

UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:)
LAMINATED WOVEN SACKS) Investigation Nos.:
FROM CHINA) 701-TA-450 and
) 731-TA-1122 (Final)

REVISED AND CORRECTED COPY

Pages: 1 through 142
Place: Washington, D.C.
Date: June 17, 2008

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

5 Madam Secretary, are there any preliminary
6 matters?

7 MS. ABBOTT: Madam Chairman, there are no
8 preliminary matters.

9 CHAIRMAN ARANOFF: Thank you. Let us begin
10 with the opening statement, please.

11 MS. ABBOTT: Opening remarks on behalf of
12 Petitioner will be by Joseph W. Dorn of King &
13 Spalding.

14 MR. DORN: Good morning, Madam Chairman,
15 Commissioners. This case is about dumped and
16 subsidized imports from China that are either
17 materially retarding the establishment of a U.S.
18 industry or causing that industry material injury.

19 Laminated woven sacks are not like other
20 sacks. No other type of sack combines the high
21 strength and low weight of polypropylene fabric and
22 the high quality print graphics of BOPP film or coated
23 free sheet paper.

24 Laminated woven sacks are a new product in
25 the U.S. market, and demand increased sharply during

1 the period of investigation. Seven U.S. companies
2 attempted to establish an industry to produce this new
3 product. They purchased the necessary equipment,
4 developed the necessary technology and know-how and
5 identified a large, potential market.

6 Their investments and marketing plans were
7 sound. They would have succeeded at least by the end
8 of 2007 except for one overriding obstacle. They
9 could not come close to matching the low prices of
10 imports from China. The low import prices result from
11 unfair trade.

12 The Department of Commerce preliminarily
13 determined that all subject imports were sold at less
14 than fair value with dumping margins of 64 percent to
15 109 percent. The Department also found that all
16 subject imports are subsidized by the Chinese
17 Government with subsidy rates of three percent to 57
18 percent.

19 The unfairly traded imports have retarded
20 the establishment of a domestic industry by preventing
21 U.S. producers from stabilizing their operations.
22 Subject imports prevented U.S. producers from making
23 sufficient sales to a sufficient number of customers
24 to stabilize their order flow. As a result, U.S.
25 producers were unable to utilize enough of their

1 production capacity to reduce their per unit fixed
2 cost. They were forced to operate intermittently, to
3 mothball new equipment and to cease operations.

4 In addition, the egregious underselling
5 prevented U.S. producers from pricing their product to
6 cover their fully absorbed cost of production.
7 Consequently, U.S. producers were not able to generate
8 the revenues needed to cover their total cost, much
9 less to earn any profits or any return on their
10 investment.

11 Alternatively, if the Commission were to
12 find that an industry is already established, that
13 industry is materially injured. First, the volume of
14 imports is significant, and the increase in the volume
15 of imports is significant. This is true whether the
16 Commission relies on official Customs data adjusted by
17 Petitioners' estimates or on your questionnaire data.
18 In fact, based on importers' questionnaire responses,
19 subject imports jumped 183 percent from 2005 to 2007.

20 Second, subject imports have adversely
21 affected domestic prices. The imports undersold
22 domestic products in all quarterly pricing comparisons
23 with margins of underselling of 19 to 58 percent.
24 Domestic producers lost substantial sales because they
25 were unable to lower their prices to match the import

1 prices.

2 From 2005 to 2007, domestic producers should
3 have been able to raise prices significantly, given
4 the fact that demand sharply increased, the dollar
5 weakened, and raw material costs and the cost of ocean
6 freight rose substantially. Instead, the domestic
7 industry experienced severe price suppression as it
8 was unable to raise prices to cover increasing cost.

9 Third, subject imports had an adverse impact
10 on the domestic industry's operations and financial
11 results. Obviously, the Commission should view the
12 trend data for this industry in light of the
13 conditions of competition. Production, shipments and
14 employment necessarily increased from the base year of
15 2005, because this is a new industry.

16 Subject imports, however, had an enormous
17 adverse impact on the domestic industry's efforts to
18 increase production, shipments and employment during a
19 time of sharply increasing demand. The adverse volume
20 and price effects of the subject imports had a very
21 negative impact on the industry's financial results.
22 On these facts, the Commission should find either
23 material retardation or material injury.

24 Alternatively, the threat of injury is real
25 and imminent. Imports are rapidly increasing, and

1 there are 200 to 300 Chinese producers. The large
2 margins of underselling will allow subject imports to
3 continue to increase rapidly, to depress the price of
4 domestic sacks and to prevent U.S. producers from
5 participating meaningfully in a rapidly growing
6 market.

7 Finally, I would emphasize that virtually
8 all Chinese producers, including the 14 producers who
9 made the effort to seek a separate rate at the
10 Department of Commerce, have refused to respond to
11 your questionnaire. As a result, the Commission
12 should draw adverse inferences in applying facts
13 available to substitute for the missing information on
14 the Chinese industry, U.S. imports and Chinese
15 exports.

16 In conclusion, the Commission should make an
17 affirmative determination of either material
18 retardation or material injury by reason of dumped and
19 subsidized imports from China. Thank you.

20 CHAIRMAN ARANOFF: Thank you, Mr. Dorn.

21 MS. ABBOTT: Madam Chairman, the panel in
22 support of the imposition of duties is seated, and all
23 witnesses have been sworn.

24 (Witnesses sworn.)

25 CHAIRMAN ARANOFF: Thank you. Please

1 proceed.

2 MR. DORN: I'm pleased to be the first
3 counsel to appear before the new Chairman.
4 Congratulations.

5 CHAIRMAN ARANOFF: Thank you.

6 MR. DORN: It is good to see all the rest of
7 you. It's nice to have a hearing where I'm not
8 totally time starved and I can say a few things.

9 We have two industry witnesses today, Isaac
10 Bazbaz with Polytex and Mike Nowak of Coating
11 Excellence International. These, as you know from the
12 prehearing report, are the two major producers who
13 have tried to get started in this new industry, and
14 we'll begin with Mr. Bazbaz.

15 MR. BAZBAZ: Good morning, Madam Chairman
16 and Commissioners. My name is Isaac Bazbaz. I am the
17 president of Polytex Fibers Corporation. Polytex
18 began operations in 1982, and I have been president
19 since 1989.

20 In 1982, Polytex was the first integrated
21 manufacturer of woven polypropylene bags for export
22 shipments of commodities like rice and sugar. Here is
23 a sample of one of our woven bags for rice. In 2005,
24 we received the USDA Small Business Contractor of the
25 Year Award for outstanding support and service with

1 respect to this type of bag.

2 In the early 1990s, we began manufacturing
3 coated bags for industrial use, also for the export
4 market. This is a sample of an industrial coated bag.

5 Around 2003, a new type of woven sack first
6 began to appear in the U.S. market. This new product
7 had an outer ply of biaxially oriented polypropylene,
8 which we refer to as BOPP. Here is a sample of BOPP
9 film. It is reverse printed, meaning that the ink is
10 trapped between the surface of the film and the inner
11 surface of the woven fabric during the lamination
12 process. This protects the graphics from flaking,
13 scratching and rubbing off.

14 Based on information from our customers,
15 these sacks laminated with BOPP were first produced in
16 Asia around 2000 for the pet food market in Thailand
17 and Korea. Soon after that, China began production to
18 supply these Asian markets. In 2003, imports of
19 laminated woven sacks from China began to appear in
20 the U.S.

21 In 2004, we were approached by Nestle
22 Purina, which had seen the laminated woven sacks from
23 Asia and was looking for a U.S. manufacturer to
24 produce these bags for them. Prompted by this inquiry
25 from Nestle, we surveyed the pet food market and

1 learned that the potential for LW sacks in that single
2 application alone was huge.

3 Because this was a new product, however, we
4 had to develop a process for laminating a reverse
5 printed film to our woven fabric. We sought the
6 advice of the manufacturer of our lamination machine,
7 but they were unable to offer us a solution. It took
8 us over six months of research and development and
9 numerous trials to come up with a successful
10 lamination process to ensure the stability of the bond
11 at extreme temperatures.

12 We began commercial production of all these
13 sacks in 2004. Our first customer was Nestle Purina.
14 This is a sample of the laminated woven sack we began
15 producing in 2004 with reverse printed BOPP film
16 printed in three or more colors in register, laminated
17 to woven polypropylene fabric.

18 Polytex is an integrated producer in the
19 sense that we manufacture the polypropylene fabric and
20 convert the fabric into laminated woven sacks.
21 Because we produce our own fabric, our manufacturing
22 process begins with the production of polypropylene
23 strips which are then woven into fabric.

24 As shown on the slide called Yarn Making, to
25 manufacture polypropylene strips we start by melting

1 polypropylene and additives in pellet form. The
2 melted plastic is then extruded into a wide film that
3 is cut or slit into strips. The strips are then
4 stretched to add strength and wound onto bobbins.

5 As shown on the slide called Weaving, the
6 bobbins are placed on the circular loom and woven into
7 fabric in a tubular form. This tubular fabric is then
8 slit open to form a wide, single ply flat sheet. We
9 purchase the rolls of unprinted BOPP film and reverse
10 print it according to our customers' design suitable
11 for use in consumer type packaging.

12 A printing press, shown on the slide called
13 Printing, is shown. The printed BOPP and the woven
14 polypropylene fabric are then bonded in a lamination
15 process as shown on the slide called Lamination.
16 During this critical process, the film and the fabric
17 are drawn from opposite directions to meet directly
18 below the die of the laminating extruder.

19 A curtain of liquid polypropylene flows
20 between the film and the fabric, immediately forming a
21 bonding center layer. This process ensures that the
22 printed surface cannot be separated or otherwise
23 blemished because it is sealed underneath the BOPP
24 film. The coating and laminating processes create the
25 material resistant to liquid, oil and grease that is

1 perfect for packaging pet food products that are sold
2 at retail.

3 From the lamination process, the rolls are
4 sent to a tuber where the fabric is formed into a
5 continuous tube and cut into individual pieces, as
6 shown in the slide Tubing Fabric Making Bags. These
7 individual tubes are transferred to a sewing line
8 where each is sewn shut and made into sacks. The bags
9 are finished by sewing the bottom, applying closure
10 tape and a pull tape for easy opening. We then
11 inspect the bags and package them for shipment.

12 In the fall of 2005, Polytex employees
13 visited seven Chinese plants producing LW sacks. In
14 particular, we visited SSJ, the only Chinese producer
15 that responded to your final questionnaire. The
16 purpose of the trip was to locate a qualified supplier
17 for specific U.S. customers who asked us to source the
18 bags from China due to our inability to match the
19 Chinese prices.

20 We were able to take some photos of some of
21 their equipment. The following slides show side-by-
22 side some of the equipment used in our Houston plant
23 and used in the SSJ plant and another plant in China.
24 As you can see, the Chinese equipment and processes
25 are essentially the same.

1 The extrusion tape line. Polytex is on the
2 left side, and the Chinese is on the right side. The
3 winding of bobbins. The left is Polytex. The right
4 is China. Circular looms, practically identical.
5 Fabric weaving and lamination.

6 The LW sack is a distinct product that
7 combines the strength, puncture resistance, tear
8 resistance and lightweight qualities of woven
9 polypropylene fabric with the glossy, high quality
10 print graphics of BOPP film.

11 LW sacks are different than other types of
12 packaging products. LW are not like paper sacks.
13 Paper sacks are made from an entirely different raw
14 material. LW sacks and paper sacks are typically not
15 made by the same companies, in the same facilities or
16 using the same production processes, equipment or
17 employees.

18 Laminated woven sacks have fewer plies,
19 weigh less and occupy less space than paper sacks.
20 This makes them less expensive for shipping and
21 storing. They also are much less likely to break
22 during shipping and distribution of the packaged
23 product to the end user.

24 Our customers also perceive the LW sacks and
25 paper sacks as a different product. For example, as

1 indicated in the advertisement from Sam's Club shown
2 on the slide, this major customer describes LW sacks
3 as a new type of dog food packaging made of a high
4 strength, woven plastic laminate. He points out that
5 the woven bags weigh about half as much as the
6 standard paper bags, are three times tougher than
7 paper bags and result in 50 percent fewer bag returns.

8 The advertisement also notes that Sam's Club
9 research shows that their clients prefer woven pet
10 food packaging because of its durability and because
11 it helps keep products fresh. Furthermore, as also
12 indicated in the Sam's Club ad, customers that value
13 sustainability like Sam's and Wal-Mart favor LW sacks
14 because they take up far less landfill space.

15 Finally, our customers have stated that they
16 have increased their sales of products packaged in the
17 laminated woven sacks. In short, the LW sack is a
18 great new product that has been embraced by producers
19 of pet food, wild bird seed and similar products
20 packaged for retail sale.

21 With over 25 years of experience in making
22 woven polypropylene bags, Polytex was well positioned
23 to capture a large share of this new product market.
24 We had the right equipment, a skilled workforce, a
25 strong sales force and a successful history in making

1 various types of bags.

2 Having commenced commercial production in
3 late 2004, we should have been able to stabilize our
4 operations by at least the end of 2005. Instead, we
5 were unable to do so even by the end of 2007. The
6 market grew as we expected, but cheap imports from
7 China prevented our participation in that market.

8 Our plant and equipment are designed to
9 operate 24/7. Due to lack of orders, however, we were
10 unable to sustain continuous operations. We would
11 finish one order and then stop the machines until we
12 got the next order. We were never able to utilize a
13 reasonable share of our production capacity.

14 We obtained a very few reputable customers
15 like Nestle and Mars, but unfairly priced imports from
16 China prevented us from increasing our sales to these
17 customers and expanding our customer base. As a
18 result, as of late 2007 we were still dependent on a
19 couple of customers who used us as a backup supplier
20 to the Chinese.

21 Having so few customers placed us at a
22 substantial financial risk. Regardless of the strong
23 demand for the LW sacks in the U.S. market, we were
24 unable to reach a break even point because of
25 extremely low prices of Chinese imports.

1 As I previously stated, Polytex has been in
2 operation since 1982, and it is an experienced and
3 highly efficient business. In spite of our efficient
4 production model and newly purchased advanced
5 production machinery, prices of Chinese imports are
6 lower than our cost of production. We have been
7 unable to achieve enough volume for our sacks because
8 our customers can readily receive comparable products
9 at a lower price from China.

10 As written in our questionnaire responses,
11 we have lost sales to Chinese imports. For example,
12 we lost sales to China on bird seed bags to Red River
13 Commodities. This is a bag that we produce in our
14 plant, and this is a bag produced in China. This is a
15 Purina Dog Chow bag we produce, and this is the same
16 Purina Dog Chow bag produced in China. We have lost
17 substantial sales in both bags.

18 I would note that the Chinese bag is the
19 tubular style, and our bag has a vertical back seam.
20 Some of the Respondents at the staff conference
21 claimed that tubular bags are inferior to back seam
22 bags. I wish that were the case since we only make
23 back seam bags. The fact is, however, that major
24 customers such as Nestle Purina are happy with either
25 type of bag. They just want the lowest price.

1 Respondents also suggest that the tubular
2 bags cannot be used on automatic filling equipment
3 because they are not as stiff as back seam bags. The
4 stiffness of the bag is derived from a combination of
5 factors, including the thickness of the yarn used to
6 make the fabric, the density of woven fabric and the
7 thickness of the lamination. The major pet food
8 manufacturers, for example, use tubular bags and back
9 seam bags interchangeably on the same automatic
10 filling equipment.

11 While we have the production capacity to
12 fulfill large orders of any specification, we simply
13 cannot compete with Chinese import prices that remain
14 lower than our cost of production. We cannot utilize
15 our capacity and achieve sustainable operations as
16 long as the dumping and subsidies of Chinese imports
17 exist.

18 Since the imposition of the preliminary
19 duties, the playing field has greatly changed to our
20 advantage. We are increasing sales, receiving
21 inquiries from new customers and utilizing more of our
22 capacity. We are even considering expansion
23 opportunities.

24 If permanent relief is not granted, however,
25 we will not be able to achieve break even operations

1 and much less a positive return on our investment. As
2 I said before, unprecedented imports from China forced
3 us to operate at very low capacity levels and to shut
4 down our operations on many occasions. They
5 effectively confined us to a narrow segment of the
6 market.

7 We have stayed in this market with
8 expectations that this will change. If the
9 preliminary duties now imposed do not continue, we
10 will not be able to maintain our current operations.
11 We will either shut down or drastically reduce
12 operations and lay off most, if not all, of our LW
13 sack employees.

14 We request your help in stopping this unfair
15 competition. There is no good reason why U.S.
16 producers like Polytex and why U.S. workers like those
17 who work in our plant in Houston should give away this
18 promising market of LW sacks to Chinese producers who
19 are subsidized by the government and who engage in
20 unfair pricing.

21 Thank you for your time. I would be glad to
22 answer any questions.

23 MR. DORN: Rebecca Woodings is now going to
24 address the import statistics that are set forth in
25 the Commission's prehearing report, in particular

1 Table IV-2 where the Commission staff used the same
2 approach as in the preliminary phase of the
3 investigation with respect to imports in 2005 and
4 2006.

5 We are pleased with that and support that,
6 but we are concerned about the change in methodology
7 for 2007 because it reflects a drop in imports from
8 2006 to 2007, which we think is inconsistent with your
9 record evidence.

10 Rebecca?

11 MS. WOODINGS: Good morning. As described
12 in the prehearing report, laminated woven sacks were
13 provided for in Tariff Item 6305330020 until June 30,
14 2007. This item also covered other products. In the
15 petition we set out a methodology to estimate the
16 volume of LW sacks based on official import data for
17 that HTS item.

18 Respondents participating in the preliminary
19 investigation offered no alternative to Petitioner's
20 subject import estimates. Meanwhile, responses to
21 both the importers' and foreign producer
22 questionnaires in the preliminary investigation were
23 substantially incomplete.

24 And yet looking at just the available
25 questionnaire data, we concluded that our original

1 subject import volumes estimates were most likely
2 understated. This is all noted in the Commission's
3 preliminary opinion which in the end relied on
4 Petitioner's methodology to quantify subject import
5 volume.

6 We find ourselves nearly a year later and
7 not much has changed. Questionnaire responses by both
8 importers and foreign producers remain woefully
9 inadequate, our revised subject import estimates are
10 still conservative relative to available questionnaire
11 data, and once again Respondents have failed to offer
12 any alternative import estimates.

13 We agree with the staff import estimates for
14 2005 and 2006 set forth in Table IV-2 of the
15 prehearing staff report. We disagree, however, with
16 the import estimates for 2007 in the same table. The
17 reasons are as follows: The staff used a new tariff
18 item, 6503330050, to quantify imports during July
19 through December 2007. Those data do not, however,
20 accurately capture the subject merchandise.

21 How do we know this? We know this because
22 those data show a 53 percent drop in imports from
23 China from the first half of 2007 to the second half
24 of 2007, and as a result they also show a 16 percent
25 decline in imports from China from 2006 to 2007

1 overall. Nothing could be further from the truth.

2 The Commission has subject import data
3 available from several sources. From the importers'
4 questionnaires you have reported imports, shipments,
5 and you also have sales volumes recorded in
6 association with specific pricing items.

7 You have monthly import volumes during 2007
8 for a number of specific foreign producers. From the
9 purchasers' questionnaires you have reported purchases
10 of LW sacks from China, and you have reports of new
11 suppliers and changes in suppliers over the period of
12 investigation. You also have a foreign producer
13 questionnaire.

14 This collective body of evidence does not
15 support the proposition that subject import volume
16 declined from 2006 to 2007. This is set forth in the
17 prehearing brief at Exhibit 6.

18 Our revised subject import volume estimate
19 is quite straightforward. We take our original
20 estimates from 2005 and 2006. Then to arrive at the
21 estimate for 2007 we increase the estimate from 2006
22 that is set forth in the prehearing report by the
23 increase in subject imports from 2006 to 2007 as
24 reported in questionnaire responses.

25 An illustration: If the questionnaires

1 showed a 10 percent increase in subject import volume
2 from 2006 to 2007, we apply the same 10 percent
3 increase to our 2006 subject import estimate to arrive
4 at our 2007 subject import estimate. Our methodology
5 and the results are set forth in the prehearing brief
6 at Exhibit 10.

7 I'm happy to answer any questions on our
8 import volume calculations during the question and
9 answer period. Thank you.

10 MR. DORN: Our next witness is Mr. Nowak.

11 MR. NOWAK: Good morning, Madam Chairman and
12 members of the Commission. My name is Mike Nowak, and
13 I'm the president of Coating Excellence International,
14 LLC, which I'm going to refer to as CEI.

15 CEI was established in 1997. We produce a
16 wide range of products that provide solutions in
17 flexible packaging. Our particular expertise is in
18 printing and laminating film as demonstrated by our
19 market leading position in the ream wrap packaging
20 market.

21 Among the honors CEI has received are the
22 following: We were the Wisconsin Manufacturer of the
23 Year in 2003. We were awarded the Wisconsin Governors
24 New Product Award in 2006, the National Society of
25 Professional Engineers New Product Award in 2007, and

1 the Best of Show Award in 2007 and 2008 from the Flexo
2 Printing Association.

3 Our laminated woven sacks, which are the
4 subject of this hearing, were awarded the 2007 Friend
5 of the Environment Award and the 2008 Flexible
6 Packaging Association Packaging Excellence Award.

7 Let me share one of CEI's success stories.
8 Several years ago we had an opportunity to enter the
9 market for Sweet 'N Low sweetener packets. I'm sure
10 that most of you have seen these little pink packets.

11 This U.S. customer was moving his packaging
12 source to Korea at the time. We were able to enhance
13 our service, achieve significant cost efficiencies and
14 specifically control our labor costs to win that
15 business back from Korea.

16 Today we are the sole supplier of Sweet 'N
17 Low sweetener packets. We produce 1.5 billion of
18 these packets each month. In sum, CEI is a leading
19 innovator and low-cost producer in the packaging
20 sector.

21 In 2005, we were approached by distributors
22 of imported laminated woven sacks to develop a U.S.
23 source. We researched both market potential and
24 potential competitors. In developing CEI's sales
25 projections and strategy, the CEI sales staff

1 contacted numerous purchasers of the product. We
2 developed what we believe were realistic sales
3 projections based on these discussions.

4 However, as evidenced by our questionnaire
5 data, we simply did not meet these sales projections.
6 Two of CEI's technical strengths are printing film and
7 laminating with polymers. The lamination, a reverse
8 printed BOPP film, to woven fabric is a critical step
9 in the manufacturing of laminated woven sacks.

10 These were not technologies utilized or
11 understood by U.S. bag makers at the time. Based on
12 our assessment of market prices and raw material costs
13 in the spring of 2005, we expected to be price
14 competitive, assuming that we were able to achieve a
15 reasonable volume of sales. We were confident that
16 the quality of our printing and laminating was equal
17 to or better than that of imported sacks.

18 From our Sweet 'N Low experience, we knew
19 that we could surpass foreign imports based on our
20 delivery times and services. Thus, we believed that
21 CEI had a competitive advantage in making this new
22 product, even though we had never made a bag.

23 Accordingly, we acquired 100,000 square feet
24 of production space, invested in printing equipment,
25 laminating equipment and bag machines. All the

1 production equipment CEI purchased was designed by CEI
2 to produce laminated woven sacks in the most cost
3 efficient manner possible and was dedicated only to
4 making this product.

5 At CEI we don't make paper sacks. We don't
6 make non-laminated sacks. We began installing
7 equipment in the first quarter of 2006 and were in
8 production by May of 2006. We purchase our woven
9 fabric rather than make it. Woven polypropylene
10 fabric is a commodity which is readily available at
11 prices established in the global market.

12 In light of the very sharp increase in
13 demand for laminated woven sacks that was occurring at
14 the time, we had originally planned to expand our
15 capacity significantly beyond our initial investment.
16 This additional investment would have created 400 new
17 jobs in a part of Wisconsin where jobs are sorely
18 needed.

19 But because of unfair pricing by Chinese
20 laminated woven sacks, rather than expanding and
21 creating new jobs CEI was compelled to idle more than
22 half of our purchased bag lines. In the first quarter
23 of 2007 we had to mothball four bag machines that we
24 acquired at considerable expense. The remaining
25 equipment used to make sacks was operating at less

1 than 40 percent of capacity.

2 Moreover, our production was plagued by
3 start and stop operations due to low customer orders
4 which caused gross inefficiencies from an operational
5 standpoint and are otherwise very costly. The only
6 reason for these start and stop operational
7 inefficiencies was lost sales to China.

8 The artificially low pricing of Chinese
9 imports resulted in low volume and insufficient orders
10 for CEI to utilize its production capacity. The only
11 sales we were able to make were to the rare customer
12 who perceived a high value in having a domestic supply
13 or a local back-up supplier. This was a very small
14 segment of the market.

15 These results and the market disadvantage to
16 CEI created by Chinese laminated woven sacks were not
17 only surprising, but disturbing. Global prices for
18 raw material used to make laminated woven sacks were
19 increasing, forcing up our costs. At the same time,
20 the prices of Chinese sacks were not moving up at all.

21 In addition, the number of Chinese producers
22 making laminated woven sacks for export to the U.S.
23 was exploding. The one Chinese producer who testified
24 at the staff conference said there were 200 to 300
25 such producers in China, and this is probably a low

1 estimate.

2 It is undisputed that the reason for the
3 growing number of Chinese producers was their ability
4 to use artificially lower prices for their laminated
5 woven sacks to gain entry into this new U.S. market.
6 The governmental subsidies provided to these Chinese
7 producers no doubt drove down import prices to a level
8 below our variable cost of production.

9 Let me emphasize that none of our original
10 assumptions about demand, customer base, equipment,
11 operational start up, manufacturing capabilities or
12 technologies were wrong. The market continued to
13 expand for this product, and we experienced no
14 unexpected technical or equipment difficulties.

15 We received numerous opportunities to
16 provide price quotes because customers indicated they
17 wanted a domestic supply for laminated woven sacks,
18 and customers valued our delivery and service. We
19 knew that our raw material costs would go up with
20 world prices, but we never expected that Chinese
21 prices would not also reflect the same raw material
22 cost fluctuations.

23 In fact, we have learned from the Department
24 of Commerce's investigation that Chinese producers are
25 heavily subsidized by the government. Among other

1 things, they receive their BOPP film at subsidized
2 prices. BOPP film accounts for a substantial share of
3 our production costs. These subsidies have enabled
4 the Chinese to price their product without any
5 relation to the cost of production, creating an
6 unbalanced playing field upon which U.S. manufacturers
7 simply are unable to compete.

8 We had great hopes of expanding production
9 and employment in our local community and meeting the
10 marketing and technical challenges with this new
11 product as we have with other new products and other
12 new markets CEI has entered over its 10 year history.
13 These hopes were dashed.

14 The one thing we had not counted on was the
15 proliferation of Chinese producers and the extremely
16 low prices that flooded the U.S. market during 2006
17 and 2007. Imports from China were priced 30 to 50
18 percent below our prices, which is often below our raw
19 material cost. Our questionnaire response explains
20 the full impact of the subject imports on our
21 operations and just how large of a gap there was
22 between the expectations we had and the reality we
23 faced.

24 As I explained earlier, we were sufficiently
25 confident about demand for this product and about our

1 ability to make it as well as anyone in the world that
2 we planned to increase substantially. But after
3 preliminary approval of our plans by the CEI board of
4 directors and certain of our lenders in mid 2006,
5 expansion plans were put on hold. Such an expansion
6 was not even remotely feasible given the market
7 environment that imports from China had created.

8 I would also emphasize that we have provided
9 considerable evidence that we have suffered lost sales
10 and revenues. We believe you will find that the
11 volume of production and sales that we lost was very
12 high compared to the volume of production and sales we
13 actually achieved.

14 Some of the lost sales described in our
15 petition involve 20 pound birdseed bags that we were
16 supplying Kaytee. The first two samples are a 20
17 pound bag for wild bird food that Kaytee makes for Ace
18 Hardware. This was the one produced by CEI. This one
19 is an identical one imported from China.

20 The next two samples are a 22 pound wild
21 bird food bag. This one is a Kaytee brand produced by
22 CEI. The other one is an identical bag from China.
23 In mid 2006, CEI was the sole source of these bags for
24 Kaytee, which is located only 10 miles from our plant.
25 Late in 2006, Kaytee was told by its owner to shift

1 sourcing to China and that the reason was strictly
2 price.

3 Both of these bags were produced to Kaytee
4 specifications. CEI has produced both of these bags
5 in tubular and back seam versions. Rather than
6 purchasing these bags from a plant 10 miles away,
7 Kaytee instead began purchasing this product halfway
8 around the globe due to the significantly lower price
9 of Chinese imports.

10 These comparisons are typical of what occurs
11 in the market as all laminated woven sacks are made to
12 customer specifications. As a result, our U.S. sacks
13 and the Chinese sacks both meet customer requirements.
14 Thus, purchasing decisions are made largely on price.

15 CEI had the production facilities and
16 capacity, dedicated equipment, technological know-how
17 and skilled workers required to compete successfully
18 in the U.S. market for laminated woven sacks in 2006
19 and 2007. Instead, we operated far below our break
20 even point, and our operations were not sustainable.

21 The unfair prices from China prevented us
22 from utilizing our capacity and achieving any return
23 on our substantial investment, even though we
24 continued to see huge demand for this new product,
25 especially in pet food markets.

1 Since the Commission's affirmative
2 determination and the imposition of preliminary
3 duties, we have seen an improvement in our laminated
4 woven sack business. Our orders have increased as
5 companies that were buying Chinese bags have looked to
6 domestic sources to avoid paying higher duties.

7 The recent upturn in our business tells you
8 that domestic producers will benefit from additional
9 duties that may be imposed because imports from
10 countries other than China are not flooding the
11 marketplace to replace Chinese imports.

12 What we are now seeing in the laminated
13 woven sacks market is unequivocally that purchasing
14 decisions are driven largely by price and that U.S.
15 producers like CEI are ready, willing and able to
16 provide the market with exactly the kind of products
17 that the U.S. market requires.

18 CEI's inability to reach break even
19 operations in 2006 and 2007 is not due to the normal
20 growing pains of a start-up business. Our historical
21 experience as a company and our recent upturn since
22 duties were imposed make this clear.

23 We began installing our dedicated bag
24 equipment in April of 2006 and were up and running in
25 May of 2006. Our inconsistent production history

1 through the end of 2007 was not because of unexpected
2 production problems, but due to the unfair market
3 conditions created by Chinese imports.

4 Due to recently imposed duties, we now have
5 a sense of what our sales volume should look like in a
6 normal, more level playing field. That is, one not
7 characterized by unfair trade. It is now plain that
8 previously our sales were severely depressed by
9 imports from China.

10 This certainly is not a growing pain
11 typically experienced by a start-up business. CEI is
12 therefore cautiously optimistic about the future. We
13 are finally being given the opportunity to participate
14 in a meaningful way in this new, growing market. We
15 are providing our existing and potential customers.
16 We can serve all their needs, not just the needs of a
17 select few customers for whom domestic supply has a
18 special value.

19 Our optimism is guarded, however, because as
20 we know full well that if domestic producers do not
21 receive relief from subsidized and dumped imports from
22 China all these gains will quickly be lost and these
23 imports will recapture this new market at the expense
24 of U.S. producers and U.S. workers.

25 If, on the other hand, we do receive the

1 relief to which we believe we are entitled under our
2 laws, we are prepared to invest in additional capacity
3 and hire additional employees to seize this
4 opportunity.

5 Thank you, and I'll be pleased to answer
6 questions.

7 MR. DORN: Joe Dorn for Petitioners.
8 Obviously the prehearing report contains a lot of
9 confidential data that's not in the public record,
10 which somewhat restrains my ability to argue the facts
11 in this case with respect to either material
12 retardation or material injury, but I would like to
13 make a few observations.

14 First of all, it is our belief that U.S.
15 producers have not stabilized their operations through
16 the end of the POI and that, therefore, we prefer the
17 Commission apply the material retardation assessment,
18 but that's not outcome determinative by any means.

19 We argued in the alternative at the staff
20 conference that this industry either has not been
21 established because of material retardation or, if
22 established, is materially injured or threatened with
23 material injury by reason of the dumped and subsidized
24 imports. Our opposition at the staff conference
25 stated that they did not think that the industry was

1 established yet and urged the Commission to apply the
2 material retardation standard, which the Commission
3 did.

4 However, as you noted in your preliminary
5 views, it was a close call. You said on balance you
6 found the industry was not stabilized and established,
7 but it was a close call and you would revisit it in
8 the final phase, and here we are.

9 As explained in our prehearing brief, we
10 believe the application of the factors considered in
11 prior cases leads to the conclusion that the industry
12 has not stabilized its operations during the period of
13 2005 to 2007. This is made clear by the following
14 facts: First, the U.S. producers only recently began
15 production.

16 Second, U.S. production has not been steady,
17 as you heard from Mr. Bazbaz and from Nowak. Mid-
18 America is another one of the Petitioners who
19 testified at the staff conference that it had to cease
20 its operations altogether, and Mid-America has not
21 restarted operations since the staff conference.

22 Third, U.S. producers have not come anywhere
23 close to achieving a reasonable level of capacity
24 utilization. Certainly an industry cannot be deemed
25 to be stabilized when it is operating at such low

1 rates of capacity utilization.

2 Fourth, U.S. producers have a small share of
3 the market and relatively few customers. The business
4 they do have is often in the nature of that as a
5 back-up supplier to the much cheaper imports from
6 China. These producers cannot sustain long-term
7 operations based on the crumbs that fall off the
8 plates of the Chinese producers.

9 Fifth, and most importantly, U.S. producers
10 to date have not even covered their total costs. This
11 was addressed in the prehearing report and also in
12 Exhibit 15 to our prehearing brief.

13 As explained in our brief, simply reaching
14 break even is insufficient to show that a new industry
15 is stabilized. We would urge the Commission to use a
16 different standard; that is, whether the industry has
17 obtained operating income sufficient to earn a risk
18 adjusted rate of return on capital invested. In this
19 case it really doesn't matter based on the facts, but
20 we think just reaching break even is not a sufficient
21 basis to say that an industry is stabilized.

22 Finally, U.S. producer activities are not in
23 the nature of introduction of a new product line by an
24 established industry. As we pointed out in our
25 prehearing brief, we have questions about the

1 propriety of that particular factor that's been used
2 in past cases.

3 We think that once the Commission defines a
4 distinct like product, which you have in this case,
5 and once you define the distinct domestic industry
6 definition as you've done in this case, you should
7 only be looking at the operations with respect to that
8 product.

9 It doesn't matter that Mr. Bazbaz and Mr.
10 Nowak are in firms that have existed for a number of
11 years and make other products. The focus on material
12 retardation should be what's the impact of the
13 subsidized and dumped imports on the establishment of
14 an industry producing this domestic like product for
15 this domestic industry.

16 But in any event, even applying that old
17 factor that the Commission used many years ago, this
18 is a new product. This is a new industry. As Mr.
19 Nowak testified, CEI never produced a bag before.
20 Entirely new. Mr. Bazbaz has produced other types of
21 sacks, but the critical element in the production of
22 laminated sacks is the lamination step which Mr.
23 Bazbaz described.

24 It is very difficult to create a proper bond
25 that's going to be secure in low temperatures in

1 Minneapolis in the winter and hot temperatures in New
2 Orleans in the summer, and if that bond breaks down
3 you've got a defective product.

4 The trick was to find out how to laminate
5 that BOPP film to the polypropylene fabric, to have a
6 secure bond. It took Mr. Bazbaz six months of
7 research and development. The vendors of his
8 equipment couldn't tell him how to do it. There's no
9 book on the shelf that tells you how to do it. His
10 process is proprietary. Mr. Nowak's process is
11 proprietary. This is a significant technological step
12 that involves the establishment of a new industry, not
13 just an add-on to an existing industry.

14 In the preliminary investigation Petitioners
15 provided their projected break-even analysis before
16 starting commercial production, but they did not
17 provide the contemporaneous business plans. Frankly,
18 I thought that the break even projections would be
19 sufficient. Based on your preliminary reviews, I was
20 clearly wrong on that point, and I apologize for my
21 error.

22 I will say that as of today the Petitioners
23 have provided all the business plans, all the
24 contemporaneous documents regarding their projections
25 for this product, their break even analyses. You have

1 what there is out there from these companies. I can
2 assure you of that.

3 And now you are in a better position than
4 you were in the preliminary phase to compare the
5 actual performance of these companies with what they
6 projected at the outset, and when you make that
7 comparison you will find that the performance of these
8 producers is far worse than could be expected. That's
9 a standard that's been used in several of the prior
10 cases in assessing whether the failure to establish an
11 industry is causally related to the subsidized and
12 dumped imports.

13 As I said before, this issue is not outcome
14 determinative. If you decide that the industry is
15 already established and therefore you wish to apply
16 the standard statutory criteria for material injury we
17 also have a very strong case.

18 Now, in assessing the material injury
19 factors in this unusual case you must do so in the
20 context of the conditions of competition that are
21 specific to this industry. In particular, you must
22 take note of the fact that this is a new industry
23 starting from a zero base of production, shipments and
24 employment in 2003.

25 Your base year for the trends analysis is

1 2005, but keep in mind that 2005 is also at the very
2 beginning of this new industry and is necessarily a
3 very low base from which to measure trends in
4 production, employment and shipments, so obviously
5 those trend factors are going to show some improvement
6 from 2005 to 2007.

7 It's clear, however, that the rapidly
8 increasing, unfairly traded imports with very large
9 margins of underselling have had an adverse impact on
10 the domestic industry's growth, which is one of the
11 statutory factors you're required to look at. In
12 fact, in the context of this case, I would say growth
13 is perhaps the key factor.

14 Why is that? Because if you're starting
15 from a low base in 2005, as these companies were, and
16 you don't grow you die because you never reach break
17 even. If you don't grow you die, and so I would ask
18 you to focus particularly on that statutory factor in
19 the context of this unusual set of facts.

20 Of course, if you look at the financial
21 performance of the industry and the price underselling
22 and price suppression and lost sales which contribute
23 to those financial results you can use your
24 traditional analysis to clearly find material injury
25 by reason of dumped and subsidized imports from China.

1 The last point I would make is that if this
2 Commission is ever going to apply adverse inferences
3 this is a case where you should do so. Look at what
4 the foreign industry did here. We have testimony
5 there were 200 to 300 Chinese producers. That came
6 from the lips of a Chinese producer who testified at
7 the staff conference.

8 In this final phase investigation, as far as
9 I know, based upon the record as of the prehearing
10 report, SSJ is the only foreign producer to respond to
11 your questionnaire. Ha-Sun, which is represented by
12 counsel on your APO list and which filled out a
13 questionnaire in the preliminary phase, has not done
14 so in the final phase. Aifudi, which is represented
15 by counsel on your APO, has not responded to the
16 questionnaire in this final phase and in fact didn't
17 respond to the questionnaire in the preliminary phase.

18 Now, the Department of Commerce applies
19 consequences when foreign producers don't cooperate,
20 and perhaps that's why 14 foreign producers did
21 cooperate to some extent at the Department of Commerce
22 in this investigation by seeking a separate rate to
23 get their own dumping margins.

24 So 14 companies hired counsel, spent the
25 money and expended the time to provide the information

1 to the Commerce Department, but stiffed this
2 Commission. If you hope to get better participation
3 from foreign producers in the future, you've got to
4 attach some consequences to that kind of a lack of
5 cooperation by foreign industries.

6 Now, I'll emphasize we don't need adverse
7 inferences. The record as it exists is certainly
8 strong and robust and supports affirmative
9 determinations, but to the extent you have any
10 question marks with respect to the Chinese industry,
11 with respect to the level of U.S. imports, with
12 respect to the level of foreign exports, you should
13 draw adverse inferences in substituting that missing
14 information with facts available.

15 Even though I have time remaining -- I'm in
16 an unusual situation I'm saying -- that completes our
17 presentation. Thank you very much.

18 CHAIRMAN ARANOFF: Thank you, Mr. Dorn, and
19 thank you, Mr. Nowak and Mr. Bazbaz, for taking the
20 time away from your businesses to be with us this
21 morning.

22 We are going to start the questioning with
23 Commissioner Williamson.

24 COMMISSIONER WILLIAMSON: Thank you, Madam
25 Chairman, and I, too, want to express my appreciation

1 to the witnesses for their testimony this morning and
2 coming to present it.

3 The first question I would like to start off
4 with is should the Commission exclude any of the
5 domestic producers from the domestic industry under
6 the related party provisions?

7 I realize you may have to address this is
8 posthearing, but anything you could say we'd
9 appreciate it.

10 MR. DORN: The short answer is I don't think
11 so because I think each of these companies that
12 imported did so for defensive reasons and the reason
13 they're supporting the action is because their real
14 interest is in being domestic producers, not
15 importers, but in order to answer the question
16 correctly I will have to go into the confidential
17 record.

18 COMMISSIONER WILLIAMSON: Okay. And I guess
19 one thing you might want to address is if we determine
20 that the industry is not established should this
21 affect our analysis?

22 In other words, the high ratio of subject
23 imports to domestic production. Should that be less
24 meaningful in a case such as this where we say the
25 industry is not established?

1 MR. DORN: That's an interesting question
2 which I haven't considered, but I'll be pleased to do
3 so in the posthearing brief.

4 COMMISSIONER WILLIAMSON: Thank you.

5 For the producers, I was wondering. Is
6 there a significant business cycle for this industry,
7 and is seasonality also a factor?

8 MR. BAZBAZ: We don't believe that there is
9 a cycle for this industry, or we cannot tell because
10 this is very new so it's very difficult to tell.

11 We have seen that the demand for pet food in
12 the United States is increasing more than GDP. This
13 product is increasing very fast also.

14 COMMISSIONER WILLIAMSON: So pets don't stop
15 eating?

16 MR. BAZBAZ: No, and there are studies that
17 show that the rate of growth of the purchases of pet
18 food is higher than the growth of GDP.

19 MR. NOWAK: I would agree with Mr. Bazbaz
20 that on an overall trend the industry has been up in
21 pet food.

22 There are some minor during-the-year
23 variations because people tend to feed birds more in
24 the wintertime than they do in the summertime and,
25 believe it or not, your pet will eat a little bit more

1 in the winter time because it's cold out and they
2 maintain their heat, but we're talking about minimal
3 variations in doing that.

4 COMMISSIONER WILLIAMSON: Okay. Thank you.

5 I also wonder if you could discuss, based on
6 your experience, where do you expect demand to go over
7 the next few years? Do you see additional uses for
8 laminated woven sacks? Either one.

9 MR. NOWAK: We're seeing continuing demand
10 growth for woven sacks. I think that the word is now
11 getting out there that the strength is now spreading
12 to other places. We're seeing more people who are
13 seeing the environmental aspects of it, and, as most
14 people know, the environmental aspects seem to be
15 growing at this point in time in the world.

16 You know, we see it only growing as those
17 two trends continue to catch on and spread into other
18 products where waste is important and where people
19 want environmentally friendlier products.

20 COMMISSIONER WILLIAMSON: Mr. Bazbaz?

21 MR. BAZBAZ: Well, we see the future demand
22 of this particular category of bags in the billions
23 per year as stated in industry statistics that are
24 available for the consumer type of packaging products.

25 So these bags are replacing the multi-wall

1 in many uses for consumer type of products. These
2 will grow continuously up to that point.

3 COMMISSIONER WILLIAMSON: Is there any other
4 sector? You talked a lot about pet food. What might
5 be the next category that's most important?

6 MR. NOWAK: If you've seen those bags, a lot
7 of them have the stitching, the sewing on it. As you
8 get into food products that's not a good thing because
9 you can get infestation in there so as the bag
10 continues to develop, and we believe there are
11 hermetically sealed bags, you'll get more into food
12 packaging.

13 We're also seeing more use in some more
14 expensive products where the graphics are important,
15 but they don't want to spill it. If they spill it
16 it's a very expensive cost to them. This could be in
17 animal feeds other than pets, in nutritional kind of
18 products. You know, anywhere that a large bag can be
19 used or something is used in bulk.

20 COMMISSIONER WILLIAMSON: Mr. Nowak, can you
21 clarify for me the environmental obligations? Is it
22 the fact that these bags take up less room in the
23 landfill, or can you recycle them?

24 MR. NOWAK: There's a number of things.

25 One, they're 100 percent polypropylene, which means it

1 can be recycled. Most communities today only have
2 recycling capabilities for bottles, but it's our hope
3 in the future that they will continue.

4 They are lighter, and I should say versus
5 paper bags or other poly bags, many poly bags are a
6 combination of films. Paper bags tend to have a film/
7 paper combination, so as soon as you have a mixture of
8 products it's worse from a recycling standpoint.

9 From a landfill standpoint, they are lower
10 weight than most other products you will find in bulk.
11 Therefore, you would have less going to landfill, but
12 you also spend less transportation cost so there's
13 less fuel being used to transport things to market.
14 There's less storage being used to store these bags
15 because you can store twice as many of these bags in
16 the same area that you can store other bags.

17 So it's a variety of different things that
18 contribute. If you look at this bag versus a multi-
19 wall bag, for example, the carbon footprint, which is
20 the big buzz this year in the market right now. The
21 carbon footprint of this bag is actually better than a
22 paper bag, so it's a variety of factors.

23 COMMISSIONER WILLIAMSON: Okay. And I guess
24 the use for recycling would depend on people who are
25 willing to say we will recycle these kind of bags or

1 recyclers who will?

2 MR. NOWAK: I would expect that we will
3 start to see that as it becomes more economical to
4 recycle them. I mean, right now all of our waste, for
5 example, is recycled so it's possible to recycle it.
6 We just don't have the collection method today.

7 COMMISSIONER WILLIAMSON: Mr. Bazbaz?

8 MR. BAZBAZ: This is a very valuable product
9 for the recyclers, so as this market grows and there
10 are possibilities of the consumers to recycle then we
11 will be glad to take it back and use it for other
12 types of products; not for this one specifically, but
13 for other types of products that are readily available
14 like for flower pots or something else.

15 I would like to extend a little bit to this
16 statement. There have been studies of the life cycle
17 analysis of this type of bag compared to the multi-
18 wall paper bags, and at the typical weights that these
19 bags are made this bag is more environmentally
20 friendly than the multi-walled paper bags from the
21 standpoint of using nonrenewable resources.

22 Even though all these bags are made from
23 natural gas and it's not renewable, the amount of
24 energy and the natural gas used is less than the total
25 energy that is used to manufacture and transport a

1 multi-walled paper bag. This is why this bag is such
2 a success in terms of environmental impact.

3 The second thing is this is a very appealing
4 type of bag, and it's a lot more appealing than a
5 multi-wall paper bag and has done a great job in the
6 distribution chain to be able to hold the products
7 inside, so there are a lot less losses in
8 transportation and distribution, a lot less spillage
9 from the pet food in the warehouses and the big
10 stores. That's also a positive environmental
11 opportunity.

12 COMMISSIONER WILLIAMSON: Thank you. I
13 appreciate all those answers about the industry. And
14 also, I've been trying to figure out what to do with
15 my coat hangars. The cleaners won't take them back.
16 I was wondering, how do you recycle something? Thank
17 you. Can you discuss the current status of the
18 domestic producers mentioned in Table 3-2 of the staff
19 report?

20 Are any of them currently producing, and, if
21 not, does the production capacity still exist or was
22 it sold, and how long would it take for the companies
23 to resume operations? I'm not sure if you can do this
24 offhand, Mr. Dorn, or whether or not you want to do
25 it --

1 MR. DORN: I think that's in the
2 confidential version.

3 COMMISSIONER WILLIAMSON: 3-2.

4 MR. DORN: I'm sorry. Table 3-1, you mean?

5 COMMISSIONER WILLIAMSON: No, 3-2. It's the
6 status of certain firms that have stopped production.

7 MR. DORN: That's in the confidential
8 report.

9 COMMISSIONER WILLIAMSON: Okay. My time has
10 expired anyway, so if you could address that in
11 posthearing briefs?

12 MR. DORN: The current status of their
13 operations?

14 COMMISSIONER WILLIAMSON: We need a
15 clarification as to, you know, verifying that those
16 who have stopped producing and that is not producing
17 now, and what are the prospects, what would it take
18 for them to restart, say the order goes in place.

19 MR. DORN: I understand. Thank you.

20 COMMISSIONER WILLIAMSON: Thank you very
21 much.

22 CHAIRMAN ARANOFF: Commissioner Pinkert?

23 COMMISSIONER PINKERT: Thank you, Madam
24 Chairman. I'd like to join my colleagues in welcoming
25 this panel, particularly Mr. Dorn whom I worked with

1 many years ago.

2 I want to begin with Mr. Nowak. You
3 expressed the idea that there was some surprise about
4 China's behavior in this market, some behavior that
5 you hadn't anticipated.

6 I'm wondering, given that China had an
7 established industry, was it truly a surprise that
8 there was a flood of Chinese exports into the U.S.
9 market after you began to establish an industry in the
10 United States?

11 MR. NOWAK: In mid to early 2005 when we did
12 our analysis based on raw material costs at the time
13 and what we understood to be the Chinese prices we
14 felt we could be competitive in the U.S. market. Now,
15 that doesn't mean dollar for dollar we're on, there is
16 some values given to service, but it's within a narrow
17 band of five percent or so, and we felt we could be
18 competitive with the Chinese.

19 Once we had started productions, we had gone
20 through the whole Katrina episode, and raw material
21 costs had gone up. When we went back and did a
22 postmortem of our plan from a production standpoint,
23 everything else, we were right on where we were
24 expected except raw material costs were higher, and we
25 found that the Chinese had not gone up in price.

1 So, yes, we were surprised that as world
2 prices for raw materials increased we did not see a
3 corresponding increase in what we would have thought
4 would be the world price for the bags.

5 COMMISSIONER PINKERT: So are you saying
6 that the volume was not a surprise but the price was a
7 surprise?

8 MR. NOWAK: Where the market went was not a
9 surprise.

10 COMMISSIONER PINKERT: I mean the volume of
11 the Chinese exports. Was that also a surprise or was
12 it simply the price?

13 MR. NOWAK: The ability of the Chinese to
14 maintain their volume was a surprise because we felt
15 that we would have a comparable price and therefore be
16 able to attract some of that volume, whereas it became
17 impossible. We'd get the opportunities to quote but
18 we'd be told that we were 30 to 50 percent high.

19 Therefore, we were not able to take what we
20 felt would be volume from these customers that were
21 expressing a desire for a domestic supply because we
22 just could not get there given the current raw
23 material situation.

24 COMMISSIONER PINKERT: Thank you. Mr.
25 Bazbaz, was the volume of the Chinese exports a

1 surprise to your company?

2 MR. BAZBAZ: Yes, certainly. Absolutely.
3 WE never expected that amount of volume coming in from
4 China. Absolutely. No question.

5 COMMISSIONER PINKERT: Had you looked at
6 Chinese capacity?

7 MR. BAZBAZ: Well, in China we understand
8 there are 200, 300 suppliers of these type of bags and
9 the barriers to entry are very, very low. So as
10 opposed to the United States, this industry in China
11 was established in the early 2000s supplying the
12 markets of Asia, so we did not anticipate this type of
13 competition.

14 COMMISSIONER PINKERT: Thank you. Now, for
15 both of the company witnesses, why would a new entrant
16 into this market focus on the tubular product as
17 opposed to the back seam product or vice versa? Are
18 there business reasons, perhaps, that you can discuss
19 in a public session or that you could put in a
20 posthearing brief that would help us to understand why
21 you would choose one over the other?

22 MR. NOWAK: Since I make both, I'll answer
23 that one. We decided to go tubular because if you
24 look at a bag, the back seam means you've now glued or
25 adhered that seam down the back of the bag. If you

1 can eliminate that, you've eliminated over half of the
2 places where the bag could potentially break open.

3 As Mr. Bazbaz described in his discussion,
4 he makes the woven in a tube and then we split it open
5 so we can make it and then back seam it again. So it
6 made sense to do it as a tube to start with. You're
7 saving a step of production and you're eliminating
8 part of the failure mode.

9 Now, you know, some people, preferences in
10 the market, I think you'll see from probably
11 questionnaires you got in don't care either way. Some
12 people have a preference one way or the other. In our
13 case, we've decided to make both so that we would not
14 have resistance at a customer.

15 Both bags can be a good product, both bags
16 meet the same needs. I guess it's a matter of
17 customer preference and how you can use it as a
18 marketing tool as to which bag is better than the
19 other.

20 MR. BAZBAZ: Yes. I agree with that
21 statement. We started making the back seam bag
22 because that was what was available in Thailand and
23 other countries for export to United States and so we
24 just did the same because it's what they asked us to
25 do. We split open the tubular fabric and made into a

1 back seam bag.

2 I suggest that the tubular bag is in no way
3 inferior of quality or any way in the performance. As
4 a matter of fact, you know, it has its critical
5 aspects of lamination the same as the back seam bag,
6 and you have to also match the printing from the back
7 to the front, it's not an obvious process or a trivial
8 thing to do just tubular instead of a back seam bag.

9 COMMISSIONER PINKERT: Thank you. Now I'd
10 like to turn to Mr. Dorn and ask a couple of legal
11 questions about the analysis of the establishment of
12 an industry. What I'm wondering is in your view are
13 all established industries profitable?

14 MR. DORN: I think if an industry has begun
15 this, to become stabilized, to have a reason to exist,
16 yes, they have to be profitable.

17 COMMISSIONER PINKERT: Well, but you're
18 equating stabilized with established, right?

19 MR. DORN: That's what the Commission has
20 done in the past, and I'm adopting that approach. If
21 you're starting from scratch, I don't see how you
22 could be stabilized and therefore established until
23 you've reached your goal, which is to make money.
24 Otherwise, you'd be much better off putting your money
25 in a bank account or treasury bonds.

1 These companies right here will not be in
2 business two years from now and making this product if
3 this case goes negative because they're not making any
4 money. They're not going to continue just going
5 through the motions without getting any return on
6 their investment.

7 Until they reach that threshold of making
8 return on investment, I don't see how you can say the
9 industry is established.

10 COMMISSIONER PINKERT: Well, have they had
11 enough success with this product that they have a
12 long-term commitment to production in the United
13 States?

14 MR. DORN: I'll let them answer that, but I
15 think it's pretty clear from the record they do have
16 that commitment. In fact, since the duties went in
17 place, as they've testified, things have gotten a lot
18 brighter.

19 COMMISSIONER PINKERT: Mr. Bazbaz?

20 MR. BAZBAZ: Our equipment is absolutely
21 dedicated for this type of product. If we were not
22 successful in this market we would have to shut it
23 down and sell it off to someone else.

24 COMMISSIONER PINKERT: Mr. Nowak, a
25 commitment to the U.S. market?

1 MR. NOWAK: I would say we're fully
2 committed to this market. We'd like to put our plans
3 back in place to expand, and grow and supply this
4 market. The other side of that, however, is I would
5 have a hard time explaining to my banks and investors
6 if we consistently had a product line that lost money
7 that because of commitment we've just got to keep
8 going and lose money in this area.

9 So, you know, it certainly does depend on
10 the outcome of the hearings. We cannot remain in the
11 market that we described being the also ran, the guy
12 who's there in case of an emergency, you know, if that
13 became a big enough piece of the market, I guess that
14 it would let us have a stabilized business.

15 Maybe we could do it without tariffs, but
16 I'd find that hard to believe.

17 COMMISSIONER PINKERT: Now, Mr. Dorn, when a
18 company reaches the break even point does it become
19 more likely that it will remain in business producing
20 the domestic like product?

21 MR. DORN: I guess you have to answer that
22 yes, it's more likely, but it also depends on how long
23 it takes to reach break even. If it reaches break
24 even in accordance with its projections at the outset
25 then obviously it's going to stay on course.

1 If it doesn't meet break even in a time
2 commensurate with its projections then it knows it's
3 falling behind because its goal is not to break even.
4 You don't go into business to break even, you go into
5 business to make money, and these companies are far
6 behind their projections in terms of when they would
7 break even.

8 COMMISSIONER PINKERT: Perhaps for the
9 posthearing if you have any academic discussions of
10 profitability in terms of how profitability bears on
11 the establishment of an industry it would be useful
12 for us to see that. Thank you.

13 MR. DORN: I'll take a look. Thank you.

14 CHAIRMAN ARANOFF: Okay. Some of my
15 colleagues started in on this but I'm interested in
16 exploring -- can you tell me what are the range of
17 customers who use the laminated woven sacks?

18 Obviously pet food is a big one, we see
19 birdseed, but can you tell us what some of the sectors
20 are where this is being used and perhaps whether there
21 are other types of customers where you see the
22 prospect for this product being useful to them but
23 they haven't really adopted it yet?

24 MR. BAZBAZ: Sure. The second use that
25 these bags will go to, naturally will go to sugar.

1 Package for, you know, over 15 or 17 pounds and up.
2 Rice. We've seen rice, you know, the rice
3 manufacturers interested in selling their private
4 brands.

5 Seeds, fertilizers, almost everything that
6 you see packaged in bigger bags outside of the stores
7 are suitable for this type of packaging.

8 CHAIRMAN ARANOFF: But how many of those
9 sectors have the industry made inroads in where you're
10 currently selling the products or the imports are
11 being sold?

12 MR. BAZBAZ: Well, the first segments that
13 we went to were these, but we have now received
14 inquiries from sugar manufacturers, and now also from
15 the rice manufacturers that they want to use these as
16 well, so it goes by segment. These definitely will
17 not go into a cement type of packaging or something
18 like that because they are not a consumer type of
19 product and they don't require this type of graphics.

20 CHAIRMAN ARANOFF: Do you think that the
21 graphics are what draws people to switch because they
22 appeal to consumers as opposed to -- because cement,
23 you know, that comes in a paper bag, right, that can
24 rip? I mean, it's not the sturdiness that would draw
25 new sectors to the product?

1 MR. BAZBAZ: Well, I would like to do an
2 analysis. The cost of these bags are not just because
3 of the unit price, but also, what is the total cost to
4 the cement manufacturer of breaking bags during
5 transportation. These bags for cement are really not
6 part of this category of LW sacks because they only
7 have one or two colors and they are used primarily for
8 distribution of industrial products.

9 So from the total market that we've seen
10 approximately about one billion bags are directed to
11 retail customers, and that's what we've seen as the
12 ideal market for these bags. From this category the
13 pet food market subset is between 500 and 600 million
14 bags a year, so it is the biggest segment of that
15 market.

16 CHAIRMAN ARANOFF: So the other potential
17 markets that are out there in terms of rice, or sugar,
18 or flour, or other things that might come in big
19 sacks, you view those as probably being smaller in
20 total than the pet food market?

21 MR. BAZBAZ: Yeah. The pet food market
22 would be the largest share. Yes, ma'am.

23 CHAIRMAN ARANOFF: Okay. Mr. Nowak, did you
24 want to add something?

25 MR. NOWAK: The one thing that I would add

1 to what Mr. Bazbaz said is there's also a large
2 market, probably not quite as big as pet food, for a
3 lot of different animal feeds. You know, there are a
4 lot of people that have horses.

5 Believe me, since we've gotten into this
6 business I've found there's a lot of people that have
7 a lot of different animals that I never knew about,
8 from show goats, to chickens, to everything else.
9 When you have an expensive horse you buy a bag that
10 looks pretty nice because you think you're giving him
11 better food.

12 We also have seen interest, for example,
13 from charcoal makers that charcoal bags could go this
14 way.

15 You know, the issue has been as people see
16 the better graphics, as Mr. Bazbaz talked about, it
17 causes more people who sell things in bulk to say,
18 hey, could I get a marketing advantage from having the
19 better graphics, from having the water resistance,
20 from having other things, and so we're seeing more and
21 more people with an interest in moving towards these
22 bags.

23 CHAIRMAN ARANOFF: As these other sectors
24 that might be interested in this product or are
25 interested in this product, has it been a race between

1 your companies and importers to try and convert these
2 new potential customers? Have you been actively
3 marketing? How has that worked?

4 MR. NOWAK: I would say that the new
5 customers tend to come to us first because it's easier
6 to develop something with someone local, and then we
7 find they become aware of a price that's 30 to 50
8 percent below us and all of a sudden we find our
9 business goes somewhere else after we've spent the
10 research and development money.

11 CHAIRMAN ARANOFF: So how long is that cycle
12 from when they come to you, you develop the product,
13 you sell them some and then they take their business
14 elsewhere?

15 MR. NOWAK: In some new customers we've had
16 it can be three to four months, you know, in some
17 they're a little bit more loyal and it takes a little
18 bit longer. I wouldn't lead you to believe everyone
19 does it, but, you know, it's happened.

20 MR. BAZBAZ: Madam, I would like to say that
21 we developed this market, but no. The market demand
22 was there. The customers came to us. We just had to
23 make the bags. I mean, I'd like to think ourselves as
24 good salespeople, but we couldn't convince anybody to
25 buy something like this. This demand came from the

1 big customers, like Wal-Mart, who asked the supplier
2 for this bag.

3 CHAIRMAN ARANOFF: Okay. So I know, Mr.
4 Bazbaz, you testified that you were first approached
5 by Purina about entering this market.

6 Mr. Nowak, you said you were approached by,
7 I think you said a distributor.

8 MR. NOWAK: One of the distributors who was
9 bringing bags in from overseas said that many of his
10 customers were asking him for a domestic supply. Our
11 first discussions, as I said to Mr. Pinkert, were with
12 the distributor about could we be competitive in a
13 range with the Chinese at that point in time, and we
14 could, so we got into the business.

15 CHAIRMAN ARANOFF: And you talked about the
16 idea that it was a range and that you expected that
17 you would get some premium or some more space on price
18 because of your ability to be local and to provide
19 service. Is the service that you're referring to this
20 research and development to collaborate with the
21 customer on designing the product?

22 MR. NOWAK: No. Generally it's more
23 service-oriented. You may not have the six or eight
24 weeks it takes to order something from China if your
25 customer comes to you with a rush order, so we can

1 respond quicker than that because we're here and we
2 don't have the transportation time. That's the kind
3 of service I'm really talking about.

4 CHAIRMAN ARANOFF: So it's turnaround time.

5 MR. NOWAK: Turnaround time, lack of having
6 to hold inventories because you don't have the long
7 supply chain.

8 CHAIRMAN ARANOFF: Do you do just in time
9 delivery?

10 MR. NOWAK: Within reason. We like to
11 supply as the customer needs, yes, but generally, we
12 fill orders.

13 CHAIRMAN ARANOFF: Okay. I was struck at
14 looking at some of the business plans that were
15 submitted at the extent to which some of the
16 companies, and not necessarily the ones represented
17 here today, really did think there was a space in the
18 market to be that back up supplier and that that was
19 going to be enough to support, you know, a profitable
20 investment in this.

21 Has the back up supply potential turned out
22 to be smaller than you anticipated?

23 MR. BAZBAZ: Madam, I don't believe that we,
24 and I don't want to speculate for the others, but we
25 would not have entered this business as a back up

1 supplier because then you're relegated just to have
2 only certain orders at some times.

3 These types of operations are designed to
4 work 24/7, so if you are not a substantial supplier
5 you really cannot justify this type of investment. So
6 I would say this back up supplier idea is not good at
7 all.

8 CHAIRMAN ARANOFF: Okay. Do either of you
9 supply other packaging products to the same customers
10 who buy the laminated woven sacks from you?

11 MR. BAZBAZ: We don't.

12 MR. NOWAK: We are trying to because we can
13 make packages, for example, like doggy treats you
14 might get in a grocery store, with the zipper and
15 things. We're getting into those products, so if we
16 would, we would supply other products.

17 CHAIRMAN ARANOFF: Okay. Seeing as my
18 yellow light is on I'll come to the rest of my
19 questions in the next round, and we'll continue with
20 Commissioner Okun.

21 COMMISSIONER OKUN: Thank you, Chairman
22 Aranoff. I want to join my colleagues in welcoming
23 this panel. Very much appreciate you being here and
24 the participation and responses you've given thus far.

25 I wanted to follow-up a moment on the

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1 business plans and note, Mr. Dorn, I do very much
2 appreciate that you followed-up and we received so
3 many of the business plans. I think it's been
4 particularly important on the facts of this case. I
5 always find them relevant to have contemporaneous
6 information but particularly so here today.

7 I was also struck by the question that the
8 Chairman just asked about the secondary supply
9 question, so appreciate your response, Mr. Bazbaz, on
10 that.

11 I also wanted to ask you, Mr. Nowak, I
12 thought that, you know, the information you supplied
13 was particularly detailed and helpful and helpful to
14 me in understanding exactly how you saw the landscape
15 out there. I know you've touched on this today, and I
16 don't know if there's anything else you can say in
17 open session about your company's, the expansion plans
18 you had and the status of those currently.

19 MR. NOWAK: I think I'd rather do those
20 afterwards.

21 COMMISSIONER OKUN: Okay. That's fine. I
22 think, you know, some of it's in there but some of it
23 I can see is what was being projected and not clear
24 exactly what all came to fruition or didn't and the
25 reasons for that. If you could expand on that, that

1 would be helpful.

2 A follow-up to some of the questions that
3 Commissioner Pinkert was asking about, what you
4 anticipated in this market and what did or didn't end
5 up happening. I heard the responses about both the
6 volume and the prices being different than what you
7 had anticipated when you entered this market.

8 Just to be clear, was there any thought
9 about any other nonsubject product or when you were
10 looking at this market, what's happened in the
11 nonsubject, has any of that been surprising or it's
12 really been about the Chinese product that's in the
13 market?

14 MR. NOWAK: I would say the surprise has
15 been on the Chinese product. I mean, we had no intent
16 on making any non-subject products, so our whole
17 intent was getting into exactly --

18 COMMISSIONER OKUN: I'm sorry. Whether when
19 you were looking at the market out there whether you
20 saw the demand such that you expected others to enter
21 the market besides the Chinese that were already
22 there. I mean other foreign suppliers.

23 MR. NOWAK: At the time we were aware of one
24 other foreign supplier which was Thailand and we felt
25 we were price competitive there.

1 Again, at the time, all the customers that
2 we had talked to were telling us we want a domestic
3 source, and our analysis said we could be price
4 competitive and give them, you know, the measure of
5 value they felt a domestic source brought, we would be
6 within that price range, so we felt we'd be
7 competitive.

8 As I said, costs went up dramatically from
9 that point in time and we didn't see the Chinese
10 prices go up correspondingly.

11 COMMISSIONER OKUN: Okay. Mr. Bazbaz,
12 anything to add on that?

13 MR. BAZBAZ: Well, at the time that we made
14 the decision to enter this market we only saw bags
15 coming in from Thailand. Our analysis and research
16 showed that we could be competitive with them. Of
17 course we anticipated many other participants. This
18 is a huge market.

19 You know, we didn't have a problem with
20 that. Our analysis was going to be break even with
21 very, very low volume in terms of the total immediate
22 market that was there. What was a surprise is that in
23 very little time the Chinese flooded the market. That
24 was something nobody could anticipate.

25 COMMISSIONER OKUN: Okay. And then, Mr.

1 Dorn, let me turn back to you on some of the legal
2 issues with respect to whether this is a material
3 retardation or present injury case. Appreciate the
4 information you've put in your brief and some of the
5 comments you made today.

6 I know you had talked about, you know,
7 specific factors that you think the Commission should
8 place emphasis on in here including the growth factor,
9 which I understand your argument there. You know,
10 again, I mean, I think this is, you know, kind of one
11 of the first cases that I've looked at where we've
12 been contemplating this.

13 I wondered if you think there are other
14 issues we should be considering in terms of this type
15 of analysis that could be problematic in the future.
16 In other words, you know, we're always fact specific
17 and we're always company specific, and here we have
18 these projections of what companies believe should be
19 their return on investment.

20 Are there factors that you think would be
21 problematic for the Commission to focus on in a
22 particular case that would, you know, cause us concern
23 in other cases where someone comes in and says, you
24 know, we anticipated our growth rate was going to be
25 10 percent and we got six, you know, therefore we were

1 material retarded.

2 Would we run that danger in this case if we
3 use that as, you know, something we give a lot of
4 weight to?

5 MR. DORN: I don't think so. For one thing,
6 the old cases that discuss material retardation, a
7 number of them say that, you know, each case is unique
8 on its facts and that the factors that are
9 determinative vary from case to case. Unlike in a
10 material injury or threat context, you have no
11 direction from Congress.

12 I mean, you have no factors given to you.
13 The only thing you have are what some prior
14 Commissioners from an earlier time came up with. So
15 in that setting I think you're free to come up with
16 the analysis you think best fits the facts of this
17 investigation. I don't see that really having any
18 binding effect on future Commissioners because it's
19 basically your views.

20 You have the discretion to come up with the
21 appropriate factors to apply given no guidance from
22 Congress. If some other set of Commissioners or the
23 same set of Commissioners wishes to apply different
24 factors in the next material retardation case, I think
25 you're perfectly free to do so.

1 COMMISSIONER OKUN: Okay. And then a
2 question about how one should view prices if you were
3 looking at this as a material retardation case with
4 new companies entering the market competition between
5 the domestic industry itself as it establishes it.
6 Should there be expectations made about prices going
7 lower as a market is established because of domestic
8 competition?

9 MR. DORN: Well, I think there could in the
10 appropriate case, but in this case I think it's sort
11 of a nonissue because the prices here are not
12 sufficient to cover the total cost. Variable costs
13 are fairly high for this particular industry.

14 You know, if you were talking about a start
15 up industry, like steel, if there were some, you know,
16 high fixed costs and so forth, you could see where new
17 entrants are going to drive prices down because
18 everybody has an incentive to sell just above variable
19 cost to have some contribution margin until they get
20 established.

21 This industry didn't really have that leeway
22 because there's not that much, you know, fixed costs.
23 You don't have the leeway to lower your prices. The
24 problem that these folks faced was that the prices
25 from China were often below their variable costs so

1 they didn't have the option of lowering prices.

2 COMMISSIONER OKUN: Okay. And maybe if the
3 producers could comment that when you were looking at
4 this marketplace, and, again, taking into account then
5 since you would start out as secondary suppliers to a
6 number of customers perhaps and there were going to be
7 other entrants, how did you expect prices to go?

8 Again, I understand that the raw materials
9 increased larger than had been anticipated because of
10 events here, but how did you look at your domestic
11 competition?

12 MR. BAZBAZ: We believe that we were very
13 well prepared to be successful in this market because
14 we had had 25 years of experience making bags and we
15 have seen a lot of competitors coming in and out, so,
16 I mean, this is not a business where you're going to
17 be making a killing one year and then the next year
18 you reduce your prices.

19 I believe that our expectations were that
20 the prices would have some deterioration as the market
21 gets saturated, but, you know, this difference in
22 prices is not more than maybe five or 10 percent.
23 Because of the nature of the business it's not more
24 than that because it's substantial amount of variable
25 costs.

1 COMMISSIONER OKUN: Mr. Nowak?

2 MR. NOWAK: I would say from our standpoint
3 as we look at the domestic market, from what we knew
4 about Mr. Bazbaz' operation we would have very similar
5 equipment, very similar overhead, so we felt from a
6 variable standpoint and from a fixed cost standpoint
7 we'd be similar, and since we both tend to be rational
8 competitors we would not be reducing prices below our
9 costs.

10 Other people who made bags, not this type of
11 bags, but if they would decide to get into the market,
12 we felt we had advantages over them because they
13 didn't understand all the technology and that
14 therefore we'd be in a better position. So, you know,
15 we felt there was plenty of market for Mr. Bazbaz and
16 ourselves to be able to participate as reasonable
17 competitors.

18 COMMISSIONER OKUN: Okay. Appreciate those
19 answers. Thank you, Madam Chair.

20 CHAIRMAN ARANOFF: Commissioner Lane?

21 COMMISSIONER LANE: Good morning. I, too,
22 welcome this panel, and I welcome Chairman Aranoff to
23 her first hearing presiding. Look forward to many
24 more. I'd like to start with questions about the
25 volume, and so, Ms. Woodings, I guess maybe you're the

1 appropriate person.

2 I have a real problem with the data in this
3 case, and so I have some questions. You know what the
4 problems are, the two different methods of reporting.

5 MS. WOODINGS: Correct. Yes, I know.

6 COMMISSIONER LANE: Would you please explain
7 your position regarding why the Commission should not
8 rely exclusively on the new HTS heading import data
9 and explain what values you believe are appropriate
10 for subject imports, other imports and domestic
11 consumption for 2007?

12 Now, I know you've done that in your Exhibit
13 10 and so I understand how you came up with those
14 numbers, but why should we not rely upon the new HTS
15 heading?

16 MS. WOODINGS: Yes. Thank you very much,
17 Commissioner Lane. We would like to think that a new
18 HTS item is accurate right off the bat, but
19 unfortunately that's not been the case often. It's
20 certainly not the case here.

21 We have examples that are documented in the
22 brief where specific importers or Customs brokers
23 perhaps on behalf of the importers are seeking
24 guidance on where these items should be classified.

25 So we have the hope and belief that in the

1 future there will be more accurate accounting for
2 these products in the HTS classification that's been
3 introduced, but it hasn't been the case in the very
4 short-term. Another complication may be that there's
5 the question of as to even the heading that the
6 products are covered under.

7 One of the requests for guidance suggested
8 that an alternative classification would be an
9 entirely different HTS chapter. The issue would be
10 that perhaps the chapter at issue, it covers textiles,
11 and there could be some confusion as to whether these
12 products are textiles.

13 They are textiles products, they should be
14 classified under that headings, but there may be some
15 confusion on the part of the import community. Why
16 specifically? I wish I could tell you more. The data
17 are frustrating to us as well. The questionnaire base
18 simply tells us that the coverage is substantially
19 incomplete in the new tariff item.

20 COMMISSIONER LANE: Okay. Now, I understand
21 using your methodology of taking the percentage
22 increase and applying it to 2007 or at least the
23 second quarter of 2007 or the third and fourth quarter
24 of 2007 you came up with these new numbers.

25 What would be the result if we used the same

1 methodology as you originally used to estimate subject
2 imports for 2005, 2006, as well as the first six
3 months of 2007, and for the second half of 2007 you
4 used both HTS numbers combined and applied the same
5 methodology previously used to pull out the nonsubject
6 product?

7 MS. WOODINGS: We could look at that
8 methodology, and I'd also like to give some
9 consideration to whether products are in fact being
10 classified in this separate heading completely as
11 suggested by one of the request for classification
12 guidance.

13 An alternative would also be to look at the
14 data you've gathered in connection with the critical
15 circumstances investigation because that provides
16 monthly data for subsets of the imports for both the
17 first half of 2007 and the second half of 2007.
18 That's also an alternative data source that could be
19 used.

20 COMMISSIONER LANE: And so in the
21 posthearing brief you will provide us with an exhibit
22 using the same methodology that was used before and
23 using both the old HTS headings and the new HTS
24 headings and this other method that you just talked
25 about?

1 MS. WOODINGS: We can do that. Yes, ma'am.

2 COMMISSIONER LANE: Okay. Thank you.

3 MR. DORN: I wish we had thought of that
4 sooner. That's a good idea. Thank you.

5 COMMISSIONER LANE: Well, I was afraid that
6 being the fifth or sixth questioner that that question
7 was already going to be asked, so I was really
8 thrilled that I got to ask it because I really have
9 been confused about the numbers.

10 Now, Mr. Nowak and Mr. Bazbaz, I have some
11 questions, especially Mr. Nowak. Since this is a,
12 "new industry", and you had to do new facilities and
13 had all of these start up costs, et cetera, did you
14 get any tax credits or incentives from your state and
15 local government to start up these businesses?

16 MR. NOWAK: I believe that our initial start
17 up the answer was no. We did purchase some additional
18 property, which was included in I think our submission
19 of our business plans, and the state has given our
20 local community funds to put in the infrastructure,
21 the water, sewer, to that with the expectation that in
22 the future we would be expanding our bag operations on
23 a new site.

24 That has been put on our hold. That was
25 part of our expansion plan.

1 COMMISSIONER LANE: Mr. Bazbaz?

2 MR. BAZBAZ: No, we have not received any
3 help from any governing body.

4 COMMISSIONER LANE: Okay. Now I have some
5 questions about the product itself. Are there any end
6 users that use both the domestic product and the
7 subject product from China? I mean, I remember seeing
8 one of those bags there, one was a U.S. product and
9 one was a Chinese product, and so am I correct in
10 assuming that there are customers that will source
11 from both domestic and subject?

12 MR. BAZBAZ: The motivation of the customer
13 would be to get the product at the lowest price.

14 COMMISSIONER LANE: No, no, no. My question
15 was are there end users that buy both a product from
16 you and a comparable product from the Chinese?

17 MR. BAZBAZ: Yes, ma'am.

18 COMMISSIONER LANE: Okay. Now, have you
19 checked on the shelf, you know, if Purina buys a bag
20 from you and one from China, are they selling the end
21 use product at the same price?

22 MR. BAZBAZ: Yes. The final product, yes,
23 ma'am.

24 COMMISSIONER LANE: Okay. And are there
25 some of your customers that are using paper bags and

1 the laminated woven sack bags for the same product?

2 MR. BAZBAZ: In the pet food category, there
3 are many brands. For instance, Nestle might have 100
4 brands and some of them are already in LW sacks. When
5 they move a brand to an LW sack they supply in LW
6 sacks and no longer in paper. So they are not side-
7 to-side bags, paper and LW sacks.

8 COMMISSIONER LANE: So a 50-pound bag of a
9 particular species of Purina dog chow would only be
10 sold in a laminated bag and not a paper bag also?

11 MR. BAZBAZ: That's correct.

12 COMMISSIONER LANE: I'm sure it's in our
13 staff report but I forget. How much, what is the
14 percentage of the end use product that is made up of
15 the bag?

16 MR. NOWAK: I believe that's about 5 percent
17 or I believe it's 5.

18 COMMISSIONER LANE: I'm sorry.

19 MR. NOWAK: The final product cost, the bag
20 as a percent of final product cost I believe is in the
21 3 to 5 percent range.

22 COMMISSIONER LANE: Okay. Madam Chairman, I
23 will wait till my next round.

24 CHAIRMAN ARANOFF: Thank you.

25 Commissioner Pearson.

1 COMMISSIONER PEARSON: Thank you, Madam
2 Chairman. Let me just say that this sounds great to
3 me. I've been waiting for months to be able to say
4 "Madam Chairman."

5 Let me extend my welcome to the members of
6 this panel. I have had some experience with bags of
7 various sorts, particularly when I was still involved
8 in farming. And I know how inconvenient it can be
9 when one of them breaks. So I am glad to see the
10 technology evolving and getting more and more toward
11 products that are not likely to spill their goods out
12 onto the floor.

13 I have some questions regarding demand. And
14 so, Ms. Woodings, let me begin with you. You have
15 argued that Table 4.2 understands imports from China
16 in 2007. Does that mean that the staff report also
17 under-reports apparent consumption for the market as a
18 whole?

19 MS. WOODINGS: That's correct, Commissioner
20 Pearson. We would suggest that the 2007 figure is
21 understated. And we have offered an alternative
22 calculation of that figure.

23 COMMISSIONER PEARSON: Okay. Whereas you
24 would feel that the apparent consumption numbers we
25 have for 2005 and 2006 are okay?

1 MS. WOODINGS: That's my recollection. I
2 will take the opportunity in post-hearing to examine
3 that. But we were particularly concerned with 2007.

4 COMMISSIONER PEARSON: Okay. So for Mr.
5 Nowak and Mr. Bazbaz, is demand for the laminated
6 woven sacks in the U.S. market likely to grow further?
7 Is the market saturated? What do you see the trend?

8 MR. NOWAK: We believe it's going to
9 continue to grow. I believe it's been growing in the
10 20-plus percent is my recollection. And we see that
11 continuing at least for the next four or five years.
12 And then it may go down a little bit from that but,
13 you know, still a very good growth rate, above GDP
14 certainly.

15 MR. BAZBAZ: The market segment as a whole
16 is growing, more than GDP. But the LW sacks as a
17 percentage of the total bags used in this category is
18 explosive, it's an explosive growth. It's going to
19 take, you know, years to get to where they need to be.
20 So the outlook is very big on growth.

21 COMMISSIONER PEARSON: Okay. And most of
22 that growth will be replacing multi-wall paper bags?

23 MR. BAZBAZ: The majority of that will be
24 replacing multi-wall paper bags as a substitution, for
25 you know, it's a better product. But also, the demand

1 in all is growing because more people have more pets
2 and they want to treat them better. You know, it's
3 something particular to the U.S. and North America.

4 COMMISSIONER PEARSON: Okay. Well, would
5 you expect that growth actually to occur if Chinese
6 sacks are subject to antidumping countervailing duty
7 orders? And I ask that because much of the, many of
8 the sacks available in the U.S. market have been at
9 prices quite a bit lower than might be the case if an
10 order is in effect, and so I'm wondering will we still
11 see the growth in demand for the laminated woven sacks
12 if, indeed, the relatively lower-cost supply is simply
13 not available?

14 MR. BAZBAZ: The growth is going to be there
15 regardless of the Chinese imports. This is a product
16 that is used, that was originally demanded by the big
17 box sellers like Wal-Mart and Sam's. But once it
18 reached the consumer, the consumer had a tremendous
19 preference for this type package versus any others.
20 So now it's driven by the consumer, it's not driven by
21 anybody else.

22 COMMISSIONER PEARSON: Okay. But we have on
23 this record a statement by a purchaser indicating that
24 he believed that if the Chinese bags were no longer
25 available that many users would go back to multi-wall

1 paper sacks because of the cost advantage.

2 MR. BAZBAZ: I wouldn't believe that. I
3 wouldn't believe that would be true. This demand was
4 driven by the customer and the consumer now demands
5 these products, of pet food packaged in these bags
6 which preserves the pet food fresher, it doesn't have
7 spillage and it is a more attractive package, you
8 know, he is going to be probably out of business if he
9 goes back to paper.

10 COMMISSIONER PEARSON: Mr. Nowak, do you
11 have any thoughts on that?

12 MR. NOWAK: Yes. I agree with Mr. Bazbaz.
13 I think that this package did not start to get
14 accepted because the people that do the packaging were
15 asking for the new package. Like many segments of
16 industry, they were happy doing what they were doing
17 and didn't like change. The Wal-Mart's, the Targets,
18 the Costcos, those people said this reduces our
19 spillage, it reduces our costs. Then the whole
20 sustainability argument and environmental argument
21 came along and again woven bags won out.

22 Today there is no stopping woven bags. You
23 know, the price could probably be higher than paper
24 bags, which I personally don't believe it is, and we
25 would still see the transition to the woven bags

1 because now it's demonstrated that it's better from an
2 environmental standpoint, it's better from a spoilage
3 standpoint, and consumers prefer it to the paper bags.
4 So I don't believe it's going back. I believe that
5 may be a somewhat self-serving statement.

6 COMMISSIONER PEARSON: What type of cost
7 difference is there? Let's take a situation for a 60
8 cent laminated woven sack, what would be the cost of a
9 paper sack that would be equivalent to the 60 cent LW
10 sack?

11 MR. NOWAK: Now, you have to understand that
12 I get my information from customers, and customers
13 don't always tell the complete truth.

14 COMMISSIONER PEARSON: Well, let's just say
15 they would like you to understand one side of the
16 issue.

17 MR. NOWAK: I would say that there's
18 instances where we find we're slightly more than a
19 paper bag. There's times when we find we're slightly
20 less than a paper bag. Inherently, I mean normally I
21 would say there is probably a 5 to 7 percent band
22 which we will hear responses in, sometimes high,
23 sometimes low. We see as energy costs have gone up,
24 paper prices have actually gone up faster than our raw
25 material costs. So, you know, it depends on where we

1 are on price increase, whether they have done the last
2 one, we've done the last one, you know, what happens.
3 But it's in a pretty narrow band that can be basically
4 comparable.

5 COMMISSIONER PEARSON: Mr. Bazbaz, do you
6 have observations on paper versus plastic?

7 MR. BAZBAZ: Well, in that particular 60
8 cent bag the paper bag would be selling for about 85
9 cents. So it's a substantial advantage in terms of
10 cost.

11 COMMISSIONER PEARSON: Okay. And at some
12 other sizes of bags might paper have an advantage?

13 MR. BAZBAZ: What we've seen is that that
14 difference becomes smaller when the bags are like 20
15 pounds or 18 pounds. And, you know, it might be
16 reverse if you go to maybe 15 pounds or lower. But
17 for the applications that we are primarily in which is
18 the 17 pounds to 55 pounds we compare favorably
19 against paper.

20 COMMISSIONER PEARSON: Okay. And one of the
21 reasons would be that a small paper bag is less likely
22 to break than a large one just because of the mass of
23 what's in there and how it gets tossed around?

24 MR. BAZBAZ: I believe that the differences
25 are that our equipment is, you know, our cost is

1 driven by a certain amount of cuts per minute. And
2 the paper industry has the ability of running at
3 faster lines than this type of operations.

4 MR. NOWAK: I think the other thing you find
5 is that if you get above a 20 pound and particularly
6 up to a 50, the way the paper people get strength is
7 they put more plies of paper in. So you might have
8 two plies of paper, plus the nice paper on the
9 outside, plus a film on the inside in order to get you
10 the strength that you need. So that's for a 50 pound
11 bag.

12 When you get down to a 10 pound bag that
13 you're on the store shelf with, you know, you can
14 almost be in a McDonald's bag with, you know, a nicer
15 print paper on the outside. So the actual bulk and
16 the weight of the bag, the quantity of paper used is
17 going to vary from being in a larger bag to a smaller
18 bag. Right now we've concentrated on, and the LWS
19 market is really the big bags, the 17 pound and over
20 where there is a substantial improvement.

21 COMMISSIONER PEARSON: Okay. Well, did you
22 have anything more, Mr. Bazbaz?

23 MR. BAZBAZ: Just that when I referred to
24 that market opportunity I was not taking into
25 consideration all shipping sizes, not all shipping

1 sizes at all. I was taking into consideration from 15
2 pounds and up and nothing under 15 pounds or something
3 in that range.

4 COMMISSIONER PEARSON: Okay. Thank you, I
5 appreciate those answers.

6 Madam Chairman.

7 CHAIRMAN ARANOFF: Commissioner Williamson.

8 COMMISSIONER WILLIAMSON: Thank you, Madam
9 Chairman.

10 I realize this is a variable cost industry,
11 but looking at the slide presentation I saw what I
12 thought looked like fancy equipment and some of the
13 equipment built in China and in U.S. factories. And
14 so I was wondering about where your equipment comes
15 from, where does the Chinese equipment come from? And
16 it seems like you do have to have some specialized
17 equipment to get into this business?

18 MR. NOWAK: I believe that the Chinese
19 equipment is made in China or Taiwan. Our equipment,
20 our initial equipment was bought from Taiwan. We have
21 since started buying the equipment in the U.S. where
22 we have been able to design some things, and some of
23 the equipment can come out of Europe also.

24 MR. BAZBAZ: In our case we got equipment
25 almost from everywhere. We have some equipment from

1 Austria, some equipment from Germany, some from Japan,
2 and some also from U.S.

3 MR. NOWAK: I would say that while it is a,
4 in our case we may invest in a little bit better
5 equipment, because our goal is to bring down the labor
6 component of making the bags, we will never compete
7 with China if we had to have as many people as they
8 did to make a product. So, you know, our goal I guess
9 is to invest in machines where we could run it with
10 less labor so that our labor cost per bag is going to
11 be comparable to them even though we are paying a much
12 higher dollar price because our people make many more
13 bags.

14 So, you know, you may find we spend a little
15 bit more on equipment than they do so that we can get
16 the efficiency of the equipment.

17 MR. BAZBAZ: In our case I don't see any
18 difference in terms of the type of equipment that will
19 give you better quality of more automation between
20 Chinese equipment and our equipment.

21 COMMISSIONER WILLIAMSON: But so there's
22 nothing extraordinarily different between their costs
23 of equipment than your?

24 MR. NOWAK: I would say no.

25 COMMISSIONER WILLIAMSON: I am thinking

1 we're talking about these two or three hundred firms,
2 you know, in China that are making the bags, I was
3 curious about whether it was any cheaper for them to
4 get --

5 MR. BAZBAZ: Of course if they buy the
6 equipment made in China they are probably buying the
7 equipment also subsidized. So, you know, it's hard to
8 say. I would say that the equipment is pretty much
9 the same.

10 COMMISSIONER WILLIAMSON: Okay, thank you.

11 It appears from the record that the reported
12 capacity of the domestic industry is larger than the
13 apparent consumption. Does this suggest that there is
14 now over-capacity in the United States or that the
15 capacity numbers are inaccurate? Ms. Woodings?

16 MS. WOODINGS: In examining the question of
17 capacity I think you need to take into consideration
18 the opportunities for growth in the market served by
19 laminated woven sacks. So we will take the
20 opportunity, if you permit, in the post-hearing brief
21 to examine specific data for capacity and apparent
22 consumption. We will note that we are suggesting that
23 apparent consumption is higher than estimated by the
24 staff for 2007. And we are also projecting that
25 apparent consumption will continue to grow at very

1 strong rates so the domestic industry is interested in
2 being available to supply that need in the years to
3 come.

4 MR. DORN: I would just add I agree with
5 that completely. And it's hard to address this
6 question because it's all confidential data. But I
7 think part of the issue is what is the correct number
8 for consumption in 2007. And as we have indicated in
9 Exhibit 10 to our prehearing brief, we think
10 consumption is a lot higher in 2007 than was set forth
11 in the prehearing report.

12 COMMISSIONER WILLIAMSON: Okay, good. Thank
13 you.

14 Since our preliminary determination the
15 domestic industry's production shipments and market
16 share have all increased. These improvements could
17 weigh in favor of finding the industry to be
18 established. To what extent are these improvements
19 due to the ongoing investigation? And how should we
20 factor this passage of time into our analysis with
21 respect to the question of establishment of an
22 industry? Mr. Dorn?

23 MR. DORN: Well, I think you could only say
24 that the effect of the investigation would begin in
25 second half of 2007 at the earliest or likely in the

1 fourth quarter of 2007. So I don't think it would be
2 fair to say that the growth in production, shipments
3 and employment is due to the pendency of the
4 investigation.

5 But on the other hand, I don't think that
6 that means that the industry is established because,
7 you know, as the prior cases that we've cited in our
8 brief point out, I think the critical element is
9 whether the industry has reached break-even. And you
10 have to compare their increases in production and
11 shipments with their target forecast that their
12 investment was based upon. And the facts will show
13 that they have fallen far short of what they
14 projected. The facts will show that they have not
15 been able to reach even a break-even point in terms of
16 their volume and, as a result, have earned no return
17 on their investment.

18 So notwithstanding the growth and the trends
19 that you've mentioned, this industry is not stabilized
20 and not established based upon the precedents that we
21 have cited in our brief. I don't think you've ever
22 had a material, it's very unusual for a material
23 retardation case where you've got a start-up industry
24 where you don't have growth in production and
25 shipments and employment because you are starting from

1 zero.

2 COMMISSIONER WILLIAMSON: Okay. And the
3 fact that the -- I think there has been some testimony
4 that you see a better picture because since the filing
5 of the case but you're saying that's just not enough
6 for us to change our assessment of the way we assess
7 whether or not the industry is established?

8 MR. DORN: Well, I think, you know, I think
9 the industry did benefit towards the end of 2007 from
10 the filing of the petition, from this Commission's
11 preliminary affirmative determination in mid-August
12 and from the imposition of preliminary duties in
13 December 3. I think we can legitimately tell you that
14 after this Commission's ruling in mid-August their
15 phones they did start to pick up more inquiries
16 because folks were starting to anticipate the duties
17 on the imports and they were looking for domestic
18 sources. So, yes, there was some uplift towards the
19 end, but even with that uplift for 2007 the industry
20 was still not generating revenues to cover its total
21 cost, so it was still not established.

22 COMMISSIONER WILLIAMSON: And the
23 improvement continued into 2008?

24 MR. DORN: The improvement continued in
25 2008; correct.

1 COMMISSIONER WILLIAMSON: Just one question:
2 in assessing whether the industry is established
3 should the Commission focus on individual producers or
4 on the industry as a whole?

5 MR. DORN: We think the Commission should
6 focus on the industry as a whole, just as it does in
7 the context of material injury and threat
8 determination. You have no guidance from the Congress
9 on that. The statute doesn't give you any criteria,
10 doesn't tell you one way or the other. But your
11 standard practice has been to look at the industry as
12 a whole, and I would suggest that that's the
13 appropriate approach in this case.

14 In Exhibit 15 in our prehearing brief,
15 Economic Consulting Services performed a break-even
16 analysis that replicates the analysis that was done by
17 your staff in your prehearing report. But we also
18 have provided that to you on an individual producer by
19 producer basis. And I don't think that, you know,
20 there is any one producer that is sort of skewing the
21 overall industry results, so I don't think it makes
22 any difference whether you look at individual
23 producers or the aggregate data. But I would suggest
24 the aggregate data is what you normally look at and
25 its telling, most telling in this case.

1 COMMISSIONER WILLIAMSON: Okay. I guess if
2 you had a different pattern of maybe sizes of
3 companies it might take a different approach to it.
4 But I take it you are saying in this case there's no
5 difference.

6 MR. DORN: Well, you know, if you had one
7 company, one large significant producer who was making
8 lots of money and then everybody else was losing lots
9 of money and so in the aggregate the industry was
10 losing money, you might have a different approach.
11 But that's not this case.

12 COMMISSIONER WILLIAMSON: Okay. In
13 assessing whether the industry has established a
14 reasonable financial break-even point should our
15 analysis be on a retrospective or on a prospective
16 basis?

17 MR. DORN: I think it has to be on a
18 retrospective basis. I mean it has to cover the
19 period of investigation, 2005 to 2007. Those are the
20 data that you have. And, you know, if you wish to
21 look at 2007 data at the very end that's fine, even
22 though there is some uplift in the industry towards
23 the end of 2007, and you have to keep that in mind.

24 COMMISSIONER WILLIAMSON: Okay, good. My
25 time has expired. So I thank you for those answers.

1 CHAIRMAN ARANOFF: Commissioner Pinkert?

2 COMMISSIONER PINKERT: Thank you, Madam
3 Chairman.

4 Turning back to the company witnesses, I
5 believe I heard Mr. Bazbaz say that the fact that your
6 company was established in another domestic like
7 product, in another aspect of U.S., of a U.S. market
8 that that gave you some advantage in getting into this
9 industry. And I just want to confirm that both
10 company witnesses would agree that it was helpful in
11 getting into this particular industry?

12 MR. BAZBAZ: I would say that our experience
13 at making the bags before helped us in the general
14 business sense of when to make the bags, how to manage
15 the resources, how to supply the customers. But
16 outside of that, the equipment is different and the
17 lamination of these bags is a very, very difficult
18 process. So even though we had that experience of
19 making the woven fabric, the woven fabric is not such
20 a big deal. I mean it's now done by many, many
21 people.

22 But putting together the OPP, the OPP with
23 the fabric is very, very difficult. And that's what,
24 that's what happened. Even though we had an
25 established business that basically helped us in our

1 general decision making, it did not help us in
2 particular in this business category.

3 COMMISSIONER PINKERT: Thank you.

4 Mr. Nowak?

5 MR. NOWAK: Well, there's three main
6 processes in this, and that's printing of the film,
7 the laminating and making a bag. In our case we print
8 other products, we print and we laminate other
9 products. We had to learn the woven lamination and we
10 had to learn bag making. I believe Mr. Bazbaz had the
11 bag making and the printing and didn't have the
12 laminating. So in either case there were substantial
13 technological challenges for us to overcome and learn
14 in order to be able to make this final product. So I
15 mean it was substantial but a reasonable risk, I
16 think, given that we knew some of the processes. We
17 were further ahead of other people because other
18 people didn't have two of the three, they might have
19 had one of the three.

20 COMMISSIONER PINKERT: Now, you answered
21 that question in terms of the technological processes.
22 What about the marketing process and the relationships
23 with customers in the U.S. market?

24 MR. NOWAK: From our standpoint we had to
25 learn new relationships with customers in the market.

1 We did rely on some, the people who brought the
2 opportunity to us who were in the market at that point
3 selling imported bags and, you know, they were going
4 to become our sales force for the domestically
5 produced bags when we would have them available, or
6 that was our initial thought.

7 COMMISSIONER PINKERT: Thank you.

8 Now, Mr. Dorn, you've heard this testimony
9 about some of the advantages or lack of advantages
10 that the company's experiencing in getting into this
11 industry. Is that legally relevant under the analysis
12 of establishment, in particular the analysis in the
13 factor that has to do with whether it's a new product
14 line or an existing product line?

15 MR. DORN: Commissioner Pinkert, as we state
16 in our prehearing brief, we think that analysis is
17 inconsistent with the statutory framework. The
18 statutory framework directs the Commission to look at
19 whether the industry producing this domestic like
20 product has been adversely affected or the
21 establishment of the industry has been materially
22 retarded. And the fact that these two firms in
23 particular were existing businesses and making other
24 products distinct from the like product should have no
25 bearing on the answer to that question.

1 In fact, you could argue that the fact that
2 they had some advantages from being an existing
3 business and having some capabilities and skill sets
4 that could be applied to this new domestic product
5 supports the conclusion that their failure is due to
6 the imports from China and not because of their being
7 incompetent or something like that. So I mean if you
8 are going to consider that factor it's a plus factor
9 for us.

10 COMMISSIONER PINKERT: Thank you.

11 Now, another legal issue has to do with
12 capacity utilization. And I'm wondering whether our
13 consideration of capacity utilization should be
14 different under a material retardation framework than
15 it would be under a material injury framework?

16 MR. DORN: I think it would because in the
17 typical case you get involving material injury you
18 have a mature industry that, you know, at some point
19 was utilizing its capacity and its capacity
20 utilization is going down as imports are increasing.
21 Here you're having a situation where the industry
22 starts with zero capacity utilization but necessarily
23 its capacity utilization is going up so it's a
24 different framework.

25 The key consideration, we think, is whether

1 the industry has reached a reasonable level of
2 capacity utilization because until it does that it is
3 not stabilized and is not established. And that's
4 made clear from the break-even analysis that's set
5 forth in the prehearing report. I mean it's very
6 dependent on volume. If these companies had increased
7 their volume and increased their capacity utilization
8 they would have reached the break-even point during
9 the period of investigation, but that didn't happen.

10 COMMISSIONER PINKERT: Now I know this next
11 question may involve proprietary information and so it
12 may be better addressed in a post-hearing submission,
13 but can you give us some understanding of where
14 capacity utilization would be in the absence of the
15 Chinese exports, or perhaps a better way of framing
16 that question would be where should the capacity
17 utilization of the U.S. industry be absent other
18 circumstances that may have harmed the industry?

19 MR. DORN: Obviously based on the
20 confidential record.

21 COMMISSIONER PINKERT: Thank you.

22 I think also in the post-hearing brief it
23 would be useful for you to describe the production-
24 related activities of the domestic producers so that
25 we might understand whether all of them are engaged in

1 sufficient production-related activities to be
2 considered domestic producers. Thank you.

3 And those are all the questions that I have.
4 I appreciate the testimony and I look forward to the
5 post-hearing submissions.

6 MR. DORN: Thank you, Commissioner Pinkert.

7 COMMISSIONER PINKERT: Thank you.

8 CHAIRMAN ARANOFF: I think I have a few
9 left.

10 Going back to Commissioner Lane's question
11 about the import data and what they show, and they
12 show the volume of imports declining in the second
13 half of 2007, the one possibility that I don't you
14 addressed is that they really did decline because of
15 the pendency of the investigation. Is that a likely
16 or unlikely explanation? And would it help your case
17 if we were to make that assumption?

18 MS. WOODINGS: Thank you very much, Madam
19 Chairman. I would suggest that your questionnaires
20 are telling you that that's unlikely. There are
21 several, you have three types of questionnaires, you
22 have numerous data sources within those
23 questionnaires, and those questionnaires are telling
24 you that the subject imports did not decline in 2007.

25 CHAIRMAN ARANOFF: Okay. If they did how

1 would that be harming? It doesn't seem as though
2 that would cut against the arguments that you're
3 trying to make in any event if we were to find that
4 they did but it was due to the pendency of the
5 investigation?

6 MS. WOODINGS: That would be correct. And
7 there's some possibility that towards the end of 2007
8 that these effects started to show. Mr. Dorn might be
9 able to address that in detail. And I think the
10 industry witnesses have some feel for the order cycle
11 for these products, might be able to expand on that.

12 MR. DORN: My understanding from talking to
13 Mr. Bazbaz and Mr. Nowak is that after the
14 Commission's preliminary determination in mid-August
15 that they did start to get more inquiries from
16 customers but there's about a 90-day lag in moving
17 product from a Chinese source to a domestic source and
18 so the benefits would tend to happen in the fourth
19 quarter and not in the third quarter of 2007.

20 MR. NOWAK: That's an accurate statement.
21 However, I think that after the ITC affirmative
22 finding we started to get people who are interested in
23 talking to us but not necessarily ordering. And I
24 would say more of the ordering things came when the
25 initial tariffs were imposed. And so you're going

1 probably 90 days forward from there.

2 CHAIRMAN ARANOFF: Okay, I appreciate those
3 answers.

4 One question I alluded to in the first round
5 but it goes back to basic questions about the product,
6 is the OPP lamination is that universally regarded as
7 superior or are there some customers that still prefer
8 paper lamination?

9 MR. BAZBAZ: Madam, are you referring to
10 paper lamination for LW sacks or --

11 CHAIRMAN ARANOFF: Yes, yes.

12 MR. BAZBAZ: We see the majority of
13 customers preferring the OPP as opposed to paper. But
14 if you see the paper side by side with this it would
15 be very similar with this type of package. So it's as
16 attractive as the OPP.

17 CHAIRMAN ARANOFF: Is the reason that that
18 product is still on the market just because some
19 people were already using it and haven't bothered to
20 look into switching or do you think people have
21 actively compared the two and said, no, you know, I
22 like paper better?

23 MR. BAZBAZ: I believe that there is one
24 producer of the bags with the paper and the surface
25 printing on the paper. And they continue making these

1 products for different applications. But what I was
2 saying before is that once a larger customer decides
3 to put a brand in a specific type of package, they
4 want to preserve that package consistently in all the
5 distribution chain and would not have both types of
6 bags.

7 CHAIRMAN ARANOFF: Right.

8 MR. BAZBAZ: Yes.

9 CHAIRMAN ARANOFF: What I was trying to
10 establish is whether people to the extent that some
11 people are still buying the paper laminated sacks that
12 it's more inertia than because they've found a benefit
13 in that product that they couldn't get from your
14 product?

15 MR. BAZBAZ: I don't know the answer, ma'am.

16 MS. WOODINGS: Madam Chairman, might I
17 suggest that there are some indications in the
18 questionnaires that we might address post-hearing that
19 talk about any preferences for paper lamination.

20 CHAIRMAN ARANOFF: Okay, I'd appreciate
21 that.

22 Commissioner Williamson asked this right off
23 at the beginning as a question for post-hearing but I
24 just want to add to his question. Regarding the
25 current status of Mid-America's production facility,

1 if you could answer for us post-hearing what the
2 current status is of its equipment and its facility,
3 whether it's idle, whether it's been sold to another
4 producer, either domestic or foreign, whether that
5 facility would be able to restart production and, if
6 so, under what circumstances?

7 MR. DORN: We will be pleased to do so.

8 CHAIRMAN ARANOFF: Thank you very much.

9 Now, I know my colleagues have talked to you
10 about a number of the factors that the Commission has
11 traditionally looked at in assessing whether or not
12 this is a material retardation case. I just wanted to
13 go back to the issue of capacity utilization. That
14 was a point that you stressed, Mr. Dorn, that this
15 industry was operating at a low rate of capacity
16 utilization. And I'm interesting in exploring whether
17 that's really a good measure that carries across
18 multiple cases of whether an industry is established
19 because in the Commission we do often see industries
20 that are producing at 50 percent capacity utilization
21 or even less that are quite profitable, and so
22 obviously we don't want to be looking at criteria that
23 might seem to make sense in this case but wouldn't
24 make sense in every case?

25 MR. DORN: Well, as I said before, I think

1 every material retardation case is going to stand or
2 fall on its own facts. And I think the fact that you
3 look at capacity utilization in this case is not going
4 to mean that the next case coming along necessarily is
5 going to consider capacity utilization.

6 I guess the bigger point in terms of
7 capacity utilization is just another way of getting at
8 the question of whether the industry is going to be
9 able to break even, which is dictated by the volume.
10 You need a certain volume to cover your fixed costs
11 and in order to break even. And you can look at it in
12 terms of break-even analysis or capacity utilization
13 but I think the result's the same.

14 CHAIRMAN ARANOFF: Okay. That was my
15 observation too, that in a lot of ways capacity
16 utilization really collapses back into the issue of
17 break even or profitability.

18 In your brief you argue with respect to the
19 length of domestic production operations you seem to
20 argue that we should consider not so much the industry
21 as a whole but rather the experience of certain
22 individual producers. And I'm concerned that that
23 kind of an approach might lead to, you know, odd
24 results on facts that perhaps are different from the
25 facts in this case. For example, if there was one

1 domestic producer maybe in business for ten years and
2 then in the last six months all of a sudden a whole
3 bunch of new entrants, would you want to find that the
4 fact that the larger number of producers entered
5 recently means that the industry is not established?
6 Or would you want to look at the fact that one
7 producer entered the market a long time ago? And here
8 obviously we have a timeline that's not over ten
9 years, it's over three or four years, but it does
10 raise some of those questions.

11 MR. DORN: I think the point we were trying
12 to make in our prehearing brief is we don't think it's
13 a negative factor for us that a company that started
14 in the earlier end of things has not itself been
15 successful. I mean you can't say, well, you know
16 production started back in 2003 and therefore that's a
17 fact in claiming the industry is established now by
18 2007 if that producer that started in 2003 has not
19 made significant inroads in terms of penetrating the
20 market, having a number of customers and reaching
21 profitable operations as opposed to just participating
22 in a very niche, narrow market with a couple of
23 customers, so.

24 CHAIRMAN ARANOFF: Would you say we
25 shouldn't really put a lot of weight on that company

1 that entered in 2003 at all because they really
2 weren't producing this precise product?

3 MR. DORN: Yes.

4 CHAIRMAN ARANOFF: Okay. A similar question
5 with respect to the issue of continuous or
6 intermittent production. In this investigation
7 obviously on the one hand we have the fact that
8 several producers have had intermittent production or
9 started and stopped. On the other hand, if you look
10 at the data for the industry as a whole it shows
11 increasing trends in terms of production and shipments
12 obviously, as you point out, from a very low base.
13 But I am struggling with how to address the issue of
14 what do we really mean by intermittent production when
15 we're seeing these upward trends?

16 MR. DORN: Well, I think that the only way
17 you can look at intermittent production is on a
18 producer by producer basis. I mean one of the factors
19 you look at is whether there's been any cessation of
20 production. That's got to be looked at on an
21 individual producer basis. Another is whether there
22 has been stop and start operations. I don't know how
23 you assess that without looking at producer/producer.
24 Because you could have producer A and producer B
25 increasing production from 2005 to 2006 to 2007 in the

1 aggregate, but each of them could be experiencing
2 intermittent stop and start in 2005, 2006 and 2007. I
3 don't think you can get at that without looking at the
4 individual producer data.

5 CHAIRMAN ARANOFF: Okay. Well, I appreciate
6 those thoughts. And obviously we will be looking at
7 those issues carefully.

8 Commissioner Okun.

9 COMMISSIONER OKUN: Thank you.

10 Just a couple other questions. This goes
11 back to the pricing discussion. I'm trying to keep
12 that in mind as I read the record what was going on.
13 And I just wanted to be clear in the responses I heard
14 earlier.

15 When you entered the market, I mean I
16 understand, I understood the point I think that the
17 raw material prices increased and, therefore, I think
18 you couldn't come in at the same prices you had hoped
19 to. But in looking at the Chinese product that was
20 already in the market when you were making these
21 calculations of coming into the market, as I
22 understood it, at competitive prices, not dollar for
23 dollar as I heard Mr. Nowak say, and you might need to
24 do this confidentially, can you give me a little more
25 context of what actually happened when you first came

1 into the market, and it will be different for the
2 different producers? But again I'm just trying to
3 figure out whether you felt like you were competitive
4 at some point and then there was divergence or that it
5 just never, the market wasn't the market you expected
6 to be in at those prices? Mr. Nowak?

7 MR. NOWAK: When we did our initial study,
8 as I mentioned, we looked at Chinese prices and our
9 prices and we felt we could be competitive. The cost
10 increases happened. When we entered the market then
11 in May of 2006 we would get requests from customers
12 for quotes, however when we would give them those
13 quotes, and it was because they were saying, "We want
14 a domestic supply," we would give them a quote as a
15 domestic supply and we would hear back, You're 35 to
16 50 percent high.

17 And I wish there was a point where we could
18 say, you know, we were competitive and then all of a
19 sudden it went. But in the time frame that we were
20 constructing equipment and installing equipment
21 everything happened to move the pricing up.

22 COMMISSIONER OKUN: Okay. And then this I
23 know you need to post-hearing, and it may be in
24 something that you've already supplied, I'm not sure.
25 When you were discussing with domestic suppliers who

1 you had talked to who you thought were potential
2 customers was there a -- did customers have a
3 particular premium in mind that they were willing to
4 give to have a domestic supply?

5 MR. NOWAK: No. I mean there was no
6 discussion over premium. At the time we felt we could
7 be competitive. So, you know, and we felt if prices
8 moved a little bit we'd be okay in the 5 percent
9 range. But, you know, no one thought we could be at
10 the 35 percent range.

11 COMMISSIONER OKUN: Okay. Mr. Bazbaz, could
12 you describe your experience?

13 MR. BAZBAZ: We were approached by this
14 major pet food supplier and they knew that we needed
15 to be competitive but they expected us to be slightly
16 more than what they were buying from other places,
17 like in this case Thailand. We compared ourselves to
18 the Thai prices. And we determined that it was a very
19 good and viable market and product.

20 We did not see the Chinese. And we couldn't
21 see the amount of volume that the Chinese started to
22 bring to the United States. I must say that the
23 Chinese prices were in our case 30 to 50 percent below
24 our price. So it was like there's nothing we could
25 do. We didn't see that.

1 So two things, not just the price but the
2 amount of volume and the rate of penetration of the
3 Chinese imports.

4 COMMISSIONER OKUN: Okay. Maybe, Mr. Dorn,
5 and this is for post-hearing, to the extent there is
6 information, other information that might be available
7 about pricing or premiums or anything else for
8 domestic supply that would be contemporaneous when
9 some of this was going on that would be very helpful
10 to see as well.

11 MR. DORN: We'll try our best.

12 COMMISSIONER OKUN: Okay, appreciate that.

13 And of course I am also a good customer,
14 having pets, that I actually like these bags that
15 don't break. But I had a curiosity question I think a
16 little bit which was in addition to not breaking what
17 I actually like are the things that close with that
18 thing across the top as opposed to when you have to
19 tear a sack open and everything spills out. Does that
20 have anything to do with the laminated sacks or is
21 that just -- in other words it seems to me you only
22 find that kind of zip closure on things that are
23 laminated as opposed to paper. Is that true or is
24 that just my limited anecdotal experience in the dog
25 food store?

1 MR. BAZBAZ: This has been in existence from
2 the paper bags as well. But it works better in these
3 bags. So that's why it's more rigid and it's easier
4 to open.

5 COMMISSIONER OKUN: Okay. So it's just
6 better with the type of product that is.

7 And then I'm not sure if you all commented
8 on this earlier but is there -- if you have customers
9 out there who can switch between domestic and imported
10 product and they can use, in other words when these
11 customers can use both products at the same time
12 without changing printing plates or anything or do
13 they have to change something in order to go from, you
14 know, these two -- I guess I'm just looking at what's
15 up here, these things that look identical but one's
16 from an import source and one's from your company?

17 MR. BAZBAZ: When they have a brand, a
18 specific brand in that type of bag, they can use the
19 Chinese bag or our bag at the same piece of equipment
20 at the same place, same distribution channels and even
21 at the same store. So it's completely
22 interchangeable.

23 COMMISSIONER OKUN: Okay. So it would be
24 just if the designs were changed that it would be?

25 MR. BAZBAZ: Yeah, it could be another

1 design that strictly would be sent to that foreign
2 supplier. But most of the cases they are the same
3 design.

4 COMMISSIONER OKUN: Okay, okay.

5 MR. NOWAK: The design really does not
6 affect us because they would supply us the design.
7 And if they supplied the same design to the foreign
8 supplier then either one of us could supply. The
9 place where we have been getting the business is all
10 of a sudden the foreign supplier's container doesn't
11 show up, then they would call Isaac or I and say, How
12 fast can you get product here? Or if there's
13 particular brands that Wal-Mart doesn't give them very
14 long lead time on so that it's impossible for them to
15 order from overseas company then we would get that
16 business.

17 But the predictable ones, the ones they sell
18 lots of they would buy from China. And so that's what
19 we're saying, it's hard to build a business based on
20 getting the leftovers or the emergencies.

21 COMMISSIONER OKUN: Okay. Well, I think
22 that covers my questions, Madam Chairman. Thank you
23 so much.

24 CHAIRMAN ARANOFF: Commissioner Lane?

25 COMMISSIONER LANE: Thank you.

1 Mr. Dorn, is there a higher standard to find
2 material injury than to find material retardation?

3 MR. DORN: I don't think so.

4 COMMISSIONER LANE: Well, then what
5 difference does it make in this particular case
6 whether we look at material injury or material
7 retardation?

8 MR. DORN: Absolutely none. In fact, I mean
9 I thought -- you know, at the staff conference, as I
10 said earlier, we presented the case either way, so you
11 could either view it as being not established due to
12 material retardation, or if you find it's established,
13 it's injured.

14 The other side argued that it's probably
15 better to look at it in terms of not being established
16 and to apply material retardation factors. But we
17 think it makes no difference. And it may be the
18 easier route for you in writing your decision just to
19 do it in terms of material injury and to avoid some of
20 these novel questions about what the factors are and
21 what they mean in the context of material retardation.

22 COMMISSIONER LANE: Oh, I might look forward
23 to getting a remand from the CIP on material
24 retardation if we go that route.

25 MR. DORN: But, Commissioner Lane, my main

1 concern was, you know, in raising the material
2 retardation argument was I think if you do apply
3 material injury you do have to look at this case
4 differently than the normal case because it is a new
5 industry. And so you are going to have some
6 increasing trends in terms of production capacity,
7 employment and shipments. And you don't see that in
8 your normal case.

9 But as I said earlier, I think if you apply
10 the material injury standard you have to consider the
11 conditions of competition, including the fact this is
12 a start-up industry. You have to concentrate on which
13 of the factors are most pertinent, and I would say
14 that growth is a very pertinent factor in this
15 particular case because if this industry doesn't grow
16 from a zero base it does not survive. And the imports
17 have affected that growth.

18 COMMISSIONER LANE: Okay, thank you.

19 Mr. Nowak, in your initial testimony I think
20 you said that you purchased your fabric?

21 MR. NOWAK: That's correct.

22 COMMISSIONER LANE: Where do you purchase it
23 from?

24 MR. NOWAK: We have a variety of sources:
25 India, we buy some from Turkey, we buy some from South

1 America, I believe it's Nicaragua but I'm not
2 positive. I'm sorry, Colombia, not Nicaragua.

3 COMMISSIONER LANE: Do you buy it from
4 China?

5 MR. NOWAK: At this point we have not.

6 COMMISSIONER LANE: And do you buy any
7 domestically?

8 MR. NOWAK: At this point I believe the only
9 domestic supplier that would supply what we need would
10 be Mr. Bazbaz. And at this point we have not for
11 competitive reasons.

12 COMMISSIONER LANE: Mr. Bazbaz, do you sell
13 your fabric to other producers?

14 MR. BAZBAZ: No, ma'am, we don't.

15 COMMISSIONER LANE: Okay. I think, Mr.
16 Bazbaz, it was you that was talking about just-in-time
17 delivery and -- one minute, I'm sorry. Mr. Nowak, I'm
18 sorry, you were talking about the delivery time being
19 important to your customers and the service. What
20 kind of service do you provide relating to this
21 product?

22 MR. NOWAK: I would relate the service
23 mainly to delivery time.

24 COMMISSIONER LANE: Okay, okay.

25 MR. NOWAK: Again, like I described before,

1 if they have an emergency or getting an order, we
2 could supply it in two to four weeks, where it would
3 take them eight to 12 probably to get it from China.
4 So we can help them take care of an emergency.

5 COMMISSIONER LANE: Now, if I understand it,
6 this product is basically sold on the spot basis; is
7 that correct?

8 MR. NOWAK: Yes.

9 COMMISSIONER LANE: And is that because it's
10 a pricing issue as opposed to a volume issue? I mean
11 I guess I would wonder why a dog manufacturer, I mean
12 dog food manufacturing company wouldn't have a basic
13 idea on a yearly basis how many bags it needs. Why
14 would it not buy a year's supply and keep on like a
15 yearly contract with you as to how many bags it needs?

16 MR. NOWAK: I would say we've had those
17 discussions. However, people have been reluctant to
18 commit to any kind of a long-term supply when you're
19 35 to 50 percent higher. You know, if they feel they
20 have an opportunity to buy more of their product from
21 China they want to have that opportunity. Again,
22 we've tended to be the emergency supplier or the
23 backup supplier because of the pricing. And as a
24 result, they're not quite sure how many of these
25 emergencies are going to come up in a year so they

1 don't want to commit to a certain number and find I
2 could have gone to China and bought more of my product
3 and reduced my costs.

4 COMMISSIONER LANE: So if Purina knows that
5 it's going to need 100,000 bags, and I'm sure that's a
6 low number, it would be reluctant to commit that
7 amount to you because they might be able to buy it
8 cheaper in China, from China?

9 MR. NOWAK: Yes, I would say that that's
10 been happening in the market.

11 COMMISSIONER LANE: And most of your
12 customers feel the same way?

13 MR. NOWAK: Yes.

14 COMMISSIONER LANE: Okay, thank you.

15 MR. NOWAK: But I would also say given our
16 capacity situation -- you know, I mean a customer does
17 that if they want to protect their own interests.
18 Given our capacity situation since we've gotten into
19 the market there's not been a lot of need for
20 customers to do that. If you want to come to me with
21 an order I am looking for you with open arms because
22 there just aren't that many opportunities where people
23 have found our pricing to be attractive versus the
24 Chinese.

25 COMMISSIONER LANE: Okay. In the, Mr. Dorn,

1 this may be a question for you, in the preliminary
2 phase of these investigations the petitioners and
3 respondents agreed that laminated woven sacks were not
4 commodity products. Has anything changed regarding
5 the commodity nature of this product since the
6 Commission's determination in the preliminary phase of
7 the investigations?

8 MR. DORN: Not that I'm aware of,
9 Commissioner Lane. As you can see from these samples,
10 each of these products has individual artwork that's
11 prescribed by the customer. They're very -- there are
12 orders that are placed for these products that are
13 specific to the design and needs of each customer. So
14 I think this is a far cry from a commodity-type
15 product. Therefore, we do not think a Bratsk analysis
16 is required.

17 COMMISSIONER LANE: Okay. In your
18 prehearing brief you assert that the prehearing report
19 does not discuss certain important findings that
20 Commerce made after it issued a preliminary
21 determination. Could you please summarize these
22 findings and explain how in your view they should
23 impact our determination?

24 MR. DORN: We probably know what the final
25 results are about right now in terms of the

1 countervailing duties. But I think the bottom line,
2 the 2.57 percent subsidy rate for SFJ is going to be
3 much, much, much higher. And the all others subsidy
4 rate is going to be much, much higher than the
5 preliminary determination.

6 So our main point was you're going to have
7 much greater rates and much more indication of how
8 subsidized the Chinese industry is. But there was no
9 Federal Register notice accompanied with those post-
10 preliminary determinations and so we'll know the final
11 results here in a few minutes when we get the call
12 from the Commerce Department.

13 COMMISSIONER LANE: Okay, thank you. Madam
14 Chairman.

15 CHAIRMAN ARANOFF: Commissioner Pearson.

16 COMMISSIONER PEARSON: Thank you, Madam
17 Chairman.

18 I have some questions regarding Bratsk. At
19 this point in time what is a commodity product for the
20 purposes of Bratsk? Is it intellectually possible to
21 argue, one, that subject and non-subject imports are
22 highly substitutable for one another and with the
23 domestic like product because they are all made to
24 order and, two, that this case does not involve a
25 commodity product?

1 MR. DORN: Well, I think that the, you know,
2 Federal Circuit was not as clear as it might have been
3 in terms of what was intended with respect to
4 commodity product. But I think the Commission should
5 apply the common meaning of commodity product which
6 would be talking about wheat and products that are
7 made to, you know, industry-wide specifications like
8 ASTM specifications and so forth and not products that
9 are made to order and that differ from customer to
10 customer. I don't see how you can, using common
11 parlance, describe those as commodity products.

12 COMMISSIONER PEARSON: You can lose a lot of
13 market to a non-commodity product fairly quickly in
14 this industry it would appear. So whether or not you
15 technically call it a commodity it seems like the
16 competition is very intense and the possibility of
17 swinging large volumes back and forth is very real.

18 MR. DORN: But we also know that there is a,
19 you know, there are only a limited number of companies
20 that are even making this product. You know, in its
21 preliminary phase of this investigation it was our
22 understanding the only non-subject producer of these
23 products was Thailand. The public record in the
24 prehearing report suggests that there's also been some
25 product from Vietnam.

1 Mr. Bazbaz and Mr. Nowak both tell me
2 they've never seen any Vietnamese product in the
3 market, and they're not aware of ever competing
4 against Vietnamese product in the market. The only
5 product they've seen is from Thailand. And their
6 prices are competitive with the Thai product.

7 So this is not like a situation where you
8 have lots and lots of countries facing a commodity
9 product. It's just the reverse, it's at most three
10 countries making this product and they're not made to
11 the same, you know, industry-wide specifications;
12 every sale is unique.

13 COMMISSIONER PEARSON: You are comfortable
14 that the product is being fairly traded in the United
15 States and the pricing is reasonable relative to the
16 costs that you experienced?

17 MR. DORN: I'm not going to vouch for it
18 being fairly traded because I haven't done any dumping
19 margin analysis. It could be sold at market prices
20 and still be dumped, depending on what the costs are
21 in Thailand and home market prices are in Thailand,
22 so. But in terms of being, in terms of being, you
23 know, a downward pricing that's not been the problem
24 for this industry, China's been the problem.

25 COMMISSIONER PEARSON: Mr. Nowak, Mr.

1 Bazbaz, any direct observations of the Thai
2 competition?

3 MR. NOWAK: The feedback that we get from
4 customers is that we are competitive with the Thai
5 product. Now, I don't know what that means exactly
6 price to price but within a range of value that we can
7 offer our customer we're viewed favorably or equal to
8 the Thai product.

9 COMMISSIONER PEARSON: The public version of
10 the staff report, the last page of it, includes a
11 little commentary about the operations of the CP Group
12 in Thailand and Vietnam. My previous experiences in
13 life have been never to underestimate the CP Group,
14 especially when they're operating in their own
15 backyard in Southeast Asia. And if I understand
16 correctly, the new facility that they are opening in
17 Dong Nai, or have opened in Dong Nai Province in
18 Vietnam has the capacity to manufacture 300 million
19 woven sacks annually, which is not trivial because it
20 would be greater than the domestic apparent
21 consumption in the United States that we are currently
22 measuring in the staff report.

23 Are we just to kind of ignore that? Or how
24 do we look at that?

25 MR. DORN: You need to remember that there

1 are woven sacks that are not laminated woven sacks.
2 There are lots of the, you know, the predominant
3 product is like the first bag that Mr. Bazbaz
4 indicated, that USDA bag, which is just a woven
5 polypropylene sack, you know, which replaced burlap.
6 And there's lots of production of that. I would be
7 shocked to learn that the capacity you referred to
8 there is talking about these consumer-oriented
9 laminated woven sacks combining BOPP film to
10 polypropylene fabric.

11 COMMISSIONER PEARSON: Okay. Well, point
12 well taken. It's a little bit unclear from the
13 context what exactly is intended, at least a little
14 bit unclear to me.

15 MR. DORN: Let me also point out that
16 sometimes there is confusion in the industry because
17 sometimes people will refer to that second bag that
18 Mr. Bazbaz had that had a coating of polypropylene on
19 the fabric as a laminated product. That's not the
20 product we're talking about here. What we are talking
21 about is a lamination that combines the fabric and
22 BOPP, B-O-P-P, film or coated free sheet paper. The
23 lamination is used to bond the two plies. But some
24 folks, some people in the industry would refer to that
25 coated, just a coating of polypropylene as being a

1 lamination. But that latter product is not within
2 scope.

3 COMMISSIONER PEARSON: Okay. In at least
4 one previous investigation I've found under Bratsk
5 that even though subject imports were likely to be
6 replaced by non-subject imports the price of non-
7 subjects would be higher, thus there would be a
8 benefit to the domestic industry. Is it reasonable to
9 apply this same rationale to a domestic industry that
10 hasn't yet achieved a level of output high enough to
11 reach some reasonable break even? In other words, can
12 a benefit be experienced from a price increase if
13 there is no volume to which the increase would apply,
14 or little volume?

15 MR. DORN: Well, I guess that goes back to
16 another point we made in our prehearing brief, is we
17 don't see guidance from the Federal Circuit to apply
18 the Bratsk analysis to material retardation cases to
19 begin with. But if you were to apply the replacement
20 benefit test in a material retardation case I guess
21 you would go back and say if there had been no Chinese
22 imports in the market would imports from other
23 countries have stepped in to materially retard the
24 establishment of that industry?

25 COMMISSIONER PEARSON: If there were no

1 Chinese imports would we have a demand for the product
2 in the country? That would be another question to ask
3 I guess.

4 MR. DORN: Well, the answer to that is, yes,
5 there would be because the product that was being, you
6 know, that was mentioned to Mr. Bazbaz and Mr. Nowak
7 was not the Chinese product it was the Thai product.
8 And that's what the consumers were looking for. It
9 wasn't created by China, it was created, the demand
10 would stem from the request from Nestle, Purina and
11 others and they were referring to the Thai product,
12 not the Chinese product.

13 COMMISSIONER PEARSON: Okay. One other
14 Bratsk question. If we were to conclude that the
15 domestic industry would receive no benefit from an
16 order in part due to loss of volume to domestically
17 produced paper bags, how would that factor into a
18 Bratsk analysis?

19 MR. DORN: Well, I think it's far afield
20 from what the Federal Circuit was addressing. I think
21 it's sort of a non-attribution test I think you could
22 certainly perhaps look at. But it's not a Bratsk type
23 test.

24 And the facts are that there is a demand for
25 this product that's not dependent on price, as Mr.

1 Bazbaz testified and Mr. Nowak testified. And there
2 is no reason to think that if you shut out Chinese
3 imports this growth for this new product is all of a
4 sudden going to stop. Quite the contrary, all the
5 evidence is, all the testimony is that demand for this
6 product is going to continue to grow because of the
7 demand of the consumers for the attributes of this
8 product. It's not price driven, it's driven by the
9 performance attributes of this new product.

10 COMMISSIONER PEARSON: And I know that's
11 been the testimony that we've heard.

12 I do find myself wondering, though, whether
13 we aren't looking at quite a rosy scenario. You know,
14 put an order on the Chinese product, the domestic
15 industry gets all the demand growth that we think is
16 out there. And there is not enough going on from non-
17 subjects to be troublesome. One would hope it would
18 work out that way. I'm just not sure the real world
19 is that generous.

20 MR. DORN: All we know about the real world
21 right now is what's happened since the preliminary
22 duties were imposed. I think Mr. Bazbaz and Mr. Nowak
23 would say that things have changed.

24 COMMISSIONER PEARSON: Okay.

25 MR. NOWAK: I would also tell you that we

1 have a major customer in Mexico that we work with.
2 And Mexico has had 200 percent duties against the
3 Chinese bags and I believe no duties against bags
4 coming in from any other country. And we've not had
5 the price competition that we have here. We have
6 other people approaching the customer but we are
7 readily able to do business because we can be
8 competitive with virtually -- bags coming in from
9 virtually any other country.

10 COMMISSIONER PEARSON: Mr. Bazbaz.

11 MR. BAZBAZ: I'm not sure if I'm going to be
12 able to answer all your questions but I can tell you
13 that Nestle told us that they intended to switch every
14 brand from multi-wall to LW sacks. And they had to
15 plan way in advance because they had to do certain
16 modifications to their equipment to handle this type
17 of bags. They have a plan and it's something that you
18 know is going to happen.

19 And similar there are other customers like
20 Mars, and they are doing the same. So the demand is
21 going to be there, not going back to paper. And one
22 thing is to compete against, you know, fair imports
23 and another thing is to compete against Chinese
24 imports. So I think that the prices of other
25 countries are substantially higher than Chinese.

1 COMMISSIONER PEARSON: Okay. Thank you very
2 much. I have no further questions. Thank you, Madam
3 Chairman.

4 CHAIRMAN ARANOFF: Commissioner Williamson.

5 COMMISSIONER WILLIAMSON: Thank you, Madam
6 Chairman. Just a few questions.

7 You argue that the domestic product and
8 subject imports are highly substitutable. However, as
9 was the case in the preliminary investigation the
10 pricing data show substantial margins of underselling.
11 Can you explain why this degree of underselling exists
12 even if the products are highly substitutable?

13 MR. DORN: I think it's largely the result
14 of there being two to three hundred producers in China
15 who are competing for this growing market. It's the
16 Chinese competing against themselves driving down the
17 prices.

18 And also the fact that because of the high
19 variable cost structure of this industry Polytex and
20 CEI and the other producers cannot lower their prices
21 to match the import prices because to do so they'd be
22 selling below their variable costs.

23 So what's your seeing is lots of lost sales
24 due to price underselling.

25 COMMISSIONER WILLIAMSON: Thank you.

1 If the domestic industry and foreign
2 producers produce laminated woven sacks to order why
3 are there inventories that in some periods have even
4 increased, in some cases I think there are increases?

5 MR. DORN: I will have to take a look at the
6 confidential record and respond in a post-hearing
7 brief on that unless either of you have a comment?

8 MR. NOWAK: The question is why have
9 inventories gone up if there are spot?

10 COMMISSIONER WILLIAMSON: Yes, among some
11 domestic and foreign producers that there have been
12 increases?

13 MR. NOWAK: Because generally our customers
14 will order bags for a expected need and the fickleness
15 of the consumer market will many times cause them not
16 to have that need. And they think that we should hold
17 the bags until they, you know, that need does develop.

18 A good example is within the last month we
19 had a customer order bags for a promotion Wal-Mart was
20 going to do and right after we got them made we were
21 told Wal-Mart canceled the promotion. So hold the
22 bags for us until, you know, we need them. We'll need
23 them eventually. And as a result, the higher your
24 business is or as your business grows those things
25 will start to occur more and more. And obviously

1 because of the fact that we have low volumes we are
2 willing to take more risks to get the order, I guess,
3 so those probably happen to us a little bit more.

4 COMMISSIONER WILLIAMSON: Okay.

5 MR. BAZBAZ: In our case what I can tell you
6 is that we would receive an order from our customer,
7 and they will typically give us an order that will
8 encompass about 90 days of their use. So it takes
9 about, you know, 30 days to proof the art and 30 days
10 to manufacture the bags, but they expect you to keep
11 those bags handy until they slowly apply, use those
12 bags in their plants. So you might hold bags for two
13 or three months for each specific brand.

14 As this industry is growing and they are
15 giving more brands to each one of us, each brand will
16 hold its own inventory. So it's not necessary that
17 you have a proportional amount of inventory for the
18 amount of business that you do, but you might have
19 more inventories because there are more brands and you
20 just necessarily have to have them on the floor. But
21 every order is independent, every order is negotiated
22 independently with the volume and specifications for
23 that specific bag.

24 COMMISSIONER WILLIAMSON: Thank you.

25 This leads to another question. Mr. Nowak

1 mentioned that I guess in the U.S. there might be
2 three to four weeks lead time to fill an order, and I
3 guess from China it's eight to 12 weeks. And I was
4 just curious why it's three to four weeks? Is that
5 just because you want to schedule your production runs
6 or is there a certain amount of prep?

7 MR. NOWAK: Well, by the time we get an
8 order in we have to print it, then we have to laminate
9 it, then we have to make it into bags, and then have a
10 little bit of time to get it ready to ship. So I
11 mean, you know, physically it probably takes two weeks
12 from receipt of order to get through all the
13 production stages. And we would typically say three
14 weeks just to, you know, every time it doesn't run
15 like clockwork, so you want to have a little bit of
16 leeway so you don't just run a customer.

17 COMMISSIONER WILLIAMSON: Okay.

18 MR. NOWAK: So our typical lead time we
19 would call three weeks.

20 COMMISSIONER WILLIAMSON: So it's not one of
21 these overnight things that you could do?

22 MR. NOWAK: No. That would be very
23 difficult.

24 COMMISSIONER WILLIAMSON: Okay, that was
25 what I was asking about.

1 MR. NOWAK: Inks need to dry and things like
2 that that we have to take into account.

3 COMMISSIONER WILLIAMSON: Okay, thank you.

4 Just one last question. Should the
5 Commission make an affirmative critical circumstances
6 determination in these investigations? Please discuss
7 this issue in detail given the large number of Chinese
8 producers that are alleged, you know, alleged in this
9 regard?

10 MR. DORN: WE are not requesting the
11 Commission to make a finding of critical circumstances
12 in these investigations.

13 COMMISSIONER WILLIAMSON: Okay. Thank you.
14 I have no further questions, Madam Chairman.

15 CHAIRMAN ARANOFF: Commissioner Pinkert?

16 COMMISSIONER PINKERT: I have one or two
17 follow-up questions based on the testimony in this
18 last round.

19 I believe I heard Mr. Dorn say that it
20 doesn't make any difference whether it's a material
21 injury analysis, or a material industry finding versus
22 a finding of material retardation. But it does make a
23 difference in terms of how the duties are actually
24 applied, does it not?

25 MR. DORN: You're ahead of me there,

1 Commissioner Pinkert. I'll have to study that.

2 COMMISSIONER PINKERT: Okay. Well, while
3 you're studying that I have an additional question on
4 top of that one.

5 If you start with the assumption that I am
6 not going to apply Bratsk in the context of a threat
7 analysis does it follow that I shouldn't apply it in a
8 material retardation context?

9 MR. DORN: Well, the simple answer would be
10 yes, because the Federal Circuit was addressing Bratsk
11 in the context of material injury and has not directed
12 the Commission to apply it in the context of either
13 threat or material retardation. And since we all know
14 that the Federal Circuit's decision is not exactly
15 consistent with the statute with respect to material
16 injury, I would not think you'd want to extend that
17 flawed analysis to threat and material retardation.

18 COMMISSIONER PINKERT: But in addition to
19 that you may wish to comment in the post-hearing on
20 whether the factors that may push one to not applying
21 it in a threat context also exists in the context of
22 material retardation analysis.

23 MR. DORN: We'd be pleased to have an
24 opportunity to do that.

25 COMMISSIONER PINKERT: Thank you. And

1 that's all I have.

2 CHAIRMAN ARANOFF: Okay. I have no further
3 questions.

4 Commissioner Okun?

5 (No response.)

6 CHAIRMAN ARANOFF: Commissioner Lane?

7 (No response.)

8 CHAIRMAN ARANOFF: Are there any more
9 questions from the dais?

10 (No response.)

11 CHAIRMAN ARANOFF: Does the staff have any
12 questions for this panel?

13 MS. ALVES: Good morning. Thank you, Madam
14 Chairman. For the record, my name is Mary Jane Alves
15 from the General Counsel's Office. We will be having
16 a few questions that we would like to give post-
17 hearing. If you could respond to those in your post-
18 hearing briefs it would be appreciated.

19 Just very quickly though I wanted to ask, in
20 most of the discussions this morning you were
21 referencing your arguments on how to measure the
22 volume of subject imports from China. Could you also
23 comment either here or in your post-hearing briefs on
24 your preference in terms of the data sources to
25 measure non-subject imports?

1 And to the extent that you request that we
2 apply a different methodology to measure subject
3 imports for the first half of 2007 and the second half
4 of 2007 could you also comment whether or not that
5 would apply in terms of non-subject imports as well?

6 MS. WOODINGS: We'd like to address that
7 post-hearing because there are APO issues involved.

8 MS. ALVES: Thank you.

9 Also, if you could address in your post-
10 hearing briefs, to the extent that some of the
11 domestic producers were importing subject merchandise,
12 if you could discuss the prices of the imports as
13 compared to perhaps what some of the customers were
14 asking the domestic producers to price their products
15 at or what the prevailing prices were in the U.S.
16 market for the imports from China, if there were any
17 discrepancies that way?

18 MR. DORN: We'll be glad to address that.

19 MS. ALVES: Particularly for those domestic
20 producers who, for example, might have imported
21 subject merchandise from China in order to get an
22 entree into the U.S. market, if that became a
23 background for their own pricing practices?

24 MR. DORN: We'll take a look at that. Thank
25 you.

1 MS. ALVES: Thank you.

2 At this point, Madam Chairman, staff have no
3 further questions.

4 CHAIRMAN ARANOFF: Thank you.

5 Let's see, since there is no other panel to
6 ask if they want to ask questions I think that takes
7 us right up to closing statement. So, Mr. Dorn, you
8 do want to give your five minutes to give a closing
9 statement?

10 MR. DORN: I will use part of it perhaps.
11 Thank you very much.

12 CHAIRMAN ARANOFF: Please proceed.

13 MR. DORN: I would like to, following up on
14 the question from Commissioner Lane, we do have the
15 final subsidy rates now. SSJ's final rate went from
16 2.57 percent to 352.82 percent.

17 In the all others rate it went to 226.85
18 percent.

19 And on the final dumping margins, Aifudi
20 64.28 percent; SSJ 91.73 percent; separate rate
21 respondent 64.28 percent; and then all other Chinese
22 producers 91.73 percent.

23 So what we have is a case where every import
24 from China during the POI is presumed to be unfairly
25 traded based upon findings of the Department of

1 Commerce both with respect to dumping and with respect
2 to subsidies. Of course, to the extent you make a
3 material injury assessment as opposed to material
4 retardation you are instructed to consider the margin
5 of dumping in making your analysis.

6 We've had lots of discussion, lots of very
7 good questions about the novel issues raised in a
8 material retardation case. But as Commissioner Lane
9 perhaps suggested, maybe this case isn't so difficult
10 at all, maybe it should be looked at just as a garden
11 variety material injury case. We have no preference
12 really one way or the other because we think the facts
13 are extremely strong in showing either material
14 retardation or with respect to material injury.

15 I do find it unlikely that any of you would
16 need to go to the third alternative which would be a
17 threat case because based on the record of this
18 investigation the industry never achieved break-even
19 operations, never made any money through the period of
20 investigation, and so you don't have a situation where
21 you say the trends are looking bad for the industry
22 but they're not quite yet injured but they might be
23 next year. This industry suffered consistently
24 throughout the period of investigation and so as
25 between threat and material injury I would think you

1 would find material injury.

2 One final comment. I know this is not a
3 civil trial, there are no default judgments, you are
4 going to look at the record and calls balls and
5 strikes based upon the evidence. But as the finder of
6 fact you are entitled to use simple logic in assessing
7 the record. And one thing you should consider is the
8 fact that there was an empty podium at the time of
9 opening statement. There was an empty table when it
10 was time for the respondents to come forward. And
11 that not a single argument, not a single legal
12 argument or single fact that we presented on the
13 record from the petitioners' side has been rebutted or
14 contested or challenged by any of the foreign
15 respondents. And we think it is certainly appropriate
16 for this fact finder, like any other fact finder, to
17 take that into consideration in deciding the issues
18 before you.

19 And with that we conclude our presentation.
20 And thank you very much for your attention today.

21 CHAIRMAN ARANOFF: Thank you, Mr. Dorn. And
22 I want to thank the entire panel for taking the time
23 to spend this morning and a little bit of this
24 afternoon with us. We appreciate your traveling here
25 and taking time away from your businesses to answer

1 our questions.

2 Post-hearing briefs, statements responsive
3 to questions and requests of the Commission, and
4 corrections to the transcript must be filed by June
5 24, 2008. Closing of the record and final release of
6 data to the parties will occur on July 11, 2008.
7 Final comments must be filed by July 15, 2008.

8 I believe that that is all our business for
9 this morning and this hearing is adjourned.

10 (Whereupon, at 12:33 p.m., the hearing in
11 the above-entitled matter was concluded.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Laminated Woven Sacks from China
INVESTIGATION NOS.: 701-TA-450, 731-TA-1122 (Final)
HEARING DATE: June 17, 2008
LOCATION: Washington, D.C.
NATURE OF HEARING: Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: June 17, 2008

SIGNED: LaShonne Robinson
Signature of the Contractor or the
Authorized Contractor's Representative
1220 L Street, N.W. - Suite 600
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

SIGNED: Carlos E. Gamez
Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

SIGNED: John Del Pino
Signature of Court Reporter