

UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:)	
)	Investigation Nos.:
CERTAIN LINED PAPER SCHOOL)	701-TA-442 and 443 and
SUPPLIES FROM CHINA, INDIA,)	731-TA-1095-1097 (Final)
AND INDONESIA)	

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THE UNITED STATES INTERNATIONAL TRADE COMMISSION

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Tuesday,
July 25, 2006

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

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

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

DANIEL R. PEARSON, CHAIRMAN
SHARA L. ARANOFF, VICE CHAIRMAN
JENNIFER A. HILLMAN, COMMISSIONER
STEPHEN KOPLAN, COMMISSIONER
DEANNA TANNER OKUN, COMMISSIONER
CHARLOTTE R. LANE, COMMISSIONER

APPEARANCES: (Cont'd.)

Staff:

MARILYN R. ABBOTT, SECRETARY TO THE COMMISSION
 WILLIAM R. BISHOP, HEARINGS AND MEETINGS
 COORDINATOR
 SHARON D. BELLAMY, HEARINGS AND MEETINGS ASSISTANT
 JAI MOTWANE, INVESTIGATOR
 FRED FORSTALL, INDUSTRY ANALYST
 NANCY BRYAN, ECONOMIST
 MARY KLIR, ACCOUNTANT/AUDITOR
 MONICA STUMP, ATTORNEY
 GEORGE DEYMAN, SUPERVISORY INVESTIGATOR

Congressional Witnesses:

THE HONORABLE ZACH WAMP, U.S. Congressman, U.S.
 House of Representatives, State of Tennessee,
 3rd District
 THE HONORABLE BILL SHUSTER, U.S. Congressman, U.S.
 House of Representatives, State of Pennsylvania,
 9th District
 THE HONORABLE LYNN A. WESTMORELAND, U.S.
 Congressman, U.S. House of Representatives,
 State of Georgia, 8th District

In Support of the Imposition of Antidumping and
 Countervailing Duties:

On behalf of the Association of American School Paper
 Suppliers:

GEORGE ROBINSON, Vice President, Sales, Top
 Flights, Inc.
 HAROLD A. RAHN, President, Norcom, Inc.
 NEIL A. MCLACHLAN, President, MeadWestvaco
 Consumer & Office Products Group
 HOLLY HART, Assistant Legislative Director, United
 Steel, Paper and Forestry, Rubber,
 Manufacturing, Energy, Allied Industrial and
 Service Workers International Union, AFL-CIO,
 CLC
 SETH KAPLAN, Vice President, CRA International,
 Inc.

APPEARANCES: (Cont'd.)

In Support of the Imposition of Antidumping and
Countervailing Duties:

On behalf of the Association of American School Paper
Suppliers:

ALAN H. PRICE, Esquire
TIMOTHY C. BRIGHTBILL, Esquire
Wiley Rein & Fielding, LLP
Washington, D.C.

In Opposition to the Imposition of Antidumping and
Countervailing Duties:

On behalf of Target Corporation; Hotrock Stationary
(Shenzhen) Co., Ltd.; Watanabe Paper Products (Lingling)
Co., Ltd.; and Watanabe Paper Products (Shanghai) Co.,
Ltd.:

MEGHAN TUCCI, Senior Buyer, Target
TONI DEMBSKI-BRANDL, Senior Counsel, Target
HE ZUORU, President, Watanabe
GRACE GAO-SHEPPARD, Interpreter for He Zuoru
BRUCE MALASHEVICH, President, Economic Consulting
Services, Inc.

JAMES J. JOCHUM, Esquire
MARGUERITE E. TROSSEVIN, Esquire
Mayer, Brown, Rowe & Maw, LLP

On behalf of Staples, Inc.:

SUSAN CIULLA, Vice President, Divisional
Merchandise Manager, Staples, Inc.
KELLY O'BRIEN, Buyer, Staples, Inc.

JULIE C. MENDOZA, Esquire
DONALD B. CAMERON, Esquire
Kaye Scholer, LLP
Washington, D.C.

On behalf of NuCarta, LLC:

DAVID GRAHAM, President, NuCarta
DAVID HIXON, Vice President, NuCarta

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APPEARANCES: (Cont'd.)

In Opposition to the Imposition of Antidumping and
Countervailing Duties:

On behalf of NuCarta, LLC:

LYLE B. VANDER SCHAAF, Esquire
JOSEPH H. HECKENDORN, Esquire
Bryan Cave, LLP
Washington, D.C.

On behalf of Navneet Publications (India), Ltd:

BARRY RAO, President, American Scholar

GREGORY S. MENEGAZ, Esquire
deKieffer & Horgan
Washington, D.C.

On behalf of CPP International, LLC and Firstline
Canada, Inc.:

CLAY PRESLEY, President, CPP
HARVEY EIDINGER, President, Firstline

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

On behalf of Walgreen Co.:

MARK VANGUYSE, Category Manager, Stationery,
Walgreens

MARK S. ZOLNO, Esquire
DAVID P. SANDERS, Esquire
Katten Muchin Rosenman, LLP
Chicago, Illinois

On behalf of Pt. Pabrik Kertas Tjiwi Kimia, Tbk.:

MICHAEL T. SHOR, Esquire
Arnold & Porter, LLP
Washington, D.C.

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P R O C E E D I N G S

(9:31 a.m.)

CHAIRMAN PEARSON: Good morning. On behalf of the U.S. International Trade Commission I welcome you to this hearing on Investigation Nos. 701-TA-442 and 443 and 731-TA-1095-1097 (Final) involving Certain Lined Paper School Supplies From China, India and Indonesia.

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

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

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

1 directed to the Secretary.

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

6 Madam Secretary, are there any preliminary
7 matters?

8 MS. ABBOTT: Yes, Mr. Chairman. With your
9 permission we will add Grace Gao-Sheppard, Interpreter
10 for Mr. Zuoru, to the calendar on page 3.

11 CHAIRMAN PEARSON: Without objection. Will
12 you please announce our first congressional witness?

13 MS. ABBOTT: Our first speaker is the
14 Honorable Zach Wamp, United States Congressman, U.S.
15 House of Representatives, State of Tennessee, 3rd
16 District.

17 CHAIRMAN PEARSON: Welcome, Congressman
18 Wamp.

19 MR. WAMP: Thank you.

20 CHAIRMAN PEARSON: Please proceed.

21 MR. WAMP: Thank you, Chairman Pearson and
22 members of the Commission. It's an honor to be here,
23 and I welcome the opportunity to testify today on
24 behalf of Top Flight and other domestic producers of
25 lined paper school supplies.

1 I understand the Commission is looking into
2 the impact of imports of paper products from China,
3 India and Indonesia and their harmful effect on our
4 domestic industry. It's my sincerest hope that the
5 Commission's finding will show that Top Flight and
6 other domestic producers have been devastated by
7 unfairly traded imports from these countries.

8 I have the privilege of representing the 3rd
9 District of Tennessee, which includes Top Flight and
10 its employees. It was founded by the Robinson family
11 in 1921 and has actively participated in the
12 production of lined paper school supplies for more
13 than 50 years. Today, 85 years after its founding,
14 the third generation of Robinsons continue to own and
15 operate the company.

16 On a personal note, I've known Top Flight
17 and the Robinson family very well. I've known George
18 Robinson for most of my life, having grown up together
19 in Chattanooga. At his invitation, over a year and a
20 half ago I toured Top Flight's facilities and heard
21 the problems the company was facing as it attempted to
22 compete against low-priced subsidized imports.

23 As unfairly traded imports from China,
24 Indonesia and India have flooded the U.S. market in
25 the past few years, Top Flight and others have taken a

1 major hit. As a result of these imports, Top Flight
2 has been forced to cut production and sell off some of
3 its equipment.

4 Indeed, the domestic industry as a whole has
5 experienced a decrease in production hours, loss of
6 sales and inability to capture new business. Not
7 surprisingly, profits have plummeted. Top Flight and
8 other domestic producers are doing everything they can
9 to compete. They've cut production, costs, shut down
10 facilities. Some have even been forced to import
11 lined paper school supplies simply to stay competitive
12 and stave off further injury.

13 While I understand this has created some
14 concern, my understanding of the law as passed by
15 Congress is that the Commission must consider whether
16 the domestic industry and domestic production
17 operations have been injured. Regardless of who does
18 the importing, these low-priced subsidized products
19 harm the operations of Top Flight and other domestic
20 producers.

21 I know George's dedication to his company,
22 his desire to see his business succeed and to provide
23 for the well-being of his employees. I'm confident
24 that with its dedicated workforce and state-of-the-art
25 equipment, Top Flight can compete with producers

1 anywhere in the world. However, Top Flight and other
2 domestic producers cannot profitably compete against
3 dumped and subsidized imports.

4 As a result, production has dropped, plants
5 have closed, hundreds of workers have lost their jobs.
6 Unless relief is granted, the domestic industry will
7 face more of the same. This is bad news for my
8 district. For many years our economy in Tennessee
9 Valley was centered on a strong manufacturing base, of
10 which Top Flight and its workers are an integral part.

11 Along with its suppliers and customers, the
12 company generates hundreds of high paying jobs that
13 provide good benefits for its workers and for
14 Tennessee. Over the past several years, Chattanooga
15 has experienced a steady decline in manufacturing
16 jobs.

17 Failure to impose orders on these unfairly
18 traded imports will further erode our manufacturing
19 base, lead to additional job loss and quite possibly
20 the termination of operation of Top Flight altogether.
21 This would have devastating consequences not only for
22 the company, but also for hundreds of my constituents
23 and their families who depend on these jobs.

24 For these reasons, I urge the Commission to
25 carefully review the evidence before it, which I

1 believe warrants imposition of antidumping and
2 countervailing duty orders.

3 In closing, Mr. Chairman, let me just say
4 when I toured they said we're able to compete because
5 technology has developed so that we can compete. I've
6 got to tell you, when technology is the only way we
7 can compete technology replaces jobs.

8 The jobs are the lifeblood really of a good,
9 strong U.S. economy and so I'm glad that we're able to
10 compete because U.S. technology continues to advance,
11 but at the same time if that technology displaces
12 those jobs I don't think the American worker is going
13 to be as well off, so please consider this in these
14 deliberations.

15 Thank you very much for the opportunity to
16 testify.

17 CHAIRMAN PEARSON: Thank you.

18 Any questions for Congressman Wamp?

19 (No response.)

20 CHAIRMAN PEARSON: Seeing none, thank you
21 very much.

22 MS. ABBOTT: Our next speaker is the
23 Honorable Bill Shuster, United States Congressman,
24 U.S. House of Representatives, State of Pennsylvania,
25 9th District.

1 CHAIRMAN PEARSON: Welcome, Congressman
2 Shuster.

3 MR. SHUSTER: Thank you very much, Mr.
4 Chairman. Thank you for having me here, both you,
5 Chairman Pearson, and Vice Chairman Aranoff. I
6 appreciate the opportunity to be here today to speak
7 to you on behalf of the domestic producers of lined
8 paper school supplies and their employees.

9 I'm proud to represent two U.S. producers of
10 lined paper school supplies in the 9th Congressional
11 District of Pennsylvania, MeadWestvaco's Blair
12 facility in Alexandria, Pennsylvania, and Roaring
13 Spring Paper Products in Roaring Spring, Pennsylvania.
14 With their suppliers and customers, these two plants
15 provide hundreds of good jobs in my district in
16 Pennsylvania critical to our local economy.

17 MeadWestvaco employs more than 400 workers
18 at their Blair plant in Alexandria. The plant has
19 been an important employer and supporter of the
20 Alexandria/Huntingdon County community for over 125
21 years of continuous operation.

22 Obviously a lot has changed in 125 years,
23 but throughout this time MeadWestvaco has invested and
24 continues to invest in this operation to maintain its
25 competitiveness in the world. Roaring Spring's

1 history dates back to 1886 when the Blank pulp factory
2 was founded. It has survived and grown through five
3 generations in nearly 120 years. Today Roaring Spring
4 provides jobs for between 250 and 300 people.

5 Unfortunately, this long and proud history
6 is being threatened by dumped and subsidized imports
7 of lined paper school supplies from China, India and
8 Indonesia. To compete with unfairly priced and
9 manipulative offshore competition, MeadWestvaco and
10 Roaring Spring and other domestic producers have had
11 to give up sales and cut their own prices to
12 unsustainable levels.

13 The dramatic and sudden growth in imports
14 from China, India and Indonesia has resulted in lost
15 profits, closure of production facilities, low capital
16 investment in R&D and hundreds of lost jobs. There is
17 solid evidence that imports from these countries are a
18 cause of injury to our Pennsylvania producers.

19 For example, in 2005 the workers at the
20 Roaring Spring facility filed for and received a trade
21 adjustment from the Department of Labor due to
22 increased import competition. MeadWestvaco workers
23 and other facilities have also received TAA assistance
24 due to imports.

25 These developments concern me greatly for

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1 several reasons. Manufacturing is the core of the
2 American economy. A strong and vibrant manufacturing
3 sector is absolutely necessary to improve our trade
4 balance with the rest of the world and to create good
5 jobs with competitive wages.

6 In Congress we are doing a lot. We could do
7 more, but we need to continue helping the American
8 manufacturers compete in a global marketplace. As
9 I've said time and time again, our companies and
10 workers can only compete if the playing field is level
11 and fair.

12 Our trade laws are an indispensable tool for
13 ensuring that this level playing field exists. If
14 foreign manufacturers are selling dumped or subsidized
15 goods here and those goods are injuring a U.S.
16 industry, this Commission should not hesitate to
17 provide the relief required by our trade laws.

18 Second, I know the importance of these
19 plants to the people of central and western
20 Pennsylvania. These plants are the town. Not only
21 are they themselves major employers, but they create
22 hundreds of other jobs at dozens of other companies
23 providing them goods and services.

24 The local governments and school systems
25 depend heavily upon the taxes for revenue. If unfair

1 foreign competition forces them to close, the
2 disruption of these communities will be massive.

3 MeadWestvaco is not only the area's largest
4 employer, but also a model corporate citizen. It
5 provides good paying, full-time jobs with excellent
6 benefits, as well as hourly and summer employment to
7 students who are saving for college. It donates large
8 quantities of notebooks and other merchandise to local
9 schools and charitable causes. The company also
10 recently pledged \$100,000 for the purchase of a
11 firetruck for the town of Alexandria.

12 Roaring Spring is equally involved in the
13 Roaring Spring community, as you might expect from a
14 company named after the town.

15 The domestic industry has been forced to
16 close several of its lined paper producing facilities
17 in recent years. Dumped and subsidized imports from
18 China, India and Indonesia have been a major factor in
19 these closings.

20 Domestic producers like MeadWestvaco and
21 Roaring Spring have done everything they can to remain
22 competitive. I sincerely hope they will not be forced
23 to stop their domestic production entirely. If they
24 do, it will have profound effects not only on these
25 companies, but also on hundreds of my constituents and

1 their families who depend on these jobs for their
2 livelihood.

3 I'm sure that after considering the
4 evidence, and I believe the evidence is great, you
5 will conclude that imports of dumped and subsidized
6 lined paper school supplies from China, India and
7 Indonesia are injuring the domestic industry and that
8 the industry is entitled to the relief which the law
9 provides.

10 Again, I hope you'll review the record
11 closely and rule in a way that's going to help these
12 companies that I believe have been injured greatly.
13 Thank you very much for this opportunity to speak to
14 you today.

15 CHAIRMAN PEARSON: Thank you, Congressman
16 Shuster.

17 Any questions?

18 (No response.)

19 CHAIRMAN PEARSON: Okay. Seeing none, thank
20 you very much.

21 MR. SHUSTER: Thank you.

22 MS. ABBOTT: Our next congressional witness
23 is the Honorable Lynn A. Westmoreland, United States
24 Congressman, U.S. House of Representatives, State of
25 Georgia, 8th District.

1 CHAIRMAN PEARSON: Welcome, Congressman
2 Westmoreland.

3 MR. WESTMORELAND: Thank you. Thanks for
4 having me. Thank you, Chairman Pearson and members of
5 the Commission. I appreciate the opportunity to
6 testify today on behalf of Norcom and the other
7 domestic producers of lined paper supplies.

8 I'm proud to represent the 8th District of
9 Georgia, which is home to Norcom and its employees.
10 Norcom is a first rate producer of lined paper school
11 supplies. It's on the cutting edge of productivity,
12 quality and low cost.

13 Given a level playing field, I'm confident
14 that Norcom can compete with any producer anywhere in
15 the world, but not when those foreign producers
16 receive massive government subsidies and then dump
17 their products into the United States at prices so low
18 they have no relation to the actual cost of the
19 product.

20 Unfortunately, this is exactly what's
21 happening. Over the past several years, subsidized
22 imports from China, India and Indonesia have surged
23 into the U.S. market. In many cases, these imports
24 have entered the U.S. at prices that are below the
25 cost of production.

1 Companies such as Norcom that play by the
2 rules simply cannot compete against such unfairly
3 traded imports. The results have been devastating to
4 Norcom and the other domestic producers. At first
5 prices were forced down, cutting into Norcom's
6 profitability, but as imports came into the U.S.
7 market at increasingly low prices Norcom was forced to
8 cut production and saw its revenue and profitability
9 plummet.

10 Unable to match the prices of the dumped
11 imports, Norcom has lost major customers. It was even
12 forced to stop reinvestment in new equipment, damaging
13 its long-term ability to compete.

14 Norcom has not alone. The domestic industry
15 as a whole has experienced a sharp decline in revenue
16 and profitability. Plants have been closed, and
17 workers have been laid off. Unless relief is granted,
18 prospects for the near future are just as grim. The
19 surge in unfairly traded imports is likely to
20 continue.

21 Norcom and the rest of the domestic industry
22 are doing all they can to compete with these unfairly
23 traded imports. They've cut prices, cut production
24 and shut down plants to remain competitive. They have
25 also begun to import lined paper supplies simply to

1 remain in business and prevent further financial harm.

2 This a dangerous path. As we have all seen
3 in other mini industries, this is not a path we wish
4 to go down. The eventual outcome is that we end up
5 importing from Asia what we used to make ourselves
6 here at home.

7 If dumped and subsidized imports continue to
8 flood the market Norcom will be forced to shift most
9 of its business to imports simply to survive, and
10 therefore hurt the citizens of my district.

11 If trade relief is granted, thereby removing
12 unfairly traded imports from the market, Norcom and
13 the domestic industry can compete in global markets
14 and flourish. In fact, I understand that since the
15 filing of the petition domestic production has started
16 to recover, demonstrating that the domestic industry
17 can compete when dumped and subsidized imports are
18 removed.

19 Without trade relief, however, the domestic
20 industry could be forced to eliminate its domestic
21 production, forcing loss of jobs. This will be
22 devastating to our local economy. Norcom, along with
23 its suppliers and customers, provides hundreds of high
24 paying jobs that are important to Griffin, Georgia,
25 and the surrounding area.

1 Hundreds of my constituents and their
2 families depend on these jobs for their livelihood.
3 Unfortunately, dumped and subsidized imports have put
4 these jobs at risk.

5 I urge the Commission to grant the domestic
6 industry the full relief available under our trade
7 laws. Thank you very much.

8 CHAIRMAN PEARSON: Thank you, Congressman
9 Westmoreland.

10 Does anyone have a question for the
11 congressman?

12 (No response.)

13 MR. WESTMORELAND: Thank you, sir.

14 CHAIRMAN PEARSON: Thank you very much. We
15 appreciate you coming up here.

16 MR. WESTMORELAND: Thank you. Yes, sir.

17 CHAIRMAN PEARSON: Madam Secretary, are we
18 ready for the opening statements by parties?

19 MS. ABBOTT: Yes, Mr. Chairman. Opening
20 remarks on behalf of Petitioner will be by Timothy C.
21 Brightbill, Wiley Rein & Fielding.

22 MR. BRIGHTBILL: Chairman Pearson, Vice
23 Chairman Aranoff, members of the Commission, the U.S.
24 lined paper school supplies industry and its workers
25 have been materially injured due to dumped and

1 subsidized imports from China, India and Indonesia.

2 You already have detailed evidence of this
3 material injury from the prehearing report in the
4 investigation. Today you will hear from the three
5 petitioning companies and the union for two domestic
6 producers. They will confirm for you that the
7 domestic industry has been spiraling downward and is
8 in danger of disappearing altogether.

9 During the POI, operating profits dropped
10 substantially. Hundreds of salaried and hourly U.S.
11 workers were let go and production facilities closed.
12 Employment, wages and hours have all declined.
13 Production lines have been shut down.

14 Capacity and capacity utilization are down
15 sharply. Shipments have declined both in volume and
16 in value. Under the statute this is material injury
17 of the domestic industry, and the evidence is equally
18 compelling as to threat.

19 The investigation further demonstrates and
20 our witnesses will confirm that the subject imports
21 are a cause of this material injury. It is critical
22 to bear in mind that competition in this industry is
23 shaped by large, major retailers such as Wal-Mart,
24 Target and Staples, who compete ferociously with each
25 other and are undeniably driven to purchase these

1 products at the lowest possible price.

2 This sets the stage for intense, head-to-
3 head, price-based competition between domestic and
4 subject products and has allowed dumped and subsidized
5 subject imports to cause material injury.

6 The evidence of this causal link is plain.
7 First, subject imports rose 60 percent at the same
8 time as all of the injury I've just described.

9 Second, subject imports demonstrably
10 undersold the domestic industry despite the fact that
11 many large importers failed to report pricing data at
12 all.

13 Third, the staff has confirmed lost sales
14 and lost revenues due to subject imports.

15 Fourth, you have detailed bid and auction
16 data that demonstrates the head-to-head nature of the
17 competition in this market and confirms that subject
18 imports suppressed and depressed prices. These
19 bidding processes are designed to drive down prices
20 and to allow importers like Atico and NuCarta to
21 quickly capture large accounts and market share.

22 Finally, causation is apparent because when
23 dumped and subsidized imports, subject imports, were
24 taken out of the market when the petitions were filed
25 the domestic industry began to recover by producing

1 more goods here, not a shift to offshore.

2 Given the weight of this injury and
3 causation evidence, it's not surprising that
4 Respondents choose to ignore it. Their arguments are
5 creative conspiracy theories. They're contradictory,
6 and they're just plain wrong.

7 Consider, for example, their argument on
8 imports. It's well known that some producers also
9 import subject merchandise. Our witnesses today will
10 tell you why this is necessary. They have to import
11 to maintain access to their valued customer base and
12 to compete with the very dumped and subsidized product
13 that is putting them out of business.

14 Respondents would have you believe that we
15 control these imports, and therefore the Commission
16 must ignore them all. It's a desperate argument, and
17 it is completely wrong. It is wrong by the statute,
18 which requires the Commission to evaluate the
19 injurious impact of imports only in the context of
20 production operations in the United States.

21 It is wrong by the legislative history and
22 the intent of Congress, which couldn't be clearer. It
23 is wrong by precedent, such as the Commission's
24 decision in Cement, Wooden Bedroom Furniture and
25 others, and it makes no sense.

1 If we control these imports, why did we
2 bring trade cases against them? If we control these
3 imports, how come we don't make any money on them? If
4 the domestic industry didn't import some of these
5 goods, do you really believe that Wal-Mart, Target and
6 Staples would be unable to find and use Asian imports?
7 Once these fundamental contradictions on Respondents'
8 arguments are revealed, this claim and the rest of
9 their claims simply crumble.

10 Let me conclude by emphasizing how vitally
11 important these cases are for the workers and
12 employees of MeadWestvaco, Norcom, Top Flight and the
13 rest of the domestic industry.

14 Hundreds of millions of notebooks, filler
15 paper packs, and composition books are sold in the
16 United States every year. The domestic industry has
17 made these products for generations, but because of
18 dumped and subsidized imports from these three
19 countries what remains of the domestic industry is in
20 great danger of being eliminated.

21 Without relief, these companies will no
22 longer produce domestically. For all these reasons,
23 we request affirmative determinations in these cases.
24 Thank you.

25 CHAIRMAN PEARSON: Thank you, Mr.

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1 Brightbill.

2 MS. ABBOTT: Opening remarks on behalf of
3 Respondents will be by Donald B. Cameron, Kaye
4 Scholer.

5 CHAIRMAN PEARSON: Welcome, Mr. Cameron.

6 MR. CAMERON: Mr. Chairman, members of the
7 Commission, Don Cameron with Kaye Scholer on behalf of
8 Staples. It's a pleasure to be here again.

9 This is a very peculiar case. We're not
10 talking conspiracy theory. The import market is
11 controlled to a significant degree by U.S. producers.
12 U.S. producers are significant importers of subject
13 merchandise, and U.S. producers control significant
14 non-subject supply in Brazil.

15 A partial answer to the question just posed
16 by counsel as to why they brought this case? Well, if
17 imports are the problem the Commission should ask why
18 Brazil, second largest supplier to the U.S. market,
19 has been excluded from this investigation.

20 U.S. producers are heavily involved in
21 Brazil. Not coincidentally, imports from Brazil
22 through May of 2006 are up by a mere 177 percent. I'm
23 sure it's a coincidence.

24 According to Petitioners, the fact that U.S.
25 producers are significant importers is "legally

1 irrelevant." We disagree. At the very least, the
2 degree to which U.S. producers are involved in
3 importing is a condition of competition that this
4 Commission certainly can and should consider.

5 In addition, in considering the significance
6 of import volume, the significance of price impact and
7 the overall impact of subject imports, the Commission
8 has the ability to take into account the significance
9 of U.S. producer involvement as it makes those
10 assessments.

11 Let's put it another way. If U.S. producers
12 were themselves responsible for 100 percent of the
13 subject imports, would there be any question that this
14 Commission can consider this fact? We think the
15 answer to that is pretty clear.

16 In the normal case there is often U.S.
17 industry participation in the import market, but
18 usually it's limited in nature and often limited to
19 one or two producers. This case is far different.

20 In this case, importing by domestic
21 producers is not limited to an isolated segment of the
22 industry. In this case, U.S. producers account for a
23 significant portion of subject imports, as well as
24 non-subject imports from Brazil. In this case, U.S.
25 producers account for a significant portion of the

1 increase in subject imports.

2 The Commission has held repeatedly that it
3 is important to separate coincidence of trends from
4 causation. It is particularly important in this case
5 because many trends in imports are in fact determined
6 by U.S. producers.

7 This Commission should look carefully at
8 subject imports that are not controlled by U.S.
9 producers. How significant are they? What's the
10 impact of those imports? We believe those imports
11 have had a marginal effect and a stable presence in
12 the market.

13 Contrast the significance of these imports
14 with the volume and price of subject imports
15 controlled by U.S. producers. As you will hear from
16 Staples, once the ITC preliminary determination
17 occurred Staples received virtually no domestic
18 response to its request for bids for the 2006 buying
19 season.

20 Also, U.S. producers canceled bids for
21 Brazil production, leaving Staples to find new sources
22 in Brazil, Argentina, Egypt and Mexico for the 92
23 bright paper that Staples requires.

24 When you look at Indonesia in the context of
25 threat this is significant. Staples imported from

1 Indonesia primarily because Brazil and Indonesia were
2 the only sources at the time of 92 bright. Indonesia
3 and Brazil are no longer the only sources of the paper
4 that Staples requires.

5 So this is where we are. Can the U.S.
6 industry dictate the pricing and volume trends for
7 subject imports and then sit back and claim that they
8 were injured by those same imports?

9 Petitioners claim in essence that if they
10 hadn't controlled subject imports these imports would
11 have occurred at those same levels anyway, but they
12 have no evidence to support this proposition.

13 Nothing.

14 In fact, the record contradicts their claims
15 at every juncture. It is U.S. producers themselves
16 that are major importers. To the extent that U.S.
17 producers may have switched to brokering rather than
18 directly importing, this is a change simply in form,
19 not in substance.

20 If their case is about what will happen in
21 the future, that this will happen in the future, it's
22 a question of threat, and there remains no record
23 evidence to support this either.

24 Again, Petitioners take the position that
25 the issue of whether domestic producers themselves

1 control the import is legally irrelevant to the
2 Commission. In other words, please don't look behind
3 the curtain.

4 That must be the reason why the issue wasn't
5 really fully discussed at the preliminary stage of
6 this investigation. We believe it is quite relevant
7 to this Commission, and we urge the Commission to make
8 a negative determination in this case.

9 Thank you very much.

10 CHAIRMAN PEARSON: Thank you, Mr. Cameron.

11 MS. ABBOTT: Would those in support of the
12 imposition of antidumping and countervailing duties
13 please come forward and be seated?

14 Mr. Chairman, all witnesses have been sworn.

15 (Witnesses sworn.)

16 CHAIRMAN PEARSON: Mr. Price, are you
17 leading off here?

18 MR. PRICE: Yes, I am.

19 CHAIRMAN PEARSON: Okay. Please proceed.

20 MR. PRICE: Thank you. First of all,
21 congratulations, Chairman Pearson and Vice Chairman
22 Aranoff, regarding your new positions at the
23 Commission.

24 I'd like to talk today about this case and
25 the fundamental facts of this case. This is a fairly

1 straightforward case in most respects.

2 Next slide? Except when it comes to the
3 PowerPoint presentation.

4 First of all, fundamentally the scope of
5 this investigation is focused on notebook, filler
6 paper and composition books, lined paper school
7 supplies. While there have been lots of comments
8 about the scope of the case, the scope is in fact
9 simpler than many cases the Commission sees involving
10 steel, involving --

11 CHAIRMAN PEARSON: Mr. Price, just a little
12 closer to the microphone, please?

13 MR. PRICE: Thanks. The scope in this
14 investigation is simpler than many steel cases which
15 involve numerous exclusions and limitations which can
16 be discerned only through certification or
17 metallurgical analysis.

18 Next?

19 Now, the domestic industry has suffered from
20 more than inconsequential, unimportant or immaterial
21 injury by reason of the subject imports, and in fact
22 the prehearing report shows material injury according
23 to essentially all of the Commission's traditional
24 measures -- shipments, production, capacity,
25 employment, wages, operating results, capital

1 investments and the lack of return on assets.

2 As we look at the facts here, you will see
3 that capacity, the red bars, declined throughout the
4 POI. You will see that production, these blue bars,
5 declined throughout the POI. Of course, the logical
6 result is capacity utilization also declined
7 throughout the POI.

8 Similarly, domestic production workers
9 declined throughout the POI and wages paid to clients
10 throughout the POI, both as a consequence of fewer
11 workers and as a consequence of wage concessions by
12 the unionized workers.

13 Domestic facilities were closed, and jobs
14 were lost. Now, MeadWestvaco itself shut down several
15 facilities. Of most relevant to the investigation are
16 Garland, Texas, and St. Joseph, Missouri, for the
17 period of investigation. For the record, MeadWestvaco
18 also closed its only Mexican facility in Nuevo Laredo,
19 Mexico.

20 Roaring Spring had significant job
21 reductions, as did Top Flight. Since 2003, the
22 petitioning firms have lost hundreds of workers due to
23 the subject imports.

24 Next slide?

25 Coincident with this large falloff in

1 production, capacity, capacity utilization, you see a
2 rapid and constant increase in the imports from the
3 subject countries.

4 Next slide?

5 Again, as we see imports increasing
6 profitability at the gross level and the operating
7 level decline. The only reason for the change in the
8 curves here, because there's a slight difference here,
9 is because of the body count. That's the number of
10 workers who literally lost their jobs in these plants
11 and in management.

12 Next slide?

13 We believe in particular the Commission
14 should pay close attention to the total decrease in
15 operating profits and gross profits between 2003 and
16 2005. You earn dollars, and if you're earning less
17 dollars that's injury. You don't earn percentages
18 here.

19 We believe the Commission should also pay
20 very close attention to the number of firms that
21 reported operating losses in 2005 compared to the
22 prior years.

23 Next slide?

24 Now, imports here did have a price
25 depressing and suppressing effect, and there was

1 massive underselling. Pricing Products 1 through 3
2 show sharp pricing declines once the prehearing staff
3 report data is revised, and those products account for
4 the overwhelming majority of production of these
5 products.

6 Further, when you look at the volume of
7 imports that were undersold and you weight the number
8 of underselling in that quarter by volume you discover
9 that there is overwhelming underselling. Of course,
10 the Commission has confirmed lost sales.

11 Now I'd briefly like to discuss the issue of
12 negligibility. The Commission precedent is clear the
13 test for negligibility is based upon the investigation
14 scope, and there are a variety of ITC cases and Court
15 cases on this issue.

16 The Commission should base its determination
17 on the two HTS numbers listed in the prehearing report
18 which represent virtually all of the subject
19 merchandise. Respondents' much broader HTS proposal
20 mostly covers non-subject merchandise. We can brief
21 this in greater detail in our brief or discuss this
22 later on.

23 Now, this case presents an interesting
24 argument regarding post-petition effects here. At the
25 staff conference, the Respondents essentially conceded

1 that the filing of this case would have a chilling
2 effect on imports of the subject merchandise. By and
3 large they were right. The statute directs the
4 Commission to discount post-petition effects when
5 assessing injury and causation in these types of
6 circumstances.

7 However, the post-petition effects are
8 relevant to Respondents' arguments on causal nexus,
9 and those post-petition effects show that when the
10 subject imports are removed from the market domestic
11 production and the domestic injury does better.

12 On the issue of threat, the producers of the
13 subject countries have massive and ample capacity to
14 flood back into the market both in the near term and
15 the long term. There is significant expansion plans
16 announced in China and India, and there is massive
17 excess capacity in all three subject countries.

18 Further, we would note that only a handful
19 of Chinese Respondents in particular provided capacity
20 data to the Commission, and the Commission should take
21 adverse inferences regarding the lack of cooperation
22 in the final investigation by the Chinese exporters.

23 We would note that with regard to India
24 there are substantial export subsidies, and finally we
25 would note the unusual conditions of competition in

1 this industry where we have large bids covering the
2 purchasing cycle. We're about to start the purchasing
3 cycle for back-to-school 2007. These imports will
4 have a dramatic and negative effect on 2007 if they
5 are allowed if the relief does not become final.

6 Finally, I want to discuss critical
7 circumstances. In 22 years of practicing before the
8 Commission, I have never argued for critical
9 circumstances. This is a first.

10 I'll tell you why we're doing it here. In
11 this case several companies went out of their way to
12 rush merchandise in to beat the order. This industry
13 has a typical shipping pattern and a traditional
14 shipping season.

15 To undercut the order, several importers
16 went out of their way to rush that merchandise in. It
17 had a negative effect on the domestic industry's
18 volume. It had a negative effect on the domestic
19 industry's pricing and undercut the relief that this
20 industry will receive. Thank you.

21 I would now like to introduce Mr. George
22 Robinson of Top Flight, Inc.

23 MR. ROBINSON: Good morning, Chairman
24 Pearson, Vice Chairman Aranoff and Commissioners. My
25 name is George Young Robinson. I'm the largest

1 stockholder of Top Flight, Inc. and the vice president
2 of sales for the Retail Division of Top Flight, Inc.,
3 a family owned and operated manufacturer of lined
4 paper school supplies located in Tennessee.

5 I started working at Top Flight the first
6 day of summer holiday when I was 15 years old. It was
7 a special moment when my father woke me up and said
8 get out of bed. I've got something for you to do.
9 Since then I've loaded trucks, checked orders, worked
10 on million dollar machines and more recently run the
11 division of Top Flight that we refer to as Retail.

12 I am a third generation owner/operator of
13 Top Flight. I work with my father, my uncle, three
14 first cousins and over 150 Chattanooga area residents.
15 Today more than 93 percent of my business is dependent
16 upon Top Flight being a competitive manufacturer of
17 this subject merchandise of this lawsuit.

18 When I was contacted about this case in
19 August of 2005, I was on the verge of shutting down
20 much of my U.S. production like Carolina Pad, CPP, and
21 American Scholar have done. This case is critical to
22 my company's survival as a domestic producer and to
23 the hundreds of Chattanooga families who depend on our
24 jobs that pay a union wage, a living wage.

25 Before this case was filed, Top Flight's

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1 manufacturing facility and our total operations had
2 been significantly negatively impacted by the unfairly
3 priced imports from India, China and Indonesia. The
4 subject imports applied so much pricing pressure on
5 the U.S. marketplace that Top Flight was forced to cut
6 factory output, cut employment, cut capital
7 expenditures, cut selling margins and outsource
8 production of some of our certain lined paper school
9 supplies.

10 The share of imported product has grown
11 dramatically in recent years. You would find no
12 industry participant that would argue this point.
13 Retailers from all major trade channels have been
14 actively involved in importing certain lines for
15 several years. There are no exceptions.

16 Walgreens, CVS, Eckerd from the drug
17 channel; Target, K-Mart, Wal-Mart from the big box
18 discounters; Fred's, Dollar General, Dollar Tree,
19 Family Dollar from the small box discounters. Office
20 superstores such as Staples and Office Depot also
21 brought plenty of product in from the subject
22 countries.

23 These products were not simply coexisting
24 with the U.S. produced goods. They were collapsing
25 prices in the every day market, they were taking over

1 the critical back-to-school season, and they were
2 taking it to the U.S. manufacturers. I can tell you
3 that regardless of who arranges the details of these
4 dumped and subsidized imports, these dumped and
5 subsidized imports were wrecking havoc on my business.
6 I want to be clear.

7 The rush to import started with Staples when
8 they began to buy product from Indonesia because of
9 the low prices. The move led all of the retailers to
10 seek cheap imports. It's my experience that retailers
11 have no problem or hesitation to shift imports even
12 for a fraction of a penny. It is incredible to clam
13 that the domestic industry can control imports as
14 compared to the sophisticated retailers and their
15 agents like Atico or NuCarta.

16 The growing presence of unfairly priced
17 imports from Indonesia, India and China severely
18 depresses prices. In 2001, I lost my largest customer
19 of certain lined products from China. This loss led
20 to the cancellation of expansion plans at our
21 Chattanooga factory.

22 Since that time, Top Flight has been
23 impacted by a market that was dominated by the
24 shrinking selling margins, by customers with a filing
25 cabinet filled with low-priced quotes from importers,

1 distributors and brokers of subject merchandise.

2 These prices made it virtually impossible to
3 build our business or pass through increases in raw
4 materials. We were in trouble. As imports from
5 subject countries fell below prices at which we could
6 produce with any profit, we were driven to choose
7 between loss of orders or reduced role in the
8 production of the orders.

9 In 2005, I lost my largest order from the
10 year before to China and to India. This loss resulted
11 in the layoff of over 15 percent of my factory
12 production workers, many of whom I had worked with as
13 a teenager. It also led us to expedite a study to
14 reposition our production facilities either to China
15 or to India.

16 All this started to change with the filing
17 of this case. Our certain lined paper school supply
18 business has seen significant improvement in unit
19 sales, dollar volume, factory output, employment,
20 factory hours per employee, pounds of paper converted,
21 machine hours and productivity.

22 We've also seen a glimmer of hope that we
23 won't have to close down the factory that my
24 grandfather opened 85 years ago. If we win this case,
25 we won't implement the plan to begin moving machinery

1 piece-by-piece to China or India or Indonesia just to
2 keep our customers, but if we lose this case as the
3 back-to-school season for 2007 bidding starts in
4 September domestic production may no longer be an
5 option for Top Flight.

6 In conclusion, this case has given us hope
7 again for our U.S. production. I have no doubt,
8 however, that unless relief is granted against
9 unfairly traded imports the end of our U.S.
10 manufacturing is imminent.

11 I thank you for your time, and I'll be happy
12 to answer any questions you may have.

13 MR. PRICE: Thank you.

14 I'd now like to introduce Mr. Harold Rahn of
15 Norcom, Inc.

16 MR. RAHN: Good morning, ladies and
17 gentlemen. My name is Harold Rahn, and I'm the
18 president of Norcom, Inc., a manufacturer of lined
19 paper school supplies located in Georgia. I have 13
20 years of experience in this industry.

21 Over the past three years, I have witnessed
22 continuing injury to the domestic industry caused by
23 imports from China, India and Indonesia. The
24 manufacturing of these products for the U.S. market
25 used to be primarily done by domestic manufacturers on

1 the cutting edge of productivity, quality and low
2 cost. As with any ongoing manufacturing concern,
3 Norcom spent significant dollars purchasing capital
4 equipment to increase our capacity and continue to
5 lower our costs of production.

6 Starting with Staples' purchases of
7 Indonesian product in the 1990s, subject imports began
8 to enter the U.S. market on an increasing scale. It
9 was Staples that led the change to imports, and the
10 other retailers began following from there.

11 Around 2001, producers in Indonesia, China
12 and India began to enter the U.S. market on a larger
13 scale. They offered their product directly to end
14 users, as well as to the domestic producers for resale
15 in the United States.

16 Knowing the ability of retail giants such as
17 Target, Walgreens and Staples to locate and exploit
18 the lowest available price in the market and their
19 familiarity with Chinese imports, we were as an
20 industry essentially offered no choice but to begin
21 importing some product ourselves.

22 Retailer stores put an immense amount of
23 pressure on companies such as Norcom to supply them by
24 shifting to low-priced imports or lose business
25 entirely. The major retailers have no hesitation to

1 import directly. Just walk into any major big box
2 retailer and you can see it. They know all the
3 producers, their prices and their capabilities.

4 We must be competitive with the dumped
5 imports or we are out. It's that simple and that
6 brutal. Often we are forced to choose the lesser of
7 two evils -- either accept a few percent the big boxes
8 will give us to act as their importer or lose the
9 customer and a chance to maintain some domestic
10 business.

11 We accepted the need to get some business
12 rather than just shut our doors. This was done as an
13 attempt to maintain some domestic production and to
14 continue as an ongoing entity. Norcom had no real
15 choice but to develop and grow import relationships in
16 order to stabilize our customer base and gain more
17 understanding of a rapidly changing marketplace caused
18 by extremely low-priced products from Indonesia, China
19 and India.

20 Although this strategy was not preferable
21 and contradicted the company's mission statement which
22 called for managed growth through sound capital
23 investment, it was our only tactical choice if we want
24 to continue as a viable company.

25 Since 2002 there has been continued

1 significant growth in imports of certain lined
2 products from China, Indonesia and India. These
3 imports are entering the U.S. at prices which I do not
4 believe can be supported by any rational model which
5 bases the cost on a fair market price of paper, which
6 is the major raw material used in these products.

7 My point is that the subject countries are
8 not searching for a profit model based on cost, but
9 they're searching for a low-cost, low-price model that
10 is below the domestic producers at any cost in order
11 to gain market share.

12 In the fall of 2003, Norcom was faced with
13 major pricing reductions from the subject countries,
14 which had a significant negative impact on the
15 profitability of our company. We were informed by our
16 largest customer that in order to maintain any volume
17 for back-to-school 2004 we must meet a price that was
18 dramatically lower than the previous year. The price
19 quoted was for subject imports.

20 This account represented over \$80 million in
21 sales. Therefore, Norcom had no real choice but to
22 meet this price in order to continue our business with
23 this customer. As a result, Norcom's profits declined
24 by over \$8 million in 2004. This was devastating for
25 our company and effectively ended any plans to invest

1 new capital into new capacity.

2 For back-to-school 2005, the situation
3 deteriorated further. Despite aggressive cost
4 reduction efforts, we were notified in February of
5 2005 that we were losing 25 percent of our business at
6 our largest account. That volume subsequently went to
7 China. Moreover, because of depressed pricing levels
8 we generated no margin on our largest item and
9 inadequate returns on the remaining items on the
10 volume we kept.

11 We cannot continue in this manner. Pricing
12 used to be reflective of the cost of paper, but as a
13 result of unfair import competition our prices no
14 longer can move up when input costs increase. We're
15 facing a significant cost/price squeeze.

16 We're being told by all of our major
17 accounts to source from overseas in order to lower
18 prices even further, and if we don't they will bypass
19 us and go directly to the subject producers. All of
20 the major retailers already source directly from these
21 subject countries or through companies like Atico and
22 NuCarta.

23 The handwriting is on the wall. We have to
24 realize that unless unfair imports are stopped we will
25 have to shift the remainder of our business to imports

1 to remain competitive. We do not want to do that as
2 Norcom is a manufacturing company. The future of
3 domestic manufacturing will be determined by this
4 case.

5 It is important we have a level playing
6 field. We can compete with these producers on every
7 level. Our labor costs are extremely low since we use
8 automated equipment to produce these products,
9 countering any perceived advantage in this area.

10 We do not have the high additional freight
11 cost incurred when shipping from overseas
12 destinations. However, many of the subject producers
13 do benefit from governmental subsidies. We cannot
14 compete against unfairly priced imports.

15 Since the filing of this case, the situation
16 has improved in several, but not all, areas for
17 Norcom. Our production capacity could still easily be
18 expanded, and our production for back-to-school '06
19 actually increased by over 40 percent in terms of tons
20 of paper converted and units produced.

21 In conclusion, I have no doubt that my
22 company has been injured by unfair imports. We've
23 been forced to purchase subject merchandise, but this
24 comes at a cost to our production and the long-term of
25 Norcom.

1 As a result of the filing of this case, the
2 harm has been lessened, but not completely removed.
3 If relief is not granted, I have no doubt that the
4 dumped and subsidized merchandise will flood back into
5 the market. Regardless of who brokered these imports,
6 my company, its production, its profits and its workers
7 will suffer.

8 Norcom and our industry thanks you for the
9 work you are doing to ensure fair trade. I sincerely
10 hope you will continue to see the merits of our
11 efforts and find favorably for our cause. Should you
12 find otherwise, it will surely reopen a door that
13 cannot be shut and will spell the end to one of
14 America's oldest industries.

15 We need your help, and we thank you in
16 advance for your support.

17 MR. PRICE: Thank you. This is Alan Price.

18 I'd now like to introduce Mr. Neil
19 McLachlan.

20 MR. MCLACHLAN: Good morning. My name is
21 Neil McLachlan. I'm president of MeadWestvaco's
22 Consumer & Office Products Division which manufactures
23 lined paper school supplies.

24 Our main office is in Dayton, Ohio, with
25 manufacturing, distribution facilities and sales

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1 offices across the United States. I'm here today
2 because our industry is suffering material injury due
3 to unfair trade practices by certain producers in
4 India, Indonesia and China.

5 This industry, its employees and their
6 communities need relief. You can measure the harm to
7 MeadWestvaco's domestic operations any way you want to
8 -- by the decline in our shipments and production, our
9 reduction in facilities, our severely weakened
10 financial results.

11 Our domestic production volume has been
12 severely impacted over the past three years, falling
13 by almost 50 percent in total. We have reduced
14 domestic capacity by one-third, and we still have
15 excess capacity. Any way you look at it we've been
16 harmed, and the imports from India, Indonesia and
17 China are a significant cause of that harm.

18 MeadWestvaco has additional evidence of
19 injury which involves business proprietary
20 information, and we'll provide this information to the
21 Commission later.

22 We have invested significantly in plants,
23 equipment, systems, training to ensure that we are
24 highly efficient and effective. However, despite
25 these efforts we find that these subject imports have

1 damaged all of our product lines, including basic
2 notebooks and filler paper, including value added
3 products and including fashion notebooks.

4 American Scholar, Carolina Paper and others
5 have injured directly those products that are key to
6 our survival in the United States. At one time
7 MeadWestvaco had eight factories. We closed Front
8 Royal, Virginia, in 2002; Garland, Texas, in 2004; and
9 our largest plant, St. Joseph, Missouri, in 2004,
10 eliminating hundreds of jobs, more than half of our
11 U.S. manufacturing employees.

12 The plants were critical parts of local
13 economies, and all communities have suffered damage by
14 their loss. Now our two remaining factories in
15 Pennsylvania and California are at serious risk.
16 These facilities employ 560 people along with many of
17 our 250 person office staff in Dayton, Ohio.

18 In particular, the Blair plant in
19 Pennsylvania accounts for the vast majority of our
20 production capability and our jobs. We have enough
21 capacity there to supply our domestic accounts. It is
22 the only major employer in that area, and these jobs
23 are high skilled positions and contribute
24 significantly to the local economy. Loss of this
25 facility would represent incredible hardship to the

1 community.

2 At Blair, we have already eliminated the
3 most high-tech, fully integrated composition book
4 production line in the world due to the subject
5 imports as we were losing money on every book we sold.
6 MeadWestvaco does not want to shut our Blair facility.

7 Let me emphasize that subject imports were
8 in fact the major reason why our other facilities were
9 closed. Believe me, if we were not forced to compete
10 with dumped and subsidized Asian imports we would not
11 have had to close six of our eight factories.

12 We have not closed U.S. facilities in order
13 to shift production to Brazil or to Mexico. Our
14 Garland, Texas, plant was certified for trade
15 adjustment assistance, and as we stated at the time
16 this was due to increased imports from China.

17 Our St. Joe facility was also certified for
18 TAA benefits. We closed the plant due to cost
19 pressure from subject imports. We stated at the time
20 that Mead would shift some of its production to
21 Mexico, and TAA relief was granted on that basis.
22 However, before we fully executed that plan we were
23 forced to close the Mexican facility as well. Today
24 we don't produce any of these products in Mexico.

25 If MeadWestvaco is injured by these imports,

1 why have we ourselves imported these products
2 particularly from China? We certainly don't do it to
3 maximize profits. Our profit margin on imports is
4 nonexistent. Instead, we import because this business
5 is incredibly price competitive, and the only way to
6 compete with dumped subsidized products is to import
7 them or broker them ourselves.

8 Our main customers -- the mass retailers,
9 superstores and drugstores -- have all the power here.
10 They are driven by the intensely competitive retail
11 environment, and each seeks to out-discount the other
12 in order to show that they have the best prices on
13 lined paper and other back-to-school products. They
14 will switch suppliers for as little as a tenth of a
15 penny difference.

16 During the last back-to-school season,
17 70-count notebooks sold for 10 cents or less at many
18 major retailers. One retailer testifying here today
19 sold filler paper last year for 19 cents a pack. This
20 year price levels are lower at nine cents for
21 notebooks and 15 cents for filler paper. This
22 competition isn't based on brightness or quality.
23 It's based on price.

24 Our retailers all lose money based on their
25 advertised prices, which are well below their

1 acquisition costs. Driven by this intense price
2 pressure, they seek out the absolute lowest cost of
3 supply. Our customers use electronic reverse
4 auctions, head-to-head shootouts and other negotiating
5 procedures to ensure they obtain the lowest possible
6 cost.

7 The low-cost dumped product has compelled us
8 and others in our industry to access converters in
9 Asian countries. Our customers know the price of
10 these imports and use ours and other importers as a
11 convenience, paying only a small up charge for that
12 service. Therefore, importing is not a profitable
13 business. We do it as an accommodation and to retain
14 access to these important customer accounts for our
15 domestic business.

16 Unfortunately, these Asian suppliers have
17 expanded dramatically over the past few years, and as
18 these companies have matured they quickly figured out
19 how to sell in the United States without a U.S.
20 producer involved.

21 Watanabe, which previously sold in the
22 United States long before it worked with Mead, hired
23 away one of our key managers and started aggressively
24 bidding against us for the back-to-school 2005 and
25 2006 seasons. Other importers like NuCarta and Atico

1 have taken substantial market share from us. Any idea
2 that we, the domestic producers, control these imports
3 is nonsense.

4 In short, MeadWestvaco has been forced by
5 virtue of the low price of Asian producers to switch
6 significant volumes from domestic production to Asia.
7 This does constitute injury to our production in the
8 U.S. These subject imports injure our workers, our
9 plants, our domestic production, our profits.

10 Moreover, the trade petition and your
11 preliminary findings are already helping. We're
12 producing more here, and we're not sending it
13 overseas.

14 On behalf of one company and its employees,
15 I ask the Commission for its continued help to stop
16 these unfair trade practices. Our survival as a
17 domestic producer of these products is at risk.
18 Without trade relief, the dynamics of our business and
19 its future are all too clear.

20 Thank you.

21 MR. PRICE: Thank you. This is Alan Price.

22 I would now like to introduce Ms. Holly Hart
23 of the Steelworkers.

24 MS. HART: Good morning, Chairman Pearson
25 and members of the Commission. Thank you for giving

1 me the opportunity to testify before you today. I'm
2 Holly Hart. I'm the assistant director of the
3 Legislative Department of the Steelworkers in
4 Washington, D.C.

5 Steelworkers President Leo Gerard was to
6 have been here today, and he regrets he was unable to
7 be here due to a scheduling conflict. He's asked me
8 to present the Union's testimony before the Commission
9 for today's hearing on the lined paper school supplies
10 matter.

11 The United Steelworkers is the single
12 largest industrial union in the United States, and we
13 are the dominant union representing thousands of
14 workers in the paper industry. This is following our
15 April 2005 merger with the former PACE International
16 Union.

17 Among the Steelworker represented workers
18 are those making certain lined paper school supplies
19 known as school notebooks at two Pennsylvania paper
20 plants, MeadWestvaco's Blair plant in Alexandria with
21 over 350 workers that are our members and Roaring
22 Spring Blank Book Company in Roaring Spring,
23 Pennsylvania, with about 200 workers.

24 Some of the Steelworker represented workers
25 are in the hearing room here today. They are here as

1 stakeholders, deeply concerned about the impact of
2 unfair imports on their jobs and their families. They
3 are here to observe the proceedings, and when they
4 return home to their jobs I'm sure they will share
5 their observations with their coworkers on the
6 production floor and in their community.

7 They know how important this case is to
8 their jobs and to the future of this industry. I'd
9 like if it's all right to take a moment to recognize
10 them, and if it's all right I'd ask them to stand.

11 The workers at MeadWestvaco in Alexandria
12 are Mitch Heaton, president of Steelworker Local
13 101442. We have local union committee men Gregory
14 Olum and Sheldon Port, and also with them is Billy
15 Thompson, director for Steelworkers District 8, who is
16 also the chairman of the Union's national bargaining
17 committee for MeadWestvaco Corporation.

18 In addition, we have Steelworker staff
19 representative Ed Kimeck, who negotiates our labor
20 agreements at the MeadWestvaco plant in Alexandria and
21 the USW represented plant at Roaring Spring Blank Book
22 Company.

23 Frankly, we're amazed at who else we have
24 here today. These are the representatives of several
25 of the big box retailers, including Target, Staples

1 and Walgreens. The appearance of these box retailers
2 is, in our opinion, a shameful attempt to preserve
3 their ability to buy dumped and subsidized school
4 notebooks at the expense of our members' jobs.

5 If you walk through any of their stores
6 you'll notice something. Very little of their
7 products are made in the United States. Most of it
8 comes from Asia and especially China. Their entire
9 business model relies on being able to import
10 merchandise from Asian countries and on their
11 willingness to switch from one supplier to another,
12 from one subject country to another, in an internal
13 and frankly brutal quest to shave just another
14 fraction of a cent off their per unit cost, and this
15 is irregardless of whether they are dumped or not.

16 The retailers will argue that this is just a
17 free-market situation, except we're not talking about
18 a free market operating on the basis of comparative
19 advantage. The U.S. Department of Commerce found that
20 the imports are you investigating were indeed dumped
21 and subsidized. The GATT and WTO agreements condemn
22 these practices precisely because they undercut the
23 operation of a free market. Of course, these
24 retailers can't just come out and say their business
25 model depends on being able to buy dumped and

1 subsidized school notebooks. Instead, they argue that
2 the domestic industry can't be injured because some of
3 the U.S. producers also imported notebooks.

4 What the box retailers are hoping is that
5 you will forget the reason the domestic importers are
6 importing and it is precisely because the retailers
7 have put so much pressure on them to shave that
8 fraction of a cent off their prices.

9 As a representative of the production
10 workers, we would of course prefer that our domestic
11 producers not import anything. It would mean more
12 work for our members. But we have to give the
13 domestic industry some credit. While the domestic
14 industry imports some notebooks and has reduced
15 domestic production, it has worked very hard to keep
16 surviving domestic operations going.

17 Another thing these retailers are hoping you
18 will forget is that the domestic industry isn't just
19 the producers. It's also the production workers. The
20 antidumping laws are clear in their intent to protect
21 the interests of workers as well as companies. That's
22 why workers can file petitions and why the law
23 includes jobs and wages, a factor you must consider in
24 determining whether imports are causing injury. In
25 fact, injury to domestic workers alone is enough and

1 it's definitely happening here.

2 The statute directs the commission to
3 consider a number of factors in determining whether an
4 industry has been injured or threatened with injury or
5 by unfairly traded imports. The statute focuses on
6 the impact of imports on domestic production
7 operations, not on the shareholders.

8 The record in this case shows that U.S.
9 production operations have been closed, that U.S.
10 production lines have been shut down, that U.S.
11 production and production capacity have declined, that
12 U.S. capacity utilization has declined, that U.S.
13 shipments have declined in volume and value and that
14 U.S. inventories have increased.

15 The big box retailers would have you
16 conclude that these events are relevant only to the
17 extent they affect the bottom line of the U.S.
18 producers. These retailers ignore the direct and
19 inevitable impact such events have had upon the
20 industry's workforce.

21 As a consequence of imports, employment in
22 the U.S. school notebook industry has declined
23 significantly during the period of investigation, as
24 did hours of work and total wages paid. There is the
25 additional fact that our workers have been forced to

1 give major concessions in wages and benefits. From
2 the workers' perspective, it doesn't matter whether
3 the imports were brought in by the domestic producers
4 or the importers. The domestic producers are
5 attempting to stay in business. Either way, there are
6 fewer jobs, fewer hours to work and lower wages, all
7 because of the imports.

8 These are precisely the effects that the
9 statute defines as injury to the domestic industry,
10 something the big box retailers can't deny.

11 The fact that the box retailers are here
12 fighting the imposition of antidumping and
13 countervailing duties so strenuously is strong
14 evidence that imports are injuring the domestic
15 industry. Giving us the relief to which we are
16 entitled will have a definite positive effect on the
17 U.S. market and on our members and their communities.

18 These big box retailers are more than
19 willing to see hundreds of Americans permanently lose
20 their jobs by importing illegally dumped and
21 subsidized goods just so their quarterly per share
22 profits might go up by a fraction of a cent. Shame on
23 them.

24 Thank you.

25 MR. PRICE: Finally, Mr. Seth Kaplan of CRA

Heritage Reporting Corporation
(202) 628-4888

1 International.

2 MR. KAPLAN: Good morning. I am Seth Kaplan
3 of CRA International and I have been asked by
4 Petitioners to examine the effects of subject imports
5 on the domestic industry.

6 For the remainder of my testimony, I will
7 briefly discuss the condition of the industry, the
8 effects of the dumped and subsidized imports on that
9 industry, and certain key conditions of competition.
10 Finally, I will discuss some of Respondents' economic
11 analysis.

12 Let me begin with a very brief overview of
13 the key facts in this case.

14 Imports from the subject countries increased
15 significantly over the period of investigation. There
16 is no argument about that.

17 This has led to declines in about every
18 statutory factor: market share, production,
19 shipments, prices, profits, employment. Facilities
20 have been closed and employees have been laid off.
21 There is no argument about that.

22 In fact, the injurious effects of the total
23 quantity of subject imports are so plain that the
24 lawyers for Staples and the Indonesians did not even
25 bother with this analysis. They did not want to

1 insult your intelligence. Instead, they have argued
2 that only a particular share of the subject imports
3 should be considered, those not imported or brokered
4 by U.S. producers.

5 I will leave the legal arguments to the
6 lawyers, but I want to make two economic observations.
7 The first is the effects of the dumped and subsidized
8 imports on the domestic industry. The domestic
9 operations of the LPP producers are injurious
10 regardless of who brings in the products and, in fact,
11 they are bringing in some of these products to
12 mitigate the effect and it would be a bitter irony
13 that their attempts to mitigate the effects of dumped
14 and injurious imports is held against them.
15 Obviously, that mitigation has not been successful
16 given the results of their U.S. operations.

17 Second, the notion that U.S. producers
18 actually control these imports is just ludicrous. The
19 Respondents would have you believe that the likes of
20 Wal-Mart, Target and Staples are beholden to others
21 for the brokering of imports. Wal-Mart has a massive
22 operation in China. Wal-Mart has relationships with
23 Chinese producer after producer and product after
24 product, as has been seen by the commission in case
25 after case. The idea that they could not see through

1 the veil of a broker by small U.S. producers located
2 in Tennessee and Pennsylvania given their buying
3 operations in China is something that has no support
4 and contradicts everything the commission understands
5 about how these stores operate.

6 In fact, the market for LLP is driven by the
7 competition among these retail giants, the Wal-Marts,
8 the Targets, the K-Marts, the Staples. The ferocious
9 competition between these companies could be
10 characterized as a continuous price war. You've seen
11 the advertisements for Wal-Mart on television where
12 they keep flipping the prices down. How does that
13 happen? By finding lower and lower price sources and
14 the sources they've found here are dumped and
15 subsidized sources. They could get lower prices but
16 the law doesn't allow them to do it like this.

17 These retailers have developed extremely
18 sophisticated buying and logistic systems. The prices
19 have in fact fallen. However, when low prices are due
20 to dumping, the benefits to consumers are undeserved
21 and the negative effects on the domestic industry
22 mandate an affirmative finding.

23 Finally, let me turn to the world market
24 argument put forward by several Respondents and this
25 argument has the potential for being economically

1 correct, not necessarily inconsistent on its face, but
2 we have to look at the facts to see if it's true or
3 not and in this investigation we have had a controlled
4 experiment to test this proposition. After the
5 imposition of the duties, we have seen that domestic
6 production has increased significantly, domestic
7 prices rose, domestic profits have increased, and
8 further the import prices from non-subject producers
9 increased. This is unsurprising. Not only is
10 non-subject capacity unavailable to replace the dumped
11 imports, but these non-subject suppliers have not
12 priced like the Chinese, Indians and Indonesian
13 dumpers. I have been told by U.S. producers that if
14 these non-subject producers begin injurious dumping
15 and subsidization, they would consider additional
16 cases in the future.

17 In conclusion, the market is driven by large
18 sophisticated retail customers. These customers could
19 easily switch to direct imports as they have done in
20 many other industries, many other products seen at the
21 commission, seen in reports by independent analysts.
22 U.S. producers have been injured as they have lost
23 share, production, shipments, profits and employment
24 as imports surged and as the representative for the
25 United Steel Workers alone, the injury solely to labor

1 and employment in wages caused by these imports no
2 matter who brought them in is enough for an
3 affirmative finding. The injury has been so severe to
4 labor given the closure of facilities and the layoffs
5 of hundreds of employees.

6 Finally, the initiation of this
7 investigation coupled with the preliminary findings
8 have shown that dumped imports and not some world
9 market price drove the market. We have seen
10 production, prices and profits rise. The continuation
11 of these trends, this nascent recovery in this
12 industry, is completely and utterly contingent upon
13 the continuation of this relief.

14 Thank you very much.

15 MR. PRICE: Thank you.

16 That ends our direct presentation. We would
17 like to reserve our remaining time for rebuttal. We
18 are available to answer questions.

19 CHAIRMAN PEARSON: Thank you.

20 Permit me to extend my welcome to this panel
21 and to members of the audience on both sides of this
22 investigation. We appreciate your interest and are
23 glad to have you here today.

24 We will begin the questioning this morning
25 with Commissioner Hillman.

1 COMMISSIONER HILLMAN: Thank you.

2 I, too, would join Chairman Pearson in
3 welcoming you all today and thanks to many of you that
4 have traveled a long way to be with us today. We
5 appreciate your willingness to do that and your
6 attention to this issue.

7 Let me start with a little bit of
8 questioning just to make sure I understand the terms
9 that we are going to be talking a lot about in terms
10 of your direct imports versus your brokering.

11 Could any of the witnesses that are engaged
12 in this operation of so called brokering of imports
13 explain what exactly you mean by brokering? How does
14 it differ from what you would describe as importing?

15 MR. MCLACHLAN: This is Neil McLachlan with
16 MeadWestvaco. We would describe importing as bringing
17 finished goods and products into our own warehouse for
18 redistribution. We would take possession in the
19 Orient, bring them across, be responsible for
20 logistics, have them in our warehouse ready to ship to
21 our customers.

22 Brokering on the other hand, we would take
23 the orders and we would arrange for production to be
24 made, the goods to be brought to a port in an Asian
25 country and from them on we would transfer title to

1 our customers who would be responsible for the rest of
2 the logistics into the U.S.

3 COMMISSIONER HILLMAN: So the title
4 transfers in Asia or wherever the products are coming
5 from?

6 MR. MCLACHLAN: That's correct.

7 COMMISSIONER HILLMAN: And the products are
8 shipped directly to the end user?

9 MR. MCLACHLAN: No, to our retailers who
10 then sell on to the consumer.

11 COMMISSIONER HILLMAN: Okay. All right.
12 That's what I meant, they go directly to the retailer?
13 They do not enter your facility?

14 MR. MCLACHLAN: Correct.

15 COMMISSIONER HILLMAN: Okay. And in either
16 instance, is anything else done to the product? Is it
17 repackaged, relabeled? Is anything done to it or is
18 it exactly the same in both instances?

19 MR. MCLACHLAN: Sometimes the products that
20 we bring into our own warehouse might get reconfigured
21 into display pallets or other configurations, but not
22 when it's done for direct import purposes and
23 possession is taken in the Orient.

24 COMMISSIONER HILLMAN: Okay. And then
25 describe for me, if you will, your revenues or your

1 profits. Is it more profitable for you to do the
2 importing that comes into your warehouse? Are you
3 able to get a better markup there or is brokering a
4 more lucrative operation?

5 MR. MCLACHLAN: Neither one of them are
6 lucrative. We lose money on both.

7 COMMISSIONER HILLMAN: You lose money on
8 both? Okay. I've heard that in the testimony, which
9 I will say given all of the data that we are looking
10 at to some degree begs the question a little bit of if
11 I look at the financials for the industry and I look
12 at it just on your U.S. operations, in essence --
13 again, we can argue over the size of it, but you're
14 nonetheless showing a profit. If I look at it on your
15 operations plus your importing operations, it doesn't
16 show as good a picture, as you say, you're losing
17 money on your imports, which does beg the question why
18 do it because it appears from the data that you're
19 better off doing more domestic production and less
20 importing.

21 I've heard you say you have to do it to
22 compete with the imports but, again, if you're making
23 more money on the domestic operations, why not do more
24 domestic operations and less importing?

25 MR. RAHN: My name is Hal Rahn with Norcom.

1 I think the prime answer to that is that when we are
2 forced on the import side to lower a pricing level
3 sometimes that pricing level will actually drag the
4 domestic price along with it and it will reduce our
5 margins, gross margins, at the domestic level as well
6 as not particularly give us high margins on any kind
7 of imported product.

8 COMMISSIONER HILLMAN: Does anyone else want
9 to add to that?

10 MR. MCLACHLAN: In many cases, we will have
11 lost the account completely if we don't go ahead and
12 do that. We lose all of that -- this is Neil
13 McLachlan with MeadWestvaco. In many cases, it's
14 business that we used to hold domestically and we
15 would convert it to imports in order to just hang onto
16 the relationship that we have with the customer and
17 also help to get access to out of season, out of back
18 to school sales or other product categories that we
19 sell into that retailer.

20 COMMISSIONER HILLMAN: Okay. Mr. Robinson?

21 MR. ROBINSON: This is George with Top
22 Flight. Top Flight wants to produce the product that
23 we sell. Top Flight wants to employ more people in
24 Chattanooga and continue to invest in capital
25 equipment in Chattanooga. Due to the extraordinary

1 pricing pressures that we've experienced in the
2 marketplace, we see those prices in these on-line
3 reverse auctions that have been referred and the
4 extraordinary bidding processes that take place, and
5 when the pricing gets down so low that we can no
6 longer provider U.S. produced product with a profit,
7 then we are forced to move to other sources for that
8 product and the low price leaders have been the
9 subject countries for low cost product. And so we go
10 to the subsidized and dumped import product because
11 our customers are going and they have access to that
12 product.

13 COMMISSIONER HILLMAN: I hear what you're
14 saying, but if you're not making a profit on the
15 imports either --

16 MR. ROBINSON: Yes.

17 COMMISSIONER HILLMAN: Again, that's a money
18 loser. I'm just struggling with why is that a better
19 choice, if you're going to lose money anyway, why
20 choose to lose money on imports as opposed to lose
21 money on domestic production? That's what I'm trying
22 to understand.

23 MR. ROBINSON: In my testimony,
24 I mentioned -- this is George again with Top Flight --
25 in my testimony, I mentioned that 93 percent of my

1 business is dependent upon being competitive in
2 certain lined goods. Certain lined goods are the core
3 of the industry. It is the core of being a paper
4 converter. If you are not competitive in those areas
5 and you're not able to provide a competitive price for
6 the critical back to school season and for every day,
7 then you are subject to increased risk of losing
8 further business. And so U.S. manufacturers have done
9 everything that they can to cut costs in their
10 factories and then finally with the growing
11 competition and the growing pressure from these low
12 priced dumped imports, we have had to move to bringing
13 in some of that product in order to service our
14 customer.

15 COMMISSIONER HILLMAN: I'll come back to you
16 in a minute, Dr. Kaplan.

17 For those that are doing this importing,
18 maybe it would help me to understand -- and, again, if
19 you have to do this in a post-hearing brief because
20 it's confidential, that's fine -- I just want to see
21 if I can understand when for each of you you began
22 doing this importing, why you chose to go to the
23 import source that you did, to the extent that you
24 chose to import notebooks versus composition books
25 versus packs of filler paper, why those choices were

1 made and when. And if there's anything that can be
2 said publicly, that would be great. If it's better
3 done in a post-hearing brief, fair enough.

4 Dr. Kaplan?

5 MR. KAPLAN: I think the commission should
6 be aware that this is not a single product, but three
7 or four different products and that the ability to
8 make a profit on one doesn't mean you can make it on
9 other ones. And so what you've seen is, especially
10 during the last year, is an enormous decline in the
11 volume of production as that is what is remaining that
12 a small profit could be made on. The other products
13 that are being brokered aren't profitable to make here
14 and, in fact, certain types of products aren't made
15 here any more but will return should the orders stay
16 in place.

17 Also, if you look at their total profits,
18 those are declining so the margins in some periods are
19 staying flat, but with a big decline in the total
20 volume of sales, so you are making X percent on half
21 of what you shipped last year and when you are looking
22 at total dollars to keep the factory running and keep
23 production going, it's not as if you could double your
24 output all of a sudden at the same profit margin, you
25 can't because it's different types of products.

1 Sometimes those are undersold significantly by the
2 importers and you've seen if you look at the
3 quantities up until the first half of this year, the
4 industry is just disappearing in terms of production.
5 They are forced to import these products.

6 MR. PRICE: Let me go through just a
7 specific example that I happen to have in front of me
8 and I'll talk about it in general so as not to reveal
9 the details of the proprietary information.

10 This involves an account that is here today
11 opposing this petition. One of the Petitioners here
12 sold a very substantial quantity to them, almost all
13 domestically produced for back to school 2004, the
14 2004 season, in essence. A very large quantity, a
15 mixture of filler paper, composition books, wireless
16 notebooks.

17 In the discussions for 2005, essentially the
18 domestic industry was told their price was not
19 competitive with Indonesia. They were out. They had
20 lost this entire volume. They had no ability to sell
21 it, it was all price based from their perspective and
22 that was the key.

23 At that point, they did offer Chinese
24 merchandise to maintain some account access and to
25 continue to service the account and get what they

1 could domestically on the side and they did sell
2 Chinese product to at least maintain the relationship
3 with the retailer.

4 It hurt their production. It hurt their
5 volume. It hurt their profitability, but they did it
6 out of necessity. They did manage to capture some
7 domestic add-on business as a result. The account had
8 already gone, they had decided to switch to a subject
9 supplier, and then it's just an attempt to mitigate
10 the damage.

11 COMMISSIONER HILLMAN: I appreciate those
12 responses.

13 Thank you, Mr. Chairman.

14 CHAIRMAN PEARSON: Commissioner Koplan?

15 COMMISSIONER KOPLAN: I thank the witnesses
16 for their direct presentation and their answers to the
17 questions thus far.

18 I'm going to begin with my first two
19 questions for counsel, Mr. Price and Mr. Brightbill.

20 First, on page 5 of your pre-hearing brief
21 it states, and I quote, "Petitioner does not contest
22 the domestic like product definition as stated in the
23 preliminary determination," but in our preliminary
24 review with regard to like product, we called
25 attention to page 15 that, and I'm quoting, "We intend

1 to explore this issue further in any final phase of
2 these investigations, including the extent to which we
3 should define the domestic like product more or less
4 broadly than we have done at this stage."

5 In your post-hearing brief, using the
6 commission's traditional six factor like product
7 analysis, please address whether the commission should
8 broaden the domestic like product to include outsized
9 lined paper products, for example, legal pads --
10 I have some interest in that -- defined at the public
11 version of our staff report at pages 117 and 118 as,
12 and I quote, "any lined paper or lined paper product
13 with a smaller dimension measuring less than 5 inches
14 or larger than 15 inches or with a larger dimension
15 measuring less than 7 inches or greater than 15
16 inches."

17 Will you do that for me?

18 MR. PRICE: We will be happy to do so.

19 CHAIRMAN PEARSON: Thank you, Mr. Price.

20 I also make the same request of Respondents'
21 counsel to do that for purposes of the post-hearing.

22 Mr. Cameron?

23 MR. CAMERON: Yes, Commissioner.

24 Respondents will be pleased to respond.

25 COMMISSIONER KOPLAN: Thank you.

1 Coming back to Mr. Price and Mr. Brightbill,
2 on page 11 of your pre-hearing brief, it is claimed
3 that, and I quote, "Orders for the next year's back to
4 school merchandise are made in the fall of each year,
5 increasingly through bid processes in which the low
6 bidder takes all."

7 Your brief cites to one purchaser's
8 questionnaire whose identity is bracketed. The next
9 sentence claims that, "Such auctions are a relatively
10 new phenomenon but have proved popular, particularly
11 with the large purchasing retailers." And there you
12 cite two purchaser questionnaires whose identities are
13 similarly bracketed.

14 Next, you state that, "The auctions
15 encourage potential suppliers to price as low as
16 possible and have facilitated sales of the lowest
17 priced products available from China, India and
18 Indonesia."

19 I direct your attention to the discussion of
20 bid data in Chapter 5 in Table 5-9 titled "CLPSS Bid
21 Information and Sales to Purchasers January 2003 to
22 December 2005." The responses are confidential but
23 I can say that on balance they appear to refute your
24 argument. For example, only six of 32 purchases
25 specifically reported that the lowest bidder wins the

1 contract. That's at page 23 of Chapter 5 of the
2 confidential staff report. See also, if you would,
3 page 5-37.

4 What I'm asking is can you reconcile this
5 for me with supporting documentation from your clients
6 in your post-hearing submission?

7 MR. BRIGHTBILL: We will do that.

8 COMMISSIONER KOPLAN: Thank you,
9 Mr. Brightbill.

10 This is for Mr. Robinson, Mr. Rahn and
11 Mr. McLachlan.

12 In your post-hearing brief, can you estimate
13 for me the extent to which U.S. purchase orders now
14 filled by subject imports would be replaced by
15 non-subject imports, particularly Brazil, if you win?

16 I ask this because Indonesian respondents at
17 page 28 of their brief argue that, and I quote, "The
18 average unit value for Brazil's CLPSS imports was
19 consistently lower than that of subject imports" and
20 they say that it is the price leader in the U.S.
21 market. Also, Brazil's AUVs during the period of
22 investigation as discussed at page 4-3 of our public
23 staff report makes mention of this and I also note
24 that the quantity of U.S. imports from Brazil rose
25 77.4 percent from 37.2 million units to about 56

1 million units during 2003 to 2005.

2 I note in addition that Target at page 13 of
3 its brief claims that during the POI there was
4 substantial and increasing imports of CLPSS from
5 Brazil at prices below that of the subject imports.
6 So can you give me some estimates for that
7 post-hearing? Do you want to do that now or how would
8 you like to cover that?

9 MR. PRICE: We will be happy to cover that
10 in the post-hearing brief.

11 COMMISSIONER KOPLAN: What I would like to
12 know is do Mr. Robinson, Mr. Rahn and Mr. McLachlan
13 think they can do that for me?

14 MR. ROBINSON: Commissioner Koplan, Brazil
15 is not the low price leader in the marketplace.
16 Brazil is a country that produces and operates in a
17 fair market. They are not dumping subsidized imports
18 into the United States. But we can do our best to
19 make some estimate, but we believe that we have
20 substantial available capacity in the United States to
21 take care of subject imports, to take care of orders
22 that have been placed with subject countries on
23 subject imports.

24 COMMISSIONER KOPLAN: Okay. Mr. Rahn?

25 MR. RAHN: Norcom certainly has felt no

1 injury from the Brazilian companies that supply into
2 the U.S. market. I think that the Brazilian product
3 prices are based on exchange rates and the price of
4 paper as opposed to just trying to be below ours.
5 There have been many years where Brazilian product has
6 cost more than what it would cost us to manufacture
7 and there have been years where it's been reversed.
8 So if we need to provide you specific data about how
9 our own companies operate, we would probably prefer to
10 do it in a proprietary way.

11 COMMISSIONER KOPLAN: That would be fine.

12 I appreciate your response.

13 Mr. McLachlan?

14 MR. MCLACHLAN: We, too, would be happy to
15 give you some responses in the post-hearing brief, but
16 I would say that we also believe that Brazil is not
17 the problem here. India, China and Indonesia are the
18 problem.

19 COMMISSIONER KOPLAN: I thought you might
20 say that. Why am I not surprised?

21 MR. MCLACHLAN: We haven't seen the kind of
22 prices out of Brazil that would say that they are the
23 price leader. They've taken prices up, '05 volume was
24 down dramatically, as Hal indicated. They have
25 limited capacity and they don't get the kind of excess

1 capacity fluctuations that we get out of the subject
2 countries and they don't receive the kind of
3 government subsidies for the converting industry in
4 Brazil as you see in the subject countries, so we
5 don't believe that Brazil is an issue here, but we
6 will provide the information you've asked for.

7 COMMISSIONER KOPLAN: Thank you.

8 Yes, Mr. Price?

9 MR. PRICE: Thank you. I would just like to
10 add there is some detailed data regarding bidding,
11 obviously, in this investigation.

12 COMMISSIONER KOPLAN: Yes.

13 MR. PRICE: And if you look at the '06
14 bidding data from the party that claims that Brazil is
15 going to be the entity that collapses prices, you will
16 see that the subject prices as substantially below the
17 Brazilian prices offered for this year.

18 COMMISSIONER KOPLAN: Thank you.

19 Let me stay with you if I could. In the
20 post-hearing brief, could you please provide capacity,
21 capacity utilization and pricing data over the POI for
22 imports from non-subject countries such as Brazil,
23 Canada and Mexico? These data will be important to me
24 in my analysis.

25 Mr. Price?

1 MR. PRICE: We will be happy to do that for
2 the panel.

3 COMMISSIONER KOPLAN: Thank you.

4 If any of the Respondents have relevant data
5 on that point, I would appreciate it if you would
6 include that in your post-hearing briefs as well.

7 Mr. Cameron, I see you're nodding in the
8 affirmative.

9 MR. CAMERON: We'll do the best we can to
10 find what we can.

11 COMMISSIONER KOPLAN: Thank you, very much.

12 I see my yellow light is on, so I won't
13 start another question.

14 Thank you, Mr. Chairman.

15 CHAIRMAN PEARSON: Commissioner Okun?

16 COMMISSIONER OKUN: Thank you, Mr. Chairman.

17 Let me join my colleagues in welcoming all
18 the witnesses here today, particularly those from
19 industry and labor who have traveled to be with us
20 today and to welcome the folks in the audience from
21 the union that Ms. Hart introduced. I encourage you
22 to read the public documents that are available to
23 help you understand how we conduct this investigation.

24 Let me start, I think, with a legal question
25 for Mr. Price and Mr. Brightbill, because it struck in

1 listening to Mr. Cameron's opening, he mentioned
2 something that I'd written down when I was thinking
3 about this case which is that coincidence of trends
4 doesn't equal causation. I want to ask you about how
5 we evaluate -- again, we've talked and I know you've
6 already responded to some questions about the presence
7 of subject imports that are either directly imported
8 or controlled by domestic producers in evaluating the
9 volume price and impact because while I understand the
10 argument you're making that the statute directs us to
11 subject imports' impact on domestic production and
12 Ms. Hart's point about what the statute tells us about
13 workers and facilities, I don't think it's the typical
14 case. I've seen a lot of cases up here now and it's
15 much easier to evaluate volume price and impact when
16 you've got subject imports coming in from an importer
17 and you've got domestic producers and our pricing data
18 is filled with domestic production competing against
19 the subject imports. That is not the case here. The
20 pricing data is filled with pricing data that's
21 impacted by subject imports that you may be bringing
22 in.

23 So what I need is some assistance from you
24 on how we look at the volume price impact analysis the
25 commission must go through to take into account the

1 volume of subject imports.

2 Mr. Brightbill looks like he's grabbing the
3 microphone there, but I'll turn to you, too,
4 Mr. Price.

5 MR. BRIGHTBILL: I'll start with just a
6 couple of thoughts. First, on the underselling data,
7 you do have to consider -- there's competition up and
8 down the line. It's not just domestic producers and
9 domestic brokered or imported data, even though some
10 of the underselling data that you have shows that,
11 because a lot of the underselling data has not been
12 reported by importers that are unaffiliated, so
13 I think that does have to be factored in.

14 I'll also emphasize what we've said about
15 the statute and the legislative history and it
16 specifically speaks to impact of imports and what
17 Congress said is only in the context of production
18 operations in the United States. That's fairly clear.
19 The legislative history is also very clear that the
20 domestic industry may be materially injured by reason
21 of unfair imports even if some producers themselves
22 import in order to stay in business. I think what
23 you've heard from our panel today is that's what's
24 going on. To try and keep a piece of these accounts,
25 they have to offer those imports after they've already

1 offered the domestic pricing and the domestic pricing
2 has been rejected. So those are things that I think
3 you have to fit into the legal framework of your
4 analysis.

5 COMMISSIONER OKUN: Mr. Price?

6 MR. PRICE: I will continue. The commission
7 has substantial precedent in this area and I will
8 point the commission to several cases which I think
9 the Respondents either ignore or make short shrift of.
10 Those involve cement, wooden bedroom furniture and
11 retail carry bags. In those cases, in fact, the
12 domestic industry had a major and substantial role in
13 the imports and, in some of the cases, the variations
14 aren't that different from what we're seeing here,
15 but, again, we will avoid the specifics because of the
16 proprietary record here.

17 Certainly the commission precedent holds
18 that imports from one domestic producer actually
19 injure other domestic producers. You found that,
20 I believe, in furniture. Further, the commission has
21 looked at this and we believe -- let me stop and say
22 that imports by a domestic producer can actually
23 injure their own production at the same time. We
24 believe that the facts in this record are very similar
25 in many respects to those in retail carry bags where

1 "the fact that a portion of subject imports were
2 imported or purchased by domestic producers does not
3 significantly lessen the impact of those imports on
4 the domestic industry, particularly where the domestic
5 producers imported the subject merchandise to retain
6 market share, that importations did not insulate the
7 producers from financial difficulties."

8 Well, total costs collapsed a lot here.
9 Production collapsed a lot here. This was not simply
10 augmentation of supply. This was in essence what
11 I sometimes call cannibalism of yourself, just to try
12 to survive. These guys get run through the trap every
13 year, down this little valley to try to compete at the
14 huge retailers, priced to get the order. It's pretty
15 apparent in this competition. They have to make a
16 choice: just bypassing entirely or trying to maintain
17 a relationship, to maintain some domestic production.
18 The trap springs on them, they then have a choice.
19 They can amputate an arm and try to escape or they can
20 just go out of business and not accept any of the
21 business.

22 These guys have been forced here to import
23 to try to save what they can. Otherwise, they don't
24 get the follow-on business, they don't get the add-on
25 business, they don't have the relationships with the

1 customers. That's exactly what happened in the
2 example I discussed with Commissioner Hillman and
3 described in detail. They had the domestic business,
4 they were told they weren't getting it because it was
5 shifting to Indonesia, it was shifting to Indonesia at
6 dramatically lower prices. At that point, yes,
7 imports were offered, but by offering imports they
8 were at least able to maintain some small amount of
9 domestic add-on volume.

10 So this is a situation where the industry
11 imports are injurious and we don't think it makes any
12 difference who imported the merchandise.

13 COMMISSIONER OKUN: Does it make any
14 difference to the pricing itself? In other words, in
15 the preliminary, the commission did not find price
16 suppression and we saw pricing data. Looking at the
17 pricing data, again, for this final record, do you
18 think the pricing data we see is higher than it
19 otherwise would be if you didn't have domestic
20 producers controlling the imports? That's putting
21 words in your mouth which you didn't say, but if we
22 didn't see a lot of data where domestics had taken the
23 tactic that you just described, deciding that they
24 would bid with imported data for a customer account.

25 MR. PRICE: First of all, the commission

1 data set on pricing -- let me stop. One of the
2 interesting things in this case was Staples' argument
3 that the pricing data was dominated by the domestic
4 industry data. Well, one of the problems was a lot of
5 the data by other importers was never put out on the
6 record and we think if anything the data set that you
7 have probably understates the degree of import
8 underselling, as a first point.

9 Secondly, look at pricing products 1 to 3.
10 Look at them once there's a correction for a reporting
11 error which we reported to the commission on one of
12 the domestic producers and that's corrected. I'm not
13 sure the staff has yet corrected that in the report,
14 but essentially one domestic producer when they were
15 filling out the report forgot to put the three zeroes
16 everywhere, so their data wasn't properly weighted.
17 Same unit prices and everything, it was just a three
18 zero issue and we apologize for that because we
19 probably should have caught it ourselves, but when we
20 found it, we reported it immediately to the commission
21 staff.

22 Once that's correct, principal pricing
23 products, which account for all the volume, had
24 declining prices domestically throughout the POI, so
25 you get downward price trends for the overwhelming

1 majority of the volume in the pricing products here.

2 I'm sorry, because I'd ask you to repeat
3 your question.

4 COMMISSIONER OKUN: I'm just trying to
5 understand what you think is going on in the pricing
6 data and I understand the point about you think that
7 because you have more of the domestics producing,
8 their prices have been -- other than straight
9 importers, that the underselling would be greater if
10 you had more of that.

11 MR. PRICE: I agree. And one final point is
12 as we demonstrated in our brief when you look at the
13 volumes transacting in the quarters where there are
14 underselling, that accounts for the overwhelming
15 volume of the imports, so you get one thing when you
16 just sort of count numbers, but when you look at the
17 volume transacted --

18 COMMISSIONER OKUN: Related to the seasonal
19 nature of the sales?

20 MR. PRICE: Relating to the seasonal nature
21 of the sales, the volume is overwhelmingly undersold.

22 COMMISSIONER OKUN: Okay. I see my yellow
23 light is on.

24 Mr. Brightbill, you can go ahead.

25 MR. BRIGHTBILL: Just one other thought.

1 I think you're right to have a sense that this is not
2 a typical case in some respects and related to that is
3 the fact that you have some data that's not typical
4 which is this bid and auction data. I think that
5 alone absolutely shows price suppression and
6 depression. Our witnesses can tell you when they're
7 sitting in a hotel room in Bentonville or increasingly
8 in Shanghai the prices are absolutely being suppressed
9 and depressed and it's because of what's going on in
10 the head-to-head competition. So that's data that you
11 have to supplement your traditional underselling
12 analysis to find -- and to me that's as
13 straightforward as anything you have as far as
14 suppression of price levels. It's just the way these
15 products are bid.

16 COMMISSIONER OKUN: I appreciate those
17 comments, Mr. Chairman, and I'll have an opportunity
18 to talk to the producers when I come back on my next
19 round.

20 COMMISSIONER LANE: Good morning.

21 Mr. Price, as I understand your answers to
22 Commissioner Okun, we are to consider the effects of
23 the unfairly traded subject imports on the domestic
24 market even though the domestic producers are the ones
25 who are importing those unfairly traded products.

1 MR. PRICE: Absolutely.

2 COMMISSIONER LANE: Could you speak into the
3 microphone a little bit more?

4 MR. PRICE: Absolutely. First of all, the
5 domestic industry does not control the imports. If
6 anyone thinks that --

7 COMMISSIONER LANE: Okay. Let me just ask a
8 question here. Now, as I understand it, you said
9 after the petition was filed, the subject imports, the
10 volume of subject imports, went down.

11 Now, did that go down from the
12 non-petitioning parties also? I mean, from the
13 petitioning parties also.

14 MR. PRICE: The volume of subject imports
15 I think went down fairly dramatically with the
16 exception of activities like two companies, NuCarta
17 and Atico, which tried to rush a lot of volume in the
18 United States.

19 COMMISSIONER LANE: Okay. Okay. Now, the
20 question I asked you was when the volumes went down,
21 did the petitioning parties imports of subject imports
22 also go down?

23 MR. PRICE: Yes.

24 COMMISSIONER LANE: Okay. Now, I'm looking
25 at our staff report and it shows that the volume of

1 subject imports by the petitioning companies over the
2 period of investigation was increasing, including its
3 highest amount in 2005. Am I reading those numbers
4 correctly?

5 MR. PRICE: Yes, you are.

6 COMMISSIONER LANE: Okay. So post-hearing,
7 could you then provide us with what those percentages
8 were in 2006, to the extent that you have those
9 numbers?

10 MR. PRICE: We will be happy to do so and
11 I believe the supplemental questionnaire that the
12 commission staff has issued will in fact contain all
13 that data

14 COMMISSIONER LANE: Okay. Now, as you can
15 tell, we're having a little bit of difficulty with the
16 facts in this case because it is sort of unusual, so
17 the petitioning parties are importing a substantial
18 amount of subject imports. Now, are you importing
19 those at the dumped prices and the subsidized prices?

20 MR. PRICE: The subject imports are dumped
21 and subsidized.

22 COMMISSIONER LANE: Okay. So when you bring
23 those in and put them into your pool of products, do
24 you then take the dumped prices and the subsidized
25 prices and average them with your domestically

1 produced product or do you keep -- how do you deal
2 with that issue?

3 MR. PRICE: My impression is that --
4 actually, you're now touching on some differences
5 among the domestic producers in this regard, as to how
6 they handle those imports. First of all, a lot of the
7 imports are brokered, so-called brokered products, so
8 they never enter the inventory streams of the domestic
9 industry. I'd actually like to get answers from the
10 clients here.

11 COMMISSIONER LANE: I'm sorry, I didn't hear
12 that.

13 MR. MCLACHLAN: This is Neil with
14 MeadWestvaco. For us, the stuff that we bring in from
15 subject countries and bring into our own inventory is
16 very, very small. Most of it is directly imported
17 through our customers and title passes in the Orient.
18 The stuff that's brought in is difficult to separate
19 once it's in our inventory between what we produce and
20 what we don't produce, but we can provide the data
21 that should be able to show that.

22 COMMISSIONER LANE: Mr. Rahn, did you want
23 to say something?

24 MR. RAHN: When we brought an imported item
25 in, whether it was from a subject country or wherever

1 we would bring it into our inventory and it would
2 blend in a cost way. If it were a like item, it would
3 blend with that item in cost.

4 COMMISSIONER LANE: Mr. Robinson?

5 MR. ROBINSON: Top Flight uses similar
6 processes where if we participate in auction where
7 there are domestic producers and subject country
8 producers involved in the bidding and pricing goes
9 down to such a level that we can no longer service
10 those orders with domestically produced goods, then we
11 will, yes, bring in product from outside the country
12 from subject countries because they are the low cost
13 providers and we will bring that merchandise in and we
14 will bring it into inventory.

15 Our system averages the cost, but from a
16 process standpoint, we would ship that product or ship
17 an equal tonnage of product out to that customer that
18 drove us to bring that product in from outside the
19 country.

20 COMMISSIONER LANE: Okay. Thank you.

21 Now, if we vote in the affirmative in this
22 case, will the companies rehire the employees that
23 they've previously laid off and will they attempt to
24 reopen closed factories, continue to plan expansions
25 in the states where you have facilities?

1 MR. ROBINSON: This is one of the glimmers
2 of hope that I referred to in my testimony. From the
3 day my grandfather started the business 85 years ago
4 to the time my father and uncle ran the business to
5 now where my three cousins and 150, 170 employees show
6 up to work every day, in order to produce certain
7 lined goods and other goods for our customers, yes, we
8 have already brought back some of the layoffs that we
9 implemented in late '04 and 2005. We have already
10 brought back some of those people. We continue to be
11 in touch and make jobs available to employees that we
12 laid off. We are anxious for a victory in this case
13 so that we can begin to return to our process of
14 buying new equipment and evaluating new equipment
15 because our financial status may be such that we are
16 capable of doing that. So, yes, we will return to
17 those days.

18 COMMISSIONER LANE: Okay. And I believe
19 that MeadWestvaco also closed six plants and kept two
20 plants remaining. What would your plans be if the
21 commission votes in the affirmative in this case?

22 MR. MCLACHLAN: First, I'd state that we
23 need an affirmative decision in this case in order to
24 prevent further erosion of the two plants that we have
25 today, which are at serious risk due to the nature of

1 the imports that are coming from subject countries.

2 We are, too, seeing a glimmer of hope as
3 George as seen and we are hoping that that can
4 continue, but I can tell you that we have been
5 severely injured. The damage may be permanent. We
6 are hoping that it is not, but it's still there. When
7 we can make money and return to the kind of levels of
8 productivity that we need, we will invest in our
9 factories, but the damage is done, it is still being
10 done and while we have hope for the future that we can
11 continue to reinvest and start to reverse that trend,
12 at the moment, that doesn't appear to be true and
13 we're hoping sincerely for an affirmative vote to help
14 change that tide.

15 COMMISSIONER LANE: If the commission voted
16 in the affirmative, would you foresee that you would
17 discontinue the practice of importing subject imports?

18 MR. RAHN: Hal Rahn with Norcom. I think if
19 you voted in the affirmative it would enable us to
20 improve and increase our domestic productivity. It
21 would enable us to not have to compete with dumped and
22 subsidized products, therefore I think it would be in
23 our best interests not to import those items, but to
24 expand our manufacturing capacity to meet whatever
25 demands continue to arise.

1 COMMISSIONER LANE: Another real quick
2 question. Does the domestic industry have the
3 capacity to fulfill all of the demands that this
4 country has for your product?

5 MR. MCLACHLAN: This is Neil with
6 MeadWestvaco. My answer to that one is we can
7 increase production. We have the ability and, as we
8 said, thankfully it's already picking up due to the
9 preliminary investigation. We can do several things
10 to pick up production even further. We can start
11 earlier in the year. We can put on more shifts. We
12 can go to continuous operations. We can work on
13 continuous schedules. We've been driving productivity
14 gains in every one of our factories and we think we
15 can continue to do that. We can put back in service
16 idled and mothballed machines, so there's a lot of
17 capacity that we can bring back on stream should we
18 have an affirmative ruling.

19 COMMISSIONER LANE: Okay. Thank you.

20 Thank you, Mr. Chairman, for allowing me to
21 go beyond my time.

22 CHAIRMAN PEARSON: Not a problem.

23 Now it's my turn.

24 Are non-subject imports being fairly priced
25 in the U.S. market?

1 Mr. Kaplan?

2 MR. KAPLAN: I can't speak to the context of
3 whether they area in a Department of Commerce sense,
4 but I can say that there has been since the
5 preliminary finding a significant increase in the
6 price of non-subject imports as well as a significant
7 increase in volume of domestic production and some
8 increases in price domestically.

9 Commissioner Lane just left, but I really
10 would call the attention of the commission to the
11 interim data that's just been provided and will be
12 provided on post-petition effects. Of course, the
13 representatives here can't speak to it because it's
14 confidential, they've just seen their own, but as an
15 industry it is striking what has happened on the
16 production side and what has started to happen on the
17 price side and the profit side for an industry as a
18 whole.

19 I also would like to quickly call your
20 attention to 418, I believe that's the market share
21 data, and what you've been hearing from Respondents
22 constantly is percentages increase in this and
23 percentages from Brazil and this went up by this from
24 year to year. Look at the actual market share of
25 Brazil compared to the subject imports. Look what

1 happened between 2004 and 2005. My contention is, and
2 I think I could say this, in terms of size they are
3 not large compared to the others, so the notion that
4 this small volume historically that has actually
5 fallen during the end of the POI is the monster in the
6 closet here is absurd.

7 I want to call your attention to many cases
8 where cases were filed against China and not other
9 countries. In the shrimp case, Mexico was left out.
10 They were bigger than some of the countries filed
11 against. In the apple juice case, Argentina and
12 Hungary were left off. There is example after example
13 of countries which were found to be non-dumping and
14 non-injurious who were left off and rightly so. The
15 countries that were targeted are the ones that are
16 causing the trouble. They have been found to be
17 dumping, they are found to be subsidizing. The
18 post-petition effects demonstrably show that removing
19 them from the United States improves the industry and
20 that the existence of Brazil still in the market has
21 not stopped this improvement.

22 CHAIRMAN PEARSON: Mr. Price?

23 MR. PRICE: Thank you. Let me add two
24 points. One of the items that developed during the
25 course of this case is that there was a company that

1 has no relationship to the Petitioners that took a
2 substantial volume initially of the back to school '06
3 bids to be produced somewhere. Again, I'm going to
4 keep it general for a second.

5 They went out and looked for capacity,
6 couldn't find it, ended up being given back to the
7 domestic industry because the non-subject sources in
8 aggregate don't have the capacity to supply the
9 marketplace and therefore the domestic industry was
10 able to substantially increase production.

11 I also want to go back to a statement from
12 the staff conference and this is a statement from Ned
13 Marshak, who was counsel to the entire joint Chinese
14 industry. He said two things at the staff conference.
15 He said, "Petitioners will be rewarded if this
16 investigation is allowed to continue regardless of the
17 final outcome. U.S. customers will not take the
18 chance of obtaining a favorable final result. They
19 will not place orders for 2006 for sales with China."

20 And that turned out, by the way, not to be
21 entirely true. Nucarta and Atico and CPP, we believe
22 just based on industry knowledge, placed substantial
23 orders in China, some of which they ultimately had to
24 cancel and could not deliver on.

25 They then continue and this is still again

1 Mr. Cameron's theory of the case, as well as
2 Mr. Shor's theory. "Will this decision benefit the
3 domestic production facilities of the Petitioner? We
4 firmly believe that the answer to this critical
5 question will be no."

6 Well, you know what? The facts as they will
7 come will demonstrably disprove that theory and that
8 claim.

9 CHAIRMAN PEARSON: Okay. Well, I don't know
10 that I got a real clear answer to the question of
11 whether non-subject imports are being fairly priced.

12 MR. ROBINSON: This is George from Top
13 Flight.

14 CHAIRMAN PEARSON: Please.

15 MR. ROBINSON: The non-subject countries
16 that are providing product to the U.S., those prices
17 are fairly priced, it's our experience. We can
18 compete specifically against Brazil and against
19 others. We've been doing it for years and we can
20 continue to compete with them and build our business
21 and maintain and build employment and continue as a
22 profitable industry with these market participants.
23 But with the subject countries and their low priced
24 goods, we have found ourselves to be unable to compete
25 and to be unable to maintain and sustain our industry

1 as it has been.

2 MR. PRICE: Let me try to answer again. I'm
3 going to go back to a specific fact and it's going to
4 be confidential, but I mentioned it earlier.

5 Again, you have specific data on back to
6 school '06 bidding and what that data shows, for
7 example, for a major account that claims the U.S.
8 industry somehow or other controls the market, even
9 though it didn't buy from the U.S. industry for '06,
10 is that the non-subject pricing that they could
11 access -- first of all, they had to scurry around the
12 world to actually try to find it, okay? It was at
13 substantially higher prices, so the industry will get
14 higher prices with an order, it can produce more
15 domestically with an order, it is more competitive
16 with an order, and its condition will be significantly
17 better with an order. So are those technically fairly
18 traded prices? That's, again, a technical issue. I
19 think as a statutory basis, you almost have to assume
20 that non-subject prices are fairly traded.

21 CHAIRMAN PEARSON: Right. I understand
22 that.

23 MR. PRICE: But pricing levels at this point
24 have changed because of this case and you can see it's
25 because of this case because they actually had bids

1 from the subject countries and remarkably lower
2 prices.

3 CHAIRMAN PEARSON: In following up on your
4 comments, Mr. Robinson, I was interested in knowing
5 exactly what you had to say. You've had no difficulty
6 competing in the marketplace with non-subject imports,
7 but what I'm trying to understand, then, is why over
8 the period of review or period of investigation have
9 we seen those imports gain market share and
10 particularly in the context in which we have not seen
11 an increase in market share from subject imports from
12 either India or Indonesia?

13 What I'm seeing on the record here is that
14 the imports against which you can compete effectively
15 are rising, the imports that are unfairly priced have
16 had a declining market share. Could you comment on
17 that, please?

18 MR. KAPLAN: The data is confidential in
19 terms of shares, but I refer to page 418 and to look
20 at the quantity share and value shares from the three
21 subject countries and I think what it shows is there's
22 been significant increases of the combined imports
23 from the three subject countries. I can't reveal the
24 exact numbers, but they're large. If you look at
25 Brazil, relative to what happened for those three

1 countries, I would say not much is going on and the
2 trend is not consistent for three years, so I think
3 that speaks to what's happened with the pricing of the
4 subject product relative to the Brazilian product that
5 has been talked about so much in the Respondents'
6 briefs.

7 CHAIRMAN PEARSON: But you will note if you
8 look at the value at the bottom of the chart, you've
9 got Brazil accounting for twice as much value as India
10 and Indonesia put together and earlier you had tried
11 to downplay the role of Brazil in the market and place
12 more emphasis of subject imports and as I look at two
13 of the subject importers I'm having a hard time
14 reaching the conclusion that I thought you were.

15 MR. KAPLAN: Well, in an injury context, you
16 cumulate the subject imports and those are the ones
17 that are causing trouble and I'll refer you, for
18 example, to the shrimp case or something where Mexico
19 is left out. You could look at their share and
20 there's guys smaller than them that were kept in.
21 They were kept in and cumulated because they were bad
22 players in terms of the pricing and their market
23 behavior along with larger players and there was a
24 player in between who, you know, might have picked up
25 some share but wasn't considered injurious and wasn't

1 considered an unfair competitor by the participants.

2 CHAIRMAN PEARSON: My time has expired, so
3 let me turn now to Vice Chairman Aranoff.

4 VICE CHAIRMAN ARANOFF: Thank you,
5 Mr. Chairman.

6 I want to join my colleagues in welcoming
7 you all here this morning. I appreciate the time that
8 you are spending with us.

9 I want to turn back to some questions about
10 capacity that Commissioner Lane had begun asking when
11 she ran out of time.

12 Looking at our staff report, it indicates
13 that apparent consumption has exceeded the capacity of
14 the U.S. industry throughout the period of
15 investigation, even before all of the recent closures
16 which have been discussed at length this morning.

17 Mr. Price, do you agree that that is a
18 correct assessment? Or whoever would like to answer.

19 MR. BRIGHTBILL: I'll answer. Tim
20 Brightbill, Wiley Rein. It's true that there is some
21 gap there. It's also true that the capacity
22 utilization levels that you have are unusually low and
23 there's an awful lot that could be done to narrow that
24 shortfall between everything the domestic industry
25 could produce.

1 VICE CHAIRMAN ARANOFF: Okay. Mr. Price?

2 MR. PRICE: And I would add that there are a
3 whole host of cases out there where the fact that
4 domestic capacity can't fill entirely domestic demand
5 has no relationship to whether or not there is an
6 affirmative determination at the commission. What
7 we're talking about is the impact of dumped and
8 subsidized goods on the market and how that drives the
9 market in its entirety.

10 VICE CHAIRMAN ARANOFF: I don't disagree
11 with you on the legal point. I'm just trying to make
12 sure I have a full understanding of the facts.

13 We had some testimony and I wasn't paying
14 attention to which witness it was who said this
15 earlier in response to Commissioner Lane who had
16 indicated some of the things that the domestic
17 industry would be able to do to increase production in
18 the event that relief were granted in this case and
19 I just wanted to follow up on some of those.

20 The one in particular that struck me was the
21 comment that the industry could start producing
22 earlier in the year and I had a few questions about
23 that. My understanding, and I'd like the industry
24 witnesses to correct me if I'm wrong, is that you
25 don't start producing anything for back to school

1 until the bid process is complete, that you don't
2 produce this stuff for inventory and risk having to
3 hold onto it if you don't win the bids. Is that
4 correction?

5 MR. RAHN: Hal Rahn with Norcom. That's not
6 correct. I think a prime example would be after the
7 initial filing of the case we began producing for this
8 back to school season in the fall of '05 and between
9 the fall of '05 and '06, where we are today, we
10 utilized a full fall production schedule. The case
11 filing enabled us to do that and we actually were able
12 to increase our output by over 40 percent which is a
13 large number, somewhere around 40 million pounds of
14 paper that we were actually able to domestically
15 produce that we would not have produced if it were not
16 for having the successful first phase of this case.
17 So we do run in the fall and we do operate.

18 VICE CHAIRMAN ARANOFF: I understand that
19 you may have done that once this petition was filed.
20 Would you describe that as -- I don't know what year
21 to look back to for what you would describe as normal
22 operation in this industry, but what would you
23 describe as your normal practice in terms of the
24 percentage of your production that you would do in
25 advance of completing the bid process for back to

1 school in a particular year?

2 MR. RAHN: I think probably the best way to
3 describe it is during the fall we may run five days a
4 week, three shifts, and then during January through
5 July we would run seven days a week, three shifts. So
6 we're really utilizing our plant and our equipment
7 fairly substantially.

8 VICE CHAIRMAN ARANOFF: So you are in fact
9 taking on the inventory holding costs and the risk of
10 not selling all the product that you make in advance?

11 MR. RAHN: Well, we typically have some sort
12 of commitment from a customer when we do that, but we
13 are in fact taking in on all the inventory management
14 of it and it's part of the domestic industry that we
15 hold inventory for extensive periods of time. It's
16 what we do. It's not what we like, but it's what we
17 do.

18 VICE CHAIRMAN ARANOFF: Okay. Let me just
19 make sure I understand you and I know, Mr. Robinson,
20 you want to chime in, too. You told me first, yes,
21 you produce in advance of winning specific bids and
22 now you've told me, well, but we have some
23 understanding with our customers.

24 MR. RAHN: Sure.

25 VICE CHAIRMAN ARANOFF: Could you just help

1 me, what's the difference between a bid and an
2 understanding? How definite does an understanding
3 have to be and when do you get that understanding
4 relative to when you bid?

5 MR. RAHN: That's very fair. We have some
6 relationships with certain of our customers that would
7 be proprietary, that would commit certain volumes and
8 we would be comfortable we would be getting certain
9 volumes from that customer and that they would want
10 and need our full capacity to be produced. So it's
11 more experience in working directly with certain
12 accounts that enable us to do that. And I don't know
13 that that's the same for the other guys, but it's how
14 we operate.

15 VICE CHAIRMAN ARANOFF: Okay. Mr. Robinson,
16 did you want to speak on this?

17 MR. ROBINSON: Perhaps it would be
18 helpful -- this is George with Top Flight -- it would
19 be helpful if we describe maybe standard industry
20 activities that are on a calendar year basis.

21 As back to school concludes this year, there
22 will be several trade shows that take place starting
23 in September. At those trade shows you will have,
24 I believe, every retailer here will be at one of those
25 three trade shows, if not all three trade shows. We

1 will sit down and discuss with them pricing, product
2 and new products and they will inform us as to what
3 their processes are for the next year and what their
4 time lines are.

5 We will return from the first show and sit
6 down and make a forecast for the year. This is the
7 way my company operates. We will make a forecast for
8 the year. That forecast, of course, downloaded into a
9 production model and we will suggest that this is what
10 we plan to sell. Then we will enter into the bid
11 process.

12 The bid process is really a variety of
13 methods. We have the on-line reverse auction. We
14 have the hotel room shoot-out and that's one that a
15 lot of people don't understand so I'd like to describe
16 that for a moment.

17 In one hotel room you may have Hal and his
18 people and in another you may have Neil and his people
19 and we may be in another hotel room. Then you'll have
20 representatives from India, representatives from
21 Indonesia, representatives from China, from the
22 producers in subject countries. And you'll have other
23 producers also in other rooms. And the buyers will go
24 from room to room, having provided what they intend to
25 buy, and they say, "We intend to buy \$6 million worth

1 of goods," and they'll give you a general plan, what
2 their buy plan is. And they will walk from room to
3 room and inform you at some point that you are either
4 in the bid still or you are \$1 million high.

5 So when I start with domestic production in
6 today's world where prior to your temporary orders, we
7 would be told more often than I really care to think
8 about that we're \$1 million high, that we're \$1.5
9 million high, that you can't possibly think that we
10 can do business this way, so either reduce your price
11 or you're dismissed.

12 And so we returned from bidding practices
13 like this, when the low priced vendors and the low
14 priced producers from India, Indonesia and China had
15 driven price levels down, we will return back to the
16 factory and forecast, add to our forecast speculative
17 volume that we think we might sell. And in that case,
18 we will then begin to produce.

19 Now, the way that we can improve capacity if
20 the orders go in place are as were described. It's
21 with additional hours and we will run -- what Top
22 Flight will do is run business that we are fairly
23 certain we will have. We will run all the everyday,
24 core stock business. We have certain customers that
25 you know will buy stock goods and so you run those

1 with confidence. And what you do is you try to clear
2 the way and reserve time for the bids, for the bid
3 volume, and you do that on an educated guess. How
4 much inventory you have left over at the end of the
5 year, how much machine time you've utilized and how
6 much unnecessary overtime you may pay has to do with
7 how well you operate and how well you forecast your
8 demand.

9 MR. MCLACHLAN: Commissioner, I'd like to
10 just add something because I think I was the person
11 that commented that started this conversation.

12 VICE CHAIRMAN ARANOFF: Sure. Please go
13 ahead, but my yellow light is on, so please be brief.

14 MR. MCLACHLAN: I will be very brief. We
15 used to have safe items, as George has talked about,
16 that we could run ahead. We don't have as many of
17 those because of the dumped product that we're seeing
18 in our marketplace, so it's been harder and harder to
19 run ahead. We do have that capacity, we can increase
20 our capacity by running earlier, by bringing machines
21 on earlier, and by running extra shifts earlier than
22 we have before. And that would only get us back to
23 the kind of situation we were a few years ago.

24 VICE CHAIRMAN ARANOFF: Okay. Thank you,
25 all of you. That was really helpful. Anything that

1 you can add in your post-hearing about the time line
2 for the individual companies of when you produce, both
3 for back to school and also how you work production
4 for other sales that you make at other times of the
5 year, that would be really helpful. Thank you very
6 much.

7 Thank you, Mr. Chairman.

8 CHAIRMAN PEARSON: Commissioner Hillman?

9 COMMISSIONER HILLMAN: Thank you.

10 If I could just follow on with one little
11 additional follow-up, just so I understand it. We
12 have obviously capacity utilization in our staff
13 report that would indicate relatively low levels of
14 capacity utilization and yet from what I just heard
15 from you, Mr. Rahn, it sounds like there are at least
16 periods of time when you are operating at full
17 capacity. Just so I understand it from the companies
18 here, in preparation for back to school, would you
19 describe yourselves as operating at full capacity and
20 then during other times it goes down?

21 I'm trying to understand how to read the
22 numbers that we have.

23 MR. RAHN: Sure. Hal Rahn with Norcom.

24 I think I'm speaking specifically from a Norcom
25 perspective and in '05-'06, we had a measure level of

1 utilization increase as a result of the case. I don't
2 know that that's the case in terms of capacity for the
3 other guys, but for us we used a lot of our capacity,
4 not all of our capacity, during that timeframe.

5 COMMISSIONER HILLMAN: And what stopped you
6 from going to using all of your capacity?

7 MR. RAHN: Merely labor management in our
8 plant, just making decisions that we had the right
9 number of people to run five days a week as opposed to
10 how we would eventually move to a seven-day-a-week
11 schedule as we generally turn into the new year.

12 COMMISSIONER HILLMAN: Others? How would
13 you describe it? Are there periods of time when you
14 are operating at full capacity?

15 MR. MCLACHLAN: There are very short periods
16 of time when we might find a particular machine group
17 or a particular product type at capacity, but at very
18 short periods and it's becoming shorter and shorter.
19 We used to run busy for a lot longer than we do now
20 and our busy period has been diminished and it really
21 is only down to last minute fill-in requests and we
22 try to open up as much capacity as we can by running
23 some of those safe things early, but we can't predict
24 that and it's becoming less predictable because of the
25 situation.

1 COMMISSIONER HILLMAN: Okay. And the
2 restraint on running at fuller capacity levels is
3 orders or is it labor, raw materials?

4 MR. MCLACHLAN: Machine capacity
5 occasionally peaks for us. We are at pretty good
6 machine utilization on certain product lines, not all.
7 We can use alternative processes, we have all the
8 machines that we could start back up in order to get
9 more capacity, we haven't brought those on line
10 because we've seen the diminish amount of business
11 that we have. So we could have un-mothballed those,
12 had those available to catch the peak demands and
13 those little vibrations you get when people reorder
14 stuff that they didn't expect or forecasted as well as
15 we could have.

16 COMMISSIONER HILLMAN: Mr. Robinson?

17 MR. ROBINSON: The only restraint that we
18 have in our factory is on the orders that we get and
19 the pricing that we get on those orders. We are
20 producing to the orders that we can get with the
21 pricing that we're able to produce out of our factory.

22 COMMISSIONER HILLMAN: I appreciate that.

23 Ms. Hart?

24 MS. HART: I'm probably stating the obvious,
25 but when we talk about capacity, of course, we're

1 talking about our workers who are sitting idle and
2 waiting to meet their capacity, so I just wanted to
3 bring that point up. Thank you.

4 COMMISSIONER HILLMAN: I very much
5 appreciate that. Thank you.

6 If I can go back to the issue that I was
7 asking about in my original round of questions, trying
8 to understand why and when you make the decision to
9 import as opposed to produce domestically, when from
10 the data we have, you're making money on your domestic
11 production and you're losing money on your imports.
12 Is it a product mix issue? Can you help me
13 understand, is there a shift in producing the spiral
14 notebooks versus the composition books versus the
15 filler paper? Is there one that you tend to be
16 purchasing more imports of and others that you are
17 continuing to produce domestically? I just want to
18 make sure I understand whether there's any product
19 shifting in terms of what you produce where.

20 MR. ROBINSON: George with Top Flight.
21 I believe that we have made clear that our role in
22 bringing merchandise in from subject countries has
23 been one of little choice and so when we bring this
24 product in the price is well known by the customer.
25 We are merely managing some details for them to get

1 the product that they're looking for and the price
2 that they're looking for from subject countries.

3 COMMISSIONER HILLMAN: Just so I understand,
4 you're not in any way mixing -- in other words, you're
5 getting the spiral notebooks and the composition books
6 overseas and mixing it with your filler paper to
7 average out a price for a package or is everything --
8 again, I'm trying to make sure I understand -- do each
9 of these producers want to buy the whole package of
10 what they need, all of these things, from one place or
11 are they going to you for notebooks and somebody else
12 for filler paper and somebody else for composition
13 books?

14 MR. ROBINSON: It varies. It varies by
15 retailer as to how they choose to do it, but the
16 predominant issue here is price and the retailers will
17 accommodate the low price. And so what we will do is
18 we will try to find -- once the prices get below
19 profitable U.S. production, we will go to find the
20 items that the retailer asks us to go find and what
21 generally happens to the industry is that the
22 predominant items are the 70 count notebooks, the
23 marble composition books, the loss leaders, the items
24 that you see advertised for 9 cents on the front cover
25 of the Staples ad last Sunday, those are the items

1 that they first go for and that are the predominant
2 unit movement items in the industry. And so the
3 retailer will go to those items because those are the
4 items that are most important to them and the retailer
5 goes to those items of the subject countries because
6 they are the low cost producers and they are the ones
7 that are harming the domestic industry.

8 COMMISSIONER HILLMAN: Okay. And typically
9 the bid, are the bids for each individual item that
10 they might want, if they want, say, ten different
11 items?

12 MR. ROBINSON: Yes, ma'am. Yes, ma'am.

13 COMMISSIONER HILLMAN: A 500 filler pack, a
14 250 filler pack?

15 MR. ROBINSON: Yes, ma'am.

16 COMMISSIONER HILLMAN: They bid each single
17 item separately? It's not a package where you can
18 offset prices from one product to another product and
19 give them a package bid?

20 MR. ROBINSON: It varies by retailer, but
21 generally whatever system is put in place, it is put
22 in place to highlight the price and to highlight the
23 low price and to give the retailers the best
24 opportunity in their mind to access the lowest
25 possible cost. And by lowest possible cost, during

1 this period of investigation, too much has been from
2 the subject countries providing this dumped and
3 subsidized product. They've been winning the bids.

4 COMMISSIONER HILLMAN: Each individual item,
5 bid separately?

6 MR. ROBINSON: Each retailer does it
7 separately. Most -- I would say the large majority of
8 the auctions and their bids are for individual -- have
9 individual SKU listings and individual items quoted,
10 so you are quoting an individual item versus quoting a
11 big bundle. So that's how most of them do business,
12 yes.

13 COMMISSIONER HILLMAN: Okay.

14 MR. ROBINSON: As individual items.

15 COMMISSIONER HILLMAN: Okay.

16 MR. ROBINSON: That's my experience. Hal's
17 and Neil's may be different.

18 COMMISSIONER HILLMAN: Mr. McLachlan?

19 MR. MCLACHLAN: You asked a question about
20 shifting a product, would they shift between domestic
21 and overseas. All of these products are available
22 overseas and all of them can be made in the United
23 States and for us the only ones that we have shifted
24 there are comp books and we've shut down our high
25 tech, high production line in Blair because we were

1 losing money on every single book and we've gone to
2 importing those. Other than that, every product is
3 available in both the overseas markets as well as
4 here.

5 COMMISSIONER HILLMAN: Mr. Robinson, is
6 there anything you want to add?

7 I appreciate those answers.

8 Next, I just want to make sure I understand
9 from everyone's perspective the issue of how you think
10 we ought to best look at pricing. The commission has
11 struggled for some time as we started to see more and
12 more cases in retail ready products where we have
13 retailers acting as direct importers. It always
14 raises this issue of what's a fair price comparison,
15 given the differing levels of trade that occur. We're
16 not seeing as many imports through distribution in a
17 way that you would see in other types of products.
18 We're seeing direct imports by retailers, always
19 begging the question of is that a fair comparison to
20 compare with the pricing data in the way that the
21 commission normally looks at it. We also, obviously,
22 here have bid data, we have pricing data on the
23 domestic industry's imports, we have data on
24 non-domestic industry imports, we have sliced the data
25 many ways.

1 I want to hear your answer for what is the
2 most appropriate data for us to look at and why and is
3 there any precedent you would point us to in why that
4 is the most appropriate price data to look at.

5 I see you looking at Dr. Kaplan.

6 MR. PRICE: In general, at this point,
7 probably the most reliable data set or the most usable
8 data set is the normal importer data set. You have
9 bid --

10 COMMISSIONER HILLMAN: You mean the data in
11 Chapter 5 of our staff report?

12 MR. PRICE: Right. Okay. Now, you have --
13 let me continue. There are still corrections being
14 done in that --

15 COMMISSIONER HILLMAN: I understand that.

16 MR. PRICE: The bid data, we can look at the
17 bid data and tell you in specific instances they're
18 not putting in all the bids, they're not putting in
19 all the negotiations, so there are some issues in the
20 bid data set, but you can see a lot of direct
21 competition going on.

22 On the issue of direct import data, one of
23 the things the commission staff did, I believe, or one
24 of the things that's collected in that, again, there
25 were problems because a lot of the retailers did not

1 put in usable data necessarily or they didn't put in
2 data at all and so there are vast gaps in that.

3 There are also some problems there that
4 relate to the fact that the price requested was the
5 price delivered to the first point of distribution.
6 Well, we shipped to that distribution, but you're
7 collecting our FOB plant prices, so that's not
8 really -- there's an unintentional bias in that
9 calculation.

10 So what we believe is that the general
11 pricing data set is the most indicative that there is
12 substantial underselling, but that it underestimates
13 it, underreports the underselling given the gaps in
14 the record here.

15 COMMISSIONER HILLMAN: All right.

16 I appreciate those responses.

17 Thank you, Mr. Chairman.

18 CHAIRMAN PEARSON: Commissioner Koplan?

19 COMMISSIONER KOPLAN: Thank you,

20 Mr. Chairman.

21 I want to come back, if I could, for a
22 moment to touch on what I asked for at the end of my
23 first round and that was for data regarding capacity,
24 capacity utilization and pricing data over the POI for
25 imports from non-subject countries, such as Brazil,

1 Canada and Mexico and I indicated that that would be
2 important to me in my analysis. I just wanted to
3 expand a little bit on the reason for that.

4 I note that the Kaye Scholer brief at page
5 28 states as follows: "The data for 2006 confirm the
6 degree to which non-subject imports have and will
7 simply replace imports from subject countries." And
8 they say "As shown in Table 7, subject imports have
9 declined overall because large declines in subject
10 imports from India and Indonesia have offset a modest
11 increase in imports from China. Over the same period,
12 imports from Brazil, many of which we believe to be
13 controlled by Petitioners, have increased by 286
14 percent, 28 million units."

15 And they then cite in a footnote to Bratsk,
16 444, F.3d, 1569 and discussion infra.

17 Well, yesterday, the Federal Circuit, their
18 disposition sheet which appears on their website,
19 reported that the petitions for rehearing en banc in
20 Bratsk were denied. I don't necessarily agree with
21 that result, obviously, but this is something that
22 I need to deal with and that's why I am asking for
23 that information. I don't believe that your brief
24 dealt with that decision of the Federal Circuit, but
25 with this latest development, and I don't know whether

1 there will be something in the form of opinion, but
2 I do know that the petitions were denied, so that is
3 what I'm faced with and that's why I need to get as
4 much information as I can.

5 Any comment you want to make on that at this
6 moment?

7 MR. PRICE: I appreciate that and we will
8 provide that information.

9 COMMISSIONER KOPLAN: You understand the
10 need?

11 MR. PRICE: I absolutely understand the
12 need. Let me come back to two very specific facts. In
13 this case, what we are telling you is that you have
14 evidence that in fact domestic production will have
15 increased as a result of these preliminary orders, so
16 that's critical. Two, we will show you that there are
17 limitations in non-subject capacity and while some
18 orders that were placed offshore originally ended up
19 falling back to the domestic industry because there
20 isn't this infinite capacity available in the
21 alternative and, finally, again, the party who
22 presented many of those arguments, their own data
23 shows that we don't control Brazil, by the way, it's
24 kind of interesting, kind of a bizarre argument that
25 we control Brazil when we don't control Brazil by the

1 evidence of their own purchasing pattern, but you
2 should look at the evidence of pricing from Brazil
3 from the non-subject versus subject sources and
4 there's no question here that subject sources have
5 lower prices than the non-subject sources out there.

6 COMMISSIONER KOPLAN: I assure you I'll be
7 looking at all the data I have and I look forward, as
8 I say, to whatever I get from Mr. Cameron and the
9 others on the Respondents' side as well on this issue,
10 but what I'm looking for here is data.

11 MR. BRIGHTBILL: Commissioner Koplan, just
12 two quick points. Tim Brightbill, Wiley Rein. The
13 percentage increase cited by Respondents from Brazil
14 is a large percentage increase because the absolute
15 number was so small to begin with, but the 2006 data
16 that you requested will show that any increase from
17 Brazil pales in comparison to the increase in domestic
18 production.

19 And then with regard to the Bratsk case, to
20 the extent you have to implement that now, what does
21 Bratsk say? You have to show somehow that there will
22 be benefit to the domestic industry and that subject
23 imports won't simply be replaced by non-subject
24 imports. You have the perfect data to show that with
25 the 2006 data that you're obtaining, so that's how --

1 if you're forced to implement Bratsk, that's how you
2 can do it.

3 COMMISSIONER KOPLAN: That's what I need for
4 you to cover in your post-hearing, then.

5 MR. BRIGHTBILL: We will do it.

6 COMMISSIONER KOPLAN: I don't have that
7 right now.

8 Go ahead, Mr. Kaplan.

9 Do you understand what I'm saying, though,
10 Mr. Brightbill?

11 MR. BRIGHTBILL: Yes, we do. And we'll
12 provide it.

13 COMMISSIONER KOPLAN: Okay. Good.

14 MR. KAPLAN: I just want to note, I'm sure
15 you have already, the tension between Respondents'
16 argument that it's a world market with an infinitely
17 elastic supply curve and some world price coming in
18 and the grand conspiracy theory of us controlling
19 everything from China, manipulating a trade case, then
20 controlling everything from Brazil. The two are
21 impossible to coexist together. They are utterly
22 contradictory. One talks about a market structure
23 that's perfectly competitive and infinitely elastic
24 import supply curves; the other talks about a market
25 structure where there's market power and control by

1 producers. And so page 1 is one story and page 2 is
2 another story and throw this up against the wall and
3 throw that up against the wall and see what sticks.

4 There's maybe a brief that's consistent on
5 their side. The other ones are internally
6 inconsistent and jointly inconsistent on this very
7 fundamental issue that has to do with Bratsk and their
8 whole case theory. I just want to point out the
9 obvious tension.

10 COMMISSIONER KOPLAN: Thank you. Thank you.
11 I do look forward to receiving data from both sides
12 for purposes of the post-hearing on this issue.

13 Mr. Robinson, Mr. Rahn and Mr. McLachlan, on
14 page 1 of Target's brief, they state, and I quote,
15 "The industry remained profitable throughout the POI,
16 although operating income declined. The entire
17 decline in the operating income margin, however,
18 preceded the only year of the POI, 2005, in which
19 subject imports increased substantially and which
20 accounted for virtually all of the net increase in
21 subject import volume and market share."

22 Could you respond to that?

23 Mr. McLachlan, do you want to start?

24 MR. MCLACHLAN: I'm not quite sure of the
25 question. Can you clarify what you'd like us to

1 respond to?

2 COMMISSIONER KOPLAN: I'll read this quote
3 again. They're stating that the industry remained
4 profitable during the period of investigation,
5 throughout the period of investigation, although
6 operating income declined; but the entire decline in
7 the operating income margin, though, preceded, came
8 before, the only year of the period of investigation,
9 that year 2005, in which the subject imports increased
10 substantially and which accounted for virtually all of
11 the net increase in subject import volume and market
12 share.

13 Mr. Price?

14 MR. PRICE: There is confidential data --

15 COMMISSIONER KOPLAN: Would you rather do it
16 post-hearing?

17 MR. PRICE: I don't understand how it adds
18 necessarily. I'd like to do it post-hearing.

19 COMMISSIONER KOPLAN: Absolutely.

20 MR. PRICE: I will say gross profits went
21 down consistently, operating profits, actual dollars,
22 went down consistently. The marginal change in the
23 percentage is essentially a function of layoff, body
24 count, plant closure. It's still injury.

25 COMMISSIONER KOPLAN: Thank you. I look

1 forward to what you can provide post-hearing on it as
2 well.

3 Let me stay with you, if I could, Mr. Price.

4 At page 13 of your brief, much of which is
5 bracketed, you make an argument concerning a new
6 importer formed after the filing of the petition and
7 you reference their questionnaire 3B-1 at 16, but when
8 I looked at that portion of their questionnaire to
9 which you refer us, I didn't find that it shed any
10 light on this and I couldn't find any information
11 elsewhere in the record that confirms what you're
12 arguing. On the contrary, Table 5-9 at page 5-45 of
13 our staff report seems to refute it.

14 In your post-hearing submission, could you
15 please provide information to support your position on
16 that?

17 MR. PRICE: Absolutely. Obviously, I can't
18 talk about the --

19 COMMISSIONER KOPLAN: No, I know that.
20 I know that.

21 Let me, if I can, get this one in. Staying
22 with you, on pages 67 and 69 of your brief, you
23 discuss alleged subsidies provided by the government
24 of China, but there is no CVD investigation before the
25 commission regarding subject imports from China nor

1 can there be. I'm not clear on what the legal
2 relevance would be of that particular discussion. Can
3 you tell me --

4 MR. PRICE: I think it's certainly relevant
5 as a general condition of the Chinese competitive
6 market. I don't think it is a statement that there
7 can be a countervailing duty case at this point.

8 Mr. McLachlan, for example, testified about
9 being in China and literally being offered a free
10 plant by the local party officials if he would
11 transfer his production operation to China.

12 Do you have anything else to say?

13 MR. MCLACHLAN: This is Neil McLachlan.
14 I'll talk a little bit more about that trip that led
15 us to believe that there were significant subsidies by
16 the government or local agencies going on.

17 We happened to be in a plant that was
18 producing some of the subject product. There was
19 another new factory next door that was doing some
20 storage for it and they were getting ready to start up
21 new capacity. This was in February of '05. The owner
22 took us across the street to five new factories being
23 built. All of them were under roof, all but one of
24 them had the floor poured. Two of them were directly
25 aimed at the U.S. Proudly he said these are for U.S.

1 capacity. The next one was for Europe, the next one
2 was for Asia and the last one was to make boxes for
3 that facility. So there were seven plants in that
4 area, all new within that year, and mostly directed
5 right at our market and the European and Asian ones
6 could be easily converted to come after U.S. product.

7 He was desperate for volume. He asked us to
8 give him more orders. He asked us to switch our
9 production from the U.S. to his factory so that he
10 could not lose these factories. He was in a state of
11 agitation over the fact that if he didn't get
12 production started he would have to repay loans that
13 he had gotten from the government or from other folks
14 in the area. He would have to give back the land that
15 had been granted to him and forfeit the factories.

16 COMMISSIONER KOPLAN: Thank you.

17 If you would indulge me just for one second,
18 Mr. Chairman?

19 CHAIRMAN PEARSON: Certainly.

20 COMMISSIONER KOPLAN: Before I give up the
21 microphone, I just wanted to also welcome Ms. Hart.
22 I know this is your first appearance before us, but
23 you are well known to me because, as you know, I'm an
24 alumnus of the AFL-CIO, so it's not the first time
25 I have run into you and I also want to greet those

1 Steel Workers who are here today and attending the
2 hearing. I very much appreciate your coming.

3 Thank you for that, Mr. Chairman.

4 CHAIRMAN PEARSON: Commissioner Okun?

5 COMMISSIONER OKUN: Thank you, Mr. Chairman.

6 I enjoyed hearing all your answers thus far.

7 I want to talk with the producers a little
8 bit more about how we evaluate impact and Ms. Hart may
9 want to join on this one as well.

10 In our preliminary determination and going
11 through the indicia of injury and impact and you've
12 gone through several and today we talked about the
13 number of production workers decreasing, the number of
14 workers, the hours worked decreasing. A lot of those
15 numbers changed significantly or declined
16 significantly in 2005. One of the things we noted in
17 footnote 213 of our preliminary review is that we
18 wanted to explore further the information with regard
19 to MeadWestvaco and the decisions to close down plants
20 and the timing of those and how it relates to this
21 impact.

22 Mr. McLachlan, I wanted to have a chance to
23 ask you that here. There may be information that you
24 would prefer to put in post-hearing, but I did want to
25 get some information from you on how we evaluate

1 whether the decisions made earlier in the period of
2 review, how we take those into account in looking at
3 the numbers of workers, et cetera, since it's an
4 important part of it.

5 MR. MCLACHLAN: That was a lot of --

6 COMMISSIONER OKUN: I know. I'm sorry. The
7 short question is why you made decisions to move, the
8 NAFTA sort of thing and others, and how we should look
9 at that, whether it was due to subject imports or
10 whether even if there's an order in place you would
11 see these numbers down because of business decisions
12 that were not related to subject imports.

13 MR. MCLACHLAN: No, the subject imports were
14 the ones that created the pressure on our factories in
15 Garland and also in St. Joe. We took the decision to
16 cut our overhead and try to compete, get our costs
17 down to where we thought we could retain some of the
18 subject import business. It was driven solely by
19 those dumped and subsidized products.

20 We're trying to streamline our operation.
21 We're trying to get to the point where we can service
22 our customers at those kind of low prices. We moved
23 machinery around. We moved machinery into our Blair
24 plant to hang onto some of the capacity that we hoped
25 we could recapture by streamlining those operations.

1 We originally envisioned moving some machinery into
2 our Mexican facility which is in our public
3 statements. That Mexican facility, Nuevo Laredo, is
4 closed. We had taken some machines that had been
5 exporting product into Mexico, decided to put it into
6 domestic Mexican product that wasn't coming back into
7 the United States, but before we could even make that
8 move the situation got even worse in Mexico due to
9 imports. And so we ended up closing our Nuevo Laredo
10 facility as well.

11 MR. PRICE: I just want to add for the
12 factual record, with regard to the Garland, Texas
13 plant the TAA application which I believe was
14 furnished for that plant in the post-conference brief
15 clearly shows that that was granted based upon Chinese
16 imports into the United States.

17 COMMISSIONER OKUN: I guess the only
18 question for you to comment further, though, is just
19 some of what we were citing from the post-hearing and
20 again being raised by Respondents in their briefs for
21 this hearing is that timing-wise, the big increase in
22 subject imports doesn't match up with that and that's
23 what I wanted to get a sense of, whether we should
24 just be looking at the absolute numbers of imports or
25 if there was something else you could point us to that

1 was going on for MeadWestvaco that we could look at.
2 Perhaps what you're saying is the TAA application
3 citing it is what you would look to, but I wondered if
4 there was anything else.

5 MR. MCLACHLAN: You're asking about the
6 timing?

7 COMMISSIONER OKUN: The timing, right.

8 MR. MCLACHLAN: We tend to time the closures
9 after our back to school. It's when things get
10 lowest, activity is lower, and so it's an easier
11 transition for both our employees and for the
12 facilities themselves. They are clearly driven by
13 pricing that was decided almost a year ahead as we
14 were in those bid processes and we were hoping for
15 things like fill-in orders and new business to try and
16 capture and keep those plants going. It became very
17 evident after that shipping season that we weren't
18 going to be able to do that because of the prices of
19 the imports.

20 COMMISSIONER OKUN: Okay. Mr. Price,
21 anything further?

22 MR. PRICE: One of the things I've learned
23 in conversations with the various domestic producers
24 is in discussions with retailers who are sitting here
25 now in July, they're starting to hear from retailers

1 what they think pricing levels are going to be,
2 et cetera, for the next year. So the industry has a
3 feel for where things are going to go and whether or
4 not they can competitively compete going forward based
5 upon what the retailers are telling them from their
6 domestic operations.

7 COMMISSIONER OKUN: What are you hearing
8 right now?

9 MR. PRICE: I think we have three
10 competitors here --

11 COMMISSIONER OKUN: Okay. For post-hearing,
12 tell me what you're hearing.

13 And I do think, actually, I think that is
14 important and I think it follows up on some of the
15 questions that Commissioner Koplan had asked.
16 Obviously, you've put a lot of weight on the
17 post-petition data as evidence of why in the absence
18 of unfairly priced imports the domestic industry would
19 have better numbers and would, as you've testified to
20 in response to other questions, increase its
21 production.

22 One question I have about that, because it
23 was raised by Respondents, is because of the timing of
24 the petition and where you were in the bidding
25 process, what would one expect with an order in place?

1 In other words, is it a short-term phenomenon that the
2 domestic industry was able to reap benefits, as you
3 said, because all the retailers would have been in a
4 hard position to go out and get anything else other
5 than domestic product? I think that's the way it's
6 been argued.

7 I think you, Mr. Price, had noted that maybe
8 someone had bid, there was a particular bid where
9 someone was going to quote for non-subject and they
10 couldn't get it. My question is if that's the case,
11 would that continue?

12 And I have a Bratsk related question about
13 that, but I just wanted to make sure I understood what
14 you think. Was it the timing of when the petition was
15 filed that gave what you would say was a big benefit
16 to the domestic industry?

17 MR. KAPLAN: I think the evidence on the
18 record to this point shows an effect. My discussions
19 individually and privately with each of the producers
20 says they expect a continued effect, given what they
21 know about various pricing and capacity issues and
22 other potential suppliers. The response of Brazilian
23 prices and prices in the U.S. market seem to confirm
24 that.

25 To the extent that there are a round of

1 dumped prices coming from other non-subject suppliers
2 at this point, the commission is well aware that
3 sometimes cases are filed in series if that occurs, so
4 the fact that there's potential dumped imports from
5 people that are not bringing in imports, could file a
6 case now if that were to happen, shouldn't prevent the
7 commission from reaching an affirmative finding here,
8 seeing the post-petition effect, positive quantity
9 effects, positive price effects, no evidence that
10 imports will come in at dumped prices from somewhere
11 else and recognize that if they do and they harm the
12 domestic industry, the domestic industry could go back
13 to offset and try to remediate the effect of dumped
14 imports. So the evidence is all one way at this
15 point, I guess is my main point.

16 MR. PRICE: I would add one thing, that in
17 the context of a threat, you are cautioned by Congress
18 not to engage in conjecture and speculation. At a
19 certain point, the Respondents are asking you to
20 speculate and how far out are they asking you to
21 speculate? So you have actual evidence of significant
22 post-petition effects here and it's fair to say that
23 our conversations with the domestic producers indicate
24 that they anticipate that they will receive additional
25 benefit from this case going forward that are

1 substantial.

2 CHAIRMAN PEARSON: I wanted to ask a couple
3 of follow-up questions related to Bratsk and Gerald
4 Metals. First, and obviously I know you're going to
5 do a lot of this for post-hearing -- I have a yellow
6 light, but just on the brief points, commodity product
7 here? Yes or no?

8 MR. PRICE: First of all, there are elements
9 of this product that are called commodity by the
10 industry and large chunks of it are but even in the
11 things that are called value added or fashion, there
12 is essentially the same types of offerings from
13 imports. So if you look at the table in front of you
14 there, you will see what is called the standard
15 commodities. And, by the way, the two biggest
16 commodities are filler and 70 count notebooks there.
17 But you will also see fashion books. We all have
18 puppy dogs. You want puppy dogs, they all give you
19 puppy dogs. Whoever gives the cheapest puppy dog gets
20 the order. They all have bright color plastic covers
21 if that's what you want. And so there's harm across
22 the entire product spectrum here.

23 COMMISSIONER OKUN: Do you see the products
24 as interchangeable?

25 MR. PRICE: Yes.

1 COMMISSIONER OKUN: From the different
2 sources?

3 MR. PRICE: Yes.

4 COMMISSIONER OKUN: Okay. And just briefly,
5 price, as I've heard you testify, I've heard the
6 producers say that price is the most important
7 consideration.

8 MR. PRICE: Absolutely. I think the staff
9 report pretty much confirms that price is the most
10 important consideration out there.

11 COMMISSIONER OKUN: I have some other
12 questions on that, but my red light is on, so thank
13 you very much.

14 CHAIRMAN PEARSON: Commissioner Lane?

15 COMMISSIONER LANE: Thank you.

16 I want to go back to an answer that Mr. Rahn
17 gave relating to capacity utilization. I think you
18 said that increased capacity was contingent upon labor
19 management agreement or something like that and I need
20 for you to explain that. Were you indicating that you
21 could increase your capacity utilization but you might
22 not have an agreement with management and labor to do
23 so?

24 MR. RAHN: Hal Rahn with Norcom. Ms. Lane,
25 that was maybe just my way of saying it because that's

1 not what I was saying. What I was saying was it was a
2 management decision, there is no agreement or anything
3 required, it's a decision that we are going to run
4 more shifts and therefore increase our labor pool or
5 we're going to run less shifts and manage the labor
6 pool that we have or run it through overtime. I was
7 merely speaking of a management decision, not some
8 sort of an agreement.

9 COMMISSIONER LANE: Okay. So can you
10 increase your capacity utilization if you had the
11 orders to do so?

12 MR. RAHN: We did this year. I think it was
13 clearly accomplished in back to school '06 production
14 year, which would be basically October '05 through
15 now. The record I know will show that Norcom --
16 I don't know the other data, but I know that Norcom's
17 data is substantially higher in terms of utilization,
18 tons, hours worked, wages, every measure.

19 COMMISSIONER LANE: Okay. I just
20 misunderstood or was confused as to your answer.

21 Mr. Price, did you want to add something?

22 MR. PRICE: I just wanted to add that you
23 did see some pick up in capacity utilization in the
24 fall period in this case because orders were starting
25 to be placed for domestic production and they were

1 able to capture that, so it did not have as sharp a
2 collapse as you would normally see because there were
3 orders being run earlier.

4 COMMISSIONER LANE: Okay. Do we have
5 company specific data to show that the companies are
6 losing money on their subject imports and making money
7 on their domestic production?

8 MR. PRICE: Yes, the commission has
9 collected that data and it is in your data set.

10 COMMISSIONER LANE: Okay. Thank you.

11 Now I'm going back to something you said in
12 your opening remarks, Mr. Price. I think that's when
13 you said it. Why was the importer's decision, NuCarta
14 and others, decision to solicit and bid on products
15 for the 2006 back to school season ahead of the
16 traditional time for bidding and soliciting considered
17 unfair?

18 MR. PRICE: What happened for the 2006
19 season, and this sort of illustrates a couple of
20 issues on control --

21 COMMISSIONER LANE: Could you speak in
22 closer to your microphone?

23 MR. PRICE: Sure. Let's deal with this on a
24 couple of different issues. NuCarta was a company
25 that did not exist essentially prior to back to school

1 '06. It was essentially created as an organization
2 just to go in and bid for business.

3 NuCarta came in, bid for substantial
4 quantities of product, tried to rush them into -- and
5 won a lot of bids based upon very low prices. Rushed
6 a lot of subject merchandise into the United States
7 prior to the suspension of liquidation. It had a
8 negative effect on domestic industry volume as a
9 result because those bids would have gone to the U.S.
10 industry, we believe, or a substantial portion of them
11 would have or more of them would have. Secondly, it
12 had an effect on pricing because their bids dragged
13 down pricing in certain key accounts here. Third,
14 when they were unable to deliver, they came back and
15 started giving up orders. By the time they gave up
16 orders, the domestic industry filled as many as they
17 could domestically as possible but could not because
18 of the late times at which orders were even given back
19 because they had essentially massively over-committed
20 their ability to find supply from supply out there and
21 when the preliminaries went in place, they basically
22 walked away from orders.

23 So they had a negative effect on volume that
24 would have occurred this year. They had a negative
25 effect on pricing so while the industry got a fair

1 amount of benefit from the preliminary relief, it was
2 not fully what they could have received and their
3 actions have undermined the effectiveness of relief.

4 COMMISSIONER LANE: Dr. Kaplan, did you want
5 to add something?

6 MR. KAPLAN: Just briefly. To echo Alan's
7 statements, typically in critical circumstances you
8 see an increase in imports before and after and a
9 critical circumstance allegation is brought to you and
10 the intent and the person, the buyer and the seller
11 are unknown, and historically the commission has not
12 found critical circumstances. This case is different
13 and unique and we ask you to look very carefully
14 because here the pattern of importation was different,
15 it was rushed in compared to what the normal delivery
16 times are. We could identify the exporters, we could
17 identify the importers and their intent and motivation
18 in terms of whether this was coincidental or
19 undermining the order should be known. And so our
20 point of raising this issue and Alan's point of saying
21 it's the first time in 23 years, it's that the
22 circumstances are atypical of what appears before the
23 commission in critical circumstances and we'd just
24 like you to look hard at this.

25 Thank you.

1 COMMISSIONER LANE: Okay. Thank you.

2 Mr. Rahn and Mr. McLachlan, you mentioned
3 your attempts to lower costs in your domestic
4 production. Other than closing plants, what have you
5 done to lower your costs?

6 MR. RAHN: Hal Rahn with Norcom. We will
7 take manufacturing or engineering looks at pieces of
8 equipment, how we can rearrange equipment to perhaps
9 get more throughput through a machine; reduce the
10 number of people required to pack boxes, to pack
11 cartons. We will take into account how we can run a
12 machine maybe two or three hundred feet per minute
13 faster. And I think that at Norcom, we have certainly
14 achieved the ability to make items at speeds that are
15 probably the low cost, fastest in the world.

16 MR. MCLACHLAN: We look at productivity
17 improvements at lots of different levels. The
18 manufacturing ones are probably the most obvious and
19 I think that's what your question went to. As Hal's
20 pointed out, increasing machine speeds, decreasing our
21 downtime, which is the time that the machine isn't
22 running for maintenance or for other aspects, reducing
23 the amount of time that we have for changeovers
24 between product sizes or product differences, those
25 are great ways to improve productivity.

1 We're also looking at improving our
2 productivity through materials utilization, so getting
3 better yield out of the materials we use, using
4 different materials that can still provide the
5 consumer benefit and specifications that are required;
6 looking at reengineering or reverse engineering some
7 of our products to make sure that we're more
8 productive in the make method that we have. There are
9 a whole host of things that we're doing to drive
10 productivity and it's succeeding.

11 In the Blair plant, we've had a consulting
12 group go through called Centrist. They've helped us
13 do a lot of different shop floor productivity tools
14 that can help us get after that. But the biggest
15 thing we've done is reduce overhead. We have
16 consistently taken looks at how are we managing the
17 business, what sort of ways are we scheduling the
18 plant, what are the other places that we can improve
19 productivity. And we're looking at asset
20 productivity. The two biggest assets for us are
21 inventory and accounts receivable, so finding ways to
22 make sure we get the kind of turns out of our
23 inventory that we need so we can reduce our cash cost
24 and reinvest that in the business and reduce our
25 accounts receivable so we get our money on time and we

1 don't have deductions. That's really important to us
2 because that's two-thirds of the asset base that we
3 have in the business. So those are the kind of
4 productivity things we've been trying to drive.

5 COMMISSIONER LANE: Okay. Thank you.

6 MS. HART: I'd also like to add that our
7 members -- this is Holly Hart with the Steel
8 Workers -- took wage and benefit concessions as well
9 in an attempt to help them achieve better productivity
10 and profits.

11 COMMISSIONER LANE: Okay. Thank you.

12 MR. ROBINSON: Commissioner Lane, could
13 I respond to that? This is George with Top Flight.
14 Although in my testimony I did mention cost saving
15 measures, I wanted to make sure that the commission
16 knows that Top Flight is not cost irresponsible in our
17 operation as well. We have used all of the practices
18 that my competitors have implemented as well. But
19 unfortunately, most of our savings or much of our
20 savings has come from cutbacks that we've had to make
21 in personnel and we've made those cutbacks because our
22 factory activity is down so much. Many of the cuts
23 have come in production control. If you do not have
24 the factory activity because of losing orders to
25 unfairly priced imports from China, India and

1 Indonesia, you do not need those people and so we have
2 eliminated many production control jobs.

3 We have tried to cut the staffing on our
4 machines, increase machine speeds, increase machine
5 maintenance so that the machines run better when they
6 are running. We try to sequence our products, manage
7 our materials and that sort of thing. So I just
8 wanted to go on record for the retailers in the door
9 as well as for you guys to know that we are working
10 hard to keep our costs low and competitive in this
11 very difficult world market.

12 COMMISSIONER LANE: Okay. Thank you,
13 Mr. Robinson.

14 Thank you, Mr. Chairman.

15 CHAIRMAN PEARSON: We have data on imports
16 from five countries or groups of countries. Three of
17 them show increasing market share and that would be
18 China, Brazil and all other countries, whatever we
19 call it here, other sources. Two of those are
20 non-subject imports, both Brazil and other sources are
21 non-subject imports. We have two countries on which
22 we have import data that show decreases in market
23 share and that would be India and Indonesian. Both of
24 those are subject countries.

25 What I'm trying to understand is why was

1 this petition structured the way it was? To me,
2 there's something counterintuitive here that I simply
3 don't understand and I would like to know why it was
4 done this way.

5 MR. PRICE: In discussing with our clients
6 where the competitive problem that was challenging
7 them in the process they were complaining about the
8 subject countries driving the marketplace and
9 following the filing of the petition while there
10 obviously is an increase in imports from nonsubject
11 countries the domestic industry is able to increase
12 production, increase volumes, increase prices, et
13 cetera, there is not an ability and enough capacity
14 alternatively out there to replace the subject
15 countries.

16 CHAIRMAN PEARSON: Dr. Kaplan?

17 MR. KAPLAN: Yes. Especially because of the
18 way the bid process works where people that bid
19 aggressively could lose to someone else who bids even
20 more aggressively we had a discussion regarding which
21 countries we felt were most aggressive and will be the
22 biggest potential problem.

23 We sat down at NALAN at one point and said
24 well, the easiest thing to do is to file against
25 everybody in the world, but the clients didn't think

1 that everybody in the world was a problem. You talk
2 and you say who's aggressive? Where is the aggressive
3 nature coming from? Is the trade law meant to sweep
4 up everybody even though you don't think that some of
5 the people you're sweeping up are behaving
6 injuriously?

7 So we've identified the three countries that
8 were most aggressive in pricing, that were seen by the
9 customers in the bidding process as being most
10 aggressive, that were the cause it was felt of a
11 decline in prices and a joint increase in share in the
12 key mode of effect, and as Mr. Price stated and each
13 of the witnesses has testified remediating the effects
14 from those three countries that had significant
15 benefits to these producers reflecting the fact that
16 they were right. That was the problem.

17 CHAIRMAN PEARSON: Well, remediating effects
18 of one of them anyway --

19 MR. KAPLAN: What?

20 CHAIRMAN PEARSON: -- but the other two were
21 not appearing to succeed terribly well in the U.S.
22 marketplace during the period of investigation. So
23 you talk about how competitive they were, yet if they
24 were so competitive why were they losing market
25 shares?

1 MR. KAPLAN: Well, if the first problem is
2 China and they're picking up share and you believe
3 that should they leave the next countries that are
4 going to pick up share based on their bidding
5 behavior, and their personal experience in the
6 marketplace and their pricing, which was found to be
7 dumped and subsidized, are India and Indonesia you
8 tell your lawyers and economists my 30 years in the
9 business, my 85 years of a company, my public company
10 merger due diligence tells us that these are the
11 miscreants with respect to pricing behavior and future
12 price depression, suppression, lost sales, lost
13 revenue, loss of jobs, lost production in the
14 marketplace, and so we went forward.

15 The calculations were allegations that they
16 dumped, they were confirmed that there were dumps in
17 subsidizations and the remediation of those three
18 countries with respect to the preliminary duties had
19 the effects that the clients felt would occur so that
20 behavior be remediated by the duties.

21 They're on pins and needles saying it's
22 starting to turn, but it will all completely disappear
23 and we will see imports and bids from these three
24 countries immediately at very low levels should there
25 not be an affirmative final determination.

1 CHAIRMAN PEARSON: How do you respond to the
2 argument that the selective choice of subject and
3 nonsubject countries serves primarily to gain the
4 system and shifts relative leverage of producers and
5 purchasers in the U.S. marketplace such that we've got
6 certain purchasers that are obtaining product from
7 countries that might be having a declining market
8 share in the United States, so let's include them and
9 let's not include other countries where it might be
10 convenient for U.S. producers to import some product.

11 Isn't there an argument that something's
12 going on here that has a lot more to do with who can
13 gain leverage in the U.S. marketplace rather than
14 what's really happening with imports?

15 MR. KAPLAN: I think that the gaming that's
16 going on and you see it in case after case on consumer
17 products in the Commission is the ferocious
18 competition at the retail level forcing prices down
19 for products and shifting sourcing overseas.

20 To the extent that these sourcings from the
21 Targets and Wal-Mart's of the world are fairly priced
22 that's fine, but if they're not fairly priced it's the
23 Commission's responsibility if they hurt the domestic
24 industry, and that was the allegation that was made on
25 these three countries, to offset it.

1 If we control the imports why aren't we
2 making all this money out of China? If we control the
3 imports why aren't we successful in our domestic and
4 other import operations? These were the countries
5 that were suspect.

6 If there was an enormous other producer that
7 we had control over their production, their capacity,
8 and it appeared that we were massively importing from
9 there and controlling it, and I could name cases where
10 that has happened, you might question it. In this
11 case you're talking about small volumes of imports and
12 I think the panel could ask for -- you could ask them
13 about control of Brazil for example.

14 CHAIRMAN PEARSON: Well, what I'd like to
15 ask.

16 Go ahead, Mr. McLachlan.

17 MR. MCLACHLAN: Yes. I think that part of
18 your question goes to the allegation that we have
19 purchased assets in Brazil in order to supply to the
20 U.S. market and the data shows that's absolutely
21 untrue. We bought the Tilibra facility, which is a
22 good producer with a good brand name, for domestic
23 Brazilian consumption in other export markets in Latin
24 America.

25 It gave us another market to compete in

1 worldwide, not for the ability to produce in Brazil
2 and bring it into the United States and the data shows
3 that. The very next year we brought our imports from
4 Tilibra from before we owned them to after down
5 dramatically. We're a small producer in Brazil for
6 those types of products. So that first part is just
7 simply not true.

8 We did it for the domestic Brazilian market.
9 The second part is the other countries don't have in
10 our opinion the kind of behavior patterns that we've
11 seen with Indonesia, China and India. Their past
12 history are very clear here.

13 They are focused on the U.S. market, they're
14 using dumped and subsidized products against us and
15 they have continued to do that over a number of years
16 whether it was Indonesia back at the very beginning or
17 whether it's China today all three of those have
18 participated in a meaningful way to harm us by using
19 those kind of subsidized products.

20 The other countries don't have the kind of
21 converter subsidies. Brazil's another one. Even the
22 people, not Tilibra, but the other conversions in
23 Brazil don't receive government subsidies at those
24 kind of rates and don't have the kind of dumping
25 propensity that we've seen from Indonesia, China and

1 India.

2 CHAIRMAN PEARSON: Okay. So how are they
3 managing to gain market share then, specifically the
4 Brazilians, in our category of other sources? I
5 understand they may be pricing fairly and all that,
6 but somehow they're gaining share in the U.S. market
7 according to our data.

8 MR. RAHN: Hal Rahn with Norcom. I think
9 that the Brazilians are fairly pricing their product
10 and at the same time that's enabling a fair price to
11 the market, it's enabling us to have a fair price to
12 the market, a more level playing field as we've been
13 talking about. When I go back and I hear about Brazil
14 I think that the key feature about Brazil is that they
15 price their product, it's very simple, it's very much
16 like ours, it's exchange rate in the price of paper.

17 There are times when their product is
18 cheaper than ours and there were times when ours was
19 cheaper than them, but there are never times at least
20 in the last five, six, eight years that I can remember
21 that our product has ever been cheaper than any of the
22 subject countries.

23 MR. ROBINSON: One response I'd like to
24 give, Chairman Pearson.

25 CHAIRMAN PEARSON: Okay. I'm on my red

1 light understand. Okay?

2 MR. ROBINSON: Okay.

3 CHAIRMAN PEARSON: My time has expired, so
4 if you could be brief. That's what I'm requesting.

5 MR. ROBINSON: Okay. Top Flight joined the
6 association because we were on the verge of very, very
7 serious considerations of closing our factory because
8 we could not participate or could not profitably
9 operate our manufacturing facility in the United
10 States given the selling prices and the incredible
11 squeeze on margins to the virtual elimination of
12 profit on certain line goods which is the core of my
13 business and the core of our operation, and so for
14 that reason we joined the association and we brought
15 the case against India, Indonesia and China because
16 they are the three low cost, low price leaders in the
17 marketplace and they are the ones that are driving
18 prices.

19 If India or Indonesia did not win more bids
20 in one year than they did the other they participated
21 actively and independently in driving the prices down
22 to levels that made it impractical, and unreasonably,
23 and a loss of profit and actually a total loss to the
24 operation as a result of the kind of pricing that were
25 present in the marketplace.

1 So we originally lost margin, and then we
2 eliminated all profit and then we lost orders. You
3 see that because it's kind of evolutionary I think of
4 the numbers as well. That was the experience that my
5 company has had and the reason that we joined this
6 because we don't want to close the factory, we want to
7 run it and we want to employ the people that we
8 employ.

9 This is the right thing for us to do and
10 with a victory in this case we will be able to do
11 that. We will be able to maintain our plant.

12 CHAIRMAN PEARSON: Okay. Thank you for that
13 elaboration, Mr. Robinson.

14 Thank you to my colleagues for your
15 indulgence.

16 Madam Vice Chairman?

17 VICE CHAIRMAN ARANOFF: Thank you, Mr.
18 Chairman.

19 My colleagues and I have asked this
20 question, versions of this question, I think each time
21 and you can see that we're struggling, but I'll ask it
22 again a different way and see if that makes any
23 progress.

24 You've indicated to us today that domestic
25 producers have been forced to turn to imported

1 product, but under pressure from their customers, and
2 you've also testified today that the subject countries
3 are the low price leaders and also the countries that
4 have the most available capacity that can be tapped.

5 If all of those things are true why, and
6 particularly with reference to the period prior to the
7 filing of the petition, would anyone be importing
8 product from nonsubject countries, NAFTA countries,
9 Brazil, or other countries, all of which are
10 represented in our data in meaningful quantities prior
11 to the filing of the petition.

12 Mr. Rahn?

13 MR. RAHN: Hal Rahn with Norcom. I hoped
14 that we have made our position clear, and obviously we
15 hadn't, but I think that back to the no choice really
16 comes to mind. If we did not import the product it
17 was there and it was coming regardless of whether we
18 imported it or not.

19 It was essential to us and we, and I'm
20 speaking for Norcom, chose to import product not as a
21 compliment to our business, but as a way, again, to
22 try to get to a price point that we were being led to.

23 VICE CHAIRMAN ARANOFF: Right. No, no. I
24 understand that argument. I guess what I'm saying to
25 you is if that's true, you had to do it and you had to

1 do it because of price, and the subject countries are
2 where the cheapest product is coming from and they
3 have plenty of capacity to supply it --

4 MR. RAHN: Right.

5 VICE CHAIRMAN ARANOFF: -- why am I still
6 seeing imports from other countries -- Brazil, Mexico,
7 Canada, et cetera, et cetera -- and why am I seeing
8 these things before the petition was filed because I
9 can see that there might be a story after the petition
10 is filed. So what I'm trying to ask you is when
11 you're forced to import, you're looking for a source,
12 what would ever make you choose product from Brazil,
13 or Mexico, or Canada over product from a subject
14 country?

15 Can they make a product you can't get
16 somewhere else? That's certainly one of the arguments
17 we've heard from Respondents. Are there capacity
18 constraints that you haven't told us about in the
19 subject countries? Is there a quality issue? Why
20 would I see a single product ever imported from Brazil
21 prior to the petition if these conditions are true?

22 MR. RAHN: If I may continue because Norcom
23 is a large importer of Brazilian product. From our
24 particular situation I think that the data would show
25 that in 2005 that the Brazilian imports into the

1 United States were significantly depressed and they
2 were depressed because of imports from subject
3 countries. It increased at such a large level.

4 We at that point I think as a business
5 decision chose to maintain some relationship with a
6 Brazilian manufacturers, but at a very, very much
7 reduced rate to where I think their business to the
8 United States probably dropped, I don't know an
9 absolute number, but significantly from a tonnage
10 basis that was shipped into the country.

11 So I think Brazil is merely a purchasing
12 alternative from time to time, but from our
13 perspective we've never been injured by Brazil.

14 VICE CHAIRMAN ARANOFF: Okay. Mr. Kaplan, I
15 see you raising your hand in the back there.

16 MR. KAPLAN: Just briefly and in all
17 petitions people sit down and oftentimes there are
18 nonsubject imports, countries not filed against, and
19 these countries in some cases are being injured as
20 well, their operations into the United States, their
21 operations in the third market. They might maintain
22 share, but have to lower prices to compete with
23 nonsubject imports and someone says well, what about
24 these guys?

25 You say they've been around for 30 years.

1 They're honest brokers in the market. Our history of
2 dealing with them is such that they're facing the same
3 problems we are. Then we expect with the orders in
4 place that the U.S. industry will improve as a
5 collateral effect.

6 Sometimes these guys get better off, but you
7 don't sit there having been involved in many of these
8 and put many cases together and say okay, let's get
9 every country that's importing because it's a
10 potential problem because what happens when you look
11 at them you'll say well, they're not a potential
12 problem. These guys have been in the market for 30
13 years.

14 Say who is the problem? India, Indonesia,
15 China. So in many cases that appear before you you'll
16 see nonsubject imports. Sometimes you'll see them
17 being a larger share of the market than the subject
18 imports and it's because the behavior of those
19 particular producers that are subject are such that
20 they're chosen when people sit down and analyze what
21 is injurious and what would bring relief.

22 VICE CHAIRMAN ARANOFF: Okay.

23 MR. KAPLAN: I hope that's helpful.

24 VICE CHAIRMAN ARANOFF: Mr. Price, can you
25 take one more shot at this and then I'm going to move

1 on?

2 MR. PRICE: Sure.

3 MR. ROBINSON: Vice Chairman, there's
4 another consideration and it may sound just too
5 simple, but there's also the issue of knowledge of
6 suppliers. It's an emerging market.

7 In some cases the knowledge of the Brazilian
8 producers because they have been in the marketplace
9 for a longer period of time operating fairly was
10 greater than the knowledge of suppliers of those in
11 India, China and Indonesia, but they grew and they
12 grew very rapidly during the period of investigation,
13 and so it is something.

14 I know with Top Flight it is something as
15 simple as that that we have as the knowledge base of
16 who the suppliers are, who has what capabilities
17 changes so do where your orders will go or where your
18 forced orders will go.

19 VICE CHAIRMAN ARANOFF: Okay. I know that
20 there's a lot of what's going on in this investigation
21 which depends on peoples' characterizations of things
22 that happened before our period of investigation and
23 sometimes long before our period of investigation, so
24 if all of the petitioning companies could tell us
25 confidentially in the post-hearing brief when you

1 started having importing relationships with Brazilian
2 producers in order to bolster your indication today
3 that these are much more longstanding relationships
4 that would be helpful.

5 I'm going to use my time to move on. There
6 was discussion about bidding practices, the hotel room
7 shoot outs and the online reverse auctions, and I just
8 want to get a sense from each of the producers is what
9 has changed in the market during the period of
10 investigation, are these new practices for how people
11 bid on business for major U.S. purchasers or is the
12 change simply in that there are so many more people
13 from low cost countries participating as between these
14 two factors vehicles that result in more ferocious
15 bidding or who has shown up at the table to also bid,
16 which of those would you say is having a stronger
17 influence on pricing behavior in the market?

18 MR. ROBINSON: The practices of hotel room
19 shoot outs from the online reverse auctions are a
20 fairly recent thing. I think the first auction that
21 we participated in was in maybe 1999 or 2000. Hal and
22 Neil may have participated in some before that, but
23 that was the first online reverse auction that we
24 participated in and it has grown in popularity during
25 the period of investigation.

1 We have also seen other practices like the
2 hotel room shoot outs, and some of the closed bidding
3 and that sort of thing that have grown, so it was
4 really kind of a moving structure in popularity. What
5 those processes do is that they make it very efficient
6 for the retailers to find the low cost producer.

7 That's what is common and injurious to our
8 industry and extraordinarily injurious to Top Flight
9 because those bidding processes will take prices down
10 very, very quickly. You can see your margin cut 75
11 percent in 15 minutes. You can have a U.S.
12 manufactured price that you planned on quoting made
13 unreasonably high by virtue of the prebid posted price
14 that is considered the maximum bid.

15 VICE CHAIRMAN ARANOFF: Okay. I'll get to
16 you, Mr. McLachlan.

17 MR. MCLACHLAN: Okay.

18 VICE CHAIRMAN ARANOFF: I guess one of the
19 things I'm trying to understand is there are these
20 ways of organizing the bidding which perhaps you can
21 tell me more in your post-hearing about how they've
22 changed over time, but they pit all of you against
23 each other perhaps more effectively than what was done
24 in the past.

25 If that's true does that have a stronger

1 effect on pricing in the market than the presence of
2 subject suppliers in those proceedings?

3 MR. ROBINSON: When you say all of us
4 together against each other what I would like to
5 clarify is that it's not just Top Flight need Norcom.
6 It's also Carolina Pad who brings in product from
7 China, it's American Scholar who brings in product
8 from India, it's other producers out of China, other
9 producers out of India that are invited to
10 participate.

11 It may be an individual, one guy that works
12 out of an office in Nashville and he has a company
13 that he represents in China. He is also bidding, and
14 also driving the prices down, and also creating this
15 extraordinary selling margin squeeze and participating
16 on equal footing with Top Flight, Norcom indeed.

17 MR. MCLACHLAN: I was trying to discern
18 between the different things. I think that's what
19 you're trying to do. Is it the bidding? It's low
20 cost producers. It's these unfairly dumped product
21 that are coming into the market. Our retailers have
22 always been very good at negotiating, they've always
23 been very good at casting a net. They're getting
24 better at it.

25 They're using new and different techniques

1 to get better at it and get faster at it. That's no
2 doubt. They've always been very, very good at getting
3 low prices and accessing those. Now, they have access
4 to something that is unfair. We'd be happy to compete
5 with them on a level playing field in those types of
6 negotiations, shoot outs or reverse auctions.

7 Now, the reverse auction that we went
8 through that's pretty dramatic and that's usually the
9 one that gets cited here because of its sort of drama,
10 but many suppliers are asked to bid online. The
11 retailer sets the target price and everybody rolls
12 back minute by minute to ever lowering prices until
13 you give up.

14 We're usually on our domestic product out in
15 the first few rounds hoping to stay in there a little
16 bit by accessing some of the low cost dumped product
17 ourselves. In one incidence we ended up on the phone
18 with our supplier who it turned out won the bid
19 because he was bidding himself while he was still in
20 the auction, so he was bidding against himself.

21 I go right back to the root cause. The root
22 cause is the low cost dumped product that's coming and
23 is now available to our retailers to get access to.

24 VICE CHAIRMAN ARANOFF: Okay. Thank you
25 very much for those answers.

1 Thank you, Mr. Chairman.

2 CHAIRMAN PEARSON: Commissioner Hillman?

3 COMMISSIONER HILLMAN: Thank you.

4 I hope just a couple of quick follow-ups,
5 but let me start where you just ended, Mr. McLachlan,
6 just so I understand it because that was one of the
7 questions that I had.

8 When you are participating in one of these
9 bids with the expectation that you are going to be
10 supplying the bid if you win it from an imported
11 product have you already negotiated with your foreign
12 supplier for that product or do you get the bid first,
13 again, with a retailer and then go to the supplier?
14 So which comes first?

15 MR. MCLACHLAN: We've done it both ways and
16 we've been losing both ways. We've done it where
17 we've gone it, we've negotiated with a supplier,
18 gotten what we thought was his absolute lowest price,
19 tried to participate in the bid and lost the bid only
20 to find out that he had the bid himself, or we've done
21 it the other way.

22 Let's include them and try to find a way
23 that we can have that should we need to if we can't
24 get it from our domestic production and we lost those,
25 too. So we tried it both ways.

1 COMMISSIONER HILLMAN: Is there an
2 expectation on your end when you are purchasing
3 imports that you are going to get some sort of a mark
4 up over what your direct expenses were in purchasing
5 the imports, and is there a standard in the industry
6 that you expect?

7 MR. MCLACHLAN: We don't have a mark up.

8 COMMISSIONER HILLMAN: None at all?

9 MR. MCLACHLAN: No. It's a buying, selling.
10 We buy, we resell.

11 COMMISSIONER HILLMAN: Okay. Anyone else?

12 MR. ROBINSON: There is no mark up left by
13 the time of the prices. Because the pricing is so
14 visible there is virtually no mark up.

15 COMMISSIONER HILLMAN: Okay. I had asked in
16 my first round of questions for this kind of timeline
17 to help us understand when you began doing the
18 importing, and from whom and why. If I could add to
19 that if you could also give me a timeline on this
20 brokering issue, when did you begin brokering and how
21 did you decide with whom you were going to engage in
22 these brokering operations, that would be very helpful
23 as well for the post-hearing brief.

24 Then also for the post-hearing brief because
25 the data is confidential I think some of the reason

1 that you're hearing us all struggle in addition to all
2 of the things you've heard on this issue of the
3 imports from Brazil with this why is I've heard your
4 testimony, specifically you, Mr. Robinson, very
5 clearly and the rest of you that Brazil is not a
6 problem because they've been in the market for a long
7 time and they've competed very fairly.

8 I have to say when I look at a lot of the
9 pricing data -- and I want this addressed in the post-
10 hearing because the individual pieces of data are
11 confidential -- it doesn't look like Brazil is
12 anything other than an equally low if not lowest in
13 many instances supplier, so you're telling me they're
14 not the problem, but I'm not sure I understand how I
15 am to read them as not the problem.

16 So if you could look at the pricing data
17 that we have and help me understand why it is that
18 you're all telling me no, it's China, India and
19 Indonesia there's a problem, Brazil is just fine, help
20 me compare that to the actual price data that we have
21 on the record to square that out if I could.

22 Then the last question goes to some of the
23 same issues that we've been discussing in terms of
24 what the implications are for the fact that the
25 domestic industry is a large importer.

1 Mr. Price, in response to my question in the
2 previous round you said that the best pricing data to
3 look at is in essence the traditional Commission
4 pricing data that works very hard at getting an apples
5 to apples comparison of the domestic price versus the
6 imported price, and therefore we should be looking at
7 in essence the Chapter 5 traditional price index.

8 My concern with that is a very large portion
9 of the data in those tables is imports that are
10 brought in directly by the domestic industry, and so I
11 struggle with if this data shows underselling to whom
12 do we attribute the underselling, to the imports or to
13 the domestic industry that's bringing in the vast
14 majority of those imports?

15 MR. PRICE: You attribute it to the imports.
16 It has a negative effect on the domestic production
17 operations in the United States. That's where the
18 focus of the statute is and that's who it should be
19 attributed to. The importers themselves, a number of
20 them did not provide data. It's not our capabilities
21 of providing their data. It's beyond our control.

22 What we can say is there's ample evidence of
23 import underselling here particularly when you look at
24 the large volumes that transact when there's
25 underselling and that's --

1 COMMISSIONER HILLMAN: Again, the struggle
2 is that in essence you're underselling yourself. In
3 other words you at some level determined what the
4 price was that you wanted to import at, so I'm now
5 comparing your price to your price and you're saying
6 I'm still supposed to find that to be significant
7 evidence of underselling.

8 I hear your argument. If there's anything
9 further on this that you want to address in the post-
10 hearing I'd be happy to look at it. The last issue,
11 again, because the data is confidential that I would
12 ask you to look at is I've heard now many of you
13 describe these very significant price declines, that
14 you're looking at tremendous price declines,
15 tremendous price pressure, this notion of very
16 substantially reduced prices, again, I'm not sure I
17 see it in our data.

18 Again, it's hard. We've got all these
19 different pricing series. Very hard to understand
20 exactly what to look at. I have to say if you step
21 back at the big picture and look at AUVs, if you look
22 at, again, just the line graphs of the individual
23 products that we've priced, yes, there's a few downs
24 here, and a few ups there and a few ups and downs, but
25 overall I think it would be hard to characterize it as

1 anything resembling a significant price decline.

2 So to the extent that you are arguing that
3 there has been significant price depression that has
4 occurred leave aside a cost price squeeze or a
5 suppression argument, but to the extent that you are
6 alleging depression of prices help me tie your price
7 depression argument to the specific pricing data that
8 you think shows it because just sitting here looking
9 at all of these series of data yes, there's a few
10 declines here and there.

11 They're modest in percentages, and they're
12 not in every product and they're not across the board.
13 It is not as though we are looking at a case where
14 every price in every product went down very
15 substantially over our POI. So that would be my last
16 request for the post-hearing brief.

17 MR. PRICE: We will be happy to do it in --

18 COMMISSIONER HILLMAN: Appreciate it very
19 much. With that I have no further questions, but
20 would very much like to thank the panel for your many
21 answers to our many, many questions. We really much
22 appreciate your time, and your attention, and your
23 attendance and the answers that you will also provide
24 in the post-hearing brief. I thank you.

25 CHAIRMAN PEARSON: Commissioner Koplan?

1 COMMISSIONER KOPLAN: Thank you, Mr.
2 Chairman. I have a couple of matters left as well.

3 Mr. Robinson, Mr. Rahn and Mr. McLachlan, in
4 other investigations before the Commission we have
5 heard testimony indicating that because of the
6 increased purchasing power of mass retailers such as
7 Wal-Mart, Target and Staples fluctuations in prices
8 paid by these retailers to manufacturers do not show
9 up in the prices charged to end use consumers.

10 In your experience is there a strong
11 correlation between the prices your companies are paid
12 for subject merchandise and the prices charged by mass
13 retailers?

14 MR. ROBINSON: George Robinson for Top
15 Flight. I think that if you look at last Sunday's ad
16 or this Sunday's ad you'll see extraordinarily low
17 prices on the certain line goods that are advertised
18 in the front cover --

19 COMMISSIONER KOPLAN: I have the exhibits in
20 which the price is waiving.

21 MR. ROBINSON: The prices are remarkable.
22 They are a fraction of the acquisition cost. I would
23 say that they are easily less than half of the
24 acquisition cost. In many cases below material cost.
25 This year I think the data shows that for the

1 purchasing of 2006 back to school prices actual
2 acquisition cost is up, yet retail pricing is down.

3 You see for instance a 10 pack, 70 count
4 notebook at 50 cents. Last year filler paper items
5 sold for 19 cents, I believe it was by Staples.
6 Nineteen cents for filler. This year is 15 cents. So
7 there is an extraordinary disconnect between the
8 acquisition cost from the vendor to the retailer and
9 the price that the end user pays, the consumer pays,
10 for this product.

11 This product is loss leader. This product
12 is used by retailers to draw customers into the stores
13 and they use it very aggressively to out duel one
14 another to get that shopper in their store.

15 COMMISSIONER KOPLAN: Thank you.

16 Mr. Rahn?

17 MR. RAHN: I concur.

18 COMMISSIONER KOPLAN: Mr. McLachlan?

19 MR. MCLACHLAN: Our experience is the same.

20 COMMISSIONER KOPLAN: Mr. Price?

21 MR. PRICE: One quick note. You'll look at
22 the Staples ad. Somehow or other we see no discussion
23 of paper brightness. They've got one issue that
24 they're selling on. Nine cents a notebook. The other
25 ad is 15 cents for their filler paper.

1 COMMISSIONER KOPLAN: No. I have looked at
2 that. Let me follow-up with you on this. Just one
3 last point on it. On page 11 of your prehearing brief
4 you state that, "the largest purchasers in particular
5 use certain lined paper products as loss leaders" --
6 that's what you're talking about now, "merchandise
7 sold at little or no profit in order to attract
8 customers to retail locations reflecting this pricing
9 strategy increases in sales volume by the large
10 purchasers tend to outpace increases in unit value".

11 Then you then cite to Exhibit No. 1 of your
12 brief. I took a look at that and that is a report
13 released in January of this year by the School Home
14 and Office Products Association. It's headed SHOPA
15 University. I don't know where the university comes
16 in, but it's an association obviously.

17 On page 1 it states this. It says that
18 heavy price competition was again prevalent for back
19 to school 2005 and the practice of deep discounting
20 and loss leader pricing tactics continued. However,
21 it appears more retailers chose not to price and
22 promote the key commodities as aggressively so as not
23 to sacrifice profit margin for unit volume gains.

24 Would you comment on whether the practice of
25 providing loss leaders is changing or diminishing as a

1 marketing technique for selling LLP and whether that
2 in turn has any impact on the prices purchasers pay
3 for your product?

4 MR. MCLACHLAN: I would say that any
5 decrease in the amount of promotion that's gone on
6 particularly on price could be negligible. That is
7 still the dominant practice in the market.

8 COMMISSIONER KOPLAN: Okay. So you don't
9 agree with what I read from the exhibit?

10 MR. MCLACHLAN: It might have decreased a
11 small amount. I don't add up the ads and I don't add
12 up the square inches of promotion, but it's clearly
13 the dominant way that retailers compete with the --

14 COMMISSIONER KOPLAN: I only ask because
15 it's in your brief.

16 MR. ROBINSON: Commissioner, the SHOPA
17 University -- SHOPA is School Home Office Products
18 Association -- it's a wide variety of product. A
19 general statement along those lines would refer to
20 many products ranging from 24 count crayons, to
21 portfolios, to pencils, to pens, erasers, backpacks,
22 et cetera.

23 It's not limited to certain line goods as
24 we're discussing today.

25 COMMISSIONER KOPLAN: That's helpful. Thank

1 you.

2 Mr. Price?

3 MR. PRICE: I would note that in our
4 questionnaire response we included a CD-rom with last
5 year's circulars from just about every major retailer
6 in the United States and they're all nine, 10 cent
7 notebooks and they're all 15, 19, 25 cent filler
8 paper, so again, the evidence indicates these guys are
9 incredibly aggressive and there's not a real
10 connection between the price they're paying and the
11 price the end consumer is paying.

12 COMMISSIONER KOPLAN: Thank you very much
13 for that.

14 I thank you, all, for your answers to my
15 questions today. I have nothing further, however I am
16 not going to be able to stay for the balance of the
17 hearing. I see Mr. Cameron is raising a hand. I will
18 certainly have the transcript, but I will also have
19 John Frye of my office two things that I am not, both
20 a CPA and an economist, who is here and will be here
21 for the balance of the day, and so with that and the
22 transcript I'm well covered.

23 So thank you, all, very much. I'm sorry. I
24 didn't expect that I would have to move off at this
25 time period, but I do. Thanks, again.

1 Thank you, Mr. Chairman.

2 CHAIRMAN PEARSON: Commissioner Okun?

3 COMMISSIONER OKUN: Thank you. Just a
4 couple of things and a follow-up on the pricing
5 questions.

6 Mr. Price, remind me your position on what
7 weight we should put on the AUVs here? Mr.
8 Brightbill? AUVs a good indicator here or not? Some
9 of this goes also to the negligibility question with
10 regard to Indonesia. I'm trying to make sure I
11 understand what your view is of value data and also of
12 just the AUVs generally because it also relates to the
13 question about Brazil and China.

14 MR. BRIGHTBILL: Well, no. In terms of
15 negligibility you want to focus on the volume data not
16 the value data as you traditionally do. There are
17 only extremely limited circumstances when you've gone
18 to value, the Ball Bearings case comes to mind, where
19 there really isn't a volume measure at all to use, so
20 you have to use value.

21 For negligibility you should stick with your
22 traditional practice of measuring by volume. It shows
23 that accumulation is appropriate and that no one is
24 negligible in this market.

25 COMMISSIONER OKUN: With respect to just

1 AUVs generally for this product, for the price, for
2 the difference in products because one party would
3 argue that they are or are not valid based on how
4 large the spread is between the prices of your top to
5 your bottom, is this one where we need to worry about
6 that at all?

7 Mr. Kaplan is shaking his head, so let me
8 hear him on this.

9 MR. KAPLAN: Just briefly. You could see
10 the products before you on the table. If you count
11 each one as an each that's the unit of measurement.
12 The prices can differ significantly in percentage
13 terms, and so product mix as it typically does in
14 these cases, causes problems with the choice of using
15 AUVs.

16 COMMISSIONER OKUN: Okay. Then I believe
17 this is just a follow-up to the question from
18 Commissioner Hillman, but just when you are making the
19 argument about Brazil that it is a fair player and
20 obviously, I mean, it for our purposes is fairly
21 traded, but to look at the data in the record if you
22 could point for me as well where you see it as being
23 the fair player.

24 In other words I look at this record
25 including the bid data and Brazil doesn't look too

1 much different without going into anything
2 confidential. So I need your help because you keep
3 saying that if it was just these other guys. That's
4 why we're about the case, it's all about these other
5 guys.

6 I have a hard time looking at that record
7 and saying, okay, I really see it, and so maybe you
8 can help me by pointing out what you think is most
9 important as opposed to me just eyeballing the numbers
10 here. Okay? You'll do that for post-hearing. Thank
11 you.

12 Then just one brief return on the nonsubject
13 and I think you're obviously providing a lot of data
14 post-hearing which I think will be helpful, but to the
15 extent you've answered general commodity product
16 prices being an important consideration then the
17 discussion of whether the analysis that the
18 Respondents, and in particular I think it's the Kaye
19 Scholer brief, goes through with regard to what the
20 Federal Circuit said in Bratsk and Gerald Metals how
21 it would apply in this case.

22 If I've understood what you've said before
23 it's that you think Brazil is not a significant enough
24 play and not -- well, what's your answer? Why don't I
25 look at this and say if I look at both the Brazilians

1 and the others, which Chairman Pearson had raised, and
2 they've both managed to gain market share in this
3 market, if there's an order in place why don't I see
4 that they're going to take market share back and
5 therefore there will not be a benefit to the
6 petitioners as the Bratsk Court has opined on?

7 MR. KAPLAN: I think it goes to first their
8 past behavior that's been discussed by all three
9 representatives that they're forced into their current
10 behavior now. The second is their relatively small
11 share and their ability to supply that share at a
12 price that wouldn't rise as their quantities
13 increased, the ability to them to even supply the gap
14 at any price.

15 What you typically see in the neutral
16 assumption in economics that you use in your models
17 all the time when you do your trade stuff that's kind
18 of embedded in your own analysis for the executive and
19 the legislative branch is that the share will be
20 split, and given the size of the U.S. industry
21 historically how much production it has and the
22 benefits we've already seen we would expect to see a
23 very significant material benefit to the domestic
24 industry, we would expect to see some shift to
25 nonsubject imports.

1 That's the neutral assumption, but that
2 shift to us is material in price, and profits and
3 particularly in labor given what's happened, so the
4 notion that it would all switch over to one spot, to
5 Brazil, is a very, very, very strong economic
6 assumption that --

7 COMMISSIONER OKUN: Again, for post-hearing
8 be sure you make it with regard to all others.

9 MR. KAPLAN: Right. It's a very unusually
10 assumption.

11 COMMISSIONER OKUN: It's not just Brazil.

12 MR. KAPLAN: Among economists there would be
13 an enormous burden on them to show that would be the
14 case, and I don't think they reach and I'll explain
15 why they don't reach it.

16 COMMISSIONER OKUN: Okay. Then let me ask
17 counsel, I know you wanted to say something, but let
18 me ask you in addition to whatever you want to say
19 answer this for me which is do you think that Bratsk
20 and Gerald Metals, that you would have to have the
21 nonsubjects be big enough that they could replace all
22 of the subject imports, the point Mr. Kaplan is
23 making?

24 If you could call them significant, but
25 they're not big enough to replace China does that mean

1 that there is no Gerald Metals, Bratsk type analysis
2 required?

3 MR. BRIGHTBILL: Tim Brightbill, Wiley Rein.
4 That's the direction that the Bratsk case was headed
5 and Gerald Metals before it was that all of the dumped
6 subject merchandise would be directly replaced by
7 fairly traded nonsubject merchandise --

8 MR. KAPLAN: At the same price.

9 MR. BRIGHTBILL: At the same price. Thank
10 you, Dr. Kaplan. That's what we don't have here.
11 Also just running through the factors that Bratsk and
12 Gerald Metals set forward, I think you started in that
13 in your questioning, are the goods fungible? Yes,
14 they are. We'll concede that as part of the test.
15 Are nonsubject imports present and significant in the
16 U.S. market?

17 We'd say they are present to some degree,
18 but not significant and not significant enough to
19 eliminate the benefit that would come back to the
20 domestic industry. Then the third part of the test is
21 whether nonsubject imports undersold the domestic like
22 product. I think you've heard from our panel
23 underselling by Brazil is not the same nature and
24 character as it is for the subject imports.

25 COMMISSIONER OKUN: Okay. So for post-

1 hearing, I appreciate those comments and I look
2 forward to seeing your analysis, but just also just to
3 help, again, with this question on Brazil, what you
4 point to because, again, I think it is a little bit
5 mixed.

6 Then the last thing and I'd ask you to do
7 this post-hearing because it is confidential, but I've
8 heard your response to Commissioner Hillman on how you
9 would have us evaluate our traditional pricing data
10 and that's the way to look at it, so I'll certainly
11 look at those responses, but also with regard to the
12 bid, and the auction processes, and the new and what
13 new practices there are, I mean, I'm very interested
14 in hearing about what affect that's had on prices, but
15 the one thing that struck me in looking at this bid
16 data because we have collected bid data in some cases
17 and not all is that it didn't look to me like some of
18 the others including with some of the same Respondents
19 where it's clear to me looking at the bid data that
20 this is all about low price and nothing else matters,
21 and so I just want you to help me put that into
22 perspective in how we take that into account in this
23 case where it does look like there is you've got back
24 to school.

25 I mean, it looks like seasonality is

1 important and it looks like having a reliable supplier
2 is important because if you miss that window you don't
3 have that dog in front of me to buy when I go out
4 shopping for my girls in a week or so. Or pony. We
5 would actually take the pony, but anyway.

6 You can put it in post-hearing, but if
7 there's anything else you want to say on auction data
8 or the other --

9 MR. PRICE: We'll put it in the post-hearing
10 brief, but I would say that the -- well, we'll just
11 put in the post-hearing brief.

12 COMMISSIONER OKUN: Okay. I appreciate
13 that. I think if I had other questions I've lost them
14 by this point of the day, but I really do want to
15 thank all of you for being here and all the answers
16 you've given us have been very helpful. I look
17 forward to reading your post-hearing brief.

18 Thank you, Mr. Chairman.

19 CHAIRMAN PEARSON: Commissioner Lane?

20 COMMISSIONER LANE: Thank you, Mr. Chairman.

21 Mr. Price, in looking at the staff report
22 the ratio of U.S. imports to production in some
23 instances are significant both relating to subject
24 imports and nonsubject imports. Can you give me in
25 your post-hearing brief specific cases where we have

1 looked at a similar fact pattern?

2 MR. PRICE: I will be happy to address that
3 in the post-conference brief.

4 COMMISSIONER LANE: Okay. Thank you. Now,
5 staying with you is it appropriate for the Commission
6 to exclude from the domestic industry those producers
7 that are related to an exporter or importer of subject
8 merchandise or which are themselves importers?

9 MR. PRICE: It is not appropriate in this
10 investigation. It's just not appropriate. Usually
11 you look for someone who is an importer who has a
12 different viewpoint than the Petitioners, expresses a
13 different viewpoint. That is not the case here.

14 Tim?

15 MR. BRIGHTBILL: Tim Brightbill, Wiley Rein.
16 To the extent you're going to think about excluding
17 anyone it would be American Scholar and Carolina Pad
18 given that they've virtually ceased domestic
19 production as opposed to the Petitioners who still
20 obviously have active domestic production operations
21 despite the fact that they sometimes import.

22 COMMISSIONER LANE: You'll address that more
23 in your post-hearing brief?

24 MR. BRIGHTBILL: We will do so.

25 COMMISSIONER LANE: Okay. Thank you.

1 Now, Ms. Hart, to the best of your knowledge
2 was the potential for direct imports from subject
3 countries ever the subject of dialogue during meetings
4 or negotiations between the bargaining units
5 represented by the steelworkers' union and their
6 employers?

7 MS. HART: I'm sorry. I would have to
8 address that later as we only became representatives
9 of the paper workers in 2005, and I don't have that
10 information available to me right now.

11 COMMISSIONER LANE: Okay. These questions
12 are for Mr. Robinson, Mr. Rahn and Mr. McLachlan. I'm
13 getting hungry and my thought process isn't quite as
14 focused as it should be, but in all of your efforts to
15 be more efficient and cut your costs do you feel that
16 you are sacrificing necessary maintenance that is
17 going to come back to haunt you in the long run?

18 MR. RAHN: Hal Rahn with Norcom. No. We've
19 seen no evidence of that at all. We have an ongoing
20 maintenance program per machine, annual teardowns, go
21 back up. We have a scheduled maintenance program that
22 we have not taken out of place to replace and to make
23 more time to run. It's all calculated into our
24 efficiency equation, so I don't see it affecting us.

25 MR. ROBINSON: At Top Flight we have a

1 standard by which we expect the machine and the
2 workers to produce product. The machines are
3 maintained to produce that speed, that volume, with a
4 measured amount of waste and that is what we manage
5 our machine maintenance to. I would anticipate that
6 we will have no problems because we haven't skipped
7 any maintenance on the machinery.

8 So we'll have no problems with increased
9 utilization of that equipment if these orders are
10 placed against the three subject countries to keep
11 these unfairly priced imports out.

12 COMMISSIONER LANE: Okay. Thank you.

13 Mr. McLachlan?

14 MR. MCLACHLAN: My answer is slightly
15 different. The machines that are in service are
16 getting well-maintained and we continue to do that and
17 we continue to look for new ways to reduce the cost of
18 maintaining them as we go forward, so we have been
19 more efficient about doing that and hopefully just as
20 effective as we had in the past.

21 We also haven't invested much in new
22 equipment at all. In fact we've postponed purchasing
23 and canceled purchases of new equipment that could
24 replace an aging equipment group. We also have
25 mothballed equipment, and so we don't maintain the

1 mothballed equipment. It's simply put away, covered
2 as best it can in the hopes that we can come back with
3 more production to fire those machines back up.

4 COMMISSIONER LANE: Okay. Thank you. To
5 the extent possible in this public forum can you
6 please discuss the varying trends of profitability for
7 U.S. producers' operations of the three different
8 product categories for which data were collected in
9 these investigations? That's CLPSS, OLPP and OSLPP.

10 MR. PRICE: I don't think we can discuss
11 that publicly at this point or at least I don't feel
12 comfortable.

13 COMMISSIONER LANE: Okay. So you can do it
14 in your post-hearing?

15 MR. PRICE: For the post-hearing.

16 COMMISSIONER LANE: Okay. Thank you.

17 With that, Mr. Chairman, I am done. Thank
18 you.

19 CHAIRMAN PEARSON: I'm interested in the
20 definition of a unit the way we have our like product
21 defined. This goes back to the basic question that
22 Commissioner Okun was raising. I mean, how much
23 variation is there between the amount of paper
24 included in the smallest thing that we're calling a
25 unit and the amount of paper included in the largest

1 thing that we have defined as a unit?

2 My sense is it's quite a large variation,
3 perhaps a factor of 100. Could you comment?

4 MR. PRICE: For all practical purposes
5 you're basically seeing it right in front of you and
6 it's not that kind of variation. In there. Seventy
7 pages versus a couple hundred pages. So there will be
8 some difference in value depending on what type of
9 cover it is, whether or not it's got a pretty dog on
10 it or so forth, but the actual amount of paper in it
11 doesn't necessarily vary that much.

12 CHAIRMAN PEARSON: Well, it wouldn't
13 necessarily, but under our like product don't we
14 include full reams, which would be 500 pages, and
15 what, as small as what, a handful of pages, 10 or
16 something like that?

17 I'm concerned about the way we're using
18 units here because it seems to me that we have this
19 really quite wide variation in the amount of actual
20 paper if you measure it by weight, or square meters,
21 or whatever and that's what I'm trying to understand.

22 MR. PRICE: People buy units, okay? They
23 don't buy pounds of paper, they don't buy values of
24 paper, they buy units. Units are the core
25 measurement. That's what this industry uses to

1 measure and that's what this Commission should be
2 using for like product, for negligibility, et cetera.

3 CHAIRMAN PEARSON: Well, but people actually
4 do buy value of paper, any purchaser buys value of
5 paper, and so I'm wondering in this case if we
6 wouldn't have a better measure of volume by using
7 value rather than units.

8 You might want to address that more in the
9 post-hearing because I don't want to take all of my
10 time for that issue, but I mean, it's a serious
11 question because it looks to me like we have quite a
12 wide range of possible weight of paper in the
13 different units, and so why should we treat them all
14 as equal in terms of our computations of volume?

15 MR. PRICE: We'll be happy to address it in
16 the post-hearing brief.

17 CHAIRMAN PEARSON: Thanks. Are your firms
18 able to produce the 92 bright paper that Staples has a
19 preference for and produce it in the United States in
20 the quantities that they would need?

21 MR. RAHN: Top Flight doesn't produce paper.
22 We buy paper from the U.S. industry that makes paper
23 just to be clear on that.

24 CHAIRMAN PEARSON: Of course. Yes. Thank
25 you.

1 MR. RAHN: The U.S. industry is now
2 producing a 92 bright sheet that is the standard
3 sheet. It's transitioning to that new sheet. Top
4 Flight certainly has availability of 92 bright sheets
5 that we can produce this product that Staples says
6 they prefer for their use and we can do it in our
7 factory very efficiently.

8 CHAIRMAN PEARSON: Okay. Because obviously
9 the equipment runs the same whether it's 92 bright or
10 something less.

11 MR. MCLACHLAN: Right. We're following the
12 same industry standard as the paper industry has moved
13 to 92 bright and we'll with that, too. They did that
14 in order to consolidate and eliminate grades in order
15 to make their operations more simple.

16 MR. PRICE: One final note and this just
17 goes to the Staples claim. We have samples of Staples
18 products brought from their shelves, okay, and I will
19 tell you that the 92 bright standard that they talk
20 about here is not observed in their product that they
21 have and their product that they buys. They could not
22 advertise that and get away with it I believe at the
23 FTC because it wouldn't be truth in advertising.

24 That applies for 2005, applies for 2006 and
25 applies to their branded product.

1 CHAIRMAN PEARSON: Okay. Thank you for that
2 clarification. Perhaps they'll have some comment on
3 that later.

4 Mr. McLachlan, earlier there was a
5 discussion of MeadWestvaco's challenges in importing
6 paper, trading paper and making any money at it and I
7 would just observe that trading skills are really
8 quite different than the skills involved in domestic
9 manufacture and distribution.

10 Looking ahead if MeadWestvaco continues to
11 be an importer do you expect to be able to make some
12 money in trading or importing the paper, I mean, based
13 on what you've learned? You've lost some to this
14 point, you know you've learned a bunch.

15 MR. MCLACHLAN: I'm not sure in this
16 category that we will, but clearly we're improving our
17 skills in many of the other different ways and we'll
18 look to try to be as strong a company as we possibly
19 can competing in whichever ways we have to.

20 CHAIRMAN PEARSON: Okay. For the other two
21 firms represented if you don't want to comment on the
22 record or in public I would understand that, but for
23 either now or for purposes of the post-hearing have
24 your import operations on paper made some money or
25 lost some money on the product we're dealing with

1 today, please?

2 MR. PRICE: My clients would prefer to
3 respond in the post-conference, but the Commission
4 actually has the data.

5 CHAIRMAN PEARSON: Okay. I just haven't
6 absorbed it yet. Thanks. That's fine. I appreciate
7 that. My last question.

8 It's a data question, and it was pointed out
9 to me following my earlier discussions that on Table
10 4-3 of the staff report, and that's BPI, it shows that
11 in 2003 U.S. producers' imports from Brazil were
12 different than what we have for the official
13 statistics on imports from Brazil, enough that if you
14 look at what producers have reported for their imports
15 you get a different sense of the trend than if you
16 look at the official Commerce statistic.

17 So for purposes of the post-hearing could
18 you look at those numbers and first of all try to
19 explain the differences if they are there, and then
20 perhaps further help us understand whether that data
21 difference is causing us some confusion that was
22 reflected here during this morning's proceeding?

23 MR. PRICE: We will be happy to in the post-
24 hearing brief.

25 CHAIRMAN PEARSON: Okay. Good. With that I

1 have no further questions, so Madam Vice Chairman,
2 over to you.

3 VICE CHAIRMAN ARANOFF: Thank you, Mr.
4 Chairman. I think maybe I'm batting clean up here.
5 We'll see. So I'll start before I rush into my last
6 few questions by thanking all the witnesses who have
7 participated this morning and well into the afternoon.
8 I haven't quite figured out how all this information
9 is going to be relevant to me, but I am going to take
10 my children shopping for their school supplies within
11 the next two weeks or so, so I'm sure I'll look at the
12 process differently than I ever have before.

13 CHAIRMAN PEARSON: I'd recommend looking at
14 the fliers in advance. It looks like there are some
15 real bargains out there.

16 MR. RAHN: Please buy Top Flight.

17 VICE CHAIRMAN ARANOFF: If only my
18 childrens' teachers would ask for the basic things
19 that actually go on sale as opposed to sending me in
20 search of very obscure school supplies, but that said
21 I don't think any of my colleagues yet have really
22 touched on the issue of threat assuming that we reach
23 that issue in this case, and so I wanted to follow up
24 with a few questions on that.

25 First on cumulation and threat. During the

1 period of investigation it's pretty clear from our
2 report that the subject imports from India and
3 Indonesia exhibited different volume and pricing
4 trends than subject imports from China. Is that a
5 good reason for the Commission to decline to cumulate
6 these imports for purposes of a threat determination?

7 MR. PRICE: Absolutely not, and I know
8 you're surprised to hear that. First of all, there
9 are some issues with some of the data, and we'll
10 address that. It affects some of the analysis.

11 But I don't think the Commission has looked
12 at a case with this intense seasonal type of bidding
13 before. All three of these guys are there, and I
14 think that is such a dominant factor here, that for
15 threat, if you were to find China a threat, I think
16 it's important that we cumulate in India or Indonesia,
17 you know, because they would become a threat
18 themselves. They would, in essence, enter the market;
19 Tim?

20 MR. BRIGHTBILL: Well, just to underscore,
21 the key inquiry is the degree that these compete head
22 to head with each other; the degree of overlap in
23 competition, and that's what you have here. So you
24 can go beyond the volume and the price data, which we
25 might disagree with, and look at the head-to-head

1 nature of the competition; the fact that India is
2 bidding directly Indonesia, and cumulate on that
3 basis. We think that's particularly relevant in this
4 case.

5 VICE CHAIRMAN ARANOFF: So there are other
6 factors, other than those trends, that I should weigh
7 more heavily when I'm considering other accumulates.
8 Okay, anything you want to add in the post-hearing on
9 that would be appreciated.

10 Target, in their brief, has submitted some
11 arguments suggesting that certain lined paper exports
12 to the United States from China may be limited in the
13 near future, either because of raw material shortages
14 or Government regulations dealing with the
15 environment, which could act as constraints on Chinese
16 production of the subject product.

17 Also, they also refer to evidence indicating
18 rising home market demand in China. Would you care,
19 either now or in your brief, to comment on whether
20 those are significant conditions that should affect a
21 threat analysis?

22 MR. PRICE: We can supply more data on this,
23 and we'd be happy to address it. We fundamentally
24 disagree with Target. I think you just heard Mr.
25 McLachlan talk about all the additional factories that

1 were literally being built on speculation to produce
2 the subject merchandise.

3 One of the things that Target, I think, by
4 the way, pointed to was, you know, wood pulp and wood
5 pulp issues. Well, you know, a lot of the Chinese
6 product isn't made from wood pulp. So it's pointing
7 to spurious issues. It's just not essentially
8 credible to say that China has a raw material supply
9 problem on these products.

10 VICE CHAIRMAN ARANOFF: Okay, just to
11 follow-up on that, in terms of the inputs that go into
12 the Chinese product, as a technical matter, assuming
13 92 Bright is becoming a global standard, can you
14 satisfy that standard using non-wood pulp input?

15 MR. PRICE: Chemicals is the answer. The
16 answer is, yes.

17 CHAIRMAN PEARSON: Do you bleach it a lot?

18 MR. PRICE: Yes.

19 MR. PRICE: Okay.

20 MR. ROBINSON: I'd like to speak to the
21 quality; saying that 92 Bright paper is becoming the
22 global standard. What is standard is what's
23 acceptable to the U.S. consumer, and what is
24 acceptable to the U.S. consumer is basically all the
25 product that you see on the shelf, up on the table;

1 whether it's 92 Bright or 84 Bright, or 89 Bright,
2 that is acceptable. That's been accepted by the
3 retailers. That's been accepted by the U.S.
4 consumers. It's been purchased for nine cents. It's
5 been purchased for 15 cents.

6 So the 92 Bright factor is a factor that
7 Staples has raised. Coincidentally, the direction
8 that the U.S. mills have chosen to take, independent
9 of the certain lined goods, they have chosen to move
10 their standard sheet to 92 from an 84 sheet. So the
11 driving factor on this is price.

12 VICE CHAIRMAN ARANOFF: I take your point on
13 that. In fact, I've been very surprised recently at
14 the number of cases in which we've seen a standards
15 issue, which is supply-driven rather than demand
16 driven, which I think is what you're describing to me
17 in this case. I certainly will be asking the
18 Respondents this afternoon whether consumers can see a
19 difference or care. I think your point is that they
20 don't.

21 MR. ROBINSON: It's price-driven. My point
22 is that it's price driven. But 92 Bright, it is
23 coincidental that the U.S. paper makers adhere to.

24 VICE CHAIRMAN ARANOFF: So I understand your
25 point, to the extent that when I refer to a standard,

1 I'm referring to something that's being supplier-
2 driven by paper supply, or at least as I see it on the
3 record. But I think I can still use the term
4 "standard."

5 MR. MCLACHLAN: Would you like some more
6 information on the paper mills and the other things
7 that are going on in China? I understand some of
8 their brief is about, there's isn't going to be enough
9 paper capacity to supply the Chinese, and that's
10 blatantly untrue.

11 CHAIRMAN PEARSON: Sure, and everything you
12 can supply on that, I think, is going to be relevant
13 to our analysis.

14 MR. MCLACHLAN: We can give you information
15 on number of machines planned, where the mills are
16 going, and where their sources of pole power, which
17 would include Russian, Brazil, straw and pulp, to show
18 you that they're still putting more paper in than they
19 can consume.

20 VICE CHAIRMAN ARANOFF: That would be very
21 helpful. I appreciate that.

22 Respondents have also noted rising demand in
23 the U.S. for the product, decreasing U.S. capacity,
24 and argued that consolidation among U.S. paper mills
25 and reduction in U.S. mill production of the types of

1 paper that are used to produce lined paper products
2 will further constrain U.S. producers' ability to
3 supply the market. Should we view that as a factor in
4 our threat analysis; Dr. Kaplan?

5 MR. KAPLAN: I think these are kind of the
6 "cats and dogs" that get thrown in the back of the
7 Respondents' brief. There's excess capacity
8 available. The U.S. industry could supply significant
9 more of the market.

10 To the extent that even if they could, the
11 order would raise prices, alleviating the injury. So
12 in purposes of threat, they are threatened on the
13 price side. They are threatened on the quantity side.

14 There would be a fairly priced market where
15 no child would have to go to school without a pony on
16 their notebook. We've talked about that. It's going
17 to be good. My daughter's is going to be a puppy, but
18 it will work. I don't think that's going to be a real
19 concern or threat to the U.S. industry.

20 VICE CHAIRMAN ARANOFF: Okay, naturally, my
21 children have a taste for those expensive licensed
22 characters.

23 (Laughter.)

24 VICE CHAIRMAN ARANOFF: I don't know, last
25 year it was Hello Kitty. Now, I don't know what. But

1 in any event, I think the question, as it was raised
2 in Respondent's brief, went more to whether there
3 would be enough paper available.

4 MR. ROBINSON: Yes, ma'am; there will be
5 enough paper available. The issue of paper supplies
6 is that we are a very small part of the U.S. paper
7 production system. The paper that goes into tablet
8 books, goes into composition books, goes into filler
9 paper and wire bound notebooks, we're very a very
10 small part of U.S. production. It is not much for
11 them to produce twice as much paper for us as they did
12 before.

13 I've met with individuals from International
14 Paper, the largest paper mill in the world, and their
15 issue is price. They need higher pricing for their
16 finished goods. If we can pay the price, if we can
17 release ourselves from this extraordinary price
18 squeeze we've been experiencing because of dumped
19 imports, then we can pay the price that would result
20 in an excessive supply of paper for our industry.

21 MR. PRICE: And to state the obvious, since
22 the petition has been filed, production domestically
23 as a result of the petition, because of the affects of
24 the petition, has increased. So, again, the paper is
25 available.

1 VICE CHAIRMAN ARANOFF: Okay, I appreciate
2 that. I have one final question, and because my light
3 is yellow, I'll ask you to please respond to it in the
4 post-hearing brief. That goes back to the
5 conversation we were having earlier about how the bid
6 process works. The one question that I never got to
7 was for the sort of last minute purchases and out-of-
8 season purchases that make up some portion of the
9 market.

10 So if you could describe to me, in your
11 post-hearing brief, as you're talking about how the
12 year works and who bids for what, when, is competition
13 the same or different than what you've described for
14 the big back-to-school season for the last minute and
15 out-of-season restocking-type purchases?

16 Are they held with the same kinds of options
17 and shoot-outs? Is the price competition the same or
18 less intense? Are the same players all present, or
19 does the domestic industry have any kind of a natural
20 advantage in terms of these maybe more short term
21 restocking-type purchases? So that's the question,
22 and if you could just respond in post-hearing.

23 MR. PRICE: We will be happy to.

24 VICE CHAIRMAN ARANOFF: Thank you very much,
25 and thank you again for all of your answers.

1 CHAIRMAN PEARSON: Are there other questions
2 from the dias?

3 (No response.)

4 CHAIRMAN PEARSON: Okay, do members of the
5 staff have any questions?

6 MR. DEYMAN: George Deyman, Office of
7 Investigations -- the staff has no questions.

8 CHAIRMAN PEARSON: Gosh, we must have done a
9 better job this morning than I thought. Do counsel
10 for the Respondents have any questions; Mr. Cameron?

11 MR. CAMERON: I believe that counsel for
12 Respondents have no questions, thank you.

13 CHAIRMAN PEARSON: Would anyone like to take
14 a lunch break; let's see?

15 MR. CAMERON: Counsel for Respondents would
16 love that.

17 CHAIRMAN PEARSON: Okay, we have a quick
18 consensus that we can survive by coming back at 2:30.
19 So let's do that. Be mindful that the room is not
20 locked. So if you have confidential business
21 information or other things that should be protected,
22 please take them with you. We will recess until 2:30.

23 (Whereupon, at 1:48 p.m., the hearing in the
24 above-entitled matter was recessed, to reconvene at
25 2:30 p.m. this same day, Tuesday, July 25, 2006.)

1 A F T E R N O O N S E S S I O N

2 (2:33 p.m.)

3 CHAIRMAN PEARSON: The hearing will
4 reconvene; Madam Secretary, over to you.

5 MS. ABBOTT: Mr. Chairman, the second panel
6 in opposition of the anti-dumping and countervailing
7 duties has been seated and all witnesses have been
8 sworn.

9 CHAIRMAN PEARSON: Okay, Mr. Cameron, please
10 proceed.

11 MS. TUCCI: Good afternoon, Commissioners,
12 my name is Meghan Tucci, and I am a Senior Buyer for
13 school and office supplies at Target Corporation. I'm
14 honored to be here and have the opportunity to address
15 the Commission concerning this case.

16 I have been Target's Senior Buyer for school
17 and office supplies since August of 2003. I've been
18 with Target 19 years in our stores and headquarter's
19 offices. I have been a buyer for various categories
20 since 1993, and as a Senior Buyer, I am responsible
21 for the strategy, vision, and financial performance of
22 the school and office supply category for all stores.

23 Target is one of the largest retailers in
24 the United States. We have over 1,500 stores
25 nationwide, and employ almost 300,000 U.S. workers. I

1 would like to take a few moments to explain to the
2 Commission how Target sources the products, subject to
3 this proceeding. I believe the information will
4 demonstrate why U.S. producers are not injured by
5 imports of lined paper.

6 The most important retail season for these
7 products is the back-to-school season, which runs mid-
8 July to September. Because the season is a mere eight
9 to ten weeks, it is essential that Target have its
10 merchandise in the stores at the very beginning of the
11 season. To do so, we must commit to the supplies in
12 the fall of the previous year, so that there is
13 sufficient time for production and shipment.

14 Generally, merchandise must be shipped to
15 Target's distribution center between April and June,
16 so that we can get the merchandise on store shelves by
17 mid-July. Logistically, this is a very tight
18 schedule. So there's very little room for error. If
19 shipments are late or contain merchandise that does
20 not meet Target's standards, it can have disastrous
21 and costly consequences for Target's back-to-school
22 season. Thus, purchasing decisions are not driven
23 solely by price.

24 Suggestions that retailers like Target drive
25 down prices for lined paper supplies by auctioning

1 contracts off to the lowest bidder are incorrect.
2 Target selects the suppliers each season, using an
3 invitation-only bidding process. Potential suppliers
4 that seek Target's business and with whom we have no
5 prior experience must be pre-qualified to ensure that
6 they meet Target's standard for quality and
7 reliability.

8 The combination of pre-qualification and
9 competitive bidding enables Target to get the best
10 value for the best price. That does not, however,
11 mean that Target simply awards the contracts to the
12 lowest bidder.

13 Because of the logistical challenges I
14 mentioned previously, other factors such as Target's
15 prior experience with a particular supplier also
16 influence our purchasing decisions. We are not
17 looking for a great price for merchandise that might
18 not show up until October. We have, therefore,
19 selected suppliers whom we know and trust, even though
20 they did not offer the lowest price.

21 Allegations that retailers such as Target
22 are driving down prices are also untrue. These
23 allegations rest on the fact that we run special
24 promotions during the back-to-school season. For
25 example, we will sell a package of 10 70-page spiral

1 notebooks for \$1. These 10 packs are a big sales item
2 and, therefore, represent the bulk of Target's
3 purchases of lined paper supplies. Target, however,
4 pays substantially more than \$1 for these 10 packs.

5 These lined paper products are one of a
6 handful of items that together with other items such
7 as markers, crayons, and colored pencils are
8 absolutely essential for our back-to-school marketing
9 program. Quite simply, we need these products,
10 because our promotions in the back-to-school area
11 drive a significant volume of business throughout the
12 entire store.

13 The cost Target incurs to provide items,
14 such as 10 packs for \$1, is recognized as an integral
15 part of our back-to-school marketing program, much
16 like an advertising expense for which we pay the going
17 market rate.

18 Target is, therefore, a price-taker in the
19 lined paper market. In fact, our suppliers, who are
20 largely U.S. producers, have increased 10 pack prices
21 significantly over the past three years; while
22 Target's back-to-school price has remained the same,
23 at 10 for a dollar.

24 The ability of U.S. producers to raise their
25 prices reflects the importance of this item to

1 Target's overall back-to-school marketing program.
2 Target's back-to-school marketing strategy increases
3 demand for these products. It does not drive down the
4 prices we pay for them.

5 Furthermore, Target's success is not built
6 on low price imports, as some suggest. Target's motto
7 is, expect more, pay less; and we put as much emphasis
8 on delivering more as we do on competitive prices.

9 Quality is, therefore, also an important
10 issue in our purchasing decisions. Most often,
11 however, we do not know what factory will actually
12 produce the lined paper products we purchase.

13 We are aware, for example, that U.S
14 producers, who are by far our largest suppliers,
15 frequently purchase the products they sell to Target
16 from foreign producers in countries such as Brazil,
17 China, India, and Indonesia, rather than producing the
18 products in the United States. We rely on our
19 supplier to ensure that the delivered product meets
20 Target's quality standards, regardless of where the
21 merchandise is produced.

22 The assurance of quality and timely
23 delivery, regardless of source, is a critical service
24 Target's suppliers provide. Thus, Target has
25 purchased its lined paper products from only a handful

1 of qualified suppliers. This eliminates the need for
2 Target to spend time and resources seeking out and
3 qualifying the best producers, wherever located.

4 Our qualified suppliers do that for us.
5 Those suppliers have primarily been U.S. producers.
6 In fact, Petitioners MeadWestvaco and Norcom have
7 always accounted for two-thirds of Target's total
8 lined paper purchases, including so-called brokered
9 imports.

10 In addition to these quality and real
11 liability factors, there are specific distribution
12 issues that have driven Target's sourcing strategy for
13 these products. For example, the 10 pack spiral
14 notebooks, which represent the vast majority of
15 Target's lined paper purchases, must be pelletized
16 when received at Target's distribution centers.

17 Target's international supply chain does not
18 handled pelletized freight efficiently. Our de-
19 consolidation center has an automated system set up to
20 handle merchandise in cartons.

21 In 2005, when Target placed a small order
22 for filler paper directly with a producer in China, we
23 learned first-hand the inefficiencies we could
24 encounter in direct sourcing these products;
25 inefficiencies that could quickly erase any price

1 advantage. In all likelihood, therefore, Target will
2 continue to rely on suppliers who are better equipped
3 to handle these distribution issues.

4 All of these factors -- tight delivery
5 schedules, quality issues, logistical challenges --
6 tend to favor experienced U.S. suppliers. In
7 particular, U.S. producers such as MeadWestvaco and
8 Norcom, are in Target's supplier selection process.
9 As a result, it is those suppliers that are the price
10 leaders.

11 Finally, I would like to state
12 categorically, that Target did not, in any way,
13 attempt to rush merchandise into the United States,
14 prior to Commerce's preliminary determination, as
15 Petitioners' have alleged. Target's commitment terms,
16 including the delivery window, were the same for the
17 2006 season as for prior seasons.

18 That concludes my testimony. I sincerely
19 hope that the Commission has found my remarks to be
20 useful, and I'll be pleased to answer any questions
21 that you may have.

22 MS. TROSSEVIN: Good afternoon, Mr.
23 Chairman, Commissioners, I'm Marguerite Trossevin of
24 Mayer, Brown, Rowe & Maw, counsel for Target
25 Corporation. I would like to introduce Mr. Herr

1 (phonetic), the owner of Mr. Watanabe. He came here
2 today from Beijing to tell the Commission how he began
3 importing into the U.S. market. Because of the need
4 for translation, rather than presenting his testimony
5 orally, we have provided it to the Commission in
6 writing, and we ask that it be made a formal part of
7 this record.

8 CHAIRMAN PEARSON: Yes, without objection,
9 it will be added to the record.

10 MS. TROSSEVIN: Briefly, his testimony shows
11 that, in fact, U.S. producers actively sought out
12 imports from China at a time when they were not facing
13 any significant competition from imports, and within a
14 couple of years, were responsible for 100 percent of
15 Watanabe's exports to the United States. Mr. Herr
16 hopes that you find his testimony useful, and would be
17 happy to answer any questions you may have.

18 In addition, we have here today Bruce
19 Malashevich of Economic Consulting Services, whose
20 testimony was submitted to the Commission in advance
21 because it was necessary for him to rely heavily on
22 APO information. Mr. Malashevich is also available to
23 answer any questions.

24 MS. CIULLA: Good afternoon, my name is
25 Susan Ciulla. I'm a Vice President and merchandise

1 manager in charge of purchasing for all certain lined
2 paper school supplies that are the subject of this
3 investigation. With me this morning is Kelly O'Brien,
4 who is the buyer for these products.

5 Staples is the number one office supply
6 retailer in the United States, with over 1,200 retail
7 stores throughout the country, and we employ more than
8 40,000 associates in the United States.

9 I have been with Staples since 1995, and in
10 that time, I have been intimately involved with
11 Staples' purchases of lined paper products. Staples
12 is one of the largest national buyers of these
13 products; and over the years, we have purchased
14 substantial quantities of lined paper products from
15 both the domestic industry and from foreign producers
16 primarily located in Brazil and Indonesia.

17 With respect to the market for lined paper
18 products in the United States, I have five major
19 points that I would like to share with you this
20 afternoon. First, Staples had been importing from
21 Tjiwi Kimia in Indonesia long before I joined Staples
22 in 1995. We began importing from Tilibra in Brazil in
23 approximately 1998.

24 Prior to the 2005 buying season, our normal
25 practice was to purchase approximately 80 percent of

1 our Staples' branded notebooks and filler paper
2 products from Brazil and Indonesia. Until recently,
3 these were the only viable sources of 92 Bright paper.
4 The remaining 20 percent of our own branded product,
5 we sourced domestically, because we felt it was
6 important to have some supply available from the
7 United States, where increased quantities could be
8 produced and delivered quickly if sales exceeded our
9 forecasts.

10 For the 2005 buying season, however, we
11 decided to shift our purposes for our own branded
12 products entirely to Brazil and Indonesia because of
13 the superior paper quality in the 92 Brightness. We
14 continued to purchase substantial quantities of Mead
15 Five Star and Five Star Advance branded products from
16 Mead.

17 Mead then approached us about purchasing
18 notebooks and filler paper being produced for them in
19 China by Watanabe. Mead said the development of China
20 as a source of supply was an important strategic
21 initiative for them, and they promoted their Chinese
22 sourcing to us aggressively. They asked us to support
23 them in this initiative, given our long-standing
24 relationship together.

25 We agreed to do so and, at their urging, we

1 placed substantial orders with Mead out of China;
2 orders that exceeded those we had given them in prior
3 years with respect to their domestic reproduced
4 product.

5 Although we were the importer, Mead was the
6 party that negotiated the sale, and we paid Mead, not
7 Watanabe. Our conditions were that Mead ensure that
8 the resulting paper was of the same brightness and
9 quality coming out of Brazil and Indonesia, and that
10 the filler paper and notebooks would otherwise satisfy
11 our quality standards.

12 Despite their assurances, this is not what
13 happened. As we worked through our standard factory
14 certification process, it quickly became apparent that
15 there were significant quality issues. Samples were
16 chronically late, factory audits revealed major
17 deficiencies. Ultimately, we found it necessary to
18 cancel some orders and to reject and destroy others.
19 Even the product that we did accept did not meet our
20 brightness and quality standards as we had been
21 promised.

22 Faced with a significant shortfall in
23 anticipated product deliveries, we scrambled to fill
24 in with additional orders from Indonesia and Brazil,
25 where possible. In some cases, we found it necessary

1 to shift orders to other Chinese sources to make up
2 for the shortfall from Mead/Watanabe.

3 After this challenge with Mead/Watanabe,
4 Mead came to us and said that they still intended to
5 continue to arrange for production of Mead products in
6 China, and they promised to provide us, by the end of
7 last summer, a corrective action plan that would
8 restore our confidence in their Chinese supply. That
9 never happened. We have not looked again at sourcing
10 product out of China.

11 Secondly, the U.S. lined paper industry
12 simply cannot supply the U.S. market demand. As just
13 one example, there is only one U.S. producer, Roaring
14 Spring, that has the capability to produce composition
15 books in the United States. This is a significant
16 portion of the market.

17 But there's no way that Roaring Spring can
18 possibly supply the U.S. market. Given the size of
19 this market and the available U.S. capacity, imports
20 are a necessity. The domestic industry, over the past
21 several years, has made what appears to us to be a
22 strategic choice to diversify their sources of supply
23 by investing in offshore production and in building
24 strategic and contractual relationships with offshore
25 suppliers, rather than modernizing or expanding their

1 U.S. production.

2 When we purchase for our own branded
3 products, we know where the product is manufactured,
4 because all of our manufacturers must pass our
5 certification program. But if we are buying name
6 branded products from companies such as Mead or other
7 domestic companies, we don't necessarily know where
8 the product has been manufactured.

9 The U.S. producers have clearly made their
10 own decisions about how much to produce domestically
11 and how much to source from abroad. What is
12 abundantly clear to Staples, however, is that the U.S.
13 producers have nowhere near sufficient capacity to
14 supply the market, and they depend on imports --
15 particularly imports from Brazil -- to supply their
16 major retail customers with the products that we need.

17 Third, the reduction in domestic capacity
18 and the diversification of sourcing by the U.S.
19 industry are indicative of trends in the broader paper
20 industry. The domestic capacity of uncoated free
21 sheet, and particularly the 15 pound tablet paper that
22 goes into the products of these products, has
23 declined.

24 Only two of the four mills that used to
25 produce this 15 pound tablet grade of paper still make

1 that paper today. In addition, raw material costs
2 have increased due to increases in energy and other
3 costs. Simply put, there's less uncoated free sheet
4 15 pound tablet paper available and the prices are
5 higher. The U.S. industry has responded to these
6 long-term trends by investing in greater off-shore
7 capacity, particularly Brazil.

8 Fourth, other than our brief adventure into
9 China with Mead, Staples' primary sources for imported
10 lined paper have been Indonesia and Brazil. We have
11 determined, as a means of distinguishing and enhancing
12 the appeal of Staples' brand, that our brand notebooks
13 and filler paper would be required to be at least 92
14 Bright, wherever possible.

15 At that time, only Brazil and Indonesia had
16 the ability to satisfy this requirement. Thus, from
17 our perspective, lined paper products offered by the
18 U.S. producers were not a viable alternative for us,
19 for our own branded products.

20 Due to the uncertainty created by this case,
21 we stopped buying from Indonesia in 2006. However, as
22 I will discuss in a moment, the U.S. industry
23 submitted very few responsive bids to us.

24 In terms of Brazil, the U.S. producers
25 control a significant portion of the supply, either

1 because they owned the facility or had commitments for
2 much of the production. Indeed, some U.S. producers
3 withdrew bids from Brazil immediately after they filed
4 this petition.

5 Unable to purchase from U.S. producers, we
6 developed other suppliers of 92 Bright paper in
7 Brazil, as well as Mexico, Argentina, and Egypt. Our
8 primary supplier in Brazil used to be Tilibra. After
9 this case was filed, Staples was informed by Tilibra
10 that they had submitted responsive bids for Staples'
11 business through Mead Corporation. Mead never
12 forwarded Tilibra's bid to Staples.

13 Fifth and finally, the domestic industry has
14 claimed that it is filing this case in order to allow
15 it to expand their domestic production in sales of
16 lined paper products. If that is what is going on, at
17 Staples -- and we're one of the largest purchasers of
18 lined paper product -- we have seen no evidence of
19 this.

20 Last August, we requested bids on our
21 Staples' brand products for the 2006 back-to-school
22 season. Despite repeated requests, none of the major
23 domestic producers, with the limited exception of
24 Mead, was willing to provide a bid to supply us with
25 lined paper to be produced in the United States.

1 Well after the bid was closed, Mead did
2 offer to supply one item, 150-count filler paper,
3 produced in the United States. But they offered to
4 supply composition books out of Brazil, and declined
5 to bid on any other item on Staples' bid.

6 Norcom initially provided us with
7 significant bids, with all of the products to be
8 manufactured in Brazil. Then in late September, after
9 the filing of this case, Norcom withdrew the
10 previously-quoted prices out of Brazil, and stated
11 that they would re-quote prices to us in October; but
12 that they were no longer sure if they had sufficient
13 capacity.

14 However, despite repeated requests, Norcom
15 failed to give us new price quotes on their Brazilian
16 offerings, or to give us a single price quote for
17 product produced domestically in the United States.

18 Roaring Spring initially responded to our
19 bid request by offering to supply product produced in
20 China. They then withdrew this bid, and they did
21 offer to supply us limited items out of the United
22 States, with larger volume items to be produced in
23 Brazil.

24 Top Flight never responded to our bid
25 request at all. In November 2005, well after the bid

1 had closed, Top Flight did meet with Staples. Their
2 presentation focused on the consequences of the ITC's
3 preliminary determination. They advised Staples that
4 as a result, supplies out of Brazil were sold out.
5 But they had orders in place from Brazil to supply the
6 U.S. market.

7 Top Flight also advised us that available
8 U.S. capacity is limited, as Mead had reduced their
9 U.S. capacity by 35 percent. However, while they
10 quoted us prices on fashion notebooks and other niche
11 products, they still declined to offer us a single
12 price on any item that was out on the bid for our
13 back-to-school 2006 season.

14 If these U.S. producers are so concerned
15 about being able to sell U.S. manufactured lined paper
16 products and have unused domestic production capacity;
17 and if, as they claim, they can now produce 92 Bright
18 paper products domestically, then why did Staples
19 receive no bids from the domestic Petitioners after
20 this case was filed?

21 The domestic industry has an inherent
22 advantage, in that they are closer to the market than
23 the foreign producers, and can generally provide
24 reliable and timely supply, which is critical for the
25 tightly compressed back-to-school selling season. Had

1 they been willing to respond to our bid requests, we
2 would likely have purchased a portion of our 2006
3 purchases from the domestic industry.

4 Instead, the U.S. producers not only failed
5 to give us quotes on the domestic production, but they
6 reneged on their previous offers to supply us with
7 products out of Brazil.

8 We were left to scramble to locate new
9 suppliers in Brazil, Mexico, Argentina, and Egypt. As
10 an executive in a U.S.-based corporation that employs
11 thousands of people in large and small communities
12 throughout the United States, I must confess that I
13 fail to see how forcing Staples to shift purchases of
14 lined paper products from Indonesia to other countries
15 like Brazil, Mexico, Argentina, and Egypt is going to
16 benefit the workers in the United States.

17 If anti-dumping and countervailing duty
18 orders effectively cut off the supply from Indonesia
19 and other subject countries, then companies who have
20 invested in production in Brazil, or who have been
21 able to effectively lock up supplies from Brazilian
22 products, will make out very nicely.

23 This concludes my prepared testimony. Kelly
24 and I are available to answer any questions; thank
25 you.

1 MR. CAMERON: Walgreens?

2 MR. VANGUYSE: Good afternoon, Mr. Chairman
3 and members of the Commission. My name is Mark
4 VanGuyse and I'm employed by the Walgreens Company,
5 where I hold the position of Category Manager for
6 stationery.

7 I have worked for Walgreens for the past 19
8 years in various parts of the company. My current
9 responsibilities include purchasing on behalf of
10 Walgreens the products subject to this investigation
11 and other school supplies.

12 Founded in 1901, Walgreens is the nation's
13 largest retail pharmacy chain in terms of sales, and
14 is considered the leader in innovative drug store
15 retailing. Walgreens has over 5,300 stores in 46
16 states and Puerto Rico.

17 Walgreens' school supply products include
18 folders, notebooks, paper and, of course, an
19 assortment of crayons, pencils, and pens. Many of
20 these products are sold under the Walgreens' Corner
21 Office and Penway private labels.

22 While Walgreens is primarily known as a
23 pharmacy retailer, our office and school suppliers are
24 an important need of our customers; but we stock these
25 items because we want to provide the utmost level of

1 convenience to our customers.

2 The process by which Walgreens makes
3 purchasing decisions regarding lined paper products is
4 consistent with other large retailers. While we
5 prefer to purchase from domestic suppliers,
6 considerations including quality and an ability to
7 provide reliable submission supplies in a timely
8 manner are paramount for Walgreens.

9 In 2001, Walgreens relied on MeadWestvaco as
10 its primary supplier of lined paper which, during that
11 period, was domestically made. In 2002 and continuing
12 through 2004, however, Mead began supplying Walgreens
13 with paper produced in China. At the outset, Mead
14 clearly identified the sources of paper as Chinese.

15 Walgreens' purchases from Mead were
16 structured so that Walgreens was the importer of
17 record of the Chinese-produced product, although title
18 flowed from the Chinese factory through me.

19 From Walgreens' perspective, the most
20 important considerations concerning sourcing of lined
21 paper are reliability, availability of the
22 product;, and the opportunity to further develop and
23 promote its exclusive Corner Office brand; thus,
24 building equity in the brand to expand sales of other
25 Corner Office products throughout Walgreens' stores.

1 Two important factors in Walgreens' sourcing
2 decisions were that it had a steady source of supply
3 of its private label lined paper, the Corner Office
4 brand, and concern that the flow of its paper might be
5 interrupted; thereby leaving Walgreens with a
6 deficient amount of product during the critical back-
7 to-school season.

8 Walgreens' desire to expand its private
9 label products was, and continues to be, a major
10 factor in our decision to purchase from vendors other
11 than Mead.

12 I also want to address the Petitioners'
13 allegation regarding the "surge of import shipment" of
14 the subject product by Walgreens during the first
15 three calendar months of 2006.

16 By way of background, it is important to
17 understand that in 2004, Walgreens purchased the
18 surplus of the subject products, which we carried over
19 into 2005. This 2004 surplus diminished our purchases
20 in 2005 of lined paper. Thus, when comparing 2006
21 quantity to 2005 purchases, the numbers are skewed.

22 In addition, in 2005, as a result of our
23 chain-wide growth and later than desired deliveries
24 from certain vendors of our entire back-to-school line
25 products, other than lined paper, our distribution

1 system was strained, such that product was delayed
2 getting on the shelf.

3 For 2006, to ensure timely placement of
4 back-to-school products on the shelves, we decided to
5 allow our distribution system more time to receive,
6 process, and deliver product to the stores. The fact
7 was that, for the first time, we are merchandising all
8 lined paper product in both displays and in bulk. It
9 meant that Walgreens had doubled the SKU count.
10 Doubling a SKU count significantly increases the
11 amount of handling which leads to increased
12 distribution lead time.

13 The company made a strategic decision to
14 have the largest bulk product, lined paper, shipped
15 first, which is a change from previous years.

16 Finally, an advance purchase discount and
17 greatly improved payment terms offset the cost of
18 carrying additional inventory of the subject products.
19 Such advance buying arrangements are common in the
20 retail industry, whether
21 purchasing foreign or domestic product.

22 Mead is petitioning the U.S. Government for
23 trade sanctions on imports of subject products from
24 China, while its self-supplying Walgreens for several
25 years with Chinese-produced paper seems to be very

1 hypocritical on Mead's part.

2 At first glance, it may seem that Mead is
3 shooting itself in the foot by filing this case, since
4 it is, and has been, since at least 2001, a major
5 supplier of subject Chinese products to the U.S.
6 market.

7 I concur with the explanation in the opening
8 statement made by counsel for Respondents; that Mead's
9 motives, including expanding its Brazilian exports to
10 the United States, will be exempt from anti-dumping
11 duties.

12 I also believe that another motive of Mead
13 bringing the case was to be able to expand Chinese
14 production of its trademark product, such as items in
15 the Five Star brands of notebooks, which Mead has
16 excluded by name from the scope of the petition.

17 In conclusion, Walgreens was a purchaser of
18 domestically-produced subject products. It was Mead,
19 not Walgreens, which decided to source such products
20 from China. After others started using China as a
21 source of such products and began competing with Mead,
22 they changed stripes and decided to file this anti-
23 dumping petition.

24 Its motives appear not to protect its
25 domestic production of lined paper; but to take unfair

1 advantage of the U.S. trade laws, to shift production
2 of lined paper to a non-subject country, Brazil.

3 At the same time, it excluded from the scope
4 of the case its highly profitable specialty items,
5 such as the Five Star line of notebooks, which it
6 produces in China, thereby exempting products from any
7 trade relief which might be afforded by the U.S.
8 Government.

9 Ultimately, as the Commission considers this
10 case, retailers and consumers alike continue to ask
11 whether the anti-dumping laws administered and
12 enforced by the International Trade Commission and
13 Department of Commerce, are intended to give relief to
14 domestic petitioners, who are also massive importers
15 from the target countries.

16 An affirmative finding by the Commission in
17 a case of this nature would result in an unfair
18 competitive advantage to the Petitioner by imposing
19 anti-dumping duties on Respondents trying to fairly
20 compete in the world marketplace, while protecting
21 Petitioners' imports of identical and similar products
22 in the name of fair trade. Truly, this was not the
23 intent of the statute's drafters.

24 I would be happy to answer any questions
25 which you may have.

Heritage Reporting Corporation
(202) 628-4888

1 MR. GRAHAM: Good afternoon, Mr. Chairman
2 and Members of the Commission. My name is David
3 Graham. I am currently employed at NuCarta as
4 president. I am appointed today by the vice president
5 of NuCarta, David Hixon.

6 Prior to joining NuCarta, both David and I
7 were employed by Norcom, where I held the position of
8 vice president of sales, and David was the national
9 sales manager.

10 As part of our job duties and
11 responsibilities, David and I both became familiar
12 with the business operations of Norcom, including but
13 not limited to, the operations related to Norcom's
14 production, importation, and sale of certain lined
15 paper products. In fact, in my position as vice
16 president of sales, one of my job responsibilities was
17 to find sources of supply for Norcom in China and
18 other countries following Norcom's decision to grow
19 sales through importing.

20 So being familiar with Norcom's operations,
21 I can speak definitively to one issue in particular,
22 the idea that Norcom and other domestic producers have
23 been forced to import from the subject countries and
24 from Brazil is incorrect. The simple truth is Norcom
25 had begun a strategy of importing as early as 1999.

1 The basic strategy implemented by Norcom that I
2 observed was to limit domestic production to a
3 relatively small number of production facilities and
4 to rely heavy on imports from China, Brazil, and
5 Indonesia to improve profit margins and to satisfy
6 demand for orders with retailers.

7 The decisions to increase imports from China
8 came after the decision not to increase domestic
9 production. I know this because I was the one at
10 Norcom that assisted in finding suppliers in China.
11 Throughout my time at Norcom, it was my observation
12 that the reason the company began shipping from
13 overseas was to increase its margins and increase its
14 sales capacity, not to respond to import competition.

15 Norcom's strategy of focusing on foreign
16 sources to satisfy its back-to-school demand is also
17 demonstrated by the fact that Brazil was not included
18 in this investigation. While Norcom may not have any
19 formal, legal relationship with the Brazilian
20 producers that supply it, like Mead does, Norcom has
21 established partnerships with these producers. In
22 these partnerships, Norcom would seek out a Brazilian
23 producer and assist it in establishing the types of
24 production capabilities Norcom needed, then purchase
25 all or nearly all of that producer's capacity.

1 Based on my experiences at Norcom, it is my
2 belief that if Petitioners are successful in
3 antidumping, or countervailing duties orders are put
4 in place, the domestic industry will merely use this
5 as an opportunity to continue its already established
6 strategy of expanding reliance on Brazil and other
7 nonsubject countries rather than increasing production
8 domestically.

9 There are a number of reasons for this.
10 First and foremost, they make more money on imported
11 products than on domestically produced products. Of
12 course, with China, India, and Indonesia excluded from
13 the market, Brazil will be an even more attractive
14 option for the Petitioners.

15 Additionally, the Petitioners will continue
16 to rely heavy on imports because the domestic industry
17 simply cannot expand its domestic capacity to meet the
18 demands during the back-to-school production cycle and
19 because the domestic industry lacks adequate cost-
20 effective inventory space with which to store
21 increased production in advance of the back-to-school
22 season.

23 While they may claim to have additional
24 unused capacity, their capacity is theoretical in that
25 it is based on a 12-month production cycle. However,

1 as anything familiar with the industry can tell you,
2 80 percent of the demand for these products are for
3 the back-to-school season. These back-to-school
4 products must be produced in a four-to-six-month
5 period, from January to June.

6 Available capacity in July through December
7 cannot be used to fill these orders because producers
8 do not get customer commitments until November and
9 December. Thus, the only way the domestic producers
10 have been able to meet the demand on such a short
11 cycle is to rely heavy on imports.

12 Petitioners have alleged that importers
13 attempted to flood the market in 2006 prior to the
14 imposition of antidumping duties. This is not the
15 case. For example, NuCarta was formed in November of
16 2005. Most of NuCarta's sales are of nonsubject
17 products. Indeed, NuCarta supplies a wide range of
18 products, such as index cards, fashion notebooks,
19 portfolios, envelopes, to customers other than Target
20 such as Dollar Tree, Office Depot, or Walgreens.

21 I have worked in the paper business for
22 nearly 20 years and have established relationships
23 with retailers like Target and Office Depot as have my
24 NuCarta partners. All of our contacts and
25 relationships are related to this business. We have

1 been tried and true suppliers to Target and other
2 retailers over the years in various positions with our
3 predecessor companies.

4 So it was natural that we would continue in
5 this line of work as NuCarta. The decision to form
6 NuCarta was completely unrelated to this
7 investigation. Moreover, each of the shipments
8 imported by NuCarta in February, March, and April of
9 2006 were actually placed in 2005 and were expected to
10 pass through customs beginning at the end of February
11 2006, continuing to enter through April of 2006.

12 The original deadline for the DOC
13 preliminary determination was February 16, 2006.
14 Thus, when each of these orders was placed, we
15 expected that preliminary antidumping duties would
16 apply. DOC decided to extend the deadline for its
17 preliminary determination after we placed our orders.
18 The timing of these imports was a function of our
19 being a smaller participant in the market and needing
20 enough lead time for further processing of the imports
21 for the back-to-school season.

22 We needed time after importation to
23 palletize the products for Target in specific
24 quantities and with specific Target-required labeling
25 on the pallets. Additionally, other containers with

1 other products, such as colored portfolios, needed to
2 be sorted and palletized by color. All of this
3 activity was required by a small group of staff in the
4 same facility, which we knew could lead to delays in
5 final processing. For this reason, the imports needed
6 to be entered when they entered to satisfy the back-
7 to-school season for orders by our retail customers.

8 There was no intent to evade preliminary
9 antidumping duties with these imports and the orders
10 placed for those imports. Thank you for your time
11 today.

12 MR. MENEGAZ: Good afternoon. This is Greg
13 Menegaz from the law firm of deKieffer & Horgan. I'm
14 here on behalf of Navneet Publications India, and I'm
15 going to introduce Barry Rao, president of American
16 Scholar, to make one quick note based on tariff
17 numbers added by the Commerce Department to the scope
18 right before the prehearing brief. India falls under
19 the 3 percent negligibility standard for both the
20 countervail and the dumping case, and I'm going to
21 turn over the podium to Mr. Rao.

22 MR. RAO: Good afternoon, Members of the
23 Commission. For the record, my name is Barry Rao.
24 I'm the president of American Scholar, a small, U.S.-
25 based, manufacturing company based in New York of

1 lined paper products dating back to the 1800s.

2 I'm testifying here today in opposition of
3 the filing of certain lined products supplied from
4 China, Indonesia, and India. I have three points to
5 address.

6 One: Petitioners are attempting to take
7 unfair advantage of the U.S. trade laws by being the
8 largest importers of certain lined products while at
9 the same time surgically targeting import sources of
10 their competition with the hope of stacking the deck
11 against smaller U.S. manufacturers. American Scholar,
12 for the past decade, was a major, private-label, lined
13 product supplier to all three Petitioners -- Mead,
14 Norcom, and Top Flight -- and other companies like
15 Esselte, Pendeflex, and Avery Dennison National.

16 Starting in the 1990s, the Petitioners
17 gradually moved their business away from American
18 Scholar as American Scholar began to grow, not just
19 being a small OEM manufacturer but having a national
20 presence itself. Shortly then in the new millennium,
21 American Scholar saw its orders from the Petitioners -
22 - to a trickle, and the Petitioners claim that
23 American Scholar's U.S.- and India-based production,
24 along with the Indian market as a whole, was too
25 expensive to compete in the U.S.

1 Petitioners, hence, moved their production
2 to Brazil and other Asian countries. In the recent
3 years, Petitioners, with the newly formed
4 MeadWestvaco, have gone on a global shopping spree,
5 acquiring Canadian manufacturer Hilroy, Mexican
6 plants, and most significantly, in 2004, the purchase
7 of the largest Brazilian manufacturer, Tilibra. At
8 that time, Tilibra was the second-largest importer in
9 the U.S.

10 Ironically, American Scholar was among the
11 last U.S. producers to diversify its capital
12 equipment, not because of imports from China,
13 Indonesia, and India, but due to the competition from
14 a host of import sources with whom the Petitioners
15 strategically partnered, affiliations such as Brazil,
16 Mexico, and China.

17 Petitioners have unreasonably included
18 India, a small, negligible, paper-manufacturing
19 country, and cased it together with Indonesia and
20 China, whose natural resources are plentiful.
21 Meanwhile, Petitioners dubiously ignored Brazil, the
22 world's largest producer of paper products.
23 Petitioners recently bought substantial capacity from
24 Brazil. I'm convinced, based on my knowledge of the
25 industry, that you'll find India's share negligible,

1 either measured by the meaningful quantity or by
2 value.

3 I urge the ITC to consult all of its HTS
4 numbers to the lined product and to consider any
5 questionnaire response of Indian imports before
6 drawing to a final conclusion on negligibility. For
7 the Commission's further consideration, the
8 Petitioners visited widely inspected Indian plants for
9 over the past few years in false pretenses to have
10 potential collaboration, only to conclude that the
11 prices were significantly higher, and they could
12 obtain from any other country.

13 India was included in this case only to
14 eliminate American Scholar, a small U.S. competitor.
15 There is written documentation from the Petitioners,
16 and it can be provided if the Commission has an
17 interest in it.

18 The Petitioners gerrymandered the scope, and
19 in the case of protection of imports -- substantially
20 the imports of American Scholar at the same time from
21 the same country. As a part of their strategic grip
22 on the U.S. market, the Petitioners eliminated the
23 scope of certain key products which have higher label
24 content, such as the Five Star brands, under the
25 intellectual property exclusion. At the same time,

1 American Scholar's trademark, Xtreme Books and Marble
2 Composition, are included in the case. These compete
3 head on with Five Star products similarly available in
4 the market.

5 If American Scholar was invited to join the
6 petition, I suppose I could have had the Marble
7 Composition, black and white composition book, for the
8 U.S. market made in China and stopped any other nearly
9 identical black and white composition from bearing the
10 trademark from coming in. Of course, this would have
11 made the Petitioners' strategy all the more
12 transparent. In this case, it's not about the
13 Petitioners protecting the imports and putting the
14 companies, like American Scholar, out of business.

15 In closing, American Scholar does not
16 believe that there is any material injury or threat to
17 the domestic industry caused by the import of lined
18 paper products from China, Indonesia, and India. On
19 behalf of all of American Scholar's employees, I hope
20 the ITC sees through the cynical business strategy of
21 the Petitioners that imply my company and refuses to
22 allow the national trade remedy laws to be used in
23 this manner. I want to thank you for the opportunity
24 of speaking here, and I would look forward to any
25 questions that you may have.

1 MR. EIDINGER: Good afternoon. My name is
2 Harvey Eidinger. I'm COO of Firstline Canada, a
3 Canadian company incorporated in 2002 that imports
4 paper products into the United States. Prior to 2002,
5 I was vice president of Fankle Products Canada, which
6 exported paper products to the United States.

7 We are aware of the major shift of lined
8 paper subject imports to Brazil for the 2006 back-to-
9 school season. Brazilian imports have undersold
10 domestic prices by margins equal and larger than
11 Chinese and Indian products. All Petitioners have, in
12 large part, been responsible for this shift. In
13 particular, we are aware that Mead is importing from
14 its wholly owned facility, Tilibra, in Brazil.
15 Tilibra has previously been found to be dumping the
16 subject merchandise by the Canadian dumping
17 authorities.

18 In 1990, Revenue Canada found Tilibra to be
19 dumping filler paper to Canada at a weighted average
20 margin of 32.5 percent. The Canadian International
21 Trade Tribunal found that dumped imports injured the
22 Canadian industry. Injury determination was made in
23 part because the Brazilian exporters were able to
24 direct their under used capacity after peak production
25 for the Brazilian school year to the North American

1 market.

2 On July 5, 1995, the CITT reviewed the
3 antidumping order on filler paper and continued it for
4 an additional five years, finding that Brazil had
5 significantly increased its capacity to produce refill
6 paper. The tribunal again found that the
7 countercyclical nature of the Brazilian back-to-school
8 season established that Brazilian manufacturers were
9 likely to have under utilized capacity to serve and
10 impact the North American market during its peak
11 season.

12 U.S. and Canadian retailers now issue orders
13 later into the back-to-school season. Production
14 details are often only known between February and
15 March, resulting in production being compressed into a
16 four-month production season between March and June.
17 The Brazilian peak production season is between
18 October and February. Consequently, Brazilian,
19 exporters, including those controlled by Petitioners,
20 have access to under utilized Brazilian capacity
21 during the peak North American season.

22 As a result, Petitioners are able to employ
23 countercyclical Brazilian capacity which undersells
24 domestic Chinese and Indian products at greater per
25 unit profit rates at the same time as Petitioners are

1 reported under utilized and abandoned U.S. capacity.

2 Over the last 10 years, I have seen Mead
3 gobble up U.S. and Canadian production and then slash
4 capacity. At the same time, Mead has steadily
5 increased its reliance on Brazilian and subject
6 imports to fill the void. Any injury to their
7 domestic operations is, therefore, of their own making
8 and not by reason of subject imports. Only
9 Petitioners' imports from Brazil and Argentina will
10 benefit from an order, not U.S. production. Thank you
11 very much.

12 MR. PRESLEY: Good afternoon. My name is
13 Clay Presley, and I am president and CEO of CPP
14 International in Charlotte, North Carolina, formerly
15 known as Carolina Pad and Paper. I've been in the
16 lined paper business and stationery products business
17 since 1987. CPP has been selling lined paper
18 products, including school supplies, since 1945 and
19 currently employs about 55 people in the United
20 States.

21 CPP was a converter of paper products until
22 2003. In 2000, we made the decision to switch our
23 product focus from standard paper products to fashion-
24 designer paper products and accessories.

25 Although the petition suggests that all

1 products covered in this case are interchangeable,
2 fashion-designer paper products are an entirely
3 separate market.

4 Since our production facility in Charlotte
5 was not equipped to produce such merchandise, it was
6 no longer cost effective to operate the North Carolina
7 facility, and CPP closed that facility in September
8 2003. CPP is now a U.S. importer of lined paper
9 products from China, India, and recently Brazil.
10 These imports primarily consist of designer-fashion
11 notebooks, although we import some standard lined
12 paper products.

13 Petitioners themselves have long imported
14 significant volumes from China and increasingly Brazil
15 and Argentina. In fact, they are, by far, the largest
16 importers of covered merchandise from China. Mead has
17 increased their ability to import from China since
18 they became involved with Watanabe in 2000. Over the
19 next four years, Watanabe increased significantly
20 their production capacity to handle the increasing
21 demand from Mead. They increased capacity at their
22 existing facility and built new factories in China to
23 serve Mead.

24 As Mead's influence over production capacity
25 grew, they became more aggressive in negotiating lower

1 prices from Watanabe to where their price structure
2 became the barometer for importing standard paper
3 products from China. Basically, Mead controlled the
4 pricing and the majority of the production capacity
5 coming from China.

6 In conclusion, it is clear there is no basis
7 for this petition, which is driven more by
8 Petitioners' overall import strategy, rather than any
9 concern for their domestic production. Thank you.

10 MR. SHOR: Good afternoon. My name is
11 Michael Shor. I'm with the law firm of Arnold &
12 Porter appearing today on behalf of Tjiwi Kimia, the
13 only identified Indonesian exporter of certain lined
14 paper, school supplies to the United States.

15 Happily for you, I am the last speaker.
16 Happily for me, time is such that I can speak a little
17 slowly. I will focus my remarks on two issues. The
18 first is a data issue, and it concerns the use of
19 nonequivalent units as a measure of volume. The
20 second issue I will address is threat, specifically,
21 why the Commission should exercise its discretion and
22 not cumulate Indonesia, and why there is no imminent
23 threat to the domestic industry by reason of future
24 imports from Indonesia.

25 Let me turn to the data issue. The broad

1 problem here, as Chairman Pearson correctly observed,
2 is that we are dealing with products as to which there
3 is no uniform volume unit of measure. Filler paper,
4 spiral notebooks, and composition books all come in
5 different sizes with different numbers of pages.
6 Simply counting each individual product as one unit in
7 no way equilibrates these differences and thus does
8 not provide a uniform or even meaningful measure of
9 volume.

10 Let me show you what I mean. I have several
11 samples for you to examine. First is a 150-sheet pack
12 of filler paper. Next, I have a 70-sheet spiral
13 notebook, a typical product for Tjiwi Kimia. Why
14 should these two products be counted as the same for
15 volume purposes as one unit when the first has twice
16 the lined paper content of the second?

17 Next, I have three- and five-subject spiral
18 notebooks. The three-subject notebook has 150 pages.
19 The five-subject notebook has 150 pages. One would
20 use these instead of three or five of the smaller
21 Indonesian notebooks, and they are priced accordingly.
22 Why, in evaluating the volume of imports, should each
23 of these count the same as one unit?

24 Finally, I have composition notebooks. The
25 first is a Norcom label, 100-sheet book. It is made

1 in Brazil. The second is a Mead five-subject
2 composition book with 160 sheets, 60 percent more
3 paper than the Norcom import. It is made in China.
4 Again, the volume of these two products is not the
5 same, and I've just addressed paper content without
6 touching on other differences like covers, pockets,
7 dividers, and other value-added enhancements.

8 The fact is that the use of units as a
9 measure reflects the absence of a uniform and
10 equalizing unit of measure in this case, not the
11 creation of one. As in cases like Ball Bearings,
12 where the product includes a continuum of items of
13 varying sizes and features, and in the absence of any
14 equilibrating unit of measure, the Commission should
15 use value for purposes of measuring negligibility and
16 all other purposes where the precise number is at
17 issue.

18 By value, subject imports from Indonesia and
19 India both are negligible for purposes of the two CVD
20 investigations before you.

21 Let me turn briefly to the issue of threat.
22 When it comes to assessing the threat of increased
23 imports, this case is about two countries: the
24 country Petitioners talked most about this morning,
25 China; and the one they didn't want to talk about at

1 all, Brazil.

2 The CVD negligible and AD close-to-
3 negligible imports from Indonesia are no threat and
4 should not be cumulated with subject imports from
5 China. First, the import amounts are drastically
6 different, and the import trends diverge. In terms of
7 absolute amounts, for Indonesia to reach the level of
8 imports from China, you first have to add India and
9 Indonesia together and then multiply by a factor of
10 three to four, or you could take imports from Brazil,
11 about which Petitioners do not complain, and cut them
12 in half.

13 Imports from China increased rapidly over
14 the POI, both absolutely and in market share, by value
15 and in units. For Indonesia and India, on the other
16 hand, as Chairman Pearson observed this morning,
17 market share dropped by volume and value, and the
18 value of imports dropped, and using a common unit of
19 measure, metric tons, for example, the volume of
20 exports from Indonesia to the United States declined
21 as well. In terms of pricing trends, there is no
22 correlation between the prices at which certain lined
23 paper school supplies from Indonesia have been sold in
24 the United States, with U.S. prices or prices of CLPSS
25 from China. They largely move in different

1 directions.

2 Finally, there is no likelihood of increased
3 imports from Indonesia. You heard this morning from
4 our largest customer, Staples, accounting for a
5 significant percentage of our U.S. exports, that they
6 have moved to alternative supply sources for the 92
7 bright paper they previously had sought from Tjiwi
8 Kimia. We also have no expectations for our second-
9 largest U.S. customer, who is now a Petitioner in this
10 case.

11 At the same time, Tjiwi Kimia's capacity is
12 stable, and exports to third countries increased in
13 2004, increased again in 2005, and are projected to
14 continue to increase in 2006 and 2007. Tjiwi Kimia's
15 exports to the United States have fallen to virtually
16 nothing in 2006, and there is no evidence that they
17 could rebound to 2005 levels, much less above in the
18 imminent future. Thank you.

19 That concludes Respondents' presentation,
20 and we would like to reserve any remaining time we
21 have for rebuttal.

22 CHAIRMAN PEARSON: Okay. So that concludes
23 the presentation of this panel.

24 MR. CAMERON: Yes, Commissioner, Mr.
25 Chairman. Sorry.

1 CHAIRMAN PEARSON: Well, permit me to start
2 by offering a welcome. Thank you for your patience.
3 It's always interesting to see such a large number of
4 people in front of us. This is a case that has
5 generated a fair amount of interest.

6 We will begin the afternoon questioning with
7 Commissioner Okun.

8 COMMISSIONER OKUN: Thank you, Mr. Chairman,
9 and let me join the chairman in welcoming all of you
10 here today, particularly those who have traveled great
11 distances to be with us, and also the many purchaser
12 representatives. It's very helpful to have you here
13 to explain how you do your purchasing.

14 I think I'm going to start and go back to
15 you, Mr. Menegaz as counsel.

16 MR. MENEGAZ: Yes.

17 COMMISSIONER OKUN: Your reference with
18 regard to the HTS numbers and the impact on the
19 negligibility calculation; can you just help me? This
20 is a different argument than what you made in your
21 prehearing brief. Correct? Is this different, or is
22 this the same argument?

23 MR. MENEGAZ: We did not have time to
24 analyze the impact of the new data at the time we
25 filed the brief. I think the point that we were

1 making is there were a number of HTS numbers excluded,
2 inadvertently or otherwise, from the scope of the case
3 by Commerce, and our point was corroborated very
4 quickly by happenstance that the day we were drafting
5 the brief in a Commerce memo where they included some
6 of the numbers we thought ought to be added where we
7 know there are imports of the subject merchandise.

8 When we ran the numbers by value, 2.4
9 percent for the 12 months preceding the initiation of
10 the case, with those two numbers added in, which we
11 think would be fair, we concur with the position of
12 Indonesia that it's just meaningless to be talking
13 about pieces.

14 I would like to have Barry Roa address that
15 because he has also got some samples and has something
16 to say about the differences in units of measure.

17 COMMISSIONER OKUN: Okay. I'll come back to
18 that, but I just want to be clear. So it is still
19 with regard to value, not on a volume basis. On a
20 volume under your calculation, it's --

21 MR. MENEGAZ: Right. To the extent that the
22 Commission looks at the volume gathered in kilograms
23 are also de minimis, and we're right on the cusp in
24 terms of pieces, but as Mr. Rao and others will
25 testify to, the pieces are just meaningless. You've

1 got 70 sheets versus 500 sheets in some of these
2 products, vast differences in the cover material on
3 the nature of the products, and the only uniform you
4 have to deal with in this case is value.

5 COMMISSIONER OKUN: On the denominator that
6 you're using in terms of the HTS, you're including
7 each of the HTS. In other words, as I understand from
8 our import statistics, we thought there were small
9 categories, so we have the two big ones, not the
10 small. You include all of them in your calculation.

11 MR. MENEGAZ: We include all of them.

12 COMMISSIONER OKUN: Okay.

13 MR. MENEGAZ: And our numbers are very low
14 throughout, no matter how you do it. India is very
15 low. I think Commissioner Hillman had it right. Why
16 would you continue to import at a loss? India has
17 answered that question. India just refuses to sell at
18 a loss. They are not dumping. They are not selling
19 at a loss. We see them exiting this market.

20 COMMISSIONER OKUN: Okay. And then before
21 Mr. Rao testifies with regard to the volume question,
22 I did want to ask, he had referenced in his remarks
23 documentation that he would be happy to provide, and
24 I'm not sure if I heard. Was that documentation with
25 regard to from the Petitioners? If you can use your

1 microphone and just reidentify yourself.

2 MR. ROA: Barry Roa from American Scholar.
3 The Petitioners have written to the manufacturers in
4 India that they are between 25 to 40 percent above
5 what they can get from any other country in Asia and
6 that they would not be buying from India. I have
7 those letters in my possession.

8 COMMISSIONER OKUN: Okay. If you could
9 provide those for post-hearing, I would appreciate
10 that.

11 MR. MENEGAZ: Do you want him to talk about
12 --

13 COMMISSIONER OKUN: Yes. If you can just
14 briefly talk. I understand the argument, but if you
15 can just make a couple of brief points because I do
16 want to move on.

17 MR. ROA: These are two books that are made
18 a part of the scope. This is 800 pages. We sell this
19 product in the United States, and this is 200 pages.
20 You can't compare the same thing. They are both
21 ruled, the same cover, but a different amount of paper
22 is in each.

23 COMMISSIONER OKUN: Can you tell me the
24 price difference that you sell those two for?

25 MR. ROA: This would be around 40 cents to

1 retailers, and this would be around \$1.90.

2 COMMISSIONER OKUN: Okay. I appreciate
3 those further comments, and I may have some additional
4 -- go ahead.

5 MR. ROA: Just to tell you how misleading
6 the whole dockets are, this is part of the scope, and
7 this is not part of the scope.

8 COMMISSIONER OKUN: Right. I understand
9 that.

10 MR. ROA: These are all ruled products.

11 COMMISSIONER OKUN: Okay. All right. I may
12 come back to you, but I appreciate those points on
13 that.

14 Then let me put this next question really to
15 all of the purchasers, but counsel may want to jump in
16 as well, which is one of the arguments made by
17 Petitioners is that if we want to see causation, all
18 we need to do is look at the post-petition behavior
19 and with the petition filed, the domestic industries
20 did better. Shipments were better. Production was
21 dated.

22 Now, we will have additional information,
23 and I'm a little bit hamstrung in asking some of these
24 questions because I don't know what the final data
25 will look like, and obviously, for post-hearing, I

1 will want all of you to comment on that. Could I have
2 some comments from you now on what you know about what
3 happened post-petition, in particular, because I think
4 it was you, Ms. Ciulla, talking about not being able
5 to get product where the domestics are not submitting
6 bids, but if I understood what they were testifying to
7 this morning, they actually did get additional orders.
8 So I don't know if you're the aberration or not.

9 MR. CAMERON: Madam Commissioner, before
10 answering that, we would also add to your hamstrung
11 nature that we're hamstrung, too, because we haven't
12 seen it. But having said that, we did comment in our
13 brief with respect to not only what happened with
14 Staples, which is the reason Ms. Ciulla would like to
15 talk, but also with respect to what has happened to
16 nonsubject imports, which, in the case of Staples,
17 that's where they went, to nonsubject imports, and
18 that is exactly what we thought would happen, and that
19 is what's happened.

20 COMMISSIONER OKUN: On that point, perhaps,
21 and, again, some of this can be done post-hearing, but
22 if I understood Petitioners' response to that, it was
23 that your brief, and I don't have that particular page
24 in front of me, but your brief talked about percentage
25 changes. The big percentage change was off a very

1 small base, so I could look at it --

2 MR. CAMERON: With all due respect, Brazil
3 is the second-largest supplier of this product to the
4 U.S. market, and through the first five months of the
5 year they are up 41 million tons. That's not an
6 insignificant amount. It totally overwhelms the
7 amount of Indonesia and India combined.

8 COMMISSIONER OKUN: I'll have some questions
9 about that because we do have a cumulation issue, but
10 instead of four questions on the table, let me start
11 with what you know about --

12 MS. CIULLA: This is the Staples experience.
13 With regard to product that's included in the
14 petition, we stopped purchasing any of the products
15 that were included in the petition. The only thing we
16 had was a very small amount of product within the
17 scope of the petition come out of Indonesia through
18 the February 13 time period, and that was Staples
19 purchasing product that our supplier had already made
20 from us based on commitments that we had given them
21 prior to the filing of the petition back in September.

22 We followed through with our commitments,
23 took that product, and we have not taken anything in
24 at that point in time, and it's a very small amount of
25 product.

1 With regard to certain lined paper school
2 supplies, Staples did reach out throughout the entire
3 industry to purchase school supplies in August of 2005
4 with the time period of coming back for the bid by the
5 end of August for the back-to-school 2006 season.

6 We continued to keep that bid open weeks
7 after it was supposed to close to try to get responses
8 from anyone in the industry, specifically, with
9 response to the three Petitioners who all claim that
10 they want to produce product in the United States.
11 One just never responded, didn't come back with any
12 answer. One did initially before the petition was
13 filed, supplied us with quotes on all or almost all of
14 the products that we had in our bid. Every single
15 item was being produced out of Brazil.

16 After the petition was filed, they withdrew
17 that bid, and they cited supply issues, constraints on
18 supply.

19 Another Petitioner failed to respond to the
20 bid during the scope of the bid. Over one and a half
21 months after the bid closed, even though we kept it
22 open an extra month, they provided us a quote on one
23 single SKU.

24 So Staples, therefore, was left with no
25 choice but to go outside of the country to buy product

1 for our customers.

2 COMMISSIONER OKUN: Okay. Ms. Tucci?

3 MR. SHOR: If I could jump in on that issue
4 for a second.

5 COMMISSIONER OKUN: Yes.

6 MR. SHOR: In the normal case, the
7 Commission is reluctant to rely too heavy on post-
8 petition data, and it's usually because the
9 respondents have cut back their shipments, and the
10 Commission says that's a response to the petition, so
11 we won't take it into account.

12 In this case, I think what you have to keep
13 in mind is the degree to which the domestic industry
14 controls everything, not just domestic production but
15 also imports from subject countries and imports from
16 nonsubject countries. This was a very carefully
17 calculated petition that excluded certain countries
18 and excluded certain products that the domestic
19 industry wanted to import from subject countries.

20 We would also expect that they would have
21 planned what would go on after the petition was filed,
22 and in order to show domestic production increasing
23 and imports from subject countries decreasing, all
24 they have to do is arrange that themselves.

25 So I would not put too much weight on post-

1 petition effects because it's all within the control
2 of the domestic industry here.

3 COMMISSIONER OKUN: Okay. I do want to hear
4 from others, but my red light is on. I'll have a
5 chance in another round. I thank you for all of those
6 answers thus far.

7 CHAIRMAN PEARSON: Commissioner Lane?

8 COMMISSIONER LANE: Thank you, and welcome
9 to the afternoon panel. I hope you had more time to
10 eat lunch than I did.

11 I'll ask this question maybe to Mr. Cameron
12 and Mr. Shor. Do any of the parties argue for a
13 domestic like product other than that defined by the
14 Commission in its preliminary determinations? Please
15 explain why the Commission should define the like
16 product more or less broadly.

17 MR. CAMERON: I'll be brief and turn it over
18 to Mr. Shor, who may have a slightly different answer.
19 On behalf of Staples, we agreed with the preliminary
20 determination on like product, and we have no dispute
21 with it. We understand that Commissioner Koplan has
22 asked for us to do the analysis, which we will be glad
23 to do in the post-hearing brief, but actually we
24 thought you got it right, and we thought that the
25 outsized lined paper, which is the only thing that's

1 not included, is marginal. It's not going to push any
2 numbers.

3 COMMISSIONER LANE: Mr. Shor?

4 MR. SHOR: I think we were the only party
5 that addressed the like product issue in our
6 prehearing brief, and we did argue for the inclusion
7 of the outsized lined paper products not because it
8 really matters -- the numbers are so small, it doesn't
9 change any of the trends, but as a matter of
10 principle, we couldn't see any basis under the factors
11 that the Commission traditionally analyzes for
12 distinguishing those products from the in-scope
13 products.

14 I think Mr. Rao held up a sample showing
15 just how different these products are, and if you
16 shrink it by an inch or increase it by an inch, it's
17 still a writing tablet. It's still a composition
18 notebook. It's still used for the same purpose. They
19 are interchangeable. There is no basis under the
20 Commission's five factors for distinguishing them.

21 COMMISSIONER LANE: So you are arguing that
22 in a final we should include the outsized product.

23 MR. SHOR: That is correct.

24 COMMISSIONER LANE: Does anybody else care
25 to add to that? Mr. Cameron?

1 MR. CAMERON: Commissioner, just one thing
2 that you might want to take note of. It's peripheral
3 to your issue, but according to the petition, this,
4 which is the Mead Five Star Advance that they make in
5 China and import -- right? -- this is out of scope,
6 and, therefore, this is not going to be covered by
7 this. This, of course, is not made by Mead, and it
8 is.

9 COMMISSIONER LANE: Okay. Do you want to
10 describe the second "this"?

11 MR. CAMERON: Ms. Ciulla will do that
12 because she actually knows what she is talking about.

13 MS. CIULLA: These two products are
14 virtually identical. What's unique about them is they
15 have a sewn binding on the edge, and it's not
16 economical to do that kind of labor within this
17 country. So what interested us as we went through
18 with what was included in the scope and what was
19 excluded in the scope is that when Mead wants to
20 produce a product in China, they exclude it from the
21 scope, but the virtually identical product from
22 another national brand supplier can no longer produce
23 the product in China anymore and must find another
24 location or bring it back to the United States when
25 Mead chose not to.

1 COMMISSIONER LANE: And the difference
2 between those two products, for the record, was the
3 cover.

4 MR. CAMERON: One has a Mead trademark. The
5 other doesn't. That's the only difference.

6 COMMISSIONER LANE: Okay. Thank you. Now,
7 some of the Respondents argue that the domestic
8 producers do not have adequate capacity to supply the
9 United States LPP market, yet these producers are
10 currently operating at low and declining levels of
11 capacity utilization. This seems to suggest that U.S.
12 producers are not able to compete in the market with
13 their U.S.-produced goods. What is your explanation
14 for their low capacity utilization?

15 MR. SHOR: Let's be clear. They talked
16 about low reported capacity utilization. I think what
17 you heard in this morning's session is, at certain
18 times of the year, particularly the back-to-school
19 season, all of the Petitioners and all of the U.S.
20 manufacturers are, in fact, operating at full
21 capacity. They can't produce more.

22 This is a very seasonal product. It's
23 produced during the first four to six months of the
24 year. There is very little production in the last
25 half of the year. So in a normal situation when they

1 are producing at normal production rates, they would
2 show low capacity utilization on an annual basis, but
3 I think they all testified this morning that there
4 were times of the year where they were all producing
5 full out. They talked about adding more workers and
6 management issues about not wanting to add more
7 workers. I think you, in fact, asked a question about
8 that this morning.

9 COMMISSIONER LANE: Okay. Just to make sure
10 I understand, you are saying that their low capacity
11 utilization is not accurate.

12 MR. SHOR: I'm not saying it's not accurate.
13 I don't know how they calculated capacity when you're
14 talking about units of different sizes. Those are the
15 numbers they reported. All I'm suggesting is that one
16 of the conditions you have to consider in this
17 industry is that production is seasonal, so on an
18 annual basis, you would normally expect there to be
19 low capacity utilization overall for an entire year.

20 MR. CAMERON: Commissioner, if it's okay, I
21 think that this gets into the question that was asked
22 earlier this morning, and I believe you asked it, with
23 respect to -- the domestic industry suggested that,
24 well, I'll produce it earlier -- right? -- and
25 actually that we have the capacity. I would like Ms.

1 Ciulla to discuss this for a moment because we're not
2 sure that that really is feasible, and that's really a
3 distortion. This gets to the question of capacity.

4 What is capacity? Is capacity annual
5 capacity, and you're going to measure it over 12
6 months and say, I'm going to go and make the stuff
7 that I'm going to give you in June, I'll make that the
8 previous July, and it's going to sit in somebody's
9 inventory. That's actually not accurate. They are
10 not going to hold that inventory that long. They do
11 that if they overproduce, but they are not going to do
12 that.

13 So the question is, what exactly happened
14 this year?

15 MS. CIULLA: I think one of the questions
16 is, is it feasible for U.S. producers to produce
17 product before the back-to-school season, and what we
18 have found in our past experience is that the
19 producers waited until we actually placed the orders.
20 I do think that the high amount of private label
21 product precludes them from producing product during
22 the down season in advance because they can't possibly
23 know what brand of product they should be producing
24 the product under.

25 Specifically, in terms of capacity for the

1 2006 year, the response that we received from Top
2 Flight is that they were prepared to run three shifts
3 to meet customer demand, but, additionally, they
4 already had orders in place for delivery of back-to-
5 school goods from Brazil beginning in the first
6 quarter 2006 to meet that demand, indicating to us
7 that even running three shifts, they were unable to
8 produce the product that they needed.

9 We also have a written response to our bid
10 from another Petitioner, Norcom, specifically stating,
11 again, that until further review with our sources, not
12 their own production, until further review with their
13 sources, they will not know exactly what kind of
14 volume they will be able to commit to. We
15 resoundingly got the response that the U.S. producers
16 were not capable of supplying their needs with U.S.
17 production.

18 COMMISSIONER LANE: All right. As I digest
19 what you said, let me ask you this. Are you saying
20 that the U.S. producers cannot meet the demand because
21 they wait first for the order, and then it's too late
22 to produce the demand, or are you saying that they
23 absolutely could not produce the amount that is needed
24 at any time?

25 MS. CIULLA: It may very well be a

1 combination of both. I can't specifically say what
2 percent it is of either, but what I can tell you is
3 that last year Staples issued our bid for this product
4 in August with a due date of end August.

5 To give you an example, the prior year, we
6 made commitments to our suppliers in December, and
7 then they were rushing to make our product. We ended
8 up awarding bids at the end of September. They
9 definitely, with the award date of September, I see no
10 reason why once they had our commitment in September,
11 they could not have begun production a couple of
12 months earlier than the prior year if they were still
13 waiting for commitments from other vendors.

14 Again, without a single price quote for the
15 product, there is no commitment we could have given
16 them.

17 MR. CAMERON: And, again, I think you have
18 to remember the seasonal nature of this product, and
19 this was alluded to this morning by various
20 commissioners. If that delivery is late, their back-
21 to-school season is down the tubes. So it isn't as if
22 we have a margin for error here. So that really does
23 get to the issue of what is real capacity versus what
24 is theoretical capacity? Do they have the capacity to
25 service this market fully? The answer, clearly from

1 the data, is no.

2 MR. SHOR: If I could, maybe this is
3 helpful, Commissioner.

4 COMMISSIONER LANE: Yes, Mr. Shor.

5 MR. SHOR: It's clear from the data, just
6 taking the domestic industry's reported capacity,
7 taking the annual apparent consumption, capacity is
8 much less than consumption. So even if they were
9 producing all out on an annual basis what they say
10 they could, they couldn't meet demand. But that
11 structural deficit, we think, understates the actual
12 inability to supply the U.S. market because of the
13 seasonality factor that's been discussed, which is you
14 can't meet your customers' needs by producing in the
15 second half of the year for merchandise that's going
16 to be delivered in the first half of the year. The
17 actual capacity at the time it's needed is even less
18 than the reported capacity.

19 MR. CAMERON: If you want the figures on
20 that, you can refer to page 19, Table 1, of Kaye
21 Scholer's prehearing brief on behalf of Staples.

22 COMMISSIONER LANE: Thank you.

23 MR. GRAHAM: There is one other factor that
24 maybe we need to consider, is customer labels versus
25 company labels or branded products when calculating

1 out capacity.

2 COMMISSIONER LANE: Okay. Thank you, Mr.
3 Graham. Thank you, Mr. Chairman.

4 CHAIRMAN PEARSON: Would I be correct to
5 assume that there might be one or more Minnesotans in
6 this group? It's my custom to greet Minnesotans.
7 Glad to have you here in Washington, although it's
8 usually kind of a shame to have to come here in July,
9 which is my least favorite time of year here. The
10 weather normally is more mild in Minnesota, but you
11 seem to be surviving it.

12 Let me start with a question for counsel.
13 What guidance, if any, does the statute provide us on
14 this question we've been kicking around of which
15 countries are included or excluded from the petition?
16 Obviously, we're trying to figure out what to do with
17 this. Does the statute give us guidance?

18 MR. CAMERON: Mr. Chairman, the statute
19 clearly discusses the issue of, first, you have
20 subject imports, but it also asks you to take into
21 account conditions of competition in the market. That
22 has been interpreted, I believe, by the Federal
23 Circuit in Gerald Metals to mean that it is an
24 obligation of this Commission to look at the impact of
25 nonsubject imports.

1 Obviously, sometimes you have nonsubject
2 imports that aren't that significant. In this case,
3 not only do you have nonsubject imports that are
4 extremely significant, but as counsel for Petitioners
5 has conceded, it's a largely fungible product. There
6 are differences. Staples is really the only party at
7 the table that actually has identified differences
8 between the products which makes them less fungible in
9 one sense, although I believe that CPP and fashion
10 notebooks also has an issue with that, but at the same
11 time, which is not to say that they haven't been able
12 to replace them.

13 As a matter of fact, when Staples was forced
14 out of Indonesia by this case, they went directly to
15 Brazil, and then they also found alternative sources
16 in Argentina, in Mexico, and in Egypt. Now, that
17 whole issue of 92 bright that we've been told is
18 really a fabrication of our own imagination; that's
19 very convenient for lawyers to talk about, but these
20 people have backed their strategy with serious
21 dollars. They have a real marketing strategy, and
22 when they went for alternative sources, they went for
23 92 bright, and they got it.

24 So, yes, that is a very important
25 consideration, and the statute is giving you the

1 ability to consider those things and an obligation, in
2 fact.

3 MR. SHOR: I would also add that the other
4 place the statute gives you some guidance is the
5 threat statute on cumulation where cumulation is not
6 mandatory. The Commission considers discretionary
7 factors. One is the volume and pricing trends. I was
8 struck very much this morning when Dr. Kaplan kept
9 talking about how small Brazil was. He must have used
10 the word three or four times. If Brazil is small,
11 then Indonesia is half small, so it can't be very
12 significant. Thank you.

13 CHAIRMAN PEARSON: Ms. Trossevin?

14 MS. TROSSEVIN: Yes. I would briefly like
15 to add a couple of points, too, on the Gerald Metals
16 Brass issue. I think there are a couple of things
17 that make this case very unique relative to some of
18 the other cases that the Commission has considered.
19 No one can contest the fact that the products are
20 basically commodity products.

21 The Petitioners here have stated time and
22 again that the Brazilian imports, from their
23 perspective, are fairly traded, but also the Brazilian
24 imports, not only being the second largest in the
25 market, are the lowest in terms of AUVs, which, I

1 think, is a fairly dramatic thing.

2 One thing that I think can't be
3 underestimated in this case that is different as well
4 is that these are not just nonsubject imports of a
5 commodity product at a lower price. They are also in
6 a market where the petitioning industry has a long-
7 standing relationship and has been continually making
8 investments, including investments as recent as 1994
9 when they were currently closing capacity in the
10 United States.

11 CHAIRMAN PEARSON: Okay. Well, I appreciate
12 those responses.

13 For purposes of the post-hearing, if you
14 have anything to add that would elaborate on this, how
15 we wrestle with this as a condition of competition or
16 what it means in the context of Gerald Metals and
17 Brass.

18 MR. CAMERON: You know, it is kind of
19 interesting to have heard the testimony this morning,
20 and it was almost -- we heard the witnesses from the
21 domestic industry saying, geez, and there was this
22 shift from imports from Brazil in 2004 to subject
23 countries in 2005. How could that possibly happen?

24 If you look at the data, and you look at who
25 is doing the importing, I think you will see exactly

1 why it happened, and you'll see that they know exactly
2 how and why it happened, and if you want to look at
3 Table 3 in our prehearing brief, it basically
4 demonstrates that shift as well. I don't think it's
5 all that difficult to understand why it happened,
6 which is why it's relevant.

7 CHAIRMAN PEARSON: Ms. Ciulla, let me ask
8 you about 92 bright, which is something we've heard
9 quite a bit about today. Obviously, I would be
10 correct to deduce that from Staples' standpoint, this
11 is important, at least as a marketing issue. Is that
12 correct?

13 MS. CIULLA: The issue of 92 bright at
14 Staples has grown as we've developed our own branding
15 strategy. At one time, our own brand was commodity
16 product. It was low end, opening price point like it
17 is in a lot of companies. Staples has really changed
18 our own brand strategy over the last several years,
19 and we've supported that change with a huge support of
20 an entire staff in terms of our marketing, our
21 packaging, our increased product specs, and our
22 increased quality standards. So this has really
23 developed as part of that.

24 For many years before it was actually
25 stated, we did prefer 92 bright, but we would buy

1 lower than 92 bright from U.S. suppliers and some
2 other suppliers.

3 So we now have a standard that says Staples-
4 branded products will be equal to or better than the
5 national brand, and frequently our products are higher
6 quality than national-branded products.

7 I think the reason why Staples is different
8 from the rest of the marketplace in this respect:
9 We're not a mass merchant who also sells ready to wear
10 and a lot of other products. We're not a drug chain
11 that has a lot of other products. We have one
12 customer. It's that school, home office, and business
13 customer, and that's what we focus on, and that's why,
14 in this product category, I think our standards are
15 higher than the rest of the industry. So, yes, we
16 firmly believe in the 92 bright.

17 CHAIRMAN PEARSON: Do you have any evidence
18 that 92 bright makes a difference to some segment of
19 final consumers?

20 MS. CIULLA: Yes. Actually, we do. For a
21 time period, based on our volume, there were many,
22 many SKUs that we source dual and triple sources from
23 multiple suppliers. For a time period, our Staples
24 brand copy paper, we sourced from two U.S. mills, and
25 we also sourced from Indonesia. The Indonesia paper

1 was brighter. The packaging of the product was
2 identical except if you looked at the UPC code. It
3 would either say "made in the USA" or "made in
4 Indonesia."

5 What ended up happening was at our store
6 level we started to have problems with customers that
7 would come into the store and make the general manager
8 or store associate completely strip and entire pallet
9 of paper, looking for the product that said "made in
10 Indonesia" on the UPC code. We also have written
11 complaints from our customers on the business end of
12 the business that after they had been getting product
13 out of Indonesia and then received product made in the
14 U.S., made claims that we sold them inferior-quality
15 product.

16 So, again, I think our customer base may be
17 a little bit different, but we absolutely have a
18 customer who recognizes the difference, and as such,
19 it's our responsibility and our mission to give our
20 customer what they are looking for.

21 CHAIRMAN PEARSON: Okay. Thank you. That's
22 very interesting. Are you able to put some of that
23 information on the record? I wouldn't want you to
24 devote hundreds of man years to going back and
25 recreating this history of customer concerns --

1 MS. CIULLA: Absolutely. We would be happy
2 to.

3 MR. CAMERON: We also put at least some
4 limited customer correspondence in our post-conference
5 brief. The preliminary will also include that.

6 CHAIRMAN PEARSON: Okay. Yes, Mr. Shor.

7 MR. SHOR: This may be helpful. I just
8 noticed the two Mead notebooks I have. One is made in
9 Brazil. I just urge the commissioners to just hold
10 the pages up to each other and look at the brightness
11 and see if these two were available in the store,
12 which one you would buy.

13 CHAIRMAN PEARSON: Okay. Would the
14 secretary please count it?

15 Mr. Graham.

16 MR. GRAHAM: Yes.

17 CHAIRMAN PEARSON: The Petitioners may have
18 cast some less-than-favorable aspersions on NuCarta.
19 Can you advise? Was NuCarta formed in response to
20 this petition or somehow related to it? Give me your
21 view, please.

22 MR. GRAHAM: Sure. I can tell you that
23 NuCarta was not formed in response to the petition.
24 Actually, as I stated in my testimony -- I did not
25 state that, but I said earlier in another declaration

1 that I did leave Norcom at an earlier time than when
2 NuCarta was formed, and there was a timeframe that
3 passed in which I was not necessarily actively
4 employed by anybody, and then as the opportunities
5 developed in the marketplace, and as I was continuing
6 to try to find something to do, we did have some
7 chances to talk with various people in the industry.

8 Since we had been in the industry for
9 somewhere in the range of 20 years, we thought maybe
10 it would be good to try to do something that we all
11 knew a lot about, and certainly what we were first
12 initially involved in and were thinking of were
13 products that were more in the lines of envelopes or
14 paper portfolios, things that may not have been
15 necessarily associated with the products that are
16 currently in the scope.

17 CHAIRMAN PEARSON: I would be correct to see
18 NuCarta as more of a trading company and less of a
19 processing company. Is that correct?

20 MR. GRAHAM: Yes. It is probably true that
21 we could be thought of more as a trading company. We
22 do not own manufacturing. We are probably a service
23 provider to our customers, and we have been doing such
24 activity for many customers for a long time, and we're
25 feeling as if we maybe knew a little bit about how to

1 provide a service.

2 CHAIRMAN PEARSON: That would be
3 distribution services, packaging, that type of thing?

4 MR. GRAHAM: Distribution services,
5 sourcing-type services possibly, bringing
6 opportunities to customers that they could then
7 evaluate in their own scope.

8 CHAIRMAN PEARSON: Can you define more
9 clearly what "a long time" is from NuCarta's point of
10 view?

11 MR. GRAHAM: Well, from our point of view,
12 maybe somewhere in the range of 15 to 20 years of
13 being in the industry, the servicing-of-retail-
14 customers industry.

15 CHAIRMAN PEARSON: You're talking about the
16 employees of NuCarta who have expertise over that
17 period of time --

18 MR. GRAHAM: That is correct.

19 CHAIRMAN PEARSON: -- but with other firms.

20 MR. GRAHAM: Yes. Correct. With other
21 firms. That is correct.

22 CHAIRMAN PEARSON: And NuCarta itself
23 actually is a relatively new entity.

24 MR. GRAHAM: That is true. NuCarta is a
25 relatively new entity, yes.

1 CHAIRMAN PEARSON: Okay.

2 MR. VANDER SCHAAF: Mr. Hixon as well was
3 formerly with Norcom, and you could at least relate
4 some of your relationships and your background in the
5 industry.

6 MR. HIXON: Actually, as David was, I was
7 with Norcom from 2000. Previous to that, I was in the
8 manufacturer's rep. business but also represented
9 Norcom during that period of time. As David was
10 saying, I left Norcom around the first of October, and
11 when this opportunity became open to start this group
12 and start NuCarta, knowing what our knowledge was and
13 our abilities and our customer relationships that we
14 developed all of these years, it just seemed like a
15 perfect fit for us to do this, and this was the
16 perfect time to do it.

17 MR. VANDER SCHAAF: Another person who
18 joined with him, a gentleman named Ron Baron, was the
19 rep. for Norcom at Target for the company. So all of
20 these assets were put together with all of their
21 collective experiences for a broad product line for a
22 broad list of customers, not the least of which was
23 this product that's under investigation here, but it
24 certainly wasn't the majority of their operations.

25 CHAIRMAN PEARSON: Thank you very much. My

1 time has expired, so let me turn now to Vice Chairman
2 Aranoff.

3 VICE CHAIRMAN ARANOFF: Thank you, Mr.
4 Chairman, and I join my colleagues in greeting the
5 extensive afternoon panel and thanking you for your
6 patience with us today.

7 I want to start with a question for -- Ms.
8 Trossevin, your client is Mr. He?

9 MS. TROSSEVIN: Mr. He.

10 VICE CHAIRMAN ARANOFF: Mr. He. Okay. A
11 question for Mr. He. We appreciate his coming so far
12 to be here today. My understanding from the
13 conversation that we've had here is that Mead has
14 been, and may still be, a very big customer of
15 Watanabe, and if that's so, could he please explain to
16 us why he is here with the Respondents' panel?

17 MR. ZUORU: (Responds in Chinese.)

18 MS. GAO-SHEPPARD (INTERPRETER): Because in
19 this antidumping investigation, we felt that we are
20 treated unfairly.

21 MR. ZUORU: (Responds in Chinese.)

22 MS. GAO-SHEPPARD (INTERPRETER): In 2000, a
23 salesman or a marketing person from Mead came to us,
24 asking us to produce some products for them. But
25 before that, our market was mainly in Japan, Southeast

1 Asia, and Australia, in addition to mainland China, in
2 the Chinese market.

3 MR. ZUORU: (Responds in Chinese.)

4 MS. GAO-SHEPPARD (INTERPRETER): But our
5 main market was the Chinese market.

6 MR. ZUORU: (Responds in Chinese.)

7 MS. GAO-SHEPPARD (INTERPRETER): And in
8 those years, in which we cooperated with Mead, we had
9 never marketed or participated in any trade fairs in
10 the United States. It was only through Mead that we
11 sold products to the United States.

12 VICE CHAIRMAN ARANOFF: Thank you, very
13 much. Ms. Trossevin, if there's anything in post-
14 hearing that your client would like to add to flush
15 out the story of their dealings with Mead and what
16 their current dealings, if any, are in the U.S.
17 market, that would be helpful to us. I'm particularly
18 interested in details of whether they were involved in
19 the issues that Staples raised with regards to Mead's
20 Chinese sourcing.

21 MS. TROSSEVIN: Yes. We will address it in
22 the post-conference brief. And I hope that you'll
23 have a chance, also, to look at the written version of
24 Mr. Zouru's testimony, because we did want to touch --
25 we did touch in great detail about the history of the

1 relationship with MeadWestvaco, because it's directly
2 relevant to the industry's claim that they imported
3 for survival reasons. Because what's very clear is
4 that at the time MeadWestvaco approached Watanabe,
5 this was in -- they first came to Mr. Zouru in 1999.
6 And I would just note from Petitioner's own exhibit, I
7 believe it's slide seven of their Power Point
8 presentation, and you look at the import graph there,
9 you'll see that in the years between, whatever it is,
10 1996 to 1998 -- I've forgotten exactly how early it
11 begins -- there was actually virtually no imports
12 coming in, no significant import competition, which
13 they admit to, themselves. So, when they came to Mr.
14 Zouru in 1999, they were not coming to China, in
15 response to imports from China. They were coming to
16 China, because they were looking for an outsourcing
17 strategy and they had indicated to Mr. Zouru that
18 their costs in the United States were getting too
19 high. So, that's one of the issues we talked about.

20 And the other thing was that really from the
21 time they came -- first came to Mr. Zouru in 1999, by
22 2000, 100 percent of Mr. Zouru's exports to the United
23 States were through MeadWestvaco. So, all of Mr.
24 Zouru's exports were through Mead and he is the
25 largest exporter from China. He has the majority of

1 the exports from China, which are all then directly
2 attributable to Mead. He only sales through Mead.
3 Mead is the one, who negotiates prices with Mr. Zouru
4 and then turns around and negotiates with his
5 purchasers in the United States. And, in fact,
6 oftentimes, Mead was encouraging Mr. Zouru to reduce
7 his prices and Mr. Zouru was not even able to comply
8 with the demands that Mead had for pricing. But, they
9 tried to service Mead as a customer, as much as
10 possible, since they had now devoted so much of their
11 production to Mead.

12 So, as Mr. Zouru said, he was driven to come
13 here, because he truly does feel that it was very
14 unfair for MeadWestvaco to come to him and establish
15 this cooperative alliance and then with no warning,
16 turn around and file a case complaining about the very
17 imports they saw and the very prices that they
18 negotiated and claiming that those -- that Mr. Zouru's
19 products were now injuring Mead and the U.S. industry.
20 And that's really what drove him to come here. Thank
21 you.

22 MR. PERRY: Madam Vice Chairman. I'd like
23 to add one point here. I had --

24 VICE CHAIRMAN ARANOFF: Could you just
25 identify yourself for the record, please?

1 MR. PERRY: Bill Perry of the law firm of
2 Garvey Schubert Barer. We didn't have access to the
3 APO and sometimes that's better, because in looking at
4 the public staff report, I thought one key public
5 statement was made, is that when you take out the
6 Petitioner's imports from China, imports from China
7 declined. That's in the public part of the staff
8 report.

9 VICE CHAIRMAN ARANOFF: Okay, thanks. Let
10 me move on to another question. Hopefully, I'll have
11 time to do this one justice; but if not, I'll come
12 back to it in the next round. What we used to refer
13 to in my youth as the \$64,000 question, and inflation
14 has probably brought it up by now, I think the exact
15 words Mr. Shor used were that the domestic industry
16 controls everything. Mr. Cameron used something
17 similar. If the domestic industry controls everything
18 and if demand is going up, as our apparent consumption
19 data appears to show, and if raw material costs are
20 going up, as people seem to agree, why are prices not
21 going up in the U.S. market and why is the domestic
22 industry not able to make a lot of money on the
23 imports for which they are responsible in one way or
24 another? Who wants to take a stab at that?

25 MR. SHOR: I'll take a crack at the making

1 money on the imports, because what I heard this
2 morning was pretty interesting and it had to do with
3 the way some of the members of the domestic industry
4 account for their imports. We heard that they bring
5 it in; they put it in their inventory; they commingle
6 it with domestic production; they can't tell it apart;
7 and they use an average cost methodology. Well, if
8 you're imports are low priced and your domestic
9 production is high priced and you average the cost,
10 then what that would tend to do would be to increase
11 the cost of your imports. So, they're saying their
12 imports are not profitable, but that may just be their
13 own accounting for it. If they do average their
14 import costs with their domestic costs, yes, that
15 would make their imports look less profitable than
16 they really are. That can be one explanation.

17 But, I agree with you, why is it that
18 they're increasing imports and -- and there was the
19 question that was asked this morning, why are they
20 increasing imports and shifting more of their
21 production to imports, when they're losing money on
22 it? I agree, it doesn't make any sense to me either.

23 MR. CAMERON: And we don't really believe
24 that actually. I mean, this gets to the question of
25 are you making -- are you losing money on all of your

1 imports, which was the assertion that was made. We
2 talked to everyone of the importers at the break. We
3 were wondering whether it's true that if you import,
4 you lose money and whether or not they are all
5 charitable institutions around this room. Actually,
6 there was not one person in this room -- I think the
7 witness from CPP could actually discuss this a little
8 bit more -- but there wasn't anybody in this room, who
9 said that they actually lose money when they import.

10 MR. HIXON: I'm David Hixon with NuCarta and
11 that's basically what we're doing. And we have not
12 lost money on importing. And in my period of time
13 when we were with Norcom, I never knowingly, if we
14 sold an import item, that we lost money on during that
15 period of time.

16 MS. TUCCI: Excuse me, Meghan Tucci from
17 Target. I just, from a retailer's point of view,
18 would like to mention again that our data, I believe,
19 supports that the prices have actually increased every
20 year for us in the last few years on the product and
21 specifically the 10-pack notebook. However, the
22 retail environment has not allowed for retail
23 increases to the consumer and use consumer price on
24 that product. It's pretty much been stabilized, 10
25 for a dollar. And our reason for that, you may ask,

1 is that, again, we see this as an overall global
2 marketing strategy for a mass retailer such as Target,
3 to continue to drive our entire back-to-school
4 marketing program, which drives sales throughout the
5 entire store.

6 VICE CHAIRMAN ARANOFF: Okay. I appreciate
7 those answers. And my red light is on, so I will come
8 back to this in the next round. Thank you.

9 CHAIRMAN PEARSON: Commissioner Hillman?

10 COMMISSIONER HILLMAN: Thank you and allow
11 me to join everyone else in also thanking you for
12 being here and for your perseverance. We very much
13 appreciate it. Just as a little bit of a follow-up to
14 that last question of Commission Aranoff, just to
15 understand, since I guess I was the one that started
16 this issue of so why do you import more, if you're
17 losing money. I would only ask those that do have
18 access to the APO data, to help me understand whether
19 you read -- you know, again, the staff has calculated
20 the financial performance of the domestic industry in
21 the main body of the staff report in the traditional
22 way, looking only at their U.S. operations. And then
23 in an appendix in the back, there are U.S. operations,
24 plus there are import operations. And it was that
25 comparison that I was mentioning. But because the

1 data, itself, is confidential, I would only ask if you
2 have any comments on what we should make of those two
3 separate analyses in our staff report. If you could
4 comment on that in the post-hearing brief, I would
5 appreciate it.

6 MR. CAMERON: We would love to. Thank you.

7 COMMISSIONER HILLMAN: Okay. Then, if I can
8 ask a couple of you, Staples, I'm sure, Walgreens, and
9 perhaps some others, commented on something that
10 struck me as unusual, but maybe not, and I guess I
11 would like to explore it, and that was this issue that
12 when Mead told you that they were going to be sourcing
13 the products that they were selling to you from China,
14 they asked you to become the importer of record. I
15 just want to make sure I understand. Is that typical?
16 I mean, do you frequently find out from a supplier
17 that they're going to switch to sourcing it from
18 somewhere else and ask you to be the importer?

19 MS. CIULLA: Susan Ciulla, Staples. When
20 products are imported, it tends to be a mix of whether
21 the product is imported by us, the retailer, or
22 whether the manufacturer imports it and then sells it
23 to us domestically. Usually, the typical driver of
24 who handles it is which company is more able to handle
25 the freight most economically. Typically, that's the

1 driver, but not always. At Staples, we have a pretty
2 extensive freight management department and, as such,
3 it's our preference to manage freight ourselves,
4 because that allows us to manage the flow into our
5 DCs. And, again, back-to-school is such a peak time
6 period. If the vendor manages the freight, we, then,
7 have a lot of difficulty controlling that inbound
8 traffic.

9 COMMISSIONER HILLMAN: And is it just the
10 management of the freight or is it also the issue of
11 the negotiation of the price in China?

12 MS. CIULLA: We strictly handle the freight.
13 We paid Mead for the product and they handle things in
14 China.

15 COMMISSIONER HILLMAN: Okay. So, they,
16 Mead, negotiated --

17 MS. CIULLA: So, we did the freight
18 management.

19 COMMISSIONER HILLMAN: They negotiate the
20 price in China. You don't know what Mead is paying
21 Watanabe?

22 MS. CIULLA: No, we absolutely do not. They
23 did all the negotiations. We strictly negotiated with
24 Mead.

25 COMMISSIONER HILLMAN: Okay. And, again, is

1 that typical in other instances, in which Staples is a
2 direct importer, yourselves, do you, then, negotiate
3 the price with the foreign supplier?

4 MS. CIULLA: I don't know of any example,
5 when we are dealing with somebody, who is handling
6 that for us, that we ever have direct negotiations
7 with the ultimate producer of the product. So, it's
8 completely standard that we would deal with Mead.

9 COMMISSIONER HILLMAN: Okay, thank you.

10 MR. CAMERON: Just to clarify --

11 COMMISSIONER HILLMAN: Mr. Cameron?

12 MR. CAMERON: Sorry, just to clarify it. I
13 believe your follow-up question was when you directly
14 import, then you're dealing with the manufacturer. I
15 think that was her --

16 MS. CIULLA: When we direct import on our
17 own and find the manufacturer ourselves, yes, we deal
18 directly with them.

19 MR. CAMERON: Which is normal.

20 MS. CIULLA: Yes.

21 COMMISSIONER HILLMAN: Okay. Ms. Tucci, on
22 the Target side, would you have any comment on this
23 typical -- atypical importer of record and who
24 negotiates the price?

25 MS. TUCCI: It would be very similar to

1 Staples' comments.

2 COMMISSIONER HILLMAN: Okay; all right. I
3 appreciate those answers.

4 MR. VANGUYSE: Mark VanGuyse with Walgreens.

5 COMMISSIONER HILLMAN: I apologize. Yes, go
6 ahead.

7 MR. VANGUYSE: It's pretty much similar to
8 my colleagues there. When we are comfortable with a
9 company producing and be able to deliver to our
10 consolidation facilities overseas, then we negotiate
11 the price, taking possession at the port in --

12 COMMISSIONER HILLMAN: So, you would not
13 describe this relationship with Mead/Watanabe as
14 unusual? I mean, they were negotiating in China, you
15 were the importer of record, but, nonetheless, they
16 were handling all of the negotiations and the pricing?

17 MR. VANGUYSE: Right. I would just -- if I
18 was buying from Mead, I would just negotiate the price
19 with Mead.

20 COMMISSIONER HILLMAN: Okay; all right. Ms.
21 Ciulla, if I could then come back to you on the issue
22 of the bids and the lack of bids, if you will, from
23 the domestic industry, just so I make sure I
24 understand it. Do all of your bids traditionally have
25 a maximum price, a starting price?

1 MS. CIULLA: No, our bids do not have a
2 starting price.

3 COMMISSIONER HILLMAN: Okay. So, it was not
4 as though the domestic industry didn't bid, because
5 they couldn't hit a given price --

6 MS. CIULLA: Absolutely --

7 COMMISSIONER HILLMAN: -- without pricing
8 the bid?

9 MS. CIULLA: Absolutely not.

10 COMMISSIONER HILLMAN: Okay. And that would
11 have been true for all of the bids that you described
12 in your testimony?

13 MS. CIULLA: That's correct.

14 COMMISSIONER HILLMAN: I appreciate that. I
15 guess I sort of was curious on this 92 bright issue,
16 just on a couple of things. One, do you pay a premium
17 for it? I mean, if you think it is going to add value
18 to your brand, have you traditionally paid a premium
19 to get 92 bright?

20 MS. CIULLA: Staples has not paid a premium
21 to get 92 bright. Typically, what drives the 92
22 bright is the source of the raw material and that is
23 the reason why it's depended upon sourcing from
24 specific countries. So, the American Hardwood that's
25 used in the United States is not as bright. The

1 Eucalyptus that the product in Brazil is made out of
2 comes out much brighter and the product used in
3 Indonesia is, also, much brighter. So, no, we do not
4 pay a premium for it. That is the standard product
5 that those countries produce and sell, as the
6 equivalent of the product produced from the mills in
7 the United States. So, it's reflective of the raw
8 material and not an upgrade.

9 COMMISSIONER HILLMAN: Okay. Do you have
10 any sense of whether from a paper production
11 standpoint, it is more expensive to product 92 bright?

12 MS. CIULLA: To the best of my knowledge,
13 there's no difference in expense.

14 COMMISSIONER HILLMAN: Okay; all right. So,
15 it's not an issue of they bleach it more or do
16 something else to it. It is simply if you start with
17 a different kind of pulp, you end up with a whiter
18 paper?

19 MS. CIULLA: That's correct.

20 COMMISSIONER HILLMAN: Okay; all right. I
21 appreciate that. If I can -- on the American Scholar
22 side, Mr. Rao, I just want to make sure I understand
23 it. Your testimony mentioned that American Scholar
24 was a major manufacturer to all three Petitioners.
25 Just so I understand it, so you were a producer, but

1 you were selling to other producers; is that correct?

2 MR. RAO: That's correct.

3 COMMISSIONER HILLMAN: Okay.

4 MR. RAO: OEM manufacture in the United
5 States.

6 COMMISSIONER HILLMAN: Okay. And, again,
7 help me understand, again, why are the domestic
8 producers purchasing from what is theoretically a
9 competitor?

10 MR. RAO: At that time, we were producing --
11 we were an OEM manufacturer. We used to manufacture
12 for other companies. Until it became apparent that we
13 were in the market competing against them, they went
14 overseas to source out other products, other
15 manufacturers in Brazil and in China, cheaper than
16 what we could provide them domestically. There are
17 only three manufacturers in the United States for
18 Marble Composition, American Scholar being one of
19 them, Mead, and Roaring Spring.

20 COMMISSIONER HILLMAN: Okay. And then we've
21 heard testimony that more recently, Roaring Spring is
22 the only remaining domestic producer of composition
23 books. Is that -- would you agree with that?

24 MR. RAO: Would I agree? We have the
25 capacity to still do it, but we do not produce

1 domestically right now.

2 COMMISSIONER HILLMAN: Okay.

3 MR. RAO: We have the machinery to do it.

4 COMMISSIONER HILLMAN: Okay; all right.

5 Then, I guess sort of following up on the \$64,000
6 question, I mean, I'm struggling to understand it,
7 because if you heard the testimony this morning, it
8 was so much about the price being driven down, the
9 price, the price, the price, that everybody was forced
10 to do various things connected to the price. I guess
11 I would like to hear your sense of how pricing of
12 these products works and whether you think it has
13 changed; whether there is something about the
14 competition, the fact that a number of the domestic
15 retailers have become direct importers, in some
16 instances; whether the reverse on-line auction
17 bidding; whether these hotel room shootouts; however
18 you want to describe it. Do you perceive that there
19 has been a change in the price discovery process or
20 anything about it that has affected the way prices are
21 set in the U.S. market in recent years?

22 MR. CAMERON: Well, why don't we start with
23 respect to Staples, because I believe, as we testified
24 earlier this afternoon, Staples has been importing
25 from Indonesia since 1994 -- they've been there for a

1 long time -- and from Brazil since 1998.

2 MS. CIULLA: Yes, I would say that the
3 importing issue hasn't changed with us over many,
4 many, many years. The only thing that did change in
5 more recent years is that instead of holding out a
6 certain amount of our supply for U.S. production,
7 based on our quality standards issue, we did then move
8 most of our supply, if not all, to the imported
9 products.

10 With regard to bids, bids have not changed
11 that significantly at Staples over the years. When I
12 started at Staples, it was a process where I would
13 solicit bids from the manufacturer and then I would
14 put together the analysis in a spreadsheet and
15 determine who I was going to buy from.

16 In this category of business, one year, we
17 did the on-line auction. It was not the right
18 process. The on-line auction for us, the way that we
19 did it, collected all the prices and drove the price
20 down. In the end, we did not end up purchasing
21 product from the lowest bidder, and it all goes back
22 to quality. We stopped using that process. And
23 although electronically, we gather the data, this is
24 all about product samples, quality of product, and
25 availability of product and pricing. And I think,

1 too, if you take a look at the response in our
2 questionnaire, that answers the issue about where
3 price falls on us.

4 COMMISSIONER HILLMAN: Okay. Unfortunately,
5 my red light has come on, so I will come back to this
6 issue of how this bidding process works and has
7 affected prices in the next round. Thank you.

8 CHAIRMAN PEARSON: Commissioner Okun?

9 COMMISSIONER OKUN: Thank you, and just for
10 purposes of keeping things complete, I would just ask
11 the other purchasers to respond to Commissioner
12 Hillman's question. But, if you could just add one
13 more thing, which I think is relevant, which is what I
14 heard the Petitioners saying this morning is what
15 Respondents are talking about, it's the domestic
16 producers, who control all of these imports and it's
17 control that allows them to figure out what's going on
18 in the market. Their response to that was, you've got
19 Staples, you've got Target, you've got Walgreens
20 sitting here. If anyone is able to control the
21 market, it's the big box, the big retailers, and
22 they're the ones driving price down. So, if you
23 could, as part of your response to Commissioner
24 Hillman's question about what's changed in the pricing
25 practices, if you could also respond to that for me.

1 And I'll come back to Staples on that; but let me
2 start with you, Ms. Tucci.

3 MS. TUCCI: Thank you. Meghan Tucci from
4 Target Stores. Again, our process has not changed.
5 We do not participate in hotel room shootouts. I'm
6 not familiar with that process. And we do not do
7 reverse auctions. We do an e-sourcing bid process.
8 We, also, do not set minimum or maximum price to begin
9 at. We just let the suppliers put in their first bids
10 and we have several rounds until we make our decision.
11 The decision is not solely based on low price. The
12 decision is based on experience with past suppliers,
13 how they handled the product logistically. Also, in
14 our largest purchase, we require palletization of this
15 product, so we are not able to direct import this
16 product. It must come through the United States, so
17 we buy it from a U.S. supplier.

18 The pricing on the product, actually for us,
19 has been increased by the suppliers for the last
20 several years. So, the price on the raw materials and
21 other pressures have caused Target to take price
22 increases every year, although our retail price has
23 remained the same to the end-use consumer.

24 COMMISSIONER OKUN: Okay. I heard that
25 response earlier. Can I hear from Walgreens on this?

1 MR. VANGUYSE: I'm Mark VanGuyse with
2 Walgreens. I can only speak for the past two-and-a-
3 half years. That's the period of time I've been
4 involved with this category. But, in 2004, we did an
5 auction process and much like Staples' experience, we
6 didn't, in all categories, go with the lowest bidder.
7 We obtained pricing that way and, then, obviously,
8 went with reliability to the vendors that we thought
9 could provide us product at a reliable time and with
10 reliable quality. And then last year, we just
11 obtained bids from the various producers and from
12 that, just based on what we obtained, shows the vendor
13 that we felt most comfortable with at that time, with
14 a lot having to do with someone being able to have
15 very consistent production of our own private label.

16 COMMISSIONER OKUN: And, Mr. VanGuyse, do
17 you do direct importing? Did you respond to that
18 question?

19 MR. VANGUYSE: Yes, we do direct importing.

20 COMMISSIONER OKUN: You direct import, as
21 well?

22 MR. VANGUYSE: Yes; yes.

23 COMMISSIONER OKUN: For your private label?

24 MR. VANGUYSE: Yes.

25 COMMISSIONER OKUN: Okay. Anyone else on

1 the panel want to respond to pricing practices in the
2 industry, anyone else that would have information on
3 that?

4 MR. CAMERON: Well, just one thing.

5 COMMISSIONER OKUN: Okay, Mr. Zouru wanted
6 to say something and I'll come back to you, Mr.
7 Cameron.

8 MR. ZUORU: (Responds in Chinese.)

9 MS. GAO-SHEPPARD (INTERPRETER): This
10 morning, I heard from the producers, who said that all
11 of their imports are not profitable. I want to use an
12 example to tell you why it's not true.

13 MR. ZUORU: (Responds in Chinese.)

14 MS. GAO-SHEPPARD (INTERPRETER): In 2005,
15 Target had an auction and they directly -- Target
16 directly approached us, invited us to participate in
17 the auction. And at that time, we mainly supplied to
18 Mead, to the U.S. market, so we didn't want to do
19 anything to offend Mead. So, we actually quoted
20 Target a price, which was 15 percent higher than the
21 price that we quoted to Mead. But, eventually, we
22 still won the auction from Target, which shows that
23 Mead apparently had quoted an even higher price to
24 Target. So, they didn't win the auction.

25 COMMISSIONER OKUN: Okay. Mr. Cameron?

1 MR. CAMERON: Madam Commissioner, you know,
2 you're talking about the issue of control. And
3 another way to look at this issue, and this is really
4 what we're talking about, we heard from the witness
5 from Watanabe that Mead went in, in 1999, and
6 essentially bought up all of their exports to the
7 U.S., 100 percent, not 50, not 25, 100 percent. If
8 you buy up all the volume, you, then, control that
9 volume.

10 In 2006, when Staples was -- after they had
11 filed this petition, when Staples is searching for
12 2006 stuff, Norcom, which controlled a lot of supply
13 in Brazil, withdrew the offers that it had made to
14 Staples, with respect to those bids from Brazil. Now,
15 is that control? The answer is yes, because they
16 controlled a great deal of the supply. And that is
17 exactly what the point is. The irony is that, of
18 course, having withdrawn those bids from Brazil, that
19 they, then, come in and say, we'll supply it. We
20 would like to bid x on this product from the United
21 States. The answer is, no, they didn't say boo.

22 COMMISSIONER OKUN: Okay. And that reminded
23 me, Mr. Cameron, that I never had a chance to go back
24 to the rest of the panel on the question of post-
25 petition, whether you're purchasing practices changed

1 and, if so, how. Ms. Tucci, I'll start with you.

2 MS. TUCCI: Thank you. The only thing that
3 changed for us for 2006 back-to-school season is we
4 did move our auction, our e-sourcing event up
5 approximately 30 days, due to the fact that we were
6 told that capacity would be very tight. And so, we
7 were concerned about that and everybody was pressuring
8 us to get our bid in and complete and a little
9 earlier. And we didn't move it up quite as far as
10 Staples, but we did move up about 30 days.

11 COMMISSIONER OKUN: Okay. So, that incurred
12 in what month, then?

13 MS. TUCCI: Our bid process moved up to
14 early November and it was previously a little bit
15 closer to Thanksgiving or post-Thanksgiving.

16 COMMISSIONER OKUN: Okay. And, then, of the
17 product you, then, sourced based on that, is that
18 public information, in terms of where you ended up
19 sourcing?

20 MS. TUCCI: No.

21 COMMISSIONER OKUN: Okay. I think it's in
22 there, but I if you can --

23 MS. TUCCI: I think it's in the bid data.
24 It's in the data that we provided on the --

25 COMMISSIONER OKUN: Okay. And could you --

1 can you say publicly whether your sourcing changed,
2 where you're sourcing products? If you're not
3 comfortable, go ahead and do it post-hearing. It's
4 just I'm just trying to make sense of the argument of
5 whether the domestic industry benefitted, because you
6 paid a higher price to the domestic industry.

7 MS. TUCCI: Our bid process did not change
8 at all.

9 COMMISSIONER OKUN: Okay. And, then, who
10 ultimately won the bids?

11 MS. TUCCI: It does shift from year-to-year,
12 yes.

13 COMMISSIONER OKUN: Okay. I'll take a look
14 at it. And, maybe, Ms. Trossevin, if you could just -
15 - again, because the reason I'm asking the question is
16 not to put you on the spot, but to try to understand
17 whether there was domestic capacity available, that
18 they were then able to sell to these major purchasers
19 at prices that allowed them to make more money than
20 they were otherwise.

21 MR. VANDER SCHAAF: Commissioner Okun?

22 COMMISSIONER OKUN: Yes.

23 MR. VANDER SCHAAF: You know, it dawns on me
24 that the Petitioners this morning said a number of
25 times that they're better off now, because of the

1 preliminary dumping duties that have been imposed,
2 that they're doing better and this, they say, shows
3 that there was some of causal nexus. That flies
4 flatly in the fact of their allegations that they need
5 critical circumstances imports, because the relief
6 hasn't been adequate. They can't have it both ways.
7 In critical circumstances, they're basically saying
8 that the imports have seriously undermined relief.
9 That's the standard. And then they, on the other
10 hand, say, well, now that the duties have been
11 imposed, we're much better off. Well, are they better
12 off because of the relief or not? They can't have it
13 both ways. Certainly --

14 COMMISSIONER OKUN: I see your point, but
15 what I'm trying to understand is just whether, to the
16 extent the Respondents' argument is about, you know,
17 that the Respondents control everything -- or the
18 Petitioners control everything anyway, that they've
19 manipulated the post-petition relief. I'm trying to
20 understand if there is anything I could look at to
21 have a sense of that or to better understand the
22 evidence. But, I understand what you're saying about
23 critical circumstances.

24 Did anyone else want to respond, in terms of
25 post-petition, how it affected purchasing decisions,

1 bid, any changes? Anyone else?

2 (No verbal response.)

3 COMMISSIONER OKUN: Okay. Well, if there's
4 anything you can put in the post-hearing brief, I
5 would appreciate looking at that again for the
6 purposes of responding to what Petitioners have asked
7 on that.

8 Then, my yellow light is on, but Mr.
9 Cameron, I'm just dying to ask you this question about
10 cumulation, because, again, to the extent we have had
11 this argument about Brazil, Brazil, and its size and,
12 yet, maybe it dwarfs Indonesia -- and my red light is
13 on, but I'll close it -- might dwarf Indonesia, might
14 be the second largest, you don't dwarf China, okay.
15 So, if you have to cumulate, is Brazil still a
16 significant non-subject source for purposes of a brass
17 geranium -- Gerald Metals analysis?

18 MR. CAMERON: Well, I don't know about the
19 geranium, but I would suggest to the answer to that
20 is, yes, because we're talking about -- I mean, if you
21 look just at the Staples' experience and what is
22 happening with non-subject imports, there is more than
23 Brazil. Mexico is significant and growing in
24 significance. Canada has always been a significant
25 supplier. So, yes, you're correct that Brazil isn't

1 China. But, I think that it gets back to a point that
2 was raised, I believe, in one of your questions
3 earlier this morning with respect to, well, exactly
4 what happened as a result of this and are we looking
5 really at a short-term bump, rather than a long-term
6 development? They filed the case and created
7 essentially chaos in the marketplace for a very short
8 term. It isn't as if everybody had the entire year to
9 kind of see how things are going to play out and then
10 make an order, because they don't have that kind of
11 time. Everybody still had to make the orders and get
12 things in place, wherever they could do. The irony
13 for Staples was that they didn't get any U.S. offers.
14 So, I think that the answer to your question is, yes,
15 Brazil and non-subject suppliers do remain significant
16 in a Bratsk analysis. And rather than my boring you,
17 I will answer some more in the post-hearing brief.
18 And I apologize to the Chairman for going over the red
19 light.

20 COMMISSIONER OKUN: I was going to apologize
21 to the Chairman for asking Don Cameron a question at
22 the red light.

23 MR. CAMERON: At the red light.

24 MR. SHOR: And expecting a short answer.

25 COMMISSIONER OKUN: My mistake.

1 CHAIRMAN PEARSON: I suggest we just take
2 that out of Commissioner Koplan's time.

3 (Laughter.)

4 CHAIRMAN PEARSON: Let me turn now to
5 Commissioner Lane.

6 COMMISSIONER LANE: I have a question for
7 Mr. Malashevich. It's so unusual for you to appear at
8 a hearing and not get to testify and I'm sure that you
9 had thoughts on this case. So, I'm going to start off
10 with a question and if I don't ask you the right
11 question, then why don't you just answer any question
12 that you want to answer.

13 (Laughter.)

14 COMMISSIONER LANE: My question is, you
15 heard this morning the Petitioners saying that they
16 are losing money on the subject imports and they are
17 making money on their U.S. production. Now, have you
18 looked at the data in this case and do you have some
19 thoughts on that and do you agree with the
20 Petitioners' assessment of what is happening?

21 MR. MALASHEVICH: I certainly have looked at
22 the data, Commissioner. I'm not prepared in the
23 public session to address the data that's provided by
24 the domestic industry. And I think I'm limited in my
25 capacity to evaluate that, because I don't have a

1 liberty -- you know, an audit function. We just look
2 at the data as provided in the questionnaires and very
3 little guidance really is given as to the methodology
4 with which the imports were accounted for in the
5 reported numbers. I might have some additional
6 comments post-hearing on that.

7 But, what I found actually most compelling
8 about the financial information had nothing to do with
9 imports per se, but had everything to do with the
10 comparison of profitability reported for operations
11 restricted to the goods within scope versus
12 progressively broader configurations of the industry.
13 And that's addressed in more than one of the briefs.
14 And I think that has profound implications, because --
15 well, for reasons that I can't say in public, but it's
16 well expressed in more than one of the pre-hearing
17 briefs. And if you want additional detail on that, I
18 would be happy to answer it post-hearing. But, I
19 think that's really the most profound thing to look at
20 and it, also, has the beauty of simplicity. I would
21 recommend you look at those data again.

22 COMMISSIONER LANE: Okay, thank you, and I
23 think maybe it would be helpful, if you would provide
24 that in a post-hearing submission.

25 MR. MALASHEVICH: I would be pleased to do

1 so.

2 COMMISSIONER LANE: Okay, thank you.
3 Various Respondents have alleged that quality
4 differences exist with regard to the subject and
5 domestic merchandise and that these differences are
6 significant factors in purchasing decisions. But, the
7 Petitioners asserts that the fact that new importers
8 and suppliers are able to enter the market quickly and
9 capture market share demonstrates how little emphasis
10 purchasers actually place on the quality of the
11 products purchased. Do you agree with Petitioners'
12 assertion? Does the fact indicate that price is the
13 most important purchasing factor?

14 MS. TUCCI: Meghan Tucci for Target Stores.
15 We would say that price is not the sole indicator for
16 our choice in this process. The logistics, the
17 timing, the handling of the product is so important.
18 Understanding Target's needs and requirements is very
19 important. New vendors enter the market. However,
20 they are well-known vendors. They might have formed a
21 new company, yet they had experience in the industry.
22 They are trusted old partners of ours. They have in-
23 depth knowledge of Target and its processes, which
24 adds a lot of value to the process that we go through.
25 So, we would say, yes, you can join the process and be

1 pre-qualified when you meet those requirements and can
2 be part of the bidding process. So, thus, we do not
3 always put the end decision of the day on price
4 solely. We have so many other factors in logistically
5 getting this product in. It weighs more importance on
6 it. I can't speak to the quality question.

7 COMMISSIONER LANE: Okay. Do you have
8 written specifications as to your qualifications that
9 you require of your suppliers? Are those written
10 down?

11 MS. TUCCI: Yes.

12 COMMISSIONER LANE: And are they extensive?

13 MS. TUCCI: We can provide that post-
14 hearing, if you would like.

15 MS. DEMBSKI: Toni Dembski, Target Stores.
16 We can provide additional detail in post-hearing on
17 that. We can provide you with copies of that
18 documentation.

19 COMMISSIONER LANE: Okay, thank you. And,
20 Ms. Tucci, are you saying that the logistics of
21 getting the product are more important than the
22 quality of the product?

23 MS. TUCCI: I'm saying that all three
24 factors play a decision. And I would say, first, the
25 logistics is considered; second, weighed by quality;

1 and third, by price.

2 COMMISSIONER LANE: Okay, thank you.

3 MR. MALASHEVICH: Excuse me, Commissioner
4 Lane, one further point. There's a section in my
5 prepared testimony that's entirely BPI, submitted on
6 Thursday, I would direct you to, because it's a very
7 detailed analysis of the bid market data. Petitioners
8 have characterized the bidding process as essentially
9 a spiral to the bottom, with price being the principle
10 swayer of the ultimate decision. And I think if you
11 read the testimony of that section, it's only a few
12 pages long with an accompanying exhibit, you'll see
13 it's certainly not the case. It's not at all
14 supported by the data.

15 COMMISSIONER LANE: Okay, thank you. Did
16 anyone else want to add to that? Ms. Ciulla?

17 MS. CIULLA: Yes. I'd like to respond to
18 that and part of this answer is in the brief that we
19 filed. If we take a look at that, what Staples has
20 stated is that quality is the number one factor,
21 supply chain logistics is the number two factor, and
22 pricing is the number three. And I believe if we take
23 a look at the bids and the awards, that supports that,
24 in terms of a decision.

25 In terms of the quality and how important

1 that is, I think that's evidenced in the fact that
2 Staples has not purchased these products from China or
3 India. We have not purchased from them in the past
4 and that is driven by quality as the number one
5 factor. After exploring China a number of years ago,
6 we made the decision that they didn't have the quality
7 we needed. The reason why we purchased from China for
8 2005 is Mead came to us and Mead committed to us that
9 they would provide to us, that they would manage this,
10 and would provide to us the quality that we required.
11 Specifically, we sent them samples of our product from
12 Indonesia and they committed to match the quality of
13 that product. So, it truly is a driving factor. I
14 think that's evidenced in our history with Indonesia
15 and Brazil.

16 Also, we've had long-standing relationships
17 with both Tjiwi Kimia out of Indonesia and Tilibra out
18 of Brazil. When we change those relationships, we're
19 extremely cautious about the impact of supply chain
20 and quality. As a matter of fact, it was not Staples
21 that chose not to continue the relationship with
22 Tilibra. Tilibra failed to quote business for Staples
23 anymore, putting us in the position where we were
24 required to find another source. So, again, the
25 changes that we have had have been the result of a

1 long-standing supplier no longer quoting the business
2 to us and another supplier convincing us that they
3 would provide that quality, which ended up not
4 happening.

5 COMMISSIONER LANE: Okay, thank you.

6 MR. VANGUYSE: Mark VanGuyse with Walgreens.
7 I'd like to reply to them stating that we have a lot
8 of equity built up in our corner office label, which
9 is our own private label. So, if we don't have a
10 quality product on the shelf, it not only reflects on
11 that product that the customer is buying right there,
12 but on other products throughout the store that has
13 that label. So, quality is the number one factor for
14 us. Reliability of supply is number two. And then
15 price is down on the decision tree, in making that
16 decision for us.

17 COMMISSIONER LANE: Okay, thank you. I
18 guess this is probably a legal question. How should
19 the Commissioners treat U.S. producers brokered
20 imports in its consideration of the volume of subject
21 imports, that price effects on the domestic like
22 product, and their impact on the domestic industry?

23 MR. CAMERON: Commissioner, I would be glad
24 to start and other people will join in, I'm sure.
25 Those are U.S. industry imports, whether you call them

1 brokered because they transferred title. They said in
2 Asia. The reality is, in Asia or in Brazil or
3 somewhere else, that really doesn't do very much.
4 That is U.S. imports.

5 It's our position, also, that U.S. imports
6 are controlled by the U.S. industry. And in that
7 section that's controlled by the U.S. industry, you
8 should take that into account. They're not injuring
9 themselves. And, really, those are the significant
10 imports in the market.

11 MR. PERRY: Commissioner Lane, one thing I -
12 - this is Bill Perry from Garvey Schubert. One thing
13 that went over, it kind of got missed, is the largest
14 really significant producer in Canada, Hilroy, is
15 owned by Mead. Hilroy is owned by Mead. So, Mead has
16 production in Brazil, in Canada, China, the United
17 States, and Mexico. So, this is a gigantic shell game
18 and the shell game is where is the pea. This is why
19 Mead controls. It controls production operations
20 around the world.

21 COMMISSIONER LANE: Okay. Sir, you will
22 have to identify yourself for the reporter.

23 MR. RAO: Barry Rao, American Scholar. I
24 have recently heard MeadWestvaco trying to source from
25 countries -- trying to buy companies that are in

1 Vietnam and the Far East, that are not part of the
2 scope, countries that are not part of the scope. So,
3 Mead is on the global buying spree and that's why they
4 took Hilroy in the 1990s, late 1990s, and in 2005,
5 they took over Tilibra in Brazil -- 2004.

6 COMMISSIONER LANE: Okay, thank you. Mr.
7 Shor?

8 MR. SHOR: I see the red light is on, so I
9 will be brief. I agree with Mr. Cameron on the
10 specific question you asked, but there is -- as a
11 theoretical matter, we don't see any difference
12 between brokered imports and direct imports. So, it
13 should be counted as domestic industry imports. But,
14 you can do that for volume purposes, because you have
15 the data. On the pricing data, you don't have any
16 pricing data for the brokered imports. Those are
17 treated as the direct imports of whoever is importing
18 them. So, there's no way to distinguish those pricing
19 data from the -- what were they called in the staff
20 report, the non-producer imports.

21 COMMISSIONER LANE: Okay, thank you. Thank
22 you, Mr. Chairman.

23 CHAIRMAN PEARSON: Commissioner Koplan won't
24 complain about us using a little more of his time.

25 (Laughter.)

1 CHAIRMAN PEARSON: Ms. Tucci, I probably
2 should explain that four years ago, when I moved from
3 Minnesota to northern Virginia, my children were not
4 enthused about this. They, at that time, were ages 13
5 and 10. And one of the reasons they weren't enthused
6 about it was less than two years earlier, the new
7 Super Target had opened at the intersection of
8 highways 101 and highway seven in Minnetonka. And
9 that was close enough that they could ride their
10 bicycles there and spend their hard-earned allowance
11 at their own discretion. And this was a huge increase
12 in their quality of life. So, they shall be quite
13 excited to hear that Target, once again, has been in
14 front of the Commission today and I have had a chance
15 to visit with you. We have a Target available only
16 some distance away now, so it's not nearly as
17 convenient.

18 I was curious to learn a little bit more
19 about your discussion about the palletized imports,
20 because, obviously, Target is a very sophisticated and
21 experienced company and with some products, has no
22 reluctance to import directly. And, yet, if I
23 understand correctly what you're saying for this
24 product line, you prefer not to deal directly with
25 producers in foreign countries. Is that correct?

1 MS. TUCCI: Meghan Tucci. Yes, that is
2 correct. The vast majority of our purchases in this
3 line paper product is in what we call a 10 pack, 70
4 count spiral notebook. Although we do have good
5 international sourcing and ability to run cartons
6 through that international facility, it is not
7 efficiently set up to run pallets through. It is the
8 best logistical savings for us to run the pallets of
9 this program directly to our stores, through the
10 distribution centers and to our stores. And,
11 unfortunately, our international center is not set up
12 to efficiently handle that. So, our preference is to
13 have our U.S. suppliers palletize for us and then we
14 buy from them and run the product through D.C. and
15 directly to our stores.

16 CHAIRMAN PEARSON: Okay. So, for imported
17 line paper products, they will be coming in, in a
18 container, I suppose; but in cartons in a container,
19 not on pallets in a container?

20 MS. TUCCI: That's correct; that's correct.
21 My understanding, again, when we make our -- do our
22 bid process with the suppliers, we're not aware, we
23 don't ask where they're going to get the product from.
24 So, we don't even ask them to break it down from how
25 many multiple countries they're getting from or

1 whether they're producing it in the United States or
2 not. So, it's probably actually a better question to
3 ask one of the suppliers to answer. I'm not really
4 able to.

5 CHAIRMAN PEARSON: Well, it would be a
6 better question to ask your colleague, who is
7 preparing to answer it.

8 MS. DEMBSKI-BRANDL: You know, we really
9 don't know whether or not the cargo moves
10 internationally.

11 CHAIRMAN PEARSON: Actually, could you
12 identify yourself?

13 MS. DEMBSKI-BRANDL: That's kind of the
14 bottom line answer, we don't know if it moves
15 internationally in pallets or on a floor load.

16 CHAIRMAN PEARSON: For the court reporter,
17 could you identify yourself for the record?

18 MS. DEMBSKI-BRANDL: Oh, I'm sorry, Toni
19 Dembski, Target Corporation. Excuse me.

20 CHAIRMAN PEARSON: Okay.

21 MR. GRAHAM: This is David Graham from
22 NuCarta. We did actually bring in some product and
23 palletization process was used for Target. It is not
24 a simple process actually. Everything that comes in
25 is in containers, where the boxes of goods are stacked

1 into the container with nothing else but just the
2 product. And the container does need to be unloaded
3 by hand and it's a -- I guess you would call it a very
4 laborious process on to pallets and then it must be
5 palletized in a particular pattern, so that it can
6 make it to Target stores without getting damages. And
7 all of that is a process that definitely takes time
8 and it, also, is a process that must be learned. It
9 is not something that can easily be accomplished
10 without having some experience as to how it needs to
11 be done.

12 CHAIRMAN PEARSON: Okay. So, I would be
13 correct to understand, then, that it's Target's
14 preference to deal with the U.S. manufacturer and then
15 if they choose to import, that's fine. But, you would
16 like it delivered to your distribution centers in the
17 same form as if they produced it in this country; in
18 other words, on pallets, packaged in the way that you
19 would require?

20 MS. TUCCI: Yes, that's correct. I can't
21 even say that it would be produced that way, if it was
22 done in this country. It's just how we require them
23 to pack it, placed on the pallet. It is very labor
24 intense. It has certain labels they have to put on
25 it. It has to be stacked a certain way. And our past

1 experience, when we've tested direct imports, again it
2 was not efficient and quickly eroded any price
3 advantage we found doing that.

4 CHAIRMAN PEARSON: Okay, good. Any other
5 comments relating to logistics of imports that we
6 should have on the record?

7 (No verbal response.)

8 CHAIRMAN PEARSON: Okay. Another question
9 for you, Ms. Tucci. In your pre-hearing brief, you
10 cited increasing incomes in China as boosting the
11 demand for paper products, in general. And do you
12 have anything specific on this part regarding line
13 paper products or, Ms. Trossevin, whoever is
14 appropriate spokesperson here?

15 MS. TROSSEVIN: We did provide a little bit
16 of information in our pre-hearing brief and we would
17 be happy to try and elaborate on that with some
18 additional information in the post-hearing brief. We,
19 also, have discussed that issue with Mr. Zouru a
20 little bit, in terms of the Chinese market and what's
21 happening there. And I would be happy to ask him, if
22 he has a couple of comments he would like to make for
23 you there.

24 CHAIRMAN PEARSON: That would be useful,
25 because, in so many cases, we deal with product coming

1 from China and the question is, is the capacity to
2 produce in China growing faster than the capacity to
3 consume or the proclivity to consume? That seems to
4 be the issue that you've raised in your brief.

5 MR. ZUORU: (Responds in Chinese.)

6 MS. GAO-SHEPPARD (INTERPRETER): Right now,
7 there is statistics provided by the Petitioners, which
8 claim that China has great paper-making capability.
9 That's actually a myth. There are altogether more
10 than 3,000 kinds of paper, but China only makes a few
11 of them that are suitable for making notebooks.

12 MR. ZUORU: (Responds in Chinese.)

13 MS. GAO-SHEPPARD (INTERPRETER): China has
14 improved its environmental standards, so a lot of
15 paper mills with low production and low technology are
16 all closed. And in 2005, in our shipment to Mead, we
17 actually experienced an instance, in which we had to
18 cancel part of the order, because we didn't have
19 enough paper.

20 MR. ZUORU: (Responds in Chinese.)

21 MS. GAO-SHEPPARD (INTERPRETER): Secondly,
22 the Chinese market -- the demand in the domestic
23 Chinese market had been growing in the past couple of
24 years. Every year, it had been growing the rate of 25
25 to 30 percent.

1 MR. ZUORU: (Responds in Chinese.)

2 MS. GAO-SHEPPARD (INTERPRETER): And also in
3 recent years, we realized that the Chinese currency
4 had been revalued, appreciated. So, that's not good
5 for exports. So, we re not focusing on exporting our
6 products.

7 MR. ZUORU: (Responds in Chinese.)

8 MS. GAO-SHEPPARD (INTERPRETER): Right now,
9 we are in an era of so-called knowledge-based economy.
10 So, the demand of paper has been increasing and we
11 have seen in the past couple of years that the demand
12 of paper from China's neighboring countries had been
13 increasing, as well. So, it's very obvious that the
14 paper supply in China is not enough to meet the demand
15 of the market.

16 MR. ZUORU: (Responds in Chinese.)

17 MS. GAO-SHEPPARD (INTERPRETER): And, in
18 particular, I'm referring to the 55 gram or the 50
19 pound of paper, as you referred to the U.S. industry.
20 The supply of this particular kind of paper is
21 diminishing.

22 CHAIRMAN PEARSON: Okay. And with
23 indulgence of Commissioner Koplan, let me offer just
24 one follow-up. The writing in Chinese characters
25 obviously is at least somewhat different than writing

1 in English. Does that mean that there are different
2 types of lined paper products that are commonly used
3 in China or does the Chinese market use the same
4 products that we've had on display here?

5 MR. ZUORU: (Responds in Chinese.)

6 MS. GAO-SHEPPARD (INTERPRETER): Two points.
7 One is a lot of the businesses in China are government
8 affiliated and they have very high criteria for
9 notebooks. So, the notebooks available in the Chinese
10 market are generally of higher quality than the
11 notebooks that you can find in the U.S. market.

12 Secondly, it is true that Chinese characters
13 are different from English; but, right now, the
14 notebooks are the same. We have -- the lines are also
15 horizontal.

16 CHAIRMAN PEARSON: Okay, good. Well, thank
17 you, very much. Madam Vice Chairman?

18 VICE CHAIRMAN ARANOFF: Thank you, Mr.
19 Chairman. One of the discussions that we had with
20 Petitioners this morning and that has come up again
21 this afternoon was the question of the ability of U.S.
22 producers to meet demand in the post-petition period.
23 And this morning, some of the domestic producers
24 testified that there are a number of things that they
25 could do, to produce more in the United States, if

1 they receive a favorable outcome in this case. They
2 talked about more shifts, producing through more parts
3 of the year, bringing back on machinery that is
4 currently not being used, and a number of other
5 things. The testimony I heard this afternoon was,
6 well, if that's true, why were the domestic producers
7 not bidding on some of the retailers here purchases
8 for back-to-school 2006. So, the question I want to
9 put to you is I'm trying to reconcile those two facts
10 or sets of facts. Is it possible -- and I put this
11 question to Petitioners, as well, to respond in post-
12 hearing -- is what we're looking at here simply that
13 the domestic producers actually cannot expand their
14 production in the ways that they described or is more
15 a case that because it would require them to spend
16 money bringing on equipment and because it would
17 require them to make commitments to workers, they
18 haven't done it pending the outcome of this case?

19 MR. CAMERON: I think some of the importers
20 or some of the other producers will have a view on
21 this. But, I believe ours, from the Staples'
22 experience, and maybe it is true that Staples is not
23 representative of everyone, but it is certainly true
24 that we had no offers. And if that be the case, it
25 does somewhat beg the question as to whether or not

1 talk is cheap or whether or not, yes, they got to bump
2 up. True enough, I mean, we haven't seen the data,
3 but we suspect that there is some bump up. But, does
4 that really answer the long-term question? And that,
5 I believe, is the real answer. We believe that,
6 actually, they are participating substantially in the
7 import market, as well. A question was raised earlier
8 today, I believe by Commissioner Lane, as to when they
9 present their data for the first six months, is it
10 also going to show that imports by them from subject
11 countries have essentially gone down to near zero.
12 And we suspect that the answer to that is,
13 undoubtedly, yes. Again, what does that prove, if
14 they are the ones that are accountable for much of the
15 previous increase. We, also, believe that they will
16 also show substantial imports from non-subject
17 sources, which goes to exactly the point, which is
18 that is exactly where a lot of this is going to go
19 long term.

20 VICE CHAIRMAN ARANOFF: Did anyone else want
21 to respond? Ms. Trossevin?

22 MS. TROSSEVIN: I think it's also important
23 when you look at the capacity issue, I think as Mr.
24 Shor mentioned earlier, I mean, you have, first of
25 all, the basic numbers in the report that already show

1 that you have a large gap. And I do think that when -
2 - and you have the industry taking production in the
3 United States offline. Now, granted, they say that's
4 because of the imports. But, I think we've shown that
5 their story about having to import to survive is not
6 accurate.

7 But, I think you also have to look at where
8 are they investing in production. I mean, they are
9 investing in capacity. They have invested in capacity
10 in Brazil. And that capacity is very important,
11 particularly because of the counter cyclical seasons
12 in Brazil. So, Brazil offers -- when you're talking
13 about getting more bang for your buck, when you buy
14 capacity in Brazil, you get a lot more bang for your
15 buck, because you can produce at a much higher rate on
16 an all-year-round basis, if you are producing for the
17 Brazilian market and for the North American market, at
18 the same time. So, I think that those are all -- when
19 you weigh the facts and you weigh the stories and how
20 things match up, I think those are very important
21 facts to take into account.

22 MR. VANDER SCHAAF: Mr. Graham used to work
23 at Norcom, and I think he had some points about the
24 capacity there.

25 VICE CHAIRMAN ARANOFF: Okay. Go ahead, Mr.

1 Graham.

2 MR. GRAHAM: In particular it is somewhat
3 difficult to actually determine how much more capacity
4 can be gained when you have to consider that a lot of
5 the products that you need to produce are customer-
6 specific products. In other words, the customer will
7 demand that it look in a particular way. It is their
8 design. It is their product. It can only be sold to
9 them.

10 Without getting a commitment from them or
11 getting an order it is very difficult to start your
12 production earlier without taking a great risk that
13 you may not end up being able to fully be the supplier
14 of all the products that you produce to that
15 particular customer.

16 So there are capacities that may be
17 available but it's hard to determine how much of that
18 capacity can be used in a customer-specific product
19 situation.

20 VICE CHAIRMAN ARANOFF: I appreciate all of
21 those responses. And again, I do invite Petitioners
22 also to comment on this issue in your post-hearing
23 brief.

24 MR. SHOR: I'm sorry. I think it's also
25 important to keep in mind the timing of the petition

1 in this case in analyzing the post-petition effects.
2 You heard testimony about the back to school season
3 and the bid data that's solicited in November or has
4 moved up a little. The petition in this case was
5 filed in September, the case was initiated in October.
6 That was right at the start of the back to school
7 season. So everything that results after that was the
8 result of the chaotic period where people were
9 scrambling in the fall of last year to secure supplies
10 for this year.

11 I think the question was asked earlier, well
12 is this a short term phenomenon or a long term
13 phenomenon? I think 2007 is likely to look very
14 different than 2006 once the problem of the case is
15 sorted out and people have time to secure alternatives
16 sources of supply. So the fact that a lot of
17 production may have been shifted to the domestic
18 industry in 2006 relates to the timing of the petition
19 and that may not necessarily be the case in 2007.

20 VICE CHAIRMAN ARANOFF: Okay. I appreciate
21 that too.

22 I'm going to move on to a different area.

23 Petitioners have made the suggestion that it
24 would be more accurate with respect to our price
25 underselling data if we were to quantity weight the

1 data in order to account for the seasonal nature of
2 the market.

3 Mr. Malashevich or anyone else, do you want
4 to comment on whether that makes sense?

5 MR. MALASHEVICH: Bruce Malashevich, I think
6 I'll start out.

7 Basically we normally in recent years among
8 the material set out to APO authorized people, it's
9 been the SASS program the staff uses to do the
10 underselling calculations, basically. We requested
11 that program but understood that it's being revised.

12 That's really a question that's best
13 answered once the final data set the staff generates
14 and the SASS program is generated.

15 MR. CAMERON: Commissioner? One other point
16 that I think needs to be pointed out is the weighting
17 it by quantity doesn't really address the fundamental
18 problem that we have with the data. The fundamental
19 problem with the data is that it largely reflects
20 intra-industry competition so it doesn't really tell
21 you very much about what is in fact happening with
22 over-selling and under-selling and that is the
23 critical point about the data.

24 They want to weight-average it by quantity?
25 Actually, if you want to see the quantity that is

1 involved you can see how much it is in the staff
2 report in terms of how much of it is accounted for by
3 the U.S. industry and it's quite substantial.

4 VICE CHAIRMAN ARANOFF: I take your point on
5 that but obviously we've thought about that because
6 everyone raised it in their brief, and we asked the
7 staff for what if you only look at the data for
8 independent importers who are not associated with the
9 domestic industry? Without going into BPI it's not
10 clear that the trends are any different, generally the
11 data's different.

12 MR. CAMERON: Fair enough. Actually I
13 believe the footnote that you're referring to in the
14 staff report says that the trends for U.S. industry,
15 U.S. controlled, and trends for the overall are not
16 that different which actually mathematically would not
17 be a big surprise to you, number one.

18 Number two, even the data with respect to
19 the "non-controlled imports", in other words the
20 independent imports. A question for this Commission,
21 how many of those are brokered imports? The answer
22 is, the Commission doesn't know the answer to that
23 question, which is exactly the point that Mr. Shor was
24 making earlier. In other words the "non-controlled
25 U.S. imports", that just means they are imported by

1 somebody that is not a U.S. producer. It doesn't mean
2 that they were not brokered by a U.S. producer.
3 Again, it is a fundamental problem with the pricing
4 data that you have.

5 Thirdly, that independent data is very
6 small. It's whatever. But I think that relative to
7 the other it's small, and we would suggest to you that
8 it doesn't really tell you very much and that is
9 exactly the point of that pricing data. That pricing
10 data is interesting, but the pricing data largely
11 tells you about what is happening with intra-industry
12 competition.

13 So I get your point but I'm not sure at the
14 end of the day if you dissect that data that you reach
15 the conclusion that you come to something all that
16 meaningful. But it's interesting.

17 VICE CHAIRMAN ARANOFF: Which takes me to
18 the one I'll try to squeeze in on the yellow light
19 since everybody else has --

20 MR. CAMERON: It's Commissioner Koplan's
21 time. You should feel free.

22 VICE CHAIRMAN ARANOFF: That is I know that
23 a number of the members of the staff knew the panel
24 spent time in their brief trying to persuade us that
25 for one reason or another our under-selling data

1 aren't really worth the paper they're written on at
2 this point. So my question to you is well, I think
3 one of the reasons for that is because to the extent
4 that retailers are importing themselves, there's no
5 sales at the same level of trade to compare and that's
6 nothing nefarious, it's just true.

7 So should we instead be looking at the bid
8 data? Is that a better place for us to be looking at
9 price effects in this market because it's the same
10 level of trade and it's precisely the same product?

11 MR. CAMERON: We actually agree with the
12 Petitioners that the proper point to do is the pricing
13 data that you've analyzed.

14 What we have said, however, is that for
15 Petitioners to suggest that this is invested with a
16 great deal of meaning is a bit misleading. So we
17 don't really think that much of it.

18 Thirdly, the suggestion has been made by
19 Petitioners, for instance, that Brazil is really this
20 very honorable -- and we believe they're honorable,
21 but very high-priced, fair trader, et cetera. I've
22 never heard so many people say so much nice things
23 about Brazil in all the time that I've been here.
24 This is the first Commission hearing I've been at --

25 VICE CHAIRMAN ARANOFF: -- given what's

1 going on in Geneva.

2 MR. CAMERON: Exactly. But this is the
3 first time I've heard that they're not subsidized,
4 honestly, in any industry. But I'll take their word
5 for it.

6 But the point of this is that we actually
7 have analyzed their prices and their prices actually
8 are not all that different from anybody else's prices.
9 I will grant you that it's U.S.-industry controlled as
10 well, but that really is the point.

11 We also had supplied some information to you
12 with respect to a comparison in the case of Staples in
13 our post-conference brief later last year and we will
14 submit that again for the record, but what it
15 demonstrated was that the prices from Brazil and the
16 prices from Indonesia that Staples was paying weren't
17 any different.

18 So it's very nice to hear that Brazil is
19 really not any problem. It's the second-largest
20 supplier. They are either under-selling or at the
21 same levels as everybody else.

22 So yeah, there are some things that you can
23 take away from that pricing data but the idea that
24 cumulated imports are under-selling imports, that's
25 one thing you really can't take from that data.

1 VICE CHAIRMAN ARANOFF: I appreciate those
2 answers. My time is up.

3 I guess I would just say for post-hearing to
4 both sides again -- My current inclination, because
5 there are these questions about the under-selling data
6 is to say gee, maybe I should be looking at the big
7 data again. So if there's anything you want to say to
8 persuade me that that's a good idea or a bad idea,
9 please feel free.

10 MR. CAMERON: Fair enough. Thank you.

11 VICE CHAIRMAN ARANOFF: Thank you, Mr.
12 Chairman.

13 CHAIRMAN PEARSON: You're welcome.

14 Commissioner Hillman?

15 COMMISSIONER HILLMAN: Thank you. I will
16 only comment parenthetically that when I take my
17 school-age children to purchase their school supplies
18 they will no doubt be wearing their Brazil national
19 team soccer jerseys that they have not taken off for
20 the last three weeks.

21 (Laughter).

22 So I will tell you that Brazil, at least in
23 my household, is highly praised.

24 In any event, let me try to make sure I
25 understand a couple more things on this.

1 Ms. Ciulla, in your testimony you noted that
2 none of the major domestic producers with the limited
3 exception of need was willing to provide a bid to
4 supply us with lined paper that was produced in the
5 United States. I just want to make sure. Was it a
6 condition of the bid that the product be produced in
7 the United States?

8 MS. CIULLA: No, it was not. All of the
9 products in the bid were Staples-branded products. As
10 such we need to know where they're produced, so
11 they're simply asked to document where the product
12 will be produced.

13 COMMISSIONER HILLMAN: But it didn't say on
14 the bid must be a product of the USA or anything to
15 that effect?

16 MS. CIULLA: No.

17 COMMISSIONER HILLMAN: For the other
18 purchasers, Walgreens, Target, anyone else, do you
19 know or care where the product comes from?

20 MS. TUCCI: Target, no we do not.

21 COMMISSIONER HILLMAN: Walgreen?

22 MR. VAN GUYSE: We want to know, and we do
23 care.

24 COMMISSIONER HILLMAN: Do you condition bids
25 on a particular source?

1 MR. VAN GUYSE: We don't condition bids on a
2 particular source but there are vendors, suppliers and
3 ports that we're more comfortable with getting
4 products through our system.

5 COMMISSIONER HILLMAN: Mr. Van Guyse, if I
6 can stay with you.

7 You talk a lot about how Mead decided to
8 source from China and encouraged you to participate in
9 this process, and Staples went through the same
10 experience. Just so I understand it, was price
11 discussed with that? Did Mead tell you why they
12 wanted to have you start purchasing their product that
13 was produced in China?

14 MR. VAN GUYSE: That pre-dated me because we
15 were buying domestically in 2001, and 2002 is when we
16 started buying imports from Mead, so it pre-dated me,
17 so I'm not privy to all the details in that matter.

18 COMMISSIONER HILLMAN: Ms. Ciulla, I don't
19 know whether you have any information of this issue of
20 when Mead came to you to say we're going to start
21 sourcing the product that we're selling to you from
22 China. Did they give you an understanding of why they
23 were doing this?

24 MS. CIULLA: Mead explained to us that
25 growing the source in another country, specifically

1 China, was an initiative for the company. It's part
2 of the company's growth.

3 COMMISSIONER HILLMAN: As opposed to price.
4 Was price discussed?

5 MS. CIULLA: Price certainly was part of the
6 discussion, yes. As well quality was part of the
7 discussion because the product that Staples had
8 purchased from Mead the prior year, which was one
9 item, that they had purchased only the prior year, no
10 other prior history of purchases with them on this
11 product, it was actually another U.S. supplier who was
12 our preferred U.S. supplier. That year we had issues
13 with both timely delivery of the product as well as
14 the quality of product. So with their bid for this
15 product in 2004 part of the issues were the quality of
16 product that they supplied for us out of the U.S., the
17 supply chain of the product out of the U.S..

18 Subsequently, when told that we would not buy from
19 them that same one item that we purchased from them
20 the prior year, they then came to us and we purchased
21 three items, greatly expanded the product that we had
22 been buying from them, through the China distribution.

23 COMMISSIONER HILLMAN: Questions for Mr.
24 Zuoru just to make sure I understand a couple of
25 things.

1 In the written testimony that you provided
2 that states that we do, this is at the end of the
3 testimony, "Although we do not have a presence in the
4 U.S. market because we sold through MeadWestvaco," is
5 the beginning of the sentence. I just want to make
6 sure I understand two issues. One, it's my
7 understanding that a significant amount of what had
8 been provided from Watanabe to MeadWestvaco were some
9 of these specifically excluded products which
10 presumably would not be subject to any final order
11 that might issue.

12 So my question is, why are they not still
13 being sourced through Watanabe if they are not subject
14 to the order? I believe all the Five Star products or
15 some of the other specifically excluded products. And
16 again, if you have to answer this in a post-hearing
17 brief, that's fine as well.

18 MR. ZUORU: (Responds in Chinese)

19 MS. GAO-SHEPPARD (INTERPRETER): It was only
20 in 2005 when we sold some of the Five Star notebooks
21 to the United States market through Mead.

22 COMMISSIONER HILLMAN: And your testimony
23 says that you do not have a presence in the U.S.
24 market. I guess I thought I'd understood that you
25 were currently supplying product to Target. I thought

1 that was what was said earlier. That's not what was
2 said? I'm sorry. To somebody.

3 MS. TUCCI: Meghan Tucci with Target.

4 In 2005 we purchased product directly from
5 Watanabe Filler Paper.

6 COMMISSIONER HILLMAN: Now in 2006 Watanabe
7 is not selling anything into the U.S. market.

8 MS. TROSSEVIN: I will let Mr. Zuoru tell
9 you the amount, if there's been any sales to the U.S.,
10 but also just to clarify the point of that statement,
11 when we're also talking about a presence in the United
12 States what we were also talking about was that
13 Watanabe itself does not market on its own in the
14 United States. In other words it only marketed
15 through Mead. It didn't have its own sales and
16 distribution network in the United States.

17 COMMISSIONER HILLMAN: That's more what I
18 was trying to understand. The specific information
19 about whether you're continuing to sell here I presume
20 would be in a questionnaire response. I'm not trying
21 to get at confidential information. I'm trying to
22 understand the gist of this statement, "We no longer
23 have a U.S. presence."

24 So you theoretically could have a U.S.
25 presence in the excluded products, you could still

1 have a presence in other ways. So that's what I was
2 trying to understand is that once the case was filed
3 you in essence terminated your relationship with
4 MeadWestvaco? That's what I'm trying to understand,
5 is whether you continue to have any relationship to
6 sell through Mead.

7 MS. GAO-SHEPPARD: In 2006 they still sold a
8 small amount of non-subject products to Mead's
9 Canadian subsidiary.

10 COMMISSIONER HILLMAN: all right. I just
11 wanted to make sure I understood that relationship.

12 Mr. Graham, I wanted to go back to a comment
13 that you made in your testimony which was in your view
14 the domestics make more money on imports than they do
15 on their domestically produced goods, which at least
16 strikes me as directly the opposite of what we heard
17 from the domestic industry this morning. I would say
18 to me, at least, it looks to be not consistent with
19 the data that we have on the record which may be the
20 accounting issue that Mr. Shor was talking about
21 earlier.

22 Nonetheless, I would like to understand from
23 you, why do you say that?

24 MR. GRAHAM: I do concur with Mr. Shor that
25 it does get to an accounting issue, but based on some

1 of the information which I received and reviewed as an
2 employee at the time of Norcom, it was clear that
3 there was money that was being made on product that
4 was imported from various countries -- Indonesia,
5 China and Brazil -- and also there was money that was
6 being made on product that was made in the U.S.. But
7 yes, there was profitability shown on those particular
8 items on information that was given to me during my
9 time.

10 COMMISSIONER HILLMAN: Okay. The other
11 issue that we've heard this afternoon on this that is
12 different from what we heard this morning was this
13 issue of a markup on imported products, at least
14 inferring from Mr. Zuoru's testimony that they in
15 essence won a bid at 15 percent above, as I heard it,
16 above the price at which they were selling the product
17 to Mead. That would suggest there is some markup that
18 the industry is getting on its imports.

19 Do you have any information about what you
20 think is or is not happening with respect to a markup
21 on imported products?

22 MR. GRAHAM: Yes. Obviously if you're
23 making some money on part there is going to be some
24 markup but I'd like to address that confidentially,
25 possibly in the post-hearing brief.

1 COMMISSIONER HILLMAN: Fair enough, I
2 appreciate that.

3 MR. SHOR: If I can just respond to that.

4 COMMISSIONER HILLMAN: Mr. Shor?

5 MR. SHOR: I think the testimony from the
6 domestic industry was very carefully worded on that.
7 I think they were trying to distinguish between
8 getting a commission on sales and buying and
9 reselling. I think what they were trying to say is
10 they buy and resell and there could be a difference in
11 price there. I don't believe for a minute that they
12 would buy and sell at the same price and I don't think
13 that was the testimony.

14 COMMISSIONER HILLMAN: I appreciate those
15 comments.

16 I think with that I have no further
17 questions. Thank you all very much for your patience
18 and your answers to our questions. Thanks.

19 CHAIRMAN PEARSON: Commissioner Okun?

20 COMMISSIONER OKUN: Thank you.

21 Ms. Ciulla, I just wanted to follow up on a
22 couple of points on your response to Commissioner
23 Hillman with regard to when Mead offered the Chinese
24 product. I'm trying to understand, they had supplied
25 one product I heard you say before that was a U.S.-

1 produced product that wasn't what you were looking
2 for, then they came in and offered to supply Chinese-
3 produced product and they get that bid. Was it a bid
4 at this point? Was this part of the bidding process
5 or part of just a normal --

6 MS. CIULLA: Typically the bidding process
7 starts out with the suppliers quoting prices on bids,
8 then we do enter into a negotiation. So this is part
9 of the discussion and negotiation after the bids had
10 been supplied.

11 COMMISSIONER OKUN: After the bids had been
12 supplied, okay.

13 So prior to that, that business was another
14 U.S. producer, I thought I heard you say.

15 MS. CIULLA: In terms of the U.S. supply of
16 those items prior to that it was another U.S.
17 producer. Mead had had some volume of one item for
18 one year and that was not a good experience.

19 COMMISSIONER OKUN: Right. So when they
20 come in with the Chinese product and they get that,
21 was that a lower price than what you were previously
22 paying from the other U.S. producer? If you can't
23 respond here you can do it confidentially.

24 I'm just trying to understand. If you are
25 the other U.S. producer out there, you hear this

1 story, I think you think it lost the sale to the
2 Chinese if it were at a lower price. I'm just trying
3 to understand if it's something different.

4 MS. CIULLA: I'd rather refer to the data
5 and make the accurate information --

6 COMMISSIONER OKUN: That's fine.

7 MS. CIULLA: I believe it was pretty
8 competitive to the price that Mead had sold the
9 product to us the prior year, but I'll get the exact
10 data.

11 COMMISSIONER OKUN: Okay, I appreciate that.

12 My final question is a little bit of a
13 theory of the case type question so I might have to
14 use Commissioner Koplan's plan again. I don't know.
15 Mr. Shor, maybe I'll start with you and then move
16 through counsel here.

17 Listening to all the testimony, it's 5:20
18 now, we have other cases where you have domestic
19 producers who import a lot of product. I think some
20 of my fellow Commissioners have observed we see an
21 increasing amount of cases that look like there are a
22 lot of imports coming in that are controlled or that
23 domestic imports are supplying, and some of those
24 cases were referenced in briefs -- Bedroom Furniture,
25 Diamond Sawblades, Outboard Engines.

1 I guess to me it looks different than all
2 those. In other words you can have, and we have some
3 domestic industries that may be importing to
4 complement a line; you see domestic industries who are
5 importing because they think it's the right business
6 model and they oppose bringing a petition.

7 Here the very odd thing about it is that you
8 have a domestic industry importing a lot of product,
9 accounting for its use at a majority of the subject
10 import, and yet they bring a case, and the disconnect
11 for me is I don't understand why you would do it just
12 to bring in Brazil. I mean, to me, it doesn't look
13 like that is enough to bring a case.

14 And so my theory of the case, not the one
15 proposed by Petitioners because they may not want to
16 say this, but I could look at this and say they
17 thought it might work. They thought if you go in and
18 you get Mr. Hurs (ph) to produce all this and you
19 control it, you control the prices a little bit, you
20 can make some money, and you can shift around product
21 and it seems like a pretty good deal. But if they
22 don't make any money on it in selling these things,
23 you know what, the imports actually are injuring their
24 domestic facilities and the best thing they can do is
25 bring a case and try to fix pricing in the markets.

1 Again, not anybody's theory of the case other than
2 Commissioner Okun's right now, and not even my theory
3 of how I would decide the case.

4 But I just want to throw that out, that
5 doesn't this look different than other cases where
6 there have been imports?

7 MR. SHOR: This is a very different case
8 from any other case, and I have them all stacked under
9 the table, and I was reading them before. It's
10 different in many respects and you've identified some
11 of them.

12 One, the extent to which the domestic
13 industry is involved in imports. Usually the
14 percentages are reversed in the other cases.

15 Two, the extent to which the domestic
16 industry is responsible for the increase in imports
17 over the POI. I think in all the other cases domestic
18 industry imports were declining over the period, so
19 they were getting out of the business. This one's
20 going the other way.

21 Three, as you said it's not the domestic
22 industry trying to complement their product line with
23 products they don't produce here. They're putting
24 their names, Norcom or Mead, on the imported products,
25 and unless you look for the tiny print that says where

1 it's made you can't distinguish the product. So it
2 shows a deliberate business strategy not to try and
3 keep their profitable products here and their imported
4 products, they're moving everything off-shore as fast
5 as they can it seems.

6 Did the strategy work? Apparently not.
7 Maybe they did think that they could control imports
8 and maybe they did or maybe they couldn't or maybe
9 there were just other countries that came into the
10 market.

11 I don't have a good sense for what happened,
12 but I think from the Commission's perspective with the
13 absence of Brazil in this case, with the absence of
14 Canada, both of which countries where Mead has
15 production operations, you have to ask the question of
16 what's the purpose of this petition? Is it to protect
17 domestic production? Is it to protect production in
18 third countries where the domestics seem to have more
19 of a foothold? and also look at what happened between
20 the domestic control of non-subject and subject
21 imports. Is this a case in which the domestic
22 industry was not sourcing from third countries at all
23 before imports were started? Or were they importing
24 from another country and switched? All those factors
25 are different here.

1 But it just doesn't add up, and I agree with
2 you that it doesn't add up. It doesn't look like it's
3 a petition aimed at protecting domestic production.

4 MR. CAMERON: Commissioner, if I may add.

5 We take your point. It isn't like all of
6 these other cases in a significant way for the reasons
7 that you stated.

8 Let's read just one paragraph from Wooden
9 Bedroom Furniture. "Members of the domestic industry
10 were themselves importers of a substantial volume of
11 subject imports during the period, but their share of
12 total imports remained essentially stable throughout
13 the POI. Accordingly, importers who were not domestic
14 producers accounted for a large majority of subject
15 imports as well as the bulk of the increases in
16 subject volumes during the period of investigation."

17 That is not our case. That really is the
18 point.

19 The other is, not only do we have
20 substantial involvement as Mike is saying in the
21 subject merchandise, we have incredibly substantial
22 involvement, if you look at your data, with respect to
23 imports of non-subject merchandise.

24 Thirdly, in our brief we tried to give you
25 the graft. There have been accusations made that

1 Respondents have been talking about conspiracy
2 theories. I mean, it really is kind of like Harry
3 Truman when he said you know, look, I'm not giving
4 them hell, it is hell. This is what it is. This is
5 reality. All we're giving is the tables. We're
6 giving the data that you have in the report.

7 What the data is showing is that there are
8 shifting by U.S. producers going back and forth all
9 over the place of imports of the product. The
10 question is, where is it coming from.

11 So you may be right, that it's not just
12 Brazil, but you can actually draw some conclusions
13 from this data, and Brazil is without question a
14 significant component of this case. Not only in terms
15 of the fact that it's significant, but in terms of the
16 importance of Brazil as a source of supply for this
17 domestic industry. We believe that the data that has
18 already been collected by the Commission makes that
19 quite clear.

20 MS. TROSSEVIN: Marguerite Trossevin.

21 I think it's also very telling that
22 Petitioners repeatedly refer to the fact that they had
23 to import to survive, and I think it's telling because
24 I think it's a recognition that the statute really
25 doesn't contemplate protecting the U.S. industry from

1 their own business decisions if they turn out to be
2 wrong.

3 The statute says, the part of the statute
4 that Petitioners rely on, it's in the impact section,
5 and it does talk about assessing impact in terms of
6 production operations in the United States. So you
7 are looking at the impact on U.S. production. Again,
8 in and of itself, it doesn't say that the producers'
9 own imports are irrelevant.

10 Also the legislative history that is cited,
11 which is the only thing that illustrates at all what
12 is meant by looking at the impact on U.S. production,
13 uses as an example a U.S. producer who makes a profit
14 on imports that they have to do to remain competitive
15 in order to survive. So the statute and the
16 legislative history suggests that that limitation is
17 there that relates to this whole idea about whether or
18 not it's imports to survive or imports to meet
19 competition, which they have repeatedly noted.

20 But that is also not the case here. That is
21 not the case here. You can look at Mr. Zuoru's
22 testimony, you can look at the import statistics that
23 we've put in our brief. These U.S. producers went to
24 foreign sources at a time when they were not facing
25 import competition. These are direct and deliberate

1 outsourcing strategies. And that is not the intent of
2 the statute. That's not what it says, that's not what
3 the legislative history says, and that's not what it's
4 intended to do.

5 COMMISSIONER OKUN: Thank you for all those
6 responses. I will look forward to seeing any further
7 elaboration you want to make of that in particular
8 with reference to the statute and the legislative
9 history, Ms. Trossevin, in post-hearing briefs, and
10 also we'll ask you in addition to the cases, I know
11 Mr. Shor you said you'd look at them, make sure you
12 look at Retail Carrier Bags as well.

13 With that, I'm on Commissioner Koplan's
14 time, but I'm done now.

15 CHAIRMAN PEARSON: Commissioner Lane?

16 COMMISSIONER LANE: Mr. Chairman, should I
17 start off with Commissioner Koplan's time or my own?

18 (Laughter).

19 CHAIRMAN PEARSON: If you do then I would
20 have to talk to him when he gets back about how he
21 used too much time this afternoon.

22 COMMISSIONER LANE: Okay, thank you.

23 To follow upon this line of questioning, is
24 it appropriate for the Commission to exclude from the
25 domestic industry those producers that are related to

1 an exporter or importer of subject merchandise or
2 which are themselves importers?

3 MR. SHOR: If you did there wouldn't be much
4 left to look at.

5 COMMISSIONER LANE: Well, I'm asking for a
6 legal analysis of that question.

7 MR. CAMERON: Could you repeat it again,
8 Commissioner? Sorry.

9 COMMISSIONER LANE: So you weren't listening
10 to Commissioner Koplan, is that right?

11 (Laughter).

12 MR. CAMERON: You got me.

13 COMMISSIONER LANE: Okay.

14 Should we exclude from the domestic industry
15 those producers who are related to an exporter or
16 importer of subject merchandise, or which themselves
17 are importers?

18 MR. CAMERON: Mr. Shor was correct. We're
19 not asking for that because you would not have a
20 domestic industry left and the domestic industry is
21 not asking for that treatment. But you should
22 distinguish the imports that they are themselves
23 controlling and you do have the ability to take them
24 into consideration which is the treatment that we're
25 requesting, Commissioner.

1 COMMISSIONER LANE: Thank you.

2 The Respondents have observed that the U.S.
3 paper industry including members of the Petitioner
4 have experienced higher raw material and energy costs
5 during the latter portion of the period examined in
6 these investigations. Given that U.S. producer prices
7 for most pricing products are relatively flat
8 throughout the period examined, is this not a good
9 argument for price suppression?

10 MR. CAMERON: Actually we don't believe that
11 that would be the case. We believe that profitability
12 is either A, stable, or actually not all that bad, and
13 they are a profitable industry, number one.

14 Number two, yes, they do have an increase in
15 cost but they also have been resorting to outsourcing
16 as a means of dealing with that, outsourcing to
17 Brazil.

18 Number three, we believe that the pricing
19 data that is on the record does not support a
20 conclusion of price suppression or depression, since
21 what you are seeing on the record in terms of prices,
22 a lot of it is price averaging.

23 COMMISSIONER LANE: Thank you.

24 Do you believe that the data collected so
25 far in these investigations support a view that the

1 U.S. industry is not vulnerable to a threat of
2 material injury by reason of subject imports?

3 MR. CAMERON: We absolutely believe that it
4 does not support a threat determination. I think
5 everybody is going to want to chime in on this, but
6 with respect to Indonesia we would note that earlier
7 today the expert economic witness for the Petitioners,
8 Dr. Kaplan, testified that the only reason that
9 Indonesia is included in this investigation is because
10 if they were to make an affirmative determination on
11 China there would be a threat of injury from
12 Indonesia. Well, that's very interesting.

13 If that really is the only thing that we
14 have going then you have to look at whether or not
15 Indonesia is a threat. What happened with respect to
16 Indonesia?

17 Staples, which is a major purchaser out of
18 Indonesia, cut off imports from Indonesia immediately.
19 Did that result in increased purchases from the United
20 States? The answer to that is no. They went to non-
21 subject producers.

22 That leads then to the conclusion that
23 whether or not Indonesia is included or not included
24 is not going to affect in one way or another the
25 condition of this industry and it begs for a

1 determination of no threat of material injury.

2 What you're asking is a very important
3 question, Commissioner.

4 COMMISSIONER LANE: Anybody else want to add
5 to Mr. Cameron's answer? Mr. Shor?

6 MR. SHOR: This is Mike Shor.

7 Were you focusing on the vulnerability
8 aspect or on the threat aspect? Or both? In your
9 question.

10 COMMISSIONER LANE: Both.

11 MR. SHOR: Vulnerability in this case is a
12 little bit funny because the domestic industry by
13 virtue of its control over most of subject imports,
14 it's hard to see how they're vulnerable to future
15 imports since that would involve then first ceasing
16 the imports and then somebody else picking up the
17 slack. I don't think the domestic industry can be
18 vulnerable to its own conduct.

19 But on the threat of increased imports, as I
20 stated in my initial statement, our position is that
21 the discretionary factors for cumulation in the threat
22 analysis are not met in this case, and Indonesia and
23 India should not be cumulated with China. If you look
24 at Indonesia and India separately, there is no basis
25 to conclude that imports would increase. They've been

1 declining over the POI and there's nothing to indicate
2 that that trend would reverse itself.

3 MR. PERRY: To follow up Mr. Shor, Bill
4 Perry from Garvey Schubert.

5 As stated in the staff report, if you take
6 the Petitioners' controlled imports out of the
7 equation, the Chinese imports declined during the
8 period.

9 MS. TROSSEVIN: Marguerite Trossevin. I'd
10 just like to follow up on that.

11 I think in terms of the threat from China
12 you really do have to take into account that since,
13 for example, with Watanabe which is far and away the
14 largest Chinese producer, was totally tied to
15 MeadWestvaco for its production and really doesn't
16 have any marketing or distribution in the United
17 States on its own. I think you've heard Mr. Zuoru
18 tell you today that he has his own market that is
19 growing rapidly. He has his capacity limitations in
20 terms of his paper supply. His home market is more
21 profitable for him right now.

22 Also all the traditional factors weigh
23 against threat. There is no inventory. This
24 merchandise is not produced for inventory, it's all
25 produced to order. So I don't really see that the

1 evidence would support a threat against China under
2 any standards.

3 COMMISSIONER LANE: My last question relates
4 to critical circumstances.

5 Petitioner argues that the Commission's
6 traditional analysis of critical circumstances import
7 data would mask the seasonal nature of the market for
8 CLPSS. Petitioner suggests that a year on year
9 comparison of December-March imports would provide a
10 more accurate assessment of this particular market.
11 Do you agree?

12 Mr. Cameron?

13 MR. CAMERON: Commissioner, we actually
14 don't have a critical circumstances issue so I'll
15 defer to those that do.

16 MR. VANDER SCHAAF: Commissioner Lane, this
17 is Lyle Vander Schaaf from Bryan Cave on behalf of
18 NuCarta.

19 We will be addressing that squarely. We do
20 not agree with the approach that Petitioners put in
21 their pre-hearing brief. We do not believe there was
22 a masking. We do not believe in addition the comments
23 that they made today that the imports by some of the
24 importers that they identified including NuCarta, were
25 significant. In fact those imports are a very small

1 fraction of what the producers themselves import.
2 They are not a significant increase from a comparison
3 time period from the previous year. If the Commission
4 chooses to use a time period other than what it
5 traditionally uses like a back to school season, it
6 should compare that time period with the period in
7 2005, if it's going to do that comparison.

8 But the Petitioners have gerrymandered the
9 back to school season. When you're talking about
10 imports as the witnesses from Walgreen and NuCarta
11 said today, you have to bring in your imports in time
12 to do the palletizing for Target and other things.
13 They would like to pick a time period that fits neatly
14 within what their comparison time period is.

15 When you actually look at the back to school
16 season you do not see a significant increase in
17 comparing 2005 to 2006. You do not see a significant
18 volume of imports coming in from importers who are
19 alleged to have critical circumstances. They don't
20 even have the data to make the proper comparison to
21 compare imports of what are alleged to be critical
22 circumstances imports versus total imports the
23 previous year. But when you do compare the previous
24 year's imports to the critical circumstances imports
25 in 2006, we think the volume will go down, but we

1 don't have import data on only the companies that are
2 alleged to represent critical circumstances. We have
3 total imports.

4 When you look at total imports the increase
5 is very insignificant. We believe if you look at only
6 the producers who have been alleged to have critical
7 circumstances and their imports into the U.S., the
8 volumes will actually be smaller when you compare the
9 relevant time period in 2006 to the same time period
10 in 2005.

11 COMMISSIONER LANE: Thank you.

12 Thank you, Mr. Chairman.

13 MR. MENEGAZ: Can I speak on that point as
14 well since India's been accused of critical
15 circumstances? This is Greg Menegaz of deKieffer
16 Horgan.

17 COMMISSIONER LANE: Yes.

18 MR. MENEGAZ: Mead and Arrow, two of the
19 three mandatories were assigned critical circumstances
20 by the antidumping investigator but not by the
21 countervailing duty investigators who verified their
22 data. We think there's no record data before the
23 Commission that could support critical circumstances.
24 And no matter how long Petitioners' counsel practices
25 before this Commission, that data would never generate

1 a final affirmative critical circumstances finding by
2 the Commission.

3 Thanks.

4 MR. VANDER SCHAAF: Can I add? I know the
5 light is on but I'd like to make one more point.

6 They claim today they need critical
7 circumstances yet the Commerce Department was
8 scheduled to make its preliminary determination on
9 February 16 of this year. The Petitioners requested
10 that Commerce extend the preliminary determination.
11 The Commerce Department specifically said in its
12 Federal Register notice when it extended that it did
13 so because Petitioners requested that extension.

14 Then the Petitioners requested a subsequent
15 extension and Commerce extended the preliminary
16 determination to April 10.

17 Commerce was originally scheduled to make
18 its determination on February 16. As our witnesses
19 have said, they placed their orders much before that.
20 Much before Commerce extended the preliminary
21 determination, fully expecting their imports to come
22 in in late February when the preliminary duties would
23 have been applied but for the Petitioners' request
24 that Commerce extend the preliminary determination.

25 How can they come in here and say we need

1 retroactive application of duties to go back to
2 January when if they hadn't requested that extension
3 duties would have been post February 16th? It just
4 doesn't square. They are, again, inconsistent with
5 respect to their arguments on the critical
6 circumstances issue.

7 COMMISSIONER LANE: Thank you.

8 MR. ZOLNO: Commissioner Lane, if I may just
9 add, Mark Zolno from Katten Muchin Rosenman on behalf
10 of Walgreens.

11 Mr. VanGuyse explained in his testimony the
12 chronology of events as to why Walgreens imported
13 during the accelerated importations during the first
14 three months of the year. We're going to address that
15 in more detail in our post-hearing brief.

16 COMMISSIONER LANE: Thank you.

17 Dare I ask if anybody else wants to add
18 anything?

19 CHAIRMAN PEARSON: It's my turn, finally.

20 COMMISSIONER LANE: Thank you, Mr. Chairman.

21 CHAIRMAN PEARSON: I believe I have just two
22 questions left.

23 Let me direct the first one to Mr.
24 Malashevich, although perhaps others would be also in
25 a position to respond.

1 This goes back to the question I raised with
2 the Petitioners' panel regarding Table 4-3 on page 4-
3 7, and that's the BPI version of the draft. You don't
4 have to look at it right now.

5 MR. MALASHEVICH: I do not have it right
6 now, sorry.

7 CHAIRMAN PEARSON: But you do have access to
8 it.

9 MR. MALASHEVICH: Oh, yes. Yes.

10 CHAIRMAN PEARSON: The issue here is that
11 there are differences in the numbers between the total
12 U.S. imports that we're showing and the U.S.
13 producers' imports. And particularly from Brazil. We
14 have the U.S. producers showing imports larger than
15 total U.S. imports, so there may be some data issue
16 there that isn't obvious.

17 My request, if possible, could you look at
18 that and see if there is some explanation for why
19 we're showing this?

20 MR. MALASHEVICH: I certainly will. Would
21 you please give me the table number again?

22 CHAIRMAN PEARSON: It is Table 4-3, it's
23 page 4-7.

24 MR. MALASHEVICH: Thank you. I certainly
25 will.

1 CHAIRMAN PEARSON: If anyone else has
2 knowledge of what might be going on in the data, by
3 all means --

4 MR. CAMERON: We would note, Commissioner,
5 just parenthetically, if you look at the tables that
6 we've attached in Appendix 1 and actually throughout
7 our brief, you will see that they differ from the
8 table that you're referring to. The difference is
9 that we have combined total controlled imports by U.S.
10 producers. That table is not total imports controlled
11 by U.S. producers.

12 In other words, in order to do it properly,
13 you need to combine the imports by U.S. producers and
14 imports brokered by U.S. producers because otherwise
15 it really does, if you want to talk about masking, it
16 does mask some things.

17 So in order to get a true understanding of
18 what is happening in the market it's important to
19 actually take that table and modify it somewhat.

20 MR. MALASHEVICH: Now that I understand the
21 context, Commissioner, Bruce Malashevich again, I
22 fully agree with Mr. Cameron. Throughout all of our
23 analysis on behalf of counsel for Target we included
24 the brokered imports together with the U.S. producer
25 imports because we didn't see any reason to

1 distinguish.

2 The testimony you heard from the domestic
3 industry this morning really reinforced that. I
4 forget which gentleman it was, but he said that when
5 arranging brokered sales, they arrange for production,
6 they negotiate the price, and the only difference is
7 that the customer picks it up instead of it being
8 delivered by the U.S. producers.

9 So I don't see any way it could be counted other than
10 as another form of imports.

11 CHAIRMAN PEARSON: Okay, take a look at this
12 table. If there's anything more I should understand
13 let me know, or if I should just be pointed to things
14 you've already put in the record that I haven't yet
15 completely absorbed, point me to it.

16 MR. CAMERON: Fair enough.

17 MR. MALASHEVICH: We'll do that.

18 CHAIRMAN PEARSON: Finally, Mr. Jochum, I
19 would not want you to go home and have to tell your
20 family that you just spent one of the dullest days of
21 your career sitting in front of the Commission and not
22 having anything to say.

23 (Laughter).

24 MR. JOCHUM: I won't tell them.

25 (Laughter).

1 CHAIRMAN PEARSON: The secret's safe with
2 you, huh?

3 As you know, the ITC never looks behind
4 Commerce's margins but the statute does ask us to take
5 the margins into account. How would you advise us to
6 do that in this case?

7 MR. JOCHUM: First of all I would caution
8 you to wait for the final margins because we're
9 confident they will come down significantly. I think
10 that will be more revealing and helpful when you look
11 at the final margin.

12 I would also say just editorially, this has
13 been an interesting process for me and I think the
14 Commissioners are grappling with something that I
15 grappled with a lot at Commerce which was looking
16 behind the numbers to try to determine motives. I
17 think that's a word that hasn't been used, but we've
18 all been sort of dancing around. How did we get in
19 this situation? Why do we have the fact pattern we
20 have?

21 I think I fully agree with Commissioner Okun
22 when she said that the cases before us are
23 distinguishable. In fact I would argue you would be
24 breaking new ground and really taking the Commission
25 decisions in a different direction if one were to find

1 injury with the fact pattern like we have before us.
2 That is something that always makes for a difficult
3 decision.

4 But clearly you have a fact pattern that
5 indicates domestic industry involvement in imports in
6 a way that I've never seen before in my career of
7 doing this, even from the Commerce side. So I think
8 it's incumbent upon us to give you the legal theory to
9 hang your hat on which I hope Ms. Trossevin has done
10 earlier with her discussion of the legal theory and we
11 will do more so with the case.

12 But obviously you are required to take the
13 Commerce calculation into account. I know somewhat
14 what individual Commissioners sometimes think of my
15 former agency's calculations and I would caution you
16 to look at the final and approach it with the degree
17 of skepticism that you usually do.

18 (Laughter).

19 CHAIRMAN PEARSON: Thank you very much for
20 that advice.

21 I have no further questions. Madame Vice
22 Chairman?

23 VICE CHAIRMAN ARANOFF: Thank you, Mr.
24 Chairman.

25 I have one question. It's sort of a long,

1 rambling question.

2 Following up on one of the questions that
3 Commissioner Okun was asking, I have been trying to
4 think about a case that might be similar to this case
5 that we've seen recently and I started to think about
6 a recent decision in Artists Canvas. In that case the
7 question also was why did the domestic producers move
8 production off-shore? Was it because they had to or
9 because they wanted to or however you want to put
10 that?

11 In that case we had some large retailers,
12 different ones from the ones represented today, who
13 said that it had nothing to do with price. It had to
14 do with the domestic producers' inability to support
15 their marketing strategy. This was also an industry
16 that had a back to school season and the retailers
17 were buying low end canvases in multi-packs that they
18 were going to sell to art students in back to school
19 sales, and that they were going to sell at big
20 promotions where clearly they weren't going to make a
21 lot of money on them.

22 In the end the Commission, I don't want to
23 put words in my colleagues' mouth, you can read the
24 opinion, but basically didn't believe the retailers
25 that this didn't have anything to do with price.

1 Here we have a case where again, because
2 some of you as purchasers are just enormous and the
3 cost of losing your business has got to be extreme to
4 any supplier, and you're looking for products that you
5 admittedly are going to sell at a loss, you told us,
6 because you're having these ten for a dollar
7 promotions, I guess I find it hard to credit that
8 you're price takers. Is there anything that you want
9 to add on that? And I'll certainly ask the domestic
10 industry to answer that question as well.

11 MR. CAMERON: I think to begin with,
12 Commissioner, the fact is that once you've broken the
13 link between the price that you as a consumer are
14 paying for that product and the price that these
15 retailers are purchasing that product for, all of a
16 sudden you don't necessarily have the normal situation
17 that you usually have which is I bought it for X and
18 therefore I must sell it for X-plus. That linkage is
19 not here in this case and that is in fact what does
20 break this.

21 Price takers, I think the retailers have
22 spoken to this at length. Again, where was the
23 domestic industry when Staples needed material in the
24 2006 buying season? Where were the bids?

25 MR. MALASHEVICH: I would add that while

1 these retailers are large corporations, the product at
2 issue here is very important to them. Not because of
3 the dollars that itself it generates but the dollars
4 of other goods being sold at a very substantial margin
5 during a very brief but intense season.

6 So this is a very important product for
7 them. It represents a very small cost of marketing
8 the store goods generally during the school season.

9 The other thing I'd point out is that the
10 domestic producers, from the point of view of this
11 product, are by no means themselves small fry. It's a
12 highly concentrated domestic industry with few major
13 players and those players control directly or
14 indirectly a fair amount of trade in the same product.

15 So I don't think it's the huge retail
16 conglomerates against the tiny paper producers. I
17 think it's the retailers who need this product
18 desperately during a brief period of time and have
19 very few sources upon which to call upon.

20 It's completely believable to me how the
21 price data have shaken out the way they did,
22 especially in the bidding data at the pre-hearing
23 report.

24 VICE CHAIRMAN ARANOFF: Did any of the other
25 retailers want to comment?

1 MR. VAN GUYSE: Yes. Mark VanGuyse with
2 Walgreens.

3 Along with the price not being the most
4 important function here, it was stated earlier by the
5 Petitioners that they felt the pressure to go overseas
6 to provide the product to keep a good business
7 relationship with the retailers.

8 In fact Mead, who used to be our supplier
9 for the CLPSS business, has actually grown with us in
10 all other products, so the business has actually
11 increased in 2005 to 2006.

12 MS. TROSSEVIN: Marguerite Trossevin for
13 Target.

14 I think it really is important, if you look
15 at the data, if you look at Ms. Tucci's testimony, the
16 proof is right there. They are paying more every year
17 for this product. This is a business expense. This
18 is a form of advertising. They are not buying a
19 product and saying well I need to get it for X because
20 I can only resell it for this so if I'm going to make
21 a profit on it I have to push my acquisition costs
22 down.

23 They're not in that situation. They're
24 going out and they're buying this, they have to have
25 it. When you have to have the product and it is

1 controlled by someone else, then the power shifts.
2 Just because you're a large corporation or a large
3 company doesn't mean you have all the power and that
4 you set the price.

5 They have to go out into the market and get
6 something that they absolutely need. They're not
7 going to forego a back to school season, no matter
8 what it costs. They might, if the price of toaster
9 ovens gets too high they might decide not to carry
10 toaster ovens. They're not going to forego a back to
11 school season. They're going to buy this stuff and
12 they're going to keep paying for it every year and
13 they will probably keep paying higher prices for it.

14 MS. TUCCI: If I may, Meghan Tucci from
15 Target.

16 You mentioned this morning that you and your
17 daughter are going to venture out soon to get her
18 supplies. Again, it is such an important season for
19 us. It is the second important season to us as a
20 retail, to holiday only. Back to school time. And
21 without these products, we need you to walk into our
22 doors and hopefully you'll take her over to sox and so
23 maybe she could buy some shirts and some other things,
24 which would really be our strategy. We hope that
25 you'll come in, buy our products that drive you into

1 our store and leave with a basketful of wonderful
2 other things.

3 VICE CHAIRMAN ARANOFF: I appreciate all
4 those arguments and I understand what you're saying
5 when you're saying you don't need to buy at a price
6 that's going to make you a profit on this particular
7 sale. That doesn't mean being wise business people
8 and knowing that you're going to sell this thing as a
9 loss you don't want to sell it at the smallest loss
10 that you can manage.

11 So while I take that there is a certain
12 severing of the normal logic, not entirely. It's just
13 the spread that's different.

14 MR. CAMERON: Fair enough, Commissioner.

15 Nobody at this table is saying that price is
16 not important. And we have not, if we have conveyed
17 that impression, we don't mean to. Price is
18 important, there's no question about that.

19 The statement that has been made by the
20 Petitioners repeatedly is that price is the only
21 thing, that price is the only driver and it is the
22 main driver. What you have heard from the retailers
23 is that yes, price is important but other factors
24 dominate. Part of the reason is if you don't have a
25 reliable supply chain and actually get it through the

1 door you can have the greatest sale involved but if
2 there's no material on the floor when you walk in to
3 buy it then it really doesn't help you very much and
4 that therefore is a result of the nature of their
5 business and the nature of the truncated period of
6 time in which delivery has to be there.

7 This isn't steel where okay, it was a couple
8 of weeks late. Okay, it's a long year.

9 This isn't a long year. So they've got a
10 problem. That really is the context.

11 So we understand that it's a gray area.
12 Nobody's saying it's all black and white. Prices?
13 Who cares about prices? We're not saying that. What
14 we are saying is that quality, and we believe the
15 record does stand for this proposition, the quality is
16 important and has driven decisions in this industry,
17 and logistics and supply chains have also done so.

18 Thank you.

19 VICE CHAIRMAN ARANOFF: I want to thank the
20 panel. I appreciate all your answers and I am not
21 going to indulge in using any more of Commissioner
22 Koplan's time.

23 Thank you, I have no further questions.

24 CHAIRMAN PEARSON: Commissioner Hillman?

25 COMMISSIONER HILLMAN: At the risk of going

1 from the big and fundamental issue of the case to the
2 very small little tiny detailed issue, I have only one
3 last question. this discussion on critical
4 circumstances that you have as Commission language
5 just begs the question for me. As I read our staff
6 report, it is clearly indicating that Commerce has
7 found critical circumstances with respect to seven
8 Chinese firms, one Indonesian firm, and two Indian
9 firms.

10 And Mr. Cameron, I heard you saying you have
11 no dog in this fight in terms of critical
12 circumstances. I want to make sure I understand
13 exactly where everybody is, but more importantly, to
14 Petitioners, their brief suggests that they are only
15 arguing about Chinese critical circumstances. So I
16 would ask the Petitioners for their post-hearing, they
17 don't need to say anything now, whether they are
18 continuing to request that we make a finding on
19 critical circumstances with respect to India and
20 Indonesia, and if they do that whether Mr. Shor as
21 counsel for Indonesia wants to add anything on the
22 critical circumstances issue.

23 MR. SHOR: I'll just take 30 seconds. I
24 understood that brief the same way you did, that they
25 were not making an argument for Tjiwi Kimia. There is

1 no argument to make. Our imports basically ceased as
2 of January. Very little. There's no basis for a
3 critical circumstances finding. So I'd be very
4 surprised if they were to make one.

5 MR. PRICE: To save everyone some time, we
6 are not making critical circumstances arguments with
7 regard to Indonesia or India.

8 COMMISSIONER HILLMAN: Okay.

9 MR. CAMERON: And we have no dog in the
10 fight.

11 COMMISSIONER HILLMAN: Okay, then I think
12 it's fair to say that the only folks that need to
13 address this question of what's the right timeframe to
14 look at in a seasonal case involving critical
15 circumstances would be those that have an interest in
16 the Chinese imports and we'll leave aside or not ask
17 that of those of you with interests only from India or
18 Indonesia.

19 With that little tiny detail, Chairman
20 Pearson, I have no further questions, but would also
21 thank everyone for your answers. I really appreciate
22 it.

23 CHAIRMAN PEARSON: Commissioner Okun?

24 COMMISSIONER OKUN: No, I would just like to
25 thank all of you for your testimony and for the

1 answers you've submitted. It was very helpful. Thank
2 you.

3 CHAIRMAN PEARSON: Commissioner Lane?

4 No further questions from the dais?

5 Then let me thank the panel. It's been a
6 very interesting afternoon, slightly later afternoon
7 than some might have wanted, but we just did it
8 Commissioner Koplan's way. What can you say?

9 Do staff have any questions for this panel?

10 MR. DEYMAN: George Deyman, Office of
11 Investigations.

12 In the interest of obtaining the most
13 accurate data possible I have three very brief data
14 related requests.

15 First is import statistics presented in the
16 pre-hearing report are official Commerce statistics.
17 Since the HTS subheadings and statistical reporting
18 numbers are not coextensive with the scope of the
19 investigation, the import data may be overstated or
20 understated.

21 Please comment in your post-hearing briefs
22 on the accuracy of the import statistics in the pre-
23 hearing report and whether you recommend any specific
24 changes that should be made to the data in the final
25 report such as the possible inclusion of two

1 additional HTS statistics reporting numbers identified
2 by Commerce.

3 My second request is for the gentleman from
4 American Scholar. Did I hear you say that you did
5 produce lined paper products in the United States?

6 MR. RAO: That is true.

7 MR. DEYMAN: During the period of this
8 investigation?

9 MR. RAO: That is true.

10 MR. DEYMAN: I am not aware that we received
11 a producers questionnaire response from you, so we are
12 going to request that you complete one for us please.

13 MR. RAO: As a matter of fact I have
14 corresponded with Mr. Motwane and he has sent me the
15 documentation that we will be sending before the end
16 of the month.

17 MR. DEYMAN: Very well, thank you.

18 My final observation is for the Petitioners,
19 please provide in your post-hearing briefs a detailed
20 explanation of the basis for the capacity information
21 you provided. For example, the assumptions made in
22 compiling the data, the number of shifts, the days per
23 week or per year, and how you factored in the issue of
24 units, and whether you ever produced at or near full
25 capacity.

1 MR. PRICE: We'll be happy to put that in
2 our brief. Thank you.

3 MR. DEYMAN: Staff has no further questions.
4 Thank you.

5 CHAIRMAN PEARSON: Do counsel for
6 Petitioners have any questions of this panel?

7 MR. PRICE: We have no questions for the
8 panel.

9 CHAIRMAN PEARSON: Thank you.
10 Then let me advise of the time remaining.

11 Petitioners have 15 minutes from their
12 direct presentation and five minutes for closing.

13 Respondents have seven minutes from their
14 direct presentation and five for closing.

15 Let me dismiss this panel and let's proceed
16 to closing.

17 Mr. Price, how would you like to proceed?

18 MR. PRICE: I think we will start with our
19 rebuttal initially. Do you want a separate closing or
20 --

21 CHAIRMAN PEARSON: How would you like to do
22 it? By combining the two, would it be more expeditious
23 and trim some of the 20 minutes that you otherwise
24 have available?

25 MR. PRICE: That would be fine. We're happy

1 to proceed that way.

2 CHAIRMAN PEARSON: Okay, that would be fine.

3 (Pause).

4 MR. PRICE: Before we start, we are going to
5 quote Mr. Cameron on the record about steel showing up
6 a few weeks late is not a big deal in future cases.

7 (Laughter).

8 CHAIRMAN PEARSON: I too thought it was an
9 interesting example.

10 (Laughter).

11 CHAIRMAN PEARSON: Okay. Mr. Price, please
12 proceed.

13 MR. PRICE: Thank you. I will start with
14 rebuttal, and Mr. Kaplan and Mr. Brightbill will
15 close.

16 First, I found it remarkable how you
17 listened to the panel of folks who essentially have
18 these very elaborate negotiation proceedings, bidding
19 procedures, et cetera. How little discussion there
20 was of price in their own direct presentation.

21 The record in this investigation when you
22 look at your questionnaires, show that price is
23 clearly the most important factor driving the
24 purchasing decisions. It's what's mentioned more
25 often, it's mentioned more often as more important

1 than any other factor. You can look at the way these
2 companies behave and the way they actually try to
3 solicit product, the way they try to acquire product,
4 et cetera, and yet there is this an amazing desire to
5 just sort of ignore that factor entirely here.

6 It's equally amazing how you have the stores
7 that essentially are these huge, global purchasers of
8 these products coming here and saying oh, we can't
9 figure out how to do this without these companies who
10 are pygmies in comparison to them. So it just doesn't
11 make sense that they're saying that price isn't what
12 drives so much of their purchasing activities here.

13 With regard to price, one of the things I do
14 want to address is a claim initially by Staples. Now
15 we're not again, going to go through specific data
16 because we'll give it to you in the post-conference
17 brief, but contrary to the impression they gave you in
18 2004 one of the Petitioners was a major incumbent
19 supplier of domestic goods in a variety of SKUs. In
20 2005 they were told they were losing it to a subject
21 supplier based upon price. It was then that they
22 offered supply out of China.

23 I would add that that company then says to
24 you, you know, price doesn't matter. It's all about
25 quality. We don't like Mead for quality in this

1 reason; we don't like Mead for quality in that reason.
2 Why were they doing business with them if price really
3 wasn't the driver on all of these transactions going
4 on here?

5 Now quality does come up. I'm not going to
6 argue that it doesn't. There are certain instances
7 that it does. But even in those instances we will
8 provide evidence that quality is not the issue that
9 that customer is making it out to be. Again, we'll
10 view it in confidence because a lot of it's
11 proprietary. At the end of the day these companies
12 all have to try to work together at some point or
13 another.

14 Another telling thing regarded Target and
15 NuCarta in this case. It's clear that they did a fair
16 amount of business together this year and they did it
17 with subject imports.

18 We heard all this discussion about
19 reliability of supplier, quality of supplier, price
20 not being a reason, et cetera. Well, you basically
21 had a company that did not exist until it was created
22 for this bid, taking a huge amount of supply or a huge
23 amount of volume, going off-shore, buying subject
24 supply, and using it to service the U.S. market.

25 Again, everything that's being made out here

1 about quality, about reliability, is really being
2 overdone. They moved to this entity because of price.
3 Does the domestic industry control NuCarta? No. Are
4 NuCarta salesmen very credible, and president very
5 credible? No. They're basically former employees of
6 one of the Petitioners who in this case went out, used
7 company information, picked off their former
8 employer's, one of their main clients. They have
9 their own motivation. They want to earn money. Let's
10 face it. I'm not saying that's an evil or bad
11 motivation but what it does show is we don't control
12 the ability of who's offering the product in the
13 marketplace, we don't have an ability to control the
14 pricing, and that guess what, quality, availability,
15 reliability is pretty minor despite what Target
16 attempted to explain to you.

17 There was a lot of time, again, spent on
18 what I call the grand conspiracy theory and we kept on
19 hearing it. We control Brazil. Brazil is the
20 domestic industry control. That's what all this case
21 is about. Somehow or other we were going to shift
22 from Country A to Country B and it's all about
23 control.

24 The only company that owns any assets in
25 Brazil is Mead. It's a relatively small asset with

1 relatively limited capacity. Indeed, the capacity of
2 all of the Brazilian producers combined are a fraction
3 of just one producer in China, and there are many many
4 producers in China, not just the one who showed up
5 here today. Although I would add again, many of those
6 producers did not supply questionnaire responses.

7 That entity did not supply, that one so-
8 called controlled entity did not supply any kind of
9 substantial volume into the U.S. in 2005, in 2006. I
10 heard testimony again earlier today essentially Mead's
11 strategy is to service the Brazilian market with that
12 capacity. I would add, it's Mead's strategy to serve
13 the Canadian market with Canadian capacity. It
14 doesn't bring much down here, never has, it makes no
15 sense. Oh, and by the way, Mead doesn't serve the
16 U.S. market with its phantom Mexican capacity that
17 they were talking about in their pre-hearing brief
18 which just doesn't exist any more.

19 As we move through the various claims that
20 were presented here, there were some specific issues
21 regarding the domestic industry's ability to supply
22 going forward. The domestic industry has excess
23 capacity, it has excess capacity to supply additional
24 volume in the U.S.. It has capacity this year, it has
25 had capacity in prior years when it lost sales, lost

1 volume and lost revenue.

2 Regarding why certain customers may or may
3 not have had bids going in at a given period of time,
4 we heard Staples talk about that, there is a lot of
5 information there and again we're going to tell you, I
6 think they haven't put the full story out on the
7 record, and again, we'll put more details in the post-
8 conference brief here.

9 Regarding Chinese capacity. You know,
10 there's massive capacity in China that's unused today
11 to produce these products. The claim that suddenly
12 all this capacity that was designed for the U.S.
13 market has been absorbed by the Chinese domestic
14 market is just not credible.

15 The record evidence doesn't support that and
16 most of the Chinese industry didn't even respond with
17 exporter questionnaires for the final determination.

18 Regarding the issue of vulnerability and
19 ability to control and so forth, not only did I talk
20 about NuCarta, there's Atico, there are other
21 companies, there's Target sourcing directly. There is
22 no control of the Chinese. There is no control of the
23 Indonesians. There's no control of the Indians. This
24 market is not controlled by the domestic industry.
25 There is substantial capacity available from these

1 foreign suppliers. That capacity has largely been
2 blunted or kept out solely by this case. If this case
3 goes negative that capacity is going to flood in with
4 devastating effects onto the U.S. industry.

5 Mr. Kaplan?

6 MR. KAPLAN: Good evening. I'll try to keep
7 my remarks brief.

8 First on the way to measure these products,
9 I just want to call your attention to the fact that if
10 you use a value number, the larger the dumping margin,
11 the larger the underselling, the more injurious the
12 products, the smaller they seem to appear. I think
13 that's kind of a perverse notion to look at when you
14 see large dumping margins and use a value number
15 knowing those values are suppressed by dumping.

16 I'd wish to add that in the Bearings matter,
17 the differences between unit price could be from 50
18 cents to 50,000 dollars. You don't see this here.
19 There are some differences, but the type of magnitude
20 that would force you to go to value aren't important.

21 Another point, there was discussion about
22 capacity during the back to school season. I believe
23 you'll find, and we'll put on the record, instances
24 where there is not full capacity during utilization by
25 all firms during the whole back to school period.

1 Another point, that these firms can produce
2 before the back to school orders are made so that
3 capacity is available.

4 With respect to prices, we've talked about
5 prices a lot and I know when you've looked at the
6 prices you haven't seen these huge swings. I think
7 the point of that is that very small price changes
8 have very big effects in this market. So in terms of
9 the consequences of these price changes, we're
10 throwing our arms up and talking about how big they
11 are, and when you look at the price numbers you don't
12 see these massive swings.

13 So I think there's just a little disconnect.
14 You're looking at the absolute magnitude and we're
15 looking at the effect of the changes. I think we
16 could get on the same page on that. That's what we're
17 talking about, these small changes have had bit
18 effects for us.

19 Finally, just on the control issue, a little
20 note. Blackberries are wonderful. I looked up Wal-
21 Mart's market cap, 186 billion; Walgreens is 48
22 billion; Target's is 40 billion. These companies are
23 saying that they have inputs controlled by relatively
24 small companies, and when Mr. Shor was asked and Mr.
25 Cameron and Mr. Malashevich, how does their control

1 theory fit with the fact that no money is being made
2 on imports, that the amount of money being made on
3 domestic production is falling, they couldn't give an
4 answer.

5 So I think there's a little bit of trust
6 what I hear, not your lying eyes. Look at the data.
7 It shows devastating effects on quantity, significant
8 effects on price, very significant effects to the
9 industry, and finally, a threat.

10 One final point, when I was looking at the
11 briefs I saw a lot of points of the statute says that
12 obviously, or the statute shouldn't be used. I flip
13 to the bottom of the page and I flip to the next page
14 and I saw no citation. The statute wasn't cited, the
15 case history of Furniture and Cement and Bags weren't
16 cited. So I'm not an attorney, but I was looking to
17 do my economic analysis and figuring out why did
18 people leave out certain imports. I saw no authority
19 for it to do it on my behalf or even to bring a second
20 analysis in.

21 I looked at the effects of the imports and I
22 found that they were injurious.

23 Finally, on the point of selling at a loss,
24 I think Vice Chairman Aranoff's comment is very well
25 taken. My history and everybody's knowledge of these

1 companies is they bargain intensely, both for their
2 service providers and for their products, and given
3 the fact they sell for a loss, a tenth of a penny on
4 losing luster in the back to school season, a tenth of
5 a penny cent less on advertising in terms of
6 negotiating for the product or for a flyer, is the way
7 of life in these types of companies given the
8 ferociousness of competition in the retail market.
9 Please consider that when you're making your decision.

10 Thank you.

11 MR. PRICE: I would just add on that tenth
12 of a penny, if you're the buyer in that area and you
13 can save that tenth of a penny off your bottom line
14 and your results get better in your department, that's
15 important to you. Very important to you. And you
16 know what? The customer, despite all the claims on
17 these quality issues, look at their advertising
18 circulars. They're selling price, customers are
19 buying on price, and the evidence on quality with
20 regard to the subject merchandise being a
21 distinguishing characteristic of any magnitude,
22 particularly on brightness, is absolutely pitiful and
23 minimal.

24 MR. BRIGHTBILL: Let's see if I can bring us
25 home.

1 Why did we bring this case? One of the most
2 frustrating things about this afternoon was sitting
3 and listening to Respondents speculate as to our
4 motives in bringing the case as if we're somehow
5 trying to pull one over on the Commission. That is
6 absolutely not the case. It would be an irresponsible
7 use of the trade laws and that's not why we're here
8 today.

9 Why did we bring this case? Because of the
10 data that you have in your pre-hearing report.
11 Because of subject imports that came into the United
12 States, took market share away from American
13 producers. Because our producer net sales quantity
14 and value declined sharply, about 30 percent, over the
15 POI because profits fell, because operating margins
16 declined over the POI, despite cost-cutting efforts by
17 the Petitioners.

18 Because we've had to close plants, because
19 we've had to sell machinery, because U.S. workers have
20 lost their jobs. And we've been forced to abandon
21 entire product lines as well, such as composition
22 board.

23 You look at the data on workers, hours
24 worked, wages paid, all of these indicate why we
25 brought the case.

1 So now that you know why we brought the
2 case, how should you look at the data? You should
3 look at the traditional data under the statute, and it
4 would be unfair to us to do anything else. So you
5 look at volume, you look at price effects, and you
6 look at impact.

7 The volume data as we already said, subject
8 imports increased 60 percent over the period of
9 investigation, increased from 352 million units to 560
10 million units. That is an awful lot of subject
11 imports. And they took market share away from
12 domestic production in a growing market. They lost
13 market share despite increasing demand that we all
14 agree upon.

15 Price effect. Declining U.S. prices driven
16 by competition with undersold, dumped imports from
17 China, India, and Indonesia. Our producer prices,
18 U.S. producer prices in products one, two and three
19 declined significantly over the POI. You have the bid
20 data from the auctions which demonstrate that domestic
21 production is increasingly shut out of the auction and
22 bid process because our price quotes are sharply
23 undercut by quotes originating in the subject
24 countries.

25 As we said on underselling, when you correct

1 the data deficiencies that we outlined in our pre-
2 hearing brief, the true extent of the underselling
3 becomes even more readily apparent. You can volume-
4 weight it and it's even worse then. But just under
5 your standard analysis, once you make those minor
6 corrections there is underselling here. There are
7 price effects.

8 The effects on the industry. I've already
9 listed a bunchy of them. Profits for the U.S.
10 producers fell sharply; operating margins declined
11 significantly; profitability is not stable in this
12 industry unlike what Respondents said just a little
13 while ago, and it was only by us taking extreme cost-
14 saving measures including closing plants, laying off
15 hundreds of workers, that we prevented operating
16 income from collapsing completely.

17 Again, look at the number of production and
18 related workers and how it declined, hours, wages
19 paid, all of these thing decreased during the POI.

20 If you want another demonstration of effect,
21 look at the post-petition effects as we've said all
22 day. Since the petitions were filed U.S.
23 manufacturers have seen recovery, an increase in
24 orders, a sharp increase in shipments. Prior prices
25 to some degree, although the low bids in the auction

1 process forced those prices lower for back to school
2 '06, so we haven't seen the full recovery. We're
3 still injured there. We're hoping to get more price
4 recovery if we're going to trade relief.

5 But you did see clear post-petition effects,
6 and those post-petition effects also underscore why
7 the Bratsk case doesn't apply here. This is not going
8 to be a case where non-subject imports will come in
9 and completely take over the market. The domestic
10 industry will benefit from these orders.

11 Aside from that hard data, the way you
12 traditionally look at the case you could go with
13 Respondents' argument. A giant shell game I think is
14 something they said. I think that applies to much of
15 what we've heard this afternoon. Founded on myths.

16 The biggest myth is that the domestic
17 industry somehow controls imports. They must think if
18 you say it enough it must be true. We do not control
19 these imports. We import not by choice but by
20 necessity. Vice Chair Aranoff you're right in your
21 point that retailers are not price takers, not at all.
22 They have the power. We would rather be selling
23 domestically here. We'd rather be selling domestic
24 product made by domestic workers. Instead, the
25 retailers have asked, they've demanded lower prices.

1 They've demanded that we give them something. So some
2 of the domestic producers did start to offer imports.
3 Brokered imports.

4 What's happening? Those brokered imports
5 are shifting to direct imports. From Watanabe which
6 is going direct, from Atico, from NuCarta, and we're
7 getting cut out altogether. We're getting cut out and
8 crushed and it's going to terminate domestic
9 production altogether.

10 Imports harm us no matter from where. When
11 Respondents were asked why we don't make any money on
12 imports, what did Respondents say? I don't know.

13 We don't make money on imports. We would
14 rather be making domestically.

15 So what is the purpose of this petition?
16 The purpose is to save the rest of this domestic
17 industry. That's why we're asking for relief and
18 that's why we're asking for affirmative determination.

19 Thank you.

20 CHAIRMAN PEARSON: Thank yo, gentlemen.

21 Mr. Cameron, do you intend to use some of
22 your seven minutes for rebuttal or are you prepared to
23 go directly to closing?

24 MR. CAMERON: Yes, we're going to use a
25 little bit of it.

1 CHAIRMAN PEARSON: Okay, well come forward
2 and proceed.

3 (Pause).

4 Did you want to continue the rebuttal with
5 closing or do you want separate?

6 MR. CAMERON: (Off Microphone.)

7 CHAIRMAN PEARSON: Okay, that would be fine.

8 MR. CAMERON: Mr. Chairman, members of the
9 Commission, thank you for your patience. I have a
10 couple of very brief points then I'll turn it over to
11 my colleagues.

12 Number one, with respect to the allegation
13 that was made by counsel with respect to Staples,
14 Staples does not agree with that characterization and
15 we will respond in our post-hearing brief.

16 Secondly, with respect to this discussion on
17 what it is that we have not discussed, if you really
18 want to talk about what hasn't been discussed I would
19 like to call the Commission's attention again to the
20 discussion this morning about Brazil and the virtual
21 tap dance that we heard every time that the name
22 Brazil was brought up.

23 Whether you actually believe based upon the
24 data that you have in the record that you had a full,
25 fair and frank discussion of the role of the U.S. in

1 Brazil, and I can guarantee you that neither this
2 Commission nor the staff had anything even close to
3 that at the preliminary phase of this investigation.

4 I guess I would ask why is that?

5 Thirdly, with respect to whether or not they
6 control these imports, we will repeat for the record,
7 they control the imports that they import, and they
8 control the imports that they broker. That is a fact.

9 MR. SHOR: I just want ask a slightly
10 different question from the one Mr. Brightbill asked
11 and answered. The question is not why was a petition
12 filed, but why was Indonesia included in the petition
13 and not Brazil?

14 Indonesian imports peaked in 2002. They've
15 been declining since then. The market share is
16 declining. The volume of imports is declining.
17 Brazil, the volume of imports is about twice that of
18 Indonesia. It's been increasing. They have gained
19 market share over the period.

20 Accepting Petitioners' theory of this
21 product that's a price-driven fungible commodity
22 product, economic theory would require you to conclude
23 that the country or the producers gaining market share
24 are the ones with the lowest prices. There's no other
25 way to gain market share, yet Indonesia was losing

1 market share, Brazil was gaining market share. Why
2 Indonesia but not Brazil?

3 The answer is that Petitioners have access
4 to the Brazil market in a way that others don't. It
5 may be the case that Mead's the only one with an
6 ownership interest, but the Commission needs to ask
7 exactly what other domestic producers' interests in
8 Brazil are? Do they have contractual relationships?
9 Do they have long-term contracts with the producers
10 there?

11 There is one domestic producer that controls
12 the majority of the imports coming from that country.
13 How is it that that has happened?

14 The trade laws shouldn't be used by the
15 Petitioners as a mechanism not just for protecting the
16 domestic industry, but we know the domestic industry
17 isn't large enough to supply the whole market. What
18 they're trying to do here is choose who gets to supply
19 the rest of the market and they shouldn't be given
20 that choice. They shouldn't be able to say we want it
21 to be Brazil and not Indonesia. And the Commission
22 has a clear way to fix that if they think that imports
23 are causing injury in this case or threatened to cause
24 injury and that's by use of the threat statute,
25 decumulating Indonesia, and finding no threat with

1 respect to Indonesia.

2 Thank you.

3 MS. DEMBSKI-BRANDL: Tony Dembski with
4 Target.

5 Target has stated that reliability and
6 logistical support are critical factors in its
7 sourcing determination for this product. Petitioner
8 has stated that our business relationship with NuCarta
9 is evidence that this is not true.

10 We would argue that our relationship with
11 NuCarta is actually proof of the proposition. For
12 years our buying department relied upon the efforts of
13 Mr. Ron Brown, Mr. Graham, and Mr. Hixon to ensure
14 that its logistical requirements were met. It might
15 not be too much to say that our logistical
16 requirements were developed in conjunction with Mr.
17 Brown who had worked as a rep for years at Target for
18 Norcom.

19 The shift to NuCarta was not a shift to a
20 fly-by-night organization formed at the last moment,
21 but the continuation of a valued business partnership
22 with experienced and well qualified business partners.

23 MR. VANDER SCHAAF: Just quickly, I know
24 that time is running out, but Lyle Vander Schaaf on
25 behalf of NuCarta.

1 I picked the one moment during this hearing
2 to step out of the room when Petitioners' counsel
3 would launch their full-scale assault on my client
4 NuCarta. Because time is running out please just
5 suffice it to say that we categorically deny these
6 allegations by Petitioners' counsel that they made in
7 their rebuttal. There was absolutely no wrong-doing
8 whatsoever by NuCarta or any of its employees in their
9 business affairs and we will respond directly in our
10 post-hearing brief.

11 Thank you.

12 MR. CAMERON: Thank you.

13 CHAIRMAN PEARSON: Okay, you're ready now to
14 proceed to closing? Excellent. Every efficient use
15 of the time. All that in less than seven minutes.

16 MS. TROSSEVIN: Thank you, Mr. Chairman,
17 members of the Commission. Marguerite Trossevin again
18 for Target Corporation.

19 It's late in the afternoon and it's been a
20 long day and you all have been so very well prepared
21 and asked so many questions we really have very little
22 to say in closing.

23 So I'd like to just touch very briefly on
24 something that my colleague Jim Jochum alluded to a
25 little while ago. That is I think the greater

1 significance of this case.

2 It's no secret to this Commission, you've
3 honed right in on the key issues of this case which
4 are, of course, the extensive role of the U.S.
5 producers in importing and the substantial presence of
6 non-subject imports from Brazil where U.S. producers
7 also have substantial interests.

8 This is a fact pattern it's true that the
9 Commission is facing more often these days and you
10 have in fact seen it in certain cases like those that
11 Commissioner Okun referred to. But I think if you
12 look at the record of this case what you see is it's
13 really pushing the envelope. The trends here are
14 unprecedented. The volumes accounted for by the
15 producers are unprecedented. The trends in their
16 increasing share of those imports are unprecedented.
17 And the level of the pricing data that they control
18 and the extent to which they themselves are
19 underselling U.S. production is unprecedented in all
20 of these cases.

21 So I think that presents this Commission
22 with a very serious and not an enviable task. You
23 have before you a case that really does bring you to a
24 point where you have to think very seriously about the
25 law -- what the law says and what the law is intended

1 to do. Because I agree with Jim Jochum, that what you
2 say in this case will determine the direction that a
3 lot of the precedents that come out of this Commission
4 are going to take.

5 One of the fundamental decisions that you
6 have to make is to what extent does the statute
7 protect U.S. producers from their own business
8 choices?

9 Here you don't have a situation, as much as
10 Petitioners would like you to believe to the contrary,
11 where they began to import to survive. The data just
12 isn't there. Their own data, as I mentioned earlier,
13 tells you that's not the case. So you do have to look
14 long and hard at this case.

15 I think if you do and you really do look
16 closely at the statute and the legislative history,
17 you will reach only one conclusion, that under the
18 facts of this case you cannot find that this domestic
19 industry has been injured by reason of the subject
20 imports, nor are they threatened with that injury.

21 Thank you.

22 CHAIRMAN PEARSON: Okay, thanks to all of
23 you very much.

24 Post-hearing briefs, statements responsive
25 to questions and requests of the Commission and

1 corrections to the transcript must be filed by August
2 2, 2006.

3 Closing of the record and final release of
4 data to parties on August 25th.

5 Final comments due August 29th.

6 This hearing is adjourned.

7 MR. CAMERON: Will the Commission take it
8 under advisement as a possibility?

9 CHAIRMAN PEARSON: Yes, we will take it
10 under advisement.

11 MR. CAMERON: Thank you, Mr. Chairman. I
12 apologize for interrupting. We would like to thank
13 the Commission for its patience. We appreciate it.

14 CHAIRMAN PEARSON: Now we are adjourned.

15 (Whereupon, at 6:38 p.m. the hearing in the
16 above-entitled matter was concluded.)

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CERTIFICATION OF TRANSCRIPTION

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INVESTIGATION NOS.: 701-TA-442

HEARING DATE: July 25, 2006

LOCATION: Washington, D.C.

NATURE OF HEARING: Hearing

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