

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
)
POLYETHYLENE RETAIL CARRIER) Investigation Nos.:
BAGS FROM CHINA, MALAYSIA,) 731-TA-1043-1045 (Final)
AND THAILAND)

Pages: 1 through 292

Place: Washington, D.C.

Date: June 10, 2004

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, N.W., Suite 600
Washington, D.C. 20005
(202) 628-4888

THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
)
 POLYETHYLENE RETAIL) Investigation Nos.:
 CARRIER BAGS FROM CHINA,) 731-TA-1043-1045 (Final)
 MALAYSIA, AND THAILAND)

Thursday,
 June 10, 2004

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

The hearing commenced, pursuant to notice, at 9:31 a.m., before the Commissioners of the United States International Trade Commission, the Honorable DEANNA TANNER OKUN, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

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

APPEARANCES: (cont'd.)

Staff:

MARILYN R. ABBOTT, SECRETARY TO THE COMMISSION
WILLIAM R. BISHOP, HEARINGS AND MEETINGS
COORDINATOR
OLYMPIA HAND, INVESTIGATOR
RAYMOND CANTRELL, COMMODITY ANALYST
WILLIAM DEESE, ECONOMIST
CHARLES YOST, ACCOUNTANT
IRENE CHEN, ATTORNEY
GEORGE DEYMAN, SUPERVISORY INVESTIGATOR

In Support of the Imposition of Antidumping Duties:

On behalf of Polyethylene Retail Carrier Bag Committee
and its individual members; PCL Packaging, Inc.; Hilex
Poly Co., LLC; Superbag Corp.; Vanguard Plastics, Inc.;
and Inteplast Group, Ltd.:

WILLIAM C. SEANOR, Managing Partner, Vanguard
Plastics, Inc.
REX E. VARN, President and COO, Hilex Poly Co.,
LLC
ISAAC BAZBAZ, Director, Superbag Corporation
JOHN BAUMANN, President and CEO, Ampac Packaging,
LLC
THOMAS EVERETT, Vice President and General
Manager, Genpak LLC
BRUCE MALASHEVICH, President, Economic Consulting
Services, Inc.

JOSEPH W. DORN, Esquire
STEPHEN J. NARKIN, Esquire
King & Spalding, LLP
Washington, D.C.

APPEARANCES: (cont'd.)

In Support of the Imposition of Antidumping Duties:

On behalf of Chinese Respondents:

LOUIS CHERTKOW, President and CEO, Elkay Plastics
Plastic Co., Inc.
FRANK CANNON, JR., President, PDI Saneck
CAROL KEEN, Director, Sales, CPI Packaging
BOB GUIDO, President, Packaging Containers, Inc.
STEVE GITLIN, Director, Sales, Glopack, Inc.
HARRIET KESSLER, President and CEO, Plastique,
Inc.
RICKY WONG, Director, U.S. Sales, Universal
Plastics & Metal Mfg. Co., Ltd.
ANDREW SUNDJAJA, Director, U.S. Sales, Memo Time
Polybags & Paper Bags Section Ltd.
RICHARD D. BOLTUCK, Vice President, Charles River
Associates

WILLIAM E. PERRY, Esquire
RONALD M. WISLA, Esquire
Garvey Schubert Barer
Washington, D.C.

On behalf of Malaysian Plastic Manufacturers
Association and its individual members:

KELLY A. SLATER, Esquire
EMILY LAWSON, Esquire
FRANK H. MORGAN, Esquire
White & Case, LLP
Washington, D.C.

On behalf of API Enterprises, Inc.; Alpine Plastics,
Inc.; and Universal Polybags Co., Inc.:

VICTOR A. PLATTA, Vice President, Sales and
Marketing, Advance Polybag, Inc.
PATRICK SANDERS, General Counsel, Advance Polybag,
Inc.

DONALD E. DEKIEFFER, Esquire
J. KEVIN HORGAN, Esquire
deKieffer & Horgan
Washington, D.C.

Heritage Reporting Corporation
(202) 628-4888

APPEARANCES: (cont'd.)

On behalf of Thai Plastic Bag Industries Co., Ltd.;
C.P. Packaging Industry Co., Ltd.; Thai Griptech Co.,
Ltd.; K. International Packaging Co., Ltd.; All members
of the Industry in Thailand:

THOMAS E. SKILTON, Esquire
Cameron & Hornbostel, LLP
Washington, D.C.

I N D E X

	PAGE
OPENING STATEMENT OF JOSEPH W. DORN, ESQUIRE, KING & SPALDING, LLP	8
OPENING STATEMENT OF DONALD E. DEKIEFFER, ESQUIRE, DEKIEFFER & HORGAN	13
OPENING STATEMENT OF WILLIAM E. PERRY, ESQUIRE, GARVEY, SCHUBERT BARER	15
TESTIMONY OF REX E. VARN, PRESIDENT AND COO, HILEX POLY CO., LLC	17
TESTIMONY OF WILLIAM C. SEANOR, MANAGING PARTNER, VANGUARD PLASTICS, INC.	22
TESTIMONY OF JOSEPH W. DORN, ESQUIRE, KING & SPALDING, LLP	28
TESTIMONY OF ISAAC BAZBAZ, DIRECTOR, SUPERBAG CORPORATION	29
TESTIMONY OF THOMAS EVERETT, VICE PRESIDENT AND GENERAL MANAGER, GENPAK LLC	34
TESTIMONY OF JOHN BAUMANN, PRESIDENT AND CEO, AMPAC PACKAGING, LLC	41
TESTIMONY OF STEPHEN J. NARKIN, ESQUIRE, KING & SPALDING, LLP	46
TESTIMONY OF BRUCE MALASHEVICH, PRESIDENT, ECONOMIC CONSULTING SERVICES, INC.	103
TESTIMONY OF WILLIAM E. PERRY, ESQUIRE, GARVEY SCHUBERT BARER	149
TESTIMONY OF STEVE GITLIN, DIRECTOR, SALES, GLOPACK, INC.	152
TESTIMONY OF CAROL KEEN, DIRECTOR, SALES, CPI PACKAGING	154
TESTIMONY OF HARRIET KESSLER, PRESIDENT AND CEO, PLASTIQUE, INC.	156

I N D E X

	PAGE
TESTIMONY OF FRANK CANNON, JR., PRESIDENT, PDI SANECK	158
TESTIMONY OF LOUIS CHERTKOW, PRESIDENT AND CEO, ELKAY PLASTICS PLASTIC CO., INC.	162
TESTIMONY OF BOB GUIDO, PRESIDENT, PACKAGING CONTAINERS, INC.	163
TESTIMONY OF ANDREW SUNDJAJA, DIRECTOR, U.S. SALES, MEMO TIME POLYBAGS & PAPER BAGS SECTION LTD.	166
TESTIMONY OF RICHARD D. BOLTUCK, VICE PRESIDENT, CHARLES RIVER ASSOCIATES	168
TESTIMONY OF VICTOR A. PLATTA, VICE PRESIDENT, SALES AND MARKETING, ADVANCE POLYBAG, INC.	180
TESTIMONY OF RICKY WONG, DIRECTOR, U.S. SALES, UNIVERSAL PLASTICS & METAL MFG. CO., LTD.	186
TESTIMONY OF THOMAS E. SKILTON, ESQUIRE, CAMERON & HORNBOSTEL, LLP	187
TESTIMONY OF KELLY A. SLATER, ESQUIRE, WHITE & CASE, LLP	189
TESTIMONY OF J. KEVIN HORGAN, ESQUIRE, DEKIEFFER & HORGAN	248
CLOSING STATEMENT OF JOSEPH W. DORN, ESQUIRE, KING & SPALDING, LLP	279
CLOSING STATEMENT OF WILLIAM E. PERRY, ESQUIRE, GARVEY, SCHUBERT BARER	286
TESTIMONY OF DONALD E. DEKIEFFER, ESQUIRE, DEKIEFFER & HORGAN	287
CLOSING STATEMENT OF DONALD E. DEKIEFFER, ESQUIRE, DEKIEFFER & HORGAN	287

P R O C E E D I N G S

(9:31 a.m.)

1
2
3 CHAIRMAN OKUN: Good morning. On behalf of
4 the United States International Trade Commission, I
5 welcome you to this hearing on Investigation Nos.
6 731-TA-1043-1045 (Final) involving Polyethylene Retail
7 Carrier Bags From China, Malaysia, and Thailand.

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

13 Schedules setting forth the presentation of
14 this hearing, notice of investigation and transcript
15 order forms are available on the Secretary's desk.
16 All prepared testimony should be given to the
17 Secretary. Do not place testimony directly on the
18 public distribution table.

19 As all written material will be entered
20 fully into the record, it need not be read to us at
21 this time. All witnesses must be sworn in by the
22 Secretary before presenting testimony.

23 I understand the parties are aware of time
24 allocations. If there are any questions regarding the
25 time allocations, they should be directed to the

1 Secretary.

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

6 Madam Secretary, are there any preliminary
7 matters?

8 MS. ABBOTT: Yes, Madam Chairman. With your
9 permission, we would like to add two witnesses to the
10 calendar, Richard Boltuck of Charles River Associates
11 and Patrick Sanders of Advance Polybag, Inc., on page
12 3.

13 CHAIRMAN OKUN: Without objection. Let us
14 now proceed with our opening remarks.

15 MS. ABBOTT: Opening remarks on behalf of
16 the Petitioner will be made by Joseph W. Dorn, King &
17 Spalding.

18 CHAIRMAN OKUN: Good morning, Mr. Dorn.

19 MR. DORN: Good morning. The articles
20 subject to investigation are polyethylene retail
21 carrier bags from China, Malaysia and Thailand. As
22 the Commission preliminarily determined, domestically
23 produced PRCBs comprise a continuum of similar
24 products that together constitute the domestic like
25 product.

1 High end PRCBs defined in this final
2 investigation are within that continuum and do not
3 constitute a like product separate from all other
4 PRCBs. The Chinese Respondents would have the
5 Commission to find two like products, one at the
6 bottom and the other at the top of the continuum.
7 Their proposed lines of demarcation are arbitrary and
8 would exclude significant products in the middle of
9 the continuum from the domestic industry.

10 Moreover, their argument based on the
11 traditional like product factors is not supported by
12 the facts in the prehearing report and is based mainly
13 on citations to the transcript of the staff
14 conference, the same evidence that this Commission
15 considered in finding a single like product in the
16 preliminary investigation.

17 The domestic industry producing PRCBs is
18 both materially injured and threatened with additional
19 injury by reason of dumped imports. Although the
20 Commission did not reach the issue of current material
21 injury in its preliminary determination, it should do
22 so in this final investigation.

23 Now that we have the data in for all of
24 calendar year 2003, it is clear that this industry is
25 in an injured state. First, the volume of imports is

1 significant both in relation to domestic production
2 and also in relation to U.S. consumption. The
3 increase in the volume of imports is very significant
4 both in absolute terms and again in relation to
5 domestic production and U.S. consumption.

6 The import numbers remain confidential for
7 this hearing, but the export numbers are public. As
8 shown on the poster, from 2001-2003 subject foreign
9 producers increased their PRCB capacity by 32 percent,
10 increased their exports to the United States by 123
11 percent and increased their exports to all other
12 countries by only five percent.

13 The Respondents' suggestion that these
14 trends are about to reverse is totally devoid of logic
15 and finds no evidentiary support in the confidential
16 record. The only plausible predicate for projecting a
17 reversal in these trends is the preliminary
18 antidumping duties that are about to become definitive
19 duties. Their suggestion of other predicates for the
20 first time on the eve of this ITC hearing is too self-
21 serving to be taken seriously.

22 Second, the dumped imports' adverse price
23 effects are demonstrated by multiple categories of
24 evidence of price suppression, including declining
25 average unit values of U.S. shipments of both imports

1 and domestic products, declining quarterly prices of
2 both domestic and import products, lost revenues and
3 lost sales, lost internet auctions and extensive
4 underselling.

5 There is also clear evidence of price
6 suppression in that the subject imports have prevented
7 domestic producers from passing along increases in the
8 cost of polyethylene resin, their primary raw
9 material.

10 Third, the evidence of adverse impact in the
11 prehearing report leaves no doubt that material injury
12 was present at least by 2003. The key data remain
13 confidential, but suffice it to say that from 2001 to
14 2003 virtually all non-financial performance
15 indicators declined, including production, capacity
16 utilization, employment, shipments, market share and
17 price.

18 The combined volume and price effects of the
19 dumped imports crumbled the industry's financial
20 performance indicators, including gross profits,
21 operating income and cash flow. These sharply
22 declining performance indicators are not results of a
23 soft or declining market for PRCBs. No Respondent has
24 made or could make such a suggestion.

25 To the contrary, consumption of PRCBs

1 substantially increased in the United States from 2001
2 to 2003. The period of this final investigation
3 should have been a time during which the domestic
4 industry increased capacity, increased production and
5 sales to grow in line with a growing U.S. market. It
6 should have been a time of increasing prices and
7 increasing profits.

8 Instead, the domestic industry lost
9 substantial sales, revenue and market share to a surge
10 of dumped imports. Those imports were not any better
11 than the U.S. product. They were just cheaper than
12 U.S. products.

13 The Commission should find, therefore, that
14 the domestic industry is both materially injured and
15 threatened with material injury by reason of dumped
16 imports from the subject countries.

17 Thank you.

18 CHAIRMAN OKUN: Thank you.

19 MS. ABBOTT: Opening remarks on behalf of
20 the Respondents will be made by Donald E. deKieffer of
21 deKieffer & Horgan and William E. Perry, Garvey,
22 Schubert & Barer.

23 CHAIRMAN OKUN: Good morning. Can you make
24 sure to turn your microphone on for us, please? Thank
25 you.

1 MR. DEKIEFFER: I think it is on. There we
2 go.

3 Thank you very much, members of the
4 Commission. The facts in this case are relatively
5 straightforward. At the preliminary stage, the
6 Commission investigated but did not find that there
7 was any current injury to the U.S. industry. That
8 fact remains the same today as it did then.

9 The Commission did find that there was a
10 chance that injury would occur in the future to this
11 industry if a preliminary determination were not made.
12 In fact, even that has now evaporated. In the face of
13 increased costs, particularly in Asia, the difference
14 between the input costs in Asia and those in the
15 United States have declined to the point where the
16 Asians no longer have any advantage over U.S.
17 production.

18 That's not just a supposition here. It's a
19 fact. We know that new investment in U.S. plants is
20 being made and will continue to be made in preference
21 to those expansions in Asia. In fact, you'll hear
22 testimony today about substantial expansion capacity
23 in the United States are occasioned not by this
24 particular proceeding, but in fact by factors that are
25 totally extraneous to any alleged dumping, but are

1 more a factor of world prices in raw materials input,
2 particularly resins.

3 These resin prices are what drive
4 international production of the subject of the
5 investigation today. In recent months, and
6 particularly during the period of investigation, those
7 prices have equalized, and they're likely to stay
8 equalized for the foreseeable future.

9 You'll hear testimony as well that over the
10 period of investigation that although U.S. prices in
11 certain cases have declined, the share of imports have
12 not risen to the extent one might have expected and in
13 fact are in a period of decline right now. That fact
14 is buttressed by the fact that the U.S. industry is
15 likely to see extreme expanded capacity in the next
16 few months as we've seen during the entire POI.
17 You'll hear testimony not only that it has happened,
18 but it is going to happen imminently right here on the
19 east coast.

20 There will be several other issues that are
21 going to be raised before the Commission today that I
22 hope do not distract the Commission from the essential
23 elements of this case. That is that unlike many cases
24 that you've heard on products coming from Asia, these
25 particular products are driven by input cost of raw

1 materials, not by labor costs or by dumping.

2 Raw material costs are the most important
3 single element in the ultimate pricing and costing of
4 the products that you're going to be considering, and
5 those costs independent of any other factor are the
6 ones that are going to drive what happens to this
7 industry in the future.

8 Mr. Perry?

9 MR. PERRY: Good morning.

10 CHAIRMAN OKUN: Good morning.

11 MR. PERRY: My name is William Perry of the
12 law firm Garvey, Schubert & Barer. As we stated in
13 our brief, this case is a good example of
14 overreaching.

15 We made the point about like product. We
16 wanted to say this is the domestic product. This is
17 the imported product. The Petitioners argue that this
18 bag is like that bag. We argue this bag, the
19 domestically produced paper bag, is like the imported
20 product.

21 When we talk about high end bags, we're not
22 talking about a difference in quality or a difference
23 in size. This isn't steel. We're talking about two
24 different animals. The high end quality shopping bag
25 is used for advertising. It's a status symbol. The

1 grocery bag, the t-shirt bag, is used to carry
2 groceries from the store.

3 When we talk about paper bags, we're not
4 talking about grocery paper bags. We're talking about
5 high end shopping bags which are produced. Paper
6 shopping bags are produced here in the United States.

7 When you go to Macy's, what do you buy?
8 When you buy your jewelry or whatever, you walk out.
9 Do you put it in a t-shirt bag or high end shopping
10 bag? It will be either one of these that's imported
11 or one of the paper ones that are produced
12 domestically because it's advertising.

13 The other point we make is the imports --

14 CHAIRMAN OKUN: Mr. Perry?

15 MR. PERRY: Yes.

16 CHAIRMAN OKUN: Your red light has come on.

17 MR. PERRY: All right.

18 CHAIRMAN OKUN: Thank you.

19 MS. ABBOTT: Will the first panel in support
20 of the imposition of antidumping duties please be
21 seated?

22 Madam Chairman, the witnesses have been
23 sworn.

24 (Witnesses sworn.)

25 CHAIRMAN OKUN: Mr. Dorn, before we begin

1 could this sign be moved maybe perhaps over there so
2 it's out of the way of the witnesses? That's better.
3 Yes.

4 Your panel of witnesses look like they're
5 ready to go. You may proceed.

6 MR. VARN: I'll start off. My name is Rex
7 Varn. Since December of 2003, I've been president and
8 COO of Hilex Poly Company. Previously I was vice
9 president and general manager of the High Density Film
10 Division of Sonoco Products Company. Since joining
11 Sonoco in 1980, I've spent all but six years in
12 positions where I've been involved in the production
13 and sale of polyethylene retail carrier bags.

14 Sonoco began producing t-shirt style plastic
15 bags in 1980. Starting with one plant, we grew to six
16 plants by 1989. In the wake of declining profits,
17 Sonoco sold the assets of the PRCB business to Hilex
18 in December of 2003. Hilex now operates the same
19 plants that Sonoco operated at the time of the
20 acquisition.

21 We employ about 700 workers, and we're
22 hopeful that with the imposition of antidumping duties
23 this business will be able to resume the growth that
24 it enjoyed until antidumping imports hit us in the
25 last several years.

1 We consider polyethylene retail carrier bags
2 to be a distinct product. Four of the five plants
3 produce this product almost exclusively. In all of
4 our plants, the production lines for PRCBs are
5 dedicated to the production of that specific product.
6 The product bags that we produce, they don't have
7 handles and thus are not within the scope of this
8 case. They're made on distinct, separate production
9 lines.

10 Dumped imports from China, Malaysia and
11 Thailand have seriously injured our PRCB operations.
12 The foreign producers in those countries have used
13 unfairly low prices to compete with our customer base.
14 The imported products are virtually identical to our
15 domestic products.

16 The imports' rapid penetration of the U.S.
17 market is due entirely to their low prices. Contrary
18 to the suggestion in the Thai producers' prehearing
19 brief, imports have not gained market share due to
20 better quality. No customer has ever told me that
21 they were replacing my bags with imports from
22 Thailand, China or Malaysia to obtain a better quality
23 bag. The only stated reason for our lost sales has
24 been the imports' lower prices.

25 For example, as indicated in our

1 questionnaire response, we had lost large sales to
2 subject imports in reverse internet auctions where
3 price was the only factor considered by that customer.
4 In addition, we've imported small quantities of bags
5 ourselves from the subject countries both to keep from
6 losing additional business and also to assess the
7 import competition. I assure you that the imported
8 bags from the subject countries are of the same
9 quality, but at significantly lower cost.

10 In the face of increasing, low-priced
11 imports, we've been forced either to maintain our
12 prices and lose sales, market share or production
13 output or to lower our prices to meet the import
14 prices. Either way we lose, but our heavy investment
15 in plants and equipment and the way we need to run our
16 plants forces us to lower prices to maximize
17 production output.

18 Our plants are intended to operate 24 hours
19 a day, seven days a week, for virtually the entire
20 year. Traditionally we only close our plants four
21 days at Christmas and two days at Thanksgiving.
22 Otherwise we expect the plants to operate continuously
23 in order to spread our fixed costs over as many
24 production units as possible. Thus, we have a strong
25 economic incentive to meet the lower priced imports to

1 maintain our optimal production levels.

2 In 2003, however, we shut down our plants
3 four days around Memorial Day, four days again over
4 the Fourth of July and an additional six days at
5 Christmas because of increasing inventories that could
6 not be sold in the face of increased imports.

7 The first major casualty of the low-priced
8 imports was Sonoco's plant in Santa Maria, California.
9 In July of 2002, we were forced to shut down that
10 plant, which made only the plastic bags at issue, and
11 to lay off approximately 100 workers. Our closing of
12 that plant was the direct result of the influx of
13 dumped imports which landed at nearby west coast ports
14 and quickly eroded our west coast customer base.

15 The Department of Labor certified the
16 workers at that plant for trade adjustment assistance.
17 In fact, the Department's survey of our customers
18 confirmed the increase in their importing of plastic
19 bags.

20 The extrusion and printing equipment from
21 that Santa Maria plant could produce up to 1.8 billion
22 bags per year. Most of that equipment is still
23 sitting in a warehouse today because we cannot justify
24 the investment required to restart this equipment on
25 existing floor space in our remaining factories.

1 Because of the dumped imports, we suffered
2 declines in capacity, production and employment from
3 2001 to 2003. These reductions were in no way related
4 to decreasing demand for PRCBs. To the contrary, the
5 U.S. market grew substantially from 2001 to 2003.
6 Sonoco and Hilex should have grown with that market.
7 Instead, we lost market share to imports.

8 To avoid losing even more market share,
9 we've had to reduce our price on our remaining sales.
10 Hilex and our former parent have done all that we can
11 to become cost competitive with the imports. Over the
12 last three years, we've invested over \$15 million to
13 automate and modernize our production facilities and
14 to reduce costs. We invested to become as efficient
15 as we can with fewer machines in operation by
16 installing the highest speed bag lines available in
17 the world.

18 These investments were successful in
19 lowering our cost of production. In fact, I believe
20 that our plants are the most automated and efficient
21 in the world. Unfortunately, however, price
22 competition with the dumped imports has forced us to
23 pass along all these cost savings to our customers in
24 order to maintain our sales volume.

25 The combination of lower prices, reduced

1 sales volume and higher per unit fixed cost has had a
2 very negative effect on our bottom line. As shown in
3 our questionnaire response, our operating profit and
4 cash flow declined from 2001 to 2003. If import
5 relief is not imposed, the downward trends of 2001 to
6 2003 will continue, forcing Hilex and other domestic
7 producers to cede all growth in the U.S. market to
8 imports.

9 Capacity rapidly expanded in China, Thailand
10 and Malaysia from 2001 to 2003. These capacity
11 additions were aimed at the U.S. market. If
12 antidumping duties are not imposed, subject imports
13 will certainly continue the rapid expansion that they
14 enjoyed over the last three years.

15 If antidumping relief is denied, the
16 experience of the last several years tells me that
17 Hilex will not be able to maintain its existing U.S.
18 assets and save its remaining 700 U.S. jobs, much less
19 grow in tandem with our growing markets.

20 If antidumping duties are imposed and fair
21 market conditions are restored, we should be able to
22 expand capacity and add U.S. jobs in line with a
23 growing U.S. market.

24 Thank you.

25 MR. SEANOR: Good morning. My name is Bill

Heritage Reporting Corporation
(202) 628-4888

1 Seanor. I am one of two managing partners of Vanguard
2 Plastics, Inc., which is headquartered in Dallas,
3 Texas.

4 I am here today on behalf of my partner and
5 our 750 plus employees who manufacture polyethylene
6 retail carrier bags at Vanguard's six production
7 facilities located throughout the United States.

8 My partners and I founded Vanguard in 1987
9 with two converting lines in St. Louis, Missouri. In
10 the last 17 years, Vanguard has grown into one of the
11 largest PRCB producers in the world. We have over 20
12 converting lines and the capacity to produce over 20
13 billion bags per year. Virtually all of our
14 production consists of PRCBs as defined in the
15 petition.

16 The production output of polyethylene bags
17 cannot be efficiently increased or decreased by
18 turning the machinery on and off. Similar to
19 continuous production processes employed in the steel
20 and glass industries, the extrusion process cannot be
21 economically shut down at night and restarted in the
22 morning. Our plants have traditionally run in excess
23 of 360 days per year.

24 Competition between imports in U.S.
25 production is based primarily on price. Let me show

1 you some examples. Mr. Dorn will assist in presenting
2 the samples. We have samples of bags from 7-11 stores
3 made both in China and by Vanguard. We have samples
4 of Winn-Dixie stores, which he is laying out right
5 now, made in China, Malaysia, Thailand and by
6 Vanguard. We have bags from Target stores made in
7 China, Thailand and Vanguard. Finally, we have bags
8 from Kohl's department stores made in China and by
9 Vanguard.

10 As you can see from the samples, the
11 domestic and imported products are perfect
12 substitutes. In fact, the products have been such a
13 commodity they are even purchased on reverse internet
14 auctions, which has given imports an easy pass to the
15 U.S. market. We listed a large number of reverse
16 internet auctions in our questionnaire response where
17 we lost sales to lower bids from China, Malaysia and
18 Thailand.

19 Another indication that domestic and
20 imported PRCBs are fungible is the use of blended
21 sales programs. That is, a domestic producer will
22 commit to sell a customer its higher priced domestic
23 bags and lower priced imported bags at a single
24 average price. This approach works because the
25 customer sees the domestic and imported products as

1 identical.

2 Purchasers understand that imports give them
3 an opportunity to get an identical product for a lower
4 cost. As a result, they use the availability of
5 dumped imports as a way to force U.S. producers to
6 lower their prices. Dumped imports can quickly
7 penetrate the market and grab market share when
8 competition is based primarily on price.

9 Apart from the purchase of raw materials,
10 the production process is capital intensive. We must
11 operate at a high level of capacity utilization to
12 achieve the lowest possible per unit fixed cost.
13 Therefore, when faced with competition from dumped
14 imports, we have a strong incentive to reduce our
15 prices and attempt to meet much lower prices of dumped
16 imports in order to maintain production volume.

17 Vanguard has lowered its prices in an
18 attempt to maintain volume and avoid losing customers.
19 Unfortunately, we have lost numerous sales because we
20 were unable to lower our prices enough to meet dumped
21 import prices. We have been able to lower prices
22 enough to retain many of our customers, but we have
23 lost substantial revenue on those sales, and our
24 profitability has deteriorated.

25 Declining profitability has hindered our

1 ability to invest in the future of the business and
2 grow to meet what we believe will be increasing demand
3 for PRCBs. Dumped imports have prevented us from
4 benefitting from the growth in the market.

5 Prior to the import surge of the last three
6 years, we were generally able to pass through resin
7 costs to our customers either through formal resin
8 pass through mechanisms or by informal agreement. The
9 dumped imports, however, have given our customers the
10 leverage to refuse price increases that were
11 historically dictated by movements in resin price.

12 For example, as detailed in our
13 questionnaire response at pages 20 and 21, several
14 large grocery chains refused to abide by resin pass
15 through agreements because they said they could obtain
16 the product from subject countries at lower prices.
17 In two cases, we decided to suffer a lower margin and
18 keep the business. In the third example, we lost the
19 account to subject imports.

20 In 2001, our inability to compete with
21 dumped imports from China, Malaysia and Thailand
22 forced us to close our plant in Compton, California,
23 and lay off 50 employees. We are very concerned that
24 if antidumping duties are not imposed dumped imports
25 will force us to close more plants and lay off more

1 employees.

2 From 1997 through 2000, Vanguard made over
3 \$65 million in capital investments to expand its
4 capacity and improve its competitive cost structure.
5 During 2001 to 2003, however, we had to drastically
6 reduce our capital investments, as is evidenced by our
7 questionnaire response.

8 In fact, we deferred and postponed several
9 expansions of productivity projects that we should
10 have undertaken in a growing market. We could not
11 justify these investments due to the lower anticipated
12 growth in our sales, unsatisfactory capacity
13 utilization, decreasing profits and unsatisfactory
14 rates of return on our prior investments.

15 In late 2003, Vanguard entered into a joint
16 venture that was created to purchase and operate
17 certain manufacturing assets of Orange Plastics, which
18 was in bankruptcy proceedings. Had we not bought
19 those assets at a bankruptcy auction, they would have
20 been acquired by a Malaysian producer that would have
21 used Orange's assets and sales force to develop
22 blended programs to further penetrate the U.S. market
23 with dumped imports. Thus, this was a defensive move
24 related to the dumped imports.

25 We need antidumping duties, however, for the

1 joint venture to realize a return on this investment.
2 Contrary to the suggestion made in several of our
3 opponents' prehearing briefs, there has been no sea
4 change in resin prices that will protect the domestic
5 industry against future imports from Asia.

6 During the staff conference last summer,
7 Respondents cited price indices suggesting that U.S.
8 prices were almost twice as high as resin prices in
9 Asia. We pointed out that that allegation was false.
10 As we explained then, those indices do not reflect
11 actual prices, and they cannot be relied on to compare
12 prices in the United States and Asia.

13 Resin is a fungible commodity, and it is
14 shipped internationally. The fact is that no U.S.
15 producer would choose to pay more for domestic resin
16 than it would cost to import resin from Asia. Our
17 actual delivered cost for resin was sometimes higher
18 from the U.S. and sometimes slightly higher from Asia.

19 MR. DORN: Excuse me. I think you left out
20 that during 2001 to 2003, you did buy resin both from
21 the United States and Asia.

22 MR. SEANOR: That's correct. On the basis
23 of that experience, our actual delivered cost for
24 resin was sometimes higher for the U.S. resin and
25 sometimes slightly higher for Asian resin.

1 Contrary to popular belief, prices of resin
2 are not highly correlated with the price of either
3 natural gas or petroleum. Moreover, neither I nor
4 anyone else can predict the future prices of natural
5 gas or petroleum, much less the price of resin.

6 Resin prices may be close to parody in Asia
7 and the United States today, but could change by five
8 to eight cents per pound in two months. They will not
9 diverge much more than that for any length of time
10 because it is an international market, and customers
11 will buy from the most economical source.

12 For the last few years, Vanguard was very
13 successful since its founding in 1987. We can compete
14 with anyone on a level playing field. However,
15 Vanguard cannot compete with dumped imports from
16 China, Malaysia and Thailand. If antidumping duties
17 are not imposed, our company will continue to contract
18 in a growing market, and eventually we will be forced
19 out of business.

20 Please give us an opportunity to resume our
21 historical growth in the growing U.S. market. Thank
22 you.

23 CHAIRMAN OKUN: Thank you.

24 MR. BAZBAZ: Good morning. My name is Isaac
25 BazBaz. I am and have been a director of Superbag

1 Corporation since its establishment in 1988.
2 Headquartered in Houston, Texas, it is a family owned,
3 private company. We are a major U.S. producer of
4 t-shirt style polyethylene retail carrier bags.

5 We operate a single plant dedicated to these
6 products. The plant employs approximately 250
7 workers. Dumped imports of t-shirt style bags have
8 caused tremendous harm to Superbag, and they are
9 threatened to close their manufacturing operations if
10 antidumping duties are not imposed.

11 Most of our bags are tabless, self-opening
12 bags which are easily dispensed at the retail checkout
13 counter. As one bag is removed from the dispensive
14 rack, the next adjacent bag is opened. We received
15 the patent in 1993 for our design for this type of
16 bag, but our design has been copied by producers in
17 Thailand, China and Malaysia.

18 In April of last year, Superbag filed a
19 Section 337 complaint against Thai Plastics, Hmong
20 Industries and other producers in China and Thailand
21 in which we alleged violations of Section 337 based on
22 patent infringement.

23 Judge Luckern found a violation of Section
24 337 and has recommended that a General Exclusion Order
25 be issued with regard to the bags that literally

1 infringe the asserted claims of the Superbag patent.
2 On May 28, the Commission issued a notice stating that
3 it would not review Judge Luckern's final initial
4 determination in the 337 proceeding.

5 Target stores used to be one of our major
6 customers. In October 2001, however, Target held a
7 reverse internet auction in which it invited importers
8 to bid. All bidders had to prequalify, making price
9 the only purchasing factor at the time of the auction.

10 We were one of Target's incumbent suppliers,
11 and we have sold them substantial quantities of our
12 patented tabless bags during May of 2000 to September
13 of 2001. We tried to keep the business by
14 aggressively lowering our pricing during the auction.
15 In the end, however, we could not afford to match the
16 prices of imports from China and Thailand because they
17 were below our cost of production.

18 Thai Plastics and Hmong Industries won most
19 of the business by offering bags essentially identical
20 to ours and which infringe on our patent, but at
21 prices that were much lower than our final bid. After
22 we filed the 377 action last year, Target changed its
23 specifications to a non-infringing design in order to
24 continue sourcing imported bags without regard to the
25 outcome of the 337 case.

1 Prior to the last Target reverse internet
2 auction in October 2001, we had ordered bag machines
3 for delivery in early 2002 that would have allowed us
4 to increase capacity by roughly 1.8 billion bags.
5 When we lost the Target account and others to subject
6 imports, we canceled the order with our vendor because
7 we no longer needed to expand our capacity.

8 As indicated in our questionnaire response,
9 we lost all the reverse internet auctions to subject
10 imports during 2002 and 2003. Subject imports have
11 also forced us to lower our prices. As you will see
12 from our questionnaire response, the unit value of our
13 shipments declined from 2001 to 2003 with no
14 appreciable change in the product mix.

15 We had to lower our prices even though the
16 demand for PRCBs was increasing in the U.S. market.
17 In addition, subject imports have prevented us from
18 increasing our prices for bags in response to
19 increasing cost of resin.

20 For example, during 2003 we were supplying
21 bags to certain distribution centers of our largest
22 customer. When we tried to increase our price to that
23 customer in the first half of 2003 to pass along our
24 increased cost of resin, the customer told us that if
25 we did so it would shift the business to imports.

1 Accordingly, we had no choice but to keep the prices
2 at existing levels and to accept a lower gross margin.

3 Our inability to match the imports' lower
4 prices is frustrating because we have very modern,
5 cost efficient facilities. We have an efficient and
6 trained work force housed in a single plant that is
7 dedicated to the production of t-shirt style retail
8 carrier bags. Moreover, we recently endeavored to
9 reduce our production costs.

10 By early 2001, we successfully completed an
11 investment program that substantially reduced our cost
12 of converting resin into finished goods. Even so, our
13 profitability has dropped substantially since 2001 due
14 to sales and revenues lost to dumped imports. As a
15 result, the rate of return on our investment has
16 steadily declined since 2001.

17 The lost sales have also adversely impacted
18 our plant's efficiency. Our equipment is designed to
19 run continuously. It is expensive to stop and resume
20 operation. Normally we only shut down Christmas Eve
21 and Christmas Day and on New Year's Eve and New Year's
22 Day. Otherwise we run out plant continuously.

23 During 2003, we've had to run our lines more
24 slowly than desired. Moreover, in addition to our
25 normal downtime at Christmas and New Year's, we've had

1 to stop production nine more days in order to avoid
2 building up excess inventory.

3 With a growing market and modern automated
4 plants, we should be investing to increase capacity.
5 We have ample factory floor space to do so. All we
6 need is the sales volume and prices to warrant the
7 investment.

8 Rather than investing to increase capacity
9 and to grow our company in tandem with the growing
10 U.S. market, we are just trying to survive. As you
11 will see from our questionnaire response, our profits
12 steadily declined from 2001 to 2003. In short, our
13 continued existence as a manufacturer is extremely
14 vulnerable to dumped imports.

15 Our future depends on the imposition of
16 antidumping duties against imports from China,
17 Malaysia and Thailand. If the imports are fairly
18 priced, I am certain that we will be able to compete
19 and to maintain our 250 U.S. jobs.

20 Thank you.

21 CHAIRMAN OKUN: Thank you.

22 MR. EVERETT: Good morning. I'm Tom
23 Everett, and I'm the vice president and general
24 manager of the Flexible Packaging Group of Genpak.
25 Genpak has two facilities that make PRCBs, one in

1 Bloomington, Minnesota, and the other in Cedar Grove,
2 New Jersey.

3 I've been with Genpak since 1991. At the
4 current time, my responsibilities at Genpak include
5 full profit and loss and operational responsibilities
6 for both division.

7 Genpak makes heat-sealed, square-bottom
8 PRCBs at our plant in Cedar Grove, New Jersey. Unlike
9 some other PRCBs, these products stand up. In a
10 minute, I'll explain what I mean by that. Our plant
11 in Minnesota also makes high-quality PRCBs, including
12 bags with patch handles. However, it does not make
13 the square-bottom bags.

14 The square-bottom bags made in our Cedar
15 Grove plant are very similar to high end PRCBs
16 imported from the countries involved in these cases,
17 particularly China. These imported products, which
18 foreign producers have called high end bags, also
19 stand up, as we will show you now.

20 Here are two bags that we are producing for
21 a New York gourmet grocery store, Citarella, the small
22 bag and the large bag, and then here are two bags that
23 the Chinese have provided to Citarella. As you can
24 see, they're essentially identical.

25 I would like to point out that one of these

1 Chinese bags, the small one, is a heat-sealed, square-
2 bottom bag just like ours. The other Chinese bag, the
3 large one, has a cardboard insert.

4 Similarly, let me show a bag that we are
5 supplying to Verizon Wireless and a bag the Chinese --

6 CHAIRMAN OKUN: Mr. Narkin hasn't kept up
7 with you, sir. Hold on a moment.

8 MR. EVERETT: That's all right. I'll let
9 you catch up.

10 CHAIRMAN OKUN: You may proceed.

11 MR. EVERETT: These are the bags that we
12 supply to Verizon and a bag that the Chinese producers
13 have sold to that company. In short, there are no
14 meaningful differences between our bags and the
15 Chinese bags.

16 Thank you, Steve.

17 The Commission should know that Genpak, not
18 imports, created the market for these square-bottom
19 bags beginning in 1967. The foreign PRCB producers
20 have simply followed in our footsteps. The only
21 difference between us and them is that in some cases
22 they use cardboard inserts to give their bags the same
23 shape and strength as ours, and they do so by using
24 more manual labor than we do.

25 Our production process enables us to make

1 products with square bottoms automatically using
2 machinery that is relatively expensive, but that also
3 does not require much manual labor. The reason why we
4 don't use cardboard inserts is that we don't need to
5 do that to make our bags stand up.

6 Moreover, some of the so-called high end
7 imported bags are made the same way that ours are.
8 That is, they do not have cardboard inserts to make
9 them stand up. Two of the imported bags that I showed
10 you a few seconds ago have cardboard inserts, but the
11 other one does not.

12 Contrary to the suggestion of the
13 Respondents, the print quality of our U.S. bags is
14 excellent, as demonstrated by these two samples. This
15 is a bag in Steve's left hand that we did for Pfizer,
16 and in his right is a shopping mall bag for
17 premiershopperclub.com. As you will see on these
18 samples, we print on all four sides of the bag.

19 In using the term high end bags, I want to
20 make clear that the notion that these products are
21 somehow a separate product group is an alien concept
22 to Genpak and I am sure to just about everyone else in
23 our industry. I've never heard that term used outside
24 of the context of these cases. In fact, we see our
25 own products, those made in Minnesota and those made

1 in Cedar Grove, as spanning a broad continuum.

2 To be sure, our heat-sealed, square-bottom
3 bags are more expensive than the typical t-shirt bags
4 that you will get in your local supermarket, and we
5 don't in fact sell much product into that segment of
6 the market. There is really no economic or commercial
7 distinction to be made between our so-called high end
8 bags and a host of other bags made by other domestic
9 and foreign producers.

10 I wish that this was not the case, but the
11 fact is that our heat-sealed, square-bottom bags
12 compete every day with a host of other high quality
13 and high to mid priced bags made by others. For
14 example, if you look just at the domestic industry, we
15 face stiff competition from Ampac, Command Packaging,
16 Uniflex and Roplast, among others.

17 Retailers buy so-called high end PRCBs
18 because they want to convey an upscale image to their
19 customers. You certainly don't need to have high end
20 bags as defined in this case, that is product with
21 square bottoms or separately applied handles, to
22 accomplish that.

23 Let me show you a merchandise bag with a
24 draw cord and shoulder tote feature made by our
25 competitor, Roplast, for Finish Line. Does this

1 convey an upscale image? I think so. Let me show you
2 another merchandise made by our competitor, Ampac, for
3 Fuji. As I think you can easily see, this is also
4 designed to appeal to upscale customers.

5 I also understand that some foreign
6 producers claim that their products and products such
7 as ours really compete with high end paper bags rather
8 than other types of PRCBs. That's just not true. As
9 I believe that your staff has told you, high end paper
10 bags are far more expensive than so-called high end
11 plastic bags. This difference effectively creates a
12 wall in the marketplace between the two products.

13 In a very real way, the difference between
14 the two products is more than just about money. The
15 people who are the main customers for high end, high
16 quality, high priced paper bags, exclusive to boutique
17 retailers like Tiffany, Cartier and Gucci, don't look
18 at PRCBs as an alternative to paper bags. Even the
19 highest quality PRCBs do not have the style and the
20 look that they wish to offer to their customers.

21 That isn't to say that you will not find
22 some retailers who see high end PRCBs and high end
23 paper bags as potential alternatives. You will, but
24 they are in the scheme of things few and far between.
25 The simple fact is that such retailers constitute but

1 a small fraction of our potential customer base. Put
2 another way, there is just about no overlap in
3 competition between so-called high end PRCBs and high
4 quality paper in the marketplace.

5 The last thing that I would like to talk
6 about is the extent to which the so-called high end
7 imported bags compete with high end PRCBs made in this
8 country. I understand that the Chinese producers in
9 particular have argued that these imported PRCBs do
10 not compete with domestically produced bags.

11 That is, regrettably, from our standpoint
12 nonsense. You can see from the samples that I showed
13 you earlier that these are essentially identical
14 products. Moreover, we have lost a large volume of
15 business to these imports, and they have exerted
16 enormous pressure on the pricing of our products.

17 We have provided a significant amount of
18 detail on this subject in our lost sales and revenue
19 allegations that we have submitted to the Commission
20 in our questionnaire response.

21 That concludes my testimony, and I'd like to
22 thank you for the opportunity to appear before you
23 today.

24 CHAIRMAN OKUN: Thank you.

25 MR. DORN: Madam Chairman, before I forget,

1 I'd like to offer all these samples into the record of
2 this investigation.

3 CHAIRMAN OKUN: That will be done, sir.

4 MR. BAUMANN: Good morning. My name is John
5 Baumann. I am the president and CEO of Ampac
6 Packaging, LLC, which is headquartered in Cincinnati,
7 Ohio. Ampac is a packaging company with 500 plus
8 employees.

9 The company was founded in the 1960s.
10 Beginning in 2000, at about the same time that low-
11 priced imports in polyethylene retail bags started to
12 flood the U.S. market, Ampac diversified into paper
13 retail packaging. In late 2002, Ampac reluctantly
14 opened a PRCB manufacturing facility in Nanjing,
15 China, as a defensive measure against import
16 competition.

17 Ampac has been and is currently being
18 injured by dumped imports, and we support the
19 imposition of antidumping duties on imports of PRCBs
20 from China, Malaysia, and Thailand. The shareholders
21 of Ampac, and I am one of them, would be adversely
22 affected by the imposition of duties in that we would
23 lose much, if not all, of our investment in China if
24 duties were imposed.

25 However, we support the petition because we

1 are a domestic producer. We have been injured by the
2 dumped imports, and the pricing in the market is
3 unjustifiably low, in some cases below our raw
4 material cost alone.

5 I would like to begin by touching on the
6 extent to which so-called high end PRCBs compete with
7 high end paper bags, but before I do that I want to
8 emphasize that we don't agree with the whole notion of
9 high end PRCBs as a potentially distinct product
10 category. Certainly that concept has no meaning to
11 Ampac. It likewise has very little, if any, meaning
12 among PRCB purchasers. What one consumer sees as high
13 end another consumer may see as a commodity and vice
14 versa.

15 Getting back to the issue of paper versus
16 plastic, as a manufacturer of both plastic and paper
17 retail carrier bags Ampac is in a position to comment
18 on the extent to which so-called high end PRCBs
19 compete with paper bags. The long and short of it is
20 that they really don't.

21 I think that the staff prehearing report
22 reflects an accurate understanding of this issue. As
23 that report indicates, PRCBs are completely different
24 products produced by different industries. Their
25 physical characteristics are quite different from

1 paper bags.

2 Although the two types of bags can sometimes
3 be used for the same applications, paper bags are not
4 substitutable for PRCBs if the end user wants a bag
5 with the properties, performance characteristics and
6 cost savings associated with PRCBs.

7 Paper bags are not as weather resistant as
8 PRCBs. Paper bags are also five to 10 times bulkier
9 and often cannot be stored effectively in warehouses
10 and under store counters due to limited space. Paper
11 bags are significantly heavier per unit, which makes
12 them much more expensive to ship.

13 PRCBs can be translucent or transparent, and
14 paper bags cannot. Last, but certainly not least, as
15 the staff points out, PRCBs are significantly cheaper
16 than paper bags due to raw material cost and design
17 characteristics.

18 Conversely, the establishments buying high-
19 end paper bags will rarely consider purchasing PRCBs
20 as a substitute. They are wedded to the look and
21 image of paper bags, notwithstanding the various cost
22 and other advantages of PRCBs that I just described.

23 While there are some retailers who may consider
24 the possibility of switching between paper bags and
25 so-called high-end PRCBs from time to time, they are

1 the minority. The manufacturing processes and
2 equipment for PRCBs and paper bags are quite
3 different. The equipment used to make paper bags
4 cannot be used to make plastic bags and vice versa.
5 We manufacture these two types of bags in different
6 facilities and there is no overlap of production
7 equipment or employees.

8 Putting the issue of paper versus plastic aside,
9 we specialize in polyethylene drawstring bags, oval
10 die cut bags and patch handle bags. These PRCBs are
11 in the upper end of the spectrum of PRCBs and anyone
12 who says that they do not compete with so-called high-
13 end PRCBs is mistaken and not in touch with the retail
14 customers with whom we do business within our markets.

15 We also compete with PRCBs that are on the low
16 end of the product spectrum, and are less expensive
17 than our products. As you might expect, most
18 retailers believe that there is a tradeoff between
19 quality and price. Thus, we are not insulated from
20 competition with products that we believe are of
21 lesser quality, such as t-shirt bags, just because our
22 bags are at a higher end of the quality spectrum.

23 I would like to make one other comment about
24 the physical aspects of PRCBs. One thing that is
25 important to most of our customers is the quality of

1 printing. We can print up to eight colors and four-
2 color process, as can several other U.S. producers and
3 some of the Chinese, Malaysian and Thai producers. We
4 are not losing business to these foreign producers
5 because their printing is better.

6 Switching gears a bit, I would also like to
7 talk about the harm that the subject imports have
8 caused to our business. We have seen the foreign
9 producers target our key accounts, quoting
10 unreasonably low prices, in some cases below our costs
11 of raw materials. We have lost accounts to these
12 imports. We have also been forced to lower our prices
13 substantially to retain other major accounts. In the
14 process, like the other companies that you have heard
15 from earlier, we have been forced to absorb increases
16 in the cost of polyethylene resin that we would
17 ordinarily have been able to pass through to our
18 customers.

19 In short, these imports have seriously
20 damaged our business. We have invested in our plant
21 and equipment at our Cincinnati facility based on our
22 expectation that demand would be good, which it has,
23 and that our sales would grow to the same extent that
24 demand has grown, which they have not.

25 We are concerned that we will not achieve

1 our anticipated return on these investments. We will
2 be forced to further redirect our investments to our
3 operations in China and to source more and more
4 merchandise offshore. In other words, we and other
5 domestic producers, are approaching a make and break
6 point. It is our concern that we would be forced to
7 cease domestic production of PRCBs altogether if this
8 case does not bring unfair trade of these products to
9 a halt. Thank you.

10 MR. NARKIN: I'm Steve Narkin with King &
11 Spaulding. Some of the testimony that these gentlemen
12 have provided obviously goes to the issue of like
13 product, and I'd like to put that testimony in
14 context. In the preliminary investigation, the
15 Commission addressed two like product issues raised by
16 the Chinese respondents. First, whether so-called
17 high-end PRCBs are a separate like product and second,
18 whether high-end paper bags are a product like high-
19 end PRCBs. The Commission concluded, after analyzing
20 the evidence relating to the Commission's traditional
21 like product factors, that high-end PRCBs are a
22 separate like product and that high-end paper bags
23 aren't a product like PRCBs.

24 We're not going to take up your time here
25 discussing the reasons why you reached the conclusions

1 that you did in the preliminary investigation.
2 Instead, we'd like to briefly summarize the record as
3 it now stands. We think that the staff report, which
4 relies heavily on the questionnaire responses -- as it
5 should -- puts the like product issues to rest.

6 On the issue of high-end PRCBs versus other
7 PRCBs, here is what the prehearing report has to say.
8 First, high-end PRCBs and other PRCBs share the same
9 essential physical characteristics and uses. They
10 come in a wide variety of shapes and sizes with an
11 equally wide variety of features, which is what you
12 would expect of a product that is generally made to
13 the specifications of individual retailers.

14 Second, although products at the opposite
15 ends of this continuum may not be highly
16 interchangeable, other PRCBs, particularly at the high
17 end of the quality spectrum, can be -- and are --
18 substituted for high-end PRCBs and vice versa.

19 Third, there are no meaningful differences
20 in the channels of distribution. Fourth, many
21 importers and essentially all domestic producers
22 recognized that the dividing line between high-end
23 PRCBs and other PRCBs is not at all clear.

24 Fifth, the core production processes
25 involved in the manufacture of the products are the

1 same. Finally, on the issue of price, without getting
2 into information that is confidential, there is no
3 break point at all between the price of high-end PRCBs
4 and the price of other PRCBs. In other words, this is
5 a classic continuum product.

6 As the Commission has repeatedly said, in
7 such a case, the Commission does not consider each
8 item of domestic merchandise to be a separate like
9 product that is only like its imported counterpart,
10 but considers the continuum itself to be the domestic
11 like product. It is for this reason that the
12 Commission has always been unreceptive to requests
13 that it treat high-end or high quality items as
14 separate like products. In our brief, we discuss some
15 cases that are directly on point.

16 On the issue of high-end paper versus high-
17 end plastic, the prehearing report is equally clear.
18 As the report says, and as you have heard our
19 witnesses testify, the physical characteristics and
20 properties of high-end paper bags and high-end plastic
21 bags are very different, and their production
22 processes are very different. On their face, these
23 are different products made by completely separate
24 industries.

25 As the report says, and as you have heard

1 our witnesses say, there is virtually no competition
2 between these products. As the report tells you,
3 high-end paper bags are priced much higher than high-
4 end PRCBs, and even the importers who have responded
5 to your questionnaire recognize that this price
6 differential effectively separates the customer base
7 for paper bags from the customer base for PRCBs.

8 In a nutshell, retailers who want the
9 physical characteristics, properties and economies of
10 high-end PRCBs buy PRCBs. Those retailers who want
11 the look and image of high-end paper bags, buy paper
12 bags, even though paper bags are much higher priced
13 and have physical disadvantages relative to PRCBs. The
14 fact that there are a very small group of retailers
15 who might consider either paper or plastic cannot
16 obscure this fundamental reality.

17 Finally, we'd like to comment briefly on the
18 arguments made by the Chinese respondents in their
19 prehearing brief. To be honest, reading that brief
20 was -- for us -- somewhat of an exercise in
21 frustration. Almost half of the brief is devoted to
22 the like product issue. Yet the arguments that they
23 make ignore the prehearing report just about
24 completely. They cite to it only once, on a
25 relatively minor point. They don't discuss the

1 information contained in even one of the questionnaire
2 responses submitted to the Commission by purchasers or
3 importers.

4 Beyond that, it appears that their argument
5 is largely -- and perhaps entirely -- a rehash of the
6 arguments that they made in the preliminary
7 investigation and that the Commission rejected. They
8 do not appear to recognize that the definition of
9 high-end PRCBs in this final investigation encompasses
10 certain products made in the United States.

11 For that matter, it is not clear, at least
12 to us, which products they are now asking the
13 Commission to treat as a separate like product. They
14 talk quite a bit about so-called high-end shopping
15 bags without ever really saying what that means.

16 That said, the broad outlines of their
17 argument are clear, as are the flaws in those
18 arguments. As before, respondents contrast t-shirt
19 bags with so-called high-end bags without recognizing
20 that -- as you heard earlier -- there is much that is
21 in between. It is only by completely ignoring these
22 in between products that they can assert that PRCBs
23 are not a continuum.

24 They ask the Commission to find that
25 imported high-end PRCBs are distinguishable from other

1 PRCBs because the production process for the imports
2 is labor intensive. As you know, if the Commission
3 were to adopt that logic, you would soon be finding
4 multiple like products in just about every case
5 involving imports from lesser developed countries.

6 That aside, in this case, this is a
7 distinction without a difference. As Mr. Everett
8 explained, for high-end bags, the end result of the
9 labor intensive process involved in making some of the
10 imports and the more automated process used by GenPak,
11 is that you have products that are essentially
12 identical.

13 Finally, on the issue of paper versus
14 plastic, Respondents' argument, when all is said and
15 done, is that the mere fact that there are a few
16 retailers who regard these products as substitutes is
17 enough to make them part of the same like product.
18 Other evidence that is highly germane to the
19 Commission's like product analysis, such as differing
20 physical characteristics, the absence of common
21 production facilities, the lack of common distribution
22 channels and a large disparity in price is just
23 ignored.

24 In short, they haven't presented the
25 Commission with an argument that you should take very

1 seriously.

2 MR. DORN: Joe Dorn, with King & Spaulding.
3 I'd like to address the issue of material injury. As
4 I mentioned in my opening remarks, this Commission did
5 not choose to reach that issue in the preliminary
6 determination, based upon the factual record that
7 ended with data through the first quarter of 2003.

8 Now that we have data for calendar year
9 2003, I believe this is a classic case of material
10 injury, based upon the confidential information that's
11 in the prehearing report. I hope you have before you
12 my confidential exhibits, and for obvious reasons I've
13 handed those up because all the good stuff is
14 confidential.

15 So I'll just walk you through these bullet
16 points. I've hit the three main subjects of a
17 material injury determination. Exhibit 1, volume of
18 subject imports, on exhibit 2, price effects of the
19 subject imports, and exhibit 3, impact of the subject
20 imports.

21 Beginning with the volume of subject
22 imports, any way you look at it the imports are
23 significant. Significant in terms of volume in 2003
24 relative to production and relative to U.S.
25 consumption. There's no question that the increase in

1 the volume of imports is significant, absolutely and
2 also relative to domestic production and U.S.
3 consumption. And of course, on the public record we
4 do have the export data up here on the poster, which
5 you can refer to.

6 Turning to the price effects, the subject
7 imports, we think we have extremely good evidence of
8 underselling in the prehearing report, and I would
9 emphasize that this is a product that has become such
10 a commodity you wouldn't even need to have
11 underselling to have adverse price effects, just the
12 incremental supply coming from imports would
13 necessarily force prices down.

14 But here, in addition to that, we do have
15 extensive evidence of underselling. The subject
16 imports have depressed domestic prices. You can see
17 that by looking at the average unit values of import
18 shipments and average unit value of domestic producer
19 shipments, and look at those trends together. You can
20 do the same thing by looking at the data for -- the
21 quarterly price data for the price comparison
22 products, and compare the import trends and the
23 domestic industry trends, particularly focused on
24 product two, which is fairly significant in terms of
25 volume of the price comparison data.

1 And then finally, subject imports have
2 suppressed domestic prices, as you've heard from our
3 witnesses this morning, as costs of resin have gone up
4 most recently, unlike historical experience, those
5 producers have not been able to pass along those resin
6 costs to their customers because their customers say
7 wait a minute, we can go to Malaysia, China or
8 Thailand and get it cheaper. Why should we raise
9 prices just because your costs have gone up?

10 And finally, turning to the impacts of the
11 subject imports, I've just listed some of the key
12 indicators, starting with the trade data. You go down
13 the list of the statutory criteria and it's a clear
14 picture of injury. And not surprisingly, given the
15 adverse price effects and the adverse volume effects,
16 when you go through the statutory criteria with
17 respect to the financial indicators, it's the same
18 story. It's a story that leads to a conclusion that
19 this industry is already materially injured. Thank
20 you.

21 MR. NARKIN: Steve Narkin again. In the
22 preliminary investigation the Commission unanimously
23 determined that the domestic industry was threatened
24 with material injury. That determination was based on
25 the Commission's evaluation of import trends and

1 import prices, and on information contained in foreign
2 producer questionnaire responses, suggesting that the
3 subject countries could and would increase their
4 exports to this country. It was also based on the
5 Commission's view that the data before it showed that
6 the domestic industry was vulnerable.

7 Since that time, nothing of any consequence
8 has changed, except that the condition of the domestic
9 industry has significantly worsened. If the industry
10 was vulnerable then, as indeed it was, it is in far
11 worse shape now. This is really beyond reasonable
12 dispute.

13 As for what has occurred in the subject
14 countries since your preliminary determination, we are
15 limited in what we can say in this public hearing.
16 But the record now before you gives you every reason
17 to think that the past will be a prologue for the
18 future if you do not make affirmative determinations
19 in these cases.

20 As we have discussed, imports have gone up,
21 not down. The domestic industry's market share has
22 been shrinking. No matter how you look at it, there
23 has been consistent underselling. Notwithstanding
24 strong demand and increases in the cost of
25 polyethylene resin, domestic prices have been falling.

1 Notwithstanding strong demand, domestic producers have
2 been forced to cancel or significantly scale back a
3 number of investment projects and remarkably, given
4 this strong demand, the industry as a whole is
5 effectively disinvesting.

6 Finally, the increase in import inventories
7 that has occurred is at least as striking as the one
8 that the Commission took note of in its preliminary
9 determination. There is one thing, and really one
10 thing only, that is different now than it was in the
11 preliminary investigation. In the preliminary
12 investigation, in finding threat, the Commission noted
13 that the projections contained in the responses of
14 foreign producers to the Commission's questionnaire
15 indicated that the capacity of the foreign producers
16 would grow significantly, and that their exports to
17 the United States would remain at very high levels.

18 In this final investigation the projections
19 of the foreign producers are for a major decrease in
20 capacity and for a more than 50 percent decrease in
21 exports to the United States. This can be seen from
22 the tables that we set out at page 64 of our brief.
23 Certainly, the differences between the responses in
24 the preliminary and final investigation are not
25 subtle.

1 Well, now what accounts for this rather
2 dramatic change of heart? We've gone into that issue
3 in some detail in the confidential version of our
4 brief, in a way that we cannot do at this public
5 hearing. Suffice it to say, however, that the
6 questionnaire responses themselves go a long way
7 towards explaining what is going on here.

8 Consistent with their approach to other
9 issues, however, the Chinese respondents have a theory
10 to offer, and they pay no attention to the prehearing
11 report or to the questionnaire responses, even their
12 own questionnaire responses, in presenting that theory
13 to the Commission, although for reasons I'll get to in
14 a second, there's a good reason why they may have
15 ignored their questionnaire responses.

16 Respondents implicitly concede that the
17 subject countries have a lot of excess capacity.
18 However, according to them, that capacity will not be
19 used to generate nearly the same level of exports to
20 the United States as previously, because of things
21 like increases in the cost of resin in Asia and for
22 ocean freight between Asia and the United States, and
23 electricity outages in China.

24 In fact, they claim that due to these
25 factors, a lot of capacity in the subject countries

1 will actually be idle. This is all speculation, of
2 course. Just as the Commission may not engage in
3 speculation that a threat is about to emerge, it may
4 not speculate that an obvious threat is going to
5 disappear.

6 But that is a secondary point in this case.
7 It is a secondary point because the Commission has a
8 way to test whether there is a factual basis for
9 Respondents' theory. In its questionnaire, the
10 Commission asked foreign producers to answer two
11 questions that are highly relevant to this issue.

12 First, question 2-2 asked them whether they
13 had any plans to curtail or shut down production
14 capacity and/or production. Second, question 2-7
15 asked them to describe the assumptions upon which
16 their projections were based. We think that it would
17 be very useful for the Commission to ask staff to
18 indicate in its final report or otherwise, whether the
19 answers to these questions are consistent with
20 Respondents' theory. We will, of course, talk about
21 this issue in the confidential version of our
22 posthearing brief.

23 Beyond that, we would ask the Commission to
24 keep something else in mind. Even if the Commission
25 were to take a dramatic and uncalled for leap of faith

1 and assume that the costs of Asian producers are
2 increasing at a faster rate than those of U.S.
3 producers, by itself this wouldn't tell you anything
4 about their intentions with respect to the U.S.
5 market. For all of the subject countries, this is a
6 big market, a market in which they spend considerable
7 time and money to gain a foothold and then seize
8 sizable market share. As we've explained in our
9 brief, the capacity of the Chinese industry is
10 huge. Now, what is the likely reaction of the Chinese
11 industry and those in Thailand and Malaysia, to any
12 costs that they may be experiencing, increases that
13 may or may not be long-lasting. Are they more likely
14 to withdraw from this market or are they more likely
15 to absorb these cost increases for the foreseeable
16 future?

17 For the reason I mentioned a moment ago,
18 this is probably not an appropriate question for the
19 Commission to be asking as part of its threat analysis
20 in the first place. Any attempt to answer that
21 question would necessarily require you to engage in
22 the wildest kind of speculation.

23 However, when you consider Respondents'
24 claims about increased costs in that light, it becomes
25 all the more obvious that their theory does not

1 significantly inform the Commission's threat analysis.

2 In short, the threatened injury has
3 materialized and the record provides no basis at all
4 upon which the Commission might conclude that the
5 threat that the subject imports pose to the domestic
6 industry has now somehow vanished. Thank you.

7 MR. DORN: One final comment before we
8 close. I'd like to commend the staff for an excellent
9 job in pulling together the data in the staff report
10 from multiple industry participants. I know they
11 engaged in a lot of follow up activities, both in
12 getting the questionnaires in, and also in getting
13 revised data that was usable. And I commend them for
14 that.

15 I will say, however, as we pointed out in
16 our prehearing brief, they met a lot of resistance, in
17 our view, from U.S. importers, and particularly the
18 Chinese foreign producers. And to that extent we
19 think that the report understates the degree of U.S.
20 imports from Chinese and we know the staff are
21 continuing to work on that and we hope that more
22 questionnaire responses will come in.

23 And that completes our presentation. Thank
24 you.

25 CHAIRMAN OKUN: Thank you, and before we

1 begin our questioning this morning, let me thank each
2 of you for being here, particularly the industry
3 witnesses for taking the time to come here and tell us
4 a little more about your industry. We greatly
5 appreciate it, and your willingness to answer our
6 questions this morning.

7 I'd like to remind all witnesses that with
8 the number of tables there are, if you could just
9 reply with your name so that the court reporter and
10 the commissioners can be sure who is responding to the
11 question.

12 And Vice Chairman Hillman will begin the
13 questioning this morning.

14 VICE CHAIRMAN HILLMAN: Thank you. And I
15 would, too, join the Chairman in thanking you all very
16 much for appearing this morning and for all of the
17 helpful information that's been provided in the briefs
18 leading up to this hearing.

19 Maybe if I can start with you, Mr. Seanor,
20 to go a little bit further in terms of making sure I
21 understand some of the issues in terms of the way that
22 pricing works in the market. You had mentioned that a
23 number of your arrangements with your customers
24 include this concept of a pass-through of increases in
25 resin costs. I'm trying to get a sense, if you can,

1 at all, of about what portion of your sales would have
2 these pass-through kinds of clauses. I'm not looking
3 for a specific number; I'm just trying to get a sense
4 of how this fits into the overall effect on prices
5 when resin prices change.

6 MR. DORN: And just to -- for
7 clarification's sake, my understanding is there are
8 sort of informal handshake pass-through agreements,
9 and then there are formal contractual agreements. So
10 the question may vary depending on which one you want.

11 VICE CHAIRMAN HILLMAN: And again, I'm just
12 trying to understand how this works in the market so
13 that we can try to understand when prices are moving,
14 and we're obviously seeing a fair amount of price
15 movement in our data, how much of that is a function
16 of this resin pass-through issue, and how much is a
17 function of competition with imports or other things.

18 So if I can just try to understand a little
19 bit more about how this pricing works in the market,
20 Mr. Seanor, if I can start with you just because you
21 mentioned it, but I would be interested from all of
22 the other producers in how your pricing structures
23 work.

24 MR. SEANOR: Certainly. From time to time
25 the percentage amount of our business that is governed

1 by price escalators or de-escalators changes.
2 However, if I would take the most recent period of
3 time, having looked at this, say about 50 percent of
4 our volume is governed by some type of either formal
5 or informal resin price adjustment agreement.

6 VICE CHAIRMAN HILLMAN: And you mentioned
7 that in the past those had historically been honored,
8 that people lived up to that bargain, whether it was
9 formal or informal.

10 MR. SEANOR: That's correct.

11 VICE CHAIRMAN HILLMAN: Okay, and when would
12 you say that started to change, when people did not
13 want to honor those price escalators?

14 MR. SEANOR: Sometime in 2001 or 2002.

15 VICE CHAIRMAN HILLMAN: Okay.

16 Others? The other producers? Mr. Varn?

17 MR. VARN: Yeah, Rex Varn. My number would
18 be pretty similar, actually, to Bill's, around that 50
19 percent level, that we would have either a formal or
20 informal index. And a similar-type time period that
21 we have not received recovery. They're always willing
22 to take the reduction, though, I will say. That's
23 probably 100 percent that will take the reduction as
24 we pass it on through the index. But you'll see we've
25 had the same issues Bill has on any increases that

1 have taken place.

2 VICE CHAIRMAN HILLMAN: Okay. Mr. Bazbaz?

3 MR. BAZBAZ: Yes, ma'am. We have most of
4 our contracts, either verbal or informal with
5 escalators, with escalator clauses.

6 VICE CHAIRMAN HILLMAN: When you say most?

7 MR. BAZBAZ: Most? Eighty percent or so.

8 VICE CHAIRMAN HILLMAN: Okay.

9 MR. BAZBAZ: But recently we have not been
10 able to pass those increases. As a matter of fact, we
11 even, with the contracts written, our customers say
12 we're not paying more, period. Just that's it.

13 VICE CHAIRMAN HILLMAN: Okay, and it's
14 recently that people have started saying no? This
15 recently would be when?

16 MR. BAZBAZ: Since 2002 to the present.

17 VICE CHAIRMAN HILLMAN: Okay.

18 Mr. Everett?

19 MR. EVERETT: The nature of our products
20 being more mid to high-end, there's more frequent
21 design changes, and so generally speaking we do not
22 have formal or informal escalators, de-escalators, and
23 we let the new bid determine whether we can get the
24 higher or lower resin costs.

25 VICE CHAIRMAN HILLMAN: Okay, that makes

1 sense. Mr. Baumann?

2 MR. BAUMANN: Our situation is similar to
3 what you've heard already. We have contracts with
4 many of our polyethylene retail carrier bag customers
5 and we have gotten tremendous resistance about any
6 price changes in the last two to three years, and
7 that's a direct result of the lower-priced imports.

8 VICE CHAIRMAN HILLMAN: And when you say
9 that people look at the prices of your resin, is that
10 a well-known indices? I mean, is everybody looking at
11 the same thing when you say your contracts or your
12 informal handshakes -- is this a clearly known price
13 indicator out there that everybody looks to, and if
14 so, what is it or what's the source of it? Mr.
15 Seanor?

16 MR. SEANOR: Yes, there are several indices
17 that are used by the trade. There's a trade magazine,
18 a weekly trade magazine called Plastics News that
19 publishes an indices. ChemData is an industry
20 information firm out of Houston that publish indices,
21 and it's widely known by the trade, by the retail
22 trade.

23 VICE CHAIRMAN HILLMAN: Okay, and everybody
24 would use those same indices?

25 MR. SEANOR: That's correct.

1 VICE CHAIRMAN HILLMAN: I see all the heads
2 nodding.

3 Okay, if I can then go, you mentioned, Mr.
4 Seanor, in your testimony, that in a couple of
5 instances you lowered your margin to keep the business
6 and in another one that you lost the account. Help me
7 understand that. When you lose an account, how soon,
8 how quickly, what is your ability to try to go back
9 after that account? Give me a sense of sort of the
10 time frame and the process. And again, I'd ask the
11 others to comment if they have anything else to add to
12 this issue of -- I mean, what constitutes an account,
13 for how long, how quickly do you go back and rebid
14 that business?

15 MR. SEANOR: As you can well imagine, this
16 is going to depend upon the particular circumstances
17 with any particular account. When we are faced with a
18 competitive situation, they can literally change the
19 business overnight. Most often it doesn't work like
20 that. We don't normally have supply contracts, we
21 have supply agreements. They're handshake agreements.
22 We may have a supplier -- a customer that we're
23 supplying multiple truckloads per week that could call
24 us in and say we have a competitive situation here.
25 We can't pass through a resin cost increase, and they

1 literally could tell us overnight that if you're not
2 going to meet the price, you're out. Or it could
3 stretch over a period of weeks or even months.

4 VICE CHAIRMAN HILLMAN: Okay, and once --
5 again, once you've lost this account, do you then go
6 back to them a week later, a month later, six months
7 later and say let's try again? Or --

8 MR. SEANOR: The practical realities are
9 that going back a week later or a month later are not
10 usually productive. You're in a dialog with a
11 customer. He has asked you to meet a price. You have
12 elected to not meet a price and he changes his source
13 of supply. Not something that they want to do every
14 week. These are large retailers, so that's large
15 volumes of bags that they're using.

16 So it becomes rather impractical to go back
17 on a short term, and it often only happens until
18 something else changes in the marketplace. Is there
19 another price change potential? Is there a quality or
20 service issue? Other things that would affect the
21 business.

22 VICE CHAIRMAN HILLMAN: Mr. Varn?

23 MR. VARN: Yeah, just to answer both parts
24 of that. First, on the transition timing when you
25 lose the business, I'd say anywhere from a month to

1 three months. They typically try to find out what
2 amount of inventory do you have and then they also
3 check with the company that's going to be replacing
4 you as to when can they start up. And I think
5 probably a one to three month time frame is a
6 reasonable number there.

7 And on length, typically when it's gone, you
8 know, you figure it's gone a year. That varies, but
9 in most cases, if you lose a piece of business, as
10 Bill was referring to, it's probably gone for a year
11 to max, two years is how we would typically look at
12 it.

13 VICE CHAIRMAN HILLMAN: Mr. Everett, your
14 arrangements are probably a little bit different
15 because they're going to be on this bid basis that you
16 described. But I wondered if you could also give me a
17 time frame from your perspective.

18 MR. EVERETT: Certainly. There's a couple
19 of other considerations. The nature of our bags,
20 again, have typically more ink coverage and more
21 colors, so the initial costs, in terms of the prep
22 work to get ready to go to press is significantly
23 higher than some of the t-shirt type bags. But once
24 you lose that, I would say at the earliest it would be
25 six months, probably more frequently 12 months, to

1 maybe even two years before you can get back in. But
2 the tendency is to stay where you are, in some cases,
3 because of the higher prepress charges.

4 VICE CHAIRMAN HILLMAN: And once you have
5 set up your presses to run a certain thing, do the
6 stores frequently change their own designs, or what's
7 your setup? These particular pictures, the ones that
8 you showed, do they change those often, or are they
9 typically using the same print setup for some time?

10 MR. EVERETT: It can vary by the type of
11 retail channel. Some change them frequently because
12 they want a constantly new look. Sometimes they use
13 graphics to change and announce new and improved, that
14 type of thing, like a Proctor & Gamble for that type
15 of a package. But usually I'd say they stick with it
16 for a while because of the cost to go to the second
17 alternative.

18 VICE CHAIRMAN HILLMAN: Mr. Baumann, did you
19 have something you wanted to add?

20 MR. BAUMANN: I would like to add something
21 that I think is important to this discussion. It's
22 been my experience when we've lost business to
23 competition, in this case to overseas importers,
24 predominantly lost on price, it then positions our
25 company as the non-incumbent. In other words, our

1 competition now becomes the incumbent. And that
2 stretches out the period of time over which we can
3 recover. And oftentimes it requires a further
4 discussion on price to recover from that. So I think
5 this issue of incumbency and the injury that results
6 from that when we lose a piece of business is
7 significant for you to hear.

8 VICE CHAIRMAN HILLMAN: Thank you very much.
9 I appreciate those answers.

10 CHAIRMAN OKUN: Commissioner Miller?

11 COMMISSIONER MILLER: Thank you, Madame
12 Chairman. And let me also join in welcoming all the
13 witnesses. We appreciate your efforts to be here
14 today, and they are very helpful to us.

15 I think I will start in just making sure I
16 understand the product and what the companies
17 represented here produce, the degree of
18 specialization. You've provided us some of that. I
19 just wanted to clarify some things.

20 For companies, Mr. Varn and Mr. Seanor, I
21 think I heard with respect to Vanguard and Hilex,
22 mostly you are in the business of the t-shirt bags, as
23 well as Mr. Bazbaz? Is that correct? I mean, I want
24 to understand in the industry the degree to which
25 companies are in one part of the continuum versus all

1 parts of the continuum.

2 Mr. Varn?

3 MR. VARN: This is Rex Varn. Yeah, we are
4 primarily the t-shirt bag. However, we do move into
5 the linens and things, the Michaels Arts and Crafts,
6 which is also moving up the continuum on the higher
7 scale bag.

8 COMMISSIONER MILLER: Okay. Mr. Seanor?

9 MR. SEANOR: Yes, we are primarily a t-
10 shirt bag producer. We also produce what we would
11 call merchandise or millinery bags. Those are bags
12 with an open mouth with a die-cut handle. We also
13 produce bags not only in the typical form which you
14 see in a grocery store identity, but then we also go
15 upscale a little bit. You can see the Kohl's bag
16 we've made here. It's a shinier film; it's a higher
17 gloss, a better appearance to many people's taste.

18 Here you can see a bag that we made for a
19 Christmas product for Target Stores. So again,
20 there's a wide range of product quality.

21 COMMISSIONER MILLER: Mr. Bazbas, you
22 obviously are in the sort of grocery bags with your
23 patented products. Is that pretty much where you are
24 in the market?

25 MR. BAZBAZ: Approximately 85 percent of

1 our sales is that type of bag with self-open feature
2 and the tablets.

3 COMMISSIONER MILLER: Okay.

4 MR. BAZBAZ: We do a certain amount of
5 business with other retailers like Sears & Roebuck and
6 some other people like that. So we just go a little
7 bit --

8 COMMISSIONER MILLER: A little bit further,
9 okay.

10 Mr. Everett, GenPak obviously is at the high
11 end. There was one comment in your testimony when you
12 referenced not being much in that other segment. You
13 are primarily in the high end -- but again, help me
14 with the range of products that you produce.

15 MR. EVERETT: We have two facilities in our
16 Minnesota plant, in trying to put it in the context of
17 what a price per bag might be. The bags that we make
18 there, which would be die-cut handles, patch handles,
19 polydraw tapes, those might start at two to three
20 cents in order quantity and design, and go up to eight
21 to 12 cents. The square bottom bags, like we were
22 demonstrating there, they might start at eight cents
23 and go as high as 30 cents, again, depending on
24 design. So we do not get involved in the t-shirt
25 segment.

1 COMMISSIONER MILLER: Mr. Baumann, help me
2 with your company. I understood you describing it as
3 mainly the high end, but not standing up, right? Not
4 the stand-up bags that Mr. Everett's company produces,
5 but otherwise primarily at what you would see as the
6 high end?

7 MR. BAUMANN: Our customers are
8 predominantly in the high end. We produce very simple
9 patch handle bags, draw cord bags, oval die-cut bags
10 with simple print. In some cases those may have no
11 print whatsoever. So we can go from very simple
12 designs, a simple product, to very elaborate, eight-
13 color, four-color process printing on their same
14 polyethylene bags.

15 We also produce the paper handled shopping
16 bags, and we can do that in multiple print colors as
17 well.

18 COMMISSIONER MILLER: So it's the printing
19 aspect of it, perhaps, that makes yours -- you don't
20 make the t-shirt grocery kind of bag?

21 MR. BAUMANN: We do not make t-shirt and
22 grocery. We do make many of the other products that
23 you've referred to today.

24 COMMISSIONER MILLER: Okay. Now, and just -
25 - obviously, there are a lot of companies that we have

1 information from as U.S. producers that aren't
2 represented here today, but you all know your
3 competition. I mean, there are a lot of smaller
4 companies, correct, in the industry, Mr. Dorn? Are
5 they in -- where are they -- and the company
6 representatives I've invited to speak rather than you,
7 but they don't -- well, there's so much of this record
8 that's confidential, but they know who their
9 competitors are and what their industry is like.

10 I'd just like someone to sort of give me a
11 big picture on the industry in terms of what all these
12 small to mid-size companies do.

13 MR. DORN: It's my understanding that there
14 are a number of smaller companies that are sort of in
15 the middle of the continuum, that expand on the upper
16 t-shirt bags. Some of them come up pretty high, and
17 those would be companies like Roplast and Command. We
18 have affidavits in our prehearing brief from those two
19 companies talking about their range of products, and
20 we have some exhibits of their products.

21 COMMISSIONER MILLER: Fine. Right, and I
22 recognize you did. Mr. Everett provided some of
23 those. But does anybody just want to talk about the
24 industry structurally for me for a minute?

25 Mr. Varn?

1 MR. VARN: Rex Varn. My comment, from the
2 t-shirt end of the business, which you were talking to
3 me about, there's so many small competitors, what we
4 would view as mom and pops.

5 COMMISSIONER MILLER: At the t-shirt end?

6 MR. VARN: Yes, absolutely, absolutely.
7 There would be a number of competitors throughout the
8 country. Bill, I kind of look to you, probably fifty-
9 plus?

10 MR. SEANOR: I wouldn't go quite that far,
11 but there are quite a few small producers of --
12 certainly in the dozens.

13 COMMISSIONER MILLER: Okay. More so in that
14 part than in the more -- the slightly higher end bags?

15 MR. EVERETT: Ms. Miller, Tom Everett.
16 There are several trade journals that annually publish
17 rankings, estimates, in terms of the largest on down
18 to the smallest. Some cut it off at 100 and some cut
19 it off at around 50, in terms of our type of product.
20 So I'd say there's too many of them, I guess is what
21 I'd say.

22 COMMISSIONER MILLER: All right. All
23 right. Thank you. That's helpful. I just wanted to
24 make sure I had a picture on the range of companies
25 and the industry.

1 And then, if you could, talk a little bit
2 about what was going on in 2002, because I think, you
3 know, we have data for 2001 through '03. 2002 looks a
4 little different in there. I know that -- I think we
5 know that resin prices were particularly low in 2002,
6 and that may have affected the financial performance
7 of companies. Obviously, when your costs go down, I
8 assume you're doing better.

9 But just if the industry representatives
10 could talk about what they've seen over this time
11 frame, how the years differ and why. 2001 through
12 2003.

13 Mr. Varn?

14 MR. VARN: Yeah, I'll just speak in generic
15 terms. What I think happened in our case is as we saw
16 the imports coming in, and we turned a blind eye,
17 initially, and we dug in, in many cases, and we
18 refused to go to the very, very low pricing that we
19 were seeing that our customers were saying this is
20 where you need to be. And more or less tried to call
21 their bluff. And we lost. As it turned out, we
22 learned a lesson, and we lost volume. We lost
23 significant volume. So then we're back in the
24 marketplace trying to regain a lot of the volume that
25 we had lost, and now, as was touched on by John, we're

1 no longer the incumbent. So when you're not the
2 incumbent, at that point it's even harder to regain
3 volume. But that's what we've been working to do now,
4 is regain to try to get our plants back up and
5 running.

6 You know, we referenced in the 2002 time
7 period we had to shut down our Santa Maria plant. We
8 just didn't have business. And we spent a year trying
9 to regroup that. And so what you've seen is our
10 margins continue to decline, but we start to fill our
11 plants up with lower margin business at that stage,
12 because we realize now they're here, the imports are
13 here. Again, we just didn't think it would continue,
14 but it has.

15 COMMISSIONER MILLER: Okay, Mr. Seanor?

16 MR. SEANOR: I really don't have anything to
17 add to what Rex had to say. I think there was a
18 period that probably began in the second half of 2001
19 where we started to see many different retailers
20 entertaining the price offerings of imports. We had a
21 major event take place when Target stores in the fall
22 of 2001 took virtually all of their business offshore.

23 For a major retailer like Target to do that
24 at pricing which was substantially lower than was
25 available prior to that in the United States, it was a

1 wake up call to many retailers. We've fought with it
2 ever since then.

3 COMMISSIONER MILLER: Okay. I have further
4 questions, but I'll come back to them on the next
5 round to the degree my colleagues don't get there
6 first. I appreciate all of your answers. Thank you.

7 CHAIRMAN OKUN: Commissioner Koplan?

8 COMMISSIONER KOPLAN: Thank you, Madam
9 Chairman.

10 First I'd like to compliment the panel on
11 the nature of its presentation this morning. I found
12 it very helpful.

13 If I could, I'd like to start with a
14 followup to what Vice Chairman Hillman asked about the
15 ability to pass through resin cost increases to
16 customers.

17 Mr. Seanor, if I could come back to you for
18 a minute? In your direct testimony, you said that
19 prior to the import surges of the last three years you
20 were generally able to pass through resin cost
21 increases to your customers either through formal
22 resin pass through mechanisms or by informal
23 agreement.

24 I'm just curious. What happened at the
25 start of the period to prevent that from being done?

1 Weren't these same countries trading here then? Are
2 you saying that they were fairly traded prior to the
3 start of that period and this all started in 2001?
4 I'm curious. What caused the change suddenly?

5 MR. SEANOR: I'm not sure that I know what
6 really caused the change. Imports of polyethylene
7 retail carrier bags have been around for a number of
8 years.

9 COMMISSIONER KOPLAN: From these same
10 countries as well?

11 MR. SEANOR: From these same countries, from
12 countries throughout the world.

13 COMMISSIONER KOPLAN: Right.

14 MR. SEANOR: It seemed that we saw in that
15 time period the retailers becoming more interested in
16 product from offshore and found that those prices were
17 particularly attractive and were willing to get the
18 cost savings to place some or even all of their
19 business offshore.

20 COMMISSIONER KOPLAN: But the non-subject
21 countries were never really the big players here. It
22 was basically these three countries right along,
23 wasn't it?

24 MR. SEANOR: Yes.

25 COMMISSIONER KOPLAN: Okay. I was just

1 curious. If you think of something you'd like to add
2 post-hearing on that, I'd be interested.

3 Yes, Mr. Baumann?

4 MR. BAUMANN: There is a comment I would
5 like to make to this. As I mentioned, we produce
6 paper shopping bags and plastic shopping bags. The
7 paper roll stock price in this country has gone up.
8 There are price increases in the market.

9 We have issued price increase letters to our
10 customers for paper. The paper market is largely
11 absent the import competition. In contrast, we've
12 also had resin increases. We have not issued letters
13 into the marketplace for price increases to our
14 polyethylene retail customers, and the reason is
15 because we know in advance that those will not be
16 accepted. They won't be accepted with the import
17 pricing that exists in the marketplace.

18 Interestingly, we also do polyethylene
19 packaging for the food market, and I did want to
20 mention to you we do have a price increase out in that
21 market where we do not have foreign competition and do
22 not have the low-priced imports, so that I think gives
23 you the contrast of the impact in our business where
24 we have the import pricing.

25 COMMISSIONER KOPLAN: I appreciate that. If

1 I could stay with you for a second?

2 I was going to ask you. If resin prices are
3 not substantially lower in Asia, what advantage did
4 Ampac gain by opening the facility in Nanjing, China,
5 in late 2002?

6 MR. BAUMANN: Well, it was twofold. The
7 primary reason that we went to China, and we've gone
8 there in a fairly small way, was to begin to
9 understand whether or not we felt through that
10 learning process what are the economics coming in from
11 overseas China.

12 Frankly, we have, in my experience since
13 opening that plant, not seen justification for the
14 pricing that's in the U.S. market based on our
15 operating cost in our plant in China.

16 COMMISSIONER KOPLAN: Thank you.

17 MR. Bazbaz, if you are ultimately successful
18 in the 337 action, do you anticipate regaining some of
19 the business in Target that you've lost?

20 MR. BAZBAZ: Well, unfortunately when Target
21 made a decision to change to the tab bags, they did it
22 very quickly. I would hope that we would be able to
23 come back to them with our product because we believe
24 it's of value, but I'm not very confident we can.

25 COMMISSIONER KOPLAN: You're not optimistic?

1 MR. BAZBAZ: No.

2 COMMISSIONER KOPLAN: Thank you.

3 The Thai prehearing brief argues at page 1,
4 and I quote, "The U.S. industry also continues to fail
5 to acknowledge that the introduction of transparency
6 into the marketplace for PRCBs through use of the
7 internet is resulting and will continue to result in a
8 downward pressure on prices for our producers and that
9 such downward pressure would exist with or without the
10 presence of imports."

11 I note that our staff report has late data
12 in 2003 that shows that U.S. producers sold about 70
13 percent of their PRCBs to retailers increasingly over
14 the period by internet auction, going from four
15 percent in 2001 to 18 percent in 2003.

16 During that period, Thai sales to retailers
17 by the internet rose from zero in 2001 to 26 percent
18 in 2003, and China's sales to retailers rose from 0.1
19 percent in 2001 to three percent in 2003.

20 I can't discuss Malaysia's numbers because
21 they're BPI, but I'd like the domestic producers to
22 tell me how much the increased use of reverse internet
23 auctions contributed to the decline in prices and
24 profits.

25 If you make an unsuccessful bid in such an

1 auction, do you know what the lowest successful bid
2 was and who prevailed? I'm trying to figure out how I
3 am to separate the impact of the auction process from
4 the effect of subject imports on the domestic
5 industry.

6 Mr. Varn?

7 MR. VARN: I'll speak to that. Our view on
8 that it is really twofold. The first question you
9 were asking Bill, I think, and he touched on Target
10 converting to a 100 percent or almost 100 percent
11 imported product. That was when the shift took place
12 of when you started seeing what we view as the major
13 influx of imported product.

14 COMMISSIONER KOPLAN: In 2001?

15 MR. VARN: Yes.

16 MR. DORN: October of 2001.

17 MR. VARN: Right. That was, as we said, a
18 wake up call for us, but, more importantly, the entire
19 industry realized that happened.

20 Where do internet bids come into play? What
21 we view is that the reason why you've seen the pricing
22 decline in the numbers you quoted on the internet bid
23 percentages increasing is more the internet bid allows
24 easy access to the Thai, Malaysian and Chinese
25 producers whereas before you had to be a salesperson

1 in front of the customer to get the business.

2 I just think it's allowed easy access to a
3 large number of importers that have come in with what
4 we view as unfairly priced products coming in.

5 COMMISSIONER KOPLAN: Is that because of the
6 precertification process?

7 MR. VARN: It's not so much
8 precertification. I'm not sure how that's impacting
9 it as much as many times they'll open up a bid -- our
10 domestic customers will open up a bid -- to all
11 comers. Sometimes there might be as many as 20
12 bidders.

13 Do we know at the end of the day? Typically
14 we know where the price ended up. Depending on the
15 internet -- they've got different groups that do this.

16 COMMISSIONER KOPLAN: So you don't know who
17 prevails?

18 MR. VARN: You don't necessarily know who
19 prevails, but if you're the incumbent or someone that
20 has a pretty good relationship in that account, you
21 typically can find out after the fact who ended up --
22 who were the low bidders in that. It's primarily
23 driven by relationships.

24 Through the bid itself you won't see it
25 because, you know, you're A, B, C, D. You're not

1 Hilex, Vanguard, Thailand producer or whatever.

2 MR. DORN: There is a lot of evidence in the
3 preliminary investigation regarding that Target
4 internet auction. There all the bidders did have to
5 prequalify, so it all came down to price. Also,
6 Target has admitted that it handed that business to
7 China and Thailand.

8 COMMISSIONER KOPLAN: Thank you. I'm
9 curious. As far as the other producers are concerned,
10 are you generally able to find out who the successful
11 bidder was, even though you don't necessarily know as
12 the bidding process is going on?

13 MR. SEANOR: You certainly do not know
14 during the bidding process. You almost always are
15 able to determine who the low bidder was. You may not
16 know who the low three bidders were, but you can
17 probably find out who the low bidder was.

18 COMMISSIONER KOPLAN: Mr. Bazbaz?

19 MR. BAZBAZ: Yes. We certainly found out in
20 the case of Target and in the case of other bids we've
21 lost who the ultimate bidder was and what ultimate
22 price that won out.

23 COMMISSIONER KOPLAN: Mr. Baumann, you had
24 your hand up?

25 MR. BAUMANN: I very much would like to

1 contribute to this question. There has been
2 throughout the history of our industry sealed bids,
3 auctions conducted in a variety of ways. I don't
4 believe that the internet auction really changed what
5 pricing is in our industry. There has been
6 competitive bids throughout our industry. The
7 internet auction is a perhaps more up-to-date and
8 technologically advanced way to conduct that.

9 The real answer to why we have seen pricing
10 at the levels it is is the introduction of the import
11 competition and unjustifiably low pricing, in my
12 opinion.

13 COMMISSIONER KOPLAN: Mr. Everett?

14 MR. EVERETT: Yes.

15 COMMISSIONER KOPLAN: If you can respond
16 very briefly?

17 MR. EVERETT: In our case, we've had very
18 limited involvement. There just haven't been that
19 many occasions where they've resorted to the internet
20 approach.

21 COMMISSIONER KOPLAN: Thank you.

22 Thank you, Madam Chairman.

23 CHAIRMAN OKUN: Commissioner Lane?

24 COMMISSIONER LANE: Good morning, and thank
25 you for being here. I have a few questions.

1 First of all, I'm curious as to the bidding
2 process, but outside the internet reverse bidding how
3 do you get your customers and what sorts of
4 arrangements do you have with them? Are they
5 contractual for periods of time? Exactly how does the
6 industry work?

7 MR. VARN: Rex Varn. I'll speak to that.
8 It's a combination of things, unfortunately. We do
9 have a number of customers that are tied to one and
10 two year contracts. We also have a lot of handshake
11 agreements, and there are also those customers who
12 have no formal agreement at all and potentially every
13 quarter could change suppliers.

14 To say there's one generic way that we go to
15 market, no. No. It's very difficult to pin that
16 down.

17 COMMISSIONER LANE: And so is it the normal
18 industry standard that you will supply bags on a
19 quarterly basis for the customers' needs?

20 MR. VARN: I would say on average, as I
21 spoke earlier, I would say a one year timeframe is
22 probably the norm, the predominant way.

23 If you get a new piece of business,
24 typically you expect, because you commit capacity to
25 that customer. You expect to have that for at least a

1 year. You know, hopefully you try to go two years,
2 but one is probably the average that I would see in
3 the industry.

4 I'd kind of leave it to the group. That's
5 our particular customer base. We see about a year on
6 average.

7 COMMISSIONER LANE: Okay.

8 MR. SEANOR: This is Bill Seanor. I'd like
9 to just make a further comment on that point.

10 I would tend to say that there are probably
11 a larger percentage of our business which is not on
12 any type of contract, that exists on a relationship
13 that we have with the customer. It's on an order to
14 order basis.

15 Now, that doesn't mean that every order is
16 negotiated, but it means that we have the business
17 until something changes. I would say the majority of
18 our business, and even with some very large retailers,
19 we have our business conducted in just that fashion,
20 so no contracts at all.

21 COMMISSIONER LANE: Okay. Thank you.

22 The other question I had related to do all
23 of you manufacture your bags for specific customers,
24 or do you manufacture some just hoping to find
25 customers?

1 MR. SEANOR: This is Bill Seanor. I think
2 about 99½ percent of our product, and that's a
3 figurative term, not a literal term, but somewhere
4 close to that are made specifically for customers.

5 There is a market in the United States for
6 bags which are routinely called thank you bags. You
7 may find them at a small shop where you may shop on a
8 daily basis, a convenience store, whatever. There is
9 a market. We don't happen to participate extensively
10 in that market, so it's virtually all custom printed
11 merchandise.

12 COMMISSIONER LANE: Okay. Let's go now to
13 the issue of plastic bags versus paper bags. I know
14 that apparently the use of the word high end is from
15 the Respondents and not necessarily the Petitioners,
16 so I will use the word high end just because that
17 distinguishes between it and the t-shirt bags.

18 Has there been a real effort, and what has
19 been the result, of the industry trying to convince
20 retailers who like paper bags to switch to plastic
21 bags, and why do you think it hasn't succeeded?

22 MR. BAUMANN: I might be best to answer that
23 since we operate both paper and plastic.

24 There are through the process of our
25 customers, which are the major department stores and

1 specialty retail stores, they have designers, they
2 have graphic artists, they have marketing personnel
3 who make a determination as to the style of bag and
4 the print characteristics that they're looking for in
5 that. That's driven by their brand identification,
6 and it's driven by the personal input of the senior
7 management of the retailers.

8 Often times that decision is made by them
9 and then we're informed as to whether they're
10 interested in paper or poly. At times they will ask
11 about price points, and because there is significant
12 price points between poly and paper it further
13 distinguishes if they're on a particular budget which
14 category they might look to.

15 Does that answer your question?

16 COMMISSIONER LANE: Yes. Thank you.

17 MR. VARN: And as a predominantly t-shirt
18 manufacturer, we happen to consider our product a high
19 end bag.

20 COMMISSIONER LANE: Okay. Thank you.

21 One of you kept talking about oval die cast
22 bags. What is an oval die cast bag?

23 MR. EVERETT: Tom Everett. I'm not sure it
24 was me, but basically there may be one up there. If
25 you envision the top of the bag to have someplace to

1 put your hand to hold it, we cut out it can be an
2 oval, it can be a kidney shaped, but the type of a
3 handle that facilitates carrying it out of the store.

4 COMMISSIONER LANE: Okay. Thank you.

5 The manufacturing process between high end
6 bags and t-shirt bags. Explain the difference in the
7 process and the equipment that might be needed for
8 each one.

9 MR. VARN: We probably all can speak to
10 that. I'm Rex Varn. From the t-shirt bag machine
11 typically run at a higher speed. We run it at a much
12 faster speed than usually because the size of the bag
13 is smaller than the "high-end" bag. They usually are
14 one or two up at a time when we run three or four up
15 on the highest equipment as I said. The film, it's a
16 similar process where the film itself is made,
17 although the t-shirt bag is more high density and many
18 times which is a resin type, whereas the higher end is
19 a low density type bag, a little glossier.

20 The process outside of that, the printing
21 process is similar except they might do their printing
22 -- the high end with the eight color is predominantly
23 done offline, whereas we'll have a printing press
24 within the bag line itself, so while we're making the
25 bag we're also printing on it. They might treat that

1 as a separate line function.

2 Any other comments?

3 MR. BAUMANN: Yes. I think, Rex, you've
4 described it. I would just simplify it by saying it
5 is the same three processes in that there is a film
6 extrusion process, a printing process, and then you're
7 taking the printed roll and converting that into a
8 finished product, a finished bag.

9 Those three steps are consistent across the
10 entire spectrum of products that we've talked about
11 today.

12 MR. DORN: Commissioner Lane, in response to
13 your earlier question, at Exhibit B of our prehearing
14 brief if you look at the product brochure materials
15 from Ampac it gives examples of drawstring bags,
16 packed handle bags, soft loop bags, merchandise bags
17 and handle hold bags would be the die cut handle bags
18 that Mr. Everett was referring to.

19 COMMISSIONER LANE: Okay. Thank you.

20 Some retailers such as WalMart, Target, big
21 box stores, et cetera, are becoming larger and more
22 sophisticated in their purchase practices. What
23 effect has changes in their purchasing practices had
24 on your prices for PRCBs?

25 MR. SEANOR: This is Bill Seanor. It

1 certainly hasn't been good. The Target example of
2 2001 reflected a substantial reduction in price to
3 Target by what we believe are dumped imports.

4 The other major big box retailers are very
5 aggressive buyers. They are very astute buyers, and,
6 of course, they have used foreign competition from
7 China, Malaysia and Thailand in an effort to reduce
8 their prices.

9 MR. VARN: If I could comment on that? I
10 don't necessarily -- is she out of time?

11 CHAIRMAN OKUN: She is, but that's okay.

12 MR. VARN: Okay. I would not necessarily
13 say that it's more sophisticated and aggressive. It's
14 really where they have benefitted is the impact of
15 what we view as dumped imports. That's really what's
16 helped them in driving down their cost.

17 I don't necessarily see that things are much
18 more sophisticated other than the internet auction
19 potentially that allows you to reach more people, but
20 it's really the presence of the imports that's the
21 difference.

22 CHAIRMAN OKUN: Do we have someone in the
23 back row? Please.

24 MR. BAUMANN: I just wanted to weigh in on
25 this as well and reiterate what Bill and Rex just

1 said.

2 The purchasers 14 years ago, 16 years ago
3 when I got into this business, it hasn't changed.
4 They knew how to conduct their purchasing at that
5 time, and it's much the same today. That's always
6 been part of our industry.

7 COMMISSIONER LANE: Okay. Thank you.

8 CHAIRMAN OKUN: Commissioner Pearson?

9 COMMISSIONER PEARSON: Thank you, Madam
10 Chairman.

11 Welcome to the panel. It's good to have you
12 here. I am learning some things about your business
13 bit by bit.

14 I'd like to ask some questions about PET
15 resin. Is it correct to assume that PET resin is one
16 of your largest cost items?

17 MR. SEANOR: This is Bill Seanor. Do you
18 mean P-E-T resin, because that happens to be different
19 than most. I think P-E-T resin doesn't happen to be
20 used by any of the producers. We use polyethylene
21 resin, which is P-E resin, just for clarification
22 purposes.

23 COMMISSIONER PEARSON: Thank you. I would
24 like to talk then about PE resin, which is relevant to
25 your industry. My apologies. Like I said, I'm

1 learning here slowly. Another case is pointed out to
2 me.

3 Okay. PE resin. Is that one of your larger
4 input costs?

5 MR. SEANOR: This is Bill Seanor again.
6 Yes, it is our largest input cost, the largest
7 individual input cost.

8 COMMISSIONER PEARSON: Okay. How much price
9 variability do we normally see in the value of PE
10 resin from one part of the world to another?

11 MR. SEANOR: It has varied over the years.
12 It tends to be between probably parody to at certain
13 times we'll see Asian prices higher than we have in
14 the United States to a variance which would probably
15 average somewhere in the five to six cent a pound
16 range.

17 As I stated in my testimony, if the price
18 varies much more than that we're going to bring the
19 stuff in from offshore as we did during 2002 and 2003.
20 The price tended to widen. We started bringing
21 product in, but when we were all said and done through
22 the end of 2003 the analysis we had and our actual
23 purchase history was the fact it was virtual parody by
24 bringing offshore resin into the United States versus
25 buying from domestic sources.

1 COMMISSIONER PEARSON: Right. So you would
2 see the market working fairly well to keep prices
3 around the world from getting too far out of line with
4 each other?

5 MR. SEANOR: That's correct.

6 COMMISSIONER PEARSON: The market works in
7 such a way that the prices would tend to converge,
8 taking account of transportation, handling costs, that
9 sort of thing?

10 MR. SEANOR: That's correct.

11 COMMISSIONER PEARSON: Okay. Mr. Seanor, in
12 your prepared statement on page 4 you indicate that,
13 "Contrary to popular belief, prices of resin are not
14 highly correlated with the price of either natural gas
15 or petroleum."

16 Could you expand on that a little bit? Why
17 do some people think that there is a correlation, and
18 why do you think there isn't?

19 MR. SEANOR: Clearly most people think that
20 there is because polyethylene resin, PE resin, is made
21 from hydrocarbon feedstocks, either from crude oil or
22 natural gas.

23 However, the polyethylene and ethylene
24 business, which is the primary feedstock for
25 polyethylene, the ethylene, has its own market, its

1 own supply and demand factors which affect that market
2 and has resulted over the years of much, much less
3 correlation than the layman would think on the basis
4 of the analyses that we have done, consultants that we
5 have had, people who deal with the futures markets who
6 will tell you that the correlation just isn't there at
7 the level that people think it is.

8 COMMISSIONER PEARSON: Okay. Your next
9 sentence goes on to say that, "Neither I nor anyone
10 else can predict the future prices of natural gas or
11 petroleum."

12 I would concur that to actually predict the
13 price six months down the road is kind of a fool's
14 error. We really can't do it with any certainty, but
15 yet there are futures markets, which you just
16 mentioned, that do allow firms to exercise some degree
17 of control over their prices for those products.

18 My question here is is there any futures
19 market for PE resin, or has there been any effort to
20 develop one? My understanding is that it's a
21 commodity and that it might be the type of product for
22 which a futures market would be workable.

23 MR. SEANOR: Again, this is Bill Seanor.
24 Yes, there is a futures market. Unfortunately, it's a
25 very, very thin market. It's not a well developed

1 market and as a result has been I would say generally
2 ineffective.

3 COMMISSIONER PEARSON: Just not enough
4 liquidity to make it work?

5 MR. SEANOR: That's right. It just hasn't
6 worked. Why? All the reasons? I don't know. We've
7 had some major, major companies in it. Shell had a
8 major commodity trading office for polyethylenes prior
9 to their problems. Enron actually started in it. The
10 business never grew into something that was really
11 substantial.

12 COMMISSIONER PEARSON: Okay. So looking
13 forward then, it's difficult to see the industry being
14 able to exercise more control over input costs through
15 the use of these futures markets?

16 MR. VARN: Yes. Again, as Bill said, they
17 do exist, and you can hedge resin. We have hedged
18 resin before in small quantities. It's just not a
19 real effective practice that we have seen. Again,
20 longer term as we continue to look at it, if it grows
21 and can be more refined then it is something that we
22 can look at.

23 As we said earlier, years ago as resin moved
24 up we typically passed that on to our customers. As
25 resin moved down, we passed it down to our customers.

1 It's just been in the last couple years that we've
2 been unable to do that.

3 We shouldn't need a hedging mechanism. When
4 feedstocks go up, again we should pass that on.
5 That's been the history with this product up until the
6 last several years.

7 COMMISSIONER PEARSON: Okay. I mean, you
8 are in a position of making perhaps a 12 month
9 contract to deliver product to a customer, and you are
10 subject to the vagaries of what PE resin does between
11 now and then. I sense the squeeze there.

12 MR. VARN: Yes. Absolutely.

13 COMMISSIONER PEARSON: Okay. Respondents
14 have argued that resin costs have increased much more
15 sharply in Asia than in the United States, making
16 subject imports less competitive in the U.S. market
17 and thereby eliminating any threat from future
18 imports.

19 Could you please address this argument? I
20 know it was touched on earlier, but let's go back and
21 talk about it a little more if we could.

22 MR. VARN: We would disagree. Resin
23 pricing, we have found over time it's such a point in
24 time relationship that eventually supply/demand
25 dynamics come into play in the world resin market, as

1 Bill said.

2 To say there's a major run up over a period
3 of time in Asia that we haven't felt here, no. We
4 just wouldn't agree with that statement.

5 COMMISSIONER PEARSON: There are no
6 structural issues relating to petroleum refining in
7 Asia that might give them a better stream of
8 ethylenes, for instance, to work with and give them
9 just an advantage in cost?

10 I ask because I'm mindful of the trade type
11 specifications for reformulated gasolines in the
12 United States and the interactive things that refiners
13 have had to do in order to meet those requirements,
14 thus changing the stream of byproducts. The economics
15 there might be somewhat different in Asia.

16 Sorry for the long elaboration, but the
17 question is any structural differences in refining
18 around the world that would affect ethylene or
19 polyethylene costs long-term?

20 MR. VARN: My comment would be again the
21 Middle East is a large producer of resins, as well as
22 the United States, but in Asia, as an example, U.S.
23 resin during very loose demand situations in the
24 United States, U.S. resin will be sold in Asia, so the
25 exact same feedstock structure we have here, as well

1 as resin from the Middle East, could be sold into
2 Asia. Resin in Asia is sold in the United States.

3 It tends to move around where the supply/
4 demand dynamics come into play more importantly than
5 anything else.

6 COMMISSIONER PEARSON: Okay. So if I could
7 try to understand the Respondents' arguments in light
8 of what you're saying here, it's possible that at a
9 point in time there could be a price difference that
10 would favor Asian producers, but hang on a while. It
11 won't last. Something will change. Is that what
12 you're saying?

13 MR. SEANOR: You got the answer.

14 MR. VARN: Yes.

15 MR. SEANOR: That's right.

16 MR. VARN: That's true.

17 MR. SEANOR: You got it.

18 MR. DORN: The other part of the answer to
19 the argument is they're assuming, you know, last
20 summer resin costs were twice as high in Asia as in
21 the United States. They made that argument before the
22 staff at our staff conference. As the witnesses
23 pointed out then, it wasn't true.

24 The indices are good at showing movements in
25 price apparently, but they're not good in terms of

1 absolute prices. You cannot use the indices that the
2 other side was using to compare prices in Asia and the
3 United States at any point in time. That's what they
4 were trying to do.

5 COMMISSIONER PEARSON: Thank you very much.
6 My time has expired.

7 CHAIRMAN OKUN: Thank you, and thank you
8 again to all the witnesses. I've enjoyed listening to
9 your answers to questions that have been posed so far.

10 I want to talk a little bit about how we
11 evaluate the role of the domestic producers who
12 actually import the subject product here. I want to
13 ask a couple of questions, but I think, Mr.
14 Malashevich, you've been quiet. I think I want to
15 start with you just on this one point to make sure on
16 the argument.

17 One of the arguments made by Respondents
18 seems to be that everyone agrees there's growing
19 demand and that the imports are serving some part of
20 that demand, but they're not really hurting the
21 domestic industry because the domestic industry is
22 doing probably what it's always done. Things are
23 pretty stable, and these guys are just getting a
24 little more of that and so, therefore, it's not the
25 industry.

1 I'm clearly paraphrasing the argument, but
2 that's what I want to focus on. First on the demand
3 side of it, based on the record and the staff report
4 here, do you view this as a case where it's clear that
5 everyone agrees that it is demand that is growing
6 versus imports coming in?

7 That the apparent consumption number is a
8 good indicator of demand I guess is the question I
9 want to ask.

10 MR. MALASHEVICH: I would say yes.
11 Generally as we've looked at it, demand is driven by
12 retail sales. It's not cyclical. Retail sales have
13 been growing in this country for a number of years.

14 I've been quiet because it's tough to follow
15 the eloquence of the other witnesses.

16 CHAIRMAN OKUN: And I usually like to hear
17 from the industry, but I'm not particular. I just
18 wanted to make sure I understood.

19 Yes, Mr. Dorn?

20 MR. DORN: There is evidence in the
21 questionnaire responses from some of the domestic
22 producers about their own experience in terms of
23 growth in the market. This is an issue in the
24 preliminary investigation because at that time the
25 Respondents' main argument was that the reason the

1 industry wasn't doing well was that demand was going
2 down. It was a soft market, and that was the reason
3 that the industry wasn't doing well.

4 They seem to have abandoned that argument
5 now that the data has been collected on U.S.
6 consumption trends.

7 CHAIRMAN OKUN: Okay. I had seen those,
8 what the industry had to say, and that's why I was
9 just asking on this just generally what the record
10 tell us.

11 What about the role of the domestic
12 producers in terms of their imports? I think, Mr.
13 Seanor, I'm not sure if it was you who talked about
14 blending, the blending of domestic product and
15 imported product.

16 Tell me a little bit more about that and
17 just generally if you can tell me about that vis-a-vis
18 imports coming in from someone else and how you
19 compete with them.

20 MR. SEANOR: Well, over the last several
21 years, again going back to probably sometime around
22 2001, a so-called sales effort of blended programs was
23 developed where a producer, often a very small
24 producer in the United States or relatively small
25 producer, would go in and offer to a customer a very

1 aggressive price that was based upon buying product
2 from Asia, from one of the subject countries, and
3 supplementing that product here in the United States
4 addressing the issue of security of supply by the
5 customer.

6 That's the blended program that I was
7 speaking to made possible by basically the pricing of
8 the imported product.

9 CHAIRMAN OKUN: Okay. So when you refer to
10 security of supply, are you implying that you couldn't
11 have met that just from your domestic production, or
12 it was the pricing that drove the need to mix?

13 Also I just want to make sure. Are we
14 talking about the exact same product? In other words,
15 are you blending whatever it is you're selling?
16 You're bringing over the exact same product?

17 MR. SEANOR: I'm talking about the exact
18 same product.

19 CHAIRMAN OKUN: Okay.

20 MR. SEANOR: Fifty percent domestic, 50
21 percent, just as an example, imported product, a
22 blend, and being able to blend down the price with the
23 effort. That either came either from importers or
24 producers who were primarily devoted to importing
25 product into the United States.

1 CHAIRMAN OKUN: Okay. Mr. Dorn?

2 MR. DORN: API would be probably the best
3 example of that.

4 CHAIRMAN OKUN: Okay. I know in the record,
5 in the public record, and the data is obviously in the
6 confidential record, but the public data, so the 14 to
7 22 reporting firms reporting imports of PRCBs from
8 China, Malaysia or Thailand, although the U.S.
9 production accounts for the overwhelming bulk of their
10 sales in those cases.

11 I think if you can just help me out in the
12 post-hearing in looking at those numbers and those
13 firms, I think that would be helpful in terms of what
14 it means in relation to demand in this market.

15 MR. DORN: We certainly will.

16 CHAIRMAN OKUN: Okay. And then also on that
17 I would raise the other point, Mr. Dorn, for you, the
18 legal issue of whether, and obviously you can do this
19 in the post-hearing brief. The related party issue.

20 MR. DORN: We will address that as well.

21 Thank you.

22 CHAIRMAN OKUN: Okay. And then, Mr.
23 Malashevich, I'm not sure if this is you or Mr. Dorn,
24 but in terms of you referenced AUVs I think in your
25 remarks this morning, as well as in your prehearing

1 brief.

2 Should the Commission place much weight on
3 the AUVs with this type of product mix?

4 MR. DORN: We certainly think you should.
5 In terms of you have data both in units and in pounds.
6 We think that the units data is what you ought to be
7 using for price comparisons because at least the folks
8 at this table and the one behind me tell me that their
9 customers buy in terms of dollars per thousand units.
10 That's the convention in terms of going to the market.
11 For price comparisons, that's what you would look at.

12 In terms of average unit values for shipment
13 values, you can look at both the unit data and also
14 the per pound data, and I think you're going to see
15 that basically they're in parallel. They're mutually
16 reinforcing of each other in terms of the downward
17 trends.

18 CHAIRMAN OKUN: And do you think the AUV
19 data on the subject imports is equally instructive?

20 MR. DORN: Yes, I do.

21 CHAIRMAN OKUN: Okay. I just want to make
22 sure. Let me also in terms of there were a number of
23 questions that were posed regarding pricing, and I
24 heard a lot of the information that I wanted to touch
25 on there.

1 Can we talk a little bit more just about
2 Product 2? I know you've put emphasis on it in your
3 brief, and it is certainly a large volume product. Is
4 there anything else about the products that we are
5 looking at in these pricing series that you would
6 point us to when we're looking at it other than
7 Product 2 being a big product, lots of volume there?

8 MR. DORN: Well, I think if you ask the
9 people around this table is there any product that's
10 coming in from these three countries that is
11 overselling a U.S. product they'd say no and say it's
12 got to be underselling for all these products.

13 To the extent that there's not consistent
14 underselling for any of these individual products, the
15 problem has to be either the parameters are too broad
16 for the product comparisons or the parameters haven't
17 been closely followed by either domestic producers or
18 importers -- there's some problem with the data -- or
19 the coverage is too thin. We do have fairly thin
20 coverage, fairly small quantities being compared in a
21 couple of cases.

22 We went over this yesterday. If you go
23 around the table and ask them if they think there's
24 any of those categories where there's not underselling
25 they'd say no. There's got to be underselling based

1 upon their experience.

2 If you look at the totality of it, you know,
3 productivity is important just because that
4 constitutes a large volume of the price comparison
5 data.

6 CHAIRMAN OKUN: Okay. Mr. Bazbaz, let me go
7 to you. Commissioner Koplan had asked you about the
8 337 and the impact of a General Exclusion Order. I
9 don't want to get into the 337 side of this case, but
10 you had made a comment in your testimony regarding a
11 design around. You didn't say anything about that in
12 terms of responding to why you didn't think you'd get
13 the business back.

14 I was curious with regard to whether that
15 was part of the response, that there have been some
16 changes in products coming in.

17 MR. BAZBAZ: Well, the imports have come in
18 with the exact same design as we have. Unfortunately,
19 this is a design that they can change with a \$20 mold
20 change. They can go from one type of bag to the next
21 bag. They can even make a die cut with the same mold
22 change or a different design, but it's the same
23 principle.

24 It is very easy for anyone to get into this
25 type of bag or anyone to get out of it. It just

1 happens that it's the bag that is mostly used by the
2 groceries, the grocery stores for easy open, for speed
3 at the checkout counters, and the one that is used by
4 the major retailers in the United States. As we've
5 seen from Target, you know, they decided to just
6 change it.

7 CHAIRMAN OKUN: Okay. I see that my red
8 light is about to come on, so I will make this request
9 both to you, Mr. Dorn, and also to Respondents'
10 counsel for post-hearing, and that has to do with the
11 negligibility question regarding Malaysia. Obviously
12 a lot of the data is confidential.

13 The question I'm going to ask is if you look
14 in Footnote 12 in Section 4 of the report, page 4 of
15 4, the allegations have been that non-subject imports
16 from Malaysia are understated.

17 The staff will need to look at this data to
18 try to determine the negligibility, and I wanted to
19 allow all parties to comment on the appropriateness of
20 how we do the estimation of non-subject imports in the
21 absence of full data reporting from U.S. importers.

22 I realize that I'm going to have read your
23 briefs in terms of have there been full response
24 everyone agreed that would have been the best, but in
25 the absence of full data, and if we do not get any

1 supplemental data, if we used importers' calendar year
2 2003 data to approximate the ratio of non-subject
3 imports from Bee Lian to subject imports from Malaysia
4 and apply that ratio to imports reported by U.S.
5 importers for the period June 2002 to May 2003.

6 I will submit the question in writing to
7 make sure that you understand what we would be
8 considering and to comment on the reasonableness of
9 that or the appropriateness or to propose something
10 else if you think there's a better method.

11 MR. DORN: We'll certainly do that. I would
12 also note that since supplemental questionnaires have
13 been submitted to the importers -- I think they were
14 due on June 4 -- I'm sure that some of them will not
15 be in by the time of our post-hearing brief, but we
16 will address the data that's available to us at that
17 time. It might be the subject of a comment in our
18 final comments as well.

19 CHAIRMAN OKUN: I appreciate that.

20 Vice Chairman Hillman?

21 VICE CHAIRMAN HILLMAN: Thank you. The
22 Chairman has asked a number of these kind of legal
23 questions, and I would share her interest in seeing
24 the answers.

25 In terms of the related parties question, I

1 do think we need a formal comment on anyone that you
2 think should be viewed as a related party and then
3 whether or not appropriate circumstances do or do not
4 exist to exclude them. I think there are clearly a
5 number of companies out there that we need you to
6 weigh in on in terms of how we should treat them.

7 MR. DORN: We'll do that.

8 VICE CHAIRMAN HILLMAN: Okay. As well as
9 distinct eligibility issues.

10 I want to follow up just quickly a little
11 bit on the question that the Chairman was raising as
12 well on this issue in terms of how best do we look at
13 the data.

14 I think as you noted in your comments, this
15 has been a very difficult data exercise for the staff.
16 We have collected data in value terms because as a
17 general matter we are able to get value data for
18 everything that we've looked at. We've collected data
19 in some instances in unit terms and in some instances
20 in pounds, depending on who keeps their data that way.

21 In response to the Chairman, you suggested
22 that at least for price purposes you would suggest
23 that we should look at it in units rather than pounds.

24 MR. DORN: For the underselling/overselling
25 analysis, yes.

1 VICE CHAIRMAN HILLMAN: How about again for
2 the more broad issues of sort of market share, volume,
3 impact? Are we best looking at value data as that is
4 the most comprehensive, or would you suggest again
5 that we should be looking at either units or pounds?

6 MR. DORN: I wouldn't look at either in
7 isolation. I think the value information certainly
8 should be more reliable just in terms of shipments and
9 measuring market share.

10 I think probably the second most reliable
11 would be units because, as the prehearing report
12 notes, there were a number of imports in particular
13 that were unable to report their data in pounds.
14 Therefore, the staff had to make estimations for the
15 data in pounds. I would think that you'd look mostly
16 at value and units.

17 VICE CHAIRMAN HILLMAN: Okay. In response
18 to the Chairman, you indicated a good deal of comfort
19 with our looking at average unit values. I will say,
20 you know, there is a part of me that looks at this and
21 says when I see prices that are down in the \$10 per
22 1,000 bags and other prices that are in the \$1 per
23 bag, it suggests to me such a wide range in price that
24 as a general matter I'm always a little bit skeptical
25 about how much weight to place on average unit values

1 given that very wide range in prices.

2 I would ask you to make sure, and if there's
3 anything further you want to add in terms of why in an
4 instance like that we should place significant weight
5 on average unit values?

6 MR. DORN: We will take that opportunity to
7 look at the data more closely, but you can also look
8 at it on an individual producer basis and see the
9 declines where you have consistent product mix.

10 You can also look at the weighted average
11 value per unit or per pound in the nine price
12 comparison products and show a downward trend in
13 prices there.

14 I mean, from my perspective what I like
15 about the data is there's a lot of corroborating data,
16 you know. You can take multiple sources and arrive at
17 the same conclusion. I don't think it's going to be a
18 problem of, you know, do we pick this data or that
19 data. I think that you're going to see that most of
20 the data is fairly corroborative of each other.

21 VICE CHAIRMAN HILLMAN: Okay. Like I said,
22 if there's anything further you wanted to add just to
23 make sure we have your views on the most appropriate
24 data to be placing the most weight on, I'd appreciate
25 it.

1 Another issue that I think we're going to
2 need to address is that of the imports by the domestic
3 producers themselves of subject products and subject
4 countries.

5 I wondered if there's anything that you all
6 can say here or whether it needs to be kept
7 confidential in terms of the predominant type of bags
8 again that the domestic industry is importing itself.
9 Are they products that they don't make themselves, or
10 are they the same kind as Mr. Varn on the t-shirt end
11 or whoever? I mean, I'm not picking any company. I'm
12 just trying to understand the nature of the imports by
13 the domestic producer.

14 MR. DORN: I believe that the confidential
15 record would suggest that in most instances the
16 imports are the same types of bags, and the motivation
17 for importing is that the bags, rather than produced
18 in the United States, is the lower cost.

19 VICE CHAIRMAN HILLMAN: Okay. Again, it may
20 be something that you want to address further in the
21 post-hearing in terms of the implications of that for
22 our material injury or threat thereof by reason of
23 subject imports. If the domestic industry itself is
24 doing a fair amount of the importing, what does that
25 mean for us in this instance? If you could do that as

1 well?

2 You all had responded very clearly to
3 Commissioner Pearson's questions on this general issue
4 of resins, but obviously as you heard from the opening
5 statement from the Respondents a big part of their
6 argument is this issue of whatever may have happened
7 recently on a going forward basis because of two
8 things, changes in resin prices and, in their view,
9 changes rising in ocean shipping costs, that the Asian
10 producers are simply not going to be as cost
11 competitive coming into the market.

12 Now, you've touched on just sort of
13 generally this, but I didn't know whether there was
14 anything that you wanted to say more precisely on
15 either this issue of ocean shipping cost.

16 You've touched on this resin issue. I think
17 we've heard a lot on that, but whether there is --
18 first of all, I just want to make sure you all agree
19 factually that the changes in resin prices -- I think,
20 Mr. Seanor, in your testimony you suggested that they
21 may be close to parody today.

22 I'm just wanting to make sure that you're
23 agreeing factually that there has been a change in the
24 relative price levels between Asia and the U.S. on
25 resin leaving them, as Mr. Seanor had said, close to

1 parody today.

2 MR. DORN: It's my understanding the
3 direction of resin prices in the United States and in
4 Asia have been an upward trend in recent months.

5 Where we really disagree with the other side
6 is they're starting from a base of last summer when
7 they were saying that resin prices were twice as high
8 in Asia as in the United States. We fundamentally
9 disagree with that. It's a false statement.

10 While there has been some convergence, as I
11 understand it, in the last few months, they were only
12 five or six cents a pound different last summer, so
13 there's not much change. There have been times in the
14 past that the relative prices have gone up and down
15 and there have been fluctuations.

16 You know, if I were presented with these
17 facts right here on this poster in terms of what
18 happened the last three years, I'd be working real
19 hard on the other side to try to convince you that
20 something fundamentally has changed.

21 At the time of the preliminary staff
22 conference there was data on the record showing that
23 imports had surged in the first quarter of 2003.
24 Their argument then was well, that was a big surge
25 that's going to recede after the first quarter because

1 there's going to be a big hike in the cost of freight,
2 \$1,000 per container, beginning in early May of 2003,
3 so all that was happening in the first quarter is that
4 importers were trying to rush the product in in the
5 first quarter, and then once that's over with it will
6 recede.

7 They also said that there is a concern about
8 SARS and stock strikes, so it was all just a temporary
9 phenomenon sucking these imports in in the first
10 quarter, but don't worry. It's not going to happen
11 the rest of the year.

12 Your data in the prehearing report belie
13 that. The imports continued to come in at the same
14 rate in the rest of 2003. This is just their latest
15 ploy to try to get you to speculate as to something
16 changing in the future because they can't live with
17 the facts of the past.

18 If past is prologue they lose because these
19 data show the trends are all going in the direction of
20 increasing capacity, increasing exports to the United
21 States, increasing focus on the United States. Their
22 burden is to try to convince you that for some reason
23 all of a sudden that's going to change. I think it's
24 a burden they cannot satisfy.

25 VICE CHAIRMAN HILLMAN: I appreciate that

1 answer.

2 Let me go to one of the other arguments that
3 they raise, which goes to domestic capacity, U.S.
4 capacity, and the argument that to the extent that
5 they see negative numbers out there, if you will,
6 there are declines in capacity utilization which they
7 then attribute to increases in capacity on the part of
8 the domestic industry.

9 Obviously there's some issues here in terms
10 of the data and whether or not there are companies
11 that have gone out of business, creating to some
12 degree what we would call survivor bias in our data,
13 but let me go, if I could, to the industry and try to
14 get your sense of whether there is a perception of
15 significantly increased capacity, capacity to produce
16 the product among the domestic industry and/or
17 potential for significantly increased capacity in the
18 near term.

19 MR. VARN: Yes. Rex Varn. I'll speak to
20 that. As we view it, I'd love nothing more than to
21 add capacity in this marketplace. We're looking at
22 that. We intend to add capacity at some point
23 provided we're successful with this effort because we
24 feel that if dumped imports are no longer present in
25 the United States then there's an opportunity for us

1 to grow. I think I made that in my opening statement.

2 We're going to do that. I mean, we fully
3 intend to grow our position in the United States to
4 try to regain what we had lost. Any incremental
5 capacity increase that anybody might show I would say
6 is probably more driven, or in our case speaking for
7 Hilex is just some internal productivity improvements,
8 but no additional capacity having been added to date.

9 Again having said that, our intent is to
10 open up a new operation and grow in the United States
11 to regain the market share we've since lost.

12 VICE CHAIRMAN HILLMAN: Okay. Anyone else?
13 Again, I'm just trying to understand whether it's a
14 factually true statement that the domestic industry
15 has added capacity and, if so, why.

16 Actually, I just saw the red light has come
17 on. Let me come back to this. Thank you, Mr. Dorn.

18 CHAIRMAN OKUN: Commissioner Miller?

19 COMMISSIONER MILLER: Thank you, Madam
20 Chairman.

21 It actually was going to be my first and
22 nearly last question, so we don't have to come back to
23 it. I would like to hear any other comments because
24 our data does actually and the staff reports indicates
25 that the data that we have currently does show an

1 increase in capacity from 2000 to 2003.

2 Mr. Varn, your testimony sort of suggests
3 well, that's kind of not your perception of what's
4 been going on. You would have thought it would have
5 been incremental.

6 Anybody else want to speak to why would
7 producers have increased capacity in the last three
8 years in the market conditions that you all are
9 describing?

10 Mr. Baumann? I'm sorry. Could you not hear
11 me?

12 MR. BAUMANN: Yes. Could you repeat the
13 question, please?

14 COMMISSIONER MILLER: Sure. It really is
15 asking you all to elaborate on why companies in this
16 industry would have increased capacity in the last
17 three years, given the market conditions that you have
18 been describing.

19 As Mr. Varn has basically said, I haven't
20 seen it as a market where in the past one would have
21 increased capacity. You'd like to in the future.

22 I recognize the details of the information
23 that we have are confidential. The issue or the point
24 that there is a capacity increase in our data is not
25 confidential, so in that sense I can ask the companies

1 to address it. The answer may be I don't really see
2 it.

3 Anybody else?

4 MR. BAUMANN: I'm not in a position to speak
5 for the industry, but I know with the companies that I
6 compete with I'm not aware of any of them that have
7 increased capacity in recent times.

8 COMMISSIONER MILLER: Okay.

9 MR. EVERETT: Tom Everett.

10 COMMISSIONER MILLER: Mr. Everett? Yes?

11 MR. EVERETT: Yes. In our case, we
12 certainly have not increased capacity. Our existing
13 capacity is significantly less utilized because of
14 lost sales, so we have no reason to add any capacity
15 within our company.

16 COMMISSIONER MILLER: Okay. Mr. Seanor,
17 anything you want to address?

18 MR. SEANOR: I'm a little perplexed at the
19 question, to tell you the truth, because we have not
20 increased. We have had no expansion of facilities.

21 COMMISSIONER MILLER: Okay. Mr. Bazbaz, any
22 additional comments?

23 MR. BAZBAZ: We have not increased capacity
24 either. I'm not sure if I understood the question.
25 If somebody would have increased the capacity, what

1 would that mean to --

2 COMMISSIONER MILLER: Or why would they have
3 done it? Was it a market that you could help us
4 understand why there would have been capacity
5 increases?

6 MR. BAZBAZ: Not in this period of time.

7 COMMISSIONER MILLER: Okay.

8 MR. BAZBAZ: Unless it was to circumvent an
9 imposition of duties that some foreign supplier might
10 have the possibility of moving capacity into the
11 United States, but I just can't speculate on that.

12 COMMISSIONER MILLER: Okay.

13 MR. DORN: API, for example, they put in
14 their prehearing brief some travel documentation
15 proving the fact that a visit was made to Howard
16 County, Maryland, in May of 2003, which would have
17 been on the eve of the filing of our petition in June
18 of 2003.

19 I assume that they're going to argue this
20 afternoon that see, we were going to build a plant
21 before we knew that our Thai operations were going to
22 be hit by high duties that was unrelated to the
23 antidumping petition.

24 That's not our belief. We think that it was
25 related to the antidumping petition. This group has

1 been talking about the antidumping petition going back
2 to November of 2002 before I ever met them. There
3 were rumors in the industry about this case.

4 They didn't announce the fact that they were
5 going to build a plant in Howard County, Maryland,
6 until January and February of this year is the first
7 time they went public with it, and we think that their
8 focus was on building up their Thai operation until
9 this antidumping case began. The filing of this case
10 and the preliminary affirmative determination of this
11 Commission was a significant motivation for them to
12 open a new plant in Howard County, Maryland.

13 I would also say that to the extent there
14 was any growth in capacity from 2001 to 2003, I don't
15 know. I can't use adjectives, I guess, without
16 violating APO, but I would look at that increase in
17 relation to the increase in the market.

18 Our point is the statute says one of the
19 factors you're supposed to look at is the impact of
20 imports on the ability of the domestic industry to
21 grow. This industry should have increased capacity in
22 line with consumption increases from 2001 to 2003, and
23 it was unable to do that.

24 The final point I would note is that there
25 are a couple of producers that we note at page 54 of

1 our prehearing brief for which you do not have data
2 who have gone out of business, so there is some
3 survivor bias in the data.

4 COMMISSIONER MILLER: Okay. I appreciate
5 that. I think we know it's going to be raised as an
6 issue by the Respondents. It was in Mr. deKieffer's
7 opening statement, so I wanted you all to have an
8 opportunity to speak to it.

9 MR. DORN: We appreciate that.

10 COMMISSIONER MILLER: Let's see. There was
11 some discussion earlier with Commissioner Lane about
12 the paper versus plastic competition. I guess I want
13 to ask another paper versus plastic question that
14 hasn't really been floating around here, but it
15 strikes me that it would be some kind of condition of
16 competition in your industry.

17 When I go to the grocery, at least the place
18 I go the most often, I'm still always asked that
19 question, paper or plastic. Some places I go don't
20 ask the question anymore.

21 Tell me. What's the competition like
22 between paper and plastic when it comes to the t-shirt
23 bags and the grocery store bags? Isn't there still
24 some competition at that level as well?

25 MR. SEANOR: There's really not any price

1 competition. The price level for paper bags is
2 probably three to five times the price of plastic
3 bags, so it isn't really -- it doesn't really compete
4 on a price basis.

5 It's obviously the choice of a retailer if
6 he wants to offer his customers a paper bag for
7 whatever reason, but it really is not price
8 competition.

9 MR. DORN: Commissioner Miller, you shop at
10 very high end markets would be my comment.

11 COMMISSIONER MILLER: Well, sometimes yes
12 and sometimes no.

13 MR. VARN: And my comment would be very
14 similar to Bill's in that years ago when we first
15 converted paper to plastic they were a rival, but
16 today probably 90 percent -- our numbers would say 90
17 percent of the marketplace plus have gone to plastic
18 grocery bags, as opposed to the paper bags, and it's
19 driven primarily by what Bill said.

20 The economics are such -- not only the
21 economics of the cost of the bag, but space savings,
22 you know, seven truckloads for one truckload of
23 plastic, all the storage that we used years ago to
24 convert this marketplace, but there's just such a huge
25 economic difference that we are not competing against

1 paper on a day in/day out basis at all.

2 MR. NARKIN: Commissioner Miller, if I could
3 just add to that briefly? With the kind of retailers
4 that you're talking about, I think possibly with no
5 exceptions, it's not a question of competition between
6 paper and plastic.

7 The decision they make is not will I have
8 plastic bags or whether I have paper bags. As the
9 gentleman from Vanguard suggested, the decision they
10 make, some retailers, is am I willing to provide my
11 customers paper as well as plastic and provide the
12 cost associated with that, but you will not find
13 people, I don't think -- the industry witnesses can
14 correct me if I'm wrong -- who are now using plastic
15 and contemplating the possibility of replacing it with
16 paper. That just doesn't happen.

17 COMMISSIONER MILLER: Okay. I appreciate
18 that. I am also interested in the legal issues that
19 you've been asked to brief regarding negligibility and
20 the related party issues, the related party issue in
21 particular.

22 I think in all my years here I still
23 struggle with how we address the related party issue
24 in our cases sometimes. I mean, I think I understand
25 the congressional reasoning of why the provision is

1 there. It's there basically so that companies that
2 have made a choice to import and including them in the
3 industry might result in the industry not receiving
4 relief. That's why it's there, but we I think still
5 struggle with how we exactly analyze that in our
6 cases.

7 To the extent the good counsel here look to
8 that issue, you're welcome to either comment on it now
9 if you have any thoughts. Obviously we want to see
10 your analysis company by company in the post-hearing
11 submission.

12 MR. DORN: Very briefly, we did make an
13 issue out of this with respect to one particular
14 company in the preliminary investigation, and the
15 Commission was split on how to address that individual
16 company as to whether or not it was a related party
17 and it should stay or be excluded.

18 It was not outcome determinative with
19 respect to the votes of individual Commissioners in
20 the preliminary investigation. In fact, in the final
21 investigation I'm largely indifferent to the issue,
22 but we will address it.

23 COMMISSIONER MILLER: Yes. Well, you're
24 indifferent because you may not believe its outcome
25 determinative. We still have to figure it out and use

1 some logical, good legal principles that will apply in
2 cases where it may have --

3 MR. DORN: We'll do our best to assist you.

4 COMMISSIONER MILLER: Thank you.

5 CHAIRMAN OKUN: Commissioner Koplan?

6 COMMISSIONER KOPLAN: Thank you, Madam
7 Chairman.

8 Since I'm tired of that split, I do have an
9 interest, a continuing interest, particularly because
10 at the time of the prelim both Vice Chairman Hillman
11 and I said we were going to explore this further at
12 the time of the final, so I'd like you to explore it
13 further with regard to API in your post-hearing
14 submission.

15 As you know, the two of us did not vote to
16 exclude it or did not exclude them at the time, but
17 I'd appreciate that.

18 Mr. Varn, both in the prehearing brief and
19 in your direct testimony you made reference to the
20 July 2002 closing by Sonoco of the plant in Santa
21 Maria, California, and that the Department of Labor
22 certified 100 former workers at the plant for trade
23 adjustment assistance based on its conclusion that
24 competition from the increased imports contributed
25 importantly to declines in Sonoco's sales and to the

1 resulting layoffs.

2 Will you provide for purposes of the post-
3 hearing the documentation that accompanied that so
4 that we have that as part of our record?

5 MR. VARN: Yes.

6 COMMISSIONER KOPLAN: Thank you.

7 MR. DORN: That was in our petition at
8 Exhibit 42. We'll replicate that, which is the
9 decision by the Department of Labor. We failed to
10 attach that to our prehearing brief.

11 COMMISSIONER KOPLAN: I knew you had that
12 exhibit, but if you can -- what did you say you would
13 do?

14 MR. DORN: Well, in our petition we had the
15 Department of Labor certification --

16 COMMISSIONER KOPLAN: Right.

17 MR. DORN: -- for that closed plant.

18 COMMISSIONER KOPLAN: Right.

19 MR. DORN: We'll certainly replicate that
20 for our post-hearing brief. Was there something else
21 that you were --

22 COMMISSIONER KOPLAN: What I was trying to
23 understand, and I'd have to go back and look, but I
24 was interested in the documentation that the company
25 submitted to the Department of Labor. Is that a part

1 of that exhibit?

2 MR. DORN: The application itself is not,
3 but we'll submit the application. I understand the
4 question. Thank you.

5 COMMISSIONER KOPLAN: Okay. Thank you.
6 Thank you for helping me clarify it.

7 This is a followup to a question I asked on
8 my first round, and that is you always argued in your
9 prehearing brief at pages 26 and 27 that once Target,
10 the second largest retailer, substituted Chinese and
11 Thai imports for domestic product in that 2001
12 internet reverse auction, subject imports' credibility
13 rose instantly and dramatically and that dumped
14 imports became a safe choice and an easy way to drive
15 down prices. You cited other large retailers, whose
16 identity is BPI, as having conducted internet reverse
17 auctions in early 2002.

18 In my first round I asked the question
19 whether you all know when you lose one of these
20 internet auction bids who the low bidder was, and I
21 think with the exception of Mr. Everett the other four
22 people said we might not know what all the bids were,
23 but by word of mouth you're able to find out who the
24 low bidder is. That's my recollection.

25 MR. VARN: If I could interrupt. My comment

1 would have been more driven. Typically we're the
2 incumbent. We'll be able to figure that out because
3 you have a pretty good relationship.

4 If we're just a participant sometimes on the
5 outside looking in as well it's not always that easy
6 to get.

7 COMMISSIONER KOPLAN: Okay. So you might or
8 you might not, depending on whether you're the
9 incumbent?

10 MR. VARN: That's true.

11 COMMISSIONER KOPLAN: Okay. My request then
12 is I know that you have attributed the
13 prequalification process as having eliminated all
14 factors of price as the reason for sales lost in other
15 internet reverse auctions conducted by retailers other
16 than Target.

17 I would like for purposes of the post-
18 hearing if you could identify for me any instances
19 where you have been able to identify who the low
20 bidder was that any of you have lost out to during the
21 period of investigation, what kind of money was
22 involved. In other words, the details of that
23 particular auction.

24 If any of you can do that for me, I would
25 appreciate your quantifying how much the subsequent

1 subject imports was able to get it for vis-a-vis your
2 own bid.

3 MR. DORN: We have some of the data in the
4 answers to the questionnaire, and we will try to pull
5 that together in a more user friendly form for your
6 review.

7 COMMISSIONER KOPLAN: With as much detail as
8 you can provide.

9 MR. DORN: Certainly.

10 COMMISSIONER KOPLAN: That would be helpful.

11 This is a followup to Vice Chairman
12 Hillman's question. The Thai prehearing brief at page
13 8 alleges that shipping rates between Asia and North
14 America rose by an average of 26 percent in the fourth
15 quarter of 2003 and are forecast to increase by at
16 least another 10 percent in 2004. The prices for the
17 containers used to transport PRCBs rose by almost 50
18 percent in the last five months. I know you all
19 referenced the Chinese Respondents in response to the
20 question.

21 My question is do long-term contracts
22 typically allow for unexpected changes in
23 transportation costs?

24 MR. VARN: My thought on that would be
25 typically when we have a long-term contract that's

1 tied, as we said, that 50 percent of it is tied to a
2 resin escalator, that's usually the primary one, the
3 primary mechanism having --

4 COMMISSIONER KOPLAN: What about with
5 shipping rates?

6 MR. VARN: Having said that, my experience
7 would not -- we would not have had that at all. It
8 would strictly be based on resin movement up and down.

9 COMMISSIONER KOPLAN: Strictly resin?

10 MR. VARN: Yes.

11 COMMISSIONER KOPLAN: Mr. Seanor?

12 MR. SEANOR: I would concur. Most of the
13 contracts that have a price escalation are a price
14 escalation due to resin cost, not resin cost, labor,
15 energy, other energy costs.

16 COMMISSIONER KOPLAN: Okay. Mr. Bazbaz?

17 MR. BAZBAZ: Yes. Our variation and our
18 ability to variate the prices our strictly on the
19 resin. When we have contracts, we have mostly
20 contracts to supply an estimated amount of quantity to
21 the customer, but the prices are negotiated on a
22 monthly or quarterly basis according to the changes in
23 price indexes of the resin.

24 COMMISSIONER KOPLAN: Thank you.

25 Mr. Baumann?

1 MR. BAUMANN: We're very consistent with the
2 other group. What I would mention in this as well is
3 that there are opportunities to address other costs at
4 times outside of the escalator and deescalator for
5 resin. That can occur, but typically it's not written
6 into the contract.

7 COMMISSIONER KOPLAN: And Mr. Everett?

8 MR. EVERETT: Our experience is consistent
9 with the rest of the group.

10 COMMISSIONER KOPLAN: Thank you.

11 I have one last question. Are any domestic
12 PRBC producers vertically back integrated to resin
13 production? Mr. Varn, you seem to be nodding your
14 head yes.

15 MR. VARN: I want to make sure I understand
16 the question. Do we have a fully integrated?

17 COMMISSIONER KOPLAN: Yes.

18 MR. VARN: We have one competitor. I'm just
19 trying to make sure I get this correct.

20 MR. DORN: Can we address that? I have
21 confidential information with respect to the company
22 he's supposed to talk about, and I don't think there
23 is any vertical integration.

24 COMMISSIONER KOPLAN: Okay. If you could
25 address that in the post-hearing, that would be good.

1 At the same time, if it is the case that there is a
2 company that is vertically integrated that way, could
3 you also elaborate on what the economic advantage --
4 once I get your attention back.

5 MR. VARN: I think it would be appropriate
6 for Mr. Dorn to speak at a later point on that --

7 COMMISSIONER KOPLAN: Okay.

8 MR. VARN: -- because he was referring to
9 the same company that I was going to speak to.

10 COMMISSIONER KOPLAN: I thought he might be.
11 If you could also discuss the economic advantage of
12 being vertically integrated at that time?

13 With that, I have no further questions.
14 Thank you all very much.

15 CHAIRMAN OKUN: Commissioner Lane?

16 COMMISSIONER LANE: I want to go back to Mr.
17 Seanor and talk about your loss to Target. I mean the
18 Target account. Is there any expectation that you're
19 going to get them back as a customer?

20 MR. SEANOR: Yes.

21 COMMISSIONER LANE: That's good.

22 MR. SEANOR: Would you like me to elaborate
23 on that?

24 COMMISSIONER LANE: Yes, I would.

25 MR. SEANOR: Due largely to our belief in

1 the import duties coming from China, we believe that
2 Target has the intention of discontinuing supply from
3 the Chinese producer. We're hopeful that we will
4 regain market share at that account.

5 COMMISSIONER LANE: And when are you going
6 to have this opportunity perhaps?

7 MR. SEANOR: We have the opportunity now.
8 We always maintained a small position as the so-called
9 exclusive domestic supplier to Target to a very small
10 degree, but we have expanded our position.

11 COMMISSIONER LANE: Okay. I'm not exactly
12 sure how to ask this question, and I'm not exactly
13 sure if you're allowed to answer it, but when you lost
14 the account do you know? Was it by very much?

15 MR. SEANOR: A great deal. A lot.

16 COMMISSIONER LANE: Oh, okay. Has the
17 industry itself identified other ways other than what
18 you have already done to cut costs and try to deal
19 with lowering your cost of production and bringing the
20 price of your bags down other than what you've already
21 done?

22 MR. SEANOR: As I stated in my prepared
23 statement, we have basically retooled our company in
24 17 years three times to stay at the leading edge of
25 production cost. We believe that we're doing what is

1 feasible in the industry, within the industry, to be
2 cost competitive.

3 To answer your question, I think we have
4 done what we believe we can do as far as what is
5 technologically available to be cost competitive
6 within the industry.

7 COMMISSIONER LANE: And in looking at your
8 operation, you have not been able to identify any
9 other areas other than what you've already done to cut
10 costs?

11 MR. SEANOR: From a practical standpoint,
12 cost reduction is an ongoing situation. There's
13 always efforts going on to produce better and higher
14 efficiencies and at lower costs, but nothing that
15 would dramatically lower our cost of production.

16 COMMISSIONER LANE: Okay. Anybody else?
17 Mr. Everett, I see you shaking your head.

18 MR. EVERETT: I was shaking my head in
19 concurrence.

20 COMMISSIONER LANE: Okay. Thank you.

21 MR. VARN: Yes. And I can speak for Hilex.
22 Even as I said in my discussion, we put \$15 million in
23 to upgrade, and anything at this point now that's on
24 our radar screen is more incremental.

25 Any leapfrog type technologies out there,

1 even meeting with equipment manufacturers, I just
2 don't see anything on the horizon. That's frustrating
3 to us, but we did see some significant reductions over
4 the last several years, and now we're kind of beating
5 our head against the wall trying to find some pennies
6 at this point.

7 COMMISSIONER LANE: And that leads me to my
8 next question. How would you characterize the amount
9 of capitalization you have done over the years? Would
10 you say it's average, or is it lower than what you
11 would expect? What are your expectations in the
12 future? I meant capital expenditures.

13 MR. SEANOR: As again stated in my comments,
14 for the last three years our capital expenditures have
15 been drastically reduced simply because we didn't need
16 additional capacities. We couldn't justify those
17 expenditures apart from those expenditures which would
18 be related to cost reduction activities.

19 We would certainly love to continue to
20 expand our business and add capital as long as we can
21 have a reasonable prospect of getting a decent return
22 on those investments.

23 COMMISSIONER LANE: Okay. My last question
24 is I would like for somebody to explain to me why
25 paper bags are so much more expensive to produce than

1 plastic bags.

2 MR. SEANOR: You can see, nobody is leaping
3 forward.

4 COMMISSIONER LANE: I know, and so I guess
5 you're the likely target, right?

6 MR. SEANOR: We've been in this business for
7 a long time, but, as you well know, 20 years ago the
8 majority of the bags in the United States were a paper
9 bag which had been around for a hundred years.

10 When we first got into the business with
11 another company, the thickness of the bag to do the
12 job that was required in the supermarket industry was
13 probably what I would describe as about a mil and a
14 quarter thick, and it was priced competitively with a
15 paper bag that was a little over two cents, 2½ cents
16 apiece, and the plastic bag was about the same.

17 Today that same plastic bag, instead of
18 being 1.25 mils, is probably a half of a mil, so the
19 reduction in material cost has been dramatic. At the
20 same time, the industry grew and the productivity
21 within the industry grew because you had an
22 opportunity to mechanize the production of plastic
23 bags.

24 At a certain point in time in probably the
25 late 1980s, the curve, the production cost curve,

1 crossed with plastic going down and paper increasing.
2 Increased costs of production of paper were faced with
3 better raw materials in the plastics area, better
4 strength to weight ratio in the plastic area, and
5 simply paper is a commodity for making low end, as
6 we're calling it, grocery bags cease to be competitive
7 so that, as Mr. Varn stated, somewhere north of 90
8 percent of the product in the United States is plastic
9 versus paper simply because those economics have
10 continued to diverge.

11 Of course, the prices due primarily to the
12 dumped imports have continued to fall in the United
13 States in the plastics area.

14 MR. VARN: Just to just amplify a little
15 more, when I mentioned seven truckloads to one
16 truckload, to have comparable strength properties a
17 paper bag is about seven times as thick, so seven
18 times more raw material. In both cases, raw material
19 is the primary cost component or the largest cost
20 component.

21 COMMISSIONER LANE: Okay. I was wrong. I
22 did have another question. What is the relative
23 ratio, if you're allowed to tell me this, between what
24 you would call the pure T-shirt bag, as opposed to the
25 high-end plastic bag, as far as the market?

1 MR. DORN: Let me just mention that in the
2 pre-hearing report, using the definition of high-end
3 PRCBs that was used to collect the data, there is an
4 actual figure for what the high-end bags constitute,
5 in relation to the total. So, there is an exact
6 answer to your question in the pre-hearing report,
7 which is probably going to be better than the
8 speculation of any of these witnesses.

9 COMMISSIONER LANE: Okay. So, it's in the
10 report; I just forgot. Okay, thank you. No more
11 question.

12 CHAIRMAN OKUN: Commissioner Pearson?

13 COMMISSIONER PEARSON: Respondents have
14 argued that even if subject imports to the United
15 States were to contract due to the imposition of an
16 antidumping duty, that the current importers could
17 readily source the vast majority of their supplies
18 from other non-subject foreign sources. Do you agree
19 with that statement? Mr. Baumann?

20 MR. BAUMANN: I do not. I have, personally,
21 visited some of the other countries and we have
22 representatives of our company that have traveled
23 around and there are infrastructure issues. There's
24 political instability in some of these other
25 countries. And although they may be able to begin, I

1 think there are extenuating economic issues,
2 extenuating political issues, social issues, that our
3 customers are not interested in being involved in.
4 There's, also, fundamental infrastructure, providing
5 electricity to operate the equipment, to produce some
6 of these products. So, I think that there is -- to a
7 certain extent, you can claim that; but, I think,
8 largely, it is very difficult to move equipment and to
9 move the sourcing to other countries that are less
10 developed.

11 COMMISSIONER PEARSON: Okay. But, there
12 already are non-subject imports coming into the United
13 States on an ongoing basis and you're saying, in part,
14 that those firms would be unlikely to be able to
15 expand?

16 MR. BAUMANN: I think, Joe, you have
17 information on the level of that activity and I think
18 it pales in comparison to some of the countries that
19 we've talked about here.

20 MR. DORN: There's, also, information in the
21 confidential pre-hearing report regarding the -- if
22 you just look at the trends of the non-subject imports
23 versus subject imports, I think that would be
24 illustrative and, also, the relative size of the
25 imports coming in from non-subject imports versus

1 subject imports. And, frankly, when I was hired, we
2 looked at where there any other countries that you
3 ought to include in this petition and we looked and,
4 no, there weren't. We couldn't even pass the
5 negligibility test.

6 COMMISSIONER PEARSON: Okay. Respondents,
7 also, state that the bulk of the growth in subject
8 imports is attributable to an increase in imports from
9 Thailand. They maintain that an examination of the
10 Commission underselling and overselling data would
11 suggest that imports from Thailand have not been a
12 significant factor in the U.S. market, in terms of
13 their effect on price. You may want to address this
14 in the post-hearing, but if you have any comments to
15 make now, I would be glad to hear them.

16 MR. DORN: From a legal perspective, we'll
17 certainly address the confidential data in our post-
18 hearing brief. But, I would ask these gentlemen at
19 the table if they think imports from Thailand had any
20 impact on price in the United States.

21 MR. SEANOR: Most definitely. Most of the
22 product coming in to Target is coming from Thailand.

23 MR. VARN: I would agree with that.

24 COMMISSIONER PEARSON: Okay. My last
25 question: Respondents maintain that the quality of

1 Thai bags is superior to that of the domestic ones. I
2 know we've talked about the quality a little earlier,
3 but they go into more detail here. I'd thought I'd
4 bounce this off you. They report that domestic
5 producers employ flexographic process using water
6 bastings, whereas Thai producers typically employ the
7 rotogravure process -- pardon my pronunciation --
8 using solvent bastings. Could you address this? Are
9 there some material differences, in terms of how the
10 color gets put on in the United States versus
11 Thailand?

12 MR. EVERETT: Tom Everett. I can certainly
13 attempt. In our case, we do print the majority of our
14 bags using the same solvent bastings that they
15 reference. We do use some wire baste, as well. I
16 think their statement on rotogravure versus
17 flexographic may have been accurate 10 years ago, but
18 the technology of flexographic has improved so much
19 that you could probably have 99 out of 100 people
20 looking at product up there and have them say which
21 one is roto versus flexo and they would have a very
22 difficult time of differentiating. So, I would
23 disagree with that allegation.

24 MR. NARKIN: Commissioner Pearson, if I
25 could just add to that. This is information that I'm

1 sure is in your mind anyway, but I think it's worth
2 discussing briefly here. If you look at page 2-13 of
3 the public version of the staff report, it reports the
4 responses of purchasers to the question that the
5 Commission asked about various factors, including
6 product quality: was the U.S. superior; was the U.S.
7 inferior; or were the products comparable. If you
8 look at the three items product, product consistency,
9 quality meets industry standards, quality exceeds
10 industry standards, you have 13 purchasers answered
11 that question for Thailand and none of them say that
12 the U.S. is inferior.

13 MR. DORN: And one other comment, the Thai
14 industry, as a whole, is not united on this issue.
15 The Thai producers association says that their product
16 is higher quality than the U.S. product. API says
17 just the opposite. It tries to explain away the
18 underselling. We're saying, well, of course there's
19 underselling, because U.S. customers are willing to
20 pay a premium. So, there's a divergent of views from
21 the Thai side of the room.

22 COMMISSIONER PEARSON: Okay, thank you, very
23 much. I have no further questions.

24 CHAIRMAN OKUN: Just as a follow up, Mr.
25 Dorn, to the question posed by Vice Chairman Hillman

1 and myself, regarding looking at the data on the
2 domestic industry imports, just briefly looking over
3 the data that we have, I'd ask you to do that in some
4 detail, because, at least, some of the companies
5 appeared to me to be importing a completely different
6 product than what they sell. And I want to have some
7 understanding of whether those differences are big and
8 what to make of them.

9 MR. DORN: We'll try to address that
10 situation, as well. Thank you.

11 CHAIRMAN OKUN: Okay, thank you. And with
12 that, I have no further questions. Let me see --
13 seeing no other questions from colleagues, let me turn
14 to staff, to see if staff has questions of this panel.

15 MS. HAND: Olympia Hand, Office of
16 Investigations. Mr. Baumann, I have a question for
17 you. Can you describe in detail the paper bags --
18 paper shopping bags that your company makes. Do they
19 have cardboard inserts and do they have rope handles
20 separately applied by hand labor?

21 MR. BAUMANN: Your question is, are we
22 providing cardboard inserts and rope handles on our
23 paper-handled shopping bags. The answer to that is,
24 most generally, not. We have done some inserting in
25 our plant in Walden, New York. My understanding is,

1 we have done that in the past, but it's generally not
2 done regularly.

3 MS. HAND: Can you describe the paper bag in
4 a little more detail, the shopping bag? Would it be
5 the paper shopping bag I would find at, say, Macy's?

6 MR. BAUMANN: Yes, it is. That would be a
7 good example of the paper-handled shopping bag that
8 you would typically find. It has a twisted rope
9 handle, twisted paper handle at the top.

10 MS. HAND: And who are you domestic producer
11 competitors producing in the United States?

12 MR. BAUMANN: Who are our competition?

13 MS. HAND: Yes.

14 MR. BAUMANN: Okay. Primarily, it's Duro
15 Bag in Kentucky, is where they're headquartered.
16 It's, also, Flexo Converters and Wright Packaging.

17 MS. HAND: And where are they located?

18 MR. BAUMANN: Wright is Iowa, Davenport,
19 Iowa. There are others. There's Longview Fiber in
20 Spanish Fork, Utah, and they, also, have a plant in
21 Massachusetts. So, there are others, but those are
22 some of the primary ones.

23 MS. HAND: And to your knowledge, are any
24 U.S. producers producing the very high-end paper
25 shopping bags, the laminated paper shopping bags that

1 you see at Tiffany's and Saks Fifth Avenue, that have
2 the rope handles and the cardboard inserts?

3 MR. BAUMANN: I understand, for example,
4 that I believe Pacoban in California may be doing
5 that. I wouldn't be certain about that, but I believe
6 that that is one that is potentially doing that, as
7 well, in the States.

8 MS. HAND: Thank you. Staff has no further
9 questions.

10 CHAIRMAN OKUN: Thank you. Let me turn to
11 counsel for Respondents, to see if they have questions
12 of this panel. Mr. Perry? Mr. DeKieffer?

13 MR. PERRY: None from me.

14 CHAIRMAN OKUN: You're shaking your head,
15 Mr. DeKieffer. You're shaking your head in the
16 negative.

17 All right, then this is a good time to break
18 for lunch. Before doing so, I want to take this
19 opportunity to, again, thank the witnesses for your
20 testimony, for your willingness to answer the
21 questions. It's been extremely helpful this morning.
22 This is a week where many things are going on, in
23 conjunction with the State funeral. Therefore, I'm
24 only going to have a 45-minute lunch break today. I
25 would remind all parties that the room is not secure.

1 Please take confidential information; but, if the
2 samples can be left out, so that the Commissioners and
3 staff would have an opportunity to look at those over
4 lunch, along with Respondents. And with that, we will
5 resume this hearing at 1:20 p.m.

6 (Whereupon, at 12:35 p.m., the hearing was
7 recessed, to reconvene this same day, Thursday, June
8 10, 2004, at 1:20 p.m.)

9 //
10 //
11 //
12 //
13 //
14 //
15 //
16 //
17 //
18 //
19 //
20 //
21 //
22 //
23 //
24 //
25 //

1 MR. GITLIN: My name is Steve Gitlin.

2 CHAIRMAN OKUN: Mr. Gitlin, if you could
3 turn on your microphone, please? Thank you.

4 MR. GITLIN: My name is Steve Gitlin. I'm a
5 sales representative of Glopack, Incorporated. I've
6 been in the packaging business since 1977. There are
7 clearly two categories of bags in this case: low-end
8 and high-end PRCBs. When you use the term "low end"
9 and "high end," we do not mean a difference in quality
10 and size. We mean two significantly different bags.

11 The predominant type of bag in the low-end
12 PRCB is the bag specifically mentioned in the
13 petition, the T-sack or bag, as known as grocery
14 sacks, grocery bags, checkout bags. These sacks are
15 produced by both domestic industry and foreign
16 producers. They are commodity products. These sacks
17 are made by fully automated machinery. There's never
18 any manual labor involved in domestic production.
19 Generally, the printing on these sacks are simple and
20 basic and the imprint is created using a standard
21 flexographic printing method. The pricing for a
22 typical grocery store sack generally runs between \$10
23 and \$16 per thousand bags, which relates to one cent
24 to one-and-a-half cent per bag.

25 The second totally separate and distinct

1 category is high-end, labor-intensive shopping bags.
2 These high-end bags usually have a square bottom and
3 additional components, such as separately applied
4 handles, generally made of rope of varying composition
5 or plastic tubing, metal grommets, cardboard or PVC
6 reenforced at the top, and cardboard or PVC reenforced
7 bottom inserts. All of these additional components
8 are applied in a separate production process by manual
9 labor. Because of the addition of these manually
10 applied components, these bags are not presently made
11 in the United States, nor could they be produced here
12 at a reasonable price that the retailer could afford.

13 The thickness of a high-end shopping bag is
14 approximately six times greater than that of a T-sack.
15 High-end shopping bags are never produced of a
16 thickness of .035 inches, which is the thickness of a
17 pool cover. Quite often, the printing done on these
18 high-end shopping bags is multicolored, photographic,
19 and of high registration, rotogravure printing.
20 Further, these bags are not interchangeable with each
21 other. They are not used by the same customers for
22 the same purpose, nor would our industry market them
23 through the same retailers.

24 Consumers and producers perceive sacks and
25 grocery bags as commodity type bags to be used as a

1 simple way to package goods for a one-way trip home.
2 These sacks are often disposed of or recycled. The
3 high-end shopping bags are used as an advertising
4 vehicle, bag-vertising, and become a walking billboard
5 for the retailer and a status symbol for the
6 customers, who perceives its high-end value.

7 The channels of distribution for these two
8 distinctly separate products are, also, different. T-
9 sacks are generally sold through food service
10 distributors to the grocery industry and are usually
11 sold direct to mass merchandisers. The high-end,
12 labor-intensive shopping bags are sold by separate
13 retail packaging distributors to high-end retailers,
14 boutiques, and specialty shops. In addition, sales of
15 high-end shopping bags are made at significantly
16 higher prices, \$250 to \$400 per thousand, or 25 to 40
17 cents per bag, and in significantly lower quantities,
18 3,000 bag minimums.

19 MR. PERRY: I'd like to ask Carol Keen of
20 CPI to testify.

21 MS. KEEN: Hello. My name is Carol Daniels
22 Keen. I'm in the sales division with CPI Packaging.
23 I've been in packaging sales since 1985 for both a
24 domestic manufacturer and now CPI, an importer. Like
25 Glopack, CPI's customer, the retail packaging

1 distributor, primarily purchases high-end, labor-
2 intensive products. My customers would never turn to
3 low-end bags. If I could not sell them a high-end
4 bag, they would look at and have looked at paper as an
5 alternative, but never low-end bags. I cannot stress
6 this fact and the inherent product differences
7 strongly enough.

8 The Petitioners have confused the situation
9 by, also, pointing to paper grocery bags. We are not
10 talking about them. We are talking about high-end
11 paper shopping bags that are produced by U.S.
12 companies, such as Duro Bag, Benita, Talsack,
13 Flexoconverters, and Longview Fiber, to name a few.
14 The Petitioners do not produce a high-end product that
15 is comparable, competition, and so diverse in size and
16 low minimum availability, as the high-end product that
17 CPI imports from China.

18 Before CPI began importing, we were at the
19 mercy of domestic manufacturers, who dictated which
20 products they would make available, a limited number
21 of sizes, styles, film colors, et cetera. This made
22 it extremely difficult for CPI and others like us to
23 keep accounts interested in our product line. As a
24 result, the retail end users began seeking new
25 innovative high-end product by turning to more costly

1 Italian and other European manufacturers and away from
2 American suppliers. Therefore, because the domestic
3 manufacturer was not heeding the demands of the
4 distributors, who were trying to fulfill the high-end
5 needs of their customers, the end users, we were
6 forced to go overseas for high-end bags, in order to
7 remain in business. The domestic manufacturers wanted
8 us to buy what they had to offer, even though it no
9 longer appealed to our accounts. These accounts, as
10 mentioned previously, were looking for and then
11 finding offshore sources, themselves, for high-end
12 bags and were willing to pay that price, in order to
13 receive what they wanted. Thank you.

14 MR. PERRY: Harriet Kessler.

15 MS. KESSLER: Good afternoon. My name is
16 Harriett Kessler. I am the president of Plastique
17 Incorporated, an importer of plastic bag -- plastic
18 and paper bags and, also, a purchaser of domestic
19 plastic and paper bags. Plastique has been in
20 business since 1966. I would like to make several
21 quick points.

22 First, we could not agree more with the
23 testimony that T-sack and high-end shopping bags are
24 separate like products. In fact, for many years, we
25 have bought and supplied T-sacks from one of the

1 original Petitioners in this case. A spokesman for
2 that company recently agreed with us, that their main
3 concern was imports of \$12 per thousand T-sacks, not
4 the high-end shopping bags that we have imported for
5 38 years. In fact, these high-end shopping bags
6 compete with domestically-produced high-end paper
7 bags, not T-sacks.

8 Finally, prior to this hearing, we contacted
9 numerous distributors of retail packaging in all 50
10 states and asked them to sign a letter, which will be
11 submitted in our post-hearing brief. We have
12 responses from 25 companies all over this country.
13 I'd like to quote from this letter. "Importers have
14 been supplying the country with bags for over 40
15 years."

16 The importation of fine quality, higher-end
17 plastic bags is not a new idea that has recently
18 overtaken the domestic bag maker by storm. These bags
19 have been sold for years, while many of the listed
20 petitioners have flourished. The importation of these
21 bags has created American jobs and saved overhead
22 costs to the retailer. Many of the bag styles in
23 question are not and have never been made in this
24 country. In the case of some styles that are made
25 here, the minimum order is so high that the small

1 retailer can only look to the imported bag for relief,
2 because of the lower minimums.

3 We urge you to consider what the excess
4 duties will mean to hundreds of retail packaging
5 distributors, thousands of retailers, and countless
6 final consumers. We would be forced to offer fewer
7 options at a higher cost, which affect all three
8 parties in a negative way. Thank you.

9 MR. PERRY: Frank Cannon?

10 MR. CANNON: My name is Frank Cannon, Jr.,
11 and I'm president of PDI Saneck. Our company has been
12 importing all types of plastic bags since 1984. My
13 company is both a supplier to and a buyer from the
14 petitioning companies. I was surprised by this
15 petition, because I knew the Petitioners were, also,
16 importing from other non-subject countries; for
17 example, production facilities out of Mexico; PCL is a
18 production facility in Canada; and, finally, Hilex is
19 importing from Brazil.

20 Let me make several points. First,
21 exporters will sometimes quote bags in terms of
22 dollars per metric ton over resin price. This shows
23 that the real issue confronting the domestic industry
24 is the cost of resin in the United States, as compared
25 to the cost of resin in Asia. In the preliminary

1 investigation, based on the data Petitioners used in
2 the petition, we stated that the price of resin in
3 Asia was 25 to 27 cents per pound. In the United
4 States, published resin prices were printed at 46 to
5 58 cents per pound. That was the major reason for any
6 problems facing the domestic industry, higher raw
7 material prices.

8 Now, the situation has been reversed.
9 Published resin prices for resin in the United States
10 are relatively stable, while Asian prices for resin
11 have increased rapidly. They're as high now as 40
12 cents per pound. This increase happened since
13 December of last year on all raw materials from Asia
14 and have increased substantially along with
15 substantial increase in shipping costs, as we
16 discussed earlier. Now, the comparative advantage
17 that Asia and China once had is disappearing and has
18 made the U.S. companies much more competitive. For
19 instance, I have recently lost my single largest T-
20 shirt bag customer to a U.S. producer, not because of
21 the antidumping case, but simply because the Asian
22 producers are no longer competitive, because of the
23 resin prices in Asia. Demand in Asia for resin has
24 simply surged over the last year to six months,
25 driving resin prices up in Asia and making exports of

1 plastic products less competitive.

2 Petitioners will probably point to the
3 Internet auctions as a reason for the price decline.
4 The Commission should know, however, that in several
5 instances, we have lost the auction, but our price was
6 higher, only to win the auction finally by a higher
7 price. Things like service and supply are, also,
8 issues.

9 Another reason for the challenges facing the
10 domestic industry is changing product styles: heavy
11 bags to light bags, which was discussed earlier by the
12 proponents. The major customer base of the
13 Petitioners have realized that the consumers prefer
14 less items in a bag and studies have showed employees
15 were never utilizing the full capacity of plastic
16 bags. Therefore, the bags of yesteryear, which were -
17 - are now 40 percent thinner and lighter. All of
18 these changes have destroyed the accounting model the
19 domestic producers have used for years. They now face
20 challenges with expensive equipment, high capital
21 investment, producing very inexpensive products. The
22 quality of raw materials, as they've testified, also,
23 will only continue to increase; and, as such, the
24 products will become thinner and thinner, down gauging
25 will continue. This, again, will cause serious

1 problems for the Petitioners going into the future.

2 Yesterday's price per pound that was
3 profitable is no longer working for them. When
4 production rates drop down from changes in size and
5 thickness, today's throughput rate no longer justify
6 those capital investments. That's why they're not
7 making them and their profits will be squeezed.

8 In the preliminary investigation, we
9 challenged the Petitioners' estimates of the imports
10 coming into the United States. As the staff report
11 now indicates, Petitioners overestimated the imports
12 by 100 percent. On the other hand, Petitioners, in
13 fact, may have intentionally overestimated the
14 imports, because they have intentionally included
15 products that they do not produce. One example you've
16 heard a lot about is the high-end merchandise.
17 Another example would be a newspaper bag. In their
18 brief, Petitioners state that they're only after, and
19 I quote, "plastic bags with handles to carry purchased
20 goods home from retail establishment." That simply is
21 not true. The scope is much, much wider. The Custom
22 Service, for example, recently has forced my company
23 to post an 80 percent dumping penalty on imports of
24 specific newspaper bags, which clearly do not have a
25 handle, but only a doorknob hole for hanging a

1 newspaper on a doorknob. By the way, there are
2 domestic producers of doorknob bags, but they were not
3 included into the investigation by the ITC, because I
4 don't believe anyone envisioned this as being part of
5 the scope of the investigation.

6 Finally, all of us firmly believe that this
7 case ultimately is not going to lead in increase in
8 market prices for bags in the United States. It only
9 takes two to three months to put up a bag
10 manufacturing. We, importers, are, and let's make
11 that clear, we are currently importing from other
12 countries, such as Sri Lanka, Brazil, Indonesia,
13 India, Turkey, Vietnam, Phillipines, all of which
14 have been and will continue to export bags to the
15 United States. Thank you.

16 MR. PERRY: Louis Chertkow.

17 MR. CHERTKOW: My name is Louis Chertkow.
18 I'm president of Elkay Plastics. We have been
19 importing bags since 1972. First, I want to emphasize
20 that the staff report is correct. In the preliminary
21 determination, the Petitioners and the Commission
22 overstated the imports by over 100 percent. Much less
23 is coming in from China.

24 I, also, agree with Frank Cannon. On a
25 comparative basis, resin prices have risen more

1 quickly in Asia, as compared to in the United States.
2 This has reduced the Chinese-Asian cost advantage
3 substantially. In addition, freight costs have
4 increased from 35 to 40 percent, which has really hurt
5 our competitiveness.

6 Regarding overreaching by the Petitioners,
7 in addition to problems with newspaper bags, we are
8 having problems with imports of double bags, which are
9 not used to carry merchandise from retail
10 establishments, and cannot be made cost effective in
11 the United States. These bags are, in fact, for
12 carrying parts or work orders.

13 Finally, I wish to confirm Frank's last
14 point. The largest importer of PRCBs from China is
15 Spectrum. I believe that the reason Spectrum is not
16 here today is that they have switched their sourcing
17 to Indonesia. In fact, I suspect that Spectrum does
18 not want the Chinese to win this case, because they
19 want to get the advantage by sourcing their bags from
20 Indonesia. Thank you.

21 MR. PERRY: I'd like to ask Rob Guido to
22 talk.

23 MR. GUIDO: Good afternoon. My name is
24 Robert Guido. I'm the vice president of international
25 at Package Containers, Incorporated. Package

1 Containers is an importer of polyethylene and
2 polypropylene bags and packaging in the United States.
3 Package Containers is, also, a domestic manufacturer
4 of paper bags. Our manufacturing is located in
5 suburban Portland, Oregon.

6 The Petitioners' overly broad continuum
7 scope simply does not work. It is inconceivable to
8 think that high-end PRCBs can be properly substituted
9 with low-end PRCBs. There's a reason why high-end
10 PRCBs and low-end PRCBs exist. It's certainly not
11 prices. If it were price, alone, the Petitioners'
12 claim before this body would be worthless. Low-end
13 PRCBs, which a majority of the Petitioners' overall
14 production is dedicated to producing, are thin,
15 inexpensive bags, which are primarily used in
16 supermarket and high volume retailer applications,
17 where price is paramount. With few exceptions, as
18 long as that type of bag holds the product, then that
19 type of bag is acceptable.

20 Once again, low-end PRCBs are the primary
21 product produced by the Petitioners. Further, these
22 bags are sold on price, period. High-end PRCBs are
23 much more expensive on a per unit basis. Further, if
24 you boil down this per unit basis to a price -- to its
25 least common denominator, which is a price or resin

1 price per pound basis, the high-end PRCBs can be as
2 much as 25 to 40 times more expensive. This is a
3 significant difference in the price between low-end
4 PRCBs and high-end PRCBs.

5 I do not recall any supermarkets or mass
6 merchandisers using high-end shopping bags recently
7 and, conversely, I do not recall any high-end
8 merchandisers using T-shirt bags. High-end users
9 already pay significantly higher prices for their bags
10 to keep their image high.

11 I recently had the opportunity to speak with
12 one of the Petitioners and asked them what would
13 happen if the Petitioners were successful at the ITC
14 hearing, were they going to go to Nieman Marcus and
15 Saks Fifth Avenue to sell them T-shirt bags. This was
16 a rhetorical question that I posed to him, which
17 elicited a few chuckles. But, I bring up this point
18 to the Commission, because it's so inconceivable to
19 think that this made up continuum of PRCBs is anything
20 more than the Petitioners trying to bolster their
21 claim numbers. Further, the Petitioners were very,
22 very particular in their minimum and maximum
23 specifications for the PRCB continuum. I'm still
24 trying to figure out why they have such detailed size
25 limits on this phantom continuum that they've conjured

1 up.

2 Lastly, if the domestic industry is doing so
3 poorly, which causes Vanguard to shut its plant in Los
4 Angeles, why did they acquire the assets of Orange
5 Plastics in Los Angeles?

6 MR. PERRY: I'd like to ask Andrew --

7 MR. GUIDO: No, no. One last sentence.
8 Simply to keep a melee company from reopening, this
9 Los Angeles-based manufacturing plant does not, on its
10 face, seem plausible.

11 MR. PERRY: Andrew Sundjaja.

12 MR. SUNDJAJA: Good afternoon, members of
13 Commission. My name is Andrew Sundjaja. My company
14 is Memo Time Polybags & Paper Bags Section, which is a
15 member of Hong Kong Plastic Bag Manufacturer
16 Association. Today, I'm representing the association
17 to explain several important reasons why Chinese
18 producers are unlikely to expand production or export
19 to the United States.

20 As many of you already know, crude oil price
21 is at an all time high. China depends on crude oil
22 and coal to generate electricity. Both resources are
23 at record price. You may have seen the photograph in
24 the Washington Post a few weeks of the ships backup at
25 an Australia import loading coal for China. This

1 situation is not expected to be alleviated even
2 partially until 2006 and will not be fully corrected
3 until the three Gorge's hydro projects come on line in
4 2009.

5 My factory has been ordered by the Chinese
6 government to stop using power two days each week.
7 This order took effect in January and is still in
8 effect today. My experience is entirely typical. Of
9 course, theoretically, I could use backup generator to
10 operate those additional days. But, in reality, the
11 cost of the additional fuel to run a generator is
12 utterly prohibitive.

13 A second factor that sharply limits the
14 industrial future of exports to the United States or
15 to other countries, for that matter, is the
16 extraordinary strength and growth in the Chinese home
17 market for all kinds of PRCBs. Increasingly,
18 prosperous and discriminating Chinese consumer now
19 demand high-end bags, actually decreasing of low-end
20 T-shirt bags. Consumption of PRCB is highly sensitive
21 to per capita income. Because of the merchandise
22 consumer buy, generally, and Chinese consumers are
23 loading up on merchandise of all kind. More PRCBs are
24 needed to carry the merchandise from stores.

25 A lot of factories have set up or are in the

1 process of establishing sales and distribution
2 networks for the PRCB in major cities in China.
3 Recently, Hong Kong signed an agreement with mainland
4 China that provides tax incentives for Hong Kong
5 enterprise to market their goods in China. As a
6 result of these developments, an increasing share of
7 PRCB production is being sold in the home market.

8 MR. PERRY: As a result of time limitations,
9 I'm going to ask Richard Boltuck to speak now; and,
10 later, if there is any time left, I'll ask Rickly Wong
11 to speak.

12 MR. BOLTUCK: Thank you. For the record, my
13 name is Richard D. Boltuck, vice president, Charles
14 River Associates, Inc. And on behalf of certain
15 Chinese and Thai Respondents, I appreciate the
16 opportunity to share my analysis of economic issues
17 bearing on the evaluation of injury and threat in this
18 antidumping investigation covering imports of PRCBs
19 from China, Malaysia, and Thailand.

20 Specifically, my review focuses on six
21 significant issues: first, the overstatement of
22 import volume on which the petition was erroneously
23 predicated; second, the erosion of the competitiveness
24 of subject imports in the U.S. market since the
25 Commission's preliminary threat determination last

1 fall; third, the economic significance of the pricing
2 comparison data; fourth, the principle effects of
3 subjecting high-end PRCB imports to an antidumping
4 order; fifth, the implications of the ready
5 availability of PRCB imports from non-subject
6 countries on the assessment of causation; and,
7 finally, sixth, the elasticity of overall demand for
8 PRCBs.

9 First, the overstatement of import volume in
10 the petition and the preliminary investigation. The
11 staff has now done an excellent job under difficult
12 circumstances of collecting nearly complete import
13 data covering merchandise from the three subject
14 countries through importers' questionnaire responses
15 and has checked the data for reasonableness and
16 reached reasonable conclusions about its usefulness.
17 As you know, in its petition, throughout the
18 preliminary investigation and even in the Petitioners'
19 current brief with respect to imports from China, the
20 Petitioners have urged estimating import volume
21 through a contrary and ad hoc methodology based on
22 unsubstantiated shares of the basket HTS category.
23 The Commission correctly expressed its lack of comfort
24 with such an approach in the preliminary and, today,
25 has available the kind of hard data that often

1 generated in other investigations, rather than facing
2 the prospect of relying on the ipsi dixit assertions
3 of Petitioners, alone. Nothing, of course, is
4 perfect, but the Petitioners are urging the ITC to
5 allow the perfect to be the enemy of the good, which
6 surely makes no sense.

7 Please turn to Attachment 5 of the Chinese
8 Respondent's pre-hearing brief, which summarizes the
9 very large magnitude of the overstatement of imports
10 in the petition and on which the Commission did rely
11 in reaching its determination of reasonable indication
12 of threat in the preliminary investigation. Why is
13 this error important today?

14 First, because the Petitioners predicated
15 their complaint to the ITC based on a misapprehension
16 that subject imports would at least double their
17 actual volume. In fact, we would have to go back to
18 at least the year 2000, possibly earlier, before
19 cumulated subject import volume estimated by the
20 Petitioners ad hoc method were as small as actual
21 import volume is today. And, yet, in those early
22 years, the Petitioners were not filing antidumping
23 petitions or complaining about being material injured
24 by subject imports.

25 Second, the Commission, through lack of

1 alternatives, predicated its threat determination on a
2 belief that the future importation of subject imports
3 was launched from a current base volume that was
4 vastly larger than in reality. Basic micro economics
5 teaches that the ability of imports to injure U.S.
6 producers is related closely to volume and market
7 share. So by how much would future import -- subject
8 imports volume have to expand before it reached a
9 level the Commission would find injurious, especially
10 in light of the Commission's unwillingness to find
11 even a reasonable indication of present injury,
12 material injury, in the preliminary investigation,
13 when it believed the volume of imports to be far
14 greater than what was actually the case.

15 Turning to the second issue I examined, the
16 erosion of subject import competitiveness. You have
17 heard direct testimony this morning from Andrew
18 Sundjaja, Frank Cannon, you will hear from Rickly Wong
19 and Victor Platta later about the very sharp increase
20 in the cost of producing PRCBs in Asia and serving
21 U.S. customers, due to surging resin costs, the advent
22 of electricity shortages, and rationing to
23 manufacturing facilities, and much higher
24 international freight costs. Please consider
25 Attachments 1 and 2 to the Chinese Respondents' pre-

1 hearing brief, which shows that since the Commission
2 found a reasonable indication of threat last fall, the
3 cost of various resin imports, critical to PRCB
4 production, have increased in Asia, not just
5 absolutely, but, also, in relation to the cost of the
6 same inputs in the United States.

7 Mr. Seanor, testifying for the Petitioners,
8 acknowledged the logic of this convergence in cost
9 this morning, which operates to the detriment of Asian
10 producers, when he told you that the resin prices in
11 the two regions "will not diverge much more than that
12 for any length of time, because it is an international
13 market and customers will buy from the most economical
14 source." Well, resin prices did diverge regionally
15 last fall when you voted affirmative on threat. But,
16 he told you they won't diverge forever. That means
17 that it has to work to the disadvantage progressively
18 of Asian producers.

19 I understand the reason for the relative
20 deterioration in resin costs in Asia is because the
21 principle precursor of resin used in the United States
22 is natural gas, whereas the principle precursor for
23 Asian resin is petroleum and petroleum costs are up
24 much more than natural gas costs. Resin is
25 essentially to any analysis of trends in variable

1 costs, because, as Rickly Wong will tell you, resin
2 accounts for a minimum of 55 percent of the cost of
3 production of PRCBs in Asia.

4 Now, the Petitioners focus on production
5 capacity in Asia, in claiming a threat exists. But
6 capacity doesn't cause threat; threat can only incur
7 based on actual production of exports to the United
8 States. When capacity is sufficient, as it is in
9 Asia, actual production and sales decision are based
10 on marketing opportunities, that is demand, and on
11 various costs, that is supply. And when variable
12 costs rise much more for one set of producers, those
13 in Asia, than for another, those in the United States,
14 competitive shifts in favor of producers in the United
15 States. A direct consequence is that any threat
16 reasonably perceived prior to the shift in
17 competitiveness, such as last fall when you addressed
18 threat, is alleviated or mitigated. There is simply
19 no escaping this compelling conclusion.

20 Now, Mr. Narkin, who is a very good friend
21 of mine, incidently, called this conclusion "wildly
22 speculative" this morning. However, it is not. It is
23 based on hard cost evidence from respected sources and
24 very basic standard mainstream economic analysis, the
25 exact opposite of speculative. To conclude the

1 opposite, in light of this evidence, however, would
2 require a daisy chain of suppositions.

3 The third issue I considered is the
4 significance of the pricing data to the Commission's
5 causation analysis. It is fair to say the Petitioners
6 cite the evidence of underselling as a central parer
7 of their analysis. But, they simply counted instances
8 of underselling and apparently believe the
9 implications speak for themselves. On reviewing the
10 record, however, I discovered that it would be utterly
11 amazing if U.S. product did not consistently earn a
12 pricing premium and the pricing premium thus earned
13 tells us absolutely nothing about whether subject
14 import competition threatens the health of the U.S.
15 industry.

16 This conclusion is based on the extensive
17 data collected from purchasers through their
18 questionnaire responses. If you look at the table in
19 Tables 2, 5, 6, and 7, in the staff report, you can
20 see what is going on here. These tables show how
21 purchasers regard the relative value of subject
22 imports and U.S.-produced PRCBs. Four of the factors
23 listed are arguably closely related to price; that is
24 lower price, certainly, but, also, extension of
25 credit, discounts offered, and U.S. transportation

1 costs. But all of the other items in the list are
2 non-price factors, characterizing the products or
3 aspects of the transaction reflected in pricing.

4 Now, obviously, price is important. That is
5 almost universally true in every investigation, since
6 no one ever wants to pay more than they have to for a
7 product. But when products differ, even if they are
8 imperfectly substitutable for each other, as our
9 imported and U.S.-made PRCBs, then prices will differ,
10 as well. Otherwise, those end users will pay more for
11 the great majority of bags sold in the United States,
12 which are produced locally, than they might, if they
13 purchased an import, must be fools, indeed. And, yet,
14 no one, at least of all the U.S. producers, have
15 suggested that to be the case.

16 The evidence presented in these tables show
17 that purchasers overwhelmingly and consistently regard
18 U.S. PRCBs to be superior rather than inferior to
19 subject imports from each of the subject countries by
20 -- if you tabulate the columns, taking out the four
21 prices factors, by ratios in excess -- often far in
22 excess of two to one. Moreover, in prior tables,
23 purchasers generally indicate that these same non-
24 price factors are very important or somewhat
25 important. This evidence makes it absolutely clear

1 why U.S. product earns a premium. Under these
2 conditions, the simple fact that there's a consistent
3 premium for U.S. PRCBs tells us nothing about whether
4 continued sale of imports in the future will cause
5 harm to competing U.S. producers, nothing. This
6 evidence cannot be ignored.

7 I would, also, like to comment on a major
8 pricing issue raised by the Petitioners' counsel this
9 morning, when they repeatedly emphasized unit value
10 trends as evidence of causation of injury. This
11 mystifies me, frankly. Between 2002 and 2003, subject
12 import unit values and U.S. producer unit values moved
13 in opposite directions. Look at pages C-6 and C-8 in
14 the staff report. How on earth does that help
15 Petitioners establish causation without truly
16 convoluted reasoning. We will, also, address
17 especially product two pricing in our post-hearing
18 brief. But the key thing is that the Petitioners
19 unambiguously this morning endorsed the probative
20 value of average unit values and I think if you accept
21 that, then you really are compelled to see that the
22 evidence does not support causation between import and
23 domestic pricing.

24 Now, the fourth issue I looked at is like
25 product, which, admittedly, is more of a legal than

1 economic issue. But, I did want to offer an economic
2 perspective. In several past investigations, the
3 Commission has wisely based its negative determination
4 on a recognition that subject imports are absolutely
5 critical to serving the U.S. market, because the U.S.
6 industry lacks the capacity or interest of producing
7 anywhere near adequate quantities. High-end PRCBs are
8 clearly a distinct product from low-end PRCBs, which
9 consist dominantly of T-shirt bags. It is difficult
10 to even compare these products, which differ
11 significantly in both production method and end use.
12 And whether or not the Commission concludes that U.S.
13 producers make a few of these high-end items in very
14 limited volumes, or whether the high-end imports match
15 up best with high-end U.S.-made paper bags, the fact
16 remains that this is a classic situation where the
17 U.S. industry lacks commitment to coming anywhere
18 close to serving the expanse of the U.S. market. PRCB
19 distributors, such as Carol Keen, who testified
20 earlier, confirm that they cannot find the range and
21 volume of products from U.S. producers that their
22 customers demand.

23 What this means is the main effect of
24 subjecting high-end imports to an antidumping order
25 would be to raise costs for department stores, such as

1 Macy's or Nieman Marcus, and for their customers.
2 Someone has to pay. And the end user and final
3 consumer impact would utterly swamp any negligible
4 benefit to the U.S. like product industry. That is, I
5 think, not the intention of the antidumping law.

6 I would like to conclude by quickly
7 summarizing the fifth and sixth issues, which I
8 studied. First, the ready potential for displacement
9 of subject imports with non-subject imports from such
10 countries as Vietnam, Indonesia, and many, many
11 others. Clearly, the availability of third country
12 imports is important in analyzing causation, since
13 reductions in subject import volume that fail to help
14 U.S. producers indicate that those imports weren't
15 causing or threatening injury in the first place. And
16 the ready availability of third country imports is not
17 just a theoretical possibility; this product is
18 already made all around the world in many countries
19 with similar costs and similar stages of industrial
20 development to the subject countries in this case.
21 Moreover, testimony this morning indicates the
22 Greenfield facilities -- testimony earlier, in our
23 panel, pardon me, the Greenfield facilities have been
24 erected in Vietnam and elsewhere in 60 to 90 days,
25 using off-the-shelf commercially available thermic

1 extrusion equipment and unskilled labor. This isn't a
2 high-tech product.

3 My sixth issue is the elasticity of demand,
4 which the staff correctly recognized as greater than
5 they had initially believed in the preliminary
6 investigation. And, yet, in truth, it is greater
7 still. Paper and polypropylene bags, among other
8 products, are excellent substitutes for polyethylene
9 bags. If you see paper and plastic in a grocery
10 store, you know they are substitutes functionally,
11 practically, and economically. The Petitioners have
12 emphasized different characteristics of different
13 materials, such as the water resistance of
14 polyethylene not shared by paper bags. True enough,
15 but common sense tells us that most of the time,
16 either type of bag is actually used to carry dry
17 products, so this won't impede substitution.

18 You heard them this morning defend the even
19 broader and entirely counterintuitive absurd position
20 that, essentially, nothing else you can use to carry
21 merchandise from a store competes at all with PRCBs.
22 In any event, there are, in fact, many ways to carry
23 merchandise that don't require PRCB. So, substitute
24 products are rife and demand is actually fairly
25 elastic.

1 That concludes my statement. Thank you.

2 MR. PERRY: Don?

3 MR. DeKIEFFER: I'd like to introduce Mr.
4 Vick Platta of API.

5 MR. PLATTA: My name is Vick Platta and I'm
6 the vice president of sales and marketing for Advanced
7 Polyberry, Inc. of Louisiana. API is a privately-held
8 family-owned and managed certified minority business.
9 We product our retail plastic carrier bag PRCBs in
10 Louisiana, Nevada, Oklahoma, and Thailand. And we
11 are, in fact, the only ones in this room, who have
12 plants in both the U.S. and our foreign production.
13 There is an old business axiom, grower die, in that
14 bit of kenesian logic is true today than ever. And as
15 mentioned in my written testimony to you folks, we are
16 growing and we're looking to the future.

17 We chose to establish our factor overseas,
18 rather than use foreign manufacturers to make the
19 product for us, as many of the others in this room
20 have done, are currently doing, and will probably
21 continue to do so in the future, because, by using our
22 own plant, we can control the quality of the product
23 we make; we don't have to rely on someone else's word
24 that they're not using heavy metals; that there's no
25 child or prison labor involved or anything else. We

1 own the plant. In fact, my boss, our present CEO, has
2 a brother over, who is our plant manager. It's our
3 plant. It's an American plant in Thailand.

4 Using our own plant, also, allowed us to
5 avoid the bad things that I just mentioned, while we
6 can enjoy the advantages of the good things available
7 in Asia, such as cheaper resin, less expensive labor,
8 lower energy costs, and so on, everything that existed
9 up until just recently. This enabled us to provide
10 our customers with the highest quality product at the
11 most economical and competitive price. It gave us the
12 flexibility to compete with both our domestic and
13 foreign competitors. And it, in effect, leveled the
14 playing field.

15 Unfortunately or however, the resin
16 advantage we enjoyed 18 months ago has evaporated, as
17 you've heard from many people here, while the cost of
18 bringing out Thai-produced bags over here has
19 increased, by our count, since the beginning of the
20 POI, around 50 percent. It puts us at a tremendous
21 disadvantage to bring things over from Thailand to the
22 U.S. right now, to sell them competitively, as we did
23 before.

24 Now, in spite of that, we're very optimistic
25 about our future. And we are so optimistic, that we

1 have grown and we continue to reinvest in that future
2 to the tune of over eight million dollars in our
3 domestic facility since starting our Thai facility.
4 Back in 2000, we put in a plant in Las Vegas, to
5 service the west coast, and that cost us over \$15
6 million. In 2001, we started our Thai facility. That
7 same year, we invested another three-and-a-half
8 million dollars in our Oklahoma City plant. In 2002,
9 the following year, we put another -- well, it was
10 over two-and-a-half million dollars into our plant in
11 Louisiana.

12 Prior to all of that, we started looking at
13 an east cost production facility, and that was back in
14 2000-2001, and that's when we started our site
15 surveys, began speaking to the different state
16 governments. You can get deals on power, on bond
17 issues, and such. So, it took us a while to actually
18 locate the plant we were going to use. And in spite
19 of what we heard before, and as our CFO had
20 acknowledge, and it's been notarized, we started
21 looking then. We did not start this Baltimore
22 facility after this antidumping action began. That
23 was a slam.

24 The plant that we're putting into the
25 Baltimore area, it will actually be in Elkridge,

1 Maryland, should employ over 100 workers. And we're
2 looking at that as being our east cost facility that's
3 going to enable us to continue to grow. We took
4 chances on putting it there and once it starts going,
5 it will be the same kind of a chance we took when we
6 started working with the National Center for Missing
7 and Exploited Children, and we put missing kids on the
8 backs of our bags -- on our customer's bags. We did
9 not know if that was going to work; we didn't know if
10 it would be effective. But 23 recovered children
11 later, we know that it does work.

12 We, like everyone else, have, also,
13 participated in numerous Internet auctions: some we
14 won, some we lost, and a lot of them didn't involve
15 any foreign vendors in them. They were domestic
16 suppliers that were bidding on the same business. Are
17 we getting less money in some cases? Yes, we are.
18 Have we lost some customers? Yes, we have. But, have
19 we gained some customers that we didn't do business
20 with before? Yes.

21 Just like anything else in a market economy,
22 Internet auctions, any of the detractors to it will
23 probably be self-correcting over time. In fact, many
24 of the customers for PRCBs are starting to factor in
25 more than just the final price to a higher degree than

1 they did before, and they'll be taking into account
2 long-term, quality, reliable ongoing service, product
3 innovations, et cetera. In the final analysis, in my
4 opinion, Internet auctions are just another means of
5 putting buyer and seller together in a very efficient
6 way. We're all in the learning mode with this method
7 of doing business. It's, as one of our economist has
8 said, it's probably the most effective way of getting
9 a buyer and a seller together.

10 Now, one of the Plaintiffs suggested that
11 resin costs were not highly correlated to the cost of
12 the feeds stocks, natural gas, and oil. That's a
13 little hard to believe, because last year, our
14 industry absorbed a very large surcharge from our
15 resin manufacturers. It was passed through, a force
16 majeure, and it was directly attributable to the
17 natural gas prices, according to them. As far as the
18 future resin prices are concerned, if anybody can
19 predict those, good luck. We don't know what's going
20 to happen in the Middle East. We don't know what the
21 weather is going to be like in the U.S. or anywhere
22 else in the world. And they all directly impact on
23 the cost of our resin.

24 Another Plaintiff said that the indices
25 don't reflect the market. Well, why do most of the

1 major customers that we have agree to use them for
2 price adjustments? These are some big customers.
3 These are some very effective and very large and very
4 successful customers and they accept this. And I am,
5 also, astonished that our competitor's customers do
6 not allow them to pass through pre-agreed to
7 adjustments, based on the index, because most of our
8 customers do. I mean, these are contracts.

9 Another thing that was mentioned by one of
10 the Plaintiffs was that resin is a commodity that can
11 be shipped around the world and it doesn't mention
12 that most of us buy in railcar quantities. We have
13 sitings next to our plant. We bring the railcars in.
14 We vacuum out the resin, itself, put it in hoppers.
15 It's a very efficient way of doing it. It keeps the
16 cost down.

17 When you import resin from overseas, it
18 comes in these big mag sacks. They have to be
19 manually loaded and manually unloaded and it's a tough
20 way of doing it. It adds to the cost. It's not
21 something you can just go ahead and do; today we'll
22 buy domestic, tomorrow we'll buy from overseas.

23 One final thing was hedging that was
24 mentioned. Shell Chemical had a group known as the
25 Shell Chemical Risk Management Group, SCRM. What they

1 did was the folded that particular group into the
2 Shell Chemical Company, itself. In fact, last Monday,
3 I spoke with a fellow by the name of Jim Krump, who
4 was a representative of SCRM -- or of Shell. I, also,
5 speak on a regular basis with John Hall at Louis
6 Dreyfus, another hedging company. These people have
7 been existence for years. It's an ongoing business.
8 That's all I have to say.

9 CHAIRMAN OKUN: Is there any other testimony
10 from this panel?

11 MR. PERRY: Yes. If we've got time, I'd
12 like to ask Rickly Wong to speak.

13 MR. WONG: Good afternoon. My name is
14 Rickly Wong. I'm the sales director of Universal
15 Plastics & Metal Manufacturing Ltd., which is, also, a
16 member of Hong Kong Plastic Bags Manufacturers
17 Association. I have a factory with 400 staff in Ding
18 Guan of Guan Dong province. I know you have heard
19 about this earlier, but let me share my own cost
20 experience.

21 Last year, at this time, I was paying around
22 500 to 600 U.S. dollars per metric tons for LDPE and
23 similar prices for the other resin products. Today,
24 I'm paying 930 to 950 U.S. dollars per metric ton for
25 LDPE and, again, similar prices for the other resins.

1 Prices vary, somewhat based on quantities purchased,
2 payment terms, delivery terms, and other similar
3 factors. Our resin costs are directly related to its
4 chief precursor crude oil and to freight costs from
5 the Middle East, both of which are at record or near
6 record levels today. I understand that our resin
7 costs are up much more sharply than resin costs in the
8 United States, which is diminishing the
9 competitiveness of Chinese manufacturers PRCBs in the
10 America.

11 Why is this important? Around 55 percent of
12 our cost of production is resin and this share is
13 lower for us, because my firm produces almost
14 exclusively high-end bags, which uses labor and other
15 material inputs like ropes, grommets, paper with full
16 printing, et cetera. That's it.

17 CHAIRMAN OKUN: With that, that completes
18 the testimony -- no, I see someone in the back row.

19 MR. SKILTON: I think there's actually two
20 more with some brief comments.

21 CHAIRMAN OKUN: Okay.

22 MR. SKILTON: My name is Tom Skilton. I'm a
23 member of the law firm of Cameron and Hornbostel and
24 I'm here today on behalf of the PRCB exporters from
25 Thailand. Briefly, to follow up and reiterate some of

1 the testimony of my colleagues, I would just like to
2 emphasize further the developments and trends in this
3 industry during the past six months, resulting in
4 increased raw materials and transportation costs for
5 foreign producers, including Thailand; argue strongly
6 for a finding that there is no imminent threat of
7 material injury to the U.S. PRCB industry.

8 We continue to receive information from our
9 Thai industry clients since the filing of our pre-
10 hearing brief that demonstrates that prices in the
11 Southeast Asian market for the necessary resins
12 continue to increase. According to one Thai
13 manufacturer, for example, between January and May of
14 this year, the prices it paid for HDPE and LDPE resins
15 rose an average of more than 10 percent, and prices it
16 paid for LLDPE resins during the same period rose on
17 average in excess of 12 percent. Similarly, the cost
18 associated with transporting PRCBs from Southeast Asia
19 to the United States, as we know, are not
20 insignificant. Percentage of the Custom's value of
21 Thai PRCBs have continued to increase significantly in
22 recent months. As was noted in our pre-hearing brief,
23 the shipping rates between Asia and North America rose
24 by an average of 26 percent in the fourth quarter of
25 2003. Thai producers are already experiencing

1 increased delivering costs since January. At least
2 one of our Thai exporters has recently reported to us
3 that its trans-Pacific shipping costs have risen in
4 excess of 10 percent, just within the first five
5 months of this year.

6 These ongoing trends of increased raw
7 materials and delivery costs support the cast that it
8 is improbable that Thai PRCB imports could cause
9 material injury to the domestic industry. And I would
10 like to turn it over to my colleague, Kelly Slater.

11 MS. SLATER: Good afternoon. My name is
12 Kelly Slater of White & Case law firm and I represent
13 the Malaysian Plastic Manufacturers Association, MPMA,
14 and its individual members, who are producers and
15 exporters of PRCBs from Malaysia. Today, I will
16 present an unconfidential summary of the arguments and
17 analysis contained in our pre-hearing brief. Our
18 brief makes two main points, one of which addresses
19 the sole central question: which source of U.S.
20 import data should the Commission use to determine
21 whether Malaysian imports are negligible, as defined
22 in the statute.

23 Our first point focuses on the facts in the
24 staff report, the pre-hearing staff report that is.
25 Normally, significant questions remain about what is

1 the most accurate source of U.S. import data to be
2 used in the Commission's negligibility analysis. We
3 maintain that these significant questions that
4 remained, if left unanswered, threaten to distort the
5 negligibility analysis and the decision of the
6 Commission regarding these Malaysian imports.

7 Now on the record at present and looking in
8 the pre-hearing staff report, the Commission has three
9 sets of import data available, to determine the
10 negligibility of Malaysian imports. The first set is
11 official U.S. import statistics from June 2002 to May
12 2003. The next set of import data available is the
13 suggested data from the Petitioners, which is, also,
14 based on the U.S. import statistics to which the
15 Petitioners apply a sort of allocation methodology.
16 Finally, the third set of import data available comes
17 from the importer's questionnaires.

18 The problem with these three sets of data is
19 that the data all diverge from one another; in some
20 cases, vary widely. The pre-hearing staff report
21 section on U.S. imports notes these discrepancies
22 among the official import statistics, the import
23 statistics as manipulated by the Petitioners and,
24 also, the data reported on the importer
25 questionnaires. Reviewing the data myself and trying

1 to make sense of the statistics in relation to one
2 another, as was part of the staff report's analysis,
3 ultimately invites a lot of speculation about the
4 potential weaknesses of each of the three data sets
5 and how each data set might be skewed or distorted,
6 depending on one variable or another.

7 That said, it is clear that the
8 clarification of the record is needed for purposes of
9 determining negligibility of Malaysian imports. And
10 the MPMA supports the Commission's plan to clarify the
11 record --

12 CHAIRMAN OKUN: If you can continue.

13 MS. KELLY: I see green. Okay. Let me see
14 where I left off. Yes. We support the Commission's
15 plan, as outlined in the staff report, to clarify the
16 record through supplemental questionnaires. And we
17 are hopeful that the data provided in those
18 questionnaires will ultimately complete and clarify
19 the record once and for all. However, the possibility
20 that the information gathered in the questionnaires
21 might further complicate the record, leads me to my
22 second point.

23 If the supplemental questionnaire data
24 further complicates the record, we recommend that the
25 Commission resort to its own import statistics in

1 making its final decision about negligibility, rather
2 than rely on import data that has been artificially
3 manipulated by Petitioners' estimates. The actual
4 import statistics should be allowed to speak for
5 themselves. The Commission's official import
6 statistics confirm that Malaysian imports are less
7 than three percent of total imports during the
8 relevant 12-month period. Based on this official
9 actual data, the Commission should find that imports
10 from Malaysia are negligible.

11 In closing, official import data on record
12 indicates that the small quantity of Malaysia could
13 not have caused material injury to the domestic
14 industry, nor would the imports from Malaysia pose a
15 threat of material injury to the industry. Malaysian
16 producers have historically had a very small market
17 share in the United States and shipment levels have
18 declined during the POI. Malaysian producers have
19 other markets, both locally and for export, available
20 to them. Based on these comments, we urge the
21 Commission to find that subject imports from Malaysia
22 are negligible and that the domestic industry is not
23 materially injured or threatened with material injury
24 by reasons of imports from Malaysia. Thank you.

25 CHAIRMAN OKUN: Does that complete the

1 testimony from this panel?

2 (No verbal response.)

3 CHAIRMAN OKUN: I don't see any other hands
4 up there. Okay. Well, thank you, very much. Before
5 we begin our questioning, I'd like to take the
6 opportunity to thank the witnesses for being here, for
7 your willingness to answer our questions, and
8 providing the information, both written and otherwise.
9 And we ask for your continued cooperation as the
10 investigation proceeds. And before we began, let me,
11 also, just note that it's helpful for us if you could
12 just repeat your name, both for the court reporter and
13 the Commissioners, before you answer the question.
14 With that, Commissioner Miller will began our
15 questioning this afternoon.

16 COMMISSIONER MILLER: Thank you, Madam
17 Chairman. And let me just echo your words of thanks
18 to our panelists all for being here, to help us
19 understand your businesses and help us better
20 understand the case that we have before us. I think
21 I'd like to begin with, in many ways, the same
22 question I started with the Petitioners this morning,
23 and that is just to make sure I understand, there are
24 a lot of companies here, what the range of product is
25 that you either produce or import, so that I

1 understand the kinds of products that are represented
2 by the companies today.

3 Mr. Platta, if I could ask you to begin for
4 API. And if you could share, also, if it's possible
5 to do so, both what you produce and sell domestically
6 and what you produce in your Thai facility and import
7 from there. Please?

8 MR. PLATTA: Vic Platta. Actually, that's
9 an easy one to answer, because we make T-shirt bags.

10 COMMISSIONER MILLER: Okay.

11 MR. PLATTA: That's our primary product.
12 Although, in the United States, we, also, produce
13 produce bags. These are the long bags that you'll put
14 bananas and whatever into, and umbrella bags, which we
15 may need this afternoon.

16 COMMISSIONER MILLER: Yes, all right. But
17 those last two are not part of the scope of this case,
18 correct? So, it's the T-shirt bags and that's what
19 you import from Thailand, as well?

20 MR. PLATTA: Correct.

21 COMMISSIONER MILLER: Same kind of product.
22 You're not doing something differently --

23 MR. PLATTA: No, no. It's the T-shirt bags.

24 COMMISSIONER MILLER: Okay, good. Now, with
25 all of the many importers represented --

1 MR. PERRY: Steven, why don't you answer
2 what you do?

3 MR. GITLIN: Steve Gitlin.

4 COMMISSIONER MILLER: Yes, Mr. Gitlin?

5 MR. GITLIN: We're importing two types of
6 bags: one being the low-end T-shirt bags, a commodity
7 type bag --

8 COMMISSIONER MILLER: Right.

9 MR. GITLIN: -- used at a totally different
10 level of retail than the high-end bags. The type of
11 bag we're importing, referring to as high-end, which
12 are on the table, as well, have a few different
13 aspects to them. The major aspect is cardboard or PVC
14 inserts, on top and on bottom, which reenforce the top
15 and bottom of the bag, and applied handles, which
16 could be rope, plastic, or PVC, and the printing of
17 the bag. These bags are not made in the United
18 States.

19 COMMISSIONER MILLER: Okay. Now, you said
20 import the T-shirt bags and you import this bag that
21 you're describing and holding in front of you?

22 MR. GITLIN: Many high-end bags.

23 COMMISSIONER MILLER: High-end -- what
24 you're calling --

25 MR. GITLIN: Mainly, yes.

1 COMMISSIONER MILLER: You mainly do high-end
2 bags?

3 MR. GITLIN: Yes, mainly high-end bags.

4 COMMISSIONER MILLER: But, you do import the
5 T-shirt -- are there things in between is really what
6 I'm asking you.

7 MR. GITLIN: We separate it very distinctly.
8 There are low-end bags and there are high-end bags.

9 COMMISSIONER MILLER: Okay.

10 MR. GITLIN: They are two really distinct
11 issues, both in the way we market it and to whom we
12 sell it.

13 COMMISSIONER MILLER: Okay. But the T-shirt
14 bags that you do import are the sort of grocery bags
15 that I would see, as opposed to a bag at some other
16 kind of --

17 MR. GITLIN: They run the gamut engage and
18 application. Mostly, T-shirt bags go to the food
19 service industry.

20 COMMISSIONER MILLER: Okay.

21 MR. PERRY: Carol?

22 COMMISSIONER MILLER: Sure, you can go in
23 the order you testified or I'll just go down the
24 witness list, whichever is easier for you.

25 MS. KEEN: Carol Keen.

1 COMMISSIONER MILLER: Yes?

2 MS. KEEN: CPI is similar to Glopack. We
3 import what we view as a variety of high end and it
4 encompasses various gauges, rope handles, tubular
5 handles, square bottoms with the cardboard,
6 reenforcement at the top, also. And then, we, also,
7 import a wide variety of what we consider low end. I
8 would say the T-sack, the T-shirt bag might be five
9 percent and then we import merchandise bags, which are
10 basically flat and could or could not have a die-cut
11 handle. We import patch handles, reenforced fold over
12 die cuts, cotton draw, poly draw. But, we really do
13 those in a lump group as low end, although our T-sack
14 importation is minimal compared to the spectrum of
15 everything that we import. I don't know if that's
16 clear or not.

17 COMMISSIONER MILLER: I think I understand
18 what you're saying. What I hear you're saying is
19 you're really doing --

20 MS. KEEN: A wide gamut. And then we --

21 COMMISSIONER MILLER: -- a wide range.

22 MS. KEEN: The other thing we do import is
23 the very high end gloss and matte laminated rope
24 handle paper shopping bags, if you're in a Burberry's
25 or a Prodo or Mez --

1 COMMISSIONER MILLER: Okay.

2 MS. KEEN: -- type of bag.

3 COMMISSIONER MILLER: Okay. All right.

4 MR. PERRY: Harriett?

5 MS. KESSLER: Harriett Kessler.

6 COMMISSIONER MILLER: Ms. Kessler?

7 MS. KESSLER: Yes. Wright, Glopack, and
8 CPI, my company, imports the same type of product.
9 We're in a different location of the country. We're
10 in the southeast; they're in the northeast. But,
11 basically, like those two companies, we import very
12 little T-shirt bag. I would say, again, less than
13 five percent of the product that we import is T-shirt,
14 because our market is not -- we deal in retail
15 packaging shops -- retail shops, whereas the T-shirt
16 bags tend to be used more in the food industry.

17 COMMISSIONER MILLER: Right. Just so I
18 understand, what you all have defined as the high end
19 are these bags that have stamp, square, paper, or
20 cardboard, or some kind of liner on the bottom --
21 exactly. You do a very little bit of the T-shirt bag,
22 Ms. Kessler?

23 MS. KESSLER: Yes.

24 COMMISSIONER MILLER: Other kinds of retail
25 bags that don't necessarily have this flat stand?

1 MS. KESSLER: Yes.

2 COMMISSIONER MILLER: And the ones you
3 described as the high end?

4 MS. KESSLER: Yes. We do a variety, based
5 on what the customer need is.

6 COMMISSIONER MILLER: Okay.

7 MS. KESSLER: We do.

8 COMMISSIONER MILLER: Okay.

9 MR. PERRY: Rob Guido?

10 COMMISSIONER MILLER: Mr. Guido?

11 MR. GUIDO: Rob Guido of Package Containers.
12 Our company on the PRCB side, for the grocery
13 application, we do import some T-shirt bags, but,
14 primarily, in the thank-you variety, where it's just a
15 stock print, not a custom print. Occasionally, we do
16 custom prints, but that is, also, very limited and it
17 falls under the minimum case quantity requirements
18 that almost all the domestic manufacturers require.
19 So, if 240 cases of a print that says, "Joe's Corner
20 Market," if a distributor -- a grocery distributor
21 can't get it domestically, they will come to us and
22 ask us to import that and, typically, we're able to do
23 that for them.

24 Other types of -- well, the reason we sell
25 the T-shirt bags to the grocery industry is we have

1 quite a few non-PRCB items that we, also, sell into
2 that industry. In the grocery side of it, that's the
3 lion share of what we do, not PRCBs. That's more of a
4 kind of a convenience, if you will, especially for
5 smaller users.

6 We, also, do higher-end PRCBs for cosmetic
7 company stores; we do for produce, for promotional
8 items. My company in Portland, they manufacture paper
9 handle bags with -- typically for applications, again,
10 in produce for packaging, or in -- we do retail. We
11 do restaurant carry out. So, we do have that, as
12 well. And then there's several ancillary items that
13 don't fall under the PRCB scope.

14 COMMISSIONER MILLER: Okay.

15 MR. PERRY: Louis Chertkow.

16 MR. CHERTKOW: My name is Louis Chertkow,
17 Elkay Plastics. We carry a variety of items. We
18 carry in various marketplaces, industrial, food
19 service, medical, and very little retail. We do
20 import T-shirt bags and merchandise bags. But, other
21 items, which are not used for retail, are included in
22 the scope. And as I mentioned earlier, double dual
23 string bag, newspaper bags, ice bags, et cetera, which
24 are -- and we believe that the scope is really
25 overreaching.

1 MR. PERRY: Frank Cannon.

2 MR. CANNON: Again, Frank Cannon, and my
3 company would probably be the A to Z supplier. We do
4 everything everyone mentioned and a lot of other bags.
5 Basically, any use you can find for a plastic bag, we
6 could probably import or have imported for it, whether
7 it's industrial, grocery, retail application, medical.
8 And then, again, as Louis has said, a lot of these
9 outside the scope, but a lot of them suddenly becoming
10 in the scope, like a newspaper bag, clearly not an
11 item to bring home a retail purchase, but by the
12 Custom's ruling with the Commerce Department, have
13 viewed it to be a handle bag now. So, again, we do
14 all bags, with or without handles and sometimes now
15 things are being called handles. So, we're the A to Z
16 guy.

17 COMMISSIONER MILLER: Okay. My yellow light
18 is on. I'm not even going to get a chance to ask a
19 question. But, let's finish. Mr. Sundjaja?

20 MR. SUNDJAJA: Yes. Andrew Sundjaja. My
21 factory is in China, making high-end PRCB and paper
22 bags.

23 COMMISSIONER MILLER: Okay. And Mr. Wong?

24 MR. WONG: Okay. Your question is asking my
25 factory produce just bags? Or I, also, produce other

1 than bags. You want to know it?

2 COMMISSIONER MILLER: No, no, no. I'm just
3 asking about --

4 MR. WONG: Okay, just about the bags.

5 COMMISSIONER MILLER: -- the bags that are
6 covered here.

7 MR. WONG: Okay. The type of bags we do is
8 the luxury carry bags, such as the rope handle
9 carrier, the PVC rope or PP rope or cotton rope. We,
10 also, have wall-to-wall cardboard carved inside the
11 bag. It's the time, itself, cost more than the
12 plastic, itself. We, also, do double bags. We, also,
13 do -- it comes in various gauges and sizes, from 15
14 micron to 150 micron. That's around six mil max.

15 COMMISSIONER MILLER: Okay. All right. My
16 time has expired.

17 MR. WONG: Okay, just -- our minimal order
18 starts from around 3,000 pieces.

19 COMMISSIONER MILLER: Okay. All right. Now
20 that I know what you all do, I'll have some questions
21 the next time. Thank you.

22 CHAIRMAN OKUN: Commissioner Koplan?

23 COMMISSIONER KOPLAN: Thank you, Madam
24 Chairman, and I thank the witnesses for their
25 testimony and responses to questions thus far. If I

1 could start, Ms. Kessler, with you. I believe you
2 testified that minimal order quantities are higher for
3 bags sold by domestic producers?

4 MS. KESSLER: Correct.

5 COMMISSIONER KOPLAN: I see you nodding your
6 head, yes, that you did say that.

7 MS. KESSLER: Correct; yes.

8 COMMISSIONER KOPLAN: Could you quantify
9 this? For example, what a typical minimum order
10 quantities for bags sold by domestic producers, as
11 compared to bags from import sources.

12 MS. KESSLER: Well, my knowledge is limited,
13 but I can tell you to what extent I do know. One of
14 the Petitioners is a company that I buy from and when
15 we buy -- when we place an order with them for a T-
16 shirt bag for one of our customers, the minimum order
17 is 60,000. That's their minimum. When we do the same
18 type of bag overseas, a T-shirt bag, of which we don't
19 do too many, but there are many small retailers that
20 just couldn't handle 60,000 bags at one time and we'll
21 do as few as 10,000 overseas.

22 Now, the high-end shopping bag, we will do
23 3,000 minimum.

24 COMMISSIONER KOPLAN: So, it varies
25 depending on the type of bag we're talking about?

1 MS. KESSLER: Yes. The shoppers being more
2 expensive, we'll do three; but, the T-shirt bag, which
3 is inexpensive -- and let me say, although it's
4 inexpensive, when it comes in from the Orient, we
5 still sell it at a much higher price than a domestic
6 T-shirt manufacturer would sell it for.

7 COMMISSIONER KOPLAN: Thank you. Can any of
8 the other Respondents join in on that?

9 MS. KEEN: Carol Keen.

10 COMMISSIONER KOPLAN: Yes.

11 MS. KEEN: I would say that, again, with the
12 high-end PRCB --

13 COMMISSIONER KOPLAN: Could you move your
14 microphone a little closer?

15 MS. KEEN: Sure. With the high-end PRCBs,
16 we, also, are able to import in quantities in the
17 three to five thousand bag range. They're extremely
18 flexible with regard to size. There are an infinite
19 number of sizes available from overseas, which is not
20 available domestically. They are, also, more flexible
21 with regard to extruded film colors. I could sell
22 3,000 bright purple bags as an imported high-end bag.
23 I could not source that here domestically.

24 On the low-end side, I'm able to still do
25 5,000 to 10,000 pieces, where many domestic

1 manufacturers, due to the nature of their equipment,
2 require 50, 100,000 bag minimum, which just puts it
3 out of the scope of many of the retail distributors
4 and their end use customer to sell to.

5 COMMISSIONER KOPLAN: Thank you.

6 MS. KEEN: Thank you.

7 COMMISSIONER KOPLAN: Mr. Gitlin, I saw you
8 nodding your head --

9 MR. GITLIN: Yes.

10 COMMISSIONER KOPLAN: -- so I think you have
11 something to say.

12 MR. GITLIN: I think it's very important to
13 understand that there are thousands of American
14 retailers, mom and pops, who cannot buy from the
15 Petitioners, because of the minimums. We serve that
16 purpose. We can supply these retailers 3,000 bags,
17 mom and pops, and they don't have to be squeezed for
18 60,000 bags that might last them 12 years. And
19 whereas the Petitioners kept speaking about Target and
20 Target and Target, there are thousands of American
21 retailers, who need our products.

22 COMMISSIONER KOPLAN: I would ask each of
23 you that have responded thus far, could you document
24 this for me in the post-hearing?

25 MR. PERRY: Definitely.

1 COMMISSIONER KOPLAN: When I say,
2 "document," I mean, during the period that we're
3 examining, 2001 through 2003, can you give us specific
4 examples of this type of thing?

5 MR. PERRY: Yes, sure.

6 COMMISSIONER KOPLAN: Thank you, Mr. Perry.

7 MR. PERRY: Sure.

8 COMMISSIONER KOPLAN: Are there others, who
9 wanted to join on this, other Respondents?

10 MR. PLATTA: Yes, Vic Platta. Because of
11 our high-speed equipment, we, typically, ask for a
12 minimum of 600,000 bags, which would be 600 cases.

13 COMMISSIONER KOPLAN: Okay.

14 MR. PLATTA: That's both domestic and from
15 our Thai facility.

16 COMMISSIONER KOPLAN: Thank you. I saw
17 another hand up. Mr. Guido?

18 MR. GUIDO: Rob Guido.

19 COMMISSIONER KOPLAN: Yes.

20 MR. GUIDO: I concur with what Vic said.
21 I'm only familiar with one of the Petitioners. I
22 don't know that there minimums are as high as 600; 360
23 stuck in my mind. But, it might be, because it's
24 extremely difficult to put up --

25 COMMISSIONER KOPLAN: I think Mr. Platta

1 said 600,000.

2 MR. GUIDO: Right, 600,000; yes. But, it is
3 extremely difficult to put up a line in one and bring
4 it down, just for maybe running 60,000 pieces. And we
5 feel that if we were able to get that done, our very
6 small low-end, we'll call it T-shirt bag, if it's even
7 on a custom print or even on a thank you print, we're
8 probably running -- I would categorize it as an
9 average of maybe 100,000, which is 100 cases, commonly
10 known as 100 cases, and that's for a grocery
11 application.

12 COMMISSIONER KOPLAN: Thank you.

13 MR. PERRY: Commissioner Koplan? I just
14 might add something here, because I think there's a
15 fundamental misconception. I did a lot of the
16 commerce corporate work for the Chinese producers, who
17 produce the high-end bags, and we're talking about a
18 completely different production process. The U.S.
19 producers have railcars coming up and taking the resin
20 out. We're talking about machines where maybe four
21 different bags will run in one day. They will have,
22 the domestics, one bag run on one machine for one
23 month. It's a very different type of production
24 process in China, especially for the high-end
25 merchandise bags.

1 COMMISSIONER KOPLAN: Thank you. Did I see
2 Mr. Sander's hand up or another hand? If not, could
3 the others here, who have, also, responded, similarly
4 document their testimony for purposes of the post-
5 hearing. Thank you.

6 Mr. Platta, if I could come back to you.
7 This morning, domestic producers testified that PU
8 resin prices were more than approximately five cents
9 per pound. If they were more than five cents per
10 pound lower in Asia, that they would simply import
11 resin. One, in your view, isn't that possible?

12 MR. PLATTA: Well, as I've said before, the
13 way that we produce our bags here in the U.S., these
14 are T-shirt bags, as I just mentioned, we have
15 railcars that we bring in. It's a very efficient way
16 of doing -- we buy in bulk. We buy 10, 20, railcars
17 at a time. It's a very automated process that we use
18 to extract the resin, itself, from the railcars, put
19 it into the hoppers within our plants. If we bring it
20 from overseas, it has to be brought over in mag sacks,
21 on a ship. It has to manually unloaded, taken to the
22 plant in trucks, manually taken off and dumped into
23 the hoppers. It's a very time consuming, very
24 expensive process.

25 COMMISSIONER KOPLAN: Are you saying, they

1 don't do that, then?

2 MR. PLATTA: Well, we have done it in the
3 past.

4 COMMISSIONER KOPLAN: You have?

5 MR. PLATTA: We have brought some -- when
6 there was a large gap in the cost of the resin, itself
7 --

8 COMMISSIONER KOPLAN: What would a large gap
9 be? What would you term a large gap?

10 MR. PLATTA: Fifteen cents, 20 cents.

11 COMMISSIONER KOPLAN: Fifteen cents.

12 MR. PLATTA: Something along those lines.
13 I'd have to verify that number.

14 COMMISSIONER KOPLAN: Could you do that
15 post-hearing?

16 MR. PLATTA: We will.

17 COMMISSIONER KOPLAN: Go ahead, finish your
18 answer.

19 MR. DeKIEFFER: Mr. Koplan, I'd like to
20 expand on that a bit and this goes to a question that
21 was asked by Commissioner Pearson this morning, as
22 well as to why there hasn't become a lot of arbitrage
23 in resins, given this price disparity. There are
24 really three reasons: one is because of the handling
25 costs; second is because of the shipping costs, which

1 on a per unit basis are higher for resins than they
2 are for finished goods, since the shipping cost is
3 approximately in dollar terms the same; and third,
4 because of the anomaly of the upside tariffs that
5 exist in this case, where tariffs are higher on resins
6 than they are on finished products. So, when you're
7 listening to the testimony this morning regarding
8 Asian prices versus U.S. prices, what they are
9 referring to there is landed duty paid prices of
10 resins from Asia available in this country, not the
11 prices available to Asian producers in Asia, because
12 those prices available to Asian producers in Asia
13 during this period didn't have those same shipping
14 costs, handling costs, and certainly not the duty
15 costs that would be embedded in the U.S. price on a
16 duty-paid basis.

17 So, those three factors are going to your
18 point this morning, Mr. Pearson, as to why arbitrage
19 hasn't taken off. Well, arbitrage will kick in at a
20 certain level, once the price disparity covers these
21 ancillary costs. But that spread has to be very
22 significant and that spread isn't reflected,
23 necessarily, in resin prices available in the markets
24 --

25 MR. BOLTUCK: Mr. Koplan, if I could just --

1 COMMISSIONER KOPLAN: Do you have any follow
2 up, Commissioner Pearson?

3 MR. BOLTUCK: Mr. Koplan, if I could just
4 add one point and that is that the testimony this
5 morning from the Petitioners, Mr. Seanor, I believe --
6 I apologize if I'm not pronouncing his name correctly
7 -- acknowledge two things. He said that there could
8 be short-term diverges, but that his assertion about
9 arbitrage was that over a longer period of time, it
10 would tend to work in the direction of eliminating
11 divergences. Our point is that relying on data for
12 two of these major resin products from different
13 consultancy firms that follow those prices and have
14 separate series for Asia and for the United States,
15 because they think there is some regionality in the
16 short run, we prepared the figures that appear in
17 Attachment 1 and 2. One of those consultancies is
18 ICIS LOR. We had to buy that data. And then the CMI
19 data, we saved our clients a little money, one of our
20 clients provided it to us. So, that's how we ended up
21 with two separate firms.

22 But the interesting thing was that we were
23 told -- we've been told by our producers in Asia that
24 the pricing of HDP and LDP actually is usually very
25 similar. And indeed, even though we got the data from

1 Asia from two different firms, the -- you know, it
2 tracked each other for both Asia and the United States
3 for HDP against LDP, in each of the markets. So, that
4 was the case. It was very similar and it showed a
5 bigger divergence last fall, when you voted in the
6 prelim, and convergence maybe --

7 COMMISSIONER KOPLAN: If you don't wind up
8 pretty soon --

9 MR. BOLTUCK: -- due to arbitrage. Okay,
10 I'm sorry. I just wanted to make that point.

11 COMMISSIONER KOPLAN: Had you finished?

12 MR. BOLTUCK: Yes.

13 COMMISSIONER KOPLAN: Okay, thank you, and
14 thank you, Madam Chairman.

15 CHAIRMAN OKUN: Commissioner Lane?

16 COMMISSIONER LANE: The first question I
17 have relates to something we heard this morning, that
18 the American producers generally run 24 hours, seven
19 days a week, 360 days a year.

20 What about the Asian producers, are those
21 producers running the same time frame also? Anybody
22 can answer.

23 MR. PLATTA: Vic Platta.

24 Yes, in our production facility we are using
25 extruders that takes resin pellets, these are just

1 little granules of resin plastic itself, we run then
2 through a heated barrel with a screw in it that melts
3 this plastic, extrudes it out into a dye and blows it
4 up into a big bubble, and blah-blah-blah.

5 You can't really take a machine like that
6 that takes hours to stabilize, turn it off at night
7 and then turn it on in the morning. It doesn't work.
8 So we run ours 24 hours a day, seven days a week. The
9 only time we will shut down an extruder, I'm not
10 talking about the bag machines, but an extruder, would
11 be for preventive maintenance.

12 COMMISSIONER LANE: And is that pretty much
13 what most of the Asian producers do?

14 MR. PERRY: No.

15 MR. PLATTA: I can't speak for them.

16 MR. PERRY: I would like to ask quickly
17 what -- I mean, what API is talking from is a big
18 production plant, which is many of the -- as I said
19 before, many of the Chinese producers and Hong Kong
20 producers are much smaller facilities, much smaller
21 machines, three or four bags running on a day on
22 machine, so much smaller orders.

23 Rickley.

24 MR. WONG: We produce almost 365 days a
25 week, except during the Chinese New Year period, which

1 is around two weeks time, well, two weeks periods, but
2 because of the power, in the last year, well, this
3 year also, we haven't been able to operate at that
4 rate, and also our machines are in inferior than the
5 foreign -- well, the America producers' machines, and
6 therefore we are not as -- you know, produce as much
7 as we want to produce.

8 MR. PERRY: Andrew?

9 MR. SUNDJAJA: I'll just try to elaborate,
10 Andrew Sundjaja. The machines in China is made in
11 China, is not the machines in the USA. We try to push
12 for 24 hours, but impossible. We break down almost
13 like, I don't know, probably we get 10 hours, 12
14 hours, like that, and that is max, that's it.

15 COMMISSIONER LANE: Okay.

16 MR. GITLIN: Steve Gitlin. I would like to
17 clarify one thing. They are talking about a machine
18 that runs t-shirt bags. That's a low-end bag,
19 different than the way the high-end bags are produced,
20 totally different method of production. It's not run
21 24 hours a day. It's not even run 12 hours a day.
22 It's totally different manufacturing than the T sacks.
23 That's important to understand. Thank you.

24 COMMISSIONER LANE: Okay, thank you.

25 Now, I would like to ask Mr. Cannon a

1 question. Did I understand you to say that your
2 company has won internet options with higher prices?
3 Would you please explain that?

4 MR. CANNON: Yes. Frank Cannon. Yeah, on
5 at least one occasion that comes right to mind we won
6 with coming in second or third place, because I think
7 there is a misnomer again that all internet options
8 have a prequalification basis too. As the proponents
9 have said, sometimes you don't know who else is in
10 there, and I think sometimes the retailers don't know
11 who they are asking to bid.

12 So price is only one consideration.
13 Although someone may end up with the lowest prices,
14 there is generally two weeks to sometimes two months,
15 three months evaluation process that a retailer will
16 go through before they determine you're the winner.

17 Just walking away from the auction with the
18 lowest price is never securing of the business. In
19 fact, they take that process where they qualify. And
20 as I mentioned, many times the incumbents sometimes
21 have an advantage. An incumbent generally can come in
22 second place and still retain the business, or third
23 place. The retailer sometimes uses it as leverage to
24 bring down their current supplier.

25 COMMISSIONER LANE: Does the internet

1 auction format allow you to input terms and conditions
2 as well as price?

3 MR. CANNON: Yeah. Generally that's done on
4 the front side. When there is a -- you would log onto
5 the computer a week in advance and enter your terms,
6 conditions, and things of that nature. And again,
7 that is something that is usually unseen. You may
8 enter a two percent 10-day term. Someone else may
9 enter no terms. So during the auction you don't know
10 if your price is -- even if it's the same price, you
11 may be two percent cheaper, so those are all
12 conditions.

13 Things like minimum, whether you ship a
14 customer a truckload a month or you service them on a
15 weekly basis, sometimes that isn't known. Those are
16 all negotiated things that are done afterwards.

17 COMMISSIONER LANE: Okay, thank you.

18 Mr. Boltuck, what are your starting and
19 ending prices to support your statement that petroleum
20 prices are up more than natural gas?

21 MR. BOLTUCK: I'll provide that for the
22 record. It was my understanding that that was the
23 underlying trend that was coincident with the trend in
24 resin prices.

25 COMMISSIONER LANE: Okay. Would you give me

1 then the beginning of whatever period you used for
2 your statement, and what are your current comparison
3 of oil and natural gas prices?

4 MR. BOLTUCK: Well, as I say, that was a
5 general understanding that I had, and I will obtain
6 data for that. The beginning and ending periods that
7 we are looking at are generally the August '03 period,
8 and through alternately, depending on what resin we
9 look at, either February or May of '04, and that's
10 what we are interested in because that goes back to
11 your preliminary vote in the fall, and then the most
12 recent data we can obtain now to get it as close to
13 the present as possible.

14 So what I actually -- the hard data I
15 actually had was the resin cost because that was what
16 was relevant, but then I wanted to understand how it
17 was that prices were moving proportionally different
18 in Asia than in the United States apparently, and I
19 made some inquiries, and the explanations I received
20 centered on differential movements in petroleum and
21 natural gas, so I was relaying that to you that that
22 was my understanding.

23 COMMISSIONER LANE: And you're going to
24 provide that information to us?

25 MR. BOLTUCK: Well, I will try to obtain

1 information on that, yes.

2 COMMISSIONER LANE: Okay, thank you.

3 Now, Mr. Platta, we heard this morning, I
4 believe it was in response to questions from
5 Commissioner Pearson, that there is no robust futures
6 market in resin. Do you agree?

7 MR. PLATTA: Not entirely. The futures
8 market, or it's called hedging, is actively actually
9 administered by at least a couple of companies right
10 now. The Shell Chemical Risk Management Group that I
11 had mentioned, SCRM, and Louis Dreyfus, have both been
12 not only talking to us, but to a number of our
13 competitors for years. Some of our competitors -- and
14 this is all hearsay, I can't swear to it, but I
15 understand that they have done quite a bit of hedging
16 in the past. So there is a viable, ongoing risk
17 management possibility that's available for all of us.

18 COMMISSIONER LANE: Okay, thank you.

19 MR. PLATTA: Sure.

20 COMMISSIONER LANE: Now another question.
21 Contrary to what we heard this morning you indicated
22 in your testimony that you believe that there is a
23 positive correlation between resin prices and natural
24 gas; is that correct?

25 MR. PLATTA: Yes. As I understand it, here

1 in the United States probably 70 percent of the
2 polyethylene resin that's produced comes from natural
3 gas.

4 COMMISSIONER LANE: Okay.

5 MR. PLATTA: And as the price of that
6 feedstock goes up, it's a little hard to believe that
7 it wouldn't have a bearing on the cost of the final
8 product, the resin itself.

9 COMMISSIONER LANE: Okay. Do you believe
10 that the correlation is strong enough that any
11 producer of PRCBs would use the natural gas futures
12 market to hedge their resin supply costs?

13 MR. PLATTA: That could be a little tough.
14 I mean, we -- I don't want to say that we're not
15 sophisticated. We certainly know how to make bags,
16 but I don't think we're sophisticated enough to follow
17 a futures market in natural gas. We have enough
18 trouble just making sure that the bags are done right.

19 COMMISSIONER LANE: Okay, thank you. I will
20 save my questions for later.

21 CHAIRMAN OKUN: Commissioner Pearson.

22 COMMISSIONER PEARSON: Good afternoon. Let
23 me continue with you, Mr. Platta, since you were
24 getting into issues that interest me.

25 The futures market that you referenced, is

1 that a market that's on a public futures exchange or
2 is it something that's run privately by companies?

3 MR. PLATTA: It's run privately by
4 companies. As I understand, one of the hedging
5 companies told me that they do an arbitrage. When
6 they extend a two- or three-year hedging futures in
7 high-density polyethylene, they will also go and do a
8 futures market on natural gas or oil, depending on
9 where the resin would be produced.

10 So they are in pretty much of a win/win
11 situation. If the natural gas prices goes up, the
12 resin price goes up, and if we are on a swap, which
13 means that you -- you understand how this works --
14 well, I'm suddenly playing them money because -- or
15 excuse me, they are paying me money because my resin
16 costs have gone up.

17 When the natural gas price goes down, resin
18 price goes down, suddenly I am buying it at less than
19 I had agreed to originally. I am paying them money.
20 So if they lose money on natural gas, they make money
21 from me, a pretty sweet deal.

22 COMMISSIONER PEARSON: Even though this
23 market is not on a public exchange, do you know, is it
24 regulated by the Commodity Futures Trading Commission
25 or is it something that's just independent of that?

1 MR. PLATTA: I honestly don't know.

2 COMMISSIONER PEARSON: Okay.

3 MR. PLATTA: I don't know.

4 COMMISSIONER PEARSON: You have no
5 particular qualms about the integrity of that
6 marketplace though, that's not in issue in your mind?

7 MR. PLATTA: No, it's been around long
8 enough now, and we are talking millions of pounds of
9 resin that you would do the risk management on. Louis
10 Dreyfus and the Shell Chemical, my gosh --

11 COMMISSIONER PEARSON: Yes, these are
12 reputable firms.

13 MR. PLATTA: Yes, it's not -- well, I won't
14 say that. Yes, they are very reputable firms. They
15 are, certainly.

16 COMMISSIONER PEARSON: And could you comment
17 on the liquidity in that marketplace? The impression
18 I got this morning was that there aren't as many
19 buyers and sellers as one might wish to have a truly
20 liquid market; is that correct?

21 MR. PLATTA: Probably so. I know the number
22 of phone calls I get from these folks tell me that
23 they are actively seeking customers, and the hardest
24 sell is probably us selling it to our customers.

25 If you are buying millions and millions of

1 dollars worth of this product that really is out the
2 door, it's a cost center for us, a large supermarket
3 chain, for example, for them to say -- the purchasing
4 guy to his boss, I'm going to go and I'm going to have
5 this flat price for the next two years, and his boss
6 is thinking, well, now, what is the resin prices go
7 down, we're stuck. That's a hard sell for him.

8 So it's a tough sale for us to sell to the
9 customers to sell to his boss. There is many people
10 that are participating in this as probably the hedging
11 companies would like? Probably not.

12 I don't know if I have answered your
13 question or not.

14 COMMISSIONER PEARSON: That's helpful. I'm
15 trying to understand the marketplace better.

16 MR. PLATTA: Sure.

17 COMMISSIONER PEARSON: Frankly, I'm more
18 familiar with corn.

19 (Laughter.)

20 MR. PLATTA: It's easier to understand.

21 COMMISSIONER PEARSON: I mean, that's a very
22 liquid market.

23 MR. PLATTA: Sure.

24 COMMISSIONER PEARSON: Let's talk a little
25 bit about the degree of integration of the global

1 marketplace because this morning I had the impression
2 that the global market is interconnected to a
3 considerable degree, and now this afternoon I'm
4 hearing some things that make me question that.

5 Could you comment on the structural factors
6 that may create price differences between one part of
7 the world and another in the market for resin?

8 MR. PLATTA: Well, the resin market, I don't
9 know if I can speak -- I can speak to bags. But
10 resins themselves, the fact that in Asia they are
11 using oil as the major feedstock, whereas here in the
12 U.S. we are using natural gas, that in and of itself
13 will cause a difference in the pricing. But I think
14 you need to speak to someone else who is more
15 conversant in that.

16 COMMISSIONER PEARSON: Okay, but the
17 difference in feedstock to produce the resin is going
18 to make that at some point one resin manufacturer will
19 be disadvantaged relative to another just based on the
20 relative prices of the feedstock; is that correct?

21 MR. PLATTA: Quite -- that's -- in fact, one
22 of the experts in the field is a fellow by the name of
23 Harold Rapaport with CMAI stated at one of our trade
24 association meetings that -- I hope I have this number
25 correct -- but \$2.50 per million btu of natural gas

1 would be the equivalent of something like \$4 per --
2 excuse me, not \$4 -- \$25 for a barrel of oil to
3 produce the same amount of polyethylene resin. I
4 could have the numbers wrong, but there is an actual
5 number that one equates to the other.

6 So when oil prices go up but natural gas
7 prices go up even more, you will find that resin here
8 in the U.S. should probably cost more than it would
9 overseas. Conversely, when you switch that ratio,
10 they will have an advantage overseas -- they will have
11 an advantage here, rather.

12 COMMISSIONER PEARSON: Reference was made to
13 an inverted tariff structure in the United States
14 between resin and bags.

15 MR. PLATTA: Yes.

16 COMMISSIONER PEARSON: Could you discuss
17 that a little more, please?

18 MR. deKIEFFER: Yes. The upside-down
19 tariffs or inverted tariff structures are common
20 throughout the HTS, and that's what has happens in
21 this case. The resin tariffs are slightly higher than
22 the finished product prices. We are only talking
23 about a couple of percentage points here, but still
24 the point remains that that is another downside
25 factor, you know, arguing against arbitrage, that plus

1 the substantially increased shipping costs, and the
2 very substantially increased handling costs.

3 So the liquidity of the arbitrage market is
4 not nearly as high as it might appear. Although the
5 final product is a substitutable commodity product,
6 the additional ancillary cost in getting it to the
7 market offset that liquidity to a great degree, and
8 that's the reason that until you get within 20 percent
9 or so there isn't any arbitrage or no effective
10 arbitrage.

11 COMMISSIONER PEARSON: So do you know what
12 the tariff levels are on bags versus --

13 MR. deKIEFFER: Yes. We'll have the exact
14 numbers for you, but we're only talking about a
15 difference of a couple of percentage points, you know,
16 because all these tariffs are rather low. It's a
17 difference of about two and a half to three percentage
18 points, but still that can make a difference combined
19 with these other factors, particularly, as I say,
20 since it's a upside-down situation, and that is
21 another factor that goes into discriminating or
22 discouraging arbitrage.

23 So when we're talking about prices we have
24 to be very sure that we're talking about Asian prices,
25 Asian prices in Asia, or Asian prices delivered duty

1 paid in the United States are two very, very different
2 things.

3 COMMISSIONER PEARSON: Mr. Platta, shifting
4 back to you for a minute if I could. You indicated a
5 couple of minutes ago that you had a good sense of the
6 degree in integration of the global market in bags as
7 compared to the resin.

8 Could you comment on that? I mean, do you
9 see the bag prices around the world influencing each
10 other to a considerable extent, and bag flowing from
11 area of relative surplus to relative shortage, that
12 sort of thing?

13 MR. PLATTA: Well, it's a world economy in
14 many things. Bags right now are just starting to
15 become that same way. You can see the number of
16 people that are supplying bags from Asia at this
17 point.

18 We have had inquiries not only from Asian
19 suppliers, but from potential Asian customers. That
20 tells me -- and this would have to do with our Thai
21 facility as well as from the U.S. This tells me that
22 there is an ebb and flow of these -- well, it's a
23 commodity, and I'm talking about t-shirt bags now. I
24 consider our t-shirt bags to be somewhat high end too.
25 We don't make junk, but there is a market for our

1 product in other countries as well.

2 COMMISSIONER PEARSON: So with a very
3 favorable container freight on shipments from the
4 United States to Asia, so many containers go back
5 empty, are you getting ready to load a container with
6 t-bags and take them back to sell them in China?

7 MR. PLATTA: Not to China, no, sir. No.
8 They can provide their own bags much better than we
9 can and at probably a much better price. But there
10 are other countries that use bags that are high
11 quality that require the sorts of products that we can
12 produce.

13 COMMISSIONER PEARSON: So you see a
14 likelihood that U.S. exports of bags would increase?

15 MR. PLATTA: I could talk to you about
16 afterward in confidence.

17 COMMISSIONER PEARSON: Okay, fine. I
18 wouldn't want you to say anything in public. I'm just
19 trying to get a sense of posttraumatic stress disorder

20 MR. PLATTA: Sure.

21 COMMISSIONER PEARSON: When we have these
22 hearing we are looking at the effect of imports, and
23 oftentimes the domestic industry is involved in some
24 exporting. But if the terms of trade are shifting
25 such that the United States might become a more

1 efficient exporter, that's of interest to me.

2 MR. PLATTA: I would rather not go into that
3 here.

4 COMMISSIONER PEARSON: That's fine. My
5 light is changing so I think I will pass at this
6 point. Thank you.

7 VICE CHAIRMAN HILLMAN: Thank you. And I
8 too would join my colleagues in welcoming you all and
9 thanking you for your appearance here this afternoon.

10 Let me start if I could a little bit
11 following up on the question that Commissioner Miller
12 asked you, which is, was to describe the range of the
13 product that you import. And I want to see if I can
14 try to understand maybe a little bit more on the price
15 side of what you are importing.

16 A number of you described importing mostly
17 high end but some on the low end, and I wondered if I
18 can ask you to help me understand, if I could maybe
19 even start with you, Ms. Keen, if you could. I mean,
20 I notice that you said you did a lot of the high end,
21 but then you also did what you described as some of
22 the low end, including you said a variety of patch
23 draw, draw with cotton, draw with poly merchandise.

24 Help me understand those sort of lower end
25 products if I could, just a range of -- what's the

1 price range of those products?

2 MS. KEEN: Sure, of course. On the low-end
3 range of merchandise patch and these various items, I
4 would comfortably say four cents, three and a half,
5 four cents on the low side to six and a half, seven
6 cents on the high side, again just for the group of
7 various low-end products.

8 VICE CHAIRMAN HILLMAN: Okay, but that would
9 include the draw bags?

10 MS. KEEN: Correct.

11 VICE CHAIRMAN HILLMAN: Now, how about the
12 square-end stand up on their own kind of bag, what
13 would that be?

14 MS. KEEN: Okay, then you're in the range of
15 14 to 15 cents on the low side, all the way up to 30
16 cents on the high, not counting laminated paper
17 shopping bags, just with the PRCB high-end products.

18 VICE CHAIRMAN HILLMAN: Okay. But for
19 example, what I had described as the restaurant carry-
20 out, or the gourmet grocery store bags that we saw
21 this morning, do you have a sense of what -- again,
22 it's a square and fits flat, stands up on its own with
23 no cardboard insert, what kind of price range?

24 MS. KEEN: Oh, import-wise?

25 VICE CHAIRMAN HILLMAN: Yes.

1 MS. KEEN: Okay, I would -- again, that
2 would probably be in the -- on the small bag, 13 - 14
3 cents; on the larger bag, getting into the high teens.

4 VICE CHAIRMAN HILLMAN: Okay. Anyone else
5 out there, any of you disagree with that? Are you
6 looking at significantly different prices for these
7 kind of products? Go ahead.

8 MR. GITLIN: Mr. Gitlin. I think it is
9 important also to take price out of the separation
10 when dealing with high-end versus low-end. It may be
11 involved in image and perception and advertising not
12 just price. So, for example, I might have a t-shirt
13 say -- okay. May I?

14 VICE CHAIRMAN HILLMAN: Yes, you may. The
15 only thing you've got to keep a microphone with you so
16 either you need to get to a portable microphone --

17 MR. GITLIN: Okay, here I am. Sure, that's
18 fine.

19 From an advertising point of view, it prints
20 very nicely. However, when loaded or from a
21 reusability standpoint, what does it say? So as an
22 advertising vehicle these bags over here is low end.
23 The same applications on a high-end shopping bag, what
24 does it say? It's still readable. It's a walking
25 billboard. It carries your name, an image along with

1 it, and that's important in separation of high and low
2 and not just price.

3 VICE CHAIRMAN HILLMAN: I appreciate that.

4 Ms. Keen, the bag that we were going over in
5 terms of all of these prices, you would describe them,
6 all of the ones that you have given me these prices
7 for as low end, or would you say the square, flat,
8 stands up on its own you're describing as being the
9 high end?

10 MS. KEEN: No, the square, flat, standing up
11 on its own is a high-end bag.

12 VICE CHAIRMAN HILLMAN: Even without a
13 cardboard insert?

14 MS. KEEN: Even without a cardboard insert.

15 VICE CHAIRMAN HILLMAN: Okay. I guess
16 that's where I'm trying to make sure I understand, its
17 exactly what in your mind distinguishes a low-end bag
18 from a high-end bag.

19 MS. KEEN: High end is square bottom.

20 VICE CHAIRMAN HILLMAN: Okay.

21 MS. KEEN: And has a true four sides.

22 VICE CHAIRMAN HILLMAN: Can you give me that
23 again?

24 MS. KEEN: Has true four sides.

25 VICE CHAIRMAN HILLMAN: Yes.

1 MS. KEEN: Okay, and this has a square, a
2 square bottom, excuse me, and you have four separate
3 and distinct sides to the bag.

4 VICE CHAIRMAN HILLMAN: Okay.

5 MS. KEEN: The low-end bags, be they flat
6 without gusset, or you know, the panels, this t-shirt
7 bag, although it does have four sides, is incapable of
8 standing by itself of having a square bottom
9 construction. It's the nature of this.

10 VICE CHAIRMAN HILLMAN: Okay. You know, I
11 was just trying to get sense of it because obviously,
12 you know, for us I'm trying to make sure, to the
13 extent that we end up looking at things as separate
14 like products, there has to be some way to have a
15 clear dividing line between what would be described as
16 a low-end product and high-end product, and I'm trying
17 to make sure I understand from your testimony where is
18 that dividing line, either on the basis of price or
19 the basis of production, on the basis of
20 characteristics.

21 You are telling me the characteristics are
22 square and four true sides?

23 MS. KEEN: Yes.

24 MR. PERRY: I think that -- this is Bill
25 Perry of Garvey & Shubert.

1 I was going to say we talked yesterday, and
2 we think that the staff's definition is pretty close
3 to accurate where they came up with high-end bags, and
4 the way they have defined it in this questionnaire, et
5 cetera, was pretty close to accurate as to where we
6 were coming out.

7 VICE CHAIRMAN HILLMAN: Well, again, there
8 will be a difference there. I expressly asked about
9 the cardboard inserts. I mean, the definition that
10 the staff used had a cardboard insert and a cardboard
11 piece at the top to shore up the handle.

12 MR. PERRY: Yes, the --

13 VICE CHAIRMAN HILLMAN: Again, I am trying
14 to make sure I understand --

15 MR. PERRY: As I read the --

16 VICE CHAIRMAN HILLMAN: -- in struggling
17 down this road there has to be a clear dividing line.
18 Everybody has to clearly believe that they can
19 distinguish one from the other, and that's what I'm
20 trying to make sure I understand from your perspective
21 where that line is, where you think that line has to
22 be drawn.

23 MR. PERRY: It seemed to me in reading the
24 questionnaires and the definitions the staff came up
25 with, they came up with like three subsets of

1 basically the high-end bags. It was interesting to
2 note that at least from our side, our people, and we
3 put in a lot of foreign producer questionnaires, a lot
4 of importer questionnaires, there was really no
5 question. People knew what was in what category.

6 MS. KEEN: Excuse me. Carol Keen again.

7 And I don't have the definition in front of
8 me. We read it over many, many times yesterday. It
9 also stated square bottom without cardboard. So we're
10 defining, and we were accepting of that definition
11 from a high-end PRCB is a square bottom bag with or
12 without cardboard, with or without cardboard at the
13 time, rope handles, et cetera. But the defining line
14 from the way we read the definition yesterday was the
15 square bottomness of it.

16 VICE CHAIRMAN HILLMAN: And again, help me
17 to understand this issue of where there may or may not
18 be a dividing line.

19 Of what you describe as the low-end, what
20 are the most expensive? I mean, what's the features
21 that get added to it? Is it beige? Is it the way the
22 handles are? I mean, what is it about the lower ends
23 that bumps up the price, and what is that?

24 MS. KEEN: Okay. It's a variety of factors.
25 It is size of the bag. You can have what we view as a

1 low-end bag it could still be large in size, but it
2 doesn't have a square bottom. It could be a heavier
3 gauge than traditional commodity products. It doesn't
4 have to be half a mil, it could be even two mils.
5 There is no hand application or hand-applied
6 components to the low-end PRCBs.

7 So it's really a function of size, gauge and
8 at times printing. Sometimes the low-end PRCBs may
9 have four color, four or five colors.

10 VICE CHAIRMAN HILLMAN: And again just so I
11 understand where the line is drawn, if you choose one
12 of these heavier gauge, well--printed, et cetera,
13 bags, what kind of price range are you talking?

14 MS. KEEN: Well, I would say again there is
15 a range of eight to 12, seven to 15.

16 VICE CHAIRMAN HILLMAN: Okay. Anyone else?
17 I'm sorry, Mr. Guido, you wanted to add something?

18 MR. GUIDO: Yes. If you took a like-size
19 plastic, squared out, handled shopping bag that
20 roughly has the same volume characteristics as the
21 generally accepted size for t-shirt bags, we'll call
22 it the, you know, traditional grocery size, it's all
23 called the six barrel, but there is a lot of little
24 nuances and changes in sizes here and there that will
25 vary that, but it's very similar in volume, you can

1 have a cost difference of say \$80 per thousand
2 individual units on the squared out bag with a handle
3 attached onto it, and all, versus maybe an eight, nine
4 or 10 dollars per thousand units of the t-shirt bags.

5 And to go to one of your other points, one
6 of the large ways to increase cost or one of the
7 efficiencies producing a t-shirt bag has is that the
8 handle is actually cut from the film, and what they do
9 is they will -- the bag will be run in a rectangular
10 shape, they are stacked on top of each other, and in a
11 single dye cut they are going to cut 50 or -- I'm not
12 a t-shirt bag manufacturer, but I know how it's done.
13 They are going to make a single cut through several
14 units, maybe Mr. Platta can attest to this further,
15 but they are going to -- in one shot they are going to
16 do that whereas these other bags each time you are
17 hitting the bag or applying a handle, it's per
18 individual piece.

19 VICE CHAIRMAN HILLMAN: I appreciate that.

20 MR. GUIDO: Okay.

21 VICE CHAIRMAN HILLMAN: Thank you very much
22 for those answers.

23 Commissioner Miller.

24 COMMISSIONER MILLER: Thank you. All right,
25 following a little bit on what I learned earlier and

1 what I have heard in the discussion with Vice Chairman
2 Hillman, and recognizing that the data, a lot of the
3 data is confidential in here, but in any event I just
4 want to make sure we understand each other.

5 If the high end is defined as you all have
6 just defined it, and you said you agree with the
7 definition that was included in the staff report, am I
8 not correct that the vast majority of the U.S. market
9 and very high level of the imports from China, okay,
10 are still of everything else, the non-high-end
11 product, correct?

12 MR. PERRY: That's true, but understand that
13 one of the things to point out here, we have got many
14 companies here from Hong Kong. A lot of them produce,
15 a vast majority of their products are the high-end
16 bags.

17 Also, it's interesting to --

18 COMMISSIONER MILLER: I mean, recognizing
19 certain companies specialize, yes. But for the
20 industry as a whole and for what we have to analyze,
21 there is still a high proportion, a majority, I can't
22 think of what adjective can I use that's okay, is of
23 the non-high end?

24 MR. PERRY: Yes.

25 COMMISSIONER MILLER: Yes.

1 MR. PERRY: Yeah, I think that's true, but I
2 think if you define a continuum wide enough you're
3 going to have that. And I think that what you have
4 got to remember is the other side of it, I think this
5 is why it's interesting in the data on the average
6 unit value, the Chinese average unit values are
7 somewhat higher because you have got a huge mix of
8 very high value bags coming in, and it's just that the
9 small percentage, but they are really high priced.

10 COMMISSIONER MILLER: Okay. Well, let me
11 just, you know, take it one step further so that I
12 understand what you would like us to do. If we were
13 to define that high-end product as a separate like
14 product, to the degree that we have the data
15 essentially in our tables, I think they are like C-3
16 and C-4 in the back that are the tables on high-end
17 bags.

18 MR. PERRY: Yes.

19 COMMISSIONER MILLER: That would be the
20 relevant tables to analyze injury to that industry?

21 MR. PERRY: Yes. I mean, what you have
22 there though the one question is the paper bag,
23 whether you're going to go to the next level and pick
24 up the paper bag manufacturers.

25 COMMISSIONER MILLER: Right, right. And at

1 this point in time we don't have any information on
2 the paper bag industry.

3 MR. PERRY: Right, but you have the rest.

4 COMMISSIONER MILLER: But we have -- all
5 right, I just wanted to make sure that I understood
6 what you have us do. All right.

7 Mr. Boltuck, let me just make sure I
8 understand your argument on volume that you made in
9 your presentation, your further point.

10 Are you saying that the volume of imports as
11 we now know it is not significant? I mean, if you
12 look to what the Commission has usually found to be
13 significant, either absolutely or relative, or the
14 increase.

15 MR. BOLTUCK: Well, I think --

16 COMMISSIONER MILLER: Would you say it's not
17 a significant level?

18 MR. BOLTUCK: You know, significance is sui
19 generis, which is a term that the Commission likes to
20 use --

21 COMMISSIONER MILLER: Yes.

22 MR. BOLTUCK: -- quite a bit, and I think
23 there are numerous reasons to believe that in this
24 case the much, much lower level of imports when one
25 looks at the corrected volumes, understands the share

1 of it are these high-end bags, that there are many
2 reasons to question the effects that those imports
3 have had on the domestic industry in terms of
4 causation, and if significance is tied to causation,
5 it's not significant, if it's not able to have an
6 effect, then there are certainly puzzles in the data
7 with respect to establishing causation.

8 For instance, the one I referred to with
9 respect to averaging of values moving in opposite
10 directions. I mean, we have three data points, 01,
11 02, and 03. Only two changes from the 01 to 02, and
12 02 to 03. One of those changes is the unit value of
13 the imports and the unit value of the domestic product
14 moves the market in opposite directions.

15 So you know, and the petitioners this
16 morning told you they linked their portions to the
17 credibility and probative value of average unit
18 values. So --

19 COMMISSIONER MILLER: That's all right.

20 MR. BOLTUCK: Yeah.

21 COMMISSIONER MILLER: Now you're going into
22 the causation questions. I just wanted to make sure I
23 understood your points about the different import data
24 that we --

25 MR. BOLTUCK: Well, I think the point that I

1 was making is in the preliminary decision you -- for
2 very good reasons you did not find that, even under
3 the reasonable indication standard you didn't say
4 either way, but you didn't visit the question --

5 COMMISSIONER MILLER: We didn't say either
6 way.

7 MR. BOLTUCK: No, I understand that, but you
8 didn't visit the -- you tell us not to tackle the
9 question of present injury by reason -- reasonable
10 indication of present injury, and now we know that in
11 fact the imports were much lower. So I think at least
12 there is a reason to raise a very serious question
13 about how much higher the imports would have to grow
14 in the future to cause present injury when it didn't
15 seem to stand out even when we believed it was twice
16 that level in the --

17 COMMISSIONER MILLER: I know you can go
18 back and read our preliminary determination as well as
19 I can. I think we clearly said that the import
20 volumes were substantial, and that there was clear
21 underselling. We said that the industry had -- that
22 its financial performance was still -- they were still
23 profitable but we found them to be vulnerable.

24 MR. BOLTUCK: Sure.

25 COMMISSIONER MILLER: So I mean, I think

1 what we said was sort of a classic threat.

2 MR. BOLTUCK: Right.

3 COMMISSIONER MILLER: You know, we didn't
4 see --

5 MR. BOLTUCK: That's right.

6 COMMISSIONER MILLER: -- volume of prices,
7 we didn't see impact is essentially what we said.

8 MR. BOLTUCK: That's right, and so I agree
9 with that, and I'm just saying how much higher would
10 imports have to be now that we know what reality is in
11 order for us to see an impact given that when we
12 thought imports were twice that level we didn't see a
13 present impact.

14 But I agree that at twice the level
15 certainly that was what the finding of significance in
16 the preliminary was based on.

17 COMMISSIONER MILLER: Okay. Then the
18 argument that you all have made repeatedly about the
19 resin cost, decline in resin, the tables or your
20 charts showing decline in resin costs, again I'm sort
21 of asking myself, what strikes we as being most
22 relevant in a threat discussion, and less relevant in
23 a present discussion. It's about what might be
24 expected in the future. You're shaking your head in
25 the affirmative so you are basically agreeing?

1 MR. BOLTUCK: I certainly think we have
2 conceived of it as forward looking and making the
3 future role of imports in the U.S. market
4 demonstrably, probably like to be less competitive,
5 yes.

6 COMMISSIONER MILLER: Okay, thank you.

7 Let see if I want to go back here for a
8 minute to -- I'm going to go back in a moment to the
9 various importers and describing their product, which
10 all was very useful to me earlier. Thank you. One of
11 the reasons I did that, and the reason I just went
12 back to making sure I understood what you called the
13 high-end bag was because much of your testimony I
14 heard, you know, the domestic industry isn't offering
15 this product. They are going elsewhere to get it.

16 And yet when I had describe your products
17 basically I heard a range of products. I think I have
18 heard a little bit more since and I've heard you talk
19 about things like the volumes, you know, the lot size
20 and such that may explain. The only product that you
21 are saying is not made in the U.S. for you are the
22 flat bottoms, high -- what you have defined as high-
23 end, correct?

24 MR. BOLTUCK: Yes.

25 COMMISSIONER MILLER: The others that you

1 are importing you are not making the argument that
2 they are not made in the U.S.

3 MR. PERRY: No. In fact, I think we put out
4 bags out there, those four bags out there are types of
5 bags that are not produced in the United States.

6 COMMISSIONER MILLER: But the others that
7 you were talking about you concede are made in the
8 U.S.?

9 MR. PERRY: Yes.

10 COMMISSIONER MILLER: You know, but some of
11 the importers -- the description of the industry that
12 I heard this morning about being lots of small
13 companies sort of doing this, it sounds kind of like
14 you all are the -- I mean, the structure isn't so
15 different with you. I mean, lots of companies that
16 have their special niches doing --

17 MR. PERRY: But I think though the
18 production process is totally different, at least from
19 what I have been told, and I have not seen a domestic
20 factory, is that it is much bigger capital-intensive
21 factory. I intend in the post-conference brief I'll
22 put pictures in of the Chinese factories, but we're
23 talking a lot smaller factory, lot smaller machines,
24 very, very different production process.

25 COMMISSIONER MILLER: Well, perhaps the

1 importers can speak to it, but my impression is that
2 the U.S. industry has a wide variety of sizes of
3 companies as well.

4 Ms. Kessler, did you --

5 MS. KESSLER: Yes, I would like to address
6 that. I thought you were asking about the importers
7 themselves if they are small companies, were you?

8 COMMISSIONER MILLER: Yeah, I'm really
9 trying to make sure I understand the sort of structure
10 of the industry, whether it's lots of -- a handful of
11 big players or lots of small players.

12 MS. KESSLER: Okay. Well, I will have to
13 admit that I'm a small player. I was not even aware
14 of the situation. I don't readily read the Federal
15 Register. I'm busy working. And I found out from
16 some of my friendly competitors about this situation,
17 and I did not attend the initial hearings about it.

18 And so this is all very new and surprising
19 to me. I mean, I have known about it for the last few
20 months, but I did not know about it a year ago. Some
21 of my factories didn't as well. My factories most --
22 I deal with three factories, two of them are family-
23 owned. I have done business with the same two
24 factories I would say for over 20 years, and I just
25 feel like my situation is totally different from the

1 petitioners.

2 I mean, they are giants compared to me.
3 Their customers are not my customers. They deal with
4 the Targets and the K-Marts and the Wal-Marts. We
5 deal with small shops, people who just want to buy a
6 few thousand bags, and basically many of them don't
7 even want to buy 3,000. They would like to buy less.
8 So that's our market, and although they want to buy a
9 few bags as possible, and want to pay the lowest price
10 possible, they are very sure about what they want as
11 far as advertising.

12 They don't want just a plain white bag to
13 carry out their products. They want their bags to
14 make a statement, even if they are just a jewelry
15 store, they want their bag to say something. And I
16 have to say that I have eight -- we are eight
17 employees in my company.

18 And one of our employees or two of our
19 employees are artists. They are the ones who prepare
20 the art work when we send the orders over to the
21 factories over there. And our customers just drive us
22 crazy with what they want to say on their bag, and
23 where they want to put it, and how many colors, and
24 they just are very detailed about what they want, and
25 that is so different from low-end bags.

1 These low-end bags, they put one color on a
2 bag or two colors on a bag, and it says the name of
3 the store, and basically these stores are very well
4 known already. I mean, we know who K-Mart and Wal-
5 Mart and Target are. Our customers are not well known
6 to anybody so they are there to make a statement.

7 COMMISSIONER MILLER: Well, Counselor, and I
8 know you probably can't see up here, but the red light
9 has been on for some time.

10 MS. KESSLER: I'm sorry. I just wanted to
11 point out the very huge difference between what the
12 petitioners are saying and our side of it. Thank you.

13 COMMISSIONER MILLER: I understand, and I
14 appreciate your answer, and I wanted to hear it, and I
15 know the red light has been on, but I'm sure my
16 colleagues appreciate your story as well. Thank you.

17 CHAIRMAN OKUN: Commissioner Koplan.

18 COMMISSIONER KOPLAN: Thank you, Madam
19 Chairman. I do appreciate the story.

20 Let me, if I could, Mr. Platta, come back to
21 you for just a second. In the preliminary I did not
22 chose to -- I have API excluded from the domestic
23 industry, although a related party, and indicated that
24 I would want to explore this issue further in the
25 final. I would like to have you, for purposes of --

1 if you can respond now, that would be fine, or if you
2 can't, in the post-hearing, but I would like to hear
3 from you on that issue.

4 MR. PLATTA: I'll go to the attorney on this
5 matter and see what we can find.

6 COMMISSIONER KOPLAN: I see you're
7 surrounded.

8 MR. HORGAN: This is Kevin Horgan. We will
9 address that in a post-hearing brief. I will say that
10 we share Mr. Dorn's indifference to the issue for the
11 reasons identified by him.

12 COMMISSIONER KOPLAN: Okay, thank you.
13 Thank you very much.

14 Mr. Skilton, the Thai prehearing brief
15 argues at page 1, and according to U.S. industry
16 continues to his knowledge that the introduction to
17 transparency in the marketplace of the PRCB through
18 the use of the internet is resulting and will continue
19 to result in a downward pressure on prices for all
20 producers, and that this downward pressure would exist
21 with or without the presence of imports."

22 What I want to ask you, and there has been
23 much discussion about this issue today, but how much
24 of the price decline that I am looking at is due to
25 the auction format alone?

1 MR. SKILTON: That's a good question, and I
2 do not have an answer for you today, but I will try to
3 address that in the post-hearing brief.

4 COMMISSIONER KOPLAN: Okay. When you do
5 that, if you could provide evidence from other markets
6 that don't have import competition, that might not
7 have import competition in which internet sales
8 continues to have price declines because of the format
9 alone?

10 MR. SKILTON: Will do.

11 COMMISSIONER KOPLAN: Thank you.

12 And I would welcome that kind of information
13 from any of the other counsel as well post-hearing.

14 Petitioners' prehearing brief at page 55
15 notes, and I quote, "In July 2002, Sonoco closed a
16 plant in Santa Maria, California. The U.S. Department
17 of Labor certified that 100 former workers at this
18 plant portrayed adjustment assistance based on the
19 conclusion that competition from increased imports
20 contributed importantly to the declines in Sonoco
21 sales and for the resulting layoffs." And we have
22 heard testimony on that this morning.

23 My question is: Was the import competition
24 that occurred with regard to that plant from sources
25 other than subject import? Can anyone speak to that?

1 MR. PLATTA: Vic Platta. It would be tough
2 to really see what Sonoco's internal problems were,
3 but I know that in an interview, and I believe it was
4 in Plastics News or -- no, no, no, I'm sorry. I have
5 that mixed up with something else.

6 California, before we put our plant into
7 Nevada, we had done some site surveys, and California
8 was mentioned as a possible site to put our west coast
9 plant in, but because of the climate there, I won't
10 say anti-business, but the environmental concerns, the
11 taxes, power problems and all of that made us really
12 take California off our list of possible sites to put
13 the plants.

14 I just wonder if Sonoco didn't have the same
15 problems that we had anticipated that caused us not to
16 build in California.

17 COMMISSIONER KOPLAN: Are you saying that
18 the Department of Labor got it wrong and it wasn't
19 import competition at all that caused their problem?

20 MR. PLATTA: I haven't seen it. I can only
21 speak from our own investigations into whether or not
22 that would be a good site to put a plant, where we
23 would have workers that we could rely on, that we
24 wouldn't have to worry about a whole host of -- that
25 was before Arnold became governor there, and it was a

1 different climate then, sir.

2 COMMISSIONER KOPLAN: I won't get into that.

3 MR. PLATTA: Okay.

4 COMMISSIONER KOPLAN: Okay, thank you.

5 Let me come back to Mr. Skilton again if I
6 could. Again, your prehearing brief argues that the
7 domestic industry's loss of market share and downward
8 pressure on PRCB prices "is merely the logical result
9 of two distinct factors: the superior quality of
10 exporters' products and the emergence and increased
11 use of auctions in purchases."

12 Petitioners argue at page 48, and I quote,
13 "No plausible argument can be made that the products
14 sold in such auctions are not fungible products sold
15 on the basis price."

16 Do you agree that once bidders have been
17 qualified price is the determining factor in such
18 auctions?

19 MR. SKILTON: Not necessarily. I think your
20 question goes to two parts. One is the impact of
21 internet auctions, which we will address in the post-
22 hearing brief. The second, I think, goes to what Mr.
23 Frank Cannon addressed earlier in his testimony
24 concerning the fact that in their experience price has
25 not been the only consideration in the reverse

1 internet auction; that in fact they have been the
2 third highest price -- excuse me -- third lowest price
3 and still won an auction.

4 And it is the argument of our clients that
5 there are certain aspects of their bids, for example,
6 the pricing that would lead them to win some of these
7 auctions not having the lowest price.

8 COMMISSIONER KOPLAN: Well, what I am
9 struggling with here is if, as you concede, domestic
10 producers do lose sales in such auctions to subject
11 imports, and Commerce has determined that those
12 subject imports are being sold at less than fair
13 value, then I'm trying to understand why those lost
14 sales would not be due to subject imports.

15 Do you have examples that you can provide
16 during the period that we are looking at, 2001 to
17 2003, where the domestic producers lost sales in such
18 auctions to subject imports but it had nothing to do
19 with the bid having been the low price?

20 MR. SKILTON: I do not, but I will go to
21 statements made by Mr. Platta earlier in the testimony
22 that they have been involved in auctions where the
23 only competitors have been U.S. companies, and I would
24 argue that, you know, decreases in prices resulting
25 from that auction, for example, was not a result of

1 price.

2 COMMISSIONER KOPLAN: Can anyone here
3 provide such examples?

4 MR. PERRY: Commissioner Koplan, I think
5 Frank Cannon can, and we could provide information
6 when he won, and it was not based on price alone.

7 COMMISSIONER KOPLAN: Go ahead.

8 MR. CANNON: Yes, I can follow up with
9 information on that specific bid that I was speaking
10 of, and again, the thing that was not mentioned too is
11 incumbency. The proponents mentioned it a lot this
12 morning, and that's important too. Incumbency in an
13 internet auction is primary also.

14 COMMISSIONER KOPLAN: Okay, do you want to
15 provide that post-hearing?

16 MR. CANNON: Yes, I will.

17 COMMISSIONER KOPLAN: And Mr. Platta, you?

18 MR. PLATTA: Yes, Vice Platta. We
19 participated in, gee, I don't know how many dozens of
20 these internet auctions, and there have been some
21 where we have been the low bidder, but we did not get
22 the business.

23 As we said, incumbency gives you a great
24 advantage because there is a certain cost in changing
25 suppliers. There are inventories to take care. You

1 have to get the chemistry right between their
2 purchasing people and your distribution people, the
3 logistics involved in all of that, and it costs the
4 company money to change suppliers.

5 But in addition to that, if you read the
6 literature that's put out by these internet brokers,
7 and when you take part in one of these internet
8 auctions you are told up front that even though you
9 may be the low bidder you will not necessarily get the
10 business because they put other factors in there.
11 They might assign a factor of five -- I'm just pulling
12 these numbers out of here -- a factor of five for the
13 fact that you have a plant that's close to their
14 distribution points.

15 COMMISSIONER KOPLAN: Availability.

16 MR. PLATTA: Yes. And at the end they take
17 the number, they put all these things together, the
18 terms that were mentioned before, some of the good
19 things that they are going to give you factors for,
20 and even though you might be low you're not going to
21 get the business because someone else who is sitting
22 higher has been rated higher by that internet broker.

23 COMMISSIONER KOPLAN: I appreciate what you
24 are saying, but I would like to have documentation of
25 instances where this has occurred provided to us.

1 MR. PLATTA: Sure. Sure.

2 COMMISSIONER KOPLAN: I understand the
3 arguments, but I would like to get that documented if
4 I could post-hearing.

5 MR. PLATTA: We will.

6 COMMISSIONER KOPLAN: Thank you. I see my
7 yellow light is on, and I will wait. Thank you, Madam
8 Chairman.

9 CHAIRMAN OKUN: Commissioner Lane?
10 Commissioner Pearson?

11 COMMISSIONER PEARSON: Petitioners argue
12 that the data for the domestic industry would paint an
13 even more dismal picture if it included all of the
14 companies that had closed plants, filed for bankruptcy
15 or ceased operations during the period of
16 investigation.

17 Could you please address that argument?

18 MR. PLATTA: Vic Platta.

19 You know, I mentioned before that the saying
20 that grower died. There is another one that says all
21 problems are management problems. And as to why some
22 companies go under and others succeed, in many cases
23 it has to do with your choice of products, the way you
24 present them to the market, your marketing approach.
25 Pricing is part of it, but it's only part of the

1 overall marketing approach itself.

2 There was a company on the west coast that
3 went under. They were bought out by some other
4 people. They lost their biggest customer, it's a
5 large supermarket chain on the west coast, and once
6 that went under, once they lost that account they
7 couldn't carry their notes anymore. You know, it's
8 mismanagement. I don't think it's always the fact
9 that someone else has come in with a lower price. You
10 can always find somebody who is going to sell
11 something cheaper than someone else.

12 If that were the case, everybody that's
13 real, real cheap would be on top, and those who are
14 asking for slightly higher price would go under, and
15 it doesn't always work that way.

16 MR. BOLTUCK: I would just like to add one
17 thing, Mr. Pearson, and that is that the data
18 presented here are just like the data in every other
19 case. There always is some ferment in the market, and
20 the possibility of bankruptcies for reasons related or
21 unrelated to imports, depending on who you speak to
22 perhaps.

23 But I would point out, for instance, that
24 with respect to Sonoco's annual reports, which are
25 public record, they always discuss their fortunes

1 rising and falling from year to year in this industry
2 with respect to resin costs, and never mentioned
3 imports in any of those annual report statements, so I
4 wouldn't presume that historical instances of
5 bankruptcies are related to imports principally.

6 COMMISSIONER PEARSON: Go ahead, Mr. Platta.

7 MR. PLATTA: I was just reminded by
8 learned counsel here that that one particular
9 customer I had mentioned who had gotten rid of the
10 supplier who went bankrupt, that supplier lost it to
11 another domestic supplier. It had nothing to do with
12 imports, and we can give you data on that later.

13 COMMISSIONER PEARSON: Was some of the
14 production capacity that was closed during the period
15 of investigation actually closed permanently or was it
16 all turned over to another firm and it's still in
17 operation?

18 MR. PLATTA: I believe it was all turned
19 over to another domestic firm and it's still in
20 operation.

21 COMMISSIONER PEARSON: Okay.

22 MR. GUIDO: Commissioner?

23 COMMISSIONER PEARSON: Yes.

24 MR. GUIDO: I was going to say I think that
25 the L.A. basin in general has a glut of capacity for

1 t-shirt bags. I mean, it's plain and simple. I don't
2 know why these guys keep putting factories down there.
3 It's too much capacity, domestic capacity down there.

4 And going back to Commissioner Koplan's
5 point, I don't know what the DOC did, if they got it
6 right or wrong on the displacement at Santa Maria, but
7 I know that Santa Maria with this excess capacity that
8 existed in Southern California, I don't pretend to
9 know what the powers of Sonoco were thinking.

10 I do know that they did a lot of
11 recapitalization of plants in other areas of the
12 country, and elected to invest a lot of money in
13 upgrading the equipment, and I'm -- like I said, I'm
14 not an employee, but I do not think, and maybe Mr.
15 Varn of Hilex can speak to that. I don't think they
16 did that in Santa Maria, which may have been one of
17 the reasons why the plant became more uncompetitive,
18 that combined with the saturation in Southern
19 California.

20 MR. CHERTKOW: Luis Chertkow, if I may speak
21 to Southern California. I am located in Southern
22 California, and for a manufacturer, which I do
23 manufacturing, it's a very, very difficult state to do
24 business with workers' compensation, especially during
25 the year 2002 when we had power outages, extrusion

1 lines went down, and caused a tremendous amount of
2 scrap. And many manufacturers have in fact moved out
3 of the State of California to Nevada just basically
4 because of the cost of doing business in Southern
5 California is so great.

6 COMMISSIONER PEARSON: Any other comments on
7 that? Okay, my last question then.

8 Petitioners maintain that projections now
9 being made by foreign producers are substantially more
10 pessimistic about the future than they were in the
11 preliminary investigation in terms of their capacity
12 and potential to ship to the United States.

13 Do you agree with that characterization that
14 the petitioners have made?

15 MR. BOLTUCK: Well, it's unsurprising that
16 foreign producers are more pessimistic today knowing
17 as we all know now and couldn't have known last fall
18 that they would become much less competitive in their
19 U.S. export market on account of changes in their raw
20 material costs.

21 So of course they have used the additional
22 period and supplemented the information available to
23 themselves and made new judgments.

24 I would like to mention that Mr. Narkin said
25 a couple of times this morning and once very

1 specifically, I think, with respect to question 2-7 in
2 the foreign producers' questionnaire. I think what he
3 is getting at is that some foreign producers made
4 certain assumptions about the outcome of this case,
5 and may have predicated their answers on that.

6 Others didn't make those assumptions, and
7 one way of looking at what is happening as of today
8 with respect to their expectations, if you want to
9 focus on foreign producers who didn't, you can look at
10 those foreign producer responses individually, and you
11 will see that almost universally foreign producers do
12 think they are going to be exporting less to the
13 United States as is entirely credible and consistent
14 with the changing competitiveness due to the sharp,
15 sharp increases in resin costs, electricity shortage
16 and higher international freight costs.

17 COMMISSIONER PEARSON: So both petitioners
18 and respondents agree that there is an issue, the
19 greater pessimism on the part of the Chinese producers
20 in exports?

21 MR. BOLTUCK: There is. They have a lot
22 more information than they did last fall. They were
23 hopeful last fall based on relative costs that existed
24 at that time that they were going to achieve a certain
25 level of competitiveness in their various markets,

1 including in the United States, and that could only
2 have shifted, you know, for all of them because it's a
3 common factor in Asia in direction toward much less
4 expectation of exports to the United States, yes.

5 COMMISSIONER PEARSON: Okay, so the
6 difference is the petitioners have some doubts about
7 whether that pessimism on the part of the foreign
8 producers is actually justified?

9 MR. BOLTUCK: I read that into the cryptic
10 remarks this morning about responses to question 2-7,
11 yes, that they are going to try to impeach these
12 aggregate projections, and what I am saying is there
13 is certainly another way of looking at the data to
14 learn something, and that would be to focus on
15 responses where there weren't assumptions you don't
16 like.

17 I mean, the question asked what assumptions
18 did you make. It didn't suggest to the respondents
19 what assumptions they should make, so it left it up to
20 them, and there wasn't a right or wrong answer. But
21 if there is an answer you prefer, you can focus on
22 those questionnaires that were not predicated on
23 assumptions you don't think -- you think might
24 interfere with the usefulness of the data.

25 COMMISSIONER PEARSON: Okay, well, going one

1 last time to Mr. Platta, who has been very patient
2 with me so far. API is a firm that produces both in
3 Asia and in the United States.

4 As you see the economics of producing
5 overseas versus here, is the United States now a less
6 attractive destination for bags than it was a year
7 ago?

8 MR. PLATTA: Well, here we sit. It sort of
9 takes the -- it makes it a little bit more pessimistic
10 but actually at this points we can produce things here
11 in the U.S. on a competitive basis with what we can do
12 in Thailand for the U.S. market itself. And you
13 factor in freight costs and other things, and who
14 knows what's going to happen tomorrow, I would
15 probably have to give you a firm don't know.

16 COMMISSIONER PEARSON: But the economics of
17 production in the two geographies have changed in the
18 past?

19 MR. PLATTA: They certainly have. Yes, sir,
20 they have. Yes, sir, they certainly have.

21 COMMISSIONER PEARSON: And they have changed
22 in a way that relatively favor production in the
23 United States?

24 MR. PLATTA: At this point, yes.

25 COMMISSIONER PEARSON: Okay, thank you very

1 much.

2 MR. PLATTA: Sure.

3 CHAIRMAN OKUN: Thank you again to all the
4 witnesses. MR. Platta, let me ask a couple of other
5 questions now that, in our post-hearing, we'll have an
6 opportunity to hear the counsel on the related party
7 issue. I very much appreciate you sitting here as
8 someone who produces domestically wondering why it is
9 you may or may not be counted as part of the domestic
10 industry for legal purposes, but we'll have a chance
11 to see the legal arguments on that.

12 The question I have is if I understand what
13 you said in the beginning, and I think it was in
14 response to Commissioner Miller, that for both the
15 Thai factory and for the U.S., your U.S. operations,
16 it's T-shirt bags, so you didn't open to try to fill
17 in a higher end or anything else, you were just trying
18 to, I think you've said, to take advantage of cost
19 discrepancies that you've talked about to increase
20 your off-shore production to serve your American
21 customers.

22 MR. PLATTA: Exactly. Yes. It was to allow
23 us to become a global player, if you will, also. It's
24 the reason we put a plant in Nevada as opposed to
25 California. We put one in Thailand for the same sort

1 of a reason. We took a look at the numbers, you do a
2 cost/benefit and you say, well, that's where we should
3 be putting it.

4 We're putting a plant up in Elkridge,
5 Maryland to service our customers here in the
6 northeast for a very similar kind of a reason. It
7 puts us closer to the market.

8 In the case of the Thai facility, it gave us
9 access to Asian resins, which now, gosh, in hindsight,
10 maybe it wasn't such a great idea, but it's still
11 there and we'll still use it. We just need to
12 probably find some other products for it.

13 CHAIRMAN OKUN: And one of the distinctions
14 of API versus, in particular, I guess, the petitioning
15 companies would be while the record shows us that a
16 number of domestic companies are now importing from
17 one of the subject countries that they wouldn't
18 describe it the way that you would, that they would
19 describe it that maybe they brought it in in order to
20 meet prices that were in the market which may have
21 been your offshore company's prices.

22 Can say anything about the competitiveness
23 vis-a-vis your competitors? Once you started
24 operating a Thai plant, did you see the other domestic
25 producers have an ability to better match prices in

1 any areas where you saw head-to-head competition?

2 MR. PLATTA: Well, there's a lot of
3 hypocrisy here. I won't get into that, but did we see
4 the competitive pressures put on other domestic
5 manufacturers caused by our Thai facility? I don't
6 honestly know because we were only bringing it in for
7 a couple of customers initially and we were using it
8 to augment and to allow us to take advantage of Asian
9 resin and we have a slightly different kind of
10 equipment over there, too, which is more labor
11 intensive. Equipment is less expensive, but you make
12 up the difference there in the labor costs. So it
13 made sense. It made sense at that time.

14 The response by our competitors was not
15 something that they did as a result of our Thai
16 facility. They had been bringing bags into the U.S.
17 for a lot longer than we ever had been producing them
18 in Thailand. We weren't bringing things in, they
19 were. We had to compete and this is our reaction.

20 As I mentioned before, we said, okay, we are
21 an American company, we're going to put an American
22 plant over there and it will allow us the best of both
23 worlds. This is where it got us.

24 CHAIRMAN OKUN: Okay. The one reason I had
25 asked that, I understand your kind of historical basis

1 you're giving, it's just that in some of this
2 information which is not really on the record but of
3 whether there is other Internet competition going on
4 where the low price is not necessary the winner, I'm
5 still trying to understand how we evaluate what is
6 essentially a blended product, it looks like, in some
7 instance on who's winning it and I'm not sure that
8 there's anything specific.

9 MR. PLATTA: Well, the way we define blended
10 is that we can produce it at any one of our four --
11 well, now five plants when Baltimore gets going, and
12 as a result it will allow us to give you a more
13 competitive price.

14 As it turns out now, if we talk blended, it
15 would be probably among the four domestic plants at
16 this stage. Blended doesn't mean it's going to come
17 from Thailand, nor does it mean it's going to come
18 from Las Vegas. It means it will come from one of our
19 plants and we'll do the best, we'll take into account
20 freight costs, shipping the bags, buying the resin,
21 labor costs, insurance costs, whatever it might be.

22 Did I answer your question?

23 CHAIRMAN OKUN: Yes.

24 MR. PLATTA: Okay.

25 CHAIRMAN OKUN: I mean, not necessarily, but

1 I'm not sure you have the information to answer, which
2 is a question for other companies and I understand
3 your explanation of why you were bringing product or
4 why you decided to do that. I'm just trying to
5 evaluate for the other domestic industries who have
6 responded that they also import and the reasons they
7 do so, how much we're seeing in the pricing.

8 MR. PLATTA: Our imports, though, are ones
9 that we've produced. We're not subcontracting to a
10 foreign producer.

11 CHAIRMAN OKUN: Okay. And then I apologize
12 that I had to leave for some of the questions.

13 Mr. Perry and Mr. deKieffer, did your
14 witnesses have an opportunity to talk about something
15 I think raised in the opening about whether product 2,
16 the pricing data for product 2, did you have an
17 opportunity --

18 Mr. Boltuck, you're shaking your head. Did
19 you have an opportunity to talk about your view of
20 product 2, the large volume product, and its
21 significance?

22 MR. BOLTUCK: You know, I was expecting to
23 address that in the staff report simply because all
24 the numbers are confidential, but I certainly don't
25 think it stands for the proposition that prices are

1 declining.

2 CHAIRMAN OKUN: Okay. Well, I will look
3 forward to the post-hearing discussion on that, then.

4 MR. BOLTUCK: Okay.

5 CHAIRMAN OKUN: And then, Ms. Slater, let me
6 go back to you with regard to negligibility. In your
7 testimony, you commented on two out of the three
8 methods in which we may be evaluating the
9 negligibility numbers from Malaysia. You spoke about
10 the desirability of getting complete coverage, which
11 we all think is desirable, and then you also talked
12 about just using the import data, but you did not
13 comment on the estimation or allocation methodology.

14 I had raised that with petitioners, I have a
15 question for post-hearing in writing, but I didn't
16 know if there was anything you wanted to say now, if
17 that's where we're going, whether you have any
18 comments here or whether you'd rather do that
19 post-hearing.

20 MR. SLATER: Well, I'll make a comment. I
21 could definitely cover it more thoroughly in
22 post-hearing. It seems to me just looking at first
23 blush at the numbers and this allocation methodology
24 based on industry experience, and I think that comes
25 from the petition, they say that there's a footnote,

1 if I remember correctly, the different percentages
2 they chose were based on industry experience, but I
3 think from a statistical point of view, if you're
4 looking to capture data for a particular population,
5 completeness is one of the main goals and a complete
6 set of data is preferable to estimated data.

7 So I think you could go either way with it,
8 but --

9 CHAIRMAN OKUN: Well, what my question is
10 going to go to, I mean, again, I don't think anyone
11 disagrees if you have complete data that's the best
12 set.

13 MS. SLATER: Sure.

14 CHAIRMAN OKUN: But if we don't have that
15 complete data, the commission is often forced with the
16 situation where we have to make calculations and if
17 there's anything with regard to that methodology that
18 we may be considering in terms of estimating the
19 non-subject imports that you want to comment on, be
20 sure to be specific about that.

21 MS. SLATER: Right. I have to say that the
22 numbers used appear to just kind of be numbers picked
23 out of the air and saying that it's based on industry
24 experience without more support, I guess that's
25 really -- I think that exposes the weakness of that

1 argument for using the numbers they allocate to
2 subject versus non-subject in that particular table in
3 the petition. I can kind of see it in my head, but
4 I'm reluctant to talk about any specific numbers.

5 CHAIRMAN OKUN: Right. No, I appreciate
6 that. Just to be sure that that's where you focus
7 your attention for the post-hearing and, again, you
8 will have a copy of the question on that.

9 MS. SLATER: Okay.

10 CHAIRMAN OKUN: I appreciate that.

11 I believe from what I understand any other
12 questions I was interested in have been covered. I'll
13 have an opportunity to review the transcript for that.

14 Let me turn to Vice Chairman Hillman.

15 VICE CHAIRMAN HILLMAN: Thank you. I have
16 just a couple of quick follow-ups.

17 Let me start on the issue -- in the Chinese
18 producers' pre-hearing brief, it states that the
19 Chinese producers projected declines in capacity are
20 attributable to planned locations of Chinese capacity
21 to certain non-subject countries.

22 I wondered if you could provide any specific
23 examples of this or any supporting documents, either
24 now or in your post-hearing brief.

25 MR. PERRY: Yes. Definitely. I mean, Frank

1 Cannon mentioned it, but literally green field
2 factories are rising up in three to six months. We
3 know that the largest importer, which was Spectrum, is
4 now sourcing from Indonesia. Vietnam production is on
5 line. India, Turkey.

6 VICE CHAIRMAN HILLMAN: But if they're green
7 field facilities, how are they affecting the capacity
8 in China?

9 MR. PERRY: Because what's happening is the
10 Chinese producers are simply shutting down and moving.

11 VICE CHAIRMAN HILLMAN: Okay. When I hear
12 green field, I'm assuming that you're starting from
13 scratch to make a green field facility. If there is
14 anything that would tie this issue of a brand new
15 start-up somewhere else to an issue of an actual
16 reduction in capacity in China, I think that would be
17 helpful information.

18 MR. PERRY: We can find that information.

19 MR. WONG: I think I would like to add a
20 point.

21 VICE CHAIRMAN HILLMAN: Mr. Wong?

22 MR. WONG: Yes. Rickly Wong from Universal
23 Plastics. The electricity shortage really affects
24 production capacity, starting at the beginning of this
25 year and we really don't know when it's going to end.

1 This is not just affecting my factory in Guan Dong
2 Province, it affects whole China. And because of the
3 economic growth in China, the demand for plastic bags
4 is higher and higher and while we have the export to
5 United States, because of the high freight cost we can
6 just sell it into our home market.

7 VICE CHAIRMAN HILLMAN: Okay. But is this
8 as a result of this that you are literally picking up
9 your equipment and moving it overseas or to other
10 countries or are other companies that you know of in
11 China moving their equipment elsewhere?

12 MR. SUNDJAJA: Commissioner, Andrew
13 Sundjaja. For us, yes, it is possible for us to pack
14 up the machines and move and it doesn't take us a long
15 time to do it.

16 VICE CHAIRMAN HILLMAN: Okay. It's
17 possible. I'm just trying to make sure I understand
18 whether this is what's actually happening.

19 MR. CANNON: I'd like to make a comment,
20 too.

21 MR. SUNDJAJA: Actually, some people I know,
22 they already did it.

23 VICE CHAIRMAN HILLMAN: Okay. Again, if
24 there is actual documentation in terms of how much
25 capacity we're talking about, I think that would be

1 very useful information.

2 Mr. Cannon?

3 MR. CANNON: Yes. I just want to tell you I
4 have direct experience just coming back from China
5 last week, where I went to a Chinese plant that has
6 been a long-term supplier, literally unbolted the
7 equipment, shipped it to Vietnam. I visited the
8 Vietnam factory, it's up and running, producing the
9 same products, just different country. Any remaining
10 capacity this plant in China had they've directed
11 towards Japan and Europe. So literally equipment is
12 being unbolted and moved.

13 VICE CHAIRMAN HILLMAN: Okay. Again, Mr.
14 Perry, if there's any specifics and totals in terms of
15 volume, that would be very useful. Thank you.

16 Mr. Platta, if I can come to you for a
17 minute, I noted in your original testimony you
18 commented on this issue of the ability to pass through
19 increased costs in resins and that to some degree you
20 had been able to do that or to a significant degree
21 you've been able to do that.

22 I wondered again, because the numbers are
23 confidential, if I could ask for the post-hearing
24 brief to help explain the trend in API's financial
25 performance from 2001 to 2003, particularly looking at

1 that 2003 number in light of this issue of your
2 testimony that you have in fact been able to pass on
3 higher resin costs.

4 MR. PLATTA: Sure.

5 VICE CHAIRMAN HILLMAN: Okay. Great. Thank
6 you.

7 And then the last question, again, probably
8 more for the post-hearing brief to counsel. As I step
9 back and listen to the testimony today, a lot of it is
10 focused on this issue of the high end bags, which I
11 think in your discussion, Mr. Perry, with Commissioner
12 Miller, they are the minority of the imports and a
13 minority of the total domestic production;
14 nonetheless, we've obviously focused a lot on it. And
15 also you've focused a lot of attention on this issue
16 of the rising costs coming out of these Asian
17 countries.

18 I'm on the other hand wanting to make sure
19 that we have all of the argument that you want to
20 make. If we are to decide this case on the basis of
21 present injury looking at the subject imports as a
22 whole, I want to make sure that we give you the
23 opportunity to make those arguments because I'm
24 hearing you make a lot of arguments that go to the
25 issue of threat and/or that go to this issue of

1 separate like products and I'm just wanting to make
2 sure that we understand your arguments on volume and
3 price and impact, if this is in fact a present injury
4 determination and if it is looking at imports as a
5 whole.

6 I'm going to invite not just you, Mr. Perry
7 but if there are other counsel that would like to
8 weigh in on that issue as well to do so in their
9 post-hearing briefs.

10 Then the last question I have is as I hear
11 your testimony, and particularly some of those that
12 commented on some of these other products like
13 newspaper banks, et cetera, I don't think you're
14 disputing that there is some domestic production of
15 the majority of the products, but that there may be
16 some products included with the scope for which there
17 is not domestic production, that's fair to say

18 I'm just curious, have there been any scope
19 exclusions sought for the products that you believe
20 are not made here at all?

21 MR. PERRY: We will know today. The
22 Commerce Department, this was a huge issue we raised
23 in our briefs at the Commerce Department on scope.
24 One is newspaper bags. We will find out. We have not
25 read the preliminary, it comes out today. It's very

1 important because if they put the newspaper bags in,
2 there are additional producers of newspaper bags in
3 this country. If they put certain bags in, there are
4 additional producers in this country. So I think that
5 staff should be reading the Commerce Department
6 decision because there are scope issues that were
7 raised and we're waiting to see what the ruling is
8 from the department.

9 VICE CHAIRMAN HILLMAN: Okay. Newspaper
10 bags and then certain other things?

11 MR. PERRY: Certain other ones. A number of
12 other ones. The question was Customs is being very
13 aggressive and it's basically collecting cash deposits
14 on products which don't have handles on it and this
15 raised the whole issue. The newspaper bag was one of
16 them, but it's becoming an overreaching, we thought,
17 by Customs, but they were demanding that we get a
18 ruling out of Commerce.

19 We have sought the ruling, we'll find out
20 what happens in the final determination.

21 VICE CHAIRMAN HILLMAN: I appreciate those
22 answers.

23 I appreciate all the answers to the
24 questions. Thank you very much.

25 CHAIRMAN OKUN: Let me see if any of my

1 colleagues have anything additional.

2 Commissioner Koplan?

3 COMMISSIONER KOPLAN: Just one. Thank you,
4 Madam Chairman.

5 As a follow-up to one of Vice Chairman
6 Hillman's questions, let me ask you, Mr. Platta, do
7 long-term contracts whose source are imported product
8 contain provisions that allow for adjustments to price
9 based on raw material costs such as PE resin and/or
10 changes in transportation costs?

11 MR. PLATTA: No. When I mentioned that we
12 were able to pass through resin changes, those are the
13 customers that we have indexed against either a CMAI
14 or CDI index, which is the cost of high density
15 polyethylene resin. We have never really put in there
16 freight costs. Shame on us, but we haven't.

17 COMMISSIONER KOPLAN: Thank you.

18 I have nothing further.

19 CHAIRMAN OKUN: Let me turn to staff to see
20 if staff has questions of this panel.

21 MR. CANTRELL: Yes. One question. I'm Ray
22 Cantrell, Staff Industry Analyst. I believe earlier
23 in respondents' testimony I heard someone mention that
24 polypropylene was used as an integral component in the
25 production of plastic carrier bags. Was I mistaken or

1 did someone mention polypropylene?

2 CHAIRMAN OKUN: If you can use your
3 microphone?

4 MS. KEEN: Carol Keen. When I commented
5 upon polypropylene, I was referring to a type of rope
6 handle made from polypropylene. There's nylon,
7 cotton, polypro. That's the only reference I can
8 think of that I said polypropylene.

9 So here's an example of a nylon or
10 polypropylene handle as opposed to a cotton material
11 rope handle.

12 MR. CANTRELL: Okay. I just thought you
13 might be referring to the body of the bag.

14 MS. KEEN: No, I was talking about the
15 handle.

16 MR. CANTRELL: Thank you.

17 MR. DEYMAN: I'm George Deyman, Office of
18 Investigations. The staff has no further questions.
19 Thank you.

20 CHAIRMAN OKUN: Thank you.

21 Let me turn to counsel for petitioners.

22 Mr. Dorn, do you have questions for this
23 panel?

24 MR. DORN: No, Madam Chairman.

25 CHAIRMAN OKUN: Very well.

1 Let me thank this panel of witnesses very
2 much for their testimony this afternoon and for
3 answering our many questions. We very much appreciate
4 you being here.

5 Before I excuse you and we turn to the
6 closing, let me just review the time remaining.

7 Petitioners have a total of ten minutes
8 remaining. That includes five minutes for closing.

9 Respondents also have a total of ten minutes
10 remaining, including their five minutes for closing.

11 With that, Mr. Dorn, we'll just take a
12 couple of moments to let this panel of witnesses leave
13 the tables and then we will hear from you.

14 (Pause.)

15 CHAIRMAN OKUN: If we could have everyone
16 seated, please, Madam Secretary?

17 MS. ABBOTT: Would everyone be seated,
18 please?

19 CHAIRMAN OKUN: Mr. Dorn, you may proceed.

20 MR. DORN: Thank you.

21 With respect to like product, the argument
22 we heard today was very similar to the argument we
23 heard last summer at the staff conference and that was
24 the same types of things you considered in your
25 preliminary determination when you found a single like

1 product.

2 There has been a shift, though, even from
3 the pre-hearing brief of last week to today in terms
4 of how they're defining the high end product.

5 For the first time we heard today that
6 apparently it all comes down to the shape of the
7 bottom of the bag, as I understand it. In the
8 pre-hearing brief, they said it had to be a cardboard
9 insert in there. I suppose in reaction to the
10 side-by-side comparison of Genpak's bag, which does
11 not have the cardboard bottom but which stands up, and
12 the Chinese bag, some of which have the cardboard
13 insert and some of which do not, they changed their
14 tune and they're now accepting the definition in the
15 pre-hearing brief staff report.

16 But the answers to the questions from
17 Commissioner Hillman and Commissioner Miller to the
18 importers regarding the range of products that they
19 bring in I thought was very instructive. As one of
20 the witnesses said, it's A to Z.

21 In talking about the price points, it was a
22 continuum. I mean, they'd like to hand up the T-shirt
23 bag and then the most expensive square bottom bag and
24 say those are two products, but there are a range of
25 products in between that are not T-shirt sacks that

1 have patch handles and drawstring handles and so forth
2 and there is a continuum and the break that they're
3 suggesting is totally arbitrary, in our view.

4 No witness talked about the differentiation
5 in terms of size, printing, gauge, prices. All those
6 things go along a continuum and that's why this
7 commission's preliminary determination on like product
8 was correct.

9 Lost of discussion today of resin. This
10 case is about bags and not resin, but I would like to
11 correct my testimony if I said something incorrect.
12 Mr. Perry suggested I did.

13 The argument that was being made last summer
14 was that U.S. prices for resin were twice as high as
15 Asian prices and that's the testimony that we refuted
16 back then and we're refuting again today. That
17 testimony from Mr. Varn was that on average over the
18 last five or so years has been about a five cent
19 differential between Asian and U.S. resin prices.

20 Mr. Seanor testified that Vanguard during
21 the period of investigation bought U.S. resin and also
22 Asian resin.

23 Vanguard, by the way, brings its resin in in
24 40-foot containers, not sack-by-sack, but in 40-foot
25 containers. It brings it in duty free, there's no

1 duty on resin from Thailand, it's a GSP beneficiary.
2 And when Mr. Seanor said that there's never going to
3 be a divergence more than six to eight cents, he's
4 talking about the transportation costs and handling
5 costs and so forth that would allow imports and
6 exports back and forth if there was any more
7 divergence than six to eight cents.

8 So this resin argument is a red herring
9 because they're starting with projecting this large
10 disparity this summer which has narrowed. There was a
11 little bit of disparity last summer which may have
12 narrowed, but not nearly to the degree that they're
13 suggesting.

14 I thought it was very instructive to hear
15 from Mr. Platta, who said that he cannot predict
16 future resin prices. We agree. Their whole threat
17 argument is based upon the proposition that there has
18 been a sea change in resin prices and that whatever is
19 happening today is going to continue into the future.

20 Mr. Platta correctly stated that nobody in
21 this room knows what's going to happen to prices of
22 natural gas, petroleum or resin in the United States
23 and Asia and to the extent they get out of whack, one
24 side or the other will just import when the difference
25 exceeds the transportation cost.

1 Turning to the statutory criteria, volume of
2 imports, using the import data in the pre-hearing
3 report, ignoring our estimates, we think that the data
4 show that the imports are very significant in relation
5 to the domestic production and U.S. consumption and I
6 don't think there's any disagreement that whatever set
7 of data you use there's been a tremendous increase in
8 the volume of imports.

9 With respect to price effects, I did not put
10 all of my eggs in the unit AUV basket. I think I made
11 it clear that there are a number of data series which
12 are mutually corroborative. I'm not saying one is
13 necessarily better than the other, I'm saying that you
14 look at them all together and they all point in the
15 direction of declining U.S. prices and declining
16 import prices.

17 Mr. Boltuck used his term pricing premium,
18 which is what the economists do when there is evidence
19 of underselling and they say, well, sure, there's
20 underselling but it's because there's a price premium
21 being paid for the U.S. product.

22 Well, I think it's an acknowledgement there
23 is a price differential, which we agree with, but it's
24 that price differential which has allowed the imports
25 to come in and gain market share.

1 Look at the price data for product 2 and
2 also look at the volume, the quarterly volume. Look
3 at what happened to the quarterly volume of the
4 subject imports over time in relation to the declining
5 prices.

6 This case has a lot better and different
7 evidence regarding adverse impact than the case you
8 had before you last fall when you looked at the
9 preliminary record. This case has the evidence from
10 all of 2003. As of 2002, I could understand how the
11 commission could look at the record and say, well,
12 this industry is still at least modestly profitable,
13 making a little bit of money. Look at the data for
14 2003. This is a different case than you had before
15 you last fall.

16 And, of course, last fall, you didn't say
17 the industry was not injured, you just didn't need to
18 get that point because the evidence of threat was so
19 strong.

20 Mr. Platta used the phrase "Grow or die."
21 Well, this is an industry that should have been
22 growing from 2001 to 2003, given the growth in the
23 market.

24 Yes, if it this industry cannot grow with a
25 growing market, if it cannot increase capacity, if it

1 cannot maintain its market share, it eventually will
2 die.

3 With regard to threat, this is a very
4 unusual argument being made by the other side. What
5 we try to do is argue our case based on the record,
6 which goes from January 1, 2001 to December 31, 2003,
7 and we're basing our argument on what's in the
8 questionnaire responses.

9 The other side is pulling out of the air
10 these arguments about what's happening here in June of
11 2004, but not based upon any record evidence. In
12 fact, I would suggest that you look at the foreign
13 producers' questionnaires and count up the number of
14 times there's a mention of resin costs. Count it up.
15 See if there's any support for their arguments.

16 I find it very interesting about the
17 discussion about the Chinese all of a sudden deciding
18 to move plants to Indonesia and Vietnam. Why would
19 they do that? Certainly resin costs aren't lower in
20 Vietnam and Indonesia. Certainly transportation costs
21 aren't any less going to the United States from those
22 two countries. The only reason that that's happening
23 is because of the antidumping duties and they're
24 scrambling looking for alternative places to go.

25 It's not that easy. In Vietnam, there's not

1 much infrastructure, very difficult to set up plants.
2 Indonesia has a lot of political instability. That's
3 why if you look at the historical record, if you look
4 at the record in the pre-hearing report, imports from
5 Vietnam and Indonesia have been negligible and we
6 don't see that changing.

7 With regard to blended sales, I found the
8 testimony from API very interesting. I'd like to know
9 any time in the history of API when they've gone to
10 their customer and said we're going to offer you a
11 blended price based upon the two plants in the United
12 States. No. They've never done that.

13 The whole idea of blended sales programs is
14 to use the cheap import prices to combine with the
15 higher domestic prices in order to lower the average
16 blended price and that's the strategy that API has
17 used and that strategy has caused harm to domestic
18 producers.

19 I think that concludes my remarks. I
20 appreciate your time and attention and, again, thanks
21 to the staff for an excellent pre-hearing report.

22 CHAIRMAN OKUN: Thank you.

23 Mr. dekieffer, Mr. Perry, Mr. Boltuck?

24 MR. PERRY: Mr. Boltuck will be giving our
25 rebuttal.

1 MR. DEKIEFFER: We've heard a lot this
2 afternoon; having some culinary references to red
3 herrings, I'd like to suggest whole enchiladas. We've
4 heard that resin prices are a red herring. Well, why
5 then would resin prices be an industry standard for a
6 pass-through cost?

7 Resin costs are what control the price of
8 most in terms of volume of the products under
9 consideration here. And those resin prices, along
10 with the attending costs, such as handling and
11 shipping and even smaller factors such as duty rates,
12 are what determine where the manufacturers in this
13 country and abroad, which ones are going to be
14 successful.

15 Now, some companies in this country and some
16 companies overseas are adroit and some are not. Some
17 hedge their bets against future costs of raw materials
18 which in every single case is more than half of the
19 value of the final price and others do not and they
20 file cases before the U.S. Government.

21 API and other companies have been adroit in
22 trying to hedge their bets as to where their costs are
23 going to be the lowest so they can offer the cheapest
24 prices to their ultimate customers. They don't,
25 however, bet against themselves. That's a fool's

1 gamble. You don't dump on your own business plan.

2 But you do put money where you think you can
3 produce the cheapest over the long period.

4 Now, I don't know and certainly Chairman
5 Okun and Commissioner Pearson have pointed out how do
6 we know whether oil prices or gas prices are going to
7 stay high or which one is going to be higher against
8 another in the future. We don't know, we're not sure.
9 But API, among others, but particularly API, has bet
10 \$25 million right now that the United States is the
11 market that's going to grow and not Asia and I think,
12 given their history, that that particular gamble is
13 going to pay off.

14 You're going to explain why.

15 MR. BOLTUCK: Well, API's shift of capacity
16 to Howard County in Maryland as a consequence of the
17 lower competitiveness in Asia and of its Thai facility
18 in serving the U.S. market due to the change in resin
19 prices is a direct indication of the consequence of
20 the shifting competitiveness that we've discussed.

21 I'd like to turn to like product for just a
22 moment and reaffirm that the respondents accept and
23 think the definition that was used by the staff in the
24 questionnaires is appropriate and complete and does
25 segregate the two very distinct products correctly and

1 that all of the responders to commission
2 questionnaires found no ambiguity or confusion in
3 being able to classify the products in one category or
4 the other.

5 With respect to like product, the
6 petitioners really are attempting to have it both
7 ways. Mr. Everett this morning testified that high
8 end paper bags are unlike high end PRCB bags because
9 there's a price wall between the two of them, but in
10 the same way there's a price wall between low end PRCB
11 bags that sell for one or one and a half cents a piece
12 and high end bags that sell for 25 to 40 times that
13 amount. So certainly there are ranges, but the ranges
14 are separate and very far apart, so if you accept the
15 price wall concept, it certainly supports the notion
16 of separate like products.

17 I would point out also that we have heard no
18 response from the other side on the significance of
19 the overstatement of imports, which we consider to be
20 an important issue since the petition was predicated
21 and motivated on a misapprehension, as was the
22 commission's preliminary determination.

23 Mr. Dorn indicated that no one knows the
24 future of resin costs, hence, he wants to say how can
25 we say Asia will be less competitive in the future,

1 but if it's true that no one knows the future of resin
2 costs, then any assumption that Asian competitiveness
3 will improve from its current deteriorated state is
4 necessarily, then, based on conjecture and
5 speculation.

6 Mr. Dorn also contends that the shift of
7 capacity to China to Vietnam can only be explained by
8 the antidumping action and yet we heard from Rickly
9 Wong that the fact his plant is required to close down
10 two-sevenths of the week, what is that, 28 percent of
11 the week? Is the factor that is driving capacity from
12 China to elsewhere in Asia, that the electricity
13 shortage in China which is understandable, given the
14 rate of development of that country and the imbalances
15 that are occurring, is in fact a factor.

16 With respect to the resin cost changes in
17 Asia, Mr. Seanor testified that although divergences
18 can occur in the short run in prices of resins between
19 the United States and Asia, that in the long run
20 there's convergence and arbitrage. If he is correct,
21 then that actually is very consistent with the data
22 we're looking at. One of those divergences existed
23 last fall and it in fact has been alleviated over time
24 as prices in Asia have risen in relation to those in
25 the United States. So I think that that's really a

1 concession.

2 And let's see if I have any additional
3 points here.

4 I think I will stop at that point.

5 Thank you.

6 CHAIRMAN OKUN: And thank you to both of
7 you.

8 Post-hearing briefs, statements responsive
9 to questions, requests of the commission, corrections
10 to the transcript must be filed by June 17, 2004.
11 Closing of the record and final release of data to
12 parties is July 6, 2004 and final comments are due
13 July 8, 2004.

14 With no other business to come before the
15 commission, this hearing is adjourned.

16 (Whereupon, at 4:22 p.m., the proceedings in
17 the above-captioned matter were concluded.)

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

CERTIFICATION OF TRANSCRIPTION

TITLE: Polyethylene Retail Carrier Bags from China, Malaysia, and China

INVESTIGATION NO.: 731-TA-1043-1045 (Final)

HEARING DATE: June 10, 2004

LOCATION: Washington, D.C

NATURE OF HEARING: Hearing

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

DATE: 6/10/04

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: Renee Miskell
Signature of Court Reporter