

UNITED STATES  
INTERNATIONAL TRADE COMMISSION

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In the Matter of: )  
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POLYETHYLENE TEREPHTHALATE ) Investigation Nos.:  
FILM, SHEET, AND STRIP FROM ) 731-TA-1131-1134 (Final)  
BRAZIL, CHINA, THAILAND, AND )  
THE UNITED ARAB EMIRATES )

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Date: September 18, 2008

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 ARAB EMIRATES )

Thursday,  
 September 18, 2008

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

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

## APPEARANCES:

On Behalf of the International Trade Commission:Commissioners:

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 DANIEL R. PEARSON, VICE CHAIRMAN  
 DEANNA TANNER OKUN, COMMISSIONER  
 CHARLOTTE R. LANE, COMMISSIONER  
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APPEARANCES: (Cont'd.)

On Behalf of the International Trade Commission:

Staff:

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In Support of the Imposition of Antidumping Duties:

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Film, Inc., SKC, Inc. and Toray Plastics (America),  
Inc.:

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TODD ECKLES, Director of Sales, Toray Plastics  
(America), Inc.  
DENNIS TRICE, President and Chief Operations  
Officer, Mitsubishi Polyester Film, Inc.  
CARLTON WINN, Manager, Strategic Planning,  
Mitsubishi Polyester Film, Inc.  
DAVID KIM, Director, Business Development, SKC,  
Inc.  
  
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APPEARANCES: (Cont'd.)

In Opposition to the Imposition of Antidumping Duties:

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GARY MICHALKIEWICZ, Manager, Corporate Purchasing,  
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On Behalf of Flex Middle East FZE and Flex America,  
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Washington, D.C.

On Behalf of Terphane Ltda. and Terphane, Inc.:

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PETER KOENIG, Esquire  
ROBERT HERZSTEIN, Esquire  
JAMES ALTMAN, Esquire  
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Washington, D.C.

On Behalf of The China Plastics Processing Industries  
Association (BOPET Association):

DAVID J. CRAVEN, Esquire  
Riggle & Craven  
Chicago, Illinois

I N D E X

	PAGE
OPENING STATEMENT OF JOHN D. GREENWALD, ESQUIRE, WILMERHALE	7
OPENING STATEMENT OF PETER KOENIG, ESQUIRE, MILLER CHEVALIER	11
TESTIMONY OF JOHN D. GREENWALD, ESQUIRE, WILMERHALE	14
TESTIMONY OF DAVID KIM, DIRECTOR, BUSINESS DEVELOPMENT, SKC, INC.	15
TESTIMONY OF TODD ECKLES, DIRECTOR OF SALES, TORAY PLASTICS (AMERICA), INC.	24
TESTIMONY OF DENNIS TRICE, PRESIDENT AND CHIEF OPERATIONS OFFICER, MITSUBISHI POLYESTER FILM, INC.	29
TESTIMONY OF RONALD I. MELTZER, ESQUIRE, WILMERHALE	46
TESTIMONY OF RONALD KASSOFF, SALES AND OPERATIONS PLANNING MANAGER, DUPONT TEIJIN FILMS	51
TESTIMONY OF BRYAN L. FALK, STRATEGIC SOURCING MANAGER, PRINTPACK, INC.	162
TESTIMONY OF JEFFREY E. LAMMERS, VICE PRESIDENT, GLOBAL SOURCING, BEMIS	156
TESTIMONY OF GARY MICHALKIEWICZ, MANAGER, CORPORATE PURCHASING, BEMIS	223
TESTIMONY OF KEVIN M. O'BRIEN, ESQUIRE, BAKER & MCKENZIE, LLP	155
TESTIMONY OF PRADEEP TYLE, DIRECTOR, FLEX MIDDLE EAST FZE AND SENIOR VICE PRESIDENT, UFLEX, LTD.	146
TESTIMONY OF MARK P. LUNN, ESQUIRE, ARENT FOX, LLP	146

I N D E X

	PAGE
TESTIMONY OF DAN ROY, GENERAL MANAGER, TERPHANE, INC.	134
TESTIMONY OF PETER KOENIG, ESQUIRE, MILLER CHEVALIER	134
TESTIMONY OF DAVID J. CRAVEN, ESQUIRE, RIGGLE & CRAVEN	154
CLOSING STATEMENT OF JOHN D. GREENWALD, ESQUIRE, WILMERHALE	242
CLOSING STATEMENT OF KEVIN M. O'BRIEN, ESQUIRE, BAKER & MCKENZIE, LLP	249



1 that contain information you wish classified as  
2 business confidential your requests should comply with  
3 Commission Rule 201.6.

4 Madam Secretary, are there any preliminary  
5 matters?

6 MS. ABBOTT: Yes, Madam Chairman. With your  
7 permission we will add Carlton Winn, Manager,  
8 Strategic Planning, of Mitsubishi Polyester Film to  
9 Petitioners' panel.

10 CHAIRMAN ARANOFF: Very well. Then we are  
11 prepared to proceed with opening statements.

12 MS. ABBOTT: Yes, and all witnesses have  
13 been sworn for today's hearing.

14 (Witnesses sworn.)

15 MS. ABBOTT: Opening statement on behalf of  
16 Petitioners will be made by John D. Greenwald of  
17 WilmerHale.

18 CHAIRMAN ARANOFF: Good morning, Mr.  
19 Greenwald. Please proceed when you're ready.

20 MR. GREENWALD: Thank you very much, Madam  
21 Chairman, members of the Commission. My name is John  
22 Greenwald from Wilmer Cutler Pickering Hale & Dorr.  
23 My colleagues and I represent Petitioners in this  
24 proceeding.

25 Just this past April the Commission voted

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1 unanimously to continue the antidumping orders on PET  
2 film from India and Taiwan. In that case you heard in  
3 detail about the conditions of competition that  
4 characterize the domestic PET film industry, including  
5 the importance of price, the purchasing decisions and  
6 the extreme sensitivity of the PET film business to  
7 what appeared to be small changes in price relative to  
8 cost.

9           The fundamentals of the industry are no  
10 different now than they were back in April. For that  
11 matter, they are no different now than they were when  
12 the first PET film case was brought in the early  
13 1990s.

14           Nor is the effect on the domestic industry  
15 of this latest wave of dumped imports, this time from  
16 Brazil, China, Thailand and the UAE which began four  
17 years ago, any less injurious than dumped imports in  
18 prior cases where the Commission has regularly found  
19 material injury and causation.

20           The record of this case is crystal clear.  
21 Between 2005 and 2007, the volume of subject imports  
22 rose and subject imports systematically undercut U.S.  
23 producer prices. During that same period, the  
24 condition of the U.S. industry deteriorated. This, we  
25 argue, is solid evidence in and of itself of the cause

1 and effect relationship between subject imports and  
2 material injury.

3 After this investigation was initiated the  
4 pricing of subject imports rose, the volume of subject  
5 imports dropped and the condition of the PET film  
6 industry improved markedly. This is further evidence  
7 of the relationship between subject imports and the  
8 condition of the U.S. industry, and because the post  
9 2007 data showed that the investigation has already  
10 benefitted the domestic industry these data refute the  
11 Bratsk argument that Respondents rely so heavily on.

12 In addition, the record of this  
13 investigation confirms a number of the domestic  
14 industry's lost sales allegations, further evidence of  
15 causation that is often very hard to come by in  
16 antidumping investigations where purchasers have an  
17 economic incentive to dispute lost sales allegations.

18 Given these facts, we speculated in our  
19 prehearing brief that rather than address the core  
20 issues of injury and causation, Respondents would  
21 focus on issues that are at the margin of this case,  
22 and in fact they have done some of that.

23 Terphane's characterization of Dupont Teijin  
24 as a mule is, frankly, an asinine attempt at humor  
25 that sheds no light whatever on the key issues before

1 the Commission. But in important respects Respondents  
2 have surprised us by taking on directly the key issues  
3 in this case, and I want right at the outset to thank  
4 them for that. They have given us an independent  
5 basis which prove our injury and causation claims.

6 Specifically, the question raised by their  
7 submissions is whether because of this investigation  
8 U.S. customers have purchased more domestic PET film  
9 and purchased that PET film at higher prices than they  
10 would otherwise have done. I urge you to review their  
11 submissions carefully with this question in mind.

12 If they show that this petition has led to  
13 increased purchases of domestic PET film at higher  
14 prices that in a nutshell is precisely the case we are  
15 making, and if the record of this investigation were  
16 to demonstrate that the improvement in the volume of  
17 U.S. PET film sold and the pricing structure of the  
18 U.S. market that occurred in 2008 were by Respondents'  
19 own admission the direct result of this investigation  
20 then there is frankly very little left for us to say  
21 and even less left for Respondents to say.

22 Thank you.

23 MS. ABBOTT: Opening remarks on behalf of  
24 Respondents will be made by Peter Koenig, Miller  
25 Chevalier.

1           MR. KOENIG: Good morning. I'm Peter Koenig  
2 of Miller & Chevalier. I'm here to make the opening  
3 presentation on behalf of those in opposition to this  
4 antidumping petition, and I and my colleagues  
5 specifically represent the Brazilian PET film and U.S.  
6 PET film producer, Terphane.

7           You will hear testimony today supporting the  
8 following bottom line facts, all of which confirm the  
9 noninjurious nature of the accused imports:

10           No. 1 ) All the Petitioners are  
11 multinationals with global supply sources and pricing.  
12 They are managed from abroad. Their actions are  
13 designed to benefit their global operations and not  
14 their U.S. operations.

15           No. 2) These Petitioners are unwilling or  
16 unable to supply U.S. customers from their U.S.  
17 facilities. Instead they are importing significant  
18 quantities from their Asian facilities. They are  
19 increasing their Asian capacity while they let their  
20 U.S. capacity stagnate.

21           No. 3) One Petitioner, Dupont Teijin, is a  
22 leading importer from the leading accused country,  
23 China, and was found to be significantly dumping in  
24 the United States.

25           Dupont Teijin has indicated in relevant

1 financial statements that its goal is to keep Chinese  
2 operations profitable by distributing a glut of  
3 subject PET film to its joint venture partners  
4 worldwide so that the Chinese operations are well  
5 positioned for when the Asian market booms.

6 No. 4) There is no injury to the domestic  
7 industry. Instead, there has been dramatically  
8 increasing and proven performance from the U.S.  
9 producers claiming injury with one exception, the  
10 joint venture whose real interests lie elsewhere than  
11 the U.S. industry.

12 No. 5) U.S. subject PET film producer  
13 performance trends have been better in precisely those  
14 markets where they compete with the subject imports,  
15 again belying the injurious nature of the accused  
16 imports.

17 No. 6) Subject PET film imports from the  
18 nonsubject countries constitutes a majority of imports  
19 of subject PET film and are at prices comparable to or  
20 lower than the accused imports. There is enormous  
21 excess PET film capacity in these nonsubject  
22 countries. That is what is driving prices, including  
23 in the United States.

24 No. 7) There is a worldwide up-tick now in  
25 subject PET film prices in 2008. It has caused all

1 boats to rise, not just in the United States.

2 The worldwide price increase has nothing to  
3 do with the U.S. antidumping case. We urge you to  
4 reject this petition. Thank you.

5 MS. ABBOTT: Will the first panel in support  
6 of the imposition of antidumping duties please come  
7 forward and take your places?

8 MR. GREENWALD: Madam Chairman, before the  
9 first panel convenes could I raise a point? I do so  
10 reluctantly.

11 I don't believe that the public record of  
12 the Commission has any company-specific data in it. I  
13 don't want to make a bigger issue of this than it is,  
14 but there is a concern on Petitioners' part about  
15 Respondents' presentation which purports to identify  
16 company-specific PET film operations that are properly  
17 confidential, so I would just raise this.

18 I don't know whether you want to consider it  
19 now or the Respondents would like to take that under  
20 advisement, but it is an issue of some consequence.

21 CHAIRMAN ARANOFF: Okay. Mr. McClure, could  
22 I just ask the staff to go over what was just said in  
23 the statement, make sure you're comfortable with the  
24 use of public information and get back to me at some  
25 point?

1 MR. McCLURE: Jim McClure, Office of  
2 Investigations. Frankly, Madam Chairman, I was  
3 talking to Ms. Trainor reviewing some questions and I  
4 missed getting that, so if we can talk about it?

5 CHAIRMAN ARANOFF: Okay. Let's see if we  
6 can do this while not slowing the clock down and in  
7 the meantime, of course, caution everyone that we need  
8 to be careful not to use any confidential information  
9 in the public hearing.

10 And now let's have the first panel come  
11 forward, please. Please proceed.

12 MR. GREENWALD: Thank you very much, Madam  
13 Chairman.

14 We are going to be very brief, I hope. You  
15 have as a group heard past PET film cases. I believe  
16 you are as familiar with the economics of this  
17 industry as you are with the economics of any other  
18 industry that comes before you.

19 We always run the risk of belaboring our  
20 points, so what I would like to do is to have the  
21 witnesses from the companies address you on the basic  
22 nature of the market, the nature of the production  
23 process, what's been going on and the impact of the  
24 subject imports on their operations.

25 I will then close with some comments on the

1 legal issues, the captive production rule,  
2 accumulation, et cetera, but our objective here  
3 frankly is to be very brief.

4 With that, I would like to turn the  
5 microphone over to David Kim of SKC.

6 MR. KIM: Good morning. I am David Kim, the  
7 Director of Business Development for SKC, Inc., a  
8 domestic manufacturer of PET film based out of  
9 Covington, Georgia, with close to 300 local employees.

10 I have been involved within the various  
11 facets of the PET film business over the last 10  
12 years. I would like to take a moment to broadly  
13 familiarize the Commission members to the markets,  
14 products, manufacturing process and the importance of  
15 commodity products to our competitiveness and long-  
16 term viability of our operations.

17 The petitioning U.S. producers have the  
18 capability to make various grades of PET films,  
19 servicing a diverse group of converters and merchant  
20 customers. The films are classified and defined by  
21 their physical as well as desired performance  
22 characteristics.

23 PET films are manufactured in various  
24 thicknesses, hazes, shades, thermal settings and  
25 layers to get the desired effects. Due to the

1 diverse, wide range of uses, I will just quickly cover  
2 the major market segments that all of the U.S. PET  
3 film manufacturers are a part of.

4           The largest and broadest market is  
5 classified under the industrial markets, and it has a  
6 large cross-section of various submarkets. Some  
7 examples of its uses are hot stamping foils, pressure  
8 sensitive labels, adhesive tapes, release liners,  
9 lamination films, building products, and the list goes  
10 on.

11           Another large and significant market segment  
12 is in the flexible packaging area. It is a rapidly  
13 growing market segment driven in part by new  
14 requirements of renewability and sustainability, as  
15 well as ever changing consumer demographics. This  
16 segment not only includes food and beverage packaging,  
17 but medical device and bulk packaging, as well as many  
18 others.

19           The above-mentioned two largest segments,  
20 due to their sheer volumes and ease of market entry,  
21 are the target markets for the subject PET film  
22 makers.

23           Another market is magnetic media that has  
24 been declining over the last decade and we predict  
25 will be obsolete shortly. The main components of this

1 market was what we used to call VHS, audiotapes and  
2 floppy disks. Remember those items?

3 Electrical and optical display is another  
4 market segment which has both growing and declining  
5 uses. In the growth area there are applications in  
6 flat panel displays for laptop computers, LCD TVs and  
7 GPS navigation tools. Some of the declining areas are  
8 wire and cable wraps, motor insulation and electrical  
9 capacitors and laminates.

10 The last market segment which has been in  
11 decline and continues to rapidly decline is the  
12 imaging and graphic area. Some of the applications  
13 here include photographic, microfilm and x-ray films,  
14 which are being replaced by digital imaging. There  
15 are also the printing and graphic areas of films,  
16 which are also being digitized.

17 This is only a very small snapshot of the  
18 markets that we participate in which needs full  
19 coverage and continued high serving cost due to the  
20 ongoing competitive pressures in the other larger  
21 segments.

22 The manufacturing process for polyester film  
23 is a capital intensive process. It starts with a  
24 production line costing anywhere between \$50 and \$100  
25 million to produce 10,000 to 20,000 tons per year.

1 The industry generally calls each of these machines a  
2 film line. A line would typically include the  
3 processing or compounding of film resin all the way to  
4 the warehousing of finished products.

5 These film lines are desired to be fully  
6 on-line in a continuous 24/7, 365 days a year process  
7 to maximize the highest capacity utilization. They  
8 are very large, highly technical and sensitive  
9 machines that are costly to maintain.

10 With the exception of respective proprietary  
11 specialty treatments onto the PET films, the basic  
12 process used to produce all the products, especially  
13 commodity grades, is essentially the same. Capital is  
14 the only barrier to entry into getting a very solid  
15 manufacturing line started.

16 Either through what is known in the industry  
17 as a continuous resin being introduced directly from  
18 the polymerization stream or batches of compounded PET  
19 resin to process into a film, the subsequent process  
20 involves extruding, casting, stretching, treating,  
21 winding and slitting. The products are then  
22 individually packaged for warehousing or direct  
23 shipments to end customers.

24 Due to the fact that all PET film  
25 manufacturing lines have to be operational on an

1 ongoing process, there is a need to have extensive and  
2 prolonged production runs of products to make the  
3 overall manufacturing efficient and productive.

4 Constant product changes and shorter runs in essence  
5 lower productivity and output of good, usable film.

6 An important component to stabilize, as well  
7 as improve machine efficiencies, are products referred  
8 to as commodity products. This factor is very  
9 critical to all PET film makers in order to lower  
10 overall manufacturing cost and increase efficiencies.

11 The basic commodity products produced on  
12 these machines are essentially interchangeable between  
13 lines and makers. For example, a packaging grade film  
14 from China, Brazil, Thailand or UAE can easily be  
15 interchanged with similar films produced here in the  
16 U.S.

17 While there is some amount of flexibility to  
18 transfer products from line to line, these lines are  
19 not, however, flexible enough to be changed over to  
20 other materials such as polypropylene, polyethylene  
21 and nylon. We cannot make these on our lines. Our  
22 assets are specific to polyester.

23 PET film is a clear or opaque flexible film  
24 that is made from PET polymer and has a unique set of  
25 physical properties that are appealing to various end

1 uses. While PET films can be produced in many  
2 thicknesses, the most common thickness is 48 gauge or  
3 half mil. It is generally more expensive than other  
4 plastic films such as polyethylene, polypropylene and  
5 polyvinylchloride due to its inherent raw material  
6 composition and the manufacturing process.

7 There are various ways to change the  
8 product. Changes can be introduced through adding  
9 polymer fillers, treating the surface with chemical  
10 coatings or modifying the surface with electrical  
11 plasma or corona charges. Other modifications include  
12 co-extrusion, which are adding multiple layers of PET  
13 in a single process to get a unique product.

14 These various combinations of desired  
15 physical properties and the ability to change the  
16 product give PET the ability to be sought after in a  
17 wide range of intermediary or end product  
18 applications.

19 Our customers are also very diverse. They  
20 apply interchangeability between products from the  
21 subject countries and the domestic suppliers. There  
22 is no or very low cost associated with interchangeably  
23 switching these grades of commodity films from  
24 producers and countries.

25 Therefore, this commodity product is a very

1 price-dependent film. There's no need for  
2 differentiation among manufacturers based on quality,  
3 technical service, R&D, delivery and other supportive  
4 functions when it comes to this commodity grade.  
5 Price is the predominant factor in determining the  
6 supplier for this film.

7 As I previously mentioned, capital is the  
8 only barrier to having a pretty solid film line  
9 capable of producing interchangeable commodity type  
10 films. Once you have your line you need to have very  
11 high capacity utilization through speeds, widths and  
12 overall throughputs to make the line profitable.

13 The PET film industry has turned into a very  
14 low margin and cost sensitive business. You have to  
15 keep the line running 24/7 at the highest outputs to  
16 cover the high fixed costs. As I covered in the  
17 manufacturing section, the various individual steps  
18 within the process, if a manufacturer has to make a  
19 change -- if he has to change resins, thickness or  
20 coatings -- due to these risks associated with line  
21 upsets, defects and contamination result in many cases  
22 where the line has to be slowed, stopped and  
23 restarted.

24 Prior to restarting the line, many setup  
25 conditions and preparations are required. All of this

1 takes time away from producing good product. Many of  
2 these details have to be supervised by very skilled  
3 and technically advanced personnel. Every  
4 manufacturer's goal is to have long, uninterrupted  
5 production runs to keep costs down and productivity up  
6 in order to remain competitive in the marketplace.

7 The following applies systematically with  
8 all petitioning U.S. makers who face this challenge on  
9 a daily basis. Producers try and load their lines  
10 with a high percentage of commodity products that  
11 require minimal changes and process disturbances. A  
12 manufacturer can then pick and choose the best times  
13 to designate specific times on these lines for  
14 innovative and the production of higher margin  
15 specialty films.

16 Typically the specialty products have higher  
17 margins and can economically allow for lower  
18 productivity levels. Unfortunately, if a line isn't  
19 heavily loaded with the commodity base load or if the  
20 line isn't fully loaded for most of the year the  
21 results are financially challenging, which inhibits  
22 additional growth and investments.

23 These large commodity product segments are  
24 the very segments that the subject countries and  
25 producers are targeting for the majority of their

1 imports. If the antidumping order on these subject  
2 countries and producers are not put into effect, all  
3 of the petitioning domestic makers will not be able to  
4 fully base load their lines and continue development  
5 of new products and expanded investments in their  
6 respective communities.

7 Furthermore, our operations are an integral  
8 part of the local communities where we operate and in  
9 many cases have been catalysts for additional  
10 manufacturing investments within the region. The  
11 worst case scenario that we do not ever want to  
12 envision is a long-term viability of these operations  
13 without a fair and level competing environment being  
14 present where we all can truly compete effectively.

15 With a better understanding of the markets  
16 and manufacturing process, interchangeability and its  
17 specific products, we believe that this Commission  
18 will concur with our argument of product and  
19 manufacturing interchangeability, as well as firm  
20 dynamics to support our petition and subsequent order  
21 of antidumping duties to subject countries and  
22 producers.

23 Thank you.

24 MR. GREENWALD: Our next witness, Madam  
25 Chairman, is Todd Eckles of Toray.

1                   MR. ECKLES: Good morning. My name is Todd  
2                   Eckles. I'm the Director of Market Development for  
3                   Toray Plastics (America) located in North Kingstown,  
4                   Rhode Island. I've been involved in the polyester  
5                   film business for 19 years. I'm responsible for the  
6                   sales and development of Toray's polyester film in  
7                   North American markets.

8                   Let me begin by giving you some background  
9                   about the PET film market. As David mentioned, the  
10                  U.S. PET film market is categorized into five  
11                  application areas with total demand in the U.S. of PET  
12                  film being about 277,000 tons. The largest and  
13                  highest growth markets are the industrial and  
14                  packaging markets, which represent 68 percent of the  
15                  total market.

16                  Producers from China, Thailand, Brazil and  
17                  UAE have targeted these markets as they offer the  
18                  greatest opportunity to sell large volume of like film  
19                  to the largest U.S. customers. In fact, many of these  
20                  producers have invested in film manufacturing lines  
21                  which far exceeds their domestic capacity with the  
22                  intent to sell these films to export markets. This  
23                  export strategy only leads to oversupply in foreign  
24                  markets and eventually unhealthy returns for polyester  
25                  producers.

1 Overall, the U.S. PET film market growth is  
2 flat with positive growth in the largest market, which  
3 is in packaging and industrial markets, and negative  
4 growth in other markets. The domestic PET film  
5 producers have installed capacity with the intent to  
6 supply these domestic markets and remain committed to  
7 the development of new products to support the growing  
8 markets.

9 The U.S. PET film industry is made up of  
10 eight producers. There are five merchant producers  
11 and three captive producers. The merchant suppliers  
12 represent a significant percentage of the total U.S.  
13 capacity and compete head on with low-priced imports.

14 The captive producers have a smaller share  
15 of the total PET film capacity and generally consume  
16 their products internally for downstream products.  
17 Captive producers are not adversely affected by  
18 low-priced imports as they do not compete with one  
19 another.

20 I'd like to spend a few minutes explaining  
21 why these markets, specifically the packaging and  
22 industrial markets, are so vital to the domestic  
23 producers' current and long-term profitability goals.  
24 As the markets continue to grow, next generation,  
25 value-added products will be required to support new

1 applications.

2 Domestic PET film manufacturers have  
3 invested significant capabilities to develop such  
4 products. However, these developments are only part  
5 of the requirements of the customers in the packaging  
6 and industrial markets. The ability to supply  
7 commodity products is another component.

8 Domestic PET film manufacturers have  
9 installed capacity to support both of these  
10 requirements and have been in the market since the  
11 introduction of PET film as a viable substrate for  
12 these applications. In fact, many large U.S.  
13 converters require domestic producers to offer a full  
14 array of products required by the customer, which  
15 includes both commodity and value-added film.

16 Conversely, subject importers often times  
17 can only supply commodity films due to the  
18 manufacturing limitations of their lines. When  
19 competing with low-priced imports, domestic film  
20 producers are faced with the no-win situation of  
21 lowering price to keep the business and lose margin or  
22 losing the business, which reduces capacity  
23 utilization, which further adversely affects the  
24 operating profits of domestic producers.

25 Subject importers continue to target those

1 high-growth, large-volume customers. The main reason  
2 is for the ability to gain large share at low prices  
3 and the repeatability of the film size and types, as  
4 well as sheer volume of these markets, which again  
5 represents 68 percent of the total market.

6 Next I'd like to explain how R&D programs  
7 are vital to our existence. All PET film producers  
8 have embarked on intensive R&D programs to support  
9 development of PET film, but also to escape the  
10 low-priced markets which have been plagued with  
11 negative margins due to low price points from subject  
12 importers.

13 These R&D programs are very expensive and  
14 require a significant amount of resources. The U.S.  
15 PET film producers have a difficult time funding these  
16 projects when the operating profits are being  
17 adversely affected by losses associated with competing  
18 with low-priced subject imports.

19 These losses are not always direct  
20 competition due to low-priced subject imports. Let me  
21 explain. The presence of low-priced imports also  
22 forces price sensitivity on value-added film. Often  
23 times the low-priced commodity film signals to a  
24 customer that PET film in general is experiencing  
25 lower price points, thus forcing great price

1 sensitivity on value-added films as well.

2 Since the domestic PET film suppliers rely  
3 on both commodity and value-added film businesses to  
4 achieve production and profit goals, we often times  
5 are forced to adjust our pricing to maintain share in  
6 both commodity and value-added markets, thus lowering  
7 our sales revenue and margins.

8 When we lose market share it affects the  
9 productivity of our film lines as we often times rely  
10 on certain products and film sizes to maximize  
11 production efficiencies. In addition, if we lose  
12 business we are often times forced to sell products in  
13 other low margin markets, so it begins the track of  
14 losing even more margin. Such negative margins will  
15 inhibit our ability to invest in our equipment and to  
16 support our customers through the development of next  
17 generation films in these growing markets.

18 As you can imagine, full utilization of our  
19 film lines is key to PET film production efficiencies  
20 and achieving reinvestment economics. Volume is a  
21 very important aspect of our business due to the need  
22 to absorb the high fixed costs of our manufacturing  
23 equipment.

24 Today, much of the volumes we depend on to  
25 absorb these costs is in the commodity markets. At

1       these prices, the business is difficult to sustain.  
2       Unfortunately, subject importers often times opt for  
3       pursuing increased volume at low prices rather than  
4       higher price points to prevent any PET film supplier  
5       from increasing price. This strategy only causes  
6       further hardship for the PET film industry.

7               The U.S. domestic PET film industry will  
8       remain threatened unless we are able to return to  
9       price points which contribute net profit versus price  
10      points which only contribute marginal profit or, even  
11      worse, net losses.

12             Thank you for your time.

13             MR. GREENWALD: Our final witness is Dennis  
14      Trice.

15             MR. TRICE: Good morning. My name is Dennis  
16      Trice, and I'm president and COO representing  
17      Mitsubishi Polyester Film.

18             I personally represent our manufacturing  
19      location in Greer, South Carolina, which is near  
20      Greenville, South Carolina, and employs over 600 U.S.  
21      workers. These jobs, plus those from the other  
22      domestic producers represented here, provide  
23      approximately 2,500 U.S. jobs.

24             First, I must thank you for the support that  
25      has been provided to our industry via the preliminary

1 dumping relief announced earlier this year. As part  
2 of the petrochemical business, our industry has been  
3 hammered with unprecedented raw materials and energy  
4 costs this year.

5 Fortunately, due to your help in leveling  
6 the playing field with this relief, we have been able  
7 to pass along these costs via multiple price increases  
8 this year, which has led to an improved financial  
9 situation.

10 I cannot even imagine how bad this situation  
11 would have been had this relief not been in place.  
12 Since the relief was put in place, there's been more  
13 demand for U.S. produced PET films, and this demand  
14 has allowed us to get real price increases for the  
15 first time in many years.

16 To put the situation of 2008 in perspective,  
17 maybe I should give a little historical background.  
18 From 2004 to 2007, our industry saw an unprecedented  
19 rise in imports from subject countries. During this  
20 time period we were not able to effectively gain price  
21 increases, although both cost increases and a squeeze  
22 in margins justified them.

23 Pricing was held in check during this time  
24 period as subject imports are interchangeable with  
25 domestically produced products and they were being

1 dumped into the United States at unfair pricing. In  
2 our industry, a few pennies matter as to whether we  
3 can maintain or gain business at an account.

4 In the three-year time period when subject  
5 imports were skyrocketing, we had no choice but to  
6 absorb rising cost, and the corresponding  
7 profitability of our business suffered.

8 An example of this situation is at Company A  
9 where we had to lower pricing to maintain business  
10 during the past three years. As imports from subject  
11 countries, specifically China and Brazil, Company A  
12 has not only been willing to pay higher pricing this  
13 year, but has also increased their volume from us.

14 During the period from '05 to '07, our  
15 company has been severely impacted by low-priced  
16 margins from subject countries. We have been forced  
17 to have major restructuring efforts aimed at lowering  
18 cost. Also in the past years, due to weak margins,  
19 one of our other domestic competitors also announced  
20 major restructuring efforts, taking out some of their  
21 domestic capacity and reducing jobs here in the U.S.

22 As well as restructuring to lower our cost,  
23 we've also had to move our product mix to higher value  
24 specialties which do have higher margins than  
25 commodities, but come with the added difficulty of

1 lowering capacity because of more line changes and  
2 higher complexity.

3           Unfortunately, with a 24/7, 365 day per year  
4 continual process requiring high capital cost, no  
5 producer can be successful with specialties alone. A  
6 producer must have a solid foundation of commodities  
7 to support its specialty business. The temporary  
8 relief has helped produce the support necessary to  
9 have this successful foundation.

10           You will note in the analysis that we also  
11 import films from our other locations in both Germany  
12 and Japan. These imports are specialty products,  
13 which we do not have the capability to make here in  
14 the U.S. The importation of these products allow us  
15 to be a full line supplier here in the U.S.

16           To understand the full impact that subject  
17 imports have had on our industry, I must go back even  
18 a little further in time. In 2001, we invested over  
19 \$100 million and created new jobs in South Carolina to  
20 supply the U.S. market. We also invested in the  
21 infrastructure to have an additional investment in the  
22 future.

23           We invested this money with faith the market  
24 would pay us a reasonable return and allow for even  
25 further investment as demand warranted. Regretfully,

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1 because of the negative impact of subject imports,  
2 this investment hasn't paid for itself, and I cannot  
3 in good faith ask for additional investment based on  
4 the returns from this past investment.

5 Similarly, SKC invested over \$350 million in  
6 Covington, Georgia, putting in three lines with  
7 announced plans for as many as 10 lines over a 10 year  
8 period, which would have been over \$1 billion and  
9 would have resulted in over 1,000 new U.S. jobs. Now,  
10 10 years later, there are still only three lines and  
11 employment is only 25 percent of what was envisioned  
12 in these announcements.

13 This strategy of investing in the local  
14 market to supply local demand is in direct contrast to  
15 the strategies of the companies represented by the  
16 subject imports. Companies like Terphane, Flex, and  
17 too many Chinese manufacturers to even mention  
18 continue to invest outside the U.S. with an announced  
19 intent to export to the U.S.

20 Why haven't major U.S. manufacturers with  
21 world class technology been able to invest further in  
22 the U.S., creating U.S. jobs to supply U.S. customers?  
23 The answer is simple and clear. Margins have been  
24 squeezed by an explosion of unfairly low-priced film  
25 from subject countries to the point where reinvestment

1 did not make sense. The basis for this case is clear.  
2 It's all about price. Pricing has been held in check  
3 despite rising costs in the past three years due to  
4 low-priced imports from subject countries.

5 So where are we today? Here in 2008, for  
6 the first time in over three years we've been able to  
7 get real price increases. Your help with the  
8 preliminary relief has given the support for these  
9 increases and truly has helped us survive, and we  
10 appreciate it.

11 Where would the industry be without the  
12 current relief? Further restructuring would be  
13 necessary, potentially further reducing capacity in  
14 the U.S., and certainly even more jobs would be lost  
15 for U.S. workers and the communities in which they  
16 operate.

17 As we look forward, we certainly believe the  
18 temporary relief that is in place has been  
19 appropriate, and we ask you to make it permanent. It  
20 is helping to lay the foundation for the U.S. industry  
21 to not just survive, but hopefully to thrive, leading  
22 to a healthy industry that can once again support  
23 further investment.

24 Thank you for your time.

25 MR. GREENWALD: Madam Chairman, on

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1 cumulation I think the staff report is clear. We've  
2 been through it. It's not a lengthy report. It  
3 outlines the factors that govern your assessment of  
4 the overlap of competition between subject imports or  
5 among subject imports and between imports and domestic  
6 production, and under all the criteria I don't see any  
7 room to argue seriously against cumulation.

8 Negligibility, by contrast, has been made a  
9 more serious issue, but it has become a serious issue  
10 not because the facts support the arguments that  
11 Respondents are making, but because Respondents  
12 asserted arguments that are not really based on the  
13 facts.

14 There are limits as to what I can say about  
15 the negligibility issue raised by both counsel for the  
16 Brazilians and for the UAE because of again  
17 confidentiality, but let me be clear on at least one  
18 point that is public.

19 In assessing negligibility, the test is  
20 subject imports from any particular country relative  
21 to total imports. The denominator in that equation,  
22 total imports, obviously matters. If total imports  
23 are overstated because they include nonsubject  
24 merchandise from, as we have said, Canada and Oman  
25 then imports from those sources have to be stripped

1 out of the equation.

2 As I read the staff report, our assertions  
3 that imports from both countries are not in fact  
4 subject PET film have been corroborated, and what that  
5 means is the denominator for the negligibility claim  
6 advanced by various Respondents is substantially  
7 smaller than they have asserted.

8 There is a second issue which deals with the  
9 numerator in that equation where what has transpired  
10 since the preliminary determination is confidential,  
11 and all I can urge you to do on that question is read  
12 the brief. We have not submitted a long brief, but  
13 the exposition of this particular issue is clear.

14 Now let me turn to captive production and  
15 related parties. In all past PET film cases the  
16 captive production issue has been, frankly, an issue  
17 that is more academic than real, and I say that  
18 because in all your past decisions you have recognized  
19 that competition in the market occurs between the U.S.  
20 producers that supply the merchant market and subject  
21 imports and therefore have under the conditions of  
22 competition a discretion given you factor that into  
23 your analysis.

24 I want to urge you today to take a more  
25 formal step and reconsider your past decisions on the

1 application of the captive production provision of the  
2 statute, and the way I would ask you to think about it  
3 is not simply what you have done in past cases, what  
4 you have articulated as your institutional preference  
5 and apply that reflexively, but ask yourself the  
6 question where does competition in this market occur?

7 Are the subject imports the same film types  
8 that are produced, for example, by captive producers?  
9 If not, isn't that another factor that narrows the  
10 competition to the merchant market?

11 And if the answer to that question is yes,  
12 that it really is demonstrably true that the  
13 competition occurs in the merchant market, then it  
14 seems to me the question that you have to ask yourself  
15 is does the statute give you the flexibility in  
16 applying the captive production criteria in a way that  
17 meets the purpose of the statute, and there the  
18 answer, as I read the statute and your discretion  
19 under it, is unequivocally yes.

20 The issue in applying the captive production  
21 rule in past cases has always been the relative value  
22 of the PET film versus the other elements of value  
23 from which the captively produced downstream product  
24 is made, and the question is one on value terms  
25 substantial.

1           My argument here and my belief here is that  
2 value is the wrong metric against which to judge the  
3 relative significance of the subject merchandise and  
4 the captively produced product, and I would urge you  
5 to use the flexibility given you by the statute to  
6 apply the second prong of the test on a weight basis  
7 and serve the purposes of the statute.

8           Now let me turn to related parties. This I  
9 gather will become an issue here today, judging from  
10 the briefs that we have seen, and the question is  
11 public knowledge that Dupont Teijin has a related  
12 producer in China. Some of the briefs that were  
13 submitted to you argue that under the related party  
14 provision of the statute Dupont should be excluded  
15 from the domestic industry.

16           Under the rules that govern the application  
17 of that particular provision in the statute, the  
18 assertion is preposterous. The core question is is  
19 Dupont's interest as a domestic producer of subject  
20 merchandise greater than its interest as an importer  
21 or do somehow the imports shield it from competition?

22           The short answer to that question is  
23 Dupont's own action in being a Petitioner in this  
24 case. The longer answer is to look at relative  
25 production, the relative significance of volumes of

1 both domestic production, and under every case and  
2 under all the criteria in the statute I think it is  
3 clear that you cannot legitimately exclude Dupont from  
4 the domestic industry.

5 Another related party issue is what do you  
6 do about Terphane, which imports from Brazil?  
7 Frankly, on that we're agnostic. I don't hold a brief  
8 one way or the other for that.

9 Let me now conclude by getting into the  
10 Bratsk issue and nonsubject imports and do that in the  
11 context of the injury and causation claims where  
12 presented.

13 The Commission has for as long as I've been  
14 practicing looked closely at trends and drawn  
15 reasonable inferences from trends. You also seek to  
16 buttress the trends by looking at issues like price  
17 underselling and margins of price underselling and  
18 looking at lost sales.

19 On the trends, you have two things happening  
20 here. One is as subject imports rise the condition of  
21 the domestic industry deteriorates and there is a  
22 consistent pattern of price underselling.

23 Post 2007, after this case is initiated,  
24 there is a fairly dramatic reversal. Subject imports  
25 fall, their prices rise, and what you see is a

1 recovery to a significant degree in the domestic  
2 industry. In addition, you have your lost sales  
3 confirmed, you have your systematic price  
4 undercutting, et cetera.

5           These trends make two points. The first is  
6 there is a cause and effect relationship between the  
7 rise in subject imports and deterioration of the  
8 domestic industry, and, second, there is a cause and  
9 effect relationship between the fall of subject  
10 imports and the improvement in the condition of the  
11 domestic industry.

12           The Bratsk test asks you what evidence is  
13 there that antidumping relief will benefit the  
14 domestic industry as opposed to nonsubject imports.  
15 The post 2007 developments, which show how the decline  
16 in subject imports and the beginning of antidumping  
17 discipline on them have improved the condition of the  
18 domestic industry, address that issue in real concrete  
19 terms. It is not speculation.

20           When subject imports fall, the condition of  
21 the domestic industry rises, improves. What happens  
22 to subject imports has no bearing on that. In other  
23 words, the domestic industry clearly, clearly has  
24 benefitted from antidumping discipline on subject  
25 imports, and when that happens the Bratsk issue of

1 nonsubject imports disappears entirely.

2 With that, we'd like to close our direct  
3 testimony. Thank you.

4 CHAIRMAN ARANOFF: Thank you very much, and  
5 thank you to all of the witnesses for taking time away  
6 from your businesses to spend the day with us and  
7 answer our questions.

8 We always appreciate hearing directly from  
9 people in the industry who, no matter how talented  
10 their lawyers are, still have more pertinent and  
11 direct information to give us.

12 We're going to begin the questioning this  
13 morning with Commissioner Pinkert.

14 COMMISSIONER PINKERT: Thank you, Madam  
15 Chairman. I'd like to join the Chairman in welcoming  
16 this group and thanking you for being here today to  
17 answer our questions and to help us understand this  
18 industry.

19 I understood from the testimony that your  
20 concern is about the lost sales in the commodity  
21 grades and the pricing structure in the commodity  
22 grades, but what I'm wondering is what reason is there  
23 for us to believe that sales of domestically produced  
24 specialty grades couldn't offset losses in the  
25 commodity grades?

1           MR. ECKLES: There is a relationship between  
2 the commodity zones and the specialty grades. It's  
3 when the 48-gauge film pricing goes down it signals to  
4 a polyester film buyer that there might be  
5 overcapacity or there might be more availability of  
6 polyester film in the market.

7           As a result, he may start believing that he  
8 can get lower prices on all polyester films, so that  
9 would include both commodity, as well as specialty  
10 films.

11           Certainly there is some disconnect at times  
12 where the specialty films don't move and the  
13 commodities do, but in general terms commodity and  
14 value-added films are related as far as price  
15 sensitivity.

16           MR. TRICE: If possible, I'd like to add a  
17 couple of comments on that question, Mr. Pinkert.

18           Also, many of our specialty products are  
19 special because we're adding coatings or things to  
20 enhance the surface of the polyester film. In years  
21 past, some of these things had to be done in offline  
22 processes with commodity products using commodity  
23 products as a base.

24           Some of our specialty products can be  
25 substituted. If the low-priced commodities are low

1 enough, our customers can go back to their old  
2 processes of doing it themselves, which might be more  
3 costly as an overall process, but if that low-cost  
4 commodity is low enough the value that we add as far  
5 as the special coatings may not be enough to offset  
6 that, and that happens frequently as well so we have  
7 to lower to make sure that value that we're adding is  
8 enough that they would continue to buy that specialty  
9 from us.

10 MR. KIM: As Mr. Eckles presented before, a  
11 significant portion of the U.S. market is driven by  
12 what we call commodity products, 48-gauge products,  
13 and most of the U.S. customers require that you have  
14 the full product offering, not just the commodity or  
15 not just the specialized.

16 They want the offset capability of commodity  
17 priced products in order to have a full product  
18 portfolio offering that they can have either  
19 chemically treated or otherwise treated products, but  
20 the impact of the overall commodity pricing decreases  
21 the overall Value of the whole package itself.

22 Due to its large volume requirements, as  
23 well as demand in the marketplace, it drives the  
24 specialized products' pricing in the same packaged  
25 portfolio.

1                   COMMISSIONER PINKERT: Thank you. Now  
2 turning to an issue that may sound like a Bratsk  
3 issue, but I don't intend this to be a Bratsk  
4 question.

5                   I'm very much interested in the argument  
6 that the subject imports are not injuring the domestic  
7 industry because the increase in the subject imports  
8 comes at the expense of the nonsubject imports, not at  
9 the expense of the domestic industry.

10                  Do you have a response to that that you can  
11 give in a public hearing?

12                  MR. GREENWALD: I don't think any of the  
13 industry witnesses can address that because they have  
14 not seen the data. I can talk in general terms about  
15 the data.

16                  COMMISSIONER PINKERT: And perhaps you can  
17 supplement it in the posthearing brief.

18                  MR. GREENWALD: Yes. I'll do it during the  
19 posthearing brief, but I do think when you look at it,  
20 and I believe this is public, you see a rise in  
21 domestic shipments.

22                  So the assertion of the decline in subject  
23 imports simply benefitted nonsubject imports is  
24 demonstrably untrue, but I don't want to overstate  
25 that. When you look at the volumes of sales it's not

1 going to be something that leads you to say wow and  
2 how volume of domestic sales respond to a drop in  
3 imports.

4 This is much more fundamentally a case about  
5 price than it is about the volume, and what I would  
6 urge you to do -- we have Table 1 in our brief, which  
7 was surprisingly dramatic which talks about -- it's on  
8 page 14, and it talks about the way in which changes  
9 in price relative to cost really do have a dramatic  
10 impact on industry bottom line.

11 Please recall that the testimony you heard  
12 today stands for the proposition that producers seek  
13 to run their lines 24 hours a day, seven days a week,  
14 and there will be down time for maintenance, but  
15 essentially year round.

16 The market for specialty products doesn't  
17 permit that, so you can't just be in the specialty  
18 product business, but more fundamentally the pricing  
19 of the market, sort of the benchmark for price, is the  
20 48-gauge base. I think that's right.

21 And what you see with the subject -- I've  
22 got to be very careful because of confidential  
23 information. The price undercutting, the number or  
24 instances of price undercutting is public. There is  
25 systematic price undercutting. It is true that some

1 nonsubject imports have lower prices than domestic  
2 producers, but it is not as true and it doesn't apply,  
3 for example, when you're talking about imports from  
4 Japan or you're talking about imports from Germany.

5           And then there's one other point that I'd  
6 like to bear in mind and then I'll stop talking, and  
7 that is imports from Korea, which had been a very  
8 significant problem because one producer, Kolon, had  
9 been brought back under antidumping law discipline  
10 very recently, but fundamentally this case is much  
11 more an issue of price and what price changes, price  
12 suppression, does to the bottom line -- price changes  
13 relative to cost -- and it is as dramatic as for any  
14 industry I think I've ever seen here.

15           So if what Respondents are saying is that  
16 limits on subject imports may lead to increase in  
17 imports of nonsubject -- and I don't know the data off  
18 the top of my head, but let's accept that as partially  
19 true. They also lead to the increases in domestic  
20 production.

21           There's no doubt about that, but much more  
22 fundamentally this is a case where what really is at  
23 issue is the downward pressure on price relative to  
24 cost.

25           MR. MELTZER: We'll put in our posthearing

1       brief some very good examples from purchaser  
2       questionnaire responses where you see directly at  
3       specific accounts the clear displacement of the  
4       domestically produced product based on the  
5       underselling by the subject imports and you'll see  
6       also the importance of pricing as to how market share  
7       at a particular account or how particular purchasing  
8       behavior at particular accounts are dramatically  
9       changed.

10                   COMMISSIONER PINKERT: Thank you. Now just  
11       a quick question on this related party issue.

12                   I understand that you're not asking the  
13       Commission to exclude Terphane from the domestic  
14       industry, but could you address either here or in the  
15       posthearing how the updated data on Terphane's ratio  
16       of imports from Brazil to production in Table III-4  
17       affects this issue as we look at it in the final  
18       phase?

19                   MR. GREENWALD: Yes. We will do it in the  
20       postconference. I think you have to talk about  
21       details that are confidential to do that properly.

22                   COMMISSIONER PINKERT: Thank you.

23                   Thank you, Madam Chairman.

24                   CHAIRMAN ARANOFF: Thanks.

25                   I want to go back first to the issue of the

1 captive production provision. Mr. Greenwald, I read  
2 the argument in your brief. I heard the argument you  
3 made this morning that we have a choice between weight  
4 and value, but as best I've been able to discern the  
5 reason that you think we should use weight instead of  
6 value is because it gives you the results you want. I  
7 can't find a reason why it's a better measure.

8 MR. GREENWALD: I mean, in a sense you're  
9 right that it gives me the result I want because it's  
10 the right result.

11 It seems to me the reason for the captive  
12 production provision has got to be does its  
13 application make sense given the nature of competition  
14 in the market between on the one hand imports and  
15 captive producers and on the other imports and  
16 producers for the merchant market.

17 What I want you to do is to start off with  
18 that premise as the basis for or the reason for the  
19 provision, and if I'm right that's the reason for the  
20 provision and if I'm right that in this industry that  
21 the competition is really in the merchant market, then  
22 it seems to me when you are given a choice as a matter  
23 of applying the law in the way Congress intended it to  
24 be applied, you should do it in a way that focuses the  
25 analysis on the arena of actual competition.

1                   So it is a principled position. Now, it is  
2 also true that that's the outcome that I think is the  
3 right outcome.

4                   CHAIRMAN ARANOFF: I take your point, but I  
5 guess my problem is, you know, if I'm looking at a  
6 particular industry and saying, "Well, which is the  
7 best way to look at predominant input weight or  
8 value?" I want to have a reasoned basis for making  
9 that distinction, not just in this case but in every  
10 case, and I can't see that there is anything about the  
11 weight of PET film that really goes to the issue of  
12 the importance of inputs.

13                   Now, if you look at what are you going to do  
14 in a case where a product is a very large percent  
15 water? That's going to be the heaviest thing there  
16 but, clearly, not the thing that's going to give it  
17 any of the capabilities for which the customer is  
18 buying it.

19                   MR. GREENWALD: But if I can respond, if the  
20 case was about water from Saudi Arabia, then, yes, you  
21 would be looking at the fact that the downstream  
22 product is a very large percentage water.

23                   So, I mean, it's an example that is not  
24 going to happen, but it does --

25                   CHAIRMAN ARANOFF: No. You're looking at a

1 chemical that's dispersed in water, let's say, and the  
2 product is maybe 80 percent water, but you're not  
3 buying it for the water. The water doesn't give it  
4 the main properties that the customer is purchasing it  
5 for. So could I really find that the predominant  
6 input is the water?

7 MR. GREENWALD: It is true that, in past  
8 cases, this has been much more an academic issue  
9 because of the conditions of competition, but it's  
10 something I care about because I think that decision-  
11 making by applying rigid rules of general application,  
12 a preference for value as just sort of this is what we  
13 do, isn't the way that the Commission should be making  
14 decisions.

15 I really do think you ought to take these  
16 issues, case by case, articulate a standard that says  
17 what you're look at is how differentiated the arenas  
18 of competition are, the ask yourself the question,  
19 "Would weight make sense?" and it's quite possible  
20 that if you had a chemical dispersed in water, you  
21 would say, no, because of the weight of water. It  
22 doesn't make any sense, and that doesn't bother me at  
23 all. That could be the right result.

24 But what I do think happens is there is a  
25 tendency for the Commission to articulate rules of

1 general application, and then they become reflexive  
2 rather than thoughtful.

3 CHAIRMAN ARANOFF: Okay. Enough said. If  
4 there is any other help that you can give me in the  
5 post-hearing brief on the value-versus-weight  
6 question, I invite you to do so.

7 Let me turn to the witness, sitting quietly  
8 in the back, from Dupont, Mr. Kassoff, is it? Mr.  
9 Kassoff, can you please explain to me how your  
10 company, or your company's parent company, organizes  
11 its sales in the U.S. market and, in particular, the  
12 issue of what entity controls the volume and pricing  
13 of the domestic product and of product imported from  
14 affiliates?

15 MR. KASSOFF: Sure. We have three main  
16 regions -- Europe, U.S.-Americas, and Asia -- and each  
17 region is responsible for their own sales. We have  
18 customer relationships in the U.S. region with the  
19 U.S. customers, and we set pricing and whatnot  
20 directly in the U.S. region. Our management team, our  
21 sales reps work and do that, and then our supply is  
22 mostly from the region that it is within. So most of  
23 our sales in the U.S. are sourced from the U.S., and  
24 we supplement as needed.

25 CHAIRMAN ARANOFF: Okay. But what I'm

1 trying to get at is, you know, if a customer wants to  
2 buy Dupont Teijin product, a U.S. customer, do they go  
3 to you at the plant, do they go to a related entity  
4 that's a sales organization, and who decides whether  
5 they get U.S. product or imported product?

6 MR. KASSOFF: The customers go directly to  
7 our U.S. sales force, which responds directly to our  
8 U.S. management team. So there is no sales  
9 negotiation or anything like that with any of our  
10 related parties offshore.

11 So the decision to where the supply comes  
12 from is made in the region, but if another region is  
13 asked to supply, there has to be an agreement with  
14 that region that they will supply.

15 So the U.S. region will make those decisions  
16 for the U.S. customers.

17 CHAIRMAN ARANOFF: Okay. In Terphane's  
18 prehearing brief, they quote from Teijin Limited's  
19 2006 Annual Report. It's on page 10 of Terphane's  
20 prehearing brief, a statement from Teijin that there  
21 is a production glut of polyester films in China that  
22 will persist for the foreseeable future and that the  
23 company will strive to export that excess production  
24 through its global joint ventures.

25 Mr. Kassoff, I don't know if you're familiar

1 with that statement. Can you comment on whether it's  
2 specifically referring to the PET film at issue in  
3 this case and perhaps let us know whether there is  
4 anything about that statement that was taken out of  
5 context?

6 MR. KASSOFF: I am unfamiliar with that  
7 statement, so I'm not sure where it comes from. I do  
8 know that the market in China has been very tight in  
9 past years as well, but, beyond that, I really have no  
10 further comment. I don't know.

11 MR. GREENWALD: We will deal with that in  
12 the post-hearing brief, if that's all right.

13 CHAIRMAN ARANOFF: Yes. Sure. I appreciate  
14 that.

15 I'm sort of reluctant to get into this  
16 because I don't know how much time I have left, but  
17 I'll start.

18 A number of the Respondents assert that  
19 there have been shortages in the U.S. market for  
20 certain commodity-grade products that have forced them  
21 to source short supplies from other countries, and  
22 they point, particularly, to nonsubject countries.  
23 Can any of the witnesses comment on whether there  
24 have, in fact, been shortages in the U.S. market for  
25 particular commodity grades?

1                   MR. TRICE: I'll try to answer that, Madam  
2 Chairman. The U.S. industry will always, at least,  
3 based on the capacity in the U.S. today, have to  
4 import some products to meet total demand. Which  
5 products we produce, you can imagine, are truly based  
6 on pricing and return. We would very much, from a  
7 long-term standpoint, love to be able to supply 100  
8 percent of the domestic market. That's the reason we  
9 have domestic companies.

10                   As I mentioned in my brief, the economics  
11 have not allowed us to continue to invest in enough  
12 capacity to be able to do that. We've tried. We put  
13 significant assets on the ground. I would love to be  
14 able to have the returns, to be able to go to ask for  
15 additional funds, from a longer-term standpoint, but,  
16 today, and as it has been for many years, the U.S.  
17 industry does have to import films to satisfy the  
18 total local demand.

19                   So the market has been tighter in the last  
20 12 months than it was in the 12 months previous to  
21 that, but I think that's due primarily, again, to  
22 price, as there was no significant advantage to  
23 purchase from subject import countries, all of a  
24 sudden the demand for our product increased.

25                   So, by nature of just supply and demand, it

1 became more important for them to get a domestic  
2 producer because the pricing was more attractive than  
3 it had been in previous years.

4 CHAIRMAN ARANOFF: Okay. Thanks. My time  
5 has run out. If one of my colleagues doesn't pick up  
6 on this, I'll come back to it in another round. I'm  
7 going to turn to Vice Chairman Pearson.

8 VICE CHAIRMAN PEARSON: Thank you, Madam  
9 Chairman. Permit me to extend my greetings to the  
10 panel also. It's good to have you here today.

11 Let me start with a question on apparent  
12 consumption. Are you comfortable with our data on  
13 apparent consumption that we have in the staff report,  
14 and this is probably directed to you, Mr. Greenwald?  
15 They show a relatively steady demand picture with a  
16 bit of a decline in 2007.

17 MR. GREENWALD: It depends on the accuracy  
18 of the import figures over time. When you do your  
19 apparent domestic consumption, I believe you take the  
20 aggregate data from the questionnaire responses,  
21 which, in this case, I believe to be pretty complete,  
22 about domestic industry shipments, and then you look  
23 at imports, and the question on the accuracy, I think,  
24 depends on how the imports are treated.

25 VICE CHAIRMAN PEARSON: Can you hold the

1 microphone a little closer in front of you?

2 MR. GREENWALD: Okay. I'm sorry. So the  
3 short answer is, it depends on what imports are there.  
4 I know there are problems in the import data, and I  
5 just have to go back and look. It was not something I  
6 focused on in preparing for this hearing.

7 CHAIRMAN ARANOFF: Okay. So the general  
8 sense of the panel is that demand is relatively  
9 steady. We're not seeing some big change in U.S.  
10 consumption from some issues in the housing market or  
11 anything like that. That's not a factor that we  
12 should be aware of in this investigation.

13 MR. ECKLES: There's five application areas.  
14 Two of them are growing; three of them are either  
15 steady or declining. So it's constantly readjusting  
16 as new applications arise where other applications are  
17 kind of becoming extinct. But, for the most part,  
18 it's a stable market.

19 VICE CHAIRMAN PEARSON: Okay. Thanks.

20 During the period, July 2007 to August 2008,  
21 Dupont Teijin Films U.S. has publicly announced  
22 several price increases for commodity-grade films,  
23 citing strong demand across multiple thin-film market  
24 segments, coupled with rising raw material costs.  
25 Mitsubishi and Toray have also publicly announced

1 price increases.

2           Could you please explain what appears to be  
3 the rise in demand and strengthened prices for  
4 domestic thin films over this 14-month period, given  
5 the alleged competition from unfairly priced subject  
6 imports?

7           MR. TRICE: Mr. Pearson, I'll try to answer  
8 that. I think, simply, the reason that we're sitting  
9 here is not just in the first of the year, when the  
10 actual preliminary duties were put in place. The  
11 rumors that there were going to be duties put in  
12 place, I think, already started to change the  
13 industry. I know, from our standpoint, we needed the  
14 price increases. I think the data that's confidential  
15 will certainly show that. As we started getting more  
16 inquiries for our product, it's the only thing that we  
17 can see that made a difference.

18           As Todd mentioned, there is no significant  
19 increase in demand, as far as a new application or  
20 anything else. Let's face it, even the economy has  
21 weakened during this time period, which our products  
22 go into a lot of different areas of the economy, even  
23 into the automotive trade, which, of course, has  
24 definitely weakened in the United States.

25           So demand did start to pick up in the latter

1 part of '07. My belief, and there is no way to look  
2 at the data, I guess, to know, but my firm belief is  
3 that the marketplace was already starting to react to  
4 what we believed would happen, and, of course, it did.

5 MR. GREENWALD: Mr. Vice Chairman, if I  
6 could elaborate on that, citing you to some  
7 confidential information in one of, I believe, the  
8 Respondents' briefs -- I'm not sure which one -- what  
9 they did was talk about price increases and break it  
10 out by year, by amount and by year, and what I would  
11 urge you to do is to add them all up and look at them,  
12 year by year, and I think what you will see is that it  
13 corroborates the point that Mr. Trice just made.

14 VICE CHAIRMAN PEARSON: Anything else on  
15 that point?

16 Respondents have argued that PET film prices  
17 are rising worldwide in 2007 and 2008. Do you agree  
18 with this?

19 MR. ECKLES: I would agree that polyester  
20 film is a global product, and we all see the same  
21 pressures, as far as higher raw material costs. So,  
22 as a result, we need to increase our price in order to  
23 cover those costs.

24 VICE CHAIRMAN PEARSON: Okay.

25 MR. GREENWALD: I'm just talking about the

1 U.S. data. It is clearly true that costs have been  
2 going up with energy prices, and you would expect  
3 prices to go up around the world.

4 What is instructive is to look at, for  
5 example, your pricing data, which you break out by  
6 quarter, and then, in the U.S. market, look at pricing  
7 trends in subject imports, post-2007, and what I would  
8 argue is you see a qualitative change that is  
9 something more than just simply raw material prices  
10 going up.

11 VICE CHAIRMAN PEARSON: Okay. I assume that  
12 Respondents will say something to the effect that the  
13 price increases that we see in the United States can  
14 be explained, all or in part, by global trends and  
15 that what we have in the United States is a reflection  
16 of what's happening in the broader world rather than a  
17 reflection of the filing of this petition.

18 MR. KIM: When you look at the data that  
19 were probably submitted, in terms of the overall  
20 impact, pre-2007, PET industry was at, historically,  
21 the lowest pricing that we've ever seen. I would  
22 believe that this was subjectively low, globally, due  
23 to the additional capacities that came out, mostly in  
24 Southeast Asia, China, as well as other regions.

25 That basically drove global pricing to the

1 levels of historical lows, pre-2007. The recovery  
2 aspects, after that timeframe, with the actions that  
3 were taking place in the United States, had an impact  
4 on the global type of an inching back up of pricing.

5 So it was not a direct fluctuation, per se,  
6 linked to the U.S. linkage but a global situation, but  
7 more so in terms of what was happening with global  
8 capacity of PET supply. It had reached, I would say,  
9 the top as to not additional capacities coming on that  
10 were announced beyond that stage.

11 MR. TRICE: Mr. Pearson?

12 VICE CHAIRMAN PEARSON: Yes.

13 MR. TRICE: One other comment on that, and I  
14 don't have the data here in front of me, so I'm going  
15 to kind of guess at it, but I believe I know it well  
16 enough to believe that, if we put it together, it  
17 would show you. Raw materials and energy costs  
18 certainly skyrocketed in '08, but they have also been  
19 going up since, really, around '04. If you look at  
20 what's been happening in the pricing in the U.S.  
21 market, it didn't change dramatically from '04 to '05  
22 to '06 to '07.

23 It only started to change in the latter half  
24 of '07 through '08, which is the reason I believe  
25 strongly that there is a strong correlation between

1 what you've been able to help us with and what we've  
2 been able to do on pricing this year.

3 MR. GREENWALD: Mr. Trice, I think you have  
4 hit on one of the core issues for you and, frankly,  
5 for this case. I mean, what we are saying, and we've  
6 said it in our brief, is that, post-2007, you can see  
7 in the data an increase in price relative to the  
8 increases in cost that is quantitatively different  
9 than what preceded it.

10 There is also confidential information on  
11 the record, which I'm not at liberty to discuss, on  
12 what has happened to prices as a direct result of this  
13 case. So the idea that Respondents could come up here  
14 and say, what's going on in this market is simply a  
15 reflection of what's going on in the global market,  
16 and there is no cause-and-effect relationship between  
17 this proceeding and the post-2007 rise in prices, is,  
18 I believe, directly contradicted by some of the  
19 confidential evidence on the record of this  
20 investigation.

21 VICE CHAIRMAN PEARSON: Okay. Well, my time  
22 has expired, but I would encourage you to go ahead and  
23 reiterate that argument in the post-hearing briefs so  
24 that I'll make sure that I understand it because,  
25 frankly, it's not yet obvious to me how I might best

1 distinguish between any price effects that would be  
2 related to the filing of this case and what's  
3 happening to price in the world more broadly. Those  
4 of you who are in the business very likely know that.  
5 I don't know it. Thank you very much, Madam Chairman.

6 CHAIRMAN ARANOFF: Commissioner Okun?

7 COMMISSIONER OKUN: Thank you, Madam  
8 Chairman, and I join my colleagues in welcoming all of  
9 you here today. It's good to be back at another PET  
10 film hearing, but a number of things going on on this  
11 record that I would like to explore further.

12 I found the pricing discussion you were just  
13 having with the vice chairman very interesting because  
14 I've heard from the industry witnesses and from you,  
15 Mr. Greenwald, as well, that your focus on this is a  
16 price case.

17 I have to say, in the prelim., you know, I  
18 was struggling with what we were looking at in prices,  
19 and some of that, I think, you heard in some of the  
20 questions earlier, which is, you know, if we have  
21 global trends that seem to also reflect what went on  
22 in the U.S. market, the timing, and I will go back and  
23 look at what you just said, Mr. Greenwald, about the  
24 breakout of price increases by year.

25 But I have been hesitant, at other times, to

1 go along with this idea that rumors in the market are  
2 something the Commission should put a lot of weight  
3 on, and, again, interim data is often troublesome, not  
4 troublesome, but it's a shorter period, and we have to  
5 look at it and figure out what to do with it.

6 So I guess I just wanted to talk a little  
7 bit more about the specifics of the pricing in the  
8 period and have you tell me when you first saw it.  
9 Mr. Trice, let's start with you because you're the one  
10 who said you started seeing movements in price, and,  
11 again, I've looked at the pricing data, and I'm just  
12 trying to link up, was it the subject imports moving  
13 out of the market that you think allowed you to  
14 increase the prices, or was it the pricing itself  
15 stabilizing from subject imports that allowed you to  
16 do that?

17 I don't know if that's clear, but I'm just  
18 trying to figure out, was it a volume movement or a  
19 price movement that you believe allowed the prices to  
20 start coming up? Then I would like to hear from the  
21 other producers as well.

22 MR. TRICE: I can only give you a guess  
23 because the market is not always as transparent as I  
24 would like for it to be, but my guess is it's probably  
25 a combination of both. On the very last part of '07,

1 when, as I mentioned, the rumors in the marketplace  
2 were out, that there very well might be duties against  
3 the subject countries.

4 My guess is that some of the importers  
5 started to become hesitate on the demand, as far as  
6 continually supplying at the rate that they had been  
7 supplying to the U.S. It's hard to say whether it's  
8 price or supply, but if they didn't understand what  
9 potentially the duties might be, it would be difficult  
10 for them probably to commit because imports have to be  
11 usually committed one quarter at a time because of the  
12 long shipment times.

13 So I don't know whether it's chicken or egg  
14 supply or price, but I think, ultimately, before the  
15 actual duty, I would have to believe it was the  
16 uncertainty of what the duty was going to be and what  
17 the price point was going to be, but, this year, in  
18 '08, specifically, once it became clear, I think it  
19 was extremely obvious that it was price. The  
20 availability of the imports, because they were not  
21 having to price their products with the duties, became  
22 less attractive than the domestic pricing.

23 COMMISSIONER OKUN: Okay. Mr. Eckles?

24 MR. ECKLES: Yes. Another factor that I  
25 think we should consider was the exchange rate during

1 that period. A lot of importers selling into the U.S.  
2 had to deal with the devaluation of the U.S. dollar,  
3 which is very difficult when you're importing film  
4 into the U.S.

5 So I know, at Toray, that was an effect that  
6 we saw that started to make the market a bit tighter  
7 here in the U.S. because folks didn't want to bring  
8 product into the States.

9 The other was there is a fair amount of  
10 seasonality to some of our markets.

11 COMMISSIONER OKUN: Just on that, when do  
12 you think that time period was? If it was exchange  
13 rate driven, what?

14 MR. ECKLES: I don't have the data in front  
15 of me. I guess maybe we can address that in the post-  
16 hearing brief. But I know that was a factor at some  
17 period of time in the last year or two.

18 COMMISSIONER OKUN: Okay.

19 MR. ECKLES: And then also, there is  
20 seasonality to some of our markets. So, for instance,  
21 Toray is a rather small film manufacturer here in the  
22 U.S., and, at certain times of the year, we're more  
23 committed to one market than another market because  
24 that market kind of has a season to it.

25 So, in the down season, we tend to kind of

1 expand the application areas that we sell to, but when  
2 we're very tight, selling to a strategic market, we  
3 may cut back a little bit.

4 So that also would cause a little bit of  
5 change in demand in the U.S., depending on what the  
6 seasons are for each one of our companies.

7 COMMISSIONER OKUN: Okay. Mr. Kim?

8 MR. KIM: I think this will cover a couple  
9 of concerns or questions that you may have.

10 During that time period, all of the domestic  
11 manufacturers covered imports that were coming into  
12 the U.S. on a religious basis. We looked at it very  
13 carefully to see what type of impacts they are having.

14 As Mr. Trice mentioned, just by rumor alone,  
15 significant amounts of imports had started to slow  
16 down, due to the fact that anything on the water was  
17 also subject. Therefore, to minimize their risks,  
18 many of the importers or offshore producers started  
19 decreasing shipments.

20 At the same time, many of the domestic  
21 manufacturers had shifted their product portfolio,  
22 over the last three years, to not directly compete  
23 against many of these products, and in order for those  
24 lines to come back to the efficiencies and the levels  
25 where it made sense for that to be a viable product,

1 that price increase push was necessary.

2 So it was a combination of both import  
3 decreases that came out from the various actions, as  
4 well as the requirements for the U.S. manufacturers to  
5 make a product at a profitable basis and not at a  
6 loss, which all of the commodity products were being  
7 manufactured in the U.S., with SKC, anyway, was at a  
8 loss.

9 COMMISSIONER OKUN: Okay. Mr. Kassoff?

10 MR. KASSOFF: If we look at 2007, the early-  
11 to-mid part of 2007, raw material prices were on the  
12 rise then as well, and we attempted to have some price  
13 increases at that time, with mixed success.

14 As we began in this case in October, if you  
15 look at the import data for the HTS number, and you  
16 plot it, on a monthly basis, from the four countries,  
17 you can see it decreasing pretty quickly -- October,  
18 November, December, January -- you can see the drop.

19 We then had some price increases, the first  
20 one being December, and the success rate was much more  
21 dramatic. So, to me, that kind of puts the two right  
22 together.

23 COMMISSIONER OKUN: Okay. I appreciate  
24 those responses. For post-hearing, Mr. Greenwald, if  
25 you can help me out on the price question by both the

1 information you submitted earlier and, I know, is in  
2 your brief that you're already discussed, but also  
3 looking at our pricing data and the volume and price  
4 trends we see there, and help me understand which  
5 products you think best describe, or best support,  
6 what I hear from the witnesses and any other  
7 information that would be helpful in that.

8 MR. GREENWALD: We will do that.

9 COMMISSIONER OKUN: Okay. Then just a brief  
10 follow-up on captive production and your response to  
11 the Chairman.

12 The one thing that strikes me, and perhaps  
13 you have a response to this that you can put into the  
14 post-hearing, but captive production is one of the  
15 more detailed of the provisions that the Commission  
16 has looked at, and so it's never struck me, for the  
17 time I've tried to scratch my head on what some of  
18 this meant, it's never looked to me like it was meant  
19 to be a very flexible statute -- not statute, a  
20 flexible application that you're given these very  
21 specific things to look at, and, therefore, in the  
22 hearing, you say, "Well, it would make sense."

23 I keep thinking, well, if it make sense, I  
24 don't need all of that. I could have just decided to  
25 do, really, what I think we do, which is look at

1 conditions of competition, which, I think, does allow  
2 us to focus on what we should be focusing on.

3 So, I guess I'm scratching my head a little  
4 bit on, is it really that we should be rewriting  
5 captive production here versus looking at conditions  
6 of competition?

7 MR. GREENWALD: Well, again, this is  
8 something that, I think, bothers me more than anybody  
9 else in the room. I'm probably wrong, and you're all  
10 probably right.

11 That said, when you have a statute that does  
12 not dictate a particular approach and gives you the  
13 flexibility, you ought to apply that flexibility in a  
14 way that best comports with the purpose of the  
15 statute.

16 I remember, way back when, when I went over  
17 to Commerce, just after the authority for the  
18 antidumping law was transferred from Treasury to  
19 Commerce, and I would sit down with Commerce staff,  
20 and they would say, "This is what we've got to do,"  
21 and the question would be, "Why do we have to do it  
22 that way?" and they would say, "Well, the statute.  
23 The statute requires it."

24 So we would say, "Let's get out the statute  
25 and go through it." The statute didn't require it.

1 Then they would say, "Well, but that's what we always  
2 do." And I think there is an element of, in any  
3 organization, to do what's been done, but, in this  
4 very narrow issue, I think it's indisputable that you  
5 have the flexibility to interpret this particular  
6 provision, either by weight or by value, and I'm  
7 simply urging that the issue be done in the way that  
8 best promotes the objectives of this particular  
9 provision.

10 COMMISSIONER OKUN: Okay. My red light has  
11 come on. I can come back to my other questions.  
12 Thank you very much.

13 CHAIRMAN ARANOFF: Commissioner Lane?

14 COMMISSIONER LANE: Good morning. I want to  
15 go back to a couple of really basic issues, and then  
16 I'll get into the captive consumption issue.

17 In the staff report, there is talk about the  
18 imports coming in from Canada and from Oman, and I was  
19 having a hard time understanding exactly what the  
20 difference is in that product and the product that we  
21 are looking at today. So could somebody explain that  
22 to me in very elementary terms so that I can  
23 understand that?

24 MR. ECKLES: Sure. The product coming from  
25 Oman is a thick sheet; it's not flexible. So it's

1 used for thermoforming; it's not used for flexible  
2 packaging or industrial applications. You can wave it  
3 in the air, and it stays rigid, whereas our film is  
4 flexible.

5 COMMISSIONER LANE: And, Mr. Greenwald, so  
6 that is clearly not included in the scope of this  
7 case. I read the description, and it was sort of very  
8 vague and not very specific.

9 MR. GREENWALD: It is something called "APET  
10 film." Now, you've probably just exhausted my  
11 technical knowledge in saying that's what it is, but  
12 our understanding is that it is not subject PET film,  
13 as the subject "PET film" is defined in this  
14 investigation.

15 MR. ECKLES: I can elaborate a little bit on  
16 APET.

17 COMMISSIONER LANE: Okay.

18 MR. ECKLES: APET is a modified polymer, and  
19 it allows the crystalline structure of polyester film  
20 to be kind of broken up a bit so you can then form it  
21 into some kind of shape. Normally, polyester film, by  
22 its physical property, and the merit of polyester film  
23 has been that crystalline structure because of the  
24 strength to withstand heat and torque and so forth.  
25 But in the case of thermoforming, they wanted to be

1 able to form it, so they had to break down the  
2 crystalline structure.

3 If you looked at the thickness of the sheet  
4 coming from Oman versus what we produce, it's  
5 sometimes 60 times thicker. That's the Oman portion.

6 COMMISSIONER LANE: Okay. What about  
7 Canada?

8 MR. MELTZER: During the preliminary phase  
9 of this case, I think all of the parties agreed that  
10 there is no PET film production in Canada.

11 COMMISSIONER LANE: Well, I understand that,  
12 but I want to know what is coming in from Canada and  
13 how it's different than PET film.

14 MR. MELTZER: We think that a substantial  
15 part of what is coming in from Canada really are  
16 downstream products. So there is a customer there who  
17 receives PET film, does processing on the product,  
18 it's substantially transformed, and what's coming back  
19 is not subject PET film, even though it's entered  
20 under the HTS number.

21 MR. KIM: Most of the findings that we found  
22 in the research there was a lot of processed films,  
23 but in order for many of these companies to get the  
24 duty drawback on those products that they shipped --  
25 for instance, we have Customer A who would buy the PET

1 films in the U.S. and ship it to Canada. They would  
2 process and add value to Canada, and they would come  
3 back to the U.S., but they would have to use the same  
4 code in order for them to get the duty that they had  
5 to put up in order for that to come back to the United  
6 States.

7 So most of the findings came to that type of  
8 a conclusion.

9 COMMISSIONER LANE: Okay. Thank you. Now,  
10 the other question I had is, we've heard a lot of  
11 testimony this morning about specialty film and  
12 commodity film, and I couldn't really find any place  
13 in the record where we were given specific volumes as  
14 to the specialty film and the commodity film and how  
15 much of each the U.S. producers produce in this  
16 country, and how much of each is produced nondomestic  
17 sources.

18 MR. ECKLES: We certainly can give you that  
19 detail in the post-hearing brief, but, basically, the  
20 U.S. market is more commodity than it is value-add.  
21 The percentage is roughly around 60 to 65 percent  
22 commodity and 30 to 35 percent, whatever the  
23 difference is, in value-add. It's constantly  
24 changing, but, for the most part, it's predominantly a  
25 commodity market.

1                   COMMISSIONER LANE: And so when you give me  
2 this information, you're going to also be able to tell  
3 me the product that is being imported, how much of it  
4 is commodity and how much of it is specialty.

5                   MR. ECKLES: It's going to be tough to do  
6 for unrelated parties because it just comes under that  
7 HS code. We can certainly estimate.

8                   MR. TRICE: We can each give our own data --

9                   MR. ECKLES: Right.

10                  MR. TRICE: -- obviously, confidentially,  
11 but that would be no problem at all.

12                  COMMISSIONER LANE: Okay. That would be  
13 fine. Okay.

14                  Now, back to captive consumption, could you  
15 describe the primary downstream articles that are  
16 produced by the firms that have internal transfers and  
17 describe the additional manufacturing steps that go  
18 into the downstream article?

19                  MR. KIM: I'll touch upon that quickly  
20 first. I think it's pretty well-known market and  
21 public information that most of the captive users  
22 there are very well-known brand names, such as Eastman  
23 Kodak and 3M. They have their own manufacturing  
24 capabilities to manufacture the PET films and then use  
25 them on a downstream process as either x-ray films for

1 medical imaging or photographic or any type of imaging  
2 application, as well as using their proprietary  
3 technologies for coatings and/or treatments, use them  
4 for the LCD markets or the higher-end electronics  
5 markets.

6 So it basically leaves their plant as a  
7 Kodak or 3M name that has been further processed  
8 through a sister plant, which can be on site or at a  
9 different location.

10 MR. ECKLES: Other products that are  
11 downstream would be pressure-sensitive labels,  
12 pressure-sensitive tapes. We're all familiar with the  
13 Scot brand from 3M that uses a lot of internally  
14 produced polyester film.

15 COMMISSIONER LANE: Okay. Now back to the  
16 issue that was being discussed earlier by some of my  
17 fellow commissioners.

18 One of the factors that we have to look at  
19 is whether the domestic like product is the  
20 predominant material input in the downstream article.  
21 I would like for you to focus on the word "material"  
22 in the context of the captive consumption issue.  
23 "Material" can mean "significant," or it can mean a  
24 physical substance that is used to make something.

25 Do you think that "material input" should

1 mean raw material, and how would such an  
2 interpretation affect the analysis of whether the  
3 domestic like product was the predominant material  
4 input in production of the downstream article?

5 MR. GREENWALD: I have always interpreted  
6 "predominant material input" in a physical sense; that  
7 is, you take, in this case, PET film, and you look at  
8 what, let's say, Eastman Kodak produces from it, and  
9 you apply a predominance test, and if you apply it by  
10 value, the downstream product, it is not going to be  
11 predominant. If you apply it by weight, it will be.

12 The back and forth I've been having has  
13 been, how do you apply it, as I read the statute?  
14 Each of you has the way to interpret that in the way  
15 that makes the most sense to you, has the discretion.  
16 So that's how I've always interpreted it.

17 COMMISSIONER LANE: Okay. Thank you.

18 Internal transfers are supposed to be valued  
19 at fair market value. I would like to know how the  
20 domestic producers that have internal uses for their  
21 PET film determine that fair market value, and, in  
22 answering, I would like your views on whether the  
23 argument that we are dealing with in an unfair market  
24 and a dumping case dictates a modified view of fair  
25 market value.

1           MR. KASSOFF: We look at our market prices  
2           and know what the films are that we supply for  
3           internal consumption and see what we're selling them  
4           to the outside customers and consider that to be the  
5           fair market value.

6           COMMISSIONER LANE: Okay. Thank you, Madam  
7           Chairman. I'll wait until my next round.

8           CHAIRMAN ARANOFF: Commissioner Williamson?

9           COMMISSIONER WILLIAMSON: Thank you, Madam  
10          Chairman. I, too, want to express my appreciation to  
11          the witnesses for their testimony today and for giving  
12          that information to us.

13          Let's go back to this question of the  
14          captive production and, particularly, the  
15          weight/volume issue. I know you've discussed it a  
16          lot, but, either in post-hearing, I would hope that  
17          you could come up with some description or discussion  
18          of this particular product and why it's either the  
19          characteristics of the way it's produced or it's  
20          nature that is relevant, for those of us who don't  
21          like simply a results-oriented test.

22          MR. GREENWALD: I think that's a fair  
23          question, and the burden is on us to provide a neutral  
24          principle that makes sense, and, yes, we will do that.

25          COMMISSIONER WILLIAMSON: Thank you.

1           Commissioner Aranoff had raised earlier the  
2           allegations of supply shortages in the domestic  
3           industry for certain commodity-grade products that  
4           have forced end users to seek imported sources, and I  
5           was wondering if any other witnesses wanted to offer  
6           comments on that. I think Mr. Trice began to discuss  
7           that, but I was wondering if there is anything else  
8           that you want to add.

9           MR. TRICE: Mr. Williamson, I think it comes  
10          back to, you can never separate totally price and  
11          supply or price and demand.

12          As the subject imports have decreased, which  
13          the data shows, it has, therefore, increased the  
14          demand for domestically produced product, which has  
15          allowed the domestic producers to raise pricing.

16          So it's a direct correlation. As the  
17          preliminary duty was put in place, and even rumored to  
18          be put in place, as I mentioned earlier, there was  
19          more demand for our product, which allowed us to raise  
20          pricing.

21          MR. ECKLES: We all are embarking on R&D  
22          programs. It's the lifeline of our business, like any  
23          manufacturing company, and there are times when new  
24          developments help us utilize our assets better than  
25          other times.

1           So it's really kind of a timing thing. We  
2 can make these new products rather than produce  
3 another product because the benefit to our company is  
4 better.

5           So it's kind of a general statement, but, in  
6 reality, our mix of products is constantly changing,  
7 and we're constantly looking at how that mix of  
8 products affects our bottom line.

9           There might be a time where the price of  
10 commodity films gets to the point where it's more  
11 advantageous to make only commodity films than value-  
12 add. That would be great, if it happened, but you can  
13 see that it's all about the mix of products that we  
14 produce and the efficiencies we get on our film lines.

15           MR. GREENWALD: Commissioner Williamson, the  
16 Respondents' claims on supply shortages are in some of  
17 the briefs that were filed and, I think, some of the  
18 statements made to the Commission. I wish I could  
19 discuss them in detail in a public forum. I, clearly,  
20 can't. But the thing that is remarkable about them is  
21 the way in which they seem to regard the relationship  
22 between supply and price.

23           I can guarantee you, just sitting here and  
24 having talked to each of these companies, that when  
25 the price of the commodity-grade films moved from a

1 loss to a slim profit, there was more interest. At  
2 some level, they all have to do it because the  
3 customers demand it. It is the bulk of the market.

4 If that price point were to move, relative  
5 to cost, to a healthy profit, you would see much more  
6 eagerness, on the part of the domestic industry, to  
7 meet demands of all customers for commodity-grade  
8 products.

9 What has happened, over time, in fact, is  
10 lines have been taken out rather than -- it's the  
11 tragedy of this whole system. Lines are taken out  
12 because the pricing does not allow production of  
13 commodity-grade products at a reasonable profit. The  
14 industry comes here, there has been, and there has  
15 been in this case, a history of temporary relief.

16 But the point I want to make is that when  
17 Respondents discuss supply and supply shortages,  
18 without regard to pricing, it's nonsense.

19 COMMISSIONER WILLIAMSON: Okay. Thank you.

20 Either now or in post-hearing, Mr. Kassoff,  
21 I was wondering if you could respond to the  
22 Respondents' argument that Dupont is basically sort of  
23 stagnating its U.S. operations to keep the Asian  
24 operation the most competitive, I guess you would say.  
25 I don't know whether you want to say anything now or

1 else just do it in post-hearing.

2 MR. KASSOFF: We'll address that in a post-  
3 hearing brief.

4 COMMISSIONER WILLIAMSON: Okay. Thank you.

5 I was wondering if, either here or in post-  
6 hearing, also, anyone could comment on productivity  
7 trends in the industry and employment trends and any  
8 significance to the relationship, and does that say  
9 anything significant about whether or not there is  
10 injury.

11 MR. KIM: I believe this will be maybe a  
12 direct correlation to your previous question as well.

13 In running a 24/7, 365-day operation, you  
14 need to come to a decision as to whether it makes  
15 sense to keep the lines running or to idle them, and,  
16 in SKC's case, pre-2007, there had been cases where  
17 we've actually deliberately idled the lines because it  
18 made more sense for us to shut the lines down than to  
19 sell it at the requested market pricing that we would  
20 get on those production requirements.

21 If the economies of scale dictate that the  
22 pricing, at a fair market price, is sustainable, all  
23 of the shortage-related questions would be answered.

24 SKC would be willing to produce and supply  
25 any types of commodity-based films if the pricing

1 economics made sense.

2 Getting back to your previous question, the  
3 supply situation, as well as the imports, have had  
4 impacts in our Covington operation, where we have had,  
5 pre-2007, cut back shifts, decreased manpower, as well  
6 as decreased total operating hours on our lines to be  
7 involved in a stagnant market. That has, of course,  
8 changed significantly with the additional demands and  
9 requirements that we face today.

10 COMMISSIONER WILLIAMSON: Thank you.

11 I was wondering as to this question of  
12 pricing that has been discussed quite a bit, but I was  
13 wondering, to what extent do purchasers expect price  
14 increases for PET film when they know that the costs  
15 of raw material inputs are increasing?

16 MR. KIM: I think, throughout this industry,  
17 the relationships that we have with converters, as  
18 well as many of our customers, we've turned them into  
19 experts of how to calculate PET pricing. So they know  
20 very well, through published information, in terms of  
21 the cost structure and makeup of a pound of polyester  
22 film, through its raw material pricing and its  
23 conversion costs associated with, and a fair margin  
24 above and beyond that.

25 So, in terms of them understanding the cost

1 pressures that we face with raw material increases,  
2 which are published on a regular basis, it is not too  
3 much to ask that, without those levels of significant  
4 energy, as well as the recent increases that we faced,  
5 that we try to cover our losses, as well as the  
6 pressures that we face in making that pound of  
7 polyester film.

8 MR. GREENWALD: Bemis is going to testify  
9 this afternoon. I would be shocked if they did not  
10 say that they, like anybody here, are under constant  
11 pressure to reduce their manufacturing costs,  
12 including reducing their material costs, and while I'm  
13 sure that, in some sort of abstract sense, a Bemis  
14 purchasing manager cares about these fellows up here,  
15 my guess is, when he reports to his management about  
16 his costs and what he is doing to contain them, there  
17 isn't very much interest in a response saying, "Well,  
18 Dupont needs to make a living wage," or the like.

19 So, yes, you're going to hear that they are  
20 under constant price pressure, and they are not  
21 particularly persuaded by the cost story you hear in  
22 the U.S. industry. That's why we're here.

23 COMMISSIONER WILLIAMSON: Thank you very  
24 much for those answers. My time has expired.

25 CHAIRMAN ARANOFF: Commissioner Pinkert?

1                   COMMISSIONER PINKERT: Thank you, Madam  
2                   Chairman.

3                   Mr. Greenwald, do you have any information  
4                   contradicting Terphane's claim that it withdrew from  
5                   the U.S. market under a business plan that predated  
6                   the filing of the petition in this case?

7                   MR. GREENWALD: There are things I can say  
8                   that I would rather say in confidence in a post-  
9                   hearing brief. I can say publicly that I don't  
10                  believe it, but there is more to it than that.

11                  COMMISSIONER PINKERT: Perhaps you could  
12                  address this, then, as a hypothetical, and you can  
13                  supplement in the post-hearing. Assuming we were to  
14                  find that Terphane did make such an unrelated  
15                  withdrawal from the market, what impact should that  
16                  have with respect to our determination regarding  
17                  material injury or threat in this case?

18                  MR. GREENWALD: Let me address that. There  
19                  is one case I was involved in where a decision was  
20                  made to withdraw from the market, and it did have an  
21                  impact on the result, and I'll address that in the  
22                  post-conference brief.

23                  But what I would like to alert you to are  
24                  the trends in imports from Brazil. Some questionnaire  
25                  responses by purchasers that talk about those imports,

1 and it strikes me as to strain credulity that  
2 Terphane-Brazil had given up the U.S. market. To the  
3 contrary, I think all of the evidence disproves the  
4 claim.

5 COMMISSIONER PINKERT: Thank you.

6 Now, does anybody on this panel have any  
7 views as to why the unit values of imports from  
8 nonsubject countries are higher than the unit values  
9 of the subject imports?

10 MR. GREENWALD: They are covered by  
11 antidumping orders, so there is antidumping discipline  
12 on most of them. If you're dealing with what should  
13 be very high prices from Germany or from Japan -- they  
14 tend to be specialty products that aren't produced  
15 here -- it is why the Bratsk case that Respondents  
16 rely so heavily on simply doesn't apply to the facts  
17 here.

18 COMMISSIONER PINKERT: That gives me a good  
19 lead-in to my next question. As you know, as you  
20 alluded to earlier, the Commission made affirmative  
21 determinations in the sunset reviews on Korea in 2005  
22 and India and Taiwan just a few months ago. What is  
23 the relevance of those determinations to the issues  
24 before the Commission in this case?

25 MR. GREENWALD: Well, they go to explain why

1 it is that, in a marketplace where there are suppliers  
2 from various countries, this subset of foreign  
3 producers that, at present, are under antidumping  
4 discipline now, matters so much.

5 The domestic industry has not found that the  
6 imports that are subject to antidumping and  
7 countervailing duty disciplines create anything like  
8 the problem that subject imports do, and, again, it  
9 goes back to nonsubject versus subject.

10 It is no coincidence that the fortunes of  
11 the domestic industry and the pricing in the domestic  
12 market both took their substantial upward turn after  
13 this case was filed, and it is no coincidence that, to  
14 date, that improvement in the market has not been  
15 undermined by nonsubject imports precisely because  
16 they are subject either to discipline, or they are not  
17 the sorts of grades that are at issue in this case.

18 MR. ECKLES: I would like to add one  
19 comment. Two of the countries that are under this  
20 investigation have Indian heritage, and, in the past,  
21 this panel has put sanctions in place against these  
22 Indian producers for dumping.

23 So there is a trend here, and the trend  
24 continues because the Indian manufacturers have  
25 started to invest in other countries, as we speak, to

1 get around dumping orders.

2 So we believe that the management team  
3 really is just transferring their same injurious  
4 imports to other countries to avoid dumping suits.

5 COMMISSIONER PINKERT: That may remind you,  
6 Mr. Greenwald, of our discussion in one of the  
7 previous sunset cases of what I referred to then as  
8 the "whack-a-mole theory," and I would like you to  
9 respond to that here, the idea that it doesn't matter  
10 where you put an order because the production will  
11 just sprout up in another country, and the imports  
12 will come from that new location.

13 MR. GREENWALD: It does matter where you put  
14 an order. I can go through every case we've had, and  
15 what you find is the deteriorating condition of the  
16 domestic industry, an antidumping case, an order, a  
17 material improvement. This statute is not perfect. I  
18 would love to be able to bring a case right now  
19 against Mexico, except Mexico is not onstream.

20 It's probably going to happen, but, given  
21 the way the statute is structured, what I think is  
22 very important for all of you to understand is that,  
23 in this particular industry, it has a pattern of  
24 working not 100 percent but working enough to bring  
25 these people back. They probably enjoy this

1 experience, but they certainly don't enjoy paying us  
2 for being here.

3 It's something that they decide to do based  
4 on how the statute works, and you're absolutely right.  
5 There is a "whack-a-mole" aspect to the statute just  
6 simply because of its structure, but you can't let the  
7 idea that we're going to have to whack possibly a  
8 Mexican mole in -- I don't know -- two years distract  
9 you from the fact that, in this case, at this time,  
10 this order really, really, really matters, and you can  
11 see it in the data.

12 I'm generally not here where I can point to  
13 pre-petition data and post-petition data. Generally,  
14 you see a declining U.S. industry performance with a  
15 rise in imports, but here you have it both ways. It  
16 does work; it works imperfectly.

17 MR. TRICE: Mr. Pinkert, maybe I can give  
18 you, at least, an opinion, after 17 years in this  
19 business, and don't ask me why I keep sticking with  
20 it. That's a different answer.

21 When I came into this business, around 1991,  
22 it was after the first order -- I think I'm right on  
23 that timing -- was on the Japanese. At that time, our  
24 firm was owned by a German company called Hertsk, a  
25 large chemical company at the time.

1           Hertsk did not look favorably upon the  
2 business, at the time. We had gone through a major  
3 restructuring when I came in, and we decided to enter  
4 into a joint venture with a Japanese company,  
5 Mitsubishi, and, in retrospect, I believe that because  
6 of the duties that were put on the Japanese product is  
7 what enticed them to go into a joint venture.

8           In 1998, they purchased 100 percent of our  
9 business, and, frankly, they have been the best owners  
10 that we've had in the 44-year history because they  
11 have looked at it as a long-term business.

12           As I mentioned in my brief, we invested  
13 heavily in decisions in 1999 and 2000, and I know that  
14 we would not have gone forward with those investments  
15 had we not had the security of the antidumping orders  
16 against India because the market would not have been  
17 attractive.

18           Maybe it would be better for my colleague to  
19 respond, but the order against Korea in the mid-  
20 nineties, I have to believe, had some influence on my  
21 Korean friends here who decided to put a very large  
22 operation into Georgia at the time because they were a  
23 major importer of film prior to that dumping order.

24           So, from my viewpoint, looking at that  
25 multiple-decade experience, I believe it has helped us

1       tremendously, as an industry, and I'm sort of like  
2       John. This is the first time I've sat in front of  
3       this Commission, but, regretfully, I have to think, in  
4       the long term, it may not be the last.

5                COMMISSIONER PINKERT: Thank you. I'm out  
6       of time for this round.

7                CHAIRMAN ARANOFF: Thank you. I do want to  
8       ask a question about the Bratsk analysis. Some of the  
9       Respondents make an argument that, in considering the  
10      ability of nonsubject producers to replace subject  
11      imports, we should be considering the factor of ease  
12      of entry into the industry.

13               As you know, we usually look at nonsubject  
14      producers who are already in the U.S. market during  
15      the period of investigation. We don't usually go out  
16      and try to figure out who else might have been there,  
17      given the right incentives.

18               Are there any comments that you want to make  
19      on this ease-of-entry argument?

20               MR. GREENWALD: The ease-of-entry issue was  
21      addressed I think in David Kim's testimony. If you  
22      have \$100 million and you're willing to invest it in a  
23      plant, you can enter the market, but for those that  
24      don't have the capital, it's not like shifting looms  
25      from one country to another.

1           The other point I suppose is one can  
2 speculate about what imports from other sources are  
3 going to be, but that's speculation, and one can  
4 speculate about the pricing. I think it's common  
5 knowledge that some producers are considering  
6 investment in Mexico. Whether or not that's a problem  
7 will depend almost entirely on the plant.

8           So, again, the way the Bratsk case is  
9 articulated by the CFAC, the question is, will subject  
10 imports take the benefit of the order as opposed to  
11 the domestic industry? Here, the benefit to the  
12 domestic industry is clear not only post-1997 but  
13 historically.

14           CHAIRMAN ARANOFF: Okay. Just one question  
15 to sort of clean up the record. Some of the  
16 Respondents have argued that BOPP is a very good  
17 substitute for PET film. So I just wanted to ask the  
18 industry witnesses, how good a substitute is it, and  
19 do the prices for BOPP or its availability in the U.S.  
20 market affect domestic prices for PET film?

21           MR. ECKLES: Right, Toray Plastics America  
22 is a polyester and polypropylene film manufacturer,  
23 located in North Kingstown, Rhode Island.

24           It really boils down to price again,  
25 unfortunately. The weight of polypropylene has a

1 density less polyester. So you get more area per  
2 pound. So if the price fluctuates to the point where  
3 it's cheaper to use polypropylene in some  
4 applications, they can use polypropylene versus  
5 polyester.

6 CHAIRMAN ARANOFF: Could you give me  
7 examples of what some of those applications might be  
8 and how large they are, relative to the size of the  
9 market?

10 MR. ECKLES: I can give you the detail in  
11 the post-hearing brief. But basically, it's really  
12 less sophisticated packaging applications; and also  
13 some, again, less sophisticated packaging  
14 applications; and also some, again, less sophisticated  
15 industrial applications, where the physical properties  
16 of the product is less important to the functionality  
17 of the product.

18 In those applications, price is like the  
19 driving force. So they may substitute polypropylene  
20 for polyester, depending on the price of the two base  
21 films.

22 CHAIRMAN ARANOFF: So then your answer to me  
23 would be yes, they are substitutable; and yes, the  
24 price of one does affect the price of the other.

25 MR. ECKLES: It can, yes.

1 CHAIRMAN ARANOFF: Okay.

2 MR. TRICE: Also, the point that Todd made  
3 is important. That substitutability is only in a  
4 small part of the market. I think, you know, Todd,  
5 our sales can give examples of that privately.

6 But in the broad market, polyester in  
7 general costs more to make and has higher selling  
8 prices; and the reason that people buy it is because  
9 they have to buy it, because it performs a function  
10 and polypropylene usually will not, in the broad sense  
11 of the market.

12 MR. KIM: In reiterating Mr. Trice's  
13 comments there, it's a very small segment where  
14 polypropylene interchangeably can be used. But you  
15 will not get the same effects. You are compromising  
16 the performance of one sub-straight versus another in  
17 order to do that.

18 My understanding is that in terms of  
19 preference, if everything was equal, the preference is  
20 for PET to be used in many of the applications. Now  
21 if there is a type of cost savings and such,  
22 sacrifices will be made in terms of the performances  
23 of that structure in order to use that as a  
24 replacement product for PET films.

25 CHAIRMAN ARANOFF: Okay, let me shift gears

1 and go to a price question. I'm not sure how much of  
2 this can be answered on the public record.

3 The Chinese Respondents make the argument  
4 that we should disregard any under-selling that we  
5 have in our price comparison data, where the subject  
6 imports are brought into the United States by domestic  
7 producers who are related to subject producers. They  
8 call such under-selling volitional. Do you have a  
9 response to that?

10 MR. GREENWALD: I think when you read some  
11 of the other briefs -- and again, it gets all into  
12 this confidential information -- you will find that it  
13 is hardly volitional. The idea that any U.S. producer  
14 would willingly sell for less than they would like to  
15 sell at, or less than the market would bear, strikes  
16 me at odds with sort of fundamental econ 101.

17 Well, I mean, there are two things to do.  
18 When you're looking at the data in the staff report,  
19 there's an interesting division by product between the  
20 responses where the imports are from a related U.S.  
21 company -- or a Chinese producer related to a U.S.  
22 company -- and where they're not.

23 I mean, one of the things that Respondents  
24 have tried to do is portray imports from China as  
25 essentially imports from Dupont Teijin. That's just

1 not true. Most of the imports from China, as I  
2 understand it -- the great majority, in fact -- are  
3 not from Dupont Teijin.

4 I'll elaborate this in the post-hearing  
5 brief. But I actually was interested in the question,  
6 can you compare Dupont Teijin's resale price of  
7 Chinese merchandise to the resale prices in the record  
8 of Chinese merchandise from other suppliers that are  
9 unrelated to any U.S. producer? The answer is, you  
10 can and the data are very instructive. In a public  
11 hearing, I can't say more than that.

12 CHAIRMAN ARANOFF: Okay, to the extent that  
13 you have the time and the inclination in the post-  
14 hearing, anything that you can do to tease that  
15 pricing data apart and separate out prices for imports  
16 that came from related versus unrelated producers and  
17 look at the under-selling, that would be, I think,  
18 helpful.

19 MR. GREENWALD: We will do that.

20 CHAIRMAN ARANOFF: Thank you; now I hate to  
21 belabor this point, because it has come up a few  
22 times. But I'm still having a little trouble with it.

23 The idea that changes in the price for a  
24 particular commodity film product can have ripple  
25 effect through the market -- I understood the

1 testimony was that if a customer sees that the price  
2 is going down on one product, they perceive some over-  
3 capacity in the market. That maybe makes them come  
4 back and demand a lower price on other products.

5 But I'm still not quite seeing how that  
6 translates through. They come and you go, well, no,  
7 but there is no over-capacity in this product. So,  
8 no, we don't lower our price. I'm still having a  
9 little trouble seeing how that translates across  
10 products; Mr. Kim?

11 MR. KIM: Yes, if we take an example of  
12 Customer A, Customer A requires SKC to supply them  
13 specialty as well as commodity products. When we look  
14 at that total value in 100, the amount of the  
15 specialty product offsets pre-2007 the losses that we  
16 had on the commodity products.

17 Therefore, that balance is very critical as  
18 to how much percentage out of that 100 they are  
19 willing to give specialty versus commodity. If the  
20 specialty should decrease significantly, then  
21 everything else in terms of the commodity side is at a  
22 loss.

23 How does that commodity side now impacts the  
24 overall is, now the playing field with that commodity  
25 product has come up to a break even point or beyond.

1 Therefore, it makes sense for us to sell that product  
2 without that combination with the specialty products.

3 So that whole product portfolio itself now  
4 gets completely changed around. Whereas, when we were  
5 trying to offset losses with specialty products with  
6 the fair value of commodity products, that offset  
7 requirement is no longer necessary.

8 MR. TRICE: Ms. Aranoff, at least from my  
9 experience, for most of the specialty products that we  
10 produce, one of core competencies is coatings. We put  
11 special coatings on films to enhance the performance  
12 of the film.

13 Many of these applications over the last 20  
14 years have been developed, which were being done by  
15 processes that our customers once did in an off-line  
16 process. When we do it in our own process, we can put  
17 on less coatings. We can do that in a more cost  
18 effective fashion.

19 So you can imagine, for the products that  
20 are now called specialties, at one time, they were  
21 produced with commodity products that the customer  
22 themselves added they value to.

23 So when those base products, pure commodity  
24 products, get depressed on pricing, it does not allow  
25 us to leave that specialty product at a very high

1 price. Because that value difference that we were  
2 once bringing in that specialty, if that gap gets too  
3 large, they can then go back and start doing it in a  
4 different way off-line, again.

5 CHAIRMAN ARANOFF: Okay, that's very  
6 helpful, thank you. I'll excuse myself to my  
7 colleagues for going way over time. I'm going to pass  
8 on to Vice Chairman Pearson.

9 VICE CHAIRMAN PEARSON: I can assure you, I  
10 never saw a red light. I never see the Chairman's red  
11 light.

12 Mr. Greenwald, this will be directly  
13 primarily to you, because it deals with the  
14 proprietary data. Your panel has painted a picture of  
15 an industry in which things were not going terribly  
16 well during the POI, up until the filing of the  
17 petition or a knowledge in the market place that a  
18 petition was about to be filed. Things are going  
19 better now; perhaps particularly after the preliminary  
20 duties went into effect.

21 So I'm thinking, okay, I ought to be able to  
22 look at the data and see that reflected in the interim  
23 2008 figures relative to interim 2007. What would I  
24 expect to see; probably an increase in production by  
25 the U.S. industry? It's hard to find that.

1           Maybe it would be an increase in shipment by  
2 the U.S. industry. That also is somewhat illusive.  
3 An increase in sales value -- oh, gosh, I'm not quite  
4 finding that, either.

5           An increase in unit values -- yes, I'm  
6 noticing something there, a little bit. But it's not  
7 as significant as we might see for unit value changes  
8 for some of the subject imports. But nonetheless, I'm  
9 seeing something there. Unit values are fraught with  
10 difficulty, because of product mix. So we have to  
11 tread gingerly when we deal with them.

12           How about the cogs to sales ratio that might  
13 indicate some lessening of price suppression after an  
14 order is influencing the market? Again, I'm not  
15 seeing much there.

16           So what I'm asking is, how on the basis of  
17 the record that we have in front of us am I supposed  
18 to corroborate and understand your view of the world?  
19 Because if I just look at the record, I might get a  
20 slightly different impression.

21           MR. GREENWALD: Oh, I certainly would hope  
22 not. Could you turn to page 14 of our brief, Table 1?  
23 Do you have it there.

24           VICE CHAIRMAN PEARSON: I do not have your  
25 brief in front of me.

1 MR. GREENWALD: That's dispositive.

2 VICE CHAIRMAN PEARSON: I have page 14 of  
3 your brief in front of me now; thanks.

4 MR. GREENWALD: Well, in the public version,  
5 you'll see blanks. But I'm sure you don't have the  
6 public version. You should have the proprietary  
7 version.

8 VICE CHAIRMAN PEARSON: I do have the  
9 proprietary version.

10 MR. GREENWALD: And when you say small  
11 changes, you look at this and you ask yourself, sales,  
12 okay, maybe; cost of goods sold, and you go down. If  
13 you would look at the bottom line which is public, we  
14 wrote, when industry witnesses say changes in price --  
15 and it's always relative to cost -- a few pennies per  
16 pound can make or break the domestic industry. These  
17 data prove the point.

18 Now what I'd like you to do is look at  
19 operating income, okay? I don't want to over-state  
20 the case. I mean, if your goal is to make a return in  
21 the range that, let's say, Microsoft makes, we're not  
22 talking that. We are talking about a relative  
23 improvement.

24 But it would seem to me that if you want to  
25 look at data, but prove the point post-2008, look at

1 the operating income and see the change. Then you  
2 will find that while sales quantities sort of weigh in  
3 their part of it, the big difference is, average price  
4 relative to average cost.

5 When you say, well, you know, average prices  
6 on their own don't tell you that much, because of  
7 product mix, that's absolutely right. But average  
8 price relative to average cost does tell you a lot.  
9 It tells you how the business is doing. What I would  
10 submit to you is the data in this table, especially  
11 the change in operating income, is striking.

12 VICE CHAIRMAN PEARSON: Yes, I acknowledge  
13 that that is noteworthy. Frankly, I'm all in favor of  
14 making money. I think this is a good thing. I've  
15 been involved in business when it's making money and  
16 when it isn't. Believe me, you prefer making money.

17 MR. GREENWALD: In that case, your vote  
18 should be very clear.

19 VICE CHAIRMAN PEARSON: This gets us back  
20 toward Bratsk, however. Because when the duties  
21 started to influence the market, if the U.S. industry  
22 was not able to increase shipments, then we kind of  
23 assume that there was some trading off between subject  
24 and non-subject imports. Indeed, the record seems to  
25 support that view.

1                   So if the order stays in effect, why would  
2 we expect that benefit would flow to the U.S.  
3 industry; rather than tending to shift back to non-  
4 subject producers?

5                   MR. GREENWALD: Well, the short answer is  
6 because it hasn't in 2008. You talk about volume, and  
7 I understand that. Now as I recall the data, there is  
8 a positive change in the volume and value of the U.S.  
9 industry shipments, in merchant market shipments. I  
10 think this is in the narrative of the staff report.  
11 It does improve in 2008.

12                   But what you're really talking about here --  
13 and I'm probably not doing as good a job in  
14 articulating the case as I should -- is an industry  
15 that has to run its machinery 24/7. I'm trying to  
16 help out John here a little bit.

17                   VICE CHAIRMAN PEARSON: Let's ask Mr. Kim.  
18 He could probably use a bit more time.

19                   MR. TRICE: I hope you charge him like he  
20 charges us.

21                   (Laughter.)

22                   MR. KIM: If you recollect from my  
23 presentation on interchangeability as well is  
24 efficiency of lines, what you're not seeing your data  
25 in front of you probably indicates something that is

1 very, very critical for a polyester manufacturer:  
2 manufacturing costs. The poundage and throughput or  
3 output of those lines will significantly change when  
4 you're making something thicker than 48 gauge versus  
5 if you're making 48 gauge product. So your volume  
6 aspects, at least from our perspective, won't seem  
7 like much changes.

8 But what is the cost to manufacture that  
9 product which would now, when you extend the run of  
10 the commodity products and you have stabilized those  
11 lines, the net effect of that whole lines'  
12 manufacturing costs for that month decrease and,  
13 therefore, improves your operational profits.

14 So the importance of us having to scramble  
15 to fill that line with many, many product changeovers  
16 versus trying to stabilize that line to increase our  
17 yields and productivity has a direct impact. The  
18 value may not go up in cost. But in terms of the  
19 underlying manufacturing cost perspective, it improves  
20 the operations. I hope that helps to clarify that a  
21 little bit.

22 VICE CHAIRMAN PEARSON: Well, and it may.  
23 We attempt to capture manufacturing costs in our cost  
24 of goods sold figure; which is both raw materials and  
25 the energy to produce it. It's other factored costs.

1 We're not seeing real strong evidence of what you're  
2 just saying in this record.

3 MR. GREENWALD: Again, let me go back to the  
4 point I was trying to make; which is, you're dealing  
5 with an industry, the economics of which are operating  
6 24 hours a day, seven days a week. You shut down a  
7 line or have it running and you keep it running. So  
8 given the dynamic of that industry, as long as the  
9 lines are running, you may see an increase in output  
10 as you shift to different product mix; as you get more  
11 through-put, et cetera. That's not going to be  
12 dramatic.

13 What is going to be dramatic is the change  
14 in price relative to cost, and that's what you see.  
15 When I ask you to look at the change in operating  
16 income which, by my view, is dramatic, it is clear  
17 why, when you look at the data, it is a change in  
18 price relative to cost. The sustainability of this  
19 industry depends on that price cost relationship.

20 Known subject imports are not a price-to-  
21 cost problem. Subject imports have been. When I said  
22 this is fundamentally a pricing case, it's true. When  
23 I say that small differences in price, relative to  
24 cost, have huge impacts on the viability of the  
25 business, that's true.

1           So if what you're looking for is a jump in  
2 domestic production, I think you're sort of  
3 misunderstanding the nature of the industry, which is  
4 to run your operations as much as you can or take a  
5 line out. I mean, if we don't have any relief, what  
6 you're going to find is lines are going to be taken  
7 out.

8           VICE CHAIRMAN PEARSON: Okay, thank you; I  
9 do tend to see my own red light and it's on.

10          MR. GREENWALD: I apologize for going on.

11          CHAIRMAN ARANOFF: Commissioner Okun?

12          COMMISSIONER OKUN: Thank you, Madam  
13 Chairman. Let me do just a couple of follow-ups.  
14 Again, you're going to have to do this post-hearing  
15 for the confidentiality.

16                 But just in terms the discussion you were  
17 just having with the Vice Chairman about, you know,  
18 what we do or don't see in the data, I mean, clearly  
19 this is one of the cases where it matters, in my view,  
20 whether you're looking at the merchant market or the  
21 whole market. Because, you know, the trends are  
22 different there. But I think you need to help us  
23 understand in terms of your argument how that works.

24                 Then second, I think in response to  
25 Commissioner Pinkert and others, I think I understand

1 how you would have us view that; which is we're  
2 looking at replacement by non-subject imports. You  
3 know, we've had this in several other cases.

4 In this industry, if you had replacement by  
5 non-subject imports of almost pound for pound of  
6 product, can you still have benefit and should we be  
7 splitting those out?

8 MR. GREENWALD: Well, of course you can.  
9 Let's say non-subject imports replace subject imports  
10 pound for pound. But the price of non-subject imports  
11 were fair value and prices rose as they have -- I  
12 mean, again, you have an actual test case.

13 For the first six months of 2008, you have  
14 that experiment. The data are what the data are, and  
15 they show a dramatic -- and again, I don't want to  
16 overstate it -- they show an improvement that I would  
17 call significant and certainly material.

18 The case I'm making is the viability of this  
19 industry over time depends upon the ability to make  
20 better returns; and on the quantity side of the  
21 industry, again, the choice is between taking a line  
22 out or keeping it in. It's much more of an all or  
23 nothing proposition on the volume side.

24 COMMISSIONER OKUN: Okay, and then this  
25 will, I think, relate to what Mr. Kim, was trying to

1 say and then trying to connect that with the data.  
2 Which is, again, in an industry where what I hear the  
3 producers describing is, what you want to be doing is  
4 running these lines, okay, and either, as you just  
5 said, Mr. Greenwald, you either take something out or  
6 you don't.

7 If you have replacement by non-subject  
8 imports, if you think there's going to be almost one  
9 for one replacement of non-subject imports on the  
10 quantity side, do we still expect to see the  
11 improvement in the bottom line on prices? If they  
12 haven't been able to sufficiently take back, in  
13 essence, what was lost to subject imports on the  
14 volume side, I'm making myself clear.

15 MR. GREENWALD: You are and, again, because  
16 I wanted to get across the idea that the industry has  
17 to run flat out and again, taking a line up or putting  
18 it down again tends to be an all or nothing  
19 proposition. I have been understating the volume side  
20 of this. I understand when you look at the volume of  
21 domestic sales, I know what the data says; and I  
22 understand Commissioner Pearson's characterization of  
23 it.

24 At the same time, what I would urge you to  
25 look at is some of the submissions by Respondents

1 about what happened post-2007 with their business.  
2 Where did they replace it? Where did the drop in  
3 imports from China go?

4 There you have count specific information of  
5 non-trivial volumes that make a quantity point. It's  
6 not as dramatic as the price issue which drives this  
7 whole case, in my view. But it is also material, and  
8 in the post-hearing brief, we will point those  
9 instances out. They're all confidential.

10 MR. MELTZER: Can I just go back to one more  
11 point about the relationship between price and cost?

12 COMMISSIONER OKUN: Sure.

13 MR. MELTZER: As the pricing for commodity  
14 grade product improves, it enables the domestic  
15 producers to produce more of the commodity grade  
16 product which, in turn, lowers the cost of production.

17 So you have that double hit: improvement of  
18 the pricing on the commodity sales and the improvement  
19 of production efficiency and the lower of costs. So  
20 it has that significant impact, which is why you have  
21 to look at price relative to cost.

22 COMMISSIONER OKUN: Right, I understand  
23 that; and again, I was just trying to make the  
24 connection of what that means with volume and where it  
25 is on this record.

1                   Then just one more question on the  
2 replacement issue which is, as you know, Vice Chairman  
3 Pearson and I do the Bratsk analysis in a preliminary  
4 and go through with the information that we have. In  
5 our analysis, we had not stated whether we believed  
6 that non-subject imports could replace, because of the  
7 lack of information on capacity.

8                   Given what's on the record now, do you think  
9 that there is now information that indicates non-  
10 subject imports could replace subject imports in terms  
11 of capacity? Again, for purposes of this, I would not  
12 include the Mexico -- you know, something I can't see,  
13 yet.

14                   MR. GREENWALD: It depends, in part, on how  
15 you're treating it. If you treat non-subject imports  
16 as including imports --

17                   COMMISSIONER OKUN: Pull your mike closer.

18                   MR. GREENWALD: If you treat non-subject  
19 imports as including imports under order, then it's a  
20 different question. We do have capacity utilization  
21 data. I think the best thing to do is to answer that  
22 in post-conference brief.

23                   COMMISSIONER OKUN: Okay, and on that, I  
24 mean, I know you've had this response to Commissioner  
25 Pinkert which is, you know, in other cases I have

1 looked at the fact that non-subjects under order would  
2 behave differently in a market than non-subject  
3 imports not under an order. If I understood your  
4 response, it was you would agree with that as the  
5 proper way to treat that.

6 MR. GREENWALD: Oh, I do. I think that's  
7 right.

8 COMMISSIONER OKUN: Okay, then a second  
9 question, what would be your view of whether we should  
10 also be looking at producer's imports from non-subject  
11 countries, and putting any weight on that in deciding  
12 whether or not we believe that affects how the non-  
13 subjects behave in this market?

14 MR. KIM: As we indicated before, the  
15 efficiency of a line depends upon how little changes  
16 that you can have on that line. Similarly, our  
17 colleagues here acceded, all line are product  
18 specific. Therefore, a lot of the products that SKC  
19 would bring in are products that we cannot or will not  
20 make in Georgia.

21 I believe that holds true with many of the  
22 colleagues in terms of how they strategize, as well as  
23 set the lines, so that you do not have the level of  
24 product changeovers.

25 These are usually grades that are not the

1 commodity-type grades; but very specialty grades for  
2 high end specialty applications, which do not  
3 influence the values that we are discussing today.

4 COMMISSIONER OKUN: Okay, just so I'm clear  
5 on what you're saying and that I haven't lost track,  
6 if there were an order imposed that wouldn't change  
7 your product mix in terms of what you'd be bringing in  
8 from non-subject countries -- is that what you said?

9 MR. KIM: Yes, that's correct. For other  
10 aspects, the lines, the strategies, have  
11 differentiated and separated the two regions as to  
12 where those products are made, and they're specialized  
13 for those applications.

14 COMMISSIONER OKUN: Okay, do other producers  
15 or would anyone else want to comment on that?

16 MR. TRICE: The imported film that we bring  
17 in from Germany and Japan is very much like Mr. Kim  
18 described. It's produced on different type of assets  
19 than we have here in the United States. As you can  
20 probably see in the confidential data, the value is  
21 higher than we're talking about here. It is very  
22 specialty products that we just cannot or don't have  
23 the physical capability to produce here in the United  
24 States.

25 COMMISSIONER OKUN: Okay.

1                   MR. ECKLES: The same is true in Toray.  
2 We're a thin film manufacturer. We don't produce  
3 thick films here in the States, so we need to bring it  
4 in from our affiliates.

5                   COMMISSIONER OKUN: Okay, I understand that;  
6 yes, Mr. Kassoff?

7                   MR. KASSOFF: I would agree that our imports  
8 from non-subject countries are in the same category,  
9 very specialized.

10                  COMMISSIONER OKUN: Okay, and I see my red  
11 light is about ready to come on. But I just have a  
12 follow-up to the Chairman's question with respect to  
13 Dupont Teijin's Chinese imports and the response you  
14 had. I was just trying to make sure I understood, Mr.  
15 Greenwald, and maybe we just need a breakdown or maybe  
16 I just haven't looked at this breakdown.

17                  I had thought Respondents were arguing that  
18 as a percentage of the pricing products, that's where  
19 there was a heavy concentration, and that's why we  
20 should be looking at it differently; versus as a  
21 percentage of overall Chinese imports. I just wanted  
22 to make sure if that's true and if it's relevant.

23                  MR. GREENWALD: As I recall, there are a  
24 significant number of Dupont's imports that were  
25 captured in the pricing data. One of the reasons is,

1 Dupont responded fully to the questionnaire.

2 COMMISSIONER OKUN: Right.

3 MR. GREENWALD: As a percentage of total  
4 imports, they are not significant; and for the  
5 Respondents to presume that your product specific data  
6 capture all other imports of those products, I think,  
7 is nutty.

8 COMMISSIONER OKUN: Okay, I may have a  
9 follow-up on that; but I see my red light is on.  
10 Thank you very much.

11 CHAIRMAN ARANOFF: Commissioner Lane?

12 COMMISSIONER LANE: Terphane argues that the  
13 domestic PET film producers lack the capacity to  
14 supply the U.S. market, and that domestic producers  
15 are therefore telling purchasers to go away; go  
16 overseas to secure supply.

17 In your experience, what factors drove some  
18 domestic producers to turn customers away during the  
19 period of investigation; and did this shortage of  
20 supply continue throughout the period of  
21 investigation?

22 MR. TRICE: I think, Ms. Lane, it comes down  
23 to price, again. The U.S. market does not have the  
24 capacity to supply the total demand in the U.S.  
25 Again, I'd love to have the returns to be able to

1 continue to invest to be able to do so.

2 But this market, for many years, has had to  
3 have imports; and we would love to be able to supply  
4 the demand. But it has to have a return, and that's  
5 the reason it comes down to price.

6 Imports, we have to compete with our strong  
7 domestic competitors here. But we also always have to  
8 compete with imports. It's not a matter of whether we  
9 compete. It's whether we compete at a fair price  
10 level that allows a reasonable return.

11 So even despite the relief that has been  
12 granted to us so far, there will have to be imports  
13 here until at least margins justify further investment  
14 in the United States. But as long as their reasonable  
15 price allows a reasonable return, imports are quite  
16 okay for us.

17 MR. KIM: If we look at this situation which  
18 has exacted that type of a response, I believe SKC,  
19 speaking for SKC's perspective, has enough capacity,  
20 as well as the ability to support the needs from our  
21 current customers.

22 If there were inquiries from customers who  
23 were customers two years ago, of course the precedence  
24 would be for us to turn them away and support our  
25 current existing customers. I believe that our

1 current existing customers are getting the level of  
2 support, if they support the level of pricing that  
3 we're requesting.

4 All of the Terphane related questions  
5 probably would come from others who are dependent on  
6 imports, and now need to turn to domestic in order to  
7 get their supply streams on line. Based upon the  
8 economies of scale, we have not turned away any type  
9 of meaningful fair opportunities and told the  
10 customers to go source from another source.

11 MR. TRICE: Maybe, Ms. Lane, another way to  
12 look at it that's kind of very simplistic, there's  
13 nothing dramatic that has changed worldwide in the  
14 supply demand in the last nine months.

15 You know, the companies that were importing  
16 product can probably still import that product. But  
17 because of the help you've given us, it's just now  
18 going to be imported at a higher price and a higher  
19 value around the domestic producers, to be able to  
20 raise their prices to start getting a reasonable  
21 return.

22 COMMISSIONER LANE: Was there ever a time  
23 when the U.S. industry could supply the entire  
24 domestic market?

25 MR. TRICE: I've only got 17 years here. I

1 think during the 17 years, there have always been  
2 imports, as far as I can remember. The percentage of  
3 imports had gone up, at least in my career, Ms. Lane.

4 MR. GREENWALD: Major lines have been taken  
5 out, I would say, in the past 10 years. So U.S.  
6 industry capacity has been reduced.

7 On the confidential record of this  
8 investigation, there are assertions that are very  
9 specific in nature about U.S. suppliers turning down  
10 requests. We will address those in the confidential  
11 version of the post-conference brief.

12 The idea that U.S. producers have ever  
13 rejected, or refused to supply at prices that allow a  
14 reasonable return, is not supported by the record.

15 COMMISSIONER LANE: Okay, and when you do  
16 that, would you also address Bemis' pre-hearing  
17 argument about certain gauges that can't be provided  
18 by the U.S. industry?

19 MR. GREENWALD: Yes, we will do that.

20 COMMISSIONER LANE: Okay, thank you; back to  
21 the assertion that you're running 24 hours, seven days  
22 a week, how many shifts are you doing that with?

23 MR. TRICE: Ms. Lane, from our operation, we  
24 do with four shifts, four 12 hour shifts, rotating  
25 shifts.

1           COMMISSIONER LANE: And is that pretty  
2 standard for the entire industry?

3           MR. KIM: It's pretty much basically. SKC  
4 also has the same four shifts; 12 hours.

5           COMMISSIONER LANE: Okay, thank you; now the  
6 staff report indicates that U.S. producers and  
7 importers often sell to processors that take the PET  
8 film and additional coatings or treatment before  
9 selling it to the ultimate end user. How common is  
10 this practice, and how much value is typically added  
11 to the product by these processors?

12           MR. TRICE: I think it would vary quite  
13 dramatically from a very small -- and I'll give you an  
14 example, like an overhead transparency film, which is  
15 a dying technology. But it might be a product that  
16 would be a clear film that a company would put an off-  
17 line coating in. Then all of a sudden, it goes onto  
18 an overhead projector. That would be a very small  
19 value to put on.

20           To other applications, which would be some  
21 of the highest value applications, like in optical  
22 films, which would have to be extremely high quality  
23 films that would go into the LCD and plasma TVs today.  
24 So the types of value that our customers put on  
25 probably could have quite varied.

1           COMMISSIONER LANE: Are processors usually  
2 supplied by imports, as opposed to domestic  
3 production, or vice versa; or does it simply vary on a  
4 case by case basis?

5           MR. ECKLES: Yes, it varies, depending on  
6 the application, the film type, the customer. It's  
7 really difficult to answer that question, generally  
8 speaking.

9           MR. GREENWALD: Commissioner Lane, most of  
10 the customers in this business are, in fact,  
11 processors, and they are supplied both by domestics  
12 and by imports.

13           COMMISSIONER LANE: Okay, thank you; now I  
14 want to go back to the Canada and Amman issue. In  
15 Terphane's prehearing brief, they argue that there is  
16 no indication yet of exactly how much of the imports  
17 from Canada, during the period of concern, that were  
18 classified under the applicable tariff number, for  
19 subject or non-subject PET film.

20           But there is a reasonable basis to believe  
21 that if such data were accurately and fully collected,  
22 Brazil would be under three percent of total imports  
23 and, therefore, negligible.

24           They also argue that even Petitioners only  
25 argue that certain entries from Canada and Amman are

1 non-subject; and admit that the issue is not clear  
2 cut. Do Petitioners still agree that only certain  
3 entries from Canada and Amman are non-subject?

4 MR. GREENWALD: That particular passage in  
5 Terphane's brief is a bit of an outrage given what was  
6 the consensus by both Respondents --

7 COMMISSIONER LANE: Well, then I'm glad I  
8 gave you the opportunity to respond. Go ahead.

9 MR. GREENWALD: -- and Petitioners at the  
10 staff conference. There was general agreement by all  
11 parties that there is no PET film production in  
12 Canada.

13 The issue then became what were these  
14 imports? We researched the matter, but so too did the  
15 Commission staff. The Commission staff finding is  
16 that to the extent they can be identified with  
17 precision, they are non-subject. That does not cover  
18 100 percent of the imports.

19 But for Terphane to take the position that  
20 having conceded, there is no PET film production in  
21 Canada; and then knowing a staff confirmation that a  
22 significant part of the imports are non-subject,  
23 provides a reasonable indication for the Commission to  
24 consume that the imports are subject, is beyond any  
25 conceivable level of credibility.

1                   COMMISSIONER LANE: Okay, one more quick  
2 question. Should the Commission use Terphane's  
3 questionnaire data or Commerce's official import data  
4 when calculating total imports of PET film entering  
5 the U.S. market?

6                   MR. GREENWALD: The answer is, with regard  
7 to Brazil, you should use the official import  
8 statistics. The reason for is explained at page -- if  
9 you have our brief; it's confidential. I know where  
10 it is; here we go -- at pages five and six of our  
11 brief. It is very succinct, and I'm not at liberty to  
12 discuss the reasons behind the assertion in a public  
13 forum.

14                   COMMISSIONER LANE: Okay, thank you; thank  
15 you, Madam Chairman.

16                   CHAIRMAN ARANOFF: Commissioner Williamson?

17                   COMMISSIONER WILLIAMSON: Thank you, Madam  
18 Chairman; I have just a couple of quick questions, and  
19 this may be more for post hearing. But I would like  
20 you to address in detail the factors the Commission  
21 must consider in making its threat of material injury  
22 determination, including the threat of cumulation?

23                   MR. GREENWALD: That was the line I was  
24 proudest of in our entire pre-hearing brief. We  
25 follow the phrase from General Petraeus. The

1 conditions have improved considerably, but the  
2 improvement is both fragile and reversible. We will  
3 be giving you more specifics on this issue, as you  
4 requested, in the post-hearing brief; thank you.

5 COMMISSIONER WILLIAMSON: Okay, then I have  
6 one last question. Is a PET film product sold into,  
7 for example, the packaging market also sold into other  
8 markets, such as the electrical market? In other  
9 words, is the same PET film product sold in more than  
10 one market?

11 MR. GREENWALD: Yes, the same PET films can  
12 be sold in terms of what the processors do with the  
13 film. Going back to the previous comments, 100  
14 percent of PET films are manufactured by the U.S.  
15 domestics. None of that film winds up at an end  
16 customer. It winds up at a through processor or  
17 converter, who adds additional values. Therefore,  
18 that converter can have the same PET film wind up in  
19 through packaging, or wind up in a cable wrap  
20 application.

21 COMMISSIONER WILLIAMSON: If that's the  
22 case, is the price of the same film different,  
23 depending on the market?

24 MR. GREENWALD: Dependent on what the  
25 customer relationship is and what the pricing is

1 there, we negotiate the prices; and all grades usually  
2 impact one type of a pricing structure.

3 MR. TRICE: I would like to add that the  
4 quality requirements and the specifications for the  
5 products, while chemically may be the same, the  
6 quality requirements could be different; and that also  
7 could lead to different pricing levels.

8 COMMISSIONER WILLIAMSON: Okay, thank you; I  
9 have no further questions, and I want to thank the  
10 panel for their testimony; thank you.

11 CHAIRMAN ARANOFF: Commissioner Pinkert?

12 COMMISSIONER PINKERT: I just have one or  
13 two questions in this round. First of all, the  
14 company specific in Table VI-2 indicate that one  
15 domestic producer is performing substantially worse  
16 than the others. Can you discuss, either here or in  
17 post-hearing, what accounts for this difference?

18 MR. GREENWALD: I can't discuss anything  
19 here. In the post-hearing, we will discuss it.

20 COMMISSIONER PINKERT: Thank you, that was  
21 quick. I have one more question. Is it correct that  
22 domestic producers' lead times for supplying at least  
23 some PET film  
24 products have increased significantly?

25 MR. TRICE: I can try to answer that. I

1 think it comes again to what has happened here; that  
2 the Commission has granted the temporary relief. So  
3 all of a sudden, very quickly, the demand for domestic  
4 product did increase.

5 So the lead times did increase, and we're  
6 trying to adjust to those lead times now, because it  
7 did happen, you know, pretty rapidly. In this  
8 industry rapidly can be three to six months, because  
9 you just can't change product lines quickly. But the  
10 demand has increased and, therefore, the pricing has  
11 increased.

12 MR. KIM: For us, as well, the lead times  
13 have definitely increased. In terms of the turn  
14 around times that we had previously to fill orders,  
15 they have now extended to a longer period of time than  
16 I would say the level of the lead time extensions that  
17 we had previously. But we do foresee it getting  
18 worse.

19 MR. ECKLES: Now strictly from a planning  
20 standpoint, you know, we've worked with our customers  
21 to explain that our lines are getting full; and that  
22 we need to speak to them sooner when we start planning  
23 to produce film for those customers.

24 So we've extended our lead times a bit; but  
25 we also have been planning with our customers pretty

1 closely to try to reduce those lead times.

2 COMMISSIONER PINKERT: Just for  
3 clarification, is it the testimony of the panel that  
4 the lead times only increased with the imposition of  
5 preliminary relief in this case?

6 MR. KIM: Yes, that's correct.

7 MR. TRICE: I would be reluctant to say  
8 absolutely that's the only thing. But I think, from  
9 our experience, certainly there's been a correlation  
10 to it and a strong correlation to it.

11 The overall economy has certainly weakened  
12 in the last 12 months versus strengthened. Some of  
13 the end uses have very much weakened, like products  
14 that would go into downstream automotive applications  
15 for sure. Yet, our demand has increased.

16 So I have to believe that the relief that  
17 has been put in place for our industry has been a  
18 major part of the increase in demand we've had for our  
19 products.

20 Mr. ECKLES: I would agree. But I would  
21 also add that some of our businesses are more busy in  
22 certain parts of the season rather than others. So  
23 times can change, based on the films that we're  
24 supplying and the seasonality of those businesses.

25 COMMISSIONER PINKERT: Thank you, and I'd

1 like to thank the panel as a whole, and I look forward  
2 to the post-hearing submission; thank you.

3 CHAIRMAN ARANOFF: I don't have any more  
4 questions at this time, so I'm going to pass it  
5 directly to Vice Chairman Pearson.

6 VICE CHAIRMAN PEARSON: Thank you, Madam  
7 Chairman; I have a handful of questions, primarily for  
8 the post-hearing. Two of them deal with Bratsk.

9 You assert in your brief that under a Bratsk  
10 analysis, the Commission should not be concerned about  
11 non-subject import sources such as India and Taiwan  
12 that are facing anti-dumping orders, presumably  
13 because those imports are fairly traded.

14 However, as India and Taiwan currently have  
15 relatively low anti-dumping margins, and there is some  
16 evidence that these imports may under-sell the U.S.  
17 industry, why should the Commission not be concerned  
18 that imports from those sources would replace subject  
19 imports, if orders are posted on subject imports?

20 MR. MELTZER: I think in the India case, you  
21 have to look not just at the anti-dumping margins, but  
22 also at the countervailing duty margins. Those have  
23 been substantial. In fact, in some instances, they've  
24 gone up dramatically in the recent periods.

25 So I think that does have an impact on their

1 ability to bring product here. In fact, their import  
2 volumes have gone down.

3 VICE CHAIRMAN PEARSON: Okay, fair enough,  
4 and I'm sure you'll follow up and clarify it further  
5 in the post-hearing.

6 Okay, the other Bratsk question, Mr.  
7 Greenwald, in your earlier comments -- quite a bit  
8 earlier -- you had indicated that because of what  
9 we're seeing in the interim period, that that's some  
10 evidence that the domestic industry is benefitting  
11 from the orders, okay, and so Bratsk would be  
12 disallowed.

13 But what I'm wondering is, should we see any  
14 difference between the immediate reaction in the  
15 market place after an order is rumored or in effect,  
16 and the slightly longer term reaction that we would  
17 anticipate in a market, once various players have some  
18 time to adjust?

19 We see markets over-shooting all the time,  
20 especially in recent days. It's not clear to me, for  
21 the purposes of Bratsk that we should look at only the  
22 most immediate effects, and not some slightly longer  
23 effects over a period of months or years that might  
24 more comport with what the Fed Circuit has asked us to  
25 do with Bratsk.

1           MR. GREENWALD: I understand that. At the  
2 same time, when you talk about the immediate effects,  
3 I assume you're talking about interim 2008 data or  
4 sub-data.

5           VICE CHAIRMAN PEARSON: That's correct.

6           MR. GREENWALD: So what you have is our data  
7 for a period, this case, if you will; and then you  
8 have what inferences can you draw from capacity  
9 utilization, et cetera, et cetera, et cetera, about  
10 projections going out.

11           I would think that as you consider this --  
12 and I also think it would be equally true for the  
13 Court -- a Court would have to look, first and  
14 foremost, at the hard data. You can go out further.  
15 But the more you do, the more you enter realms of  
16 conjecture; and that is not what sound decision making  
17 should be based on.

18           So I understand the point. But I also think  
19 there is a fundamental difference between the  
20 assertion of a laboratory test that you have in front  
21 of you, and inferences about what may or may not  
22 happen in the future.

23           MR. MELTZER: If the past is in any way  
24 indicative of what is likely to happen here, I think  
25 you can look at the aftermath of the Indian and Taiwan

1 case; and where you did have significant improvement,  
2 which lasted a period of time until the new wave of  
3 unfairly traded imports came and had an impact in the  
4 U.S. market. There's no reason to believe that that  
5 same trend would not occur here.

6 MR. GREENWALD: That is a good point,  
7 because you do have historical models. Now if what  
8 you want to say, isn't it true that at some time in  
9 the far-out future -- that is, a matter of years --  
10 the situation may change, the answer is yes. That's  
11 what history shows. But in a Bratsk analysis, it  
12 seems to me that we're dealing with a much shorter  
13 timeframe.

14 VICE CHAIRMAN PEARSON: Okay, and I imagine  
15 your post-hearing brief might shine a little  
16 additional light on that point regarding the orders on  
17 India and Taiwan.

18 I have a couple of questions for Mr. Kassoff  
19 for the post-hearing. I'm curious, how will Dupont  
20 adapt to the dumping margin on its imports that it's  
21 bringing in from China, if this case does indeed  
22 result in an order?

23 I mean, clearly, someone in your firm has  
24 thought about this, and I'm just curious to understand  
25 better what that thinking might be. So if, for

1 purposes of the post-hearing, you could address it, I  
2 would be appreciative.

3 MR. KASSOFF: Yes, we'll address that in the  
4 post-hearing.

5 VICE CHAIRMAN PEARSON: Okay, thank you; the  
6 second question somewhat relates. You indicated  
7 earlier that Dupont's U.S. management has been making  
8 decisions to serve some portion of its U.S. client  
9 base with imported product from China.

10 My question is, what led to that portion  
11 being so large that the industry, the Petitioners as a  
12 group, decided that it was injurious -- lumped it in,  
13 made it injurious? I mean, if your management is  
14 really thinking this through, how did we get into this  
15 pickle? So again, for purposes of the post-hearing,  
16 whatever you could tell us about that would be  
17 helpful.

18 MR. GREENWALD: You know, I think that Mr.  
19 Kassoff ought to be spared public answering of that  
20 question.

21 VICE CHAIRMAN PEARSON: No, I'm not asking  
22 him to say on the public record.

23 MR. GREENWALD: It is true that when you  
24 looked at the numbers, the volumes from Dupont were  
25 not driving imports from China. There has been a

1 tendency on the part of Respondents to portray imports  
2 from China as imports by Dupont Teijin. That is  
3 simply not true, by any stretch of the imagination.

4 VICE CHAIRMAN PEARSON: And I may indeed  
5 have a misperception. So clear it up for me. The  
6 last question, for the panel in general, in this  
7 record with respect to non-subject imports, the unit  
8 values of such imports, this is Table VI-2. Actually,  
9 Mr. Greenwald, this is going to be for you, because  
10 it's confidential.

11 But the unit values of non-subject imports  
12 in table VI-2 -- excuse me, IV-2 -- the IV-2 data are  
13 considerably higher than the product specific non-  
14 subject import pricing data that we see, for example,  
15 in Table V-2. So taking heed of the fact that these  
16 data are all BPI, how could you explain the  
17 discrepancy?

18 MR. GREENWALD: May I explain it in the  
19 post-conference brief?

20 CHAIRMAN ARANOFF: Absolutely.

21 MR. GREENWALD: Thank you.

22 MR. GREENWALD: Madam Chairman, I think I've  
23 asked enough post-hearing questions to last for  
24 awhile. So I have no further questions. I want to  
25 thank this panel for their appearance here today?

1 CHAIRMAN ARANOFF: Commissioner Okun?

2 COMMISSIONER OKUN: Thank you, I have just  
3 one brief follow-up on that. Again, just back on  
4 China, the percent of China by Dupont Teijin, if you  
5 would just make sure that you've provided the data  
6 that you believe is accurate, to be sure what we think  
7 you are looking at; versus what Respondents have  
8 argued.

9 MR. GREENWALD: We will do that.

10 COMMISSIONER OKUN: With that, I have no  
11 further questions for this panel. But I did want to  
12 thank all of you for your responses.

13 CHAIRMAN ARANOFF: Commissioner Lane?

14 COMMISSIONER LANE: I have one question.  
15 Mr. Greenwald, I guess maybe you said you might be the  
16 only person interested in the captive production  
17 issue. But apparently, I am, too, because all of my  
18 questions seem to come back to that.

19 So in our preliminary views, the Commission  
20 stated that the PET film represented approximately 30  
21 percent of the total cost of production of the  
22 downstream products. My focus for this question is,  
23 the total cost of production.

24 If the Commission now analyzes the PET film  
25 and downstream products based on value rather than

1 weight, do you believe that we should focus on the  
2 total cost of producing the downstream product; or  
3 would it be more appropriate to focus on the raw  
4 material inputs only?

5 MR. GREENWALD: I think it is proper to  
6 focus on the raw material inputs only. I cannot see -  
7 -

8 COMMISSIONER LANE: Could you get to your  
9 mike?

10 MR. GREENWALD: Yes, I'm sorry, I think that  
11 the proper way to look at it is by focusing on the raw  
12 material inputs. The processing is a processing of  
13 the film and the other materials together. The idea  
14 that the processing should be all non-PET film value,  
15 compared to the value of just the material film,  
16 strikes me as a skewed analysis.

17 COMMISSIONER LANE: I do have another  
18 question. In your post-hearing brief, I assume you  
19 are going to analyze the past cases where we have  
20 actually applied captive production statute.

21 MR. GREENWALD: Yes, we are going to do  
22 that.

23 COMMISSIONER LANE: Okay, thank you; that's  
24 all I have, Madam Chairman.

25 CHAIRMAN ARANOFF: Are there any more

1 questions from the dias?

2 (No response.)

3 CHAIRMAN ARANOFF: Does staff have any  
4 questions for this panel?

5 MR. MCCLURE: Jim McClure, Office of  
6 Investigation -- Chairman Aranoff, staff has no  
7 questions.

8 CHAIRMAN ARANOFF: Do counsel for the  
9 Respondents have any questions for this panel?

10 MR. KOENIG: No questions, Madam Chairman.

11 CHAIRMAN ARANOFF: Thank you very much; we  
12 are going to take a lunch break. We are going to be  
13 extravagant and take this lunch break for one hour and  
14 five minutes; returning at 1:45, if I'm reading the  
15 clock correctly.

16 Okay, I want to remind all the parties that  
17 this room is not secure. You should not leave any  
18 confidential business information in the room during  
19 the lunch break. We will reconvene at 1:45. Until  
20 that time, we stand in recess.

21 (Whereupon, at 12:40 p.m., the hearing in  
22 the above-entitled matter was recessed, to reconvene  
23 at 1:45 p.m. this same day, Thursday, September 18,  
24 2008.)

25 //



1           That itself determines U.S. market prices  
2           for subject PET film. Imports of subject PET film  
3           from Brazil, China, and the U.A.E. do not injure our  
4           domestic PET film industry.

5           I will elaborate on these themes in more  
6           detail, but, first, I want to stress that Terphane is  
7           here as a U.S. producer of subject PET film. It no  
8           longer sells subject PET film from Brazil.

9           Unlike Petitioners, we are American owned  
10          and operated. In both their original petition and in  
11          the preliminary injury investigation, Petitioners  
12          repeatedly conceded that Terphane is a significant  
13          presence in the U.S. market.

14          Terphane, Inc.'s affiliate, Terphane Ltda.,  
15          located in Brazil, produces the subject PET film in  
16          Brazil. Terphane-Brazil is the only producer of  
17          subject PET film in Brazil; in fact, the only producer  
18          of subject PET film in all of South America and  
19          Central America.

20          Demand for subject PET film in Brazil is  
21          very strong, growing at about eight percent per year.  
22          The same applies generally in South and Central  
23          America. Those markets are Terphane-Brazil's main  
24          focus.

25          Even though Terphane-Brazil has stopped

1 exporting to the United States, Terphane's Brazilian  
2 production facility has been operating flat out at 100  
3 percent of its production capacity.

4           There are three reasons for this full  
5 capacity utilization: One, there is a strong regional  
6 demand; two, Terphane-Brazil has completed its plan,  
7 conceived long ago, well before this antidumping case,  
8 to transition its facility from the production of  
9 subject PET films more to nonsubject PET film; and,  
10 three, Terphane-Brazil exported subject PET film to  
11 Europe until recently, when its limited production  
12 capacity was overwhelmed by the first two factors that  
13 I just mentioned.

14           I would like to take a moment and address in  
15 more detail why Terphane-Brazil previously did export  
16 subject PET film to the United States and why those  
17 exports have since stopped.

18           Since September 2007, Terphane-Brazil's  
19 shipments of subject PET film to the United States  
20 fell, on a month-by-month basis, to essentially zero.  
21 This all happened before the imposition of antidumping  
22 duty liability.

23           Terphane-Brazil's shipments to the U.S. of  
24 subject PET film, now ceased, remained exclusively to  
25 Terphane, Inc.'s New York production facility for

1 further processing before sale into the U.S. and  
2 Canadian markets.

3 As noted, Terphane-Brazil's U.S. shipments  
4 have now completely transitioned to nonsubject, value-  
5 added PET film. These sales complement our U.S.  
6 production of subject and nonsubject PET film.

7 Terphane's approach to the construction of  
8 its new Brazil PET film production facility had two  
9 phases.

10 Phase one, the startup phase, involved  
11 production of the basic commodity product, i.e.,  
12 subject PET film.

13 Phase two involved adding the downstream,  
14 value-added, production operations. In Phase two, the  
15 subject PET film is used internally to produce value-  
16 added products that are not subject PET film. From  
17 what I understand, this Terphane-Brazil strategy is  
18 very similar to what some of the Petitioners are  
19 doing.

20 Moving to production of higher-value,  
21 nonsubject products was Terphane-Brazil's business  
22 plan vis-à-vis the U.S. market since well before this  
23 antidumping petition was filed. That explains why,  
24 one, Terphane-Brazil initially sold subject PET film  
25 to the U.S. as the facility came online and then why,

1 two, those sales were phased out as the downstream  
2 finishing operations came online.

3 In short, the orderly phaseout of Brazil's  
4 sales of subject PET film to the United States was for  
5 reasons other than this antidumping case.

6 \*\*\*

7 Our business plan for Terphane-Brazil was,  
8 and is, to sell nonsubject PET film into the U.S.  
9 Given that, there was no reason for Terphane-Brazil,  
10 as a foreign exporter, to go through a burdensome and  
11 expensive Commerce Department investigation.

12 But, as a U.S. producer, I am here at the  
13 Commission to oppose this antidumping case for four  
14 reasons.

15 First, we want U.S. manufacturers using our  
16 U.S.-made subject PET film, i.e., our customers, to  
17 remain viable. We are highly concerned about the  
18 viability and competitiveness of our U.S. customers.  
19 Our customer use subject PET film to manufacture  
20 downstream products. They must then compete with  
21 imports in these downstream markets. Given that,  
22 there is only so much our customers can pay for  
23 subject PET film and still be competitive to stay in  
24 business. They can afford to pay no more.

25 Our customers also need sufficient

1 quantities of subject PET film for their production  
2 operations. As a U.S. producer, we cannot fully  
3 supply our customers' subject PET film needs. From  
4 what we hear, and we hear plenty, and strongly worded,  
5 at that, Petitioners cannot supply U.S. demand either;  
6 well, at least they cannot do so from their U.S.  
7 facilities.

8 We have an interest in seeing that our  
9 customers have adequate supplies of subject PET film  
10 to meet their needs. That requires imports.

11 As a U.S. producer, we are only as viable as  
12 our customers are. It does us no good if our U.S.  
13 customers are ultimately, themselves, forced overseas  
14 or out of the business.

15 Second, U.S. market conditions are dominated  
16 by nonsubject-country PET film. There are substantial  
17 imports of subject PET film from countries not  
18 included in this investigation, i.e., nonsubject  
19 imports. Substantial additional capacity is available  
20 or planned in those countries, capacity that far  
21 exceeds U.S. demand. Those imports and extra capacity  
22 play a dominant role in the U.S. market. These  
23 nonsubject imports are sold to the U.S. at comparable  
24 or lower prices than subject PET film imports from the  
25 countries that are subject to this investigation, and

1 they are available in significantly greater  
2 quantities.

3 While some such imports come from countries  
4 already subject to antidumping orders, the fact still  
5 is that they are entering the U.S. at the above-noted  
6 prices and quantities, even though subject to those  
7 antidumping orders.

8 The capacity of other countries to export  
9 significant volumes of subject PET film at comparable  
10 or lower prices is limiting U.S. market prices,  
11 regardless of the presence of subject PET film imports  
12 from the countries accused in this case.

13 Also, as a result, subject PET film imports  
14 from countries not subject to this antidumping  
15 investigation would quickly replace the accused  
16 imports in the market if antidumping duties are  
17 ultimately imposed.

18 For this reason, too, any positive effect  
19 for U.S. producers from the preliminary dumping  
20 decision is temporary, the result of disruption to the  
21 U.S. market. That temporary benefit is not evidence  
22 of prior injurious accused imports. The temporary  
23 benefit will quickly disappear as the U.S. market  
24 adjusts, either by, one, importing more subject PET  
25 film from nonsubject countries or, two, U.S. customers

1 moving overseas.

2 Third, Petitioners are a major cause of  
3 their own problem. Every single Petitioner has major  
4 subject PET film production facilities around the  
5 globe that are managed from abroad, and they supply  
6 globally from that platform.

7 For instance, Petitioner Dupont Teijin  
8 itself imports significant volumes of subject PET film  
9 into the United States from its China facilities. In  
10 fact, Dupont Teijin is one of the two leading  
11 importers from China and is China's largest producer  
12 of subject PET film, yet Dupont Teijin now claims that  
13 the prior antidumping order on imports from India and  
14 Taiwan was undermined by its own then-nonsubject  
15 Chinese imports.

16 Petitioners continue to import from many  
17 other nonsubject countries and can be expected to  
18 continue to do so in the future.

19 Demand for subject PET film is growing much  
20 faster in Asia than in the United States, so it makes  
21 perfect sense for Petitioners to expand their Asian  
22 subject PET film production facilities, as they have  
23 been doing. It also makes sense for them to then  
24 supply U.S. demand from those facilities before Asian  
25 demand is able to match the significant investments in

1 capacity.

2 But while all of that may make sense, it  
3 also means that Petitioners are, themselves, creating  
4 the injury about which they complain. These  
5 Petitioner investments in China have further  
6 consequences.

7 First, the expansion of subject PET film  
8 production capacity in China reduces China's need for  
9 imports of subject PET film. That creates surplus  
10 subject PET film production capacity in nonsubject  
11 countries for sale to the United States.

12 Second, to the extent that Chinese producers  
13 cannot sell their increased production in the United  
14 States, they will sell it internally or elsewhere in  
15 the world. That displaces subject PET film from those  
16 other markets, making it likely that it will be  
17 offered for sale to the U.S. market.

18 Fourth, PET film industry conditions are the  
19 result of broad economic trends, not the accused  
20 imports. Subject PET film is a cyclical industry.  
21 Demand for subject PET film is driven by the demand  
22 for the many products for which it is used. Thus,  
23 when the U.S. economy moves downward so also does the  
24 demand for subject PET film. That has nothing to do  
25 with the accused imports.

1           Based on our experience as a U.S. producer,  
2 we believe that subject PET film trends over the  
3 January 2005 to June 2008 period of investigation  
4 reflect general economic trends and not the impact of  
5 accused imports.

6           As an example, biaxially oriented  
7 polypropylene, BOPP, may be used in place of PET film  
8 for certain end-use applications which do not require  
9 the heat stability of a polyester film. Examples of  
10 such use include the outer web for confection and ice  
11 cream packaging and over-wrap applications, dust  
12 covers.

13           Market trends in industries comparable to  
14 subject PET film, such as BOPP, are similar to the  
15 subject PET film, yet, again, this is due to the more  
16 basic, overarching trends in the general economy, not  
17 the accused imports.

18           The good news is that, beginning in early  
19 2008, worldwide subject PET film prices have increased  
20 significantly. This upswing is all the more notable  
21 and evidence of the health of subject PET film  
22 producers, given the worldwide economic slowdown. It  
23 is unusual that now subject PET film is on the upswing  
24 when the economy is, in fact, on the downswing. In  
25 today's times, anomalies almost seem the norm.

1           For instance, the normally cyclical steel  
2 industry, which I understand this Commission knows  
3 very well, is enjoying huge profits during the general  
4 economic downturn, also an anomaly.

5           Terphane's customers are suffering from the  
6 economic slowdown, as, indeed, are all U.S. users of  
7 subject PET film. Now is not the time for genuine  
8 U.S. producers to hurt their U.S. customers by seeking  
9 imposition of antidumping duties or for the Commission  
10 to aid foreign production at the expense of U.S.  
11 manufacturers. We ask that you reject this  
12 antidumping petition. I thank you for your time.

13           CHAIRMAN ARANOFF: Mr. Secretary, if you  
14 would stop the clock for a moment before we go to the  
15 next witness. It's been brought to my attention that  
16 there was some information in Mr. Roy's statement  
17 which, according to our record, only exists in  
18 bracketed form in another party's brief, so that would  
19 be confidential information.

20           Mr. Koenig, we are going to take a look at  
21 that. If we can't find a public source for it, we're  
22 going to have it redacted from the transcript. If you  
23 do have a public source, I would appreciate your  
24 bringing it to the staff's attention, and they can  
25 point you to the information.

1           I would also like to caution all of the  
2 parties that there is a lot of confidential  
3 information in this case. There are issues that it's  
4 difficult to talk about, but we cannot have that  
5 information being used in a public session. So I  
6 would ask everybody to please take our rules to heart  
7 and be careful, and if there is public information to  
8 support these points, please submit it to the staff,  
9 and we'll get it in the public record, and then  
10 everyone can talk about it.

11           Thank you very much, and we can restart the  
12 clock with the next witness.

13           MR. LUNN: Thank you. My name is Mark Lunn.  
14 I'm an attorney with law firm of Arent Fox. I  
15 represent Flex Middle East and Flex America, Inc.

16           I am joined today by Mr. Pradeep Tyle. Mr.  
17 Tyle is in a unique position to discuss some of the  
18 issues of the global PET film market. He is a  
19 director of Flex Middle East, as well as being a  
20 senior vice president with Uflex, the parent company  
21 of Flex Middle East and Flex America.

22           With that, I will turn it over to Mr. Tyle.

23           MR. TYLE: Thank you. Good afternoon to the  
24 panel of Commissioners and others too. My name is  
25 Pradeep Tyle. I am a director of Flex Middle East,

1 which is located in Dubai, U.A.E., and senior  
2 president of Uflex, Ltd., which is the parent company  
3 of Flex Middle East FZE.

4 As I looked around the room today at the  
5 various witnesses and industry representatives today,  
6 I asked myself, "Who is the most like the companies  
7 that I represent?" Bemis is here today, and they are  
8 a U.S. consumer.

9 While Flex America sells in the United  
10 States, we are not a consumer in the United States.

11 Terphane is here. They are a U.S. producer.  
12 Flex is not a U.S. producer.

13 In some ways, Uflex is more like  
14 Petitioners. You will notice that I did not say "like  
15 U.S. producers" because we are not a U.S. producer,  
16 but these companies are more than U.S. producers.  
17 These companies are global suppliers of polyester film  
18 to the world. However, Uflex and Flex Middle East are  
19 much more than that.

20 We view ourselves as being in the flexible  
21 packaging business for more than just a film producer.  
22 We strive to be a company that you just heard, and you  
23 will hear, from other converters, we want to expand in  
24 the overall market of flexible packaging, building  
25 long-term relationships by supplying them with a

1 quality material in short lead times.

2 We are a flexible packaging solutions  
3 company. We do business in 94 countries today, and I  
4 can tell you, in all of the countries, that flexible  
5 packaging is growing. Some of it is growing four  
6 percent, and some of it is growing 40 percent.

7 We do not strive to be a low-cost producer.  
8 We have not interest in capturing market share by  
9 giving low prices to the consumers. In this vein, I  
10 would like to discuss how companies like mine make  
11 investment decisions and how we supply our customers.

12 First, in terms of investment, at the  
13 preliminary staff hearing, I understand that the  
14 Petitioners claimed that the problem of polyester film  
15 is "expansion of global capacity" and that the  
16 countries, such as U.A.E., are marketing "their excess  
17 supplies in the United States" and that "low-priced  
18 subject imports defy economic rationality" and that  
19 Indian companies are targeting the United States from  
20 export platforms.

21 All of these statements, from the  
22 perspective of Flex, are ridiculous, and this is not  
23 how Flex makes investment decisions.

24 As a company, Uflex has the same investment  
25 opportunities as Dupont Teijin or any other company,

1 and our investment dollars go to where we think we can  
2 earn the highest rate of return.

3 It would be irrational for any company,  
4 including Flex, to invest millions of dollars in the  
5 polyester film line only to drive down the prices. We  
6 increase production without lowering pricing because  
7 we go into the markets to increase demand and usages  
8 for the polyester film.

9 Our decision to locate our facility in the  
10 United Arab Emirates was because we wanted to grow the  
11 market. We are the only film producer in U.A.E. and  
12 the Middle East. The majority of our output is used  
13 to service customers in the Middle East.

14 In the Middle East, we not only met unfilled  
15 demand, but we grew the markets there.

16 When we first went to Dubai, U.A.E., there  
17 was only one packaging materials manufacturer. As you  
18 may know, a converter takes the product out and turns  
19 it into flexible packaging. Bemis and Printpack are  
20 both converters in the United States.

21 Today, there are 30-plus converters in  
22 Dubai, U.A.E., whereas, when we went there, there was  
23 only one converter because the polyester film was not  
24 available to them, which is an integral part of the  
25 flexible packaging material.

1           Moreover, we are helping to develop new  
2 types of flexible packaging material. To give you an  
3 example, a lot of products which use to be in multi-  
4 walled paper sacks are, today, in plastic laminates,  
5 of which polyester film is a significant component.

6           Various awards received by Flex worldwide,  
7 including several from Ankel in the United States,  
8 Flexible Packaging of America in the United States,  
9 are a testimony to this.

10           This would not have happened without a high  
11 investment in applied research and development in  
12 flexible packaging, what Flex is doing.

13           Similarly, our goal in the United States is  
14 to supply a reasonably small number of customers with  
15 a steady supply of product and expand the market. We  
16 do not produce without a firm order and do not sell  
17 from inventory. Inventories are held to supply  
18 specific customers with just-in-time delivery.  
19 Therefore, if spot prices drop, we do not have to drop  
20 the prices to dispose of the inventory. We do not  
21 lower the prices to capture the market.

22           We went through a similar analysis when we  
23 decided to put up a plant in Mexico, which has been  
24 talked about in the before-noon session. If setting  
25 up this plant would just drive the prices down and

1       reduce our return on investment, we would never ever  
2       decide to make an investment in Mexico.

3               Like the Middle East, we can grow the market  
4       in Mexico. Similar to the Middle East several years  
5       ago, Mexico has few flexible packaging companies. We  
6       hope to build the market for converters in Mexico and  
7       other countries in the region.

8               Currently, North and South America are being  
9       serviced by production from U.A.E. and, for certain  
10      products, from India. We expect that, even with a  
11      Mexican facility fully operational, that the U.A.E.  
12      lines and the Indian lines will remain at high  
13      capacity levels. This happened when we started our  
14      U.A.E. line. Our Indian line was running at full  
15      capacity, not that we shifted some of the sales of  
16      Indian capacity to Dubai, and Indian capacity was  
17      running idle, no.

18              We would not have built the line in Mexico  
19      if it was simply going to reduce output of other  
20      company lines.

21              Our goal is not to dump polyester film from  
22      U.A.E. or Mexico into the United States. Again, that  
23      would make no sense.

24              We want to build the market; however, this  
25      does not mean that we will stop supplying the United

1 States from U.A.E. We will supply our customers from  
2 the facility where it is most economical to do so.

3 It may be more economical to produce certain  
4 specialty films from one facility as opposed to a  
5 number of small runs from the multiple facilities.  
6 Moreover, there may be capacity constraints that  
7 require sourcing from other countries.

8 I would assume that this is the way any  
9 global company will act: You rationalize production  
10 to maximize profits. From testimony that you are  
11 hearing today, it seems as if Dupont Teijin follows  
12 the same approach. It had production globally and has  
13 moved much of its production overseas, too.

14 In some ways, perhaps I should not be  
15 complaining about this antidumping action. If an  
16 order is imposed, it will help our Mexican operations.  
17 We have seen prices increase somewhat since the  
18 preliminary determination. However, this would be a  
19 short-term benefit at best if the price of imports  
20 increase from Korea and other places, unless they  
21 reach equilibrium. The antidumping law does not trump  
22 the law of economics.

23 That finishes my written testimony, but I  
24 would like to point out some of the relevant points.

25 I can tell you, the prices of polyester film

1 are irrelevant. What is relevant is the difference  
2 between the polyester resin and the polyester film  
3 prices because, as somebody pointed out in the before-  
4 noon session also, polyester resin prices went up, and  
5 so did the polyester film prices.

6 So, basically, what is important is the  
7 difference between the polyester resin and the  
8 polyester film prices, and, selling in 94 countries, I  
9 can tell you, in each and every country -- I have  
10 traveled myself to 72 by now -- every country, in the  
11 last six to eight months of time, the prices have gone  
12 up, and so have the margins between the polyester  
13 resin and the polyester film.

14 The second important thing is, although  
15 people are talking about the nonutilization of lines,  
16 unproductive lines, and all of those, the technology  
17 in the field of oriented film production has undergone  
18 tremendous change in the last 10 years.  
19 Unfortunately, U.S. producers have not invested in the  
20 last 10 years.

21 The technology 10 years back was 7.2 meter  
22 wide lines. Today, the technology is 8.7 meter wide  
23 line at a high speed of 500 meters per minute and in  
24 excess. So if you're sitting with an obsolete  
25 technology, you may not be viable. The reason may not

1 be dumping by other countries.

2           There was a lot of discussion on commodity  
3 and specialties. Our own observation is we are in  
4 this field only for the last 15 years. Today's  
5 specialty becomes commodity tomorrow. There is no  
6 specialty whatsoever.

7           As far as BOPP and polyester are concerned,  
8 we as a company produce polyester film. We produce  
9 BOPP film. The major difference between the two is  
10 BOPP is a barrier to moisture vapor transmission rate.  
11 Polyester is a barrier to gas and oxygen. That's the  
12 major difference. There is a shift, which sometimes  
13 does happen, but there are considerations of what the  
14 product to be packed demands. It depends upon that.  
15 Thank you very much. If there are any questions, at  
16 the appropriate time, I'm willing to answer them.

17           MR. CRAVEN: Good afternoon. My name is  
18 David Craven. I am with the law firm of Riggle &  
19 Craven of Chicago, Illinois. I'm appearing today on  
20 behalf of the China Plastics Processing Industry  
21 Association, also called the "BOPET Association." My  
22 statement will be very brief. I am not accompanied by  
23 any industry witnesses but will address any questions  
24 the Commission may have to my clients.

25           The BOPET Association has only two brief,

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1 public comments. We first submit that the Commission,  
2 when considering the magnitude of dumping, should  
3 consider the rates of those companies that  
4 participated in the Department of Commerce proceedings  
5 and received a rate based on these actual sales. We  
6 believe that this rate reflects any margins of dumping  
7 and should be considered in your evaluation.

8 We further submit that the Commission should  
9 also consider the internationalization of the domestic  
10 PET film industry and the impact that this has had on  
11 exports of products by U.S. producers' facilities.

12 To the extent that these international  
13 producers do not sell to these export markets, and  
14 thereby reducing the output of U.S. lines from their  
15 U.S. facilities, this represents a choice, a choice  
16 unrelated to unfairly traded imports made into the  
17 United States.

18 Thank you very much. I look forward to any  
19 questions the Commission may have.

20 MR. O'BRIEN: Good afternoon, Madam Chairman  
21 and Commissioners. I'm Kevin O'Brien with the law  
22 firm of Baker & McKenzie. On my immediate right is  
23 Mr. Jeff Lammers, the vice president, Global Sourcing,  
24 for the Bemis Company. On his right is Gary  
25 Michalkiewicz, the manager of corporate purchasing for

1 Bemis, and, on my left is Mr. Brian Falk, the  
2 strategic sourcing manager for Printpack, Inc. I will  
3 hear first from Mr. Jeff Lammers.

4 MR. LAMMERS: Thank you, Kevin, and thank  
5 you for the opportunity to address this hearing today.  
6 Kevin mentioned that I'm Jeff Lammers, and I'm the  
7 vice president of Global Sourcing for Bemis Company.

8 Bemis is a Neenah, Wisconsin-based, global  
9 supplier of flexible packaging and pressure-sensitive  
10 materials. Bemis, which is celebrating its 150th  
11 anniversary this year, serves its North American  
12 customers through its operating companies named  
13 Kirwood, Milprint, Perfect Seal, Bemis Polyethylene  
14 Packaging, Bemis Paper Bag, and Magtag.

15 Bemis shares have been traded on the New  
16 York Stock Exchange since 1964, and we had revenues of  
17 over \$3.6 billion in 2007.

18 Bemis's packaging roots stem from the  
19 introduction of the first printed and sewn burlap bags  
20 in 1858. Through technological change and innovation,  
21 Bemis has become one of the largest flexible packaging  
22 companies in the world, with manufacturing plants in  
23 10 countries. Bemis employs roughly 16,000 people  
24 worldwide, and we have over 10,000 employees in the  
25 United States. Our products provide protection for a

1 vast array of food products, from fresh and processed  
2 meats to candy bars.

3 We like to call Bemis a "materials company"  
4 because Bemis takes a broad spectrum of plastic resins  
5 and films and designs packaging using combinations of  
6 these materials to meet the needs of our customers and  
7 consumers. Our customer base includes the largest  
8 food and consumer product companies in the world.  
9 They would include Kraft, Frito-Lay, Nestle,  
10 Kellogg's, and Kimberly Clark. Bemis purchases over  
11 one billion pounds of film and resins, on a global  
12 basis, annually.

13 Bemis knows the global markets for these  
14 materials, as well as PET. The materials provided by  
15 the companies that have brought this antidumping  
16 action have been utilized in many product  
17 specifications developed by Bemis Company over the  
18 last 10 to 15 years.

19 We've been using PET films produced outside  
20 the U.S. for about 10 years. In addition, our Kirwood  
21 operations manufacture our own PET film. These  
22 materials are made using a proprietary process which  
23 results in different end-use properties than the  
24 materials provided by the outside PET suppliers.

25 Bemis purchases the same PET resins as our

1 suppliers for use in our film operations, as well as  
2 for use in other products that we manufacture. This  
3 gives us insight into the operations of our suppliers,  
4 and we understand what their costs and the drivers are  
5 that change those costs.

6 Bemis's raw materials sourcing process  
7 starts with our product-development group. We  
8 authorize the purchase of no materials until approved  
9 by this group of chemical engineers. Once suppliers'  
10 materials are specified, purchasing decisions are made  
11 using the normal criteria of quality, technical  
12 service, availability of supply to meet overall demand  
13 on a long-term basis, delivery flexibility, and,  
14 finally, price.

15 Over the years, materials provided by Dupont  
16 Teijin Films, Mitsubishi, and SKC have been included  
17 in our product specifications on the basis of these  
18 criteria. Both our customers and we have become  
19 dependent on a steady flow of quality PET film to meet  
20 demand.

21 The truth is Dupont Teijin does not have  
22 capacity or capability to meet our demands with  
23 domestically produced materials. In fact, no  
24 combination of domestic production from these  
25 companies is sufficient to meet market demand.

1           We were quite surprised to learn that this  
2           antidumping action had been filed. We asked Dupont  
3           Teijin about it, and we were assured that Dupont  
4           Teijin would never take action that would put their  
5           Chinese operations in jeopardy.

6           One Dupont Teijin senior manager told us,  
7           "You have nothing to worry about. Your supply is  
8           secure."

9           I've described our relationship with Dupont  
10          Teijin in my declaration submitted in this case. I  
11          would like to further add the following point in  
12          response to Commissioner Pearson's question on why the  
13          nonsubject imports wouldn't benefit instead of  
14          domestic industry, and our answer is that they would  
15          benefit. The nonsubject countries would benefit  
16          directly.

17          We've been abruptly cut off by Dupont Teijin  
18          for a short time, so we've had to use out-of-spec.  
19          material and change our specifications, taking greater  
20          risks with our customers. But, in the long term, we  
21          will fill the need with in-spec. materials from  
22          nonsubject countries.

23          I would add that Mitsubishi recently  
24          relocated one of their senior management people to  
25          Shanghai. During a meeting I had with this manager,

1 in 2007, he told me one of his responsibilities would  
2 be to establish PET film supply in China, either  
3 through a greenfield operation or a joint venture.  
4 Now, Mitsubishi is reducing domestic production of  
5 this PET film, preferring to produce specialty  
6 products.

7 It was made clear to me that, regardless of  
8 whether Mitsubishi's U.S. plants operate at capacity  
9 or not, Mitsubishi plans on opening a plant in China  
10 and not further expansions of its U.S. operations.

11 SKC has notified us of a similar decision.  
12 In fact, SKC told us that it intended to move away  
13 from 48-gauge product roughly four years ago, before  
14 Chinese product entered the U.S. in any significant  
15 volume.

16 Toray, to our knowledge, does not currently  
17 produce these PET products in the United States.

18 So, in short, we have one supplier who has  
19 never produced 48-gauge PET film here and another who  
20 is exiting this business in December, when prices are  
21 at record highs.

22 We have still another evolving its business  
23 model toward more specialty products who wants to use  
24 this case as an excuse to exit a market they were  
25 leaving anyway.

1           Finally, our largest supplier refuses to  
2 honor its contractual obligations while initiating  
3 this case against its own facilities.

4           To make sure Bemis honors its obligations  
5 under our customers' supply contracts, Bemis has been  
6 forced to locate other sources of supply of PET film  
7 around the globe. We will ultimately succeed in this  
8 effort but not in the timeframe made available to us  
9 by our current suppliers.

10           In the interim, we've had to accept domestic  
11 products that do not meet our specifications. We've  
12 had to modify our production parameters and adjust our  
13 product specifications. This puts us at great risk  
14 with our customers.

15           Knowing what we do about the PET film  
16 business and resin markets, we believe that any  
17 profitability erosion is the result of the sharp runup  
18 in costs of all crude oil- and natural gas-based  
19 products.

20           Production of PET film products is not labor  
21 intensive. These products, as they have mentioned all  
22 morning, are produced on large processing lines that  
23 operate 24 hours a day, seven days a week, 365 days a  
24 year.

25           I've seen numerous such operations around

1 the world, and they are all substantially the same.

2           Given the large spike in all petrochemical  
3 commodities, it's not surprising that the  
4 profitability would lag, given the time that it takes  
5 to pass costs through to the marketplace.

6           We still believe, however, that this remains  
7 a profitable commodity. We've been approached by a  
8 supplier who has a Mexican operation coming onstream  
9 that we've just heard about. Global demand for PET  
10 film continues to increase while domestic suppliers  
11 have, and remain, sold out. At the same time, these  
12 suppliers are moving their production toward more  
13 specialty products.

14           We conclude that putting an extra duty on  
15 materials produced in China will have no effect,  
16 except on Dupont Teijin, which has reneged on its  
17 contract with Bemis after it asked for the antidumping  
18 duty on itself.

19           Finally, I hope the point is not lost on the  
20 Commission that Bemis is the only U.S.-owned, PET film  
21 producer at this hearing. The complaining companies  
22 all have roots, ownership, allegiances, outside the  
23 U.S., which might explain some of the decisions made  
24 in this case. That completes my statement, and I  
25 thank you.

1           MR. FALK: Good afternoon. My name is Bryan  
2 Falk. I am the strategic sourcing manager for  
3 Printpack, Inc. I have been with Printpack for 23  
4 years, of which the first 11 years were with James  
5 River's flexible packaging business, acquired by  
6 Printpack in 1996.

7           Printpack is a privately held flexible  
8 packaging corporation headquartered in Atlanta,  
9 Georgia. The company was started in 1956 by J.  
10 Erskine Love, Jr., and the family still owns and  
11 operates the business.

12           The company had sales of \$1.4 billion in  
13 2007 and has 4,500 associates worldwide, of which  
14 greater than 3,500 are workers in the U.S. We have 26  
15 manufacturing sites in the U.S., the U.K., and Mexico.  
16 We service such customers as Frito-Lay, Nestle, Kraft,  
17 General Mills, Delmonte, Unilever, and others.

18           Printpack is one of the largest flexible  
19 packaging converters in the world, with a two-percent  
20 market share of the \$28.8 billion marketplace. In the  
21 U.S., we have a seven-percent share.

22           We buy significant quantities of polyester  
23 film each year. Approximately 45 to 50 percent of our  
24 film purchases are commodity types, and the other half  
25 are more specialty types. In total, we purchase about

1 two dozen film types across three-to-four-gauge  
2 thicknesses.

3 We select films with fitness for purpose in  
4 mind. Initial qualification and demonstrated  
5 repeatability of performance are critical factors in  
6 selecting film types. Suppliers are also vetted for  
7 their ability to demonstrate flawless supply chains.  
8 Without having the proven ability to work in the  
9 designated application, and without having the  
10 confidence that orders will be fulfilled as required,  
11 a polyester film producer will not supply to  
12 Printpack, regardless of the pricing offered.

13 I want to mention market realities for  
14 polyester film evident today. There has been no  
15 significant increase in capacity installed in the  
16 United States since the 1990's. Demand in packaging  
17 is growing through population growth and with the  
18 increasing popularity of many food products that are  
19 packaged in polyester films, such as microwavable  
20 products.

21 In the polyester film market, there is new  
22 demand for polyester thick films, for example, for LCD  
23 TVs.

24 Therefore, there is insufficient domestic  
25 capacity for commodity films.

1           Another market reality: Even though we have  
2 had long-term relationships with Dupont Teijin and  
3 SKC, we have contended with ongoing supply issues with  
4 these companies. As recently as this week, we had a  
5 very pointed conversation with SKC regarding service  
6 issues, one of many, manifested as declining volume  
7 commitments, late deliveries, and failure to notify us  
8 that those deliveries would be late.

9           Printpack has been doing business with  
10 Dupont, one of the partners to Dupont Teijin Films,  
11 since our inception as a business in 1956. Their  
12 polyester film business with Printpack has varied over  
13 the years, but, at the present time, they are the  
14 largest-volume supplier to Printpack.

15           Today, Dupont Teijin is limited in their  
16 supply of some commodity-type films to Printpack.

17           Printpack also does significant business  
18 with other domestic producers: Mitsubishi, Toray,  
19 SKC, and Terphane.

20           In a perfect world, with the volume of  
21 purchases that we make and to capitalize on potential  
22 supply chain improvements and product consistencies  
23 that are possible with fewer sources, we would opt to  
24 do business with fewer suppliers versus more.  
25 However, because of the tightness in today's U.S.

1 market, we need support from every producer  
2 domestically and from others internationally.

3 We have also purchased significant  
4 quantities, in the past few years, from Terphane.  
5 This company was previously known to us as Rhone  
6 Poulenc. When business ownership changed, and  
7 strategies changed with those owners, the Rhone  
8 Poulenc sales of polyester film to Printpack dropped  
9 off to virtually nothing.

10 Three years ago, with people on board that  
11 we knew from past relationships and with new capacity  
12 emerging, Terphane films were reconfirmed as fit for  
13 use in our packaging applications, and their supply  
14 chains were proven to be more consistent and robust  
15 than some of our domestic suppliers. Terphane pricing  
16 was not out of market, one way or the other.

17 The key decision points in sourcing film  
18 are: fit for the intended purpose; reliable supply  
19 chains. If, and only if, those criteria are met, we  
20 then seek not the lowest price but competitive  
21 pricing.

22 Today, because of oversold market conditions  
23 in the U.S., price is even less of an object than ever  
24 before. We're scrambling monthly to get the volumes  
25 we need to service our customers. We are not

1 accustomed to predicting what they need in flexible  
2 packaging requirements 12 to 14 weeks in advance.

3 Converters like Printpack are exposed to  
4 significant risk in the applications of materials we  
5 buy from suppliers to fulfill flexible packaging  
6 requirements for our customers. It's important to  
7 note that all of our materials to make flexible  
8 packaging for such customers like Frito-Lay will come  
9 into direct contact with food.

10 Therefore, we need to certify that incoming  
11 materials are FDA compliant and that the physical  
12 characteristics and specifications will process  
13 through our converting equipment to produce the final  
14 product for our customers.

15 In some cases, to test material through our  
16 operations and through our customers' operations into  
17 extended-shelf-life applications, the duration of time  
18 could take six to 12 months. It's not a process we  
19 take lightly, nor is it a process that is susceptible  
20 to spot purchasing activities.

21 All domestic polyester film suppliers are  
22 seemingly oversold today. Additionally, domestic  
23 suppliers are capitalizing on the tight market by  
24 engaging in mixed-enrichment strategies, whereby they  
25 deliberately limit the production of commodity-type

1 films so that more specialty films can be  
2 manufactured.

3 In the time in which lost profitability has  
4 been proclaimed by the U.S. producers, allegedly due  
5 to the competitive pricing offered by alternative film  
6 sources, the cost of crude oil and natural gas has  
7 increased dramatically, thus rapidly increasing the  
8 cost to manufacture these films.

9 The manufacture of polyester film is not  
10 especially labor intensive but, rather, more energy  
11 and capital intensive. I believe the rapidly rising  
12 feedstock costs to make polyester resins that make  
13 polyester films have the direct effect of squeezing  
14 film profitability in the short term.

15 In recent weeks, with declines in crude oil  
16 and natural gas pricing, I would expect those lower  
17 costs to show up in lower polyester film manufacturing  
18 costs.

19 We understand that the demand is growing in  
20 China dramatically. It is unlikely that large volumes  
21 will be shipped to the U.S. from China in the short  
22 term. There are also plans for a startup of a new  
23 plant in Mexico which should make film available in  
24 2009.

25 Because of strong demand and finite capacity

1 of polyester film, the market is tighter than it has  
2 ever been, and I've been in this market buying  
3 polyester for a long time. Now is not the time to  
4 constrain supply.

5 In the past three years, lower prices were  
6 available from domestic and from international sources  
7 that Printpack rejected and did not pursue. From my  
8 company's perspective, no business was lost by a  
9 domestic producer to a speculative spot seller of  
10 polyester film due to price; rather, suppliers of  
11 proven films that meet our approved specifications and  
12 have reliable, consistent supply chains are the  
13 suppliers of interest to us, whether they are domestic  
14 or offshore.

15 In conclusion, it's our assessment that the  
16 domestic suppliers are effectively on allocation, with  
17 the intent to sell more specialized films for higher  
18 profitability versus needed commodity films, which  
19 have already increased dramatically in price this year  
20 due to rising energy costs.

21 Without imports from China, Thailand,  
22 Brazil, and the United Arab Emirates, Printpack and  
23 the flexible packaging industry will not be able to  
24 easily service the packaging requirements of our  
25 customers, but we will find film to meet our

1 requirements. Thank you for your time.

2 MR. KOENIG: That completes our testimony.  
3 Thank you, Madam Chairman.

4 CHAIRMAN ARANOFF: Welcome, and thank you to  
5 the afternoon panel for hanging in there with us  
6 through the morning and the lunch break. We've all  
7 had coffee, and we're ready to ask lots of questions  
8 this afternoon. I hope nobody's flight leaves too  
9 soon.

10 In any event, we do thank you for taking  
11 time away from your real jobs to come here and help  
12 answer our questions. It's always enormously helpful  
13 to us to get this background.

14 By luck of the draw, I'm going to be asking  
15 the first questions this afternoon, and I wanted to  
16 start by following up on a few questions with Mr.  
17 Lammers from your testimony.

18 You may not be able to answer some of these  
19 publicly, but you had mentioned in your testimony that  
20 your U.S. production arm, Kirwood, makes PET film with  
21 a proprietary process, and I think I heard you say it  
22 results in a product that has different  
23 characteristics than what you're buying in the  
24 merchant market.

25 Is there anything that you can tell us about

1 that? Is it going to different end uses? What's  
2 different about it? Is that all very confidential?

3 MR. LAMMERS: Yes, that's true. We use it  
4 in different products to get different properties than  
5 we would from the subject materials, yet it does give  
6 us knowledge into this business because we buy the raw  
7 materials, the resins necessary, follow their  
8 feedstocks, and understand how complicated they might  
9 be to process. But it's not made with the same  
10 process, and we use them in different end uses.

11 MR. KOENIG: Madam Chairman, we'll be happy  
12 to elaborate on that in the post-hearing submission.

13 CHAIRMAN ARANOFF: I would also be  
14 interested in the relative proportions of how much of  
15 the PET film that the company uses comes from their  
16 domestic production versus how much they purchase.

17 As you're the only one here, Mr. Lammers,  
18 who can speak from the standpoint of the captive  
19 producers of PET film, I know you can't answer this  
20 publicly, or maybe you can, I'm interested in what  
21 differences there are between the sort of market and  
22 operating conditions that face a captive producer  
23 versus a producer who is producing for the commercial  
24 markets.

25 You, obviously, haven't seen our

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1 confidential record, but there appear to be some  
2 differences, and I'm interested in what particular  
3 facts might be different for a captive producer, in  
4 terms of the costs you face or operating conditions or  
5 how you allocate your costs at different levels of  
6 production compared to someone who is producing for  
7 the commercial market.

8 MR. KOENIG: Yes. We will address those  
9 points as well.

10 CHAIRMAN ARANOFF: I appreciate that.

11 You also testified that once the effects of  
12 the pendency of this investigation that you were  
13 having trouble getting product within your  
14 specification and that you were kind of looking around  
15 for other sources, and you said you were using out-of-  
16 specification material. Is that material that you're  
17 purchasing from domestic producers or from subject or  
18 nonsubject sources?

19 MR. LAMMERS: That's materials that we were  
20 purchasing from a domestic producer that's here. We  
21 have a rather large supply contract with Dupont Teijin  
22 that gives them the choice of where in the world they  
23 want to supply us, presuming they can give us material  
24 that was in spec.

25 At the point that this antidumping action

1 first took place, they refused to continue to supply  
2 us on the basis they had been and said the only way  
3 they can supply us is from their domestic sources that  
4 don't produce the materials that meet our needs, that  
5 are in our spec., and claim they can't change that  
6 process to meet our needs.

7 So we're taking what we can to keep our  
8 business running and keep our customers supplied.

9 CHAIRMAN ARANOFF: Okay. Is that typical in  
10 your relationship with other domestic producers, that  
11 you enter into a contract where they have the choice  
12 of whether they are going to supply the product from a  
13 domestic facility or from an overseas facility, or is  
14 that unique to that particular relationship with  
15 Dupont Teijin?

16 MR. LAMMERS: Well, I would say that each of  
17 our contract negotiations is unique. I'm not aware of  
18 another similar one, but, in other areas, we've got  
19 contracts with suppliers who have the option to supply  
20 from any number of plants that are approved. Once  
21 they are approved, they can pick whichever one they  
22 want to supply at any given time, as long as they meet  
23 the delivery criteria and the specifications.

24 CHAIRMAN ARANOFF: Okay. It would be  
25 particularly helpful, in your post-hearing brief, if

1 you do business with the other domestic producers, if  
2 you could indicate sort of what the nature of the  
3 contract is because I think it is very important to us  
4 to know whether the standard supply contract in the  
5 industry is that they can supply either domestic or  
6 imported for any particular specification, or whether  
7 that's a unique circumstance.

8 MR. LAMMERS: For the other suppliers of  
9 this material that are here, we don't have the same  
10 sort of supply contract, and we wouldn't have that  
11 same arrangement. It's only because of the long  
12 relationship with Dupont Teijin that we would let that  
13 clause into a contract.

14 CHAIRMAN ARANOFF: Okay. Thank you. That's  
15 really helpful.

16 There was one other thing you said that I  
17 wanted to follow up on. I think it was you who  
18 mentioned this, that there is a lag between the rise  
19 in raw material costs, particularly coming out of the  
20 petrochemical sector, and the ability to pass that on  
21 in the form of price increases.

22 Can you give me an idea of how long a lag  
23 you're talking about and why you think there is one,  
24 because these are, obviously, publicly available  
25 prices for these input materials? Is it because there

1 are contracts that set prices over a long period of  
2 time in the PET film market? Why is there a lag?

3 MR. LAMMERS: There's contracts, there's  
4 market precedents. We expect from our suppliers some  
5 stability of price so that we can provide that to our  
6 customers as well, so we don't have daily swings in  
7 pricing of our raw materials, nor could our customers  
8 tolerate that from us, yet the feedstocks that go into  
9 all of these plastic materials do trade on a daily  
10 basis. A lot of their numbers are set by contract on  
11 a monthly basis, but they supplement that with spot  
12 purchases in the petrochemical markets on a daily  
13 basis, and they swing up and down regularly.

14 CHAIRMAN ARANOFF: Okay. For the post-  
15 hearing, I certainly invite the Petitioners, as well,  
16 to address this issue of whether or not there are  
17 built-in lags in the ability to pass on these costs.

18 Mr. Lammers, I think I've directed enough of  
19 my questions to you, and I'm going to turn to Mr.  
20 Koenig and ask a question about negligibility.

21 In your brief, with respect to the issue of  
22 whether subject imports from Brazil are negligible,  
23 you urge our staff to further investigate.

24 From my reading of the staff report, our  
25 staff has done a very thorough job, so I guess what I

1 would like to ask you to do, either now or in your  
2 post-hearing brief, is identify what specific actions  
3 our staff could take that they haven't taken to  
4 address this issue, if there is specific information  
5 that you think is missing from the record that's  
6 within our ability to find or other specific actions  
7 that our staff could take.

8 MR. KOENIG: Sure. In the post-hearing  
9 brief -- if one looks at our confidential version -- I  
10 won't indicate what it says -- you'll see some  
11 information that perhaps should be inquired into, just  
12 from reading it, and that's kind of what sparked the  
13 attention. It's in the same footnote.

14 CHAIRMAN ARANOFF: Well, I will take a look  
15 at that, but if there is anything that you can add to  
16 really just direct us because this, obviously, is  
17 something that has been looked at a lot, and, to me,  
18 it looks like we're pretty close to an answer here.

19 MR. KOENIG: I would agree that certainly a  
20 lot of time has been spent on it, and I would  
21 certainly appreciate that. It's how close it is to  
22 three percent, and, given that there is certain  
23 information we do identify in that confidential  
24 footnote, that perhaps some questions should be asked  
25 of certain individuals, and also, knowing that the

1 whole tariff category hasn't been covered, as far as  
2 exactly what is coming in under that tariff category,  
3 it just seemed it warranted some further inquiry.

4 The Petitioners are right that we're not  
5 aware of any production of PET film in Canada, but  
6 there is a concern that perhaps shipments going  
7 through Canada, which is also -- obviously, you can  
8 only do so much investigating, so that was all our  
9 point was.

10 CHAIRMAN ARANOFF: Okay. I appreciate that  
11 answer, and, since my light is yellow, I'll turn it  
12 over to Vice Chairman Pearson.

13 VICE CHAIRMAN PEARSON: Thank you, Madam  
14 Chairman. I would like to welcome the afternoon panel  
15 also, and I appreciate your endurance in hanging in  
16 there through the morning session and the afternoon.

17 I asked the domestic industry about their  
18 view of the demand situation in the United States,  
19 and, with this panel, let me start, first, by asking  
20 about demand in the global marketplace. Are we seeing  
21 growing demand for PET film worldwide, or is that  
22 market relatively stable? Mr. Tyle?

23 MR. TYLE: As far as global demand for  
24 polyester film is concerned, it's increasing. It  
25 varies from country to country, and I can answer you,

1 when we are present in 94 countries, somewhere it is  
2 growing four percent; somewhere it is growing 25 to 30  
3 percent.

4 VICE CHAIRMAN PEARSON: Is that somewhat  
5 aligned with GDP growth in the individual countries?

6 MR. TYLE: Yes. There are two factors in  
7 answering the growth of usage of polyester film. It's  
8 basically driven by flexible packaging. As we all  
9 know, the oil prices, the energy prices went up, so  
10 what happened is flexible packaging assumed an  
11 increased importance because rigid packaging and semi-  
12 rigid packaging, which consumes more energy --  
13 basically has tried to shift that to flexible  
14 packaging, and that's how the increased demand started  
15 in flexible packaging. Of course, it is related to  
16 GDP. It is also related to places where energy is of  
17 utmost importance.

18 VICE CHAIRMAN PEARSON: Okay. Are there  
19 observations, Mr. Lammers?

20 MR. LAMMERS: Bemis purchases the subject  
21 48-gauge PET film around the world, and the U.S. is,  
22 by far, our largest market use, but we use it in  
23 Finland, we use it in the U.K., Mexico, Brazil,  
24 Belgium, and Malaysia, and we find the growth in the  
25 established countries in Western Europe and the U.S.

1 to be, GDP, about maybe a little faster, depending  
2 upon the year.

3 This year, we've had the good fortune of  
4 some faster growth than we have had in the last two  
5 years, certainly, because of certain customers'  
6 product introductions. But, in Asia, we see much  
7 greater growth. In Mexico, we see greater growth. So  
8 it's related to the growth in the economy.

9 We also find that, since we purchase this  
10 material around the world, we've got access to the  
11 selling prices in all of the regions of the world, and  
12 we find them to be all substantially similar, very  
13 much the same, no matter where we buy the material in  
14 the world.

15 VICE CHAIRMAN PEARSON: Okay. Thank you.

16 So what you've just described would be  
17 consistent with the situation in which demand in the  
18 United States might be relatively stable, perhaps  
19 growing slightly, and yet demand elsewhere in the  
20 world, particularly the faster-developing countries,  
21 that that demand also is developing quite rapidly.

22 MR. LAMMERS: Yes, certainly that's the  
23 case.

24 VICE CHAIRMAN PEARSON: Okay. What about  
25 the supply situation, then? We apparently have seen

1 some price strength around the globe in the last year  
2 or so. Has demand just plain caught up to supply, and  
3 thus the price is strengthening? How would you  
4 describe that? Mr. Roy?

5 MR. ROY: The installed capacity is still  
6 outstripping the demand on a global basis. There was  
7 a huge investment made --

8 VICE CHAIRMAN PEARSON: Let me clarify.  
9 You're saying that there is still an overhang of  
10 capacity in the global marketplace.

11 MR. ROY: Yes. When we look at global  
12 utilization rates or capacity utilization rates, the  
13 polyester industry, as far as we know, what we can  
14 ascertain, it's probably around 88 to 90 percent. So  
15 there is some capacity left to be utilized.

16 Now, on the startup of a lot of these new  
17 lines, it does take some time to get machinery up to  
18 full speed. We're still at it in Brazil, having  
19 started a line back in 2005. So most of the new  
20 capacity was installed in China, and they are still  
21 very much gearing up that capacity.

22 So when we look at it, country by country,  
23 the larger countries, in terms of both capacity and  
24 demand, China, for example, their installed capacity  
25 is far greater than the demand, but that demand is

1 catching up. Their equipment is also speeding up, so  
2 there will come a time, in the near future, if no more  
3 investments are made on a global basis, where demand  
4 will catch up to capacity. That is not the case  
5 today.

6 Typically, in polyester, we see a seven-to-  
7 eight-year cycle where there is a lot of installed  
8 capacity, then the demand catches up, and there is a  
9 new wave of investment. Where the investment is made  
10 very much depends on where the projected growth is  
11 going to be in demand.

12 It so happens that, since 2000, it's been in  
13 Asia, it's been in China. When we look at "BRIC" --  
14 Brazil, Russia, India, and China -- right now, those  
15 are the countries where we see polyester growing very,  
16 very quickly, at multiples of GDP in some cases simply  
17 because we have a new phenomenon of flexible packaging  
18 catching up to the needs of consumers and the change  
19 in consumer preference. There's emerging middle  
20 classes in those countries that are wanting to  
21 consume.

22 So as far as the United States is concerned,  
23 the United States has been a net importer of polyester  
24 for a very, very long time and will continue to be a  
25 net importer. What we see in the United States,

1 because of consumer preferences, are some segments of  
2 polyester usage disappearing. It was mentioned this  
3 morning, magnetic media, for example, is disappearing.  
4 Some of the decorative film applications have been  
5 moved to Asia.

6 So, always, the dynamics of the global  
7 market are such that there is a lot of movement going  
8 around, but, looking at the net numbers, polyester is  
9 growing in the United States at the rate of GDP, some  
10 segments faster than others, but, overall, we're still  
11 seeing healthy growth in the North American market, in  
12 the U.S., Canada, and Mexico. That's what we look at,  
13 but, specifically, in the U.S.

14 VICE CHAIRMAN PEARSON: Okay. So you're  
15 describing a world market that is close to balance,  
16 perhaps with a little bit of excess supply capacity  
17 out there somewhere.

18 MR. ROY: There is excess supply out there.  
19 We can always tap a little more out of these lines. I  
20 think all film companies are continuously trying to  
21 improve processes and trying to speed up old lines by  
22 modifying those lines. So this is our daily activity:  
23 How do we increase output on existing equipment? We  
24 try to anticipate the demand, forecasted demand, and  
25 see whether it makes sense or not to invest.

1           We've just invested, and it takes a lot of  
2 time and money and effort to get these new lines up  
3 and started.

4           So, looking at the overall polyester market,  
5 it is growing, and it is growing because applications  
6 are growing. It is growing because there is a shift  
7 from other types of substrates to polyester. So it's  
8 still a healthy business to be in.

9           VICE CHAIRMAN PEARSON: Okay. Well, let me  
10 back up. A little bit earlier in this exchange, I  
11 made an assumption that price had been increasing over  
12 the past year. I realize now I'm not completely sure  
13 that I've heard you say that. So let me ask, what has  
14 price been doing in the past year in the United States  
15 and globally?

16           MR. ROY: It's been increasing on a global  
17 basis. Mr. Lammers buys on a worldwide basis. It's  
18 been increasing. We also participate in various  
19 markets on the global platform and prices have  
20 increased.

21           It's interesting to note that a lot of these  
22 price increases were driven by the Petitioners on a  
23 global basis that sit here today. They have a global  
24 platform. They are the largest producers of polyester  
25 when you consolidate the four of them, and they have a

1 huge impact in moving those prices up. Prices have  
2 moved up everywhere. There's not one country or one  
3 zone. We tend to look at the Americas, Europe and  
4 Asia. Prices have moved up. Cost of materials has  
5 moved up. Prices have moved up.

6 VICE CHAIRMAN PEARSON: Has that price  
7 increase been due fundamentally to some tightening in  
8 the supply/demand balance, or has it been due to  
9 greater consolidation among the major producers and  
10 kind of an exercise of market power that they may or  
11 may not possess?

12 MR. ROY: I believe the main driver for the  
13 rounds of price increases that we've seen is that  
14 costs have gone up. Costs have gone up to the point  
15 where it's no longer acceptable to absorb these costs.  
16 There's different things you can do in terms of  
17 product mix. You can look at your product portfolio.  
18 More value added. But there comes a point where you  
19 need to move.

20 We've seen in the past costs, we've seen  
21 cost increases in the past that were not sustained  
22 over a long period of time, so we've seen blips in  
23 some of the raw materials, for example, that we use,  
24 that can be seasonal in nature. But overall the move,  
25 I think it as an industry move on a global basis to

1 say prices are moving up.

2 VICE CHAIRMAN PEARSON: Do you have a sense  
3 whether as costs have risen and prices have risen,  
4 have prices risen enough to increase profitability a  
5 little bit? Or don't we know enough to say that?

6 MR. ROY: We focus on the packaging segment  
7 of the industry so I can't really comment on the  
8 totality of the polyester.

9 VICE CHAIRMAN PEARSON: Mr. Tyle?

10 MR. TYLE: As far as the pricing is  
11 concerned, the costs of raw material have gone up and  
12 so have the prices. But the delta between the cost of  
13 raw material and the selling price has increased,  
14 thereby increasing the profitability.

15 VICE CHAIRMAN PEARSON: So that would be  
16 generally true globally.

17 MR. TYLE: Right.

18 VICE CHAIRMAN PEARSON: The profitability of  
19 producing PET film has increased --

20 MR. TYLE: Right. The last eight to twelve  
21 months of time it has gone up.

22 VICE CHAIRMAN PEARSON: Thank you very much.  
23 The light is changing, so thank you, Madame Chairman.

24 CHAIRMAN ARANOFF: Commissioner Okun?

25 COMMISSIONER OKUN: Thank you Madame

1 Chairman. I join my colleagues in welcoming this  
2 afternoon's panel. I appreciate you being here and  
3 answering questions.

4 I think I'm going to start with a question  
5 probably best directed to counsel, although it is  
6 somewhat related to the last exchange we've just had  
7 about global pricing.

8 That is, one of the things Petitioners have  
9 argued is that we can test whether having subject  
10 imports under order will be beneficial to the domestic  
11 industry by looking at the information post order, and  
12 that according to both I think Table 1 in Mr.  
13 Greenwald's brief and the other information he cites  
14 there shows the domestic industry's fortunes improved  
15 with the order in place.

16 I know that part of your response has been  
17 prices are going up everywhere, and I just heard that  
18 response.

19 I did want to get a more specific response  
20 from the lawyers, and if there's anything in this  
21 record that you could point to that would say we  
22 should discount this view that the interim periods are  
23 not a good period in which to judge how the market  
24 will react if a final order were placed on the  
25 products.

1 I don't know who wants to start on that.  
2 Mr. O'Brien, I see you reaching for a mike back there.

3 MR. O'BRIEN: Yes, Commissioner Okun.

4 I would add, referring to the testimony of  
5 the gentlemen on my left and right, that this is a  
6 product that needs to be qualified and in many cases  
7 it has to be FDA certifiable material. So you cannot  
8 switch overnight between suppliers. There will be a  
9 period of weeks or months that will be required for  
10 that to take place.

11 I would suggest that you should not be  
12 confined simply to the interim period. It is a longer  
13 process because of the nature of the product. But a  
14 slightly longer period will be more revealing as to  
15 the effect of this case, if any, on price increases.

16 COMMISSIONER OKUN: Other counsel want to  
17 comment?

18 MR. KOENIG: Peter Koenig for Terphane. We  
19 would agree with that.

20 If there's a temporary dislocation in the  
21 market, that doesn't evidence injury. It takes time,  
22 not long, but to adjust as was testified to by Dan  
23 Roy.

24 MR. LUNN: The only thing that I would add  
25 is that it is too short of a period of time.

1                   COMMISSIONER OKUN: Speak into your mike,  
2 please.

3                   MR. LUNN: I'm sorry. The only thing that I  
4 would add is that along with being a short period of  
5 time, as Mr. Tyle said, worldwide prices are  
6 increasing. So I don't think it's possible right now  
7 during that short period of time to determine whether  
8 or not the price increase in the U.S. would have  
9 occurred but for the imposition of the preliminary  
10 duties or not or if it was simply a worldwide effect  
11 that we were seeing.

12                   COMMISSIONER OKUN: Okay. And then was  
13 there someone else who wanted to comment? Yes? Mr.  
14 Koenig?

15                   MR. KOENIG: I would also agree with my  
16 colleagues, and I would also suggest that in the post-  
17 hearing brief we can discuss what we think of any  
18 other factors that may also have entered into that. I  
19 think there are a couple of other factors, but I don't  
20 think we can go into them in the public session.

21                   COMMISSIONER OKUN: Okay. And then my next  
22 question probably would also be best handled post-  
23 hearing, but that would be the other information that  
24 the Petitioners had pointed us to with respect to  
25 looking at interim periods and others for evidence of

1 the impact of the order.

2           There is, as I think the Chairman mentioned,  
3 a distinction in the merchant market and versus the  
4 other. One of the things that I thought the producers  
5 were discussing was by looking at that there was  
6 evidence there of a cost-price squeeze which the  
7 Commission looked at in the preliminary, in our  
8 preliminary opinion.

9           So I guess while I understand what you're  
10 saying about global prices, I think it would be  
11 helpful post-hearing to have a more specific response  
12 on what we see in this record prior to the preliminary  
13 order and after that period with respect to the  
14 company's bottom line and the arguments we heard from  
15 producers. So I know that's kind of a convoluted  
16 question, but I think you understand the gist of it  
17 which is our preliminary finding was it did talk about  
18 the impact on prices on this record.

19           My second request would be, you've talked  
20 about these increases in global prices. If that is  
21 your argument for why what we saw during this order  
22 was related to global demand versus improvements due  
23 to subject imports being ordered, if you can give me  
24 more specific information in your post-hearing about  
25 prices in other markets. You testified about a number

1 of specific things this afternoon, but if you have  
2 more specific information about particular products,  
3 particular markets, what was going on during the whole  
4 period, that would help me better understand whether  
5 the trends are essentially meeting up on a global  
6 basis better than they're meeting up in what I  
7 observed during the POI in the U.S. market.

8 So all that for post-hearing.

9 Next let me turn, I think I want to go to  
10 Mr. Tyle, is that correct? I just wanted to make sure  
11 I understood your testimony with respect to how you  
12 would supply your U.S. customers. I think what I  
13 heard you say is that even if there's an order in  
14 place the company would just be looking globally to  
15 try to figure out how to bring, I think I wrote down  
16 bringing in, supply U.S. customers from whatever  
17 facility is most economical.

18 MR. TYLE: That's correct.

19 COMMISSIONER OKUN: So tell me then, if  
20 there's an order in play you would then look to a  
21 particular non-subject country? I wasn't sure if you  
22 knew specifically where you'd go or whether that was  
23 just a response to it's easy to move somewhere else if  
24 I needed to.

25 MR. TYLE: No, no. That was in response to

1 we have multiple facilities. We have a manufacturing  
2 facility in India. We have manufacturing in Dubai,  
3 UAE, and we are going to have manufacturing in Mexico.  
4 It was only related to our manufacturing facilities  
5 that we have qualification with our customers, most of  
6 the customers around the world for the Indian product,  
7 for Dubai product, and as Mexico takes off the same  
8 process is being followed.

9 So what I meant is very economical for us  
10 and for our customer to get the material, we source it  
11 from there. Our manufacturing facility does not use  
12 other outside facilities.

13 COMMISSIONER OKUN: From the analysis we  
14 have to perform in trying to determine what the  
15 behavior of what the non-subjects would be if an order  
16 were in place, when you talk about bringing product in  
17 from one of your other facilities in India under order  
18 subject to --

19 MR. TYLE: We bring material only against  
20 orders, not only in the United States but around the  
21 world. Typically if we do not have the order, we  
22 would close the line. It has never happened in the  
23 last 15 years of our existence. We only produce  
24 material against orders.

25 COMMISSIONER OKUN: And in terms of the

1 pricing, you take into account what the different  
2 facilities' costs are in pricing to the U.S. market?

3 MR. TYLE: Yes.

4 COMMISSIONER OKUN: I guess I'm trying to  
5 understand, would it change the pricing if you are  
6 looking at bringing it in from India if there's an  
7 order in place?

8 MR. TYLE: There are different pricing for  
9 different facilities. It's because the cost of  
10 manufacturing is different, the freight component is  
11 different.

12 Second thing, while on the subject I would  
13 also like to clarify. There is also a suspicion that  
14 we are moving from one country to another country  
15 just to get out of this antidumping duty in different  
16 countries or continents. But the issue is, we have  
17 exposure in 94 countries. What our vision is, we will  
18 have manufacturing units in different parts of the  
19 world which are geographically easier to serve the  
20 various customers on just in time basis.

21 COMMISSIONER OKUN: I appreciate those  
22 comments.

23 I also wanted to go back to, my yellow  
24 light's going to come on. I think this question's  
25 will take longer than what I have on my yellow light,

1 so I will return on my next round, Madame Chairman.  
2 Thank you very much.

3 CHAIRMAN ARANOFF: Commissioner Lane?

4 COMMISSIONER LANE: Thank you.

5 Mr. Tyle, I want to go back to you. To the  
6 extent that you can discuss your company's operations  
7 on the record, can you describe your exports to the  
8 United States after the imposition of the preliminary  
9 duties and how the preliminary duties impacted your  
10 ability to sell into the U.S. market?

11 MR. TYLE: In order to answer that freight,  
12 whatever we were selling before the imposition of  
13 duties, we have sold --

14 COMMISSIONER LANE: Can you get your  
15 microphone just a little bit closer, please?

16 MR. TYLE: Sorry.

17 Whatever we were selling before the  
18 imposition of provisional duties, we are selling the  
19 same quantities. We have not increased the  
20 quantities, we have not decreased the quantities. We  
21 have not increased the customers, we have not reduced  
22 the customers.

23 COMMISSIONER LANE: Let's go to the  
24 information that you discussed about Mexico. As I  
25 understand it, you are building a facility in Mexico.

1 MR. TYLE: That's correct.

2 COMMISSIONER LANE: Could you tell me when  
3 construction started and when you expect that to be  
4 on-line?

5 MR. TYLE: The construction is going on and  
6 it will be in operation in 2009.

7 COMMISSIONER LANE: When did you start  
8 building that facility?

9 MR. TYLE: That was about six months back.

10 COMMISSIONER LANE: Six months ago?

11 MR. TYLE: Yes, please.

12 COMMISSIONER LANE: After this case was  
13 filed.

14 MR. TYLE: You said building. By building I  
15 meant construction. But if you want to know when we  
16 acquired the land, that was about a year and a half  
17 back.

18 COMMISSIONER LANE: Maybe I'm  
19 misunderstanding.

20 When did you start construction of the  
21 facility?

22 MR. LUNN: Perhaps I can clarify for a  
23 second.

24 COMMISSIONER LANE: Thank you.

25 (Pause).

1 MR. TYLE: Let me describe that in sequence.

2 We first conceived the Mexico project about  
3 two and a half years back. We took the possession of  
4 land one and a half years back. The activity of  
5 construction of building started six months back. We  
6 expect to start commissioning in 2009.

7 Does that answer the question?

8 COMMISSIONER LANE: Yes.

9 Now I would like for you to provide post-  
10 hearing, if you can, a comparison of your cost of  
11 production in the UAE and compare that to your  
12 expected cost of production in Mexico.

13 MR. TYLE: You will have it.

14 COMMISSIONER LANE: And the capacity in  
15 Mexico and the capacity that you have in your facility  
16 in the UAE.

17 MR. TYLE: This type of plant, the capacity  
18 is not built overnight. It's in a batch process. You  
19 put up one line, then you put up the second line, then  
20 you put up additional lines if required.

21 We started our Dubai UAE facility in 2004  
22 with one line. We added in 2007 the second line. So  
23 it happens over time.

24 COMMISSIONER LANE: Maybe I'm asking the  
25 wrong question. I want to know how much you can

1 produce in each facility, the one in Mexico and the  
2 one in the UAE.

3 MR. TYLE: You will have the answers.

4 COMMISSIONER LANE: Okay.

5 Mr. Craven, in your statement you suggested  
6 that domestic producers are not taking advantage of  
7 export opportunities. Could you explain your position  
8 on that point and what evidence supports your  
9 observations?

10 MR. CRAVEN: Yes. Some of this will have to  
11 be deferred to the post-conference brief, it's  
12 confidential. But I would note that the public staff  
13 report discusses, for example, I want to be very  
14 careful to use the correct words, if you'll just give  
15 me a second.

16 COMMISSIONER LANE: Okay.

17 (Pause).

18 MR. CRAVEN: The public portion of the staff  
19 report says at page Roman Numeral II-V, U.S. producers  
20 export shipments and the share of total shipments  
21 decreased from blank in 2005 to blank in 2007. The  
22 relatively low level of exports during the period of  
23 investigation indicates that domestic PET film  
24 producers may be somewhat constrained in their ability  
25 to shift shipments between the United States and other

1 markets in the short run in response to price changes.

2 We then heard this morning from the domestic  
3 producers explaining how they would allocate their  
4 production between their various facilities depending  
5 on needs and the like. So I think a question comes  
6 in, to the extent that the U.S. producers have from  
7 the U.S. facilities low levels of exports, is that  
8 related to a choice on allocation or is it actually  
9 related toward some factor that prevents them from  
10 doing so.

11 COMMISSIONER LANE: Thank you.

12 Mr. Roy and Mr. Koenig, I want to go to a  
13 couple of statements you made in your opening  
14 statement. I just want to make sure that I understood  
15 what you were saying. You were saying that Terphane is  
16 no longer exporting anything from Brazil into the  
17 United States.

18 MR. ROY: What I said was we're no longer  
19 exporting subject import films into the United States.  
20 We are still importing from Brazil polyester film but  
21 it is not subject PET.

22 COMMISSIONER LANE: Do you have any  
23 facilities in countries other than the United States  
24 and Brazil?

25 MR. ROY: No, ma'am.

1                   COMMISSIONER LANE: The other statement was  
2 that Dupont is manufacturing and importing into the  
3 United States a substantial quantity of subject  
4 product from China. I think that's what you said.

5                   MR. ROY: Yes, that's what I said.

6                   COMMISSIONER LANE: I recognize that this is  
7 probably confidential, so I would like for you in the  
8 post-hearing to look at those numbers that are coming  
9 from China produced by Dupont and tell me if you think  
10 those numbers are accurate. Then I would like for you  
11 to give me a definition of what you think is  
12 substantial.

13                   MR. ROY: We'll do that, ma'am.

14                   COMMISSIONER LANE: Thank you.

15                   Okay, in Terphane's pre-hearing brief it is  
16 argued that Dupont is pursuing a global Asian oriented  
17 strategy rather than a strategy that prioritizes U.S.  
18 production. Please explain what facts support the  
19 notion that Dupont is pursuing a global Asian oriented  
20 strategy, and you can feel free to supplement your  
21 answers in your post-hearing.

22                   MR. KOENIG: We will do so in our post-  
23 hearing brief.

24                   There was a focus on the public financial  
25 statement of Teijin, who as the public financial

1 statements indicate is the company running Dupont  
2 Teijin and its use of the China facility for global  
3 export because there was a surplus in China. That was  
4 one aspect of it. But the rest would involve  
5 confidential from the APO so we wouldn't go into that  
6 here.

7 COMMISSIONER LANE: Thank you.

8 Terphane also states in its pre-hearing  
9 brief that the Commission should find that  
10 circumstances are appropriate to exclude Dupont from  
11 the domestic industry as a related party. There are  
12 three other domestic producers that import and/or  
13 purchase subject merchandise. Do you believe that  
14 they should be excluded from the domestic industry as  
15 well?

16 MR. KOENIG: The case for Dupont Teijin is  
17 particularly compelling so that was our focus. We  
18 actually didn't even proceed to look at the others.  
19 That's where we focused our attention. But in a post-  
20 hearing brief we can think about the others.

21 COMMISSIONER LANE: Thank you.

22 I'm also interested in your take on the  
23 Petitioner's proposed weight based analysis for the  
24 second prong of the captive production test. In your  
25 view is such an approach legally valid? If so, how

1 should the Commission resolve this prong of the test?

2 MR. KOENIG: We'll deal with that in the  
3 post-conference brief, but if it's pure weight that's  
4 not really getting to the total value added in the  
5 essence of the end product. If you use the pure  
6 weight test and then you started applying it in all  
7 cases, it would start generating some very odd  
8 results.

9 COMMISSIONER LANE: Thank you.

10 Thank you, Madame Chairman.

11 CHAIRMAN ARANOFF: Commissioner Williamson?

12 COMMISSIONER WILLIAMSON: Thank you, Madame  
13 Chairman. I too want to thank the witnesses for their  
14 testimony today and for taking time to give it to us.

15 Mr. Koenig, Commissioner Lane just asked you  
16 about whether or not any of the parties should be  
17 excluded. I don't think in your brief you discussed  
18 fully the factors that the Commission usually examines  
19 under this provision so I wonder if you can either now  
20 or in post-hearing --

21 MR. KOENIG: Sure, post-hearing. I think  
22 our explanation maybe just needs to be elaborated on,  
23 so we will do so.

24 COMMISSIONER WILLIAMSON: Thank you.

25 Mr. Tyle, I wanted to get a little more

1 clarification about the plant in Mexico. I think you  
2 said in 2009 you're taking commissions. Does that  
3 mean that's when production is going to begin, or --

4 MR. TYLE: 2009, production will begin.  
5 What I meant by commissioning is production will  
6 begin.

7 COMMISSIONER WILLIAMSON: Can you say  
8 whether it's early 2009 or late 2009?

9 MR. TYLE: Middle to late.

10 COMMISSIONER WILLIAMSON: And I guess either  
11 now or in post-hearing whether or not that's one or  
12 two lines. If it's one line are there plans for a  
13 second line. How long does it really take for one of  
14 these operations --

15 MR. TYLE: We have bigger plans, but 2009  
16 will be one line.

17 COMMISSIONER WILLIAMSON: Thank you.

18 I get the impression you're really focused a  
19 lot on PET film for the packaging industry.

20 MR. TYLE: That's correct.

21 COMMISSIONER WILLIAMSON: That's the  
22 intention of the Mexican plant too?

23 MR. TYLE: As a company, which I described  
24 our company as, packaging solutions company. We only  
25 focus on packaging. We are not into industrial, we

1 are not into TV monitors, we are not into any other  
2 grade. We are just into flexible packaging.

3 Similarly, the Mexican operation is also  
4 going to be focused on polyester films used in  
5 flexible packaging process.

6 COMMISSIONER WILLIAMSON: Do you construct  
7 the packaging yourself often? Or is it mostly for --

8 MR. TYLE: In India we are the largest  
9 packaging manufacturer in the world. From Indian  
10 perspective.

11 COMMISSIONER WILLIAMSON: What about in  
12 terms of the other plants? Do you usually try to turn  
13 out the packages, or --

14 MR. TYLE: Our strategy is we sell packaging  
15 nationally. We sell raw materials like BOPP film,  
16 polyester film, internationally.

17 COMMISSIONER WILLIAMSON: Okay. Thank you.  
18 That's helpful.

19 For Mr. Koenig, this is actually for post-  
20 hearing, but I'm wondering if you could take a look at  
21 your Tables 1 and 2 in your pre-hearing brief on pages  
22 14 and 15, and also look at the data in the staff  
23 report and just clarify in post-hearing the data,  
24 because there are questions there about that data.

25 MR. KOENIG: I took those directly from

1 questionnaire responses. I'll compare them to the  
2 staff report and see if there are any differences and  
3 figure out why.

4 COMMISSIONER WILLIAMSON: Thank you. I  
5 think that would be helpful.

6 For the Chinese Respondent, again, probably  
7 in post-hearing, but I'd like to know could you  
8 address in detail the factors that the Commission must  
9 consider in making its threat of material injury  
10 determination, including on the question of  
11 cumulation? Any of the Respondents could also  
12 address this.

13 MR. CRAVEN: Yes I will, Commissioner.

14 COMMISSIONER WILLIAMSON: Thank you.

15 I also asked this of the Petitioners, is PET  
16 film, is a PET film product sold into, for example,  
17 the packaging market also sold into other markets such  
18 as say the electrical market? And if it is indeed  
19 sold in other markets, is the price of the same film  
20 different depending on the market?

21 MR. TYLE: The polyester film which is used  
22 for flexible packaging according to us cannot be used  
23 for other applications like industrial, like  
24 electrical applications.

25 The basic resin may be polyester, but the

1 recipe is different. Heat factor is different, the  
2 thickness is different.

3 COMMISSIONER WILLIAMSON: And you're only  
4 producing PET film for --

5 MR. TYLE: Technologically, that's all the  
6 technical answers.

7 COMMISSIONER WILLIAMSON: Mr. Roy?

8 MR. ROY: There are instances where films  
9 produced for packaging are interchangeable with  
10 industrial applications. In the 48 gauge range we  
11 typically see standard films, untreated films for  
12 example, being used in packaging where the converter,  
13 such as Bemis or Printpack, will add primers and what  
14 not to be able to print or laminate the film. That  
15 same product can also be sold into industrial  
16 applications that require a 48 gauge plain film  
17 profile. So we do see an overlap somewhat in terms of  
18 the same product being sold into two different  
19 markets. And to answer your question with regard to  
20 price differential, yes, at times there are price  
21 differentials between similar film sold for packaging  
22 and industrial.

23 COMMISSIONER WILLIAMSON: Thank you.

24 And that applies both in the international  
25 market as well as in the y domestic market?

1 MR. ROY: Yes.

2 COMMISSIONER WILLIAMSON: Thank you.

3 Again, another question I asked this morning  
4 and I'd appreciate your views on it. Can you discuss  
5 how the price of commodity PET film affects the price  
6 of more specialized PET film?

7 MR. ROY: The variances we see in commodity  
8 pricing are much wider than what we've seen in the  
9 value added or specialty market.

10 Having said that, the specialty market, the  
11 driver for price typically is not the base film price  
12 or your commodity film price. It's more what that  
13 film is actually providing in terms of the  
14 characteristics, performance characteristics that it  
15 provides.

16 If the converter is able to source other  
17 materials that can provide similar performance  
18 characteristics at a lower price, they will obviously  
19 discuss with us our position to see if indeed we are  
20 prepared to compete on a similar basis. So we do not  
21 see the wild fluctuations in price for value-added or  
22 specialty products in the packaging segment that we  
23 have seen in the commodity film sector.

24 COMMISSIONER WILLIAMSON: Does Bemis have  
25 anything to add on this?

1 MR. LAMMERS: Yes, we'd be happy to.

2 We would agree with that. We do not believe  
3 that the price of a commodity film that's available  
4 from a large number of suppliers around the world is  
5 going to directly impact the price of a specialty  
6 material that maybe has but one or two competitors.  
7 They're going to be disconnected.

8 If our job were that easy just to say well  
9 this other one that's readily available is  
10 inexpensive. Why can't you give us a lower price on  
11 this one that's not? It would be a lot simpler day  
12 for us, but it's not the case. They're not related.

13 I think the feed stocks, the resins that go  
14 into those materials and their movement may cause them  
15 to move in a similar amount at a given point in time  
16 as they try to pass their cost increases through or  
17 maybe give some advantage back if resin does  
18 eventually go down. But in terms of magnitude, the  
19 resin content of a commodity film's going to be much  
20 greater than it is in a specialty film because there  
21 are other coatings and other value that gets added, so  
22 it won't be as variable.

23 COMMISSIONER WILLIAMSON: The film that's  
24 used in packaging, that's a commodity film generally?  
25 Are there some commodity in some specialty?

1           MR. LAMMERS: As Mr. Falk described, we use  
2 the whole gamut. We use a very large amount of Bemis  
3 of this subject 48 gauge, corona treated polyester,  
4 but we use a very large number of other materials as  
5 well, the specialty materials for specific  
6 applications to meet customer and consumer needs.

7           MR. FALK: We would say that polyester films  
8 are part of the tool box that we use to create  
9 flexible packaging solutions for our customers. There  
10 can be applications that, in our portfolio about half  
11 of our mix is commodity and about half is specialty.

12           COMMISSIONER WILLIAMSON: Thank you. I see  
13 my time is about to run out. Thank you for those  
14 answers.

15           CHAIRMAN ARANOFF: Commissioner Pinkert?

16           COMMISSIONER PINKERT: Thank you, Madame  
17 Chairman. I join my colleagues in thanking you for  
18 being here. I note that Mr. Lunn is on this panel and  
19 he's a former colleague of mine so I want to welcome  
20 him especially.

21           I'd like to begin with a question for Flex  
22 America.

23           My yellow light is already on. (Laughter).

24           That is, what accounts for the difference in  
25 channels of distribution as between imports from the

1 UAE and other imports, or as compared with the  
2 domestic film noted at page Roman II-III of the staff  
3 report? If you can't answer that in public session  
4 then perhaps in the post-hearing.

5 MR. LUNN: I think I'll have to address that  
6 in the post-hearing. I haven't quite memorized the  
7 staff report that well. Thank you, though.

8 COMMISSIONER PINKERT: Thank you.

9 Turning to Mr. Lammers for a moment, I  
10 realize this question calls for some speculation, but  
11 perhaps you can give me some speculation on this. Why  
12 would a company in the United States initiate a case  
13 against its own foreign facility?

14 MR. LAMMERS: Commissioner Pinkert, we've  
15 speculated on that question since this case began, and  
16 I'm not certain we come up with any good answers. Bad  
17 advice from counsel would be one suggestion that we  
18 had. (Laughter). And we don't know their counsel so  
19 we couldn't comment on that.

20 Another that I guess we finally concluded  
21 is, we believe that they thought they weren't dumping.  
22 They had prepared themselves and they had covered in  
23 the markets, they were providing material for the  
24 proper pricing and felt they were immune from any  
25 duties.

1           They appeared to us, when we called them in  
2 fact and told them what the preliminary determination  
3 was, to be very shocked. We learned it before they  
4 did. Their actions since then aren't consistent with  
5 what we've seen from Dupont's affiliated company over  
6 the last 30 years that I've been in the business.

7           But beyond that, it's just continuous  
8 speculation and I guess that's probably two good ones,  
9 at least one good one.

10           COMMISSIONER PINKERT: Thank you.

11           Does anybody else wish to add to that  
12 answer? Anybody on the panel?

13           Okay. Turning to Terphane, given the  
14 updated information on Terphane's ratio of imports  
15 from Brazil to production in Table III-IV which I note  
16 is confidential, do you or does anybody on this panel  
17 think that it's appropriate to exclude Terphane in the  
18 final phase of the investigation?

19           MR. KOENIG: Actually on that one, given  
20 their size relative to total production, it may not  
21 make a difference. They are a U.S. producer and they  
22 ceased importing the subject product pursuant to a  
23 business plan, so that would seem to indicate their  
24 interest, Terphane, Inc., as a U.S. producer.

25           COMMISSIONER PINKERT: Are there any other

1 comments on this panel on that issue?

2 How should Terphane's information that it's  
3 phasing out its imports from Brazil affect the  
4 question of whether to exclude them from the domestic  
5 industry?

6 MR. KOENIG: On that, again it shows that  
7 they are part of, their interest is domestic  
8 production. So I would say it supports the idea that  
9 you include them within the domestic industry.

10 COMMISSIONER PINKERT: Turning to the  
11 arguments about Dupont Teijin, I'm just wondering  
12 whether anybody on this panel, and this is really  
13 directed to the attorneys, can cite any legal  
14 authority or precedent for the Commission to exclude a  
15 U.S. producer from the industry on the grounds that  
16 it's operating philosophy emphasizes a global strategy  
17 rather than simply a U.S. production related strategy?

18 MR. KOENIG: In our pre-hearing brief we  
19 noted some citations where, the look is what's the  
20 focus of the producer? Is it on domestic production  
21 or not? And it's our believe that it's not on  
22 domestic production.

23 On that we did discuss it in our pre-hearing  
24 brief and I can elaborate in the post-hearing brief,  
25 but I can't really here, given the nature of the

1 information.

2 COMMISSIONER PINKERT: I realize you may not  
3 be able to elaborate on my question here, but I think  
4 there's a distinction to be made between a case that  
5 simply says the focus ought to be, or the focus here  
6 is on domestic production or it's not on domestic  
7 production, versus a case that says that there's a  
8 global strategy here that's being pursued by the U.S.  
9 company and for that reason the company is being  
10 excluded or not excluded from the domestic industry.  
11 do you see the distinction I'm making? Do you see the  
12 distinction I'm making?

13 MR. KOENIG: I think so. There's the idea  
14 that if a U.S. producer is related to foreign  
15 exporters or imports itself and if their inclusion  
16 would skew the data, then they should not be included.  
17 If we believe that their inclusion does skew the data,  
18 that's probably the most I can say here on why. But  
19 maybe we should emphasize certain points in our post-  
20 hearing brief on why we think that's the case. It  
21 skews it to a degree that under Commission precedent  
22 they should not be considered a domestic producer.

23 COMMISSIONER PINKERT: And if there's any  
24 other case or precedent that you come across that  
25 discusses this issue of the global strategy, that

1 would be very helpful.

2 MR. KOENIG: Sure.

3 COMMISSIONER PINKERT: Thank you.

4 Turning to issues about price, do the  
5 parties or do the companies represented in this panel  
6 agree with Petitioners that the pricing of commodity  
7 grades of PET film is the benchmark for the pricing of  
8 all PET film including specialty grades?

9 I think that's a different question than the  
10 one that was answered earlier. I'm asking here  
11 whether there's a benchmark relationship between the  
12 pricing for the commodity grades versus the specialty  
13 grades.

14 MR. LAMMERS: I guess I can address that.

15 There are a number of specialty grades that  
16 we make internally by buying the base material and  
17 process further ourselves, and we also buy some for  
18 capacity reasons outside. We do not see a direct  
19 incremental value add from the base material that's  
20 subject to this action and those commodity items. It  
21 depends upon the value that's added and what the end  
22 result is.

23 COMMISSIONER PINKERT: I understand that  
24 answer, but I want to hone in on that a little bit.

25 I understand you're saying there's not an

1 incremental value add, but I'm focused on this  
2 question of benchmarking. So is the price of the  
3 commodity grade in any way factored into the price of  
4 the specialty grade? That's really my question.

5 MR. LAMMERS: Certainly if you start with a  
6 commodity grade you've got to get compensated for  
7 that. But we don't have a pricing formula any place  
8 that would say for this product it's the commodity  
9 grade plus X per pound or per ton. Or commodity grade  
10 times the percentage. That's not the case at all.

11 Again, back to my answer before. We do some  
12 further processing, saran coating, for example,  
13 ourselves. We know what that costs. We could  
14 probably scale up to do it all ourselves but for  
15 reason of supply diversification we don't. And we  
16 know that there's margin there that we think the  
17 producers ought to have and deserve.

18 There aren't as many, there aren't anywhere  
19 near as many suppliers of that material as there are  
20 base material. So the market's different.

21 COMMISSIONER PINKERT: Any other comments  
22 from the panel on that issue?

23 Can I assume that there's general agreement  
24 as to what Mr. Lammers just said?

25 MR. ROY: Yes.

1 COMMISSIONER PINKERT: Thank you.

2 I see that my yellow light is on for a  
3 second time this round, so I'll wait until the next  
4 round. Thank you.

5 CHAIRMAN ARANOFF: Mr. Koenig, I want to  
6 come back to you and maybe try to back you into a  
7 corner a little bit on your related parties argument.

8 MR. KOENIG: Okay.

9 CHAIRMAN ARANOFF: You've argued that Dupont  
10 Teijin should be excluded from the domestic industry  
11 because it's part of a global company. This is an  
12 issue that the Commission that has faced in a number  
13 of recent cases, particularly some involving global  
14 steel producers like Tenaris and Arsemore Metal. In  
15 each one of those cases we have not excluded the  
16 global producer from the domestic industry.

17 I guess you have two choices here. You can  
18 either convince me that there's something factually  
19 different about Dupont Teijin that should cause me to  
20 come out differently; or you can concede that this  
21 isn't really a related parties issue. It's really a  
22 causation issue, and that what you're telling me is  
23 that I should discount the volume, price effects and  
24 impact of any imports that have something to do with a  
25 company related to a domestic producer. Take your

1 pick.

2 MR. KOENIG: We think it's both a related  
3 party issue and a causation issue. It's a related  
4 party issue and there I think I'd prefer to stress why  
5 in the post-hearing brief, because if I tell why and I  
6 indicate what I think are pertinent Commission  
7 precedents, I think I'll have some difficulty under the  
8 APO. So on that, I'm not trying to duck the question  
9 but I do think I'd be getting into some issues there.

10 CHAIRMAN ARANOFF: Okay. If you're going to  
11 keep arguing it's a related party issue please do look  
12 at what we've said about some of these global steel  
13 producers and tell me why this case is different.

14 MR. KOENIG: I think there is a big  
15 difference.

16 CHAIRMAN ARANOFF: Fair enough. Thank you.

17 We heard some testimony in the direct  
18 testimony this afternoon, and I'm not sure which  
19 member of the panel said it, but the statement was  
20 something to the effect that there's not really any  
21 such thing as a distinction between commodity and  
22 specialty films. Something that's a specialty today  
23 is a commodity tomorrow.

24 That was you, Mr. Tyle?

25 In the preliminary phase of this

1 investigation I thought the parties were in a fair  
2 degree of agreement that there was a distinction  
3 between specialty and commodity products, so I wanted  
4 to --

5 MR. TYLE: Ma'am, I didn't say there was no  
6 distinction between the two. I said today's specialty  
7 becomes commodity tomorrow. That's the phrase I used.  
8 There is certainly --

9 CHAIRMAN ARANOFF: Is tomorrow really  
10 tomorrow, or is it five years from now?

11 (Laughter).

12 MR. TYLE: Over a period of time. That's  
13 what I meant.

14 CHAIRMAN ARANOFF: Which is to say that the  
15 product continues to evolve and the more state of the  
16 art products continue to change. Okay.

17 Following up on that then, well, I don't  
18 know. Is there a particular time period over which  
19 you would say that a product that someone invents  
20 becomes a commodity in the marketplace?

21 MR. TYLE: There is no set time for  
22 different kind of specialties, you know. What comes  
23 today can become a commodity in next one month of  
24 time, one and a half months of time. Whereas  
25 something can come from specialty in five years, ten

1 years. There's no set rule per se. It depends on the  
2 usage. When the alternatives come then it becomes,  
3 specialty becomes commodity; or when a lot of people  
4 start using it, producing it, then it becomes  
5 commodity. There are various kind of things which  
6 help turning specialty into commodity. That's what  
7 precisely I meant.

8 You can't classify anything a specialty  
9 forever.

10 CHAIRMAN ARANOFF: Following up on that,  
11 some of the domestic producers told us that they tend  
12 to sell the product in, I don't want to use the word  
13 bundles, but that they tend to sell to the same  
14 customer maybe some commodity and some specialty  
15 grade, and that because of that there can't be too  
16 large a price gap between the two because then their  
17 customers would just buy the commodity grades and do  
18 the further processing themselves to make them into  
19 whatever the specialty is, and that that's why in  
20 their view the prices all move together.

21 Would you agree with that view of how  
22 pricing works in a market between commodity and  
23 specialty?

24 MR. TYLE: There are some specialties which  
25 are basically produced from the basic film. The basic

1 film is coated. Some producers, print producers, also  
2 make the coated film. So in order to give the  
3 economies, they can sell that at a better price at a  
4 better quality. Which one of our guys sitting over  
5 here also said, that if commodity prices go down, they  
6 buy the film and do the coating by themselves.

7 So there are certain specialties -- it's not  
8 all the specialties which can qualify into this.  
9 There are certain specialties which are produced by  
10 the intrinsic production process of the film making  
11 into specialty. And there are some products which are  
12 post-treated for making it into specialty.

13 CHAIRMAN ARANOFF: I understand your point  
14 is that this isn't true of everything. you can't take  
15 commodity film and have a downstream purchaser process  
16 it into a specialty product in every instance, only in  
17 some.

18 But does it account for enough of the market  
19 to validate the point that the Petitioner was making,  
20 which is that the prices for specialty and commodity  
21 products are going to move in tandem?

22 MR. TYLE: I don't think so. It's not a big  
23 person in terms of flexible targeting.

24 MR. LAMMERS: We would agree that they're  
25 not related. Being one of the largest, and certainly

1 the largest flexible packaging company in the United  
2 States, we've got a lot more capabilities than many of  
3 the smaller market participants have, yet we don't  
4 have the capability to make all those products, nor is  
5 our core business or our strategy to do that. So we  
6 only do it where we can add special value. We can  
7 keep a proprietary advantage in the marketplace for  
8 supplying customers or we can only find multiple  
9 sources of supply to make sure we're not shorted by  
10 doing it ourselves.

11 Other than that, we're not in the business  
12 of making those specialty products and wouldn't tie  
13 them together that way.

14 We do, however, go to suppliers and look for  
15 multiple product lines. We want to have, here we're  
16 suppliers so we've got less service and a good  
17 supplier that provides the delivery you need and has  
18 the technical support to handle not only the  
19 commodities but as well as an interest in the  
20 specialty things that's going to be looked on  
21 favorably and their business with us is going to grow.

22 CHAIRMAN ARANOFF: I think the testimony  
23 this morning was that purchasers who purchased the way  
24 you're describing, that they buy multiple products  
25 some of which might fall into the commodity end and

1 some into the more specialty end from a supplier, if  
2 there's price pressure at the commodity end in the  
3 market that those customers will perceive excess  
4 supply in the market and come to them and demand price  
5 cuts on the specialty end, so across the whole bundle  
6 of products. Has that been your experience?

7 MR. LAMMERS: I would say that's not our  
8 experience except in the case when there are raw  
9 materials. The PET resin would decline on a global  
10 market basis. We might expect at that point a pro  
11 rata decrease in cost for the specialty products as  
12 well as the commodity. But as I said earlier, the  
13 resin cost in a specialty product is likely  
14 substantially less than in the commodity product and  
15 pro rata it wouldn't fall by as much. We wouldn't  
16 expect it to.

17 CHAIRMAN ARANOFF: So what we end up with  
18 here is a little bit of a he said/she said. We've got  
19 one group telling us that all the prices move in  
20 tandem; and we've got another group saying that  
21 sometimes happens but mostly no. So if there's any  
22 specific instances or data that either group can put  
23 into the record for the post-hearing that would  
24 demonstrate cases where the prices either have or have  
25 not moved together, I think that would help us to

1 evaluate the credibility of the testimony on both  
2 sides.

3 I see a few nods out there, and I thank  
4 everyone for whatever you're able to submit on that.

5 Mr. Tyle, one last question. In your brief,  
6 and this goes Mr. Lunn to the Bratsk argument. you  
7 basically argue that the barriers to entry are low in  
8 this industry, that it's easy to enter. So I guess I  
9 want to ask Mr. Tyle, my understanding from the record  
10 is that it costs between \$50 and \$100 million to put a  
11 new film line in. I don't know exactly how much you  
12 are spending in Mexico. Would you consider this an  
13 industry where barriers to entry are low?

14 MR. TYLE: Relative terminology. For some  
15 people \$100 million is big money. But if the guy  
16 invests in the steel industry \$100 million is not a  
17 big sum. It's sort of relative terminology. It's not  
18 rocket science and it's not a big investment too.

19 CHAIRMAN ARANOFF: When we hear about low  
20 barriers to entry we're usually thinking of things  
21 like sewing machines or other kinds of machines. That  
22 came up recently in our --

23 MR. TYLE: -- is a big investment.

24 CHAIRMAN ARANOFF: -- where people said you  
25 pick up the machine, you put it in a container, you

1 move it to another country, you plug it in, done.

2 This isn't on that level.

3 MR. TYLE: For them, \$100 million is a big  
4 investment, in that terminology.

5 MR. LUNN: The statement in the brief went  
6 to certain statements that were made in the staff  
7 hearing in the preliminary phase where they discussed  
8 the fact that the machinery is fairly standard across  
9 the world and the technology is fairly standard. So  
10 based on that we made the assertion that there was  
11 relative ease of entry into the market.

12 CHAIRMAN ARANOFF: As I mentioned, this did  
13 come up in our recent investigation of hangers,  
14 garment hangers from China. That opinion is not  
15 complete and isn't public yet, but it may be before  
16 your post-hearing brief is do. So if that opinion  
17 comes out while there is still time, take a look at  
18 it, and if there's anything you want to add to your  
19 Bratsk argument in response to that, let us know.

20 With that, let me turn it to Vice Chairman  
21 Pearson.

22 VICE CHAIRMAN PEARSON: Thank you, Madame  
23 Chairman.

24 Mr. Lammers, in Bemis' pre-hearing brief  
25 there was the allegation that Dupont had passed on

1 repeated price increases. My question is one of  
2 timing. Were some of those price increases passed on  
3 before the petitions were filed in these  
4 investigations, or did they all happen afterwards?

5 MR. LAMMERS: The particular pricing  
6 methodology we have with that supplier is proprietary  
7 and we'd like to answer after.

8 VICE CHAIRMAN PEARSON: Okay. Post-hearing  
9 would be fine. You understand the reason for asking  
10 the question.

11 MR. O'BRIEN: Yes we do, Commissioner. We  
12 will address it.

13 VICE CHAIRMAN PEARSON: Good, yes, because  
14 that would be helpful.

15 A Bratsk question. Which non-subject  
16 countries are best positioned to increase their  
17 exports to the United States at competitive prices in  
18 the event a final antidumping order goes into effect?  
19 In other words, who's out there who could replace the  
20 subject imports such that the domestic industry would  
21 not benefit from the imposition of the order?

22 (Pause).

23 I'm not accustomed to so much thought being  
24 given to one of my questions. It's most unusual.

25 MR. MICHALKIEWICZ: Well, as mentioned

1 earlier by Mr. Lammers, we have been pursuing non-  
2 subject sources for polyester film. Actually this  
3 started before the preliminary. We saw in the  
4 marketplace that there was, the supply situation was  
5 dwindling and we were going to move in that direction.  
6 It was necessary. It was mentioned that takes some  
7 time.

8 But we have been successful in locating  
9 sources in non-subject countries. In the case of  
10 Indonesia, we have Turkey, there's Taiwan, and there  
11 are other countries that have contacted us that we  
12 have not pursued but we're not finding any, in non-  
13 subject countries we're not finding any lack of  
14 supply. It is limited by supplier, but there is film  
15 available in non-subject countries.

16 VICE CHAIRMAN PEARSON: For the purposes of  
17 a Bratsk finding, were we to make one in this case,  
18 what we would really be interested in is as much  
19 detailed information as possible, regarding production  
20 in various non-subject countries, the pricing of that  
21 product. If you have arrangements that have been made  
22 with non-subject countries and could provide that  
23 information in the post-hearing brief, that would be  
24 corroboration of what you're saying now.

25 The reality is, we don't have a lot on this

1 record yet that would flesh out a Bratsk argument. If  
2 you're making one and want us to consider it  
3 seriously, a much fleshing out as is possible would  
4 be, it would serve your own interests.

5 So think about what's out there. Look at  
6 what we have on the record, which is not a lot. If  
7 you want to make an argument that pound for pound you  
8 can pretty well replace what is there for subject  
9 product, let us know that.

10 MR. KOENIG: If I may just add quickly, I  
11 didn't bring our APO brief. It's back at the office.  
12 But we had a table which listed all the suppliers who  
13 could supply the U.S. and their capacity utilization  
14 rates. But as you say, we will provide more  
15 information.

16 VICE CHAIRMAN PEARSON: It's also possible  
17 that I have not adequately absorbed what was in the  
18 pre-hearing brief. That's been known to be the case  
19 more than once. So if it's just a matter of going  
20 back and reiterating what's already there, that of  
21 course would be appropriate.

22 MR. KOENIG: It listed maybe 11 countries,  
23 but I don't have them off the top of my head.

24 VICE CHAIRMAN PEARSON: To the extent that  
25 firms present here have been involved in negotiations

1 with non-subject suppliers to get supply, that could  
2 be helpful.

3 This may be my last question. It's another  
4 Bratsk one. With the domestic industry I discussed  
5 the question of the timing of market adjustments for  
6 the purposes of Bratsk. They basically were making  
7 the argument that we should interpret the recent  
8 profitability increases that they have experienced as  
9 evidence that they are benefiting from the preliminary  
10 duties and thus there has not been non-subject product  
11 available to replace the subject imports at the same  
12 price unless they've benefitted from a price increase.

13 What should we think about that argument?

14 MR. KOENIG: There was testimony today, it  
15 takes a while. Markets don't adjust overnight.

16 VICE CHAIRMAN PEARSON: That was kind of  
17 what I was asserting. I don't think they necessarily  
18 agreed with that.

19 MR. KOENIG: We had some testimony to that  
20 effect from Dan Roy. If you were going to be a mere  
21 lawyer on this, there's a lot of Commission precedent  
22 that one or two quarters is not very reliable on which  
23 to make a decision.

24 VICE CHAIRMAN PEARSON: I agree with that,  
25 but we have precious little experience making Bratsk

1       determinations and the Court hasn't given us an  
2       incredible amount of guidance, or at least the  
3       guidance we have may be lacking in clarity.

4                What I'm asking is that you look at what the  
5       Courts have said about Bratsk and look at the evidence  
6       on this record of some profitability increases and  
7       help us understand why you think Bratsk is a correct  
8       finding despite that evidence that seems to favor the  
9       domestic industry.

10               MR. KOENIG: We will do so.

11               VICE CHAIRMAN PEARSON: Mr. Lammers?

12               MR. LAMMERS: I would add that our imports  
13       usually had a 90 to 120 day time horizon from order to  
14       availability in the United States and our material  
15       dried up in 30 days. so it's virtually impossible for  
16       us to replace that in that short a period of time.  
17       Hence we placed larger orders at longer lead times  
18       with domestic suppliers. And as I mentioned earlier,  
19       negotiated at length to take materials that weren't up  
20       to our standards and specifications to fill in.

21               As Gary mentioned, we had been working on  
22       other non-subject country supply prior to that and we  
23       accelerated those plans. But we couldn't turn that  
24       over in a matter of 30 or 60 days. But I can tell you  
25       on 120 to 180, we will.

1                   VICE CHAIRMAN PEARSON: Okay. That's very  
2 helpful and you'll probably flesh it out in the post-  
3 hearing. But this whole question of how the market  
4 responds to a shock, that's something that you as an  
5 individual company trying to make a living in the  
6 marketplace, you understand that much better than we  
7 do. So your description of how you responded to the  
8 imposition of the orders and then how you see that  
9 effect being ameliorated over time, that would be  
10 helpful.

11                   MR. LAMMERS: We would dispute that the  
12 short term up-tick is due entirely to the preliminary  
13 order. In fact to some extent we feel by one of our  
14 suppliers misled that we were covered and didn't have  
15 to worry about supply. That assurance resulted in us  
16 buying material domestically that was not of our  
17 liking, that we would not have purchased had we not  
18 taken their word on that position.

19                   VICE CHAIRMAN PEARSON: So you're suggesting  
20 that --

21                   MR. LAMMERS: Those materials would not have  
22 been purchased.

23                   VICE CHAIRMAN PEARSON: So a questionable  
24 representation by one of the Petitioners got you in a  
25 situation where you had to scramble more actively to

1 deal with the supply disruption.

2 MR. LAMMERS: To buy domestic material.

3 VICE CHAIRMAN PEARSON: That might be an  
4 interesting item to consider in Bratsk, too. I'm not  
5 sure.

6 As a panel you know a lot about this, about  
7 what all you're doing to try to get over the hurdle  
8 that the preliminary duties represent, so help us to  
9 understand that more if you could.

10 With that, Madame Chairman, my light is  
11 turning yellow and I think I'm done. Thank you.

12 CHAIRMAN ARANOFF: Commissioner Okun?

13 COMMISSIONER OKUN: Thank you, Madame  
14 Chairman.

15 In addition to the other things about Bratsk  
16 that, there have been questions asked about, there is  
17 a decision out by the Federal Circuit today so I  
18 assume everyone will take a look at it, as we all will  
19 be, to figure out what direction they may have given  
20 us. Further direction they may have given us with  
21 respect to the analysis.

22 Not knowing what that is, I'll continue to  
23 ask my questions.

24 Let me again, this I'll direct to counsel a  
25 question that I put to Petitioners as well, which is

1 in previous Bratsk analysis that I've performed I have  
2 looked, in cases where we've had a large number of  
3 non-subject imports that were subject to antidumping  
4 duty orders. I've taken that in to account in  
5 determining that while non-subject imports might have  
6 the capacity to replace subject imports in a market,  
7 that because they are fairly traded for purposes of  
8 having an order in place, that I still found that the  
9 domestic industry would receive a benefit, so kind of  
10 looking at the second part of the test.

11 I don't think I saw you all address that  
12 specifically in your brief, so if you have anything to  
13 add here, please do. If not, please talk about that,  
14 or please discuss it in your post-hearing briefs.

15 MR. LUNN: Excuse me, Madame, is your  
16 argument or what you're posing, the question you're  
17 posing is that even because the other antidumping  
18 orders are in place. For example in this case,  
19 against India.

20 COMMISSIONER OKUN: Correct.

21 MR. LUNN: Because there's an order against  
22 India and the goods coming from India are fairly  
23 traded, that if the Indian suppliers can replace, for  
24 example UAE production, that the domestic industry  
25 will somehow get a benefit from an order on the UAE?

1           COMMISSIONER OKUN: Correct. Again, in many  
2 cases that information, that's why we need more  
3 information on this record if you're making that  
4 argument.

5           In many cases you see that while imports,  
6 non-subject imports subject to other orders, they have  
7 come in priced lower than the domestic industry,  
8 they're priced higher than subject imports and  
9 therefore there is a price, or one could argue there  
10 is a price benefit to that. That the domestic  
11 industry would get a price benefit. The Petitioners  
12 have made the case that they believe this is a price  
13 case. That by increasing the price, and again that's  
14 why I think it's also important to look at the record  
15 of what happened in the interim and tell me what you  
16 see on this record.

17           But just as an analytical matter, do you  
18 agree or disagree that is a relevant inquiry? If one  
19 is looking at whether there's a benefit to the  
20 domestic industry, whether something is under order or  
21 not under order. This isn't the first time the  
22 Commission has seen this factual situation.

23           MR. KOENIG: Maybe just one point.

24           If a product is under order and the exporter  
25 has shown the ability to make significant sales under

1 the order and we're told this is purely a pricing  
2 market, they've demonstrated by the significance of  
3 their sales, their ability to make sales to the U.S.  
4 under the order. If they have extra capacity I think  
5 they should be considered like anybody else as far as  
6 sales to the U.S.. As far as Bratsk, non-subject  
7 imports.

8 COMMISSIONER OKUN: Okay. I would ask you  
9 to address that post-hearing and look at prior cases  
10 as well with respect to that.

11 In this case in particular, and again I know  
12 you've been asked for other information. Some of what  
13 we heard this morning in response to Bratsk argument  
14 is that for some of the specialty product coming in  
15 from Japan and Germany are priced so much higher. If  
16 we look at the record you would have to have, I think  
17 you would have to have more information split out  
18 about pricing from other non-subject countries to make  
19 the argument that there wouldn't be a price impact if  
20 there's an order in place.

21 I haven't seen that yet, Mr. Koenig. I know  
22 there's data about the different countries but I'm not  
23 sure it's specific enough for me to follow your  
24 argument with respect to pricing. What pricing would  
25 be in the U.S. market if there's an order placed on

1 subject imports.

2 MR. KOENIG: In our pre-hearing brief we did  
3 look at the pricing data for the six products. There  
4 was also an all other category for others. We  
5 presented some statistics where we believed it would  
6 support the idea that already existing non-subject  
7 imports had a significant enough presence in the  
8 market at a certain pricing level to pretty much  
9 determine U.S. price.

10 MR. KOENIG: It's not the only event in the  
11 record with respect to non-subject pricing. That's  
12 why I'm curious whether there's other information,  
13 well, I'd be looking to other information as well.

14 MR. KOENIG: We'll look.

15 COMMISSIONER OKUN: Okay.

16 Mr. Roy, a question for you. In describing  
17 Terphane's operations in Brazil and the staging as I  
18 understood it, the beginning production of commodity  
19 product and the second phase was to then produce non-  
20 subject specialty product. I just want to be clear.

21 The plant still produces subject commodity  
22 product. It's being captively consumed? Did I  
23 understand that correctly?

24 MR. ROY: That is correct. The film line  
25 makes the base commodity film that we either add value

1 to in-line or with secondary off-line processes.

2 COMMISSIONER LANE: Okay. So during the  
3 period of investigation that commodity product was  
4 being sold in the United States but being phased down  
5 as you indicated.

6 MR. ROY: Part of our plan was the  
7 investment in secondary processing equipment that  
8 happened to be delivered in September 2007 and January  
9 2008. So the timing of the period of investigation  
10 happened to be dead on with our starting up this  
11 secondary processing equipment that's making value  
12 added film using commodity base. So in essence what  
13 was going on is instead of bringing into the United  
14 States or selling into Brazil or South America the  
15 subject product, that base was being utilized as part  
16 of the secondary processes to add value, and then  
17 subsequently sold as value added film.

18 COMMISSIONER OKUN: Okay. Thank you for  
19 that clarification.

20 With that, Madame Chairman, I don't think I  
21 have any other questions.

22 CHAIRMAN ARANOFF: Commissioner Lane?

23 COMMISSIONER LANE: I didn't have any  
24 questions until Mr. Roy just said what he said.

25 So when Terphane takes the commodity

1 product, adds the value to it and turns it into a non-  
2 subject product, does it sell that product into the  
3 United States?

4 MR. ROY: No. Well, some of the products,  
5 yes, are coming into the United States. The bulk of  
6 that transition stayed in Brazil and South America.

7 COMMISSIONER LANE: Could you provide post-  
8 hearing how much of the commodity product with the  
9 value added then comes into the United States?

10 MR. ROY: Certainly.

11 COMMISSIONER LANE: Thank you.

12 CHAIRMAN ARANOFF: Commissioner Williamson?

13 COMMISSIONER WILLIAMSON: Actually, I have  
14 no further questions except just to clarify.

15 The value added product, is that a subject  
16 product or not, Mr. Roy?

17 MR. ROY: It's not.

18 COMMISSIONER WILLIAMSON: Thank you.

19 I have no further questions and I wanted to  
20 thank the panel for their testimony.

21 CHAIRMAN ARANOFF: Commissioner Pinkert?

22 COMMISSIONER PINKERT: Thank you, Madame  
23 Chairman. I just have a couple of questions.

24 First, for Mr. Craven. I'm interested in  
25 your argument that the Petitioners are attempting to

1 "game the system", and I use that term or phrase in  
2 quotation markets, and exclude their competitors from  
3 access to the U.S. market by maintaining some sort of  
4 control over the margins that apply to their  
5 competitors.

6 I'm wondering how you see that so-called  
7 gaming working.

8 MR. CRAVEN: I will go into that a little  
9 bit in the post-hearing brief as well.

10 I think the situation relates specifically  
11 to certain resource issues at the Department of  
12 Commerce and the result that the Department of  
13 Commerce currently does not conduct reviews of all  
14 potential Respondents, but rather assigns rates. So  
15 we end up with unique situations such as this one  
16 where the only company which formed the basis of a  
17 rate based on actual sales data, for example, for  
18 China, was Dupont. And it does certainly create the  
19 situation where sa they discussed this morning, the  
20 prices are set for their Chinese sales in the United  
21 States. Here in the United States it does create the  
22 interesting situation where the setting of the prices  
23 in turn may have some influence on the margins. But I  
24 will expand upon that in the post-hearing brief.

25 COMMISSIONER PINKERT: And if in the post-

1 hearing brief you address those resource issues that  
2 you alluded to just now, would you also explain which  
3 parties have the legal authority to request  
4 administrative reviews?

5 MR. CRAVEN: It's not really related to the  
6 parties that have the ability to request  
7 administrative reviews. The difficulty is that the  
8 Commerce Department simply will not conduct  
9 administrative reviews for parties that request  
10 administrative reviews. Rather they will limit their  
11 selection of respondents to one, two or in extreme  
12 cases three Respondents with the net result that if  
13 you're not one of the three largest producers of  
14 product you cannot get a rate based on your own sales.

15 Now that's being challenged frankly by an  
16 awful lot of Respondents' counsel at this point in the  
17 Courts, but so far the Courts have allowed the  
18 Commerce Department to do this.

19 COMMISSIONER PINKERT: Are you talking about  
20 administrative reviews or are you talking about  
21 investigations?

22 MR. CRAVEN: Yes. Both.

23 COMMISSIONER PINKERT: It would be useful in  
24 answering that question if you distinguish between the  
25 two.

1 MR. CRAVEN: I will do so.

2 COMMISSIONER PINKERT: Thank you.

3 Turning to the panel as a whole, you may  
4 remember that earlier today I asked the Petitioners  
5 about the relevance of Commission determinations in  
6 the sunset reviews of Korea in 2005 and in the India  
7 and Taiwan recently. I'm wondering whether you have  
8 any comments either on their answers to that question  
9 or on the question itself.

10 It's really directed to the lawyers on the  
11 panel.

12 MR. KOENIG: As far as the sunset reviews,  
13 there the issue is if we revoke the antidumping order  
14 will there be a surge in imports that are injurious.  
15 Outside of the constraint of the antidumping order  
16 perhaps the surge would be even greater. But on a  
17 factual basis it's our belief that even under order, a  
18 number of them have shown significant enough sales to  
19 demonstrate they can sell to the U.S. under order and  
20 they have the capacity to do it. So we further  
21 strengthened what we think is already a strong case on  
22 non-subject.

23 MR. O'BRIEN: Commissioner, I think if the  
24 only alternative sources were ones covered by orders,  
25 albeit having just concluded sunset reviews I think

1 that would be relevant, or more relevant.

2 But the fact that as was just stated, there  
3 are numerous alternative countries with capacity and  
4 with supply capability, so that whether or not it's a  
5 country covered by an order, or whether it's a non-  
6 subject country that's never been involved in a case, I  
7 think the fact that there are so many other  
8 alternatives that really dilutes the effect of whether  
9 or not there are orders as to particular countries.

10 COMMISSIONER PINKERT: Mr. Lunn?

11 MR. LUNN: I don't have much more to add  
12 other than as you know, the legal question that's  
13 addressed in a sunset review is different than the one  
14 that is addressed here. Here we're looking at whether  
15 or not there is material injury by reason of imports  
16 of the subject countries, which is a different issue  
17 than what you're faced with in a sunset review.

18 So while there are certain market conditions  
19 because of the proximity of the two determinations  
20 that may be similar, and perhaps the health of the  
21 domestic industry, the investigation periods may  
22 overlap somewhat.

23 Other than that, I don't see any relevance.

24 COMMISSIONER PINKERT: Thank you.

25 Mr. Craven?

1           MR. CRAVEN: I would agree with all of my  
2 colleagues. I was actually one of the counsel in the  
3 sunset review. I would suggest that in addition to  
4 the different legal standards there are certainly some  
5 very different factual standards and we're dealing  
6 with an examination of frankly a totally different set  
7 of industry participants from the foreign side. There  
8 are enough, I think, distinguishing factors.

9           COMMISSIONER PINKERT: Thank you.

10           I would note, having quickly perused the  
11 Federal Circuit's decision, that there may also be a  
12 distinction between the applicability of Bratsk in a  
13 sunset review and an investigation. But that's for  
14 further analysis.

15           Thank you very much. I have no further  
16 questions for this panel.

17           CHAIRMAN ARANOFF: Are there any further  
18 questions from the dais?

19           Does staff have any questions for this  
20 panel?

21           MR. McCLURE: Jim McClure, Office of  
22 Investigations. Chairman Aranoff, we have no  
23 questions.

24           CHAIRMAN ARANOFF: Do Petitioners have any  
25 questions for this panel?

1 MR. GREENWALD: We do not.

2 CHAIRMAN ARANOFF: Okay, thank you Mr.  
3 Greenwald.

4 Let me check the remaining time.

5 Right now Petitioners have 20 minutes  
6 remaining from your direct presentation plus five  
7 minutes for closing.

8 Respondents have 12 minutes remaining from  
9 direct and five minutes for closing.

10 We can either do rebuttal from both sides  
11 and then closing from both sides, or we can have you  
12 combine your time.

13 Mr. Greenwald, do you have a preference?

14 MR. GREENWALD: Our preference is the  
15 Chair's preference, which I assume is for us to say  
16 less rather than more and combine rather than not. If  
17 that's the way you'd like to proceed, we'd be very  
18 happy to do so.

19 CHAIRMAN ARANOFF: Mr. Koenig, do you have a  
20 preference?

21 MR. KOENIG: I think combined would be fine.

22 CHAIRMAN ARANOFF: As a general rule we tend  
23 to do combined. That's what people tend to like, but  
24 I'm always open to shaking things up a little bit.

25 We'll do it combined, so we will first hear

1 from Petitioners for up to 25 minutes. Then for  
2 Respondents for up to 17.

3 Thank you very much to this afternoon's  
4 panel. We appreciate all of your time and we'll ask  
5 you to move back to the back of the room so we can do  
6 the wrap-up. thank you.

7 (Pause).

8 CHAIRMAN ARANOFF: Mr. Greenwald, are you  
9 ready to come forward? Please proceed as soon as  
10 you're ready.

11 MR. GREENWALD: Thank you Madame Chairman.

12 This afternoon's session was difficult I  
13 think for us to get our arms around because there's  
14 this Winston Churchill remark about pudding. He was  
15 complaining to his hostess that the pudding had no  
16 theme. I am not sure that I discerned a coherent  
17 theme in the presentation of the Respondents.

18 To me the single most significant part of  
19 the responding panel was not what was said, but what  
20 was not said. At page 15, I'm going to ask you to  
21 turn to the pre-hearing brief that we submitted. On  
22 page 15 there's a table that compares traditional  
23 injury and causation data in this case with the case  
24 in 2002 in India and Taiwan.

25 The legal standard for injury and causation

1 hasn't changed. There was no effort to address, as  
2 best I could tell from Respondents the increase in  
3 subject imports, the pattern of systematic price  
4 underselling by subject imports, the declines in the  
5 financial condition and other indicia of industry of  
6 the U.S. industry.

7           Instead, what we got was a question that  
8 perhaps this case was filed because Dupont really  
9 didn't get very good advice from counsel.

10           The data, the hard data, the record speaks  
11 for itself and speaks very loudly.

12           One of the things that Respondents did say  
13 and that has a bearing on this case is that there is  
14 global excess supply. It was Mr. Roy who said that  
15 installed capacity is out-stripping demand on a global  
16 basis.

17           When you have global excess supply and a  
18 U.S. market which by all accounts, both Petitioners  
19 and Respondents, is not in an excess supply position,  
20 that is at least on the part of the domestic industry,  
21 you have inevitably what the antidumping law is  
22 designed to address. That is sales in the home market  
23 at prices that are higher than the sales price to the  
24 United States. Classic dumping. That is what we have  
25 in this case.

1            Respondents said that the prices of PET film  
2 around the globe, including presumably in the home  
3 market of these various responding countries, are  
4 essentially the same as the prices in the United  
5 States and therefore what legitimate basis does the  
6 United States industry have to complain.

7            If that were the case we would have no basis  
8 for complaint. There wouldn't be any dumping. But  
9 there is dumping and it has injured a U.S. industry  
10 that is very very sensitive, as we have shown, to  
11 small changes in price relative to cost. That very  
12 basic premise was never addressed and never disputed  
13 by the Respondents' panel.

14            A price variant relative to cost of a few  
15 pennies a pound has a dramatic impact in this case and  
16 that is why this petition was filed.

17            Now I would like to remind the gentleman I  
18 think from Bemis who questioned why the case was  
19 brought, that this is not a case against imports of  
20 PET film produced by Teijin Dupont in China. It is a  
21 case against imports from PET film from four countries  
22 which grew to a very significant volume over a period  
23 of investigation, and in fact even if you look only at  
24 China which accounts for the largest share of the  
25 imports, the shipments by Dupont Teijin is a small

1 part of the whole.

2 No industry wants to be in the position of  
3 having to come before you to seek relief. It's not  
4 the best way of spending a Thursday afternoon. They  
5 do it because in this industry at any rate the facts  
6 again and again and again have shown that rising  
7 imports from producers that engage in dumping and  
8 undercut U.S. producer prices have a materially  
9 adverse impact on the U.S. industry.

10 Instead of addressing the basics, what I  
11 heard listening to the presentation were statements  
12 that the supply of the imported product wasn't  
13 purchased because of price or that it didn't harm, it  
14 didn't displace the U.S. industry, or that it was a  
15 product that the U.S. industry didn't make. In fact  
16 the direct testimony that you heard contradicted every  
17 single -- let me correct that.

18 The direct testimony that you heard by  
19 Respondents clearly contradicted the latter point. It  
20 is perfectly clear from the testimony that the  
21 gentleman from Bemis offered, that when supply was  
22 unavailable from subject countries, that company  
23 switched to U.S. sources. It didn't want to. It  
24 complained about it. My guess is that when Bemis says  
25 to you we don't want you, the Commission, to do

1 anything to restrict our supply of merchandise from  
2 these countries they have a very good understanding of  
3 Economics 101. They understand that when you limit  
4 supply by an antidumping duty order and you impose  
5 pricing discipline on it, it raises prices which  
6 raises their cost, and after all they have to compete  
7 downstream. But they never ever took issue with the  
8 basic economics.

9 Now what I'd like to do is to go from this  
10 general point to the specifics of a questionnaire  
11 response which is confidential and I can just call  
12 Company A. But you will see the relevance of Company  
13 A to this proceeding when you look at the cover sheet.  
14 The questions I think that the answers, the data in  
15 this particular questionnaire response will help you  
16 address is first, how important is pricing? If you  
17 listened and took at face value the testimony that you  
18 heard this afternoon, you would have thought aah,  
19 secondary, tertiary. In fact if you turn to pages 10  
20 and 11 of the questionnaire response here, you get an  
21 answer that frankly anybody in business knows to be  
22 true but one that Respondents would have you walk away  
23 from.

24 The next question that comes up and that I  
25 think this particular questionnaire response will help

1     you address is what about the interchangeability of  
2     product? Can this stuff be purchased from -- I  
3     shouldn't say stuff. Can the PET film at issue here  
4     be purchased from domestic sources and from the  
5     subject imports?

6             On pages 15 and 16 of the questionnaire that  
7     issue is addressed.

8             Lastly, and probably, well the next question  
9     goes to, it's related to interchangeability. It goes  
10    to qualification. There's a question you ask, have  
11    you disqualified anybody? Have you not qualified  
12    anybody? That answer is on page nine of the  
13    questionnaire.

14            Finally, when you go to page four and you  
15    will see some handwritten notations that are ours,  
16    they're not the purchasers, those are ours. You can  
17    correlate the significance of price with the level of  
18    imports. Then if I can draw your attention to one of  
19    the lines in this questionnaire that sets out volume  
20    of imports, it will give you an insight into the  
21    credibility of any assertion that Company A or Company  
22    B has withdrawn from the market.

23            It can't be more specific, and obviously one  
24    questionnaire response does not a record make. But  
25    this one is consistent with everything you heard from

1       Petitioners today about how purchasing decisions are  
2       made and what matters, and is fully consistent with  
3       the injury and the causation arguments that we have  
4       made.

5                Let me close going back to Bratsk. I don't  
6       mean to take a lot of time here. It clearly matters,  
7       it's clearly an issue that is before you.

8                I think the Commissioners that address this  
9       issue, I certainly got the sense listening to the back  
10      and forth, that the arguments that we are trying to  
11      make about Bratsk in fact have been fully absorbed.  
12      That you do have hard data up to a certain period. I  
13      would say it's dispositive, but take issue with that.  
14      However, when you look out and you ask yourself about  
15      non-subject imports and what happens, it is not enough  
16      to say well, there's capacity out there. It isn't  
17      even enough to say there have been some imports from a  
18      particular country. What you have to be able to say  
19      is that there is a reliable basis on which to make a  
20      firm conclusion that the order at issue, the orders we  
21      want you to impose will not benefit the domestic  
22      industry but rather will benefit the non-subject  
23      imports.

24               I would say on that very precise question  
25      there is not a single point of hard evidence that

1 supports that conclusion on the record of this  
2 investigation.

3 That is all we have to say. Thank you.

4 Any questions? Do you want us to just go  
5 quietly?

6 CHAIRMAN ARANOFF: We don't usually ask  
7 questions at this stage.

8 Thank you very much for your testimony and  
9 we will call up whoever is giving the rebuttal for  
10 Respondents.

11 MR. O'BRIEN: Thank you, Madame Chairman.  
12 Kevin O'Brien from Baker & McKenzie on behalf of the  
13 Respondent companies.

14 I would like to thank the Commission for its  
15 time and attention this afternoon and this morning. I  
16 do believe the questions have been excellent, and  
17 frankly that the Commission has zeroed in on the  
18 important key issues in the case.

19 This is an unusual case. You have heard  
20 Complainants describe this case as run of the mill,  
21 prices down, dumping complaints filed, prices up,  
22 therefore causation is proved, injury is proved, what  
23 are we all doing here, why don't we go home early.

24 But that's far, far too abrupt an analysis  
25 and it misses the true dimensions of this case.

1           The fact, as Commissioner Pinkert so  
2 properly asked. The fact that the case is being  
3 brought against the Chinese facilities of one of the  
4 complaining parties is unusual and those Chinese  
5 facilities are not insignificant. They are in fact  
6 the opposite.

7           We've heard Complainants' counsel say that  
8 very small changes in pricing are key or pivotal to  
9 the health of the industry, but at the same time  
10 Complainants' counsel would have you ignore the  
11 imports from its related affiliates. That's an  
12 utterly inconsistent position.

13           Our pre-hearing and post-hearing filings  
14 will expand on that, but the fact is if such small  
15 changes are important, then you really do need to take  
16 into account the related party activities.

17           That is not the only unusual aspect of this  
18 case. This case does have a long history in the sense  
19 of the product.

20           One of the reasons is there are many many  
21 sources of supply. This is a global industry with  
22 global players. Each one of the complaining parties  
23 is a multinational in the dictionary sense of the  
24 word. In addition to them there are sources available  
25 we've heard today from Turkey, Indonesia, from other

1 sources. There are sources available that are covered  
2 by dumping orders and those that are not. Frankly  
3 speaking, there is no shortage of supply to meet any  
4 vacuum created by the imposition of the order or not.

5 It will take a little bit of time for the  
6 reasons that were explained, but that will be  
7 happening in the event that an order was imposed.

8 We heard from Petitioners' counsel that  
9 Korea has itself been a source of problems. It was  
10 one of the issues with a company called Kolon, that I  
11 believe the commission knows well. Obviously that  
12 cannot be laid at the feet of the countries involved  
13 in the subject case.

14 Another question I believe put to  
15 Complainants by Commissioner Pinkert had to do with  
16 the whack-a-mole scenario. The response in part was  
17 yes, we're looking at the Mexican facility and we may  
18 be here in two years asking for relief against Mexico.

19 I just have to shake my head at that kind of  
20 a response.

21 The facility has not even been built. It's  
22 not even due to open for a year and a half. And an  
23 actio is contemplated, at least in theory, against it.

24 You simply cannot be found to have caused  
25 injury to the domestic industry merely by shipping

1 product to the U.S.. Each case has to be looked at on  
2 its own merits. I'm sure the Commission will do that  
3 in this case.

4 The final dumping results, I believe, are  
5 out and will be announced if not already in the very  
6 near future and I think that will add to the  
7 Commission's deliberations on why this case was  
8 brought and whether or not it truly has the kind of  
9 merit that should result in an affirmative  
10 determination.

11 We have tried to answer all the questions we  
12 could today. We will answer the remaining ones in our  
13 post-hearing submissions. We believe when the facts  
14 are settled it will be clear that there is no  
15 entitlement to relief by way of a dumping order in  
16 this case.

17 Thank you very much. We appreciate your  
18 time.

19 CHAIRMAN ARANOFF: Thank you, Mr. O'Brien.

20 On behalf of all the Commissioners I want to  
21 thank everyone who has been involved in today's  
22 hearing. It's been very helpful and informative.

23 Post-hearing briefs, statements responsive  
24 to questions, and requests of the Commission and  
25 corrections to the transcript must be filed by

1 September 25, 2008.

2 Closing of the record and final release of  
3 data to the parties is scheduled for October 14, 2008.

4 Final comments are due on October 15, 2008.

5 I don't believe there is any more business  
6 before us, so I wish everyone a good evening and this  
7 hearing is adjourned.

8 (Whereupon, at 4:32 p.m., the hearing in the  
9 above-entitled matter was concluded.)

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**CERTIFICATION OF TRANSCRIPTION**

**TITLE:** Polyethylene Terephthalate  
**INVESTIGATION NOS.:** 731-TA-1131-1134  
**HEARING DATE:** September 18, 2008  
**LOCATION:** Washington, D.C.  
**NATURE OF HEARING:** Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

**DATE:** September 18, 2008

**SIGNED:** LaShonne Robinson  
Signature of the Contractor or the  
Authorized Contractor's Representative  
1220 L Street, N.W. - Suite 600  
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

**SIGNED:** Micah Gillett  
Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

**SIGNED:** John DelPino  
Signature of Court Reporter