

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
TETRAHYDROFURFURYL ALCOHOL) Investigation No.:
FROM CHINA) 731-TA-1046 (Final)
)

Pages: 1 through 220

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THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
) Investigation No.:
 TETRAHYDROFURFURYL ALCOHOL) 731-TA-1046 (Final)
 FROM CHINA)

Monday,
 June 14, 2004

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

The hearing commenced, pursuant to notice, at 9:30 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:

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In Support of the Imposition of Antidumping Duties:

On behalf of Penn Specialty Chemicals:

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Officer, Penn Specialty Chemicals
MICHAEL NEFF, Vice President and Chief Financial
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P R O C E E D I N G S

(9:30 a.m.)

CHAIRMAN OKUN: Good morning. On behalf of the United States International Trade Commission, I welcome you to this hearing on Investigation No. 731-TA-1046 (Final) involving THFA Alcohol From China.

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

Schedules setting forth the presentation of this hearing, notice of investigation and transcript order forms are available on the Secretary's desk. The parties are aware of the time allocations. All prepared testimony should be given to the Secretary. Do not place testimony directly on the public distribution table.

As all written testimony will be entered in full into the record, it need not be read to us at this time. All witnesses must be sworn in by the Secretary before presenting testimony. I understand the parties are aware of time allocations. Any questions regarding time allocations should be directed to the Secretary.

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

5 Madam Secretary, are there any preliminary
6 matters?

7 MS. ABBOTT: No, Madam Chairman.

8 CHAIRMAN OKUN: Very well. Let us proceed
9 with our opening remarks.

10 MS. ABBOTT: Opening remarks on behalf of
11 Petitioner will be made by William D. DeVinney,
12 Pillsbury Winthrop.

13 CHAIRMAN OKUN: Good morning, Mr. DeVinney.

14 MR. DEVINNEY: Good morning, ladies and
15 gentlemen, and thank you for the opportunity to appear
16 before you today. My name is William DeVinney, and
17 I'm with Pillsbury Winthrop. I am here on behalf of
18 the Petitioner, Penn Specialty Chemicals.

19 With me are Bob Quinn, the CEO of Penn, and
20 Michael Neff, the vice president and chief financial
21 officer of Penn, both of whom you will hear this
22 morning. I'm also here with my colleagues, Bill
23 Matthews, who is the director of international trade
24 services for our firm, and Bruce Malashevich, from
25 whom you will also hear this morning, and Greg Hogan

1 of Economic Consulting Services who have assisted us
2 in this case.

3 As you know, Penn is the only domestic
4 producer of tetrahydrofurfuryl alcohol, or THFA, a
5 feron based product that has many end uses, especially
6 as a solvent in the agriculture chemicals and
7 coatings, such as paints and lacquers, and various
8 cleaning solutions.

9 THFA is a popular ingredient in many
10 formulations because of the unique chemical properties
11 and because it is environmentally friendly. From the
12 time that Penn purchased its THFA business in 1999, it
13 has been very enthusiastic about the prospects for
14 growth of that industry, and it is still enthusiastic.

15 Penn has been very active in trying to
16 encourage that growth by working with both its current
17 customers and potential new customers to develop new
18 uses and markets for THFA and, as you will hear in
19 more detail today, that work is producing encouraging
20 results.

21 Its THFA business is vitally important to
22 sustaining Penn as a profitable company. As the
23 Commission knows, Penn entered bankruptcy protection
24 in 2001 and emerged in the summer of 2002. Penn
25 remained committed to its THFA throughout the

1 bankruptcy and did not miss a single shipment of THFA
2 to any customer.

3 As part of its plan to emerge from
4 bankruptcy protection, as Mr. Quinn will describe in
5 more detail, Penn restructured its current operation
6 so now it is even more reliant on a profitable,
7 healthy THFA business.

8 THFA can be made by one of two different
9 processes, but so long as THFA meets minimum technical
10 specifications it's fungible for nearly all or all
11 applications. Because it is a fungible commodity type
12 product, THFA user purchasing decisions are naturally
13 made primarily on the basis of price, making the THFA
14 market and, therefore, Penn particularly vulnerable to
15 imports dumped at below fair market value.

16 From the time that it entered the THFA
17 market, Penn has faced unfair competition from Chinese
18 imports. As you will hear, Penn has faced competition
19 from Chinese THFA for sales to almost all of its end
20 user customers, both large and small, and its
21 distributor customers as well.

22 This has come in the form of either
23 customers informing Penn of a price quote from a
24 Chinese producer which those customers expected Penn
25 to match, or, in the case of some of Penn's larger

1 customers that had long-term contracts, those
2 customers have been able to invoke the meet or release
3 provisions of those contracts. Repeatedly, Penn has
4 been forced to meet prices of the subject imports or
5 lose market share.

6 As I indicated, the THFA business is
7 critical to Penn's long-term survival of the company.
8 Losing its customer base was simply not an option, so
9 it was forced to meet the prices of the unfairly
10 traded subject imports. This naturally has led to
11 price suppression and depression in the THFA market,
12 and it has reached the point where Penn was forced to
13 sell THFA below its own cost if it wanted to retain
14 its customer base.

15 It is no coincidence that as the price of
16 subject imports decreased the volume of subject
17 imports increased. In fact, the two trends are
18 directly related. The annual volume of subject
19 imports increased significantly from 2001 to 2002 and
20 was set to further increase significantly in 2003
21 until the subject imports ceased in September of that
22 year due to this investigation.

23 Penn expects that the THFA market, if open
24 and fair, will thrive and grow over the next several
25 years, and it will contribute to Penn's growth as a

1 company. Penn's confidence is supported by its recent
2 performance since the Chinese imports have stopped due
3 to this investigation. Without price pressure from
4 unfairly traded imports, Penn's performance has
5 improved and shown signs of profitability.

6 Despite this improved outlook since the
7 subject imports have ceased due to this investigation,
8 Penn still faces a threat from the Chinese imports.
9 As we've explained in more detail in our brief, Penn
10 believes that there are more firms in China that are
11 either producing or are capable of producing THFA than
12 the lone Respondent in this investigation.

13 Furthermore, antidumping orders are in place
14 in both Europe and the United States regarding
15 furfuryl alcohol, or FA, the precursor ingredient to
16 THFA. Penn believes that absent relief from the
17 submission, Chinese producers will make the relatively
18 fast and inexpensive shift to convert their FA
19 facilities to THFA facilities and export that THFA to
20 the United States.

21 Penn understands it will not be the sole
22 producer in the domestic THFA industry over the long
23 term. Penn believes that if the Commission makes a
24 positive determination here today that the market
25 price for THFA will rise to a fair level, and the THFA

1 market will expand to the point where a new domestic
2 producer or producers will enter the market.

3 Penn does not fear competition. It only
4 wishes to compete on a level playing field. On a
5 level playing field, Penn expects that the market will
6 grow as new entrants encourage innovation and the
7 market expands, providing an opportunity for more than
8 one firm to operate profitably. Penn simply asks the
9 Commission to ensure that the THFA market becomes a
10 level playing field.

11 Thank you for your time.

12 CHAIRMAN OKUN: Thank you.

13 MS. ABBOTT: Opening remarks on behalf of
14 the Respondents will be by Matthew P. Jaffe, Crowell &
15 Moring.

16 CHAIRMAN OKUN: Good morning, Mr Jaffe.

17 MR. JAFFE: Good morning. Page 11 and 12 of
18 Penn's prehearing brief makes the following statement,
19 and I quote: "In an attempt to take advantage of
20 Penn's bankruptcy, the single largest U.S. importer
21 used Penn's struggle to spread uncertainty in the
22 marketplace and expand competing subject imports into
23 the U.S. market both for its own account and for
24 resale to other U.S. customers."

25 I believe this one sentence actually is the

1 theory of Penn's case, and what we will do in our
2 presentation today is to demonstrate that that
3 statement is false.

4 Now, the statement is somewhat tantalizing.
5 It doesn't actually mention any particular company by
6 name. It talks about the single largest U.S.
7 importer. If you look at page IV-1 of the staff
8 report, you'll see the sentence that Kyzen by far was
9 the largest importer in the period examined, so we're
10 making the assumption here, the presumption, that
11 they're talking about Kyzen.

12 Now, I would like to put this in
13 perspective. Even though Kyzen is the largest
14 importer, it is first and foremost a manufacturer.
15 It's not a big company. It has 28 employees, only \$6
16 million in revenue last year, so on the scale of
17 things it's a relatively small company.

18 THFA is extremely important to that revenue
19 stream, and so what is critical to the success of
20 Kyzen is to have a secure supply of THFA as a raw
21 material. It's critical to the success, so at the
22 same time they were the largest importer they also
23 made sure that they always purchased 30 to 50 percent
24 of their THFA from Penn.

25 It's something that you're going to hear

1 during our presentation. It's a mantra that you're
2 going to hear time and time again. It's critical to
3 our success that we have two viable suppliers of this
4 commodity.

5 When you go back to that first sentence and
6 you look at it and you say this importer, Kyzen, they
7 were trying to spread uncertainty in the marketplace,
8 well, that would be against our best interest to do
9 so. It would actually hurt Kyzen to do that
10 particular item, try to spread uncertainty.

11 If you also look at it and if you look at
12 the imports, what you're going to see today, and we'll
13 testify, is that most of those imports, almost all,
14 were used for internal consumption, so once again when
15 you go back to that particular sentence in which it
16 talks about resale to other U.S. customers, that's
17 also false. There's no resale whatsoever.

18 We also look to the evidence for price.
19 What you're going to see is that when Kyzen purchased
20 price of THFA from China and it purchased price from
21 Penn, the price of Penn's THFA was always below the
22 price of the THFA purchased from China. Once again,
23 when they said there was a manipulation here for its
24 own account, that's not what the evidence shows.

25 It's the same thing when you go into the

1 record, and you look at the prices, the evidence as to
2 the price of everything. You also see that that's not
3 what's happening in the market as well.

4 For example, on page V-9 of the report it
5 talks about prices for Product 1 sold to end users
6 between the United States and China. There's a
7 possible total of eight quarters during the 3 period
8 examined. During these quarters, the prices of
9 Chinese imports were above the U.S. price during all
10 quarters.

11 Same thing with regard to pricing data for
12 Chinese Product 2. It was not available for the
13 period examined. No sales were reported. Once again,
14 if we look at the ITC report you can see that they
15 were not using these imports to compete against Penn.

16 The last point, of course, is to look at the
17 impact. Unfortunately, it's proprietary. We can't
18 really concentrate on that, but I ask you and invite
19 you to look at the lost sales and lost revenue. Again
20 on page V-11, it does indicate that the only company
21 subject to lost sales allegations, disagreeing on all
22 counts, so once again no lost sales in this particular
23 record.

24 As with regard to lost revenue, there are
25 eight. I see one, two, three, four all disagreed with

1 Penn's lost revenue allegations, and one didn't
2 respond, so five out of the eight. No lost revenue.
3 We will demonstrate again during our presentation that
4 this statement is false; that in fact imports of THFA
5 from China did not cause injury to the domestic
6 industry, and they do not threaten to cause material
7 injury to the domestic industry in the foreseeable
8 future.

9 Thank you.

10 CHAIRMAN OKUN: Thank you.

11 Madam Secretary, if you could please
12 announce the first panel?

13 MS. ABBOTT: The first panel in support of
14 the imposition of antidumping duties, please come
15 forward and be seated.

16 All witnesses have been sworn.

17 (Witnesses sworn.)

18 CHAIRMAN OKUN: Welcome to all of you. Mr.
19 DeVinney, it looks like your panel is all seated and
20 ready to proceed.

21 MR. DEVINNEY: Thank you, Madam Chairman.
22 Our first witness will be Robert Quinn, who is the CEO
23 of Penn Specialty Chemicals.

24 MR. QUINN: Good morning. Madam Chairman
25 and the Commission, thank you for your time and the

1 opportunity to present our case on this issue. We
2 really appreciate the forum.

3 I am Bob Quinn. I'm president and CEO of
4 Penn Specialty Chemicals. I've been president of Penn
5 Specialty Chemicals since the middle of 1999 when
6 myself and a group of partners bought the furfuryl and
7 derivatives business from Great Lakes Chemicals.

8 I have been in the chemical industry for 40
9 years, worked in areas of technology, sales and
10 management for both large and small chemical
11 companies. The problem we're bringing to you today I
12 know is typical of what's going on in the chemical
13 industry in general, so there's nothing truly unique
14 about our situation, but it's a serious one.

15 Michael Neff, who is seated on my far right,
16 is our vice president of finance and chief financial
17 officer, and he'll talk to you as we go forward about
18 more of the details of how the unfairly priced Chinese
19 THFA has truly affected our business negatively and
20 makes us concerned about our viability.

21 As you're aware, we had financial
22 difficulties in the year 2001. In the year 2001, that
23 year was known as the perfect storm because so many
24 things worked against the domestic chemical industry.
25 One of the chief causes of our problem was a change in

1 the valuation of the euro, and we had a cash flow
2 problem that caused us to voluntarily petition for
3 Chapter 11 bankruptcy in 2001. We successfully
4 emerged about a year later in July of 2002, and we've
5 been out of bankruptcy and back on our feet for two
6 years.

7 In order to emerge from bankruptcy, we had
8 to do two things. We had to find a way to improve the
9 liquidity of our business, and it was seen early on
10 that the way to do that would be through a tolling
11 arrangement with another company for two of our very
12 large volume products.

13 The second thing was to be able to grow the
14 revenue and the profitability of our non-toll products
15 so that we could demonstrate to our shareholders that
16 we had a viable business that would generate value for
17 them, so there were two specific and two different
18 things that needed to be done, and they were seen
19 early on.

20 Through the year when we were in Chapter 11,
21 we did accomplish both of those feats. We did put
22 together a tolling arrangement to make two of our
23 products, THF, tetrahydrofuran, and polymeg, or PTMEG,
24 with a large chemical company. This tolling
25 arrangement, which goes for 15 years, enables us to

1 cover the fixed cost of that portion of our plant.

2 We have a fairly large plant. A big portion
3 of it is devoted to these large volume products. The
4 rest of the plant is devoted to these non-toll
5 products, which includes THFA. From the time we
6 bought the business through the time of our bankruptcy
7 and as part of our plan to come out of bankruptcy and
8 demonstrate value to our shareholders, THFA has been a
9 cornerstone of growth and profitability for our non-
10 toll products.

11 When we bought the business in July of 1999,
12 two of the partners that I brought in had a lot of
13 experience with market development for solvents. Some
14 of these solvents were designated for the market areas
15 where they saw, when they came with Penn, that THFA
16 was very strong and should have enormous success over
17 the long term because of the unique values of the
18 product as a solvent and also because of its green or
19 environmental friendly characteristics, so they were
20 very excited about THFA, and right from the start we
21 looked for the growth areas in this particular market
22 area and put together a program to develop the market.

23 Not much work was done by Great Lakes
24 Chemicals in the years before we bought the business
25 The business was for sale for several years and, as is

1 typical, it was ignored, and a lot of work was not
2 done that would have been done under normal
3 circumstances to derive growth for the business.

4 The reasons why THFA looked like a great
5 product, a great growth product for us right from the
6 start, and still is, are several, and I'll look at my
7 notes here to make sure I don't miss any of them.

8 THFA is the preferred solvent in a number of
9 rapidly growing market areas such as, but not limited
10 to, agricultural chemicals. As I mentioned, it's a
11 very unique solvent, unique properties, and the green
12 characteristics of it are an element that is becoming
13 increasingly important as time goes on.

14 The markets we were looking at back in 1999
15 and the year 2000 were markets such as agricultural
16 chemicals where it would take years -- three years,
17 maybe even four years, to get all the necessary
18 approvals to get a new product in the marketplace, but
19 we spent our time with the R&D people in those market
20 areas, realizing that it would take several years to
21 pay off, but that once they did start to produce their
22 commercial products it would be hard to dislodge us
23 and stem the growth, so that's what we've been working
24 on right from the start.

25 The pharmaceutical market, just as an aside,

1 is another market where we're spending a lot of our
2 time for Penn, and that also is a market that doesn't
3 really develop quickly, but once it develops it
4 usually has strong growth, and you usually have a good
5 position being in products that are very important and
6 that are difficult to reformulate.

7 The other thing we had and have is a body of
8 performance data for THFA in the lab at our Memphis
9 plant when we bought the business, and some was
10 developed since then, enables our scientists to go out
11 and talk to R&D people about new products, new product
12 development, to help them formulate, to get into the
13 formulations and become instrumental in terms of
14 driving their business forward. We have a lot of data
15 on THFA relative to other solvents that hasn't really
16 been exploited, and that's one thing we started to do.

17 Our plant itself is a world class plant, and
18 we are the only producer of THFA in Europe or North
19 America. To make THFA successful, you have to have a
20 good source of furfuryl alcohol or FA. We do produce
21 FA at our Memphis plant also, so it's a very strong
22 manufacturing resource with good labor, a good
23 relationship with labor and good technical people,
24 both engineering and Ph.D. scientists.

25 We have an excellent record of shipping

1 quality products on time. We've missed no supply
2 commitments to any of our customers either in THFA or
3 any of our other toll or non-toll products. Even
4 during the Chapter 11 reorganization, we kept in close
5 touch with our customers that were in the
6 pharmaceutical industry, and we're very anxious to
7 make sure they get a continued source of supply and we
8 didn't blink, so we have an excellent record in terms
9 of supplying our customers.

10 The other advantage that we have and saw
11 that we had was the ability to very quickly and
12 economically expand our production capacity for THFA,
13 basically double it. We announced that we were going
14 to expand our capacity in the year 2000 when we saw
15 the double digit market growth and the fact that we
16 could outstrip our production capacity in three, four
17 or five years, and we've been doing all the work since
18 then to be able to literally double our production
19 capacity in two months from the time we make the
20 decision to do that.

21 What we're doing is waiting for the pricing
22 in the THFA market to reach levels that justify that
23 expansion, but we've done all the prework, and we're
24 poised and ready to expand quickly and significantly.

25 In the years 1999 and 2000, we were

1 predicting long-term, double digit growth in THFA, and
2 we're still doing that. The seeds we planted three
3 and four years ago are starting to bear fruit, and
4 again we were looking at long-term market growth, not
5 short-term. There weren't very many THFA markets
6 where you could get a lot of business quickly, so we
7 had to get in the formulations, go through the R&D and
8 the approval work and get the payoff down the road.

9 Just within the recent six to nine months we
10 have one new customer who we've been working with for
11 over three years on a technical basis and other ways
12 to partner to improve that customer's viability and
13 ability to move quickly who was already started to buy
14 and is well on their way to being our largest customer
15 in a year or two.

16 This isn't pie in the sky. We've been
17 working with them for over three years. They did
18 start to buy. Their product is going into the market
19 and looks very promising. They're very excited about
20 it, and so are we.

21 We have an existing customer, one of our
22 largest, who recently decided to reformulate two of
23 their other products using THFA and are going to start
24 increasing their purchasing volume from us in the
25 fourth quarter of this year, so a lot of the seed work

1 that we did is starting to pay off.

2 We have two other new global chemical
3 companies -- I'm talking the biggest chemical
4 companies in the world -- who several years ago
5 decided to formulate products with THFA and indicate
6 they'll be buying from us probably in 2005. The
7 products are important to them, seem to have all the
8 elements that are necessary, and they feel very
9 confident they'll get the approvals they need.

10 Any one of these four new customers will be
11 twice the size of our largest customer today within a
12 year or two. We say that's great, and we think it's
13 exciting, but unfortunately the pricing situations
14 that has developed makes this a joy, but one that we
15 still carry a lot of concerns about.

16 Another thing we've been working on since we
17 bought the business is a very large project with a
18 large global chemical company where we would use THFA
19 to make a product for them, so we're doing a lot of
20 things to try to differentiate our products and make
21 them harder to duplicate. That one is still an active
22 project. It's very hard to predict when it will bear
23 fruit, but it looks like it will.

24 Michael Neff will talk about some of the
25 details of our numbers and our critical situation, but

1 he'll also talk when I'm done, which is soon, about
2 the sales results we've seen thus far this year which
3 support what I've been saying about our market
4 development efforts paying off.

5 It's a two-edged sword. We are very reliant
6 now on THFA as our chief non-toll product to bring the
7 growth that we said we'd bring to our shareholders
8 both in revenue and profitability, but the thing we
9 have to do now to take advantage of that is get some
10 help on the unfair pricing from Chinese THFA to work
11 with a level playing field.

12 The way this happens is that our other major
13 customers outside of Kyzen, because Kyzen had already
14 been buying THFA from China, came to us in the year
15 2002 with credible offers of Chinese THFA at very low
16 prices, and they've told us very emphatically and
17 clearly that we would lose most or all of our business
18 if we didn't match those prices or at least come
19 close.

20 We made some really tough decisions, dug
21 into the offers that our customers were talking to us
22 about. It was happening at a lot of places at the
23 same time, roughly the same kind of pricing approach.
24 I've been in the situation before, and we decided that
25 we weren't going to give up the volume so we didn't

1 literally meet the Chinese THFA prices, but we came
2 close enough so that our major customers at least
3 decided to stick with us.

4 We did lose some business at some smaller
5 customers, but we wound up with THFA prices that are
6 below our cost, and we just can't survive long-term at
7 the pricing level, but it was a decision that we had
8 to make to keep the volume.

9 My experience again is if there are credible
10 offers, even if the product isn't being imported at
11 that moment in time, if it's available the product can
12 come into the country. Once you lose the business,
13 you won't get it back. The customers, once they make
14 a commitment, will be very loathe to go back and give
15 more business to the person who didn't meet the price.
16 They typically feel that you didn't believe them, and
17 that's something they don't like to experience. It's
18 also just something that they like to stick with.

19 We saw losing a lot of business and the work
20 we've been doing going to waste, so even with our
21 success in our market development efforts for THFA we
22 wind up with prices that can't sustain us. We need
23 the help that we're asking for today. The additional
24 volume and the sales success don't solve the pricing
25 problem. Basically the more you sell the more you

1 lose.

2 This is not a case between Penn and Kyzen,
3 or it shouldn't be. That's not how we viewed it.
4 Kyzen does participate in just one segment of our THFA
5 market. As indicated in my written statement of
6 July 17, 2003, and Penn's sales director, John Mann's,
7 written statement of July 2, 2003, to the Commission,
8 it's a case of Chinese THFA being sold or, very
9 importantly, being offered for sale.

10 Being offered for sale from credible
11 suppliers is just as important as the amount that's
12 coming in and taking business from us because that's
13 what forced us to reduce our prices in some cases 25
14 cents a pound reduction, in other cases 10 cents per
15 pound. Big, big numbers, credible offers and, at
16 least in my humble opinion, we had no choice.

17 The product was being offered for sale at
18 all of our big customers on the same basis. It was a
19 very credible offer and situation. We can't keep the
20 doors open at our plant if we keep being forced to
21 sell at prices that aren't generated by a level
22 playing field.

23 We do encourage fair competition. We would
24 just like it to be fair. We think what we're asking
25 to do here would make the situation fair, which is

1 really all we're looking for.

2 We can meet the needs of the market. We
3 have for years. We're excited about the prospects and
4 the work we've done and the volume that we can
5 generate, but again the pricing is the issue. With
6 your assistance, I think we have an exciting business
7 here. Without your assistance, I think the future is
8 very bleak.

9 Michael Neff will discuss in more detail the
10 importance of fairly priced THFA to our continuing
11 operating.

12 Thanks again for your time and
13 consideration. Again, we're just one small example of
14 a problem that's pervasive in the chemical industry.
15 Thank you.

16 CHAIRMAN OKUN: Thank you.

17 MR. QUINN: Michael?

18 MR. NEFF: Good morning. My name is Michael
19 Neff. I'm the vice president of finance.

20 CHAIRMAN OKUN: Mr. Neff, can you just pull
21 your microphone a little closer so we can hear you
22 better?

23 MR. NEFF: Sure. Good morning. I'm Michael
24 Neff. I'm the vice president of finance and the chief
25 financial officer for Penn Specialty Chemicals. Thank

1 you for your time today. I appreciate the chance to
2 be able to speak to you.

3 I'd like to address to the Commission our
4 concern of the impact of the depressing and
5 suppressing effects of Chinese imports on our prices
6 and on our bottom line. Confidential details of the
7 damaging effects of Chinese imports on our financial
8 results have been provided to you in response to the
9 Commission's questionnaire, at the Commission's
10 verification of our response and then in our response
11 to various inquiries by the Commission staff.

12 As Bob had pointed out in his remarks, THFA
13 has always been positioned as an important revenue and
14 profit generator for Penn. It was very important to
15 us before we entered our Chapter 11, and it became
16 critical to Penn upon our emergence from Chapter 11 in
17 July of 2002.

18 THFA revenue increased as a percent of our
19 total revenue by almost 50 percent. THFA revenue
20 increased by almost 50 percent as a percent of our
21 total revenue as a result of the agreements that we
22 were able to enter into and essentially needed to
23 enter into in order to emerge from Chapter 11.

24 The result is that today THFA revenue is
25 roughly 14 percent, and by today I mean our results so

1 far in 2004 is roughly 14 percent of our total revenue
2 and, more importantly, it's more than 30 percent of
3 our non-toll revenue that we rely upon for profit
4 generation.

5 From the beginning, Penn viewed THFA, as Bob
6 pointed out, as an excellent product with excellent
7 growth potential, and we worked with various customers
8 in areas to develop that growth. Throughout the
9 period of investigation, we continued to do that work
10 through difficult times in the hope that volumes would
11 grow.

12 In 2004, all of those efforts finally appear
13 to be taking shape and bearing fruit. First half
14 sales of THFA in 2004, that is, are set to increase
15 dramatically in substantial part owing to the effects
16 of this case. Our actual sales for first half 2004,
17 and by that I mean our billed sales plus the open
18 orders that we still have on our books through the end
19 of June 2004, are 32 percent greater than sales
20 recorded in the first half of 2003, and that's by
21 volume.

22 This sales increase includes purchases from
23 customers who are formulating THFA into new products,
24 so we're starting to see the results of efforts that
25 have gone before. These customers plus a few

1 additional customers, as Bob has mentioned, are
2 forecasting increased demand for THFA for their
3 products, the new products that are going on into the
4 marketplace, over the second half of 2004 and beyond.

5 The facts are that Penn has continually
6 worked to develop THFA business and expand the
7 marketplace. That business is finally and that market
8 development effort is finally taking shape, and we're
9 starting to see the fruits in terms of increased sales
10 volume and the prospects of much greater to come, but
11 that Penn is being fully deprived of the benefits of
12 all of this work by virtue of the low-priced and
13 depressed pricing that Chinese THFA has been able to
14 exert on our marketplace.

15 Unfortunately, that deprivation will
16 continue unless the Commission sees fit to act to
17 level the playing field and eliminate unfairly traded
18 THFA from the marketplace. This deprivation, if you
19 will, in terms of not being able to achieve full value
20 has had and will continue to have serious financial
21 impacts on Penn because of the importance that THFA
22 has had and now the increased importance that THFA has
23 in our business portfolio.

24 We've worked hard to ensure that Penn
25 produces THFA at the lowest possible cost in order to

1 make a reasonable rate of return on our product sales.
2 In the middle of the period of investigation, we
3 implemented some very painful cost control measures.
4 We curtailed our R&D and our capital expenditures.

5 The result of that was that from 2001 to
6 2003 we were able to reduce our cost of goods for THFA
7 by more than seven and a half percent, and yet we're
8 still not able to compete and make a reasonable rate
9 of return because of the existence of low-priced
10 Chinese THFA or the threat of low-priced Chinese THFA
11 in our marketplace.

12 In that period, 2001 to 2003, when we were
13 able to reduce our cost of goods by more than seven
14 and a half percent, we also saw a decline in our
15 average selling prices in the U.S. that more than
16 offset any of the cost decreases that we achieved and
17 that we expected to be able to take to our bottom
18 line, so we actually lost ground, even though we were
19 able to implement a lot of cost improvements.

20 On one positive note, I would mention that
21 we have noticed in the last few quarters an increase
22 in the prices. This correlates to the cessation of
23 Chinese imports that began in October of 2003 during
24 the pendency of this case.

25 We believe that the Chinese strategy was

1 first to attack our major volume accounts and then
2 were going to systematically proceed throughout the
3 marketplace to attack our middle volume/lower volume
4 accounts. In written statements to the Commission and
5 to the Department of Commerce, we've detailed
6 incidents of being forced to meet very low Chinese
7 prices in order to maintain our market share at both
8 our end use and our distributor customers.

9 Large or small, all of these customers are
10 important to Penn, and all of them are critical to
11 Penn's survival in the THFA market. Our goal has been
12 and is to make this a growing and profitable business
13 by meeting our customers' needs for THFA. We want to
14 do that by providing a good quality product at a fair
15 price. If we are forced to continue meeting unfair
16 Chinese prices, this goal will be impossible to reach.

17 If the Chinese are permitted to continue to
18 sell to our end use and distributor customers at
19 unfair prices, Penn will ultimately be forced to exit
20 the THFA market, and, because THFA is such an
21 important part of our business portfolio, this unfair
22 competition will have severe consequences for the
23 financial stability of our entire company.

24 Arguments have been advanced in this
25 proceeding about the need for dual suppliers. I

1 respect that, but my concern is that if the Commission
2 does not force the Chinese to trade fairly and stop
3 dumping THFA in the United States that there will not
4 be dual suppliers. We'll have a situation where there
5 will be a single supplier, and that single supplier
6 will be the Chinese THFA industry.

7 Thank you for your time.

8 MR. MALASHEVICH: Good morning, Madam
9 Chairman, members of the Commission. I am Bruce
10 Malashevich with Economic Consulting Services
11 testifying on behalf of Penn Specialty Chemicals.

12 Certain conditions of competition in this
13 case are rather unusual in my experience. We have a
14 market in which there are only two suppliers, the sole
15 domestic producer of the like product and subject
16 imports. There are no known non-subject imports, nor
17 are there any practical substitutes for the like
18 product in its various applications. Demand is price
19 inelastic.

20 There is general agreement that subject
21 imports and the like products are interchangeable and
22 compete on the basis of price. There is no
23 differentiation of grade. One variety of grade fits
24 all applications.

25 Finally, the vulnerability of the domestic

1 industry is apparent from the concentration of sales
2 in a handful of customers. Lost sales or lost revenue
3 at only one of those customers very materially and
4 rapidly worsens Penn's bottom line.

5 The basis for an affirmative determination
6 is straightforward in this case. The negative effects
7 of unfairly traded subject imports have had on Penn
8 can be seen in almost every volume-related indicator
9 the Commission typically considers.

10 Over the POI, while demand remained
11 relatively stable, domestic production and shipments
12 of THFA declined significantly. Based on the unusual
13 condition of competition of the domestic THFA market
14 whereby Penn and subject imports are the only sources
15 of supply, such a reduction in domestic shipments
16 necessarily reflects displacement by subject imports,
17 and as a result subject imports' market share expanded
18 over the POI at 10 percent.

19 It's important to note that subject import
20 penetrations have spread over the POI to both the end
21 user and the distributor channels of distribution
22 until the filing of this case apparently halted new
23 subject imports beginning in late 2003.

24 Publicly available import statistics show
25 that imports of subject THFA ceased in October of last

1 year. Thus it's clear that data for the full year
2 2003 and interim 2004 do not portray the full adverse
3 effects of subject imports on the domestic market
4 prior to their cessation. The Commission should
5 evaluate all data for 2003 and interim 2004 with this
6 fact in mind.

7 Volume-related indicia rebounded in response
8 as did average selling prices. The domestic
9 industry's overall condition consequently improved in
10 the aftermath of the withdrawal of subject imports
11 from the domestic market.

12 The recent improvements owing to the
13 progress of this case should not detract from the fact
14 that subject imports caused serious adverse price
15 effects over the POI when they were present in the
16 U.S. market. As described earlier by Mr. Neff, Penn
17 was repeatedly first to lower their prices to every
18 single one of their contract customers who leveraged
19 the availability of imports at dumped prices in order
20 to reduce Penn's prices, and I call your attention to
21 the section of the staff report that shows the very
22 substantial fraction of Penn's total sales that
23 occurred on the basis of these contracts.

24 Typically, a customer who received the low-
25 price quotes for the purpose of subject product would

1 approach Penn, and give Penn the option to retain that
2 business by meeting the low price offered by the
3 imports. Penn, in an effort to maintain market share
4 and customer relationships, as you heard earlier,
5 often chose to meet that lower price.

6 In such instances, even though there was no
7 sale of subject imports per se the price effects
8 caused by subject imports are clearly detrimental to
9 Penn's bottom line.

10 The Commission should also note that price
11 effects are not fully reflected in the Commission's
12 standard underselling analysis. As outlined by
13 petitioner in their prehearing brief at pages 17 and
14 18, the underselling analysis contained in the staff
15 report, although correct, does not tell the whole
16 story. A much more applicable comparison can be made
17 between the purchase prices paid by direct purchasers
18 of imports and the sales prices charged by Penn.

19 Without revealing any APO data, I would
20 direct the Commission's attention to confidential
21 Exhibit 4 of petitioner's prehearing brief, which I
22 believe you have before you. It illustrates the
23 negative price effects caused by subject imports in
24 this fashion.

25 These lower prices forced upon Penn by the

1 imports acted to worsen Penn's financial condition
2 just as it was emerging from bankruptcy, the period of
3 its greatest vulnerability.

4 Also relevant to this hearing is the fact
5 that Penn's THFA business would have been profitable
6 absent unfairly priced subject imports. Using
7 assumptions found by Penn to be reasonable, albeit
8 conservative, we used an income statement model to
9 calculate what Penn's profitability would have been in
10 2003 in the absence of dumping.

11 I direct the Commission's attention to
12 Exhibit 5 of petitioner's prehearing brief, which I
13 believe is also before you. It contains the income
14 statement models to which I just referred.

15 Once again, we cannot discuss the specifics,
16 but the model clearly shows that absent the negative
17 volume and price effects of subject imports Penn would
18 have been much better off in 2003 than it was.

19 Our conclusion that the negative price,
20 volume and financial results were caused by the
21 presence of dumped imports is further strengthened by
22 the results achieved by Penn since the cessation of
23 subject imports in October 2003. And as discussed by
24 Mr. Neff a short while ago, Penn has seen a
25 significant increase in average selling prices, a

1 higher volume of sales, and is on track to turn a
2 reasonable level of profit in 2004, assuming an
3 affirmative determination in this case. This is a
4 clear sign that Penn has the ability both to produce
5 and supply THFA for the entire domestic market, and
6 achieve a reasonable level of profit absent the
7 presence of unfairly priced imports.

8 It's also clear from the record that subject
9 imports threaten the domestic industry. Although only
10 one foreign producer responded to the Commission's
11 questionnaire, it is clear from other Chinese firms'
12 websites that there are a significant number of other
13 producers of subject THFA. I would direct the
14 Commission's attention to Exhibits 11 through 13 of
15 the petitioner's prehearing brief.

16 Moreover, the high number of furfural
17 alcohol manufacturers in China is even more disturbing
18 given their ability to quickly and inexpensively
19 switch production from FA to THFA. Due to dumping
20 duties on FA that are currently in place in both the
21 EU and here in the United States, a negative
22 determination will most certainly encourage Chinese FA
23 factories to convert to produce THFA.

24 Given the very significant levels of subject
25 import penetration reached prior to the filing of this

1 case, it is clear that subject imports have the
2 ability to quickly increase their share in the
3 domestic market. For this and other reasons detailed
4 in Penn's prehearing brief, the threat of material
5 injury is also present in this case.

6 Thank you.

7 MR. DeVINNEY: Madam Chairman and members of
8 the Commission, that concludes Penn's remarks, and on
9 behalf of everyone we thank you again for taking time
10 to hear us out this morning.

11 CHAIRMAN OKUN: Before we begin our
12 questioning, let me thank you on behalf of the
13 Commission to appearing here this morning, for
14 providing your testimony, your willingness to answer
15 questions, and for the information you have submitted
16 to the Commission, and will continue to do so
17 throughout the investigation.

18 Commissioner Koplan will begin our
19 questioning this morning.

20 COMMISSIONER KOPLAN: Thank you, Madam
21 Chairman. I want to thank the witnesses for their
22 direct presentation. I find it very helpful.

23 Let me begin by asking this question to Mr.
24 Quinn or Mr. Neff. At the time of our preliminary
25 views we found that Kyzen internally consumed most of

1 its imports. Can you identify any transactions in
2 which you have been involved when unrelated customers
3 in the merchant market caused you to negotiate down
4 your price based on the imported price of subject
5 products internally consumed by an importer such as
6 Kyzen?

7 MR. QUINN: The situations where we have
8 actually lost business or were negotiating price with
9 somebody who was actually using Chinese THFA, it was
10 hard to find out exactly where it came from, but there
11 was Chinese THFA on the market, and the three
12 importers of Chinese THFA are Kyzen and Advanced
13 Resins.

14 Well, there was Chinese THFA in the
15 marketplace. Customers were buying it, and using it.

16 COMMISSIONER KOPLAN: Actually, I think that
17 that customer and another one, although you might have
18 bracketed it in your brief, it's not bracketed
19 elsewhere, so I don't think that's considered business
20 proprietary.

21 MR. QUINN: I didn't think so either, but
22 what do I know?

23 And Alchem are the three names that people
24 have fed back to us.

25 COMMISSIONER KOPLAN: Right.

1 MR. QUINN: But we didn't have any
2 documentation to prove where it came from, but it was
3 there, people were using it.

4 COMMISSIONER KOPLAN: So these are merchant
5 markets, these are products in the merchant market.

6 MR. QUINN: Yes.

7 COMMISSIONER KOPLAN: You can't identify any
8 of it in the -- as far as that which is being used
9 internally?

10 MR. QUINN: If I understand the question,
11 yeah, we can address this in the post-conference
12 brief --

13 COMMISSIONER KOPLAN: Sure.

14 MR. QUINN: -- because we could probably dig
15 out some more information. Thank you.

16 COMMISSIONER KOPLAN: Okay. I cannot
17 disclose the numbers because they are confidential,
18 but Table C-1 of our prehearing report indicates that
19 U.S. consumption decreased in both quantity and value
20 during the period of investigation, and was
21 significantly lower during the first quarter of 2004
22 when compared to the first quarter of 2003.

23 In light of that, I do not understand your
24 prediction, and I quote, "that the U.S. market in THFA
25 is set to expand by 10 to 12 percent over the

1 foreseeable future due to expanding markets and their
2 use of THFA." I'm referring to page 13 of your brief.

3 I'm wondering if you can document for me
4 your claim that new customers are reformulating
5 towards the of THFA because it is an environmentally
6 friendly chemical.

7 I'm asking this because the trend that I see
8 in 2004, and I heard your testimony, Mr. Neff, but the
9 trend I'm seeing in 2004 appears to me that Penn is
10 simply displace Chinese market share by taking away
11 some of China's existing business, and, Mr. DeVinney,
12 I'm referring to Table C-1, but I can't get into the
13 exact numbers here because they are BPI, but that's
14 why I am describing the trend that I see that way.

15 I would like you to respond to that if you
16 could, Mr. Quinn and Mr. Neff?

17 MR. QUINN: Yes, I think in the post-
18 conference brief we can do that in detail because our
19 sales for the first six months of 2004 are not only
20 showing growth over prior periods but also showing
21 purchases by new customers who weren't buying from --

22 COMMISSIONER KOPLAN: That would be --

23 MR. QUINN: -- before.

24 COMMISSIONER KOPLAN: That would be very
25 helpful.

1 MR. QUINN: Yes, we can do that.

2 COMMISSIONER KOPLAN: Mr. Malashevich, I
3 note that the petition was filed June 23 of 2003, and
4 we made our preliminary determination on August 11 of
5 2003.

6 Can you provide the Commission with monthly
7 subject imports data by volume beginning in January
8 2003 to assist us in determining the effect of the
9 pending investigation on subject imports?

10 MR. MALASHEVICH: Yes, we certainly will
11 endeavor to do that, Commissioner. I just wanted to
12 mention one point is that the subject imports are
13 included in what amounts to a basket category. The
14 petition estimated to the best of our knowledge
15 subject imports, and we'll try to do that.

16 The basis for my testimony is that imports
17 under the basket category were zero beginning in
18 October 2003, so that was the basis for my testimony
19 that imports of subject imports also were zero from
20 that period.

21 COMMISSIONER KOPLAN: I thought that in your
22 submission you said that that is in September of 2003.

23 MR. MALASHEVICH: No, I think the last
24 import occurred in September, but beginning in October
25 published imports were zero.

1 COMMISSIONER KOPLAN: Okay. Mr. Quinn, on
2 pages 4 to 6 of their prehearing brief respondent
3 states that is, and I quote, "had a long-term
4 established practice of purchasing THFA from two
5 suppliers." And that's at page 4, and gives five
6 reasons why they say that represents a sound business
7 practice as well as a fundamental condition of
8 competition. Three of those five reasons are
9 bracketed, but let me mention the two that are not.

10 Now, first, Kyzen primarily manufactures,
11 and I'm quoting, "Kyzen THFA-based products. The
12 continuing availability of THFA during the POI thus is
13 critical to Kyzen's business strategy and financial
14 success."

15 Second, "Kyzen represents a significant
16 portion of the total production costs of Kyzen THFA-
17 based products." That's also at page 4. They provide
18 bracketed numbers as backup that I cannot disclose.

19 In our July 14, 2003, staff conference Mr.
20 Forsythe, who will be testifying later today, stated
21 that Kyzen initiated that practice, "over five years
22 ago," and that's page 68 of the transcript.

23 They argue in their prehearing brief, and I
24 quote, that "Penn's bankruptcy validated Kyzen's
25 second source strategy."

1 Could you respond to that?

2 MR. QUINN: When we bought the business from
3 Great Lakes, Kyzen was already purchasing from a
4 Chinese source.

5 COMMISSIONER KOPLAN: That was in '99.

6 MR. QUINN: We bought the business in '99.

7 COMMISSIONER KOPLAN: Right.

8 MR. QUINN: And they had embarked on that
9 effort several years before that, and the reason I was
10 given is that because Great Lakes was not very
11 responsive in committing to volume that would cover
12 Kyzen's requirements. They felt that the sole
13 domestic producer, Great Lakes, was not responsive and
14 that they needed to find product elsewhere.

15 We have had no one else do that or come to
16 us with any concerns at all. The only threat to our
17 business has been through price, low price from
18 Chinese product, so that's my knowledge of the Kyzen
19 situation, and reflect the fact that no other customer
20 has come to us with that situation, and we have been
21 very responsive to our customers. We have plenty of
22 capacity today to cover the market, and we can expand
23 very rapidly to double the capacity we have today.

24 COMMISSIONER KOPLAN: Thank you.

25 Product-specific pricing data indicates that

1 subject imports frequently oversold the domestic like
2 product. You acknowledge at page 17 of your
3 prehearing brief that the underselling tables in the
4 prehearing staff report are correct, but argue they
5 are almost totally irrelevant. You urge us to use
6 different methods upon which to base our comparison.

7 Assuming hypothetically that I disagree with
8 your alternate methodology, are you suggesting that I
9 simply ignore those tables even though you have
10 acknowledged them as correct?

11 MR. MALASHEVICH: I'm probably the best --

12 COMMISSIONER KOPLAN: I guess they are
13 looking for you, Mr. Malashevich.

14 MR. MALASHEVICH: I'm probably in the best
15 position to respond to that.

16 As you know, Commissioner, I'm not a lawyer,
17 but I do remember from the statute that there is a
18 discussion of in examining price effects that look at
19 price underselling, and also practices that otherwise
20 depressed domestic prices.

21 COMMISSIONER KOPLAN: I appreciate that.

22 MR. MALASHEVICH: And we have testimony, I
23 believe it's BPI, I won't get into the details, but
24 there is a discussion in the post-conference brief
25 from the preliminary and there is discussion in our

1 prehearing brief about how the availability of subject
2 imports were used to leverage down domestic prices
3 even though in some circumstances on a weighted
4 average basis the price tables show overselling in
5 certain cases.

6 COMMISSIONER KOPLAN: If you could, and I
7 realize you have touched on this previously as well as
8 you have now, could you expand on that for me in the
9 post-hearing?

10 MR. MALASHEVICH: Yes, sir.

11 COMMISSIONER KOPLAN: I would appreciate
12 that. Thank you, Madam Chairman.

13 CHAIRMAN OKUN: Commissioner Lane.

14 COMMISSIONER LANE: Good morning. I'm glad
15 to see that counsel for the petitioner has trouble
16 pronouncing the name of the product too, it made me
17 feel much better, so let's get on with the questions.

18 Mr. Quinn, when you all decided to buy this
19 business, I assume that you had a business plan, that
20 you had projections, that you had an estimation as to
21 when you thought this product would make an acceptable
22 return to you, and I am wondering if you could file in
23 your post-hearing that information, either the plan
24 itself or what you were expecting when you actually
25 got into the business.

1 MR. QUINN: We can do that.

2 COMMISSIONER LANE: Thank you.

3 And I can't remember, Mr. Quinn, if it was
4 you or someone else who talked about reducing your
5 prices below your cost because you were getting
6 credible offers or credible -- or your customers were
7 getting credible offers from Chinese suppliers, and in
8 order for you to keep the volumes you reduced your
9 prices. But those prices are still higher than the
10 Chinese prices.

11 After you did this and in looking at the
12 information that is now available to you, are you
13 satisfied that those offers that your customers told
14 you were actually real?

15 MR. QUINN: Yes, absolutely. Yes, I have a
16 long-term personal relationship with the president of
17 one of the companies that came to us with the
18 competitive offer, and our salespeople went through
19 all the due diligence with the purchasing people, and
20 everything looked credible. And I asked the person I
21 have know if this was a serious offer, and he said
22 very serious, and you will lose business if you are
23 not close to competitive with the Chinese price. Yes,
24 absolutely, dead certain.

25 COMMISSIONER LANE: And I'm not sure, do you

1 have access to the staff report?

2 MR. QUINN: Yes, just the public version.

3 COMMISSIONER LANE: Okay, okay, then I won't
4 ask you this next question, or I won't ask you that
5 question.

6 I am interested in the non-substitutability
7 attributes of THFA. Mr. Quinn, in your opening
8 remarks you indicated that several manufacturers were
9 reformulating some products to use THFA, and that
10 there was some discussion in the staff report about
11 reformulation of THFA products to substitute other
12 solvents.

13 Would you please tell me about this
14 reformulation process?

15 MR. QUINN: Yes. At this point there is no
16 viable equivalent substitute for THFA, but some work
17 that was done two and three years ago with other
18 solvents did incorporate other solvents into the
19 formulations or at least tentative formulations.

20 But the work that's going on in California
21 in terms of categorizing solvents in terms of their
22 environmental friendliness has pushed everything in
23 the direction of THFA. So right now it is the solvent
24 of choice, and there doesn't appear to be any
25 equivalent or pseudo-equivalent that formulators are

1 comfortable with in the markets where we see or major
2 growth, that is.

3 COMMISSIONER LANE: As I understand your
4 testimony, THFA revenues is basically more profitable
5 than the rest of your business; is that correct?

6 MR. QUINN: At this point, it is not.

7 When we put together our plans coming out of
8 bankruptcy, and we will show you the plans that we had
9 for the business when we bought it, we sought THFA as
10 the largest volume of our non-toll products, and a
11 very profitable product, and a major contributor to
12 the profitability of the business.

13 With the reductions in prices that we have
14 seen in 2002 across the board with our major customers
15 coming back to us with release requirements, with new
16 customers that we have developed coming to us when we
17 are selling them the first 10 drums of product saying
18 I can get Chinese product for 25 cents a pound less
19 than your list price, which was appropriate for drum
20 quantities, small quantities, it is not our most
21 profitable business, but it should be.

22 We thought it would be. That was our plan
23 when we bought the business for the non-toll product,
24 but because of the price erosion that was seen, it is
25 not today, and that is our -- that's our plight.

1 COMMISSIONER LANE: Okay, thank you.

2 MR. QUINN: Sure.

3 COMMISSIONER LANE: The domestic demand has
4 been flat throughout the period of investigation and
5 was lower in the first quarter 2004 than in the same
6 quarter 2003. What's keeping demand down?

7 MR. QUINN: I think maybe the post-
8 conference brief can be more specific, but I can say a
9 couple of general things which I know are true.

10 Some of our major customers' business is
11 seasonal. For instance, if you look at agricultural
12 chemicals, at certain times of the years are different
13 from other times of the years, and certain years are
14 different from prior and future years just because of
15 the nature of what they are treating. So that was a
16 big part of it.

17 And our major customers, and I am excluding
18 Kyzen, we see demand go up and down with the economy,
19 but we haven't really seen lost business other than
20 from business that we did lose to Chinese imports when
21 we didn't meet a price or didn't meet it quickly
22 enough.

23 COMMISSIONER LANE: Okay, thank you.

24 MR. QUINN: Sure.

25 COMMISSIONER LANE: On an equal volume basis

1 is there a difference in the price of THFA sold in 55-
2 gallon drums, and that of THFA sold in bulk
3 containers?

4 MR. QUINN: I will say yes and let Michael
5 Neff speak if there is anymore. The bulk price is
6 always lower because it's to a higher volume customer,
7 and the drum quantities are usually trial quantities,
8 and the price schedule is calculated on the basis of
9 cost savings to the producers, so that the drum
10 products' costs are higher. There might be some
11 bizarre exceptions somewhere in the world, but I'll
12 let Michael deal with that.

13 MR. NEFF: Yes. Typically, the price for
14 drum products is going to be higher than the price for
15 bulk products in equal quantities just because of the
16 pricing -- the packaging requirements involved in the
17 product.

18 Certainly you can have other impacts,
19 depending on total quantities purchased. If you start
20 to move away from equal volume discussions, there will
21 be differences.

22 COMMISSIONER LANE: Is it possible to buy
23 very large volumes of THFA in both 55-gallon barrels
24 and bulk containers?

25 MR. NEFF: Yes, it's possible to buy large

1 quantities in either form. It's really the preference
2 of the customer that drives that particular issue.

3 COMMISSIONER LANE: Okay. Is the spot
4 market for THFA limited to certain geographic regions?

5 MR. NEFF: No, I don't think that spot
6 versus contract geography does not come into play on
7 that. That ends up being, again, a specific customer,
8 what they are doing, and what their desires are, and
9 our desires to be able to contract with them.

10 COMMISSIONER LANE: Okay, and you may be the
11 proper person to answer this question. Could you
12 please indicate in percentage terms the difference in
13 price for large and small volume sales of THFA?

14 Well, there is my red light. I will get you
15 on the second round. Thanks.

16 CHAIRMAN OKUN: Commissioner Pearson.

17 COMMISSIONER PEARSON: Thank you, Madam
18 Chairman.

19 Welcome to the panel, and it's interesting
20 to learn things about businesses of which I know very
21 little. I appreciate the opportunity for you to be
22 here.

23 Mr. Quinn, what I would like to start with
24 is to get a better understanding, if possible, of the
25 overall Penn's operations and how this particular

1 product line fits into the mix, and I ask that from
2 the context of my own experience working in a firm
3 with multiple product lines, and you know, they tie
4 together in various ways.

5 So do you feel at liberty to talk a little
6 bit about Penn overall to help put this into context?

7 MR. QUINN: Sure. Of what we refer to as
8 non-toll products, THFA is the largest and at this
9 point the most dynamic in terms of market growth and
10 market potential. It's one of 100 products in our
11 non-toll product line.

12 COMMISSIONER PEARSON: One hundred?

13 MR. QUINN: Yes, we make a lot of small
14 volume specialty products. Some of them we sell to
15 one customer, some we sell to several, some are on our
16 product lists that we haven't sold them for awhile,
17 but we are always trying.

18 COMMISSIONER PEARSON: You would manufacture
19 some if there was a desire by someone to buy it?

20 MR. QUINN: Yes. We really focus on niche
21 specialties with the THFA business being a commodity
22 business that really carries us while we are
23 developing more specialized products to sustain long-
24 term growth, and hopefully effect higher product
25 markets.

1 COMMISSIONER PEARSON: Is Penn a member of
2 the Chemical Specialties Manufacturers Association, or
3 at least what used to have that name?

4 MR. QUINN: The SOCMA?

5 COMMISSIONER PEARSON: I'm going back a
6 couple of decade here.

7 MR. QUINN: Yes. Yes, are members of SOCMA.
8 I am on the board of SOCMA. That's the Synthetic
9 Organic Chemical Manufacturers Association, and that's
10 for the specialties business, the people that sell
11 agricultural chemicals and pharmaceuticals. So we are
12 part of SOCMA.

13 And the other chemical trade organization
14 which used to be CMA is now called ACC, and that's for
15 the people that produce ethylene and propylene,
16 benzene and toluene and stuff like that. They are the
17 Dows and the CBASF and the buyers, and they are
18 customers, of course, but we supply more technically-
19 oriented products, and SOCMA is an organization that's
20 geared to that.

21 COMMISSIONER PEARSON: And is your customer
22 base primarily domestic, or do you also have some
23 substantial export demand?

24 MR. QUINN: We have business, significant
25 business in Europe. The U.S. is our biggest market.

1 It's the fly wheel that's driving us. And THFA in the
2 U.S. right now is the major part of our business. But
3 we do have some business in Europe, a little bit in
4 Asia.

5 COMMISSIONER PEARSON: Do you manufacture
6 outside the United States?

7 MR. QUINN: No, we have just one plant.
8 It's in Memphis, Tennessee, and if you looked at the
9 plant, the perception you would get is that the
10 equipment we use to sell our salt products is the big
11 --

12 COMMISSIONER PEARSON: I'm sorry?

13 MR. QUINN: Is the biggest part of the
14 plant. That's the arrangement we have for the THFA
15 and PTMEG, which allows us to maintain our liquidity,
16 because it's a big plant, but the non-toll products
17 are a small part of it, relatively speaking.

18 COMMISSIONER PEARSON: And when you say it's
19 a big plant, is that in terms of capital investment or
20 employees, or both?

21 MR. QUINN: Both. It's 130 people, and it's
22 a valuable plant. The assets that we used to produce
23 our THFA and PTMEG as part of non-toll is our world-
24 class assets with a high value.

25 COMMISSIONER PEARSON: Okay. Well, thank

1 you. I appreciate that background.

2 MR. QUINN: Sure.

3 COMMISSIONER PEARSON: Mr. DeVinney, a
4 specific question for you. You have access to the
5 confidential staff report?

6 MR. DeVINNEY: Yes, I do.

7 CHAIRMAN OKUN: Okay. I just wanted to make
8 sure that the decimal point is in the right place for
9 the figures relating to value of consumption and value
10 of production, and that sort of thing.

11 So on Table C-1, are we quite certain that
12 we have the decimal point in the right place, and that
13 it isn't supposed to be one or two places to the
14 right?

15 MR. DeVINNEY: I don't have that in front of
16 me right now. Can we address that in the post-
17 conference brief?

18 COMMISSIONER PEARSON: Well, perhaps you
19 could, but it is an issue that is having a significant
20 effect on my analysis of the case.

21 As I look at the look at the numbers, and I
22 have not been a commissioner terribly long, but this
23 would appear to be the smallest business that I have
24 had the opportunity to look at, and so I'm just
25 wanting to make sure that I am understanding it to be

1 the size that it is, and that there isn't some issue
2 in the data that are causing me to draw an incorrect
3 inference.

4 MR. DeVINNEY: I believe it is right. If
5 it's not, we will certainly point that out in the
6 post-conference brief.

7 MR. MALASHEVICH: Commissioner, I hesitate
8 to shoot from the hip. I believe it's correct as
9 well, but I would like to double-check.

10 COMMISSIONER PEARSON: Okay. Well, it seems
11 to me that for a business of the size represented by
12 THFA that there is a considerable amount of management
13 time and effort going into trying to turn it around.
14 And yet if one did turn it around, even if the size is
15 to be doubled, would that be a material benefit to
16 bottom line of Penn overall?

17 MR. QUINN: For THFA?

18 COMMISSIONER PEARSON: Yes.

19 MR. QUINN: Oh, yeah, absolutely, and I'm
20 not sure what numbers you are referring to, but THFA
21 is the most important product for the non-toll
22 products part of our business. Yeah, it's extremely
23 important. It's vital.

24 Now, in terms of the number of people at the
25 plant devoting to manufacturing THFA or something like

1 that, it would be misleading because a lot of people
2 at the plant are devoting to manufacturing the toll
3 products the PHS and PTMEG, so in the scope of the
4 whole manufacturing plant THFA won't pop out at you as
5 a huge part of it, but it's part of the non-toll
6 business that is ours that we use really to generate
7 our profitability because the tolling arrangement is
8 basically a break-even. We use it to cover our costs.

9 But of the business that's left to us, it's
10 a huge part of it. It gets a lot of my attention, and
11 the attention of the people at the plant. But you
12 know, in terms of the whole plant and, you know, where
13 do all the arms and legs in our manufacturing stuff,
14 it would get lost because the PHS and PTMEG units are
15 much bigger.

16 COMMISSIONER PEARSON: Okay. Well, I am not
17 entirely accustomed looking in this step at businesses
18 where you can describe them kind of in multiples of an
19 average house value in the Washington, D.C. area. You
20 know, if we think about it in that context, we pretty
21 well can capture the size of the entire value of
22 consumption in the United States.

23 And so I just wanted to make sure that we
24 are talking about the right thing here, we're talking
25 about, you know, a handful of houses.

1 MR. QUINN: It's hugely important to us. We
2 will have to explain whatever it is that looked funny
3 to you, but it's hugely important to us, and that's
4 why we are here.

5 COMMISSIONER PEARSON: Okay, thanks. I
6 appreciate that.

7 MR. MALASHEVICH: Excuse me, Commissioner
8 Pearson.

9 COMMISSIONER PEARSON: Yes?

10 MR. MALASHEVICH: Having consulted with my
11 colleagues, the numbers are correct in the staff
12 report.

13 I would simply note that as something of a
14 Commission history buff that I am, there actually was
15 a case involving another specialty chemical product
16 called benzylparadin, circa 1991, that actually has
17 apparent consumption roughly 25 percent of apparent
18 consumption in this case, and it went affirmative.

19 COMMISSIONER PEARSON: Okay. Well, thank
20 you. I, unfortunately, wasn't here to enjoy that
21 experience.

22 The light has changed so I will yield my
23 time.

1 CHAIRMAN OKUN: Thank you, and thank you
2 again to all the witnesses. Well, Mr. Malashevich, I

1 thought you put it quite well in your opening
2 testimony in kind of pointing out some of the things
3 about this case that are not our usual -- that are
4 unusual I think was your words, and I think that we
5 have had a chance to explore some of those things in
6 the questions, but let me focus for a few moments
7 going back to some of the price questions that have
8 been asking, and trying to understand better what your
9 argument is in terms of what we should be focusing on
10 in trying to determine impact on prices. And let me
11 just start with a general question, and I guess I'll
12 put this to Mr. Malashevich first.

13 In terms of is this a case where you would
14 describe the average unit values as being helpful to
15 look at, and if so, why are we not?

16 MR. MALASHEVICH: I think the answer is yes.
17 I think you need to look at both the transaction
18 prices and the average unit values we have in a usual
19 situation where, as I mentioned in my testimony, there
20 basically is one grade of this stuff that accounts for
21 all the market as opposed to other situations where
22 there may be -- I hate to use the word "continuum,"
23 but there may be a whole variety of individual grades
24 selling at different prices.

25 We have one size fits all in this particular

1 market, and that's what makes the analysis, I think,
2 very straightforward.

3 CHAIRMAN OKUN: Okay. And let me ask for a
4 couple of things in the post-hearing. But then let me
5 turn to kind of the bigger issue I have, which is, you
6 know, I've heard the testimony which is essentially
7 the pricing data that we have collected is not
8 particularly instructive in your view of what's going
9 on in the market.

10 You have attached to your brief an
11 alternative Exhibit 4, which I have had a chance to
12 look at. And I am just trying to, I just want to have
13 a conversation, and I think, with the industry folks,
14 although Mr. Malashevich can jump as well since some
15 of this is confidential, but I'm trying to understand
16 whether Exhibit 4 is accurate, or there was another
17 price table that we had collected, which is a
18 confidential exhibit, so just for you, Mr.
19 Malashevich, which was Table 5-4.

20 And I wanted to see what your view is of
21 whether or not the appropriate price comparison
22 shouldn't be the unit value of Kyzen's direct imports
23 and the prices paid by Kyzen for the domestic-like
24 product. And if that's not a valid -- if that's not a
25 good comparison, why not, which I think is different

1 than your -- as I understand Exhibit 4?

2 MR. MALASHEVICH: I, quite frankly, hesitate
3 to get into that lest I risk --

4 CHAIRMAN OKUN: Okay.

5 MR. MALASHEVICH: -- getting into BPI
6 information. I hope you will permit me to address
7 that directly. I know the answer. I just don't think
8 it's necessarily appropriate for --

9 CHAIRMAN OKUN: Okay, that's fine.

10 MR. MALASHEVICH: -- a public hearing.

11 CHAIRMAN OKUN: If you can cover that in
12 some detail for purposes of post-hearing, I think that
13 would be helpful.

14 MR. MALASHEVICH: I will indeed.

15 CHAIRMAN OKUN: But I guess for the industry
16 people, it may relate a little bit more back to the
17 question that I believe Commission Koplan posed, which
18 is, when we're looking for price competition in this
19 market, and where the price competition occurred, and
20 you have attached some exhibits to your brief talking
21 about these meet and release clauses.

22 Let me just talk about, I guess, maybe your
23 perception of the market generally, which is, as I
24 understand it, you've got a lot of -- your business
25 you do under these longer terms contract; is that, you

1 know?

2 MR. QUINN: With our big customers, yes.

3 CHAIRMAN OKUN: Big customers. The big
4 customers we are talking about longer term contracts.

5 MR. QUINN: Right.

6 CHAIRMAN OKUN: They are getting some volume
7 discounts in there for the bigger customers?

8 MR. QUINN: Yes, at this point their prices
9 are based on meeting the competition from the offers
10 they had from the Chinese, so that's the price that's
11 in there now.

12 CHAIRMAN OKUN: Okay. And the affidavits
13 that you have submitted with regard to the meet and
14 release price, if there is anything else that you
15 could submit that would show -- I mean, you have
16 described in general terms in these affidavits how you
17 knew it was Chinese product, or what they have said,
18 and I think Commissioner Lane touched on this. But if
19 there is anything that you can help with in terms of,
20 you know, Chinese prices to where?

21 And again, it goes to this issue, is it
22 Kyzen? It is others? Is it, you know, how do we
23 know, how did you know what your customers were
24 talking about? If there is anything more specific
25 just to help out, because I have read the information,

1 but I am still a little unsure on how we necessarily
2 tie in what the subject imports' prices were with what
3 you were doing with regard to these contracts.

4 MR. QUINN: Okay. The reason it was
5 credible is because we know the people who told us
6 they had the offers, and the offers occurred at the
7 same time, and they were at the same price level, and
8 were credible based on what we knew about the
9 marketplace and the value of Chinese imports coming
10 in.

11 So it was sort of an orchestrated effort,
12 and we did dig in with the purchasing people, and even
13 executives at some of the companies to say is this
14 real or is this something that you're trying out. But
15 we are fairly convinced that they were real as samples
16 were received and evaluated. Our customers evaluated
17 the Chinese product, said it was perfectly acceptable
18 for their use, and we're ready to place commercial
19 orders if we didn't do something to get closer to that
20 price.

21 CHAIRMAN OKUN: Okay. And can you help
22 anymore in describing kind of how you would describe
23 Kyzen's behavior?

24 In other words, you talked a little bit
25 about that -- you know, Kyzen's decision to have, I

1 think it was maybe you, Mr. Neff, commenting on
2 Kyzen's, as understood it, their desire to have
3 multiple sources extends beyond the period of the POI,
4 so it didn't occur during the POI that we had there
5 for their purposes, the Chinese imports.

6 Is there anything else about Kyzen's
7 behavior during the POI with regard to their imports
8 or what they were doing that you could describe in
9 open session to help us understand?

10 (Pause.)

11 MR. QUINN: I think some specifics we can
12 address in the post-hearing brief. Some comments I
13 can make is that people in the marketplace that we
14 work with that did receive written quotes from several
15 Chinese suppliers of THFA with prices that were right
16 in the range of the prices that our customers came to
17 us with, not just from Zhucheng, from others who were
18 not as well established or credible, but there is
19 documentation of prices from other Chinese suppliers
20 that are right in that range, and we do have some
21 things in the post-conference brief that I think will
22 help clarify all that was going on, at least that we
23 know about.

24 CHAIRMAN OKUN: Okay.

25 MR. QUINN: Okay?

1 CHAIRMAN OKUN: And I guess, is there
2 anything -- I mean, one of the arguments made by
3 respondents would be that, you know, what you really
4 saw in '02 was an aberration; that, you know, what was
5 going on with Kyzen was longer term, and we can look
6 at the data that we have in our POI, and that in '02,
7 a number of things that were going on that affected
8 the market, including the bankruptcy.

9 You have responded a little bit in your
10 testimony and questions, but I wonder if you can help
11 me better understand, you know, as I'm looking at '02,
12 what was going on with the company and the bankruptcy,
13 the emerging from bankruptcy, whether there is
14 anything else we can look at kind of for hard facts
15 the difference between subject imports in the market
16 versus the numerous other factors that are going on
17 going on during that time period.

18 MR. QUINN: Yes. We pretty much knew at the
19 beginning of the second quarter of '02 that our
20 reorganization was going to work out. So our
21 customers had no concern about the viable source of
22 supply for THFA. They believed what we said because
23 we always told them what was going on, and none of
24 them were looking for a second source for any reason
25 other than lower prices.

1 And when in '02 our big customers came back
2 to us with the same price level and quotes from
3 Chinese suppliers with the same backdrop, which we can
4 get into in the post-hearing brief, it was just very
5 credible, and we do have some quotes from other
6 Chinese suppliers who did contact folks that we talked
7 to in the marketplace.

8 So there is no doubt in my mind that it was
9 real, and all we had to do was stick with our prices
10 and force our customers to embarrass themselves and us
11 by going through buying large quantities from China,
12 and we never would have recovered from that. I have
13 seen it happen many times.

14 CHAIRMAN OKUN: Okay, I appreciate all those
15 answers.

16 MR. QUINN: Sure.

17 CHAIRMAN OKUN: Vice Chairman Hillman.

18 VICE CHAIRMAN HILLMAN: Thank you, and I
19 would join my colleagues in thanking you for being
20 here. We appreciate all the information in the
21 prehearing brief as well as that provided this
22 morning.

23 Maybe if I can start again trying to make
24 sure I understand the issues of prices and how prices
25 get set, and how you deal with price competition from

1 the Chinese.

2 As I understand it from looking at the staff
3 report, you sell to both end users and to
4 distributors?

5 MR. QUINN: That is correct.

6 VICE CHAIRMAN HILLMAN: Okay. And the staff
7 report would indicate some differences in price
8 between that which you sell to end users versus
9 distributors.

10 Can you explain any differences in prices?

11 MR. QUINN: Yeah, the distributors are large
12 customers of ours. The individual distributors are
13 very large. They will sell to their customers who are
14 smaller customers, so the price you see to a
15 distributor is an odd combination of the profit that
16 the distributor has to make when they resell the
17 product, and the kinds of feedbacks they get from
18 their customers on what competitive prices are.

19 But typically, the prices to the
20 distributors are higher than the prices to our large
21 end use customers, and they will sell to smaller
22 customers.

23 VICE CHAIRMAN HILLMAN: Okay. And then if
24 we look then at the issue of the contracts. Some of
25 your product is sold on spot, some is sold on

1 contract. Is it the distributors with whom you have
2 the majority of the contracts, or are the contracts
3 with the end users?

4 MR. QUINN: The contracts are typically with
5 the end users, and I will defer to Mike just for
6 confirmation.

7 VICE CHAIRMAN HILLMAN: Mr. Neff.

8 MR. NEFF: No, that's correct. Our
9 contracts are typically done with end users.

10 VICE CHAIRMAN HILLMAN: Okay. So they would
11 typically be those smaller buyers?

12 I mean, you're describing that a distributor
13 is a larger purchaser, and yet I thought I had heard
14 earlier that the contracts tend to be with larger
15 purchasers.

16 MR. QUINN: The contracts are with our end
17 use customers rather than the distributors. Although
18 the distributors can be large purchasers, they are not
19 end users.

20 VICE CHAIRMAN HILLMAN: Okay.

21 MR. NEFF: Just to clarify, we have a wide
22 range of end users use, but we will have some very
23 large end user volumes being sold to a customer. We
24 will also have some end users that are relatively
25 small, so there is a range.

1 We have the distributors typically will buy
2 significant volumes, but then they are going to
3 distribute them to a variety of small customers.

4 VICE CHAIRMAN HILLMAN: Okay, and the
5 distributors are typically buying on a spot basis?

6 MR. NEFF: Typically, yes.

7 VICE CHAIRMAN HILLMAN: Okay. Now, then if
8 I look at these contracts, it's my understanding that
9 a number of them or perhaps all of them, and maybe I
10 need some explanation there, have these meet or
11 release clauses.

12 Can you help me understand the mechanics of
13 how these meet or release clauses work in your
14 contracts?

15 MR. QUINN: Yes, the meet or release clauses
16 that we have are with our large end user customers,
17 the people that consume the product. And it simply
18 says that if the customer has a documented, legitimate
19 offer from another supplier at a lower price, if we
20 don't meet that price, the contract is broken and they
21 don't have to buy from us.

22 VICE CHAIRMAN HILLMAN: Okay. And can you
23 provide, and it probably would be in the post-hearing,
24 specific examples that would show the activation of
25 those clause, including the sort of before and after

1 prices?

2 MR. QUINN: Sure.

3 VICE CHAIRMAN HILLMAN: Okay. Now, I know
4 there is some information in the record already, but
5 if there is anything further on this that you could
6 add, I think that would be very helpful.

7 And then, would you say in terms of the
8 competition that you felt from the Chinese, was it
9 almost entirely in this end use market or did you feel
10 that you were also seeing Chinese competition to your
11 distributors?

12 MR. QUINN: Well, in the end use market it
13 was clear and distinct, our purchasing contacts at our
14 large end use customers came to us and said, I have an
15 offer for Chinese THFA. Here is the price. Meet it
16 or we're not going to buy anything or much from you.

17 So that was the clearest indication of the
18 price competition we were getting. We knew what was
19 going on with those large customers because they
20 wouldn't move quickly. They would move methodically
21 and we had a lot of dialogue with them.

22 With the distributors, it's very different
23 because, although they buy large amounts from us, they
24 sell to small customers, and sell smaller amounts. So
25 we had a number of situations where we lost business

1 with several of our distributors because some of their
2 customers came back to them and said, I can buy
3 Chinese product for 90 cents a pound or 88 cents a
4 pound, and we just said to the distributor we're not
5 going to meet that. If we lose the price or lose that
6 small amount of business, we'll lose it.

7 So it's the distributor network primarily
8 where the imported THFA was going, being sold, and
9 moving through the system.

10 VICE CHAIRMAN HILLMAN: You mean sold direct
11 to the distributors or being sold to their customers?

12 MR. QUINN: It could have been -- in some
13 cases to the distributors, and in some cases just to
14 the customers. Some of the distributors bought THFA
15 and sometimes they lost business because their
16 customers were buying, but that's where it gets real
17 complicated.

18 VICE CHAIRMAN HILLMAN: Okay. Mr. DeVinney,
19 perhaps for you, I mean, obviously one of issues in
20 this case, I think, for us is that the vast majority
21 of the imports have been internally consumed to make
22 downstream products, which makes it a little more
23 difficult to understand how the Commission factors
24 this into our normal sort of volume and price effects
25 analysis. If what is coming in as an import is going

1 into internal consumption, and not being sold into the
2 market as such, that has a very dramatic effect on how
3 we look at the volume of imports, and how we look on
4 the price effects in the market.

5 So if there anything you can point us to in
6 terms of either relevant Commission precedent or other
7 thing that you would want to take us into account in
8 terms of how do we assess this market if such a
9 significant portion of the volume of the imports is
10 being internally consumed. What does that mean for
11 our analysis?

12 MR. DeVINNEY: Can we address that in the
13 post-conference brief?

14 VICE CHAIRMAN HILLMAN: Yes. Yes,
15 certainly. Certainly.

16 Again, one of the other things I guess I
17 wanted to go back and understand from you, Mr. Quinn,
18 is the issue of this kind of corporate arrangement
19 among the company, because the staff report noted that
20 according to Penn's bankruptcy reorganization plan the
21 company seniors secured lenders were pushing Penn to
22 either sell the fine chemical and solvents business or
23 enter into a total processing arrangement.

24 And I wondered if you can comment on any
25 developments on that. My understanding from what you

1 said, to the degree that you have entered into total
2 processing arrangements, they are for parts of the
3 business that are not under the fine chemicals and
4 solvents business. The other product, as I heard your
5 testimony, that are now subject to total arrangements
6 would not be in that division of the company.

7 I want to make sure I am correct, and is
8 there anything you can tell us about this existing
9 push form the senior secured lenders to either sell or
10 create toll arrangements for the fine chemical and
11 solvents?

12 MR. QUINN: You are exactly right, and when
13 we were going through our reorganization in order to
14 get as much value for themselves as soon as possible,
15 that was their thrust. Let's sell the fine chemicals
16 and solvents business or enter into a tolling
17 arrangement where the secured lenders could get some
18 up-front money.

19 We convinced them, and rightly so, that it
20 wasn't a good time to do that; that the business
21 should have some stability; that entering into two
22 tolling arrangements and, you know, disrupting all the
23 customer base for fine chemicals and solvents didn't
24 make sense, and that we saw more value in the business
25 for the shareholders and the secured lenders long term

1 by growing the business and having something that had
2 a lot of value.

3 And they agreed, and that's the premise we
4 are working on now. It's not an issue that has even
5 come up for a year or more, so that was a big point of
6 discussion at the time of the reorganization, again,
7 just so they could get as much money as soon as
8 possible.

9 But now the operating plan is to keep
10 developing the fine chemicals and solvents business,
11 use the THFA business to keep us moving along while we
12 work on higher differentiated specialty products in
13 the pharmaceutical and agricultural chemical area so
14 that there will be more value for all the
15 shareholders, including the lenders.

16 VICE CHAIRMAN HILLMAN: All right, I
17 appreciate your answers.

18 CHAIRMAN OKUN: Commissioner Miller.

19 COMMISSIONER MILLER: I join my colleagues
20 in welcoming the witnesses. We appreciate your being
21 here today and helping us understand your business.
22 It's very helpful. I have a broader question I want
23 to go back to, but as long as Vice Chairman Hillman
24 just asked the question about the bankruptcy plan,
25 we'll undoubtedly hear it again. It appears to be

1 public.

2 Is this typical that a plan would
3 essentially suggest or have a provision in it that the
4 management will receive some fairly large cash bonuses
5 if you sell a particular part of the business? I
6 don't see the details of these plans very often, and I
7 suspect we'll hear about this. It sounds, from what
8 you've said, Mr. Quinn, like at least the corporate
9 plan has shifted, but is this still out there was part
10 of it, and is that sort of the typical thing?

11 MR. QUINN: It's in there, and it's very
12 common and very modest by any standards I've seen. It
13 really is for all the employees, and it's meant to be
14 an incentive to build the value of the business so
15 that if at some point in time it's sold or refinanced,
16 they will get something. But it's very typical of any
17 business arrangement I've seen, whether within a
18 bankruptcy or outside of bankruptcy, in normal venture
19 capital agreements.

20 It's funny because somebody mentioned to me
21 that that might come up, and I didn't even remember
22 what it was. It's not something that we think about
23 or have even discussed since we put the reorganization
24 plan together. People that own businesses typically
25 want to give the people that are running the

1 businesses as much incentive as they can to create
2 value for themselves, and that's how it's done.

3 COMMISSIONER MILLER: Okay. Yes, I think it
4 may come up, and I wanted you to have an opportunity
5 to comment on it, and as I say, it's not something --
6 typically, it's not our business here, for the most
7 part, reviewing bankruptcy plans, so I just wanted you
8 to be able to --

9 MR. QUINN: I didn't enjoy doing that
10 myself.

11 COMMISSIONER MILLER: Okay. Let me step
12 back to sort of a bigger -- help me a little bit on
13 the bigger world picture, in fact. The staff report
14 comments that there are essentially two forms that
15 account for the vast majority of THFA produced
16 worldwide. Help me a little bit to understand just
17 that world dynamic. You mentioned the euro having an
18 impact on you, contributing to your bankruptcy.
19 You've said that you export somewhat, even though the
20 U.S. is your major market, but just give me the world
21 picture of THFA. You know, in the chemical industry
22 we often see concentration, but we usually see a
23 European player in there as well. Tell me a little
24 bit about the global market.

25 MR. QUINN: Since we've been in the

1 business, and I can guess or make an informed guess
2 about earlier, but since we've been in the business,
3 there has been THFA from China, and basically in the
4 chemical industry when product is coming from China,
5 and it's very low priced, people don't make any
6 investments to produce the products and compete with
7 them, especially in Europe since the products from
8 China typically go to Europe before they go to the
9 U.S.

10 I think the genesis of the issue is that the
11 furfuryl alcohol business was a booming business 10
12 years ago, and because of competition from China
13 primarily, nose dived, so you don't have many people
14 now who produce furfuryl alcohol, which is a necessary
15 feedstock for THFA. And typically, if there is a
16 furfuryl alcohol producer, it would be hard pressed to
17 make the investment in time and capital that would be
18 required to purchase THFA successfully. There is only
19 one producer of furfuryl alcohol in Europe, and they
20 are under a lot of pressure from Chinese competition
21 for furfuryl alcohol, so they are not going to
22 consider THFA.

23 Now, if the THFA market improves, if pricing
24 is more on a level playing field, I think people in
25 the U.S., maybe Europe if they do something there,

1 would make that step. Although it's a commodity
2 because it's very price sensitive, it's not a huge-
3 volume business, and it only makes sense to people who
4 make furfuryl alcohol. In China, you have a lot of
5 furfuryl alcohol produced, a lot of furfuryl produced.
6 In Europe, there are no producers of furfuryl and the
7 only one producer of furfuryl alcohol has been pretty
8 much on the ropes because of Chinese competition.

9 In short, I think 10 years ago, it was such
10 a small-volume product that most people wouldn't even
11 think about it.

12 COMMISSIONER MILLER: But THFA is used as a
13 solvent in Europe; to the extent it's being used, it's
14 being provided by the Chinese users.

15 MR. QUINN: Yes.

16 COMMISSIONER MILLER: Okay. Or to the
17 extent that you participate in that market as well.

18 You know, you've referenced furfuryl alcohol
19 a couple of times, obviously, as the important input,
20 but you've also talked about your own experience in
21 losing accounts. You said a moment ago something to
22 the effect, again, I've seen it happen many times. We
23 know there is an outstanding antidumping order here
24 that we conducted a sunset review of regarding
25 furfuryl alcohol.

1 But tell me, when you keep making these
2 references to your experience in competition and what
3 happens, what are you talking about? Are you talking
4 about furfuryl alcohol? Are you talking about other
5 chemical products? I guess I just want to understand
6 a little bit your own experience in more specifics.

7 MR. QUINN: Okay. THFA is a vital product
8 to us, and that's what I've experienced recently and
9 what's most significant to me. When we bought the
10 business from Great Lakes Chemical, furfuryl alcohol
11 was already a dead product basically because of
12 offshore competition.

13 So I can't say I really saw that happen, but
14 what I'm more referring to are my prior years'
15 experience in a lot of different chemical businesses
16 where if you're selling a product, and a good,
17 credible customer comes to you and says, I have an
18 offer from the Chinese, or sometimes it was a Japanese
19 or Asian supplier, at a lower price, you do your due
20 diligence, you make sure that it's grounded in
21 reality, that it's happening other places, that the
22 price is what has been seen before in the marketplace.
23 You go through all of that, and in some cases, when I
24 was working for big companies, they would tend to not
25 want to meet the competitive price.

1 In a lot of cases, large companies, even
2 though they depend on the customers, they really don't
3 listen to the customers all that well; they just see,
4 okay, if we meet this price, we're going to lose some
5 bottom line right away. If we don't meet it, maybe we
6 won't lose any business ever.

7 My experience with the several companies
8 that I worked for was that if it was a credible offer,
9 that you would lose business, and you would have a
10 hard time getting it back because the purchasing
11 person that you would talk to would be insulted
12 because you didn't believe him, he would be insulted
13 that your management wouldn't be responsive, and once
14 you lost that business, you were never going to get it
15 back, and it's based on my prior-to-Penn, longtime
16 experience selling a lot of chemicals and managing
17 some other companies.

18 COMMISSIONER MILLER: I listened to your
19 discussion with Vice Chairman Hillman -- I'll do this
20 quickly, if I can -- about the distributors and end
21 users, and I appreciate that because that was actually
22 a question I wanted to ask. Sometimes in this record
23 I'm trying to understand who companies mean if they
24 talk about buying from different suppliers. There are
25 only a couple of big suppliers in the world, you know.

1 I wanted to ask you the question of whether you
2 compete with your own distributors in sales to small
3 companies.

4 MR. QUINN: No, no. That's typically not
5 good business, and any distributor that I've ever been
6 successful with, there's open communications about
7 what accounts they can go after, and we don't compete
8 with them. I've seen it happen in business a lot of
9 times. At Penn, I only saw it a couple of times, and
10 it was in the THF and PTMEG business areas, which are
11 no longer ours. I haven't seen it in our THFA
12 business. You could always have confusion when a
13 sales person thinks he or she has found a new account
14 and realized that one of our distributors are selling
15 the account.

16 The distributors are, I would say, not well
17 organized. They have nationwide offices. Sometimes
18 they are the result of acquisitions they have made
19 where people in the Columbus, Ohio, office won't talk
20 to the people in the Houston, Texas, office because
21 they are from what were formerly competitors. So you
22 don't get good, immediate feedback from there. So
23 there can be cases where there's confusion, but we
24 don't want to --

25 COMMISSIONER MILLER: You avoid that.

1 MR. QUINN: We want to sell to distributors
2 because we think they can do a better job with smaller
3 customers because they are selling them a lot of
4 products where maybe we would only sell them one.

5 COMMISSIONER MILLER: Okay. I appreciate
6 that answer. I have a follow-up that I'll come back
7 to, --

8 MR. QUINN: Sure.

9 COMMISSIONER MILLER: -- if somebody else
10 hasn't, before I get back to another round. Thank
11 you.

12 MR. QUINN: Sure. Oh, you're welcome.
13 Thank you.

14 CHAIRMAN OKUN: Commissioner Koplan?

15 COMMISSIONER KOPLAN: Thank you, Madam
16 Chairman.

17 If I could start with you, Mr. DeVinney, you
18 argue, at pages 13 and 14 of your prehearing brief,
19 that because there is a lack of viable substitutes for
20 THFA, it is relatively price inelastic, and the
21 purchases are not overly sensitive to increases in the
22 price of THFA. You agree with our prehearing report,
23 at II-18, stating that, and I quote, "purchasers would
24 not likely to be very sensitive to changes in the
25 price of THFA and would continue to demand fairly

1 constant quantities of this product over a
2 considerable range of prices."

3 How do I reconcile that argument with your
4 earlier statement, at page 9 of your brief, that, and
5 I quote, "as a fungible commodity product, THFA is
6 purchased on the basis of price," and the quote that
7 "price is an overwhelmingly important factor
8 considered in the THFA purchasing decisions"?

9 MR. DeVINNEY: The purchasing decision would
10 be who to buy from. I guess, the price inelasticity
11 would go to the fact that if price went up from X to X
12 plus 20 cents a pound, that end users are not going to
13 reformulate away from THFA. They are not going to put
14 something else in. But when it comes down to who they
15 are going to buy from, price is the most important
16 factor.

17 So I guess I would reconcile those two.
18 They are going to buy THFA, no matter what the price.
19 Within bounds, of course, they are going to buy THFA,
20 but when they decide who they are going to buy from,
21 price is the most important factor.

22 COMMISSIONER KOPLAN: Okay. You can see why
23 I was having a bit of trouble with that.

24 MR. DeVINNEY: Certainly, certainly.

25 COMMISSIONER KOPLAN: Thank you. Let me

1 follow up with a question that, I think, the chairman
2 has asked and Vice Chairman Hillman has asked as well.
3 I'm trying to understand, if the merchant market sales
4 of subject imports oversell domestic like product, as
5 appears to be the case, how are a significant
6 percentage of meet-or-release clauses of Penn's sales
7 to end users triggered under contracts? I'm wondering
8 if you can provide me with detailed documentation for
9 that allegation in your post-hearing submission.

10 MR. DeVINNEY: Yes. We will do it. I'm
11 sorry. I just didn't want to make a representation
12 about how detailed the documentation would be before I
13 spoke to my client, but yes.

14 COMMISSIONER KOPLAN: I guess your co-
15 counsel is saying it can be done. Right?

16 MR. DeVINNEY: We will give you the most
17 detailed documentation we have. I'm not trying to
18 imply there is not; I'm just saying I'm not positive.

19 COMMISSIONER KOPLAN: Okay. I appreciate
20 that. Thank you.

21 While I'm on post-hearing submissions, will
22 you provide as a post-hearing submission a detailed
23 chronological account with supporting documentation of
24 the correspondence and negotiations between Penn and
25 Kyzen regarding the price of Kyzen's purchases of THFA

1 over the period examined?

2 MR. DeVINNEY: Absolutely. We will provide
3 you all of the documentation that we have.

4 COMMISSIONER KOPLAN: And in light of the
5 testimony I've heard today, could you also do that for
6 me with regard to your big customers, the ones that
7 you were referring to, Mr. Quinn, that you referred to
8 today in your direct testimony so I have that as well?

9 MR. QUINN: Certainly.

10 COMMISSIONER KOPLAN: Thank you.

11 This is for Mr. Quinn and Mr. Neff. In our
12 preliminary reviews, we noted that in 2002 domestic
13 consumption fell, but the volume of subject imports
14 rose. The actual numbers are confidential. We also
15 know that prior to 2002, a single importer, Kyzen, had
16 accounted for most subject imports and had internally
17 consumed most of those imports. Also in 2002, the two
18 distributors, Alchem Industries and Advanced Resins
19 Systems, became importers of record, opening the door
20 for more merchant market sales of subject imports and
21 increased competition between subject imports and the
22 domestic like product. Subsequently, Kyzen reduced
23 its purchases of the domestic like product.

24 Respondents argued that Penn's bankruptcy
25 filing in mid-2001 prompted a round of purchases to

1 stockpile THFA, a search for alternate sources of
2 supply, and attempts to reformulate products away from
3 THFA, dampening demand. We said that we would further
4 explore those changes in this final phase of our
5 analysis. Your prehearing brief argues that "none of
6 the changes was a major factor in the deterioration of
7 the domestic industry," at pages 2 and 3.

8 I would like you to discuss that for me. I
9 would like you to give me your take on the effect of
10 these changes. Before you begin, I note that Table
11 II-5, at page 217 of our May 28th prehearing report,
12 which you reference -- I believe it's mis-cited, but
13 it's on page 10 of your brief -- does reflect that,
14 and I quote, "multiple sources of supply" were listed
15 as either very important or somewhat important as a
16 purchase factor by eight out of 11 U.S. purchasers on
17 their questionnaire responses. Could you respond for
18 me?

19 MR. QUINN: None of our customers, large or
20 small, during that period said anything to us or did
21 anything that we're aware of about seeking out an
22 alternate source of supply. All they did was come to
23 us with lower prices for Chinese material. On the
24 questionnaire, I remember that an alternate source of
25 supply was mentioned, but it didn't seem like it was

1 ranked very high, but price was right there as a real
2 critical factor for THFA. But alternate sources of
3 supply has not been an issue for our customers.

4 COMMISSIONER KOPLAN: Okay.

5 MR. QUINN: The climate has been so bad in
6 the chemical industry that people will just jump on
7 any opportunity to reduce a price, so I think the
8 aggressive way our customers came back to us for price
9 relief reflects that, that the chemical business is
10 tough. They are under a lot of pressure. Not that
11 THFA wouldn't be viable in their formulations if it
12 were 20 cents per pound more; it's just the desire to
13 save money and improve the bottom line for them and
14 their company.

15 COMMISSIONER KOPLAN: Thank you.

16 MR. QUINN: Thank you.

17 Mr. Malashevich, you can do this post-
18 hearing, but I'm looking at the pink document we got
19 this morning, the business-proprietary one, Exhibit 4,
20 of that document. My question is simply, is it your
21 position that the comparisons made in Exhibit 4 are
22 being made at the same levels of trade? And if you
23 want to respond to that post-hearing or respond to it
24 now.

25 MR. MALASHEVICH: It's in the same category,

1 I believe, Commissioner Hillman or Chairman Okun asked
2 me earlier. I believe I could respond to it more
3 fully post-hearing, if I may.

4 COMMISSIONER KOPLAN: I would appreciate
5 that. Thank you.

6 With that, I don't think I have any further
7 questions. Thank you very much.

8 CHAIRMAN OKUN: Commissioner Lane?

9 COMMISSIONER LANE: Thank you. I want to
10 start with Mr. Quinn to make sure that I understood
11 the answer to Commissioner Pearson's question relating
12 to the size of the industry. My question is, in your
13 tolling arguments that you have, are all of your
14 employees involved in those tolling arrangements,
15 including the ones that we're talking about today that
16 work on the THFA?

17 MR. QUINN: I think Michael can probably
18 give you a better breakdown, but at the plant, the
19 bulk of the hands-on manufacturing people, including
20 the logistics people, they are very involved in the
21 toll, the THFA/PTMEG toll. As you go through the
22 organization, Michael spends some of his time on the
23 financial aspects of the toll. I spend some time on
24 it if a business issue comes up because the toll is
25 with the company that I formerly worked for.

1 So we all, to one degree or another, pay
2 some attention to the toll because it's big, and it
3 covers our fixed costs. It doesn't contribute profit;
4 it just covers costs. So even though the amount of
5 attention at the plant with the hands-on people is
6 significant, the nontoll business, including the THFA,
7 is much more important to us as a way to maintain our
8 liquidity and grow.

9 The toll is huge, and it's pretty constant
10 and hasn't been a problem, and a lot of people get
11 involved in it, and Michael can be more specific than
12 me about it, at the plant, how many people are full
13 time because there are some operating units where the
14 people that work on those units, that's all they do,
15 so they are fully dedicated to the toll. That's the
16 buildings that they are in and the tank cars that they
17 load, the tank trucks that they load.

18 I know it's a complicated issue, and I want
19 to make sure that I do answer your question
20 appropriately, so keep firing.

21 COMMISSIONER LANE: Well, it's sort of hard
22 for me to ask the question because I can't go into
23 specific numbers, --

24 MR. QUINN: Okay.

25 COMMISSIONER LANE: -- but what I'm asking

1 is, you talked about -- at one point, I think, you
2 said something about 130.

3 MR. QUINN: A hundred and thirty-some souls
4 at the Memphis plant.

5 COMMISSIONER LANE: Okay. Now, are any of
6 those people doing the THFA?

7 MR. QUINN: Yes. The people at the Memphis
8 plant are manufacturing people, and the people that
9 work on the units that produce THFA, they are
10 dedicated to THFA, are scientists, all work on THFA,
11 so they have the time dedicated to it. Our purchasing
12 people who buy our raw materials; they are really
13 working on THFA when they are buying the raw materials
14 for it, whether it's a major raw material or a
15 catalyst. Our financial people at the plant, as they
16 do the financials for THFA, are dedicated to it.

17 What you have is that the THF and PTMEG
18 volumes are so huge, and the manufacturing equipment
19 is so much bigger than the rest that you get basically
20 kind of a warped opinion of what's important to us,
21 going by what the people at the plant spend their time
22 on because the THF and PTMEG manufacturing units are
23 big. They have two, three, or four people around the
24 clock, so a lot of the people are working on that.

25 COMMISSIONER LANE: Mr. Neff, do you want to

1 add to that?

2 MR. NEFF: I don't know if this will provide
3 clarity or not, but I think the short answer to your
4 question is, no, everyone at the plant is not working
5 on THFA. We are set up in, really, three distinct
6 operating units. We've got the THF and PTMEG unit
7 that has dedicated operators and other folks that are
8 dedicated solely to that production. We've got a
9 fine-chemicals unit where we have the same situation.
10 We have dedicated operators and managers at the plant
11 level working on that, and then we have the THFA unit
12 where we have some dedicated folks there as well.

13 Around that, then you will have other
14 support functions, folks that are doing maintenance,
15 purchasing, the logistics. They tend to do a piece in
16 everything, and then on top of that, you'll have the
17 administration, and clearly we're involved to varying
18 degrees in all of the pieces of the business as well.

19 COMMISSIONER LANE: Okay. Thank you.

20 According to the staff report, there were no
21 sales of Chinese imports in bulk containers during the
22 period examined. However, prices of domestically
23 produced THFA sold in bulk containers were lower at
24 the end of the period than they were at the beginning.
25 If the subject imports are the cause of price

1 depression or suppression, why are your prices falling
2 in sales of bulk products when no subject imports were
3 sold in bulk?

4 MR. NEFF: I think that the issue is that
5 the source of the subject imports resulted in offers
6 of lower prices to customers who we ultimately
7 defended and met the prices; and, therefore, there
8 were no imports.

9 COMMISSIONER LANE: Okay. Thank you.

10 At this point, I can't remember. Did you
11 enter into a tolling arrangement with Kyzen or not?
12 But I think they offered to enter into an agreement.

13 MR. QUINN: No, we didn't. We were looking
14 for ways to have an ongoing relationship with Kyzen.
15 I had offered several times to work closer with them
16 so maybe together we could take costs out of the
17 system together and be more economic. But Kyle had
18 invited myself and Dale Finn, our chief operating man
19 at Memphis, to visit with them, and at that time he
20 suggested a tolling arrangement, and the tolling
21 arrangement that he had suggested, just as we sat
22 there, within three minutes, we could see that the
23 numbers just didn't work for us, that we were going to
24 wind up with even less money coming back to us for the
25 THFA business, and at the same time, Kyle said Kyzen

1 would like to sell our THFA for us and said that they
2 would sell the Chinese THFA and compete with us if we
3 didn't want to do that.

4 So we did not enter into the tolling
5 arrangement. It made no economic sense to us.

6 COMMISSIONER LANE: Okay. Let me go to the
7 argument about the ability of taking FA processing and
8 turning it into THFA processing. How easy is that to
9 do?

10 MR. QUINN: Well, I think, with some proper
11 time and some capital, it should be relatively easy to
12 do for people that understand the technology. There
13 have been a couple of attempts to make THFA in the
14 U.S. from furfuryl alcohol, but it was always on the
15 basis of doing it quickly without a lot of investment,
16 and there aren't many good things that you can do that
17 way. But with someone who is serious about THFA
18 production in the United States, with a little time,
19 the right people, and some capital, it can be done.
20 It's something that we do really well because we've
21 done it for a long time, but the technology is pretty
22 well known, so it's very possible.

23 COMMISSIONER LANE: Okay. Thank you. My
24 time is up.

25 CHAIRMAN OKUN: Commissioner Pearson?

1 COMMISSIONER PEARSON: There was an article
2 ... [***]. I have not read the article, so I'll
3 confess that up front, but, among other things, it
4 said: "After growing rapidly in the 1960's and
5 1970's, the crop-protection industry has shrunk by an
6 average of 3.7 percent a year since 1988." To me,
7 this seems intuitively to make sense. The first
8 biotech soybeans were planted in 1996 in the United
9 States commercially, and since then we've seen
10 substantial acreage shifting to biotech soybeans,
11 cotton, and corn, and this has had the effect of
12 reducing demand for a number of crop-protection
13 chemicals, probably not including glyphosate, but I'm
14 guessing you're not a manufacturer of glyphosate.

15 MR. QUINN: That's true.

16 COMMISSIONER PEARSON: It's also my
17 understanding that agricultural chemicals have
18 accounted for the largest single use of THFA during
19 the period of investigation. Would that be correct?

20 MR. QUINN: Ball park, I would say close.
21 It's hard to tell where all of our distributors sell
22 their product, but, ball park, yes.

23 COMMISSIONER PEARSON: Okay. So the basic
24 question, then, is, is there a long-term down trend in
25 demand in the United States for agricultural chemicals

1 and thus for THFA?

2 MR. QUINN: Not for THFA. We have been
3 working closely with R&D within four very large,
4 global producers of agricultural chemicals, [***] and
5 they are all formulating new products based on THFA
6 and are forecasting huge growth in their demand. So I
7 think some products are losing favor in the market,
8 just as you pointed out from the article, but not with
9 products that can be made from THFA. In fact,
10 worldwide, there is an increasing interest in THFA as
11 the solvent of choice for various agricultural
12 chemicals. It's kind of amazing.

13 So, yes, I think the market is suffering but
14 not the segment of the market that likes to use THFA.

15 COMMISSIONER PEARSON: Okay. If I'm not
16 restating it correctly go ahead and correct me, but in
17 what might be overall a declining marketplace, the
18 desirable functional properties of THFA are likely to
19 allow it to replace some other product that's
20 currently being used in the manufacture of
21 agricultural chemicals such that the demand for THFA
22 could grown even at a time when the overall tonnage of
23 crop-protection chemicals may be going down.

24 MR. QUINN: Absolutely. That's what our
25 major customers and new customers are saying. The

1 forecasts they are giving us are very aggressive, and
2 we're very happy.

3 COMMISSIONER PEARSON: Okay. Shifting gears
4 here, in your opening statement, I think I understood
5 you to say that if there is growth in demand for THFA,
6 as you are projecting, that there may well be room in
7 the marketplace for a second domestic producer. What
8 are the costs of getting into the THFA business?
9 Would you expect to see someone come in with a
10 greenfield facility, or would some other chemical
11 manufacturer with a little excess capacity be able to
12 reconfigure itself in order to produce THFA? How
13 would you see that evolving?

14 MR. QUINN: There are some units in the U.S.
15 where furfuryl alcohol has been produced. My guess
16 would be that someone would take a plant that was
17 amenable to furfuryl alcohol production and add what
18 they need to make THFA properly, and they would have
19 to make some, again, investment in time, the right
20 people, and some capital. I could see, if the market
21 grows and the pricing improves, that there could be
22 another domestic producer of furfuryl alcohol,
23 probably not in a year but in two years maybe,
24 certainly three years, if someone was serious about
25 it.

1 COMMISSIONER PEARSON: Okay. Of course, in
2 that intervening time, you would, I expect, have a
3 chance to improve your capacity utilization, which
4 would be a reasonable objective.

5 MR. QUINN: And continue to supply the
6 market, which would be growing, which would be part of
7 the incentive for another producer to get involved.

8 COMMISSIONER PEARSON: Shifting gears again,
9 back to an issue that's come up previously, and that
10 is the question of THFA in bulk being cheaper than
11 THFA in drums, can you, either now or in your post-
12 hearing brief, provide an estimate of the average
13 price difference in cents per pound between the bulk
14 product and the drum product?

15 MR. QUINN: I would like Michael to do that
16 because he has all of the numbers, but I just want to
17 emphasize that in some cases you could have a huge
18 customer who is buying truck loads of drums who might
19 have a drum price that's different from somebody
20 that's buying four drums at a time or five drums at a
21 time. So the details of the analysis are important,
22 and I'll let Michael deal with that.

23 MR. NEFF: We will do that in the post-
24 conference brief.

25 COMMISSIONER PEARSON: As you're doing that,

1 the related question is, explaining the differences in
2 prices between the types of THFA, as reflected in
3 Tables V-3 and V-1 of the staff report, and this
4 probably would have to be done in the post-hearing
5 brief, but we've been trying to interpret what's going
6 on in those tables, and to the extent that you could
7 shed some light on that, that would be a help.

8 Following up on one of Chairman Okun's
9 questions, you seem to be arguing that the Commission
10 should be focusing on the impact of the negotiations
11 before the sale as evidence of price effects rather
12 than on the prices ultimately agreed to by the
13 parties, and the prices that we have, of course, do
14 show predominantly overselling by the imported
15 product.

16 Are you arguing, then, that the importers
17 are engaging in a sort of bait-and-switch tactic where
18 they are enticing customers with promises of low
19 prices but then ultimately managing to sell at a
20 higher price? What's going on there? I mean, what's
21 going on here?

22 MR. QUINN: No. I only have seen that
23 suppliers of Chinese THFA have gone into our accounts
24 and offered prices lower than ours by 10 cents a pound
25 up to 25 cents per pound. We have negotiated with our

1 customers and retained our business, and that's where
2 we've suffered. Account by account by account, the
3 price is now 10 cents lower, 20 cents lower, 15 cents-
4 per-pound lower than it was before because of what our
5 customers and we viewed as a legitimate offer to sell
6 by suppliers of Chinese THFA.

7 Now, I think a smart purchaser says to
8 himself or herself, I've been buying from Penn for
9 years. They have always done what I've needed. I
10 would rather continue to buy from them, buy from one
11 source, but I want a lower price.

12 So our argument is that Chinese THFA has
13 been used many, many times to get a lower price from
14 us, legitimately. I'm not complaining. The only
15 thing we're basically petitioning is that the lower
16 prices from China are not fair. You know, buyers
17 could be thinking of some of the things that you have
18 suggested, that they could buy Chinese material for a
19 year, and then the price would go up, or the product
20 wouldn't be available.

21 So all of those things are real things that
22 I think a smart business person takes into account.
23 But what we saw was we would absolutely lose business
24 and lose it quickly if we didn't respond to our
25 legitimate customers and come up with a price that was

1 more acceptable to them.

2 COMMISSIONER PEARSON: Go ahead, Mr. Doyel.

3 MR. DeVINNEY: We'll respond more
4 specifically in our post-conference brief as well.

5 COMMISSIONER PEARSON: Okay. Thank you very
6 much.

7 MR. MALASHEVICH: There is one point I would
8 like to make, please, Commissioner, regarding Tables
9 V-2 and V-1 that I can respond to in public session.
10 You heard earlier about the testimony about how price
11 was quite sensitive to volume since the higher the
12 volume, the lower the price and vice versa. I would
13 urge you to compare the volumes at issue in those two
14 tables, and I think that will address your question in
15 part, and we'll elaborate post-hearing.

16 COMMISSIONER PEARSON: Okay. Thank you.

17 I have no further questions.

18 CHAIRMAN OKUN: Thank you. I think there's
19 a couple of other things I'm going to try to cover
20 here. One is a follow-up on a question that
21 Commissioner Lane posed which relates to threat
22 factors such as whether Chinese companies would
23 convert FA to THFA, and one of the points Respondents
24 have raised is you've had an order in effect on FA
25 since 1995. Wouldn't the incentive have already been

1 there to do so?

2 And I wondered if there is anything else
3 going on which would make there more incentive now
4 than there was when these orders were put into effect.
5 And maybe, Mr. DeVinney, you look like you wanted to
6 grab that, but I'm just trying to make sure -- Mr.
7 Quinn had commented on the market as a whole and
8 seemed to have a good idea, so I want to have his
9 response as well.

10 MR. DeVINNEY: I'm sorry. I would just add
11 that the duties in the EU have just recently been
12 raised, so that's going to shut off -- well, it's
13 going to impose significant barriers in the EU market,
14 and that's been within the last several months. So
15 that's a new factor. I'll let Mr. Quinn --

16 MR. QUINN: I think there is more than
17 adequate capacity in China now for FA and THFA to
18 satisfy the world market. I just think Zhucheng was
19 first and came up with a product that was acceptable
20 and aggressive pricing. There are other producers.
21 I've seen their Web sites. We've talked to people who
22 have had quotes from them and people who have received
23 samples. So we think the incentive to convert FA to
24 THFA is there, but the market hasn't needed -- they
25 haven't asked for more than one supplier from China.

1 CHAIRMAN OKUN: You're talking about the
2 U.S. market now or the global.

3 MR. QUINN: U.S. or Europe, yes.

4 CHAIRMAN OKUN: Okay. I guess this is
5 something for post-hearing, and others will be talking
6 to the staff and to our accountants, because one of
7 the things that we've had a number of questions about
8 is where you have an industry such as yours where
9 you're producing a number of things, and trying to
10 understand how you evaluated THFA's production and its
11 profitability is something that I think I have to
12 spend some more time to understand what your business
13 plan was for it specifically and how that relates to
14 how you're reporting some of these things. So I don't
15 think there is anything we can do anymore in open
16 session on, but if there is anything else you want to
17 put in the post-hearing brief to help us understand
18 the impact on this particular product and how it's
19 numbers relate, I think that would be helpful.

20 And then, finally, the only other question -
21 - I think, at this point, I don't think I have any
22 other specific questions. I've appreciated all of
23 your answers. If I find the other one I've scribbled
24 down here, I may come back to it, but let me turn to
25 Vice Chairman Hillman.

1 VICE CHAIRMAN HILLMAN: Thank you.

2 If I can, I want to come back, just to make
3 sure I understand some of the issues relating to these
4 pricing factors. Mr. Quinn, in your very opening
5 comments, you used the word "perfect storm" in the
6 chemical's business, and then, specifically, you only
7 referenced the issue of the value of the euro. So I'm
8 assuming that there were other things out there.

9 I'm trying to step back from this and look
10 and say, okay, what is affecting prices for THFA or
11 other related products in this market? I'm looking
12 at, over this period of investigation, declines in
13 consumption of THFA. We don't have data, but you're
14 describing other things going on in the chemicals
15 business, so maybe you can start by helping me
16 understand what was going on in the sort of broader
17 chemicals area that you refer to as the "perfect
18 storm," and then specifically come back to its impact
19 on THFA.

20 MR. QUINN: The reference to "a perfect
21 storm" was really geared toward the chemical industry
22 in general and the fact that a number of large
23 chemical companies declared for Chapter 11 support, as
24 we did, and a lot of the problems were common problems
25 to the chemical industry as a whole. I'll go over

1 them and say that it, to some degree, also mirrors
2 what we're seeing with THFA. We mentioned the euro
3 conversion, to get that behind us.

4 The other thing that was unusual at that
5 point in time was that raw material and industry costs
6 were rising, rising significantly, at a time when
7 product sales prices were declining, which is unusual
8 in the chemical industry. Typically, when raw
9 material costs go up, when utility costs go up, when
10 other energy costs go up, the selling prices also go
11 up, too, maybe not fast enough to recover all of the
12 costs, but they also rise.

13 In this situation, and a lot of it had to do
14 with Asian competition, the selling prices for U.S.
15 producers to keep their business actually declined, so
16 that was really the "perfect storm" reference, a
17 situation where something happened that people who had
18 been watching the chemical industry for longer than I
19 had said that they had never seen it happen before,
20 and that is selling prices going down -- THFA would be
21 a good analogy -- because of Chinese competition where
22 energy prices, natural gas is going up, and other raw
23 materials are going up.

24 VICE CHAIRMAN HILLMAN: Now, our record
25 would indicate that, again, over the POI, consumption

1 of the product went down, demand down. How did that
2 affect prices? You're describing all of this increase
3 in demand as something looking forward, that you're
4 expecting demand to go up.

5 MR. QUINN: Exactly.

6 VICE CHAIRMAN HILLMAN: But over the period
7 that we looked at, consumption was actually down. So
8 how did that affect prices?

9 MR. QUINN: Not at all. What affected
10 prices were our customers coming back to us with
11 offers from Chinese suppliers. Plain and simple,
12 that's what affected our prices. That was product
13 being sold in the U.S. that affected prices in some
14 places, but the significant thing was our major
15 customers all coming back to us and saying, "Here is
16 my offer. It's 10 cents, 15 cents, 25 cents lower
17 than your price. What are you going to do about it?"
18 So that's what affected prices.

19 VICE CHAIRMAN HILLMAN: I appreciate that,
20 and obviously what we're struggling with is to square
21 everything that you said with some of the indications
22 --

23 MR. QUINN: Sure.

24 VICE CHAIRMAN HILLMAN: -- in the record of
25 overselling by the Chinese as well as struggling with

1 figuring out these price comparisons in terms of what
2 is the most appropriate comparison. We think that's
3 the reason you're getting all of these questions about
4 -- you're wanting us to look at prices one way, our
5 staff report has looked at prices in the way that we
6 always do, and trying to square those two together.

7 Maybe to do that, I don't know whether there
8 is anything that you can say on the public record, and
9 if not, if you could do so for the post-hearing brief,
10 which is, how do Penn's prices to Kyzen compare to
11 Penn's prices to its other largest customers? Again,
12 if there is anything you can say generally in the open
13 record, fine. If it all has to be done in a post-
14 hearing submission, that's fine as well. Again, I'm
15 trying to nail down how I look at these various pieces
16 of pricing data we have on the record.

17 MR. QUINN: I could say some general things,
18 and then we can supply the rest in the post-hearing
19 briefs. Before our other customers came to us with
20 offers of Chinese material at much lower prices, the
21 price to Kyzen was lower than it was to any other
22 customer, and our understanding, based on our sales
23 people calling there, was that our prices were the
24 same as the Chinese prices, that we were being
25 competitive to keep a certain level of volume, but

1 their prices were always lower.

2 Then when the competitive forces hit our
3 customers with Chinese THFA, that balance changed, and
4 I think we can accomplish that in the post-hearing
5 brief. But then we subsequently learned that our
6 prices at Kyzen were actually lower than the Chinese
7 prices, and we did not understand that or know that,
8 and that was quite a shock to me.

9 VICE CHAIRMAN HILLMAN: Was there a response
10 to that once you sorted all of that out?

11 MR. QUINN: We did increase our price to
12 Kyzen to put it competitive with the Chinese product.

13 VICE CHAIRMAN HILLMAN: Okay. And others?
14 Had you lowered everybody to the same level as the
15 Kyzen price?

16 MR. QUINN: No, no, no. These offers were
17 all very specific. I mean, Company A comes in. Their
18 price was X, and they tell us the offer they got from
19 the Chinese competition was Y. Another customer would
20 come in, and their price was M, and they would come
21 back and say the offer they got from the Chinese
22 competition was very close to Y.

23 So the offers that were coming in from our
24 customers were all in the same range, but our prices
25 to the customers before that were different. They

1 were all negotiated prices.

2 VICE CHAIRMAN HILLMAN: Okay. I appreciate
3 those answers.

4 Then the last question. You mentioned that
5 there were a number of new customers out there, and
6 we've asked you to provide us as much detail and sort
7 of adding up of the numbers that would support your
8 sense that demand is going to pick up, et cetera.

9 I'm curious whether how much of this ability
10 of your customers to reformulate and to use more THFA
11 was price dependent. Is it the kind of thing where if
12 the price of THFA gets low enough that it's cost
13 effective for them to reformulate and use THFA, if the
14 price of THFA had been at what it was earlier on this
15 period, would it still be cost effective for them to
16 switch into using THFA?

17 MR. QUINN: They basically all started their
18 work before 2002, when our prices were higher, before
19 we met competitive prices at our major customers, so
20 all of their formulation work was done based on the
21 prices that held when they started, and that was going
22 back to mid-'99, some of the earliest work, and the
23 year 2000. The price competition didn't really affect
24 our price structure until 2002. Now, if they can get
25 those prices, they will take them, but their

1 formulating works at the higher price level.

2 VICE CHAIRMAN HILLMAN: The last thing on
3 the price issue: The price trends in terms of the
4 values of exports outside the U.S. market look very
5 different than they do for product in the U.S. market.
6 Are you facing direct Chinese competition in your
7 export markets, and if so, why are the price trends
8 different in terms of export prices versus U.S.
9 prices?

10 MR. QUINN: We, Penn, the Great Lakes
11 business, didn't have a whole lot of THFA business
12 outside the U.S., so what we have seen is that in
13 Latin America and in Europe, there is some very
14 aggressive pricing out there, but since we didn't
15 really have large established customers in those
16 areas, we haven't really been affected in terms of
17 what we had in losing something. It has kept us from
18 going after additional business there because the
19 pricing is low, and typically pricing from China is
20 lower in Europe than it is in the U.S. Just because
21 it's closer, there's more established marketplaces and
22 relationships.

23 VICE CHAIRMAN HILLMAN: Okay. So you're
24 saying you just did not try to keep that business or
25 didn't do anything in response to the competition.

1 MR. QUINN: Yes. We just didn't go after
2 business, and we didn't have much to start with, so we
3 didn't really lose, you know, much to speak of.

4 VICE CHAIRMAN HILLMAN: Okay. I appreciate
5 those answers. Thank you.

6 MR. QUINN: Sure.

7 CHAIRMAN OKUN: Commissioner Miller?

8 COMMISSIONER MILLER: Well, I wanted to ask
9 you some questions about the pricing issues related to
10 Kyzen, and Vice Chairman Hillman did that, so I don't
11 think I have any further, although I want to ask this
12 follow-up. You made a comment about you were
13 surprised when you learned that your prices to Kyzen
14 were low. How did you learn that?

15 MR. QUINN: From the testimony.

16 COMMISSIONER MILLER: From the testimony --

17 MR. QUINN: Yes.

18 COMMISSIONER MILLER: -- at the preliminary
19 stage.

20 MR. QUINN: Yes. I had several sales people
21 call on Kyzen, including our then-sales VP, and what
22 they told me was that we weren't going to get a price
23 increase at Kyzen, that we were just competitive with
24 the Chinese THFA. We did try a price increase there
25 once -- I forget exactly when it was -- and weren't

1 successful. So I just kept, without any better
2 knowledge, thinking that our price was the same as the
3 Chinese price, and then the testimony showed it was
4 lower, and I was shocked. I couldn't believe it.

5 COMMISSIONER MILLER: I appreciate it. I
6 have no further questions.

7 MR. QUINN: Okay. Thank you.

8 COMMISSIONER MILLER: I appreciate all of
9 the testimony. Thank you.

10 MR. QUINN: Thank you.

11 CHAIRMAN OKUN: Let me see if there is a
12 third round of questions. Commissioner Lane?

13 COMMISSIONER LANE: Mr. Quinn, the answer to
14 your last question goes to what I was trying to ask
15 you before, and maybe I didn't do a very good job of
16 it. When your customers came to you and said, you've
17 got to lower your price to meet the Chinese price, I
18 ask you, how do you know, after you did that, that the
19 Chinese prices weren't, in effect, really lower? And
20 you said, well, because of the people you were dealing
21 with.

22 And so, I guess, the question I want to ask
23 now is, Mr. DeVinney, can you look at the record that
24 we have and compare it to the prices that Penn were
25 told that they had to meet and see if, in fact, that

1 is what happened? I'm just curious to know whether
2 the prices that we are looking at are the ones that
3 you all had to meet, and you can do that in your post-
4 conference brief.

5 MR. DeVINNEY: We can do that in the post-
6 conference brief.

7 Just so I understand your question, are you
8 saying does the record now reflect what the quoted
9 prices were?

10 COMMISSIONER LANE: Well, the record now
11 reflects that the prices from the Chinese imports are
12 actually lower than -- no -- I'm sorry -- are higher
13 than what Penn is doing, and I just wondered if the
14 record reflects accurately what you all were told when
15 you had to lower your prices.

16 MR. DeVINNEY: We can address that in the
17 post-conference brief.

18 COMMISSIONER LANE: Okay. And maybe in the
19 post-conference brief you can also take a look at the
20 production employees and the change in the production
21 employees and the change in the productivity and
22 explain what you attribute the change in productivity
23 to, and then, in the post-hearing brief, you can
24 explain how many more employees are involved in the
25 THFA as opposed to just the production employees.

1 MR. DeVINNEY: Certainly. We'll address
2 that.

3 COMMISSIONER LANE: Okay. Now, as I
4 understand it, there are two technologies for the
5 production of THFA: the liquid phase and the vapor
6 phase. Is that correct?

7 MR. QUINN: Yes.

8 COMMISSIONER LANE: And hydrogen is the raw
9 material for the production of THFA.

10 MR. QUINN: Yes.

11 COMMISSIONER LANE: It's not clear to me
12 whether you purchase the hydrogen or whether you
13 produce the hydrogen.

14 MR. NEFF: We produce the hydrogen.

15 COMMISSIONER LANE: Okay. So the hydrogen
16 that is used as part of your raw material; you produce
17 that yourself.

18 MR. NEFF: That's correct.

19 COMMISSIONER LANE: Okay. Just a minute.

20 (Pause.)

21 COMMISSIONER LANE: So is the cost of the
22 hydrogen, then, a significant portion of your raw
23 material costs?

24 MR. NEFF: I would not characterize it as a
25 significant portion. It's not an insignificant

1 portion, but it's a relatively small percentage. We
2 can give you more details of that in the post-
3 conference brief, if you would like.

4 COMMISSIONER LANE: Okay. That would be
5 fine. Okay. That's all I have. Thank you.

6 CHAIRMAN OKUN: Any other questions on this
7 side?

8 (No response.)

9 CHAIRMAN OKUN: Let me turn to staff to see
10 if staff has questions of this panel.

11 MS. MAZUR: Diane Mazur, Office of
12 Investigations. Madam Chairman, staff has no
13 questions.

14 CHAIRMAN OKUN: Do those in opposition to
15 the imposition of antidumping duties have questions
16 for this panel?

17 MR. JAFFE: Madam Chairman, we have no
18 questions.

19 CHAIRMAN OKUN: Very well, then. This will
20 be a good time to take a break for lunch. Before
21 doing so, I want to take this opportunity to thank
22 this panel of witnesses very much for your testimony
23 today and for responding to our many questions. We
24 appreciate you being here. I will remind everyone
25 that the room is not secure. Therefore, you need to

1 take any business-proprietary information with you,
2 and we will take a recess for lunch until one-ten.

3 MR. QUINN: Thanks to each and every one of
4 you. Thank you.

5 CHAIRMAN OKUN: Thank you, Mr. Quinn.

6 (Whereupon, at 12:10 p.m., a luncheon recess
7 was taken.)

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1 Kyzen Corporation headquartered in Nashville,
2 Tennessee.

3 Kyzen manufactures chemical solutions
4 designed to clean electronic assemblies,
5 semiconductors, and precision metal parts. Kyzen
6 began purchasing THFA in 1990, when the product was
7 only available from the -- chemicals division of Great
8 Lakes Chemical. I co-founded Kyzen that year after
9 leaving Great Lakes, where I had been the THFA
10 marketing manager for about two years.

11 Given the 16 years that I've been involved
12 with the product, I believe I am uniquely qualified to
13 discuss with the Commission the conditions of
14 competition that exist in this market and the market
15 dynamics during the period of investigation.

16 Tom Forsythe, our vice president and chief
17 accounting officer will speak second and discuss the
18 import volumes, price trends, and other economic
19 factors that demonstrate conclusively that THFA
20 imports did not materially injure Penn during the
21 period of investigation and pose no threat of material
22 injury to Penn for the foreseeable future.

23 It has been Kyzen's guiding principle during
24 the period covered by the Commission's investigation
25 that we maintain two viable sources for THFA. First,

1 we use THFA extensively. It is our single, most-
2 important raw material and represents a major portion
3 of our total production costs. To clearly put this in
4 perspective, last year, Kyzen bought many raw
5 materials other than THFA. With that said, THFA
6 represents 38 percent of our total raw material costs.
7 Last year, Kyzen sold \$6 million worth of revenues, so
8 clearly THFA played a major role in our company's
9 success.

10 Kyzen, we believe, also has performed more
11 research and development into the use of THFA than any
12 other company, we suspect, much more than Penn, and we
13 have invested heavily in obtaining U.S. and foreign
14 patents to cover the use of THFA. THFA means a lot to
15 Kyzen, much more so than any other purchaser of the
16 product. But this fact also makes THFA Kyzen's
17 Achilles' heel. Because our supply options have been
18 very limited, when Kyzen began, we had no options on
19 THFA supply other than Great Lakes Chemical. They
20 were the only supplier of THFA.

21 As we developed our cleaning products, which
22 are used to replace chemicals that harm the earth's
23 ozone layer, our use of THFA grew. Unfortunately, we
24 were not much larger than a minnow, from Great Lakes'
25 viewpoint, who was our supplier then. They were a

1 large chemical company and made lots of money
2 manufacturing chemicals other than THFA, so, in 1997,
3 when our consumption of THFA was at an all-time high,
4 THFA represented just a very small fraction of Great
5 Lakes' overall chemical portfolio. That same year, in
6 1997, Great Lakes announced their decision to divest
7 themselves of the furfuryl-based chemical business,
8 including THFA.

9 Imagine, our only source of THFA was now
10 suddenly up for sale. We absolutely had no idea who
11 was going to buy it, and if somebody did buy it,
12 whether they were going to actually continue the
13 production of THFA, or would they just simply walk
14 away since it was a very small business?

15 Given the circumstances, Kyzen embarked on a
16 mission then to either produce THFA using a toll
17 manufacturer in the United States or find another
18 source to guard against the possibility of there not
19 being any supply.

20 In early 1997, Kyzen explored a number of
21 options. We met with a number of toll manufacturers
22 in the United States who could produce THFA. Also
23 through our connections in the chemical industry, we
24 found a company in China that was interested in
25 helping us, and that's Zhucheng.

1 Based on the fact that Zhucheng made the
2 basic raw materials of furfuryl and furfuryl alcohol
3 that are used to make THFA, we felt that Zhucheng was
4 a better option for a long-term supply that would be
5 stable than making it ourselves. We worked with
6 Zhucheng for about six months to a year and created
7 another source of THFA supply as a fail-safe against
8 the possible loss of the Great Lakes facility.

9 Two years of uncertainty from Great Lakes'
10 announcement to Penn's decision to buy Great Lakes'
11 furfuryl business in 1991 passed. When Penn bought
12 the business, we thought that was a positive
13 development, -- Penn was a small, startup company, not
14 unlike Kyzen -- and perhaps Penn would have a lot more
15 interest than Great Lakes in having Kyzen as a
16 customer. But we soon found out that Penn was much
17 more interested in Great Lakes' tetrahydrofuran and
18 polytetramethylene ether glycol. Sorry. That's a
19 mouthful. That's THF and PTMEG, which you've heard
20 the gentlemen speak about before. Their goal and
21 their business plan was to convert the Great Lakes
22 plant from a furfuryl-based feedstock to a feedstock
23 manufacturer for petroleum-derived materials.

24 Soon after that acquisition, in poured
25 millions of dollars into a new manufacturing facility

1 in Memphis, Tennessee, designed to produce PTMEG and
2 THF from this alternative process.

3 Now, I know Penn will disagree with me on
4 this point. I have read its public responses to my
5 previous witness statement, but the fact is, from
6 Kyzen's perspective, we saw Penn's actions in 1999 and
7 2000 as a signal that we were no better off than when
8 Great Lakes owned the THFA business. Penn poured
9 millions into one business at the same time they
10 closed their Nebraska plant used to manufacture the
11 raw material needed to produce THFA.

12 Based on these moves, we had discussions
13 with Penn about not only their Nebraska facility, but
14 Penn also gave us a price level at which they would
15 consider selling us the THFA business during that time
16 frame. Maybe Penn said that THFA was an important
17 part of their game plan, but from my point of view,
18 Penn's actions spoke louder than words. But unlike
19 the period in 1996 and 1997, it was different. This
20 time, we had a backup source of supply.

21 The U.S. economy then withered in the second
22 half of 2000, which hurt the demand for Kyzen's THFA-
23 based products, and then Penn filed for bankruptcy in
24 July 2001.

25 I would like to pause here and repeat the

1 Commission's staff finding in its prehearing report
2 that, and I quote, "[t]he impact of the subject THFA
3 was not a significant factor in driving Penn to file
4 for bankruptcy protection."

5 Personally, I would like to frame this in
6 stronger language. As Penn has acknowledged, imports
7 of THFA played no role whatsoever in Penn's decision
8 to file for bankruptcy.

9 Now, as for Penn's bankruptcy and its impact
10 on market dynamics of THFA, when I reviewed Penn's
11 prehearing brief, I was surprised to find the word
12 "bankruptcy" barely appears in the public version. I
13 can only guess from this that Penn is trying to
14 convince the Commission that bankruptcy was a
15 nonevent. Not from our perspective. I understood the
16 bankruptcy didn't mean that Penn was going out of
17 business, but it also meant that they were as close as
18 possible to going out of business at any time that
19 that facility had ever seen.

20 So we kept a close watch over the bankruptcy
21 proceedings. We bought THFA from Penn, and we maybe
22 bought a little bit more THFA from China to protect
23 against the possibility of Penn going under. After
24 all, if Penn closed its doors tomorrow, it would take
25 six to eight weeks for THFA to reach Kyzen from China.

1 About a year later, in 2002, Penn exited
2 bankruptcy, and that's impressive because, at the
3 time, we were unclear whether or not Penn would
4 actually survive. Then I read Penn's bankruptcy
5 papers. So I knew then, as I know now, that Penn's
6 senior secured lenders have instructed Penn to sell
7 the THFA business and that Penn's management is
8 motivated to do that because they will receive large
9 bonuses upon the completion of the sale. So I have to
10 wonder if Penn will sell the THFA business tomorrow.

11 The numbers collected by the Commission's
12 staff confirm everything that I've said. I'm going to
13 let Tom provide you the details about our imports and
14 prices, but I think it's fair to say that based on our
15 knowledge of THFA in the marketplace, Kyzen certainly
16 was, and is, the major importer of THFA from China
17 during the period of investigation. If you remove us
18 from the import data, you'll see that the imports by
19 other companies almost vanish. But you'll see from a
20 purchaser questionnaire at that same time that when we
21 imported THFA from China, we purchased between 50 to
22 30 percent of our needs from Penn.

23 The numbers will also show that we bought
24 from Penn and Zhucheng at about the same price during
25 the period of investigation. In fact, Penn's price,

1 as you've discussed previously, was actually lower
2 than Zhucheng's price during most of the period of
3 investigation. That's until Penn raised its prices in
4 August 2003.

5 The point I want to make here is Penn never
6 lost a sale, Penn never lost revenue because Kyzen
7 decided to purchase THFA from Zhucheng. Price has
8 never been a motivation for Kyzen to purchase THFA
9 from Zhucheng. We purchased from Zhucheng, and we
10 purchased from Penn and their predecessors, and we do
11 this because it's our company philosophy, which
12 history has proven us right time and time again, that
13 to survive and thrive in this business, to be so
14 dependent on a product like THFA, we've got to have a
15 backup supply of THFA, and we have to have two healthy
16 suppliers of THFA.

17 Finally, I have one more point about price.
18 Penn did not approach us in 2000. Penn did not
19 approach us in 2001. Penn didn't approach us in 2002
20 to talk about the price of THFA. The first time Penn
21 approached us to talk about the price of THFA was in a
22 phone call in March 2003, and as I testified at the
23 preliminary conference, I was surprised that Penn
24 offered to lower their price.

25 I rejected Penn's offer. As I've already

1 said, we want two suppliers. Based upon our
2 calculations, because, remember, we've done our math
3 in this, from looking at toll processors, we have an
4 idea of what a reasonable profit would be for Penn,
5 and it just didn't make sense for us that somebody
6 emerging from bankruptcy would want to come in and
7 lower their price.

8 Penn then filed the antidumping petition in
9 August 2003, and after it learned, during the ITC
10 proceedings, that their THFA was priced lower than the
11 Chinese product, Penn contacted us and increased their
12 prices. Last week, Penn informed us of another price
13 increase, their second in less than 10 months.

14 I said this before during the Commission's
15 preliminary conference, but I believe it's worth
16 saying again: Throughout the period of investigation,
17 Kyzen remained, and still remains, committed to our
18 strategy of purchasing a significant portion of our
19 THFA requirements from two sources. THFA is critical
20 to the success of our company, and history has proven
21 to us the criticalness of having that second supplier.

22 We do not want a Chinese monopoly of THFA,
23 nor do we want a Penn monopoly on this product. If
24 the Commission grants Penn's request, we will
25 certainly lose one source of THFA supply. As Chinese

1 THFA has not been, and is not, the cause of Penn's
2 alleged financial troubles, the question that I now
3 must consider: If the Commission approves Penn's
4 antidumping petition, will I really maybe have lost
5 both of my suppliers? Thank you.

6 CHAIRMAN OKUN: Thank you.

7 MR. FORSYTHE: Sorry, I couldn't resist a
8 plug for my alma mater. It was a good year. They
9 don't come by very often.

10 Good afternoon. My name is Tom Forsythe and
11 I am Vice President and Chief Accounting Officer for
12 Kyzen Corporation.

13 Kyle has outlined the conditions of
14 competition in the U.S. THFA market. With the help of
15 statistics, my job is to show you why given these
16 conditions of competition the U.S. industry is not
17 being materially injured or threatened by material
18 injury by reason of THFA imports from China.

19 As Kyle mentioned, Kyzen has been involved
20 with THFA for a much longer period than Penn, so we
21 have a thorough understanding of all the import
22 players in this area. We've used that institutional
23 knowledge to generate the data I'll be discussing with
24 you today.

25 Since Kyzen represents nearly 90 percent of

1 the imports, a point we confirmed conducting a
2 statistical analysis during the preliminary
3 investigation, it makes it relatively easy to sort out
4 THFA imports by individual shipments just by comparing
5 our purchasing records to publicly available import
6 data.

7 I have three charts that show the volume of
8 THFA imports from China during the period of
9 investigation was not significant, whether you look at
10 it in absolute terms or in relative terms. To derive
11 these charts, I downloaded the import statistics
12 reported on the commission's trade data website for
13 HPS, 2932.13.00.00, which encompasses imports of THFA
14 and furfural alcohol. I identified the imports of
15 Kyzen. Again, we are the largest importer of THFA
16 from China during the period. I then identified by
17 Customs district the imports of other companies
18 familiar to us, specifically, Advanced Resins and
19 All Chem.

20 By examining the data this way I could
21 separate imports of THFA from any furfural alcohol
22 base based on Kyzen's knowledge of the industry and
23 could easily double-check that knowledge against
24 container size and value because THFA is shipped in
25 set container sizes and imports of furfural alcohol

1 typically carry a much lower value.

2 We also confirmed most of this in
3 discussions we had with ARS and All Chem.

4 Now, I know from what Kyzen reported in its
5 importer questionnaire that the import numbers on my
6 charts are not going to match exactly the numbers that
7 appear in the commission's staff report. This is due
8 to timing. Our data is based on when we receive
9 things, as opposed to when they clear Customs. But
10 I'm betting the trend lines I'm about to discuss
11 follow the trends found in the commission's report and
12 the points I'm about to make apply as well to that
13 information.

14 Would you go to the first chart, Kyle?

15 The first chart shows that import volumes
16 start in 2001 at roughly 400,000 pounds, not a very
17 large amount and I'll back that up with one of my
18 later charts.

19 In 2002, the imports jump. Why?

20 Penn declared bankruptcy in July of 2001.
21 There is a brief time lag between Penn's declaration
22 and the reflection of that bankruptcy in the import
23 data because, frankly, it took some time for the
24 market to process that information. Many people
25 waited to find out if it was going to be sold or

1 auctioned. Shipments from China take about six to
2 eight weeks from order to delivery.

3 My chart shows that Kyzen reacted the most
4 to this news. One of our two sources of THFA supply
5 was in trouble, which meant we were in trouble, so we
6 took some countermeasures to protect ourselves. We
7 definitely continued to purchase significant amounts
8 of THFA from Penn to support Penn, but we also
9 increased our purchases of imported THFA just in case
10 Penn shut down.

11 We also understand from ARS and All Chem
12 that they received phone calls from some customers who
13 wanted them to look for THFA from another source. So
14 other imports increased as well, since we were
15 unwilling to sell more than a small amount of our
16 treasured inventory while Penn was in bankruptcy.

17 By late 2002, Penn managed to right itself
18 and by 2003 the import figures dropped down. See
19 here? As THFA purchasers other than Kyzen filled
20 their requirements by purchasing once again
21 exclusively from Penn. That is particularly down here
22 in the red zone. These are the numbers away from
23 Kyzen.

24 Show the second chart, please, Kyle?

25 My second chart is a line graph. The top

1 line shows total imports and the bottom line shows
2 imports from companies other than Kyzen. It is clear
3 from this chart that if you take Kyzen out of the
4 picture, imports of THFA from China dropped to a
5 negligible level.

6 As for Kyzen's imports, I think it's
7 important to repeat here that all but a very small
8 portion of our imports during the period of
9 investigation were consumed internally by Kyzen. We
10 are not competing against Penn in the marketplace. In
11 fact, to do so would be against our best interests
12 since it is very important to us that Penn remain a
13 viable supplier.

14 Third chart, Kyle?

15 My third chart on this point puts everything
16 in perspective. Penn's bankruptcy papers reported
17 that they have the capacity to produce 5 million
18 pounds or so.

19 When you compare total imports against
20 Penn's THFA capacity, it becomes quite clear that
21 during the period of investigation they barely made a
22 dent in what Penn could have produced if there had
23 been market demand equal to Penn's capacity. As for
24 imports not internally consumed by Kyzen, they appear
25 so far down on the graph that they are virtually

1 invisible in the marketplace.

2 What is also interesting about this chart,
3 to the best of our knowledge, it confirms that no
4 other end user of THFA in the United States looked
5 directly to imports as a solution to Penn's
6 bankruptcy. Personally, I don't know why they did.

7 Back in 2003 during the preliminary
8 investigation, we thought some of them may have
9 started reformulating their products to use something
10 other than THFA and perhaps that's still going on, but
11 we don't talk to those other end users about THFA and
12 they don't talk to us.

13 The last chart, Kyle?

14 My next chart examines pricing. As I noted
15 at the beginning of my statement, Kyzen represents
16 about 90 percent of the imports during the period in
17 question, but Kyzen also purchases religiously between
18 30 and 50 percent of its THFA requirements from Penn.
19 That being the case, if you compare the prices at
20 which Kyzen purchases THFA from Penn to the prices at
21 which it purchases THFA from China, you get a pretty
22 accurate sense of the price competition between the
23 two products.

24 I did not include on this chart exact price
25 figures. That information is confidential and it

1 appears in the information we have provided to the
2 commission. I can show you that Penn was selling at
3 lower prices than our Chinese supplier, Zhucheng, in
4 2001, in 2002 and in 2003. Until Penn brought its
5 antidumping petition, found out about this gap and
6 called and raised our price almost immediately
7 thereafter. In other words, Kyzen is the primary
8 arena where THFA imports compete against Penn's THFA
9 and yet it is also Penn who undersold the imports
10 non-stop since 2001, not the other way.

11 Black screen, Kyle?

12 Finally, I'd like to address a couple of
13 specific allegations that Penn made in its brief about
14 the threat of material injury from Chinese imports.
15 Penn argued in the public version of its brief that
16 the U.S. and E.U. markets for furfural alcohol have
17 been closed to China because of antidumping duty
18 orders. Based on that, they argue, the Chinese
19 manufacturers are likely to convert all of their
20 furfural alcohol capacity to THFA capacity, which they
21 believe could be done with relatively little capital
22 investment. The line of logic is wrong from start to
23 finish.

24 First, the basic premise is flawed. The
25 U.S. antidumping duty on furfural alcohol has been in

1 place for almost ten years and it has not resulted in
2 any furfural alcohol to THFA capacity conversion that
3 we know of. There is no reason to believe that the
4 E.U. order will be any different.

5 Second, the fact is that it's one thing to
6 manufacture THFA but it's another entirely to become a
7 qualified supplier. The process is critical for a
8 number of THFA users, including Kyzen, and it can take
9 months to qualify a source.

10 Third, and most importantly, if you're going
11 to make a drastic change in your manufacturing to make
12 a new product, you need a market to sell that product
13 to. THFA is simply not that market. It's relatively
14 small to begin with. It may grow larger over time,
15 but there's no guarantee that it will or that it has
16 recently. Kyzen aside, from what we see, it's full of
17 end users that buy all their material from Penn. The
18 idea that Chinese companies are going to retool their
19 production lines from furfural to THFA to get into a
20 market with these characteristics just doesn't make
21 sense, especially given that none of the Chinese
22 manufacturers have a marketing presence in the U.S.
23 In short, Chinese THFA does not pose a threat of
24 material injury to Penn in the foreseeable future.

25 Together, the data I have shown you confirms

1 THFA imports from China have had no significant
2 adverse effect on the domestic industry during the
3 period of investigation and they don't pose any threat
4 to Penn for the foreseeable future.

5 Kyzen's intimate understanding of the THFA
6 market is not driven by idle curiosity. As Kyle
7 noted, THFA is central to our success and survival.
8 It represents our largest single raw material cost.
9 It is a principal ingredient in all of our best
10 selling products. There is no one I know of to whom
11 THFA is more important and that is the reason why over
12 seven years ago Kyzen sought out and developed a
13 second source of THFA supply. It is for that same
14 reason that Kyzen has declined Penn's offer of even
15 lower prices. Given how mission critical THFA is to
16 our business, the fact is it's in Kyzen's best
17 interests to have multiple sources of THFA supply all
18 making reasonable returns on a product they sell to
19 us.

20 Based on our own make versus buy analysis,
21 the current Kyzen price levels allow such a return to
22 both suppliers. If the petition is successful and our
23 costs increase because of an antidumping duty
24 requested by Penn, the negative consequences for Kyzen
25 would be severe and they would seriously threaten the

1 28 jobs at our company.

2 Thank you for your time. Both Kyle and
3 I are prepared to answer any questions you may have.

4 MR. JAFFE: Thank you, Tom.

5 Thank you, Kyle.

6 Since we have a little time, I would like to
7 take this time to actually give my client an
8 opportunity to respond to the statement made in the
9 pre-hearing brief by Penn, the statement that I voiced
10 during my opening. It's at pages 11 and 12 of the
11 pre-hearing brief.

12 Again, Kyle, the quote is, "In an attempt to
13 take advantage of Penn's bankruptcy, the single
14 largest U.S. importer used Penn's struggle to spread
15 uncertainty in the marketplace and expand competing
16 subject imports into the U.S. market, both for its own
17 accounts and for resale to other U.S. customers."

18 Now, I'm going to ask you a series of
19 questions and I'm going to put some definitions down.

20 If I use the pronoun you, I not only mean
21 you, but I also mean Kyzen Corporation and I'm also
22 going to refer to the period of investigation, which
23 is 2001, 2002, 2003 and the first three months of
24 2004.

25 During the period of investigation, did

1 Kyzen take advantage of Penn's bankruptcy to spread
2 uncertainty in the THFA marketplace?

3 MR. DOYEL: No, we did not.

4 MR. JAFFE: During the period of
5 investigation, did Kyzen take advantage of Penn's
6 bankruptcy to expend competing subject imports into
7 the U.S. market, either for its own account or for
8 resale to other U.S. customers?

9 MR. DOYEL: No.

10 MR. JAFFE: During the period of
11 investigation, did Kyzen ever approach Penn and ask
12 Penn to decrease its prices?

13 MR. DOYEL: No, we did not.

14 MR. JAFFE: All right. I'm going to try to
15 get into more depth here. I want to actually kind of
16 go down into the details.

17 Does Kyzen have any relationship with
18 another end user of THFA?

19 MR. DOYEL: No, we do not.

20 MR. JAFFE: Therefore, would it be a correct
21 statement for me to say that at no time during the
22 period of investigation did you discuss with another
23 end user of THFA the purchase of imported THFA from
24 China?

25 MR. DOYEL: That is correct.

1 MR. JAFFE: Would it also be correct for me
2 to say that at no time during the period of
3 investigation did Kyzen discuss with an end user of
4 THFA prices for imported THFA from China?

5 MR. DOYEL: No, we did not.

6 MR. JAFFE: I next want to ask you about
7 your relationships with the distributors. Here,
8 I want to define distributors, I want to exclude ARS,
9 also known as Advanced Resins, and All Chem.

10 During the period of investigation, did you
11 have any relationship with a distributor, other than
12 obviously ARS or All Chem, that sold THFA?

13 MR. DOYEL: No, we did not.

14 MR. JAFFE: So would it be a correct
15 statement for me to say that at no time during the
16 period of investigation that Kyzen discussed with a
17 distributor the purchase of imported THFA from China?

18 MR. DOYEL: That is correct. We did not
19 discuss with any of our distributors which sell us
20 other products.

21 MR. JAFFE: Okay. And at the same time, to
22 kind of repeat my statement here that I used for end
23 users, but is it a correct statement for me to say
24 that at no time during the period of investigation did
25 Kyzen talk with a distributor about the price of

1 imported THFA from China?

2 MR. DOYEL: No, we did not.

3 MR. JAFFE: Okay. I know want to direct
4 some questions with regard to All Chem and ARS.
5 You've indicated in your statements that you did have
6 a relationship, I just want to confirm.

7 During the period of investigation, did you
8 have a relationship with All Chem?

9 MR. DOYEL: Yes, we did.

10 MR. JAFFE: Could you give me a timeframe
11 when this relationship began?

12 MR. DOYEL: This relationship probably began
13 when I was still employed at Great Lakes Chemical.
14 Mainly, my relationship as an individual who used to
15 work at Great Lakes Chemical, who was a sales
16 representative, who sold many of these products that
17 are sold today by Penn.

18 MR. JAFFE: So you were at Great Lakes in
19 1990?

20 MR. DOYEL: Yes. I was there prior to that,
21 1988 to 1990.

22 MR. JAFFE: Okay. And who is the individual
23 that you might know at All Chem?

24 MR. DOYEL: The gentleman's name is Jim
25 Williams.

1 MR. JAFFE: Okay. During the period of
2 investigation, did you ever initiate contact, either
3 through e-mail, telephone call, any other
4 conversation, in which you contacted All Chem
5 proposing that you would sell them THFA imported from
6 China?

7 MR. DOYEL: We made no effort to sell
8 Chinese THFA to All Chem.

9 MR. JAFFE: At any time during the period of
10 investigation, did you sell THFA imported from China
11 to All Chem?

12 MR. DOYEL: Yes, we did.

13 MR. JAFFE: Okay. I'd like to try to get an
14 idea of the exact time period. Did you do any of
15 those sales in 2003?

16 MR. DOYEL: No, we did not.

17 MR. JAFFE: Okay. Did you do any sales in
18 2002?

19 MR. DOYEL: Yes, we did.

20 MR. JAFFE: Just try to narrow it down.
21 Did you do any sales to All Chem in 2002 after Penn
22 exited bankruptcy?

23 MR. DOYEL: No, we did not.

24 MR. JAFFE: Could you give me a little idea,
25 I'm going to ask some questions about the idea of the

1 amount and kind of compare this to all your imports
2 from China. Was the amount that you sold to All Chem
3 during the period of investigation greater than 10
4 percent?

5 MR. DOYEL: No, it was not.

6 MR. JAFFE: Was it greater than 5 percent?

7 MR. DOYEL: No, it was not.

8 MR. JAFFE: Was it greater than 2 percent?

9 MR. DOYEL: Yes, it was.

10 MR. JAFFE: I'd also like to get an idea a
11 little bit about price. Was the price at which you
12 sold this THFA to All Chem above or below the price at
13 which you purchased THFA from China?

14 MR. DOYEL: It was above the price.

15 MR. JAFFE: Was it more than 10 percent
16 above that price?

17 MR. DOYEL: Yes, it was.

18 MR. JAFFE: Was it more than 30 percent
19 above that price?

20 MR. DOYEL: No, it was not.

21 MR. JAFFE: Did you otherwise ever sell THFA
22 imported from China to All Chem in the year 2001?

23 MR. DOYEL: No, we did not make any sales to
24 them in 2001.

25 MR. JAFFE: Did you otherwise broker or

1 arrange for All Chem the importation of THFA from
2 China during the period of investigation?

3 MR. DOYEL: No, we did not.

4 MR. JAFFE: I'm going to go through the same
5 questions with regard to ARS. Again, confirm that you
6 do have a relationship with ARS.

7 MR. DOYEL: Yes, I have an extensive
8 relationship with ARS.

9 MR. JAFFE: Could you tell me when that
10 relationship began?

11 MR. DOYEL: It began in 1987. The
12 relationship with the people of ARS, ARS was not in
13 business at that point in time, but many of the people
14 at ARS are former employees of the Keo Chemicals
15 Division of Great Lakes Chemical. Personally, my main
16 contact there is Dr. McKillip. Dr. McKillip is a
17 foremost authority on furfural alcohol resins. Dr.
18 McKillip is the president of that company and he was
19 my boss at Great Lakes Chemical. There is one other
20 individual who is extremely knowledgeable about THFA, a
21 gentleman by the name of Ron Flora, who was the market
22 manager for THFA after I left Great Lakes Chemical.

23 MR. JAFFE: All right. During the period of
24 investigation, did you ever initiate, either during a
25 telephone call, e-mail, any other type of

1 communication, contact to Advanced Resins, trying to
2 selling them imported THFA from China?

3 MR. DOYEL: No, I did not solicit their
4 business for THFA.

5 MR. JAFFE: Any time during the period of
6 investigation did Advanced Resins ask you to sell them
7 THFA?

8 MR. DOYEL: Yes.

9 MR. JAFFE: And did you sell to them?

10 MR. DOYEL: Yes, we did.

11 MR. JAFFE: Did you sell any THFA imported
12 from China to ARS in 2003?

13 MR. DOYEL: No, we did not.

14 MR. JAFFE: Did you sell any THFA imported
15 from China to Advanced Resins during 2002?

16 MR. DOYEL: Yes, we did.

17 MR. JAFFE: Again, I'm going to try to get
18 down to the exact time period. Did you sell any THFA
19 imported from China to ARS after Penn exited from
20 bankruptcy?

21 MR. DOYEL: No, we did not.

22 MR. JAFFE: I want to try again here to try
23 to get the amount again. Looking once again at all
24 your imports that come from China, is the amount that
25 you sold THFA imported from to ARS more than 10

1 percent of the amount that you imported from China in
2 its totality?

3 MR. DOYEL: No, less than 10.

4 MR. JAFFE: Is it above 5 percent?

5 MR. DOYEL: No, less than 5.

6 MR. JAFFE: Is it above 2 percent?

7 MR. DOYEL: No, less than 2.

8 MR. JAFFE: Okay. The price at which you
9 sold THFA to ARS during this particular period, was it
10 higher than the price at which you purchased THFA from
11 Penn?

12 MR. DOYEL: It was higher than the THFA
13 price from Penn.

14 MR. JAFFE: Was it more than 10 percent
15 higher?

16 MR. DOYEL: It was more than 10 percent.

17 MR. JAFFE: Was it more than 30 percent
18 higher?

19 MR. DOYEL: No, it was not more than 30.

20 MR. JAFFE: Did you ever otherwise during
21 the period of investigation broker or arrange for
22 imported THFA from China in order to allow ARS to
23 import it into the United States?

24 MR. DOYEL: No.

25 MR. JAFFE: Did you ever sell THFA to ARS in

1 2001?

2 MR. DOYEL: No, we did not.

3 MR. JAFFE: And I think my final question,
4 did you ever communicate to the marketplace during the
5 period of investigation either through an ad or any
6 other type of thing generally that you had THFA and
7 that you would be willing to sell it to anybody who
8 came and approached you?

9 MR. DOYEL: No, we did not.

10 MR. JAFFE: Thank you very much.

11 That concludes our direct presentation.

12 CHAIRMAN OKUN: Thank you. Before we begin
13 our questioning, let me take this opportunity to thank
14 each of you for appearing here today, for the
15 testimony you've given, for your willingness to answer
16 our questions and for your continued cooperation as we
17 proceed with this investigation.

18 Commissioner Lane will begin our questioning
19 this afternoon.

20 COMMISSIONER LANE: Good afternoon.

21 Both Kyzen and Penn have facilities in
22 Tennessee and one of you are in Memphis and one of you
23 are in Nashville. Both of you get your electricity
24 from TVA?

25 MR. FORSYTHE: We get ours from Nashville

1 Electric, who I'm almost certain is a TVA distributor,
2 I think they're referred to as.

3 COMMISSIONER LANE: So your electricity is
4 hydro?

5 MR. FORSYTHE: Well, somewhere in the
6 mountains, I suspect. We're speculating on that, but
7 I believe that's the case. I'm not sure as far as
8 Memphis goes, but I believe that's inside the TVA
9 umbrella as well.

10 COMMISSIONER LANE: Okay. Thank you.

11 I want to go back to the questions that you
12 answered in response to your counsel's questions. Did
13 you sell any of your product to All Chem and ARS that
14 you bought from Penn?

15 MR. DOYEL: Yes, we did.

16 COMMISSIONER LANE: Did you sell more of the
17 product that you bought from Penn to these other two
18 customers than the Chinese product?

19 MR. DOYEL: In the numbers that we provided
20 the commission, since we look at our THFA as just
21 being THFA, we don't make any distinction. On the
22 amounts that we sold to these two customers, we said
23 50 percent of it was Chinese and 50 percent of it was
24 Penn and that should be reflected on our import
25 documents where when we made sales we said, hey,

1 they're probably a little bit of both.

2 MR. FORSYTHE: And that's an assumption. We
3 don't track that, actually. The THFA gets all lumped
4 together once we purchase it.

5 COMMISSIONER LANE: Okay. Now, going to
6 your handout, I would like you to explain the handout
7 relating to -- I guess it's page 2 of the exhibit,
8 imports of THFA from China, the colored chart.

9 You clearly show that in 2004 the amount is
10 zero. Is that your projection?

11 MR. DOYEL: That is an actual number from
12 the first of the year through May.

13 COMMISSIONER LANE: And do you have an
14 explanation for that?

15 MR. DOYEL: Yes. We stopped importing THFA
16 from China.

17 COMMISSIONER LANE: And is there any
18 particular reason for that?

19 MR. DOYEL: Certainly. At the present time,
20 because THFA historically has had a 3.7 percent duty,
21 right now, as we're learning through these
22 proceedings, because of the investigation, the
23 Department of Commerce is coming up with a new duty
24 that would be placed on the material. Since the
25 product -- we cannot determine what the real cost of

1 the product would be, we just said let's take a
2 conservative viewpoint and not import material until
3 we clearly see what's going to transpire from these
4 proceedings.

5 So really to answer your question in a
6 nutshell, we don't know what the cost of the material
7 is, so we decided not to buy any.

8 COMMISSIONER LANE: And what does that do to
9 your two-source strategy?

10 MR. DOYEL: For the time being, it makes us
11 very nervous.

12 COMMISSIONER LANE: You testified that you
13 started looking at -- when you could only deal with
14 Great Lakes, you started talking to other producers of
15 THFA and you said you talked to several.

16 MR. DOYEL: There are not other producers.
17 We talked to other toll manufacturers. There are a
18 number of companies in the chemical industry who
19 basically rent their plant. If you want to produce
20 product A, they will look to make that.

21 COMMISSIONER LANE: Okay. So
22 I misunderstood you when I wrote down that you said
23 met with a number of producers who could produce THFA?

24 MR. DOYEL: Correct. What you understood
25 was that these people have equipment available, but

1 they may be making trimethyl fufu dust for DuPont,
2 they may be doing some other material for somebody
3 else.

4 COMMISSIONER LANE: What was that product
5 again?

6 MR. DOYEL: That's the word we use for
7 whatever chemical, trimethyl fufu dust.

8 COMMISSIONER LANE: I like that.

9 MR. DOYEL: Write that one down. But
10 essentially these are people who have the capability
11 and they rent themselves out to make products.

12 COMMISSIONER LANE: Okay. Now, on page 27
13 of the petitioner's pre-hearing brief, it is argued
14 that subject imports have caused price suppression.
15 Petitioner contends that even though the price of
16 natural gas needed to produce THFA rose dramatically
17 over the period examined, domestic prices failed to
18 increase due to the low price of subject imports of
19 THFA.

20 How do you respond to this argument?

21 MR. JAFFE: This is Matthew Jaffe. I'm not
22 too sure. I mean, our client doesn't have the full
23 price information and they don't make THFA, so I'm not
24 too sure we can actually respond.

25 MR. FORSYTHE: There is one point that we

1 might say, that obviously that's an energy source that
2 Penn happens to use. They might use hydro, they might
3 use something else. Zhucheng does not use natural gas
4 as their energy source, so one would suspect that did
5 not have an impact on their costs. If the roles were
6 reversed, it would not have had an impact on Penn's
7 cost. But we're not in the making THFA business.
8 That's for Penn to discuss.

9 COMMISSIONER LANE: Okay. And you may have
10 answered this other question and I just didn't catch
11 it, but you said that Penn did a second price
12 increase. Is that price now more or less than what
13 you were paying for the Chinese import? And are you
14 allowed to answer that?

15 MR. FORSYTHE: Well, the last time we
16 answered that we got a price increase, so perhaps you
17 will allow us to answer that in the post-hearing, so
18 we don't immediately get a price increase this time.

19 COMMISSIONER LANE: That would be fine.
20 That would be fine.

21 I don't have any other questions at this
22 time.

23 CHAIRMAN OKUN: Commissioner Pearson?

24 COMMISSIONER PEARSON: Good afternoon.
25 I appreciate your perspective. It's helping me to

1 adjust mine.

2 As you may have noted this morning, I was
3 taking the view that THFA is really not that large a
4 product, what's going on here. Now I've listened to
5 you and I think you're trying to persuade me that Penn
6 is a large chemical company that is so big and has so
7 much going on that it's not really paying that much
8 attention to your particular needs.

9 How would you respond to that?

10 MR. FORSYTHE: I think that in the world
11 relative to chemicals, if you take DuPont as the
12 whale, I would say Penn is the size of a fish and
13 we're the little minnow and so they look big compared
14 to us.

15 Penn was very focused on the PTMEG business.
16 That was their game plan when they came in. Their
17 whole game plan was to come in and convert a segment,
18 a large segment, of that plant in Memphis over to a
19 new feedstock that would allow them to compete with
20 the DuPonts and the BASFs of the world.

21 We saw that clearly they were very focused
22 on that, that's why we initiated a number of
23 conversations early on in our relationship with them.

24 To characterize the relationship, I think
25 we've had a good relationship with them, but they've

1 been very de-focused, obviously because of the
2 bankruptcy and they've been busy worrying about trying
3 to get this other business going.

4 Plus, also, and I'm sure they'll attest to
5 this fact, Great Lakes left the business in a very
6 sorry state and they did a lot of work, and to their
7 credit did a great job, they were really trying to
8 repair a lot of the market damage from the neglect
9 that Great Lakes left them in.

10 MR. FORSYTHE: One additional point perhaps
11 is that as we've implied, THFA is a very big deal to
12 us. We know a lot about it, our R&D people work with
13 it constantly, our production people touch it every
14 day. Frankly, from Penn's perspective, I would
15 suspect that we were that kind of nice, pricing aside
16 perhaps, low maintenance customer. We didn't complain
17 much, we had little or no demand or requests for
18 support from a technical support kind of thing, we
19 were pretty much doing our own thing, not having
20 anything to do with Penn's actions, frankly. We were
21 being ignored for many years as a customer of Great
22 Lakes, we just learned to survive on our own. So we
23 were a pretty low maintenance operation for them,
24 I suspect, as evidenced by their activity.

25 COMMISSIONER PEARSON: You mentioned just

1 briefly the nature of Kyzen's business. Could you
2 expand on that a little bit, please, and help me
3 understand better the role that you play in the supply
4 chain for these organic chemical products?

5 MR. FORSYTHE: Surely. Our business, Kyle
6 and another fellow, Mike Bixenman, founded the company
7 back in 1990 with a focus on providing cleaning
8 solvents to replace the freon, freon 113 specifically,
9 that was used almost exclusively to clean electronics.

10 There was a nice market there and they
11 jumped off the edge of the world to start a company to
12 do that. It turns out we put together some good
13 products in those early days, we got patent positions
14 on them both here and abroad, and despite all odds
15 here 14 years later we survive and many larger
16 competitors have decided to pursue other options.

17 It is a very modest business. It's one of
18 great product diversity. We, too, have dozens and
19 dozens and well over a hundred products. The 80/20
20 rule applies, as it does to most things.

21 Ours is a very high touch, very customer
22 intimate business. Cleaning is what happens right at
23 the end before these things are shrink wrapped, so
24 when cleaning does not work effectively, the whole
25 world stops and the focus of Mount Olympus is on you.

1 People on the shop floors strive mightily to avoid
2 that help from Mount Olympus, so they're trying to
3 pick very high quality suppliers that can in fact help
4 them optimize their cleaning process, get the best
5 bang for the buck and get a great job done. And
6 that's what we do.

7 We sell products that are based on THFA. We
8 have a broad technology suite that has particularly in
9 the last five or six years expanded well beyond that.
10 Some might say, although a few competitors will
11 disagree, that we're really the world leader in doing
12 this. But it's a niche business, it's a small market.
13 Our total revenue was right around \$6 million last
14 year.

15 MR. DOYEL: Could I add to that, too?

16 The key reason why THFA is critical to us,
17 especially from the supply standpoint, I think it's
18 key that you understand this, we're working with
19 people like NASA, Rockwell Collins, very high
20 reliability electronics. If I can't deliver product,
21 their whole production process shuts down. And so
22 that's why it's just absolutely critical for us to
23 make sure that they maintain a supply.

24 MR. FORSYTHE: Shipping is two weeks.

25 CHAIRMAN OKUN: Mr. Forsythe, if you would

1 move one of the other microphones over so that we
2 don't miss your exchanges there. Thank you.

3 COMMISSIONER PEARSON: So your customer base
4 would be manufacturers that have very specific
5 cleaning requirements for a product that's going out
6 the door, basically?

7 MR. FORSYTHE: Absolutely. Our customers
8 are purely manufacturers, people that make things.
9 We're in Nashville where Dell Computer in the last
10 couple of years opened a site around the corner from
11 us and we're always chagrined to note that Dell
12 doesn't actually make things there, they just screw
13 them together. Our customers are people that in fact
14 make things, that turn something into something else
15 rather than use screwdrivers.

16 COMMISSIONER PEARSON: So the companies in
17 the United States that would use THFA as an input into
18 manufacturing agricultural chemicals, those would be
19 in some respects competitors of yours in terms of the
20 supply of product?

21 MR. FORSYTHE: No, these are very specialty
22 products. Our competitors are typically operations
23 somewhat similar to ours, the agency guys and the
24 distributor people, none of that.

25 COMMISSIONER PEARSON: I should have said in

1 terms of competition for input. I may not have been
2 clear. They are a big consumer of THFA, so if the
3 market ever got tight, you'd be duking it out with
4 them?

5 MR. FORSYTHE: Agreed. Absolutely.

6 COMMISSIONER PEARSON: We discussed this
7 morning the demand over the period of the United
8 States, the apparent consumption in the United States.
9 What's your view of the demand picture? Our numbers
10 show that it's been not rising, what's been your view?

11 MR. DOYEL: Well, the last time I sat here,
12 I used the term sleepy and I think that's still an
13 appropriate term. I think that Kyzen was -- for Great
14 Lakes, Kyzen was a great little coup because here's
15 this little company that came out of nowhere and with
16 no investment on Great Lakes' part ended up buying a
17 considerable portion of the world marketplace.

18 Other than our growth, frankly, my
19 experience in the market, at least when I was there
20 and kind of what I hear from people in the trade who I
21 talk to who know about other people who sell THFA,
22 it's pretty steady state demand.

23 I think that there are some interesting
24 growth trends. Mr. Quinn -- I kind of smile when
25 I hear him saying there are great possibilities in the

1 ag marketplace and I think that's great because when
2 I was at Great Lakes in 1988, I gave a paper on the
3 exact same thing, of using THFA as an adjutant, using
4 acid toluene as a solvent. But the key thing is is
5 that in order to use THFA you have to understand how
6 to formulate with THFA and that's what we do very
7 well.

8 So in a nutshell, to answer your question,
9 the state of the market, I would call it sleepy. Is
10 there growth potential? Yes, but that growth
11 potential has been there even in 1988.

12 COMMISSIONER PEARSON: You indicated that
13 your firm does some research also in terms of how to,
14 I suppose, expand the demand for your product and thus
15 the demand for THFA as input?

16 MR. DOYEL: No, not necessarily. I look for
17 expansion of my products, not necessarily trying to
18 expand THFA. I'm looking for business. If I put
19 something else in it, I don't care.

20 COMMISSIONER PEARSON: Fair enough.

21 MR. FORSYTHE: And, in fact, not simply
22 during the last 12 months or so, but over the last
23 several years, we have broadened our focus from a
24 feedstock perspective, even when everyone was smiling
25 it's a little disconcerting to have that much of your

1 business tied up with one molecule.

2 COMMISSIONER PEARSON: Right.

3 MR. FORSYTHE: So we have taken proactive
4 steps to have that abate over time, although many of
5 our older products, we have customers that have used
6 the same product for five or ten years, God bless
7 them, and we encourage that, but over time that
8 changes; the raw materials may change as well.

9 COMMISSIONER PEARSON: So the search for
10 diverse molecules, is that similar to the search for
11 diverse supplies of THFA or is that a different
12 dynamic?

13 MR. DOYEL: It could be technical. In a lot
14 of cases, it can be technical because we're looking
15 at, well, if THFA doesn't work as well as maybe this
16 other solvent or this other material.

17 MR. FORSYTHE: Our core market of
18 electronics has changed a lot in the last 10 years in
19 response to 10 or 15 years ago when the world was
20 cleaned by that one CFC that was banned, well, all the
21 contaminant folks, if you were making soldering
22 material, which was our principal contaminant, well,
23 they had a job that their product had to be cleaned by
24 that particular CFC or they couldn't sell it to
25 anyone. Well, now that those shackles have been

1 removed, we constantly tease the soldering guys that
2 they stay awake at night inventing things that are
3 going to cause us to stay awake at night trying to
4 invent things because they now have a much broader
5 suite of polymers and things that they can use in
6 their products which in some cases make our life
7 easier and in some cases make our life more
8 challenging. So it's the underpinnings of the market
9 are evolving, as all things do over time, and we're
10 simply reacting to that and moving ahead.

11 COMMISSIONER PEARSON: Okay. Thank you very
12 much for that background. My light has changed, so
13 I will pass.

14 CHAIRMAN OKUN: One of the points that was
15 made in our questioning of the earlier panel was how
16 the commission should evaluate the substantial portion
17 of subject imports that Kyzen imports for internal
18 consumption and I know you've spoken a little bit
19 about that and I think the exchange with your counsel
20 was directed towards part of that as well, but let me
21 ask you if I can a couple of things which I'm not sure
22 how much you'll be aware of, but one of the points
23 made by the panel earlier when we were asking about
24 price depression is that what they're describing is
25 with the presence of subject imports in the market and

1 you can look at '02 and see that they're up as a
2 total, we'll use your chart of the '02, that they felt
3 that pressure and they had these meet and release
4 clauses in these contracts.

5 Can you comment at all in terms of -- this
6 doesn't seem like a market where there's much price
7 discovery, this is what we've observed, where people
8 don't seem to have a very good idea, but I wonder
9 whether you can comment at all on that in light of
10 what you've just said about the sales to at least the
11 two, ARS and All Chem, what impact they may have had
12 on other negotiations that Penn would be in with other
13 customers.

14 MR. DOYEL: I don't know if I can comment on
15 that relationship because I have no knowledge of it.
16 If some of the people I sold to had negotiations with
17 other people, I didn't get any feedback from them.

18 You have to remember, most of the product
19 I sold was to a couple of guys that I used to work
20 with. Hey, you know, I have somebody that needs eight
21 drums of THFA, can you sell me some? That's basically
22 what's taking place.

23 MR. FORSYTHE: And, similarly, we're not
24 familiar with these meet and release things. We've
25 been a major buying of this product for a decade and

1 we've never seen one, so we're not familiar with them.

2 MR. JAFFE: I would only add to that, when
3 I discussed the issue of price and we kind of honed in
4 and said what was the Penn price, was it 10 percent,
5 yes, it was above 10 percent but it was not above 30
6 percent, well, remember these are the prices to ARS
7 and All Chem and they are not end users, so that they
8 sold then from that particular amount to somebody else
9 and I believe an issue was made by Penn that, of
10 course, they would then sell it at a profit as well.

11 CHAIRMAN OKUN: Right. I understand that.
12 And one of the other things we're obviously trying to
13 understand is the levels of trade and which pricing we
14 should look at and, I guess on that, Mr. Jaffe,
15 I would ask for post-hearing, since your clients do
16 not have access to it, the petitioners have submitted
17 their Exhibit 4, which is an alternative pricing
18 comparison. I'd like your comments on that, as well
19 as -- and I guess if you could do this here, which is
20 would it be appropriate for us to look at price
21 comparisons that we can pick out of the staff report
22 which would compare the unit value of Kyzen's direct
23 imports with prices paid by Kyzen for the domestic
24 like product?

25 MR. JAFFE: Yes, of course.

1 CHAIRMAN OKUN: Can you comment on that at
2 all in this session or do you need to do that
3 post-hearing?

4 MR. JAFFE: Relative to Tale 4, I guess?

5 CHAIRMAN OKUN: Yes. Well, Table 5-4 was
6 the table I was looking at earlier in the staff
7 report. It's different from the petitioner's
8 Exhibit 4.

9 MR. JAFFE: And if I remember, you did
10 indicate it involved Kyzen and it was a comparison of
11 Kyzen's prices and relative to whether or not Table 4
12 of the petitioner's brief was appropriate?

13 CHAIRMAN OKUN: Actually, I'm asking
14 something different.

15 MR. JAFFE: I'm sorry.

16 CHAIRMAN OKUN: Exhibit 4 of petitioner's
17 makes a different comparison than the one I'm asking
18 about. The comparison I would be asking for would be
19 the unit value of Kyzen's direct imports, comparing
20 those with the prices Kyzen paid for the domestic like
21 product and that's, of course, instead of just general
22 prices out there, whether that would be something
23 appropriate for the commission to place any weight on.

24 MR. JAFFE: I would ask permission if
25 I could actually comment on that in the post-hearing

1 brief.

2 CHAIRMAN OKUN: That's fine. That's fine.
3 And, again, as well as commenting on what the
4 petitioners would have asked for as well. And then on
5 that as well, one of the questions I had asked this
6 morning was with regard to average unit values. It's
7 been described as a commodity product, is this a case
8 where we could use the average unit value as an
9 indication of where prices have been?

10 MR. FORSYTHE: The materials are fungible.
11 As far as the materials themselves, I don't see any
12 reason why the averages -- I'm not familiar -- we've
13 never been in one of these proceedings before, so
14 we're not as intimately familiar with your inner
15 workings.

16 MR. JAFFE: Would you describe THFA, though,
17 as a commodity product?

18 MR. FORSYTHE: No. Well, it comes back to
19 your definition of what a commodity and a specialty
20 is. Now, the products I sell are specialties because
21 you can't go to the grocery store and find them
22 anywhere else. We get into issues with customers
23 where they have -- there's a Kyzen product ABC that's
24 simply not available from anyone else because we
25 formulated it, we put it together, it's my wife's

1 terrific cake recipe or the secret Italian sauce kind
2 of stuff.

3 Now, from that perspective, what we do as a
4 specialty whereas tomatoes aren't necessarily a
5 specialty, but tomatoes from just the right altitude
6 on the hill facing to the west, well, you know,
7 certain people perhaps consider it that way.

8 MR. DOYEL: And we've rendered our opinion
9 to the staff, I believe the staff asked that question,
10 and we provided an answer to the staff about that.

11 CHAIRMAN OKUN: Okay. All right. Well,
12 anything, obviously, on the pricing data. I've
13 understood the arguments you've made today, the
14 commission has to go through its analysis to try to
15 determine what the price is and what data that we've
16 collected mean and I'm trying to evaluate that in
17 terms of the arguments you've made and the substantial
18 amount of internal consumption, but also the role
19 Kyzen has played in selling Chinese product and how to
20 evaluate that in light of the arguments made by
21 petitioners.

22 If you can comment on this in open session,
23 when you buy from Penn, do you buy a whole range of
24 products from Penn?

25 MR. DOYEL: No, we do not.

1 CHAIRMAN OKUN: You don't? Okay. Just --

2 MR. DOYEL: Just THFA.

3 CHAIRMAN OKUN: Just THFA? Okay.

4 All right. Then that wouldn't help me.

5 Okay. In terms of the 2002 period and the
6 comments you've made about that and the bankruptcy,
7 one of the things the petitioners had commented on
8 this morning was this isn't a situation where you
9 actually had any disruption in supply. In some of the
10 other cases, you actually see supply going out of the
11 market and customers reacting. You didn't see that
12 here.

13 Demand has been described as fairly flat
14 during this period, but you saw even in your chart in
15 2002 an increase in imports. Was it really the
16 bankruptcy?

17 MR. DOYEL: To increase our imports?

18 Absolutely.

19 CHAIRMAN OKUN: For everybody?

20 MR. DOYEL: Well, let me understand how we
21 order THFA. You understand there's a large lead time
22 between actually when I talk to the Chinese and
23 I actually receive the product. During that period of
24 time, I'm still shipping to my customers. So
25 realistically, I had to ramp up and increase my

1 inventory during that timeframe as a hedge because we
2 had monitored Penn, kept an eye on them, and we knew
3 early on that nothing was going to happen until there
4 was a point where they were looking to auction the
5 business and at that point in time, it was kind of
6 everything's going to be okay up to then. And that
7 was probably at the end of 2001, early 2002.

8 The reason why we did that is we wanted to
9 make sure we had enough inventory, but that is a true
10 statement, they never missed a shipment to us, they
11 were still very cooperative, just business as usual.
12 The only thing is they had this overriding bankruptcy
13 that we just didn't know what was going to happen.

14 CHAIRMAN OKUN: And in terms of -- you
15 commented on this, I think it may have been you,
16 Mr. Forsythe, in terms of your description of the need
17 for a second source of supply and the efforts you made
18 to develop that versus the rest of the industry, which
19 apparently didn't follow that model. I could look at
20 this record and say, well, you had a company that
21 clearly wasn't -- it had the capacity to produce for
22 the market, so it wasn't a situation where someone
23 looks at it and says these guys don't have the
24 capacity -- I assume, that's what I'm thinking it was.
25 Yours was driven more from just the one person and

1 because they had had these difficulties, as opposed to
2 looking at their capacity or the quality of their
3 product or anything else.

4 MR. FORSYTHE: Exactly. It had nothing to
5 do with product quality or capacity, but back in '97,
6 when Great Lakes put the business on the block,
7 imagine if it took you two years to sell your house.
8 You'd be a little nervous and the milkman might be a
9 little nervous. We were very concerned about that.

10 It's important to note that the Chinese
11 didn't find us, we found them. We went out and sought
12 out someone who could be a quality second source
13 supplier for us. That was our goal. Because, you
14 know, big companies have this habit of -- we're a
15 small company, we can't go back to the candle business
16 or something after this and big companies have a habit
17 of just deciding abruptly that we're not going to do
18 that any more. And they have been known to turn
19 lights out on occasion, especially for little tiny
20 product lines.

21 In the grand scheme of the chemical
22 business, in Great Lakes land, a million dollar
23 product line is several orders of magnitude away from
24 a decimal point. These are the kinds of product lines
25 that people roll over in bed and say, well, let's just

1 end that and chop it off clean. And then we would be
2 very way up the creek without a paddle. So it was all
3 about security and until Great Lakes put that thing on
4 the block, we had no reason to believe that we were
5 insecure.

6 CHAIRMAN OKUN: Okay. My red light has come
7 on, but I appreciate all those comments.

8 Vice Chairman Hillman?

9 VICE CHAIRMAN HILLMAN: Thank you very much.
10 I would join my colleagues in thanking you
11 for taking the time to be with us this afternoon and
12 for all the information that you've provided
13 throughout the course of the investigation.

14 Let me start to focus a little bit more also
15 on this issue of pricing.

16 Clearly, over the period of investigation
17 and particularly the more recent part of it, Penn's
18 unit values went down and we're trying to understand
19 other than competition from the Chinese imports what
20 would have caused that.

21 Do you have a sense of what would have
22 driven down the prices of THFA?

23 MR. FORSYTHE: Frankly, we don't. There's
24 no supply, as the charts all indicate, away from us.
25 We don't have a good feel for why those prices went

1 down. We were the only other person that had a pot,
2 if you will, an ample supply on hand. The phone
3 didn't ring. We're quite puzzled by that. We don't
4 understand how one can decrease prices for things that
5 don't exist.

6 VICE CHAIRMAN HILLMAN: Okay. All right.
7 I appreciate that.

8 You started to get into this a little bit
9 with Commissioner Pearson, but I wondered if I could
10 follow up a little bit more on the issue of the
11 companies that you compete against for sales of the
12 products you make.

13 Are there competitors out there in the
14 cleaning solution sort of side of the THFA and sort of
15 who are they?

16 MR. FORSYTHE: They're little companies.
17 They don't use any THFA based materials, so I'd just
18 as soon not put their names on the record, for them to
19 find out about this.

20 VICE CHAIRMAN HILLMAN: No, that's fair
21 enough because obviously what I'm interested in is
22 whether they are getting their THFA from Penn.

23 MR. FORSYTHE: I guess one good point that
24 you bring up there is price competition is something
25 that we live with at every customer, every day, on

1 economic value delivered to the customer versus
2 alternatives and we consider that a normal course of
3 events, not an unusual and extreme situation.

4 VICE CHAIRMAN HILLMAN: But there's nobody
5 out there on your sort of end of the business that is
6 using a THFA based cleaning solution of some kind.

7 MR. DOYEL: If they are, let us know because
8 they'd be violating our patent.

9 MR. FORSYTHE: Yes. They're violating our
10 patents. No, they have patents on alternate
11 technologies that accomplish similar ends. Now, we
12 happen to think ours are better, but they, of course,
13 don't share that opinion.

14 VICE CHAIRMAN HILLMAN: Okay.

15 MR. FORSYTHE: So there are many ways to
16 deflux circuit boards. We have a patented way to do
17 it, several of our competitors have patented ways to
18 do it. All of them remove the flux from the circuit
19 board and meet the customers' goals.

20 VICE CHAIRMAN HILLMAN: Okay. All right.
21 I was just trying to understand it and trying to,
22 again, think through this whole issue of pricing,
23 whether there's anything further you could add.

24 Then on the issue of Chinese capacity, going
25 this issue of are there lots of other players in China

1 that you're aware of? And, again, it's very difficult
2 for us because, as you said, there's a lot of people
3 out there that could maybe produce this product, you
4 looked at a number of them. Are you aware of any
5 other efforts within China to become significant
6 producers of THFA?

7 MR. DOYEL: No. I'm not aware of anybody
8 over there trying to make THFA and, in fact, if I had
9 to speculate, the THFA quotes that you see in the
10 marketplace, there's probably a trading taking place
11 between the different manufacturers over there,
12 meaning that with THFA -- THFA is really made by one
13 producer over there, Zhucheng. If you see another
14 supplier wanting to quote on THFA, chances are he's
15 probably getting it from Zhucheng.

16 VICE CHAIRMAN HILLMAN: Okay. So that
17 you're aware of --

18 MR. DOYEL: We're aware of Zhucheng.

19 VICE CHAIRMAN HILLMAN: Zhucheng is
20 currently the only --

21 MR. DOYEL: To our knowledge, he is the
22 only --

23 VICE CHAIRMAN HILLMAN: -- producer that is
24 actually producing THFA today.

25 MR. DOYEL: That is a correct statement, in

1 commercial qts. There may be -- and, again, China is
2 a big place, but there may be a guy that might make
3 100 pounds over somewhere, but as far as the
4 commercially available THFA that we're aware of,
5 Zhucheng is the only player.

6 MR. FORSYTHE: And to the other part of your
7 question, as far as this whole conversion thing, the
8 FA duty has been in place for going on ten year. In
9 Europe, the duty is much smaller, I believe, it
10 amounts to a couple of pennies a pound and is in no
11 way generally perceived as any kind of a stone wall,
12 if you will, to Chinese materials of FA going into
13 Europe. So once again, the impetus for oh, my God, my
14 market disappeared, I've got to do something isn't
15 really there and if I was going to do something, why
16 would I jump into a market that it's an order of
17 magnitude smaller? The FA market is at least an order
18 of magnitude bigger.

19 MR. DOYEL: Absolutely. It's a much larger
20 market and also we do talk to the Chinese people over
21 there, a company Brenkem/Wenkem, who is very involved
22 in selling FA and their information to us is that the
23 business -- most of furfural alcohol goes into foundry
24 resins that's used in the steel industry and that's a
25 very, very growing business in China and a lot of it's

1 really being consumed internally in China today.

2 VICE CHAIRMAN HILLMAN: I appreciate that.

3 Talk a little bit about how prices have been
4 historically set for your THFA, either in your
5 discussions with the customers or in your discussions
6 with Penn. I mean, how do you go about deciding and
7 for what length of time, how often do you renegotiate
8 or reconsider what the price should be and what is
9 that based on?

10 MR. FORSYTHE: All right. Well, the prices
11 that we pay Penn have been pretty the same, so there's
12 really no discussion there.

13 VICE CHAIRMAN HILLMAN: And you purchase it
14 on a long-term contract?

15 MR. FORSYTHE: No. No. Spot basis.

16 VICE CHAIRMAN HILLMAN: Okay. But the price
17 just stays the same?

18 MR. FORSYTHE: Stays the same, until they
19 raised the price in August and until they're going to
20 raise the price again July 1st. We get a letter,
21 you're notified that your price is going to a
22 different level. We don't have any contracts, we
23 don't have any immediate release clauses, it's that's
24 what your price is going to be.

25 VICE CHAIRMAN HILLMAN: So you call them,

1 you e-mail them, do something, I need X amount --

2 MR. FORSYTHE: No, I get calls and e-mails
3 from Mr. Quinn, so when my price goes up, he'll notify
4 me.

5 VICE CHAIRMAN HILLMAN: Okay. And on their
6 side, though, how do they know how much you want on
7 any given basis?

8 MR. FORSYTHE: For Penn, we give them kind
9 of an estimate of where we're at. I mean,
10 historically, the way we've done our business, and
11 maybe that's the root of the question, of what you're
12 trying to ask, is that quarterly we would inform the
13 Chinese of what our take would be and there would be
14 some negotiation as far as where the price is. They
15 would have different factors that come into play. You
16 can see the Chinese price changing on occasions and
17 sometimes that's due to factors, for example, like
18 transportation, things like that, but pretty much it's
19 been a pretty flat price from the Chinese. The real
20 raises that you see in our documents is from
21 transportation and essentially it was done on a
22 quarterly basis.

23 We have a price from Penn and we place
24 orders, we look at our demand and depending on what
25 our demand is, we'll call Penn and place an order.

1 VICE CHAIRMAN HILLMAN: In terms of trying
2 to figure out whether that seems like the right price,
3 fair price, are you looking at the costs of any of the
4 components that go into THFA or that is just the price
5 and there's nothing to look at or nothing to do about
6 it?

7 MR. FORSYTHE: What you just said is a true
8 statement and the reason for that is historically THFA
9 has never been linked to those underlying raw
10 materials. When we were preparing for the preliminary
11 stage 1, whatever the right name for that is, we went
12 back and looked at furfural and furfural alcohol
13 prices over an extended period of time to get a feel
14 for this stuff, we hadn't really documented it, and
15 those are true commodities and their prices wiggle all
16 over the place. They go up, they go down, and THFA
17 just trucked along, never changed. That supports the
18 specialty perspective and it also supports the fact
19 that there was plenty of money being made there
20 because people raise prices when their margins get
21 squeezed and THFA was always priced where there were
22 ample profits for people. Great Lakes was not big on
23 negotiating things, as I recall.

24 So when we did our maker versus buy
25 analysis, long ago now, we went back and looked very

1 carefully at the raw material costs, what the
2 conversion costs are, these tollers -- and they're
3 really people that have a manufacturing plant that
4 don't have a product and they sell capacity to react
5 or do whatever it is that needs doing, and they have
6 certain things that they charge for different -- you
7 know, if you need to distill it, well, that costs a
8 few pennies a pound, if you need to react it, it costs
9 so many a pound, this sort of thing. And when that
10 was all done, that's where the prices with the Chinese
11 were developed that was fair all around.

12 For us, it made sense, it was at a very
13 similar price point to what we thought we could make
14 it ourselves and be happy with and it made sense to go
15 that direction.

16 We have not done intensive studies of that
17 in the last several years and that's really Penn's
18 expertise, obviously, energy costs and things can have
19 big impacts on those, the point about hydrogen or any
20 of these other raw materials. THFA generally ha not
21 been terribly cyclic with the underlying raw materials
22 over the long haul.

23 VICE CHAIRMAN HILLMAN: Do you have a sense
24 outside the U.S. of whether either prices or demand
25 for THFA?

1 MR. DOYEL: That's only pure speculation on
2 the prices.

3 VICE CHAIRMAN HILLMAN: Okay. Demand in
4 China? I mean, obviously, you're purchasing from
5 them. Are they getting a lot of competing demand for
6 product within China or elsewhere that you know?

7 MR. DOYEL: We believe that there is a
8 market for THFA in China. I couldn't tell you what
9 magnitude it is compared to the United States.

10 MR. FORSYTHE: We don't hear details, we
11 hear that there is some demand emerging there, but we
12 don't hear much about it.

13 VICE CHAIRMAN HILLMAN: But at this point --
14 well, you're no longer importing it.

15 I think at that point, I have no further
16 questions, Madam Chairman. Thank you.

17 CHAIRMAN OKUN: Commissioner Miller?

18 COMMISSIONER MILLER: Thank you, Madam
19 Chairman.

20 Thank you and welcome to the witnesses. We
21 appreciate your being here to help us understand your
22 business and I particularly appreciate the insights
23 you provide us into the operations of small business,
24 a minnow as you call yourself.

25 One of the more interesting aspects of this

1 job is that one day you can be dealing with a
2 multibillion dollar business and the next day a
3 multimillion dollar business. We get to see them all,
4 basically. That's kind of the beauty of the
5 antidumping law, you know, we'll spend the same amount
6 of time with you no matter what the size of the
7 business.

8 In my experience, the complexity of the case
9 doesn't have anything to do with the size of the
10 business, either.

11 I wanted to ask you the same question that
12 Vice Chairman Hillman asked you earlier about how what
13 do you see as causing the price declines in the market
14 that we've talked about?

15 You answered the question, I think, I mean,
16 you basically said you didn't know what caused them,
17 as I heard you.

18 Mr. Doyel, you look like you're reaching for
19 the microphone. Did you want to add something?

20 MR. DOYEL: Well, no, not really. I mean,
21 it's just pure speculation because I'm not out selling
22 in the market. It would be speculation.

23 COMMISSIONER MILLER: Right. Right. And
24 I understood that. I just wanted to take it one step
25 further and that is you heard Mr. Quinn's testimony

1 this morning, you've heard their testimony about the
2 price competition that they were encountering at their
3 accounts from offers of Chinese product. I mean, do
4 you have any reason to believe that that's not an
5 accurate representation of what was going on there?

6 MR. DOYEL: I could give you speculation, if
7 that's admissible.

8 You have to understand at that timeframe,
9 they were coming out of bankruptcy, okay? In the
10 timeframe that he was talking, that there was a lot of
11 these issues where they're combating price. Also,
12 from my perspective, at that point in time, I had a
13 salesman that called on us from 1999 to about mid to
14 late 2002 and he informed us at that time that when
15 they came out of bankruptcy because at that time they
16 could clearly see that they were not going to be an
17 end seller of a lot of products, they were only going
18 to sell a handful of products, and so that they were
19 going to decrease the size of their sales force, and
20 I think we made a statement in one of the documents
21 about that.

22 So my speculation is that he left the
23 company, they got another salesperson who was there
24 for -- and, again, these are the people I can only
25 judge who called on us -- they had a new salesperson

1 who was there for a short period of time and then he
2 left and they also got another salesperson.

3 So my pure speculation is that maybe during
4 this timeframe it could be possible that you had some
5 people who didn't have good close relationships with a
6 number of customers and maybe they pulled the wool
7 over these guys' eyes. I don't know. And that's just
8 pure speculation, but I do know that they did have
9 changes in personnel during this period.

10 COMMISSIONER MILLER: Do you think that the
11 importers of the Chinese product weren't out there
12 actively soliciting business in that timeframe?

13 MR. DOYEL: I have no knowledge of that.

14 MR. FORSYTHE: But neither have we ever
15 heard of a Chinese importer pressing the flesh to sell
16 THFA in North America. A fax machine is available
17 from a lot of places.

18 COMMISSIONER MILLER: Right. Okay. Well,
19 it seems to me it's an important question because
20 you've tried in your pre-hearing brief and in your
21 initial presentation to portray this case as being
22 about Kyzen, frankly, and in all honesty the testimony
23 I think we heard this morning didn't try to portray
24 the case as being about Kyzen, it portrayed it being
25 mostly about everybody else.

1 MR. FORSYTHE: But in fact everybody else
2 didn't buy any THFA from China. We're the only people
3 that actually bought THFA from China in any kind of
4 measurable quantity, so we're the fellow that's going
5 to lose. Who knows who's going to win? We know we're
6 the loser because we're the fellow that has until very
7 recently bought substantial quantities of product
8 there. So while it may not be about us, we're the
9 fall guy. That's why we're here.

10 COMMISSIONER MILLER: I recognize the
11 difficult position it puts your company in, so
12 I understand what you're saying.

13 The one question -- other question I did
14 want to ask you about is, you've talked a lot about
15 the importance of THFA for you all and the importance
16 of that second supply. Help me understand why that
17 might be true for you, but not for other purchasers of
18 THFA. Because, I don't think the record suggests that
19 other purchasers put the same kind of emphasis on
20 that. So, understanding how important it is to you,
21 it's not clear to me why it's not important to others,
22 who use it as a raw material, as well.

23 MR. FORSYTHE: I think it may come down to
24 scale. If THFA wasn't available today, I'd be out of
25 work before the lights went off in this room, okay.

1 If I'm working for a major ag, chemical, whoever those
2 folks may be, you know, if I'm the hot running guy and
3 that product line blew up, well, you know, it may
4 another job for me. If it's a product that's made at
5 a plant that makes scads of products and the typical
6 chemical industry metrics of measuring things in
7 thousands of tons and millions of tons and that sort
8 of jazz, are they going to miss a half a million
9 pounds of something that went to somebody, someplace?
10 Chances are, not. You know, that's that whole -- when
11 you're two or three orders of magnitude away from a
12 decimal point, you don't get much concern in the front
13 office.

14 We don't have any decimal points. It's the
15 whole deal. That's why it's very important to us and
16 we're only speculating on the others. But, I really
17 do think it comes down to scale.

18 COMMISSIONER MILLER: You mentioned the
19 patented issue, that your -- at least the competitors
20 that are in the same kinds of businesses that you're
21 in aren't using THFA because of the patents. That's
22 sort of --

23 MR. FORSYTHE: They'd be thrilled to have it
24 disappear. Trust me, if they were privy to this,
25 which they probably are, they're pulling for the other

1 direction.

2 COMMISSIONER MILLER: All right, okay. I
3 appreciate all your answers to my questions and to my
4 colleagues. I've learned a lot from you. Thank you,
5 very much.

6 CHAIRMAN OKUN: Commissioner Koplan?

7 COMMISSIONER KOPLAN: Thank you, Madam
8 Chairman. I want to thank the witnesses for their
9 testimony. By going last, it seems to me, at this
10 point, that my colleagues have basically covered most
11 of what I wanted to ask you about. But, I do have a
12 couple of things that I'd like to inquire of.

13 First, let me ask you -- I made this request
14 this morning of Petitioners -- can you provide the
15 Commission with monthly subject import data by volume,
16 beginning in January 2003, to assist us in determining
17 the effect of the pending investigation on subject
18 imports? Mr. Jaffe? Mr. Doyel?

19 MR. JAFFE: Yes.

20 COMMISSIONER KOPLAN: Thank you. You might
21 already know this, but the initial margin that came
22 out at the time in the preliminary was at the level of
23 31.33 percent ad valorem. I understand that during
24 today, Commerce came out with its final margin. Have
25 you seen that?

1 MR. JAFFE: No. We are actually not counsel
2 to Zuchen in the Commerce Department investigation, so
3 they would not contact us.

4 COMMISSIONER KOPLAN: Okay. Well, just for
5 the record, because I understand this is a public
6 number, that has risen to, as I understand it, 136.86
7 percent. So, I just mention that. I won't know for
8 the record the reaction from Mr. Doyel or Mr.
9 Forsythe, but I thought I would share that. I just
10 found that out.

11 Let me ask you, as you went through that
12 line of questions after the direct presentation, Mr.
13 Jaffe, Mr. Doyel, Mr. Forsythe, you said you've known
14 the folks from ARS since, I think, 1987.

15 MR. DOYEL: That's correct.

16 COMMISSIONER KOPLAN: And the folks from All
17 Chem since --

18 MR. DOYEL: Same time frame. It was an
19 individual that I worked with -- the person, who I
20 named, was the person, who I was familiar with when I
21 worked at --

22 COMMISSIONER KOPLAN: And you all have been
23 second sourcing ever since the late 1990, is that
24 correct?

25 MR. DOYEL: Since 1997.

1 COMMISSIONER KOPLAN: Yes, 1997 is when you
2 mentioned today. I think, actually, at the staff
3 conference in 2003, Mr. Forsythe, you said over five
4 years ago is when you started. It actually is even
5 further back than that; okay. Did other folks in this
6 industry realize that you all were second sourcing?

7 MR. DOYEL: Yes. The industry meaning, from
8 our knowledge, Penn or Great Lakes, at that time, they
9 knew we were second sourcing. But as far as other
10 people in the industry --

11 COMMISSIONER KOPLAN: How about ARS folks
12 that you knew?

13 MR. DOYEL: Yes, ARS knew.

14 COMMISSIONER KOPLAN: All Chem folks that
15 you knew?

16 MR. DOYEL: Yes.

17 COMMISSIONER KOPLAN: Okay. And Mr. Jaffe,
18 I just said to you, I can't get into the numbers here,
19 because it's BPI. But, when I look at our record, I
20 see that most purchasers, who responded to the
21 Commission's questionnaires, actually do not regularly
22 by from more than one source. And the table I'm
23 referring to is Table II-4 of our May 28th pre-hearing
24 report. I can't get into the numbers here, because
25 they're confidential; but, I know you have access to

1 that information and I'm sure you must have reviewed
2 it. And I'm just wondering how I reconcile your
3 argument regarding the effect of Penn's bankruptcy
4 during the POI with my reading of the information in
5 Table II-4. Now, you can respond to that post-hearing
6 or maybe you could tell me that it can't be
7 reconciled.

8 MR. JAFFE: Actually, I would prefer to
9 respond in the post-hearing brief.

10 COMMISSIONER KOPLAN: Okay. Would you do
11 that, though, because as I look at that, I'm
12 struggling a bit with that issue; okay?

13 MR. JAFFE: We, also, did address, to a
14 certain extent, I believe, that in our pre-hearing
15 brief. We are --

16 COMMISSIONER KOPLAN: I know you did, but
17 not in terms of this table, okay; not in terms of the
18 results of this table, and that's why I'm asking you.

19 I understand this long-term practice
20 existed. But, I keep coming back, in my own mind, to
21 this one statement you all have and that is on page
22 four of your pre-hearing brief, you say, "Penn's
23 bankruptcy validated Kyzen's second source strategy."
24 That, to me, is a little bit like saying, I told you
25 so kind of thing. I'm just wondering, have you ever

1 shared a comment like that with other folks that you
2 have known all these years in the industry, that knew
3 that you were second sourcing to begin with? Has
4 there been no conversation with any of these people
5 that you've known since long before our period of
6 investigation --

7 MR. DOYEL: Oh, I'm sure that --

8 COMMISSIONER KOPLAN: -- of the bankruptcy?

9 MR. JAFFE: -- of the people that we've
10 mentioned, All Chem and ARS, sure, said, oh, yes,
11 thank goodness we had a second source. And just so
12 the Commission knows, I mean, this flipped the other
13 way two, because there was a period of time after Penn
14 emerged from the bankruptcy where a lot of our
15 shipments were from China that stopped because of the
16 fact that there was a dock strike on the west coast.
17 And one of the anomalies that you see in the numbers
18 of this whole thing is the fact that we couldn't --
19 you know, some of the product that we had ordered was
20 actually sitting in the Pacific Ocean and couldn't
21 come here. So, we were thrilled, make sure that Penn
22 survived and was able to supply us during that period
23 of time.

24 COMMISSIONER KOPLAN: I'm aware of the dock
25 strike, but I'm wondering whether the -- your well-

1 known policy had any effect on All Chem and ARS
2 deciding to import in 2002. Is it possible that --

3 MR. DOYEL: I can answer that, in fact, that
4 All Chem and ARS have imported before, before the
5 period of investigation.

6 COMMISSIONER KOPLAN: Oh, they did?

7 MR. DOYEL: Yes.

8 COMMISSIONER KOPLAN: Do you know when that
9 was, before the period of investigation?

10 MR. FORSYTHE: In the period of
11 investigation, but in the very beginning, when this
12 all began back in 1996-1997ish sort of time frame --

13 COMMISSIONER KOPLAN: Right.

14 MR. FORSYTHE: -- ARS was, in fact, not in a
15 formal sense, but we worked together to identify the
16 source and when the imports first began, ARS was, in
17 fact, the importer of record for the material that was
18 coming to us. We transitioned that relationship after
19 -- not too long a period of time, but we worked
20 together on this. Dr. McKillip is the shell answer
21 man when it comes to such things. He knows all
22 everywhere. And, in fact, he knows a lot more than we
23 do about things. So, the concept that we would be
24 sharing information that Dr. McKillip didn't already
25 know is hard to imagine.

1 COMMISSIONER KOPLAN: There came a time
2 during -- thank you for that. There came a time
3 during the period of investigation that you decided to
4 reduce your purchases from Penn to some extent and
5 increase your imports to an extent?

6 MR. DOYEL: Yes.

7 COMMISSIONER KOPLAN: When was that?

8 MR. DOYEL: We increased out -- well, I can
9 look at the documents and give you a precise answer to
10 that.

11 COMMISSIONER KOPLAN: Would you do that --

12 MR. DOYEL: Yes.

13 COMMISSIONER KOPLAN: -- post-hearing?

14 MR. DOYEL: Sure.

15 COMMISSIONER KOPLAN: Can you tell me why
16 you did that? Was it because of the bankruptcy?

17 MR. DOYEL: Correct. If the lights went out
18 at Penn, I had to have enough material on hand here to
19 be able to meet the demand of my customers. And then
20 there's a lag time before I could get product again
21 back on the letters that come over here to the
22 country.

23 COMMISSIONER KOPLAN: Did you have any
24 conversations with Penn during the period July 2001 to
25 mid-2002, when they emerged from bankruptcy, about

1 whether they would have any problem meeting your
2 needs, as they existed before they entered bankruptcy,
3 any conversation?

4 MR. DOYEL: No, we did not.

5 COMMISSIONER KOPLAN: Why is that?

6 MR. FORSYTHE: Well, frankly, we didn't
7 expect the people in bankruptcy to tell us they were
8 going out of business.

9 MR. DOYEL: Right.

10 MR. FORSYTHE: And since that's not what we
11 expected them to tell us, we were going with an added
12 grain of salt to their expectations, were we in
13 reverse roles.

14 COMMISSIONER KOPLAN: But --

15 MR. FORSYTHE: We would certainly expect to
16 emerge without a hiccup, as they did, as well.

17 MR. DOYEL: To answer your question, sure,
18 they said, oh, yes, everything will be fine;
19 everything -- business as usual; we'll be able to ship
20 you. But, you have to understand, you have to listen
21 to that, and just like what Tom said, with kind of a
22 grain of salt, that here's the salesperson saying,
23 everything is fine, but we don't know whether or not
24 the plug is going to get pulled.

25 COMMISSIONER KOPLAN: But, they were

1 continuing their operations during this period.

2 MR. DOYEL: Absolutely.

3 COMMISSIONER KOPLAN: They didn't shut down.

4 MR. DOYEL: Absolutely.

5 COMMISSIONER KOPLAN: And other customers,
6 apparently, their needs were being satisfied.

7 MR. DOYEL: But, we have no contact with
8 them, so we can only assume that that's the case.
9 But, again, I can't risk the future of my company on
10 someone else having a good day in bankruptcy court,
11 period. It just doesn't make sense.

12 COMMISSIONER KOPLAN: Okay. Thank you, very
13 much, for that.

14 CHAIRMAN OKUN: Commissioner Lane?

15 COMMISSIONER LANE: Mr. Doyel, your company
16 apparently takes THFA and makes it in the products
17 that are used to clean things. When you make these
18 products, are they products that I would recognize by
19 name?

20 MR. DOYEL: No, you would not.

21 COMMISSIONER LANE: Okay. So, it's not
22 something that's sold out there --

23 MR. DOYEL: It's not sold in the retail or
24 in the commercial market. It's sold in the industrial
25 market. It's a very specification driven business.

1 You would recognize our customers, but you wouldn't
2 our product.

3 COMMISSIONER LANE: Okay. When Penn filed
4 bankruptcy, and I'm assuming that this was a
5 reorganization, did you do a formal assessment of
6 Penn's chances of emerging successfully from
7 bankruptcy?

8 MR. FORSYTHE: Ma'am, with all due respect,
9 we're a small company. That sort of formal assessment
10 is lunch. None of us have any experience in
11 bankruptcy and we don't have the funds to hire people
12 to do that assessment, who would be skilled in that
13 area.

14 MR. DOYEL: So, there was no formal
15 assessment, other than what we did do is -- you know,
16 I can say what we did do is try to monitor, as much as
17 we could, what we saw coming out of the bankruptcy
18 court, as far as information. We, also -- and, again,
19 we started a practice then of Dunn & Bradstreet,
20 pulling the D&B on the company. We continue to do
21 that today. And because of the fact that the Dunn &
22 Bradstreet information, again, makes us nervous and
23 the fact that we did, you know, switch over, we're
24 going to keep an eye out, see where they're at
25 financially.

1 COMMISSIONER LANE: And you did not contact
2 any of the other people that you knew that Penn did
3 business with to determine what their strategy would
4 be or just discuss this event with them?

5 MR. DOYEL: Correct. We did not sit down
6 with any of their customers and say to them, well,
7 gee, what are you going to do now that Penn has gone
8 into bankruptcy. I'm sure we had discussions with ARS
9 and All Chem and said, what do you hear; what's going
10 on. We traded information, so we could have an
11 understanding, because, obviously, those guys have a
12 different perspective of the market from what we see
13 and what we're told by Penn.

14 COMMISSIONER LANE: Now, was Kyzen one of
15 the customers that Penn referred to before lunch that
16 came to Penn and said, you've got to lower your price,
17 because we've gotten this lower quote from China?

18 MR. DOYEL: No, we were not. We were the
19 opposite.

20 COMMISSIONER LANE: So, you never told Penn
21 that you were getting a better deal from the Chinese
22 and could they meet that price?

23 MR. DOYEL: We were getting a worse deal
24 from the Chinese.

25 MR. FORSYTHE: But, your question is no. In

1 fact, Penn approached us, they approached Mr. Doyel,
2 and said, gee, for a lower price, can I get more of
3 your business and we said, no, thank you.

4 COMMISSIONER LANE: Okay.

5 MR. DOYEL: You have to remember, pricing
6 conversations that took place during the period of
7 investigation, there were none. We had a price --

8 MR. FORSYTHE: Until the price increased --

9 MR. DOYEL: Until the price increased,
10 right.

11 COMMISSIONER LANE: Okay. Let's go the
12 patents on your products. Is reformulating your
13 products away from THFA made it more difficult because
14 your potential products include THFA?

15 MR. FORSYTHE: Well, reformulating away
16 isn't really limited by the patents. Obviously, the
17 patents provide certain benefits. Our limitation on
18 reformulating away is for the existing customer base.
19 People have products that are qualified. Our
20 customers make expensive, in some cases, exotic stuff.
21 They do exhaustive qualifications. And they,
22 generally, are not eager to make changes frequently at
23 all. I mean, in some cases, we have products that are
24 -- that we've improved dramatically, that we've taken
25 years to get customers to move to the newer product.

1 COMMISSIONER LANE: Okay. If you didn't
2 have THFA, would your patents, then, be worthless?

3 MR. FORSYTHE: Yes; but, it wouldn't matter,
4 because our business would be dead that day.

5 COMMISSIONER LANE: Just a minute.

6 (Pause.)

7 COMMISSIONER LANE: I'll come back later, if
8 I have more questions. Thanks.

9 CHAIRMAN OKUN: Commissioner Pearson?

10 COMMISSIONER PEARSON: How would you respond
11 to Penn's argument that the price comparisons in Table
12 V-1 and V-2 of the confidential staff report are not
13 meaningful, because of the differences in the volume
14 of sales between Penn sales and those made by
15 importers of Chinese product? And that would be a
16 question for you, Mr. Jaffe. I don't know whether you
17 can address it now or in the post-hearing.

18 MR. JAFFE: Thank you. I think we have
19 addressed it in the pre-hearing. But, I think what's
20 interesting about their argument is that, of course,
21 they've taken traditional charts that the
22 International Trade Commission has used that show
23 direct competition. And, of course, since it doesn't
24 demonstrate underselling, yes, I recognize that they
25 are going to make the arguments that you should throw

1 out these charts and introduce one of their own. But,
2 we can address that further. I need to, obviously,
3 address their particular chart, where they kind of
4 cherry picked, you know, something from over here and
5 something from over here and, yet, their assumptions
6 by which they base that cherry picking, I have serious
7 problems with.

8 COMMISSIONER PEARSON: Okay. I'll look
9 forward to that. Your chart number II, the line chart
10 showing imports of THFA, it indicates that imports
11 declined steeply in mid-2003, which was approximately
12 the time the petition was filed. Doesn't that
13 indicate that we should give relatively little weight
14 that the fact that 2003 imports were lower than 2002
15 imports?

16 MR. JAFFE: No. I think that there's -- if
17 I remember correctly, the petition actually did not
18 get filed until, I guess, past the midyear. But, I
19 think what it demonstrates, however, is significant
20 and I think the key here is not only to focus on the
21 imports that Kyzen bought for internal consumption,
22 and I think what you see over the -- except maybe a
23 little stronger spike, there is a degree of
24 consistency in the internal consumption. But, what we
25 see is a decrease in the imports for -- by other

1 parties, whatsoever, parties, who were not there in
2 2001 and who were -- and, again, because of the change
3 in the particular market dynamics have exited the
4 market, as well. At the same time, however, I would
5 say as for 2004, yes. And, certainly, in our pre-
6 hearing brief, we did not make any arguments with
7 respect to the decrease, the obvious decrease in term
8 2004. To answer your question, yes, obviously, there
9 was an antidumping petition filed. Obviously, it had
10 an impact on the marketplace.

11 COMMISSIONER PEARSON: Okay. And you're
12 seeing that in 2004 quite clearly and --

13 MR. JAFFE: Very clearly.

14 COMMISSIONER PEARSON: -- and perhaps not so
15 clearly in 2003; perhaps not at all --

16 MR. JAFFE: And once again, you have to
17 remember, there is a delay. So, even if they filed
18 the petition -- I don't know -- once again, I don't
19 recall the exact day; I remember it being midyear --
20 we're still talking six to eight weeks. So, if stuff
21 is on the water, it's on the water. So, six to eight
22 weeks, that's another two months. So right now,
23 you're up to eight or nine months, in which you would
24 probably see an accurate database. And even then, I'm
25 not too sure you're going to see an impact those last

1 two months.

2 COMMISSIONER PEARSON: Okay. Well, if you
3 could offer any clarification in the post-hearing,
4 whatever you think appropriate to provide, in terms of
5 what was going on with the timing of the change in
6 imports and the petition.

7 MR. JAFFE: Thank you. We will.

8 COMMISSIONER PEARSON: My last question, in
9 response to the conversation you had with Commissioner
10 Koplan, you had indicated that you had started
11 importing THFA from China before the period of
12 investigation. Prior to that time, was Penn or Penn's
13 predecessor your sole supplier of THFA?

14 MR. DOYEL: Yes, they were.

15 COMMISSIONER PEARSON: Okay. In that case,
16 the business decision to start importing from China,
17 could that be characterized as a loss sale to Chinese
18 imports? And if not, why not? If so, how do we
19 factor that into our investigation here under the
20 statutes that we have to live with?

21 MR. FORSYTHE: Well, certainly, well before
22 the period of investigation, by longer than the period
23 of investigation, I believe. So, I'm not, again, an
24 expert in your procedures, but it strikes me that
25 there's a reason the period of investigation is

1 delineated; in fact, shifted during the course of the
2 proceeding. So, also, bear in mind that, you know, as
3 these volumes began back in the beginning, you know,
4 even though we're now a small company of six million
5 dollars, we were about half that size when this all
6 began, even smaller. These are major challenges to
7 try to deal with.

8 COMMISSIONER PEARSON: Okay. Well, Mr.
9 Jaffe, if you have anything to add in the post-
10 hearing, in regard to how we might look at or not look
11 at that question of loss sales on something that
12 happened prior to the period of investigation, I'd be
13 happy to know. And I say that because I'm not an
14 attorney and I don't pretend to understand with any
15 specificity how the law might address that question.

16 MR. JAFFE: Thank you. We will.

17 COMMISSIONER PEARSON: I have no further
18 questions, Madam Chairman.

19 CHAIRMAN OKUN: Thank you. I think I just
20 have one and it was along those lines, just in terms
21 of I understand that you started in 1997, you were
22 smaller. You may have provided this before, but have
23 your imports from China risen over the period prior to
24 -- I mean, I know what happened during the period of
25 investigation. I'm trying to figure out historically,

1 I mean, did you have a target? When you started this,
2 did you say, we're going to second source and we plan
3 to second source for X percent as part of -- I mean,
4 you're small. I've heard that. I don't know if you
5 had a business plan. But, is there anything that you
6 may not be able to say here, but just in terms of how
7 you envisioned the second source, I'd be interested in
8 hearing about it.

9 MR. DOYEL: I would just say that during the
10 whole time, in the whole history that we have bought
11 THFA from China, we've always maintained a split of
12 the business.

13 CHAIRMAN OKUN: You've always maintained --
14 I didn't hear.

15 MR. DOYEL: A split in the business, 30 to
16 50 percent. I would just say, historically going
17 back, it would fall in that same range.

18 CHAIRMAN OKUN: Okay. I don't think I have
19 any other questions, hearing all your answers today.
20 It's been very helpful. I'm going to turn to Vice
21 Chairman Hillman.

22 VICE CHAIRMAN HILLMAN: Thank you. I hope
23 just a couple of quick follow-ups. We had talked --
24 in my previous round, you had responded, again, to
25 Commissioner Koplan on this issue of the lack of any

1 significant price discussions with Penn over the
2 course of this period. Again, I just wanted to ask,
3 if there are any documents -- you mentioned,
4 obviously, this price increase letter -- but if
5 there's anything that you could document, in terms of
6 the price discussions or lack thereof between you and
7 Penn over the period of investigation, if those could
8 be supplied, I think that would be helpful. Again,
9 I'm not asking for you to drag through everything.
10 I'm just trying to get a sense of -- it's just a
11 little unusual to have a price be set and just sort of
12 stay there forever. So, I'm just -- it's just
13 interesting to me --

14 MR. FORSYTHE: Well, frankly, with many of
15 our customers, our electronics customers are in the
16 business of signing contracts with their customers,
17 that the prices go straight down, which is rather
18 disconcerting to those of us, whose costs don't go
19 straight down. So, it's quite often that our prices
20 stay the same for -- we, actually, only get to
21 increase prices every couple of years. Then, when
22 we're lucky, it's two or three percent. So, it's not
23 uncommon to us to have extended periods of time go by
24 where it just doesn't come up.

25 VICE CHAIRMAN HILLMAN: Okay. And then you

1 had indicated, again, in response when I asked you
2 before about the situation in China, that you thought
3 there was significant demand in the Chinese market for
4 THFA. Now, if you have any way to quantify that or
5 have any sense of how much the demand in China for
6 THFA would be, that would be useful information, if
7 you have it.

8 MR. DOYEL: I really don't have any. I'm
9 just speculating on conversations with people,
10 anecdotal, you know, what do you know about the THFA
11 market, I hear it might be this or that. It's pure
12 speculation on our part.

13 VICE CHAIRMAN HILLMAN: Okay. And, then, as
14 you probably heard from the discussion this morning,
15 there was a lot of talk about the difference in price,
16 whether product is purchased in a 55-gallon drum
17 versus in bulk. From your perspective, was there a
18 general sort of percentage difference between 55-
19 gallon drums versus bulk? Do some customers prefer
20 one way or another? What's the price difference and
21 the relative advantage or disadvantage?

22 MR. DOYEL: Well, I can't answer that on
23 THFA. From my products that I ship to people, we ship
24 pretty much in drums and pails. We are --

25 VICE CHAIRMAN HILLMAN: Your THFA purchases,

1 do you purchase in drums or in bulk?

2 MR. DOYEL: We purchase in drums from the
3 Chinese. We purchase in bulk from Penn.

4 VICE CHAIRMAN HILLMAN: Okay. And do you
5 have a sense of if you were to purchase from the same
6 source of bulk versus drums, what the price
7 differential might be?

8 MR. FORSYTHE: Bringing bulk in from China
9 is -- right, if we were to shift to bulk from China,
10 there are, frankly, additional logistics costs,
11 whereas -- because of the containers. Unlike in
12 America, the truck that delivers the THFA from Memphis
13 to Nashville then goes and gets somebody else's
14 chemical, fills up and goes somewhere else.

15 MR. DOYEL: Yes. To answer your question
16 succinctly, the reason why we bring it in, in drums
17 from China, is because the fact we don't want to risk
18 cross contamination with another product. It's always
19 an issue when you use a reusable container, which is a
20 bulk container. So, we don't want to have the risk of
21 cross contamination of other products, something that
22 might have been in that truck or tanker before.

23 VICE CHAIRMAN HILLMAN: Okay. If there is -
24 - I understand there's reasons why you do one versus
25 the other. I'm trying to understand what that

1 suggests to me about price differences between
2 something and --

3 MR. DOYEL: I couldn't tell you.

4 VICE CHAIRMAN HILLMAN: Okay.

5 MR. DOYEL: I couldn't.

6 VICE CHAIRMAN HILLMAN: No, I appreciate
7 that. And then you had, also, mentioned the issue of
8 Zhucheng's shipments into the U.S. market. Do you
9 have any information on the degree of which Zhucheng
10 or Qingdao One Trading -- their trading company has,
11 in terms of seeking to obtain customers other than the
12 business with you, in terms of THFA sales in the U.S.
13 market? Are you aware of them trying to market their
14 product either directly or through the trading
15 company?

16 MR. DOYEL: I'm unaware -- unaware of them
17 actually trying to seek other customers.

18 VICE CHAIRMAN HILLMAN: Okay, all right. I
19 think with that, I have no further questions, Madam
20 Chairman. Thank you.

21 CHAIRMAN OKUN: Commissioner Miller?

22 (No verbal response.)

23 CHAIRMAN OKUN: Commissioner Koplan?

24 COMMISSIONER KOPLAN: Just a little bit.

25 Let me ask you, I understand from this morning's

1 testimony, that THFA delivered in 55-gallon drums is
2 more expensive than THFA sold in bulk containers of 20
3 metric tons, which is approximately 44, 100 pounds.
4 Now, I don't pretend to know how many 55-gallon drums
5 equal a metric ton. I'm sure you all can help me with
6 that. Excuse me?

7 MR. FORSYTHE: It's about four drums.

8 COMMISSIONER KOPLAN: Four drums.

9 MR. FORSYTHE: A drum is around 500 pounds;
10 metric tons around 2,000 pounds.

11 COMMISSIONER KOPLAN: Okay. And I realize
12 that it's not distinguished by grade or quality. Now,
13 you seem to have been able to answer that question
14 easily for me. Do you purchase it both ways?

15 MR. FORSYTHE: We do.

16 COMMISSIONER KOPLAN: You do? So, you get
17 it in drums, 55-gallon drums, and you, also, get it in
18 20 metric ton containers?

19 MR. FORSYTHE: Well --

20 COMMISSIONER KOPLAN: Well, that's what I
21 understand the containers have: 44,000 --

22 MR. FORSYTHE: There are purchases from
23 China, we purchase in drums. They come in a container
24 of drums. And our purchases from Penn, we buy in tank
25 trucks, which are roughly 20 metric tons, I guess,

1 ish.

2 COMMISSIONER KOPLAN: Okay. You buy --
3 where do you get the bulk containers from?

4 MR. FORSYTHE: They're common carriers, I
5 believe.

6 COMMISSIONER KOPLAN: No, I mean, you're
7 buying the drums from China?

8 MR. FORSYTHE: Correct, drums from China.

9 COMMISSIONER KOPLAN: And containers, then,
10 what, from Penn? Where do you get the containers?

11 MR. FORSYTHE: This is like a milk truck
12 going down the highway. There's a whole industry of
13 people that own these tank trucks. Just like shipping
14 a skid of something, you can actually, amazingly, ship
15 bulk quantities of things with little motors, frankly.
16 I mean, they squeeze from time to time; but, by and
17 large, it's remarkable.

18 COMMISSIONER KOPLAN: Let me see if I can
19 stumble through this. Mr. Jaffe, I'm asking this
20 question; at the same time, looking at page 14 of
21 Kyzen's internal consumption data. And I'm wondering
22 how this is all factored into that table. But, I
23 can't get into the table, because the information in
24 the key column is bracketed. So, I'm wondering how we
25 translate the drums and the containers into what I'm

1 looking at on page 14. I'm wondering if you can do
2 that for me in the post-hearing.

3 MR. JAFFE: Well, everything is done in
4 pounds, I think. But, I'll look at it, again, in the
5 post-hearing brief.

6 CHAIRMAN OKUN: Mr. Jaffe, can you just pull
7 your microphone closer?

8 COMMISSIONER KOPLAN: Can you move the
9 microphone over?

10 MR. JAFFE: I'm sorry. I said, everything
11 is done in pounds. But, I'll certainly take another
12 look at that chart in the post-hearing brief.

13 COMMISSIONER KOPLAN: Okay. I would
14 appreciate that. As I've listened to the testimony,
15 it would be helpful for me, if you would provide me
16 with monthly shipments -- your monthly purchases for
17 the period of investigation from Penn and from -- and
18 subject product and give me price comparisons, as you
19 went along. That should be relatively easy for you to
20 do. I'm, also, particularly interested in the period
21 that followed your stopping purchases from China in
22 2003. I mean, I'm asking for the whole period, but
23 I'm interested in that, because after you stopped with
24 China, you were, basically, single sourcing; right?
25 And Mr. Jaffe, you can appreciate this, I'm looking at

1 Table C, okay, and what has gone on in the interim
2 period, for example, of 2004 versus 2003, and I'm
3 trying to figure out how much of the change is
4 attributable to the fact that I assume your client was
5 ramping up in its purchases to make up for dropping
6 Chinese product after September of 2003. You follow
7 me? There's a difference -- do you have the C table?

8 MR. JAFFE: Well, my apologies to the
9 Commission, but I have a tendency not to bring the
10 proprietary tables here, just to make sure that I
11 don't make a mistake with my client sitting next to
12 me.

13 COMMISSIONER KOPLAN: If you go back, take a
14 look at market share, by consumption and by volume.
15 And I am interested in how much of that is
16 attributable to the shift that took place after Kyzen
17 stopped buying Chinese product.

18 MR. JAFFE: Okay.

19 COMMISSIONER KOPLAN: I think with that, I
20 have no further questions. I thank you all, very
21 much.

22 CHAIRMAN OKUN: No questions from my
23 colleagues. Seeing none, let me turn to staff, to see
24 if staff has questions for this panel.

25 MS. MAZUR: Diane Mazur. Madam Chairman,

Heritage Reporting Corporation
(202) 628-4888

1 staff has no questions.

2 CHAIRMAN OKUN: Thank you. Do those in
3 support of imposition of antidumping duties have
4 questions for this panel?

5 MR. DEVINNEY: No, we have no questions.
6 Thank you.

7 CHAIRMAN OKUN: Let me review the time
8 remaining and then I will have an opportunity to thank
9 this panel, before we turn to closing. Petitioners
10 have a total of 30 minutes remaining, which includes
11 five minutes for closing. The Respondents have a
12 total of 29 minutes, which includes their five minutes
13 for closing. Before we turn to the Petitioners for
14 their closing and rebuttal, let me take this
15 opportunity to thank you for being here, thank the
16 witnesses for your testimony, for your willingness to
17 answer our questions. It has been very helpful this
18 afternoon. And we'll just take a couple of moments to
19 let you return to your seats.

20 (Whereupon, a brief recess was taken.)

21 MS. ABBOTT: Would everyone be seated,
22 please.

23 CHAIRMAN OKUN: Mr. DeVinney, do you want to
24 do your closing from there? You can come up here or
25 you can stay back there, whatever you prefer.

1 MR. DEVINNEY: If it's okay with the
2 Commission, if I can do it from here.

3 CHAIRMAN OKUN: That's fine.

4 MR. DEVINNEY: Okay. In his opening
5 statements, Mr. Jaffe speculated that our theory of
6 the case had to do with some remarks in our brief
7 about Kyzen's potential entry into the THFA market and
8 that's definitely not what our case is about. Our
9 case is about the basics on the impact of the Chinese
10 imports on our business. And in one sense, this is a
11 very basic case, in that you have the domestic
12 industry, our company, and the subject imports. And
13 the effect of those imports is demonstrated somewhat
14 by Respondent's own numbers. We're trying to
15 demonstrate that the effect of these imports on the
16 market price, which we contend is unfairly low, and it
17 seems to us that the Department of Commerce finding
18 today would support that.

19 Kyzen showed us what happened with the
20 market price and what happened when Chinese imports
21 ceased coming into this country due to this
22 investigation. The market price went up and due to
23 this investigation, the subject -- when the subject
24 imports stopped, the market prices risen and that's
25 been shown through Penn's performance since this

1 cessation of imports from China.

2 But like I said, this case isn't about Penn
3 versus Kyzen. It's about Chinese manufacturers
4 dumping THFA at unfairly low prices in the U.S.
5 market, an injury that that dumping has caused to the
6 domestic industry. It's not a case about Chinese
7 producers desire to serve as a second source to one
8 purchaser or the desire to fill purported gaps in the
9 market. It's about Chinese producers aggressively
10 pursuing market share by using unfairly low prices, in
11 attempt to become the sole source of THFA in the
12 United States.

13 And Kyzen is a good and valued customer, but
14 they're not our largest customer and they represent
15 only one portion of the market and not the largest
16 portion of the market. Penn understands the entire
17 THFA market. Kyzen is entitled to use a second
18 source. Some companies, such as Kyzen, might prefer
19 to do so. Mr. Quinn testified that other end users
20 don't necessarily express a preference for dual
21 sources and we believe that the data before the
22 Commission flushes that out and supports that. In
23 fact, there are advantages to having a sole source.
24 And what the customers care about is the price and the
25 Chinese are selling at an unfairly low price.

1 As far as the price depression, probably
2 this Commission has rarely seen a simpler case, in
3 that a good portion of Penn's sales are through their
4 long-term contracts. And all of those contracts have
5 a meet or release provision and in every single
6 instance, that meet or release provision was
7 triggered. It had to be triggered from the subject
8 imports, because, as this Commission has noted, there
9 are no other global sources. And Kyzen is actually a
10 good example of the type of price suppression we're
11 talking about.

12 Now, we disagree about the circumstances
13 surrounding the price suppression and negotiations --
14 the price negotiations, but this really isn't the time
15 to get into that. We'll deal with that in our briefs.
16 But, Kyzen used the subject imports to negotiate a
17 lower price. Once the price pressure from the Chinese
18 imports were relieved, Penn's situation started to
19 improve. And Kyzen has happened with all of our other
20 customers, be them end users, large or small, or
21 distributors. The only difference is, Kyzen has
22 chosen to go with a second source of about an equal
23 price, whereas other customers have just used that to
24 get that supply.

25 For the most part, for Penn, although we

1 have lost some sales, our injuries are not caused by
2 the bankruptcy. Mr. Quinn testified, Mr. Neff
3 testified that there aren't reformulations out there
4 that are causing our injuries. And there's no -- we
5 haven't seen any scramble for a second source among
6 our customers for the bankruptcy or for any other
7 reason. Our injuries were caused by the drop in
8 market price.

9 I believe Mr. Doyel and Mr. Forsythe
10 expressed that they really weren't sure what caused
11 the drop in price. Well, Mr. Quinn and Mr. Neff are
12 quite sure. Every time they turn around to try to
13 make a sale to a customer, the Chinese are attempting
14 to undercut them. Now, there is some evidence where
15 the Chinese haven't always been underselling us. I
16 believe Mr. Quinn testified to some of that in respect
17 to Kyzen and Mr. Malashevich has dealt with that in
18 our brief, which I believe Mr. Jaffe referred to as
19 cherry picking. But, to play Mr. Malashevich's chart
20 is that what we're looking at is what are the Chinese
21 imports -- what are our large customers able to buy,
22 at what price are they able to buy from the Chinese
23 producers, and at what price are we able to sell to
24 those same customers. That's the comparison we're
25 looking at here, what are the Chinese producers

1 offering to sell at and what are we offering to sell
2 at to our customer base.

3 I believe Mr. Forsythe said something to the
4 effect that he can't imagine someone else to whom the
5 THFA market is as important as it is to Kyzen. Well,
6 it's just as important to Mr. Quinn and Mr. Neff.
7 Again, we dispute their characterization of our
8 commitment to THFA. This isn't the time to do that.
9 We'll do that in our post-hearing brief. But, it is
10 critical that Penn get a level playing field on which
11 to compete. We're not trying -- we're not shying away
12 from fair competition. Mr. Quinn testified, we expect
13 another producer, domestic or foreign, will emerge in
14 a healthy THFA market. We're not afraid of that
15 competition. We would rather compete and maybe lose a
16 little bit of market share in a profitable industry,
17 than try and be the big boy on the block, when we've
18 had -- but to do so, we'd have to sell below our own
19 cost. We expect competition and we're ready for it;
20 we just want a level playing field. Thank you.

21 CHAIRMAN OKUN: Thank you.

22 MR. JAFFE: Like a lot of lawyers, I dream
23 of being a writer. But, I don't want to write novels;
24 I, actually, want to write plays. And when I was
25 studying play writing, I found out it actually had a

1 lot of rules. One of the major rules is that you have
2 to have at least three characters; that the plot is
3 between the central character and the second
4 character, their relationship; and that there has to
5 be a climax. There has to be a turning point,
6 something that happens to that relationship that turns
7 the entire direction of the plot. You may not notice
8 it. It may be something subtle. But, it is certainly
9 the climax, the point of no return. And it's, also,
10 important that it happens -- that it's an action not
11 between the first and the second character, but the
12 first and the third character.

13 An example: Romeo and Juliet, there's some
14 question there. We know that people have said that
15 the third character role is actually Tibold. And the
16 question, of course, is who is the central character.
17 Is it Rome or is it Juliet? And what we find out is
18 we identify it according to the climax, because
19 there's a relationship between Rome and Juliet and the
20 relationship changes. The point of no return is when
21 Rome kills Tibold, the first, the central, and the
22 third.

23 Well, I don't mean to belittle this
24 particular case. It's a very important case to my
25 client. But, I couldn't help noticing that there are

1 really three characters in this particular
2 investigation. The third character, we've barely
3 heard its name at all, but it's definitely the third
4 character is Zhucheng. The question is, is who is the
5 central character, the number one character, and who
6 is the second character. Well, we know we have Kyzen.
7 We have Penn. This has to deal with the relationship.
8 And the question is, is let's look at the climax.

9 Well, the climax happened prior to the
10 period of investigation. It happened in 1997, when,
11 for its own reasons, dealing with sourcing from the
12 domestic industry, at that time, Kyzen decided that it
13 was extremely important that it have a second source
14 of supply. And if you look at the relationship
15 between Kyzen and the domestic industry since then,
16 you will see that everything is dependent on that.
17 And interestingly enough, the business plan, I think
18 that you requested for, if they did their due
19 diligence, then Penn would have known that, as well,
20 at the time.

21 Now, I think, Commissioner Miller, you asked
22 me and you pointed to the case of Penn and you said,
23 well, you're talking about Kyzen and they're saying
24 that this is not a case about Kyzen; it's a case about
25 everybody else. Well, I have to stick to the facts.

1 I have to look at the imports and I have to -- and
2 when I look at the imports, what I see is that the
3 majority of imports, not just -- and when I say,
4 "majority," not 51 percent, but 90 percent are Penn
5 imports -- excuse me, Kyzen imports. So, when I look
6 at the imports and I analyze the imports and I see
7 what's on the record, I notice that it's Kyzen. And,
8 in fact, I just heard the closing remarks of counsel
9 and he said, this isn't a case about Kyzen. It's a
10 case about Chinese imports on our business. Well,
11 Chinese imports, they're all or almost all Kyzen
12 imports.

13 The same thing about price, Penn undersold -
14 - once again, just looking at the investigation
15 record, they certainly undersold the Chinese
16 throughout the period of investigation. And so, we
17 see, once again, we don't have a case of underselling
18 by the Chinese here. And we, also, look at the
19 particular document -- this is, again, the brief --
20 and I think it's been referenced a number of times by
21 the Commission here, where it's page 17 of the pre-
22 hearing brief of Penn, and they quote, and it says,
23 "the Commission should note that although the
24 underselling tables in the pre-hearing staff report
25 are correct," I think you should stop right there. In

1 other words, they demonstrate that there's no
2 underselling in the market. But, then, they go on,
3 and say, "the tables are almost wholly irrelevant to
4 the domestic THFA market." To me, that's an
5 admission; that's an admission right here that based
6 upon the facts that have been collected by the staff,
7 that there is no price underselling, no price
8 suppression, no price depression.

9 Now, in every play, there are bit players,
10 and that's really what Penn's argument is all about.
11 It's about bit players. It's about, you know, I don't
12 know, mystery importers. The only importers that we
13 see are All Chem and ARS. And once again, based upon
14 the facts of the record, we can see that they are
15 very, very small numbers. And then, they, also, do
16 this pricing chart, again. You know, they're trying
17 to come up, cherry picking. And, yes, I guess if you
18 do look at the record, you're going to find instances
19 -- if you chose something from over here and something
20 from over there, well, yes, it looks like
21 underselling, unless, of course, you look at the
22 assumptions that underscore that particular chart and
23 realize that those particular assumptions -- and,
24 perhaps, I should answer this on the business
25 proprietary record, because, personally, I have

1 children and I don't think something like this should
2 be on the public record, but there is problems,
3 serious problems with those assumptions.

4 This case is not a tragedy. If you look at
5 the facts of the record, what you will see is that
6 imports of THFA from China are not -- or did not
7 materially injury the domestic industry during the
8 period of investigation and imports of THFA from China
9 will not threaten to cause injury to the domestic
10 industry in the foreseeable future. Thank you.

11 CHAIRMAN OKUN: Thank you. Post-hearing
12 briefs, statements responsive to questions, requests
13 of the Commission, corrections to the transcript must
14 be filed by June 21, 2004; the closing of the record
15 and final release of data to parties is July 8, 2004;
16 and final comments are due July 12, 2004. With no
17 other business to come before the Commission, this
18 hearing is adjourned.

19 (Whereupon, at 3:26 p.m., the hearing was
20 concluded.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Tetrahydrofurfuryl Alcohol from
China

INVESTIGATION NO.: 731-TA-1046 (Final)

HEARING DATE: June 14, 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: June 14, 2004

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: Kyle Johnson
Signature of Court Reporter