

 ORIGINAL

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
) Investigation Nos.:
 REFILLABLE STAINLESS STEEL) 701-TA-610 and
 KEYS FROM CHINA, GERMANY,) 731-TA-1425-1427 (Final)
 AND MEXICO)

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THE UNITED STATES INTERNATIONAL TRADE COMMISSION

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 KEGS FROM CHINA, GERMANY,) 731-TA-1425-1427 (Final)
 AND MEXICO)

Wednesday,
 August 14, 2019

Main Hearing Room, 101
 U.S. International
 Trade Commission
 500 E Street, S.W.
 Washington, D.C. 20436

The meeting commenced, pursuant to Notice, at
 9:30 a.m., before the Commissioners of the United States
 International Trade Commission, the Honorable
 JASON E. KEARNS, Commissioner, presiding.

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In Support of the Imposition of
Antidumping and Countervailing Duty Orders:

Picard Kentz & Rowe LLP
Washington, D.C.
On behalf of:

American Keg Company, LLC

SCOTT BENTLEY, Owner, American Keg Company, LLC
PAUL CZACHOR, Chief Executive Officer,
American Keg Company, LLC
STEVE RUBEO, Controller, American Keg Company, LLC
BRIAN LUZZI, Director, Sales and Marketing,
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Of Counsel:

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Antidumping and Countervailing Duty Orders:

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On behalf of:

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Antidumping and Countervailing Duty Orders (Cont'd):

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Blefa Kegs, Inc.

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DINAH QUIST, Controller, Blefa Kegs, Inc.
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CHRIS SAPYTA, Chief Executive Officer,
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Of Counsel:

GREGORY C. DORRIS, Esquire

Trade Pacific PLLC
Washington, D.C.
On behalf of:

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Ningbo Major Draft Beer Equipment Co., Ltd.
Qingdao Henka Precision Technology Co., Ltd.

STEVEN SYZDEK, Managing Partner, NDL Keg LLC
BRIAN KEYSER, President, Krew Kegs, Inc.,
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Of Counsel:

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In Opposition to the Imposition of
Antidumping and Countervailing Duty Orders (Cont'd):

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Procurement, North American Operations, AB InBev
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Petitioner (Whitney M. Rolig, Picard Kentz
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Respondents (Craig A. Lewis, Hogan Lovells US LLP;
and Gregory C. Dorris, Pepper Hamilton LLP)

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P R O C E E D I N G S

(9:30 a.m.)

1
2
3 COMMISSIONER KEARNS: Good morning. On
4 behalf of the U.S. International Trade Commission, I
5 welcome you to this hearing on the final phase of
6 Investigation Nos. 701-TA-710 and 731-TA-1425-1427,
7 involving Refillable Stainless Steel Kegs from China,
8 Germany, and Mexico.

9 Some of you may be wondering where my
10 colleagues are. As you may know, the Senate recently
11 confirmed Amy Karpel and Randolph Stayin to serve as
12 Commissioners. Once they are sworn in, they will
13 replace Commissioners Williamson and Broadbent,
14 respectively. Commissioner Williamson and Broadbent
15 therefore will not be participating in these
16 proceedings.

17 Now, I'll read a statement on behalf of
18 Chairman Johanson and Commissioner Schmidtlein:

19 "We would like to thank all of the witnesses
20 for appearing here today. We apologize that we could
21 not be here in person, but each had a conflict with
22 today's date that could not be avoided. We plan to
23 review the transcript from today's proceedings and may
24 have some follow-up questions for the parties in the
25 coming days."

1 Commissioner Schmidlein also wanted to
2 thank American Keg for hosting her in Pottstown last
3 month.

4 The purpose of these final investigations is
5 to determine whether an industry in the United States
6 is materially injured, or threatened with material
7 injury, or the establishment of an industry in the
8 United States is materially retarded, by reason of
9 imports of refillable stainless steel kegs from China,
10 Germany, and Mexico.

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

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

22 Speakers are reminded not to refer in their
23 remarks or answers to business proprietary
24 information. Please speak clearly into the
25 microphones, and state your name for the record for

1 the benefit of the court reporter and those seated in
2 the back of the room.

3 If you will be submitting documents that
4 contain information you wish classified as Business
5 Confidential, your request should comply with
6 Commission Rule 201.6.

7 Mr. Secretary, are there any preliminary
8 matters?

9 MR. BISHOP: Mr. Chairman, the witnesses for
10 today's hearing have been sworn in. There are no
11 other preliminary matters.

12 COMMISSIONER KEARNS: Very well. Let's
13 begin with opening remarks.

14 MR. BISHOP: Opening remarks on behalf of
15 Petitioner will be given by Andrew W. Kentz, of Picard
16 Kentz & Rowe.

17 Mr. Picard (sic), you have five minutes. I
18 apologize. Mr. Kentz, you have five minutes.

19 MR. KENTZ: That's fine. Good morning, I am
20 Andrew Kentz, of the law firm Picard Kentz & Rowe LLP.
21 I am here this morning on behalf of the American Keg
22 Company, LLC, to request that the Commission make an
23 affirmative determination in the final phase of this
24 investigation of refillable stainless steel kegs.

25 American Keg Company is the only domestic

1 manufacturer of refillable stainless steel kegs. As
2 you will hear directly from company officials later
3 this morning, American Keg has, in a few short years,
4 built a world-class operation that supplies a high-
5 quality product into the U.S. market for kegs.

6 Over the last two months, the Commission's
7 staff has done tremendous work obtaining and compiling
8 information about this market. American Keg officials
9 cannot see much of the results of the staff's efforts,
10 and it is important for me to emphasize how much we
11 appreciate the staff's thorough approach under
12 incredible resource and time constraints.

13 This is a new market for the Commission to
14 be evaluating, and the investigative work of the staff
15 provides an excellent guide to the market and its
16 participants.

17 The record of this investigation supports a
18 finding that the domestic industry is materially
19 injured by reason of subject imports from China,
20 Germany, and Mexico. Ironically, this is amply
21 demonstrated by the arguments presented in the pre-
22 hearing submissions of the parties opposed to trade
23 relief.

24 Their beliefs spend much of their time
25 arguing for what the record should say, rather than

1 what it does say. They argue that the Commission
2 should disregard, or discredit, the evidence in the
3 record regarding massive underselling, the evidence
4 regarding lost sales, and the evidence regarding lost
5 revenue.

6 They assert that the Commission should
7 evaluate pricing trends based on different beginning
8 points for some products from some countries, but not
9 for others. They argue for massive changes in the way
10 that sales of kegs are reported, regarding their
11 channels of distribution because the record does not
12 support their preferred narrative.

13 But the record is clear. Purchasers told
14 the Commission that American Keg produces kegs that
15 compete with subject imports in the marketplace;
16 purchasers have told the Commission that the domestic
17 like product is on par with subject imports in
18 everything but price; and purchasers have told the
19 Commission that they have purchased subject imports,
20 rather than the domestic like product because of lower
21 prices.

22 The record also shows that dumped and
23 subsidized imports increased in volume over the period
24 of investigation. The volume of subject imports, both
25 in absolute and relative terms, was significant

1 throughout the period.

2 The record demonstrates that unfairly traded
3 imports massively undersold the domestic like product.
4 It shows that this underselling suppressed prices for
5 the domestic like product, such that American Keg was
6 unable to make sales at prices and volumes necessary
7 to return a profit.

8 American Keg increased its capacity, its
9 production, and its sales over the period of
10 investigation. Over the period, American Keg grew its
11 customer base, and the domestic like product was sold
12 through new channels of distribution, becoming less
13 concentrated in sales to small craft brewers. As a
14 ratio of its net sales value, American Keg reduced its
15 costs of goods sold over the last three years.

16 Yet, even with these positive developments,
17 American Keg maintained massive amounts of unused
18 capacity and could not make sales for the kegs they
19 were producing. American Keg lost money over every
20 part of the period investigated.

21 On this record, there can be no question
22 that dumped and subsidized imports have adversely
23 impacted American Keg's operations. As the Chinese
24 Respondents have told the Commission, the dumping and
25 subsidization rates found by Commerce are massive.

1 Without the ability to engage in unfair trade, few of
2 the Chinese exporters can participate in the U.S.
3 market.

4 Although importers have built huge
5 inventories of subject imports in advance of the
6 imposition of cash deposit requirements in these
7 cases, a market free of the distortions of unfairly
8 traded imports is on the immediate horizon for the
9 American Keg Company.

10 In their brief, Chinese Respondents state,
11 "Since non-subject producers do not have the ability,
12 or desire, to replace subject Chinese imports,
13 American Keg will obtain a windfall in terms of
14 increased future shipments that vastly exceeds the
15 reasonable expectation of a small start-up".

16 This statement acknowledges the unavoidable
17 facts of this record. The overwhelming presence of
18 unfairly traded imports has prevented American Keg
19 from making sales. But for dumped and subsidized
20 imports, Petitioner would be able to grow its business
21 in a fair market.

22 With trade relief, American Keg would, as
23 the Chinese Respondents state, obtain a higher number
24 of sales at fair market prices. This precisely
25 describes the material injury our laws intend to

1 remedy.

2 If dumped and subsidized imports are
3 permitted to once again enter the U.S. market without
4 discipline, there will be no domestic industry. This
5 is not hyperbole. The Commission has American Keg's
6 data before it. Commission staff has verified the
7 numbers. The company's losses are not sustainable.

8 A negative determination that reintroduces
9 unfairly traded imports means the shuttering of an
10 American manufacturing plant.

11 The record of this proceeding does not
12 support such a finding. Instead, the record here
13 strongly demonstrates that the domestic industry is
14 materially injured by reason of subject imports, and
15 we ask that the Commission make an affirmative
16 determination. Thank you.

17 MR. BISHOP: Thank you, Mr. Kentz.

18 Opening remarks on behalf of the Respondents
19 will be given by William Connelly, of Trade Pacific
20 PLLC. Mr. Connelly, you have five minutes.

21 MR. CONNELLY: Good morning. We don't have
22 a typical investigation scenario in this case. The
23 Commission rarely considers the factors that affect
24 the start-up's efforts to break into a mature
25 industry, much less whether its expectations are

1 reasonable under all other circumstances.

2 AKC knew from its inception that it could
3 not hope to compete for sales to large or medium-sized
4 brewers, or to keg leasing companies, or to
5 distributors. Its lack of skill and its cost
6 structure put these market segments out of reach. AKC
7 does not really contest this fact.

8 But it had a different plan, which was to
9 start a small scale, niche business that would sell
10 made-in-the-USA kegs to small craft brewers. To be
11 profitable, it would need to sell those kegs at a
12 significant premium over the prevailing market price,
13 and the company believed that a sufficient pool of
14 customers would be willing to pay that premium.

15 It sounded like a good idea at the time, but
16 their game plan had at least six serious flaws.
17 First, they really didn't know how many small brewers
18 would actually pay the type of premium that they
19 required.

20 It turned out that far fewer would do so
21 than they had projected. Small brewers operate on
22 small margins, so paying more than the going price
23 reduces the amount of capital that's available for
24 more important projects.

25 Second, they did not know how many small

1 brewers had already turned to leasing and renting
2 kegs, or that many more would do so in the coming
3 years.

4 Third, they did not appreciate how much they
5 would need to spend to market and advertise a new,
6 higher priced brand in order to reach thousands of
7 small brewers who purchase kegs irregularly, if at
8 all.

9 Fourth, they didn't realize that lower
10 price, lower profit sixtels, not one-half-barrel kegs,
11 were the preferred size. Also, they may not have
12 known that other sizes accounted for a significant
13 percentage of overall demand. Suppliers who could
14 also provide those other sizes were preferred by many
15 buyers.

16 Fifth, they had to import substantial
17 volumes from China, to serve customers who were not
18 interested in paying more for an American-made keg.
19 They deliberately undercut their own prices for their
20 domestic product by doing so.

21 Finally, and most important, they could not
22 have anticipated the devastating financial impact of
23 the Section 232 duties on their cost of stainless
24 steel. Their economics as a start-up were marginal,
25 like all start ups, but the 25 percent duty guaranteed

1 that they could not achieve their financial
2 objectives.

3 None of these problems had anything to do
4 with subject imports. Having said all this, AKC's
5 production, sales, prices, market share, and financial
6 condition have all shown steady improvement. But for
7 the Petitioner to blame subject imports for not
8 allowing it to achieve even better results, is a
9 bridge too far.

10 Import relief should not be granted merely
11 because a domestic producer contends that its prices
12 and sales volumes should have rapidly increased, just
13 because it entered the market with what it thought was
14 a promising idea.

15 AKC claims it has been injured by
16 underselling, but substantial evidence of underselling
17 does not exist. It broke into the market with the
18 express purpose of selling at higher than prevailing
19 market prices, and it deliberately undersold itself
20 when it imported kegs from China.

21 The Petitioner did not complain about import
22 prices when it entered the market in 2016, with full
23 knowledge of the prevailing market price levels, and
24 it did not complain about those prices throughout most
25 of 2017. It was only after the Section 232 duties

1 crushed its financial projections, that it began to
2 blame imports.

3 Moreover, the Commission's data confirm what
4 we already know. American Keg has succeeded in
5 breaking into an established market and in increasing
6 its sales volume, despite choosing to price at the top
7 of that market.

8 In conclusion, AKC has successfully carved
9 out a niche in the small brewer segment, which is the
10 only segment in which it is equipped to operate. But
11 excluding foreign competitors from both that segment
12 and the far larger segments in which AKC does not
13 compete, and cannot hope to compete, will penalize
14 those purchasers that have depended, and must continue
15 to depend, on subject imports. Thank you.

16 MR. BISHOP: Thank you, Mr. Connelly.

17 Would the members of the panel in support of
18 the imposition of antidumping and countervailing
19 duties please come forward and be seated.

20 Mr. Chairman, this panel has 60 minutes
21 worth of direct testimony.

22 COMMISSIONER KEARNS: Thank you. You all
23 may begin when you're ready.

24 MS. ROLIG: Good morning, my name is Whitney
25 Rolig, a partner at Picard Kentz & Rowe, and I

1 represent the U.S. industry in these investigations.

2 As my colleague stated earlier, we are
3 extremely grateful for the effort put forth by
4 Commission staff, as they've compiled a record for a
5 new industry under very tight deadlines. The
6 information they were able to put together is thorough
7 and broad, and we appreciate their good work.

8 The record demonstrates that American Keg,
9 which represents the entirety of the domestic
10 industry, has been injured by subject imports. The
11 record of this final phase demonstrates that American
12 Keg should have been able to grow and profit.

13 The fact that they have not been able to do
14 so, and, in fact, have lost money over the entirety of
15 the POI, comes down to the fact that they cannot sell
16 enough kegs at a fair price in the face of a massive
17 volume of dumped and subsidized imports.

18 I want to start with the observation that
19 the Respondents are attempting to hold unfairly traded
20 imports harmless, by arguing a record that largely
21 doesn't exist. The record we have is not only the
22 result of extensive work by Commission staff to get a
23 comprehensive understanding of the industry, it is the
24 result of what the Respondents themselves asked for.

25 The Respondents wanted the questionnaires to

1 distinguish shipments to specific brewery sizes,
2 leasing companies, and distributors. They wanted
3 purchasers to report on the importance of minimum
4 purchase quantities. They wanted additional details
5 regarding perceptions of domestic quality and services
6 versus imports.

7 Now, faced with facts that don't support
8 their narrative, the Respondents insist that the data
9 are actually inaccurate, incomplete, and unreliable.
10 They don't like the proprietary record regarding
11 channels of distribution, so they argue that small
12 craft brewers buy too few kegs to really matter.

13 They don't like that American Keg's capacity
14 has been verified, and that the company should be able
15 to make a profit if it operates at that level, so they
16 argue that this is really about the normal struggles
17 of a start-up, who can't achieve the true economies of
18 scale that have entrenched foreign suppliers.

19 They don't like that most purchasers either
20 don't care about minimum volume, or capacity
21 requirements, or ranked American Keg as comparable to
22 subject imports, or that purchasers overwhelmingly
23 approved of American Keg's quality, lead time, and
24 services. So they point to American Keg's incremental
25 progress in the face of a market dominated by unfairly

1 traded kegs as proof that there's no real problem at
2 all.

3 But the Respondents can't change the fact
4 that American Keg competes for sales in a majority of
5 the market for refillable stainless steel kegs. Even
6 if we were to limit our discussion to small craft
7 brewers, they are an important and dynamic area of the
8 keg market, where all of the Respondents compete for
9 sales with American Keg.

10 Respondents can't change the fact that
11 whatever asserted competitive advantage they may
12 claim, they are all dumping their kegs in the U.S.
13 market, and that Chinese kegs are massively
14 subsidized. And they can't change the fact that, even
15 as American Keg has fought for every sale, and has
16 looked for every opportunity to cut costs and up their
17 efficiency, they are still losing money. And the
18 reason that they are losing money is because they
19 cannot make enough sales. American Keg has been
20 unable to sell enough kegs at a sustainable price to
21 survive in a market dominated by unfairly traded kegs.

22 Given the significant noise that the
23 Respondents have introduced, I want to walk the
24 Commission through a few conditions of demand and the
25 basic indicators that American Keg has been injured.

1 Keg demand is driven, largely, by the demand
2 for beer, but it's not a 1:1 relationship. Within
3 that demand for beer, you have different factors that
4 affect who buys kegs, and in what quantities.

5 First, most beer is packaged in bottles and
6 cans -- the TTB reports that this covers about 85
7 percent of beer consumption -- but draft beer has
8 maintained a consistent presence over the POI.
9 Bottles and cans are the packaging utilized by larger
10 brewers who have distribution channels for their beer
11 into retail. Small craft brewers may not be equipped
12 to use these same channels, and instead rely on kegs.
13 Accordingly, while much of the beer produced in larger
14 brewing companies is packaged in bottles and cans
15 rather than kegs, craft brewers rely more on kegs.

16 Second, overall beer consumption is down
17 slightly over the POI; however, the craft sector is
18 actually growing, with volume increasing by about four
19 percent annually and accounting for about 13.2 percent
20 of total beer volume in 2018. That level of growth
21 has continued in 2019.

22 As craft brewers have proliferated, their
23 on-site sales also increased throughout the POI, and
24 draft beer's shares of those sales grew, as well,
25 accounting for nearly two-thirds of on-site

1 consumption. In fact, the majority of craft beer's
2 growth is driven specifically by micro breweries, tap
3 rooms, and brew pubs.

4 The takeaway is that craft brewers,
5 particularly new, small craft brewers, not only drive
6 growth in the beer industry, but are particularly
7 attractive consumers for kegs. The keg industry
8 understands this. That is why all keg producers
9 devote significant resources to winning those
10 customers.

11 This is a map of the vendors at this year's
12 Craft Brewers Conference in Denver, Colorado. So, as
13 you can see in this zoom-in, all of the producers
14 appearing before you today, as well as importers NDL
15 and G4, were practically within throwing distance of
16 each other, and with American Keg.

17 And in this photo from Blefa's promotional
18 blog you can see the company's impressive investment
19 in signage, with Chinese competitor Ningbo Major in
20 the very large booth just behind them, see, with that
21 black sign.

22 These producers' and importers' interest in
23 craft brewers is not just limited to the CBC, however.
24 As you can see in this slide, Thielmann attended the
25 Illinois Craft Brewers Convention, just one month ago.

1 In fact, Thielmann has been a sponsor for other state-
2 level craft brewer events, and their sales
3 representative gave an interview last year about the
4 brand's commitment to supplying small craft brewers.
5 So, if you want to watch this.

6 (Whereupon, a video was shown.)

7 MS. ROLIG: So, the Commission can see for
8 itself the fruits of these efforts. When you look at
9 the sheer volume of subject imports over the POI, and
10 at the sales of those imports that went to small
11 brewers, the importance of these particular customers
12 is undeniable, especially for a producer like American
13 Keg who needs to move more volume.

14 So, given these opportunities in the market,
15 why is American Keg continuing to struggle? The
16 Respondents insist that it can't be imports, and that
17 American Keg is either fatally flawed as a business,
18 or, incredibly, that they are doing exceptionally
19 well, given other challenges in the market.

20 But the legal factors for finding injury
21 paint a much different picture. This is a young
22 company that has established itself as a viable
23 supplier for important portions of the keg market, but
24 it cannot survive against subject imports because
25 those unfair imports have made it impossible to sell

1 domestic kegs at a sustainable volume and price.

2 We detail these factors in our brief, but I
3 want to emphasize a few of these considerations,
4 because they get to the essence of our case.

5 First, the volume of subject imports has
6 been massive. The Commission recognized this in the
7 preliminary phase, and it remains true now. Moreover,
8 subject import volumes, shipments, and share of
9 imports increased between 2016 and 2018. And while
10 subject shipments declined in interim 2019, following
11 the filing of the petitions, American Keg now faces a
12 massive increase in importers' inventories.

13 Second, price is important, and subject
14 imports have consistently undersold the U.S. industry.
15 The Respondents have pointed to certain capacity or
16 production requirements that a handful of larger
17 purchasers impose, but the record is clear that those
18 purchasers are in the minority, and a significant
19 number of purchasers either don't care or have
20 requirements that American Keg can meet. The record
21 is also clear that American Keg rates well on a
22 variety of other purchasing considerations.

23 Instead, the only factor where the U.S.
24 industry consistently loses to imports is price. As
25 you'll hear today, American Keg regularly faces

1 pressure to lower their own prices to match those
2 unfairly traded imports, and they have been unable to
3 sell a sufficient volume of kegs as a direct result.

4 Finally, American Keg lost money on its
5 sales in every period. Its commercial sales value
6 never exceeded its COGS. It's true that American Keg
7 is now losing less money on each sale than at the
8 beginning of the POI, but those improvements come from
9 cost-cutting efforts and an attempt to maintain price,
10 to the detriment of sales volume. That strategy can
11 only take them so far. If they can't increase the
12 volume of their sales at a sustainable price, the
13 company will fold. They cannot achieve that goal
14 without trade relief.

15 The keg market presents a number of
16 challenges for any producer, and American Keg has done
17 its best to address those challenges and position
18 itself for success. The company reasonably expected
19 that it could be profitable, given the enormous
20 opportunities created by the explosion of craft
21 brewing throughout the country, and given American
22 Keg's ability to scale up quickly to serve customers
23 in other channels. And American Keg has grown its
24 sales base, reducing its reliance on customers in just
25 one sales channel throughout the period of .

1 investigation, but, as Scott, Paul, Steve, and Brian
2 will share with you today, the sheer volume of
3 unfairly traded imports that entered the market over
4 the POI has been insurmountable.

5 They have an incredible team in Pottstown.
6 They know the industry, they know how to make a
7 quality keg, and they know how to sell that keg, but
8 the successes they've been able to achieve over the
9 last three years cannot, and will not, sustain their
10 company for much longer. Trade relief is imperative
11 for American Keg's survival.

12 Thank you again for your time this morning.
13 I will now turn it over to Scott Bentley, the owner of
14 American Keg.

15 MR. BENTLEY: Good morning, my name is Scott
16 Bentley, and I am here to address the Commission
17 staff, with respect to the petitions filed by American
18 Keg Company. I want to thank the Commission for its
19 work, and we are extremely grateful that they took the
20 time to visit our plant and speak with our staff.

21 I am the owner of American Keg, which I
22 formed from the assets of a previous company,
23 Geemacher, in 2016. I created American Keg because of
24 my belief in the people and the business plan that was
25 presented to me. I also wanted to save jobs of the

1 smart, hardworking people that I met in my home of
2 Pottstown. These people have worked very hard to re-
3 establish the keg industry here, in the United States.

4 As Thielmann points out in their written
5 brief to the Commission, American Keg is about an
6 hour's drive south of Allentown, Pennsylvania.
7 Allentown is about five miles due west from Bethlehem,
8 Pennsylvania. Our region bears the scars from what
9 unfair trade can do to American manufacturing. I did
10 not know that Allentown was, as Thielmann contends,
11 the fourth worst place to start a small business in
12 America. I've been there about as many times as I've
13 been to Mexico, though I know that Billy Joel wrote a
14 kind of downer song about it.

15 However, Montgomery County, where Pottstown
16 is located, currently has 1,406 manufacturers, second
17 in Pennsylvania, behind Allegheny County with 1,780.
18 I have never tried to start a business in Allentown.
19 Instead, over the course of my professional life, I
20 have had the great fortune of working with several
21 close friends, and my brothers, to start successful
22 businesses in the Pottstown area.

23 In the mid-1980s, I was the second employee
24 of Bentley Systems, Inc., a company that now has more
25 than 3,300 employees and hundreds of millions of

1 dollars in annual revenue.

2 I left Bentley Systems in 1999, to start
3 VideoRay, a business which has moved several times as
4 we grew. It is now headquartered in Pottstown, just
5 down the road from American Keg. Today, VideoRay is
6 the largest volume producer of observation-class,
7 underwater remotely-operated vehicles in the world,
8 employing about 45 people.

9 These successes have allowed me to give back
10 to my community in a number of ways. I have been
11 involved with Big Brothers/Big Sisters since 1981. I
12 am now on the Board of Directors of Big Brothers/Big
13 Sisters' Independence region, including several
14 counties in Pennsylvania and New Jersey.

15 I'm the Vice President on the Board of
16 Directors of our local theater company, a volunteer
17 for the local tourist railroad, and a major
18 contributor to many charities, of both my money and my
19 time.

20 In 2016, when I was presented with the
21 opportunity to purchase what is now the American Keg
22 Company, I acted on what I considered a good
23 opportunity, based on my years of business experience.
24 Through the purchase of Geemacher's assets, I would
25 own the nation's only stainless steel keg producer at

1 a time when the market for stainless steel kegs was
2 growing. I was drawn to this prospect of having
3 Pottstown become the home of the only American keg
4 manufacturer using American steel, American
5 engineering ingenuity, and American factory floor
6 labor.

7 This is important to me, as Pottstown, over
8 the last several decades, has experienced many of the
9 same challenges faced by countless other manufacturing
10 cities across the country, including idle factories
11 and high unemployment for manufacturing labor.

12 When I bought the company after carefully
13 reviewing its business plan, I had confidence in
14 American Keg's ability to produce high-quality,
15 refillable stainless steel kegs and generate a profit,
16 all the while generating meaningful employment
17 opportunities for the people of Pottstown.

18 I knew I was not going to make money
19 immediately, but I did not enter the business to lose
20 money over the long term. I did not intend to create
21 a niche market, nor one limited in scope. We had, and
22 have, a plan to gradually and progressively increase
23 our sales, and the companies to which we can do
24 business.

25 I initially invested over \$4 million in

1 American Keg, anticipating that the company would
2 break even and maintain a profit. Since then, I have
3 continued to invest millions in American Keg's
4 facilities and people.

5 The staff report shows what happened after I
6 started American Keg in 2016. Keg imports from China,
7 Mexico, and Germany increased by 110,000 kegs, up by
8 over nine percent from the year before. The unit
9 value of those imported kegs fell from \$79 to \$73,
10 dropping by over seven percent.

11 Unfair competition from dumped and
12 subsidized foreign imports has a large and direct
13 impact on us. These unfair trade practices have cost
14 American Keg Company dearly, creating an environment
15 that makes it impossible to make a sustainable profit.

16 The Commission's determination in this case
17 decides American Keg's future. An affirmative vote
18 means a level playing field, and we will expand. We
19 anticipate that other domestic competitors will join
20 the market, and we will welcome the challenge from
21 fair competition. I believe American Keg will thrive.

22 A negative vote means a return to unfairly
23 traded imports. American Keg will be forced to close,
24 and the U.S. industry will die.

25 If the Commission returns an affirmative

1 determination, we will immediately embark on a plan
2 with our existing factory that will roughly double our
3 production and significantly increase our capacity.
4 This will require a few million dollars in investment
5 on areas where we have specific plans involving
6 increasing throughput and efficiency. Within a year
7 or so, we expect to start a brand new factory,
8 designed for a large multiple of our current
9 production.

10 There are a number of things I want to
11 emphasize that I am particularly proud of at American
12 Keg. First, our CEO and our management team. We have
13 world-class manufacturing management.

14 Second, our engineers and our production
15 technicians. We are not the most efficient
16 manufacturer in the world, but we are making steady
17 progress, and can make a profit on a level playing
18 field.

19 Third, our workers on the factory floor.
20 They have frequently had challenges in life, and this
21 work is not easy. Saving and creating more of these
22 jobs is one aspect of American Keg that I am most
23 proud.

24 Fourth, the quality of our product, and our
25 customer support. Again, we are world-class in both

1 areas.

2 In closing, I would like to explain what it
3 will take to address the problems American Keg has
4 with profitability and sustainability.

5 First, we need to increase our volume. We
6 are currently spreading our fixed costs, CEO and other
7 salaries, much of our depreciation, and plant costs,
8 over far too few kegs. As I mentioned, we have both
9 long and short term plans to address this.

10 And we need to make sure that unfairly
11 traded kegs do not depress our prices below the level
12 where we can earn a fair return on capital.

13 As with everyone at American Keg, I would be
14 happy to answer your questions.

15 MR. RUBELO: Good morning, my name is Steve
16 Rubeo, and I am the Controller of the American Keg
17 Company. American Keg Company is located in
18 Pottstown, Pennsylvania, in the heart of the rust
19 belt. We are the only manufacturer of stainless steel
20 kegs in the United States. Today, we are proud to
21 have 32 employees.

22 I began working with American Keg Company in
23 November 2013, when the company was started as
24 Geemacher. Geemacher was founded by John
25 Giannopoulos, the owner of Sly Fox Brewery, also

1 located in Pottstown.

2 At that time, there were no stainless steel
3 kegs manufactured in the United States, and there was
4 a limited supply of imports. As a result, small
5 brewers were struggling to obtain stainless steel
6 kegs, and John founded Geemacher to address that
7 shortage.

8 While Geemacher began by importing kegs, the
9 company decided in 2011 that it would start producing
10 kegs in the U.S., and eventually started production in
11 2014. When Geemacher began manufacturing, we started
12 by manufacturing kegs to order. Then we grew to
13 marketing our own kegs rather than only selling
14 imported ones, since our plan was always to keep
15 making American kegs.

16 We currently manufacture the one-sixth-
17 barrel and one-half-barrel kegs, because they are
18 universally the most popular sizes.

19 We started out by marketing to small and
20 craft breweries. We focused on them, because we were
21 started by a craft brewer ourselves, and we felt that
22 as we built up our inventory, focusing on craft
23 breweries made the most sense. We also recognized
24 that craft breweries often have a preference for
25 American-made products. They want to support the

1 country's only stainless steel keg manufacturer.

2 We have customers located across the
3 continental United States, serving customers in the
4 Northeast, Southeast, Midwest, and out West, including
5 such places as California, Nevada, and Oregon. While
6 most of our customers are breweries, we also sell to
7 wineries, cideries, and coffee houses.

8 Aside from our website, we attract customers
9 at trade shows, such as national and regional craft
10 brewers conferences, brewery trade shows, and winery
11 conferences. We also advertise in trade publications.

12 As I mentioned, we are both a manufacturer
13 and importer of stainless steel kegs, and we've always
14 been committed to producing American kegs. We are
15 able to witness firsthand how customers make their
16 decisions about which kegs to purchase.

17 At the end of the day, one stainless steel
18 keg is the same as another, and many breweries have
19 kegs from multiple suppliers. Unless a customer has a
20 strong preference for a product that's made in
21 America, they will go for the cheaper keg every time.

22 And frankly, that gets to the crux of our
23 problem here today. Chinese, German, and Mexican kegs
24 are distinguished from American-made kegs, only by the
25 fact that they are much, much cheaper. These imported

1 kegs are unfairly traded, making it impossible for
2 American Keg Company to compete on a level playing
3 field.

4 Until late 2016, we were very optimistic
5 about our business. We were a growing company, with
6 plans to expand our operations and sales in the
7 future.

8 Our plans to grow, and even our ability to
9 survive as a company, have been thwarted by the
10 unfairly traded kegs which have been priced too low
11 for us to sell our kegs at a sustainable price and in
12 the volume we need. Imports from China, Germany, and
13 Mexico are the primary culprit for these low prices,
14 and the losses that we've experienced as a result.

15 Given these challenges, our company has
16 always looked for ways to reduce our costs and
17 maximize our efficiency. For example, steel is one of
18 our biggest costs. Even though we only buy American
19 steel, we've had to cope with real volatility over the
20 past year, so as of last September, we've picked up
21 two additional steel suppliers, and now buy from all
22 four certified stainless steel mills in the U.S. This
23 helps us get a more competitive pricing for our steel
24 imports.

25 We've made other small changes, as well,

1 because we know that we can't take this investigation
2 for granted. If we're going to survive as a business
3 in a fair market, we have to be as cost efficient as
4 possible.

5 But even our best cost-cutting efforts
6 haven't been enough, in the face of the unfairly
7 priced imports. As steel prices have gone up, we
8 absorbed those costs, but we also had to pass some of
9 them along to our customer. This puts us in a tough
10 position when we are in a head-to-head price war with
11 the foreign manufacturers.

12 When we were selling both American and
13 imported kegs, we always quoted American kegs first,
14 but the customers invariably asked for quotes for the
15 imported kegs, as well. Now that we've stopped
16 importing, we continue to hear from our customers who
17 want us to match importer prices. Those imported kegs
18 are much, much cheaper.

19 We can't blame our customers for this. Most
20 of them would love to purchase an American-made
21 product, and we know this because they tell us.
22 However, most of our customers are cost-conscious.
23 They are not going to pay for more for American-made
24 kegs, when comparable ones are available for
25 significantly cheaper prices due to unfair trade

1 practices by the foreign manufacturers.

2 Of course, I am worried about what this
3 means for American Keg Company's business, but my
4 worries are compounded by my concern what this
5 situation means for our employees and the families who
6 depend on them.

7 As I said, we are a small business, and, as
8 often the case with small businesses, I wear many
9 hats. In addition to serving as Controller, I also
10 handle the human resources. We went through two
11 layoffs last year, which included about a third of our
12 entire workforce. This is really difficult for us,
13 because we are located in a community that really
14 needs those jobs.

15 Pottstown is a steel town, and while it used
16 to be thriving, most of its mills have shut down and
17 they aren't coming back, so we take our responsibility
18 as an employer seriously. We pay a living wage,
19 starting at over \$12 per hour.

20 We're also a second-chance employer. We
21 will hire and train people who have had criminal
22 records or have had problems in their life. We give
23 them a chance to make a decent living, while learning
24 skills that apply to a mid-level manufacturing job,
25 fabricating and welding stainless steel.

1 When we lay off employees, there's a good
2 chance that these people will have no other place to
3 go find a decent job that provides them a living wage.
4 We do everything we can to avoid layoffs. Management
5 has not received a raise in three years. We have
6 eliminated production bonuses, to allow us to meet
7 payroll instead. And we continue to look ways to
8 reduce our costs.

9 If we don't receive help to allow us to
10 compete on a level playing field, we won't be able to
11 survive much longer. We'll have 32 more people out of
12 a job, which is a loss not just for them, but for
13 their families, and the greater community as well.

14 At the same time, if we receive some help
15 that allows us to compete on a level playing field, we
16 have plans to further grow our business that would
17 allow us to expand our workforce.

18 Most recently, we brought on an additional
19 engineer, and upgraded one of our employee's positions
20 to a plant manager position. And, as you heard from
21 Scott, we are ready to add more employees and
22 machinery as soon as the market supports it.

23 A level playing field will allow us to
24 become even more cost efficient. For example, if we
25 can sell more kegs at a sustainable price, we can buy

1 and store larger volumes of steel. This would help us
2 further manage those costs, and be better equipped to
3 deal with the changing market conditions.

4 I am optimistic that American Keg Company
5 can grow and thrive, if given a chance to compete in a
6 fair environment. Thank you for allowing me the
7 opportunity to tell you about American Keg Company,
8 and why this investigation is so important to us, our
9 employees, and our community. Thank you.

10 MR. LUZZI: Good morning, my name is Brian
11 Luzzi. I am the Director of Marketing and Sales for
12 American Keg Company, a position I've held since 2016.

13 I am intimate with the impact of unfairly
14 trade kegs on our company, because I have been
15 competing with most of the groups represented here
16 today, on a daily basis for the last three years.
17 Whether I'm at an industry trade show and see their
18 promotional pricing, or negotiating with potential
19 customers who reach out to us for quotes, I am
20 constantly reminded of the lower prices that our
21 foreign competitors offer.

22 American Keg Company offers a high-quality
23 product, coupled with first-class service to our
24 customers, but the reality is that we have not been
25 able to sell enough of our kegs to survive as a

1 business, because there is too much of a price
2 differential between our domestically-produced kegs
3 and these imported kegs.

4 Our company has worked very hard over the
5 past three years to promote our brand and build our
6 customer base. We are regular attendees at industry
7 trade shows like the Craft Brewers Conference, and we
8 run ads in important industry publications like the
9 Brewery Association's *The New Brewer* magazine. But we
10 also rely very heavily on our website, where
11 prospective customers can learn about our company and
12 products, and request product quotations.

13 My team follows up on these requests
14 immediately, and if a customer is serious, they'll
15 respond, and we can work towards building our
16 relationship. We've received thousands of inquiries
17 from both large and small purchasers, alike. Some
18 customers make an immediate purchase decision and we
19 move forward; however, many customers are just doing
20 their due diligence as new or small business owners,
21 and shopping around for the best price, period.

22 I make it a point to follow up and learn
23 everything I can about these inquiries, so I can
24 maintain contact, but when I can't get a return
25 response, it's pretty obvious the sale was lost and

1 they went with an imported keg, which happens quite
2 often.

3 There has been a lot of talk about keg
4 leasing and logistics companies in the industry. And
5 it's true that some brewers have chosen to outsource
6 the management of their keg fleet so they don't have
7 to invest the capital to keep track of their own kegs,
8 but leasing and logistics products and services can
9 have real disadvantages for brewers, especially when
10 they're new and still trying to find their place in
11 the market.

12 A lot of these arrangements involve complex
13 contracts with lots of paperwork, and customers end up
14 locked into long-term commitments with very high
15 interest rates. This makes leasing much more
16 expensive over the long term, which can make buying a
17 keg outright a more attractive option.

18 Keg logistics and leasing companies may also
19 offer rental models or paper-free (phonetic) models,
20 but the brewers using that option tend to be larger
21 and more well-established, and their business model is
22 such that they wouldn't be buying a keg outright
23 anyway.

24 This is why we think there is plenty of
25 opportunity for us with both smaller craft brewers,

1 and logistics, leasing, and distribution companies.
2 Even with overall beer consumption down, there is
3 still a ton of growth in craft beer, with hundreds, if
4 not thousands, of new small breweries opening up every
5 year.

6 And while much larger brewers tend to just
7 replenish lost and damaged kegs every so often, rather
8 than significantly adding to their fleet, especially
9 when you're losing market share to new craft brewers,
10 small brewers will remain a dynamic and growing area
11 for keg sales.

12 The feedback we get from American Keg
13 customers is really positive. They've expressed great
14 satisfaction with our quality, and have commented that
15 our keg is "built like a tank." It's a quote that
16 we're very proud of.

17 Customers also love that we are made in
18 America, and use domestically-sourced, American steel.
19 The truth is that once we get a customer we can
20 usually keep them because they trust our product and
21 appreciate the service we offer.

22 But while we've succeeded in growing our
23 customer base over the last three years, the reality
24 is that we haven't been able to expand our sales
25 volume at the level we need to. The reason for that

1 is imported kegs.

2 We know that we meet customers' quality
3 expectations, and we know that we can meet most
4 customers' volume requirements. We also know that a
5 lot of customers just won't buy from us, when they can
6 get a comparable imported keg at a lower price. We do
7 what we can to minimize that price differential, but,
8 at the end of the day, we can't realistically compete
9 when the imported kegs are unfairly priced so low.

10 I love working in this industry, and, more
11 importantly, love the people that I sell to. They are
12 extremely hard working, creative, and driven small
13 business owners, all qualities that I greatly admire,
14 which makes them easy to build a rapport with. Plus,
15 they all make amazing beer, which I happen to also
16 love.

17 I have come to learn that craft brewers
18 value community and supporting local vendors, as much
19 as possible. Though the industry is very competitive,
20 they also support each other in many ways, including
21 talking to each other about the best products out
22 there for their business. That's a big part of why I
23 know there's room for an American producer with a
24 high-quality product to grow and succeed in a fair
25 market.

1 Customers like our product, they like our
2 company, they like what we're all about, and I know
3 that American Keg is fully capable of supplying a lot
4 more of these customers, but when I see on a daily
5 basis, the import prices that we're up against, I also
6 know that we won't have a real shot of making it if we
7 can't put a stop to our competitors' unfair trading
8 practices.

9 I very much appreciate the opportunity to
10 speak before you today, and I'd be happy to answer any
11 questions.

12 MR. CZACHOR: Good morning, my name is Paul
13 Czachor, and I am the Chief Executive Officer for
14 American Keg Company, a position I've held since 2016.

15 I wanted to start my comments today by
16 showing you some examples of refillable stainless
17 steel kegs. We brought four kegs with us this
18 morning. For the purposes of convenience, we brought
19 one-sixth kegs, because they are smaller and were
20 easier to bring in today than half kegs.

21 All of these kegs look extremely similar to
22 one another. They are made from stainless steel, they
23 have similar dimensions, with the same height of
24 approximately 23 and a quarter inches, and they all
25 use a D Sankey spear.

1 We also brought a *D* Sankey spear with us, as
2 well. This spear goes in the keg and is used to move
3 liquid in and out of the keg. The kegs that work with
4 this spear are interchangeable, and you can see that
5 in the different types we have here today.

6 The first keg here, is an American-made keg
7 from American Keg. The second keg is a German-made
8 keg from manufacturer Blefa. The third keg is from
9 China, from the manufacturer Major Keg Company. The
10 fourth one is a Mexican manufacturer, made by
11 Thielmann. As I mentioned, the spear goes inside the
12 keg to extract the liquid in and out.

13 I have read the comments from the parties
14 opposed to trade relief and understand that they are
15 arguing that kegs are not commodity products sold on
16 the basis of price; however, it is difficult to
17 believe that argument when you look at the product.

18 The fact that all these kegs are all
19 interchangeable is why importers have been able to
20 build huge inventories of dumped and subsidized kegs
21 after we filed our petition. The public staff report
22 states that at the end of March, importers were
23 holding over 400,000 Chinese, German, and Mexican kegs
24 in inventory. That is an incredible number of kegs,
25 equal to about one-third of the total shipments of

1 these kegs in the U.S. market.

2 These importers can sell a commodity product
3 out of inventory because there are no special
4 requirements in our market for how a keg is produced.
5 Like the importers, we also maintain inventory of kegs
6 to facilitate a quick turnaround time for orders. The
7 difference is importers turn their inventory at a lot
8 more rapid rate than we can, because unfairly traded
9 keg prices are well below our prices.

10 The interchangeability of kegs is also why
11 keg producers use a variety of different suppliers to
12 meet their needs. Keg buyers, whether they are small,
13 medium, or large, are not married to one brand of
14 kegs. They will switch to get the best deal out
15 there.

16 The players in the market change, the volume
17 of kegs they sell into the market in any given year
18 changes. In the preliminary conference, I described
19 the tools American Keg uses to monitor shipments of
20 kegs into the United States. Through this monitoring,
21 we saw new Chinese companies jump into the market.
22 This happens because kegs are interchangeable.

23 The existence of keg leasing and rental
24 companies are a reflection of the commodity nature of
25 kegs. The fact that kegs are a commodity product

1 allows keg leasing and rental companies to build their
2 capital stocks and service customers based on what
3 they have on hand, as opposed to needing to tailor
4 their purchase to a customer's individual specialized
5 needs for a keg with a unique weld or proprietary
6 shape. This is also why we are confident that we can
7 supply anyone in the market for kegs.

8 Brian talked about what American Keg has,
9 and continues, to do to market our product and grow
10 our customer base. In addition to that marketing,
11 American Keg is actively working with leasing and
12 rental companies to move even further into the market.

13 At the end of this month, we are sending
14 samples to two of the largest leasing and rental
15 companies in the country. We have a meeting set up in
16 September with one of those companies to discuss their
17 needs and our capabilities. Additionally, we have
18 worked on a quote for a wine logistics company that
19 also has expressed an interest in our kegs.

20 I do not know if any of these efforts will
21 pan out, but we are actively competing for sales in
22 all markets. Our experience indicates that leasing
23 and rental companies are interested in our product.

24 American Keg has been manufacturing and
25 selling kegs since 2016, and I have been with the

1 company from the beginning. My responsibilities are
2 to grow American Keg's business, while making the
3 company's operations more efficient and effective.

4 We are constantly working to get better.
5 We've reduced our lead times, we have increased our
6 production capacity, and we expanded our customer
7 base. We supply high-quality, American-made kegs to
8 customers throughout the country.

9 American Keg is an example how manufacturing
10 remains not only possible in this country, but how it
11 can thrive. However, the United States market for
12 kegs is dominated by unfairly traded imports.

13 I have read the comments from those opposing
14 trade relief that say our problems are self-inflicted
15 or caused by other things, other than imports. They
16 frequently quote myself or someone from American Keg
17 to support their arguments, implying that we agree
18 with their position that imports do not significantly
19 our operations. But, however much they seem to enjoy
20 twisting our words, the facts do not support them.

21 In 2017, we, and everyone else in the
22 market, saw a large increase in the amount of imported
23 kegs coming into the United States. With that volume,
24 prices for kegs fell. With the price decline,
25 American Keg had to become even more cost-sensitive

1 just to mitigate losses. The prices for these imports
2 were crazy. The numbers did not work. What foreign
3 producers were asking for their kegs made no sense.

4 As we thought about the future of the
5 company, we realized that we had to do something about
6 unfair trade. We looked at what options existed under
7 Federal law to combat dumped imports. Eventually, I
8 called the Commission on November 29, 2017, and spoke
9 with an attorney about filing a possible petition.

10 Steve and I then put together a few drafts
11 of a sample petition, which I sent to the attorney at
12 the Commission. The attorney was helpful, and
13 eventually introduced us to the Department of
14 Commerce's petitioning counseling unit.

15 At Commerce, Whitney Schablik and her team
16 patiently worked with us over several months, as we
17 obtained new information to get our case off the
18 ground, but by the summer of 2018, we hit a wall and
19 were advised that American Keg was going to need to
20 engage an attorney in order to bring a case forward.

21 We did not wait until after the steel
22 tariffs to raise our concerns about unfairly traded
23 keg imports. We realized the problems that unfairly
24 traded imports were causing in the market well before
25 any steel duties went into effect.

1 When steel costs increased, they did so
2 after dumped and subsidized imports had forced keg
3 prices down. It is simply not true that American Keg
4 has sought to make unfairly traded imports the
5 scapegoat for increases in our raw material costs.

6 I have seen in the written submissions a lot
7 of reminders that there is pretty extensive record of
8 me complaining about increases in American Keg's steel
9 costs. Imported keg prices have dropped throughout
10 the market. Our raw material costs went up, while
11 what customers were willing to pay was declining.

12 We were actively working to get this case
13 off the ground, but it did not seem like we were close
14 to having that happen. The circumstances were
15 desperate. We wanted the American public to know that
16 we were on the brink, and I actively spoke out about
17 what steel tariffs meant for our business, but we
18 never lost sight of the dominance of dumped and
19 subsidized imports in the market.

20 I asked for help, American Keg asked for
21 help anywhere, and everywhere, it might have made a
22 difference.

23 It has taken us a long time to get here. We
24 have actively pursued trade relief for almost two
25 years now. The legal requirements for initiating a

1 trade case like this are incredibly difficult for a
2 company like American Keg to meet on its own.

3 Throughout the process we were encouraged
4 and asked by staff both at the Commission and
5 Commerce. In answering their questions, I became even
6 more aware of the harmful impact unfairly traded
7 imports were having in this market.

8 Since the case was formally initiated and
9 the investigation began, we have been incredibly
10 impressed by the work at the Commission staff in their
11 efforts to understand this industry and the market.
12 They have done a tremendous job in seeking out and
13 confirming information provided to them.

14 One of the lasting impressions we have of
15 this case is Mr. Boyland, with a stopwatch, verifying
16 the underlying production facts that are built into
17 our capacity calculations.

18 We are grateful that the Commission has
19 taken our petition for relief as serious as we take
20 our business. The information that the staff has
21 compiled establishes how dumped and subsidized imports
22 have prevented American Keg from making sales at the
23 prices and volumes necessary to make a profit within
24 our business.

25 American Keg is now an established keg

1 producer in the United States, with a strong brand.
2 As we have grown since 2016, we have expanded our
3 customer base and supply customers beyond small craft
4 breweries with high quality, American-made kegs. Our
5 progress can only be sustained if we are not forced to
6 compete with dumped and subsidized imports.

7 Thank you for your time and consideration
8 today.

9 MS. ROLIG: And that concludes our
10 affirmative presentation, so we would welcome your
11 questions.

12 COMMISSIONER KEARNS: Great.

13 Thank you all for appearing here before us
14 today. We appreciate your input, and thank you for
15 appreciating our staff's hard efforts. I've now got
16 the image of Mr. Boyland more as a high school gym
17 coach with a stopwatch, rather than as an accountant.
18 But that's kind of a good image. I like that.

19 I'm going to start off with a few questions
20 for counsel, so just bear with me. I'll have plenty
21 of others for American Keg's folks, as well.

22 But in reading your pre-hearing brief, I was
23 struck by your emphasis on American Keg as a new
24 entrant to the U.S. market and that losses would be
25 expected. Nevertheless, you argue the Commission

1 should examine whether its performance was worse than
2 could be expected at the startup. Aren't you in
3 essence urging us to conduct a material retardation
4 analysis?

5 In prior investigations where the Commission
6 has applied a material retardation analysis, it was
7 framed in the same manner whether, "the performance of
8 the industry reflects mainly the normal startup
9 condition of a company entering an admittedly
10 difficult market, or is the performance worse than
11 could have been reasonably expected?"

12 Can you explain your positions on that?

13 ATTY: Commissioner, this is Nathan Rickard,
14 with Picard Kentz & Rowe.

15 Our belief in this particular issue is that
16 it doesn't matter in what way the Commission does its
17 analysis. Whether on the material injury facts -- or
18 on material injury factors -- or on the material
19 retardation factors. The record supports an
20 affirmative vote.

21 We have gone through the difference in the
22 material retardation tests the Commission has applied
23 and the material injury test in the post-conference
24 brief, and we're happy to go through that again in a
25 post-hearing brief.

1 One of the issues that is a concern about
2 material retardation was just the lack of a
3 significant history from the Commission in making
4 those determinations. And, as we have seen, we
5 believe the pre-hearing submission that was filed by
6 Blefa, they're making an argument that because there
7 is a lack of reference to material retardation in the
8 parts of 1677 that discuss cumulation, that cumulation
9 is not possible in the material retardation setting
10 analysis.

11 The part that's true about that is there
12 isn't any reference one way or the other to what the
13 Commission would do, with respect to cumulation in a
14 material retardation analysis.

15 What we don't accept is that the Commission
16 is therefore required to not cumulate, and that the
17 Commission is bound, if it makes a determination that
18 a domestic industry is not established, to only do a
19 material retardation analysis. And, you know, one of
20 those points that we need to go into further in post-
21 hearing brief is that under 1677.11, the Commissioner
22 Statute sets out how affirmative determinations are
23 analyzed by individual Commissioners, and it sets
24 forth the possibility that Commissioners may make
25 different decisions about material injury, threat of

1 material injury, and material retardation. We think
2 that that is one of the acknowledgments within the
3 Statute, that we can do different types of analysis
4 and still reach the same results.

5 An affirmative vote for material retardation
6 and an affirmative vote for material injury is two
7 affirmative votes, and that there is no support for
8 the argument that once the Commission does a material
9 retardation analysis vote, that that's the only thing
10 that the Commission can do, in terms of its
11 investigation. It cannot look at material injury.

12 COMMISSIONER KEARNS: Okay, thank you.

13 Mr. Rickard, it seems like there might be
14 reason for us to focus more on material retardation.
15 In a typical material injury analysis you look at
16 often worsening trends, maybe even in an expanding
17 market, coupled with loss of market share, and that
18 would indicate subject imports are causing injury to
19 U.S. industry.

20 Here the trend is to be improving for the
21 U.S. industry, even in a declining market, coupled
22 with a gain in market share. As some of the absolute
23 values suggest, the industry has not yet reached a
24 sustainable level.

25 Do you agree? And if so, doesn't that

1 suggest material retardation is the right framework?

2 And let me just give you an example of,
3 maybe, how I'm looking at this, to tell me if you
4 think this is a right approach. While it may be the
5 case that this industry's market share increased,
6 which might tend to suggest no material injury in an
7 ordinary investigation, an industry that is
8 establishing itself will almost necessarily see its
9 market share increase, because it's starting from
10 zero. But the question is whether unfairly traded
11 imports retarded that growth in market share.

12 It seems like that's the right way for us to
13 be looking at this, and the reason why material injury
14 analysis could be misleading. But I'd appreciate your
15 thoughts on that.

16 MR. KENTZ: Thank you, Commissioner. Andrew
17 Kentz, from Picard Kentz & Rowe.

18 I think that the main point in us doing that
19 is to take into effect sort of what happened clearly
20 in a determination, when there is a condition in which
21 all the factors are evaluated, that you're looking at
22 a company that has been recently started and is moving
23 forward.

24 Specific factors have become significant in
25 terms of whether an industry is established. The

1 record is mixed. There are a lot of things that would
2 point towards whether it's established or not.

3 But I think it would still be possible to
4 evaluate the amount of market share increase, the
5 increase in shipments, increase in capacity, the level
6 of things have happened in the domestic industry in a
7 material injury analysis, provided that the condition
8 of competition that's being evaluated undermines the
9 fact that the company had started in 2016.

10 COMMISSIONER KEARNS: Okay, thank you.

11 I'd appreciate any further thoughts you have
12 on that post-hearing, and including anything you would
13 like to add further about Blefa's argument on
14 cumulation. But I appreciate your comments on that,
15 as well.

16 I wanted to turn to capacity constraints. I
17 think this is sort of the elephant in the room, or
18 maybe it would be better to call it the Clydesdale
19 horse in the room. The Statute does not require any
20 finding that the U.S. industry can satisfy all demand
21 for the product in the United States.

22 On the other hand, if there are huge swaths
23 of the market that American Keg has never really
24 expected to serve and realistically could not possibly
25 serve during the POI, Period of Investigation, or in

1 the foreseeable future, but that are served by subject
2 imports, shouldn't that affect how we think about
3 whether subject imports are causing injury to the
4 domestic industry? And, again, this is I think more
5 of a legal question.

6 MS. ROLIG: Thank you, Commissioner. This
7 is Whitney Rolig from PKR.

8 In general, yes, that can be true, but
9 that's simply not what's going on here. When you look
10 at the channels of distribution, yes, American Keg is
11 much smaller than its competitors. But it does have
12 significant room to grow within its existing capacity
13 and it is competing head-to-head with all of the
14 Respondents in this case, and losing sales to those
15 Respondents in a very important portion of the market.

16 That's why I focused on the small craft
17 segment in my presentation, because the Respondents
18 would have you believe that the only ones that really
19 matter for a sustainable business are large brewers
20 and the leasing companies. And, of course American
21 Keg hopes to supply them in the future, as their
22 capacity grows. But they don't need to supply them
23 right now to be a viable business, and the purchaser
24 questionnaire responses that the Commission got made
25 very clear that the kind of capacity or availability

1 requirements that some of the large purchasers have
2 are limited to those large purchasers. There are
3 literally thousands of other customers available to
4 American Keg that American Keg advertises to, tries to
5 sell to, and they are losing significant sales to
6 those customers.

7 I understand that a large company such as
8 Thielmann doesn't think craft brewers are terribly
9 important, but you can see the amount of effort
10 they're putting into courting those customers, because
11 they still view them as extremely important, in
12 reality.

13 The way that translates for American Keg,
14 what may look like a small portion of sales for the
15 larger guys is huge for American Keg. And as they're
16 able to make inroads with that industry in the volumes
17 they need, and the volumes they're getting right now
18 are not enough. The volumes that have been taken by
19 foreign competitors could sustain this business.
20 That's what matters. That's why they're injured.

21 It is a significant market available in
22 small craft brewers, and as we've pointed out, they're
23 not limited to just that part of the market. They are
24 actively engaged with leasing companies. They do sell
25 to larger customers. So, they're able to supply those

1 other parts of the market. They just had a very hard
2 time doing so, when everything they're running up
3 against is dumped or subsidized.

4 MR. RUBEO: Mr. Kearns, I just wanted to
5 add, just on the legal question that you were asking.
6 We also, Picard Kentz & Rowe also represents the
7 United States shrimp industry, and in cases when
8 that's been before the Commission, the U.S. shrimp
9 industry accounts for about 10 percent of all
10 consumption in the United States.

11 The question you're looking at is that it
12 cannot be possible for that 10 percent to be able to
13 compete for every possible sale in the United States.
14 It's whether or not there is competition between
15 imports and the domestic industry, sufficient enough
16 so that there is -- the material injury factors are
17 met.

18 One of the complications that we have in
19 this, about the facts, is that we cannot talk about
20 where the client, how the channels of distribution
21 information came out. That's not public. But we
22 think that it's fair to say that some of the things
23 that have been said about the way the market is
24 divided are overstated, in terms of where sales are.
25 And, again, there's a lot of emphasis on trying to

1 talk about the large purchasers and these many foreign
2 requirements. But again, on the public record,
3 there's not a lot of evidence that that's a huge
4 demand in the market.

5 And I'd state that the analysis that you're
6 looking at is, is there competition between the
7 domestic product, when it's selling in the market
8 place for foreign imports. And the record
9 overwhelmingly shows that that's true here.

10 One of the references that was made by
11 opposing counsel, Thielmann's attorney, was to a case
12 called Silica Bricks, the Commission looked at, where
13 the sales were very distinct. We're talking about
14 sales that related to steel mills or to glass furnace
15 manufacturers, and there were totally different
16 channels of distribution where imports were going into
17 one market; domestic market products were going into
18 another. That is nothing like what this case is.

19 What you have here is imports of domestic
20 product going in the same market, same channels of
21 distribution. There are some places where they set on
22 product type and size, and on certain types of
23 customers, but the domestic industry is not yet
24 present. But that's not relevant, I think, for the
25 purposes of the legal analysis.

1 COMMISSIONER KEARNS: Okay, thank you.

2 And just to follow up on that, that was one
3 question I had, was your view on Silica Bricks.

4 So, your position is even if a U.S. industry
5 can't serve, let's say 95 percent of the market, just
6 throwing out a number, and that it's like in the
7 Silica Bricks case, it might be just a very different
8 segment. I think that's arguable about whether or not
9 that's here, and I hear what you're saying on that.
10 And within the remaining five percent of the market,
11 the U.S. industry is present and is facing
12 competition, unfair competition from subject imports.
13 That that, even if there's a complete dividing line
14 between those two segments, the huge segment and the
15 small segment, if the U.S. industry is not doing as
16 well off in that five percent of the overall market,
17 that's a material injury, nevertheless. Is that your
18 argument?

19 MR. RICKARD: Commissioner, Nathan Rickard.
20 I'm not going to answer the question, because I don't
21 think that's what's present on the record here. I
22 mean, it is not something, again, in the shrimp cases
23 that you got in the past, you've got an industry that
24 produces 10 percent of what apparent consumption is.
25 And that 10 percent can be sold into every market

1 channel that exists out there. There were claims that
2 because of the way that seasonality worked, that large
3 purchasers could not, would not consider domestic
4 product, and only importers could serve that market.
5 But there was nothing that prevented importers from,
6 or those large purchasers from changing their
7 requirements and purchasing, and certainly not the
8 intent of the industry, not to sell to certain
9 markets.

10 Here, there are claims in some of the briefs
11 that the divide is something like, I think it's 97 to
12 three percent, in terms of where the stuff goes in the
13 markets. But that is not supported by the record.

14 The record here shows that the domestic
15 industry not only sells just to small craft brewers,
16 which are much more significant in terms of keg
17 purchases in the data that the Commission collected,
18 but also that they were selling into other channels of
19 distribution and that those sales increased over the
20 period of investigation and the alliance of small
21 craft brewers decreased over time.

22 But I hear what you're saying. If we have
23 that fact pattern, I think I could answer it, but I
24 don't think that's the fact pattern at all. I think
25 it's what's being presented as what the facts would

1 be, but that's not on the record, where American Keg
2 is competing for three percent of the market for kegs.
3 They're competing for the majority of the market
4 demand for kegs.

5 COMMISSIONER KEARNS: Okay, well that goes
6 back to my question before, that Ms. Rolig was
7 answering. I mean, even if you were maxed out on your
8 capacity utilization, you know, we're not talking
9 about being able to serve all those customers. You're
10 talking about even if you could convince every
11 purchaser to do away with its minimum capacity
12 requirements, you won't be able to serve the lion's
13 share of this market. Right? So, where does that
14 leave us? How should we think about that?

15 MR. RICKARD: Commissioner, again, I think
16 this is -- this is Nathan Rickard. I don't think
17 we've gone through all of it, in terms of where we do
18 an internal injury analysis, but as you've heard,
19 there are plans for American Keg to increase its
20 capacity, and they fully anticipate that other
21 companies will then invest in manufacturers, domestic
22 kegs. The amount of capacity of the domestic
23 industry's capacity will grow beyond just American Keg
24 in a market that has fair prices.

25 And again, the material injury analysis is

1 looking at what the impact is on the domestic industry
2 as it exists now and whether you can say that the
3 volume and price impacts of the imports are
4 materially, are having an adverse impact on the
5 domestic industry. And under that part of the
6 Statute, the way that you look at it, what happens to
7 the rest of demand doesn't really enter into it.

8 We do understand that there are a lot of
9 arguments, and you'll hear from the second panel about
10 what the impact level of this would be on purchasers,
11 but the law doesn't protect purchasers to have access
12 to unfairly traded imports at unfair prices. That's
13 not part of the way that the Statute is set out.

14 COMMISSIONER KEARNS: Okay. Thank you.

15 And I'm going to turn to Vice President of
16 Operations. Mr. Bentley, I think you -- but, before
17 I turn there, if you all can tell us post-hearing.
18 You cited shrimp. I'd love to hear more about that
19 case, and any others that you think are helpful here,
20 and further arguments as to why the Silican Brick case
21 is not analogous would be helpful. Thank you.

22 So, yes, as Mr. Bentley, I think you
23 suggested that if a remedy were put in place, that you
24 all could build a second factory, is that right?

25 MR. BENTLEY: That's our plan.

1 COMMISSIONER KEARNS: Okay.

2 And what can you tell us about how you would
3 finance a capital -- it sounds like a pretty major
4 capital expansion. Would it double your production?
5 Or what are you thinking that way?

6 MR. BENTLEY: We'd probably increase by a
7 factor of 10. I have three ways that I could finance
8 it. I'm talking to a couple of companies or groups
9 that I can't divulge about doing it, or I could do it
10 myself. It's about, order of magnitude is tens of
11 millions of dollars.

12 COMMISSIONER KEARNS: Okay, okay, thank you.

13 So, just taking a step back, kind of along
14 the same lines, though. You were responding somewhat
15 at least to have asserted that you have never
16 intentionally targeted large breweries. Is that a
17 fair statement?

18 MR. BENTLEY: I think it's a fair statement
19 about the past. I don't think it's a fair statement
20 about the future. It's certainly not a true statement
21 about our intentions.

22 COMMISSIONER KEARNS: Okay. And even when
23 you were beginning the company say in 2015, 2016, you,
24 at that period, did you think that eventually you
25 might serve the large breweries? Or --

1 MR. BENTLEY: Certainly.

2 COMMISSIONER KEARNS: Okay, okay, thank you.

3 Several purchasers indicated -- this may be
4 for Mr. Luzzi -- several purchasers have indicated in
5 their questionnaire responses that they were not aware
6 of a domestic source for kegs. Can you please
7 describe your firm's marketing efforts in acquiring
8 more purchasers and expanding your customer base?

9 MR. LUZZI: Sure. This is Brian Luzzi,
10 Sales and Marketing Director, American Keg.

11 We have identified some of the larger
12 outlets, publications, industry trade shows, working
13 through state guilds that most of the small brewers
14 are members of. I think we've identified as having
15 the most visibility at Craft Brewers Conference for
16 the markets that we serve right now, which is the
17 largest trade show gathering every year. All the
18 Respondents here participate in that, as well.

19 Our online visibility is a big part of our
20 marketing strategy, using all the resources that we
21 can do over the web to gain customers.

22 Locally, word of mouth, especially, is huge
23 for us. Like I mentioned in my testimony with the --

24 MR. BUSH: Can you pull the mic a little
25 closer? They can't hear you in the back.

1 MR. LUZZI: Yeah, sorry.

2 Word of mouth in this industry is very big.
3 Like I mentioned in my testimony, there's a lot of
4 competition between them. They do talk with each
5 other a lot about products they buy that help make
6 them successful, so that's another big one for us.

7 So, I would say those three avenues are
8 where we try to gain the most visibility from.

9 COMMISSIONER KEARNS: Okay. And I guess, I
10 mean, we know how your sales have increased over the
11 period of investigation. What can you tell us about
12 your customer base, how much that's changed over the
13 period?

14 MR. LUZZI: Of course, with our abilities
15 we've started with small brewers. As they've grown
16 over the last three years, we've watched them grow, so
17 we've grown with them as their keg needs grow. That's
18 one way.

19 I believe that's it.

20 COMMISSIONER KEARNS: Do you have more
21 customers now, than you did in 2016, 2017?

22 MR. LUZZI: We do. Yes, we've grown our
23 database, our customer base, as well, and it's through
24 all the channels that I've mentioned.

25 COMMISSIONER KEARNS: Yeah. Anything you

1 can tell us about estimating how much the customer
2 base has grown, and what kinds of customer? I hear
3 you say that you started off with some small customers
4 who have grown. Besides those, are you serving other
5 medium-sized brewers more than you did in the past?
6 And anything about the kind of customer and the number
7 of customers over the last couple of years.

8 MR. LUZZI: Well, we anticipate we've talked
9 to over half of the people in the industry. We've had
10 thousands of inquiries. We sell to very few, but we
11 do sell to people in the top 50, what would be
12 considered top 50 barrel producers in the country.
13 And some regional breweries around us, that have
14 bought our product.

15 So yes, those have grown. Though, as small
16 as that number is, they have grown over the last three
17 years. We love, when we talk to somebody that's in
18 the big barrel producers, giving them detailed
19 proposals on our product, giving them samples,
20 visiting with them. We love those. We want so many
21 more of those.

22 It's just really hard when it comes down to
23 offering a quote to them and you're talking about a
24 six-figure difference in between what they're getting
25 and what we have to offer for them.

1 So, yeah, the goal has always been to --

2 COMMISSIONER KEARNS: Okay. Thank you.

3 I guess post-hearing, if you all can just
4 provide us with maybe a customer list from 2016, and
5 those who you're reaching out to. That might be
6 harder, but who you've sold to in 2016, versus 2018,
7 2018, just to get a better sense for us of how things
8 are going that way, would be helpful.

9 MR. LUZZI: Sure.

10 COMMISSIONER KEARNS: Thanks.

11 Do certain customers demand sizes other than
12 the half and one-sixth keg produced by American Keg?
13 How do you respond to Blefa's argument that other
14 sizes are becoming more popular in the U.S. market?

15 MR. LUZZI: From what we see on a daily
16 basis, the quarter barrel is probably the one question
17 where -- there's a little bit of demand for a 50
18 liter, which is a little bit smaller capacity than the
19 half barrel that we sell.

20 The quarter barrel has been a very, very
21 small part of what we see in demand. We don't offer
22 it. It's not something we manufacture right now,
23 though it is something we'll absolutely take a look
24 at, if we see a return on the investment for that
25 size.

1 COMMISSIONER KEARNS: And can you give us
2 some sense of how difficult it would be to start -- I
3 mean it seems to me there wouldn't be a huge
4 difference if you can produce a half barrel and a
5 sixth barrel, that you could probably split the
6 difference, more or less, into a quarter barrel.

7 MR. CZACHOR: This is Paul Czachor speaking.

8 In terms of making a quarter barrel, we
9 already have the technical drawings and the concepts
10 on how to do it.

11 In terms of the overall production, it's
12 relatively simple. We just need to add some minor
13 tooling.

14 COMMISSIONER KEARNS: Okay.

15 MR. RICKARD: I'm sorry, this is Nathan
16 Rickard. I just want to add one thing, which maybe
17 they can fill out a little bit more, just so we're
18 clear on it.

19 The domestic industry produces sixth and
20 half kegs, but because they import them, they also
21 sold kegs in other sizes. So, when you're asking
22 about what the demand would be for quarter kegs and
23 for other sizes beyond that, they do have a sense of
24 that, because they were putting that out. And I think
25 the point has been, at least in conversations with us,

1 that there wasn't market demand there, in the way that
2 Blefa seems to be characterizing it.

3 COMMISSIONER KEARNS: Okay, thank you.

4 By the way, this is more of an aside, but
5 what do they have in pony kegs, and what size is a
6 pony keg?

7 MR. LUZZI: A quarter barrel.

8 COMMISSIONER KEARNS: You said a quarter
9 barrel? Okay, okay. All right, just curious.

10 So, this is an issue I think you all touched
11 on before, but maybe we can talk a little bit more
12 about. Certification or qualification.

13 According to the staff report, 10 of the 23
14 Respondent purchasers require their suppliers to
15 become certified or qualified to sell kegs to their
16 firm. Of the 10, seven purchasers indicated that
17 American Keg has not even attempted to certify its
18 product over the POI. Can you explain why that's the
19 case?

20 Also, maybe post-hearing, can you further
21 reconcile the discrepancy between the two producers
22 that indicated American Keg was unable to successfully
23 certify with them, and your assertion that you have
24 not failed any certifications?

25 MR. CZACHOR: In terms of certification,

1 . there is no one certification that customers are
2 asking for. They vary from maybe one simple piece of
3 paper to another customer asking to follow the BA spec
4 -- or the Brewers Association specs. So,
5 certification or specifications can vary.

6 We have been certified with some customers,
7 and again, that could be in terms of they would try a
8 few kegs and test them out and measure them. We have
9 also went to some of the larger leasing companies, in
10 fact we're working with one right now, in terms of
11 certification. We are unaware of failing any
12 certifications in the past. We have sent sample kegs,
13 but have not, to our knowledge, failed a certification
14 process.

15 MS. ROLIG: And, if I could jump in, this is
16 Whitney Rolig.

17 We did address the two purchasers that you
18 mentioned in our pre-hearing brief. Obviously, it's
19 all confidential. But we would be happy to provide
20 more comment on that in the post-hearing brief.

21 COMMISSIONER KEARNS: Okay. Thank you.

22 MR. RICKARD: Sorry, Commissioner, just to
23 set the stage, too. We have a little bit of a
24 difficulty in that we can't relay to American Keg what
25 the purchasers said. So, what we've tried to do is

1 just go through circumstances, where there have been
2 sales that haven't gone forward. But, I think that
3 from what we've seen, there's just a disconnect
4 between what people are claiming as a certification
5 process, and then what really is something where it
6 was can you do this at this particular price, and the
7 answer back was, well, we can't do that at that price.
8 That's too much of a loss.

9 COMMISSIONER KEARNS: Okay, thank you.

10 And can you tell us more about how often it
11 happens that you approach a potential customer and
12 they tell you, just flat-out, regardless of your
13 price, regardless of the quality of the product, we
14 just aren't going to purchase from such a small
15 producer? Just how often does that happen?

16 MR. LUZZI: I haven't come across that.
17 That's not, not something I've been told.

18 COMMISSIONER KEARNS: Okay, okay.

19 All right, okay, I wanted to turn to some
20 questions about sales volumes. Respondents argue any
21 increase in subject imports came at the expense of
22 non-subject imports. Not domestic products. The
23 domestic industry was also growing in a declining
24 market.

25 Can you address this argument from the

1 Respondents?

2 MS. ROLIG: This is Whitney Rolig. I'll
3 start, and I think Brian's got some thoughts about
4 this, as well.

5 As I mentioned, when you're looking
6 particularly at the small craft, there's a lot going
7 on there. A lot of openings. So, that's where you
8 see growth within the beer industry. That's where
9 you're going to see a lot of keg purchases. And
10 again, maybe it's not the individual order sizes of a
11 large brewer or a leasing company, but you do see a
12 lot of activity within that part of the market.

13 So, that's why I think all keg producers
14 want to sell there, because instead of the larger
15 purchasers just replenishing their fleet, as Brian
16 mentioned, you have a lot of people starting their
17 fleet. And as they expand, adding to that fleet. Not
18 just trying to replace the kegs that get beat up over
19 a couple of years.

20 MR. RUBEO: That's good, yeah.

21 But Commissioner, I'd just add to that that
22 what we're looking at, in terms of the way the market
23 looks, and the impact on non-subject imports, we think
24 it supports the understanding that American Keg has of
25 the market place where there are multiple suppliers

1 that are going in and trying to compete for sales.
2 And that they change over time because of price.

3 It is the argument that many subject imports
4 have lost market share to unfairly traded imports is
5 what you would anticipate in the marketplace.

6 We do appreciate the point that American Keg
7 has grown its production over time, while subject
8 imports have gone up, but that is another indicia of
9 the impact, growth on price and volume, that subject
10 imports are having. If you can look at non-subject,
11 and see what happens to a fairly traded product.

12 COMMISSIONER KEARNS: Okay, thank you.

13 I want to turn to pricing and underselling.
14 I guess my first question is, and again, I think this
15 is probably for Mr. Bentley or Mr. Czachor.

16 When you decided to begin producing kegs,
17 what did you think about the market prices at that
18 time? Were they too low then? Or were they adequate?

19 MR. CZACHOR: When the business plan was
20 first put together, it was based on present-day market
21 conditions in 2015, and we would consider those
22 adequate.

23 COMMISSIONER KEARNS: Okay. And, in your
24 view, how have prices changed from 2015 to 2017 and
25 2018?

1 MR. CZACHOR: The subject import pricing has
2 eroded.

3 COMMISSIONER KEARNS: Okay, thank you.

4 And 2015 to 2016, the prices in 2016, what
5 was that?

6 MR. CZACHOR: I don't have that data. We'll
7 have to follow up with that.

8 COMMISSIONER KEARNS: Okay. We appreciate
9 that.

10 Okay, so, Respondents pointed out, and I
11 guess they can cite to things that you all have said,
12 that there is a premium for American-made kegs. Can
13 you, I guess just, first of all, can you tell us how
14 much is that premium, and how we should take that into
15 account in our underselling analysis? And also, as
16 part of that, one thing we're going to look at of
17 course is, in our staff report, what we've heard from
18 purchasers and others about how much of a preference
19 there is for American-made product.

20 And I'll ask the same questions to
21 Respondents this afternoon, but from what our staff
22 has seen from the way I've read it, it doesn't look to
23 me like that is a huge issue for many purchasers.

24 If you can just speak to us about how to
25 sort through all this, where you all have said there

1 is a premium; Respondents think there's a premium.
2 There already are, I think, some estimates of what
3 that premium is, but we also have some data suggesting
4 this doesn't really seem to matter, at least to most
5 purchasers.

6 So, how should we think through that?

7 MS. ROLIG: This is Whitney Rolig.

8 Without trying to get into any BPI
9 information about pricing, we don't accept the
10 Respondents' characterization of the size of that
11 premium, or how that should affect the underselling
12 analysis.

13 I think, as these guys discussed at the
14 conference, there is a willingness to pay a little bit
15 more for a made-in-America keg, but they have
16 recognized, well, since Paul started looking into this
17 in 2017, that only goes so far. And they understand
18 that, and they're not pricing their kegs out of reach
19 simply because they think they can do so on the
20 strength of the brand. They're pricing their kegs to
21 try not to lose money.

22 So, the idea that they're somehow inflating
23 the price to the point that they're going to lose
24 money on every sale, just because they think they can
25 get that extra price, that's not what's going on

1 here --

2 MR. RUBEO: I'd just add onto what Whitney's
3 saying, that the argument about a premium in the
4 market is difficult to support or substantiate when
5 the prices that American Keg is selling at are below
6 what their cost of goods sold are. It's not, you
7 know, it's not around someone's ability to get, the
8 prices are established by what they can take in terms
9 of their losses.

10 And so, what the --

11 COMMISSIONER KEARNS: This seems to be
12 arguable they're not an established industry, you
13 might have sales below cost of goods sold.

14 MR. RUBEO: You may have sales below the
15 cost of goods sold, but the whole goal of this was to
16 try and limit how much those losses are, instead of
17 make volume sales that can keep you as an operating
18 enterprise. So, it's not as if you're walking in
19 saying they'll be able to charge much more for those
20 kegs, but anything else isn't part of the business
21 model.

22 Instead, if there's a price that's below,
23 and this is I think borne out by the record. If
24 there's a price offer from imports that are below what
25 the domestic industry can absorb in terms of losses,

1 it loses that sale. They have a price point that they
2 just can't go below. That price point is higher than
3 the unfairly traded imports are.

4 And what we've struggled with is trying to
5 understand the argument that you get to wipe out the
6 unfair trade, not only in terms of price impact, we're
7 not talking about efficiencies or different ways that
8 they're structured. We're talking about an ability to
9 come in with subsidized imports that allow them to set
10 lower prices. That lower price point is not something
11 the domestic industry can compete with.

12 And so, they are asking for the prices that
13 they can get back that allow them to survive. Even
14 though structurally, I don't understand how you can
15 have a concept of a premium.

16 COMMISSIONER KEARNS: I'm sorry, but why
17 not? You can have a premium, right? You can have an
18 American-made premium.

19 MR. RUBELO: I'm sorry. I meant that we
20 could potentially get to a point where we'd have a
21 price premium, but the record as it's set, I mean, the
22 argument is that this is what the domestic industry's
23 goal is and how it's -- but that's not the domestic
24 industry.

25 I mean, what American Keg's experience is,

1 and you've heard is, their view is they need to make
2 more sales at the same price and to be able to spread
3 their costs over those sales to be able to make a
4 profit. But there's no part of it where they're
5 saying whatever the import price is, we're going to
6 get some percentage more than what that import price
7 is. That's certainly not one of the aspects that's
8 gone into the business plan, or how American Keg
9 operates.

10 COMMISSIONER KEARNS: Okay. But it would be
11 helpful, I think, for us to figure out what, if, if,
12 imports were fairly traded, you know, in an ideal
13 market, what would be the premium? And it seems to me
14 that there's a few that you would want to look at.

15 And one is, I think Respondents have pointed
16 out that when American Keg acquired Geemacher, that
17 one of the first decisions that was made was to
18 increase the price. So, that does seem to suggest to
19 me that that's something that we would take an
20 interest in, in terms of figuring out what is the
21 "right" price, with the premium possibly built in.

22 Also, during the period of investigation, if
23 your position is that imports were not unfairly traded
24 at the beginning of that period, and then you all
25 decided to ramp up production, if you were operating

1 under the assumption that those were prices you could
2 deal with, how much higher were your prices? That
3 would be a good way for us to figure out whether or
4 not, you know, what the premium is.

5 Also, I would think we would want to look at
6 non-subject imports. If those are fairly traded, as I
7 think you have said, Mr. Rickard, then would we want
8 to look at the difference between the price of those,
9 to the price of the U.S. product, and determine that
10 that's probably what the U.S. premium is, given as
11 you've said, that on other issues, I guess, besides
12 potentially American-made, in terms of quality and
13 other things, we think those appear to be comparable.

14 So, any further thoughts on what kind of --
15 what we should use for a benchmark to determine what
16 the premium is?

17 Because I take your point. And I think your
18 point is if it seems that the other side is simply
19 saying any time you see a difference between the U.S.
20 price and the dumped and subsidized price, that's the
21 premium, that's obviously kind of circular.

22 So, then how do we determine what the fair
23 market premium might be for the U.S. product?

24 MS. ROLIG: We will be happy to provide
25 extensive analysis of that.

1 COMMISSIONER KEARNS: Okay. Anything from
2 the business folks, though, about what you all thought
3 going into this when you priced your product at the
4 beginning of the POI, or otherwise?

5 (Pause.)

6 MR. BENTLEY: Scott Bentley.

7 When you talk about what people are willing
8 to pay for a keg, in our case, it's thousands of
9 individual decisions by thousands of different people.
10 Some will give us a little more leeway than others. A
11 few dollars. Always, or almost always, we'll win in a
12 tie. So, you can't say a uniform level that people
13 make their decision at.

14 Craft breweries are businesses, too. We
15 understand that. Several of them will go Chinese for
16 50 cents a keg. Most of them won't.

17 So, I think Whitney's analysis you'll get
18 post-conference, can give you the data on that.

19 But you can't look at this as a uniform
20 decision by thousands of people looking at a line on a
21 chart. It's not done that way.

22 And other factors, like our ability to
23 deliver rapidly, high-quality customer support, they
24 like Brian, those are all factors, too.

25 COMMISSIONER KEARNS: And what about leasing

1 companies versus small craft brewers? Is there -- do
2 leasing companies, are they less concerned about
3 buying American, or not?

4 MR. LUZZI: Brian Luzzi.

5 In our limited experience with them, just
6 given the nature of how most of the leasing companies
7 out there tend to have one brand that they use, we
8 were fortunate enough to meet a couple of folks down
9 south that really kind of believed in what we were
10 doing, and formed their business around offering an
11 American-made product only. And we've seen success
12 with them over the last two years. Sales have
13 increased, their awareness has increased. So, they're
14 kind of our little leasing companies.

15 COMMISSIONER KEARNS: So, if I'm hearing you
16 right, you're saying that the leasing companies
17 traditionally might just source from one supplier, but
18 increasingly you are able to persuade them that they
19 may want to have a second supplier that can offer an
20 American-made product?

21 MR. LUZZI: That's correct.

22 COMMISSIONER KEARNS: Okay, okay, thank you.

23 So, we want to talk bout the 232 steel
24 tariffs. And what I find kind of interesting is I
25 think I'm hearing kind of two seemingly somewhat

1 contradictory things on the record here, including
2 from Respondents. One is the 232 steel tariffs have
3 driven up your costs, and that's where the harm is
4 coming from.

5 On the other hand, we look at cost of goods
6 sold, where your cost of goods sold is declining. So,
7 I hear both that there is no cost/price squeeze here.
8 Costs are going down. Or maybe there is a cost/price
9 squeeze here, because your raw material costs are
10 going up.

11 What's the right way for us to look at this?
12 And it seems to me that regardless of what's happening
13 with steel, I would want to look at the cost of goods
14 sold to see whether or not there's any kind of
15 cost/price squeeze here.

16 MS. ROLIG: This is Whitney Rolig.

17 Steel prices have just been volatile in
18 general. There was a spike, the spring of last year,
19 obviously, when the 232's -- and that was the case for
20 U.S. prices. Because, I want to emphasize there was
21 some confusion about this at the conference. American
22 Keg buys U.S.-made steel. So, they were not paying
23 directly the 232 tariffs. And the same price
24 pressures on steel were also affecting Thielmann,
25 because you heard from them, they also buy U.S. steel.

1 So, any steel cost trends are not exclusive to just
2 American Keg.

3 To the extent there's been volatility in the
4 market, of course that affects them, because steel is
5 such a huge input for kegs. But they've done their
6 best to manage that.

7 As you heard in the testimony, they've
8 expanded to all four certified U.S. steel producers as
9 suppliers. This allows them to try to manage those
10 costs, because there's more competition there.
11 They've made other adjustments within their plants.
12 They have a really great plant manager that's been
13 able to up their efficiency. So, they've made
14 adjustments where they can, recognizing that they're
15 going to have to be kind of lean and mean to make it
16 as a small company right now.

17 That said, we recognize the cost of steel
18 has gone up over the POI. And they need to be able to
19 pass some of those costs on to their customers. To
20 the extent that they are consistently and
21 significantly undersold by their foreign competitors,
22 that gets tougher. But the improvements you see in
23 their cost ratio, they've done what they can to be a
24 very competitive business. And so, that's kind of
25 explaining the trends you see. We can provide more

1 analysis, but there's just a lot of ways in what the
2 statistics mean, and certainly the Respondents are
3 placing way too much emphasis on that.

4 As Paul explained, he started looking at
5 trade relief almost two years ago. To the extent that
6 volatility in the steel market was introduced in the
7 midst of that process, of course he was going to look
8 at every avenue to try to save the business.

9 COMMISSIONER KEARNS: Okay. Thank you.

10 A couple of follow-up questions and then I'm
11 going to take a short break to confer a little bit
12 with staff, here.

13 But I guess the first question is, putting
14 aside steel, shouldn't I just look at this and say
15 sales, on average, values are going up and your costs
16 are going down. And so, that doesn't seem to suggest
17 that subject imports are suppressing prices.

18 MS. ROLIG: We disagree with that.

19 Again, they're losing money on every sale
20 and it's unsustainable. We know that subject imports
21 are dumped and subsidized. The final for Mexico, from
22 Commerce came out yesterday. They're dumped. Those
23 prices are not fair.

24 American Keg has had to compete against
25 those lower prices. We've put proprietary information

1 on the record about customers asking Brian, can you
2 please drop your price? Can you please match this
3 importer price? And it's a significant differential.
4 We know that they're losing sales to lower priced
5 imports, and when they lose those sales, as you heard
6 Scott say, they can't spread their costs over enough
7 kegs. And that's injury.

8 COMMISSIONER KEARNS: So, I guess this goes
9 back to what I was saying in the beginning. That,
10 even if the trend might show costs are going down,
11 prices are going up, you have to ask yourself,
12 starting from where? And if costs start from way
13 above your sales costs, then you would want to take
14 that into account, as well?

15 MS. ROLIG: Sure. And again, as Nate
16 Rickard was saying, it is a mixed record on the
17 question of material retardation versus material
18 injury, but we think under either analysis it shows
19 that our client is being injured by subject imports.
20 They cannot become profitable. They cannot be
21 profitable as long as they're competing against unfair
22 imports.

23 COMMISSIONER KEARNS: Okay.

24 And then, one question before I take a short
25 little break.

1 Can you describe American Keg's current
2 stainless steel procurement process, and the extent to
3 which it might have changed following the 232 tariffs?
4 Do you agree with Thielmann's assertion that, unlike
5 the domestic industry, large producers of raw
6 material, purchasing power mitigates input costs?

7 MR. CZACHOR: Regarding the procurement of
8 stainless steel -- this is Paul Czachor, by the way.

9 Regarding the procurement of stainless
10 steel, as Whitney mentioned, we have four stainless
11 steel mills in the U.S. that can supply product to us.
12 We can periodically bid those mills against each other
13 to make sure that we're getting a competitive price.

14 In addition, we subscribe to market services
15 out there that are published weekly, to give us a good
16 indication what the remainder of the country in the
17 U.S. is paying for stainless steel. So, we have tools
18 available to us to ensure that we're competitively
19 priced every time we place an order.

20 COMMISSIONER KEARNS: Thank you. And you
21 don't hedge or anything like that in order to try to
22 get a more constant price?

23 MR. CZACHOR: We do not hedge.

24 And just to clarify one point on stainless
25 steel, and I believe this applies to all the

1 manufacturers. When you purchase stainless steel,
2 there's two components of your price. There's a base
3 price, which is your negotiated price with that
4 particular supplier, and then there's a surcharge
5 that's published monthly by these suppliers. That
6 surcharge takes into account basically world
7 commodities, such as the price of nickel.

8 So, as world commodities pricing is
9 changing, that surcharge is going up or down.

10 COMMISSIONER KEARNS: Okay.

11 MR. CZACHOR: Which impacts the overall
12 price.

13 MS. ROLIG: Sorry, I'd like to jump in with
14 one more thing. Whitney Rolig.

15 When American Keg purchases steel, they are
16 buying coil. They do their own stamping within their
17 plant to get the shapes that they need for the kegs.
18 So, they're not like outsourcing that part of the
19 steel processing. They do that all in-house.

20 COMMISSIONER KEARNS: Okay. Thank you.

21 MR. CZACHOR: Paul Czachor. One last point.

22 In addition, when we purchase our steel, we
23 purchase our steel in what we would call at least full
24 truck loads, or order quantities, that the steel mills
25 are efficient at. So, we do not buy smaller

1 quantities that would cost more. We do not use any
2 kind of distribution. We buy direct, and as Whitney
3 just stated, we stamp our steel directly, in-house, to
4 keep that cost lower.

5 COMMISSIONER KEARNS: Okay, okay, thank you.
6 And just give me one second to confer with
7 staff.

8 (Pause.)

9 COMMISSIONER KEARNS: Okay, thank you.
10 So, somebody touched on a bit earlier kind
11 of your plans in 2016, and how things may have turned
12 out differently. And one point I heard in the
13 opening, and also in your briefs, was that I think in
14 2017, that's when you really saw a big growth in
15 imports. And I think it was Mr. Bentley, you referred
16 to, I think, 110,000 increase. Is that, we're looking
17 at 2016 to 2017? Is that right?

18 MR. BENTLEY: I have to confess that my
19 lawyers wrote that part. So, I'll let them answer.

20 COMMISSIONER KEARNS: Sure.

21 But my question is going to be, basically
22 we'd like to know, especially from 2016 to 2017, I
23 think you all have pointed to the most dramatic
24 change, in terms of imports. How did what happened in
25 2017 differ from what you expected when you were

1 putting together the business plans from 2016? Both
2 in terms of volume of imports, and also pricing? And
3 on pricing, if you could provide anything post-hearing
4 that will help us see that prices were not what we
5 would have expected, and that you're beginning to see
6 more pricing competition, that would be helpful.

7 MR. RICKARD: Commissioner, just a point of
8 clarification. Paul was talking about work that they
9 did to try to bring the petition at the end of 2017.

10 And one of the things that we have talked to
11 American Keg about, which may be why there's a little
12 bit of a disconnect at the moment, is the data is
13 based off of bill of lading data and the pricing that
14 they saw in the marketplace. And so, they have used
15 that anecdotal data in terms of, or that data to do
16 their evaluation of what market trends look like.

17 We have kept on saying to them that's very
18 helpful and it's great that you have that, but there's
19 also the data that's on the record from the
20 Commission, and you may want to just reference the
21 Commission data back overall.

22 So, we can provide you the analysis of the
23 Commission data that was collected that we think
24 supports what they saw in the marketplace. But we can
25 also provide you with what they've been looking at, if

1 that's, in terms of the analysis that they were doing,
2 as to what changed for them in 2017, based off the
3 data they had available at that point, if that's the
4 point that you're getting to.

5 COMMISSIONER KEARNS: Yeah, I think so.
6 Part of that I think is also what, in the business
7 plans, it would be one thing if the business plan said
8 well, we think the price in the market and the price
9 for imports will be X in 2016, and then we're
10 expecting a 20 percent decline in 2017, for whatever
11 reason. Maybe you've seen companies overseas ramping
12 up production, or whatever, maybe you thought -- you
13 know, that versus no, we thought prices were going to
14 stay the same from 2016 to 2017. So, maybe you can
15 tell us about, you know, what your expectations were
16 at the beginning of the POI, and how that did or did
17 not sort of pan out, in terms of both price and
18 volume.

19 And then, also, on a separate point, we had
20 talked a little earlier about projections going to the
21 future. Mr. Bentley, I think you said that you think
22 if an order were put in place that you could maybe see
23 your capacity expand ten-fold. Anything you can send
24 to us that would help, you know, solidify that? Yeah,
25 I've given that some thought and those numbers are

1 reasonable, you know, something we can rely upon.
2 That would be helpful, as well.

3 MR. BENTLEY: So, we'll send you that.

4 COMMISSIONER KEARNS: Okay, thank you.

5 I guess, while we're on the subject of
6 business plans, there's a few points that the
7 Respondents raised I want to talk to you about. The
8 business plan estimates that future production and
9 financial performance, certain estimates about that.
10 How did you arrive at those estimate of production
11 levels? How do you respond to Respondents' contention
12 that these production estimates were not reasonable?

13 MR. CZACHOR: This is Paul Czachor.

14 In terms of capacity and reasonability, in
15 terms of can we meet those numbers, I think we've
16 presented to the Commission three years of capacity
17 and the assumptions that we had. And, as we've told
18 Mr. Boyland, we are confident that we can meet those
19 capacity numbers.

20 COMMISSIONER KEARNS: Okay.

21 Kind of in a different vein, Blefa compares
22 your expected profitability with your actual
23 performance. How do you respond to those arguments?

24 MS. ROLIG: This is Whitney Rolig.

25 I know exactly which page of the brief

1 you're talking about --

2 COMMISSIONER KEARNS: Thirty-two?

3 MS. ROLIG: -- yeah.

4 So, it's really hard to discuss this in a
5 public forum, so we're happy to address that, but --

6 COMMISSIONER KEARNS: Absolutely.

7 MS. ROLIG: -- yeah, we couldn't even show
8 that part to our client, even though it's their BPI.
9 So, yeah.

10 COMMISSIONER KEARNS: Okay. Fair enough.
11 Thank you.

12 Another issue that Respondents have raised
13 is the extent that subject imports are serving larger
14 customers, you would expect to see some volume
15 discounts in that.

16 So, kind of again going back, it's different
17 from the premium issue, because I think there we were
18 more focused on whether or not it's an American-made
19 product. But what can you tell us about volume
20 discounts that we can expect from subject imports?

21 In other words, is the fact that subject
22 imports are a lower price, is that simply a reflection
23 of the fact that there's large volume discounts and
24 they serve large volume customers more than you do?

25 MR. RICKARD: Commissioner, the experience

1 I've been talking about in terms of volume discounts
2 would be from those who say that they're claiming
3 these discounts. So, the Commission's collected
4 information on that. The Commission has also collected
5 information on the averaging of values off to those
6 different sales journals, so there can be comparisons
7 done throughout to try and demonstrate what that is.

8 There may be volume discounts that are
9 present in the marketplace, but it's not, again,
10 that's not something that they would see, but it is
11 something that the Commission has collected data on,
12 that can be evaluated. We can go through that in the
13 post-hearing brief, in terms of the confidential data.

14 COMMISSIONER KEARNS: Okay.

15 And I guess also, I mean, I believe you all
16 grant volume discounts or some sorts of discounts if I
17 remember right, as well. And you can tell us, and
18 this may be proprietary, so post-hearing, but maybe
19 you can tell us about, and if it's not already on the
20 record, about what those discounts look like. How
21 much volume there needs to be for you to grant a
22 discount, if you do grant volume discounts, and what
23 the difference is. That would be helpful.

24 MS. ROLIG: This is Whitney Rolig.

25 In conferring with Paul, they can provide

1 those numbers confidentially, so we'll be happy to do
2 so. Brian, did you want to add anything? Okay.

3 COMMISSIONER KEARNS: Okay, thank you.

4 And then, I want to turn to lost sales. Can
5 you respond now or post-hearing to Blefa's argument, I
6 think it's in the brief, pages 44 to 45, that the lost
7 sales information from two key purchasers may not be
8 reliable. I don't know if there's something you can
9 say about that now, but if not, at least post-hearing?

10 MS. ROLIG: This is Whitney Rolig.

11 We'll be happy to address that post-hearing.

12 I would just note that this is yet another
13 instance of the Respondents asking you to reject the
14 record that the Commission has put together, and that
15 we think is well-supported. And I do not agree with
16 their characterization of that.

17 COMMISSIONER KEARNS: Okay.

18 A little bit more on keg leasing. How do
19 you respond to Thielmann's argument that keg leasing
20 is becoming a more popular option for the small brewer
21 segment of the market?

22 MR. LUZZI: This is Brian Luzzi.

23 I do see some customers, especially those
24 just starting up, you know, they don't have the
25 capital up front to purchase kegs outright, so, of

1 course, that's going to be a viable avenue for them to
2 take. We do see that quite often. And, one second --

3 So, to that extent, in the last few years,
4 we have begun doing our own sort of financing
5 arrangement with them, just so we don't lose yet
6 another sale to the leasing companies. So, we've
7 started, it's called lease-to-own, or, basically, it's
8 a financing option where it's a smaller monthly
9 payment, nothing up front, so they're paying over time
10 to own their kegs outright.

11 COMMISSIONER KEARNS: You do that?.

12 MR. LUZZI: We do offer that.

13 COMMISSIONER KEARNS: Interesting. Okay.

14 MR. LUZZI: We had to.

15 COMMISSIONER KEARNS: Yeah.

16 MR. BENTLEY: We love to.

17 MR. RICKARD: Commissioner, can I just add
18 something about Thielmann's argument? The reference
19 is a page in the staff report, on page 201, and it's
20 the part of the staff report that says that 4,000
21 craft brewers out of the 6,000 to 7,000 are, lease or
22 rent kegs. And then, the citation was to my
23 colleague, Mr. Kentz, who did not say that, in the
24 transcript.

25 I just want to make clear that that comes

1 from Thielmann itself. That's an estimate that there
2 is no support for, on the record, other than the
3 statement. They're asking you guys if you think that
4 that number is correct, and they chime in on that
5 part.

6 But I also think that on the record you can
7 look at the companies that are leasing, that are doing
8 that, and see who they say that they're serving, and
9 we, and whether or not that's consistent with that
10 representation that's in the staff report.

11 That's just to say really nice things about
12 how the Commission staff, and all this stuff was put
13 together. I think that would be the one complaint,
14 that that number showed up, without a reference or any
15 support.

16 COMMISSIONER KEARNS: Okay, okay. Thank
17 you.

18 MR. CZACHOR: This is Paul Czachor.

19 If you do the statistics on the number of
20 customers that are out there, and you look at the
21 quotes that we do over time, and our database, we've
22 touched over 5,000 people either asking for quotes, or
23 we're selling product to them now. And we estimate
24 that there's potentially 7500 to 8,000 customers that
25 can buy kegs out there. We totally do not believe, no

1 way close, are these keg logistics companies serving
2 4,000 of those customers. It's not possible.

3 COMMISSIONER KEARNS: Okay, thank you.

4 The Section 301 tariffs. Respondent
5 Thielmann argues that those tariffs are having a
6 significant impact on the market, citing firms that
7 have stopped importing from China, or going out of
8 business due to the 301 tariffs.

9 Respondents also point out that American Keg
10 told USTR how effective the 301 would be. How should
11 the Commission evaluate the effect of the 301 tariffs
12 on the keg market?

13 MS. ROLIG: Thank you, Commissioner. This
14 is Whitney Rolig.

15 So, as we put in our brief, I mean, there
16 has been an effect from the 301 that has been somewhat
17 delayed. Because I laid out the time line in the
18 brief. They were announced at 10 percent last fall,
19 and then there was talk of going up to 25 percent
20 January 1, but that got put off at the last minute.

21 If you look at the confidential data, you
22 can see some very clear volume trends going on around
23 all that. So, that got put off until March. And then
24 it got put off indefinitely. And then all of a sudden
25 in May, suddenly it was in effect, but if your stuff

1 was on the water, it wasn't going to apply until June
2 1st. So, there was a lot of confusion about how big
3 that impact was going to be and when it would take
4 effect.

5 American Keg has said they didn't see a lot
6 of movement in the market initially. It was only
7 later this year, when the tariff was actually going to
8 go up and when people's inventory started to run out,
9 that they were going to see actual price relief.

10 But we think it's important to note that
11 this demonstrates clear price sensitivity for kegs,
12 and when unfairly traded kegs from China have to pay
13 more to access the market, you are going to see a
14 change in consumption patterns there. And that's
15 exactly what American Keg has been saying. If they're
16 not having to compete with those extremely unfair
17 prices, they will have a chance to make more sales.

18 COMMISSIONER KEARNS: Okay.

19 MS. ROLIG: So, if I can just add, the idea
20 that having the 301 tariffs in place is a good enough
21 remedy for American Keg, that's not accurate. The law
22 entitles them to relief from unfair trade with the
23 antidumping duties and countervailing duties. That's
24 why we're here today.

25 We don't know what's going to happen with

1 the 301's, but the idea that that should be enough for
2 them is simply not supported by the law.

3 MR. RICKARD: Commissioner, I'll just add to
4 what Ms. Rolig was saying. We were talking about this
5 morning, they can't make investment decisions based
6 off of the section 301 tariffs staying in place. They
7 have no idea whether or not those, to whatever extent
8 that they have an impact on the market, whether that's
9 going to last, or whether there's going to be
10 something that relieves those tomorrow.

11 And so, it is, as Ms. Rolig says, it's a
12 very different thing than what you would get from a
13 trade remedy action, where you could be reasonably
14 sure that you'll have fairly traded imports in the
15 market going forward.

16 COMMISSIONER KEARNS: Okay, thank you.

17 I don't think I have too many questions, but
18 I do have maybe a couple.

19 So, one question I have is, as you know, and
20 as we've talked about, Respondents assert that this is
21 really all about the 232 tariff, and that's what's
22 really causing the harm.

23 How do you respond to that? I mean,
24 normally what we would do in a case is we would ask,
25 well, was the U.S. industry really able to pass on

1 those costs to its customers, and if not, then was it
2 because of subject imports or was it for other reasons
3 that it was not able to pass on those additional costs
4 to its customers? Can you answer those questions?

5 Any further thoughts on how much would the 232 impact?

6 MR. RICKARD: Commissioner, I think that's
7 exactly the way we described it. That's the way the
8 Commission has looked at it in the past. Again, in
9 the shrimp cases the argument was that the real damage
10 to the domestic industry was because fuel costs have
11 gone up during the POI, and the point of it is what
12 happens with those costs? If there's a cost increase,
13 for whatever reason, is the domestic industry able to
14 pass on those costs to customers? And that's, again,
15 kind of the crux of how the 232 -- the only relevance
16 of the 232 is that it impacted costs and that's in
17 American Keg's reporting, and whether or not that
18 impact on cost is reflected in the prices they were
19 able to get in the marketplace.

20 COMMISSIONER KEARNS: Okay.

21 Whitney was talking about some of those
22 cases, too, sometimes it seems as though there is some
23 time lag from the time where costs might go up and a
24 company might not want to immediately raise prices for
25 a variety of reasons, either long term contracts or

1 really just more customer relations, whatever it might
2 be. So, any thoughts on that, in terms of, is this
3 really just an issue of a time lag, where eventually
4 we can expect that these costs will be passed on to
5 consumers and that it's not related to their companies
6 and that it's not really realistic to expect
7 otherwise? Any thoughts on that?

8 MR. RICKARD: Commissioner, we'll have to
9 deal with that in the post-hearing. I think that's
10 where really the volume stuff comes across. The
11 volumes of sales are important, and how those trends
12 work over time.

13 It also goes to, again, the concept of a
14 premium. If you could charge prices that reflected
15 what your costs were, your cost increases were, you
16 would anticipate to have a certain level of sales that
17 would allow you to operate closer to what your
18 capacity is.

19 And when that's not present, we think that
20 it's an indication of the fact that they've not been
21 able to pass costs along; that their losses have
22 increased and they're not able to charge anything like
23 what this concept of a premium has been alleged.

24 COMMISSIONER KEARNS: Okay, thank you.

25 And I don't believe Respondents have pointed

1 to too many other potential causes for inability to
2 raise prices, but one thing that they have talked a
3 little bit about was plastic kegs. Do plastic kegs
4 compete against stainless steel? What impact have
5 they had on prices?

6 MS. ROLIG: This is Whitney Rolig, and I'm
7 sure Brian can jump in on this.

8 But, I, too, was very interested in plastic
9 kegs, because I didn't know what they were. Those are
10 one-way kegs. And they're used, I put some pictures
11 on the record as part of our brief. They look, it's
12 hard to describe how they look. Kind of like giant
13 soda bottles with chimes around them. But they're
14 used for one-way shipping. For either exporting beer
15 in kegs when you don't want to pay extra shipping
16 costs from the weight of a keg. These guys have told
17 me they're really good at festivals, where you don't
18 have to worry about keeping your kegs.

19 So, these sort of compete for very
20 specialized applications, but in the day-to-day
21 running of a brewery, that's just not a viable
22 alternative. They can't be cleaned in the same way
23 that a steel keg can. They can't be cleaned full
24 stop. They're not nearly as durable.

25 So, do you have anything else, Brian?

1 MR. LUZZI: No, I think that's pretty good.

2 As far as if they have any impact on our
3 pricing, I would say no.

4 COMMISSIONER KEARNS: Okay --

5 MR. LUZZI: I'm sorry, Commissioner, just
6 the last thing. One of things we had asked for in
7 terms of, as to the draft questionnaires, was to ask
8 importers whether or not they are actually importing
9 plastic kegs, to the extent, just a little bit more on
10 whether or not these products were in fact competing
11 in the workplace or having an impact on them. And so,
12 I'd just encourage you to look at that. And we did
13 put that in the post-hearing brief.

14 COMMISSIONER KEARNS: Thank you.

15 And I was confused by something I had read,
16 that I thought I had read that it's just kind of the
17 inner lining that is one use, but that the plastic keg
18 can be reused. Is that right? Or is the entire
19 product just disposable?

20 MR. LUZZI: It's disposable and it's
21 recyclable. I think that's one of the big things that
22 they tout about that product.

23 COMMISSIONER KEARNS: Okay, so, it's not --
24 and I think, as you said, Mr. Bentley, you can't just
25 clean this thing out in any sense. It has to be sort

1 of reconstructed from --

2 MR. LUZZI: Yeah. And it's just a one-way
3 kind of single-use --

4 COMMISSIONER KEARNS: Okay.

5 MR. LUZZI: There's a couple of different
6 varieties of it. If it's the one I believe you're
7 referring to, then yeah --

8 COMMISSIONER KEARNS: I know the prices are
9 lower, but I also know that steel kegs can be used for
10 20 to 30 years, right? So, I guess in terms of
11 comparing the pricing just from that basis, is kind of
12 hard to compare the two.

13 MR. LUZZI: That's correct, yeah.

14 COMMISSIONER KEARNS: Okay.

15 (Pause.)

16 COMMISSIONER KEARNS: One other question
17 that came up from Respondents, in terms of the trends
18 in half-barrel kegs versus sixth-barrel kegs. And
19 whether or not things are moving in a direction that
20 you all, I guess, didn't really anticipate, and
21 whether or not that's been affecting your profits.

22 If you can tell us anything, I think this is
23 all fairly proprietary, so it would be great if you
24 could say something now, that would be great. But
25 also post-hearing about that, that would be helpful.

1 Mr. Czachor, did you want to say anything?

2 MR. CZACHOR: Yes, Paul Czachor.

3 Year-to-year, month-to-month, the product
4 mix does vary. Overall, because of smaller breweries,
5 there's probably more, sixth-barrel keg, the one you
6 see in front of us, is a growing trend. For us, it's
7 no impact whether we make a sixth keg or a half keg.
8 We price the raw materials and the cost of labor
9 appropriately.

10 COMMISSIONER KEARNS: Okay, okay.

11 I think that's all the questions I have.

12 Does staff have any questions?

13 MR. CORKRAN: This is Douglas Corkran,
14 Office of Investigations. Thank you, Commissioner
15 Kearns. Staff has no additional questions.

16 COMMISSIONER KEARNS: Okay, great. Then I
17 think we will recess until 12:45. Then we'll come
18 back here.

19 Please remember that the room is not secure,
20 so any business proprietary information should be kept
21 with you and not in the room.

22 And we'll see you at 12:45.

23 (Whereupon a recess was taken at 11:45 a.m.,
24 to reconvene at 12:45 p.m. this same day, Wednesday,
25 August 14, 2019.)

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

(12:45 p.m.)

1
2
3 MR. BURCH: We will hear now from the
4 parties in opposition to the imposition of antidumping
5 and countervailing duty orders. They have been sworn
6 in and are seated. They have 60 minutes to deliver
7 their testimony.

8 MR. LEWIS: Good afternoon, Commissioner
9 Kearns. My name is Craig Lewis of Hogan Lovells, and
10 I'm appearing before you today on behalf of the
11 Mexican producer, Thielmann. I want to thank you and
12 your staff for your time and attention to this
13 important case. The panel you're about to hear from
14 includes representatives of one of the world's largest
15 manufacturers and distributors of beer and a major
16 U.S. consumer of stainless steel kegs. Our servicers
17 today are representatives of major U.S. distributors
18 of kegs and representatives of global keg
19 manufacturers in Mexico, Germany, and China. In
20 short, we have a broad spectrum of market
21 participants, both U.S. and globally.

22 Our witnesses will share with you the
23 structure of this market and the role of American Keg
24 within it. While American Keg has strived very hard
25 to paint this as a conventional case, where an

1 established U.S. producer is facing an unexpected
2 surge of competition through foreign suppliers,
3 causing price declines and lost sales, that is not the
4 case.

5 American Keg is a newcomer to the market, a
6 startup company which has 30 employees using high-
7 cost, small-scale, hand-operated machinery. You will
8 hear from our witnesses that th established foreign
9 manufacturers, on the other hand, have longstanding
10 operations and scale that dwarfs American Keg, and
11 with modern automated machinery that can be used to
12 produce kegs at a significantly lower cost and with
13 well-established reputations for quality and
14 reliability.

15 And you will also hear American Keg knew all
16 of this but chose a different strategy. American Keg
17 chose to embrace its small-scale, high-cost production
18 to leverage its unique made in the U.S.A. brand, to
19 manufacture and sell a high-priced premium keg to any
20 craft beers who were located close enough to their
21 Pennsylvania facility and were willing to pay above-
22 market prices for an American made keg.

23 American Keg officials have openly and
24 repeatedly acknowledged that under the best of
25 circumstances, they would be able to sell these kegs

1 at a premium that was \$10 to \$15 over the current
2 market price in order for these sales to be
3 profitable. The company gambled that there would be
4 a sufficient number of small craft brewers willing to
5 make these payments, but how many craft beers actually
6 care about buying kegs made in America?

7 As our witnesses will tell you, the rapid
8 growth and prevalence of keg rentals and the use of
9 plastic kegs as alternatives confirms that small craft
10 brewers generally prefer not to tie up their limited
11 capital buying specialty premium priced kegs. Most
12 are looking, instead, for a reliable supply of quality
13 kegs and related after-sales services, not a made in
14 the U.S.A. label.

15 American Keg is now bringing import
16 competition for its failure to meet its financial
17 goals. But American Keg was telling a very different
18 story to the public before it filed this case. Before
19 filing this case, American Keg repeatedly pointed the
20 finger at the Trump Administration's Section 232
21 Tariffs. American Keg's CEO claimed on national
22 television that the Section 232 duties on steel raised
23 their material costs to a level that threatened to
24 destroy their ability to sell kegs.

25 Subject imports have nothing to do with

1 these raw material tariffs. With this backdrop in
2 mind, let's examine the Commission's standard injury
3 factors. On volume, this is not by any stretch of the
4 imagination a volume case. American Keg's volume
5 indicators, including market share, production of
6 shipments, shows strong, positive trends during the
7 investigation period, particularly, the segment where
8 it was singularly focused on small craft brewers.

9 Meanwhile, cumulative subject import volumes
10 were declining since 2017, including by 33 percent in
11 the interim period. This is also not a price case.
12 There is no evidence of price depression or
13 suppression. Claims of price depression are negated
14 by the simple fact that domestic prices rose across
15 the board during the investigation period. And as our
16 economist will explain, key financial indicators
17 traditionally considered by the Commission do not
18 support a finding of price depression.

19 American Keg's lawyers have, nevertheless,
20 seized upon the pricing comparison data to claim
21 injurious underselling by subject imports. However,
22 the pricing data show a persistent pattern of pricing
23 differences, which is consistent with product
24 differentiation, not price competition, particularly
25 as there's also noticeable evidence of price erosion.

1 Indeed, the pricing comparison is also entirely
2 predictable, given American Keg, again, by its own
3 admission, has sold its products at a significant
4 premium over market prices based on patriotic appeal.

5 On impact and causation of imports, our
6 witnesses will again note that American Keg, by its
7 own public admission, was fully "on plan" until the
8 Section 232 Tariffs took effect in 2018.

9 Notwithstanding the shock of the 232 duties, American
10 Keg expanded capacity, production, shipments and
11 market share. Any downturn, therefore, was entirely
12 on the cost side of the ledger and subject imports,
13 again, cannot be blamed for rising steel costs. As a
14 startup company, American Keg's financial performance
15 was not good, but the key point is the company
16 continued to improve its pricing and its financial
17 operations performance, despite the challenges, as one
18 would hope to be the case for a startup business.

19 Finally, the Commission should take into
20 account the Section 301 Tariffs that are currently
21 being imposed on imports and subject kegs from China.
22 American Keg lobbied heavily for these tariffs to be
23 imposed. The tariffs went into force in September
24 2018, and have increased from 10 percent to 25 percent
25 in May 2019. American Keg has already received a

1 strong and effective measure of tariff protection that
2 it was looking for.

3 With that, we will turn this over to our
4 first industry witness.

5 MR. HOFFMEISTER: Good afternoon. My name
6 is Jon Hoffmeister, and I am currently vice president
7 of packaging and procurement for Anheuser Busch North
8 America. In this position, I am responsible for three
9 primary functions: sourcing all packaging materials,
10 including kegs, either directly or with our global
11 procurement office in Switzerland; working with our
12 company's integrative supply chain in developing and
13 executing global sourcing strategies for aluminum can
14 sheet and folding carton containers. I have worked
15 for Anheuser Busch for 24 years, with previous roles
16 in sales, marketing, business development, and
17 finance.

18 Anheuser Busch has operated in the United
19 States for almost 160 years. We have more than 18,000
20 employees at 121 facilities, all focused on making and
21 distributing iconic American beers. Our family of
22 independent Anheuser Busch distributors includes
23 another 40,000 plus employees. We are proud of our
24 company's contribution to the U.S. Economy, and I am
25 grateful for the chance to appear before the

1 Commission and provide a U.S. purchaser's perspective
2 on the market for kegs. In particular, today, I would
3 like to explain our keg procurement process.

4 Anheuser Busch purchases kegs on an annual
5 basis. We do not buy kegs sporadically throughout the
6 year. Instead, our purchases are typically
7 concentrated just before the summer months when demand
8 for beer is at its -- when demand for beer is at its
9 peak. Our annual keg purchases are extensive. The
10 central procurement office of our parent company
11 negotiates for the procurement of kegs on a global
12 basis.

13 Suppliers must have both the total annual
14 capacity to satisfy our global demand, and also
15 sufficient line availability throughout the year to
16 fill large individual orders from specific regional
17 business units in a timely fashion. There are only a
18 handful of keg producers with this kind of scale.
19 Suppliers must also be able to manufacture kegs to our
20 demanding quality specifications. Durability is
21 crucial, because new kegs float and circulate in use
22 for years and sometimes decades.

23 In terms of key purchasing factors for
24 Anheuser Busch, a supplier's capacity and quality are
25 far more important than the prices charged. If a

1 supplier does not have the capacity to cover our
2 annual demand, we will not consider them. All of our
3 suppliers have to undergo an extensive certification
4 process. We review the potential suppliers'
5 operations and we test trial kegs in a production run.
6 So to put the point simply, keg producers that cannot
7 meet our capacity, quality and timeliness requirements
8 will never earn our business, no matter what price
9 they offer.

10 Currently, there is no keg producer in the
11 United States that meets our purchasing criteria. AKC
12 is not certified to sell to Anheuser Busch and has
13 never attempted to become certified as a supplier.
14 This is presumably because AKC does not have the
15 capacity to produce at the volumes or rate required to
16 be one of our suppliers. Some of our procurement
17 strategies for other products do rely on local
18 suppliers. Corrugated boxes is an example. This,
19 however, is not the case for kegs. It simply would
20 not be practical or efficient for a large brewer, like
21 us, to buy modest number of kegs from local producers
22 in each market where we sell beer.

23 The logistical difficulties, and more
24 importantly, the quality control challenges would be
25 far too great. In the United States, as in most

1 markets where we sell beer, we rely on importing kegs
2 from our handful of certified global suppliers. In
3 our experience as a purchaser of kegs, AKC does not
4 compete against our global keg suppliers in the U.S.
5 market. And even if duties are imposed on kegs from
6 Germany, Mexico and China, this situation will not
7 change at all for Anheuser Busch.

8 There will be no viable domestic producer
9 for our keg needs, and we will still have to rely on
10 the same international suppliers. Thus, for Anheuser
11 Busch and many other similar brewers in the United
12 States, the only result of these duties will be
13 increased cost.

14 For all of these reasons, we were surprised
15 to see the petition in this case, and we hope the
16 Commission will recognize that any difficulties faced
17 by AKC are not the result of competition from kegs
18 from our global suppliers.

19 MR. PARKER: Good afternoon, and thank you
20 for the opportunity to testify today. My name is
21 Terry Parker. I'm an advisor to the Thielmann
22 Executive Committee and formerly managing director of
23 Thielmann U.K. Thielmann is a global manufacturer of
24 stainless steel containers, including refillable
25 stainless steel kegs covered by this investigation. I

1 have worked for Thielmann for 12 years. While at
2 Thielmann, I was responsible for the sales of beverage
3 containers in the United Kingdom and Ireland.

4 Before that, I had a long career working in
5 the beer and container industry, including over 20
6 years for Carlsberg, and throughout their supply
7 chain. More recently, I worked for Transtar
8 (phonetic), a local leasing company of which MicroStar
9 was a subsidiary of this company.

10 The Thielmann container business, which
11 includes our keg business, has been in continuous
12 operation since 1924. In the more than 90 years of
13 our existence, we have grown to include six factories
14 in the United States, Mexico, Spain, Chile, and the
15 United Kingdom. Our portfolio includes more than
16 stainless steel kegs. We also produce many other
17 types of tailor-made industrial containers and special
18 tank containers serving many other industries. The
19 stainless steel tank production facility in San Luis
20 Potosi, Mexico, in order to produce kegs economically,
21 and on the scale of manufacturing lines like those of
22 all of the other global keg producers are highly-
23 automated and efficient.

24 Our Mexican market has historically been our
25 large and dynamic market for us. Many of the world's

1 most famous brands, such as Corona and Heineken are
2 produced in Mexico, which creates a steady demand for
3 our kegs. The two largest beer companies in the
4 world, Anheuser Busch and Heineken, are present in
5 Mexico with more than 15 breweries.

6 Given our location and longstanding business
7 relationships, our monthly sales in Latin America are
8 also very important. Over the last few years, we have
9 seen very strong growth and demand for our products in
10 South America, including Brazil, Argentina, and Chile,
11 and we expect to see our sales continue to grow at
12 healthy rates. We are increasingly looking to China,
13 Korea, and India, as countries where we see a very
14 significant growth potential. We have been
15 responsibly serving the U.S. market since the 1980s by
16 building our reputation of both quality of our
17 products and the level of our service, including the
18 reliability of our supply and short lead times.

19 The U.S. market can be roughly divided into
20 two industry market segments. The large purchaser
21 segment consists of a relatively small unit of very
22 major customers. The companies operating in this
23 segment demand fleets of hundreds of thousands or even
24 millions of kegs. These various purchasers of kegs
25 have always been our principal customers. In fact,

1 only the largest keg producers, like Thielmann and a
2 handful of other global companies, currently have the
3 production capacity and dissolution capabilities to
4 supply and service these types of large volume buyers.

5 Now, we've never encountered American Keg in
6 the U.S. market. My feeling there is that American
7 Keg lacks the capacity necessary to sell into this
8 large volume segment of the market.

9 The other segment of the United States
10 market consists of small, independent craft brewers
11 producing American-made small quantities. Initially,
12 the industry saw an explosion of craft brewers in
13 America. However, the segment has several challenges.
14 To be frank, it is not our principal or most
15 attractive market segment.

16 On volume, craft brewer customers have a
17 very small demand. It is ordinarily not economical
18 and, therefore, less attractive for a large scale keg
19 producer to work to meet small volumes sales to
20 hundreds of customers.

21 Rental leasing companies also serve
22 customers in this market segment. We estimate that
23 over half of the U.S. craft breweries are choosing to
24 rent kegs, rather than buy new kegs. In other cases,
25 they are choosing to buy cheaper single-use plastic

1 kegs at perhaps 10 to 15 percent of the price of a
2 stainless steel keg.

3 Both of those options are attractive to
4 small craft brewers because leasing ties up less money
5 in the short term. Rental leasing companies also
6 offer a range of specialized services to the small
7 craft brewers, such as purchasing older kegs and then
8 renting the same kegs back to the brewer. They also
9 are redone and customized unwanted kegs and sold to
10 the other brewers at a lower rate.

11 Attempting to serve the craft brewer market
12 is also challenging due to logistics. For example,
13 shipping small orders to small brewers around the
14 country is more difficult and more expensive per unit
15 than shipping large orders to Anheuser Busch or
16 MicroStar.

17 Stainless steel kegs are engineered and
18 among the products that should compete principally on
19 the basis of quality, durability, availability,
20 service, logistic services and brand. Customers,
21 particularly the large ones, prefer to purchase kegs
22 from companies they know and trust. Thank you.

23 MR. SYZDAK: Good afternoon, my name is
24 Stephen Syzduk, and I'm the managing partner of NDL
25 Keg, LLC. We're a small Michigan-based company that

1 has been an importer and reseller of kegs and cask
2 produced in China throughout the period of
3 investigation until recently.

4 However, mainly as a result of the Section
5 301 duties, we have halted the importation of
6 containers in April of this year. The prospect of an
7 indefinite continuation of these duties, which are now
8 at 25 percent, makes it impossible for my company to
9 earn a reasonable profit.

10 The prospect of additional anti-dumping and
11 countervailing duties makes our distribution business
12 untenable. Currently, we're in the process of closing
13 our keg distribution business in the U.S.A, selling
14 off our remaining inventory, and disposing of our
15 warehouse properties. Most unfortunately, we've lost
16 two employees on this news, and another five staff
17 will be laid off once the stock is gone. It's been
18 very difficult to understand the rationale of American
19 Keg's petition, given their weak position in the
20 market. One company in the United States with limited
21 capacity does not make an industry.

22 With close to 7,000 craft breweries in the
23 U.S.A., volumes are significant, and yet, American Keg
24 only offers two production versions of stainless
25 containers: one half-barrel and one six-barrel kegs.

1 For many years, they, themselves, were an importer of
2 Chinese kegs from China major and Penglai Jinfu.
3 Since purchasing the assets of Geemacher, LLC, in 2016
4 in a distressed assets sale, American Keg has not
5 developed any further production capabilities beyond
6 what it purchased. Further, which is indisputable,
7 Geemacher, LLC was sued by Penglai Jinfu for debts
8 amounting to \$1.4 million. Despite winning a summary
9 judgement, Penglai Jinfu was not able to collect on
10 this debt. That's because Geemacher's secure lender
11 negotiated a fire sale of the assets to American Keg,
12 who ironically pledged to purchase kegs from Jinfu on
13 a going forward basis at a premium in an attempt to
14 make good on its debt to Jinfu.

15 No purchases ever materialized, although we
16 understand that American Keg has purchased additional
17 Chinese Kegs to add to its inventory. NDL offers more
18 than 10 styles of containers, and within that, 16
19 variants, such as stacking and non-stacking kegs.
20 Given the market space within the U.S., we almost
21 never hear that we're competing with AKC when we
22 market our products to small and independent craft
23 brewers.

24 One reason for this is that we can supply
25 keg sizes that American Keg does not make, such as a

1 10-liter, quarter barrel, 9-gallon cask, 4.5 gallon
2 cask, 2-liter growlers, and other keg styles within
3 that range, such as European DIN and Euro.

4 When you make your living selling kegs to
5 small craft breweries, you accept that your profit
6 margins are going to be small, because these brewers
7 operate on thin margins themselves. They have very
8 little ability to absorb significant price increases,
9 even though sales to craft brewers are predicted to
10 increase in the aggregate, the fact is that each
11 brewer purchases a relatively small amount of kegs at
12 any one time. And they may go years without buying
13 any kegs, since typically, kegs can last more than 10
14 years.

15 In fact, the only reason a brewer needs
16 additional kegs is to accommodate an increase in
17 production, distribution and loss. In this
18 environment, sales and marketing costs are going to be
19 high, since your goal is to find craft brewers who are
20 ready to buy and volumes vary. In the top 10 list of
21 brewers that we identified in our questionnaire, the
22 average order for the No. 9 and 10 brewers was just 86
23 kegs.

24 It's hard to make significant money when you
25 have to search hard to sell so few kegs. Large beer

1 orders are difficult to come by and usually capacity,
2 delivery time and service are major factors for
3 winning a bid. Small independent distributors, such
4 as NDL, are not equipped to make these sales, and
5 Given American Keg's size, location, range of
6 production and output, neither are they equipped to
7 support larger projects.

8 I'm convinced that American Keg filed its
9 petition because it was hurt by the 25 percent duty on
10 imported steel. So when the steel duties hit American
11 Keg's finances, I'm sure it was quite painful. It was
12 just as painful when the Section 301 duties hit our
13 own finances, but by seeking relief from the ITC from
14 imports, by alleging unfair trade, American Keg is
15 trying to avoid the consequences of its own decision
16 to enter a very difficult and complicated market.

17 Granting them relief in the circumstance
18 would damage the market as a whole. That concludes my
19 testimony.

20 MR. KEYSER: Good afternoon, I am Brian
21 Keyser, the President of G4 Kegs. We believe G4 is
22 the largest independent keg distributor in the
23 country. Our office is located just outside of
24 Portland, Oregon, and we maintain warehouses in
25 Virginia Beach, Oklahoma City, and St. Petersburg.

1 Our warehouses allow us to quickly serve our customers
2 throughout the country. G4's mission is to serve
3 predominantly craft brewers and other beverage makers.
4 Our company was established back in 2012, just as
5 craft brewing began to take off.

6 At that time, many small brewers had
7 difficulty buying kegs because they were not big
8 enough to purchase directly from manufacturers. G4
9 served a need because we were willing to sell smaller
10 volumes. Small craft brewers are typically not the
11 best planners, so being able to deliver quickly from
12 our inventory is a major comparative advantage.

13 Our clients include a wide variety of craft
14 beverage makers, from small nano breweries up to
15 companies producing nearly 100,000 barrels per year.
16 Due to our team's hard work, our business has expanded
17 significantly. We have invested in more equipment;
18 moved to a warehouse in Tualatin, Oregon; and we have
19 developed relationships with keg producers who support
20 our mission with quality keg products. We've also
21 spent a significant sum on marketing activities, as
22 well as on branding, a new website, and advertising.

23 These types of expenses are essential to
24 reach small craft beverage companies around the
25 country. The keg producers we work with share our

1 commitment to the craft industry in the U.S. We vet
2 all of our business partners on their dedication to
3 service and quality.

4 Over the years, our Chinese supplier, Ningbo
5 Major, has continued to hit high marks across all of
6 our requirements. We offer a 30-year warrantee, which
7 is an industry leader. We offer a diversified product
8 line that also includes kegs from European suppliers.
9 Our products also include kegs of various sizes,
10 besides the two sizes that American Keg produces.

11 Our customers know the keg sizes they need,
12 and different keg sizes serve different purposes for
13 each beverage maker. We did not include our
14 competition with American Keg. They are just not a
15 significant player in the industry. When G4 competes
16 with another distributor, we make it a priority to
17 fill orders based on customer service, product
18 quality, and product availability. We have kept
19 prices for our customers nearly constant between 2016
20 and 2019.

21 Making sure price is predictable is
22 especially important for smaller craft beverage
23 makers, which not always have the resources to plan
24 around variable costs. G4 kegs offer volume-based
25 discounts pricing to customers, which is typical in

1 the market. For example, we offer a few dollars off
2 per keg for customers who order over three pallets of
3 kegs at a time. Our average shipment to our top 10
4 customers exceeded 2,500 kegs in 2018.

5 As you know, the Section 301 tariffs imposed
6 a 10 percent duty on our products last September,
7 which increased to 25 percent this spring. We could
8 not absorb a 25 percent increase to our cost and have
9 had to pass on some of the tariff to our clients. Our
10 price increase is impacting our sales, despite that
11 summer is typically our best season. Craft brewers
12 will not be able to purchase as many kegs as they have
13 in the past as a result of our price increase, which
14 is substantial. That means we may soon suffer cutbacks
15 in labor hours and warehouse space.

16 In conclusion, we can only hope that the
17 Section 301 tariffs do not undercut all of our team's
18 efforts. Additional tariffs and duties could
19 seriously injure not only G4 kegs, but also the entire
20 craft beverage industry, impacting thousands of small
21 businesses in this country. Thank you.

22 MR. BRAND: Good afternoon, Commissioner
23 Kearns and staff. I'm Alexander Brand, CEO of Blefa
24 GmbH and president of Blefa Beverage Systems. I've
25 been in my current position for 10 years now and have

1 been working for Blefa for 15 years, starting as a
2 sales selector in 2004. I'm very proud of our company
3 and its people. We've worked hard together over the
4 past years to build a state-of-the art tech production
5 facility.

6 The production plant is in Kreuztal,
7 Germany, not too far from Frankfurt or Cologne. Our
8 plants currently employ 156 people, including those in
9 the plant and those in the front office. On average,
10 we are capable of producing 9.5 million kegs per year
11 and have been utilizing that capacity at close to 100
12 percent in the previous years. We can make many sizes
13 of kegs, including full stainless steel kegs, kegs
14 with different chine (phonetic) materials or even
15 completely covered with polyurethane foam to make it
16 look like a wooden barrel.

17 We can the individualize these kegs in a
18 variety of ways to meet our customer's needs,
19 including embossing, silk screening, RFID and specific
20 laser markings. Germany, as our home market, and
21 other European countries are important markets to us,
22 but we also sell to sites in Central America, Africa,
23 Australia and the emerging Asian markets.

24 We serve international corporations around
25 the world that purchase mainly annually through their

1 head offices for all of their breweries around the
2 globe. We first entered into the U.S. market in 1999,
3 many, many years before AKC was even an idea. At that
4 time, there were just the local manufacturers,
5 Spartanburg Industries and Thielmann from Spain, as
6 well as the supplies in the U.S.

7 Spartanburg Industries sold their assets for
8 keg production to us in 2006 because they wanted to
9 focus on the automotive segment. Blefa established a
10 foothold in the United States 20 years ago by the
11 certification of Anheuser Busch, Coors and Microsoft.
12 We then grew our presence in the U.S. market by
13 offering very specific services that were unique at
14 that time, such as keeping stock in the United States
15 and being able to customize those kegs in small
16 quantities.

17 We are also committed to servicing used
18 kegs, as it was important to us to maintain the
19 ability and to protect the value of the assets of our
20 customers. These capabilities, in combination with
21 the highest product quality in the industry, were also
22 the starting point of our long-lasting partnership
23 with keg lenders and approving companies who formed
24 the backbone of our business today, both for new keg
25 sales, as well as for servicing of used kegs.

1 Today, I'm proud to say that we employ, on
2 average, around 60 people in the United States; about
3 40 in our facility in La Vergne, Tennessee and about
4 20 in our facility in Vancouver, Washington. While we
5 do sell to small and craft -- to small and craft
6 breweries, our target always has been to make high
7 volume sales to the large and mid-sized breweries and
8 to the keg leasing and rental companies.

9 We can serve these larger customers well by
10 providing them timely delivery of large volumes of all
11 sizes of kegs essentially made to order for their
12 needs. My company takes our presence in the U.S.
13 market as one of the largest, if not the largest
14 supplier, very seriously. We understand that due to
15 the methodologies employed by the U.S. Department of
16 Commerce, we have been found to have made some sales
17 at less than -- a very small amount of what is thought
18 to be fair value.

19 Believe me that this was never our intent,
20 as we consider ourselves to be the quality and price
21 leader in the United States. Let me say that we have
22 never intended any ill will to AKC. In fact, we
23 really are not being impacted by their entry into the
24 U.S. market, as we rarely, if ever, directly compete
25 with them for customers. Because we've been producing

1 kegs since 1986 -- '68, which is over 50 years of
2 experience, we can provide the most consistent quality
3 in the industry, not just a few good test kegs
4 (phonetic), but also kegs -- but all kegs that we
5 make.

6 We have four well-established quality
7 control systems that ensure that every keg leaving the
8 factory has passed all checkpoints and deserves the
9 permanent laser marking that carries our 30-year
10 warrantee.

11 Now, I will turn over the microphone to
12 Dinah, who will further explain our operations in the
13 United States.

14 MS. QUIST: Good afternoon. My name is
15 Dinah Quist. I am the controller for Blefa Kegs, Inc.
16 I have been working for Blefa Kegs since September
17 2013 and prior to that, I worked several years for
18 Frankfurt Service Systems. I handle the financial
19 data and various other daily operations of our two keg
20 locations in the United States. I work out of our
21 main location in La Vergne, Tennessee, but I'm also
22 responsible for our second location in Vancouver,
23 Washington that was opened in January 2016.

24 Blefa is unique in that at both of our U.S.
25 locations, we maintain equipment and personnel for

1 servicing kegs. Our keg servicing is one of our
2 strengths and one of the key benefits that we provide,
3 both to customers who purchase our kegs and to anyone
4 who has kegs that need servicing, regardless of who
5 made the kegs or where they were purchased. Our
6 servicing ranges from simple valve maintenance to
7 retrimming of handles. We can completely overhaul an
8 old keg, totally cleaning it out.

9 You would be surprised what a peanut butter
10 beer can do to the inside of a keg. We also can get
11 any dents out and even repair any leaky areas and
12 repair or replace kegs when necessary. We believe
13 that when our servicing is complete, that the keg is
14 like new again. In addition to keg servicing, our
15 U.S. locations handle keg sales made by our sister
16 company, Blefa GmbH in Germany. We do consignment
17 sales, we do call off stock and we do quick keg sales.
18 For consignment sales, we purchase kegs from Blefa
19 Germany, which are drop-shipped to our customer
20 location.

21 The customer is invoiced as the kegs are
22 drawn down. For call off stock, we purchase large
23 quantities of embossed kegs from Blefa Germany for
24 future use of our major customers. We can silk-screen
25 design these kegs according to customer specification.

1 For big kegs, we purchase plain blank kegs from Blefa
2 Germany. We emboss and silk screen design these kegs
3 by customer specification. At present, we do have a
4 significant build up of kegs in inventory, but these
5 kegs were needed in order to comply with contractual
6 demands and -- and suspected needs of our large keg
7 leasing and rental company customers.

8 Justin Willenbrink can better explain our
9 sales and customers. Justin?

10 MR. WILLENBRINK: Good afternoon. My name
11 is Justin Willenbrink, and I'm the sales director for
12 Blefa Kegs in North America. You've heard today from
13 my colleagues about Blefa's production of Kegs in
14 Germany and the further customization of these kegs in
15 the United States. The majority of our keg sales in
16 the United States are to large customers, either to
17 larger breweries or keg leasing and rental companies.
18 We sell tens of thousands or more kegs a year to these
19 customers, after passing very strict and involved
20 qualification testing prior to the initial sale.

21 If we are to continue doing so, especially
22 as we see the keg leasing and rental market expand,
23 the small breweries are choosing this option over
24 investing their capital in the purchasing of new kegs
25 themselves. We provide almost all possible kegs

1 around the world, including many varieties outside of
2 the one-half and one-sixth barrel dimensions. Many of
3 the customers prefer this because we can provide this
4 full range of keg sizes that they can't purchase from
5 the U.S. keg supplier.

6 We've seen a shift recently to greater
7 purchases of smaller kegs, such as six-barrel and
8 quarter barrel, as restaurants and bars prefer to
9 offer a greater variety of beers to give customers
10 choices and to be able to change out unpopular beers
11 without absorbing the cost of the larger keg. This
12 point is just one of the many reasons why kegs are not
13 sold on the basis of price. When I sell to customers,
14 I'm offering them a high quality keg at a fair price
15 from our German company that has been making kegs
16 since 1968.

17 Having been established for over 50 years,
18 we can stand behind the 30-year warrantee you provide,
19 which distinguishes us from other suppliers offering a
20 much shorter warrantee. Our warrantee is a part of
21 our price but requires that the customer pay to have
22 their keg serviced by us every seven years to maintain
23 its validity. The Blefa brand is well-known and well-
24 respected due to our quality. And in this industry,
25 keg service is just as important. Our customers have

1 piece of mind knowing that when they do need keg
2 service on their kegs, they have a partner suitable to
3 provide every possible service needed to maintain a
4 health keg flow.

5 Keeping a well-maintained keg flow can be
6 just as good as buying new kegs in some instances. As
7 I stated the first time I was in this room at the
8 preliminary staff conference, our full service
9 capabilities tie into our sales philosophy that we
10 want to grow with our customers and not just sell them
11 kegs but sell them solutions. Being a provider that
12 can do all of this is invaluable. We work everyday to
13 make sure our customers are aware that Blefa can
14 consistently provide high-quality kegs that exceed
15 industry standards and that Blefa will be here as a
16 reliable partner, both now and in the future.

17 I know that our customers value us and not
18 just to look to buy low-price kegs offered to them.

19 MR. SAPYTA: My name is Chris Sapyta. I'm
20 the CEO of Keg Logistics, LLC. Thank you for allowing
21 me to be here today to give you the basic details
22 about keg management, leasing and the rental
23 businesses in the U.S. beer industry. I know all of
24 these concepts very well. I was a founder of
25 Microstar Keg Management in September of 1996. I

1 served as its president until January of 2005.

2 Microstar is currently the largest keg
3 management company -- keg pooling manager in the
4 world, with over 3.5 million kegs in play. I am now
5 the CEO of Keg Logistics, a company I started in
6 November of 2011. Today, we have over 2,100 customers
7 in the U.S.; another 350 in the U.K., with over 1.3
8 million kegs in play. I'm going to start with
9 discussing keg management or keg pooling. This is the
10 model I established in 1996 at Microstar. The key to
11 this model is that the brewers do not own the kegs;
12 they will never own the kegs direct, the management
13 company does.

14 The keg management company owns the kegs;
15 takes full responsibility of the purchase and the
16 maintenance and absorbs the loss of the kegs. The
17 brewer or customer simply orders the kegs needed each
18 month to fill to support their sales; then they fill,
19 ship and forget. The keg management company then
20 takes it from there. That is the pooling model that I
21 pioneered with Microstar from 1996 until I left in
22 2005.

23 Microstar continues to be the leader in
24 volume, providing this model today, just like it was
25 designed in 1996. While I was absent from the beer

1 and keg industry for about six years, the U.S. beer
2 industry had changed dramatically. Small local
3 brewers were opening up at the rate of one per day in
4 the U.S., and the need for a different solution to keg
5 ownership was now apparent to me. The pooling model
6 did not apply, in most cases, to the new U.S. brewing
7 industry, the craft industry.

8 This new breed of brewer was focused on
9 producing and selling their beer locally with very
10 little interest in the needs of outsourcing, logistics
11 and management. This need or opportunity was a
12 catalyst for me starting Keg Logistics in late 2011.
13 Now, let me explain how Keg Logistics operates. While
14 we offer today the same pooling services as Microstar,
15 we also offer other options for brewers, primarily the
16 rent-to-own or straight rental model.

17 We counsel and let the brewer determine
18 which solution best fits their immediate need. We
19 give our brewers the option to obtain many sizes of
20 kegs and casks. These include, in the U.S., one-half,
21 one-sixth, quarter barrel kegs, plus 50-liter, 30-
22 liters and 9-gallon casks. The brewer has the option
23 to finance the keg over time, with the option to buy
24 or in a straight rental, they pay a lower rate per
25 month but do not have the option to own or buy the keg

1 out of the lease.

2 Whether it is by leasing or by renting or on
3 a per use model, our customers would rather work with
4 us than purchasing kegs direct. Keg Logistics' main
5 role is to provide the capital to buy the kegs in
6 large quantities, keep kegs in stock in the U.S. so
7 that any one of our customers can add kegs to their
8 fleet on very short notice. And on short notice, I
9 mean in many cases with less than seven business days
10 of notice, and provide the logistic support where
11 needed.

12 The alternative for our customer is to buy
13 the kegs outright. Purchasing any volume of new kegs
14 can be expensive, not just for a new craft brewing
15 startup, but even for an established brewer. By
16 leasing and renting, brewers can avoid this up front
17 cost and still get the highest quality keg on the
18 market at an affordable rate. This gives them an
19 operational advantage over a brewer who may be buying
20 lesser quality kegs because of their limited access to
21 capital.

22 Aside from the financial aspect, the other
23 reason for leasing and renting from Keg Logistics is
24 that we provide, in our legal contract, a warrantee of
25 every keg for performance. We -- also, we are

1 required to pay for the kegs to be professionally
2 serviced by Blefa after three years of use. This
3 service guarantee allows us to ensure that the kegs
4 that we provide to our customer will perform without
5 fail.

6 If there is failure, Keg Logistics has to
7 pay to replace the keg, as well as the cost or value
8 of any product loss because of keg failure. This
9 could become very expensive, so it is Keg Logistics
10 number one goal to provide only the best keg in the
11 market. We simply are not willing to take a chance of
12 not providing the best keg. Every keg that we have
13 serviced is then under a 30-year warrantee from Blefa.
14 We could not get this comfort level from any other
15 source at the moment. I'm here today with Blefa
16 because we do work closely with them to meet the
17 personal needs of my company's customers quickly and
18 efficiently. We can direct Blefa to customize a keg
19 to our customer's specific request, be it embossing,
20 silk screening or other labeling.

21 We also are able to offer them Blefa's
22 highest quality, well-made kegs at a price they can
23 afford, with the servicing from us that they desire.
24 We can do this because of the very large volume we
25 purchase from Blefa and because Blefa maintains that

1 stock we need for us at all times at their facilities.
2 We have seen the future for the U.S. keg market in the
3 growing reliance on leasing, renting and pay-per-fill.

4 We expect that our company will continue to
5 grow and our 2,100 small business owners will continue
6 to rely on our speed of service and the ability to
7 deliver kegs just in time. Keg Logistics and all of
8 our customer base do not want unwarranted anti-dumping
9 duties imposed on Blefa now or any time in the future.

10 MR. DORRIS: I am Greg Dorris from the law
11 firm of Pepper Hamilton, representing Blefa. You
12 already have heard considerable testimony here today
13 about material injury and threatened material injury.
14 But Blefa has a very different legal approach than the
15 other parties in this investigation. As detailed in
16 its prehearing brief, Blefa contains that the domestic
17 industry here is not established and that its
18 establishment is not materially retarded by the usage
19 of imports from Germany. To Blefa, this threshold
20 question is not even that close a call. Please keep
21 in mind that it is not a subjective analysis of
22 whether AKC is committed to becoming established, but
23 an objective analysis of whether it is established
24 based on the criteria traditionally examined by the
25 Commission.

1 When carefully examined, all of the
2 historical criteria favor a finding that the domestic
3 industry is not established. AKC is still a startup
4 company and only has been in operation since mid-2016.
5 Because AKC has elected from the start to make only
6 two sizes of kegs, which again, it produces only in
7 small quantities, it cannot serve the majority of the
8 industry. As a startup, it only has a tiny part of
9 the U.S. keg market and lacks the capacity to achieve
10 much more any time soon.

11 AKC still has not reached a reasonable
12 financial breakeven point, a fact it admitted this
13 morning and recognizes in Page 92 of its prehearing
14 brief. And it admits publically that it experienced
15 loses throughout the POI and continues to operate in a
16 loss position.

17 AKC does not have the expertise or support
18 of any affiliated companies to help it change its loss
19 position. When the domestic industry is not
20 established, the statute does not provide for
21 cumulation in determining whether its establishment is
22 materially retarded by subject imports. It is clear
23 from careful examination of the record evidence that
24 the German imports alone have not in any material way
25 retarded the establishment of the domestic industry.

1 Indeed, there is no support for the conclusion of
2 AKC's performance would've been better in the absence
3 of the subject imports from Germany.

4 The imports from Germany do not display
5 volume or price trends that could have prevented AKC
6 from achieving its modest goals. Simply put, the
7 establishment of the domestic issue was not materially
8 retarded by imports from Germany. Should the
9 Commission not agree with Blefa, however, despite the
10 overwhelming evidence, and find instead that the
11 domestic industry is established, Jim Dougan will now
12 explain why it is not materially injured by the
13 subject imports from China, Mexico and Germany, and
14 certainly not threatened of material injury by subject
15 imports from Germany.

16 MR. DOUGAN: Good afternoon, I'm Jim Dougan
17 from ECS. I'd like to begin by discussing some
18 important conditions of competition that should inform
19 the Commission's analysis. First, the domestic
20 industry is, as you've heard, at best, in a startup
21 phase, if it's even established at all. And AKC has
22 only been producing kegs since May of 2016 when it
23 purchased the assets of Geemacher. In comparison, for
24 example, Blefa GmbH has continuously produced kegs
25 for over 50 years.

1 The Commission recognized this in its
2 preliminary determination, and you can see the quote
3 here on Slide 1 -- several quotes, I should say. And
4 even though the Commission analyzes a well-established
5 domestic industry that claims to have been injured by
6 new entrance from subject countries, the reverse is
7 true in this investigation. It is the domestic
8 industry that is the new entrant.

9 Second, the domestic industry has very
10 limited ability to serve the U.S. market. This arises
11 from three factors. Its small capacity, which limits
12 the customer base to which it can sell. Its lack of
13 certification or qualification with large brewers,
14 distributors and leasing companies and its limited
15 product range, which is one-half and one-sixth barrel
16 kegs only.

17 Slides 3 to 7 provide some additional
18 supporting information that we can talk about, but
19 let's skip those for now. Third, price is not the
20 driving factor for purchases of kegs in the U.S.
21 market. As you can see here on Slide 8, price was
22 ranked 8th among factors that purchasers considered to
23 be very important. And then 15 of 23 purchasers said
24 that quality is the first factor used in their
25 purchasing decisions, while only two purchasers cited

1 price or cost. Most strikingly, 18 of 23 purchasers
2 either never or only sometimes purchased the lowest
3 price product.

4 This statistic is rare, if not unique, in my
5 experience with the ITC. Fourth, domestically
6 produced kegs and subject imports are not fully
7 interchangeable. The Commission recognized this in
8 the staff report, as you can see on Slide 10. Fifth,
9 the Section 232 and Section 301 tariffs have had an
10 impact on the U.S. marketplace.

11 The 232 tariffs have led to increases in the
12 price of stainless steel, which is, of course, AKC's
13 primary raw material, and these were unanticipated at
14 the time it entered the market in 2016. The Section
15 301 tariffs have also affected the U.S. market by
16 causing a sharp decline in the value of imports from
17 China, including those by AKC itself.

18 Sixth, and final of the demand conditions,
19 apparent consumption for kegs fluctuated over the POI,
20 increasing from 2016 to 2017 and then declining in
21 2018 and between the interim periods. In their
22 prehearing brief, Petitioners discussed how the small
23 craft breweries are becoming an increasingly important
24 source for demand for refillable stainless steel kegs.
25 Notwithstanding their presentation, the apparent

1 consumption data show that the small brewery channel
2 has fallen as a share of consumption over the POI. As
3 you can see on the chart, its share has been replaced
4 almost exactly by the keg leasing and rental channel.

5 You've heard the industry witnesses that
6 leasing kegs rather than purchasing them outright is
7 an attractive option for smaller breweries for a
8 number of reasons. This shift in the demand
9 landscape, in addition to the overall decline was not
10 fully anticipated as AKC developed its business model
11 in 2016. Moreover, the leasing and rental companies
12 purchase on a scale that AKC cannot meet, and for this
13 reason, AKC cannot compete for their business.

14 Moving on to volume. Notwithstanding the
15 weak demand, AKC's volume indicators improved over the
16 POI. Most positive was the growth in AKC's market
17 share. Slide 15 shows how AKC's share of the overall
18 market grew, but its share -- its share grew even more
19 significantly in segments of the market that it was
20 actually equipt to address. That is sales of one-half
21 and one-sixth barrel kegs to the small brewery
22 segment.

23 It doesn't follow that AKC would've been
24 able to increase its shipments by even more absent any
25 effect of subject imports. As discussed in our

1 confidential prehearing brief, the reported volume of
2 loss sales is significantly overstated.

3 Turning to price effects. There is no
4 evidence of price depression during the POI. AKC's
5 shipment interviews and its pricing data all show
6 increases over the POI. And only one of 23 responding
7 purchasers indicated that AKC had lowered its prices
8 to compete with subject imports. And even that
9 purchaser had only a general impression, rather than
10 any hard number. There was no price suppression
11 during the POI.

12 In its prehearing brief, petitioner states
13 that, "The record in the proceeding establishes that
14 the domestic industry was unable to raise its prices
15 commensurate with the increase in its production
16 costs." But this is not true, AKC's cost-to-net sales
17 ratio improved dramatically over the POI and was
18 steady, even between 2017 and 2018 when the Section
19 232 tariffs were imposed. This ratio improved again
20 between the interim periods, as AKC's prices increased
21 in nearly every quarter from the middle of 2017, even
22 though stainless steel prices peaked in mid-2018 and
23 then declined thereafter.

24 The pricing data do not reflect underselling
25 as such, but rather the premium charged for domestic

1 kegs, varying levels of volume discounts and
2 perceptions of quality. At the staff conference, Mr.
3 Bentley testified that American made kegs should be
4 able to command a premium of \$10 to \$15 per keg and
5 they priced their kegs accordingly at the outset.
6 Contrary to statements from Petitioner's counsel this
7 morning, charging a premium is explicitly part of
8 AKC's business strategy, not only from their own
9 public statements but from the projections provided
10 with the business plan.

11 AKC charged the premium for its domestic
12 related kegs over the kegs that it imported from
13 China. Now if the pricing data are adjusted to
14 reflect this premium, it eliminates all of the
15 underselling from Germany and nearly all of the
16 underselling from Mexico. And while some underselling
17 from Mexico and China remains, this can be explained
18 by two other factors. First, since the pricing data
19 do not collect pricing on the basis of channel, there
20 are volume discounts essentially baked into the data.
21 They reflect the volume discounts of importers'
22 shipments to large customers, while AKC's prices would
23 basically only reflect small orders to small
24 breweries.

25 Second, at least some purchasers perceive

1 there to be quality issues with kegs from China. This
2 means that at least some purchasers would not be
3 willing to pay the same prices as they would for U.S.,
4 German or Mexican kegs. Thus, we submit that because
5 of all of these factors, the underselling observed in
6 the data is not significant.

7 Now turning to impact. As summarized in
8 Slide 29, AKC's performance indicators all increased
9 from 2016 to 2018 and between the interim periods,
10 with the exception of U.S. shipment volume that
11 declined modestly between the interim periods
12 reflecting a decrease in demand. AKC's employment
13 also generally increased over the POI, and while AKC
14 unfortunately experienced some layoffs in 2018 that it
15 now blames on subject imports, at the time of the
16 layoffs, AKC publically attributed them to the
17 imposition of the Section 232 tariffs. All of these
18 improvements occurred, despite the fact that subject
19 imports held a dominant and increasing market share
20 from 2016 to 2018.

21 Although, that share declined somewhat in
22 entering 2019 to approximately its 2016 level.
23 Petitioner's claim to have been injured by subject
24 imports because they've been unable to achieve the
25 improvements that they had projected when entering the

1 market in mid-2016. At the staff conference in
2 October 23018, Mr. Bentley testified that, "I'd just
3 like to reiterate that we had a plan. Until the last
4 few months, we were on that plan." What happened in
5 the last few months before October 2018? That would
6 be the Section 232 tariffs. This is echoed by a
7 similar statement formerly appearing but since removed
8 on AKC's website under it's FAQs, where they said that
9 they planned on increasing production to achieve
10 profitability and that they were making great progress
11 on this until the fourth quarter of 2017 when their
12 domestic sale producers started increasing their
13 prices because of these new tariffs.

14 It is clear that the Section 232 tariffs
15 were the key to implementing AKC's fortunes. It was
16 also adversely affected by another market factor
17 that's discussed in Blefa's confidential brief at 61
18 to 63. But notwithstanding these difficulties, AKC's
19 financial performance, given the level of output that
20 it was actually able to achieve, was ahead of
21 projections, the relevant data presented at
22 Confidential Slide 23 and discussed further in our
23 prehearing brief. Thus, even by its own projects,
24 AKC's current condition really reflects the normal
25 startup condition of the company entering a difficult

1 market.

2 AKC did would not have performed
3 significantly better absent any effect of subject
4 imports. The U.S. industries petition the Commission
5 for trade relief typically present one of two
6 scenarios that allegedly demonstrate injury by reason
7 of subject imports. One, that they had to cut prices
8 to compete with lower priced imports in an attempt to
9 maintain the market share. Or, two, that they
10 maintained their prices to preserve their profit
11 margins, but by doing so lost market share. Neither
12 scenario applies here. AKC both raised its prices and
13 gained market share over the POI. And at the same
14 time, it reduced its operating losses as a startup.

15 The fact that AKC did not meet its
16 projections was not because of subject imports but
17 because it overestimated the portion of the market
18 that was willing to pay a premium to a producer with
19 limited production capabilities and no track record in
20 the marketplace, especially as small breweries were
21 increasingly shifting to the renting model.

22 It's not entirely unrealistic to think that
23 some customers would be willing to pay premium prices
24 for kegs. Blefa charges prices that are generally
25 higher than those of imports from China and Mexico and

1 it ships significant volumes, but its ability to
2 charge higher prices is predicated on the long track
3 record of the highest quality and service levels. AKC
4 is a startup company with only a few years in the
5 market and no prior manufacturing experience.

6 Many purchasers weren't even aware that it
7 existed and others thought of it primarily as an
8 importer from China. So while there were demonstrably
9 a growing number of customers that were willing to
10 purchase AKC's kegs at a premium, there weren't as
11 many as they had projected. This is not the fault of
12 subject imports. And AKC was well-aware of subject
13 imports dominant position in the marketplace and of
14 import pricing as well, considering that they,
15 themselves, imported significant quantities from China.

16 AKC claims in its brief that there was a
17 surge in imports in 2017 which, "disrupted the
18 market," and "upended its plans." But this is not
19 supported by the record. While there was an increase
20 in subject import volume from 2016 to 2017, subject
21 market share actually fell. It's not clear how this
22 could've disrupted the market, given the dominant
23 share already held by subject imports. The statement
24 presented in the brief is not even supported by their
25 own prior statements where they state that they are

1 making great progress until the 4th quarter of 2017
2 when their domestic suppliers began to raise their
3 prices because of the tariffs.

4 It's also telling that AKC's response to
5 what it perceived as increased import competition in
6 2017 was to raise its prices further, above and beyond
7 the premium that it was trying to command when it
8 entered the market. Again, having been in independent
9 operation for only a year and holding just a tiny
10 fraction of the marketplace, it isn't surprising that
11 they were unable to push these increases through to
12 the market more broadly. Nevertheless, their cost to
13 sales ratio held steady from 2017 to 2018. Their
14 operating margin improved, and they gained market
15 share. That their production and profitability did
16 not improve by even more was not attributed to subject
17 imports.

18 Turning now to threat. Blefa submits that
19 the Commission should exercise its discretion to de-
20 cumulate Germany for purposes of its threat analysis.
21 As discussed by the witnesses from Blefa, it has a
22 unique position and approach in the U.S. marketplace,
23 characterized by high-quality and service levels and
24 what is regarded as purchasers as price leadership at
25 the high end of the market. And unlike China, it is

1 not subject to the 301 tariffs. Imports from Germany
2 do not pose a threat to the domestic industry.

3 As shown in Slide 25, the volume and market
4 share of imports from Germany had declined over the
5 POI, and not only has the overall volume declined, but
6 as shown in Slide 26, the portion of imports from
7 Germany that have arguably the greatest competitive
8 overlap with AKC have been declining as well. That
9 is, the share of imports from Germany shipped to the
10 small brewery channels declined, and the share of
11 imports from Germany in the one-half and one-sixth
12 sizes also declined. Prices of these imports were
13 high and steady, and capacity utilization in Germany
14 is very high.

15 For all of the foregoing reasons, the
16 Commission should make a negative threat determination
17 with respect to Germany. And I'll make one more
18 observation in the short time that I have left. There
19 was some back-and-forth this morning about the
20 premium, what it means, and I'm sure there'll be
21 questions about that this afternoon, but when
22 analyzing Petitioner's claims that the price of
23 subject imports took them by surprise and undermined
24 their plans, the Commission should keep in mind two
25 statements made by this morning's panel. One, that

1 the market price when they entered -- when they formed
2 their business plan was adequate, and number two, that
3 now subject imports are fairly traded.

4 So if we invite the Commission to compare --
5 I invite the Commission to compare the average year of
6 values of subject and non-subject imports in Table C1
7 of the prehearing report. And so if the non-subject
8 imports are fairly traded, how does AKC's price -- how
9 do AKC's prices represent anything other than a
10 premium? Also, how does subject import pricing
11 reflect unanticipated injurious pricing behavior?
12 There may be some -- some product mix in that, but,
13 you know, we could get into that a little bit further
14 in, you know, our confidential solution. And with
15 that, I conclude my remarks. Thank you.

16 COMMISSIONER KEARNS: All right. Thank you
17 all very much. Really appreciate you all appearing
18 here today. This is usually helpful, lots of issues
19 to discuss. Also, just thank you for -- I think as
20 some of you pointed out in your briefs, some of you
21 had very good coverage of foreign producers and so
22 forth, and appreciating the help that you all give us
23 to get there as well.

24 Let's see. As I said, I think there is an
25 issue of where to begin. I guess I'll begin on the

1 issue of material retardation versus material injury.
2 obviously Blefa has pointed out why it believes that
3 this is a material retardation case. Can the other
4 Respondents, I guess their counsel, speak to this
5 today, disagree with that? Do they think, as I think
6 I heard this morning, it doesn't really matter one way
7 or the other. The analysis is similar.

8 How does that analysis differ? Can you just
9 speak to that, please?

10 COMMISSIONER KEARNS: Commissioner Kearns,
11 this is Craig Lewis for Thielmann. I think I would
12 agree, ultimately, that it doesn't really matter. I
13 think that this case is a causation case, and whether
14 the injury analysis is conducted in terms of material
15 retardation or material injury, either way, this
16 record overwhelmingly lacks or is devoid of any kind
17 of evidence of the causal relationship between the
18 condition of Thielmann -- sorry, the condition of
19 American Keg and subject imports.

20 That said, I think our position is that this
21 case should be looked at from the perspective of
22 material injury, because we do believe that American
23 Keg, while it certainly is still in the start-up
24 condition, was established, as is evidenced by its
25 performance data that's on the record.

1 COMMISSIONER KEARNS: Okay. Anyone else?

2 MR. CONNELLY: Warren Connelly for the
3 Chinese Respondents. We essentially agree with what
4 Craig just said on behalf of Thielmann. I think the
5 only other thing I'd say is while we take the
6 position, and still take the position, it's a current
7 material injury case, if you evaluate this on the
8 material retardation criteria, you come out the same
9 way, with a negative determination.

10 COMMISSIONER KEARNS: Okay. Thank you.

11 MR. DORRIS: Mr. Kearns, I would just add
12 that Blefa does not agree, in the sense that this
13 analysis is similar under the two approaches because,
14 under material retardation, obviously there is no
15 cumulation. That decision is made up front. And
16 also, there is no threat analysis under material
17 retardation. And finally, the manner in which you
18 analyze the various trend factors is influenced by the
19 material retardation case, as you yourself pointed out
20 this morning, when you look at the trends of the
21 domestic industry.

22 So ,I think there are very significant
23 differences between them. I do actually agree with
24 Petitioners in the end, that the results are the same,
25 there would be a negative determination under both

1 approaches.

2 COMMISSIONER KEARNS: Okay. Thank you.

3 MR. LEWIS: Commissioner Kearns, if I could
4 just clarify on that point. What I mean by saying
5 that -- the ultimate outcome, I think, is the same
6 under either framework. And what I meant by causation
7 is I think that the ultimate question under either
8 standard -- if you look at what the Commission
9 concluded at the preliminary stage, it was, well, the
10 American Keg evidence suggested it's possible that
11 American Keg would have done better, were it not for
12 subject imports.

13 We strongly disagree with that because there
14 isn't the causal relationship. That wasn't what was
15 the factor at the preliminary phase. It is my
16 understanding -- and I think everyone's experience
17 with material retardation is pretty limited -- but
18 that's a similar question, I think, of material
19 retardation. The question being whether the U.S.
20 producer would have done better --

21 COMMISSIONER KEARNS: Yeah.

22 MR. LEWIS: -- but for --

23 COMMISSIONER KEARNS: Okay. Yeah, and I
24 guess that's consistent with what I was -- my example
25 this morning. I mean, it seems to me that if it's a

1 retardation case, we might -- the fact that, you know,
2 if you look at market share, I think that's a good
3 example. And market share going up, normally that
4 would be pretty strong evidence of a negative material
5 injury case.

6 But we would want to ask an additional
7 question in the retardation case. Well, should we
8 have expected it would go up more, but for imports?
9 And so in that sense, I think the way you phrase it,
10 it is sort of similar either way. I suppose you can
11 even in a material injury case still sort of ask
12 yourself, but would it have been better, you know, but
13 for subject imports. I guess that's where I'm hearing
14 what you're saying. Okay. Thank you.

15 (Pause.)

16 COMMISSIONER KEARNS: Okay. I guess, I think
17 this question is for Mr. Dorris. You just mentioned
18 cumulation and material retardation. So, we took a
19 look at the factual witness. As Mr. Lewis pointed
20 out, I think we're all not fully familiar with how
21 best to consider these retardation cases. But it
22 looks to us -- that said, and I've got to condense
23 this a little bit.

24 But if you look at 1671(d)(b), it provides
25 for material retardation analysis in its final

1 determination, in addition to material injury and
2 threat. That we all know. If you then go to
3 1677(7)(b) -- and I apologize to the industry
4 witnesses here, because we kind of get a little bit
5 deep here in some of the legal questions.

6 But if you go to 1677(7)(b), it provides the
7 definition of material injury, which includes a
8 determination made under 1677(d)(b). That is material
9 retardation. So, that appears as if, even though the
10 statute at first distinguishes between material
11 retardation and material injury, it then seems to
12 define material injury as including material
13 retardation. And then, after that, if you go to
14 1677(7)(g), it says you shall accumulate for
15 determining material injury. But since we just now
16 defined material injury as apparently including
17 material retardation, it looks to us as though the
18 upshot of this may be that we are not required to not
19 cumulate.

20 Now, whether or not we are permitted to or
21 not, I think that's another question. But anyway, I
22 guess I would ask all of the sides, and Petitioners as
23 well, to comment on, you know, that analysis. And if
24 you have any other thoughts now, in terms of
25 cumulation, we'd be happy to hear them. But my

1 understanding of where you went in your brief was
2 really more that the statute very clearly says
3 material injury shall cumulate threat, you know, may
4 silence with respect to material retardation. And so,
5 in that case, silence should be read as not allowing
6 cumulation.

7 But if you have any other thoughts on that
8 now, I'd be happy to hear them.

9 MR. DORRIS: Surely I won't go into the
10 details and the intricacies of the statute at this
11 point for any pleasure this afternoon. But I would
12 point out that the Commission itself has noted that
13 material retardation is separate from material injury
14 and threat of material injury. And, therefore, it
15 doesn't lump those two together for the statutory
16 purposes. There is clear indication in the statement
17 I think I quoted in the prehearing brief from the
18 Commission, in the 53-foot containers case, where it
19 was clear that the Commission said, if you have
20 material retardation, you don't do material injury or
21 threat of material injury.

22 And I would say the statute does not provide
23 for cumulation with material retardation. And as you
24 just pointed out, do you choose shall cumulate or do
25 you choose discretionary cumulation, because it's very

1 clear from material injury and threat of material
2 injury, but does not use the word material retardation
3 anywhere in the statute. And I don't necessarily
4 agree with that link that you're drawing.

5 COMMISSIONER KEARNS: Okay. Well, again I
6 just appreciate any further thoughts on that post-
7 hearing.

8 Let's see. We covered that. I guess
9 also -- I think this is probably also for you, Mr.
10 Dorris. In your analysis, you said the Commission's
11 determination -- never a determination in the dry
12 containers case. In that case, the Commission relied
13 on lack of causation to find that it was not subject
14 to imports, but the domestic industry's own well-known
15 problems with order and inability to meet the
16 specifications and requirements of major customers,
17 such as preferring a fully-welded container. How did
18 you address causation under a material retardation
19 analysis in this case?

20 MR. DORRIS: I think the causation analysis
21 would be similar. I don't think the cases are
22 identical. I'm not claiming that. But I think there
23 is also some overlap in the analysis that the
24 Commission did, and I think in the sense of causation,
25 it's very similar to the causation you do or look at

1 from material injury, but your overall analysis is
2 whether or not the U.S. industry would have done
3 better without the subject imports, which is different
4 than what you look at, although I do hear what Mr.
5 Lewis is saying and what you were talking about with
6 the overlap between material injury analysis and the
7 material retardation analysis as the but-for the
8 imports.

9 But I think it's very clear, when you do it
10 under material retardation, and that that's the
11 standard that you've applied in cases, our cases.
12 There has been several material cumulation cases.
13 It's not that unique. It's just that it's interesting
14 that there has never been one with multiple countries.

15 COMMISSIONER KEARNS: Well, although what we
16 found is there have been some with multiple countries,
17 although though that was, I think, back in the early
18 '80s, and it was before the statute was changed with
19 respect to cumulation, so --

20 MR. DORRIS: Right, right.

21 COMMISSIONER KEARNS: -- we're going to have
22 to look at that some more, as well.

23 Okay. Well, getting on with the legal side
24 of this a little bit, but also a question for Blefa.
25 And I think that you touched on this in your direct

1 presentation. But in 2006, your firm purchased the
2 only U.S. producer of kegs at that time, Spartanburg
3 Stainless. Can you explain your rationale for this
4 purchase, and can you estimate how much of the U.S.
5 market was served by domestic production versus
6 imports at that time?

7 MR. BRAND: Yes. This is Alexander Brand
8 speaking. I was not really in charge at that time, so
9 I was just a sales director. But I got involved with
10 the results of that purchase. So, Spartanburg
11 Industries has been setting the standards, especially
12 together with Anheuser-Busch at that time. So, the
13 majority of the keg sizes in the U.S. have been
14 developed, together with AB, at that time. And that
15 was a smart development to say all keg sizes are
16 exactly the same height, so that has a logistical
17 benefit.

18 And so, that was the root cause. So, the
19 differences in volume were the diameter differences,
20 not as in the rest of the world the heights of the
21 keg.

22 MR. BURCH: Thank you, Mr. Brand. You had a
23 question?

24 MR. BRAND: Again, so this is strange.
25 Okay. So, the difference in diameter determined the

1 volume of the kegs, and that has a really big
2 logistical benefit. So, at that time, Spartanburg,
3 together with a company called Huntville (phonetic),
4 who has also been manufacturing kegs for the U.S.
5 market before, but they have been concentrating on
6 aluminum kegs, and so the aluminum has been prohibited
7 after they found out that aluminum reacts with the
8 citric acid of the beer. So, aluminum kegs are not
9 allowed anymore, and that also applies for the U.K.
10 market that Terry referenced, too, so it's a phase-out
11 also in other parts of the world for aluminum kegs.

12 So, that turned to be a situation that
13 Spartanburg Industries were kind of the only local
14 manufacturer left.

15 COMMISSIONER KEARNS: The only U.S.
16 manufacturer left.

17 MR. BRAND: U.S. manufacturer left, and then
18 the business with kegs had a slowdown at that time,
19 and they also have based the competition from European
20 manufacturers at that time. So, they decided that
21 they go for by far more profitable area in the
22 automotive industry, so they could use their know-how
23 of working with stainless steel for mufflers for BMW.

24 So, that was the root cause of why they
25 decided to sell to us. So, they have really asked

1 others to buy their assets.

2 COMMISSIONER KEARNS: Okay, okay. Thank
3 you.

4 (Pause.)

5 COMMISSIONER KEARNS: Okay. All right.
6 Thank you, that's helpful.

7 Okay. So, I wanted to turn to market
8 segmentation, an issue I've discussed with Petitioners
9 this morning. And as you probably heard, you know, I
10 think they didn't think my hypothetical -- well,
11 anyway, manufacturers in markets over here, and five
12 percent of the markets in a different place, and
13 complete segmentation between the two sides.

14 But let's just play with it anyway, if you
15 all would, because I think it's similar to what you
16 all are arguing. What I'm hearing from them is, you
17 know, if the U.S. industry is only in the five percent
18 segment of the overall market, it doesn't really
19 matter what is going on in this 95 percent segment of
20 the market. All that matters is in that segment where
21 the U.S. is present, if subject imports are causing
22 injury in that segment, then that's material injury,
23 and that's your answer.

24 Do you all have any responses to that? Is
25 that the way I want to look at this?

1 MR. DOUGAN: Jim Dougan from ECS. I guess
2 I'll start. I think the way that we were -- certainly
3 the way that I tried to approach the market share
4 analysis, was to say, look, there are segments of the
5 industry where AKC cannot serve. They can't serve the
6 scale of the large brewers. They can't serve the
7 scale of medium brewers, really, for the most part.
8 They can't serve the scale of the keg leasing and
9 rental companies.

10 So, and there are also distributors who have
11 requirements. And also, I would actually take issue
12 with Petitioners' characterization of the purchasers'
13 responses on this. They said, well, it's only a
14 handful of them who said that they have minimum
15 quality -- sorry, minimum capacity, or quantity
16 requirements.

17 But those purchasers who even responded
18 account for like the overwhelming majority of reported
19 purchases. So, they are significant now. They may be
20 a fragmented number of purchasers who don't, and, you
21 know, that's relevant perhaps to AKC's ability to
22 address those customers in that segment of the market.
23 But when you're looking at consumption overall, there
24 is a very, very large portion of it that is accounted
25 for by purchasers who have these requirements that

1 they can't meet.

2 So, when you're looking at volume effects,
3 when you're looking at something like market share,
4 and trying to assess whether AKC has either been
5 materially retarded in its establishment, or whether
6 it is materially injured, it's really -- you shouldn't
7 be judging this on the basis of the market as a whole,
8 because it's just not addressed at this time. And we
9 recognize that they don't have to be able to serve the
10 whole market to be eligible for trade relief. That's
11 not what we're arguing.

12 We're just saying, look, if they can't even
13 touch this market, let's look at the portion of the
14 market that they can. And their market share went up
15 fairly significantly in the markets they were actually
16 able to address, that is, the small brewery segment
17 and in the one-half and one-sixth size kegs.

18 So, if that's the case -- and I can't get
19 into the -- I mean, there is a slide up there with the
20 numbers removed. But if you look at the numbers in
21 our brief, that what the increase in that market share
22 in the segment or sort of the cross-section of the
23 segment of the small brewers and the one-half or one-
24 sixth barrel kegs, they had a very significant
25 increase in their market share that is -- so, their

1 absolute level is higher, and the increase is quite
2 significant.

3 And so, you know, the argument that even if
4 you do boil it down to the area where they can
5 reasonably address the market, the evidence don't
6 support the fact that they were materially retarded or
7 that they were injured in terms of their ability to
8 penetrate that market, especially when you consider
9 that their prices went up, and demand was declining,
10 and that when -- you know, when these small brewers
11 are, as you've heard from some of the witnesses,
12 increasingly considering keg logistic -- I'm sorry,
13 keg -- well, keg logistics, but also keg leasing and
14 rental operations.

15 So, there's things that -- .

16 COMMISSIONER KEARNS: I'm sorry. When you
17 say the price is going up, you're referring to over
18 the POI overall, and for small customers specifically?

19 MR. DOUGAN: So, I'm talking about AKC's
20 prices. And so --

21 COMMISSIONER KEARNS: Right.

22 MR. DOUGAN: -- who they're selling to.
23 Their prices went up.

24 COMMISSIONER KEARNS: Okay. Over the POI?

25 MR. DOUGAN: Over the POI, yeah.

1 COMMISSIONER KEARNS: Yeah, yeah.

2 MR. DOUGAN: And so, if the market share is
3 going up to that segment, and the prices they charge
4 to that segment are going up, to us there is no
5 causal -- like there is no material retardation and no
6 injury:

7 So, even if you do boil it down to here is
8 the area where they can play, and you look at what
9 happened, there is no evidence that there is adverse
10 effects by reason of imports. And then, they're left
11 with, well, we didn't improve our profitability by as
12 much as we wanted. And that's where we get into the
13 thing to say, well, if you actually compared our
14 business plan to our actual results for the level of
15 output that they were able to achieve, it's shockingly
16 similar. Actually, it's better.

17 COMMISSIONER KEARNS: Which is what we
18 raised this morning, I think, where --

19 MR. DOUGAN: Yeah.

20 (Simultaneous discussion.)

21 MR. DOUGAN: Sure. And we can't get into
22 the details in this public setting, but -- so if you
23 put all those things together, you know, even if you
24 argue about -- if you want to sort of shrink the
25 market down to this bite-sized thing that they can

1 actually address, the volume trends, the price trends,
2 the profitability trends all go the other way from
3 what they're arguing.

4 COMMISSIONER KEARNS: Okay. Thank you.
5 Anyone else? Mr. Lewis?

6 MR. LEWIS: Yes, if I could. I subscribe to
7 what Jimmy just said. But I would just add that if
8 you're looking at that market segment, that, you know,
9 we're talking small craft brewers, I think is what
10 we're talking about here. The thing that needs to be
11 kept in mind always, I think, and this really unique
12 future of this investigation is this pricing premium.
13 You know, it comes back to the original business plan
14 of this company, which was okay, given our scale. The
15 large volume customers are out of reach. We're not
16 even going to try. And I can point to in a lot of
17 briefs the public statements they made where they
18 acknowledged that we're not even going to attempt to
19 go into that market segment.

20 So, we're going to focus on the small craft
21 brewer segment, yes. And our, you know, is Theilmann
22 in that market segment to some extent, very small
23 today, small proportion of their sales. But I think
24 most of these companies are in there, you know, to a
25 limited degree.

1 But what is their strategy for going in
2 there? Was it I'm going to have a cost structure
3 that's similar to those who are already in this
4 market, like the leasing companies? No. They
5 recognize that they had a large problem, which was
6 that they're a small-scale craft producer, which is
7 the seller's manual production, you know, equipment.
8 Their costs are high. They said, okay, fine, we can
9 deal with that because what we'll do is we'll leverage
10 the fact that we're selling American-made, branded
11 American-made keg, and we'll command \$10 to \$15, I
12 think was the figure they stated publically, more per
13 keg as a premium, and that way we'll squeak by and
14 kind of grow our market on with this premium.

15 And the evidence shows that actually, to
16 their credit, that strategy was working reasonably
17 well, up until 2018. And then they went on television
18 and explained to the world what happened in 2018,
19 which was the material costs blew that business model
20 off-course.

21 And so, my point being, to come back to when
22 we're focusing on that market segment of craft
23 brewers, you've got to always keep in mind how were
24 they planning to and how did they actually compete in
25 that market segment, and they didn't do it the same

1 way as anybody else, but other players, established
2 players -- and I'm speaking probably primarily of like
3 leasing companies. They did it with a model that
4 relied on a premium based on a made-in-the-USA label
5 on their products, and that wasn't enough to sustain.

6 Now, the short-term -- although who knows,
7 longer term, if they stick with it, maybe it will.

8 COMMISSIONER KEARNS: Okay. Thank you.

9 Anyone else?

10 MR. CONNELLY: Warren Connelly for the
11 Chinese Respondents. Just one slight thing, the
12 shrimp case was mentioned as a precedent earlier this
13 morning. Actually, the most recent shrimp case was a
14 negative determination by the Commission. And a key
15 factual difference in the shrimp case, was that the
16 shrimp producers could only produce 10 percent of
17 apparent consumption. They can sell it, however, to
18 anybody.

19 The difference here, is that American Keg
20 can't sell to everybody, for all the reasons our
21 testimony has covered.

22 COMMISSIONER KEARNS: Right, okay. Thank
23 you. And just to be clear, I remember that counsel
24 this morning did not buy into my idea that it's 95
25 percent over here, and five percent over there. So, I

1 think that would be their response on shrimp. But I
2 appreciate that.

3 Anyone else?

4 MR. SMITH: James Smith for Anheuser-Busch.
5 I would just add to that that the relevant kind of
6 segmentation is not just by channel distribution,
7 which is how the data are organized, but also by just
8 size of purchaser. So, the fact that AKC may have
9 some contacts or attempts to sell outside of the small
10 brewer to wherever they are currently focused, does
11 not mean that they are actually penetrating or have
12 any basis or ability to penetrate the large purchaser,
13 you know, component of other channels.

14 Just as in the brewer channel, the large,
15 medium, and small, that may be true, as well, in
16 others.

17 COMMISSIONER KEARNS: In others, I'm sorry.

18 MR. SMITH: Other channels, so that you
19 could have large distributors --

20 COMMISSIONER KEARNS: Okay.

21 MR. SMITH: -- or small distributors.

22 COMMISSIONER KEARNS: Okay. I see.

23 MR. SMITH: The fact they're selling to a
24 small distributor does little to, you know, contradict
25 the argument that they're not positioned to compete in

1 vast swaths of the market --

2 COMMISSIONER KEARNS: I see.

3 MR. SMITH: -- represented by large
4 purchasers.

5 COMMISSIONER KEARNS: Okay. Got you, okay.
6 Thank you.

7 MR. JACOBSON: Commissioner Kearns, Michael
8 Jacobson, briefly.

9 COMMISSIONER KEARNS: Yeah.

10 MR. JACOBSON: Hogan Lovells. You also
11 mentioned the Silica Bricks case this morning, so I
12 wanted to address that. One of the hallmarks of the
13 Silica Bricks case are indeed present in this case,
14 where the Commission has looked at a similar
15 circumstance. In that case, the U.S. industry sales
16 were, "overwhelmingly concentrated in one market
17 segment," which is what we have here. And the
18 Commission found that there was not price depression
19 or suppression, in part, because domestic prices were
20 increasing, despite the price levels of the subject
21 imports.

22 And in that case, they also addressed the
23 fact there was little head-to-head competition. We
24 don't have the confidential numbers of exactly how
25 much there was. We've heard from a number of industry

1 witnesses today. They universally say they rarely, if
2 ever, encounter American Keg head-to-head in the
3 market.

4 COMMISSIONER KEARNS: Okay. Thank you.

5 So, I'm going to turn just a little bit to,
6 you know, how big of a -- I don't love using the word
7 segments in this market. I'm not entirely convinced,
8 maybe as you might have suggested, Mr. Smith, that
9 these are best viewed as segments of a market,
10 necessarily. But in any event, this -- let's just
11 call it segment of the market that is the small
12 producers, question and responses confirm, it seems to
13 us, that the significance of the small brewers to the
14 kegs market, yet most Respondents argue that a few
15 large breweries and/or keg leasing companies command
16 the majority of the purchasers and imports of the
17 market.

18 How do I square this argument with the data
19 on Tables 4-11 through 4-17? And you can address that
20 post-hearing, if you like. But, basically, what I'm
21 seeing there is a lot of kegs are purchased by the
22 small brewers as opposed to the big brewers, very
23 surprisingly. I don't know if you have any further
24 thoughts on that?

25 MR. CONNELLY: Yeah. Warren Connelly for

1 the Chinese Respondents. On behalf of the Chinese, we
2 would argue that the small brewer segment is a small
3 segment. That's not our argument. Our argument is
4 that there are large segments out there besides the
5 small brewer segment, obviously, that American Keg
6 can't reach. As to the small brewer segment, however,
7 the indicia of causation are far weaker when you just
8 make it the small brewer segment.

9 I think that was one of the points that you
10 did in slides.

11 COMMISSIONER KEARNS: Okay. Thank you.

12 MR. DOUGAN: Commissioner Kearns, if I could
13 just add to that. Jim Dougan here. It certainly -- I
14 think the data support the fact that it's not a small
15 share of the market. But it is a declining share of
16 the market.

17 COMMISSIONER KEARNS: Because of the
18 leasers.

19 MR. DOUGAN: Because of the leasers, right.

20 COMMISSIONER KEARNS: Yeah, yeah.

21 MR. DOUGAN: So, there is a shift there, and
22 given that the leasers are the ones who have
23 requirements based on, you know, capacity and
24 quantity, that's a segment of the market --

25 COMMISSIONER KEARNS: Yeah.

1 MR. DOUGAN: -- that they're here seeking to
2 address. So anyway --

3 COMMISSIONER KEARNS: Right.

4 MR. DOUGAN: -- in my view, that's the
5 significance.

6 COMMISSIONER KEARNS: Okay. Thank you. And
7 I will get to the leasers here in a minute.

8 Okay. So, this, I think, is for Anheuser-
9 Busch. So, your firm, I think you just testified,
10 does have minimum product capacity requirements. Is
11 that right?

12 MR. HOFFMEISTER: Jon Hoffmeister. Yes,
13 that's correct.

14 COMMISSIONER KEARNS: And can you tell us
15 what the capacity requirements are?

16 MR. HOFFMEISTER: Well, let me maybe explain
17 sort of the broader process, and hopefully that'll
18 help answer the question. As I stated in my
19 testimony, North America, in particular the U.S., is
20 part of a broader global buy that we try to do on an
21 annual basis. So, our role in that process is to
22 articulate our needs, so that they can be aggregated
23 and essentially sourced at the same time.

24 Our requirements vary on an annual basis, as
25 we're replenishing loss to our flow. Any specifics,

1 in terms of numbers, probably need to be addressed in
2 the post-hearing.

3 COMMISSIONER KEARNS: Okay.

4 MR. HOFFMEISTER: Does that answer the
5 question?

6 COMMISSIONER KEARNS: It does, yes. Thank
7 you.

8 MR. SMITH: And I believe those numbers are
9 in our questionnaire responses.

10 COMMISSIONER KEARNS: Yeah. And I was
11 trying to see if there was something you were willing
12 to say publically, or not. I guess in post-hearing if
13 you all can help us understand. I mean, I guess my
14 question would be, first of all, how many global keg
15 producers can meet those requirements, and do you ever
16 purchase from any keg producers who don't meet those
17 requirements? And then the third question would be --
18 and maybe this you could answer now. I mean, it seems
19 to me -- well, I understand why you need to have some
20 pretty large suppliers.

21 But it seems to me that, I would have
22 thought that you would want a little more flexibility
23 than you seem to have with this requirement, just to
24 have more competition, so that you can have -- you
25 know, you can get better prices, I would have thought.

1 So, I don't know if that's something you can address
2 at all. Because it just seems like, I mean, you know,
3 if you can find, you know, a few suppliers who can all
4 together meet the requirements, that that would work
5 just as well as finding one or two or three or four,
6 you know, who can do it as well.

7 I don't know if you can speak to that. And
8 in other words, why do you have to have such a high
9 capacity requirement?

10 MR. HOFFMEISTER: Okay. Yeah, again Jon
11 Hoffmeister. I think one important consideration here
12 is that this is beer contact material. So, unlike
13 other forms of packaging which don't touch the beer,
14 our bottles, our cans, and our kegs obviously come
15 into direct with the beer. So, the process of getting
16 qualified and making sure that the taste of the beer
17 is consistent, so that we can sell our brands on an
18 ongoing basis, is really critical for any aspect of
19 the production process that touches the beer.

20 So, while I agree with you that I would like
21 to have more supply option as a buyer -- I always want
22 more supplier options. But that has to be in balance
23 with the quality considerations, and then on top of it
24 some of the capacity considerations that we've
25 described.

1 COMMISSIONER KEARNS: Okay. I guess you
2 don't want -- I think Ms. Quist referred to a peanut
3 butter beer having been previously in a keg. I guess
4 you might not want that?

5 MR. HOFFMEISTER: Correct.

6 COMMISSIONER KEARNS: Yeah. I've not heard
7 of peanut butter beer, so I'll get my mind around that
8 one.

9 Okay. So, this is for Thielmann.
10 Petitioner provided a statement in some video this
11 morning from a trade show indicating that your company
12 has recently expanded from selling primarily to large
13 brewers, to offering options for small brewers with
14 quick delivery and customization. When did this
15 transition take place for Thielmann, and how do your
16 sales to small brewers differ from those of large
17 brewers?

18 MR. LEWIS: This is Craig Lewis. I'd
19 obviously like our industry witnesses to speak to
20 that. But I did want to mention that we will need to
21 address this partially in our confidential submission.
22 But I can state publically that the quantities we're
23 talking about are small. You know, we stand by our
24 position that the company's focus is in, and remains,
25 the large customers.

1 But I don't know, Terry, if you want to
2 comment further.

3 MR. PARKER: Yeah. As I mentioned this
4 morning -- this is Terry Park. As I mentioned this
5 morning, our concentration is on our larger brewers.
6 And so, we do see to supply some of the smaller craft
7 brewers as well through -- because there are -- the
8 small brewers tend to be entrepreneurial, and so on.
9 They do have specifications and things that they ask
10 for at the time. We have the facilities and the
11 capability to provide specialist requests for them --
12 we can supply on a small basis.

13 But it's not something we get involved in
14 too much, because the costs tend to be prohibitive
15 anyway for them. But they chose to do that because
16 they are, in one situation, indifferent to the design
17 of their keg, and so on, then we can do it on a small
18 basis. But it's not something that we would go out
19 and strive to look for, or to encourage for them to
20 come to us.

21 COMMISSIONER KEARNS: Just trying to
22 understand your answer. Are you talking about all
23 small brewers, are you talking about small brewers
24 that want something special on their product? Or is
25 that the same thing?

1 MR. PARKER: That's the small brewers
2 usually have different requirements for different
3 uses, time scales are very short, which do mean we
4 meet our specifications for the production plants,
5 where instead of the usual production plan, you need
6 to be ready for one day, two days, three days.

7 COMMISSIONER KEARNS: I'm sorry, so it it
8 like the logos on the product, or what?

9 MR. PARKER: That's correct, yes.

10 COMMISSIONER KEARNS: Okay.

11 MR. PARKER: We do extra specialist. In
12 other words, we have the means within our system to do
13 things, whether it be on a laser basis, maybe on a
14 printing basis. And some of them, because they're
15 entrepreneurs, or not just -- beer lovers -- they like
16 to see something different, and they come along with
17 that specification and ask for certain things.
18 Generally, it's not very big numbers, maybe 100, 200.
19 It may only be 50. But we have the -- we've got the
20 specialist requirements to do that, I would say AKC
21 maybe not have. So, the comment was whatever product
22 we give you, when they ask for a special specification
23 to their keg, we can do that.

24 It's not something we actually go looking
25 for, it's something they request us to do.

1 COMMISSIONER KEARNS: Okay. Yeah, I'm
2 hearing this. But, I mean, we did see this morning
3 what Thielmann said and, you know, the layout of
4 the -- I think it was American Craft Brewery meeting
5 in Denver, where, you know, you all do run into each
6 other. I mean, maybe not you specifically, but
7 someone in Thielmann, someone out there must have, you
8 know, come across AKC before.

9 And so, I mean, I know this isn't an
10 important part. But you are in that market, and it
11 may not be as important, you know, to you relative to
12 the large segment. I mean, AKC doesn't have a
13 monopoly in the small brewer segment of the market,
14 and its main competitors are the subject imports,
15 right?

16 MR. PARKER: Correct. And I'm a little bit
17 aware of AKC in that format, as we saw this morning.
18 I'm aware of them, anyway, because they produce kegs.
19 But it's not something that -- the small craft brewers
20 more tend to approach us, rather than the other way
21 around.

22 COMMISSIONER KEARNS: Okay, okay. Thank
23 you.

24 So, for the Chinese producers, let me ask
25 Mr. Connelly. You are aware that competition between

1 72 parts and the domestic like product is attenuated,
2 as they do not participate in the same channels.
3 Isn't this contradicted by the record evidence,
4 specifically if we look at Table 2-2 of the prehearing
5 staff report?

6 MR. CONNELLY: Okay. We agree that there is
7 competition in the small brewer channel. It's the
8 other channels that that remark was directed towards.

9 COMMISSIONER KEARNS: Okay, okay.

10 (Pause.)

11 COMMISSIONER KEARNS: Hold on a sec. Okay.
12 I guess where I would like to turn next is to leasing.
13 I mean, so I think it's clear, and I think you all
14 have made that very clear in your opening, leasers
15 typically sell to small breweries, right?

16 MR. SAPYTA: Yes, sir.

17 COMMISSIONER KEARNS: Okay. And the large
18 keg producers typically sell to you, the leasing
19 companies?

20 MR. SAPYTA: Yes. Chris Sapyta with Keg
21 Logistics. We buy directly from, I believe, 99
22 percent of our kegs, the market that is being
23 discussed here. Everybody in this room was a
24 competitor against me.

25 COMMISSIONER KEARNS: Right, right.

1 MR. SAPYTA: We're selling to the craft
2 brewing industry, not solely, but the majority of our
3 sales are the small brewer.

4 COMMISSIONER KEARNS: Right. Everyone in
5 the room, AKC and Blefa --

6 MR. SAPYTA: And Thielmann, and every
7 Chinese keg manufacturer versus Keg Logistics.

8 COMMISSIONER KEARNS: Right, right. And we
9 heard this from -- I guess, American Keg is also
10 leasing, themselves, now. So, you're competing both
11 with a sold product and with a leased product, at
12 least from them.

13 MR. SAPYTA: Absolutely.

14 COMMISSIONER KEARNS: Yeah. And then I
15 guess -- well, a few questions about this. But one
16 is, I mean, this is maybe more of a legal question.
17 But given that the end customer is the same, the small
18 brewer, isn't it a mistake to draw a bright line
19 between sales to the leasing companies that are made
20 by the bigger producers, and sales directly to the
21 small brewers, that might be made by American Keg?

22 I mean, in other words, American Keg, when
23 it is competing and doing kegs made by the subject
24 imports that flow through the leasing companies,
25 aren't they? I think that's what we just heard. This

1 is not a surprise. This is my question, anyway. Any
2 thoughts on that?

3 MR. DOUGAN: Jim Dougan. I'm not a lawyer,
4 so someone else --

5 COMMISSIONER KEARNS: No. You're close
6 enough. Sorry.

7 (Laughter.)

8 MR. DOUGAN: We'll see. And I think my
9 attorney colleagues can help address this, too. But
10 from my point of view, just in thinking about it, what
11 would constitute competition -- if you are the small
12 brewer, you are, I mean, these are entirely different
13 models, and there are entirely different ways to meet
14 your needs for beer containers, right, for kegs.

15 And so, some of it has to do with just
16 purely, you know, availability of capital. But it
17 also has to do with flexibility and, you know, the
18 servicing and all those other things that go with it.
19 Now, some of that, it may be available for a purchase.
20 But there are, especially considering that these
21 companies themselves are startups, there are
22 considerations that go into sort of not just to
23 purchase and the competition among purchasers, but
24 whether to purchase at all, or whether to lease.

25 COMMISSIONER KEARNS: Yeah.

1 MR. DOUGAN: And so, you know, and what they
2 get charged for a lease or to rent the keg, or for a
3 paper filler, or water services that are provided by
4 Keg Logistics or MicroStar or people like that, is,
5 you know, sort of an entirely different calculation.
6 Obviously, it's all money. But it's a different
7 calculation than a head-to-head price comparison in
8 sales. So --

9 COMMISSIONER KEARNS: Right.

10 MR. DOUGAN: I mean, to say that there's,
11 you know, that there is absolutely no relationship
12 between those things is not a credible thing to say.
13 But to say that it's direct competition, I don't think
14 I'd agree with that statement, either.

15 COMMISSIONER KEARNS: Yeah. But, now,
16 you're looking at from a small brewer's perspective.
17 If you look at it from American Keg's perspective --
18 and last week, they were selling, if this were the
19 case -- if they were selling a keg to a small brewer
20 in Milwaukee, and the next day they say, hey, can you
21 sell another keg, and you look over and you see a
22 Blefa keg that's provided by the leasing company, I
23 think they would say that kind of feels like
24 competition to them, though, right?

25 MR. DOUGAN: Well, but that sort of thing

1 might -- you know, Blefa might lose sales that way,
2 too --

3 COMMISSIONER KEARNS: Right.

4 MR. DOUGAN: -- you know, to someone who is
5 going to enter a paper sale for MicroStar or otherwise
6 obtain that keg that they need.

7 So, I mean, there is an absolute shift, if
8 you look at the consumption numbers, to that model.
9 And, you know, so the volume is going to decline
10 whether you're AKC, or Thielmann, or Blefa, or
11 whoever. So, that is an impact. That's a condition
12 of competition that's affecting everyone in the
13 marketplace.

14 COMMISSIONER KEARNS: Okay. One --

15 MR. SMITH: This is James Smith from
16 Anheuser-Busch. One additional point, I think, is
17 that while it may be true that AKC is now, you know,
18 starting a lease-to-own model, that is not necessarily
19 comparable to the other services that Mr. Sapyta
20 described, one being provided by leasing and rental
21 companies, which include the one MicroStar and he
22 pioneered, this management model where you never own
23 it, or to a straight lease model. And differences
24 between those different types of rental and leasing,
25 you know, programs are worth considering when you

1 think about whether there really is apples-to-apples
2 competition --

3 COMMISSIONER KEARNS: Right.

4 MR. SMITH: -- in that segment.

5 COMMISSIONER KEARNS: Yeah.

6 MR. DOUGAN: Commissioner, if I could just
7 add one addendum to my remarks. The other thing is;
8 too, you know, if there is lack of ability, let's say,
9 for AKC to sell directly additional kegs to a customer
10 who has now shifted to a leasing model, you know, that
11 wasn't a sale that was really lost on the basis of
12 price, right, because they never had the option to
13 sell to the leasing company because they had those
14 large capacity requirements.

15 So, now, if they were displaced at the
16 logistics company or the leasing company, that may be
17 a different story. Then they were displaced in both
18 places. But if a small brewer decided to shift how
19 they procure their beer containers, and AKC was never
20 in the running for that business model, then you can't
21 really be sure it is a lost sale, in my view.

22 COMMISSIONER KEARNS: Okay. Right, okay.
23 Thank you.

24 MR. JACOBSON: Commissioner Kearns, just
25 to -- this is Michael Jacobson, Hogan Lovells, for

1 Thielmann. Building on what Mr. Smith said, American
2 Keg Company, their goal is to sell kegs. Mr. Luzzi
3 made clear this morning that the rent model is a
4 financing model. And I believe he said they have to
5 offer this as an option, because their customers can't
6 necessarily afford to pay upfront for the keg.

7 These large keg logistics companies are
8 leasing and renting kegs. Their value add is really
9 that they offer a different model, and their logistics
10 capabilities, their ability to distribute kegs around
11 the country in an efficient way.

12 It's an entirely separate model than
13 American Keg's financing model.

14 COMMISSIONER KEARNS: Okay. Thank you.
15 And, Mr. Sapyta, I had a couple of more questions for
16 you. One, hopefully isn't too much of a tangent. But
17 I'm just curious, when you were describing -- I guess
18 you call it the pooling method you had, especially at
19 MicroStar, right? I'm not really sure I understand
20 that. So, you give the keg to the small brewer. The
21 small brewer fills it. It, I'm guessing, then ships
22 it to a bar somewhere, and then you pick it up from a
23 bar. Is that how that works?

24 MR. SAPYTA: How the pooling model works in
25 the United States, is part of what they call the

1 three-tier system. So, you have a producer that goes
2 to a distributor or wholesaler, and they take it to
3 the on-premise account.

4 COMMISSIONER KEARNS: Okay.

5 MR. SAPYTA: So, it is filled by the brewer.

6 COMMISSIONER KEARNS: Yeah, yeah.

7 MR. SAPYTA: The wholesaler delivers to the
8 pub.

9 COMMISSIONER KEARNS: That makes sense.

10 MR. SAPYTA: The pub delivers -- or, the
11 wholesaler brings it back the empty, and then that's
12 where it's picked up by the management company, Keg
13 Logistics or MicroStar in turn.

14 COMMISSIONER KEARNS: Is that the
15 distributor?

16 MR. SAPYTA: The empty keg, once it's drank
17 (sic) at the Chili's. It's empty. It returns back to
18 the wholesaler, distributor, it's the same name.

19 COMMISSIONER KEARNS: Yeah, okay.

20 MR. SAPYTA: Or the same entity.

21 COMMISSIONER KEARNS: Okay.

22 MR. SAPYTA: That's the middle man. And
23 then we, or MicroStar, would pick up that empty --

24 COMMISSIONER KEARNS: Yeah.

25 MR. SAPYTA: -- from that location and take

1 it, maybe not back to the same brewer that had filled
2 it --

3 COMMISSIONER KEARNS: Right.

4 MR. SAPYTA: -- but to fill another order
5 somewhere in the country.

6 COMMISSIONER KEARNS: Right, okay. But you
7 first shipped it to the small brewer.

8 MR. SAPYTA: Directly to the brewery.

9 COMMISSIONER KEARNS: And that's your
10 customer, and then you retrieve it from a distributor.

11 MR. SAPYTA: Right. They let us know where
12 the kegs went, and then we pick them up, regardless of
13 where they're at in the country.

14 COMMISSIONER KEARNS: Yeah, that's very
15 interesting. Okay. So, getting a little bit closer
16 to a relevant question. I'm just real fascinated on
17 how that process might work.

18 But so, have you considered buying American
19 Keg? I mean, you know, we heard this morning that
20 they are talking to some leasing companies, and that
21 it sounds to me like one reason some leasing companies
22 might want to work with them, even though, you know,
23 they may not be able to provide huge quantities, but
24 that there might be some demand for American-made
25 kegs.

1 Can you speak to that? Have you
2 contemplated working with American Keg, either because
3 of the made-in-America characteristic, or otherwise?

4 MR. SAPYTA: I guess a couple of answers.
5 No, we have not purchased kegs or considered
6 purchasing kegs from AKC, mainly because of just
7 really not knowing the company, but knowing the
8 reputation of Geemacher. And I still don't know
9 really that relationship, but from the perception in
10 the industry, it was a company that had Chinese kegs
11 with a German name. And we don't buy Chinese kegs.

12 COMMISSIONER KEARNS: And why not?

13 MR. SAPYTA: The quality doesn't meet our
14 standard.

15 COMMISSIONER KEARNS: Okay, okay. Thank
16 you.

17 MR. SAPYTA: And now, things have changed.
18 They make their own kegs. But our brewers are looking
19 for the highest quality keg made, and that's what we
20 provide.

21 COMMISSIONER KEARNS: Okay, okay. Thank
22 you. And while I'm addressing this, I was asked to
23 raise one question. It seems like our staff has not
24 received a purchaser's questionnaire from you. Your
25 information would be beneficial to our investigation.

1 We'd appreciate if you could provide that information
2 to us.

3 MR. SAPYTA: Yes, sir. I'm aware of that.

4 COMMISSIONER KEARNS: Okay. Will you be
5 able to provide a response?

6 MR. SAPYTA: Well, I think we provided a
7 partial response. A lot of the data that -- the way
8 it was laid out in the questionnaire -- I'd be happy
9 to open up our entire books. It's just not, I'll say,
10 conducive to fit that format. But maybe with the help
11 of the staff, they could extract the data that they
12 would want.

13 COMMISSIONER KEARNS: Okay, okay. Thank
14 you.

15 Okay. So, I want to turn to 232 and its
16 impact. So, you all heard this morning Petitioner say
17 that we already approached ITC and the Commerce
18 Department well before the 232 relief with concerns
19 about subject imports. Maybe this is a Chinese issue,
20 but can you speak to, you know, that argument? And
21 maybe you don't have the information about when they
22 first approached the ITC, but can you help us respond
23 to that?

24 MR. LEWIS: This is Craig Lewis. Yeah, I
25 would like to go back and look exactly at the time

1 line. But I think what's important is it's not even
2 necessarily the actual date that the President issued
3 the proclamation he should be getting this from. The
4 232 investigation, I think, took 270 days to be
5 completed. And the uncertainty that created in the
6 market was already being felt, and I will quote
7 here -- and this is from the FAQs of American Keg's
8 web site, which they took down before this hearing,
9 where they had said -- and I'll read the relevant
10 portion:

11 "We are making great progress on this -- "
12 This is their effort to maintain a premium and a small
13 profit, " -- until the fourth quarter of 2017 -- " I
14 think the 232 tariffs were subsequent to that, " --
15 when our domestic steel producers started increasing
16 their prices substantially. These price increases are
17 directly related to steel tariffs -- " and here is the
18 relevant portion, " -- the anticipation, announcement,
19 and imposition."

20 So, I think the -- again, I don't have the
21 time line. Clearly be able to address this in a post-
22 hearing. But I think that where you should be
23 measuring it from is not the date of the President's
24 proclamation, but prior to that, as AKC themselves
25 suggested.

1 COMMISSIONER KEARNS: Okay. Thank you. I'd
2 appreciate hearing that post-hearing in August. And
3 also timing it to stainless steel prices, tying it to
4 stainless steel prices at that time before March 2018,
5 or whatever, the 232. I guess that would be something
6 you'd want to include in your answer, as well.

7 MR. LEWIS: Right.

8 MR. CONNELLY: One point on that, the
9 testimony this morning was that -- I think I heard
10 this right -- that American Keg made its first call to
11 the ITC on November 29, 2017. So, before, in the
12 summer of 2017, that's when the President started
13 threatening the 232 duties. We have given several
14 exhibits quoting the President to that effect.

15 The duties took effect March of 2018. So,
16 it's only four months later. And there really wasn't
17 much of a lag in there. And one other small point,
18 maybe. American Keg used the word "volatility" to
19 describe their stainless steel costs. I would say
20 that's not exactly the trend in their costs. We'll
21 save the rest for the post-hearing brief.

22 COMMISSIONER KEARNS: Okay.

23 MR. JACOBSON: Mr. Kearns, just to follow
24 on. Michael Jacobson, Hogan Lovells, for Thielmann.
25 The timing is interesting, in part, because Mr.

1 Czachor, under a sworn testimony in the section 301
2 hearing, which was in May of 2018, stated, and I
3 quote, "European and Mexican suppliers' kegs are not
4 subsidized or dumped, low-cost products." They were
5 focused on achieving tariffs for Chinese kegs, but
6 told us that they were not concerned with European and
7 Mexican kegs.

8 In fact, it was in response to a question of
9 what would happen to the keg market if the Chinese
10 kegs could not be in the market anymore. Of course,
11 there are Mexican and European fairly traded imports
12 for that supply. And indeed, they did achieve their
13 goal of 10 percent of a net increase to 25 percent
14 tariffs on Chinese imports, as well.

15 So, the three subject countries are, well,
16 taken care of at least, according to their own words.
17 And then the President's action that led to the 301.

18 MR. DOUGAN: Commissioner Kearns, Jim
19 Dougan. If I could just add to this. The staff
20 report at figure 5-1 has a time series of stainless
21 steel prices. And you can see that, while it's true
22 that it is proprietary because it's subscription-
23 based. But I can talk about the trends. And while
24 you see the sharpest increase beginning in early 2018,
25 it didn't just start in March 2018, right? So, there

1 was a run-up that began in late 2017, that would seem
2 to fit with the response from AKC's FAQ web site,
3 where it said that the domestic steel producers began
4 increasing their prices in anticipation of the
5 imposition of the tariffs, and not only with the
6 actual proclamation in March of 2018.

7 COMMISSIONER KEARNS: Okay. Thank you.
8 And, yeah, on this point of the 301 proceedings in
9 Mexico, in June, I will -- and I saw that in the
10 briefing, and if Petitioners could respond to that
11 post-hearing, that would be appreciated.

12 So, okay. So, if this is all about them
13 increasing their stainless steel costs, why didn't
14 they just increase their prices to, you know, passing
15 it on to the consumer? And, you know, this isn't a
16 novel question I'm asking, right? This is something
17 we look at in every single case, where we say, you
18 know, well, what stopped them from doing that, as I
19 mentioned this morning?

20 MR. DOUGAN: Commissioner Kearns, Jim
21 Dougan. I want to steer clear too much of, again,
22 proprietary information. But if you look at the
23 pricing product data for domestic shipments -- this is
24 in Section 5 of the Prehearing Report -- there was an
25 increase for each of the pricing products by AKC in

1 nearly every quarter, beginning in the second quarter
2 of 2017, all the way to the end of the POI, even when
3 the stainless steel prices started coming back down.

4 COMMISSIONER KEARNS: But then, first of
5 all, then how did it hurt their business, if they were
6 able to pass on all of the costs? Or was it that
7 their costs increased more than their prices could be
8 increased?

9 MR. DOUGAN: Well, I think their raw
10 material -- so their -- as we pointed out, their
11 overall cost-to-sales ratio was down from '16 to '18,
12 and then, between the interim periods. And it was
13 pretty much flat between '17 and '18, which means that
14 they had other cost reductions. That, in combination
15 with the increase in prices, allowed them to sort of,
16 you know, not have the cost-price squeeze.

17 But the raw material component of that, I
18 think, did go up. So, you know, again, I think the
19 idea they were able to continue to increase their
20 prices from what was already established as a premium.
21 I think, as we mentioned, because they were newly
22 entering the market, with limited capacity, limited
23 track record, and already, from the day that they
24 started selling kegs, selling at a significant premium
25 over any other market participant, including non-

1 subject imports, by the way. The ability to then --
2 and their willingness to increase their prices another
3 quarter to get even more, you know, it was probably
4 harder to justify at that stage.

5 MR. LEWIS: Yeah. This is Craig Lewis. And
6 I, of course, agree with those comments, based on them
7 as I understand that. AKC was able to do that and did
8 raise its prices. It did handle that. And I think
9 there is an element here of there is a bit of the sky
10 is falling when this was happening, that they were --
11 and this is where the public statements were coming
12 in. They were telling PBS, et cetera, what am I going
13 to do now? This is going to -- you know, we're not
14 going to find a way to handle this.

15 And I think their panel said this morning
16 that they took efforts to cut costs, and I'm not sure
17 what other measures they did. But I think the COGS-
18 to-sales ratios that you look at for price
19 suppression, which is relevant to what we're talking
20 about, were actually kind of favorable, that they were
21 able to actually digest this change in markets.

22 So, that's one positive side. Now, they're
23 saying on the other hand that they wanted to sell at
24 large volumes. But I think that's a separate
25 question. And, you know, my assessment of the record

1 is that that's chiefly attributable to the fact that
2 the -- assumption that there were sufficient numbers
3 of craft brewers who cared enough about a made-in-USA
4 label was an overly-optimistic assumption, and that
5 that wasn't as significant a factor in the market as
6 they had hoped it would be. And that's what they've
7 been struggling against, pretty successfully.

8 They've been increasing their shipments and
9 volumes and capacity, but maybe not as quickly as
10 they'd like. But I think the reason for that is there
11 really just isn't the market for a made-in-USA labeled
12 product that they anticipated.

13 MR. DOUGAN: If I can just add to that --
14 Jim Dougan from ECS. They also increased their
15 shipments between 2017 and 2018. So they were, you
16 know, were getting price increases, and were getting
17 increased shipping volume. Did it increase by as much
18 as they wanted it to, or as they projected to? It
19 doesn't appear so, although, again, looking at their
20 financial performance and what they projected for
21 their level of output versus what they actually
22 achieved, strikingly similar.

23 So, they had a business plan of, you know,
24 we're going to hit the loop shoot and hit the moon.
25 And they may not have achieved that. But, you know,

1 But does that mean it's a failed strategy?
2 I don't think so. I don't think any of us are saying
3 that they weren't making progress towards achieving
4 profitability and volumes. But the fact that it
5 wasn't at the pace that they anticipated, that had to
6 do with their assumptions, not to do with import
7 competition.

8 MR. DOUGAN: Commissioner, actually an
9 aside. This just reminded me of one other thing.
10 This morning you asked the panel what, essentially,
11 were the assumptions that underlay the production
12 numbers that you had in your business plan that was
13 printed. You didn't get an answer to that question.
14 You had an answer to our capacity was this, and we
15 could have hit this capacity if we made these
16 investments.

17 There is no justification for the level of
18 production that they predicted, which is really the
19 key question, right? It's how much do you think you
20 can make and sell into the marketplace. And there are
21 numbers in there, obviously proprietary, that we can
22 get into. But I didn't see any assumptions that went
23 into the justification for achieving those numbers.

24 Now, they may exist. Maybe their excerpt
25 that we received as part of their questionnaire

1 response didn't include that. But they're not in
2 there. And, you know, in a prior life, I used to
3 build business plans for people to bring to private
4 equity and investors. We spent 10 times as much on
5 the assumptions as we did on the calculations, because
6 it's the assumptions, how do you justify the fact that
7 you would think you would get this level of market
8 penetration with this price level, given your
9 addressable market and what the customer segment you're
10 trying to get into. And really the math is the math.

11 And, so far, really what we see in their
12 business plan is just the math. We haven't really
13 seen the assumptions that underlie it and the due
14 diligence and the homework that went into it on the
15 front end. Surely they did some, but we haven't seen
16 it.

17 COMMISSIONER KEARNS: Okay. Thank you. And
18 so, I think this next question I have -- I think you
19 have just addressed it, but in case there is any more
20 you all want to say. You know, I'm struggling with
21 are we supposed to be looking at the raw material
22 costs, which went up, or the overall cost of goods
23 sold, you know, cost of goods sold, which went down in
24 terms of MOIs, and so, I guess the answer you all are
25 sort of saying is both.

1 But, I mean, it seems to me that the simpler
2 part of the answer is you would start the with unit
3 COGS went down, and prices went up, and that that
4 wouldn't seem to suggest price suppression in a normal
5 case. And again, because this is, you know, material
6 retardation, conceivable, and not, maybe we would look
7 at it a little bit differently. Maybe that, you know,
8 COGS went down because as input survey data become
9 more efficient or something, and -- but anyway, it
10 would seem to me that we would want to start with unit
11 COGS.

12 I don't know if you have any further
13 thoughts on that.

14 I think that's kind of what you said, Mr.
15 Lewis, about the sky is falling. I mean, you know, I
16 heard a lot of things in the press that I don't
17 necessarily think that's necessarily what is going in
18 the world, but any other thoughts on that, or is that?
19 Okay.

20 MR. DOUGAN: I agree that that's a helpful
21 way to look at it. I'm cautious about opining too
22 much on it in a public forum, because I fear I'd slip
23 too closely into proprietary information. But I'm
24 able to address it at more length in confidential
25 post-hearing.

1 COMMISSIONER KEARNS: Okay. Thank you. And
2 I was hoping that my next question would get away from
3 Mr. Dougan and Mr. Lewis and some of the other lawyers
4 and other experts in the room. But alas.

5 Mr. Dougan, you mentioned the volume changes
6 in terms of -- subject import volume changes from 2016
7 to 2017, that they, I think you pointed out, that they
8 lost market share during that time. But AUVs, though,
9 also went down pretty dramatically, I would say
10 significantly, over that period. And I think American
11 Kegs went down somewhat, as well. Can you speak to
12 that? You know, does that suggest that there was more
13 of a price impact it was a volume impact, or no?

14 MR. DOUGAN: Well, I'm going to obviously
15 disagree with the idea that this is what sort of upset
16 their -- or upended their plans. And I think some of
17 it might have to do with product mix. Some of it
18 might have to do with trends. I would take a look at
19 that, because I think the AUV of subject imports writ
20 large is public, but individual countries is
21 different, and in the trends of, say, the quarterly
22 prices within each country are different.

23 So, I would like to, you know, maybe address
24 that more fully in post-hearing. But I think this is
25 all getting back to the idea -- and sort of the

1 concept that I'll establish in my testimony was they
2 already knew that they had a very, very small share of
3 the market, and subject imports were most of what was
4 out there. And they already knew that the market
5 price for those imports, for imports writ large, not
6 just from the subject countries, but from everyone,
7 was a lot lower than theirs.

8 And so, the idea to me, that there was this
9 massive change in the conditions of competition
10 between 2016 and 2017, just really isn't supported by
11 the record. There are trends that you observe. There
12 is an increase in volume. There is a decrease in at
13 least the aggregate AUVs. And if you're someone who
14 is already in a market position that's established,
15 and you're seeing your market share erode, and those
16 are the trends you're seeing, you know, that's a
17 different kind of argument.

18 If you're going into the market, you know
19 what it is. You know you're going to place yourself
20 at a premium above this, and you know your penetration
21 is already tiny. It just doesn't follow to me that
22 this is some sort of surprise, this is a condition of
23 competition or trend in the market place that was
24 completely unanticipated or should have been
25 completely unanticipated. And then, in part, the

1 trend went kind of the other way in 2018, and we can
2 talk about that.

3 But this is also relevant to your question
4 about the comparison of subject and non-subject, so
5 change in behavior of subject, and so on. But if
6 we're talking about pricing levels, and we're talking
7 about the ability to justify the premium in this
8 marketplace when you're a new entrant. That's a
9 relevant question. And I don't think that they have
10 provided a good answer for that.

11 COMMISSIONER KEARNS: Okay. Thank you.

12 COMMISSIONER KEARNS: Okay. So, Mr. Dougan,
13 again, sorry, but --

14 MR. DOUGAN: I thought you said you wanted
15 stop here.

16 COMMISSIONER KEARNS: I do. I do not really
17 want to ask you anymore questions.

18 MR. DOUGAN: I'm not going to stop talking
19 if you do.

20 COMMISSIONER KEARNS: But you on the slides
21 you presented a moment ago really pointed out that a
22 lot of other things are more important than price, but
23 isn't it also the case that with the possible
24 exception of being able to -- availability sorts of
25 issues for large customers that American Keg -- and I

1 guess this isn't just for Mr. Dougan, actually, and,
2 Mr. Hoffmeister, you provided some insight into this
3 in terms of explaining why you have the quantity
4 requirements that you do, but, I mean, I think our
5 report seems to suggest that American Keg was
6 comparable on all levels more or less other than maybe
7 price and availability issues. That's been flagged,
8 but in terms of quality of product and so forth, is
9 there really any argument that American Keg makes a
10 good product, and not just on that, but I think it
11 also talks about lean times and things like that? I
12 mean, do those other characteristics really
13 distinguish subject imports from American Keg other
14 than they have some, I think, when it comes to Chinese
15 products that there are quality concerns? I think it
16 was maybe Mr. Sapyta had suggested that, but any
17 thoughts on that?

18 MR. SAPYTA: I think I can speak to the
19 question about the perception of the quality of
20 American Keg. I think unfortunately it just takes
21 time. When you're building an asset that should last
22 25 to 30 years, it's hard to establish that my keg can
23 last that long if you're only two or three years into
24 the process, so for a large purchaser such as us, we
25 just can't take the chance and hope that it meets

1 those requirements. We have to go with something
2 that's proven.

3 COMMISSIONER KEARNS: Okay. Anyone else?

4 MR. CONNELLY: Warren Connelly -- I think
5 one way to look at that is the length of a warranty
6 that's offered by American Keg versus other companies.
7 There's a very significant difference in the length of
8 the warranty. I think that goes to quality. Another
9 issue, which I kind of talk about here, involves a
10 particular customer that American Keg was interested
11 in serving and we discussed what that customer's
12 reaction was. We did a qualification test.

13 COMMISSIONER KEARNS: Okay. Anyone else?

14 MR. PARKER: Terry Parker, Thielmann. One
15 little issue on quality, at this point we have seen a
16 producer point of view. We have to submit ourselves
17 international standards on various things. There's
18 testing, production, steel, foreign steel. From my
19 point production, I think we have a product that sells
20 itself off. So we're subjected to very stringent
21 examination by the brewer. We also have specification
22 of the brewers as well.

23 When they give us those we have to date them
24 and make sure with the quality of work product, and so
25 on. And that was open to every single customer that

1 would come to Thielmann for a container, whether it be
2 one or 100,000. And so because we have that system in
3 place and we got traceability back. The issue from
4 what I heard this morning that that is easy to place
5 in terms of AKC, and I just wondered what the -- it
6 may not be necessary. They want to have that in place
7 but we can assure them that from our systems we can
8 offer that to ever single brewer that buys from us,
9 and I'm sure that's the same for the others.

10 Complaintive side is subjective anyway
11 because with -- I've seen kegs arrive at a brewery and
12 within 24 hours they're all scrapped because there's a
13 problem with it, and you've found it's been drilled
14 into or something, so that wouldn't take him -- you'd
15 be disappointed. But in terms of standards, we've all
16 been subjected to that over the years and we have
17 standards. We've had systems in place to make sure
18 that the product is not affected at the brewer.

19 MR. DOUGAN: Sorry. I know I'm supposed to
20 stop talking, but you did start with me, and you did
21 refer to my slides, so in slide A, I think with regard
22 to things that are more important than price, it's not
23 just about quality, right? I mean, ranked ahead of
24 price is also customer service and business historical
25 relationship, and so again, it's not about AKC making

1 a poor quality keg. I mean, maybe some people have
2 had a very great experience with them. Some have had
3 difficulty qualifying them, but again, it's as Mr.
4 Sapyta said, they've been in the market for a couple
5 of years.

6 So even if it is a great quality keg, are
7 you going to go with the new entrant versus your
8 established supplier of many years who you know is
9 able to not just supply you with a high quality keg
10 but also service it and will back you up all the way,
11 and certainly that's what the customers like Mr.
12 Sapyta are getting from Blefa.

13 COMMISSIONER KEARNS: Okay. Thank you, and
14 I guess that is helpful, and I guess it's really more
15 of a question for purchasers than it is from most of
16 the folks in this room, so I appreciate that, Mr.
17 Dougan.

18 MR. HOFFMEISTER: Commissioner, maybe to
19 that end, as a large purchaser, we're going to buy on
20 five criteria, and I think it applies to us for sure,
21 perhaps for other larger purchasers. First, we're
22 going to buy on availability and then quality, price,
23 sustainability, innovation, but in that order, so if
24 the availability, if I can't get what I need when I
25 need it, I never end up answering the other four

1 questions regarding quality, price, innovation,
2 sustainability, and that would be the case here.

3 COMMISSIONER KEARNS: What do you mean by
4 sustainability?

5 MR. HOFFMEISTER: Well, in this case how are
6 the kegs made? Are they made in a responsible way?
7 Can we measure their impact on the environment, so
8 from a --

9 COMMISSIONER KEARNS: Environmental?

10 MR. HOFFMEISTER: Exactly, yes.

11 COMMISSIONER KEARNS: Okay. Okay. So
12 turning subjects here, I had asked Thielmann a minute
13 ago about Spartanburg -- that's right, Blefa. I'm
14 sorry. Blefa was the one who had -- but some of you
15 sitting over there, and some of you are sitting over
16 here, so it confused me, but so I guess this is not
17 yet on the record but I think it will be on the
18 record, that we have an article *Global Atlanta* from
19 1998.

20 It says "Atlanta-based Caltech Mental
21 Disciplinary Management and Consulting Firm is
22 assisting the worlds largest beer keg manufacturer,
23 Blefa, to take on Spartanburg Stainless Steel, a
24 Spartanburg, South Carolina-based and sole keg manager
25 which currently controls three-fourths of the national

1 market", so we're just curious if you all could in the
2 post hearing go back and see if you can corroborate
3 that. We're just curious how big of a -- was this
4 market back in 1998 three-quarters U.S. dominated,
5 U.S.-producer dominated or not, so anyway, we're just
6 curious about that.

7 MR. DOUGAN: Yes, sir. We'll do that.

8 COMMISSIONER KEARNS: Okay. Thank you. All
9 right. Not too many more questions here, but I do
10 have a few, talk a little more about pricing and
11 under-selling, and this is definitely a question for
12 Anheuser Busch, but I think it may be more generally.
13 You argue that the pricing products in this case have
14 significant limitations and are not an accurate
15 presentation of the market. I believe you did not
16 address our proposed pricing products in your comments
17 on the draft questionnaires. Is that right? Again,
18 it's not just for Anheuser Busch. I'd like to hear
19 from you all, but --

20 MR. SMITH: I believe that's correct.

21 COMMISSIONER KEARNS: Okay. So did any of
22 the parties comment on -- because I know we've heard,
23 for example, that it would have been helpful to have
24 broken out large purchasers from small purchasers. I
25 guess that's the main thing both because of quantity

1 requirements but maybe also discounts and so forth,
2 but you haven't proposed any breakdown like that.

3 Okay. I guess for the record I'm not
4 hearing any, so if they did propose anything different
5 from what we had. Mr. Connelly?

6 MR. CONNELLY: Yes. To be honest, I don't
7 remember exactly what we said. We said something
8 about the breakdown. It certainly wasn't the
9 breakdown that I thought was very helpful that the
10 staff came up with, the breakdown about the six
11 channels of distribution. We didn't go that far, but
12 we did ask for some type of further breakdown than
13 just all prices to all customers.

14 COMMISSIONER KEARNS: Okay.

15 MR. CONNELLY: Now, the problem was the
16 Chinese Respondents did not enter an appearance in the
17 prelim, and so when we submitted our comments, it
18 wasn't until, I think, June, and so maybe it was two
19 late because enough questionnaires had come out. I
20 put the comments in anyway with my fingers crossed,
21 but the breakdown we got. I thought was pretty good all
22 things considered.

23 COMMISSIONER KEARNS: Okay. Thank you.

24 MR. JACOBSON: Commissioner Kearns, my name
25 is Michael Jacobson for Thielmann. The quote under

1 pricing products according to American Keg's public
2 statements including here they only sell two kegs.
3 There's no pricing competition for the rest of the
4 market out of it.

5 COMMISSIONER KEARNS: So the question is if
6 the argument is that there's a very different price
7 when you supply Anheuser Busch versus when you supply
8 a small brewer versus when you supply a leasing
9 company, and then if we had actually -- I thought the
10 argument I was hearing was that if we distinguished
11 those things, you might see a very different picture
12 there.

13 MR. JACOBSON: Commissioner, because that
14 may be relevant for distributors' segment and leasing
15 segment, but given what data is -- it's confidential
16 data and the competition that you guys listed,
17 published statements of Anheuser Busch and their
18 purchasing patterns. I'm not sure it would have made
19 a difference in a lot of the --

20 COMMISSIONER KEARNS: Yes, but what I'm
21 hearing is if you're purchasing -- I thought I saw
22 this in one of the briefs. If you're purchasing lots
23 -- hundreds of thousands of kegs, you know, the price
24 you may get might be discounted, but I thought you
25 also listed in your direct this afternoon it would be

1 different than, if you're providing 10 kegs to a
2 supplier somewhere else, so I thought that you all
3 were criticizing the pricing data on that basis, but
4 maybe I have that wrong.

5 MR. DOUGAN: Sorry. That was in my
6 testimony, and I can talk about it a little bit more
7 in post hearing. It's not in the pricing data. I
8 sort of say it's baked in, but I can give some
9 examples from the trade data that get at it a little
10 bit about what the impact of that might be and how it
11 might explain what's observed as being under-selling.

12 COMMISSIONER KEARNS: Okay. That would be
13 helpful, and any other way apart from the pricing data
14 we have -- any other way to kind of help us figure out
15 whether or not the apparent under-selling that we're
16 seeing in the pricing data may not be reliable and
17 that if you looked closer at, for example, say a
18 particular small supplier, small purchasers, that you
19 would see that there is maybe less underselling. What
20 I would need, sort of if you can tell us, apart from
21 the pricing data, if there's another way of going
22 about this, we're hoping to hearing that as well.

23 MR. DOUGAN: We'll do our best. Thank you.

24 COMMISSIONER KEARNS: Okay. I had a couple
25 of questions about demand and how purchases tend to be

1 lumpy I think is the term that we've been using a few
2 times. This may be for Blefa. I know they argued
3 that. There might have been a number of craft brewers
4 and over 7,000 potential purchasers in the market in
5 2018. Does that really make a difference? Doesn't a
6 lumpy sale from a bunch of small producers over time
7 end up being not so lumpy or any thoughts on that?
8 And while you're at it, I guess, too, and this is for
9 all of you, I mean, apart from demand, I'm kind of
10 surprised.

11 If you look at our capacity utilization for
12 all of the producers that I can think of, it seems
13 pretty stable from year to year, which seems to be
14 inconsistent with what you'd expect with lumpy usage
15 swings and purchases from various large purchasing
16 brewers, so any thoughts on that? Wouldn't we expect
17 to see very different capacity utilization figures
18 from year to year?

19 MR. LEWIS: This is Craig Lewis. I can give
20 one partial answer to that, that I just know from our
21 questionnaire response and prior testimony for
22 Thielmann which is that there is a seasonality to keg
23 sales with higher sales in the summer and one of the
24 things that Thielmann has successfully done to try to
25 address that, that type of lumpiness is that they are

1 leveraging sales to the southern hemisphere, Latin
2 America, so that it balances out, the seasonality, so
3 that's one way they've managed that issue.

4 COMMISSIONER KEARNS: Okay. Okay. Thank
5 you.

6 MR. CONNELLY: There's one other thing --
7 Warren Connelly -- on this lumpy thing. It may be
8 lumpy as to a particular customer that as you say may
9 be spelled out when you look at the entire customer
10 base, but the problem, if there is one, is that you've
11 got to chase that customer. You've got to make the
12 investment to get that customer. You get him for a
13 year or two, and then he's gone. Now you got to
14 replace that customer, so your cost of acquisition of
15 customers becomes your gravel, particularly if you're
16 a small craft brewer with limited financial resources.

17 COMMISSIONER KEARNS: Okay. Thank you.
18 Let's see. All right. Okay. So this may be my last
19 question. The Petitioners point out some pretty large
20 inventory swings both with respect to importers and
21 foreign producers in 2019. Can you tell us anything
22 about that? I mean, why are we seeing such massive
23 increases in inventories in 2019?

24 MS. QUIST: I'd rather answer this one. I'm
25 Dinah Quist.

1 COMMISSIONER KEARNS: Please, go ahead.

2 MS. QUIST: Yes, we've had pretty high
3 inventory in 2019, but it's nothing special. It's
4 just to meet the need of a specific customer, and we
5 can provide more information on that in our post-
6 hearing submission.

7 COMMISSIONER KEARNS: Okay. So that's
8 proprietary? You can't share more than that right
9 now?

10 MS. QUIST: No.

11 COMMISSIONER KEARNS: Okay. Thank you.
12 Anyone else?

13 MR. CONNELLY: Warren Connelly. We'll
14 address specifically as to the Chinese Respondents. I
15 mean, I think everyone has a different story to tell
16 about that, but I think one thing I can say is that
17 the implication by the American Kegs repeated
18 stressing in their brief of the inventory built is
19 that this inventory built is going to flow into the
20 market at distressed prices. That's not what the
21 record shows. It doesn't show that, so the inventory
22 build, per se, if there is one, and there is some
23 doubt about that, is not I think a real strong
24 causation factor.

25 MR. DOUGAN: Commissioner, if I could just

1 add? I know this is going to be addressed in
2 confidential terms, but just to put a little context
3 about it -- because this is inventory that is intended
4 for a particular customer's needs, this is essentially
5 pre-sold. This is not rebar sitting on the docks in
6 the port that people are going to sell off at cheap
7 prices. It's already intended for somebody. This is
8 not a lost sale or potential future lost sales to the
9 domestic industry.

10 COMMISSIONER KEARNS: Okay. And, Mr.
11 Connelly, if you could just flesh out a little bit
12 more when you said the record doesn't support the
13 notion that this is actually flooding the market?

14 MR. CONNELLY: I think I better comment on
15 that in the post-hearing brief.

16 COMMISSIONER KEARNS: Okay. Okay. That's
17 great. I don't think I have any further questions.
18 Does staff have any questions?

19 MR. CORKRAN: Douglas Corkran, Office of
20 Investigations. Thank you, Commissioner Kearns. The
21 staff has no additional questions.

22 COMMISSIONER KEARNS: Okay. Great. Then, I
23 think in any case we can move to closing statements
24 and I just want to point out that -- we'll take just a
25 couple minutes before the closings, but before

1 closings, Petition has 15 minutes from direct and then
2 five minutes from the closing for a total of 20
3 minutes, and Respondents have one minute from direct,
4 five minutes for closing for a total of six minutes.

5 (Whereupon, a short recess was taken.)

6 MS. ROLIG: Good afternoon. Again, my name
7 is Whitney Rolig on behalf of American Keg. The
8 Respondents began today by characterizing this as a
9 case of a new small entrant trying to use these
10 investigations as a means to take more of the market
11 than they deserve. That is simply incorrect. This is
12 the case of a currently small company that is being
13 crushed by unfair competition. They're not asking for
14 a handout, and they're not asking for a special carve-
15 out for a niche product. They're asking for a fair
16 market, and the law says that they are entitled to
17 just that. The statutory factors make this clear:

18 (1) The volume of subject imports, that is
19 the volume of dumped and subsidized imports, is
20 massive.

21 (2) These unfairly-priced imports
22 consistently under-sell U.S. kegs. That's not because
23 American Keg is enjoying that differential as a self-
24 imposed premium. This is not because of product
25 differentiation between U.S. kegs and foreign kegs.

1 The record is clear that all of these countries
2 compete with each other. Rather, this is a case of
3 American Keg being unable to match import prices
4 because those prices are unfair. That fact had clear
5 and devastating implications for American Keg's
6 viability as a business.

7 (3) Those implications have one result
8 without trade relief. American Keg will close. In
9 fact, they'd be gone already if they hadn't brought
10 this case. The promise of gaining sales once they can
11 get past dumped and subsidized imports is literally
12 the only thing justifying Scott's continued investment
13 in the business.

14 The Respondents want the Commission to find
15 that American Keg is almost there, the sales and
16 profitability are just around the corner because it's
17 certainly not unfair imports holding them back, but we
18 know they're wrong. American Keg has already made
19 investments that should have allowed them to achieve
20 profitability, and the reason they're not hitting that
21 point is because they can't make enough sales, and
22 those buyers are there. All of the producers here are
23 fighting for those buyers and are fighting for them
24 with unfair prices.

25 I'm struck by one of the Respondents

1 insistence that they simply don't go after sales that
2 American Keg can make to small brewers.

3 The Commission should query why they
4 continue to sit to the scenario that small brewers
5 just aren't important to them because we know that's
6 not true, but actually the Respondents themselves have
7 already told you why they don't want to focus on that.
8 They've told you that when subject imports are priced
9 fairly, that benefit is going to go to American Keg.
10 That means that but for imports, American Keg does
11 better as a business. That's not an unfair windfall.
12 It is the remedy for a U.S. manufacturer that our laws
13 are designed to provide.

14 That's why we have come before the
15 Commission today to ask for your affirmative vote. An
16 affirmative vote let's the U.S. industry progress and
17 compete and prove itself on fair terms. A negative
18 vote ends the industry altogether.

19 We appreciate your time and excellent
20 questions and interest today.

21 Thank you.

22 MR. BURCH: Thank you, Ms. Rolig.

23 The closing or rebuttal remarks will be
24 given by Gregory C. Dorris, with Pepper Hamilton, and
25 Craig A. Lewis from Hogan Lovells.

1 minutes. You may begin when ready.

2 MR. DORRIS: As discussed this afternoon,
3 the threshold question of this investigation with the
4 Commission is whether the domestic industry is
5 established or not, and Blefa has explained here today
6 and its pre-hearing brief why AKC is not established,
7 and let's be clear. AKC is not Geemacher. Geemacher
8 went out of business early in the POI for reasons
9 wholly unrelated to subject imports, so AKC is not the
10 predecessor company to Geemacher. AKC own all assets
11 of Geemacher and started a new keg company in the mid-
12 2016, not that long ago.

13 It appears Blefa, unfortunately is the only
14 one to speak true to the emperor in his new clothes.
15 AKC is not established applying the historical
16 criteria that the Commission considers in making this
17 decision on establishment. I believe strongly that
18 the Commission, too, will speak true to the emperor
19 here and find AKC is not established based on this
20 historical criteria. When it does, the Commission
21 will consider whether German imports alone have
22 materially targeted AKC from becoming established
23 during the early POI.

24 The statute does not allow for cumulation to
25 subject imports to make materially retardation

1 decision, and, of course, we will address this further
2 in our post-hearing brief. As discussed in
3 confidential detail in our pre-hearing brief, the
4 establishment of the domestic industry was not
5 materially targeted by imports from Germany, and, of
6 course, there is no concept of threat under material
7 retardation either, so based on the determination of
8 looking at the factual information with respect to
9 material retardation, the Commission should reach a
10 negative determination as to Germany.

11 In conclusion, AKC is a tiny company in a
12 very large, established industry, but serving a
13 smaller segment of the larger industry fairly well at
14 this point. The question is whether we allow to have
15 anti-dumping and counter-veiling duties imposed on
16 this entire industry serving so many different
17 customers just because of AKC's problems with its cost
18 and its getting started as a new company. This really
19 isn't even the tail wagging the dog; this is the flea
20 on the tail trying to wag the dog, and the Commission
21 should not let that happen.

22 COMMISSIONER KEARNS: Thank you very much to
23 the Commission and the staff. This case deserves a
24 negative determination on material injury and threat.
25 There is absolutely no basis for claiming that subject

1 imports have caused material injury to American Keg.
2 Let's look briefly at the statutory factors of volume.
3 Despite what we've heard from the other side, this is
4 not a volume case. The evidence shows that this
5 company, a sole producer in the U.S. market, increased
6 its capacity, increased its production, increased its
7 market share over the period of investigation, so to
8 claim that volume is an issue is a non-starter.

9 Price, same thing. There is no evidence of
10 price depression. Price has raised over the period of
11 investigation. That's in complete negation of any
12 claimed price depression. There's no evidence of
13 price suppression. Applying the standard criteria
14 that the Commission looks at price suppression, it's
15 not on the record of this case.

16 Under-selling fully explained by the price
17 premium that American Keg has repeatedly stated publicly
18 that it sought and obtained in the market, and then
19 finally impact.

20 While this is a start-up company, they're
21 still in start-up phase, and their proper measure of
22 the impact, and I'm not talking about material
23 retardation, but it could be applied there as well, is
24 whether the company is making progress in its
25 profitability and its operations, and the record again

1 shows that that is the case, that over the period of
2 investigation, the company has steadily improved its
3 operation results and all that a start-up company can
4 reasonably expect and that is evidence of lack of
5 impact.

6 Now, if the company has any complaint, they
7 only need to turn to themselves to learn what it is
8 that has been the cause of their concerns, and I note
9 again the company had a market plan to sell at a
10 premium price, and I'm quoting again from their
11 website, "really making great, great progress" not
12 just progress, "great progress on this" with that
13 being their plan until the fourth quarter of 2017 when
14 what happened? We'll continue the quote, "when our
15 domestic steel producers started increasing their
16 prices substantially, these price increases are
17 directly related to steel tariffs, the anticipation,
18 announcement and imposition". There's not a single
19 breath referencing subject imports.

20 The Commission's record is strong. It's
21 complete. This is a case where there isn't a
22 causation. This is one of the rare cases where the
23 Commission should reach a negative determination
24 whether it's on a theory of material injury, threat of
25 injury or material retardation. Thank you very much.

1 COMMISSIONER KEARNS: Okay. Thank you.
2 We'll now issue the closing statement. Post-hearing
3 briefs, statements responsive to questions and
4 requests of the Commission and corrections to the
5 transcript must be filed by August 21. Closing of the
6 record and final release of data to the parties by
7 September 10 and final comments are due on September
8 12, 2019. Thank you very much. This hearing is
9 adjourned.

10 (Whereupon, at 3:35 p.m., the hearing in the
11 above-entitled matter was concluded.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Refillable Stainless Steel Kegs from China, Germany, and Mexico

INVESTIGATION NOS.: 701-TA-610, 731-TA-1425-1427
Final)


HEARING DATE: August 14, 2019

LOCATION: Washington, D.C.

NATURE OF HEARING: Commission Hearing

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

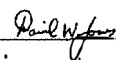
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Washington, D.C. 20005

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

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Signature of Court Reporter

