bayer
20 previously made, Clariant makes, and 3V makes is not a
21 U.S. product. As we have explained, there are
22 significant chemical reactions, and there is a
23 substantial transformation, to use the term that's
24 typically used, and it becomes a U.S. product. So
25 you're comparing one U.S. product to another.

1 Perhaps if it wasn't 30 percent, and it was
2 95 percent DAS, maybe it would be viable, but in that
3 70 percent there are so many different factors of raw
4 material and different production processes that
5 you're really getting a false reading if you compare
6 SFWA prices because somebody could have a high-cost
7 conversion, and they could get the cheapest DAS in the
8 world. They could get it for free and still not be
9 able to compete.

10 MS. DeFILIPPO: Thank you.

11 MR. WEIGEL: That's the problem we see with
12 the case.

13 MS. DeFILIPPO: Great. Thank you very much.
14 That completes my questions.

15 MR. CARPENTER: Mr. Mehta? Mr. Wanser?

16 MR. WANSER: Yes. Just the same question
17 that I asked the Petitioners. If you could supply us
18 -- we're just looking for some objective measure of
19 these different products, the DAS versus the end-use
20 products. So I was looking at some measure of the
21 fluorescent intensity. I guess it's the maximum
22 wavelength at which it's absorbed and then the maximum
23 wavelength at which it fluoresces, just for three
24 products, two or three of your best-selling products.
25 That would be fine.

1 MR. CARPENTER: Ms. Noreen.

2 MS. NOREEN: Bonnie Noreen with the Office
3 of Investigations. I have just a couple of questions.

4 On Bayer, did I understand that you sell to
5 the textile and to the paper but not to the detergent?
6 Is that correct?

7 MR. MATHEWS: Bayer exited the detergent-
8 brightener business in 2000. We ceased production.

9 MS. NOREEN: So you were there until 2000.

10 MR. MATHEWS: And really, a diminishing
11 capacity from about 1992 on, U.S. production.

12 MS. NOREEN: But you're in the textile and
13 the paper.

14 MR. MATHEWS: Correct. The paper is our
15 primary focus. Textiles. When you're selling to any
16 of these industries, typically what you have is an
17 array of chemicals that you're offering, and sometimes
18 you can be excluded from being considered to sell one
19 of your core products if you don't have the full
20 array. In the textile lines, that's what we do. We
21 source the textile brighteners from other producers to
22 augment our line of textile chemicals in order that we
23 can compete in that business.

24 MS. NOREEN: So when you sell to the
25 textiles, you don't sell your own SFWA; you sell SFWA

1 that you've purchased.

2 MR. MATHEWS: Correct. Purchased from Ciba.

3 MS. NOREEN: So that's what you were saying,
4 that it was Ciba product. It wasn't DAS that was Ciba
5 that you then made into --

6 MR. MATHEWS: It was SFWA for textile
7 application.

8 MS. NOREEN: Okay. Clariant. You said you
9 had no change in your production process from when you
10 used to buy Ciba product to now. Is that correct?

11 MR. O'NEAL: Yes. We have no change. At
12 the time when we were buying the Ciba DAS, it was in a
13 pressed-cake form; it wasn't the liquid form.

14 MS. NOREEN: It's pressed cake.

15 MR. O'NEAL: It's pressed cake, yes, ma'am.

16 MS. NOREEN: Wasn't that what they said that
17 they export? Wasn't that pressed cake?

18 MR. O'NEAL: Export, yes.

19 MS. NOREEN: So they would be able to sell
20 you pressed cake as well. Correct?

21 MR. O'NEAL: If they get the right form. In
22 '95, when we used it, it caused us problems. We had a
23 claim that we submitted that it discolored the
24 product.

25 MS. NOREEN: That's something that was

1 hydrolized, bad color?

2 MR. O'NEAL: It was hydrolized, yes, ma'am.
3 It hydrolized and turned the optical brightener red.

4 MS. NOREEN: Okay. Does Ciba have the same
5 process now that it had then, or has it changed its
6 processes since then? Do you know?

7 MR. O'NEAL: I don't produce for Ciba, but I
8 think they have a different process.

9 MS. NOREEN: They have a different process.

10 MR. O'NEAL: I think that they have upgraded
11 to the -- I can't answer for Ciba.

12 MS. NOREEN: Yes.

13 MR. O'NEAL: I don't want to --

14 MS. NOREEN: No, no. I just wondered if you
15 knew.

16 MR. McGRATH: I think our understanding was
17 that we don't know if they could make a form that
18 would be usable for Clariant. Perhaps they could. I
19 think their process has changed since '97. But the
20 point is it's not being produced in a form that any of
21 us here need, and it's not being offered in that form.
22 So we're not really sure whether they could.

23 We do know that in 1997, as Mr. Friemark
24 testified, they provided a sample, which we tested,
25 which we found was adequate to move to the next step

1 if they could provide the form in which we would need
2 it, and they simply withdrew at that point, did not
3 provide the trial sample, and that was the last we've
4 had dealings with them.

5 MS. NOREEN: And you haven't requested
6 anything of them since in the way of asking them for
7 prices or anything, if they would be willing to sell
8 to you.

9 A PARTICIPANT: Typically, when you're
10 selling actively into a market, you would probably
11 seek out the customer.

12 MS. NOREEN: Right. But you don't
13 essentially put out for bids or anything.

14 A PARTICIPANT: No. We have other sources
15 that we have worked with for years, and we simply
16 supplemented all of that with that type of product.

17 MS. NOREEN: Do you produce SFWAs anyplace
18 other than in the United States?

19 A PARTICIPANT: Yes, we do. We produce
20 product in Europe and in the U.K.

21 MS. NOREEN: In the U.K.?

22 A PARTICIPANT: In the U.K., in Spain.

23 MS. NOREEN: And Spain.

24 A PARTICIPANT: In Switzerland, in Brazil.

25 MS. NOREEN: Do you produce DAS anyplace?

1 A PARTICIPANT: We do not produce DAS
2 anyplace. We source our DAS globally. Before it was
3 fashionable to be global, we were global.

4 MS. NOREEN: Bayer. Bayer, you're out of
5 the SFWA in the United States now -- right? -- and
6 you're out of the DAS in Germany now. Do you produce
7 either DAS or SFWA anyplace else in the world?

8 MR. SCHULTZ: We stopped our DAS production
9 at the end of last year in Germany, and we are not
10 producing any DAS in our company.

11 MS. NOREEN: Anyplace in the world anymore?

12 MR. SCHULTZ: No DAS.

13 MS. NOREEN: Okay. What about SFWA? You
14 produce it in Germany.

15 MR. SCHULTZ: We produce SFWA in Germany.

16 MS. NOREEN: Do you produce it anyplace else
17 in the world?

18 MR. SCHULTZ: No, not yet.

19 MS. NOREEN: 3V, do you produce SFWA
20 anyplace else in the world?

21 MR. SAVORETTI: Produce is the question?

22 MS. NOREEN: Yes.

23 MR. SAVORETTI: Yes. We produce it in
24 Italy, in our factories in Italy.

25 MS. NOREEN: And do they produce DAS in

1 Italy?

2 MR. SAVORETTI: No, they do not.

3 MS. NOREEN: Do you produce DAS anyplace in
4 the world?

5 MR. SAVORETTI: No, we do not.

6 MS. NOREEN: So the only producer of DAS,
7 among all of us, the only producer of DAS that also
8 produces the SFWA is Ciba, then. Is that right?
9 Well, except used to be Bayer.

10 MR. WEIGEL: Until the end of last year,
11 Bayer did produce DAS in Germany and discontinued that
12 production at the end of 2002.

13 MS. NOREEN: In your post-conference brief,
14 could you explain why you stopped producing, if you
15 don't mind, or now, if you want to?

16 MR. WEIGEL: We'll say it in our post-
17 conference brief.

18 MS. NOREEN: Okay. And also the SFWA, why
19 you stopped producing that, too.

20 MR. WEIGEL: Why we stopped in the U.S. We
21 will do that as well. But we did mention in the
22 testimony this morning -- I think Mr. Mathews's
23 testimony mentioned that it was to consolidate
24 production at the newest facility, which was in
25 Germany.

1 MS. NOREEN: Okay. The U.S. facility here
2 that used to produce SFWA still does produce the dyes,
3 though. Is that correct?

4 MR. WEIGEL: Yes.

5 MS. NOREEN: It's made from the DAS.

6 MR. WEIGEL: Correct.

7 MS. NOREEN: Is there any other U.S.
8 producer that you know of that makes dyes from DAS?

9 MR. SCHULTZ: I'm not aware that any other
10 dyes producers use DAS in the U.S. for this purpose.
11 But perhaps to add something, in our facility in the
12 U.S. where we produce dyes, it's not only the S-based
13 dyes, also other dyes.

14 MS. NOREEN: Do any other dye producers in
15 the world use DAS?

16 MR. SCHULTZ: Yes. There are other
17 producers in the world who use DAS to produce dyes.

18 MS. NOREEN: Do you know of any other
19 products other than your dyes in the U.S. that are
20 produced from DAS except for the stilbenic whiteners?

21 MR. SCHULTZ: Not to my knowledge.

22 MS. NOREEN: I would like to know, Bayer,
23 did you ever buy from Ciba? That's not the
24 brighteners, but did you ever buy the DAS from Ciba?

25 MR. SCHULTZ: Yes.

1 MS. NOREEN: And when you bought from Ciba,
2 did you buy it in the pressed cake or the solution?

3 MR. SCHULTZ: Yes. In the nineties, we
4 bought some quantities from Ciba as a pressed cake.

5 MS. NOREEN: As pressed cake?

6 MR. SCHULTZ: Yes.

7 MS. NOREEN: And that would be okay for your
8 production processes now if they were to offer it in
9 the same pressed cake, except you don't make it
10 anymore? But I mean, before you went out of business,
11 it would have been okay.

12 MR. SCHULTZ: It's already a long time ago,
13 and we have also some modifications in our optical
14 brightener process, and I'm not aware that this will
15 be feasible without any major adjustments.

16 MS. NOREEN: Okay. 3V, same question of
17 you. Did you used to buy from Ciba?

18 MR. SAVORETTI: To my knowledge, no.

19 MS. NOREEN: Okay. Thank you. I have no
20 more questions of anybody.

21 MR. CARPENTER: Just a couple of questions.
22 First of all, Mr. Savoretti, I believe you said in
23 your testimony that the overall market for SFWA has
24 declined in recent years. Do you want to elaborate on
25 that indicate what has been driving the decrease in

1 consumption?

2 MR. SAVORETTI: Well, the detergent market,
3 as was said before, there's been changes in the
4 formula and reduction and the amount of that's used.
5 We've noticed a general decline there especially and
6 also in the paper market somewhat. I can be more
7 specific in my post-hearing brief.

8 MR. CARPENTER: Okay. We should be getting
9 this detailed data by market segment, so that will
10 help clarify it, too.

11 Do any of the other parties here have any
12 comments on the overall market for SFWA, whether it's
13 been decreasing or stable?

14 MR. SCHEURELL: My name is Andreas
15 Scheurell. I'm the vice president for paper, textile,
16 and leather, Bayer Chemicals Corporation, and if you
17 look at the market from my perspective, what we, as
18 Bayer, see is certainly there is a textile market, as
19 you can all envision. The textiles you are buying
20 currently are all coming from abroad, so the textile
21 industry is shrinking. The use for textile
22 specialties is probably shrinking. That's one of the
23 problems I see with Ciba's position.

24 The detergent market, I don't want to
25 comment really because I really don't know. I'm not

1 an expert on detergents.

2 The paper market; I would assume that it's
3 in the United States basically flat. It doesn't move
4 a lot up and down. There are a lot of consolidations
5 happening, mostly in colored papers, white paper. We
6 are producing plenty of paper in copies in stacks of
7 paper like I have seen in the last couple of days, so
8 I would say flat.

9 MR. CARPENTER: Okay. Thank you. I guess
10 that gets to my previous question, too, where I asked
11 for the detailed data by market segment. If your
12 sales are decreasing to any particular market segment
13 or increasing, if you could just provide an
14 explanation as to what's driving that.

15 Also, too, this has been asked by a number
16 of people, and I don't want to get into it too much
17 more, but, again, the issue of Ciba either being
18 unable or unwilling to supply DAS to the SFWA
19 producers in the form that they need it. Mr. Dudman,
20 if I could just ask you to clarify one thing. You
21 said you need the free-acid powder form, but I got the
22 impression from what you were saying was that Ciba
23 could provide it, but that's not naturally the form
24 they produce it in, so if they were to convert it to
25 the form that you need it in, I'm assuming -- it

1 sounds like it's an additional production step which
2 would add cost. Is that right?

3 MR. DUDMAN: For Ciba.

4 MR. CARPENTER: For Ciba. Right.

5 MR. DUDMAN: They would have to produce the
6 free acid, which they evidently do for some of their
7 foreign subsidiaries, but I assume sales are small.

8 MR. CARPENTER: Okay.

9 MR. DUDMAN: For their plant in McIntosh
10 consumption, they use a solution, which is the sodium
11 salt.

12 MR. CARPENTER: Is it your impression that
13 if you were to buy from Ciba that they would not be
14 competitive in price with other suppliers because of
15 this additional production step?

16 MR. DUDMAN: It was indicated previously
17 that it was a value-added step. I believe the
18 gentleman actually quantified that percentage. I
19 don't recall it now. But the fact is, they did
20 indicate that it is an additional step for them, and
21 it would add cost for them to produce the pressed
22 cake.

23 MR. CARPENTER: Okay.

24 MR. DUDMAN: They call it "wet cake."

25 MR. WEIGEL: I believe they use a 10 percent

1 number for that, and I also believe it's important to
2 remember what Mr. Dudman was saying before. It's the
3 production process that Ciba uses to make DAS which
4 results in this product, which then needs to be
5 further processed, and it differs from the process
6 used by the other producers of DAS in the world who
7 create the end product available for sale.

8 So it's the entire production process of
9 Ciba that comes up with a different end product, and,
10 yes, it's possible to convert that into something
11 that's usable in the marketplace, but it adds 10
12 percent, I think Ciba's words were, to the cost of
13 product.

14 MR. McGRATH: I think, if I could also add
15 one thing, we ought to keep in mind that Ciba
16 described this as being an additional cost that would
17 go into the production, but that kind of takes away
18 from consideration of the fact that they are already
19 using a more expensive, less-efficient manner of
20 producing the DAS in the first place. Once you put on
21 top of that the additional requirement for our needs
22 of providing in a free-acid or powder form, then there
23 is a whole different cost situation there. But I
24 don't think you can compare what they would sell and
25 what they would have to do to do it directly with what

1 the foreign producers would have to do.

2 MR. CARPENTER: All right. Ms. Noreen got
3 to this, or asked some of you, at least, whether any
4 of you had approached Ciba as to whether or not they
5 were willing to offer you product or to work with you
6 to provide you product in a form that you needed. And
7 some of the comments I've heard were that either they
8 don't provide the product in a form you need, and
9 maybe you didn't think they were capable of it, or it
10 might be a cost issue, or the fact that they haven't
11 offered in the market since the late-nineties, and
12 it's generally understood that they are using it only
13 for internal consumption. I got the impression,
14 therefore, that customers may feel that they are just
15 not interested in selling into the market. My
16 understanding is that no one has approached Ciba to
17 see if they are willing to work with you -- is that
18 true? -- as the only U.S. producer.

19 MR. MATHEWS: Typically, it's the seller who
20 goes out and tries to sell to the customers rather
21 than the other way around. I want to keep my job, so
22 I need to go out and sell SFWAs. I've got to contact
23 my customers, the same way. You get the opinion or
24 the impression that they are not interested or that
25 it's all captive usage if no one is, at least, making

1 an attempt to make an offer or even visit your plant
2 site.

3 MR. CARPENTER: All right. Okay. Fair
4 enough.

5 Ms. Noreen, did you have another question?

6 MS. NOREEN: No?

7 MR. MATHEWS: No.

8 MS. NOREEN: Thank you very much.

9 MR. CARPENTER: Okay. Thank you again for
10 your testimony and for your responses to our
11 questions. We'll take a recess until about twelve-
12 twenty, and then we'll have a 10-minute closing
13 statement by the Petitioners followed by a 10-minute
14 closing statement by the Respondents. In the
15 Respondents case, since there are several of you, if
16 you want to get together and decide. It doesn't have
17 to be one person; it can be a number of people, just
18 as long as you realize you have 10 minutes to work
19 with. Thank you.

20 (Whereupon, at 12:14 p.m., a brief recess
21 was taken.)

22 MR. CARPENTER: Mr. Koenig, please proceed
23 at your convenience.

24 MR. KOENIG: Okay. I'm Peter Koenig again,
25 with Miller & Chevalier, to give the rebuttal

1 presentation of the Petitioner, Ciba.

2 We have several main points. In overview,
3 we heard a lot of talk this morning. Much of it
4 avoided key issues. Much of it didn't make sense on
5 further questioning, and towards the end, it seemed to
6 me that there was considerable back-pedaling on some
7 issues from the commencement of the presentation to
8 the end.

9 Our several points: one, on like product.
10 It was nice of them to show that, in fact, it is the
11 DAS that does provide the fluorescence. I raised a
12 question at the beginning of this conference, which I
13 had hoped that they would answer, but they ducked it.
14 The question was, if it's not DAS that provides the
15 fluorescence to a whitener, then what happens? Where
16 is it coming from? What, in the process of going from
17 DAS to the whitener, creates the fluorescence that DAS
18 itself is not the molecule providing it? I don't
19 think there was an answer to that.

20 When they talk about the production of going
21 from DAS to whitener, what you're talking about is
22 providing affinity to the DAS molecule so it can
23 attach to the substrate and do its job. So all of the
24 discussion of production process going from DAS to the
25 whitener, but you've got to put it in the total

1 context of what is this production doing. It's taking
2 a DAS molecule and providing the affinity such that it
3 can attach to a substrate and do its job. In that
4 context, the production processes they discuss are not
5 anywhere near as meaningful as the production of the
6 DAS itself.

7 I also asked at the beginning of this
8 conference another question which they didn't answer.
9 They keep repeating that DAS may be used for something
10 other than a fluorescent whitener. I don't know how
11 many times I've heard this. But the question back is,
12 what percent of DAS use is for these nonwhitener
13 purposes? and there is never an answer, and there is a
14 good reason why there is not an answer. It's an
15 insignificant percentage.

16 Finally, in the petition itself, we went
17 through the Commission's precedent on
18 upstream/downstream decisions on why DAS and whiteners
19 are considered one like product. We still have yet to
20 hear from Respondents any views on that. I guess they
21 are going to wait until the post-hearing brief, when
22 there is no opportunity to reply, but it would seem
23 that they could have provided some legal analysis
24 beforehand, especially since they have had that
25 analysis since March 28th, when we first filed the

1 petition.

2 We noted one decision therein, the
3 Crankshaft case, where all crankshafts were considered
4 one like product. When you go from an unfinished
5 crankshaft to a finished crankshaft, 70 percent of the
6 cost of the finished crankshaft is going from the
7 unfinished to the finished, and 30 percent of the cost
8 of the finished crankshaft is the unfinished version.
9 It was all considered one like product under the
10 Commission's upstream/downstream analysis, as applied
11 and discussed in the petition.

12 Point 2, on Ciba's DAS sales: The simple
13 reality is that the subject import price of DAS went
14 down, down, down. Ciba competed as far down as it
15 could go until the price went below Ciba's cost. The
16 buyers were indicating the price that they would pay
17 that was available to them, and it was below anything
18 Ciba could offer. You tend to lose sales when the
19 subject import price dumped goes far below your cost,
20 and you can't even sell.

21 I particularly liked the testimony of 3V
22 when they said, Well, Ciba uses it internally, and,
23 therefore, they don't sell to us. That's circular
24 reasoning, and it really begs the question. The fact
25 is that the import price available to 3V is far below

1 Ciba's cost and the price that Ciba needs in order to
2 make a sale. People aren't in business to
3 continuously sell below cost, at least, not in
4 business very long.

5 The Bayer testimony towards the end of this
6 conference, I thought, was particularly interesting,
7 when it really became apparent that it was really an
8 issue of price. They were saying, Well, we think that
9 Ciba is too costly, their production process, so their
10 price would be too high. The fact is, everybody used
11 to buy the Ciba product, they don't now, and the key
12 change is price. The import price just went down,
13 down, down.

14 Clariant says, Well, at one point, they had
15 a quality problem. It seems isolated, just from the
16 discussion itself, from the testimony of Clariant.
17 But the reality is, and we will document in our post-
18 hearing brief, is that Ciba went to the plant, and
19 this issue was addressed, and the problem was found to
20 be Clariant's own problem as far as improper use of
21 certain ingredients. The referenced claim made was,
22 in fact, not a claim for quality; it was a goodwill
23 gesture because Ciba wanted to keep Clariant business.
24 This, too, will be documented. Ciba, in fact,
25 continued to sell to Clariant after this claimed

1 quality problem, something that was not discussed.

2 Finally, Clariant says its production
3 process didn't change, but Clariant speculates, and
4 it's pure speculation, that something must have
5 changed at Ciba. Nothing changed at Ciba, but if you
6 look at Clariant's testimony, something did change at
7 Clariant. They talked about shifting the use of DAS
8 from the wet-cake form to the dry form, which suggests
9 that there was a production-process change at
10 Clariant.

11 On SFWA prices, I was happy to hear that
12 Clariant did acknowledge that Ciba sells in the
13 commodity-price-sensitive SFWA market. In fact, the
14 whole market is commodity-price sensitive. Clariant
15 talks about specialty brands it sells but makes no
16 attempt to quantify them. You know, in the final
17 investigation, of course, you have purchasers that
18 come and testify. They could have had purchasers come
19 and testify, but no purchaser came to testify, and you
20 have no answers from purchasers of whiteners as far as
21 what is important to them.

22 But I can tell you that in the May 5, 2003
23 issue of the Chemical Marketing Reporter, which we
24 will provide in our post-hearing brief, there is an
25 article which specifically discusses this subject, and

1 it indicates that all purchasers care about as far as
2 whiteners is price, price and nothing but price. They
3 are so concerned about price that they are driving the
4 price down such that people cannot reinvest in
5 facilities, and they are using the fact that they can
6 get the imported product.

7 So if you want some purchaser testimony, we
8 will provide it in the post-hearing brief, and if this
9 case goes to a final, it will be interesting to see
10 the purchaser questionnaires on what purchaser says is
11 important, since obviously the Respondents have not
12 been able to get any purchaser to come forward to
13 testify, and I think for good reason: Price is
14 everything to the whitener purchasers.

15 On Point 4, they allege a lot of problems at
16 Ciba. Now, that's pure speculation, but for one, as a
17 matter of law, it's irrelevant. Both this Commission
18 and the courts have said, you take the petitioner as
19 he is, and if the petitioner is high cost, which this
20 one is not, that makes him more vulnerable to dumped
21 imports, and that doesn't give you a license to dump
22 into a market to injure someone.

23 But, in fact, their testimony doesn't show
24 that Ciba is high cost. What they do is they talk
25 about Ciba's equipment, and that's all they talk

1 about, and they say, well, the equipment is high cost,
2 but that doesn't mean that the production process is
3 high cost. In fact, Ciba's yield rates are much
4 better because of that equipment, which means less
5 waste and a less environmental cost. So the logic of
6 their argument doesn't follow.

7 Finally, I might add that Ciba does not
8 object to imports. What Ciba objects to is unfairly
9 priced imports. Bring the prices to a fair level
10 above cost of production, and then Ciba is willing to
11 compete on that level playing field. Thank you.

12 MR. CARPENTER: Thank you, Mr. Koenig. If
13 the Respondents would come forward to make their
14 arguments.

15 MR. McGRATH: Thank you very much. I think
16 we all have a point or two to make, and we want to
17 thank the staff for the time that they have put into
18 this, and I'm sure it feels like having done two
19 cases, since you started once, and then there was a
20 withdrawal, and then you started again. In fact, if
21 this were a book, we're on the third printing of the
22 second edition, and that's just in the last month.

23 I did have only a couple of points, but
24 given some of the comments that we just heard, I can't
25 avoid making a few additional comments.

1 I wanted to clarify one point. During the
2 testimony from the Respondents' side, there was
3 perhaps a misimpression about when Clariant left the
4 detergent market. I just wanted to make it clear,
5 Clariant was never in the detergent market.
6 Clariant's focus has been on paper and was on
7 textiles. We'll provide the breakdown between
8 textiles and paper, but detergent is not where they
9 had focused their efforts.

10 At one point during the initial
11 presentation, Ciba had indicated that all of their DAS
12 production is used to make whitener, and it is
13 currently, but our understanding is that at some point
14 in the past, Ciba has also used DAS to produce dye,
15 various dyes or perhaps one or more dyes, much the way
16 Bayer has used DAS to produce dye.

17 And the point that was just made about
18 quality problems that Clariant had with Ciba having to
19 do with Clariant's improper use of the Ciba product in
20 1997, I think, is a good illustration of what we're
21 talking about with whether or not U.S. producers of
22 whitener can use Ciba's DAS. Their view of it is that
23 we just don't have the right operation. We don't use
24 their product properly rather than, as any supplier
25 would of a raw material, being worried about whether

1 their product is correct for the customers' use. As
2 long as Clariant has to buy DAS, Clariant needs to
3 have a certain type of product formulation for its
4 use. It didn't work in that case, and whether they
5 want to call it a goodwill gesture or a payment of
6 compensation for a quality claim, it definitely was a
7 problem.

8 I'll turn it over now to my colleagues.
9 There are a number of other issues that we challenge
10 that we'll cover in our post-hearing brief.

11 MR. WEIGEL: I'm Ken Weigel on behalf of
12 Bayer. Just a couple of points. First, we believe
13 it's clear that DAS and SFWAs are two distinct
14 products.

15 Second, it's important to understand that
16 Bayer, as was said in the testimony, Bayer stopped
17 buying DAS from Ciba not because of lower priced
18 imports but for other reasons, and actually when the
19 calculation is done accurately, and you take into
20 account the 60 to 65 percent purity, Bayer ended up
21 paying more. Ciba offered a lower price than the
22 imports at that time, in 1997-98.

23 Another point is that SFWA competition,
24 until really the end of 2002, in the United States was
25 solely domestic competition. Yes, imports from

1 Germany did start at the end of 2002 to compete with
2 U.S.-produced SFWAs in the paper segment of the
3 marketplace but only at the end of the period of
4 investigation. Those imports merely replaced what
5 Bayer was producing in the United States, sold at the
6 same prices to the same customers basically under the
7 same contracts. There can be no allegation that the
8 imports of SFWAs from Germany are causing material
9 injury or are threatening to cause material injury.

10 A third point is Bayer has testified that it
11 needs DAS to produce dyes. It has said on the record
12 in a filing with the Commerce Department that it uses
13 hundreds of thousands of pounds of DAS to produce dyes
14 in its Bushy Park, South Carolina, plant. We showed
15 the example of the colored paper made using dyes made
16 from DAS, and we will explain this in further detail
17 in the brief, but this is a critical issue to Bayer
18 and one that Petitioners' claiming is not an important
19 use of DAS is just false. I'll turn it over to my
20 colleagues.

21 MS. LEVINSON: Lizabeth Levinson on behalf
22 of Vasant Chemicals. We definitely believe that DAS
23 and SFWA are two different products. They are very
24 different from one another, and I would like to just
25 add one point that will illustrate how different they

1 are.

2 Vasant Chemicals has been producing DAS for
3 over 10 years now and very successfully so. However,
4 it did make an attempt to produce SFWA some years ago
5 and failed at that venture, and I will give you some
6 more details in the post-hearing brief, but that is
7 clear testimony that someone who can produce DAS
8 cannot necessarily produce SFWA.

9 MR. ROSENTHAL: Paul Rosenthal on behalf of
10 3V. Just a couple of concluding points. First, and
11 most important, this is a case that should not have
12 been brought because of these like product issues,
13 these problems. It's a case that's neither fish nor
14 fowl, to use some other agricultural cases that you
15 might have seen before as examples.

16 Talk about the difficulties of doing a price
17 analysis here. Why do you think that is? Because you
18 don't have imported SFWA, for the most part, to
19 compare to domestically produced SFWA. As pointed out
20 before, it's because the competition has essentially
21 been amongst and between domestic suppliers of SFWA.

22 With respect to DAS as a component, the
23 Commission would never entertain a dumping case
24 brought by the U.S. auto industry as competitors based
25 on their imports of the engines or steel or the other

1 components that made up a small minority of the value
2 of the product. Now, I admit that's an imperfect
3 analogy here, but it is incredible to me, as a person
4 who generally represents petitioners, as the staff
5 well knows, that they would try to bring a case that
6 is, in essence, an amalgamation, a combination of a
7 component and a finished product, as a single like
8 product. That's why you're going to have incredible
9 difficulty doing your analysis, and I have nothing but
10 sympathy for the staff on this.

11 Just a couple of points with respect to like
12 product. Mr. Koenig says, yes, we've been aware of
13 their like product analysis since their first aborted
14 petition on March 28th. Their analysis hasn't gotten
15 any better with time, and it's obvious from the
16 questionnaire responses, from the testimony today,
17 we've basically taken apart, point by point, every one
18 of the factors that the Commission is supposed to be
19 looking at in doing a like product analysis or a semi-
20 finished analysis. Virtually every one of these
21 points goes against the claims made by the Petitioners
22 in this case.

23 When it comes to causation, if you analyze
24 this in any rational way, you'll find something
25 incredible. You've got imports going down, looked at

1 cumulatively, when the Petitioners' profitability is
2 going down. That's not normally the pattern that one
3 looks at for an affirmative determination, quite the
4 contrary. So it is hard to fathom an argument that
5 gets the Petitioners past a preliminary determination
6 in this case. Unless we have not seen something that
7 they are going to argue, and I presume they have put
8 everything in their petition or in their testimony to
9 convince you, this case should go negative at the
10 prelim, to save everybody a lot of time and effort.
11 Thank you.

12 MR. CARPENTER: Thank you for those comments
13 and thanks to everyone for your participation in the
14 conference today.

15 There are a few key dates that I would like
16 to remind people of. The deadline for both the
17 submission of corrections to the transcript and for
18 post-conference briefs is Monday, June 9th. If briefs
19 contain business-proprietary information, a
20 nonproprietary version is due on June 10th.

21 The Commission has scheduled its vote on the
22 investigation for Monday, June 30th, at 11 a.m. and
23 will report its determinations to the Secretary of
24 Commerce later that day.

25 Commissioners' opinions will be transmitted

1 to Commerce on July 8th. This conference is
2 adjourned.

3 (Whereupon, at 12:43 p.m., the conference
4 was concluded.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Certain 4,4'-Diamino-2,2'-
Stilbenedisulfonic Acid Chemistry from
China, Germany, and India

INVESTIGATION NOS.: 701-TA-435 and 731-TA-1036-1038

HEARING DATE: June 4, 2003

LOCATION: Washington, D.C.

NATURE OF HEARING: Preliminary Conference

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: June 4, 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: Gabriel Rosenstein
Signature of Court Reporter