UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	
CERTAIN STILBENIC OPTICAL BRIGHTENING AGENTS FROM CHINA AND TAIWAN	)	Investigation Nos.: 731-TA-1186-1187 (Final)

ages: 1 through 256

Place: Washington, D.C.

Date: March 15, 2012

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Thursday,
March 15, 2012

Main Hearing Room
International Trade Commission
500 E Street, S.W.
Washington, D.C.

The hearing commenced, pursuant to notice, at 9:34 a.m., before the Commissioners of the United States International Trade Commission, the Honorable Deanna Tanner Okun, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

CHAIRMAN DEANNA TANNER OKUN
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COMMISSIONER DANIEL R. PEARSON
COMMISSIONER SHARA L. ARANOFF
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APPEARANCES: (Cont'd.)

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MATTHEW DETTLAFF, Senior Products Manager, BU Paper Specialties North America, Clariant Corporation
RUSSELL GIBSON, Operations Manager, Paper Specialties, Clariant Corporation
DR. ANDREW JACKSON, Head of Product Management Optical Brightening Agents, Clariant International Ltd.
CHRISTOPHER S. BARNARD, Head of Legal Services North America, Clariant Corporation
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On Behalf of BASF Corporation, Charlotte, North Carolina:

TED KELLY, JR., Vice President, Wet End Paper Chemicals
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I N D E X

P R O C E E D I N G S

(9:34 a.m.)

CHAIRMAN OKUN: Good morning. On behalf of the U.S. International Trade Commission, I welcome you to this hearing on Investigation No. 731-TA-1186-1187 Final, involving Certain Stilbenic Optical Brightening Agents from China and Taiwan.

The purpose of these investigations is to determine whether an industry in the United is materially injured or threatened with material injury or the establishment of an industry in the United States is materially retarded by reason of less than fair value imports of certain stilbenic optical brightening agents from China and Taiwan.

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 the parties are aware of the time allocations. Any questions regarding time allocations should be directed to the secretary. Speakers are reminded not to refer in their remarks or

answers to questions to business proprietary information. Please speak clearly into the microphones and state your name for the record for the benefit of the court reporter.

If you'll be submitting documents that contain information you wish classified as business confidential, your request should comply with Commission Rule 201.6.

Mr. Secretary, are there any preliminary matters?

MR. BISHOP: Yes, Madame Chairman. While Commissioner Pinkert is unable to attend today's hearing, he did leave some written questions for everyone involved today, which I have a copy of for them, and they are to be submitted with their post-hearing briefs March 22nd, 2012. The questions will also become part of today's hearing record.

CHAIRMAN OKUN: Thank you, Mr. Secretary. And Commissioner Pinkert asked that I also let the parties know that while he cannot be here today, he will be reviewing the transcript and the other information available prior to making a vote.

With that, let us proceed with opening statements.

MR. BISHOP: Opening remarks on behalf of

Petitioner will be by Richard L.A. Weiner, Sidley Austin.

CHAIRMAN OKUN: Good morning, Mr. Weiner.

MR. WEINER: Good morning. My name is Richard Weiner, from Sidley Austin, and I represent Petitioner Clariant Corporation. Clariant accounts for the majority of the domestic industry for certain stilbenic optical brightening agents, the subject merchandise in this investigation.

Today you will hear from Clariant representatives about the impact of unfairly traded imports of CSOBAs on the domestic industry. Their experiences support the ample evidence on the record and further demonstrate that the domestic industry is suffering material injury directly caused by unfairly traded imports.

The volume of imports of CSOBAs from Taiwan and China has increased dramatically over the period of investigation. This increase in volume clearly has been at the expense of the domestic industry. Taiwanese and Chinese CSOBAs have gained market share in the United States each year, while at the same time the domestic industry's market share has declined. The domestic industry's loss of market share is a direct result of the unfair pricing of CSOBA imports.

Importantly, CSOBAs compete primarily on the basis of price. The responses from purchasers and importers confirm that all major suppliers meet industry standards for quality, technical service, and supply, and that CSOBAs from the United States are comparable to CSOBAs from Taiwan and China on all nonprice factors.

Therefore, TFM's claims that purchasing decisions are made on the basis of nonprice factors are nothing more than TFM's own advertising propaganda and a red herring in this investigation. In addition, the low prices at which Taiwanese and Chinese CSOBAs compete in the U.S. market have clearly had negative effects on the prices that members of the domestic industry can obtain for their products, and therefore on the economic conditions of the domestic industry.

There is substantial evidence on the record of underselling, price depression, and price suppression. Sales representatives of the domestic industry are experiencing these negative effects firsthand. Despite their efforts to win new business or maintain current customers, they cannot lower prices enough to compete with the unfairly low prices of subject imports.

Purchasers are not shy about using competing

offers from Taiwan and China as leverage to win price reductions from the domestic industry, and important customers have already switched to purchasing Taiwanese and Chinese CSOBAs simply because of price.

The pressure on the domestic industry to lower prices has been particularly devastating in light of increasing raw material costs. The destructive impact of unfairly traded imports has been profound. As mentioned, the domestic industry's market share has fallen substantially, while subject imports have gained market share.

As a result, the domestic industry's capacity utilization has declined dramatically, along with U.S. shipments of domestic merchandise. The domestic industry has faced reduced profitability and significant operating losses. Consequently, domestic producers have reduced their work forces, postponed or canceled new investments, and restructured their operations in a desperate attempt to cut costs and remain viable.

Unfortunately, there is no relief in sight. Key subject foreign producers are expanding capacity and have unused capacity that is easily directed towards the United States. The continuing threat posed by subject imports is perhaps best demonstrated

by the increase in subject imports in the form of powder over the past three years.

As others will explain, CSOBAs are produced in a solution state and used in a solution state. But Taiwanese and Chinese producers are converting their solution products into powder in order to reduce their long distance transportation costs and further target the U.S. market.

In sum, the domestic industry has suffered material injury and will continue to suffer material injury. That injury is directly caused by the dumping of unfairly priced imports onto the U.S. market. During Petitioner's panel, you will hear further testimony about the harm caused by unfairly traded CSOBA imports. Thank you very much.

CHAIRMAN OKUN: Thank you.

MR. BISHOP: Opening remarks on behalf of Respondents will be by Peter J. Koenig, Squire, Sanders, and Dempsey.

CHAIRMAN OKUN: Good morning, Mr. Koenig.

MR. KOENIG: Thank you. Good morning. Peter Koenig, as noted, from Squire Sanders representing Taiwan Respondent TFM. TFM is pretty much the only Taiwan producer and exporter, and you'll hear testimony today indicating several points, the

basic point being that Taiwan doesn't sell into the U.S. based on price to get sales. Taiwan sells based on quality and providing needed technical services, and also a necessary second supply source to U.S. paper companies who need a guaranteed supply for this critical input.

Finally, it's a little ironic that Clariant is here as a Petitioner. Some years ago, they were before this Commission in which they were on the respondent's side, and they were arguing that they should be allowed to continue their massive purchases of DAS, the input to make this product, from Asia. And as a result, no dumping duties were imposed, and there is no more U.S. DAS industry.

So Clariant gets its supply now from Asia DAS, which is part of the problem why it's an unreliable supplier, because the DAS, when it gets short, it's available in Asia, but it's not available to Clariant. That's it.

CHAIRMAN OKUN: Thank you.

MR. BISHOP: Will the first panel, those in support of the imposition of antidumping duty orders, please come forward and be seated. Madame Chairman, all witnesses have been sworn.

(Pause.)

CHAIRMAN OKUN: All right. Looks like the panel is all seated. You may proceed.

MR. ELLIS: Thank you. Good morning, Madame Chairman and members of the Commission and staff. My name is Neil Ellis from the law firm Sidley Austin, also representing Clariant Corporation in this investigation. I'd like to start our panel this morning by turning this over to Dr. Andrew Jackson. Andrew.

MR. JACKSON: Good morning. My name is Dr. Andrew Jackson. I'm currently the global product manager, optical brightening agents, for Clariant International Limited. I've held this position since 2007, prior to which I held various research posts within the company. I've been with Clariant since 1990 when it was known as Sandoz Products Limited.

I hold a Ph.D. and master's degree in chemistry from the University of Oxford, and I've completed post-doctoral studies in chemistry at Brandeis University and Imperial College. Over the years, I've authored 30 technical publications, including 17 patents or patent applications related to CSOBAs.

I would like to talk briefly today about the chemistry of these products known as CSOBAs and how

the quality of these products may be assessed from a technical perspective. Beginning with the chemistry, as you are aware, the CSOBAs at issue in this investigation fall into a class of chemical compounds known as triazinylaminostilbenes. Now, these are built around a central compound known as diaminostilbene disulfonic acid, often acid, often abbreviated to DAS or DAST. This is coupled with cyanuric chloride, an aniline derivative and typically an alcohol or amine. This is depicted in the current slide.

The center of the structure, the two phenyl groups, are joined together by a carbon-carbon double bond. This is the stilbene moiety that confers the name stilbenic upon these optical brightening agents. The final CSOBA compound is generally categorized according to the number of sulfonic acid groups on the molecule.

As you can see, DAST already contains two sulfonic acid groups. So the minimum number of sulfonic acid groups on a CSOBA molecule is two. CSOBAs with two sulfonic acid groups fall into the di category. Additional sulfonic acid groups may be present on the final CSOBA molecule, depending on the aniline derivative used in the synthesis.

Because the aniline derivative is present twice on the final molecule, where the aniline derivative contains one sulfonic acid group, the final CSOBA molecule will have four sulfonic acid groups and falls into the tetra category. And where the aniline derivative contains two sulfonic acid groups, the final CSOBA molecule will have six sulfonic acid groups and falls into the hexa category.

Di-, tetra-, and hexa-CSOBAs may all be used to brighten paper. There is one exception, which is the di compound known as Florescent Brightener 71. This is disfavored in the paper industry owing to its low solubility in water.

CSOBAs may be applied at different stages of the papermaking process. Di-CSOBAs are the preferred choice for addition to stock of the so-called wet end, or the water fiber phase of the papermaking process. Tetra-CSOBAs are universal brighteners that may be added to either the stock or the paper surface. And hexa-CSOBAs are the preferred choice for surface applications.

Given the universal appeal of tetra-CSOBAs, these are the most common and most commoditized, he product known as Fluorescent Brightener 220 serving as the workhorse product.

Let me next quickly walk you through the three sequential chemical reactions used to synthesize CSOBAs. The first two steps may be done in either order, but the last step is always the same. The present slide depicts cyanuric chloride reacting with an aniline derivative to form the first intermediate product. That intermediate product is then reacted with DAST to form the second intermediate product.

Alternatively, cyanuric chloride may be reacted with DAST in the first step and then with the aniline derivative in the second step to wind up with the same second intermediate product.

Because the first step always involves cyanuric chloride, which is an extremely reactive compounds, the temperature of that step must be closely monitored and maintained near freezing using large quantities of ice. The temperature of subsequent steps rises in order for those reactions to go to completion.

After the second intermediate product is created, it's typically reacted with an alcohol or amine to create the final CSOBA product in the third and final step of the synthesis, as depicted in the current slide. The amine most commonly used in this step is diethanolamine. Once the synthesis is

complete, the product may be used directly, or it may be processed further, such as through ultra-filtration, ion exchange, or the addition of agents that may enhance brightness or whiteness and so forth.

The final processing steps are unique to each individual CSOBA product and supplier. This final slide shows the end result of the synthesis for the tetra compound Fluorescent Brightener 220. As you can see, this product is synthesized using DAST, cyanuric chloride, sulfanilic acid, and diethanolamine.

Finally, I would like to address the topic of product quality from a technical perspective. Respondents have alleged that purity above all else determines the quality of a product, and the alleged high purity of their product makes their product of higher quality. This is simply incorrect. Rather, product quality is measured ultimately by the effectiveness of the CSOBA solution in application at the paper mill to achieve the desired level of brightness or whiteness.

That effectiveness is driven principally by the concentration of active ingredients in the product, not its purity.

Let me try to conceptualize for you the

distinction between purity and concentration. Assume that a CSOBA solution contains 23 percent active ingredients, 2 percent inactive impurities, and 75 percent water. this solution may be considered 92 percent pure because 92 percent of the compounds other than water, that is, 23 out of 25, are the active ingredients.

At the same time, the concentration of the solution is 23 percent because that is the proportion of the active ingredients in the overall solution. In practice, the effectiveness of a CSOBA solution is determined by the concentration of active ingredients in the solution, not its purity because the small amounts of impurities present in CSOBA solutions produced by all major suppliers are generally benign.

By that I mean that such impurities do not contribute the quenching of fluorescents, and therefore have impact on the performance of a CSOBA when applied at a paper mill. The ultimate effectiveness of a CSOBA solution is tested by applying different quantities of that solution at the wet end or the size press or in coating, and measuring the brightness or whiteness that results using technical instruments, the details of which I will not bore you with.

I have submitted such test results to you on the confidential record, which illustrate that Clariant's CSOBA products are comparable with if not better than the products offered by our competitors.

That concludes my testimony. I thank you.

MR. ELLIS: Thank you, Andrew. There is going to be a quiz after this hearing, by the way, on the chemical stuff. We're now going to turn this over to Russell Gibson, who is the operations manager at Clariant's plant in Martin, South Carolina. Russell?

MR. GIBSON: Good morning. My name is Russ Gibson. I am the operations manager in the paper specialties division of Clariant Corporation. In my current position, I am responsible for the production of Leucophor OBA product line at Clariant's plant in Martin, South Carolina.

Prior to my current position, I was shift production manager, process engineer, OBA process specialist, and most recently Paper North America, lean sigma blackbelt working on several OBA process improvement projects. Through these positions, I have more than four years experience producing CSOBAs in the U.S. market and 16 years producing CSOBAs in the U.K.

You have already heard from my colleague

Andrew Jackson about the chemistry of these products called CSOBAs, so I will not repeat that discussion. Rather, I would like to take a few minutes today to discuss how we produce CSOBAs at the Martin plant and the impact that imports from Taiwan and China have had on our plants and our community.

As Andrew mentioned, the principal raw materials used in producing CSOBAs are DAST, cyanuric chloride, an aniline derivative such as sulfanilic acid, and an alcohol or amine such as diethanolamine. I understand that a question has been raised regarding Clariant's ability to obtain sufficient quantities of these raw materials. I can unequivocally state that we have had no difficulty obtaining these raw materials at the Martin plant.

With respect to DAST in particular, Clariant sources this chemical from reliable suppliers globally. During the Commission's 2009 to 2011 period of investigation, Clariant has never experienced a shortage of DAST and has never had to place its customers on allocation due to DAST shortage. This is also true for the period during the 2008 Beijing Olympics, which took place prior to the Commission's period of investigation.

Clariant tightly controls the supply chain

of all its chemical inputs. We may not be able to control the prices of these inputs, which have increased in recent years, particular for DAST. However, we can and do ensure that we have sufficient inventory of these inputs in order to produce sufficient volumes at Martin to fulfill our customer orders.

Turning next to how we turn these inputs into CSOBAs at Martin, all of the reactions involving the chemical inputs must be performed in large tanks in water solution. In addition, strict temperature controls must be maintained, particularly in the initial synthesis step involving cyanuric chloride because cyanuric chloride is a dangerous and potentially explosive compound.

A significant amount of ice is used in the production process to prevent such explosions. A schematic for the production process of Fluorescent Brightener 220, which as you know is the workhorse CSOBA product in the industry, is displayed on the screen.

This slide also identifies the production steps that take place after chemical reactions have occurred. These so-called finishing steps put the product in final form by removing non-florescent and

insoluble impurities, sodium chloride, and excess water. These steps also involve the removal of hydrochloric acid byproducts, which is commonly neutralized with sodium carbonate or sodium hydroxide.

In addition, biocides are introduced to prevent the growth of bacteria and other microorganisms in the solution during storage and transport. Every batch of CSOBAs that we produce goes through our quality control process. We perform several tests to ensure that the quality of our product meets the high standards required by our customers.

Importantly, we use spectrophotometry to measure a batch of concentration against a standard. For example, Clariant's standard for Fluorescent Brightener 220 is in the range of 22 to 23 percent active ingredients. Our precise standard is on the confidential record. This standard conforms with the requirements of virtually all U.S. customers. We also perform additional tests to assess a batch's pH, appearance and purity.

Respondents have argued that purity is the principal determinant of quality. We disagree. Nonetheless, we also ensure that each batch meets the minimum standards of purity required by our customers

by using high pressure liquid chromatography or HBLC as the industry norm. No CSOBA solutions that fall below these minimum purity standards are shipped to U.S. paper makers. Our purity standards enable U.S. paper makers to reach their desired levels of brightness or whiteness.

The other major producers of CSOBAs are able to achieve similar purity levels as well as other quality standards because the production process that I described earlier is quite straightforward. A producer that couldn't consistently achieve these levels of quality wouldn't be in business for very long in this market.

Following testing, conforming batches are stored in a tank farm until they can be transported to the customer. CSOBAs leave the Clariant plant as a solution, which is the end result of the production process. The product is typically transported by truck or rail tanker, depending on the location of a customer.

Smaller quantities, such as those in trials, offer customers without large storage capacity, may be transferred in what are known as totes or intermediate bulk containers, also known as IBCs. Once at the customer site, the CSOBAs are used in the original

solution stage during the paper production process. Although the CSOBAs are produced and used as solutions, they may be dried following production to create a powder.

Clariant used to dry one of its non-CSOBA colorant products, so I am familiar with this process. It typically involves the use of spray drying equipment to remove water and concentrate the product into a powder of about 95 percent active ingredients. At some point, the powder must be reconstituted into its original solution state in order to be used in the paper production process.

The process of dissolving the powder into water to create a solution is known as letdown. The producer can perform this process itself or it can contract with third-party tollers for this service. On occasion, a paper maker may be willing to let down the powder itself, but end users overwhelmingly prefer to receive ready-to-use solution products.

Adding two steps to the production process, spray drying a solution into powder and then later reconstituting the powder into solution is done for one purpose only, to facilitate transportation across long distances. Naturally, it is cheaper to ship concentrated powder across long distances. Keeping

the product out of solution may also prevent microbial growth over long shipping distances.

We considered the idea of producing CSOBA powders at Martin, but could not justify the cost given the relatively short shipping distances to reach most of our U.S. customers. However, I understand that the Taiwanese and Chinese CSOBA producers have implemented the strategy of producing powder to reduce their ocean freight costs. As these imports have flooded into the U.S. market, I have seen firsthand the injury that these imports have caused to Clariant.

We are making only minimal investments to keep the Martin plant safe and operational. Clariant's production staff is doing the best we can with the equipment and the facilities that we have because Clariant just doesn't have the revenue stream to justify badly needed improvement projects at the Martin plant.

As you have already heard and will hear again, we have been forced to cancel or postpone several much needed improvement projects at Martin. But more importantly, some of my colleagues, friends really, have been laid off as Clariant production volumes have dwindled. Even those of us who still have jobs have been hard hit.

In 2011, for the first time, Clariant imposed several production-related shutdowns at the Martin plant due to declining sales volume. Staff are required to take vacation or unpaid absence during these shutdowns. With bills to pay and kids in school, the lost wages during these shutdowns were significant to me and Clariant's production staff. Thank you.

MR. ELLIS: Thank you, Russ. Our next witness will be Matt Dettlaff. Thank you.

MR. DETTLAFF: Good morning. My name is Matt Dettlaff, and I am a senior product manager for Clariant Corporation. In my current position, I am responsible for the sales and marketing efforts of both the Leucophor OBA product line and the paper colorants product line in the North American region.

Prior to my current position, I held several sales and marketing posts dating back to 1991, when I joined Sandoz Chemicals, the predecessor of Clariant Corporation. Through these positions, I have more than 20 years of experience selling CSOBAs in the U.S. market.

Based on this experience, I can tell you that the situation in the U.S. market is critical. Virtually every week I receive a call report from

Clariant sales staff echoing the same message that I've heard repeatedly over the past few years. If Clariant doesn't lower its price to compete with a Taiwanese or Chinese CSOBA supplier, we will lose the business. The customers in these call reports may be different, but the message is always the same.

The confidential data before the Commission reveals that in many cases Clariant does lose business to suppliers like TFM, Hongda, and Transfar. In other cases, Clariant holds onto the business by cutting its prices to the bone. Either way, the subject imports are making it extremely difficult for Clariant to compete in the U.S. market.

Due to the presence of these suppliers in the U.S. market, Clariant cannot adjust its prices to reflect increases in its raw material costs. This pricing pressure caused by unfair imports from Taiwan and China is widely recognized in the CSOBA industry. The well-respected Paperchem Report has reported on this pricing pressure repeatedly.

Let me read for you just two of their observations. First, "Clariant faces mounting pressure on price as Asian suppliers increase their market share. The major purchasing groups typically retain a portion of the business with one of the key

suppliers, while the imported product provides leverage on pricing."

Second, "Customers have seen OBA pricing flat or slightly down, and have found there is sufficient competition to provide leverage. The Chinese and Taiwanese suppliers insist that OBA pricing will remain unchanged. The suppliers that will feel the greatest effect envisage a 20 percent rise in costs, but are still eager to increase market share and will accept a part of the additional costs."

That last point is an important one. The Taiwanese and Chinese suppliers have succeeded in gaining market share because of their willingness to absorb rising costs. In other words, they're willingness to dump. No other reason accounts for their market penetration.

Undoubtedly, you will hear claims to the contrary this afternoon, claims that Clariant is being edged out of the market based on other factors, such as alleged higher quality, better technical support, and greater reliability of subject imports. These claims are simply incorrect.

Although customers may take these factors into consideration, the reality is that all major CSOBA suppliers, including Clariant, are capable of

satisfying these nonprice requirements. This is what I hear from our customers all the time.

In fact, Clariant's Leucophor CSOBAs have been used to successfully manufacture every white grade using CSOBA. Some of these grades measure 99-plus brightness on a scale of 100. To my knowledge, there are no new grades of paper that can be made only with imported CSOBAs, and not with Clariant's Leucophor products.

When a truly differentiated CSOBA product hits the market, such as when hexa-CSOBAs were first offered commercially, customers typically use these products to differentiate themselves from their competitors by making higher brightness paper grades. However, to date, the only comments I have received from customers regarding the subject CSOBA imports concern the lower pricing offered by those imports.

I have heard nothing about grade differentiation or inability of Clariant's products to meet the required paper specifications. This speaks volumes about TFM's claim that product purity is the reason companies use TFM's product. Indeed, if TFM's product were truly superior in performance, then from my market experience, it should cost more in the marketplace, not less.

The reality that all major CSOBA producers satisfy customers' requirements in terms of quality, service, and supply is also reflected in the public data collected by the Commission from purchasers of CSOBAs, which is presented in the next few slides.

On the topic of product quality, the first slide demonstrates that most customers with knowledge of all sources of supply find that domestic, Taiwanese, and Chinese product always or usually meet minimum quality specifications. Similarly, the second slide demonstrates that most customers find that three principal sources of supply generally are comparable in terms of actually meeting the industry standards for quality.

Also with respect to quality, the third slide indicates that domestic and import products are generally comparable in terms of product consistency.

Turning to the issue of service, the next slide reveals that customers generally view the three principal sources of supply as comparable in terms of technical support. In fact, TFM's public admission that it has only four personnel dedicated to technical support casts doubt on its argument that it offers better technical support than the domestic industry.

I deal with our technical support staff

every day. And although the exact number is confidential, I can attest that we have many more than four employees dedicated to servicing the needs of our customers.

Finally, turning to supply considerations, the next slide shows that U.S. purchasers generally consider domestic and import product to be comparable in terms of availability. Customers also find domestic, Taiwanese, and Chinese producers generally comparable in terms of reliability of supply. Taken together, these data reveal that ultimately the major CSOBA suppliers are comparable in terms of critical nonprice factors, meaning competition in the marketplace comes down to price. And Clariant cannot compete with the unreasonably low prices offered by Taiwanese and Chinese producers.

In fact, U.S. purchasers readily recognize that Clariant's prices, as well as the prices of the other domestic producers, are higher than the prices charged by Taiwan and China, as indicated in the next slide. This confirms the price underselling of subject importers.

When I say that Clariant cannot compete with Taiwanese and Chinese prices, it is important for the Commission to recognize which prices I mean. CSOBA

prices are quoted on a delivered basis. Clariant wins or loses business at the customer's front door. As a result, the only meaningful way to compare Clariant's prices against the competitor's prices is to consider them all on a delivered basis.

This is what our customers do, and that is what Clariant does when deciding whether it can shave a few pennies, nickels, or even dimes off of its price in order to meet the delivered price of TFM or another supplier. These pennies, nickels, and dimes may not sound like significant costs, but taken on a percentage basis, these leveraged price cuts make our business unsustainable.

Delivered prices have become particularly important in the CSOBA market since Taiwanese and Chinese suppliers began importing their products in powder state. As Russ had described, CSOBAs are produced in solution state, and they are used in solution state. Thus, when Taiwanese and Chinese suppliers convert their product to powder state, they do so principally to facilitate trans-ocean shipments to the United States.

It is, of course, cheaper to ship a dry product across the ocean than a liquid product because one can avoid the cost of shipping water, which makes

up a large percentage of the CSOBA solutions. Once the powder is in the United States, it is converted back into a solution. U.S. purchasers generally do not want to be bothered with the mechanics of this process or the extra logistics that it entails.

These customers simply want to know what the price of the liquid product will be when it's delivered to their facility, that is, the delivered price. The growing production of CSOBAs in powder state in Taiwan and China is important in another way. As Lynn will discuss in more detail, imports of subject CSOBAs have increased now that suppliers like TFM and Hongda have reduced their ocean freight costs by shipping product in powder state.

With their rapidly increasing volumes, these suppliers have taken market share directly from U.S. producers like Clariant. Our market share with respect to the tetra category of CSOBAs has been particularly impacted. Every indication is that import volumes will continue to grow as Taiwanese and Chinese add to their spray drying capability and expand its use into the production of di and hexa products.

It is only a matter of time before these import volumes begin in earnest to push domestic

producers out of the di and hexa markets as well. To be clear, Clariant and the other domestic producers are willing to compete with imports if such competition is fair. We offer excellent products and skilled technical and sales staff. We have steady access to raw materials necessary to produce CSOBAs, which hasn't been disrupted over the entire three-year period of investigation.

We have more than ample production capacity to meet the needs of the U.S. purchasers, yet we continue to lose ground to Taiwan and China. We do so whether CSOBA demand is weak, as it was in 2008 and 2009, or whether demand is stronger, as it was in 2010. We do so whether the economy is in recession or not.

Taiwanese and Chinese producers are impervious to these trends in demand, as well as trends in raw material costs I had mentioned earlier. Thank you.

MR. ELLIS: Thank you, Matt. Our next witness will be Lynn Holec, from ITR LLC. Before she starts, I just want to mention there will be a series of slides accompanying her presentation. They have all been indexed in order to purge any BPI out of the data that will be shown today. But the BPI data is

noted from the staff report, which you could refer to if you wish. Thank you.

MS. HOLEC: Good morning. My name is Lynn Holec. I'm an economist with ITR LLC. I have a master's degree in economics and 35 years of experience in international trade policy and litigation. I will address three topics: first, the growth in the volume of subject CSOBA imports; second, the effects of these imports on the domestic CSOBA prices; and third, the injured status of the domestic CSOBA industry.

I will illustrate that subject imports have grown dramatically at the expense of domestic products, while undercutting domestic prices, thereby causing material injury and further threatening material injury to the domestic industry. A complete description would include specific numbers, but those are confidential, so I will paint only a general picture and discuss trends.

I have prepared trend graphs which index each series of data independently, so the absolute values in the graphs have no meaning, but the trends provide important information. When actual numbers replace my adjectives and trend graphs, as is done in the Commission staff report and in Petitioner's

prehearing brief, the material injury to the U.S. CSOBA industry becomes clearer.

As a threshold matter, it is important to ensure that a constant unit of measure for quantity data is used to discern volume and price trends because CSOBAs are imported and sold in various concentrations. Accordingly, in my analysis, I will rely on the quantity data collected by the Commission in terms of 100 percent active ingredients.

Turning to the volume trends, subject CSOBA imports have been aggressively marketed in the United States through the 2009-2011 period, with absolute volume and market share of subject imports increasing each year. My first slide illustrates the trends and the volume of U.S. shipments in subject imports during the period.

As you see, the volume of U.S. shipments declined over the period, while the volume of U.S. shipments of subject imports rose substantially in each year. The confidential data show the absolute volume of subject imports has been substantial and growing in each year.

As you see in the second slide, the increase in subject imports has caused the U.S. industry to lose market share in each year of the POI. The third

slide shows that subject imports have captured market share regardless of the underlying demand trends in the industry. As you see, between 2009 and 2010, when U.S. apparent consumption rose, subject imports gained market share. And between 2010 and 2011, when U.S. apparent consumption fell modestly, subject imports again gained market share.

Next, let's step back and review the underlying economics of the CSOBA market, which are summarized by the elasticity estimates determined by the Commission staff. These elasticity estimates are displayed on the slide. As you heard earlier, CSOBAs are a commodity-like product because major suppliers satisfy the principal nonprice prerequisites considered by purchasers in their purchasing decision.

Thus, the primary remaining basis of competition among the major suppliers is price. This fact is reflected in the Commission's estimate of the elasticity of substitution between imported and domestic CSOBAs that is in the range of three to five. Thus, a 1 percent decrease in the price of imports results in a 3 to 5 percent reduction in the quantity of domestic producers' CSOBA shipments, which is consistent with the commodity-like nature of the product, and the fact that the domestically produced

and imported product are frequently used interchangeably and thereby compete principally on price.

The Commission staff also estimated the domestic supply elasticity to be in the range of four to six. Thus, for every 1 percent increase in price, the quantity supplied is predicted to increase by 4 to 6 percent. This estimate reflects the low capacity utilization of the CSOBA manufacturers during the 2009-2011 period. Thus, the loss of market share by the domestic industry cannot be explained by lack of ability to supply the U.S. market, and should an antidumping order be issued, the domestic industry can readily take advantage of the relief.

In this economic environment, subject imports dramatically increase their U.S. market share through competing on the basis of price. Their success if revealed in the confidential data gathered by the Commission, which provide evidence of the pervasive price underselling and substantial lost sales and lost revenue by the U.S. industry to the low priced subject imports.

These low prices have also had the effect of depressing and suppressing the prices of the U.S. producers in their struggle to remain competitive.

On the subject of underselling, the Commission requested U.S. producers provide data both on a delivered basis and on an estimated FOB U.S. plant basis. It similarly requested U.S. importers provide prices on a delivered basis on an estimated FOB U.S. port basis.

Both these delivered prices and the estimated FOB prices demonstrate substantial price underselling by subject imports. However, the results of the delivered prices provide the more accurate picture of injury caused by subject imports to the U.S. producers.

In the preliminary determination, the Commission stated that substantial U.S. freight costs indicate that FOB prices are the better basis upon which to make price comparisons. Accordingly, the Commission relied primarily on FOB prices in its underselling analysis. I submit that this is not correct. I believe the Commission should rely primarily on delivered prices for the final determination.

Delivered prices are the better gauge of price competition for two reasons. First, U.S. producers and importers sell CSOBA on a delivered basis. U.S. customers purchase a delivered product.

All price negotiations focus on delivered prices. Sales are won or lost based on delivered prices. Accordingly, this is the proper basis on which to measure the degree of underselling that has occurred.

Second, because prices are based on delivered -- because sales are based on delivered prices, these are the prices that U.S. producers and importers can reliably supply. As recognized by the Commission, the FOB prices are necessarily nothing more than estimates that have been prepared for this proceeding.

Furthermore, the FOB prices obtained by the Commission are flawed estimates. As detailed in Petitioner's brief, the U.S. inland freight cost reported by the importers are not credible estimates, particularly for Taiwanese product. The Taiwanese importer reported freight expense substantially below that reported by the U.S. producers.

The Commission staff report suggests that these lower freight expenses reflect shorter shipping distance. However, the shorter distances reported by the Taiwanese importer and the associated lower freight expense reflects only shipments from the importers' U.S. warehouses to its final customer.

The freight expense incurred for shipping

from the U.S. port to its U.S. warehouse is most likely omitted. This belief is supported by the fact that the importer reported in its publicly available questionnaire response to the Department of Commerce that the cost of shipping from the U.S. port to the importers' various U.S. warehouse locations is included in international freight costs.

With respect to imports of powder, important components of transportation cost have been omitted, namely, the cost of warehousing and returning the powder to a solution. As other witnesses have noted, he sole purpose of converting CSOBA in a solution state after it is produced in Taiwan or China to a powdered state is to facilitate trans-oceanic shipment to the United States. Thus, the letdown process that returns the CSOBA to a solution is an integral part of the transportation cost incurred in the United States by the importers.

If an FOB price is to form the basis of the price underselling analysis, the estimated FOB price should include all the associated transport costs, including the warehouse and letdown expenses.

We submitted in our prehearing brief analysis of price underselling of Taiwanese CSOBA based on delivered prices, the estimated FOB prices

submitted by the importer, and FOB prices that we corrected for letdown costs incurred by imports of powder. The analysis of delivered prices reveals best the degree to which the U.S. producers have been undercut by Taiwanese imports. Even though the estimated FOB prices are overstated, these prices also indicate substantial underselling by the Taiwanese imports.

When the FOB prices are corrected to exclude the letdown cost based on information the importer has provided, the price underselling analysis results approach the results of those based on delivered prices. We do not have data on the cost of shipping from the U.S. port to the importers' U.S. warehouses. Consequently, the FOB prices cannot be adjusted for these costs. However, if such adjustments could be made, they should show additional underselling by the Taiwanese importer.

As to China, the price data from the dominant Chinese importer is so fundamentally flawed that it is not possible to identify the extent of the underselling. The Commission should disregard the data submitted by the dominant Chinese importer and instead find significant price underselling on the basis of facts available and adverse inferences. Or

if the Commission chooses to rely on the available data, then it should make certain adjustments to that data that would allow the Commission to confirm significant price underselling.

The confidential data on the record also demonstrates price depression and suppression. Price depression is best illustrated by looking at U.S. producers per unit prices of di-, tetra-, and hexa-CSOBAs during the course of the POI. This is displayed in the current slide.

As you see, CSOBA prices in the United States fell across the board during the POI. In addition, price suppression is evident from an examination of the confidential data on the U.S. industry's operating cost. See cost of goods sold and raw materials cost relative to sales revenue.

Turning last to the impact on the U.S. industry, the effects of increased volume of subject imports and their aggressive pricing is evident in the domestic industry's financial results. The record evidence shows that the domestic CSOBA industry's performance declined substantially during the 2009-2011 period, when subject imports were surging.

The domestic CSOBA's financial indicators demonstrate material injury that the industry has

experienced from subject imports. I will briefly review some of these key indicators for the 2009-2011 period. But all the impact factors examined by the Commission are reviewed in detail in Petitioner's prehearing brief.

First, as the next slide shows, the domestic industry's production and U.S. shipments rose slightly in 2010, and then fell markedly in 2011. As shown in some of my earlier slides, the domestic industry steadily lost market share, while subject imports steadily gained market share during the 2009-2011 period.

Second, as the next slide shows, the domestic industry's operating losses increased each year during the POI. The record evidence further shows that per-unit profitability, as well as profitability as a percent of sales revenue, also deteriorated during each year.

Third, the record evidence shows that the domestic industry's return on investment became increasingly negative during each year.

Fourth, the record evidence shows that the domestic industry's capacity utilization, which was already extremely low, fell further during each year of the POI.

Finally, the domestic industry's employment declined significantly in each year. This is displayed on the next slide.

In sum, during the course of the period of investigation, the evidence before the Commission shows (1) subject import volumes have been rising at the expense of domestic producers' market share, and doing so regardless of the demand trends in the industry; (2) subject imports have been undercutting domestic prices, causing domestic prices to decline, and causing domestic producers to lose substantial sales and revenue; and (3) the domestic industry's financial indicators have steadily deteriorated.

The unavoidable conclusion is the domestic industry is suffering material injury by reason of subject imports. This is summarized in my final slide. Thank you.

MR. ELLIS: Thank you, Lynn. Our final witness will be Kenneth Golder, the president and CEO of Clariant Corporation.

MR. GOLDER: Good morning. I am Ken Golder, the president and chief executive officer and chief financial officer of Clariant Corporation, based in Charlotte, North Carolina. I have been Clariant's president and CEO since June of 1998, and am head of

Clariant's operations for all of North America. I have worked for Clariant or its predecessors since 1982.

I am here today as the CEO of the largest U.S. producer of CSOBAs to deliver a simple, but painful message. Very soon, U.S. production of CSOBAs will be unsustainable if unfairly traded imports from Taiwan and China are not restrained. Over the past years, the onslaught of these imports in the U.S. market has had a devastating effect on domestic producers, including Clariant.

Despite the best efforts of Clariant's experienced and highly regarded technical and sales staff to supply our world class products to U.S. customers, we have seen our business quickly erode. As Matt has explained, our robust sales volumes and revenues have been lost to Taiwanese and Chinese producers. Like Matt, the refrain I hear from Clariant's sales staff is always the same. We cannot drop our prices low enough or fast enough to compete with the dumping of products by these producers. And they're right.

Clariant cannot compete in the unfair race to the bottom created by companies like TFM. In my position overseeing the preparation of Clariant's

financial statements, I see firsthand the impact of rising import costs on Clariant's bottom line. Our experience indicates that in a fair market, Clariant is able to pass along these costs to its customers. In fact, Clariant has a successful history of doing so.

But time and again, Clariant's modest price increases have been rebuffed in whole or in part due to the willingness of Taiwanese and Chinese producers to undersell our products. This destructive and unfair competition severely impacts the financial health of Clariant and the entire domestic industry. Each time that Clariant loses a sale to a Taiwanese producer, or that Clariant is forced to reduce its already low price to match a competing offer from a Chinese producer, Clariant's bottom line takes a hit.

These hits are substantial, especially since Clariant has been largely squeezed out of the spot in short-term contract market by subject imports, and our remaining long-term contracts are at risk. The loss of even one long-term contract can severely reduce Clariant's sales volume, which in turn makes it difficult for Clariant to maintain reasonable production rates and capacity utilization at our Martin, South Carolina plant. And the loss of a long-

term contract is all too easy, given the insistence of U.S. paper makers on the inclusion of meet-or-release clauses in these contracts.

These clauses require Clariant to meet the prices offered by competitors or at a minimum reduce prices substantially in order to maintain CSOBA volumes. The confidential record contains evidence of how these meet-or-release clauses have impacted Clariant during the period of investigation. As a result of these clauses, Clariant and the other domestic producers are especially vulnerable to the negative price effects of unfairly traded imports.

The data collected by the Commission staff in the final phase of these investigations confirms the adverse impact of subject imports that I have seen in Clariant's financial reports over the past years. Much of this data are confidential, but even in the public data, it makes clear the extent of the injury suffered by the domestic industry.

With respect to Clariant itself, between 2009 and 2011, our CSOBA production, U.S. shipments, and capacity utilization have all substantially declined. As U.S. shipments of unfairly priced imports from Taiwan and China increased dramatically, our market share also declined. Our employment base

and wages fell, and we were forced to cancel or postpone much needed investment at our Martin facility.

Looking ahead, I fully expect the state of the U.S. industry to soon worsen further from its already dire situation as the unfair behavior of Taiwan and China continues and grows stronger. I have been informed that the Taiwanese producers has just expanded its capacity, and China has significantly unused capacity, which could all be used to rapidly increase production in order to target the U.S. market.

These producers could readily shift their shipments from China in other markets to the United States. Yet the greatest threat of all to the domestic industry stems from the recent investments by Taiwanese and Chinese producers in spray drying equipment. You have already heard from my colleagues discuss this development. My concern is that it increases the threat of the near-term injury of Clariant's production in the United States.

In short, we have been significantly injured and continue to be threatened with further and greater material injury by low-cost imports from Taiwan and China. Clariant is here seeking relief from these

unfairly traded imports as an absolute last resort. We do not take the decision to file an antidumping petition lightly. We made this decision only after taking significant operational measures to improve our efficiency and boost our productivity. Clariant has undertaken several lean sigma continuous improvement projects, increased automation, streamlined our product portfolio, and found innovative ways to market our strengths and expertise.

Clariant's hardworking employees have absorbed the pain of these efforts through layoffs and other austerity measures. As I mentioned, our number of employees and hours worked fell from 2009 to 2011. Wages also declined. These measures may have somewhat cushioned our bottom line for now, but they threaten substantial permanent damage for Clariant and the struggling local community in which our U.S. production facilities are located.

To be blunt, without protection from these unfairly traded imports, it's only a matter of time before Clariant will be forced to consider the extreme step of closing our U.S. plant. In fact, our under-performance has led our parent company to consider other strategic options for this business unit that could ultimately have further negative impact on the

domestic industry.

We are not seeking to preserve our U.S. production capabilities by driving the Taiwanese and Chinese producers out of the U.S. market. We welcome competition. We are only asking for prices that would naturally be obtained in a fairly traded market, prices that would sustain a healthy domestic industry. However, the reality of the CSOBA market today is that the pricing levels are not set by natural market forces, but by the unfair and destructive competition from producers in Taiwan and China.

In conclusion, there is no doubt that Taiwanese and Chinese producers are firmly targeting the U.S. market. The ability of Clariant and the other domestic producers to withstand the increasing competition from unfairly priced imports is faltering. As I stated at the outset of my remarks, if imports from Taiwan and China are not restrained, U.S. production ultimately will not be sustainable. And the domestic papermaking industry will become wholly dependent on the foreign suppliers of CSOBAs.

We would be happy to answer any questions you may have, and thank you for your time.

MR. ELLIS: Thank you, Ken. That concludes our panel's affirmative presentation. Thank you.

CHAIRMAN OKUN: Thank you. And before we begin our questions this morning, I want to take this opportunity to thank all the witnesses for being here this morning. We appreciate you taking the time from your business to travel to Washington and answer our questions. And this morning Commissioner Aranoff will start off the questions.

COMMISSIONER ARANOFF: Thank you, Madame Chairman. I also do want to welcome this morning's panel of witnesses. Thank you for being here today. The testimony this morning touched at some length on the issue that TFM raised about whether or not there is a distinction between effectiveness and purity. And I understand your testimony on the subject. What I would like to know is, is there any objective technical or scientific source that the Commission could look to in order to basically definitively resolve this dispute over the extent to which purity matters?

MR. JACKSON: I would say not. Ultimately, the test of a product's quality has to be the performance on a paper machine. And as we've testified, that performance is driven by the concentration of active ingredients in the product, not by the purity of the product.

Yeah. I mean, we could add to that that what we learn from our customers, in addition to the tests that we perform ourselves, support that Clariant's products are comparable, if not better, than the products supplied by our competitors.

COMMISSIONER ARANOFF: It would be helpful to have in the record -- and I don't know if this is possible -- some kind of example of analyses that are performed by purchasers in the ordinary course of their business.

MR. ELLIS: This is Neil Ellis. We put one example of that on the record in attachment to Dr. Jackson's affidavit in our post-conference brief in the preliminary phase, where it showed a sample of both Clariant product and TFM product in a real-life sample, and showed that the two graphs basically overlapped, showing that they had the same -- that was effectiveness, I believe. And so that's one example of the sort of testing that is done in real time.

So there is one example. We could probably provide you with others, if you like.

COMMISSIONER ARANOFF: Do effectiveness and concentration of the active ingredients mean the same thing? Or are there other factors that can make a CSOBA product more effective than another?

MR. JACKSON: I think again as long as we're talking about comparing two identical chemistries -- so, for example, if we're comparing two products which are both based on Fluorescent Brightener 220, which is the tetra that we showed earlier, then again the performance, that is governed by the concentration of the active ingredients in the solution.

COMMISSIONER ARANOFF: Okay. TFM also makes the claim that by producing a higher purity product, it's saving its customers money by allowing them to use less of the product to achieve the same level of brightness. Can you respond to that?

MR. JACKSON: Yes. I apologize if I'm being a little repetitive, but you will be able to use less product if your solution a higher concentration of active ingredients. Concentration of active ingredients, yeah.

MALE VOICE: Not purity.

MR. JACKSON: Not purity, yeah, that's correct.

MR. ELLIS: I want to make sure that last point was heard, which is that it's not based on purity, but on concentration. You can use a lower dosage. They're talking about purity, and that's not correct, from my understanding.

COMMISSIONER ARANOFF: Okay. There is a reference in one of the briefs to CSOBAs being FDA approved for certain applications. Are there applications for which FDA approval is needed, and what would those be?

MR. DETTLAFF: This is Matt Dettlaff with Clariant. Yes, there are FDA-compliant applications with the paper, end paper, that is used. Such applications go into food wrap, or even some customers want -- even though their paper may not come in direct contact with the food, any components of the packaging of some food, such as the box around a bag, they want that to be FDA compliant. So typical applications for FDA compliance are with food contact paper grade.

COMMISSIONER ARANOFF: Do all of the U.S. producers make a product that could be used in FDA-compliant paper product?

MR. DETTLAFF: TO my knowledge, yes, all the domestic producers have an FDA-compliant product. The Fluorescent Brightener 220, at least the two main -- I know for sure the two main producers domestically do have FDA compliance on their Fluorescent Brightener 220 molecule.

COMMISSIONER ARANOFF: Okay. How large a share of the U.S. market of CSOBAs is going to FDA

applications?

MR. DETTLAFF: To narrow that down to an actual market share is very difficult because you don't know -- some of our customers don't even know what their paper is going into in terms of direct application. So they make a large portion of their own production to FDA-compliant standards, but what proportion of that paper actually goes into those food contact applications is kind of unsure.

COMMISSIONER ARANOFF: Okay. Well, I understand the point that you're making about you don't know for sure whether they actually needed it. But I'm more interested in for what portion or purchases they request it or require it.

MR. DETTLAFF: In my estimation, it's a relatively small portion of the overall sales volume of the Fluorescent Brightener 220 that goes into actual food contact applications or is sold in order to claim FDA compliance. I would say it's definitely under 10 percent of the total market.

COMMISSIONER ARANOFF: Okay. I appreciate that. Switching to another topic, are there any customers in the U.S. or anywhere in the world that you're aware of who take delivery of CSOBAs in powder form?

MR. DETTLAFF: Again, this would be anecdotal information, but I think there are one or two customers that are at least contemplating utilizing or taking the powder form in delivery and then setting up their own system for dilution. I do not know of any customers domestically taking the powder and applying it to paper.

So all of the anecdotal information I have heard is the customers are contemplating taking the powder and doing the letdown that Russ Gibson discussed, doing the letdown themselves.

COMMISSIONER ARANOFF: Okay. These are U.S. customers or customers somewhere else?

MR. DETTLAFF: I only have domestic market real firsthand -- even anecdotal information. So, yes, the customers that I've heard anecdotal evidence is for the domestic market.

COMMISSIONER ARANOFF: Okay. Can somebody describe in some detail the kind of services and technical support that your company provides to its customers? I'm interested, in addition to hearing a description of the services and support that you provide, of whether you have any data that you could give us on either the number of employee hours that you spend on customer technical support or onsite at

customer locations so that we would have a basis for assessing TFM's claims.

MR. DETTLAFF: Having firsthand experience in providing that service, as well as managing others that have -- that do provide that service, the types of service typically requested and required by our customers include the ability to do lab work, grade development. So we are helping our customers develop new grades for the market or increase their capability of meeting more stringent specifications of the paper. We have also done efficiency audits on paper machines. So we are fairly -- we have fairly close partnerships with some of the larger customers to where we are acting as their technical staff in regards to these applications. So on machine is really where we prove our worth to our partners, our customers.

In addition to that, we also have some services that allow us to control the inventories, where customers have put their inventory in our control, just so that they don't have to worry about that. But those are the major focuses in terms of the overall service of these products, is in grade development and improving the efficiency on their paper machines. Their end product is where they're looking for better efficiency.

COMMISSIONER ARANOFF: Okay. My time is up. But if there is anything that you can put on the record post-hearing to help quantify how much service you're providing to customers, that would be helpful.

MR. ELLIS: We're glad to do so. Thank you.

COMMISSIONER ARANOFF: Thank you very much. Thank you, Madame Chairman.

CHAIRMAN OKUN: Commissioner Johanson.

COMMISSIONER JOHANSON: Thank you, Chairman. I'd like to begin by thanking you all for appearing here today. I know that some of you came -- had to travel here to Washington from South Carolina and possibly other places as well.

This is an interesting hearing for me because this is a product with which I have no familiarity at all. So it's always interesting to learn something new about a new industry. We had a vote yesterday on orange juice, which is something I know all about because my children like to drink it. But this is clearly a very different product.

The first question I have regards transportation and how that might affect prices here in the U.S. I was wondering if the Chinese and Taiwanese product has an advantage in the West Coast over that produced in other parts of the country, such

as in South Carolina. I assume there is a fair amount of paper production on the West Coast, let's say because of -- I know that, for example, in the Washington state area, I think there is quite a bit of production. And, of course, you have the big ports there, as opposed to other parts of the country. I believe that paper is produced in Jacksonville, Florida, or at least it used to be, which would maybe give you all an advantage shipping from South Carolina.

I was wondering if someone could address this issue, please. Thank you.

MR. DETTLAFF: To speak to where the types of paper that CSOBAs are produced or used in to produce that paper, the market share of white paper grades that use CSOBAs is predominantly in the Southeast. That is where the largest paper machines have been most recently built and are still in production of typical grades like copy paper.

The West Coast is probably the smallest region of these types of grades being manufactured. The other predominant areas of white paper manufacture or higher whiteness grade manufacture are in the Northeast and the Midwest. So of all the four regions, Southeast, Northeast, Midwest, and West, the

West Coast is by far the smallest region utilizing CSOBAs.

MR. ELLIS: I would just add that given that there is no real transportation benefit for the imports, in other words, both BASF in Alabama and Clariant in South Carolina, have got good transportation -- or low transportation costs because they're good locations as compared to a lot of their major customers. Thanks.

COMMISSIONER JOHANSON: Just out of curiosity, why is the white paper industry concentrated on the East Coast? Is that just the type of trees or what would that be?

MR. DETTLAFF: My impression is it's because of the wood source used in many of these grades. Southern Yellow Pine is a predominant wood species used in paper manufacture, and it grows particularly well in the Southeast. In addition to that, even the northern species of trees such as Aspen, particularly in the Midwest, also help to produce higher whiteness and brightness grades. So that's kind of why the southern mills are built around the great availability of their fiber source in the Southern Yellow Pine, and then the northern mills are taking advantage of the higher brightness pulp that is achieved by tree

species such as Aspen.

COMMISSIONER JOHANSON: Thank you. That is helpful. In your experience, has a delivery ever been rejected because of unacceptable purity levels?

MR. DETTLAFF: To my knowledge, Clariant has never been rejected for impurity, for purity levels, or any preemptive testing. Clariant does supply certificates of analysis on the major functionality of the product in terms of strength and pH and salt content. So no, we have never been rejected. A delivery of Clariant's has never been rejected for quality standards.

COMMISSIONER JOHANSON: Do customers ever ask about the purity of your product? Has that issue been raised? This is something that once again the Respondents give quite a bit of attention to.

MR. DETTLAFF: I think in terms of HPLC, which was kind of mentioned before, high pressure liquid chromatography, our customers don't really have the equipment or the know-how to test those kind of parameters. And their major concern is whether or not our products delivered on a consistent basis can help them make their products to specification of the paper. And given our consistent ability to do so, our customers have not questioned us in terms of the

purity of our products.

COMMISSIONER JOHANSON: And sticking somewhat in this same area, could the process of letting down or transforming powder back into a solution affect the purity level of the product?

MR. GIBSON: The letting down process will not affect the purity of the product, no.

COMMISSIONER JOHANSON: So the final product, it's the same, with the quality.

MR. GIBSON: That goes to the customer, yes.

COMMISSIONER JOHANSON: Okay. Thank you. Between 2009 and 2010, apparent U.S. consumption decreased while nonsubject imports and subject imports increased. Do you know why nonsubject imports increased during this time?

MS. HOLEC: We can look at it specifically. Nonsubject is a very small portion of the imports of CSOBAs.

MR. ELLIS: I think we would just be surmising, frankly. I don't think anyone really knows here the reason for the increase.

COMMISSIONER JOHANSON: Okay. Thank you. And coming back to the issue of powder, what is the cost to transform a letdown powder into solution? And is this step performed by third parties that offer

this service, or is it done by the end user?

MS. HOLEC: We can -- the information we know -- maybe Russ can speak more specifically. We can respond on the confidential record because there is information that has been given in the staff report. I think all the information we know is confidential.

MR. ELLIS: Well, also, bear in mind, Clariant doesn't do that process. So they wouldn't have their own information.

COMMISSIONER JOHANSON: Okay.

MR. ELLIS: It's all going to be based on the information from the Respondents, which is confidential, obviously.

COMMISSIONER JOHANSON: Okay. Thank you. Getting back to the purity issue, Petitioners state that 85 percent purity is the threshold. Is it difficult or expensive to increase purity, and what would be required to do so?

MR. GIBSON: When we manufacture FB220 -- and we generally are in the range of around 91 percent purity, which can go up to 93, to the low 90s. With improved automation, you could possibly get to a slightly more pure product. And there may be something with the isolation process that may go on

which we don't do because we provide a liquid solution that is synthesized as a liquid and sent to the customer as a liquid. The isolation to form a powder may improve the purity. But for us, the product we deliver is averaging 91 percent purity.

COMMISSIONER JOHANSON: Yes, Mr. Golder.

MR. GOLDER: Sorry I'm not the technical expert, but a little bit on finance.

COMMISSIONER JOHANSON: I'm sure you know the subject, though.

MR. GOLDER: The point is that there would be no economic value for increasing the purity that our customers would accept or would request. So Russ' points are absolutely correct that our level of purity is perfect for the industry, and to increase purity would be at a cost that wouldn't be requested or of value to our customers.

COMMISSIONER JOHANSON: All right. Thank you. My time is almost up, so I will conclude at this point. Thank you.

CHAIRMAN OKUN: Let's see. I'm not sure, Mr. Jackson, if this is a question for you or others on the panel. But the staff report contains some information of purchasers reporting that patent requirements played a role in their purchasing

decisions. And I wondered if you could comment on that.

MR. JACKSON: I'm sorry. I'm not sure if I heard you correctly.

CHAIRMAN OKUN: Patent.

MR. JACKSON: Patents to be --

CHAIRMAN OKUN: Yes. Products being patented, I assume for a particular --

MR. JACKSON: Okay. I'm not aware of a purchaser asking for a patented product, no. I mean, Clariant has a large number of patents on CSOBAs, which really allow us the chance to offer products which our competitors are not able to. And there is additional information that we could supply to you separately as it's of a confidential nature.

CHAIRMAN OKUN: Yes, that's fine if you want to do it confidentially. I'm just trying to understand what role it plays in just purchasing decisions generally. Mr. Dettlaff, did you want to add something there?

MR. DETTLAFF: Yes. Some of our customers because again the partnership that we form with them do rely on us in terms of being able to develop patented products as well as application-specific products for their maneuvering in the marketplace. So

I think that's what you're driving at, and, yes, it is very confidential in terms of that particular partnership. And we will describe it more afterwards.

CHAIRMAN OKUN: Okay. And then in doing so, can you just comment on how -- and this might be for your lawyer or for Ms. Holec in terms of what that means for competition in the market with subject imports. In other words, you know, if they don't -- do they all -- do the subject imports have products that may not have the same patents, but that they can be used in the same applications. Does it matter when you're negotiating with a customer?

MR. DETTLAFF: Again, thinking of the one particular item with one of our partner customers, that business relationship and that development was key to us keeping that partnership alive. And the patentability of that product is only as good as the patent lasts, and I'm sure that once the patent comes off, the importers and foreign producers will be looking to copy that.

CHAIRMAN OKUN: Okay. And if you can just in the confidential record note when that patent expires. And then also just more generally on contracts. I know in your testimony you responded to one of the allegations Respondents have made about

whether there was short supply and whether you were ever unable to meet a customer's order, which I heard your testimony on that.

But the other part of the Respondent's argument, as I understand it, is that to the extent there might have been disruptions outside the period of investigation, that there was perhaps a move to multiple sourcing of contracts, so that might account for some of the shift that continued forward. And I wondered if you could comment on that in the public session just in terms of is there a lot of multiple sourcing now, and did that not exist before.

I'm having a hard time looking at the record and understanding that part of it.

MR. DETTLAFF: In the marketplace as it stands today, I do not see a lot of multiple sourcing at the specific plant site, paper-producing plant site. The great majority of it is single source still today.

CHAIRMAN OKUN: Okay. Yes, Ms. Holec. Be sure and use your mike.

MS. HOLEC: One point to keep in mind in response to that argument is the argument is based on the shortage -- a concern about a shortage of DAS. TFM gets their DAS from China. The only -- as does

Clariant, most of their DAS. The only entity that doesn't is BASF, which makes their own, which is a U.S. producer. So it wouldn't do one a whole lot of good if they're concerned the shortage of DAS to use TFM as opposed to Clariant.

CHAIRMAN OKUN: Okay. And obviously I'll have a chance to talk to the panelists later. But I guess I -- what I couldn't -- what I thought they were arguing was that even when there were shortages, their purchasers spread out their contracts among multiple suppliers because, you know, maybe everyone had a shortage, but maybe they could supply a portion of a contract that otherwise couldn't.

Yes, Mr. Ellis.

MR. ELLIS: This is Neil Ellis. Yeah, I think this all was somewhat exaggerated. There are a few anecdotal comments in the record. And also, bear in mind, it was a small and contained shutdown of DAS production in China just for a couple of months around the time of the 2008 Olympics. SO it's not like there were major shortages that disrupted the supply chain. Clariant got all of the DAS it required for its U.S. production. And also, they were communicating with their customers and making it clear that there were adequate supplies to supply their demand.

So it's not as if there was a lot of fear in the marketplace caused by some severe shortages here. I think that's exaggerated.

CHAIRMAN OKUN: Okay. And then just to make sure the record is complete, I think what the -- you had answered the question about whether there are any multiple-source contracts. It sounds like there aren't. And to the extent the record might -- there could be further information on the record about that, I think that would be helpful on that point of whether there was a change.

And then I just also wanted to just have you discuss a little more about the role of the meet-and-release clauses. And again, I don't want to get into anything confidential. I know there is information on the record. But just in terms of how that works in a marketplace where you have a long-term contract, would you -- would a purchaser come back multiple times in the life of contract to say, you know, I'm continuing to get quotes at a lower price, and I want to invoke it? Or I guess I'm just wondering whether you have a lot of discussions about that, or if it's just a one-time thing, someone comes in and says meet-or-release, and either you do or you don't.

MR. DETTLAFF: There have been occasions

where multiple requests from a customer with a contract with meet or release has come forward with new or different pricing during the life of the contract. So, yes, there are occasions, or there are examples of multiple trips down the meet-or-release clause line.

Typically, due to the length -- most of the contracts are much shorter today than they have been in the past. More of them today are single-time meet-or-release because the life of the contract is so brief.

CHAIRMAN OKUN: And when you're talking about the briefness of the life of the contract, I know there is some information in the staff report, but in your experience, what is that change and over what period in terms of the length of the contract getting shorter for long-term contracts?

MR. DETTLAFF: The shift in the industry has been from multiple year to probably a one-year contract.

CHAIRMAN OKUN: Okay. And that has occurred over what period of time?

MR. DETTLAFF: Over the -- from the early 2000s through -- you know, today it's much more consistent to have only single-year.

CHAIRMAN OKUN: Okay. And then can you -- I know there is information in the staff report, but I just wanted to have your sense, to the extent again the information is publicly available -- talk about what you see as trends in raw material and other import costs looking forward. Mr. Jackson?

MR. JACKSON: Yes, I can take that. Raw material prices or the trend is certainly towards increasing raw material prices over the coming months. I think that's clear. There are a number of factors behind that. Some of the more obvious ones would be increasing labor costs in the Far East, increasing environmental controls in China and in India, and of course the strength of the Chinese currency.

So these are trends looking forward. And also, over the past, let's say, three or four years, there has been an increasing trend in raw material prices over that time, too.

CHAIRMAN OKUN: Okay. Appreciate all those comments. And my red light is about to come on, so I will turn to Vice Chairman Williamson.

VICE CHAIRMAN WILLIAMSON: Thank you, Madame Chairman. I too would like to express my appreciation to the witnesses for coming today. Just to finish up, Mr. Dettlaff, on this trend towards going from multi-

year to single-year contracts, what is driving that? Is there an explanation for that?

MR. DETTLAFF: I guess I would propose that it's more along the volatility of the market and the reluctancy of both suppliers and the customers to engage in very long-term contracts, just because of the volatility in the market. I'm projecting those kind of, I guess, guesstimates on why this is happening. But I think because of the pricing leverage that is ongoing in the market, customers want the freedom to go and seek lower prices a lot quicker.

VICE CHAIRMAN WILLIAMSON: Okay. Thank you. Can a given paper manufacturer switch among the types of CSOBAs, and if so, do they do so on the basis of price? You know, if you're going from the di, the tetra, the hexa -- well, go ahead.

MR. DETTLAFF: Typically, they will utilize the different species of CSOBA depending on what the difference in their paper specifications require. There are benefits to using one or the other type of CSOBA to meet varying specifications, and there are even times when combinations of those products yield better results than any single product might yield.

So the changing between them is typically driven both by economics as well as trying to meet

various paper specifications.

VICE CHAIRMAN WILLIAMSON: Okay. Is it a big deal for them, or is it a significant adding cost of doing --

MR. DETTLAFF: In application, it's not that big of a deal. But the logistics behind the endpoint application on a paper machine can get complicated. As Russ kind of related, most big users of CSOBAs get delivery in tank trunk, so 45,000 pounds at a time. Mills typically don't have several of these types of storage tanks to flipflop between, so once they commit to a certain production strategy, they tend to stay with that for an extended period, and don't swip-swap between products on very quick notice.

VICE CHAIRMAN WILLIAMSON: Okay. Thank you. We've already talked about this product DAS. But I was wondering, do you have in place any measures to cope with any future supply disruptions? I know you don't expect that any competitors might be faced with the same problem, but I was just curious, of the DAS or any other raw materials.

MR. JACKSON: We have taken -- I mean, Clariant as a global company has taken steps to at least, shall we say, ameliorate the effects of any future -- let's say if there are any shortages in

supply of DAST, I would say they're probably of a confidential nature, which we'd have to --

VICE CHAIRMAN WILLIAMSON: Okay. No. That's fine. Post-hearing is fine.

MR. JACKSON: -- submit later.

VICE CHAIRMAN WILLIAMSON: Thank you.

MR. JACKSON: But there are actions in place.

VICE CHAIRMAN WILLIAMSON: Okay. Please describe any shifts to higher or more brightness in paper in the U.S. market during the period of investigation, and how those shifts affected U.S. demand for CSOBAs.

MR. DETTLAFF: Over the period of investigation, there have continued to be increases in the overall whiteness and brightness of paper grades produced with CSOBAs. Again, this kind of -- it's more anecdotal information because a lot of the grades -- grade production is really not tracked by whiteness and brightness per se, but more so just on production tons of various types of grades.

But in my estimation, and through the technical service that we have provided our clients, our customers, there is a continued effort to push whitenesses and brightnesses up to compete not only in

the domestic market with that paper, but also to defend somewhat from import of paper. I think it's recognized that globally paper -- paper grades on a global scale tend to be higher whiteness. It's a different scale, but it's relatable. Higher whiteness and higher brightness then is typical in the United States. And so there are some trends where import products push the domestic paper market to increase their whiteness and brightness, as well as we get into the competition amongst the domestic paper producers. They continue to have their battles in terms of market share domestically, between domestic suppliers of paper, as well as defending their market from imports of paper.

So I still see evidence, mainly due to our tech service efforts in grade development, to improve that whiteness and brightness level domestically.

VICE CHAIRMAN WILLIAMSON: Okay. And I take it, is this sort of outside -- I think of my own purchases of, you know, copier paper at Staples and, you know, whether or not the price differences -- but is that -- is it really more on the other applications of paper like, you know, shall we say where higher quality is demanded?

MR. DETTLAFF: I think to the normal

consumer, you and I, of paper in ream form at Staples --

VICE CHAIRMAN WILLIAMSON: Yeah.

MR. DETTLAFF: That is the most evident. You see the number on the ream wrap that you're buying. But other grades of paper such as magazine papers, you know, where you're getting the real high glossy, high brightness paper that some of these magazines are trying to compete on from a marketing perspective, they've also raised their brightness and their gloss and, you know, other specifications to differentiate their paper.

So it's not just the copy paper, even though taking on -- again, it would be estimates on my part, but I think copy paper is a very large portion of the OBA consumption domestically. And that speaks to the grade shift, you know, in 2005, where that was a dramatic shift in the overall grade structure of copy paper, and that had a dramatic effect on the CSOBA market.

VICE CHAIRMAN WILLIAMSON: You mean there was a shift up in demand?

MR. DETTLAFF: That was a very dramatic shift in demand and in the paper specifications themselves. There was a dramatic market shift in that

grade of paper and announced and, you know, the market leaders did their marketing maneuvers in the paper industry, the domestic paper industry. But even past that very monumental shift in the industry, there have been continuing -- I call them tweaks in terms of the overall market dynamics.

So back in 2005, it went from 88 as the base brightness in copy paper to 92. And so that was a dramatic shift in the paper specifications because the paper looked a lot different between 88 and 92. But in addition to the 92, they also made a secondary tier of 96 brightness. Now, you know, five to seven years later, after that momentous shift in the paper market itself, we see more people trying to make more of the 96 rather than the 92. So there is that kind of smaller shifting in the paper industry itself.

VICE CHAIRMAN WILLIAMSON: Okay. So that would be a positive thing in terms of future demand for you, I take it.

MR. DETTLAFF: We see the domestic paper industry competition as an opportunity for the domestic CSOBA market suppliers.

VICE CHAIRMAN WILLIAMSON: Okay. Thank you. Okay. My time is about to expire, so I'll save further questions. Thank you.

CHAIRMAN OKUN: Commissioner Pearson.

COMMISSIONER PEARSON: Thank you, Madame Chairman. Permit me also to provide my welcome to all of you. Let me begin with a technical question. I have a paper cup. I'm using one like it to drink water. It's white on the inside. It's printed on the outside. Excuse me. Would this have been made white by stilbenic optical brighteners that would meet an FDA qualification? Or is there a waxing or some other treatment that makes this cup okay to use for water? I hope it's okay to use for water.

MR. ELLIS: Can someone give Commissioner Pearson a drink, by the way?

(Laughter.)

COMMISSIONER PEARSON: Yes.

MR. DETTLAFF: There are many nuances in terms of the FDA compliance of the paper itself. Most likely, if there was optical brightener in there, it would be made by FDA-compliant means with the Fluorescent Brightener 220. One of the nuances of the FDA compliance of paper is if it's a one-time use, there are some considerations there. If it's intended to be a long-term application with food contact or beverage contact, then there is kind of another level of expectation of that paper.

Most likely because it has a wax coating on the inside to keep the water in the cup rather than let it dissolve the cup and end up on your desk, that is also referred to as an active order or active barrier to transfer whatever might be in the base paper to the contents of the cup.

So because it has a wax coating, it has got its own FDA compliance to it. It's still safe to drink the water, though.

(Laughter.)

COMMISSIONER PEARSON: Thank you for that clarification. Why on this record do we see a decline in apparent consumption between 2010 and 2011? Now, you know, we've dealt with a number of cases coming out of the recession, and it's quite common to see an increase from 2009 to 2010, as we have here. But then the more common pattern in the other cases has been that we see an additional increase again in 2011, as the economy has continued to strengthen.

So what is going on with this product that caused consumption to drop in 2011, at least by our data?

MS. HOLEC: Sorry. Evidently, the apparent consumption numbers that you saw is from the Commission's data, and it's not a huge drop. It's a

relatively small drop. So --

COMMISSIONER PEARSON: Ten percent? I mean, I would think it would be a drop that would be commercially noticeable, but perhaps not.

MS. HOLEC: Well, I mean, Mr. Dettlaff has a lot of things going on. I mean, if you see what imports were doing at the same time, when demand grew in 2010, and also again when it grew in 2011, he's looking mostly at his share of the market, which is taking a hit in both years, as opposed to -- and I don't think there is -- other than what the Commission has, we haven't found really good aggregate data on apparent consumption. So all we have is the questionnaire responses.

But he is looking at Clariant's picture, which is obviously a losing share in both years.

COMMISSIONER PEARSON: Of course. But from your customers, do you hear general comments about we're using less of this product for reasons A, B, and C, or we see the prospects for the future as not being so bright for these brighteners, and thus we are reformulating to handle things differently? I mean, or are our data from some reason just not correct?

MR. DETTLAFF: I don't have any firsthand knowledge of why the recovery in the CSOBA market

would not follow the general economy. Typically, paper production follows business. The more business is conducted, the more paperwork that it generates. And so not having I guess a wide view of the overall capacity -- we have our own estimations of the overall CSOBA market, but I don't know of any particular reason why the overall data collected by the Commission would not show a more robust recovery in 2011.

COMMISSIONER PEARSON: Okay. Well, for purposes of the post-hearing, if you could put on the record Clariant's estimates for the demand in the marketplace, that would be helpful, if we don't already have that. And, Ms. Holec, I know you have access to the confidential data. And if in the post-hearing you have any additional thoughts of why we're seeing what we're seeing, I would appreciate knowing that.

MS. HOLEC: Sure.

COMMISSIONER PEARSON: Mr. Dettlaff, do you see a roughly equal amount of competition in the marketplace between imports from China and imports from Taiwan?

MR. DETTLAFF: Currently, I would say there is a much bigger proportion of competition from

Taiwan. I would say a couple of years ago, there was mounting competition from China. But today, I would say the greatest proportion of the competition from foreign imports is from Taiwan.

COMMISSIONER PEARSON: And as you deal with them in the marketplace, do you sense that the level of competitiveness of both those countries is roughly the same? I mean, do you see one country as being more competitive than another?

MR. DETTLAFF: Both of them are very competitive in terms of their pricing strategy, a very similar strategy actually in terms of their pricing. What their success ratio, it seems to be more tilted towards Taiwan, from what I have experienced.

COMMISSIONER PEARSON: Okay. Thank you for that. Ms. Holec, you had stated earlier something to the effect that nonsubjects are a very small portion of domestic consumption. So either now or in the post-hearing, could you please compare the volume of nonsubject imports with the volume of subject imports from China, especially in 2011, because if the nonsubjects are a very small portion, then I wanted to know how we should understand the imports from China.

So, you know, if we should be concerned about one, why shouldn't we also be concerned in some

way about the other?

MS. HOLEC: Sure.

COMMISSIONER PEARSON: And that would be particularly in light of the average unit values that we are showing for 2011 for those two categories, for the nonsubjects and for China.

MR. ELLIS: I would just -- Commissioner Pearson, I would just point out that we think pretty strongly that the AUVs for the Chinese data are meaningless. And we understand that your staff are working hard to try to clear up the data. We think that when you get more realistic data from China that it won't be different very much from other import sources.

COMMISSIONER PEARSON: Okay. So you have problems both with our pricing products in relation to China and with the AUVs?

MR. ELLIS: Oh, no, I'm sorry. Pricing products. The pricing product data we think from China is too high.

COMMISSIONER PEARSON: Okay. And the AUVs --

MR. ELLIS: I didn't mean to speak to the AUVs. I don't know the data.

COMMISSIONER PEARSON: Okay. That was the

specific --

MR. ELLIS: Sorry.

COMMISSIONER PEARSON: -- question. Okay.

MR. ELLIS: Okay. We'll check into that for the post-hearing.

COMMISSIONER PEARSON: And I understand that the AUVs could reflect a product mix, and if you're able to address that, that would be fine also.

Mr. Ellis, how should we view cumulation in the context of a threat determination?

MR. ELLIS: We -- I actually took some notes for that. We actually think that you should exercise your discretion to cumulate.

COMMISSIONER PEARSON: That doesn't particularly surprise me. But I'm wondering --

MR. ELLIS: How I was going to explain the reasons why we think that's appropriate. The Chinese and Taiwanese product are fungible. They are sold in the United States in overlapping geographic markets. That is, you will see them -- not perfectly, but there is quite a bit of overlap as between what markets, what regions of the country the Chinese and Taiwanese and the United States product are found. And they are sold in the same channels of distribution, if you will, which means directly to customers.

So it's not like there is a different distribution channel for the Chinese as opposed to the Taiwanese or the United States producers. And they've been simultaneously present in the United States in each year of the POI. So those are your chief factors that you've used historically for cumulation analysis in a threat situation. So, to back up my initial statement, we think those are the reasons why you should do so.

COMMISSIONER PEARSON: Okay. Thank you. I assumed you'd have some reasons. Madame Chairman, my time has expired.

CHAIRMAN OKUN: Commissioner Aranoff.

COMMISSIONER ARANOFF: I have a rather convoluted question about FOB versus delivered pricing. So my understanding of why someone would convert this product to powder form, ship it, and then reconvert it would be because the cost of taking the water out and then putting the water back in is less than the amount that you save in freight costs by doing that.

And assuming that that is in fact true that there's been a cost savings to the seller and they were to pass that cost-savings along in the form of a lower delivered price to the customer, I guess my

question is would that really underselling that the Commission should be cognizant of or does it rather suggest that that's not a good way to compare prices?

MS. HOLEC: Well, if I understood your question correctly, I mean, our point is that the competitions at the customer. That's what Mat says. They buy a delivered product. I mean, exactly -- the main thing, the main cost that the letdown, the spray drying and let-down process saves, it's the Ocean Freight. It's not within the U.S.

But I mean, there's -- commerce actually measures whether the price is a fair price, and commerce in the prelim has looked at all of the cost factors including the make-down and the whole production process in Taiwan and in China, and in the preliminary ban substantial margins from both producers. So, I --

COMMISSIONER ARANOFF: Wait. I under --

MS. HOLEC: -- take a piece of the whole delivery price and say, well, you know, you can dump. It's okay to dump because this clever thing of turning it into powder before you shipped it over the ocean and reduced your cost there.

For me that whole is the price fair is a commerce decision, and --

COMMISSIONER ARANOFF: I understand that, and of course we're going to accept Commerce's decision with respect to the product being done, but I guess what I'm saying is if someone finds a cheaper way to ship something here, you know, that's what businesses do. They find cheaper ways to do things if it doesn't hurt the product or the customer.

So they found a cheaper way to ship something here, and now the Commission is being asked to say, well, when you look at the deliver price and you see that there is lower, pay no attention to the fact that they found a cheaper way to ship it because there's something wrong with that.

And I guess I'm suggesting that there's not rally anything wrong with finding a cheaper way to ship something if customers case about delivered prices.

MR. ELLIS: As Ms. Holec said though, my understanding of this is that in that case you should take it all the way back to the factory gate in Taiwan. In other words, you're stopping kind of half way between here and there by stopping at the U.S. port and, in fact, we think you're not even getting that far back, so you're giving them credit, in effect, for some of the efficiencies they've created

by this process but not all of them.

If you go back to the factory gate, you will end up with underselling again, and it doesn't seem fair to say they get some credit for efficiencies but not all of them.

The other thing is we're concerned because as someone mentioned in the testimony, you're not deducting -- you're not really getting to FOB U.S. Port as you requested in the questionnaire because we think that the first leg which is often a very significant one from port to the letdown facility has not been deducted because they consider that part of international freight, so you're getting an overly high price and, therefore, some oversell.

COMMISSIONER ARANOFF: Okay That part makes sense to me as I understand you're saying is if we are going to look at FOB prices, we didn't calculate the void and you think we should. So that part I understand, so I appreciate that clarification.

Let me turn to something, a follow-up on a conversation that, Mr. Dettlaff, you were having with the chairman. She asked you about multi-source contacts, and you answered in a way that I thought sounded a little bit careful and you said you were not aware of multi-source contacts with respect to

particular paper parties and plants.

So at the plant level, is that the way that purchasers who own -- who have multiple paper-producing plants in the U.S., do they contract for a specific supplier for one plant and maybe another supplier for a different plant? I just wanted to make sure that I understood what you were saying.

MR. DETTLAFF: During the RFP process or request for proposal, that most of the paper producers go through, they typically do want to select one supplier for one paper plant. The decision to split up different plants to different suppliers happens sometimes. But again, it's usually leveraged against the volume. Volume versus price. If you give a very attractive price, most times you get 100 percent of the business in an RFP.

COMMISSIONER ARANOFF: Okay. Thanks for that clarification.

Claimant has argued with respect to the DAS back in 2008 that you were able to supply all of your contract customers with everything that they were promised, and my question is how did you handle customers during that period who were not contract customers and were seeking to make spot purchases?

MR. DETTLAFF: During that time as you very

correctly stated, we looked out for our contract customers first; their willingness to truly commit to us as a supply partner carries a lot of weight.

We also had traditional customers that were, I guess, classified as a spot business but they were ongoing business, so that's another differential slice of the pie.

During the time when DAS was in question or the beginning of the allegations of shortage, there were non-traditional customers that approached and we were giving them availability of a longer time period. It wasn't available today because we were watching out for our contract business and from our traditional business.

But we still said we would make product available two or three months down the line because I guess I viewed it -- because I fielded most of those calls -- there were customers panicking out in the marketplace for whatever reason.

I mean, rumors run wild sometimes within an industry, but they were panicking and we just couldn't -- we recognized at that point we couldn't supply everybody, so we were kind of trying to calm down the fear saying it's going to be all right.

We will supply you down the line but we want

some guarantee that you're not just going to use us to get through this panic stage and then leave us behind.

COMMISSIONER ARANOFF: Thank you. That's very helpful.

Now, an argument that Clariant makes in its brief regarding the current time period now is that you're having difficulties selling to spot market customers that those guys have abandoned you for subject imports. You make that argument in the context of arguing why keeping your long-term contract customers is so important to the company.

So my question there is the spot customers that you are concerned are abandoning you for the imports now, are these the same customers who you couldn't immediately accommodate back in 2008?

MR. DETTLAFF: They were both -- we have lost some of the what I refer to as traditional customers where now, to date, the pricing incentive for them to move their business elsewhere plays a major impact.

There have also been some RFP's of the people that we decided we needed a contract in place and the time in 2008 where we said we would like a contract to commit to that supply, and we've not still since been able to achieve their business.

So both we've lost traditional business and we've lost the RFP or the ones that came for help out, I guess I refer as help-out shipments of OBA at that time.

COMMISSIONER ARANOFF: Okay. Thank you. That's very helpful.

Thank you, Madam Chairman.

CHAIRMAN OKUN: Commissioner Johanson.

COMMISSIONER JOHANSON: Thank you, Madam Chairman.

I think that the level of concentration of purchasers and producers is an interesting feature of this market. Petitioner's slide number seven, the Paper Kim report referred to large buyers and major purchasing groups. I'd like to pose some questions on the dynamics of major purchasing groups.

The first one is how much power do major purchasing groups wield?

MR. DETTLAFF: The major consumers and customers of these products wield a great deal of power. They can make those decisions on very large volumes consistently, but I guess -- yeah, they have a lot of power, but the ones that we are currently partnered with appreciate what Clariant brings to the table in terms of product quality and delivery and

cost of application.

MR. ELLIS: I just wanted to add that the level of concentration of the power for Clariant is quite significant. If you take a look at the top customers that they've listed in their questionnaire response, you see that the percentage held by the top customers is really quite high, so these people proportionately have a very high leverage with the Clariant folks.

COMMISSIONER JOHANSON: Has concentration increased in recent years?

MR. DETTLAFF: I think it is accurate to say that the concentration has increased over the last few years, yes.

COMMISSIONER JOHANSON: And would the major purchasing groups, do they negotiate prices jointly?

MR. DETTLAFF: Are you referring to different companies joining together?

COMMISSIONER JOHANSON: Well, you mentioned major purchasing groups, so I'm not -- I'm not entirely sure what major purchasing groups are. Maybe you could explain that and that will maybe help you answer that question.

MR. DETTLAFF: We refer to as purchasing groups as multiple mills of the same company.

COMMISSIONER JOHANSON: Okay, so these are not different companies?

MR. DETTLAFF: Not a --

COMMISSIONER JOHANSON: Yeah, that would pose problems.

MR. DETTLAFF: Yes, it would cause many problems, yes. Big problems. So no, we refer to the collection of individual mills as kind of collective purchasing groups.

COMMISSIONER JOHANSON: Okay. That helps clarify it for me.

MR. DETTLAFF: Well, it's the same company.

COMMISSIONER JOHANSON: I was getting a little concerned there for a minute.

And are CSOBA prices reported publicly, and how much price transparency is there?

MR. DETTLAFF: To my knowledge, there's no public documentation of the pricing of those products at least in the domestic market. I think there's publications that estimate pricing movements or -- to answer specifically, no, I don't know of any documented pricing of these products.

COMMISSIONER JOHANSON: So there's little price transparency or is price transparency just through word of mouth in the industry?

MR. DETTLAFF: Yeah, typically it's just going through the RFP processes where you kind of find out where you were successful and unsuccessful in terms of acquiring business.

COMMISSIONER JOHANSON: Okay. Thanks. That's helpful.

And I'm going to move to --

MR. ELLIS: If I could add to that, we gave an example in our pre-hearing brief of the sort of information they got when a major RFP, they were told by the customer the competing bid or roughly what the competing bid was, and then they had to come in with an alternative bid that was lower. That was just one anecdotal example of that.

COMMISSIONER JOHANSON: Okay. Thank you.

Respondent TFM claims that subject imports were pulled into the U.S. market because DIS supplies -- because of DIS Supply disruptions. You clearly disagree, and I'm wondering what explains the interest of not just subject imports but also non-subject imports since 2009? Did something change in the United States or in Asia to cause that?

MR. DETTLAFF: I don't know of anything particularly that would, you know, one step issue that would have related to what's actually occurred in the

market. I don't know of any specific event or, you know, issue that may have resulted in the shift to imports.

COMMISSIONER JOHANSON: Okay, and kind of following up on -- oh, I'm sorry. Go ahead, Ms. Holec?

MS. HOLEC: We'll look at it and respond in more detail in our post-hearing brief.

COMMISSIONER JOHANSON: Okay. That would be helpful.

MR. ELLIS: Actually, I wanted to add something more.

COMMISSIONER JOHANSON: Yes.

MR. ELLIS: The DAS shortage supposedly occurred in 2008 and dissipated after that, so it's not a -- it is not an issue certainly by the latter part of the PLI.

And the increase in non-subjects -- non-subjects were very insignificant in the first two years and increased a little bit in the third year, but by then, it's not a DAS shortage or an inability of the domestic producers to supply that sucked in non-subject imports.

You've heard that there has been huge capacity -- unutilized capacity in the United States

that could easily supply the U.S. market, so it's not shortages that's causing anything that's going on in the last year.

COMMISSIONER JOHANSON: All right. Thank you. And I'm going to kind of follow that with something similar and that is the issue of -- follow up on the issue of non-subject imports.

Is production capacity for CSOBAs in India or other non-subject import sources expected to increase in the coming years? Are you aware of anything that would indicate that?

MR. JACKSON: I think it's certainly true that capacity for CSOBAs in China is increasing and will increase, continue to increase in the coming years, so I think there's no doubt about that.

COMMISSIONER JOHANSON: Other countries? Not China.

MR. JACKSON: Oh, apart from China. Outside of China, no, I would say not that I'm aware of, no.

COMMISSIONER JOHANSON: Okay, so you don't see anything happening in India or other countries?

MR. DETTLAFF: There are pockets.

COMMISSIONER JOHANSON: Okay. That's fine. Thank you.

MR. JACKSON: Sorry, just to -- as Mr.

Dettlaff was saying, in Europe there's actually consolidation of CSOBA capacity.

COMMISSIONER JOHANSON: Okay.

MR. JACKSON: In fact, Clariant itself was closed down at least two of its production sites in Europe and consolidated down to one major site.

COMMISSIONER JOHANSON: Was that -- were there increased imports from China and Taiwan into the EU as far as you know that could have impacted that?

MR. JACKSON: No. It was basically a decision made because there was an over capacity of -- there was sort of -- there was more production capacity within Europe than the market could take.

COMMISSIONER JOHANSON: Okay.

MR. JACKSON: More supply than demand.

COMMISSIONER JOHANSON: Thank you.

And Mr. Dettlaff, you earlier stated that the clariant sales team is frequently pressured to lower prices because of lower subject import prices?

Do you have any internal emails or other correspondence that could, perhaps, describe this or illustrate this?

MR. ELLIS: I'm not Mr. Dettlaff, but --

COMMISSIONER JOHANSON: Right.

MR. ELLIS: But I'll start the answer by

saying we submitted some series of emails, call reports, email traffic, between Mr. Dettlaff and his sales team commenting on those developments.

COMMISSIONER JOHANSON: Okay, I will refer to those. Thanks.

MR. DETTLAFF: My comment was I asked him if we had actually submitted those, so that was the delay.

COMMISSIONER JOHANSON: Okay.

MR. DETTLAFF: But yes, we do have documentation of those kind of discussions.

COMMISSIONER JOHANSON: Now I'd like to pose another question, and this is something which was -- that was also posed to you, similar to what was posed to you by Chairman Okun and also Commissioner Aranoff, and that deals with issues of contracts.

This could perhaps be answered best by Mr. Golder. Mr. Golder, you testified that Clariant has been squeezed out of its spot in short-term market. ITC questionnaires requested data on shipments by type of sale, that would be spot, short, and long-term contracts for 2011 only. I think that it might be helpful to have the shares in 2009 and 2010.

If you can't answer this, perhaps you could provide this information in the post-hearing brief.

Thank you.

MR. GOLDER: We will provide that.

COMMISSIONER JOHANSON: Okay. Thank you. I appreciate it.

And that concludes my questions for now. Thank you, Madam Chairman.

CHAIRMAN OKUN: Thank you. I think I just have a couple left. The first one I think just a post-hearing request, Mr. Ellis and Mr. Holec, which is we've had a number of questions about the delivered prices versus the FOB and the arguments you've made in the brief and the several exhibits that you included.

So just for post-hearing, I think it would be helpful for you to prioritize what it is, you know, you think is most important for the commission to do with respect to pricing.

I understand the different arguments you make, but just based on the exchange today, I would like to understand what you think would be the -- like to see us to do priority-wise. And then -- well, I guess I will look at that.

MR. ELLIS: Everything is equal of course, but we will nonetheless prioritize them.

CHAIRMAN OKUN: Okay.

MR. ELLIS: Thank you.

CHAIRMAN OKUN: Just based on the additional information that's been gathered, and I guess I know in your brief you had cited -- I think it's on 143, you had cited several cases where the Commission had looked at something other than FOB and, you know, again non-precedential, all those things, but in making your argument, if you can help explain whether those cases are on point with regard to the facts of this case.

In other words, sometimes if I've done something in the past, if you can help me understand if this looks like it or doesn't it helps my analysis.

MR. ELLIS: Okay. Sure. We'll be glad to do that. Thank you.

CHAIRMAN OKUN: Thank you.

And then I wanted to ask the panel if you can talk about any changes in U.S. imports of finished paper products during the POI and whether that's affected the demand.

I know you've responded to the apparent consumption questions in response to, I think it was, Commissioner Pearson, but just wondering about finished products. Is that affecting demand for CSOBA's?

MR. DETTLAFF: I don't have access to actual

import data of the finished paper. Again, anecdotally, dealing with the customer's requests to match the specifications of some import grades that we recognize as import grades kind of lends credence to the fact that there is still significant import volumes or import threat of finished paper with higher whitenesses, higher brightnesses.

CHAIRMAN OKUN: Okay. Yeah, I just wasn't sure if there was any other data that we might be able to look at on the record to help us understand what impact that might be having on prices or demand here.

MR. DETTLAFF: I'm not -- I know there should be some sort of overall import record of paper. Whether it gets down to the grades of paper that utilize CSOBA's I can't really speak to. But I can check to see if we have some sources of, you know, paper importation records that --

CHAIRMAN OKUN: It could be, and I don't know, for your company, and I know Mr. Golder had to step out, but -- our rounds are long here -- but it could be in as you do business plans, like you know, if you're looking at potential changes in market dynamics, if there's any documentation that you might have from your product managers in valuating the market generally and imports of a finished product,

that would also be useful.

MR. DETTLAFF: I think we have some global market trends and analysis that might be useful, and I will convene with my colleagues to make that available for you.

CHAIRMAN OKUN: Okay. I appreciate that. And again, I thank you for all the response.

Vice-Chairman Williamson?

VICE CHAIRMAN WILLIAMSON: Thank you, Madam Chairman. Just a few additional questions.

You talked about the, I guess, the buying groups and all, but I was wondering, can you describe the consolidation in the paper industry during the period of investigation? How has this affected competition among suppliers of CSOBA and has it affected prices?

MR. DETTLAFF: During the actual period of investigation, the consolidation of the customer base, the paper producers, actually slowed a bit. There was -- in the early -- again, this is coming off the top of my head. In the early 2000's, in the earlier part of the 2000's decade, there was a lot of consolidation, a lot of merger and acquisition activity.

But during the actual period of

investigation, those very large customers in the white paper market basically were already at a very strong point and very large point of acquisition and merger.

So I would say that during the period of investigation, it was relatively steady state in terms of the mergers and acquisition activity.

VICE CHAIRMAN WILLIAMSON: Okay. Thank you. So the only affect on pricing would have happened earlier when it was going on or in transition?

MR. DETTLAFF: I think because of the earlier acquis -- oh, again, this is my own feeling in dealing with some of these corporate groups -- the earlier acquisition activity probably finally formed in an organized manner because understanding the chaos that can happen through merger and acquisition, it usually takes a few years for that to settle out to get an organized approach to the market to the negotiation stages of that.

So even though the mergers and acquisitions happened earlier in the 2000's decade, I guess they would -- I would classify them as being well-organized during the period of investigation and very strategic in their approach to sourcing CSOBA's resulting in a lot of price pressure.

VICE CHAIRMAN WILLIAMSON: Okay. Thank you.

We've already talked about the trend towards multi-year to single-year contracting. Also, is there any seasonality to how the firm's do their contracting, say, the one-year contracts? I mean, does it all happen in the fall, the next calendar year, or is it sort of a rolling?

MR. DETTLAFF: In my experience with dealing with these RFP's, requests for proposals, they are rolling throughout the year. There may be some consolidated effort either at the end of a year -- well, typically people don't like to do an RFP at the end of the year because they are preparing for the next year.

So there may be some more activity at the first quarter, after the first quarter, once the year's under way or towards the second or third quarter. But other than a slow-down at the end of a calendar year, it's pretty steady throughout the rest of the quarters.

They typically try to put these RFP's out at a quarter ending or, you know, start things on a quarter because that's the regular business schedule flow.

VICE CHAIRMAN WILLIAMSON: Okay. Thank you.

I'm sorry, I haven't heard any discussion of

trends in recycling the paper and how does that -- might affect your demand. Is it a relevant issue or question?

MR. DETTLAFF: I believe there's some evidence in the trade journals for the paper industry that indicate that the amount of recycling and the percentage of recycling going into white paper grades is increasing. And the affect that recycled fiber has on the application of CSOBA's can be dramatic because recycled fiber has already been printed, and de-inked, and goes through a number of other chemical processes, other physical properties that makes it more difficult to apply CSOBA efficiently on it.

Because it's already kind of closed down due to other chemical and physical activities on the fiber, especially the fiber source of recycle, they tend to be a little bit more difficult to deal with and so that's kind of driven some of the demand for CSOBA to rise slightly.

Of course, what's being recycled is more and more brightened paper or paper with CSOBA applied. So to correlate that directly with demand for CSOBA is very difficult to do.

VICE CHAIRMAN WILLIAMSON: Okay. Thank you. Do you have any projections for third-country market

demand and are there industry analysts that track this market globally.

MR. DETTLAFF: As Dr. Jackson kind of alluded to, there is an expected more growth in paper consumption in Asian countries than U.S., but I don't personally have any direct correlation of demand for our product from the U.S. to other areas of the world, if that's the question you were asking, do we expect more demand on our manufacturing capabilities or?

VICE CHAIRMAN WILLIAMSON: Or just demand for the product in -- globally.

MR. DETTLAFF: We do see as the paper consumption in other regions of the world increases that there will be an increase in the demand for CSOBA's, but whether the supply demand properties of those different markets, I can't necessarily speak to those markets. But yes, there's going to be a growth in demand for paper in Asia, and that's where we should see still some growth.

VICE CHAIRMAN WILLIAMSON: Okay. Thank you.

While I don't consider it particularly relevant, I would just -- I want to give you the opportunity now -- Mr. Koenig had made some comments about clearance position on an early -- a dumping case involving DAS. If you want to respond now, you can.

I'm giving you the opportunity. If you don't, okay.

MS. HOLEC: I wasn't entirely clear on his point, but what I gathered from it is they did lose their arguments for injury which he concluded that's why there's no longer a DAS industry in the United States.

I don't know whether he was arguing for our side with that or -- but I think as far as Clariant's position in the other case, I don't --

VICE CHAIRMAN WILLIAMSON: Okay. I mean, as I said, it's not really relevant to this, so if you don't have anything, that's okay.

MR. ELLIS: I don't see the relevance. It's acute irony, basically, he was bringing up perhaps that Clariant opposed that one and now they're supporting this one, but I think that happens frequently in cases nowadays where you've got cases on multiple steps in a production chain. So, yes, Clariant opposed that one and, yes, Clariant is supporting this one. So be it.

VICE CHAIRMAN WILLIAMSON: Okay. Fine. With that, I have no further questions. And thank you for your answers.

CHAIRMAN OKUN: Commissioner Pearson?

COMMISSIONER PEARSON: Thank you, Madam

Chairman.

We have in this case the somewhat unusual situation in which a major producer is choosing not to appear or is not appearing with your panel and instead will appear separately. Do you have anything you could say about that either now or in the post-hearing to help us explain how this situation might have come about?

MR. ELLIS: You ought to ask them. They will be a -- it is very -- it is a sensitive topic that's between the two companies, but you will hear them say, I believe, that they are experiencing a lot of the same difficulties and a lot of the same causation problems from the imports as is Clariant.

Why they chose not to be here with us is something that's very delicate that's between the two companies, but frankly, we think it shouldn't affect the analysis that the ITC undertakes in this case.

COMMISSIONER PEARSON: Well, fundamentally it will not affect the analysis. It may make our process somewhat more complicated and elongated, but we'll get there.

These questions are for Mr. Ellis and Ms. Holec, those who have access to the confidential data. How should we understand the operating income figures

for the various firms in this industry, and I ask that in the context that there is a subset of firms that is not doing particularly well.

And as I look at that subset and the results that they've achieved, it's not clear to me that there's any type of clear alignment with subject imports. So it makes me wonder if something else is going on that is having a material influence no the performance of that subset and then perhaps having an affect on the performance of the domestic industry as a whole.

So I would like to hear what you might have to say about that, and again, I understand that at least part of your response may have to come in post-hearing.

MR. ELLIS: Yes, a lot of that will be in the post-hearing, but just generally, you know, in the cases I've been involved in including this one, there are different levels of competitiveness or of profitability of the different companies that make up the U.S. Industry and, you know, you are obliged to look at the industry as a whole.

The point though is that while there are different levels of profitability within the U.S. Industry, they are all saying the same thing, that to

a significant extent the problems with profitability is being caused by unfair competition with the subject imports.

In other words, it's not due to some catastrophically bad decision making or inept, you know, management, or non-subject imports, or whatever else it might be.

So they've started at different levels. They're having different trends which you would expect among these companies, but ultimately, are subject imports a material cause for each of them? I think the answer is yes.

COMMISSIONER PEARSON: Okay, well, based on what I've understood of the record so far, I'm not able to as comfortably as you just did dismiss the other possible causes of problems for the industry as a whole as reflected particularly in a subset.

So for post-hearing, if you could help me -- make sure that I can see at the end of the process why it is the subject imports that are the issue here rather than other things about which at the moment we may not know enough.

MR. ELLIS: Okay. That's fine. I'm happy to do that in the confidential post-hearing.

COMMISSIONER PEARSON: Okay. Thank you.

Madam Chairman, I think that exhausts my questions, so permit me to express my appreciation to all of you for being here. I certainly know more about stilbenic optical brighteners now than I did a couple days ago.

CHAIRMAN OKUN: Commissioner Aranoff?

COMMISSIONER ARANOFF: Thank you. Just two more questions.

Commissioner Johanson was asking some questions about transparency of pricing in the market, and I wanted to follow-up on that by asking about the process. When you're in the process of negotiating a contract with a customer particularly one that has been a long-term contract customer, to what extent are prices of subject imports discussed in the negotiations?

MR. DETTLAFF: The price of all competitive products are a point of discussion during the negotiation process. It's been my experience that the subject import and those companies supplying them has taken over a vast majority of those discussions.

So you know, it's become more and more apparent that the low prices and unfair prices are being promoted by the subject imports.

COMMISSIONER ARANOFF: Are you -- because

you told us that there isn't any public information, so is the customer usually just saying to you, oh, Company X is going to have a lower price. Are they showing you offers that they've received? How is price information being transmitted to you?

MR. DETTLAFF: The pricing information is discussed by many means, and I don't want to go into too many details in terms of my sincere and close relationship with my customer base, but I've seen specific offers in writing, and I have discussed during the negotiation stages across the table from customers.

But the most telling point is when we've lost a piece of business, it's most often been to these import products. So the actual follow-up after we've lost a piece of business indicates that the imports are the ones that have taken over that piece of business, and presumably because of those conversations had during the negotiation phase, it's due to price.

COMMISSIONER ARANOFF: Okay, now you talk about the fact that the pattern in the market has been towards shorter-term contracts than before, and I don't think any of us asked you why. Is it just because of the cost volatility that people are tending

toward shorter-term contracts or is there another reason why the market is going that way?

MR. DETTLAFF: My own impression is because of the cost volatility such as was made example of the 2008. A lot of that volatility has made both customers and suppliers nervous in terms of locking into long-term deals especially without ability to have decent pricing discussions, decent cost discussions.

So the customer base wants to lock into a secure supply, but they oftentimes would rather leverage the price to the lowest level which is kind of reasonable from their perspective. But the domestic suppliers I think are hesitant because of the pain of the volatility noticed in 2008.

COMMISSIONER ARANOFF: Right. Okay. Why is it that some customers in the market prefer to purchase based on contracts of a year or maybe more and others that you've said come to you as repeat customers but are more in the nature of spot buyers?

MR. DETTLAFF: I don't know the dynamics behind why the varying approaches to securing supply of these products has changed. I think we've talked a little bit about, you know, the main customer, the main long-term customer from Clariant's perspective

has engaged in that longer term for more reasons about their market approach to their industry rather than price supply issues.

They're comfortable in our supply, but they have other things in their market approach that they're trying to conduct.

And Ken actually made a very good point. The spot buyers tend to be more smaller entities, not the larger corporations, and so they've go the more flexibility to move about the market a little bit more. So that typifies, I guess, some of the contract issues.

COMMISSIONER ARANOFF: Okay. Thank you very much for those answers. I don't have any further questions, but I do want to thank this panel for all your responses this morning.

CHAIRMAN OKUN: Commissioner Johanson?

COMMISSIONER JOHANSON: Yes, I thank you, Madam Chairman. I have no further questions, but I would like to thank you all for appearing here today.

CHAIRMAN OKUN: Seeing that no other questions appear, let me ask staff if they have questions for this panel?

MR. McCLURE: Jim McClure, Office of Investigations. Staff has no questions for the panel.

I do note it's 10 after 12, so if you don't have your NCAA pool in, you're too late.

CHAIRMAN OKUN: I'm too depressed to do it this year.

Do those in opposition to a position of the orders have any questions for this panel?

MR. KOENIG: No.

CHAIRMAN OKUN: For the court reporter, that was Mr. Koenig indicating they don't have any questions, so this would be an excellent time to break for lunch. We'll come back at 1:15.

I would note for the record that the room is not secure, so please take any confidential business information with you, and just once again to thank all of the witnesses on this panel. We very much appreciate all your testimony and your continued cooperation. With that, this hearing will stand in recess.

(Whereupon, at 12:10 p.m., the hearing in the above-entitled matter was recessed, to reconvene at 1:15 p.m. this same day, Thursday, March 15, 2012.)

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

(1:15 p.m.)

COMMISSIONER OKUN: Good afternoon. This hearing of the U.S. International Trade Commission will now reconvene. Mr. Secretary, I see our second panel is seated. Have all the witnesses been sworn?

MR. BISHOP: Yes, Madam Chairman. Those in opposition to the imposition of antidumping duty orders have been seated; all witnesses have been sworn.

COMMISSIONER OKUN: Very well. You may proceed.

MR. KOENIG: I'm Peter Koenig of Squire, Sanders and I'm here just to introduce Randy Nelson.

MR. NELSON: Good afternoon. Thank you for having such nice weather. When I left Seattle the other day, there was six inches of snow and when I talked to my wife at lunch, she says, "it's still some here, but it's melting." That said, I do have a bit of an allergy with the Cherry Blossoms; so if you hear me go, "hmm, mm, mm," I apologize in advance.

By way of introduction, formerly, I'm Dr. Randall Nelson with Technical Services Group of TFM North America, Inc., Vancouver, Washington. In that capacity, I'm involved with marketing, since TFM's

market is based on product performance, as I discuss below. I received by Ph.D. in inorganic chemistry at Dartmouth College in 1975, way back in the late plasticine. And I was an NIH post-doctoral fellow at Columbia University the years following, 1975 and 1976. Before joining TFM North America, I worked in the water and paper business segment of Ciba with optical brightening agents. Ciba is now BASF, obviously. I was with Ciba Geigy Corporation for 17 years, from 1992 to 2009, as industrial technical specialist, business development manager, and then account manager. Prior to that time, I was with ITT Rayonier, as both a research chemist and a research group leader in pulping and bleaching and chemical products. So, I have been involved with the paper business and the optical brightener business for a total of maybe 40 years, of which 21 years was in the optical brightener dyes arena.

So, I have a perspective that comes from both sides of the business, now from the import side, as well as being with a domestic supplier for many, many years. I'm here to testify about the paper OBA business. You will hear me say OBA, because I'm not used to saying CSOBA. CSOBA is what these things are referred to in the testimony and I'm sure I will be

calling them OBAs throughout. So, please translate and I ask forbearance.

The following testimony will show that Taiwanese OBA, which really is essentially TFM, has not and will not injure the U.S. industry. Also, note at the Commission's preliminary staff conference, I was joined by Mark Wong, who is TFM's president. Unfortunately, Mark cannot join us for this hearing because he is in Europe. European paper producers have been and are keenly interested in TFM's OBA because its performance characteristics enhance their international competitiveness. But, Mark will and can provide any needed information in a post-hearing brief.

I'll focus broadly on three items in my testimony today. One, TFM's OBA or CSOBA is purchased for reasons of quality and purity, not price. The accused Taiwan imports, again TFM's, because TFM accounts for essentially all Taiwan production in exports, do not underprice U.S. producers, as TFM's prices are higher than those of U.S. producers. And finally, number three, TFM entered the market due to the current U.S. suppliers, including Petitioner Clariant, not meeting the product availability and performance needs of the U.S. paper mills. In

addition, U.S. paper mills needed a second secure supply source of the OBA here in the United States because of the OBA product shortage created in part by Petitioner Clariant, itself.

Consider my first point, TFM strives to make the highest purity and highest quality product offered by any OBA supplier and focuses its marketing on that achievement. We market OBAs as a specialty chemical. Because of that marketing and manufacturing objective, we make TFM products work differently than others, actually better. What we have done in the industry, we have done differently than the other OBA suppliers gathered in this room. To make and offer the best purity and quality, that has been our goal and we have successfully done that in the OBA market for most of our 20 plus years existence.

I'll say as a trained chemist, and I think my publication number is 12 publications and 17 patents, in both analytical and organic chemistry disciplines, I know that a technically rigorous analysis of a chemical yields a result that is totally without bias or prejudice. If one designs the experiment with proper care and in setting up the instrumentation and experimental routine and has a well-tuned instrumental procedure, the results are

accurate and uncontested. The term "OBA effectiveness," as used by the Petitioner Clariant in his pre-hearing brief and today, is a weak and non-technical attempt to describe one of the real drivers for the performance of OBA in application technology.

Let me illustrate what are the chemical and fundamentally grounded factors leading to effective OBA performance. I apologize in advance to those non-chemists here present because this is a fairly technical discussion. But, it's important to understand what TFM does and the reason we market the way that we do. I have to confess, I may get excited during this presentation because I get excited about chemistry. That's my nature.

I'm particularly excited about the capabilities and the characteristics of the OBA that TFM offers. The first and most important factor is knowing how to choose the right OBA molecule for the given application. This decision is driven by several items in papermaking, such as, but not limited to, system charge, fiber type, and application point; other additives in the process, including biocide, starch types; as well as the end goal in making the paper, what is the target market.

We are determining whether, in this

decision-making process, whether we are going to use either a kinetically controlled reaction or one which is thermodynamically controlled or possibly a combination of both processes. We do this to derive the desired outcome for the customer. Only when the right kinetic factors are under control can we begin to say we have effective choice of the proper molecule for the job. By having a very pure OBA, TFM can isolate and maximize the effectiveness of that kinetic process that we choose for achieving the desired outcome. An impure OBA or mixture makes that choice difficult, the drivers and the customer's process harder to control, and the outcome more in doubt.

Clearly, any OBA "effectiveness" is just a masking or marketing word used because real chemical "effectiveness" is completely dominated and determined by the purity of the OBA and the purity of the OBA is what allows the chemist to selectively engage any one or more kinetic reaction pathways, in order to gain the desired effect. This is how TFM sells our product; that is, based on knowing the effect that we want to achieve and targeting that goal specifically by understanding the chemistry of the particular customer's manufacturing situation and what they want to achieve. Simply running OBA trials in an attempt

to determine which product works and varying the concentrations added during the trials is just that, trial and oftentimes error. We disagree with such Petitioner Clariant's approach.

To one familiar with the relevant chemical literature in the area of OBAs and Cyanuril Chloride -- you'll hear me say, "Cyanuril" instead of "Cyanuric;" they're the same. It's just what you've been brought up talking about. Let me repeat, to one familiar with the relevant chemical literature in the area of OBAs and Cyanuril Chloride, which is a crucial starting material to make OBAs, as we saw earlier, freedom from impurities formed in the Cyanuril Chloride or Cyanuric Chloride reaction is a paramount factor that determines effectiveness. This chemistry is well documented in the literature.

TFM will submit several relevant literature citations in its post-hearing brief supporting that fact, that CC, Cyanuril Chloride, based chemistry requires strict process control and understanding to make high yield and high purity products. The primary literature describing the problems of obtaining high purity in the making of compounds from Cyanuric Chloride is substantial, well-known, and not controversial. Even classic textbooks, like Phizer

and Phizer, refer to this and reference it. Petitioner Clariant's failure to address the recognized chemistry here and elsewhere is disappointing.

To recap, the effectiveness of any given OBA product in any application is primarily dependent upon the purity of the OBA, assuming the right product molecule is selected for the fiber type charge I've described before. That product OBA is so important, is well known, offsited, and also uncontroversial. That importance of the OBA purity was, in fact, further defined and disclosed in the patent literature of optical brightening agents by Ciba Geigy, in a similar patent number US4468341, by Brian Bear. If the OBA purity is 100 percent or near, then one gains maximum effectiveness.

So, effectiveness of an OBA is a function of the purity. Purity is not high solution concentration, rather it is the avenue to greater product effectiveness and performance. Higher purity translates into there being fewer colored byproducts present that lower the effectiveness of the OBA in papermaking. Higher concentration mainly gives you freight savings.

OBA purity was recognized early by TFM as so

important a factor that it has been one of the principal tenets of TFM's approach to the OBA market. TFM has always approached the OBA market differently than other suppliers, U.S. producers and China, and particularly telling is the contrast over the past five years versus Petitioner Clariant. While most everyone, Clariant, Ciba BASF, Bear, Kemira were cutting their technical staffs for OBA even before any claimed period of dumping occurred, TFM had kept expanding its R&D and service team to meet customer product performance needs, and we invested in the technology to provide higher purity and the result, higher degree of effectiveness that our customers and value and week and, indeed, need.

The Petitioner's efforts in filing this antidumping case, as well as their comments pertaining to our earlier testimony, clearly demonstrate that we are here as a result of a failed commodity marketing strategy, coupled with the Petitioner's failure to recognize and respond to a U.S. paper industry whose product performance needs have changed and continue to change. TFM has been pulled into the market place by the vacuum created by the exit of technical service and quality in U.S. producers. As a commodity model adopted by the USAOBA, manufacturers failed to meet

the more demanding needs of the OBA end users.

The paper OBA market is different from what it was in the past. Petitioner Clariant's and other domestic manufacturers claimed failure to thrive in this market is of their own making and more specifically, due to a lack of foresight. The needs of the market changed while the Petitioner Clariant and BASF and Kemira's commodity marketing strategies were looking backwards. Their strategy has become outdated and is out of step with what is required by today's customer, as far as product performance characteristics.

The reason that TFM has done well all along is because TFM offers significant non-price advantages over any competitor's OBA. Our superior quality product purity results in significantly improved product performance and performance capabilities. That TFM continues to do well with higher prices than U.S. producers precisely demonstrates that TFM is not injuring U.S. producers by alleged dumped low prices. So, antidumping duties are not warranted.

Customers are choosing to stay with TFM's OBA even though TFM's price is higher. This is market proof that TFM is not injuring U.S. producers by dumped low prices and taking sales away from U.S.

producers. Again, antidumping duties are not warranted.

I'll now return to my discussion about the importance of purity, after I got taken away in a marketing digression. It's not easy or sometimes even possible to make the highest quality finished paper with a commodity grade starting material like the Petitioner's. This unmet need is a major reason why TFM is successful and continues to be successful, even while having higher prices.

Because TFM's materials are so significantly superior in purity to U.S. producers, our technical service is more focused on helping customers use our higher quality products in higher-valued application than U.S. producers would normally not even be aware of or have their technical associates invited to work on. It logically follows that the Petitioner Clariant would most likely not be privy to or aware of the type of technical support that TFM is routinely involved in or exposed to.

I'll share an example of some very current work, where TFM's highest OBA purity offers significant quantifiable non-price advantages to the customer. We worked technically with a major U.S. paper mill and is currently saving them several

million dollars annually in lost production time, heat, waste treatment cost, by working to allow the paper mill to be able to reuse their white water containing residual amounts of different OBAs. Prior to this time, they had to dump all their white water when making a grade change to and from an FDA grade, which is where you have to have the certification. We suggested to them this process. We worked with them to implement it, develop it, and supported it in obtaining the formal written allowance of the practice by the FDA. This is outside of the normal 220 type FDA certification that was discussed earlier. This significant non-price advantage that TFM offers came about only because of TFM's high purity OBA, coupled with our knowledge of how to effectively utilize that purity. That is a significant advantage. The name of the company in details of this success will be limited to the confidential post-brief hearing for obvious reasons.

I repeat, a commodity mind set severely limits one's horizons and opportunities to venture into specialty applications and, in this situation, appears to be a classic manifestation of a failed market strategy by the U.S. producers. As evidenced by the above example, TFM is utilizing superior

product quality in specific applications to address specific needs that are not being met by U.S. producers. This is but one example that evidences that TFM is not injuring U.S. producers by dumped low prices. It is Petitioner Clariant's, along with 3V's and BASF's own marketing strategies that are leading to their failure to thrive.

TFM has demonstrated that its OBA is purchased for reasons other than price, i.e., its purity, and I'd like to take a few minutes to explain why OBA purity matters a lot to mills. The presence of impurities if not removed can lower the apparent brightness of paper by significant amount, as much as three to five points, at times even more, and it will give a yellower cast than it should have. A less pure OBA can also cause the paper brightness to fade and yellow more quickly than a pure OBA will. The knowledge that impurities are present in OBA and that OBA impurities are deleterious to brightness is well researched and that information was widely available during by tenure with Ciba.

Much of the work on OBA impurities was, in fact, performed while developing the application to the FDA for their approval for brightener 220 in food grade paper. It's inconceivable that Clariant is a

co-Petitioner to the FDA, along with Ciba and, at that time Bear, is ignorant of the impact of impurities present and other actual structure from those FDA proceedings.

Their apparent indication otherwise in this dumping case is also disappointing. There was so much interest and concern with the OBA impurities at Ciba, now BASF, that the contaminant products were actually individually and uniquely synthesized and then studied for their impact on the OBA performance. Any technical report or competitive analysis of OBAs nearly always listed the nature of the impurities and the likely process caused for their presence.

Continuing with my discussion on OBA impurities, for example, if you take 10 pounds per ton of an only 90 percent pure optical brightener, that is effectively the same as adding one pound per ton of a quenching agent when you're making the paper; that is nine pounds of OBA with one pound of darkening agent. Therefore, using a pure OBA can avoid causing some of those negative darkening effects.

The above facts are especially important, as brightness levels continue to increase past the 92 GE brightness, as the trend is today. Poor OBA purity becomes a definite negative, even more so in the hexa

OBA application at the size press. This is one of the applications where TFM's products are the absolute best and allow companies to make products that they cannot with the commodity hexa-sulfinated OBA supplied by the Petitioner, Petitioner Clariant or other U.S.A. producers. TFM is meeting a market segment need driven by the purity of our specialty OBA and not dumping. So, again, antidumping duties are not warranted.

Here's why the TFM OBA works so much better. In a size press, the OBA is essentially painted onto the surface of the paper and any impurities or darkening agents in a less pure OBA will end up on the surface where they will exert negative performance effects. This is even more critical in the color lock application because of the natural dulling effect of the calcium used to make the grade. Calcium has an affinity for fiber and it darkens the fiber. So the negative impact of the impurity on brightness is made even more serious when you consider that the use of the hexa OBA and the size press is the method of choice for making the highest and most challenging grades of paper. The reason for this is related to the volumes of water used in the size press versus a wet in and the fact that the size press deposits the

OBA on the surface and the large volumes of water provide a way to dilute the impurities in a wetting application versus a size press.

TFM's OBA purity allows more effective usage compared to others. We heard some of that this morning. OBA usage is a critical factor in making paper at the paper mill. It is much less expensive for a mill to use an OBA to obtain brightness than to bleach to a given brightness. If a mill is incapable of bleaching, they must purchase a higher brightness pulp to make the paper and that is very expensive. However, there is a limit to how much OBA can be added. Where the increase in brightness or gain is still reasonable on a cost basis is what is the determining factor. In most cases, a maximum of 10 points theoretical of TAPPI brightness can be obtained more typical in a practical application because of variabilities in each paper mill's manufacturing process. That rate of increase is more typically 8.5 to 9.5 of points of brightness.

Therefore, it is very important for paper mills to use the right amount of OBA at the best addition point, as a way of keeping the cost down. In short, there is a sweet spot where the OBAs perform best and it is important for a mill to operate it

within that zone to be internationally competitive. If there are fewer impurities in an OBA, then the OBA will respond better and more effectively at a lower dose and give the mill more latitude to accommodate other process variables or even push to a higher grade of value grade product.

I'd like to cite two examples at two different companies that illustrate the effectiveness of using TFM's higher purity OBA compared to the current offerings of the domestic manufacturers. This first example is a little older. At company number one, using TFM's tetra OBA, this provided the customer an ogling 18 percent improvement in processed capability over 3V's Optiblanc NF-200 OBA, also a tetra. This could be demonstrated even at equivalent brightness with 3V product. The customer now had the capability to make and sell a higher brighter and more robust product than it could previously by now using the TFM OBA.

I became aware of this result while I was still at Ciba. We were trying to figure out why the product was working so effective and why did it give so much upside potential. At the time, we had not obtained a sample of TFM's product to assay. I must say that we were frankly dumbfounded by the

performance improvements that were reported to us by the paper mill when the TFM OBA was used.

At company number two, TFM's OBA performed so much better that there was a 40 percent improvement in paper mill process capability over Clariant's Leucophor AP OBA when the switch to TFM's disulphil OBA was made. Generally, we find that TFM's products can offer customers a 10 to 50 percent paper mill process improvement capability, mainly attributed to the much lower impurity level. The more challenging the application, generally the better the result is. It's like putting low-test gas in your Portia. As a direct result of the higher TFM OBA purity and consistent performance from TFM's products, customers are frequently able to achieve -- to better balance their process and save usages of other chemicals, especially some of the tinting dyes, for example, blue, violet, or red.

As Table 1 shows, which you have, there are wide variations in the purity levels of commercially available OBAs. TFM has the highest purity of any OBA supplier, U.S. or China. The results in Table 1 are from our lab. The methodology we used is very standard HPLC analysis and is totally objective, as I mentioned earlier. This analytic procedure is very

common; it's easily duplicated by just about any competent chemist with a lab and the proper equipment. We can provide experimental conditions to duplicate these analyses to labs that are experiencing difficulties.

Observe the assay for the tetra OBA as an example. TFM's impurity level is less than 2.5 percent. In contrast, the impurity ratio of the Clariant 3V is 18 to 20 and 15 percent respectively. These assays, all of these listed in Table 1, are from samples offered to us by customers and reflect what they, the customers are receiving from their supplier. It's not something that we conjured up. The values observed in Table 1 are entirely consistent with and reconfirm what I had learned about TFM's OBA back when I was with my prior company, Ciba. There is very strong consistency between the sets of numbers.

And as a historical note, I want to add that over the years while I was at Ciba, it was so well known that both Clariant and 3V products were so much less pure than Ciba's at the time -- Ciba is now BASF -- that we used it as a common selling tool whenever we would advise our account managers against Clariant. We always pointed out to our customers the lower quality and the lower purity levels of the Clariant

product. So this is not something new. This is historical. That goes back at least 10 years that I remember.

Continuing, at the time when TFM entered the market here in the U.S.A., I, still at Ciba, believed that Ciba had the best OBA purity because I had frankly never seen anything better. However, Ciba observed that their tetra and their hexa performed much poorer than TFM's OBAs and at times by rather large margins. It was very disconcerting. Particularly with respect to the TFM hexa, some of us at Ciba were frankly stunned by the performance differences and wondered if they were using a different molecule. It was only after Ciba obtained a sample of TFM's OBA in mid-2007 and had it analyzed -- I'm going off from memory here, so -- we confirmed that TFM had a high purity advantage. At that same time, I, also, recall seeing an analysis of Clariant's T-100 that showed it to be in the high 80s percent purity level. That is about the same purity level that our TFM lab has determined the Clariant product to be and is reported in Table 1.

I specifically recall that the Ciba chemist related some of TFM's purity advantage to fewer OBA impurities that were attributed to the aniline content

in the sulfanilic acid. That's a critical raw material in making the tetra OBA. I, also, specifically recall that some of the major impurities of the Clariant T-100 product were from the hydrolysis products of Cyanuril chloride. As a chemist, this was fascinating to me and so I remember this. I don't have access to that information now, so I'm going on memory. But, I was totally fascinated by it and I ended up working with the Bozzle labs at Switzerland on an issue that was very similar to this, because I had a customer who had some reversion problems; so, we were trying to figure out what were the causes. So, I was deeply involved in this.

Moving on, pricing: TFM does not underprice the U.S. industry. We hear repeatedly from customers that our price is higher than Petitioner Clariant, in particular. TFM's price does not undercut the domestic prices of U.S. OBA manufacturers, Clariant, 3V, or BASF. In fact, with my long tenure with Ciba, Ciba's prices were often disturbed by low-price quotations at major customers from both Clariant and 3V. As a result of Clariant price predation, Ciba, in fact, developed a new market application for OBAs, as a way to just keep ahead of them, and we developed secure -- we tried to develop and secure that business

for a period of time, so that we had freedom from competitive pricing offers.

Turning to my final issue, DAS. Diaminostilbene is a core raw material of OBA. It is produced in China and, to a lesser extent, in India, and really nowhere else. All OBA producers, including Clariant and 3V, rely upon it for their supply.

There's a historical component to this. In 2005, as we've heard, International Paper suddenly increased the brightness standard from 88 to 92 brightness. This instantly increased the demand globally of OBA in the marketplace, especially in the U.S., which had lagged Europe and the rest of the world in high brightness standards. IP, the one who did this, had worked in advance to secure a major OBA position with supplies from Clariant. That meant one major source of OBA was nearly sold out instantly by this move and that forced many U.S.A. paper companies to seek overseas sources. There was a frenzy. I was involved in it. It was frenzy. It was a mad scramble that ensued with paper companies trying to secure OBA at any cost, in order to compete with the new brightness standard. It was this event that brought TFM into the U.S.A. OBA market.

Then, in the summer of 2008, the Chinese

Government announced restrictions in the production and transportation of hazardous chemicals within 200 kilometers of Beijing, in order to improve the air quality at the Olympics. This caused an immediate shortage of DAS, that input for OBAs. As a result, most OBA producers could not supply enough OBAs for the U.S. market, including Clariant and 3V. IP's sudden increasing to brightness standard in 2005 was an aggravating impact to this shortage.

These events threw U.S. paper mills into a more global sourcing of their optical brightener. Most of the big paper companies, such as International Paper, Georgia Pacific, Boise Cascade, had direct sourcing activities in Asia several years prior to this. Some companies, such as IP, had already established sourcing offices in Asia. But the OBA shortages of 2005 and 2008 further energized paper manufacturers in their sourcing of OBA globally.

Concurrently, the domestic suppliers of OBA all have pursued a commodity cost-cutting approach to their business, which has left them following an outdated business model, compared to what is needed by the paper mills in 2012. The demands are for higher brightness, color lock capability, performance in 100 percent race cycled content, which is diminishing in

quality as we go on, that gives poor starting optical properties. These demands are challenging and the domestic suppliers have been unable to respond to the needs to which TFM can and has satisfied with their higher purity OBA.

It is highly ironic that the activities of the Petitioner, which led to the shortages originally in the past and had forced mills to look outside, has now chosen to follow a self-limiting business strategy that is also the main reason why we are here today with this antidumping suit. I thank you for your attention. I'd be happy to address any questions.

MR. NELSON: That concludes our presentation.

COMMISSIONER OKUN: Well, thank you. Before we begin our questions, let me thank you, Mr. Nelson, for traveling here to be with us and for your testimony and for your willingness to answer our questions. About August or July, we'll all be wishing we were out in Washington State, as opposed to here, so I'm glad you get to enjoy nice weather.

MR. NELSON: August is the best month to come out.

COMMISSIONER OKUN: Absolutely. Let's see, Commissioner Johanson begins our questions this

afternoon.

COMMISSIONER JOHANSON: Yes. Thank you, Madam Chairman. Also, thank you, Mr. Randall, for coming all the way out here today. Earlier today, Mr. Golder of Clariant testified that Clariant has been squeezed out of the spot and short-term market. The ITC questionnaires requested that on shipments by type of sale that is spot, short- and long-term contracts for 2011 only. And I think it would be helpful to have the shares for TFM in 2009 and 2010, and this is something you all can provide in your post-hearing brief. This might be for Mr. Koenig.

MR. KOENIG: Yes.

COMMISSIONER JOHANSON: Okay, thank you. I appreciate it. Mr. Nelson, you testified that TFM markets OBAs as specialty chemicals. Could you provide marketing materials that TFM was in the United States market -- that TFM uses in the U.S. market to illustrate your point?

MR. NELSON: Absolutely. In fact, I've been completely involved with writing just that type of marketing presentation. There is a real need for that approach to the business. I have to say, my previous employer and Clariant have all been following this commodity mind set that struck about 10 years ago and

TFM is kind of like swimming upstream against the current compared to everybody else. But, we'd be happy to provide that. There are several marketing programs that I have information on. We can supply that to you.

COMMISSIONER JOHANSON: All right. That would be helpful. Thank you. I now have a series of questions for you. When did TFM begin producing OBAs?

MR. NELSON: I wish I had the exact date. That's something Mark could answer more specifically. It's at least 20 years ago.

COMMISSIONER JOHANSON: Okay. If you could get that to us, I would appreciate it.

MR. NELSON: Yes.

COMMISSIONER JOHANSON: Do you know when TFM began exporting to the United States?

MR. NELSON: I believe that was in 2005 or '06. There was some initial exports. We can give an exact date for that.

COMMISSIONER JOHANSON: Okay. That would be helpful. Other than the United States, what other export markets has TFM developed?

MR. NELSON: TFM actually exports -- we're a global company. We have a substantial position in Europe. We actually sell into China. We sell into

Asia. We compete in the higher value markets.

COMMISSIONER JOHANSON: Are your exports to China growing, do you have any idea?

MR. NELSON: That, I would have to defer that to Mark.

COMMISSIONER JOHANSON: Okay, that's fine. Thank you. Mr. Nelson, you spoke about the success of TFM's OBAs in highly technical or specialized applications. Could you quantify the portion of U.S. market accounted for by these applications; or, alternatively, what portion of imports from Taiwan are purchased for these applications?

MR. NELSON: That's an interesting question because what happens very typically is a customer will come to us with a very challenging application. Once you meet that application and you demonstrate the capability of being able to do that, you typically gain the rest of their business. So that -- that is typically a wedge entry for us. If we can produce an effect that they can't get or do not feel that they have the capability to get anywhere else, that may be 10 to 25 percent of our business; but, the remainder of our business comes from having been able to solve the problem. I hope that kind of gives you a feel for what happens. That's actually the way things usually

develop.

As far as defining a certain number, we only sell x number of tons of material for this very high value application. That doesn't usually happen. What happens is that the customer brings most of the business to you.

COMMISSIONER JOHANSON: All right, thank you. That answers my question.

MR. NELSON: Okay.

COMMISSIONER JOHANSON: Now, I'm going to ask you a few questions. Some of these I posed to the Petitioners this morning. But, I'm interested first of all in any transportation advantages TFM might have in shipping to the United States, let's say by shipping to the west coast. I assume you ship largely to the west coast. And, also, what cost advantages would you have overall by having your product shipped in powder form?

MR. NELSON: I guess first place, having a powder is not strictly just a shipping advantage. Having powder is actually a technical advantage because there are several applications that we're not going to mention in public, but we are working on because it makes sense to use a powder in the process, rather than a liquid. That's one of the drivers.

The other factor is that it makes perfect sense to ship things as a powder when you have a highly purified product because as you purify the product, it is much easier to get a spray dried material. So, by having this pure product as we do, we are able to make the powder easier and it's actually advantageous to us to do that. The benefit of shipping with a freight of powder is -- maybe it's not quite secondary, but it's not primary.

COMMISSIONER JOHANSON: You mentioned just right now the increase use of OBAs in powder form.

MR. NELSON: Yes.

COMMISSIONER JOHANSON: Is that -- I wasn't -- an you maybe elaborate on that?

MR. NELSON: That's actually --

COMMISSIONER JOHANSON: Do you know if other producers are selling powder for that reason?

MR. NELSON: I know of one other company that is working to sell powder, but I don't -- they're a very non-technical sale and their approach is very different than ours. We are looking to use powder in specific applications where we think that we can offer a real significant advantage at certain customers that have a very strong need. I don't feel comfortable explaining too much more about that because it's

fairly confidential with the companies.

COMMISSIONER JOHANSON: Right; I understand. I don't -- no need for you to further into that. If you do want to mention more on that, perhaps you can put it in the post-hearing brief --

MR. NELSON: Yeah, okay.

COMMISSIONER JOHANSON: -- under BPI. Now, I want to talk just a minute on technical service. This is something which TFM believes distinguishes it from other producers. How does the technical service provided by TFM differ from that of other sellers in the U.S. market? What distinguishes you all?

MR. NELSON: We understand the chemistry. When I take a look at a process, and I have done this numerous times, I go in to a -- I'll give you a specific example. In fact, this is a mill that was buying optical brightener from us and it had a problem that was not even related to our optical brightener, as it turned; but, we were tangentially involved because they had an issue with spots on their paper and the spots were tearing out and the posts were colored and they oftentimes would have a fluorescent ring about them. And we were asked to do a consult on what was possibly the cause because there was some fluorescent involved on the spot that was being formed

in the paper.

How that transpired, that turned out to be the hydrolysis of a sizing agent that was occurring because of an overuse of biocide and it was steam distilling the degraded sizing agent into the first dryer section, which was entraining some optical brightener and code distilling it and then it was picking out and making holes in the paper. So, we took apart the entire chemistry of everything that was going into that paper-making process. That mill saved several million dollars and actually avoided being shut down. And interestingly, they moved away from buying any optical brightener because their markets changed from what they were. But, they invite us in to -- if we ever sell anything else, we have an open door to come in. That's one example that comes to mind very succinctly.

We understand the chemistry of what is going on in the paper-making process and you have to look -- you have to look at the soup that goes together. And you have to understand that the chemicals that are mixed together, as far as they're concerned, the pulp that is being worked on by those chemicals might as well be a rock because the chemicals will interact with each other in side reactions far faster and more

effectively than they will with any pulp. So, you have to know what to do to drive the reaction that you want with that specific chemical without interfering with the rest of the process. That's what TFM does and that's what TFM knows how to do better, we think, than anybody else.

COMMISSIONER JOHANSON: Thank you. I have just about 20 second left. I wanted to go back just quickly to one of the questions I asked before; if you could perhaps answer this. We got side tracked for a minute or so ago concerning possible transportation advantages you all have in shipping to, let's say, the west coast or wherever you ship to.

MR. NELSON: Oh, yes, I'm sorry, I ignored your question.

COMMISSIONER JOHANSON: That's fine.

MR. NELSON: We actually -- thank you for bringing me back. I meant to answer that. TFM doesn't ship just to the west coast. We ship all throughout the U.S. We don't just ship to the west coast and then move things from there.

COMMISSIONER JOHANSON: Are your transportation costs, I assume, higher than those of U.S. producers?

MR. NELSON: I defer that to Mark,

unfortunately. I don't have those numbers.

COMMISSIONER JOHANSON: All right. Thank you and I've gone over my time.

COMMISSIONER OKUN: Thank you, again, for all of your responses. With respect to the arguments of the information presented regarding quality of product and purity and I understand from your testimony the distinction you are making from what we heard the Petitioners make. But what I'm trying to do is reconcile that with what information is in our staff report with respect to what purchasers say. Because, it -- I don't think it's overwhelmingly indicating that there's a lot of -- I mean, there are differences. We see that from the purchasers. But, it's not -- it's not really clear cut to me. I don't know if there are particular things you would point me to in the information that we have collected. And, again, I know some of this information you don't get to see, but just -- and Mr. Koenig might be able to help, as well, to support your point that it's a quality, a purity driven purchasing decision for many, as opposed to price.

MR. KOENIG: Some of that we will deal with in a post-hearing brief, since it's confidential. I might add just looking at the Petitioners'

presentation, they were talking about who meets minimum industry standards and that's not what TFM is about. They're about doing more. So, it's kind of misses the mark as far as TFM. And the focus is on who meets minimum industry standards and you're looking at that type of information, I'm not sure that's really responsive to the situation --

COMMISSIONER OKUN: Yeah, and I guess I'm more focused just on what purchasers said in the staff report and whether that is really indicative of differences. But one of the questions I asked the Petitioners this morning and you clearly know your product and it's great to have that kind of expertise there, but I wondered what role patented products play in this market. And, again, to the extent something is proprietary, you can certainly address it post-hearing.

MR. NELSON: No, I was amused because I have one of the patents that I wrote when I was at Ciba that is probably what was leading to that question. I'm the author of that patent. So, I was in a unique position of writing that patent during a time when Google did not exist. And we filed the patent application based on the best information that we had. And if you go and look in the Google universe now, I

couldn't defend that patent because things have changed. So, there are some purchasing decisions where people still are saying that patent exist and they honor that patent and we respect that. There are other companies who ask is this real or is it Memorex and I have to say it's probably Memorex and they go and they purchase the material from other people, not even always us. I think that's maybe the patent that you're referring to.

COMMISSIONER OKUN: I'm just trying to understand from the record whether it's -- how important just overall it is, in terms of --

MR. NELSON: Oh, overall. Overall the patents -- the patent that I cited, that 1984 by Brian Bear's, one of the -- I think that's a very seminal patent, where he was disclosing the importance for Ciba of how they make their process, because it made a big difference in how Ciba, at that time, made their product and it made a difference in their purity, as well. But, I don't know that that applies to any customers making a purchase. I think it has more to do with how the product is made.

COMMISSIONER OKUN: Okay.

MR. NELSON: It helps me to understand. I love reading them.

COMMISSIONER OKUN: Okay. With respect to the argument -- and I know you have touched on today both that the 2005 IP, International Paper, changing the brightness standards, I guess, and then the 2008 DAS supply shortage in China affecting this market. And we spent a fair amount of time with the Petitioners this morning trying to understand what we see in this period of investigation that would still reflect something out side the period of investigation. So, again, if these are contracts that have bene renegotiated since the time of those disruptions, is it still relevant in our analysis, in terms of what's going on during the contract negotiations?

MR. NELSON: Ms. Okun, I would say, absolutely that's relevant because what happened with 2005 and 2008 is that you set up a path dependence of the future on what events transpired. And once you set that process in motion, people have a learning curve. They learn, oh, there are ways that I can get something else differently. So, those two events were very pivotal. And so, you can't -- I don't think you can discount the importance of those when you look at today's marketplace with what happened back -- you have to consider that. Marketing and sales and what

goes on in this business is very path dependent.

COMMISSIONER OKUN: So help me out with that because one of the things I was trying to understand, and it could be that the post-hearing record will lay this out more clearly, but I had thought, Mr. Koenig, one of the arguments that you had made was that it had led to multiple sourcing or a desire for a second source. And in asking the Petitioners about that, my guess, and I'm trying to look at the record here to figure this out, I'm not sure that we see as much multiple sourcing here or do we? Am I missing something? Is there something not in the record that's not obvious to me right now?

MR. KOENIG: I think -- I understand that there is actually more multiple sourcing than they were indicating.

COMMISSIONER OKUN: Okay. Mr. Nelson, could you comment on that?

MR. NELSON: That really is driven by individual manufacturer's preferences. Some manufacturers, their mind set is they want one supplier; they want one invoice; they don't want to deal with a lot of different people calling on them. The more specialized mills actually will cherry pick. We'll see these companies that are in the higher

value markets and very focused markets, difference in the commodity manufacturers say of the Staples white paper. They'll pick and choose. They'll have several different products from several different companies. So, it depends on their need, meeting their needs, and it also depends on kind of their corporate culture. I don't know that there's anything that I could say would define how you would determine that. I don't think you put an r square on that line or anything like that. The best answer I would say is it depends.

COMMISSIONER OKUN: And is it your experience in that, that for those purchasers who are pursuing multiple sources, are they asking for quotes from you? Do you know what the competition is? Again, I talked about this morning, what's the transparency of the market? Do you know what the quotes are?

MR. NELSON: No, I don't. In fact, the people who ask for quotes like that typically are the more technically competent people who are involved I purchasing. And they're a lot less inclined to tell you what the prices are because they're looking for an effect, rather than more of a commodity-type product. There is a bifurcation in the type of people that do the purchasing in the different industry segments.

The higher value oftentimes has a more competent person who understands the chemistry. I've had some very engaging conversations with purchasing agents, who were quite good in their chemistry and done very well because of that. And then, I've had absolutely zero with some people because all they want to know is what's the price.

COMMISSIONER OKUN: And one thing I discussed this morning with Petitioners was the impact on -- well, two different impacts or two different things impacting contracts. One was described as less long-term contracts or, I guess, shorter-term contracts, more than historically. And then, second, the meter release clauses being exercised based on price competition. Can you speak to either of those?

MR. NELSON: I'd say meter release is with us basically forever from now on. I mean, once people get that, they always want to be able to make a change. If it's a better technology, they want to be able to adopt that technology. Pricing, I'm sure that would also be a driver. And I guess I spaced on your other --

COMMISSIONER OKUN: Shorter length contracts, as opposed to --

MR. NELSON: Oh, shorter-length contracts.

I apologize, because it's now 11:00, I'm due for another Starbucks. Yeah, that probably -- I don't have a good answer for that either. I would say that is all over the map. There are some customers of ours that are quite happy to lock up longer contracts. They've been with us, they're happy, and they will -- they've seen we are consistent in our product quality, consistent in our ability to supply, and I'm ready to go with you. And, in fact, some of those customers are looking at bringing in powder, themselves.

COMMISSIONER OKUN: And during the period of the investigation, our investigation here, has TFM ever had a meter release clause, had to invoke that to meet a lower price?

MR. NELSON: I have to honestly say, I don't know. I'd have to defer that to Mark.

COMMISSIONER OKUN: Okay. If you could supply that post-hearing.

MR. KOENIG: We will do so post-hearing.

COMMISSIONER OKUN: And with that, my time has expired. Vice Chairman Williamson?

VICE CHAIRMAN WILLIAMSON: I, too, want to express my appreciation to this panel for being here today. Mr. Nelson, can you give us -- can a given paper manufacturer switch among types of OBA, you

know, between di, tetra, and hexa; and, if so, do they do so on the basis of price?

MR. NELSON: I didn't catch all of your question, sir; I'm sorry.

VICE CHAIRMAN WILLIAMSON: I guess, can a given manufacturer switch among different types of OBA? I mean, would they under circumstances use di, switch to tetra or to hexa; and if they do use different types, what determines that? Is it price or --

MR. NELSON: None of TFM's customers will do that because one of my jobs is to make sure that they are using the right product for the right application. We do run into cases, and I have shown up at a customer, and why are you doing that; this is not the way that you should be doing this. And there's actually a joke in the industry, sometimes, I have to be told it's not my paper mill. But, no, the very serious answer to your question is, with TFM, one of our goals is to make absolutely sure that the customer is using the right product; and if they aren't, we will suggest that and we'll tell them why we're suggesting that. That need for a certain product will oftentimes change depending on what their furnish is.

For example, if a company wants to use --

increase their bulking and they want to use some more BCTMP bleach, thermal mechanical pulp to give a better feel and better thickness, we will suggest not using, for example, the tetra. We will suggest using the di sulfa, unless they have a size press, then we can maybe switch and use some of the di sulfa in the wetting and top off at the size press. Again, it's very dependent on what their goals and their objectives are and we match what the particular fiber types and their machine capabilities are with what are recommendations are.

VICE CHAIRMAN WILLIAMSON: Okay. Now is this a situation where they're designing the factory or is this -- they have an operating, an ongoing factory.

MR. NELSON: Yes.

VICE CHAIRMAN WILLIAMSON: You can come in and make these kind of suggestions? I mean --

MR. NELSON: Oh, I've got a reputation for doing that. I have been thrown out of a lot of mills, too, and I've also been called back after I've been driving up the road about 20 miles. But, absolutely, that is -- part of our marketing philosophy is that you should be using the right product and if you're going to buy our material, we will help you. And

sometimes helping is defined as being a little more aggressive and say, Vince, really, you really shouldn't be doing this; this is costing you money. And we'd rather you be in business for a longer period of time than making lots of money short term. I've done that as lately as last week. That is very common to show up at a company and find they're using, in fact, the wrong material. There's not a whole lot of quality technical support available, in spite of what you've heard today.

VICE CHAIRMAN WILLIAMSON: Okay. And I guess it may vary as to say, okay, we'll do this immediately or we're going to do a shutdown next month or this summer or --

MR. NELSON: It does vary. And it's very interesting that once you have demonstrated competence in saving a company money like that, it's much easier to talk to them about how to really do this the next time. That is a very clear factor that occurs.

VICE CHAIRMAN WILLIAMSON: Okay, thank you. And so, you're saying these decisions aren't really based on the price of the OBA that they're using?

MR. NELSON: I'll give you an example. Typically, disulfil is a more expensive product that tetrasulfil. And in some applications, you can add

tetrasulfinated OBA until the cows come home and you only get a certain limited effect. And you can take that same money and you can buy the more expensive OBA and use maybe a fraction of that amount and have a better brightness product that stays bright and gives you the effect that you want. And that's all part of being a technically-driven company; you have to do that. I can't go home at night allowing someone to do something that's wrong. That's not in my nature.

VICE CHAIRMAN WILLIAMSON: Okay. Thank you. We've already asked you to sort of give us post-hearing some idea of what's the size of the specialty application market is, and I was just wondering if there are other measures one should look at.

Because you said that some folks are really concerned about the technical aspects, and others with the commodity. Are there any other ways of measuring the size of this market?

MR. NELSON: I keep getting hung up on the technical aspect, because we, we become almost a consultant to our customer in so many applications. I'm involved with aspects of all types of chemistry in paper. I mean, not just optical brighteners and dyes; I end up with bio-size, I end up with sizing. Because, because we understand the chemistry of the

process, and customers seek that out. So I'm hard-pressed to parse that any more precisely.

VICE CHAIRMAN WILLIAMSON: Okay. I think this morning it was mentioned, I think you've also talked about some companies are considering bringing in powder, and then, you know, converting that to solution themselves in house.

MR. NELSON: Not necessarily always converting to solution. Sometimes using it directly as a powder.

VICE CHAIRMAN WILLIAMSON: Okay.

MR. NELSON: Paper making, think about paper making for a second. When you've got paper, starting at the machine, it's 99 percent water. Do you really need to add more water to that? Probably not. Why dissolve something to pipe at a run, when you can feed it directly?

VICE CHAIRMAN WILLIAMSON: Okay. Can you give, maybe post-hearing, some indication of what kind of companies might consider that direct use? I mean, are they more like the commodity, large volume? Or --

MR. NELSON: I could tell you right now, that covers the entire spectrum of paper makers, from commodity to specialties. Yes.

VICE CHAIRMAN WILLIAMSON: Okay.

MR. NELSON: We can get more specific.

VICE CHAIRMAN WILLIAMSON: Have customers or potential customers discussed supply constraints or shortages when they are, you know, in their discussions with you? And if so, when?

MR. NELSON: When I was with CIBA, I had, how big is infinite? I had, the phone was ringing off the hook during that period of time. And I had people who basically were asking, just as a friend, can you help me out. And CIBA at that time did help people out.

VICE CHAIRMAN WILLIAMSON: Okay. But, so does the POI and some more recently, has that been forgotten about? I won't assume they have forgotten, what extent do they still take it into consideration?

MR. NELSON: I've not seen that. But again, I'm not as involved with that type of a discussion. When I show up at a customer, I'm usually there to fix something that's broken.

VICE CHAIRMAN WILLIAMSON: Okay, good. Now, where does TFM get its DAS?

MR. NELSON: DAS comes from China, like everybody else.

VICE CHAIRMAN WILLIAMSON: Okay. And does TFM have in place procedures and mechanisms to cope

with any future supply disruptions of raw materials, particularly DAS?

MR. NELSON: Yes, we do. We've got existing long-term contracts and very strong relationships that, that have been in place for several years, if not decades. We do not change our DAS supplier on a regular basis; we have a very long relationship. It's more of an Asian way of doing business, longer-term relationship-type business.

VICE CHAIRMAN WILLIAMSON: Thank you. What do you expect in the cost of raw materials and the other inputs over the next year or two?

MR. NELSON: I just, looking at the price of gas and what goes on with oil coming from the Middle East, it's got to go up. Depending on how much speculation we allow on Wall Street, that's going to be a real driver. But the raw material costs of anything based on carbon I believe will be going up, just looking at the factors that are, that are out there right now.

VICE CHAIRMAN WILLIAMSON: Okay. Okay then, my time is about to expire, so thank you for those answers.

CHAIRMAN OKUN: Commissioner Pearson.

COMMISSIONER PEARSON: Thank you, Madame

Chairman. Welcome, it's good to have you here this afternoon.

MR. NELSON: Thank you.

COMMISSIONER PEARSON: You began your comments with an explanation of the very specific chemistries that can be achieved through modifying the kinetic or thermal properties, or the reaction. Does TFM match its chemical processes to the needs of a specific customer? Or is TFM producing a high-quality product through a given reaction process, and then finding customers that can utilize that advanced purity?

MR. NELSON: Yes. We do both.

COMMISSIONER PEARSON: Okay, so within your plant --

MR. NELSON: Yes, we do.

COMMISSIONER PEARSON: -- you have the capability of modifying the given batch such that it will --

MR. NELSON: No, what we can do is we have the capability to manufacture a different molecule. We could -- when you're making something, the assays that I see typically are at 98.5, 98.7. If we're going to modify anything, it's probably going to be on the down side.

So when you're at that level of performance, and if we can't make it work with something of that purity, we will be looking for another molecule. Because it's more than likely possible that we should be doing something different to get the effect that the customer wants.

And we will manufacture, and we have the capability of manufacturing a different molecule. And have done that.

COMMISSIONER PEARSON: So the TFM implant is, it's a batch process. Is it with multiple lines? Or are you producing just one, one grade of product at a time, and then switching? Or do you have two or three or four lines?

MR. NELSON: We have several lines. We manufacture on a, on an almost continual basis, because that's the most efficient way to get the high purity that we, we require and we sell.

We can, we can shift into more of a batch mode and break into that to change, as you saw this morning, some of the chemistry. We can make some changes to affect a different, and manufacture a different molecule, if need be.

COMMISSIONER PEARSON: Would I be more correct to understand that you have a continuous

process then? A continuous process in different lines, and that you, you would need to stop the process and restart it to get a slightly different composition?

MR. NELSON: Oh, definitely we would stop and start the process. Because if we were to break into the process and just modify a certain amount, we would be, we would be making material that would be not within our specification. So in that case we would be not, we would be semi-continuous. We would operate the process continuously, but we would break that and segment it to make a different product.

Because otherwise, you do end up impacting the purity and the quality with a contaminating molecule. And that's something that we will not do.

COMMISSIONER PEARSON: Okay. And I've kind of discussed this from both sides now, so let me go back. Because if I understand correctly, on this record, we have some plants in the United States that are considered a batch process, and some that are considered continuous production processes.

If TFM's fits into one of those two categories, which is it?

MR. NELSON: I would say it's more continuous than batch, but we have the capability of

running batch.

COMMISSIONER PEARSON: Okay.

MR. NELSON: It's most efficient and provides the highest purity when we run in a continuous mode.

COMMISSIONER PEARSON: Okay, thank you. Can the same level of brightness be achieved with a smaller amount of active ingredient if the OBA is of higher purity?

MR. NELSON: Absolutely.

COMMISSIONER PEARSON: Okay. So we're not talking about, we're talking about the actual amount of active ingredient needs to be less.

MR. NELSON: Yes. Because if you have impure material, you will have side reactions that don't contribute, and actually are deleterious to the brightness. And those products are quite well know. They typically are the dihydroxy versions of what we saw this morning.

COMMISSIONER PEARSON: Okay. So we have evidence on the record that there may be over-selling of TFM's product in the United States. And if that's the case, could that be due in part to the fact that the purchaser is achieving more brightness for this smaller level of active ingredient? Thus, for a pound

of active ingredient -- if the paper mill buys active ingredient from a lower-purity source versus from a higher-purity source, on a per-pound basis of total compound, he should be paying more for yours rather than for the other one. Is that correct?

MR. NELSON: I would think so. It may not be significant, because we may, we may have in fact built the business based on a very high-value need that they have, and then they may be using our product in one of their more commodity-based products. And more power to them if they can do that. I mean that's smart business, if they figured that out.

I'm going back to a question I think I might not have answered. You were starting to -- I apologize if I skipped over it. You were asking about a kinetic versus a thermodynamic, and so I'm stuck in that.

COMMISSIONER PEARSON: Well, you had used those terms to kind of explain some of the complexity of producing OBA that met specific customer requirements.

MR. NELSON: That's why I'm hesitating here, because I suddenly realized that I had just totally blown off one of your questions here.

Well, I talk about kinetic versus

thermodynamic. I'll give you an example. Okay, it's coming up on Easter. You've got a bunch of grandkids or kids, and they want to dye Easter eggs. So you're going to put eggs, hard-boiled eggs in water, and you're going to add some colored dye to it.

And you're getting ready to do that, and the aunt or uncle comes in and says geez, eggs have got all kinds of nasty bugs on there; you ought to put some bleach in there to kill any salmonella on the surface of the egg. So they add some bleach.

Suddenly the color is all gone. The egg is not brightened at all, or not got any color. What has happened there is, that's a kinetic reaction. The dye and the bleach are both in solution. They find each other very quickly, as opposed to the dye finding the egg, which is out of solution very slowly.

So that's an example of kinetic reaction. It happens very quickly. Whereas if the dye is there for a long period of time, it has a chance to find the egg and dye the egg.

So when you're, when you're making paper and using this type of process technology, you use this to your advantage. Because a lot of times you can achieve, by kinetic control of the reaction, what you cannot by the thermodynamic control of the reaction.

And there's wonderful examples of that in the chemical literature, where people have done what you're not supposed to be able to do by thermodynamics.

And that's part of the fun job I have, when I go and I deal with engineers who are always trained to deal with thermodynamics. I've never run into an engineer yet who has understood kinetics, and you have to explain to them how to do this.

So anyway, I apologize for ignoring your question there and moving on so quickly. I'm glad I came back to it.

COMMISSIONER PEARSON: Not a problem. This is more of a discussion of chemical reactions that I've been involved in for a while. I at least have some familiarity with the terminology, but it's from a long time ago.

MR. NELSON: I apologize for the Easter egg thing, but it just came to mind as to how to explain that.

COMMISSIONER PEARSON: More specific question. In Boston or parts of the country where the eggs often are brown, is that because they haven't yet been treated with stilbenic optical brighteners?

(Laughter.)

MR. NELSON: No, I think that's because, I

think the chickens are fed a lot of calcium carbonate and light dyes to make the eggs white. I think they're naturally brown.

COMMISSIONER PEARSON: Okay.

MR. NELSON: You do have a lot of fun with optical brighteners around Halloween, though.

COMMISSIONER PEARSON: You have some familiarity with the domestic industry's production facilities. What would be required for domestic firms to produce higher-purity CBA? And if any of this is knowledge that you're not supposed to reveal in public because of whatever agreements you might have with a former employer, by all means, don't say something you shouldn't. But you can see the question I'm asking.

MR. NELSON: No, I see that. And I would, actually I argued within my previous company that they should do certain things that would make their process a lot more effective.

The thing that TFM does that's most effective is our, our precise control of the reaction conditions. You heard this morning, it was talked about how it's important to control the temperature when you're working with cyanuric chloride, because you get a lot of side reactions. And that's in fact very true.

How you do that cooling, and how you make sure that the entire reaction mass is always at the right temperature, and that you don't have places where there's isolated thermal excursions occurring, really gives you the control that you need.

And that's one thing that TFM does, is that we have very precise control throughout the entire reaction mass as to how to keep that temperature under control. I'm not giving away anything that's rocket science there; it's pretty simple to figure out. If you need to control temperature specifically, you do it by having plenty of capacity and efficient heat transfer away from the reaction, so you control that.

You also can take care of things by controlling your dilution ratio. There are many things that the domestic industry could do quite easily to match TFM's capabilities.

COMMISSIONER PEARSON: Okay, I'm over time. But quickly on that point, if they were to run their plants at a lower capacity, a lower through-put rate, would they be able to achieve some of this? Or would they --

MR. NELSON: Absolutely. As a process chemist, that would be one way to do it.

COMMISSIONER PEARSON: And another way would

be to make additional investments in capital equipment?

COMMISSIONER PEARSON: Capital investments would also do it. Changing the way you do the reaction is also possible. There's other things that you can do there.

COMMISSIONER PEARSON: Okay, thank you very much.

CHAIRMAN OKUN: Commissioner Aranoff.

COMMISSIONER ARANOFF: Thank you, Madame Chairman. Thank you, Dr. Nelson, for being here this afternoon.

MR. NELSON: I go by Randy in the West Coast. Nobody uses Doctor.

COMMISSIONER ARANOFF: Most of the time I got by "Mom." Anyway, you've talked a lot to us today about how TFM is marketing its product as a specialty or a better product.

When the Commission collected quarterly pricing data in our questionnaires, we asked for data for a specific product; it was the 220 Tetra product. And we did it in bulk and non-bulk. So that was the two products that we collected data on.

And both the domestic industry and TFM reported meaningful volumes of that product; I can't

characterize, it's confidential, how much of the total that represented.

And so my question to you is, how is that, I mean that, I'm told, is the basic product, the workhorse product. How is that consistent with your argument that mainly you're in the U.S. market marketing something specialized?

MR. NELSON: That's a fair question, and let me try to answer that. For lack of a better explanation, I would say that the brightener 220 is kind of like the 737 of optical brighteners: Everybody flies it. That's how you get from point A to point B. You don't have a whole lot of first class or business class on it. Southwest flies it, everybody is coach.

If you're in business you have to have a bread-and-butter product, and that's basically the bread-and-butter product. The specialties are the disulfos and the hexas.

But in order to be in the market, you need to have one of the main things that people are asking for. I mean, if I go into company A and they say well, I really need your hexa for this application, and by the way, I also buy a boatload of the tetra, can you help me there. I need to have that.

And so if I just had only the specialties, I wouldn't have much business. But our approach to selling is a specialty approach; it's not a commodity approach. That's the difference.

COMMISSIONER ARANOFF: Okay. I mean, that sort of leads me into my next question, which is you've told us that you sell a better product at a higher price, and that your customers tell you that your prices are higher. We have pricing data that we've collected in this case, and it has a number of ambiguities associated with it.

I would say that based on the current state of the pricing data, it doesn't really support the argument that TFM is offering a consistently higher-priced product. Is there anything that you can do -- and this may be a question for counsel, who has access to the confidential record -- to show us what, in the data that we've collected, would support your impression of the market that you're selling at a higher price?

MR. NELSON: I'd be very happy to look at that data. But unfortunately, I have not seen that data. All I get are the complaints from customers that we're higher in price. So I do not see what you see. And so, on the basis of what I hear is why I say

what I do.

COMMISSIONER ARANOFF: Okay. There is obviously a debate that's been going on here about what it means to provide superior service to customers. And I asked this morning Clariant's witnesses to describe the kinds of services that they provide. You have described the kinds of services they provide.

I'm obviously not a chemist, but I'm not sure that I'm expert enough to see the difference between what they were telling me, and what you were telling me. And I'm trying to figure out what question I could ask you, or what I could ask you to put on the record, that I and my colleagues would find persuasive of your argument that you're providing a kind of service, or a degree of service, that can't be or isn't being supplied by other domestic producers.

I don't know if you have a suggestion. The only thing I was thinking, and I don't know if this is possible, is if you have, you know, customers who would be willing to tell us that, in an affidavit or something, that they tried to get this service from somebody else and couldn't.

MR. NELSON: I've got a couple people in mind. I don't know that they would have tried to get

the service from anyone else, because they knew that we could fix the problem, and they called us first.

So they didn't spend the time butting their head against the wall to get nowhere; they called us. And we fixed the problem. So I'm trying to figure out how I could prove, short of calling them up and saying could you go goof around for about six months with someone else to figure out how to fix this, and then give me a call and I'll come in and fix it.

They're not going to do that. If they know that you can do the work, they're going to call you first.

COMMISSIONER ARANOFF: Okay. Yes, I understand that. You know, we're in a position here where we've got people with eminent chemistry credentials on both sides of the case, both telling us something, and we're going to have to make a credibility determination. That's my job, and I'm willing to do it.

But if I don't have to do it just on who seems more believable to me today, and I can do it based on something else, that I think would be the preferable approach.

MR. NELSON: I mean, the argument that there's only four of us in the U.S., we have to be

very good. I mean, we are small, we are effective; we also have good resources back in Taiwan. We have a very good laboratory; they turn around information for us very quickly. And what's even more important is they do what I ask.

Because rather than just generating some data that may or may not be useful, they will do what I ask to see if I can see something. So it's not cookie cutter-type chemistry that we do, hand-sheet studies or things like that. We oftentimes end up doing fairly challenging technical analyses.

We do this on the paper-making side, too. I've got four or five e-mails that I'm supposed to be responding to where we are looking at some of the peripheral effects of brightness issues, and how to resolve that so our product works better.

But if we need to get you affidavits from some people, I've got several suggestions in mind that I would be happy to talk to them, and ask them.

COMMISSIONER ARANOFF: Okay. No, I appreciate that, and I think you can see the situation that we're in. So whatever you can think of to help us out on the record I think would be appreciated.

You have submitted some test results concerning purity levels with your brief. And I don't

know if that's the same as Table 1 that you gave us today, or if it's something different.

MR. NELSON: It's Table 1.

COMMISSIONER ARANOFF: Okay. And in Clariant's prehearing brief they critiqued these test results on purity levels, and said that the purity level can be affected by the age of the product, and that some of the samples were terribly old. And I just wanted to give you an opportunity to respond to that critique.

MR. NELSON: Thank you for the opportunity, because if your product is impure, your shelf life is much shorter. If your product is pure, it's very stable over a longer period of time.

All these samples were well within that one-year period, though. I have no question that my --

COMMISSIONER ARANOFF: Was that one year since they were produced, or one year since the customer gave them to you?

MR. NELSON: The customer that would be using would be going through, you know, a tank truck or so every week or two. So that's time of production versus time of us obtaining the samples is pretty much the same number, within the definition of a year period of time. The differential would be small

relative to the year period of time.

COMMISSIONER ARANOFF: Okay, so my time is almost up, so I'm going to stop there and come back in the next round. Thank you.

CHAIRMAN OKUN: Commissioner Johanson.

COMMISSIONER JOHANSON: Thank you, Chairman Okun. I have no further questions, but I'd like to thank Mr. Nelson for appearing here today. Thanks.

MR. NELSON: You're quite welcome. Thank you.

CHAIRMAN OKUN: I wonder, Mr. Nelson, if you could talk about demand for the product here, and then demand in Asia and abroad. And what trends you have observed over this period, as well as what trends you see in the future.

MR. NELSON: To be honest, I'm probably not the right person to do that. Mostly in the past nine months I've been wearing a hat that says "technical" on it, so I would have to, I'd probably defer that to Mark.

CHAIRMAN OKUN: Okay. So Mr. Koenig, just for a post-hearing. We've collected information in the staff report, but if there's anything else you would want to add there, I'd appreciate that.

And then also, and I don't know, Mr. Nelson,

could you come at, one of the questions I'd asked the panel this morning is whether they have seen an impact from imports of finished paper product, either on demand in the U.S. market or with respect to impact on price.

MR. NELSON: I know that there is substantial paper coming on shore. But I also know that two of our customers that are among my favorites, simply because I've known these people for 25 years, are selling substantial amounts of their paper overseas. They are actually shipping off shore, and being very effective at that right now. That I find very interesting, and very pleased. Because, as was pointed out this morning, the Northwest, which is where this is logically occurring, is one of the smaller markets. So that is good for our local industry in the Northwest.

CHAIRMAN OKUN: Okay. If you have any further information, or if there is anything available, that would be great to have for post-hearing, as well.

And then I guess, Mr. Koenig, best directed to you for post-hearing. There's obviously been a lot of discussion this morning, as well as in the briefs, about the pricing data, and the adjustments the

Petitioner has urged either on the FOB data or on a delivered-price basis. And if you could look at that again in the post-hearing with regard to the questions that were asked today, and put in your best case on the pricing data.

MR. KOENIG: Okay, will do.

CHAIRMAN OKUN: Okay. And then again, and I know you've done some of this, and Mr. Nelson doesn't have the data in front of him. But one of the things, as you know, that we've cited in the preliminary was the, as evidence of competition and price competition in this market was their lost sales and lost revenue allegations. And to the extent that there is any additional information that's been gathered that you think would be helpful in your argument, if you would address that post-hearing, as well.

MR. KOENIG: Okay.

CHAIRMAN OKUN: I think with that, I believe my questions have been either covered, or I think they have been covered, so thank you very much for all your responses. I very much appreciate them. Vice Chairman Williamson?

VICE CHAIRMAN WILLIAMSON: Thank you, Madam Chairman. I'm about to do something that I'm afraid may foolish given someone who's only had a high school

chemistry. I never before in a hearing had to look up so many terms during the hearing on Google, things like HBL purity and stuff like that.

MR. NELSON: Please ask.

VICE CHAIRMAN WILLIAMSON: But I guess my question is you've talked a lot about purity. The Petitioners this morning talked all about concentration, the 23 percent, and so I was wondering when you talk about purity, if it's 85 percent pure, and Petitioners say that's sufficient, what is the other 15 percent? Is it inert material, other items?

MR. NELSON: No. No, definitely not inert materials. If we had the triazine structures up there, instead of having the amino, the diethanol amino function that was mentioned as one of the reactants, if you replace that with a hydroxyl group, a monohydroxyl group from water hydrolysis instead of the mean reaction, that product is about neutral in effectiveness in terms of generating a fluorescence, and if you have two hydroxyls on both molecules, it's actually negative.

If you had a reaction failure with adding one of the amines like analine or sulfanilic acid, that actually behaves as a red dye, and the color is basically the same as your desk there, so while you

may be adding 85 percent of optical brightener, but you're adding at the same time three to four percent of dulling red dye.

VICE CHAIRMAN WILLIAMSON: Okay. So four percent is your molecules that are not the ones --

MR. NELSON: No, no. When I say the molecules are deleterious, they actually have either a neutral effect, or they actually degrade the brightness or shift the shade to a color that you don't want, and that's a double-edged sword. Not only is it changing the color of what you want, but you have to add dyes back to get it to where you want it to be, which further degrades the brightness, so purity is absolutely very important in making high brightness, and the byproducts that are formed are just not neutral inert byproducts. They contribute quite negatively to the performance.

VICE CHAIRMAN WILLIAMSON: And so depending on what those molecules are, a product that's 85-percent impure may work, but in other circumstances, the molecules are different. A product that's 85-percent impure may not work?

MR. NELSON: Absolutely, especially as you start getting into a more challenging application. It may work fine at 88, 89, 90, 92 brightness. 96, 98,

99, let's start adding some recycled paper where it may have news print in there. You start separating the men from the boys pretty quick.

VICE CHAIRMAN WILLIAMSON: Okay.

MR. NELSON: It really makes a big difference.

VICE CHAIRMAN WILLIAMSON: Now, are these things that can be verified by chemical analysis?

MR. NELSON: They have been. That's what I was referring to. That's known chemistry. I don't have that report obviously. Since I left CIBA, I don't have access to it, but I was intimately involved in some of that work, and I remember seeing the structures, and if you've done organic chemistry for 35, 40 years, certain things stick with you when you see it, and it catches your interest. I know what they are.

VICE CHAIRMAN WILLIAMSON: So do paper manufacturers in their specifications say that certain tests or certain assay have to --

MR. NELSON: No. Paper makers, that's a very low technical area, and in fact, that's why it's important for the supplier to be very on top of their performance game because the suppliers more and more and more rely on the supplier to tell them what's

right, and if I go in and I were to try to supply something that was 85- or 95-percent pure, and some of my customers are trying to make something at 99 brightness that was 100 percent recycle with color lock, it's not going to work, or if it does work, the cost is going to be so high that they can't afford to do it.

VICE CHAIRMAN WILLIAMSON: Okay. And if they have a problem, would they come back to the supplier and says --

MR. NELSON: I'd hear about it very quickly.

VICE CHAIRMAN WILLIAMSON: Okay. Because it's just hard for us to get a handle on this thing given that we don't have anything on the record that goes into it.

MR. NELSON: I understand.

VICE CHAIRMAN WILLIAMSON: Okay. Thank you for that. Actually, it's a clear explanation, yes. I'm sorry. I think we've already asked that you discuss this question on delivery price and adjustments that should made to the data to take into account warehousing, your let-down costs. I assume you're going to do that all post hearing?

MR. KOENIG: Yes.

VICE CHAIRMAN WILLIAMSON: Okay.

MR. NELSON: We call it make done.

VICE CHAIRMAN WILLIAMSON: Okay. Excuse me. Okay. There's also, and this probably has to be done post-hearing, too, Petitioner's claim there's evidence of price depression when we look at Table 4-3, which breaks out shipments by the three categories of products, and this table shows AUVs for the domestic producers your shipments. Can we AUVs as a proxy for price and when we're looking at the imports, and are there product mix issues that we should take into account? You can address that post-hearing, too.

MR. KOENIG: Yes.

VICE CHAIRMAN WILLIAMSON: Can you explain post hearing if need be the capacity and capacity utilization data in Table 7-3?

MR. KOENIG: Okay.

VICE CHAIRMAN WILLIAMSON: I'm not sure if anyone's asked about the trend for long-term to short-term contracts and if you agree with what we heard this morning about that trend. I don't know. It's something that may have to be discussed post hearing too if there's anything differences?

MR. NELSON: Yes, I would say so.

VICE CHAIRMAN WILLIAMSON: Good. Given the size of the Chinese industry even based on our

questionnaire responses, how likely is TF to make significant in roads into the Chinese market? Again, that may have to be address post hearing, too.

MR. KOENIG: Yes, we can do that post hearing, though there is now a free-trade agreement between China and Taiwan where Taiwan can ship duty free into China, which just happened, so which is believed to create big opportunities for TFM.

VICE CHAIRMAN WILLIAMSON: Okay. Even given the size and number of producers in China?

MR. KOENIG: Well, TFM too, you can tell they approach the market a little differently, so as developing a market for what they do.

VICE CHAIRMAN WILLIAMSON: Okay. Good. Thank you, and just one last question --

MR. NELSON: As an example of that I just mentioned to Peter --

VICE CHAIRMAN WILLIAMSON: Sure.

MR. NELSON: I actually made a trip to China to go to APP, which is the largest paper maker in China because of technical competence of TFM, so I had to go there to offer some suggestions as to how things could work better. It was a very interesting operation.

VICE CHAIRMAN WILLIAMSON: Okay. Thank you.

Let's see. TF research that demand in third country markets is increasing significantly, and I was wondering anything you can provide either now or post hearing to support this, and are there industry analysts that track the market globally?

MR. KOENIG: Okay. We'll do that in the post hearing, and maybe Mark can give a report on what he's doing in Europe right now today.

VICE CHAIRMAN WILLIAMSON: Okay. Okay. I think with that, all my questions have been answered. Thank you very much.

MR. KOENIG: Yes.

CHAIRMAN OKUN: Commissioner Pearson?

COMMISSIONER PEARSON: Thank you, Madam Chairman. I believe that the Chairman asked earlier about how you see demand conditions in the U.S. marketplace, and you may be responding to that post hearing, but along with that, what I'd like to do is direct you for a moment, if you have it, to page 17 of Petitioners' presentation from this morning, which included a number of charts?

The chart on the left-hand side of page 17 shows apparent U.S. consumption index so that it takes out the specific information that would be business confidential, and what it shows is that starting from

the base point in 2009 that consumption went up by my eyeballing it somewhat more than 10 percent in 2010, which seems to me reasonable coming out of the recession, and then it came down by something in the neighborhood of 10 percent in 2011.

The Petitioners were not able to provide a lot of information about what might have caused the downturn, but they seem to be comfortable with the numbers because they took out of the staff other numbers and made this indexed chart. Now, you may or may not have an idea on your own of whether there are factors that have been leading to a decrease in consumption in the United States. If you do, I'd be glad to hear it, and if not, you might raise this question with your colleagues at TFM who may have additional perspectives.

MR. NELSON: I'll do both. I'll raise it with our colleagues, but I see actually the consumption increasing, and I think this may be more of a reflection of when they were sampling the data and what individuals mills may have been shutting down or maintenance, but I see the market growing. I mean, there's more demand for color lock. There's more demand for a higher-coated paper, and there's more demand for higher brightness, so that militates

against this type of shaped curve.

COMMISSIONER PEARSON: Okay. And we haven't seen other factors, mills going out of business and more paper being imported from other countries, that sort of thing?

MR. NELSON: Yes, we've seen several mills go out of business. I lot several mills where I've had a lot friends out on the West Coast. The West Coast has been severely impacted in the recent past year by two major closures, so that might be reflected here, but the overall trend, I think the trend is going to be up.

COMMISSIONER PEARSON: Okay. So if we have indeed seen a dip, it's most likely short term?

MR. NELSON: I think it would be --

COMMISSIONER PEARSON: Perhaps firms that didn't quite make it through the recession and now coming out of that, the demand prospects are decent?

MR. NELSON: Right. And there are people that are working to start up mills, too. One of the mills that went down is in the process of trying to start up, so it may end up being noise in the overall trend.

COMMISSIONER PEARSON: Is it possible that we could see some decline in consumption due to a

shift to using a smaller quantity of higher purity OBA? You haven't sold enough of it yet to influence the market that way?

MR. NELSON: I'd be hard pressed to give you anything statistically meaningful on that.

COMMISSIONER PEARSON: Okay. I think you have discussed this already, but if you could comment on whether some purchasers are more interested in a high-purity OBA than others? I mean, are there some purchasers who have facilities that just are making a product where they fundamentally don't benefit much from higher-purity OBA and so that there's an ongoing demand for a commodity-grade OBA, if that's the right term?

MR. NELSON: Absolutely, and we typically are not as successful at those places. We're more successful at mills that are having a higher requirement in demand initially, and when we are successful with those type of companies which are making more of the bread-and-butter-, the 737-type product, it's only because we've established ourselves as capable of doing something at the higher end or come in and solve the technical problem that they had, and we're rewarded with the bread-and-butter-type business.

COMMISSIONER PEARSON: Okay. And when you are rewarded with the bread-and-butter-type business, the 220 Series, are you providing that product in a high-purity form?

MR. NELSON: Absolutely, all our product is always the same purity. We don't sell a different-grade product.

COMMISSIONER PEARSON: Okay.

MR. NELSON: I have one mill, they only buy maybe one truck every other month now, and it's the same quality product as before.

COMMISSIONER PEARSON: Okay. And then some mills, depending on the product they're making and how they're configured, they may or may not see an efficiency improvement from using the high purity?

MR. NELSON: Absolutely, yes.

COMMISSIONER PEARSON: But regardless, that's what you're selling them?

MR. NELSON: Exactly, yes. I mean, they're basically throwing away the purity, but we don't make anything different. Everything we make is the same. How they choose to use it is up to them. I mean, we don't have different scales of purities to pick and choose from.

COMMISSIONER PEARSON: Right. Okay. And is

TFM able to get a somewhat higher price than for those higher-value uses relative to the commodity uses?

MR. NELSON: We sure try to. We try to, and that's our goal. Otherwise, you have to pay for guys like me.

COMMISSIONER PEARSON: So could that explain some of the price confusion that we have on this record whether there's some evidence of overselling, and then some at least anecdotal information regarding lost sales and revenues due to competitively-priced product?

MR. NELSON: I'm sure there is. I'm sure there is. I mean, just looking at the numbers, I mean, there's about 14 different variables that you've got to try to parse out in that. I think it's a very difficult job. I'm glad you guys are doing it and not me.

COMMISSIONER PEARSON: Most days we're glad we get to do it, and then there's the odd day when we wish we were doing something else.

MR. NELSON: I'll bring you out to one of my paper mills when they have 14 things going wrong and making 600 tons per day of nothing but junk.

COMMISSIONER PEARSON: Again, going back to your experience working in the domestic industry, do

you know whether there are issues relating to whether OBA are produced with purchased DAS versus DAS manufactured in house that might influence the cost effectiveness of the OBA that's produced in those facilities, so I'm really not talking about the source of DAS. Is there an inherent advantage to producing it on site versus purchasing it?

MR. NELSON: When I was with CIBA, CIBA had a very intriguing process that they had for making their own diamino stilbene, and I don't know whether that's still currently in operation, but at that time, because of the way the patent was written, it appeared to me that it was a superior process, and in fact, that was one of the reasons that I thought for the longest time that CIBA had the best optical brightener, especially the standard 220 was because of the patented process that we had for making diamino stilbene and whether that process was shut down and they're purchasing imported DAS, I don't know. I thought that they had closed that operation, but I lost track of that when I left the company, so I don't have any way of knowing whether that's the case now or not, other than hearsay.

COMMISSIONER PEARSON: Okay. But merchant DAS that's available to any purchaser is of a

sufficient grade so that you can make a high-quality OBA with it if you're in your process right, or do you have pretty tight specs on the DAS that you buy?

MR. NELSON: We have extremely stringent requirements on our DAS, and we won't accept DAS from anybody. We've only got one or two suppliers that will supply us the quality that we require.

COMMISSIONER PEARSON: So they're pre-qualified suppliers then?

MR. NELSON: Absolutely. If you look at the structure of diamino stilbene, it's just pregnant with possibilities to have impurities itself because of the diamino functionality that will oxidize to nitrosis and nitrates, which are all colored, and you could easily get byproduct colors that will show up in your final product. There has to be a rigorous standard for DAS, and there is one at our plant.

COMMISSIONER PEARSON: And do you have any knowledge of the standard set for DAS by domestic producers who may be purchasing it from other firms?

MR. NELSON: No. That information is too far back in the late-placed to sink for me to remember.

COMMISSIONER PEARSON: Fair enough. Madam Chairman, running out of time. I do have a couple

more questions, but I'll hold for the next.

MR. NELSON: Commissioner Aranoff?

COMMISSIONER ARANOFF: Mr. Koenig, in the preliminary phase, you argue that imports from Taiwan and China should not be cumulated, but you didn't repeat the argument in your prehearing brief. Are you conceding cumulation at this point, or do you have an argument on that?

MR. KOENIG: We are arguing that TFM is unique in what it provides and how it markets its product, so yes, Taiwan and China should still continue to be treated differently. They're not competing in the same market.

COMMISSIONER ARANOFF: Okay. Mr. Nelson, you had indicated that there can be benefits to using a powdered product directly without having to put it back into solution, and I just wanted to clarify for the record, do you currently have customers in the U.S. who are already doing that, or is that something that you're working toward?

MR. NELSON: Yes to both. We have people doing it. Yes to both. We have people that are presently implementing that process, and we have people that are actually doing that, so yes.

COMMISSIONER ARANOFF: Okay. If, for post

hearing, you could provide us confidentially with some sense of the volume of products that's involved in those kind of applications, that would be helpful.

MR. NELSON: I think that volume is going to be rather noisy and understated because that's a fairly recent development. That would qualify under a fairly recent innovation, so the information you may get from that in terms of volume may be very misleading.

COMMISSIONER ARANOFF: Okay. Well, if you're going to share the identities of the customers and tell us that they're big and the prospects are big, I'll take that, too.

MR. NELSON: Okay.

COMMISSIONER ARANOFF: Thanks.

MR. NELSON: I'm just giving you a warning that it may be understated because it's a fairly new development.

COMMISSIONER ARANOFF: I understand. I understand. Okay. Thank you. The Petitioners provided in their brief, and they showed us in their slides this morning some excerpts from industry publications that refer to low prices offered by Asian suppliers being an important influence in the market, and I wanted to give you the opportunity to comment on

how the Commission should consider that evidence.

MR. NELSON: My sense is that we become strange bedfellows with the Petitioner because the low prices bother us as much because we have to look over our shoulders with some of these guys coming in trying to buy some business and telling people that well, our still is as good, but it's a lot cheaper. We faced that several times, and in fact, just last week that happened with a Chinese manufacturer showing up and offering a low price against us.

COMMISSIONER ARANOFF: Okay. We had some conversations with Clariant this morning about whether paper mills use multiple sources and their impression of the market was that an individual mill typically would have one supplier. Is that also your impression in the U.S. market?

MR. NELSON: By and large, I'd say yes it is, but there are those cases where people select from a basket of available materials, and for one reason or another, they have an ongoing relationship with either three, BU, BSF or Clariant, and yet our product will do what they can't achieve, and they will buy from the both of us, and I know of a couple of mills that are doing just that right now. That is their choice. I mean, that's how they choose to run their business.

We would be happier to obviously have all that business, but we can't really dictate.

COMMISSIONER ARANOFF: Yes, and from what I can tell, and you can correct me if I'm wrong, having multiple sources is not that prevalent in the U.S. market right now. I'm wondering how that's consistent with the argument that past shortages have left U.S. paper companies wary and interested in having more options for a secure supply, and if that were really a concern, wouldn't everybody have two sources, one of which was maybe not in the U.S. or maybe two domestic sources, but in other words, not be single sourcing?

MR. NELSON: That's an interesting question, and I honestly don't know. I would have thought that people would want two sources. However, if you've done an effective job of convincing the customer that you have deep resources, they may be willing to go with that, particularly if there's a sense that you will supply them. I guess I'm on the wrong the side of the fence to answer that. I'd have to be on the paper-making side.

COMMISSIONER ARANOFF: Okay. Well, I think that's all the question that I have, but I do want to thank you very much for your testimony this afternoon. Thank you, Madam Chairman.

CHAIRMAN OKUN: Commissioner Pearson.

COMMISSIONER PEARSON: Thank you, Madam Chairman. Was I correct to understand from your earlier comments that you have a technical support staff of four people at TFM in the United States?

MR. NELSON: Yes.

COMMISSIONER PEARSON: Are all of them chemists?

MR. NELSON: Two of them are engineers. Three of them engineers, and two of them are chemists.

COMMISSIONER PEARSON: Chemical engineers, I assume?

MR. NELSON: Yes, ChemEs. Yes.

COMMISSIONER PEARSON: Yes, yes. Okay.

MR. NELSON: The support staff are all technical.

COMMISSIONER PEARSON: Okay. So they can all speak to each other and to the customers?

MR. NELSON: Yes. Some of them speak better engineering than chemistry, and some of us don't speak as good to engineering as we speak chemistry.

COMMISSIONER PEARSON: Okay.

MR. KOENIG: TFM only produces this product, so if you look at the support staff of a big chemical company that does a lot of chemicals, well obviously

it's going to be a little different.

MR. NELSON: Yes.

COMMISSIONER PEARSON: Do you have an understanding or an agreement with customers about how quickly you'll be able to provide technical assistance if it's needed?

MR. NELSON: I've never been able to not respond, so I'm thinking about how to answer your question. I know the customers that we have well enough that if there's a problem, I can usually get a piece of it pretty quick, and I can usually be at a place within a couple of days if I have to be, and I've had to be, but I've never been able to say no, I can't help you.

COMMISSIONER PEARSON: Okay. Well, part of the reason for asking the question is that obviously the conclusion has been that TFM needs more than just you to do this because there's a staff that works with you.

MR. NELSON: Right. The account managers are all technical, and that's what's really nice is that they can behave as essentially first responders, if it's more serious an issue, I get involved pretty quick, and I can be on the phone very quickly, and if I have to, I travel, but there's a difference between

just throwing airlines tickets at a problem. I don't fly somewhere if it's something that we can fix easily, and we try to manage our business in that way.

COMMISSIONER PEARSON: But in the hypothetical situation in which you have a customer in Wisconsin who all of a sudden does have a legitimate issue, you or someone else is prepared to get on a place fairly quickly and fly from --

MR. NELSON: Wisconsin, I know that I can fly Alaska, connect in Minneapolis and get into central Wisconsin. I can come through Chicago on United and Continental. I know those flights very well.

COMMISSIONER PEARSON: Okay. You probably prefer to Minneapolis to O'Hare I would guess.

MR. NELSON: Yes, I usually get stuck in snow storms. That's what happened two weeks ago.

COMMISSIONER PEARSON: My experience has been that Minneapolis is better at handling snow storms than O'Hare is.

MR. NELSON: Yes.

COMMISSIONER PEARSON: How long is the shelf life of OBA in solution?

MR. NELSON: It depends if you make it down, with what kind of water you use because if your water

is city water that's not been treated and demineralized, you will have problems a lot quicker than you might imagine it. If you have water that's been thoroughly sterilized and has a bit of biocide and no metals, no iron, no copper from bad solder joints and poor feed systems, you could have quite a remarkable stability, particularly with a high-purity product. If you have mill water that's being used to make something done that could have sulfur-reducing bacteria, and it's not been treated, you can very quickly have a problem within a month, within two or three weeks, so it's very dependent, and for that reason, when we have maked-on equipment in that process, we have quite stringent requirements. The nice thing about having a spray-dried material and one of the benefits that comes from that is that your product is sterilized, and so you don't have the issue the biocide requirements as quickly as you would with any material that's made not purified through an evaporative and drying process, so that's a pretty significant advantage for mills. Biocide costs them quite a bit, and that's one of the secondary and third order of benefits that comes from using pod or product.

COMMISSIONER PEARSON: Does biocide also

have the potential to influence the performance characteristics of the optical brightener?

MR. NELSON: Absolutely. It depends on which one you use. If you've got a mill that's using chlorine dioxide as their biocide, you're going to have quite an impact on your optical brightener. If you have a hypobromous-based one, you can also have that. If you have one that's based on ammonium chloramine, you can have very little impact on the OBA, so that's where knowing the chemistry of all of those will make a very big difference, also knowing the characteristics of the water that's being used because if you have, for example, high iron, bacteria in order to grow need iron, so you need to take care of that, and one way to do that is to chelate the iron so it's not available. It's very complicated. What sounds simple, is actually quite complicated, but by having a high-purity material, you've done a lot of things that are in the right direction of giving yourself longevity with the product.

COMMISSIONER PEARSON: Okay. So excepting all those potential elements of uncertainty, if you were aware of a manufacturer doing a good job putting together a solution product, would you think that it might be okay to use it for a period of six months?

MR. NELSON: Absolute.

COMMISSIONER PEARSON: Okay. And it can go longer than that?

MR. NELSON: I've actually used material that's like about a year and a half old. No problem.

COMMISSIONER PEARSON: And the powdered form from what you're saying probably could last longer than that?

MR. NELSON: Quite stable. Quite stable.

COMMISSIONER PEARSON: Not that one would not to store it because I assume you'd prefer to use, but at least it would be shelf-stable for a considerable period?

MR. NELSON: Yes, I mean, in the case where say someone had bought something and not used it for a period of time. It doesn't make sense to buy a whole bunch in inventory. Nobody does that these days, but if you had a super sack, I'd have no problems about using it.

COMMISSIONER PEARSON: And is hygroscopic?

MR. NELSON: Not the way it's packaged.

COMMISSIONER PEARSON: It's not going to cake up?

MR. NELSON: It will absorb water if it's left just out and open, but the way that we ship it is

obviously in a water-proof container so that it doesn't absorb any water. When you ship on the ocean, you have to take precautions and make sure things don't get damp, and that's one of the things that we do, and so that solves a lot of our problems with air permeation into the super sack and moisture as well, so typically we don't find our material caking much. If we do, it's usually at the bottom or where air or moisture could have gotten in.

COMMISSIONER PEARSON: Okay. And then if there is a problem with microbial contamination, is it possible to rework that material, or what happens to it?

MR. NELSON: I've never seen a microbial issue with a potter in terms of --

COMMISSIONER PEARSON: No, back to solution. Sorry.

MR. NELSON: You can. You need to know what the nature of the microbiological activity is. We had that issue at CIBA a few times, and we were able to recover and reuse the product. I prefer not to. It's better to prevent those problems than to fix them afterwards.

COMMISSIONER PEARSON: Okay. Well, I thank you very much for this conversation. It's been very

interesting, and I've enjoyed the afternoon, and I've probably about exhausted my colleagues patience, so I'll conclude now. Thank you very much.

CHAIRMAN OKUN: Let me turn to Commission staff to see if they have questions of this panel.

MS. TRAINOR: Cynthia Trainor, Office of Investigations. I'd like to thank the panel for their testimony this afternoon, and the staff has no questions.

CHAIRMAN OKUN: Thank you. Do those in support of imposition of the order have questions for this panel? No questions for this panel. All right. Well, before we turn to our last witness today, I'd like to take the opportunity to thank you very much. Again, Mr. Nelson, thank you for traveling to be with us, and we appreciate all your answers this afternoon and look forward to the post hearing submission.

MR. NELSON: You're welcome. Thank you so much.

CHAIRMAN OKUN: Thank you.

MR. BISHOP: Would our final panel of other parties please come forward and be seated. Madam Chairman, all witnesses have been sworn.

CHAIRMAN OKUN: Good afternoon. Welcome. You may proceed.

MR. GOLDBERG: Madam Chairman and Commissioners, I'm Steven Goldberg. I'm Vice President and Associate General Counsel for Regulatory Law and Government Affairs at BSF Corporation, a domestic manufacturer of the subject merchandise, and we are pleased to present today the testimony of Ted Kelly, Vice President of Wet End Paper Chemicals for BASF corporation to discuss the issue and to inform the Commission on the issue of material injury or threat of injury to the domestic industry form subject imports.

MR. KELLY: Good afternoon. Can you hear me?

CHAIRMAN OKUN: Is your microphone on? Just pull it closer. That's the easiest.

MR. KELLY: Good afternoon. My name is Ted Kelly. I'm the Vice President of Wet End Paper Chemicals Business with BASF Corporation. I have over 20 years of experience in the paper chemicals business. In my present role, I'm responsible for BASF's entire wet end paper chemicals business in North America, which includes the paper whitener of CSOBAs. As you know, BASF neither supports nor opposes the petition at issue.

I am speaking as a member of the domestic

industry in order to present BASF's views on the impact of imports from Taiwan and China on the domestic industry. As I see it, the outlook for BASF's OBA business is bleak. BASF has lost significant OBA volume to competitors from Taiwan and China simply because those producers are under pricing the market. This information comes directly from our customers who have told us that they dropped BASF because Taiwanese and Chinese CSOBAs are cheaper.

The evidence of BASF's lost sales is contained in the confidential evidence before the Commission, so I won't go into the details here. However, I am here to testify that BASF's CSOBA business has taken a serious hit during the period of investigation. BASF has lost significant sales volume and market share since 2008. Also, BASF's per unit prices have fallen, even as its per unit costs and raw materials costs continue to rise. BASF has lost the ability to pass increases in raw material costs on to its customers because of the underselling of the Taiwanese and Chinese producers.

If imports from Taiwan and China continue to enter the U.S. market at the volumes and prices that we've seen in the past three years, BASF will have great difficulty maintaining its CSOBA production in

the United States. BASF has difficulty competing against unfairly-priced imports from Taiwan and China because competition is based primarily on price. While purchasers may consider other factors such as quality and technical service, BASF and other producers of CSOBAs all meet purchaser's standards in these items. Thus, the only differentiating factor is price.

BASF offers its customers a range of technical services and has never had complaints about the purity of its products. As the confidential evidence before the Commission shows, BASF has lost business based on intense price competition. There are a few trends in the CSOBA market that make BASF and other U.S. producers particularly vulnerable to underselling by foreign competitors.

First, BASF now relies on just a few important customers for the bulk of its OBA sales volumes. The loss of one of they key customers would hurt BASF's bottom line significantly. Second, despite objections from BASF, virtually all of the CSOBA supply contracts contain a mandatory meet or release clause. This means that BASF must meet a lower-priced offer from a competitor or lose the supply.

To remain competitive, BASF has done everything it can to cut costs and improve the efficiency of its production of CSOBAs. In February 2011, BASF announced a restructuring plan at its McIntosh, Alabama, production facility, which will result in the layoff of 250 of the 700 employees at the site within two years. The loss of these jobs is a blow for the community of McIntosh, which is an economically struggling rural town with an unemployment rate that is well above the national average.

BASF has been a major employer in McIntosh for years, and it will be hard on the town to lose so many well-paying jobs. BASF is also cutting costs by restructuring its stilbenics production unit in the McIntosh plant to make it more efficient. BASF needed to take these restructuring measures in order to remain competitive with Taiwanese and Chinese producers, but the prices of imports have continued to drop.

At this point, there's little else that BASF can do to reduce its costs to offer competitive prices. BASF's CSOBA business is at a breaking point. There is a direct link between the injury that BASF has suffered in recent years and the influx of

unfairly priced imports from Taiwan and China. Other factors simply do not explain the deterioration of BASF's CSOBA business.

For example, import volumes from other countries are small and not a significant source of competition. The recession also cannot be blamed. CSOBA demand has fluctuated in recent years, but the fact remains that whether demand is increasing or decreasing, the volume of unfairly priced CSOBAs from Taiwan and China has continued to grow while the market share of U.S. producers continues to fall.

Imports from Taiwan and China pose a serious threat to BASF's future for several reasons. First, the Taiwanese producer is expanding its production capacity. Second, there are a large number of producers with high production capacity and relatively low capacity utilization in China. Third, the Taiwanese and Chinese producers continue to invest in spray-drying capabilities to produce CSOBAs in powder form.

The only reason for adding this extra step of spray drying is to target overseas markets such as the United States. Therefore, the threat from Taiwanese and Chinese producers in the U.S. market will only get worse. Should BASF continue to lose

sales to low-priced imports from Taiwan and China, we will need to consider the extreme step of shutting down the U.S. production of CSOBAs. I'd like to thank you for the opportunity to speak, and we'd be happy to take any questions you have.

CHAIRMAN OKUN: Well, thank you. Before we begin our questions, let me take this opportunity to thank you for your appearance here and for your willingness to testify and to answer our questions, and I will start the questions this afternoon, and I'm not sure if you were able to be here for the panel this morning, but one of the questions that we discussed was whether there was multiple source contracts in this market, whether that's been a change over the period of investigation and also whether the contracts or shorter or longer, if you've experience any change.

I wondered if you could comment on that, of course not touching on any confidential information.

MR. KELLY: Sure. So the question about multiple sourcing contracts, so one company buying from multiple suppliers. Generally, what we see within single paper mills, they will be supplied from a single supplier. The larger-volume suppliers, consumers receive it in bulk, so there's a limited

number of bulk tanks on a paper mill site with which to receive the whitener, so a single mill will usually be supplied from a single whitener supplier. However, the larger corporations with five, six, eight or 10 paper mills using whitener, in order to spread their risk, will usually have a primary supplier, 75, 80 percent of the supply, but will also have a second supplier, so when you talk about the larger corporations, usually there's a second supplier to reduce the risk.

CHAIRMAN OKUN: And when the negotiations are taking place for a contract like that where you might have one large supplier as you described it and then a secondary supplier, how much do you know about the prices? In other words is it price driven who gets the 80 percent and who gets the 20 percent?

MR. KELLY: Absolutely. Absolutely. I didn't address the second part of your first question, which was the length of the contract terms.

CHAIRMAN OKUN: Yes. Thank you.

MR. KELLY: The length of the contract term is really driven by the purchaser. The procurement teams are looking to make the best deal for their companies to save them as much money as possible in the procurement of chemicals, and when they're

forecasting the cost of their raw materials, one of which is the OBAs, if they're forecasting pricing falling in the coming years, they're going to look for shorter contract terms because they want to be free to go out and take advantage of lower prices.

If they think the market's going to get tight and supply is going to be limited or prices are going to go up, they're going to try to look for longer-term contracts from their suppliers. What we have in the market today for the last several years is they've tended to grow shorter. I think a one-year contract for a business under contract is fairly standard.

There aren't too many two-, three-, five-year contracts today, and I think that's a good example. A good reason why is because there's more players coming in offering lower and lower prices, and so they want to remain free to go after these lower prices.

CHAIRMAN OKUN: And just going back to the multiple suppliers to a contract, would it be the case that there would be different products being offered? We're discussing kind of like the 220, I guess, I think our TFM witness referred to it as a bread-and-butter product but that they also have other specialty

products with different purity concentration.

MR. KELLY: Right. Yes.

CHAIRMAN OKUN: Can you comment on that and what role that plays in contract negotiations?

MR. KELLY: Sure. Sure. Sure. There's four basic products in the CSO being the paper whitener market. You've got the tetro, which is the 220. This is the workhorse product. It's the cheapest product, so if a paper maker can make a great specification with tetro, they'll do it with tetra. If they need to go to a higher brightness level, then they'll move to a dysulfo, a modified tetro, which is more soluble or a hexanesulfinated product, so these are the four products, tetra, modified tetra, disulfo and hexanesulfo, and most of the competitors have very similar products in these four molecules.

CHAIRMAN OKUN: And when the contracts are being negotiated, would there be a mix of those products going to one mill, or would that be different?

MR. KELLY: Yes. The paper mills will structure their grades within the different mills. It's usually fairly stable. Unless they're developing a new grade or changing a grade specification, they've got a process or a formula they follow for matching

the shade and the optical properties, the brightness and whiteness of the paper grades, so once that grade is established, they don't change that very often. They know they use, for example, the tetra in the wet end and possibly a tetra in the size press or maybe a hexa in the size press and a disulfo in the west end.

Once this is set, and they've developed the grade, and they've found this the most optimal way to make the grade, they don't change it very often, so when a corporation is holding their request for proposal for the competitors for the next year's brightener business, they'll share the volumes by product that the companies will be bidding on, and so a company could bid on X million pounds of tetra, Y million pounds of disulfo, and Z million pounds of hexa, and this is the information in the RFP.

Now, if we as a supplier think there's a better way, a cheaper way usually, to make the grade specification, in our proposal, we will include that, and it might include a better tinting dye or pigment package to help them use less whitener, or if they're using hexa at the size press, and we think we can make that grade with tetra, which is cheaper, then we help them optimize, and that's fairly common to do that within the industry.

CHAIRMAN OKUN: And to the extent you've had experience with meet or release clauses, if a purchaser was coming back to you with a meet or release clause, would they be doing it for a paper mill or for the entire contract?

MR. KELLY: It depends how the company operates. Some of the companies are organized with a corporate purchasing arm that is quite involved and quite strong within the organization. Other companies, the real decisionmaking is made a the mill level, but if we're the incumbent, and they've got a lower price quote from another supplier, and they're looking to exercise the meet or release, we'll have that discussion. There's a savings on the table that they plan to realize, and we can meet that, or we can walk away from the business, and it could possibly be mill specific or it could be corporate-wide.

CHAIRMAN OKUN: Okay. And could you describe your technical service?

MR. KELLY: Certainly. We have a sales force in the industry that is our primary, our first face with a customer. It's a technical sales force. The role is very technical. These people live where the paper industry is in the United States, and they're servicing the customers there. We also have a

field technical specialist group, and these folks are very deep in their technical capabilities, very experienced, and they'll travel to the mills to support the technical sales force with running trials, with troubleshooting, with developing proposals at paper mills.

We've got a technical team, which is laboratory-based where samples from the field are sent for analysis, where lab work, hand sheet work is done for customers and then sent to the customers for presentation. Our technical support is everything from developing grades with customers to running trials and optimizing on their paper machine to troubleshooting issues that happen on the paper machine.

A whitener is often a good indicator of a problem somewhere else. It could be a starch issue on a paper machine which shows up as a lack of fluorescence. It's the fluorescence that the whitener is giving, so we're their first call, so we'll be involved in troubleshooting, finding what the problem is, what's the solution to the problem.

CHAIRMAN OKUN: Okay. And could you comment on the purity versus concentration of active ingredients and some of the points that were touched

on by our Respondent this afternoon?

MR. KELLY: Yes, certainly, and as I stated earlier that we've never had a complaint about purity, and while I can't argue with the chemistry that Dr. Nelson was sharing, in my experience in the industry, the paper maker is looking to make their specifications in the most efficient or the cheapest way possible, and so what it comes down to is can your products make those specifications, those whiteness and brightness specifications, and if so, how expensive is it?

Our product portfolio enables us to make all of the grades of white paper that are made in the industry, and we've never had an issue with our purity. What it comes down to is the cost per ton of paper, and this is I think where the purity argument has to go. If it requires say 10 pounds per ton of whitener to make a grade of paper, will a more pure product require less, maybe nine pounds per ton to make that grade of paper? Frankly, we haven't seen it.

Our products are able to make the grade of paper. If our customers were able to make the same grade of paper with less whitener from a competitor, we would know about it very quickly because this would

be part of the meet or release. Another competitor is able to make the grade with less volume of whitener. Therefore, it's cheaper. In order to keep this business, you have to reduce your price.

CHAIRMAN OKUN: Okay. My red light's come on, but I thank you for those responses. Vice Chairman Williamson?

VICE CHAIRMAN WILLIAMSON: Thank you, Madam Chairman. I want to thank the panel for coming today. Let's see. Just to finish up on that last line of questioning, so it's a question that you could possibly get the higher purity but are you saying at a significantly higher cost, or is it just that is not needed?

MR. KELLY: Well, yes. What I'm saying is our products work on the paper machine, and if we invested in making a higher purity that didn't result in a better performance on the paper machine, it would be wasted money.

VICE CHAIRMAN WILLIAMSON: Okay.

MR. KELLY: So if there was an issue with our products not working as well as the competitive products, we would need to get back in the lab and find out what's the difference? Why are we getting beaten performance-wise on the paper machine, but what

I'm saying is we're not getting beaten performance-wise. We're getting beaten price-wise.

VICE CHAIRMAN WILLIAMSON: Okay. Now, we talked earlier about specialty producers. Is there a category of specialty producers where maybe there's a different --

MR. KELLY: Yes, I think that there might be a little confusion there. As you know, the tetrasulfo product, the tetra is the 200, this is the workhorse of the industry, 75 percent of the volume used in the industry, I believe, this is tetra. The reason it's the workhorse, it's the cheapest product, so if you can reach the brightness specs with the tetra, that's that one you use because it's the cheapest per ton of paper manufactured.

The disulfo, the modified tetra, the hexasulfo have been traditionally called the specialty whiteners versus the tetra, but most of these have been in the market in existence for 15, 20 years, so you could argue the level of specialty, but that's just, I think, the common terminology between the tetra and the other products, the specialties. Tetra is the workhorse, the others are specialties.

You would only use the others if there was some specific characteristic that the tetra wasn't

giving you. You needed a higher-level of whiteness, for example, that the tetra couldn't give you, so you'd move to a hexa or a disulfo, which would be a specialty.

VICE CHAIRMAN WILLIAMSON: Okay. I think the opinion we've heard from others today is that there was a big increase around 2005 in popularity of the brighter papers.

MR. KELLY: Yes.

VICE CHAIRMAN WILLIAMSON: But that sort of leveled off. Would you agree with that?

MR. KELLY: Yes. What happened in 2004, International Paper, one of the leaders in copy paper manufacturing at the time raised their brightness specification from 88 to 92. This was discussed earlier. Most of the rest of the industry followed. If you look at the brightness specifications in North America, at that point in time, they were significantly less than Europe and Asia and Latin America, so this was bringing the North American brightness standard closer to what we see in Europe, Asia and Latin America. The result was a significant increase in demand in optical brighteners because this is the cheap way to get those extra four points of brightness.

VICE CHAIRMAN WILLIAMSON: Okay. Thank you. Do you feel that your company's ability its own DAS gave it a competitive advantage during the period when DAS from China was in short supply, and does it give it a competitive advantage now?

MR. KELLY: Well, certainly during the 2008 Olympic period when DAS was short, this was an advantage. We were manufacturing our own DAS, so this is a competitive advantage. Whether it is a competitive advantage today or going forward comes down to our cost to manufacturer DAS versus the market price, the merchant market price of DAS, and it's a market we've looked at for years.

We have steel in the ground. We have a commitment to manufacturing DAS, but our analysis of the DAS market is that it is long today. There's plenty of supply, and it's getting longer going forward with expansions and investments in both China and India.

VICE CHAIRMAN WILLIAMSON: Okay. Thank you. You've said the plant now in McIntosh, Alabama, is still producing, and do you expect any changes over the next few years other than what you've said about the outcome of this case? If you want to do it post hearing, that's fine.

MR. KELLY: Yes, I think I said in the statement that our whitener business has reached a critical point, and at the end of the day, it's a for-profit business, so we'll leave it at that.

VICE CHAIRMAN WILLIAMSON: Okay. Can you now or post hearing address whether you have plans to produce CSOBA in China?

MR. KELLY: I'm sorry. Do we plan to manufacture in China?

VICE CHAIRMAN WILLIAMSON: Yes.

MR. KELLY: We do not have plans to build and manufacture in China, no.

VICE CHAIRMAN WILLIAMSON: Okay. Having listened to your testimony, can you now or post hearing sort of explain your position on this petition?

MR. KELLY: Yes, we can. For the preliminary hearing, we submitted a letter, and we can submit again a comment on BASF's position on the petition and why it is not a petitioner in this case.

VICE CHAIRMAN WILLIAMSON: Okay. Thank you. And with that, I have no further questions. I want to thank you for your testimony.

MR. KELLY: Thanks.

CHAIRMAN OKUN: Commissioner Pearson.

COMMISSIONER PEARSON: Thank you, Madam Chairman, and welcome. It's good to have you hear. An additional perspective is always helpful. Following up on the Vice Chairman's question about whether having the capacity to produce DAS provides an advantage, you indicated it does in some circumstances, does BASF have the option of purchasing merchant DAS and using that rather than using product from your own plan? I ask because you indicated that currently the global market for DAS seems to be a bit long, so do you have the ability to respond to those economics?

MR. KELLY: Yes we do. We also have sunk costs, fixed costs, in our DAS facility, and so to purchase on the merchant market leaves that facility idle, and you're still paying for it.

COMMISSIONER PEARSON: Yes, but of course it could have employment implications and --

MR. KELLY: Absolutely.

COMMISSIONER PEARSON: In your experience with the firm, has it ever made that choice to buy DAS on the merchant market rather than produce it?

MR. KELLY: Not on any regular basis because again you'd leave a significant asset completely idle.

COMMISSIONER PEARSON: Right. But at least

hypothetically if you had the DAS facility for a major overhaul, it was going to be down for a month or two or whatever, you would have the capability to --

MR. KELLY: Yes. Yes, we'd continue manufacturing OBA with purchased DAS while the DAS manufacturing facility was down. Yes.

COMMISSIONER PEARSON: Okay. I asked Clariant this morning why we have a major producer appearing separately at this hearing rather than as part of the Petitioners' panel, and I'll put that question out there, and I realize you may wish to respond to it post hearing, but anything you could provide would be helpful.

MR. GOLDBERG: Yes, as I indicated, Commissioner Williamson, we'll provide that post hearing.

COMMISSIONER PEARSON: Okay. I thought you'd provide your position on the petition in response to this question.

MR. GOLDBERG: It is the reason why we take the position we do.

COMMISSIONER PEARSON: Okay. Thank you. I'm getting too picky here I can see. Mr. Kelly, when did competition with subject imports begin to have a meaningful effect on the results of BASF or its

predecessor company? When did you start to deal with them in the marketplace such that they were noticeable?

MR. KELLY: I suppose looking at the results and our analysis of the market over the last few years, 2008, they were noticeable. We saw them in the market. With the sales force we have in the market, we have a pretty good idea of what's happening in the whitener business at the different paper mills, so in I guess 2007, 2008, we knew they were in the market.

COMMISSIONER PEARSON: And then starting to gain some meaningful share by the time we get into our period of investigation here, 2009, 2010?

MR. KELLY: Absolutely. Yes, very rapidly gaining market share certainly over the last three years.

COMMISSIONER PEARSON: You had indicate earlier that subject imports are the reason for any challenges that BASF might be having in the marketplace currently, and of course one of the great advantages of having the confidential staff report is I've been able to review those numbers, and it's not clear to me that there's a direct relationship between what seems to be happening with subject imports and what seems to be happening in terms of the effects on

BASF, and there may be limits on what you can say about that here, but either now or in the post hearing, I'd be interested if you could help me to rule out other issues that might be a factor.

MR. KELLY: Absolutely. First, I disagree, and I think it's something I can share publicly. WE have lost the ability to increase price in the market when raw materials are increasing, so our margin has been squeezed, and we've lost volume, and I think you in your information can see our P&L statement, and you can see the effect of both lost volume and a reduced margin on the bottom line. It's just that simple.

COMMISSIONER PEARSON: Okay. It was in 2009 that BASF acquired the facility from CIBA?

MR. KELLY: Yes. I guess the BASF acquisition of CIBA was announced in September 2008. The deal closed in April 2009.

COMMISSIONER PEARSON: And you have been with CIBA?

MR. KELLY: I am legacy CIBA employee, yes.

COMMISSIONER PEARSON: Okay. You've survived the transition. Congratulations. Okay. Given what you're saying about the challenges in that marketplace that were known at that time, why did BASF acquire this facility? Was it part of some larger

package?

MR. KELLY: Well, BASF acquired CIBA Specialty Chemicals, and the whitener facility, the McIntosh facility is a very small part of a fairly big corporation with production around the world in several different businesses.

COMMISSIONER PEARSON: Okay.

MR. KELLY: And so the paper chemical business was one, and the paper chemical business itself is probably 10 different product families of which one is whiteners, and the paper chemical business was a fairly small piece of CIBA and the reason that BASF acquired CIBA.

COMMISSIONER PEARSON: Okay. So now BASF has it, and it's trying to decide what to do with it? How to make some money?

MR. KELLY: That's one way of putting it.

COMMISSIONER PEARSON: Okay. I think my last question goes to an issue that I raised with the other parties. I understand you won't have seen our confidential staff report, but you will have Petitioners' Exhibit 17 and the chart that I discussed a few minutes with the Respondents.

MR. KELLY: Yes.

COMMISSIONER PEARSON: I'm still unsure why

we see domestic consumption, apparent consumption going down in 2011 from 2010.

MR. KELLY: Yes.

COMMISSIONER PEARSON: You may or may not have thoughts on that, but if you do, I'd be glad to hear them.

MR. KELLY: Well, I do actually, and I'd love to share it. It's something we track pretty closely, and first I think it's important to segment the market. The pulp and paper industry, we've got three major segments. You've got tissue, which is for whiteners, there's a little bit of whitener going in the tissue packaging and for food packaging it was mentioned earlier there's a small amount of whitener going into packaging.

The great majority of whiteners going to graphic paper, right? Copy paper, printer paper, magazines, newsprint, right? This is all graphic papers. In our analysis in looking at the trends in the market, we see for the next 10 years graphic paper declining at a rate in North America of about two and a half percent per year. There's a few reasons for that, for example, how many people own an iReader whether it's a Kindle, or if you read the newspaper on your laptop.

There's electronic substitution, which is having a significant impact on the demand for paper, graphic paper, and the whitener volume, the whitener demand, tracks very closely with that of graphic paper, so as this trend continues, take it as a negative two and a half percent per year. There's a couple of positives. Increased recycled content is a positive for whitener use because it takes more whitener to maintain those brightness specs, and possibly we can raise brightness standards further.

The brightness specifications, which would be another positive effect, but our estimate, our best estimate, is minus one to two percent in whitener demand in North American going forward until 2020. Asia is a very different story. Latin America, a different story. Graphic paper is still growing in the developing parts of the world. Western Europe is a fairly similar picture to North America where graphic paper's a very mature market, will be for the next eight to 10 years, declining.

COMMISSIONER PEARSON: Okay. Good. Well, thank you. That's a helpful perspective. If you'd like to add anything for post hearing, by all means do so. I think it's possible that our staff investigator will be in touch with you regarding some of this, but

I very much appreciate your willingness to come in front of us, and I understand the complication you have in not having access to the confidential record or even no one in your group has that. You as a business person wouldn't have it anyway, but it's a challenge because you're answering questions somewhat in the dark, but your responses have been very helpful, so thank you.

MR. KELLY: Thank you.

CHAIRMAN OKUN: Commissioner Aranoff?

COMMISSIONER ARANOFF: Thank you, Madam Chairman. Thank you for being here today, gentlemen. BASF makes its own DAS. Do you do that here in the U.S.?

MR. KELLY: Yes, that's also at McIntosh, Alabama.

COMMISSIONER ARANOFF: Okay. So in 2008, when we heard about this shortage, this global shortage, or there was some shortage and an even larger perception of shortage, you had all the supply that you needed?

MR. KELLY: Yes, that's correct. We were not short on DAS or whitener.

COMMISSIONER ARANOFF: Okay. So when a client told us that they protected their contract

customers and they protected other long-time loyal customers but that people who sort of showed up on their doorstep who maybe were not so familiar to them, they didn't turn them away, but they told them you may have to wait to get supply, and I don't want to put words in their mouth, but enter a contract in go further up in the line. Did you do that, or were you able to supply everyone who knocked on your door at that point?

MR. KELLY: Yes. We did not run out of whitener, but we also looked for, and when the market changes so significantly, you look for a commitment because we're ready to make a commitment to our customers. We're looking for this same commitment in return, so at that point in time, we're looking for a longer-term supply, not just help out material until the shortage is over, and then we lose them as a customer, so it was an opportunity to gain volume to more fully utilize our plant, and we wanted to keep that volume beyond 2008.

COMMISSIONER ARANOFF: How long did that effect last for you in terms of customers that you were able to bring on board?

MR. KELLY: Sure. I know you've seen our volumes for 2009 and '10 and '11, so it did not last

as long as we would have liked.

COMMISSIONER ARANOFF: Okay. I think you were this afternoon and much of TFM's testimony, and Mr. Nelson said that in his time at CIBA, CIBA knew as much as 10 years ago that there were problems with the quality of Clariant's product and perhaps even with CIBA's own product relative to the way that TFM's product performs, and I wanted to give you the opportunity to comment on that.

MR. KELLY: We always talked about our own product quality and reliability in order to work to differentiate ourselves from our competition. At the end of the day, it came down to, and still does, in my opinion, the performance on the paper machine. If they make the grade of paper with 10 pounds per ton of our product, are they making it with 11 pounds per ton of a competitive product or nine pounds per ton.

This is what it comes down to because in the paper industry, which is notoriously a tough industry that's gone through a lot of consolidation in the last several years, is notoriously unprofitable, these guys are very good about optimizing their chemical costs, and if your whitener costs more to apply, you'll have to answer to that, and purity and reliability and reliability of supply and technical service, these are

table stakes. You don't even get in the game unless you bring that, and the differentiator, the decision maker for the procurement people is cost.

COMMISSIONER ARANOFF: Okay. I appreciate that, and it's actually a good segue to my final question which has to do with the Chinese producers who are selling in the U.S. market. Have you or someone you work with closely examined the product of the major Chinese producers or have you been to visit their plant, and do you have opinions on their ability to meet the kind of quality standards that you're talking about, performance standards for U.S. purchasers and technical service standards for U.S. purchasers?

MR. KELLY: Yes, I don't know of anyone in the company that's visited their facility, their production facility. Our analysis, I mean, when we can get samples of competitive products, we analyze them. We'll make hand sheets. When we run trials, we run versus a competitor on a paper machine in making a specific grade of paper, and again, in a very general sense the products worked. They had the main four products in the portfolio, and their approach to the market was one of price. It was they were offering a cheaper product to the customers. It was just that

simple.

COMMISSIONER ARANOFF: Okay. Well, I appreciate all of those answers, and I think that's all the questions that I have. Thank you, Madam Chairman.

CHAIRMAN OKUN: Commissioner Johanson?

COMMISSIONER JOHANSON: Thank you, Madam Chairman. Also, thank you, Mr. Kelly, for appearing here today, and I'm going to ask something of you that I asked of the other two parties here today, Clariant and TFM. Mr. Golder of Clariant testified earlier today that Clariant has been squeezed out of the spot and short-term market. The ITC questionnaires requested data on shipments by type of sale, that is spot, short- and long-term contracts for 2011 only, and I think that it would be helpful to have the shares for BASF in 2009 and 2010. Could you all provide that to us? Would that be possible?

MR. KELLY: I had assumed we already provided that. We can absolutely do that.

COMMISSIONER JOHANSON: If you can check and see if that's been done, and if not, if you wouldn't mind, providing that to us.

MR. KELLY: Right. And just for point of clarification, what's the difference between a short-

term contract and a long-term? It is one year?

COMMISSIONER JOHANSON: I think that earlier today that was the indication we had. I think it was one year.

MR. KELLY: Okay.

COMMISSIONER JOHANSON: Thank you. I appreciate it. Clariant has asked the Commission to evaluate price comparisons on a delivered and not-FOB basis. Does BASF quote its prices on a delivered or FOB basis, do you know?

MR. KELLY: Yes. The buyers are buying on a delivered basis, so we're quoting on a delivered basis.

COMMISSIONER JOHANSON: So it's the same as far as you know in the industry?

MR. KELLY: Absolutely.

COMMISSIONER JOHANSON: Okay. Okay. Do you know if your customers have used import prices in their negotiations with you, and if so, if those were undelivered or FOB prices?

MR. KELLY: I'm sorry? Have used?

COMMISSIONER JOHANSON: Are your customers using delivered prices then? Are they relying on that?

MR. KELLY: Yes, yes.

COMMISSIONER JOHANSON: Okay. So in the industry, that's the standard?

MR. KELLY: I'd stay that industry standard. I don't know of any of our customers that are buying FOB. I don't think a single one is. It's delivered.

COMMISSIONER JOHANSON: Okay. Thank you. And, Mr. Kelly, you've indicated that BASF has done everything that it can to optimize it's production process, and you describe in general terms the restructuring at your plant in Alabama?

MR. KELLY: Yes.

COMMISSIONER JOHANSON: Could you be a bit more specific about the steps that BASF has taken regarding its restructuring and its efforts to optimize its production process and describe how those have been tied to subject import competition?

MR. KELLY: Yes. Sorry. No, I can't be more specific on what we've done within the plant. I guess we could send you something confidentially after the fact. The driver was driving our fixed costs per ton of whitener down. That was the goal there, so these were efficiency gains, optimizations within the plant and within the way the plant was structured.

COMMISSIONER JOHANSON: Okay. Thank you. Yes, if you could submit that confidentially or in

confidential form, that would be appreciated, and you might have touched on this before, but in your opinion are there quality differences between domestically produced OBAs, CSOBAs and those produced in China and Taiwan?

MR. KELLY: I'm sure there are, but again, what it comes down to is performance on the paper machine, and the products have generally worked, so I don't think there's a quality difference that really changes the performance on the paper machine.

COMMISSIONER JOHANSON: So if there are quality differences, they're minimal then, is that safe to say?

MR. KELLY: From my point of view, yes.

COMMISSIONER JOHANSON: Okay. Thanks. We have heard today about supply strategies, and it has been suggested by TFM that U.S. customers sought secondary sources of supply after the 2008 DAS shortages. In your experience, do CSOBA customers rely on a single or rather dual sources typically, and has that changed over the years?

MR. KELLY: Yes. The answer is always it depends on different situations.

COMMISSIONER JOHANSON: Right.

MR. KELLY: Most of the mills would have a

single supplier. Most of the high-volume mills, they receive it in bulk, so it has to go into a tank in the mill. There aren't that many tanks, so at a specific paper mill, there would be a single supplier of a product. If they're buying a tetra, it would probably be from a single supplier. On a larger scale, a corporation with several paper mills would most likely have a second supplier. They might have a predominant supplier, which is their most cost-efficient supplier, and a second supplier just to spread their risk.

COMMISSIONER JOHANSON: All right. Thank you, and I'm going to step back to the question I posed I think it was two questions ago, and you might or might not know the answer to this, and if you don't just let me know, but do you consider CSOBAs from China and Taiwan to be interchangeable?

MR. KELLY: Yes, yes.

COMMISSIONER JOHANSON: Okay.

MR. KELLY: We're using these products on the same papers machines in the same market across the U.S. We're competing together for the same business.

COMMISSIONER JOHANSON: Okay. And could you please tell me where BASF produces CSOBAs? I know you do in Alabama. Are there other facilities owned by BASF?

MR. KELLY: Yes, we have a facility in Ankleshwar, India.

COMMISSIONER JOHANSON: Okay. That's it?

MR. KELLY: And that's it.

COMMISSIONER JOHANSON: I know you're a worldwide company. I didn't know if you had them in Germany or other places in Europe.

MR. KELLY: We used to in Germany, but do not anymore.

COMMISSIONER JOHANSON: Okay. As far as you know or as far as you can say, does BASF have plants install production capacity in other countries?

MR. KELLY: No, not that I can say.

COMMISSIONER JOHANSON: Okay. And you might have already discussed this, but I'm the very last person here on the list, so we've been going through a lot of questions with you today, but despite the manufacture of DAS at the time, back in 2008, did you experience supply constraints related to the DAS shortage in 2008? Were you able to keep up supply?

MR. KELLY: Yes, we were able to keep up supply.

COMMISSIONER JOHANSON: I know there were a lot of people searching for the product at that time.

MR. KELLY: Right. That's correct. We did

not short any of our customers and managed to take on new customers.

COMMISSIONER JOHANSON: Okay. And then for my last question, I guess it's more of a technical question, but does the greater degree of whiteness in paper translate to more or less use of CSOBAs in the process of producing the paper?

MR. KELLY: In general, the higher the whiteness level, the more optical brighteners, CSOBAs would be used, and the ways you typically get white paper is bleaching the fiber, adding high-brightness fillers like calcium carbonate and optical brightener.

COMMISSIONER JOHANSON: Getting back to the contention of TFM regarding quality of the product, would the quality of the CSOBAs used make a difference as to how much you would use them in producing the product, in producing the paper?

MR. KELLY: In general yes, but as I said, we haven't seen that purity advantage translate to less usage of product on the paper machine, and just looking at the table, there's actually quite an array of purity levels, and what we've seen in the industry is that a 23-percent active tetra product has a pretty similar brightness or fluorescence build curve as the other 23-percent active tetra products, so we just

haven't seen the purity difference translate to performance different on the paper machine.

COMMISSIONER JOHANSON: All right. Thank you, and I know we've been asking a lot of questions about quality today, but that's been something that's been discussed by one of the other parties.

MR. KELLY: Sure.

COMMISSIONER JOHANSON: Well, that concludes my questions, and I thank you again for appearing here today.

MR. KELLY: Thank you.

CHAIRMAN OKUN: Let's see if there are any other questions from the Commission. I turn to staff to see if Commission staff have questions for this witness.

MS. TRAINOR: Cynthia Trainor, Office of Investigations. Thank you for your testimony this afternoon, and the staff has no questions.

CHAIRMAN OKUN: All right. Well, again we want to thank you for your appearance here and for answering our questions, and we look forward to your post-hearing submission. Before we turn to our closing rebuttal, let me just review the time remaining. The Petitioner has a total of nine minutes, four from direct and five for closing.

Respondent has a total of 30 minutes, 25 from direct, five from closing.

If there's no objection, we would follow our normal course of combining those times and having each counsel to come up to present their closing and rebuttal together. Okay. We'll just take a couple of moments to let these witnesses go back and bring up our counsel for those in support of imposition of duties.

(Whereupon, a short recess was taken.)

MR. ELLIS: Is it possible to take a moment to set up the slide machine?

CHAIRMAN OKUN: Yes. Yes, they'll bring that down for you.

MR. ELLIS: Thank you, Madam Chairman.

MR. ELLIS: Is my time already running?

CHAIRMAN OKUN: No. All right. You may proceed.

MR. ELLIS: Thank you, Madam Chairman and Commission. Good afternoon. I want to thank you for your patience and your attention today and for your careful consideration of a sometimes complicated product and topic. I would also like to thank the staff, by the way, for their hard work in dealing with some difficult issues that have arisen during the

course of this investigation, and I also want to just note also that some written testimony and a letter has been submitted by members of Congress, and I understand that they've been placed in the record of this proceeding as well.

As you heard this morning, the domestic industry is struggling to survive against increasing imports of low-priced subject merchandise. I'd like to touch upon a few important issues in closing. First, an important condition to competition is the commodity-like nature of CSOBAs where by competition is based principally on price. It is true that U.S. purchasers consider several criteria when selecting a supplier, including quality, service and supply reliability in addition to price.

However, the major suppliers in the U.S. market, certainly the domestic industry and generally the subject imports as well, satisfy the purchasers' expectations with regard to these non-price criteria. As a result, competition among the major suppliers is distilled down to a single factor, price.

TFM's principal argument this afternoon has been that purchasers prefer its products over domestic products due to TFM's allegedly superior quality, service and supply. Dr. Nelson is proud of his

product, and that's great, but TFM's argument is contrary to the evidence collected by the Commission from U.S. purchasers.

Let's quickly recall some slides presented earlier during our panel. As you can see from this first slide, U.S. purchasers consider domestic product and subject imports to be comparable when it comes to quality meeting industry standards, and that is also supported by sample effectiveness test results that we submitted in our post-conference brief with Dr. Jackson's affidavit where test results were run against both TFM and Clariant product, and you got almost identical effectiveness results showing the comparability that the purchasers themselves recognize.

In addition, contrary to what Mr. Koenig said earlier, the U.S. product, that is Clariant's product, and TFM's product are considered comparable by purchasers not only as to meeting expectations, but also as to exceeding expectations, and that's shown in the chart on page 2-24 of the staff report. The next slide shows U.S. purchasers consider domestic product and subject imports to be comparable in terms of technical support and service.

What Dr. Nelson said TFM does for its

customers, so does Clariant, and we described some of the work that's done both today and also in the presentation of the virtual plant tour we did last week, and another side shows that U.S. purchasers consider domestic product and subject imports to be comparable in terms of reliability of supply, so they're comparable, comparable, comparable. While Dr. Nelson asserted the opposite, it's not supported by the purchasers' statements and the evidence in the record.

Given the comparability among major suppliers on the non-price factors, competition comes down to price, and on the price issue, this slide, which we saw earlier today, shows that the domestic industry's inferior to, *inferior to*, that is higher priced than the subject imports. At least that's how purchasers look at the market.

The customers pressure Clariant on the basis of price, and the pressure is due to TFM, so here's the question. If their product is better than the domestic industry's product, why are they underselling? Why do purchasers see their product as superior, our product as inferior in terms of price? On the purity issue just for a moment, even assuming it's relevant, and there's been a lot of debate about

whether that's a relative metric at all, TFM's chart, which they show today and also had in the preliminary conference, is wrong.

The numbers there are simply incorrect. It's a bad misstatement of the test results as explained in pages 17 to 18 of our brief. Their own test results show a different outcome as to the purity of Clariant's product, and Clariant's test results show an even higher purity level. Second, expanding on the issue of price, there's ample evidence of significant price underselling, depression and suppression on the record, which is corroborated by evidence of lost sales and revenue as well as customer statements and industry publications.

The quotes we had earlier of sample industry publication statements, Dr. Nelson said he blamed on the Chinese, and he's strange bedfellows with Clariant looking over their shoulder. Well, in fact, the Asian product that was talked about in those industry publications is in large part TFM's because they are a significant Asian exporter to the United States.

We've addressed today and in our prehearing brief problems that exist with the pricing data collected by the Commission, in particular the data collection from the principal importer of Chinese

product is garbled. You can't use that data for anything significant in pricing in terms of underselling analysis.

If the staff is not able to coax reasonable data from that importer, and I understand they're still working on that, the existing data must either be disregarded or adjusted, and we gave some sample adjustments the Commission could do in our brief, and return, by the way, to a question that Commissioner Pearson asked me earlier today, yes, in retrospect, on closer look, we do think that the AUV data of the Chinese product is distorted, although we can't parse it exactly, but we think that's as distorted as the pricing product quarterly data is as well.

In conclusion therefore that these products, Taiwanese and Chinese, are overselling the domestic product is not really supported by the responses you've received from the purchasers, which we saw earlier by the market realities. Third, we would note that the subject imports have entered the United States at a significant pace during the period of investigation.

The volume of imports has been significant when measured against each of the indicia that's identified by the statute, that is both volume levels

and increases in volume levels have been significant whether they're measured in absolute terms relative to production in the United States or relative to consumption in the United States. Those are the criteria that the statute sets out.

Now, Dr. Nelson focused to a large extent on specialty products, which he acknowledged the dye in hexa products, but we would note that the bulk of TFM sales in the United States without going into BPI are in what he called bread and butter or the 737 tetra product, and that is shown in the staff report at page 4-7.

A large percentage of the conversation this afternoon was off the point because they were talking about something different from what's really going on in the marketplace, which is competition in large scale in a commodity product and that you also heard BASF testify about this afternoon. On that product, the bread-and-butter and 737-product, competition is based on price, and TFM and the Chinese have come in a taken a lot of those sales based on price.

Fourth, the causal connection between the high volume of the low-priced subject imports and the injury suffered by the industry is evident from impact criteria that you look at in your impact analysis

including output, sales, market share, profits, productivity, return on investment, capacity utilization, employment, wages. They all make it painfully evident the negative conditions confronting this industry.

The deteriorating performance cannot be attributed to extraneous factors such as allegedly weaker quality or service or supposed inability of U.S. producers to provide adequate supply or demand trends in the United States. Finally, even if despite the foregoing you find no current material injury, the domestic industry is certainly threatened with material injury in the imminent future.

The most visible evidence of this threat is the increase in production and exportation of CSOBAs from Taiwan and China in power form. This is only for one purpose, I'd like to finish this one thought, to facilitate trans-ocean shipments to oversea markets. The use of powder directly on paper is very small and is not the commercial basis on which the investment in powder production was made in Taiwan. Thank you very much. I appreciate your attention.

CHAIRMAN OKUN: Thank you.

MR. KOENIG: Okay. Again, Peter Koenig for TFM. Actually, in listening to all the testimony

today, Petitioners have been silent on one issue that normally Petitioners talk about, and I think it's kind of revealing. The petition was filed a year ago, and the preliminary remedy has been in effect for quite some time, and yet the Petitioners are silent on whether it's had any impact. In fact, all their charts allege imports continue to go up and BASF testified the situation today is as what it was before as far as alleged harm, but no claim of any impact of filing the petition or the remedy.

I think there's a reason for that. It's because TFM does not sell on price. They sell on non-price factors, quality, technical services, and so the petition and the preliminary remedies have had essentially little impact because that's just not particularly relevant to a company that doesn't sell on price. They sell on the various other factors.

As far as the Petitioners' long pre-hearing brief and the technical details of that, I think on that, we'll just address them in our post-hearing brief and address them with some confidential information. Thank you.

CHAIRMAN OKUN: Thank you. Post-hearing briefs, statements responsive to questions, requests of Commission and corrections to the transcript must

be filed by March 22, 2012. Closing of the record and final release of data to the parties is April 12, 2012, and final comments are due April 16, 2012. With no other business to come before the Commission, this hearing is adjourned.

(Whereupon, at 4:23 p.m., the hearing in the above-entitled matter was concluded.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Certain Stilbenic Optical Brightening Agents from China and Taiwan

INVESTIGATION NO.: 731-TA-1186-1187 (Final)

HEARING DATE: March 15, 2012

LOCATION: Washington, D.C.

NATURE OF HEARING:Hearing

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

DATE: March 15, 2012

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 which is attached to transcript is a true, correct and complete transcription of the proceeding(s).

SIGNED: Rebecca McCrary
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: Gabriel Gheorghiu
Signature of Court Reporter