UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	Investigation Nos.:
POLYVINYL ALCOHOL FROM	)	731-TA-1014, 1016 and 1017
CHINA, JAPAN, AND KOREA	)	(Review)

OPEN SESSION

Pages: 1 through 311 (with excerpts)

Place: Washington, D.C.

Date: January 27, 2009

HERITAGE REPORTING CORPORATION
Official Reporters
1220 L Street, N.W., Suite 600
Washington, D.C. 20005
(202) 628-4888
contracts@hrccourtreporters.com

THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	Investigation Nos.:
POLYVINYL ALCOHOL FROM	)	731-TA-1014, 1016 and 1017
CHINA, JAPAN, AND KOREA	)	(Review)

Tuesday,
January 29, 2009

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

The hearing commenced, pursuant to notice, at 9:33 a.m. before the Commissioners of the United States International Trade Commission, the Honorable SHARA L. ARANOFF, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

SHARA L. ARANOFF, CHAIRMAN
DANIEL R. PEARSON, VICE CHAIRMAN
CHARLOTTE R. LANE, COMMISSIONER
IRVING A. WILLIAMSON, COMMISSIONER
DEAN A. PINKERT, COMMISSIONER

APPEARANCES: (Cont'd.)

Staff:

MARILYN R. ABBOTT, SECRETARY TO THE COMMISSION
SHARON BELLAMY, HEARINGS AND MEETINGS ASSISTANT
ANGELA WISSLER, INVESTIGATOR
JEFFREY CLARK, INTERNATIONAL TRADE ANALYST
CATHERINE DeFILIPPO, ECONOMIST
CHARLES YOST, ACCOUNTANT/AUDITOR
MARY JANES ALVES, ATTORNEY
DOUGLAS CORKRAN, SUPERVISORY INVESTIGATOR

In Support of Continuation of Antidumping Duty Orders:

On behalf of Celanese, Ltd. and E.I. DuPont de Nemours & Co.

LOU PURVIS, General Manager, Polyvinyl Alcohol Business, Celanese, Ltd.
LAURA KORTE, Vinyls Business Manager, E.I. DuPont de Nemours & Co.
EUGENE BARTOLOMEO, Product Line Manager, Celanese, Ltd.
JEANNE WALKER, Associate General Counsel, Celanese International Corporation
MIRIAM RONCHI, Elvanol Product Manager, E.I. DuPont de Nemours & Co.
ELAINE OLSEN, International Trade Specialist, E.I. DuPont de Nemours & Co.

JOHN D. GREENWALD, Esquire
RONALD I. MELTZER, Esquire
PATRICK MCLAIN, Esquire
RAMAN SANTRA, Esquire
WilmerHale
Washington, D.C.

APPEARANCES: (Cont'd.)

In Opposition to Continuation of Antidumping Duty Orders:

On behalf of Solutia Inc. (Solutia):

MICHAEL BEREZO, Vice President, Global Procurement, Solutia
DAVID McCOOL, Vice President and Deputy General Counsel, Solutia
TIM FEAST, President, Saflex, Solutia
RICHARD BOLTUCK, Economist, CRA International

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

I N D E X

	PAGE
OPENING STATEMENT OF JOHN D. GREENWALD, ESQUIRE, WILMERHALE	7
OPENING STATEMENT OF MICHAEL T. SHOR, ESQUIRE, ARNOLD & PORTER LLP	10
TESTIMONY OF JOHN D. GREENWALD, ESQUIRE, WILMERHALE	14
TESTIMONY OF LOU PURVIS, GENERAL MANAGER, POLYVINYL ALCOHOL BUSINESS, CELANESE, LTD.	16
TESTIMONY OF LAURA KORTE, VINYLS BUSINESS MANAGER, E.I. DUPONT DE NEMOURS & CO.	26
TESTIMONY OF RONALD I. MELTZER, ESQUIRE, WILMERHALE	48
TESTIMONY OF MICHAEL T. SHOR, ESQUIRE, ARNOLD & PORTER LLP	128
TESTIMONY OF TIM FEAST, PRESIDENT, SAFLEX, SOLUTIA	129
TESTIMONY OF MICHAEL BEREZO, VICE PRESIDENT, GLOBAL PROCUREMENT, SOLUTIA	138
TESTIMONY OF RICHARD BOLTUCK, ECONOMIST, CRA INTERNATIONAL	150
CLOSING STATEMENT OF JOHN D. GREENWALD, ESQUIRE, WILMERHALE	299
CLOSING STATEMENT OF MICHAEL T. SHOR, ESQUIRE, ARNOLD & PORTER LLP	303

C O N T E N T S

Confidential Session: 229 through 298

P R O C E E D I N G S

(9:33 a.m.)

CHAIRMAN ARANOFF: Good morning again. On behalf of the U.S. International Trade Commission I welcome you to this hearing on Investigation Nos. 731-TA-1014, 1016 and 1017 (Review) involving Polyvinyl Alcohol From China, Japan and Korea.

The purpose of these five year review investigations is to determine whether revocation of the antidumping duty orders covering polyvinyl alcohol from China, Japan and Korea would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Before I begin, I would note that the Commission has granted in part a request from those in opposition to continuation of the orders to hold a portion of this hearing in camera. We will begin with public presentations by Petitioners and by Solutia. We will then have a 10 minute in camera session by Solutia, followed by a 10 minute in camera rebuttal presentation by Petitioners if so desired.

Only signatories to the administrative protective order will be permitted in the hearing room during the in camera sessions. Following the in camera presentations, we will resume with public rebuttal and closing remarks.

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

All witnesses must be sworn in by the Secretary before presenting testimony. I understand that parties are aware of the time allocations. Any questions regarding time allocations should be directed to the Secretary.

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

Madam Secretary, are there any preliminary matters?

MS. ABBOTT: No, Madam Chairman.

CHAIRMAN ARANOFF: All right. Welcome to everyone on this snowy morning.

I think this hearing may go fairly late, but I don't know if anyone's plane will get out of town tonight anyway, so we're all in this for the duration.

Let's please begin with the opening remarks.

MS. ABBOTT: Opening remarks in support of continuation of orders will be by John D. Greenwald of WilmerHale.

CHAIRMAN ARANOFF: Good morning.

MR. GREENWALD: Good morning, Madam Chairman, Commissioners, Commission staff. I am John Greenwald of Wilmer Cutler Pickering Hale & Dorr. I am appearing today on behalf of Petitioners, DuPont and Celanese.

It is almost impossible for me to overstate the harm to the PVA industry in the United States that revocation of these orders would entail. In today's economy what's at issue going forward is, frankly, survival.

The condition of the U.S. industry improved, albeit modestly, when the orders were in effect. That improvement has always been fragile, and it is -- has been -- reversible, and in fact the data that you have before you show that it is already being reversed.

The data in the prehearing staff report run through the third quarter of 2008. Since then, the bottom has fallen out of the U.S. PVA market. Fourth quarter 2008 results and first quarter 2009 results are almost certain to be very grim indeed. At the same time as the bottom has fallen out of PVA demand not only in the United States, but globally, there has been an expansion of capacity in the subject countries.

The combination of the postorder improvement or reduction in subject imports, significant increases in PVA production capacity in the subject countries, sharply contracting worldwide demand and relative attractiveness of the U.S. market in terms of pricing support only one conclusion, and that is if the orders were to be revoked subject imports would return quickly and do so at injurious levels and at injurious prices.

The situation we are facing now is precisely the same situation that the industry faced when the orders were first put into effect. At today's hearing, the opposition to continuation of the orders will come from one company and we believe one company only. That is Solutia.

Solutia has an interest in access to dumped imports that is narrow and that is self-serving. In order to make a case that the revocation of the orders will not lead quickly to a reoccurrence of material injury, Solutia has, as we understand their argument, claimed two things:

First, that the orders have not benefitted the U.S. industry and, second, that because PVA demand remains strong and in line with global capacity revocation of the orders would not lead to an increase in subject imports.

Those factual predicates for Solutia's position are wrong on each and every point. Today's testimony will confirm that the orders did indeed benefit the U.S. industry, but for purposes of this review the more important question is the likely impact of revocation of the orders going forward in light of the current situation in both demand and supply.

What we will show you today is that revocation of these orders will have consequences for the United States industry that can fairly be called catastrophic. In an era of severely depressed demand, and that is what we are in -- make no mistake -- there is no rational economic basis for assuming that subject imports would not re-enter the U.S. market in significant quantities.

Solutia's argument, at least as we understand it, is as if the world stopped in the third quarter of 2008, and that is simply factually and legally incorrect.

So let me come back to my original point. Given the condition of Celanese and DuPont's PVA operations and the prospect of depressed demand not only for this year, but for the next year, and maybe two years or more, the likelihood is that the domestic industry would not survive revocation of these orders intact.

I want to close -- I guess I want to close right now because my red light is on as I see it, but I do want you to consider the context in which this case arises and the economic crisis we are in.

Thank you very much.

MS. ABBOTT: Opening remarks in opposition to continuation of orders will be my Michael T. Shor of Arnold & Porter.

CHAIRMAN ARANOFF: You just turned your microphone off. There you go.

MR. SHOR: Good morning, Madam Chairman and members of the Commission. My name is Michael Shor of the law firm of Arnold & Porter, and I'm appearing today on behalf of Solutia.

This is a pretty straightforward case, and the Commission should not be distracted by Mr. Greenwald's hyperbole. First, these orders did not benefit the domestic industry. The orders did not result in any increase to the domestic industry's market share, nor did they permit the U.S. industry to raise prices. Those are the only two benefits that could accrue.

Both on an average unit basis and on a product specific basis, the domestic industry prices in the merchant market were flat to declining in the two years following the imposition of the orders in 2003 and 2004. The orders simply allowed nonsubject imports, mostly from Taiwan, to flood the market, more than replacing the market share lost by subject imports.

Second, subject producers have not built up huge excess capacity over the period that they are holding ready to unleash on the U.S. market. The simple truth is that all the capacity increases that Mr. Greenwald referred to in China and Japan over the period have not even kept pace with demand increases in the markets they served.

PVA capacity worldwide was tight in 2007 and 2008, as DuPont and Celanese executives repeatedly reminded Solutia during their contract negotiations at the end of last year. China, on which Petitioners focused most of their attention, is not even export oriented. It is a huge and fast-growing consumer of

PVA. New capacity that has been added has both replaced old capacity and has met demand growth in China. In fact, China was a net importer of PVA in 2007.

Third, to mix a couple of metaphors, the sky is not falling on the U.S. industry, nor is the bottom falling out. That argument is predicated on Petitioners' highly selective comparisons for two domestic producers of shipment data only for two quarters for which the Commission does not even have data, the fourth quarter of 2008 compared to the fourth quarter of 2007.

Let me highlight several problems with that data. Did Petitioners mention in presenting that data that DuPont had production problems and had unilaterally declared force majeure and had customers on allocation during the fourth quarter of 2008? Did they highlight how much they were able to increase prices in the fourth quarter of 2008? Did they tell you how much their raw material costs had dropped in the fourth quarter?

Come to think of it, if they are predicating their entire case on the fourth quarter of 2008, why did they fail to come forward with complete data, including profitability data? Yes, PVA demand has declined during the recession, but pricing and profitability have held up remarkably well.

In any event, the Commission is tasked with evaluating competition in the context of the business cycle, which means considering both the current downturn and the inevitable upturn.

Demand for PVA in the U.S. and worldwide grew over the period and will return to growth. In both 2007 and 2008, the supply situation in the U.S. and worldwide was tight. DuPont and Celanese put their U.S. customers on allocation while they continued to export, and DuPont still has Solutia on allocation today.

The domestic industry has proved itself unable reliably to meet the levels of demand already reached. Subject producers have no incentive to increase exports to the U.S. Even if they did, there would be no adverse impact on U.S. producers. They would likely displace the nonsubject imports that displaced them when the orders were entered.

The U.S. industry is largely insulated from price-based competition by virtue of their extraordinarily high degree of captive consumption, their high degree of exports and nonprice factors like product differences, purchaser desire from multiple sourcing, product qualification requirements, long-term contracts and other factors that limit direct price-to-price competition.

Thank you very much.

MS. ABBOTT: Will the first panel in support of continuation of antidumping duty orders please come forward?

Madam Chairman, all witnesses have been sworn.

(Witnesses sworn.)

CHAIRMAN ARANOFF: Madam Secretary, I think that the microphone on the podium is still on.

(Pause.)

CHAIRMAN ARANOFF: Whenever you're ready, Mr. Greenwald. Please proceed.

MR. GREENWALD: Thank you, Madam Chairman. Once again, we thank the Commission for the opportunity to be heard.

One of the pieces of advice I gave the panel that's appearing here today is this Commission stands out in the interest it takes in listening to not so much lawyers, but the business, the witnesses that come, and that they will be heard and their testimony will be understood.

We are going to begin our testimony with the managers of respectively Celanese's and DuPont's PVA businesses. They are going to talk to you about PVA and its uses, the economics of PVA production, U.S. and global PVA demand and supply and the likely consequences to their businesses if the orders were to be revoked.

After that, my colleagues and I from WilmerHale will address, and do so very briefly, legal issues of potential concern, including like product definition, cumulation, captive consumption and the application of the Bratsk doctrine to this review.

One last point before we turn it over to the people you really want to hear from. Imports of PVA from Taiwan, which were mentioned by counsel for Solutia, are the subject of a separate antidumping proceeding.

You know very well that Celanese and DuPont have different views on the effects of imports from Taiwan on the domestic industry as a standalone proposition and will express those differences in any hearing or other exchange that occurs in the antidumping proceeding on imports from Taiwan.

The point here is that both of these companies agree that whatever the impact of imports from Taiwan may be, if the orders were to be revoked or occurrence of material injury by reason of PVA imports from the three subject countries here today or of interest today is a certainty.

With that, let me turn the microphone over to Lou Purvis of Celanese.

MR. PURVIS: Good morning. My name is Lou Purvis. I'm the general manager of the PVA business at Celanese Chemicals.

As the largest domestic manufacturer of PVA, obviously we're here in support of continuation of these orders, which have been critical to the viability of our production assets in Calvert City, Kentucky, and in Pasadena, Texas.

These orders have had a dramatic and positive impact on our business in a number of ways. First of all, it's allowed us to regain market share in the domestic industry. We'll talk in a minute as we get through this presentation about why market share is important as we try to fully utilize our production assets.

The orders have allowed us to gradually increase prices and expand our margins to the point where our business is marginally profitable. It's important for us to note here that we have taken great caution not to abuse the protection that's been afforded to us under these orders.

The health and viability of the domestic consumer base is critical to our own viability, and we have seen in the last decade a dramatic exodus of demand for PVA from our shores. The textile industry, which was once one of the largest consumers of PVA in the U.S., is a dramatic example of that. We have taken great care to increase our prices into the marketplace at a pace at which the market and consumers could handle.

Thirdly, it's important to note this order has given us the confidence and the long-term viability of our business necessary for us to make reinvestments, reinvestments in R&D to develop new applications, reinvestments in our process technology to improve energy efficiency, investments to improve the safety and reliability of our operations. We have a demonstrable track record of success in these areas.

Folks, this dumping order is now more important to our business than ever for a couple of reasons. We have seen through a typical chemical reinvestment cycle a dramatic build, a dramatic increase in production capacity of PVA, particularly in subject countries, driven by growth in those marketplaces.

I think we've shared a lot of details on the specifics of this production capacity that's coming onstream today and coming onstream in an environment where we've seen an absolute market collapse. We shared with you some specific data from our Q-4, from the fourth quarter in our business, that will show you a very dramatic dropoff in demand to the point that all of our production assets in Q-4 were idled for a significant portion of the quarter.

If you look toward the next quarter the situation is not improving. It's actually getting worse. We'll share with you in our posthearing briefs details about our operation, our production facilities in the U.S. and the status of demand.

I thought it would be relevant to talk a little bit about some specific applications for our chemistry perhaps to help you relate to why demand is so weak for our products. Several applications we've listed in our brief as critical to our business. Principally our chemistry is used in applications that are related to adhesive compounding, emulsion polymerization, textiles, paper. Let me give you some examples of those.

Probably the largest market space for us certainly in the U.S. and one we depend most heavily on is the adhesive space. Our chemistry is used in a host of applications. If you were to lay tile on a floor today you would use a PVA-based adhesive to glue those tiles down. A manufacturer of furniture like this where you have a lamination that's glued down on top of a wooden structure uses PVA in those applications.

If you were to have your house recarpeted and buy a roll of carpet that was wound on a tube core, that cardboard tube core is glued together using PVA. Tape joint compounds is a significant application, so if you were to hang drywall in a new home construction PVA is used to fill the gaps between the drywall boards.

This application we call emulsion polymerization is paint. So go buy a can of paint at a home improvement store, and it contains a significant amount of our product.

You'll notice a trend here. It's hard to open a newspaper today without seeing a new article on how bad the housing market is. We've certainly suffered significantly as a consequence of the downturn in housing. It's applications like this that make up the majority of our sales into the U.S. and that are critical to the long-term viability of our business.

There are those in this room who have made the claim that PVA produced in subject countries is not a good substitute in these applications for our PVA; that they require some sort of significant levels of qualification or approval. This is absurd. These are commodity applications. They make up the vast majority of our sales into the U.S.

In fact, I think you'd be hard pressed to find a single customer of mine in these application spaces who has not at one point or another in the past consumed PVA from subject countries and who would be happy to do so again if the price was right.

I want to take a brief moment and draw for you an illustration on our process, the PVA process, and I think it will be relevant for a couple of points here. I'm not a chemist.

CHAIRMAN ARANOFF: Okay. You need to be speaking into a microphone because our court reporter cannot take a transcript any other way.

MR. PURVIS: Will this be okay?

CHAIRMAN ARANOFF: Yes. Sorry about that. I guess if we had known you were going to move around the room we actually have a mobile microphone, but we don't have it here right now.

You also may want to pull the easel a little bit further toward the table because several of us can't see it from the dais.

MR. PURVIS: How's that?

CHAIRMAN ARANOFF: Well, it's better. Commissioner Williamson and Commissioner Pinkert, can you see that? Yes?

MALE VOICE: As long as you stay on the top part.

CHAIRMAN ARANOFF: Okay.

MR. PURVIS: Okay. I'll stay on the top part. This is good.

So let me walk you through briefly the process of our chemistry. We take a product -- I'll use acronyms. We take a product called acetic acid. Celanese is the largest global producer of acetic acid. If you add water to this, this is vinegar. This is the same vinegar you find in your kitchen.

We take that acetic acid into a product, manufacture a product called vinyl acetate monomer. Maybe not an exact proxy, but think of this as Elmer's glue -- sticky, thick. From vinyl acetate monomer we then manufacture PVA. Everything in blue here is something that Celanese produces.

I want to walk you through the steps in the manufacturing chain. As we manufacture acetic acid we take enormous amounts of natural gas and methanol as inputs. What's in blue Celanese manufactures. What's in red we buy. Both methanol and natural gas are obviously heavily tied to the energy complex to crude oil. We then take this acetic acid, and we add ethylene, another crude oil derivative, to make vinyl acetate and then our next step to PVA.

A couple of points we want to make here. First of all, this is an energy intensive business, and our cost structure, our variable cost structure, is heavily tied to the energy complex so when we saw crude oil rise to $147 a barrel last year our prices have to follow that or we're dramatically under water.

The second point I want to make here, and I think it was detailed to some degree in your report, is that as a function of the transformation of vinyl acetate into PVA we produce an enormous byproduct stream of acetic acid.

About 90 percent of the contained acetic acid that comes into the vinyl acetate molecule is recycled. It's a carrier, so it's a continuous loop. The net impact is we consume very little acetic acid in this process.

I raise this point. There's been a lot of talk about the force majeure that Celanese had in 2007, the manufacturing issues that we had. Our manufacturing issues had nothing to do with PVA. Our PVA production facilities have no history of ever declaring a force majeure because of complications with our own production plants.

What Celanese had was a force majeure in our acetic acid chemistry. It's important to note that this acetic acid production unit that declared force majeure represents about 10 percent of global production capacity. This was an industry issue that happened at a point in time in the economic cycle where the industry was completely sold out.

The recycle nature of our acetic acid chemistry allows these businesses, our VAM and our PVA business, to stand alone, to be self-contained without the need for a dramatic makeup of acetic acid from the marketplace.

When you look at our data and how we supplied the domestic market during our force majeure period, you will see a very minimal impact to the domestic marketplace because of our force majeure situation due to our ability to recycle.

The third point I want to make here, and it's relevant in a number of places. Our PVA assets are fixed cost intensive. They're very complex processes. They're very expensive to build. They have multiple steps in the process. They're difficult to run and require a lot of people.

On a dollars per ton of capacity basis our PVA chemistry is probably six to eight times more fixed cost intensive than anything else that we've produced. The implication is we have to run these assets hard to cover our fixed costs. These assets are not profitable running at reduced production rates.

In preparation for these hearings we were asked to describe a sequence of events that would likely occur if these orders were lifted, and it's not necessary that we speculate because we're experiencing it real time.

A significant amount of our sales today take place in the export market. Latin America is a good example, a good proxy for the U.S., where we have many multinational customers who produce the same products that we produce in the U.S., who buy the same grades of PVA.

In the last 60 days, we have seen a dramatic surge in availability of imported PVA from subject countries into Latin America. These are the same sorts of end uses that we depend on in the U.S. market. We're being forced to dramatically reduce our selling prices to maintain a market share.

Ultimately if our prices fall much further and reach a level where we can't cover fixed costs we'll have to back out of that market. Frankly, I can't see a reason why the situation would be any different in the U.S. if these orders were lifted.

I want to close by drawing an analogy to the automotive industry. It's a market space in industry that all of us are tied to in a significant way and one that's received a lot of press here in Washington lately.

Capacity to produce automobiles in the U.S. is roughly 16 to 17 million units. Up through the first half of 2008, sales demand in the U.S. matched roughly this capacity. Obviously we've seen a dramatic turndown in demand for automobiles. I think the best minds in the industry would argue that going forward demand is maybe 11 or 12 million units. You're talking about a 30 to 40 percent decrease.

These industries, this automotive industry, is capital intensive, fixed cost intensive, just like ours. These guys are going to be required to take capacity out in order to stay viable. You guys see that in the press today.

Our industry is no different. We will see in this global economic environment PVA capacity shut down as the industry right sizes its capacity to match demand. Obviously we don't want it to be our assets that are shut down.

Thank you.

MS. KORTE: Good morning, Commission. My name is Laura Korte. I've been with the DuPont company almost 25 years, and of that 25 years 19 of them have been with the vinyls industry, specifically PVA and our VAM businesses.

Because of the length of time that I've been in this business in roles such as manufacturing, sales and most recently as its business manager, the performance of this industry is very personal to me, and I represent not only my business, but also the workers at our LaPorte plant who are both friends and have been colleagues for almost 20 years.

DuPont produces PVA at our plant in LaPorte, Texas. Unlike Celanese, our PVA production is limited to fully hydrolyzed grades, and without significant capital investment we're constrained from producing the full product line that Celanese produces.

We serve the USA PVA merchant market, export markets, and we also consume PVA internally for production of PVB. Like Celanese, we strongly support continuation of these orders on PVA imports from China, Japan and Korea.

Lou has already discussed some of the issues that concern our industry and so I'd like to focus on just the current U.S. and global market conditions, both present and in the past, that would lead the subject producers to continue dumping significant volumes of PVA in the industry.

First I'd like to amplify Lou's comments on the poor state of the PVA market. We do not see that improving in the foreseeable future. In the fourth quarter of 2008, it was as if a light switch had gone off. Orders didn't just decline. They just simply stopped, first in our VAM business in October and then spreading to our PVA business in November and December.

Demand dropped across the board, not limited to one region or market, but included our internal and external customers in all industries, including PVB. The change was not concentrated to just one industry. Customers that only a month before had been asking for more product than we could ship were now canceling orders that had been on our books.

In response, we simply had no choice but to curtail our operations in the fourth quarter, and this is after we had worked hard to start up our units quickly after our hurricane impact from Hurricane Ike.

In past years we've had to cut our production back and our rates back for a week or two to meet a year-end inventory goal, but never to the extent that we had to do in 2008. We shut our operations down in early December and only recently started them back up last weekend.

Even though we took those bold actions to shut down our plants, I'll admit to the Commission today that we didn't act quickly enough and we ended 2008 with large amounts of inventory, negatively impacting the cashflow of our business.

As Lou covered in his testimony, these plants are capital intensive and ideally should be run at or near full capacity utilization, but we can't do that when there are no orders to fill.

While we all hoped that during the fourth quarter that what we were seeing was just an inventory destocking on the part of our customers and that orders were going to pick up in January, we have yet to see demand rebound. Orders in January are anemic. In fact, we still have significant inventories for some customers and are adjusting our current production schedules accordingly.

Just as an example, at year end we had over a million pound of inventory waiting for Solutia to consume at their site in Springfield with additional volume in Texas waiting to ship to them. From the rate that orders are coming in currently, it appears that that material, as well as material for our other customers, will remain in DuPont's inventory for some time.

The last few years in the PVA market have been quite the wild ride as the market has been impacted by increasing global demand, the higher energy prices that Lou talked about and raw material costs and higher freight costs in all of our transportation modes.

These factors resulted in tighter supply/ demand balances in the industry in 2007 and into the first half of 2008, but that was a short period of tightness in the last five to 10 years that I can assure the Commission was an anomaly and not what we should judge the health of this industry on.

This tighter market came crashing to an end in the fourth quarter. DuPont and Celanese were not the only PVA producers that curtailed production in the fourth quarter as there are widespread industry reports of numerous plants globally shutting down.

Shutting down capacity, however, is a short-term fix and does not address the issue of the overall health of the domestic industry. It is at best a stop-gap measure to give us time to assess overall market conditions.

While the higher energy prices that plagued our industry and increased our costs last year have dropped in the fourth quarter and into 2009, I can assure you that has not resulted in a windfall for our PVA business. The rapid declines in energy resulted from an overall lack of demand, not an increase in supply of energy. That decline in demand extends to our PVA markets and customers.

In addition, these rapid declines in energy prices have caused our customers to demand corresponding price decreases. Those demands for price decreases started quickly in October and November and continue today almost daily.

We have been holding off these demands as long as possible. As a rule it takes much longer for a producer to raise prices than to bring them down as customers that are demanding the rapid price decreases are also the ones that resist price increases when prices are moving up.

We've been addressing pricing in a disciplined manner to try and maintain the margins that we can on this lower volume of sales. If the orders were to be lifted, subject imports would be free to re-enter the market, and their entry to our customer base would be through offers of lower price.

Just as we saw in 2001 when the original orders from the 1996 orders were sunsetted, subject imports were offered to our customers at rapidly declining prices as the subject producers came in and offered prices that were 25 to 30 percent lower than current price in the domestic industry.

Those producers have not gained a pound of business as both DuPont and Celanese chose to meet those competitive offers and maintain some volume of sales to our customers. But the damage that was done in 2001 and 2002 was there as our prices declined while costs were also rising during that time, so it doesn't take anything more than a few pounds of imports to crater the price in the domestic industry.

As you can see in our data, it take years to recover the pricing as we were trying to raise price in a disciplined manner that would not negatively impact our customer base.

We've also seen recently customers changing their purchasing behavior, willing to buy on a spot basis versus contract as they have seen the industry shift from a more balanced supply/demand position to a situation where supply is much longer than demand. They're asking not just for price concessions, but also increases in terms and conditions of sale such as payment terms as all of our customers, as well as DuPont and Celanese, try to manage cash.

Just as an example, last week one of our adhesive customers called DuPont to ask us to waive what we would call a less than truckload upcharge. The customer could only afford to buy 30,000 pounds instead of a typical 42,000 pound shipment. They were asking for our help. They couldn't afford to buy anything more than they needed for their order.

To maintain this customer and to get the sale, we did meet that customer's request and give the concession on the pricing, eating more freight for shipping a smaller volume. This is a business where pennies matter not only to the producers such as DuPont and Celanese, but also to our customers, and we're trying hard to be fair and maintain the balance between the two.

It's always hard to predict the future, and that's never more true than today. DuPont believes that overall demand for PVA in the United States will continue to decline short-term as a result of this economic crisis globally and the overall downturn that Lou talked about, especially in the housing and construction industry that serves so much of our downstream products.

The extent and length of this decline is not known at this time. We have yet to see demand respond. Traditional industries and applications for PVA such as textiles and adhesives in the housing market have not recovered, and while we agree with Solutia that the future for new applications such as a photovoltaic application for PVB will eventually grow demand for PVA, DuPont doesn't see that in our immediate one to two year future.

In fact, our predictions for PVB growth, including the impact of photovoltaics for 2009, is that our overall demand for PVB will be down versus 2008 and when it does recover will recover at growth rates half of what we had originally predicted just six months ago.

Five years ago in the original investigation of this order my predecessor, Catherine McCord, testified that it was DuPont's intent then to serve first and foremost the U.S. domestic industry, and that's true today. We would much rather serve our domestic customer base where we have lower freight costs, a leaner and shorter supply chain and a shorter cashflow cycle time than our export markets.

We've been forced to export more over the last five years to augment our U.S. sales and to keep our capacity fully utilized. Falling demand globally, however, in the recent months has already begun to affect this volume as our export customers have chosen to buy smaller quantities from local stocks rather than import from DuPont.

If we cannot export and our domestic sales are impacted by a flood of subject imports if these orders were to be lifted, then we would be forced to reassess running our plant, as well as our place in the PVA industry.

Solutia's contention in their prehearing brief that our exports offset any impact of an increase in imports into the U.S. is simply not true. Exports are a necessity of our business, but they are not our desired route to market.

When I think about what will happen in the future, I look back at what the past behavior of the subject producers has been. This industry has been under attack from subject imports since the mid 1990s when Air Products filed the original petition seeking relief from unfairly traded imports. The imposition of that order in 1996 specifically against Japan resulted in a decrease in the volume of exports. The case was sunsetted in 2001.

At the time, Air Products' vinyls business was being acquired by Celanese, and less than a year later DuPont and Celanese had to file another petition as increased volume of imports following that sunset order and declining prices resulted in price depression in all of our accounts at a time when demand in the U.S. industry was shrinking and the U.S. was in a very minor recession in the fall of 2001 and into early 2002.

We sit here now five to six years later in the midst of a global recession and a globally contracting market. Volatility in the energy markets, declining demand and tight credit, compounded by the excess capacity that has been put on line worldwide, have resulted in an untenable situation for the domestic industry.

If these orders are lifted, subject producers will again be free to re-enter the U.S. at a time when the industry is most vulnerable and do the same things they did to us five years ago.

Since these antidumping orders were imposed in 2003, Chinese producers have greatly expanded their production capacity, increasing by almost 33 percent between 2003 and 2007. Japanese and Korean producers have increased their capacities as well. These capacity expansions were driven by overall higher global demand as the globe had increasing economy.

In the last several years, Chinese PVA has had increased demand in its domestic market for production of things like textiles. Japanese producers have also targeted a larger share of their production to the two applications such as PVA film for LCD screens.

But both of these applications are ultimately targeted at a consumer, and you can only look at the reports from retailers in the fourth quarter, as we had an anemic holiday season for shopping, to understand the consumer simply isn't buying.

If the Chinese producers of textiles cannot export their wares and people aren't buying LCD screens, the PVA that ultimately goes into those industries will need to find a place to go, and that will be into the U.S. market.

Chinese producers and Japanese producers have the same capital intensity that the domestic industry has, and they must run their plants as well. We have no doubt that the U.S. market will be an attractive market for this production, particularly given the pricing differentials in different country markets.

In general, from 2003 to the fall of 2008 price gaps in the U.S. and non U.S. markets has narrowed over the years, but the U.S. still remains the highest priced market. As we've seen in the last few months, Asian prices have fallen further and faster than U.S. prices are currently doing.

Despite the rise in the Asian pricing over the 2003 to 2008 period, they were still substantially lower than U.S. average market prices, and absent any antidumping duties an Asian producer could still net more revenue and margin by selling in the U.S. than they can in their home market, even accounting for ocean freight and average import duties.

The end result of this additional capacity in Asia would be a surge in subject imports that DuPont would struggle to withstand. The condition of our PVA business is at best precarious, and opening the door to increased volume of low-priced imports would be the final blow to our industry.

While we have not met our financial goals, without the orders our results would have been far worse. These orders over the last few years have allowed us to maintain our share of the U.S. PVA market amidst declining demand, and by reducing unfairly priced imports the orders enabled us to partially offset sharp increases in raw materials, energy and freight costs as we worked over the last five years to slowly raise prices in the U.S. market and capture the value for our product.

Prior to the imposition of the orders in 2003, imports from China, Japan and Korea were targeting sales in the U.S. to customers in the adhesives, textiles and paper market segments, three industries that traditionally have been large users of PVA.

Their low-priced imports were forcing DuPont to lower our prices to meet competition and maintain our sales and production volumes. After the orders were imposed, DuPont was able to maintain its relative share in these segments. This was especially important in the textile sector where our ability to maintain our share of a shrinking market has been critical to our operations.

Since 2003, you've all seen reports that the textile industry has suffered in the U.S. through huge declines in its manufacturing as major suppliers such as Dan River, West Point Stevens or Springs either declared bankruptcy, were sold or relocated offshore.

If DuPont had to compete with imports from China, Japan and Korea absent an antidumping order during this time of declining market base, the impact to our sales would have been even more severe.

Similar declines in the U.S. automotive market have occurred over the last five years, as Lou just recently discussed, and the automotive industry not only pulls in sales for PVB for windscreens, but also for other things such as textiles and adhesives that go into the manufacture of a car. More recently in 2008, the downturn in the construction and housing industry has impacted many of our customers in the applications that Lou discussed.

All of these factors of market demand and increasing supply of subject imports will again make the U.S. market attractive to importers wanting to bring their low-priced imports into the U.S. market.

For DuPont, this will mean further downward pressure on pricing for our products, lower profit margins and could result in lower production in U.S.

shipments of PVA. There is a significant risk that we would again be forced to curtail or idle production and to reduce production-related workers in PVA manufacturing and packaging.

Over the last few years we have taken whatever steps we could to reduce our expenses and improve our profitability without impacting our operations and curtailing our production. In manufacturing we have focused on improving our energy efficiency between our two plants.

We have also restructured our selling, technical service and business staff three times in the last five years as we continue to try to support this industry with less resources, and our most recent restructuring occurred just a week ago as we further cut our sales and technical service staff.

We can't save our way to financial health. If the performance of this industry continues to decline, we will be forced to consider more drastic and permanent options. Therefore, DuPont asks the Commission to continue the orders against the subject producers.

Thank you.

MR. GREENWALD: Chairman Aranoff, with your indulgence what I'd like to do is defer any more speaking by the lawyers. You will have questions, no doubt, about Bratsk, about cumulation, captive production.

For us it's more important to save time for rebuttal and for the in camera session, so with that I'd like to close our affirmative presentation.

CHAIRMAN ARANOFF: Well, thank you and welcome again to all the witnesses. We appreciate your taking the time away from your businesses to be here with us.

As Mr. Greenwald has said, we really appreciate the opportunity to hear from people who are directly involved in the business and can give us their perspective. We find these days long, but extremely helpful in resolving these cases.

We're going to begin the questioning this morning with Commissioner Williamson.

COMMISSIONER WILLIAMSON: Thank you, Madam Chairman. I, too, want to express my appreciation to the witnesses for their testimony.

Let's begin with a request for posthearing. Could you please submit a copy of the document that is the subject of your October 31, 2008, filing responding to the Director of the Office of Investigations' request?

If you need further clarification on that we can do it posthearing, but --

MR. GREENWALD: The answer is short. We will submit whatever you want submitted.

COMMISSIONER WILLIAMSON: I wanted to get that out of the way. Thank you.

You made some allusions to the fact that your price increases after the orders first went in effect was kind of gradual, and I was really wondering why you weren't able to obtain say more significant increases after the orders were imposed.

MR. PURVIS: Yes. As we said, Mr. Williamson, clearly there is a concern for the industry -- for the domestic customer base, consumer base -- that we drive a change in pricing in the market at a rate that they could accept.

You also have to understand that there are contracting cycles, right? It's not an instantaneous occurrence that at any point in time we can just go out and make dramatic changes. You have to work through.

You know, typically 70 or 80 percent of our customers are under long-term contracts. You have to work through expiration periods that allow more flexibility to change pricing structures, pricing mechanisms.

Does that answer your question?

COMMISSIONER WILLIAMSON: In part. In that period, how long were the typical contracts? Was there any kind of standard length?

MR. PURVIS: Yes. Typically one to three years is a typical length. We see them run longer.

I think what our data says is roughly 70 percent of our customers in the U.S. are contracted for longer than a one-year period of time.

COMMISSIONER WILLIAMSON: Now, has that trend changed? I got some indication that maybe people are going more to spot prices.

Is that just because of the financial crisis, or is that sort of an industry shift?

MR. PURVIS: Do you want to respond to that?

MS. KORTE: Commissioner Williamson, in our business we have seen a shift toward more spot purchases and customers unwilling to commit, especially in the last few years as prices have been rising a bit more dramatically.

DuPont, for example, implemented five price increases in 2007 and three to four in 2008. Our customers have been willing to only commit for about six months or so and so we've gone through either shorter term contracts of a year or simply a pricing agreement for a period of time that may or may not be documented in a formal contract.

So I've seen that trend in our business, and Lou can speak to Celanese.

MR. PURVIS: I agree. I think it's a near term trend.

Certainly any smart buyer in any marketplace when they see a market going along with dramatic overcapacity available, they don't want to have long-term commitments of any form. So I think it's a trend we've seen more so really in the last one or two quarters at Celanese.

COMMISSIONER WILLIAMSON: To what extent were the more rapid price increases say in '07 and '08 driven by energy costs, increases in energy prices?

MS. KORTE: Certainly the bulk of our price increases over the last two years were driven both by higher energy costs as we were forced to try to recover margins and pass on those cost increases to our customers, as well as the tightness in the supply/demand balance in the market.

The other thing that drove the rather slower implementation of price increases in the 2003 to 2006 period at least from DuPont's perspective was that supply to demand was relatively loose even in the U.S. market, so there was still just not a lot of incentive or we could not push a lot of price increases onto our customers.

There was certainly ample supply in the U.S. market both from the domestic industry, as well as imports that were continuing to come in not only from subject producers despite the orders, but other countries such as Singapore, Germany, that were not subject to the orders.

COMMISSIONER WILLIAMSON: In looking at raw material costs, do PVA producers impose surcharges or other fees to account for the rise in raw material costs?

MR. PURVIS: For Celanese, particularly over the last two years we've seen a dramatic run-up in our raw material cost structure. We just announced price increases directly to the market to try to cover that.

It's not uncommon in our business to add a freight surcharge so that there's a freight component to our cost to deliver PVA. As we see the price of diesel rise to $4 or $5 a gallon and we incur increased costs from our freight carriers, we certainly try to pass that on, so there is from time to time a surcharge imposed specifically on the

freight component.
Does that answer your question?
COMMISSIONER WILLIAMSON: But not on the energy component?
MR. PURVIS: Typically from Celanese's perspective we would try to pass that through directly in the form of a price increase, not calling it a surcharge per se.
COMMISSIONER WILLIAMSON: How much of a lag in the timing between say you adjust your prices in response to falling and rising raw material costs? This has been a factor in some other cases we've looked at.
MR. PURVIS: I'm sorry. The question is how much of a lag between the time we see raw materials go up and the time we can increases prices?
COMMISSIONER WILLIAMSON: Say oil prices jump 10 percent in January.
MR. PURVIS: Yes.
COMMISSIONER WILLIAMSON: How much after that? How many months or weeks after that might you adjust your prices?
MR. PURVIS: Typically prices are settled on a quarterly basis in the U.S. industry, and if we intend to raise prices or desire to raise prices we'll

typically make an announcement 30 days before the turn of the quarter. So generically speaking, 60 to 90 days.

We can announce all the price increases we want. We still have to negotiate in good faith to achieve those. Just a simple announcement of our intent is not success, but typically 60 to 90 days.

COMMISSIONER WILLIAMSON: I don't know to what extent you can address this here, but are you able to hedge on say energy supplies the way some airlines have done? I don't know if that's something you can address now or later.

MR. PURVIS: Yes.

MR. GREENWALD: Let them both answer that in their -- I mean, we'll put it in the posthearing submission.

COMMISSIONER WILLIAMSON: Okay.

MR. GREENWALD: I don't think it's right to have --

COMMISSIONER WILLIAMSON: Okay.

MR. GREENWALD: -- each of them talk about what they're doing.

COMMISSIONER WILLIAMSON: Okay. Thank you. Okay.

Turning to the question of exports from

China, your brief cites significant expansion of the Chinese PVA industry since 2003. However, only one Chinese producer has exported meaningful quantities of PVA to the U.S. since 2000.

Do you claim that other Chinese producers will commence significant exports to the United States in the event of revocation of the orders?

MR. GREENWALD: The answer is unequivocally yes. The one producer you have in mind is subject to the discipline of an antidumping order, but I also believe has a fairly favorable rate under it.

I think that the proof is in the extent to which the order has effectively precluded other Chinese supply from the U.S. market.

COMMISSIONER WILLIAMSON: I mean, is this a case where the other suppliers weren't interested before?

MR. GREENWALD: I believe, and if I'm wrong or if it needs to be expanded upon we'll do so in the postconference brief, but I believe that the rate, that rate that applies to all those producers, is very significant.

MR. MELTZER: May I jump in here? In the prior case or in the original investigation there were many other Chinese producers selling here and attempting to sell here, and then when the order was put into place that ceased except for the one producer which has now a de minimis rate.

COMMISSIONER WILLIAMSON: Okay. Is there anything from other markets that we could look to in terms of the Chinese export pattern that might add further clarification on this point?

MR. GREENWALD: Yes, and I would urge you to do so.

The comparisons that I want to use are confidential so it's an issue that we would get into in the confidential portion of the hearing, but your staff report does contain unit value data, average unit value data by year for exports from each of the subject countries to third countries, and I would urge you to look at that carefully.

COMMISSIONER WILLIAMSON: Okay. And I was also thinking about in terms of other Chinese producers who have not exported to the United States and how they've behaved in other markets.

MR. GREENWALD: Well, what you will see in terms of behavior in other markets is average unit values -- you have for China, for example, a chart in the staff report that will have an average unit value of Chinese shipments to various markets, including the

United States.

COMMISSIONER WILLIAMSON: Thank you for that. Thank you for the answers to those questions.

CHAIRMAN ARANOFF: Commissioner Pinkert?

COMMISSIONER PINKERT: Thank you, Madam Chairman. I see that my red light is on. There we go.

Going back to Ms. Korte's testimony, and this may be more of a question for posthearing, but I want to give you an opportunity to comment on it.

You said that Asian prices have fallen further and faster under the conditions of recession than prices here, and I'm wondering if you can give me some explanation for why that would be the case.

MS. KORTE: We'll expand more on that in the posthearing brief. However, I will say briefly the majority of the world's production is in Asia and so there is certainly a faster supply chain there.

Just to give you one example, whereas the prices in Pakistan in the textile industry were a few months ago $2,900 per metric ton, I recently received a report that Chinese PVA is being offered in Pakistan to our customers at $1,800 per metric ton, which is a dramatic price decrease and a much lower level than U.S. prices.

MR. GREENWALD: Commissioner Pinkert, I think you raise a key point.

Part of the answer obviously is with so much Asian supply located in China, Japan and Korea the effect of the orders provides a significant wall against some of the lower priced imports from these countries that are free to go to other Asian markets, so in part it is a function of the orders.

COMMISSIONER PINKERT: Now, as you know, Solutia argues that price competition between subject imports and domestic PVA is limited by certain factors like quality and product mix, end use and purchasers' qualification requirements.

How do you respond to the attenuated competition argument?

MR. PURVIS: Simply not true. I can't say it any more simple than that. There's certainly some quality differences. There are quality requirements of any PVB producer which are more exacting than the bulk of the industry.

We're dependent on much more than just sales to the PVB market in the U.S. to be viable, and the vast majority of our sales go to other market spaces, as we've outlined for you. The vast majority of our customers have purchased PVA from subject producers in the past and would do so again given the opportunity.

The notion that an adhesive compound or an emulsion polymerizer in the U.S. would have to go through some lengthy process to qualify a subject import because the quality is substantially different is absolute nonsense.

MR. GREENWALD: Commissioner Pinkert, one of the points that I think we have to constantly bear in mind is that the opposition to continuation of the order comes from Solutia that is focused on a minor part of the overall market.

So what you are hearing in testimony against continuing the order is an analysis that is based on a subset of the overall market, but even with regard to PVB or the use of PVA for PVB purposes, the question I would like the Commission to ask is if the orders are inconsequential, if they have no impact on prices and qualification or whatever are effective bars to competition, what on earth is Solutia doing here?

COMMISSIONER PINKERT: Now, my next question is probably one that we'll get into in greater detail in the in camera session, but again I wanted to give the company witnesses an opportunity to comment on this.

To the extent that you can in the public session, can you explain the trends in individual company profitability during the period of review for the domestic producers?

MR. GREENWALD: That is a fair question. It is grounded in data which I know in the whole and which the company witnesses only know their own.

What we will do in the posthearing brief is give you a full explanation behind the data that you are looking at, but I don't think they can even begin to discuss their respective situations in a public forum.

COMMISSIONER PINKERT: Thank you. Now, you did mention Taiwan in your testimony earlier, Mr. Greenwald, and what I'm wondering for purposes of this proceeding should we treat imports from Taiwan any differently from any other nonsubject imports?

MR. GREENWALD: Again, this is another area, because of the obvious differences of view on the impact between the two domestic producers that are here, I don't think it's appropriate for me to get into in any detail.

The answer to the question is that there is a separate proceeding going on; that whether or not you believe that the imports from Taiwan are injurious doesn't really impact the consequences of maintaining these orders. Both companies would say that it would be catastrophic to lift these orders.

The question for you becomes, it seems to me, given the fact that there is another proceeding going on how do you look at those imports, as you put it, compared to all the other nonsubject imports.

What I would submit to you is you have to look at them differently. I would like to, again if you'll indulge me because of the obvious sensitivity of this issue, do it in the postconference brief.

COMMISSIONER PINKERT: Thank you. This brings to mind the issue that you alluded to again in your testimony about how to apply Bratsk in the context of this case. I'm particularly interested in the argument that I believe it was Solutia made about the opinion from the CIT in the NSK case.

I understand that your position is that this is not a commodity product for purposes of Bratsk, but I'm wondering if you could comment more specifically on what kind of analysis we should be doing here if we consider this to be a commodity product for the purpose of Bratsk.

MR. GREENWALD: There is a threshold question, it seems to me, given the decision of the Court of Appeals in the Federal Circuit in I believe it's Mittal, as to whether or not Bratsk can apply in a sunset review, and the reason is that a sunset review is necessarily forward looking.

What Mittal stands for, as I read it, is the proposition that the Commission is not to engage in speculation going forward as to whether a reduction in subject imports will simply benefit nonsubject imports, et cetera, which is essentially speculative, but rather the rule instructs the Commission to look backwards. That is, as a historical proposition is it true that subject imports simply replace nonsubject imports.

So I have a question, and I think you should have a question, about the application of Bratsk to sunset reviews given what we believe to be the holding by the Federal Circuit in Mittal.

COMMISSIONER PINKERT: Thank you for that answer. Perhaps for the posthearing if you could explain what sort of analysis would apply in this case if the NSK opinion -- that is, the CIT opinion from Judge Barzilay -- is the law what sort of analysis we should do in this case.

MR. GREENWALD: We'll do that.

COMMISSIONER PINKERT: Thank you. Thank you, Madam Chairman.

CHAIRMAN ARANOFF: In looking at the responses to the purchaser questionnaires that we have, we see a number of purchasers expressing concern about the reliability of supply from domestic PVA purchasers, and we know there have been some force majeure events over the past few years.

Have the liability issues become demonstrably more serious during our period of review, or have they always been present to about the same degree?

MS. KORTE: Speaking for DuPont, we've had one supply interruption that required us to declare a force majeure in the 19 to 20 years that I've been a part of this business, and that was when we took a direct hit from Hurricane Ike.

Our plant was down for three weeks. We started back up and ran at full rates and lifted our force majeure on November 14. We declared it, you know, in late September.

So in my opinion, you know, we have not gotten any demonstrably worse and in fact had excess production capacity available to supply our customers at the end of 2008 as demonstrated by the fact that we simply took our plant down and yet still had very high inventories.

CHAIRMAN ARANOFF: Okay. Mr. Purvis?

MR. PURVIS: Yes. I would agree with the comments.

We've seen, as I described a moment ago, one significant issue in our value chain, not in our PVA production, that has certainly caused difficulty for our customers in 2007 to some extent.

I think it's important to note, Madam Chairman, that the U.S. industry is a dramatic net exporter of PVA. There's no shortage of PVA or PVA capacity in this country. In fact, I think we export about three times as much volume as we import, so there's no shortage of availability here.

CHAIRMAN ARANOFF: Aside from the force majeure incidents which you've explained and would characterize as rare, I know in Solutia's brief they mention a number of other shutdowns of varying durations over time which were not force majeure events.

Do you have any comments on those in terms of the ability of customers to get what they need when they need it?

MR. GREENWALD: We had an extensive back and forth on that issue, and it's quite detailed, especially with regard to Solutia.

Each company is prepared to provide a detailed exposition of their supply to Solutia, issues that have come up in the course of supplying Solutia and explain a situation which I believe, having heard the other side, has been mischaracterized grossly by Solutia.

CHAIRMAN ARANOFF: Okay. Well, that would be helpful to the extent you can put that in the posthearing.

I mean, there are other customers responding to the purchaser questionnaire who make those comments. You know, within the bounds of confidentiality it would be helpful to have responses to their claims as well.

MR. GREENWALD: We will do that customer by customer.

CHAIRMAN ARANOFF: Okay. Looking at operations of the domestic producers as a whole during the period under review, Solutia's argument is at least for the latter part of the period where these force majeure events were happening that the domestic industry was producing all the PVA that they could. So you would agree with that?

MR. GREENWALD: Yes. I think that is right. We don't quarrel with that. They were producing all the PVA they could, and there was a benefit in doing so.

One of the reasons they were able to produce all the PVA they could and sell it at the prices they did was the impact of the orders.

CHAIRMAN ARANOFF: Okay. Obviously if they were producing all that they could, but we have capacity utilization numbers that show us that they were operating below capacity because of being unable to operate some portion of their operations, then we should be discounting those capacity utilization numbers?

MR. GREENWALD: Let me get into the specifics. I think that goes to the way in which -- the difference between theoretical capacity and practical capacity, especially when you are constrained because of force majeure situations.

CHAIRMAN ARANOFF: Okay. Let me go back to a comment that you made earlier which leads into one of my questions, flipping over from the supply side to the demand side, which is we have purchasers arguing that there has been short supply in the U.S. market, and at the same time we see U.S. producers' exports growing. I'm trying to rectify those two situations.

MS. KORTE: Let me speak for our issues in

DuPont.

When we make a commitment to export material, it will be a certain volume for a certain amount of time, such as a quarter. You know, we honor those commitments. If we have orders on our books to supply a customer in India or Taiwan or China or in Europe, we simply can't cancel those orders.

It would not be within the spirit of our agreements to cancel those simply when a spot order would come in from our customers, so we treat our committed customers, including people that we've made a commitment to even for a quarter, and we try to treat them all fairly and equitably.

MR. GREENWALD: Commissioner Aranoff, I do think it's fair to say that when because of these -- there were two large force majeure situations that occurred during the period of review, one for each company.

I do believe there is data showing an effort, a conscious effort to supply U.S. demand first.

MR. PURVIS: Let me add to that. Again, look at our data for supply to the domestic industry during our force majeure period.

What you will see is a demonstrable

commitment that we've made to our core customer base, to our contract customers, to our domestic customers, at the expense of participation in spot export markets during that time period.

The data shows that very clearly. Extremely minimal impact to our domestic customers during our period of force majeure and a very dramatic impact to -- we took the hit in the export markets and the spot markets.

MS. KORTE: And I'll also echo that. In the posthearing brief we can discuss our allocation percentages among various markets.

I think you'll see that we did, you know, treat the domestic industry within our equitable bounds as fairly as we could, but we changed the allocation percentages and we did take a hit in the export markets during our force majeure.

CHAIRMAN ARANOFF: Okay. I may come back to that later, but I'm just looking at some other demand factors that I wanted to go through.

I guess we know that a number of traditional applications for PVA in the U.S. market are shrinking in the textile and paper industry, for example. You mentioned in your testimony that there are some potential new applications, including photovoltaic applications, and I think I've heard biodegradable plastics as a new application.

There was some reference made to the fact that at least in DuPont's projections that these weren't likely to be large consumers of PVA in what we would consider to be the reasonably foreseeable future, but I wanted to see if the parties could put some numbers behind that, and I invite Solutia to do the same.

How much PVA could we expect to go into these new applications and any other new ones that I haven't mentioned say between now and the end of 2010, give or take?

MS. KORTE: We'll address that in the posthearing brief, including our projections of growth for those industries.

CHAIRMAN ARANOFF: Okay. And I know that those predictions sort of depend on what happens to the global economy now and then, so if you've had a range of different predictions depending on different economic assumptions, that would be helpful to see.

MS. KORTE: We'll show you both our projections from say six months ago, as well as our current projections on growth. While they still are what we would call a hockey stick of growth, the trend has certainly plateaued and shifted.

CHAIRMAN ARANOFF: Okay. Since I'm almost out of time, I'll save the rest of my demand questions for the next round and turn to Vice Chairman Pearson.

VICE CHAIRMAN PEARSON: Thank you, Madam Chairman.

I also would extend my greetings to the panel, and although getting around Washington after the hearing might be a little complicated, take some consolation from the reality that it should be a lot simpler than it was a week ago today.

Mr. Purvis, you had mentioned that petroleum had gotten up to $147 a barrel last summer, but let me clarify. I had the impression that the major input cost for the production of the product would be natural gas. So is petroleum also a significant cost driver?

MR. PURVIS: Yes, it can be. Again, if you look at the board here obviously natural gas is a very significant input not only as a raw material, but as an energy source.

One of the most substantial components of the chemistry that we purchase from the outside market is ethylene, and ethylene can be produced from a variety of sources, certainly from natural gas or from crude oil derivatives, so the answer is yes, it's both. It's both.

You know, the trend we saw last summer in crude oil was very similar to the trend we saw in natural gas where natural gas prices reached I think $13 or $14 per MMBTU by late summer, which is the highest we've seen in a number of years.

MS. KORTE: And I'll echo Mr. Purvis' comments. The natural gas did peak out around $12.80 to $13 per million BTUs, and that's dramatically at three X what it is today, for example.

Also, ethane, which is derived from natural gas and is what the majority of the ethylene in the U.S. is cracked from, has been trending not just natural gas, but also crude oil as ethane goes on parody with naphtha in terms of what people are buying to crack.

So even though we are derived from a natural gas liquid in ethane and DuPont has an ethylene cracker that cracks ethane, it has been tracking the crude oil market.

VICE CHAIRMAN PEARSON: Okay. And the ethylene production that you mentioned that's a precursor. Do you have some idea of what percentage of U.S. production of ethylene is derived from natural gas versus petroleum derivatives?

MS. KORTE: I don't have the exact numbers, but we can answer that in the postconference brief.

VICE CHAIRMAN PEARSON: Okay.

MR. PURVIS: Just directionally, Mr. Pearson, I think probably half or better of the Gulf Coast ethylene producers are ethane based or are natural gas based ultimately.

That's not to say that the pricing structure in the industry is based purely on -- in periods of tight supply you see prices for ethylene which are established by the margin producer, but I think probably better than half are ethane based on the Gulf Coast.

VICE CHAIRMAN PEARSON: Okay. Well, thanks for those explanations.

But I would be correct if I walk out of here today thinking that natural gas is somewhat more important than petroleum as a cost factor for PVA production?

MR. PURVIS: I think that's a fair comment for us.

VICE CHAIRMAN PEARSON: Okay. Thanks. It's somewhat unusual to have an antidumping case involving a product that is so actively exported by U.S.

producers.

I mean, it's not unusual to have two percent or five percent of domestic production exported, but when we get up to the levels that we have here it's surprising.

So I would conclude from that that U.S. producers are competitive in the global marketplace because you're putting a lot of product out there and competing.

So the question then is why are U.S. producers able to compete effectively against PVA from the subject countries in third country markets, yet are here asking for protection to be continued in the home market?

MR. GREENWALD: The answer to your question begins with the performance of the U.S. industry.

You have financials before you. You have production data. You have shipment data. They include both your exports of domestically produced material, as well as your -- domestically produced material that's sold domestically.

The first question you have to ask yourself is given those financials, when you talk about competitive if what you mean by that is the ability to sell at presumably a price that is greater than your variable cost then you may be competitive for a couple of days, but the business isn't viable.

In order to do the analysis that you would like done, what you have to take is your average export prices against your average cost and look at competitive not in terms of the ability to meet whatever pricing there is on a variable cost basis, but rather whether or not --

MR. GREENWALD: -- prevailed in the U.S. market, the business could survive. And I would submit to you that the answer is very clear that the business could not and would not survive.

VICE CHAIRMAN PEARSON: I'm sorry, your saying the business would not survive if?

MR. GREENWALD: If the pricing patterns of -- what you see, it's prices in export markets, in some Asian markets with the prices here. You have issues of product mix. You have all sorts of complications when you look at values, but I think you've heard the testimony here that prices offshore as a generalization are less firm than prices in the United States.

So in third country markets, you were given the example of Latin America where Celanese is now looking at -- I believe this was your testimony, Lou, or was it you, in Latin America? Well, looking at having to withdraw because the pricing has reached the point where it is nonviable. If those prices were the prices that were to prevail in the United States market, and that's the core problem we face here, the business would not survive. The economics of the business would not support reinvestment and ultimately they'd have to wind down.

VICE CHAIRMAN PEARSON: Yeah, but that still doesn't really address the question of how over a period of years has the domestic industry exported a substantial percentage of its production and seemed to find buyers and compete in some way against subject producers in those third country markets. Are you alleging, Mr. Greenwald, that all of those sales have been effectively at a loss for the U.S. industry?

MR. GREENWALD: No. No, it's not again, and when you look at what goes on in a business and you look at economics what you're looking at is the return that you get over time.

VICE CHAIRMAN PEARSON: Right.

MR. GREENWALD: And it is probably not true that all of those sales were at a loss. You could do a rough unit value comparison and just allocate your costs sort of on average between export sales and domestic sales and do sort of a financial analysis, and ask yourself the question, if the economics of exporting were the only economics of this business would the business survive? I haven't done that analysis but I suspect the answer is no. Now as you well know given your experience in business, you have a fixed cost base, you have to absorb those fixed costs over a quantum of sales, and if to do so you have to export, you export.

VICE CHAIRMAN PEARSON: Well Mr. Purvis, Ms. Korte, do you have?

MR. PURVIS: Yeah, I would just add that, look the domestic industry, our capacity was constructed in a period of time where domestic demand was substantially more than it is today. So we've evolved to the state of the market currently as a function of the exodus of significant segments of demand in our marketplace. And we've had to fight and scratch and claw to gain share in the export markets to stay viable. So I don't know if that helps add some color.

MS. KORTE: And speaking for DuPont, it's only been recently in the last year or two that our prices in our export markets got to the point where we covered both our variable and fixed cost of sales.

And so for years, especially in the 2003 to 2006 period, those sales were really done to try to just cover our variable costs and cover some portion of our fixed cost again because we wanted to run our plant as efficiently as possible and lower our overall fixed cost per pound.

VICE CHAIRMAN PEARSON: Okay, well I may have a followup question later but the light is changing now so back to you, Mme. Chairman.

CHAIRMAN ARANOFF: Commissioner Lane.

COMMISSIONER LANE: Good morning to all of you and thank you for coming. And I have some followup questions to the Vice Chairman relating to exports. I would like for you to discuss the mix of sales of U.S. produced PVA within the United States and into its export markets. Could you describe the extent of exports by U.S. producers, the uses of exported PVA as compared to the uses of PVA sold in the U.S. market, and whether U.S. production destined for export is a significantly different product or the same product that is sold in the U.S. market?

MS. KORTE: For DuPont, the material that we sell in the export markets is, because it is only our La Porte production, is only our four fully hydrolyzed grades. It's serviced primarily on our export markets the textile industry, some small adhesive applications, and some small paper application.

COMMISSIONER LANE: Okay, I mean you're going to have to forgive me because -- so are your exports the same product that you sell in the domestic industry?

MS. KORTE: Yes.

COMMISSIONER LANE: Okay, thank you.

MR. PURVIS: The same goes for Celanese. The products we export are identical to the products we sell domestically. We have a broader portfolio of product offering at Celanese, and the markets, the end uses that we serve offshore are largely the same as what we serve domestically, emulsion polymers, adhesive compounds, textile producers, paper manufacturers, same products. And the customers that we sell offshore are competing with our domestic customers in some cases as well.

COMMISSIONER LANE: Okay, to the extent that you can I would like you to comment on the value of PVA sold for export as compared to the value of PVA sold in the U.S. market and the reasons for any differences in value. And you might have to do this posthearing but to the extent that you can do it now that would help.

MR. PURVIS: Let us address it posthearing. You know I think the direction of the data sets that the offshore markets, the export markets are typically priced lower than our domestic market. But let us address it in some detail in the posthearing if you like.

COMMISSIONER LANE: Okay, then I have some more questions relating to this issue. Similarly, without divulging BPI, I would like for you to look at the average unit value of domestic production sold in the United States, the average unit value of domestic production sold for export, and the average unit value of cost of goods sold on either Table C-1 or Table 1-1 in the prehearing report.

I don't understand the differences in average unit values particularly when comparing sale prices of cost of goods sold. I would like you to explain the reasons that the domestic industry would be experiencing the differences between average unit prices and cost of goods sold as shown in the prehearing report. Would this be a product mix or something else?

MR. GREENWALD: Commissioner Lane, the industry witnesses haven't seen the average unit value data because it's confidential. It's an aggregate of a limited number of U.S. producers. So they can't answer that. And I don't know that I can answer it, because it is treated as confidential information, in a public session. I would be happy to address the issue either where I'm free to do so in a closed hearing or alternatively in the confidential version of the postconference brief.

COMMISSIONER LANE: Okay, I hope your memory's good because I have a few more questions and I assumed that you would do them either post hearing or in the closed session that we have this afternoon. Table 3-9 of the prehearing report provides a breakdown of net sales quantity and value by domestic producer. Could you provide posthearing a schedule for each of the domestic producers represented on this panel further breaking down the data on Table 3-9 to show the net value of sales in the United States and the net value of export sales?

MR. GREENWALD: Yes I could, and I think what the data will show is that the points we are making about the viability of the business if export pricing were to prevail in the U.S. market are accurate.

COMMISSIONER LANE: Okay, could you explain how the export market that domestic producers serve and the extent of export affects our evaluation of the likely impact of revocation of the orders in this proceeding? For example, would an increase in unfairly traded imports upon revocation of the orders be likely to have any impact on your export markets?

MR. GREENWALD: Well the answer, and sort of the public answer that I can give here is that lifting of the orders, I don't know whether they would have any impact on export markets. The concern we have, which I think is supported by the statistics, is that lifting of the orders would transpose to the U.S. market because the Chinese, the Japanese, and the Koreans would be free to sell here as they were in 2002 without any dumping discipline, would transpose the pricing in offshore markets to the United States which would have very serious adverse consequences.

COMMISSIONER LANE: Okay, thank you. I understand that each domestic producer recycles or recovers a part of raw material inputs and the value of these byproducts were deducted from the cost of goods sold. Could you indicate whether you are selling the byproducts or reusing the byproducts yourselves in the production process for PVA? And if you are selling the byproducts please indicate whether they are sold to affiliated or unaffiliated parties and what the byproducts are used for.

MR. PURVIS: Ms. Lane, for Celanese, typically the byproduct acetic acid, which I think you're referring to, is recycled back into our process, back in either directly into the production of vinyl acetate or it goes net into our system. It could be sold into the market directly as acetic acid.

COMMISSIONER LANE: Okay, I thought I understood your little chart, and I sort of liked your little chart. That's about the extent of how I can understand chemistry is by that type of drawing.

MR. PURVIS: Me too.

COMMISSIONER LANE: So when you use the acetic acid yourself reusing it, do you put up a value on that and use that to still deduct against your cost of goods sold or do you just sort of mix it all up?

MR. PURVIS: Yeah, the data that Mr. Yost put together I think demonstrates that we value the byproduct acetic acid at market. So effectively the PVA of Celanese receives a credit based on the market value of that contained acetic acid that comes out of our process as a byproduct. So it's fully reflected in the economics that you see.

COMMISSIONER LANE: So whether you recycle it yourself or whether you sell it to someone else, on your books it is put down at market value?

MR. PURVIS: Our raw material vinyl acetate comes to us at cost. The byproduct acetic acid that goes out of our process is credited to us at market. So put simply the way that we've, it's not the way that we manage our business, but it's the way we were requested to report our profitability. And by using this methodology, what we would say that Celanese scholarshipped our PVA business. We've made it look as attractive as it possibly could through our integration chain for the purposes of this report.

COMMISSIONER LANE: And does DuPont do the same thing?

MS. KORTE: Commissioner, DuPont recycles 100 percent of its acetic acid, and since we are not, you know we do not produce acetic acid we value the byproduct acetic acid at the market price that we buy acetic acid on the market for. And that is how we reflect our books both internally and how we reflected the value to the Commission.

COMMISSIONER LANE: Okay, thank you. Mme. Chair, I'll wait until my next round.

CHAIRMAN ARANOFF: Commissioner Williamson.

COMMISSIONER WILLIAMSON: Thank you, Mme. Chairman. Just continuing on this use of the acetic acid. Mr. Purvis, you mentioned that, well I guess the force majeur that you had was related to acetic acid production, and I was just curious, give me more detail on that. Because it sounded like you're getting almost 90 percent of your acetic acid comes from the byproduct process so I was just wondering why the problem?

MR. PURVIS: Yeah, acetic acid is a significant merchant product for Celanese. We pride ourselves on this integrated value chain where we produce all the chemistries in step from acetic acid through to PVA. But our acetic acid does recycle. And it can be a virtual recycle where I'm taking acetic acid as a byproduct out of one of my production facilities and because of logistics advantages putting it directly into the market.

Or it can be an actual recycle. For example what we do in the Gulf Coast in our Pasadena, Texas facility where the byproduct goes directly back into vinyl acetate production. There's a little bit of a time lag in this. If you were to cease the availability of what we call make-up acetic acid there's a time lag as this acetic acid --

COMMISSIONER WILLIAMSON: What kind of acetic acid? What is it?

MR. PURVIS: We call it make-up, make-up acetic acid. Again as you see on this chart we recycle about 90 percent of the contained acetic acid that comes through the process. The other 10 percent has to be added as make-up to refill the molecule if you will. But again there's a bit of a time lag as the acetic acid works its way through this process. But with a small amount of make-up acetic acid, 10 percent is what we've illustrated here, the chemistry is almost self contained.

COMMISSIONER WILLIAMSON: The reason why I'm asking the question is, you know there have been charges about your reliability and you said that when force majeure year period dealt with the acetic acid. So I was trying to figure out, you know what significance could be attached to that in terms of either your commitment or your ability to supply your purchaser some PVA.

MR. PURVIS: Yeah, again to illustrate our force majeure, the issues that led to our needing to declare a force majeure were caused by acetic acid production, not by issues with our PVA production asset. Mr. Williamson, it was a perfect storm because you have the world's largest production facility, single largest reactor that produces acetic acid, that had a production failure at a period of time where the global market was completely sold out. So you have the stars aligning here to create a perfect storm in our industry. I'd ask you to go back and look at the data that we've published, and I don't know if it's individually or just --

COMMISSIONER WILLIAMSON: Well let me cut to the chase real quick, I mean did you have to do force majeure in terms of supplying other users of acetic acid?

MR. PURVIS: Yes. Yes, in fact we declared force majeure on acetic acid probably two months or a month and a half before we declared force majeure on PVA because the outage extended beyond what we thought it would.

COMMISSIONER WILLIAMSON: Okay, I think.

MR. PURVIS: Sorry.

COMMISSIONER WILLIAMSON: Now I understand, thank you. Let me turn to another question. Looking at employment, I mean clearly your workers don't seem to cost a whole lot relative to the end value, but I was just curious about what's happened to employment over the period of time that we're looking at and what impact there might be on employment if the orders were revoked.

MS. KORTE: I'll start with the DuPont facility. Our production related workers have varied throughout the period and I think we discussed that and you can see that in our data. Certainly the cost to retain an employee over the last three years, particularly as the Gulf Coast experienced huge increases in refinery production and things, our wages had to increase in 2005 through 2008 to be able to retain qualified employees.

So the cost per individual worker has gone up, not only in our operators and our mechanics but also even in our technical staff as we saw, you know folks like BP and Exxon offering our technical people as well as our operators signing bonuses in order to get qualified operators. So our costs have gone up. Our staffing levels at the plant have remained relatively constant.

From an operations and maintenance standpoint you need a certain amount of workers to safely operate these facilities that are highly hazardous processes. On the sales and the staffing side, back in 2004 or 2003 when these orders were imposed, just to give you an example, we had five sales people in the U.S. serving the U.S. industry, we're now down to one.

We had three technical service people to service the domestic industry, we now have one person that we are trying to use to support not only the U.S. domestic industry with any service questions our customers have, but also through email, phone calls, and an occasional trip support the rest of our customers in any export market. Our business staffing has dropped. We basically have a business team that's three people, and myself and Miriam Ronchi are two of the three so you've got the vast majority of our vinyls business team here. So we've cut our staffing as much as we can to try to improve the profitability of this business but we're simply down to bare bones.

MR. PURVIS: Let me address the second part of your question. The vast majority of the people that are involved in our PVA business are at our manufacturing sites. I said in my prepared comments that we believe there exists in the market today a state of overcapacity driven by a collapse in demand the magnitude of which I have not seen in my career. We don't know how long or how deep this is but it's long and deep as best we can tell. And we believe there's got to be capacity that comes out of the global industry. It's binary for us. If we shut an asset it's a complete elimination of jobs, it's on or off for us in terms of our staffing levels in this business.

COMMISSIONER WILLIAMSON: Is there a threat to your competitiveness, then? Future competitiveness that -- the orders were revoked?.

MR. PURVIS: Absolutely. Absolutely.

MS. KORTE: Yes, and, you know, I mean, with only one asset if we're not able to profitably and sustainably operate that facility, we don't have a choice. I mean, the plant either runs or it doesn't. And so while we had the plant down, for example, the last six to seven weeks, we still employed all those people.

We kept them busy doing housekeeping, I mean, the place is cleaner than I've ever seen it, but hat's not sustainable. And so if this industry is not going to be viable, then we're going to have to look at other business models to support our downstream industry. We're in the PVB market to stay and we've had a PVA business to support that PVB business, primarily, with a mission to sell the rest of our excess capacity as profitably to generate earnings and cashflow that we can.

If that's not going to be sustainable for the long term, especially if we're in an economic downturn and have a U.S. industry that's not healthy, then we're going to have to look at other business models, and that could mean shutting down our assets.

COMMISSIONER WILLIAMSON: Okay. Thank you for that clarification because no one had mentioned workers too much in the prepared statement, so I was wondering what was invested in them. Let me turn to another question. This is photovoltaic demand.

I must admit, I'm not familiar at all with the photovoltaic itself. Are they things that are likely to be produced in the United States or do we see so much with electronic products that they're more likely to be produced offshore?

MS. KORTE: I can't speak to where the module makers. I know there's many module makers. I think the primary manufacturing right now is in countries like Europe, as well as Asia. Our assets are working at this point to qualify our materials in these applications and then we'll sell our PVB that we produce here, as well as in our facilities in Europe and in Korea, into those applications. I can address where the manufacturer is in our postconference brief.

COMMISSIONER WILLIAMSON: Okay. Thanks. Because I was just trying to figure out, even if there's more demand for photovoltaic itself how much of that a year you're likely to get from U.S. production of --

MS. KORTE: Well, our demand would come to our PVB manufacturing and our assets are primarily in the U.S. You know, where we consume the PVA would be in the U.S. to service that market regardless of whether the module is actually manufactured.

COMMISSIONER WILLIAMSON: Okay. Thank you.

MS. KORTE: You're welcome.

COMMISSIONER WILLIAMSON: Okay. Thank you for those answers.

CHAIRMAN ARANOFF: Commissioner Pinkert?

COMMISSIONER PINKERT: Thank you, Madame Chairman. Does the panel agree with Solutia's argument that U.S. demand is declining in downstream sectors that have been traditionally served by subject imports?

MR. PURVIS: Yes. I think that's a fair comment.

COMMISSIONER PINKERT: If so, perhaps, Mr. Greenwald, you'd like to comment on what the relevance of that observation might be to the task in front of the Commission in this case.

MR. GREENWALD: Well, I mean, it seems to me, I'm not quite sure why this was a point that

Solutia made. If what you have are areas of declining demand but you still have demand, and if you invite dumped imports to supply that demand even though it's declining, you have more rather than less price impact, and price-based competition and price pressure.

I mean, it would seem to me that if Solutia were to say subject imports will come into segments of the market that are growing and for which the U.S. industry can't meet the demand, then I suppose I would have a tougher time trying to persuade you why you should maintain the orders.

But if what they're saying is imports are likely to come into sectors of the U.S. market that are already hard pressed, I mean, it seems to me self-evident it just adds to the pressure on the U.S. industry in an already declining market.

COMMISSIONER PINKERT: Thank you. Now, I'd like to stay with you, Mr. Greenwald, to address another legal issue. How should the Commission adders the issue of domestic industry vulnerability in a time of recession? Let me just elaborate on my question a little bit.

Is it your view that it's essentially a given that in conditions of recession the domestic industry is going to be vulnerable, particularly if demand for the product domestically is going to be down as a result of recession, or is the analysis that you're suggesting more complex than that?

MR. GREENWALD: I hesitate to claim much complexity on anything. I recall when I first got into this business and was working on I think it was either the Trade Act of 1979 or the Trade Act of 1974 drafting with Ways & Means, and Finance Committee, and Senate a provision on causation which talked about the added vulnerability to dumped import competition of industries that are being hammered by other factors.

It always struck me as not only economically sound but a part of the statutory construct, that is where your task is to assess the probable impact of in this case revoking an order and you find that there is a deep recession with a likelihood of excess capacity globally, two things follow.

One is that the foreign capacity that has been out of the U.S. market because of the dumping order is much more likely to come into the U.S. market if the dumping order is revoked. And that's one aspect of causation.

The second is that when you have an industry that is reeling because the bottom has fallen out of a market, the consequences of revoking an order and inviting in subject imports without regard to antidumping discipline threaten the industry's survival. If this were a short swing, you know, we'd probably use hyperbole anyway because it's sort of in the nature, but it wouldn't be that credible.

In this context, in this environment where you have three countries that have made a concerted policy of export led growth at a time when global demand is shrinking rapidly, the prospect, the likely consequence of revoking the order is, I believe, the survival of one or both of these U.S. manufacturers.

Again, I don't know if it goes to it's a particularly complex analysis but it does seem to me to be an analysis that is central to your consideration of perspective impact of revoking the order. I mean, I hope that answers the question.

COMMISSIONER PINKERT: All right. Let me just ask you a quick follow-up to that. Would it be relevant to what you just said if we knew that those three countries were not going to act vigorously to stimulate domestic consumption in order to address the recession?

MR. GREENWALD: Yes, it would matter. I mean, it's something that I wanted to say in the opening remarks because I think it is critical to your assessment of this case and the context it arises. We are in the mess we are in in part because of export led growth by major trading countries that have not succeeded in stimulating their domestic demand.

I see no change in approach. One of the issues that has been discussed amongst us as we were looking over this case was China's decision to reinstitute tax rebates in order to maintain their export levels.

The antidumping law is one of the very few tools that the U.S. industry and the U.S. government has to say to countries that would otherwise be inclined to export their way out of a problem and shift the burden of adjustment to the U.S., not here, not now. To me, it's the context in which this case arises and the context that I hope all of you take very seriously.

COMMISSIONER PINKERT: Well, for purposes of the posthearing, if you could add any detail on the policies that you've alluded to in your answer, that would be helpful. Now, let me turn back to the witnesses on the panel concerns Solutia's argument that the continuation of the orders poses a grave risk to the downstream PVB industry because of difficulties in obtaining supplies from domestic producers.

How do you respond to that? Not so much on a legal level, but on just a factual level, how do you respond to that?

MR. PURVIS: I'd be happy to sell it more, Mr. Pinkert.

MS. KORTE: Me, too.

COMMISSIONER PINKERT: Then I'll turn to Mr. Greenwald and ask what relevance we should give to the question of the impact of the orders on downstream industries.

MR. GREENWALD: As a legal matter, I think the answer is nothing except to the extent that it impacts U.S. production. I mean, the statutory task is defined as assessing injury to the domestic industry that produces the like product, and that isn't the PVB industry, but I do think that you are when you think about this right to entertain the question what does it do long term to the customer base of the U.S. industry?

What I'd like to go back to there is two points. One is in the postconference brief we will get into some detail responding to some of the allegations that have been made about supply reliability of both of these companies. They are anxious to put information on the record. Second, I think you have to take both of them at their word when they say if Solutia wants more PVA, they are more than happy to supply it to them.

COMMISSIONER PINKERT: Thank you. Thank you, Madame Chairman.

CHAIRMAN ARANOFF: I want to start out with something of a technical question which I think is going to provide important background to a lot of the discussion that we've had. There's been discussion about how PVA facilities need to operate at very high levels of capacity utilization in order to be economic, and so what I wanted to understand is when you're operating these assets, are your only choice on or off?

Are there incremental things that you can do to reduce the rate of production or do you just shut down for certain periods of time, that's the only option when you're trying to reduce your output in the face of demand?

MS. KORTE: We're able to turn down our facility to about two-thirds of what its typical full rate capacity would be, and after that it's simply not efficient to run it, and so at that point, then we would have an on and off. So to the extent that we could run continuously at a two-thirds rate, that would obviously be our first choice; however, that was not an option in the fourth quarter.

CHAIRMAN ARANOFF: Okay. And can you explain how that would work? Do you have more than one line and you take one down? Do you slow the rate of processing through your facility? How does it work?

MS. KORTE: DuPont is a single line facility and so we would simply slow the rate down.

CHAIRMAN ARANOFF: Okay. Mr. Purvis?

MR. PURVIS: Madame Chairman, we have several, multiple production lines. We have similar constraints in that we can reduce the rate of production by about a third on each of those individual lines. We also have a little greater flexibility in that we can shut down a line, or two lines, or three lines.

Ultimately, the concern that Celanese has as a producer in this industry is at what level do we have to "campaign" our units, meaning shut them completely down as we draw inventory, and as inventory gets low restart them and run them for a finite period of time and shut them completely down again? We're at a level of demand in Q-4 and in Q-1 where we are campaigning our units where we're shutting them down completely and restarting them as necessary. It's expensive, and it's not efficient.

CHAIRMAN ARANOFF: So are there additional costs associated with shutting down and then turning back on? I know in some industries that, you know, you have to heat up a furnace or there are things you have to do to get started again that add cost.

MS. KORTE: Certainly when you start up a unit you have perhaps production of material that would not be first quality. As you get your first process lined out you could have waste and raw materials of yield as you purge equipment and things, and so that's why we like to choose to run them continuously.

CHAIRMAN ARANOFF: Is there some time period after the equipment is shut down after which you can't restart it? I know that's true in some industries but not all.

MS. KORTE: No, not specifically. Certainly as our units shut down for six to seven weeks, as we've come back up we've found things. We have pump seals or little leaks here and there as the equipment has, you know, gotten cold and contracted. So I think the start up process is longer. We've seen that in the last weekend, but we were able to start it up.

CHAIRMAN ARANOFF: Okay. Let me go back to some of the demand related questions that I was asking in my first round and didn't get a chance to finish. The first thing I just wanted to clarify, are DuPont and Solutia the only PVB producers in the U.S. market or are there other purchasers of PVA who are making PVB in the U.S.?

MS. KORTE: Sakasui is the only other PVB producer that I'm aware of that produces PVB film. However, they do not consume PVA in the U.S. They import the PVB resin and simply extrude in the U.S. market.

CHAIRMAN ARANOFF: Okay. The quality or grade of PVA that DuPont produces for its own production of PVB, is that the same product that you would sell to Solutia or are they buying something different?

MS. KORTE: I'll address that in the postconference brief.

CHAIRMAN ARANOFF: Okay. I'm trying to, as you can probably guess, get at the arguments that Solutia's making that DuPont has been either unable or unwilling to meet certain quality specifications that they have for the PVA that they purchase, and so any information that you can give me on, and not just as between DuPont and Solutia, but if there's anything that puts it in global context in terms of what goes into PVB and how much it can vary, that would be helpful.

MR. GREENWALD: Let me just say for the public record that on that point Solutia's testimony has been grossly misleading. We cannot get into the specifics in the public forum but the companies are anxious to address them in detail in the postconference brief.

CHAIRMAN ARANOFF: Okay. So my next question, which probably also is going to lead to the posthearing, is we've had these discussions about the extent to which producers can reduce their capacity to meet demand.

In one of the questions that I had for DuPont, since you have this captive production of PVB, and you've said you're very committed to the PVB market and we see that in the long term there's growth potential there, can you operate your U.S. facility solely to captively serve your PVB on the model that Solutia does? I mean, is that a successful model for you, and, if not, why not?

MS. KORTE: We've never tried to operate it.

Our demand has simply not been there to be able to do that. Typically, our internal consumption has been about half of our total capacity, and so one of the things we are looking at as we look to growth models out to 2013 or 2014 where the PVA that we need for our internal PVB consumption may take a larger percentage of our production, we're looking at what that might mean in terms of not the production of the PVA itself, but simply the auxiliary systems supporting that plant, such as solvent recovery and things.

We do rely on a certain grade mix to be able to recover solvents, work off second quality materials that we would not be able to do if we were producing the material that's needed for PVB manufacturing, and so that's a study that we have under way now.

CHAIRMAN ARANOFF: Okay. Now I want to go back to a question that was asked earlier but I don't think whichever of my colleagues asked it got all the way through it before running out of time. Solutia argues that merchant market PVA producers are largely sheltered from any adverse effects on revocation of the orders because the majority of their sales are not into the domestic merchant market but go into either internal consumption, sales to domestic or foreign affiliates or open market exports.

Is that a fair assessment? I mean, you know, you look at the data and you see that it's true that a majority of domestic production is not going into the domestic merchant market, so that's part true, but are all those other kinds of sales truly sheltered from what might happen in the event of revocation? And even if they are, you know, is there enough in the portion of the market that we're still looking at?

MR. GREENWALD: The answer is no. The proof, if you need it, is the analysis that you did that supported the initial antidumping orders five years ago where the question was injury to essentially merchant market sales. There are other elements that you have to look at when you consider the issue. One is company distinctions.

You have three domestic producers: Solutia, that for its own reasons opposes the order and have a certain quantum that they produce and use themselves; DuPont, which, as testimony today shows, uses about 50 percent --

MS. KORTE: It used to be. It's less than that now.

MR. GREENWALD: For PVB?

MS. KORTE: Yes.

MR. GREENWALD: Does not internally consume majority of its production; and then Celanese, which supplies the merchant market. The impact of revoking the orders affects each one of those companies a little bit differently. Both Solutia and Celanese are here today because their PVA business as it is now constituted will not, in their view, be able to survive in today's market a repeat of what happened in 2002, 2003. It's as simple as that.

They depend on the domestic market. If I can add one final point. It goes on to a question raised by Commissioner Pearson. The economics of global markets or many, not all, but many offshore markets where there is no dumping discipline will not be sufficient to support a U.S. industry. If the U.S. industry had to rely entirely on export markets, my guess is the financials would be nonviable.

CHAIRMAN ARANOFF: Okay. Thank you. Vice Chairman Pearson?

VICE CHAIRMAN PEARSON: Thank you, Madame Chairman. If the United States is the highest priced market in the world, which I think was the testimony earlier, how do you export anything? I mean, are the conscious decisions made to price discriminate such that observers who are concerned about dumping margins, which we here clearly are not, but observers might look at what's happening and think this is dumping. Could you comment, please?

MR. GREENWALD: Let me answer that. It is perfectly possible that a competitor in -- can you give me a country -- Pakistan would look at the numbers and conclude that the export price to Pakistan is lower than the price to the United States, but as you know, dumping also requires injury.

VICE CHAIRMAN PEARSON: No, no, no. Not at all. Dumping is just the margin of undersell.

MR. GREENWALD: No. That's sales at less than fair -- I mean, I hate to be finicky about it, but that is sales at less than fair value.

VICE CHAIRMAN PEARSON: We call it the dumping margin here, so I've been well-informed.

MR. GREENWALD: Okay.

VICE CHAIRMAN PEARSON: But as a practical matter, are you finding that consistently you're having to sell for less in global markets than you're able to sell in the United States? That's what I'm really curious about.

MR. PURVIS: Mr. Pearson, you've seen the profitability of our business. We would make the argument not that our U.S. prices are too high but that our export prices are too low.

VICE CHAIRMAN PEARSON: And is that just a function of transport costs or primarily a function of transport costs? Is that making the difference?

MR. PURVIS: No. Not at all. I think it's a function of competition in those export markets.

VICE CHAIRMAN PEARSON: Okay. Well, if there's more that I should know in the posthearing, because I understand there is potential proprietary information here, please fill me in, help me understand this a bit. Next I have kind of a customer relations question that gets to an issue that other Commissioners have been touching on.

You know Solutia's business reasonably well, I assume, because you manufacture PVA and you sell some product to them and what not, so over the POR, was Solutia able to obtain domestically all of the PVA it needed of a grade required to manufacture PVB in their process?

MR. PURVIS: Mr. Pearson, we're going to submit to you in our posthearing brief some very specific data on the volume we've supplied to Solutia before and during our force majeure events, and it's confidential data, and we'll respect the confidentiality of it here, but I think it will tell you a very different story then perhaps what you've been led to believe.

VICE CHAIRMAN PEARSON: Okay.

MS. KORTE: We'll address that in the postconference brief as well.

VICE CHAIRMAN PEARSON: Okay. Well, and I appreciate the sensitivity. I mean, you've got a major customer sitting here with a different point of view than you do and so help me understand this. It's kind of one of those, what, industry food fights or something and I hope everyone gets out of the cafeteria okay.

This might also be for posthearing, but are Celanese and DuPont able to reorient their production mix such that more PVA that's appropriate for the production of PVB could be produced?

MS. KORTE: DuPont is able to adjust its production mix. I mean, that is one of the things our plant was designed to make.

MR. PURVIS: The same for Celanese, Mr. Pearson. We could run a lot more PVB grade or quality PVA if needed.

VICE CHAIRMAN PEARSON: Okay. Thank you. Okay. Now we get to causation. I think it's not so hard to persuade me that the domestic industry is likely to experience some material injury in the months ahead, largely because we can see what's happening to demand, and you've spoken to that. I mean, there's going to be a world of hurt, not just for PVA, but for a whole lot of other businesses.

In that context, how do we take the next step and conclude that revocation of the order would lead to subject imports causing material injury? I ask that in part because the domestic industry has done a really good job of maintaining the vast majority of U.S. market shares, so a lot of people like buying domestic product.

Who in a time of declining demand is going to want to go out and buy product from some country thousands of miles away?

MR. GREENWALD: First, most of the applications are very price sensitive.

VICE CHAIRMAN PEARSON: Pardon?

MR. GREENWALD: There's a price sensitivity. If a fund, supplier, let's say a Chinese supplier, is willing to offer five cents a pound discount, they will find buyers for that. So there's immediate pricing pressure. Second, in order to look at this causation link the statute directs you to look at capacity. Is there the capacity overseas, in this case in the subject countries, to supply the U.S. market given the condition going forward?

If you accept the proposition that demand has indeed fallen dramatically and will continue to be deeply depressed, and this is the global economic problem, then it seems to me you have to accept the proposition that there is ample capacity overseas to supply the U.S. market, ample capacity in the three subject countries.

The third part of the analysis is is there any evidence in the past of what happened under similar circumstances? If you look at the data that the Commission staff has collected, the answer is clearly yes, there was a surge in subject imports, particularly from some countries rather than others.

The fourth question you have to ask yourself is what do the data that have been collected by the Commission tell you about pricing? You've heard, and I think you accept as true, that pricing in third country markets is lower than in the United States, and therefore, there is an economic incentive to ship into the United States at at least those prices given the excess supply.

You have detailed Commission data on exports from each of the subject countries an average unit value. What we did in our prehearing brief was compare those average unit values to third country markets to the average unit value of U.S. producer shipments into the merchant market.

VICE CHAIRMAN PEARSON: Right, but then how do you explain away the majority overselling that we see in our pricing products, you know, because I don't know that --

MR. GREENWALD: Because its subject to orders. There are two things you have to look at. The hypothesis is not what have the Japanese, in particular, or the Koreans, or the Chinese been doing since the orders were in effect. I think it's perfectly clear that the Japanese have, for example, withdrawn from all but the very high grade, high priced merchandise.

I think that's true. But if you go back to 2002, 2003 and you look at the data, it is a very different story, and the most instructive part of the data is not pricing in the U.S. market where there is antidumping duty discipline but pricing in third country markets where the Commission has collected by year average unit value data, and I would suggest that those are very, very instructive.

VICE CHAIRMAN PEARSON: Yes, but, you know, if we look not just to the period of review, back to the period of the original investigation, it's hard to find a surge of subject imports that you had alluded to. During the POR there's just this remarkable degree of stability in terms of imports from the world as a whole.

We see a little bit of shifting in import share from subjects to nonsubjects, but the overall level of imports to me seems remarkably stable, so that's why I go back to my point that the domestic users seem to have some significant preference for domestic product. Why we would expect in the event of revocation for domestic users to go running around looking for some other country to buy from is not obvious to me.

MR. GREENWALD: Well, let me ask you specifically to turn to the table, I think it's right in the beginning, the summary table, on imports from Japan and imports from Korea from 2000 to 2002.

VICE CHAIRMAN PEARSON: Yes, I see that.

MR. GREENWALD: I mean, it's confidential information so I can't characterize it here.

VICE CHAIRMAN PEARSON: Right. I invite you to look down at the next category, this total for subject countries.

MR. GREENWALD: Yes, that is true. And you have an issue there with regard to China.

VICE CHAIRMAN PEARSON: Yes, okay. But unless you're going to argue for decumulation and handling the countries separately, I don't know that we can pick and choose here.

MR. GREENWALD: Well, no.

MR. PURVIS: Mr. Pearson, if I understood your question specifically, you're searching for a surge of imports into a marketplace.

VICE CHAIRMAN PEARSON: One was alleged earlier by Mr. Greenwald, and I'm trying to find it.

MR. GREENWALD: Well, but here, again, I mean, if you aggregate -- and this essentially is a repeat of what happened in the initial investigation. If you look at 2001, 2002 data for all subject imports, okay, and look at the volume, that is, well, again, I don't want to characterize it, and then look at 2003 data and just look at the volumes of these imports, you know, it was one of the reasons for which there was an affirmative determination five years ago.

VICE CHAIRMAN PEARSON: Yes, but unfortunately the Commissioner who was involved in that is not here to explain it.

MR. GREENWALD: But when you look at shifts in imports of subject countries over time, preorder and postorder, it is dramatic. For the Commission to say, well, postorder subject imports have been restrained, I think that's true, but all that says is the order is working, which it is.

VICE CHAIRMAN PEARSON: Okay. Well, as you know, I've been on red light here for a while and I would like to thank the Chairman for her indulgence and advise that I believe I have no further questions.

MR. PURVIS: Mr. Pearson, if you'd allow me a minute? I want to further address this from a business standpoint. The fact of the matter is we don't have to have a dramatic increase in physical exports into our markets to be damaged by this product being dumped.

We see today real time in Latin America where product has become dramatically more available from Pacific producers and is entering these Latin American markets. We're defending our market share. We're not going to walk away from it. To the best of our ability, we're going to withstand the pain, lower the price and maintain our market share in hopes that things will be better in the future.

You know, that's what we've seen historically in the U.S. We're going to defend our market share as long as we can and hope that it gets better.

VICE CHAIRMAN PEARSON: Okay. Thank you. Madame Chairman, back to you.

CHAIRMAN ARANOFF: Commissioner Lane?

COMMISSIONER LANE: I thought maybe we could attribute the overrun to Commissioner Okun. Mr. Greenwald, you might be the one to answer this. If not, you can direct me to the person to do it. Could you provide any calculations showing what you believe would be the combined volume and price impact of subject imports on the domestic industry's financial position and the effect on employment and the domestic industry if the orders were revoked?

MR. GREENWALD: Sure. Yes, we can do that.

COMMISSIONER LANE: You'll do that posthearing?

MR. GREENWALD: We have to do it posthearing because off the top of my head I don't know.

COMMISSIONER LANE: Okay. Fine. And can you provide any information comparing the U.S. price for subject PVA to the price in other markets, and in responding, price information for specific countries or price comparisons for specific regions, such as the price in the Asian markets, the European markets and the South American markets, would be helpful.

MR. GREENWALD: We can. I would draw your attention to the staff report that while it does not have product specific prices does have average unit value shipment data, export data, from each of the subject countries to a series of third country markets. I believe that those data, especially when compared to the average unit value of domestic shipments in the U.S. market, are very instructive.

COMMISSIONER LANE: Okay. Thank you. Could you provide a schedule posthearing that provides a breakdown of your cost of goods sold by raw materials, labor, process energy and other factory costs and indicate which of those cost categories you would consider to be totally variable and which are generally fixed?

If any of the categories would be partially variable and partially fixed, please indicate your best estimate of the percentage split between fixed and variable costs.

MR. GREENWALD: Yes, we will do that.

COMMISSIONER LANE: Okay. We may have touched on this question earlier but I want to make sure I understand the qualification issue. I understood Mr. Purvis to say in the opening remarks that the idea that the domestic PVA purchasers require extensive qualification is absurd. Please clarify what you mean. Are you saying that there are no qualification requirements at all? If so, is that true for all grades of PVA, including PVB grade?

MR. PURVIS: Commissioner Lane, with respect to the vast majority of end uses, excluding PVB grade PVA, there is very little to no barriers to entry for material from subject countries.

As I said in my opening remarks, many of our customers, probably the majority of our customers, were once served by producers in subject countries at one time or another, but these applications are not horribly sensitive to any sort of variability in product quality, which there is typically little.

In the case of PVB grade PVA, Solutia has pointed out that much of this product ends up in the front windshield of your car. Clarity is of critical importance, and so to have a product that's very low in color is not included. A low end ash, if you will, is really important.

There's nothing magical about producing PVA that's low ash and low color. There's no patented technology that you must own, there's no special and differentiated PVA production process. It's simple know how. I would think that the PVB industry and the downstream glass manufacturers are probably, as I've seen in the industry, the most sensitive to dramatic changes in quality.

COMMISSIONER LANE: Okay. Thank you. Mr. Greenwald, the prehearing report provides data regarding the competitive overlap between subject imports and the domestic like product and the briefs discuss the factors used by the Commission to establish a reasonable overlap of competition. Could you please boil down to your best argument why the Commission should cumulate subject imports in these reviews.

MR. GREENWALD: Yes. The argument is that subject imports from all countries -- let me rephrase that. All subject countries produce and export PVA of similar qualities and for similar applications. Since the orders were in effect it is true, for example, that Japan has exited from lots of lower priced, lower grade applications and is concentrating on very high grade, high cost applications.

But if you look at the export data from Japan to third countries you will see that the Japanese, like every other producer in the world, produces a full range of PVA for the full range of applications. The overlap of competition in the global market is beyond dispute, and the only reason that there is a difference with regard to the U.S. market is the impact of the orders.

Korea has essentially withdrawn from the U.S. market, Japan has essentially withdrawn from the U.S. market, China is in the U.S. market but in a very different way than they were. The legal test for you is what happens going forward? Will there be a significant overlap of competition?

What I submit to you is that the proof of that point is in the range of products to third countries now and in the overlap of competition that occurred prior to the orders. The staff report shows that overlap of competition which we submit is the inevitable consequence of revocation of the orders.

COMMISSIONER LANE: Okay. Thank you. I have another cumulation question. The Commission did not cumulate subject imports from Japan and Korea with imports from China for purposes of its final affirmative threat of material injury determination regarding imports from Japan in the original investigations, but the Commission did cumulate subject imports from Japan with imports from Korea and China for purposes of the present material injury determination regarding imports from China and Korea.

Should this disparate treatment in the original investigations affect the Commission's cumulation analysis in this review? Should it affect our analysis of the likely volume price effects or impact in this review?

MR. GREENWALD: The decision to cumulate imports from all three in terms of present injury would, I think, govern, unless there has been a material change in the fact pattern, what you do going forward. This is not to say that you are legally bound to cumulate. You're not.

But the analysis that led you to conclude that there was a significant overlap of competition and led to a finding of that they should cumulate for purposes of present injury I think ought to guide your decision on how you exercise your discretion to cumulate in the sunset review.

COMMISSIONER LANE: Okay. Thank you. In what major markets is PVA currently the most expensive to purchase?

MR. PURVIS: I would say from our perspective probably the U.S.

COMMISSIONER LANE: In what major markets is PVA currently the most lucrative to sell? Would that be the U.S.A., too?

MR. PURVIS: I think that's fair.

COMMISSIONER LANE: Okay. I'm not sure how much time I've got left, but I'd like to talk about internal transfers. Okay. I'll wait until either my next round or the in camera. Thank you.

CHAIRMAN ARANOFF: Commissioner Williamson?

COMMISSIONER WILLIAMSON: Mr. Purvis, could you now or in the posthearing describe your exports to affiliated foreign producers. Where are they shipped, and in what quantities and what product types.

MR. PURVIS: Sure. A couple of different answers to your question. We do have one small downstream consumer of PVA within the Celanese organization. We've shared with you data on the volume that represents. It's not significant. And so we do ship to our downstream business. It's an emulsion polymerization business in Europe predominantly.

We also ship to a separate legal entity, a Celanese legal entity in Europe, where we merchant market the product. I think one of your questions was what's the difference in products that we export? It's all the same. You know, there's a very similar mix of products that we're exporting versus what we're selling domestically.

COMMISSIONER WILLIAMSON: Like the Chairman, I'm also interested in your views in which segments of domestic production compete with subject imports and which are essentially insulated from competition and what this means for assessing likely injury by imports? We've been around this question a little bit, but maybe you can address it again.

MR. GREENWALD: Well, let me just give sort of a -- from what I can tell for each of the companies and then they can answer and either agree or disagree. For Celanese, essentially all of their production competes potentially with subject imports. That is, if the order is removed, there are producers in China, in Japan, and in Korea that, taken together or individually, offer the same range of products that Celanese offers.

For DuPont, the exception is the captive production of PVA for their own PVB business, which is -- we'll give the precise numbers -- I think you actually have it in the questionnaire response. But, there is a very substantial portion of DuPont's business, as well, that is -- competes or would compete, if the orders were revoked with subject imports.

MR. PURVIS: I don't have anything to add to that. I agree.

COMMISSIONER WILLIAMSON: Okay. So --

MS. KORTE: I don't either.

COMMISSIONER WILLIAMSON: You don't agree with --

MS. KORTE: I agree with Mr. Greenwald, but I don't have anything else to add.

COMMISSIONER WILLIAMSON: Okay. So, basically, you disagree with Solutia's argument that the domestic industry is insulated other than the captive production?

MR. GREENWALD: We disagree with Solutia. Solutia has got it wrong.

COMMISSIONER WILLIAMSON: Okay. I just wanted to get that clarification.

We talked a lot about the force majeure and things like that. But, this is another Solutia argument, looking at your operations during the period under review, is it fair to say that your facilities essentially produced all the PVA that it could? I mean, basically, it's been said that really you couldn't supply anymore. But, I think I heard -- you know, I was out of the room -- that if Solutia wanted more that you would provide more.

MR. PURVIS: Commissioner Williamson, at the five-year review period, there's been a lot of changes in the marketplace, obviously. I think if you look earlier -- for Celanese, if you look earlier in that period, perhaps our assets were not fully utilized. If you look later in the period, they were more fully utilized. It think their comments -- my comments about our willingness to sell more product to Solutia are driven by the economic environment that we see today and for the foreseeable future, there's plenty of excess capacity to produce PVA. We would love to be able to sell more in the domestic marketplace.

MS. KORTE: And during the period of review, our facilities did produce all the PVA that they can. And while we did have one force majeure event driven by a hurricane in 2008, there were also times when we have had small utility outages that did result in maybe some temporary delays in going to Solutia that we addressed through expedited modes of transportation at DuPont's cost. And we'll address those more fully in the post-conference brief.

COMMISSIONER WILLIAMSON: Okay. Thank you for those answers. I have no further questions, Madam Chairman.

CHAIRMAN ARANOFF: Commissioner Pinkert?

COMMISSIONER PINKERT: I have no further questions in this part of the session. I may have additional questions for Mr. Greenwald in the in camera. Thank you.

CHAIRMAN ARANOFF: I find myself in the unusual position of having a number of additional questions, while my colleagues seem to have mostly run out. So, I beg all of their indulgence and if they're lucky, some of these have to be answered in the post-hearing brief.

One of the things that I've wanted to understand about this industry is a little bit more about how price competition works. In particular, I'm used to seeing in industries that have just a few suppliers and a few large purchasers, who make up at least a significant portion of demand, very aggressive bidding of the large domestic suppliers against each other for contracts for these large customers. And I don't see anything on the record that tells me whether or not that is happening here and I don't get the sense that it is. What can you tell me about the contracting process for these large customers? Are DuPont and Celanese usually bidding against each other or do these companies have just sort of long-term relationships where they just offer a portion of their requirements to each of you're never really head to head?

MR. PURVIS: Madam Chairman, let me answer that as it relates to Celanese in two ways. First of all, specifically as it relates to Solutia, who is our largest domestic and global customer, we can share with you some confidential, some business confidential data in our post-hearing brief that will demonstrate beyond reasonable doubt that there is extreme competition, that there is substantial buying power, purchasing power that exists, given the scale of their purchase requirements for PVA.

With regards to competition outside of Solutia in the domestic market, the vast majority of our market is highly fragmented. My average customer buys 100 or 150 tons of product a year. It's a very fragmented market. And so, there is much less buying power across most of the domestic industry than what we see from purchasers like Solutia. There is absolutely very active competition in the domestic market, not only from U.S. producers, but from non-subject imports that create a very dynamic market and pricing market environment.

MS. KORTE: And from DuPont's perspective, the contracting process can be anything from a formal request for proposal that comes out from a customer electronically that Celanese, DuPont, and any other producers that would want to bid on that can bid on that business, to just negotiations on a case-by-case basis with the customers. We always recognize that we face competition. I can assure the Chairman that we have not had any instances where we're just locked into any one supplier and we can address that more fully -- or to one customer. We can address that more fully in the post-conference brief.

CHAIRMAN ARANOFF: Okay. In a lot of cases where there are -- you know, a substantial portion of the market is accounted for by long-term contracts, which we, in our Commission lingo, define as anything longer than 12 months, we often will go out and ask the parties to give us specific contract-by-contract data. Nobody asked us to do that here and we didn't come up with the idea ourselves. But, if there is anything that you can do in the post-hearing brief to just illustrate that process, I'm really interested in looking on a customer-by-customer basis at how the price negotiations take place. There are some industries where we see, for example, you know, reverse Internet auctions. There are some industries where we see that everybody submits a sealed bid and then the customer comes back and says, oh, you're too high; here's what this other guy is offering me. So, I am interested in figuring out which of those models it is or maybe there are multiple models that apply in this industry, so that we can really understand how, if imports were to enter the market and offer low prices, how that would play out.

MR. PURVIS: Let me comment on that now. I think it's safe to say the vast majority of our contractual customer base has a very, very common industry pricing mechanism called a meter release clause. So, these contracts are very, very favorable to the consumer. They guarantee a certain volume of supply at a price to be determined in the future. Typically, under these contracts with meter release clauses, if an exporter of subject country PVA, if subject material were to enter the U.S. and go to Customer A at a dumped price, Customer A would call me and say, I have the opportunity to buy a product from someone else at a cheaper price; do you want to meet that price. To the best of our ability, we would lower the price to be competitive and keep their business. That's from a practical standpoint.

And back to the other discussion with Mr. Pearson, oftentimes, what we've seen historically in this market before the orders and what we see in other export markets today is that we lower prices to be competitive within the constructs of our contractual agreements.

CHAIRMAN ARANOFF: Okay. My next question was going to be about meter release clauses, so you took me there already. How common is it for those meter release clauses to be invoked? And looking at the period of review that we're looking at, is there a difference between periods when prices are generally rising and periods when prices are declining, which might be the most recent period and maybe some periods earlier when prices weren't doing very much?

MR. PURVIS: It's very common for the meter release clauses to be invoked. Obviously, our industry has an economic cycle like any other, where supply and demand drive, to a significant extent, the ability to increase prices. In the more balanced market environment, you see less meter release clauses invoked and in an environment like we see today, it's a dozen phone calls today from different customers asking for lower prices.

CHAIRMAN ARANOFF: And at the point in 2007 when prices were going up like crazy and globally there was tight supply, you were, in theory, not seeing meter release clauses invoked?

MR. PURVIS: Not nearly as much; not nearly as much.

CHAIRMAN ARANOFF: Okay. I have a couple of questions about the Chinese producers. And I don't know whether you will have answers to these, but these are areas where our record is a little bit spotty. The most recent information that I could cull from the record, and I think it came out of Solutia's brief, is that the Chinese Government lowered the VAT tax rebate on PVA in mid-2007. If anybody has got more current information about the state of Chinese VAT tax rebates or any other incentives or disincentives to export PVA, that would be helpful.

MR. GREENWALD: What you're talking about is a reduction in the rebate, sort of an export disincentive, if you will.

CHAIRMAN ARANOFF: Yes. I mean, my understanding is that the VAT tax rebate was 13 percent. It was lowered to five percent. I think that is what is contained in Solutia's brief. That was mid-2007.

MR. GREENWALD: Right, right.

CHAIRMAN ARANOFF: A lot has changed in the world since then.

MR. GREENWALD: What China has done is resisted the appreciation of the RMB in the interim. And I believe they've rescinded I believe for PVA, but I don't know that for sure, I will have to check, the reduction in the VAT tax rebate.

CHAIRMAN ARANOFF: Okay. Well, anyone, who can submit more current information on that would be helpful.

There is also mentioned in the record of an antidumping case that was brought against Chinese PVA in the European Union and what I don't understand is what happened in that case. Are you aware of that?

MR. MELTZER: We can provide that to you in the post-hearing brief.

CHAIRMAN ARANOFF: Okay, thank you. And going back to the pricing questions that I had asked, as you are going back and trying to give me sort of more specific information on what's going on in terms of contracting, in particular in the market, I would be interested in knowing what long-term contracts are going to be up for rebid during the rest of 2009 and into 2010, so we can get a sense of how much of the market -- how much of the merchant market that is subject to contracting is open and going to be subject to bid in which subject imports could participate, if the orders are revoked.

MR. GREENWALD: Will do.

CHAIRMAN ARANOFF: Okay. Thank you, very much. One more question going back to this issue of product quality. A number of purchases responding to our questionnaire expressed some skepticism about the quality of Chinese and Korean PVA. And these are not, by and large, purchasers, who are making PVB. And what I'm trying to avoid is having a sort of a he said/she said record, where we have the domestic producers telling us that these are basically commodity applications, anybody can serve them, and we have these purchasers, who aren't here to answer questions, but did submit questionnaires saying we just don't think that -- we think there are quality problems with the Chinese and Korean product. Because what is not clear to me from the questionnaire responses is the extent to which those responses are based on truly recent experience with Chinese and Korean product versus either experience during the original period of investigation or maybe just sort of quoting common knowledge, as they fill out the questionnaire. So, what I would like to do is ask, and I ask this to both panels, what information is available on the record or could be put on the record that is objective, to the extent to which Chinese and Korean product is of sufficient quality and made in the right formulations for application in all the major end uses and aside from PVB, because I understand that there is a difference there that we've covered?

MR. GREENWALD: Yes, we will do that.

CHAIRMAN ARANOFF: Okay. With that, I think I may have actually exhausted my questions. Commissioner Lane, do you have further questions?

COMMISSIONER LANE: I just have one question that was triggered by one of your questions. Could you provide over the period of review what percentage of your sales are covered by or were covered by long-term contracts?

MR. GREENWALD: You mean this is contracts for sales going forward or during the full five-year period?

COMMISSIONER LANE: Both. Thank you.

CHAIRMAN ARANOFF: Are there anymore questions from Commissioners?

(No response.)

CHAIRMAN ARANOFF: Does staff have questions for this panel?

MR. CORKRAN: Douglas Corkran, Office of

Investigations. Thank you, Chairman Aranoff. Staff has just one or two very brief questions and they are to clean up some information that came early in the questioning. This is for Ms. Korte. With respect to DuPont, does DuPont utilize a surcharge mechanism? And if they do, is it similar to Celanese, in that it only deals with freight rather than raw material or is there a raw material surcharge?

MS. KORTE: Like Celanese, for the most part, when energy prices have gone up, we have tried to utilize just a full industry price increase. During the period of review, we did have one time and I believe -- I'll go back and verify it -- but I believe it was in 2007 or fall of 2006 that we put a temporary energy surcharge on. However, several months later, when the energy prices had not fallen, we converted that and rolled that into the permanent price increase that was announced subsequent to that.

Let me also clarify, we also have a number of contracts that have a formulaic price that is based on both a base price and then an energy component of the price that will fluctuate. And so from that, to the extent that that would be considered an energy surcharge, that is factored into the price.

MR. CORKRAN: Thank you, very much. And one more follow-up question, which was to the extent that changes in your raw material costs flow through to your prices, in the case of Celanese, Mr. Purvis testified that that takes place roughly on a quarterly basis. Is that similar for DuPont?

MS. KORTE: The raw material price increases come through almost immediately depending on your overall inventory levels. But to the extent that we're able to announce and raise price increases, I agree with Mr. Purvis's answer, that it takes typically 30 to 60 days. And one of the things that we're looking for there is to make sure that it's not just a temporary spike. And so for example, when oil went to $147 a barrel in early July, we had just recently announced a price increase in June of 2008 and we're in the process of implementing it. And so, we debated back and forth in our business, should we announce another one. We chose not to and several weeks later, the price did start to decline. And so, we never were able to raise the price to try to recover that July spike of $147 a barrel and we simply tried to implement fully our prior price increase.

MR. CORKRAN: Thank you, very much, for those responses. Thank you, Chairman Aranoff. Staff has no further questions.

CHAIRMAN ARANOFF: Mr. Shor, do you have any questions for this panel?

MR. SHOR: I do not, Madam Chairman.

CHAIRMAN ARANOFF: Thank you. Okay. Well, I want to thank this panel for all of your time and for answering our many questions this morning. This has been very helpful. Now, normally, at this point, when we only have two panels, we would take a break for lunch. However, because we actually have effectively three more panels to go through today and to try to get some balance into our day, we're going to invite the next panel up to give your direct testimony prior to the lunch break and then come back for questioning. I know that's not ideal; but from my standpoint, it's better than taking a lunch break and then having three more complete panels to get through before we can all go home. So, I will dismiss the first panel and ask you to take your seats in the back of the room and we'll bring up the second panel to start.

(Panel dismissed.)

MS. ABBOTT: If the second panel will come forward, we will help you get seated. And Madam Chairman, all members of the panel have been sworn.

CHAIRMAN ARANOFF: Please proceed whenever you are ready.

MR. SHOR: I will start right in by introducing Mr. Tim Feast of Solutia.

MR. FEAST: Good afternoon, Chairman Aranoff and members of the Commission. My name is Tim Feast. I am the President of the Saflex Division of Solutia. Saflex Division produces and purchases polyvinyl alcohol, PVA. We use PVA to produce PVB, polyvinyl buterol, resin, and film products. As President, I am responsible for Saflex's worldwide business operations.

The purpose of my testimony is to explain the tenuous PVA supply situation that has existed in the United States for the past two years and the grave risk it poses to our downstream PVB business. My remarks will focus on three issues. First, I will discuss Solutia's position in the PVA and PVB industries. Second, I will explain why Solutia has invested in expanding its PVB, but not it's PVA operation. And thirdly, I will explain the risks posed by the U.S. PVA supply situation to our U.S. PVB business and workers.

I turn first to a description of Solutia and its Saflex PVA and PVB businesses. Solutia is a publicly-traded U.S. corporation headquartered in St. Louis. We are a global company spun off from Monsanto in 1997 and Solutia consists of four businesses: Saflex, CP films, nylon plastics and fibers, and technical specialities. Saflex exists primarily to produce PVB film. This is a thin, clear adhesive film used to laminate two pieces of glass together primarily for automatic and architectural applications. It is the product that prevents windshields from shattering in an accident and windows from breaking or shattering in a storm. And Saflex is the world's leading manufacturer of this performance interlayer. Nearly 50 percent of laminated architectural and automotive glass produced globally contains Saflex interlayer.

We produce PVB interlayer by extruding it from a mixture of PVB resin and plastic plasticizer. We produce the PVB resin ourselves and PVA is a key raw material in this production process. Saflex also sees and emerging and fast growing application for PVB film in the production of photovoltaic modules. This technology uses a PVB interlayer and an encapsulate for the thin film silicon photovoltaic components, bonding the glass on which the semiconductor is deposited to a backing layer and providing benefits of high durability and efficient process ability. The thin film photovoltaic market will be a huge market for PVB, both in the United States and Europe, as these regions seek to reduce both carbon emissions and their dependence on imported oil. PVB film has already been selected as the encapsulate of choice by major players in the thin film photovoltaic industry and worldwide demand for thin film solar panels is growing at a rate of 40 percent a year.

Solutia produces and distributes its PVB film products and also PVB resin globally. The building block to produce PVB is PVA and PVA is the largest raw material cost in the production of PVB. Solutia produces PVA in the United States and in Belgium. Our U.S. plants are located in Springfield, Massachusetts, and Trenton, Michigan. Solutia does not sell PVA in the merchant market; rather, we captively consume all of the PVA we produce to manufacture PVB resin at those same plants here and in Belgium. Because our PVB business exceeds our own PVA production capacity, we purchase large and growing quantities of PVA to supply both our U.S. and Belgium resin plants. We buy PVA for our U.S. plants exclusively from U.S. producers and we buy PVA for our plant in Belgium from U.S. producers and from producers in Europe and Asia.

PVB resin production is a highly specialized process, which is critical to the successful extrusion of PVB interlayer. We use PVB resin to produce PVB film at extrusion plants in the U.S., Belgium, China, Mexico, and Brazil. Solutia thus manufactures U.S. PVA into PVB products distributed worldwide. Roughly half of the PVB resin we produce in the United States is used here. The other half is exported in the form or resin for extrusion in our other plants, resin for sale, or finished PVB sheet.

Saflex is our flagship business with revenues of more than $800 million and a growth engine for the entire company. We employ more than 600 people here in the United States. Saflex is our fastest growing business and a large and growing contributor to Solutia's profitability. Operating income has increased every year since 2003. We have grown the Saflex business and maintained our status as the market leader through innovation and careful expansion through investment in new plants. We have a major PVB technology center in the U.S., which is a source of innovation and new patent applications every year. We invested in buying 100 percent ownership of a joint venture PVB extrusion plant in Mexico in 2006. We opened a new extrusion plan in Soujo China in 2007. We opened a third extrusion line in Ghent, Belgium, in the third quarter of 2008 and we opened 12,000 tons of new PVB resin capacity in Springfield, Massachusetts, at the end of 2008.

Let me now address my second issue, the argument from DuPont and Celanese that Solutia has not invested in additional PVA production capacity, because PVA production is not profitable. This is a nonsensical argument and both DuPont and Celanese know it. There are three reasons why we have invested in expanding our PVB resin and film capacity and not our PVA capacity.

First and foremost, our strategic goal is to grow the overall PVB business. The only way we can do that is by growing sales of PVB and by expanding PVB resin and film capacity. Producing more PVA will not increase our revenues. It will merely substitute captive production for external purposes. Were we to divert limited capital to PVA expansion, we would have to sacrifice investments in PVB and would lose the ability to meet growing demands for our PVB sheet. The result would be business lost principally to our two Japanese PVB competitors.

Second, the economic scale for a PVA plant is approximately 40,000 metric tons or some 90 million pounds. We do not have a demand for that much PVA in the U.S. To build and operate a new plant at efficient scale, we thus would have to enter the merchant PVA business. This would divert significant resources and management focus away from our core strategic objectives.

Thirdly, Solutia is a world leader in PVB technology. This is not the case in PVA. We would certainly need to invest significant time and effort in updating our own PVA technology before investing in a new world scale plant and our limited technology resources and investment capital are better spent to allow us to do more of what we do best. I would also note that from a business perspective and an economic perspective, we certainly consider our PVA operations to be profitable. We purchase raw materials to produce PVA and then we combine PVA with other raw materials to produce PVB in an integrated production operation. We sell the resulting PVB at a profit. We do not understand how DuPont and Celanese can contend that our PVA production should be regarded as unprofitable and our PVB production correspondingly more profitable. The PVA we produce is perfectly suited to our PVB production operations and to us is more valuable than the PVA purchase and cannot use in the same production line. We don't have to order it.

We don't have to move it. We don't have to worry about security of supply or the manufacturer changing its specifications. If it did not have a higher value, we simply would not produce it.

I will now turn to my final topic, the tenuous U.S. PVA supply situation and the intolerable risks it poses for out U.S. PVB business. I spoke earlier about the growth in our PVB business. Because our own PVA production capacity limits have been reached, we have been purchasing increasing quantities of PVA for both our U.S. and European resin plants from U.S. producers, DuPont and Celanese. Demand for Saflex product was very strong in 2007. It grew in 2008 and in spite of the economic downturn, is expected to remain strong in 2009. In light of our global diversification, our demand for PVA is not driven solely by developments in the U.S. market. We experienced some weakness in the automotive and architectural markets in the U.S. in 2008, but this was counterbalanced by growth in the architectural market in Europe and growth in both the automotive and architectural markets in China. But our ability to meet the growing needs of our customers in 2007 and 2008 was placed in jeopardy by the inability of DuPont and Celanese to meet their contractual commitments to supply us with the quantities and specifications of PVA we required.

My colleague, Mike Berezo, will discuss the details of some of the supply problems we experienced. The conduct of DuPont in 2007 in refusing to meet that contractual commitments was, in my view, particularly outrageous. The bottom line is this. For months at a time in 2007, for all of 2008, and even today, we could not and cannot obtain from U.S. producers the full quantities of PVA we wanted at the specifications we wanted. We came perilously close at times to having to shut down our own production lines and layoff our own U.S. workers, because DuPont and Celanese could not meet the demand, demand they had contracted to supply. But the risks to our business extend beyond the risk to our ability to maintain continuous production operations. They are the slow-acting corrosive impacts on our production efficiencies and product quality that harm our business over the long term.

I heard from DuPont and Celanese this morning that their production problems are behind them, demand is now soft, and they have plenty of capacity to meet the needs of the U.S. market for the foreseeable future. Well, I've heard that story before. More importantly, you've heard that story, too. You heard it five years ago in the original investigations and you heard it more recently from Celanese in their petition against Taiwan. It proved to be at best wishful thinking and at worst, a deliberate distortion of reality. The production problems always turn out to be more serious than they first admit, the outage is longer, and the frequently higher. And while demand may be down this quarter, it will also return and increase in the foreseeable future and we will be right back in the mess we were in, in 2007 and 2008.

Yes, there is considerable economic uncertainty today and no one knows what the depth or duration of the recession will be. But, I do not have the luxury of just worrying about tomorrow or next quarter and neither should this Commission. I have to plan and manage my business not just for the current downturn, but also for the inevitable upturn. The prospects for PVA are strong. We have no doubt that the demand for PVB will resume its growth in the U.S. and worldwide, as will demand in other PVA applications. We want to grow with the architectural and automotive laminated glass markets and we want to be able to serve the photovoltaic market, to help this country and others meet their energy needs and reduce greenhouse gas emissions. Our workers are union members and earn good salaries. The question is, where will that growth go? Here or to our PVB competitors in Japan?

We are a global company. When we consider our next PVB resin expansion, one of the primary considerations would be the availability and security of PVA supply. Those jobs can go there or they can go to Europe and China. The antidumping orders will, without a doubt, be a factor we consider.

Thank you for your time and consideration. I would now like to introduce my colleague, Mike Berezo.

MR. BEREZO: Good afternoon, Chairman Aranoff and members of the Commission. My name is Michael Berezo. I have worked in the chemical's industry for some 27 years in a wide variety of capacities. Since October 2007, I've been Vice President of Global Procurement, Solutia. I am responsible for some three billion dollars in annual procurement operations worldwide, including raw materials, energy, logistic services, covering all of Solutia's businesses.

As Timothy has noted, Solutia produces polyvinyl alcohol at plants in the United States and in Belgium. I am responsible for securing the precursor raw materials for those production operations, which principally comprise VAM and ethanol. We also produce PVB resin at those plants, using both PVA we produce and PVA we purchase. I am responsible for those PVA purchases. My testimony today will address four issues. First, I will spend a few minutes discussing the qualities that differentiate different types of PVA. Second, I will explain the structure of the U.S. PVA industry. Third, I will discuss the problems we have had in maintaining the security supply of PVA to our PVB operations in the United States. And, finally, I will discuss the current market trends for PVA, including demand, cost, and pricing.

First, what differentiates one type of PVA from another? The building block needed to produce all PVA is vinyl acetate monomer, VAM. VAM accounts for roughly two-thirds of the cost of production of PVA. VAM must be polymerized into an acetate and then hydrolyzed. But, different technologies are available for these processes. Solutia uses an ethanol-based process. DuPont and Celanese use a methanol-based process. The particular technology used affects the physical characteristics of the PVA produced. This is one of the reasons why the PVA we produce, ourselves, differs physically from the PVA we purchase and why we use distinct PVB resin lines for purchase of PVA in our self-produced PVA. That the product we purchase is undisputably a different product than the one we produce ourselves also underscores why the value of purchased PVA is not a proper indicator of the value to us of our own captively-produced and consumed PVA.

Different end use applications of PVA require different specifications for PVA. For example, when PVB is laminated in glass, it needs to be clear without imperfections. It also needs to laminate well and thus have good processing properties. And to achieve these properties in PVB we produce and to optimize the efficiency of our PVB production processes, we require PVA with a specific hydrolysis level, the correct molecular weight, the correct molecular weight distribution, low residual methanol content, and finally low ash and low iron, which affects color.

Our first requirement for potential PVA supplier is that they meet these physical specifications on a consistent basis. We require a time consuming and expensive pre-qualification process for all potential suppliers that generally take six to

12 months. U.S. PVA producers can all meet these requirements, because PVB production is the largest PVA application in the United States, accounting for some 40 percent of the market. Most PVA producers elsewhere in the world, however, cannot meet our PVA requirements, generally because the products are too high in color, the level of hydrolysis is unsuitable, or the residual methanol content is too high. They produce PVA geared to dominant local uses, such as venalonon fibers and textile sizing in China.

Let me next turn to the structure of the PVA industry. This is a highly concentrated industry with only three producers: Celanese, DuPont, and Solutia. Solutia is the smallest of the three. As Tim mentioned, we can consume all of the PVA we produce to produce PVB. We do not sell PVA in the merchant market. We are a major purchaser of PVA in the U.S. market.

DuPont produces and sells both PVA and PVB. Its PVA produce line is limited, as it can only produce PVA within a limited hydrolysis and viscosity ranges. A bigger problem from our perspective is that it captively consumes a large portion of its PVA production to produce PVB resin and PFB film and it competes with Solutia in those markets. Indeed, DuPont is one of our principal global competitors in the PVB market. It's far from ideal to be dependent upon a principal competitor.

Celanese is the largest U.S. producer of PVA. It has a full product line and it's the market leader and the price leader. Celanese does not compete in the downstream PVB market. However, Celanese is not focused only on the U.S. market. It exports to Solutia in Belgium and our peer's data shows it exports to Germany, Italy, Latin America, and China, among other countries.

In sum, without the option of imports, a U.S. PVA purchaser has a choice of at best two suppliers and for certain products, only one supplier. And for Solutia, which produces PVB resin and film, one of those two potential suppliers is also our principal competitor. This is a purchasing nightmare scenario and a scenario that came to pass in both 2007 and again in 2008, as I will discuss next.

A mandatory requirement for Solutia as a purchaser is security of supply. There is no substitute for PVA and PVB. We simply cannot risk the shutdown of a PVB plant due to a PVA supply disruption. We, therefore, require multiple suppliers and purchase PVA for PVB production under long-term, multi-year contracts. We do not and cannot switch suppliers based on short-term price differences of PVA for our U.S. operations from U.S. producers. A supply chain extending to China, Japan, or Korea is, by definition, much longer and less reliable. Neither DuPont nor Celanese has added new production capacity since the orders and none, to my knowledge, has any plans to increase production capacity. Any increases that have occurred have been incremental and have come about by optimizing the use of existing capacity.

Because the demand for PVA in the U.S. has grown since the orders and will grow again in the future, demand inevitably will exceed the capacity of the U.S. industry to reliably meet it, making imports necessary to provide security of supply. From my vantage point, that limit was reached both in 2007 and then again in 2008. I am not talking about the point at which apparent consumption reaches some theoretical or nameplate capacity figure that is calculated for the purposes of responding to a Commission questionnaire. Theoretical capacity is only meaningful if a producer carefully and adequately maintains its plants and can continuously and reliably operate at that level without outages or breakdowns. I'm talking about effective run time, a level that form a purchaser's perspective is reached and exceeded when suppliers place you on allocation; when they tell you, you can't increase your volumes; when they tell you, you can't produce your product; and when you put your own operations in jeopardy due to supply problems. It is a level that is exceeded when you no longer have confidence in the security of your domestic supply. That's the point we've already reached and that's why we are here before you today.

The details of our varied and increasing supply problems with both DuPont and Celanese are set forth in our pre-hearing brief. Many are confidential and, thus, I'm not at liberty to repeat them. But, I will highlight two incidents that are a matter of public record.

First, in June 2007, Celanese experienced a problem at its acetic acid plant in Clear Lake, Texas. Celanese placed Solutia on a 20 percent PVA allocation for five months. That means they refused to supply us with 80 percent of our contract volumes. They did not offer any alternative source of supply. They made their problem our problem. We then went to DuPont to cover the shortfall, with whom we also have a long-term supply contract. We ran into supply problems with DuPont, as well, as discussed in our brief.

Next, on September 28, 2008, DuPont declared force majeure. Like Celanese before, DuPont responded by placing Solutia on allocation at a level of 90 percent. This allocation lasted throughout the fourth quarter of 2008 and in my testimony, I would say that it continues to this day. I just discovered that the force majeure has been ended. I had not been notified of that and so I am happy to hear about it. Like Celanese, DuPont had not attempted to find alternative supply during the time of the force majeure or otherwise make good on their contract. They, too, have made their problem our problem.

This supply situation fails to meet anyone's definition of security supply. It is intolerable to Solutia as a purchaser. It puts our PVB business at risk and it jeopardizes the jobs of our 620 U.S. Saflex employees. I'm not a lawyer and I don't pretend to understand antidumping laws. I'm also not an economist. I'm a buyer and my responsibility is to obtain an assured supply of PVA to run Solutia's Saflex PVB businesses. When I sign a contract with DuPont or Celanese, I expect them to deliver. If they have a problem, I'm really not interested in the reasons. I need to keep my plants running. If I'm put on allocations for two years straight and cannot get the products I need, then there is a problem of supply in the U.S. market, end of story.

U.S. producers cannot reliably meet demand. That was a problem in 2007. It was a problem in 2008. And it's a problem that can only get worse when U.S. demand resumes its growth trajectory. We simply must have access to additional import supply, if we're to maintain and grow our PVB business in the United States and that supply must include China. Let me explain why.

First, you may ask why we can't rely on supply from countries not subject to the antidumping orders. Well, we tried. One producer in Germany is focused on the capacity short European market and is no position to supply our growing needs. One producer in Singapore likewise does not have capacity. Taiwan has the capacity. It has increased exports to the U.S. dramatically since the orders. Taiwan sells in the U.S. through DuPont and through Perry Chemical. We examined the product, but there are quality issues that need to be resolved. In addition, we have concerns due to the fact that they are an expanding PVB producer and, thus, a downstream competitor like DuPont. Finally, with respect to Korea and Japan, when demand is strong, all their capacity is used to supply higher-priced markets in Asia and Europe.

What we really need is a contingency plan, multiple suppliers to whom we can look when there is a supply issue in the United States. China is the only realistic option for the long-term future of supply, because there are a dozen or so of different producers. Domestic producers are our first choice for the reasons I mentioned. But as events have shown, we need a backup plan and China is hardly the threat DuPont and Celanese make out in their brief.

First, the Chinese industry is focused on its huge and growing domestic demand and is not export oriented. The trade data show that the United States, that's DuPont and Celanese, export more PVA than China and in most years of the period of review, China was a net importer.

Second, plants that have been built in recent years have been built to meet growth in Chinese domestic demand or to replace high polluting settling technology plants that have been dismantled. Supply was tight worldwide in 2007 and 2008, as Celanese and DuPont emphasized to us repeatedly during our negotiations last year.

This brings me to the final issue I wish to address: trends in U.S. demand in pricing and the increasing need for subject imports as an alternative source of supply to unreliable domestic producers. U.S. demand for PVA has increased since the orders were put in place and all projections, including our own, are for continuing growth. The CEH report projected 2.2 percent annual growth over the period 2006 through 2011, led by four percent growth in PVB applications. The SAI report projected higher growth. Our own demand projections were provided confidentially. We see large demand growth in PVB in existing laminated glass applications and in nascent thin film photovoltaic applications. We also see opportunities for PVA in new applications that you heard from Celanese about in their testimony, including replacement for styrinebutadine latex in paper production and water-based coatings.

Demand growth will only worsen the supply situation that's already been tenuous. We recognize that the U.S. economy is in a midst of a serious recession and today, in January 2009, there is no question that demand for PVA is down over last year's worldwide. Automakers have announced temporary shutdowns and the environment is uncertain. But, we're in the business for the long term. Just as we must plan beyond the next month or year, so we urge the Commission to consider not just the current downturn, but the eventual upturn when demand recovers and we return to supply problems we saw in 2007 and 2008. In any event, we do not share the sky is falling forecast you've heard from DuPont and Celanese this morning.

The critical point in understanding the health of the PVA industry in the context of the current business cycle downturn is that while volumes are down a bit, prices have remained high and profit margins are likely increasing. Our own purchases of PVA are down only slightly from 2008 levels, in terms of volume, but the prices we're paying are higher. That's right, we pay more per pound now in the first quarter of 2009 than we paid in the fourth quarter of 2008 and we paid substantially more in the fourth quarter of 2008 than we paid in the fourth quarter of 2007. In November and December 2008, at the end of the fourth quarter, in which DuPont and Celanese would have you believe the market collapsed, we signed new multi-year contracts with each of them, with minimum volume requirements and with prices higher than we paid in 2008. We knew demand was declining, but we know there will be a recovery and we bet our money on it.

But beyond declining volumes, consider prices and profitability in assessing current conditions. Based on our own experience, we believe Dupont's and Celanese's PVA margins are likely stable, if not improving. As I noted earlier, VAM represents nearly two-thirds the cost of PVA. One way to estimate the trend and profitability of PVA is to track the spread between VAM prices and PVA prices, both of which I purchase. VAM prices peaked in the third quarter of 2008 and by the first quarter of 2009, had dropped by half. PVA prices have not dropped by anything close to that, if at all. As noted, we're paying more. With input cost collapsing, the spread between VAM and PVA prices is increasing. In short, the sky is hardly falling.

That concludes my testimony. I would now like to introduce Richard Boltuck.

MR. BOLTUCK: Thank you. Good afternoon. I am Richard Boltuck, Senior Advisor, CRA International, and I welcome the opportunity to appear before the Commission on behalf of Solutia. I have been asked by counsel to review the most significant economic factors bearing on whether the U.S. PVA industry would be harmed by expiration of the orders against imports from China, Japan, and Korea. The record evidence in this case supports the following conclusions.

First, economic substitutability between the subject imports and the like product is extremely limited by several compelling factors that restrict competition to a small sliver of U.S. production.

Second, any increase in subject imports were the orders to expire would likely displace non-subject imports to a substantial, perhaps overwhelming extent, thereby insulating U.S. producers from competitive harm. To whatever extent in increase in subject imports is not fully offset in this way, U.S. producers have demonstrated an ability to avoid harmful competition in the U.S. market by selling PVA in attractive overseas market.

Third, in managing its PVB operations, Solutia has encountered unreliable PVA supply in the United States and until very recently, at least, DuPont has had Solutia on allocation. This situation threatens current PVB production and workers employed in those operations and is likely to grow more challenging as Solutia grows its downstream operations in the future.

Fourth, the financial data before the Commission are flawed and understate the true economic performance of the U.S. industry. Still, these data point to strengthening performance towards the end of the POI that cannot be associated with the advent of the orders, but leave the U.S. industry much less vulnerable to injury. Evidence indicates the profit margins have increased right through the end of 2008.

Now for the details. First, the economic substitutability is extremely limited. Without disclosing actual shares, a much greater proportion of U.S. PVA production is insulated from any competition with subject imports than in the vast majority of investigations the Commission has considered. A large share of U.S. production is transferred captively for use in integrated downstream PVB production and does not compete with subject imports. A large share of U.S. production is successfully exported to an established customer base overseas and these sales contribute to the performance of the U.S. industry as a whole, but do not compete with subject imports within the U.S. market. Finally, subject imports compete in only a small segment of end uses that compete directly with U.S. production, principally in the paper industry and textile sizing segments that are relatively static or declining, whereas the U.S. PVB market for PVA is likely to grow.

Significantly, no producers in subject

countries supply the U.S. PVB industry, which the staff has identified as the most import single end use in the United States. As the Commission's record confirms, purchasers universally require a lengthy qualification process. Such significantly limited economic substitutability is important in evaluating the effect of any hypothetical increase in subject imports on U.S. producers. The Commission has long recognized that the lower the degree of substitutability, the smaller is any adverse competitive effect. And, here, that effect is small, indeed.

Second, any increase in subject imports consequent to expiration of the orders is likely to substantially displace a similar volume of imports from non-subject countries, thus insulating U.S. producers. The best evidence of what will happen if the orders end is what actually did happen when the orders were put in place. The data are confidential, but I urge the members of the Commission to examine Table 1-1 of the staff report carefully, look at the U.S. producers' U.S. shipments. To what extent did they increase, if any, from 2002 to 2003, as the orders took effect? Look at the U.S. producers' share of the U.S. market from 2002 to 2003. Did it increase significantly? To what extent is any increase explained by greater U.S. shipments and to what extent by a change in the size of the U.S. market? Look at the longer term effects. To what extent does the U.S. producers' share of the U.S. market in 2007 exceed its share in 2002? Given any change in the amount of consumption in 2003 over 2002, to what extent did increased imports from Taiwan and other countries increase as the volume of subject imports decreased?

Celanese and DuPont, in their brief, argue that displacement is irrelevant, that the test ought to be based on a pricing analysis. I will address aspects of this claim in the in-camera session, but the bottom line of this approach ought to be whether the orders permitted the U.S. producers to raise their prices. The Commission should focus on the pricing data before the orders took effect and for the couple of years following imposition, data which are depicted graphically on page 47 of Solutia's brief and draw from the original and current investigations. These comparisons are possible because the same products were defined in both investigation.

Celanese and DuPont admit that in the wake of the orders, they were unable to recover higher costs through higher prices. And, yet, since the orders, if effective, operate to enhance this revenue, this failure is strong evidence that the orders were ineffective. Contrary to protestations throughout their brief, it is a highly reasonable economic inference that elimination of the orders would similarly have no apparent effect on the industry's success in the U.S. market and that result is explained, in large part, by the offsetting changes induced in imports from non-subject countries. The record lacks any reason to doubt that if the orders were removed, to whatever extent subject imports increased, the process evident when the orders took effect would substantially reverse itself, including an induced offsetting change in the volume of non-subject imports. Moreover, an examination of the official national PVA export data for Taiwan, the largest non-subject supplier, shows that in 2007, it exported 46 times more PVA than it shipped to the U.S. market to countries other than the United States. This is important because it confirms the ease with which Taiwan could divert its U.S. shipments elsewhere, were the orders to expire.

Similarly, U.S. producers are further insulated from harm because their access to established overseas export customers mean that they may increase export shipments in response to any increased competition within the U.S. market. As the staff noted in its discussion of the U.S. producers' elasticity of supply to the U.S. market, "supply responsiveness is enhanced by a large amount of exports." This ability is especially apparent when one considers just how limited the direct competition with subject imports actually is, as I discussed a moment ago. Moreover, any shift of subject imports to the U.S. market would raise PVA prices in markets outside of the United States, thereby improving U.S. industry performance on its export sales and to that extent, offsetting any effects within the U.S. market.

Third, Solutia seeks to increase its multiple sourcing of PVA, in order to secure more reliable supply availability. As Michael Berezo explained, Solutia has encountered serious difficult obtaining the PVA products it needs to keep its PVA operations running and is currently or until very recently on allocation by DuPont. Solutia naturally seeks to alleviate this trouble by multiple sourcing, which means qualifying a foreign supplier. Significantly, as photovoltaic and other new PVA applications take off and the global PVB and resin industry expands in future years, growing U.S. PVB resin production are likely to require volumes of PVA that simply exceeds suitable U.S. PVA capacity. Continuation of the orders actually places expansion of PVB production in the U.S. in jeopardy, in light of perspective offshore venues that don't face similar sourcing impediments. These futures of competition in the evolving market ought to be considered in evaluating the utility of these orders.

Fourth, the U.S. PVA industry's financial data are flawed and understate the industry's true economic performance over the POR. I will explain why in detail in the in-camera session. But, this conclusion is significant, as the Commission assesses the performance of this industry within the context of the business cycle. Moreover, as I will discuss in the closed session, while the magnitude of profits is understate, the trends are still likely meaningful and the pattern of reported profits during the POR shed light on whether the orders were effective in helping the industry or whether the industry is increasingly or decreasingly vulnerable by the end of the POR.

I would also note that while Celanese and DuPont stress the effect of the recession on sales volume in the final months of 2008, they do not report their fourth quarter profitability. Michael Berezo, however, has testified that through the end of 2008, the PVA-VAM margin, based on the ratio of PVA prices Solutia pays in the market to commodity VAM costs, continued to increase. This margin is widely used in the industry as a metric of profitability, since VAM accounts for roughly two-thirds of the cost of PVA production and it's all the more relevant, given the importance of PVA production as an end use in the U.S. PVA market. So while volume has inevitably been affected by the recession, profit margins appear to be holding up well and even likely increasing through the fourth quarter.

Finally, I have noticed that Celanese and DuPont stress increasing PVA capacity in China. An overwhelming share, over 90 percent of China's PVA production is dedicated to serving its rapidly growing home market. As a corollary, the PVA grades in which Chinese producers specialize are geared for end uses that have actually been contracting for many years in the United States. In addition, the recent sharp reduction of the VAT rebate in China for exports of PVA and other products also has increased the cost of exporting. These facts hardly argue in favor of the conclusion that Celanese and DuPont urge the Commission to reach with respect to Chinese capacity.

I would be pleased to answer any questions at the appropriate time. Thank you.

MR. SHOR: Chairman Aranoff, that concludes our affirmative public presentation.

CHAIRMAN ARANOFF: Okay. Let's not send anyone into shock by not having their lunch. We will take a lunch break now. And, let's see, it is 10 after 1:00. We will resume at 2:00 with the questioning of this panel. Please be reminded that this room is not secure. You shouldn't leave any confidential information behind in this room unsupervised. So, we will go into recess until 2:00.

(Whereupon, at 1:10 p.m., the hearing was recessed, to reconvene at 2:00 p.m. this same day, Tuesday, January 27, 2009.)

//

//

//

//

//

//

//

//

//

//

A F T E R N O O N   S E S S I O N

(2:02 p.m.)

MS. ABBOTT: Will the room please come to order?

CHAIRMAN ARANOFF: Welcome back to the second portion of this hearing. We're going to begin with the questioning of the second panel. We thank you very much for your indulgence of our taking the lunch break in the middle of your presentation. I know it's not ideal. But I think it will work out well with keeping the day moving along.

Let's see, for this panel, we're going to begin the questioning with Commissioner Pinkert.

COMMISSIONER PINKERT: Thank you, Madam Chairman, and I thank the panel for coming in today and helping us understand what's going on in this industry.

I want to begin with Mr. Boltuck and, in particular, ask you whether there's some economic test that can be performed to determine whether or not there's limited competition between the subject imports and the domestic production. For example, is there some test of relationship or correlation of prices that could be done to make that determination?

MR. BOLTUCK: In principle, yes, you can use econometric techniques to estimate elasticities of substitution. But you need longer time series typically than are available in ITC investigations, even with the extended review investigation. The data points are too few for that purpose.

But the method that's been used consistently since the late 1980s at the ITC itself, and recalling that the staff estimates elasticities of substitution in every case and obtains comments on them from the parties, is looking at the underlying basic building blocks that are universally understood by economists, for instance, to influence the degree of substitutability.

So, for instance, one can look at product differentiation, at long term contracting, at internal consumption, at other factors that insulate some production from direct competition such as exporting; and also the evidence that the purchasers provide regarding their concerns about product quality and consistency, reliability, multiple sourcing, and the like.

So one has to look at that in the case specific context, comparing it to the experience that the Commission has with prior investigations. Those tend to be qualitative factors that allow you to say, is the substitutability more or less than we encountered in prior cases where they were less true?

So it's an empirical approach, but it's an approach that relies upon understanding the factors that influence substitutability and identifying them specifically as part of the investigation.

COMMISSIONER PINKERT: I appreciate that, and I thank you. You heard the testimony earlier today with the Petitioners' panel. You might remember that I specifically asked about the claims that the competition is limited by factors such as end use, product mix, quality, and purchaser qualification; and you heard the response I got earlier today.

So I guess what I'm trying to get at right now is, how am I supposed to sort out the different prospectives on this limited competition issue?

MR. BOLTUCK: Well, I mean, I think one thing to do is to understand that those urging retention of the orders have an interest in emphasizing or arguing in favor of a higher degree of substitutability, rather than a lower degree of substitutability. So the credibility is probably colored by that interest.

But ultimately, my advice or my suggestion would be to look at the uncontroversial underlying evidence. So in other words, no one can dispute what share of domestic production is exported and is protected from competition with the imports, what share is captively produced; and put that in the context judgmentally of your experience with prior cases in other products.

So I don't think, in the end, as a Commissioner, you can depend on either what I say as a bottom line conclusion on substitutability, or what the other side says. But you do need to look at the factors that I've raised, that they've raised; and place it in the context of the whole history of your experience with other industries.

COMMISSIONER PINKERT: Thank you; turning to Mr. Berezo, I recall that in your testimony, you talked about how it's not desirable to be dependent upon a competitor for purchasing inputs. I'm wondering whether there was every any tie, any connection, between the allocation that Solutia was put on and your status as a competitor with Dupont.

MR. BEREZO: I don't think I could say that, no.

COMMISSIONER PINKERT: Is there any other annecdotal information or any other evidence that you could present to us that would demonstrate that you had a legitimate fear of sourcing from a competitor?

MR. BEREZO: Well, certainly; I mean, I don't know what sort of documentation, you know, would support that. But it's just logical to think that. You know, we're competitors downstream. To the extent that you've got to manage your own business and take care of your own interests, it just would seem logical that that may be factor in consideration. But I don't have any documentation or anything beyond that, no.

MR. SHOR: Commissioner Pinkert, there is one instance that we'll talk about in the in-camera session, that I think goes to the question you asked.

COMMISSIONER PINKERT: Thank you; now I don't know who on the panel should answer this next one. But imports from all three subject countries declined under the anti-dumping orders, and some importer questionnaire responses indicate that the orders have affected sourcing decisions by imports. In light of this information, do you agree or disagree with the proposition that revocation of the orders would result in an increase in subject imports?

MR. SHOR: I'll take a first crack at that. The first fact we pointed out in our brief was that imports from subject countries began to decline before the orders were put into place. That's where Mr.

Greenwald was trying to look just at Japan and Korea this morning, and not taking into account China.

But if you look at China, or if you look at all three countries combined, imports were declining before the orders, both absolutely and relatively to market share.

If you look at what happened after the orders, there was a decline. But the question is, where did that volume go? And we know from the evidence before the Commission, the full data, that that capacity was absorbed elsewhere in the world.

In 2007, 2008, even Dupont and Celanese acknowledge, the world was at capacity. They were producing all they can. The rest of the world was producing they can, and there were supply problems. So that capacity got absorbed. It's not sitting in wait, ready to come back to the U.S.

Then we have the issue with China, which was the major exporter to the U.S., accounting for most of the volume. If you look at what happened over the period, there was a drop in 2003 right after the order. But there was an equally large percentage drop in 2007/2008, and that can't be explained by the order. That's explained by other factors.

We think the reduction in the VAT debate had an effect on that. So there had been structural changes in the conditions of competition that suggest that the level of imports that had been declining before the order, but dropped after; that wouldn't come back to the market.

Having said that, even if it did, even if the exact volume pound for pound were to come back to the U.S. market, the question the Commission is faced with is, what would the impact of that be on the domestic industry? Would it reduce domestic industry sales; or would it reduce sales from Taiwan, Germany, and Singapore?

The best evidence is what happened. Those sales didn't go to the domestic industry when they left the U.S. market. They went to the Taiwanese mostly.

COMMISSIONER PINKERT: Thank you; I see that my yellow light is on. So I'll save my additional questions to the next round.

CHAIRMAN ARANOFF: I was thinking about all of the different testimony that we had this morning, between purchasers saying that, you know, when times were good, they couldn't get enough of this product; and the merchant domestic producers saying that, you know, when times are bad, they can't find enough customers to keep their plants running.

So I just want to make sure. My understanding is that this is the kind of industry where when there are increases to capacity made, they have to be made in large chunks. I think you had talked about the fact that the economic scale of a plant is quite large for PVA. I take it that you're all nodding at me.

MR. SHOR: That's correct, yes.

CHAIRMAN ARANOFF: So would it be fair to say that this is the kind of marketing in which supply and demand are very seldom going to be in an ideal balance? Either somebody just brought new capacity on line and demand hasn't caught up; or nobody has brought that new capacity on line, yet. But demand is too high?

MR. SHOR: Let me respond this way by saying, I think it's important -- in this industry, in particular -- not to limit your focus to the United States. Because a new plant is a large amount of capacity, when you look at just the United States.

But this is an industry where the U.S. producers, Dupont and Celanese, export a tremendous percentage of their shipments. So they're not insulated from the larger forces of supply and demand that are going on in the world; and their prices ultimately are going to be affected by what happens in the rest of the world.

They can't insulate themselves from that, even with a dumping order. That's the lesson of what happened after this dumping order was put in place.

So supply and demand in the United States may seem that there would have to be a big increment for a capacity. But it's not a big increment if you look at the world as a whole.

So when the Chinese producer, for example, adds a new plant because the Chinese consumed two billion pounds a year of PVA, when they add a plant that's not a big increment in capacity for them. So it balances out in the world. I don't know if that answers your question.

I don't think, in this case, you can just focus on the U.S. and say, there's either going to be a big imbalance or it's not going to be.

CHAIRMAN ARANOFF: Well, I mean, at some point I have to focus on the U.S., because that's what the statute tells me to do. But I take your point, and I think my question was more globally oriented; that this is not an industry where you can take a plant and incrementally increase your production as demand goes up. These plants are basically on or off.

MR. SHOR: That's correct.

MR. FEAST: There may be opportunities with plants that are not at scale, weren't built to scale, to de-bottleneck them, to add increments of capacity that don't represent 40,000 tons.

At the same time, I think there was some testimony earlier that older, less efficient plants in China using outdated and dirty technology actually have been taken off line. So the evolution of global capacity, although you may see significant size new plants come on, those are characterized by the closure of older, less efficient plants, rationalization of capacity, and function of where the market growth is.

CHAIRMAN ARANOFF: Right, well, I'll follow you on that, because I was going to ask about that later, anyway; which is, we just don't have anything in our record to substantiate that there have been plant closures in China to balance out plant openings.

We have some evidence from press and other public sources about plants coming on line. Having had a not terrific response rate from China's producers, we just don't know.

So if there's anything that you can put on the record to substantiate that there are plant closures in China that are balancing out some of the plant openings, that would certainly be helpful.

MR. FEAST: We'll certainly see what we can do.

CHAIRMAN ARANOFF: Okay.

MR. SHOR: Commissioner Aranoff, if I could just respond to briefly one point you mentioned in terms of the statutory question. I believe that the Commission resolved early on in its years that you really aren't just looking at the effect in the U.S. market. You're looking at the effect on U.S. producers.

There were cases early on, on whether you should consider the effect on exports or how you should look at the export market.

But to the extent the U.S. industry is large exporter, then nothing you do with the dumping order is going to affect the condition of the U.S. industry. Their profitability, their shipments, are going to depend largely on the performance of their exports.

So if prices for exports go up, they're going to do better. If prices for exports go down, they're going to do worse. That is something you are supposed to take into account under the statute. So I think the large degree of exports does mitigate the effective imports in the U.S. market.

CHAIRMAN ARANOFF: Well, to the extent that you're talking about a non-attribution issue, I would agree with you.

Now having read Solutia's brief, in looking at demand issues, there are citations to a number of projections about the state of demand for PVA in the U.S. and the global economy, which given events since the end of our period of review where we stopped collecting data, seem kind of dated. A lot of people have revised their forecasts since then.

Should we be giving probative weight to projections about likely demand and about supply shortages that were made during the boom years of 2007 and early 2008, in terms of considering them indicative of likely future conditions and in the reasonably foreseeable future?

MR. FEAST: My position would be, having indeed revised some of our own estimates, that if you look at the rate of growth in the outer years of our planning horizon and you look at what has happened over the last three to six months, the impact has been without a doubt to change our predictions for the next 12 months.

And if you compared the projections we have now with those we had maybe 12 months ago, what you would see is essentially a hiatus, a delay, in the pace of growth as markets correct, investment slows.

My expectation and indeed our projections show that the pace of growth is expected to pick up again. If you look at the trajectory of growth and growth rates, you know, three to five years out, they look very similar to what we had in the original plan; al beit it from a slightly smaller base, because of what we're seeing in 2009.

CHAIRMAN ARANOFF: I mean, obviously, in this case, as in every case, we need to define what is the reasonably foreseeable period that we're looking at. You could make a reasonable argument that next week isn't reasonably foreseeable under current conditions.

But the Commission normally is looking at a period of, you know, two years or less when we look at what's reasonably foreseeable in a five year review. You know, it seems to me that most things you read in the popular press would suggest that, you know, the economic recovery is maybe some time in 2010.

MR. FEAST: I would expect that 2009 is going to look a lot like 2008 in terms of a demand profile, inasmuch as I can tell right now, and that

2010 is indeed going to be a year of recovery. The question we have to answer is how fast a recovery, how sharp a recovery, and when is it going to start?

But my expectation is that we're going to see a one year hiatus where demand is going to look a lot in 2009 like 2008; and then the question is just about the paces that pick up in 2010.

CHAIRMAN ARANOFF: Let me go specifically to the issue. I spoke with Dupont and Celanese this morning. You've been very bullish on prospects for PVB and some of the downstream products that it's used in; and in particular, in referencing new applications in Federal take modules and in biodegradable plastics.

I know I asked this morning for this, and so I'll ask you again -- can you give us solid numbers of what you expect the demand for PVA that goes into PVB, that goes into these applications, to be in the next two years or so?

MR. FEAST: I certainly couldn't give you solid numbers. But I can definitely give you the very best estimates we have, and we will do that in our post-hearing brief. Because obviously, a lot of the detail in there is confidential. But we have some very good projections for the next 24 months, which I think will answer the question.

CHAIRMAN ARANOFF: Okay, well, that would be very helpful. To the extent that you can provide detail about who are the customers and whether these are already growing concerns that are purchasing this product or companies that are expected to start purchasing, that would also be helpful to know.

MR. FEAST: On a confidential basis, we'll be happy to do that.

CHAIRMAN ARANOFF: Thank you very much; Vice Chairman Pearson?

VICE CHAIRMAN PEARSON: Thank you, Madam Chairman; greetings to the afternoon panel. Mr. Feast, with a name like yours, you perhaps are particularly glad that we did take a lunch break.

(Laughter.)

MR. FEAST: You know me too well.

VICE CHAIRMAN PEARSON: In the event these orders are extended and an order eventually goes into place on Taiwan, how would the market place adjust? I mean, some trade sales will change. Some things will change in the global market, if we end up with these orders in place and an order on Taiwan. What might those adjustments be?

MR. BEREZO: You're saying the orders would be continued an an order would be one placed on

Taiwan?

VICE CHAIRMAN PEARSON: Yes.

MR. BEREZO: Well, certainly the risk of interruption, you know, would be a great concern for us in the North American market.

Depending on how things play out in the rest of the world and where demand is, we would continue to try to find alternative supply from, say, non-subject countries. It's not worked out well so far.

Beyond that, you know, it would be a concern for us on what the level of competitiveness would be like for the U.S. producers and what their incentive would be to work with us to develop a more reliable supply chain, and develop products that work better for us and improve our process; that sort of thing.

VICE CHAIRMAN PEARSON: Okay, but you don't foresee a circumstance in which Solutia or some other company would increase PVA production in the United States in response to limitations?

MR. BEREZO: It's possible. Like Tim mentioned, you know, we've got, like everybody has, limited resources; and you have to make choices of where to make investments.

You know, to the extent the economics get better or worse, I mean, a PVA expansion by Solutia I don't think is out of the question, no. But, you know, we would certainly prefer to focus on our downstream operations, our downstream businesses, and grow our PVB business.

MR. FEAST: It's very hard to imagine to imagine a third party coming into the U.S. and building a plant here. Because as we already talked about, the capacity in the U.S. already is greatly in excess of demand in the U.S. and exists largely to serve either captive use or exports. So I don't think there's any likelihood whatsoever that someone else is going to come to the U.S. and build a plant here.

It's extremely difficult for us, in the situation we're in. Because the short answer to your first question is, things would not be expected to get any better in the event that the orders were continued.

I would not expect to see any improvement in service, and we would not be able to make the contingency plans that we talked about to protect ourselves in the event of a supply interruption; or indeed to provide a certain amount of encouragement to our suppliers to focus on the needs of ours as a customer.

VICE CHAIRMAN PEARSON: Is there a

possibility that Solutia would shift more of its PVB production overseas, rather than producing it in the United States?

MR. FEAST: The plants that are here today, it's very unlikely that anything would happen in the near term with respect to them. Because obviously they are significant investments we've made and not easily moved.

But as I mentioned in my testimony, very clearly, we are looking at this issue when determining future investments. I have to say that it is very unlikely that we would look favorably on further investments in PVB resin production in the U.S. with these orders in force. Because it's essentially asking us to put our head in the mouth of the crocodile and hope it doesn't bit.

VICE CHAIRMAN PEARSON: Okay, fair enough; thank you for those answers. Given what appears likely to be a significant decline in demand in the reasonably foreseeable future for PVA, is the domestic industry vulnerable?

MR. SHOR: We don't know. Part of the problem I have with the whole focus of the domestic industry's presentation this morning is, they seem to be predicating their entire case on a quarter and developments on which the Commission has not gathered any comprehensive data.

They tell you their shipments are down. I don't know what their profitability is. We suspect it's up, because the VAM prices have dropped so much.

I don't know how the Commission can base a determination on developments in the fourth quarter of 2008 and in January 2009 on which it has no data; relying on press clippings about the state of the economy generally. I think that's very dangerous territory.

VICE CHAIRMAN PEARSON: Right, well, I'm not relying so much on the fourth quarter of 2008, as I am trying to project into the reasonably foreseeable future; and to try to guess whether the conditions facing the domestic producers will be favorable or unfavorable. Mr. Boltuck, did you want to make a comment?

MR. BOLTUCK: Yes, I just wanted to add to that. You know, the statutory guidance, that the Commission evaluates the industry over or within the context of the business cycle, is really very relevant here. We are embarked in a recession at the moment; there's no doubt.

But you know, recessions are followed by recovery. Anti-dumping orders are for five year periods at a time; and the testimony you've heard from our panel has been that certainly within the context of that five years, there's a lot of optimism about this segment of demand for PVA.

There will be a recovery. There are growth segments such as photo-voltaic. But also, you know, there is going to be investment in renovating schools. Schools require plate glass, which uses PVB. There's going to be replacement of large automobiles with small automobiles. Those new automobiles will have windshields that use PVB.

So there are all kinds of developments that may be related to the evolution of the economy that also suggest that this is one of the industries, once investment starts rolling again, that will be expanding, not contracting. So some industries are going to contract. Some are going to be bigger than they otherwise would have been in the wake of this recession, and I think that's important.

The other thing is that looking back to get some guidance on the performance of the industry, we'll talk about it in the in-camera session. But we certainly think the performance of this industry is better than the numbers that are before you.

VICE CHAIRMAN PEARSON: Okay, well, you referenced a five year time horizon, looking forward. I think giving it that much time; yes, I would see a high probability for better times for the domestic industry.

I don't know that the Court of International Trade would smile on that approach. So we can't, for the purposes of an opinion, look that far ahead.

MR. SHOR: Vice Chairman Pearson, if could just add one idea. The statute directs you to look at the performance of the industry in the context of the business cycle and the conditions of competition.

I think you asked a good question of the panel this morning which is, okay, even assuming that there's some vulnerability by reason of the recession, where is the causation; and is there anything to indicate that the domestic industry is likely to be injured in the reasonably foreseeable future, in the context of the recession, by subject imports? That's also an important question.

VICE CHAIRMAN PEARSON: No, I agree; and let me just turn that around then and ask, in that situation where they were in the downsize of the business cycle, how can we have any assurance that there won't be an increase in subject imports; perhaps not an absolute increase, but an increase in terms of market share, that would be large enough to cause material injury to the domestic industry?

MR. SHOR: I think my best answer to that question is, can I give you an assurance? I don't think so.

VICE CHAIRMAN PEARSON: More likely than not -- we don't go for assurance here. We just go for more likely than not.

MR. SHOR: This is an unusual case in a lot of respects, apart from the fact that you have the three domestic producers here arguing with each other. But consider the high degree of captive consumption, the high degree of exports, the relatively small share that is even subject to import competition; and compare that segment of the market to the export segment of the U.S. industry.

I liken it to a balloon; and I'd invite the domestic industry to respond to this issue. But what they basically said this morning is, their business model is, they want to protect the U.S. market from dumping so they can dump in other markets; because they have excess capacity and they're going to sell in other markets at below the prices they sell here.

So they want to dump in other markets, and not have anybody dump here. At the same time, there's this balloon effect on the market. If prices in the rest of the world drop, that's going to hurt their export earnings.

But they can't have it both ways. Either the recession is going to affect their export earnings or it's going to affect their domestic sales, and they're going to balance out. If they protect one, the other is going to go down. If you squeeze one, the air is going to come somewhere else.

VICE CHAIRMAN PEARSON: Okay, fine; I took too many liberties with the red light this morning. So I think we'd better end it there, Madam Chairman.

CHAIRMAN ARANOFF: Commissioner Lane?

COMMISSIONER LANE: Good afternoon; Mr. Shor, I'm going to start with you because this is the question that I've had from the very beginning of getting ready for this hearing. How would revocation of these orders benefit Solutia?

MR. SHOR: I have an answer to that question.

COMMISSIONER LANE: Well, I figured you would.

MR. SHOR: It's one we've discussed quite a bit.

COMMISSIONER LANE: I guess I still don't understand.

MR. SHOR: What Solutia most wants is not to buy imports from any subject country. We do not want to be an importer. The testimony this morning was, we do not want a supply chain extending around the world.

What we want is reliability of supply, and we want what was talked about this morning, a contingency plan. We want to be able, in the event that Dupont or Celanese has another force majeure or minor outage -- in that instance to be able to attain supply.

We will talk about this more in the in-camera session. We do not want to have long term contracts necessarily with foreign suppliers. We do not want them to be our primary suppliers; but we need a contingency plan. We don't have one now and we can't have one now.

COMMISSIONER LANE: Have you discussed with the Chinese producers the possibility of buying subject product from them?

MR. BEREZO: Yes, we have.

COMMISSIONER LANE: Have you entered into contracts?

MR. BEREZO: No.

COMMISSIONER LANE: Have you made any arrangements whatsoever to buy product, other than what you're currently buying?

MR. BEREZO: We have experience with Chinese production for our operations in Europe. So one way to try to understand what the capability is of Chinese producers to meet our qualifications is to experiment with our operations in Europe.

COMMISSIONER LANE: Okay, just in case I was vague, have you discussed with Chinese producers buying subject product for your operations in the United States?

MR. BEREZO: No, we have not.

COMMISSIONER LANE: What about Korea or Japan?

MR. BEREZO: No.

COMMISSIONER LANE: All right, thank you; I sort of saw an inconsistency in your direct remarks -- not yours. I can't remember who said that you wanted a diversity of supply, and so you were looking at China for diversity of supply.

But at the same time, you said China is not going to come into this market because their capacity is already going to their home market. Now could you please reconcile those two thoughts and make them consistent?

MR. FEAST: It was the response we got when we embarked on some discussions with Chinese suppliers of PVA to see what their availability would be. In fact, the common response we got was, we have no interest in supplying you. We're fully committed to supplying our home market.

So while we are looking for a contingency supply to improve the reliability of our supply base, the very clear direction we got from those we spoke with was that they really weren't interested in supplying the U.S. market. Their home market was fully utilizing their capacity.

Added on to that, they could supply a very simple grade of product to their home market; and the last thing they wanted to do was to embark on a lot of effort to supply the more demanding requirements of the PVB industry, when they could supply something simpler to a market that was already fully sold out.

COMMISSIONER LANE: Okay, if the orders were to be revoked, what is your estimate of the amount of subject product you would purchase from China, Korea, or Japan?

MR. FEAST: Over the next two years, which I think is the horizon you're looking at, my expectation in the U.S. market for the amount we would purchase from those companies would be zero.

MR. BOLTUCK: May I just add that this really has to do with an understanding of their strategy; that they're interested in pursuing should the orders be revoked. They want, as has been explained, a contingency plan.

The reason they want it is that over the past two years, they have reassessed the risk to which they are exposed with respect to their supply security or reliability within the U.S. market from U.S. suppliers. They've had very bad experiences with respect to two suppliers.

Consequently, they don't know if those are just one offeror events. As you heard this morning, it may turn out to be the case. That would be wonderful, from their standpoint. They'll supply 100 percent of their needs from Dupont and Celanese in the future then.

However, they can't count on that. They need to engage in a risk minimization strategy, and that means seeking to qualify a foreign supplier.

COMMISSIONER LANE: Okay, and just to make sure that the record is clear, when you say "they", you are referring to Solutia?

MR. BOLTUCK: Yes, I think; I'm referring to Solutia as the purchaser, yes. However, the companies that currently supply them are Celanese and Dupont, both U.S. producers.

COMMISSIONER LANE: Okay, let me stick with you, and maybe the Solutia folks or Mr. Shor an answer this. If, looking at the BPI information, and assuming of course that everybody wants to maximize their profits and would sell into the best market where they could get the best price, then why are Celanese and Dupont not selling more of their product to Solutia, rather than other markets?

MR. FEAST: I have to assume, since they are rational organizations, that they are maximizing their profit. Therefore, the margins they make on the export sales they have been making were superior to the margins they were making on sales to us.

One thing that's very important to consider, and particularly in the context of a market that was sold out in the period 2007/2008, you can run a plant for 24 hours a day. So when the plant is running flat out, the question becomes how much profit can you make per hour that the plant is running?

So if you have a relatively cheap product, but it runs much more quickly through the plant so you can produce three times as much of it during that given period and you sell that product into your export market, it might appear to be a lower priced product on unit basis.

But in terms of the amount of profit you earn from an hour of production, you're better off producing three units of cheap product and selling them, than one unit of a more expensive product and selling that.

Now I don't claim to have insight into how they run their plant. But it's not necessarily the case that because someone sells a lower price product into a particular market, that that is a lower profit product in the context of maximizing their profitability.

MR. SHOR: Let me just give the background to that. Our understanding is that the PVB grade BVA that we want to purchase takes longer to produce in the factory. So what Tim was mentioning is, when the factory is at capacity and producing full out, they can make more money by producing more cheaper stuff than our product.

COMMISSIONER LANE: Okay, and one of you characterized that Celanese and Dupont preferred dumping in other countries than selling to you. Now dumping is your characterization, right? I mean, Celanese and Dupont didn't use that word this morning.

MR. SHOR: I was using Mr. Pearson's term from this morning.

COMMISSIONER LANE: Okay, but Celanese and Dupont didn't say that they were dumping in other countries, did they?

MR. SHOR: No, they said that they were selling at lower prices in other countries than they were selling in the United States.

COMMISSIONER LANE: Okay, and so dumping is your characterization.

MR. SHOR: Yes.

COMMISSIONER LANE: Okay, all right, let me see if I have anything else right now. I'll wait until my next round; thank you, Madam Chairman.

CHAIRMAN ARANOFF: Mr. Williamson?

COMMISSIONER WILLIAMSON: Thank you, Madam Chairman, and I do want to thank the witnesses for their testimony. Now has Solutia ever used imported PVA in the United States?

MR. BEREZO: Ever in the history of the production?

COMMISSIONER WILLIAMSON: During the period of review.

MR. BEREZO: No.

COMMISSIONER WILLIAMSON: I, like Commissioner Lane, am having some problems with this. I think, Mr. Feast, you said that right now you think capacity in the U.S. in excess of the demand.

MR. FEAST: I have to assume, based on the assertion by Celanese and Dupont, that they're exporting their excess. So there must be an excess.

COMMISSIONER WILLIAMSON: If your contingency plan is not really to be based on buying imported PVA, because I take it the quality is probably not there in many cases, that sounds to me like you think that Celanese and Dupont will make more PVA that you want if there's more imported PVA in the U.S. market; particularly since you talked about the fact that where the imports are coming are in what you call declining sectors for sales in the U.S.

MR. FEAST: That isn't actually the theory. I think what you're suggesting is, if we can open the door to foreign imports such that they have excess capacity, then they'll be interested in selling that capacity to us.

Actually, what we're looking to do is create an opportunity for us to qualify one or two sources of high grade product that we would like to buy from somewhere; and right now, it has to be somewhere else in the world, because there's no where else in the U.S.

My expectation is that Celanese and Dupont do value our business; and that they will, in the event that we have that option, focus more on meeting our needs and servicing us as a very important customer.

But absent that credible threat -- I mean, faced with the reality that this is a duo-poly, sometimes benign, sometimes not, in which one of the pair is a major competitor and which we have no choice but to buy from the two of them and no opportunity to pick up our plants and move the somewhere else, we don't believe that we have got the service in terms of supply or quality that we need in order to grow this business. We see no option other than creating an alternative to bring that focus to bear.

Now for the next two years, even where we define someone outside the U.S. who is willing to put the effort into upgrading their product to meet our specifications, realistically it would take us a year to do that. So nothing is going to change in the first year.

Then our contractual arrangements, as Mr.

Berezo mentioned, are long term. So we're not looking to make quick switches. So there's no reason why those suppliers, if they're focused on our business, should continue to supply.

MR. SHOR: Commissioner Williamson, I think we could expand more on that in the in-camera session.

COMMISSIONER WILLIAMSON: Okay, I was about to ask the question, what qualifiers did you leverage to obtain lower prices Celanese and Dupont?

MR. SHOR: It's not an issue of price. We'll talk about it in the in-camera session, because I can't get into it now.

COMMISSIONER WILLIAMSON: I was about to start off with a Rodney King comment -- why can't you all get along? But maybe we can ask that later.

(Laughter.)

MR. BEREZO: I think it's important to point out, as a buyer, we want and need healthy suppliers. It doesn't do anybody any good to have unhealthy suppliers. We want our suppliers to be successful. It helps them invest in their business, and enables us to go to them for help when we want new products developed. So we want healthy suppliers.

We also need reliable suppliers; and the track record over the last two years has just been unacceptable. Our objective is to find a way to have a very small portion of alternative supply, longer term, from some place other than the United States. The idea there, since we're not going to have a lot of expansions here in the U.S. -- at least it doesn't look as if anybody is expanding -- is to have some material on the water, at any given time, that can help us in a pinch.

MR. BEREZO: ... spot purchases from time to time on, you know, some sort of a routine basis, but we have no intention of not having our US suppliers as our dominant suppliers, now or long-term.

COMMISSIONER WILLIAMSON: Over the lunch break, I was wondering, is the question, since the allocations, they seem to, I guess, relating more to hurricanes and weather problems, is the question whether or not somebody should be building a plant up north rather than down on the Coast? I mean, I know there are questions of where you get your energy and all that from, but it's --

MR. FEAST: We did what we could. We built our plants away from the Coast, so, you know.

COMMISSIONER WILLIAMSON: What's that?

MR. FEAST: We built our plants away from the Coast. We can only hope that our suppliers will do the same.

COMMISSIONER WILLIAMSON: Okay, because, one, you say, here's the capacity in the US to meet demand, even anticipated demand now, is that correct?

MR. FEAST: As long as they are not exporting it, yes.

COMMISSIONER WILLIAMSON: Okay, and I assume that the PVA that's used for the PVB, the PVA is higher priced and you talk about the fact that the gap between the bag (ph) and the PVA price growing, is it larger for the higher quality PVA that's used in PVB?

MR. BEREZO: Yes, I think on a unit basis, that's true, but I think to the point that Mr. Feast was making, through-put matters. So if you can have a material that's slightly lower priced but runs through the unit a lot faster and you can get a lot more volume, I mean, the math just works better. You can make more money, which is, in fact, what we heard from the competition, or our suppliers, I should say, when we talk with them about, we don't get it, how can you say that the market -- this is in 2007, 2008 -- how can it be that the market is so tight and you continue to export material? How can that be? I mean, why do you export material? And the answer was, because we make more money.

COMMISSIONER WILLIAMSON: Okay, well, I would invite the Petitioners to address that post-hearing to, get their views on that. You cite your strategic analysis study from July 2008, about global supply and all that, and I was wondering, how should that study be changed in light of what's happened in the fall of 2008?

MR. BEREZO: I think, if I remember, there was a lot in that study, and I'm pretty sure that the take-home message was that longer-term PVA was tight globally, and I think the change would be that the, you know, instead of -- because they don't build any recessions into the growth projections or demand projections, instead of a straight line, you're going to see a dip, and then a resuming of the trajectory that you have.

The applications that the PVB goes into, anyway, and a lot of the applications for PVA are, I mean, they are fundamental. They have been around for a long time. There is an ongoing need. The world needs these things, and so there is no reason to think that that trajectory won't return as soon as some money starts to flow in the world.

COMMISSIONER WILLIAMSON: Okay. So it's just that the projections are the same but maybe they just are --

MR. BEREZO: Down and then back up, mm-hmm.

COMMISSIONER WILLIAMSON: Okay, thank you. Okay. My time is about to expire. I'll save my questions for later. Thank you.

CHAIRMAN ARANOFF: Commissioner Pinkert?

COMMISSIONER PINKERT: Thank you, Madam Chairman. I've got my green light on there. Okay, so on page 32 of your brief, your prehearing brief, it seems to me that you are suggesting that increased imports after the hypothetical lifting of the orders would indirectly benefit US producers. Am I reading that wrong, or is there some analysis that you can give to that?

MR. SHOR: That was the balloon theory I explained before that, as was discussed this morning, the PVA that's produced in China that's being exported is being exported somewhere today, and maybe what it's doing is causing prices in Latin American to be lower than they would be if they weren't otherwise there. So, Celanese is seeing that on their export side.

If those imports were to come to the United States instead of to Latin America, the reverse would happen. They would see their prices on their exports to Latin America go up, and we think what would most likely happen is there wouldn't be much of a change in the US but the Taiwanese exports would be forced out of the market since -- due to confidential reasons I can't get into, but, so there might not be as big of an impact, but it's the counterbalancing effect of a domestic industry that is -- I don't know how much this -- is significantly present in both a domestic market and the export market.

MR. BOLTUCK: I would just point out, Mr. Greenwald made a very similar point in reverse this morning when he said that, in his belief of course, his view is that the orders kept a lot of subject imports out of the United States, and he said that might be one of the reasons why, in his view, prices are lower in markets outside of the United States, because those products find homes outside of the United States.

We are just pointing out that, to the extent his concern about shifts in where subject imports are sold has any validity at all with respect to the orders, that if they are sold here, the reverse is going to happen. Prices are going to rise outside of the United States, and that's relevant for this industry because this industry sells a lot of what it produces outside of the United States, and that's a help. That's a benefit.

COMMISSIONER PINKERT: Thank you. More broadly, we did discuss in the earlier session the question of how to evaluate the vulnerability of the domestic industry in light of the economic downturn, and I had asked the domestic industry representatives to tell me whether it's just a question of demand declining in light of the recession, or whether there is some more complex analysis that we need to perform, and you heard the answer that we received this morning.

I am wondering whether you want to put your own gloss on this issue.

MR. SHOR: Well, as we had mentioned, we think you can't look at the demand in isolation. You have to also look at the other factors under the statute, and one of them is profitability, and they didn't give you any data on their profitability in the fourth quarter of 2008. So the question is, yes, demand is declining, but are prices declining? Are your raw material costs declining?

It's a balance of all those factors, and if shipments are down, but prices and profitability are being sustained, we would certainly contend that the industry is non-vulnerable.

MR. FEAST: I think if we were instructed to look at what this discussion would have been like if we had had it six months ago, we would have had domestic suppliers who have absolutely sold out, who had no materials to supply to us, who were exporting to more attractive export markets rather than supply to us, and would have had an extremely hard time demonstrating that they would have come to harm if those orders had been lifted.

So, what we have seen since then, to me, is purely an impact of a temporary global downturn which is going to be particularly severe over the December/January period because of the much-publicized inventory corrections, plant shutdowns -- it's not going to be all roses in February, but the upturn is going to make the next two years look nothing like the last two months.

COMMISSIONER PINKERT: Thank you. Now, regarding the subject producers' incentive to export to the United States, could you react, either here or in the post-hearing, to Table 2 on page 4 of the DuPont-Celanese prehearing brief, which compares the average unit values for domestic producers' US commercial shipments with the AUVs for subject producers' shipments to other export markets?

MR. SHOR: Those are average unit values of different countries that have completely different product mixes. The US industry, we know 40% is in PVB at the higher-price application. Of course US average unit values are going to be higher than the rest of the world. It doesn't tell you anything about product-specific basis (ph).

MR. BOLTUCK: I would just like to add that there was a question this morning of the other side also about product mixes, perhaps Commissioner Aranoff asked it, and the answer was roughly, well, you know, we sell all the same stuff we sell here, we sell it there, but that isn't a full answer regarding product mix. Product mix is not just the specific components that are in the mix, but also the proportions, and that makes a big difference. If you have a higher proportion of a lower-priced product, you will get a lower unit value.

COMMISSIONER PINKERT: Thank you. Now, perhaps the Solutia witnesses could help me with the typical length of the contracts with Celanese and DuPont, and can the price typically be renegotiated?

MR. SHOR: We'll discuss that in the in camera session later.

COMMISSIONER PINKERT: Thank you. And what percentage of the long-term contracts that your company enters into contain the meet-or-release clause?

MR. SHOR: We'll discuss that in the in camera session as well.

COMMISSIONER PINKERT: Okay. I have another question on that issue, and if you want to discuss it in the in camera session, that's fine, but have you ever invoked such a clause to reduce a supplier's price under a long-term contract?

MR. SHOR: We'll discuss that in the in camera session as well.

COMMISSIONER PINKERT: Okay. Now, prices for PVA were rising through the third quarter of 2008. Can you tell me what has happened to the PVA prices in the US market since that time, in light of the economic downturn?

MR. SHOR: Solutia is paying higher prices.

COMMISSIONER PINKERT: Mr. Feast, would you like to elaborate on that?

MR. FEAST: What can I say? Much to my disgust, Solutia is paying higher prices. We are paying higher prices in 2009 than we were paying in 2008 than we were paying in 2007, so economic downturn notwithstanding, prices are going up.

COMMISSIONER PINKERT: Perhaps Mr. Boltuck would like to explain the economics behind that.

MR. BOLTUCK: Well, I wish I could offer an obvious explanation for that, but I think it is supply and demand, and it really emphasizes that there is tight supply for the specific product that Solutia seeks to buy, and Solutia's concern in their complaint has been that in 2007 and 2008, they bumped into practical capacity constraints in the US market, not for some amorphous, undifferentiated PVA product, but rather for the very specific product they seek to obtain, and the indications are that there is no assurance that the situation has improved, and they feel that they continue to be exposed to that risk, and certainly, the pricing situation they face in the US is at least consistent with a continued tight supply for the grade that they seek to acquire.

COMMISSIONER PINKERT: One last question for Mr. Shor. As you know, the largest single source of the non-subject imports is Taiwan, and as you also know, they are currently subject to an investigation, at least pending the outcome of the appeal to the Federal Circuit. How should we treat the imports from Taiwan in the context of this review? Should we treat them any differently from the other non-subjects?

MR. SHOR: I know Mr. Greenwald said yes, but I can't think of any legal basis for that answer. They haven't been found to be dumped. They haven't been found to be injurious. They are non-subject imports, period. There are not different grades of non-subject imports. Commerce sustained no dumping finding even.

COMMISSIONER PINKERT: Thank you. You may wish to address that further in the post-hearing, but I gather that you and Mr. Greenwald don't have the same viewpoint on that issue.

Thank you, Madam Chairman.

CHAIRMAN ARANOFF: Let's just say that I were to accept, you know, Solutia's basic case that you are interested in subject imports because you would like to have an alternate source of supply and you are going to be a responsible actor and not pit ultra-low-priced Chinese imports against your domestic suppliers and drive down prices in the domestic market if the orders are revoked.

I guess my question is, even if I accepted all of that -- and it may very well be true, you all testified to it under oath -- there are a lot of producers in China and there are a lot of customers in the United States, and your story about how the market works for you doesn't really tell me anything, does it, about how the Chinese producers are likely to act in the event of revocation with respect to other US purchasers? And the same would go also for Korean and Japanese producers.

MR. BEREZO: Well, I think I would like to address that from the point of view of the purchaser. You know, our entire thesis here is we are looking for the liability supply, so to the extent that we do not have the majority of our supply, the vast majority of our supply, supplied by domestic producers, we have a risk. You know, I have sold things to China. I have bought things from China. It's a long way away.

There are all sorts of things that happen with the supply chain, and supply interruption is something that is a lot more expensive than people think. We look at total delivered cost. That also includes risk. When we have to supply Mr. Feast's business, we want to make sure that there are no interruptions, so the logic behind why you should believe it, it's why -- what the logic is that supports the fact that we would have a minority supply is, we wouldn't want to put any more risk in the supply chain than we had to.

Therefore -- and I don't think that's a

unique point of view. I think a lot of purchasers would have the same point of view, and so that if subject imports were able to come in without the antidumping duties, I think that people would look at the use of them as suppliers the same way that we do.

MR. SHOR: Let me just respond with some more data you have that bolsters what Mr. Berezo said. We heard from Celanese this morning, which is the largest seller to the US merchant market, that 70% of their shipments are under long-term contracts from one to three years. What that tells you is that the purchasers are interested in long-term security supply.

They are not interested in shifting back and forth from supplier to supplier, and yes, there is an economic downturn now, but as everyone understands, and we don't know when, there will be an upturn, and there will come a point in time again when supply becomes tighter than it is today, and if you are a purchaser and you've got a business that you want to be around 10 years from now or 20 years from now, you are not going to go to China for some six-month advantage at 5 cents a pound and then have the possibility a year from now that you are not going to be able to get anything from DuPont and Celanese because you don't have a contract with them and supply is tight.

So I think the fact that 70% of Celanese's customers have long-term contracts tells you a lot about the nature of the industry and the nature of the demand for PVA.

MR. BOLTUCK: And Commissioner, I think the question also went to the segments of the US market that Solutia is not in specifically, and I understood that. You know, it's absolutely true that Solutia is here to speak for itself. It's an important part of the US market, and PVB production is the most important single end use in the United States. We, however, have looked at the data that was collected by the Commission in the original investigation and in this investigation, and are basically pointing out some inferences from that data that are very strong economically, and that is that, even if there is competition in some end uses, which we don't know from first-hand experience one way or the other that you are correct to point that out, but even if there is, the domestic producers are insulated from any effect based on the observation of what happened when the order was implemented, namely that there was basically a substitution of non-subject product in the US market for subject product.

So that we can see, so we don't have to be experts on textile sizing to understand that there was an essential insulation of US producers, based on the evidence that the Commission itself has collected.

CHAIRMAN ARANOFF: I am going to think about that some more and come back with some more --

MR. SHOR: Let me just follow up on that, because Richard makes a good point. I think you have data before you on the product pricing that will tell you the relative hierarchy of domestic producer prices, Taiwan prices, and subject producer prices. So the question is, if there is going to be price-based competition, if low-priced imports from China, Japan or Korea come into the US market, who is most likely to be displaced first, and I would urge you to look at the data and see who is the low-priced player in the US market today. They are most likely to be displaced first.

CHAIRMAN ARANOFF: It's a touchy thing because there's not really any way that we can find, I don't think, on this record, that subject imports in the event of revocation would increase in exactly the amount by which non-subject imports increased when the order went into effect.

MR. SHOR: No, but you look at the conditions of competition and you ask yourself what's different in the market today. One thing that is different is it now costs the Taiwanese producer 8% more to export to the United States than it did back in 2003, because of the change in the VAT rebate, and notwithstanding anything Mr. Greenwald told you this morning, that has not changed. I checked last week.

So that condition has changed, so if anything, the balance is a little different than it was before. You also have the presence of the Taiwanese in the US market. That makes the US market relatively less attractive to producers in China, Japan and Korea because there is more competition here than there was before.

MR. BEREZO: And I would just add that I think it's not really a fair objective that we get it down to exactly how many pounds this will displace if subject imports increase down to the last pound. That isn't your job either, but the statement of administrative action points out that a five-year review is an inherently counterfactual analysis. That means you do have to do your very best to answer the question, how the market would adjust if the orders come off, and part of the adjustment is the role of non-subject imports in the market, and there is evidence about how that adjustment takes place, based on what happened when the order went into effect.

So all we are saying is, it works in a certain direction and you need to come up with a view of what that likely adjustment will be, and we are suggesting it's very substantial based on what we saw actually happen.

CHAIRMAN ARANOFF: Okay. Well, I guess I am trying to urge you, to the extent that you can post-hearing, to help me to come up with the best story for why, other than the purchases that Solutia might want to make if the orders were revoked, what else is going to happen in the market. We look at the market, we know what happened during the Asian financial crisis when the US was the market of last resort for a lot of Asian production.

We know that freight rates are down right now. We know what's going on with exchange rates. We know that demand for Chinese textile products is down right now, and so they may not be consuming as much PVA in China as they were a little while back. So there's a lot of factors that we know are going on out in the market to lead us to think that there is excess capacity in Asian producers that wasn't there six months ago, and that probably will continue to be there at least until the global economy starts turning around, and so the question is, why wouldn't a significant volume of that product come to the US?

And, you know, the VAT tax situation is one disincentive, but that's in the face of a whole lot of other incentives that we know are there.

MR. SHOR: We'll do our best.

CHAIRMAN ARANOFF: Thanks.

Vice Chairman Pearson?

VICE CHAIRMAN PEARSON: Thank you, Madam Chairman.

Just a couple more questions for the open session. Just to clarify, do you support revocation of all three of these orders?

MR. SHOR: Our argument is, first, that we think China should be decumulated and that it should receive revocation, and in the alternative, all three should be revoked.

VICE CHAIRMAN PEARSON: Okay. Is there any basis for not exercising our discretion to cumulate Korea and Japan, or in other words, which is the better argument, to cumulate those two or not cumulate them?

MR. SHOR: I think there is very little to differentiate those two. We don't know a lot about those markets so we haven't made an argument about that. We know very little about the Korean --

VICE CHAIRMAN PEARSON: You have access to the confidential record that we have, and --

MR. SHOR: Right. There seems to be very little basis --

VICE CHAIRMAN PEARSON: You have as much information on which to make a decision as the Commission does, I think.

MR. SHOR: That's a fair point. We are not urging the Commission to decumulate those two countries.

VICE CHAIRMAN PEARSON: Okay.

Madam Chairman, I think I have no more questions for the open session.

CHAIRMAN ARANOFF: Commissioner Lane?

COMMISSIONER LANE: Mr. Shor, what would be your best argument for not cumulating China with Japan and Korea?

MR. SHOR: Do I only get to pick one, or can I use all six that I had in my brief?

MR. LANE: Well, I thought I would let you start with your best argument.

MR. SHOR: The Chinese are just not export-oriented. They are completely focused on their domestic market. They are small exporters. The volumes exports from China are smaller, I believe, than the other two countries and smaller than the US. It's a low percentage. It's just not -- they are not interested in exporting. They are interested in their domestic market.

COMMISSIONER LANE: And so it would be wrong for us to conclude that since China does a lot of exporting in other products that it might also want to export this product?

MR. SHOR: Sure. There's no -- China is export-oriented on certain finished products like textiles. This is a product that primarily serves the textile market. So it was built and designed and their focus is on meeting domestic demand.

COMMISSIONER LANE: Okay, thank you. Has Solutia's European operations purchased PVB-grade PVA from subject countries?

MR. BEREZO: Yes.

COMMISSIONER LANE: Okay. If yes, then why doesn't Solutia's US operations also do the same?

MR. BEREZO: Well, it's not very economical. You are looking for a security supply and a balance and an alternative that makes economic sense.

MR. FEAST: I think there are some aspects to those purchases as well that I think we need to clarify, maybe in the in camera session, to provide more detail.

COMMISSIONER LANE: Okay, Mr. Feast, did I understand you to say that Celanese and DuPont are selling a different product abroad than the same product that they are selling in the United States?

MR. FEAST: No, they have testified, I don't know, but they have testified that they sell the same products abroad that they sell here. There appears to be a conflict here because their testimony this morning was that we only export because we have to, it's lower price, it's less attractive than our domestic business, so we only do it because we are forced into it by the excess capacity, and I have trouble making that stick with what they told us when we were on allocation, which is, your business is less attractive to us than the exports, therefore, we are only going to supply you X.

So for me, it's not clear to me that the business overseas is less attractive, and to the extent that it may be lower price, lower price does not necessarily mean less attractive, because certainly there are products that we supply that may have a higher price point, but less unit profitability or less profitability per hour of plant time, and I get into the realm of speculation because I don't know their business, but clearly there is a reason that they export, and I don't believe, based on what they have told us in the past, that it's simply a question of, we do it because we have to and it's all low-priced business and we wish we didn't have it.

COMMISSIONER LANE: Okay, thank you. In what major markets is PVB currently the most expensive to purchase?

MR. SHOR: I just wanted to clarify, your question is which countries?

MR. FEAST: We won't get into the details publicly, but generally, PVB is a globally traded product. Global requirements in the automotive industry are fairly consistent, and although the architectural markets differ, all of the players in the PVB market are, to a greater or lesser extent, global. So pricing tends to be similar all around the world, simply because capacity can be directed to different world markets.

COMMISSIONER LANE: Okay, thank you. Does Solutia have a by-product that it either recycles or sells?

MR. BEREZO: Yes. In our process, we produce -- as a by-product you are talking about in the PVA process?

COMMISSIONER LANE: Yes.

MR. BEREZO: Yes, our by-product turns out to be ethyl acetate.

COMMISSIONER LANE: And what do you do with it?

MR. BEREZO: We resell it. In the open market, it's used in the solvents business.

COMMISSIONER LANE: And do you sell that at market price?

MR. BEREZO: Yes. There are other producers out there who make it on purpose, and so yes, we sell it market price.

MR. FEAST: We actually have a marketing arrangement. We are not in the business of selling it ourselves. We have a marketing partner who takes the product from us and who sells that to the end users in the US market.

COMMISSIONER LANE: Okay, thank you.

Madam Chair, that's all I have.

CHAIRMAN ARANOFF: Commissioner Williamson?

COMMISSIONER WILLIAMSON: Thank you, Madam Chairman.

Just one question for open session. You claim on page 24 of your brief that Japanese producer Perali (ph) would not be likely to export to the United States because it already has access to the US market via its subsidiaries in Germany and Singapore, and I was wondering, wouldn't revocation mean that they could then have the option of exporting directly to the US, as they were doing before the orders went into effect?

MR. SHOR: Certainly they would have that option. I'm not sure I understand the --

MR. FEAST: It's not clear to me, putting myself in their position, they obviously have the ability to export to the US market from Germany and from Singapore, and there is nothing that we can see that would make exporting to this market from Japan more attractive than exporting from those markets, so I don't see any reason why the lifting of these orders would cause exports from that region, when they weren't willing to export from the other places where they produced PVA.

MR. SHOR: I guess our point was really that there would be no net impact on the US industry. If you are exporting to the US from Singapore and Germany, and you were to switch that volume to the --

even if you were to switch that volume to Japan, you would still end up in the same place. There would be no net impact on the US industry.

COMMISSIONER WILLIAMSON: Or if you find it advantageous to ship from three places rather than two, you'd do that too I guess.

MR. SHOR: But you are serving your customers. There is no reason to suspect it would increase. They could meet any increase now from Germany and Singapore.

COMMISSIONER WILLIAMSON: Okay. The other question I was just wondering, I guess the export -- so the VAT rebate is off, now, you said?

MR. SHOR: The VAT rebate was reduced from 13% to 5%.

COMMISSIONER WILLIAMSON: But the Chinese could push it back up if they suddenly want to push more export out, is that correct?

MR. SHOR: That's entirely speculative.

COMMISSIONER WILLIAMSON: But I mean, isn't the pattern that they have been doing up and down?

MR. SHOR: No, the pattern has been that they reduced it. That was one movement.

MR. FEAST: The pattern in Germany has been that these export -- what essentially amount to export subsidies or encouragements for exports have been reduced. The Chinese have sought to develop more a focus on their own economy rather than export-led economic growth.

COMMISSIONER WILLIAMSON: Okay. The reason I am raising the question is that now, as their own economy has slowed down, is there a possibility they may take a different view?

MR. BOLTUCK: I might just mention that Mr. Greenwald said this morning that these export-led Asian economies don't engage in any stimulus, and that's not true. In China now, they are suffering a recession just as we are, and they have a government program to spend $500 billion on stimulus, so they are trying to develop their -- and they are going to, just as we are going to restructure and reorient our economy in the wake of the recession, they are going to do the same with theirs in a matching way.

COMMISSIONER WILLIAMSON: Which could mean the VAT rebate --

MR. BOLTUCK: I have no evidence that it's even under discussion.

COMMISSIONER WILLIAMSON: No, it's just, given what was changing there, I wasn't sure you could discount it entirely.

MR. SHOR: There is no evidence whatsoever.

MR. FEAST: Given the political environment now, I think it would be about as politically advisable as devaluing the yuan.

COMMISSIONER WILLIAMSON: Okay, anyway. Okay, good. That's all the questions I have now. Thank you.

CHAIRMAN ARANOFF: Commissioner Pinkert?

COMMISSIONER PINKERT: I have nothing further for this session.

CHAIRMAN ARANOFF: Okay, my turn. I wanted to re-ask a few of the questions that I asked this morning about contracting practices. Do DuPont and Celanese usually bid against each other for your business? How does that work? Do you put all your business out at the same time for a multi-year contract?

MR. BEREZO: Maybe we can just talk about that in the closed session. We can give you the answer. I'd rather not talk about it specifically in an open session. What we don't do, and have not done, is run an RFP process or something like that. I mean, for the US business, there are only two suppliers. We have conversations with them. Contracts go when they expire, and then well in advance of the expiration date, we talk about the next turn and that sort of thing. So it's more of a negotiation, as opposed to a bid.

CHAIRMAN ARANOFF: Okay. I am just going to go through a couple facts that I want to know, and maybe you will be able to answer them in the confidential session, although we won't have the witnesses present, we will only have the lawyers and economists present, so this may have to be in your post-hearing.

MR. BEREZO: Okay.

CHAIRMAN ARANOFF: But I am trying to figure out, I mean, I guess what I really would like to do is see the terms of the contract that you have entered into with the two domestic suppliers over the period of review and since that time up until the present; how much volume, at what price, at what time --

MR. BEREZO: Okay.

CHAIRMAN ARANOFF: -- so that I can take a look at whether those were head-to-head, how the amount of volume between the two suppliers has shifted, how the prices have changed over time. It's just really hard to visualize this kind of non-transparent contracting process in this industry. It's much, much easier in industries where a request for quotes goes out and, you know, 15 people bid and you can look at them and compare them.

MR. BEREZO: Sure.

CHAIRMAN ARANOFF: So whatever you can provide me with in detail on that I think would be really helpful.

MR. BEREZO: We'll do everything we can.

CHAIRMAN ARANOFF: Okay, thanks. And the other question that I had, and again, this may just require a confidential response, is, during the period where domestic supply was short and you were not able to get everything that you wanted when you wanted it in 2007 and parts of 2008, I guess it seemed to me that you had sort of a hierarchy of bad choices of things that you could do instead of getting supply from your domestic suppliers when you wanted it, and it would be helpful to me to have your explanation on the confidential record of why you went with the choice that you went with, which was basically to kind of wait around and hope that the domestic supply was going to come through.

I know you said you went to some non-subject producers and tried to look into whether that was available. You know, other choices might have been to buy the subject product anyway and pay the duties, to look at US product that might be out of specification, to look at shutting down part of your PVB production for some period of time, and I guess I am interested in the economics of, between all those bad choices, how you ended up where you did.

MR. BEREZO: Yes, I think we could provide that after the fact and maybe talk a little bit about the economics, but I think one of the things you have to think about, just in terms of context and in the moment, at that time, the question is, what information are you getting from your suppliers on how long the outage will last. What should the expectation be, because of course, you don't want to have to make expensive choices when you may not have to.

And so, there is just a little bit of context there on the decision making process. It wasn't as if we were, you know, just waiting around for something really good to happen. Hope is not our strategy, but were working on the best information we had at the time.

CHAIRMAN ARANOFF: Okay, because I know you talked about, for example, the fact that having off-shore suppliers increases your time along your supply chain and creates uncertainties, and so --

MR. BEREZO: It does, and you have to give that a month. I mean, you have to say, I need to make this choice at least a month in advance for some off-shore supply to be here, and if you can avoid that, you do, but you have to decide when, and so you are either making a choice that you just overpaid, you just bought material you didn't make, or you saved yourself, and you just have to judge based on the information you are getting, how to make that choice.

CHAIRMAN ARANOFF: Okay, and this is a question for both Solutia and for DuPont and Celanese, but one of the things I am trying to understand is whether, when DuPont and Celanese make sales to Solutia or to anybody else who is making PVB with the product, whether they have to balance those sales with sales of less exacting grades of the product in order to maximize production in the facility, and I am wondering if that bears any relation to the fact that Solutia is claiming that it is paying higher prices now even though, you know, perhaps to make up for the fact that the customers for that other part of the production have kind of dried up.

Is that part of the explanation of what's going on?

MR. BEREZO: Yes, I mean, I think you would have to get, certainly, an explanation from them, but based on what we have heard from them, it is a fact that our material processes longer, it takes longer to process. It takes longer to make, requires more of their productive capacity, and we pay a premium as a result.

CHAIRMAN ARANOFF: Okay.

CHAIRMAN ARANOFF: The only other thing that I had asked this morning that I didn't know if you had any additional information on was the issue of the antidumping case in Europe.

MR. SHOR: I think that's covered in our brief. I forget the exact dates, but sometime around mid-to-late 2007, there were preliminary antidumping duties imposed in Europe, and I believe they were lifted in March of 2008, but the details are in our brief on when the preliminary duties went in and when they came off. There was a negative injury determination in that case --

CHAIRMAN ARANOFF: Okay.

MR. SHOR: -- as there should be here.

CHAIRMAN ARANOFF: Okay. I read what was in your brief, but I guess I just was not able to process all of it and get to that point, so thank you for the clarification. With that, I don't think I have any further questions.

Commissioner Lane, do you have any other questions?

(No response.)

CHAIRMAN ARANOFF: Any other commissioners?

(No response.)

CHAIRMAN ARANOFF:

Do the staff have any questions for this panel?

MS. ALVES: Yes, Madam Chairman. This is Mary Jane Alves from the General Counsel's Office. I have two quick questions.

First, if you could identify by name the other firms that produce PVB products in the global market. It sounds, from Solutia's testimony today, as though there are relatively few such producers. You mentioned two, in particular, in Japan. If you could, along with identifying the names of those PVB producers globally, identify whether any of them is affiliated with a PVA producer.

My second question is also for Solutia, but DuPont and Celanese are also welcome to answer it as well.

Does Solutia purchase PVA from DuPont's or

Celanese's U.S. operations for use in its European facility?

MR. BEREZO: I can answer the second one first because it's pretty easy, and that is, yes, we purchase PVA from a U.S. producer for use in our European operations.

Do you want to handle the one, Tim, on who the PVB producers are? I think I can get them, but --

MR. FEAST: There are four major PVB producers in the world: Solutia, DuPont, Sakasui and Crerrari. I think all four of those names have come up at some point today.

There are also producers emerging in China. Kingboard is probably the largest PVB producer in China, and there are a lot of smaller producers of PVB in China whose names I won't pretend to be able to pronounce, spell, or remember. But the major players on the world market are the four I mentioned -- Solutia, DuPont, Sakasui and Crerrari -- and, within China, Kingboard is a fifth. Chang Chung in Taiwan also produces PVB, so if you're looking for a complete list of PVB producers, they are a major player upstream, although their volume sales of PVB, we don't believe, are that large at this stage.

In terms of PVA production, DuPont, you

already know about. Crerrari clearly is integrated upstream. Sakasui, we believe, is not integrated upstream into PVA. Kingboard is integrated upstream into PVA, although I'm not sure of the status of that plant startup, whether it's running today or whether it isn't, but, clearly, they are building a plant to integrated into PVA. Chang Chung is integrated upstream. So the majority of the players are integrated backwards into PVA.

MR. CORKRAN: Douglas Corkran, Office of Investigations. Thank you, Chairman Aranoff. The staff has no further questions.

CHAIRMAN ARANOFF: Mr. Greenwald, do you have any questions for this panel?

MR. GREENWALD: We do not.

CHAIRMAN ARANOFF: Okay. I believe we are now going to go into the first part of our closed session.

I want to thank this panel very much for your answers to all of our questions this afternoon. It's been very helpful, and we appreciate your taking the day off to join us.

Madam Secretary, we now need to clear the room.

MS. ABBOTT: Yes, Madam Chairman. If all of the persons who have not identified themselves to me as being in the closed session would please leave, it would be appreciated.

(Whereupon, the proceedings went into confidential session.)

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

O P E N S E S S I O N

CHAIRMAN ARANOFF: The time remaining, the Petitioners have 21 minutes remaining. That includes 16 minutes of rebuttal time, plus five minutes for closing. And Solutia has 14 minutes remaining, nine for rebuttal and five for closing.

We'd normally just combine those, unless there's any objection.

MR. GREENWALD: Madame Chairman, I think it is our joint wish not to burden you beyond brief closing statements.

CHAIRMAN ARANOFF: Does that mean that you would like to forfeit the time above your five minutes? Or just that you hope that you won't use all your time?

MR. GREENWALD: Depends in part on what the other side says.

MR. SHOR: I think we're willing to settle for three minutes each.

MR. GREENWALD: We are. Do you want to go first?

CHAIRMAN ARANOFF: I believe that we normally have the Petitioner's closing first.

MR. GREENWALD: I was afraid of that.

(Laughter.)

CHAIRMAN ARANOFF: Well, Madame Secretary, we won't hold them to three minutes, but we'll just hope that they come in under the 21. Although you are perfectly entitled to our attention for 21 minutes, if you wish it.

MR. GREENWALD: The temptation to get your undivided attention for 21 minutes is almost irresistible.

CHAIRMAN ARANOFF: I can't guarantee undivided.

(Laughter.)

MR. GREENWALD: How about undivided for three, and we forfeit the rest?

Let me give you a brief closing statement which, you know, I hope really is brief, that tries and summarizes what we have heard: where this case is, and what the nature of the testimony on both sides has been.

I think the first point, and it is a point that one tends to forget with so much back-and-forth, is that our position to continuation of the orders, and the arguments for not continuing the order, are predicated on assertions about a small subpart -- not a small, let me be fair -- about 35 percent of the production of DuPont and Celanese. That is, production of PVA for PVB uses.

The market, as you know, is much broader than that. And while there have been efforts on the part of counsel and counsel's economists for solution to comb the record to find things that they can usefully say about why the order won't lead to a significant increase into a significant price pressure caused by subject imports on the roughly 65 percent of the market that is not PVA production for PVB purposes, they haven't really succeeded in giving you any evidence.

And what I would like to do on those points is summarize really what the record shows. First, the record shows that, in terms of the condition of the U.S. industry and vulnerability, it has been rough going over the period of investigation. But that is not really the issue before you.

The question is, going forward, what's likely to happen over the next two, three years. And it seems to me that the testimony on the record is unequivocal; that there will be a significant drop in demand, and with that, significant consequences for the domestic industry. That is, the domestic industry is clearly, using Commission parlance, vulnerable.

Secondly, it seems to me incontrovertible that all the evidence shows that there has been an expansion of capacity in subject countries; and that with the bottom dropping out of the global market, whatever anybody may say about a Chinese producer interested in exporting in the past, or a Korean exporting interested in exporting, or Japanese producers -- in fact, in the world in which we are now, there is an economic need that has not been contradicted to keep plants running at as high utilization as possible.

And to do that, if one has to look for export markets, that is what the economics drives producers to do, in Japan, in China, and in Korea. The idea that the Chinese, for example, under today's conditions, produce exclusively for the Chinese market is just unsustainable.

The third issue before you is, given the condition of the market looking forward, are there economic incentives to ship added PVA, or even offer to sell added quantities of PVA in the U.S. market at low prices. And there the evidence is incontrovertible; in fact, has not been contradicted.

What we have done in our presentation is give to you the best data on the record about pricing in third-country markets, both U.S. export pricing and values and pricing data on the exports from each of the subject countries.

That's not perfect. It's not hard product-specific pricing data. But it is not only a fair reflection of what's going on on average in terms of what sells at what price, but the differentials between the data you have on export markets, third-country markets, and the data you have in the U.S. market, are too large to ignore.

So you have this combination of supply overseas, of demand dropping, and of pricing in the U.S. market that, by all the evidence, is relatively attractive. And that was consistent in testimony by both DuPont and Celanese.

And yet, Solutia once said that that will not lead producers of subject merchandise to look at the U.S. market, either in terms of -- and there will be no significant volume impact because the imports won't come, or there won't be significant price impact because the pricing won't affect U.S. market prices. That is not a credible position to take.

Lastly, let me make a reference to the 35 percent of the U.S. market that the Solutia testimony does address in detail. And the question you have to ask yourself is, when all is said and done, is it credible for you to believe that Solutia wants to access, as they said, security of supply without regard to the pricing of that supply. And is it credible to believe that if, for example, they can use a specific country that Solutia witnesses spoke of, if they get a supply arrangement with a Chinese producer, which appears to be their intention, is it really credible to say that there will be no subsequent pressure on U.S. producer prices, no matter what the price the Chinese producer offers.

I don't think that is a credible position for them to take, much less for the Commission to take. What you are charged with doing is making reasonable projections into the future. And no matter what Solutia may say about its interests and intentions, I don't think on this record you can make a reasonable projection into the future that revocation of these orders will not lead to harm, at least the same sort of harm that led to the imposition of the orders in the first place, either through volume or through pricing.

Thank you.

MR. SHOR: Good evening. My clients were ready to leave at 5:15, so I'll be brief so they don't leave without me.

The domestic industry has all but conceded that it has no case based on the data you've gathered through the end of the third quarter, 2008. They admitted that they were producing a full capacity in 2007 and 2008. They admitted that supply was tight worldwide; that there would be no vulnerability, and no likelihood of increased exports, because there was no excess capacity worldwide.

So the case comes down to the fourth quarter and 26 days of January in 2008. That's a thin reed on which to base a five-year period of review, particularly since it is the fourth quarter. And it's a fourth quarter that had problems.

We know that DuPont had a production outage due to Hurricane Ike throughout the fourth quarter that they want you to rely on. So how are you supposed to waive the fact that production and shipments were down, when one of the two U.S. manufacturers assigned to the merchant market were not producing what it can?

And the fourth quarter is highly unusual for a variety of other factors. At the end of the year it's the holiday period. A lot of manufacturers, both in the United States and abroad, shut down production for the holidays and for other periods of time. The auto makers shut down their plants for a month. So it's hardly a predictor of the state of the economy or of the industry going forward, because it bears the brunt of all those factors.

It can't be the case that there can never be a revocation in a sunset review during a recession. That's essentially the domestic industry's argument. That in a recession, assume the worst; we don't know when we'll get out of the recession, it's going to be long and deep, so you can't possibly consider revocations during recessions. That's not the way the statute is written.

The statute tells you to consider that the condition of the domestic industry, in the context of the business cycle. That doesn't mean that they win every time there's a recession. It means you have to weigh the downturn and the recession against what conditions will be like in the eventual upturn.

The key to this case, I think, is in thinking about causation. All the domestic industry has really argued is that they are vulnerable due to a recession, and they will be injured as a result of that recession. They really haven't told a story of why subject imports will be the cause of the injuries they contend they will suffer.

Why do I say that? Ask yourselves several things they have not explained in this case. DuPont and Celanese cannot explain why subject imports declined over the period 2000 to 2002. That was a period before the orders were in place. There was no discipline resulting from the orders. There was no recession. And yet imports declined.

They also can't explain why their market share did not increase following the imposition of the orders in 2003 or 2004. That's not, as Mr. Greenwald would characterize it, looking at a limited segment of the market focusing just on just PVB; that's looking at the entire market. Their market share did not increase.

They also cannot explain why prices in the U.S. market did not increase in 2003 and 2004. Again, that's not just looking at the 35 percent of the market accounted for by PVB; that's looking at the entire market. Prices did not increase in the merchant market on an average-unit basis, and they did not increase in any of the four product comparisons for which you have pricing data from both periods of investigation. They can't explain that.

The explanation, I submit, is that these orders have not succeeded in eliminating, if you will, the effects of global supply and demand on the domestic industry, nor can they. There are two big holes, one of the holes caused by non-subject imports which flooded in the market, exposing the U.S. industry to the global forces of supply and demand, and the other is the export hole. The U.S. industry is a large exporter, so either way they would still have been subject to the forces of supply and demand, not just in the United States, but globally. And that's why, as demand picked up and supply tightened in 2005, and most vehemently in 2007 and 2008, they reached capacity. They raised prices. Things got better for them, not because of the orders, but because the economy improved.

And correspondingly, things got worse in 2008, when the economy got worse, not when anything that was a result of subject imports.

Finally, the last thing they haven't even tried to explain, or provided any kind of coherent story for, is why they think that the volume of subject imports that they expect would occur on termination of the orders would not replace non-subject imports. There is an assumption in their whole analysis that every pound of PVA that comes in from China or Japan or Korea would displace U.S.

production. They forgot about Taiwan, they forgot about Germany, they forgot about Singapore. They forgot about what happened after the orders were in place.

What you heard from Solutia, and what the other evidence reveals, is that PVA is a vital input to several products. Customers do not come out and by and large buy on an on-the-spot basis. Security of supply is important. It is a critical factor. It is a factor causing producers to lock in multiple suppliers.

On that basis, no rational purchaser is going to buy from a Chinese producer for six months; and then, when his eventual upturn comes and demand is tight again, be locked out of any supply because the Chinese supplier decides to sell again in its own market. They're going to look to their long-term suppliers; they want long-term contracts. That's how this market works. And there's nothing to indicate that there's going to be a short-term shift to Chinese or Japanese or Korean suppliers simply to take advantage of short-term demand manufacturers.

Thank you very much.

CHAIRMAN ARANOFF: Well, thank you to all of the participants in today's hearing. I think we have all learned a lot, and we appreciate everyone taking this much time to spent with us and answer our questions.

I hope that everyone has a safe trip wherever you are heading this evening. And with that, this hearing is adjourned.

(Whereupon, at 5:40 p.m., the hearing in the above-entitled matter was concluded.)

//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//

CERTIFICATION OF TRANSCRIPTION

TITLE: Polyvinyl Alcohol from China, Japan, and Korea

INVESTIGATION NOS.: 731-TA-1014, 1016 and 1017 (Review)

HEARING DATE: January 27, 2009

LOCATION: Washington, D.C.

NATURE OF HEARING: Hearing

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

DATE: January 27, 2009

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