

APPEARANCES: (Cont'd.)

Staff:

MARILYN R. ABBOTT, SECRETARY TO THE COMMISSION
WILLIAM R. BISHOP, HEARINGS AND MEETINGS
COORDINATOR
SHARON BELLAMY, HEARINGS AND MEETINGS ASSISTANT
NATHANAEL COMLY, INVESTIGATOR
PHILIP STONE, INTERNATIONAL TRADE ANALYST
CRAIG THOMSEN, ECONOMIST
DAVID BOYLAND, ACCOUNTANT/AUDITOR
DAVID FISHBERG, ATTORNEY
GEORGE DEYMAN, SUPERVISORY INVESTIGATOR

In Support of the Imposition of Antidumping Duties:

On behalf of E.I. DuPont de Nemours & Co. Inc.:

KENNETH J. HILK, Business Marketing Manager,
Reactive Metals Business, E.I. Dupont de Nemours
& Co. Inc.
BRIAN MERRILL, Global Sales Leader, Reactive
Metals Business, E.I. DuPont de Nemours & Co.
Inc.
RICHARD WALLDEN, Plant Manager/Supply Chain
Manager, Reactive Metals Business, E.I. DuPont
de Nemours & Co. Inc.
LARRY FETZER, Technical Service Consultant,
Reactive Metals Business, E.I. DuPont de Nemours
& Co. Inc.
SETH KAPLAN, Principal, The Brattle Group

MATTHEW P. JAFFE, Esquire
NICOLE M. JENKINS, Esquire
SABINA K. NEUMANN, Esquire
Crowell & Moring, LLP
Washington, D.C.

APPEARANCES: (Cont'd.)

In Opposition to the Imposition of Antidumping Duties:

On behalf of MSSA S.A.S. and its U.S. subsidiary, MSSA Co. (collectively MSSA):

FREDERIC CHAMINANT, Sales Director, MSSA S.A.S.
GUY DONZELLA, Environmental & Safety Manager,
Environmental Protection Services, Inc.
BRUNO GASTINNE, President, MSSA S.A.S.
MARIANNE JOHNSON, Senior Purchasing Agent, Ciba
Coating Effects Newport
MARC MATUSEWITCH, President, Columbia Sales Inc.
AL PUNTURERI, President, Interstate Chemicals Co.,
Inc.
BETH SLOANE, Purchasing Manager, Afton Chemical
Corporation
NIGEL WINTERS, Technical & Quality Manager,
Honeywell Specialty Materials
BRUCE MALASHEVICH, President, Economic Consulting
Services, LLC
JENNIFER LUTZ, Economist, Economic Consulting
Services, LLC

WILLIAM SILVERMAN, Esquire
RICHARD P. FERRIN, Esquire
DOUGLAS HEFFNER, Esquire
Hunton & Williams
Washington, D.C.

On behalf of Ferro Corporation:

JIM LOVE, Business Manager, High Performance
Solvents, Ferro Corporation
JIM KENNAN, Global Purchasing Manager, Ferro
Corporation

JULIE C. MENDOZA, Esquire
R. WILL PLANERT, Esquire
Troutman Sanders, LLP
Washington, D.C.

APPEARANCES: (Cont'd.)

On behalf of MEMC, Inc.:

DOUG RICE, Managing Support Services Manager,
MEMC Pasadena

LYLE B. VANDER SCHAAF, Esquire
Bryan Cave, LLP
Washington, D.C.

I N D E X

	PAGE
OPENING STATEMENT OF MATTHEW P. JAFFE, ESQUIRE, CROWELL & MORING, LLP	9
OPENING STATEMENT OF WILLIAM SILVERMAN, ESQUIRE, HUNTON & WILLIAMS, LLP	13
TESTIMONY OF MATTHEW P. JAFFE, ESQUIRE, CROWELL & MORING, LLP	17
TESTIMONY OF NICOLE M. JENKINS, ESQUIRE, CROWELL & MORING, LLP	17
TESTIMONY OF LARRY FETZER, TECHNICAL SERVICE CONSULTANT, REACTIVE METALS BUSINESS, E.I. DUPONT DE NEMOURS & CO. INC.	17
TESTIMONY OF RICHARD WALLDEN, PLANT MANAGER/SUPPLY CHAIN MANAGER, REACTIVE METALS BUSINESS, E.I. DUPONT DE NEMOURS & CO. INC.	20
TESTIMONY OF BRIAN MERRILL, GLOBAL SALES LEADER, REACTIVE METALS BUSINESS, E.I. DUPONT DE NEMOURS & CO. INC.	24
TESTIMONY OF SETH KAPLAN, PRINCIPAL, THE BRATTLE GROUP	28
TESTIMONY OF KENNETH J. HILK, BUSINESS MARKETING MANAGER, REACTIVE METALS BUSINESS, E.I. DUPONT DE NEMOURS & CO. INC.	38
TESTIMONY OF WILLIAM SILVERMAN, ESQUIRE, HUNTON & WILLIAMS, LLP	162
TESTIMONY OF DOUG RICE, MANAGING SUPPORT SERVICES MANAGER, MEMC PASADENA	163
TESTIMONY OF JIM LOVE, BUSINESS MANAGER, HIGH PERFORMANCE SOLVENTS, FERRO CORPORATION	173
TESTIMONY OF BETH SLOANE, PURCHASING MANAGER, AFTON CHEMICAL CORPORATION	180
TESTIMONY OF NIGEL WINTERS, TECHNICAL & QUALITY MANAGER, HONEYWELL SPECIALTY MATERIALS	185

I N D E X

	PAGE
TESTIMONY OF MARIANNE JOHNSON, SENIOR PURCHASING AGENT, CIBA COATING EFFECTS NEWPORT	189
TESTIMONY OF FREDERIC CHAMINANT, SALES DIRECTOR, MSSA S.A.S.	192
TESTIMONY OF MARC MATUSEWITCH, PRESIDENT, COLUMBIA SALES INC.	196
TESTIMONY OF GUY DONZELLA, ENVIRONMENTAL & SAFETY MANAGER, ENVIRONMENTAL PROTECTION SERVICES, INC.	199
TESTIMONY OF BRUCE MALASHEVICH, PRESIDENT, ECONOMIC CONSULTING SERVICES, LLC	201
TESTIMONY OF DOUGLAS HEFFNER, ESQUIRE, HUNTON & WILLIAMS, LLP	203
TESTIMONY OF JIM KENNAN, GLOBAL PURCHASING MANAGER, FERRO CORPORATION	211
TESTIMONY OF JULIE C. MENDOZA, ESQUIRE, TROUTMAN SANDERS LLP	237
TESTIMONY OF AL PUNTURERI, PRESIDENT, INTERSTATE CHEMICALS CO., INC.	239
TESTIMONY OF LYLE B. VANDER SCHAAF, ESQUIRE, BRYAN CAVE LLP	279

I N D E X

	PAGE
CLOSING STATEMENT OF MATTHEW P. JAFFE, ESQUIRE, CROWELL & MORING LLP	322
CLOSING STATEMENT OF WILLIAM SILVERMAN, ESQUIRE, HUNTON & WILLIAMS LLP	325

1 with Commission Rule 201.6.

2 Mr. Secretary, are there any preliminary
3 matters?

4 MR. BISHOP: Yes, Madam Chairman. With your
5 permission, we will add Dr. Seth T. Kaplan, Principal
6 of The Brattle Group, to the witness list for today's
7 hearing.

8 CHAIRMAN ARANOFF: Without objection. Very
9 well. Let's proceed with opening statements.

10 MR. BISHOP: Opening statements on behalf of
11 Petitioners will be by Matthew P. Jaffe, Crowell &
12 Moring.

13 MR. JAFFE: Good morning. Matthew Jaffe
14 with Crowell & Moring on behalf of the Petitioner,
15 DuPont.

16 I'd like to offer three key industry
17 principles for your consideration this morning. No.
18 1, volume is king; No. 2, price bends to volume; and
19 No. 3, quality rarely trumps price.

20 With respect to Principle No. 1, volume is
21 king, if you look at MSSA's argument, if you look at
22 their European antidumping complaint in particular,
23 you can see that DuPont and MSSA agree on the
24 following parts of this principle:

25 The industry's production structure -- that

1 is the down cell technology which requires a long-term
2 commitment -- and its market structure -- that is,
3 there's just a handful of large volume customers
4 available to make such a commitment -- make this
5 particular industry vulnerable to unfair traded
6 imports.

7 Again, for this particular principle of
8 volume, the focus is on major volume customers, and
9 there's just a handful, so you really can't say that
10 DuPont has been injured because of volume loss because
11 perhaps one customer has exited the market demand, but
12 then turn around and say it's not been injured because
13 of volume loss as a result of unfairly traded subject
14 imports. It's an inconsistency to make those
15 arguments.

16 Principle No. 2, price bends to volume.
17 Again, look at MSSA's arguments. Look at their
18 antidumping complaint. You see that DuPont and MSSA
19 agree on certain parts of this principle. This is a
20 high fixed cost industry. It's an industry that must
21 operate at a high level of capacity utilization so
22 that producers in this industry will reduce their
23 selling prices to maintain production volume, head-to-
24 head competition.

25 Again, the focus of this principle is the

1 long-term contract used to tie down the major volume
2 customers for many years, so you can't say, as MSSA
3 has done here, that the Commission should really just
4 look at price and price effects based on an aggregated
5 quarterly fluctuation -- something like a spot price
6 -- only to turn around in your antidumping complaint
7 in the European Union and say that price and price
8 effects must be judged based on long-term contractual
9 arrangements and that every lost sale means lost
10 volume for many, many years.

11 The last principle, quality rarely trumps
12 price. Here we have an addendum that I'd like to
13 direct your attention to. It's an addendum of the
14 antidumping complaint. The number fifth quote there
15 talks about price, and there it says DuPont in the
16 European sector is the only U.S. producer of sodium
17 metal.

18 All the purchasers know that. They also
19 know that they can look at the export values for that
20 particular customer. Excuse me. Purchasers look at
21 the export value as they come in and judge.

22 Well, it's well known here that MSSA is the
23 only French producer of sodium metal, so if you look
24 at their import values coming into the United States,
25 as they suggest purchasers will, you see that it was

1 only 91 cents a pound in 2005, only 93 cents a pound
2 in 2007.

3 So again, and here I quote from MSSA's
4 antidumping complaint: As such, the lowest price has
5 been and currently is affecting the market price,
6 especially as the negotiation process is based on
7 several face-to-face rounds between purchasers and
8 potential suppliers.

9 Notice what's missing from this statement.
10 There's no mention of quality. In fact, if you look
11 throughout their antidumping complaint quality shows
12 up only twice, and one of those instances has to do
13 with Chinese sodium metal, not DuPont's.

14 So you can't say, as MSSA has here, that its
15 better quality has caused customers to switch, not
16 price, when they've argued in their antidumping
17 complaint that customers look at price, price, price.
18 Price is the link here obviously between what MSSA
19 said in their brief, the increasing quantity and the
20 decreasing profit experienced by the domestic
21 industry.

22 They said in such a case it's a slam dunk.
23 Well, here if you look at the long-term contract,
24 focus on that contract, see that price link, what
25 you're going to have here is also a slam dunk.

1 Therefore, we request on behalf of
2 Petitioner DuPont that you find that the domestic
3 industry is materially injured and threatened with
4 material injury because of the subject imports.

5 Thank you.

6 MR. BISHOP: Opening remarks on behalf of
7 Respondents will be by William Silverman, Hunton &
8 Williams.

9 MR. SILVERMAN: When DuPont filed this case,
10 Madam Chairman, the Commission was told that all
11 sodium is interchangeable and that quality differences
12 really don't matter to purchasers, so it's only the
13 low price of the French imports that explains the
14 growth in imports.

15 The best quotes on that are right in the
16 transcript in the preliminary conference. For
17 example, at page 17, "Producers may distinguish
18 between sodium metal at different purity levels for
19 marketing purposes, but essentially all sodium metal
20 is interchangeable."

21 In other words, the levels of purity are
22 just for marketing purposes. Those purchasers don't
23 really know what their needs are. In addition, in
24 their testimony they scoffed at the idea that purity
25 makes a difference to customers, and they used the

1 term "just fine details about purity." That's at page
2 69 of the transcript.

3 DuPont also told the Commission from the
4 beginning that this is a mature market. It's a no
5 growth market. However, the staff report and the
6 information in the record contradict all of these
7 views from DuPont.

8 Our purchaser witnesses today will explain
9 that this is a growing market, not a mature market.
10 They will explain how impurities in DuPont's product
11 cause them considerable problems, and for some
12 purchasers they won't even use DuPont's products.

13 In a sense, DuPont is the best salesman for
14 the French imports. I repeat: DuPont is the best
15 salesman for the French imports. Some customers will
16 tell you they won't purchase from DuPont because
17 DuPont competes with them in the aftermarket, and they
18 don't want to buy the raw materials from the same
19 person that they're competing with in the downstream
20 market.

21 Other customers will tell you that a
22 significant portion of the products imported from
23 France, such as ingots and refined grade, are not even
24 made by DuPont.

25 Now, compare this testimony from our group

1 of purchasers to the purchasers who are testifying
2 today on behalf of DuPont. Now, we've heard this
3 standard argument in many cases -- price, price, price
4 -- but the staff report, another record in this case,
5 shows overpricing, overpricing, overpricing.

6 The record also shows zero confirmed lost
7 sales or lost revenue allegations. None. But, most
8 striking, MSSA's purchasers are paying a 62 percent
9 price increase to cover the duty deposits and are even
10 becoming importers of record. Even with this price
11 hike, they're importing increased quantities.

12 If this were a case about price, price,
13 price for an interchangeable chemical, why would
14 purchasers spend an extra 62 percent and buy
15 increasing imports? The answer is simple. The answer
16 is they won't buy DuPont's products due to the quality
17 problems. DuPont doesn't make the product that meets
18 their specifications.

19 All this means is there is no causal link.
20 Think about it. Overpricing, no confirmed lost sales
21 or lost revenue allegations and purchasers are paying
22 62 percent higher price rather than buy from DuPont.

23 Now, in the face of all this record
24 evidence, DuPont does not want the Commission to use
25 its normal quarterly pricing analysis because such

1 data undermines their presentation. Instead, DuPont
2 invents a so-called head-to-head approach for pricing
3 for selected customers.

4 But this is really the lost sales analysis.
5 It's not the Commission's underpricing/overpricing
6 analysis. It's a clever legal tactic, but it's so
7 transparent it should not get to first base in this
8 proceeding.

9 Now, on the issue of cost/price squeeze,
10 which I'm sure we'll hear about today, there are two
11 straightforward responses from the record. One,
12 without underpricing -- and, as I said, the record
13 shows overpricing, overpricing, overpricing -- where
14 is the squeeze?

15 Second, look at DuPont's pricing to one
16 major customer with a long-term agreement. DuPont's
17 real cost/price squeeze is all because of its pricing
18 to that single customer. Since MSSA is not involved
19 with that purchaser, DuPont's pricing to that
20 purchaser is not by reason of imports from France.

21 Thank you.

22 MR. BISHOP: Will the first panel, those in
23 support of the imposition of antidumping duties,
24 please come forward and be seated?

25 Madam Chairman, all witnesses have been

1 sworn.

2 (Witnesses sworn.)

3 CHAIRMAN ARANOFF: Whenever you're ready,
4 please proceed.

5 MR. JAFFE: Thank you. Good morning.
6 Again, Matthew Jaffe with Crowell & Moring on behalf
7 of the Petitioner, DuPont.

8 My colleague, Nicole Jenkins, will begin the
9 questioning of our first witness, who will discuss the
10 characteristics of sodium metal.

11 MS. JENKINS: Mr. Fetzer, can you tell us
12 about your background at DuPont and in particular
13 within the sodium metal industry?

14 MR. FETZER: Certainly. My name is Larry
15 Fetzer. I'm a technical service consultant and
16 product stewardship coordinator for our Reactive
17 Metals Business. I've been with DuPont for 19 years,
18 and all of those 19 years have been at the sodium
19 metal manufacturing facility in Niagara Falls, New
20 York.

21 MS. JENKINS: What does it mean to say that
22 sodium metal is a reactive metal?

23 MR. FETZER: Well, typically when people
24 hear the word metal they think of things like
25 structural steel, but in the case of sodium metal it's

1 a compound that can be used to foster chemical
2 reactions.

3 In particular, people are aware that it does
4 react violently with water -- it forms hydrogen as a
5 byproduct -- and also reacts with the oxygen in the
6 air and forms sodium hydroxide as well. These
7 particular characteristics of sodium do require that
8 it's handled by sophisticated chemical plant
9 operators.

10 MS. JENKINS: If sodium metal then is 100
11 percent pure, would it still be difficult to handle?

12 MR. FETZER: Well, the inherent properties
13 of sodium metal that make it difficult to handle --
14 you know, its reactivity with very common compounds
15 like oxygen in the air and moisture in the air -- are
16 still present regardless of the purity of the metal,
17 whether it's 100 percent pure or has 400 or 200 parts
18 per million calcium.

19 Also, the inherent properties, the ability
20 to auto ignite in air when it's above 123 degrees
21 Centigrade, do require again that it's handled by
22 sophisticated chemical plant operators.

23 MS. JENKINS: There's a lot of discussion in
24 the record about how sodium metal that contains 200
25 parts per million is better than one that contains 400

1 parts per million.

2 How does the grade or purity of sodium metal
3 affect the downstream product for which sodium metal
4 is input?

5 MR. FETZER: In my experience, the chemical
6 products that are produced by our customers are not
7 impacted by the grade of product that they use,
8 whether it's 200 or 400.

9 MS. JENKINS: As a general rule, how long is
10 it before a customer's sodium metal storage facility
11 needs to be cleaned?

12 MR. FETZER: That varies. In my experience,
13 I've known customers that go in excess of 10 years
14 between having to clean a sodium storage tank, or they
15 could go as short as three to five years. Some of
16 that really relates to the sophistication and systems
17 that the customer has in place.

18 What's a critical point in this timing is
19 the rigor that customers go through to make sure that
20 air and moisture are excluded from those storage tanks
21 so that products like calcium oxide and sodium oxide
22 are not produced.

23 MS. JENKINS: Does your answer differ
24 whether the sodium metal being purchased is 200 parts
25 per million calcium versus 400 parts per million

1 calcium?

2 MR. FETZER: No. At the heart of the issue
3 is whether contaminants like oxygen or moisture from
4 the air enter the system and create oxides.

5 Or there's even been cases where some of the
6 downstream products that customers use have
7 essentially contaminated the storage tanks and
8 required them to be cleaned.

9 MR. JAFFE: Our next witness is going to
10 discuss the production of sodium metal.

11 If you look at the conditions of competition
12 you'll find that DuPont and MSSA agree that they both
13 manufacture sodium metal using the same down cell
14 technology.

15 They both agree that once you start a down
16 cell you can't really stop it or really adjust the
17 volume it produces, and they both agree that the
18 production of sodium metal entails high fixed costs
19 and an exceptional amount of electricity, which is
20 essentially a high fixed cost.

21 Nicole?

22 MS. JENKINS: Mr. Wallden, can you tell us
23 about your background at DuPont and in particular
24 within the sodium metal industry?

25 MR. WALLDEN: Yes. I'm Rich Wallden. I've

1 been with DuPont for 24 years. I've been at the
2 Niagara facility since January of 2001 where I've held
3 positions as the operations manager, the supply chain
4 manager for the business and am currently in a role of
5 combined plant manager and supply chain manager for
6 the Niagara Falls plant.

7 MS. JENKINS: Both DuPont and Metaux have
8 made a point of explaining to the Commission that once
9 a down cell is started and stopped it is impossible to
10 restart. Why is that?

11 MR. WALLDEN: The down cell is a large
12 vessel that contains a molten salt solution. Once
13 that solution is melted and the cell is put in
14 service, if you have to turn that cell off the molten
15 salts freeze. They become solid again.

16 At that point in time it's impossible to add
17 enough heat to the cell in order to remelt the bath
18 that's in there without distorting and essentially
19 ruining the internals of the cell.

20 So therefore, once you start that cell it's
21 going to keep running, and once it's shut down you
22 have to tear it apart and rebuild it.

23 MS. JENKINS: Can you provide us with a
24 rough estimate on how long a down cell will
25 efficiently produce sodium metal?

1 MR. WALLDEN: In my experience, the down
2 cells that we have will operate anywhere between 1,000
3 and 2,000 days with many of them reaching the 1,500 to
4 2,000 day range.

5 MS. JENKINS: Both DuPont and Metaux have
6 high fixed costs. How do these high fixed costs
7 affect the level of capacity and operations with
8 respect to DuPont's production of sodium metal?

9 MR. WALLDEN: There are a couple of
10 components of fixed cost. One is the manufacturing of
11 the cell, and the other is the operation. It's
12 manually intensive, and we have to keep the operators
13 there in order to operate the cell.

14 The capital to build the cells is one that
15 is very high, and once you start that operation of the
16 cell in order to guarantee a return on that investment
17 you need to keep that cell operating through the
18 entire projected useful life.

19 MS. JENKINS: So what are the factors that
20 you consider before placing down cells in operation?

21 MR. WALLDEN: The primary factor is input
22 from our sales and marketing on what the demands are
23 going to be from the customers.

24 It's critical that we have long-term
25 contracts for planning purposes. When long-term

1 contracts are achieved then we start to make sure that
2 all the cells are available to start.

3 Many of these things the demand doesn't come
4 in at the exact rate that had been originally
5 projected, so we actually do not start the cells until
6 we have a high degree of confidence from the customer
7 that they're going to be able to use that material
8 that is coming out of the production cell.

9 MS. JENKINS: So you don't rely on trade
10 journals or articles predicting a forecast of a high
11 demand of sodium metal?

12 MR. WALLDEN: No. Trade journals and other
13 publications are not used in order to project what we
14 should be doing as far as production.

15 MR. JAFFE: Thank you. We're now going to
16 move actually from production to sales.

17 The following conditions of competition
18 again have been agreed with regard to DuPont and MSSA.
19 They both agree that this particular industry is
20 dominated by a handful of major purchasers of sodium
21 metal.

22 They both agree that they, because of the
23 down cell technology, are going to endeavor to sign
24 these major customers to long-term contracts, and they
25 both agree that volume is critical and that every lost

1 sale means lost volume for a long time.

2 Brian, could you introduce yourself to the
3 Commission, please?

4 MR. MERRILL: My name is Brian Merrill.
5 I've been with DuPont for 34 years. I serve as the
6 Global Sales Leader for our Reactive Metals Business.
7 I first became involved with the Reactive Metals
8 Business in 1994, and I've served in a sales capacity
9 since that time.

10 MR. JAFFE: Could you provide the Commission
11 a general description of the U.S. market for sodium
12 metal?

13 MR. MERRILL: The U.S. market is comprised
14 of eight to 10 major consumers of the product. Those
15 customers generally secure their supply of sodium
16 through long-term agreements. That boils down to
17 usually head-to-head competition between MSSA and
18 DuPont.

19 Again, in securing those long-term
20 agreements when volume is secured it's usually for a
21 lengthy time period. In most cases, customers choose
22 to secure a 100 percent supply agreement because that
23 affords them the lowest price.

24 MR. JAFFE: And how large is this market
25 when you're talking about bulk customers? Is it 50

1 percent or larger?

2 MR. MERRILL: These probably eight to 10
3 customers probably comprise at least 80 percent of the
4 demand within the United States.

5 MR. JAFFE: Brian, you've probably noticed
6 behind you that there are a number of purchasers that
7 are appearing in opposition to DuPont's petition.

8 I was wondering if you could tell us. Have
9 you supplied sodium metal to any of the companies
10 represented here today?

11 MR. MERRILL: With my understanding of the
12 customers that are represented, I think all the
13 customers except for Interstate Chemical DuPont has
14 supplied material, in many cases for over 10 years.

15 DuPont supplied through the '90s 100 percent
16 of most of the customers' requirements that are in
17 attendance in this room.

18 MR. JAFFE: And in head-to-head competition
19 between DuPont and MSSA, have you ever lost sales with
20 respect to any of the companies that are in this room
21 today?

22 MR. MERRILL: Yes, we have. As a matter of
23 fact, there's probably very little material currently
24 supplied by DuPont to any of the customers in the
25 room.

1 MR. JAFFE: And with regard to certain
2 purchasers that are not in the room today, with regard
3 to head-to-head competition between DuPont and MSSA
4 have you ever lost sales to MSSA?

5 MR. MERRILL: There are at least five other
6 major customers who are not in attendance today
7 whereby DuPont has lost business and is no longer
8 supplying.

9 MR. JAFFE: And could you give your opinion
10 as to the number one reason why DuPont in these head-
11 to-head competitions lost the business to MSSA?

12 MR. MERRILL: Yes, Matthew. That's price.

13 MR. JAFFE: I believe that a number of these
14 purchasers in the room are probably going to testify
15 that it was quality. Could you discuss the question
16 of quality?

17 Did it come up during these head-to-head
18 competitions? Did it affect your negotiations with
19 these particular purchasers?

20 MR. MERRILL: In 2001, DuPont was supplying
21 100 percent of Ethyl's requirement, now subsequently
22 Afton Chemical. We had supplied probably for the
23 prior 10 years 100 percent of their requirements.

24 In 2002, though, we were requested to meet a
25 lower competitive offer. DuPont lowered our price 14

1 percent to retain the majority share at that account.

2 We were then requested following that,
3 following 2003, to lower our price an additional seven
4 percent, and we were awarded 50 percent of the
5 requirement.

6 In 2004, we were requested to lower our
7 price another nine percent, which we chose not to do,
8 okay? That negotiation was all about price.

9 In 2006, MEMC awarded their business to
10 Metaux under a long-term agreement. However, DuPont
11 was offered the opportunity to lower our price 13
12 percent to retain 25 percent share. DuPont chose to
13 do that. That negotiation was all about price.

14 At Ferro, DuPont lowered our price 17
15 percent in order to retain business in 2005 and 2006
16 based on a competitive offer that Ferro offered us
17 from MSSA, okay?

18 In 2007, DuPont failed to meet the lower
19 competitive offer of another seven percent reduction,
20 okay? That again was all about price.

21 MR. JAFFE: Thank you.

22 Our next presentation is going to be by Dr.
23 Seth Kaplan. He is going to discuss in greater detail
24 the conditions of competition and also the factors the
25 Commission normally considers as we are presenting

1 certain business proprietary information documents.

2 These are documents that appear in our brief
3 or are drawn from information that already appears on
4 the Commission record.

5 Dr. Seth Kaplan?

6 MR. KAPLAN: Good morning. I am Seth Kaplan
7 of the Brattle Group.

8 I have been asked by Petitioner to examine
9 the conditions of competition in the U.S. sodium metal
10 market and, based on my analysis of those conditions,
11 to analyze the effect of dumped French imports on the
12 trade and financial performance of the industry.

13 In conducting my analysis, I have examined
14 the confidential record, including questionnaire
15 responses and the staff report, conducted discussions
16 with members of the U.S. producer's management team,
17 and I've reviewed public information, including MSSA's
18 European sodium metal petition.

19 My analysis has led me to three conclusions.
20 First, the conditions of competition make the domestic
21 industry particularly susceptible to the negative
22 effects of dumped imports; second, the subject imports
23 have suppressed and depressed domestic producer
24 prices; and, third, that increased dumped imports have
25 had a materially negative impact on the domestic

1 industry's condition.

2 Let me address each of these in turn. As a
3 threshold matter, the conditions of competition in the
4 domestic sodium metal industry conspire to make the
5 sole remaining U.S. producer extremely susceptible to
6 material injury by unfairly traded imports.

7 First, there are only a handful of remaining
8 significant customers in the market. The loss of even
9 a single customer can make the industry unprofitable
10 or cause the industry to cease operations altogether.

11 Second, the domestic industry faces a long-
12 term secular decline in demand extending into the
13 foreseeable future. This product was originally used
14 as an additive in leaded gasoline, and over time that
15 application has disappeared and the industry has
16 shrunk as shown in the prehearing brief. The current
17 injury suffered by the domestic industry due to dumped
18 imports occurs in a period of continued industry
19 distress.

20 Third, this high fixed cost industry must be
21 operated at high levels of capacity utilization and at
22 a minimum scale of operations to remain economically
23 viable. As noted by the Commission in past
24 investigations, the high level of fixed costs requires
25 the industry to react to dumped imports by lowering

1 prices.

2 Fourth, the industry must operate its
3 equipment continuously or the equipment is destroyed.
4 This severely limits the industry's flexibility in
5 responding to dumped imports.

6 Fifth, the industry must operate through
7 long-term contracts. Unlike most industries before
8 the Commission, reacquiring a lost customer may
9 require waiting years until existing contracts expire.

10 Sixth, competition is based primarily on
11 price in this commodity product, and it is an element
12 on the periodic table. The Commission has faced these
13 before in magnesium, but you usually get a more
14 manufactured product than an element. The commodity
15 product imports can readily gain market share by
16 underselling as we will demonstrate.

17 Seventh, there are practically no nonsubject
18 imports in this market, and that means that any
19 increase in dumped French imports comes at the expense
20 of the U.S. industry on a ton-for-ton basis.

21 Eighth, demand for sodium metal is
22 inelastic. Consequently, increased imports
23 disproportionately lower prices relative to expanding
24 sales.

25 Finally, French imports have become less

1 competitive over the period of investigation due to
2 the appreciating euro and increased freight costs.
3 This fact, unlike the previous eight, should have
4 benefitted the domestic industry. Nonetheless, we
5 could see the trends in the trade and financial data
6 and note that it has not.

7 French imports have increased over the
8 period of investigation, undersold the domestic
9 producer because of the large dumping margins and took
10 significant market share. We'll discuss each of these
11 conditions now and move to price.

12 Now I will turn to the three factors the
13 Commission must consider: Volume, price and the
14 effects on the industry. While we know the French
15 sodium metal imports have increased over the POI, take
16 a look at their market share, which is in Tab 1 to the
17 exhibit.

18 The Commission characterized this increase
19 as dramatic in the preliminary opinion, and, as you
20 can see, nothing has transpired that should cause the
21 Commission to alter its view.

22 Moving from quantity, let's go to pricing.
23 This is the most important part of the analysis.
24 Before beginning, however, I wish to briefly discuss
25 why the conditions of competition require a contract-

1 by-contract approach. This is critical to the
2 analysis, and it's based on the facts peculiar to this
3 investigation.

4 The Commission has a long tradition of
5 relying on comparisons of quarterly weighted average
6 prices of narrowly defined products to evaluate
7 underselling. Implicit in this practice is the belief
8 that these comparisons capture contemporaneous head-
9 to-head competition between domestically produced and
10 subject merchandise. These comparisons are reasonable
11 in industries where a significant share of
12 transactions are made on a spot basis or through
13 short-term contracts.

14 However, because such a large share of
15 sodium metal sales are tied to overlapping, multi-
16 year, fixed price contracts and because the industry
17 is characterized by a handful of very large
18 purchasers, comparisons of the quarterly weighted
19 average prices provide little or no information on the
20 degree of competition and underselling during the
21 quarter that's being examined.

22 Why? Because the price in that quarter was
23 negotiated some of it four years ago, some of it three
24 years ago, some of it two years ago. Go look at when
25 the prices were negotiated and the competition at that

1 customer to tell who's underselling or overselling.

2 Looking at a weighted average based on four
3 years of contract prices does not reveal the
4 contemporaneous competition the Commission strives to
5 examine. Because only a small share is sold at prices
6 negotiated during the period of delivery, the
7 Commission should instead compare instances of head-
8 to-head competition analyzing individual customers.

9 The Commission has done this in many cases
10 where there's contracts. Often times it's one
11 contract for a very large sale. Here there's multiple
12 contracts with a small number of producers, but the
13 principle is the same. They're possible and necessary
14 given the small number of customers that account for
15 the large share of domestic sales.

16 Both parties agree that conditions of
17 competition require long-term contracts. Now let's
18 turn to four of these comparisons. If you take a look
19 at Exhibit 2, you see a comparison for what I call
20 Customer A. Note that the red line is the price of
21 DuPont negotiated under contract. The gray line
22 represents the contract price of MSSA.

23 So at the top you're seeing a price
24 comparison. At the bottom you see vertical bars.
25 These bars represent the total sale of sodium metal.

1 The red part of the bar represents DuPont sales, and
2 the gray part of the bar represents MSSA sales.

3 I'm going to give you a moment to look at
4 Exhibits 2, 3, 4 and 5, Customers A, B, C and D. This
5 is the best possible evidence you could have about
6 price competition. It's customer-by-customer. It's
7 contract-by-contract. It's year-by-year. It's sale-
8 by-sale. It can't be any better.

9 Take a look at where the gray line is
10 compared to the red line and then take a look if the
11 share of red is increasing or the share of gray is
12 increasing. It speaks for itself. If you take a look
13 in the staff report after the hearing and look at how
14 much volume these customers represent, you will know
15 how significant and important these four customers
16 are.

17 Now let me talk a moment about quarterly
18 underselling. I think that there is one comparison
19 that might be useful, even though much less so than
20 the evidence I just presented, which was, by the way,
21 unavailable at the preliminary phase of the
22 investigation.

23 If you look at Exhibit 6, you will see
24 quarterly underselling and overselling, removing
25 Customer E, so we're removing a single customer, and

1 now you're looking at weighted averages of all the
2 quarterly remaining sales, and I ask who is
3 underselling and who is overselling at every average
4 customer, excluding Customer E. I think this also
5 speaks for itself.

6 Exhibit 7, reproduced from our prehearing
7 brief, shows the cost/price squeeze that was
8 discussed. Imports suppressed domestic prices is the
9 conclusion that's usually drawn from evidence of a
10 cost/price squeeze. Over the POI, take a look at the
11 cost of goods sold and take a look at the
12 deteriorating financial performance showing this
13 cost/price squeeze.

14 Now, based on the head-to-head competition
15 and what was happening to DuPont's prices from those
16 four large customers, you could tell where a lot of
17 that squeeze is coming from. A Commissioner had
18 suggested that it had to do with our Customer E's
19 contract, but if that's the case the other prices
20 would be rising for all the other customers. Are they
21 rising for the other customers? Take a look at the
22 head-to-head competition.

23 So we have underselling. We have a cost/
24 price squeeze. We have head-to-head competition. In
25 the introduction to Respondents' brief they talked

1 about ships passing in the night. Exhibits 2, 3, 4
2 and 5 say that they are not ships passing in the
3 night, but in fact they are crashing in the daytime.

4 Head-to-head competition based on price.
5 Does price win or lose? If quality is the key,
6 doesn't quality carry a premium, not a discount?
7 Exhibits 2, 3, 4 and 5 show exactly what's going on.

8 Now briefly I'll turn to a but for analysis.
9 The dumping margins are extremely high. There is no
10 question that but for the dumping domestic prices
11 would be higher, contracts would be negotiated at new
12 and higher prices, domestic profitability would rise,
13 sales would likely increase. Given the conditions of
14 competition, the negative effects have been quite
15 large.

16 Finally, let me turn to the injury factors.
17 We've seen the volume. We've now seen the head-to-
18 head competition in price. Exhibit A shows what has
19 happened to the performance of the domestic industry.
20 The top line shows what has happened to imports and
21 their increase, and the rest of the factors are the
22 traditional trade and financial data collected by the
23 Commission. The effects of the price underselling and
24 imports increasing over the period of investigation
25 are demonstrated plainly.

1 Two more quick points and I'll conclude. On
2 threat, it's rarely that the Commission has such good
3 information about the future, but since there are
4 long-term contracts at fixed prices we know what's
5 going to be happening to imports next year and the
6 year after.

7 I ask the Commission to take a look at the
8 foreign producer questionnaire of MSSA to see what
9 they say about imports in the future and to take a
10 look at the contracts section part of the pricing
11 section to figure out what's going to happen with
12 prices, as well as the graphs I've provided.

13 Finally, a shout out to my friends on the
14 staff. This was a very difficult case. The
15 production technology is something that has not been
16 seen before the Commission.

17 Sometimes you get a chemical plant that has
18 to operate 100 percent full-time, but the down cell
19 technology is different. Individual cells have to
20 operate full-time, but there is some leeway in adding
21 them, as you saw when you visited the plant. The
22 staff has captured that difficult technical
23 circumstance the Commission hasn't seen.

24 On the financial side, the financial
25 investigator did a fine job of sorting out issues with

1 byproducts. Not an easy thing to do. The economist
2 on the pricing side has made sure that you have all
3 the information you need by insisting upon collecting
4 all the individual contracts.

5 Mr. Deyman, who I have known for a very long
6 time, has made sure that all of this information is
7 captured in a staff report in a very difficult case.
8 Three or four things going on that are unusual, and
9 the staff has given you all the information you need
10 in a fine staff report.

11 That concludes my testimony.

12 MR. JAFFE: Thank you, Seth.

13 Our last witness is going to address some of
14 the matters that were raised in the preliminary
15 dissenting view.

16 Ken, could you introduce yourself to the
17 Commission, please?

18 MR. HILK: Yes. Thanks, Matthew. I'm Ken
19 Hilk. I've worked for DuPont for 27 years. I've been
20 associated with the sodium business and the reactive
21 metals business going back to the 1980s when I was in
22 manufacturing at Niagara Falls. I've recently been in
23 business management assignments with the business for
24 a number of years.

25 MR. JAFFE: Thank you. One of the issues

1 raised was concerning the exit of a particular
2 customer. For purposes of the public hearing I'll
3 just call that customer Sengenta. How did that impact
4 DuPont's profitability?

5 MR. HILK: Well, of course the loss of the
6 Sengenta volume was impactful. I mean, whenever we
7 lose volume in this business it's very impactful to
8 the profitability of the business.

9 We had anticipated that volume loss for
10 quite some time. We knew going back to the early '90s
11 since Sengenta made Paraquat, a controversial
12 herbicide, that that was not going to be forever; that
13 that business was going to exit the market.

14 Sengenta also had developed alternative
15 technologies that they were practicing outside the
16 United States, and DuPont supplied products to that
17 alternative technology. So we knew that that business
18 was going to shut down.

19 What happened is the loss of that volume
20 only magnified the impact of the volume losses we then
21 sustained through the unfair pricing and the low
22 prices that we encountered in the market.

23 MR. JAFFE: Okay. I'd like to discuss
24 another relatively significant customer. We're going
25 to call this Customer X for the purposes of this

1 public hearing, and I would like to ask you if you
2 could talk about the importance of this customer to
3 DuPont.

4 MR. HILK: Yes. Customer X has not
5 negatively impacted the financial performance of the
6 business as some of the other assertions that have
7 been made.

8 I think it's really important that I ask the
9 Commission to place DuPont's relationship with this
10 customer in perspective. In the early part of this
11 decade when we reached an arrangement with this
12 customer for its global business, imports in the
13 United States were low, prices were significantly and
14 relatively much higher than they are now, and our
15 DuPont profits for the reactive metals business were
16 good.

17 We entered into this contract to increase
18 our volumes in part to offset what we knew was going
19 to be a loss of Sengenta. It offered us a very nice,
20 big base load for our very high fixed cost operations
21 at the plant, which some of you have seen. It helped
22 us cover those fixed costs. It was a sustaining
23 contract for us. It was done at pricing that was
24 something that we could sustain, given the rest of our
25 portfolio.

1 Several years later, at the beginning of the
2 period of this investigation, dumped imports surged.
3 Our prices became depressed and suppressed, and
4 obviously our profits were impacted greatly. I think
5 you've seen the numbers.

6 MR. JAFFE: Could you tell me, Ken, whether
7 or not to the best of your knowledge MSSA has ever
8 competed with DuPont for sales to Customer X in the
9 United States?

10 MR. HILK: When we arrived at the
11 arrangement with Customer X, we faced very stiff
12 competition from MSSA both in Europe, where we were
13 supplying volumes, and in the United States.

14 The pricing negotiations were very
15 difficult. The whole negotiation was about price. We
16 finally arrived at a price that would work for both
17 parties, Customer X and DuPont, but we clearly faced
18 very stiff price competition from MSSA.

19 MR. JAFFE: A little switch in direction
20 here, Ken. There's a lot of discussion on the record
21 about future prospects for sodium metal demand. I
22 note DuPont actually manufactured sodium methyllate,
23 which is one of the ones that have been identified.

24 Now, we were discussing it yesterday.
25 Between the preliminary conference back in November

1 and today, something happened. I was wondering if you
2 could talk about the future prospects of sodium
3 methyrate at least from DuPont's point of view?

4 MR. HILK: Yes. I think it's important to
5 look at the sodium methyrate growth. It's the only
6 growth that is on a commercial basis evident that has
7 been referenced by anyone around this industry.

8 It has grown a little bit. It's way behind
9 its projections, and that's because of the compression
10 of feedstocks in the biofuels industry. The biofuels
11 industry has a very uncertain future.

12 DuPont was forced to postpone a major
13 expansion of sodium methyrate production this summer
14 at one of DuPont's plants because of this biofuel
15 industry's recession from where we thought it was
16 going to be, where they thought they were going to be.

17 The other thing about sodium methyrate is
18 that there are several technologies to produce it, and
19 most -- in fact all except for our technology -- do
20 not use sodium to produce the methyrate, so these
21 alternative technologies could also take -- they
22 continue to take share and they will take share in the
23 future.

24 MR. JAFFE: Thank you. That concludes our
25 direct presentation.

1 CHAIRMAN ARANOFF: Thank you very much. I
2 want to welcome all of the witnesses here this
3 morning.

4 Thank you for taking time away from your
5 business to come and make this presentation and answer
6 our questions. We always find it very helpful to hear
7 directly from the people involved on a daily basis in
8 the business.

9 This morning we will begin the questioning
10 with Vice Chairman Pearson.

11 VICE CHAIRMAN PEARSON: Thank you, Madam
12 Chairman.

13 Welcome to all of you. I've had the
14 pleasure of seeing some of you before. I appreciate
15 the courtesies extended when we had a delegation that
16 visited the Niagara facility. It's easier to
17 understand the production process having been there, I
18 can assure you. Staff reports are good. They're not
19 that good.

20 The issue of customer perception is perhaps
21 relevant to this investigation. I have some previous
22 experience working for a company where the customer
23 was always right, and we sometimes wrestled with how
24 right they were, but we worked hard to meet the
25 customer's requirements.

1 In this case we've got 14 purchasers
2 reporting that DuPont's sodium metal always or usually
3 meets minimum quality specifications; 11 reporting
4 that its product rarely or never meets minimum quality
5 specifications.

6 Can you comment what it is about this
7 product and this marketplace that would prompt a large
8 minority of responding purchasers to say that your
9 product rarely or never meets minimum quality
10 specifications?

11 Well, you're not in the business, Mr.
12 Kaplan. Let's let Mr. Hilk start, okay?

13 MR. KAPLAN: Sorry. Because of the
14 confidentiality of the record and which customers
15 responded in which ways, there will be some
16 difficulty. I'll wait until someone answers.

17 VICE CHAIRMAN PEARSON: I understand that,
18 but the numbers that I've just given in terms of the
19 numbers of customers, that's public data. We've got
20 14 on the one side and 11 on the other, so kind of an
21 even split.

22 What is it about this customer base, this
23 product, this marketplace, that would bring about that
24 type of divergence of opinion? Mr. Hilk?

25 MR. HILK: Thank you, Mr. Commissioner. I

1 think that what we've seen in competing in this
2 business and supplying product for customers is in the
3 face of very significantly depressed prices, falling
4 prices, prices forced down by the competitor.

5 We have tried to respond to customers'
6 requests for improved quality. In fact, I think some
7 of the staff and some of you that came to the plant
8 saw the equipment we installed and the equipment that
9 we can invest in further to meet higher quality.

10 Those quality specifications changed over
11 time. Customers who could take I'm going to say Y
12 specifications for decades all of a sudden now who
13 happen to also be paying 30, 40, 50 cents a pound
14 lower prices all of a sudden needed a tighter spec.

15 DuPont I think stepped up and has addressed
16 in its investments and in its Six Sigma programs and
17 in our quality program a number of ways to meet the
18 customer requests, but it was really price driving all
19 these discussions and all these interactions.

20 MR. JAFFE: Can I just address that briefly?

21 VICE CHAIRMAN PEARSON: Sure. Please.

22 MR. JAFFE: Matthew Jaffe. Again, if you
23 look there was like 38 purchasers, but if you look at
24 our prehearing brief we focus on a large majority. We
25 focus on seven customers that make the bulk sale.

1 So what you have here in this situation is
2 also bulk sales versus perhaps ingot sales, and in
3 that particular situation ingot sales -- DuPont does
4 not make ingot sales from U.S. produced product. They
5 only buy it. They buy it -- it's Chinese manufactured
6 -- and they sell that into the United States.

7 So if a purchaser was responding to that
8 question and if they were responding to it because
9 they were an ingot purchaser then I think they would
10 mark, as you indicated, that didn't meet; that DuPont
11 could not meet that specification.

12 VICE CHAIRMAN PEARSON: Okay. Thank you.

13 Mr. Kaplan, was that the point you were
14 going to make?

15 MR. KAPLAN: Yes. On page 2-7 of the staff
16 report it says: The top 10 responding purchasers
17 accounted for 94.3 percent of reported purchases
18 between 2005 and 2008, and then they list these
19 purchasers.

20 I would ask you to examine each one and see
21 if they are or were supplied by DuPont at some point.
22 I think Matthew's point really comes to the light that
23 small purchasers buying ingot count as one purchaser,
24 but in terms of share they're very small.

25 VICE CHAIRMAN PEARSON: Okay. Point well

1 taken.

2 Some of your purchasers have mentioned that
3 DuPont sodium metal has resulted in a buildup of
4 calcium in storage tanks. To what extent have you
5 worked with those purchasers to identify and rectify
6 the sludge problem?

7 MR. FETZER: Larry Fetzer. Thank you,
8 Commissioner.

9 With some of the customers, over the years
10 we've worked with them either on programs to attempt
11 to clean heel buildup in a tank, but we also work with
12 customers to try to identify what might be the source
13 of the contamination because it's just not calcium per
14 se. There needs to be more than likely a source of
15 oxygen or moisture coming into the system.

16 So there have been some customers. We've
17 worked with them to identify either poor quality
18 nitrogen supply that goes into their system, or they
19 may be getting contamination from their own downstream
20 products that come back and create reaction products
21 in their storage tank.

22 VICE CHAIRMAN PEARSON: Okay. But to the
23 extent that customers might have imperfect systems
24 that would allow some material to enter that would
25 then react with the sodium and lead to sludge buildup,

1 wouldn't those customers experience the same sorts of
2 problems with the French product?

3 MR. FETZER: You would expect that they
4 would, and it just may be that this buildup needs to
5 take place over time.

6 As I said, depending on the rigor of the
7 systems and the sophistication of the operation, it
8 could be as long as 10 years so it might not be known
9 if they're building up heel material at the same rate
10 or not. It's probably too soon to tell.

11 VICE CHAIRMAN PEARSON: Okay. So we need a
12 few more years of use of the French product to see
13 what it might do.

14 Mr. Hilk?

15 MR. HILK: Yes. If I could add, DuPont has
16 been supplying tens of millions of pounds per year to
17 a lot of these customers.

18 Only recently during the POI, as we've seen
19 from the dumped imports, have the millions of pounds
20 level started to be reached, and only like a year, two
21 years ago, so it's very, very difficult for anyone to
22 claim that this product now magically is not going to
23 produce any residue in tanks. It's just not something
24 that can be asserted at all.

25 VICE CHAIRMAN PEARSON: Okay. I don't know

1 all that much about the customers in this business,
2 but you certainly do.

3 Fourteen purchasers have rated as very
4 important the avoidance of calcium buildup. What
5 factors would make the avoidance of calcium buildup
6 very important for some purchasers, but not for
7 others? Different facilities? Different production
8 processes?

9 What we're seeing -- what I'm seeing -- in
10 the staff report is this is an important issue for
11 some customers; either that or they're grousing about
12 it for fun, and it may not be as important to others.

13 Can you fill in any of that blank, Mr.
14 Fetzer?

15 MR. FETZER: This is Larry Fetzer. Yes,
16 Commissioner.

17 With our customer base and some of the
18 customers we've looked at, several customers, as I've
19 said, with their rigor and operation don't experience
20 the same types of buildup, maybe have different
21 mechanical systems where the accumulation doesn't
22 occur.

23 The systems that some of the people might be
24 concerned about have built up over the years, and it's
25 now to the point where it does need to be addressed.

1 We've worked with several customers to try to address
2 that particular issue.

3 VICE CHAIRMAN PEARSON: To the best of your
4 knowledge, have these issues led to some customers
5 switching to purchasing product from MSSA?

6 MR. MERRILL: Brian Merrill. I would say
7 that customers have conveyed to us concerns about the
8 calcium.

9 As Ken Hilk mentioned, DuPont has undertaken
10 efforts to lower our calcium. We've sent customers
11 who are in attendance today material for them to
12 requalify after consuming DuPont technical grade
13 material for over 10 years, so we have taken those
14 steps to try and improve the quality of the material.

15 As I mentioned, we're offering material to
16 some customers here for them to requalify to determine
17 the value of that material.

18 VICE CHAIRMAN PEARSON: Okay. Well, thank
19 you very much. My time has expired.

20 Madam Chairman?

21 CHAIRMAN ARANOFF: Commissioner Okun?

22 COMMISSIONER OKUN: Thank you, Madam
23 Chairman.

24 I join my colleagues in welcoming you here
25 today. I appreciate very much the time you've taken

1 to be with us. For those who were with us during the
2 tour, I also appreciate the information that you
3 shared at that point. It does help give one a better
4 understanding of the business.

5 Let me turn to some pricing questions. I
6 guess I'll put this to you, Mr. Jaffe, first, in terms
7 of the way that you suggest the Commission should look
8 at the pricing data. In particular, the quarterly
9 pricing data is not the most relevant. Mr. Kaplan may
10 have some thoughts about this too.

11 I went back through your brief. I know that
12 during my time on the Commission there have been cases
13 where we've had long-term contracts and where there
14 have been bid prices involved.

15 For purposes of posthearing, can you look
16 through some of those precedents and see if you think
17 they're relevant to this case? For purposes of the
18 response here, help me understand. Would you have us
19 look at any of the quarterly pricing comparisons or
20 just rely on contract data?

21 MR. JAFFE: Matthew Jaffe. I think we will
22 certainly of course look at precedent and cite it to
23 you in our posthearing brief. With regard to --

24 COMMISSIONER OKUN: I know it's not
25 precedential, but it often helps me think about how

1 we've looked at it in prior cases and whether there's
2 similarities or not.

3 MR. JAFFE: I think to respond to your other
4 question, conditions of competition in this particular
5 industry, say long-term contracts, we've got big, big
6 volume customers.

7 You have a down cell technology that
8 requires a long-term commitment and so you have a
9 situation in which the producers in this particular
10 industry try to get commitments because of that down
11 cell technology for the long term and so they go to
12 long-term contracts. So I would say that is critical
13 -- critical -- to your analysis.

14 At the same time, I think Dr. Kaplan also
15 suggested a different way of viewing this. He pointed
16 and talked about a Customer E. There is another way
17 to look at that. I can't again go into great detail
18 because it involves business proprietary information,
19 but that is a secondary.

20 I think that particular study only supports
21 what you see with regard to the long-term contract.

22 COMMISSIONER OKUN: And I guess I would
23 amend my request for posthearing to you, Mr. Kaplan.

24 I know that you have made this argument with
25 regard to taking Customer E out of the pricing data

1 and then looking at it and also to see if there's any
2 prior instances where the Commission has done
3 something like that in looking at its pricing data.
4 That would be helpful to me.

5 Let me then turn back. Mr. Hilk, you've had
6 an opportunity to comment in your testimony about what
7 Mr. Jaffe I think referred to as Customer X, and I
8 think you had said that it was important for the
9 Commission to put in perspective this large contract
10 and what it means for DuPont's business.

11 In doing so, could you help me better
12 understand really both on the financial side, because
13 one of the arguments Respondents make is that if you
14 look at the history of negotiations with Customer X
15 and the prices with Customer X that it has an impact
16 on the bottom line.

17 I know we can't get into the confidential
18 details here, but help me better understand your
19 argument that this really isn't impacting DuPont's
20 bottom line in a negative way. Is it because you're
21 just able to keep the volume going? Explain to me how
22 you view it.

23 MR. HILK: It's going to be difficult, but
24 I'm going to give it a real shot, given that we have
25 the confidentiality restrictions in this public forum.

1 The most important thing in the sodium
2 operations is to run a very high sales to capacity
3 ratio, a very high capacity utilization. The base
4 load contract with Customer X allows us to run. That
5 customer also happens to be very stable and very
6 reliable in terms of quarter in/quarter out volume,
7 and it allows us to maintain sustainable operations
8 with a large part of our operation.

9 I will also say, and I have to be careful
10 and cautious here, but a significant part of this
11 volume goes overseas. That volume was negotiated at
12 prices that did have the ability -- in fact, there are
13 other mechanisms in the contract that allow us to
14 recover value and price over the life of the contract.

15 So this volume that goes overseas, as a
16 matter of fact, is priced significantly over the
17 volume that's coming in to our shores and landing from
18 France. I mean, I think that speaks for itself.

19 The fact that our base load customer,
20 Customer X, has a very significant piece of volume
21 that goes overseas, that volume is priced very
22 significantly above the product that's landing on our
23 shores and destroying our pricing here in the domestic
24 market.

25 COMMISSIONER OKUN: Okay. And then if you

1 could also help me?

2 I think in your comments with regard to
3 Customer X in your testimony you had talked about the
4 prices of MSSA's subject imports on those
5 negotiations, and again I understand much of it is
6 confidential, but the Respondents have made in their
7 brief --

8 There is a lot that is said about this
9 particular contract, and I wonder if there's anything
10 you can say publicly and then also for purposes of
11 posthearing to give me any greater detail on how you
12 view subject imports impacting this particular
13 contract, this particular customer.

14 Is there anything further you can say
15 publicly in terms of either the timing of the
16 negotiations, where the contract is now versus how
17 it's been during the POI?

18 Is there anything that can be said publicly
19 about that that would help me understand whether
20 subject imports are impacting the pricing of this
21 either now or in the near future?

22 MR. HILK: Yes. I would say that the
23 mechanism of our contract with Customer X allows us to
24 look at the fact that we've been damaged by domestic
25 import prices being so low, so therefore we can

1 recover some value, and we have done so during the
2 POI.

3 Is that the question you were asking me?

4 COMMISSIONER OKUN: Yes. I mean, obviously
5 I guess for posthearing this customer does account as
6 not a very large share of DuPont's business.

7 Respondents have made a number of arguments with
8 respect to why if you just look at that it accounts
9 for whatever is going on with respect to DuPont.

10 Therefore, I'm just trying to get the best
11 understanding I can of whether subject imports have
12 impacted the volume or price for that particular
13 contract during the period of investigation or will in
14 the near future and any further arguments you can make
15 with respect to how we should evaluate it.

16 Mr. Jaffe, you wanted to add something?

17 MR. JAFFE: Yes. If I could add here?
18 Putting it into perspective again, if you look at it,
19 yes, the volume is high now, but why is that volume a
20 high percentage share? Because volume has been lost.
21 Significant volume has been lost to the unfairly
22 traded imports.

23 That makes this customer high, so you're
24 basically put in a situation again -- and Mr. Hilk
25 testified -- when they entered into this particular

1 arrangement it was a totally different environment.
2 You did not have the imports in the market. You did
3 not have the dumped. You had significant volume
4 outside of this particular contract.

5 Lo and behold, it's 2005, 2006, 2007, and
6 all of a sudden that volume has disappeared, that
7 other volume, and the answer is clear. It's because
8 the subject imports have taken it, so all of a sudden
9 this particular Customer X's volume is high, but at
10 that particular point it doesn't place DuPont in
11 danger because they've been able to increase the price
12 there.

13 It certainly is an issue. I will not
14 disagree on that point. But the more important issue
15 is why is it an issue? And the reason why? Because
16 of dumped imports.

17 COMMISSIONER OKUN: Yes, Mr. Hilk?

18 MR. HILK: Thank you, Commissioner. I'd
19 just like to add one more point.

20 I think that we view this as a portfolio
21 decision, a large, base part of the business. It's
22 kind of like a fixed income part of the portfolio as
23 you would look at your own portfolio.

24 COMMISSIONER OKUN: That's not the thing to
25 do right now.

1 MR. HILK: It may be difficult, and actually
2 it may be a very smart decision for us to have a lot
3 in our fixed portfolio.

4 As I look at what the other party has said
5 in the prehearing brief publicly, I guess it's hard
6 for me to try to understand it. So you have DuPont.
7 You have a big portion of your portfolio in fixed
8 income. It has a nice margin, but it's not huge.

9 Therefore, I should be excused from my
10 dumping behavior. You know, I should be allowed to
11 dump into the market. I have trouble with that. I
12 mean, I feel like a fair, level playing field is still
13 required.

14 COMMISSIONER OKUN: My red light has come
15 on. I'll have a chance to follow up on some of those
16 points.

17 Thank you, Madam Chairman.

18 CHAIRMAN ARANOFF: Commissioner Lane?

19 COMMISSIONER LANE: Good morning. Thank you
20 all for coming. I want to talk to you about your
21 long-term contracts. Dr. Kaplan, maybe I should start
22 with you.

23 I know we have a lot of information in our
24 report about the long-term contracts. Could you
25 provide either now or posthearing what percentage of

1 your sales long-term contracts expire within the next
2 two to three years?

3 MR. KAPLAN: I'd be happy to provide that in
4 the posthearing brief because it does concern some
5 confidential business information.

6 COMMISSIONER LANE: Right. I understand
7 that.

8 What I'm really trying to get to is if long-
9 term contracts are so important and you tie in your
10 customers to long-term contracts, exactly what
11 percentage of your business is going to be subject to
12 competition from the subject imports over the next two
13 to three years?

14 MR. KAPLAN: It's a significant share, as
15 you can see from B through E how these contracts are
16 renegotiated over two or three years.

17 We'll go through the list of who we have
18 contracts with. We'll look at the confidential
19 information and look to see who MSSA has contracts
20 with and try to give you a timeline of expiration.

21 COMMISSIONER LANE: Along with what
22 percentage you would expect of your production to be
23 tied to those contracts.

24 MR. KAPLAN: Yes, Commissioner.

25 COMMISSIONER LANE: Okay. Thank you.

1 Now, are your long-term contracts tied to
2 specific cells?

3 MR. WALLDEN: Rich Wallden. The production
4 of the cell, of the shop, is in aggregate.

5 We don't say that a particular cell is
6 making product for a particular customer, but in
7 entirety you look at the overall volume that you're
8 producing and the volume coming out of your combined
9 cells and you allocate the production to fill the
10 orders requested by the different customers.

11 COMMISSIONER LANE: I'm trying to understand
12 what one of you said in your testimony; that you don't
13 even start planning for these cells until you have a
14 customer to take the output.

15 MR. WALLDEN: Okay. Thank you for the
16 clarification there, Commissioner. Rich Wallden.

17 COMMISSIONER LANE: Yes.

18 MR. WALLDEN: The direction there is
19 primarily focused on new customers, new growth in the
20 marketplace.

21 The customers that we have, as Mr. Hilk has
22 mentioned, many of them have some stable demand
23 profiles and so we know, based on their forecast and
24 input to us, what their demand is going to be.

25 Just because a new contract is signed with

1 projected increase in demand would mean I would not
2 start that production until we had better visibility
3 of the exact timing in the demand profile.

4 COMMISSIONER LANE: Okay. Thank you.

5 Dr. Kaplan, going back to the information
6 that I wanted, would you please supply in your
7 posthearing brief a list of all the companies with
8 which you have had discussions regarding future
9 supply, the amount they require and the price per
10 pound, price bids and discussions that have been
11 presented in 2008 to possible purchasers of sodium
12 metal so then that will allow me to see what is open
13 for negotiation and then what sort of prices you've
14 been talking to your customers about?

15 MR. KAPLAN: Seth Kaplan. We'd be happy to
16 provide that information.

17 COMMISSIONER LANE: Okay. Thank you.

18 Now, I understand that electricity is a
19 significant cost in the production of sodium metal.
20 Could you tell us on the record, or posthearing if you
21 prefer, the average or typical number of kilowatt
22 hours required to produce a pound of sodium metal?

23 If there is a significant difference
24 depending on production cells, could you give us some
25 sort of range in the kilowatt hours?

1 MR. HILK: Ken Hilk. Sorry. We can do that
2 in the posthearing brief.

3 COMMISSIONER LANE: Okay. And can you tell
4 us who your electricity provider is, and is your
5 electricity supplied under a special contract, or are
6 you using tariffs that are regulated by a state
7 commission?

8 MR. HILK: We can say that our electricity
9 is supplied under a very long-term contract. We've
10 been in the contract for decades. We can say that
11 today publicly.

12 COMMISSIONER LANE: Okay. And is that
13 contract renegotiated periodically?

14 MR. HILK: Yes, it is on a periodic basis.
15 We can give you that information in the posthearing
16 brief.

17 COMMISSIONER LANE: Okay. Thank you.

18 And will you also be able to provide
19 posthearing I imagine your annual electricity load
20 factor for the years of the investigation, 2005
21 through 2007?

22 MR. JAFFE: This is Matthew Jaffe. We'll
23 certainly provide that in a posthearing brief.

24 I just want to apologize to the
25 Commissioner. We are facing an anti-subsidy petition

1 complaint in the European Union brought by MSSA, so we
2 are somewhat reticent in responding to this in a
3 public session.

4 COMMISSIONER LANE: Okay. Thank you.

5 How do you respond to the Respondent's
6 argument that the decline in U.S. commercial shipments
7 during the PLI are attributable to plant closures and
8 declining sales, which had nothing to do with subject
9 imports?

10 MR. KAPLAN: Commissioner, this is Seth
11 Kaplan. I had spoken in my direct testimony about the
12 long-term secular decline in the industry.

13 The Respondents have talked about all new
14 types of end uses and increasing demand. And in my
15 discussions with DuPont, they all hope that will
16 occur, but they see no visibility for it in the next
17 three to five years.

18 So what you're faced with is a condition of
19 a competition of declining demand. A closer, for
20 example like Sengenta, with no replacement. At the
21 same time, that makes all the remaining customers
22 extremely important, given the long-term contracts and
23 the limited nature of demand.

24 So as a condition of competition, DuPont has
25 been put under great stress by the low-priced dumped

1 imports that are taking market share.

2 MR. HILK: Commissioner, I'd like to also
3 add to that -- this is Ken Hilk. During the PLI, with
4 the exception of customer X, all the contracts became
5 available for negotiation and renegotiation. So I
6 kind of refer to that as the addressable market in the
7 industry.

8 If you looked at the volume, one customer,
9 Sengenta, did shut down their plant. That could have
10 just as easily been another customer, or several
11 customers. That has happened from time to time in
12 this industry. We expected it to happen.

13 So as we looked at the addressable market,
14 the fact that one shut down I think has no relevance
15 to the fact that unfairly priced imports then entered
16 the market and severely depressed and suppressed
17 prices.

18 COMMISSIONER LANE: Okay, thank you. Madame
19 Chairman, I'll wait until my next round.

20 CHAIRMAN ARANOFF: Commissioner Williamson.

21 COMMISSIONER WILLIAMSON: Thank you, Madame
22 Chairman. And I do want to thank the witnesses for
23 their testimony today.

24 I just want to clear up a couple of things
25 that have come up. I think Commissioner Pearson had

1 earlier asked about the purchaser's dissatisfaction
2 with your product. And I'm not sure who it was that
3 mentioned that they were, some of them were maybe
4 requesting tighter specs.

5 And I was just wondering, is there any
6 reason why some customers would have suddenly
7 increased their specification requirements?

8 MR. MERRILL: Brian Merrill. I would say
9 it's not uncommon for customers to adopt a
10 specification of a current supplier, okay. So when a
11 customer begins purchasing from a different supplier,
12 they often adopt that specification within their
13 procedures. And so subsequently, if someone goes,
14 like DuPont, back in to bid for business that they
15 once lost, oftentimes they're presented with a
16 different specification than when we supplied
17 originally.

18 COMMISSIONER WILLIAMSON: Mr. Kaplan?

19 MR. KAPLAN: Yes. I want to point out the
20 importance of this in a commercial realm, though. And
21 I refer you to the staff report at 227, and the first
22 sentence. And I think this really puts in context the
23 quality issue. Because if quality is that important,
24 and you've experienced it in your own purchases as
25 well, you pay for it.

1 And what it says is only five of 33
2 responding purchasers reported that they would be
3 willing to pay a higher price for a higher grade of
4 sodium metal.

5 So if quality is that important, you're
6 willing to pony up. I know in my personal life, I
7 have, and I think people think about that when they're
8 making decisions. And I think if you're a purchaser
9 in this market with this introduction of dump imports,
10 you know, it's wonderful. Not only do I want a lower
11 price, but why don't you upgrade me to this other
12 product for free? And by the way, lower the price
13 again next year and make that a three-year contract
14 where the prices can't rise.

15 So it's wonderful to be a purchaser. Sure,
16 quality matters if it's free. But it's obviously not
17 that important, because no one is willing to pay for
18 it.

19 So I think the point is if you're getting a
20 different spec from somebody else next time you go in
21 the market, sure, it didn't cost anything for me; I'll
22 take that spec. What if we could give you the other
23 product at the lower price? Oh, I'll take the other
24 product; quality is not so important any more. And
25 we've seen that, as well, and we'll bring you

1 instances of that in the post-conference brief, where
2 parties that have shown concern for quality are
3 suddenly less concerned when a lower price is
4 available.

5 COMMISSIONER WILLIAMSON: Thank you, but I
6 guess it gets back to the original question, though.
7 If DuPont is a rebid with DuPont, we already had the
8 customers. They'd come back in on the next go-around
9 and say, I guess, we wanted it higher quality.

10 Larry Fetzer.

11 MR. FETZER: Yes, Commissioner. We have had
12 experience with customers who come to us with a
13 specific problem. In one particular case, it was the
14 reason we developed our product grade called ny-pure.

15 In this particular case, the customer came
16 to us and said they had a very, very small feed nozzle
17 in their process, and that periodically particles
18 would plug that up. They asked us to go through and
19 improve our product.

20 By virtue of the fact that we had a long-
21 term contract with this customer, we can developing an
22 alternative or a secondary filtration process which
23 removes those particles from the sodium, and
24 effectively it eliminated the plugging process that
25 they had.

1 Now, this removed some particles that may
2 have been in the system, and to some degree removed
3 calcium to a minor degree. But in the end, as far as
4 their product quality of what they were producing, it
5 didn't impact that, per se.

6 COMMISSIONER WILLIAMSON: Okay. Okay, thank
7 you.

8 Mr. Merrill, you mentioned, I think, again
9 with this question about competition, you talked about
10 a customer requalifying.

11 Now, does a customer requalify, or do they
12 requalify DuPont?

13 MR. MERRILL: This particular customer that
14 we recently shipped the material to asked us for some
15 material so that they could requalify the materials
16 for their use. We found it a little unusual, in that
17 we supplied this customer for again 10 years with
18 product, 100 percent of their supply.

19 But again, since volume is key here, you
20 know, we'll do what the customers request. And given
21 the opportunity to ship them additional product,
22 regain a position, we'll comply with it.

23 COMMISSIONER WILLIAMSON: Okay. So you're
24 not sure whether or not that was just an excuse they
25 were using to get out.

1 MR. MERRILL: No, at this point we don't
2 know. It's ironic that it's during this period of
3 investigation and throughout this hearing, yes.

4 COMMISSIONER WILLIAMSON: Thank you. Mr.
5 Fetzer, you were talking about, again on the quality
6 issue, the fact that a problem may come from a
7 downstream product coming back into the system. And I
8 didn't quite understand how that would occur.

9 MR. FETZER: In a particular case that I had
10 in mind, we had a customer that downstream, they would
11 react sodium with ammonia, and produce a product
12 called sodamed. What they did find over time is that
13 the vapor space of their reactor did bleed back into
14 the vapor space of the sodium storage tank. So they
15 were actually forming sodamed in the storage tank
16 itself. And sodamed is a very high-melting material;
17 I believe it melts at about 285 degrees Centigrade.
18 So it tended to build up in the storage tank, as well.

19 And when they did go to explore, maybe why
20 they had some problems removing sodium from the tank,
21 they did find that there was quite a heavy ammonia
22 smell in the tank. So it was contamination of some of
23 their downstream material back into the storage tank
24 which caused them a problem.

25 COMMISSIONER WILLIAMSON: So was the

1 solution to prevent that flowback?

2 MR. FETZER: Actually, they modified some of
3 their piping so that it didn't come back into the
4 system there. And that eliminated most of the
5 problem, but not all of the problem.

6 COMMISSIONER WILLIAMSON: Okay, thank you
7 for that clarification.

8 Mr. Hill, the customer X, can you, either
9 now or in post-hearing, discuss the future demand for
10 their product? In other words, you're making a
11 product that's an input into their product, and I was
12 just wondering about the future demand for that
13 product.

14 MR. HILK: Again, it's hard, because it's a
15 public hearing.

16 COMMISSIONER WILLIAMSON: Well, post-hearing
17 would be fine.

18 MR. HILK: We can provide, I think, some
19 real detailed information about what we think their
20 forecast or their demand is going to be.

21 I will say that their downstream
22 applications are subject to not in-kind competition,
23 have been for a number of years. So that does play
24 into their ability to sustain their own business. So
25 that will be a factor that we'll address in specific

1 detailed terms in the post-hearing brief.

2 COMMISSIONER WILLIAMSON: And the last time
3 you were competing -- thank you for that -- that long-
4 term contract, I think you said MSSA was also
5 competing for it. And I guess maybe in post-hearing
6 you can sort of say why you went out.

7 MR. HILK: Why, what was the question?

8 COMMISSIONER WILLIAMSON: Why did DuPont win
9 the contract?

10 MR. HILK: Oh, why did DuPont -- well, I
11 would actually like to comment on a couple things.

12 I believe the customer determined overall
13 that DuPont had a superior value proposition, and that
14 would, that would be obvious.

15 But I think one comment I would make is that
16 we had to install infrastructure logistics over a
17 couple years in order to supply this customer with all
18 the parts they needed in all the global locations they
19 needed. And they had a lot of confidence that DuPont
20 could do that, and we weren't able to do that, and
21 have supplied all their needs over the entire
22 contract.

23 COMMISSIONER WILLIAMSON: Okay, thank you.
24 Thank you for those answers.

25 MR. HILK: I think we would like to expand

1 on that in the post-hearing brief. There are some
2 other things that we would mention, as well, to that
3 answer.

4 CHAIRMAN ARANOFF: Commissioner Pinkert.

5 COMMISSIONER PINKERT: Thank you. And I'd
6 like to join my colleagues in thanking you for coming
7 to testify here today.

8 I want to begin with a question for Dr.
9 Kaplan. You said in your testimony that you had
10 considered the European petition in the context of
11 determining or in analyzing impacts of the imports on
12 the domestic industry here in the United States.

13 And I'm wondering, how much weight did you
14 place on the assertions made in that European
15 petition?

16 MR. KAPLAN: The references I was referring
17 to were exclusively to the conditions of competition
18 regarding the need for long-term contracts, regarding
19 the agreement that it's a high fixed-cost industry.
20 Those were the points I was agreeing on.

21 And then from, from those conditions of
22 competition, I used my own judgment and my own
23 analysis in discussing how imports affect the market.

24 So once again, it was limited solely to the
25 conditions of how the product is sold, and how it's

1 produced, not any extension to the effects that were
2 mentioned in that petition at all.

3 COMMISSIONER PINKERT: Then just limiting
4 the question to the specific items that you did rely
5 on in terms of how the product is sold and so forth,
6 did you just accept the allegations in the petition as
7 a given? Or did you examine the allegations
8 critically?

9 MR. KAPLAN: Well, what I did originally was
10 discuss these conditions with DuPont, and then looked
11 at actually how the market functioned. And then I,
12 when I saw the petition, it just confirmed what I knew
13 about how the market worked in the United States.

14 They have the same production process. That
15 tells me about the inputs that are needed for it. So
16 it reconfirmed how the business using this production
17 process worked, and with respect to needing to keep
18 the cells running or they destroy the need for a lot
19 of energy. The fact that the number of customers is
20 typically not enormous for these end users. Things
21 like that that were general conditions in the
22 marketplace.

23 COMMISSIONER PINKERT: Thank you. And
24 turning to Mr. Jaffe. How much weight should we put
25 on the allegations made in a European anti-dumping

1 petition?

2 MR. JAFFE: Again, it depends on which
3 allegations you're talking about. If you're talking
4 about the conditions of competition, as Dr. Kaplan has
5 stated, we looked at it. We examined what DuPont told
6 us, and we then compared it exactly to what they said.

7 So in that, I would give it a lot of weight.
8 Because it's basically the two major producers
9 basically confirming that the same competitions exist
10 in this particular industry.

11 Now, with respect to, of course, the anti-
12 dumping allegations or the anti-dumping subsidy
13 allegations, I would give no weight whatsoever to
14 them. We are not dumping in Europe, and we are not a
15 subsidized company here in the United States, a
16 countervailable subsidy.

17 COMMISSIONER PINKERT: Well, going back to
18 your opening statement, Mr. Jaffe, you talked about
19 how product quality issues were not mentioned, or they
20 were downplayed in the European petition. I think
21 they're mentioned twice, and once in the context of
22 China, according to your testimony.

23 How much weight should we put on that?

24 MR. JAFFE: Well, the conclusion that they
25 would like you to reach in this case is that we have

1 an inferior product, okay. So that's why they have a
2 superior -- so therefore, everybody's buying their
3 product, because it's superior.

4 Well, it then works the other way around.
5 If we have an inferior product being shipped to
6 Europe, why, then, is price key, if they have a
7 superior product? So I would say in that thing,
8 again, it's really a condition of competition here.
9 What is the number-one condition of competition, long-
10 term contracts, look at that long-term contract's high
11 volume, what decides, in the long-term contract, its
12 price, not quality.

13 COMMISSIONER PINKERT: Could you think of an
14 instance where the Commission has based a factual
15 finding, at least in part, on an allegation in a
16 foreign petition?

17 MR. JAFFE: I would ask you to, if you
18 could, clarify exactly what allegation you are talking
19 about. Again, is it a condition of competition, or
20 the price allegation?

21 COMMISSIONER PINKERT: Well, my question,
22 the preface of my question had to do with your
23 statement in your testimony that product quality
24 issues were downplayed in the petition.

25 Would the Commission be acting in accordance

1 with its general practice, or any precedent that you
2 can think of, in paying attention or putting weight on
3 that?

4 MR. JAFFE: The Commission, as you know,
5 examines witnesses and decides credibility, questions
6 of credibility. So I would ask you in this particular
7 instance to weigh, take that particular petition; look
8 at it, the European petition; give it weight with when
9 you look at the statements that are made here, in
10 order to judge the credibility of statements that are
11 made here that contradict, or are contradictory to,
12 statements that have been made by Metaux in its
13 European petition.

14 COMMISSIONER PINKERT: Thank you. Mr.
15 Kaplan, or Dr. Kaplan, did you have something to add?

16 MR. KAPLAN: I think on the purchasers'
17 side, in the views of the purchasers, you have
18 information on their actions with regard to contracts
19 and prices, and also from the questionnaire responses
20 that in some ways speak louder than an opinion about
21 what they think about.

22 And you know, economists always want more
23 data. And there's a phrase in Washington that goes
24 back a ways about following the money. And I suggest
25 you do that first, and see if it's consistent with the

1 statements that are made.

2 I am confining my analysis to purchasers and
3 dynamics in the U.S. market. Once again, only looking
4 at that much more on the production side, to confirm
5 that the same constraints on the market are placed by
6 the fact you have a down-sell, long-term contract,
7 isis costs, lots of energy. And then we could see
8 certain effects on market behavior flowing from that.

9 So it's not about the dynamics in Europe,
10 it's not about customer preferences in Europe for me.
11 That, we have the information on the record. But I
12 think that issues about it has to be long-term
13 contracts, it does cost a lot. The down-sell
14 processes like this are kind of predicates to begin
15 the economic analysis. And that everyone agrees on,
16 worldwide.

17 COMMISSIONER PINKERT: Thank you. Now,
18 turning to the DuPont witnesses, I note that there has
19 been an argument from Farrow that it informed DuPont
20 on numerous occasions of certain quality problems that
21 were allegedly causing a sludge buildup.

22 Do you confirm that those, that those
23 occasions occurred?

24 MR. MERRILL: Brian Merrill. Absolutely. I
25 visited the, Farrow's plant in Zachary, Louisiana,

1 probably five times over the last probably seven
2 years. So I was very familiar with assisting them in
3 discussion of redesign of their unloading system, in
4 order to prevent some of the problems that had
5 occurred in buildup within their tanks.

6 We examined together ways to clean those
7 tanks, ways to remove them and put in a new unloading
8 and transfer system of the sodium to their process.
9 We offered support, financial support, to help them
10 proceed in that manner.

11 We proceeded, we initially proceeded with
12 some of that effort. That was suspended, and Farrow
13 elected to, you know, source through MSSA.

14 COMMISSIONER PINKERT: Is it possible
15 perhaps in the post-hearing that you might be able to
16 provide us with some documentation, internal company
17 documentation about the exchanges of information and
18 assistance between your company and Farrow concerning
19 this issue?

20 MR. MERRILL: We can, we can provide
21 additional information. I will say that we researched
22 strongly the actual documents, you know, during this
23 whole investigation. So I think it's unlikely that
24 we'll have any additional supporting written
25 documents. But we can expound on the documents we've

1 provided to this point.

2 COMMISSIONER PINKERT: Thank you. Thank
3 you, Madame Chairman.

4 MR. HILK: Commissioner Pinkert, could I
5 just add one comment?

6 COMMISSIONER PINKERT: Yes.

7 MR. HILK: You know, my perception in having
8 been involved over the years, since the mid-eighties,
9 was that Farrow bought sodium from DuPont for a long,
10 long time; from the early nineties, or maybe the late
11 eighties. And a salesman even preceding Brian.

12 And it was only after those very many years
13 that problems cropped up with tanks. And again, since
14 tanks are now cleaned, it will be probably again many,
15 many years before another problem would crop up again.

16 COMMISSIONER PINKERT: Thank you. Thank
17 you, Madame Chairman.

18 CHAIRMAN ARANOFF: I just want to pick up
19 where Commissioner Pinkert left off, and say one of
20 the past cases that comes to mind when I look at the
21 facts of this case is metal calendar slides from a
22 couple years ago, where there was a single domestic
23 producer, there was a single subject producer. There
24 were no known non-subject imports in that case.

25 There, as here, the domestic industry

1 claimed it was losing sales to lower-priced imports.
2 But the Commission found that the record supported the
3 claim of the principal purchaser that it had switched
4 suppliers because it was desperate for a better-
5 quality product and for better service. And they only
6 found out later that that came at a lower price, too.

7 In that case, the Commission placed a lot of
8 weight on contemporaneous communications between the
9 supplier and the customer concerning the quality
10 problems, the asserted quality problems, and the
11 efforts to resolve them. Because there really was a
12 credibility issue between the two sides, about was it
13 about price, or was it about quality.

14 And it was, you know, contemporaneous
15 documents, emails and letters that were exchanged
16 between the parties, that really I think had a very
17 strong influence on how the Commission resolved that
18 case.

19 So I know you've just said you searched your
20 records with respect to that particular customer,
21 Farrow, that Commissioner Pinkert asked about. But to
22 the extent that you are able to provide us with
23 contemporaneous documentation with respect to each of
24 these major customers regarding what was going on in
25 that relationship on quality issues, prior to when

1 they may have switched suppliers, that's going to be
2 extremely helpful to us.

3 MR. JAFFE: This is Matthew Jaffe.
4 Certainly we'll provide more detail in our post-
5 conference brief.

6 However, I would like to underscore what Mr.
7 Fetzer and Mr. Wallden had indicated; that this is the
8 nature of this particular product, okay. It is sodium
9 metal. It has the specs -- no matter what your specs
10 are going to be, the final product is the same, no
11 matter what the specs are.

12 The critical thing here is that because of
13 the product, over years there is going to be this
14 buildup of this heel, or sludge. And it doesn't
15 matter which product.

16 And in some circumstances, depending on the
17 systems of the customers, it could be 10 years or
18 less. In other customers, they haven't experienced
19 any of this problem.

20 CHAIRMAN ARANOFF: Okay. Well, I take your
21 point there. Although let me just say, let's say
22 you're right, and there's actually no difference
23 between the French product and DuPont's product; over
24 time, they perform exactly the same.

25 But if MSSA has done a really terrific

1 marketing job and persuaded people that its product is
2 better, even if it isn't; and people have switched,
3 and are now saying they're happy, and you say well,
4 that's because they haven't waited around long enough
5 to see that really nothing has changed. Maybe you're
6 right, but right now they think they have a better
7 product. Isn't that still a non-price reason for them
8 to have switched suppliers? Dr. Kaplan?

9 MR. KAPLAN: You know, I go back to that
10 statement in the staff report, where only five of 33
11 customers said they'd be willing to pay more for
12 quality. And I look at a 50-percent dumping margin.
13 And the customers that say I love it, but not so much
14 to pay for it.

15 And I say if the price is, if the dumping
16 margin was put in place, that the market prices would
17 rise for everybody here. And that there might be some
18 switch. And if people didn't want to switch, at least
19 the whole market price would rise in the market, and
20 that the available product would now be at a fair
21 price, rather than a dump price.

22 But once again, only five of 33 said they're
23 willing to pay for it. A non-price reason is a reason
24 that kind of offsets price differentials. Here, if
25 that were the case, you'd expect to see at head-to-

1 head competition a higher price for the supposedly
2 higher-quality product. And people walking in and
3 saying no, I'm sorry, I can't raise my price, uh,
4 lower my price as MSSA, because our stuff is so good.

5 Look at Exhibits B, C, D, and E at 234 and
6 five, and you can see that evidence regarding this
7 distinction I'm drawing is, is there. It's
8 inconsistent with that argument.

9 CHAIRMAN ARANOFF: Well, maybe they were, I
10 don't remember, maybe they were one of the few that
11 said they would pay more. But in their brief, Farrow
12 asserts that it was forced to try subject imports,
13 because DuPont was unable to make certain deliveries.
14 And that once it switched, it found the subject
15 imports to be superior in quality. And it states that
16 Farrow ended up paying more for subject imports than
17 the domestic product.

18 Based on those assertions, would you still
19 argue that Farrow switched to subject imports because
20 of price? Or would you agree that maybe in that case
21 it was non-price reasons that principally led to the
22 switch?

23 MR. KAPLAN: Well, I'm going to refer you to
24 5 to look at prices and where they wound up. But
25 also, with respect to the delivery, Richard is going

1 to discuss that.

2 MR. WALLDEN: Rich Wallden. I would like to
3 make some detailed comments around that period of
4 time, which I believe the period of time you're
5 referencing is December of 2006 through April of 2007,
6 where Farrow has alleged that DuPont was unable to
7 make some deliveries.

8 In my role as supply chain manager, that
9 never happened. We were able to make deliveries.

10 The interesting part is that in their brief,
11 they mention they had a problem, an overflow of their
12 tank, significant down time in March. DuPont wasn't
13 supplying material in March. DuPont's last shipment
14 to this customer was in December of 2006, and did not
15 resume again until April of 2007, when they returned
16 to buying some material from DuPont.

17 During this time period we had numerous
18 interactions with our customer service and this
19 customer, saying I'll take an order, but I have to
20 delay it because our plant is having extensive
21 problems. We had orders that were delayed three,
22 four, five times. Sometimes two days after an order
23 was placed, Farrow called back and said I need it
24 delayed a month.

25 After that, we found out they were actually

1 purchasing material from MSSA, even though we had a
2 100-percent supply contract and we were able to
3 supply.

4 The brief even mentions that DuPont didn't
5 have tank trailers in service at this time. DuPont
6 was not supplying this customer in tank trailers at
7 this time. It had been well over a year since we
8 supplied them in tank trailers. We were supplying
9 them in iso-containers. We had dedicated three
10 specialized trailers to transport the isos for this
11 customer.

12 So I am at a loss to understand the
13 information that's alleged in this brief, that's not
14 consistent with any of the information. And I
15 researched all of the orders, from August of 2006
16 through our resumption of supply of April of 2007.
17 Significant inconsistencies.

18 CHAIRMAN ARANOFF: That's actually very
19 helpful. I find that most helpful. If you could do a
20 timeline for me for the post-hearing that puts all
21 that information down, I think that would be, you know
22 -- and any documentation you have to support it, that
23 would be very, very helpful. And I think it will go a
24 long way toward the kind of, the kind of documentation
25 that I'm looking for.

1 MR. WALLDEN: I will be able to supply that
2 information for you.

3 CHAIRMAN ARANOFF: Thank you very much. Let
4 me go back to the issue of long-term contracts.

5 Commissioner Okun was mentioning that in
6 cases where the market is largely involved, a few
7 large customers with long-term contracts, we usually
8 end up in our final staff report with a table that
9 goes on for pages and pages that sort of shows each
10 contract, when it was up for bid, what the initial
11 bids were, who got what share of the ultimate award in
12 a requirements contract, and at what price.

13 Our staff has been trying to put together
14 something that looks like that in this case, and I
15 hope we'll be able to in the final staff report, but
16 there are a lot of holes in the information that we
17 have right now.

18 So if I could just check, do we have all of
19 DuPont's contract, terms for contracts that were
20 entered into during the period on the record? As far
21 as you know?

22 MR. JAFFE: Matthew Jaffe. To the best of
23 my knowledge, you have all the terms of the contracts.
24 What we can do is, of course, communicate with staff.
25 Perhaps they can identify for us the holes, and we'll

1 try our best to see if we can fill it in for them.

2 CHAIRMAN ARANOFF: Okay. And I don't have
3 it in front of me right now, so I don't know the
4 extent to which the holes are here, or with respect to
5 the other panel. I'll ask them the same question this
6 afternoon.

7 But my hope is that, you know, before we
8 vote in this case, we'll actually be able to look
9 contract by contract and see what the competition was.
10 I'll come back to this in my next round.

11 Vice Chairman Pearson.

12 VICE CHAIRMAN PEARSON: Thank you, Madame
13 Chairman. I'm not sure whether this question has been
14 asked yet.

15 Is there any competition between DuPont and
16 MSSA to serve the customer that we've been referring
17 to as customer X?

18 MR. HILK: Ken Hilk. Mr. Chairman, we, I
19 think we said earlier that when we arrived at the
20 contract several years ago, we faced very stiff
21 competition from MSSA on pricing for both the
22 component that was outside the United States and the
23 customer represented to us that the competitor could
24 also supply into the United States.

25 VICE CHAIRMAN PEARSON: Excuse me,

1 clarification. This would have been at a time prior
2 to our prior of investigation?

3 MR. HILK: Yes.

4 VICE CHAIRMAN PEARSON: Thank you.

5 MR. HILK: Since the PLI, it would not have
6 been an addressable contract.

7 I would like to clarify something we talked
8 about earlier, though, on Sengenta. Because during
9 the POI, or at least right around the start of the
10 POI, we had significant price pressure even at that
11 account. Even though we were pretty much aware that
12 that account was going to go away, they were going to
13 eventually shut down, they were still coming back to
14 us saying well, MSSA has presented us price offers,
15 and we want a lower price. So we faced, you know,
16 stiff competition, price competition with that
17 account, as well.

18 VICE CHAIRMAN PEARSON: Okay. Would DuPont
19 be adequately profitable if all contracts had pricing
20 that was equal to the pricing in the contract to
21 customer X? You can define what's adequately
22 profitable; I'm just throwing the term out there for
23 your consideration.

24 MR. HILK: Yes. I think we would have to
25 answer that in the post-conference brief. I mean, I

1 talked about how our portfolio approach would involve.

2 VICE CHAIRMAN PEARSON: Then answer it at
3 your current volume. And answer it in the context if
4 you picked up volume that you've lost to MSSA and it
5 was priced at the contract price for customer X, would
6 DuPont be adequately profitable?

7 MR. HILK: If I could just add to -- we'll
8 certainly address that again in the post-hearing
9 brief. I just would add, however, that one of the
10 components in a long-term contract negotiation that
11 affects price is obviously volume.

12 So I don't know if you can do this type of
13 comparison without taking into the effect of how
14 volume actually affects price.

15 VICE CHAIRMAN PEARSON: Of course. That's
16 why I encourage you to go ahead and answer the
17 question both in the context of current volume, and
18 then answer it for if you had the volume of all, all
19 customers that you could reasonably supply, if you
20 could take a higher number. Dr. Kaplan.

21 MR. KAPLAN: Yes. If you're interested, I'd
22 also be happy to provide the profitability of DuPont
23 if they retained their volumes of customers they had
24 lost at their existing prices before the surge of
25 dumped imports, and show you what the profit for

1 DuPont would be there, if that would be of interest to
2 you.

3 VICE CHAIRMAN PEARSON: Okay, that
4 perspective also might be helpful. Thanks.

5 Given the contract with customer X, how high
6 would the other contract have to be priced in order to
7 make DuPont adequately profitable? Same issue,
8 another perspective on it. If we accept as given the
9 contract with customer X, then what would need to be
10 accomplished in the marketplace with the other
11 customers in order to bring about adequate
12 profitability?

13 MR. JAFFE: Matthew Jaffe. We'll of course
14 stress that at the post-hearing brief. But I would
15 also note Mr. Hilk's testimony indicating that, of
16 course, when that particular contract was entered
17 into, the prices that were in effect with regard to
18 all these other customers that they serviced at that
19 particular time in which they entered into that
20 contract, DuPont was profitable.

21 VICE CHAIRMAN PEARSON: Another question.
22 We have this, we've been having a discussion about
23 quarterly pricing versus the contract pricing.

24 And the question is, is it mathematically
25 possible from a quarterly pricing perspective to show

1 consistent over-selling if, at the time the contracts
2 were negotiated, the MSSA price was consistently below
3 DuPont's price. I'm not sure whether that's clear.

4 MR. JAFFE: Yeah, it is. If the set of
5 contracts being negotiated is a subset of all of the
6 contracts, it's certainly mathematically possible.

7 VICE CHAIRMAN PEARSON: Okay. No doubt
8 you'll provide me those --

9 MR. JAFFE: Yes, sir. I've got a
10 chalkboard, I'm ready to go.

11 VICE CHAIRMAN PEARSON: Since the filing of
12 the petition or the imposition of the preliminary
13 duties, whichever you prefer, has DuPont been
14 contacted by any previous customers seeking sodium?

15 MR. JAFFE: Just about all of the former
16 customers have contacted us. We've had either phone
17 conversations or, in fact, face-to-face meetings with
18 many of these customers. And I'll say they've
19 expressed concern over their future supply, to the
20 point where they wanted to discuss with DuPont one,
21 the availability of material in the future; and two,
22 the price of material in the future.

23 VICE CHAIRMAN PEARSON: Counsel for the
24 Respondent indicated earlier that some Respondent
25 customers have been, some customers on Respondent's

1 panel have been wiling to pay 62 percent higher in
2 order to still obtain the products of MSSA.

3 Do you have any comment on that? Is that
4 the correct way to see what's happening in the
5 marketplace now?

6 MR. HILK: Ken HilK. I think that was the
7 primary motivation of almost every customer, including
8 almost all the customers that are in the room today,
9 called us because they understood that this margin was
10 likely to go through, could go through, and wanted to
11 talk to us about what our pricing would be. And what
12 our ability to supply volumes and that.

13 This quality issue came up, and we talked
14 about the tighter specs that we could meet, and the
15 likely pricing that we would want to obtain.

16 So I take definite exception to the
17 statement that was made by counsel, that these
18 customers are happily going to pay the 62-percent
19 margin well out into the future.

20 VICE CHAIRMAN PEARSON: Mr. Jaffe?

21 MR. JAFFE: Again, we don't know exactly
22 which importers he's talking about. I believe one of
23 them may have been mentioned in one of the briefs.
24 But I would also -- and unfortunately, this gets a
25 little bit into the anti-dumping side -- I would

1 suspect that in this particular case, they're looking
2 for maybe importer-specific margins, margins that they
3 can control, should they decide to continue to import
4 from Metaux. But I don't think that's actually
5 related.

6 Again, it may be something that they're
7 doing just for the sake so they could stand up here at
8 the hearing today and make that particular statement,
9 recognizing of course that they've already contacted
10 DuPont and said something that they're willing to look
11 at DuPont as their source of supply.

12 VICE CHAIRMAN PEARSON: Okay. Well, I did
13 want to give you a chance to address it, because I
14 assumed that we may learn more about it from
15 Respondents this afternoon.

16 MR. MERRILL: Sir, one customer in
17 particular that was being supplied half of their
18 requirement by DuPont and half by MSSA, which I
19 mentioned earlier was a bit unusual, they have just
20 recently agreed to a 100-percent supply agreement by
21 DuPont. And so they certainly have chosen not to
22 continue to source offshore.

23 VICE CHAIRMAN PEARSON: Okay. Well, thank
24 you. My light is changing, so Madame Chairman, back
25 to you.

1 CHAIRMAN ARANOFF: Commission Okun.

2 COMMISSIONER OKUN: Thank you. Let me just
3 follow up on Vice Chairman Pearson's last questions.

4 In terms of during this hearing we talked
5 about customers or former customers that have
6 contacted you. Would those become customers who would
7 be under a contract that they could get out, because
8 this would be considered a hardship? Or some other
9 clause where you would be able to pick up the
10 business?

11 MR. MERRILL: Brian Merrill. We suspect
12 customers aren't freely open to share with us, you
13 know, what their contractual arrangements are.
14 Currently, in most cases, we don't know the length of
15 time, or those, in most cases, we don't know if
16 there's a hardship clause. But we understand their
17 desire to at least discuss with us the, you know, the
18 possibility of DuPont supplying, should whatever
19 particular contractual arrangements that they have
20 allow them to do that or permit them to do that in the
21 future.

22 COMMISSIONER OKUN: Okay. And then
23 actually, as you described that, it reminds me that I
24 think -- I'm sitting back and trying to understand a
25 little bit better, in these contract negotiations, how

1 much you are aware of in terms of the other length of
2 contracts that might be in place, and the prices at
3 which they may have, they may already be set, or how
4 long that is in the future.

5 I mean, how much do you know of that when
6 you --

7 MR. MERRILL: Well, I'll say Dr. Kaplan has
8 a lot more information on the pricing than we do.
9 We're sitting here without, without that knowledge.
10 And as I expressed, we don't often know the
11 contractual arrangements, the length of agreement.

12 In some cases customers will indicate that
13 they have a contract expiring at a certain time
14 period, and they begin discussions with us prior to
15 that. But in these particular cases right now,
16 there's not a lot of information we have, no.

17 COMMISSIONER OKUN: Okay. Maybe, Dr.
18 Kaplan, maybe I'll ask you, you know, again, is this
19 attempt to collect additional information on the
20 contracts or the bid data, it's not like a lot of -- I
21 mean, it seems like some of the prior cases we're
22 talking about, where you have a certain time where the
23 contracts come up, and you have subject imports and
24 domestics in the market at the same time offering
25 different prices, a lot more, I guess, transparency

1 perhaps than we see in this industry than what I'm
2 hearing.

3 Does that detract from the argument that we
4 should be looking at something like contract data to
5 determine what is the price competition here?

6 MR. KAPLAN: Well, I think we should start
7 with kind of first principle. And what is the statute
8 trying to get at, which you're certainly a better
9 judge than I on that. And then what, what prices to
10 look at to get to that.

11 And it's my understanding that the idea of
12 this underselling is to try to get a notion of
13 contemporaneous price competition to at least help
14 infer about who is pulling prices down, who is leading
15 prices, who is underselling.

16 And so what the Commission has always
17 struggled with, depending on the contract situation or
18 the spot situation, is how to get, how to ask the
19 questions to get this head-to-head competition.

20 And in here, and in some cases, you know,
21 recent cases we've been involved in, every year at a
22 certain time everybody comes together. In a lot of
23 those cases you have a small number of sellers and a
24 large number of customers.

25 Here we have a small number of sellers and a

1 small number of customers. And so the easiest way to
2 look at it, and the way it is head-to-head, is to go
3 to each of the individual customers to figure out what
4 happened in terms of how their decision was made. And
5 then you could say okay, was it price? What was going
6 on? Okay, there's only six customers or seven
7 customers we've got to look at. Turns out the timing
8 could be different from each of them.

9 So when you get these quarterly prices, it's
10 kind of, it conflates things that happened two, three,
11 and four years ago into something that appears to be
12 contemporaneous. And I think that undermines the
13 whole principle of what underselling, and what that
14 second part of that three-part test that's laid out in
15 the statute is.

16 So I think you almost have to go to the
17 contracts and say, you know, this case is about four
18 or five customers. What happened at each of them?
19 And you could have a contract, you could have a
20 narrative, you have a questionnaire response. But
21 that's what you've kind of got to get to, is how did
22 prices affect the customer's decision. You've got to
23 know when they made that decision to buy. And I think
24 you have to look at the contracts to do that. I don't
25 know of any other way.

1 There was a question asking about how can
2 you use the quarterly data. I have a chart in there,
3 and I think that's just indicative, if you used it.
4 But you know, it's not even a secondary or tertiary,
5 it's just, you know, it's something of interest.

6 The quarterly stuff just doesn't work. It
7 doesn't get at what you need to know, what the statute
8 asks you to do, and how the market works.

9 COMMISSIONER OKUN: And with respect again
10 to the additional information that we might be able to
11 see in a final staff report, again the chart that
12 staff has been working on at 5/9. You obviously have
13 a lot more information in these exhibits with respect
14 to the different customers and the contracts.

15 I guess I will, maybe this is just for you
16 to work with staff afterwards, Dr. Kaplan. But I'm
17 having a hard time just figuring out exactly how this
18 would fill in the chart. In other words, the
19 information you have here, which is a lot more
20 detailed, I'm trying to figure out if we can print it
21 in a way that shows contemporaneously when there was
22 competition between the subject import price and the
23 domestic price, and how that came about. And maybe
24 you can, I mean, some of, you know some of the
25 information that Mr. Wallden will be preparing about

1 timelines will be helpful for a number of these
2 things. But I think that it has to be tied in,
3 because I think that now it's hard for me to figure
4 out what is the contemporaneous --

5 MR. KAPLAN: I mean, sometimes the contract
6 comes up next year, and it's the next bid.

7 COMMISSIONER OKUN: Right. Right.

8 MR. KAPLAN: We've had, we've ordered
9 enormous -- yeah, we've devoted an enormous amount of
10 energy to try to get these graphs together and look at
11 all these documents. And you know, the staff has had
12 lots of things to do. And unless you are willing to
13 assign a lot of people for that, there's no way they
14 could have come up with it at this point.

15 But I think we could work with them and try
16 to supply the information that they need to put
17 something like this together.

18 The information we have does come from the
19 staff report and the questionnaires. They've done a
20 fantastic job collecting it. I think maybe by the
21 time the final staff report comes out, they could
22 display it in a way or compile it in a way that would
23 be of, you know, of interest to you in asking those
24 specific questions. That's what we tried to do.

25 But they have it all there. And as I said,

1 it's just a great job. None of this was known in the
2 prelims. I mean, this is complicated in four
3 different ways from other cases I've been involved in.
4 And they got it all there. They re-devised the
5 questionnaire, the investigator did a great job, the
6 technical people had to learn new things, the
7 financial people had to learn new things.

8 So now you have it all there. We'll try to
9 put it together in a way that hopefully makes it more
10 useful for you, and work with the staff to do that, as
11 well.

12 COMMISSIONER OKUN: Okay. And obviously
13 we'll, I know we'll have an opportunity to discuss
14 with Respondent their comments on that, as well.

15 I did want to go back, Mr. HilK, to you, on
16 one more thing about customer X. Which is -- and
17 maybe it applies to some of these other customers, as
18 well -- which is, are there global contracts if you're
19 supplying for DuPont in Europe? Do you set prices for
20 everything, or is that separate commercial entities, I
21 guess?

22 MR. HILK: Well, in the case of customer X,
23 it's clearly a very global approach to all the
24 customers' requirements for its business over, you
25 know, a significant period of time. You know, a long

1 multi-year contract. So we developed the requirements
2 to meet all the global aspects of that.

3 Most of the customers that we're talking
4 about today outside of customer X are much more
5 focused on the domestic market.

6 COMMISSIONER OKUN: Okay. And then, Dr.
7 Kaplan, I wanted to go back on one thing just to make
8 sure I understand it.

9 You keep referencing the, you know, the five
10 of 33 purchasers saying that they would pay more for a
11 higher grade. And I was trying to look back at
12 Respondent's argument with respect to quality. And I
13 thought what they were saying is not that it doesn't
14 matter, they're not focused on who is willing to pay
15 more for a higher grade, but that if it's considered
16 the same grade, that they feel like they're getting a
17 better product. Maybe this was asked by a colleague.

18 But I'm just trying to make sure that, will
19 you address that as well? Not the five that say
20 they'd pay more for a higher grade, but if they think
21 they're getting the same grade, a better quality of
22 that same grade. Do you think that's more of what
23 they're -- I mean, that's what struck me as what they
24 were arguing. I'm not sure.

25 MR. KAPLAN: To the extent that they view it

1 that way, I guess my point is typically that people
2 are willing to pay more if they perceive something to
3 be a higher quality. They're not willing to pay more
4 for a higher grade.

5 That leads me to believe they aren't willing
6 to pay more for the same grade. And if you look at
7 the charts, I don't even think you get that far.

8 COMMISSIONER OKUN: But that specific five
9 of 33 was asking them about a higher grade.

10 MR. KAPLAN: Yes, that's correct. But I
11 mean, if you aren't willing to pay more for a higher
12 grade, are you willing to pay more for the same grade.
13 And that kind of gives you a reference, to me, on how
14 much quality is really worth to the customer, in terms
15 of --

16 COMMISSIONER OKUN: Right. We have the
17 overselling argument. I understand your point on
18 that, so thank you, Madame Chairman.

19 CHAIRMAN ARANOFF: Commissioner Lane.

20 COMMISSIONER LANE: I think that I read in
21 the staff report, or maybe the Respondent's brief, I
22 can't remember, that none of the lost sales or lost
23 revenues have been verified.

24 If that is true, could you tell me why?

25 MR. JAFFE: This is Matthew Jaffe. It is

1 true that all of them indicated that it was, that they
2 disagreed. And I believe, again, I want to be
3 careful, they disagreed based upon price.

4 However, we have a section in our brief that
5 addresses that. I think in this particular situation,
6 that if you actually examine the facts, the evidence,
7 if you look at their purchaser's questionnaire and you
8 ask the simple question was your price higher or lower
9 before or after the lost sale, I think that -- and
10 again, I can't say it here, but we will, you know, try
11 and provide more information. We will demonstrate
12 whether the price was higher or lower.

13 But to a certain extent, some of that has
14 been provided in our prehearing brief.

15 COMMISSIONER LANE: Okay, thank you. Now,
16 one of you mentioned that there was a situation where
17 half the product was provided by DuPont, one-half by
18 MSSA. And then it was finally agreed that 100 percent
19 of the contract would be provided by DuPont.

20 Is that contract reflected in the data that
21 we have right now?

22 MR. MERRILL: Brian Merrill. No, it is not.
23 That's a recent situation, say, that's transpired
24 since this investigation.

25 COMMISSIONER LANE: And will you be able to

1 provide that post-hearing, then?

2 MR. MERRILL: Yes, we will.

3 COMMISSIONER LANE: And will that have a
4 positive change in the actual revenues or your
5 operating income of DuPont?

6 MR. MERRILL: Yes, it will.

7 COMMISSIONER LANE: And you'll show that to
8 us, also?

9 MR. MERRILL: Yes.

10 COMMISSIONER LANE: Thank you. Now, in
11 MSSA, in their prehearing brief, indicate that DuPont
12 misleadingly calculated its capacity figures based on
13 the number of possible slots for down-sells, rather
14 than on the actual number of active sells.

15 Would you please comment on which method of
16 calculating capacity is more appropriate?

17 MR. WALLDEN: Rich Wallden, I'll take that
18 question. At the plant site we have holes in the
19 floor for different cells. I believe it's the way we
20 calculated it is the accurate way.

21 The major pieces of infrastructure, meaning
22 transformers, rectifiers, the supporting equipment, in
23 order to process that material, is already in place,
24 ready to be used.

25 As I mentioned in my earlier comments, it

1 does take capital investment to actually build the
2 cells and have them sitting there waiting to be
3 started. Today we have cells waiting to be started
4 that we're not starting because there isn't a demand
5 for that product at this particular time. As I
6 mentioned earlier, we have to have strong indications
7 that there is volume.

8 Because of the cost to build those cells, I
9 don't believe it would be accurate to say you don't
10 have the capacity to make additional product in those
11 cells just because you're not willing to spend
12 additional money to build cells and have them sitting
13 there, waiting to be started. As I believe MSSA
14 actually says, the cell has to be running in order to
15 count it as capacity.

16 Well, that cell is either on or off. So if
17 you go that way, you're always operating whatever cell
18 count, you're always at 100-percent capacity because
19 the cell is either running, or it's off. And that's
20 not the correct way to look at capacity.

21 COMMISSIONER LANE: Okay. I can't remember
22 off the top of my head, and so if it's not in the
23 record, would you please provide it.

24 The number of actual cells that have been
25 built so that we could look at that, as compared to

1 the potential for cells that you might build.

2 MR. MERRILL: We'll provide that information
3 in the cell-builds in the post-hearing. Because it is
4 confidential, as far as how many cells we're building
5 in order to support our operations.

6 MR. JAFFE: This is Matthew Jaffe. We also
7 have provided to a certain extent the number of cells
8 operating, the numbers that are built. And we've also
9 provided the timeframe that it takes to build a cell,
10 and how long it would take DuPont to fill all the
11 slots, if it had to do so.

12 COMMISSIONER LANE: And if the record
13 doesn't provide it -- I'm sorry, but sometimes I can't
14 remember everything that's in the record. If the
15 record doesn't provide the capacity utilization based
16 upon the actual cells that are built, as opposed to
17 the ones that you might build, could you provide that,
18 also?

19 MR. JAFFE: That's correct. I believe we've
20 already provided that information. And I believe it
21 appears as a footnote, I believe, in the staff report,
22 if I'm correct.

23 COMMISSIONER LANE: Okay, thank you. Now
24 going back to electricity. Could you provide
25 information about the right structure that you

1 purchased your electricity under? I would like to
2 know the demand charge, if any, and the energy charge
3 for your primary electricity energy contract.

4 And then let's go back to the European Union
5 subsidy issue. The staff report indicates that there
6 is a current anti-subsidy complaint filed in Europe
7 claiming that you are receiving electricity at below
8 market rates. And I'm assuming you will want to do
9 this in your post-hearing.

10 How are market rates defined or described in
11 that complaint? And what is the status of the
12 complaint?

13 MR. JAFFE: Well, I don't know. I mean, we
14 can obviously provide the public portion of that
15 complaint. And in fact, I guess MSSA can do it, as
16 well. I don't think we could provide the business
17 proprietary information, because I think that again
18 would be something that only MSSA provided.

19 Right now, the status of that particular
20 case is that questionnaires have been issued,
21 responses have been provided to the Commission. Some
22 supplemental questions have been issued as well, and I
23 believe they are in the process of being responded to.
24 So it's at the part where you have questionnaires and
25 responses. And then I think the next stage will be

1 after complete responses, is that the Commission is
2 discussing with us possible verification of the U.S.
3 in the anti-dumping case and in the anti-substitute
4 case. That's the status.

5 But as far as a preliminary, I don't believe
6 that it will occur until March or April of next year.

7 COMMISSIONER LANE: Okay, thank you. Other
8 than coring, are there any marketable byproducts
9 produced during the production of sodium metal?

10 MR. WALLDEN: Rich Wallden. Chlorine is the
11 only other marketable product that comes out of the
12 manufacture of sodium.

13 COMMISSIONER LANE: Could you describe how
14 the revenue from the sale of chlorine gas is reflected
15 in the financial data presented to the Commission in
16 this case? For example, do you allocate out
17 incremental costs associated with byproduct
18 production, or do you credit the byproduct revenue
19 against the sodium metal production expenses? And if
20 so, which expense categories reflect a credit from the
21 byproduct revenue?

22 MR. JAFFE: This is Matthew Jaffe. I'd just
23 indicate that we have provided that information to the
24 Commission staff. And it is in the verification
25 report of the accountant who visited DuPont. But we

1 can certainly indicate and provide to you the exact
2 citations for that particular document as it appears
3 on the record, which should respond directly to your
4 question.

5 COMMISSIONER LANE: Okay. And the final
6 question on that subject is, could you provide the net
7 operating income in dollars attributable to byproduct
8 sales that are reflected in the net operating income
9 of the sodium metal operations in your reported
10 financial data?

11 MR. JAFFE: Again Matthew Jaffe. That
12 information is on the record, but we will certainly
13 put it in a clear response to your question, so that
14 you can have it directly.

15 COMMISSIONER LANE: Okay, thank you. Thank
16 you, Madame Chairman.

17 CHAIRMAN ARANOFF: Commissioner Williamson.

18 COMMISSIONER WILLIAMSON: Thank you, Madame
19 Chairman. You know, just to clarify, last time you
20 renegotiated with customer X, that was the, did MSSA
21 compete -- they were competing for all of the sales,
22 not just sales in the U.S., is that correct?

23 MR. HILK: Well, the customer approached us
24 with that position, so that's, I would say that's
25 correct.

1 COMMISSIONER WILLIAMSON: And probably MSSA
2 was saying we're going to supply all of Europe.

3 MR. HILK: Yes.

4 COMMISSIONER WILLIAMSON: Okay, thank you.
5 I guess DuPont apparently only sells its domestically
6 produced sodium metal in bulk form. Is it capable of
7 producing ingots or other forms of sodium metal? And
8 did it ever do so? And how do you respond to this
9 argument that subject imports have limited adverse
10 volume effects, because DuPont does not produce ingot
11 sticks, it does refined-grade metal.

12 MR. WALLDEN: Rich Wallden. Let me respond
13 to the first portion of it, specifically around
14 production capability. And then some of the other
15 business folks can respond to the other portion of
16 that question.

17 We had the facilities in place at the
18 Niagara plant in order to make ingots, packaged
19 sodium, the non-bulk form. We have elected at this
20 point in time not to make that product at Niagara due
21 to the pricing in the marketplace.

22 So the pricing, can someone else comment on
23 it?

24 MR. HILK: This is Ken Hilk. We've made
25 basically a cost-versus-benefit analysis around that,

1 and the market is fairly small overall, smaller than
2 it used to be. And so we're currently getting our
3 ingot product from one of our technology licensees.

4 COMMISSIONER WILLIAMSON: Thank you. I want
5 to go back to this question of sort of this sludge
6 buildup and the fact that some of your former
7 customers, when they go to MSSA.

8 If the problem is in their storage tank, I
9 assume that when they get the new -- wouldn't they
10 continue to see the problem? Unless they completely
11 cleaned their tanks, or started with new tanks, before
12 they, when they got the new contracts.

13 MR. FETZER: Well, let me answer by, I know
14 there was a confusing statement in Farrow's brief that
15 when they, as they stated, when they converted to
16 MSSA's product, they saw an immediately improved
17 performance.

18 And also in their brief they stated that in
19 March of 2007, they had a significant process outage
20 that was a result of calcium oxide that plugged up a
21 valve in the process.

22 What I wanted to point is that during that
23 period of time, DuPont was not supplying product to
24 Farrow. So during that period of time from December
25 through April, they were only receiving material from,

1 from MSSA.

2 So there is a period there where they appear
3 to ascribe improved performance to receiving the MSSA
4 material. But then, at the same time, they did have a
5 process outage during that point in time, but they
6 don't ascribe that to the MSSA product, even though
7 MSSA was the only one supplying sodium to them.

8 COMMISSIONER WILLIAMSON: Are you saying
9 that if there was something, their equipment, there
10 was a problem that needed to be cleaned or updated,
11 that that was probably causing the outage?

12 MR. FETZER: Well, it seems to be there's
13 two sides to the argument, and it's not being
14 completely consistent, in the sense that if they took
15 MSSA sodium into the process, and they had a storage
16 tank that that did have calcium oxide in it, and they
17 say they saw an improved performance; I don't
18 understand exactly what that improved performance
19 would be.

20 But if it's because there's calcium oxide in
21 the tank as well that you're attributing to DuPont
22 sodium, when they had their process interruption, you
23 know, why -- and again, if you have a process
24 interruption in that calcium oxide was in the tank,
25 then how can you ascribe the improved performance when

1 the calcium oxide was still there previously?

2 COMMISSIONER WILLIAMSON: Okay, thank you.

3 I think I've got your point.

4 I'd like to know how you evaluate projected
5 demand for sodium metal from the bio-diesel industry.
6 I guess there was an economic statement, the emerging
7 economic stabilization act extended the bio-tax credit
8 through 2009, and increased the credit from 50 cents
9 to a dollar a gallon.

10 Does this affect your argument that the high
11 cost of soybean and all feat stocks will limit
12 biodiesel production in the U.S.?

13 MR. MERRILL: Brian Merrill. We have
14 essentially two salespeople who are highly committed
15 to this marketplace. And they work very closely with
16 all of the people who have constructed facilities to
17 produce biodiesel fuel.

18 There is, from time to time we have
19 contractual commitments that we are able to put in
20 place with customers who actually do operate their
21 facility. We've had contracts with people who have
22 shut down their facility. It's a very suspect market
23 with respect to forecasts.

24 As Ken Hilke mentioned, we, you know,
25 discontinued effort on a capital project whereby we

1 were going to expand one of our DuPont facilities to
2 produce the sodium methyrate required for this market.

3 MR. HILK: Can I add to that, Commissioner?
4 I think you also asked about the one-dollar-per-gallon
5 rebate that actually exists now in the market. Even
6 with that rebate, the biodiesel producers have not
7 been able to run, I believe they are running at 20- to
8 25-percent capacity utilization if the 2009 rebate
9 goes through. If it doesn't go through, it's going to
10 provide even further compression on that market.

11 If it goes through, it's questionable, since
12 it hasn't been that successful this year, you know,
13 what success we'll have next year with it.

14 COMMISSIONER WILLIAMSON: And I guess
15 soybean prices have come down in recent months. What
16 effect does that have?

17 MR. HILK: It still has oil, right? Oils
18 come from 140 to 81. And so you have to look at the
19 relationship between soybean oil and crude oil.

20 COMMISSIONER WILLIAMSON: Okay, thank you.
21 Let's see. In MSSA's complaint with the European
22 community, they say that to the best of their
23 knowledge there are no producers of sodium metal
24 outside that community, other than the U.S. and China.

25 However, the prehearing staff report

1 presents evidence the U.S. imports sodium metal from
2 India and perhaps other countries.

3 Do you contend that any export data on
4 sodium metal from countries other than France, China,
5 and the United States are misclassified or trans for
6 shipments?

7 MR. JAFFE: Matthew Jaffe. To the best of
8 my knowledge, after talking to our client about this,
9 they understand that there are producers in France,
10 the United States and China. Therefore, to the best
11 of our knowledge, we believe it is probably a
12 misclassification.

13 COMMISSIONER WILLIAMSON: Okay. Thank you.

14 Please discuss the applicability to this
15 investigation of the inflation of benefits test
16 articulated in the Bratsk case, especially in light of
17 the recent Federal Circuit decision.

18 Please walk us through your analysis on
19 nonsubject imports and also discuss whether the two
20 Bratsk --

21 MR. JAFFE: Matthew Jaffe. We did drop a
22 footnote, I believe, in our brief indicating that we
23 do not believe Bratsk is applicable here.

24 The number one reason, of course, is if you
25 look at the nonsubject imports they are minimal, and

1 they are not in any way going to affect the market in
2 this particular case. Subject imports are clearly the
3 dominant volume imports in this particular case.

4 COMMISSIONER WILLIAMSON: Okay. Thank you.
5 My time is expiring.

6 CHAIRMAN ARANOFF: Commissioner Pinkert?

7 COMMISSIONER PINKERT: Thank you, Madam
8 Chairman.

9 I have a couple of questions for the company
10 witnesses and then a few questions for Dr. Kaplan. I
11 want to begin with a question about the hardship
12 clauses in long-term contracts and whether you can
13 tell us do those clauses offset any tendency to lock
14 in prices as a result of those long-term contracts?

15 MR. HILK: Ken Hilk. Absolutely. The
16 clauses are designed as mechanisms to recover
17 unforeseen cost increases, unforeseen changes in
18 operations and a vast myriad of things.

19 We have been able to use those mechanisms
20 with significant impact around our contracts.
21 Obviously I'm limited to comment here because of
22 confidentiality.

23 COMMISSIONER PINKERT: Well, perhaps in the
24 posthearing or if you can comment on it here. Is
25 there ever any dispute with the customer about whether

1 those clauses apply?

2 MR. HILK: I don't know that there's a
3 dispute so much as there is always a debate about what
4 the level of -- what the mechanism should deliver in
5 terms of value to either party.

6 COMMISSIONER PINKERT: And again either here
7 in the posthearing. How do you resolve those kinds of
8 differences of view in applying the hardship clauses?

9 MR. HILK: Typically significant
10 negotiation.

11 COMMISSIONER PINKERT: Well, again, if
12 there's any additional information that you can supply
13 in the posthearing about how those clauses have
14 actually been implemented and used I would appreciate
15 it.

16 MR. JAFFE: Yes. Thank you. This is
17 Matthew Jaffe. We'll certainly do so.

18 However, I also indicate and perhaps direct
19 the staff to a significant discussion on this point in
20 response to I believe it's Question Roman numeral
21 II-10 of DuPont's producer questionnaire response.

22 COMMISSIONER PINKERT: Thank you.

23 Now turning to the issue of other factory
24 costs, I'm wondering if somebody on the panel can
25 explain the trend of what is called other factory

1 costs as a ratio of net sales, can explain that trend
2 during the period of investigation, either here or in
3 the posthearing?

4 MR. JAFFE: This is Matthew Jaffe. I think
5 we'll discuss that trend in the posthearing brief.
6 Thank you.

7 COMMISSIONER PINKERT: Thank you.

8 Now, perhaps somebody from the company can
9 help me to understand the Respondents' argument that
10 certain customers are reluctant to deal with DuPont or
11 at least exclusively with DuPont because they compete
12 with DuPont in the downstream market.

13 Is that a valid argument? Is that something
14 that you've encountered or can supply any perspective
15 on?

16 MR. MERRILL: Brian Merrill. We're actually
17 only aware of one possible sodium consumer that has
18 expressed that concern. We don't feel there was a
19 strong interest by that customer to acquire sodium
20 from DuPont.

21 We're essentially in the sodium business,
22 and again volume is very important to us. We
23 participate in the sodium methyllate business as an
24 extension of our sodium business so that we can
25 increase sodium sales.

1 And so to that degree anyone who would
2 produce sodium methyrate and consume sodium, even
3 though we would compete with them possibly head-to-
4 head in the sodium methyrate market, it would
5 ultimately result in sodium sales for us, so we would
6 welcome that.

7 Again, this particular concern that's been
8 reflected, we don't view we've had sincere opportunity
9 to supply this customer with sodium.

10 COMMISSIONER PINKERT: Thank you.

11 Mr. Jaffe, did you want to add to that?

12 MR. JAFFE: No, thank you.

13 COMMISSIONER PINKERT: Okay. Now turning to
14 Dr. Kaplan, you had maintained at one point that there
15 were lost sales with respect to six different
16 customers, and I'm looking at Table Roman V-10.

17 Why does your head-to-head analysis consider
18 the relationship with only four of those customers?

19 MR. KAPLAN: I'll be happy to extend the
20 analysis to the other two. I was looking at the
21 largest customers with the clearest paper trail.

22 We actually made a decision also because
23 some of the evidence was further back before the POI.
24 If you look at our table, some of the lines are
25 indicated before the POI to be estimates. Some of

1 them are exact.

2 And so we just wanted to highlight the big
3 customers and the effects at them, but we'll go back
4 and see what we can do with the other two.

5 COMMISSIONER PINKERT: Thank you. Now,
6 which do you consider to be more meaningful, to
7 compare MSSA's price to the price at which DuPont
8 formerly supplied the customer or to the price DuPont
9 bid to try to keep the business?

10 MR. KAPLAN: Well, I think that you'd like
11 to look at both and look at the costs as well.

12 The former prices were negotiated under a
13 certain cost structure. The newer prices were offered
14 under competition with a dumped product and a higher
15 cost structure.

16 So I think going back to the original price
17 gives you some maybe better information because it's
18 not a price that was offered in competition with a
19 dumped product, and it was too high anyway, and it
20 doesn't reflect the increase in cost.

21 So I'll look at it both ways. I know that
22 when calculating lost sales the Commission often looks
23 at the bid at the time, but I think it's also useful
24 information if there was an older contract and you've
25 seen prices rise to see how the new bid reflects the

1 competition from the dumping as well.

2 COMMISSIONER PINKERT: Thank you. Now, one
3 more question about the head-to-head comparison.

4 Your head-to-head comparison for the most
5 recent period appeared to show that DuPont's sodium is
6 priced both below and above that of MSSA. This might
7 indicate to somebody -- I'm not prejudging the issue,
8 but it might indicate to somebody -- that there is a
9 mixed pattern of underselling.

10 What would be your response to somebody who
11 might view it that way?

12 MR. KAPLAN: First, I would look at the
13 history at each of the customers. We know how
14 important volume is. At a certain point you've got to
15 do what you've got to do to keep the plant running. I
16 mean, literally plants are shuttered if you don't
17 reach a certain minimal level.

18 For example, I take a look at the share of
19 Customer X and total sales, and that's kind of an
20 indication of what was lost and the pressure to keep
21 current customers.

22 I think some of the proposed pricing
23 reflects that pressure that then exists before the POI
24 and it's now just accelerating throughout the POI. I
25 still think even at the end most of what you see and

1 most of the share changes or the offers reflect my
2 view of head-to-head competition.

3 I'm scared to use a certain word if I'm
4 going to violate the APO even if it's not with the
5 mention of a certain customer. Sorry for being a
6 little cryptic.

7 COMMISSIONER PINKERT: I think we're all
8 trying to be cryptic on some of those issues.

9 Thank you. I'll come back to that on the
10 next round.

11 CHAIRMAN ARANOFF: I've given up trying to
12 be cryptic, and I will actually have some written
13 questions that I'll be submitting.

14 But in the meantime, one thing that I know
15 my colleagues have asked this every which way, but my
16 impression is this is not an industry where a contract
17 comes open and there's like a negotiation season. All
18 the players in the market are there submitting bids.

19 From what I can tell, to the extent that
20 some customers, for example, have entered into
21 contracts with both DuPont and MSSA for supplies,
22 those contracts aren't even entered in the same year.
23 Is that correct? Mr. Merrill?

24 MR. MERRILL: Brian Merrill. I would say
25 there's not a lot of overlapping contracts. A

1 customer makes a decision at a point in time whether
2 they're going to source a portion of their material
3 from each producer or sole source from one.

4 I would say even where customers have chosen
5 to split their share, okay, I think those are
6 generally done at the same point in time that decision
7 is made to go in that direction.

8 CHAIRMAN ARANOFF: Okay. I just can't get a
9 visual on this.

10 A customer comes to you and says my contract
11 -- maybe it's with you, maybe it's with MSSA -- for
12 100 percent of my requirements is coming to an end at
13 the end of the year. I'm interested in having you
14 supply for a three-year contract going into the
15 future.

16 Are they having that conversation with
17 DuPont and MSSA at the same time? Are you submitting
18 an initial bid and then they compare them and then
19 they come back to you, or is it your sense that
20 they're not even talking to both companies at the same
21 time?

22 MR. MERRILL: Brian Merrill. Generally my
23 view, and again I've been involved in this business
24 since '94-'95. The incumbent supplier generally has
25 the opportunity to at least evaluate a supply

1 opportunity that they have from the other producer.

2 Over this time period that we lost a lot of
3 business we were confronted with competitive offers,
4 okay, such that when a contract -- often times they're
5 evergreen agreements that are going to continue into
6 the next year unless they're canceled, and the
7 customer would bring the opportunity. DuPont, if
8 you're willing to reduce your price by 15 percent you
9 can retain the volume, okay?

10 As I described earlier, you know, in some
11 cases we lowered price to retain volume. In some
12 cases we lowered our price a portion of the customer's
13 request, and in some cases we lost volume then and
14 eventually got to the point where customers were
15 asking for prices that was untenable for DuPont and we
16 would forego that business.

17 But generally I've seen that the incumbent
18 has the preferred position with most of the customers
19 that exist in this market.

20 CHAIRMAN ARANOFF: Okay. To what extent is
21 the fact that customers are demanding lower and lower
22 prices, which you say has been your experience in the
23 market, a function of the fact that there are fewer
24 customers now than there were in the past and that the
25 sale to each customer is more important?

1 In other words, that it's market power on
2 the part of the customers as opposed to competition
3 from MSSA that could be driving prices down on some of
4 these contracts?

5 MR. HILK: Ken Hilk. I'm not sure it's
6 market power of the customers so much as it is
7 significant overcapacity brought about by MSSA's
8 expansion in 1999.

9 I mean, MSSA doubled their capacity to
10 supply Actel in the U.K. in the 1998, '99 and 2000
11 timeframe based on an optimism that that Actel
12 business would continue to consume 10,000 to 15,000
13 tons of sodium for quite some time.

14 They almost overnight disappeared from the
15 demand profile for the whole market, so Metaux had all
16 this capacity and it came into the U.S. and went after
17 every customer from DuPont and brought price down when
18 it first didn't succeed.

19 You know, when it only got one customer out
20 of 10 or 15 it lowered prices further, and it just
21 kept going and going and going.

22 CHAIRMAN ARANOFF: Okay. That's an
23 interesting answer and brings in a new angle.

24 It doesn't quite go to the question of
25 whether purchasers have more market power now than

1 they did when the market was larger and there were
2 more customers. But if there's anything you want to
3 add on that in the posthearing, that would be fine.

4 I just want to follow up on my question. So
5 what I'm taking from this is in fact that there isn't
6 sort of a set time where there are price negotiations
7 in the kind of organized way we see in some cases.

8 Dr. Kaplan, let me just ask you because
9 you've argued that our looking at quarterly price
10 comparisons like we often do is not reliable in this
11 case because you're dealing with prices that may not
12 have been negotiated at the same time.

13 The comparisons that you gave us in your
14 confidential exhibits are prices year-by-year, but
15 don't they suffer from the same flaw? Those prices
16 may not have been negotiated in the same year. I'm
17 still looking for the right point of comparison.

18 MR. KAPLAN: I think your point is well
19 taken, and that's why I think you have to look at the
20 sequence of contracts and the sequence where prices
21 change and look at entry points. That's why I have
22 the quantities on there as well.

23 And so there's an entry point for let's say
24 MSSA at a certain price and then a year later the
25 contract comes up to DuPont and the pressure is put on

1 DuPont, who now knows that their customer has another
2 client, to lower prices.

3 The price might be indicated. A suggested
4 discount might be made, and then you could see DuPont
5 either has to lower its price to keep the business or
6 they lower the price and they'll only keep some of the
7 business. You can see the sequence over time.

8 It's not easy. It's easier when everything
9 is contemporaneous in a quarter or there's these cases
10 with the hotel selling season where all the sellers
11 sat in the room and the big customer walked around and
12 then told them what the guy in the last room said for
13 a price. We don't quite have anything here.

14 But what makes this manageable is that there
15 are so few of these customers that you can trace out
16 the contract prices and the share changes over time,
17 and I think they do kind of speak for themselves. You
18 see the share shifts. Are they because of lower
19 prices or higher prices?

20 When the lower price comes in, especially by
21 a lot, is there a big share change? Does a client
22 drop who previously had a contract? You could trace
23 this through customer-by-customer.

24 CHAIRMAN ARANOFF: Okay. Let me turn to
25 something slightly different.

1 Dr. Kaplan, you've focused our attention on
2 information from the staff report that only five out
3 of 33 responding purchasers were willing to pay a
4 higher price for a higher grade of sodium metal.
5 That's on page 227.

6 But isn't the issue here differences within
7 grades like DuPont's technical grade versus MSSA's
8 technical grade? If that's the case, then that five
9 out of 33 statement, how probative is that?

10 MR. KAPLAN: Well, I think one of the things
11 to look at is some of the quality claims have been
12 made that the product with less parts per million is
13 higher quality because of issues revolving around the
14 calcium.

15 Now, once again I want to repeat it's always
16 a process, never a product issue. No one has claimed
17 that their product at the end is not as good no matter
18 what quality is used going in. It's a process issue.
19 To the extent that customers believe the higher
20 quality product is better for their process, I think
21 that's important because they're not willing to pay
22 more for it.

23 To the extent that -- and you could look at
24 price comparisons. The different qualities aren't
25 necessarily reflected also in prices as you might

1 expect, so I think if it doesn't hold for the higher
2 quality stuff the argument is even stronger that
3 they're not willing to pay more for the same quality
4 product if they think it's the quality that's causing
5 the buildup in the tanks. Am I being clear?

6 CHAIRMAN ARANOFF: I think so; I think so.

7 MR. KAPLAN: I am trying.

8 CHAIRMAN ARANOFF: I will think about it and
9 come back on my next round, if I need to.

10 MR. JAFFE: This is Matthew Jaffe. I was
11 just wondering if I could add, I think the short
12 answer to your question is sometimes no, because what
13 you're going to see is that if you actually do look at
14 the long-term contracts, it's not all tech versus
15 tech. It is a different "quality" that is being
16 offered at a different price that is forcing the issue
17 here.

18 CHAIRMAN ARANOFF: Well, I think the
19 response to that, that we'll hear this afternoon is,
20 yeah, but since the preliminary duties have gone into
21 effect, if not before, people now are paying more,
22 whatever they said in answer to that question
23 notwithstanding and they're still buying it, in
24 increasing volumes. And then the question that we'll
25 have to ask ourselves, and some of my colleagues have

1 asked is, is that because they can't get out of those
2 contracts or because they don't want to. And I don't
3 know the answer to that yet.

4 Okay. Vice Chairman Pearson?

5 VICE CHAIRMAN PEARSON: Yes. Just in
6 reference to Dr. Kaplan's comment, it's all that's
7 clear is sludge to me. Do Dupont and customer X buy
8 and sell any other products to and from each other, in
9 addition to sodium metal?

10 MR. HILK: This is Ken Hilk. Yes, there's a
11 significant amount of business that goes back and
12 forth, just like it does with a lot of the other
13 larger companies that we do business with.

14 VICE CHAIRMAN PEARSON: Does Dupont have a
15 person, who manages the overall relationship with
16 customer X, as all or part of his or her
17 responsibilities?

18 MR. HILK: Let me ask Brian Merrill to
19 comment on that.

20 MR. MERRILL: Actually, I served for a time
21 as the corporate account executive to customer X and
22 the way Dupont handles those assignments is, it often
23 resides with the salesperson, who has the majority of
24 business with that company.

25 VICE CHAIRMAN PEARSON: Okay. Then the next

1 question is, is the pricing on sodium metal to
2 customer X influenced in any way by the desire to
3 maintain a broadly harmonious business relationship
4 with that company?

5 MR. MERRILL: Actually not at all. Within
6 Dupont, all of our businesses are viewed independently
7 and have to speak to their own profitability. We
8 actually have business with several of the other
9 customers in the room within other parts of Dupont.
10 One particular customer - well, one particular company
11 in the room, Dupont is a very large customer of
12 theirs.

13 VICE CHAIRMAN PEARSON: And I don't know
14 whether this is something you would say on the record,
15 but I'm just curious, in the broad relationship
16 between Dupont and customer X, how significant a
17 factor is sodium metal? Is it one of the large
18 products? Small products?

19 MR. MERRILL: Actually, it's probably the
20 largest product - actually, it's one of the top two.
21 Dupont might be a customer of customer X in a, I'll
22 say a comparable sized product.

23 VICE CHAIRMAN PEARSON: Okay. So, I just
24 wanted to get an impression. This is an important
25 issue for the two companies?

1 MR. MERRILL: Yes, it is.

2 VICE CHAIRMAN PEARSON: Okay. I have a
3 couple of non-attribution questions here. Respondents
4 have argued that the decline in Dupont's U.S.
5 shipments during the POI was primarily attributable to
6 the closing of Sengenta. Do you agree with that?

7 MR. JAFFE: Matthew Jaffe on behalf of the
8 Respondents. The use of the word "primarily," I
9 disagree with.

10 VICE CHAIRMAN PEARSON: That might be my
11 term. I didn't go back and quote the brief, so blame
12 me, not them; but, please answer.

13 MR. JAFFE: Well, again, volume is king in
14 this particular industry. So, yes, of course, when
15 you lose volume, it does have an impact. But, it's
16 inconsistent to say that that is the reason or the
17 issue and then come back and say that, well, because
18 you lost volume because of some unfair imports, that
19 is not an issue. If volume is king and you lost
20 volume, the fact that you lost it because of unfairly
21 traded imports is also a cause of injury, as well.

22 VICE CHAIRMAN PEARSON: Okay. How about
23 price suppression, then? Is any cost price squeeze
24 that we might see here, is that attributable primarily
25 to the difficulty of raising prices under long-term

1 contracts at times when costs are rising? In other
2 words, I would be uncomfortable if I find myself in a
3 situation where I would be finding material injury by
4 reason of long-term contracts.

5 MR. KAPLAN: Well, what you see is -- or
6 there are first hardship clauses. But, also, the
7 contracts overlap. They aren't all at once for five
8 years. And so if the contracts were holding things
9 down, what we would expect to see is the additional
10 costs being passed on at each new contract, as the
11 costs are rising. And, in fact, we are not seeing
12 that, as you could see from the exhibits. And, in
13 fact, what was just discussed earlier with client X,
14 that export prices were actually better. So, it's a
15 squeeze going on in the United States. It's
16 continuous, because at each new negotiation, you could
17 see it's not like just all of them were five years ago
18 and everyone is locked down.

19 VICE CHAIRMAN PEARSON: Just clarification.
20 The export pricing data that you referenced, those are
21 AUVs or is that some other data?

22 MR. KAPLAN: We will give you the
23 transactions -

24 VICE CHAIRMAN PEARSON: Okay, because there
25 might be a product mix issue there.

1 MR. KAPLAN: No.

2 VICE CHAIRMAN PEARSON: There's not?

3 MR. KAPLAN: It's my understanding that it's
4 not.

5 VICE CHAIRMAN PEARSON: Okay.

6 MR. KAPLAN: It's not. My understanding is
7 correct. It's not a product mix issue. It's a higher
8 price on the export side. So, you're seeing a
9 domestic squeeze, as shown in that exhibit, and it's
10 not all from legacy contracts, because the squeeze has
11 been increasing, as negotiations have been occurring
12 with new prices. So, it's an ugly situation. It's
13 intensifying over the whole period of investigation.

14 VICE CHAIRMAN PEARSON: Okay. Then, I think
15 my last one deals with price depression. You've
16 alleged that prices in the U.S. market have been
17 depressed based on AUV data. This was in your brief.
18 Couldn't trends in the AUV data, though, reflect
19 changes in product mix and not necessarily be
20 indicative of any upward or downward movements in
21 prices?

22 MR. KAPLAN: Yeah and that's why I think
23 it's better looking at the contracts we just showed
24 you and taken a look at what has happened with prices.

25 VICE CHAIRMAN PEARSON: Okay, but that was

1 an argument in the brief; right, based on AUVs?

2 MR. KAPLAN: It's true and I think because
3 the pricing of the various grades has not - both from
4 the import side and domestically has not followed some
5 traditional patterns, that I think that is an
6 appropriate statement. But, I think that it gets away
7 from what I think is more fundamental, which is
8 whether there is suppression or depression at
9 individual customers that is observable without
10 conflating old contract prices and worrying about
11 grades.

12 VICE CHAIRMAN PEARSON: Okay. Well, I think
13 I have no further questions. So, let me thank all of
14 you on this panel for your contribution here today and
15 turn it back to Madam Chairman.

16 CHAIRMAN ARANOFF: Commissioner Okun?

17 COMMISSIONER OKUN: Thank you, Madam
18 Chairman. I thought maybe I was going to pose a
19 hypothetical with respect to how to evaluate the
20 pricing, but I think I am now able to submit one post-
21 hearing and not risk someone taking a hypothetical to
22 reveal the APO data here. Let me then ask, Mr. Jaffe,
23 in your - I think it was your opening remarks or in
24 your testimony, you talked about kind of a but for
25 causation argument and I know you have that in your

1 brief, as well. In arguing that had sodium metal
2 imports been fairly traded, import prices would have
3 increased over the POI to reflect the lack of dumping,
4 a decrease in value of the dollar relative to the
5 Euro, and the past of increased transportation costs,
6 where would one expect to see that show up, given the
7 contractual nature of this market? In other words, if
8 we have this constructed time line that you all are
9 supplying, would it be looking at those contracts of
10 which you want us to focus on, kind of the ones Dr.
11 Kaplan has picked the higher volume that have come up
12 during the POI? Is that the argument, that MSSA would
13 have come in with - would have had to come in with
14 higher prices and, therefore, is the argument that
15 Dupont would not have lost the business or would have
16 gotten higher prices?

17 MR. KAPLAN: I think some of each and it
18 would have depended on the relative prices, but the
19 whole price level would have gone up. You know, as
20 new contracts are negotiated, and you see this
21 sometimes in long-term contracts in other markets
22 you've looked at, in the steel market or something
23 like that, where the costs are going up for two or
24 three years, there's some - you know, in those cases,
25 in commodity markets, you've seen big shocks, then the

1 contract comes up. And then you see a nice jump up
2 and the average price will go up, if you're looking at
3 averages, too. But, we're just not seeing that.
4 We're just not seeing these higher costs being
5 reflected. With the exchange rate, you expect to see
6 the import prices rise, because their costs are going
7 up. And since the products are substitutes, demand
8 for our product would rise. So, our prices should go
9 up and our volume should go up. And depending on the
10 particular customer, it could be a little of this and
11 a little of that. But, you should be seeing both
12 quantity and price effects from rising costs and
13 rising import prices.

14 The problem is what we have, we haven't seen
15 rising import prices and just tamped everything down.
16 And how severe? Well, the margin - I don't know,
17 we'll probably know another 10 minutes what the
18 official margin is. It was 50 percent in the prelim.
19 That's a lot of suppression. That leaves a lot of
20 room for MSSA to charge lower prices in the United
21 States and a lot of room for the customers to say, you
22 know, I'm not going to accept a price increase. I
23 don't care if your costs went up. I have an
24 alternative supplier.

25 COMMISSIONER OKUN: Okay. I appreciate that

1 comment. Mr. Hilke, I wanted to go back to you and
2 just couldn't put my fingers on it, so you might know.
3 When you had responded to one of my colleagues about
4 what you thought the difference in the market - one of
5 the differences you saw was the increase in MSSA's
6 capacity and that's what really impacted the market
7 and then when they lost their customer. Can you
8 remind me just time-wise, are we talking about during
9 the period of investigation or prior to that when you
10 started seeing that impact?

11 MR. HILKE: I mean, my facts, I think, are
12 pretty close, that the expansion occurred in the 1999
13 to 2001 time frame. The shutdown of Actel Sodium
14 Manufacturing plant in the U.K. occurred in about the
15 1999 to 2001 time frame and 100 percent supply from
16 MSSA to Actel in the U.K. started occurring. And then
17 between 2000 and 2005, which would have been about the
18 start of the POI, Actel's tetra lead production went
19 essentially to zero. So, it was projected at this
20 huge capacity or demand, bigger than what MSSA says
21 its previous capacity was, that's why MSSA expanded,
22 but then that demand went to zero. And so that
23 occurred in the early part of this decade and we
24 increasingly saw pressure from imports at lower
25 prices. At some point the line was crossed and I

1 think we talked about this at the preliminary. At
2 some point, I regarded it as competition, you know,
3 from overseas, natural competition. At some point,
4 they lowered their prices below their home market,
5 they lowered their prices below their costs, and they
6 were dumping and we were injured almost from the
7 beginning.

8 COMMISSIONER OKUN: Okay. And then I know
9 you've responded to a lot of questions about that, but
10 just so I'm very clear, in terms of - I mean, I'm more
11 familiar with hearing about meter release clauses in
12 contracts and hardship clauses. Are hardship clauses
13 considered a more lenient or better if you're the
14 producer? I mean, do you have more flexibility than
15 with the meter release? Would you know from other
16 businesses you're familiar with?

17 MR. HILK: I mean, what I will say is that
18 in this market, in the face of prices being driven
19 down dramatically, and obviously at some point, we are
20 aware that the other parties across the line. They
21 were dumping now; we were faced with their selling
22 below their costs; we're going to be forced to sell
23 below our costs. It's as simple as that. The cost
24 structure is not that much different. We've basically
25 refused to put in meter release clauses. I mean, when

1 you're agreeing to a price that you know is going
2 really push your margin, it's going to really crimp
3 your profitability. That's basically going to injure
4 you. You are not going to allow your customer to just
5 willy-nilly go out in the market and get more bids
6 below your price even further. So, typically, in this
7 market, we haven't given meter releases. When a
8 market turns and Brian and I worked together in a lot
9 of other businesses and we see this often, when the
10 market turns, when we raise prices significantly,
11 customers will say, and it's rational, we'd like a
12 meter release around that, I mean, just two years from
13 now, it might be a different market. We generally are
14 obliged to grant those meter releases. It's all in
15 the competitive situation.

16 Hardship is something that we put in only
17 for exactly what that is, hardship. We hope to never
18 invoke hardships. I think I've only done it - I can
19 count on a couple of fingers when I invoked hardship
20 in my contracts and I've done a lot of them. So,
21 we've had one in this business. It's been very
22 significant. It's been unfortunate. But, we've
23 invoked it.

24 MR. MERRILL: Brian Merrill. If I might add
25 to that, certainly a meter release clause favors the

1 customer only, okay. Hardship clause generally is
2 within a partnership in an agreement, which can go
3 both ways. The customer can bring hardship, as well,
4 if they view that the price is detrimental to their
5 changing marketplace, okay. So, in this particular
6 case, Dupont exercised a hardship, because we have
7 been the one that's been harmed within our market.

8 COMMISSIONER OKUN: Okay. That's very
9 helpful. I have a better of that now. And with that,
10 I don't believe I have any further questions, but I
11 did want to thank all of you for the responses. Thank
12 you.

13 CHAIRMAN ARANOFF: Commissioner Lane?

14 COMMISSIONER LANE: I just have one or two
15 questions. Dupont is arguably recouping some of its
16 lost sales volume in the United States by increasing
17 its exports to other markets. One such market is the
18 European Union. Do the purchasers in the EU have the
19 same quality requirements as the sodium metal
20 producers in the United States?

21 MR. MERRILL: I would say absolutely, we
22 have the same quality requirement that we have to meet
23 in the U.S., as in the European Union.

24 COMMISSIONER LANE: Okay, thank you. And
25 the other question I had is are there any countries

1 still that use leaded gasoline?

2 MR. MERRILL: There are very few countries
3 that we're aware of that still use leaded gasoline.
4 There is some use in the aviation industry. They
5 still use some leaded gasoline. But, essentially, the
6 last countries, Greece, Turkey, et cetera, exited the
7 use of leaded gasoline far before they were mandated,
8 okay, and that speaks to Ken Hilk's comment that
9 Actel's business fell off much more rapidly than was
10 forecast, because these countries eventually exited
11 again well before they would have had to of.

12 MR. JAFFE: Also, if I might just add
13 additional information to the first question that you
14 asked. There was a view in the preliminary dissenting
15 that the export actually invited the imports into the
16 United States. That's not correct. We have put
17 information on the record, which demonstrates that the
18 exports that were increasing was actually just a
19 reshuffling of the portfolio that Dupont had at the
20 time and that it was not an invitation for people to
21 import, that it actually was a way of reshuffling the
22 portfolio to actually counteract, to a certain degree,
23 the Sengenta issue and its loss of volume in the
24 United States and how that impacted production.

25 MR. MERRILL: If I might add, Brian Merrill,

1 the contractual structure for us supplying in Europe
2 was put in place in 2002, well before the Sengenta
3 business was terminated.

4 COMMISSIONER LANE: Okay, thank you. I have
5 one more question. How do you think the announced
6 purchase of Roman Haus by Dow will affect, if at all,
7 the Roman Haus purchases of sodium metal?

8 MR. HILK: This is Ken Hilk. We've actually
9 seen a number of our customers over time be purchased
10 in the same way that Roman Haus was recently purchased
11 and we don't expect any effect. We haven't seen
12 changes in the past.

13 COMMISSIONER LANE: Okay, thank you. Madam
14 Chair, that's all I have.

15 CHAIRMAN ARANOFF: Commissioner Williamson?

16 COMMISSIONER WILLIAMSON: Thank you, Madam
17 Chairman. Just a few additional questions. How much
18 time is typically required between a contract
19 negotiation and product shipments began?

20 MR. MERRILL: Brian Merrill. Oftentimes,
21 contract negotiations take place well before the
22 expiration of the current agreement. They may start
23 six months prior. If it's a new contract, oftentimes
24 those are several months in advance. As we've, I
25 guess, tried to describe, these contracts are often

1 long-term agreements. They're relatively complex and,
2 consequently, there is sufficient amount of time
3 needed. So, I would say, generally, they're within
4 six months of the start of supply.

5 COMMISSIONER WILLIAMSON: Thank you. What
6 is the minimum time required to construct the cell and
7 begin production?

8 MR. WALLDEN: Rich Wallden. I will go ahead
9 and answer that one for you. There is always a
10 certain number of cells in our production line at
11 different stages of production. So, if we needed to
12 accelerate that, we can adjust the amount of manpower
13 that is on the line making cells. So, we can make an
14 adjustment in the time to bring a new cell on, from
15 anywhere from a couple of weeks to a month, depending
16 on how many cells we have going. Sometimes, we even
17 can get them out in a week, if we're pushed to get an
18 additional cell built and ready to go. So, it really
19 depends, as you mentioned, how much lead time, when is
20 supply going to be needed. As you're doing your
21 production planning, we roll that in, as far as how
22 much resources we need to put on our cell building
23 activities.

24 COMMISSIONER WILLIAMSON: Thank you. Now, I
25 know you don't usually - a particular cell is not

1 linked to a particular contract. But, I take it if
2 you - what happens if your, say, demand is going down,
3 would you bring cells offline earlier than the useful
4 life?

5 MR. WALLDEN: Rich Wallden. Yes, we would
6 adjust our production rate based on the general
7 direction of the demand. If it is going down, we will
8 bring down some of those cells and, hopefully, you
9 don't have to take too many of those cells off and
10 have to restart them, if the demand were to jump up
11 again. But, we slowly ramp down the cell count.

12 COMMISSIONER WILLIAMSON: Thank you. Now,
13 I'm thinking about the different types of - say,
14 qualities of sodium and I guess the amount of calcium.
15 We have a particular cell running. Does it only
16 produce one grade of sodium or can you adjust the
17 grade while it's running?

18 MR. FETZER: The down cell, as it runs at
19 the cell, produces one grade of product. We do some
20 post-production processing, different filtration
21 steps, cooling to different levels, additional
22 filtering treatment that would adjust the quality
23 grade by removing more or less calcium.

24 COMMISSIONER WILLIAMSON: Okay.

25 MR. FETZER: So, all of the material as

1 produced is one grade. Post-processing takes care of
2 different calcium levels.

3 COMMISSIONER WILLIAMSON: Okay. So, it's
4 not - the grade is not linked to the -

5 MR. FETZER: Not to the cell.

6 COMMISSIONER WILLIAMSON: - cell. One other
7 question. We talked about these long-term contracts
8 and the importance of looking at the price of those.
9 I imagine there are differences in - there are
10 adjustments that can be made in the contracts and they
11 vary by contract. To what extent - are there factors
12 that we should be looking at, in terms of how the
13 price is adjusted in different contracts that might
14 give us any light on the nature of competition? There
15 may not be, but it just occurred to me to raise that
16 question.

17 MR. HILK: Mr. Commissioner, can you repeat
18 the question?

19 COMMISSIONER WILLIAMSON: I am just trying
20 to figure out if there is anything in the way you
21 adjust the price of a contract that may give us some
22 light or shed light on the nature of the competition
23 between the imports and the domestic production.
24 There may not be, but I just - the question just
25 occurred to me.

1 MR. HILK: I think the only one that stands
2 out is really significant volume and stable demand can
3 have value to the producers such that there can be
4 some value negotiation in price. There are other
5 price adjustments that we consider and we try to build
6 into contracts. I think those would be - we can
7 provide some of those things off the record - or in
8 the post-hearing brief.

9 COMMISSIONER WILLIAMSON: Okay, thank you.
10 That just helps shed light on the nature of the
11 competition and I appreciate it.

12 MR. KAPLAN: A lot of times the Commission
13 sees industries with long-term contracts and they're
14 really almost like a quantity commitment and you see
15 the prices flopping around all over the place. And I
16 appreciate your question, because sometimes, you know,
17 you have a series that allow for different types of
18 adjustments and some of them are larger and some of
19 them are smaller. I will address that in the post-
20 hearing. But, on the graphs and the way the contracts
21 are done, there seems to be less adjustments in this
22 industry than in others we've seen in a relative
23 basis. So, I don't know if that's helpful.

24 Also, we were talking about the price
25 suppression before and the large margin. The final

1 DOC margin did come out and it's 66.64 percent. And
2 that's the kind of margin that would cause prices to
3 go up once products are fairly traded.

4 COMMISSIONER WILLIAMSON: Thank you for that
5 information. I have no further questions, Madam
6 Chairman.

7 CHAIRMAN ARANOFF: Commissioner Pinkert?

8 COMMISSIONER PINKERT: I just have a couple
9 of questions. Going back to this issue, Mr. Merrill,
10 about the possible competition in the downstream
11 market and whether that causes any refusal or choices
12 not to deal with that customer. Has Dupont ever made
13 a choice not to deal with a potential customer in this
14 merchandise because it competes with Dupont in a
15 downstream market?

16 MR. MERRILL: Again, I'm not aware of us
17 making the decision to refuse to sell sodium to
18 anyone, who would want to make sodium methelate,
19 because, again, ultimately, we view this as a return
20 on our sodium molecule, okay. And if they're
21 producing sodium methelate marketing, it's a sodium
22 sale for Dupont. So, to answer your question again,
23 I'm not aware of us refusing to sell anyone, who
24 wanted to make sodium methelate.

25 MR. HILK: This is Ken Hilk. I would like

1 to add to Brian's comment. We do sell sodium to
2 downstream competitors of some products and we do it -
3 I'm also not aware of any situation where we've
4 refused to sell to a customer.

5 COMMISSIONER PINKERT: Thank you. Now,
6 turning to the issue about possible constraints on
7 Dupont's ability to supply the domestic market. Does
8 Dupont face a constraint in its ability to supply the
9 domestic market as a result of a limited number of ISO
10 containers?

11 MR. WALLDEN: Rich Wallden. At this time,
12 we have extra ISO containers that have been sitting,
13 some of them at the Niagara plant for - some of them
14 almost two years, because there hasn't been enough
15 demand in order to keep those ISO tanks in service.
16 We don't put extra ones in service, because there's
17 additional expense and inspections. So, we keep them
18 available and can be put into service. Most of those
19 can be put into service with two or three weeks
20 notice, if we needed to add those. So, from a vessel
21 standpoint, the other vessels are railcars, we have
22 adequate railcars for our - the business that we have
23 and what we expect. I don't believe that
24 transportation equipment, which historically has been
25 one of the issues, is any problem for Dupont. We've

1 been able to meet our customers and some of them on
2 very short notice, in moving our transportation
3 equipment around. We've even met customers with two
4 or three days notice that they needed halfway across
5 the country and made that delivery, because we have
6 the equipment available to meet the requested delivery
7 dates.

8 COMMISSIONER PINKERT: Thank you. That
9 completes my questions, at least other than possible
10 written questions, and I look forward to the post-
11 hearing.

12 CHAIRMAN ARANOFF: Just a few more follow-
13 ups. With respect to this issue of competition in
14 downstream markets, Commissioner Pinkert asked if
15 Dupont had ever failed to supply sodium metal to a
16 customer that competes with you in a downstream
17 market. But, I wanted, just for the record, to ask
18 the question more broadly. Has Dupont ever cut off
19 supply of any chemical or refused to supply any
20 chemical that it makes to a company with which it
21 competes downstream, other than in circumstances of
22 forced majeure, where there might have been a reason
23 why you couldn't supply anyone?

24 MR. HILK: To the best of my knowledge, I'm
25 not aware of us refusing to supply in the market.

1 CHAIRMAN ARANOFF: Okay, thank you. At the
2 conference in the preliminary, Texas Molecular
3 reported that it had asked Dupont for a price bid on
4 about three million pounds of sodium metal per year,
5 but that it had not received any bids as of November
6 2007. Did Dupont subsequently respond to Texas
7 Molecular's invitation to bid?

8 MR. MERRILL: Actually, we recognized the
9 initial information. We still have not - we have a
10 formal procedure for first orders for a customer,
11 which we follow, to make sure they adequately can
12 handle product, et cetera. So, I am still not aware
13 of a request by Texas Molecular for us to supply
14 sodium. And Larry can correct me, but I'm not aware
15 of any first order procedure or anything that we've
16 gone through to investigate whether this company can
17 adequately handle sodium.

18 MR. HILK: Yeah, let me just add - Larry,
19 that's okay. With this customer, I mean, I have
20 personal knowledge that the sales individual did
21 follow-up with this company and our position is we
22 will supply, the terms to be negotiated. So, I don't
23 know exactly what the time frame was after November,
24 but I'm aware that after - we heard about this or I
25 heard about it at the preliminary as one issue and we

1 addressed it at the preliminary.

2 MR. JAFFE: Finally, Matthew Jaffe, I would
3 just note for the record that there is a footnote, I
4 believe, in the staff report that indicates that Texas
5 Molecular did not file a purchaser questionnaire
6 response.

7 CHAIRMAN ARANOFF: Okay. All right. Well,
8 anything you want to add post-hearing to just firm up
9 the time line on that and who did what would be
10 helpful. And I take your point about the missing
11 questionnaire response.

12 A number of people have asked questions
13 about the issue of new demand, demand in new end uses,
14 and the extent to which that might be relevant for
15 purposes of a threat determination, were we going to
16 reach that issue. I just want to ask specifically for
17 post-hearing, to the extent that it hasn't already
18 been asked, if Dupont could give us an indication for
19 these new uses, that includes the bio-diesel and the
20 titanium and the solar and any others that I'm not
21 thinking of right now, about what volume of sodium
22 metal do you estimate is going to actually be
23 contracted for, for those uses, in the next six to 12
24 months and what volume do you think is actually going
25 to be delivered in the U.S. market for those uses in

1 the next six to 12 months? That would be very
2 helpful, because I understand that a lot of what we've
3 seen on the record has been that in the future, there
4 may be very large demand for these products, maybe
5 even as soon as 2010, but that already would be
6 further out than we would normally look for threat
7 determination. So, I want to try and narrow it down
8 to how much would be demanded in a period that we
9 would look at.

10 MR. HILK: Ken Hilk. I've been asked this
11 question many times. Of course, it's a very difficult
12 one, predicting the future, and I can just share from
13 my experience what we've seen. In our experience, the
14 applications for sodium use take a long time to come
15 to fruition. We would be very excited if, for
16 example, the titanium use for sodium - by the way,
17 titanium used to be manufactured using sodium and it
18 used, I think, more than what is produced at Niagara
19 today. In the 1960s, 1970s, that declined
20 dramatically, because of the cost situation around
21 that manufacturer and that company went out of
22 business somewhere around 2000, somewhere in the
23 1990s, around 2000. So, titanium made from sodium is
24 not new. This is a new application for new end-use
25 applications. I've been working with companies on

1 this since 1998 and we're, again, looking forward to
2 commercial development. We're looking forward to
3 hopefully developing. But, my experience is, it takes
4 a long time. So, in the next six to 12 months, it's
5 very difficult to say there's going to be a really big
6 significant volume that moves the needle on demand at
7 all.

8 On the solar markets, we are seeing -
9 application of technology again has been around for
10 10-15 years. The knowledge - again, people from
11 Dupont have worked with individuals in technology
12 applications to develop silicon using sodium for a
13 long time. And we've supplied sodium in these
14 applications. There tests, piloting, so on, and
15 that's continuing today. Again, we would love to see
16 that, but we just don't see a very high potential for
17 growth the next quarter of next year, because there
18 needs to be commercialization of these technologies.
19 We are also fully aware that silicon can be made again
20 using many different technologies and competing
21 technologies will continue. And the most prevalent
22 use today to technologies will continue to make
23 silicon for the foreseeable future.

24 CHAIRMAN ARANOFF: Okay.

25 MR. HILK: So, that's how I would answer

1 that question. We see a stable market, mature. We
2 don't see the growth in the next few months.

3 CHAIRMAN ARANOFF: Okay. This question,
4 obviously, also goes to Respondents, if I neglect to
5 ask you this afternoon, the question remains open.
6 But, I would really like to see some evidence or
7 quantification put on the record, not of long-term
8 forecasts where there looks like there might be a
9 bright future, but of what's going to happen in the
10 next six to 12 months, in terms of actual orders,
11 because I think that's the only time period, at least
12 for me, that's going to be relevant for a threat
13 determination.

14 With that, let me just turn to one other
15 question. Does Dupont store sodium metal prior to
16 shipping it to the customer?

17 MR. WALLDEN: Rich Wallden. All the sodium
18 that we manufacture gets stored in railcars or in ISO
19 tanks. And then depending on the order pattern and
20 inventories, we may store it in that railcar until we
21 receive a specific order, and the same with the ISO
22 containers.

23 CHAIRMAN ARANOFF: And you own those, the
24 ISO containers and the railcars?

25 MR. WALLDEN: There is a mixture, depending

1 on the time when we need the containers. Some of
2 those are leased and some of those are owned by Dupont
3 and we have a mixture of both of those.

4 CHAIRMAN ARANOFF: Okay. But even the ones
5 that are leased, they're not being alternately used by
6 some other chemical company to carry other things
7 around or -

8 MR. WALLDEN: No. All of these railcars and
9 ISOs, whether we own them or lease them, are long-term
10 leases. This product is not one that you can take and
11 put into a container and then next week ship another
12 product in that and then come back to use sodium in it
13 again. The fleets, both railcar and ISOs, are pretty
14 much dedicated to hauling that material, because it is
15 expensive to clean them. It's not an easy process to
16 clean them out to return them to another service.

17 CHAIRMAN ARANOFF: Okay. Have you
18 experienced issues with sludge building up in these
19 various storage and transportation containers that you
20 use?

21 MR. FETZER: We do see over time, there is
22 an accumulation. But, interestingly enough, it's kind
23 of the opposite of what the customers might have
24 originally talked about, in a sense. We were able to
25 do a study where we measured the level of calcium as

1 we loaded it into the vessel and we had a very close
2 by customer where we were able to measure the level of
3 calcium as it was removed from the vessel. And what
4 we found out is the customer was a benefactor of about
5 50 parts per million of calcium that remained in the
6 vessel and we see that that is a minor accumulation
7 that happens over the years. One of the things that
8 we'll do at the railcars is every 10 years, they need
9 to be recertified and in order to recertify it, you
10 have to clean the railcar out, because you do a
11 hydrostatic test. You actually do put water in it.
12 So, we do want to make sure all the sodium is out
13 there. So, every 10 years, regardless of the amount
14 of accumulation that's in a railcar, we'll go through
15 the process to remove that, so we can recertify the
16 railcars.

17 CHAIRMAN ARANOFF: Okay. Can you explain to
18 me, because you're now saying that sometimes, there's
19 an advantage to the customers, I guess, because some
20 stuff settles out into the railcar that never gets
21 delivered to the customer. But, aren't there some
22 kind of weight adjustments or - I've seen the term
23 heel charges? Can you explain how those work?

24 MR. WALLDEN: Rich Wallden. Our billing
25 practice with all of our customers is that when we

1 make a shipment to them, we weigh the vessel, whether
2 it's a railcar or an ISO tank, before we ship it. We
3 add material to that vessel and we invoice the
4 customer for the amount of material we put into the
5 vessel. When it returns, some customers leave extra
6 material in the container, some take extra material
7 out, and we make an adjustment, and our terminology is
8 either a heel credit or a heel debit, based on what
9 the customer actually took out. Many of our customers
10 will actually use charges of a certain volume in their
11 process. So, if there isn't an adequate inventory of
12 material in that container for a complete charge for
13 whatever chemistry they're doing, they will disconnect
14 that vessel and put another one in, because they don't
15 want to take a half a charge from one container and
16 then have to bring another container in and get it
17 connected and melted to make that next one. So, from
18 their process, they don't want to be charged for that
19 material that they - because of their logistics and
20 their chemical process, they weren't able to use. So,
21 we make that adjustment on every shipment, on every
22 railcar, and that's our practice over a significant
23 period of time.

24 CHAIRMAN ARANOFF: And then what happens if
25 they don't take a certain amount and that car comes

1 back to you? You just top that thing off and send it
2 to the next customer?

3 MR. WALLDEN: You are exactly correct.
4 Whatever is left in there, it's - because if it's the
5 same grade, it has no problem, we put it right on top
6 of that and that customer then, if it goes to a
7 different one, may take more out than what the
8 previous customer was able to do. So, then, we have
9 to charge them for that extra amount that they took
10 out of that vessel, because our practice is to just
11 charge for what we put into the vessel.

12 CHAIRMAN ARANOFF: Okay, thank you.

13 MR. WALLDEN: Let me add one more. One
14 particular customer goes into a shutdown. They've got
15 a half of railcar that still has sodium into it. When
16 they come out of their shutdown, they don't want to
17 have only a half a car to work with. They want to
18 come up and they want to run. So, they return, and
19 this has happened several times, between a quarter and
20 a half a railcar still full of sodium. We give them a
21 credit for that. When a car goes out, we only charge
22 the customer for half a car of sodium, because that's
23 all we put in. But, we know they're going to take a
24 lot more sodium out of that railcar when they're
25 running continuously then. And so, then, they get the

1 benefit. It's a delayed billing. When that car
2 finally comes back again, then they get charged for
3 the remainder of that material they took out. It's
4 just an adjustment based on actual consumption by the
5 customer.

6 CHAIRMAN ARANOFF: Okay. Thanks, very much,
7 for that clarification. That was helpful. I probably
8 would have known some of that, if I had been able to
9 make it to the plant tour. In any event, I appreciate
10 all of the witnesses' answers and I don't have any
11 further questions at this time. Are there further
12 questions from Commissioners?

13 (No further questions from the
14 Commissioners.)

15 CHAIRMAN ARANOFF: Do the staff have any
16 questions for this panel?

17 MR. DEYMAN: I am George Deyman, Office of
18 Investigations. The staff has no questions.

19 CHAIRMAN ARANOFF: Do Respondents have any
20 questions for this panel?

21 (No questions from Respondents.)

22 CHAIRMAN ARANOFF: Okay. We are going to
23 take a lunch break for one hour and come back here at
24 10 minutes after 2:00. And in the meantime, I should
25 advise you that this room is not secure. You should,

1 please, take all confidential information with you
2 during the lunch break. And until 10 after 2:00, we
3 will stand in recess.

4 (Whereupon, at 1:10 p.m., the hearing was
5 recessed, to reconvene on this same day, Tuesday,
6 October 14, 2008, at 2:10 p.m.)

7 //
8 //
9 //
10 //
11 //
12 //
13 //
14 //
15 //
16 //
17 //
18 //
19 //
20 //
21 //
22 //
23 //
24 //
25 //

1 the problems they find in their customers. But, they
2 don't buy sodium. Our panel is buyers and it will
3 give you an entirely different and more accurate
4 understanding of the buying decisions. Thank you.

5 MR. RICE: Good afternoon. My name is Doug
6 Rice. I am manager of support services for MEMC
7 Pasadena, Texas, which is located in the Houston area.
8 I am the former site manager of that facility with
9 almost 30 years with MEMC.

10 CHAIRMAN ARANOFF: Could you come just a
11 little closer to your microphone, sir? You have a
12 soft voice.

13 MR. RICE: Absolutely, thank you.

14 CHAIRMAN ARANOFF: Thank you.

15 MR. RICE: MEMC Electronic Materials is a
16 global leader in the manufacture and sell of silicon
17 wafers and related intermediate products, such as
18 poly-silicon to the semiconductor and solar
19 industries. We use sodium metal in a proprietary
20 process to produce poly-silicon, which we then use to
21 make our wafers, both electronic and solar. We employ
22 over 1,130 people in the United States in our
23 operations and have capacity to produce nearly 80
24 million square inches of silicon wafers per year in
25 the U.S., plus an additional 400 metric tons of single

1 ingot crystal of silicon. In 2007 alone, we spent
2 over \$40 million U.S. in R&D expenditures, with a vast
3 majority of these in the U.S., primarily in our St.
4 Peters facility, which is located outside of St.
5 Louis, Missouri, including R&D for our wafers for
6 solar applications, which is an increasing R&D effort.

7 MEMC has doubled its poly-silicon
8 manufacturing capacity, including a capital expansion
9 of several hundred million dollars, our capacity in
10 the facility to support the growth in the solar
11 industry. Due to this expansion, our sodium metal
12 demand has doubled since March and June of 2008 and
13 will continue to increase steadily in the future for
14 solar panel and semiconductor applications, of which
15 solar will grow faster. MEMC produced the demand for
16 green products like MEMC solar panel wafers to
17 increase significantly over the next 10 to 20 years
18 and actually much beyond into the future. Demand for
19 sodium metal will experience the same increasing
20 demand.

21 From the mid-1980s through 2005, Dupont was
22 the sole supplier of all sodium metal demand. As
23 background, sodium metal is a very unstable material.
24 It's elemental. It spontaneously ignites in contact
25 with air and spontaneously explodes in contact with

1 water. This is deemed a power fork material. This is
2 in the chemical industry reference. The industry has
3 experienced three significant, extremely significant
4 safety and environmental events caused by the sludge
5 and waste accumulation associated with Dupont's
6 material due to these excessive calcium levels. In
7 the chemical industry, these accumulations are called
8 heels. We have experiences from these heels, which is
9 material that's beyond the solubility of the material
10 in the original product, is a fire resulting from
11 efforts to remove Dupont waste from a vessel on site
12 at MEMC with excessive accumulated material caused by
13 Dupont's sodium metal. We had a fire incident in our
14 facility at a tank.

15 Also, secondly, an employee was injured, who
16 was trapped by personally trying to remove waste from
17 this vessel, which requires entry and protective
18 clothing and air supplied respiration, again due to
19 trying to remove this excessive material, again caused
20 by Dupont sodium metal.

21 Third, we had an explosion and fire
22 resulting from an overflow fill of a storage vessel.
23 Again, this contained excessive heels from Dupont
24 material. This incident was so severe it had to be
25 reported to state and federal agencies, because of the

1 significant volume of material released into the
2 environment in the Houston area.

3 Lastly and fourth, a significant dedication
4 of man hours and funds was expended after this event
5 by MEMC, by developing our own technology to safely
6 and environmentally remove Dupont from our remaining
7 vessels, get this waste material out from the
8 remaining vessels on site. And just to give you a
9 perspective of the cost to do this safely and MEMC's
10 concern in this area, just to remove Dupont waste
11 material from one vessel requires \$300,000 of costs
12 from MEMC and specialized contract labor associated
13 with removing tank heels in this environment; \$350,000
14 for waste disposal of the heel in the best
15 environmentally friendly manner, which had to be
16 developed in coordination with a local HAZ waste
17 disposal unit with MEMC technology. The technology
18 did not exist. It was not available to MEMC.

19 Additionally, easily 50 to 100,000
20 additional dollars not tracked by external purchase
21 orders or internal tracking was associated with
22 internal efforts to manage and clean up this material.
23 This does not include the lost revenue to MEMC from
24 having to shut down production for a month for this
25 cleaning process on the one vessel, of which we have

1 eight major vessels in our facility, and it does not
2 include several hundred thousand dollars of the repair
3 to the facility caused by these fires and explosions.

4 The safety and environmental risks are
5 unacceptable to MEMC going forward due to risk to the
6 employees, due to the personal exposure required of
7 taking an employee and putting them into these vessels
8 to remedy these heels. Therefore, we attempted to
9 work with Dupont to resolve the problems from the
10 excessive buildup, from accumulated impurities on a
11 root cause effort, unfortunately with no success.
12 Rather than eliminate the source of the accumulation
13 problem to their sodium metal, which is a proactive
14 approach, which is expected in the chemical and
15 especially the electronics industry, Dupont's only
16 recommendation for us to clean the vessels. This is a
17 very reactive approach, post-incident approach. It is
18 not proactive. It does not prevent.

19 Due to all the problems we've experienced
20 with Dupont's metal, we began to seek alternate
21 supplies. We work with MSSA to seek a solution to the
22 contamination problem. This is demonstrated by the
23 focus on quality in our supply agreement with MSSA and
24 can be supplied as evidence.

25 In addition, we experienced a separate fire

1 with temporary piping used to unload railcars during
2 an unloading of a railcar containing the Dupont sodium
3 metal. Again, therefore, we work with our suppliers
4 to address logistic issues to eliminate safety and
5 environmental problems associated with a temporary
6 flex piping required to go from a railcar, fix piping,
7 to our production units, fix piping. Dupont's
8 solution offered to MEMC was to upgrade our unload
9 station. This include cameras, fire detectors, smoke
10 ventilation when the fire occurred to remove the
11 smoke, again a very reactive approach, what to do
12 after the fire incurs. MSSA's solution was to move
13 the fixed piping, with delivery of sodium through a
14 pipeline system from MSSA to MEMC. This is common
15 practice in Houston for hazardous chemicals within the
16 chemical industry, very standard. That's why you have
17 the dense population of the chemical industry within
18 Houston, again a proactive approach.

19 Since purchasing MSSA's product, we have
20 demonstrated no problems with accumulated material. I
21 ask that the Commission please understand the
22 philosophy and root cause protocol from proactive and
23 reactive between these two companies. Material
24 supplied by pipeline, thereby eliminating any
25 potential for a fire resulting from a temporary

1 piping, is another benefit we enjoy unloading
2 railcars. In addition, we save significant cost by
3 not having to maintain daily use of this unload
4 facility. We have no associated internal labor
5 associated with unloading this material. We have not
6 costs associated with energy to heat the sodium to
7 liquid state, to be able to transfer from a railcar
8 through this temporary pipeline. We simply do not
9 incur the cost and risk with utilization of the MSSA
10 pipeline that we incur when purchasing Dupont's
11 product delivered in the railcars.

12 Most importantly, most critically, we have
13 had no safety or environmental incidents associated
14 with MSSA sodium that we had with Dupont material. We
15 have had to expose no employees to the risk associated
16 with personally removing waste like we have with the
17 Dupont material. Where doubling of our capacity and
18 resulting doubling of sodium consumption, MEMC cannot,
19 and this is very important, I will repeat, MEMC
20 cannot, Commissioners, support its operations without
21 the MSSA pipeline. We cannot achieve the volume
22 today. We simply cannot supply sufficient quantity of
23 sodium using the railcar unloading system with
24 Dupont's product. In summary, there is an extreme
25 safety and environmental logistical differentiation

1 between the MSSA product and Dupont's product, as we
2 sit here today.

3 Halides - this is totally separate. You've
4 heard a lot about the calcium. We are in the
5 electronic's industry. We are in the solar industry.
6 At the same time, working with MSSA, we are able to
7 resolve our safety and environmental concerns. We are
8 able to also work with MSSA in a technical
9 relationship to reduce our chloride and bromium
10 impurity concentrations in our product. These
11 together comprise the halides. This is very important
12 to the electronic's industry. So, amongst the
13 suppliers of the sodium, this is - the customers, this
14 is probably a little bit unique to the electronic's
15 industry and this is because we measure these
16 impurities in parts per billion, parts per billion.
17 However, another important issue with the electronic's
18 industry, again, is this halide. Harm to MEMC really
19 - MEMC's ready access to high-quality sodium, as I've
20 expressed to you, is critical to our operation.
21 Protection of our supply of sodium metal is absolutely
22 required, absolutely required, for the survival and
23 health of our U.S.-based operations and our ability to
24 compete against growing competition, particularly from
25 China.

1 In the silicon market, and this is both for
2 our solar applications and our semiconductor
3 applications, Dupont can simply not supply us with a
4 product we need with lower calcium and potassium
5 levels, with volume. It cannot supply sodium metal
6 with halides at our current requirement. Therefore,
7 MEMC has relaxed its specifications to Dupont.
8 Although MSSA provides sodium with 20 ppm halide
9 content, we relaxed this specification to 35 for
10 Dupont, to be able to qualify to MEMC. We remain
11 concerned about the capability for them to produce at
12 20, so there was a relaxation of the specification for
13 Dupont. With our most current supply from Dupont, for
14 improved quality product, to support our ISO 9001
15 certification requirement, Dupont missed its target
16 delivery date by months. And even then, its sodium
17 metal had a halide content of 50 parts per million, 15
18 ppm higher than we were able to allow for our
19 qualification requirements. Again, MEMC, working with
20 Dupont, at these halide levels, we were willing to run
21 one railcar under waiver, which are ISO 9001 allows,
22 to determine the impact on our operations. If this
23 9001 requirement waiver, if we run this, we can only
24 run one railcar for volume. We cannot qualify Dupont
25 for volume with a current product that has been

1 supplied to MEMC.

2 MEMC approached MSSA as a possible supplier
3 due to the quality issues that MEMC was having in the
4 areas of safety and environmental impacts due to this
5 waste and sludge in Dupont's product and the highly
6 reactive nature of sodium in dealing with it, with the
7 safety of our personnel. We did not approach MSSA due
8 to price. MSSA has worked closely with MEMC,
9 providing proactive detailed technical support for
10 sodium metal, which is outside the core business for
11 MEMC. Very important, MEMC is very capable in
12 analytical capability in electronics and solar. We
13 don't have that and we don't enjoy that in sodium
14 metal. We depend on our suppliers. Dupont has never
15 supplied proactive technical support in the same way
16 to help us solve the operational problems from using
17 their product. In addition, MEMC has never made a
18 decision to purchase from MSSA and to not purchase
19 from Dupont on the basis of price. All of MEMC's
20 purchasing decisions have been based primarily upon
21 the quality of the product coming from these two
22 suppliers and, secondary, based on the logistics of
23 supply.

24 Price is a tertiary factor. In fact, MEMC
25 has rejected price offers from Dupont that are lower

1 than MSSA's prices. And MSSA has refused to accept
2 immediate release requirement spurred by a lower
3 Dupont quote to MEMC. Although the sodium metal that
4 MEMC obtains from Dupont is inferior to the sodium
5 metal obtained from MSSA and cannot be used currently
6 commercially by MEMC, a successful and viable source
7 of supply from Dupont is deemed essential to MEMC's
8 future growth and sodium demand. Despite what MEMC
9 perceives to be a lack of commitment demonstrated on
10 Dupont's part, MEMC will continue to strive to make
11 Dupont a viable supplier to us, because it is so
12 obvious to be in our best interest.

13 Thank you. I sincerely look forward to
14 questions from the Commissioners.

15 MR. LOVE: Good afternoon. My name is Jim
16 Love. I am the business manager for Ferro's High
17 Performance Solvents business. I have been with
18 Ferro Corporation for over 20 years, including six
19 years as plant manager in our Zachary plant and in my
20 current position with Ferro for two years. I am
21 joined here this afternoon by my colleague, Jim
22 Kennan, our global purchasing manager, who is in
23 charge of our purchases of sodium metal.

24 For over 20 years at our Zachary, Louisiana
25 plant, Ferro has been a significant consumer of

1 sodium, which we use to produce high purity special
2 solvents for the pharmaceutical, agricultural,
3 electronic, and other specialty industries. For most
4 of those 20 years, Ferro purchased sodium metal
5 exclusively from Dupont. The most recent long-term
6 contract with Dupont was a three-year agreement, which
7 originally was to have expired at the end of 2006 and
8 was extended through 2007.

9 Ferro first purchased sodium from Metaux
10 late in 2006, when Dupont was unable to supply Ferro
11 due to a shortage of trucks. Dupont had reduced the
12 number of trucks available for transporting sodium to
13 Ferro, so that by 2007, there were only two trucks
14 available. When these trucks were taken out of
15 service for repair, Dupont was unable to keep up with
16 Ferro's demand. For this reason, Ferro found it
17 necessary to purchase sodium from Metaux, to fill in
18 for the material we could not get from Dupont. Our
19 reason for purchasing this material was due to
20 Dupont's transportation limitations, not lower pricing
21 from Metaux. In fact, we had to pay Metaux a higher
22 price than Ferro's contract price with Dupont.

23 For many years, we'd experience problems
24 with impurities in Dupont's sodium, causing
25 performance problems in our facilities. When we

1 switched to Metaux, those problems disappeared. And
2 from the very first truckload, Ferro noticed superior
3 quality, and I will be happy to answer questions about
4 that later. Metaux's sodium was easy to unload, had
5 caused no line plugging, and over time has
6 demonstrated no propensity to cause additional buildup
7 in our tanks. Although the Metaux technical grade has
8 the same specification as Dupont's, Dupont's product
9 has substantially greater levels of impurities than
10 Metaux's.

11 Over the course of our dealings with Dupont,
12 Ferro has advised Dupont numerous times about problems
13 with the sodium metal they provided us due to
14 impurities. These impurities, calcium, calcium oxide,
15 and sodium oxide, precipitate out of the melt and
16 sodium metal to form sludge or mud, which fills our
17 weigh tanks and storage tanks and plugs our pipeline.
18 This is not only an operational issue, but a serious
19 safety issue. A schematic of our production process,
20 which includes several heated storage tanks and
21 extensive heated transfer piping, has been provided to
22 the Commission in our pre-hearing brief. Due to the
23 deposition of calcium and sodium oxide from Dupont's
24 sodium, two of the three sodium tanks became nearly
25 half filled with sludge and the pipelines were

1 increasingly plugged with deposits.

2 In March 2008, accumulation of sludge
3 prevented us from restarting production after a
4 scheduled shutdown. When we attempted to restart
5 operations, we were unable to remelt the sodium in the
6 east weigh tank due to the accumulated buildup of
7 sludge. In fact, enough sludge had accumulated in the
8 tank, that it plugged the outlet piping, so that we
9 could not melt it on startup and couldn't force
10 nitrogen into the tank through the outlet nozzle.
11 When we attempted to restart the operations, we were
12 forced on an emergency basis to replace the east weigh
13 tank with new equipment at a cost in excess of
14 \$133,000, which is a significant and unanticipated
15 cost for our business. Half the plant remained
16 shutdown for an additional 13 days to replace this
17 equipment.

18 Today, our other two tanks are nearly half
19 full of sludge and we will have to take a shutdown
20 this spring to try to clean out the sludge at an
21 estimated expense of over \$150,000. In addition to
22 the cost and production interruption for cleaning out
23 our tanks, there are significant safety risks
24 associated with cleaning these tanks and piping. As
25 had been mentioned, sodium is an extremely hazardous

1 material that combusts spontaneously upon contact with
2 air and explodes even with small quantities of water.
3 As you might imagine, in south Louisiana, this is a
4 serious issue. Breaking into our equipment during
5 these tricky cleanup operations exposes our personnel
6 to unnecessary and potentially life threatening
7 chemical and fire hazards.

8 We have explained to Dupont on numerous
9 occasions over a number of years about these problems,
10 but they could provide no acceptable solutions. We
11 have no record nor can we recall on any occasion that
12 Dupont offered a grade of sodium that would produce
13 less sludge or otherwise tried to address these safety
14 and performance issues. To be absolutely clear, this
15 is not a new problem, and DuPont was well aware of
16 this problem, and of our frustrations long before we
17 entered into a contact with Metaux. The suggestion
18 that we have raised this issue with DuPont only in
19 connection with price negotiations is not correct.

20 "In fact DuPont accepted the responsibility
21 for sludge buildup in Ferro's equipment. In our last
22 contract with DuPont, we insisted that DuPont agree to
23 pay for a portion of the costs for cleaning our tanks.
24 In our most recent contract proposal, DuPont offered
25 to increase the amount it would reimburse Ferro for

1 the removal of sludge from our three tanks, and also
2 agreed to provide a replacement storage tank.

3 "DuPont's proposal, however, would have
4 required that we physically remove the tanks from our
5 facility in Louisiana, move them to DuPont's facility
6 in Niagara, which would have required us to remove
7 part of the roof from our factory in order to remove
8 the tanks.

9 "In 2006, Ferro solicited a bid from DuPont
10 and sodium for a new long-term contract. Ferro ended
11 up offering the contract to Metaux because their
12 product is superior, and presents fewer safety issues.

13 "And in 2007, when we notified DuPont of our
14 decision to enter into a supply agreement with Metaux,
15 DuPont contacted Ferro and asked if they could retain
16 the business if they lowered the price. Ferro
17 responded by advising DuPont that Ferro's decision to
18 switch suppliers was not based on price alone, but was
19 rather based on the improved performance at our
20 Zachary facility using the Metaux sodium.

21 "In addition to these stark differences in
22 quality, it has become clear to us that the same
23 shortage of trucks or iso-tanks on the part of DuPont
24 that caused us to initially try Metaux's sodium metal
25 is not an isolated circumstance, but reflects an

1 ongoing problem that eliminates DuPont's ability to
2 supply sodium metal to Ferro on a timely basis.

3 "In a May 20, 2008, meeting, DuPont
4 representatives informed us that due to shortages in
5 the special tankers that would fit in our loading
6 building, it would be at least six months before they
7 could resume supplying to us. DuPont also told us
8 that due to increased demand for sodium for use in the
9 production of sodium methylate and photo-altaic
10 applications, they were forecasting tight supply
11 conditions over the next two to three years, and could
12 not make a firm commitment that they could supply
13 Ferro in the future. This is also detailed in our
14 brief and in our declaration from Mr. Jim Kennan.

15 "When preliminary anti-dumping duties were
16 imposed on sodium metal last May, rather than try to
17 switch back to DuPont and face the risk of unreliable
18 supply and the likely recurrence of the sludge buildup
19 problems we had experienced with DuPont's products, we
20 opted for the first time to become the U.S. importer,
21 and pay the anti-dumping duties ourselves.

22 "When you add the 62-percent anti-dumping
23 duties on top of the delivered price we pay to Metaux
24 for the product, it is clear we are now paying
25 substantially more for Metaux's sodium than we ever

1 paid DuPont.

2 "Our competitors generally do not use sodium
3 to produce glimes, so increases in the cost of sodium
4 via an imposed duty has had the effect of making
5 Ferro's products more costly than our competitors'
6 similar products.

7 "If anti-dumping duties prevent Ferro from
8 sourcing the high-quality Metaux sodium that we need
9 at reasonable prices, Ferro may be forced to move a
10 majority of our production to our tolling operations
11 in China. This would affect the jobs of a significant
12 number of the 97 employees at our Zachary, Louisiana
13 plant site.

14 "As I hope I have made clear, our decision
15 to purchase from Metaux was based on the superior
16 quality of their product, and the inability of DuPont
17 to guarantee a reliable supply due to their
18 transportation equipment shortages."

19 MS. SLOANE: Good afternoon. My name is
20 Beth Sloane, and I am purchasing manager for Afton
21 Chemical Corporation, an affiliate of New Market
22 Corporation of Richmond, Virginia.

23 Thank you for this opportunity for me to
24 tell you about my experiences.

25 Afton Chemical purchases bulk sodium metal

1 to produce MMT, a gasoline additive; and we currently
2 purchase exclusively from Metaux. We use this product
3 at our processing unit in South Carolina.

4 I heard comments this morning about long-
5 term contracts, power of the customer, and inferring
6 who is leading prices down. In my experience, I say
7 DuPont is leading prices down.

8 In 2000 DuPont had to bid for our business
9 for the first time in many years. It is not a
10 purchasing practice to tell a supplier what price they
11 need to offer, and for a two-year supply period,
12 DuPont offered a much lower price than the previous
13 period; and during that two-year supply period, we
14 also bought from Metaux at a higher price.

15 But now we purchase from Metaux instead of
16 DuPont because of product quality, safety, and
17 customer service.

18 I heard a comment this morning that quality
19 rarely trumps price. But in the chemical industry,
20 there's a fourth principle, and that is safety always
21 trumps everything.

22 The product we purchase from Metaux is a
23 grade called so-pure, which is certified to contain
24 less than 200 parts per million of calcium. It leaves
25 no significant calcium residue in rail cars and

1 storage tanks. In contrast, the DuPont product
2 contains approximately double the level of calcium as
3 Metaux's so-pure product.

4 Lower calcium is important to us for several
5 reasons. In 1990 a new bulk storage tank was
6 installed in our plant. And at that time, we were
7 only using DuPont's sodium. The calcium sludge in
8 DuPont's sodium accumulated in the bottom of the tank,
9 requiring that the dip leg, which is used to draw
10 sodium out of the tank, had to be shortened several
11 times in order to keep it up out of the sludge. As
12 more unusable sludge built up in the tank, transfers
13 of sodium from rail cars had to be done more
14 frequently.

15 Sodium is an extremely hazardous material.
16 And even though there is a closed system from the car
17 to the storage tank, every handling event is a safety
18 concern, increasing risk of exposure and spills; not
19 to mention the increased manpower costs when transfers
20 are done more frequently.

21 DuPont's sludge also built up in the
22 delivering rail cars. With each shipment we received
23 less useable material, and there were cars returned
24 with increasing buildup of sludge, material that was
25 charged as delivered product. Later, DuPont did start

1 providing credit for returned material. However, that
2 process creates additional transaction costs to both
3 sides, because the rail care had to be weighed upon
4 return. DuPont would issue credit in as much as two
5 months later.

6 In early 2001, our storage tank had to be
7 emptied and cleaned because so much solid calcium had
8 built up. Cleaning the storage tank required workers
9 to wear full body protection, HAZMAT suits, and self-
10 contained breathing apparatus, entering an enclosed
11 space with residue of a highly pyrophoric material,
12 and jackhammering to remove the solid sludge buildup.
13 And remember, this is in hot, humid South Carolina.

14 Besides being time-consuming and costly,
15 cleaning the tank was a very dangerous operation with
16 significant health and safety risks for workers and
17 the facility. Even though DuPont knew of our
18 dissatisfaction with these quality and service
19 problems, they never proposed the option of using a
20 sodium product with a lower calcium specification.

21 As recently as June 2008, the plant
22 contacted me for assistance in cleaning and disposing
23 of pipe from an old pipeline that had been taken out
24 of service during the time DuPont was the sold sodium
25 supplier. When attempting to dismantle the pipe,

1 workers found that it was clogged with a completely
2 solid material that would not dissolve even in
3 sulfuric acid. The material was identified as
4 containing 30 various elements, including sodium and
5 calcium.

6 The plant is still paying for the sludge
7 accumulated from DuPont's products, even four years
8 after switching to the Metaux products.

9 We eventually fixed our problems by sole-
10 sourcing from Metaux. We have been under a long-term
11 100-percent requirement contract with Metaux since
12 January 1, 2004. We have been pleased with Metaux's
13 sodium, and over the five years we have not
14 experienced any of the sludge buildup that caused such
15 a problem with DuPont's material.

16 Curiously, Afton has not had any sales
17 offers from DuPont since awarding Metaux our contract
18 in December of 2003. While we are always open to new
19 proposals, our biggest concern with the DuPont product
20 has been the sludge buildup. And unless DuPont
21 determines a way to deliver sodium without the sludge,
22 like Metaux has been able to do, it is highly unlikely
23 we would consider returning to DuPont. Indeed, Afton
24 Chemical has chosen to pay the extra 62-percent duties
25 to continue supply from Metaux.

1 We have not contacted DuPont since the
2 application of this duty, which was a purposeful
3 decision, as we do not want to accept the safety and
4 product risks of their material.

5 Thank you.

6 MR. WINTERS: Good afternoon. I'm Nigel
7 Winters, Technical and Quality Manager of Honeywell
8 Specialty Materials Titanium Plant.

9 CHAIRMAN ARANOFF: Sir, can you come a
10 little closer to your microphone, please?

11 MR. WINTERS: Certainly, yes. Technical and
12 Quality Manager for the Honeywell Specialty Materials
13 Titanium Plant.

14 Honeywell Specialty Materials is a leading
15 producer of, and supplies to, the semi-conductor
16 industry and adjacent marketplaces. We use sodium
17 methyrate in our Salt Lake facility, which I am
18 involved with, to produce titanium that enters the
19 semi-conductor market.

20 Quality, including low-suspended solids and
21 low-metallic impurities, are very important to the
22 safety of our operation, which is our first priority,
23 and to the quality of the end products we deliver to
24 our customers.

25 Honeywell began purchasing sodium methyl

1 from DuPont in 1995, with the commissioning of our
2 Salt Lake City facility. DuPont was Honeywell's
3 original supplier of sodium methyl; and in fact, the
4 sodium handling and filtering system in our Salt Lake
5 facility was based upon DuPont's recommendations.

6 From the start and throughout the years,
7 we've had several problems with solids found in
8 DuPont's sodium. Due to these solids, our in-line
9 filters had to be cleaned on a regular basis,
10 typically after two or three iso containers had been
11 off-loaded.

12 There is significant health and
13 environmental risk associated with the removal,
14 decontamination, and placing back in service the
15 sodium filters. Given the hazardous nature of sodium,
16 we seek to minimize our employees' exposure to
17 decontaminating equipment that had sodium in it.

18 In addition, we also have safety concerns
19 regarding the possibility of leaks when making and
20 breaking sodium connections, which is called for
21 during filter clean-outs.

22 Because it's more difficult to carry out
23 leak tests when putting sodium filters back into
24 service, it's also taken a considerable amount of
25 maintenance time to achieve this.

1 In addition to the problems that high solids
2 caused in our manufacturing process, they also caused
3 issues with the iso-container delivery system. We use
4 the iso-container for on-site storage, as well as for
5 transporting sodium. Solids would settle out in the
6 iso-container, and over time would accumulate, thus
7 reducing the capacity of the container. Therefore,
8 the quantities in our iso-containers vary
9 considerably. This meant the production was often
10 interrupted when less material was discharged from the
11 iso-container than was expected.

12 Despite these problems, we tried to work
13 with DuPont to resolve the solid buildup issues.
14 Discussions were held with the local representative,
15 Diane Braceley, and their technical expert, Verne
16 Markent, but there was no improvement in quality.

17 After we changed to MSSA, there was some
18 mention of improved filtration being installed at the
19 DuPont plant, but no details of reduction in suspended
20 solids were ever provided.

21 Because of the quality, quantity, and
22 logistics issues, Honeywell entered into agreement
23 with MSSA for S-plus, and later for soy-fuel products.
24 After several months of using S-plus product, we
25 noticed a dramatic improvement in the number of filter

1 cleanouts, from approximately one every month and a
2 half to once every 18 months.

3 Further, when we switched to MSSA's so-pure
4 product, because of the lower calcium levels, we were
5 able to remove the filtering operation entirely.

6 On a side note. Honeywell and DuPont have
7 close business relationships through which we buy,
8 sell, and jointly develop products and technology. So
9 Honeywell's experience is no way a negative affection
10 on DuPont's overall business, but rather a reflection
11 on the fact that DuPont's sodium doesn't satisfy our
12 quality requirements.

13 To address any notion that the only reason
14 Honeywell purchases from MSSA is due to lower price,
15 I've just recounted our experience, and price was not
16 the driving factor in Honeywell's decision to switch.
17 I believe that when we switched, actually DuPont's
18 price was lower than the MSSA price.

19 Currently, with the anti-dumping duties
20 applied, Honeywell is paying a higher price, and
21 significantly greater than the most recent quote we
22 had from DuPont. If price was everything, we would
23 simply switch to purchasing from DuPont. The fact
24 that we haven't is because of the inferior quality and
25 the safety and operational problems posed by DuPont's

1 material. And this is the reason why we continue to
2 purchase them from MSSA.

3 I'd like to thank you for the opportunity of
4 representing Honeywell to you today. Thank you.

5 MS. JOHNSON: Good afternoon. My name is
6 Marianne Johnson, and I am a Senior Purchasing Agent
7 of Ciba Corporation.

8 Ciba uses sodium metal to produce sodium
9 amylate solution, and then to produce what are called
10 DPP pigments for use in certain auto body paints,
11 plastics, inks, and other specialized applications.

12 Ciba's production process requires the
13 sodium pass through a micro-filtration unit which is
14 highly sensitive to impurities. As a result, Ciba
15 purchases R-grade sodium from MSSA, which contains
16 less than 10 parts per million calcium. Ciba cannot
17 obtain sodium of this high purity level from DuPont or
18 any other producer in the world.

19 Ciba requires that all raw materials go
20 through a rigorous certification process. Samples are
21 submitted to an R&D lab. If the samples indicate that
22 the product is of good quality and will have a strong
23 possibility of good performance inside the production
24 process, a business decision is made to undertake a
25 plant material trial procedure. There are extensive

1 tests which must be run on the intermediate and final
2 products.

3 During this time any batches of material
4 created during the plant material trial are
5 quarantined and not available for sale to a customer.

6 If the product passes this stage, Ciba
7 salesmen contact a significant Ciba Coatings customer,
8 such as DuPont Coatings Group, and requests that the
9 customer take a sample of the pigment from the
10 material-run tests, and test it in their paint labs
11 for performance and quality. The entire process can
12 take more than -- the entire process can cost more
13 than \$75,000, and take one year to complete.

14 We attempted to qualify DuPont's sodium
15 through this procedure. In March 2007, we conducted a
16 plant-material trial using DuPont's purest material,
17 which it refers to ny-pure select. Unfortunately,
18 this material failed during our trial process. The
19 trials demonstrated that DuPont ny-pure select product
20 caused significant micro-filtration problems, and
21 could not be used in the Ciba production process as it
22 is engineered.

23 After using the DuPont ny-pure select
24 product, Ciba's micro-filtration unit had to be taken
25 offline, opened up, and completely cleaned out. Some

1 mechanical repairs were required before the unit could
2 be placed back into the production system. As a
3 result, we had no alternative but to purchase sodium
4 from MSSA.

5 MSSA has informed us that they have been
6 forced to increase our price significantly to recoup
7 the anti-dumping duty deposits they have to make on
8 all shipments made from France. With respect to
9 Ciba's business, these dumping duties do not change
10 our purchasing pattern at all, because we simply
11 cannot use DuPont's material.

12 In fact, in March 2007 we tried to qualify
13 DuPont with plant-material trials because we wanted a
14 secondary source of supply. Unfortunately for both
15 DuPont, unfortunately for both Ciba and DuPont,
16 DuPont's ny-pure select failed our testing process.
17 Despite the fact that DuPont's prices were lower than
18 MSSA's price, the only effect of the dumping duties
19 from our perspective is to increase our costs of
20 production, because we are paying the additional 62
21 percent to MSSA.

22 Thus, from our point of view, we cannot see
23 how French-imported sodium can possibly be causing any
24 injury to the U.S. industry.

25 I thank you very much for your time.

Heritage Reporting Corporation
(202) 628-4888

1 MR. CHAMINANT: Good afternoon, ladies and
2 gentlemen. My name is Frederic Chaminant. I am
3 working for MSSA for more than 30 years now. My
4 background is chemical engineer, and I have been in
5 charge of the sodium sales from 1995 to 2003 as
6 Product Manager. Then I was leading the Safety,
7 Environment, and Quality Department of the company for
8 two years, before being promoted to Sales and
9 Marketing Director beginning of 2006.

10 Today I would like to extend why MSSA's so-
11 pure and extra grades are not leading to calcium
12 sludge accumulation and calcium sludge plugging issues
13 as the DuPont sodium.

14 So-pure contains less calcium than the
15 solubility limit, a word I have not heard this
16 morning. A maximum of 200 ppm, parts per million,
17 compare to solubility limit of approximately 250 ppm.
18 That means that calcium cannot settle from sodium. It
19 is as simple as that. With so-pure, calcium cannot
20 settle.

21 This is years of research and development,
22 along with several million dollars of capital
23 expenditure. This was not an easy job to go from the
24 idea to the achievement. S-plus is on paper very
25 similar to the DuPont sodium, with a maximum content

1 of 400 parts per million of calcium, but the weight to
2 the customer is very different. And this difference
3 explains why S-plus doesn't lead to calcium sludge
4 issues.

5 First, and referring to the different flow
6 chart in the staffing report at page 19, and as it was
7 confirmed this morning by Mr. Wallden, it is clearly
8 indicated that DuPont feels its size of container or
9 railcars directly from its filtration equipment. That
10 means that all the calcium above the solubility
11 limits, which is 250 ppm only, then settles in the
12 transportation tank. This is a big difference between
13 the DuPont process and the MSSA process, in which all
14 sodium is going through several internal storage tanks
15 prior to filling transportation tanks. Thus, part of
16 the calcium is settling in those fixed storage tanks,
17 and not in the transportation tanks. That means that
18 MSSA S-plus sodium filled in transportation tanks is,
19 in fact, cleaner than the DuPont sodium.

20 Second, in order to prevent any of the
21 calcium sludge being transferred into customers' tanks
22 eventually, MSSA cleans very regularly its tanks, with
23 a much shorter period of time than the 10 years we
24 have heard this morning. We clean both our six
25 storage tanks and transportation tanks.

1 We were told by several customers that
2 DuPont is not cleaning its transportation tanks the
3 same way we do, and not as often as we do. In fact,
4 we are doing every single year for the six storage
5 tanks, and less than five years for our iso-
6 containers, compared to the 10 years we have heard
7 this morning. That means that MSSA transportation
8 tanks are much cleaner than DuPont ones.

9 For these reasons, calcium sludge
10 accumulation is not an issue for MSSA sodium.
11 Contrary to DuPont, MSSA does not deliver sludge along
12 with its sodium.

13 Thank you for listening.

14 MR. PUNTURERI: Good afternoon. My name is
15 Al Puntereri, and I am President of Interstate
16 Chemical, which was founded in 1968, and is
17 headquartered at Hermitage, Pennsylvania.

18 Interstate Chemical produces numerous
19 industrial and specialty chemicals. However, I am
20 here today to discuss our purchase of sodium metal and
21 our resulting production of sodium methylate for
22 biodiesel fuels.

23 The biodiesel market has experienced
24 tremendous growth, and sodium methylate has become the
25 catalyst of choice for many biofuels producers around

1 the world. By 2015, the biodiesel market is expected
2 to grow by a compound annual growth rate of close to
3 60 percent.

4 As a result, our production of sodium
5 methyrate will grow dramatically, along with our
6 purchases of sodium metal. For example, our purchases
7 of sodium metal increased from a zero base in July of
8 2007 to over 1.3 million pounds to that same period in
9 2008.

10 We expect continued growth in the future.
11 You heard this morning that DuPont representatives
12 stated they felt there was low to little growth
13 potential in biofuels. We would disagree with that
14 totally.

15 In the last four months alone, our growth
16 rate kicked production up by 2.5 times as much as we
17 had in the first year of operation.

18 Since DuPont is one of our main competitors
19 in the sodium methyrate business -- yes, they not only
20 produce sodium, they do make sodium methyrate -- in
21 fact, DuPont reported in the April 2008 issue of
22 Biodiesel Magazine that it had three plants producing
23 sodium methyrate on a full-time basis, which is a
24 tripling of DuPont's capacity since May of 2007.

25 In addition, DuPont is planning on having at

1 least two additional new U.S. production facilities on
2 line in 2008.

3 Why do we purchase from MSSA? The answer is
4 quite simple. We do not want to purchase sodium
5 metal, which is a key ingredient in our production of
6 sodium methyrate, from a competitor. We do not want
7 our competitor, DuPont, to control our ability to
8 compete in the marketplace. It's just that simple.

9 Secondly, MSSA produces a very good quality
10 product. We actually advertise the superior quality
11 of our sodium methyrate due, in part, to the purity of
12 sodium metal supplied by MSSA. In fact, several
13 customers have told me that they buy sodium methyrate
14 from Interstate because Interstate does not use
15 DuPont's sodium metal as a raw-material feed stock for
16 our production of sodium methyrate.

17 Finally, if price is everything, as DuPont
18 stated earlier this morning, why is it that we are
19 paying a higher price that includes a 63-percent anti-
20 dumping duty, instead of buying from DuPont?

21 I thank you all for your time.

22 MR. MATUSEWITCH: Good afternoon. My name
23 is Marc Matusewitch. I am the President of Columbia
24 Sales International of Columbia, Maryland. My company
25 is an importer of sodium metal from France, and also

1 serves as a distributor for MSSA France in North
2 America.

3 I have been involved in the sodium metals
4 business since 1990, and am very familiar with the
5 product specifications and grades, as well as its
6 purchases and its uses in the United States.

7 I want to focus my remarks on one form of
8 sodium metal that serves a specific market segment,
9 and has no domestically produced counterpart; namely,
10 ingots.

11 My company imports ingots from France as
12 MSSA's affiliate, MSSA Company. MSSA ingots,
13 sometimes called bricks, are solid-shaped products
14 transported in drums, not in iso-tanks or rail cars.
15 They come in many sizes, weights, and shapes, made
16 possible by MSSA's extrusion technology. They are
17 composed of sodium metal having a calcium content of
18 less than 400 ppm.

19 Why do customers buy ingots instead of bulk?
20 Some customers require sodium metal in a specific
21 shape for use in their manufacturing operations, so
22 the bulk product is physically unusable. Other
23 companies do not have the facilities in which you hold
24 both sodium in inventory nor the value usage required
25 for a bulk sodium facility, so the ingot form is the

1 only way in which they can consume sodium.

2 Some customers are small consumers, and
3 could not possibly, under any circumstances, take bulk
4 sodium. You will hear more about this from one of our
5 current ingot customers.

6 The fact is that ingots are not
7 interchangeable with bulk sodium. Ingots serve a
8 separate and distinct market. A customer who uses
9 bulk sodium cannot switch to ingots, and vice-versa.
10 There is no overlap in customers, or competition for
11 the two forms. And the ingots I sell are higher
12 priced than bulk.

13 Why is this important? DuPont does not
14 produce ingots or bricks. Instead, around 2000,
15 DuPont discontinued production of bricks in the U.S.
16 and sold its technology to China. DuPont then began
17 importing ingots from the Chinese company to whom it
18 sold the technology.

19 The Chinese product has severe quality
20 problems, as well as severe limitations on size,
21 weight, and shape, which has led numerous customers to
22 switch to MSSA ingots.

23 The point is that none of MSSA's ingot sales
24 have come at the expense of DuPont, because DuPont
25 does not produce ingots.

1 I wish that the Commission could exclude
2 imports of ingots from its analysis, but I understand
3 that the Commission cannot do this because DuPont
4 included in the petition. I truly hope that the
5 Commission will take into consideration the fact that
6 DuPont does not produce ingots in the U.S., that it
7 actually imports them from China, and therefore cannot
8 be injured by French imports for the significant
9 market segment.

10 Thank you.

11 MR. DONZELLA: Good afternoon. My name is
12 Guy Donzella, and I am the Environmental and Safety
13 Manager for Environmental Protection Services of
14 Wheeling, West Virginia.

15 EPS is a leader in the business of PCD
16 decontamination and disposal, which is one of the most
17 contaminants in environmental cleanup sites. EPS
18 purchased sodium metal exclusively from MSSA for its
19 PCD decontamination business, because we need sodium
20 in ingot form, and in a particular size.

21 Let me explain in more detail what our
22 business does, and why we need a specific form and
23 size of sodium.

24 EPS removes PCD contaminants from oil
25 through a special mobile process. EPS starts with

1 sodium ingots and mineral oil. The sodium is ground
2 by a specialized machine into particles of one micron
3 in size, and mixed with the mineral oil to make a
4 slurry, also known as sodium dispersion.

5 The sodium dispersion is then introduced
6 into the PCD-contaminated oil, and the sodium bonds
7 with the PCDs and allows the PCDs to be removed from
8 the oil. EPS can decontaminate oil in its Wheeling,
9 West Virginia rig, or on site in environmental hazard
10 sites, using a mobile rig.

11 EPS used to purchase sodium dispersion
12 directly from another company, but then EPS learned
13 how to make its own dispersion using sodium ingots.
14 We cannot use bulk sodium in our process, because our
15 grinding machine can only process a solid form in
16 small quantities. Also, our mobile rig in the field,
17 we obviously cannot have a liquid sodium tank trailing
18 us around. It's just a practical impossibility.

19 When EPS was in the research and development
20 phase of making its own dispersion in 2003, EPS spoke
21 with DuPont about purchasing DuPont's ingots as an
22 input. EPS purchased some ingots from DuPont, but
23 unfortunately found the DuPont ingots were too large
24 to insert directly into our grinding machine; and so
25 we had to cut the ingots before insertion into the

1 grinder.

2 Because sodium is so reactive, we found that
3 cutting the ingots before insertion into the grinder
4 would expose our employees to unnecessary safety
5 hazards.

6 EPS then contacted MSSA. MSSA offered two-
7 kilogram ingots, which were just the right size for
8 the grinder, with no precutting necessary. EPS has
9 purchased all of its sodium metal needs from MSSA ever
10 since.

11 Since the imposition of preliminary duties,
12 MSSA has added a 62-percent surcharge for our ingot
13 purchases. We are paying the surcharge because we
14 have no practical alternative.

15 On behalf of EPS and its 70 employees in
16 Wheeling, I thank you for the opportunity to testify
17 today.

18 MR. MALASHEVICH: Good afternoon, Madame
19 Chairman, members of the Commission. Bruce
20 Malashevich Economic Consulting Services.

21 I'd like to begin by quoting from
22 Petitioner's Appendix D to their prehearing brief,
23 public version. And it says, "All forms and grades of
24 sodium metal in which the technical grade, technical
25 sales specifications are at or above 200 ppm calcium

1 are completely interchangeable with each other."

2 Now, I'd like to think even before the
3 hearing, the record could not sustain that kind of
4 conclusion. But I think hearing from such a diverse
5 group of distinguished customers today, you should
6 have no doubt that that claim just cannot be
7 supported.

8 But let's take it. Let's assume that it's
9 correct. Please turn to my proprietary Exhibit 1.
10 Exhibit 1 segregates two sets of customers. The lower
11 line is a set of customers that the prehearing report
12 judges to be not having competitive influence from
13 subject imports at all. The top line is everybody
14 else.

15 Now, I think, given what was said earlier in
16 the morning session, you could just follow your finger
17 across the lower line and look at the gap between the
18 upper line and lower line, and understand that the
19 causal link, the so-called causal link between subject
20 imports and adverse price effects just doesn't exist.

21 Now, earlier also you heard about so-called
22 customer X. That customer, I believe, I'm
23 paraphrasing, provided a good base load for the
24 domestic industry, and a fine margin. That's
25 paraphrasing what was said.

1 And Commissioner, Pearson, I think you're
2 the person who requested DuPont to provide the
3 calculation of margins regarding customer X.
4 Fortuitously, ECS had already done that, and that's
5 shown in Exhibit 2. And the vertical axis is cents
6 per pound, the horizontal axis is time. I can't go
7 into detail, but once again follow your finger, and
8 ask yourself if this is a great base-load customer
9 that provides a satisfactory margin.

10 Thank you. I believe Mr. Heffner has
11 additional remarks.

12 MR. HEFFNER: Good afternoon. I'm Douglas
13 Heffner, counsel to MSSA.

14 DuPont asked that the Commission ignore its
15 traditional pricing analysis, and instead conduct a
16 head-to-head pricing analysis. DuPont's request is
17 nothing more than an attempted detour around the fact
18 that it cannot prove underselling using the
19 Commission's normal benchmarks.

20 DuPont has tried many times to prove
21 underselling, but has failed. In the preliminary
22 phase, DuPont asked that the Commission collect
23 pricing information based on all grades combined.
24 That did not, that proved no underselling. So in the
25 final phase, DuPont asked that the Commission collect

1 pricing information based on distinct grades.

2 However, that information also showed that
3 almost every conceivable combination, MSSA almost
4 always oversold DuPont, for DuPont had gone back to
5 the drawing board, and now asks the Commission to
6 ignore the weighted average quarterly pricing
7 analysis, and do a head-to-head analysis. That's just
8 pure cherry-picking, and it should not be sanctioned
9 by the Commission. This wait-and-see attitude should
10 not be sanctioned.

11 With regard to this new method, DuPont is,
12 in essence, asking the Commission to ignore its
13 longstanding practice, and purify carboxymethyl
14 cellulose. One of the parties made a very similar
15 argument in that case, and that wasn't too long ago.
16 They asked for a purchaser-to-purchaser analysis. The
17 Commission stated the following.

18 "The Commission has a longstanding practice
19 of examining weighted average sales pricing data on a
20 quarterly basis, and sees no reason to depart from
21 that practice here. The Commission has used this
22 benchmark for underselling, even in situations where
23 there were few customers and the market was dominated
24 by long-term contracts."

25 Magnesium. Magnesium is produced in a

1 similar manner to sodium, using electrolysis process.
2 And therefore, the same incentive exists to maintain
3 continuous levels of production. Also, long-term
4 contracts exist in that industry.

5 But you'll see the Commission did not ignore
6 its quarterly pricing analysis and focus on a
7 purchaser-to-purchaser analysis. Rather, it continued
8 using its quarterly analysis.

9 As the Commission stated in the purified
10 carboxymethyl cellulose, the Commission does not like
11 relying on head-to-head purchaser comparisons, because
12 that analysis can lead to different results, depending
13 on the criteria used to construct the possible
14 dataset.

15 Here, Petitioners are not even asking you to
16 construct a dataset. They're looking to look at bids.
17 However, if you look at what DuPont is doing, they're
18 actually asking you to look at lost sales. That's
19 what it is. The Commission has already collected that
20 information. That's right, they already collected
21 that. And it says that none of the purchasers confirm
22 the lost sales and revenue claims of DuPont.

23 Thank you.

24 MR. SILVERMAN: That concludes our direct
25 presentation. Do we have any time?

1 MR. BISHOP: You have one minute remaining?

2 MR. SILVERMAN: That's good, thanks.

3 CHAIRMAN ARANOFF: Excellent timing. Thank
4 you to the afternoon panel for staying with us. We
5 hope to get you out of here before dark, although
6 nothing is guaranteed. And we can tell you that last
7 week we went until 10:00, or was it the week before?
8 And that's not the latest we've ever gone. So fair
9 warning, as I do tell witnesses on the afternoon panel
10 sometimes. If you've got a flight out of town this
11 evening about six, you might want to consider the
12 first flight out tomorrow.

13 In any event, we will begin the questioning
14 this afternoon with Commissioner Okun.

15 COMMISSIONER OKUN: Thank you, Madame
16 Chairman. I also want to thank all of you for being
17 here, and I appreciate having such a large amount of
18 folks here to testify. And I'd just remind you all
19 to, when you answer, to repeat your name, because we
20 can't see everybody's names, and I want to make sure
21 I'm talking to the right person. And so the court
22 reporter can get it, as well.

23 Let's see, I guess I have a lot of questions
24 for the -- you raised a number of points that I want
25 to explore. But I think, Mr. Heffner, I'll start with

1 you, where you ended up on the pricing data that the
2 Commission should look at in this case. And I've
3 spent a lot of time with the panel talking about this
4 issue, as well.

5 One question I would have for you is, again,
6 you cite a couple of cases, magnesium in particular,
7 where there were long-term contracts and high fixed
8 costs. And a case where the Commission was ignoring
9 the pricing, quarterly pricing data. I will ask of
10 you, as I asked of Petitioner's counsel, to look at
11 some of the other cases the Commission had where we've
12 had long-term contracts and bid pricing, and see if
13 you see distinctions there, as well.

14 But I guess maybe for purposes of this
15 hearing, if you could just comment on -- we talked
16 about what is right now being collected as Table 5.9.
17 Obviously, the data in there is confidential, and your
18 merchants haven't seen it.

19 The Petitioner has also provided exhibits to
20 their briefs, and provided those this morning, as
21 well, where they go through some of what they term the
22 bigger volume customers. And they provided the data,
23 and the price, what they think the price was that MSSA
24 is providing, versus what the price was when DuPont
25 had the business.

1 And I guess I would just like to get your
2 reaction, and probably Mr. Matusewitch would want to
3 comment on this as well, in terms of what problems you
4 would see with including that additional data in
5 charts the Commission prepares, to try again to find
6 out where the competition is in the market. Sorry,
7 it's a very long-winded question, but if you could
8 comment on that generally.

9 MR. HEFFNER: First, Douglas Heffner. I
10 will be glad to provide that additional information
11 that you want analyzed in the cases.

12 Concerning the second question, I think the
13 problem with what the Petitioners have done and what
14 you want to do is that you're trying to analyze
15 competition as it exists. And I think there is
16 competition throughout each quarter with a lot of
17 different customers here. So I think the quarterly
18 pricing analysis is the best.

19 But if you want to try to do some sort of
20 other analysis on head-to-head comparisons, I think
21 you have to be very careful trying to make sure that
22 it's indeed head to head, and not bringing in
23 contracts from prior to the period, and contracts
24 where there were evergreens. There's all sorts of
25 things that go on in these contracts that are -- there

1 are most-favored nation clauses, there is price
2 escalators, there is all sorts of different things.

3 There's many factors that go into these
4 contracts, whether it's evergreen provisions. And I
5 think that the best analysis to look at a product is
6 you have it over a series of time, like you do during
7 the period. And that's probably the best
8 representation.

9 MR. SILVERMAN: This is Bill Silverman. I
10 just want to clarify. I think the Commission was
11 misled this morning when you heard the term long-term
12 contract as if there was one price which lasts for
13 five or seven years.

14 As Doug just said -- and we'll give you more
15 details -- these contracts are living. They're not
16 fixed price agreements. There are hardship clauses,
17 meet and release clauses, most favored nation clauses,
18 evergreen clauses and other types of midterm price
19 adjustments, and that's why the quarterly average is a
20 better snapshot of commercial behavior. Things are
21 changing.

22 You asked questions this morning, and the
23 domestic panel was waffling back and forth about well,
24 maybe you should use the annual, but there were
25 problems with the annual. The fact is these prices on

1 a quarterly basis reflect what's really going on
2 because these contracts are staggered, depending on
3 which customer, and there are various other factors.

4 I listed several. There's also a price/
5 volume calculation to change the price midterm in
6 contracts, so the prices are changing many, many
7 times. So-called fixed price or long-term contract is
8 a misnomer, and it misleads the Commission.

9 There is contemporaneous competition because
10 of all these adjustments, and the people in this room
11 as purchasers will tell you about them. Don't listen
12 to what you heard this morning. Talk to the
13 purchasers.

14 Thank you.

15 COMMISSIONER OKUN: Okay. Well, I do want
16 to ask the purchasers about pricing in the market, but
17 perhaps for posthearing, just to make it specific, for
18 the data that the Petitioners collected with respect
19 to the particular contracts and the prices that MSSA
20 is supplying for, if you can provide additional
21 details of those contracts being ones where there was
22 either renegotiation that went on, whether they have
23 some of these clauses that you're discussing, I would
24 appreciate seeing that.

25 I think it's useful information to the

1 Commission in determining how to look at the pricing
2 data and how to evaluate it.

3 So let me now turn to the purchasers who are
4 here. You know, of the things that struck me this
5 morning in hearing the description of how prices get
6 set or how contracts get negotiated is it seemed like
7 an opaque process. It is not an industry where
8 everybody knows what everyone else is paying, even
9 though there are only two big producers in the market
10 and a limited number of purchasers.

11 Do you agree with that? I mean, is that how
12 we should look at it is that there's not good
13 information out there in terms of you know what
14 everyone else is paying when you're negotiating these
15 contracts?

16 Mr. Kennan?

17 MR. KENNAN: Jim Kennan. It is an opaque
18 process because the consumers are widely varied, so
19 sometimes when you're purchasing a raw material it's
20 used a lot in a certain industry. You go to industry
21 meetings, and you can legally talk to your in some
22 cases fellow people to find out uses.

23 In this case we have almost no contact.
24 It's not something that you can find industry prices
25 on in literature and things like that, so it does come

1 down to negotiating, and it's relatively opaque.

2 COMMISSIONER OKUN: Okay. Mr. Rice?

3 (Feedback interference.)

4 CHAIRMAN ARANOFF: I'm sorry.

5 Unfortunately, last week or the week before we had a
6 sound system breakdown with a lot of feedback.

7 Sometimes it's caused by cell phones being
8 near the microphone. Sometimes it's something else.
9 So if you hear loud, ear splitting noises, bear with
10 us.

11 VICE CHAIRMAN PEARSON: Madam Chairman, I'm
12 concerned that the problem could be caused by high
13 calcium levels.

14 MR. RICE: Okay. We seem to be okay. It is
15 true that knowledge within the industry is very
16 limited because there are limited suppliers. It's not
17 like we're buying -- although it's considered a
18 commodity, it's not there.

19 The other thing is, and I can't speak to the
20 other purchasing agents because we don't even talk
21 between us, but in MEMC's case obviously we would not
22 sole source. We're a huge consumer. We're growing,
23 and we would always leave room in our supply
24 agreements for a supplier, particularly one like
25 DuPont, that we want successful.

1 We're not going to sole source, and I'm not
2 going to tip my total hand, but we're not 100 percent
3 supply agreement. We leave room, and we've been
4 steadily interested in a viable second supplier. It's
5 critical.

6 You know, the timing. The timings are
7 disconnected. Between us and others there's no annual
8 timing, but even between us and our suppliers they're
9 not joined.

10 COMMISSIONER OKUN: Okay. Mr. Winters, from
11 the Honeywell perspective if there's anything you can
12 add to that?

13 MR. WINTERS: Not really. I'm more directly
14 associated with plant operations. The purchasing
15 decisions tend to be made at the corporate level.

16 But I believe that when negotiations do take
17 place, obviously we will listen to prices from both
18 parties. Not much to add.

19 COMMISSIONER OKUN: Okay.

20 MR. DOOBAY: I can perhaps add a little
21 something. I'm the procurement counsel for the
22 Specialty Materials Group.

23 I think one of the other things worth saying
24 about the pricing or the negotiation process is that
25 it is a lengthy qualification process so it's not a

1 product where you can jump around, even though there's
2 only two players in the market, but you can easily
3 jump around.

4 With our end customers we qualify raw
5 materials for them, so this is a lengthy process.
6 It's anywhere from six months to a year when you do
7 negotiation or come to some kind of pricing to
8 ultimately get that product into that stream.

9 COMMISSIONER OKUN: I can't see your name.

10 MR. DOOBAY: It's Sadesh Doobay.

11 COMMISSIONER OKUN: Okay. Thank you very
12 much.

13 Other purchasers that could comment on --

14 MS. SLOANE: Beth Sloane, Afton Chemical. I
15 would agree with the first two gentlemen. It is an
16 opaque process. I have no idea. I've had no contact
17 until today with other purchasers of sodium.

18 As was mentioned this morning, I don't tell
19 the other supplier what my agreement is. I put the
20 business out for bid. In my particular situation I
21 had both suppliers for a couple of years, and I asked
22 them to give me a proposal for my business. I do not
23 tell them what I'm doing with the other, so it's
24 opaque even to the two participants.

25 COMMISSIONER OKUN: Okay.

1 MS. JOHNSON: Marianne Johnson from Ciba. I
2 would agree. It is not our custom to be sole source.
3 It is a dangerous position to be in for any chemical
4 company with anything that is considered a key raw
5 material to a product line. It is extremely dangerous
6 to be sole source.

7 It is Ciba's express policy to have at least
8 two sources where possible. However, our process, as
9 I spoke to you this morning, takes a full year to
10 complete. It is a very costly process, and it takes
11 at least that long to complete.

12 When working with suppliers it is not
13 ethical to tell one supplier what you're paying
14 another or the details of your contract. You go out
15 for bid. You ask your supplier for his best overall
16 proposal, including price. You do not tell them what
17 you're already paying someone else. That's very
18 unethical.

19 COMMISSIONER OKUN: Okay. My red light has
20 come on. I'll have some follow-up questions, but I
21 appreciate very much those responses.

22 CHAIRMAN ARANOFF: Commissioner Lane?

23 COMMISSIONER LANE: Good afternoon. I want
24 to welcome all of you to the afternoon panel, and I
25 especially want to welcome Mr. Donzella from Wheeling,

1 West Virginia. Welcome.

2 I sort of feel like I need a chemistry
3 course for dummies. I sort of feel like that the
4 morning panel and the afternoon panel don't connect
5 whatsoever, and so maybe somebody could tell me. Is
6 the difference in the product, the one with sludge and
7 the one without sludge, can they be used
8 interchangeably; it's just the process, or are the
9 products used for a specific purpose?

10 I mean, is there a reason that somebody
11 would make a product that leaves a lot of sludge that
12 purchasers don't want?

13 MR. LOVE: This is Jim Love. If we can get
14 DuPont's product into our reactor it behaves the same
15 as Metaux's product. The chemistry and the reaction
16 is the same. It's a reactive intermediate. Not to
17 say another big term, but it gets used up and consumed
18 in the reaction.

19 So the main issue for us is in the storage,
20 the transfer and the feeding into our process. Once
21 it actually gets into our process they behave very
22 similarly.

23 I don't think that's the same for MEMC, but
24 for Ferro that's the case.

25 MR. RICE: Regarding MEMC first on the

1 calcium and potassium, those impurities are the same.

2 If you can get the DuPont into your stream
3 you're okay, but the problem is you're precipitating,
4 you're settling as you go through, and you're creating
5 huge problems and cost. You're exposing your
6 employees to unacceptable environmental and safety
7 risks.

8 To remedy this, when there's a proactive
9 approach it should be used, which is to remove the
10 contaminant. That's common in the industry. So for
11 those two impurities it's straightforward.

12 Additionally, for MEMC you have to
13 understand we're moving to a tens of millions pounds
14 consumer per year. We're already there. We can't
15 deal with rail cars that only contain 100,000 or
16 150,000 pounds. We have to have huge volume supply.

17 Lastly, because of electronics and these
18 other impurities which are important to the
19 electronics industry, those are the ones that go
20 downstream into our processing and create impurity
21 problems by making byproducts in our downstream
22 processing which ends up in our product and issues
23 there.

24 If that helped clarify, or any additional
25 questions?

1 COMMISSIONER LANE: No. That helps a lot.

2 MR. RICE: Thank you.

3 MS. SLOANE: I just had one more example.
4 This is Beth Sloane.

5 I'm not a chemist either. I'm a food
6 scientist and I'm a mother, so I realize that when I
7 think of quality Green Giant green beans have less
8 stems in it than WalMart brand green beans. When I
9 serve them to my family, I take the stems out and I
10 leave them in the pot.

11 With this particular material, those stems
12 that get left in the pot are hazardous materials that
13 somebody has to clean out.

14 When I get the sodium moleculing to my
15 process sodium molecules will react the same, but when
16 this batch of sodium comes in with more stems in it
17 than what I can get from the Metaux, then that's the
18 product that I want. I don't want that hazardous
19 material left in my pot that I'm having to clean out
20 eventually.

21 COMMISSIONER LANE: So in essence are you
22 saying that the DuPont product, which leaves sludge,
23 is creating a hazard to anybody that works with it?

24 MS. SLOANE: Yes, ma'am, in the sense that
25 the sludge is accumulating, causing problems, safety

1 problems, as my other witnesses have said, and creates
2 the problem that you have to clean out this sludge
3 periodically and could cause other hazards. Yes.

4 COMMISSIONER LANE: When the sludge is
5 cleaned out, can it be reused and reprocessed, or do
6 you have to dispose of it in some fashion?

7 MR. RICE: Yes. In the case of MEMC, just
8 for example, first of all understand that the removal
9 requires human contact to physically go into a vessel.

10 If you can imagine a tanker truck going down
11 the road and something on the order of twice the size
12 of that tanker and there is a heel of waste material
13 in the bottom of that tank from a third to a half full
14 and putting humans inside that vessel sealed with
15 nitrogen.

16 They are in essentially an astronaut suit
17 with a supply of air, and they are in there with
18 pneumatic tools, sparkless, shovels and picks.
19 They're trying to chip away that material, put it in
20 five gallon buckets and bring it out.

21 That is a human exposure that all sodium
22 consumers that use DuPont material are faced with. We
23 heard this morning you haven't run long enough to
24 demonstrate MSSA does not produce heels. Surely we
25 have. We test for heels in our tanks, and we're not

1 accumulating a heel.

2 Secondly, once you get the material out you
3 have a hazardous material that has to be dealt with.
4 When we were buying from DuPont, our first tank heel
5 went back to DuPont. I know not what DuPont did with
6 that material.

7 The second tank that we cleaned out on our
8 own because of the two incidents that occurred with a
9 crew that was referred to MEMC by DuPont that we had
10 bad experience with, both a fire and an injury, we
11 developed our own expertise and we cleaned.

12 When we had that material out we went to the
13 Houston community, an environmental exposure and
14 environmental release industry, the best in the
15 nation, that could not deal with the sodium. No
16 supplier could take that sodium, on the order of
17 50,000 pounds, and dispose of it safely.

18 MEMC had to work over a period of six
19 months. We were given 90 days by the federal and
20 state authorities to get that material offsite. It
21 took six months.

22 We had to develop a technique to dissolve it
23 in oil, inject it into an extremely high temperature
24 furnace and dispose of that material. Nothing existed
25 to us. That alone cost \$360,000 for one vessel, of

1 which we have eight.

2 Does that answer your question on disposal?

3 COMMISSIONER LANE: Yes. Thank you.

4 Now I want to go to the issue of ingots.

5 How much of the market for sodium metal is comprised
6 of ingots? As I understand it, DuPont does not
7 produce ingots itself, but imports ingots from China.
8 Is that correct?

9 MR. MATUSEWITCH: I'm sorry. Can you repeat
10 that? I didn't get most of it.

11 MR. SILVERMAN: This is Bill Silverman. The
12 answer to your question, the percentage is in the
13 confidential version of the brief. I don't want to
14 say it in public, but it's a decent size.

15 COMMISSIONER LANE: But whatever that
16 percentage is, DuPont does not produce that product.
17 Is that correct?

18 MR. SILVERMAN: That's correct.

19 COMMISSIONER LANE: Okay. Now, I've
20 listened to everything that you all have said.
21 Twenty-four out of 38 purchasers reported that the
22 avoidance of calcium buildup clog was somewhat
23 important or not important. Fourteen purchasers rated
24 it as very important.

25 What factor would make the avoidance of

1 calcium buildup clog very important for some
2 purchasers but not for others?

3 MR. CHAMINANT: Frederick Chaminant, MSSA.
4 I have just the public version of this chart, so I do
5 not know which customers have answered what, but I
6 would suspect that this question is only relevant for
7 bulk customers.

8 According to the number of customers having
9 answered this question, also ingot customers have
10 answered this question, which is totally irrelevant to
11 them.

12 I would say that this calcium settlement
13 issue is only a concern and only relevant for bulk
14 customers.

15 COMMISSIONER LANE: Okay. Thank you.

16 Madam Chairman, I'll wait until my next
17 round.

18 CHAIRMAN ARANOFF: Commissioner Williamson?

19 COMMISSIONER WILLIAMSON: Thank you, Madam
20 Chairman. I too want to express my appreciation to
21 all the witnesses for their testimony.

22 Continuing along with Commissioner Lane's
23 question, I take it the majority of the demand is
24 usually for bulk customers. Is that correct? Demand
25 for sodium metal.

1 MR. CHAMINANT: Yes. That's correct.

2 COMMISSIONER WILLIAMSON: Thank you.

3 Mr. Rice, you talked about all the safety
4 hazards with handling this material, and I got the
5 impression that what made the difference for you with
6 MSSA was the pipeline system that they had.

7 I take it that's because they must what,
8 ship it by boat to Houston and then hook your plant up
9 directly by a pipeline?

10 MR. RICE: If I could offer? The first
11 priority for us as far as ranking would be the safety
12 and environmental concern from the calcium and the
13 deposit of the heel and having employees deal with
14 that. That is uniquely and strongly the first I think
15 amongst all the bulk users.

16 Logistics for us was second only because
17 we're a large user. It's very common in Houston in
18 the market we're in. The chemical industry feeds off
19 each other in terms of products and byproducts, so
20 hazardous material by pipeline is very preferred.

21 It's a closed system. You can do mechanical
22 integrity programs required by OSHA under their PSM
23 program on that system, and it's easy to maintain.
24 You don't open and close it. It's easy to keep. You
25 don't have any flexible piping.

1 So logistically, yes, sir, that is a strong
2 preferred logistic benefit that we get. It is
3 supplied by working with Special Metals. They put a
4 facility in where they bring material over by ship in
5 ISOs, and then of course they produce that into a
6 liquid and then transfer it to us by a pipeline.

7 All of this is digital controlled with
8 computers called DCS systems in the chemical industry.
9 It's all safety locked and controlled both from the
10 MSSA side and our side, so our computer systems talk
11 and work with each other. It's just a very safe,
12 redundant system.

13 On top of that, based on OSHA's PSM program,
14 we have a safety interlock system that rides on top of
15 that that is an additional safety barrier, as opposed
16 to the manual operation.

17 COMMISSIONER WILLIAMSON: But basically
18 that's only going to work where it's economical; where
19 the plant is located close enough to the port or it's
20 economical to build a pipeline.

21 MR. RICE: We have a unique position. Yes,
22 sir. It is a tremendous benefit for us.

23 Actually, in the amount of volume we move,
24 sir, that is a requirement now because we physically
25 can't move all that volume currently by rail car.

1 COMMISSIONER WILLIAMSON: Thank you.

2 Mr. Chaminant, I think you mentioned that
3 you basically clean your tanks more frequently, and
4 that is the main way that you control the sludge. Is
5 that my understanding?

6 MR. CHAMINANT: This is totally correct
7 regarding our S+ grade sodium, which is a grade with a
8 maximum content of 400 parts per million of calcium.
9 That's the way we control the sludge, yes, in certain
10 terms. Yes.

11 We have two big differences with the DuPont
12 process. The first big difference is that all our
13 sodium is going through intermediate storage tanks
14 inside our facility prior to being filled in the
15 transportation tanks, into the ISO containers which
16 are delivered to customers.

17 So that means that part of the calcium is
18 settling in our own fixed storage tanks that we are
19 cleaning once every year, so we avoid any accumulation
20 of sludge in those tanks, so any transfer of this
21 sludge into the transportation tanks. So that's the
22 first point.

23 The second point is that the sodium which is
24 filled into the transportation tanks is actually
25 containing less calcium which could settle into the

1 transportation tanks than the DuPont sodium.

2 Those tanks are delivered to the customer,
3 and those tanks, we are cleaning them as well much,
4 much more frequently than the competition. So that
5 means here again the sludge is not accumulating and is
6 not transferring into a customer problem.

7 The best answer we have given to customers
8 to this issue is by developing a new grade, which is
9 subpure grade with a calcium content of less than 200
10 PPM. This has been the real breakthrough into this
11 industry and the real improvement. With so pure, less
12 than 200 PPMs, there is no more calcium sediment. No
13 more, so no more tank cleaning to be done.

14 COMMISSIONER WILLIAMSON: Okay. But in
15 terms of the 400 parts per million, you still sell
16 that?

17 MR. CHAMINANT: Yes. Yes, of course, we
18 still sell this grade. Yes.

19 COMMISSIONER WILLIAMSON: Yes. So the
20 difference is the --

21 MR. CHAMINANT: There is a difference on
22 this grade, on the 400 PPM grade. There is a
23 difference, clearly a difference between our product
24 and the competition product.

25 It has been assessed by witnesses this

1 afternoon, and there is a huge difference between our
2 subpure grade and what the competition is offering.

3 COMMISSIONER WILLIAMSON: Okay. Getting
4 back to the 400 parts per million, I was wondering
5 whether some of the other purchasers -- this doesn't
6 seem to be proprietary technology or anything, how
7 frequently you clean or going to the interim
8 intermediate tanks.

9 I was wondering if anyone has discussed with
10 DuPont why they don't do the same thing. This is
11 something that can also be addressed in the
12 posthearing too. I don't know if any of the
13 purchasers work with them closely.

14 MR. WINTERS: Yes. Nigel Winters. I had
15 some discussions with DuPont about their filtration in
16 the early days, and I believe what they told me was
17 that they wished to avoid the on-site storage of
18 significant quantities of sodium, and for that reason
19 they didn't actually have those intermediate storage
20 vessels on their site.

21 That is what I remember them telling me,
22 okay?

23 MR. RICE: For MEMC regarding this
24 technology, MEMC is not our core business associated
25 with sodium, so we can't always distinguish between

1 patent technology, know-how and common knowledge out
2 in the environment of the business community.

3 So we always sign nondisclosure agreements,
4 and those are reciprocal in that our IP is very
5 important, and sometimes we have to open our IP to our
6 relationships with both DuPont and with MSSA to
7 understand how to work together to overcome these
8 objectives; in this case, DuPont's sodium creating a
9 problem which we were trying to solve.

10 It wasn't our problem. It was a problem
11 from DuPont's raw materials. So we respect those, and
12 we don't normally talk about that with a competitor
13 because we can't distinguish where it lies in the IP
14 community.

15 DuPont's relationship with us has always
16 been reactive in what we can do to clean out, as
17 opposed to expose their true level of impurities and
18 their inability to remove. We do not share that with
19 DuPont from MSSA.

20 MS. SLOANE: Beth Sloane. I just wanted to
21 add to what Mr. Rice said.

22 DuPont had never been proactive to suggest
23 that there was anything to do about it. We had no
24 choice. This was the supplier. This was the way it
25 came. Quite frankly, I didn't go well, you guys need

1 to clean this up. They knew it was a problem, but
2 they didn't offer a solution.

3 Quite frankly, DuPont is the gold standard
4 of safety in the chemical industry except in this
5 case. It's just kind of confounding that DuPont has
6 not taken responsibility for this problem with their
7 product.

8 Until Metaux was in the market to be able to
9 offer a solution, it was kind of like waking up one
10 day and going gee, I don't have to put up with this.

11 MR. SILVERMAN: This is Bill Silverman. I
12 just want to add one point on this issue of what the
13 company can do.

14 You heard DuPont testify this morning it's
15 not their problem. It's the customers who screw up.
16 It's the customers who have water or other substances
17 in their tubes.

18 They're not taking responsibility, if you
19 listened to their witnesses this morning, and you
20 should compare that to the experience of these people,
21 please.

22 MR. LOVE: Yes. Jim Love. Earlier today
23 Brian Merrill testified that they had been to our
24 plant a number of times, and in fact they had been to
25 our plant and talked about handling and equipment and

1 storage procedures and this kind of thing.

2 But we never heard DuPont ever express that
3 there was another kind of sodium available that might
4 have less sludge. That was never offered to us. The
5 technology for making sodium is sort of beyond what we
6 are familiar with, so we certainly were unable to tell
7 them why don't you try a settling tank or something
8 like that. That was just beyond what our technical
9 competence would be.

10 But they in fact never offered a grade of
11 sodium to us that had less sludge. We didn't know
12 that there was anything available.

13 COMMISSIONER WILLIAMSON: Okay. My time has
14 expired. I want to thank you all for those answers.

15 CHAIRMAN ARANOFF: Commissioner Pinkert?

16 COMMISSIONER PINKERT: Thank you, Madam
17 Chairman. I want to join my colleagues in thanking
18 you all for coming and helping us understand this
19 industry.

20 I want to begin with a question for the
21 purchasers about the DuPont Niapure Select product. I
22 notice that one of you testified that you had tested
23 it at one point, but I want to know from each of the
24 purchasers if they have any experience with that
25 product and, if so, was the product satisfactory?

1 MS. JOHNSON: Marianne Johnson from Ciba.
2 I'm the company that tested it in our process, and
3 unfortunately it blocked the micro filtration system
4 so badly that we had to shut down the plant material
5 trials before we had planned to do so.

6 We originally wanted to run 10 batches, and
7 we were only able to complete three, so as far as we
8 were concerned the Niapure Select did not qualify, and
9 the plant material trials just basically ended at that
10 point.

11 So we used some MSSA what is known as R
12 grade where the calcium content is very low. It's
13 less than 10 parts per million. Our equipment just
14 will not run on that type of calcium content.

15 COMMISSIONER PINKERT: Thank you.

16 MR. RICE: Doug Rice, MEMC. Just speaking
17 to the Niapure Select, first I want to help you
18 understand that MEMC's development of the
19 specification with MSSA went through two and a half
20 years of working together essentially before we
21 qualified their sodium, or two years, so understand
22 the length of time and resources that MEMC dedicated
23 on this.

24 We had in-depth decisions and discussions
25 on, first of all, the calcium and the potassium and

1 understanding the solubility and being educated and
2 learning, and then we went to logistics, and then we
3 went to the chlorides and the bromine and the halite,
4 so we worked a lot and developed the requirement.

5 DuPont indicated this morning it's just a
6 standard and you buy it and rubber stamp it and then
7 the next person comes along and gets rubber stamped.
8 That's not true. You can see documentation if you so
9 wish where we develop our specs internally.

10 We don't go by trick names and trade names.
11 You know, we're in the electronics industry and so
12 it's survival. This is our requirement. Can you meet
13 this requirement? At what volume and at what cost
14 lastly. Then, if you can meet it -- if you can't,
15 let's talk about.

16 So we talked with Niapure Select. These
17 discussions went on and went on. After we finally
18 agreed to order with a relaxed bromine and chloride
19 and total halite spec at 35 PPM versus 20, which we
20 knew did not create a problem, it was months and the
21 product wasn't delivered.

22 In our minds, Commissioners, we're concerned
23 about the ability to produce. Again, understand we're
24 an over 10 million pounds per year consumer going to
25 20 million pounds per year. You have to be able to

1 supply volume routinely. It took months to get the
2 first rail car.

3 When we got the rail car and got the
4 certificate of analysis, it wasn't in our format for
5 our spec, and it didn't have all our requirements on
6 it. Weeks went by. We would send and call with no
7 reply, and then a sarcastic reply. That documentation
8 is available to you, Commissioners, okay?

9 MEMC needs a second supplier at these
10 volumes. You have the data. You know how large we
11 are. You know there are no options for energy other
12 than solar. The sun and hydrogen and the silicon on
13 the universe, those two elements God made the most of,
14 hydrogen and silicon. Solar is our only long-term
15 option for hundreds of years, so we need a supplier.

16 But we have to work with them and develop
17 the requirement. The Niapure Select did not meet it.
18 We issued another waiver beyond the 20 to 35. Now
19 we're going from 35 to 50, and we're going to run it
20 under one rail car. It's in our facility. It's
21 melting, and we're going to run it, but we cannot
22 continue to use that material long-term.

23 We need to meet our requirements. So we
24 solve both the product quality on the electronic and
25 solar side and make sure we stay out of the filing

1 issue for the safety and environmental concerns.

2 So we are committed, but we need a supplier
3 to deliver. There's a lack of commitment on MEMC's
4 concern that we don't have a viable second source.
5 We're concerned with DuPont's commitment.
6 Demonstrating that commitment with more than words
7 here today is very important.

8 COMMISSIONER PINKERT: All right. I'm just
9 not clear about whether you're saying that the product
10 did not meet your specifications, or are you focusing
11 more on the level of commitment demonstrated by
12 DuPont?

13 MR. RICE: Let's be very specific, sir. Our
14 halite concentration is 20 parts per million. We were
15 concerned with DuPont's ability to produce. We
16 relaxed it to 35. The car arrived. The car is 50.
17 We are now running the car under 50, one car only.

18 So it did not meet the 20. We did not
19 expect 20. We relaxed it to 35. When delivered, it
20 did not meet 35. It's 50. We will run the one car in
21 the waiver, which our quality system allows, but we
22 can't qualify.

23 Are there remaining questions?

24 COMMISSIONER PINKERT: Only that you said
25 that the documentation was available to the

1 Commission?

2 MR. RICE: Yes. Absolutely. Our specs are
3 documented. All that is available.

4 COMMISSIONER PINKERT: But how about the
5 testing of the Niapure Select?

6 MR. RICE: That qualification just started.

7 COMMISSIONER PINKERT: Well, anything that
8 you could supply in the posthearing would be helpful.
9 Thank you.

10 Other purchasers?

11 MR. WINTERS: Nigel Winters, Honeywell. We
12 requested SPC data from DuPont about their Niapure
13 Select grade, and we are still waiting for
14 information.

15 MR. KENNAN: This is Jim Kennan from Ferro.
16 We never used Niapure Select, and DuPont never offered
17 us a product that they said would solve the sludge
18 problem so we never tried Niapure Select.

19 MS. SLOANE: Beth Sloane. I was not aware
20 that Niapure Select existed.

21 COMMISSIONER PINKERT: Just back to Mr.
22 Kennan for just a second.

23 Are you saying that Niapure Select was never
24 discussed in the context of eliminating the sludge
25 problem or that it was discussed, but it wouldn't

1 solve the problem?

2 MR. KENNAN: It was never discussed. They
3 knew we had a problem, and they never offered a
4 solution to the sludge problem so that product was
5 never discussed.

6 COMMISSIONER PINKERT: Thank you.

7 I'm sorry. Ms. Sloane?

8 MS. SLOANE: Yes. I was just commenting
9 also that I didn't know the Niapure Select grade
10 existed. Again, we had a problem, but a solution was
11 never offered.

12 COMMISSIONER PINKERT: Thank you. Did we
13 cover everybody?

14 (No response.)

15 COMMISSIONER PINKERT: Okay. My next
16 question goes to some testimony that we received I
17 think from more than one of the purchasers concerning
18 the fact that you're paying that additional 63 percent
19 -- I think it's 62 point something percent -- in
20 antidumping duties, and you emphasized that you're
21 willing to do that because of the differences in the
22 product.

23 I'm wondering whether you have some sort of
24 arrangement in the event that an order does not go
25 into effect in this case that you would get that money

1 back?

2 MS. MENDOZA: Well, I mean, they become the
3 importer of record. I mean, they're the ones that pay
4 it. They're the ones that would get it back.

5 COMMISSIONER PINKERT: Okay. So then are
6 you saying that irrespective of whether an order goes
7 into effect that you're willing to pay that
8 difference?

9 MR. KENNAN: That's correct. Jim Kennan.

10 COMMISSIONER PINKERT: Thank you.

11 MS. JOHNSON: Marianne Johnson from Ciba.
12 That is correct. If that order goes into permanent
13 effect, we will be paying the 62 percent import duty
14 charged to MSSA for the sodium grade.

15 COMMISSIONER PINKERT: Okay. And it's your
16 testimony that that wouldn't affect your desire to
17 purchase the product?

18 MS. JOHNSON: I can't buy something that
19 will not perform in my production process. There is
20 no point.

21 COMMISSIONER PINKERT: Okay. Mr. Kennan, do
22 you want to testify to that?

23 MR. KENNAN: Well, I think as we said
24 earlier, it could affect our long-term supply
25 situation if because of competition we're forced out

1 of the markets we're in.

2 We have a tolling operation in China that
3 does not use sodium. We might be forced to do that,
4 but in the short term or near term we will pay the
5 duty.

6 COMMISSIONER PINKERT: Thank you. Thank
7 you, Madam Chairman.

8 MR. RICE: May I answer that question? I
9 think it's very important because, as I related to
10 you, we cannot survive.

11 We've become the importer of record. It is
12 an extreme burden on us financially and logistically
13 because this is not our core expertise. We're paying
14 in short-term. We have to have sodium, so if we have
15 an alternative supply we would be there and pay the
16 cost.

17 Long-term, I understand the solar industry
18 has to produce on cost per kilowatt, so that would
19 impact the solar industry in the U.S. We have 1,130
20 people in this industry, and our estimation is at that
21 sodium price we would not be competitive, particularly
22 as China ramps up. Absolutely not long-term
23 competitive. Very important.

24 In the electronics industry, as consumers
25 we've all enjoyed very attractive electronics prices.

1 Every one of us who has bought a camera or VCR, a flat
2 screen TV, knows that depreciation in price over time
3 is 15 percent a year. That's the standard in the
4 industry.

5 There's huge pressures on us to reduce our
6 costs, so short-term absolutely. Long-term, you're
7 putting an industry, U.S. based where we want to
8 control the technology in the U.S. You're putting us
9 potentially at risk with that to be competitive.

10 COMMISSIONER PINKERT: Thank you.

11 Any other purchasers wish to comment on that
12 issue?

13 MR. PUNTURERI: Mr. Commissioner, my name is
14 Al Puntureri with Interstate Chemical, and I was one
15 of those that also are paying the extra amount on the
16 duty.

17 There's been no promises made to me, and my
18 reason for buying from MSSA, as I stated earlier, was
19 because I did not want to buy from a competitor who
20 also produces sodium methyrate, the same as we do. I
21 didn't want to be in that position.

22 COMMISSIONER PINKERT: Thank you.

23 MR. PUNTURERI: Thank you.

24 COMMISSIONER PINKERT: Thank you, Madam
25 Chairman.

1 MR. DONZELLA: Guy Donzella, EPS. I would
2 also like to chime in and say that we will also
3 continue to pay the 62 percent because of the fact
4 that we need a stable source for two kilogram ingots,
5 which we are currently receiving from MSSA.

6 MS. JOHNSON: Marianne Johnson from Ciba.
7 I'd like to add a piece to my answer.

8 Short-term we will pay the 62 percent so
9 that we can get sodium that we can use in our plant.
10 Long-term, however, the answer may be very different.
11 Ciba already has a plant in Monthey, Switzerland, that
12 can produce the same DPP pigments, and they have a
13 plant in China that is being developed and could
14 produce DPP pigments.

15 Therefore, although I cannot say with any
16 certainty, there is the option to move the production
17 that is now in Newport, Delaware, to either Monthey,
18 Switzerland, or possibly to China in the future.

19 MS. SLOANE: Beth Sloane. Afton Chemical
20 will also be paying the additional 62 percent, but
21 again it does affect our ability to compete in our
22 market and fuel additives either with alternative
23 materials or with materials produced in other
24 countries.

25 COMMISSIONER PINKERT: Thank you all. I'm

1 beyond my time.

2 CHAIRMAN ARANOFF: Well, actually Ms.
3 Johnson, I wanted to follow up with you on a few
4 things that you said.

5 MS. JOHNSON: Yes, ma'am.

6 CHAIRMAN ARANOFF: Prior to -- when did you
7 start using MSSA as refined grade in your process?

8 MS. JOHNSON: We started using it in
9 Newport, Delaware when we got the DPP production line
10 up. In other words, it was a new production product
11 in May of 2005.

12 CHAIRMAN ARANOFF: Okay, so you had never
13 used --

14 MS. JOHNSON: That is correct; we have never
15 used Dupont products in the production of DPP
16 pigments. Our only attempt at using Dupont products
17 was in March of 2007 and it was not -- it was a
18 failure. Prior to our using it here in Newport, it
19 was also used in Monthey, Switzerland to make DPP
20 products. So our experience with MSSA goes back prior
21 to May of 2005 at another plant.

22 CHAIRMAN ARANOFF: But you set up your
23 production facility in the U.S. on the understanding
24 that you were going to be importing this input from
25 MSSA then?

1 MS. JOHNSON: That is correct.

2 CHAIRMAN ARANOFF: Okay. In the tests that
3 you performed on Niapure select -- when did that
4 happen?

5 MS. JOHNSON: The tests were in March of
6 2007.

7 CHAIRMAN ARANOFF: Okay. Thank you very
8 much.

9 Even though it's wonderful to have a panel
10 with so many purchasers on it, I actually have some
11 questions to direct to MSSA. So, Mr. Chaminant, I
12 know you're hiding in the back there, but -- first of
13 all, can you tell us -- this is the question that I
14 was asking Dupont this morning -- but can you describe
15 to me what is the contracting process like for you?
16 Are you generally bidding against Dupont for a
17 specific account, or are you generally dealing with a
18 customer who may not be speaking to Dupont at all, or
19 at least not within months of when you're speaking to
20 them?

21 MR. CHAMINANT: You hear me? Very clearly,
22 when we compete on the market, it's extremely rare to
23 know that we are alone in front of the customer.
24 Normally, we have a competitor in front of us. So, it
25 could be Dupont, it could be Chinese -- we have some

1 ideas of who is in front of us, sometimes both of
2 them, but it's not an open bid, you know, it's not a
3 tender.

4 We have open discussions with customers,
5 it's a lengthy process as several witnesses assessed
6 already; it takes six months, one year, sometimes two
7 or three years to find -- between the beginning of the
8 discussion til the conclusion of a negotiation and
9 it's a face to face negotiation, taking into account
10 all the market situations and price volumes are only
11 one side of the discussion.

12 What is extremely important to us -- I don't
13 know for our competitors -- but the way we negotiate
14 with our customers is that we want to have a global
15 picture of their market situation. You have to
16 understand that for MSSA sodium is the only activity.
17 If we do not have sodium activity, we are dead. So we
18 have to be extremely careful and we want to keep our
19 customer alive. The key word for us is balance. We
20 have to balance our negotiations with customers to
21 keep them alive long range. That's key.

22 So we want to understand for each customer,
23 for each customer segment and on each segment there
24 are very few sodium users, but there may be several of
25 our competitors to our customers. We want to

1 understand their own situation -- what are the
2 alternative routes to produce the product, the
3 manufacture of raw sodium. What are the alternative
4 products we can find competing with our product on the
5 downstream market. This is extremely important to us
6 to understand their strength, their weaknesses, and
7 how we can help them to succeed in the market, because
8 the success of our customers will be our success.

9 CHAIRMAN ARANOFF: All right, I appreciate
10 those answers. This morning I had also asked Dupont
11 to make sure that we have on the record all their
12 contract, the pertinent terms of their long term
13 contracts that were entered into during our period of
14 investigation and I would ask you to please make sure
15 of the same; that we have all of the contracts or the
16 pertinent terms of those contracts in terms of price,
17 quantity, duration, any adjustment clauses that may
18 permit adjustments in prices or quantities during the
19 life of the contract.

20 Do we have those things, Mr. Silverman, or
21 can we have them, or Mr. Heffner?

22 MR. HEFFNER: We'll be glad to supply all
23 those; we have all the contracts and we'll be glad to
24 supply those with all the terms.

25 CHAIRMAN ARANOFF: Okay. Obviously, I went

1 to law school; I can sit and read a contract no matter
2 how long it is, but if they're lengthy and you don't
3 want to dump the whole thing on us, you want to
4 summarize the pertinent terms, that would be okay too.
5 This is not like discovery where I want you to drop
6 boxes and boxes of contracts on me, but I do want to
7 make sure that we have the key terms of the contracts
8 for the two parties here. Thank you.

9 Considering the number of purchasers who've
10 testified here today that they have significant
11 problems with Dupont's product in terms of the way
12 that it transfers into or runs in their process, what
13 can you tell us, Mr. Chaminant -- maybe this isn't a
14 fair question -- about your case against Dupont in the
15 European market. If their product is so bad, and
16 their customer service is so bad, why are they causing
17 you a problem in competition in Europe?

18 MR. CHAMINANT: Just because we are facing
19 an extremely severe injury in Europe -- first of all I
20 would like to clearly state that we strongly believe
21 that there is a dumping case in Europe; we strongly
22 believe that there is a subsidy case in Europe, and
23 this is the reason why we are fighting there, and
24 there is substantial injury as they took from us our
25 largest European customer. So after they won this

1 customer from us in Europe, we have been even forced
2 to reduce our capacity of production in France to the
3 same extent as the volume we have lost to them.

4 CHAIRMAN ARANOFF: Okay. Apparently, this
5 particular customer doesn't have a quality problem?

6 MR. CHAMINANT: Sorry. On the quality side,
7 it is one of the customers for which the quality seems
8 not to be as important as for all the witnesses we
9 have here today.

10 One more thing I would like to add is that
11 this largest customer in Europe is also the largest
12 customer in the U.S. and that when we lost this
13 customer in Europe, it was part of a global bid and a
14 global request made by this customer to both Dupont
15 and Metaux Speciaux and at that time MSSA was not able
16 to service the demand of this customer in the U.S. and
17 I think that this plays also a major role in the
18 decision of the customer. You have to know, and
19 probably you have that in the business proprietary
20 information you have received, that the volume
21 consumed by this customer is much, much larger in the
22 U.S. than in Europe. It's 2 to 2.5 times more in the
23 U.S. than in Europe.

24 So the logistic issue -- that means the
25 fleet on containers to be able to deliver the amount

1 of sodium on the U.S. market is absolutely not the
2 same than to deliver in Europe and on top of that the
3 U.S. plant of this customer is not willing to receive
4 ISO container instead of railcars, so that explains
5 why MSSA, not at that time and even today, had not the
6 ability to serve its U.S. demand.

7 CHAIRMAN ARANOFF: I'm going to explore this
8 further in my next round, but as my time is up, I'll
9 turn it over to Vice Chairman Pearson.

10 VICE-CHAIRMAN PEARSON: Thank you, Madam
11 Chairman. Permit me to offer my welcome to all of you
12 as well. It's great to have you here this afternoon,
13 and have such a diverse set of companies in front of
14 us.

15 How do you respond to Dupont's argument that
16 the reason customers have had few problems with the
17 MSSA material is that it hasn't been in the U.S.
18 market for long enough to create any problems?

19 MR. WINTERS: Can I respond from Honeywell?
20 I'll also make another comment before I respond. From
21 experience in Europe, we actually included a
22 filtration system between the tanker and our process
23 equipment to avoid exactly the experiences that people
24 have had here with buildup of sludge in their storage
25 tanks. Our filter system catches all this sludge and

1 rubbish that was coming out of the Dupont tankers.
2 When we made the change from Dupont to MSSA's S plus,
3 changes of filters went from every month and a half to
4 18 months. We have plenty of experience to
5 demonstrate the difference between the two.

6 MS. SLOANE: Beth Sloane, Afton Chemical.
7 We have been using the Metaux sodium exclusively since
8 the first of 2004, so we're going on finishing our
9 fifth full year of supply of only Metaux sodium and
10 the plant reports no accumulation of sludge during
11 that time. So it's been five years.

12 MS. JOHNSON: Marianne Johnson with Ciba.
13 As I stated earlier, the plant that we have in
14 Newport, Delaware was brand new. It was commissioned
15 and started up in May 2005. We had very minor
16 problems in microfiltration in two to three months in
17 the beginning of the start-up which we cured by going
18 through operational procedures and things like that.
19 They were minor. When we tried to trial Dupont's
20 material in March of 2007, we got through the creation
21 of three batches and we had to take microfiltration
22 down; take that unit offline, open it up, clean it
23 out, and do mechanical repairs before we could bring
24 it back online.

25 The original plan was seven to ten batches;

1 we got through three. After we cleaned it out,
2 mechanically repaired it, and brought it back online,
3 to date we have not had the same type of event in
4 microfiltration that we had trialing the Dupont
5 material.

6 VICE-CHAIRMAN PEARSON: So your expectation
7 is that you could continue to run the MSSA material
8 without any problems developing over time?

9 MS. JOHNSON: That is correct. And that is
10 borne out in our Monthey, Switzerland plant and their
11 history goes back further than ours.

12 MS. SLOANE: Beth Sloane. I just wanted to
13 add that we do get the material in railcars that are
14 dedicated to our service. We weigh the railcars in
15 and out of our plant and our plant has not reported
16 any leftover material accumulating at all in these
17 railcars.

18 MR. LOVE: This is Jim Love with Ferro. We
19 have kind of a unique experience in that we purchased
20 from Dupont, suspended purchases for a period of time,
21 and then resumed purchases again in the spring of
22 2007, and with the first three containers we began to
23 experience problems as soon as we resumed purchases
24 from Dupont. In fact, I have a letter here to Bruce
25 Petrovich detailing a claim in June 28 that actually

1 shut our reactor down at 2,027; that actually shut our
2 plant down for 28 hours where we had material go all
3 the way through our system to our reactor, 300 feet of
4 pipe, and plug up our control valves upon resuming
5 purchasing from Dupont again. So we had that
6 experience.

7 MS. MENDOZA: And we'd be happy to put the
8 letter on the record in our post-hearing brief.

9 VICE-CHAIRMAN PEARSON: Thank you.

10 MR. RICE: MEMC's experience is that we put
11 a tank in service with our second production line in
12 the late 90s -- '99, 2000 -- that facility, due to
13 some MEMC operational issues with technology, did not
14 run -- only ran at very low capacity; on the order of
15 40 percent. So there was less than half the turns
16 through that tank that it should have had at capacity,
17 and by 2002 and 2003 I was having discussions with
18 Brian on that tank and issues we were having with the
19 heel material, which is a very short time with Dupont.

20 We subsequently have cleaned those vessels.
21 When we started using MSSA in 2006, almost three years
22 now, at twice the volume turnover capacity, so it
23 should have taken only half as long, if you can
24 understand the dwell time, we continue monthly
25 examining these tanks now and we can distinguish no

1 heel material. It's very important. Secondly, MEMC
2 supply contract, because we are by pipeline and
3 because we're in a hurricane area, we had the idea of
4 requiring a railcar by MSSA to be charged full and
5 onsite and stored for our use as emergency backup.

6 That car is turned only once in six months
7 to once per year. When we empty and heat and melt
8 that car, we have no issue emptying the car and
9 returning it to MSSA empty. So we have two very
10 distinct factual backup convincing us that this is a
11 real issue and we have solved it. We have a lot of
12 piping, a lot of downstream weigh vessels; I could go
13 into so much detail; but I don't want to belabor the
14 point. I can make it up front, factual with our
15 storage facility, I do not have to go into all the
16 operational problems that this carries going forth
17 downstream in the electronics industry.

18 Brian is with Dupont -- he's the sales
19 representative that you spoke with this morning.

20 VICE-CHAIRMAN PEARSON: Any other comments?
21 I think I've kind of gotten the drift of what you're
22 saying. Then let me ask a question that delves a bit
23 into chemistry which is dangerous ground for me, but I
24 might as well try. Since calcium precipitates out of
25 the sodium metal under the conditions that we've been

1 describing here, and collects in the tanks or in
2 piping, if you were to run a grade of sodium through
3 that system with very low levels, perhaps consider the
4 nuclear reactor coolant grade sodium, will that absorb
5 deposited sodium and clean up the tanks and piping?

6 MR. RICE: At an equilibrium ratio, yes, but
7 you also have to draw that sodium back into solution,
8 which is difficult from a solid back to a liquid. So
9 yes, it occurs, but it depends on a lot of equilibrium
10 and a lot of propensity to come back out of that
11 sludge which is not true calcium, back up in, so it's
12 called stripping and yes, you do do it. We service a
13 lot of that in our gas actually for impurities for
14 electronics trying to get to parts for a billion,
15 where we pass a very clean gas and a crude gas, we can
16 reverse contaminate. MSSA may have more information
17 on that, but that's our experience.

18 VICE-CHAIRMAN PEARSON: Is some of that
19 happening as you've switched from Dupont product to
20 MSSA product, or is that too much of a stretch?

21 MR. RICE: We've cleaned all our vessels,
22 and we've maintained and cleaned since the conversion.

23 VICE-CHAIRMAN PEARSON: You've cleaned
24 before the conversion, so you have not --

25 MR. RICE: We cleaned before or shortly

1 thereafter.

2 VICE-CHAIRMAN PEARSON: Okay. Any other
3 observations on this question? Mr. Love.

4 MR. LOVE: No, we not observing any removal
5 of sludge by using the higher purity material.

6 VICE-CHAIRMAN PEARSON: So it might be
7 theoretically possible but not getting the
8 temperatures high enough for whatever would need to
9 happen in order to re-absorb the precipitated calcium?

10 MR. LOVE: Yeah, you know, I don't know that
11 we have categorically defined what is in the sludge.
12 I think we think it's calcium, we think it's oxides of
13 calcium which are even less soluble, and oxides of
14 sodium. So we've heard testimony today what the
15 solubility of calcium is; I'm not sure what the
16 solubility of sodium and calcium oxides, which we also
17 feel are in there, and are precipitating, are.

18 VICE-CHAIRMAN PEARSON: Well, I don't feel a
19 need to delve that far into chemistry here in this
20 hearing, but I did want to ask that question because
21 you have said such kind things about the performance
22 of MSSA product in your systems, that I was wondering
23 whether it actually was serving as a solvent and kind
24 of cleaning out the gunk; dump in your fuel line
25 cleaner and get that stuff out of there, but

1 apparently not.

2 Madam Chairman, my light is changing. Back
3 to you.

4 CHAIRMAN ARANOFF: Commissioner Okun?

5 COMMISSIONER OKUN: Thank you, Madam
6 Chairman. I wanted to go back and follow up some more
7 just in terms of what goes on in the marketplace when
8 you're negotiating with the producers. I know you'll
9 have some opportunity to respond to this further, but
10 one thing that I got from your last responses was that
11 there is competition going on throughout these
12 contracts because they can be renegotiated or you
13 might be going out or someone might be looking to
14 change their contract -- I didn't know if you could
15 provide any more information, a public session about -
16 - during the previous investigation, are you -- is it
17 -- which purchaser -- are you the one going to the
18 producers while you still have a contract in place and
19 saying, look, we have a contract but I need something
20 else, or is it the producers coming to you and saying,
21 we'd like to try again to get some more business from
22 you.

23 Tell me a little bit more about that and
24 then if you can tell me what that says about when you
25 have meet and release versus hardship clauses. I

1 talked a little bit to the Petitioners about this and
2 find that an interesting description of the market in
3 terms of who has more control in those situations, the
4 purchaser or the producer. So if you could comment on
5 that, Mr. Kennan.

6 MR. KENNAN: I'll answer the simple part of
7 the question first. That is, when would we get
8 together? A number of these contracts are evergreen
9 and they would have say a 90 day expiration, and if
10 you don't notify the other party, the contract rolls
11 for another year. So often, depending if you want to
12 -- and most often you'd want to renegotiate unless you
13 have very favorable terms -- so if you have a very
14 good contract, you take your phone off the hook, but
15 typically, one party or the other will contact each
16 other within 90 days.

17 COMMISSIONER OKUN: And has that changed
18 over this period of investigation for you, whether
19 it's you calling them or them calling you?

20 MR. KENNAN: No. Now, the party not
21 servicing, that's out, often will do it prior to 90
22 days, but you have to talk to people prior to 90 days
23 in order to renegotiate the contract.

24 COMMISSIONER OKUN: And before I move to
25 another purchaser -- in terms of hardship clauses or

1 meet and release clauses?

2 MR. KENNAN: We've submitted the contract; I
3 can't remember actually if there's -- I don't believe
4 there's a meet and release -- and I don't want to get
5 into the details of the contract.

6 COMMISSIONER OKUN: Okay. If, in looking at
7 that there's anything you want to further comment on.

8 MR. KENNAN: Okay.

9 COMMISSIONER OKUN: Other purchasers. Tell
10 me about, yes?

11 MR. RICE: Yes, for MEMC --

12 COMMISSIONER OKUN: Mr. Rice.

13 MR. RICE: Yes, thank you. First of all,
14 again, when we develop a requirement, we desperately
15 need a second supplier I've explained so there's room
16 in our contract, so it's a continuous effort. We
17 don't lock ourselves in with our total volume. It's
18 not just hedging but we would never go out and buy all
19 our product and tie ourselves into the future, so we
20 leave that room to help suppliers survive. It's very
21 reciprocal to what MSSA said in -- it's a mutual
22 success that we need as a partner to go forward with a
23 supplier. So that's the first element.

24 The second element is we're growing so we
25 have uncommitted volume related to our growth. So

1 that volume is totally out there for opportunity to
2 bid, which we do. Again, based on our requirement as
3 defined or working with a supplier on a compromise or
4 as close to as we can get, where it puts the quality,
5 logistics, and the cost all on a perspective that
6 allows us to compete and allows them to be successful.

7 Thirdly, when we do get from Dupont a very
8 favorable quote, although we're concerned with our
9 ability to produce volume at our requirement and we
10 will issue a meet and release at MSSA, although some
11 related volume is tied down, we issue it and it's been
12 rejected. That's in the record and you can see that
13 documentation as well. That's our experience.

14 COMMISSIONER OKUN: And you've talked a lot
15 about the desire to have dual-sourcing for material --
16 do you look to keep a certain spread within those --
17 if you have two sources, would you want them to be
18 close in price?

19 MR. RICE: Our approach is first of all to
20 have two capable suppliers and sorry to repeat, but
21 that does require the quality, logistics, and the
22 cost. When it comes to cost, if there's differences
23 because of location, because of some special
24 circumstance, even related to quality, if they can't
25 meet it and if we can compromise on a spec that still

1 protects us, we will meet those obligations in
2 pricing, in quality, anything that will allow us to be
3 successful with a partner that's committed to be
4 successful. But it takes a lot of effort, a lot of
5 hard work, and we just don't quite see that, so the
6 answer to your question is yes, absolutely. At the
7 rate we're growing, at the rate we plan to grow
8 globally as well, at a time when we can protect our
9 IP, we have to have the suppliers.

10 We're concerned that one supplier can't even
11 grow with us at the rate that we plan to grow, so the
12 answer is absolutely yes, but we do have to survive
13 long term or we won't be there for anybody including
14 the U.S. economy and all the employees that we employ
15 here in the U.S.

16 COMMISSIONER OKUN: And you may have
17 responded to this in talking about another question,
18 but does that mean that you are the one actively going
19 to both producers or do you expect that both producers
20 should be coming to you?

21 MR. RICE: I've heard in here testimony that
22 people are not aware of Niapure select. Obviously we
23 are, we've had ongoing discussions. We are not
24 satisfied with the response time, but yes we are
25 pursuing.

1 COMMISSIONER OKUN: Okay. Other purchasers
2 who can comment on the terms of the contracts and --

3 MR. DOOBAY: Sabesh Doobay for Honeywell.
4 To speak generally to our purchasing group -- we tend
5 to be more proactive in our approach of purchasing.
6 We have commodity managers who are focused on each
7 commodity area and generally the way we approach it is
8 we have calendar ticklers for host of things, contract
9 expiration dates, as well as pricing provisions, and
10 so forth in contracts. So we generally do not wait
11 for a supplier to contact us. Again, as previously
12 said though, the exception is that if we do think
13 we're in a very good position then we'll sit on that
14 position, but if there's a reason for us to want to
15 negotiate price or some other provision in the
16 contract, we will certainly be proactive about it, as
17 I think we've been in this situation as well.

18 COMMISSIONER OKUN: What about with respect
19 to hardship clauses and meet and release clauses; have
20 those been important during this period?

21 MR. DOOBAY: I can't speak
22 directly -- I don't have direct knowledge on the MSSA
23 contract, but certainly we do look out for the
24 protections on the buying side. Meet and releases are
25 very important to us, so we try to have them in every

1 contract.

2 COMMISSIONER OKUN: Okay. Ms. Johnson; Ms.
3 Sloane?

4 MS. SLOANE: Yes, during the period of
5 investigation, we have been under contract with
6 Metaux, but also during this period, in December of
7 2006, Metaux came to us under the hardship clause
8 because of the effects of currency on the overall
9 price impact of our account, and we negotiated a
10 mechanism in which we would negotiate price with
11 respect to that issue. Even indeed under the current
12 duty, because we require the materials to be in
13 railcars, we can't be the importer of record of ISO
14 containers, so under the contract we have agreed to
15 pay the higher price, even though that price condition
16 wasn't in the initial contract.

17 So there has been negotiation under the
18 contract, as we had said earlier in other testimony,
19 that there are clauses in contracts that allow you to
20 deal with price during the term of the contract.
21 During this time as well, as the Dupont folks had said
22 this morning, they're generally not aware of the types
23 of agreements that customers have, and I never told
24 Dupont what my agreement was and it's only in the
25 confidential record that I have submitted with the

1 questionnaire. But curiously, Dupont has never
2 contacted me since December of 2003 when they were
3 made aware that we were going to take 100 percent
4 supply from Metaux.

5 COMMISSIONER OKUN: Okay.

6 MS. JOHNSON: Marianne Johnson. In general,
7 you want to have at least qualified two suppliers for
8 any key raw material, any key raw material in your
9 production line should have two, if possible. You
10 should make sure that both of the contracts do not
11 begin and end at the same time; that they run in
12 different timeframes, and with something like a key
13 raw material like this, you should include as many
14 protection clauses as you can negotiate in place,
15 inside your contract. Meet or release -- the way the
16 pricing is handled within the life of the contract, if
17 there is a hardship clause. All of those things need
18 to be considered, negotiated, and documented and our
19 agreement with MSSA is a global one. It includes the
20 Monthey plant, it includes the Newport plant as
21 separate entities inside the contract.

22 COMMISSIONER OKUN: And the pricing set for
23 the different -- in a global context.

24 MS. JOHNSON: A base price is set and then
25 delivery costs are set, so there's a base cost per

1 unit of sodium and then there is the delivery cost
2 that MSSA must incur to deliver to Monthey in
3 Switzerland, to deliver in Newport in the United
4 States of America. They are clearly defined so that
5 you can see the costs that are built into the
6 contract. There is also something in a long-term
7 contract -- I think there was an impression that the
8 price never changes -- that is not correct. There are
9 clauses inside the contract that stipulate when the
10 cost for the contract year would change, or if there's
11 a hardship inclusion or if other pertinent type
12 clauses may exist.

13 COMMISSIONER OKUN: Okay. I appreciate that
14 very much. My red light has come on but a proposed
15 hearing -- I know several of us have asked you for a
16 lot of information with respect to contracts to be put
17 on the record, make sure we have that information as
18 part of this discussion of whether you've actually
19 invoked changes because of hardship clause or meet and
20 release, if you can make sure we're aware of that and
21 what the reason stated was, that would be helpful as
22 well. Thank you.

23 CHAIRMAN ARANOFF: Commissioner Lane.

24 COMMISSIONER LANE: Am I correct in
25 understanding that none of the purchasers in this room

1 today purchase product from Dupont?

2 MR. KENNAN: This is Jim Kennan. We do not
3 currently purchase material from Dupont, sodium from
4 Dupont.

5 COMMISSIONER LANE: You do not?

6 MR. KENNAN: Do not.

7 MS. JOHNSON: This is Marianne Johnson from
8 Ciba. You are correct; we do not currently purchase
9 sodium from Dupont.

10 MS. SLOANE: Beth Sloane. We do not
11 currently purchase sodium from Dupont.

12 MR. RICE: Doug Rice, MEMC. We've been
13 pursuing a business relationship with Dupont for our
14 remaining share. We have been working with them on
15 their Niapure select and on our specification.
16 There's been long delays in delivery, once the
17 agreement was delivered and purchase order issued at a
18 cost which takes into account the current duty. The
19 car was delivered very late and then after delivery
20 there was a lot of follow-up discussion because the
21 material did not meet the requirements and now we are
22 running as a waiver under a qualification, one car
23 that we have received of a product that's still not
24 quite acceptable.

25 MR. WINTERS: Nigel Winters for Honeywell.

1 We requested, as I said earlier, SPC data, over six
2 months ago to allow us to start the requalification
3 process with Dupont. To this date we haven't had any
4 information back from them.

5 MS. JOHNSON: Marianne Johnson from Ciba. I
6 did want to further clarify that we did do the plant
7 material trials in March of 2007 and have attempted to
8 qualify Dupont sodium as a second source. We have not
9 yet been successful. We do, however, buy a number of
10 other products from other Dupont business units.

11 COMMISSIONER LANE: Okay, and you may have
12 answered this, but if you want two sources of supply
13 for your sodium and you get one source from MSSA, who
14 do you get your other source from?

15 MR. RICE: Doug Rice, MEMC. The other
16 viable supplier for the volume currently would be
17 Dupont. In the future there's a potential that the
18 Chinese market would come in but that's not available
19 to us, so today it's MSSA and Dupont at the volumes
20 which are required by MEMC and the quality which is
21 required by MEMC which we're working with Dupont to
22 achieve.

23 COMMISSIONER LANE: Ms. Johnson, you said, I
24 thought, that you currently have two sources of
25 supply.

1 MS. JOHNSON: No, I'm sorry, that was -- I'm
2 sorry if I gave you that impression. Currently I have
3 one source and that's MSSA. We attempted to qualify
4 Dupont as a second source in March of 2007, and were
5 unsuccessful. We could not qualify the product in our
6 process. At this point, there is no third choice. It
7 is my understanding that there is a sodium supplier in
8 China, but at this point I do not believe they're a
9 viable alternative.

10 COMMISSIONER LANE: Okay, thank you. Mr.
11 Donzella, the process that you talked about using the
12 ingot to I guess disperse or something with PCBs -- is
13 that a process that you cannot use the bulk sodium?

14 MR. DONZELLA: That's correct.

15 COMMISSIONER LANE: Okay, thank you. Madam
16 Chair, that's all I have.

17 CHAIRMAN ARANOFF: Commissioner Williamson?

18 COMMISSIONER WILLIAMSON: Thank you, Madam
19 Chairman.

20 Ms. Johnson, I was wondering -- when you
21 were talking earlier about the bidding process, I got
22 the impression that you did not do any post
23 negotiation with the bidders, whereas I got the
24 impression this morning from the witnesses that
25 usually there's a long process of negotiating these

1 contracts -- a lot of back and forth; I got that
2 impression from Mr. Chaminant. I was wondering, do
3 you engage in a different type of process or is it
4 similar?

5 MS. JOHNSON: I'm sorry, can you ask --

6 COMMISSIONER WILLIAMSON: You had talked
7 about not going -- not talking to your suppliers about
8 other suppliers, but I also got the impression that
9 you didn't really go back and forth with them on
10 price.

11 MS. JOHNSON: Basically, one of the things
12 we do if we set out a bid proposal package to a
13 supplier, we ask them to please bid on this raw
14 material chemical product, this is our specification,
15 this is the quantity involved, this is the plant you
16 would be delivering to -- we give them the entire
17 profile and everything that we would like them to bid
18 on. However, we ask them to give us their best price
19 and all of the details in the proposal. It is not
20 normally our procedure to then take their quotation or
21 their proposal and say, sorry, you have to do better
22 than that. X,Y, and Z over here gives us better than
23 that and if you can't do that for us in a better price
24 or profile, then I'm sorry, it's just not going to
25 work.

1 We ask that you provide us with your best
2 pricing and your best proposal and your best offering.
3 If it comes in and it is a good price, a good
4 proposal, there may be additional discussion on
5 detail; how the supply contract is going to be set up,
6 what conditions will go into it, what clauses will go
7 into it, but we will not return it to you and say
8 you'll have to reduce that 20 percent or we can't
9 discuss it with you any further. We do not place them
10 in that type of position and we do not ever reveal
11 what other pricing that we have gotten from someone
12 else.

13 COMMISSIONER WILLIAMSON: Okay, but it's not
14 a process where you say, submit the bid by 5:00?

15 MS. JOHNSON: Or else don't bother to come?
16 No.

17 COMMISSIONER WILLIAMSON: Or else after
18 that do you say, okay, this is who gets the contract.

19 MS. JOHNSON: It's not that simple and it
20 may go on for weeks after that because once we know
21 that one can supply it, that they can meet the
22 criteria, that we've done the testing and it's
23 physically qualified in the testing, and the pricing
24 is something that is acceptable, then you're going to
25 go into the terms and the conditions of the exact

1 contract. That may be a very long discussion.

2 CHAIRMAN WILLIAMSON: Thank you for that
3 clarification. Does anyone else engage in this
4 process of -- I got price A from supplier A -- can you
5 beat that? Ms. Sloane?

6 MS. SLOANE: There was a comment made this
7 morning -- and let me turn to it and make sure I get
8 it correct -- that the incumbent has a preferred
9 position. And many times what people mean by that is
10 that an incumbent will get the last look, in other
11 words instead of coming in and saying, give me your
12 best, both parties give me your offer, and then that's
13 it; sometimes an incumbent will want you to come back
14 and say, well sorry, you didn't go good enough.

15 That is not a procedure that is generally a
16 good practice; it is not one that I practice. We want
17 somebody to give us their best proposal initially, you
18 don't go back and forth and try to manipulate it. So
19 that's I think what we were talking about -- you get a
20 proposal and once you get the proposal you discuss it
21 and make sure you understand it, then you award the
22 business.

23 COMMISSIONER WILLIAMSON: Okay. Anybody
24 else have a comment on this point? No, okay, thank
25 you. I'm just wondering -- this is for anyone -- are

1 lead times an issue in your purchasing of sodium and
2 how often do you ramp up production quickly and
3 increase your sodium purchases on short notice?

4 MR. KENNAN: This is Jim Kennan. Lead time
5 is a very important issue for us because we
6 continuously use sodium and it was one of the reasons
7 that we started to look at Metaux's sodium, because
8 Dupont was down to two bulk containers and that really
9 isn't enough to service our account because we're in
10 Louisiana and they are in Niagara Falls. We get the
11 material, it takes a day for us to melt the material,
12 so it was very, very difficult for them to meet
13 specific delivery requests. So lead time is a very
14 important issue.

15 And I was also concerned, I must say, in
16 buying from France, because normally someone coming
17 overseas, they're the ones that I have the issues
18 with, but we've had absolutely no issues in delivery
19 with them.

20 COMMISSIONER WILLIAMSON: Is that because of
21 the volume they have moving, their delivery system, or
22 what?

23 MR. KENNAN: Because they have a good
24 storage system in wherever their bulk storage is. The
25 other issue about lead time -- you tend to think of

1 three day lead time, five day lead time -- we did talk
2 to Dupont and we've put in a declaration of a May 20
3 meeting that we had where we asked Dupont -- May 20 of
4 2008 -- could they supply us with material, and they
5 said it would take six months for them to supply us
6 with material in 2008. Possibly they could supply us
7 in 2009; they could give no promise that they could
8 supply us in 2010. So that's a serious lead time
9 issue.

10 COMMISSIONER WILLIAMSON: Is that a question
11 of production or delivery system?

12 MR. KENNAN: Well, I believe it was delivery
13 system, but also production because in there they
14 talked about the growing biodiesel industry and they
15 also talked about the fact that they had bids out with
16 six people for the photovoltaic area where each one of
17 them had bids for ten million pounds. With this
18 volume, if a number of these came through, they could
19 not supply us.

20 COMMISSIONER WILLIAMSON: Thank you.

21 MR. RICE: Doug Rice, MEMC, regarding lead
22 times, when an industry is in a ramp like we are, as I
23 related earlier, we're planning a couple years in
24 advance. So we prepare for the lead time because of
25 the requirement to obtain vessels, obtain funding

1 within your company for that capital to invest. So we
2 understand and appreciate that. So that's planned
3 into our ramp.

4 So that lead time is put into the planning,
5 when you're working in a close relationship with a
6 supplier to a customer.

7 Secondly, when you get into the business of
8 continuing business, our plant has to run continuous.
9 We have some batch processes, but a lot of our
10 reactors are very advanced fluid-beta reactors, and
11 they have to run unthrottled, at capacity. That's
12 where they run. Very similar to what you heard about
13 the salt sales. So that forces us to very detailed
14 planning with our suppliers.

15 So really, the lead time issue arises from
16 marrying up with your supplier. And when you're in
17 these negotiations for volume, MEOC's approach is you
18 talk about how much do you store at your facility, how
19 many vessels do you have allocated to us; I want to
20 see those vessels, and a very detailed logistical
21 plan. Because they may be located in different
22 producing locations, France versus Niagara Falls. So
23 those require different lead times to produce.

24 So all of that is worked out, where the end
25 lead time is not so important to us in terms of how

1 long it takes from their factory to ours, because
2 that's put into our logistics as we work together in
3 the planning cycle.

4 The lead time from when we introduce new
5 volume is important, and we work very close with them.
6 So that doesn't create a problem where any supplier
7 has capacity that's not utilized, which of course is a
8 serious problem for them.

9 COMMISSIONER WILLIAMSON: Ms. Mendoza?

10 MS. MENDOZA: Yes. I'd just like to add
11 something, Commissioner. I think it's important to
12 keep in mind that when he talks about, you know, 2008,
13 2009, 2010, and sort of those time periods and what
14 they mean in terms of their ability to supply; because
15 you are signing these long-term contracts, the
16 availability of supply over a more extended period
17 really is relevant here.

18 So that's an important factor I think in
19 this industry, in taking into account, when they
20 discuss their contracts, how long they can supply,
21 whether they can supply fully over the three years.

22 COMMISSIONER WILLIAMSON: Okay. Thank you
23 for those answers.

24 That leads me to a question about -- my time
25 is going. Rather than go into a new line, I'll just

1 stop. Thank you.

2 CHAIRMAN ARANOFF: Commissioner Pinkert.

3 COMMISSIONER PINKERT: Thank you, Madame
4 Chairman.

5 My first question is directed toward MSSA.
6 And there was some testimony just a minute ago about
7 having to run 24/7 at the greatest possible degree of
8 capacity utilization. Or actually, I think Mr. Rice
9 was referring to some testimony earlier on that.

10 But I'm asking you, do you agree with DuPont
11 that sodium production is capital-intensive, and that
12 the down cells need to run 24/7 at the greatest degree
13 of capacity utilization?

14 MR. GASTINNE: My name is Bruno Gastinne.
15 I'm the CEO of MSSA.

16 Yes, I agree. It's a very capital-intensive
17 industry.

18 COMMISSIONER PINKERT: Thank you. And
19 perhaps you can stay with us for a second, and tell me
20 how we should measure capacity in this industry.
21 Particularly the capacity of the U.S. industry.

22 MR. CHAMINANT: Frederic Chaminant, MSSA.
23 So there are several ways to measure capacity. And I
24 think that what is relevant for the case is the
25 capacity which could be put on stream, and there is a

1 certain period of time which is relevant to your
2 investigation.

3 And this morning I heard Mrs. Chairman
4 saying what about the future, and the future was six
5 to 12 months.

6 So I think that capacity should be measured
7 with the same timeframe. So what could be the
8 capacity today or within six months.

9 And here we ought, I have to go a little bit
10 into the details of the process especially of the
11 cells construction. I was really astonished this
12 morning to hear DuPont saying that we can start and
13 put on three cell within a week, and construct a cell
14 within a week.

15 Quite frankly, if they can do so, they are
16 much more rich than we are to have a huge amount of
17 cell ready to be installed in stock, and have all this
18 money. As we told them, as we know also, it's very
19 capital-intensive, and not be used.

20 Or they're much better to get older
21 components with such a short notice. Our experience
22 is that to build a new cell, to add capacity, assuming
23 that you have still cell position available in your
24 plant, it can take up to six months. Because some
25 components are very long-time delivery components. We

1 have components with up to six months' lead time
2 delivery.

3 So between the time you know you will need
4 this capacity and the time you receive the component,
5 and in the time you construct the cell, then it's
6 between six and eight months to add ready capacity,
7 and to have it on stream.

8 So for us, the real way to measure to
9 capacity is to say okay, what are the number of cells
10 in operation today. What are the number of cells
11 which are ready to be sorted. And this, this is the
12 real capacity.

13 If we are talking about capacity in two
14 years or three years from now, okay, but it could be
15 different.

16 COMMISSIONER PINKERT: I heard you say that
17 it could take up to six months to obtain all of the
18 deliveries that you need in order to get started with
19 production. Can you give me some idea of the average
20 amount of time? You said it can take up to six
21 months.

22 MR. CHAMINANT: In fact, it's six months for
23 one component. But without this component, you cannot
24 start the cell. So all the components do not have the
25 same lead time. But this is one major component,

1 major in cost, and major from the technique of
2 specification. Very sensitive. And this is driving
3 the rest.

4 COMMISSIONER PINKERT: So are you saying
5 that that particular component always takes six
6 months?

7 MR. CHAMINANT: I'm not in the purchasing
8 side, nor on the maintenance side, so I cannot give
9 you extremely accurate figures on that. To the best
10 of my knowledge, it's in the range of five to six
11 months.

12 COMMISSIONER PINKERT: Perhaps in the post-
13 hearing, if you could supply additional information on
14 that, that would be helpful.

15 MR. CHAMINANT: Okay, I will be glad to do
16 that.

17 COMMISSIONER PINKERT: Now, turning to
18 Ferro. In your prehearing brief at page 2, you
19 indicate that Ferro had to, had initially to pay a
20 higher price for the French product than it had been
21 paying.

22 Does this imply that Ferro subsequently paid
23 less for the French product than for the U.S. product?

24 MS. MENDOZA: I think we'd have to answer
25 that in our brief.

1 COMMISSIONER PINKERT: Thank you, that will
2 be helpful.

3 And finally, back to MSSA. I want to ask
4 you this question, but also I'd be interested in the
5 response from the other, from the purchasers on this
6 panel.

7 Why would only five of 33 purchasers report
8 that they would be willing to pay a higher price for a
9 higher grade of sodium metal?

10 MR. CHAMINANT: Frederic Chaminant. I think
11 that we have to be very careful about what we call a
12 higher grade of sodium.

13 We have grades which are S-plus and so-pure,
14 which are technical grade. And which are considered
15 as a technical grade from a customer point of view.

16 Then we have what are really called a higher
17 grade, which are refined grade, au grade or hyau
18 grade. And there are only very few customers which
19 are really requesting such a grade, and that's
20 certainly the reason why only five are willing to pay
21 higher for higher grade, because they need a higher
22 grade.

23 MR. KENNAN: This is Jim Kennan. I think
24 it's a question of higher quality or higher grade. We
25 would pay for a higher quality, which indeed we did

1 with Metaux, but we didn't need a higher grade. Their
2 base grade is a higher quality than the base grade
3 from DuPont. I suspect that may be why so few people
4 said they would pay for a higher grade.

5 COMMISSIONER PINKERT: Thank you. Mr.
6 Heffner, did you have something to add?

7 MR. HEFFNER: Doug Heffner. I was just
8 going to almost say exactly the same thing that the
9 Ferro witness said.

10 COMMISSIONER PINKERT: Thank you. Well
11 then, is there any other purchaser who wishes to
12 comment on that? If not, I have another question for
13 the purchasers.

14 MS. SLOANE: I just want to comment that
15 some of these questions were kind of hard to
16 understand, so there may have been a mixture of
17 responses based on, well, I don't need a higher grade.
18 Kind of like what Frederic was saying. I don't need a
19 higher grade, as we define a grade, which is a
20 completely different specification. So that's just
21 one observation for me, is filling out the
22 questionnaire; that it was a little confusing.

23 MR. RICE: Yeah, it's a compound question.
24 And we were referring to it here, and there is
25 confusion there. I think that's the source maybe of

1 the confusion.

2 MR. VANDER SCHAAF: Yes. Just so you know,
3 Commissioner Pinkert, the question says "Did/would
4 your firm pay a premium for the lower calcium grade of
5 sodium metal; vis-a-vis the technical grade?" And you
6 know, looking at this, I would just draw you to MEMC's
7 answers.

8 Question 3-3, Roman 3-3 in the purchaser
9 questionnaire, on page 18 of our questionnaire
10 response. And it's, you know, we checked one of the
11 boxes. But then you read our narrative below it, and
12 you'll see I think there might have been other people
13 beside us that didn't really understand the question.

14 MR. LOVE: This is Jim Love with Ferro. We
15 checked "no" for the reasons why Jim Kennan said. We
16 did not need to purchase a higher grade of material.
17 The material we were buying was acceptable.

18 COMMISSIONER PINKERT: Thank you. Well, let
19 me give the purchasers one last opportunity on this
20 question of quality and price. And I want to ask it
21 in the form of a hypothetical question.

22 If DuPont's sodium cost less than MSSA's
23 sodium, would you purchase sodium from DuPont today?

24 MR. LOVE: This is Jim Love. It would be
25 very difficult to purchase sodium from DuPont today

1 without a specific improvement plan, because of the
2 safety issues.

3 In fact, I'm not convinced we could persuade
4 our plant manager to take the safety risks to purchase
5 DuPont's sodium today.

6 COMMISSIONER PINKERT: Thank you. I think
7 there's somebody in the back that wishes to comment?

8 MR. PUNTURERI: Yes. My name is Al
9 Puntereri. And the answer to the question is no, I
10 would not, simply because of the competitive nature.
11 I would be willing to purchase some amount from
12 DuPont, but I wouldn't want to be totally in the hands
13 of a competitor.

14 COMMISSIONER PINKERT: Thank you.

15 MS. SLOANE: Beth Sloane. And as I stated
16 in my original testimony, we have elected to pay the
17 higher duty price because of the safety issues that we
18 feel the DuPont material has.

19 MR. RICE: MEMC, desperate for a second
20 source, have the rail car, work with DuPont to
21 qualify. It's important that we work with them in a
22 relationship that gets us to the quality level that's
23 required, and then work out the rest of the logistics
24 in pricing. And they'd become a second supplier.

25 COMMISSIONER PINKERT: Thank you.

1 MS. JOHNSON: Marianne Johnson from Ciba.
2 Provided the material from DuPont was the same grade
3 that I was buying from MSSA, and the material from
4 DuPont could go through the plant material trials and
5 qualify, I would be more than happy to split my
6 purchasing between two suppliers.

7 COMMISSIONER PINKERT: Thank you. Thank
8 you, Madame Chairman.

9 CHAIRMAN ARANOFF: All of the purchasers who
10 are present today, in particular I just want to
11 address the ones of you who purchase bulk sodium.
12 You've all testified that you would prefer, and
13 certainly this would be a normal business practice, to
14 have more than one source. But in fact, you currently
15 don't.

16 What do you do to mitigate the business risk
17 of not having a second source? Do you keep more
18 sodium inventory on hand at your site? Or what other
19 steps do you take to mitigate the business risk of
20 having a single source?

21 MR. RICE: In Texas, with MEMC, the pipeline
22 is there, which is the on-load facility. And we all
23 carry guns, so we just go down and hold it hostage.

24 (Laughter.)

25 MR. VANDER SCHAAF: He's really from North

1 Carolina, so he tells jokes about Texans like that.

2 (Laughter.)

3 MR. RICE: You know, it is no joke that you
4 have an industry that's employing 1150 employees,
5 where MEMC is the sole supplier of electronics in the
6 world. That's only unique to MEMC. We are the only
7 electronics wafer supplier in the world that supplies
8 solar wafers.

9 MEMC has been in business since 1959. We
10 made the first silicon wafer in the world, and very
11 proud of that. In addition, we are the only company
12 who can take the dirt and the ore and the rock and the
13 sand that God provided on the earth, and turn it into
14 a wafer. It's MEMC's technology and our raw material
15 suppliers for silicon gas. It's our technology that
16 our suppliers use to produce our gas.

17 We give royalty-free op-E licenses to our
18 saline gas supplier to produce for us. That's the
19 depth at which we take.

20 CHAIRMAN ARANOFF: Okay. But is there
21 anything that you're doing -- I mean, you're probably
22 not the best example, because you do have this direct
23 pipeline. So your business risk is probably minimized
24 right there.

25 MR. RICE: We installed extra tankage.

1 CHAIRMAN ARANOFF: You did.

2 MR. RICE: And we keep our rail cars backed
3 up.

4 CHAIRMAN ARANOFF: Okay. Does anyone else
5 want to answer that question?

6 MS. SLOANE: Beth Sloane, Afton Chemical.
7 Two things that we do. And we have the only MMT plant
8 in North America. Therefore, we also keep a good
9 amount of inventory and security supply for our own
10 process.

11 We look to MSSA to also keep inventory on
12 hand in the U.S. as a buffer for any interruption that
13 might come through the international shipping and so
14 forth.

15 So between both of our supply chains, we
16 manage that. And again, we have elected to have MSSA
17 as our only supplier because of the safety hazard.

18 MS. JOHNSON: Marianne Johnson from Ciba.
19 Again, we have negotiated with MSSA to support us by
20 bringing in the R-grade and storing it in, I believe
21 it's New Jersey. And we place as much as we can in
22 our tanks at all times. So we carry extra inventory
23 physically in our plant, as our tank will allow. And
24 we ask our supplier, MSSA, to support us by bringing
25 in material and keeping it in storage for us in New

1 Jersey.

2 We provide them with a detailed forecast of
3 what we are going to need, a rolling forecast going
4 forward, so that they can count on what our
5 requirements are going to be.

6 MR. WINTERS: At Honeywell we hold extra
7 inventory on site in iso-containers just to solve the
8 problem about logistics.

9 CHAIRMAN ARANOFF: Mr. Kennan.

10 MR. KENNAN: Yes. This is Jim Kennan. We
11 have very limited storage capacity, half the amount we
12 used to have, because our tank is full with sludge
13 from DuPont. So it is a serious issue for us.

14 We really rely on Metaux with their local
15 storage of material to, you know, to supply us in a
16 good fashion.

17 CHAIRMAN ARANOFF: Okay. Well, let me ask
18 as a follow-up to that question, counsel, as you're
19 preparing post-hearing submissions, think about
20 whether the fact that, whether we can quantify how
21 much of the imports of this product are actually, you
22 know, being held in some kind of buffer inventory.
23 And how that, if at all, ought to affect the way we
24 look at our numbers for both imports and apparent
25 consumption. Okay.

1 Let me move on to another topic. Several of
2 the purchaser witnesses testified that in the short
3 term at least, you will continue to pay the estimated
4 duties. And you portrayed that as a choice, the
5 choice between paying the duties to get a product that
6 you view as superior, versus purchasing a product that
7 you either can't use or don't want to use from DuPont.

8 But my question to you, and I asked this
9 this morning, is, do you really have a choice? Or are
10 you bound by your long-term contract to accept that
11 volume?

12 MS. MENDOZA: We would have to answer that
13 in the brief, because it deals with a lot of
14 confidential issues. I would say we're not bound, but
15 we'll address that in our confidential brief.

16 CHAIRMAN ARANOFF: Okay.

17 MS. JOHNSON: Marianne Johnson from Ciba.
18 DuPont does not offer an R-grade. They have nothing
19 to give me. So I don't have a choice.

20 MS. SLOANE: Beth Sloane. Under our
21 contract there is a price clause. This extra charge
22 for the duties was an exception to that. So under my
23 contract, I could have said sorry, I'm not going to
24 buy it from you, I'm going to source elsewhere.

25 But we agreed to pay this extra charge.

1 MR. RICE: Doug Rice. For current capacity
2 and current volume, we allocate an amount to be
3 negotiated and allocated for second-sourcing. That's
4 our strategy. And that percentage I don't want to
5 disclose, except maybe post.

6 And then, of course, for growth, it's all
7 new opportunity to bid and quote.

8 MR. DOOBAY: Sadesh Doobay, Honeywell.
9 Although we do have a contractual commitment, we do
10 have the ability to source product elsewhere.

11 CHAIRMAN ARANOFF: Okay. If there's any
12 other details that folks want to provide
13 confidentially, that would be helpful.

14 You know, as we were having the conversation
15 this morning, the issue was are people voluntarily
16 paying more for this product because they like it
17 better, or are they paying more because they're stuck
18 in a contract, and now the price has gone up. So
19 anything that you can do to help us sort through that
20 is going to be very helpful.

21 One of the things that folks have talked
22 about this morning, and this was particularly in the
23 conversation regarding customer X, was the issue of
24 delivery by rail car versus delivery by iso-container.
25 Can anybody explain to me sort of what the difference

1 is from a cost of logistics standpoint? Or why, why a
2 purchaser might care really a lot whether they were
3 getting their delivery by iso-container or rail car?

4 MS. JOHNSON: Marianne Johnson from Ciba. I
5 don't have a rail siding. Mine has to come in iso-
6 container. I don't have a rail siding.

7 CHAIRMAN ARANOFF: Okay. But I think in the
8 case of customer X, and maybe I need to ask Mr.
9 Chaminant this question, customer X could conceivably
10 get this delivery either way, and there are probably
11 other customers who could. So for those customers,
12 why would it matter?

13 MR. CHAMINANT: So let's take an example of
14 customer which could receive both by rail car or iso-
15 containers. I think there are several questions.

16 But the main issue in all our customers
17 already have tread that point many times. It's 50/50
18 in the industry. And one point has been mentioned
19 also earlier, is that the more connections you do
20 between the transportation tank and the process, the
21 higher the hazard of leakage or fire, and of a safety
22 issue.

23 So when you have the choice to take a rail
24 car containing -- I try to convert in pounds, it's not
25 so easy for me -- 109.50, 180,000 pounds, compared to

1 an iso-container of 40,000 or 44,000 pounds, there is
2 a ratio of one to three or one to four on the number
3 of connections for a certain amount of sodium you want
4 to deliver. So you have an improvement of your safety
5 if you take the largest container.

6 CHAIRMAN ARANOFF: Okay. Perhaps that is
7 actually helpful, and I understand that that seems to
8 be completely contrary to what's going on with
9 customer X. So if there's anything you can tell me
10 confidentially in the post-hearing, that would be very
11 helpful.

12 MS. SLOANE: Afton Chemical, this is Beth
13 Sloane. We were taking a small amount of product from
14 Metaux isos initially. The plant was very unhappy
15 with us, but again we wanted to qualify to prove out
16 Metaux as a competent supplier. And when they were
17 able to supply in rail cars, we completely switched to
18 rail cars; removed any capability of supplying from
19 isos, because the plant was concerned about the
20 hazards.

21 CHAIRMAN ARANOFF: Okay. Actually, I
22 thought that Mr. Chaminant said that the hazards are
23 less when you use isos because there are fewer
24 connections.

25 MS. SLOANE: No. There are less with rail

1 cars, because you need like three or four isos to make
2 the same amount of volume as you would with one rail
3 car.

4 CHAIRMAN ARANOFF: Okay, I had it backward.

5 MS. SLOANE: You have three to four times
6 the handling. And every time you handle connect,
7 disconnect, and all that stuff, there's opportunity
8 for spills, leakage, exposure, and bad things.

9 CHAIRMAN ARANOFF: Okay. Okay, thank you,
10 everyone, for that clarification. I think I
11 understand now.

12 Vice Chairman Pearson.

13 VICE CHAIRMAN PEARSON: Thank you, Madame
14 Chairman. I think I just have a couple questions.

15 The first one has to do with demand. If I
16 understand the Petitioner's position correctly, they
17 are arguing that the domestic industry is facing a
18 long-term secular decline in demand that will extend
19 into the foreseeable future. How do you see it?
20 Demand going up, down, sideways?

21 MR. WINTERS: I'm Nigel Winters from
22 Honeywell. When we started the plant, we were running
23 at about 50- to 60-percent utilization. Last year we
24 invested to increase our capacity by 50 percent. You
25 don't do things like that if your market is

1 disappearing.

2 MR. PUNTERERI: Al Puntereri, Interstate
3 Chemical. We see the demand on biofuels accelerating
4 in a nice fashion. The second year of our operation
5 we're expecting to be somewhere in the three-and-a-
6 half to four times as much volume as we had the first
7 year.

8 VICE CHAIRMAN PEARSON: Mr. Kennan?

9 MR. KENNAN: I'll refer back to the meeting
10 that we had with DuPont on May 20, where they, of
11 2008, where they weren't even sure they could supply
12 us until 2010 because of the growth in the market of
13 sodium methyrate and sodium used in tank applications.

14 Our personal growth is relatively stable.

15 VICE CHAIRMAN PEARSON: Mr. Malashevich.

16 MR. MALASHEVICH: Yes, Mr. Vice Chairman.
17 Bruce Malashevich, ECS. I think one way of
18 reconciling the two points of view, in addition to
19 testimony that you've heard, the people just minutes
20 ago present at the table, with few small exceptions,
21 do not currently purchase from DuPont. Yet they
22 represent applications, individual applications, be it
23 solar, biodiesel, whatever, that are taking off.

24 And I would only surmise that DuPont is
25 basically serving the residual. And the residual

1 rates of growth, with the exception of biodiesel, are
2 much weaker than the leading-edge allocations, for
3 various reasons that you've heard, that are currently
4 being served by MSSA.

5 And there's a simple statistical way of
6 demonstrating that that I could provide post-hearing.
7 It involves APO information.

8 VICE CHAIRMAN PEARSON: Okay, thanks. I
9 would appreciate that. Because if you could give some
10 perspective on apparent consumption, likely apparent
11 consumption, that will, it will give me a perspective
12 that right now I don't have clearly. That would be
13 helpful.

14 MR. RICE: Doug Rice, MEMC. As related
15 under the previous testimony, in the POI we've already
16 doubled our capacity; that's doubled the sodium
17 demand. We have the next facility already in design,
18 and significant parts of it are completed design. We
19 have both brownfield and greenfield sites in the U.S.
20 already identified to continue our growth pattern,
21 which will be dictated first of all by the parity of
22 solar industry with fossil fuel energy. And that will
23 drive our growth.

24 The industry growth for electronics is, if
25 you look at the standard, the range is between 10 and

1 20 percent for electronics growth. We generally guide
2 on the lower end. Solar is in the range of 40- to 60-
3 percent growth. Both of those are on an annual basis.
4 And those are available as industry standards.

5 VICE CHAIRMAN PEARSON: Okay, thank you. My
6 last question has to, it goes back to an issue that
7 was discussed earlier. And that had to do with the
8 long-term contracts that you operate under, and the
9 flexibilities that they may have contained within
10 them.

11 I'm not sure just where that discussion
12 ended up, and whether there was a commitment to
13 provide information for the post-hearing, was there?

14 MS. MENDOZA: That was my understanding, we
15 were going to provide it in the post-hearing briefs.

16 VICE CHAIRMAN PEARSON: It would be helpful
17 to know, as a practical matter, what flexibilities
18 have been there that have been exercised, and that
19 have had some effect on the marketplace. Price,
20 volume, delivery terms, da-da-da. Whatever would help
21 us to understand whether these contracts are a
22 straightjacket or just a way that changes are
23 accommodated in a dynamic marketplace. Okay.

24 MR. RICE: Doug Rice, MEMC. It was our
25 understanding that we would supply that post.

1 VICE CHAIRMAN PEARSON: Good. Thanks.

2 MR. HEFFNER: Doug Heffner. We'll try to
3 round up everybody and make sure that we have a full
4 consensus, and get you all the information. Thank
5 you.

6 VICE CHAIRMAN PEARSON: Thank you very much.
7 Madame Chairman, that concludes my questions. I'd
8 like to thank the panel very much, and have good
9 travels homes, which probably isn't until tomorrow.

10 CHAIRMAN ARANOFF: I would just like to add,
11 before turning to Commission Okun, that I've been
12 notified that Ms. Johnson does have to leave by 6:00.
13 So if any commissioners have questions for her
14 remaining, would you please try and get those in
15 before 6:00.

16 And with that, I'll turn to Commissioner
17 Okun.

18 COMMISSIONER OKUN: Madame Chairman, I don't
19 have any further questions for this panel. But I will
20 look forward to all the information you've promised us
21 in your post-hearing submissions. And thank you for
22 everything you've supplied today, as well.

23 CHAIRMAN ARANOFF: Commissioner Lane.

24 COMMISSIONER LANE: I have no questions,
25 either. And I want to thank the panel for the

1 presentation this afternoon.

2 CHAIRMAN ARANOFF: Commissioner Williamson,
3 do you have any questions?

4 COMMISSIONER WILLIAMSON: Just a couple.
5 One is the question that was posed this morning about
6 producers outside of China, the U.S., and France. And
7 I guess there has been some talk about trade from
8 India. Is that a misclassification, or are they
9 actually producing? Does anyone know?

10 MR. CHAMINANT: Frederic Chaminant, MSSA.
11 As far as we know, there is, several years ago there
12 is no more production in India.

13 And what I think, what I believe, but I have
14 absolutely an idea, is that what has been classified
15 as sodium could be NaK. What we call NaK is a sodium
16 production alloy, which is, from the clinical point of
17 view, not so far away from the sodium, but going in
18 completely different applications, and not competing
19 with sodium.

20 So I would agree that some of it's a
21 misclassification, yes. But there is, as far as we
22 know, absolutely no production in India.

23 COMMISSIONER WILLIAMSON: Thank you.

24 MR. RICE: MEMC has extended the effort to
25 second-source, and we can't identify a reliable source

1 out of India.

2 COMMISSIONER WILLIAMSON: Thank you. A
3 number of you have indicated that you are purchasing
4 from MSSA, paying the higher duties. And I was just
5 wondering, have you been able to pass on your costs to
6 customers? Is anyone willing to --

7 MS. JOHNSON: Marianne Johnson from Ciba.
8 We have not been able to pass along to customers the
9 entire cost of this increase to sodium and its effect
10 on our total product cost.

11 One of the customers who is the most
12 resistant to any increase in cost was DuPont Coating.
13 They are not happy at all about discussing price
14 increases with our salespeople.

15 MR. RICE: MEMC. Obviously not electronics
16 industry. We're expected to have price reductions
17 each year to obtain our market share. And again, with
18 the solar industry, it's all parity with fuel.

19 So the answer is no, we haven't even
20 attempted. We have take-or-play contracts on the
21 supply side, and we just couldn't do that to our
22 partner customers.

23 MR. WINTERS: Honeywell. Our competitors
24 don't use sodium in their manufacturing process, so we
25 don't have the flexibility to adjust our prices.

1 MS. SLOANE: Beth Sloane. I'm not in sales
2 and marketing, so I don't know exactly. My
3 understanding is that we are not able to pass on this
4 additional cost.

5 It is a gasoline additive. You've seen the
6 turmoil that's been in the fuel industry this year
7 especially. Gasoline consumption worldwide is down,
8 so it would be very difficult for us to pass along
9 this type of increase.

10 COMMISSIONER WILLIAMSON: Thank you for
11 those answers. Okay, no further questions at this
12 point.

13 CHAIRMAN ARANOFF: Mr. Pinkert.

14 COMMISSIONER PINKERT: I have nothing
15 further for the panel. But I'd like to thank you
16 again, and I look forward to the submissions that you
17 indicated you'll provide us.

18 CHAIRMAN ARANOFF: I do have a few more
19 questions. I think we have at least one purchaser on
20 the panel here who was among those who testified that
21 he didn't want to buy from DuPont because of
22 competition for the downstream product.

23 Can you tell us whether -- this is a
24 question I asked DuPont this morning -- whether DuPont
25 has ever cut off or threatened to cut off the supply

1 of a chemical to a company with which it competes
2 downstream? Or whether there are any specific actions
3 that DuPont has taken that demonstrate that such fears
4 could be well-founded in your case?

5 MR. PUNTURERI: I'm not certain I understood
6 your question. Could you repeat that portion, please?

7 CHAIRMAN ARANOFF: You're the one who had
8 testified earlier that you don't want to purchase from
9 DuPont because you compete with them.

10 MR. PUNTURERI: That's right, Madame
11 Chairman. That's correct.

12 CHAIRMAN ARANOFF: Okay. Is there any
13 specific action that DuPont has taken with respect to
14 your company, or things that you've seen happen with
15 respect to other DuPont customers, which would lead
16 you to believe that there is a realistic possibility
17 that DuPont could threaten your security of supply?

18 MR. PUNTURERI: We have had at least two
19 occasions from customers that have indicated that they
20 were concerned that we might have a problem with
21 source of supply on sodium in the near future.

22 CHAIRMAN ARANOFF: But were these customers
23 referring to quality? Because I think you also
24 testified that they liked the product better when it
25 was made without DuPont's product.

1 MR. PUNTURERI: No. I believe they were
2 referring to our potential to have availability of
3 sodium. Because our process, somewhat unique, doesn't
4 have the quality problem that everyone else has been
5 talking to, or talking about. I don't believe that
6 would be a problem for us. It may be; I don't know
7 that. We never used DuPont material before. But I
8 don't think that would cause the kind of problem that
9 most everyone else has referred to.

10 I think our customer base was referring to
11 the fact that we may not have sodium available because
12 of some impending action that might be down the line.
13 And I think they were referring to the anti-dumping
14 suit.

15 MR. SILVERMAN: This is Bill Silverman. I
16 think the question is what prudent businessperson
17 would operate knowing that its supplier also competes
18 in the after-market. Do you need a declaration from
19 DuPont for revenge, something specific? Or do you
20 look at the normal business behavior?

21 Someone sets up a new product, and they feel
22 at risk because they're competing with DuPont in the
23 downstream market. DuPont is a big company; this is a
24 small company. It's not irrational for them to say
25 there's a significant risk here, even though there was

1 no specific refusal from DuPont or some sort of
2 retaliation or revenge. People make judgments when
3 they operate businesses. They don't like to be in a
4 situation where they're buying the major raw material
5 from a company, specifically a company as big as
6 DuPont, when they're competing with them in the after-
7 market.

8 So if we have anything in writing, which --
9 CHAIRMAN ARANOFF: No, you may not have
10 anything. I'm not expecting you to come up with
11 anything in writing.

12 Here's the thing. This morning DuPont
13 testified that they're in the market to sell sodium,
14 as much sodium as they can, whether it's to their own
15 downstream, you know, or to other customers. They
16 testified that they have got to keep those cells
17 running.

18 I think we had both sides testify that
19 there's global over-capacity, so people are, you know,
20 fighting each other for that last bit of business.
21 So, you know, I guess I'm trying to ask you to weigh
22 that against someone's fear that maybe someday this
23 might be a problem because there's competition
24 downstream.

25 MR. SILVERMAN: As I said, these are

1 rational businesspeople who know something about how
2 multi-nationals deal with small companies. But the
3 trump card is what you heard about a May meeting. I
4 think it was a Ferro witness who had asked about more
5 shipments, and was told we can't guarantee shipments
6 until 2010. They can repeat their statements. They
7 were the ones that said they couldn't get the
8 quantities, and they were worried.

9 So I mean, that's the kind of thing that
10 people live with.

11 CHAIRMAN ARANOFF: Okay. I'll take a look
12 at that. I mean, I think some of the testimony today
13 was that a lot of chemical companies are very
14 interdependent with each other. They sell one thing
15 to the other one, buy one thing back. That may not be
16 the case with respect to this specific customer, but
17 it does seem to be a pretty common practice in the
18 industry, that there's a lot of interdependency. So
19 I'll have to take a look at that compared to this
20 particular situation.

21 Let me just move on. I wanted to reiterate
22 a question that I asked this morning, just to make
23 sure that I give this panel a chance to answer it,
24 either now or in writing. And that is, if we end up
25 looking at the issue of threat, we do have this clash

1 of predictions between the two sides about whether or
2 not demand is growing in the near term for some of
3 these new applications. And so if there is any extent
4 to which this, you know, demand is likely to be
5 contracted for or delivered to some of these new
6 applications within the next six to 12 months can be
7 put on the record, I know we have projections that
8 they're going to grow hugely in five or 10 years, but
9 that's not as helpful.

10 And particularly with respect to titanium,
11 for example, because nobody on the panel today
12 represents that end use.

13 MS. MENDOZA: I do think that, you know, Mr.
14 Kennan's testimony with respect to his conversation
15 with DuPont in May of this year concerning, you know,
16 where they saw demand and what their commitments were,
17 is relevant. I don't know if you'd like him to
18 explain that in more detail.

19 But I mean, he did meet with DuPont, and
20 DuPont suggested to him specifically that in fact they
21 would have trouble supplying him for six months, and
22 at various points down the line, because there was so
23 much demand. And they explained to him, you know, the
24 customers, and how much demand they were going to
25 have. So I think that's pretty relevant to this case

1 in terms of what DuPont has said in other
2 circumstances what they expect demand to do.

3 CHAIRMAN ARANOFF: Okay. Well, I welcome
4 any additions to that on the record for purposes of a
5 post-hearing. If anybody's got any, you know,
6 evidence from other sources about what specific
7 amounts of demand are likely to be, that would be
8 helpful, too.

9 MR. RICE: Pardon me. Doug Rice, MEMC. We
10 will supply, since the POI of March '08 and going
11 forward 12 to 18 months, we will supply that demand.
12 And it is capacity, and it's already up for quote and
13 availability. We're working to fill that demand.

14 CHAIRMAN ARANOFF: Thanks. I'm probably
15 going to get myself in trouble asking this question,
16 but I'll try anyway.

17 DuPont asserts that MSSA's optimistic
18 forecast of demand growth in new sodium metal
19 applications, for purposes of this investigation, is
20 contradicted by MSSA's statement to the European
21 Commission in its own case that without relief, MSSA
22 will go bankrupt and cease production in 2009.

23 Mr. Chaminant, or anyone else who wants to
24 answer, can you reconcile for me the statement that
25 demand is growing in all these new applications which

1 MSSA appears to be uniquely qualified to serve because
2 of the quality of its product, and the assertion to
3 the European Commission that bankruptcy is a likely
4 possibility? Particularly in light of your statement
5 that a lot of what's going on in that case is for a
6 particular customer that isn't very quality-sensitive,
7 and isn't one of the new applications.

8 MR. SILVERMAN: This is Bill Silverman.
9 We'll be glad to answer that in a confidential
10 submission. What we submitted to the EC Commission, a
11 lot of that is confidential. But we'll try to share
12 some of it with you.

13 CHAIRMAN ARANOFF: Okay, I'd appreciate
14 that.

15 With that, I think I have run out of all my
16 questions, and want to thank all the witnesses this
17 afternoon for your many answers.

18 Vice Chairman Pearson, do you have further
19 questions? Are there any further questions from
20 commissioners? Does the staff have any questions for
21 this panel?

22 MR. DEYMAN: I'm George Deyman. The staff
23 has no questions.

24 CHAIRMAN ARANOFF: Well, we must have done
25 an excellent job thinking of everything. All right.

1 Do the Petitioners have questions for this
2 panel?

3 MR. JAFFE: Yes, we do. A question for
4 Ciba. Based on your testimony today, is it true that
5 you did not purchase so-pure or x-box from MSSA?

6 MS. JOHNSON: What we bought from MSSA is
7 considered their R-grade.

8 MR. JAFFE: Thank you. Question for Afton.
9 You testified today that 11 years passed before Afton
10 cleaned out its storage tank. Is that correct?

11 MS. SLOANE: That's correct.

12 MR. JAFFE: I understand that Afton, as Echo
13 Corporation, used to produce sodium metal. Is that
14 correct?

15 MS. SLOANE: That's correct.

16 MR. JAFFE: I understand that Echo currently
17 has, in Pasadena, Texas, a number of storage tanks
18 that have sodium metal sludge in them. Is that
19 correct?

20 MS. SLOANE: I have no knowledge of that.

21 MR. JAFFE: Thank you. DuPont tells me
22 Afton bought 100 percent of its sodium metal
23 requirements from DuPont for more than 10 years. Is
24 that correct?

25 MS. SLOANE: I think so.

1 MR. JAFFE: DuPont tells me that it lost all
2 of Afton's business to MSSA in 2004. Is that correct?

3 MS. SLOANE: That's correct.

4 MR. JAFFE: Was the price at which you
5 bought sodium metal from MSSA in 2004 higher or lower
6 than the price at which you had previously bought
7 sodium metal from DuPont?

8 MS. SLOANE: I would like to make a
9 confidential submission to the Commission on that.

10 MR. JAFFE: Thank you. Question to Ferro.
11 You testified today that 20 years passed before Ferro
12 cleaned out its storage tank. Is that correct?

13 MS. MENDOZA: We'd be happy to answer in our
14 post-hearing brief.

15 MR. JAFFE: DuPont tells me that Ferro
16 bought 100 percent of its sodium metal requirements
17 from DuPont for more than 10 years. Is that correct?

18 MS. MENDOZA: Again, we'll be happy to
19 answer in our post-hearing brief.

20 MR. JAFFE: DuPont tells me that it lost all
21 of its Ferro business in 2008, is that correct?

22 MS. MENDOZA: Again, we'll answer in our
23 post-hearing brief.

24 MR. JAFFE: Was the price at which you
25 bought sodium metal from MSSA in 2008 higher or lower

1 than the price at which you had previously bought
2 sodium metal from DuPont?

3 MS. MENDOZA: We'll answer in our post-
4 hearing brief.

5 MR. JAFFE: Question for MEMC. In the
6 preliminary conference, MSSA testified that when it
7 bought its, started to put together its facility in
8 Texas, that a number of customers supported MSSA by
9 making long-term contracts based in large part on this
10 transporting facility. Was MEMC one of those
11 customers who entered into a contract that supported
12 the building of this Pasadena trans-loading facility?

13 MR. RICE: As I've indicated, we do source
14 from that facility.

15 MR. JAFFE: Was this a part of your
16 contract?

17 MR. RICE: The contract we'll supply post-
18 hearing.

19 MR. JAFFE: Was there an item in that
20 contract that indicated that you supported the
21 creation of a Pasadena Trans-loading facility?

22 MR. RICE: That wouldn't be an element of
23 the contract.

24 MS. MENDOZA: Could I ask a question? Are
25 we obligated to answer all of these questions in our

1 post-hearing brief, or is the Commission going to
2 indicate to us which one of these you would like us to
3 answer?

4 CHAIRMAN ARANOFF: Normally, our procedure
5 is that if Petitioners do have time left over, which
6 they do, from their direct presentation, then they are
7 allowed to ask questions of opposing witnesses, and
8 that's completely proper. So we would ask that you
9 respond to them, either here or in your post-hearing
10 brief.

11 MR. JAFFE: Thank you. MEMC, DuPont tells
12 me that it lost a significant portion of MEMC's
13 business to MSSA in 2006. Is that correct?

14 MR. RICE: That is not correct.

15 MR. JAFFE: Was the price at which you
16 bought sodium metal from MSSA in 2006 higher or lower
17 than the price at which you had previously bought
18 sodium metal from DuPont?

19 MR. RICE: As stated earlier in my
20 testimony, and not to belabor here, but the issues we
21 had were all of the incidents related to dealing with
22 the waste material and the hazards of that of exposing
23 our employees; and, secondly, the logistics, which I
24 have already clearly identified as an opportunity for
25 us logistically.

1 Those are the issues that drove it.

2 MR. JAFFE: Thank you.

3 Questions to MSSA: During the preliminary
4 conference, the Commission staff asked whether or not
5 MSSA handled all costs related to the Pasadena
6 infrastructure, and MSSA answered that it did. Is
7 that statement still correct?

8 MR. HEFFNER: We'll answer that in our post-
9 conference brief. Doug Heffner.

10 MR. JAFFE: Other than in the United States,
11 could you tell us where else in the world, in 2005 to
12 2007, did MSSA sell the sodium metal that you now
13 named "Sokur"?

14 MR. HEFFNER: We'll answer that in our post-
15 conference brief.

16 MR. JAFFE: Last question: Back in November
17 2007, during the ITC's preliminary conference, and
18 this was a public conference, MSSA indicated that it
19 planned to open a plant in China and reduce capacity
20 in France when the Chinese plant became operational.
21 It's almost a year later. Could you update the
22 Commission as to the current status of this plant?

23 MR. HEFFNER: We already have. We already
24 have, but we'll, again, answer it in the post-
25 conference brief.

1 MR. JAFFE: Thank you. No more questions.

2 CHAIRMAN ARANOFF: Mr. Secretary, can you
3 give me the update on the time allocations, please?

4 (Pause.)

5 CHAIRMAN ARANOFF: Okay. It appears that
6 the Petitioners have, let's see, 21 minutes left from
7 their direct presentation after subtracting the
8 questioning time plus five minutes for closing.
9 Respondents have one minute left from their direct
10 presentation time plus five minutes for closing.

11 I believe that Petitioners' panel wanted to
12 separate your time for your rebuttal and your closing.
13 Is that correct?

14 MR. JAFFE: That's correct. We would just
15 like a brief time between the rebuttal and the
16 closing.

17 CHAIRMAN ARANOFF: Okay. Does anybody
18 object to grouping those two things together
19 sequentially rather than putting the Respondents' one
20 minute of rebuttal time in the middle? We'll just
21 have you do your 20-whatever-minutes-it-is, and then
22 we'll switch into your closing. We can have it
23 separately timed and then have the Respondents combine
24 their six minutes. Is that acceptable to everyone?

25 MR. JAFFE: That is acceptable to the

1 Petitioners.

2 MR. SILVERMAN: Bill Silverman. It's
3 acceptable for us as well.

4 CHAIRMAN ARANOFF: Okay. Thanks for bearing
5 with me through all of this complicated procedure. I
6 want to thank the afternoon panel very much. You are
7 all excused now. Thank you for your patience and for
8 all of the information that you've been able to
9 provide.

10 As soon as the tables are cleared, I'll ask
11 Mr. Jaffe to come forward, or whoever is going to do
12 the rebuttal.

13 (Pause.)

14 MS. ABBOTT: Would the room please come to
15 order?

16 CHAIRMAN ARANOFF: Okay. Madam Secretary or
17 Mr. Secretary, whichever one of you is in charge of
18 the stopwatch, you're going to separately time the 21
19 minutes where we're going to have the question-and-
20 answer format for rebuttal and then the five minutes
21 for closing separately. Correct?

22 MR. BISHOP: Yes, ma'am. That is correct.

23 CHAIRMAN ARANOFF: Okay. Please proceed.

24 MR. JAFFE: Thank you. Matthew Jaffe,
25 Crowell & Moring, on behalf of DuPont.

1 I think it's a little disingenuous to have a
2 panel that just talks about quality, but when you ask
3 a simple question about price, whether it's higher or
4 whether it's lower, suddenly it's thrown to the post-
5 hearing brief.

6 So we've prepared additional exhibits for
7 the rebuttal, and if you look at this rebuttal, it is
8 framed to answer that particular question, rather than
9 waiting for the post-hearing brief.

10 Again, you have before you a chart. This
11 chart is slightly different than has been prepared and
12 presented to you as part of our direct presentation.
13 This chart, however, goes through it a little
14 differently. It looks at particular customers. It
15 goes through and talks about and shows actually what
16 were the offers, and it shows you and provides you an
17 answer to the question, whether or not the price after
18 they left DuPont was higher or lower than the previous
19 DuPont price.

20 That said, I would like to address other
21 comments that were made.

22 I would like to ask my panel of experts
23 here, first, to start with some discussion about MEMC.
24 Ken and, if you can, MEMC today talked about a
25 particular Niapure Select railcar. Could you kind of

1 give additional background with respect to that
2 railcar?

3 MR. HILK: Thank you, Matthew. We did
4 receive the request that Doug Rice spoke about in the
5 summer of this year. We have worked with MEMC for a
6 long time to develop the Niapure Select product to
7 meet their needs. We very much want to supply MEMC.
8 They are a big-volume customer, and, as we've talked
9 about before, volume is very important to us.

10 As we got that order, we simultaneously had
11 a couple of things. We had an issue with our plant,
12 which we, I think, explained to the various people at
13 MEMC we were working with on that order; and, second,
14 we got the letter that was sent to the Department of
15 Commerce complaining about DuPont's quality and
16 objecting to the order and basically trying to support
17 a suspension agreement.

18 MR. JAFFE: I'm sorry. I just want to
19 clarify. That was a letter from MEMC to the
20 Department of Commerce. Correct?

21 MR. HILK: Yes. I don't know what I said,
22 but it was from the MEMC people to the Department of
23 Commerce.

24 So we had a little bit of a conundrum, and
25 it appeared to come at a very inopportune time. We

1 chose to go ahead and begin the work to supply that
2 railcar, and, as Doug mentioned, they have the
3 railcar. But our lawyers did counsel us to proceed
4 with caution because of the various proceedings that
5 are happening around this antidumping issue.

6 MR. JAFFE: Thank you. Do you think that
7 they had a particular motive in asking for this at
8 this particular time?

9 MR. HILK: It's hard to say, but it has
10 certainly appeared on the surface that there was an
11 ulterior motive for trying to get this railcar at this
12 particular time.

13 MR. JAFFE: Brian, I wanted to clarify the
14 record. Has DuPont ever sold Niapure Select to MEMC,
15 and when did they do so prior to this particular
16 railcar?

17 MR. MERRILL: Brian Merrill. We supplied
18 MEMC and Ferro with Niapure Select material in at
19 least the first and second quarter of 2007. I'm
20 uncertain as to why they feel they hadn't qualified
21 this material, but we did supply it. It's in the
22 information we supplied, one of the affidavits, on our
23 sales by quarter to customers, both to MEMC and Ferro,
24 and, in fact, those two companies were the reason that
25 we worked to develop that material, basically at

1 MEMC's request.

2 MR. JAFFE: Brian, you passed me a note, and
3 you indicated that you personally took a DuPont Six
4 Sigma champion to meet with MEMC. Could you explain
5 what a "Six Sigma champion" is, and then could you
6 explain to me what was the reception by MEMC?

7 MR. MERRILL: Brian Merrill. I forget the
8 exact time, but this was probably in 2004, 2003-2004
9 timeframe. I took our Six Sigma champion for our
10 chemicals business down to MEMC. We met with Doug
11 Rice. Six Sigma, as you're probably aware, is a
12 methodology of problem solving, process improvements,
13 cost reduction, et cetera, and we had that discussion.

14 DuPont was, based on comments that MEMC had
15 relayed to us of problems, operating issues, concerned
16 for product quality within their plant. We wanted to
17 identify what some of those things were to work on
18 improvement and identify a team to address those
19 concerns.

20 At that particular time, I know Doug Rice
21 was dealing with a lot of operating concerns at his
22 plant, but, at that time, he chose not to participate
23 in putting this team together to address these
24 problems.

25 MR. JAFFE: Brian, today, Ferro testified

1 that they have never bought Niapure Select from you.
2 Has DuPont ever sold Ferro Niapure Select?

3 MR. MERRILL: Brian Merrill. Yes, again, we
4 supplied Ferro in the first and second quarter of
5 2007, certainly second quarter. I don't believe we
6 supplied anything in the first quarter, but in the
7 second quarter of 2007, we supplied iso-containers of
8 Niapure Select.

9 Rich, can you confirm that?

10 MR. WALLDEN: Yes. As I mentioned earlier,
11 we resumed shipments in 2007 to Ferro in April, and,
12 from April on, all of the material, per the discussion
13 that our salespeople had with Ferro, was at 200 parts
14 per million or less.

15 So April all the way through the remainder
16 of 2007 was Niapure Select.

17 MR. JAFFE: Larry, Ferro testified about the
18 sludge, and they indicated they didn't know exactly
19 what the sludge was. Could you describe exactly what
20 the sludge is?

21 MR. FETZER: Well, generally, in our
22 experience, when we've had the opportunity to sample
23 it, the sludge itself is actually 85 percent sodium,
24 the balance being calcium, calcium-oxide and sodium-
25 oxide.

1 One of the things that we're able to do with
2 this is to actually take this material back. We have
3 a separate process where we can rework this back into
4 a finished product, sodium.

5 MR. JAFFE: And also, Rich, you spoke this
6 morning about the logistics issue with Ferro. I was
7 wondering if you could actually recount your testimony
8 again, given that they have testified again that there
9 were logistics problems.

10 MR. WALLDEN: Yes. Just to reemphasize, we
11 had three iso-tanks on specialized trailers dedicated
12 to Ferro, and they canceled several orders numerous
13 times from the period of December of 2006 all the way
14 until the resumption of sales in April of 2007, and we
15 were able to make very quick deliveries with sometimes
16 only two days from the time Ferro placed an order
17 until the material shipped from our facility to make
18 the transit to their plant.

19 MR. JAFFE: Thank you. Seth, I think you've
20 had a chance to analyze the ECS documents. Could you
21 comment on them?

22 MR. KAPLAN: Well, let me take a quick look
23 at the documents.

24 The second document related to a similar
25 chart that I had produced. I had looked at the price

1 of all sales from DuPont minus the prices of Customer
2 X and compared them to prices from MSSA, and what I
3 asked you to do was to look at who was under and who
4 was over on a quarterly basis. So that relates to
5 their Exhibit 1 of 2.

6 Their Exhibit 2 of 2 goes to the condition
7 of the industry and what it faces. We talked about
8 the importance of running at high levels of capacity
9 and running a base load, and what that does is make
10 that contract important, but it also makes every other
11 contract extremely important to run profitably.

12 So I think we had discussed that earlier,
13 about the importance of each of these contracts.

14 I want to comment quickly on three other
15 points that came up that were economic points. The
16 Commission asked about quarterly prices versus
17 contract prices and why they supported quarterly
18 prices, and I think their answer was really thin gruel.

19 The Commission has a role to get to the
20 bottom of the pricing issues in the context of
21 competition. That's the first principle.

22 While I'm not a lawyer, the answer seemed to
23 be, oh, they have always done it this other way.
24 Don't look at what we're using it for. Don't look at
25 what it gets to. Don't look at how it explains

1 competition, but there is a precedent. That's what
2 you should look at.

3 Well, first, I think that the Commission has
4 always tried to get behind to the bottom question and
5 not rely on some rote methodology to answer a question
6 but look at why the question is being asked. I think,
7 here, it's head-to-head competition with a small
8 number of customers. The best way to look at it is
9 the prices to those customers.

10 I think the second point they made, though,
11 is misplaced. The Commission has not always looked at
12 quarterly pricing data. The Commission goes and looks
13 at what it finds is important. It looks at contract
14 prices. It looks at bid prices. It always collects
15 what they think is important, and when the staff and
16 the Commission found out about how the prices and
17 contracts took place, they went out, and they
18 collected all of this information, and now you're
19 being asked to ignore all of this information.

20 I think the idea that you ignore head-to-
21 head competition because there is quarterly price data
22 somewhere, but there is no good reason to look at it
23 other than it's there, is not very convincing.

24 On the second point, there was a very
25 articulate spokesman for Respondents, Marianne Johnson

1 of Ciba. She was very articulate in speaking to all
2 of the questions you had asked and answered them very
3 clearly. She was a great witness.

4 But I would like you take a look, again, at
5 the staff report on page 2-7, the second full
6 paragraph, where it says: "The top ten responding
7 purchasers accounted for 94.3 percent of reported
8 purchases between 2005 and 2008." And it goes through
9 these customers, and, at the bottom, it has the share
10 of the last customer, and I ask you to look to see if
11 Ciba is on that list and what that says about her
12 understanding of the market and competition in the
13 market.

14 So I have no doubt that what she is saying,
15 she believes to be correct, and it is correct, about
16 her business, but the Commission always collects a lot
17 of data to try to get a representative view, and I
18 contend that you could look at that data to see if her
19 views are representative.

20 With respect to demand, the pricing series
21 and the prices we've seen at these individual
22 customers does not suggest a booming demand, or if it
23 suggests booming demand, it represents an
24 extraordinary amount of dumping to get prices to move
25 in the directions they have.

1 I was also kind of struck by Mr.
2 Malashevich's comment that, well, DuPont doesn't know
3 about one part of the market, and MSSA does, and I
4 would really like to know where his knowledge comes
5 from, if he has spoken to the people at DuPont.
6 There's two producers in the world, and yet DuPont,
7 kind of a slouch company, kind of ignores half of the
8 market. That's what they are known for worldwide.

9 So I think that rampant speculation is
10 uncalled for. I think there is nothing on the record
11 or any evidence suggesting that DuPont is not fully
12 participating in this market worldwide, and it
13 understands its markets, and that the notion of,
14 "Well, demand is really going up a lot, but they don't
15 know," is ridiculous.

16 So with respect to demand, we will put in
17 further information, but we've already discussed that
18 while we all hope demand increases in the largest
19 segments and takes large increases in volumes, there
20 is no evidence in the immediate future that this is
21 going to occur. In fact, the exact opposite has
22 occurred with the closing of Sagenta. Thank you.

23 MR. JAFFE: Thank you. Just one question
24 for Larry: MEMC discussed about sludge, and you had
25 an answer to that question.

1 MR. FETZER: Well, in particular, MEMC had
2 stated that during the process of cleaning one of the
3 tanks that we had assisted with, DuPont took the
4 sodium sludge, didn't know what we did with it, but
5 what we offer as a service is we can take that
6 material back, and since it's substantially sodium, we
7 can put it through another chemical process and
8 recover that sodium value and create finished-product
9 sodium.

10 It's a little bit disappointing and
11 distressing to find out that when they cleaned the
12 second tank, they actually did create hazardous waste
13 when it really wasn't necessary to do that.

14 MR. JAFFE: All right. Thank you. That
15 concludes our rebuttal presentation.

16 CHAIRMAN ARANOFF: Okay. I don't think we
17 need to take the time to send everybody to the back of
18 the room if you're prepared to go straight to closing.
19 However, if you need to rearrange the chairs, please
20 feel free.

21 MR. JAFFE: Thank you. I think I have about
22 10 minutes left, total: five and five for rebuttal.
23 I'll do my best not to use all of that time.

24 When I came back to Washington, D.C., back
25 in the 1980's, my first job, after unemployment, is I

1 had a great opportunity, actually, to work on the
2 Hill, and I got a chance to work in an investigation
3 that actually had a very long name, but it was known
4 as "ABSCAM" at that particular time, a large
5 investigation that actually followed Watergate.

6 So, of course, we all were very conscience
7 of Watergate and conscious of the movie, "All the
8 President's Men," and, as you know, there is a famous
9 line in that movie, and it goes as: "Follow the
10 money." Bob Woodward says, "What do you mean?
11 Where?" "Oh," Deep Throat says, "I can't tell you
12 that." Bob Woodward: "But you could tell me that."
13 Deep Throat: "No. I have to do it my way. You tell
14 me what you know, and I'll confirm. I'll keep you in
15 the right direction, if I can, but that's all. Just
16 follow the money."

17 In this case, follow the long-term
18 contracts. They will lead you to the solution for
19 what I would like to call "So Pure Gate," "So Pure
20 Scam" perhaps.

21 Now, the opposition would like to lead you
22 in the wrong direction. They would like to add false
23 leads perhaps. They will talk about a second supply
24 source. It's incredibly important, notwithstanding,
25 of course, that they have gotten a single supply

1 source from DuPont for many years, and now many of
2 them just had a single supply source from MSSA.

3 Some of them talk about logistics, but, as
4 Rich Wallden has told you here, logistics have never,
5 ever, been a problem.

6 Some will talk about future demand and how
7 it's going to explode, and yet you hear that, in a
8 down-cells technology, you would be foolish to put a
9 down cell into operation unless you absolutely,
10 positively, knew you had a long-term contract.

11 And then, of course, the biggest false lead,
12 I believe, is this quality issue. Again, look at the
13 history in this case. No problems for so many, so
14 many years, and then, after maybe 10, 11 years -- I
15 think it was in the question of Afton, and I'm pretty
16 sure I heard Ferro say 20 years with respect to theirs
17 -- suddenly they have a problem, a problem that they
18 should have known about all along, certainly Afton.
19 Ethyl used to produce sodium metal.

20 Then, of course, there are these
21 inconsistent arguments. Sagenta; that's the reason
22 why they are in a difficult profitability position.
23 They lost the volume. But the fact that you heard it
24 today from all of these purchasers, lost volume was
25 here in this room, significant but dumped price of 66

1 percent, no. That had absolutely nothing to do with
2 it.

3 The Commission, in a recent review -- it was
4 actually in the Carbon and Certain Alloyed Steel Wire
5 Rod from Trinidad and Tobago case, the famous Mattal
6 recent CFC decision, but, in the Commission's view,
7 they talk about the statutory scheme. It says: "The
8 statutory scheme clearly contemplates that an industry
9 may be facing difficulties from a variety of sources,
10 including nonsubject imports and other factors, but
11 that the existence of injury caused by other factors
12 does not compel a negative determination if the
13 subject imports themselves are a cause of material
14 injury." Clearly, they are here.

15 Further, and here is a quote of a quote:
16 "Any such requirement has the undesirable result of
17 making relief more difficult to obtain for those
18 industries facing difficulties from variety of
19 sources, precisely those industries that are most
20 vulnerable to subsidized or dumped imports."

21 You've heard it from Mattal in their
22 antidumping petition, and it's from us as well: The
23 production structure in here in this particular
24 industry, the market structure in this particular
25 industry, a handful of customers, long-term

1 commitments necessary; this is a vulnerable industry.
2 It needs an affirmative vote in the final phase of
3 this investigation. Thank you.

4 (Pause.)

5 MR. SILVERMAN: I've got six minutes. I was
6 here at ten-fifty-eight at the hearing last winter and
7 also, whatever it was, 9 o'clock on October 2nd. I
8 won't hold you that long.

9 Look, this is not a case from the "Perry
10 Mason Show" with cross-examination and picking at
11 little details back and forth. I've practiced before
12 the Commission for a long time. As far as I know, the
13 Commission is interested in substantive issues,
14 substantive analysis, and data on the record, not the
15 "Perry Mason Show."

16 If you're worried about the credibility of
17 our customers, they came and testified under oath.
18 You can look at what they submitted to the
19 questionnaire responses and compare what they said, in
20 response to your questions and in their testimony, to
21 the purchaser witnesses that they brought. If you
22 want to talk about quality, listen to their witnesses
23 talk about quality. It's not there.

24 When they say "quality," they also talk
25 about safety. Did you hear all of the rebuttal on

1 safety? It's not there.

2 These are people who have bought this
3 material, and some of them bought mainly DuPont in the
4 past, but it's better to buy the better product
5 because it's safer. How many people testified as to
6 the safety?

7 I can't sit here and let you get spun around
8 with all of these side issues. They discovered a new
9 economic analysis after they read the staff report.
10 They don't want you to use the staff report's
11 overselling analysis once they have seen it. Now they
12 have a new idea: long-term contracts.

13 They have been in this business a long time.
14 They didn't raise that in the petition. They didn't
15 raise it in the prelim. Only now, when they see the
16 data they don't like, they get a new theory, that
17 somehow long-term contracts are really important.
18 They have taken you on so many detours away from your
19 normal analysis, and the crowning one was a few
20 minutes ago when one of their people said, "Get away
21 from that same rote methodology."

22 Come on. They don't like the results of the
23 data, so they want to take you away from the same rote
24 methodology. The Commission has yardsticks. You've
25 used them for years. The record here doesn't support

1 them. No confirmed lost sales; no confirmed lost
2 revenues. How many cases do you get like that?
3 Underpricing. It's not there; it's overpricing. They
4 don't like that.

5 They don't like the fact that all of these
6 people are paying 62 percent more because they won't
7 buy an unsafe product, or they don't want to be
8 dependent on DuPont, or they don't make the product.
9 DuPont doesn't make it, the people with the bricks and
10 ingots.

11 They don't want you to concentrate on that
12 because that's rote methodology. Forget about
13 precedents. Forget about the way the Commission
14 analyzes things. They never would have come up with
15 that theory if they liked the staff report, but they
16 don't like the data in the staff report. That's one
17 big detour.

18 Another big detour was really clever. I
19 enjoyed it, but it's not the "Perry Mason Show." It
20 was, look at the EU complaint on subsidy and dumping.
21 That's a nice detour, but you caught them on that, and
22 they stopped. They looked at the pricing information,
23 and they said, Well, why don't you take out Customer
24 X? Just take out Customer X, and then we'll analyze
25 it.

1 How transparent is that? They don't like
2 the result, so let's change it. They will tilt the
3 table a little bit. That's a detour I think you
4 should resist.

5 They used the term "conditions of
6 competition." That's another reason you shouldn't
7 look at the data in the record, because this big fog
8 called "conditions of competition" can be used to get
9 away from absence of confirmed lost sales or
10 overpricing, not underpricing, paying 62 percent.
11 "Conditions of competition" is a fog to take you away
12 from the data in the record.

13 Now, on this issue of long-term contracts, I
14 think you've caught up with them on that. Your
15 questions about flexibility versus straitjacket; we've
16 given you a list of six or seven specific types of
17 things that go on in this industry. Whether it's
18 hardship, meet and release, Most Favored Nation,
19 Evergreen, other mid-term price changes, we'll give
20 you all of those contracts and explain to you why
21 there is something akin to a contemporaneous
22 competition, that this is not a straitjacket where
23 people signed contracts five years ago, and nothing
24 changes.

25 Everything that Mr. Kaplan said hinges on

1 that. The truth is, the facts don't support it. It's
2 a nice concept, but it's a detour from what the facts
3 are in the case.

4 As I said, one of the outstanding parts of
5 this case was when they testified, There may be some
6 quality out there, but it's the purchasers who screwed
7 it up. They didn't have the proper care, the proper
8 pipes. That tells you something about the way they
9 sell their product and their views about the
10 competence of their customers.

11 So I hope you will get back to the record,
12 to the normal yardsticks that the Commission uses, and
13 don't let them spin you around. Don't let them take
14 you on these detours away from what's in the record.
15 They spent a lot of time doing it. They are very
16 clever. It's not the "Perry Mason Show," and it's not
17 the EC Commission.

18 It's not these side issues that may be
19 interesting, but the substantial evidence on the
20 record, which is clear, and I've done these cases for
21 years. I've never seen a case with so many customers
22 coming in to talk. I usually plead with people to
23 come to Washington. These people demand to come in
24 and talk. Sorry, my light is out. Thank you.

25 CHAIRMAN ARANOFF: Thank you. I promised to

1 get you out before dark tonight, and it looks like
2 I've done it.

3 Post-hearing briefs, statements responsive
4 to questions and requests of the Commission, and
5 corrections to the transcript must be filed by October
6 21, 2008. Closing of the record and final release of
7 data to parties will occur on November 6, 2008, and
8 final comments are due November 7, 2008.

9 With that, thank you all, and we are
10 adjourned.

11 (Whereupon, at 6:03 p.m., the hearing in the
12 above-entitled matter was concluded.)

13 //
14 //
15 //
16 //
17 //
18 //
19 //
20 //
21 //
22 //
23 //
24 //
25 //

CERTIFICATION OF TRANSCRIPTION

TITLE: Sodium Metal from France
INVESTIGATION NO.: 731-TA-1135 (Final)
HEARING DATE: October 14, 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: October 14, 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: Carlos Gamez
 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