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Orders:

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In Opposition to Continuation of Antidumping Duty
Orders:

On behalf of Consolidated Fibers, Inc. (Consolidated
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P R O C E E D I N G S

(9:30 a.m.)

CHAIRMAN KOPLAN: Good morning. On behalf of the United States International Trade Commission I welcome you to this hearing on Investigation Nos. 731-TA-825 and 826 (Review) involving Certain Polyester Staple Fiber From Korea and Taiwan.

The purpose of these investigations is to determine whether the revocation of the antidumping duty orders covering certain polyester staple fiber from Korea and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Notice of investigation for this hearing, list of witnesses and transcript order forms are available at the Secretary's desk. I understand the parties are aware of the time allocations. Any questions regarding the time allocations should be directed to the Secretary.

As all written material will be entered in full into the record it need not be read to us at this time. Parties are reminded to give any prepared nonconfidential testimony and exhibits to the Secretary. Do not place any nonconfidential testimony

1 or exhibits directly on the public distribution table.
2 All witnesses must be sworn in by the Secretary before
3 presenting testimony.

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

8 Madam Secretary, are there any preliminary
9 matters?

10 MS. ABBOTT: No, Mr. Chairman.

11 CHAIRMAN KOPLAN: Very well. Let us proceed
12 with the opening remarks.

13 MS. ABBOTT: Opening remarks in support of
14 continuation of orders will be by Paul C. Rosenthal,
15 Collier Shannon Scott.

16 CHAIRMAN KOPLAN: Good morning, Mr.
17 Rosenthal.

18 MR. ROSENTHAL: Good morning, Mr. Chairman,
19 members of the Commission. Coming as this hearing
20 does right after the start of a new year, I still
21 haven't abandoned my attempts at introspection that a
22 new year brings. Why do we do what we do for a
23 living? Is it self-satisfying? Are we doing anything
24 good with our lives? I won't take today's hearing as
25 an opportunity to provide you all my answers.

1 I will tell you that after 25 years of
2 practicing before the Commission I can say that one of
3 the big gratifications is helping my clients obtain
4 justice which in the ITC context often means
5 representing workers who maintain their jobs and
6 industries who stay in business and, on those rare
7 occasions when I represent importing interests, making
8 sure that the Commission's processes are not abused in
9 any way.

10 I will say that those are the big joys. The
11 smaller joys involve things like going on plant tours
12 and getting to learn about different industries and,
13 of course, getting to read all those wonderful case
14 names that the Commission has. Who could forget such
15 favorites such as Certain Electric Nibblers From
16 Sweden or Operators for Jalousie and Awning Windows
17 From El Salvador or the oxymoronic Brown Fish From
18 Canada.

19 Although the case names are derived directly
20 from the product under consideration, I sometimes
21 think it would be better if the Commission could
22 rename the cases based on the arguments presented. It
23 certainly would help you remember them better.

24 For example, today's case would no longer be
25 called Certain Polyester Staple Fiber From Korea and

1 Taiwan. You'd probably want to rename it Certain Red
2 Herrings From Washington, D.C. I recognize that that
3 term or that name could be used for a lot of cases
4 before the Commission, but it's particularly
5 applicable here.

6 If you review the Respondents' brief,
7 relatively little time is actually spent reviewing the
8 evidence on the record that would be helpful to the
9 Commission in making its decision under the sunset
10 law. That is not surprising because the foreign
11 exporters who would have been in a position to provide
12 relevant information have refused to do so.

13 Recognizing that the record is not helpful
14 to them, Respondents spend most of their time
15 rearguing issues that the Commission has decided in
16 the original investigation. There's nothing wrong
17 with that except in this case they didn't provide any
18 backup argumentation or documentation for their
19 arguments.

20 Most of the Respondents' brief is spent on
21 the issue of price fixing. It is a matter of public
22 record that one company in the domestic industry has
23 admitted that a single employee of that company had
24 fixed prices on textile staple fiber.

25 Although our brief and supporting

1 documentation make clear that the product that was the
2 subject of the conspiracy was not the like product in
3 the sunset review, Respondents' counsel has in effect
4 maligned the people employed in selling this
5 particular product and involved in this particular
6 case. This is wrong and should not be countenanced.

7 As we'll explain in more detail later this
8 morning, the products, the people and the time period
9 involved in that price fixing conspiracy on textile
10 fibers were not the same product, people and time
11 period involved in this proceeding involving the
12 polyester staple for fiberfill.

13 Opposing counsel's allegations and
14 speculation should not be confused with evidence.
15 Those allegations and speculations should not be
16 permitted to obscure the inquiry that the Commission
17 is supposed to be pursuing here, which is what will
18 happen if the antidumping orders are revoked with
19 respect to fiberfill from Korea and Taiwan?

20 This morning we will devote the bulk of our
21 testimony to that question, and the testimony you will
22 hear will explain, based on the evidence, based on the
23 statutory criteria, that revocation of the dumping
24 orders on Korea and Taiwan will result in a
25 continuation of material injury to the domestic

1 industry.

2 Thank you.

3 CHAIRMAN KOPLAN: Thank you, Mr. Rosenthal.
4 I won't hold this against you, but I was one of the
5 counsel that presented the oxymoronic Canadian Brown
6 Fish to the Commission in 1986. I'm sure there was
7 nothing personal in that remark.

8 MR. ROSENTHAL: You didn't get to make up
9 the name, did you?

10 CHAIRMAN KOPLAN: Not the oxymoronic part,
11 no.

12 Madam Secretary?

13 MS. ABBOTT: Opening remarks in opposition
14 to continuation of orders will be by Merritt R.
15 Blakeslee, deKieffer & Horgan.

16 CHAIRMAN KOPLAN: Good morning, Mr.
17 Blakeslee.

18 MR. BLAKESLEE: Good morning. In this
19 sunset review the Commission has not only the
20 opportunity, but an obligation, to correct a
21 longstanding injustice.

22 During at least a part of the period of
23 investigation that led to the Commission's material
24 injury determination and continuing for at least a
25 part of the current period of review, Petitioners

1 colluded to maintain prices for certain PSF above
2 their natural market levels and conspired to allocate
3 customers so as to reduce competition still further.

4 CHAIRMAN KOPLAN: Could you move the
5 microphone a little bit closer to you?

6 MR. BLAKESLEE: Is that better?

7 CHAIRMAN KOPLAN: Yes.

8 MR. BLAKESLEE: Make no mistake about it.
9 There's every indication in the record the antitrust
10 conspiracy did cover certain PSF.

11 Moreover, this antitrust conspiracy was
12 active during the very time that the Commission was
13 engaged and was conducting the original investigation
14 and taking testimony on the conditions of competition
15 in the U.S. market.

16 Nevertheless, Petitioners never disclosed
17 the evidence of the conspiracy to the Commission
18 during the investigation, notwithstanding its
19 importance as a condition of competition during that
20 period.

21 The existence of the antitrust conspiracy
22 only became known in legal proceedings that occurred
23 after the original investigation. Because Petitioners
24 withheld the existence of the conspiracy from the
25 Commission during its original investigation and

1 during the sunset review, there's ample justification
2 for the Commission to revoke the antidumping orders at
3 issue here either as of the end of the sunset POR or
4 ab initio.

5 Should the Commission nonetheless proceed to
6 consider further the facts of the record in this
7 review, it should make the following findings: The
8 Commission's original material injury determination
9 relied heavily on data that appeared to show that
10 subject imports undersold the domestic product during
11 the POI, thereby depressing and suppressing domestic
12 prices.

13 These data are now known to be invalid as
14 they reflect the market distorting effects of unlawful
15 price fixing and customer allocation that raised
16 domestic prices above their natural market level in
17 relation to the prices of subject imports. The record
18 from the original investigation with regard to pricing
19 should therefore be disregarded for the purposes of
20 this proceeding.

21 Moreover, the antitrust conspiracy remained
22 active during at least the early years of the POR.
23 Therefore, the Commission should disregard any
24 evidence of underselling during the period that the
25 conspiracy was active and for the period thereafter

1 necessary for market prices to return to their natural
2 level. Even leaving the antitrust conspiracy
3 completely aside, there's ample record evidence to
4 warrant revocation.

5 The POR pricing data reveal a very mixed
6 pattern of overselling and underselling by subject
7 imports. Much of the so-called underselling during
8 the POR is the result of apples to oranges price
9 comparisons between products that do not in fact
10 compete directly with one another. This is a point
11 that our industry witnesses will address.

12 In addition, the record is replete with
13 evidence that the orders were ineffective and
14 instruments intended to improve the domestic
15 industry's condition. Hence, the revocation would not
16 precipitate further harm to the domestic industry.

17 For example, the dumping margins found in
18 the original investigation were small and diminished
19 further in successive annual reviews. Meanwhile,
20 cumulated subject imports initially increased and
21 later remained steady at or about preorder levels. In
22 other words, there's no correlation between the
23 antidumping margins and the trends of subject imports
24 during the POR.

25 Moreover, shortly after the orders were

1 imposed most owners of the original petitioning
2 companies abandoned production of certain PSF through
3 sales of productive assets, a complete exit of the
4 industry and/or reductions in capacity.

5 Capital spending fell sharply.
6 Notwithstanding, the Petitioners collected some \$20
7 million in Byrd Amendment payments between 2002 and
8 2004. Petitioners' wholesale abandonment of domestic
9 production continues today despite robust and growing
10 apparent consumption and severe supply shortages that
11 are well-documented in the record.

12 Finally, nearly all of the industry's
13 economic indicia trended upward during the POR, and
14 increases in average selling prices have exceeded in
15 increases in the volatile cost of the industry's
16 principal raw materials, yet the industry's
17 profitability during the POR fell to well below the
18 levels reported in the original investigation.

19 In sum, this industry has been unable to
20 sustain a reasonable level of profit under conditions
21 of expanding demand, shortage of product, recent
22 declines in the cumulated volume of subject imports,
23 prices rising at a higher rate than cost increases,
24 competition from fairly traded imports and Byrd
25 Amendment refunds. This has occurred --

1 CHAIRMAN KOPLAN: Excuse me, but your time
2 has expired.

3 MR. BLAKESLEE: Okay.

4 CHAIRMAN KOPLAN: Are you just about
5 finished?

6 MR. BLAKESLEE: I'm just about finished.

7 CHAIRMAN KOPLAN: All right.

8 MR. BLAKESLEE: Okay. Thank you. This has
9 occurred because the industry declined to reinvest,
10 not because of subject imports.

11 In light of the foregoing, the Commission
12 has ample grounds to vote for revocation of the
13 antidumping orders covering certain PSF from Korea and
14 Taiwan.

15 Thank you.

16 CHAIRMAN KOPLAN: Thank you.

17 Madam Secretary?

18 MS. ABBOTT: The first panel in support of
19 continuation of orders, please come forward and be
20 seated. The witnesses have been sworn.

21 (Witnesses sworn.)

22 CHAIRMAN KOPLAN: Thank you, Madam
23 Secretary.

24 While that's occurring I'd like to
25 acknowledge the presence of a rather large contingent

1 from American University. I understand you're in the
2 undergraduate school taking international business and
3 trade. Welcome.

4 I assume none of you are going to be
5 offering testimony this morning, but we're glad to
6 have you with us and hope you can stay for a good part
7 of the proceeding. Thanks for coming.

8 You may proceed, Mr. Rosenthal.

9 MR. ROSENTHAL: Good morning again. Our
10 first witness this morning will be Jonathan McNaull.

11 MR. MCNAULL: Good morning.

12 CHAIRMAN KOPLAN: Good morning.

13 MR. MCNAULL: Are you guys able to hear me?

14 CHAIRMAN KOPLAN: Now I can.

15 MR. MCNAULL: Okay. Thank you. Members of
16 the Commission, Commission staff, ladies and
17 gentlemen, my name is John McNaull, and I am the
18 Fibers Business Director for DAK Americas.

19 I would like to talk to you today about my
20 company's production of certain polyester staple fiber
21 for fiberfill and other nonwoven applications and the
22 market for these products in the United States. I'll
23 also discuss the importance of keeping the orders on
24 imports of PSF for Korea and Taiwan in place, given
25 the very challenging business environment that the

1 domestic industry is now facing.

2 Although I've been in my current position
3 with DAK for only nine months, I have 13 years of
4 experience in the polyester staple fiber business.
5 I've not only worked as an engineer in the
6 manufacturing process for polyester staple, but also
7 in every aspect of the business from technical
8 marketing, sales and marketing, supply chain
9 management, before assuming the role as the Fibers
10 Business Director.

11 I'm very familiar with the dynamics of the
12 PSF market in the United States and in particular the
13 market that DuPont was active in which migrated into
14 DAK Americas. As you recall, DuPont was a Petitioner
15 in the original case in 1999.

16 DuPont entered into the DuPont-Akra
17 polyester joint venture in 1999 as well by formally
18 partnering with Alfa, a Mexican conglomerate that had
19 over a 25 year relationship and history with DuPont in
20 Mexico and several industries, including Fibers. In
21 April 2001, Alfa acquired DuPont's remaining shares in
22 this joint venture. The final step in our company's
23 current history resulted in the consolidation into one
24 company called DAK Americas in November of 2004.

25 The subject deniers we manufacture today in

1 our facilities represent about 20 percent of DAK's
2 total polyester staple fiber business. At our
3 manufacturing facility in Wilmington, North Carolina,
4 we have shut down a manufacturing line due to lack of
5 orders for our PSF products. At other points during
6 the past five years we've also had to temporarily shut
7 down another line for the same reason.

8 As you might conclude from the restructuring
9 and retrenchment described above, it has been a tough
10 market environment for the U.S. PSF business since the
11 orders were put in place. We were initially
12 encouraged by the antidumping duties placed on imports
13 from Korea and Taiwan in mid 2000. Unfortunately,
14 although import volumes declined, the imports from
15 Korea and Taiwan stayed in the market to a significant
16 extent. In addition, new import sources arrived, so
17 we're still unable to raise our prices sufficiently to
18 completely cover our cost.

19 Because polyester staple fiber is a
20 commodity product, imports gain and maintain share by
21 offering customers lower price. My day-to-day work
22 entails deciding, together with the sales staff,
23 whether we want to lower our regular price on many of
24 our sales to meet the low import prices.

25 In many cases we make the decision to meet

1 those prices for two reasons. First, we want to hold
2 onto our customers to maintain market share, and
3 secondly because we're in a capital and energy
4 intensive business we're required to maintain high
5 operating rates to realize competitive efficiencies.

6 If we do not run these production lines at
7 optimal efficiency, unfortunately we're forced to shut
8 them down. That's what we've had to do with our
9 fourth line production in Wilmington, North Carolina.
10 Unfortunately, there's no tinkering with the capacity
11 to cut back production marginally if you lose a few
12 customers or suddenly are short of orders on one of
13 these production lines.

14 These economies naturally affect not only
15 U.S. producers, but the Korean and Taiwanese producers
16 as well. Once they have built their huge capacities
17 far in excess of what their downstream markets
18 require, they had to export the excess they produced.
19 In fact, combined with the duties on the Korean and
20 Taiwanese products in Europe and other markets, this
21 is what keeps the imports coming here at the low
22 prices we're forced to meet.

23 As if this business condition was not
24 challenging enough, not long after the orders were
25 imposed we began to get reports that PSF from China

1 was becoming available in the United States market.
2 Again, because we're talking about a commodity
3 product, the new supplier attempted to gain a foothold
4 here by offering the product below even the Korean and
5 Taiwanese prices.

6 Chinese producers have been spectacularly
7 successful with this strategy as China has gained
8 market share rapidly in the United States competing
9 across all deniers and finishes. In fact, China today
10 is the largest source of imported certain PSF in the
11 United States market, and it's also one of DAK's key
12 competitive problems.

13 As part of DAK's strategy and commitment to
14 the U.S. market, we have increased production and
15 shipments since our creation, but only at the cost of
16 matching low price levels of these import sources with
17 the predictably negative effect on our profitability
18 in the PSF segment.

19 We shudder to think what price levels would
20 be today if the giant productive capacities of Korea
21 and Taiwan were allowed to quote prices and sell
22 products without the dumping orders in place. In my
23 opinion, although Korean and Taiwanese imports and
24 prices continue to hurt us, without the orders their
25 sales and prices would have mimicked those of Chinese

1 producers with the result that we would not be here
2 today.

3 Our continued frustration at DAK is that
4 when we bought out DuPont in 2001 we got the
5 fundamentals of the market right. We had reasoned
6 that the PSF was going to enjoy generally expanding
7 markets in the years ahead as the housing sector in
8 the United States would stay healthy and furnishings,
9 bedding and other home consumer products that contain
10 PSF would be in continued demand.

11 It's not a question of demand. It's the
12 question of who gets to satisfy that demand that
13 counts for DAK Americas. The market problem of dumped
14 imports from Korea and Taiwan now compounded by the
15 unprecedented rise in the Chinese presence in the U.S.
16 PSF market has left DAK and other U.S. producers in a
17 weakened condition, having suffered losses or minimal
18 profitability for years.

19 To allow our industry a chance to deal with
20 the new challenges of the Chinese PSF producers and
21 their pricing practices, the current duties on the
22 proven unfair trades in the market on Korea and Taiwan
23 must be maintained.

24 Thank you.

25 MR. ROSENTHAL: Our next witness is Ms.

1 Gisela Katz from Wellman. I just want to add at the
2 outset that Ms. Katz was involved in the original
3 investigation and prepared the questionnaire response
4 for Wellman then and in this sunset review.

5 MS. KATZ: Good morning. My name is Gisela
6 Katz, and I'm a Manager of Market Planning at Wellman,
7 Inc. I have been with Wellman for 16 years, first in
8 the Strategic Planning area and then in the Fiber and
9 Recycled Products Group.

10 Prior to that I was with Celanese and Fiber
11 Industries, companies that subsequently became part of
12 Wellman, so I have been in the fiber business for
13 about 20 years.

14 Wellman is the largest producer of polyester
15 staple fiber in the United States with operations in
16 Europe as well. We produce certain polyester staple
17 fiber from both virgin and nonvirgin inputs. Based on
18 our use of different input materials to manufacture
19 the subject PSF, I would like to address some of the
20 product issues raised by Respondents in this review.

21 Respondents tried unsuccessfully to convince
22 the Commission during the original investigation and
23 continued to argue here that there is some fundamental
24 difference between polyester staple fiber made from
25 virgin inputs as compared to nonvirgin inputs.

1 Respondents also argued before, and continue
2 to argue there that there's a difference between the
3 nonvirgin inputs used for producing PSF imported from
4 Korea and Taiwan and the nonvirgin inputs used by the
5 domestic industry.

6 Nothing has changed since the Commission's
7 original investigation, and there continues to be no
8 difference between the end products made from virgin
9 or nonvirgin inputs either in the United States, Korea
10 or Taiwan. The raw material inputs are all identical,
11 whether the PSF is produced in Korea, Taiwan or the
12 United States. The end products are also
13 interchangeable with each other and with subject
14 imports.

15 We may hear the terms recycled or
16 regenerated staple fiber, but they refer to the same
17 PSF product made from nonvirgin inputs. Nonvirgin
18 inputs are comprised of postindustrial waste and
19 postconsumer waste, as your staff saw during a recent
20 tour of our Johnsonville facility. PSF can also be
21 manufactured from blends of virgin and nonvirgin
22 inputs.

23 I think it's important to mention something
24 that the Commerce Department found during the original
25 investigation that is pertinent to product issues in

1 this sunset review. At verification in Taiwan,
2 Commerce found that a major Taiwanese producer
3 referred to all nonvirgin inputs as waste and that it
4 used the terms recycled and regenerated
5 interchangeably.

6 Commerce also conducted verification of two
7 Korean Respondents, which both produced staple fiber
8 exclusively from nonvirgin materials. These companies
9 reported to Commerce that their raw material inputs
10 include fiber waste, filament waste, popcorn chips,
11 polyester lumps and off-grade chips. These raw
12 materials, which have various names, are the same ones
13 that Wellman uses to produce its PSF at its
14 Johnsonville facility. There's absolutely no
15 difference in the nonvirgin raw materials used by the
16 U.S. producers and by the foreign producers.

17 As the Commission found in the original
18 investigation, imports are not junk and are not
19 noncompeting, low quality products as the Respondents
20 would have the Commission believe.

21 Purchasers of certain polyester staple fiber
22 are interested in the physical characteristics of the
23 fiber, not the raw materials from which it is
24 produced. Those characteristics include cross-
25 section, fiber length, denier and finish applied to

1 the fibers. These specifications are listed on our
2 invoices for PSF sales, as well as on the label of the
3 package of staple fiber that is shipped to the
4 customer. There is no indication of the raw materials
5 used to produce the product on our invoices or
6 packaging.

7 Also PSF sold by Wellman, whether made from
8 virgin or nonvirgin inputs, is sold as the same
9 product for the same uses. Regardless of input
10 material, certain polyester staple fiber is considered
11 a commodity product and is sold on the basis of price.

12 Our customers are concerned with buying PSF
13 that meets their basic needs at the best price,
14 whether it be a certain denier range, cross-section,
15 finish or length. Once they know they're getting the
16 specifications they requested, they're interested in
17 the lowest possible price for the product they need.

18 If the orders are revoked, there is no doubt
19 that Wellman will lose additional sales and
20 profitability on the basis of lower prices offered by
21 subject imports.

22 As we reported in our questionnaire
23 response, imports from Korea and Taiwan compete
24 strictly on price, and price and operating margins are
25 sacrificed for market share. If the antidumping

1 duties are removed on imports of PSF, the price of
2 imports will decline while demand for the imports will
3 increase, putting severe price pressure on
4 domestically manufactured PSF.

5 Respondents also imply that their sales
6 practices are different from those of the U.S.
7 producers. Again, this claim is not true. Polyester
8 staple fiber is sold by importers and domestic
9 producers in the U.S. market primarily on the basis of
10 spot sales and short-term contracts.

11 The short-term nature of these sales makes
12 it very easy for our customers to switch suppliers.
13 The problems of spot sales and short-term contracts
14 would permit subject imports to re-enter the United
15 States quickly and regain market share.

16 I would also like to address Wellman's
17 vulnerability caused by market conditions that have
18 occurred since the orders were issued, including
19 increasing cost. There has been a general rising
20 trend in raw materials, energy and transportation
21 costs in recent years.

22 These increased costs have required us to
23 raise the selling price of certain polyester staple
24 fiber, but we have had great difficulty passing all
25 these higher expenses to our customers. As a result,

1 the increased prices are occurring without really
2 improving the profit margins on these products.

3 In the past, when faced with rising raw
4 material costs Wellman has shifted production between
5 virgin and nonvirgin inputs if the cost of one rises
6 relative to the other. In recent years, our costs
7 have increased for both virgin and nonvirgin raw
8 materials, so we no longer have this flexibility.

9 Wellman has made great efforts to reduce its
10 cost and remain competitive over the past five years.
11 In an effort to survive, we announced several cost-
12 cutting measures that included a reduction in the
13 levels of management, plant closings and employee
14 layoffs.

15 Wellman closed its Marion plant in 2002,
16 resulting in the elimination of 43 jobs. Most
17 recently in the second quarter of 2005 a substantial
18 portion of our Johnsonville facility was shuttered,
19 resulting in the loss of 50 jobs. Including job
20 losses associated with other cost reduction programs
21 at our Johnsonville facility, we have reduced the
22 total number of PSF employees at that site by 260
23 workers, about 40 percent.

24 It is not optimal from our company's vantage
25 or for morale to eliminate jobs of dedicated workers,

1 but we had no choice. At a tenuous time like this,
2 the removal of the orders would have a harmful
3 financial effect on Wellman and the industry as a
4 whole.

5 As you can see from the financial data, our
6 industry has suffered losses for many years. It has
7 earned a very small operating profit in interim 2005
8 for the first time in many years. Unrestrained,
9 unfair imports from Korea and Taiwan would cause that
10 profit to fall back to a loss very quickly. Wellman
11 would also be forced to shut down additional PSF
12 production lines and further reduce our workforce.

13 It is heartbreaking for us to shut down
14 operations that could easily be up and running, but
15 when the plant becomes cash negative we are forced to
16 make these difficult decisions. Wellman has publicly
17 stated that if our plants manufacturing certain PSF
18 suffer negative cashflow we will either shut them down
19 or convert the equipment at these facilities where
20 possible to manufacture products other than PSF.

21 There is no doubt that if low-priced imports
22 gain additional U.S. market share and our operating
23 margins are further reduced we will be forced to
24 completely shut down our Johnsonville facility in the
25 near future because there are limited opportunities to

1 use these assets to produce other products. This
2 would have a significant impact on the local community
3 in Johnsonville where Wellman is one of the major
4 employers.

5 It is critical to our company and the
6 livelihood of our workers that the current orders
7 remain in place. Thank you.

8 MR. ROSENTHAL: I'll be our next witness,
9 and I want to address the allegation of price fixing,
10 the unfounded allegations of price fixing on the
11 subject merchandise that the Respondents have made.

12 The two importers, Consolidated Fibers and
13 Stein Fibers, rely heavily on a price fixing
14 conspiracy involving textile fibers to have the
15 Commission disregard or would have the Commission
16 disregard virtually all the findings in the original
17 investigation and disregard data collected in this
18 review as well.

19 As documents presented in our prehearing
20 brief demonstrate, the conspiracy involved price
21 fixing on commodity textile staple fiber and
22 allocation of large textile mill customers. That case
23 involved a different domestic industry and did not
24 involve or implicate the like product under review,
25 certain polyester staple fiber of three denier or

1 greater known generally as fiber for fill, which for
2 shorthand I refer to and I think others do as
3 fiberfill.

4 The 2001 textile fibers conspiracy is no
5 more relevant to the Commission's analysis in this
6 sunset review than would be the price fixing in the
7 ferrosilicon. Consequently, the importers' contention
8 that this textile fiber conspiracy taints any of the
9 data in this case is baseless.

10 Now, the importers have submitted numerous
11 pages purporting to document price fixing by U.S.
12 producers during the original investigation that they
13 changed continued into this review period. Not
14 content to simply levy an unfounded charge, the
15 importers have created from whole cloth, if you will,
16 an elaborate tale asserting that the U.S. industry:

17 (1) purposely concealed the price fixing
18 conspiracy from the Commission for the past six or
19 seven years; (2) Filed the original antidumping
20 petition as part of a larger price fixing conspiracy;
21 and (3) used the coordinated effort of price fixing
22 and the imposition of the antidumping orders to secure
23 price increases in the market for certain PSF.

24 The importers' tale ends, at least insofar
25 as their brief is concerned, with the postorder import

1 volumes rising while the conspiracy was in effect and
2 import volumes declining as the price fixing
3 conspiracy allegedly collapses in 2001. That's their
4 argument, and not one of those assertions has any
5 basis in fact.

6 I ask you to consider the source literally.
7 Aside from the Respondents, no other purchasers would
8 be adversely affected by a conspiracy, by having to
9 pay higher prices extracted by the conspirators, have
10 raised the issue of price fixing. Indeed, some of the
11 purchasers submitting questionnaire responses in this
12 review were targeted by the textile fiber
13 conspirators, but have made no link between that
14 conspiracy and this case.

15 The importers' specious claims result solely
16 from a desire to see their orders revoked and have
17 nothing to do with concerns about price fixing.
18 Indeed, the price fixing investigation has been public
19 since 2002. If the importers truly believed their
20 prices for the like product were fixed, they would
21 have notified the Commission immediately.

22 Instead, the importers, hoping to gain some
23 advantage and cloud the record in this review, charge
24 that the Petitioners concealed the same price fixing
25 conspiracy that the importers themselves ignored for

1 years and only now cite the public documents in 2003
2 as evidence that allegedly has come to light during
3 this sunset review proceeding.

4 In fact, we find it ironic that the
5 importers have raised the price fixing issue in this
6 case without mentioning the Korean Fair Trade
7 Commissioner's price fixing conviction and resulting
8 fines of 12 Korean producers of polyester staple
9 fiber. We don't know whether the Korean price fixing
10 case involved fiberfill, but we do know that the
11 conditions extended to export pricing by these 12
12 Korean producers.

13 Stein and Consolidated Fibers, who are
14 longstanding importers and have strong ties to Korean
15 producers, undoubtedly have known about this matter
16 for a long time and have not brought it to the
17 Commission's attention.

18 Now, in our prehearing brief we explained
19 the 2001 price fixing case in the U.S. involved
20 efforts by a company to fix commodity textile prices
21 for first quality, fine denier staple fiber, which is
22 nonsubject merchandise sold to large textile mills.

23 No party has ever argued, either in the
24 original investigation or in this case, that the like
25 product definition should encompass fine denier staple

1 fiber. That is as it should be as fine denier staple
2 fiber is sold into a different market with different
3 end uses.

4 The textile fibers conspiracy focus on large
5 textile mills that possess great leverage in the
6 negotiations with suppliers which allowed the textile
7 mills to unilaterally beat back announced price
8 increases. The conspirators focus on the fine denier
9 fiber specifically because of the limited number of
10 suppliers, the absence of alternative supply sources
11 such as imports and the traditional loyalty of certain
12 customers known as house accounts. In contrast, the
13 market for fiberfill has numerous suppliers, including
14 many import sources, basically preventing price
15 fixing.

16 Now, we presented to the Commission a
17 confidential document that was created not for
18 purposes of this investigation, this sunset review,
19 but involved the criminal case. It explains to you
20 exactly what was going on in the mind of the primary
21 conspirator in that case. It was created not in
22 connection with this. It is I think very probative
23 evidence of what the target was of the conspiracy and
24 what product the conspiracy related to.

25 Now, interesting enough I was never in the

1 mind of the conspirator and didn't know about it until
2 after this investigation began, but one of the things
3 that's quite clear is that the conspirator never even
4 envisioned trying to fix prices in the polyester
5 fiberfill industry in part because of people like
6 Stein Fibers and Consolidated Fibers and many other
7 entrants to the market. It was just a market that was
8 not susceptible to price fixing.

9 By the way, this case is not about what the
10 conspirators could have or might have or would have
11 done had they had the chance. It is was there a
12 conspiracy involving this particular product, and the
13 answer, based on the evidence in the record, is no.

14 Now, the importers cite what they call
15 striking and highly relevant parallels between the
16 textile fibers conspiracy and the Commission's
17 reconsideration determination in the Ferrosilicon
18 case. Even if one wrongly assumed that the textile
19 fibers conspiracy encompassed the like product, the
20 importers' claim of striking parallels is still
21 incorrect.

22 In the Ferrosilicon case, the Commission
23 found that the three domestic producers representing a
24 substantial majority of U.S. production pled guilty to
25 or were criminally convicted of price fixing. In

1 contrast, in the textile fibers conspiracy a single
2 U.S. producer, KoSa, and a single employee of KoSa
3 pled guilty. No other criminal convictions occurred,
4 and the Justice Department has closed the
5 investigation. At no time did KoSa ever account for a
6 majority of U.S. production of fiberfill.

7 The Commission also found that the
8 ferrosilicon conspiracy overlapped much of the
9 original investigation period. The criminal
10 conviction secured in the textile fibers conspiracy
11 encompassed a period from September 1999 through
12 January 2001, just four months of the final 36 month
13 investigation period which was 1997 through 1999 in
14 this case, and about one year in the five year sunset
15 review period.

16 In addition, in the Ferrosilicon case the
17 Commission found that in many instances the same
18 industry officials that participated in or were
19 knowledgeable about the ferrosilicon conspiracy also
20 provided inaccurate and misleading information to the
21 Commission, including incorrect certificates of
22 accuracy and testimony under oath.

23 In contrast, no individual convicted in the
24 textile fibers conspiracy provided testimony to the
25 Commission in this case. I went back one more time to

1 review the original investigation. All of the
2 witnesses that we had before you in the final
3 investigation in this case were not involved or
4 implicated in the textile fibers conspiracy.

5 Mr. Burmish, who was the Wellman witness,
6 unfortunately could not be here today, but Ms. Katz,
7 who was very much involved in that original
8 investigation who filled out the questionnaires and
9 attested to their accuracy, is here today.

10 As I said at the outset, I think it's an
11 insult to those people who participated in this
12 original investigation in a thoughtful and honest way
13 to be tarred with the work of the conspirators in the
14 textile case.

15 This case does have striking parallels to
16 another case not cited by the importers involving
17 Silicomanganese From Brazil. That's never mentioned
18 by opposing counsel. In that case an importer
19 requested that the Commission draw adverse inferences
20 against some of the same companies convicted in the
21 Ferrosilicon case. The Commission correctly rejected
22 that request, finding that there had been "no Justice
23 Department investigation and certainly no conviction
24 for price fixing in the market for silicomanganese."

25 Similarly, there have been no price fixing

1 or market allegation investigation or convictions
2 related to the like product in this review, which is
3 the polyester staple fiber for fiberfill applications.

4 The importers allege that the Petitioners'
5 failure to notify the Commission of the textile fibers
6 conspiracy is a fundamental affront to the
7 administrative process that undermines both the
8 original imposition of the orders and the review
9 process.

10 The importers then request that the
11 Commission rescind the orders ab initio or, in the
12 alternative, revoke the orders in this review based on
13 allegedly corrupted information supplied by
14 Petitioners in these proceedings. As the textile
15 fibers conspiracy did not involve the like product
16 here, the Commission should simply reject the
17 importers' base of allegations.

18 According to the importers, Petitioners have
19 concealed evidence because in the Ferrosilicon case
20 the principal Petitioners went through public files
21 which led to convictions and hence numerous public
22 exhibits were available for submission, whereas in
23 contrast KoSa entered into a plea agreement and
24 Justice does not comment on ongoing investigations.

25 A few responses leap to mind. First, as

1 noted in our prehearing brief, the Justice Department
2 has concluded its criminal investigation, so no other
3 indictments will occur. Second, the plethora of
4 public information in Ferrosilicon resulted because
5 three domestic producers representing a substantial
6 majority of production were criminally convicted, two
7 through lengthy criminal trials and other via plea
8 agreement.

9 In the textile fibers conspiracy, only KoSa
10 was criminally convicted, and there was an acquittal
11 involving another person. The alleged lack of public
12 information of which the importers complain is not
13 because of KoSa's decision to plead guilty, but is
14 because it was the only company that was found guilty
15 or pled guilty, and that represented only a minority
16 of production.

17 The importers' claim that Petitioners have
18 shielded information from public disclosure in the
19 civil investigation is equally inaccurate. The DAK
20 settlement agreement submitted by the importers shows
21 that fiberfill was specifically excluded from that
22 agreement.

23 Nan-Ya and Wellman took a different
24 strategic approach in settlement. No agreements were
25 submitted to the Commission, but while the settlements

1 don't affirmatively exclude fiberfill they try to in
2 effect insulate themselves from other lawsuits by
3 trying to make the settlement as broad as possible.
4 This is not an attempt to shield information from the
5 Commission. It's an attempt to get those
6 investigations behind them and not be the subject of
7 more lawsuits.

8 In those settlement agreements, the domestic
9 producers quite appropriately state that they do not
10 admit to any wrongdoing and are settling to avoid
11 future business disruption. By the way, the civil
12 settlements are not anything like a criminal
13 conviction and cannot form the predicate for adverse
14 inferences even when the like product is encompassed
15 broadly by such settlements.

16 Let me just say one last thing in conclusion
17 and that is as you know, my law firm comes before the
18 Commission regularly. This is where we earn our
19 living. We have as much an interest in having the
20 processes of this Commission be fair and be perceived
21 as fair and not be abused as anybody else.

22 We want this Commission to be able to rely
23 on the data it receives, and if anyone commits a fraud
24 on the Commission we want you to throw the book at
25 them. That is our interest. In fact, in other cases

1 we've argued you should be tougher on certain parties
2 who don't supply you with full and accurate
3 information and will make some arguments a little
4 later this morning about why we think you should make
5 some adverse inferences against the Korean
6 Respondents.

7 If we believed that our clients had lied to
8 us and committed a fraud upon us, we would feel
9 obligated to come to the Commission and tell you that.
10 I believe that's the obligation of every attorney who
11 appears before this Commission.

12 I feel confident, knowing our witnesses from
13 the previous investigation, that that did not happen
14 with respect to the products here. That is why we're
15 happy to have Ms. Katz testify. Unfortunately, a lot
16 of people who were around for the original
17 investigation are no longer in these companies, so
18 they are not available.

19 I believe that every one of us takes
20 seriously the need for the Commission to be able to
21 rely on the accuracy of the information it receives
22 and feel very strongly that you have the right
23 certainly to inquire about that and to get to the
24 bottom of what information is submitted to you.

25 With that, I'll close. I know you have more

1 questions. I want to turn to our next witness, who
2 will be Ms. Cannon.

3 MS. CANNON: Good morning. I'm Kathleen
4 Cannon from Collier Shannon Scott, and I'd like to
5 address very briefly a couple of more mundane legal
6 issues presented to the Commission here.

7 First, cumulation. Record evidence strongly
8 supports cumulating imports from Korea and Taiwan in
9 this review. Indeed, Respondents have not even argued
10 against cumulation in their briefs.

11 The continued presence of significant
12 volumes of subject imports in the U.S. market during
13 the review period, selling at prices that often
14 undercut U.S. prices and the ability of the subject
15 producers to increase exports to the United States to
16 an even greater degree if revocation occurred indicate
17 that there will be a very discernable adverse impact
18 from imports from both Korea and Taiwan if these
19 orders are revoked.

20 As to the cumulation factors, similar
21 evidence to that supporting the Commission's decision
22 to cumulate imports in the original investigation
23 supports a cumulative approach in the sunset review.
24 As Ms. Katz testified, there is no physical difference
25 between PSF whether produced from virgin or nonvirgin

1 input, and the end uses of both are the same.

2 Purchasers responding to Commission
3 questionnaires confirm the comparability of PSF from
4 subject countries and from the United States.
5 Further, all PSF is sold through a common distribution
6 channel, primarily to end users, is sold in common
7 geographic markets and has been simultaneously present
8 in the U.S. market throughout the review period.

9 Finally, common competitive conditions
10 shared by the imports, including their export
11 orientation, their maintenance of large capacities to
12 produce PSF and their continued sales of significant
13 volumes of PSF to the United States at low prices over
14 the review period support a cumulative approach in
15 this case.

16 The second legal issue I will address is
17 market segmentation. Although Respondents have not
18 expressly requested the Commission to undertake a
19 segmented market analysis here, they have urged the
20 Commission to recognize alleged "material differences"
21 between different types of PSF, including conjugate
22 PSF and regenerated PSF.

23 In their brief, Respondents cite to
24 purchaser questionnaire responses submitted in the
25 original investigation to support their claims that

1 conjugate and regenerated PSF are not interchangeable
2 with other types of PSF.

3 In the original case, however, based on
4 these exact purchaser responses and other record
5 evidence, the Commission found no material differences
6 between the different types of PSF. In particular,
7 the Commission found Respondents had failed to
8 identify any significant market segment or end use
9 served by either of these types of PSF that was not
10 also served by other PSF.

11 Respondents have cited to no new evidence
12 that would alter that conclusion. As Ms. Katz
13 testified, subject imports and U.S. produced PSF of
14 all types compete directly for sales in the U.S.
15 market.

16 The final legal issue I'll address is the
17 use of adverse inferences. The statute is clear in
18 authorizing the Commission to rely on adverse
19 inferences in reaching its decision where parties fail
20 to cooperate. Nonetheless, in most cases where
21 parties refuse to submit responses to questionnaires
22 or otherwise participate the Commission has simply
23 used the facts that are available in a relatively
24 neutral fashion to reach its decision.

25 In at least one case with very similar facts

1 to those presented here, however, the Commission has
2 recognized that the use of adverse inferences is
3 appropriate. In Polychloroprene Rubber From Japan,
4 the sole Japanese Respondent who initially stated it
5 would fully participate in the review, leading the
6 Commission to conduct a full sunset review, later
7 withdrew from the case and refused to submit a
8 questionnaire response.

9 Under those facts, the Commission stated it
10 was taking an adverse inference against the Japanese
11 producer in selecting from the facts otherwise
12 available and was relying upon the higher Japanese
13 capacity figures available in that record.

14 Here, the Korean producers stated they would
15 participate, but they later withdrew from this case.
16 Although one Korean producer has belatedly submitted a
17 response after our briefs were filed, the major
18 producer in Korea, Huvis, that stated it would
19 participate has failed to even respond to the
20 questionnaire. The major Taiwanese producer, Far
21 Eastern, also has not replied to Commission
22 questionnaires.

23 Information the Commission has received from
24 the foreign producers in Korea and Taiwan as a whole
25 on key facts such as capacity, capacity utilization

1 and exports is extremely limited. Under those facts,
2 the Commission should use the approach taken in the
3 Poly Rubber case. It should not merely use the facts
4 available in a neutral fashion, but should use adverse
5 inferences against the nonresponding producers.

6 The use of adverse inferences is not only
7 authorized expressly by the statute, but was approved
8 by the Federal Circuit in the Matsushita case cited in
9 our brief. There the Court found that in the absence
10 of evidence on foreign production capacity and other
11 key variables it had requested the Commission was
12 fully entitled to infer incentives or motivations to
13 increase exports on the part of the nonresponding
14 party.

15 Only by taking adverse inferences in
16 selecting from among available facts can the
17 Commission send notice to foreign producers here that
18 they will not be rewarded for their noncooperation.

19 Thank you.

20 MR. ROSENTHAL: Our next witness is Pat
21 Magrath.

22 MR. MAGRATH: May I have a time check, Madam
23 Secretary?

24 MS. ABBOTT: If I can subtract, 24 minutes
25 left.

1 MR. MAGRATH: Okay. Thank you.

2 Good morning, Mr. Chairman, members of the
3 Commission, ladies and gentlemen. My name is Patrick
4 Magrath of Georgetown Economic Services. With me
5 today from GES is Gina Beck.

6 I'm going to speak to some of the conditions
7 of competition in the U.S. market for certain
8 polyester staple fiber that is the subject of this
9 case and the likely volume effect of imports from
10 Korea and Taiwan that would be triggered with the
11 sunset of the duties. Gina will talk about the likely
12 and damaging effects of the import prices and the
13 negative impact on the industry if the orders are
14 terminated.

15 The competitive factors the Commission looks
16 at in every case revolve around the demand and the
17 supply in the market. Let's take demand first because
18 overall demand, the trend in consumption, the level of
19 consumption, is the only factor in the entire market
20 environment that is arguably a plus for the domestic
21 industry.

22 Our companies, Respondents' brief and your
23 questionnaire responses all agree that the overall
24 demand has been healthy and will continue to be so in
25 the future primarily due to the continued strength of

1 the U.S. economy in general and the housing sector in
2 particular.

3 That is where the positive background
4 factors begin and end for this industry. Certainly
5 the strong and linear increase in demand in the
6 original period of investigation did little to help
7 the domestic industry, which the Commission determined
8 to be materially injured in the 1997-1999 period.

9 It has not helped this industry in the
10 review period in which the industry has suffered
11 operating losses in each year from 2000 to 2004. In
12 fact, the healthy demand over the eight year period
13 only serves to put the U.S. industry's declining and
14 unprofitable performances into greater relief.

15 Other background facts on the record -- the
16 numerous changes in ownership, asset sales,
17 bankruptcies, capacity shutdowns -- are all
18 corroborative points further demonstrating the
19 vulnerable state of this industry, which Gina will
20 speak to.

21 The healthy demand begins and ends the good
22 news, as we've said. The bad news starts with who
23 gets to satisfy that demand. Thus, if we turn to the
24 supply factors in this review investigation we find
25 there a full explanation for why this industry has not

1 been able to make profits for the last five years
2 despite the imposition of antidumping duties.

3 Those negative supply factors can be summed
4 up in one word. Imports. Imports, first of all, from
5 unfair traders, Korea and Taiwan, which although
6 restrained somewhat by the orders have retained a
7 significant presence in this market.

8 Second, imports from third country sources,
9 particularly China. In fact, in the review period,
10 third country imports of PSF increased 128 percent.
11 These additional imports include imports from China,
12 the volume of whose imports went from virtually
13 nothing when the duties were imposed to, as of today,
14 the largest single import source of certain PSF in the
15 U.S. market with the lowest average unit values.

16 Of course, the Commission has heard about
17 the China factor before in the sunset context.
18 Suffice it to say that in this case, although sunset
19 proceedings are by their nature prospective, there's
20 nothing prospective about China's current large
21 presence in the U.S. market.

22 As if its direct impact were not enough to
23 this beleaguered U.S. industry, there is the indirect
24 but no less threatening development that as China
25 extends its own indigenous capacity to produce certain

1 PSF exports to China from the subject countries, Korea
2 and Taiwan, will be displaced and that excess
3 production will be seeking another outlet.

4 In fact, exports from Korea and Taiwan to
5 China, as the data at Exhibit 7 of our brief show,
6 have already dropped substantially in 2004 and again
7 in the most recent period, 2005. With trade
8 restrictions already in place in many major consuming
9 markets, that excess production will certainly come to
10 the United States, especially if it is invited to do
11 so by a termination of the orders.

12 The nature of the polyester staple fiber
13 product and market greatly facilitates these supply
14 factors relating to imports. First, polyester staple
15 fiber for fiberfill and other nonwoven applications is
16 a commodity product sold primarily on the basis of
17 price. What does this mean? In these proceedings it
18 means that certain PSF sold by one manufacturer is
19 interchangeable with that sold by another.

20 Besides offering a lower price, there is
21 little that distinguishes subject PSF from one
22 supplier over that offered by another, be it domestic
23 or foreign. Your purchaser questionnaires corroborate
24 this.

25 How does a supplier gain sale and share in

1 this market for this fungible product then? You offer
2 a lower price. How can a supplier keep a customer
3 that has been offered this lower price? He matches
4 that price or is forced to offer a lower one.

5 This interchangeability among subject PSF
6 from whatever source and the decision by suppliers to
7 distinguish their products by the only real route that
8 is available to them -- lower prices -- begins and
9 maintains the cycle of underselling by imports,
10 dumping and the response of price suppression or
11 depression by U.S. competitors with predictably
12 injurious consequences on profitability and industry
13 health.

14 These facts fit the U.S. market for the
15 subject products as the Commission correctly
16 determined five years ago when it found the domestic
17 and imported products to be fungible and directly
18 competitive and also cited the opinions of producers
19 and purchasers of certain PSF as to the broad
20 comparability of U.S., Korean and Taiwanese fiber for
21 all product characteristics.

22 Finally, the ITC noted in its original
23 investigation that on the issues of fungibility and
24 competition purchasers acknowledged that price was an
25 important variable in purchasing decisions and indeed

1 that price was the only advantage that subject imports
2 had over the domestic product.

3 It's five years after the Commission made
4 those observations, but these market facts, the
5 fungibility of PSF products from whatever source, the
6 mechanism of price as the only real way a supplier can
7 improve its sales and share, these haven't changed.

8 In 2005, purchasers' questionnaires still
9 stated that price was an important variable in
10 purchasing decisions and that certain PSF from
11 domestic and other sources is generally
12 interchangeable and that the only competitive
13 advantage that imports have over U.S. producers is a
14 lower price.

15 There are still other supply factors that
16 increase the vulnerability of the U.S. industry and
17 market. The supply situation in the subject countries
18 has changed since 2000. Their hyper aggressive and
19 unfair pricing practices and ability to increase their
20 exports have resulted in the imposition of antidumping
21 duties on their products in many major consuming
22 markets, in addition to the United States, including
23 the EU, Turkey, Japan and China, among others.

24 In addition, important changes in the Korean
25 and Taiwanese industries also increased the

1 vulnerability of the U.S. industry, especially if the
2 restraining effects of the orders are removed. They
3 include the merger of Korean PSF giants Eskay
4 Chemicals and Samyang to form supernova producer
5 Huvis, with the two combined companies' U.S. exports
6 now subject to the order, a documented increase in
7 other Korean producers' capacities and a transfer of
8 some of Taiwan's capacity out of textile fiber deniers
9 and into the manufacture of the subject products,
10 developments documented in the trade press and cited
11 in our brief as well.

12 Lastly and still under the organizational
13 umbrella of supply factors leading and resulting in
14 vulnerability, a final factor which is brought to mind
15 by a Taiwanese producer's announced shift in capacity
16 to the subject products. This issue in trade parlance
17 is called product shifting. At least one producer in
18 Taiwan is doing it now in reaction to competition in
19 its textile fibers business from China.

20 These many supply conditions, some existent
21 in the original case and some new, for example, the
22 third country trade restrictions, capacity additions,
23 the rise to preeminence of China, would certainly lead
24 to substantial and immediate increases in the volume
25 of dumped imports should the present orders on Korea

1 and Taiwan be terminated.

2 Petitioners project a substantial and
3 immediate increase in subject country imports on the
4 following record facts. First, an already established
5 orientation and pattern of export orientation and
6 pattern of aggressively priced exports as evidenced by
7 the largest share exports comprise of subject country
8 PSF production;

9 Two, the lack of other major consuming
10 markets due to the plethora of existing trade
11 restrictions on Korean and Taiwanese products;

12 Third, a swift increase in imports from
13 these countries to even more injurious levels given
14 their already substantial presence and established
15 market connections in the U.S. market;

16 Four, the enhanced ability of Korea and
17 Taiwan to supply the U.S. market given announced
18 capacity increases in the subject countries, chronic
19 unused capacity and decline in availability of China
20 as an export outline due to China's dumping duties on
21 these subject imports, as well as development of its
22 own substantial PSF capacity;

23 Fifth, the ease with which subject producers
24 can shift product from textile to nonwoven denier
25 production and exports;

1 Sixth and finally, the evidence that prices
2 to the United States are higher than those currently
3 obtained by subject producers in certain alternative
4 export markets.

5 These negative volume effects of subject
6 country PSF imports would be sure to result if these
7 orders are terminated. These effects, which we can
8 also predict, would cause even greater injury to this
9 already import vulnerable industry.

10 We urge the Commission to consider all these
11 factors as it decides whether to lift the dumping
12 duties on their unfair imports even as the rest of the
13 world keeps theirs. Thank you.

14 Gina?

15 MS. BECK: Good morning, Mr. Chairman,
16 Commissioners and Commission staff. I am Gina Beck of
17 Georgetown Economic Services.

18 This morning I would like to discuss the
19 factors that indicate imports of certain PSF from
20 Korea and Taiwan will continue to undersell and
21 depress prices of U.S. produced PSF and will continue
22 to cause injury to domestic producers of the like
23 product.

24 In their prehearing brief, Respondents argue
25 that subject imports will not return at reduced prices

1 and will not have a depressive effect on U.S.
2 producers' prices. This is simply not true. The high
3 degree of underselling that was found in this review
4 despite the existence of the orders demonstrates the
5 price-based nature of competition and the constant
6 pressure by subject imports that depress and suppress
7 U.S. prices.

8 Despite the imposition of the duties,
9 subject imports have continued to undersell the U.S.
10 product during the POR. Of the 286 possible pricing
11 comparisons, 171 comparisons show underselling by
12 subject imports accounting for 60 percent of all the
13 instances. Without the orders in place, the price of
14 imports from Taiwan and Korea would be even lower and
15 would show even more underselling, causing depressed
16 and suppressed U.S. producer prices.

17 Respondents attempt to dissect the POR and
18 show that there were fewer instances of underselling
19 during the most recent years, but no matter what time
20 period you review the record shows a majority of
21 underselling. The margins of underselling were also
22 significant throughout the period and even increased
23 for several products in the most recent quarters.

24 Although there were upturns in U.S. prices
25 of PSF over the past five years, domestic prices

1 remained suppressed because the price increases have
2 been insufficient to cover rising costs. Over the
3 review period, costs of raw materials, energy and
4 transportation have all increased. In particular, raw
5 material costs, including purified terephthalic acid and
6 monoethylene glycol increased dramatically over the
7 past couple of years.

8 Respondents inaccurately assert that
9 increasing prices are a sign of health and that prices
10 rose sufficient to "more than cover" increases in
11 costs. This claim is not supported by the record. As
12 the Commission staff report noted, the raw material
13 cost increase was more than triple the increase in net
14 sales value per pound.

15 As you heard Ms. Katz testify this morning,
16 although rising costs have caused U.S. producers to
17 increase the selling prices of certain PSF they have
18 had great difficulty passing on these higher costs to
19 purchasers.

20 It is critical for U.S. prices of certain
21 PSF to keep pace with the rising costs in order to
22 avoid further financial problems for U.S. producers.
23 Especially given the prevalence of spot sales and
24 short-term contracts in the U.S. market, it has been
25 and will be easy for imports to quickly increase their

1 share of the U.S. market and undersell U.S. prices.

2 Respondents also argue that the domestic
3 industry is not vulnerable. In making this argument,
4 however, Respondents conveniently ignore how the
5 current large volume of imports have adversely
6 affected the U.S. industry.

7 As the Commission's database demonstrates,
8 the hardships faced by the domestic industry have
9 resulted in underutilized capacity, plant shutdowns,
10 declining employment and capital expenditures, as well
11 as profitability deteriorating to severe losses. With
12 all five full years of the review period showing
13 operating losses, the condition of the U.S. industry
14 cannot be characterized as healthy or not vulnerable.

15 Last year the industry suffered a loss of
16 \$17.3 million or negative 4.8 percent as a ratio of
17 sales, with three of four responding U.S. producers
18 experiencing losses. The slight upturn in
19 profitability the industry experienced in interim 2005
20 is insufficient to characterize this industry as
21 healthy.

22 The minimal profit of \$6.3 million achieved
23 in interim 2005 is not nearly enough to make up for
24 the accrued industry losses of \$86 million since 2000,
25 leaving it in a continued vulnerable condition. It

1 should be noted that when U.S. producers were able to
2 increase profits to this minimal level in 2005, they
3 did so at the expense of the market share.

4 Respondents also incorrectly claim that the
5 domestic industry's capacity utilization is mis-stated
6 and includes nonsubject products. Capacity has been
7 correctly reported for only the subject product and
8 reflects that the domestic industry has more than
9 enough capacity to meet current demand and the
10 projected growth in the U.S. market.

11 Capacity utilization of U.S. producers
12 dropped to only 57 percent in interim 2005. The
13 Commission staff report highlights this significant
14 idle capacity and concludes, "This level of capacity
15 utilization suggests that the industry has
16 considerable ability to expand output in response to
17 changes in prices."

18 As Ms. Katz indicated, it is devastating for
19 companies to shut down capacity that could otherwise
20 be operating if it were not for insufficient cashflow.
21 As you heard this morning Roman experienced a shutdown
22 of the Canadian plant and shut a significant part of
23 the Johnsonville facility, Mr. McNaull also testified
24 as to the problems DAK has suffered over the review
25 period. Other U.S. producers have had to shut down

1 PSF production lines during the POR, and some of these
2 lines continue to be shut down today.

3 The U.S. industry has gone through a
4 difficult adjustment period with a number of
5 restructurings, changes in ownership and asset sales.
6 Petitioner Intercontinental went out of business.
7 Others, including all three Petitioners in this
8 review, have closed facilities or shut down lines of
9 production since the orders went into effect.

10 The staff report mentions three new PSF
11 producers as well, one of which is already in
12 bankruptcy. Generally these numerous restructurings
13 and closures clearly indicate an industry that is
14 still struggling. Coupled with the consistent
15 negative profitability of the industry, the conclusion
16 that this industry is still vulnerable to the effects
17 of dumped imports is inescapable.

18 The current weakened condition of the U.S.
19 industry would spiral downward even further were the
20 orders to be revoked. You've heard this morning how
21 vital it is for production operations to continue at
22 various plants for the well-being of the local
23 community and workers. It would be devastating to the
24 domestic industry if unfair imports from Korea and
25 Taiwan were to be unrestrained.

1 Thank you for your attention. That
2 concludes my testimony.

3 MR. ROSENTHAL: Thank you. We are ready to
4 answer questions.

5 CHAIRMAN KOPLAN: Thank you. I want to
6 thank each of you for your direct presentation.
7 Extremely helpful.

8 I think I'll begin the questioning by
9 picking up on Mr. Rosenthal's discussion on the price
10 fixing conspiracy. I'd like to turn though to the two
11 domestic witnesses for this.

12 The document that I found particularly
13 informative was not so much the confidential document
14 that you referred to, Mr. Rosenthal, but another
15 exhibit that was included with your brief, and that's
16 Exhibit 12, which is public.

17 Exhibit 12 consists of the transcript of the
18 sentencing hearing before U.S. District Judge Richard
19 Voreis on November 15, 2004. I find it informative
20 because what typically occurs at a sentencing
21 proceeding is that the Court called upon the attorney
22 representing the government for the Department of
23 Justice, Mr. Chitwood, to provide the factual basis
24 for what would have been proven had the case gone
25 forward. That factual basis was stipulated to by the

1 other side.

2 In part, and I am reading from that
3 transcript on page 3, "The charges in the conspiracy
4 began at least as early as September 1999 when the
5 Defendant, while employed by KoSa, participated in a
6 conspiracy among the four major United States
7 polyester staple producers to fix the price of and
8 allocate customers for first quality polyester staple
9 fiber sold primarily for textile applications in North
10 America. The Defendant continued his participation in
11 the charged conspiracy until January 2001."

12 That's from Mr. Chitwood's presentation. I
13 also note that prior to imposing a sentence the Court
14 stated as follows: "Defendant's cooperation was
15 extensive and significant, useful and timely. It was
16 particularly timely. It was truthful, complete and
17 reliable. He testified in a criminal trial and gave
18 extensive debriefings to the government which were
19 materially useful."

20 As a result of all that, the Court imposed a
21 sentence of one year probation and a \$5,000 fine to be
22 paid at the conclusion of the probation period in
23 increments of \$500 a month with no interest.

24 Now then, what I'd like to know from Ms.
25 Katz and Mr. McNaul that I don't think we've heard

1 yet, I'd like you to define for me what first quality
2 polyester staple fiber primarily for textile customers
3 is.

4 I know in the scope there seems to be this
5 cutoff of 3.3 desitecs or three denier. There is a
6 specific exclusion for product below that and so I'd
7 like to hear the actual definition. I don't pretend
8 to be an expert in this, but what is first quality
9 polyester staple prices for primarily textile
10 customers? How do you define that in terms of
11 desitecs and denier?

12 MS. KATZ: Okay. Generally fine denier
13 fiber, which is usually less than three denier, is
14 considered the appropriate fiber for textile
15 applications, textile meaning end uses where a fabric
16 is either knit or woven, so the fabric goes into a
17 golf shirt or fabric that goes into the shirt you're
18 wearing, knit and woven fabrics. Those are textile
19 applications.

20 Fiberfill and nonwoven applications
21 generally use fibers that are greater than three
22 denier and can be as high as 15 denier in most
23 fiberfill applications. There are some applications
24 that we sell into that go up to 500 denier, which are
25 very bulky, very thick fibers. Generally the industry

1 interprets textile to mean fine denier or less than
2 three denier.

3 CHAIRMAN KOPLAN: Less than three?

4 MS. KATZ: Yes. The term first quality --

5 CHAIRMAN KOPLAN: At some point I saw a
6 number of two and a half.

7 MS. KATZ: Two and a half denier can be used
8 for a heavier fabric, a heavy pant, slacks.

9 The other word they use is first quality.
10 First quality is the expectation that we have for all
11 the products that we produce. Our goal is to make
12 that product that the customer wanted meeting all the
13 characteristics that the customer requested.

14 Wellman's first quality projection, I would
15 say about 96 percent of the product we produce at our
16 plants is first quality. The other four percent,
17 either because of a hiccough in the production process
18 or someone not adding the right chemical, may be
19 inferior in that it's not the product the customer
20 really wanted or maybe just a waste product was
21 generated.

22 Again, first quality refers to making the
23 product that the customer has specified.

24 CHAIRMAN KOPLAN: Not used for stuffing?

25 MS. KATZ: First quality is a quality

1 definition. It's product meant to be used. First
2 quality. You can have first quality fiberfill. You
3 can have first quality textiles.

4 This specific sentence refers to first
5 quality textiles, so the product that is being
6 discussed here is a less than three denier product.

7 CHAIRMAN KOPLAN: Thank you. That's
8 helpful.

9 Mr. McNaul, do you want to jump in on that
10 as well?

11 MR. MCNAULL: I would just say that first
12 quality is very much a qualifier. Our complete goal
13 is to manufacture first quality, and very rarely do we
14 manufacture anything that's not first quality so I
15 really agree with your testimony.

16 For textile applications I would say the
17 vast majority of what we ship is denier and a half or
18 less. Rather than the three denier threshold, it's
19 less than denier and a half so there's a pretty clear
20 distinction in deniers between subject fibers and the
21 fibers that we manufacture and supply for textile
22 applications.

23 CHAIRMAN KOPLAN: Thank you.

24 Ms. Beck, I'd like to direct your attention
25 to Table 3-8 of the Commission's staff report, which

1 is not confidential. That table indicates that the
2 ratio of operating income to net sales for the
3 domestic industry was negative from 2002 to 2004, but
4 positive in the first nine months of 2005.

5 I'm coming back to you because you just
6 testified about that interim period, but I'm trying to
7 understand what accounts for the industry's improved
8 performance in the interim period?

9 I note that total net sales for the
10 domestics appear to have declined in the interim
11 period, so if you could tell me what accounts for the
12 improved performance last year?

13 MS. BECK: In particular, the industry saw
14 an increase in raw material costs in the interim 2005
15 period, and this in turn caused an increase in prices
16 so it was really the increase in prices in the interim
17 2005 period that allowed the industry to experience
18 somewhat of an improvement.

19 However, again, as you mentioned and we
20 testified to this morning, this was on the heels of
21 numerous years of losses so to the industry it was
22 again a very, very minimal improvement and also at the
23 expense of market share. They lost market share
24 during that period as well.

25 CHAIRMAN KOPLAN: Thank you. I appreciate

1 it. I know you made that argument in your brief, what
2 you just said, but I wasn't clear in terms of what
3 caused the numbers that I looked at in 2005. I
4 appreciate your response.

5 Mr. McNaul1 or Ms. Katz, at page 61 of your
6 prehearing briefs it states, and I'm quoting,
7 "Although U.S. producers were able to increase
8 shipments in market share during the POI, they were
9 faced with rising raw material costs during the POI
10 that U.S. price increases were insufficient to cover."

11 I note, however, that at Table 3-8 of the
12 Commission's staff report it indicates that unit raw
13 material costs for the domestic industry were
14 essentially flat between 2002 and 2003 and increased
15 less than the average unit value of net sales between
16 interim 2004 and interim 2005.

17 In other words, the only period in which
18 increasing unit raw material costs were greater than
19 the increase in unit net sales was between 2003 and
20 2004. Why were you able to raise your sales values in
21 the interim period sufficiently to cover your costs,
22 but were unable to do so between 2003 and 2004?

23 Ms. Katz?

24 MS. KATZ: I just need to think back to that
25 period and what may have happened. If you'll just

1 give me a minute?

2 CHAIRMAN KOPLAN: Well, I see my time is
3 about to expire. Do you want to respond to me in my
4 next round?

5 MS. KATZ: Sure.

6 CHAIRMAN KOPLAN: All right. In fact, it
7 did just expire.

8 Vice Chairman Okun?

9 VICE CHAIRMAN OKUN: Thank you, Mr.
10 Chairman. Let me join the Chairman in welcoming all
11 of you here this morning. We appreciate you taking
12 the time to be with us to talk about your industry.

13 I want to return just for a few moments to
14 the price fixing allegations and select product
15 definition because as I understand the argument you're
16 making, Mr. Rosenthal, if in fact these are brought to
17 be as a separate like product then you would argue
18 that all the information would not be relevant to this
19 case and so I want to understand a little bit more on
20 the like product because in talking with the staff and
21 trying to prepare for this it seems to me this first
22 quality was not much of a distinguisher.

23 I think, Ms. Katz and Mr. McNaull, you've
24 acknowledge that first quality could be fiberfill or
25 it could be textile applications. As I heard your

1 answers, the important point is that it's for textile
2 application.

3 I wondered, Mr. Rosenthal, and I would ask
4 you to comment on this for posthearing, which is if I
5 chose not to rely on Exhibit 13 for support, if I were
6 to take the view that the position of the person
7 testifying is influenced by other things that are
8 going on and that I want something else to show me
9 that again this is textile applications only, is it
10 enough to rely on the document the Chairman
11 referenced, which is Exhibit 12?

12 Are there other things in the record that
13 could make this distinction again based on textile
14 when other information presented by Respondents does
15 make these kind of broader references to polyester
16 staple fiber, including in the press releases from
17 companies where they refer to something?

18 I know they're not looking at like product
19 the way we are. I mean, not everything is speaking
20 about a very specific product, but I want to make sure
21 that I understand what we look to to make those very
22 important distinctions for this case.

23 MR. ROSENTHAL: Certainly I can point you to
24 other things in the record and our posthearing brief,
25 but I do want to emphasize two things.

1 Number one, those statements, both the
2 statement in Exhibit 13 and the statement by both the
3 Court and the prosecutor in Exhibit 12, are statements
4 done in the context of the criminal proceeding under
5 oath and done in a way that has no expectation that
6 those documents would be used in this proceeding, so
7 they should be of great probative value to you.

8 There's nothing in the record in this case
9 or anywhere else that I know of that contradicts those
10 statements, so I think you should rely mainly on
11 those.

12 What I think is important in this respect is
13 once you've got those documents what else is there
14 that would make you believe that those documents were
15 not correct and that the conspiracy went beyond the
16 textile fibers to include the fiberfill at issue here,
17 especially when those documents explain why that would
18 not be the case and why it would not make sense to do
19 that.

20 There has been a total absence of any
21 explanation as to that not theory, but what in fact
22 happened, and it's quite unlike the situation you had
23 in the Ferrosilicon case.

24 As I said, we'll go back and comb to see if
25 there's anything else that goes one way or the other.

1 We have not been able to find anything that points to
2 the conspiracy extending beyond the textile fibers for
3 the obvious reasons that have been stated.

4 VICE CHAIRMAN OKUN: Okay. If I could turn
5 to the industry witnesses, again just helping me
6 understand when there are broader references that the
7 Respondents have made with regard to polyester staple
8 fiber.

9 When your company, and I understand it could
10 be different for the companies, but when your company
11 makes a price announcement, a price increase
12 announcement, does it make it specific?

13 Would it say on the price increase that it's
14 specific to fiberfill, or would it say it's specific
15 to textile applications, or would it be more general?
16 If it's different, explain that as well.

17 MS. KATZ: Okay.

18 VICE CHAIRMAN OKUN: I'll start with you,
19 Ms. Katz.

20 MS. KATZ: In general, most of our price
21 increase announcements cover all our products. There
22 might be some situations -- I can think of one in the
23 past -- where we specifically identified a market, a
24 nonwovens fiberfill market, for a price increase many
25 years ago, but in general it really covers the whole

1 market area.

2 It used to be more prominent where we had
3 two businessmen running the two businesses. They each
4 made their own decisions as to when their increases
5 were going to occur based on their market conditions.
6 We had someone who was in charge of the textile area,
7 someone in charge of the fiberfill area. They worked
8 independently, so they reacted to their market
9 conditions.

10 In the last few years as our company has
11 reduced the layers of management for cost cutting we
12 have one person who makes a decision for both the
13 fiberfill area and the textile area, so those
14 announcements tend to be more general covering the
15 whole marketplace.

16 VICE CHAIRMAN OKUN: Okay. Mr. McNaull?

17 MR. MCNAULL: Our pricing announcements are
18 general. We don't specify one particular market
19 segment or another. We deal with our competitive
20 situations case-by-case and account-by-account to
21 determine the final price.

22 VICE CHAIRMAN OKUN: Okay. Again with
23 respect to pricing, and again I'm trying to separate
24 out the antitrust allegations, but the one thing that
25 was raised here that I just want to make sure I

1 understand with regard to price competition in the
2 market is the reference to house accounts.

3 Is that a common term in the industry, and
4 does it apply to both a fiberfill and a textile
5 customer?

6 MR. MCNAULL: Yes. A house account is an
7 account with a very large volume. Volume that's very
8 important from a revenue perspective. I don't know
9 that it has to do with whether it's a textile account
10 or a subject fiber account. I think it's a general
11 term that one would use to apply to what's an
12 important customer for our company.

13 MS. KATZ: We at Wellman don't use that
14 term. I've not heard it used, the term house account.

15 VICE CHAIRMAN OKUN: Okay. Then in helping
16 me understand your purchasers one of the things, Mr.
17 Rosenthal, you mentioned in terms of why these are
18 completely separate because it was a different like
19 product with regard to the price fixing allegations
20 was that the purchasers that responded to the staff
21 report didn't seem to raise it and you had talked
22 about that, that if this were really going on we would
23 have heard from purchasers.

24 It struck me, too, when I read it and I was
25 trying to understand even where I saw some crossover

1 between customers who were involved in the various
2 pieces of litigation why that is here.

3 Maybe the industry and, Mr. Rosenthal, you
4 look like you want to respond to this, too. Help me
5 understand the industry a little better in terms of
6 who is purchasing the fiberfill and why wouldn't they
7 have known that there was something going on out there
8 with the companies who were the same?

9 MR. ROSENTHAL: I think I understand the
10 question, but I think probably the best thing to do is
11 first start with who is purchasing and then why a
12 purchaser who might be buying both would react to one
13 and not the other. Is that a --

14 VICE CHAIRMAN OKUN: Yes. Yes.

15 MR. ROSENTHAL: -- fair recharacterization?

16 VICE CHAIRMAN OKUN: Yes.

17 MR. ROSENTHAL: Okay. Thank you.

18 MR. MCNAULL: So your first question was who
19 would buy subject versus the textile?

20 VICE CHAIRMAN OKUN: Right.

21 MR. MCNAULL: Okay. We have home furnishing
22 companies that would buy both. They would buy a
23 textile product or they would buy a subject product
24 and then we have companies that would just purely buy
25 a textile product or only buy a subject product

1 depending on their line of business, and so really we
2 have all of those categories.

3 We have customers that buy both and then we
4 have customers that may exclusively buy one or the
5 other. Remind me of your second part of your
6 question?

7 VICE CHAIRMAN OKUN: I think it was going to
8 be why they wouldn't know that there were these
9 allegations about price fixing by the companies.
10 Maybe that's not a fair characterization.

11 MR. MCNAULL: Well, I wouldn't know how to
12 answer that question to be honest.

13 VICE CHAIRMAN OKUN: Okay.

14 MR. ROSENTHAL: I'm not sure that it's that
15 they wouldn't know, it's that if they felt that one
16 side of the company that bought these textile fibers
17 was being abused by this conspiracy they may react,
18 they may have even participated in lawsuits in a
19 class-action, but if the other side of the company
20 that bought fiberfill was not adversely affected by
21 any conspiracy they had no reason to raise it here in
22 the questionnaire response or try to make any
23 allegations in any litigation.

24 VICE CHAIRMAN OKUN: Okay. My yellow light
25 is on, but the number of companies who produce for

1 textile applications versus the produce for fiberfill
2 are we talking about the same universe? Just help me
3 understand that as well.

4 MS. KATZ: I would say there are many, many
5 more companies that produce fiberfill or use --

6 VICE CHAIRMAN OKUN: In the U.S.?

7 MS. KATZ: In the U.S., or use the heavier
8 denier, greater than three denier or four, fiberfill
9 in nonwoven applications. There are many more of
10 those than there are customers that use finer denier
11 for textile applications. I think the textile
12 companies are bigger. There are less of them, but the
13 ones that exist are larger.

14 The companies that make product requiring
15 the heavier denier, there seem to be a lot more of
16 them. We have many more of those customers than we
17 have textile customers and they're smaller.

18 VICE CHAIRMAN OKUN: Okay. I appreciate all
19 those explanations.

20 CHAIRMAN KOPLAN: Thank you, Commissioner.
21 Commissioner Hillman?

22 COMMISSIONER HILLMAN: Thank you.

23 I, too, would join my colleagues in
24 welcoming you all here this morning. We appreciate
25 the time you've given us to be here this morning. Let

1 me start just with a couple of quick follow-ups on the
2 questions that Vice Chairman Okun was just asking just
3 to be very specific and to you, Mr. Rosenthal, in your
4 combing through the record to help us really drill
5 down into this issue of whether subject product was in
6 any way referenced in any of these anti-trust
7 pleadings I would specifically ask you to comment on
8 the document that is the memo in support of
9 Plaintiffs' motion for preliminary approval of the
10 proposed settlement with Wellman, Inc. and the Nan-Ya
11 defendants, which was a document filed in the anti-
12 trust litigation, the multi-district litigation Docket
13 No. 303-CD-1516.

14 Again, there's a specific product reference,
15 so I want you to comment on that one as well as on the
16 information in the criminal case, Document No.
17 3:02CR229V. Again, these are the two documents that
18 have very specific product references.

19 I won't ask you to do anything more than
20 when you're doing this combing to help us understand
21 whether there was any overlap in product mix for in
22 general the price fixing conspiracy, both the criminal
23 and the civil. If you could comment on those?

24 MR. ROSENTHAL: Well, I will tell you that
25 in looking at those documents like a lot of complaints

1 there is information that's simply incorrect and so
2 plaintiffs -- you may have heard this before -- make a
3 lot of unsubstantiated allegations. What is important
4 is what in fact got adjudicated in these cases and
5 where there was evidence and where there was sworn
6 testimony.

7 That's what I would rely on, not an
8 allegation by a plaintiff in a case.

9 COMMISSIONER HILLMAN: I appreciate that.

10 MR. ROSENTHAL: In the post-hearing brief
11 we'll go back specifically and articulate that.

12 COMMISSIONER HILLMAN: I appreciate that.

13 Then, Ms. Katz, just to follow-up on the
14 response that you gave to Vice Chairman Okun in terms
15 of when did the salespeople -- again, as I understood
16 your testimony you used to have sort of a sales force
17 that was directed at the textile side of the business
18 and a separate sales force that was directed at the
19 fiberfill side of the business and that those have
20 more recently been consolidated is what I understood.

21 When did that consolidation occur?

22 MS. KATZ: I'd say maybe the last two years
23 or so.

24 COMMISSIONER HILLMAN: Okay. Prior to that
25 the sales forces had been separate?

1 MS. KATZ: Yes.

2 COMMISSIONER HILLMAN: Mr. McNaull, I
3 realize DAK has a little bit of a history in terms of
4 who was whom when, but tell me from your perspective
5 are your sales forces for the two applications one in
6 the same or are they separate units?

7 MR. MCNAULL: I'll say when it was DuPont
8 prior to the venture being formed, part of the history
9 you're talking about, they were separate. There was a
10 sales force in Wilmington, Delaware, that was both
11 physically and administratively separate.

12 When the company was formed in 1999 to
13 consolidate efforts, and costs and to be competitive
14 we did consolidate that under one set of management
15 for pricing both for textiles and for the subject
16 fiber.

17 COMMISSIONER HILLMAN: For pricing, but for
18 the sales force that's out in the field --

19 MR. MCNAULL: It was a common sales force
20 after the company was formed in 1999, the original
21 venture.

22 COMMISSIONER HILLMAN: Okay. You testified
23 in response to Vice Chairman Okun that there is --
24 again, the textile companies that are doing all the
25 yarn spinning, they're buying the fine denier and then

1 you've got the fiberfill guys over here, but that
2 there was some overlap among the home furnishings
3 people.

4 What portion of the total market would you
5 say is in that overlapping?

6 MR. MCNAULL: Less than 10 percent. Yes.
7 It's very small. The home furnishings sectors have
8 suffered economically and it's a relatively small
9 portion of the business.

10 COMMISSIONER HILLMAN: I appreciate that
11 response. Then help me understand. Given that it's a
12 small overlap why do you connect the prices that
13 you're selling your fiberfill -- Ms. Katz, you
14 testified that and again you, Mr. McNaul, that your
15 price lists if you will cover both.

16 Why if the customer base is different for
17 the two products and presumably they have different
18 demand trends, different other things going on in
19 their markets, why do you link the prices?

20 MS. KATZ: Okay. Well, first of all we
21 don't have price lists. Prices are all negotiated
22 individually between each salesperson and their
23 account. In general our raw material costs, our
24 virgin raw material costs are pretty much dictated to
25 us.

1 We purchase -- the two products that Gina
2 mentioned, ethylene glycol and terephthalic acid, are
3 created on the world market and prices are pretty much
4 set on a world basis. Those have gone up. As those
5 raw material costs have gone up companies have traded
6 down and started buying recycled raw materials,
7 particularly countries in the Far East.

8 What that has done is that has driven the
9 cost of these recycled raw materials up as well. So
10 we use different raw material costs. The trend has
11 been very similar. One tracks the other.

12 If you were to go through price increase
13 announcement -- which are all public, are all on our
14 website, they're issued as press releases -- you will
15 see that most of them in the last few years have been
16 directly tied into raw material and cost changes that
17 have occurred.

18 Because these two sets of raw material costs
19 have become more inter-related in pricing structure
20 generally the one increase that applies to one is
21 going to apply to the other as well.

22 COMMISSIONER HILLMAN: Mr. McNaull?

23 MR. MCNAULL: Yes. I would tell you they're
24 not at all linked. They're related because of the
25 cost and things because you have certain realities you

1 have to deal with in terms of your manufactured costs,
2 but they're not linked.

3 For example we might have a customer where
4 we have a textile application and a subject fiber
5 application and we'll go in and quote prices and deal
6 with those two situations separately based on the
7 competitive environment we're in for one versus the
8 other and often we'll come away with two different
9 resulting agreements depending on whether it's the
10 subject fiber and dealing with the competitive
11 realities of imports or a different fiber for a
12 different application or end use where there's a
13 different competitive situation.

14 So when we announce price increases it's a
15 general intent to get a certain level of pricing and
16 then we go at each individual account and deal with
17 the competitive realities there to arrive and agree on
18 a price for the customer.

19 COMMISSIONER HILLMAN: From a cost of
20 production standpoint, again, assuming it's the same
21 input so the raw material costs if you will are the
22 same for the fine denier versus the heavier deniers is
23 it more costly to produce the finer denier than it is
24 to produce the fiberfill?

25 MR. MCNAULL: Generally for finer denier

1 fibers it's more capital intensive, it's a more
2 demanding process, you have to have a return that's
3 greater, the yields are not as good, so yes. I mean,
4 fine denier polyester staple production is not as
5 "easy" if you will a heavier denier polyester
6 production. That's true.

7 COMMISSIONER HILLMAN: Ms. Katz?

8 MS. KATZ: Well, I'd like to qualify that in
9 terms of Wellman's situation. Unfortunately people
10 believe in general that when you purchase a recycled
11 product it should be less expensive because you didn't
12 have to go back to basic raw materials and it's
13 actually more costly for us to make product in our
14 Johnsonville facility than it is in our Palmetto
15 facility which makes product from virgin inputs.

16 Because there are a variety of inputs and
17 each has a different level of being pure, you know, we
18 get bales of bottles that have been sitting in the
19 yards and garbage yards, we have sweepings off the
20 floor from people making other polyester products and
21 it takes extra man hours and processes to clean these
22 goods to be able to reintroduce them into the process,
23 so you can't just automatically say a higher denier
24 product is less costly to make.

25 You have to look at the physical

1 characteristics of the facility where it's being used.

2 COMMISSIONER HILLMAN: I appreciate that.

3 MR. ROSENTHAL: Commissioner Hillman, I
4 think the essential point which I think you understand
5 is that the raw material costs are common across all
6 these deniers and it is a substantial percentage of
7 the total costs and so when they announce these price
8 increases they are general and mainly because of
9 higher raw material costs and then as Mr. McNaull said
10 then they go to the different accounts and see whether
11 they can negotiate a deal based on what they hope to
12 be the price increases.

13 COMMISSIONER HILLMAN: Then in terms of
14 production allocations presumably you can reasonably
15 easily switch your production between the finer denier
16 versus -- I understand it would be a big switch to go
17 between virgin and recycled, but if you're just within
18 the deniers how difficult is it to move from producing
19 a fine denier product to producing fiberfill?

20 MR. MCNAULL: The answer is it depends on
21 the plant that you have set up and what your initial
22 allocation of capital was to give it that flexibility
23 or not. In the case of DAK we can relatively easily
24 move that back and forth. I think you've seen that in
25 the questionnaire. We have a competitor that has a

1 little bit different situation where it's not at all
2 easy to do.

3 COMMISSIONER HILLMAN: Given that the red
4 light is on I will come back because I want to
5 understand better the demand conditions in these two
6 related markets. Thank you.

7 CHAIRMAN KOPLAN: Commissioner Lane?

8 COMMISSIONER LANE: Good morning. I, too,
9 am perplexed by this whole price fixing issue. As Mr.
10 Rosenthal said in his opening remarks we do deal with
11 a lot of products and I find a lot of the products
12 very confusing.

13 Now, we have a different dimension on this
14 to take an issue and make it even more complicated and
15 that is to determine whether or not the price fixing
16 occurred with this product or a separate product.

17 In looking at everything that I have read my
18 sense is that there's the Department of Justice
19 criminal action and then there are the civil class-
20 action suits in which they talk about polyester staple
21 fiber and it never occurred to these folks over here
22 that there were a whole lot of different variations.

23 From the documents that I have looked at
24 there's nothing really except for Exhibit No. 13 that
25 sort of defines polyester staple fiber and what it's

1 used for. I can't really give a whole lot of credit
2 to somebody who has pled guilty and is trying to get
3 the best deal possible who perhaps is further defining
4 this particular product.

5 So, Mr. Rosenthal, what can you point to in
6 other documents, other than Exhibit No. 13, that not
7 only talk about polyester staple fiber but further
8 defines what it is used for that is something other
9 than what the subject product is used for?

10 MR. ROSENTHAL: With all due respect,
11 Commissioner Lane, I think you should give great
12 credence to this particular person you're talking
13 about because the prosecutor and the Judge both found
14 that he had every reason to tell the truth about this.
15 He was pleading guilty. There's no reason to --

16 COMMISSIONER LANE: Okay, but, Mr.
17 Rosenthal, I looked at the date on Exhibit No. 13 and
18 it was executed in 2005. It is not contemporaneous or
19 simultaneous with the plea.

20 MR. ROSENTHAL: This is part of the earlier
21 proceedings. You have the Exhibit No. 12 I believe
22 that was the transcript of the proceeding before the
23 Court where the Judge found this person to be
24 cooperative, and to be telling the truth, and this is
25 a person who had that witness before the Court. He

1 also had a prosecution --

2 COMMISSIONER LANE: Mr. Rosenthal, I grant
3 you all of that. All I'm saying is do you think that
4 Judge knew the difference between polyester staple
5 fiber that's used for fiberfill and something used in
6 sheets?

7 MR. ROSENTHAL: I believe that Judge and the
8 prosecutor who spent a lot of time in this case did
9 know the difference and understood -- actually, the
10 Judge may not have known the difference, but the Judge
11 relied on the cooperation and the hard work of the
12 prosecutor.

13 I put a lot more credence on that than I do
14 on allegations by Plaintiffs' lawyers who have an
15 incentive to cast as broad a net as possible in the
16 hopes that the damages that they may be able to get
17 are very, very broad. If you're a plaintiff's lawyer
18 you're going to allege that the conspiracy applies to
19 everything.

20 COMMISSIONER LANE: Mr. Rosenthal, I
21 understand all that. What I'm trying to figure out is
22 are there any documents -- even in the settlement
23 agreements that we I don't think have seen does it
24 define what the product is used for so that would give
25 us some independent evidence that this really is a

1 separate like product?

2 MR. ROSENTHAL: There's one settlement
3 agreement that specifically excludes fiberfill.
4 Others do not because of a different litigation
5 strategy by the companies who wanted to make sure that
6 they weren't hit by other lawsuits, so there is one
7 settlement document that does that. I would ask you
8 two things.

9 One, to look at not just the statement of
10 the affiant that we're talking about, but the
11 rationale behind why he says what he says. That is
12 that the market for fiberfill wasn't fixed because
13 there never was an opportunity to do that and it
14 couldn't be.

15 COMMISSIONER LANE: Let's go back to the
16 settlement agreement that specifically excludes
17 fiberfill.

18 MR. ROSENTHAL: Yes.

19 COMMISSIONER LANE: Is that in our records?

20 MR. ROSENTHAL: Yes, it is. It is in your
21 record. I think the Respondents submitted it and I
22 believe we submitted it as well. I'll give you the
23 exhibit number.

24 If, Mr. Smith, you have it handy he can give
25 it to you, but otherwise we'll submit it in our post-

1 hearing brief.

2 COMMISSIONER LANE: It says that it
3 specifically excludes fiberfill?

4 MR. ROSENTHAL: Yes, it does.

5 COMMISSIONER LANE: Okay. I'll take a look
6 at that then. When did the Department of Justice
7 start its investigation into the price fixing case?

8 MR. ROSENTHAL: They don't tell us that.
9 The answer is I don't know when they began their
10 investigation. At some point we heard that there was
11 an investigation going on, but I didn't know when it
12 began.

13 MR. SMITH: Madam Commissioner, this is
14 David Smith. I believe there are documents on the
15 record that suggest that the Justice Department began
16 its inquiry in January 2001 and may have issued
17 subpoenas that month.

18 COMMISSIONER LANE: Okay. Thanks. In the
19 class-action suit is there an overlap between the
20 plaintiffs in that suit and the customers of the
21 domestic producers?

22 MR. ROSENTHAL: Yes. In fact they are the
23 customers of the domestic producers for the most part.
24 That's my understanding. They are the customers.
25 They're the textile customers.

1 COMMISSIONER LANE: They would also be
2 customers that would also buy fiberfill?

3 MR. ROSENTHAL: We will try to break that
4 down, but one of our essential points was that the
5 customers who buy fiberfill, presumably the purchasers
6 who would fill out your questionnaires in this
7 proceeding, have not complained to you nor to my
8 knowledge anybody else about a conspiracy with respect
9 to fiberfill.

10 Now, there is some overlap. There are some
11 customers who are involved in the class-action as I
12 understand it who might buy both textile and fiberfill
13 applications, but to the best of my knowledge no one
14 has said that they have evidence that the conspiracy
15 affected their purchases of fiberfill products.

16 As I said the broad words of a plaintiff's
17 allegation doesn't make that evidence.

18 COMMISSIONER LANE: Does the phrase
19 polyester staple products refer to all denier PSF?

20 MR. ROSENTHAL: What's the context of that
21 phrase?

22 COMMISSIONER LANE: It's one of my
23 questions.

24 MR. ROSENTHAL: Did you say all polyester
25 staple products?

1 COMMISSIONER LANE: Polyester staple
2 products.

3 MR. ROSENTHAL: The way I hear that it would
4 apply to all deniers.

5 COMMISSIONER LANE: Okay. Okay.

6 MR. MCNAULL: May I address the last
7 question you had asked --

8 COMMISSIONER LANE: Yes.

9 MR. MCNAULL: -- about I think you were
10 trying to distinguish overlap between textile
11 customers and the subject. For our sales we have one
12 customer in particular where that's the case and that
13 would represent less than five percent of sales.

14 COMMISSIONER LANE: How much percent?

15 MR. MCNAULL: Less than five percent. So in
16 the case of our customer base overlap where you have
17 customers that buy both it's almost completely
18 insignificant for us.

19 COMMISSIONER LANE: Well, I'll just wait
20 until my next round, Mr. Chairman.

21 CHAIRMAN KOPLAN: Thank you, Commissioner.
22 Commissioner Pearson?

23 COMMISSIONER PEARSON: Thank you, Mr.
24 Chairman.

25 My greetings to the panel. I think this is

1 the first time I've had a case dealing with a textile
2 or fiber product like this. I learned something new.

3 Let me address a question to Mr. McGrath and
4 Ms. Beck and it has to do with Table 3-9. This is a
5 table that provides the results of operations of U.S.
6 producers by firm over the period of review.

7 I'm sure it will be a lot more instructive
8 in the confidential data than in the public so some of
9 you won't have it, but normally I find a table like
10 this in the staff report to be instructive because
11 normally it will provide quite a bit of information on
12 why there might be different results among firms.

13 Although this is confidential let me just
14 divide the U.S. producers into two subsets, one subset
15 that generally made money during the period of review
16 and another subset that generally did not make money
17 during the period of review.

18 So the question is why the difference
19 because I don't see it reflected cleanly in the cost
20 of raw materials, I don't see it reflected cleanly in
21 cost of goods sold, I don't see it reflected cleanly
22 in the net sales figures.

23 So I'm wondering does the subset of firms
24 that's making money have Rumpelstiltskin in the back
25 room somehow magically spinning polyester staple fiber

1 out of thin air or whatever other resources he might
2 have? Apologies for the long question.

3 MR. MCGRATH: Commissioner, one thing that
4 you can see reflected are net sales. Without going
5 into confidential data the people that are making
6 money, are noticeable for that, their net sales are
7 going down. They are choosing as a corporate strategy
8 to seed market share to maintain those accounts where
9 they can maintain those prices.

10 There are other people who are coming up in
11 terms of net sales and shipments. They are making
12 less money. They are losing significant amounts of
13 money, but they are trying to as we've said in our
14 testimony stay with the imports, to meet the import
15 prices and to compete in the market.

16 You have this really in every case and it
17 colors the response of the domestic industry. Do you
18 switch or fight? Do you go to the niche and try to
19 maintain your profitability at the expense of market
20 share and sales or do you fight for market share and
21 sales with the imports, with the negative results on
22 your profitability and prices?

23 MR. ROSENTHAL: In fact, Commissioner
24 Pearson, yes.

25 COMMISSIONER PEARSON: Mr. Rosenthal?

1 MR. ROSENTHAL: If you look at the overall
2 numbers you saw that the first year in this period
3 that any money was made was 2005 and that was the year
4 that the industry overall lost market share.

5 It is the horns of the dilemma that they're
6 on that if they want more market shares that can have
7 the throughput to keep their plants operating in
8 greater capacity they have to basically buy that
9 market share at lower prices and lower profitability.
10 Every company makes a different choice about what's
11 better for them.

12 COMMISSIONER PEARSON: Of course, but, Mr.
13 McGrath, I'm not sure that I see clearly the
14 relationship that you mentioned between increases or
15 decreases in the volume of production over the period
16 of review and financial performance. Did I
17 misunderstand what you were saying about it?

18 MR. MCGRATH: I don't think you
19 misunderstood it. I mean, it gets into the results of
20 individual producers, so we'll have to put that in a
21 brief. I mean, we can't discuss individual producers
22 here.

23 COMMISSIONER PEARSON: Of course. Of
24 course. I note that one of the individual producers
25 in the subset that has generally made money over the

1 period of review did manage to increase its output and
2 so that would seem to be a firm that would fall into
3 the group that you talked about that has met the
4 competition by trying to ramp up production and lower
5 per unit cost, et cetera.

6 MS. BECK: Yes. There's another point to
7 that, Commissioner Pearson, which is confidential and
8 we will address in the brief.

9 MR. MCGRATH: We think the firm you're
10 referring to, although it may have made money in a
11 certain period here or late in the review it made very
12 little. It's just above the line. The two firms that
13 are our type in terms of either the niche strategy or
14 the fight for market share strategy are the first two
15 firms on your table with opposite results as you can
16 see.

17 We'll detail this in our brief. We can't
18 talk about --

19 COMMISSIONER PEARSON: No. I understand the
20 limitations, but I just have found this somewhat
21 perplexing because normally the data in this table is
22 a lot more illuminative if that's a correct use of the
23 term. It tells me a lot more than this particular
24 table is telling me now and I really don't understand
25 why.

1 Let me address that basic issue to the
2 industry witnesses if I could. Is there a technology
3 or something about cost structure in the industry that
4 would give an advantage to one firm versus another? I
5 mean, obviously don't tell me anything that's
6 proprietary information, but is there something out
7 there that would give a firm a real cost advantage in
8 the marketplace?

9 MS. KATZ: Well, as I mentioned before the
10 plant that manufactures fibers from virgin inputs has
11 a better cost advantage than the plant that
12 manufactures product from recycled content.

13 As recycled raw materials have increased
14 this plant that used to be very, very profitable
15 because raw material, recycled materials were abundant
16 and relatively inexpensive had increased difficulty
17 and has had to undertake great cost-cutting efforts in
18 its actual manufacturing operation to compensate for
19 the increased cost of these nonvirgin raw materials.

20 COMMISSIONER PEARSON: Okay. That would not
21 be reflected in this table and so that's an entirely
22 plausible explanation for at least some of what's
23 going on.

24 Mr. McNaul1?

25 MR. MCNAULL: I guess the two things to

1 consider, one is there is a difference in raw material
2 source. The one that Ms. Katz cited that might be
3 fundamentally different I guess that would show up in
4 the cost of goods sold. I think that's on your table.
5 I'm not sure --

6 COMMISSIONER PEARSON: Cost of goods sold is
7 on the table --

8 MR. MCNAULL: Okay.

9 COMMISSIONER PEARSON: -- but it doesn't
10 match up all that well with the financial --

11 MR. ROSENTHAL: He doesn't have that table
12 because it's confidential, so he's guessing now.

13 MR. MCNAULL: Yes. Right. I'm guessing.
14 Right. That's correct. I'm guessing. I'm looking at
15 my questionnaire. I guess the other thing to consider
16 is the behavior around share or share gain during the
17 period. I think you should look at that carefully.

18 I don't want to say too much more than that,
19 but I will say since DAK was formed in 1999 it's our
20 intent in the market to be competitive and to grow in
21 certain areas and that may have influenced the figures
22 to some degree in terms of individual results.

23 COMMISSIONER PEARSON: Okay. Well, Mr.
24 McGrath and Ms. Beck, I will look forward to whatever
25 light you can shine on this in the post-hearing.

1 Thank you.

2 It wouldn't be too hard to have listened to
3 your presentation this morning and get the impression
4 that things are really bleak in this industry or they
5 have been. I mean, this is really a gloomy picture
6 that you guys painted.

7 In that context I suppose the right way to
8 ask the question is has the domestic industry
9 benefitted from the anti-dumping orders, and if so
10 how, but my gut reaction is to say more wouldn't
11 maintaining the orders simply be a recipe for
12 continuing the bleakness?

13 MR. MCNAULL: Polyester staple is very
14 challenging from an earnings perspective. I think
15 you've garnished that by looking at the data. I would
16 say we do have value for the orders. The prices that
17 we have in the subject fibers relatively speaking
18 would be worse than they are today if it weren't for
19 the orders.

20 It is a difficult business. We have to
21 focus on costs, we have to focus on conversion and our
22 intent is to be competitive globally in that endeavor,
23 but it is a difficult business. There is no doubt
24 about that. We're committed to try to find a way to
25 make it work.

1 COMMISSIONER PEARSON: Ms. Katz?

2 MS. KATZ: Believe it or not the fiberfill
3 side of the business in terms of demand for polyester
4 for fiberfill has fallout pays for demand for fiber
5 for the textile areas.

6 Many of our customers in the textile areas
7 have gone out of business and what Wellman has done in
8 addition to reducing cost, we see the fiberfill market
9 as better of the two areas to be in as opposed to
10 textile and we have spent capital over the last couple
11 of years to be able to make more of the product for
12 fiberfill in our virgin operation because we see that
13 as the more efficient operation.

14 So we've shifted product to that operation
15 and closed down some of the inefficient operations at
16 the Johnsonville recycling facility. So again, as
17 bleak as it seems it is the better market at this
18 point based on what's happened to the textile area
19 from Chinese imports of garments and downstream
20 products that have severely affected apparel and home
21 fashion items.

22 We see the fiberfill area as a place where
23 we can continue to sell product into.

24 COMMISSIONER PEARSON: Okay. Thank you very
25 much.

1 Mr. Chairman, my time has expired.

2 CHAIRMAN KOPLAN: Yes. Thank you.

3 Commissioner Aranoff?

4 COMMISSIONER ARANOFF: Thank you, Mr.

5 Chairman.

6 I want to join my colleagues in welcoming
7 the panel and thanking you for being here with us this
8 morning. Tempted as I am to start with more price
9 fixing questions I will ask something else. In the
10 first few years after the orders went into affect in
11 this case subject import volumes didn't fall or didn't
12 fall much.

13 The Respondents tell us that the explanation
14 for that is that there was this price fixing
15 conspiracy during that time and later when that was
16 over and that was drawing product into the market.
17 That explains why imports fell off later. What's the
18 alternate explanation?

19 MR. ROSENTHAL: This will go a little bit to
20 Commissioner Pearson's question about gee, how helpful
21 have the orders been, but when the orders first went
22 into place actually it took a little while to have
23 some traction because originally the margins weren't
24 very high, Taiwan was excluded at the preliminary
25 stage and it wasn't until the final that they got

1 included and it wasn't until after the original order
2 went into place for Korea that the combination of the
3 bigger Korean manufacturers that became Huvis and that
4 Huvis got covered, so it took a while really for the
5 orders to have some traction.

6 So after a while it began to bite and annual
7 reviews began to take place. Now, part of the
8 conspiracy theory of Respondents is that there's this
9 collapse of the price fixing and saying how the orders
10 have been ineffective because the margins haven't been
11 high, but in fact the prices for the imports subject
12 to the order did go up initially as well.

13 So there was a beneficial affect shortly
14 thereafter once the order began to have some traction,
15 and then what happened was administrative reviews and
16 some more pricing discipline. Ultimately what
17 happened was that the imports began to no longer
18 continue to have their downward pricing trend.

19 There began to be some floor below which
20 they could not price and that was beneficial to the
21 industry. Not only did it prevent things from getting
22 worse, the actual imports began to decline.

23 COMMISSIONER ARANOFF: Well, if I take you
24 then you're arguing essentially that the coverage of
25 the orders expanded and helped have this affect even

1 though the margins on a number of the producers were
2 going down?

3 MR. ROSENTHAL: Well, there are so many
4 different situations here. You had margins going down
5 for certain producers, margins being applied because
6 coverage was expanded for others. It is hard to track
7 with precision every single event here. Overlapping
8 that is you've got after the orders began an entry
9 into the market of the Chinese for the first time.

10 The Respondents never mentioned that little
11 factor, that the subject imports declined because
12 imports from another source that wasn't covered began
13 to come in and take market share not just from the
14 domestic industry but from the subject imports.

15 COMMISSIONER ARANOFF: Yes. Well, actually
16 I wanted to ask you about Chinese imports next, so
17 thank you for the segue into that. As the volume of
18 nonsubject imports has increased over our review
19 period prices in the U.S. market have increased as
20 well. Can we read that to suggest that high U.S.
21 prices are pulling nonsubject imports into the market?

22 Because otherwise I take your argument is
23 that in order to gain share a new entrant would drive
24 prices down.

25 MR. ROSENTHAL: That's why it's so important

1 -- prices went up, but that's all driven by raw
2 material costs and those raw material cost increases
3 have been really a worldwide phenomenon. While the
4 U.S. at any particular time may feel those more
5 acutely the Koreans, and Taiwanese and even the
6 Chinese at some point have to reflect those higher raw
7 material costs in their prices.

8 So if you go back to Ms. Beck's testimony
9 and you look at the record before you prices were
10 increasing because raw material costs were increasing,
11 but profitability didn't improve because the prices
12 that the industry could get weren't enough to cover
13 those raw material cost increases.

14 COMMISSIONER ARANOFF: Okay. Appreciate
15 those answers. Now I can't resist to turning back to
16 a couple of price fixing questions. The first one
17 deals with confidential information, so I'd ask you to
18 answer it in your post-hearing brief. With respect to
19 Exhibit No. 13 to your brief could you just tell the
20 Commission how that document came into your
21 possession?

22 My second question which hopefully is a lot
23 less confidential, as I understand it there are a
24 number of cases that either were pending or are still
25 pending with respect to this alleged price fixing

1 conspiracy. Some criminal, some civil, some are
2 settled or over and some as best I can figure out may
3 still be pending.

4 It would be helpful if we could get some
5 kind of complete listing of all the cases, what they
6 covered, what status they're in so that we could keep
7 track of that.

8 MR. ROSENTHAL: We'll get you that for our
9 post-hearing brief, but I'll tell you that there
10 aren't any other criminal proceedings pending. There
11 are some civil actions I believe that have not been
12 settled yet, so they are still pending, but we'll get
13 you that compendium.

14 COMMISSIONER ARANOFF: Okay. Appreciate
15 that.

16 One of the things I know you were mentioning
17 to some of my colleagues is that in some of the civil
18 proceedings some of the settlements that have been
19 made have involved broader definitions of the covered
20 product and you've given us a reason that is a
21 plausible reason why you might want to define the
22 product more broadly to avoid future litigation, but I
23 guess I'm interested in whether there are any outside
24 sources other than your testimony that can confirm to
25 us that was in fact the reason why the product was

1 defined the way it was in some of these settlements to
2 potentially include subject products.

3 MR. ROSENTHAL: We'll do our best to find
4 the answers. I can tell you that we talked to some of
5 the lawyers for the companies who are involved in this
6 and our conversations while I don't want to regale
7 everything, but the essence of what I told you is what
8 we've heard from them. I will get you what we can
9 there.

10 By the way I do want to emphasize the
11 difference between the civil settlement and the
12 criminal proceedings not for any number of reasons and
13 we'll explain more of that, we already explained some
14 of those reasons, but just going back to your question
15 and Commissioner Lane's question about why should we
16 believe a particular person who has pled guilty to
17 conspiracy or anything like that, you know, you don't
18 have to believe that person and you don't have to
19 believe me.

20 You may want to believe the U.S. Department
21 of Justice, who prosecuted the case and who concluded
22 before that Judge that the conspiracy extended only to
23 textile fibers. Commissioner Lane asked is there any
24 other documentation to support that.

25 We'll put this on the record, it's a public

1 document, but it's a testimony of Hugh Pate, who is
2 the Assistant Attorney General for anti-trust in the
3 current administration, that he presented to the House
4 Judiciary Committee talking about the anti-trust
5 enforcement oversight as July 24, 2003.

6 Characterizing the case that we're
7 describing here Assistant Attorney General Pate says
8 "In October 2002 Artiva Specialties SARL, a Luxembourg
9 company doing business out of Charlotte, North
10 Carolina, as COSA, pled guilty to price fixing and
11 market allocation in polyester staple, a synthetic
12 fiber used in textile products such as clothing, table
13 and bedding linens, upholstery, carpeting and air and
14 water filters."

15 "The company agreed to pay a \$25.8 million
16 fine and its former director of textile staples pled
17 guilty to and agreed to eight months in prison and a
18 \$20,000 fine. This is part of a continuing
19 investigation." So clearly the Justice Department
20 believed the conspiracy to apply to textiles. They
21 didn't say all polyester staple.

22 COMMISSIONER ARANOFF: Appreciate that. I
23 actually find that kind of ambiguous, but let me just
24 direct before my time runs out one question to Ms.
25 Katz and Mr. McNaull which is with regard to this

1 distinction that you've testified to between textile
2 and fiberfill.

3 Are there any published industry standards,
4 or any associations, or any other organizations sort
5 of outside of your companies themselves that have
6 published definitions of these products?

7 MS. KATZ: You can contact AFMA. I think
8 they're at Arlington now.

9 MR. ROSENTHAL: American Fiber Manufacturers
10 Association.

11 MS. KATZ: They could describe it to you or
12 define it for you.

13 COMMISSIONER ARANOFF: There are not sort of
14 industry standards the way we find in some industries
15 that set specifications for these products?

16 MR. MCNAULL: Yes. I don't know that
17 there's a written standard per se or a formal
18 standard, but I think the distinction between textile
19 polyester staple and the subject polyester staple is
20 very widely used, very commonly accepted and anybody
21 who is in the industry would immediately understand
22 what you say if you say this is a textile application
23 versus another.

24 COMMISSIONER ARANOFF: Okay. Maybe it's
25 just the laymen who find it confusing, but when some

1 of these references from the Justice Department and
2 whatever refer to bed linens for example they may mean
3 the sheet, but I might think the comforter. All
4 right. My time is up.

5 MR. ROSENTHAL: This isn't industry
6 standard, but look at the HTS break as right at that
7 three denier level and it's there because it's a well-
8 recognized demarkation in the industry.

9 COMMISSIONER ARANOFF: Thanks. That's
10 helpful.

11 Thank you.

12 CHAIRMAN KOPLAN: Thank you.

13 You know, we've talked about a lot of
14 attachments and exhibits to both briefs, but there are
15 two things that are missing here that might be helpful
16 and that is the actual copy of the two criminal
17 indictments that were disposed of. I'm referring to
18 U.S. v. Troy Franklin Stanley, Docket No. 302-CR230
19 and U.S. v. RTVS Specialties SARL, d/b/a COSA, Docket
20 No. 302-CR229-V.

21 I took a crack at that. There is something
22 that as I'm sure you know called PACER, Public Access
23 Court Electronic Records, but they don't go back
24 beyond 2004 and we're looking here at 2002. So if you
25 could provide those for the record that's what the two

1 guilty pleas were based on and neither side has
2 provided those.

3 MR. ROSENTHAL: We will do our best to get
4 those and provide those to you.

5 CHAIRMAN KOPLAN: I'm sure that they're
6 publicly available through the Clerk's Office in the
7 Western District, so it's just that it couldn't be
8 accessed electronically.

9 MR. ROSENTHAL: Understood. By the way I
10 have no idea what's in there, but I regard an
11 indictment as similar to a complaint and so I still
12 believe that ultimately the document that you cited
13 and Exhibit Nos. 12 and 13 will have more probative
14 value than the original allegation because you get to
15 that after you do your investigation.

16 CHAIRMAN KOPLAN: Except for one thing, and
17 I agree and I used to prosecute --

18 MR. ROSENTHAL: I remember that.

19 CHAIRMAN KOPLAN: -- but you're right. An
20 indictment is only a way of charging someone, but
21 these weren't multiple counts as I understand it, they
22 were single count. That's what these two pled two,
23 both the corporation and the individual and it was
24 stipulated at the time of the one sentencing that I've
25 got.

1 So how the product is defined in the
2 indictment is based on what the plea was to. Follow
3 me?

4 MR. ROSENTHAL: Because the indictment
5 you're saying came after the understanding.

6 CHAIRMAN KOPLAN: Well, the indictment
7 precedes the sentencing. Right. That's the count
8 that was pled to.

9 MR. ROSENTHAL: We'll get those for you and
10 it will say what it will say.

11 CHAIRMAN KOPLAN: No. I appreciate that. I
12 don't discount the transcript of the sentencing
13 proceeding by any means or I wouldn't have gotten into
14 it with you, but it would close the loop to have the
15 indictments --

16 MR. ROSENTHAL: Certainly.

17 CHAIRMAN KOPLAN: -- in both of those
18 matters. Just not to beat this to death, but I note
19 that the indictment, that the sentence was in November
20 of last year. Exhibit No. 13 is five months later as
21 I think Commissioner Lane got into and is not part of
22 a criminal proceeding, but is part of the civil docket
23 that Commissioner Hillman cited for the record, which
24 is 303-CV1516.

25 Different matter. The criminal case had

1 been disposed of.

2 MR. ROSENTHAL: We will explain it as we
3 said in response to a question how we came across
4 that.

5 CHAIRMAN KOPLAN: Yes. I'd appreciate that,
6 too. Thank you.

7 MR. ROSENTHAL: Commissioner, may I just add
8 one more thing. I don't mind having a dead horse
9 beaten. You want to make sure that your processes are
10 if not pristine, unsullied by bad behavior, by
11 fraudulent information and that's my goal, too.

12 I have not seen anything that suggests that
13 it has been for all the reasons we've suggested, but
14 as far as I'm concerned you need to satisfy yourself
15 with that and we want to help you get to that point.

16 CHAIRMAN KOPLAN: It's to both sides benefit
17 to get us to that point or to get -- speaking to
18 myself I'm trying to get as much information as I can.
19 Let me come back now to the question I closed with
20 with Ms. Katz and Mr. McNaul.

21 I won't go through the whole predicate
22 inferred, but I'll just come to the question part of
23 it and that was in other words the only period in
24 which increasing unit raw material costs were greater
25 than the increase in unit net sales was between 2003

1 and 2004.

2 Why were you able to raise your sales values
3 in the interim period sufficiently to cover your costs
4 but were unable to do so between 2003 and 2004? I
5 assume you both had time to think about that.

6 Who wants to begin? Ms. Katz?

7 MS. KATZ: I really would feel more
8 comfortable approaching this in the post-hearing
9 brief. I don't know the specifics of what occurred or
10 they're not coming to the top of my head right now.

11 CHAIRMAN KOPLAN: Not a problem. If you
12 would do that?

13 MS. KATZ: Yes.

14 CHAIRMAN KOPLAN: Mr. McNaul?

15 MR. MCNAULL: You know, I can tell you in
16 2004 we had very dramatic increases in raw materials
17 costs and typically in the industry as the raw
18 material cost increases come through you try to recoup
19 that in terms of pricing.

20 If you have an accelerating increase in raw
21 material price usually your finished product pricing
22 lags and as a result your profitability lags until
23 you're stable again in raw materials. I think that
24 was part of the factor for 2004, why it was so
25 difficult to reach the margins that you had seen in

1 previous years.

2 CHAIRMAN KOPLAN: Okay. All right. Thank
3 you.

4 Mr. Rosenthal, you state on page 53 of your
5 prehearing brief that "the Commission has recognized
6 that higher prices in the United States vis-a-vis
7 other third country markets provide an incentive for
8 farm producers to shift exports from such third
9 country markets to the United States in the event of a
10 revocation of orders and a sunset review."

11 You then cite to several earlier Commission
12 reviews of orders covering various steel products.
13 Can you document that prices for certain PSF in the
14 U.S. are generally higher than prices in third country
15 markets? Your microphone is not on.

16 MR. ROSENTHAL: I know that. I decided to
17 put my brain in gear before talking here.

18 CHAIRMAN KOPLAN: Mr. McGrath?

19 MS. BECK: Mr. Chairman, if there's evidence
20 on the record specifically found the Commission's
21 questionnaires. Unfortunately I can't indicate the
22 actual location of where the exports are from, but if
23 I could direct you to page 53 of our brief elsewhere
24 on that page there is evidence that in fact the
25 exports from those companies --

1 CHAIRMAN KOPLAN: I can't hear you.

2 MS. BECK: That the exports from those
3 companies were consistently lower than subject import
4 prices in the U.S.

5 MR. ROSENTHAL: Also, I'm looking at that
6 same page at the bracketed material and I --

7 CHAIRMAN KOPLAN: Excuse me. I was asking
8 whether prices for domestic product are generally
9 higher.

10 MR. ROSENTHAL: Than?

11 CHAIRMAN KOPLAN: Than prices in third
12 country markets.

13 MR. ROSENTHAL: Well, that's not obvious
14 from this page and we'll have to go back and look at
15 that.

16 CHAIRMAN KOPLAN: Okay. Thank you.

17 Did Mr. McNaul want to jump in on that?

18 MR. MCNAULL: I had a salient point to your
19 previous question, so whenever it's appropriate.

20 CHAIRMAN KOPLAN: Right now.

21 MR. MCNAULL: The other thing, 2004 versus
22 2003, is the domestic industry gained nearly nine
23 points in market share. I think that's the other
24 thing that had an impact on margins back to your
25 questions around margins.

1 CHAIRMAN KOPLAN: All right. Thank you for
2 that.

3 Now, Mr. McGrath, I'm calling on you on this
4 one I think because you touched on it in your direct
5 presentation. At page 30 of your prehearing brief it
6 states "in addition to the continued presence of
7 dumped imports in the U.S. market from Korea and
8 Taiwan the U.S. market has experienced a significant
9 increase of imports from other sources over the POR
10 particularly China."

11 We've been talking about China this morning.
12 On page 31 it continues as follows: "The reasons for
13 the unprecedented success of Chinese PSF are obvious
14 from Exhibit No. 5."

15 "The average unit values AUVs of imports
16 from China have been among the lowest of all import
17 suppliers since they entered the U.S. market and are
18 among the lowest of any foreign supplier in the most
19 recent interim period, January to September of 2005,
20 concurrent with our country's huge increase in the
21 volume of its PSF shipped to the United States."

22 "The success of China in the U.S. market is
23 further corroboration of the pivotal role of price in
24 U.S. purchasers decisions." The public staff report
25 however states at 4-4 that in each year the period

1 examined the AUVs for imports from nonsubject
2 countries exceeded the average unit values for subject
3 countries.

4 How do you define the term among the lowest?
5 What do you mean when you say that they're among the
6 lowest?

7 MR. MCGRATH: They're among the lowest.
8 First of all the one statement you read is specific to
9 China. The other statement you read about the AUVs
10 being higher is all nonsubject imports. You have in
11 there nonsubject imports obviously from many sources.
12 The average unit value is an average of all those
13 imported quantities divided into those imported
14 values.

15 So what's true for one particular supplier
16 is not necessarily true for all of them. I mean, I'm
17 sure you appreciate that.

18 CHAIRMAN KOPLAN: No. I guess what I'm
19 asking, sir, I'm referring to the phrase in your brief
20 where you say among the lowest of any foreign supplier
21 in the most recent interim period. I'm curious
22 whether you can break that out for me.

23 MR. MCGRATH: Yes, Mr. Chairman, we do on
24 Exhibit No. 5 of our prehearing brief.

25 CHAIRMAN KOPLAN: All right.

1 MR. MCGRATH: The public data show that the
2 average unit values in the latest interim period from
3 China are 48 cents a pound, from Korea they're 50,
4 from Taiwan they're 59, from Thailand they're 62.
5 China is the lowest.

6 CHAIRMAN KOPLAN: Thank you.

7 Vice Chairman Okun?

8 VICE CHAIRMAN OKUN: Thank you, Mr.
9 Chairman.

10 Ms. Katz, I wanted to go back to one thing
11 you said to help me understand it. You were talking
12 about I think demand for the different applications
13 and I think I heard you say for textile applications
14 you've seen more of a movement of your customers
15 offshore than for fiberfill. Is that accurate? No.

16 MS. KATZ: No.

17 VICE CHAIRMAN OKUN: What were you saying?
18 I was trying to understand whether what we see is
19 increased demand over the period and I thought the
20 projections were fairly positive. What that means for
21 this and for fiberfill.

22 MS. KATZ: What I said before is that
23 there's been a decline in shipments to the textile
24 market because the actual finished products are now
25 coming in from overseas, so our customer base here in

1 the U.S. has disappeared because a lot of the
2 completed -- like a bed in a bag, they've come in from
3 China already completed.

4 VICE CHAIRMAN OKUN: Okay. That's not
5 happening on the fiberfill side?

6 MS. KATZ: It's happening on a much more
7 limited basis. If you think of, you know, all those
8 products come in in containers and the less space your
9 item takes the more you can get in. Well, a lot of
10 our products by their definition are high loft.
11 Certain product is used for loft.

12 Well, you don't want to compress a whole lot
13 of pillows because many of them may not come back to
14 life when you take them out of the trucks. So there's
15 less motivation in importing those kinds of high loft
16 products from overseas than there's more motivation to
17 keep those here in the U.S.

18 So therefore the demand -- some U.S.
19 manufacturers of various bedding components stays here
20 so that the polyester staple comes in here to service
21 that market as opposed to the finished goods coming
22 in.

23 VICE CHAIRMAN OKUN: On the textile side or
24 not?

25 MS. KATZ: On the certain polyester staple

1 because that's high loft. The textile side is flat,
2 you know?

3 VICE CHAIRMAN OKUN: Right. No. I
4 understand. I'm just saying so the imports -- in
5 other words I'm trying to figure out if imports of
6 finished product are more problematic in the textile
7 side than on the fiberfill side?

8 MS. KATZ: Correct. Correct.

9 VICE CHAIRMAN OKUN: Okay. Thanks.

10 Mr. Menegaz, do you want to add to that?

11 MR. MENEGAZ: I was just going to say for
12 the market of raw I think you're trying to get a sense
13 for the market and where this fits. We have segments
14 in the United States that are doing well: carpet,
15 nonwovens, other areas that are specific that we think
16 will be here long term. In the case of textiles it's
17 definitely going through an attrition.

18 Mostly it's competition. Downstream
19 finished goods that are displacing textile shipments
20 here. So we look to the subject segment as a way to
21 offset that attrition and to maintain levels of
22 volumes we need to be able to operate and manufacture
23 efficiently and keep our businesses going.

24 So when we look at this segment we're very
25 concerned because imports have grown particularly in

1 this area from around 300 million pounds in 1995 to
2 double that in 2005, and so it's that trend that's
3 eating away at our domestic shipments and that's what
4 we're concerned about.

5 VICE CHAIRMAN OKUN: I appreciate that. It
6 helps my understanding.

7 Mr. Rosenthal, I wanted to go back just to
8 get your response on a couple of things. In response
9 to the Chairman's request for some additional
10 information on the criminal side you had said you
11 would attempt to do that.

12 I wanted to get your response to the
13 Respondents' request that the Commission ask for broad
14 categories of relevant documents, information,
15 additional discovery on page 34 of their brief.

16 I wondered if you could comment on whether
17 you think the Commission has the authority, whether
18 it's appropriate and whether we would find anything
19 relevant in the information that they ask us to get
20 which includes all criminal convictions and fines
21 associated with the price fixing conspiracy, a
22 comprehensive set of civil settlements public and
23 private associated with the price fixing conspiracy
24 including amounts of settlements, all discovery taken
25 and/or produced in the civil anti-trust litigation in

1 the Western District of North Carolina and the written
2 and/or deposition testimony of key personnel of
3 domestic producers including petitioners and their
4 predecessors with knowledge of the conspiracy.

5 MR. ROSENTHAL: I think you have the
6 authority to ask for information that will satisfy you
7 that the information you got in the original
8 investigation here is true and accurate, so I think
9 you've got that authority.

10 I don't think it's appropriate however to
11 ask for all that information because at some point
12 there is a burden here that the Respondents have not
13 carried. We have given you what we regard as the best
14 information concerning what is relevant to the
15 Commission under the standards you've enunciated in
16 the Ferrosilicon and the Silicomanganese cases.

17 In those cases you've made it clear that if
18 there has been evidence presented to you that a
19 majority of the industry has been convicted, presented
20 or made it clear that the majority of the industry has
21 involved in the price fixing conspiracy -- those
22 witnesses have testified before you, and misled you
23 and you have a number of other standards there.

24 That hasn't been even shown in a prima facie
25 way here that would then trigger your interest or

1 should trigger your interest in getting what would
2 likely be reams of information that may or may not be
3 helpful in making any further decision. So my view is
4 do you have the authority? Yes. You need to protect
5 your processes.

6 Is it appropriate here? No. Because the
7 other side has not demonstrated why such a broad
8 request for information is necessary. The kinds of
9 requests that you made today for the criminal
10 indictments, the other things that you've asked for
11 are perfectly appropriate.

12 If you have other things you want that we
13 can get we will certainly supply it, but not the
14 pulling up the back of the truck and unloading it
15 approach that the Respondents have suggested.

16 VICE CHAIRMAN OKUN: Okay. I appreciate
17 those responses. I will also look forward, I know
18 Commissioner Aranoff had asked if you could help pull
19 together the status of all litigation including what
20 is still ongoing with regard to the civil litigation,
21 where that stands, and I'll look to that as well.

22 So then maybe, Mr. Rosenthal, I'll stick
23 with you before going back to the industry on I guess
24 a broader question related to the allegations which is
25 if at the end of the day, or not the end of the day,

1 end of the investigation here I agree with you that
2 the price fixing allegations were with regard to a
3 separate like product, not the subject product do I
4 have any obligation to sort through the record to
5 figure out what I should be looking at and what I can
6 rely on?

7 The reason I ask this is just the responses
8 we're getting with regard to our price increases
9 announced for all of PCF. Yes, okay?

10 So to the extent that even during the
11 original period there would have been a lot of
12 discussion about what happened with pricing, even if
13 it's not the same product the price increases would
14 have been it sounds like the same for both the subject
15 product and the nonsubject product. You're shaking
16 your head.

17 I just want to make sure that for -- I want
18 to hear your response now, but help me sort through
19 that because it's not clear to me. I mean, it seems
20 now things are a lot more separate than they were and
21 maybe that's the answer: looking forward I don't have
22 to deal with this. So let's hear your response.

23 MR. ROSENTHAL: First I think that things
24 were a lot more separate so even though you might have
25 a general price increase announcement that applied on

1 its face across all polyester staple product, in fact
2 what happened then was that the price increases were
3 not uniform, and what happened was that a salesman
4 went to the textile side and went to the fiber side
5 and worked out totally different deals.

6 And whether you want to believe the
7 statement in Exhibit 13, I believe, or not, as a
8 practical matter it was not possible to fix prices in
9 the fiberfill market.

10 So for you, what I would suggest to you, if
11 you find that these are separate like products and
12 that the conspiracy did not apply to the subject
13 merchandise, you do not have to go back and reexamine
14 and wonder whether the pricing information you got was
15 artificial or somehow distorted because you should be
16 convinced that there isn't a distortion there. These
17 are actual, negotiated prices, unaffected by bad
18 behavior by conspirators.

19 VICE CHAIRMAN OKUN: Mr. McNaul?

20 MR. McNAULL: If I may. I think Paul hit
21 the nail, a general price increase is like a statement
22 of intent and it's saying to the industry we need a
23 price increase of X. But the fact of the matter is
24 it's not until you sit with the individual customer
25 and negotiate the individual price that you have the

1 net result for the business. That's something that's
2 done with that customer given that competitive
3 situation.

4 So even though we've announced a general
5 price increase to apply to all products and done that
6 for the most part because our raw materials are up by
7 X if you will, and you're trying to recoup it across
8 all your production, the ultimate price is different
9 depending on the environment you wind up with in terms
10 of a competitive negotiation.

11 I think there's a distinction between making
12 an announcement and an intent to do something and what
13 the net effect ultimately is in the business.

14 VICE CHAIRMAN OKUN: I appreciate that.

15 MR. ROSENTHAL: Part of the conspiracy
16 alleged was not just to fix prices but to allocate
17 customers and the only place that was possible was
18 when you had a small customer base which would have
19 been the textile segment of the customer base, not the
20 fiberfill. One more reason why you couldn't simply
21 announce a price increase and have this work. You had
22 to have that small customer base to allocate.

23 VICE CHAIRMAN OKUN: I do want to return to
24 the customer base on another round, but I appreciate
25 all those comments.

1 Thank you very much.

2 CHAIRMAN KOPLAN: Thank you.

3 Commissioner Hillman?

4 COMMISSIONER HILLMAN: Thank you. And I too
5 would share the Vice Chairman's questions just to make
6 sure we nail this down.

7 I certainly appreciate that if we end up
8 where you want us to end up, suggesting that the price
9 fixing conspiracy did not affect this kind of
10 polyester stable fiber, that answers the one question
11 of sort of, if you will, how heinous do we regard
12 everybody sitting in front of us. Okay, none of these
13 individuals actually came forward and swore their
14 questionnaires were correct or actually appeared at a
15 Commission hearing. Okay, leave aside that issue.

16 It still doesn't, to me, answer this
17 question of whether any of our pricing data was in any
18 way tainted by the conspiracy if the prices in the
19 textile area bleed over into or affect the prices for
20 fiberfill. That's what I'm trying to make sure we
21 have everything we need on the record.

22 I appreciate your statement, Mr. McNaul, I,
23 but let me try to understand a little bit more.

24 I'm trying to understand how price discovery
25 generally works in this market and how much of it is

1 demand driven versus how much of it is your cost
2 driven.

3 As I've heard your statements, you go out
4 with a price increase because your costs have gone up.
5 My first question is, do your customers know that?
6 Are they tracking the prices for your input products,
7 be they the virgin inputs which we've certainly heard
8 a lot about in terms of price increases? Is there
9 sort of out there publicly available information on
10 your virgin inputs and/or on the price of your soda
11 bottle, your water bottle sitting there? Presumably
12 those are pretty well known markets.

13 I'm trying to understand what drives a price
14 increase and what information your customers have when
15 you come to them and say we want a price increase.
16 Generally what's their response, and is it different
17 in the fiberfill world versus in the textile world?

18 MR. McNAULL: Yes. The answer to your first
19 question is yes. It is broadly known, well
20 understood, there's consulting firms, there's
21 published data. Our customer can understand our raw
22 material situation in terms of relative change in
23 price. They can understand that very well.

24 COMMISSIONER HILLMAN: Okay, now you say
25 yes. Is the yes true for textile people and fiberfill

1 people? As I heard it the fiberfill people were
2 smaller, maybe less sophisticated customers than your
3 large textile players that are clearly going to follow
4 this very closely.

5 MR. McNAULL: Well, it's a qualified yes.
6 That's yes from our perspective. We use virgin raw
7 materials to manufacture our fiberfill. I think
8 that's commonly known. Our competitor uses a second-
9 hand material which has a different pricing dynamic
10 altogether.

11 My experience has been that our customers,
12 be it textile or be it fiberfill, are very well
13 educated in terms of the major raw material components
14 that make up our costs. Our major raw materials make
15 up approximately 75 percent of our cost. So when
16 those raw materials change in price and that's
17 published or accessible through a third party
18 consultant, it's very obvious what our price is doing.

19 In terms of how do we arrive at a price with
20 a customer, the industry has gotten to a point with
21 margins where we're taking positions with customers we
22 have to pass through a certain level of raw material
23 increases when they happen and recoup that to be able
24 to continue to operate. So that's basically the way
25 the discussion goes.

1 Now what you wind up with when you're
2 dealing with a customer, it depends on their
3 alternatives. If they have imported fiber
4 alternatives, often that becomes the lowest common
5 denominator in price. Then you're faced with a
6 decision to either meet that price or lose the market
7 share.

8 COMMISSIONER HILLMAN: And are you, again
9 I'm trying to understand, you're talking about the
10 supply side of it. I'm trying to understand two
11 things. One, would you face the same degree of import
12 competition for fine denier staple fiber coming in?

13 MR. McNAULL: The import alternatives for
14 staple fiber and fine denier are not as prevalent as
15 they are in the subject fiber that we're discussing
16 here.

17 COMMISSIONER HILLMAN: Why is that?

18 MR. McNAULL: Do you want to take that?

19 MS. KATZ: I think in general textile denier
20 fiber is the fine fiber, some of them as fine as .8
21 denier, are more demanding in terms of quality
22 requirements. The color has to be just right, the
23 performance of the fiber has to be just right. It's a
24 more difficult product to make. We provide a
25 substantial amount of technical service to our

1 customers who buy those fibers because change in the
2 temperature inside the plant can affect the
3 performance of the fiber. Humidity levels, things
4 like that.

5 In general, I think the foreign producers, I
6 don't think they won't be able to do it but to date
7 they have not been as successful in making these finer
8 products.

9 COMMISSIONER HILLMAN: I appreciate that.

10 Then on the demand side, as I heard you
11 describe it, and we obviously have data, demand has
12 been growing on the fiberfill side as I've heard you
13 describe it, and it certainly would be consistent with
14 whatever we know about the textile industry, clearly
15 declining on the textile side.

16 How have those differing demand trends
17 affected what you've actually gotten with your
18 customers? You say you sit down with them and you may
19 get one result one place, one result another.

20 How has the fact that you have slightly
21 increasing demand on the fiberfill side versus
22 declining demand on the textile side affected what
23 you've been actually able to achieve in terms of price
24 with your customers?

25 MS. KATZ: I think that price is more, it

1 doesn't have to do with what's happening in the
2 textile versus fiberfill. It's based on what product
3 is available to that customer at different price
4 levels.

5 I know in our case there are customers who
6 when we have put a price increase through because
7 we're trying to recoup our costs, they have said
8 sorry, you've just gone too high, we're going to
9 import.

10 This happened to us very recently, and we
11 have to make, oftentimes we make a decision we just
12 can't absorb any more losses and we're willing to lose
13 a customer because it's better to not have a loss than
14 to have that customer.

15 COMMISSIONER HILLMAN: Mr. McNaull?

16 MR. McNAULL: I would say a good point. The
17 industry's spent a lot of time investing in equipment
18 to be highly efficient, and we've tailored fibers and
19 tailored our offering to meet the needs of that
20 particular equipment. We recoup some of the value of
21 that tailoring. We have to use technology, we have to
22 use effort, we have to support in a number of
23 different ways tailoring in terms of ultra fine
24 deniers, cut lengths, finishes, whatever the case may
25 be. We go into that customer and tailor that so that

1 their net conversion cost in textiles is as good as it
2 can possibly be.

3 So in that arena because we put all those
4 value added things into the fiber and into our
5 offering, at times we can recoup a premium over an
6 import alternative.

7 COMMISSIONER HILLMAN: We've talked a fair
8 amount about this issue of the fine denier going into
9 textiles, and obviously we've talked a lot about the
10 subject product in terms of, again, I'm trying to
11 think in terms of both cost and pricing.

12 Are there other products out there of
13 polyester staple fiber that you are producing on the
14 same equipment that go into something other than what
15 we've described as the fiberfill market versus the
16 textile application market?

17 You mentioned carpet, non-wovens.

18 MR. McNAULL: Right.

19 COMMISSIONER HILLMAN: What out there is not
20 subject product but is not the fine denier that's
21 going into the fabric industry?

22 MR. McNAULL: There are other segments, but
23 I will tell you we need collectively the volume that
24 we have in all of them to maintain our production
25 rates in our plants to have a competitive conversion

1 cost. That's the key to the industry for us.

2 There are some alternatives, but we're not
3 in a position where we can choose one alternative over
4 another. We really need all of our options for sales
5 to keep our plants full and realize our earnings, our
6 conversion costs.

7 MS. KATZ: One of the markets that we in the
8 past have worked with is carpet, and that's been
9 actually a growing market in the U.S.. Unfortunately
10 a majority of the polyester staple pounds that are
11 produced for the carpet market are produced by the
12 users, so it's actually a fully integrated process.

13 So the opportunities for us to sell into
14 that market are very limited. We would only be the
15 excess. When these self-supply customers have an
16 increase in demand then they'll come to us. As soon
17 as their own equipment is available, they'll cut us
18 off.

19 COMMISSIONER HILLMAN: Are they using the
20 virgin product or a recycled product?

21 MS. KATZ: Recycled.

22 COMMISSIONER HILLMAN: So they're competing
23 with you for the recycled product.

24 MS. KATZ: Right. And that is also one of
25 the reasons our recycled product inputs have gone up

1 in cost.

2 MR. ROSENTHAL: Part of the category we've
3 described, from zero to three denier is the textile
4 fiber, not subject merchandise; and three to 15 is the
5 subject merchandise which is basically fiberfill, then
6 above 15, also polyester staple fiber, is all the
7 other product that would be covered by these price
8 increase announcements, if you will. It involves
9 carpeting, would be the heavier stuff than the denture
10 stuff and the fiberfill. So there's a whole range of
11 products above the 15 denier that we're talking about
12 too that would be part of this overall industry.

13 COMMISSIONER HILLMAN: One quick question
14 given that the light is on on the capacity issue. Our
15 data clearly shows this very significant capacity
16 increase, and obviously the staff report is very
17 clearly caveated that as largely, at least, as I read
18 it, due to a survivor bias, if you will, in terms of
19 not having data from some of the companies that have
20 gone out of business or converted.

21 Is that all of it? Or was there any actual
22 capacity increases made by the domestic industry,
23 again showing, we see the big increases in our data
24 between 2001 and 2002. I just want to make sure
25 whether you understand that all of that was due to

1 these data issues in terms of who reported data on the
2 earlier years, or were there, I guess my question is
3 were there actual increases in domestic capacity to
4 produce polyester staple fiber during this period?

5 MR. McNAULL: There have not been any
6 increases in domestic capacity. To the contrary, I
7 think there's been capacity removed from the market in
8 one case. That's public information. Wellman shut
9 down one line in one of their facilities, or some
10 portion of their facility. But there's not been any
11 capacity commissioned in the period.

12 COMMISSIONER HILLMAN: I just wanted to make
13 sure I was clear on that.

14 Given that the red light is on, Mr.
15 Rosenthal, I would though ask in the post-hearing
16 brief to brief this issue of again, leave aside
17 whether we think the price fixing conspiracy directly
18 affected this subject product. Nonetheless, how much
19 concern should we have about whether our pricing data
20 is tainted given this overlap in price between the
21 various forms of polyester staple fiber? As a legal
22 matter, how do we read our pricing data? That's what
23 I need briefed.

24 MR. ROSENTHAL: We'll do that.

25 CHAIRMAN KOPLAN: Commissioner Lane?

1 COMMISSIONER LANE: Thank you.

2 Mr. Rosenthal, the document that you read
3 from I think it was at a legislative hearing or
4 something, I'm assuming that you will put that in the
5 record. And I think you referred to one of the uses,
6 upholstery use. I think that you read that from the
7 document.

8 Does the subject product go into upholstery?
9 Are we talking about the outside part of it, or are we
10 talking about stuffing?

11 MR. ROSENTHAL: Stuffing.

12 COMMISSIONER LANE: In relation to that
13 document that you read.

14 MR. ROSENTHAL: This says upholstery, not
15 the stuffing for the upholstery.

16 COMMISSIONER LANE: That's what I'm saying.
17 It said upholstery. Do you think that that means the
18 outside or do you think that means stuffing that goes
19 into upholstery?

20 MR. ROSENTHAL: As Commissioner Aranoff
21 said, there are things in that statement that point
22 both ways. They keep talking about textile, but they
23 mention things that would not be textile, and then go
24 back to textile again. It's hard for me to know what
25 was specifically in Mr. Pate's mind or rather his

1 assistant's mind when that was written, and probably
2 the best evidence is to go back to Exhibit 12. But
3 we'll provide that.

4 I recognize there is inconsistency there,
5 but their emphasis is on textiles as opposed to
6 fiberfill.

7 MS. KATZ: Can I add something, if that's
8 all right?

9 COMMISSIONER LANE: Yes.

10 MS. KATZ: I'm not an attorney, but just in
11 reading this paragraph that Mr. Rosenthal read
12 earlier, it does not include any of the typical
13 fiberfill end uses. It doesn't include furniture, it
14 doesn't include pillows, which probably between those
15 two represent two-thirds of the fiberfill market.

16 I know there's confusion whether bedding
17 linens, would include a comforter. I think in general
18 bedding linens are used to refer to sheets and pillow
19 cases. Again, comforters and mattress toppings are
20 also big users of fiberfill.

21 So missing from this paragraph are probably
22 90 percent of the uses of fiberfill.

23 COMMISSIONER LANE: That's why I zeroed in
24 on the upholstery because I thought that was somewhat
25 ambiguous. So you think that because of the context

1 in which it's used, it does not refer to the
2 fiberfill.

3 MS. KATZ: Correct. I'm particularly
4 sensitive to end uses because I do the reporting for
5 our company into the industry organization, so I'm
6 very aware of various end uses and what they mean.

7 MR. McNAULL: To me, as an expert in the
8 industry, if you say upholstery you mean the fabric on
9 the outside of a piece of furniture, and that fabric
10 is very likely manufactured using a fine denier
11 polyester staple.

12 COMMISSIONER LANE: All right.

13 Mr. Rosenthal, when did this issue of
14 whether or not it was the same like product arise, or
15 when did you become aware that this was going to be an
16 issue in this particular proceeding? Before we
17 initiated the proceeding, or afterwards?

18 MR. ROSENTHAL: Interestingly enough, about
19 two years ago, in March of 2004, counsel for the
20 importers came to us and said we want you to go to the
21 Commission and ask for the order to be revoked because
22 we understand that there's this antitrust
23 investigation going on.

24 Now we'd heard about it through counsel for
25 the companies who were doing the antitrust work and we

1 were told well, the antitrust investigation did not
2 involve the product that was subject to the
3 investigation, didn't involve the people, didn't
4 involve the time period. So I very politely told the
5 counsel for the other side, go stuff it, and that's a
6 fiberfill term.

7 COMMISSIONER LANE: Go what?

8 MR. ROSENTHAL: Stuff it.

9 COMMISSIONER LANE: Okay. I wanted to make
10 sure the court reporter got that.

11 MR. ROSENTHAL: Okay.

12 We said look, we're not going to the
13 Commission to ask for revocation on a product that was
14 not the subject of the antitrust conspiracy. And if
15 you want to go to the Commission, go do it. That was
16 two years ago.

17 We didn't hear a peep out of the Respondents
18 until earlier this year, after the sunset review had
19 begun, and they started trying to get you to do
20 something about it prior to the time of briefing, et
21 cetera.

22 My position was this is not the proper
23 subject for the Commission to be revoking an order
24 because it is a different like product and all the
25 other reasons. So not only did I tell them that we

1 were not going to raise it for the Commission because
2 it is not relevant to this proceeding, they obviously
3 felt the same way two years ago, or almost two years
4 ago.

5 It's only now, once the sunset review began,
6 that they decided to try to use that to their
7 advantage.

8 COMMISSIONER LANE: Thank you.

9 Is there any type of polyester staple fiber
10 that is currently imported into the United States that
11 the United States industry does not produce?

12 MS. KATZ: There's limited production of one
13 product which is not part of the subject merchandise.
14 It's called low-melt staple fiber, and it's a hybrid
15 product, if you like. It's a copolymer. There's some
16 polyester and then there's another product that
17 ensures that this fiber will melt at a different
18 temperature than standard polyester staple.

19 Customers use it to create a binding effect.
20 Used mostly in a batting or the inside of a comforter
21 to keep the fibers together. It used to be done more
22 with a chemical. They would spray a chemical as the
23 batting went through the equipment and for healthy
24 reasons, and it would ignite in the processing
25 process. They went more to a low melt product and it

1 now shares I guess the first five digits of the HS
2 code with regular polyester, but the suffix has its
3 own code.

4 COMMISSIONER LANE: Are the increased non-
5 subject import volumes, particularly those from China,
6 directly comparable to the subject imports and to the
7 domestic product?

8 MR. McNAULL: Yes, I believe so.

9 COMMISSIONER LANE: In looking at the staff
10 report, it's evident to me that this is an industry
11 that is not doing real well. What are your plans to
12 make this a more productive and profitable industry?

13 MR. McNAULL: Since we've purchased the
14 assets from DuPont, and there's a long history of
15 different corporate formations, but ultimately it
16 culminated in DAK Americas LLC, we've done a couple of
17 things.

18 One is very dramatic cuts in cost. We've
19 been continuously improving our conversion cost of raw
20 materials to polyester staple year over year and we
21 continue to do so.

22 The second thing we're doing is in one of
23 our related business which is PET. We're growing
24 pretty dramatically in that area as well. So as a
25 company, we're working on becoming world class in cost

1 and providing competitive fibers to the fibrous
2 industry on a long-term basis, and that's the overall
3 plan. We have a track record of doing that since the
4 acquisition of this business from DuPont.

5 MS. KATZ: Wellman would very much like to
6 stay in this business and what we've done is we have
7 modified equipment at our virgin input plant to
8 manufacture the subject fiber and we've also, we're in
9 the process of developing products in the fiberfill
10 area that are in a little bit of a niche and perhaps
11 can improve the profitability for us in this market
12 area.

13 We're continually cutting costs wherever we
14 can. One of the reasons we closed some capacity
15 earlier this year was because it was old and
16 inefficient and making product there on those lines
17 would have just lost money. So we are continually
18 improving our process and improving the products that
19 we get out of our process to make a profit in this
20 business.

21 COMMISSIONER LANE: Do you have a timeframe
22 for which you want to turn this industry around?

23 MS. KATZ: The plans that I've just
24 mentioned are in place right now. We have a number of
25 products that we're working on that we hope will come

1 to fruition within the next couple of years.

2 COMMISSIONER LANE: Thank you.

3 Thank you, Mr. Chairman.

4 CHAIRMAN KOPLAN: Thank you, Commissioner.

5 Commissioner Pearson?

6 COMMISSIONER PEARSON: A company named
7 Formed Fiber Technologies apparently produces and
8 imports a product that's called black automotive
9 substrate, also known as reprocessed intermingled.

10 FFT is suggesting that this product should
11 be considered to be a separate like product. You
12 referenced this in your original briefs, but would you
13 be so kind as to check off the six factors, probably
14 in a post-hearing brief. Could you go through that
15 analysis to explain why indeed you think this is not a
16 separate like product?

17 MS. CANNON: Yes, we'll be happy to do that
18 in post-hearing.

19 MR. ROSENTHAL: Did you want that now or in
20 the post-hearing?

21 COMMISSIONER PEARSON: Actually, if you want
22 to walk through it now, that's fine.

23 MR. ROSENTHAL: I think it's probably better
24 to wait until the post-hearing brief.

25 COMMISSIONER PEARSON: Okay. I would wait

1 if I were you, but I'm always willing to listen.

2 A related question. Since this is a product
3 that apparently is not produced in surplus in the
4 United States, is there some potential for more of it
5 to be produced? Some company other than Formed Fiber
6 Technologies. Is that a way to utilize some capacity?

7 MS. CANNON: I think we need to comment on
8 that in post-hearing as well.

9 COMMISSIONER PEARSON: Okay.
10 Unless you wanted to say something now, Mr.
11 McNaull?

12 MR. McNAULL: No. I don't have any input.
13 Thank you, though.

14 COMMISSIONER PEARSON: It seemed kind of an
15 obvious question to me because we've got some
16 testimony that there is more capacity than, it's hard
17 to keep the stuff running. Then I see this product
18 about which I know nothing, which apparently is having
19 to be imported. So explain what you can in the post-
20 hearing, please.

21 The Chairman earlier asked a little bit
22 about price, particularly the price in the United
23 States versus other countries. Is the U.S. price for
24 polyester staple fiber generally higher than the price
25 in the European Union, for instance?

1 MS. KATZ: We have a subsidiary in Ireland.
2 The pricing is actually quite similar. They may not
3 always move in the same direction. Unfortunately
4 they've been subject to imports as well. I can't say
5 that they move penny for penny at the same time, but
6 I know in general I think they're at the same basic
7 price levels.

8 COMMISSIONER PEARSON: Okay.

9 Mr. Magrath?

10 MR. MAGRATH: Commissioner, we presented
11 some evidence that's APO that the prices are higher in
12 Europe, at least for the period. But you've got to
13 remember that these two producers are sort of a pariah
14 in the international trading system. Almost all major
15 consuming markets have dumping findings on these
16 products and so they are continually probing and
17 searching for new homes. Of course that just means to
18 us, at least, that if you revoke the dumping duties
19 and the restraints in this market while everyone else
20 keeps theirs on, there's going to be a laser refocus
21 of these imports to the U.S. market.

22 MR. ROSENTHAL: And Commissioner, I know
23 Commissioner Lane had to leave temporarily, but the
24 question she asked the industry, what are you doing to
25 get more competitive you heard an answer to. But

1 ultimately unless the producers in the U.S. market can
2 get a better price for their product, they're not
3 going to be able to sustain, continue the \$86 million
4 in losses that you heard about over the last five
5 years. Unless imports are restrained and there's
6 better pricing in the marketplace, this segment of the
7 industry will go the same way that the textile
8 industry is going.

9 COMMISSIONER PEARSON: My understanding is
10 that during the period of review the Taiwanese
11 producers increased their shipments of polyester
12 staple fiber into the European Union. What was the
13 effect of that on the European market? Was it
14 observable in the pricing there?

15 MS. KATZ: I don't know the specifics. I
16 could research that and get you the answer to that
17 question.

18 COMMISSIONER PEARSON: Okay, that might be
19 helpful because given what's been going on in several
20 markets with shifting of imports that Mr. Magrath
21 mentioned, I'd just kind of be curious, if we can
22 document what happened in Europe in response to that
23 increase in imports, that might be useful.

24 Mr. Chairman, to continue to atone for my
25 performance last Tuesday, I think I have no further

1 questions at this point.

2 CHAIRMAN KOPLAN: I'm speechless.

3 (Laughter).

4 Thank you, Commissioner.

5 Commissioner Aranoff?

6 COMMISSIONER ARANOFF: Thank you, Mr.

7 Chairman.

8 Ms. Katz, you made some testimony this
9 morning, and I believe if I understood you correctly,
10 you had said with respect to, that regardless of what
11 input you use, virgin or recycled product, you can get
12 an output which is a product of the same quality.

13 MS. KATZ: That's correct.

14 COMMISSIONER ARANOFF: The Respondents have
15 made an argument in their brief that there are well
16 understood industry distinctions between a product
17 known as regenerated and a product known as recycled.
18 Could you comment on that? That one was a subset of
19 the other.

20 MS. KATZ: There is absolutely no
21 difference. Those words are used interchangeably to
22 refer to non-virgin inputs.

23 COMMISSIONER ARANOFF: Okay.

24 I take your testimony that you can take an
25 input of any quality. They make a distinction between

1 say clean bottles and dirty bottles or sweepings off
2 the floor, or other different kinds of perhaps dirtier
3 or trickier inputs. As I understand it, your
4 argument is with enough care in your process, and you
5 did mention there are some cost issues there, you can
6 get a product of the same quality out the back end.

7 MS. KATZ: Yes.

8 COMMISSIONER ARANOFF: But are there in fact
9 noticeable differences in the quality that different
10 producers, either domestic or imported, achieve or
11 sell in their product that's made out of recycled
12 materials?

13 MS. KATZ: There shouldn't be. They should
14 all be the same quality level.

15 If you were to take a product from our
16 Johnsonville plant and a product from our Palmetto
17 plant and send it to a customer, they wouldn't know
18 the difference.

19 COMMISSIONER ARANOFF: So if Respondents are
20 contending in their brief that say your recycled
21 product and product made by another domestic producer
22 which is mentioned in their brief and is confidential,
23 both made of recycled material, that in fact quality
24 differences between those two products, the end
25 product as opposed to the inputs that went into them,

1 account for perhaps price differentials?

2 MS. KATZ: If the product was such poor
3 quality, why would anyone buy it? Why would you have
4 the volume increases that you have in demand for that
5 product if it was so inferior?

6 COMMISSIONER ARANOFF: With respect to a
7 product that's made of, say, recycled material and is
8 of a certain denier, are there quality ranges for
9 different end use applications? Or does everybody
10 want exactly the same thing?

11 MS. KATZ: I think depending on the end use
12 there might be a different quality requirement. For
13 the majority of end uses which are pillows and
14 furniture and batting for comforters, you want first
15 quality. You don't want to make a pillow that the
16 customer is going to complain about a week after
17 they've purchased because it's gone flat.

18 So if you want to participate in a majority
19 of the products that fiberfill goes into, you need a
20 first quality product.

21 COMMISSIONER ARANOFF: Okay.

22 MR. McNAULL: I think you're limiting this
23 to domestic, but I've seen imported, regenerated fiber
24 that spans a pretty wide range, everything from bales
25 with trash contamination, splinters, undrawn fibers,

1 to bales that mechanically are in very good shape. So
2 there is some range in this regenerated recycled world
3 of product quality, if you will.

4 Now is it important? That's going to be
5 dependant on customer needs and requirements.

6 COMMISSIONER ARANOFF: What would be a low
7 end use where someone could take something that either
8 isn't first quality or has some less desirable
9 characteristic in terms of consistency or color?

10 MS. KATZ: Something that you don't see, a
11 carpet shoddy which is underlay for carpeting to
12 provide a cushioning effect.

13 COMMISSIONER ARANOFF: Is that the subject
14 product?

15 MS. KATZ: Some low end subject product
16 could go in there.

17 MR. ROSENTHAL: Commissioner Aranoff, by the
18 way, the Respondents made exactly the same arguments
19 in the original investigation and the Commission
20 properly rejected them then.

21 One of the applications that they claimed
22 would be used for this low end product was dog beds.
23 Ms. Katz properly pointed out that there are a lot of
24 customers and companies who don't want shoddy filling
25 in their dog beds, so even that application is not one

1 you can assume will be used for off-quality product.

2 COMMISSIONER ARANOFF: I appreciate those
3 answers, Mr. Rosenthal. I know that a lot of this was
4 argued in the original. Of course I wasn't here then,
5 so I allow myself a little bit of leeway to re-explore
6 some of these issues.

7 The importers assert on a similar issue that
8 the underselling in pricing products six and seven is
9 a function of physical differences between the
10 domestic and imported products, and products six and
11 seven were both 100 percent regenerated polyester
12 staple fiber, the first being five to seven denier and
13 the second being 12 to 15.

14 How do you respond to that argument?

15 MS. KATZ: I'll respond because we make
16 products that are virgin and not virgin. The pricing
17 that we get for both products is essentially the same.
18 So there is no difference in the inputs.

19 COMMISSIONER ARANOFF: So you make both
20 those specific products, product six and product
21 seven, with both virgin and non-virgin input?

22 MS. KATZ: What were the descriptions?

23 COMMISSIONER ARANOFF: Number six was 100
24 percent regenerated PSF 5 to 7 denier, and number
25 seven was 100 percent regenerated, 12 to 15 denier.

1 MS. KATZ: Yes. Well, assuming you take the
2 regen word out and using virgin. Yes. we make six
3 denier at both locations; we make 15 denier in both
4 locations. Both products command equivalent pricing.

5 COMMISSIONER ARANOFF: Okay.

6 MS. BECK: And Commissioner Aranoff, if I
7 can just add. I think what's also very telling is you
8 have product three which is the virgin, exact same
9 description as seven; and you have very similar
10 underselling results. So that would be opposite.

11 COMMISSIONER ARANOFF: Thank you, Ms. Beck.
12 I appreciate that answer.

13 Mr. Magrath, I think this was your part of
14 the presentation. You had argued that increased non-
15 subject imports have rendered the domestic industry
16 more vulnerable. In general, non-subject imports seem
17 to have displaced subject imports and at the same time
18 prices for the domestic product increased while the
19 volume of non-subject imports increased.

20 In that case is it clear that non-subject
21 imports actually make the domestic industry more
22 vulnerable?

23 MR. MAGRATH: I listened with some amusement
24 this morning to the questions about price increases.
25 There were certain price increases, especially in the

1 latest period that were driven by raw material costs.
2 At the end of the day this comes out in profitability
3 which has been almost totally absent from each
4 producer throughout this period of investigation.

5 Perhaps this 2.1 percent operating
6 profitability in the latest period stands out because
7 it's the only period of profitability in the seven
8 year period of investigation. So when you talk about
9 price increases, perhaps we would have you refocus on
10 the absolute level of prices and the complete lack of
11 ability of the U.S. producers to charge prices
12 sufficient to cover their costs and to make profits.

13 We have this interim period where we have
14 increased costs, we have a little bit of increased
15 prices, this comes at the same time that the Chinese
16 have pushed through to be the largest single supplier
17 in the market, like we've said before. We repeat that
18 that is because, directly related to the fact that now
19 the Chinese have pushed through to become the lowest
20 priced supplier in the U.S. market and if it doesn't
21 perfectly correlate with the U.S. price trends in this
22 commodity product it will very shortly.

23 COMMISSIONER ARANOFF: I appreciate that.

24 One more quick question that ties into that
25 before my time is up.

1 Essentially I suppose your pricing argument
2 in this case has to be principally based on price
3 suppression since prices have largely been increasing.
4 Normally to find price suppression we have to find
5 that prices otherwise would have been higher. There
6 are price increases that are being prevented by the
7 subject imports.

8 Given the significant presence of non-
9 subject imports in the market, how do we make that
10 finding that price suppression is likely if the orders
11 are revoked because of the subject as opposed to the
12 non-subject imports?

13 MR. MAGRATH: It's a commodity product PSF
14 from China with five to seven denier hollow slick, is
15 directly comparable, competes in the marketplace with
16 both domestic and the imports from Korea and Taiwan.

17 Your job here is to number one, make a
18 determination as to vulnerability, and then to say
19 what would happen if. From all these factors we have
20 listed, it's pretty apparent what would happen if,
21 especially considering the rise of China and the
22 factor of that very aggressive competitor in the
23 marketplace. What would happen if the duties went off
24 these other imports? But it's all competitive in the
25 market. That's our basic point.

1 Indeed, it was the basic determination you
2 made in 1999.

3 COMMISSIONER ARANOFF: Thank you. I
4 appreciate that answer. Anything that you can do in
5 your post-hearing to help us sort of separate out what
6 happens if with respect to subject versus non-subject,
7 you know the Commission is sometimes called to answer
8 for that difference by various reviewing entities. So
9 I appreciate that. Thank you.

10 CHAIRMAN KOPLAN: Thank you, Commissioner.

11 I want to come back if I could to the
12 subject of quality.

13 The importers on page 15 of the pre-hearing
14 brief state, and I quote, "The difference in the
15 various certain PSF products were also present in the
16 POR. These differences have created a demand for
17 subject imports from Korea and Taiwan that cannot be
18 met by domestic producers."

19 Now according to our pre-hearing staff
20 report at 2-10, and I'm quoting, "Quality was named by
21 12 purchasers as the number one factor generally
22 considered in deciding from whom to purchase certain
23 PSF while six other purchasers indicated that it was
24 the number two factor. One responded it was the
25 number three factor."

1 What I'm trying to understand, and I'd like
2 to hear from domestic witnesses on, what are the
3 attributes that purchasers consider in determining the
4 quality of PSF? How does PSF from domestic producers
5 compare with the subject imports from Korea and Taiwan
6 with respect to these attributes?

7 So if you could break down for me what we
8 mean when we're talking about quality.

9 MS. KATZ: I think in general they compete
10 very closely together. The attributes that a customer
11 would be looking for, again depending --

12 CHAIRMAN KOPLAN: That's what I need you to
13 identify.

14 MS. KATZ: Yes. That depends on the end
15 use. If someone is making pillows they're likely to
16 want a silicone finish. What a silicone finish does
17 is you kind of rub a pillow, it kind of like slides.
18 It gives it a bit of a slick feel. And some end uses
19 such as pillows require that.

20 CHAIRMAN KOPLAN: Is that the coated versus
21 non-coated?

22 MS. KATZ: Yes, that's a finish.

23 CHAIRMAN KOPLAN: Both were covered in the
24 scope.

25 MS. KATZ: And that's covered, that's within

1 the scope, yes. Because that's just one of the minor
2 variations that exist within the products. That is
3 available domestically, that is available from various
4 imports. No difference in the product.

5 Another attribute would be the denier, and
6 basically it's, as defined in the product categories,
7 it's usually in the six to seven, five to seven denier
8 range and let's say a 13 to 15 denier range. Again,
9 for pillows and for batting for a comforter, you would
10 use the finer, the five to seven denier range because
11 you don't want a clumsy comforter. You don't want
12 heavy, you want a lighter filling inside.

13 For furniture where the stress on furniture
14 is much more severe than you would have on a pillow or
15 a comforter, you want a heavier denier.

16 CHAIRMAN KOPLAN: You're talking about the
17 stuffing.

18 MS. KATZ: Right, the stuffing. You would
19 want a 15 denier product for the pillow that goes into
20 a couch or the wrapping that goes around the wood
21 frame of a couch. Again, the domestic producers can
22 make both those denier ranges. The foreign producers
23 can make those same denier ranges.

24 There's also a product called, there's a
25 cross-section which is what --

1 CHAIRMAN KOPLAN: A what?

2 MS. KATZ: A cross-section, which is if you
3 were to slice the fiber what it would look like
4 inside. There are two basic types of cross-sections
5 that are used. One is a solid which means it's just a
6 solid piece of material, and one is hollow which means
7 there's actually a hole in the middle of the fiber.

8 John, I think maybe you can help me better
9 differentiate the end uses for that, a hollow versus a
10 solid.

11 MR. McNAULL: It's like a quality of
12 springs. You have stiff springs, you have weaker
13 springs. You're trying to fill a space. You're
14 trying to have resilience in terms of holding that
15 space. You're trying to create a soft cushion or a
16 hard cushion.

17 I think customers, depending on the
18 application, want to have a fiber that will fill a
19 void as efficiently as it possibly can and deliver
20 those attributes. Be it a firm seat, be it a soft
21 pillow, be it a comforter, whatever the case may be.

22 I think customers look at two things. They
23 look at one, what is their conversion. In other words
24 from the time they purchase a product until they get
25 it into that end use state, what is their cost to do

1 that. Then what attributes does it deliver when it is
2 in that end use state.

3 I think the domestic industry has products
4 that fulfill all those needs across the board.

5 CHAIRMAN KOPLAN: Thank you, I appreciate
6 both of your answers to this question.

7 In your brief at page 11 you argue that
8 almost all purchasers and importers stated that the
9 products were either always, frequently, or sometimes
10 interchangeable. In fact according to Table 2-4, a
11 slight majority of responding purchasers reported that
12 certain PSF for both Korea and Taiwan were only
13 sometimes or never interchangeable with that produced
14 domestically.

15 Do product differences explain why subject
16 products have remained in the U.S. market despite
17 these orders? And if so, why would you expect that
18 revocation would lead to increased imports in the
19 foreseeable future?

20 MR. ROSENTHAL: Could you repeat your last
21 sentence, please?

22 CHAIRMAN KOPLAN: If so, why would you
23 expect that revocation would lead to increased imports
24 in the foreseeable future?

25 MS. KATZ: The sentence before that then?

1 CHAIRMAN KOPLAN: Excuse me?

2 MS. KATZ: The introductory sentence that
3 you used for that question.

4 CHAIRMAN KOPLAN: Okay.

5 Do product differences explain why subject
6 products have remained in the U.S. market despite
7 these orders?

8 MR. ROSENTHAL: I think in fact, leading
9 into that part, the notion that there were some
10 differences in quality and therefore the theory by the
11 Respondents is --

12 CHAIRMAN KOPLAN: I quoted to you from our
13 staff report.

14 MR. ROSENTHAL: The answer is no, that would
15 not be the case here.

16 The reason that sometimes, as Ms. Katz
17 mentioned, the domestic industry can get a little bit
18 more than the importers for the essentially commodity
19 product is that they will work with the customers,
20 they will try to make sure that the customers are
21 satisfied and may want be willing to pay a little bit
22 more than they would for the imported product that
23 they have an alternative to buy.

24 If the order goes away and the pricing
25 restraints go away with them, then the gap in pricing,

1 the underselling that's been found will increase
2 dramatically. It will be less, the domestic
3 purchasers will be less willing to pay whatever
4 premium they would be willing to pay for a domestic
5 product or working with a domestic manufacturer
6 because the price gap will be even larger. And as
7 we've seen over time, the willingness of domestic
8 customers to pay for what some purchasers may regard
9 as a difference in quality, although as you said the
10 record is mixed on that, has diminished.

11 This goes to the other portion. As demand
12 has increased in the market over the last five to ten
13 years, but the demand is being captured not by the
14 domestic industry but by imports. And originally it
15 was the subject imports, now it's the Chinese plus the
16 subject imports.

17 If the order goes away there will be even
18 less of a reason for the domestic industry to be able
19 to get those sales, more of a reason for the
20 purchasers to buy from Taiwan and Korea because
21 they'll be able to price even lower.

22 I'm hoping I'm answering your question.

23 CHAIRMAN KOPLAN: You are. I appreciate
24 that.

25 MR. MAGRATH: Mr. Chairman, the way the

1 Respondents present this is really disingenuous. They
2 are, the particular Respondents in back of us here,
3 they're talking about a subset of a subset. They're
4 talking about the small family-owned firms in Korea
5 that make regen product and that according to them, we
6 think it's competitive in the U.S. market, according
7 to them they don't compete. But they're not talking
8 about the Hubises of the world which is a world-class
9 producer. They're not talking about any of the
10 Taiwanese who are all large corporations and world-
11 class producers of the highest quality products.

12 CHAIRMAN KOPLAN: Thank you.

13 MR. McNAULL: Just to add, these
14 applications, these business models that consume this
15 fiber are very sensitive to price, and the subject
16 countries here are sophisticated producers. They're
17 hungry for the volume, for the U.S. business. And
18 they're willing to do what they can do to make their
19 fibers run and gain market share.

20 CHAIRMAN KOPLAN: Mr. Magrath, I think I was
21 reading from the staff report, not the Respondents'
22 brief, so --

23 MR. MAGRATH: Generally the staff report was
24 characterizing what the Respondents' brief said, that
25 it wasn't competitive.

1 Now the purchasers --

2 CHAIRMAN KOPLAN: That's a nice recover.

3 MR. MAGRATH: You said the purchasers had
4 different opinions on that. As I recall, --

5 CHAIRMAN KOPLAN: My time has expired.

6 MR. MAGRATH: I'm sorry.

7 CHAIRMAN KOPLAN: I do have one question
8 left, but I'll come back to it.

9 Vice Chairman Okun?

10 VICE CHAIRMAN OKUN: Thank you, Mr.
11 Chairman. I just have one question left, although it
12 has two parts.

13 Mr. McNaull, I wanted to just go back to
14 you. I think in response to I think it was
15 Commissioner Hillman's question about the overlap in
16 customers for the textile applications and the
17 fiberfill applications, I think you had said about ten
18 percent of those customers. Or there is overlap at
19 about ten percent?

20 MR. McNAULL: I'd said ten percent and then
21 I'd taken this little card and calculated it. It's
22 actually less than five for DAK Americas.

23 VICE CHAIRMAN OKUN: And just so I
24 understand that, five percent meaning five percent of
25 the customers or five percent of the volume --

1 MR. McNAULL: Five percent of the volume
2 that we sell.

3 VICE CHAIRMAN OKUN: And for those
4 particular customers, if you're selling both fiberfill
5 and textiles, do you still have separate people
6 dealing with them on the two separate applications?
7 Or the two like products? Or --

8 MR. McNAULL: It's one person and there's
9 separate pricing arrangements for each application.

10 VICE CHAIRMAN OKUN: And Ms. Katz, I can't
11 remember if you had commented on the overlap between
12 textile and fiberfill customers.

13 MS. KATZ: We have a handful of customers
14 that buy both products. I think currently it's maybe
15 one or two, in the past maybe five. But several have
16 gone out of business. Most of our customers are
17 either in one area or the other.

18 VICE CHAIRMAN OKUN: Okay, and for those
19 customers is the same person dealing with that
20 customer?

21 MS. KATZ: Currently, yes. Not several
22 years ago.

23 Basically what happened, Wellman bought
24 Fiber Industries. Fiber Industries was the textile
25 end; Wellman was the heavier denier and the fiberfill

1 end. So those personnel structures basically stayed
2 intact, whereas the sales people from the textile end
3 kept selling to textile customers; those from the
4 fiberfill end kept selling to the fiberfill customers.
5 As I said before, it was only in the last several
6 years, just through a need to consolidate and reduce
7 cost that we have reassigned the sales people so that
8 there's one person calling on, only one person from
9 Wellman calling the accounts.

10 Even within these accounts you'll have
11 someone who's a fiberfill buyer and someone who's a
12 textile buyer, so even our customers differentiate who
13 they deal with.

14 VICE CHAIRMAN OKUN: I appreciate those
15 answers.

16 Mr. Rosenthal, there's a proposed hearing on
17 that point and we have two of the industry here with
18 us. If you could provide any additional information
19 from the other companies that you represent, both with
20 regard to, during the original investigation and now,
21 how they were set up that would be greatly
22 appreciated.

23 With that I don't have any further
24 questions, but I do want to thank all of you for all
25 the answers that you've given this morning and this

1 afternoon.

2 CHAIRMAN KOPLAN: Thank you.

3 Commissioner Hillman?

4 COMMISSIONER HILLMAN: Thank you.

5 In trying to get the information that we
6 would love to have in terms of the comparisons between
7 U.S. prices versus third countries. You've alleged
8 that the U.S. is the high priced market and therefore
9 price is one of the things that would suck in imports.
10 Most of the data you've referred to, I think virtually
11 all of it, is AUV data.

12 So my first question was, for this product
13 in this industry, how good is average unit value data
14 as opposed to particular pricing data.

15 Dr. McGrath or Ms. Beck?

16 MS. BECK: Yes, Commissioner Hillman. For
17 this product we think that AUVs are probative and are
18 useful in comparing.

19 COMMISSIONER HILLMAN: Okay.

20 Then Mr. McNaul and Ms. Katz, at least our
21 data shows, and again not company specific, but
22 generally, that the industry does engage in a fair
23 amount of exporting. Fair, I say. Obviously it's not
24 a huge part of your business.

25 To the extent that you are participating in

1 export markets, how would you describe prices for
2 fiberfill outside of the United States?

3 MS. KATZ: Most of our exports of the
4 subject fiber are in four denier, three denier
5 products, products going into non-wovens, and they're
6 essentially sister companies of our domestic
7 customers. So the pricing there is essentially the
8 same as it is for the domestic based customer. Just
9 maybe a freight differential.

10 We also attempt every so often to ship to
11 Canada, and that's a market that we find it very
12 difficult to sell into because that is totally
13 inundated with imports from Korea and Taiwan. It is
14 very very difficult for us to sell at a profit into
15 Canada.

16 COMMISSIONER HILLMAN: Okay.

17 Mr. McNaul1?

18 MR. McNAULL: For DAK Americas exports, we
19 export primarily to Mexico. We take advantage of the
20 NAFTA Free Trade Agreement and place the pounds into
21 Mexico in existing accounts that we had prior to a
22 plant shutdown there, so we service our business from
23 U.S. assets.

24 The Mexican market is protected by a ten
25 percent polyester staple tariff, so we're able to sell

1 there with that protection into that market so we
2 generally see those prices at or higher than U.S.
3 prices for fiberfill.

4 COMMISSIONER HILLMAN: I appreciate that.

5 If there is anything else on specific prices
6 in third country markets as opposed to AUVs that could
7 be put on the record I think it would be very helpful
8 for us to know.

9 The second thing I wanted to explore a
10 little bit, we've had a lot of discussions about China
11 and the fact that China is coming so heavily into the
12 U.S. market. Obviously China would be the source of a
13 huge portion of the finished textile and apparel goods
14 that are coming in here.

15 What do we know about where China sources
16 its input materials, whether they're the water bottles
17 or whether they are the, I can't remember the name of
18 the two chemicals, the primary chemicals that are
19 going into your virgin product. Again, why this huge
20 expansion from China? Has there been something in
21 China, again I would have assumed that the domestic
22 demand in China for these fibers would have gone up
23 considerably as China has become, in essence, the
24 world supplier of fabric in the form of finished
25 apparel products as well as significant players in

1 home furnishings and a whole line of things.

2 I'm trying to understand what has happened
3 in recent years that has allowed China to have, if you
4 will, excess or at least surplus production of
5 fiberfill and/or textile fibers such that they are
6 able to export it in, if you will, its downstream form
7 as opposed to sending it into finished product.

8 MS. KATZ: I think China a number of years
9 ago developed a plan, a long-term plan, and that plan
10 included, and this is published. There are many
11 consultants who cover this industry. They were going
12 to build polyester capacity and that was their goal
13 because if you make polyester fiber you could support
14 a downstream textile industry that employs a lot of
15 people and they're looking for ways to employ their
16 people.

17 So really with no rhyme or reason as to
18 matching demand with supply, they created an edict to
19 just grow and they'd worry about what to do with the
20 product later.

21 Their raw materials are available to them
22 the same way they're available to us. The producers
23 of TA and EG are worldwide producers. They welcome
24 the ability to sell to Chinese and Korean and
25 Taiwanese the same as they do the U.S..

1 COMMISSIONER HILLMAN: So on the virgin side
2 their inputs are, in essence, the same world class
3 competitors that we've seen in PET resin and lots of
4 other cases that we've done that are followed by I
5 think substantially the same inputs.

6 How about the recycled product? Presumably,
7 I don't know how the rest of the world deals with
8 their recycling, but I would assume that the U.S. or
9 certainly North America is the primary source of water
10 bottles, like that, or soda bottles, or all of those
11 things that are the primary inputs to the recycled
12 material.

13 Is China sourcing that from here? Or what
14 happens to the trade in the regenerated material?

15 MS. KATZ: That's exactly correct. If you
16 remember what I mentioned before is that Wellman used
17 to make a lot of money on its recycled products
18 because raw materials are very cheap. What's happened
19 in the last five to seven years is that China has come
20 in and they're out there buying all the bottles.
21 They've driven the price of bottles up tremendously.
22 They buy bottles, they buy regrind.

23 One of the people that went to our
24 Johnsonville facility saw some of the stuff that looks
25 like dirt that they actually buy and convert to fiber.

1 And they're in the marketplace buying all the same
2 recycled inputs that we have historically used and
3 driven up the prices.

4 They can afford to do it because we lose
5 money in the amount of labor that's required to clean
6 these products and sort through them. They've got
7 more labor than they know what to do with. Even with
8 the cost of bringing those bottles and other inputs
9 from the United States, those transportation costs,
10 they can still process that product much more cheaply
11 than we can because their labor costs are non-
12 existent.

13 COMMISSIONER HILLMAN: Had Korea and Taiwan
14 been significant suppliers of fiberfill or textile
15 polyester staple fiber to China and had that stopped
16 and do you have any hard numbers you can put on the
17 record in terms of the degree to which Korea and
18 Taiwan had been supplying the Chinese market and when
19 did those sales start, exactly when did China shift to
20 becoming more of an exporter of this product as
21 opposed to a significant importer?

22 MS. KATZ: Originally a lot of the staple
23 capacity in Korea and Taiwan was built to provide
24 polyester staple to China. When China decided on the
25 policy where they were going to be a self-sufficient

1 polyester producer, they went to their Taiwanese and
2 Korean suppliers and said sorry, we don't need it any
3 more. That's about the same time that the products
4 started coming to the U.S..

5 COMMISSIONER HILLMAN: Again, I'm trying to
6 make sure I understand exactly what time you think
7 that happened.

8 MS. KATZ: I think that happened in probably
9 the mid to late '90s.

10 COMMISSIONER HILLMAN: Mr. McNaull?

11 MR. McNAULL: I almost chuckled, you asked
12 for a rational explanation as to why China's doing
13 what they're doing in terms of polyester capacity.
14 From a capitalistic perspective, we really can't
15 figure that out.

16 We know today that they've got enough
17 capacity to meet their own needs and will only run
18 their industry at around 65 percent capacity to meet
19 internal needs. So there's a huge incentive for them
20 to export.

21 They've had this huge buildout in polyester
22 staple capacity. At the same time they've displaced
23 Korea and Taiwan. So now they're in a situation where
24 they're looking for a home for their product through
25 exports. We think they'll go through a very similar

1 thing that the U.S. industry is going through and that
2 is a situation where you're trying to place the
3 pounds, you're trying to run your plants full, and
4 you're going to have to shut down the less competitive
5 capacity.

6 So China has a huge overhang in the amount
7 of polyester capacity they have on hand and I think
8 it's --

9 COMMISSIONER HILLMAN: Notwithstanding a
10 huge home market demand? I mean I would assume that
11 their home market demand is very huge.

12 MR. McNAULL: There's huge growth, but the
13 consultants we use for global polyester will say
14 they've outbuilt capacity. There's enough capacity
15 there to meet domestic demand growth projections for
16 years, possibly decades to come, so they've not been
17 very responsible at all in deployment of capital in
18 polyester.

19 COMMISSIONER HILLMAN: I know there is a
20 fair amount of this on the record, I just wanted to
21 hear from the industry's perspective what there is.
22 But if there is further of these kind of industry
23 analyses that would help us understand how to fit
24 China into this picture. They're not a subject
25 country, we don't have good data on where Korea or

1 Taiwan are shipping in the absence of questionnaire
2 responses. So again, whatever you can do to help us
3 fill out this picture of exactly what has happened in
4 terms of once Korea and Taiwan from your testimony get
5 pushed out of China, again, I'm trying to make sure I
6 understand when that happened, how much it happened,
7 how much had they been shipping, what this diversion
8 is. So anything further for the post-hearing I think
9 would be helpful.

10 MR. McNAULL: And we believe that they sell
11 at their cash cost for additives, raw materials, and
12 take very little to cover the cost of capital or labor
13 at all for their offering here.

14 MS. KATZ: It's very easy to reconstruct the
15 price of polyester staple. Being that 70 percent of
16 the cost is raw materials and those raw materials are
17 basically internationally known, those numbers,
18 internationally known. It's so easy to see that their
19 pricing is so under the cost when you take into
20 consideration raw materials are 70 percent,
21 transportation, broker fees, transportation within the
22 United States.

23 In many cases it's impossible to make any
24 money at the prices that are being sold based on just
25 general information that you know is out there.

1 COMMISSIONER HILLMAN: I appreciate those
2 responses. Thank you.

3 CHAIRMAN KOPLAN: Thank you.
4 Commissioner Lane?

5 COMMISSIONER LANE: Mr. McNaul, I have a
6 question and maybe for Ms. Katz also. How would you
7 characterize the financial condition of that portion
8 of your industry that is not the subject of this
9 proceeding but what I would loosely characterize as
10 the price fixing portion of the industry?

11 MR. McNAULL: For the record, I have no
12 involvement in any of those prior activities, it's
13 probably important to say.

14 Polyester staple in general is a very
15 difficult business to make money in. It's marginal at
16 best and the subject fiber that we have is really on
17 the bottom of that hierarchy in terms of its
18 contribution to any profits that we make. I don't
19 know if that answers your question or not.

20 COMMISSIONER LANE: No, I don't think it
21 did.

22 MR. McNAULL: Textiles better than subject
23 matter, I think.

24 COMMISSIONER LANE: So the textile portion,
25 and when we say textile, that would be how you are

1 defining, how you're differentiating the subject
2 product and the product that was part of the price
3 fixing.

4 MR. McNAULL: Yes.

5 COMMISSIONER LANE: Okay. So you're saying
6 that the textile portion is much more profitable.

7 MR. McNAULL: It's marginally better. It's
8 not much more profitable. Again, it's a difficult
9 business in terms of generating earnings. It is
10 better than the subject product, but not dramatically
11 better.

12 COMMISSIONER LANE: I'm assuming that you
13 use some of the same equipment to produce both
14 products.

15 MR. McNAULL: It's not exactly the same. We
16 do have a textile, if you look at the DAK business
17 model in particular, we've taken your staple equipment
18 and retrofitted it to manufacture the subject items,
19 so there is a capital investment there, there are some
20 differences in equipment, but there is some crossover
21 retrofitting you can do to manufacture one over the
22 other. I don't know if that answers your question.

23 COMMISSIONER LANE: Yes.

24 Ms. Katz?

25 MS. KATZ: I thought your question was more

1 market oriented, but I would suggest that with respect
2 to the market the textile side of the house is
3 probably more vulnerable because, as I mentioned
4 before, a large segment of the textile business which
5 is mostly apparel, has --

6 COMMISSIONER LANE: No, I was actually
7 asking if you produce both textile and the subject
8 product, how would you characterize the financial
9 condition of that portion of your company that is
10 related to the textile portion?

11 MS. KATZ: I think in general they're not
12 too dissimilar. They're similar. I think within each
13 one you have some end uses that allow you a higher
14 price and some end uses that you can barely cover your
15 costs on. But in general I think they're equivalent
16 if they were made on the same production equipment.

17 COMMISSIONER LANE: And I am assuming that
18 in your financial reporting and your records that
19 there is a clear line between what you're making on
20 the textile portion and what you're doing with the
21 polyester staple fiber.

22 MS. KATZ: In our Johnsonville facility it's
23 all fiberfill so there's no issue there.

24 At the Palmetto facility what we had to do
25 is we had to invest some money this past year to

1 convert lines that previously could only make the
2 finer deniers to allow them to make the heavier
3 deniers. So we had some down time on those lines and
4 spent quite a substantial amount of money to now make
5 that product, make the covered product at that plant.

6 You can identify the costs attributed to
7 that product and the profits, yes.

8 COMMISSIONER LANE: Okay, thank you.

9 That's all the questions I have.

10 CHAIRMAN KOPLAN: Thank you, Commissioner.

11 Commissioner Pearson?

12 COMMISSIONER PEARSON: Mr. Chairman, I have
13 no further questions for the domestic industry but
14 would just like to thank the panel for their
15 contributions this morning.

16 CHAIRMAN KOPLAN: Thank you.

17 Commissioner Aranoff?

18 COMMISSIONER ARANOFF: Thank you, Mr.
19 Chairman. Two quick questions. Well, hopefully
20 they're quick.

21 Mr. Rosenthal, you quote from several
22 articles in Exhibit 6 of your brief that indicate that
23 polyester staple fiber production in China is
24 increasing. In reading those articles, though, it's
25 not clear whether the PSF being referenced is the same

1 PSF products that are under review here. Some of the
2 articles indicated that the PSF in question is being
3 consumed downstream in the production of textiles as
4 has been discussed, which would seem to suggest that
5 it is in fact the other non-subject product.

6 Can you address the possibility in your
7 post-hearing submission that in fact what you're
8 asking us to rely on is not referring to this product
9 at all?

10 MR. ROSENTHAL: Yes, we will do that in our
11 post-hearing.

12 COMMISSIONER ARANOFF: Thank you.

13 One more question.

14 According to the data in our staff report,
15 over the period of this review it looks as though
16 conjugate PSF made up an increasing share of domestic
17 production while regenerated PSF declined. Do you
18 think that is actually the case? I'd ask Ms. Katz and
19 Mr. McNaul. Do you think that's actually the case or
20 do you think that trend is a data anomaly that's based
21 on the fact that we don't have data for all domestic
22 producers in certain years?

23 MS. KATZ: What you're saying is they're
24 using regen as a product that can't be a conjugate?
25 Is that what you're saying? They think of conjugate

1 as a virgin as opposed to regen which is something
2 else?

3 COMMISSIONER ARANOFF: My understanding of
4 the way that we defined it in the staff report was
5 that conjugate was defined as being separate from
6 either regen or virgin. That's why our number got to
7 100 percent.

8 MS. KATZ: You can make conjugate either out
9 of regen or virgin.

10 COMMISSIONER ARANOFF: But doesn't it mix
11 two different things?

12 MR. ROSENTHAL: I think the problem is that
13 it's not conjugate or regen. It's conjugate versus
14 other types, but you can make conjugate out of regen
15 or virgin material. I think that dichotomy doesn't
16 work.

17 MS. KATZ: I think what's confusing is the
18 word regen to describe the polyester product. Regen
19 is really the raw materials. They were either
20 regenerated or recycle or they're virgin.

21 COMMISSIONER ARANOFF: I guess I understand
22 your point, but my understanding, and staff can
23 correct me if we're wrong, is we had a table in the
24 staff report which asked that domestic production be
25 broken out into those three categories and they added

1 to 100 percent. So clearly, we were reporting it on
2 some basis.

3 (Pause).

4 COMMISSIONER ARANOFF: Okay. It's Table 3-
5 4. I guess if you want to go ahead and think about it
6 you can answer later, but there is an apparent
7 indication in there that there's an increasing share
8 of domestic production in conjugate and a decline in
9 regenerated, however we've defined them to be
10 different here. I'm trying to understand whether
11 that's real or a data anomaly based on who we do and
12 don't have for particular years.

13 MR. McNAULL: Commissioner, I think it's a
14 valid trend. We'd need to confirm in the post-hearing
15 brief, but my knowledge of the market, I think that
16 makes sense.

17 COMMISSIONER ARANOFF: Okay.

18 MR. ROSENTHAL: We would characterize it as
19 conjugate versus non-conjugate, as opposed to
20 conjugate versus regen. That's what the conversation
21 has been at the table behind this microphone, and
22 we'll explain that more in the post-hearing brief.

23 COMMISSIONER ARANOFF: That would be
24 helpful. If you could just take a look at Table 3-4
25 and explain to me what in your view is going on there

1 and what explains it, that would be helpful.

2 Thank you very much to the panel, and Mr.
3 Chairman, I have no further questions.

4 CHAIRMAN KOPLAN: Thank you.

5 I have one question for Mr. McNaul and Ms.
6 Katz.

7 At pages 52 and 53 of the importers' pre-
8 hearing brief they're arguing that you've shown by
9 your actions that the orders are ineffective and they
10 go on and talk about that a little bit and then they
11 conclude by saying, "In fact the Petitioners have been
12 steadily disinvesting in this industry during the POR
13 and taking capacity out of production."

14 Recognizing that you disagree with the
15 allegations of a price fixing conspiracy in the market
16 for the like product, what accounts for the apparent
17 reorganization of the domestic industry throughout the
18 POR despite the existence of the orders?

19 MS. KATZ: With respect to what Wellman has
20 done, we closed a facility in 2002, a small facility,
21 because it was not competitive. We couldn't make
22 product that would compete in the marketplace at the
23 cost of that facility.

24 Then the recent shutdown that we did in
25 Johnsonville this year was also to shut down equipment

1 that just was not competitive. We couldn't make
2 product that we could sell in the marketplace at a
3 competitive price so we shut it down.

4 On the other hand, we have increased
5 capacity to make the subject merchandise at our
6 Palmetto --

7 CHAIRMAN KOPLAN: I didn't hear that.

8 MS. KATZ: We did increase capacity to make
9 subject merchandise at our Palmetto facility and are
10 looking to increase it again in 2006.

11 So what we have done, and I can't speak for
12 the whole industry, but what Wellman has done is
13 become more efficient in producing the product by
14 eliminating those assets that don't perform properly,
15 either because of age or antiquated technology. So I
16 would disagree with the comment that was made.

17 CHAIRMAN KOPLAN: Thank you.

18 Mr. McNaul1?

19 MR. MCNAULL: In 2002 we entered the
20 fiberfill market investing capital and resources into
21 the market and have worked to have a reasonable market
22 share there ever since. We're committed to this being
23 a part of our portfolio.

24 We did eliminate non-competitive capacity in
25 Mexico, in Monterrey, Mexico, this past year and have

1 consolidated some of that production into our
2 facilities where we also manufacture the subject
3 product to get at the economies of scale and
4 efficiencies we need.

5 CHAIRMAN KOPLAN: Consolidated where?

6 MR. McNAULL: In one of our plants that
7 makes the subject products in the United States.

8 CHAIRMAN KOPLAN: Which plant would that be?

9 MR. McNAULL: That's in Wilmington, North
10 Carolina.

11 CHAIRMAN KOPLAN: Okay.

12 MR. ROSENTHAL: Mr. Chairman, just to
13 respond further, I think the Respondents have kind of
14 mixed certain facts in an inappropriate way.

15 It is true that the orders have not been as
16 effective as this industry would have wanted for a
17 variety of reasons, and as you heard over the past
18 five years the industry lost \$86 million. It's hard
19 to invest a lot of money when you're losing that much
20 money, but you've heard testimony about what the
21 industry has done to get more competitive.

22 Just because the industry has lost money and
23 hasn't had a lot to invest doesn't mean that the
24 orders haven't still been helpful, even though they
25 haven't returned the industry to profitability because

1 there are other things going on --

2 CHAIRMAN KOPLAN: I didn't say I was making
3 that leap.

4 MR. ROSENTHAL: No, no. I'm saying the
5 Respondents have and I want to address that, that it
6 is an illogical leap. And you were just recasting the
7 Respondents' argument.

8 Because the industry hasn't done as well as
9 it might doesn't mean that the orders haven't been
10 helpful. As was stated earlier, if the orders go away
11 the only restraint on the Korean and Taiwanese prices
12 will be abandoned and then there will be nothing to
13 stop them from then going even further in their
14 pricing, down to where the Chinese have come in and
15 taken more market share. That is the biggest concern
16 that this industry has.

17 You've got the non-subject imports, China in
18 here, eating the domestic industry's lunch, and if you
19 let the Taiwanese and Koreans off the hook there will
20 be no stopping them from going down to the Chinese
21 level.

22 The --

23 CHAIRMAN KOPLAN: Let me just interrupt for
24 a second. One of the reasons I asked this question,
25 in listening to the response of Mr. McNaul to

1 Commissioner Lane that in the PSF industry fiberfill
2 was at the bottom of the grocery chain, so to speak.
3 So I picked up on what importers had said.

4 Go ahead, I'm sorry to interrupt you.

5 MR. ROSENTHAL: I understand their argument.
6 It just starts from a wrong premise and I wanted to
7 explain what happens when you start with the right
8 premise.

9 CHAIRMAN KOPLAN: Thank you. I appreciate
10 that.

11 With that I have no further questions. I'll
12 turn to Commissioner Hillman.

13 COMMISSIONER HILLMAN: Only one quick
14 followup with respect to the issue that Commissioner
15 Aranoff was raising on conjugate.

16 I understand your concerns about the numbers
17 can't add if they're the two, but I would ask you in
18 reacting and commenting in your post-hearing on
19 conjugate if you could also address the pricing issues
20 because I think we priced one conjugate product,
21 product five, in our pricing tables. It is the one
22 product where you see fairly consistent, very
23 consistent overselling by the subject imports.

24 So I'm wondering if you can tell me anything
25 about how I should look at the data on conjugate given

1 that at least it looks to me as though we are seeing
2 increased domestic production of conjugate product at
3 the same time you're seeing imports that are fairly
4 significantly overselling domestic production and what
5 we should make of that as opposed to the other forms
6 of the product.

7 With that I have no further questions but
8 would join my colleagues in thanking you all very much
9 for your answers and for taking the time to be with us
10 this morning.

11 Thank you.

12 CHAIRMAN KOPLAN: Let me see if there are
13 other questions from the dais.

14 No. Seeing that there are none, Ms. Mazur,
15 does staff have questions of this panel?

16 MS. MAZUR: Mr. Chairman, staff has no
17 questions but I would like to take the opportunity to
18 inform parties that we have in fact late last week
19 received questionnaire responses from the Korean
20 Respondent, interested parties Hugin and Seahan.
21 They'll be released to everyone under APO as soon as
22 possible.

23 MR. ROSENTHAL: Thank you.

24 CHAIRMAN KOPLAN: Thank you.

25 Before I release the panel, Mr. Blakeslee,

1 do you have questions of this panel?

2 MR. BLAKESLEE: I have two requests for the
3 Respondents, if I may.

4 One is, and this follows up on Commissioner
5 Okun's request for a breakdown of sales volumes in the
6 U.S. market as between textile and subject PSF. I
7 would request that when Respondents provide that, if
8 they would they could go back not just to the
9 beginning of the --

10 CHAIRMAN KOPLAN: You mean Respondents or --

11 MR. BLAKESLEE: I'm sorry, Petitioners. I
12 beg your pardon.

13 That Petitioners add 1999 data as well for
14 the Commission if they would.

15 A second request is simply a request of Mr.
16 Rosenthal that as a courtesy we would appreciate a
17 copy of the press report he was reading from this
18 morning before we go into this afternoon's session.

19 MR. ROSENTHAL: Certainly.

20 CHAIRMAN KOPLAN: Does that cover it?

21 MR. BLAKESLEE: Yes. That's all I have.
22 Thank you.

23 CHAIRMAN KOPLAN: Thank you.

24 I want to thank this panel for its testimony
25 this morning and this afternoon and all of your

1 answers to our questions. I look forward to your
2 post-hearing submissions.

3 I see it's 1:25. We'll come back at 2:30
4 from lunch and I would remind you that the room is not
5 secure so please do not leave any BPI behind.

6 With that, we'll go in recess.

7 (Whereupon, at 1:25 p.m. the hearing was
8 recessed, to reconvene at 2:30 p.m. this same day,
9 Tuesday, January 17, 2006.)

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1 were covered this morning and address each in turn.

2 Petitioners assert that even if it is true
3 that they fixed prices on subject merchandise during
4 the relevant period, "the Commission does not have the
5 authority to deny relief so long as no fraud was
6 committed on the Commission."

7 By the way, I'll have a number of quotations
8 in what I'm reading. You have a copy in front of you
9 of my written testimony, and it's footnoted so that
10 there are citations there to all of the quotations.

11 CHAIRMAN KOPLAN: I don't believe I have
12 your written testimony. Does any commissioner have
13 his written testimony? Apparently not.

14 MR. BLAKESLEE: We will have it for you
15 momentarily. Let me continue.

16 I respectfully disagree with Petitioners'
17 point of view, and I would like to tell you why. From
18 the very beginning, this has been a price case.
19 Petitioners argued successfully in the original
20 investigation that underselling by subject imports was
21 responsible for the material injury suffered by the
22 domestic industry, and they have argued again in the
23 sunset review that underselling during the POR is the
24 main reason for the Commission to maintain the orders
25 in place.

1 The Commission, of course, must decide
2 whether revocation of the antidumping orders will
3 likely lead to a continuation or a recurrence of
4 material injury, but material injury, it should be
5 stressed, is injury caused by reason of subject
6 imports.

7 The antitrust conspiracy calls into question
8 whether whatever injury the domestic industry suffered
9 during the original POI was, in fact, caused by
10 subject imports. If the subject imports were not the
11 cause of any such injury, then the Commission should
12 find that revocation is not likely to lead to a
13 continuation or a reoccurrence of material injury.

14 The essence of an antitrust conspiracy is
15 collusion by sellers, collusion that enables them to
16 make sales at prices that are unconstrained by normal
17 competitive mechanisms. Here, Petitioners colluded to
18 raise prices above market levels and to allocate
19 customers, depriving them the benefits of price
20 competition. In other words, for some period of time
21 during the POI and the POR, and I will return in a
22 moment to the question of what that period was, the
23 prices for certain PSF charged by Petitioners were
24 artificially elevated.

25 Given this situation, it was inevitable that

1 the subject imports which were sold in the U.S. market
2 by sellers who were not members of the antitrust
3 conspiracy should undersell the conspirators' products
4 because the subject imports were still constrained by
5 the same market forces that conspirators had
6 successfully circumvented.

7 It's useful to spend just a minute talking
8 about what is and also what is not known about the
9 conspiracy, and I want to correct a very substantial
10 misunderstanding about the scope of the criminal
11 investigation.

12 In 2001, DuPont admitted to the Justice
13 Department that it had participated in the antitrust
14 conspiracy. In exchange, DuPont was granted amnesty
15 from criminal prosecution by the Justice Department.
16 No further details about this amnesty of the conduct
17 that it covered are public, and this is a very
18 significant hole in the record.

19 In addition, the Justice Department has
20 testified that certain Wellman employees, including
21 its president, engaged in collusive conduct as part of
22 the antitrust conspiracy, and I need to pause here and
23 tell you what the source of that statement is. In the
24 materials that we've given you already, we gave you
25 some fairly sparse excerpts from the trial transcript

1 of Brad Dutton, who is a Nan-Ya employee. We will
2 provide you with a complete copy of that transcript,
3 which is what I'm referring to here and is footnoted
4 in my testimony so that you'll be able to judge for
5 yourself what's in that piece of the record.

6 In 2001 and 2002, however, at least one
7 Wellman employee cooperated in the Justice
8 Department's investigation, in fact, by making tape
9 recordings at the direction of the FBI. However,
10 neither Wellman nor any Wellman employee has ever been
11 prosecuted criminally in connection with the antitrust
12 conspiracy. This suggests strongly that like DuPont,
13 Wellman was granted amnesty in return for the
14 cooperation of its employee. My belief, and it's no
15 more than a belief, is that the Justice Department was
16 working through the other members of the conspiracy to
17 come to the center of the conspiracy, which was KoSa.

18 In 2001, the Department of Justice brought a
19 criminal case against KoSa and the head of its PSF
20 division, Troy Stanley, alleging participation in the
21 conspiracy. KoSa and Stanley pled guilty to
22 participating in the conspiracy, and KoSa paid a fine
23 of \$28.5 million while Stanley received a fine and a
24 suspended sentence in return for cooperating with the
25 Justice Department.

1 In the government's words, the antitrust
2 conspiracy was "a combination and conspiracy to
3 suppress and restrain competition by fixing the price
4 of and allocating customers for polyester staple fiber
5 sold in North America." And the Department of Justice
6 testified publicly, and this is a very important
7 point, that DuPont, Wellman, KoSa, and Nan-Ya all
8 participated in the antitrust conspiracy. It should
9 be remembered in this regard that these four companies
10 collectively represented a very substantial majority
11 of the domestic production during the POI.

12 The question I would like to address first
13 before coming to the key question of scope is, how
14 long was the conspiracy active? In its criminal
15 information charging KoSa, the Justice Department
16 alleged that the antitrust conspiracy began "at least
17 as early as September 1999 and continued at least
18 until January 2001, the exact dates being unknown to
19 the United States."

20 Mr. Koplan, this is the document that you
21 indicated you believe was missing from the record.
22 This criminal information is the indictment document
23 for KoSa. It was submitted as its Exhibit 1 to the
24 materials that we submitted with our importer's
25 questionnaire, so that is currently of record.

1 In other words, at a minimum, the antitrust
2 conspiracy covered the last four months of the POI and
3 the first 13 months of the POR. Other evidence,
4 however, indicates that the antitrust conspiracy
5 extended well beyond the period alleged by the
6 Department of Justice. For example, the period
7 covered by both the DuPont/Dak and the Wellman/Nan-Ya
8 settlement agreements in the consolidated class action
9 is April 1, 1999, through July 31, 2001, a period
10 fully 12 months longer than that alleged by the
11 Justice Department. Still other evidence indicates
12 that the domestic PSF manufacturers had begun
13 colluding as far back as 1995.

14 In November 2003, KoSa filed a Federal
15 District Court action against its predecessor in
16 interest, alleging in a significant admission against
17 interest that its predecessor had engaged in customer
18 allocation in the U.S. PSF market beginning in 1995
19 and that it attempted to fix prices in that market
20 between 1996 and 1998. In other words, there is sworn
21 testimony on the public record that the antitrust
22 conspiracy covered the entire POI and indications that
23 it extended over fully the first 20 months of the POR.

24 But the key question, which was the subject
25 of many questions this morning, is, what did the

1 conspiracy cover? Petitioners, of course, have
2 asserted quite simply that there was no antitrust
3 conspiracy as to certain PSF.

4 Mr. Koplan, with his instincts of a former
5 prosecutor, though, went right to ask immediately for
6 the key document. This was the document I referred to
7 a moment ago, the bill of information, which is the
8 exact document to which KoSa pled guilty.

9 In preparing for the hearing, I've come
10 across the equivalent document, the information for
11 Troy Stanley. We will make that available with our
12 post-hearing brief. It is substantially identical to
13 the document, the KoSa criminal information, which is
14 already on the record, and I'll talk in just a moment
15 about what they say.

16 So KoSa and Troy Stanley each pled guilty
17 to, and I'm quoting -- this is from a sentence in
18 hearing in 2002 -- they pled guilty to "the acts
19 charged in the bill of information lodged by the
20 Department of Justice," and those bills of information
21 say nothing about textile fiber, nothing about fine
22 denier fiber, nothing about fine, first-quality,
23 polyester staple fiber. Instead, they make it
24 abundantly clear that the PSF encompassed by the
25 Department of Justice's criminal investigation was not

1 limited to textile fiber but included certain PSF.

2 Specifically, the Justice Department alleged
3 a price-fixing and customer-allocation conspiracy by
4 KoSa, Stanley, and their co-conspirators in the sale
5 of what it called "polyester staple," and it went on
6 to define "polyester staple" to include PSF sold not
7 only to textile manufacturers but also to
8 manufacturers of, and again I'm quoting, "other items,
9 such as sleeping bags, pillows, and comforters. The
10 latter, of course, is the fiberfill or certain PSF
11 covered by this review."

12 In this regard, I would like to read just
13 briefly an excerpt from the sentencing hearing after
14 the court, and the court went through a very elaborate
15 procedure to assure itself that the defendants
16 understood what they were pleading guilty to, and
17 after the court had taken their guilty pleas, he went
18 on as follows: "Do you want the Court to accept your
19 plea of guilty, Mr. Duffy?" "Yes, Your Honor." "Mr.
20 Stanley?" "Yes, Your Honor." "Search your mind,
21 then, and tell me if you have any lingering questions,
22 statement, or comment to make at this time about
23 anything involved in your case. Mr. Duffy: No, Your
24 Honor. Mr. Stanley: No, Your Honor." This after
25 they pled guilty to fixing prices and allocating

1 customers for polyester staple fiber, including
2 sleeping bags, pillows, and comforters.

3 Petitioners have, of course, produced two
4 documents that are intended to support the proposition
5 that this was all about textile fiber. One, of
6 course, is the confidential document that we will
7 address at length in our brief, but the other is the
8 public transcript -- this is, of course, Exhibit 12 to
9 Petitioners' brief -- the public transcript of Mr.
10 Stanley's November 4, 2004, sentencing hearing
11 conducted two years after his original guilty plea,
12 and it bears a close reading.

13 At this hearing, the government attorney,
14 Mitchell Chitwood, offered a fuller recitation of the
15 antitrust conspiracy that had been provided at KoSa's
16 sentencing two years earlier. Mr. Chitwood states
17 expressly, as I mentioned, that DuPont, Wellman, KoSa,
18 and Nan-Ya participated in the antitrust conspiracy.
19 However, he goes on to say, and this is the crux of
20 the matter, that the conspiracy allocated "primarily
21 textile customer accounts" and fixed "first-quality
22 polyester staple fiber at other primarily textile
23 customers."

24 Mr. Chitwood's recitation makes it clear
25 that the antitrust conspiracy covered textile fiber.

1 The question, of course, is, what else did it cover?
2 Petitioners have argued that it was all textile fiber,
3 but a number of different facts help to place Mr.
4 Chitwood's statement in context and to show that the
5 antitrust conspiracy also covered certain PSF.

6 Mr. Chitwood used the word "primarily" a
7 number of times. He says, for example, this PSF was
8 sold "primarily" to textile customers. But this
9 doesn't clarify matters. First, if the PSF that was
10 the subject of the conspiracy was sold primarily to
11 textile customers, then at least some PSF that was the
12 subject of the conspiracy necessarily was sold to
13 nontextile customers.

14 We need a context here, though. Mr. Kunik
15 will testify shortly that, in his understanding, at
16 this period, and the proportions have changed since,
17 but at this period, the 2000 and 2001 period,
18 approximately 75 percent of the PSF in the U.S. market
19 was textile fiber. The other 25 percent was
20 nontextile fiber, some, but not all of which, was
21 certain PSF. In other words, a conspiracy that
22 covered all PSF in the market, textile fiber and
23 nontextile certain PSF, could still be described as
24 covering primarily PSF for textile fibers because 75
25 percent was textile fiber.

1 There is another even more important point.
2 The transcript of the sentencing hearing says, of
3 course, that the conspiracy focused on large textile
4 customers like Dan River, one of the customers
5 mentioned by Mr. Chitwood, but these customers
6 purchased not only textile fiber but also very, very
7 significant quantities of fiberfill, and there is a
8 very good reason for this. Their product offerings
9 include not only textile products like bed sheets and
10 pillow cases but associated what are called "top-of-
11 the-bed products," pillows, comforters, and other
12 household items, that are manufactured using
13 fiberfill.

14 Here is how Troy Stanley, in his own words,
15 described exactly what it is that Dan River, this
16 large textile customer, purchased from Petitioners.
17 This is Stanley's words: "The Dan River account is --
18 they are in sheeting, shirting, top of the bed,
19 comforters, pillows, that kind of thing." In other
20 words, Dan River produced products made from textile
21 fiber and fiberfill, and what is true of Dan River is
22 also true of the other two largest textile customers
23 in the industry: WestPoint Stevens and Springs
24 Industries.

25 In other words, a sale of PSF to what Mr.

1 Chitwood, in his recitation in the sentencing hearing,
2 referred to as "textile customers" could as easily
3 have been a sale of fiberfill as a sale of textile
4 fiber. That's all the more likely because the
5 conspiracy involved not only price fixing but
6 customer allocation.

7 Mr. Kunik will testify that when he has
8 presently negotiated pricing with these same large
9 textile manufacturers, the pricing of textile and
10 nontextile PSF has been conducted as a single
11 negotiation, not as separate negotiations on textile
12 and nontextile fiber. Mr. Stein will testify that
13 pricing decisions and transactions involving multiple
14 types of PSF for a single customer are typically made
15 by a single, upper-level manager with pricing
16 responsibility for all types of PSF involved in the
17 transaction. In Mr. Stein's experience, salesmen do
18 not have the authority to make final decisions on
19 price.

20 Thus, there is every indication that when
21 KoSa negotiated prices with its large, illegally
22 allocated customers, including its textile customers,
23 it conducted a single negotiation that set an above-
24 market price for all PSF purchased by that captive
25 customer, not just for textile fiber.

1 Moreover, the lock step price increases
2 orchestrated by the conspirators during the conspiracy
3 were not limited to textile fiber. For example, and
4 this is Exhibit C to the handout that you had, when
5 Wellman announced the price increase to take effect on
6 November 1, 1999, it was an across-the-board price
7 increase. According to Wellman's press release at the
8 time, this price increase "will affect the apparel,
9 home furnishings, industrial nonwovens and fiberfill
10 markets."

11 There are other indications that the scope
12 of the conspiracy went well beyond textile fibers.
13 For example, the complaint in the consolidated class
14 action is not limited to textile fiber but
15 specifically covers certain PSF, and it's hardly
16 surprising, then, that the Wellman/Nan-Ya settlement
17 agreement and consolidated class action expressly
18 includes fiberfill.

19 But perhaps the most significant indication
20 that Mr. Chitwood's recitation of the facts is not the
21 last word on the scope of the conspiracy is the ruling
22 by the judge, Judge Voohres, in the consolidated class
23 action, who held that "the DOJ's criminal
24 investigation does not define the scope of these
25 consolidated civil proceedings."

1 If there were any further doubt that the
2 antitrust conspiracy covered certain PSF, the economic
3 data are eloquent in this regard. Following the
4 imposition of the orders and the associated
5 antidumping duties, subject imports jumped in the
6 first two years of the POR. In a freely competitive,
7 undistorted market, this behavior would be in
8 explicable. The antidumping duties should restrain,
9 not unleash, subject imports.

10 Rising subject imports are, however,
11 perfectly consistent with the market conditions
12 created by the antitrust conspiracy. Petitioners'
13 customer allocation and collusive price fixing would
14 have limited the availability of, and raised prices
15 for, Petitioners' products. This, in turn, would
16 naturally have increased demand for the subject
17 imports.

18 The volume of these subject imports, which
19 were fairly traded and priced at market levels, rose
20 significantly between 1999 and 2001. This anomalous
21 result is only explicable by the distortion of demand
22 in the U.S. market produced by the antitrust
23 conspiracy or by shortages in that market, including
24 the very type of shortage produced by an antitrust
25 conspiracy.

1 Mr. Rosenthal's explanation that it took the
2 margins a while, and I believe his term was "to gain
3 traction" is, with respect, not something that's seen
4 in most trade cases. Since Petitioners have insisted
5 that this is a market that's characterized by spot
6 sales and short-term contracts, one would expect that
7 the market would react even more quickly to the
8 imposition of antidumping duties than in a market that
9 was not as volatile as this one.

10 In sum, the Petitioners' bald assertion that
11 the antitrust conspiracy did not cover certain PSF is
12 refuted throughout the record.

13 I want to return to the question from this
14 morning about what should be done about this. It
15 gives me no pleasure to bring before the Commission an
16 incomplete picture of the antitrust conspiracy rather
17 than a rendition of facts that can be documented fully
18 and with certainty, but it is a very incomplete
19 picture, and it is most incomplete on the point of
20 what happened in the Justice Department investigation.

21 The Commission does not normally do business
22 in its investigations or reviews on the basis of
23 incomplete information, but this is not a normal
24 review. Conspiracies, on the one hand, and private
25 arrangements to settle litigation, on the other, are

1 both, by their very nature, secret. The documentary
2 record in the criminal and civil litigations generated
3 by the antitrust conspiracy is largely visible,
4 guarded by nondisclosure agreements, protective
5 orders, documents filed under seal, and criminal
6 administrative proceedings.

7 The only parties to this review who possess
8 the key to that secret information are the
9 Petitioners, and they have produced only the tiny
10 portions of that secret record that suit their
11 purposes.

12 Commissioner Okun asked earlier exactly what
13 the scope of any document request should be and what
14 you might find there. Is this a wild goose chase, or
15 is there something to be gained? Let me offer a
16 thought on this.

17 If, for example, the documentary record were
18 accessible, it could shed a very intense light on the
19 scope of the conspiracy. It is highly relevant
20 whether, for example, Dan River's settlement agreement
21 with Wellman, and there is such a settlement agreement
22 -- it is secret -- whether Dan River's settlement
23 agreement with Wellman covered just textile fiber or
24 also included fiberfill. The same would be true of
25 WestPoint Stevens and of Springs Industries.

1 But because these settlement agreements and
2 dozens of others like them were secret, the answer to
3 that question is at present known only to the
4 Petitioners. We don't know it. You don't know it.
5 They do.

6 In light of the Petitioners' criminal
7 antitrust activity and of their concealment of that
8 activity from the Commission during the original
9 investigation and during the sunset review, we
10 respectfully request that the Commission order
11 discovery directly from Petitioners and other members
12 of the domestic industry to develop a full
13 understanding of the true conditions of competition
14 during both the POI and the POR.

15 Based on the record that emerges, including
16 the light that it sheds on alleged underselling, the
17 Commission can decide whether termination of the
18 orders would likely lead to a continuation or a
19 recurrence of material injury by reason of subject
20 imports. If it decides in the negative, it must, of
21 course, the orders.

22 More fundamentally, an examination of the
23 hidden record of the antitrust conspiracy would permit
24 the Commission to determine whether its original
25 material injury investigation was flawed by

1 Petitioners' concealment of the antitrust conspiracy.
2 If it decides this issue in the affirmative, then the
3 Commission should terminate the orders ab initio.

4 Thank you very much. I would like to turn
5 the microphone first over to Mr. Malashevich from
6 Economic Consulting Services.

7 MR. MALASHEVICH: Thank you. Mr. Chairman,
8 members of the Commission, Good afternoon. Bruce
9 Malashevich.

10 My brief testimony on this issue is
11 straightforward. As an economist, I submit that even
12 if you conclude that the conspiracy, the formal terms
13 of the conspiracy, only apply to so-called "textile
14 products," you still could not help to conclude also
15 the conspiracy still distorted the pricing and
16 production data for subject merchandise. Why? The
17 principal basis for my opinion is the testimony of the
18 domestic industry today.

19 You heard testimony from both witnesses that
20 broad pricing decisions are made in common to the
21 textile and to certain PSF. You heard from Mr.
22 McNaull that their sales force has been consolidated
23 since 1999 to encompass both products. You heard from
24 Mr. McNaull that a large customer, the same person,
25 negotiates prices for the textile and certain PSF,

1 Even if those prices may be different, the same person
2 is conducting that negotiation.

3 Mr. McNaul testified that his production
4 facility is fully capable of freely switching between
5 textile and certain PSF in the production process,
6 which means that the production decisions are very
7 sensitive to relative pricing, among other factors.

8 It's mainstream economics that if you have
9 common equipment and rapid switching capability, if
10 you tamper with the pricing mechanism on one part of
11 the pricing continuum, so to speak, it necessarily
12 distorts pricing and production decisions on the rest
13 of it.

14 So you have a very powerful bases, linked
15 largely to the domestic industry's own testimony a few
16 hours ago, even if the conspiracy did not formally
17 apply to certain PSF, it certainly distorted pricing
18 and production decisions. That's it. Thank you.

19 MR. BLAKESLEE: I would like to ask Mr.
20 Menegaz, my colleague, to respond briefly to Mr.
21 Rosenthal's point this morning about the fact that we
22 waited too long to bring this up.

23 MR. MENEGAZ: Hello. Good afternoon,
24 members of the Commission. We did, indeed, see the
25 press releases about the indictments to KoSa. Back in

1 the fall of 2003, this came to our attention. Just as
2 the Commission found out, a lot of the criminal
3 information isn't available on PACER. The Justice
4 Department stonewalled us.

5 We came to the Commission's General
6 Counsel's Office and complained because we thought
7 they had the subpoena power to unlock these documents.
8 We were told, in light of Ferrosilicon, that much more
9 would need to come to light before the ITC would act.
10 This information came to light in the fall of 2005.
11 If you look at the printed date on the pleadings in
12 our attachments, the Nan-Ya/Wellman settlements, which
13 included the fiberfill, came to light in the fall of
14 2005. We promptly brought it to the Commission's
15 attention. So their allegation that we've dropped
16 this like a bomb to muddy the waters is baseless.
17 Thank you.

18 MR. BLAKESLEE: I would like to now
19 introduce our industry witnesses, and before I do
20 that, I would like to mention what I should have said
21 up front, which is that Mr. Elias of Fibertex, who is
22 now on the schedule to testify today, was unable to
23 join us here today. But I have with me Mr. Chip Stein
24 of Stein Fibers, Mr. Bob Kunik of Consolidated Fibers,
25 and I would like to ask Mr. Stein to speak first,

1 please.

2 MR. STEIN: Good afternoon, Chairman and
3 members of the Commission and staff. For the record,
4 my name is Chip Stein with the real name of Sidney
5 Stein, and I'm vice president of Stein Fibers, Ltd. I
6 welcome the opportunity to make a presentation before
7 the Commission, but I must say, I'm not a public
8 speaker. I might make mistakes. I didn't go to
9 college for public speaking.

10 First, let me tell you a little bit about
11 Stein Fibers and my qualifications to speak on this
12 subject. Stein Fibers was founded in 1976 as a
13 family-owned business which started as a shmata
14 business, and for those of you who don't know what it
15 means, it's a rag business. Now beginning our fourth
16 decade, we are among the largest suppliers of
17 polyester staple fiber for fiberfill and nonwoven
18 products in America, with annual shipments exceeding
19 400 million pounds. The fiberfill accounts for
20 approximately 80 percent of our business.

21 In addition, as indicated in the
22 questionnaire responses, I am a significant
23 shareholder in a U.S. production facility in
24 Lafayette, Georgia, named United Synthetics, or "USI."
25 USI is jointly owned with Korean owners. However, the

1 genesis of USI arose out of my difficulty in obtaining
2 certain types of subject PSF from Petitioners who
3 would not sell to Stein Fibers or from abroad.

4 I am proud to say that the plant we built in
5 Georgia has performed well throughout the sunset
6 period of review. We have expanded production
7 capacity and enjoyed profits at the same time that
8 Petitioners have not modernized or done anything else
9 to improve their competitiveness over the same five
10 years.

11 I have been involved in the polyester staple
12 business for over 30 years, and my father had 30 years
13 of experience before me. With this background, I am
14 going to speak about the different classes of subject
15 staple fiber and the U.S. capacity for them. I am not
16 a lawyer, but in reading the public version of the
17 Petitioners' prehearing brief, it struck me how they
18 tried to gloss over the major differences between
19 these products that diminish competition between
20 domestic production, on the one hand, and the Korean
21 and Taiwanese products on the other.

22 In fact, the types of PSF that remain within
23 the scope of the present review are highly
24 differentiated and are not merely a swap by our
25 customers, as Petitioners seem to suggest, on the

1 basis of price. I will provide an overview of the
2 nature of these products and the marketplace for them.
3 I will then specifically address the U.S. producers'
4 capabilities with respect to each class in the real
5 world.

6 Conjugate fiber. True conjugate, as the
7 ITC's questionnaire suggests, is a spiral or double-
8 crimped fiber that is made of two types of fiber,
9 otherwise known as "bicomponent fiber," and the
10 crimping is achieved through the use of heat. It has
11 significantly better performance characteristics than
12 mechanically crimped conjugate. The spiral crimps
13 impart certain characteristics unique to the
14 bicomponent conjugate, such as compression,
15 resiliency, and loft recovery.

16 Labs have tested for Stein Fibers such
17 characteristics in samples of these end products. In
18 fact, these tests of bicomponent conjugate have come
19 out that it is far superior to mechanically crimped
20 conjugate. The feel and the recovery of a pillow or a
21 seat cushion influences the buying decisions of the
22 end customers. More importantly, these differences
23 point to the need for the imported bicomponent
24 conjugate due to the significant shortage of this type
25 of conjugate produced in the United States.

1 When the orders were first imposed in 2000,
2 Petitioners made very little bicomponent conjugate.
3 Nan-Ya USA picked up a limited capacity, but the
4 shortage remains. The Petitioners maintain that
5 Wellman's mechanically crimped PSF is a ready
6 substitute for bicomponent conjugate. As stated
7 above, Wellman's mechanic conjugate underperforms
8 bicomponent conjugate on every standard industry test,
9 such as loft and loft recovery.

10 For these reasons, Wellman's mechanically
11 crimped conjugate does not address the shortages.
12 Customers will not accept mechanical as a substitute
13 for bicomponent conjugate.

14 Recycled fiber. Here is another area where
15 the Petitioners are attempting to confuse the
16 Commission by pretending that all PSF is the same. In
17 industry parlance, recycled PSF is made from
18 exclusively 100-percent, post-consumer, PET bottle
19 stock with the highest intrastatic viscosity, or what is
20 termed "IV."

21 Recycled actually competes most widely with
22 the virgin rather than the regenerated, as you heard
23 earlier today. By contrast, regenerated fiber, or
24 what is termed "regen," is a generic term encompassing
25 several different qualities of fibers based on a

1 variety of lesser-quality inputs, including post-
2 consumer, PET bottle stock, lump and chunk, chunk
3 waste, PSF fiber and yarn waste. However, the
4 Commission has included both recycled and regen in its
5 broad definition of Products 6 and 7 in the pricing
6 section of the questionnaires.

7 Regen products have longer melt histories,
8 and for that reason, poor molecular structure, lower
9 IV, and more contamination. Accordingly, the raw
10 materials for regen cost significantly less than the
11 inputs for recycled or conjugate or version. Regen
12 also has mixed cross-sections, mixed lusters, and
13 mixed crimp. There are no C of As, or what we call in
14 our business "certificate of analysis."

15 In Korea, the regen makers cannot even tell
16 us how many crimps, what the cross-section, and what
17 the lusters are of the fibers they sell, what they
18 call regen, unlike the virgin or recycled, which you
19 heard this morning.

20 Recycled is not imported from Korea or from
21 Taiwan, to my knowledge. In fact, USI was formed in
22 part to address this shortage. A customer seeking
23 virgin might accept recycled but will not accept
24 regenerated as an equal substitute.

25 Virgin. Virgin fiber is produced 100

1 percent from the raw materials of PTA and MEG. This
2 is a single-crimped product and is characterized by
3 high quality and the purity of color, which is the
4 whiteness. Although certain PSF is seldom visible
5 direct to the consumer, its presence directly affects
6 the appearance of perceived value of many end
7 products, such as mattresses, comforters, cushions,
8 pillow, and furniture with light-color upholstery.

9 We feel that the staff's report in
10 accurately deemphasizes the value of color and, hence,
11 the directness for which virgin PSF competes with
12 regenerated PSF.

13 With respect to virgin pricing, Stein Fibers
14 is one of the top two importers who oversells the
15 Petitioners in the U.S. market. To my knowledge,
16 Huvis is the only company exporting virgin from the
17 subject countries at a very small volume and, I might
18 make note, at higher selling prices than the domestic
19 producers.

20 With respect to the efficiency of Dak,
21 Invista, and Wellman, using outdated equipment, they
22 have enormous waste in their production lines,
23 resulting in almost 4 to 5 percent off-quality
24 products, which you heard this morning. In fact, they
25 are so ineffective at manufacturing first-quality

1 certain PSF, there are at least two or three other
2 companies marking nothing but their off-grade fiber.
3 This has to impact their profitability negatively.

4 Technical service, quality of fiber,
5 capacity availability, and having branded products
6 should all lead to higher sales prices compared to the
7 subject imports. However, the Petitioners lack the
8 marketing and customer service to realize this premium
9 and what should be the true market price of certain
10 virgin PSF. Petitioners' assertions that all certain
11 PSF is the same and is all about price do not square
12 with our expertise selling in the U.S. market.

13 Now I'm going to discuss the U.S. capacity.
14 The U.S. industry reports a 68-percent capacity
15 utilization in a prehearing staff report. However,
16 just as the distinction in the products, the data as
17 presented to the Commission has blurred reality with
18 respect to the Petitioners' relevant capacity to
19 produce what the market demands. For example, USI is
20 operating at 100 percent of its actual capacity with
21 respect to recycled. Meanwhile, as indicated above,
22 there is a significant shortage of U.S.-produced,
23 bicomponent conjugate.

24 In terms of capacity of conjugate, it stands
25 apart from other PSF because it is produced on a

1 separate line. The only other product that can be
2 produced on this bicomponent line is low-melt, which
3 is not subject to the orders. To my knowledge,
4 Petitioners have not constructed any bicomponent
5 conjugate lines or even enjoyed the protection of the
6 antidumping orders for this product over the past five
7 years and significantly have been compensated under
8 the Byrd Amendment.

9 As the staff has reported, dumping margins
10 have been low for some years, and so Stein Fibers has
11 no reason to believe that the domestics will build
12 more conjugate capacity if the orders are left in
13 place. Rather, as evidenced from public import
14 records, DuPont/Dak has resolved the short supply
15 problem by importing bicomponent conjugate from
16 Indonesia, and they also import virgin subject PCF
17 from India. Clearly, their opposition to the removal
18 of these orders is motivated in part by a desire to
19 protect the American market for their own foreign-
20 supplied conjugate and virgin PSF.

21 As for the virgin, the same lines can be
22 used to switch between certain PSF and the orders and
23 other polyester staple fiber outside the orders such
24 as fine denier textile fibers. Petitioners report in
25 their brief that the Commission previously noted that

1 domestic producers can shift production relatively
2 easily between certain PSF and other products, such as
3 fiber for spinning, carpet fibers, et cetera.
4 However, after Katrina hit, there was, and still is, a
5 heightened demand for carpet fiber. To our knowledge,
6 Petitioners have not upgraded their technology
7 sufficiently to take care of this heightened demand
8 despite the reported lack of capital utilization.

9 Whereas Petitioners have virgin capacity, we
10 are overselling them at the same time that margins are
11 low, so Stein Fibers does not understand how there
12 could be a likelihood of recurrence or a continuation
13 of material injury by reason of the Korean and
14 Taiwanese imports if the orders are removed.

15 I have already discussed U.S. recycled and
16 regen capacity above. Regen is not produced in the
17 United States. USI has produced recycled at capacity,
18 and we do not perceive the likelihood of continuation
19 or recurrence of material injury on either product.

20 To summarize, Stein Fibers believes there is
21 little direct competition between domestics and Korean
22 and Taiwanese imports. The domestics simply do not
23 make regen. The recycled they do make competes with
24 virgin, not regen, as you heard this morning. As for
25 conjugate, domestic production of bicomponent

1 conjugate is limited and does not meet the demand.

2 Finally, there is competition on virgin, but
3 Stein Fibers oversells them and wins the business
4 based on service, not price.

5 In closing, I want to make a point that
6 relates to the Petitioners' brief in which they claim
7 the price-fixing conspiracy that they are
8 participating in did not cover fiberfill. Based on my
9 30 years in the industry, this makes no sense to me.
10 Where PSF producers sell textile and fiberfill to the
11 same customer, they do so in part by a single price
12 negotiation.

13 Some companies may have salespeople that
14 specialize in particular products. However, for sales
15 transactions with customers that buy both textile and
16 nontextile, like Dan River, WestPoint, or Springs, the
17 ultimate price decision on each side of the
18 transaction is made by a single, high-level manager.
19 Just like they talked about this morning, the managers
20 of the producers in the selling area make the final
21 decision, not the salesmen.

22 This has been my personal experience and is,
23 to my understanding, the standard practice across the
24 industry. Before coming today to testify, I made a
25 number of calls to colleagues in the industry, and

1 they call confirmed that my understanding is correct.

2 Thank you for the opportunity to testify
3 before the Commission on the conditions of competition
4 in the U.S. PSF market, and I welcome any questions
5 about my testimony and any others. Thank you.

6 MR. BLAKESLEE: Thank you. Mr. Kunik?

7 MR. KUNIK: Good afternoon, members of the
8 Commission. For the record, my name is Bob Kunik, and
9 I am president of Consolidated Fibers. Consolidated
10 Fibers imports certain PSF from Korea and Taiwan.
11 Consolidated Fibers also owns a textile mill, Waverly
12 Mills, in Laurinberg, North Carolina, which purchases
13 nonsubject textile fibers for industrial purposes from
14 U.S. producers and certain foreign producers.

15 I'm going to discuss the issues of the
16 foreign producers' capacity to produce certain PSF and
17 the outlook for the market without the orders, from
18 the businessman's perspective.

19 CHAIRMAN KOPLAN: If I could just interrupt
20 for a second. Mr. Blakeslee, I just want to make sure
21 because you submitted your own statement after I asked
22 the question, had you submitted these other statements
23 as well today?

24 MR. BLAKESLEE: We have not submitted them.

25 CHAIRMAN KOPLAN: Okay. I just wanted to be

1 sure. Your mike is not on, but you've answered my
2 question. You said you have not.

3 MR. BLAKESLEE: We have not, but we can, if
4 that would be helpful.

5 CHAIRMAN KOPLAN: I wasn't trying to get you
6 to do that. I just wanted to make sure --

7 MR. BLAKESLEE: We didn't get them to you,
8 as we initially did not get you mine, but we do have
9 them.

10 MR. KUNIK: Before I begin, I want to state
11 for the record that Consolidated Fibers concurs with
12 the testimony provided by Chip Stein of Stein Fibers.
13 I would like to add just a few points, if I might.

14 Petitioners argue that all PSF is the same
15 and that types of grades compete against each other
16 like a commodity. This simply is not true. Customers
17 generally have a specific type and grade in mind when
18 they solicit an order. They don't call up and ask for
19 the cheapest possible PSF in inventory; rather, if
20 they are making white bedding, they are going to ask
21 for virgin or recycled. If they are making a low-end
22 product where color, loft, et cetera, are not
23 important, chances are they will want pricing by grade
24 on various regenerated products.

25 Getting back to what Chip Stein said about

1 service and knowing the market and knowing the
2 customer, Consolidated Fibers perceived the need for a
3 lower-quality, lower-priced product among its
4 customers, so it pioneered the development of
5 regenerated fibers. If my customers do not get it
6 from Korea, they will be forced to get it from
7 somewhere else. The domestic industry never has
8 produced it, and there is no reason to believe that
9 they will in the foreseeable future just because the
10 orders are kept in place.

11 The Korean regen producers are able to
12 assist Consolidated Fibers to serve the full spectrum
13 of end-use applications. Unlike the Petitioners,
14 which are large multinationals with huge overheads,
15 Korean regen producers tend to be very small, family-
16 owned factories that can efficiently produce small
17 orders that the Petitioners will not service.

18 For example, the Korean suppliers are
19 willing to sell containers split up to three different
20 grades of production, whereas the large domestic
21 producers, such as Petitioners, are not interested in
22 splitting up truck load shipments. The domestic
23 producers want to sell very large orders of a single
24 production run. This can have an adverse effect on
25 many of the purchasers because carrying the large

1 stock required to accommodate such high-volume runs
2 causes inefficiencies in inventory management.

3 Naturally, regen is going to undersell other
4 types of fiber because the material inputs are
5 significantly less expensive, and industry overhead is
6 a fraction of the overhead at the large
7 multinationals. This has nothing to do with the
8 dumping orders. The fact that the Korean regen
9 suppliers were able to establish de minimis or near-de
10 minimis margins as soon as Commerce looked at their
11 individual trade data demonstrates this point.

12 As for foreign producer capacity, we have
13 experienced shortages in the supply of Korean regen
14 over the past two years. I will provide proof of the
15 shortages in a confidential exhibit to the importers'
16 post-hearing brief. These shortages have been caused
17 by expanding world markets and at the same time a
18 reduction in Korean capacity. In the past few years,
19 several Korean producers of regenerated fibers have
20 gone out of business or moved out of Korea, including
21 Geum Poong, East Young, and Kohap. Meanwhile, Taiwan
22 is not a significant producer of regen, to our
23 knowledge.

24 As for virgin suppliers, capacity and
25 availability from the subject countries has decreased

1 over the POR. The only producer currently making any
2 capacity of significance available to the U.S. market
3 is Korean producer, Huvis. Daehan Synthetic Fibers
4 has stopped selling virgin.

5 Meanwhile, Seahan does not sell significant
6 quantities of virgin to the U.S., to our knowledge.
7 Instead, Seahan is concentrating on low-melt,
8 conjugate, and other types of specialty fibers not
9 just to the U.S. market but to its other markets as
10 well. This has nothing to do with the orders, as
11 Seahan's margin is approximately 2 percent. Rather,
12 Seahan appears to believe that it can offer the most
13 value added from the products I just listed.

14 Therefore, as virgin goes, the entire
15 domestic industry only competes with a single producer
16 from Korea.

17 When Katrina hit, Petitioners raised their
18 prices 15 percent, and they got the price increase.
19 To us, this suggests and confirms what we've
20 experienced, that the Korean and Taiwanese plants are
21 operating at full capacity and are unable and
22 unwilling to provide more certain PSF to the U.S.
23 market even as the antidumping margins have tumbled.

24 Since I understand that the sunset reviews
25 are forward looking, I would like to turn now to

1 Consolidated Fibers's view of the effects of removing
2 the orders. Certainly with respect to regen, the
3 regen producers are at extremely low margins at their
4 earliest opportunity in the first Commerce review, and
5 neither they nor Petitioners have disturbed the
6 results for the remainder of the POR.

7 Since the regen producers are not dumping,
8 and given that supplies have generally been tight over
9 the past few years, despite the low margins,
10 Consolidated Fibers cannot foresee any effect
11 whatsoever from removing the orders. Rather, it is
12 more likely that foreign capacity producing certain
13 PSF will remain flat or shrink as large suppliers
14 focus more on specialty fibers, and the regen
15 suppliers remain focused on more profitable markets
16 elsewhere, notably, China and Europe.

17 I will be providing additional evidence with
18 respect to restrictions on the supply of regenerated
19 PSF from Korea in the confidential version of the
20 importers' post-hearing brief.

21 As for the U.S. industry, we expect U.S.
22 demand to remain robust, and we expect that U.S.
23 producers will remain competitive in the virgin
24 segment due to branding, technician service, grading,
25 and guarantees, and for conjugate due to their limited

1 production capacity.

2 I want to now touch on the condition of the
3 U.S. industry over the past five years that the
4 antidumping orders have been in place. Petitioners
5 have not taken advantage of the so-called "fair trade
6 leveling effect" of the orders to improve their
7 competitive situation over the past five years. For
8 example, it is common knowledge in the industry that
9 KoSa/Invista has not reinvested and modernized their
10 Salisbury facility. This equipment and the plant are
11 very old and are not competitive in the world market.

12 In addition, Wellman's plant in
13 Johnsonville, South Carolina, is also an example of a
14 production facility that has not modernized or
15 updated. Their automation technology is nowhere near
16 competitive on a world scale. These are very old
17 lines with poor quality controls. For example, they
18 do not, to my knowledge, have the integrated computer
19 PLC quality control that modern plants come with
20 today.

21 Wellman, instead, has chosen to invest in
22 upgrading its plants producing nonsubject merchandise,
23 such as their fine denier plant in Darlington, South
24 Carolina, and their PET bottle resin plant in Pearl
25 River, Mississippi. Moreover, Wellman suffered an

1 additional setback at Johnsonville when it had to shut
2 down its carpet lines after losing their carpet denier
3 business to the more modern, Nan-Ya USA plant.

4 To me, by not improving their plants and
5 equipment over the past five years, these companies
6 are sending a signal that they are turning their backs
7 on this sector.

8 In closing, I want to touch for a moment on
9 the antitrust conspiracy. I understand that
10 Petitioners take the position that the antitrust
11 conspiracy covered only first-quality PSF sold mostly
12 to large textile accounts. Petitioners claim that for
13 this reason the antitrust conspiracy only involved
14 textile fiberfill.

15 This strikes me as improbable for two
16 reasons. First, the large textile customers purchase
17 a great deal of fiberfill in addition to textile
18 fiber. First-quality PSF has a number of meanings,
19 but one of the ways that it is used is to refer to
20 virgin PSF, including fiberfill PSF.

21 Second, in my experience, when large textile
22 customers purchase PSF, they make large purchases that
23 include both textile and nontextile PSF. Purchases of
24 this sort are considered to be a single purchase, and
25 pricing for all products included in such a purchase

1 is done within a single negotiation.

2 For example, I have personally negotiated
3 the sale of PSF to Dan River. I was offering Dan
4 River both textile fiber and fiberfill PSF. In my
5 price negotiations with Dan River's purchasing
6 department, we engaged in a single price negotiation
7 covering both textile and nontextile PSF. Dan River's
8 purchasing department did not have purchasing agents
9 that specialize in textile fiber versus nontextile
10 fiber or vice versa.

11 In my experience, the way my price
12 negotiations were conducted with Dan River is the way
13 such price negotiations are typically conducted in the
14 industry where the purchaser is buying both textile
15 and nontextile PSF, and it only makes sense if I am a
16 WestPoint, Stevens, or Springs, I'm going to try to
17 get the greatest volume commitments on the broadest
18 product line for the longest contract term that I can
19 negotiate with a particular fiber supplier. I want to
20 use my buying power to leverage the best possible deal
21 across the board.

22 In the 1991-to-2000 period when the
23 antitrust conspiracy was in full swing, my best
24 estimation is that our industry was apportioned 75
25 percent to textile fibers and 25 percent to nonwovens

1 or fiberfill, including certain PSF. So it would not
2 surprise me if the antitrust conspiracy mostly
3 involved textile fibers. That said, it is not
4 credible for Petitioners to assert, as they do in
5 their brief, that it did not involve certain PSF as
6 well.

7 One final point: I do know that many of the
8 buyers of certain PSF have been involved in class
9 action suits and settlements -- that is public
10 knowledge -- for instance, companies like Hollander
11 and Carpenter, who are large buyers of certain PSF.

12 I want to thank you for the opportunity to
13 be heard today, and I look forward to responding to
14 your questions at the appropriate time.

15 MR. MALASHEVICH: Mr. Chairman, members of
16 the Commission, Bruce Malashevich again. May I ask
17 the secretary for the remaining time check?

18 MS. ABBOTT: Just under five minutes.

19 MR. MALASHEVICH: Thank you.

20 I would like to make two additional points,
21 please, beyond what I mentioned earlier today.
22 Putting aside the effects of the conspiracy, the
23 Commission should make a negative determination in
24 this case for a very simple reason: The data on
25 record show clearly that the domestic industry did not

1 benefit from the orders throughout the period.

2 May I call your attention to Exhibit S as in
3 "Sam"? It is a confidential exhibit reprinted in our
4 prehearing brief that was passed out to you just
5 before. It's our attempt to aggregate all of the
6 developments before and after the order that are
7 documented in the record. As you'll see, all of the,
8 shall I say, bad stuff is concentrated in the period
9 of the POR after the orders were in effect.

10 If I were a CEO seeing this information, I
11 would say, "Why in the world would we want to keep
12 these orders given the fact that we have not gained
13 any benefit?" Since then, indeed, the industry's
14 condition overall worsened by a variety of measures.

15 I also read a lot of your determinations in
16 sunset reviews, particularly most recently, and I've
17 noted that it's unusual for an industry to appear
18 before the Commission in a sunset review claiming
19 vulnerability, as this one has, without also
20 demonstrating significant benefits from the orders.

21 Now, we all sat through the hearing
22 testimony of Petitioners this morning. Not a word in
23 their affirmative testimony talked about benefits from
24 the orders. Commissioner Pearson kindly invited
25 commentary on that from the industry witnesses. Ms.

1 Wise basically did not answer the question, and Mr.
2 McNaull gave a brief amount of rhetoric.

3 The chairman invited additional commentary
4 on this very issue toward the end of the testimony.
5 Counsel responded briefly rhetorically. There is not
6 a scintilla of evidence in the record that the
7 industry benefitted from the orders. Therefore, I
8 can't imagine how they could possibly be vulnerable to
9 the orders. There may be other forces in the market
10 out there, but the orders just don't matter.

11 On the subject of pricing, as noted in
12 Respondent's prehearing brief, the Commission should
13 view the comparative pricing and underselling data
14 with caution. The U.S. producers' conspiracy
15 certainly distorted the data to some degree, as I
16 testified earlier, particularly in the early portion
17 of the POR.

18 Second, as discussed more thoroughly by the
19 industry witnesses you just heard from, the
20 underselling analysis does not always reflect a valid
21 comparison, particularly with respect to the regen
22 products. In this regard, I want to emphasize that I
23 commend the staff for very diligent efforts to work
24 with all parties to address this issue and defining
25 the pricing products in the questionnaire. That's not

1 the issue.

2 The issue appears to arise from Petitioners'
3 attempt to make fuzzy certain distinctions among
4 product types and quality that are otherwise well
5 established within the industry.

6 I believe you will review the testimony
7 today from the industry witnesses and will cause to be
8 reevaluated how the weighted average price comparisons
9 were prepared as to what exists in the prehearing
10 report. I would be happy to work with staff to assist
11 in that endeavor, but it warrants a rethink and a
12 recalculation of those comparisons with, I think, very
13 different results at the end. Thank you.

14 MR. STEIN: I would just like to add one
15 more point. This morning, they were talking about
16 prices of PET and MEG. There are three different
17 markets for the Commission to look at. PET and MEG
18 are traded on the world market. There is a market in
19 southeast Asia, one in Europe, and one in the United
20 States, and please keep that in mind. There's
21 different raw material costs throughout the world, and
22 I just wanted to make that point.

23 CHAIRMAN KOPLAN: Thank you.

24 MR. BLAKESLEE: As I see, our time has
25 expired. That, of course, concludes our testimony,

1 and we would be pleased to take questions from the
2 Commission.

3 CHAIRMAN KOPLAN: Thank you, and thank you
4 all very much for your testimony, and I'll turn to
5 Vice Chairman Okun.

6 VICE CHAIRMAN OKUN: Thank you, Mr.
7 Chairman, and before I begin my questioning, let me
8 say welcome to this panel and to the witnesses for
9 being here today and taking the time from your work to
10 help us understand the business. I much appreciate
11 you being here.

12 Let me start with regard to the allegations
13 regarding the price fixing. I want to make sure I
14 understand a couple of points about your argument, Mr.
15 Blakeslee. We have industry folks here. You don't
16 argue that polyester staple fiber for textile
17 applications and polyester staple fiber for fiberfill
18 are the same like product. You acknowledge they are
19 separate like products. Correct?

20 MR. BLAKESLEE: No. We do not make that
21 argument.

22 VICE CHAIRMAN OKUN: Okay. In your view,
23 and, of course, I do want you to brief this post-
24 hearing, as we asked Petitioners, of the evidence
25 that's been submitted thus far, what do you believe is

1 the most probative on the issue of what like product
2 is being discussed in the criminal sentencing -- I
3 know you've pointed us now to the first document as
4 being more general, but, again, Exhibit 12 of the
5 Petitioners' brief, Department of Justice
6 sentencing -- we have Department of Justice lawyers
7 who are usually careful lawyers -- using slightly
8 different language, and I'm trying to understand in
9 terms of what you see as most probative, first,
10 between those two documents.

11 MR. BLAKESLEE: Certainly. The criminal
12 information you have in front of you and the Troy
13 Stanley criminal information that we will provide you,
14 which, as I said, is substantially identical, are the
15 specific documents containing the specific terms to
16 which both KoSa and Troy Stanley pled guilty. Those
17 are the documents that define the terms of their
18 guilty plea and, therefore, the terms of the
19 conspiracy that they were pleading guilty to.

20 I also pointed out at the sentencing hearing
21 that they were given the opportunity to elaborate on
22 their guilty plea, and both of them declined. That's
23 Point 1.

24 Point 2, though, goes to what happened two
25 years later at Mr. Stanley's sentencing hearing when

1 the same government lawyer, Mr. Chitwood, came in and
2 presented what's clearly an expanded recitation of the
3 facts. What I would ask you to do is read his
4 recitation with a great deal of care because,
5 remember, he talks about primarily fiber for textile
6 applications, primarily textile customers, and so even
7 if you assume that we're talking almost exclusively
8 about large textile customers, these are customers
9 that purchase both textile fiber and very, very
10 significant quantities of nontextile fiber.

11 I think what's problematic about Mr.
12 Chitwood's language in the second sentencing hearing
13 is the fact that he does not come out ever and say,
14 "This was a conspiracy about textile fiber." He said
15 it was primarily about fiber for textile applications
16 primarily for large textile accounts, but that leaves
17 open, as I explained a moment ago, because of the
18 relative proportions in the industry at the time of
19 textile and nontextile fiber, that leaves open a great
20 deal of scope for nontextile fiber, particularly since
21 those same textile customers were buying nontextile
22 fiber.

23 VICE CHAIRMAN OKUN: Okay. I do want to
24 have the opportunity -- Mr. Kunik, did you want to add
25 something?

1 MR. MALASHEVICH: Forgive me, Vice Chairman,
2 but Mr. Kunik had a factual observation.

3 VICE CHAIRMAN OKUN: Okay.

4 MR. KUNIK: From my industry knowledge,
5 being a yarn spinner and also a buyer of certain PSF,
6 there is a description in the scope of the price-
7 fixing conspiracy, and the word "upholstery" was used,
8 and from my knowledge, upholstery fabric spun from
9 yarn woven from fabric, be it knit or woven
10 application, would either be cotton, rayon, or
11 acrylic, so that description of upholstery that was
12 explaining the scope of the price-fixing conspiracy
13 would have to indicate the upholstery stuffing, which
14 is 100-percent polyester in most applications. So I
15 just wanted to make that clarification.

16 VICE CHAIRMAN OKUN: I want to have an
17 opportunity to talk to the industry witnesses about
18 what they have described in terms of how textile
19 applications and fiberfill applications, how the
20 negotiations go with some of these customers. But I
21 just want to make sure, Mr. Blakeslee, before I move
22 on, just a couple of points, which is if I were to
23 agree that the price fixing did extend beyond textile
24 applications and included the subject product, I'm
25 trying to make sure I understand what else you want us

1 to do.

2 In other words, you talk a lot about the
3 settlement in which the other companies have denied
4 any wrongdoing. Legally, would you have us place
5 weight on the fact that they denied wrongdoing in
6 these settlements? Would you have us treat them the
7 same as the indicted companies' employees?

8 MR. BLAKESLEE: No. I would not. Everybody
9 understands that in any settlement agreement one
10 always disclaims liability, but as I said, I think it
11 would be particularly relevant to know whether the
12 settlement agreements with the three largest textile
13 customers who were purchasing, as I said, both textile
14 and non-textile product, covered only textile or
15 whether it covered both. I think that would be
16 extremely probative. That's something we don't know.

17 I do agree with you that those are the less
18 probative documents because, by nature because of the
19 liability disclaiming nature of any settlement
20 agreement, but I would also ask you to understand that
21 the only parties who understand what happened in the
22 criminal investigation, it's far more important to
23 understand what happened at DuPont, to understand what
24 happened at Wellman. That information is in the
25 possession of the government which has declined to

1 give it to us, and in the possession of the parties,
2 the Petitioners to this case.

3 It would be very important to know what
4 agreements were entered into between those companies
5 and the Department of Justice.

6 VICE CHAIRMAN OKUN: Well, we'll have a
7 chance to talk a little bit more about what we could
8 or couldn't see on that and how it might be used.

9 The other point I wanted to raise in your
10 presentation, both in your brief here and today, in
11 your written testimony, was talking about the time
12 period. You have in here that there's other evidence
13 saying it's well beyond, but in my view, again, you're
14 pointing us to other evidence that's nothing like the
15 criminal indictment, the very specific time period.
16 Or even the civil proceeding. In other words you're
17 citing a lot of stuff out there and I'm trying to make
18 sure I understand that, do you really expect us to go
19 beyond, even if we were to agree that with this like
20 product that you had asked us to go beyond the period
21 in the settlement agreements, in the consolidated
22 class action, or in the criminal action.

23 MR. BLAKESLEE: Remember, there is sworn
24 testimony on the record, and I'll have to go back and
25 check. It's certainly sworn testimony by Mr. Stanley

1 to the effect that the conspiracy began as early as
2 1995. I believe, and this is subject to correction,
3 that in the transcript of the Brad Dutton trial that
4 the government attorneys make the same point in their
5 presentation of the evidence to the court. That, by
6 the way, those are documents that are not yet, the
7 entire transcript of the Dutton trial is not yet
8 before the Commission, but as I said, we will provide
9 that with our post-hearing brief.

10 VICE CHAIRMAN OKUN: I see my yellow light's
11 on but I did want to go back to make sure I
12 understand. If I were to decide it is clear that the
13 antitrust conspiracy did not extend to fiberfill, that
14 it was specific to the textile applications, you note
15 here that even if we were to determine that was the
16 case, if there was still distortion in the record.
17 The one thing that struck me in listening to Mr. Kunik
18 and Mr. Stein describe price negotiations is it sounds
19 different than what I heard from the producers this
20 morning.

21 But the one question I wanted to ask about
22 that is, even if there was overlap what I heard this
23 morning from the two producers is that it was a very
24 small amount of business. I think it was less than
25 five percent, at least according to Mr. McNaull.

1 Would you disagree with that? Do you think the
2 overlap in those customers who would have been
3 purchasing both for fiberfill and for textile, is
4 greater than what they testified to?

5 My red light's on, but can I get a yes or
6 no, Mr. Chairman, and then --

7 CHAIRMAN KOPLAN: Sure.

8 VICE CHAIRMAN OKUN: Mr. Kunik, for the
9 industry.

10 MR. BLAKESLEE: Let me answer quickly, and
11 then I'd like a more authoritative answer --

12 VICE CHAIRMAN OKUN: I'd like to hear the
13 industry first, and I'll come back to you.

14 MR. KUNIK: I think the characterization of
15 five to ten percent is probably accurate, but it also
16 is a significant amount of pounds. Remember, it's a
17 big market so it's a significant amount of pounds, but
18 five to ten percent is probably accurate.

19 VICE CHAIRMAN OKUN: And I'll have a chance,
20 Mr. Blakeslee, to come back.

21 Thank you, Mr. Chairman.

22 CHAIRMAN KOPLAN: Sure.

23 Commissioner Hillman?

24 COMMISSIONER HILLMAN: Thank you, and I too
25 would join the Vice Chairman in welcoming you and

1 thanking you for your time and testimony this
2 afternoon.

3 If I can go perhaps away for a moment from
4 the antitrust issues to some of the industry specific
5 testimony in terms of the product that we're looking
6 at and how you see it. And let me start with an
7 understanding, I think both you, Mr. Kunik, and you,
8 Mr. Stein, suggested that you think approximately 75
9 percent of all the polyester stable fiber goes into
10 the textile applications, that's less than three
11 denier size as I heard it, and that about 25 percent
12 goes into either non-woven or fiberfill.

13 Within that 25 percent, how would you
14 describe how much is non-woven versus how much is
15 fiberfill? Of the 25.

16 MR. KUNIK: What portion is non-woven and
17 what is fiberfill?

18 COMMISSIONER HILLMAN: Yes.

19 MR. KUNIK: I would say that fiberfill is
20 probably 60-70 percent.

21 COMMISSIONER HILLMAN: Of the 25?

22 MR. KUNIK: Yes.

23 COMMISSIONER HILLMAN: Thank you.

24 Then if I go to the issue of conjugate
25 versus non-conjugate, again, let me start perhaps with

1 you, Mr. Stein, on the issue of what inputs go into
2 conjugate? We heard testimony this morning from
3 Wellman that conjugate can be made from either, as
4 they call it, recycled or regenerated or virgin fiber.
5 Would you agree with that? You can start with your
6 input with --

7 MR. STEIN: You cannot have a true spiral
8 crimp that is made chemically with a mechanically
9 crimped conjugate.

10 COMMISSIONER HILLMAN: I understand that,
11 but that's a mechanical difference as opposed to a
12 chemical difference.

13 MR. STEIN: Chemical --

14 COMMISSIONER HILLMAN: -- to make conjugate,
15 what do you have to start with as an input?

16 MR. STEIN: As they said this morning, as we
17 agree, you start with a PTA and MEG and add a third
18 component to make it by component.

19 COMMISSIONER HILLMAN: Okay, but as I'm
20 hearing it then you're saying it can only be made as a
21 virgin product. It cannot be --

22 MR. STEIN: No. You can make a recycled or
23 regenerated conjugate from waste or recycled items.

24 COMMISSIONER HILLMAN: So conjugate can be
25 made from either recycled product or from, direct from

1 the MEG and --

2 MR. STEIN: That's what I think we said this
3 afternoon that Wellman makes.

4 COMMISSIONER HILLMAN: Fine.

5 Then of the total fiberfill market, what
6 portion would you say is conjugate and what portion is
7 non-conjugate?

8 MR. STEIN: Are you talking about comparing
9 it to regen, virgin and conjugate? Or just within the
10 --

11 COMMISSIONER HILLMAN: Of the whole market,
12 how much of it is conjugate and how much of it is not.

13 MR. STEIN: Including the imports?

14 COMMISSIONER HILLMAN: Correct. Just ball
15 park. I'm just trying to get a sense of how big an
16 issue conjugate is.

17 MR. STEIN: Forty percent is conjugate.

18 COMMISSIONER HILLMAN: Forty. Of the
19 fiberfill market, 40 percent is conjugate.

20 MR. STEIN: Yes.

21 COMMISSIONER HILLMAN: Then let me try to
22 understand this issue of recycled, as you put it,
23 versus regenerated product. So let's leave aside for
24 a moment the virgin product and try to understand
25 this. Obviously our data puts them together as one

1 product.

2 So I guess my first question might be for
3 you, Mr. Blakeslee. If your perception was that there
4 was such a difference between regenerated product
5 versus recycled product, as I'm hearing it this
6 afternoon, you're saying there is this dividing line
7 with regen being over here and recycled being over
8 here.

9 Just out of curiosity, why at the time the
10 questionnaires were developed was there no effort to
11 segregate out or to ask the Commission to collect the
12 data an other way? Why are we now hearing that you
13 think that there is this data distinction that we
14 should have made between regenerated product versus
15 recycled product?

16 MR. BLAKESLEE: I believe we addressed that
17 early on in the investigation, but let me ask Mr.
18 Menegaz to respond to that, please.

19 MR. MENEGAZ: I would have to go back and
20 look through our submissions, but we noted there was a
21 footnote to the chart where the companies were
22 supposed to specify how the recycled was made. That
23 would be an issue, whether the companies who responded
24 to the questionnaire filled in that footnote. So you
25 could see there's a clear distinction between how it's

1 made in the U.S. and how it's made abroad.

2 COMMISSIONER HILLMAN: Okay.

3 MR. STEIN: Also if I may say, we did ask
4 for it to be separate, recycled and regenerated like
5 we did in the first review, and I think the Commission
6 refused it. They wanted to put --

7 COMMISSIONER HILLMAN: Again, this is
8 something counsel can go back and address in the post-
9 hearing brief in terms of what was or was not
10 commented upon in the draft questionnaires which
11 clearly laid out these pricing products with only a
12 distinction between virgin versus regenerated as it
13 was termed in the questionnaires, and I am not aware
14 that there was any changes further separating those
15 products. But again, I would ask for that to be
16 submitted in the post-hearing.

17 If I can stay, though, with this issue in
18 terms of these distinctions. First I want to just
19 make sure I understand some of the testimony that
20 we've just heard.

21 Both of you, Mr. Stein and Mr. Kunik,
22 testified that from your knowledge Huvis, the Korean
23 producer, is the only producer of virgin product
24 selling in the U.S. market, and yet if I look at our
25 pricing data we are showing very significant imports,

1 priced product, coming in from Taiwan from all of the
2 producers of products one, two, three, et cetera. In
3 other words the very products that are specific to
4 virgin products, we are clearly showing significant
5 volumes of imports from Taiwan and yet you're telling
6 me that Huvis is the only subject producer that is
7 making virgin product.

8 Are they shipping through Taiwan? I mean
9 how am I seeing Taiwanese imports of virgin products?

10 MR. STEIN: Huvis produces for the United
11 States about 1600 tons a month which is about 80
12 containers. To my knowledge, Nan-Ya used to. Nan-Ya
13 in Taiwan used to make a hollow siliconized virgin and
14 ship it to the United States. But since their plant
15 opened up in the United States they have ceased
16 producing that in Taiwan to bring it to the United
17 States.

18 COMMISSIONER HILLMAN: When would that have
19 been?

20 MR. STEIN: 2001 probably, when the plant --

21 COMMISSIONER HILLMAN: Again, because the
22 actual numbers in the pricing tables are confidential,
23 this again may be something that counsel is going to
24 have to answer, but I'm hearing testimony that the
25 only producer in either Korea or Taiwan that is

1 capable of making virgin fiberfill is Huvis, the
2 combined Korean firm, then how is it that I see the
3 data that I see in our pricing tables for Taiwan? I
4 would just ask that --

5 MR. STEIN: If I may answer --

6 COMMISSIONER HILLMAN: -- the numbers are
7 confidential.

8 MR. STEIN: If I may answer you also that
9 virgin has different breakdowns. You have a virgin
10 hollow, you have a virgin solid, you have a virgin --

11 COMMISSIONER HILLMAN: And we priced both of
12 those.

13 MR. STEIN: You have a virgin solid slick
14 and a virgin hollow slick.

15 When you use the word virgin it encompasses
16 a lot more, but the true virgin that competes with the
17 domestic industry is what is produced by Huvis.

18 COMMISSIONER HILLMAN: You're at a
19 disadvantage because you cannot look at the data that
20 I'm looking at, but I think counsel will understand.
21 I just heard the answer, but in fairness to us, we
22 priced virgin solid dry, virgin hollow slick, in two
23 different deniers, and then ditto in a higher denier.
24 Both a solid dry and a hollow slick, and we are
25 showing import numbers.

1 So I'm trying to understand how that's
2 possible if what you're telling me is accurate in
3 terms of the Korean and Taiwanese production
4 capability. So I would ask for that in a post-hearing
5 since the numbers themselves are confidential.

6 MR. BLAKESLEE: We'll see if we can clear
7 that up.

8 COMMISSIONER HILLMAN: Then if I can go more
9 specifically to this issue of whether there is or is
10 not an overlap between recycled versus regenerated
11 product. I'm sure that you heard the testimony
12 particularly from Wellman this morning that in their
13 view the product that goes into their, again,
14 combined, recycled, regenerated, in terms of what
15 inputs they use are both the clear bottles, if you
16 will, and all of the other forms of waste product of
17 all different kinds. It was her direct testimony that
18 the Koreans and the Taiwanese use exactly the same
19 inputs in producing their non-virgin product.

20 I guess I'm trying to make sure I understand
21 whether there's a factual disagreement here or whether
22 there's something else in the market.

23 MR. STEIN: Regenerated in Korea is made
24 with literally waste. It's lump and chunk. It comes
25 from purging of the virgin machines. They are lumps

1 that you and I could not even lift up. That is one
2 part.

3 They come from yarn, spun yarn, as I
4 testified before.

5 She also testified this morning, if you
6 heard her say, that the reason they're having trouble
7 with the recycled and the reason their costs went up
8 is because the exports of the "bottle resin", the
9 bottles, are going to China.

10 She didn't really say that they're having
11 trouble getting the other components parts. She
12 really made a point about what was exported to China
13 when someone asked the question from the Commission.

14 So what I'm getting at, the difference, the
15 long and short is they need high IV material to run
16 recycled like we do at USI. We cannot use lump and
17 chunk. We cannot use yard waste. We need good, high
18 IV raw materials.

19 Again, as I said in what I talked about
20 before, the end product is completely different and
21 the consumer or the manufacturer that uses this end
22 product can see the difference.

23 I'll go one step further. If we have, if
24 we're competing hypothetically against Wellman, and
25 the customers using Wellman or regen from someone,

1 what Mr. Kunik or myself would sell. If we are at the
2 same price, they will not buy regen. It's not worth
3 the same money. It's a different product with no
4 definite characteristics.

5 There is a denier, but is it an exact denier
6 like recycled? Absolutely not. Do we have a C of A
7 that says it's first quality? Absolutely not. There
8 is no regen that's first quality.

9 They talked this morning about first
10 quality. They referred to it in the textile industry.
11 They sort of referred to it in the fiberfill industry,
12 in the non-woven industry. There's first quality.
13 Recycled they said can be first quality, like similar
14 to virgin.

15 They did not compare recycled to regen.
16 They compared recycled to virgin.

17 COMMISSIONER HILLMAN: My red light is on so
18 I'm going to have to come back to this. Clearly the
19 problem that we're having is they, and to some extent
20 the Commission data, combines recycled and regen into
21 a single product and you are now suggesting that in
22 fact they need to be distinguished. That's the issue
23 that I will need to come back and further explore what
24 if anything we can make of that.

25 Thank you.

1 CHAIRMAN KOPLAN: Thank you.

2 Commissioner Lane?

3 COMMISSIONER LANE: Thank you.

4 Mr. Blakeslee, I'd like to start with you.
5 The document that you presented which is the United
6 States of America v. Artiva Specialties.

7 MR. BLAKESLEE: I'm sorry. Are you
8 referring to the information --

9 COMMISSIONER LANE: Yes. And I want to make
10 sure that I understand or recollect correctly that an
11 information is something that the federal government
12 does when it's already reached an agreement with
13 someone that they're going to plead guilty to a
14 particular charge. Is that correct?

15 MR. BLAKESLEE: That is my understanding.

16 COMMISSIONER LANE: So in this document,
17 this information, when in the background it defines
18 polyester staple to be a "manmade fiber that is
19 varying thicknesses and cut into short lengths." Then
20 it says, "It is sold to textile manufacturers who
21 incorporate it into fabrics for sheets, shirts, and
22 other wearing apparel. Other forms of polyester
23 staple have applications in items such as sleeping
24 bags, pillows, and comforters."

25 Now does that mean that when these folks

1 plead guilty to this particular information they were
2 agreeing with everything that was set forth in the
3 information because they in fact had participated
4 probably in the wording of this information?

5 MR. BLAKESLEE: I think that is exactly true
6 and I think that is validated now in what was Exhibit
7 3 of the same set of documents that has the
8 information as Exhibit 1. This is what I quoted
9 briefly in my testimony.

10 The court says to Mr. Duffy, who is the
11 representative for KoSa, "Are you entering the plea of
12 guilty because in your case, Mr. Duffy, the
13 corporation or organization was in fact guilty of the
14 acts charged in the Bill of Information?" "Yes, Your
15 Honor."

16 This is on page 31.

17 Same question to Mr. Stanley, and same
18 answer.

19 The judge referred specifically to this Bill
20 of Information which is, as you say, was something
21 that was part of a plea agreement and --

22 COMMISSIONER LANE: Okay.

23 Now Mr. Malashevich, I want to go to you.

24 Let's assume that the price fixing did cover
25 the product that we're discussing today. Let's assume

1 that. And you said that the price fixing distorted
2 the prices.

3 MR. MALASHEVICH: Correct.

4 COMMISSIONER LANE: I would find that
5 reprehensible and I think that criminal conduct is
6 reprehensible. But I want to separate the conduct
7 from the effects of the price fixing.

8 In looking at the data that we have, it
9 looks to me like the domestic industry was being
10 undersold prior to the price fixing and they weren't
11 doing very well then.

12 Then after the price fixing they're still
13 being undersold and they aren't doing very well.

14 So I would like to hear an explanation as to
15 why the price fixing has had an effect upon the
16 outcome of our order.

17 MR. MALASHEVICH: Well, there's a partial
18 response I can give you now and an APO response I can
19 give you post-hearing.

20 The partial response now is the tendency of
21 not only the price fixing component but also we can't
22 forget the allocation of customers. The tendency
23 would certainly have been to increase prices at least
24 among the co-conspirators operating. That would tend
25 to inflate the margin of underselling found because

1 there's no evidence that importers were conspirators.

2 So you have an upward bias in the domestic
3 pricing data arising from the effects of the
4 conspiracy and the allocation of customers.

5 Remember, of course, the data are generally
6 weighted, and before preparing the comparisons.

7 Therefore, the largest producers who were members of
8 the conspiracy and the largest customers, would have
9 been affected.

10 COMMISSIONER LANE: Explain to me then if
11 the price fixing raises the prices more than the
12 prices should be, why do the customers not then switch
13 to the importers to buy their product at the lower
14 prices?

15 MR. MALASHEVICH: Well, without necessarily
16 saying the prices were lower they necessarily switch
17 to the importers, which is one reason why subject
18 imports increased following the order, rather than
19 decreased, which is the tendency in the vast majority
20 of cases.

21 The reason for the increase was not only
22 because of higher prices for the domestic industry as
23 a result of the conspiracy, but also there was
24 restricted availability of domestic supply owing to
25 the agreements with allocated customers and those

1 customers being the largest customers.

2 COMMISSIONER LANE: Maybe I need a better
3 explanation of what you mean by allocating customers.

4 MR. MALASHEVICH: Well, basically, it's
5 saying we're going to fix prices at 100, let's say,
6 and we're also going to say we're not going to
7 compete. You sell to customers A, B and C. We won't
8 compete over there. We'll sell to D, E and F. You
9 won't compete over here. That's generally how a
10 customer allocation works.

11 COMMISSIONER LANE: And can you look at the
12 pricing and the volumes that are sold and all of that
13 and determine that if in fact that is true it did have
14 an adverse effect upon the domestic industry's ability
15 to sell its product?

16 MR. MALASHEVICH: I'm not sure I understand
17 the question, Commissioner. You're saying it would
18 have had an adverse effect on the domestic industry?

19 COMMISSIONER LANE: Yes.

20 MR. MALASHEVICH: I am sorry, I don't
21 understand.

22 COMMISSIONER LANE: Well, I mean, the orders
23 went on and that means that the commission found that
24 the industry was being harmed and you are now saying
25 that we put that order on in effect because of the

1 price fixing, that that distorted the prices.

2 MR. MALASHEVICH: Well, if I may restate, my
3 reading of the opinion from the original
4 determination, I believe this was in Mr. Blakeslee's
5 testimony, it was essentially what practitioners in
6 the room would call a price case. The volume effects
7 were not very great, there were no big changes in
8 market share, the industry was profitable throughout
9 the POI, so it was all about the effects on price.

10 I'm saying that that decision might have
11 turned on information that was biased upwards as
12 reported by the domestic industry, arising from the
13 conspiracy.

14 COMMISSIONER LANE: Okay.

15 MR. STEIN: Maybe a better way of saying it
16 in layman's terms, I'm not a lawyer, is that how can
17 you have price fixing and dumping in the same time
18 period? I mean, the case came out -- if the antitrust
19 case had come out prior to your 1999 ruling that there
20 is dumping, we would have brought it up at that time.
21 We didn't know about it.

22 The two people that testified this morning
23 from DAK and Wellman admitted right at the beginning
24 they had nothing to do with the information that was
25 provided to you when you requested it back in '99, if

1 I remember correctly.

2 Well, how do you know that the information
3 that was provided to you, to this commission, back in
4 1999 was true and accurate?

5 I know someone signed it, but they also said
6 they weren't price fixing.

7 I don't understand how the commission have
8 both in the same time period. It just doesn't work.

9 COMMISSIONER LANE: Okay. The other
10 question I have is when you all filed your response to
11 our notice that we were going to start this review,
12 did you file anything at that point that these price
13 fixing allegations and the price fixing had occurred
14 in this industry?

15 MR. BLAKESLEE: Not at the very beginning of
16 the -- not at the time of initiation, but we did
17 shortly thereafter. We actually made several filings,
18 some of which were rejected, some of which remain
19 rejected. We filed the same information that's
20 finally on the record, but it actually took us three
21 tries to get it on the record. We put it in without
22 argumentation and it was rejected. We put it in again
23 and it was rejected as untimely and we were told that
24 it would have to come in with the questionnaire
25 responses or with the pre-hearing brief and so

1 ultimately the first group of documents that you got
2 from us came in with the importer questionnaire, but
3 that was our third try.

4 The other point is that in October we did
5 request that the commission undertake a
6 reconsideration of the original order and that has
7 been denied by the commission, but that was an effort
8 that went to the same end.

9 COMMISSIONER LANE: And that was after we
10 had initiated a full review?

11 MR. BLAKESLEE: That is correct. Yes.

12 COMMISSIONER LANE: Okay. Thank you,
13 Mr. Chairman.

14 CHAIRMAN KOPLAN: Thank you.

15 Commissioner Pearson?

16 COMMISSIONER PEARSON: Thank you,
17 Mr. Chairman.

18 I would observe that we often have a
19 divergence of views between the domestic industry
20 panel and the importers' panel. I would note that
21 today the divergence seems to be even wider than
22 normal.

23 Mr. Malashevich, let me begin with you, if
24 I could.

25 This morning, I asked questions of the

1 domestic industry regarding Table 3-9, trying to
2 understand what was going on there and I basically,
3 because of the confidential nature of the information,
4 I divided the industry into two subsets, a subset of
5 firms that basically had not made much money during
6 the period of review and another subset that had done
7 reasonably well financially during that same
8 timeframe.

9 I was trying to understand what the reasons
10 might be because it didn't seem to be fully explained
11 by any of the other material in the table regarding
12 cost of goods sold or that sort of thing.

13 Have you had a chance to look at that?
14 Do you have any thoughts on that issue?

15 MR. MALASHEVICH: This is page III-17?

16 COMMISSIONER PEARSON: Yes, 17 and 18.

17 MR. MALASHEVICH: I think it is clearly
18 non-APO to say this is a standard analysis expressing
19 the various lines of the income statement on an
20 average unit value basis.

21 At ECS, this is one of the first things we
22 do in analyzing the questionnaire responses of the
23 profit and loss statements. We look for precisely the
24 kinds of patterns. We, shall we say, sanity check
25 costs of raw materials against independent

1 observations of those values like MEP and PTA and we
2 try to find patterns, as you did.

3 I likewise did not find a pattern. I can
4 take an educated guess as to the reason for that, in
5 addition to the reasons given.

6 COMMISSIONER PEARSON: Other than
7 Rumpelstiltskin, I hope?

8 MR. MALASHEVICH: Yes, something other than
9 Rumpelstiltskin.

10 COMMISSIONER PEARSON: All right.

11 MR. MALASHEVICH: We do in fact have a
12 tremendous amount of restructuring going on within the
13 industry. You had several changes in management and
14 organization at DAK, from DuPont. You had various
15 other changes. Closures. All these are disruptions
16 to production activity and they invariably will
17 produce certain inefficiencies, perhaps eventually to
18 be offset by efficiencies, presumably the less
19 efficient equipment would be closed first, but
20 nevertheless the benefits from these changes are not
21 realized at the same time as are the costs and they
22 were different for each of the companies.

23 Also, it's I think very well stated by staff
24 in the financial section of the post-hearing report
25 that there were a number of accounting issues during

1 the course of analyzing these questionnaires that had
2 to do with differences in, let's say, method of
3 allocation.

4 Now, by that, I'm not necessarily being
5 critical of what was done, but if the individual
6 producers, especially those who produce non-subject
7 goods on the same plant and equipment, do so in
8 different proportions, so to the extent the allocation
9 base as it's known as accounting, are you going to
10 base it on COGS or are you going to base it on sales,
11 et cetera, is, let's say, costs, the proportions will
12 be different among the companies, which invariably
13 will lead to differences in time and across the
14 various companies in the values reported.

15 So I'm taking an educated guess that a
16 combination of these factors enter into the absence of
17 a particular pattern that I was able to discern other
18 than the industry continually lost money after the
19 orders when they made money before the orders, all
20 things considered.

21 COMMISSIONER PEARSON: Okay. Thank you.

22 Mr. Stein, on that same basic issue, did
23 I understand you to say in your statement that there
24 are different degrees of efficiency among domestic
25 producers based on your own experience?

1 MR. STEIN: Yes. Based on my experience,
2 there are a number of jobbers, I would say, or
3 resellers of the waste or substandard that come out of
4 the domestic producers. They live off that. In fact,
5 I think they said this morning that their substandard
6 rate was 4 or 5 percent, but don't quote me exactly.
7 That is extremely large compared to Nan-Ya in the
8 United States that has .5 percent and what a Huvis
9 would have, which is .5 or less percent. So, yes.

10 COMMISSIONER PEARSON: So you're saying that
11 a portion of the domestic industry has a problem with
12 quality control in terms of producing consistent
13 product that meets customer specs? I think 4 percent
14 was the figure suggested this morning as being
15 non-conforming material.

16 MR. STEIN: I think what it is -- they said
17 it, I think Wellman said it, they're starting to redo
18 their equipment. I think she said in one of the
19 plants and I don't remember which plant it was.
20 They're admitting that they have inefficiencies,
21 they've had inefficiencies, and that's what we've been
22 trying to prove for the last five or six years, that
23 their inefficiencies have caused this dumping. In
24 other words, it wasn't that regen was cheaper or
25 whatever, like they're claiming, it was they were not

1 efficient to compete with the foreign producers.

2 COMMISSIONER PEARSON: Do we know enough on
3 this record to have an opinion as to whether a
4 4 percent non-conforming rate of production would be
5 sufficient to shift the industry from being in the
6 black to in the red?

7 MR. STEIN: I can say one thing. In our
8 plant in Georgia, we make approximately 80 truckloads
9 at 44,000 pounds apiece each month. Out of that
10 plant, we might have 15,000 pounds a month of
11 substandard, of off-quality.

12 COMMISSIONER PEARSON: What's the price
13 discount for the off-spec?

14 MR. STEIN: We sell that, believe it or not,
15 we have to sell that -- probably at about a 30 percent
16 discount.

17 COMMISSIONER PEARSON: Okay. So there is
18 super alloy significant cost to the off-spec.

19 MR. STEIN: Yes.

20 COMMISSIONER PEARSON: Mr. Kunik?

21 MR. KUNIK: I would say the 4 to 5 percent
22 may be the standard here in the USA but I think the
23 point that Chip was trying to make was compared to a
24 more modern facility here in the USA, Nan-Ya or a more
25 modern facility in Korea, Huvis, it's not competitive

1 because they can achieve .5 percent, so I think it
2 probably has to do with more the age of the lines and
3 the age of the equipment.

4 COMMISSIONER PEARSON: Mr. Stein?

5 MR. STEIN: And if I may say, I said it in
6 my testimony, if DAK could have produced bicomponent
7 fiber and thought they could have done it properly to
8 compete, wouldn't they have done it instead of
9 importing from Indonesia and importing other virgin
10 material from India? I think they've admitted they
11 cannot compete automation wise.

12 I know the commission is not going to go
13 visit a plant, but it's amazing the difference from
14 when you go to Korea or you go to one of the older
15 plants at the old -- and I call it Hoechst Celanese
16 KoSa, the difference in automation. That is the
17 reason why they're not able to turn a profit in the
18 fiber industry.

19 COMMISSIONER PEARSON: Okay. So it's issues
20 of efficiency related to technology and the choices
21 that various players in the domestic industry have or
22 have not made regarding investing in technology?

23 MR. STEIN: Yes.

24 COMMISSIONER PEARSON: Okay. Anything
25 further on that, Mr. Kunik?

1 MR. KUNIK: No, I think I added what
2 I needed to.

3 COMMISSIONER PEARSON: Okay.
4 Mr. Blakeslee --

5 My light is changing. I'll tell you what.
6 Since this would be of necessity a little bit long and
7 engaged, why don't I just take the opportunity to
8 pass.

9 CHAIRMAN KOPLAN: Thank you.
10 I'm going to have to give you about three
11 extra rounds this afternoon, I think.

12 Commissioner Aranoff?

13 COMMISSIONER ARANOFF: Thank you,
14 Mr. Chairman.

15 I join my colleagues in welcoming the panel
16 today.

17 Mr. Stein, I come from a family in the
18 shmata industry myself. My grandfather was a button
19 salesman, he sold to all those guys.

20 All right. Mr. Blakeslee, on page 34 of
21 your brief, you suggest that the commission engage in
22 some additional discovery, as you term it, regarding
23 the alleged price fixing conspiracy in this case and
24 you suggest that we go out and find all criminal
25 convictions and fines, a comprehensive set of civil

1 settlements, all discovery take or produced in the
2 civil antitrust litigation, the written or deposition
3 testimony of key personnel of domestic producers.
4 That's a lot of information.

5 I take it from the discussion so far in your
6 testimony this afternoon, as best as I can get, that
7 what you're telling us is from everything that's on
8 the record now we really can't tell whether or not the
9 subject product was included in the price fixing
10 conspiracy. Petitioners say it's not, but the words
11 are maybe ambiguous, maybe it could be, we just don't
12 know for sure, and you'd like us to find out for sure.

13 Do we really need to fill this hearing room
14 with all the discovery taken in multiple antitrust
15 actions in order to make that determination? Is that
16 the only way to get an answer?

17 MR. BLAKESLEE: Commissioner Aranoff,
18 I think the first point is that I do believe that
19 there is enough information now on the record to
20 conclude that the price fixing conspiracy covered up
21 certain PSF and the reason I say that is that
22 Mr. Chitwood's testimony is crystal clear in saying
23 that in addition whatever other customers were
24 targeted the large textile accounts were targeted and
25 the point that I made and it's been corroborated by

1 the industry witnesses who know far better than I is
2 that large textile customers do not buy exclusively
3 textile PSF but buy very, very significant quantities
4 of subject merchandise.

5 COMMISSIONER ARANOFF: Well --

6 MR. BLAKESLEE: I'm sorry, let me finish
7 out. I'll give you a full answer to your question.

8 I don't want to go through those mountains
9 of materials any more than you do, but I would suggest
10 that the most probative evidence and also
11 unfortunately the most difficult evidence to obtain is
12 any evidence that was generated in connection with the
13 criminal investigation and there are presumably in
14 theory two ways to get at that information. The
15 commission as an agency of the U.S. Government could
16 approach the sister agency, the Department of Justice,
17 and ask whether that information could be provided to
18 it. But separately, the companies that were caught up
19 in the criminal investigation, and there are four of
20 them, all four of the companies we have named were
21 subjects of the criminal investigation, have their own
22 files and the information in there presumably would
23 give us the most concise and most immediate insight
24 into what really happened. And if one is prioritizing
25 among these four categories, that would be the first

1 place to go.

2 COMMISSIONER ARANOFF: Well, I appreciate
3 that answer. I'm finding it a little frustrating.
4 From the documents that have been put in front of us,
5 and I haven't read them all, but I've read a number of
6 them, it seems to me at this point that they're
7 ambiguous. It's possible that this product was
8 included and it's possible that it wasn't and at this
9 point what we have is the convictions of the two
10 sides, which are at odds with each other, and I'm
11 looking for a way to solve that.

12 I suppose that getting the attorney from the
13 Department of Justice here under oath and saying, hey,
14 was it in or was it not in might work, but I'm not
15 sure the commission has the legal power to compel
16 that. We can certainly look into it, if that's what
17 people think would work, but I'm not sure that's the
18 solution here.

19 I'm looking for a solution that is effective
20 within the schedule that we need to keep in this
21 review.

22 I'll invite you if you have further comments
23 on that to do it in your post-hearing and move on to
24 another question.

25 On a completely other subject matter, in

1 speaking with Commissioner Hillman, I think,
2 Mr. Stein, you were having conversation with her about
3 this difference between recycled and regen and I think
4 you indicated to us over and over that despite the
5 testimony this morning from Ms. Katz that they use all
6 these different types of input from the sort of
7 dirtiest, most rotten stuff up to the clean bottles,
8 that you feel that there are in fact completely
9 separate products here. I know this is something the
10 commission considered to some extent in the original
11 investigation.

12 Can you name for me in support of your
13 argument that this low end regen is really something
14 different from the recycled product that competes with
15 the virgin product, can you name for me any specific
16 end uses for this low end product where it doesn't
17 compete with other higher types of recycled or with
18 virgin product and can you name either now or in a
19 confidential submission specific customers who buy
20 this product?

21 MR. STEIN: I think based on industry, I
22 would like to do both of those answers in a
23 confidential brief --

24 COMMISSIONER ARANOFF: Okay. I would
25 appreciate that.

1 MR. STEIN: -- because, it's -- I think some
2 of what we do and I assume what Bobby Kunik does is
3 confidential and I think both of us would be more than
4 happy to answer that. It would be better in a
5 confidential brief.

6 COMMISSIONER ARANOFF: Okay. Anything that
7 you can do that can really point us to specific
8 products where you use this low end Regen where
9 there's no competition from the virgin or the higher
10 end recycled and the specific customers that it goes
11 to, so that we can really see if there's an overlap
12 there or not, would be very helpful. I appreciate
13 that.

14 I'm changing subjects completely for a third
15 time. I guess I'll direct this question to Mr.
16 Malashevich, although whoever wants to can jump in.
17 The record in this review indicates that underselling
18 was more frequent prior to the imposition of the
19 orders than it was afterwards. So if the restraining
20 effect of these orders were removed, why shouldn't the
21 Commission find that the subject producers would go
22 back to the same behavior?

23 MR. MALASHEVICH: Among a variety of reasons
24 effectively addressed in our brief and I won't repeat
25 those. First of all, we think the underselling from

1 the original investigation was not real, so to speak,
2 for reasons I indicated in response to Commissioner
3 Lane's question. We believe they were artificially or
4 unnaturally inflated by the effects of the conspiracy.

5 Also, you have to be careful in comparing
6 the two, because the products were defined somewhat
7 differently in this review than they were in the
8 original investigation. As part of an attempt,
9 independent of the effects of the conspiracy, to
10 achieve closer apples-to-apples comparison. And I
11 guess, in effect, in response to a point raised by
12 Commissioner Hillman earlier, both sets of parties
13 submitted written comments on the draft questionnaires
14 at the appropriate time, in part, intended to address
15 this issue. The reason why we still have issues to
16 sort out has everything to do with the simple fact
17 that we could not forecast how the domestic producers
18 would complete their questionnaires, despite our best
19 intentions to arrive at what we thought was strictly
20 an apples-to-apples comparison. We don't have perfect
21 information about their activities and could not
22 predict what they, in fact, would report. But, we
23 made our best efforts at the time.

24 COMMISSIONER ARANOFF: Okay, thank you. I
25 appreciate that. Mr. Blakeslee, did you want to add

1 something?

2 MR. BLAKESLEE: No. I'll address it in my
3 closing.

4 COMMISSIONER ARANOFF: Okay, thank you.
5 Thank you, Mr. Chairman.

6 CHAIRMAN KOPLAN: Thank you. It's been a
7 lot of years for me, but I'd like to stumble through,
8 if I could, with you on this issue of the price fixing
9 and see where we go with this. First of all, as
10 Commissioner Lane brought out, this is a criminal
11 information that was filed. Now, these are felony
12 charges involved both with regard to the corporation
13 and with regard to the individual, Mr. Stanley. Of
14 course, there was another individual, but he was
15 acquitted. And I don't have all of the details of the
16 acquittal; but, obviously, it went forward and he was
17 found not guilty. The fact that these are criminal
18 informations that were filed means that these
19 defendants, the corporation and defendant Stanley,
20 waived their right for presentation to a grand jury;
21 agreed? You realize they had that right?

22 MR. BLAKESLEE: I'm a civil lawyer and I
23 understand that you're the prosecutor, so I'm going to
24 be guided by you on this.

25 CHAIRMAN KOPLAN: I'm not prosecuting

1 anyone. I'm just asking a question. But, trust me,
2 they had that right. So, it does appear that at the
3 time that this was filed, both the corporation and the
4 individual had agreed to some sort of stipulated
5 factual presentation for a guilty plea, okay. This is
6 how I read what I see in front of me.

7 Now, in looking at this information, I just
8 want to walk through this with you, in the description
9 of the offense in paragraph two, it's alleged that
10 beginning at least as early as September 1999 and
11 continuing until at least January 2001, the exact
12 dates being unknown, and then it goes on and walks
13 through a set of facts that does not specify whether
14 it's textile or whether it's fiber fill or whether
15 it's both, not under the description of the offense.

16 The second part of the information has a
17 background section that describes what polyester
18 staple is and it describes both, but that's not broken
19 out in the description of the offense. The specifics
20 of exactly what happened aren't spelled out there.
21 It's in the background section. And I think I
22 understand that you can be talking about textiles,
23 with sheets, shirts, and other wearing apparel, as it
24 says, or you can be talking about sleeping bags and
25 pillows and comforters, and then you're looking at

1 fiber fill. That's in the background section.

2 You, Mr. Blakeslee, made a comment that at
3 sentencing, Mr. Stanley didn't provide any additional
4 information. However, when you read the full
5 sentencing transcript, his counsel stated, and
6 government counsel agreed, he had met with them
7 probably at least 16 times, responded to every
8 question that he had been asked, and provided all the
9 information they needed. That's why he ended up with
10 probation instead of jail time. The specifics of what
11 the government said they would prove were elicited
12 from government counsel by the court and that's what I
13 read into the record this morning and that covered
14 textile commodity product. There was no mention of
15 fiber fill at the sentencing. The sentencing said
16 that the conduct involved textile commodity during
17 this period.

18 I was curious to see the information that
19 you provided with your questionnaire -- I'm sorry I
20 didn't realize that it was attached -- but, I was
21 curious to see it, to see whether or not there were
22 multiple allegations in there. For example, this
23 covers 1999 to 2001. I was curious as to whether
24 there were other periods that were negotiated out.
25 But, apparently, this is the only period that was

1 covered, the period that was also covered at the
2 sentencing.

3 So, having said that, then, the other things
4 that are in the record, besides the criminal
5 informations, are what actually transpired at the
6 sentencing. And Exhibit 13, which is business
7 confidential, but is sworn to under oath and not part
8 of any criminal proceeding, but followed this position
9 of the criminal proceeding by five months. So having
10 said all of that, then when you talk about, as you did
11 this afternoon, Mr. Stein and Mr. Kunik, when you
12 discuss blending and that when you do a negotiation,
13 it can include both products, both textile commodity
14 and it can include fiber fill, that's outside the
15 scope of what I'm reading in these criminal charges,
16 okay. You're talking about what your business
17 practice is and how you negotiate your contracts and
18 that certainly is relevant to my consideration on this
19 record. But, that doesn't flow from what's in the
20 criminal information or what else I have in those
21 antitrust cases, at this point in time.

22 So, I'm just saying to you that I don't
23 think, Mr. Blakeslee, that you intended, when you were
24 asked whether a guilty plea covered everything in
25 here, I don't think that you intended to say that that

1 guilty plea covered both fiber fill and textile
2 commodity, because it doesn't appear to me, from
3 reading the information and then reading the
4 transcript of the sentencing, that it does.

5 MR. BLAKESLEE: Well, I don't read the
6 background section of the information quite the way
7 you do. I take that as a definitional section of the
8 information, not --

9 CHAIRMAN KOPLAN: I agree with that; I agree
10 with that. But, I'm saying that it doesn't carry
11 forward in the description of the offense that the
12 government is saying that both were separate price
13 fixing.

14 MR. BLAKESLEE: Well, understand that what
15 the government says at the second sentencing hearing,
16 the one in 2004, is that this covered primarily
17 product for textile application. They do not limited
18 it uniquely to textile applications. There is another
19 document --

20 CHAIRMAN KOPLAN: If you have examples of
21 conduct that covered fiber fill, you're welcome to put
22 that on the record, as far as I'm concerned. But, it
23 doesn't appear to me that it was the subject of what I
24 read in either the information or the sentencing.

25 MR. BLAKESLEE: Well, let me explain to you

1 why I think that what you've seen so far is not the
2 definitive word on any of these questions --

3 CHAIRMAN KOPLAN: Okay.

4 MR. BLAKESLEE: -- and that is that the
5 document that we will be submitting with our post-
6 hearing brief is this voluminous transcript of the
7 Dutton trial, of which we only submitted a few pages
8 initially. This was a trial that was brought by the
9 same government attorney, Mr. Chitwood, and his star
10 witness was Mr. Stanley. And what you see in the
11 extended testimony there, both the statement by Mr.
12 Chitwood of what he intended to prove and by Mr.
13 Stanley's voluminous testimony, is that statements
14 that were made in the information and there were
15 enlarged on somewhat in the sentencing hearing, the
16 2004 sentencing hearing, are enlarged still further in
17 the Brad Dutton trial.

18 Now, I can't, at the moment, point you to a
19 place where the scope was enlarged significantly, but
20 I can point you and will have done pointed you to
21 places where the temporal scope, the time of the
22 conspiracy was expanded enormously. Mr. Stanley
23 testifies under oath that he began conspiring in 1994.
24 That is not what the criminal information says. And I
25 believe, and I said, I will confirm this in the post-

1 hearing brief, I believe that the government attorney
2 makes the same point in open court. So, my point is
3 simply that this is a set of facts where each new
4 document that comes to light provides additional
5 insights into what actually happened and we're still
6 not seeing the big picture, not seeing the complete
7 picture.

8 CHAIRMAN KOPLAN: Is it your position that
9 the information you're going to provide from the
10 criminal trial that resulted in acquittal, that it
11 refutes what I've read in Exhibit 13?

12 MR. BLAKESLEE: I believe it refutes it with
13 respect to time period. I do not believe that it
14 refutes it with respect to product scope.

15 CHAIRMAN KOPLAN: Okay.

16 MR. BLAKESLEE: But, I think the point on
17 product scope is that it is, in Ms. Aranoff's words, a
18 fair reading is that it is ambiguous. I disagree. I
19 think it is -- the total picture is more definitive
20 than that. But accepting for the moment that it is
21 ambiguous, I believe that this does -- that any
22 ambiguity should not be resolved against the
23 Respondents, but why it should be resolved against the
24 Petitioners, who have access to the information that
25 we do not have access to.

1 CHAIRMAN KOPLAN: Okay. But, it is not
2 ambiguous with respect to product scope, you're
3 saying?

4 MR. BLAKESLEE: My reading of the entire
5 record is that it is not ambiguous.

6 CHAIRMAN KOPLAN: I appreciate that. Thank
7 you, very much. Vice Chairman Okun?

8 VICE CHAIRMAN OKUN: Thank you, Mr.
9 Chairman. Mr. Blakeslee, in Petitioners' brief, they
10 had discussed the relevance of the Silicon Manganese
11 from Brazil, China, and the Ukraine, which was an ITC
12 review in 2001 for the point that if we're talking
13 about a different like product, that the Commission
14 should not be using evidence with regard to price
15 fixing in one instance for another. I don't think you
16 briefed that particular case in your pre-hearing
17 brief. I ask you to distinguish it for purposes of
18 post hearing.

19 MR. BLAKESLEE: We would be happy to. If
20 you'd like, I'll address it very briefly right now.

21 VICE CHAIRMAN OKUN: Okay.

22 MR. BLAKESLEE: Okay. I think that whether
23 you decide that the guiding authority is Silicon
24 Manganese or Fair Silicon depends absolutely on the
25 simple question here, which is was it all textile

1 fiber or was it textile fiber and certain PSF. If it
2 was both, then the guiding authority should be Fair
3 Silicon. Or if Petitioners are right, that it was
4 only textile fiber, then, clearly, the case that's all
5 on fours is Silicon Manganese. But, we do not accept
6 that that's the proper reading of the facts.

7 VICE CHAIRMAN OKUN: Okay. I appreciate
8 those comments. If I could just go back to the
9 industry witnesses again in this discussion about the
10 purchasers and how they might conduct their business.
11 Because, I am still trying to sort out and I still see
12 this as ambiguous with regard to the criminal case and
13 the like product, and that is because it talks about
14 primarily textile customers and that if I have
15 understood your testimony, that a primarily textile
16 customer to me could also be a fiber filled customer.
17 So, I'm trying to understand and sort out the record
18 that refers to what was going on with pricing. So, I
19 want to have an opportunity to have you comment on
20 something that the Petitioners' panel commented on
21 this morning and that is one of price increases
22 announced in the industry; your understanding, as they
23 testified this morning, that it's price increase that
24 relates to all types of PSF.

25 MR. KUNIK: That's correct, because I buy

1 both the textile deniers and the certain PSF in our
2 operation and when I receive a price increase, it's
3 across the board on both products.

4 VICE CHAIRMAN OKUN: Okay. And then when
5 you have negotiations, you negotiate separately with
6 regard to fiber fill and textile applications or the
7 same?

8 MR. KUNIK: Well, in my case, I'm usually
9 dealing with it in one negotiation, because I'm doing
10 it for our company for both products. So, it's
11 usually a negotiation that takes place at the same
12 time, usually in either our place of business or
13 theirs.

14 VICE CHAIRMAN OKUN: Okay. Mr. Stein?

15 MR. STEIN: And the same with me. One of
16 the producers, I buy both fiber fill, subject PSF, and
17 fine denier. We negotiate at the same time. Just
18 recently, probably about three weeks ago, one of the
19 domestic suppliers announced a five cent per pound
20 increase, effective February 1st. In our negotiations
21 that we have not finished, we're negotiating both
22 products, both segments, at the same time, and it is
23 very common.

24 VICE CHAIRMAN OKUN: Mr. Blakeslee, do you
25 want to add something?

1 MR. BLAKESLEE: Yes, please. We have put on
2 the record some of the press releases from the
3 Petitioners announcing these price increases during
4 the period that we're discussing. We'll give you a
5 full set of those in our post-hearing brief. But my
6 recollection from those is that in every one, it
7 discusses products across the board.

8 VICE CHAIRMAN OKUN: There's no disagreement
9 on that. I mean, I think the interesting thing I'm
10 trying to sort out is to the extent that some of the
11 information provided makes it clear that while price
12 increases are announced across the board and it looks
13 like on the entire product category, that then
14 everyone negotiates separately. And I'm just trying
15 to understand what was taking place and how that may
16 or may not have effected the original record. And so,
17 again, it's not the price increase, itself, although
18 for post-hearing, if you would comment on whether you
19 think the Commission placed reliance on that in the
20 original investigation and went back and looked and
21 I'm not sure I think we did. Again, we often looked
22 to the pricing data. So, I'm just, again, trying to
23 sort through what you're saying today about, you know,
24 that the industry purchasing -- once price increase is
25 announced, that you then are negotiating for both

1 fiber fill and textile applications for one price and
2 whether that was true during the time when the
3 conspiracy is alleged or not. I think we have
4 conflicting information. So, to the extent there's
5 anything else you can provide post-hearing, that would
6 be extremely helpful.

7 MR. BLAKESLEE: We will do that.

8 VICE CHAIRMAN OKUN: Okay. And then the
9 other thing I wanted to go back to, and I know
10 Commissioner Aranoff had a chance to go through with
11 you a number of the issues with regard to some of the
12 discovery you've asked for, the one thing that I -- if
13 she touched on this and I didn't hear it in the other
14 room, I'll just go back and look at the transcript,
15 but one of the things you had referenced in your
16 testimony today was the private settlements that
17 Wellman had, including agreements with its largest
18 textile customers, Dan River, West Point, Stevens, and
19 Spring Industries. And these are secret agreements.
20 And so, are you asking us to ask for a secret
21 agreement and what could we do with that, if we asked
22 for it? Would they give it to us? What could we do
23 with them? I'm trying to make sense of some of the
24 discovery requests and what we can ask for and what
25 would be relevant.

1 MR. BLAKESLEE: As we pointed out in our
2 pre-hearing brief, we believe that the Commission has
3 subpoena power, that its questionnaires carry the
4 force of subpoenas. It's written very clearly on the
5 face of your regulations. And, therefore, you do have
6 the ability to request production of documents, which
7 are otherwise protected, and the Commission can, of
8 course, protect the confidentiality of those documents
9 with its own protective order. So, I do believe that
10 you have those.

11 Let me tell you very briefly a little bit
12 more about what I know about the extent of these
13 settlement agreements. The only one of the
14 Petitioners that is a publicly-traded company is
15 Wellman. And so, to the extent that we can get any
16 insights into this, we have got it through Wellman's
17 SEC filings. But, Wellman does say in its -- I
18 believe it's its 10-K for the most recent year, that
19 they have, as of midyear or mid-2005, they had entered
20 into 35 private settlements. And by the time they got
21 to the settlement of the class action, which we've put
22 on the record and which has, as the final page of that
23 submission, a list of the opt outs, the members, who
24 opted out of the class, and you'll see all of those
25 large textile producers on there. But by the time

1 they got to that class action settlement, they had a
2 very small and not necessarily representative set of
3 their customers remaining in the class. That's the
4 value of the other confidential agreements.

5 Also, the civil action that has just been
6 sent out and was requested back by the end of January,
7 I think it was, Bobby, the Wellman Nan-Ya -- end of
8 December, which has a sum of money to be paid -- to
9 pay to anyone that bought any fiber fill or textile
10 grade fiber from Nan-Ya Wellman. There's a
11 settlement. You cannot forget that. Why did they
12 include fiber fill? What the Petitioners said is one
13 thing, but there's obviously something underlying,
14 that maybe they don't want to go through additional
15 lawsuits. I don't know. But, I find it hard to
16 believe that Mr. Stanley was convicted, basically. He
17 agreed. He got a penalty. What's to say that he was
18 in charge of fiber fill, too? It is not just
19 textiles. He had the pricing decisions. We don't
20 know. I mean, I don't think we're ever going to find
21 out unless you can -- you have subpoena power and you
22 look at the records and say, oh, yes, he said he did
23 it or he didn't do it. But, if he committed a crime
24 in one way, how can you believe he didn't do it on the
25 other side? I just don't understand that.

1 VICE CHAIRMAN OKUN: I'll look forward to,
2 Mr. Blakeslee, going through the record. And, again,
3 I think there's obviously a lot of information that's
4 on the record so far, additional information that's
5 coming, and I think it started with the question of
6 the probative value of each of these. Because, again,
7 what I think the Commission cannot rely on is single
8 documents where we don't understand the context and
9 what underlies it, in trying to determine what part of
10 the industry we're talking about here.

11 And I regret that I spent my entire time on
12 that again, but I know my colleagues have covered a
13 number of other questions related to volume, price,
14 and impact. But, I'll have a chance to come back, Mr.
15 Chairman.

16 CHAIRMAN KOPLAN: Sure. Commissioner
17 Hillman?

18 COMMISSIONER HILLMAN: Thank you. Let me
19 stay a little bit, if I could, with the issue in
20 general of pricing and how we should look at the data,
21 because part of this is I'm trying to understand the
22 degree to which prices in one, if you will, segment of
23 the market do or do not effect prices in another
24 segment of the market. And let me just start with the
25 issue of the denier size, because as I understand it,

1 that is really the principle distinction between
2 whether something is considered textile fiber or
3 whether something is considered fiber fill.

4 I noted in your comments on the
5 questionnaires that were filed in advanced, that it
6 was your view that denier size, at least in the fiber
7 fill, made no difference; in other words, the price
8 would not, in any way, change whether it was a seven
9 denier or a 15 denier or a five, so that you were
10 suggesting that we aggregate them all into one single
11 product, because it didn't make any difference. Is
12 that true no matter how far or wide you go on the
13 denier scale, or is there a point at which, from the
14 industry perspective, you start to see a price
15 difference between a 1.5 denier product versus a five
16 denier product, say? Or, again, if you go above 15,
17 do you start to see price distinctions?

18 MR. BLAKESLEE: Could I ask for you to
19 clarify the submission of ours that you're referring
20 to?

21 COMMISSIONER HILLMAN: Sure. It's a public
22 document. It is dated September 19, 2005. It is on
23 the sunset review of antidumping orders, it is
24 comments on the draft questionnaires. It says,
25 'comments on the draft questionnaires on behalf of

1 Dongwoo Industries, Consolidated Fibers, and Stein
2 Fibers, Ltd.,' filed by you, Mr. Blakeslee. I guess
3 it's on the questionnaires. But what it says in it
4 that I'm trying to make sure I understand the point
5 you're making, it says, clearly, again it's a public
6 document, 'pricing for deniers five through 15 is the
7 same,' so that what you were recommending that the
8 Commission do was consolidate. We had recommended, in
9 our draft questionnaires, that the Commission price
10 products differently depending on denier size; whether
11 they were hollow versus solid; whether they were
12 regenerated, which, again, we would have included
13 recycled within that; whether they were conjugate; or
14 whether they were virgin. So, we had eight products
15 broken out.

16 Your response said, no, no, no, don't bother
17 collecting different data for different deniers. Yes,
18 segregate virgin versus recycled, reconjugated -- I'm
19 sorry, regenerated and, yes, separate conjugate, but
20 do not make any distinctions based on the denier,
21 because there's no distinction in price. And what I'm
22 trying to understand is do you think that it's also
23 true on the textile side. In other words, is there a
24 distinction in price between a 1.5 or two denier
25 polyester fiber product versus a 7.5, somewhere in

1 what we would call the fiber fill range?

2 MR. KUNIK: Okay, I can start off with that.
3 You're correct and we maintain what we said in our
4 original response, that six and 15 denier or the
5 spectrum of six to 15 denier are priced very much the
6 same. They're basically identical. The cost is
7 pretty much the same. Three denier, which is covered
8 by the order, is usually priced different. That's
9 priced different. Now, as it relates to the fine
10 denier, which is anything three denier or below three
11 denier, the only thing with 1.4 to 2.5 denier is
12 basically priced the same. The only thing below one
13 denier, which is called micro denier, .9, is more
14 expensive to make. It sells for more. So, that's the
15 pricing spectrum.

16 COMMISSIONER HILLMAN: Okay. And is that
17 medium range, that 1.5 to 2.4, I believe as you
18 described it, is that more expensive than the fiber
19 fill deniers, the six to 15 range?

20 MR. KUNIK: It depends on what you're
21 comparing. If you're virgin -- I would say virgin 1.4
22 to 2.5 and virgin certain PSF are priced pretty close,
23 pretty much the same.

24 COMMISSIONER HILLMAN: Okay. That's very
25 helpful.

1 MR. KUNIK: Okay.

2 COMMISSIONER HILLMAN: Again, I'm trying to
3 understand how the two market prices effect each
4 other.

5 Then, if we could go back to this issue of
6 any distinction, whether there should be one, and how
7 we would make it between regenerated, versus recycled,
8 versus virgin. Again, help me put this Regen issue in
9 some perspective. If I look at the total market of
10 fiber fill, the seven to 15 denier product, what
11 percentage of what's sold in the U.S. market is Regen,
12 as you define it? What percentage is recycled, which
13 is, as I understand it, you're defining as 100 percent
14 made from clear plastic bottles? And what percentage
15 of it is virgin, meaning it's made from the MEG --
16 MGA, I'm sorry, and whatever the original materials?

17 MR. KUNIK: Well, we said 40 percent of the
18 market was conjugate, so that -- you're asking about
19 the --

20 COMMISSIONER HILLMAN: No. I am now asking
21 the input product that goes into it. So, again, I'm
22 trying to understand, of the total polyester staple
23 fiber being made in the U.S. or sold in the U.S., I'm
24 trying to understand how much of it is made from what
25 you're describing as recycled, just the plastic

1 bottles. How much of it is made from regenerated
2 product, which I understand you're describing as waste
3 that is different than plastic bottles and how much of
4 it is made from virgin it stocks, input direct
5 chemical stock inputs? Again, I'm trying to put this
6 Regen issue into some perspective.

7 MR. KUNIK: Okay. I understand.

8 COMMISSIONER HILLMAN: Okay, go ahead, Mr.
9 Kunik.

10 MR. BLAKESLEE: This is a difficult issue, I
11 think, because of --

12 COMMISSIONER HILLMAN: You need your
13 microphone on, Mr. Blakeslee.

14 MR. BLAKESLEE: This is a difficult issue
15 and so I just want to make sure that I and my
16 witnesses understand. One the one hand, we have Regen
17 and recycled as output products. But, I believe
18 you're asking about the inputs to the prices that are
19 sold generally in the market.

20 COMMISSIONER HILLMAN: Let me back up. The
21 Commission did not collect data separately for
22 regenerated product versus recycled product, okay. We
23 combined all of the data, the pricing data, the
24 production data, all of that. We have our data
25 collected according to virgin product, versus

1 recycled, regenerated product, versus conjugate
2 product. That's how we collected the data. And we
3 collected the data that way in part base, because
4 that's how we went out, in terms of questionnaires,
5 that's how we suggested we were going to collect the
6 data. And as I understand it, again, we did not get
7 any comments back from you saying no, no, no, you have
8 to separate recycled from regenerated, that these are
9 somehow two different things. And, yet, clearly, what
10 I'm hearing Mr. Stein and Mr. Kunik telling me this
11 afternoon is that they are, in fact, different things,
12 that Regen is very, very low end, made from waste,
13 different from recycled, as I understand it, made 100
14 percent from plastic water bottles and that kind of
15 recycled polyester PET, or whatever we're going to
16 call it. And then yet another category is virgin.

17 And from your perspective, those are the
18 three ways, in which we should look at the inputs
19 going into the product, the outputs coming out are
20 virgin product, as you're describing it, Regen
21 product, recycled product, and conjugate product,
22 which could be made from either recycled or virgin.
23 Is that how you're -- Mr. Stein is at least
24 acknowledging --

25 MR. STEIN: Yes. That's how it is. But,

1 you're asking for numbers. I'll be honest with you,
2 I've been -- as I've said, I've been in this 30 years.
3 I never try to guess what someone else produces. I
4 only know what I sell and --

5 COMMISSIONER HILLMAN: Okay.

6 MR. STEIN: -- what I can produce. But, I
7 will tell you that just by meeting the producers,
8 Wellman produces recycled and virgin, USI produces
9 recycled, Dak/Invista produce virgin, if that helps
10 you to point you in the right direction. What
11 percentage of the market each of those have along with
12 what percentage Regen has, I don't know what my
13 competitors bring in, in Regen. So, it's a very --

14 COMMISSIONER HILLMAN: Okay. Mr. Kunik, can
15 you help me? Again, what I'm specifically trying to
16 put into some context is this issue of Regen. Again,
17 you're the one suggesting to me that it's somehow
18 something different from everything we've been talking
19 about and the way we collected the data. So, how
20 significant an issue is Regen?

21 MR. KUNIK: Well, I probably would have to
22 say my best guest is probably 30-35 percent of the
23 market. But, I guess if I could try to explain the
24 difference between a Regen or a virgin. And
25 Commissioner Aranoff had asked this question and maybe

1 I can try to explain it quickly. When we first talk
2 about customers, I want to be careful on that, that's
3 confidential. But, for instance, I have a customer,
4 who makes bed pillows, and I know that they have a
5 demand in the market for a high-end pillow that's sold
6 at a high-end department store. That customer will
7 demand and ask from me for a conjugate fiber that is
8 of the highest quality, because he needs that to
9 attract those customers at retail. They will also
10 tell me, I, also have distribution and sales at a
11 Cosco or a WalMart. For that product, I'm competing
12 at a price point for different customers. I need a
13 regenerated product when you have in that type of
14 product. And there are two distinct very different
15 type of products. If that can explain the difference.

16 COMMISSIONER HILLMAN: Okay. Is he asking
17 for it because of the low price or is he asking for it
18 because he cares about the input was going into the
19 fiber that you're producing? I'm trying to understand
20 why anybody cares about Regen, from a customer
21 perspective. Is it purely he wants a low price?

22 MR. KUNIK: Well, I think there's --

23 COMMISSIONER HILLMAN: Or are there
24 qualities or attributes to Regen that he's
25 specifically looking for?

1 MR. KUNIK: Well, there's attributes and
2 qualities and a market for that type of a product and
3 the customers and the purchasers knows that there's
4 distinctions between the Regen and the recycled. For
5 instance, Ms. Katz from Wellman said the recycled is
6 basically virgin. It's the same thing. It's selling
7 at the same price points and the same quality. So, he
8 wouldn't ask for that when he knows he was trying to
9 meet a WalMart or Cosco price point.

10 COMMISSIONER HILLMAN: Right. Thank you,
11 very much.

12 CHAIRMAN KOPLAN: Commissioner Lane?

13 COMMISSIONER LANE: In Chemical News and
14 Intelligence, July 31, 2002, Exhibit 2 to Petitioners'
15 brief, it is reported that South Korea's Huvis Corp.
16 had plans to convert one of its spinning fiber lines
17 to produce regular hollow fiber. Did this change take
18 place, to your knowledge, and do you know of any other
19 product shifting that has taken place in Korea or
20 Taiwan?

21 MR. STEIN: As was noted, Huvis has shrunk
22 their -- not only shrunk their total capacity, but
23 they have reduced the so-called virgin polyester
24 that's in this investigation. The line has gone back
25 as of 2004. They switched over for maybe a year and

1 they switched back to fiber fill. They have the
2 advantage of overseas with just changing what we call
3 a technical term, spinneretts. And then they use
4 different, maybe different grades of PTA and MEG.
5 But, they can switch back and forth. No, they are not
6 producing -- they're producing less virgin subject
7 commodity than they were back in 2003 or 2002 even.

8 COMMISSIONER LANE: Given that the same
9 employees and production facilities can be used to
10 produce the various types of PSF, how long does it
11 take to convert a greater than three denier production
12 line to a less than three denier production line, or
13 vice versa?

14 MR. STEIN: Working with one of the domestic
15 producers left unknown, and if you want, I'll put in a
16 confidential brief, it takes merely hours. Within
17 three to four hours, you can switch from either --
18 I'll even go one step further -- you can switch from
19 either fine denier or subject PSF.

20 COMMISSIONER LANE: Are there other products
21 that can be made in the same facilities with the same
22 employees that can be shifted as the market moves,
23 such as PET resin? Or have any of the plants or
24 facilities been used to manufacture another product in
25 the past?

1 MR. STEIN: Again, left unknown, and, again,
2 we'll do it in confidential, but a domestic producer,
3 when I say recently, over the -- probably about four
4 years ago, switched one of its fine denier lines,
5 which, again, is the 1.5 to three denier -- it can be
6 actually anything -- to carpet staple. Now, going to
7 carpet staple, because it's a different raw -- a
8 little bit different raw materials supply, because
9 there, it's a different luster than what we need in
10 fiber fill. A luster, I think we mentioned, is one of
11 the criteria for first quality. They can switch --
12 they switched over to carpet. That's why I was
13 surprised this morning when the Petitioners talked
14 about a shortage of carpet capacity. You can switch
15 over to carpet capacity. Yes, there's a little bit of
16 an investment. But, it's basically a raw material
17 change, too. So, yes, you can switch over to
18 anything. Now, you cannot switch over from conjugate
19 to fine denier or low-melt to fine denier, that we
20 know of.

21 COMMISSIONER LANE: Okay, thank you. Mr.
22 Chairman, that's all the questions I had.

23 CHAIRMAN KOPLAN: Thank you. Commissioner
24 Pearson?

25 COMMISSIONER PEARSON: Trying once again to

1 understand the financials that we have in the staff
2 report, Mr. Malashevich, do you have any idea whether
3 there are any fines or settlement expenses
4 incorporated into the financials regarding payments
5 that the domestic industry may have made? If so,
6 where would they show up? Because, I wasn't thinking
7 this morning to ask that question of the domestic
8 industry, if you have anything to add in the post-
9 hearing brief, I would be pleased to have it. And
10 staff, if you know this already, just inform me
11 tomorrow, okay.

12 MR. MALASHEVICH: Commissioner, I don't know
13 is the short answer to your question, in part, because
14 only one -- as mentioned earlier, only one domestic
15 producer is publicly traded. And we routinely examine
16 10-Ks and 10-Qs for players in the industry as part of
17 our analysis. We only have one from Wellman. I
18 simply do not recall offhand whether it's explicit in
19 their 10-K, how those fines are treated. But,
20 certainly, staff has the 10-Ks, as we do, and I
21 believe it would be a simple matter to determine if
22 the 10-Ks provide that information. Otherwise, I
23 think it will have to come from the producers,
24 themselves.

25 COMMISSIONER PEARSON: Okay. Well, given

1 the size of one settlement that I have in mind, that
2 would be large enough to be seen in our financials
3 here. If there are sorts of expenses that are getting
4 built in, that would have some effect on how we're
5 evaluating the performance of the industry.

6 MR. MALASHEVICH: You're certainly right. I
7 simply cannot answer your question without reviewing
8 the 10-K, in which I last did a month or so ago.

9 COMMISSIONER PEARSON: Okay. Now, I
10 appreciate that. Mr. Blakeslee, I have to confess
11 that I'm even less familiar with antitrust law than I
12 am with antidumping law. I'm making a little progress
13 on the latter over time, but antitrust is pretty much
14 beyond me. I remember, though, from when I was in the
15 private sector that there's some index named for two
16 people, whose name start with 'H,' that -- Mr.
17 Malashevich?

18 MR. MALASHEVICH: The Herfendel Index.

19 COMMISSIONER PEARSON: Herfendel, just one?

20 MR. MALASHEVICH: There's another academic
21 involved; but in the trade, people just refer to it as
22 the Herfendel Index or the HHI.

23 COMMISSIONER PEARSON: Okay.

24 MR. BLAKESLEE: And I think the other name
25 is Hirsch. That is not -- that's an index that's used

1 to analyze the potential anti-competitive effect of a
2 merger. And I don't know that that's right.

3 COMMISSIONER PEARSON: I'm not wanting to
4 get into that now, but it has to do with concentration
5 in an industry. And what's of interest to me is that
6 the case made by Petitioners or by the domestic
7 industry, that because there is a relatively small
8 number of customers for the textile grade PSF, that
9 they were trying to control prices in that market.
10 They were not trying to control prices in the market
11 for subject PSF, because there were more customers.
12 And I reflected on that over lunch and it seemed to me
13 that rather than an argument that the number of
14 customers would control how one might -- or dictate
15 what type of collusion might work in a market, it's
16 much more likely that the number of producers would be
17 the relevant factor. And in this industry, if I
18 understand it, there are roughly the same number of
19 producers, or perhaps exactly the same number of
20 domestic producers that produce subject PSF and the
21 non-subject PSF.

22 So, that's why -- from an antitrust
23 standpoint, is there a difference? I mean, does the
24 antitrust practice make the distinction that I am
25 clumsily trying to make now between concentration on

1 the producers side, versus concentration on the
2 customer side?

3 MR. BLAKESLEE: I think the Herfendel Index
4 tries to measure, as you say, the concentration of the
5 industry before or after a merger. But, I think that
6 in my written testimony, I referred and I referred
7 very generally to the market shares that were held by
8 the four companies that you're referring to. And I
9 think what I said verbatim was that it's a very
10 significant majority of the industry. I would invite
11 you, and the page reference is in my written
12 testimony, to consult the original -- the staff report
13 in the original investigation just to see how very
14 significant that majority is. And I think it's sort
15 of 101 antitrust, more the law practice, that the
16 smaller the group of conspirators, the larger the
17 chance of success for conspiracy and that conspiracies
18 succeed in inverse proportion to their numbers, to the
19 number of conspirators. I hope that answers your
20 question.

21 COMMISSIONER PEARSON: Mr. Stein?

22 MR. STEIN: I, also, want to say that in the
23 time of the so-called conspiracy back in 1995, I think
24 -- I don't remember the exact dates, but there are
25 many more spinners and textile mills in the United

1 States. Don't forget, we've already said and
2 Petitioners agree that the textile industry has
3 emptied out of the United States for the big part. So
4 back in the time of this so-called conspiracy, there
5 were a lot more end users.

6 COMMISSIONER PEARSON: Okay. Mr.
7 Malashevich?

8 MR. MALASHEVICH: Yes. That was exactly the
9 point I was going to make. I hope the Commission will
10 not get hung up on this five to 10 percent number
11 that's been talked about in terms of the share of
12 volume going to customers that are also PSF customers,
13 because since the original time of the conspiracy,
14 1999 to the present, the demand for certain PSF has
15 gone up. And as you heard from testimony this morning
16 and I think it's obvious from the public press, demand
17 for textile fibers has gone down. So, it follows that
18 the further back you go in time, the bigger the number
19 that five to 10 percent is going to be, especially
20 during the time -- the precise time in the documents,
21 1999-2001, perhaps earlier, perhaps later. But, in
22 principle, the further back you go, the bigger that
23 number is going to be.

24 COMMISSIONER PEARSON: Okay. Well, if you
25 have anything to add for the post-hearing on the

1 question of whether, as we evaluate the possibility
2 that the domestic industry made a decision to try or
3 not to try to conspire in the subject PSF market, as
4 we evaluate that question, if there's an argument that
5 you would care to make regarding whether we should
6 look more at the number of producers or more at the
7 number of customers, I would be pleased to see it,
8 because this just gets into things that I don't have
9 experience with.

10 MR. BLAKESLEE: Understand. And we will
11 address that.

12 COMMISSIONER PEARSON: Okay. Let me offer
13 that invitation also to the domestic industry. Mr.
14 Malashevich, going back to a point you made in your
15 opening presentation, you were talking about there is
16 a case for a negative vote even if we don't find that
17 the price fixing conspiracy had a meaningful influence
18 in this investigation. And my question is -- well, if
19 you want to elaborate more on that, you can. But, the
20 real question is, are there precedence where the
21 Commission has looked at industries where we could see
22 no benefit to the industry from the order when we were
23 doing the review and then made the decision that I
24 think you were recommending, by voting negative?

25 MR. MALASHEVICH: Offhand, I can't say. As

1 you know, I'm not a lawyer. But, I'll consult with
2 counsel and try to do that. The thrust of my
3 testimony, the brief, itself, I don't need to go into
4 volume, price, and effects on overall condition. But
5 reading a lot of recent opinions by the Commission for
6 this case and for other matters I'm involved in, I
7 notice that if an industry is found to be vulnerable,
8 there generally has been a finding that there's --
9 they're vulnerable, because they've benefitted from
10 the orders. So, I'm reversing that, in effect, and
11 saying, well, if they haven't argued they benefitted
12 or they haven't been able to state, in response to
13 your invitation, really, and the Chairman's
14 invitation, they can't define any benefits, then they
15 can't be vulnerable.

16 COMMISSIONER PEARSON: Okay. Are you
17 differentiating between the Commission making a
18 finding that they're not vulnerable, versus making a
19 negative determination on injury?

20 MR. MALASHEVICH: I have to leave that for
21 counsel to answer, because that gets into an area that
22 I'm not the best to address.

23 COMMISSIONER PEARSON: Fair enough. I'm not
24 either. Counsel, do you have anything to add on that
25 point?

1 MR. BLAKESLEE: I'm sorry, would you repeat
2 the question, Mr. Pearson?

3 COMMISSIONER PEARSON: Oh, gosh. I'm not
4 sure, but let's see. We were talking about the case
5 that Mr. Malashevich made in his opening remarks
6 regarding that if the domestic industry has not
7 received benefits from the orders, that then we should
8 not find them vulnerable to a lifting of the orders.
9 And then the next step is, is there any precedent for
10 the Commission under those circumstances also finding
11 no material injury or whatever the standard is we deal
12 with in a review?

13 MR. BLAKESLEE: Let me address the standard,
14 and I mentioned this earlier, but that the standard is
15 a likelihood of continuation or recurrence of material
16 injury by reason of imports. And so, I think the key
17 issue here is whether the injury that this industry
18 has clearly suffered over at least the last eight
19 years, whether that is by reason of imports or by
20 reason of something else.

21 COMMISSIONER PEARSON: Okay. Well, consult
22 with Malashevich. If you have more to add in the
23 post-hearing, that would be great. Mr. Chairman, my
24 light is changing.

25 CHAIRMAN KOPLAN: Thank you. Commissioner

1 Aranoff?

2 COMMISSIONER ARANOFF: Thank you, Mr.
3 Chairman. Some issues that I don't think have come up
4 yet today, in your brief, Mr. Blakeslee, you make a
5 number of arguments about supply shortages caused by
6 hurricanes Katrina and Rita and maybe some other
7 factors. Petitioners, in their brief, address these
8 also and basically indicate that these were very short
9 lived phenomenon and are long since over. Is there
10 anything you can tell us about these particular shocks
11 to the market, in terms of when they hit, how long
12 they lasted, whether you think there are any -- were
13 any price effects at the time and are any continuing
14 price effects at the present time?

15 MR. BLAKESLEE: I'm going to turn to my
16 colleagues on that, because all three of the people at
17 this table are better equipped than I am to answer
18 that particular question.

19 COMMISSIONER ARANOFF: Thanks.

20 MR. STEIN: I'm sorry to say, I don't
21 remember the exact day of the Katrina, even though we
22 probably all should.

23 COMMISSIONER ARANOFF: Well, it was in
24 August.

25 MR. STEIN: Yes. And at that point, the

1 domestic suppliers announced two increases during the
2 month of late August and September. The total of the
3 increases was anywhere between 15 and 20 cents per
4 pound, and that's -- percentage-wise, that could be as
5 much as 25 percent. And that's just a guess on my
6 part, and figuring -- well, my math is not -- if
7 you're talking about a 65 cent -- let's put it this
8 way, if you're talking about a 65 cent material, it
9 went up 17 cents, plus we did hear pricing in the 80s.
10 And then subsequent to that, they reduced and they
11 made an announcement -- I think it might be on the
12 Wellman site -- back in November, that they reduced
13 the price to pre-Katrina pricing, plus three cents per
14 pound. And exactly the date, I don't remember, but it
15 is on one of the producer's sites and I think it's
16 Wellman. My question that I think you should be
17 question, why they raised -- you asked why they raised
18 the price, it's because the price of PTA and MEG went
19 up due to the shortage of the refineries that go hit
20 in Texas, et cetera.

21 My question is, why didn't they stay up?
22 Why didn't the producers keep the prices up? They
23 talk about a problem in making money. There was no
24 competition at the 17 cent increase. Did they sell
25 the same -- the question should be asked, did they

1 sell the same pounds, as they would at 65 cents? I
2 know the answer. You should ask them the question.
3 And I think the problem is, they feel, they don't know
4 -- I told you about marketing in my little spiel.
5 Well, they don't know about marketing. I'm convinced
6 that the pricing -- they think there's competition at
7 certain pricing, because of our Regen, because it may
8 be recycled, separated out from a USI. There is no
9 competition. The competition is among them, the
10 domestic producers, and they're blaming us for that.

11 COMMISSIONER ARANOFF: Okay. Mr. Kunik, did
12 you want to add anything?

13 MR. KUNIK: I think Chip did a good job on
14 that. I concur with what he said.

15 COMMISSIONER ARANOFF: But one of the
16 arguments in your brief was that there are these
17 continuing shortages and that they're continuing to
18 effect the market and that's one of the things I was
19 trying to get at.

20 MR. KUNIK: Well, I think Chip addressed the
21 U.S. situations. And some of the shortages that I
22 refer to, and it can be provided in a confidential
23 exhibit post-hearing, that some of the shortages that
24 are in the Korean market, and that's basically -- you
25 know, attributed to other markets where they can sell

1 the product to, whether it be China or Europe. So,
2 that, in my brief -- in my statement, that's what I
3 was referring more towards the shortages. And there's
4 a restriction on supply of types of fiber that I buy
5 from the subject countries and it's not separate from
6 what happened during the aftermath of hurricane
7 Katrina.

8 COMMISSIONER ARANOFF: Okay. Thank you,
9 very much. Anything that you can add to try to get to
10 the bottom of the question. I understand that the
11 hurricanes had a temporary effect on the supply of the
12 raw material inputs and that that may have had an
13 effect on prices. I'm trying to figure out how long
14 that lasted, what kind of an effect it had on the
15 market. I know you indicated that --

16 MR. STEIN: It went back off. I'm going to
17 say, it was reduced formerly probably at the beginning
18 of December. So, that's the length of it.

19 MR. KUNIK: It lasted for basically a
20 business quarter, three months --

21 COMMISSIONER ARANOFF: Okay.

22 MR. KUNIK: -- here in the U.S., because of
23 Katrina.

24 COMMISSIONER ARANOFF: And, obviously, since
25 some people are not, in fact, using those raw material

1 inputs, it would be interesting to know, and I asked
2 the Petitioners to respond to this, as well, whether
3 the price effect that that had led to effects across
4 the market, even to people, who weren't having trouble
5 accessing their raw material inputs during that period
6 time.

7 But, let me move on and ask some questions
8 about foreign capacity. Obviously, we don't have
9 representatives of the Korean and Taiwanese industries
10 here today, but perhaps I can put these questions to
11 you gentlemen and see if there's anything that you can
12 offer on these subjects. Petitioners assert that
13 capacity to produce subject product in Korea is higher
14 now than it was during the original investigation,
15 both perhaps because of actual increases in capacity
16 and also because producers, who were non-subject, are
17 now subject. Do you agree that subject capacity in
18 Korea is higher now than it was during the original
19 period of investigation?

20 MR. STEIN: The answer is no, because I
21 think, as Bob Kunik stated, Daehan, Seahan, and one of
22 the others -- Daehan is no longer in existent
23 producing polyester staple fiber. The actual total
24 production out of Korea has reduced. And, again, I
25 think the Commission -- someone said that the Seahan

1 and Huvis members -- our briefs came in and obviously
2 you have access to those.

3 COMMISSIONER ARANOFF: Right, okay.
4 Petitioners, also, contend in their brief that the
5 smaller producers in Korea, who produce regenerated
6 PSF, have invested in additional production capacity.
7 Would you agree with that?

8 MR. STEIN: As Mr. Kunik said in his
9 testimony, there's at least three to five producers
10 that produce this so-called Regen that are not in
11 existence anymore, especially the one that we had a
12 long fight on that went to the -- all the way up to
13 the Court of Appeals. They went bankrupt and closed
14 down. It was East Young, Geum Poong -- who else,
15 Bobby?

16 MR. KUNIK: And Kohap.

17 MR. STEIN: Kohap.

18 MR. KUNIK: There's been a reduction of
19 capacity -- of regenerated capacity in Korea.

20 COMMISSIONER ARANOFF: Okay. Obviously, we
21 never really heard from those small producers in
22 Korea, either in the original investigation or now.
23 Is there anyway to document that there's been an
24 overall production in regenerated capacity in Korea?

25 MR. STEIN: I think maybe what we can do is

1 get together with counsel, Mr. Kunik and myself get
2 together and go through the major six to eight
3 producers of so-called Regen in Korea and come up with
4 a volume, because between the two of us and some of
5 the other people that -- like Fibertex, who should
6 have been here, all buy from Korea. Maybe, we can
7 come up with some numbers. Or even ask, if we can,
8 we'll ask the Koreans, themselves.

9 COMMISSIONER ARANOFF: Okay. I appreciate
10 anything that you can provide on that. Domestic
11 producers, also, contend in their brief that capacity
12 to produce subject product is now higher in Taiwan
13 than it was during the original period of
14 investigation. Is that something that you would agree
15 with or disagree with?

16 MR. STEIN: Again, I think Bobby, he doesn't
17 buy enough from Taiwan, and our purchasing from Taiwan
18 has been drastically reduced, because we're now buying
19 from their sister company in the United States, called
20 Nan-Ya. We bought a lot from Nan-Ya. The production
21 that Nan-Ya, I can tell you, Nan-Ya in conjugate, in
22 virgin, the subject virgin polyester has been reduced
23 by probably 99 percent from what Nan-Ya shipped to the
24 United States back five years ago, and that's
25 primarily because of their plant here in the United

1 States.

2 COMMISSIONER ARANOFF: Okay. I appreciate
3 that answer. Thank you, very much.

4 CHAIRMAN KOPLAN: Thank you, Commissioner.
5 Mr. Malashevich, I've got the first two questions for
6 you and I hear you keep referring to the fact that
7 you're not a lawyer. So, I assume as an economist,
8 you might even be able to give me a yes or no on
9 these. We'll see.

10 MR. MALASHEVICH: I'll do my best.

11 CHAIRMAN KOPLAN: All right. On page 55 of
12 your pre-hearing brief, you state that there are at
13 least two reasons for the domestic industry's poor
14 results during the first five years of the POR. On
15 56, you state that one of the reasons is 'production
16 by the domestic industry of other products produced on
17 the same equipment as PSF has fallen with the
18 consequence that PSF is forced to absorb overhead that
19 historically was allocated to these other non-PSF
20 products.' Can you point to any data that supports
21 your argument?

22 MR. MALASHEVICH: Yes. It's in the pre-
23 hearing report.

24 CHAIRMAN KOPLAN: Okay.

25 MR. MALASHEVICH: I'll elaborate a little

1 bit. The further elaboration will have to be APO.
2 But, there's a section of the questionnaire that asks
3 for a breakdown of shipping volume, I believe it was.
4 I can't --

5 CHAIRMAN KOPLAN: Can you provide that for
6 purposes of post-hearing?

7 MR. MALASHEVICH: Yes.

8 CHAIRMAN KOPLAN: Okay.

9 MR. MALASHEVICH: It's a very simple answer.
10 And there's other evidence beyond that, including the
11 testimony here, the decline in textile applications,
12 generally, but the questionnaire elicited information
13 precisely on that subject.

14 CHAIRMAN KOPLAN: That would be great, if
15 you can do that. Thank you. Your pre-hearing brief
16 also argues that global demand for the subject imports
17 will continue to increase. It states on page 41 that
18 'with subject imports already down 22.3 percent over
19 the POR, the increase in global demand should continue
20 to pull Taiwanese and Korean production away from the
21 U.S. market to foreign markets like the European
22 Union.' The staff report at 4-17 states that 'the EU
23 initiated an investigation of imports of PSF from
24 Korea in December of 2003 that resulted in the
25 imposition of antidumping duties of 0.9 to 10.6

1 percent in March 2005.' Doesn't those recently
2 imposed orders suggest that imports from Korea to the
3 EU are likely to decrease in the future? Do you have
4 any evidence you can provide in your post-hearing
5 submission that demonstrates that imports from Korea
6 to the EU had been increasing since the EU order was
7 imposed in March 2005?

8 MR. MALASHEVICH: I did not study that
9 particular question, but I defer to counsel, who is
10 much more familiar with the facts in that, than I am.

11 CHAIRMAN KOPLAN: Mr. Blakeslee?

12 MR. BLAKESLEE: I don't have a ready answer
13 for you on that one, but we will address that in our
14 post-hearing brief.

15 CHAIRMAN KOPLAN: Thank you. I would
16 appreciate that, very much. Mr. Stein and Mr. Kunik,
17 the domestic producers assert that imports of PSF from
18 both Korea and Taiwan face antidumping duties in Japan
19 and Turkey, that Korean PSF exports additionally face
20 antidumping duties in Argentina, China, the EU, and
21 Mexico, and that PSF exports from Taiwan are subject
22 to recently applied duties of four percent in the EU
23 and five percent in China. That's at pages 50-52.
24 Given the existence of these barriers to third-country
25 markets, would you expect a shift away from these

1 markets to the United States, if the order under
2 review is revoked? If not, why not, if the order is
3 under review and revoked? If you can answer that?

4 MR. KUNIK: Well, my first statement is that
5 the orders, at this point, are so low, that there's
6 really -- if they were revoked, I don't believe they
7 would have an impact. The orders, as they stand now,
8 the margins are quite low.

9 CHAIRMAN KOPLAN: You're talking about in
10 the subject investigation?

11 MR. KUNIK: Yes.

12 CHAIRMAN KOPLAN: So, then, it doesn't
13 matter to you whether we revoke the orders or not, if
14 they're that low? Do you consider them that low that
15 they don't make a difference?

16 MR. KUNIK: Well, I think the point I'm
17 trying to make is that the orders, as they stand now,
18 have not impacted our specific volumes into the
19 country.

20 CHAIRMAN KOPLAN: Mr. Stein?

21 MR. STEIN: I completely concur that the
22 dumping orders that were instituted in 1999 and then
23 adjusted after that, percentage-wise, have not changed
24 the amount of imports the regenerated has come in
25 here. I shouldn't say it's changed, it changed the

1 number of producers, because, as we said, three or
2 four of them have gone out of business.

3 CHAIRMAN KOPLAN: So, you're saying, as
4 well, that it's not important to you whether these
5 orders --

6 MR. STEIN: NO. I'm saying that the
7 percentages that we have, that we're paying -- don't
8 forget, we, as importers, are paying this, not the
9 people in Korea or Taiwan. It has an effect on our
10 bottom line.

11 CHAIRMAN KOPLAN: Right.

12 MR. STEIN: And that's where the effect
13 would be. We're not going to -- you know, we've
14 sacrificed profit. And, again, this is not for --
15 again, for public, but we sacrificed many dollars in
16 profit, all the importers, because of this dumping
17 case that we have. In some cases, we had to pass it
18 on, but we pass it -- when we passed it on, we passed
19 it on in the form of price increases as a whole,
20 because one of the things that -- one of the
21 Commissioners asked --

22 CHAIRMAN KOPLAN: Maybe you can specify that
23 for me for purpose of post-hearing --

24 MR. STEIN: Okay.

25 CHAIRMAN KOPLAN: -- as to those instances

1 where you passed --

2 MR. STEIN: Okay.

3 CHAIRMAN KOPLAN: -- it on and to whom and
4 when.

5 MR. STEIN: Okay. But, I will tell you that
6 one of the things is, it's very hard when you have
7 people like Target and WalMart. I don't think there's
8 any questions about what the consumer wants --
9 everything has been the antitrust and what's produced
10 in these countries -- what the consumer wants. And
11 one of the things that I think is important to
12 understand that the consumer wants the variety of
13 fibers. Because, everyone here knows the company Bed,
14 Bath & Beyond, and I use them as an example. You go
15 into the towel department of Bed, Bath & Beyond, and I
16 assume most of us have been there, and you feel the
17 different pillows. And you look at the different
18 grades, anywhere from a three-dollar pillow, on up to
19 \$140 pillow, and there's major, major differences.
20 We've got to be cognizant and you have to be cognizant
21 of the fact of what does the consumer want. The
22 consumer wants the variety. The consumer needs the
23 Regen to meet a price point and a quality. They don't
24 care about quality in Regen, because there is no
25 quality standard. We said that from the beginning.

1 Then they go up and buy the conjugate, et cetera. So,
2 I think the Commission has to take that into effect.

3 CHAIRMAN KOPLAN: Thank you. Let me stay
4 with you (missing testimony) future subject import
5 trends in interim 2005 indicates clearly that there's
6 no likelihood that subject imports will increase if
7 the orders are revoked. Korean subject imports fell
8 27.7 percent and Taiwanese subject imports plummeted
9 38.4 percent in the interim period. That's from your
10 brief.

11 I note that Table 3-8 of our staff report
12 indicates that interim 2005 was the only period since
13 2002 that the domestic industry had a positive ratio
14 of operating income to net sales.

15 Were there any significant changes in the
16 conditions of competition in the market for certain
17 PSF that would explain these two changes?

18 MR. STEIN: The first change, why the
19 domestic producers are now showing -- I think you said
20 marginal profit? I don't remember the exact words.

21 CHAIRMAN KOPLAN: Positive ratio of
22 operating income to net sales.

23 MR. STEIN: A positive ratio. Because
24 they've maybe learned from maybe some of us importers
25 how to market their fiber and keep the prices up and

1 realized that virgin fiber does not compete with what
2 we bring in. That's the first thing. And I forget
3 your first part of the question. Sorry.

4 CHAIRMAN KOPLAN: I asked whether there were
5 any changes in the conditions of competition in the
6 market and you said changes in their marketing and I'm
7 asking you if there's anything else.

8 MR. STEIN: Marketing and --

9 CHAIRMAN KOPLAN: Because they're following
10 your lead on marketing.

11 MR. STEIN: Yes.

12 CHAIRMAN KOPLAN: That's the reason that
13 explains this?

14 MR. STEIN: No, there's more to it than
15 that, Commissioner. These gentlemen don't have access
16 to all the information.

17 First of all, I'll point out that during the
18 morning session, I believe it was you and at least one
19 other commissioner gave multiple opportunities to the
20 domestic industry to comment on the changes in
21 pricing. Not a single time -- not a single time --
22 did any one of those witnesses draw a linkage between
23 the improvement in the industry's profitability in the
24 interim 2005 and the decline in subject imports in
25 2005. Not a word. Not even a word about imports

1 generally. It was other conditions in the
2 marketplace, higher costs of materials, expanding
3 market share, that they cited as the reason. Nothing
4 to do with imports.

5 CHAIRMAN KOPLAN: What's your linkage?

6 MR. STEIN: Well, my answer is -- beyond the
7 answer the industry gave -- we have information we
8 received yesterday too late to incorporate in our
9 proceeding concerning the competing demands on
10 material from the Korean producers in particular that
11 we believe for reasons already stated by the industry
12 apply to Taiwanese producers as well that supplies are
13 tight and that there are opportunities for their
14 material elsewhere that they view more favorably. So
15 there was a retraction in the volume supplied to the
16 United States interim 2005.

17 CHAIRMAN KOPLAN: Thank you.

18 I see my red light is about to come on.
19 Rather than start another question, Vice Chairman
20 Okun?

21 MR. BLAKESLEE: Chairman Koplan, before your
22 time expires, I at some point, it doesn't have to be
23 now, would like to follow up on a question you asked
24 me earlier which also is a question that was asked in
25 different forms by the other commissioners, so I would

1 just like to at some point be able to come back to it.
2 It's a question of the contents of the product
3 discretion in the criminal information and any other
4 documentation that elucidates that.

5 CHAIRMAN KOPLAN: Okay. On my next round,
6 we will cover that.

7 Vice Chairman Okun?

8 VICE CHAIRMAN OKUN: Mr. Blakeslee, if you
9 just want to go ahead and do that now on my time,
10 that's fine, because I have no further questions for
11 this panel.

12 MR. BLAKESLEE: Thank you very much,
13 Commissioner Okun.

14 The question, again, asked in different ways
15 by different commissioners is is there anything else
16 on the record that resolves the ambiguity about
17 whether we're talking about textile fiber or textile
18 fiber plus certain PSF. The press release -- it's
19 actually congressional testimony with bullet points
20 Mr. Rosenthal read from this morning, I didn't hear
21 all of the items, that's why I asked for a copy of it,
22 but I'd like to read you again what the Justice
23 Department said about the KoSa case and specifically
24 about what products were the subject of the plea
25 agreement, if I may, and I think this moves us closer

1 to the answer that we're looking for here.

2 In October 2003, Artiva, et cetera, pled
3 guilty to price fixing market allocation of polyester
4 stable, a synthetic fiber used in textile products
5 such as clothing, table and bedding linens,
6 upholsteries, carpeting and air and water filters.

7 There was discussion this morning about what
8 upholsteries might mean, is that the fabric, is that
9 the filling. I don't want to dwell on that, but it
10 should be crystal clear that carpeting is not textile
11 fiber.

12 What Mr. Kunik has just told me is that the
13 last double item on here is air and water filters and
14 my question to him a moment ago was is this textile
15 fiber and his answer was no, these are fibers that are
16 of 6 and 15 denier respectively.

17 Clearly, certain PSF which is identified by
18 this item published or this testimony from the
19 Department of Justice that clearly refers to subject
20 certain PSF as part of the scope of the conspiracy to
21 which KoSa pled guilty.

22 VICE CHAIRMAN OKUN: Thank you,
23 Mr. Blakeslee.

24 With that, I have no further questions for
25 the witnesses, but I appreciate your testimony this

1 afternoon and I will look forward to the post-hearing
2 submissions and the information there.

3 Thank you, Mr. Chairman.

4 CHAIRMAN KOPLAN: Thank you.

5 Commissioner Lane?

6 Commissioner Hillman is not here.

7 COMMISSIONER LANE: Mr. Blakeslee, I just
8 have a follow-up to what you read.

9 Under what context was somebody testifying
10 at a congressional hearing about polyester staple
11 fiber?

12 MR. BLAKESLEE: This is a multi-page
13 document, 14 pages. I confess, I haven't had a chance
14 to go through it because, of course, this was a
15 document that Mr. Rosenthal raised this morning and
16 then offered to put on the record, but what it says on
17 the cover is that it's a statement of the Assistant
18 Attorney General in the Antitrust Division before the
19 House Judiciary Committee Concerning Antitrust
20 Enforcement Oversight. The page that I cited to refer
21 to -- it looks like four separate, specific
22 investigations that are bullet pointed. Each one gets
23 about a paragraph.

24 COMMISSIONER LANE: Okay. Thank you.

25 Mr. Chairman, that's all I have.

1 CHAIRMAN KOPLAN: Thank you, Commissioner.
2 Commissioner Pearson?

3 COMMISSIONER PEARSON: Mr. Chairman, I think
4 just one issue.

5 The allegations here or the bill of
6 information deals with two somewhat different
7 activities, as I understand it. One is the fixing of
8 prices and the other is this -- what do they call
9 it -- allocating customers.

10 Now, are you arguing that the conspiracy to
11 allocate customers also included an agreement to limit
12 or reduce the aggregate level of sales to those
13 customers? In other words, selling less product by
14 the domestic industry into the domestic market than
15 otherwise would have been the case?

16 MR. BLAKESLEE: There are fairly complete
17 descriptions of what the government attorney
18 understood the customer allocation to involve and part
19 of those are in the 2004 sentencing hearing and
20 I believe I'm right in saying that additional
21 description is provided in the transcript of the Brad
22 Dutton trial, but my understanding from reading
23 those -- and, again, you'll have the transcript of the
24 Brad Dutton trial when we place it on the record -- is
25 that what happened was that Mr. Stanley organized his

1 colleagues to agree that they would divide up this
2 customer base of textile customers among themselves.
3 One of the examples was Dan River and that Mr. Stanley
4 made an agreement with another industry member that
5 they would talk before they went in to negotiate
6 price, which was done periodically with this large
7 textile customer, they would understand what their
8 going in positions would be and that Mr. Stanley
9 agreed on behalf of KoSa that he would not give Dan
10 River a price or a set of prices that was lower and
11 that would take the business away from his
12 co-conspirator and that this was one example of the
13 way that the customer allocation operated among these
14 four conspirators.

15 They understood that they had certain large
16 customers and it was their intent that they would
17 preserve the status quo and preserve it in a
18 profitable way by not competing on price for these
19 large, important customers.

20 COMMISSIONER PEARSON: Okay. So you are not
21 taking the next step and arguing that they were
22 actually conspiring to short the U.S. market relative
23 to what it would otherwise would be; in other words,
24 offer less in the domestic industry, maybe export
25 more, but short the domestic market through the market

1 allocation system in order to drive up price. Rather,
2 what you are saying is that effect of the customer
3 allocation system would be to reduce price competition
4 and that way try to maintain price, but on their full
5 volume of production.

6 MR. BLAKESLEE: Yes, but I think not
7 maintain price, but raise price. In other words,
8 where there was no price competition, the producer to
9 whom that customer belongs within the terms of the
10 agreement is able to charge a higher price than he
11 would be able to otherwise and so I think it's not a
12 matter of maintenance, but a matter of pushing the
13 prices higher.

14 COMMISSIONER PEARSON: Okay. So no volume
15 effects here in this conspiracy.

16 MR. BLAKESLEE: Not on the customer
17 allocation. Right.

18 COMMISSIONER PEARSON: Okay. Thank you very
19 much.

20 I appreciate very much your testimony this
21 afternoon. I have no further questions.

22 Thank you very much.

23 CHAIRMAN KOPLAN: Thank you, Commissioner.

24 Commissioner Aranoff?

25 COMMISSIONER ARANOFF: Thank you,

1 Mr. Chairman. I don't have any further question.

2 I would just join my colleagues in thanking
3 the panel for your testimony this afternoon.

4 CHAIRMAN KOPLAN: Thank you.

5 I do have a little bit left and I think I'll
6 have enough time to have you respond, but first I want
7 to cover these that I have and then I'll come back to
8 you on the price fixing, Mr. Blakeslee.

9 Let me start with you, Mr. Blakeslee.

10 MR. BLAKESLEE: I'm sorry, I'm not able to
11 hear you, Commissioner Koplan.

12 CHAIRMAN KOPLAN: You can't hear? Can you
13 hear me now?

14 Okay. Good.

15 I'll begin with you and I'll come back to
16 you at the end so that you can respond on the price
17 fixing, but the question I have for you initially is
18 I didn't find any cumulation arguments in the
19 importers' brief. I'd like to have you for purposes
20 of post-hearing brief that for me, if you would, that
21 issue.

22 In doing that, if you could take into
23 account the discussion on page 14 of the domestic
24 producers' brief and on page 10 of their brief?

25 MR. BLAKESLEE: Thank you. We will do that.

1 CHAIRMAN KOPLAN: Okay. Thank you.

2 Now, then, Mr. Kunik, at pages 24 and 25 of
3 the domestic producers' pre-hearing brief, it states
4 that, and I quote, "Record evidence in this case
5 establishes that the great majority of sales in the
6 U.S. market by domestic producers and subject
7 importers are on a spot or short-term contract basis,
8 a market situation permitting subject producers to
9 more rapidly penetrate the U.S. market if the orders
10 are revoked."

11 I note that Ms. Katz testified to this in
12 the morning session. Could you respond to this?
13 Do you agree?

14 MR. KUNIK: I'm trying to recall the
15 definition of short-term/spot. Most of the business
16 is done on a quarterly basis, a lot of it's done on a
17 quarterly basis. There is some done on a six-month
18 basis, so for the most part, covering the most
19 volume -- I'm not recalling what the definitions were,
20 but I would say for the most part --

21 CHAIRMAN KOPLAN: You could define it based
22 on your own experience in your industry.

23 MR. KUNIK: I'm trying to determine what the
24 definition was in the questionnaires. From my
25 experience, contracts are done on a quarterly and

1 sometimes on a six-month basis.

2 CHAIRMAN KOPLAN: Okay. And then the
3 question was doesn't that permit subject producers to
4 more rapidly penetrate the U.S. market if the orders
5 are revoked?

6 MR. KUNIK: I don't think the duration of
7 the contract would lead to that or they're necessarily
8 linked. I think in my experience, and I've been in
9 the business, like I said, since 1990, the contract
10 terms have stayed about the same, three to six months.

11 CHAIRMAN KOPLAN: I guess my point is that
12 if your business was conducted on long-term contracts,
13 a year, two years or whatever, wouldn't it be more
14 difficult to come back in than if you're operating on
15 a quarterly basis?

16 MR. KUNIK: Perhaps, but I think it's a
17 competitive environment.

18 CHAIRMAN KOPLAN: All right. Thank you.

19 Mr. Malashevich, the domestic producers'
20 brief at page 2 asserts, "Substantial expansions of
21 PSF capacity and production in China are leading to
22 not only increased imports from China that are
23 contributing to U.S. industry vulnerability, but also
24 to a reduction of exports by subject producers to
25 China requiring such producers to find other export

1 markets as an outlet for their production. The U.S.
2 market would be a highly attractive market for these
3 imports if revocation occurred."

4 They also at page 34 state that "China's
5 imports of PSF from the subject countries dropped
6 41 percent between interim 2004 and interim 2005,
7 while imports of Chinese PSF into Korea and Taiwan
8 doubled over the same period."

9 Won't the loss of this export volume and the
10 loss of domestic sales lead subject producers in Korea
11 and Taiwan to shift more sales to alternate export
12 markets, including the U.S.? If not, why not?

13 MR. MALASHEVICH: I don't see why that in
14 itself would cause a shift. Principally, and I could
15 speak more to Korea, I might be constrained with
16 respect to Taiwan, but to just speak to Korea because
17 it was addressed earlier today, what Petitioners don't
18 mention or, I suspect, they simply didn't know about
19 the sharp reductions in capacity within Korea that
20 have accompanied reduction in exports to China.

21 This was testified to by the industry
22 witnesses earlier about the withdrawal entire of a
23 number of producers that shutdown and we will attempt
24 to document that.

25 CHAIRMAN KOPLAN: Would you do that?

1 MR. MALASHEVICH: Yes. Indeed, I will turn
2 to Mr. Stein only because what I'm about to tell you I
3 learned from him, but to paraphrase, what's coming in
4 from China is almost entirely regen made from the
5 lowest rent kind of mixed scrap available, which
6 explains a relatively low average unit value and, in
7 fact, they are unable to qualify to sell virgin
8 material.

9 I invite Mr. Stein to elaborate on that.

10 MR. STEIN: There are only three virgin
11 producers that we know about, China is very secretive,
12 but producers in China, one of which is Far Eastern
13 and that is owned by Suma Taiwanese Far Eastern and
14 the other is Huvis. They built a plant there, but
15 that's used for only internal consumption. And the
16 other one is owned by one of the chairmen of Tuntex,
17 it's a combined company, I do not know the name. But,
18 again, none of that material is coming in here.

19 As he said, the only material from China
20 that is coming in here is a regenerated fiber that can
21 take various different states, including white, green,
22 mixed colored, black, et cetera.

23 CHAIRMAN KOPLAN: Thank you for that.

24 Mr. Blakeslee, now I'll come back to you.
25 You wanted to make an additional statement with regard

1 to the price fixing?

2 MR. BLAKESLEE: That was the statement that
3 Ms. Okun invited me to make. It was the point about
4 the Department of Justice statement and the products
5 that were included in that statement.

6 If you would like, because you may have been
7 consulting with your aide at the time --

8 CHAIRMAN KOPLAN: I didn't hear you.

9 MR. BLAKESLEE: If you would like, because
10 you may have been consulting with your aide while
11 I was responding to Commissioner Okun, I can make the
12 point again very briefly.

13 CHAIRMAN KOPLAN: No, I'll have the
14 transcript. That's okay.

15 MR. BLAKESLEE: That's fine.

16 CHAIRMAN KOPLAN: Thank you.

17 With that, I have no additional questions.
18 Let me see if there's anything else from the dias.

19 I see that there is not.

20 Ms. Mazur, do you have any questions for the
21 panel? Staff?

22 MS. MAZUR: Mr. Chairman, I believe Mr. von
23 Schrilitz of the General Counsel's Office has a
24 question or two.

25 MR. VON SCHRILTZ: Thank you, Mr. Chairman.

1 A question for Mr. Malashevich.

2 The question is this: Can there be a
3 successful conspiracy to fix prices in a market where
4 half of the market is held by suppliers that do not
5 belong to the conspiracy and would it be rational to
6 organize such a conspiracy?

7 MR. MALASHEVICH: Well, I'll answer that in
8 two ways. First of all the practical and secondly the
9 theoretical and I'll try to be very brief, I know it's
10 late in the day.

11 Obviously, the conspirators thought so and
12 the evidence that's been submitted suggests the
13 conspiracy lasted for roughly two years, which strikes
14 me they thought it was obviously beneficial, so it did
15 succeed for at least a period of time.

16 On a theoretical basis, I think part of the
17 issue here is that we do not have access to all the
18 details of the conspiracy from the documents that are
19 publicly available and I really cannot present the
20 complete opinion until and unless those documents are
21 made available to the commission and APO authorized
22 parties in response to Mr. Blakeslee's recommendation.

23 MR. VON SCHRILTZ: If I may follow up, I'm
24 asking as an economist, just speaking of the economic
25 theory of price fixing, I believe Mr. Blakeslee put it

1 that Antitrust 101 is the fewer conspirators, the more
2 successful the conspiracy, so if you have half the
3 market controlled by suppliers that are outside of a
4 conspiracy, could that conspiracy succeed in fixing
5 prices?

6 MR. MALASHEVICH: Depends upon conditions of
7 competition and the market. If, hypothetically, the
8 non-conspiring suppliers are restricted in their
9 product mix, let's say to regen, which is not
10 certified, not guaranteed product and therefore not
11 acceptable to the marketplace that requires certified
12 guaranteed product, their non-participation is
13 immaterial because they are not a serious player in
14 that segment of the market.

15 MS. MAZUR: Staff has no further questions.

16 CHAIRMAN KOPLAN: Thank you, Ms. Mazur.

17 Mr. Rosenthal, do you have any questions of
18 this panel before I release them?

19 MR. ROSENTHAL: I do. Very briefly.

20 First, Mr. Stein, I do want to congratulate
21 you on your public speaking skills and also your fine
22 business judgment by naming your company Stein Fibers
23 rather than Shmatas R Us.

24 I want to go back to your earlier statement
25 where you make the point that there are major

1 differences between virgin, conjugate, recycled and
2 regenerated PSF and I believe your testimony, I want
3 to confirm this, perhaps yes or no would be
4 sufficient, that based on your view of the differences
5 between these products that you believe they command
6 different prices in the marketplace. Is that correct?

7 MR. STEIN: Yes. The three products you
8 mentioned demand different price points.

9 MR. ROSENTHAL: And is that because they
10 have different customers and different expectations in
11 the marketplace about these products?

12 MR. STEIN: Because of the different
13 qualities, they demand different prices. You
14 mentioned -- again, I've got to --

15 CHAIRMAN KOPLAN: You've got to stay with
16 the microphone.

17 MR. STEIN: What were the three different --

18 MR. ROSENTHAL: I'm looking at your
19 testimony, which says virgin, conjugate, recycled and
20 regenerated all have different pricing and marketplace
21 characteristics.

22 MR. STEIN: They all can go into different
23 end uses and demand different pricing.

24 MR. ROSENTHAL: So if you were to announce a
25 price increase, if you made all of these, for example,

1 if you were to announce a general price increase
2 because your raw materials went up for all these you
3 made, would you expect your customers to accept the
4 same price increase for all of these different
5 products?

6 MR. STEIN: When we have announced price
7 increases in our company, we've done it based on
8 a percentage basis, so it's equal. In other words, if
9 we announce hypothetically a 5 percent price increase,
10 it would go across the board.

11 MR. ROSENTHAL: And your customers would
12 accept that, even though they're in different market
13 segments and have different end use applications?

14 MR. STEIN: To my knowledge, there's no
15 customer that likes a price increase, but if the
16 industry is firm and everyone else is increasing
17 prices, the answer is yes.

18 MR. ROSENTHAL: And it's not a matter of
19 customer by customer negotiation in that instance?

20 MR. STEIN: After there's a price increase,
21 just like I think you, the Petitioner, said this
22 morning, after you announce a price increase there's
23 always some negotiating that goes on with individual
24 customers, but for the most part we try to stay with
25 a percentage.

1 MR. ROSENTHAL: Thank you. No further
2 questions.

3 CHAIRMAN KOPLAN: Madam Secretary,
4 Mr. Rosenthal had five minutes. What's he got left?

5 MS. ABBOTT: Three and a half.

6 CHAIRMAN KOPLAN: Three and a half?

7 MS. ABBOTT: Right on 30 seconds.

8 CHAIRMAN KOPLAN: Right there. Okay.
9 Here's what's left time allocation wise.

10 From your respective times from your direct
11 presentations, Mr. Rosenthal has three and a half
12 minutes remaining, plus five minutes for closing.

13 Mr. Blakeslee, you have used all your time.
14 You have five minutes for closing.

15 Mr. Rosenthal, do you have rebuttal?

16 MR. ROSENTHAL: I do. I would like to come
17 up and do it up there at the podium.

18 CHAIRMAN KOPLAN: Sure. Are you going to
19 combine it?

20 MR. ROSENTHAL: Yes.

21 CHAIRMAN KOPLAN: All right. So we'll time
22 you on your three and a half and then separately on
23 the five.

24 MR. ROSENTHAL: Can you do eight and a half
25 minutes? I think that's eight and a half.

1 CHAIRMAN KOPLAN: Yes. Go ahead. I'll let
2 you know.

3 MR. ROSENTHAL: Thank you.

4 CHAIRMAN KOPLAN: Can you use your
5 microphone?

6 MS. ABBOTT: Would you like to dismiss the
7 panel?

8 CHAIRMAN KOPLAN: I'd love to dismiss the
9 panel.

10 I want to thank you very much for your
11 direct presentation.

12 Not you, Mr. Blakeslee, but the panel is
13 excused.

14 Thank you very much for your testimony and
15 your answers to our questions and I'll look forward to
16 your post-hearing submissions.

17 Now you're on the clock, Mr. Rosenthal.

18 MR. ROSENTHAL: Thank you.

19 Very briefly, I want to go back to really
20 the last question that was asked by Commissioner
21 Pearson about is it the number of customers or the
22 number of suppliers that's important to make a
23 conspiracy work and in this particular instance -- and
24 every instance it's both, but in the instance
25 involving this particular conspiracy what's on the

1 record is the only way they thought the conspiracy
2 would work in textile fibers was because they had this
3 idea they had a couple or a few big customers that you
4 could allocate and have one day, one supplier go to
5 one of them and say we're going to give you the best
6 price and the next day you go to another customer, but
7 there are only a few big ones that matter.

8 CHAIRMAN KOPLAN: Can you move that mic a
9 little closer?

10 MR. ROSENTHAL: Yes, I'm sorry.

11 But the most important thing, and that's
12 also on the record, is that the main conspirator has
13 said we didn't even try to fix the prices in the
14 market or allocate customers in the fiberfill end of
15 the business because there are too many suppliers
16 there and that's exactly the point made by the lawyer
17 in your General Counsel's office. You can't have a
18 conspiracy if you don't have very many people as part
19 of it and you have all these other potential suppliers
20 who are not part of the conspiracy. And, in fact, you
21 will see from the affidavit at Exhibit 13 the exact
22 rationale.

23 Now, we don't have time to clear up all of
24 the scrap and waste that's been left this afternoon,
25 but I do want to say a couple of things and I do

1 regard Mr. Malashevich as a good friend. I'm assuming
2 that his mischaracterization of some of our arguments
3 was just that he wasn't able to hear us, perhaps we
4 weren't close enough to the microphone, but he made a
5 couple of statements I want to clear up.

6 First, he says not a word was said by the
7 Petitioners on the benefits of the orders. That's not
8 true. The witnesses this morning did indeed address
9 this issue and the transcript will show that and, in
10 fact, Mr. Malashevich's chart in fact shows that.

11 If you go and look at this and you get rid
12 of all the other extraneous material, the only thing
13 I think they've left out of here are some
14 meteorological events, but if you go back and you look
15 at this chart, you will see that after the order went
16 into place, or the orders, operating profits began to
17 improve. Now, they're still not at good levels, the
18 industry is still not doing well, but it doesn't mean
19 that the order hasn't been beneficial. What you heard
20 the witnesses say earlier was that absent the orders
21 things would be even worse.

22 That brings me to a legal point for
23 Commissioner Pearson. The statute talks about
24 revocation and the effects of revocation will lead to
25 a continuation or recurrence of injury. The statute

1 contemplates a situation where the domestic industry
2 is in a state of injury and that the orders have not
3 been enough in and of themselves to restore the
4 industry to health. So it is not odd or aberrational
5 to say the orders have to stay in place when the
6 industry has continued to be injured. In fact, the
7 statute exactly contemplates that.

8 A couple other of what I regard as things
9 not having to do with the price fixing conspiracy.

10 The issues concerning the product mix or
11 inputs are really confusing and, frankly, they were in
12 the original investigation and they obviously have
13 been confusing here today. The key issue here is that
14 the differences that are alleged by the Respondents
15 about recycled versus virgin have been examined
16 before. The issue of recycled versus regen has been
17 examined before. Conjugated versus non-conjugated
18 have been examined before. No new bit of information
19 has been elicited in this proceeding to change your
20 decision about all that. In fact, what you heard
21 today were several admissions by the Respondents that
22 suggest that you got it exactly right the first time
23 on how you defined like product and how you analyze
24 the industry.

25 The commission attempted to go further in

1 the sunset review to break out even more to
2 accommodate the Respondents' arguments. What you got
3 was a rather unhelpful series of responses by the
4 Respondents on this topic.

5 Let me turn to the issue of the price fixing
6 conspiracy.

7 Despite the testimony you heard by the
8 Respondents this afternoon, in fact, there are
9 separate contracts when you go to that small number of
10 customers who buy both fiberfill and textile products.
11 Again, undisputed evidence that it's only 5 percent or
12 so of the marketplace we're even talking about here,
13 although they made it sound like a lot more earlier
14 this afternoon.

15 In that 5 percent, you still have people
16 going in there, negotiating separate contracts for
17 fiberfill versus for the textile product. That is
18 undisputed or it should be undisputed and we'll supply
19 more information for the record there. It is only in
20 recent years, after the period of this conspiracy,
21 that there's been a consolidation in the sales forces
22 referred to.

23 Now, Commissioner Lane asked a wonderful
24 question earlier today about, okay, let's assume that
25 the price fixing conspiracy applied to the subject

1 merchandise. Where in the record do I see any effects
2 of that?

3 There is a lot of obfuscation by the
4 Respondents about when the price fixing conspiracy
5 began and end, but if you go by what the Justice
6 Department said in the plea agreement, the price
7 fixing conspiracy began in the last quarter of '99 or
8 September of '99 and ended in 2001.

9 What you see in the record of this
10 proceeding is that prices actually went down in 1999,
11 the domestic industry's prices went down in 1999, so
12 you started off the period where in 1997 prices were
13 higher and going down in 1999 after the price fixing
14 conspiracy allegedly was in place. That suggests one
15 of two things: either the price fixing conspiracy
16 didn't exist with respect to this product, which is
17 what we believe and what I believe the evidence in the
18 record will show you, or that the attempts at price
19 fixing were so incompetent to have no effect on the
20 record whatsoever.

21 The key, though, is you look at your data.
22 You will see that even if their wildest accusations
23 are true, and they are not and they really are
24 accusations unsupported by the record, there was no
25 effect on the original investigation of any price

1 fixing conspiracy.

2 Mr. Malashevich and others talk about this
3 is all a price case. If you look at your record, you
4 will see many other findings with respect to volume.
5 Commissioner Pearson asked about whether there was any
6 volume effect to the conspiracy. Absolutely not. And
7 you found that there was a volume effect during the
8 original investigation.

9 The record is very, very clear that there is
10 no price fixing conspiracy affecting this product and
11 if it did affect this product, it didn't affect the
12 information that you got.

13 Lastly, no matter what happened then, or
14 what the allegations are of what happened then, you
15 have an obligation to figure out what would happen now
16 if the orders in this case were revoked. I think
17 there is no dispute that the unrestrained imports
18 would lead to lower prices, and we heard that it's
19 important to customers such as Target and Wal-Mart,
20 prices do matter, despite their attempt not to use the
21 P word the entire afternoon, finally under the
22 questioning they had to admit price mattered. Their
23 prices will go down, their volumes will go up, and the
24 domestic industry will have a continuation of injury.

25 Thank you.

1 CHAIRMAN KOPLAN: Thank you.

2 Mr. Blakeslee?

3 MR. BLAKESLEE: I'll be brief, given the
4 lateness of the hour.

5 Mr. Rosenthal suggested in talking about
6 whether a price fixing conspiracy occurred at all that
7 these are simply allegations. I want to emphasize
8 that most of what I have referred to is testimony by a
9 Department of Justice lawyer. To the extent that
10 there is additional information on the record, it's by
11 a witness who was under oath. There were four
12 companies identified by the government lawyer as being
13 involved in a price fixing conspiracy. Of those,
14 there was only one acquittal. There was a conviction
15 and there was certainly an amnesty in one case and
16 apparently an amnesty in the other. So something
17 happened. This is not simply an accusation.

18 To the extent that there is any ambiguity in
19 the record about what product was covered, I would
20 submit that the document that I came back to at the end
21 of the question period, the Department of Justice
22 document from July 24, 2003 that mentioned
23 specifically subject merchandise as one of the
24 products covered by this investigation, I would submit
25 that that rules out any ambiguity that might exist in

1 the other documents, but to the extent that there is
2 any perception on the part of the commission that
3 ambiguity still exists, Respondents should not be
4 penalized for their inability to resolve that
5 ambiguity when they do not have the means to resolve
6 the ambiguity because they were not in any way
7 involved in the criminal investigation that
8 transpired.

9 All four Petitioners were the subject of
10 that criminal investigation. They have in their files
11 information which if provided to the commission would
12 resolve any remaining ambiguity and so I would
13 reiterate my plea to the commission to ask, using its
14 subpoena power, for the documents that will clarify
15 what indeed happened and what product was covered by
16 the conspiracy.

17 Thank you very much.

18 CHAIRMAN KOPLAN: Thank you.

19 And thanks to all of those who participated
20 in these investigations today and thanks to the staff
21 as well.

22 Post-hearing briefs, statements responsive
23 to questions and requests of the commission and
24 corrections to the transcript must be filed by January
25 26, 2006.

1 Closing of the record and final release of
2 data to parties, February 23, 2006.

3 Final comments by February 27, 2006.

4 With that, this hearing is adjourned.

5 (Whereupon, at 6:06 p.m., the proceedings in
6 the above-captioned matter were concluded.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Certain Polyester Staple Fiber
INVESTIGATION NO.: 731-TA-825, 731-TA-826
HEARING DATE: January 17, 2006
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: January 17, 2006

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: Christina Chesley
Signature of Court Reporter