

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
ALLURA RED COLORING FROM INDIA) Investigation No.:
) 701-TA-433P and
) 731-TA-1029P
)

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Tuesday,
 March 25, 2003

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

The preliminary conference commenced, pursuant to Notice, at 9:32 a.m., before the Commissioners of the United States International Trade Commission, the Honorable ROBERT CARPENTER, Director of Investigations, presiding.

APPEARANCES:

On behalf of the Commission Staff:

Robert Carpenter, Director of Investigations
 Jim McClure, Supervisory Investigator
 Woodley Timberlake, Investigator
 Laurent deWinter, Attorney/Advisor
 Craig Thomsen, Economist
 Justin Jee, Accountant
 Steve Wanser, Industry Analyst

On behalf of Sensient Technologies Corporation:

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 Washington, DC

APPEARANCES: (cont'd)

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GARY MORRIS, Director Marketing, Sensient Colors, Inc.
HAROLD MEGGOS, Vice President, Sensient Colors, Inc.
JOHN HAMMOND, Gen. Counsel, Sensient Technologies Corp.

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Neelikon Food Dyes & Chemicals, Ltd.:

LIZ R. LEVINSON, Esquire, Of Counsel
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Washington, DC

ROHIT TIBREWALA, Chief Executive Officer, Roha (USA)
ROBERT M. SCHAEFER, Industry Consultant to Roha (USA)
SUDHIR TRIVEDI, President, Alps Colors LLC

I N D E X

	PAGE
TESTIMONY OF KEVIN M. O'BRIEN, Esquire, Baker & McKenzie, Washington, DC	6
TESTIMONY OF LISA A. MURRAY, Esquire Baker & McKenzie, Washington, DC	30
TESTIMONY OF THOMAS O'BRIEN, President, Sensient Colors, Inc.	11
TESTIMONY OF GARY MORRIS, Director Marketing, Sensient Colors, Inc.	22
TESTIMONY OF HAROLD MEGGOS, Vice President, Sensient Colors, Inc.	38
TESTIMONY OF LIZ R. LEVINSON, Esquire, GARVEY SCHUBERT BARER, Washington, DC	58
TESTIMONY OF ROHIT TIBREWALA, Chief Executive Officer, Roha (USA)	63
TESTIMONY OF ROBERT M. SCHAEFER, Industry Consultant to Roha (USA)	72
TESTIMONY OF SUDHIR TRIVEDI, President, Alps Colors LLC	87

P R O C E E D I N G S

(9:32 a.m.)

1
2
3 MR. CARPENTER: Good morning, and welcome to the
4 United States International Trade Commission's conference in
5 connection with the preliminary phase of countervailing duty
6 investigation number 701-TA-433 and antidumping
7 investigation number 731-TA-1029 concerning imports of
8 Allura Red from India.

9 My name is Robert Carpenter. I'm the Commission's
10 Director of Investigations, and I will preside at this
11 conference. Among those present from the Commission's staff
12 are: Jim McClure, the supervisory investigator; Woodley
13 Timberlake, the investigator; Laurent deWinter, the
14 attorney/advisor; Craig Thomsen, the economist, who should
15 be here in a couple minutes; Justin Jee, the accountant; and
16 Steve Wanser, the industry analyst.

17 The purpose of this conference is to allow you to
18 present your views with respect to the subject matter of the
19 investigation in order to assist the Commission in
20 determining whether there is a reasonable indication that a
21 U.S. Industry is materially injured or threatened with
22 material injury by reason of imports of the subject
23 merchandise.

24 Individuals speaking in support of and in
25 opposition to the petition each have one hour to present

1 their views. Those in support of the petition will speak
2 first. The staff will ask questions of each panel after
3 their presentation, but no questions from opposing parties
4 will be permitted. At the conclusion of the statements from
5 both sides, each side will be given ten minutes to rebut
6 opposing statements and make concluding remarks.

7 This conference is being transcribed, and the
8 transcript will be placed in the public record of the
9 investigations. Accordingly, speakers are reminded not to
10 refer in their remarks to business proprietary information
11 and to speak directly into the microphones. Copies of the
12 transcript may be ordered by filling out a form which is
13 available from the stenographer.

14 You may submit nonconfidential documents or
15 exhibits during the course of your presentation. These will
16 be accepted as conference exhibits and incorporated into the
17 record as attachments to the transcript.

18 Speakers will not be sworn in. However, you are
19 reminded of the applicability of 18 U.S.C. 1001 to false or
20 misleading statements, and to the fact that the record of
21 this proceeding may be subject to court review if there is
22 an appeal. Finally, we ask that you state your name and
23 affiliation for the record before beginning your
24 presentation.

25 Are there any questions? If not, welcome Mr.

1 O'Brien, please proceed.

2 MR. KEVIN O'BRIEN: Thank you, Mr. Director, and
3 good morning. My name is Kevin O'Brien. I am with the law
4 firm of Baker & McKenzie, and we represent the petitioner in
5 this proceeding, Sensient Technologies, Inc.

6 With me on my left is Mr. John Hammond, the
7 general counsel of Sensient Technologies; on my right is Tom
8 O'Brien, no relation, the president of Sensient Colors; on
9 Tom's right is Mr. Gary Morris, the director of Marketing
10 for Sensient Colors; on the far right is my colleague, Lisa
11 Murray, from Baker & McKenzie; and then on the extreme right
12 is Mr. Harry Meggos, the vice president of technical service
13 at Sensient Colors, and I would like to note for the record,
14 Mr. Meggos last name is spelled M-E-G-G-O-S.

15 We appreciate the Commission's investigation into
16 this matter. It is a matter of extreme seriousness to the
17 domestic industry producing Allura Red dye, or as it is more
18 commonly known in its certified form, FD&C Red. No. 40.

19 I'll spend a few minutes this morning identifying
20 features in the industry which we believe are pertinent to
21 the Commission's preliminary determination. We will then
22 hear from those in the industry regarding the product's
23 characteristics, the conditions of the U.S. market, and the
24 presence and likely affects of Indian exports.

25 Some cases that come before the Commission come

1 with clear evidence of lost sales and lost revenues. Some
2 cases come with evidence of declining prices and evidence of
3 price suppression and depression, and still others come with
4 declining profitability, under-utilized capacity and an
5 inability on the part of the domestic industry to continue
6 to invest in capital improvements, research and development,
7 and new product introduction. This case has all of the
8 above, and more.

9 There were two U.S. producers, Sensient, the major
10 domestic producer of Allura Red, and Novian which also
11 supports this investigation. There had been a third
12 producer, Monarch Food Colors, however, Monarch left the
13 business in early 2000. It's production equipment was
14 purchased by Sensient, but due to deteriorating market
15 conditions, this production capacity has not been brought on
16 line.

17 The information supplied in the petition and in
18 the U.S. producers' questionnaire responses demonstrate that
19 matters cannot continue on their present course if the U.S.
20 industry is to survive.

21 Yesterday, the Department of Commerce initiated
22 this investigation. The dumping margin set forth in the
23 Commerce Department fact sheet range from over 137 percent
24 to over 226 percent. In addition, the Commerce Department
25 initiated the countervailing duty investigation based on

1 unfair subsidy programs.

2 The combination of extensive dumping and
3 subsidization permits the damaging activities of the Indian
4 suppliers to continue indefinitely until the domestic
5 industry is effectively destroyed.

6 As will be discussed this morning, the product at
7 issue is subject to Food and Drug Administration
8 certification before it can be sold in the United States.
9 As certified, the product is sold as FD&C Red 40, and once
10 it is certified, the products are fungible and
11 interchangeable as among suppliers.

12 That is, food manufacturers can move freely
13 between domestic and imported FD&C Red 40. One affect of
14 the interchangeability is that the Indian suppliers have the
15 ability to make price considerations dispositive in the
16 purchasing decision which they have done through their
17 destructive pricing practices. This is the context in which
18 the pricing information should be viewed in this case.

19 The information supplied in the petition and
20 questionnaire responses on the pricing practices of the
21 Indian suppliers shows repeated and consistent underselling,
22 and the underselling is large, so large, in fact, that it is
23 apparently intended to destroy the prior supplier's
24 relationship with that customer.

25 Please keep in mind that the only known source of

1 Allura Red in the U.S. market are the U.S. producers and
2 Indian suppliers. The U.S. domestic industry is fully
3 capable of meeting demands. In fact, the domestic industry
4 is characterized by substantial underutilized capacity. In
5 view of this, it can be fairly stated that the havoc caused
6 by the Indian exporters is directly and causally related to
7 the U.S. industry's difficulties.

8 The progression of the Indian suppliers through
9 the U.S. market will be discussed in the witnesses'
10 testimony this morning. As the petition states, the
11 respondents in this case are export oriented businesses.

12 For example, Exhibits 15 and 33 included with the
13 petition show that two of the major respondents, Roha and
14 Neelikon, both export the vast majority of their production.
15 They have made public claims of their ambitious intentions
16 such as Roha's claim on its web site, which is Exhibit 15 to
17 the petition, that it is in the process of "becoming the
18 number one synthetic food color manufacturer" and that it
19 "operates the single largest food color plant in the world."

20 And the Indian suppliers can pursue these claims
21 and ambitions relying on and supported by the extensive
22 platform of subsidies provided by the Indian government that
23 commerce has found to be countervailable in prior cases.

24 These Indian exporters supply some of the non-U.S.
25 affiliates of the domestic industry's major customers.

1 Since they are already suppliers to third countries, the
2 potential for product shifting is very real.

3 For example, Roha's web site, included as Exhibit
4 15, boasts that Roha has a presence in more than 100
5 countries. Obviously given Roha's export orientation and
6 global presence, there is a substantial potential for
7 diversion of product to the U.S. market when the U.S.
8 industry is destroyed.

9 The Indian exporters began their penetration at
10 the distribution level and to small-volume end-users. The
11 U.S. producers' questionnaire data speak clearly to the
12 value and value affect on the U.S. industry in that segment
13 which deals largely with large numbers of relatively low-
14 volume sales.

15 These respondents have used their place int eh
16 distribution level and sales to low-volume customers to
17 injure the U.S. industry across the entire customer base so
18 that now at virtually every customer the question has become
19 how much lower will the price be for the next sale.

20 Roha has already taken major customers away from
21 Sensient. As a further example, Exhibit 44 to the petition
22 notes that Roha continues to attempt to take large Sensient
23 customers which would devastate Sensient's business.

24 In this way, the injury caused by the Indian
25 suppliers extends across the industry far beyond their

1 individual market shares, and this is at a time of sharp
2 cost increases putting even more pressure on profitability.

3 I want to now ask Tom O'Brien, the president of
4 Sensient Colors, and Gary Morris, the marketing director, to
5 describe the domestic industry and the competition in the
6 market in greater detail.

7 My colleague, Lisa Murray, will then address some
8 of the factors the Commission may seek to address as part of
9 its injury analysis.

10 MR. THOMAS O'BRIEN: Good morning. My name is Tom
11 O'Brien, and I've been in the color business for more than
12 14 years. I'm currently president of Sensient's color
13 group, a company I joined in early 2002.

14 I have witnessed first-hand the devastating affect
15 the Indians have had on the markets. It may help to provide
16 a little background on Sensient Technologies Corporation.
17 We are a \$900 Million publicly-traded company that is split
18 into two divisions.

19 One division manufacturers flavors and fragrances
20 for the food and cosmetic industry. My division, the color
21 group, manufactures color for the food, pharmaceutical,
22 cosmetic, and specialty markets. Among the products made at
23 our largest site in St. Louis, Missouri, is Allura Red.

24 Sensient and its predecessor, Warner Jenkinson,
25 have a long and successful history as a U.S. manufacturer in

1 competitive industries. Warner Jenkinson began in 1905.
2 This is the first time in our 98 year history that we have
3 come to the U.S. government seeking relief from unfair
4 import competition. We do this because of the dire
5 conditions in the U.S. Allura Red market that have both
6 seriously injured the U.S. producers and threaten the
7 existence of the domestic production of the Allura Red
8 product.

9 My statement today addresses various aspects of
10 competition in the U.S. market for Allura Red. Let me first
11 address the demand side. The vast majority of Allura Red is
12 used in food, primarily soft drinks, dry mixes, baked goods,
13 confections, dairy products, sausage casings, and pet foods.

14 Food use represents roughly 90 percent of the
15 total use of Allura Red. Less common uses of Allura Red are
16 in pharmaceuticals and cosmetics. The demand for Allura
17 Red, thus, closely tracks the domestic consumption of food
18 product. Demand is not seasonal and is generally flat or
19 with very slow growth.

20 The production capacity of Sensient, including the
21 idled Monarch equipment, is sufficient to supply almost the
22 entire U.S. market. With Novian, the other U.S. producer,
23 the domestic industry's production capacity substantially
24 exceeds U.S. demand.

25 The presence of the Indian suppliers in the U.S.

1 market has done nothing to increase demand. To the
2 contrary, there are no suppliers of Allura Red to the U.S.
3 market other than the domestic industry and Indian
4 suppliers, and the sales obtained by these Indian suppliers
5 have been to purchasers that would have been supplied by
6 either Sensient or Novian.

7 In addition to doing nothing to expand demand, the
8 Indian suppliers have destroyed the supply side of the
9 industry. During the 1990s, Sensient was able to pass along
10 price increases to the market roughly every year, at least
11 at a level keeping pace with inflation and maintaining per-
12 unit profitability.

13 During this time, the Indian suppliers were not a
14 significant factor to the U.S. market. Roha was the first
15 of the Indian suppliers to enter the market in a significant
16 way during the late 1990s. Since that time, other Indian
17 suppliers such as Neelikon followed.

18 Also, since that time, every attempt by Sensient
19 to pass along price increase has been rejected by the market
20 due in a large part to the presence of Roha and other Indian
21 suppliers. As a result, there have been no price increases
22 since 1999.

23 To the contrary, prices have collapsed. At some
24 accounts, Sensient has had to reduce its price anywhere from
25 10 percent to over 30 percent. As just one example of many

1 at a long Sensient account in September of last year, Roha
2 took the business with a price that was less than half the
3 price of which Sensient had been supplying.

4 Our petition contains several other examples of
5 the damage that has occurred by specific price competition
6 from Roha to former and current Sensient customers. The
7 damage goes far beyond the customers for which Sensient and
8 the Indian suppliers have competed head-to-head. This is in
9 a large part because of the structure of the U.S. customer
10 base.

11 The U.S. market roughly divides into three tiers.
12 Tier one consists of major end-users such as Kraft, Heinz,
13 and others. Tier two includes resalers that are
14 manufacturers of color products but purchase FD&C Red to
15 round out their product line as well as many other private-
16 label end-users. Tier three consists of distributors that
17 resell to end-users as well as some small end-users
18 themselves.

19 Roha and the other Indian suppliers began their
20 entry into the U.S. market in the late 1990s with the tier
21 three customers, that is at the distributor level and with
22 the small-volume end-users.

23 Roha in particular used various methods to buy
24 market share and penetrate this tier. Roha established a
25 U.S. warehouse and subsidiary close to Sensient's plant in

1 St. Louis and hired a former director at Warner Jenkinson to
2 run Roha's U.S. business.

3 Roha subsequently hired a former Sensient manager
4 in charge of technical applications and a former Sensient
5 sales person specializing in tier three accounts. To this
6 day, they continue to recruit our employees. In fact, they
7 contacted Mr. Morris within the last three months as well as
8 two other senior managers, one in sales and one in
9 technical, to work at Roha USA.

10 So after hiring our employees that knew the tier
11 three market in the United States, Roha set about competing
12 for Sensient's distribution customer base with low prices in
13 three ways.

14 First, Roha competes head-to-head with Sensient's
15 distributors and Sensient for small-volume sales, uniformly
16 undercutting Sensient's pricing.

17 Second, Roha has made concentrated efforts to lure
18 away Sensient's own distributors by offering much lower
19 pricing. This has been successful and extremely damaging to
20 Sensient with a result that at the distributor level Roha
21 has gained an entire geographic territory and countless
22 customers served by that distributor.

23 In addition, Roha has set multiple distributors
24 onto the same accounts that Sensient serves through a single
25 distributor creating confusion and sharp price erosion in

1 the market.

2 For example, it is not uncommon for a Sensient
3 distributor to compete with four or five distributors for an
4 account with three or four of the competitors being
5 different Roha distributors.

6 The result, of course, is that the Roha
7 distributors compete against each other on price and drive
8 the price down to unapproachable levels for Sensient's
9 distributors to penetrate the tier one level.

10 Tier one represents Sensient's largest accounts
11 and is critical to Sensient remaining a U.S. producer. Roha
12 has visited virtually everyone of Sensient's major accounts
13 offering to supply Red 40 product at lower prices.

14 In some instances, Roha has taken the business
15 resulting in large lost sales. In other instances, however,
16 Roha has inflicted damage through price suppression and
17 depression.

18 It is important to note that these tier one
19 customers enter into written contracts for a 12-month period
20 that typically have meet-or-release clauses. In other
21 words, Sensient is locked into a price that can't go up, but
22 if Roha or other suppliers offer the product at a lower
23 price, then Sensient must meet the lower price or sacrifice
24 the business. So these contracts as a practical matter
25 operate in one direction: the prices can go down but not

1 up.

2 The sharp consistent price declines that have been
3 forced on Sensient are the direct result of competition by
4 Indian suppliers for these customers. Sensient is, of
5 course, put in a untenable position of slashing prices to
6 keep the business or giving up and letter Roha take the
7 account.

8 Thus far, Sensient has chosen in many cases to
9 lower its prices, however, that cannot continue. In fact, I
10 visited a major customer yesterday, one that is referenced
11 in Exhibit 44 to the petition. That customer told me that
12 Roha is "dying to get our business."

13 We know the price that Roha is quoting to that
14 customer, and it is far below our current pricing. Losing
15 that account by itself would inflict serious harm on our
16 business. That account by itself would also substantially
17 increase Roha's share of the U.S. market and undoubtedly
18 lead to further price collapse.

19 The prices have now gotten so low that Sensient
20 has abandoned its R&D efforts, canceled capital improvements
21 other than maintenance, cut back its labor force and put on
22 hold any start-up of its idled capacity and abandoned plans
23 to introduce new products.

24 This situation cannot be maintained and will lead
25 to the demise of Sensient as a domestic producer. This is

1 particularly likely given that Roha and Neelikon are large
2 global producers that already supply some of Sensient's
3 major customers in other regions.

4 The sharply increased raw material costs are
5 accelerating the problems of price declines and further
6 eroding profitability. Raw material costs are the major
7 component of the total production costs of Allura Red, and
8 Sensient has been experiencing relatively low raw material
9 cost increases during 2001 and 2002.

10 However, in December of 2002, the market price for
11 the major cost component in Allura Red jumped dramatically.
12 By itself, it increased the cost of production of the
13 finished good substantially.

14 Sensient would, under normal circumstances, seek
15 to recover the cost increase by a representative price
16 increase. In this market, however, the opposite has
17 occurred. Prices are plummeting daily.

18 The fungibility of Allura Red product results in
19 intense price competition. By regulation, the FDA certified
20 Red 40 products are interchangeable. They can exist side-
21 by-side in our users' inventory and can even be used in
22 the same production run. This fungibility lends itself to
23 severe price competition. This is one of the reasons that
24 some of our customers have required reverse internet
25 auctions.

1 In one recent situation, Sensient and two other
2 suppliers, including at least one Indian supplier bid
3 against each other over a period of 30 minutes for a
4 contract that covered volume for 12 months. It was crystal
5 clear that the low bidder would get the business.

6 Non-price factors, such as delivery, customer
7 service, technical development, etcetera, were of no
8 consequence. The low prices got the business, and it was
9 that simple.

10 Purchasers can do this because they know the FDA
11 certified products are interchangeable so the decision is
12 based on the lowest price. I have some samples here to
13 illustrate.

14 To illustrate the fungibility of these products, I
15 brought along a few samples that you might like to pass
16 around. In the United States, the only two red dyes that
17 are approved for food use are FD&C Red 40, which is to your
18 right, and FD&C Red 3.

19 Bottles 1 and 2 are samples of Sensient and Roha
20 FD&C 40 at equivalent concentrations in solution, or 20
21 parts per million. The Red 40 is normally used in solution,
22 and since they are both FDA certified, they are identical in
23 every material aspect.

24 In contrast, bottles 3 and 4, these two, are
25 samples of Sensient's and Roha's Red No. 3. As you would

1 expect, the Red 3 samples are identical from the user's
2 standpoint to each other.

3 But I think you can see that the Red 3 samples
4 differ sharply from the Red 40 samples. In short, the
5 Sensient and Roha samples are essentially identical the end
6 user, thus, the dominance of pricing as an overriding
7 factor.

8 As a final point, you may wonder how the Indian
9 suppliers can remain in business with sharply lower U.S.
10 prices that are being offered. The subsidy program referred
11 to earlier provides one explanation. The import productions
12 present in the Indian market provide even further
13 explanation.

14 If Sensient were to try and resell Allura Red in
15 India, I have been advised that we would need to pay an
16 import duty of 25 percent. We would then need to pay a
17 further duty of 16 percent, plus a special duty of four
18 percent. Out of this, the user can claim back 16 percent as
19 a VAT set-off.

20 The importer would then need to pay certification
21 fees, and pay lab fees, and then pay registration fees to
22 the Indian government. The upshot is that with these high
23 duties in place, the Indian suppliers can afford to remain
24 in the U.S. market at extremely low prices and inflict great
25 harm on the domestic industry.

1 In conclusion, I would like to highlight some of
2 the points I just mentioned. That is, the Indian suppliers
3 have done nothing to expand the market. The volume obtained
4 by these suppliers has come directly at the expense of the
5 domestic industry.

6 At the same time, the Indian suppliers have
7 destroyed the profitability in the industry with their
8 unfairly low pricing. The actions of the Indian suppliers
9 extend far beyond their presence as measured in market
10 share.

11 Sensient has been given the choice of either
12 continually reducing their price to keep market share or
13 maintaining the price and losing the sales.

14 The low prices offered by the Indian suppliers are
15 known throughout the industry, and the prices offered by the
16 Indian suppliers comes up in every significant price
17 negotiation that Sensient engages in for Red 40.

18 As I mentioned, Roha's prices came up again
19 yesterday with a description is "trying to get your
20 business." So even when we keep the business, we have to
21 lower prices.

22 Thus far, Sensient has tried its best to keep its
23 customers through cost reductions of various types, deferral
24 of needed capital improvements, and a reduced emphasis on
25 product development. But there is no more Sensient can do.

1 Raw material prices have increased sharply. All
2 development efforts have ceased. All other cost reductions
3 have been exhausted and still profitability keeps eroding.
4 Absent relief in this proceeding, Sensient will need to exit
5 the business and cease its domestic production of Allura
6 Red.

7 Thank you. I'll now turn the microphone over to
8 Gary Morris.

9 MR. MORRIS: Good morning. My name is Gary
10 Morris. I am the director of marketing for Sensient Colors,
11 and I have been with Sensient for five and-a-half years. My
12 testimony will address issues regarding the domestic
13 production and technical characteristics of Allura Red.

14 As a preliminary matter, the U.S. industry
15 consists of two producers, Sensient and Novian. There had
16 traditionally been three U.S. producers of Allura Red, the
17 third being Monarch Food Colors, also located in the St.
18 Louis area in High Ridge, Missouri.

19 Monarch's principal product was Allura Red, and
20 its production capacity for Allura Red was almost as large
21 as Sensient's. Monarch had been producing Allura Red at its
22 High Ridge location since at least the early 1990s and had a
23 fine reputation in the food colors industry.

24 It historically had been a profitable supplier
25 concentrating largely on the distributor level customer

1 base.

2 In the late 1990s, Roha and other Indian suppliers
3 entered the U.S. market at the distributor level and began
4 decimating the price structure. Monarch did not have the
5 financial ability to withstand the attack by the Indian
6 suppliers. Largely for this reason, Monarch decided to shut
7 its doors in late 1999.

8 At that time, Monarch was producing an extruded
9 form of the product that was attractive to Sensient because
10 of its reduced dust characteristics. Sensient believed that
11 the Monarch product could extend the Allura Red product line
12 that Sensient already had on the market.

13 For this reason, Sensient in January of 2000
14 acquired the Monarch equipment and facilities with the
15 intention of using that capacity to fill out its Allura Red
16 product line.

17 Nothing of the kind happened. Shortly after
18 acquiring the Monarch equipment, the market damage wrought
19 by Roha and the other Indian suppliers became apparent to
20 Sensient.

21 During 2000, we began seeing pricing on a regular
22 basis that was far below anything that we had seen
23 previously. As much as we had wanted to bring the
24 additional capacity on stream, we saw that the market was
25 changing dramatically, and the investment could not be

1 justified.

2 Since January of 2000, the reactors and other
3 equipment acquired in the Monarch transaction have set empty
4 and idle at our facility as the market continues to
5 deteriorate from every aspect.

6 Indeed, the damage caused by the Indian suppliers
7 has now spread to the tier one customers of Sensient. The
8 damage caused by the Indian suppliers is the primary reason
9 that those reactors, which ran at full capacity during the
10 1990s, stand dead empty with no plan to activate them under
11 current market conditions.

12 Regarding the production process for Allura Red,
13 Monarch and Sensient used the same processes with
14 differences primarily in the drawing steps according to the
15 desired form of the product.

16 Sensient believes that Novian and the principal
17 Indian exporter use largely the same methods to produce the
18 product. In each case, the basic compounds are produced
19 using batch reactors. The product is then dried and packed
20 for shipment according to the needs of the customers.

21 Sensient's production process for Allura Red
22 begins with the formation of the diazo of CSA, using acid
23 and sodium nitrite. The diazo of CSA is then reacted with
24 schaefer salt to yield Allura Red.

25 The product is then filtered, and the insolubles

1 are removed. The clarified product is transferred to an
2 ultrafiltration tank for removal of additional water, salt,
3 and unreacted raw materials and intermediates.

4 In the case of powder, the principal form of
5 finished product, the product is then transferred to spray
6 drying tanks for conversion into a form suitable for
7 shipment to customers.

8 All forms of Allura Red, whether powder, granule,
9 or extruded, are chemically produced identically and differ
10 only in the drying method. Different drying methods can be
11 used, such as pan drying, spray drying, and fluid bed
12 drying. In the extruded process, the powder is wetted and
13 then forced through small holes forming strands of color
14 dried on a fluid bed.

15 Until the presence of the Indian suppliers,
16 Sensient was able to obtain a premium for its dust master
17 form which is similar to an extrate in that it produces
18 relatively little dust but also dissolves in solution
19 relatively fast.

20 One of the affects of the Indian suppliers is that
21 the price distinctions, based on the form of the product,
22 have been essentially eliminated in the market. In fact,
23 shortly after it entered the market, Roha introduced its own
24 dust-free fast-dissolving product and then eliminated any
25 premium for that form in its product line.

1 Now Roha and the other suppliers will undercut
2 Sensient's price regardless of the form that is offered, and
3 the customer will not allow any price premiums based on
4 form.

5 This is one of the reasons that R&D and capital
6 investment in new product lines for Allura Red have
7 disappeared at Sensient. Researching and developing new
8 forms of the product cannot be justified with the present
9 market erosion. Unless current conditions change,
10 innovation by the U.S. industry will stop completely.

11 Allura Red has an indefinite shelf life and can be
12 stored in inventory for years. The product is intended to
13 be dissolved for use so absorption of moisture presents no
14 storage issue.

15 In fact, it can be shipped and stored as a solid
16 or liquid depending on customer preference. Since demand
17 tracks food production, there is very little seasonality to
18 the product.

19 Two further issues that I would like to touch on
20 are the FDA certification process and follow-up on the
21 importance of raw material cost.

22 Regarding the FDA, the regulations require that
23 every batch be individually certified before sale in the
24 United States. Thus, the product can be entered into the
25 United States and stored at a suppliers warehouse

1 indefinitely, but before the product is sold, samples of the
2 production batch for that product must be submitted to the
3 FDA for lab testing and approval.

4 There is no market that I'm aware of for non-
5 certifiable Allura Red. As a result, one of the top
6 priorities for a supplier is to insure that the FDA
7 regulations are satisfied.

8 At that point, as explained earlier, the products
9 are fungible from supplier to supplier, and even though
10 there are differences in form as between powder, or extrate,
11 or granule, these differences are overwhelmed by the
12 chemical similarities in FDA certified product, leaving
13 price as the key sales driver.

14 With respect to the cost of raw materials, the
15 primary ingredients are the schaefer salts and the CSA.
16 Schaefer salts are oil-based derivatives, and their cost
17 rises and falls consistent with oil pricing.

18 After receiving relatively low pricing for this
19 component during 2001 and 2002, at the end of 2002, we were
20 hit with a very substantial price increase. Due to rising
21 naphthalene prices, we saw schaefer salt prices double in a
22 week's time.

23 Our sources in the raw material market gave us
24 clear indications that all consumers of schaefer salt were
25 paying much higher prices. Most recently, the sharp rise in

1 the price of oil has caused further upward movement in the
2 raw material market driving the cost of schaefer salt even
3 higher.

4 Recently we have received indications that the
5 pricing for CSA will be going up as well. Thus, giving the
6 higher raw material costs and the high level of volatility
7 in the oil prices, there is no question that our cost of
8 production will be substantially higher in 2002 as compared
9 with prior years.

10 Finally, I would like to provide additional
11 comments regarding the overall affects of the sales efforts
12 of the Indian suppliers on Sensient's business.

13 With respect to sales through distribution,
14 Sensient and Novian both use a small number of distributors
15 that carry their respective products. Sensient currently
16 uses three distributors for Allura Red, each assigned to a
17 geographical area and intended customer base. Novian uses
18 even fewer distributors, I believe.

19 In each case, the use of a small number of
20 distributors enabled each manufacturer to present a
21 coordinated and consistent space in the market to a
22 particular area.

23 In contrast, my distributors have informed me that
24 Roha uses 20 or more distributors that compete against one
25 another apparently without any regional boundaries. My

1 distributors have advised of instances in which numerous
2 Roha distributors compete against one another on price for
3 the same sale, driving the price down further and further
4 and eliminating the profitability for my distributors even
5 if they manage to maintain the business.

6 In addition, as mentioned, the regional
7 distributor is the face of the manufacturer to the end user
8 in this market segment. Many end-user customers do not know
9 Sensient, but they know our distributors with whom we have
10 worked for many years.

11 All the effort that Sensient expended developing
12 the region and supporting that distributor is destroyed,
13 however, when our distributors are lured away to the Indian
14 suppliers by offers of low pricing.

15 In a very real way, taking a distributor from
16 Sensient carries with it the fruits of years and years of
17 Sensient support and countless down-stream customers that
18 Sensient cannot replace.

19 In the same way, when the Indian suppliers take a
20 major customer from Sensient, it is important for the volume
21 loss, but it also allows Roha to visit the rest of our tier
22 one base claiming that if one major U.S. customer buys from
23 Roha at low prices then they all should.

24 This drives down prices across the customer base
25 without Roha having to take a single sale, casting a harmful

1 shadow with much further than just the customer taken.

2 In conclusion, the destructive actions of Roha and
3 the other Indian suppliers pervades the U.S. market. My
4 firm belief is that Sensient cannot remain a domestic
5 producer of this product under the current market
6 conditions. Thank you.

7 MS. MURRAY: Good morning. I'm Lisa Murray of
8 Baker & McKenzie, also appearing on behalf of Sensient
9 Technologies. I'll briefly address the statutory elements
10 that the Commission will consider in its determination.

11 The situation that Sensient has described this
12 morning is the very definition of material injury as defined
13 by the statute. The volume of imports has increased
14 significantly from zero percent of the U.S. market
15 previously to now a pervasive presence present in all of the
16 customer accounts.

17 Indian imports have had a devastating impact on
18 price. There's been significant underselling. The Commerce
19 Department is initiating a dumping investigation based on
20 evidence of dumping margins of 137 to 226 percent.

21 As Sensient has described, this underselling has
22 caused significant price depression. It has also prevented
23 the domestic industry from introducing price increases that
24 could otherwise have occurred.

25 Finally, Indian imports have had a detrimental

1 affect on the domestic industry resulting in declines in
2 sales, market share, return on investment, capacity
3 utilization, and profits. R&D has ceased. Not only is
4 there no new investment, but Sensient has been unable to
5 make use of previous investments. I refer you to the
6 domestic producers' questionnaire responses for the full
7 detail.

8 The domestic industry is also threatened with
9 further injury in the foreseeable future as defined by the
10 statute. The statutory factors to consider are, one, a
11 significant rate of increase of volume or market penetration
12 of imports; two, whether imports are entering at prices
13 likely to have a significant depressing or suppressing
14 affect; three, inventories of the subject merchandise; four,
15 the potential for product shifting; five, actual and
16 potential affects on existing development and production
17 efforts; six, unused production capacity or substantial
18 increase in production and capacity; and seven, any other
19 demonstrable adverse trends. And as the Commission is
20 aware, no one factor is determinative.

21 An additional factor to consider is that the
22 imports in this investigation are the subject of several
23 subsidy claims. The subsidies alleged are violations of
24 Article 3 of the WTO subsidies agreement, a fact that the
25 statute directs the Commission to particularly consider in

1 its threat analysis.

2 These subsidy programs allow India's export
3 penetration to continue and grow, particularly the Indian
4 import tax deduction for export profits which the government
5 of India acknowledged to the WTO prohibited subsidy yet has
6 no plans to phase out.

7 Regarding the increase in volume and market
8 penetration, the Commission should note the pervasive
9 presence of Indian imports at the distributor level. The
10 affects that the Indian exporters have had on distributor
11 sales is apparent from the questionnaire responses.

12 Note further, however, that in the last year, the
13 Indian suppliers have visited virtually every major account
14 of the domestic industry. There can be no mistaking their
15 intentions or motives.

16 The next factor, whether imports are entering at
17 prices likely to have a significant depressing or
18 suppressing affect has been well documented. The
19 underselling is wide spread and large, sometimes as low as
20 50 percent or less of the prevailing price by the domestic
21 suppliers.

22 Next, the Commission must consider current
23 inventories of the subject merchandise. We note again that
24 this product has a long shelf lief and can be stored
25 indefinitely.

1 We have evidence that at least some of the Indian
2 suppliers have stored other colors in the U.S. for long
3 periods of time, and there is no reason that Allura Red
4 cannot also be similarly stored.

5 Regarding the potential for product shifting, the
6 Indian suppliers themselves state that they are vigorous
7 exporters to numerous countries. Roha's web site, Exhibit
8 15 of the Petition, notes that Roha has a presence in more
9 than 100 countries.

10 There's every reason to believe that Roha could
11 redirect these shipments to the United States as it captures
12 market share through its unfairly low pricing.

13 The fifth factor relates to actual and potential
14 affects on existing development and production efforts in
15 the domestic industry. The evidence on this issue strongly
16 supports the finding of material injury and threat of
17 injury.

18 The Monarch purchase, followed by the idling of
19 the Monarch equipment, is just one example. Other examples
20 are set forth in the questionnaire responses. It is clear
21 that the deteriorating market conditions have had a major
22 impact on new-product development.

23 Next, the Commission must consider the exporter's
24 unused production capacity or a substantial increase in
25 production capacity. On this, the Commission should note

1 the stated ambitions of the Indian suppliers.

2 Roha's web site states that "we are in the process
3 of being the number one synthetic food color manufacturer."
4 Roha's web site also boasts that Roha has "the single
5 largest food color plant in the world." And it is apparent
6 from Exhibit 33 of the petition, Roha's exports represents a
7 large and growing proportion of its sales.

8 Similarly, Neelikon states in petition Exhibit 13
9 that over 90 percent of its production is exported. The
10 Indian producers' questionnaire responses contain the full
11 details.

12 One additional factor that the Commission should
13 consider is the nature of the sales that are being lost.
14 The loss of certain customers taken by the Indian suppliers
15 has had particularly injurious affects. For example, when a
16 Sensient distributor is lost to an Indian supplier, a long-
17 term relationship and investment is destroyed that cannot be
18 replaced for years until a new relationship is formed with a
19 new distributor.

20 Similarly, the Indian producers incursion into
21 major traditionally held customer accounts has caused price
22 reductions and other problems across the entire customer
23 base.

24 We ask the Commission to recognize that the affect
25 on the customer base as a whole far exceeds the already

1 substantial and material injury caused by the loss of the
2 customer itself.

3 I'll now turn the floor over to Kevin O'Brien for
4 a few closing remarks.

5 MR. KEVIN O'BRIEN: Thank you.

6 Mr. Director and members of the Commission staff,
7 we believe the evidence of record as well as the testimony
8 presented to day establish that for purposes of the
9 Commission's preliminary determination there is a reasonable
10 likelihood that the domestic industry is both materially
11 injured and threatened with material injury.

12 We recognize that the Indian suppliers will have
13 their turn to present their case. We hope that in
14 presenting their case they will be able to address the
15 following four areas: first, as you've heard, Sensient has
16 a very small number of regional distributors in the U.S.

17 Which of Sensient's regional distributors have
18 these Indian suppliers contacted for purposes of having them
19 sell Allura Red product? What prices do they offer these
20 distributors, and did they know that those prices offered to
21 Sensient distributors were far below Sensient's prices to
22 the distributors?

23 Which of Sensient's major customers such as Coke,
24 Kraft, and Heinz -- prior to last year, Heinz -- have been
25 contacted by these Indian suppliers? When were those

1 contacts made? What prices have been offered to those major
2 customers, and, of course, did the Indian suppliers know
3 full well that those prices were far below the prevailing
4 price to those customers?

5 Which of the Indian suppliers have competed in
6 internet reverse auctions? How many bids did they put in as
7 the auction price went lower, and lower, and lower?

8 And finally, what is the production capacity of
9 Roha's "largest food color plant in the world"? And what
10 are their long-term plans for the U.S. market, particularly
11 as Roha pursues its plans "of being the number one synthetic
12 food manufacturer"?

13 That concludes our presentation this morning, Mr.
14 Director. We would be happy to answer any questions.

15 MR. CARPENTER: Okay. I want to thank the panel
16 for your informed remarks, and we'll begin the questioning
17 with Mr. Timberlake.

18 MR. TIMBERLAKE: Good morning. Tim Timberlake.
19 Welcome.

20 Can I address the question of Monarch first? When
21 Sensient purchased Monarch, it purchased, as I understand
22 your testimony, the machinery and equipment used to produce
23 Allura Red.

24 Did it also purchase machinery and equipment
25 capable of producing other products that Monarch produced

1 prior to its going out of existence?

2 MR. MORRIS: Yes, we did purchase all of the
3 equipment that was at Monarch. They did have other
4 equipment which they could manufacture blends and some
5 dispersion capability as well.

6 MR. TIMBERLAKE: Now, is that equipment also down
7 as the Allura Red equipment is, or is that equipment in
8 production?

9 MR. MORRIS: Yes, the majority of that equipment
10 is now down as well and is being produced over at the St.
11 Louis facility.

12 MR. TIMBERLAKE: Good. Thank you. Mr. O'Brien.
13 Just so I can be clear about the transition of companies
14 here, we've got a number of companies involved. We've got
15 Sensient. We have Warner Jenkins. We have Monarch. We
16 have Universal Foods.

17 Can you sort of tie these companies together for
18 me --

19 MR. O'BRIEN: Absolutely.

20 MR. TIMBERLAKE: -- so that we have some
21 historical basis for --

22 MR. O'BRIEN: The corporation was called Universal
23 Foods. The name changed -- we changed our name in 2000 to
24 Sensient Technologies, and the color group is made up of a
25 large number of acquisitions. We made numerous acquisitions

1 over the past 10 years.

2 And we've just changed our name to Sensient Color
3 Group in 2003, January 2003, effectively. Prior to that we
4 were known as Warner Jenkinson, so that name has just
5 changed. So in effect, Warner Jenkinson and Sensient Color
6 Group are one and the same, and the official name change
7 occurred January of 2003.

8 MR. TIMBERLAKE: All right. Very good. Thank
9 you. Now, one further question. I believe, Mr. O'Brien,
10 you mentioned that there are no other world suppliers of
11 Allura Red to the U.S. market.

12 MR. THOMAS O'BRIEN: Correct. None that we know
13 of.

14 MR. TIMBERLAKE: Kevin O'Brien.

15 MR. KEVIN O'BRIEN: Thank you, yes, none that we
16 are aware of.

17 MR. TIMBERLAKE: All right. Has this always been
18 the case, or were there other suppliers that simply gave up
19 on the domestic market?

20 MR. MEGGOS: Industry history --

21 MR. TIMBERLAKE: Other world suppliers, for
22 example, Germany, Japan. I believe they at one time did
23 export Allura Red to the U.S. but no longer do.

24 MR. MEGGOS I'm not aware of anyone else from
25 Germany and/or Japan they had supplied. None that we're

1 aware of in this country.

2 MR. TIMBERLAKE: Fine. Thank you. No other
3 questions.

4 MR. CARPENTER: Thank you. Mr. deWinter?

5 MR. dewinter: Good morning. Laurent deWinter
6 from the office of the General counsel. Welcome to the
7 Commission.

8 I have a couple questions regarding how prices are
9 set in this market if you could explain the process to me,
10 especially in regards to the tier one purchasers, just the
11 basics, sort of. Are these spot sales, annual sales, long-
12 term contracts? Do you sell through a distributor? Do you
13 sell directly to these companies?

14 MR. MORRIS: Typically, if we start with the tier
15 one customers which are the longest consumers of Allura Red
16 in the domestic industry, those customers will negotiate a
17 contract typically on a 12-month basis, but they can extend
18 those out to say a 2-year. It's very rare, but you can also
19 have a 3-year basis with those companies.

20 And typically you will negotiate, you know, based
21 on the volume of the Allura Red that they buy. When you get
22 beyond those top companies -- when you go into what we are
23 loosely terming tier two, those customers tend to operate
24 also on a 12-month basis on verbal contracts or blanket
25 purchase orders, but again, on a volume basis: this is how

1 much Allura Red I purchase, and you would quote on that
2 volume.

3 When you step into tier three, which are the very
4 small volume users, the majority of that business will run
5 through our distribution channels, and so we set a price for
6 our distributors, and then they in turn sell to the market
7 at a price.

8 There are some customers in that area that we do
9 serve directly ourselves, and they tend to pay the higher of
10 the prices because their volume is very low. And with those
11 customers, you typically do not operate on a contractual
12 basis with them. Those would be considered more spot buy
13 because they will change at any time.

14 MR. deWINTER: So do you work off a set price list
15 every year that you work discounts off that set price
16 depending on the volume purchased?

17 MR. THOMAS O'BRIEN: The pricing has been based on
18 the historical levels, and they're negotiated from
19 historical level with a Coke, for example, or with a Kraft.
20 They know what they've paid for a long time, and they're
21 trying to get better prices. We're trying to charge them
22 more.

23 So it's really -- fundamentally it's been based on
24 what they've historically been paid from the domestic
25 industry, and that's where the negotiations start from.

1 Does that answer your question?

2 MR. deWINTER: Yes, somewhat. Let me ask you
3 about qualification process. Is there a qualification
4 process for the larger purchaser, meaning do you have to
5 meet certain standards other than the FDA standards to sell
6 to these larger purchasers?

7 MR. MORRIS: Typically with the larger purchasers,
8 they have very specific defined specifications. The
9 products must meet the FDA requirements, and then they will
10 define if the product has to be powder form, granular form,
11 or possibly an extruded form.

12 With many of the larger suppliers, we are not
13 seeing a qualification period if they want to switch
14 suppliers simply because if it meets the FDA specification,
15 it will perform in their systems regardless of who the
16 supplier is if they have the FDA certification batch number.

17 MR. deWINTER: Are there any exclusive
18 arrangements with purchases, not just Sensient, but that you
19 know of, either with the importers or the other domestic
20 producer. Are there any exclusive supply arrangements with
21 large purchasers?

22 MR. MORRIS: Contracts?

23 MR. deWINTER: Contracts, yes.

24 MR. MORRIS: Yes, there are, and typically, as we
25 mentioned earlier, the U.S. business has evolved, though.

1 In just about all of these contracts, there does exist a
2 meet-or-release clause which can be exercised if they are
3 given a lower price on their products.

4 MR. KEVIN O'BRIEN: Pardon me. Just to make it
5 clear, the meet-or-release clause means that if the customer
6 gets a lower price then it's incumbent on Sensient to lower
7 the price to meet the competitive offer or release the
8 customer from the contract.

9 MR. deWINTER: On the product itself -- I don't
10 know if you mentioned this earlier. I may have missed it,
11 but are there other products on the market that are
12 substitutes for Allura Red or is this the only thing that
13 your customers can purchase to make the products they make?

14 MR. MEGGOS In this country there's no substitute
15 for the Red No. 40 or Allura Red. As Mr. O'Brien said, the
16 only two synthetic reds permitted in this country is Allura
17 Red and Red 3, and you can see the difference there.
18 There's no other color in this country.

19 MR. deWINTER: Okay. But customers wouldn't use
20 one for the other interchangeable, the No. 3 and the No. 40?

21 MR. MEGGOS No.

22 MR. deWINTER: All right. One last question.
23 Does Sensient import Allura Red from any other countries?

24 MR. MORRIS: No, we do not.

25 MR. deWINTER: All right. Thank you very much.

1 That's all my questions.

2 MR. CARPENTER: Mr. Thomsen?

3 MR. THOMSEN: Good morning. Just a couple of
4 quick questions. You had noted just now that for the
5 smaller tier three purchasers that you have that some of it
6 you sell directly to them and some of them you sell through
7 distributors.

8 In your questionnaire responses, we did try to
9 look at these different tiers and sales that were under 500
10 pounds per year. I wanted to know whether that information
11 included the sales through distributors or whether that is
12 just your direct sales.

13 MR. MORRIS: The distributors, due to the volume
14 that goes through our distributors, they would fall in one
15 of the other tiers. They would not be in that particular
16 tier.

17 MR. THOMSEN: Okay. Thank you. You had also
18 noted in your responses just now that you've made numerous
19 acquisitions over the past 10 years. Maybe for your post-
20 conference brief or something, I'd kind of like a little
21 history of how many, you know, what you've bought and if you
22 could also in there say, you know, how big of producers they
23 were, you know, kind of a snap shot of what the industry
24 looked like while you were purchasing these companies.

25 MR. THOMAS O'BRIEN: Just to be clear, only two of

1 those manufactured synthetic dyes for food.

2 MR. THOMSEN: Okay.

3 MR. THOMAS O'BRIEN: And we've made lots of other
4 acquisitions that are not necessarily related, but we'll
5 give you a thorough accounting.

6 MR. THOMSEN: Okay. That would be great. I guess
7 in the same vein, I'm also interested in knowing a little
8 bit more about Novian. It seems that the domestic industry
9 may be changing, so we really only ask for information that
10 goes back to the year 2000, but also I would be interested
11 in knowing -- again, and looking at how the industry has
12 changed over the past few years, possibly how large Novian's
13 share was in those prior years to 2000.

14 MR. THOMAS O'BRIEN: We will try to include that
15 in our brief.

16 MR. THOMSEN: You produce a large range of food
17 dyes, correct?

18 MR. MORRIS: Excuse me?

19 MR. THOMSEN: You produce a large range of food
20 dyes, blue number one, etcetera. Is Allura Red the largest
21 in volume or the largest that you produce?

22 MR. MORRIS: Yes. Allura Red is our largest food
23 color that we produce.

24 MR. THOMSEN: Have you noticed competition on
25 these other food colors from India, you know, be it blue No.

1 1, blue No. 2, etcetera, etcetera.

2 MR. MORRIS: Yes, we have.

3 MR. THOMSEN: You have. I'm just wondering why
4 you filed a case on just the Allura Red rather than -- if
5 you're noticing this competition coming from all dyes.

6 MR. KEVIN O'BRIEN: We filed on Allura Red because
7 this is a separate and distinct industry that we're being
8 harmed very badly in. It is certainly a matter of high
9 concern to the company, the activities that are going on
10 with respect to other colors.

11 MR. THOMSEN: When you make sales, do you make
12 sales just on Allura Red, or do you make sales on, say, I'll
13 give you Allura Red for "x" price per pound plus blue No. 1
14 for "x" price, or is it only on, you know, one specific type
15 of food dye at a time?

16 MR. MORRIS: The typical transaction will be to
17 make an offering on multiple colors that a customer is
18 using, so you wouldn't necessarily just quote on Allura Red.
19 You would quote on blue 1, yellow 5, yellow 6, and Allura
20 Red.

21 MR. THOMSEN: Okay, so when the purchasers decide
22 to go with our company, they decide on the entire package
23 rather than picking and choosing, I'll take Allura Red from
24 here, blue 1 from Novian, etcetera?

25 MR. MORRIS: That is typical, but they will

1 generally put pressure on you to make -- if your other
2 colors are out of range on competitive pricing, they can put
3 pressure on you to also bring those prices down in line so
4 that their entire package is, you know, the most
5 competitive.

6 MR. THOMSEN: So -- go ahead.

7 MR. MORRIS: But there are separate quotes for
8 each color. It is not one quote for everything.

9 MR. THOMAS O'BRIEN: Yes, and while it's not
10 unusual for a customer to ask us for pricing on a basket of
11 things, after we get a contract it's also not unusual for
12 them to come back and say your Allura Red price is too high.
13 So while we may sell a basket, they can pick and chose what
14 they want to negotiate mid year.

15 MR. THOMSEN: And is -- a lot of times we talk
16 about price leadership in here and talk about between
17 companies, but when you're dealing with a basket, sometimes
18 something is more important than another thing. Is Allura
19 Red then kind of the price leader in terms of the basket,
20 you know, kind of the deal breaker?

21 MR. MORRIS: Again, it is going to depend on the
22 customer, but for the most part on the tier one customers,
23 it is the driver. It is the most important one.

24 MR. THOMSEN: Okay. You also noted about there is
25 qualification -- or you didn't really notice a qualification

1 process at these tier one customers. You've been doing
2 business with these customers for quite a number of years,
3 correct? Might the reason why you don't have to go through
4 a qualification process is because you have been using
5 these, you know, the same facilities, the same -- and you've
6 built up a relationship with them.

7 I assume you've been -- since you have been with
8 them for years that they kind of, you know, they know you
9 guys probably on a first-name basis, and the thing I'm just
10 wondering is was there an initial qualification period, you
11 know, the first time you had to go through there, or was it
12 just, you know, accept that you're certified, you know, so
13 it's fine.

14 MR. MEGGOS If I can answer that since I've been
15 with the company for 33 years, yes, there was an initial
16 qualification for a lot of those companies, but you do not
17 have to repeat that.

18 MR. THOMSEN: Okay. Also in your testimony you
19 noted that there are -- you are selling to a lot of world-
20 wide companies, be it Coca-Cola, Kraft Foods, whatever. I'm
21 wondering, are there purchasing arms? Are they buying for a
22 world-wide, you know, their world-wide production, or is the
23 United States just buying for the United States, India
24 buying for India, Europe buying for Europe. How integrated
25 are these sales that you're making to these customers?

1 MR. THOMAS O'BRIEN: I mean, it's really a
2 contrast. There's companies that want to negotiate on a --
3 in the U.S., for example, as Coca-Cola will want to
4 negotiate what happens globally, but they have local
5 purchasing arms around the world that make decisions locally
6 as well, so they look at their business on a global basis,
7 however, they have some flexibility locally.

8 MR. THOMSEN: Okay.

9 MR. THOMAS O'BRIEN: Does that make sense?

10 MR. TIMBERLAKE: Yes. That's helpful.

11 MS. MURRAY: You should also bear in mind that
12 certification in one country does not mean that the product
13 is certified in another, so each of these is a separate
14 purchasing process to the extent that it needs to be
15 recertified in each country.

16 MR. THOMSEN: Okay. That makes sense. Okay, I
17 also wanted to ask you about, you recently have this newly
18 produced dust master product that you had noted. I'm just
19 wondering what type of R&D you could do, you know, to get a
20 better product.

21 You had noted that you had stopped really doing a
22 whole lot of R&D, and I'm wondering, you know, what you
23 would want to do given that your testimony here today has
24 basically been if it's FDA certified it's all the same.

25 MR. KEVIN O'BRIEN: If we could, I think we'd like

1 to address that in the confidential post-hearing brief.

2 MR. THOMSEN: Please do so. That would be great.
3 And just as a last question, I wanted to know whether there
4 are any distributors that sell multiple producers product,
5 you know, some Novian and Sensient and Roha, Neelikon, or
6 whether they're exclusive distributors.

7 MR. MORRIS: I can speak to our distributors.

8 MR. THOMSEN: Okay.

9 MR. MORRIS: When we assign a distributor to our
10 company, and the distributors we have have been with our
11 company for well over ten years, we do assign the
12 distributors on an exclusive basis. That is, we expect them
13 to sell and represent our product and our company.

14 MR. THOMSEN: Okay. Thank you very much. I have
15 no further questions.

16 MR. CARPENTER: Mr. Jee?

17 MR. JEE: I have no questions.

18 MR. CARPENTER: Mr. Wanser?

19 MR. WASNER: Yes. Just one question, sort of a
20 historical structure of your industry. Since the Tokyo
21 round, many other subsectors of the dye industry have
22 suffered reduced tariffs, the technology is disseminated
23 throughout the world, and they have felt competition from
24 throughout, not just one other country.

25 Furthermore, domestically, a lot of the production

1 has gone to the big BASF or Byer or somebody like that.
2 Now, I know I'm oversimplifying it, but looking at your
3 sector, that doesn't seem to be the case.

4 Do you think there are any technical barriers to
5 trade or is the FDA set up some kind of a barrier to entry
6 from foreign productions? Somehow I would have expected to
7 have seen, as what I've seen just looking at other
8 subsectors of the industry, competition from all over the
9 world without dumping.

10 I mean, whether or not they adhered to
11 environmental regulations as they are in the U.S. That's
12 another issue, but I would have expected to have seen more
13 competition world-wide, more production from a BASF or a
14 Byer or somebody because it looks like your market is pretty
15 attractive. I mean, who you sell to is some pretty big
16 accounts. That would attract more producers.

17 MR. THOMAS O'BRIEN: I'm not sure BASF has ever
18 been in the food dye business.

19 MR. WASNER: Well, I just look at them as a large
20 company with a capacity to do something like that.

21 MR. MEGGOS They are a large company, but they
22 don't produce the food dyes. If you compare with what BASF
23 and some of the other countries do, it's a small industry.
24 It's not that large. By comparison, they make a lot of the
25 technical dyes and nonfood-grade products but the volume is

1 --

2 MR. WASNER: So is it a fairly small subsector of
3 the dye industry?

4 MR. MEGGOS Yes.

5 MR. WASNER: Okay. All right. Thank you.

6 MR. CARPENTER: Mr. McClure?

7 MR. McCLURE: Jim McClure, Office of
8 Investigations. I have no questions presently.

9 MR. CARPENTER: There are a few questions I'd like
10 to ask. First of all, in the FDA certification process, how
11 long a process is that? How long does it take to get FDA
12 approval?

13 MR. MEGGOS Typically when we send a sample to the
14 FDA, we get a response within two weeks, sometimes less,
15 sometimes more, but on an average two weeks.

16 MR. CARPENTER: Do you think that would be the
17 same for foreign producers?

18 MR. MEGGOS I would say it would be because they
19 run the same tasks.

20 MR. CARPENTER: Do you typically only approach FDA
21 for certification after you have an order for the product,
22 or do you obtain certification for a particular lot and then
23 hold it in inventory prior to sale?

24 MR. MEGGOS We obtain certification for the
25 products as we manufacture them, all the basic products.

1 MR. CARPENTER: Okay, thank you. Do other
2 countries have similar requirements as we have in the United
3 States for the FDA certification process, as far as you
4 know?

5 MR. MEGGOS As far as I know, not the same
6 certification process. Other countries do have purity
7 requirements or specifications that you have to meet and it
8 becomes onus of the manufacturer to make sure that those are
9 met.

10 MR. CARPENTER: You mentioned R&D and investment,
11 that you've had to cut back on that recently. Is there
12 anything that you can do to expand the market through
13 product development and increase consumption of your
14 product? Because, I believe you said in the petition that
15 demand for the product closely tracks food consumption, and
16 I was just wondering how much opportunity you have to expand
17 the market or grow the market.

18 MR. MORRIS: The market demand for allura red is
19 basically flat. It tracks with what happens in the food
20 consumption sector of the United States. So, if food
21 consumption in particular areas is growing, then allura red
22 may grow a little bit. But, you know, it is a relatively
23 flat, close track.

24 MR. CARPENTER: I thought I heard someone mention
25 in their testimony that when the Indian product came in --

1 or that the Indian producers did nothing to grow the market
2 in the United States. I was just wondering what you -- I
3 can't remember who said that, but what was meant by that?

4 MR. THOMAS O'BRIEN: No, I mean, we spend time on
5 other product areas trying to innovate and this is an area
6 where we wouldn't even consider any kind of innovation to do
7 anything new, because there's no value in it, there's no
8 premium in it for us.

9 MR. KEVIN O'BRIEN: One other point that is, I
10 think, notable, since the market is basically flat, any
11 market share that goes to the Indian suppliers almost by
12 definition comes from the domestic industry, which already
13 is underutilizing its capacity.

14 MR. CARPENTER: Okay. That leads into another
15 question, the whole question of capacity. I believe you
16 said that Sensient alone can almost supply the entire U.S.
17 market and when you add in Novian, the two can supply well
18 over 100 percent of domestic consumption, and that's without
19 any imports. And then you mentioned that you had acquired
20 the capacity of Monarch Food Colors, which, I believe, you
21 said was almost as large as Sensient's capacity.

22 Now, you made he earlier statement about Sensient
23 being able to supply almost the entire U.S. market. Did
24 that include the capacity of Monarch, which is not being
25 used?

1 MR. KEVIN O'BRIEN: Yes, that includes the Monarch
2 acquisition.

3 MR. CARPENTER: Okay. Notwithstanding that, the
4 fact that Sensient and Novian can supply well over 100
5 percent of the market, can't an argument be made that there
6 is an over capacity problem in the industry that could have
7 some affect on driving down prices, in addition to the
8 imported product?

9 MR. KEVIN O'BRIEN: Well, no, I don't believe that
10 that is correct. Certainly, the company wants to move to
11 the forms of the product that command the higher prices, if
12 it can. There, at one point, was a delineation between
13 pricing for different forms, before the Indian suppliers
14 destroyed that delineation. There are, also, export markets
15 that the company would be very, very anxious to pursue, if
16 it could.

17 MR. CARPENTER: When you acquired the capacity of
18 Monarch, was there some expectation that consumption would
19 grow? Or what was the motivation behind acquiring that
20 capacity?

21 MR. MORRIS: Monarch had a patented technology
22 with their extruded form of Red 40. And we believed that we
23 could command a further premium in the market, because of
24 the performance of that product over our current dust master
25 product, and that was our interest -- that was our focus,

1 and what we wanted to use the capacity of Monarch for was to
2 grow that extruded business.

3 MR. CARPENTER: I see. Thank you. You mentioned
4 meter release contracts and I got the impression that that's
5 becoming more prevalent in the recent time periods. Can you
6 give me an idea of when that practice started and
7 approximately what percentage -- do you have any idea of
8 what percentage of U.S. consumption would be subject to
9 meter release contracts?

10 MR. KEVIN O'BRIEN: If I can just make sure --
11 clarify the question, in the sense that I think the
12 contracts traditionally had meter release provisions, but
13 the phenomena that's occurred is that they're being invoked
14 with increasing frequency.

15 MR. CARPENTER: I see.

16 MR. KEVIN O'BRIEN: Maybe Mr. Morris can expand.

17 MR. MORRIS: No, that is correct. They've been a
18 standard in most legal contracts; but, in our experience,
19 just in the last couple of years, we've seen where these
20 clauses are invoked on a very routine and regular basis.
21 And there have been instances where they've been invoked
22 more than one time in a 12-month period, because of lower
23 price quotations.

24 MR. CARPENTER: Okay, thank you. You, also,
25 mentioned a reverse Internet auctions. I was wondering, is

1 that a recent phenomena, or when did that start to occur and
2 is it increasing?

3 MR. MORRIS: Our first experience with that was
4 around May of 2000 and we have only participated in two such
5 -- well, we've participated in two events with the same
6 customer, once in May of 2000 and then once in July of 2002,
7 and then only one other event with a separate customer,
8 which was around November of 2002. It appears that that
9 trend is an isolated trend and we're not seeing an increase
10 in that at present.

11 MR. CARPENTER: Okay. Could you give an estimate,
12 either now or in your post-conference brief, as to 2002,
13 what percentage of U.S. consumption was -- or sales were
14 awarded through Internet auctions?

15 MR. MORRIS: Yes. We'll address that in our
16 brief.

17 MR. CARPENTER: Thank you. Does anyone else have
18 any further questions? Mr. deWinter?

19 MR. DEWINTER: Regarding your production of allura
20 red, can you produce other colors on the production line
21 that produces allura red, or is that specifically devoted to
22 allura red year round?

23 MR. MORRIS: It is devoted to allura red year
24 round. So, we have dedicated equipment on the allura red
25 side, until we get to the spray drying side. The spray

1 dryer is a shared piece of equipment for multiple dies.

2 MR. DEWINTER: Okay, thank you.

3 MR. CARPENTER: That completes the staff
4 questions. Than you, very much, for your presentations and
5 for your -- I'm sorry, one more question. Mr. Thomsen?

6 MR. THOMSEN: Sorry about that. I, actually,
7 wanted to ask one further question on what Mr. Carpenter
8 brought up about the timing of the Monarch purchase. Did
9 you ever produce anything on the Monarch equipment?

10 MR. KEVIN O'BRIEN: I think we would have to check
11 and we can confirm that in the brief.

12 MR. THOMSEN: Okay.

13 MR. KEVIN O'BRIEN: I don't think we're aware of
14 any right now.

15 MR. THOMSEN: I just wanted to know kind of the
16 timing, whether, you know, you bought it and then while they
17 were still producing, were they shut down first and then you
18 bought their assets. I think that would be very helpful to
19 know that.

20 MR. KEVIN O'BRIEN: We'll provide that.

21 MR. THOMSEN: Thank you.

22 MR. CARPENTER: Okay. Thank you, again, for your
23 presentations, for coming here this morning, and thank you
24 for your responses to our questions. Now, I'll just take a
25 couple minutes break while the Respondents come up and

1 prepare. Thank you.

2 (Whereupon, a brief recess was taken.)

3 MR. CARPENTER: Welcome, Ms. Levinson. Please be
4 seated.

5 MS. LEVINSON: Thank you, Mr. Carpenter and than
6 you to all the members of the Commission staff for being
7 here and listening to us. For the record, my name is
8 Lisbeth Levinson and I'm with the law firm of Garvey,
9 Schubert and Barer. I represent Roha Dyechem, Roha (USA),
10 Neelikon, and Alps Colors. I'm going to make a few
11 introductory remarks on behalf of the Indian respondents.

12 I think I can best summarize this case by saying
13 that Petitioners have gone on a fishing expedition, but
14 they've come up with no fish. They allege that injurious
15 volumes of allura red are coming in from India. But what is
16 the source of that data? They rely on volume and value
17 import data for a tariff item that is a basket category that
18 they, themselves, admit does not correlate specifically to
19 import of the subject merchandise.

20 They, also, rely on volume and value export data
21 from India for a tariff item that is, also, a basket
22 category that does not correlate specifically to exports of
23 the subject merchandise. In other words, Petitioners
24 brought this case having no idea of what the actual volumes
25 of allura red from India are and they are hoping against

1 hope that the questionnaire responses would substantiate
2 significant volumes. They went fishing.

3 Well, unfortunately for them, the record that has
4 been amassed before this Commission simply does not
5 substantiate the allegations in the petition. The volumes
6 of allura red being imported from India are minuscule, as
7 compared to total U.S. consumption. The volumes of allura
8 red have been so minuscule, in fact, that they cannot
9 possibly be causing the injury that Petitioners allege, nor
10 could they form a reasonable basis for supposing that any
11 threat of injury exists.

12 There are only two exporters of allura red from
13 India: Roha Dyechem and Neelikon. Both companies have
14 submitted questionnaire responses to the Commission. The
15 other companies named in the petition have submitted or will
16 be submitting statements that they have never exported to
17 the United States. Thus, we believe that the Commission
18 will have the entire universe before it. From these
19 questionnaire responses, it should be immediate apparent
20 that the volumes of imports are simply not there to sustain
21 either a preliminary injury or a threat determination, even
22 at this preliminary stage.

23 Petitioners allege a number of loss sales. We
24 urge the Commission to investigate these allegations
25 carefully, as we know you're doing. Our own research shows

1 that the majority of loss sales are simply fictitious. In
2 one particularly egregious case, Sensient lost its own
3 customer, not because Roha approached the customer, but
4 because the distributor had sold three years worth of supply
5 to the customer at dramatically reduced prices. Ironically,
6 the product was Sensient's own product, not Roha's.

7 With respect to threat, I note that the
8 Petitioners claimed over and over again that because Roha
9 exports to over 80 countries, somehow that means that Roha
10 is likely to direct its supply to the United States in the
11 future. Why would they do that? They have been well
12 entrenched in their other markets. This is the last market
13 -- or one of the last markets that they have entered and
14 they're getting very good prices in their other markets.

15 There's no cause for them to direct supply from
16 other countries, where they're getting good prices, to the
17 United States, where prices, everybody agrees, are
18 depressed. If they were going to do that, they would have
19 done it. The small quantity that has come from India belies
20 the assertion that Roha has any intention of flooding the
21 United States market with supplies at the expense of its
22 other markets.

23 There hasn't been a lot of discussion today about
24 like products, but we'll just say that we think there's a
25 very good argument that the industry this Commission should

1 be looking at is the food coloring industry, not just allura
2 red. But since the data collected in this preliminary
3 investigation is limited to allura red, we're willing to
4 argue based on the facts of this case and leave arguments
5 about expanding like product to any further investigation,
6 if there is.

7 Our first witness, the gentleman to my right, Mr.
8 Rohit Tibrewala, is a CEO of Roha (USA) We believe that
9 Roha (USA)'s parent company, Roha Dyechem, is the largest
10 exporter of allura red from India. Yet, even Roha's imports
11 are minuscule in quantity, as compared to the total U.S.
12 market.

13 Roha (USA) is a new outfit only created in 1999.
14 The company did not even make its first sale of any
15 commercial quantity until December 2000. Yet, the
16 Petitioner claims over and over again that somehow they're
17 responsible for serious price erosion in 1999 and that
18 they're even responsible for driving U.S. producer Monarch
19 out of business in 1999. They didn't even have a sale until
20 December of 2000. So, you wonder how this can be.

21 Mr. Tibrewala will explain to you how ironic it is
22 that Petitioners are accusing Roha of causing price
23 declines. The irony comes in, because as Mr. Tibrewala will
24 explain, Roha actually imported allura red beginning in
25 December 1999; but, as I said before, it didn't make a

1 single sale until a full year later, in December 2000. Why
2 not? Because, Roha's price was too high to attract
3 customers.

4 So what happened for a year? What did they do
5 with the supply that they imported in 1999? The allura red
6 imported by Roha either sat in inventory for a year, while
7 they were waiting for prices to come up, or was exported to
8 Mexico, where Roha exported 25 percent of its imports from
9 India.

10 Following Mr. Tibrewala's remarks, Mr. Bob
11 Schaefer, to my right, was one of the founders of Roha (USA)
12 and a former employee of Sensient Technologies, will tell
13 you that price erosion in the United States began long
14 before Roha (USA) opened its doors and it is no way
15 attributable to Roha. He will describe, based on his many
16 years as an employee of Sensient, that competitive
17 conditions that existed in the late 1990s and how these
18 competitive conditions have resulted in any injury that
19 Petitioners claim they are suffering today.

20 Finally, at the far end, Mr. Sudhir Trivedi of
21 Alps Colors will talk about his supplier, Neelikon.
22 Neelikon is a very recent entrant into the U.S. market and
23 is still unsure whether they're committed to this market and
24 whether they are going to have any success in this market.

25 After the testimony, all witnesses and I will be

1 available for questions. And with that, I turn the floor
2 over to Mr. Rohit Tibrewala.

3 MR. TIBREWALA: Good morning, members of the
4 Commission staff, ladies, and gentlemen. My name is Rohit
5 Tibrewala. I am the CEO of Roha (USA). I appreciate this
6 opportunity to appear before you and tell you about my
7 company.

8 Roha (USA) was established in 1999. Our parent
9 company, Roha Dyechem, is a manufacturer of food coloring
10 with a worldwide distribution network. Today, Roha Dyechem
11 has a presence on every continent, except for Antarctica, to
12 serve its customers throughout the world. We have been
13 serving the Southeast Asian market since the mid-1980s;
14 European, South American, Australian, and Mexican market
15 since the early 1990s. We did not enter the U.S. market
16 until 2000, long after we have already well established in
17 other parts of the world.

18 We opened operations here in the United States,
19 because many of our already existing multinational customers
20 had headquarters in the United States and wished for us to
21 have a U.S. presence. Unfortunately, we have not been able
22 to sell any products to these customers, because the
23 domestic prices are lower than what Roha offers them. Our
24 company in the United States is one of the smallest of the
25 Roha family, as we just recently entered this market, and is

1 only very small quantities.

2 We first imported allura red from India in late
3 1999 in relatively small quantities. We did not make our
4 first U.S. sale, however, which consisted of a mere 25
5 pounds, until May of 2000, over six months after the
6 importation. We delayed in making the first sales for one
7 reason: we were simply unwilling to lower our prices to the
8 levels that U.S. customers were paying in 1999 and 2000.

9 We were well intent on not destroying the market.
10 After all, bringing down the price would impact our
11 profitability, as well as that of other suppliers. We
12 preferred not to make the sale, than to lower our prices.
13 As a result, almost the entire product that was imported in
14 late 1999 and up until December of 2000 simply remained in
15 our inventory.

16 In 2001, we exported a significant portion of our
17 imports to Mexico, rather than sell at low prices in the
18 United States.

19 The Petitioners have said that these products are
20 interchangeable and since Roha has presence in the other
21 countries, they can always move their product into the
22 United States. I would want to put a point in front of the
23 Commission, that though we can ship the product out of
24 Europe to any other market, it is very difficult to import
25 any product from the other markets into the U.S., because it

1 is highlighted that the U.S. market is regulated by FDA.
2 So, any product that I get into the U.S. has to be FDA
3 approved, of FDA standards, which the sample has to go into
4 FDA for approval. That is not the case with other
5 countries. So, it is easy to get the product out of the
6 U.S. to other countries, but it is difficult to get the
7 products from other countries into the U.S. And there
8 cannot be a more compelling testament of our imports not to
9 cause a decline in prices than that.

10 I was astounded to read that the Petitioners blame
11 imports from India for the supposed demise of Monarch, which
12 they acquired in January 27, 2000. Given that we had not
13 even made a single sale by January 27, 2000, the time of the
14 acquisition, the allegation that somehow we caused injury to
15 Monarch is almost laughable.

16 The petition also claims that Sensient acquired
17 Monarch, because Roha had driven them out of the business.
18 Their own chairman, president, and CEO, Mr. Manning,
19 contradicts this allegation in a news release, dated January
20 27, 2000, attached to the petition as Exhibit 20, wherein he
21 stated, "this acquisition sits well with our color business
22 in St. Louis and will provide a number of marketing and
23 production synergies." He further says, "in addition, we
24 gain access to Monarch's customers and products, including
25 its proprietary line of water soluble food colors." Thus,

1 there were legitimate business reasons that drove the
2 Monarch acquisition that had nothing to do with Roha.

3 Significantly, the news release does not make a
4 single reference of imports from India as a cause behind
5 Monarch's supposed demise. Petitioners are trying to
6 rewrite history before the Commission, and this has been
7 supported by Mr. Gary Morris, that acquisition of Monarch
8 was because they had a patented line of product.

9 There is another astonishing fact about this
10 petition. Novian, which is another domestic manufacturer in
11 the U.S., has supported this petition. I would like to
12 inform the Commission that Roha (USA) has purchased 2,000
13 pounds of allura red from Novian in 2001 for five dollars
14 per pounds. This price is very below than the lowest price
15 that Roha has sold to any of its customers in 2001 and
16 significantly below our average selling price of allura red
17 in 2001 and 2002. We find it ironic that they are accusing
18 us of dumping, when, in fact, the domestic producer's prices
19 are lower than our lowest prices and they have been selling
20 at those prices.

21 We have encountered low prices from both Sensient
22 and Novian over and over again. We have given the
23 Commission some details of these instances in our
24 questionnaire response.

25 At this point, I would like to brief the

1 Commission about the on-line bidding that has been going on
2 in the industry. As it has been brought out by the
3 Petitioners, the first on-line bidding that they
4 participated was in May 2000. Roha did not participate in
5 any on-line bidding until June of 2001. So the on-line
6 bidding has been going on or the Internet sales of this
7 product have been going on, even before Roha started the
8 business in this country.

9 And the main reason of decline in the prices is
10 not because of Roha's presence or Indian producer's presence
11 in the U.S. It is because of the on-line or the Internet
12 sale. And it is very difficult to establish, in these
13 conditions, who is responsible for declining prices, because
14 no one knows who is bidding. It may be that the two
15 domestic producers are bidding against each other, assuming
16 that the other party is Roha, and accusing Roha of dumping
17 the product in the U.S.; whereas, we don't have any sales
18 derived from those kind of bids. So, I don't know what the
19 Petitioners are trying to prove over here.

20 There was another question raised by the staff of
21 the Commission about the global contracts or these companies
22 contracting just for the U.S. I would like to highlight the
23 Commission that, generally, the companies, who have multiple
24 locations worldwide, always want to go in for a worldwide
25 contract. They never go in for a U.S. contract only. There

1 are only very few of them, who want to go in only for a U.S.
2 contract and leave the other part of the world aside.

3 Roha has come across various instances where the
4 companies have asked all the color manufacturers to pay for
5 the entire global consumption of colors and we have been
6 successful to get the business in other parts of the world.
7 In fact, we are doing business with them in every other
8 country, except for the U.S. We are not being able to get
9 the U.S. business, because we are not being able to meet the
10 prices here in the U.S. that are being offered by the
11 domestic suppliers, and that is the reason they are not
12 giving us any business.

13 Second, I would like to point out, at this point,
14 is the qualification process. There was a very eligible
15 question raised by the Commission, whether there is a
16 qualification process for any new supplier to supply to
17 these multinational countries or the TR-1 companies, as
18 quoted in the petition. I would like to inform the
19 Commission that even if I offered them the product free of
20 cost, they are not going to buy from me, until and unless
21 they complete their entire qualification process, which
22 lasts for more than a quarter. It involves using my product
23 in their end product, testing their shelf life, which may
24 range from one month to over six months. And not only that,
25 after that, they have to go on and audit my manufacturing

1 plant that is in India.

2 So, it is just not that my product has to be
3 attractive in order for them to switch over to Roha as a
4 supplier, there has to be other reasons why they are willing
5 to evaluate Roha as a supplier. And we have the quality, we
6 have the service, which are compelling them to evaluate Roha
7 as a supplier, and we have still not finished that process
8 with any of these customers. As a result, we are not
9 selling to any of them. But, I would like to inform the
10 Commission that we are selling products to all of these
11 customers everywhere else in the world, except for the U.S.

12 Since 2000, we have continued to import very
13 modest quantities of allura red. In fact, 2001, we imported
14 much less than what we had in 2000. There has been no
15 significant increase in volume of imports that we have
16 brought in since 2001. And, in fact, there was a 50 percent
17 decline in 2001 over 2000 figures. The maximum amount that
18 we have imported in any year to date is reported in our
19 questionnaire response.

20 To put our imports into perspective, please
21 consider the FDA certified 4.25 million pounds of allura red
22 each year for use in the United States. Out of our total
23 imports, we have exported 25 percent of the product to
24 Mexico, where we had established markets from earlier years.
25 Therefore, to see how much we have sold in the U.S., the

1 figures are in the questionnaire and I hope the Commission
2 will consider those, to see if there is any, if at all,
3 injury to the domestic manufacturers.

4 I can only surmise that this case is just one more
5 attempt by Sensient to drive us out of the United States by
6 subjecting us to unwarranted legal proceedings. To give a
7 series of these attempts, Sensient approached Roha -- I
8 don't remember the year exactly -- for a conference between
9 the CEO of Roha and the CEO of Sensient, where they wanted
10 to discuss some business opportunities. They wanted to meet
11 with a big delegation of people, but Roha said, we are not
12 interested in meeting with a big delegation; let us just
13 meet the CEO to CEO, which was declined by Sensient.
14 Thereafter -- or I would take my word back, it was not
15 declined by them, but we did not hear anything back from
16 them, after we offered -- or counter offered the proposal.

17 In 2001, they sent letters to our sales agents,
18 who was not even Roha's employees, claiming that by dealing
19 with Roha, she was violating a previous employee agreement
20 with Sensient. They, then, sent us and all our sales agents
21 and distributors letters threatening a patent infringement
22 suit, which failed. And I would like to highlight over here
23 that even if they suspected that Roha was infringing a
24 patent, they should have just sent a letter to us and not to
25 our agents and our customers saying that Roha is infringing

1 a patent, until it was established that we were infringing.
2 And even that petition failed.

3 Now, they have brought this antidumping and
4 countervailing duty proceeding, claiming that we have
5 injured them, even though our market share is insignificant
6 in this country. Therefore, I only summarize that this case
7 is just one more attempt by Sensient to drive us out of the
8 United States.

9 In conclusion, I would like to ensure the
10 Commission staff that Roha has always acted responsibly and
11 will continue to do so. We have no intentions of flooding
12 the U.S. market with imports of allura red. If we had such
13 an intention, we would have already done so. We had the
14 material in stock to support us with that intention, if we
15 had that intention.

16 The figures supported in the questionnaire
17 response speak for themselves. We have imported our only
18 minuscule quantities, because the United States is one of
19 our smallest markets. We have commitments to long-standing
20 customers in other markets, such as Southeast Asia and
21 Europe, and we are not about to divert supply from these
22 well-established markets to the United States market.

23 I would, also, like to point here that Mr. Morris
24 mentioned that Roha has around 20 different distributors,
25 who are selling and competing against each other, and Roha

1 has been taking all the Sensient distributors. And he,
2 also, mentioned or someone from the Petitioner's side
3 mentioned that Sensient only deals with three or four
4 distributors, so they could synergize the market
5 effectively. So, I don't understand how can we take 20
6 distributors out of the three that they had.

7 And, secondly, I don't know of the 20 distributors
8 that we have, because we only have two distributors, who
9 Roha is dealing with, and they have never sold Sensient
10 colors or they have not -- as a matter of fact, they have
11 never sold colors in the past. The color industry is new
12 for them and those agents are new for us. So, we are
13 appointing distributors, who have never sold colors in this
14 industry before. We are not taking over any distributors.
15 We are not firing any employees. We are not taking over any
16 of their resources to assist us.

17 Thank you for this opportunity to appear and I
18 will be happy to respond to any questions you might have.

19 MR. SCHAEFER: Good morning. My name is Robert
20 Schaefer and I am the founder of Roha (USA), in partnership
21 with Roha Dychem of India. I have acted as the consultant
22 to Roha (USA) since 2001. I find it particularly ironic
23 that the Petitioners are accusing us of undercutting prices
24 in the United States, because we have always pursued a very
25 different strategy. As my colleague has just pointed out,

1 we were unable to make any sales during the first year of
2 our operation and we were unable to successfully quote
3 during that period.

4 Our sales agents complained that we were not
5 giving them realistic prices and eventually all but one of
6 them has left. I left the company in 2001, because the
7 competitive pressures that were exerted on us by the
8 domestic producers left me with no hope that we would ever
9 achieve any reasonable volume in the near future.

10 I am extremely well trained and extensively
11 trained in marketing and business management. In an
12 industry such as ours, where the technology is mature and
13 virtually the same for all competitors, as the Petitioner
14 has also alleged, the price aggressive strategy is absolute
15 suicide. I was driven personally and professionally to
16 avoid a price war in the entry to this market. That is not
17 my style and, I would like to highlight this, the Petitioner
18 is well aware of that fact.

19 I have read the petition in this investigation and
20 I must say that it contains several misleading and
21 inaccurate statements, which I would like to address. Some
22 inaccuracies are not important in the large scheme, but some
23 are extremely important. I will comment on the minor points
24 first.

25 The petition suggests that Roha lured me away from

1 WJ, as part of some devious plan to usurp WJ's position in
2 the marketplace. Nothing could be further from the truth.
3 I left WJ in 1999 and I approached Roha about a position
4 with them. They never approached me.

5 The petition, also, suggests that there is
6 something sinister about the fact that I set up Roha (USA)
7 in St. Louis. I set up the company there simply because I
8 was there.

9 Now, onto the important points. One of the more
10 striking inaccuracies contained in the petition is
11 Sensient's statement that Monarch was driven out of business
12 in large part by Indian imports. This, as we have reviewed,
13 is a preposterous statement for several reasons.

14 First, at the time of the Monarch's proposed
15 demise, there were not yet any imports at all of allura red
16 from India into the United States.

17 Second, on or about June 6, 1999, representatives
18 of Roha Dyechem met with John Mudd, the former CEO and owner
19 of Monarch, and intended to discuss expanding the quantity
20 of dyes that they were supply Monarch, in an attempt to
21 assist Monarch in the development of the market to our
22 mutual benefit, and not, in any way, to harm or thwart the
23 growth of Monarch. We wanted to work with them, not
24 undermine them.

25 I would, also, like to comment on the affidavit

1 dated February 24, 2003, submitted by Gary Morris, and
2 attached to the petition as Exhibit 12. In paragraphs 32
3 through 54, Mr. Morris asserts that the price erosion
4 experienced in the allura red market started in 1999 and was
5 caused, in fact, by Roha. The reality is that price erosion
6 begin in 1996 and 1997, long before Roha ever entered this
7 market or even thought about it.

8 Prior to those years, there was a stable supply
9 situation in the United States, with WJ and Novian supplying
10 the entire U.S. market. In those days, our strategy was to
11 let Novian sell out their capacity and then leave the rest
12 of the marketplace to WJ. Under those competitive
13 situations, WJ could virtually charge whatever it wanted of
14 the product in the remaining market.

15 The atmosphere changed when Pointing Limited from
16 the United Kingdom reentered the United States in
17 approximately 1996. Now, instead of two suppliers, there
18 was suddenly three, and WJ no longer had a strangle hold and
19 lost the flexibility to dictate prices. To give you an
20 example of the difference that Pointing made, prior to 1996,
21 WJ was charging Kraft Foods, one of the largest U.S.
22 consumers of allura red, \$7.25 a pound and Coca Cola, \$6.70.
23 At that time, the price to Coca Cola was the lowest price
24 that WJ had anywhere in the market.

25 After Pointing entered the market, those prices

1 begin to slide. A price war erupted between Novian and
2 Pointing, with WJ struggling to keep up. By 1998, WJ was
3 quoting prices of \$5.90 and not getting the business. Now,
4 remember, this was still several years before there was any
5 significant import from India.

6 By 1999, as a result of its low pricing, Pointing
7 was totally unprofitable. Sensient acquired Pointing in
8 that year. After the acquisition, instead of raising the
9 Pointing prices to the previously prevailing market levels
10 that WJ had dictated, WJ lowered its own prices to the
11 Pointing levels, particularly after accounts that they
12 referred to as the tier one accounts, even though Roha was
13 not yet a factor in the market. Novian, who had always
14 priced its product at about 50 cents below WJ, was then
15 forced to lower its prices even more, in what they felt was
16 a required defensive move.

17 My point is that price erosion actually started
18 years before Roha imported a single pound of allura red.
19 While there were price increases announced prior to 1995
20 that went through, the prices started declining in 1996, in
21 spite of the price increase announcements, but it had
22 nothing to do with Roha. In fact, as Mr. Tibrewala has
23 stated before me, when Roha did finally enter the market, it
24 priced its product at or above the market price and, as a
25 result, did not make any significant sales for a full year

1 until after its first imports entered the United States.

2 Turning away from the pricing issue, I would now
3 like to discuss the Roha product and how its perceive in the
4 marketplace. Petitioners wrongly claimed that they are the
5 only ones that have devoted significant resources to
6 research and development and improvement of the U.S. market,
7 and that the Respondents are benefitting from their
8 investments.

9 Quite to the contrary, Roha has invested a great
10 deal of time and money into R&D and has developed a new and
11 unique product, which is the subject of patent applications
12 in both India and the United States. This product, known as
13 Sphericlean, by trade name, has a smooth exterior profile
14 and a spherical shape, to reduce the propensity of our
15 competitor's products to regenerate dust, after it has been
16 manufactured during shipping and handling.

17 Several of our customers have told us that they
18 consider the Roha product to be superior and have awarded us
19 the business on that basis, and that our competitor's
20 products do not perform as well, and that they would buy
21 Roha product even if it were priced higher, which it has
22 been in several instances. These customers are expected to
23 submit individual statements to the Commission.

24 I will conclude by detailing the many reasons why
25 customers want to do business with Roha for reasons

1 unrelated to price. First, the global presence of Roha
2 gives them a viable alternative supply to the only other
3 game in town, which is Sensient Technologies. Customers
4 value having more than one source of supply simply for the
5 prudent fiscal management and secured market management of
6 their business. Throughout the years, Sensient Technologies
7 has sought to eliminate its competitors by acquiring all of
8 those competitors in the synthetic dye industry, save one,
9 to the detriment of the customers.

10 In 1988, Sensient bought H. Conestand, which was
11 not a producer of allura red; but, in this market, the
12 customers buy packages of products, which the Commission has
13 raised questions about. Then, in 1989, they bought Dyeco of
14 Canada, also purchased Clark Colors in Europe, and the
15 staining food color business from McCormick. In 1991, they
16 bought the Williams Color Business of Morton International.
17 In 1992, they acquired Butterfield Laboratories in the
18 United Kingdom. In 1997, they bought the regulated color
19 business of Peosa Mexico. In 1999, they bought Pointing of
20 the U.K. and thereby acquired a quarter interest in Monarch
21 Food Color, which they had to do something with, as they
22 settled that acquisition. You can understand that in this
23 environment, many customers are very keen to support
24 Sensient's competitors, simply for a matter of self
25 preservation.

1 There are other non-price reasons why customers
2 purchase Roha product, as well. Customers appreciate the
3 fact that we can offer the full range of product in the FDNC
4 markets. We are the only other alternative to Warren
5 Jenkinson worldwide that can make that claim. They purchase
6 allura red from us, because they can also fulfill their
7 other needs for lace and dyes and value-added products.

8 In addition, Roha and Sensient Technologies are
9 the only remaining significant players in the worldwide
10 industry and the world, frankly, is dependent on the sum
11 capacity of the plant in Roha, India and the plant in St.
12 Louis, Missouri.

13 Finally, our customers buy from Roha, because our
14 product, which will soon be patented, has some superior
15 characteristics, which some customers favor.

16 I would, also, like to address a few of the other
17 points made in the Petitioner's testimony, simply to bring
18 some clarity to a few points. They have cited cost
19 increases as being a particular burden on their business and
20 that is certainly true. We can sympathize with them,
21 because just like they, we suffer those same cost increases.
22 The sources of raw materials in the world are severely
23 limited. They are commodity markets and anything that they
24 see, we're going to see within a heartbeat.

25 They allege that idle production capacity in the

1 United States is sufficient to supply U.S. demand. That is
2 true. They could idle production capacity here or certainly
3 take care of the entire U.S. market, but that statement is
4 somewhat misleading.

5 First of all, the capacity, as the Commission
6 began to probe a few moments ago, can easily be converted to
7 make other dyes in what they call the ESA class. They do
8 have dedicated equipment, as all producers would, for making
9 Red 40, because it minimizes your cleanup times and things
10 like that. But, the equipment can be relatively easily
11 converted to make other dyes, particularly sunset yellow and
12 tarquizine.

13 That excess capacity that they speak of that is in
14 St. Louis has always been there. The assertion was made
15 that during the 1990s, some of that capacity was not there,
16 that they were fully occupied. And during my tenure at WJ,
17 which ran from 1993 to 1999, again, that capacity was never
18 under full utilization during that entire period. That is
19 pretty much true for anyone in that business, because you
20 never obviously want to run capacities up to full
21 utilization, because you can't take care of your customers,
22 at that point, and, if you did, you'd expand.

23 Mr. Rohit Tibrewala made the point that
24 distributors that we have are not encroaching on their
25 distribution network at all. We were solicited by a few of

1 their distributors, when we entered the market, looking for
2 business, but the prices that we encountered were such
3 ridiculous prices, that we declined to do business with them
4 and, to this day, have not done business with anyone of
5 them, except save one, who solicited a very small, very rare
6 order, when they could not get supply elsewhere.

7 On the fungibility issue, chemically, these
8 products are the same. They are regulated by FDA.
9 Chemically, there is no difference between them. If the
10 difference could be detected, the batches would be rejected
11 by the FDA and unfit for sale in the United States.

12 However, it is not to say that there is an easily
13 replaced supply situation on the part of customers in the
14 United States. Here, there are extensive approval processes
15 that you must go through, certainly at the tier one
16 customers, that take quite frequently months on end to
17 complete, where the product must be evaluated to meet
18 certain quality standards and quality systems within all of
19 those companies.

20 In addition, there are some differences in the
21 product forms, in the granular forms, the powders, the
22 things that we talked about today in the Red 40. And as
23 products are tested at these customers, they will want to
24 run them through production -- well, first of all, trial
25 scale and then production runs, to make sure that the

1 products do work. Typically, there are small production
2 changes that have to be made based on the dissolution rates
3 or the physical form of the product. It does cause some
4 concern for them. So, it is not an exact place or time in
5 the technology right now, where we could walk in with a
6 product one day and offer a lower price and have the
7 business the next day. That simply doesn't happen at the
8 tier one customers ever.

9 -- stringent at the tier one, but I would also
10 assert a different scenario than what the Petitioner has
11 claimed, and that is that even the tier two customers do
12 have a qualification process. They may not see it, because
13 they are the infringed incumbent. They have not had to deal
14 with those issues significantly for many years. But, as a
15 new comer to the market, I can tell you that the tier two
16 customers are quite careful about their change in supply, as
17 well, and that does not happen over night.

18 Red 40, being a competitive market, as they've
19 claimed, is certainly true, as it would be for any dye
20 that's manufactured. It's a relative judgment, I guess.
21 Some people would look at this market and say it's not very
22 competitive, because the profit margins are still decent in
23 this market compared to other commodities that you may
24 encounter. They would be run out of this business where
25 this hearing not to go in their favor is a gross

1 exaggeration.

2 Large acquisitions and significant acquisitions
3 over the years have expanded their capacity. They have been
4 able virtually to do what they want in the marketplace and
5 that never lasts in any market for very long, because
6 competitive pressures being what they are and the United
7 States being a free market certainly is going to discourage
8 any such activity.

9 Sensient's capacity could be used for other
10 things, as I said. They are flexible. They do have the
11 best technology probably in the world, as far as separation
12 technology, and other things that I am prevented by a
13 secrecy agreement by divulging. But, I'm aware of their
14 cost position, because I worked at the company. I was on
15 the executive committee of that company and I am quite
16 certain that no one in the world is going to drive them out
17 of the market. The profit margins may be impacted, no
18 doubt; but, certainly, no one is going to be able to drive
19 them out of this market. That is a gross exaggeration.

20 I make no bones about the fact that we're here to
21 compete. The business that isn't here to make money and try
22 to find customers is either a charity or nonexistent.
23 However, we are here exactly for that reason, to compete.
24 The United States represents a significant market for Red
25 40. It's the only one that we don't have. We do compete

1 with them in our home markets and are simply trying to look
2 for a fair opportunity to do the same thing here.

3 New product development has always been slower in
4 a mature market like Red 40 that is heavily regulated by the
5 FDA, using old chemistry technology, and for the most part,
6 relatively simply batch chemistry. There isn't going to be
7 a lot of innovation in an industry like that. And the value
8 added products that form downstream, certainly there can be,
9 but to say that there isn't going to be a lot of innovation
10 because we're impacting the profitability simply is an
11 exaggeration. I applaud and encourage the Commission's
12 questioning with Sensient to dig into what they would do
13 with Red 40, to make the significant expansion to the Red 40
14 market in the United States.

15 For clarity, Mr. Wanser's question before about
16 competitors in the world and why does it not develop -- why
17 we haven't seen more competitors developing, by world
18 standards and modern industry, this is a small industry.
19 Worldwide, we're talking \$350 to \$400 million total, not for
20 allura red, for the total FDNC food color market. For a
21 company like BASF, ICI, several Japanese competitors, other
22 chemical producers in the world that could easily duplicate
23 this technology or were in this market and left, which is
24 the case with BASF, there simply isn't the justification
25 from their capital and their returns in that industry. For

1 someone to come into an industry, like BASF, and to focus
2 energy on something that might make them \$25 to \$50 to \$75
3 million a year simply isn't going to fly past the boards
4 that make the decisions about investing in future
5 development.

6 So, there are other competitors around. There are
7 other people with that technology. But, the industry size
8 simply doesn't warrant expanding the number of competitors
9 that are already here, particularly when they have the
10 capabilities of a Roha and Warner Jenkinson and Sensient
11 Technologies. The rest of the world knows that the two of
12 us have the capability, have the technology, have the people
13 in place, to take care of the industry as it currently
14 exists.

15 The Petitioners assert that the premium for
16 Dustmaster, their premium product in the area of dust
17 prevention, was eroded by Roha. In 1989, when that product
18 was introduced to the market by WJ, they attempted to get a
19 premium for that product and virtually abandoned the efforts
20 to do that in the marketplace over the next couple of years.
21 There were a few instances in the future that I can think
22 of, but they were very minor and I can count them on one
23 hand, where we were able to justify a slight premium for
24 that product with customers.

25 We do, in some of our customers, it's rare, again,

1 but we do in some of our customers a payment premium for our
2 product, as well, and that was part of our strategy when we
3 started the business and we deliberately do that, because we
4 do think it is worth more.

5 As far as the Internet bidding, the Petitioner
6 claimed that in May 2000 that it started. I would like to
7 just say before this Commission that we had no knowledge of
8 any bidding process in May 2000 and had no participation in
9 anything that took place in the year 2000 whatsoever. If
10 Internet bidding took place in that year and there is any
11 claim that Roha somehow eroded the prices, we had no
12 knowledge and was not present in any of those bidding
13 processes during that year.

14 To make a clear statement about an answer that I
15 thought was somewhat ambiguous, to answer Mr. deWinter's
16 question about the capacity, the capacity can produce other
17 colors. I want to make that point clear. It's not
18 something that you do on the fly in a matter of hours
19 between batches, but it is not a major deal to convert
20 capacity to make some of the other colors; though, as I said
21 before, it can and is probably devoted to allura red at
22 their operation, as well as within ours.

23 Thank you.

24 MS. LEVINSON: We've heard a lot about Roha. Now,
25 we're going to pass the mic to a representative for

1 Neelikon.

2 MR. TRIVEDI: Good morning, gentlemen. My name is
3 Sudhir Trivedi. I'm the CEO of Alps Colors LLC. Alps
4 Colors LLC was established in January of 2001. Prior to
5 Alps Colors, I was president and CEO of Sunbelt Corporation,
6 from 1983 to 2000. Sunbelt Corporation was based in
7 Baltimore, Maryland, and has a manufacturing plant in
8 Rockville, South Carolina. And it was engaged and it is
9 engaged in manufacturing and marketing dyes for textiles,
10 plastics, inks, and petroleum, what Mr. Wanser referred to,
11 the other dyes.

12 Alps Colors was established as a distribution
13 office for Alps Chemicals, Plywood Limited of India. The
14 main product line and the consideration was dyes for
15 textiles, leather, plastics, and inks. These are the
16 product lines being manufactured by Alps Chemicals in India.

17 We began exclusive representation for Neelikon for
18 dyes and -- Neelikon dyes and chemicals in May 2002. We
19 market the entire range of the food drugs and cosmetic dyes.
20 Our first new entries of allura red was received in June of
21 2002. We produced our company as a distributor of food,
22 drugs, and cosmetic dyes from Neelikon at an international
23 food technology expo in Anaheim, California, in July of
24 2002.

25 Much of our efforts in the year 2002 have been

1 devoted to contacting various distributors and getting the
2 product samples tested and approved. And this process, as
3 mentioned by Rohit and Robert, takes several months,
4 sometimes years, especially in the case of tier one
5 companies, and it may not happen. For example, Coca Cola
6 would not even accept samples from people, because they
7 would just simply say, we don't want to test samples. So,
8 there are instances that substitutability of a product is
9 not an easy in, in spite of providing every possible angles
10 of service that you can possibly provide.

11 Our only sales of the product of allura red is
12 minuscule by all accounts, and that would be submitted in
13 our petition. By contrast, the FDA has certified tremendous
14 amounts of allura red in 2002 and earlier. We have entered
15 the market in the U.S., to provide a fair alternative to
16 distributors and end users in the marketplace, and not to
17 destroy the competitive market environment in the U.S.A.
18 But, by all accounts, we are here to compete. We are not
19 kicking tires.

20 Neelikon has long established customers in other
21 countries, including, like Roha mentioned, Australia, the
22 Far East, the U.K., Latin America, and they have no
23 intentions of degrading those markets in fear of these
24 markets, where it has made its reputation to bring large
25 volumes of allura red to dump in the United States.

1 We have no idea at this very early juncture
2 whether we will be successful to a degree that we hope. We
3 are still very much in the exploratory phase. Process of
4 entry into the marketplace is not easy. A company, in
5 addition to certifying their products through FDA, has to
6 pass the same product through R&D departments of
7 distributors and end users for suitability of the product in
8 their formulations. These products are not always easily
9 substituted for incumbent products in existing formulations,
10 even though they might be chemically identical.

11 While we hope for a successful future here, we are
12 not in a position to realistically predict. And what we
13 want to make clear is that this is seemingly -- and I've
14 been in the United States long enough to be here to know the
15 market forces and I respect that. But, this is like a
16 preventive strike, that even before there is nothing that
17 you -- how do you put people and arrest them and give them
18 undue burden to come before commissions and spend money and
19 time for smaller people, to expand all this and explain
20 where there is no case, where there is no facts.

21 I want the Commission to please take this into
22 consideration, that future applications of these natures
23 have to have some mechanics of thereby we are informed of
24 this somewhat in an early way, rather than spread this all
25 over, as if we have been the culprits of dumping in this

1 country. If it is dumping, I hope, like Mr. Wanser state,
2 the world is getting competitive every day and what will
3 happen tomorrow, I cannot predict. But to say that
4 something has happened before it has happened and that it
5 will happen and before anything, that there should be an
6 antidumping duty is something really egregious.

7 I thank the Commission members and all the
8 gentlemen here and I would like to take questions later,
9 when you have some. Thank you, so much.

10 MS. LEVINSON: That concludes our presentations.

11 MR. CARPENTER: Thank you, very much, for your
12 presentations. We'll begin the question with Mr.
13 Timberlake.

14 MS. LEVINSON: Mr. Carpenter, excuse me, I've just
15 been informed that Mr. Tibrewala would like to make one
16 point, if you don't mind.

17 MR. TIBREWALA: Thank you, very much. I would
18 just like to explain a bit more on the on-line bidding
19 process, which we anticipate to be the cause of decline in
20 the pricing and not Roha. Most of these cases where there
21 is an Internet bidding or an on-line process, I would like
22 to make a point here, that Roha has never been the first
23 bidder on the Internet. We have always waited, seen where
24 the market is going, see the other players participate in
25 the market, and then only bid. There has been only one

1 single instance when Roha was the first one to bid and in
2 that instance, there was no one else bidding in that
3 business and we were awarded the business.

4 The other thing that I want to point out is that
5 whenever we waited and watched the Internet bidding, there
6 were always more than one bidder on the Internet, which were
7 fighting against each other to reduce the price, and it was
8 not us. If there is anyway by which Commission can get
9 those bidders, which I feel is extremely impossible or
10 difficult, it will prove for itself that Roha was never the
11 first bidder. There were two people fighting, reducing the
12 prices, and Roha always came at a later time to participate,
13 because we have been forced by the mechanism, if we don't
14 participate in that kind of a structure, the buyer will not
15 approve Roha as a supplier and they will not consider us as
16 a supplier every in that industry. So, in order -- since we
17 are new in the market, we have to supply. We have to
18 approach the customers. They leave us with no option, but
19 to do that.

20 The other point that I want to point out about
21 that is that the bids, in most of the cases, do not ask for
22 a separate price for allura red or a separate price for
23 Yellow 5, or a separate price for Yellow 6. It always says,
24 put in your best price for the package. The package
25 includes all the colors that the buyer is buying. Whatever

1 quantity of Red 40, whatever quantity of Yellow 5, whatever
2 quantity of Yellow 6, they give us the quantities. They
3 give us the point of delivery. And they tell us, okay, I
4 want this quantity to be delivered to this plant of mine.
5 They all have multiple locations. They all give us all the
6 information. They tell us, okay, this is the quantity that
7 goes to this particular location of ours. This is the order
8 site. They just want to quote us, okay: this is my entire
9 package; I want you to quote; I want the delivered price at
10 this location; this is my package; this is the opening bid;
11 x amount is the opening bid, can you bid below x price.

12 And they put that increment. Okay, there is a .5
13 percent increment that you have to give, in order for your
14 quote to be accepted. If someone quotes \$100, I can't quote
15 \$99.99. There is a percentage, which I have to quote below
16 that, in order to consider my quote. Otherwise, the system
17 does not accept my quote. So, there are a lot of
18 considerations, there are a lot of restraints, there are a
19 lot of unfair means established in this way of negotiating
20 business. And if at all anyone wanted to discontinue this
21 process of negotiation, it would have been the domestic
22 buyers, because Roha was new in this industry. And all
23 these bids very clearly say that even the lower bidder will
24 not get the business unless he is qualified as per our
25 procedure.

1 So, if the domestic industry feel that Roha will
2 not qualify as a supplier to those industries, they were the
3 ones that could have prevented this erosion. They were the
4 ones, who would have ruled out that we are not participating
5 in these bids. And then if Roha would have bid, we would
6 have not gotten the business. There has been an instance
7 where we have been the best bidder and the business was not
8 awarded to us, because the company said, well, you don't
9 meet our qualification process. So, the price is always not
10 the consideration of awarding business. And if this decline
11 could have been stopped, it could have been stopped by the
12 domestic manufacturers and not Roha.

13 Roha was just forced to participate in this,
14 because we had no say in this market. Since we were new, we
15 had to penetrate. We had to make a presence. We had to
16 participate. And we played very responsibly. We waited.
17 We saw what the other people were doing. And as I put in my
18 testimony, in an earlier time, that maybe the two domestic
19 players are fighting against each other, and you think that
20 the other person was Roha.

21 That's it and thank you, very much.

22 MR. TIMBERLAKE: Thank you for your testimony.

23 Tim Timberlake, Office of Investigations.

24 Mr. Tibrewala, can you just very briefly describe
25 the allura red industry in India? Tell us who the producers

1 are. I believe you, Ms. Levinson, said there were only two
2 firms that exported product to the U.S. Give us some idea,
3 Roha we know is one. Give us some idea who the others are.

4 Tell us whether or not there have been new firms
5 that have come into the industry say from 1999 forward, or
6 whether firms have exited the industry. Give us any
7 scuttlebutt you might have of rumors of takeovers and
8 acquisitions as such.

9 MR. TIBREWALA: I would like to start this with
10 answering that allura red is not the easiest color to
11 manufacture. There are colors which are easier to
12 manufacture and which are used worldwide in more quantities
13 than allura red and that is tartresen and sunset yellow
14 which is produced in India in tons and tons and there are
15 more manufacturers of these colors than the manufacturers
16 producing allura red.

17 So if at all our pricing would affect, it would
18 affect those pricings, not allura red. Because allura red
19 there are hardly three or four manufacturers in India that
20 we know of.

21 Secondly, the allura red market in India is very
22 insignificant. That product is not manufactured for India.
23 And the primary reason that we manufacture allura red is
24 because this product is used in our Southeast Asian market
25 and our European market and in our Mexican market. We

1 started manufacturing allura red. As a matter of fact only
2 the Indian exporters who are exporting into these countries
3 are manufacturing allura red. A person who is just
4 supplying domestic industry in India is not manufacturing
5 allura red because there is no market for allura red in
6 India.

7 About the acquisitions, I would like to inform the
8 Commission that even in the U.S. there have been around six
9 or seven color manufacturers in the history of colors.
10 Sensient is not a pioneer in manufacturing of allura red.
11 Sensient did not develop allura red. Sensient was not the
12 first color manufacturer in the U.S.

13 What happened to the pioneers? What happened to
14 the people who started this industry? Where are they?
15 They're all history. They are nowhere to be seen. They are
16 nowhere to be heard.

17 Because when Sensient was formed they had a stride
18 of acquiring anyone who provided colors in the U.S. There
19 were manufacturers in Europe, for example, Pointing. There
20 was a manufacturer in Mexico. There was a manufacturer in
21 Latin America who all tried to come into the U.S. and sell
22 their product. They were all acquired by Sensient.

23 Secondly, Sensient has been acquiring companies as
24 their CEO Mr. O'Brien said, from the last ten years they
25 have had a series of acquisitions. Why are they talking

1 only about the capacities of Monarch? What happened to the
2 capacities of other guys? They were also manufacturing.
3 They had manufacturing capacity. What happened to those
4 manufacturing capacities? Are those being used? Are those
5 idle? Why were they acquired? Why were they let go? Why
6 were they shut down? Why are those questions not being
7 answered in the petition? Why is only Monarch coming in.
8 Was Monarch only the third manufacturer in this industry?
9 No, there were many manufacturers in the U.S. which Mr.
10 Robert Schaefer has testified in his testimony as a matter
11 of fact, and there were also manufacturers worldwide, but
12 now there is no manufacturer worldwide except for the two
13 manufacturers in the U.S. which is Novien and Sensient and
14 only the Indian manufacturers. All the other competition
15 has been bought.

16 I would like to highlight that I am not sure
17 whether it was the intent for Sensient to come into India
18 and acquire companies, but they were in India trying to have
19 dialogues with the manufacturers. We are not sure what was
20 their intent. They offered us, we counter offered, and they
21 do not accept our offer. Maybe it was not their strategy to
22 talk one to one. They wanted to talk a team with the one
23 person, but I don't know what happened. So maybe they had
24 intention to acquire companies in India which did not work.
25 That's my assumption. But that is the reason why only the

1 manufacturers are left in India and nowhere else in the
2 world.

3 MS. LEVINSON: Mr. Timberlake, there are a number
4 of dye-producing companies in India. For the most part
5 they're devoted to the textile industry.

6 We discovered last night and I'll ask Roha to
7 correct me if I'm wrong, but that actually allura red as we
8 know it is not permitted for sale in food products in India
9 at all. So that the extent allura red is used in India,
10 which if you look at the questionnaire responses you'll see
11 that there are very limited sales in the home market. But
12 to the extent they are made it's for the pharmaceutical
13 industry and not for the food industry at all.

14 MR. TIMBERLAKE: One further question for you, Mr.
15 Tibrewala. Under what HTS number does your firm import
16 allura red?

17 MR. TIBREWALA: I will need to check that. I'm
18 not sure.

19 MR. TIMBERLAKE: You can provide that in your
20 post-conference brief.

21 MS. LEVINSON: Mr. Timberlake, it's interesting
22 that you raise that issue. I believe, and I'll check this
23 and I'll submit it in my post-hearing brief, but I think
24 Petitioners correctly identified the HTS number in the
25 petition. It is a basket category which it comes in.

1 But interestingly enough I think, and we'll give
2 you much more detail about this in our brief, but they have
3 mischaracterized the export category from India. They have
4 relied in part on that export category to estimate volumes
5 coming into the United States and in fact they're way off.
6 We'll give you more details for that in the brief.

7 MR. TIMBERLAKE: Very good, thank you.

8 That concludes my questions.

9 MR. CARPENTER: Mr. DeWinter?

10 MR. DeWINTER: Good morning and thank you for
11 coming today.

12 This is a question for Mr. Tibrewala and Mr.
13 Trivedi. If portions of the question have confidential
14 information if you would answer these questions in your
15 post-conference brief I'd appreciate it.

16 This goes to the qualification process that you've
17 been talking about. With respect to the tier one
18 purchasers, have either of your companies asked to be
19 qualified, one? Number two, if so are you now qualified?
20 And if you are qualified, which companies are you qualified
21 to supply?

22 MR. TIBREWALA: On behalf of Roha we will answer
23 this question in the briefing that we submit to the
24 Commission.

25 MR. DeWINTER: Thank you.

1 MR. TRIVEDI: Same here. We will answer that in
2 post-hearing.

3 MR. DeWINTER: Thank you.

4 One additional point to that question, are you
5 currently selling to any tier one purchasers?

6 MR. TIBREWALA: We will include that with the
7 names in our post-hearing brief.

8 MR. DeWINTER: My second question goes to the on-
9 line bidding process. If you could explain that a little
10 bit.

11 Are there any tier one purchasers participating in
12 this on-line bidding process? Or is this strictly tier two
13 or tier three purchasers?

14 MR. TIBREWALA: This process significantly started
15 with the tier one customers because it made sense, and how
16 it has gone on to tier two also. We are seeing some
17 instances where the tier two customers are following. But
18 we are, if not required, we don't want to participate in
19 this kind of --

20 MR. DeWINTER: In the process who initiates this
21 then? You mentioned that some purchasers will go on-line
22 and say this is what we need. Have you seen any suppliers
23 that go on-line and say this is what we have?

24 MR. TIBREWALA: This is always RFP is the word
25 they use, that is request for procurement which is initiated

1 by the buyer. Usually this is in consultation or
2 coordination with a technical company or a software company
3 who developed the software for the buyer, and the buyers use
4 this software not for buying colors only. They use the
5 software for buying all of their ingredients and color is
6 just one part of that. So it is always initiated by the
7 buyer.

8 MR. DeWINTER: And the identities of the buyers,
9 of the parties are always kept confidential. No one knows
10 who is participating. You can watch the bidding, but you
11 don't know who it is.

12 MR. TIBREWALA: Yeah, this participation is only
13 by invitation so if I am not invited by the buyer I cannot
14 participate. And yes, we do not know who is the other party
15 bidding. We just see the prices bid by the other parties
16 and we know our status, whether my price is the best or I am
17 not the best. That is all that the screen shows us.

18 MR. DeWINTER: Okay.

19 I do have a follow-up question for your post-
20 conference brief to that first question.

21 If you have been qualified have you also been
22 disqualified? Does this go both ways?

23 MR. TIBREWALA: We will respond that to our post-
24 hearing brief.

25 MR. DeWINTER: Thank you. I have no further

1 questions right now.

2 MR. CARPENTER: Mr. Thomsen?

3 MR. THOMSEN: Actually, building on Mr. DeWinter's
4 question, I would like to know if you are trying to qualify
5 at the tier one where are you in the qualification process.
6 Not just whether you have been qualified yet or not.

7 MR. TIBREWALA: We will address that in our post-
8 hearing brief.

9 MR. THOMSEN: Also for Mr. Trivedi, right?

10 MR. TRIVEDI: Yeah, I can also address that in
11 post-hearing brief. But yes, I can tell you that we have,
12 our samples have been approved, a tier one company.

13 MR. THOMSEN: So when you say your samples have
14 been approved, what would be the next step in a
15 qualification process?

16 MR. TRIVEDI: There could be all the other
17 elements that will come in in terms of service, price, you
18 know, because being a multinational company they expect
19 drop-off points in various countries, and our capabilities
20 in those countries to have warehouses, whatever we have
21 currently and all that. So all those are part and parcel of
22 the decision.

23 MR. TIBREWALA: If I am permitted could I answer
24 my, answer this question?

25 MR. THOMSEN: Please do.

1 MR. TIBREWALA: Usually the approval process or
2 any, when we are approaching a new customer the price is the
3 last consideration. If I approach a buyer he doesn't even
4 talk to me like, he will just say okay, give me your bid.
5 We give him a bid. He doesn't even evaluate whether it is
6 that part of it what he is buying right now or not. He will
7 direct us to the R&D. R&D, the research and development is
8 the person. If he says okay, I have time, he will evaluate
9 the samples. If he does not have time he will not evaluate
10 the samples. Even though I tell him okay, I can save you 50
11 percent or 20 percent on your buy, that does not work.

12 The approval process starts from R&D and then it
13 goes on and ends at the plant approval which most of the
14 tier one customers have to approve our plants. Our plants
15 actually get audited by them. People from their plant or an
16 organization go into our plant, approve our plant.

17 In just one single case where we have been
18 supplying to a tier one customer that went through our
19 products were tested in their final products. They went
20 and audited our plant. They found our plant to be as per
21 their requirements. And then only we start doing business
22 with them.

23 So the time duration between the time -- And this
24 regardless on this one instance where we said that we were
25 the only bidders and no one else bid for their business, so

1 it was an attempt by Roha to be recognized that yeah, we are
2 still interested in the business, and apparently there was
3 no one who is interested they just award that thing at the
4 opening so we did not deteriorate the pricing or anything at
5 that instance.

6 The time between that bid ended and the time when
7 we first started making a sale to them, even though our
8 pricing was approved, even though we had got the contract it
9 was a duration of two or three months before we actually
10 sold anything to them.

11 MR. THOMSEN: Okay.

12 If I may change gears a little bit toward the on-
13 line bidding process, how many on-line auctions have you
14 participated in, won, et cetera? If it's business
15 confidential please answer in your post-hearing brief. But
16 if you want to, please go ahead.

17 MR. TIBREWALA: This question has been answered by
18 us in great detail in our response to the questionnaire. I
19 would request the Commission to please refer to that answer
20 of ours.

21 MR. THOMSEN: Okay.

22 And when you're talking about your distributors
23 for both Alps and for Roha, Roha said you had noted that you
24 have two distributors. Are there redistributors that they
25 then sell to that may have been participating in these on-

1 line auctions?

2 MR. TIBREWALA: For all the distributors that we
3 appoint, before we appoint them we ask them to give us their
4 customer list so that there is no conflict of anyone else
5 calling on those customers, and we make sure that in their
6 customer list there is no redistributor. So we only work
7 with direct customers through our distributors.

8 MR. THOMSEN: Mr. Trivedi?

9 MR. TRIVEDI: We basically follow the same
10 policies.

11 MR. THOMSEN: I believe Mr. Tibrewala and Mr.
12 Schaefer had noted that Roha (USA) did not begin selling
13 until 1999. That being the U.S. entity, Roha (USA), did
14 Roha Dyechem in India export to the United States before
15 that time?

16 MS. LEVINSON: Excuse me, Mr. Thomsen, I just want
17 to say that they did not begin selling in 1999.

18 MR. THOMSEN: They began selling in 2000.

19 MS. LEVINSON: 2000.

20 MR. THOMSEN: In 2000, but they opened up their
21 operations.

22 MS. LEVINSON: Correct, and they imported in 1999.

23 MR. THOMSEN: Correct.

24 MR. TIBREWALA: Before Roha (USA) was established
25 in the U.S. we were selling very very small quantities into

1 the U.S., but U.S. was never the prime focus of Roha
2 Dyechem. That's the reason that we did not establish an
3 office over here.

4 We had a distributor over here who would import as
5 and when he would require the product and he would buy it
6 from us. So we actually never, Roha Dyechem did do some
7 things over here, but it was, I can't even quantify that and
8 I can't even value that because it was very very small.

9 MR. THOMSEN: In your post-conference brief might
10 you be able to give us an idea of how much it is?

11 MR. TIBREWALA: We can do that. We will do that
12 in our post-conference brief.

13 MR. THOMSEN: Okay. -- Dyechem business in the
14 United States?

15 MR. TIBREWALA: For any distributor or
16 manufacturer of food colors the ratio of allura red or any
17 other color would probably be in the same ratio that that
18 color is used in the country. To get the exact figure or a
19 similar figure we could compare the quantities of different
20 colors certified by FDA which has been provided to the
21 Commission as an exhibit to the petition and we could also
22 give you the exact figures from the FDA web site and from
23 our own sales in our post-hearing brief.

24 MR. THOMSEN: I'm just trying to figure out if
25 there's a definite advantage from one company to another,

1 whether one specializes in one color or another.

2 MR. TIBREWALA: No.

3 MR. THOMSEN: I guess I have one other question
4 and this goes to your SpheroClean product. This would be
5 good for post-conference brief, but how much of your sales
6 are in the different forms, are SpheroClean versus granule
7 versus the other kind? And also if Petitioners wanted to
8 answer this question themselves that would also be helpful.

9 MR. TIBREWALA: We will address this in the post-
10 conference brief.

11 MR. THOMSEN: Thank you. I have no further
12 questions.

13 MR. CARPENTER: Mr. Wanser?

14 MR. WANSER: The Allura red is an acid dye that
15 could conceivably be used in other markets like maybe
16 textiles or leather or something. Are you aware of any
17 other markets in which it is sold and maybe that would
18 affect the trade data?

19 MR. TIBREWALA: I am not aware.

20 MR. SCHAEFER: Allura red is a product that was
21 invented in the U.S. market, developed by Buffalo Color
22 specifically because all of the other reds are used
23 worldwide and are approved by the other world areas in other
24 countries. All of those colors are not permitted, they did
25 not survive the FDA toxicology testing back in the '60s and

1 '70s. So as a result this product was developed.

2 It is an inferior red, even for food color use.
3 It's known to colorists as a dirty red. It doesn't have a
4 good vibrant hue. It is also, the food colors, because of
5 their nature they are unstable dyes which is what makes them
6 good food colors because our bodies are able to decompose
7 them without any harm. That automatically almost renders
8 all of the dyes except one, except for two, virtually
9 useless for technical uses. Allura red is not used to our
10 knowledge, we would concur with Petitioner, it's not useable
11 anywhere else.

12 MR. WANSER: It was developed for food and drug --

13 MR. SCHAEFER: Yes.

14 MR. WANSER: Thank you.

15 MR. CARPENTER: Mr. McClure?

16 MR. McCLURE: With respect to what you ship from
17 India to your markets in other countries is the implication
18 there that they are of a lesser quality and would not meet
19 the FDA standard? Am I understanding that? And obviously
20 what you have shipped in here and then subsequently exported
21 to Mexico, I assume that came in here with the possibility
22 it was going to enter the U.S. market as opposed to the
23 Mexican. So where did they land in terms of their
24 standards?

25 MR. TIBREWALA: Usually when we manufacture any

1 particular product it meets all the global requirements
2 because they are very similar except for one or two chemical
3 characteristics which are different from a country to the
4 others. But FDA is the most stringent qualification or test
5 that the product has to pass.

6 In order for us to sell anything into the U.S. or
7 in order for Roha Dychem to ship anything into Roha (USA)
8 they have to run a series of different tests to make sure
9 that that product complies with the FDA regulations.
10 Because every batch sample goes into FDA for testing.

11 In that scenario our lab confirms that, and as far
12 as the other countries are concerned, there is no FDA-like
13 authority who is evaluating the product so we feel more
14 comfortable in shipping the product over there.

15 Once a product is approved by FDA or is FDA
16 approvable quality, it can be shipped anywhere in the world.
17 So that is why I say that -- If I have the material in the
18 U.S. I could ship it out to Mexico, but if my company would
19 ship material directly to Mexico I could not get it in the
20 U.S. because they have not tested it for the FDA status.

21 MR. McCLURE: Thank you.

22 MR. CARPENTER: Mr. Tibrewala, I believe it was
23 you who mentioned that FDA approval makes sales in the
24 United States more difficult. Could you explain what you
25 meant by that? How does it make sales more difficult? Is

1 it the time period that's required for approval or the
2 difficulty in meeting the approval?

3 MR. TIBREWALA: I don't recall saying that FDA
4 approval makes it difficult. If I did it was in error.
5 What I meant was that the general approval by the buyer
6 makes it difficult for us to start selling in the U.S.

7 MR. CARPENTER: Okay.

8 MR. TIBREWALA: The approval process of the buyer,
9 not FDA specifically.

10 MR. SCHAEFER: Mr. Carpenter, if I may, there is a
11 barrier to entry that is the subject that you're addressing
12 there in that the FDA, the technology that's used by the FDA
13 and the standards that are established are somewhat
14 ambiguous. There's a particular method that's called the
15 HPLC -- High Pressure Liquid Chromatography -- against which
16 you have to have your product analyzed and meet a specified
17 curve. If you have not been through that process before
18 and worked with FDA and have copies of the curve and know
19 their exact procedures and preparation, procedures for
20 preparation of the samples, the odds that you will meet
21 those requirements stringently the first few times you do it
22 are pretty low.

23 It's not insurmountable. Any country that's
24 technically developed at all that has a university in it
25 will be able to eventually figure this out, but it is

1 another one of these barriers that it takes several months
2 to get through this and get it to a routine point where you
3 are analyzing and generating the same results that FDA does.
4 You want to calibrate your results so that it's green with
5 FDA. So when you test it and it passes your test, you
6 submit it to FDA because you pay the fee to FDA whether or
7 not you pass. When they do the analysis you get charged the
8 fee so you want to make sure before it goes that you are
9 submitting samples that will pass.

10 That process takes six months to a year for a
11 typical competitor coming into the country.

12 MR. CARPENTER: Once you pass that period and
13 you're making routine sales in the United States, how long
14 is the FDA process typically, for a particular batch?

15 MR. SCHAEFER: It's the same as it is for the U.S.
16 competitor, about two weeks.

17 MR. CARPENTER: Okay.

18 How common is it to have your material rejected
19 and if it is rejected what happens? Do you just submit a
20 new batch? Do you have to destroy that batch? How does
21 that work?

22 MR. SCHAEFER: Typically if it's rejected for a
23 U.S. manufacturer they would simply rework it, purify it
24 through part of their production process. For us, not
25 having any manufacturing facilities right now, we would have

1 to ship it back to India or depending upon why it didn't
2 pass, it may meet other world -- The FDA's restrictions, the
3 actual technical qualifications are not necessarily tighter
4 than other parts of the world compared to Europe, for
5 instance. They're just slightly different. What doesn't
6 pass here may pass in the European community. We might ship
7 it there or we would send it back to India.

8 We have had very very few rejections. We did have
9 a series of rejections a few years ago simply because of the
10 samples that we had submitted had been contaminated
11 inadvertently during the process and we resampled all of the
12 product.

13 So we have not had significant rejections.

14 MR. CARPENTER: Thank you. That's very helpful.

15 I'd like to ask a couple more questions on the
16 internet bidding.

17 Mr. Tibrewala, I believe you were making the point
18 that your company was never the first to enter a bid. I'm
19 not sure what the significance of that is. Can you explain
20 what you meant by that?

21 MR. TIBREWALA: When a bid package comes out there
22 is always a feeling prior to just published that okay, if
23 you have to bid you have to bid but be below that particular
24 bid. And we always wait to see a situation where what if
25 nobody bids? What is going to be the result? Because we

1 want to go away with this whole process. We don't want to
2 participate in this whole process. You want to see is anyone
3 else interested, or if it is extremely important for us to
4 participate in that bid in order to get qualification.

5 Considering all of those facts we put in our bid
6 in that process. Usually the bids last for 30 minutes
7 duration. You don't have to bid right when it starts. You
8 can bid at the 29th minute also. So we just wait and see
9 how the market moves before we participate into that.

10 MR. CARPENTER: Did I understand you to say that
11 you might have the lowest bid but you still might not win
12 the sale because your product may not be qualified with that
13 particular customer?

14 MR. TIBREWALA: Yes, this is a possibility when a
15 customer -- Now we are only selling FDNC colors. That is
16 the synthetic colors. There is another group which is
17 called the natural colors which Roha is not manufacturing.

18 So when a company is bidding out the entire
19 package -- the bid may be separate. Like he is bidding
20 differently for natural colors and differently for FDNC
21 colors. Even though if I give him a better pricing for FDNC
22 colors, he would not or he may not give the business to me
23 saying that I would want to buy all my colors from one
24 single vendor.

25 MR. CARPENTER: So the bid may be for more than

1 just allura red, it could be for a variety of products.

2 MR. TIBREWALA: Usually the bid is not only for
3 allura, it is for the entire package of synthetic colors
4 that the buyer is using.

5 My point is apart from synthetic colors there is
6 another group of colors which is called natural colors which
7 is derived from the natural sources like extracts of fruits
8 or insects or whatever the natural source may be and Roha
9 does not carry that line of business.

10 So if a company is using natural as well as
11 synthetic colors even though we may go ahead and bid good on
12 synthetic colors they would not want to have two suppliers
13 for the colors because there are other people, example
14 Sensient, who has the entire range. They carry the natural
15 and the synthetic colors so they would definitely prefer
16 Sensient or other domestic manufacturers over Roha.

17 So we have a better chance only with the customers
18 who use this particular group of colors.

19 MR. CARPENTER: One other statement I was trying
20 to reconcile. I believe you said at one point that the bids
21 were by invitation only. If that's the case, why would a
22 customer invite a supplier to bid if they had not been pre-
23 qualified? Are we talking about different customers here
24 or --

25 MR. TIBREWALA: That is a very good question and

1 that is a question that we always have had in our mind and
2 we have always pushed the buyers to qualify us before they
3 invite us for a bid. Because in all these bids there is a
4 catch. They always have two tiers. They say okay, this is
5 one tier where if you are approved supplier you start at an
6 X amount. Then they put a tier like X minus whatever. So
7 if you are not approved you start at this point.

8 We never want to start at this point because we
9 always want to get ourselves approved so that we don't have
10 that disadvantage. But that is, again, I don't know why the
11 buyers do that and we don't support that and we don't favor
12 it.

13 MR. SCHAEFER: If I may again, Mr. Carpenter. The
14 reason that they domestic industry would do that, the
15 justification that they give or have given in one of the
16 cases that I witnessed was that if you're at a price of X,
17 that's the existing, prevailing price from a domestic
18 producer, and you are approved, there is, as I talked about,
19 there is an approval process that you have to go through to
20 enter these industries. You have to be evaluated, they have
21 to run production quantities, they have to go through the
22 lab time and this is an expensive part of their
23 organization. There is a cost to doing that to the
24 customer.

25 In these computer bidding situations what they

1 typically do, in the one case that I'm speaking of it was
2 specifically stated that way, is the existing producers were
3 allowed to start at this point to be a new entrant, even if
4 your product they thought would be approved, you had to
5 start at a lower level. They would not consider a bid above
6 a lower level. That difference being the cost of the
7 approval. So if they weren't going to recover that cost
8 they were not willing to consider a new supplier.

9 That is not always the case. It is sometimes, of
10 course.

11 MR. CARPENTER: Thank you. That's helpful.

12 MR. TIBREWALA: And that is not only for Roha or
13 any other company, that is for anyone who is not an approved
14 supplier with that buyer.

15 MR. CARPENTER: Mr. Tibrewala, just one other
16 question. You mentioned a couple of times I think that you
17 do not like to participate in these internet auctions.
18 Could you elaborate on that?

19 MR. TIBREWALA: The bottom line of -- We all know
20 that these internet auctions were already at below rate
21 pricing because you know who is your competitor bidding and
22 that's what's happening. We have tried to avoid this. We
23 have tried to speak with the buyers to avoid this situation.
24 But if it does not work out then we have left with no
25 options, as I said, because we are not an existing supplier

1 to them. So we have to follow it, we have to accept
2 whatever the buyer wants us to do.

3 MR. SCHAEFER: In the first situation, Mr.
4 Carpenter, in 2001 was the first such instance in which we
5 participated. We were contacted by the customer. We did
6 not go to them, they found us and called us on the phone,
7 offered to send us the software that was necessary to
8 install on our system to participate in this bid. I
9 resisted that for several weeks and in fact we only hastily
10 installed the software literally the evening before the next
11 morning in which the bidding took place.

12 I had also pointed out to the party that we were
13 not, we were prevented because of patent restrictions and
14 other things from bidding on part of the basket that they
15 wanted us to look at. I made the plea that being the new
16 incumbent we had no idea what we were doing in that
17 situation because we didn't know them as a customer, we were
18 not yet approved. They simply basically held a gun to our
19 heads and said if you don't participate in this, we're just
20 not ever going to consider you period.

21 In that situation I waited because I had heard
22 that there were other producers, that some of the other
23 potential players were resisting as well. That encouraged
24 me and I tried to hold back.

25 The day before I was told point blank by the

1 company running the internet bidding that the two domestic
2 suppliers were participating and that we would be left out
3 in the cold if we did not.

4 But that first time I went into that kicking and
5 screaming trying to avoid it, and I had no choice. In fact
6 it was my vote not to participate and we kind of discussed
7 it as a group and decided that we would just because we had
8 to learn, had to find out what was going on.

9 MR. CARPENTER: Are distributors ever invited to
10 participate in these internet auctions? And if so, would
11 you know whether one of your distributors might be competing
12 against you?

13 MR. TIBREWALA: As I said earlier, we do not know
14 who are the invitees for this auction because we just know
15 that we have been invited or we have not been invited.

16 MR. CARPENTER: Okay. Thank you.

17 That concludes the questions for this panel.

18 Thank you very much.

19 Mr. Wanser?

20 MR. WANSER: Sorry, just one thing.

21 Are you aware, or in your post-hearing brief could
22 you give the percentage difference between a certified and
23 non-certified supplier? And would a decertified supplier be
24 aware just by the difference in price, the percentage bid,
25 whether it was an uncertified supplier?

1 MR. TIBREWALA: We can get that figure for the
2 instances that we have. We'll dig up our data and see if we
3 can get you some figures on that.

4 MR. WANSER: Thank you.

5 MR. CARPENTER: Thank you again for your
6 participation this morning and for your helpful responses to
7 the questions.

8 We'll take a five minute recess and then each side
9 will be given ten minutes for rebuttal and closing
10 statements beginning with the Petitioners. Thank you.

11 (Whereupon, a brief recess was taken)

12 MR. CARPENTER: Please start when you are ready.

13 MR. KEVIN O'BRIEN: Thank you Mr. Director.

14 Let me start just by correcting a mistake of one
15 of our witnesses. The first on-line bid that we are aware
16 of occurred in May of 2001. We might have said it was 2000
17 during the previous testimony. Let the record be clear that
18 it was 2001.

19 We're not going to address all of the
20 misstatements of inaccuracies in the Respondents' testimony,
21 we'll leave that for our post-hearing brief but I do want to
22 highlight some of the points.

23 First of all on the volume and value data, the
24 Respondents are correct, the data is peculiar. There are
25 very good reasons for that. We will detail that in our

1 post-hearing brief, but I think the Commission should be
2 well aware that the data that has been submitted requires
3 very very close scrutiny.

4 In any case, as has been explained during our
5 testimony the shadow cast by the market share of these
6 Respondents is much longer than the actual market share
7 itself.

8 Roha made the point that it brought product in in
9 1999 and then did not sell it for a 12 month period. If we
10 assume that to be true what were they doing during that 12
11 month period? We all know what they were doing. They were
12 going around to customer after customer, lowering and
13 lowering and lowering the price offerings until they could
14 get it down to a point where they could get their foot in
15 the door. They were destroying the pricing structure in the
16 market all during the year 2000 while they made their first
17 sale. That price destruction has simply accelerated.

18 Roha also made the point, and I believe the
19 Commission caught this, that they in fact did import before
20 1999 but under another company name. That is also an issue
21 in this case and in any event it would be useful to know how
22 much product they did bring in in 1999. We've heard, and I
23 believe it's undisputed, there is a considerable shelf life
24 to this product.

25 With respect to the prices in other markets, our

1 general understanding is that the pricing for example in
2 Europe is lower than the U.S. pricing. We will try to get
3 specific information on it, but the notion that they're not
4 selling in the U.S. because the prices are too low is
5 absurd. It simply is an absurd comment. They themselves
6 have done more to lower the price in the U.S. than any other
7 company.

8 On the issue of Monarch. I believe it's
9 undisputed that Roha was talking to Monarch in mid 1999.
10 Monarch decided to exit the business. We believe that part
11 of Monarch's decision to leave the business was that they
12 knew they could not compete with Roha's low prices.

13 The reference to the press release that was made
14 when Sensient or Warner Jenkinson purchased the Monarch
15 facilities is exactly correct. We were optimistic.
16 Sensient did want the equipment. Sensient did want to bring
17 the equipment on-line and wanted to move to the form, the
18 higher form of the product that was covered by the Monarch
19 facilities.

20 The essential point here is that we couldn't do
21 it. The equipment was running at Monarch, it was purchased,
22 and it has never been ramped up anywhere near its capacity.
23 That is the point.

24 To go to an earlier point, it is not as if some
25 new capacity was built in the U.S. Monarch had been

1 producing since the early '90s. That capacity existed.
2 There wasn't any price erosion or price destruction before
3 the Indian suppliers entered the market. So it was not the
4 case of additional capacity being delivered into the U.S.
5 market. It simply moved from Monarch to Sensient and we
6 were unable to realize our investment because the pricing
7 deteriorated. Those are the essential points for the
8 Commission.

9 Mr. Schaefer tried to blame the price erosion on
10 Pointing, a company in the UK which shipped to the U.S.
11 apparently in the second half of the 1990s. I believe the
12 Commission should focus on the fact that nobody is
13 contending pointing is still selling to the U.S. or even
14 sold during the POI, or as far as we know even before the
15 POI. Where is that price erosion that's occurring right now
16 to be attributed? Where is the price erosion that's
17 undisputable that has occurred in 2001, 2002, and 2003?
18 They cannot point their finger at Pointing. Pointing is not
19 here. Even if it were true, a fact which we dispute in any
20 event, the price erosion is due to the Indian suppliers.

21 The on-line bidding, I'm glad that you asked
22 several questions because the Commission would have to look
23 long and hard to see a more crass example of price
24 sensitivity.

25 To get the full context you have 30 minutes to bid

1 for a 12 month contract. The contract will be awarded on
2 price. Thirty minutes for a 12 month contract at a major
3 customer. No other criteria except the interesting criteria
4 which they said which is if you're not approved you have to
5 start out at a lower point anyway. There simply could not
6 be a more glaring example of price sensitivity driving,
7 indeed controlling the award.

8 The Roha representative we believe is simply wrong
9 when he says the only on-line bid that Roha received was an
10 event where they were the only one bidding. We've
11 documented that in the questionnaire response, we'll address
12 it in the brief.

13 To the extent that experience is true, he's
14 talking about another on-line bid which may have occurred
15 not to our knowledge, but certainly we have first-hand
16 knowledge that Roha was actively participating, repeatedly
17 bidding, and was awarded the contract.

18 The argument that they weren't the first one to
19 bid is absolutely absurd. It doesn't matter who the first
20 one is, what matters is who's driving the price down and
21 indeed who was the last one to bid is a fairly relevant
22 item, too.

23 On the issue of you can't tell who is doing the
24 business, again the Roha representative is simply wrong. We
25 know who's doing the business. We know which suppliers are

1 involved, our customers inform us. There's no mystery to
2 it.

3 The Roha witness I believe also said that they
4 couldn't bring product in from Mexico because it was not
5 certified. That's not true and it is an important point.

6 You can bring product into the U.S. that is
7 certifiable. You simply can't sell it to a U.S. customer
8 before it is certified. It can sit in inventory
9 indefinitely in certifiable form, in full compliance with
10 U.S. law.

11 Mr. Schaefer said he left Roha sometime in 2001
12 which may explain why he simply is not familiar with the
13 price erosion that's occurred in 2002 and in early 2003.
14 But one point that he did make is right, that if you are not
15 approved at a tier one customer you have got to offer a
16 lower price. The notion that the Neelikon witness was
17 trying to argue that you give samples to a tier one customer
18 and then the selection process is driven from R&D is
19 absolutely ludicrous. Unless the tier one customer has a
20 motive to go through the substantial cost of testing the
21 samples, they simply are not going to do it. You have to
22 come in with a lower offer right off the bat or your product
23 is simply not going to get tested.

24 The next point on the different forms of the
25 product. I do hope the Commission staff understands the

1 inconsistency that Roha apparently can try and get premiums
2 on its SpheroClean product and at times does get premiums
3 according to their testimony, however Sensient was
4 completely unrealistic in thinking they could get a premium
5 on their Dustmaster product. Now that's just simply, that's
6 simply just utterly inconsistent.

7 The fact of the matter is that if price was not
8 deriving these purchases you could legitimately charge a
9 premium for forms of the product that are easier to use. A
10 non-price factor would have some effect. But the prices
11 have deteriorated to the point where the non-price factors
12 have no play.

13 Finally, my final point is on the issue of the
14 distributors. There's a lot to be said on that issue.

15 Our distributors certainly can clarify the facts
16 for the Commission. Whether Roha has two lawfully appointed
17 distributors and numerous other functionaries that are out
18 there peddling its product, we don't know. But the fact of
19 the matter is that our distributors meet up with numerous
20 Roha distributors competing against one another for price.

21 And the other issue which wasn't really addressed
22 head on is Roha has been trying to take our distributors way
23 from us. They do not dispute that, apparently. Indeed,
24 Neelikon has been trying to take our distributors away from
25 us. That fact stands un rebutted on the record.

1 That completes our rebuttal.

2 MR. CARPENTER: Thank you.

3 (Pause)

4 MS. LEVINSON: In considering the merit of this
5 petition I ask the staff to consider the fact that FDA
6 certifies 4.5 million pounds of allura red every year. We
7 don't want to disclose any confidential information but if
8 you look at the questionnaire, Roha has never sold more than
9 100,000 pounds out of 4.5 million. That market share I
10 think we count it at about between one and two percent. And
11 yet the Petitioners are here complaining when they are the
12 dominant supplier in the market and by their own admission
13 could supply the entire market except for the fact that they
14 keep acquiring companies and increasing their own capacity.

15 I just was perplexed at why a company that is not
16 utilizing its entire capacity as Mr. Schaefer testified to
17 when he was working at WMJ back in 1997 or 1993, why does
18 this company keep acquiring capacity? And what's happening
19 to that capacity? Is it in fact that capacity that is
20 causing prices to come down?

21 Ask the same question about the internet. A
22 dominant supplier by Sensient. Why doesn't it put a stop to
23 the internet bids? Why is it participating in these
24 internet bids? Roha explained why it's participating in the
25 internet bids. Mr. O'Brien doesn't counter. They seem to

1 know all about the internet bids. They seem to be there,
2 they seem to be talking to their customers. Why? If it's
3 designed to bring down price, why?

4 You heard Mr. Schaefer describe in some detail the
5 erosion that the market has suffered. Mr. O'Brien asked
6 during that year in which Roha had product and inventory,
7 what was it doing? Was it going around lowering its price?

8 First of all, I submit that if that were the
9 intention it wouldn't have taken a year. You can lower your
10 price -- qualifying may take several months. Lowering your
11 price doesn't take a year. And because this is a factual
12 matter to which the industry representatives are much better
13 informed than I am, I'm going to ask Mr. Schaefer to
14 describe what happened during that year and why did you
15 finally get your first sale?

16 MR. SCHAEFER: During the first year that we were
17 officially here in the U.S., the year 2000, we were calling
18 certainly on customers. We were looking at how to approach
19 the market. We were establishing relationships with agents,
20 we were searching for them. We did make some calls on
21 customers as early as October of 1999. However, we were at
22 that point running into two, well really one severe problem.
23 We were an unknown in this marketplace. Some people had
24 heard of us but there is a natural bias or used to exist in
25 the U.S. market against the Indian producers as substandard

1 quality. That image was very vocally and actively
2 perpetuated by the Warner Jenkinson sales force. We had
3 many reports of that as customers came to us.

4 We fought through that. The FDA was alerted to
5 our presence and I believe, I cannot state this as a fact, I
6 can only testify to the outcome. But the FDA suddenly did
7 take a great deal of interest in Roha. We were subject to
8 the typical FDA surprise visits. They found our records to
9 be in order. All of our accounting, all of the accounting
10 for all of the product that was there. What we had sold,
11 what had certified, what we had in inventory. What we had
12 used internally to make other products. All of that met
13 their satisfaction.

14 They then turned their attention to India and by
15 the same token they were there, and to use an old adage, we
16 passed with flying colors. There was no problem with that.

17 As that took place there were several of the major
18 producers that were paying attention to us. Having had that
19 assurance that FDA found us to be in order, and then a few
20 of them beginning to look at us, having us inspected by
21 their overseas or even in some cases U.S. operations, they
22 found us to be a compliant manufacturer.

23 When we finally did achieve some sales, it really
24 began to take place when we began to talk about the product
25 that we were developing for the market. Originally we had a

1 granular that was the old-fashioned granular that was not a
2 very good product. When we brought the Spheroclean to
3 market that began to generate some interest. We probably
4 sold a few 25-pound boxes earlier than, before December of
5 2000. Literally that small. But it was not until the fall
6 of that year that we had any significant sales and our first
7 customers really came because of the interest that was
8 generated over our Dustfree product.

9 MS. LEVINSON: Mr. Tibrewala, do you want to add
10 something to that?

11 MR. TIBREWALA: I would just take two points at
12 this time. This talk about Pointing and the Petitioners
13 said that why are we talking about Pointing now, they do not
14 exist. Well, it is a very important point that needs to be
15 considered by the Commission that because if Pointing would
16 not have been acquired by them they would be sitting in this
17 room but against Sensient.

18 If the Petitioners can give one concrete example
19 of a competition that came in the U.S. and has succeeded and
20 has not been acquired we would say that we have, it should
21 not be considered. But the only fact that we did not get
22 acquired or we are giving competition to them is the only
23 reason that we are the only one in the whole history of
24 whatever years they have been in business that we are
25 sitting in this room defending ourselves against them is

1 because we are not for acquisition.

2 The other point that they said is whenever they
3 receive an invitation or a response for procurement on the
4 on-line bidding their buyer tells them who the other bidders
5 are. Well if that is the situation that is only because of
6 their relationship with the buyer. We at the other end, who
7 do not have relationship with the buyer, do not know who the
8 other participant in the bid is. That is another unfair
9 situation which will have faces on each and every customer.
10 We don't know all the -- We don't know anything that is
11 happening or that the domestic people are doing, but the
12 domestic buyers, because of their long-lasting
13 relationships, are able to get what we call them, they are
14 able to get what we are talking to them because of their
15 relationships.

16 And then I don't know. If they have such a good
17 relationship with the buyers why can't they put a stop to
18 it? Why can't they convince them not to buy from Roha?

19 This is one unfair situation which we have come
20 across every time where buyers share all our information
21 with them but they do not share even one percent of
22 information with us. So we don't have figures, we don't
23 have facts to put in front of the Commission as to what's
24 happening in the market. And this is a proof which they
25 have accepted, that the buyer tells them who the other

1 participant is on the on-line bidding and they don't tell
2 us.

3 I pick this point right now because I have a bid
4 of proving my point. I didn't put this earlier because I
5 had no evidence of proving it earlier to the Commission that
6 there is an unfair play against Roha in this country.

7 MS. LEVINSON: Finally we'd like to put to rest
8 the allegation that somehow Roha is soliciting Sensient's
9 distributors. Mr. O'Brien is wrong when he says it's
10 un rebutted. It is very much rebutted.

11 Mr. Schaefer, have you ever solicited their
12 distributors?

13 MR. SCHAEFER: In one case early on I did strike
14 up a conversation, I truthfully do not remember who
15 initiated it, with a distributor of color in the market.
16 Mr. Morris correctly asserted that Warner Jenkinson attempts
17 in its appointment of distributors to make those
18 relationships exclusive. They all resist, some of them
19 successfully and vehemently. The one distributor I talked to
20 I have personal knowledge bought from anybody and everybody
21 that was in the market in previous years.

22 I had approached them, but we never did any
23 business with them because I could not get close enough to
24 them. I did not trust them to not erode the price by taking
25 the price back to Warner Jenkinson and then reporting us

1 where it had eroded and try to get us to quote lower. I
2 wasn't going to play that game and we walked away.

3 They pursued us for several months afterwards,
4 made several visits to St. Louis to look at our facilities
5 and talk to us about it. I won't say several, but two or
6 three, multiple visits. We did not do business with them.

7 As Roha testified before, we have not solicited
8 any other distributors and in fact have a strategic reason
9 not to. In a market like this where we're the new entrant
10 trying to get approvals, it does not lend itself to giving
11 that task to someone who is not committed to your business,
12 who has other business interests in the other lines he also
13 represents. He just isn't going to focus the energy that's
14 needed to get that approval process done in the first place.

15 In the second place -- eight percent commissions
16 to do business on a specialty commodity item like this where
17 the volumes are low and you have to have a fairly high
18 commission rate in order to make any money. The margins
19 simply don't support that kind of added expense and we have
20 no interest in pursuing distributors at this point.

21 The one distributor that we do have that is
22 actively working for us is a very high quality distributor
23 who sells value-added products, has a reputation for doing
24 so and has for multiple generations in the family of that
25 business. The business is dedicated to the food industry

1 and the President of the company is a personal friend of
2 mine. That's how the relationship started. They have never
3 distributed food colors before and that's the extent of that
4 relationship.

5 No other distributors exist in this country. The
6 agents we had who did not take title to the goods simply
7 represented us and did the work of a salesman for a
8 commission, save one, have all left. Again, because the
9 margins simply aren't there and they can't find progressive
10 enough pricing.

11 I think if you look at the information that we
12 provided to you in our disclosure you will see that there
13 are no customers there that would fall into this category.
14 I don't know how else to say it, but we're not chasing
15 distributors.

16 MR. CARPENTER: Thank you very much for those
17 comments.

18 Thank you to all participants today. We
19 appreciate your coming here and your testimony.

20 The deadline for both the submission of
21 corrections to the transcript and for briefs in the
22 investigation is March 28th. If briefs contain business
23 proprietary information a non-proprietary version is due on
24 March 31st.

25 The Commission has scheduled its vote on the

1 investigations for Thursday, April 17th at 11:00 a.m. and
2 will report its determination to the Secretary of Commerce
3 on April 18th. Commissioners' opinions will be transmitted
4 to Commerce a week later on April 25th.

5 This conference is adjourned.

6 (Whereupon, the hearing was adjourned at 12:57

7 p.m.)

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DOCKET NO.: 701-TA-433 and 731-TA-1029
CASE TITLE: Allura Red Coloring From India
HEARING DATE: March 25, 2003
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the

Date: March 25, 2003

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