

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)	
)	Investigation Nos.
POLYETHYLENE TEREPHTHALATE)	731-TA-1455 and
(PET) SHEET FROM KOREA AND)	731-TA-1457 (Final)
OMAN)	

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 (PET) SHEET FROM KOREA AND) 731-TA-1457 (Final)
 OMAN)

Tuesday,
 July 14, 2020

Teleconference
 U.S. International
 Trade Commission
 500 E Street, S.W.
 Washington, D.C.

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

APPEARANCES:

On Behalf of the International Trade Commission:

Commissioners:

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 RANDOLPH J. STAYIN, VICE CHAIRMAN
 DAVID S. JOHANSON, COMMISSIONER
 RHONDA K. SCHMIDTLEIN, COMMISSIONER
 AMY A. KARPEL, COMMISSIONER

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Kelley Drye and Warren LLP Washington, DC <u>on behalf of</u>	
Advanced Extrusion, Inc. Ex-Tech Plastics, Inc. Multi-Plastics Extrusions, Inc.	
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Brian Grayczyk, President, Ex-Tech Plastics, Inc.	35
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<u>Of Counsel:</u>	
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In Opposition to the Imposition of Antidumping Duty Orders:

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& Mosle LLP
Washington, DC
on behalf of

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Chad Pyland, North American Sales Manager, OCTAL --
Inc.

Arnaud Figard, Chief Performance and Risk Officer, --
OCTAL SAOZ FZC

Nataly Cazacova, Corporate Performance Controller, --
OCTAL SAOC FZC

Of Counsel:

Daniel L. Porter
James P. Durling
Matthew P. McCullough

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P R O C E E D I N G S

(9:30 a.m.)

CHAIRMAN KEARNS: Good morning. On behalf of the U.S. International Trade Commission, I welcome you to this public hearing concerning Polyethylene Terephthalate, or PET, Sheet from Korea and Oman.

Due to COVID-19 considerations, the Commission is holding this hearing via videoconference. We appreciate everyone's cooperation and patience during this time.

The purpose of this investigation is to determine whether an industry in the United States is materially injured or threatened with material injury or the establishment of an industry in the United States is materially retarded by reason of imports of PET sheet from Korea and Oman.

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

Speakers are reminded not to refer in their remarks or answers to questions to business proprietary information. Please speak clearly into the microphone, state your name and affiliation for the record for the benefit of the court reporter, and mute your microphone when you are not

1 presenting.

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

5 Mr. Secretary, are there any preliminary matters?

6 MR. BISHOP: No, Mr. Chairman.

7 CHAIRMAN JOHANSON: Thank you. Let's begin with
8 opening remarks.

9 MR. BISHOP: Opening remarks on behalf of those in
10 support of imposition will be given by Paul C. Rosenthal of
11 Kelley Drye & Warren.

12 Mr. Rosenthal, you have a total of five minutes.
13 You may begin when you're ready. Paul, are you there?

14 MR. ROSENTHAL: Here we go.

15 MR. BISHOP: There you go. Can you get your webcam
16 going?

17 MR. ROSENTHAL: Yep.

18 MR. BISHOP: There you are.

19 MR. ROSENTHAL: All right, thank you.

20 MR. BISHOP: Welcome. You can begin when you're
21 ready.

22 MR. ROSENTHAL: Thank you. Good morning, Mr.
23 Chairman, Commissioners, and members of the staff. I'm Paul
24 Rosenthal of Kelley Drye & Warren, appearing on behalf of the
25 domestic Petitioners, U.S. producers of PET sheet.

1 This industry is at a crossroads. As you will hear
2 from the company witnesses today, the domestic industry has
3 been hurt by low-priced imports for many years. If I had
4 been representing the domestic industry several years ago, we
5 might have filed these cases then, as imports have been
6 causing material injury since before the Period Of
7 Investigation, but instead of pursuing trade remedies a few
8 years ago, the domestic producers did their best to lower
9 their costs and fight imports through their own lower prices.

10 In some instances, though, companies stopped making
11 products that faced import competition because they could not
12 earn a decent profit. Indeed, some of the industry members
13 realized that because import prices are so low, it was more
14 profitable not to obtain the sale at such low prices. That
15 strategy has not worked in the short term, and it's a recipe
16 for extinction in the longer term, so they're here today
17 because they need import relief and they need it badly.

18 The subject imports from Oman and Korea have been
19 significant since the beginning of the Period Of
20 Investigation and have increased from 2017 to 2019. The
21 increase in absolute volumes is mirrored by the growing
22 market share of the subject imports, and the market share
23 taken by those imports has come directly from the domestic
24 industry, as non-subject imports are not a factor. Not
25 surprising, the domestic industry's production, shipments,

1 and capacity utilization have all declined as a result.

2 The imports from Oman and Korea have been able to
3 achieve these volume gains by the time-honored tradition of
4 low-priced offers. The record confirms the primacy of price
5 in purchasing decisions and shows that imports from Oman and
6 Korea have undersold the domestic industry in almost all of
7 the comparisons, whether quarterly or based on volume.

8 The domestic industry witnesses you will hear today
9 will expand about the importance of price in this industry.
10 Indeed, two of our witnesses used to work as buyers of PET
11 sheet, and they will explain how, in that capacity, they
12 evaluated offers from imports versus those from domestic
13 producers. They will tell you that purchasing decisions
14 always came down to price. Things are no different now that
15 they're trying to sell PET sheet.

16 Omani producer OCTAL claims that its production
17 process and resulting product differentiates it from the
18 products made by the domestic producers and leads to higher
19 quality products. The Commission rejected that argument
20 before and should do so again.

21 Indeed, the evidence concerning the cyclone that
22 shut down OCTAL's exports for three months did more than
23 close the facility. It blew away any pretense that PET resin
24 sold by domestic producers is not a substitute for OCTAL's
25 PET resin.

1 The record evidence showing rampant underselling by
2 imports from Oman also shows that Oman is not selling the
3 higher quality premium product as it claims. You will hear
4 agreement from domestic and foreign producers alike that PET
5 sheet is a capital-intensive industry with a need for high
6 capacity utilization.

7 The domestic producers frequently lower their
8 prices to get a sale in order to maintain volume throughput
9 for their factories. Subject import competition has made
10 that nearly impossible, resulting in very low domestic
11 capacity utilization rates throughout the periods.

12 The intense price competition with subject imports
13 has forced domestic producers to sell at unsustainably low
14 prices to maintain volume and operational efficiencies. The
15 result has been terrible profitability. By every measure,
16 this industry is under severe financial strain. You don't
17 have to take the Petitioners' word for it. Non-petitioning
18 members of the domestic industry have presented extensive
19 information that corroborates the injury information provided
20 by the Petitioners.

21 As the Commission knows, the PET sheet that goes
22 into this proceeding goes into making plastic containers and
23 packaging used extensively in the food and retail industries.
24 I'm proud to tell you that at the time of the COVID-19
25 pandemic the domestic producers have answered the need for

1 our country by devoting a substantial amount of time to
2 producing the plastic for face shields, which has become so
3 essential to the health and safety of our medical personnel
4 and the citizens of our country generally.

5 I thought that you would like to see a sample of
6 this and be as proud as I am of our capabilities to help in
7 times of national emergency.

8 The domestic industry representatives look forward
9 to telling you more about that but, most importantly,
10 explaining this morning why the Commission should reach an
11 affirmative decision in this case. Thank you.

12 MR. BISHOP: Thank you, Mr. Rosenthal.

13 Opening remarks on behalf of those in opposition to
14 imposition will be given by Daniel L. Porter of Curtis,
15 Mallet-Prevost, Colt & Mosle.

16 Mr. Porter, you have a total of five minutes. You
17 may begin when you're ready.

18 MR. PORTER: Good morning, Commissioners. It's
19 very good to see you again. In this final phase, the
20 Commission has a much more robust evidentiary record than it
21 did during the preliminary phase. The Commission now has
22 questionnaire responses from numerous U.S. producers and
23 importers, accounting for the overwhelming majority of
24 subject imports, and, importantly, the Commission has
25 certified questionnaire responses from 17 U.S. purchasers

1 that, combined, account for virtually all of the merchant
2 market purchases of subject imports from OCTAL in Oman.

3 I want to highlight that the two sides today are
4 adopting very different approaches to the more robust
5 evidentiary record. The Respondents' side fully accept the
6 compilation of the evidentiary record by the Commission
7 staff, specifically, the data reported in Table C-4 in the
8 Commission's pre-hearing report entitled *Merchant Market-*
9 *Related Party Exclusion*.

10 In contrast, Petitioners are asking the Commission
11 to ignore this compilation and instead create an entirely new
12 version of the domestic industry data by excluding a U.S.
13 producer from the analysis. However, Petitioners have not
14 offered any legitimate legal or factual basis to do so. We
15 will be happy to address this issue more during the question-
16 and-answer session.

17 Now what does the more robust evidentiary record
18 demonstrate? Consider first volume effects. It is true that
19 subject imports increased and gained some market share over
20 the period, but the broader context shows that these
21 increases do not constitute significant adverse volume
22 effects.

23 The volume and market share gains here resulted
24 because OCTAL has offered a very different type of PET sheet,
25 referred to as D-PET. D-PET is produced utilizing a unique

1 patented technology production process that no other PET
2 sheet supplier in the world has. The record demonstrates
3 that customers consider D-PET to have superior performance
4 attributes not offered by U.S. PET sheet producers.

5 Now consider price effects. Given the distinctive
6 way in which OCTAL competes, it is not surprising that there
7 are no adverse price effects. There is no price depression
8 because domestic prices have increased over the investigation
9 period for three of the four pricing products. Moreover,
10 domestic prices have more than kept up with changing cost,
11 and so there's also no price suppression.

12 It is true that subject imports have undersold
13 domestic prices, but that underselling has been stable and it
14 has not had significant adverse price effects. The
15 underselling did not lead to price suppression and did not
16 lead to financial losses. Subject imports can undersell
17 without affecting domestic volume or prices because price is
18 not the most important factor to customers who purchase D-PET
19 from OCTAL.

20 There's also no adverse impact. Although
21 Petitioners complain about financial losses, the actual
22 evidentiary record show the opposite. Indeed, the merchant
23 market producers as a whole show improving operating income
24 in 2019, even with higher volumes of lower-priced subject
25 imports in 2019. Such facts are utterly inconsistent with

1 Petitioners' theory of a lower-priced commodity product
2 stealing sales and driving down prices.

3 Indeed, the distinctive nature of D-PET and OCTAL's
4 strategic supplier relationships with larger volume customers
5 fully explain why Petitioners' theory of the case is so
6 deeply flawed and why this case is rather different. OCTAL's
7 dumping margin is just 2.78 percent, barely above de minimis.
8 Such low dumping is a fraction of the underselling in this
9 case, a scenario that is unlike most of the AD cases that you
10 see. This fact cannot be ignored. Dumping is not causing
11 any injury suffered by U.S. producers. Unlike most other
12 cases with higher AD margins, even if OCTAL was forced to
13 sell at above fair value prices, there would be no material
14 change in the competitive dynamic in the market.

15 What this means is that there is another factor,
16 unrelated to dumped imports from OCTAL, that is causing
17 whatever woes the domestic industry may be experiencing, and
18 the evidentiary record demonstrates that this other factor is
19 new technology and innovation. OCTAL has succeeded in the
20 U.S. market not because of dumping but because they've
21 employed a new process technology that can create a PET sheet
22 product that has both a lower cost and superior performance
23 attributes. Thank you.

24 MR. BISHOP: Thank you, Mr. Porter.

25 Mr. Chairman, the panel in support of the

1 imposition of the anti-dumping duty orders are all present
2 and accounted for. All witnesses on this panel have been
3 sworn in. This panel has 60 minutes for their direct
4 presentation.

5 If you folks would go ahead and activate your
6 webcams and microphones when you're presenting direct
7 testimony.

8 Paul, I have you muted and your camera off. I just
9 unmuted you. You need to turn on your webcam. You may begin
10 when you're ready.

11 MR. ROSENTHAL: Good morning again. For the
12 record, Paul Rosenthal. I'll be presenting the overview of
13 the data and summary of key arguments in the case. Can you
14 see the slide back there?

15 MR. BISHOP: Gina, go ahead and present. There we
16 go.

17 MR. ROSENTHAL: Thank you. Let's turn to the first
18 substantive slide, 2. It's nice to start the discussion with
19 the areas in which Respondents and Petitioners agree. This
20 Slide 2 indicates there is no disagreement on issues of like
21 product, domestic industry, cumulation for material injury,
22 negligibility, or the applicability of the captive production
23 provision of the anti-dumping law.

24 Accordingly, we are going to focus most of our
25 attention on the merchant market producers as they are the

1 ones that experience significant differences in conditions of
2 competition as compared to producers that internally consume
3 their PET sheet production.

4 Mr. Porter has acknowledged some of these differing
5 conditions of competition. It is the merchant market
6 producers, after all, that are most exposed to the unfair
7 pricing practices of the imports that are the subject of
8 these investigations.

9 The next few slides highlight the evidence in the
10 record that demonstrates the high degree of substitutability
11 between domestically produced sheet and PET sheet imported
12 from subject sources. The vast majority of responding
13 producers, importers, and purchasers reported that domestic
14 and subject PET sheet imports are always or frequently
15 interchangeable.

16 You heard Mr. Porter make the argument, which we'll
17 hear throughout from Respondents, that OCTAL's PET sheet,
18 allegedly, is unique. Most market participants disagree.
19 The vast majority of respondents to this question say that
20 OCTAL's sheet is always or frequently interchangeable. As
21 seen on Slide 4, the majority of purchasers reject the claims
22 that OCTAL puts forward about its so-called D-PET product.

23 Confidential Slide 5 provides some quotes from
24 importers and purchasers that essentially confirm that D-PET
25 is interchangeable with other PET sheet. Please note not one

1 of these quotes comes from Petitioners. All of these are
2 from third-party purchasers and importers.

3 Next slide. Everyone likes to quote Groucho Marx,
4 but it's a rare occasion to get a quote from his brother,
5 Chico, who, in the movie *Duck Soup*, famously said, "Who are
6 you going to believe, me or your lying eyes"? Well, I'll
7 paraphrase this question in the context of a 2018 cyclone
8 that you've heard about. That's the one that hit Oman and
9 caused OCTAL to cease shipping to the U.S.

10 As you'll hear further from the domestic industry
11 witnesses, the immediate response from OCTAL's U.S. customers
12 was to buy domestically produced sheet. Indeed, the U.S.
13 domestic producers of PET sheet ramped up quickly so it could
14 sell to those customers, some of whom will be testifying
15 later today. Those customers had no problem using the U.S.-
16 produced sheet on their equipment, which is no surprise
17 because they used U.S. product before switching to OCTAL.

18 And we will supply some information to you post-
19 hearing to rebut some of the claims made by Respondent
20 witnesses concerning the ability to use the domestic industry
21 PET sheet very efficiently in their operations. Do they
22 can't really seriously argue that D-PET isn't substitutable
23 with PET sheet. The Respondent purchasers use that quite
24 interchangeably.

25 Who are you going to believe about this claim? The

1 purchasers who like-low priced products from Oman or their
2 order books for the time when OCTAL couldn't supply the low-
3 priced product?

4 Turning to the question of volume of imports in
5 Slide 7, that shows they're significant, with subject
6 countries accounting for an overwhelming percentage of
7 imports.

8 In OCTAL's pre-hearing brief, counsel argued that
9 because of the cyclone of 2018, it was perhaps best to look
10 at the entire 2017 to 2019 period rather than a year-to-year
11 comparison. We have no problem with that.

12 The data shown on your Confidential Slide 8 show a
13 substantial increase in subject import volume, and Mr. Porter
14 conceded that imports were increasing, and that increase in
15 volume is from an already significant volume at the beginning
16 of the Period Of Investigation. By the way, you've already
17 heard Mr. Porter acknowledge that there was persistent
18 underselling and increased volume. I don't want to lose
19 sight of that.

20 Slide 9 shows that not only were import volumes
21 increasing absolutely, but they're capturing increasing
22 market share. What caused these volume increases? Well, Mr.
23 Porter has already indicated why: price, underselling.

24 Chart 10 summarizes some of the data in the record
25 regarding price. Of note, the majority of purchasers

1 reported that they usually purchased the lower-priced
2 product, and most responding purchasers found domestic PET
3 sheet to be comparable or superior to PET sheet from Oman on
4 every factor except for one: price.

5 Mr. Barenberg, quoted on the slide, was the witness
6 for OCTAL at the staff conference, and he'll be appearing
7 later today. He stated at the staff conference that,
8 "Pricing competitive" to the U.S. market encourages "broad
9 adoption" of OCTAL's PET sheet product. In other words, if
10 the OCTAL price is low enough, more customers will buy it,
11 and that's exactly what happened.

12 Indeed, the final quote on the page pretty much
13 says all you need to know: "OCTAL's customers didn't feel
14 good about what they were having to pay the U.S. producers as
15 compared to OCTAL's prices." No kidding. I wonder why. Of
16 course, they don't want to pay higher prices when they can
17 get lower prices from OCTAL. That's why they're testifying
18 today. They want to pay less, not more. Totally
19 understandable, but let's not kid ourselves why they're here.

20 Slide 11 summarizes the underselling data. It's
21 pretty rare to see such pervasive underselling. Seventy-
22 three of 76 quarters and on the vast majority based on
23 volume. Wow. It's no wonder, faced with these data, that
24 Mr. Porter tries to normalize it and report of it as stable
25 underselling, as if that were not injurious. What we've seen

1 from stable underselling is steady gains in market share by
2 OCTAL.

3 The next slide shows that nearly all purchasers
4 reported that the subject imports were lower-priced. Some
5 admitted to shifting because of price. Others simply have
6 good lawyers.

7 The next slide, 13, confirms what you heard from
8 Mr. Barenberg. When OCTAL was out of the market for a few
9 months, U.S. producers were able to obtain a reasonable
10 price. I would refer to that as the wonder years, but,
11 unfortunately, that era of decent pricing lasted only about
12 three months. When OCTAL came back in the market, domestic
13 PET sheet prices hit the fan once again.

14 MR. ROSENTHAL: Slide 14 shows how the lower prices
15 of subject imports allow them to gain market share at the
16 direct expense of domestic producers.

17 The next slide, 15, illustrates how, despite the
18 increase in demand, U.S. production and shipments in the
19 merchant markets declined. Even when the data for the total
20 market are analyzed, as in Slide 16, you can see how U.S.
21 shipments and production grew far less than demand over the
22 POI.

23 The inability of the domestic industry to take
24 advantage of the growth in demand had nothing to do with the
25 capacity of U.S. producers. In fact, there's plenty of

1 capacity, but capacity utilization was going down, not
2 increasing in this period of increased demand. That's
3 because subject imports were capturing that demand and more.

4 Notably, even producers who captively consumed
5 their PET sheet consumption were not immune from the problem
6 of reduced capacity utilization, but the merchant market
7 producers, who were even more exposed to the subject import
8 competition, suffered even greater declines.

9 Slide 18 summarizes some of the financial data
10 which were confidential. As we discussed in our prehearing
11 brief, there's one U.S. producer who has supplied
12 aberrational data which simply cannot be used for the
13 analysis. We cannot go into detail in the public session,
14 but any serious review of this data suggests that you have to
15 exclude it. It simply doesn't jive with not only the
16 experience of other producers, but they don't give you all
17 the data on which to base your analysis.

18 When you do exclude this data, which we understand
19 why Mr. Porter wouldn't like you to do, you see how dismal
20 the industry profitability is.

21 The next slide, 19, shows the domestic deepening
22 operating losses over the POI. What started out as a bad
23 position has only gotten worse. There's simply no way to
24 sustain this industry with those kinds of losses.

25 Slide 20 graphically portrays the operating income

1 margin. I don't know much about making charts, but I know
2 that when I see what looks like stalactites, that can't be
3 good.

4 The next slide, the net income margins look pretty
5 much the same, meaning bleak. And take a look at how many of
6 the companies in the merchant market are losing money.

7 Confidential Chart 22 overlays the data on
8 operating margins with the subject import market share. As
9 you can see, as the subject imports gain more share, U.S.
10 industry profits decline even further.

11 Looking at Slides 23 and 24 collectively, I want to
12 mention, as I did at the outset, that non-petitioning U.S.
13 producers have had quite a bit to say about the negative
14 effects of the subject imports.

15 Please take a minute or two to review the quotes on
16 the next two slides. While Mr. Porter would like to argue
17 that Petitioners' experiences are unique in their dismal
18 quality, these quotes demonstrate that the injury caused by
19 the subject imports is being suffered by just about every
20 merchant market producer, with the one exception perhaps of
21 that aberrational database that you saw.

22 While the current injury picture is terribly bleak,
23 I would be remiss if I didn't at least touch upon the threat
24 of future injury. Slide 25 shows how the subject producers'
25 already large export share to the United States has already

1 increased over the POI and is projected to grow further into
2 2021.

3 OCTAL hasn't been shy about boasting about its
4 capabilities, as Slide 26 shows. It's very large, and they
5 like to talk about how big they are and how that size really
6 makes a difference. It does. It allows them to grow market
7 share all the time and shows that they are a continuing
8 threat to do so further, as you look at Slides 27 and 28.

9 Finally, I want to note that no other factor than
10 subject imports explains the unfortunate condition of the
11 domestic industry. Slide 29 summarizes those facts. Demand
12 has been increasing. Non-subject imports have been
13 essentially flat, and non-subject import prices were higher
14 than both U.S. producer prices and subject imports. In
15 contrast, subject import prices undersold the domestic
16 industry in almost every comparison.

17 Slide 30, OCTAL attempts to explain away its low
18 prices and admitted underselling by claiming that it's long-
19 term contracts that lock in these low prices. That argument
20 has a "devil made me do it" air about it.

21 But I just want to be clear, and, I think, you,
22 Commissioners, all understand this very, very well. Just
23 because it's a long-term contract locking in lower prices
24 does not mean that there's no underselling or injury as a
25 result of those low prices. To the contrary, as you will

1 hear, the low prices are part of a long-term strategy that
2 allows OCTAL to gain more market share and increase sales in
3 the U.S. market.

4 By the way, take a look at the quote at the bottom
5 of the page from an earlier case of the Commission on orange
6 juice from Brazil. I would go directly to Mr. Porter's claim
7 about what he calls stable underselling.

8 And, by the way, I understand you've got to deal
9 with the facts you're dealt with, and they have underselling
10 in virtually every instance. Trying to characterize that as
11 benignly is the best you can do, but I've never heard stable
12 underselling as a defense in a dumping case. And to the
13 extent that the low margins at the prelim are Mr. Porter's
14 defense too, we'll see what happens at the final.

15 Finally, I'll leave you with one more look at the
16 slide that we presented earlier in which you saw non-
17 petitioner purchasers and importers explain that OCTAL's
18 product is interchangeable. Interchangeability and long-term
19 contracts that lock in lower prices than market prices is how
20 the industry has been injured by imports from Oman and Korea.

21 The witnesses that you'll hear from the industry
22 will amplify these points, and I will turn to them right now.
23 Our first industry witness will be John Parsio, Jr.

24 Mr. Parsio?

25 MR. PARSIO: Good morning. Can you hear me?

1 Good morning. My name is John Parsio, Jr., and I'm
2 the President of Multi-Plastics Extrusions, a Petitioner in
3 this case. My father founded Multi-Plastics in 1979 and
4 continues to own and operate it. We produce PET sheet at our
5 facility in Hazleton, Pennsylvania.

6 I appreciate the opportunity to speak to you. I
7 appreciated the opportunity to speak to your staff here
8 during the preliminary conferences, and I am grateful for the
9 opportunity to answer your questions today, particularly
10 under such trying conditions.

11 Are you guys hearing some other background noise?

12 MR. BISHOP: Yes. Stop the clock.

13 MR. PARSIO: What would you guys like me to do?

14 MR. BISHOP: Just wait one second for us, John,
15 please. Sorry about this. I can't see who it is.

16 Could everyone make sure that your microphones are
17 muted except for John, please?

18 Go ahead, John. Sorry about that. You can restart
19 the clock.

20 MR. PARSIO: I appreciate the opportunity to speak
21 to you and your staff last year during the preliminary
22 conference, and I am grateful for the opportunity to answer
23 your questions today, particularly under such trying
24 conditions. This case is extremely important to my company,
25 and the relief we are seeking is absolutely vital to the

1 future of our PET sheet operations and employees in the
2 United States.

3 Multi-Plastics produces high-quality PET sheet in a
4 wide array of gauges and colors, as well as with special
5 properties, including anti-fog and anti-static coatings. PET
6 sheet is used to produce rigid package products such as food
7 trays and clam shell containers. We use both virgin PET
8 resins and recycled inputs in our manufacturing process.

9 It's important to understand that when I talk about
10 recycled inputs, that typically refers to post-industrial
11 regrind material. Regrind is the industrial scrap left over
12 after our customers, the thermoformers, use the PET sheet to
13 form or cut out the shapes required for their packaging
14 products. The scrap is then ground into flake and sold back
15 to us. Use of post-industrial PET regrind is extremely
16 common in the PET sheet industry and results in a high-
17 quality, clean, clear recycled PET product.

18 Post-consumer recycled PET flake, which gets
19 processed from curbside pickup and recycling centers, is also
20 used but less frequently.

21 At the end of the day, the vast majority of our
22 customers do not care about the inputs to be used. They only
23 care about the end product and, most importantly, about the
24 price. Demand for PET sheet, therefore, relates to the
25 demand of rigid food containers and retail packaging.

1 Over the past three years, demand for PET sheet has
2 been strong and growing. The U.S. industry has been well-
3 positioned to supply that demand, but my company has not been
4 able to benefit from any of that expanding market.

5 Throughout the three-year Period Of Investigation,
6 we had significant capacity sitting idle that we would like
7 to put into use. Unfortunately, the imports have prevented
8 that from happening, leading to both lost sales and lost
9 revenue for my company and our industry.

10 The challenge we face in the PET sheet industry is
11 that price drives sales, and the imports targeted by this
12 case continually undercut our prices.

13 During the preliminary conference, representatives
14 from OCTAL claimed that customers have decided to buy its
15 imported PET sheet because of its superior qualities, but
16 that's just not true. Customers are not buying the imports
17 from Oman and Korea due to their better quality or to get a
18 type of PET sheet that we cannot supply.

19 As I mentioned, Multi-Plastics' PET sheet is a
20 high-quality product. We make clear, black, custom colors.
21 We make coated PET sheet, and all of our PET sheet is totally
22 interchangeable with the PET sheet OCTAL produces in Oman.

23 As Mr. Doug DeBode will tell you further, our PET
24 sheet works on customers' thermoforming machines just as well
25 as OCTAL's does. We are not losing sales because we sell an

1 inferior product or are not meeting our customers' needs. We
2 are losing sales to the imports because of their low prices,
3 their dumped prices.

4 OCTAL claims that it is focused on selling to a few
5 large customers, but those large thermoformers used to be our
6 big accounts until they switched to imports for low prices.

7 The conversations we've had with our customers and
8 the pricing pressures that we've been experiencing over the
9 past several years makes it very clear that the imports,
10 whether from Oman or Korea, are winning orders large and
11 small because of their low prices. In fact, if OCTAL's
12 products were truly of the high quality, it would not need to
13 undercut our prices at all. Strong U.S. demand and ample
14 available capacity of Multi-Plastics should have allowed us
15 to increase our sales and raise our prices.

16 The increasing volume of low-priced imports
17 prevented that from happening. Instead, our profits
18 deteriorated as we were forced to sell PET sheet at
19 unsustainably low prices to compete with these imports.

20 We lost sales all together. We did not benefit
21 from strong demand for our products because imports from Oman
22 and Korea were sold at prices not only well below our prices
23 but often below our cost of production. As you see from the
24 table -- I'm sorry, the trade and financial data, we cannot
25 afford to continue to do this.

1 The imports from Oman and Korea have already
2 captured a huge part of this market. Imports from Oman alone
3 are massive, yet they continue to increase.

4 Imports from Korea have also grown significantly in
5 volume over the past three years. We have lost sales to
6 imports from each country due to their low pricing. It is
7 difficult for us to call the United States our PET sheet
8 market when we've lost so much business to these dumped
9 imports.

10 The only reprieve we had for a very short period of
11 time in 2018 was as a result of the cyclone that hit Oman.
12 When that cyclone hit, OCTAL was shut down for a while and
13 unable to ship to the U.S. for a period of three months. As
14 a result, we experienced a big surge in order for the U.S.
15 customers that had been buying from OCTAL. Our volumes of
16 sales increased as the import volumes dropped. We received
17 orders from customers that we had long lost to the imports.
18 Also, the prices for the PET sheet that we sold improved.

19 Once OCTAL resumed operations, however, customers
20 canceled orders they had placed with us to get their low
21 prices offered from those imports. Those customers switching
22 back and forth shows the interchangeability of the products
23 regardless of the source and the price-driven nature of PET
24 sheet sales. The result of OCTAL surging back into the
25 market with volumes bigger than ever meant that 2019 was

1 Multi-Plastics' worst year in terms of sales and
2 profitability of our PET sheet operations.

3 Our shipments dropped significantly, to the point
4 where our lead times virtually disappeared because we had so
5 much available capacity. We were forced to idle production
6 lines in 2019 and had more production downtime than in 2017.

7 We filed this case in July 2019 when we thought it
8 could not get any worse and we were desperate for a remedy,
9 and yet imports continued to increase aggressively even after
10 the petition was filed. Imports continued to increase in the
11 second half of the year, and OCTAL's extremely low pricing
12 has continued.

13 The customers that we had hoped would increase
14 their orders with us after we filed the petition have instead
15 loaded up on as much low-priced PET sheet from Oman and Korea
16 as they could get before the Commerce Department issued its
17 preliminary determination in February of this year.

18 After preliminary duties went into effect, imports
19 from Korea did back off. We were able to regain sales to
20 customers that had moved to Korean imports as a result of
21 duties. Imports from Oman, however, have not slowed.

22 I also wanted to tell you about my company's
23 experience this year. The COVID-19 pandemic has impacted our
24 operations. We have been able to use significant idle
25 capacity to produce PET sheet for the face shield production.

1 We are very proud to have domestic production that
2 could serve our country during this time of need. Within
3 days of being asked, we were able to direct production to
4 demand for face shields.

5 The COVID-related demand surge in the second
6 quarter of this year was fast and strong and gave us some
7 optimism on how this year might shape up, but the demand
8 bubble has basically popped. Our production levels and lead
9 times are effectively back to normal, close to where they
10 were before the pandemic hit.

11 In the meantime, we have heard that OCTAL continues
12 to grab major orders with our traditional PET sheet customers
13 and has started to capture sales from face shield
14 manufacturing. We are not safe from either the pandemic or
15 OCTAL.

16 Relief is badly needed to remedy these situations.
17 We cannot continue to operate our profit levels that we have
18 been suffering. If the unfair trade behavior is not checked,
19 there will be additional closures of U.S. facilities, job
20 layoffs, and further financial loss in this industry. We
21 urge you not to let that happen. Thank you.

22 MR. ROSENTHAL: Our next witness will be
23 John Thibado.

24 MR. THIBADO: Can you guys hear me okay?

25 MR. BISHOP: Yes, we can, John.

1 MR. THIBADO: Okay, great. Good morning. My name
2 is John Thibado and I am founder, President and CEO of
3 Advanced Extrusion, located in Rogers, Minnesota. I've been
4 in my current position for 20 years. Prior to my founding of
5 Advanced Extrusion, I worked for a large PET sheet packaging
6 company, also known as a thermoformer. In all, I've been in
7 the PET sheet business for over 30 years.

8 When I appeared before the Commission staff at the
9 preliminary phase of this case almost a year ago, we noted
10 that imports had been a problem for several years before the
11 period that the Commission was investigating. By the time I
12 appeared, increasing volumes of imports from Oman and Korea
13 were making things even more difficult in the U.S. market.
14 We were constantly faced with competition from low-priced
15 offers by subject imports during our customer negotiations
16 and lost numerous sales and substantial revenue as a result
17 of their extremely low prices.

18 Things only got worse in the second half of 2019.
19 While OCTAL's profile in the U.S. market had fallen back
20 somewhat due to the impact of a cyclone on their Omani
21 production facility, it came back with a vengeance in 2019.
22 OCTAL used extremely aggressive pricing in the United States
23 to dramatically increase its share of our market.

24 This had a significant impact on my company. Our
25 shipments in 2019 fell off notably and we were forced to cut

1 our production back from seven days a week to just five.
2 Customers stopped ordering from us because they could buy the
3 same PET sheet from Oman and Korea at lower prices, as
4 demonstrated in numerous examples of lost sales provided to
5 the Commission.

6 The subject imports have not adjusted their pricing
7 in response to the filing of this case. This just shows how
8 committed they are to buying share in our market. It is not
9 true, as OCTAL implied at the staff conference, that OCTAL
10 would be satisfied with just a small customer base in the
11 United States. OCTAL's customers include three of the
12 largest buyers of PET sheet in the U.S. market, and it
13 continues to aggressively pursue every account in the
14 country, big and small.

15 I am convinced that OCTAL's ultimate goal is to
16 destroy the industry producing PET sheet in the United
17 States. Let me be clear that price is the driving force in
18 purchasing decisions when comparing our product to imports.
19 We are not losing business to Oman or Korea for reasons of
20 quality or inability to supply PET sheet needed by our U.S.
21 customers. While OCTAL and its representatives would have
22 you believe that their product is of superior quality to that
23 of domestic industry, I can tell you from my experience that
24 is not the case. My company product has performance and
25 optical qualities that are every bit as good as the product

1 from Oman or Korea. Customers do not need Omani sheet to run
2 their thermoforming machines.

3 In 2018, after the cyclone in Oman, when we got
4 orders from one of OCTAL's largest customers, Inline, we were
5 offered to buy back the scrap regrind resulting from Inline's
6 use of our PET sheet, but Inline would not sell to us, saying
7 that the regrind was reserved for OCTAL Ohio. In other
8 words, OCTAL Ohio sells our PET sheet made from our regrind
9 material to the very same customers that claim they need D-
10 PET from Oman.

11 In fact, customers have complained to our
12 salespeople that the PET sheet from Oman can display optical
13 issues, such as brown streaking, that negatively affect the
14 former's ability to produce high-quality packaging product.
15 This is not despite OCTAL's allegedly special direct to sheet
16 process but because of it. Any clogging in the PET reactor
17 that feeds directly into OCTAL's extruders creates quality
18 issues in the resulting sheet. When provided with a
19 deficient product, those customers then ask my company to
20 quickly fill in for OCTAL's subpar product, which we're happy
21 to do. But even when the Omani product is not processed
22 properly, customers do not discontinue using it because it's
23 priced so far below ours.

24 The most obvious question raised by OCTAL's quality
25 claim is the following. The Omani product is of much higher

1 quality. Why is it priced lower than the domestic product?
2 In my years of seeing the import product in our market, I
3 have never once come across a customer who paid a premium for
4 OCTAL'S product. When I meet with customers, they make it
5 clear that we must be competitive with the low import prices
6 to keep their business. Our customers present details of the
7 import offers they have received so we know where we have to
8 price to win the sale.

9 Here's an example of how low the import pricing
10 really is. One of our large customers we have been pricing
11 at the level of the unfair imports just to keep the business.
12 When we finally lost that customer because we simply could
13 not go any lower, our profitability improved.

14 But losing sales volume in effort to improve
15 profitability is not a sensible business strategy over the
16 long term. We've watched our sales and our market share drop
17 as unfair imports penetrate this market. A decade ago, in
18 anticipation of rising U.S. demand, we explored opening
19 facilities on the east and west coast. Unfortunately, as
20 unfair imports increased over the last several years, we had
21 to abandon those plans.

22 The capital-intensive nature of the PET sheet
23 industry makes it important that producers maintain high
24 operating rates to maximize efficiencies. If we cannot run
25 our lines at optimal efficiency levels, significant costs are

1 incurred and production curtailments or shutdowns are often
2 our only alternatives. The increased volumes of subject
3 imports leading to reduced production and shipments of U.S.
4 product have not only cost us market share but has also
5 affected our production efficiencies.

6 Our utilization rate is much lower than we'd like
7 it to be, but if we were to lay off our highly skilled
8 workers, it would be difficult to replace them if the
9 business were to come back, so we are trying to remain
10 operational in hopes that we can address these import
11 problems, retain our workforce, and increase our sales.

12 That difficult effort has been worthwhile because
13 we were able to respond very quickly to the surge in demand
14 for PET sheet for face shields needed for the COVID-19
15 pandemic this year. We are glad to have been able to
16 immediately ramp up in production of PET sheet for that
17 purpose and to do our part during this emergency.

18 Now, however, OCTAL is aggressively pursuing sales
19 in our new face shield customers. We cannot continue to
20 compete with the unfair pricing from Oman and Korea and we
21 cannot survive as a company when we must continuously cede
22 market share to unfairly traded imports and suffer poor
23 financial results. I respectfully request, therefore, that
24 the Commission reach an affirmative finding in this case.

25 Thank you for your attention.

1 MR. ROSENTHAL: Our next witness will be Mr.
2 Brian Grayczyk.

3 MR. GRAYCZYK: Good morning. My name is
4 Brian Grayczyk, and I'm the President of Ex-Tech Plastics.
5 I've been with Ex-Tech for over eight years and I've been in
6 sales and purchasing with various plastic materials and
7 products businesses for over 20 years.

8 I testified before the Commission last summer
9 during the preliminary phase of this investigation to discuss
10 the harm that unfairly traded imports from Korea and Oman
11 have had on the domestic PET sheet industry. We brought this
12 case because the domestic industry has been battered by low-
13 priced imports that are driving down our prices and eroding
14 our market share. This has been going on for quite a while
15 but has only gotten worse in the last few years.

16 In my earlier testimony, I explained that PET
17 sheet, whether produced in the United States, Oman, or Korea,
18 was typically sold in rolls to downstream end-users,
19 primarily thermoformers that use PET sheet to manufacture
20 rigid food and retail products like carryout containers,
21 fruit and vegetable trays, clam shell containers, and paint
22 tray liners.

23 In 2020, PET sheet has been in high demand for
24 another end use, medical face shields. PET sheet is a
25 particularly desirable input for these uses because it has

1 exceptional visual properties, provides barriers to gases and
2 oils, and it's impact and tear-resistant, thermally stable,
3 and recyclable. These factors and others differentiate PET
4 sheet from other polymers.

5 Importantly, however, there are no differences in
6 the basic physical and technical characteristics and uses
7 between the PET sheet produced by domestic producers like Ex-
8 Tech and that produced in Oman and Korea. I know because I
9 used to be in the purchasing side when working for a
10 thermoformer. Prior to my time with Ex-Tech, I spent nearly
11 four years in the customer side of the U.S. PET sheet market
12 with a company called CM Packaging, which produced plastic
13 and aluminum packaging products. CM Packaging became
14 part of D&W Fine Pack, a packaging producer, where I became
15 Director of Planning and Forecasting.

16 My role at D&W Fine Pack involved supply chain and
17 PET sheet purchases, including from domestic and import
18 sources. At D&W Fine Pack, I was responsible for purchasing
19 150,000,000 pounds of material annually, approximately 70
20 percent of which was PET sheet, for seven thermorforming
21 plants. When I was making buying decisions, the most
22 important factor to me was price. I had to compete with
23 other thermoformers to sell PET packaging and those other
24 thermoformers were also buying PET sheet for the lowest price
25 possible. I purchased PET sheet from both domestic producers

1 and foreign producers, including OCTAL. D&W Fine Pack also
2 extruded its own PET sheet for internal consumption. I can
3 tell you that PET sheet, whether from a domestic PET sheet
4 producer, from an import source, or internally extruded, is
5 the same.

6 As a purchaser, I found that my customers rarely
7 cared where the PET sheet came from. They just wanted to
8 have the lowest price. Ultimately, pricing PET sheet is a
9 race to the bottom. Before CM Packaging became part of D&W
10 Fine Pack, we did not have any internal extrusion capacity.
11 At one point, we became big enough that we considered
12 investing in an extrusion line for internal PET sheet
13 production for our own use, but OCTAL's prices were so low
14 that it simply did not make sense to bring that capability in
15 house.

16 My customers now sitting where I used to sit
17 continue to tell me that PET sheet is the same no matter the
18 source and that price is a predominant factor in their
19 purchasing decisions. As I noted in my earlier testimony,
20 the complete interchangeability and price-sensitive nature of
21 PET sheet is demonstrated perfectly by what happened in 2018
22 when a cyclone knocked OCTAL offline for part of the year.
23 During that outage, we had numerous customers come back to us
24 and even obtained a new customer. These customers did not
25 shut down waiting for OCTAL to come back or switch to a

1 different product. They quickly switched to purchasing large
2 volumes of our PET sheet with no complaints about our
3 quality, delivery, speed, or service.

4 Unfortunately, as soon as OCTAL resumed selling to
5 the U.S. market at a price that was far below ours, we lost
6 that business. We did everything we could to give those
7 customers the best service possible when they needed supply,
8 but price is paramount in this market and we simple could not
9 match OCTAL's offers.

10 I'll note here too that when we were selling to a
11 new customer while OCTAL was shut down because of the cyclone
12 we offered to buy back the scrap regrind resulting from the
13 use of our PET sheet. Just as you heard from another
14 domestic producer today, that customer also told us the scrap
15 was reserved for OCTAL Ohio, which made clear to me that
16 OCTAL Ohio sold our PET sheet made from our regrind material
17 to the same customers that they claim they need D-PET sheet
18 from Oman.

19 PET sheet imports have taken a significant portion
20 of the U.S. market in recent years as they have consistently
21 undersold us in negotiation after negotiation. Where we do
22 try to compete with their offers, we are forced to sell at
23 unsustainably low price levels. Most of our sales are
24 conducted on a transaction-by-transaction basis with very
25 tight margins. That means we are constantly fighting for

1 every additional amount of volume and every extra cent per
2 pound. If I lower my price enough, I can get the sale over
3 extremely low-priced import competition because our products
4 are interchangeable. But even when we keep the volume, the
5 unprofitable price just kills us.

6 As a domestic PET sheet producer, I fully
7 understand the harm that low-priced PET sheet imports are
8 causing the U.S. industry. Despite an uptick in demand for
9 PET sheet in 2019, we watched our order volumes fall over the
10 course of a year to the lowest level we've seen in years.
11 Our customers simply kept shifting their purchases and
12 increases volumes to lower-priced imports.

13 It is not just our sales volume that suffers,
14 however. Our profitability also tanked. Even though raw
15 material costs have been in steady decline for about a year,
16 we are now at one of their lowest points in years. We are
17 unable to improve our markings on the limited amount of PET
18 sheet we did sell because of the downward pressure imports
19 place on domestic prices.

20 Ultimately, competition with unfairly traded PET
21 sheet devastated Ex-Tech in 2019. We had one of our worst
22 years financially in the history of the company and ended the
23 year at a huge loss. We were forced to lay off some of our
24 workforce at the beginning of 2019. By the end of 2019, we
25 closed down our production line for the last two weeks of the

1 year. In the past, we have been able to continue our
2 operation through December with only a few days of closure
3 for the holidays, but in the past couple years, we've been
4 unable to justify operations for the final weeks of the year
5 as customers' orders have dropped off.

6 The increase in demand for PET sheet for use in
7 medical face shields as a result of the COVID-19 pandemic
8 gave Ex-Tech a small reprieve in early 2020. Initially,
9 imported sheet was not competing in the face shield market.
10 Without the downward price pressure of imported sheet, we
11 were able to capture higher sustainable margins on our
12 product for the first time in months.

13 Yet that reprieve was short-lived. OCTAL has begun
14 targeting face shields, took the market, which includes
15 customers that don't ordinarily purchase PET sheet. Clearly,
16 OCTAL is not just targeting its existing large accounts.
17 It's trying to obtain new customers in the face shield market
18 and OCTAL's low prices threaten our ability to compete with
19 those end users as well.

20 We are ready and willing to supply the domestic
21 face shield market with quality, American-made PET sheet and
22 we can do so quickly to meet surging demand in the face of
23 the COVID-19 crisis, but it seems everywhere we turn low-
24 priced imports from Oman and Korea are saturating the market
25 and driving down prices to unsustainable levels.

1 Ex-Tech cannot remain competitive in the PET sheet
2 industry if imports from subject countries continue to
3 dominate the U.S. market with unfairly low prices. I do not
4 see how we can withstand the rapidly declining production and
5 financial injury we're experiencing as a result of this
6 unfair competition. Relief from the dumped PET sheet imports
7 is needed to keep our doors open.

8 Thank you very much for your attention. I'm happy
9 to answer any questions you may have.

10 MR. ROSENTHAL: Our final industry witness this
11 morning will be Doug DeBode. Mr. DeBode.

12 MR. DEBODE: Good morning, Commissioners. My name
13 is Doug DeBode. I am the General Manager of Multi-Plastics
14 Extrusions. I testified before your staff one year ago and I
15 appreciate the opportunity to be here today to tell you about
16 my experience in this industry and the dire need for relief
17 from unfairly traded imports from both Oman and Korea.

18 I believe I offer a little bit of a unique
19 perspective because I actually worked at OCTAL in their
20 importing and marketing arm in the United States, OCTAL Inc.,
21 from 2006 to 2009. I served as the customer operations
22 manager based at the company's Dallas, Texas, headquarters.
23 In that role, I was primarily responsible for setting up
24 OCTAL's logistics and customer service operations for its
25 U.S. and international sales.

1 OCTAL entered the U.S. PET sheet market with a very
2 specific strategy. OCTAL's plan was to sell PET sheet to
3 thermoformers at such a low price that it would no longer be
4 worthwhile for them to invest in in-house PET sheet extrusion
5 lines but to buy PET sheet from OCTAL instead. That's
6 because thermoformers are relying on PET sheet as their
7 primary input to downstream PET packaging. They're
8 constantly making make or buy decisions. Even those
9 thermoformers that decided to invest in PET extrusion lines,
10 they don't install enough PET sheet capacity to meet all of
11 their sheet requirements. They also purchase PET sheet from
12 extruders like Multi-Plastics.

13 In this context, OCTAL's goal in the U.S. market is
14 twofold: first, to win merchant sales away from U.S.
15 extruders, like my company, by offering lower prices, and
16 then secondly to offer such low prices that thermoformers
17 also give OCTAL the volume that could or would have been
18 produced internally. You heard Mr. Grayczyk explain that was
19 the case when he was the purchasing manager at CM Packaging.
20 OCTAL's low pricing led many other thermoformers to reach the
21 same conclusion.

22 When I worked for OCTAL prior to the opening of its
23 domestic PET sheet production facility in Ohio, we had
24 extensive discussions about what that operation would look
25 like. The original plan for OCTAL's Ohio facility was simply

1 to collect all the regrind from the customers, used in the
2 process of thermoforming, and to make noncompeting products
3 out of it, in other words, to get it out of the market.
4 OCTAL soon discovered that it could not maintain sufficient
5 control where that regrind went.

6 As Mr. Parsio explained, post-industrial regrind is
7 very commonly used in the production of PET sheet, so there's
8 a market for resale of that PET regrind by thermoformers back
9 to the sheet producers. Just like PET sheet, the PET regrind
10 that meets specifications is offered at the lowest price and
11 that's what people want to buy. Many other domestic PET
12 sheet producers were buying the regrind for exactly the same
13 reason purchasers were buying PET sheet from Oman: low
14 price. As a result, OCTAL changed direction and purchased
15 extrusion equipment and began producing PET sheet in its Ohio
16 facility. This closed loop arrangement continues today.
17 OCTAL sells imports of PET sheet from Oman to U.S.
18 thermoformer customers. Those customers sell their regrind
19 back to Oman's Ohio facility, often based on a prior
20 agreement or informal commitment not to sell OCTAL regrind to
21 other sheet producers.

22 Then OCTAL's Ohio facility uses the regrind to
23 produce PET sheet for those same and other customers. The
24 driving reason behind why OCTAL did this was to keep its own
25 PET regrind out of the market and to be able to claim that

1 the PET sheet being produced from the regrind in its Ohio
2 facility is a better quality OCTAL regrind product. It's
3 just a marketing gimmick.

4 PET sheet produced from post-industrial regrind is
5 a totally interchangeable product no matter who is making it.
6 In fact, this arrangement also makes clear that OCTAL's
7 imported PET sheet from Oman is interchangeable with PET
8 sheet produced from virgin or recycled PET here in the United
9 States. OCTAL's U.S. production facility makes PET sheet
10 primarily from OCTAL's scrap PET material, but the sheet gets
11 sold to the same U.S. customers for the same end uses and
12 runs on the same thermoforming equipment.

13 I expect OCTAL to talk today about what it claims
14 is special about its D-PET sheet that's made directly from
15 its PET melt in Oman. The D-PET name is merely marketing for
16 PET sheet made from virgin inputs. Multi-Plastics and many
17 other domestic producers also make PET sheet from virgin
18 inputs. No U.S. customer must have OCTAL's D-PET sheet to be
19 successful on its equipment or to make a downstream product.
20 Let me give you two examples.

21 First of all, we've heard that OCTAL recently
22 landed a very large volume deal with a U.S. customer that
23 makes PET packaging primarily for strawberries. The
24 strawberry baskets are considered commodity packaging
25 products. They don't require exceptional clarity,

1 formability, or any other qualities that OCTAL claims about
2 its D-PET sheet from Oman. You bought strawberries and you
3 know that the strawberry baskets have many holes or slits in
4 them. They're often covered with dirt or leaves or other
5 debris. They also have a large label on the top.

6 In fact, we used to sell to this customer that I'm
7 talking about, and the customer always requested from us the
8 lowest quality specifications in order to lower its costs,
9 period. We provided the customer with a significant volume,
10 millions of pounds of material, over many, many years without
11 a single complaint. We were invited to bid on the business
12 this year also about six months ago, but we lost to OCTAL's
13 price.

14 A second example involves a customer just starting
15 with us out of retail from our facility. The customer
16 created a PET meat tray, like the trays underneath raw meat
17 and poultry you buy at the grocery store. They did this to
18 replace the common lighter weight polystyrene foam meat
19 trays. Multi-Plastics has supplied significant quantities of
20 color and clear sheet for this use, over 2.1 million pounds
21 in 2018. That was before, during, and after the cyclone in
22 Oman.

23 MR. BISHOP: Could you get a little closer, Doug?
24 We're losing you a bit.

25 MR. DEBODE: I'm sorry. The first question that we

1 were asked by the owner of this company was, what's your
2 price? That customer shifted into OCTAL sheet from Oman
3 except for its colored PET sheet products. Why would they
4 use PET sheet imported all the way from Oman to replace an
5 extremely light-weight low-cost and ubiquitous polystyrene
6 foam tray? Because Omani PET sheet is so low price. It
7 doesn't matter that OCTAL claims its sheet has better
8 clarity. For this purpose, no one is going to see the tray
9 covered in raw meat juice and an absorbent pad. Instead, the
10 customers are buying from Oman while we are just 30 minutes
11 away because of price.

12 Universally, customers purchase PET sheet on the
13 basis of price, whether it's virgin PET sheet from Oman or
14 domestic producers or recycled PET sheet. The fact that
15 OCTAL's Ohio facility sells recycled PET to the same
16 customers that buy imported PET sheet proves that point.

17 OCTAL also made claims that its sheet is easier to
18 run on customers' thermoforming equipment. That's just not
19 true and it's not like thermoformers are buying Omani sheet.
20 Thermoform operators need to make minor adjustments from one
21 material to the next. A customer called us once and said an
22 inexperienced operator had a problem running a roll. We were
23 concerned and our customer service manager followed up to
24 ensure that there were no further problems. The owner told
25 them that there were no further issues as they had had a more

1 experienced operator complete the minor adjustments. That
2 customer is the same one that's 30 minutes down the road.
3 Had the operator been running Multi-Plastics' sheet and then
4 gone to OCTAL, minor tuning would also have been required.

5 OCTAL's assertion that these everyday realities
6 indicate some difference in our qualities is baseless. The
7 low-priced import competition from Korea and Oman over the
8 past several years has had a devastating effect on my
9 company, as you heard from Mr. Parsio. I ask the Commission
10 to affirm that truth, eliminate unfair pricing, and give my
11 company and our employees in Hazleton, Pennsylvania, a chance
12 to survive in this industry.

13 Thank you very much.

14 MR. BISHOP: Paul, you're on mute.

15 MR. ROSENTHAL: That concludes the domestic
16 industry's direct statement. Before we answer questions I
17 want to introduce my colleagues, Kathleen Cannon and Brooke
18 Ringel, and Gina Beck and Mike Kerwin of Georgetown Economic
19 Services, who will be available to answer questions as well.
20 Thank you.

21 MR. BISHOP: Mr. Chairman, that concludes direct
22 testimony from this panel.

23 CHAIRMAN KEARNS: Okay. Thank you all very much.
24 I will begin questions today. And, again, thank you to all
25 the witnesses for your testimony. I'm going to start with

1 impact. On pages 38 through 39 of your brief, you argue for
2 exclusion of certain data in our impact analysis. Given that
3 we must consider the industry as a whole, can the Commission
4 do so, and is there a precedent for excluding such data?

5 MR. ROSENTHAL: Ms. Cannon will address that issue.

6 MS. CANNON: Good morning, members of the
7 Commission. Kathy Cannon with Kelley Drye for the record.
8 Yes, Chairman Kearns, we looked at this issue and you're
9 correct that generally speaking, the Commission is required
10 to look at the industry as a whole. But there was a court
11 case, the ALTech case, which was appealed to the Court of
12 International Trade and then affirmed by the Court of Appeals
13 for the Federal Circuit, that has a very important
14 qualification to this, and I think it's so important I will
15 read a quote from that case and we'll expand further on this
16 in our brief.

17 But what the court said was, "Evaluating the
18 domestic industry as a whole, however, is not a license to
19 ignore information that could give context and meaning to the
20 data it is analyzing in assessing the domestic industry's
21 performance. Indeed, the statutory directive to analyze the
22 industry as a whole compels an evaluation of all material
23 factors raised by the parties that could render a more
24 accurate reading of the health of the industry."

25 So I think that quote speaks directly to the

1 situation presented to you here. I can't get into the facts
2 a lot, but if you look at the contrast and the data on
3 Confidential Slide 18 in our PowerPoint at page 42 of our
4 brief, you will see that it's quite different and that the
5 company we're referring to as the aberrational producer
6 really is positioned quite differently. So, when you see
7 particularly from page E11 of your staff report how the
8 industry individual companies are doing otherwise and
9 collectively, you will see quite a different picture and that
10 indicates the injury they have experienced.

11 So I believe in the context of that type of a legal
12 analysis you are definitely allowed to look at the data as we
13 have presented it.

14 CHAIRMAN KEARNS: Okay. Thank you. And just a
15 followup to that. I mean, it seems to me that we wouldn't
16 want to just show that one producer looks different. You
17 know, its financial numbers are different from everyone
18 else's. We would also want to kind of trace that back to,
19 you know, how it differs from other U.S. producers and
20 whether there is or is not -- you know, whether or not that
21 producer is or is not competing directly with subject
22 imports. And I didn't see a whole lot in your brief that
23 kind of addresses that. I mean, I think what I heard instead
24 was more along the lines of, you know, the numbers speak for
25 themselves. They're so aberrational compared to the other

1 producers, and I take that point. But if you could all maybe
2 post-hearing provide us with a better explanation as to why
3 that producer is in just a very different category because,
4 again, I mean, I think, you know, if we see purchaser data,
5 for example, that show head-to-head competition between that
6 producer and subject imports, you know, I think that's one
7 thing. If instead this is a producer that's, you know,
8 basically producing just a very different product and is not
9 competing on a purchaser-by-purchaser basis with subject
10 imports, that would be another. So maybe post-hearing you
11 can say more.

12 MS. CANNON: Absolutely. We will do that. In
13 fact, there is information in your staff report to that very
14 effect about --

15 CHAIRMAN KEARNS: Okay.

16 MS. CANNON: -- this producer competing
17 differently. We've also asked your staff to look into that a
18 little more so that we could gather additional information,
19 and it's difficult in the context of this hearing to discuss
20 what that would be, but I take your point and believe we can
21 address that exactly to show the lack of competition that is
22 enabling the different performance.

23 CHAIRMAN KEARNS: Great. Okay. Thank you. I want
24 to just -- yeah, Mr. Rosenthal?

25 MR. ROSENTHAL: I just do want to add two things.

1 Number one, in our brief, we note some internal problems with
2 the data you've gotten from that particular company. It does
3 not seem to be all sensible. They're excluding certain
4 things, if you will, without going into detail. So there's a
5 problem with the data itself apart from it being -- I would
6 say as Ms. Cannon noted from the staff report they're
7 producing different products that don't seem to be in
8 competition with the imports or, frankly, with the rest of
9 the domestic industry. So we will expand on both of those
10 points.

11 CHAIRMAN KEARNS: Okay. Good. Thank you. I
12 wanted to turn to the next producers' issue. Producers that
13 both internally consume PET sheet and sell on the open
14 market, what affects their decisions to sell on the open
15 market? Is their primary concern sales of the downstream
16 packaging? What I'm trying to figure out here is this
17 reminds me a little bit of a case we saw recently or a few
18 cases we saw recently involving co-products where you might
19 see, you know, the behavior of some firm that doesn't really
20 care about what the prices are it gets in the merchant market
21 for a product, resulting in, you know, quite a bit of noise
22 and inconsistencies I think in the effects of that market.
23 Is that what we see with mixed producers here? Obviously,
24 it's not a co-product, but is it the same sort of impact on
25 the market that we would see in those sorts of cases?

1 MR. ROSENTHAL: Well, Chairman Kearns, when you
2 talk about mixed producers, you're talking about folks who
3 both consume internally and also sell into the merchant
4 market?

5 CHAIRMAN KEARNS: Yes.

6 MR. ROSENTHAL: Okay. I'll ask if any of the
7 industry witnesses have an opinion on those companies and
8 then chime in as counsel. Brian or Doug or John, have a
9 thought on companies that sell both merchant market and
10 internally?

11 MR. DEBODE: This is Doug DeBode from Multi-
12 Plastics, Commissioners. I would say that in the PET
13 industry I'm not aware of anybody that actually does that,
14 who both makes their own PET product and sells it into the
15 merchant market. I think when we're talking about an interim
16 producer, most of what we talk about is people that have a
17 production level or a consumption level internally, as well
18 as a need for outside sheet that they purchase from either us
19 or from OCTAL or something like that. It's not that they
20 sell that product in the open market, not the sheet in the
21 open market.

22 I can tell you an example in the polystyrene market
23 where we do know someone that does that, but it's because
24 they don't have the demand internally for the product and so
25 they sell it just to keep the machines running and low prices

1 in the marketplace. Thank you.

2 MR. ROSENTHAL: And this business, though, PET
3 sheet, it's usually the converse? Usually they're making up
4 for their lack of capacity internally in buying from the
5 merchant market?

6 MR. DEBODE: I concur with that.

7 MR. ROSENTHAL: Yes.

8 CHAIRMAN KEARNS: Okay. And why do they do that?
9 Is it structural? Are we seeing a change over time where
10 they're increasingly deciding it's cheaper to just purchase
11 PET sheet from others, or is it more of a cyclical sort of
12 thing?

13 MR. PARSIO: I think it's what we've been talking
14 about consistently that the strategy of some importers are to
15 sell at a price that doesn't give an advantage to an
16 individual to increase their capacity of internal production
17 for their own use because of economics.

18 CHAIRMAN KEARNS: So you're saying that those
19 purchasers who also make their own PET sheet are increasing
20 their sales of the downstream product over time and rather
21 than ramping up capacity to produce PET sheet accordingly,
22 they instead decide we might as well just purchase this
23 cheaper product from subject imports?

24 MR. PARSIO: Absolutely. Yes.

25 MR. THIBADO: Again, I believe that's due to the

1 imports being a lower price.

2 CHAIRMAN KEARNS: Okay. And I guess if you all can
3 point us, Mr. Rosenthal and others, to anything post-petition
4 or, I mean, I'm sorry, post-hearing that would help us see
5 that, you know, whether we're looking at individual, you
6 know, mixed producers where they over time are really
7 increasing purchases of subject imports. I think that might
8 be helpful.

9 MR. ROSENTHAL: Mr. Chairman, we will do that, but
10 if you take a look at Slide 17 I believe it is, you'll see
11 the contrast between the capacity utilization in the full
12 market versus just the merchant market and you see there is
13 despite the increase in demand -- I just want to make sure --
14 yeah, it is 17. I memorized these. The total market
15 capacity utilization was actually going down and that's the
16 resultant phenomenon we're talking about. But capacity
17 utilization didn't decline as much as in the merchant market
18 for the reasons you just heard.

19 CHAIRMAN KEARNS: Okay. Very helpful. Thank you.
20 My time is up.

21 MS. CANNON: Mr. Chairman, I can -- Mr. Chairman,
22 could I just add a quick point? You asked about the
23 anomalous producer, and I just wanted to direct you to the
24 staff report at Section 6, page 10, Footnotes 4 and 6, and I
25 think that will be helpful to get a little bit more

1 information about that particular producer.

2 CHAIRMAN KEARNS: Okay, thank you.

3 Vice Chair Stayin, I think you're next. Think you
4 might be on mute.

5 MR. BISHOP: You're still on mute, Vice Chair. No,
6 no, it's not working yet.

7 CHAIRMAN KEARNS: Bill, can you unmute Randy?

8 MR. BISHOP: It's showing that he is unmuted. It's
9 showing -- it's still showing that he is unmuted. I've muted
10 him now, and I've unmuted him now.

11 Vice Chair, can you try to speak again?

12 VICE CHAIRMAN STAYIN: Can you hear me, Bill?

13 MR. BISHOP: We can hear you now.

14 VICE CHAIRMAN STAYIN: Okay.

15 MR. BISHOP: We can't hear you again. Speak again.

16 VICE CHAIRMAN STAYIN: Can you hear me now?

17 MR. BISHOP: Very, very faintly. No, we can't hear
18 you.

19 CHAIRMAN KEARNS: Mr. Secretary, should we go on to
20 the next Commissioner?

21 MR. BISHOP: Yeah, we'll try to get the Vice Chair
22 figured out here.

23 CHAIRMAN KEARNS: Okay. Commissioner Johanson?

24 COMMISSIONER JOHANSON: All right. I'd like to
25 thank all the parties for appearing here today. Okay. My

1 first question is this. Respondent observes that the dumping
2 margins found by Commerce on most of the subject imports are
3 quite low and are much lower than the underselling margins
4 for PET sheet from Oman. Given the statute directs us to
5 consider the magnitude of the margin of dumping in our impact
6 analysis, what weight should we give to this?

7 MR. ROSENTHAL: Paul Rosenthal. Very little at
8 this point. Wait until you see the final margins before you
9 consider this argument at all, but, in general, the
10 Commission has disdained what amounts to margins analysis.
11 It doesn't say you ignore it totally, but the clear precedent
12 and direction from Congress has been not to do what is done
13 in other countries sometimes, which is to basically look at
14 the margins of dumping as if it were the same thing as the
15 margins of underselling.

16 We can expand more on that in our post-hearing
17 brief, but I can't recall a case in which the Commission in
18 the last 15 years has relied on the margins of dumping as a
19 true indicator of the extent of injury.

20 COMMISSIONER JOHANSON: Thank you, Mr. Rosenthal.
21 This is a unique case because the dumping margins found by
22 Commerce to this point are quite low, and they don't -- I
23 know it's often the case that they do not reflect what we see
24 in underselling, which can be expected, but in this case,
25 there's quite a disparity, so it is a somewhat unique

1 situation, I believe.

2 MR. ROSENTHAL: Well, it isn't affirmative, number
3 one, and, as I said, you're not done yet.

4 COMMISSIONER JOHANSON: Right.

5 MR. ROSENTHAL: As you who have done dumping cases
6 on the Commerce side know, very often, the prelims are lower
7 than the final because, in many instances, the Commerce
8 Department gives the benefit of the doubt to respondents and
9 then goes on verification and has a hearing. I'm pretty
10 confident the margins will go up from the number that you saw
11 in the prelim.

12 Beyond that, you don't see that issue at all with
13 respect to Korea, which had more substantial margins than
14 Oman. And, frankly, as you heard from one of the domestic
15 industry witnesses this morning, as a result of those higher
16 margins, that company was able to get sales that previously
17 had been obtained by the Koreans. I think you'll be seeing
18 something similar along those lines when the margins for Oman
19 get published.

20 COMMISSIONER JOHANSON: All right. Thank you, Mr.
21 Rosenthal. Now I'm going to move to an issue which was
22 raised by Commissioner Kearns. It was discussed at some
23 length by the witnesses, but I want to dig a bit more into
24 this issue since it was a major part of Respondents'
25 arguments in their brief.

1 On page 15 of their brief, Respondents argue that,
2 given the large presence in the merchant market of integrated
3 packaging companies with different business objectives, the
4 Commission cannot assume that a decrease in shipments was
5 solely because of subject import competition. What factors
6 might cause an integrated packing producer to reduce PET
7 sheet shipments into the merchant market?

8 MR. ROSENTHAL: I think we touched a little bit on
9 that topic in the previous question, and, frankly, I think
10 what you're really seeing is almost the converse of what the
11 Respondents are talking about, which is now companies that
12 are using their own equipment for their own internal
13 purchases are buying more imported product as opposed to
14 using their capacity to sell into the merchant market. It's
15 a fairly common thing, but I also think, to some extent, it's
16 a result of some consolidation in some of these companies.
17 Maybe Brian can tell you a little bit more about that. He
18 and the others who have been on the purchasing side of this
19 business can tell you what's going on there.

20 Brian?

21 MR. GRAYCZYK: Well, sure. Yeah, thank you. Yep.
22 Thank you, Mr. Commissioner. What happens in this industry
23 every year is basically consolidation, one company buying
24 another. Maybe the company that was purchased didn't have
25 their own extrusion capabilities and someone who was bigger

1 bought one of our customers. The customer landscape changes
2 every year with the constant consolidation in this
3 marketplace.

4 COMMISSIONER JOHANSON: Okay. Thanks for your
5 response. Oh, I'm sorry. Ms. Cannon?

6 MS. CANNON: Yes, Commissioner, I just wanted to
7 add that you had indicated you were looking at data that
8 combined the companies that were selling exclusively to the
9 merchant market with those that were also mixed, but I would
10 highlight that in the staff report in Section III at pages, I
11 think it's 9 through 11, there are discrete breakouts for
12 just commercial market -- merchant market sales alone that
13 don't combine the mixed producers, and those are all really
14 accentuating the impact of the imports and the decline on the
15 industry in terms of their production and shipments to a far
16 greater degree, so I would suggest that that would be another
17 indication of the direct impact of the imports on those most
18 affected.

19 COMMISSIONER JOHANSON: All right. Thanks for your
20 responses. And, once again, I realize that Commissioner
21 Kearns raised this issue as well, but this is a point -- the
22 whole issue of mixed producers is a point with which the
23 Respondents put a lot of ink, and so I wanted just to get a
24 bit more into it.

25 Moving on to a different issue, the D-PET

1 manufacturing process has been stated to be different from
2 the extrusion process. In the preliminary phase, it was
3 noted that four patents have been granted for the D-PET
4 process. Are these patents evidence of significant
5 differences in the domestic industry's extruded products and
6 OCTAL's D-PET product or processes?

7 MR. ROSENTHAL: I'll ask Mr. DeBode and Mr.
8 Grayczyk, but Mr. DeBode, who actually worked for OCTAL, may
9 have some insight into this.

10 MR. DEBODE: Thanks very much. I can add a little
11 bit but not a lot because my timeframe at OCTAL was prior to
12 the D-PET process being installed. But I know, because of
13 what -- it would be process-related, though, sir. It's
14 simply a difference in the way they make the material, which
15 I'm sure they'll talk about this afternoon, where it goes
16 directly from a reactor into a die for sheet to be extruded.
17 That's the main difference in what they're doing there, not
18 much else.

19 MR. ROSENTHAL: Brian, Mr. Grayczyk, do you have
20 something to add here?

21 MR. GRAYCZYK: Yeah. Brian Grayczyk, Ex-Tech
22 Plastics. So, again, I'll speak to my experience working at
23 D&W Fine Pack where we did extrude our own PET sheet. We
24 bought from the Petitioners and OCTAL and Korea and others,
25 so we bought from pretty much any source that we could, but,

1 at the end of the day, it was just, you know, who could get
2 it to us at the best price or where could we get it the
3 quickest.

4 But we ran hundreds and hundreds, several hundreds
5 different of PET items, and we could use any one of these
6 companies that are here today. We could use any one of their
7 products or our own PET sheet for those specific items, for
8 those different SKUs. So we'd have, say, a carryout
9 container, and we could use OCTAL, we could use Ex-Tech, we
10 could use Advanced, we could use Multi, or we could use our
11 own sheet. It didn't matter.

12 COMMISSIONER JOHANSON: But, again, despite the
13 different patents involved in the process, in the end, you do
14 not see any differences in the product, the final product?

15 MR. GRAYCZYK: No, sir, we did not. It was clear
16 PET is clear PET.

17 COMMISSIONER JOHANSON: Okay. I actually have a
18 follow-up question for this, but, given that I only have
19 about 45 seconds left, I'll go ahead and follow up with that
20 in a minute, but, Ms. Ringel, did you have something to add?

21 MS. RINGEL: Yes, Commissioner Johanson. Thank you
22 so much. I just wanted to add that, ultimately, regardless
23 of the differences or any claimed physical differences or
24 quality or production differences that OCTAL claims, the
25 domestic industry witnesses today have testified to,

1 ultimately, at the end of the day, the overlapping
2 competition in the market between OCTAL's PET sheet and their
3 own PET sheet, and Mr. DeBode gave two very good examples of
4 this, one, the strawberry container that it doesn't require
5 any of the claimed qualities that OCTAL makes, and yet that
6 particular customer is using OCTAL's PET sheet because of its
7 pricing, and then also the meat tray that is typically not
8 even a clear product, is typically a grayish product because
9 it's covered in meat and juice and an absorbent pad, and no
10 one actually has to see it, and yet OCTAL's allegedly
11 superior product is being used for that purpose.

12 So, ultimately, at the end of the day, regardless
13 of the claimed differences in quality, there is significant
14 overlapping competition across end uses for all producers'
15 PET sheets.

16 MR. ROSENTHAL: Commissioner Johanson, I know your
17 time is up, but I just want to add one thing. We're talking
18 mainly about their claimed difference in process, but, as
19 you've seen in other cases, the process here and in those
20 other cases don't result in a different end product. The end
21 product is all interchangeable. We can give you other
22 examples, but I just want to re-emphasize that point.

23 COMMISSIONER JOHANSON: Okay, thank you.

24 MR. DEBODE: Can I add one item to that, sir?

25 COMMISSIONER JOHANSON: Certainly.

1 MR. DEBODE: I have right here, this is a tray.
2 Paul was just talking about the meat trays. This is a tray
3 that was for meat. This is for packaging meat, in this case,
4 hamburgers. I bought it at the grocery store, my local
5 grocery store on Sunday, not for this case, I just happened
6 to note who it was made by.

7 One of the folks who will be talking this
8 afternoon, 30 minutes down the road from us, also makes meat
9 trays. This meat tray that I just held up is made from 100
10 percent recycled material, so it's already gone out, it's
11 already been consumed, been recycled back into new product.

12 That's at the exact opposite end of the spectrum
13 from OCTAL's material or normal PET sheet. So it was used
14 for that exact same purpose that the customer 30 minutes down
15 the road is using OCTAL's product for.

16 The recycled mixture of this did not diminish the
17 characteristics of it. This was tinted gray was why it was
18 gray. The formability of this product allows the person that
19 made it, which is actually a domestic producer who competes
20 with all of us, including OCTAL on this call, they
21 thermoformed the product. They have detail down to 1/32nd of
22 an inch on that thermoformed tray. So there is not major
23 detail that a thermoformer can get with their product out of
24 the OCTAL tray than with this tray that's at the opposite end
25 of the market from their tray. I just wanted to point that

1 out because it shows that interchangeability of that
2 equipment.

3 And one thing that's interesting is that the
4 grocery store that I bought this in is a grocery store called
5 Weis, it's local here in Pennsylvania, and it's the grocery
6 store that the customer 30 minutes down the road has on their
7 website talking about their material from OCTAL. So the same
8 grocery store is buying both of these products for the same
9 use.

10 COMMISSIONER JOHANSON: Okay, thank you. My time
11 is well expired. Oh, I'm sorry. Ms. Beck, can you just make
12 it quickly, please?

13 MS. BECK: So quick. Gina Beck of GES. If I could
14 just direct you again to the purchasers' data on Chart 4
15 which also underscores the interchangeability and the
16 comments of our witnesses.

17 COMMISSIONER JOHANSON: Okay, thank you, Ms. Beck.
18 My time is expired.

19 VICE CHAIRMAN STAYIN: May I step in?

20 MR. ROSENTHAL: Yes. Please.

21 CHAIRMAN KEARNS: Certainly.

22 VICE CHAIRMAN STAYIN: Thank you. Pardon me for
23 the technical problem. Apparently, we've got
24 it -- hopefully got it solved. Two primary issues, according
25 to the purchasers, quality and price, are very important.

1 They're listed as both -- 15 purchasers stated that for both
2 of those items. And then the question for me is, well, what
3 is quality? I know what price is. We know there's
4 underselling. What about the quality issue?

5 In this table, it's Table 2-7 on page II-13, in the
6 words next to quality, it said, "quality meets industry
7 standards." Does that mean that the quality provided by the
8 Omani product meets industry standards and the U.S. product
9 does not meet industry standards?

10 I mean, I'm trying to understand the difference in
11 quality because they're trying to differentiate the U.S.
12 product and the Omani product, so if you might please address
13 the quality issue and compare it to the price issue.

14 MR. ROSENTHAL: Vice Chair Stayin, I'm going to
15 start first on that, but I would refer you to our slide
16 presentation, Confidential Slide 5, which really does get at
17 the question of interchangeability, which includes quality.

18 And our view and the view of the purchasers and
19 importers, not just the domestic industry, is that there is
20 no difference in quality. You see these quotes that other
21 third parties, if you will, without a dog in the fight
22 basically say that the D-PET product made by OCTAL is the
23 same quality and interchangeable with the products made by
24 the U.S. producers using a slightly different process but
25 ending up with the same results.

1 So look at Confidential Chart 5. I'll let the
2 industry witnesses go on. I should also add, if you look at
3 the comparison of the Omani and U.S. product, you see that
4 all the purchasers regard them as comparable on everything,
5 including quality, and the only thing they're not comparable
6 on is price, and that's where the U.S. industry, from the
7 purchasers' point of view, is not as good as Oman, meaning
8 it's lower-priced. The Omani product is lower-priced. But,
9 on quality, the purchasers and importers rate them
10 comparably.

11 Mr. Grayczyk, did you have something to add there?

12 MR. GRAYCZYK: Yes, thank you. I was going to say,
13 regarding price and quality, you know, those are two of the
14 most important factors. You know, when people are looking at
15 buying, as I used to buy myself.

16 But what I wanted to say was, you know, Ex-Tech,
17 and I know the other Petitioners, all proved that our quality
18 was just as good as the imported material from Oman during
19 the cyclone shutdown as we all were able to provide millions
20 and millions of pounds to Inline during that shutdown with
21 zero returns.

22 And our quality level is just across the board --
23 not just to Inline but to the industry as a whole, you know,
24 our return percentage is less than 1 percent. So we're very
25 proud of that, and I'm sure my competitors can speak to that

1 as well, but our quality is right there along with the
2 imported material.

3 And, if I can, I agree with Mr. Grayczyk as well in
4 the fact, again, that same customer that was noted, because
5 of their size, I would suggest, that most any domestic
6 producer stepped in and had some short-term sales during the
7 cyclone and performed extremely well. Unfortunately, when it
8 came back to price and nothing else, we lost to imports.

9 MR. ROSENTHAL: Mr. Thibado, can you comment on
10 this, please?

11 MR. THIBADO: Yes. We had pretty much the same
12 experience with a large customer we were servicing. We were
13 starting to ship millions of pounds. We had a little problem
14 with the topical, but we were one-tenth of 1 percent return.

15 And our industry as a whole, we track on our
16 scorecard for our regular customer base, I don't mean to
17 upstage Brian from Ex-Tech, but we are under one-half of 1
18 percent for return rate as a whole. Our quality is
19 exceptional.

20 VICE CHAIRMAN STAYIN: Thank you very much.
21 Another question is when the cyclone hit Oman and they were
22 unable to supply the -- as I understand it, the customers of
23 Omani were buying products from the U.S. producers, and were
24 there any issues there? Were there problems with the buyers,
25 purchasers, buying domestic product and being able to use it

1 as they were able to use the Omani product?

2 MR. PARSIO: What we heard from most, we supplied a
3 substantial amount of material at that time and had no issues
4 at all with any individual using that material.

5 VICE CHAIRMAN STAYIN: So, when you supplied the
6 Omani customers, there were no issues raised on quality?

7 MR. THIBADO: No, not on our part. As a matter of
8 fact, we received compliments on quick turnaround, quick
9 delivery, quality. No problem at all.

10 MR. GRAYCZYK: I concur. We also had no problems
11 at all with our material, same thing. I know that the
12 customers were extremely happy that we were able to step up
13 and provide them with a quality product in a timely manner.

14 VICE CHAIRMAN STAYIN: Were you able to increase
15 your prices at that time when the Omani product wasn't in the
16 market?

17 MR. PARSIO: We were able to gain some price level
18 there, but we also didn't want -- we knew it was going to be
19 a short-term situation, so we also -- we tried to show a
20 level of competitiveness to try to maintain some of that
21 volume after the restart so, you know, customers wouldn't --
22 we didn't want them to be viewed as being gouged, although
23 there was a differential in price because price is so
24 sensitive, so there was that view to a certain extent.

25 MR. GRAYCZYK: Mr. Vice Chairman, if I may add we

1 were actually able to sell at a price where we didn't have to
2 match the import price, so we were actually able to sustain
3 some reasonable margins for the first time in many, many
4 months.

5 VICE CHAIRMAN STAYIN: And when the Omanis came
6 back online, were you able to keep those customers?

7 MR. GRAYCZYK: Absolutely not. Unfortunately, no,
8 we were not, no.

9 MR. THIBADO: Almost 100 percent no.

10 VICE CHAIRMAN STAYIN: What was the reason?

11 MR. THIBADO: Price. The price, exactly. And I
12 want to make one extra comment regarding pricing. You know,
13 with our inability to buy the regrind back, which we
14 typically do with other customers, we had to take a look at
15 our net cost and adjust it fairly to market, so, you know, if
16 we would have been able to get the regrind back, we would
17 have been able to even reduce the price further to be more
18 competitive, but because they kept the regrind for OCTAL, you
19 know, it took that opportunity away.

20 VICE CHAIRMAN STAYIN: Thank you very much. My
21 time has run out.

22 CHAIRMAN KEARNS: Thank you.

23 Commissioner Schmidtlein? I think you're on mute.

24 COMMISSIONER SCHMIDTLEIN: There you go. I pressed
25 it and then I pressed it again. Okay. Thank you very much.

1 I'd like to thank all the witnesses for appearing here today
2 as well.

3 I'm going to start with some questions about your
4 pricing arguments. So the Respondents contend that the
5 domestic industry's PET sheet prices generally track
6 movements in raw material prices and that, therefore, any
7 declines in domestic industry prices were just a function of
8 a decline in those raw material prices. And it looks like
9 some of the domestic industry contract sales are indexed to
10 raw materials but not all of them.

11 Can you address this argument? Do you agree that
12 there is normally a strong correlation between PET sheet
13 prices and PET resin prices?

14 MR. ROSENTHAL: Doug? Mr. DeBode, would you like
15 to answer that?

16 MR. DEBODE: I would. Thank you very much,
17 Commissioner Schmidtlein. I also purchase resins for our
18 company, including PET, so I probably am in one of the best
19 positions to answer that question.

20 There is definitely a correlation between prices
21 lowering and the sheet product prices lowering. That could
22 be true for OCTAL if they're tied to an index. It's also
23 true for us, not necessarily because of an index, but because
24 everybody expects with the decrease in prices that -- excuse
25 me, in resin prices or input prices, that the cost of sheet

1 will go down. So we see our sheet price go down as the resin
2 price input costs go down, just like you see OCTAL's sheet
3 price go down.

4 So we don't gain any damage there or anything else
5 when their price goes down because our price has to go down
6 also. We're still capped by what their price is as to what
7 we can sell at. So it doesn't get us in any better situation
8 just because the pricing is moving down because of an index;
9 we're all affected by that.

10 MR. ROSENTHAL: Commissioner Schmidtlein, I think
11 you'll see from the data that it didn't matter whether PET
12 resin prices were going up or down. The domestic producers
13 were still losing money, and so what matters not so much as
14 the indexing is where you start your pricing to begin with.

15 If you start at a low base price, lower than, as
16 OCTAL does, lower than the domestic industry price is, as
17 things go up and down on your input materials, you're still
18 underselling when the raw materials, the PET resin is going
19 up, and you're underselling when the PET resin's going down.
20 That's a result of basically contracts with low starting
21 prices, and the indexing just perpetuates that.

22 COMMISSIONER SCHMIDTLEIN: So can you elaborate a
23 little bit on your price suppression argument. You know,
24 what's the best evidence on the record that domestic
25 producers weren't able to raise prices adequately? Are you

1 relying primarily on the fact that they were losing money?
2 Is it anecdotal evidence?

3 MR. ROSENTHAL: I'll let Ms. Beck talk about the
4 cost of goods sold versus the realized prices and the price
5 suppression evidence there.

6 MS. BECK: Commissioner Schmidtlein, yes, we have
7 relied on anecdotal evidence. The witnesses can jump in too.
8 I think they have some really good examples.

9 Given the averaging of values in this case, as you
10 will see why the variance analysis isn't used, it has to do
11 with a product mix. The actual cost data in the AUVs are not
12 what we're relying on because the AUVs are not probative
13 here.

14 But we will provide more examples and more support
15 in our post-hearing brief, but I know, for example, our
16 witnesses have examples that I think would be helpful to you
17 now as well.

18 COMMISSIONER SCHMIDTLEIN: Sure. Would any of the
19 witnesses like to speak to that?

20 MR. PARSIO: I'm trying. Can you hear me?

21 COMMISSIONER SCHMIDTLEIN: Yes.

22 MR. PARSIO: There we go. Yeah, I have a situation
23 where I had a contract with an individual company and we were
24 indexed and we were lagging in the index, so we would lag a
25 month behind. And when it came time for that contract to

1 end, as well as prices in theory would have went up and I
2 would have been able to maintain a margin, that decline
3 happened every month over a period of let's just say six
4 months, so I lost every month for six months on the incline
5 with the monthly lag. When that contract was over, OCTAL
6 took that business at a price that not only could I ever not
7 catch up, but it was gone.

8 So that shows you once again in an inclining market
9 of inclining prices, costs -- inclining costs, and trying to
10 incline prices, we still got beat.

11 COMMISSIONER SCHMIDTLEIN: Okay. Okay. Well, I
12 would invite you to include any other witness examples in
13 your post-hearing brief.

14 MR. PARSIO: We'll do that.

15 COMMISSIONER SCHMIDTLEIN: Okay. Let me move to a
16 slightly different topic. This has to do with the fact that
17 U.S. producers and importers are concentrated in different
18 types of channels, I guess, so U.S. producers have more
19 products sold under long-term -- I'm sorry, under spot sales,
20 more concentrated in spot sales. Importers are more
21 concentrated under long-term contracts.

22 I see that U.S. producers do also sell under the
23 long-term contracts, but I wonder if some of the witnesses
24 could elaborate on that in terms of how they see the
25 competition in the market from subject imports. Are they

1 encountering subject imports in the spot sale market?

2 MR. PARSIO: Yes, I believe they are. I mean, I
3 don't believe it's relative to a length of a contract because
4 almost any contract would have to have a mover type of
5 indexing, whatever mechanism to move as the raw material
6 inputs move.

7 So, ultimately, I'd be happy if the price was more
8 competitive and I could make money on a long-term contract.
9 I'd be happy to lock in a margin on a number that moves with
10 an index, but I think that generally people are locking into
11 a long-term contract with subject importers because their
12 ultimate beginning price is lower.

13 MR. THIBADO: I agree. We all would love to have
14 long-term contracts. We just don't get that opportunity
15 because of our beginning, our opening price, where we need to
16 be to make money. So we don't feel that or at least I don't
17 feel that we have that opportunity.

18 COMMISSIONER SCHMIDTLEIN: Has your concentration
19 in terms of how many sales you make in the spot market versus
20 long-term contract, has that shifted over the POI? In other
21 words, were you at the beginning of the POI selling more
22 under long-term contract, and now you've been moved to the
23 spot market because you've lost those contracts?

24 MR. PARSIO: Unfortunately, as Mr. Rosenthal said
25 prior in his actually opening remarks, this has been going on

1 a lot longer than the period of interest. So I would like to
2 say that that's the case.

3 Yes, there was a time, but we're talking about 2014
4 or so, so, unfortunately, maybe we were slow to the game,
5 slow to the process, understanding we can even talk to people
6 like yourselves to try and help us.

7 MR. THIBADO: Yeah, I agree. I started selling
8 sheet back actually in 2000, and that time frame was -- the
9 ability to speak to any contracts tapered out, but prior to,
10 let's say, 2008, everybody wanted a contract; they wanted to
11 be locked in.

12 MR. PARSIO: And that coincided directly with the
13 influx of the imports we've been talking about.

14 MR. THIBADO: Yes, exactly.

15 MR. ROSENTHAL: Commissioner Schmidtlein, it is
16 true that, as you heard from OCTAL's counsel and in the
17 briefs, that OCTAL does have long-term contracts with some
18 customers, but you've also heard that they are selling in the
19 spot market for a number of other customers and also even
20 most recently in the face shield market. Those are not long-
21 term contracts. They came in on a spot basis and are
22 competing there as well. So, while they have these long-term
23 contracts that basically lock in stable underselling, as Mr.
24 Porter would call it, they also are going after spot sales
25 that are not under contract.

1 MR. PARSIO: I can't remember a time in current
2 history that I've ever had a conversation with an individual
3 contract, small, large, or non-contract, that the price from
4 imports didn't come up, especially the prices from OCTAL.

5 COMMISSIONER SCHMIDTLEIN: So I know my time has
6 expired, but this is so directly related. Is there a
7 relationship between the spot sale market and the long-term
8 contract market? Do you see -- do you think spot sale prices
9 impact what happens in long-term contract negotiations?

10 MR. PARSIO: Not necessarily. I don't see that. I
11 see them to be fairly synonymous.

12 COMMISSIONER SCHMIDTLEIN: But you're seeing
13 competition in both, so you feel the pressure in both, is
14 that what I'm hearing?

15 MR. PARSIO: Yes, yes, absolutely.

16 MR. GRAYCZYK: Yeah, we can't even -- yeah,
17 contract or spot sale, we can't compete.

18 MR. ROSENTHAL: Just to conclude on this one point.
19 One of the problems you have here is whether you have a long-
20 term contract or a spot sale, all these folks are selling to
21 extruders, who are competing against one another. So, if
22 you've got a contract price, an attractive one from one
23 extruder, they're going to say, look, we're competing against
24 these other guys, your spot sale price has to be competitive
25 with what my competitor is getting its sheet for. So there

1 is a relationship between the contract prices and the spot
2 sale prices.

3 MR. GRAYCZYK: One hundred percent.

4 COMMISSIONER SCHMIDTLEIN: Okay. All right. Thank
5 you. My time has expired.

6 MR. PARSIO: Thank you.

7 CHAIRMAN KEARNS: Commissioner Karpel.

8 COMMISSIONER KARPEL: Yes, thank you. Thank you,
9 everyone, for being here today. It's great to hear your
10 testimony. I'll start with a question. Can you explain why
11 the loss of market share and the drop in U.S. shipments that
12 we see over the POI is not showing up in the domestic
13 industry's financials, where we see rising operating income
14 and profits over the POI? Is this solely due to the
15 inclusion of a certain producer's data that you say should be
16 excluded, or are there other factors that are at play?

17 MR. ROSENTHAL: Commissioner, the answer is yes, it
18 is solely because of the aberrational data from that one
19 producer. If you look at the slides on everybody else's or
20 the information on every other merchant market producer, the
21 profitability is bleak. If you look at the number of
22 producers that are losing money over this time, it is clear
23 that the decline in shipments and capacity utilization are
24 what -- and revenues overall because of the low prices, those
25 are what's causing what is a terrible situation with losses

1 for many of the producers extending for a lot of the period.
2 It shows how aberrational that one producer is. You take out
3 the one producer and everything else looks terrible, and it's
4 all because of pricing, lack of sales, lack of capacity
5 utilization, losing market share.

6 MS. CANNON: This is Kathy Cannon. Could I also
7 add that you also see that the trends shift, Commissioner
8 Karpel, when that one producer is removed, so Respondents
9 have argued about increasing or improving profits, but, in
10 fact, removal of that one producer not only shows a much
11 bleaker picture, it shows the decline that correlates exactly
12 with the market share gained by the imports.

13 COMMISSIONER KARPEL: Mm-hmm. And so I guess my
14 obvious follow-up, is your injury argument contingent on us
15 agreeing with you that we should exclude this aberrational
16 producer or, if we look at the data and decide for whatever
17 reason that we should not exclude their data, does your
18 injury argument fall apart?

19 MS. CANNON: No.

20 MR. ROSENTHAL: There is a --

21 MS. CANNON: I'll go first, okay. You have 90
22 percent underselling and you have a market share shift, so
23 even if you were to look at the financial performance of the
24 industry or you were to say it was improving, you didn't see
25 it there, you would see it in the volume loss. We've lost

1 volume and we've lost it because they've undersold us, so you
2 see a volume effect quite clearly and you see the declines we
3 mentioned in the performance of the merchant market in terms
4 of not only the market share loss, shipment declines,
5 production declines in a rising market with demand growing.
6 So you very clearly are seeing a volume effect. What's
7 masked by the data is the financial impact, but it's not
8 required statutorily that you find that too.

9 MR. ROSENTHAL: Certainly, I agree with what
10 Ms. Cannon said, but I'd add one other thing. One of the key
11 things to consider about this aberrational producer is that
12 the product they're making and as pointed out, it's reflected
13 and your staff report, is that it is a product that is not
14 being affected by import competition. It's a specialized
15 product that neither -- or for that matter, domestic industry
16 competition. They're making a unique product as far as we
17 can tell that is immune from import competition because
18 neither the Koreans nor OCTAL make it and, frankly, neither
19 does most of the domestic industry, so it shows what happens
20 if you are in a -- apart from the problems of the data
21 themselves, it shows what happens if you are in an area that
22 is not affected by import competition, and that contrast
23 shows you how the rest of the domestic industry to a company
24 is adversely affected.

25 I would add two other things on this point since

1 you got me started and that is two companies that are
2 reported, one a Petitioner, one not a Petitioner has reported
3 profits that might be slightly higher than some of the others
4 and both of them report that they were able to achieve that
5 higher profitability by dropping out of producing products
6 that were in direct competition with the imports. And, to
7 me, that's an indication of injury. If you're focusing only
8 on net operating profits of sales and you look at that and
9 say, well, geez, they're making money, how did they do it, by
10 selling less is what you've heard, by getting out of the way
11 of direct import competition, and, for me, that's injury. If
12 you are selling less volume because you can't compete against
13 the imports even if you temporarily maintain higher
14 profitability margins, that does not mean you're not being
15 injured by the imports. It means that you are shrinking and
16 that inevitably you will not be able to sustain your business
17 because you don't have the base of volume to keep making that
18 product.

19 COMMISSIONER KARPEL: Okay. All right. I think I
20 would just reiterate what some of my fellow Commissioners
21 have said that the more you can talk about this in your post-
22 hearing brief about this competition issue between this
23 aberrational company and what they produce and what others in
24 the market are producing it would be helpful for us to have.

25 MR. ROSENTHAL: Certainly.

1 COMMISSIONER KARPEL: Okay. I also wanted to
2 follow up, Commissioner Schmidtlein asked about your price
3 suppression argument, but I'm not for sure I quite understood
4 your response. In your pre-hearing brief at least, you talk
5 about unit cost versus net sales value from 2017 to 2018.
6 You don't talk about the period as a whole or 2018 to 2019,
7 so I'm trying to understand that, but then I thought I heard
8 you say in response to Commissioner Schmidtlein's question
9 that you weren't relying on COGS and net sales comparisons,
10 you were relying more on your witness testimony, what they
11 experienced in the market for your price suppression
12 argument. I wonder if you could help me understand. I think
13 you're on mute.

14 MS. BECK: Sorry about that. This is Gina Beck
15 from GES. That's correct, Commissioner Karpel. We are
16 relying on the evidence from our witnesses and additional
17 information that we will supply in our post-hearing brief
18 given that the data is, as I mentioned, on the average unit
19 value basis, it doesn't really give a clear picture of what
20 has happened over the Period Of Investigation given the
21 product mix.

22 COMMISSIONER KARPEL: And can you elaborate what
23 the product mix issues are? Has the product mix changed over
24 time from what domestic producers are making?

25 MS. BECK: I don't know if the industry witnesses

1 want to explain or if we should --

2 MR. ROSENTHAL: I will just say in generic terms
3 without getting into anything proprietary, we know of a
4 couple of companies, for example, that stopped making certain
5 products because they were competing against the imports and
6 being unsuccessful. One of them is not a Petitioner. It's a
7 pretty good-sized company. We actually cite them in one of
8 the slides and they basically said we've gotten out of making
9 certain things because we couldn't make money out of them.
10 And I know, though, that Mr. Thibado testified to that a
11 little earlier, so there has been a change in product mix in
12 that sense.

13 COMMISSIONER KARPEL: Okay. So maybe you could
14 elaborate a little bit. It sounds like we're getting into
15 some confidential information that you're not wanting to say
16 in the hearing, so if there's anything you can do to
17 elaborate on that in post-hearing, that would be important.

18 MS. CANNON: We will do so.

19 COMMISSIONER KARPEL: Okay. And then also I wanted
20 to clarify. Are you making a price suppression argument or
21 just a price depression argument. For example, prices appear
22 to be declining for product one where there's a high volume
23 of domestic priced product. Can you clarify your argument
24 there?

25 MR. ROSENTHAL: We believe there's both going on,

1 although we admit that, if you're following the particular
2 pricing data, there's a mixed view of that and some products,
3 clearly, where there are large volumes and import competition
4 concentrated, we think there is price depression and
5 suppression. In other areas or other products, it's a more
6 mixed picture, but we will be more specific about that in our
7 post-hearing brief, Commissioner Karpel.

8 COMMISSIONER KARPEL: All right. All right, well,
9 my time is almost up so I'll pass the baton on to the next
10 Commissioner.

11 CHAIRMAN KEARNS: Okay. Thank you. I'll just
12 continue on with where Commissioner Karpel left off. Mr.
13 Rosenthal, if I heard you correctly, I think you said in your
14 opening that after OCTAL re-entered the market in 2018 U.S.
15 producer PET sheet prices hit the fan as you put it as only
16 you would. Is that correct? Do our data show that, our
17 pricing data, for example?

18 MR. ROSENTHAL: One of the things that I've been
19 trying to see if we can tease from the information we've got
20 is the following. U.S. shipments went up from I would say
21 June to -- or July to September in response to the OCTAL
22 outage, so our companies were able to supply OCTAL's
23 customers, so their sales went up dramatically and we have
24 been told that their prices went up nicely above where they
25 were when OCTAL was in the market. We don't have month-by-

1 month data on that because, if we did, I was going to show
2 you on a slide sales going up like this when OCTAL was out
3 and then dropping dramatically when OCTAL left and the same
4 thing happening with prices. Our clients have told us that
5 that's exactly their experience. But we don't have month-by-
6 month data to put on a slide to show that, but that is
7 exactly what happened.

8 CHAIRMAN KEARNS: Okay, thank you. Let me see
9 here. You all talked about D-PET quite a bit and so this is
10 maybe a little bit of an overlap with those things you've
11 already said, but let me try. Just I have two questions
12 here. One is the record contains several statements from
13 purchasers regarding the benefits of D-PET sheet for their
14 operations and why they prefer it. Do you disagree that some
15 purchasers perceive advantages to D-PET and does this ever
16 come up in your price or purchase negotiations? And I guess
17 just as a continuation of that, could you look at the
18 purchaser data and, you know, I know that the Respondents are
19 arguing that they have a pretty stable set of purchasers that
20 they work with, so I don't know if you can glean anything
21 from the data that they provide on that or that we know from
22 purchasers as to, you know, where there is overlap that can't
23 be explained by the D-PET issue and where there isn't? Any
24 thoughts on that would be appreciated.

25 MR. ROSENTHAL: Commissioner, I'm going to turn

1 this over to the industry witnesses in one minute. I just
2 want to refer you back to the slide from earlier where we
3 point out that the vast majority of purchasers say that
4 there's no difference in quality, that D-PET and A-PET and
5 the other, R-PET, are all interchangeable.

6 CHAIRMAN KEARNS: Yes, and I looked at that. You
7 know, I mean, to me, we tend to get lost when we aggregate
8 the data, right? Like, it could be true that for the vast
9 majority of uses there's no real difference, but, you know,
10 conceivably there still could be enough situations there
11 where it does make a difference and that's really where
12 OCTAL, you know, is concentrated, so any thoughts on that
13 would be appreciated.

14 MR. ROSENTHAL: One last thing that I'll say and
15 then I'll turn it back to the witnesses. Look at what
16 happened when OCTAL couldn't supply. The customers used the
17 domestically produced product without problem. The rate of
18 reject or return you heard was one-tenth of 1 percent for one
19 of the customers, and so there really wasn't a difference
20 there. I'll add one other thing that I heard from a client,
21 hearsay, but we get to do that here at the ITC, right? One
22 of the joys of working in this environment. As the OCTAL
23 folks were coming online and one of the domestic producers
24 was talking to one of the companies who is purchasing why
25 don't you stay with us, we give you great product, great

1 service, it all worked well, and the answer was, well,
2 because you can't meet the prices of OCTAL and, frankly, you
3 haven't ever been able to and we can't continue with you. It
4 has nothing to do with any special qualities of D-PET. With
5 that, I'll turn it back to the domestic industry witnesses.

6 MR. PARSIO: I'm not sure you have to. He pretty
7 much said it.

8 CHAIRMAN KEARNS: Maybe this isn't the best analogy
9 I can come up with right now, but I like diet Coke. I don't
10 really like diet Pepsi. If diet Coke goes away tomorrow, I
11 guess I'll drink diet Pepsi, but as soon as diet Coke comes
12 back I'm drinking diet Coke and it doesn't really have
13 anything to do with the price. So I don't know the fact
14 that, like, you know, I turn to diet Pepsi when there was no
15 alternative doesn't suggest to me that it's all about price
16 or that, you know, that they are interchangeable. I mean,
17 they're not interchangeable to me, but if I have no other
18 option, yeah, I'll turn to diet Pepsi.

19 MR. ROSENTHAL: Your equipment works perfectly well
20 on diet Pepsi, though, right?

21 CHAIRMAN KEARNS: My equipment?

22 MR. ROSENTHAL: Yes.

23 CHAIRMAN KEARNS: I really don't want to talk about
24 my equipment, but yeah, I'll have to think about that. I'm
25 not sure. Help me, what you mean by that.

1 MR. ROSENTHAL: You function perfectly well either
2 way and so does the customer's equipment, whether D-PET or A-
3 PET, and most important, the end product that you get is the
4 same. I don't mean you, Chairman, now, now back to the real
5 world of PET sheet, and what you heard is that the product
6 that comes out is exactly the same no matter what the process
7 is. You know, there's this mumbo jumbo about this direct
8 sheet product which I just described. What you're talking
9 about here is you see in other contexts, whether it's the
10 steel industry where you have direct casting or you have
11 steel made from batches, the end result is the same
12 chemistry, the same output, and if you don't have exactly the
13 same chemistry, you can make some adjustments for that.
14 That's effectively what's happening with, as Mr. DeBode
15 called, the marketing of D-PET. It's supposed to be special
16 and maybe they want to say this has great environmental or
17 carbon footprint qualities, that we like it because of that,
18 but the same is actually true with respect to in many
19 respects the recycled PET, which a lot of people want to
20 tout, but the end result, the product result is the same.

21 CHAIRMAN KEARNS: Okay, thank you.

22 MR. THIBADO: Mr. Chairman, I'd add one more thing
23 to your question. I believe OCTAL and the witnesses they
24 brought, I think -- and, again, this is maybe just
25 speculation -- but the witnesses they brought to my knowledge

1 do not have any extrusion equipment, unlike some other of
2 OCTAL's customers, which gives the thermoformer, their
3 witnesses, the ability to keep expanding their thermoforming
4 opportunities and again tighten that co-dependency of the
5 OCTAL sheet just because you can buy it so much cheaper. You
6 know, it's a double-win. The thermoformer gets more of the
7 market share of the tray business and also OCTAL wins because
8 of the relationship.

9 CHAIRMAN KEARNS: Okay, thank you. And I think I
10 just have one other question I wanted to ask and I'm happy to
11 have this just be post-hearing if you like, but turning back
12 to impact and this aberrational producer, if we were to
13 include that producer's data in our analysis, what evidence
14 do you have that subject imports injure the U.S. industry
15 given the trends that we've already talked about? I mean, I
16 know, I heard you, Mr. Rosenthal, part of your answer is
17 going to be look at the market share shifts, but what else
18 can you tell me about injury or impact?

19 MS. CANNON: So we can expand on this further in
20 our brief, Chairman Kearns, but I would say the other things
21 we can point you to are the indications on the declines that
22 have gone on throughout the market and the trade variables
23 most pronounced in the merchant market, but the total market
24 production shipments are not keeping pace with demand.
25 You're seeing strong demand growth and you're seeing trade

1 variables in the supermarket that are, you know, growing at a
2 much smaller, lower level, and you've got actual declines in
3 those variables in the merchant market. So notwithstanding
4 that particular company, whether it's in or out, you're going
5 to see that, which is another effect on, injury effect on
6 these companies under the statute.

7 MR. ROSENTHAL: Also, Commissioner Kearns, take a
8 look at the narrative by the other non-petitioning producers.
9 They tell you about what the adverse impact is of the
10 imports. They are telling you -- and, again, they weren't
11 petitioners, but they can tell you why they've been harmed by
12 the imports, and once again it undermines the utility of that
13 one producer's aberrational data. But there's plenty of
14 sworn statements that imports have adversely affected the
15 rest of the domestic industry, the virtually uniform
16 sentiment.

17 By the way, I would say take a look at this one,
18 we'll get you this in the post-hearing brief, one
19 thermoformer who basically makes its own internal PET sheet
20 for its own production who is also complaining about this.
21 You asked about the differences between folks who are
22 consuming for their own use and for the merchant market, and
23 I had a conversation with the lawyer from this company who
24 said we are adversely affected by this even though we don't
25 compete in the merchant market because the low prices that

1 OCTAL is providing its competitors is causing them to lose
2 end-use sales, and you can go back to that Chart 17 about
3 their capacity utilization going down because they are
4 competing against OCTAL's customers, who are in the room or
5 in this hearing today.

6 COMMISSIONER KEARNS: Okay, thank you.

7 Vice Chair Stayin?

8 VICE CHAIRMAN STAYIN: Yes, thank you. How do you
9 respond to the OCTAL arguments that the increase in subject
10 imports from Oman was not from sales to new customers but
11 from the group with OCTAL's long standing customers under
12 contracts that pre-date the POI? Do we give less weight to
13 these volumes?

14 MR. ROSENTHAL: I will ask the industry witnesses
15 to talk about the other sales to customers outside of those
16 contracts. I'll come back.

17 MR. DEBODE: Commissioner Stayin -- excuse me.
18 This is Dr. DeBode from Multi Plastics. I'd go back to my
19 opening, my statement, sir, in that we just talked about a
20 customer that had a large contract in -- it was January or
21 December of last year. January of this year -- that was won
22 by OCTAL -- that previously was not, that was 60 million
23 pounds of business. That was the company I was talking
24 about, part of it was a customer down in Florida that we used
25 to supply. That became a part of a larger conglomerate and

1 now it is solely working with OCTAL. So, there is damage
2 there or a shift of business. It's not just a growth. They
3 didn't grow that customer. They took that customer and it
4 was based on price because again it was a very commodity
5 product, that they went in with lower price to get the
6 contract, because it was 60 million pounds.

7 MR. PARSIO: To comment to your direct point,
8 Commissioner, if you have a long term contract with OCTAL
9 prior to the period that we're talking in questioning and
10 your prices were at that time lower you would in theory have
11 an advantage against an individual that was integrated former
12 that had extruded and thermo former equipment that had no
13 advantage to making their own product because of the cost
14 structure of making their own product versus the cost
15 structure that someone can buy the PET sheet. So the fact
16 that they in turn would be able to increase their market in
17 total over the period of time doesn't surprise me.

18 MR. KERWIN: Michael Kerwin of Georgetown Economic.
19 I just wanted to supplement those answers. I would recommend
20 you look at OCTAL's Exhibit 4 from their pre-hearing brief
21 which shows a full list of customers in the U.S. market
22 throughout the period of investigation and while I can't go
23 into the detail here, I think it's very telling. It
24 certainly shows the entire gammut of customers that OCTAL
25 serves and it's directly relevant to your question.

1 MR. ROSENTHAL: I would one other thing and that is
2 -- well, two other things -- we talked about in my Power
3 Point presentation the case law that basically says just
4 because they have a long term contract that's been
5 underselling doesn't mean it has -- doesn't -- it hasn't
6 entered the domestic industry during the period of
7 investigation. But more directly, as we've have talked about
8 a little while ago, you could have low contract prices that
9 have been set awhile ago and everybody else who is now in the
10 marketplace has to essentially compete against those contract
11 prices.

12 If you are in the stock market you are influenced
13 by the contract prices as we discussed a little while ago.
14 So it is not as if the -- the fact these contracts were
15 assigned a few years ago somehow immunises anybody from
16 injury. To the contrary it amplifies the injury because now
17 everybody has to be competing against the -- several former
18 prices that they have got from OCTAL and demand the same
19 prices from others who want their business.

20 VICE CHAIRMAN STAYIN: Thank you. Do you agree
21 with Respondent's legal argument, 32 and 33 of their brief.
22 "But under the statute, our material injury analysis should
23 be focused on where there is injury occurring at the present
24 time, not where there was injury earlier in the POI. It is
25 injury only during the early portion of POI and not to

1 support an affirmative material injury determination."

2 MR. ROSENTHAL: I'm going to turn this to Ms.
3 Cannon, but I was to say that the premise of that argument is
4 wrong. The injury has been throughout the period and has
5 only gotten worse as you can see from the financials and once
6 you exclude the aberrational producer. Market share
7 decreases by the domestic industry, capacity division, so the
8 injuries has gotten worse over the period of investigation,
9 not better, and Ms. Cannon will take it from there.

10 MS. CANNON: Yes, Commissioner Stayin. Not only is
11 it incorrect for Respondents to contend that we aren't being
12 material injured at present, we are, but the premise of that
13 is that they had entered these long term contracts outside of
14 the POI and so somehow as we were just discussing -- you
15 know, suggesting that means that any injury occurred back
16 when they negotiated them and not day after day in the
17 current market.

18 And yet in fact what is going on is based on those
19 low prices and that consistent underselling pursuant to
20 contracts that were, were absurdly low priced. They are
21 continuing to injure the industry throughout the period of
22 investigation and you see that both in your market share
23 table as well as in the financial data that we've presented
24 excluding that one producer. So you are definitely seeing
25 injury over that entire period.

1 MR. ROSENTHAL: I just want to add one thing. I've
2 used this quote before, but it seems applicable to the
3 argument by Respondent today and that is the quote by Senator
4 Hayakawa of California when the Panama Canal debates were
5 taking place in the late '70s. Senator Hayakawa's argument
6 was the canal is ours, we should keep it, we stole it fair
7 and square.

8 Well, that's the approach by OCTAL. They stole
9 these contracts fair and square and therefore they should be
10 able to price with impunity from that time on. That's not a
11 good legal argument and if that were the case then domestic
12 industries would never be able to get relief from unfair
13 imports based on long term low price contracts.

14 VICE CHAIRMAN STAYIN: So you are arguing that the
15 price in the market at the time is a relevant price, whether
16 it is under a long term contract or a spot contract, spot
17 agreement?

18 MR. ROSENTHAL: Yes. That's correct.

19 VICE CHAIRMAN STAYIN: I think we have already
20 discussed this but the concept that you need Oman in the
21 market because they're the only ones that can have the
22 capacity to supply the demand in the United States and
23 suggesting that the U.S. producers do not have the capacity
24 to support that demand. What is your comment on that?

25 MR. ROSENTHAL: There are a couple. Number one is

1 the -- we know, and you Commissioners know well. It is not
2 necessary to have the domestic industry to be able to supply
3 the entire market nor to get relief. And frankly we are not
4 suggesting that imports shouldn't be in this market. What
5 we're suggesting is and asking for is simply a remedy to
6 offset the unfair pricing.

7 Secondly, the domestic industry had enough, and as
8 for the aggressive pricing by Oman was going to -- and had
9 plans to -- increase their capacity. And you -- you heard a
10 little bit from the witnesses and they could expand on that
11 in a minute, but every one of them is prepared to increase
12 their capacities to meet demand as long as they can get a
13 fair price.

14 I'll turn it over to witnesses and Ms. Cannon to
15 amplify.

16 MS. CANNON: Before the witnesses amplify on that
17 let me just add that if you look at the staff report actually
18 it is a false claim that the domestic industry does not have
19 the capacity to meet demand. That is clearly in your staff
20 report that we have capacity to supply demand. But the
21 witnesses can amplify on what they've been trying to do to
22 ramp up and how much they would like to ramp up but not for
23 OCTAL's low pricing.

24 MR. PARSIO: Yeah. We have a substantial amount of
25 idle capacity right now. I think everybody's ability to ramp

1 up capacity was in a term of six to nine months would be
2 there if the capital expenditure made sense on an economic
3 basis. But because of the price structure it doesn't make
4 sense to put -- call it good money after bad to increase
5 production in a product line in a market where you can't make
6 any money.

7 VICE CHAIRMAN STAYIN: Well, that leads me to my
8 question. In the current market how are you being affected
9 in terms of being able to invest in your machinery and
10 equipment, to get financing for other kinds of things needed
11 in your company in order to accelerate and in order to
12 compete?

13 MR. PARSIO: Multi-Plastics has multiple product
14 lines. So in truth we have been holding onto this market at
15 terrible numbers to hope that there might be relief and not
16 exit. Well, there is other people that have gone out of
17 business. I think if you -- probably, probably John and
18 Brian have a better perspective on that in light of the fact
19 that this is a substantially larger piece of their total
20 business.

21 MR. THIBADO: Yes. Commissioner Stayin, I can tell
22 you that in my testimony we seriously were looking at Salt
23 Lake as one of our client's production to hit the West Coast.
24 And we were close on pulling the trigger to do so. But after
25 we got intel and actually seen how OCTAL's selling behavior

1 was, we just pulled back.

2 We were hoping that it was just a -- hey, let's get
3 into the market and offer some great pricing. But to answer
4 your question for us to get into -- you know, to make that
5 investment we need to have fair market pricing. And so we
6 have the ability to make those investments and equipment to
7 supply. I'm actually sitting on excess capacity right now.
8 But sometimes you want to be closer to the customer. You
9 know, plays a little bit of a part in it, but we just need
10 the pricing to be fair.

11 MR. GRAYCZYK: Okay. I believe -- if I could add
12 on -- so Ex-Tech is in the same position. We have actually
13 had plans drawn up to add onto our building several years ago
14 but that's up and put on hold because we haven't been able to
15 make enough money in the PET market to do so because of
16 price. And we do have plenty of capacity now and we are
17 willing to invest in the equipment and we would love to add
18 onto our building, but again, because of where the market is
19 today it doesn't make sense for us to do so.

20 VICE CHAIRMAN STAYIN: Thank you.

21 MR. PARSIO: Interestingly enough the manufacturers
22 of the equipment are also being hurt for the same reason. I
23 mean, I know that's not necessarily relevant to this case but
24 it -- you know, most of the manufacturing equipment that we
25 all run is made in the United States and they just haven't

1 seen the orders in the PET market for the reasons we speak
2 of.

3 VICE CHAIRMAN STAYIN: Thank you. And I am out of
4 time.

5 CHAIRMAN KEARNS: Thank you. Commissioner
6 Johanson.

7 COMMISSIONER JOHANSON: All right. I wanted to
8 follow up with the last question asked. It involves the D-
9 PET manufacturing process and the patents involved, et
10 cetera. Have any domestic producers considered adopting the
11 D-PET process and if so, or if not so, why was that the case?

12 MR. PARSIO: From what I know of the D-PET process
13 is the patents -- it takes out one particular process but
14 gives you the same end product and to do that at the scale
15 that you would have to do that, you would have to be looking
16 down the road of a long term market that has viability in
17 reasonable prices to put the kind of capital expenditure that
18 you need to do that and economically it just doesn't make
19 sense. Again, if the importers keep the price where it is
20 now whether you -- the pay back in trying to go through some
21 D-PET process would be just way too long of an outlook.

22 COMMISSIONER JOHANSON: Thank you, Mr. Parsio.

23 MR. THIBADO: I would also like to add to that in a
24 previous slide, prior to Advanced Extrusion, we were looking
25 at that process to even go further back and with integration.

1 And us in the extrusion business we -- our investment per
2 lines are in the millions. But when we start looking at a
3 reactor and all of the components needed to take the raw
4 petrol chemicals to -- you need the scale, the economy, the
5 investments, we're talking billions of dollars.

6 MS. RINGEL: Commissioner Johanson. Brooke Ringel
7 with Kelley here. I just wanted to clarify. As OCTAL has
8 explained, OCTAL is vertically integrated as Mr. Thibado also
9 explained. They produce PET resin which allows them to
10 extrude directly from their resin melt. That is all there is
11 to the D-PET process is the resin doesn't get pelletised.

12 And this Commissioner is actually very familiar
13 with PET resin and the PET resin industry. It is a separate
14 industry. It is a separate production process. It requires,
15 as Mr. Thibado just explained, the chemical reaction of those
16 upstream petro chemical products and this is -- that is just
17 simply not something that's available to these domestic
18 producers. But considering what it actually is, all it does
19 is take out that one step of pelletising the resin.
20 Otherwise you have got these same exact input.

21 You have got the same exact upstream production
22 process. The only difference is that that transfer from the
23 PET resin melt to the sheet. That's the only difference.
24 You get the same thing on the other end.

25 MR. ROSENTHAL: And I just want to add in your 2015

1 PET resin case which involved Oman and OCTAL, the -- OCTAL
2 made exactly the same argument. Our PET resin that we make
3 is totally different. And for all the reasons you heard --
4 and you rejected it then, and you should reject it again
5 today.

6 COMMISSIONER JOHANSON: All right. Thanks for your
7 thoughts, but given all that you have stated would a
8 difference in the manufacturing process lead to a difference
9 in cost or producer product if it is produced using D-PET
10 manufacturing process?

11 MS. RINGEL: Commissioner Johanson, Brooke Ringel.
12 While that may be the case and that is certainly OCTAL's
13 position, with all due respect that is for the Commerce
14 Department to determine if OCTAL is selling at a fair price
15 in the United States under the dumping laws.

16 COMMISSIONER JOHANSON: But with this -- would the
17 use of the D-PET process indeed make the process more
18 efficient and thus help explain why prices might be lower?

19 MR. ROSENTHAL: Well, not necessarily Commissioner.
20 Yes. You do eliminate a step in the process but if you were
21 actually advertising or you were considering the investment
22 of billions of dollars of investment in that operation to
23 basically get into the PET resin business, you need to make
24 sure you are pricing your product to take into account of
25 those billions of dollars of investments and so -- in the --

1 while the process itself may eliminate a step, it doesn't
2 mean that the end product is necessarily less expensive if
3 you were actually taking into account the cost of building
4 the that process and upgrading it.

5 MS. RINGEL: Commissioner Johanson, one other point
6 I'd like to make is that the Petitioners today are aware that
7 OCTAL also has non-D-PET lines in Oman and is selling non-D-
8 PET PET sheets in the United States as well. So there is
9 really -- from Oman there is really a variety of products and
10 it's not limited to D-PET. And yes, everything coming out of
11 Oman is low priced.

12 MR. ROSENTHAL: And I would add one other thing.
13 Take a look at OCTAL's Ohio or Cincinnati operations where
14 they are buying or they are using the re-grind from OCTAL,
15 not a D-PET product, and see how they're doing in competition
16 with imports. The information is confidential and we are not
17 contesting related party issues today, but frankly if you
18 take a look at that particular producer, that domestic
19 producer, and see how they're doing, all that does is
20 reinforce the arguments we are making about competition to
21 get imports from Korea and Oman and once again how
22 aberrational that other particular customer is.

23 COMMISSIONER JOHANSON: And following up on this
24 issue, you all had raised that the Oman production or Oman
25 plant is fully integrated. That would affect its pricing,

1 right?

2 MR. ROSENTHAL: Not necessarily. Commissioner, if
3 you have to invest billions of dollars to -- just build the
4 hot end, if you will, of the PET resin capability you would
5 think you would price your product in order to recoup your
6 investment. And so it doesn't necessarily mean that you can
7 price it lower depending on how much profit you want to make
8 and what kind of returns you want to make on your big
9 investment, on the PET resin side of things. You can be a
10 very, very efficient and low cost producer as using PET resin
11 pellets as your starting point. You are not necessarily --
12 it all depends on how much you're paying for that. By being
13 a purchaser of PET resin as opposed to a producer of PET
14 resin you're making your make/buy decision there as well.

15 COMMISSIONER JOHANSON: Okay. Thanks for your
16 responses to that series of questions.

17 This next question is related to what was asked by
18 Commission Stayin, and I apologize if it was already
19 answered, but I wanted to raise it anyway. Regarding prices
20 set using contracts, do purchasers know the prices paid by
21 other firms?

22 MR. ROSENTHAL: By other thermoformers?

23 COMMISSIONER JOHANSON: By other firms, by
24 competitors in the market.

25 MR. PARSIO: Are you asking if one of my customers

1 would know what another person pays?

2 COMMISSIONER JOHANSON: Right.

3 MR. PARSIO: No.

4 COMMISSIONER JOHANSON: How much transparency is
5 there in this market?

6 MR. PARSIO: To price? No more or less than any
7 other market. No, I don't think that's the case.

8 MR. ROSENTHAL: Mr. Parsio, let me -- the question
9 being asked is, if you're dealing with a customer and you're
10 quoting price, will the customer tell you I know my
11 competitor in the thermoforming business is getting it for X
12 price or I know it's been offered by another competitor for Y
13 price?

14 I think that's where you're going, Mr. Johanson?
15 Am I correct?

16 COMMISSIONER JOHANSON: Right.

17 MR. ROSENTHAL: Okay. I just want to make sure you
18 understood the question.

19 MR. PARSIO: I'd say that sometimes people will
20 talk like that but not usually. Certainly, if we're
21 competing in a market for a piece of business, they will say
22 somebody else has a lower price or someone else has a
23 different price, but I would say the common thread is always,
24 hey, I can get it cheaper from, used to be the Koreans, now
25 it's OCTAL. I can get it cheaper from OCTAL.

1 MR. ROSENTHAL: Mm-hmm.

2 MR. PARSIO: Now do they sell it how much cheaper?
3 Sometimes, sometimes not.

4 MR. THIBADO: In my case, often, they tell you the
5 price, and I know they tell my price, so, again, it goes back
6 to that point. I have one customer that says, you know,
7 really, it doesn't matter who supplies, it's how we buy, and
8 we have to buy at the low price.

9 COMMISSIONER JOHANSON: Okay. Thanks for your
10 responses. My time is expired.

11 CHAIRMAN KEARNS: Commissioner Schmidtlein?

12 COMMISSIONER SCHMIDTLEIN: Thank you. I just have
13 one follow-up question regarding the line of questions about
14 transparency in the market, and you mentioned that when
15 you're negotiating, they often say, well, I can get from
16 OCTAL for a lower price. Are those contract negotiations, do
17 you do those by email or in writing? In other words, what I
18 hear you say is that they're quoting the price to you, but
19 they're not quoting that they can get a different quality or
20 a different type of PET sheet.

21 MR. PARSIO: No, I would say -- I mean, I think
22 we've actually given examples of just that, where emails come
23 from buyers saying my price from X person is this, therefore,
24 you have to beat it. But, as far as whether it pertains to
25 contract, spot, is that what you're asking? I'm trying to

1 understand.

2 COMMISSIONER SCHMIDTLEIN: Yeah. I'm just trying
3 to get a sense of whether specifically you've got buyers
4 quoting the subject countries' prices as a way to leverage
5 down your price.

6 MR. PARSIO: All the time.

7 COMMISSIONER SCHMIDTLEIN: Okay. Well, if you all
8 could put that on the record, that would be very helpful in
9 terms of --

10 MR. PARSIO: Correct me if I'm wrong, so I think we
11 presented you with examples of that.

12 MR. ROSENTHAL: We have submitted it, and we will
13 get you some more.

14 COMMISSIONER SCHMIDTLEIN: Okay. Okay. If you
15 did, I'm sorry if I missed that. But any contemporaneous
16 documentation of that is helpful.

17 MR. PARSIO: Thank you.

18 COMMISSIONER SCHMIDTLEIN: Okay, I have no further
19 questions. Thank you.

20 CHAIRMAN KEARNS: Commissioner Karpel?

21 COMMISSIONER KARPEL: I just want to clarify a few
22 things. So we talked a bit about OCTAL's argument that D-PET
23 is superior or has other advantages to other types of PET
24 sheet, and I just wanted to make sure I understood your
25 argument.

1 Are you acknowledging at all that there are some
2 physical differences between the two, D-PET and other types
3 of PET sheet, or -- and then -- but saying that there are
4 minor differences, but they don't really matter in the
5 marketplace, or are you saying there's just absolutely no
6 physical differences at all, it's really just a difference in
7 how it's produced?

8 MR. ROSENTHAL: I'll let Mr. DeBode answer this,
9 but our short answer is it's the difference in the way it's
10 produced. Everybody meets the specifications, the intrinsic
11 viscosity, all the other specifications. So they're all
12 satisfying the customers' needs within these specifications,
13 so there isn't a difference physically. I'll let Mr. DeBode
14 expand on that.

15 MR. DEBODE: Thank you, Paul. Yes, he's exactly
16 right. And I'd like to maybe expand on it just a little bit
17 is that there are -- our material or the other Petitioners'
18 material compared to OCTAL's material is the same.
19 Chemically, it's the same, everything else. We're talking
20 about an A-PET type product. There are different levels of
21 material needed for different uses.

22 I talked earlier about a strawberry basket. You
23 care about the strawberries in that basket, you do not care
24 about the packaging that's carrying them, other than, you
25 know, you don't want it dirtied or something like that. But

1 it's serving a function, and after that it's going to be
2 thrown away. Ninety-two percent chance it's going to be
3 thrown away.

4 So you care about the functionality of that
5 product. In that respect, there is no difference between
6 these materials whatsoever.

7 COMMISSIONER KARPEL: Okay. So sorry to interrupt.
8 I don't want to take all my time on this question, but it
9 sounds like it's a little bit of both. To the extent that
10 there are any physical differences, you're saying they're
11 immaterial for the purchasers in the market because -- right?
12 I mean --

13 MR. DEBODE: Yes.

14 COMMISSIONER KARPEL: -- I think that's what I hear
15 you saying. Okay. Without conceding that there are physical
16 differences. Okay, I think I understand your argument there,
17 so let me move on to another question. Let me see. Where
18 did it go? Oh, here, back on the back of my page.

19 So one of the arguments I anticipate hearing this
20 afternoon from OCTAL is they make some arguments about the
21 benefits of their product being the reduced carbon footprint,
22 I assume because of the lower energy it takes because they
23 skip that production step.

24 I just wanted to get a sense from those, you know,
25 industry representatives, how important is that to your

1 customers? You know, is carbon footprint something that a
2 niche set of customers cares about, or is that a growing area
3 of concern?

4 It sort of strikes me that maybe end users are
5 looking to buy products or certain end users are looking to
6 buy products that might contribute to a reduced carbon
7 footprint, but when you're talking about more intermediary
8 individuals in a supply chain, for example, you know, a
9 packaging company who then is selling their packaging maybe
10 to a food producing industry, it's so attenuated from the end
11 user who might be sort of looking for those kind of
12 attributes of products they buy.

13 But maybe you can speak to that. We heard some of
14 that in the pre-hearing brief from OCTAL, but I'm not sure I
15 saw much of a discussion from Petitioners' perspective on
16 this issue.

17 MR. PARSIO: Pertaining to an imported product, I
18 would think that the fact that we use post-industrial flake
19 in our product would be an advantage in some cases to
20 individuals that were looking to "be more green." I think if
21 the end customer -- end user would probably -- that would
22 resonate if the price functionality wasn't so important.

23 MR. DEBODE: Could I comment and expand upon that
24 just a little bit? We actually have done some work in this
25 area, and I looked last night at OCTAL's, the hearing

1 information they'll be putting out this afternoon, public
2 information, and I saw that they said their OCTAL D-PET
3 process is 58 percent, I believe, better with respect to
4 carbon footprint.

5 The thing is that's compared to normal A-PET sheet.
6 The strawberry basket I talked about before, I'm not trying
7 to harp on that, but the strawberry basket made out of 100
8 percent recycled material, regrinds, as we've been calling
9 them, is actually 42 percent better than that.

10 The carbon footprint reduction -- excuse me. It's
11 about 32 percent. The carbon footprint reduction of 100
12 percent recycled product like that versus A-PET is about 82
13 percent, so OCTAL's product actually at 58 percent is
14 technically less of a carbon footprint improvement than
15 something that they're substituting by offering a lower price
16 for the product.

17 COMMISSIONER KARPEL: Thanks. That's interesting.
18 So anything you can sort of put down on paper for the post-
19 hearing on that. I think it's interesting. And, as I
20 understand, domestic producers are making and putting on the
21 market PET sheet made from recycled material.

22 So am I understanding, from your perspective, you
23 would think that customers looking at this carbon footprint
24 issue would be looking more to buy PET sheet made from
25 recycled material versus looking at the new PET process as

1 their way to contribute to that?

2 MR. PARSIO: Yes, I would say correct, if, in fact,
3 price structure could be taken out of the mix.

4 MR. DEBODE: Yes. Absolutely.

5 MR. ROSENTHAL: Everybody wants to be green. No
6 one wants to pay for it.

7 MS. RINGEL: Commissioner Karpel, I would just make
8 one very brief point. As Mr. DeBode just explained, the
9 regrind, the post-industrial regrind PET sheet that goes into
10 a strawberry basket that's being replaced by OCTAL is being
11 replaced by Omani imported sheet because of price. That
12 means that Oman's imported price is not only underselling
13 domestic A-PET but also underselling domestic R-PET. So I
14 just wanted to make that point as well.

15 MR. DEBODE: And if I might, Commissioner Karpel?
16 This is Doug DeBode from Multi-Plastics again. I'll give an
17 example. We have a customer that we actually tried a bio-
18 based, cold-casted thing they call a plant model resin as a
19 PET. And it's much more expensive because of how it's made,
20 but we actually tried to put that into a product for a
21 customer who said we have to have this. We said okay. And
22 this led us to a policy that we said, okay, we'll make it for
23 you. And they said we want 30 percent of this. We said,
24 okay, we'll make that for you, it's going to cost you almost
25 two cents more per pound, and they said, no, thank you.

1 So what Paul just said about people want green, but
2 they don't want to pay for it is absolutely true. But, in
3 the case of a recycled material, we have a low-cost product
4 that is greener, but if it can't compete with that price from
5 OCTAL, it's not going to sell.

6 MR. ROSENTHAL: And I know I shouldn't make a
7 statement that I don't know the answer to, but I don't know
8 whether OCTAL's calculations of carbon footprint include the
9 carbon footprint of shipping their product halfway around the
10 world to the United States.

11 COMMISSIONER KARPEL: Yes. I was going to ask
12 about that too, so you beat me to it, Mr. Rosenthal. Okay, I
13 think that really covers my questions. I just have some
14 things to maybe flag for post-hearing for you all.

15 One is an argument in OCTAL's pre-hearing brief at
16 the bottom of page 17 and the top of page 18, and it talks
17 about a particular producer, and I guess I'll say that. It
18 talks about a particular producer and their activity in 2019.
19 I wondered if you could respond. They make an assertion
20 there, and I wanted to know if you agreed with that.

21 Also for post-hearing, other Commissioners have
22 asked about this, but it's OCTAL's argument at page 14 to 16
23 of its pre-hearing brief that talks about the motivations for
24 sales being different between vertically integrated
25 producers, those who produce PET, but also that produce the

1 downstream products versus those PET producers that are just
2 producing for the merchant market, and they include -- what
3 I'm particularly interested in is on page 16.

4 They include some tables that show shipments for
5 those two baskets of producers, those vertically integrated
6 and those that are sort of focused on the merchant market and
7 draw some conclusions from those tables. So, if you could
8 specifically speak to that in your post-hearing brief, I'd
9 appreciate it. They're all bracketed, so I can't really talk
10 about it now. And I think that does it, so thank you.

11 CHAIRMAN KEARNS: Okay. I have no further
12 questions. Do any other Commissioners have further
13 questions?

14 VICE CHAIRMAN STAYIN: No.

15 COMMISSIONER JOHANSON: I have one, and this deals
16 with the issue of threat. On page 4 of the Respondents'
17 brief, they argue that there is no threat of material injury
18 from imports from Oman because capacity is being fully
19 utilized. Do you agree that this makes imports from Oman
20 less of a threat?

21 MR. ROSENTHAL: No, Commissioner. We spent a
22 little time on that in our pre-hearing brief. I will also
23 note our confidential charts in Slides 27 and 28 which talk
24 about OCTAL's capacity and intention. So I would refer those
25 to you now, and we'll expand further in our post-hearing

1 brief.

2 COMMISSIONER JOHANSON: All right. Thank you, Mr.
3 Rosenthal. I appreciate it. That concludes my questions for
4 this panel. I'd like to thank all of you for appearing here
5 today, especially as we try to refine our online process. I
6 think so far this morning it's actually gone quite well.

7 CHAIRMAN KEARNS: Do any other Commissioners have
8 questions?

9 VICE CHAIRMAN STAYIN: No.

10 CHAIRMAN KEARNS: Do those in opposition to the
11 imposition of anti-dumping orders have any questions for this
12 panel?

13 MALE VOICE: No questions.

14 CHAIRMAN KEARNS: Okay, thank you. Then we'll
15 break for lunch. If there are no objections, I'd suggest we
16 --

17 MR. BISHOP: Mr. Chairman? Mr. Chairman, if I may?
18 You need to see if staff have questions.

19 CHAIRMAN KEARNS: Oh, I'm sorry. Thank you very
20 much. Do staff have questions?

21 MS. HAINES: Betsy Haines, Office of
22 Investigations. Staff have no questions.

23 CHAIRMAN KEARNS: Okay, thank you.

24 I suggest we break for lunch and return at 1:15 if
25 there's no objections to that.

1 (No response.)

2 CHAIRMAN KEARNS: Sounds good. 1:15. See you
3 then.

4 MALE VOICE: Thank you.

5 (The hearing in the above-entitled matter recessed,
6 to reconvene at 1:15 p.m. this same day, Tuesday, July 14,
7 2020.)

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1 a superior PET sheet made in Oman by way of a technologically
2 advanced production process.

3 I'm also President of OCTAL Extrusion Corporation,
4 a U.S. producer of PET sheet located in Cincinnati, Ohio.
5 OCTAL Extrusion produces PET sheet from recyclable PET waste
6 obtained from unaffiliated PET sheet packaging thermoformers
7 in the United States.

8 I've got more than 15 years of experience in the
9 PET sheet and packaging business in the United States and, on
10 top of this, 15 years of additional experience in general
11 packaging at the world's largest paper, paperboard, and
12 packaging company, and I've seen this business from many
13 perspectives.

14 Let me begin my testimony with a brief introduction
15 to OCTAL. OCTAL was established in 2006 to meet the growing
16 demand for high-performance, clear rigid, or thermoformed,
17 packaging. PET sheet was emerging as the preferred
18 thermoforming substrate, and OCTAL's factory in Oman was
19 first built in 2006, with both PET sheet and PET resin
20 capacity expanded in 2009 and again in 2012.

21 OCTAL manufactures and sells only two products:
22 PET resin and PET sheet. PET sheet is the merchandise under
23 consideration in this investigation. PET resin is a separate
24 product that is not within the scope of this investigation
25 but, rather, is subject to an earlier U.S. trade case.

1 For some PET sheet suppliers, but not OCTAL Oman,
2 PET resin is used as the key input for making PET sheet.
3 These two products, both PET sheet and PET resin, are
4 manufactured in a single facility located in Salalah, a town
5 in the southern part of the Sultanate of Oman near the border
6 with Yemen. All production of the merchandise under
7 consideration takes place at this one facility.

8 OCTAL Oman does not produce any other products. In
9 particular, OCTAL does not produce any PET film, which is a
10 much thinner product than sheet and made by way of a
11 different production process.

12 You heard earlier this morning Petitioners and
13 their counsel repeatedly emphasizing the fact that U.S.
14 imports from Oman have increased over the past three years,
15 suggesting that there is something inherently damaging about
16 this increase, but the argument misunderstands the market,
17 and today I'm going to explain the reason behind the increase
18 in PET sheet imports produced by us in Oman.

19 Simply put, OCTAL was able to increase its sales to
20 the U.S. market because we were able to offer a next
21 generation PET sheet manufactured based on a new production
22 process technology invented by OCTAL, a product called D-PET,
23 that no other PET sheet supplier has. This process delivers
24 a menu of significant benefits that cannot be duplicated by
25 traditional means.

1 Let's start with addressing the most prominent
2 issue of the day, which is sustainability. It is important
3 to understand how the overall trend for sustainable packaging
4 has affected demand for PET sheet and the demand for the
5 special type of PET sheet produced by OCTAL in Oman that is
6 D-PET.

7 In the early 2000s, municipalities across the
8 country began to question the usage of polystyrene as a
9 packaging substrate. Polystyrene is a material associated
10 with Styrofoam, also known as foam polystyrene, but can also
11 be made into a clear thermoforming substrate called oriented
12 polystyrene, which was dominant, actually, in the past before
13 PET eclipsed it.

14 By the mid-2000s, many coastal communities in
15 California began implementing polystyrene bans for both foam
16 and oriented polystyrene. This led to a large-scale movement
17 to ban styrene across the country and was most apparent in
18 college towns and cities with a more progressive
19 environmental view. The Styrofoam bans were targeted at cups
20 and hinged-lid containers used in takeout applications.

21 In response, many packaging manufacturers utilized
22 more aluminum products and paper substrates as alternatives
23 to styrene in the short term; however, these products did not
24 serve the bakery, produce, or merchandiseable takeout
25 business well, so its customers could not see the food in the

1 container. For bakery and produce, fresh fruits and
2 vegetables, consumers really want to see what they are
3 buying.

4 As a result, by the late 2000s, a significant
5 number of thermoformers had begun a mass migration into PET
6 and away from oriented polystyrene as the most viable option
7 for visual appeal packaging. PET was the clear answer to the
8 packaging industry because it is the most recycled plastic
9 available.

10 It has outstanding clarity and superior mechanical
11 toughness. Plus, it has thermoforming characteristics that
12 allow for switching from polystyrene to PET without
13 substantial investment in machinery and tooling. In
14 addition, consumers were very accepting of PET because of the
15 ease of recycling and its ability to protect food during
16 transport.

17 Styrene has very little curbside recycling and is
18 not well supported by the waste industry as they do not want
19 to separate or sort styrene waste. Because virtually every
20 water and soft drink bottle sold in the U.S. is made from
21 PET, the waste management industry has a well-established
22 process and infrastructure in place to capture commercial and
23 curbside PET products.

24 Once the initial transformation from styrene to PET
25 was underway, further pressure was placed on the industry to

1 achieve more environmentally friendly packaging solutions.
2 This came in many forms: plant-based materials, like POA, a
3 return to fiber-based packaging, and increased recycled
4 content in containers of all types.

5 OCTAL saw a different path forward. Reduce the
6 number of processes needed to create PET sheet and
7 dramatically reduce the amount of energy required to
8 manufacture the finished material. OCTAL's PET sheet from
9 Oman made with this process has a special trademarked name
10 called D-PET. The D stands for direct and signifies that
11 OCTAL produces PET sheet using a very different and, indeed,
12 unique production process. OCTAL is the only PET sheet
13 producer in the world to employ a production process that
14 goes directly from the reactor where the chemicals to produce
15 PET resin are combined all the way to the equipment that
16 makes the PET sheet. We call this direct to sheet
17 technology.

18 Unlike every other PET sheet producer in the world,
19 OCTAL's PET sheet production process does not start with PET
20 resin pellets. Rather, OCTAL produces PET sheet directly
21 from liquid resin from the reactor before it is made into a
22 pellet. This key fact distinguishes OCTAL's PET sheet from
23 all other PET sheet produced around the world. More
24 importantly, this key fact gives OCTAL's PET sheet physical
25 performance attributes and a sustainability profile that no

1 other PET sheet producer can match.

2 Let me explain further. OCTAL's new patented
3 production process eliminates five energy-intensive
4 manufacturing steps from the traditional PET sheet production
5 process. Please refer to the first page of the attachment to
6 my testimony. As you can see, the eliminated production
7 steps include pelletizing, solid state pellet condensation,
8 compacting, drying, and extruding the PET resin.

9 Elimination of these energy-intensive production
10 steps provides several critical benefits to our PET sheet
11 customers, who are primarily thermoforming packaging
12 companies. You can see this on page 2 of the attachment.

13 First, it provides superior optical properties,
14 gloss, clarity, color, and haze, which are significantly
15 superior due to the particular nature of the manufacturing
16 process. This is important for the merchandising appeal of
17 the final package on a store shelf.

18 Second, the direct to sheet process, in eliminating
19 the processing steps mentioned above, vastly reduces the
20 punishment or wear and tear on the molecules, resulting in
21 less degradation than is found in PET sheet produced by the
22 traditional method.

23 This benefit delivers a PET sheet that forms
24 superbly and more easily and more uniformly, flowing into
25 fine features of thermoformed packaging, enabling

1 thermoforming converters to innovate their packages with
2 higher precision features and more advanced performance
3 overall.

4 Third, the very nature of the direct to sheet
5 process allows for ultra-high precision control of thickness
6 of the sheet. This is a driving factor in providing an
7 unparalleled level of product uniformity that allows our
8 thermoforming partners to save money in two ways. First,
9 they can finely tune their converting process for maximum
10 throughput as they do not have to readjust their machines
11 after every roll, and, two, they use thinner sheet for the
12 same applications, which provides both cost savings and
13 source reduction by using less plastic overall.

14 Fourth, because the resin from which OCTAL's PET
15 sheet is made comes directly from the reactor, the produced
16 D-PET PET sheet has a highly consistent intrinsic viscosity.
17 This is valued by all thermoformers as it aids in forming
18 quality crack-resistance and adds value to the thermoforming
19 cut out waste as it is highly sought after for reprocessing.

20 Fifth and among the most important factors, the
21 processing steps eliminated in the direct to sheet technology
22 are the most energy-intensive and defect-prone of the entire
23 manufacturing process. This results in reducing electrical
24 energy usage by a whopping 65 percent.

25 This, coupled with the site using natural gas and

1 down gauging, as discussed above, delivers a lower carbon
2 footprint that cannot be matched by other PET sheets, even
3 those with post-consumer recycled content. And to add to
4 that, the idea of shipping. Shipping constitutes generally
5 an infinitesimal amount to the carbon footprint, as was
6 explained by Intertech in the report.

7 A dramatically lower carbon footprint is a huge
8 part of the success of D-PET. Governments and consumers are
9 pushing manufacturers to be more accountable for the
10 packaging they create. It must be recyclable and show
11 continual improvement on carbon footprint.

12 Please refer to pages 3 through 5 of the
13 attachment. The United Nations has developed 17 global
14 sustainable development goals that are used by some of the
15 largest retailers in the U.S. For instance, the retailer
16 Target uses the icons from the U.N. goals on their website to
17 track progress.

18 All of the large U.S. retailers have made bold
19 statements regarding their footprint. Walmart will reduce
20 its emissions by 18 percent by 2025. Target will be 25
21 percent below their 2015 level by 2025. In 2006, Safeway
22 committed to a 25 percent reduction by 2020. These
23 statistics are important because the companies publish
24 targets and publish their progress towards achieving these
25 reductions.

1 As suppliers to these companies, our customers need
2 material that can demonstrate a sustainability message that
3 is second to none. This is most evident with one of OCTAL's
4 largest customers, Inline Plastics, who is participating in
5 this hearing today.

6 Please refer to pages 6 and 7 of the attachment,
7 which includes screen shots from Inline's website. As you
8 can see, sustainability is highlighted prominently as one of
9 Inline Plastics' major selling points. And when you click on
10 the sustainability link, OCTAL's PET sheet is featured
11 prominently as allowing Inline Plastics to offer packaging
12 "using the lowest carbon footprint plastic." Thus, one of
13 the largest purchasers of PET sheet in the U.S. has made the
14 ability to offer a lower carbon footprint a central tenet of
15 their entire marketing approach.

16 Again with respect to lower carbon footprint,
17 OCTAL's D-PET sheet is unlike any other material on the
18 market. Third-party research labs have documented this
19 through life cycle analysis studies. Please refer to page 8
20 of the attachment. As can be seen by Intertech's
21 verification statement, a 2012 study by Intertech
22 demonstrated that OCTAL's D-PET sheet has a 22.3 percent
23 lower carbon footprint than virgin A-PET. And I note that we
24 provided a copy of the complete study by Intertech to the
25 Commission during the preliminary phase.

1 With respect to lower carbon footprint, OCTAL's D-
2 PET simply outperforms any other PET sheet available in the
3 global marketplace. Our customers know and understand this,
4 which is why they have partnered with us for so long.

5 One of the great appeals of OCTAL's direct to sheet
6 process is that owning and operating the resin reactor allows
7 OCTAL to innovate D-PET sustainability benefits beyond carbon
8 footprint. OCTAL has recently begun chemically recycling PET
9 scrap in its reactor. This is a revolutionary process for
10 PET sheet as it allows OCTAL to provide virgin-quality sheet
11 and recycled content.

12 The typical method for incorporating recycled
13 content in PET sheet involves mixing recycled bottled flake
14 with virgin resin and extruding it in traditional extruders.
15 This results in a sheet with high variability in terms of
16 color, brittleness, and visual defects.

17 To compensate for this, producers have added
18 additional processes, such as offline SSPs, or solid staters
19 is what they're called, to lift the intrinsic viscosity and
20 remove impurities in an effort to enhance final sheet
21 quality. All of this comes at a cost, making high-quality,
22 recycled sheet an expensive luxury, as opposed to sound
23 environmentalism with sound economics.

24 OCTAL's D-PET sheet with recycled content sidesteps
25 all of these disadvantages by feeding post-consumer PET waste

1 directly into our process, economically and efficiently de-
2 polymerizing, then re-polymerizing this post-consumer waste,
3 effectively up-cycling it into virgin-like material, making
4 PET perpetually recyclable.

5 Our long-term partners are committed to alliances
6 with OCTAL because of the innovative potential made possible
7 only with our proprietary direct to sheet technology. The
8 Petitioners can try to cast D-PET as a marketing tactic all
9 they want, but with these realities, their claims become a
10 plain and transparently desperate effort to draw an
11 equivalency between traditional sheet and D-PET, which not
12 only delivers tangible and valuable advantages today but
13 holds the promise to establish an insurmountable combination
14 of performance and economic advantages that will fuel its
15 perpetuation globally, including the United States.

16 I also want to make a couple more points in
17 addition. First, a comment about plastic shields. OCTAL is
18 very proud of its ability to quickly start supplying the very
19 needed plastic shields to help combat the pandemic.

20 This morning, Petitioners attempted to complain
21 about OCTAL's supply of plastic shields, but here is the
22 thing. A hundred percent of OCTAL's supply of plastic
23 shields to the U.S. market comes from OCTAL Cincinnati,
24 OCTAL's U.S. production site. None of the plastic shields
25 come from Oman.

1 To me, this just shows that Petitioners really have
2 no idea about OCTAL's business. It appears that much of
3 Petitioners' complaints about OCTAL are United States' PET
4 sheet production.

5 And my last comment is about the strawberry
6 customer. We are not entirely certain who Mr. DeBode is
7 talking about, but a quick analysis shows that our recent new
8 business for strawberries came from our OCTAL Cincinnati
9 plant, as well as from the OCTAL Oman facility.

10 I will now turn over the microphone to Tom Orkisz
11 of Inline Plastics.

12 MR. ORKISZ: Thank you, Joe.

13 Good afternoon, Commissioners. I'm pleased to be
14 here to provide testimony to this process. My name is Thomas
15 Orkisz. I am currently the President and owner of Inline
16 Plastics Corp. Inline has been in business for more than 50
17 years. I've been active in the packaging business for over
18 30 years, working at and now leading the company that my
19 father founded.

20 As you probably know, I have earlier submitted a
21 sworn statement to the Commission with our company's U.S.
22 purchaser questionnaire response. I made that statement, and
23 I'm appearing before you today to address some of the factual
24 representations made by Petitioners that I believe to be
25 either false or misleading. They have fundamentally

1 mischaracterized key facts about this market, and I want to
2 help the Commission understand the reality.

3 I also wanted to just take the opportunity to thank
4 OCTAL. Joe had mentioned face shields. OCTAL had supported
5 by donation of sheet our local community effort to provide
6 face shields to our area during the pandemic that we've been
7 experiencing, so we appreciate that.

8 My first key point to stress is the difference
9 between traditional PET sheet and the unique D-PET sheet
10 provided by OCTAL. The Petitioners stated these products are
11 directly interchangeable and applied, they're really the same
12 product, that the name D-PET is just a marketing strategy.

13 These statements are wrong. I agree with the
14 earlier testimony you heard about the distinctive qualities
15 of D-PET. D-PET has concrete physical differences that make
16 it a different and significantly better version of
17 traditional PET sheet.

18 The name D-PET is more than a trademark or brand.
19 It is a patented production process that delivers valuable
20 efficiency in my production process.

21 D-PET processes better in my plant. Its age
22 consistency and formability is superior to every other sheet
23 on the market, resulting in increased up time and
24 productivity and less scrap in our operations.

25 D-PET also has a uniquely low carbon footprint that

1 enables me to offer products that address my customers'
2 pressing business needs for more sustainable packaging.

3 The inclusion of the sustainable properties of D-
4 PET sheet into our line of tamper-evident and tamper-
5 resistant packaging has supercharged the growth of that
6 product line, which has transformed my company from an
7 average size regional thermoformer to one of the largest and
8 fastest growing spanning the United States. There's hardly a
9 conversation that I'll have with a customer where
10 sustainability isn't part of the talk track.

11 Inline has grown dramatically over the past several
12 years. In 2017, we installed six new thermoformer lines
13 across the country and have been adding more thermoforming
14 lines each year. Inline is making continuous investment and
15 rapidly increasing employment. In fact, it would not
16 surprise me if my increase in employment far outstretched the
17 total employment of the Petitioners combined.

18 My company has built its marketing campaign around
19 D-PET because of these differences and, in particular, the
20 fact that D-PET has been proved by third-party researchers to
21 have a significantly lower carbon footprint.

22 We are in the process presently in going to the
23 next level by introducing OCTAL chemically recycled D-PET.
24 We're calling it RD-PET. We're going to be introducing that
25 new chemically processed, recycled D-PET across our entire

1 product line because it's the unassailable leader in the
2 field. No other producer in plastics can supply this
3 material or one that even comes remotely close to its
4 performance.

5 My second key point is about whether customers care
6 about the input raw materials. The Petitioners have stated
7 that downstream customers of packaging materials do not care
8 what input was used to make the packaging, that PET sheet is
9 just a commodity.

10 These statements make no sense to me. Our
11 downstream customers care very much about the inputs we use
12 and particularly care about the carbon footprint of the
13 packaging and how we could help them meet their own corporate
14 sustainability goals.

15 I was astonished to learn that the Petitioners have
16 been claiming that all PET sheet is the same and that only
17 price matters. That is not my experience, and such
18 statements do not reflect our experience marketing or
19 packaging products made from OCTAL's D-PET sheet.

20 Let me clear on this point. We were able to
21 increase our business by marketing the heightened
22 sustainability attributes of our products precisely because
23 there are actual physical differences between OCTAL's D-PET
24 and other PET sheet sold in the market.

25 Petitioners' claim that the D-PET is just a

1 marketing ploy is wrong on many levels. It minimizes the
2 very real preference of our customers, the companies that buy
3 our packaging solutions, have for more sustainable packaging.

4 All of the big brands, as Joe just mentioned, have
5 sustainability goals, and sustainability is a very pressing
6 business need for all of us. And it completely ignores the
7 documented proof that D-PET is physically more sustainable
8 than all other PET sheet in the market. I have customers
9 today that require threshold levels of recycled content in
10 their packaging for carbon footprint targets. They do care
11 deeply about the input raw materials going into their
12 packaging.

13 A third key point is to note our long-term
14 contractual arrangement with OCTAL. Petitioners discussed
15 the market as if everything is done by spot purchase and
16 everything is based on price. That may be true for smaller
17 thermopelers, but not Inline. We have been buying from
18 OCTAL since about 2006. We were their first sheet customer.

19 To be clear, during this approximately 10-year time
20 period, '06 to '16, we sourced PET sheet from many sources,
21 including the Petitioners here, and other PET sheet suppliers
22 around the world. And, therefore, we have 10 years of
23 experience buying and utilizing PET sheet from different
24 suppliers, including the Petitioners today.

25 Over time, it became increasingly obvious that D-

1 PET was a significantly better product. U.S. PET sheet
2 product developed on the U.S. merchant market, including the
3 PET sheet from these three Petitioners, is simply no match.

4 And so, when OCTAL expanded their own capacity by
5 installing a second reactor, we began sourcing more and more
6 of our needs from OCTAL. Finally, in 2016, we made a
7 business decision and decided to enter into a long-term five-
8 year exclusive supply contract. That 2016 agreement
9 established a fixed pricing formula mechanism that dictated
10 pricing for all of our PET sheet purchases from OCTAL during
11 the period of interest here, '17, '18, and '19.

12 We did not make this decision lightly. It reflects
13 quite a bit of analysis about how best to grow our business
14 and the trade-offs between buying PET sheet or installing our
15 own industry lines to become vertically integrated like all
16 of our major competitors in the packaging business.

17 In the end, we decided that given our desire to
18 increase our own sales of packaging products and to support
19 that through by highlighting a lower carbon footprint it made
20 sense to adopt a single source strategy with only a PET sheet
21 supplier offering a lower carbon footprint PET sheet.

22 We did not vertically integrate to produce our own
23 PET sheet because D-PET was such a better product, and we saw
24 more potential for our own growth through the supply
25 arrangement with OCTAL.

1 Simply installing a bunch of traditional extruders
2 using technology that had not appreciably changed in 50 years
3 would have given Inline no discernible market advantage
4 related to performance and sustainability. Strategically,
5 for my company, it made more sense to go with a technically
6 superior product that offered a lower carbon footprint.

7 Beyond this decision to source from OCTAL, I also
8 want to clarify the mechanics of pricing. During all of '17,
9 '18, and '19, three years of the focus of your investigation,
10 we did not negotiate prices with OCTAL shipment to shipment
11 or month by month. Instead, the prices for individual
12 shipments made during these three years moved up or down
13 based on a third-party market index.

14 It is also important to emphasize we were
15 contractually committed to purchase all our needs from OCTAL
16 during this time period, and, so to the extent we purchased
17 more from OCTAL, that increasing volume simply reflected that
18 our own business was able to grow during this time period.

19 Another key consideration in this decision was
20 OCTAL's ability by virtue of its scale of production to offer
21 the quantities from a single supplier. We require more than
22 200 million pounds of PET sheet every year, and that number
23 grows by more than 10 percent a year.

24 I can confirm that when we made the decision in
25 2016, not a single U.S. PET sheet producer that was supplying

1 the U.S. merchant market at that time was part of our
2 consideration because not a single U.S. PET sheet producer
3 had anywhere near the production capability to supply the
4 quantities that we demanded.

5 My fourth key point is about our decision to resume
6 purchases from OCTAL after the cyclone-triggered supply
7 interruption. I know you have heard about the supply
8 disruption caused by Cyclone Mekuna.

9 The Petitioners stated that we resumed purchasing
10 from OCTAL when they restarted their factory after recovering
11 from the cyclone because of the lower price. That is a
12 blatantly false statement on many levels. The price we pay
13 OCTAL had been set back in 2016 when we entered into a long-
14 term exclusive supply contract. We resumed purchasing from
15 OCTAL when they could supply us because that was what our
16 contract required. The pricing continued pursuant to the
17 pricing formula in the contract.

18 OCTAL did not lower its price when it went back in
19 business. The domestic producers we purchased from during
20 this supply interruption knew that these were only temporary
21 purchases that would cease once OCTAL came back online.

22 I noted from John Parsio's testimony this morning
23 that he said their pricing improved during the OCTAL
24 disruption. I personally felt that the domestics took
25 advantage of OCTAL's supply disruption and actually brought

1 the price up a bit to market during that time frame.

2 The statement is also misleading in the sense that
3 it ignores the challenges we face when we're forced by
4 circumstances to use domestic supply. The Petitioners stated
5 their product successfully replaced OCTAL D-PET in
6 thermoforming operations.

7 I guess successful depends on your perspective.
8 They did supply PET sheet, but when we had to process their
9 PET sheet during OCTAL's supply interruption, the reject rate
10 from the Petitioners' sheet were multiples of OCTAL's D-PET
11 sheet.

12 More importantly, when using the Petitioners' PET
13 sheet, our system-wide thermoforming throughput dropped to
14 such a degree that we became supply-constrained at times due
15 to product inconsistencies that we do not experience from
16 using OCTAL's D-PET sheet.

17 We had no choice during the disruption. Our
18 primary source of raw material was cut off for a couple
19 months. We had to make the domestic suppliers work. We had
20 to buy from six new suppliers in a hurry, and five were
21 domestic, one was foreign, and regardless of how well or not
22 their sheet performed in our operation, we had to make it
23 work. We couldn't be fussy. We weren't inclined to be
24 rejecting any of their product because we had to fill orders
25 for our customers.

1 Let me be clear. My statement of the sub-par
2 operational performance by the U.S.-produced PET sheet that
3 we were forced to use during the summer of 2018 is not a
4 subjective view. It's based on test reports and operation
5 deficiency reports that we keep in the ordinary course of
6 business and can be produced if necessary.

7 When processing the Petitioners' sheet, our
8 efficiencies went down, scrap went up. We had customers
9 asking us about the decline in the specs. They noticed that
10 there was changes in the clarity of the packaging we were
11 providing them.

12 My fifth key point is about the role of price in
13 purchasing decisions. Petitioners stated that PET sheet
14 purchases are primarily or exclusively about price. Such
15 statements are overly simplistic and quite misleading.

16 Prices are one element for measuring value. We
17 care about how the input material works, how it affects our
18 process for processing, how it affects our yield, how it
19 affects our customers' perceptions of the packaging we sell
20 to them.

21 Honestly, if the domestic producers truly believe
22 that PET sheet supplies are predominantly about price, that
23 misunderstanding may explain why they are struggling in the
24 market. This simplistic approach will not win the business
25 of any sophisticated purchaser of PET sheet.

1 Moreover, Petitioners discussed pricing without any
2 acknowledgment that pricing for larger customers follows
3 market indices, either directly or indirectly. Everyone in
4 the industry can track the very transparent price indices for
5 the key chemical inputs of PET sheet. Our contract with
6 OCTAL sets prices based on such a market index. We adopted
7 this pricing formula mechanism because many of our own
8 customers utilize the same price indices to determine the
9 prices that we charge to them.

10 As you can see, I disagree with much of how the
11 Petitioners have characterized the PET sheet market and
12 OCTAL's role in that market. Inline is one of the largest
13 purchasers in that market, and we view the market very
14 differently.

15 We source from OCTAL rather than produce our own
16 PET sheet because of the quality of OCTAL's D-PET, and by
17 quality, I mean things like clarity, age consistency,
18 formability, intrinsic viscosity, low carbon footprint. A
19 lot of elements go into that quality mix. And we have a
20 great long-term business relationship with OCTAL.

21 So let me close with this thought. If OCTAL's D-
22 PET were not available, we would probably buy our own
23 extruders and make the PET sheet we need for our operations.
24 We could not rely on the smaller-scale domestic producers,
25 particularly given our recent experience with them.

1 Honestly, all the problems, the aggravation of
2 dealing with several smaller domestic suppliers, with less
3 consistent quality within each company, with inconsistent
4 quality across different companies, with older equipment that
5 makes them high-cost producers would collectively make it
6 virtually inevitable that we would buy our own extruders and
7 vertically integrate.

8 So I thank you for listening to my testimony, and I
9 will pass the mike off to Jeff. Thank you.

10 MR. MCGUIRE: Hello. My name is Jeff McGuire. I
11 am a general partner of Clearly Clean Products, LLC, CCP as I
12 will call it.

13 We are a privately owned manufacturer of open-
14 topped plastic food containers that are used in the food
15 packaging industry. CCP is headquartered in South Windsor,
16 Connecticut, and its manufacturing facilities are located in
17 Orwigsburg and Frackville, Pennsylvania, where we have over
18 100 employees.

19 CCP's containers or trays are used for packaging
20 food items like cuts of beets, pork, or chicken. Our trays
21 facilitate their handling, shipping, and eventual sale at
22 retail locations, such as grocery stores. Our patented food
23 containers have superior characteristics which we achieve
24 through our patented manufacturing process that allows us to
25 produce their sophisticated design.

1 Our raw material purchasing decisions are driven
2 not solely or even primarily by price but primarily by the
3 need for superior raw materials, particularly our single-most
4 important raw material, the PET sheet that our manufacturing
5 technology and patented products require.

6 When founded in 2008, CCP produced a variety of
7 containers made from A-PET and R-PET. CCP patented a series
8 of rolled-edge rigid plastic food trays and worked tirelessly
9 to develop the sophisticated manufacturing technologies that
10 allowed us to commercialize our patented products.

11 In 2016, CCP stopped manufacturing other products
12 and began producing only rolled edge rigid plastic food
13 trays. CCP's new products filled the customer requirement to
14 replace Styrofoam-type trays, and demand for these products
15 skyrocketed.

16 Today, CCP produces patented food containers with
17 specialized components like a tightly rolled edge and
18 intricate geometric shapes that are impart important
19 functional features to our trays.

20 In addition to these functional features imparted
21 by their specialized shape, the strongest selling points of
22 CCP's food containers are their visual clarity, their
23 strength and durability, and their eco-friendliness.

24 PET sheet is the largest input into CCP's products,
25 accounting for well over half the cost of manufacturing its

1 food trays. As I will explain, CCP's ability to produce food
2 containers with the features that have been responsible for
3 its dramatic market success have been greatly facilitated by
4 its use of D-PET sheet that it purchases from Omani supplier
5 OCTAL.

6 D-PET has superior properties, specifically,
7 clarity, formability, and strength, that are superior to A-
8 PET. In addition, D-PET is more eco-friendly than A-PET.
9 These characteristics are of first importance to our
10 customers.

11 As our name Clearly Clean Products signals, CCP's
12 signature product is its food trays made of clear plastic.
13 When A-PET is used to form, trays can appear hazy or dirty.
14 On the other hand, D-PET produces the clearest plastic food
15 trays, giving them a higher quality appearance than the trays
16 made from A-PET. This clarity is prized by CCP's customers
17 because they display their products in our trays. The
18 appearance of our trays can impact the end user's perception
19 of our customer's product.

20 D-PET also provides greater formability, i.e., the
21 ability to form trays into a desired shape, than A-PET during
22 the manufacturing process. Some of the shapes that we mold
23 into our tray provide crucial functional characteristics,
24 such as how well the trays nest together, how easily they can
25 be nested for filling, and how thin an insert they will

1 accept. These characteristics are an important reason why
2 our customers buy our trays.

3 CCP's food containers must protect their contents
4 during processing, packing, shipping, unpacking, storage,
5 display, and once sold at retail until their contents are
6 consumed. In this challenging environment, strength and
7 durability are crucial to the ability of our products to
8 perform properly. D-PET imparts greater strength,
9 durability, and impact-resistance to our tray than does A-
10 PET.

11 Our customers and the end customer increasingly
12 demand that our food containers, which tend to be used only
13 once before disposal, are eco-friendly. Unlike Styrofoam,
14 which has traditionally been used for food containers, both
15 D-PET and A-PET are both recyclable, but the manufacturing of
16 D-PET has a significantly smaller carbon footprint than A-PET
17 because it is heated only once, while A-PET must be heated
18 twice to produce PET sheet.

19 The only producer of D-PET is OCTAL, which is
20 located in Salalah, Oman. No domestic producer of PET sheet
21 produces D-PET. OCTAL is a major international producer of
22 PET products, including D-PET and resin, and OCTAL's scale
23 and production capacity are guarantors of its reliability as
24 a supplier. The reliable availability of OCTAL's D-PET
25 product in its greater capacity are crucial to our company's

1 current operations.

2 As discussed above, CCP has experienced remarkable
3 growth in the demand for our products since 2016, and we
4 continue to expand to meet that demand. Such expansion plans
5 would be called into question if we were not confident that
6 OCTAL could provide the D-PET material sufficient to meet our
7 future needs.

8 The period from 2016 to the present has been one of
9 continuing experimentation for CCP as we developed, refined,
10 and then commercialized our innovative product design. One
11 of the most significant challenges we faced was developing
12 the ability to thermoform complicated geometries required by
13 a new design.

14 During this period of intense experimentation, CCP
15 tried different suppliers as it tested the properties of
16 different types of PET sheet, including the domestic A-PET
17 offered by the Petitioners in this investigation. We found
18 the domestic A-PET to exhibit a heavy tint in a nominally
19 clear sheet, inferior strength and durability, and
20 inconsistent dimensions.

21 OCTAL has developed a superior technology that
22 produces a product with superior properties. In describing
23 the differences between D-PET and A-PET, I like to compare D-
24 PET to butter, smooth, soft, uniform, easy to work. A-PET,
25 on the other hand, is like margarine, hard and less

1 homogeneous and distinctly more difficult to work.

2 We can make our products from A-PET. Indeed, we do
3 when necessary, but our process suffers, as does our
4 efficiencies. But this is only part of the story. OCTAL's
5 superior technology also results in a product with vastly
6 superior uniformity. Because of the exacting nature of our
7 thermoforming process, any variations in the property of the
8 PET sheet complicate the manufacturing process, adding time
9 and expense.

10 OCTAL's D-PET material is distinguished by its
11 consistency and sheet thickness, sheet width, intrinsic
12 viscosity, and clarity. We have found no other PET sheet
13 supplier who can match OCTAL's consistency and quality
14 control. A-PET is not a satisfactory substitute for D-PET
15 for a large majority of the products we make.

16 Since 2016, CCP has purchased a vast majority of
17 our PET sheet in the form of D-PET from Oman. The rest is
18 purchased from domestic suppliers. Why, given D-PET's
19 superior properties, do we purchase both types of PET sheet?
20 There are several reasons.

21 The large majority of CCP's rolled-edge rigid
22 plastic food trays are, as the company's name implies, made
23 of clear plastic because that is what a large majority of our
24 customers request. CCP manufactures its clear plastic food
25 trays from clear D-PET which it buys in volume. However,

1 some of CCP's customers request their trays made of colored
2 plastic, green, blue, yellow, or black. Typically, these are
3 smaller orders, but OCTAL and the domestic producers have the
4 ability to produce colored PET sheet.

5 To do so, however, requires adjustments, making
6 colored PET sheet effectively a specialty product. The
7 domestic suppliers have the ability to make the necessary
8 equipment changeovers more easily than the much larger OCTAL,
9 so CCP purchases colored PET sheet from domestic suppliers.
10 This is an example of how PET price can become a primary
11 sourcing driver at least for small batches.

12 CCP's value is not being dependent on a single
13 source of PET sheet. We intentionally source some from
14 multiple sources in order not to be trapped into that
15 situation. However -- sorry, price is, of course, always
16 relevant to sourcing choices.

17 However, the difference in price between domestic A-
18 PET and Omani D-PET does not solely drive our purchasing
19 decisions. As noted above, the properties of D-PET are
20 crucial to the sophisticated technology that allows us to
21 produce our patented food trays with superior functionality
22 and environmentally friendly characteristics that are the
23 reason our customers demand them.

24 The increase in the price of imported D-PET would
25 not induce CCP to substitute A-PET for all of its D-PET

1 requirements unless the magnitude of that increase was so
2 great that it put CCP's business at risk.

3 The current anti-dumping investigation puzzles us.
4 Until and unless American suppliers produce D-PET themselves,
5 it seems to us impossible they can sell a product equivalent
6 to D-PET. A-PET is not equivalent.

7 CCP buys D-PET primarily because of its favorable
8 properties. After a diligent search over several years, we
9 have been unable to find a source of any type of PET sheet,
10 including domestically produced A-PET, which exhibits these
11 favorable characteristics, a low carbon footprint and the
12 consistent high quality of D-PET.

13 Although price is always a relevant concern, CCP's
14 decision to use D-PET for a large majority of its Production
15 is not driven by price but by D-PET's superior properties.
16 These properties allow us to achieve the superior
17 characteristics of our patented food trays, clarity,
18 formability, strength, and durability, and eco-friendliness,
19 that have propelled CCP to extraordinary growth during 2016.

20 Thank you for your attention.

21 (Pause.)

22 MR. BISHOP: Joe, you're on mute.

23 MR. BARENBERG: I told myself I wasn't going to
24 forget that. This is Joe Barenberg again. I just want to
25 add a few additional points about OCTAL's approach to selling

1 D-PET in the U.S. market. You just heard from two of our
2 larger customers about why they prefer to purchase OCTAL's D-
3 PET sheet, highlighting the superior performance attributes
4 of the D-PET product.

5 However, I want to address squarely the reason we
6 are all here today. Mainly, OCTAL's U.S. sales prices are
7 lower than most other suppliers to the U.S. market, including
8 most U.S. producers. Our prices are lower and the
9 Petitioners filed the differences reporting about that, those
10 low prices. But that product is so superior, why are we
11 charging a lower sales price? The answer is simple. We are
12 charging as much as you need to and as much as we can.

13 Let me be very direct. The U.S. sales prices that
14 OCTAL charges are not below our production and sales costs.
15 In fact, OCTAL is making a sound profit on its U.S. sales. I
16 ask you to look at page 62 of the confidential version of
17 OCTAL's pre-hearing brief. The chart at the top of the page
18 provides OCTAL's profitability for its export sales over the
19 three-year period, 2017 to 2019. Given that our U.S. sales
20 account for a majority of our total export sales, this chart
21 is a good proxy for OCTAL's profitability on its U.S. PET
22 sheet sales. I trust you agree that our profitability on our
23 U.S. PET sheet sales is just fine.

24 And so the next obvious question is, how is OCTAL
25 able to earn a decent profit while charging lower sales

1 prices than its competitors? The answer is very
2 straightforward: the combination of process innovation and
3 scale. As I discussed earlier, OCTAL has a very different
4 production process from that utilized by U.S. PET sheet
5 producers. Besides producing a better product, the new D-PET
6 melted resin production technology also results in tremendous
7 cost savings. OCTAL's new production technology eliminates
8 five energy-intensive manufacturing steps from the
9 traditional PET sheet production process, as stated earlier.
10 Indeed, our patented unique production technology eliminates
11 about 50 percent of the conversion cost of traditional PET
12 sheet producers.

13 Moreover, OCTAL does not mark up its own production
14 of PET melt, that is, the liquid plastic that has not yet
15 been turned into pellets, for use in PET sheet production.
16 Accordingly, OCTAL is able to pass on these significant cost
17 savings to its customers and still make reasonable profits.
18 It is the story of all successful industries, such as the
19 microprocessor market, for example. Innovation drives down
20 costs and increases processing power, like something we brag
21 about as Americans in terms of innovation. Imagine computers
22 and devices at our disposal today that were truly
23 unimaginable just 10 years ago. This is the power of
24 innovation.

25 OCTAL's lower prices also reflect the lower cost

1 associated with OCTAL's scale. Not only is OCTAL the only
2 PET sheet producer having employed multi-resin -- multi-sheet
3 technology -- excuse me, multi-resin technology, OCTAL's
4 production is also much larger because direct to sheet
5 technology lends itself to scale. In the ordinary course of
6 business, OCTAL attracts suppliers to the U.S. market.
7 Exhibit 1 to OCTAL's prehearing brief provides our latest
8 estimate of the production capability of those U.S. PET sheet
9 producers that only produce PET sheet for sale in the U.S.
10 merchant market as opposed to consumers of PET sheet
11 themselves to make packaging products.

12 As can be seen in Exhibit 1, the average production
13 capability of an individual U.S. PET sheet producer
14 supporting the U.S. merchant market is about 47 million
15 pounds per year. In contrast, OCTAL's production capacity is
16 nearly 500 million pounds per year or 10 times the size of an
17 average merchant market supplier. A much larger scale,
18 combined with vertical integration, confers very real cost
19 savings. OCTAL buys its key raw material inputs, PTA and
20 MEG, in large quantities at competitive prices.

21 Smaller U.S. merchant market producers, in contrast,
22 are buying smaller quantities of PET resin, a downstream
23 product made from PTA and MEG, at what are probably less
24 attractive prices. These smaller companies have to pay the
25 markup that PET resin producers charge. OCTAL's size and

1 vertical integration make it a very low-cost producer of
2 extremely high-quality PET sheet.

3 I know that this is not just economic theory. We
4 have actual concrete real-world experience that demonstrates
5 the per pound cost advantages of our direct to sheet
6 technology and larger scale compared to smaller U.S. PET
7 sheet producers. Specifically, OCTAL extrusion, which refer
8 to as OCTAL Cincinnati, is our U.S. PET sheet production
9 facility. OCTAL Cincinnati is a pure merchant market
10 participant. That is, OCTAL Cincinnati only produces PET
11 sheet for sale in the U.S. merchant market.

12 The size and scale of OCTAL Cincinnati's production
13 operations match that of the average U.S. PET sheet merchant
14 market producer. What this means is that we have a direct
15 experience with both the cost of operating a small-scale U.S.
16 PET sheet producer, producing say 50 million pounds using
17 more traditional production technology, and the costs of
18 operating our Omani production, which produces 500 million
19 pounds using the unique direct to sheet production
20 technology. And based on this actual experience, we believe
21 the combined advantages of having the unique production
22 technology and the significant economies of scale give OCTAL
23 Oman a significant cost advantage, somewhere in the 15 to 20
24 cents per pound range, over traditional U.S. sheet producers.

25 The other side would have you believe it is not

1 possible to make a better mouse trap that is also lower cost.
2 Commissioners, this is wrong. Innovation and new production
3 technology allow us to make a superior PET sheet at a lower
4 cost. I just described how and why we are able to charge
5 lower prices than our competitors and still make a reasonable
6 profit. I will now explain why market forces do not allow us
7 to charge more than we do. Our same prices are the highest
8 that the market will allow us to charge.

9 To appreciate this market reality, it is important
10 to focus on two points. First is that PET sheet faces
11 competition from other types of materials. While we believe
12 that PET's ability to provide better see-through material and
13 having a lower carbon footprint makes it preferable to other
14 plastic substrates, the preference is not absolute. The
15 other substrates continue to exist and fight vigorously for
16 the retailers' attention.

17 I'll give you a real-world example. Several years
18 ago, Starbucks decided to offer a large range of cold drinks.
19 Originally, Starbucks went with a PET cup because it was
20 structurally stiffer and easier to hold and better for the
21 consumer to see the drink inside. But, when PET prices
22 increased, Starbucks decided PET became uneconomical, and so
23 Starbucks and others went with polypropylene and this is a
24 real-world example that highlights the very tangible effect
25 that other substrates still are having on PET pricing.

1 The second important point is the economics of a
2 larger form of customers. You just heard one of our larger
3 customers, Inline Plastics. Inline made very clear that if
4 the PET sheet price that it pays increases beyond a certain
5 point, Inline will just decide to produce the PET sheet
6 themselves from PET resin. It is a matter of just pure
7 economics. Indeed, that is precisely why so much of the
8 total market have already integrated in years past. Most of
9 the larger thermoformers have decided to make rather than buy
10 PET sheet. This means they're buying PET resin themselves,
11 they melt it and extrude it to produce their own sheet for
12 internal consumption. Ultimately, what this means that even
13 though we have a PET sheet product with superior performance
14 attributes, we are not able to pass onto our customers higher
15 and higher selling prices. Our customers will decide to stop
16 buying PET sheet from us, D-PET, and make it themselves.

17 And my final point, I want to address the entire
18 premise of the Petitioners' injury argument. Petitioners'
19 premise is that our OCTAL increased sales in the U.S. market
20 should offer lower selling prices for each shipment from
21 Oman, this is simply not true. For the vast majority of our
22 shipments from Oman, we did not choose the selling price.
23 Rather, the selling price was dictated by changes in third-
24 party market industry. As you know, OCTAL has long-term
25 multi-year contracts with our larger customers and these

1 contracts were entered into before 2017. These contracts
2 have pricing provisions that require our selling prices for
3 individual shipments be based on a reference to a third-party
4 market index. This mechanism treats both OCTAL and its
5 customers fairly by recognizing that changing raw material
6 prices impact the cost of producing the product.

7 And so Petitioners' entire premise that OCTAL chose
8 to offer lower prices month after month from 2017 to 2019 is
9 simply wrong. And this concludes my statement. Thank you.

10 MR. PORTER: All right, Mr. Chairman, that concludes
11 Respondents' affirmative presentation. We welcome any and
12 all questions.

13 MR. BISHOP: Mr. Chair, you're on mute.

14 CHAIRMAN KEARNS: Vice Chair Stayin?

15 VICE CHAIRMAN STAYIN: Yes. Thank you. Petitioners
16 argue that subject imports are completely interchangeable and
17 of the same product as U.S.-produced PET sheet. Can D-PET
18 sheet be used interchangeably with PET sheet sold by U.S. PET
19 producers in the same applications?

20 MR. PORTER: Let me begin. Thank you, Commissioner.
21 Let me begin and then obviously turn it over to our purchaser
22 customers. I think I want to highlight something that
23 actually Commissioner Schmidtlein brought up a little earlier
24 and that is supporting documentation. I'm going to turn it
25 over to Inline and Clearly Clean and they are going to

1 describe how they have actual production reports, testing
2 reports that distinguish the ability to use Petitioners' A-
3 PET versus D-PET. It's not just talk. They actually have
4 data and reports to demonstrate that.

5 Tom, why don't you start?

6 MR. ORKISZ: Okay. Certainly. So it's true that we
7 can make any PET work in our operations, but D-PET works much
8 better. Its consistency, its gauge control, its viscosity,
9 it's on, it's stable and our machines run very well. When we
10 use A-PET from other domestics, even other of our global
11 suppliers, we tend to have to put more heat into the sheet.
12 We tend to have more gauge variation, which creates scrap.
13 We tend to have just lower efficiencies in our operations.
14 So yeah, we can make it work, but it doesn't work as well.
15 It impacts yield, it impacts our overall operating
16 effectiveness of our plants.

17 MR. PORTER: Thanks. Jeff, why don't you add your
18 experience?

19 MR. MCGUIRE: Sure. What I would tell the
20 Commissioners is that if I put a roll of D-PET on the floor
21 next to one of my machines and I put a roll of A-PET from a
22 domestic supplier next to my machine and I gave my processors
23 the opportunity to pick which sheet they would run, they will
24 absolutely 100 percent of the time pick the D-PET because
25 they know they will have less problems running that material

1 through our process. It's just what we experience every day.
2 It's how we have to run our business. Our people on the line
3 will tell us and they will complain. Like, you know, people
4 will complain that this is not running well. Why are we
5 doing this? Why can't you get me X? And that always comes
6 back to D-PET.

7 And I will agree with Tom and his point. There is
8 probably a 20 to 25 percent heat increase potentially in
9 material from D-PET from A-PET. It might be, you know, 50 to
10 100 degrees because what we're doing in our process is
11 warming the sheet, forming the sheet. So D-PET, we put less
12 heat into it. It makes our profit proper.

13 VICE CHAIRMAN STAYIN: Would you agree that
14 according to the staff report that price and quality are the
15 two most important matters taken into consideration in
16 purchase of a product?

17 MR. MCGUIRE: Well, I will tell you price is always
18 an important factor. There's no doubt about it. I mean,
19 we're running a business to try to make money and if we can't
20 make money, what's the sense? But I will tell you that the
21 most important thing for us that we have to deal with is
22 we're a new product. We're a different type of thermoformer.
23 We're doing something totally different and if I don't have a
24 superior product and superior quality and material, I cause
25 problems downstream with my customers and with the end

1 customers. So the quality of the product is so important to
2 us as a processor.

3 MR. PORTER: Tom, do you want to add a couple
4 points?

5 MR. ORKISZ: Sure. And we view it more from a total
6 cost perspective. You know, the price per pound of the sheet
7 is a piece of that package, but, you know, how well it
8 processes, what cycle signs we can get on our machines, what
9 kind of reject rate are we going to get in our plant versus
10 maybe a stage that our customers end up experiencing? So,
11 yeah, price is a big driver, but it's not the only driver.
12 I'd be happy paying a penny more a pound for a sheet that's
13 going to give me increased efficiency, better yield, better
14 confidence in the quality of the products that I'm sending to
15 my customers. So it's the total cost that we have to look
16 at, the whole package. It's not just that price per pound.

17 MR. PORTER: Commissioner, can I just add a comment
18 about the other evidence on the record because, of course,
19 you just have two purchasers here and you have collected
20 information and data from 17 purchasers, and I kind of want
21 to highlight that Petitioners' argument is price is the most
22 important and the only consideration, and, of course, you
23 hear this in every case and you go out and you ask purchasers
24 to essentially test this theory, this hypothesis, and you did
25 that in this case and your team put out a questionnaire to

1 purchasers and they said, you know, tell us what you think
2 are the important factors, and I think you had very
3 important, important, and less important. I can't remember
4 exactly, but you had three categories and the overwhelming
5 majority or the overwhelming supply of the purchase, quantity
6 by purchasers said D-PET was very important, which was either
7 equal to the price. So the evidentiary record does not
8 support the Petitioners' claim that the evidence you have
9 acquired, that price is the only most important thing.

10 VICE CHAIRMAN STAYIN: Another argument that that
11 rates highly on the purchaser's viewpoint is reliability of
12 supply and, you know, the question becomes how important is
13 reliability of supply. Do you have a contingency plan, and
14 are there any constraints that you've experienced in terms of
15 supply?

16 MR. PORTER: Tom, why don't you go first, and, Jeff,
17 you follow up?

18 MR. ORKISZ: Sure. Reliability of supply is
19 critical. Obviously, we can't make our packaging product and
20 fill our customers' orders without certainty of the raw
21 material arriving. You know, OCTAL performs, you know,
22 superbly on that front, a very, very robust, you know, well-
23 organized supply chain. We also have the benefit of OCTAL
24 Cincinnati's operation. It's kind of our safety valve if
25 there was an issue with, you know, an ocean vessel getting to

1 port on time or even maybe just a spike in orders. We do
2 have the ability to lean on the OCTAL operation. So, you
3 know, supply is critical. You know, to the extent we can
4 rely on the supply, we can reduce our working capital, have a
5 little less inventory, turn our inventories quicker, which,
6 you know, is good for our profitability.

7 So, you know, in our case, scale is critical as
8 well. We're a large buyer. We're very unique. Most of our
9 competitors who are anywhere near our size have all
10 vertically integrated. We chose not to do that. You know, I
11 guess fortunately for us, we happened to start really getting
12 to the size where vertical integration made sense around the
13 same time that OCTAL was coming onto the scene. We liked
14 what they were doing, we loved the D-PET, the carbon
15 footprint story, which is critical in our market today. All
16 of our big customers, the Walmarts of the world, Trader
17 Joe's, Whole Foods, all those people, sustainability is key.
18 So, you know, we needed a company that could deliver us
19 integrated like economics without us having to spend the
20 money on integrating ourselves. So, you know, scale is a big
21 part of that reliability and, you know, we're fortunate that
22 we have the Cincinnati safety valve in our relationship.

23 VICE CHAIRMAN STAYIN: Do you have the same -- did
24 you have -- are the imports being sold to the same consumer,
25 same purchasers as our same customers -- as are the other

1 products that are made in the United States?

2 MR. ORKISZ: My understanding is you're correct. I
3 mean, we sole source from OCTAL. So all the products we make
4 are made out of D-PET or occasionally maybe some sheet from
5 Cincinnati. But, you know, the vast majority, 99 point
6 something percent of our products are made out of D-PET. So
7 we're selling those packaging products into a market that
8 some of our competitors are selling into that same market.
9 So they might be using casted sheet. So they might be using
10 some sheet from merchant markets. But it is all hitting the
11 same market for sure.

12 MR. PORTER: Commissioner, I'm sorry. Let me ask
13 Jeff Maguire to get your question, because Jeff actually buys
14 D-PET from OCTAL, OCTAL buys some colored PET sheet from the
15 U.S. producers. It's the idea of different products serving
16 different applications. Jeff, why don't you elaborate on
17 that?

18 MR. MCGUIRE: Sure. The answer to your question is
19 yes. So D-PET and A-PET products would be sold into the same
20 market space, so that is an affirmative to that question.
21 However, you cannot afford to underestimate the process that
22 we have to go through to make the A-PET products move from
23 our facility to that customer. It's just, as Tom has alluded
24 to before, our efficiencies in using the D-PET are much
25 greater.

1 VICE CHAIRMAN STAYIN: All right. Thank you very
2 much. My time is up.

3 CHAIRMAN KEARNS: Commissioner Johanson.

4 COMMISSIONER JOHANSON: All right. I'd like to
5 thank all of you for appearing on this afternoon's panel.
6 Could you all please respond to the Petitioners' claim on
7 page 22 of their brief that your assertions regarding the
8 alleged premium quality of D-PET are a resurrection of the
9 same argument that you raised and that the Commission
10 rejected in the 2016 PET resin case?

11 MR. PORTER: Yeah. Let me ask Joe Barenberg to
12 address that and in particular the very real-world
13 differences between sort of making resin and making PET
14 sheet. Joe, won't you go ahead. Joe, your mike.

15 MR. BARENBERG: Yeah. So, if I understood your
16 question correctly, you're getting at the, to understand the
17 difference in -- how our explanation of the quality of the
18 sheet versus the traditionally manufactured sheet. Is that
19 correct?

20 MR. PORTER: No, Joe, I guess -- and, Commissioner
21 Johanson, if I may. So the difference is essentially the D-
22 PET process and what benefit it gives to the ability to
23 charge a lower price in PET sheet versus what benefit D-PET
24 gives the ability to charge a lower price in resin.

25 MR. BARENBERG: Oh, okay, very good, yeah. So,

1 yeah, the resin process that we use is through a reactor.
2 This reactor is a relatively new technology called melt the
3 resin and the process we go through is we polymerize it and
4 then we take, when we're making resin, we take that melt or
5 the liquid and we put it through chippers to make little
6 pellets out of it, and then we condition them in a silo and
7 ship them. The sheet is a different -- it separates from the
8 resin process as the liquid is then funneled into a different
9 direction towards the sheet-making equipment and this sheet-
10 making equipment having that direct connection to the reactor
11 makes a tremendous difference in the quality and performance
12 of the sheet.

13 That's really where the magic is, and I know that we
14 heard from the Petitioners that it's just getting rid of one
15 step, et cetera. Well, I would say to say that just getting
16 rid of one step and it's not much different than traditional
17 sheet manufacturing is sort of like saying the difference
18 between an autonomous driving car and the cars we drive today
19 is just taking your hands off the wheel, and that's simply
20 not the case. It's a very sophisticated level of technology
21 that controls the melt and how it disperses into the sheet-
22 making line, and so the quality of that comes from not having
23 to make the resin into a solid state and then having to take
24 the energy to cool it and then to take those pellets and then
25 re-heat them.

1 You have to dry them first and re-heat them in a
2 punishing process and then you extrude them, which the
3 extrusions crew is the most punishing and energy-intensive
4 process, so the quality and difference in how D-PET behaves
5 is really quite linked to the fact that the resin has never
6 been solidified before it's turned into the sheet. That
7 alone imparts tremendous capabilities, flow characteristics
8 for making intricate parts, degradation of molecules within
9 it, making the flake from the D-PET very valuable.

10 We, especially in Europe but also in the U.S. in the
11 early days, there were flake merchants who would go around
12 and specifically search for D-PET flake because they could
13 get a significant increased price for that flake and sell it
14 back to integrated thermoformers, so there's a lot of
15 evidence out there that people are really choosing D-PET for
16 the fact that they get secondary and tertiary benefits when
17 they buy D-PET even if they're integrated. They like the
18 side flake because it makes what they extrude an even better
19 product. So there are many, many, many reasons why the sheet
20 is of superior quality from a technical side of things.

21 MR. PORTER: Joe, one second, Jim, go ahead.

22 MR. DURLING: Yeah, Commissioner Johanson, just
23 really quickly, vis-a-vis your earlier decision in PET resin,
24 two simple key differences. First, it's a different product
25 and so there's a different evidentiary record. At the end of

1 the day, you have to make a decision about the arguments for
2 each product based on each evidentiary record.

3 Second, the point Joe was making about a second
4 heat, it is true that virgin resin typically had one heat and
5 virgin D-PET resin has had only one heat and that was the
6 point you heard this morning. The difference is this morning
7 they were ignoring the fact that even if you're starting with
8 virgin resin, in the traditional process, you have to heat it
9 again, and that's the key difference. It's the second heat
10 which degrades the molecules, changes the performance
11 characteristics, and that leads to all the benefits that Joe
12 was just describing. So those are the two key differences
13 from your prior decision, different factual record and the
14 fact that there's a second heat, a important physical
15 difference which changes the performance characteristics.

16 COMMISSIONER JOHANSON: All right, thank you for
17 your responses there. Moving on to another question, you
18 seem to indicate that the reason for subject import
19 underselling, which in this case involves market index
20 pricing formulas and the long-term supply contracts, can in
21 some cases reduce the relevance of underselling data to our
22 price effects analysis, and you discuss this at pages 46 to
23 47 of your brief. Why does this reason affect our analysis
24 of the significance of underselling in this investigation?

25 MR. DURLING: Let me take a first crack at that,

1 Commissioner Johanson. The point we were making about the
2 relevance of underselling is that, you know, it's not just
3 the fact of underselling. Part of the broader context is
4 understanding the reasons for the underselling, right, so the
5 reasons for the underselling, another important part of the
6 context is the changes in the underselling, right? Earlier
7 this morning you heard repeated references with Mr. Rosenthal
8 kind of denigrating our point about kind of stable margins of
9 underselling. Well, we think that actually is relevant
10 because, when you have stable margins of underselling, then
11 the question is, okay, if the underselling isn't changing, if
12 the imports are always selling at a significantly different
13 price, what is explaining the changes over the period, right?
14 So your typical paradigm is imports are increasing,
15 underselling is increasing, and profitability is falling.

16 That traditional paradigm doesn't work here because
17 underselling was relatively stable. It is true that imports
18 were increasing, but as imports were increasing over the
19 period of time, the domestic industry as a whole was
20 performing as well or, indeed, in the merchant market was
21 performing better than it was at the beginning of the period,
22 so it's the ability to understand how changes over the period
23 are informing your analysis. That's what we mean by it's
24 important to look at the context of the underselling.

25 COMMISSIONER JOHANSON: All right, thank you for

1 your response, Mr. Durling. OCTAL Oman is a fully integrated
2 facility, correct?

3 MR. BARENBERG: Yes, it makes both resin and sheet.

4 COMMISSIONER JOHANSON: And that makes OCTAL Oman
5 more efficient and thus a lower-cost producer, correct?

6 MR. BARENBERG: Yes, we think so.

7 COMMISSIONER JOHANSON: And that's what you would
8 state?

9 MR. BARENBERG: Yes.

10 COMMISSIONER JOHANSON: So how much of that do you
11 attribute to your lower pricing in the market?

12 MR. PORTER: Joe, let me just say that Joe can
13 elaborate, but we tried to anticipate that very question,
14 Commissioner Johanson, and Joe there, you can't see him but
15 was part of our panel, Arnaud and Nataly are on our panel and
16 they're from Oman, and together they actually looked at this
17 and they looked at their experience running OCTAL Cincinnati,
18 which is about a very typical in terms of size U.S. producer
19 of PET sheet and they use -- they don't have this D-PET in
20 Cincinnati, so they use a more traditional process and they
21 use that data that they have from OCTAL Cincinnati, what do
22 you need to pay plant managers and so forth, and they
23 compared that to their Oman facility and they took into
24 account both the benefits of D-PET in terms of reducing cost
25 and the benefits of scale in the sense that they're a very

1 large buyer of PTA and MEG, which are the chemical inputs,
2 and they did a whole analysis and the result of that
3 analysis, which is what Joe said today, it's about 15 to 20
4 cents a pound is the benefit from operating D-PET plus the
5 size scale.

6 MR. DURLING: And, Commissioner Johanson, just one
7 other point. If I could call your specific attention to
8 Footnote 94 of our prehearing brief, the confidential
9 version, it's on page 60 and you'll see discussion of some
10 confidential information there that should give you comfort
11 that the analysis we did is, in fact, robust and rigorous and
12 consistent with the other information on the record.

13 COMMISSIONER JOHANSON: All right, yes, and I recall
14 that from the brief, but one reason I'm raising this is
15 because Mr. Rosenthal this morning seemed to indicate that he
16 was dubious about the contention that the fact that the plant
17 in Oman is fully integrated makes it indeed a more efficient
18 -- I'm forgetting what the exact words were, but he contested
19 what I stated.

20 MR. ROSENTHAL: Yeah, but, okay, Commissioner
21 Johanson, with all due --

22 COMMISSIONER JOHANSON: But ultimately responding to
23 what they say once you see the transcript in the post-hearing
24 brief, I'd appreciate it.

25 MR. PORTER: I know your time is up. We will do

1 that. Again, I want to highlight something else that Joe
2 Barenberg said and that's if you turn to the brief, look at
3 page 62 of our prehearing brief, okay?

4 COMMISSIONER JOHANSON: Okay.

5 MR. PORTER: Profitability, okay, I'm sorry. I
6 don't think you have seen a case in which a foreign producer
7 exporter, there was such large amount of underselling and
8 such demonstrated higher profitability, and what I'm saying
9 is those two facts get at your very question. How were they
10 able to do that? It's because of the unique production
11 process and their scale, and it all ties together.

12 COMMISSIONER JOHANSON: All right. Thank you for
13 your responses. My time has expired.

14 CHAIRMAN KEARNS: Commissioner Schmidtlein.

15 COMMISSIONER SCHMIDTLEIN: Okay. All right. Thank
16 you. I'd like to thank you all for appearing this afternoon.
17 Let me start with I guess the purchasers, Mr. Orkisz and Mr.
18 McGuire. Both of you have emphasized the superior
19 performance qualities of D-PET. I think I heard you testify
20 that you have better efficiency, less scrap, and you like the
21 clarity, so clarity is better. So it sounds to me, and I
22 wonder if you could, you know, expand on this, would you be
23 willing to pay more for D-PET than other types of PET sheet?

24 MR. ORKISZ: Yes, all of that has value that, you
25 know, I would be willing to pay more up to a limit, up to a

1 practical limit that enables me to remain competitive against
2 my large integrated competitors who are self-producing their
3 sheet.

4 COMMISSIONER SCHMIDTLEIN: And is that the same for
5 you, Mr. McGuire?

6 MR. MCGUIRE: The answer's yes, but I'm in a little
7 bit different situation in that my main competitor are
8 Styrofoam trays. We're kind of trailblazing in market rather
9 than, you know, competing with other existing manufacturers,
10 so cost does mean a lot to me, I mean, it does, but it is not
11 the only thing. If I had to pay more for D-PET, would I pay
12 for more? I said it in my statement yes. I just don't --

13 COMMISSIONER SCHMIDTLEIN: Well, I guess my question
14 specifically is, would you pay more than A-PET? Would you
15 pay the same as what U.S. producers are charging for the non-
16 D-PET? That's my question, all right, not would you pay more
17 for D-PET. Would you pay more for D-PET than you would pay
18 for the other types? Because I keep hearing it's a very
19 unusual case where we have such underselling and that we have
20 purchasers sitting telling us that the product is so much
21 better and results in all of these efficiencies, which is
22 worth money, but yet you're paying so much less than you
23 would for a U.S. product, because Mr. Barenberg has said that
24 he has charged as much as he can, right, but I'm hearing you
25 all saying he's not charging as much as he can per --

1 MR. DURLING: Well, I think if we listen to the last
2 conversation that, you know, Commissioner Johanson brought up
3 about, you know, there is a reactor that is producing the
4 same material of resin and the same material of D-PET. To be
5 really honest, their scale and what they're doing is so much
6 better than what's occurring, you know, for A-PET. I should
7 be paying less. I mean, that's my personal side of this, my
8 business side of this.

9 COMMISSIONER SCHMIDTLEIN: Yeah, but the quality
10 part of it, right? I'm not talking about the cost of
11 production. I'm talking about the performance --

12 MR. DURLING: Quality is the important part, and
13 it's very important to me and would I pay more if I could
14 charge my customers more, the answer's yes, so it's a
15 business decision. If I could charge my customers more and
16 you've heard everyone --

17 COMMISSIONER SCHMIDTLEIN: Given the performance?

18 MR. DURLING: Yes.

19 COMMISSIONER SCHMIDTLEIN: Given the clarity, given
20 the -- couldn't you charge your customers more based on what
21 you've argued here today?

22 MR. DURLING: It's a business school application.
23 You know, will they stay in Styrofoam or will they move to
24 PET?

25 MR. PORTER: Yeah, hypothetically. Commissioner, if

1 I could just interject and I do want Jeff and Tom to
2 continue, but I think you heard a little bit earlier and both
3 of them will I think elaborate, there are two constraints
4 that these particular purchasers are facing in terms of
5 ability to charge more and then pass that on to their
6 customers. Tom Orkisz was very clear. He has to charge
7 more, then he'll probably just make it himself. At some
8 point, that's a constraint. And Jeff testified that he is
9 restrained by another substrate.

10 COMMISSIONER SCHMIDTLEIN: Okay, Mr. Porter, please
11 let me finish because I'm on a limited time here, right. I
12 did hear you say that, but now I feel like I'm hearing the
13 purchasers saying, well, we really can't pass on additional
14 costs, so I don't think you would pay more or as much for A-
15 PET that's produced in the U.S. Is that correct?

16 MR. ORKISZ: Let me respond. There is a limit. At
17 some point, our customers will say, okay, you know, what I
18 can get from your competitor is good enough. You know, I
19 like the increased clarity. I like the more robust product.
20 So there is a ceiling. There's a limit.

21 COMMISSIONER SCHMIDTLEIN: I'm trying to figure out
22 what that limit is. Is the limit the cost of what the U.S.
23 is charging?

24 MR. ORKISZ: No, because we would never buy from
25 these Petitioners because they're just small players. You

1 know, f we couldn't buy from someone --

2 COMMISSIONER SCHMIDTLEIN: But we're not limited to
3 just Petitioners. We're talking about the entire U.S.
4 industry.

5 MR. ORKISZ: Those three Petitioners are really the
6 only merchant players in the United States. Anyone else of
7 our scale is vertically integrated, so, you know, we're
8 probably not far away from a cross point where we would just
9 have to be vertically integrated. We might have to actually
10 turn our back on some of the great qualities of D-PET and
11 vertically integrate in order to be in the game with our big
12 competitors who are vertically integrated, so we need a
13 supplier that gets us integrated-like costs without being
14 integrated.

15 COMMISSIONER SCHMIDTLEIN: If you did integrate,
16 would you produce D-PET or you would produce A-PET?

17 MR. ORKISZ: We would have no choice but to produce
18 A-PET.

19 COMMISSIONER SCHMIDTLEIN: And why is that?

20 MR. ORKISZ: Because I couldn't afford to install a
21 reactor. At least, you know, short term I don't think I
22 could install a D-PET operation. It's just huge, huge
23 investment.

24 COMMISSIONER SCHMIDTLEIN: Okay.

25 MR. ORKISZ: Huge investment. But, if I was going

1 to integrate, I would get state-of-the-art equipment. I
2 would do it with the best stuff I could buy for traditional
3 extrusion, which, you know, a lot of these Petitioners aren't
4 doing it. They're not investing in their business. They're
5 not even trying to improve their cost structure to compete
6 against some of the innovation that's, you know, coming upon
7 them.

8 COMMISSIONER SCHMIDTLEIN: Okay, so it sounds, I
9 mean, Mr. Barenberg, maybe you want to jump in, but it
10 sounded to me like they would be willing to pay more up to a
11 certain point, so do you still feel like you're charging as
12 much as you can?

13 MR. BARENBERG: Well, I would say there's a question
14 of price elasticity here. If we wanted to go out and sell
15 less volume than we do today, could you find applications
16 where there's less elasticity and we could go in and get a
17 better price, there's a whole cascade of business out there,
18 some of which is more price-sensitive than others, but to
19 take our targets and just say, you know, to have the impact
20 on the industry in terms of providing better product, et
21 cetera, you know, to allow our customers to grow like they
22 need to grow, they do end up always competing with the
23 integrated, so I would tell you that, you know, we obviously
24 have price negotiations with all of our customers and we try
25 to get the best price we can possibly get and these arguments

1 go back and forth like any negotiation. We don't consciously
2 leave money on the table. We price where we think we need to
3 to have profitability that makes sense for us but also allow
4 growth potential.

5 COMMISSIONER SCHMIDTLEIN: So is there a cap on your
6 profitability? Is there a limit that the parent company has
7 set that you don't need to go above?

8 MR. BARENBERG: Well, I would say no. There's
9 definitely no limit on how much we would like to make.
10 There's certainly the floor on how little we can afford to
11 make given that we do have an investment. We are solidly
12 profitable, but still, you know, this is a several hundred
13 million dollar investment that we're shepherding and
14 responsible for, and I think that we've tried to strike a
15 proper balance between pricing to have the risk rewarded for
16 the initial investors, plus to allow value in the market that
17 allows this innovation to pollinate itself throughout the
18 market.

19 COMMISSIONER SCHMIDTLEIN: So do you think if you
20 raise prices you would lose sales?

21 MR. BARENBERG: We would absolutely. We walk from
22 business all the time. I mean, there is business where
23 domestics absolutely have us under-priced and we walk. This
24 is not an uncommon thing. So, if we were to go out and raise
25 price, let's take the non-contracted business, go out and

1 say, look, we need a 10 percent increase, that's what we
2 want, we would absolutely lose business without question.
3 We've been told that.

4 COMMISSIONER SCHMIDTLEIN: So then I guess that
5 price is as important as quality?

6 MR. BARENBERG: Well, it's all a factor. Like they
7 said, they have to compete and I think one of the reasons
8 that our customers compete well is they can go in with a
9 reasonably competitive price, but they have a point of
10 differentiation about their products. They can provide a
11 sustainability story. They can provide scale manufacturing.
12 They can provide product quality and performance. There's
13 one of Inline's product lines that actually will be leak-
14 resistant, which is quite astonishing to have a hinged-lid
15 with a leak resistant thing and that's possible because of
16 product uniformity, so it's a balancing act always, but,
17 obviously, we try to maximize, you know, our personal
18 benefit, but we view it as a full value chain.

19 MR. PORTER: Commissioner, can I have 20 seconds?

20 COMMISSIONER SCHMIDTLEIN: Go ahead.

21 MR. PORTER: Okay. When you're talking about
22 increasing price, I'm a trade lawyer, I'm a company lawyer, I
23 do have to note that under the law they only need to raise
24 their price 2.7 percent and they're selling at fair value,
25 and so the question I believe for the Commission is do you

1 believe the whole competitive dynamic would change if OCTAL
2 raised their price 2.7 percent, and if the answer is no, then
3 that means there's something else going on that has nothing
4 to do with dumped imports, and I do want to make that point
5 since you were talking about raising price. Thank you.

6 COMMISSIONER SCHMIDTLEIN: Yes, okay, I appreciate
7 that. Thank you. My time is up.

8 (Pause.)

9 MR. BISHOP: You're on mute. Mr. Chairman?

10 CHAIRMAN KEARNS: I'm sorry. I thought you said
11 Commissioner Karpel is on mute. Commissioner Karpel, please
12 go ahead.

13 MR. BISHOP: She has to unmute.

14 COMMISSIONER KARPEL: Sorry. My mouse was not
15 cooperating to click on the unmute button, so I apologize for
16 that. I guess where do I -- I think I'm going to have to go
17 over some ground the other Commissioners have already raised
18 with you because I'm struggling to understand the argument a
19 bit too on why are OCTAL's prices in the U.S. market so low.
20 And I guess I hear your point that you are trying to price it
21 at a point where your customers don't turn to maybe other
22 types of packaging or decide to vertically integrate, at
23 least the two customers that we have with us here today.
24 But, at the same time, domestic producers are selling a
25 significant amount of PET sheet into the U.S. market at

1 higher prices and, according to you, of an inferior product.
2 So how are they able to do that? There has to be customers
3 out there who have a different calculus, who are willing to
4 pay more for PET sheet. Can you speak to that?

5 MR. PORTER: Yeah, I'd be happy to.

6 MR. DURLING: First off, let me start and then the
7 customers can jump in. What's important to remember is
8 you're looking at a product, PET sheet. But, in fact, there
9 are different categories of product within PET sheet. So,
10 for example, you've heard already in the testimony that some
11 of the volume is of colored products, and so that's going to
12 behave a little differently in the market. You heard
13 references to some domestic producers making more specialized
14 products for which they may receive a higher price. So
15 behind your kind of aggregate look at the market there are a
16 lot of individual products and so there's going to be some
17 variation in the pricing there. So it's important not to
18 lose sight of that.

19 COMMISSIONER KARPEL: But all of what domestic
20 producers are selling can't just be this colored or more
21 specialized product. Is that your argument, that all of it's
22 sort of this sort of --

23 MR. DURLING: No, no, not that it's all --

24 COMMISSIONER KARPEL: Oh, Jim, I think we lost your
25 volume.

1 MR. BISHOP: Jim, you're on mute.

2 MR. DURLING: Sorry. No, it's not just different
3 products, Commissioner. It's different products and
4 different customers. So maybe if the industry witnesses
5 could speak to the different kinds of customers and how
6 different customers have different needs and so the pricing
7 to those different customers may be -- in fact, will be
8 different.

9 MR. BARENBERG: But also, I'd like to jump in and
10 say there's a couple other things and that is, you know,
11 order size, lead time requirements. There are certain things
12 we simply can't do and I think when you can deliver a truck
13 the next two or three days and you can deliver small
14 quantities inside that truck of different skews, that's a
15 different product package and it's more expensive to do. So
16 that's another set of factors that goes into why certain
17 products may be priced differently.

18 MR. ORKISZ: Could I add something to that?

19 COMMISSIONER KARPEL: Yes.

20 MR. ORKISZ: In my view, there is a large cottage
21 industry of thermoformers out there, many, many small players
22 that, in aggregate, can probably add up to some decent
23 volumes. So I think those are a lot of the customers that
24 are keeping, you know, companies like Multi-Plastics and Ex-
25 Tech and Advanced Extrusion alive, because those are

1 thermoformers that aren't really going to attract the
2 attention of OCTAL. They're going to be buying small
3 quantities. You know, a lot of irrigation and size of this
4 use but not a lot of volume behind it. So there's a lot of
5 that out there and that's probably what's keeping these guys
6 engaged and my recollection from this morning's discussion is
7 a lot of them have underutilized capacity. So, you know,
8 there is A-PET being sold for higher prices out there, but
9 the customer mix, they're smaller players. They're players
10 that have, you know, a lot of special needs, colors, maybe
11 coatings like anti-fog coatings, smaller order quantities.
12 So there's a lot of that. That's just not where the big guys
13 like OCTAL, like Jeff are. So that might account for their
14 ability to continue to still play in the market at a higher
15 price.

16 COMMISSIONER KARPEL: It, I guess --

17 MR. MCGUIRE: Commissioner Karpel?

18 COMMISSIONER KARPEL: Oh, yes, sure.

19 MR. MCGUIRE: Just so you understand when we talk
20 volume, I only order four SKUs from OCTAL and I order those
21 in -- I'm a small company. I'm not an Inline. We are a
22 small company, but I do order four SKUs and they are large
23 volume orders in the four SKUs. That's all I order from
24 OCTAL Oman because I need that to run the long runs that we
25 have to deal with. We are not a normal small thermoformer

1 per se in that the small thermoformers run small batches.
2 They have multiple material requirements. They're changing
3 tools all the time. What we're doing is running long runs
4 and we only have four SKUs with them. So I have a larger
5 volume in those particular SKUs, which makes sense that, you
6 know, we're able to do what we need to. So that's all I
7 wanted to say. And I'm not going to OCTAL Oman saying I want
8 40,000 pounds of this material today and 40,000 pounds of
9 this material tomorrow. I am very consistent.

10 COMMISSIONER KARPEL: Okay. So I guess for post --
11 did someone else have something to say?

12 MR. PORTER: I just want to add one more thing --

13 COMMISSIONER KARPEL: Yeah.

14 MR. PORTER: -- just to maybe give you a little
15 better perspective. Like for the Petitioners, a couple
16 million pounds annually, a customer that's, you know, buying
17 a couple million pounds annually is a good customer, is
18 interesting. You know, for OCTAL, they're looking for
19 customers ideally that are buying, you know, multiples of
20 that. So there are a lot of players out there that need
21 small quantities. They might be in short lead times. That's
22 how those guys are surviving or trying to survive.

23 COMMISSIONER KARPEL: Okay. Thank you. So, for
24 post-hearing, I mean, this sounds -- I appreciate all the
25 information, but I guess for post-hearing, if there's a way

1 that we have any data on this, do we know the size of
2 customers that OCTAL is selling to versus the size the
3 domestic producers are selling to? Do we know the amount of
4 maybe specialty or colored or small run orders that are being
5 received by domestic producers versus OCTAL? That might help
6 us understand this price question. I think it, you know,
7 sounds like a good theory that you've all put out and I know
8 you have a lot of experience in the industry, so I don't
9 doubt your sort of perspective, but we're going to be needing
10 to look at some numbers and some data to answer these
11 questions when we come time to make a decision here.

12 MR. PORTER: Yeah. Commissioner, just, obviously,
13 the data that we have comes from the questionnaires.

14 COMMISSIONER KARPEL: No, of course, but --

15 MR. PORTER: Those questionnaires often don't get
16 quite into that level of detail, but I do think it's
17 important we try to emphasize in the brief that if you look
18 at OCTAL, okay, the numbers, it sounds trite, but a very,
19 very large proportion of their total sales is just to a
20 handful of customers. And so that support, sort of what Jeff
21 McGuire and Tom Orkisz are saying, that OCTAL concentrates on
22 small SKUs, large volumes. That's their business, so that --

23 COMMISSIONER KARPEL: And that information is --

24 MR. PORTER: And you have that information on the
25 record about the concentration of customer base.

1 COMMISSIONER KARPEL: Okay. And the SKUs as well?

2 MR. PORTER: Well, I don't believe -- I have to
3 triple check the questionnaire response. I believe there was
4 a specific question, of course, as a follow-up and all the --
5 from OCTAL can provide information on the number of SKUs for
6 each customer. That's a sort of simple request I think that
7 it will very much go to what we're saying here.

8 COMMISSIONER KARPEL: Okay, okay. All right. So I
9 wanted to talk also about sort of your carbon footprint
10 sustainability argument, and I sort of scratched out the
11 question I had as I think your direct testimony did a pretty
12 good job of answering it, but I sort of wanted to go another
13 level down. So you have argued that your customers are
14 demanding products with a lower carbon footprint and you cite
15 customers such as Walmart and Target and similar companies.
16 But I also wanted to understand if you have other types of
17 customers other than those sort of large retailers that are,
18 you know, facing end users and that are interested in
19 sustainability, whether you have other customers, for
20 example, food packagers who then maybe sell to Walmart or
21 then sell to another retailer and what their perspective and
22 demand for product, D-PET product with lower carbon footprint
23 is and how much of a driver of their purchasing decisions
24 that is.

25 MR. DURLING: Is this a question for the purchasers

1 or for Joe Barenberg?

2 COMMISSIONER KARPEL: I guess either. I think I was
3 thinking more the purchasers would start because they're the
4 ones who are, you know, selling the actual packaging to
5 either Walmart, who wants to put something in it and put it
6 on the retail shelf, or to maybe a middle -- for lack of a
7 better word, middle processor who's packing fruit or packing
8 other types of food.

9 MR. MCGUIRE: Well, I can speak to that because my
10 entire business and my entire business scope is driven by
11 sustainability and sustainability issues. For any company
12 that is in the grocery store market, they sit there and they
13 look at sustainability. No one wants to pay for it, which
14 you've had discussions in before, but the retailers drive the
15 sustainability questions. So all of their goals and all of
16 their sustainability goals drive what ends up their products
17 get packaged in, whether it's fruit, whether it's vegetables,
18 whether it's a protein. So my entire business is driven by
19 sustainability. My growth will be limited if sustainability
20 is not the driver.

21 COMMISSIONER KARPEL: But are you just selling to
22 the Walmarts and the retailers, or are you selling also to --

23 MR. MCGUIRE: No, I'm selling to their vendors.

24 COMMISSIONER KARPEL: Their vendors. Right. Okay.

25 MR. MCGUIRE: Their vendors do not -- they would not

1 do this if they were not focused. Let me tell you from my
2 business standpoint they would --

3 COMMISSIONER KARPEL: Yes.

4 MR. MCGUIRE: -- dire --

5 COMMISSIONER KARPEL: But those vendors that you're
6 selling to are getting input from then who they sell to, the
7 Walmarts, the Targets, that they need to care about this. So
8 they're in turn telling you that I want to buy your product
9 because I understand it is made with D-PET and --

10 MR. MCGUIRE: And it's recycled.

11 COMMISSIONER KARPEL: -- it's recyclable or it has
12 this low carbon footprint? Because the other A-PET is
13 recyclable too.

14 MR. MCGUIRE: Well, both because what they'll do --
15 what the retailers will do -- the consumers drive the
16 retailers, the retailers sit there and then drive the
17 processes and then hopefully they buy our product. But what
18 it will all come back to is they sit there and they make us
19 go through a sustainability exercise and one of those items
20 within the sustainability exercise and one of those items
21 within the sustainability exercise is what material are you
22 using and how sustainable are the carbon footprint of that
23 material, and when we get to prove that our carbon footprint
24 is lower, they sit there and they go, okay, I'm meeting my
25 sustainability goals and I'm moving forward. And I know Tom

1 has issues related to that as well, so --

2 COMMISSIONER KARPEL: Okay. If other Commissioners
3 will indulge a little more time so Tom can answer.

4 MR. ORKISZ: Yeah. Our scenario is similar. It's
5 really ultimately the retailers that drive all this because,
6 ultimately, the product is going to end up on a store shelf,
7 a supermarket shelf somewhere. So they force the
8 requirements through the supply chain. A lot of processors,
9 the middle folks, the processors that are, you know,
10 preparing the fresh-cut fruit and putting it in a retail
11 package, then delivering it to a Walmart or a Kroger, they're
12 mandated by those retailers to provide them more sustainable
13 packaging. It's a big deal today. So they're grudgingly
14 talking to suppliers like us, what can you offer, what can
15 you offer me so I can be providing products to my customers
16 that meet their pressing business needs. So it's a big deal.

17 Even distributors, even distributors, who are just a
18 pure middleman. They're not putting any product in it. They
19 understand that if they're going to be supplying a processor
20 who's supplying a Walmart, they need to be providing more
21 sustainable solutions in that supply chain. So it's a whole
22 supply chain that understands, you know, there's a big anti-
23 plastic movement out there nowadays and everybody's
24 scrambling to come up with ways to have a better carbon
25 footprint, to bring recycled content post-consumer or post-

1 industrial. So there's a lot of opportunity in that space to
2 really distinguish yourself.

3 COMMISSIONER KARPEL: All right. Thanks. My time
4 is long up. I may circle back.

5 CHAIRMAN KEARNS: Thank you all again for appearing
6 before us today. I think a lot of the other Commissioners
7 have already asked some of the questions I want to about the
8 underselling for a superior product, but let me just do a
9 little bit around that same space.

10 One is this is an issue I've been sort of wondering
11 about that I always think of as kind of the bells and
12 whistles sort of question. So this is probably going to be
13 for you, Mr. Porter, or you, Mr. Durling. Suppose subject
14 imports decide to compete not by lowering their price for
15 U.S. producers but by having the same price but adding bells
16 and wishes to the product and they take market share by doing
17 that and U.S. producers then have to lay off workers and they
18 lose profits. Is that something the Commission would
19 recognize as material injury?

20 MR. PORTER: Commissioner Kearns, this is Dan
21 Porter. Quite luckily, the Commission faced that I'm pretty
22 sure before you joined -- looking around, I'm not sure -- so
23 in the washing machine case, the original case going back a
24 number of years, you've since terminated the order, but in
25 that case and actually in the case before, refrigerators,

1 petitioners advanced something called feature dumping and
2 they made that very argument that a price, even if it was
3 higher, in that case, the import price was higher than
4 domestic, but they said the Commissioners had to take into
5 account the whole thing and that because the customer was
6 getting such a better value for the money that was like
7 underselling. And, you know, I don't want to relive that
8 case, but there was a lot of serious sort of legal
9 metaphysical thought about, you know, whether you could have
10 that in a trade case context.

11 I submit we don't have that here. Okay? There is
12 bonafide underselling, okay, and that is a fact that the
13 record shows. I think what we're saying is something,
14 picking up my colleague --

15 CHAIRMAN KEARNS: Wait just a minute there, Mr.
16 Porter. The reason why I raised that is what I heard earlier
17 from one of your witnesses was actually that there is a
18 connection there, that they're competing on quality, you
19 know. And so, to me, that is the question I hear you
20 raising, which is this isn't really about a lower price.
21 This is about a superior quality product, and I think one of
22 the witnesses said we couldn't do this ourselves in the
23 United States because, if we were going to make this product
24 ourselves -- I can't remember if it was Mr. Orkisz or -- I
25 think it was Mr. Orkisz -- but that would cost us too much

1 money to make D-PET ourselves.

2 So what I'm hearing is D-PET's a superior product.
3 We couldn't make it at the price that OCTAL makes it at,
4 which maybe that is a price issue. But one way or the other
5 there's a link between the two and so I'd like to hear more
6 about that.

7 MR. PORTER: So absolutely there is a link and I
8 think that's the point and my colleague, Jim Durling, was
9 mentioning it. Yes. Whether there's underselling or not is
10 a fact that you need to look at, but it is very important
11 about the why. Why is there underselling? And we tried to
12 get at that point a lot in our brief, that OCTAL is very
13 profitable, they have a patented production process, all
14 those things are part of it and it makes the typical
15 underselling less sort of relevant from a trade case context.

16 So absent anything else, if you have underselling of
17 increasing marketing share, you can make the assumption that
18 the underselling was the reason for the market share. But the
19 key, of course, phrase there is absent other information.
20 What OCTAL has provided and the purchasers have provided are
21 all this additional information and context as to describe
22 why the underselling is not the sole reason for the increased
23 business that OCTAL is doing. Jim?

24 CHAIRMAN KEARNS: But what I'm hearing, though, on
25 that is the other reasons. And tell me if I'm wrong. But I

1 thought Mr. Barenberg said this is in his opening. If you
2 all were to raise your prices, OCTAL, then you would lose
3 sales not to the U.S. producers of PET sheet but that these
4 integrative producers, your customers would decide, you know
5 what, I can make this cheaper myself than I can purchasing it
6 from OCTAL at this higher price. Right? Isn't that the main
7 part of your argument? That and then also styrene and other
8 competing products outside of PET sheet, right? Aren't those
9 the two reasons that you all were citing for why you can --

10 MR. PORTER: No, that is correct. Again, Joe is
11 right here. He can elaborate, but, basically, he gave two
12 reasons that constrain his ability to increase his price:
13 competition from other material and self-producing by the
14 large customers.

15 CHAIRMAN KEARNS: Okay. So then just focusing on
16 the customers, they can just make it themselves. So,
17 basically, what you're arguing is OCTAL's price is down here,
18 the integrative producers, your customers could make it
19 themselves at a higher price, and then you've got the
20 merchant market that has an even higher price. Right? So,
21 basically, what you're saying is, if anything, OCTAL is
22 taking sales from captive production side of the market, not
23 the merchant market? Is that right?

24 MR. PORTER: Joe, do you want to elaborate?

25 MR. BARENBERG: I would say that and even internally

1 when we say what is our biggest competitor, it's internal
2 production. You know, there are many components to internal
3 production and our two customers can speak to this. But it's
4 not only the calculation of okay, I've got to buy the
5 equipment and that's quite expensive. I've got to train up
6 for it, I've got to have allocated space, cost, overhead, but
7 it's also the fact that decisions like this get made also
8 because the shared mind that can point towards a revenue-
9 generating focused company versus one that has defensive
10 manufacturing assets. There is value there too. So I don't
11 think the equation is we have to go straight to what are the
12 integrated economics; it's really a whole value, and I think
13 Tom was hitting upon this, there that allows, you know, sort
14 of the Adam Smith Wealth of Nations approach where converters
15 can focus on innovation in their packages. We will focus on
16 innovation in a highly capital-intensive process on the sheet
17 side, and then everybody can deliver maximum value and I
18 think that calculus is part of what goes into determining
19 whether Tom or Jeff decide that they need to buy extruders.
20 And that's that window in which we end up playing in terms of
21 our pricing.

22 CHAIRMAN KEARNS: Okay. Thank you. So I guess, for
23 post-hearing, I guess there's kind of two legal issues I'd
24 like to hear more from both Respondents and Petitioners
25 about. One is, as I said, sort of the bells and whistles

1 argument or feature dumping. I'd be curious to know more
2 about that. I take your point, Mr. Porter, that arguably
3 it's not relevant here. You clearly do have lower prices,
4 but it seems like there is a connection.

5 And then the other issue, though, is, I mean, my
6 understanding of the, you know, captive production provision
7 of the statute, it wasn't that Congress thought, well, so
8 long as you're only taking away, you know, jobs and U.S.
9 production from captive producers, then we don't really care.
10 You know, that's not what motivates that provision of the
11 statute. So I'd like to hear more from both Petitioners and
12 Respondents. I mean, essentially, what I'm hearing argued
13 here is don't worry, yes, OCTAL's prices are so low that
14 we're taking sales, we're taking production -- not sales.
15 We're taking production from U.S. captive producers, but
16 that's okay. We're focused on the merchant market. And so,
17 you know, hearing more about that post-hearing would be
18 helpful. But I kind of wanted to touch on a few other issues
19 before my time is up. Mr. Porter, you're asking to chime in.

20 MR. PORTER: Why don't you go ahead, Jim.

21 MR. DURLING: Yeah. I just wanted to make one quick
22 point. We'll certainly address it in more detail post-
23 hearing, but the captive market has not been losing. The
24 captive market has been growing fine. In fact, when you look
25 at this aggregated data, you'll see that there actually is

1 growth. But your basic point that OCTAL's competition really
2 is more with providing a high-quality alternative as a way to
3 avoid the need for vertical integration by some suppliers,
4 and so it is fair to say that the merchant market, smaller
5 volume customers, smaller scale, is a different space.

6 So your basic paradigm of there's kind of the
7 captive space, there are the large-volume suppliers like
8 OCTAL, and then there are the smaller-volume suppliers and
9 smaller-volume customers in the merchant market, that's not a
10 bad way to think about the different parts of the market.
11 But you wanted to move on to some other questions.

12 CHAIRMAN KEARNS: Yeah, but that's the thing.
13 That's a good tie-in. I wanted to get to your Exhibit 4. I
14 had a number of questions about that, which it was very
15 helpful to kind of have a better understanding of OCTAL's
16 purchaser relationships. So one question I had there based
17 on what you just said, Mr. Durling, you said, you know, in
18 the captive market there is growth. And I guess, you know,
19 when I look at Exhibit 4, I'm seeing some of -- and I want to
20 be careful here about business proprietary information. But
21 I think what I'm seeing there is sales to what I believe to
22 be integrated producers and they're going up pretty
23 dramatically and so, you know, if you could comment on that.
24 And, again, because it's proprietary, it may be best post-
25 hearing, but up to you, as to, you know, when I'm looking at

1 those numbers, aren't I seeing that they are producing --
2 that those customers of yours are producing less PET sheet
3 themselves or no?

4 MR. PORTER: Can I take a quick answer now and
5 develop more post-hearing?

6 CHAIRMAN KEARNS: Sure.

7 MR. PORTER: First, of course, the captive
8 production provision says you should focus especially on
9 financial performance of the merchant market, but no one is
10 saying you need to ignore everything else. In fact, we made
11 an argument that if you look at all producers together, we
12 think at least on a financial performance standpoint the
13 domestic industry is doing just fine. We have actually an
14 entire argument on that.

15 But I do want to kind of highlight something with
16 respect to the so-called integrated producers and I'm going
17 to be a little bit careful here. But if you know in our
18 brief, we kind of mention a particular such customer and we
19 talked about how they approach PET sheet production versus a
20 what's called pure merchant player, and we think that the
21 Commission needs to be sort of careful about making sort of
22 assumptions about the reasons for, for example, reduced
23 production versus a merchant player. Okay? There's no
24 question that a pure merchant player, if their production --
25 they're not choosing to reduce their production, right? I

1 mean, they just want to produce and sell as much as they can
2 like any other company and that's in fact why the law says
3 you want to focus on the merchant market.

4 But there are other players who are bonafide PET
5 sheet producers and, in fact, could be larger PET sheet
6 producers in sort of the scheme of things, but they are
7 concentrating on selling packaging. That's what they are
8 concentrating on, selling packaging, and there was really an
9 example which we highlighted -- of course, it's confidential
10 -- of this one particular company that because they expanded
11 so greatly, they no longer had any excess to sell in the
12 merchant market and they increased their production and they
13 still bought a whole bunch. So they bought from the merchant
14 market instead of selling and they still increased their
15 production. But their whole business objective is to sell
16 packaging, and I think that's a very, very sort of important
17 consideration and I think it sort of lessens this idea of
18 OCTAL is somehow stealing production from those bigger guys,
19 and I think that you can't really make that assumption since
20 their whole business objective is so different.

21 CHAIRMAN KEARNS: Okay. Thank you. My time is up.
22 Mr. Vice Chair.

23 VICE CHAIRMAN STAYIN: Thank you. Just following
24 on, with respect to selling to the huge producers and the
25 suggestion that the domestic producers of the product could

1 not supply these big companies that are being supplied by
2 OCTAL, and so, therefore, that's just fine. That's just --
3 they don't need to, so the question is, why would you sell
4 your product at such low prices that you would preclude the
5 domestic industry from competing to get some of that work?

6 MR. DURLING: Commissioner, let me take a crack at
7 that one. It's not that OCTAL is selling at a low price to
8 preclude them because, at the end of the day, they have to
9 make their own decision about whether or not they want to
10 vertically integrate.

11 I think what's distinctive about this case, and it
12 is somewhat unique, I've been doing this for more than 35
13 years, and I don't think I've ever seen this before, a
14 situation where you have a foreign producer that because of a
15 distinctive patented production technology has such a
16 significant cost of production advantage. And, again, what
17 makes it unusual in this case is that it's not just a
18 significant cost advantage, but it's really quite large
19 relative to the margins of dumping, and, more importantly,
20 it's been documented on the record.

21 I can't think of any other case where such a
22 significant cost advantage was documented on the record of
23 the case and, at the same time, there was a relatively low
24 margin of dumping.

25 So, essentially, when you combine those two facts,

1 what it's showing is that OCTAL has a significant genuine
2 economic advantage, which based on the Commerce Department's
3 own analysis, both the dumping margin in this case and the
4 fact that in the prior case involving PET resin, when there
5 was an effort made to demonstrate unfair subsidies to OCTAL,
6 that led to a zero subsidy margin.

7 So a company that's been investigated for subsidies,
8 found not to have granted any subsidies, a company that's
9 been investigated for dumping and has demonstrated that its
10 dumping margin is actually quite small yet has also
11 demonstrated a significant cost advantage. And I guess I
12 would submit that in that unique situation, it would be an
13 inappropriate use of the trade laws to deny the U.S. market
14 more generally of the benefits of that innovation.

15 VICE CHAIRMAN STAYIN: Thank you. How is the CDI
16 index used in establishing your prices?

17 MR. PORTER: Joe, why don't you go ahead.

18 MR. BARENBERG: Yes, CDI is published once a month,
19 and it moves -- it basically indicates the prevailing market
20 price for PET resin in the United States, and if it moves up
21 X pennies, our price auto-adjusts by that same amount. If it
22 moves down, it auto-adjusts that same amount. And so it's
23 quite a -- I think the reason many people use it is because
24 it's extremely simple. It reflects market conditions quite
25 well, and it's quite well-accepted as well.

1 VICE CHAIRMAN STAYIN: Thank you. You admit that
2 subject imports have undersold domestic prices but argued
3 that there have been no adverse effects as a result of the
4 underselling, yet the record shows some confirmed lost sales
5 due to price and market share shift from domestic to subject
6 imports from 2017 to 2019 accompanying the underselling.

7 Petitioners also give examples of U.S. customers
8 using OCTAL's prices to set minimum price in the market. Are
9 these evidence of adverse price effects?

10 MR. DURLING: Commissioner, let me start. We would
11 submit that those facts need to be considered in light of the
12 overall evidence on the record, which includes several other
13 very important points.

14 One other very important point is that we documented
15 in our submission that for the customers that are purchasing
16 from OCTAL, that, in fact, they are purchasing for reasons
17 kind of unrelated to the price, right. So there are a lot of
18 customers in the market. Different customers are buying for
19 different reasons. The reasons the customers are buying from
20 OCTAL were demonstrated non-price reasons.

21 There may be purchasers in the market who were not
22 buying from OCTAL who answered the question, oh, well, D-PET
23 doesn't matter to us, but, if they're not buying from OCTAL,
24 they don't really know what the advantages of D-PET are.

25 So, in the end, you need to look at who is buying

1 from what suppliers and then what inference can you draw from
2 the answers that those particular purchasers give, okay?

3 A second piece of information that needs to be
4 included in the analysis is, at the end of the day, volume
5 and prices translate to whether the industry is making money
6 or not, and both on an overall basis for the entire industry
7 as a whole and even in the merchant market for the industry
8 as a whole, the industry is actually making money, not losing
9 money.

10 The whole issue of whether there are adverse effects
11 depends critically on whether you agree with Petitioners'
12 argument that you can take one company out of the mix, yet
13 the industry as a whole is making money, but, if you take one
14 company out, then somehow they're not making money anymore,
15 and somehow that's relevant.

16 And we'll have a lot more to say about that post-
17 hearing, but for present purposes in a public setting, I just
18 want to make a few quick points on that because it was
19 discussed extensively this morning.

20 The first point is that all of the domestic
21 producers are producing scope merchandise. There is no basis
22 to think that anyone is producing a product that is so
23 different as to be outside the scope of the investigation.

24 The second point is the company that was identified
25 as an outlier is really not that much of an outlier at all

1 because it's not the largest, it's not the smallest. It's a
2 company that produced in every single year of the period even
3 though there's some other domestic producers that did not
4 produce every single year; wasn't the highest-priced product,
5 and it wasn't even the largest gain in operating profit.
6 There are other domestic producers that actually had a bigger
7 gain in operating profits during the period than the company
8 they want to exclude.

9 I mean, again, I mentioned I've been doing this for
10 a long time, and we did some research on this point before
11 the hearing. I could not find a single example where the
12 Commission has ever excluded an individual company from the
13 domestic industry unless that company met one of the
14 statutory reasons for exclusion, like a related party or one
15 of the other -- or a regional industry, specific statutory
16 provisions to exclude a company, or where the company was so
17 much of an outlier that the Commission couldn't relate it to
18 the other data on the record.

19 If you look at every instance where the Commission
20 has considered this argument and then ultimately rejected the
21 request, rejected the request either by a petitioner or by
22 respondent, every single time the Commission has consistently
23 rejected such a request, they've done so by pointing to the
24 fact that, in fact, you have a range of companies and a range
25 of different data, and different companies are either similar

1 or different in different ways, so as long as the company is
2 falling generally within the mainstream, it's not going to be
3 excluded.

4 So I think the burden on the Petitioners here is to
5 explain why, in light of the statutory requirement to focus
6 on the domestic industry as a whole and why in light of the
7 Commission's longstanding practice of doing so and why in
8 light of the Commission's consistent decision to reject such
9 arguments in numerous other cases, why in this case should an
10 exception to all of that be made.

11 VICE CHAIRMAN STAYIN: Thank you. I am running out
12 of time, but I would like you to reply as to the confirmed
13 lost sales in your post-hearing brief.

14 MR. DURLING: Of course, we will do that.

15 CHAIRMAN KEARNS: Commissioner Johanson?

16 COMMISSIONER JOHANSON: All right. Thank you.

17 I wanted to have you all speak a bit more on the
18 whole cyclone situation because Petitioners put quite a bit
19 of weight into that. I believe it's actually the opening
20 paragraph of their prehearing brief dealt with the cyclone.

21 Could you respond further to Petitioners' claims
22 that when subject imports from Oman were unavailable due to
23 the destruction by Cyclone Mekunu, U.S. customers readily
24 switched to domestic PET sheet and how that impacted the
25 market?

1 MR. PORTER: Commissioner, this is Dan Porter. Are
2 you asking kind of from a legal standpoint or more a what
3 happened in the market standpoint?

4 COMMISSIONER JOHANSON: Let's hear what happened in
5 the market standpoint.

6 MR. PORTER: Okay. So we'll ask Tom and Jeff to
7 kind of describe what happened when the cyclone hit and OCTAL
8 could not produce and, you know, whether they agree with
9 Petitioners' characterization that the cyclone proved that
10 each of them could use Petitioners' materials.

11 I guess, Tom, why don't you start.

12 MR. ORKISZ: Okay. Well, I got that terrifying
13 phone call from OCTAL that the cyclone hit their plant in
14 Salalah and that the plant was down, and within a few days it
15 was clear it was going to be down for a while, so we had to
16 quickly scramble. We didn't really have a contingency plan
17 really ready to rock, so we had to scramble and find out a
18 way to make up those sheet purchases for, you know, what we
19 expected would be probably six to 12 weeks. We didn't really
20 know for sure at that point.

21 So we had done business with, you know, all the
22 domestic players over the years, so we just immediately
23 started reaching out to them and seeing if they had excess
24 capacity. We reached out to some overseas suppliers, and it
25 was quite a scramble, but, ultimately, we were able to bring

1 on six new suppliers, you know, new in that we just probably
2 hadn't done business with them in, you know, probably five to
3 10 years, but we might have had prior relationships. But we
4 managed to, you know, one way or another, get enough
5 alternate sheet rolling in from those six new suppliers to,
6 you know, kind of survive the issue.

7 You know, a lot of that sheet didn't come in when
8 we had been expecting OCTAL's sheet, so it was quite a
9 scramble. Each supplier, the recipes were different, and we
10 had to do a lot of massaging of our equipment to get the
11 stuff to run. As I said in my testimony, we weren't overly
12 choosy, but we had orders to fill, so if we were having
13 trouble with any sheet, we just did what we had to to process
14 it to produce our products.

15 We ultimately paid a lot of money for all that
16 extra sheet, a huge amount of money. I think some of the
17 folks kind of took advantage of our situation.

18 And then, after a few months, OCTAL's plant came
19 back online, and as we had explicitly told all these folks,
20 that when OCTAL came back online, we would be returning our
21 business back to them as per our contract, and, you know,
22 that's kind of how it went down from my perspective.

23 And the Cincinnati plant helped as much as they
24 could as well. That was a plant that we tried to pull as
25 much as we could out of that plant, which is here stateside.

1 MR. PORTER: Jeff, do you have a similar
2 experience?

3 MR. MCGUIRE: We panicked. You know, what we did
4 was we had existing relationships with actually some of the
5 Petitioners, and we reached out to the Petitioners, and as
6 I've said in other points in this briefing, you know, their
7 material does not run as well, and one of the things that was
8 said this morning was that we didn't have any problems, and
9 that is not accurate. You know, what I did this morning when
10 you were having your discussion was I looked back at my 2018
11 purchases from Petitioners, and I actually had an 8.7 percent
12 return rate on materials during that year, that specific year
13 from that Petitioner.

14 You know, when I sit there and tell the Commission
15 that the material quality is different, I just tell you this
16 from a simple operational standpoint. I mean, our process is
17 different from Tom's, it's different from anybody else, so
18 the quality of the material is critical.

19 So, when the cyclone hit, we panicked. We did what
20 we needed to do. We brought in additional material from our
21 domestic suppliers, and we tried to minimize what we brought
22 in so that we could sit there and move back to D-PET as
23 quickly as possible.

24 COMMISSIONER JOHANSON: Mr. McGuire, you had an 8.7
25 return rate during that year?

1 MR. MCGUIRE: Yes.

2 COMMISSIONER JOHANSON: What would that compare
3 like to other years?

4 MR. MCGUIRE: For the domestic suppliers or for --

5 COMMISSIONER JOHANSON: For OCTAL, yes.

6 MR. MCGUIRE: I have no discernible returns to
7 OCTAL Oman. I have no NTMRs or quality issues with them.

8 COMMISSIONER JOHANSON: Okay. Thank you.

9 MR. PORTER: Commissioner, can I make a quick legal
10 point?

11 COMMISSIONER JOHANSON: Certainly.

12 MR. PORTER: Okay. Again, and you're correct that
13 Petitioners -- a big part of their argument is to say there's
14 this real, real natural experiment. OCTAL was kicked out of
15 the market, and what could Petitioners do, and they said,
16 well, OCTAL was kicked out, and we were able to increase our
17 sales and raise our prices. Hence, we win.

18 My response, Commissioner, is not so fast. The
19 reason, again, is this case is different. OCTAL has a
20 dumping margin of 2.7 percent. In many other cases, many,
21 many other cases, the dumping margin is so high, it's
22 expectedly precluding the four producers from selling if they
23 had to raise their price 20, 30, 40 percent higher, as
24 Commerce found.

25 But their natural experiment doesn't work here

1 because all OCTAL has to do is raise their price 2.7 percent.
2 So I would submit that their whole argument really doesn't
3 work as well as they say that it does.

4 COMMISSIONER JOHANSON: Mr. Orkisz, I have a
5 question for you. It didn't appear that you were -- you
6 imported -- that you did not import due to the cyclone and
7 you were using domestic material. Did you see quality
8 problems at that point?

9 MR. ORKISZ: We did. I'm looking at a screen here,
10 and, you know, we had efficiencies that were running about 85
11 percent April through June of 2018, and then --

12 COMMISSIONER JOHANSON: When you say efficiencies
13 of 85 percent, could you explain that perhaps?

14 MR. ORKISZ: It's one of the, you know, KTI's that
15 we measure in our manufacturing process. It's the
16 combination of cycle time and utilization, so, you know, our
17 efficiencies, production efficiencies had been running at
18 about 85 percent in the months prior to the change in
19 supplies, and we dropped down to like 82, 83 percent for like
20 the next six months as we were processing all of the
21 alternative material.

22 In our scrap briefs, we had been just under 2
23 percent April through June, and then the subsequent six
24 months we had jumped up to about 2.28, 2.25 percent, which is
25 significant for the amount of volume that we process.

1 So we had a measurable decrease in efficiency,
2 increase in scrap rate on our plant work at least in the
3 metrics that I was available to put my hands on pretty
4 quickly here.

5 COMMISSIONER JOHANSON: All right. Okay. If you
6 have any more, feel free to provide them in your post-
7 hearing. That would be good.

8 And I have just one more quick question. I think I
9 can get it in during the time remaining. Is all the PET
10 sheet that OCTAL exports to the United States, is it D-PET?

11 MR. BARENBERG: The majority, the vast majority,
12 is. There is a small amount because, when they make the
13 rolls, you do have to take some stock through, and that trim
14 is then flaked up and then reprocessed through a traditional
15 machine, but it's sold differently. It's A-PET, but 100
16 percent virgin resin A-PET. But it's a small percent, like 5
17 percent.

18 COMMISSIONER JOHANSON: Okay. All right. Thank
19 you. My time, I think, has ended. Let's see if anybody else
20 has something to add. No?

21 MR. PORTER: Well, I'd just say, Commissioner, we
22 can provide, obviously -- I think we might have already done
23 it, but if not, we'll be sure to provide the very high
24 percent, I think it is over 95 percent, that was D-PET for
25 each year during the investigation period.

26 COMMISSIONER JOHANSON: Okay. Thank you, Mr.

1 Porter. And thanks to all of you for your responses. My
2 time is expiring.

3 CHAIRMAN KEARNS: Commissioner Schmidtlein?

4 COMMISSIONER SCHMIDTLEIN: Yes, thank you. I just
5 have a couple more questions. Mr. Porter, maybe you would be
6 the best one to attempt to answer this one. In your brief,
7 you highlight that the domestic producers in the merchant
8 market were able to increase their profitability. However,
9 we also know that a majority of U.S. producers in the
10 merchant market were actually losing money throughout the
11 POI, so I wonder -- and I apologize if this has already been
12 addressed, but if you have a theory as to why that was given
13 that demand was so strong and they had available capacity.

14 MR. PORTER: I guess, Commissioner, I think it
15 might have been addressed a little earlier, but my colleague,
16 Jim Durling, noted there are a number of U.S. producers and
17 who I think -- again, it's all confidential, but some made
18 money, some lost money. But that's why you look at the
19 total. I do not have sort of a unifying theory why one made
20 money and one lost money, except to say that their cost
21 structures and their customer bases were different.

22 Jim, do you want to add anything?

23 MR. DURLING: We can go into more detail post-
24 hearing because then we could discuss specific individual
25 companies, but I think there are two points I can make
26 publicly. The first is that if you look at the pattern of

1 performance within the merchant market, you'll see, in
2 general, the larger companies tend to do better than the
3 smaller companies. It's not a completely consistent trend,
4 but, in general, larger tend to do better than smaller.

5 The other is that, for individual companies, the
6 more a company has been able to kind of differentiate its
7 products in some way, the more successful they will be.

8 But you also have the variability of not every
9 company is either profitable or not profitable in every
10 single year, so you have year-by-year variation, as well as
11 company-by-company variation, all of which goes to why the
12 Commission has so consistently focused on the domestic
13 industry as a whole and not kind of jumped into the briar
14 patch of trying to figure out under what circumstances do we
15 basically go in and start picking and choosing which
16 companies to include or not include.

17 That's why I was so struck trying to do systematic
18 research on this issue the week before the hearing. And we
19 went back and tried to find examples where either petitioners
20 or respondents had made this kind of argument and found
21 examples of both but found only examples of the Commission
22 looking at the argument, as you do in every case, but then
23 ultimately concluding that, you know, there's so much
24 variability here that we're simply not going to get in the
25 business of cherry-picking when we pull companies in and out
26 of the domestic industry that has been defined as the

1 domestic industry as a whole.

2 So we can go into more detail post-hearing talking
3 about specific experiences of specific companies, but that's
4 what I can say publicly.

5 COMMISSIONER SCHMIDTLEIN: Okay. Yeah, I wasn't
6 really focused on this argument about whether they should be
7 technically included or excluded but more just generally
8 about what's going on in the market that when you have a
9 demand so strong and available capacity, why would a majority
10 of the producers be losing money, right? So sometimes
11 there's something else that could be pointed to that is
12 affecting that many producers at once. So you can address
13 it, you know, as you said, post-hearing as well. I invite
14 you to do that.

15 MR. PORTER: Commissioner, we'll do that, and I
16 think it's better post-hearing, but, again, OCTAL can give
17 its real-world experience running OCTAL Cincinnati, which is
18 a U.S. PET sheet producer and, you know, kind of had its own
19 issues with pricing and cost and so forth. So OCTAL will
20 give its own perspective of running a U.S. PET sheet
21 producer.

22 COMMISSIONER SCHMIDTLEIN: Okay. In post-hearing
23 you mean?

24 MR. PORTER: Yes, of course.

25 COMMISSIONER SCHMIDTLEIN: Okay. Okay. All right,
26 Mr. Barenberg, this question's for you. In the brief,

1 there's a lot of emphasis placed on long-term contracts that
2 were signed prior to the Period Of Investigation, so I'm
3 curious about sales activity during the Period Of
4 Investigation.

5 And, again, I apologize if this has been covered,
6 but can you talk a little bit about your sales efforts during
7 the Period Of Investigation? Was OCTAL seeking new customers
8 during the Period Of Investigation? Were you active in the
9 spot market? Were you signing long-term contracts with other
10 than existing customers?

11 MR. BARENBERG: During that time, and we have an
12 ongoing sales effort, obviously, globally, and so, with
13 respect to having the contracts in place, obviously, those
14 kind of go on automatically because they have the terms and
15 conditions well-defined.

16 In terms of other business, yes, I mean, we have a
17 profile, I mean, we're fairly highly utilized, we don't have
18 a lot of spare capacity, and so, when we select new customers
19 and go after new business, we like it to meet certain
20 criteria that address some of the issues you've heard about
21 today, which is, you know, we ship full container loads,
22 which is 20 to 24 pounds apiece, so we need companies that
23 have a profile that matches well our manufacturing
24 capability. So, yes, certainly, we're doing that.

25 But, in terms of addressing everybody in the
26 market, no, because, you know, it's a select few. The U.S.

1 is a fairly concentrated market and so we certainly are out
2 there in the market, we're in touch with the market, and as
3 companies go and morph into -- we certainly --

4 MR. PORTER: Commissioner Schmidtlein, could I make
5 just a quick point?

6 COMMISSIONER SCHMIDTLEIN: Yes.

7 MR. PORTER: Yeah. If you look at Exhibit 4 of our
8 brief, I think you can see that Petitioners' theory that
9 OCTAL just went out in the spot market and tried to grab
10 every sale is just not true. There was actually a
11 concentration of customers as the period went on. We put
12 this information so the Commission had that and it had actual
13 data to examine that point.

14 COMMISSIONER SCHMIDTLEIN: Those are confirmed
15 customers? Those are actual sales in Exhibit 4, right?

16 MR. PORTER: Yeah, Exhibit 4 puts
17 everything -- it ties to the OCTAL importer questionnaire
18 response the totals, and it shows every single customer that
19 OCTAL has and the quantity sold.

20 But what you can see is by looking at existing
21 customers and sort of growth in existing customers versus
22 going out and trying to get sort of new business, I think you
23 can see OCTAL's growth was with existing customers and, you
24 know, not going out in the spot market trying to get new
25 business. They grew with their customers, which is part of
26 their business plan.

1 COMMISSIONER SCHMIDTLEIN: So were you not in the
2 spot market then at all in the POI? You don't go that far.

3 MR. PORTER: No. Of course. You know, OCTAL has a
4 business, they're trying to increase sales, but you can look.
5 Because we gave it all to you, every single customer -- and I
6 actually urge you to ask that from Petitioners as well -- you
7 can see which customer was sort of brand new, if you will, in
8 which year, and, again, you can look, and on a quantity
9 basis, the increase came from existing customers. There was
10 just a very, very small, if you will, tiny quantity of a
11 brand new customer say in 2019.

12 COMMISSIONER SCHMIDTLEIN: And you mean the
13 increase came from existing customers signed before the POI?

14 MR. PORTER: Yeah. Again, you can see that because
15 we told you, on a confidential basis, all the customers that
16 they had contracts with before the POI, and we've given you
17 the actual quantity and the totals tied to the importer
18 questionnaire response. So, yes, you could literally do the
19 analysis that you're talking about right now.

20 COMMISSIONER SCHMIDTLEIN: So, Mr. Barenberg, there
21 must have been -- you have an ongoing sales effort then. So
22 you weren't able to acquire new customers during the POI? Is
23 this --

24 MR. BARENBERG: We only have one, two, three active
25 salespeople in North America for everything that we do, and
26 the reason we're structured like that is because we have a

1 very specific profile of folks with whom doing business makes
2 good sense for both parties. And so, while we certainly try
3 to get to know the market broadly, we also understand that
4 when we see potential for us to add value to each other's
5 businesses, then we will move to join in with these people
6 and have some kind of a trading relationship. Past that, you
7 know, we clearly have as much inbound inquiries as anything
8 else, and so we do service the customers who we know and who
9 request product.

10 But, with respect to building new relationships, I
11 think that Dave Plume (phonetic) is a very good example. We
12 communicated with somebody we didn't -- we knew them in the
13 early days, and as they grew, they really morphed into a
14 company that fit very well with what we provide.

15 So, in the early days, as Jeff said, he bought from
16 others, but when his business grew and the demands of his
17 packaging got very, very difficult, you know, he came to us,
18 and it was a very good match in terms of the value we could
19 provide and that he needed.

20 But in terms of scouring every account and
21 scratching out every last thing, no. The cost to serve on
22 that level is not how we built our business. We build our
23 business to scale and scale efficiencies not only with
24 manufacturing but also for distribution and the end sale.

25 COMMISSIONER SCHMIDTLEIN: Okay. All right. Thank
26 you. My time is up.

1 CHAIRMAN KEARNS: Commissioner Karpel?

2 COMMISSIONER KARPEL: Yeah. Thank you. I sort of
3 have several questions that sort of jump around, so bear with
4 me, but I guess I wanted to start sort of with a bigger
5 question, and, as I understand your argument, you acknowledge
6 that there's underselling and that there's a market share
7 shift, but your crux of your argument is that that market
8 share shift is not caused by the underselling, it's caused by
9 this differentiated product you have, the D-PET product, and
10 we've heard from two customers who obviously highly value
11 that product and don't want to have to purchase another
12 product, but for the other purchasers out there in the
13 market, and we have several who responded to the
14 questionnaire that said price is very important, are not some
15 of those buying OCTAL products because it is cheaper, they're
16 a little more flexible on quality, their customers are not
17 that demanding, but, gee, they're looking for what they can
18 get in the marketplace that will allow them to turn the most
19 profit?

20 So I feel like you're asking us to sort of ignore
21 the instinct of purchasers and purchasers that have responded
22 yes to the fact that the price is a very important question
23 for them.

24 MR. PORTER: Commissioner, let me start, and then
25 we can get -- let me start from what the evidentiary record
26 before you actually shows, okay?

1 First, okay, let's be very clear. Neither OCTAL,
2 nor we, are saying that every single customer who buys D-PET,
3 the sole and only reason is because of the quality. Sure,
4 there are some customers who like the ability that OCTAL has
5 this cost advantage. Sure.

6 The question for you is significance, okay, and
7 materiality, which is why you asked, which is why your
8 questionnaires explore the very idea of so-called non-price
9 reasons, and we get back to something that we a little bit
10 talked about.

11 You have data on the record that says to purchasers
12 which purchasers cared only about price and which purchasers
13 said, no, I care very much about the D-PET aspect, that is,
14 the quality, and I care as much as price. And you have that
15 information, and, most importantly, you have the quantities
16 of those purchasers.

17 And we've done the math, and when you include all
18 of the purchasers, including those who submitted
19 questionnaire responses after the staff report came out, and
20 you look at that, you find that 82 percent of total OCTAL
21 sales went to purchasers who listed D-PET as among the most
22 important factors for buying it.

23 So you actually have -- yes, I'm not saying there's
24 -- it's 82, it's not 100, but 82, in our minds, is very
25 significant. And so, yes, there may be a purchaser here or
26 there that says, yeah, D-PET is not very important to me, but

1 they're not the people, the vast majority of the customers
2 who are actually buying the D-PET. The vast majority of
3 customers who are buying D-PET are saying D-PET is very, very
4 important because of the superior performance attributes.

5 COMMISSIONER KARPEL: Okay. So we would have to
6 say that the 18 percent that are buying OCTAL's product just
7 because of price are not significant, are not enough to say
8 that underselling is significant or to say that the market
9 share shift is representative of injury?

10 MR. PORTER: You're correct, Commissioner. You
11 need to look at the 18 and see, number one, did they -- I
12 mean, again, 18 percent is a static number, but you look at
13 that and what was going on with the 18, and was what they
14 were doing so significant as to find the entire industry was
15 injured because of that? And I submit that that's not what
16 the Commission has done in the past, that, you know, you're
17 looking at sort of broad things here.

18 And I submit that when the evidentiary record shows
19 82 percent listing D-PET as very important, a non-price
20 reason for buying from OCTAL, I say that the evidentiary
21 record really supports the argument of non-price factors.

22 Jim?

23 MR. DURLING: Yeah, I guess just the only other
24 point I would add is that, at the end of the day, you look at
25 the significance of each individual piece of your analysis,
26 but then, in the end, you need to pull it all together, and

1 so it's in light of all of the other evidence, it's in light
2 of the fact that there's no price depression, it's in light
3 of the fact that there's no price suppression, it's in light
4 of the fact that the domestic industry as a whole has
5 actually been making more money, not less money.

6 So, yes, there's underselling, yes, there are some
7 small portion of the customer base for whom price may have
8 been more important than D-PET, but when you look at that 18
9 percent in light of all the other contexts on the record,
10 that's where we say, at the end of the day, there's not
11 enough evidence to justify an affirmative.

12 MR. PORTER: Commissioner Karpel, I think your mike
13 is off.

14 COMMISSIONER KARPEL: Sorry. Thank you. Just a
15 few more things. This one's for post-hearing I think, but,
16 Mr. Porter, you mentioned, in talking about the physical
17 characteristics of D-PET versus other types of PET sheet,
18 that you have laboratory tests that show they're physically
19 different.

20 I think right now, at least from what I've read,
21 I've heard from purchasers who have explained how they feel
22 like they're different and how they affect their process, but
23 I'm not sure I've seen anything more sort of analytical or a
24 study or a laboratory analysis that shows that, so if that's
25 on the record, maybe you can point me to where that is, or,
26 if it's not, if you can --

1 MR. PORTER: Right. Let me point you where
2 something actually is now, and, of course, OCTAL has it.
3 Where you have right now is I believe Exhibit -- I'm sorry --
4 Attachment 8 to Mr. Barenberg's chart. That is from
5 Intertech, and that is hard evidence of the lower carbon
6 footprint. So they tested D-PET versus U.S. A-PET, and so
7 that's hard evidence of the lower carbon footprint.

8 With respect to sort of the other characteristics,
9 like intrinsic viscosity and so forth, we can get you some
10 harder data points from OCTAL and from the customers on that.

11 COMMISSIONER KARPEL: Okay, thank you. That would
12 be appreciated. And then I guess along those lines, in the
13 prehearing brief, I think we heard from the same purchasers
14 that are participating in today's hearing, but if there are
15 other purchasers who have the same perspective that was
16 shared today and on the prehearing brief, you know, obviously
17 interested in hearing that as well. I think we have a
18 smaller universe here than what is the market participants.

19 MR. PORTER: Yeah. Just to note because maybe you
20 hadn't see it yet, there was a purchaser questionnaire coming
21 in after the staff report that actually conveyed very similar
22 things to what you're hearing today. Of course, we'll
23 highlight that in the post-hearing.

24 COMMISSIONER KARPEL: Then sort of a follow-up from
25 an earlier question talking about the cyclone and sort of the
26 scramble that some of the purchasers or at least the two

1 purchasers here went through. I mean, do you now have
2 contingency plans in place should other natural disasters or
3 pandemics, you know, interrupt supply chains, or is it still
4 somehow an advantage to have a sole source supplier?

5 MR. PORTER: Jeff, I'll let you go first. Jeff,
6 your microphone.

7 MR. MCGUIRE: Sorry about that. I was laughing.
8 You know, we're more of an entrepreneurial company, so I
9 don't have a true contingency plan developed. I mean, I
10 could be really honest. If the same issue happened, I think
11 Tom and I would go through the same exercise, and we would
12 sit there and start calling the domestic suppliers because,
13 in reality, my business can't stop. I have to keep going to
14 keep the people employed.

15 So, you know, I keep domestic suppliers -- you
16 know, I still do business with even some of the Petitioners
17 because I like to sit there and be able to have a
18 relationship and I don't want that relationship damaged, but
19 I will tell you that it's just a material issue for me. But,
20 as far as a contingency plan, the answer is no. I'd go
21 through the same exercise.

22 MR. PORTER: Tom?

23 MR. ORKISZ: In my perspective, we don't have a
24 formal written contingency plan yet, but I think we learned a
25 lot, and I think it forced us to kind of do a fresh inventory
26 of what's out there in the world. I think we became aware of

1 a couple of other players that can help us in the event
2 something happens, and it wouldn't be limited to just
3 domestic. There's some more options out there. So I think
4 that's recently now happened.

5 But, no, you know, it would, again, be a tough
6 scenario to go through and certainly something we'll be
7 talking about in our next contract negotiation with Mr.
8 Barenberg, about having a little more of a safety net out
9 there for sure.

10 COMMISSIONER KARPEL: All right. Thank you all. I
11 think that's the last of my questions. So I really
12 appreciate all of your time today and your explanations and
13 your answers.

14 MALE VOICE: Thank you.

15 CHAIRMAN KEARNS: Okay, thank you. Just a few last
16 questions on my end. I wanted to go back to Exhibit 4. You
17 all answered a number of questions for me and others about
18 that and, again, I appreciate that exhibit. It's very
19 helpful and I think you touched on this, Mr. Porter, already,
20 but let me just double-check. Are these sales export
21 shipments or import shipments? I ask because I want to make
22 sure I understand the timing of them. Also, does this
23 exhibit cover all of your sales or shipments over the POI?
24 And I think you said it did.

25 MR. PORTER: Yes, Commissioner, if you look at the
26 grand total at the bottom, that ties exactly to the

1 commercial shipment and the importer questionnaire response.

2 CHAIRMAN KEARNS: Okay.

3 MR. PORTER: And, obviously, we wanted to show you
4 with everything, so we first gave the importer questionnaire
5 response, certified numbers, and then I asked them to just do
6 customer by customer obviously they had to do it or do that,
7 so that's what that is. So, yes, this is 100 percent of
8 commercial shipments of imported product from Oman over the
9 POI.

10 CHAIRMAN KEARNS: Okay, great, thanks again. One
11 last question on that and this will likely be for post-
12 hearing, but which of these purchasers have long-term
13 contracts with OCTAL and what are the lengths of those
14 contracts and when were they entered into, if you could
15 provide that post-hearing, that would be great.

16 MR. PORTER: That information is buried in our 89-
17 page brief, but we'll highlight that for you in our post-
18 hearing.

19 CHAIRMAN KEARNS: Okay, thank you. One last
20 question. In your brief, you make some comments, this is
21 business proprietary, so I'm going to be a little bit hard to
22 follow here, but in your brief, you make some comments about
23 your understanding about decisions by certain customers but
24 provide no support for those understandings. This is at page
25 26 near the top and at the bottom of page 28. Post-hearing,
26 can you provide evidence on these points, particularly any

1 contemporaneous communications with the customers at issue?

2 MR. PORTER: Again, that customer has submitted a
3 purchaser questionnaire, so you have that; basically, you
4 have a purchaser questionnaire response from that customer,
5 so just like any other purchaser.

6 CHAIRMAN KEARNS: Okay, so you think we have
7 everything we need to --

8 MR. PORTER: I believe with respect to that
9 purchaser, and, again, looking at the release that was a
10 release by the Secretary's office of the sort of confidential
11 record that was made after the briefs went in, I can tell you
12 that that purchaser is large and they submitted quite a bit
13 of data about their purchasing decisions.

14 CHAIRMAN KEARNS: Okay, thank you. I have no
15 further questions. Vice Chair Stayin?

16 VICE CHAIRMAN STAYIN: I have no further questions,
17 thank you. Thank you all for being here and for being so
18 responsive to our questions.

19 CHAIRMAN KEARNS: Do any other Commissioners have
20 questions?

21 COMMISSIONER JOHANSON: I do not.

22 COMMISSIONER KARPEL: I don't.

23 CHAIRMAN KEARNS: Okay, very well. Do the staff
24 have any questions?

25 MS. HAINES: Elizabeth Haines, Office of

1 Investigations. Staff have no questions.

2 CHAIRMAN KEARNS: And do those in opposition have
3 any questions for this panel?

4 MR. ROSENTHAL: We do not, thank you.

5 CHAIRMAN KEARNS: I'm sorry, I said opposition, but
6 I think you all support. Very good. Let's see. So I
7 believe Petitioners have 11 minutes total left and
8 Respondents have 12 minutes total left.

9 MR. BISHOP: That is correct, Mr. Chairman. Moving
10 on to rebuttal and closing remarks, providing rebuttal and
11 closing remarks on behalf of those in support of imposition
12 will be Paul C. Rosenthal of Kelley, Drye & Warren. Mr.
13 Rosenthal, you have a total of 11 minutes. You may begin
14 when you're ready.

15 MR. ROSENTHAL: Mr. Bishop, are you activating my
16 webcam, or am I doing that myself?

17 MR. BISHOP: Are you able to do it yourself? There
18 you are.

19 MR. ROSENTHAL: Apparently I am.

20 MR. BISHOP: The others on the responding panel can
21 go ahead and turn off their webcams and microphones, please.

22 MR. ROSENTHAL: Thank you. In my 11 minutes, I'll
23 try to hit on some key points. There are a lot of factual
24 questions that we'll address in our post-hearing brief, but
25 for today and at this point, I just want to make a few

1 points. One is that there was a lot of discussion about the
2 efficiency of OCTAL. As the Commission know, there have been
3 many, many cases where they've come in, Respondents have come
4 in and said, we're more efficient than the domestic
5 producers. They can't compete with us and therefore they
6 shouldn't win. The Commission has never accepted that
7 argument. The Commission always understands that you take
8 the domestic industry as you find it, and so even if the
9 domestic industry is the most inefficient in the world, if
10 the foreign producers are underselling and dumping, they can
11 cause injury, which is what happened here.

12 And on the question of dumping, I don't know how
13 many times I heard from Respondents' counsel the margins are
14 only X percent. They're less than 3 percent. That's prelim.
15 Let's see what happens at the final.

16 One of OCTAL's, I'm not going to go into
17 proprietary information, but at the Commerce Department, one
18 of OCTAL's major U.S. customers turns out to be selling its
19 head scrap regrind to OCTAL Ohio during the Period Of
20 Investigation and, as you heard, that's very common. What
21 happened, though, and one of our concerns was that what OCTAL
22 Ohio is paying for this customer was way above market pricing
23 for that. The result was an effective discount for that
24 customer, and we believe that once the Commerce Department
25 makes the adjustment for that, which they couldn't do in the

1 prelim, the dumping margins will go higher. There are other
2 issues as well that will cause a higher dumping margin, but I
3 suggest that the Respondents shouldn't be focusing on that.

4 By the way, one of the arguments they made
5 concerning the reason why OCTAL can raise its prices was the
6 concern about the substitutability of other products. Your
7 record totally contradicts that. If you look at page 2-10 of
8 your staff report, it makes it very clear that there's only
9 one producer importer and you could have guessed who that
10 might be, reported that price, substitute the effective price
11 of PET sheet, all the other producers, importers, and
12 purchasers that reported on that question said that the price
13 of substitute plastics did not influence the prices of PET
14 sheet.

15 I'm not going to go into the questions or, again,
16 the discussion of substitutability of D-PET and A-PET and the
17 others. Just look at your record. It's very, very clear.
18 Charts 5 and 4 and 3 that we used earlier make it very clear
19 that the vast majority of importers, purchasers, and
20 producers believe that these products are interchangeable,
21 and I had an exchange with one of our witnesses today while
22 the Respondents were talking about this topic and claiming
23 that they couldn't substitute one for another and there are
24 all these problems with A-PET and R-PET as compared to D-PET,
25 the response by this customer was this is BS, the material

1 can be subbed with no problem. We'll get a more articulate
2 affidavit from this customer as a third-party independent
3 source, but there's plenty of other information on the record
4 with respect to that.

5 I noted Mr. Orkisz talked about the merchant
6 producers and he only refers to Petitioners as merchant
7 producers, probably forgot about all the other merchant
8 producers and even that so-called aberrational producer. He
9 did say that if he couldn't get D-PET he'd start producing in
10 the U.S., and I appreciate the follow-up questions by the
11 Commissioners on that because effectively what you heard from
12 him and from the other witnesses, including Mr. Barenberg, is
13 that they are, and by the way, Mr. DeBode mentioned this too
14 as one of the original strategies by OCTAL was to go in and
15 make their prices so low that the thermoformers didn't want
16 to produce the PET sheet themselves, but they would
17 substitute the OCTAL products, and, by the way, I understand
18 the argument by Mr. Porter that while they're in the
19 thermoforming business and what do you care about whether
20 they produce the cut sheet themselves, but as you note, we're
21 looking at the industry overall, not just the merchant
22 market, and if you're losing jobs in cut sheet production if
23 workers are not being employed and if investments are not
24 being made, its capacity utilization is going down, which is
25 exactly what has happened because of that strategy. That is

1 injury.

2 It's interesting that OCTAL says its biggest
3 competitor is internal production and if the prices weren't
4 low enough they're not going to get more of those sales.
5 Well, by the way, domestic producers sell the thermoformers
6 too. We would like them to buy our product instead of the
7 internal production as well, but we are being denied that
8 opportunity because of the low prices by OCTAL.

9 The notion that OCTAL is charging the highest
10 prices it can get is just ridiculous, especially given all
11 the claims about quality, and I think the Commissioners'
12 questions made that very, very clear. The opportunity for
13 growth has been taken entirely by OCTAL and it's been
14 entirely based on their pricing.

15 One of the most telling things that I heard today,
16 apart from conceding underselling, apart from conceding that
17 there's growing market share by OCTAL, Mr. Barenberg
18 basically said in the response to a question if we raise our
19 prices, we're going to lose market share. We'll lose sales.
20 What could be more telling? And, by the way, this is going
21 back to -- everyone on the Commission knows Tim Wright. His
22 very first case as a young lawyer at the ITC was deports of
23 trucks from Japan case in 1989. I was counsel for the
24 domestic industry. The Japanese made the argument in that
25 case that they were much more efficient than the last

1 remaining U.S. producer, which was a company called Chrysler
2 Corporation, and the Japanese were also benefitting by
3 favorable exchange rates.

4 The presiding officer at the staff conference, Mr.
5 Irvin, asked Mr. Riley, the economist for the Japanese case,
6 why don't, if you're so efficient and you've got this benefit
7 of better pricing due to the exchange rates, why don't you
8 raise your prices, and Mr. Riley said, well, if we raise our
9 prices, we'll lose market share. Mr. Irvin responded, well,
10 it seems to me you just handed the petitioners their case.
11 Well, Mr. Riley did not get invited back by the respondents
12 to testify at the final stage of that proceeding, but they
13 have no choice here than to have Mr. Barenberg continue to
14 testify because he is their client, but the admission that
15 increasing prices will cause OCTAL to lose market share to me
16 puts the nail in the coffin as far as this injury analysis
17 goes.

18 Mr. McGuire was generous in suggesting that the
19 domestic industry is surviving by living on small customers
20 and why is that? Because the domestic can't get the large
21 runs of SKUs that have been totally dominated by OCTAL. The
22 domestic industry would love to be able to have more
23 efficient longer runs so they could lower their cost and use
24 more of their unused capacity, but that's not possible when
25 OCTAL is not only going after the three big customers and the

1 82 percent that is claimed by Mr. Porter but by every other
2 customer that they can find, including new ones that are
3 producing the plastic face shields.

4 And, by the way, if you look at the record as a
5 whole, you will see ample evidence of lost sales, lost
6 revenues, a bunch of producers, not petitioners, saying that
7 they have been hurt by imports from OCTAL and Korea,
8 companies, big ones getting out of product lines because they
9 can't compete with the imports. There's ample evidence of
10 injury. Indeed, while we think you've got a good basis for
11 disregarding the data from that aberrational producer, we've
12 talked about and will supply more information about why it's
13 so aberrational and mainly because it's an integrated
14 producer, but there are many other reasons as well. Even if
15 you include them, we believe the record is very, very clear.
16 If you are in competition with imports from Oman and Korea,
17 you are getting your business kicked. You are losing money.
18 You are losing sales. You are losing capacity utilization.
19 Every indication of injury is there, so whether or not you
20 eliminate that aberrational producer, there's plenty of
21 evidence to support a affirmative determination in this case.
22 Thank you.

23 MR. BISHOP: Thank you, Mr. Rosenthal.

24 Providing rebuttal and closing remarks on behalf of
25 those in opposition to imposition will be James P. Durling of

1 Curtis, Mallet-Prevost, Colt & Mosle. Mr. Durling, you have
2 a total of 12 minutes. You may begin when you're ready.

3 MR. DURLING: Thank you --

4 MR. BISHOP: We have a terrible echo, Jim.

5 MR. DURLING: I think this is better now?

6 MR. BISHOP: Yeah, that's better.

7 MR. DURLING: Okay, perfect, my fault. So thank
8 you. I want to start by just recapping what we think are the
9 distinctive features about this case that we've learned a lot
10 more about today. The first distinctive feature is that D-
11 PET really is a unique product. The other side has tried to
12 say the Commission has already considered and rejected this
13 argument, but that's not true. The facts the Commission was
14 confronting in the PET resin case were very different than
15 this case and in this case, we have demonstrated that D-PET
16 is a different product. You heard a lot about but it
17 functions the same way, but with all due respect, function is
18 not the same thing as quality. Two products can function the
19 same way but still have very significant differences in
20 quality that matter to the ultimate purchasers, and I thought
21 the example from Commissioner Kearns about diet Coke made
22 that point very well. He basically said even if Pepsi is
23 available at a lower price he prefers diet Coke, so he is not
24 choosing diet Coke because of the price, whether it's higher
25 or lower, he's choosing diet Coke because he has a

1 preference, and quality preferences work the same way.

2 A second distinctive feature of the market is that
3 we are dealing with an industry that has a significant
4 portion that is being captively consumed, and that is
5 important not just because it means the captive production
6 provision is at stake and if you apply it you'll be focusing
7 on the merchant market. It's also important because you
8 still have to step back and look at the industry as a whole,
9 and one of the key dynamics here has been the shift to
10 vertical integration, the importance of vertical integration
11 over the entire period and the shift in total production
12 quantity toward vertical integration. That's part of what
13 you need to incorporate into your analysis here. It's in the
14 data and the importance of this dynamic was confirmed in the
15 testimony by Mr. DeBode this morning.

16 The third key point is pricing transparency, which
17 is very distinctive in this case. You have widely published
18 market indices that everyone is tracking. You have contracts
19 that are linked to those market indices, and all of the
20 industry representatives that you heard from today
21 acknowledge that there is much greater transparency here
22 about kind of the input costs, and that affects the dynamics
23 in the industry.

24 The fourth key distinguishing fact here is the low
25 dumping margin and, yes, we don't have a Commerce final, but

1 until we have a Commerce final the best information you have
2 is the Commerce preliminary, and what that preliminary shows
3 and what we submit the final will also show because there may
4 be some small variation, but we're not talking about a
5 difference between a 2 percent margin and a 20 percent
6 margin. We're still talking about in all probability a very,
7 very low dumping margin, which Commerce has basically gone
8 through the exercise of confirming that there's a very low
9 dumping margin even after checking to see whether OCTAL is
10 selling above or below its cost of production.

11 Indeed, I would also note that but for the practice
12 of zeroing dumping margins, in fact, economically, on an
13 overall average basis, the OCTAL dumping margin actually is
14 zero and it's entirely possible, Petitioners made arguments
15 to raise the dumping margin, but we made arguments before
16 Commerce to lower the dumping margin, and we'll see where
17 Commerce comes out.

18 But I think to appreciate the importance of the low
19 dumping margin, I would just pose a hypothetical for the
20 Commission to reflect upon. Let's suppose that the final
21 dumping margin is 2.1 percent, so at below 2 percent, it's
22 legally de minimis and you lose any legal authority to do
23 anything with the case.

24 Is it truly the case on these facts that if the
25 dumping margin is 2.1 percent that that extra .1 percent of

1 dumping margin on these facts in light of this demonstrated
2 greater economic efficiency and lower cost of OCTAL, is it
3 truly the case that the statute requires you to make an
4 affirmation determination because of that extra .1 percent of
5 dumping margin? I don't think the statute requires that. I
6 think that's precisely why the statute gives you the
7 authority to take into account the margin of dumping and the
8 analysis, doesn't constrain how you do that, but it gives you
9 the authority to do that and this is one of those cases where
10 taking into account the margin of dumping is important for
11 understanding what's really going on here.

12 And the final fifth point I want to highlight as
13 just being very distinctive here is this whole question of
14 profitability, and it works on both sides. This case is
15 unusual in two important respects regarding profitability.
16 The first is that you actually have your record evidence
17 showing that both for the domestic industry as a whole and
18 even for the merchant market there actually have been pretty
19 reasonable operating profits throughout the period. In fact,
20 the operating profits are so devastating to Petitioners'
21 theory of the case that they have made a hail Mary pass.
22 They basically have tried to argue that you should cherry-
23 pick out the one company strategically selected to somehow
24 reverse this terribly adverse trend which is quite
25 devastating to their theory of the case, but as I noted

1 during the hearing presentation, we've looked pretty
2 comprehensively at your precedent over the past 20-odd years
3 and we could not find any example where the Commission
4 accepted such a request.

5 The Commission has been quite disciplined in
6 recognizing that the statute directs you to consider the
7 domestic industry as a whole and you have a very longstanding
8 practice of taking the domestic industry as a whole. So
9 you've been evenhanded. You've rejected this argument
10 whether it was made by petitioners or respondents, but you
11 have consistently rejected the argument, and I submit that
12 there's nothing in this record that would make this case the
13 reason to make an exception that you've never before made.
14 So those are the distinctive features about the case, but now
15 let me turn to what is a fairly traditional framework for how
16 you look at these key facts.

17 As I just mentioned, you have a very longstanding,
18 well-settled statutorily based practice to consider the
19 domestic industry as a whole. In fact, Mr. Rosenthal just
20 mentioned in his closing remarks that you take the industry
21 as you find it. Well, that is true, but it works for him as
22 well. He takes the domestic industry as he finds it and his
23 clients represent a small portion of that domestic industry.
24 I'm sure he was quite surprised when he saw the prehearing
25 staff report showed the tabulation of data for the final

1 investigation and saw just how strong the operating profits
2 were in this industry.

3 The Commission has to look at that data on a
4 systematic basis. The captive production provision is at
5 play here. I think everybody agrees your focus will be on
6 the merchant market, but focus on the merchant market does
7 not mean that you ignore everything else. It is still
8 important to step back and say, okay, I focus on the merchant
9 market, but I still need to look at the domestic industry as
10 a whole and I still need to consider the profitability and
11 the trends for the industry as a whole.

12 Next, in this case, because of this profitability,
13 there is no link between the alleged adverse consequences to
14 the domestic industry and the alleged dumped imports. We'll
15 see whether they're dumped imports at the end of the day.
16 We'll know in a few days from Commerce, but even if Commerce
17 finds some small margin of dumping, there's no linkage
18 between that margin of dumping and the adverse consequences
19 at play, here and that's important. Much the same way that
20 you can't blame a more efficient non-subject producer for
21 taking market share or having adverse consequences over the
22 domestic industry, you can't blame a non-subject import
23 because the non-subject import has not been found to be
24 dumping. It's the same logic for why you need to look at the
25 margin of dumping and to what extent does that margin of

1 dumping explain the consequences that you're observing in
2 your data, which is not the case here.

3 Two final points. At the end of the day, this is a
4 case about PET sheet and overwhelmingly the imports are
5 coming from Oman. This is not a case about PET regrind. You
6 heard a lot about regrind in the morning, but this case is
7 not about regrind. It's not a case about PET resin. You've
8 had that case. And, emphatically, it's not a case about
9 OCTAL Cincinnati. You repeatedly heard references to, oh,
10 they're even stealing the market for shields to protect, you
11 know, healthcare workers in the United States or other people
12 trying to protect themselves from the pandemic even after we
13 explained to you that the PET shield product is coming from
14 Cincinnati. You can't blame imports from Oman for what's
15 happening by OCTAL Cincinnati.

16 Finally, facts are stubborn things and
17 investigations sometimes reveal surprising facts that Mr.
18 Rosenthal's clients did not appreciate all of the dynamics in
19 the market and did not appreciate the extent to which the
20 rest of the market, either the merchant market or the market
21 as a whole, including the captive, that they did not
22 appreciate the extent to which most of the rest of the
23 industry on an overall average basis is actually doing quite
24 fine, that they did not realize that fact when they filed the
25 case, that they did not realize that fact in the preliminary

1 determination doesn't make it any less of a fact for purposes
2 of this final investigation. So we urge you to take that
3 into account and we urge you to make a negative
4 determination. Thank you.

5 MR. BISHOP: Thank you, Mr. Durling.

6 Mr. Chairman, that concludes rebuttal and closing
7 remarks. Your mike is on mute, Mr. Chair.

8 CHAIRMAN KEARNS: Thank you. On behalf of the
9 Commission, I want to thank all the witnesses for
10 participating in today's hearing. Post-hearing briefs,
11 statements responsive to questions and requests of the
12 Commission, and corrections to the transcript are due no
13 later than 5:15 on Tuesday, July 21. The Commission
14 appreciate's everyone's patient and flexibility in adapting
15 to our modified procedures during this time.

16 Seeing no other business before the Commission,
17 this hearing is adjourned.

18 (Whereupon, at 4:20 p.m., the hearing in the above-
19 entitled matter adjourned.)

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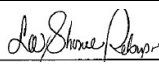
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CERTIFICATION OF TRANSCRIPTION

TITLE: Polyethylene Terephthalate(PET) Sheet from
Korea and Oman
INVESTIGATION NO.: 731-TA-1455 and 731-TA-1457
(Final)
HEARING DATE: July 14, 2020
LOCATION: Washington, D.C.
NATURE OF HEARING: Hearing

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

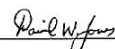
DATE: 7/14/20

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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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