

UNITED STATES  
INTERNATIONAL TRADE COMMISSION

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In the Matter of: )  
)  
SODIUM NITRITE FROM CHINA AND ) Investigation Nos.:  
GERMANY ) 701-TA-453 and  
) 731-TA-1136-1137  
) (Final)

Pages: 1 through 216

Place: Washington, D.C.

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Wednesday,  
 July 2, 2008

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

The hearing commenced, pursuant to notice, at 9:31 a.m., before the Commissioners of the United States International Trade Commission, the Honorable Daniel R. Pearson, Vice Chairman, presiding.

## APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

DANIEL R. PEARSON, VICE CHAIRMAN (presiding)  
 DEANNA TANNER OKUN, COMMISSIONER  
 CHARLOTTE R. LANE, COMMISSIONER  
 IRVING A. WILLIAMSON, COMMISSIONER  
 DEAN A. PINKERT, COMMISSIONER

APPEARANCES: (Cont'd)

Staff:

MARILYN R. ABBOTT, Secretary to the Commission  
SHARON BELLAMY, Hearings and Meetings Assistant  
DANA LOFGREN, Investigator  
ROBERT RANDALL, International Trade Analyst  
CATHERINE DeFILIPPO, Economist  
CHARLES YOST, Accountant/Auditor  
WILLIAM TRENCHER, Attorney  
DOUGLAS CORKRAN, Supervisory Investigator

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

Williams Mullen  
Washington, D.C.  
on behalf of

General Chemical LLC

DOUGLAS McFARLAND, Director of Business Development  
and Technology, General Chemical LLC

TOM NELSON, Business Manager, Sodium Nitrite,  
General Chemical LLC

VINCENT J. OPALEWSKI, Vice President and General  
Manager, Performance Chemicals Group, General  
Chemical LLC

JIM IMBRIACO, General Counsel, General Chemical LLC

JAMES R. CANNON, JR., Of Counsel

DEAN A. BARCLAY, Of Counsel

APPEARANCES: (Cont'd)

In Opposition to the Imposition of  
Antidumping and Countervailing Duty Orders:

Barnes, Richardson & Colburn  
Washington, D.C.

on behalf of

BASF SE and BASF Corporation ("BASF")

WILLIAM J. WORK, Business Manager Inorganics  
and Electronic Chemicals, BASF

In Opposition to the Imposition of  
Antidumping and Countervailing Duty Orders:

KAREN A. KATZ, Product Manager, Inorganics, BASF

MATTHEW T. McGRATH, Of Counsel

STEPHEN W. BROPHY, Of Counsel

I N D E X

	PAGE
OPENING REMARKS (PETITIONERS)	
James R. Cannon, Jr., Williams Mullen	6
TESTIMONY OF DOUGLAS McFARLAND, Director of Business Development and Technology, General Chemical LLC	12
TESTIMONY OF TOM NELSON, Business Manager, Sodium Nitrite, General Chemical LLC	27
TESTIMONY OF VINCENT J. OPALEWSKI, Vice President and General Manager, Performance Chemicals Group, General Chemical LLC	107
TESTIMONY OF MATTHEW T. McGRATH, Of Counsel, Inorganics, BASF	119
TESTIMONY OF WILLIAM J. WORK, Business Manager Inorganics Electronic Chemicals, BASF	121
TESTIMONY OF KAREN A. KATZ, Product Manager, Inorganics, BASF	128

P R O C E E D I N G S

(9:31 a.m.)

1  
2  
3 VICE CHAIRMAN PEARSON: Good morning. On  
4 behalf of the U.S. International Trade Commission I  
5 welcome you to this hearing on Investigation Numbers  
6 701-TA-453 and 731-TA-1136 to 1137, Final, involving  
7 Sodium Nitrite from China and Germany.

8 The purpose of these investigation is to  
9 determine whether an industry in the United States is  
10 materially injured or threatened with material injury  
11 by reason of subsidized and less than fair value  
12 imports of sodium nitrite from China and Germany.

13 The schedule setting forth the presentation  
14 of this hearing, Notice of Investigation, and  
15 transcript order forms are available on the public  
16 distribution table. All prepared testimony should be  
17 given to the Secretary. Please to not place testimony  
18 directly on the public distribution table.

19 All witnesses must be sworn in by the  
20 Secretary before presenting testimony.

21 I understand that parties are aware of the  
22 time allocations. Any questions regarding the time  
23 allocations should be directed to the Secretary.

24 Finally, if you will be submitting documents  
25 that contain information you wish classified as

1 business confidential, your requests should comply  
2 with Commission Rule 201.6.

3 I would note for the record that Chairman  
4 Aranoff is necessarily absent today. However, she is  
5 not recused from these investigations and will be  
6 participating.

7 Madam Secretary, are there any preliminary  
8 matters?

9 MS. ABBOTT: Mr. Chairman, all witnesses  
10 have been sworn. There are no other preliminary  
11 matters.

12 (Witnesses sworn en banc.)

13 VICE CHAIRMAN PEARSON: Very well. Let us  
14 proceed with the opening statements.

15 MS. ABBOTT: Opening remarks on behalf of  
16 Petitioners will be by James R. Cannon, Jr. of  
17 Williams Mullen.

18 VICE CHAIRMAN PEARSON: Good morning, Mr.  
19 Cannon. Welcome back to the Commission.

20 MR. CANNON: Good morning. Thank you.

21 The record in this case, the evidence in the  
22 Staff Report, the evidence that you'll hear this  
23 morning and today will show you that imports are up.  
24 Imports are up 62 percent in this product. You will  
25 also see that there is significant underselling, it's

1 persistent, it exists in I think 34 out of your 40  
2 comparisons. And the industry is not healthy. It was  
3 losing money in 2005 and 2006. It is barely breaking  
4 even in 2007.

5 On those facts, on the statutory factors,  
6 the big picture items, you should conclude that there  
7 is material industry to this industry.

8 I believe BASF will argue essentially two  
9 points: they will first argue that the dry product  
10 that we make, the sodium nitrite, does not compete  
11 with the liquid product.

12 The first thing you should be aware of in  
13 this case is that dry is the most important product  
14 made by the domestic industry. It accounts for the  
15 largest volume of their production and in head-to-head  
16 competition in the data collected in the Staff Report,  
17 product one, product two, in head-to-head competition  
18 the imports are increasing volume, the domestic  
19 industry is losing sales. So on the dry product alone  
20 you can conclude there is causation.

21 Moreover, you will also hear today that the  
22 domestic industry is losing sales of solution to  
23 imports of dry product. So on that basis too you will  
24 able to find that the domestic industry's health is  
25 impaired by reason of the imports of the dry product.

1           The next thing that I expect that BASF will  
2 argue is that the performance of the industry is  
3 improving. This is true. But the first thing you  
4 should not about that is improving is relative, and in  
5 2007, the full year data before you show an industry  
6 that is not healthy. By any measure, the profits that  
7 they made in 2007 are not adequate, it's not an  
8 adequate return on investment, it's not an adequate  
9 return on assets or money invested in the business.

10           More importantly though, you should consider  
11 the reason for the improvement. Why did the industry  
12 improve in 2007? Why has their profit rate increased?  
13 The reason is that one of two domestic producers left  
14 the business. The cost of profitability in 2007 was  
15 to shut down a factory, to lay off workers in the  
16 domestic industry. That is a high cost to bear. And  
17 so the improvement in 2007, albeit it's an  
18 improvement, has to be looked at in this context.

19           For these reasons when you consider the  
20 testimony today and you look at the record I think you  
21 will conclude that the domestic industry is materially  
22 injured by reason of imports from China and Germany.

23           Thank you.

24           VICE CHAIRMAN PEARSON: Thank you, Mr.  
25 Cannon.

1 MS. ABBOTT: Opening remarks on behalf of  
2 Respondents will be by Matthew T. McGrath, Barnes,  
3 Richardson and Colburn.

4 VICE CHAIRMAN PEARSON: Good morning, Mr.  
5 McGrath. Welcome back.

6 MR. McGRATH: Good morning, Commissioners.  
7 Thank you. Good morning to all. I am certainly  
8 pleased to be here today, Matt McGrath on behalf of  
9 BASF.

10 The Commission is being asked today to  
11 endorse an effort by General Chemical to reach  
12 monopoly status in the United States. And we are here  
13 to urge you to reject this because there really is no  
14 evidence of causation of injury caused by allegedly  
15 dumped imports.

16 General has just indicated that they will  
17 offer some conventional arguments that are presented  
18 by sole domestic producers appearing before you in  
19 antidumping matters, that the subject import market  
20 share has increased. They will argue that prices have  
21 been suppressed, that all forms of the product compete  
22 with each other and with other forms of the product in  
23 the marketplace and, of course, everyone's favorite,  
24 that the Chinese are involved.

25 However, we intend to show that there are

1 good reasons to conclude that there is no causal  
2 relationship between the subject imports and problems  
3 that were experienced by the domestic industry which,  
4 as we've just heard, have diminished.

5 First, the market in the United States for  
6 granular product sales is expanding, not contracting  
7 based on pricing data that's been submitted in  
8 response to questionnaires and based on the  
9 information in the Staff Report.

10 The Staff Report suggests that subject  
11 imports overall held an expanding share of the market.  
12 But as we intend to show, the real market data, the  
13 market in which there is head-to-head competition,  
14 that is the granular product, show the imports only  
15 held a steady share of a growing market. There were  
16 increases both by the domestic and by the subject  
17 imports.

18 The Commission already found in its  
19 preliminary determination that the decline in solution  
20 customers due to the departure of two major customers  
21 was not due to subject imports. So the effects from  
22 that decline were not causally related.

23 Secondly, the prices for granular product  
24 experienced a marked upward trend throughout the  
25 period of investigation. So you will be looking at a

1 record which does show a pretty significant increase  
2 in prices. The German price is rising almost 50  
3 percent throughout the period of investigation, more  
4 than the rises for domestic products. Average  
5 quarterly prices rose for the Chinese as well.

6 Third, we do intend to show, and we will  
7 further show in confidential information, that price  
8 increases have covered our costs for the German  
9 product and BASF has greater flexibility, perhaps  
10 because of its vertical integration in recovering  
11 costs throughout its production stream, but we have  
12 recovered costs.

13 And fourth, all the financial indicators  
14 show healthy improvements in the condition of the  
15 domestic industry. It's not an industry being injured  
16 by imports that compete with less than half of its  
17 production. Improvements in operating income, net  
18 income, cash flow were all under way before this  
19 petition was filed. By their own admission a  
20 combination of two companies' capacity reduced their  
21 unit costs, I think it was well explained, and that  
22 has improved the financial picture greatly.

23 With all of these record indicators, we  
24 believe that there is a clear lack of causation. And  
25 General is left with the primary argument that prices

1 for the solution that it sells into the market are  
2 affected by customers who are negotiating with them  
3 using and citing BASF's prices quoted for the granular  
4 product. This is a rationalization, it's not  
5 causation. And we will present witness testimony to  
6 demonstrate that there is no causal nexus and urge  
7 that you rule in the negative.

8 Thank you.

9 VICE CHAIRMAN PEARSON: Thank you, Mr.  
10 McGrath.

11 MS. ABBOTT: Will the first panel in support  
12 of the imposition of antidumping and countervailing  
13 duty orders please come forward.

14 VICE CHAIRMAN PEARSON: Okay, your show, Mr.  
15 Cannon. Please proceed.

16 MR. CANNON: Thank you. Our first witness  
17 will be Douglas McFarland. Douglas.

18 MR. MCFARLAND: Good morning. I am Douglas  
19 McFarland. I am the Director of Business Development  
20 and Technology for General Chemical LLC. I am honored  
21 to appear before the Commission this morning on behalf  
22 of General Chemical, the sole remaining U.S. producer  
23 of sodium nitrite.

24 I have been with General Chemical since  
25 1993. I have worked primarily in the chemical and

1 food and farmer business and I have been involved in  
2 many manufacturing operations, which include water  
3 treatment, soda ash and, of course, the sodium nitrite  
4 business we are here to discuss today.

5 I assumed my current position as Director of  
6 Business Development in 2005. My responsibilities  
7 include acquisitions for the performance chemicals  
8 division. Consequently I was directly involved in the  
9 Repano transaction in 2006.

10 The first thing I would like to talk about  
11 is the products and the production process. Sodium  
12 nitrite is a simple inorganic salt with a chemical  
13 formula  $\text{NaNO}_2$ . It's primarily used as an intermediate  
14 or processed chemical. The end user values the sodium  
15 nitrite for a variety of reasons, including as a  
16 source of nitrous acid in inks and dyes production,  
17 because it a oxidizing agent in water treatment,  
18 because of its high melting point in heat-treating  
19 salts, and because it is used as a food preservative.

20 At this point what I would like to do is  
21 pass around some samples of the various forms and  
22 grades of sodium nitrite that we sell. The first  
23 sample is granular sodium nitrite without any anti-  
24 caking agent. This form can solidify within two to  
25 three months in a 50-pound bag and, consequently, you

1 will have a brick of sodium nitrite which is obviously  
2 difficult to use. You can see that the sample in the  
3 jar is already becoming solid.?

4 The next sample is what we call granular  
5 free-flowing sodium nitrite. Upon examination you  
6 will see that this granular form is very fine and  
7 flows in the jar like sugar. This form has an anti-  
8 caking agent added to the granular sodium nitrite to  
9 prevent the material from solidifying into a solid  
10 brick.

11 The next jar shows the flake form. In this  
12 case the particles of sodium nitrite are much larger  
13 and irregular in shape. Flake sodium nitrite does not  
14 stick together because of these physical  
15 characteristics and, therefore, does not need any  
16 anti-caking agent.

17 Next we are passing around a bottle of  
18 Chinese sodium nitrite in a "prilled" form. This is  
19 another way to provide a form that is free flowing.

20 Last we are going to pass around a bottle of  
21 sodium nitrite in liquid solution. Putting the  
22 product in solution form is yet another way to avoid  
23 caking. Also, as I will explain, virtually all end  
24 users will put the sodium nitrite into solution even  
25 if they do not buy it in the liquid form.

1           End users of sodium nitrite essentially want  
2           the sodium, nitrogen and oxygen for use in their  
3           production process, for example, in water treatment  
4           applications the end user wants the sodium nitrite  
5           because it is a strong oxidizing agent. This means  
6           the sodium nitrite will cause oxygen to bond with the  
7           sodium nitrite instead of bonding with the metal  
8           pipes. This process keeps their iron pipes from  
9           rusting.

10           Another one of the uses of sodium nitrite is  
11           what we see on the table before us which is in  
12           antifreeze. The sodium nitrite in the antifreeze  
13           keeps your radiator from rusting.

14           In other applications an end user may want a  
15           source of nitrous acid. However, shipping nitrous  
16           acid is not practical because of its stability. The  
17           nice thing about sodium nitrite is that it can be  
18           easily transported, we can ship it in liquid form in  
19           tank cars or we can ship it in dry form in super sacks  
20           or 50-pound bags.

21           Therefore, the different forms of sodium  
22           nitrite can therefore be understood from the  
23           standpoint of customer convenience.

24           Moving along to slide one which is above us,  
25           shows all the different categories of customers by end

1 use. In all but two cases General Chemical ships dry  
2 or liquid sodium nitrite to end users in each  
3 category.

4 In the case of imports from Germany or China  
5 it's impractical to ship sodium nitrite in solution  
6 form because of the additional freight costs to ship  
7 water. Consequently, imports are exclusively in the  
8 dry form. However, once the end user receives dry  
9 sodium nitrite it will put it into solution in a large  
10 majority of applications. In fact, the dry form of  
11 sodium nitrite will always substitute for the  
12 solution. We know this because we make the dry  
13 granular form in our plant and then we dissolve it in  
14 water for the customers that want the solution.

15 Next I would like to talk about plant and  
16 manufacturing process. Our plant is located in the  
17 town of Solvay which is on the outskirts of Syracuse.  
18 Manufacturing at the site dates back to 1874 with one  
19 of the first operations being the production of soda  
20 ash. This led to the plant manufacturing sodium  
21 nitrite starting in the 1920s. And we had a major  
22 capacity expansion in the 1960s.

23 Our Syracuse operation is one of the longest  
24 producing sodium nitrite operations in the world and  
25 chemical manufacturing on the site dates back to the

1 beginning of the chemical industry in America. I see  
2 no reason with fairly traded competition that we  
3 cannot continue to produce sodium nitrite for the next  
4 100 years.

5           The next slide shows the production process.  
6 Our process is typical of the sodium nitrite  
7 manufacturing process in which two chemicals, either  
8 ammonia and soda ash in the case of General Chemical  
9 and the Chinese producers, or ammonia and caustic soda  
10 for BASF and the former Repano are reacted to form a  
11 sodium nitrite solution. The first step involves  
12 oxidizing ammonia with air to produce nitrogen oxide  
13 over a very hot catalyst which is at 750 degrees  
14 centigrade. In the General Chemical process these  
15 nitrogen oxides, which are gases, are then reacted  
16 with the soda ash in five absorbing towers which are  
17 three stories high to produce a weak and impure sodium  
18 nitrite solution.

19           The next step is concentrating and purifying  
20 this weak solution of sodium nitrite. The process is,  
21 first, evaporation to remove the water. The second  
22 step is crystallization to form crystals of pure  
23 sodium nitrite that are in a slurry. The final step  
24 is the centrifuge where the crystals are separated  
25 from the slurry and a dry, pure sodium nitrite

1 crystals with approximately 3 percent moisture is  
2 produced. These last three steps are typical of other  
3 crystallization processes such as sugar and salt.

4 The pure sodium nitrite crystals that comes  
5 off the centrifuge is our core produce.

6 We will now pass around a sample of the raw  
7 granular product that comes off our centrifuge. As  
8 you can see, this product is very similar to the  
9 finished forms that we passed around earlier.

10 The next part of the process is taking this  
11 basic pure sodium nitrite crystal and putting it into  
12 various forms to meet the particular requirements of  
13 the customers. A possible parallel to the manufacture  
14 of products in different forms is the market for  
15 bouillon which is sold in liquid, powder which  
16 contains an anti-caking agent, cubes, and even a  
17 paste.

18 Turning to the next slide we see that the  
19 crystals will be handled differently depending on the  
20 form that we want to make. If we are making solutions  
21 we will simply take the sodium nitrite crystals that  
22 come off the centrifuge and dissolve them in water.  
23 Customers typically request a solution of 38 to 42  
24 percent. Customers for solution tend to be larger  
25 customers who like the convenience and price of buying

1 in bulk. This is unfortunately because due to the  
2 tendency of sodium nitrite to cake they can't buy  
3 sodium nitrite in bulk.

4 When we produce the dry form of the produce  
5 the sodium nitrite crystals undergo a small amount of  
6 drying and conditioning to reduce the moisture from 3  
7 percent to less than .2 percent. This product is then  
8 blended with the low level of anti-caking agent,  
9 around .1 percent, to produce our standard free-flow  
10 material or it's packaged as it is to produce our high  
11 purity granular material.

12 Finally, the flake produce is produced by  
13 taking the crystals, compacting them between rollers  
14 into a sheet and then breaking the sheet of sodium  
15 nitrite into flakes. It is a simple process in which  
16 only a limited number of customers have an interest.

17 From an end user perspective they will order  
18 and use a different form of sodium nitrite depending  
19 on price, convenience and practice. If the customer  
20 needs to be able to store sodium nitrite for some  
21 period of time before use it will prefer to have the  
22 free-flowing product with anti-caking agent.

23 If the customer is a large end user with the  
24 ability to accept delivery of rail cars they may  
25 instead prefer the liquid form. However, in each case

1 the customer can and may change its process if it can  
2 obtain sodium nitrite in a different form at a lower  
3 price.

4 In any event and in all cases and without  
5 exception, a solution customer can substitute the  
6 liquid form of sodium nitrite with dry material by  
7 simply dissolving the dry material in water. We know  
8 this is a fact because we make solution by dissolving  
9 the dry material in water.

10 At this point I would like to make a short  
11 demonstration where I am going to make up a solution  
12 of 38 percent. I've got somebody from my R&D group to  
13 basically make up enough powder and allying with water  
14 I'm going to add the two and just agitate. What you  
15 will see is that initially it will look at little  
16 cloudy; that's mainly driven by the air bubbles that  
17 are entrained. On top of which there is some  
18 condensation that forms on the outside.

19 (Mixing contents.)

20 You can see it gets a little cold. I think  
21 that should be enough.

22 In short, competition can and does take  
23 place between the different forms of sodium nitrite.  
24 The liquid form competes directly with the various dry  
25 forms. Chinese prilled product competes directly with

1 domestic or German free-flowing forms. For these  
2 reasons not only is there a single like product but  
3 the form of the product does not create separate sub-  
4 markets or market segments. In fact, the same end  
5 user may buy liquid and dry sodium nitrite and may  
6 switch between the two. Or one of our traditional  
7 customers may switch from free-flowing to the prilled  
8 form of the product imported from China.

9 With this background concerning a single  
10 like product let me describe the history of the  
11 domestic industry, the impact of import competition,  
12 and the eventual contraction of our industry.

13 As I indicated earlier, I was personally  
14 involved in the process to acquire Repano and  
15 consolidate the sodium nitrite business. In 2005  
16 there were two longtime producers of sodium nitrite in  
17 North American, General Chemical with its operation in  
18 Syracuse, and Repano with its operation in Gibbstown,  
19 New Jersey. In 2005 both businesses were operating at  
20 a loss because of low output and unused capacity.  
21 BASF was aggressively growing its market share using  
22 low pricing by dumping product into the U.S. market.  
23 BASF both increased its sales to major distributors  
24 and captured sales to end users.

25 For example, BASF displaced Repano in

1 supplying one of the major water treatment customers  
2 based on price. Consequently Repano approached  
3 General Chemical in the middle of 2005 to discuss a  
4 possible combination of businesses either through a  
5 joint venture or by one party purchasing the business  
6 of the other. It quickly became evidence during the  
7 discussions that a joint venture was unlikely to  
8 succeed for a variety of reasons and that General  
9 Chemical was better positioned to take advantage of a  
10 consolidation. Simply put, General Chemical had a  
11 greater capacity to produce the dry form of sodium  
12 nitrite and it had a lower cost structure.

13 General Chemical's motivation to acquire the  
14 Repano business was to acquire the customer list and  
15 increase the capacity utilization of Syracuse which  
16 would result in significant improvement in fixed costs  
17 on a per ton basis. We believed that if we acquired  
18 Repano's customers and put that volume in our plant in  
19 Syracuse we would be able to fill our capacity and  
20 achieve an acceptable level of profitability.

21 BASF has called attention to the fact that  
22 two U.S. customers, PMC and Chemtura, closed in 2006.  
23 However, the decision to close the Gibbstown plant was  
24 already made before PMC and Chemtura decided to close  
25 their own plants. When we negotiated the acquisition

1 of Gibbstown the primary objective was to improve our  
2 fixed costs by consolidating production to one plant  
3 running at 100 percent capacity rather than two plants  
4 operating at 50 percent capacity. There were two  
5 failing companies and we realized that the only way to  
6 survive was to consolidate and become more efficient  
7 in our operations.

8 Obviously we expected competition from  
9 imports during this process but not at the  
10 extraordinary low prices offered by BASF and the  
11 Chinese. Our calculations late in 2006 would indicate  
12 that the customs value being declared by the German  
13 and Chinese importers was hardly above the raw  
14 material costs of the sodium nitrite. Consequently,  
15 I'm not surprised by the magnitude of the dumping  
16 margins issued by the Department of Commerce against  
17 both the Germans and the Chinese. In fact, they  
18 confirm my original belief that BASF and the Chinese  
19 producers were engaged in dumping.

20 The loss of sales to PMC and Chemtura only  
21 hastened the process that had already begun as a  
22 result of unfair import competition and declining  
23 demand.

24 After the closure of Gibbstown, the  
25 resultant reduction in capacity, the expectation was

1 that the Syracuse plant would operate at full  
2 capacity. Unfortunately, while capacity utilization  
3 did improve it was approximately half of what was  
4 expected, driven by the continued increase in low-  
5 priced imports. In fact, the imports increased in  
6 2006 to over 13 million pounds.

7 In 2007 we expected we would be able to fill  
8 our capacity at the Syracuse plant. In fact, in the  
9 first quarter of 2007, immediately after the plant was  
10 shut down, our performance temporarily improved. In  
11 the first quarter of 2007 we did generate a very  
12 modest operating profit for the first time in over  
13 three years. Nevertheless, as 2007 went on imports  
14 from China and Germany continued to eat away at our  
15 market share. Even though we had closed the Gibbstown  
16 plant, which was the larger of our two plants, we  
17 could not operate the Syracuse plant at full capacity  
18 for the entire year.

19 By the end of 2007 our plant was only three-  
20 quarters full. Despite starting the year with a  
21 modicum of optimism, by the end of 2007 we were barely  
22 at break-even results.

23 Before filing this antidumping case I  
24 undertook an analysis of the marketing conditions that  
25 would allow our overseas competitors to offer the

1       incredibly low prices at which they were selling the  
2       sodium nitrite. I could not understand the import  
3       prices, particularly given the world market prices for  
4       ammonia and caustic soda.

5               As shown in our prehearing brief, it is a  
6       relatively simple matter to calculate the raw material  
7       costs to produce sodium nitrite. You need about .3  
8       tons of ammonia, .6 tons of caustic soda to produce  
9       one ton of sodium nitrite. If you multiply the  
10      published European market prices for ammonia and  
11      caustic soda times these factors you get an estimate  
12      of the raw material costs to produce sodium nitrite.

13              As shown by the next slide, this cost was  
14      about 16 cents per pound in 2007. By comparison, BASF  
15      was exporting sodium nitrite from Germany at an F.O.B.  
16      origin price of 17 cents a pound. This means that the  
17      German producer was selling sodium nitrite at prices  
18      that barely covered its own raw material costs. This  
19      doesn't include energy, factory overhead, depreciation  
20      or even labor.

21              The sole remaining U.S. manufacturer of  
22      sodium nitrite just cannot compete against import  
23      prices at these levels. Even discounting the fact  
24      that Repano and General Chemical were operating at 50  
25      percent of capacity, our own raw material costs for

1 ammonia and soda ash were rising. As shown by the  
2 next slide, this trend has accelerated to a new high  
3 in 2008. Ammonia costs this year are more than twice  
4 as high as 2007.

5 It is therefore easy to understand how the  
6 dumped imports increased so rapidly throughout the  
7 market. Because their prices were so low and because  
8 our own costs continued to rise we could not stop the  
9 dumped imports from grabbing more and more market  
10 share. We did try to obtain higher prices because of  
11 our position as a local supplier. Because we do not  
12 have to ship products across an ocean to get to a  
13 market we have some advantage over imports. But using  
14 extremely low prices, the imports have penetrated our  
15 largest customer accounts with national distributors.

16 Looking back, the merger of Repano and  
17 General Chemical did reduce overhead costs, although  
18 at the expense of shutting down a U.S. company.  
19 However, all of our gains on the overhead cost side  
20 are being erased by rising raw material costs. On top  
21 of that we were never able to operate the remaining  
22 plant at full capacity, even though we closed  
23 Gibbstown, because the imports increased by 50 percent  
24 near the end of 2007. Imports have suppressed our  
25 prices and continue to prevent us from operating at a

1 profitable level.

2 For these reasons we need your relief from  
3 the dumped and subsidized imports urgently. Thank you  
4 for your attention.

5 MR. CANNON: Thank you, Douglas.

6 Your little science class experiment here  
7 appears to have settled down so why don't you pass  
8 that around. Thank you.

9 And now we will hear from Tom Nelson.

10 MR. NELSON: Good morning. My name is Tom  
11 Nelson. I am the business manager for the sodium  
12 nitrite business of General Chemical. I have been  
13 with General Chemical since 2005. And before coming  
14 to General Chemical I worked for other companies in  
15 petroleum distribution and lighting design. I have  
16 degrees in mechanical engineering and marketing.

17 This morning I would like to describe the  
18 way General Chemical typically negotiates sodium  
19 nitrite sales and the role played by distributors. I  
20 will also discuss some accounts where dumped imports  
21 compete with us and the changes we have seen in the  
22 domestic market since we filed this case and since  
23 Commerce entered its preliminary antidumping duty.

24 In this business distributors matter. For  
25 instance, our three largest distributors account for

1 approximately 30 percent of our total sales volume.  
2 General Chemical Sales Rep. Tony Gallagher and I visit  
3 or phone key distributors multiple times a year. In  
4 November or December, for example, we start to talk  
5 about pricing for the next six months. So if we want  
6 to increase pricing by, say, 3 cents a pound because  
7 our ammonia or soda ash costs are soaring we present  
8 this increase to the customer verbally then we start  
9 negotiating. Ultimately we agree on pricing and we  
10 send a formal pricing letter.

11 Distributors usually want 30 days' notice of  
12 an increase so they can warn their customers their  
13 price increase is coming. During negotiations we will  
14 get customer feedback indicating the current level of  
15 BASF and Chinese prices. Because all of the major  
16 distributors handle imported and domestic sodium  
17 nitrite, the import prices set the market at every  
18 account.

19 The pricing letter we eventually send to  
20 distributors is a firm offer from General Chemical  
21 that sets price. However, our distributors will not  
22 agree to fixed quantities. Because of the volume  
23 purchased by large distributors such as Univar or  
24 Brenntag we must commit to a price for a certain  
25 period. But they do not agree to any minimum

1 quantity. As a result, distributors can often force  
2 us to make concessions during the contract period  
3 simply by stopping orders or threatening to place  
4 orders for imported material.

5 As shown by the next slide, this customer  
6 offered to order from us but only if we would meet the  
7 import price. These communications are routine.

8 After getting our formal letter distributors  
9 usually tell us one of two things, either they may  
10 purchase a smaller volume from us this year than  
11 historically due to the higher price, enough to supply  
12 customers with cheaper imports instead, or else they  
13 want us to lower our price to them so they can match  
14 import prices for certain large end users. We at  
15 General Chemical call this second situation "support  
16 pricing." In support pricing we partner with the  
17 distributor to provide a lower price to a specific end  
18 user. Sometimes we will make joint calls or joint  
19 visit to that end user.

20 For example, an industrial lubricant  
21 supplier had been purchasing General Chemical' sodium  
22 nitrite through a distributor. On learning that  
23 Chinese sodium nitrite was available at 31 cents per  
24 pound the end user called the distributor to complain  
25 that General Chemical's price was higher. The

1 distributor then contacted us to ask for either a  
2 rebate on the previously agreed-to price or a lower  
3 price so he could match the Chinese price. In this  
4 case we could not match the Chinese price and lost the  
5 business.

6           Sometimes the same process begins directly  
7 with my sales force instead of coming through a  
8 distributor. For example, many end users want to buy  
9 smaller volumes. General Chemical is not set up to  
10 deliver less-than-truckload or LTL shipments. Knowing  
11 that cheap imports are available, a small end user of  
12 wants the low price that would ordinarily go with  
13 higher volumes. And so, when an end user asked  
14 General Chemical to deliver a less-than-truckload  
15 order at a price comparable to import competition we  
16 call the distributor and the distributor delivers that  
17 LTL volume. In that case the distributor will send us  
18 proof of delivery and we will give the distributor a  
19 rebate to support the low price.

20           Whether in support pricing or rebates on  
21 proof of delivery, we are matching the import price  
22 when our distributors resell our product to end users.  
23 This means that we might have one price called the  
24 inter-stock price for regular shipments to the  
25 distributor, then when these competitive situations

1 arise during the year we will have to renegotiate our  
2 support prices.

3           Pretty much the same process happens when we  
4 sell directly to end users. Dumped imports still  
5 affect our prices. Our negotiations with end users  
6 typically occur annually beginning in November or  
7 December. As with distributors, if we want to  
8 increase pricing by some amount we make a verbal  
9 announcement before we send the formal pricing letter.  
10 Foreign sales reps will also communicate with end  
11 users we are talking to. And the low prices the  
12 foreign sales reps offer will be around the same price  
13 as the foreign producer is giving to distributors.

14           In the case of Germany, that price has  
15 recently been 33 cents a pound delivered, regardless  
16 of how little volume that end user might want or the  
17 location in the United States. For these end user  
18 accounts we compete directly with the importers of  
19 German and Chinese sodium nitrite. In sort, we are  
20 seeing dumped prices spread throughout the market at  
21 all levels of distribution and end use without regard  
22 to geography or volume. National distributors and  
23 regional distributors have offered the same low,  
24 dumped prices without regard to whether the customers  
25 are buying LTL quantity or container loads. Our

1 distributors must compete with these prices at small  
2 end user accounts. And we compete directly with the  
3 same dumped prices at the very largest end user  
4 accounts.

5 In their prehearing brief BASF argues that  
6 sodium nitrite does not compete with liquid. First,  
7 of course, our largest sales volume is dry product.  
8 Second, to claim that solution and dry do not compete  
9 is wrong. In fact, customers have asked us to hold  
10 prices for both liquid and dry sodium nitrite.

11 As Douglas explained, virtually every  
12 customer that buys dry sodium nitrite takes the  
13 product and puts it into liquid solution. It follows  
14 that nearly every customer purchasing liquid could  
15 switch to dry. And our customers actually have made  
16 that switch in order to obtain lower prices. An  
17 example is found in Exhibit 8 to our brief and on the  
18 next slide.

19 Here the customers asked if our dry price  
20 would be lower than our liquid price. In our  
21 questionnaire response we provided examples of lost  
22 revenues and lost sales affecting both General  
23 Chemical and Repano. The following are examples of  
24 customers using sodium nitrite in various forms and  
25 the impact that dumped sodium nitrite has had on our

1 pricing and our business.

2 Example one. A large pigment manufacturer  
3 was buying liquid from Repano to use at two locations.  
4 In 2002 BASF offered the pigment manufacturer very  
5 aggressive pricing for dry at both locations, pricing  
6 in the 20 cent per pound range. By lowering its price  
7 Repano kept the liquid business at one location but  
8 lost the business to imported dry at the other  
9 location.

10 After Repano merged with General Chemical  
11 the same pigment manufacturer's request for a quote  
12 invited General Chemical to submit pricing and samples  
13 of both our dry and our liquid to the location  
14 currently using dry sodium nitrite. This request was  
15 included in Exhibit 7 to our brief and is the next  
16 slide. Ultimately this manufacturer did approve both  
17 our dry and our liquid. Clearly, this end user can  
18 use either form and is willing to switch based on  
19 price. Nevertheless, this manufacturer has not  
20 ordered either from us because, we are told, our  
21 prices can't compete with dumped German imports.

22 Technically, the manufacturer could use  
23 either our dry or our liquid interchangeably with the  
24 German product. And in fact, we have been told that  
25 they used a load of our sodium nitrite solution at

1 this location as recently as 2006. But price is the  
2 deciding factor.

3 Example two. Another pigment manufacturer  
4 has been a longstanding customer of General Chemical.  
5 In this case General Chemical did not lose the  
6 customer to BASF but to keep this account for 2008  
7 General Chemical had to lower our price for solution  
8 so that it would match the German producer's 2007  
9 price for dry material adjusted for putting it into  
10 solution and local transportation. We also sold  
11 granular tech grade to this customer at another  
12 location. On those sales we again were forced to  
13 reduce our sales price to meet the dumped prices  
14 offered by BASF.

15 Example three. A large chemical company was  
16 buying liquid from General Chemical at two locations.  
17 These two locations had no incentive to convert from  
18 liquid to dry because we had already lowered our  
19 prices to match the German dry price, again adjusting  
20 for mixing the granular material with water. At our  
21 third location, though, the layout of the plant  
22 prevented tank cars from delivery solutions. This  
23 plant, therefore, used dry product. Anticipating that  
24 BASF would attempt to take this account we offered dry  
25 at the established import price but the German pricing

1 got even more aggressive, below the typical 33 cents  
2 per pound being quoted. In the end the customer  
3 bought the low-priced German sodium nitrite.

4 Incidentally, to convert from dry to liquid  
5 that company simply poured 50 pound bags of dry  
6 material into 55 gallon drums, added water. It would  
7 then pour the solution from the drums directly into  
8 the plant's mixing process. It was as simple as that.

9 Example four. Manufacturers of fuses used  
10 to purchase small amounts of dry and put them into  
11 solution in a tank. But when the company's volume  
12 grew it switch to liquid which required a capital  
13 investment in bulk storage tanks and in unloading  
14 station and feed systems. We were forced to quote  
15 this company very competitive pricing on our liquid  
16 for two reasons. First, this company could go back to  
17 dry and again mix the solution itself. Second, this  
18 company competes with other companies whose price for  
19 sodium nitrite has been driven down by German and  
20 Chinese imports.

21 We try to give customers in the same  
22 industry similar pricing. Thus, if the German or  
23 Chinese imports penetrate any market segment, even at  
24 one customer, that affects our price at every customer  
25 in that segment.

1           To address the issue of like material raised  
2 by BASF this is a form produced by General Chemical  
3 primarily used by one customer. This form represents  
4 less than 10 percent of the total sodium nitrite  
5 market. In November of 2001, BASF went after this  
6 business at this one account with their untreated  
7 granular material. We were told by this customer that  
8 they preferred our flaked material and would pay us a  
9 premium for it but the premium was only 5 percent over  
10 the quoted BASF price.

11           I went to visit the purchasing agent at this  
12 customer on June 11 to discuss current market  
13 conditions, the forecast for the remainder of 2008,  
14 and the potential of a large project. While the  
15 purchasing agent was flipping through his sodium  
16 nitrite folder he flipped right past the BASF product  
17 data sheet. So although BASF does not offer this form  
18 of sodium nitrite, if offered at low enough price this  
19 customer has the ability to modify its process to  
20 accept granular sodium nitrite. Incidentally, this  
21 customer's major competitors use sodium nitrite in  
22 granular form to make competing products and they have  
23 used sodium nitrite from BASF.

24           These are just a few examples to demonstrate  
25 the impact of dumped sodium nitrite on our business.

1 In customer negotiations for 2008 that took place in  
2 November and December of 2007, the German producer had  
3 maintained pricing flat at 2007 pricing levels and the  
4 Chinese had largely disappeared from the market. We  
5 were forced to respond to the aggressive pricing  
6 action of the German producer. We were able to get a  
7 modest increase in early 2008 based on increasing raw  
8 material costs but the benefit of these increases has  
9 been more than offset by the astonishing increase in  
10 ammonia costs in the past three to four months.

11 Our customer base is well aware of the  
12 increase in all the commodity chemicals since they  
13 purchase the majority of them and follow them as  
14 closely as we do. And most are aware of the increases  
15 in ammonia and soda ash prices from the industry  
16 publications such as Green Market. Our annual pricing  
17 letters have locked us into our previously quoted  
18 prices through the end of June or July. Meanwhile,  
19 raw material costs continue to rise, doubling up the  
20 price increases that we were able to push through.

21 Since we filed the petition and won the  
22 preliminary determination, circumstances have shown an  
23 improvement. As you know, Commerce's preliminary  
24 determination imposed a dumping margin of 237 percent  
25 on Germany and 190 percent on China. We increased our

1 production since the end of 2007 so that we would be  
2 ready to supply any customers that wanted to replace  
3 the German or Chinese sources. We did this because we  
4 strongly believe that the antidumping case will result  
5 in fair trade in our market and customers will return  
6 to us to fill their needs.

7 As Douglas reported, this strategy  
8 definitely reduced our cost per unit. And our first  
9 quarter 2008 raw material costs have just started to  
10 see the effects of the market rise in ammonia pricing.  
11 Customers that we haven't supplied in over two years  
12 have approached us looking for supply of sodium  
13 nitrite and we have seen a modest increase in sales  
14 volume. At the same time, Tony and I have been  
15 quoting higher prices for customers looking for  
16 current pricing on sodium nitrite. We have not only  
17 pointed out that the competition is dumping but we  
18 have also cited the amazing increase in ammonia  
19 prices. Therefore, since we filed the antidumping  
20 petition we have been much more successful in  
21 obtaining price increases.

22 Therefore, if the Commission finds injury or  
23 threat of injury we at General Chemical would expect,  
24 one, to capture additional volume and, two, to  
25 increase prices. In short, without relief from dumped

1 imports our output, shipment, sales and profit will  
2 decline. What we have experienced since the petition  
3 was filed has given us hope. But we very much need  
4 your vote if we are to sustain our business and return  
5 to a reasonable level of profitability, one that would  
6 warrant continued investment in this business.

7 Thank you very much for your attention.

8 MR. CANNON: I'd like to say a, make a few  
9 remarks and then we'll conclude.

10 First for the record, we think there is a  
11 single like product. The argument's in our brief.

12 We also think that the Commission should  
13 cumulate imports from China and Germany. The imports  
14 compete with each other, they compete with domestic  
15 products, they are simultaneously present in the  
16 market, they are sold through the same channels of  
17 distribution on a national basis, therefore you should  
18 cumulate.

19 Third, I want to call attention to an  
20 important condition of competition which you heard  
21 testimony about. The domestic industry, and to our  
22 knowledge the imports, do not obtain any commitment  
23 from customers on quantity so they negotiate these  
24 annual contracts, they get a price for the year, but  
25 there is no requirement to buy any quantity. So as

1 the year goes on if the customer can get a better  
2 price in a spot market on Chinese products or from  
3 BASF they simply don't buy from General Chemical, they  
4 don't place an order. And so what you will see then  
5 in the data is a loss of volume.

6 And so if we look at the next chart, this is  
7 the trend in domestic industry shipments. This is the  
8 trend in General Chemical and Repano shipments since  
9 2004. Now, this is public. We took 2004 as the base  
10 and indexed to 100 so that we could show it at the  
11 hearing.?

12 What you see is a steady decline in  
13 shipments year on year.

14 If you go to the next chart, here at the top  
15 half of the page you see declining U.S. shipments. We  
16 have contracts. We've put out the price for the year.  
17 There is no fixed quantity that the customer must  
18 purchase. So what do they do? They order more from  
19 the imports and less from the domestic industry and  
20 the data tell you that.

21 Looking at the statistical evidence in this  
22 case you see domestic industry shipments are being  
23 replaced by the imports. Their market share is  
24 increasing in every year throughout the case.

25 Now, this morning in our opening statement

1 and in our brief BASF on page 13 of their brief has  
2 argued that you really should only look at the dry  
3 market. And in the dry market things are getting  
4 better. The dry market demand is going up and the  
5 domestic industry is improving.

6 What we saw in the top half here is both  
7 solution and dry. The top part of the bar, the red,  
8 the dark red part that's solution. The bottom part is  
9 the dry market. Yes, in fact, the solution part of  
10 the market has contracted. That was the exit of the  
11 two customers PMC and Chemtura who left the market in  
12 2006, at the end of 2006.

13 But even in the dry market the domestic  
14 industry is declining. Show the next slide, please.

15 This compares dry only against the imports.  
16 Again this is an index to 100 from the year 2004. But  
17 what you see here is that what they are claiming on  
18 page 13 of their brief is incorrect, their analysis is  
19 flawed because what they have given you are only  
20 General Chemical sales taken out of our questionnaire  
21 response from the price section. They have not  
22 included Repano's sales, and Repano also sold dry  
23 product. When you add the two companies who are  
24 together the domestic industry that's the picture.  
25 The dry market is the biggest part of the market and

1 it is going down. And there, where we compete head to  
2 head, imports are increasing. So their argument is  
3 both flawed and misleading.

4 Now, I spoke in the opening statement about  
5 profitability. And you've heard testimony that since  
6 the case was filed the condition of the industry has  
7 improved. In the first quarter you will see in 2006  
8 domestic industry shipments there they have gone up  
9 slightly but domestic industry profits have in fact  
10 gotten a lot healthier. The reason for that is the  
11 domestic industry is banking on this petition. They  
12 started building inventory.

13 If you look in the Staff Report in Appendix  
14 C where all the aggregate data are you will see that  
15 production in the first quarter of 2008 is  
16 substantially higher than the first quarter of 2007.  
17 Even though the sales are the same, the production is  
18 up; they are building inventory.

19 Now what that means in their industry is  
20 they can spread their fixed costs. From this larger  
21 volume of production their costs have gone down. So  
22 in one quarter things are looking better. But they  
23 can't hold that increase though, they can't keep  
24 selling all year at a higher level.

25 If those sales don't materialize, if the

1 import trend keeps going on that direction they won't  
2 be profitable on full-year 2008, they will be right  
3 back where they were in 2007 and in prior years. And  
4 at this point we don't have any more plants to shut  
5 down. That was a one-time event. Once we can close  
6 one factory. There is only one factory left. So if  
7 we return to the past, if we set the measure back and  
8 we go through this again with imports increasing at  
9 that rate the one remaining plant is clearly in  
10 jeopardy. That constitutes a threat.

11 And that's all I have. Thank you for your  
12 attention.

13 VICE CHAIRMAN PEARSON: Thank you, Mr.  
14 Cannon. That concludes the presentation of the  
15 Petitioner's panel?

16 MR. CANNON: Yes.

17 VICE CHAIRMAN PEARSON: Okay. I would like  
18 to begin by thanking all of you for coming. You have  
19 businesses to run and other things to do but by being  
20 here today you certainly increase greatly our level of  
21 understanding of what's going on in this industry.

22 We will begin the questioning this morning  
23 with Commissioner Pinkert.

24 COMMISSIONER PINKERT: Thank you, Mr. Vice  
25 Chairman. And I would like to join the Vice Chairman

1 in thanking this panel for being here today and  
2 helping us to understand what's going on in this  
3 industry.

4 I want to begin my questioning with Mr.  
5 McFarland. And I believe that you testified earlier  
6 today that back in the middle of 2005 when this  
7 acquisition occurred you had two companies in the  
8 domestic industry that were failing at that time. And  
9 I'm wondering if you can help me to understand why  
10 those two companies were failing back in the middle of  
11 2005?

12 MR. McFARLAND: There are several factors  
13 when you look at 2005. The first factor is shrinking  
14 utilization of the plants. I think the record shows  
15 both of us were operating at about 50 percent. And  
16 then you have to understand why that was happening.  
17 And there were largely two reasons that was happening.  
18 One was imports. And I think the record very clearly  
19 shows that imports were continuing to climb. Dating  
20 back to, I think if you go back to 2000-2001 time  
21 frame imports were only in the 1,000 to 2,000 ton  
22 range. So they were increasing their share of the  
23 market.

24 There was some shrinkage of the market or  
25 demand in the marketplace driven by end users moving

1 overseas in some of the segments, not all of them, but  
2 such as the rubber and plastics which we saw as well  
3 as the pigments area. So that was driving the  
4 declining utilization between demand and imports.

5 And then we had pricing going up. Raw  
6 material pricing and energy pricing going up and an  
7 inability to recover pricing. 2005 energy pricing  
8 very much spiked as a result of Katrina down in the  
9 Gulf. I mean gas prices went extremely high in the  
10 middle of the year. And the ability to recover that  
11 cost, what we started to see was in essence that the  
12 price level in the marketplace was being strongly  
13 impacted by the imports coming in and an inability to  
14 basically recover these increased costs.

15 Soda ash, you know, I was looking back, soda  
16 ash pricing we were paying probably 60 percent of what  
17 we're paying today on soda ash pricing in 2003, 2004  
18 time frame. You know, ammonia pricing has doubled  
19 over the last few months but that in itself is up.  
20 Ammonia in the past was very much tied to natural gas  
21 so as natural gas is going up so is the price of  
22 ammonia.

23 So it was the combination of a declining  
24 capacity utilization for the reasons articulated,  
25 coupled with increasing costs both on the raw material

1 side but also on a cost-per-ton basis. It's very  
2 important for chemical plants like ours to run at a  
3 high utilization level. And as capacity utilization  
4 shrinks then you basically end up with a higher cost  
5 per ton. And we weren't able to get that back in the  
6 marketplace.

7 COMMISSIONER PINKERT: Well, considering the  
8 factors that were causing the industry to fail back in  
9 2005, I'm wondering whether the testimony that we've  
10 heard today about the circumstances since that time  
11 indicates that there's any real difference between  
12 what was going on in the middle of 2005 and what's  
13 been going on in the subsequent years. Can you help  
14 me to understand that?

15 MR. McFARLAND: I mean I think you're  
16 correct, the imports continue to increase into the  
17 marketplace, raw materials continue to go up. I think  
18 the one change is that we as a domestic industry tried  
19 to do something about it by addressing in essence our  
20 fixed costs, which is why you see the improvement from  
21 2006 to 2007. But the other factors are still there.  
22 Imports have not slowed down from 2004 through 2007.  
23 And their impact on pricing across the marketplace if  
24 anything has become more widespread. So our ability  
25 to recover pricing or, just as importantly, to retain

1 our market share, I mean if we had -- our intent was  
2 to run our Syracuse facility at 100 percent. We  
3 couldn't do that because essentially the imports  
4 continued to take share from our us.

5 So I'd agree the factors have continued to  
6 be the same. The only factor, as Jim pointed out, is  
7 what do you do to improve efficiency? One of the  
8 things is try to push your utilization to 100 percent;  
9 right? And that's what we did. We paid money, we  
10 bought this company. We went through the exercise of  
11 shutting down an operation and consolidating into  
12 Syracuse, which is an extremely time-consuming  
13 business. For our chemical business it took a lot of  
14 company attention to do that and do that effectively.

15 But there is no more of that consolidation  
16 left; right? The next step is if our volume continues  
17 to shrink as we lose volume to imports our financials  
18 will go to where they were in 2005. And the next step  
19 after that is shutting down the facility.

20 COMMISSIONER PINKERT: Thank you.

21 Now, turning to the question of the  
22 convertability of the dry form into the liquid form  
23 and vice versa, or I guess it's the dry form into the  
24 liquid form, turning to that issue are there customers  
25 that have never purchased the dry form? You said that

1 they can convert the dry form into the liquid form but  
2 are there some that just have never done that?

3 MR. McFARLAND: My suspicion is yes but I'll  
4 let Tom answer.

5 MR. NELSON: Yes, there are customers that  
6 have never bought dry and converted to liquid. There  
7 are customers that have historically bought solution.

8 COMMISSIONER PINKERT: And can you help me  
9 to understand why some of the customers even though  
10 they could convert the dry form into the liquid form  
11 may have chosen not to?

12 MR. NELSON: Their plants are probably set  
13 up with the infrastructure to accept large bulk  
14 deliveries of solution and they can pump it right from  
15 their tanks, if you will, into their process.

16 MR. McFARLAND: And I think they have an  
17 attractive price on solution so because they have an  
18 attractive price on solution there's no reason for  
19 them to convert because they know, you've seen, they  
20 know how easy this is. You know, I think we have to  
21 remember that the product we sell goes into the  
22 chemical industry, and we're selling an intermediate  
23 chemical. They're buying lots of other chemicals.  
24 Some come in like we buy soda ash, some come dry, some  
25 come liquid. They're just making a decision as to the

1 easiest way to purchase it but also at the lowest  
2 price; right? And many of our liquid customers are  
3 our larger customers who want it in bulk. And they're  
4 smart people, they know how to do this and they know  
5 the cost of doing this.

6           You've heard Tom talk about it's not hard,  
7 you can put a 55-gallon drum in with a lightning  
8 agitator; right? This is not difficult stuff to do.  
9 This is stuff which people in chemical plants to every  
10 day because chemical plants are full of chemicals  
11 being added to other chemicals to make new chemicals,  
12 and they all have to come in in some form.

13           And we have provided to them as a service  
14 liquids, as did Repano. And if these -- you know, we  
15 would like to, you know, if the pricing were  
16 significantly higher they would convert because the  
17 cost justification would be there. I worked as a  
18 process engineer, that would be a perfect project. It  
19 would be, listen, we can buy the dry stuff at 10 cents  
20 a pound cheaper, process engineer, go and install the  
21 equipment. And I'd do the IRR and put it in. It's  
22 not hard. In fact, this is great work for a first  
23 year chemical engineer to do.

24           COMMISSIONER PINKERT: Well, are there some  
25 customers who have indicated that they will not under

1 any foreseeable circumstances purchase the dry form,  
2 that they specifically require the liquid form?

3 MR. NELSON: No. Our largest solution  
4 account has, we've had discussions with them. They  
5 say we know what it costs for dry, here's what we've  
6 done the calculation internally what it would cost us  
7 to convert it to solution, and this is where you've  
8 got to be. I mean we've had those conversations.

9 And if you look at some of the exhibits  
10 we've submitted then you can see where our -- here's  
11 where we went in with our first price. They said  
12 here's where you've got to be. And here's where we  
13 ended up. And those, that progression is based on we  
14 know what dry costs, and we know what it costs  
15 internally or externally to have it converted to dry,  
16 here's where you've got to be.

17 And so those calculations, like Douglas  
18 said, they can do those calculations and they know  
19 those calculations and they use that as leverage  
20 against us.

21 MR. McFARLAND: And I think what I would add  
22 is you have to remember that the way we make the  
23 solution for them is we take that dry product, the one  
24 I showed you coming off the centrifuge, and we drop it  
25 into an agitator tank, we turn it into a solution, we

1 put it in a rail car or a truck and we sent it to  
2 them. From an engineering, from a chemical  
3 engineering perspective you can just take that tank  
4 and shift it, right, I mean and move it to their  
5 facility. So there's no reason that action couldn't  
6 happen in their facility.

7 COMMISSIONER PINKERT: I understand -- if I  
8 can have just a follow-up on that -- I understand that  
9 your testimony is that there is no reason it couldn't  
10 happen but I'm wondering whether you've gotten  
11 indications from the customers that it's not going to  
12 happen?

13 MR. MCFARLAND: Not that I'm aware of.

14 MR. NELSON: No. No, none of them have ever  
15 said we will not do that. Most of them have said  
16 we're completely capable of doing it.

17 COMMISSIONER PINKERT: Thank you.

18 Thank you, Mr. Vice Chairman.

19 VICE CHAIRMAN PEARSON: Not a problem,  
20 Commissioner. I'm just running this hearing on behalf  
21 of the Chairman and I'm sure she would have approved.

22 I would like to ask a basic question about  
23 demand in the U.S. market. This is what we refer to  
24 as apparent consumption in our data.

25 Now, we've seen, although it's confidential

1 so I won't mention any specific numbers, but we have  
2 seen apparent consumption coming down over this period  
3 of investigation with a possible slight uptick in the  
4 interim period. What do you see for demand in the  
5 U.S. market going forward? Are we going to have  
6 continued flight of users to other countries or are we  
7 going to now see perhaps some increase in demand?

8 MR. McFARLAND: My expectation is or our  
9 expectation is that we would see a leveling off here.  
10 What you see is that some of the large chemical  
11 companies, the rubber industry, saccharin industry  
12 moving overseas. A lot of the customer list now our  
13 customers are in water treatment, corrosion  
14 inhibition, so they are in, you know, the antifreeze,  
15 it's in cooling water system at, presumably at power  
16 plants and things like that.

17 So as the customer base that we have now I  
18 think is more established users not the large chemical  
19 producers who we are really using as an intermediate.  
20 So our expectation is that it's going to level off.  
21 And I think somewhat the evidence is.

22 I also think, as you see up there, there  
23 were a couple big buyers of this product and they  
24 moved overseas. But we don't foresee some dramatic  
25 decline on this again. I mean corrosion inhibition,

1 food preservatives as we have up there, it goes into  
2 hotdogs; right? That's not going away I mean. So on  
3 that basis our expectation is it will be relatively  
4 flat over the next number of years.

5 And we have seen a little bit of uptick  
6 recently driven by, you know, the dollar exchange rate  
7 issue that some of the users into the agricultural  
8 industry and the tint area, into the paint area are  
9 running at higher rates because of their ability to  
10 export. So that's had a favorable impact on us to.  
11 So unless we see a significant reversal in the dollar  
12 there's no reason that that would change.

13 VICE CHAIRMAN PEARSON: Mr. Nelson?

14 MR. NELSON: Yes, if I may add, there are  
15 some subsegments like, you know, if the auto industry  
16 starts to decline as it is now, we're getting some  
17 indications some of those customers may be feeling a  
18 temporary pinch right now. So I've gotten, you know,  
19 some indications from the market right now of, you  
20 know, people are starting to pull back a little bit.  
21 But I think overall demand is, like Douglas said,  
22 going to be flat.

23 VICE CHAIRMAN PEARSON: Just to clarify, the  
24 auto use is that for metal preparation?

25 MR. NELSON: Yes, metal preparation.

1                   VICE CHAIRMAN PEARSON: Or we're not talking  
2 antifreeze here?

3                   MR. NELSON: No. Metal preparation. Thank  
4 you.

5                   VICE CHAIRMAN PEARSON: And that's used to  
6 get metal ready to accept paint or other?

7                   MR. NELSON: Correct. For cleaning, zinc  
8 phosphate coatings, right before metal is painted.

9                   VICE CHAIRMAN PEARSON: Okay. You have been  
10 obviously active in the market at the time when the  
11 two significant industrial customers were getting  
12 ready to leave the country. Were you aware that this  
13 was happening? Had they been in communication with  
14 you discussing their plans?

15                   MR. McFARLAND: PMC and Chemtura they were  
16 both Repano customers; right? So the PMC closure  
17 actually occurred before we acquired Repano business.  
18 It occurred during the negotiating process. And we  
19 were quickly informed by Repano that this was  
20 happening. So in the purpose of the acquisition we  
21 were well aware of it happening before that closed.

22                   For the Chemtura it was somewhat of a  
23 surprise. It happened somewhat quickly. Chemtura had  
24 shut down some operations before. They gave us some  
25 notice but not a lot of notice.

1                   VICE CHAIRMAN PEARSON: Okay. Do you expect  
2 if an order goes into effect that General Chemical  
3 would be able to serve the entire U.S. market or would  
4 we be having some imports from somewhere to meet the  
5 portion of the demand, if any, that General Chemical  
6 could not meet?

7                   MR. MCFARLAND: I believe we can meet the  
8 domestic market. That's about where our calculations  
9 are. We do have a small level of exports into North  
10 America which could impact that. But I mean largely  
11 our capacity is probably just north of what the  
12 domestic market is. So I think it's a comfortable  
13 position for us to be in and we're, frankly, looking  
14 forward to doing it.

15                   VICE CHAIRMAN PEARSON: And there are some  
16 small, there is some small quantity of non-subject  
17 imports, imports coming from countries other than  
18 China and Germany. You would expect still to have  
19 that coming in or?

20                   MR. MCFARLAND: I mean there's basically two  
21 countries that have brought them in. One is Poland.  
22 It's always been a very small level. We're not aware  
23 of them particularly active in the marketplace, and I  
24 think because the level is so small.

25                   I think some Indian production. It comes

1 in, again, at a very low level. And I think they are  
2 not prepared to ship it over here at a loss; right?  
3 They are buying ammonia on the open market, they are  
4 buying caustic soda on the open market. If they can  
5 supply some into North America at a price and make an  
6 acceptable profit they'll do that. But they won't do  
7 it where it is now.

8 VICE CHAIRMAN PEARSON: Okay. Occasionally  
9 in dumping and countervailing duty cases we do  
10 encounter situations where the domestic industry tells  
11 us that imported produce is being sold at less than or  
12 equal to the cost of the raw materials that go into  
13 it. So we did hear that again today.

14 You're a chemical engineer I think, Mr.  
15 McFarland. Is there something or could there be  
16 something about the cost structure of BASF production  
17 of sodium nitrite that really does give it a price  
18 advantage? I mean I don't know, but if indeed they  
19 have an integrated chemical complex that's producing  
20 streams of both caustic soda and ammonium and they  
21 have a choice of selling those in a merchant market,  
22 whatever that could be, or using them for the  
23 production of sodium nitrite, is it possible that they  
24 are covering their full costs and making some handsome  
25 profit and still selling in here at a low price? Or

1 is that just beyond the realm of the possible?

2 MR. McFARLAND: It's difficult for me to  
3 speculate on how BASF does it. As I rationalize it,  
4 I'll have a few comments. First of all, yes, they are  
5 vertically integrated, but to make ammonia, you need  
6 natural gas, right? There's no natural gas in  
7 Germany. From what I understand, it all comes from  
8 Russia, and when I look at pricing on natural gas in  
9 Europe, there is nothing special about it at all,  
10 right? And in fact, you know, natural gas got very  
11 expensive here. I understand at the moment it's like  
12 at \$13 per Mcf.

13 I understand that's what price they've been  
14 paying all the time in Europe, right? So there's  
15 nothing special about their natural gas price. Plus,  
16 when you take that the next step, if you have that  
17 ammonia, I mean, you can sell that on the open market,  
18 it would appear to me, for more than they are getting  
19 for the sodium nitrite.

20 And then when you look at caustic soda,  
21 right, caustic soda only has essentially two costs,  
22 right? I mean, one is buying the salt, and one is  
23 energy, and again, when you look at energy costs in  
24 Europe, it's not a cheap place to be. We have a very  
25 nice energy position in Syracuse, right? I mean, I

1 think we have a competitive advantage on energy in  
2 Syracuse over BASF.

3 But that, to me, then says there's no reason  
4 why that they should be making exceptionally cheap  
5 caustic soda, because it would surprise me if they  
6 have exceptionally cheap electricity, because where  
7 does the electricity come from? It comes from coal,  
8 or the natural gas coming from Russia, which we said  
9 is not particularly cheap. And once again, caustic  
10 soda, the pricing on the marketplace, I mean, caustic  
11 soda is over \$500 a ton now.

12 I mean, if you want to see what's going on  
13 in the world today, you know, some of the things to  
14 look at is what's going on in raw materials, right?  
15 And the entertaining ones to look at are ammonia, they  
16 are caustic soda, they are potash. I mean, the  
17 numbers are staggering, the increases on these  
18 products. So for them to then decide that we'd rather  
19 take that product, which doesn't seem to have  
20 particularly cheap raw materials, I mean, Germany is  
21 not natural.

22 If we were competing against, if this  
23 product was in the Middle East with cheap natural gas,  
24 maybe I could understand it, but I can't. But why  
25 would they put it into sodium nitrite when they can --

1 there's loads of ammonia demand.

2 VICE CHAIRMAN PEARSON: I'm not sure, but  
3 I'll have the opportunity to ask them this afternoon.

4 MR. MCFARLAND: Okay, understood.

5 VICE CHAIRMAN PEARSON: My light is  
6 changing, so let me turn now to Commissioner Okun.

7 COMMISSIONER OKUN: Thank you, Mr. Vice  
8 Chairman, and I join my colleagues in welcoming you  
9 here today. I very much appreciate your testimony and  
10 your willingness to answer our questions. Mr. Nelson,  
11 in particular, I appreciate the testimony that you  
12 gave regarding how you feel competition in the  
13 marketplace and the specific information that's been  
14 included in the brief. I do think that is helpful in  
15 trying to understand how the market works here.

16 Mr. McFarland, I want to go back just to  
17 understand a little bit more about Repano, and Mr.  
18 Cannon, I'll follow up with you, because as you know,  
19 in the prelim, the Commission did not attribute the  
20 closure of Repano to subject imports, and I want to  
21 discuss that with you, but Mr. McFarland, in your  
22 testimony, you had said that when you negotiated the  
23 acquisition of Gibbstown, the primary objective was  
24 to, I think, if I heard you right, improve fixed costs  
25 by consolidating production into one plant, and that

1 that consolidation was made before you knew that the  
2 two end users, PMC and Chemtura, were going to close  
3 their own plants.

4 Did I hear that -- I'm just trying to  
5 understand when the decision, when you were acquiring  
6 Repano, that the decision had already been made that  
7 there was going to be one plant operating.

8 MR. MCFARLAND: That's correct. The total  
9 volume in the marketplace as we looked at it basically  
10 required us to consolidate into one facility. We  
11 opted to consolidate into Syracuse for the reasons I  
12 sort of enunciated with -- you get a better cost  
13 structure, and frankly, we could make our primary  
14 product in Syracuse was dry material at that time. We  
15 made like 65% at that time, 65% dry, and the rest was  
16 liquor, and Repano didn't have the ability to, at that  
17 particular time, to make the level of dry necessary to  
18 supply the market.

19 So consequently, we made the decision to  
20 consolidate into one facility, and that facility was  
21 Syracuse. That was done, as I said, PMC's closure was  
22 done and dusted before we closed on the acquisition.  
23 Chemtura occurred four months after we closed, but  
24 when we acquired the business, we literally, we  
25 acquired it in July, we shut down their dry operation

1 in August, so they stopped making dry and just made  
2 liquor, we had a plan to run through into the next  
3 year and then shut down in the middle of the year, and  
4 all that Chemtura did was just bring that forward, but  
5 our intent was consolidating the operation into one  
6 manufacturing facility, and frankly, as I said, it was  
7 just to get the efficiency of operating in one  
8 facility to push the capacity utilization to 100%, and  
9 that's because our plant runs 24/7, right?

10 It's the maintenance, labor, supervisor,  
11 chemical staff, all those are just fixed costs, and  
12 the more you can spread them over more time, the more  
13 effectively we can compete in the global market.

14 COMMISSIONER OKUN: Okay, and then, are  
15 there any contemporary business plans or business  
16 documents that talk about how General Chemical viewed  
17 this consolidation and the reasons for it that could  
18 be supplied? I did not see that in the brief.

19 MR. CANNON: Why don't we -- we'll see what  
20 we can find and give it to you in the post-hearing.

21 COMMISSIONER OKUN: Okay.

22 MR. CANNON: I know, for example, the timing  
23 issue, there is at least one hard document that talks  
24 about when the date had to be and the reasons for it  
25 and so forth, on when it had to be closed, and that

1 that was advance of the actual agreement taking place.  
2 They had already contemplated -- whether there was  
3 business plan per se written out, I think the answer  
4 is no, but probably somebody did a spreadsheet or some  
5 math, so we'll see what we can find for you.

6 COMMISSIONER OKUN: Okay, and then, the  
7 other thing, which I know --

8 MR. CANNON: I would say though, I know that  
9 in many cases lately this has sort of been an issue  
10 before the Commission. This is about an \$18 million  
11 business. We are not talking a steel mill, right?  
12 This isn't a \$100 million business, so the level of  
13 business plan is commensurate with the size of this  
14 business.

15 COMMISSIONER OKUN: Right, and I understand  
16 that. I think, as you know, having practiced here a  
17 lot, to the extent that you continue to make the point  
18 -- well, I guess maybe this is the legal question. In  
19 terms of analysis, if one looks at this and says that  
20 the closure of this plant was unrelated to subject  
21 imports, if you just look at the numbers and what  
22 moved offshore, there was, again, the end use  
23 customers.

24 How should we take that into account in  
25 looking at the rest of the industry, because it does

1     affect, you know, if you have domestic shipments that  
2     have gone down with the closure unrelated to subject  
3     imports, market share of subject imports looks higher,  
4     but is that the same as saying that, you know, a large  
5     increase in subject imports that are causing -- it's  
6     the causation connection that I am trying to  
7     understand in terms of the volume of those subject  
8     imports, and how to evaluate it.

9             MR. CANNON: Actually, I thought that the  
10     footnote indicating that the closure of Repano was not  
11     linked to the increase in volume of imports was  
12     unfortunate, and I think it's our position that in  
13     fact, the closure of Repano was indeed driven by  
14     import competition and what was happening in the  
15     market, at least in part. In other words, the imports  
16     were at least a significant cause of the reason that  
17     the industry was in the shape it was in.

18             The imports have been increasing for several  
19     years. They have been taking market share. The trend  
20     in imports is up, and so you have the situation of two  
21     producers, a fixed amount of capacity, demand is  
22     falling and imports are increasing, so each plant is  
23     going down. So I think imports are adding to the  
24     problem, and that typically, you look at the state of  
25     the industry in the condition that you find it, and so

1 if demand is declining, if customers have left us,  
2 right, we are in a weakened condition, and therefore  
3 vulnerable to imports, and then when those imports  
4 have this kind of impact, then I think you can  
5 consider the closure of Repano was indeed  
6 significantly caused, to some extent caused, by the  
7 import competition. So I disagree --

8 COMMISSIONER OKUN: I guess that's why I  
9 think it would be helpful to have some contemporaneous  
10 view of how General Chemical viewed Repano, and --  
11 because again, if you look at the lost sales/lost  
12 revenue, the information that Mr. Nelson talked about,  
13 again, I think several -- I mean, I think it shows  
14 competition, in my view, I mean, you see competition.  
15 There are lost sales, there is lost revenue, really  
16 related to General Chemical, and I am trying to  
17 understand --

18 MR. CANNON: We did also supply lost  
19 sales/lost revenue with regard to Repano.

20 COMMISSIONER OKUN: Yeah, did they --

21 MR. CANNON: They also lost sales to  
22 imports.

23 COMMISSIONER OKUN: Right.

24 MR. CANNON: They had lost revenue --

25 COMMISSIONER OKUN: I'm not sure that it all

1 was -- but I will look back, because again, the  
2 timing, again, some of the information that you  
3 discussed today was pre-period of investigation, and  
4 so, you know, we are hamstrung, or not hamstrung, but  
5 it is how we conduct our analysis in trying to make  
6 sure that, as I look at it, evaluating whether that  
7 evidence shows that.

8           The other thing that I think would be -- and  
9 you might know or could just submit in the brief, but  
10 we have the shipments of the two downstream, how much  
11 PMC and Chemtura, how much those shipments from Repano  
12 were to those two customers. I have not found, and  
13 maybe it's there and I just couldn't see it, how big a  
14 portion of that was of Repano's total customer base.

15           In other words, if I understood the  
16 testimony, part of the reason to acquire Repano was  
17 for customer lists, and I am trying to understand how  
18 significant their business was outside of these two  
19 end users who moved offshore.

20           MR. CANNON: We can give that to you also in  
21 the brief and show you --

22           COMMISSIONER OKUN: Okay.

23           MR. CANNON: -- the size of both, those two  
24 customers combined, out of total Repano and out of  
25 total industry. I mean, all of the bars. But

1 basically, in that chart, if you look at the solution  
2 part, the two customers that left were solution  
3 customers.

4 COMMISSIONER OKUN: Right.

5 MR. CANNON: So it's the red bars on the  
6 top, that's the two customers that left.

7 COMMISSIONER OKUN: Right, and so then it's  
8 the blue is --

9 MR. CANNON: And I guess my point  
10 economically is that it doesn't really matter whether  
11 they left Repano or General, because there's sort of  
12 so much domestic capacity, and if you take that much  
13 out, what are they going to do? I mean, they need  
14 some sales volume to fill that capacity. There's the  
15 volume. The imports are taking it, and the reason  
16 they are taking it is low prices.

17 So, in effect, they are dumping by 237%. So  
18 if they hadn't been dumping and taking it, we might  
19 have been able to fill our capacity of our two plants.  
20 And an interesting sidebar, and I realize I'm into the  
21 yellow light. I'm sorry. Douglas got the idea to  
22 file this case from Repano. Before they started the  
23 negotiations, Repano guys were looking at bringing a  
24 dumping case.

25 MR. MCFARLAND: And I'd like to add a couple

1 points to that now that I sort of understand, is that  
2 Repano were obviously very upset at BASF's activities.  
3 They lost a key customer in 2005, and they lost  
4 another big customer in 2002, both of which Tom talks  
5 about. They were very upset with what they had done  
6 in the marketplace, and what we did is we were trying  
7 to find out how do we address the competitive  
8 activity.

9 Frankly, this process is not something which  
10 we think of doing, right, I mean going through the  
11 antidumping process. We were thinking of how do we  
12 address it. But the person holding the pricing down  
13 in the marketplace at that time was BASF, and if the  
14 pricing had been 10 cents a pound higher, and I would  
15 argue strongly that BASF was the one driving it down,  
16 then both facilities would have been profitable, and  
17 Repano may not have been interested in selling the  
18 business, right?

19 So their injury, Repano's injury, they were  
20 definitely upset at BASF's activity. Their comments  
21 to me brought it up, and I think they had lost volume,  
22 and they believed that it was Repano's pricing in the  
23 marketplace which was holding it down, because you  
24 know, the issue with the period of investigation is,  
25 we are talking about 2005, which really means we

1 should be then now looking at 2003, 2004, and we  
2 should be looking at what happened on raw materials  
3 and energy over that period, and they were spiking,  
4 right?

5 I mean, they were -- that's essentially when  
6 this whole raw material thing in North America began,  
7 in that time frame, and we were not able -- because if  
8 you go back a few years before that, 2002, 2001, these  
9 were profitable businesses, nicely profitable.

10 COMMISSIONER OKUN: Okay. I appreciate  
11 those further comments, and you know, Mr. Vice  
12 Chairman, the Chairman is away, the red light just,  
13 you know, goes unheeded. No, I'm kidding. I very  
14 much appreciate it. No, no, I appreciate hearing that  
15 and I'll have a chance to come back to some other  
16 questions. Thank you very much.

17 VICE CHAIRMAN PEARSON: If there's no  
18 objection, we'll just take those red light moments off  
19 the Germans' time. How about that?

20 Commissioner Lane.

21 COMMISSIONER LANE: Good morning. Mr.  
22 Cannon, I'm going to start with you, and this is maybe  
23 a real simplistic question, but I'm having a hard time  
24 when I look at this data to see a typical causation  
25 factor here related to the subject imports. When I

1 look at the data, the industry is doing poorly in the  
2 beginning, and then the more the imports come in and  
3 the industry raises its prices, then the better the  
4 industry starts doing, and so could you please explain  
5 to me how you are arguing that the subject imports are  
6 the cause of the industry injury?

7 MR. CANNON: Thank you, Commissioner, and  
8 I'm glad you have a problem with that, because in  
9 fact, that's the issue. I mean, the rest of the case  
10 more or less lays out. We have rising imports --

11 COMMISSIONER LANE: I know, so you have to  
12 convince me.

13 MR. CANNON: We have rising imports,  
14 declining domestic shipments, and we have massive  
15 underselling, so the question is, how is it that our  
16 profitability improved? How did our performance  
17 improve? And I think the answer is, when you look at  
18 this case, the way it improved is, at a tremendous  
19 cost. We shut down a factory. We laid off workers.  
20 We took capacity out of the industry, right?

21 So once, one year, we got better, by  
22 shutting down a factory, by closing that factory, by  
23 taking those costs out of the industry -- we don't  
24 have those labor costs anymore or those workers. So  
25 in 2007, when it's all said and done, things are

1 looking better for what's left, because General  
2 Chemical, who is left, now all of a sudden, they are  
3 not running at 50% capacity. They are running at 75%  
4 capacity or three-quarters, roughly, of capacity.

5 So yes, their profits jumped up that year  
6 and they got better, but even that year, even 2007,  
7 even, let's take out what happened before then. Just  
8 look at one company. Forget about '05 and '06. In  
9 2007, the company is injured. They are not earning an  
10 adequate rate of return. As opposed to looking at the  
11 trends, just look at absolutely, where are they? They  
12 were not making enough money to sustain the business.  
13 It's not an adequate rate of return.

14 COMMISSIONER LANE: Okay. I mean, I  
15 understand that, and so, you've got to convince me,  
16 though, that even in the face of rising imports, the  
17 industry is able to do better.

18 MR. CANNON: Well, the industry is doing  
19 better because domestic production went down so much  
20 that a plant closed, and if you have two companies and  
21 they are both making losses, and one of them goes  
22 away, the other company got to pick up some business,  
23 right? Not enough, but they got to pick some up, and  
24 so they are doing a little bit better than last year,  
25 relatively better than the year before.

1                   But the other company that was gone, I mean,  
2                   in fact, if this is a reason to excuse dumping by  
3                   237%, if this is the reason you are not going to issue  
4                   an order, you are essentially rewarding BASF for being  
5                   very effective. I mean, look at what they did. They  
6                   were so effective that they forced one company out of  
7                   the market.

8                   COMMISSIONER LANE: Okay, let's go to Repano  
9                   a minute. Could you please describe the operational  
10                  and cost differences between the Gibbstown facility  
11                  that was shut down and the facility that continues in  
12                  operation? When you decided to shut down Gibbstown,  
13                  did you all do an analysis of your costs of the one  
14                  facility and the costs of your Syracuse facility  
15                  before you decided which one to shut down?

16                  MR. MCFARLAND: Yes. I mean, part of the  
17                  due diligence process was, in essence, I'll put it  
18                  another way, is that we looked at, if we took the  
19                  volume at the plant in Syracuse was running at about  
20                  50%, and then we basically put together what would  
21                  happen if we run that at 100%, and what we refer to it  
22                  as variable contribution, which is essentially the  
23                  fixed costs, which are a large part of the costs of  
24                  the plant, I think 40, 50%, they roughly stay flat,  
25                  and then you have to pay for the raw materials.

1           So we see the improvement in profitability  
2           from that facility. That improvement is a consequence  
3           of basically taking away, eliminating the fixed costs  
4           of the Repano operation. Yes, we looked at it crudely  
5           for both facilities, but as you focused on the  
6           modeling, the modeling said that Syracuse was where it  
7           had to happen because of the dry product in  
8           particular. I hope that answers that. And I just  
9           want to say the energy costs in Syracuse were much  
10          lower than the energy costs at Repano.

11           COMMISSIONER LANE: Okay, and that takes me  
12          to my next question. What are your primary energy  
13          sources, and could you give us some idea as to the  
14          relative amount of each source?

15           MR. MCFARLAND: I'd have to -- I mean, the  
16          primary energy cost we have is through -- is steam.  
17          We are actually located next to a cogen facility next  
18          door and we get our steam from a cogen unit which is  
19          next door to us. The second would be electricity, and  
20          we actually get our electricity from the town of  
21          Solvay, but that ultimately comes from Niagara Falls  
22          electricity.

23           COMMISSIONER LANE: So it's hydropower?

24           MR. MCFARLAND: Yes, it is.

25           COMMISSIONER LANE: Okay.

1 MR. MCFARLAND: And cogen steam.

2 COMMISSIONER LANE: Right. Okay, now, you  
3 talked about that it was really easy to convert from  
4 dry to liquid and liquid to dry. I think that's what  
5 you said.

6 MR. MCFARLAND: No, it's very easy to  
7 convert from dry to liquid. Liquid to dry is, I mean,  
8 a customer -- what we said is all customers who are  
9 taking liquid can take dry, but not all dry customers  
10 can take liquid.

11 COMMISSIONER LANE: Okay. So, and it may be  
12 in the report and I have forgotten it, do you have the  
13 cost of what it costs to convert from dry to liquid  
14 for your customers?

15 MR. MCFARLAND: I'll let Tom answer it.

16 COMMISSIONER LANE: Okay.

17 MR. NELSON: We have an estimation, kind of  
18 our back-of-the-envelope calculation, if you will.

19 COMMISSIONER LANE: Okay, could you provide  
20 that?

21 MR. NELSON: Our back-of-the-envelope  
22 calculation we say is roughly 5 cents a pound dry.

23 COMMISSIONER LANE: I'm sorry, what?

24 MR. NELSON: Is roughly 5 cents a pound dry  
25 to convert it. That's if you are going to use a third

1 party to convert the dry to liquid, or to solution.  
2 If you are going to do it in-house, if you have the  
3 equipment, the capability, we say it's somewhere  
4 around 3 cents. That's, again, just our internal  
5 back-of-the-envelope calculation that we use.

6 COMMISSIONER LANE: And so did I hear you  
7 say that some customers might calculate that they can  
8 take the dry, save money and convert it themselves?

9 MR. NELSON: Correct.

10 COMMISSIONER LANE: And do you have an  
11 estimate as to what percentage of your sales are to  
12 customers who do that?

13 MR. NELSON: I would say the majority of our  
14 solution customers have either quoted us pricing on  
15 dry or have said, all it takes is a phone call to get  
16 a competitive dry price or have talked to BASF. I'm  
17 thinking through three specific examples in my head  
18 that make up a majority of our solution customers, or  
19 our top three solution customers are up there.

20 COMMISSIONER LANE: Okay. One more quick  
21 question, and I'm going to try to get done within my  
22 allocated time. You said that your customers enter  
23 into contracts and they enter into contracts for price  
24 but not necessarily quantity. Do those customers  
25 enter into contracts with both you and BASF?

1           MR. NELSON: It's our understanding that  
2 BASF issues kind of a schedule price list and that's  
3 how they set pricing, although we do know that they  
4 come off of that price list for end users or  
5 distributors. We know end users who have gotten and  
6 distributors who have gotten prices below their  
7 published price lists, distributor price lists.

8           COMMISSIONER LANE: Okay. Thank you.

9           VICE CHAIRMAN PEARSON: Commissioner  
10 Williamson.

11           COMMISSIONER WILLIAMSON: Thank you, Mr.  
12 Vice Chairman. I want to express my appreciation to  
13 the witnesses for their testimony this morning. I'd  
14 like to continue on with this question about the dry  
15 versus liquid, and I was wondering, you mentioned that  
16 there are a couple of Repano customers who had lost  
17 business to BASF before the acquisition, before  
18 Chemtura and PMC left. Were those liquid customers?  
19 I mean, were they selling liquid or were they selling  
20 dry? Do you know?

21           MR. MCFARLAND: The one in particular were  
22 the -- first I guess Repano did make a lot of liquid  
23 material. I mean, they were predominantly liquid. We  
24 were predominantly dry. Those customers were liquid.  
25 The one customer in particular we're talking about was

1 a liquid customer, yes.

2 COMMISSIONER WILLIAMSON: So that customer  
3 then had to -- did it convert the dry that it got from  
4 BASF to liquid itself?

5 MR. MCFARLAND: Correct, correct. And that  
6 is a function of how they use it in the process,  
7 right, in terms of somebody who -- in fact the  
8 candidate I think we're talking about is in the  
9 pigment process, so they use it in a chemical reaction  
10 so at some point they're taking the dry and putting it  
11 into solution anyway. So they were doing that for us,  
12 but that's just very -- the reaction requires it to be  
13 in the liquid form, so that's what they're doing.  
14 They're putting it in the liquid form somewhere in the  
15 process.

16 And I think on the table here we have a  
17 sheet from Sun Chemical and it shows for the various  
18 dyes what chemicals they use to make that dye, right,  
19 and one of those is sodium nitrite, and it's mixed  
20 with these other chemicals in a liquid form. So, yes,  
21 they took that dry and put it in liquid form.

22 COMMISSIONER WILLIAMSON: To what extent,  
23 and this is generalizing, can we say that customers of  
24 which say sodium nitrite may be a significantly higher  
25 percentage of their business, of their costs to the

1 end product are, that they're using a significantly  
2 larger volume, are more likely to be prepared to say  
3 invest in converting dry to liquid as opposed to some  
4 customers where it's a very small part, sodium nitrite  
5 is a very small part of the end product and therefore  
6 they didn't want to be bothered with that? Is this a  
7 factor at all in considering this relationship between  
8 dry and liquid?

9 MR. MCFARLAND: I think clearly a larger  
10 customer is going to have the financial incentive to  
11 look at, and our larger customers who are liquid tend  
12 to have competitive pricing because they are larger  
13 customers. I think the other thing to remember,  
14 though, is that they are largely chemical customers  
15 who are blending and mixing chemicals all the time, so  
16 it may be just a case of using existing blending  
17 equipment. If you go into our facilities, you'll have  
18 blending tanks just sitting there for other chemicals  
19 that they may use which have to get into, be put into  
20 solution to go into the reaction. And a smaller  
21 customer may have those blending tanks available.

22 So I think it's really on a customer-by-  
23 customer basis to how much it costs them. Clearly a  
24 larger customer who is buying more material is going  
25 to have more of an incentive to spend capital for that

1 specific purpose. Yes, that's correct.

2 COMMISSIONER WILLIAMSON: Okay. And what  
3 about, you mentioned that there's some industries or  
4 some uses where it's more likely they're going to go  
5 offshore producing. I guess the saccharine was  
6 clearly one of them. I forgot what the others were,  
7 and how significant are those industries as a user of  
8 sodium nitrite as opposed to people like the water  
9 treatment plants and the other industries that you  
10 said, you know, uses where they're likely to stay in  
11 the U.S.?

12 MR. MCFARLAND: I'm kind of generalizing  
13 here, but this would help us understand.

14 MR. NELSON: Yes. I think the industries  
15 that are kind of left are the industries that are  
16 primarily going to stay in the U.S. That's really a  
17 very broad, general statement.

18 MR. MCFARLAND: Yes.

19 MR. NELSON: The rubber industry has  
20 primarily moved offshore. Those intermediates,  
21 they're able to import via intermediates that they  
22 were manufacturing here at lower costs than they were  
23 able to manufacture them. But the industries that are  
24 here, I think they're here for a reason, to support  
25 other industries like the metal treatment is to

1 support the U.S. auto industry. As long as that's  
2 here, that's going to stay here.

3 Pigment manufacturing, a lot of the  
4 pigments, inks and dyes that were used for textile  
5 have moved offshore, but the pigments that are going  
6 into paints and some other applications, the  
7 facilities are here and we're almost at this point  
8 with the dollar where it is almost capacity-  
9 constrained because they're primarily running full  
10 out. If we had more capacity, they'd be exporting  
11 more.

12 The water treatment, like Douglas mentioned,  
13 the boiler treatment, applications like that, that's  
14 going to stay here. So I don't know that we expect  
15 any major significant end user to exit the market for  
16 the same reasons that we saw them exit the market in  
17 the past, because of chemical manufacturing for those  
18 uses exiting the U.S. market.

19 MR. MCFARLAND: I would agree. I think the  
20 market's got to a nice place this time for us.

21 COMMISSIONER WILLIAMSON: Any idea what,  
22 roughly what percentage say your consumption may be in  
23 '04, '05 has been lost or just say the consumption in  
24 the U.S. has been lost as a result of these industries  
25 moving out, moving away? It's a tough question.

1           MR. NELSON: I can't estimate that just  
2 sitting here. If you want the answer, maybe we could  
3 try and find it, or we could answer it in the  
4 postconference brief.

5           COMMISSIONER WILLIAMSON: To the extent you  
6 can maybe address it posthearing as to the question  
7 about where is the industry going, to what extent was  
8 any injury because of that as opposed to the imports.  
9 That's what we're trying to sort out here.

10          MR. MCFARLAND: I think that would be  
11 easiest to answer in the postconference brief because  
12 then we'd have the actual numbers in front of us to do  
13 it right.

14          COMMISSIONER WILLIAMSON: That would be  
15 appreciated. This has been helpful. Thank you. Just  
16 a second.

17           I guess BASF in their brief characterized  
18 the market for dry sodium nitrite as growing. Do you  
19 want to comment on that?

20          MR. CANNON: Yes. As I pointed out, it's  
21 wrong and they based that calculation on data from our  
22 questionnaire response, and at the bottom of I think  
23 page 21 in our questionnaire, 22 in our questionnaire  
24 response, we quite clearly state these data are only  
25 the pricing data for General Chemical, Repano is not

1 included. And apparently they overlooked that, and so  
2 they basically used our pricing data to try to  
3 estimate the dry, the buying of dry, and they  
4 completely left out all the sales of dry product by  
5 Repano, and so the analysis that they come up with on  
6 page 13 showing an import market share of 40 percent  
7 every year is entirely wrong and in fact domestic  
8 shipments are declining, and what you'll see is the  
9 dry market is declining and in a declining market, the  
10 imports are increasing.

11 COMMISSIONER WILLIAMSON: Okay. And the  
12 liquid market, how would you characterize that now?

13 MR. MCFARLAND: The liquid market has  
14 declined, proven by the two big players we talked  
15 about, PMC and Chemtura, and some shift to dry, which  
16 I think is what the charts that Jim put up clearly  
17 show. And I think on the dry side, it said it's flat  
18 to slightly declining, and I think our numbers have  
19 consistently shown that through the petition period.

20 COMMISSIONER WILLIAMSON: Okay. Thank you.  
21 What role do distributors play in the sodium nitrite  
22 market? Does their role differ by relative size of  
23 distributor? What I'm thinking about particularly is  
24 this question, do any of the distributors convert dry  
25 to liquid for their customers?

1           MR. NELSON: Like I mentioned, distributors  
2 play a key role for us in the marketplace. They serve  
3 some of those smaller accounts I believe for us  
4 anyway. They ship the LTL shipments. They're kind of  
5 the face for sodium nitrite to some of these smaller  
6 accounts in the marketplace. Some of the smaller more  
7 regional distributors will put dry into solution. I  
8 think that answers your question.

9           COMMISSIONER WILLIAMSON: To what extent are  
10 your distributors the same distributors that BASF is  
11 using or that are being used by Chinese imports?

12           MR. NELSON: The major distributors, I  
13 mentioned Univar, Brenntag carry both our product as  
14 well as I know BASF product. I'm not sure if they  
15 carry the Chinese material. The Chinese material is  
16 imported and I know sold through some of the smaller  
17 regional distributors. We also sell to the smaller  
18 regional distributors.

19           But I also know that the Chinese material  
20 has been offered from some of the importers to Univar,  
21 so I know they have access to it, so it's all the  
22 point of access and the point of competition. If they  
23 need that material to go after an end user or to  
24 compete, I'm sure they could have access to it if they  
25 wanted it.

1                   COMMISSIONER WILLIAMSON: Okay. Good.  
2 Thank you very much for those questions. Thank you.

3                   VICE CHAIRMAN PEARSON: Commissioner  
4 Pinkert.

5                   COMMISSIONER PINKERT: Thank you, Mr. Vice  
6 Chairman. I want to go back to the acquisition of  
7 Repano for a second, and I understand that your  
8 testimony was that the objective was to take two  
9 companies that had relatively low capacity utilization  
10 and combine them and get up to roughly 100 percent  
11 capacity utilization and thereby enhance the  
12 efficiency of the operation. What I'm wondering is,  
13 were you also planning at that time to reduce the  
14 overall amount of production coming from the plants  
15 considered as an aggregate? In other words, was there  
16 an objective not just to increase efficiency but to  
17 reduce the domestic supply of the product?

18                   MR. MCFARLAND: No, we were intent on  
19 supplying the whole market, and we are intent on  
20 ensuring that that's something that we could do,  
21 that's something that we would be able to undertake.  
22 You know, the purpose was to buy the customer list,  
23 and we wanted the whole customer list. We weren't  
24 interested in giving some of it up to somebody else.

25                   COMMISSIONER PINKERT: And going back to

1 Commissioner Okun's questions, is there some  
2 contemporaneous documentation of that objective that  
3 you were not trying to reduce the overall amount of  
4 U.S. production at that time?

5 MR. MCFARLAND: I mean, I guess in shutting  
6 down the facility, obviously we were reducing capacity  
7 of the facility. But you have to look at where the  
8 plant was in -- first of all, it's important that PMC  
9 come out of the picture, right? They were out of the  
10 picture. We're only talking about one customer really  
11 now. We're only talking about Chemtura, and our  
12 intent was to supply Chemtura. So our intent was to  
13 supply Chemtura, and our intent was to supply all the  
14 market, so that's what we were going to do. And if  
15 you look at the production level that we ran in 2007,  
16 I think it's way below what our capacity was for the  
17 facility, way below the capacity of the facility.

18 So when we got to -- yes, I mean, I don't  
19 know. Our intent was to supply the market, because  
20 there's no point in buying the customer list and  
21 acquiring this business if you're not going to do  
22 that, right? My point earlier is just to show that  
23 the economies were in collapsing it into one facility  
24 unfortunately. If the market had been much larger, if  
25 the announcement by PMC had been we're going to triple

1       saccharine production and we want three times as much  
2       from you, then perhaps we would have had a very  
3       different conversation. We would have said we're  
4       going to run Repano as a liquid plant, we're going to  
5       run that hard and efficient, we're going to  
6       consolidate dry into Syracuse. Then that's what we  
7       would have done.

8                   And that thought is validated. Some of the  
9       first comments or discussions with Repano were about  
10      this when I mentioned the JV, the concept of they  
11      would make solution and we would make dry or something  
12      like that if there was something that worked. So, you  
13      know, if Chemtura had said they had shut down an  
14      operation before, if both of them had said the  
15      opposite of what they said, they said we're here in  
16      America, we're here to stay in America, we're going to  
17      double our capacity, we're going to supply the  
18      saccharine market for the world, then we would have  
19      kept Repano running happily to do it. But when you  
20      look at the domestic volume when we acquired the  
21      business, we could do it from -- we felt comfortable  
22      doing it from our facility.

23                   MR. CANNON: I would just add that I think  
24      it was testified that they were aware of the import  
25      volume when they did the plan, and so they knew that

1 imports were at a certain level in 2005 and 2006, and  
2 so they sort of planned that. When we shut down  
3 Repano, what's left of the market, we can basically  
4 run General Chemical at 100 percent. What happened in  
5 2007, and in fact in the first quarter of 2007, they  
6 actually became profitable. You know, they sort of  
7 saw the light at the end of the tunnel, look, it's  
8 going to happen.

9           What happened in 2007 is the imports kept  
10 going up and that's when of course you get an even  
11 bigger chunk of Chinese coming in too. And so what  
12 happened at that point is they couldn't realize the  
13 plan. They planned to kind of fit this, okay, we have  
14 this much market, let's fit into this and do the best  
15 we can. But it would be sort of irrational to plan to  
16 reduce production to less than 100 percent for a high  
17 fixed cost producer. I mean, they would never kind of  
18 at the outset plan to run at less than full capacity  
19 in the circumstance where the more product you put  
20 through the lower your fixed costs are.

21           And so I don't think there was any intent  
22 from the record. I mean, it's logical they wouldn't  
23 intend to reduce production, but they weren't  
24 oblivious to the imports is my only point. Just they  
25 got caught by surprise.

1                   COMMISSIONER PINKERT: Thank you. Now let's  
2 stay with you, Mr. Cannon. You mentioned the Chinese  
3 sodium nitrite in that last answer. What are the  
4 indications that the Chinese sodium nitrite will have  
5 a greater U.S. presence in the imminent future?

6                   MR. CANNON: In the threat section of our  
7 brief, we go into that in some detail. I'm happy to  
8 address it more in posthearing. I must, however,  
9 concede that the evidence with regard to China is  
10 tough because they didn't participate, and so it is in  
11 essence asking for some speculation, but here we have  
12 a product that is actually quite easy to produce, that  
13 is widely produced by many, many companies in China as  
14 shown in the petition, and so given what you've seen  
15 over the past three years, a steady increase in  
16 Chinese market penetration, I think it's fair to say  
17 that that's going to continue. And so we'll flesh it  
18 out some more in the brief. I don't want to take up  
19 too much time.

20                   COMMISSIONER PINKERT: Just as a legal  
21 question, are you suggesting that we employ an adverse  
22 inference in addressing this issue?

23                   MR. CANNON: That would be great.

24                   (Laughter.)

25                   MR. CANNON: I haven't seen you all do that

1 too many times. But I can cite a statute for that  
2 too. Thank you.

3 COMMISSIONER PINKERT: Thank you. Now,  
4 turning back to the company witnesses, I'm wondering,  
5 we've had a lot of discussion this morning about the  
6 wet form and the dry form and whether they can compete  
7 with one another, but looking just at the dry form,  
8 does flake compete with the other dry forms of the  
9 merchandise?

10 MR. MCFARLAND: Absolutely. I think first  
11 of all, Tom presented in one of his examples where  
12 we've had granular go up against our flake. The flake  
13 is primarily made for one customer. The other thing,  
14 and we can provide the details in the posthearing  
15 brief, is that that customer is in a particular market  
16 segment. He has one or two competitors. Those  
17 competitors do not use flake. And it's a particular  
18 market segment, so you could absolutely use granular.  
19 His competitors do, and he's talked to us about using  
20 it.

21 COMMISSIONER PINKERT: Do you have any  
22 explanation for why there's no imported flake in the  
23 U.S. market?

24 MR. MCFARLAND: Our processes, I think it's  
25 a function of the fact that the plant's been around

1 for 85 years, and somewhere somehow somebody 20, 30,  
2 40 years ago decided to come up with flake as an  
3 alternative. One of the things that we discussed is  
4 many of these issues of the flake, even the volume of  
5 solution, the anticaking agent, these are all really  
6 ways to address the fact that this product cakes. If  
7 you compare it to another product like soda ash that  
8 we take that we buy soda ash for our process, that  
9 doesn't tend to be put in solution. It doesn't tend  
10 to have anticaking agents added. It doesn't tend to  
11 be put into flakes because it doesn't cake in the same  
12 way.

13 So it was obviously something somebody came  
14 up with 20, 30 years ago or perhaps longer to address  
15 the caking issue, and we've ended up with one customer  
16 who takes it. So I think it's a historical thing for  
17 our plant. It's been around a long time. If it went  
18 away and we went away, they would convert overnight to  
19 granular. It's not a big change. And they're  
20 blending this product with other dry materials which  
21 they would just have to blend it with those dry  
22 materials.

23 COMMISSIONER PINKERT: Thank you. Thank  
24 you, Mr. Vice Chairman.

25 VICE CHAIRMAN PEARSON: Just to clarify, is

1 General Chemical purchasing both of the inputs for  
2 this product, both the soda ash and the ammonia in the  
3 merchant market?

4 MR. MCFARLAND: Correct. Right.

5 VICE CHAIRMAN PEARSON: Okay. And do you  
6 have long-term supply arrangements? You don't worry  
7 about being able to get these inputs? This is not a  
8 hard thing to do?

9 MR. MCFARLAND: No. They're commodities.  
10 You just have to pay the bulk price, and I don't know  
11 if you follow ammonia. You have to pay what the  
12 ammonia price is. But, yes, we have long-term  
13 relationships with established customers. They're  
14 happy to supply us.

15 VICE CHAIRMAN PEARSON: And contracts that  
16 would cover the next period of months or a year or so?

17 MR. MCFARLAND: The ammonia and soda ash is  
18 supplied differently. They're under agreements. I  
19 think the soda ash is under a contract. The ammonia  
20 is under a supply arrangement where pricing changes  
21 every month dependent on tender pricing, which is  
22 typical of ammonia.

23 VICE CHAIRMAN PEARSON: Okay. That's fine.  
24 Do you know anything about the price of sodium nitrate  
25 in Germany or elsewhere in Europe? I'm sorry, did I

1 say nitrate instead of nitrite? Yes, I do know the  
2 difference.

3 MR. MCFARLAND: We make the same mistake.  
4 We had when I first began looking into this process,  
5 which would have been well over a year and a half ago,  
6 frankly I was trying to understand what was going on.  
7 I was unable to get pricing in Germany. I got pricing  
8 in Holland and the U.K., which to me was -- I can't  
9 think exactly what the numbers were, but they were  
10 very -- if their pricing here was 33 cents a pound, it  
11 was almost like I remember it was 33 euro cents a  
12 pound approximately and 33 pence in the U.K. So, you  
13 know, from the very simple math, it said it was much  
14 cheaper over here, plus they had to pay freight. That  
15 was my recollection of the numbers.

16 VICE CHAIRMAN PEARSON: But that did not  
17 prompt you to put some on a boat and head it east  
18 looking for a market in that high-priced destination?

19 MR. MCFARLAND: We have looked at that in  
20 the past and not been successful at it. We've talked  
21 about it, but you've still got to remember we've got  
22 to get -- I mean, first of all, we're going to sell it  
23 at our price, so you take what our price is, which is  
24 higher, higher than at 33, then you've got to put it  
25 on a boat and then you've got to get it over there.

1 So we wouldn't necessarily be competitive.

2 I mean, I look upon this product as being a  
3 freight-logical product, and it's dominated by  
4 transportation and raw material costs, the costs of  
5 the product, and it's hard to compete against a  
6 domestic producer because the cost structure is driven  
7 by commodity raw materials, which are largely the same  
8 price everywhere in the world and transportation.

9 So I think it's a nice idea, and we  
10 certainly talked about it. I can remember five, six,  
11 seven years ago us talking about that we need to go  
12 over to Europe and sort of show that we can compete  
13 there but deciding the numbers didn't work for us  
14 because of the transportation side.

15 VICE CHAIRMAN PEARSON: And you don't have  
16 any U.S. customers who also have European operations  
17 where you might have been able to run a trial, that  
18 sort of thing?

19 MR. MCFARLAND: Well, I mean, Brenntag and  
20 Univar are global distributors. They clearly are all  
21 over Europe. But what you see from our testimony  
22 about distributors, Brenntag and Univar are as  
23 prominent, if not more prominent, in Europe than they  
24 are here. They would look at us and say unless we  
25 were going to give them a significantly lower price.

1                   VICE CHAIRMAN PEARSON: Well, what is sauce  
2 for the goose also can be sauce for the gander here.  
3 If one company can put the stuff on a boat and ship it  
4 here, I'm just curious about the thinking that you  
5 might have done about doing that in reverse. But I  
6 understand there are some complications.

7                   MR. MCFARLAND: And we're going to do it so  
8 that we make a profit it from it. We're not going to  
9 do it at our raw material cost, right, which is  
10 essentially the feeling now, that I felt they were  
11 able to do it.

12                  VICE CHAIRMAN PEARSON: Okay. Well, fair  
13 enough. I understand. Mr. Cannon, I'm not looking  
14 behind Commerce's margins here, which your associates  
15 might not be aware that we accept as a matter of law  
16 what Commerce finds for a dumping margin. We don't  
17 question that. But, I'm just trying to understand the  
18 conditions of competition in the marketplace here that  
19 affects the various firms that are in front of us.

20                  MR. CANNON: Without indication by name, I  
21 would point out that one of the theories of dumping  
22 put forth by Professor Vynar in his 1921 treatise is  
23 that where a producer can sell in a home market at a  
24 high price and he only can fill about 70 or so percent  
25 of his capacity, you would have an incentive to sell

1 to export markets at a low price sufficient to even  
2 cover variable costs, because by selling that out of  
3 his home market, he won't disrupt the price structure  
4 at home and, yet, he'll still be able to fill his  
5 factory. And so, I would posit that Douglas wondering  
6 about why it is that BASF is doing what they're doing,  
7 is that this is classic. In fact, from their  
8 standpoint, it makes perfect sense, if you're the  
9 world's largest producer. And you want to fill your  
10 factory, too, to push a little out, a little volume  
11 out to the U.S. at variable costs, just so you could  
12 load your plant.

13 VICE CHAIRMAN PEARSON: Especially prior to  
14 the closure of Repano, you've got production in a  
15 country with the dollar getting weaker versus the  
16 Euro. And ocean vessels do go back and forth all the  
17 time. There are customers in Europe, who want the  
18 stuff. I spent too much time with a trading company,  
19 Mr. Cannon, you've got to forgive me there.

20 Let me shift gears. When Repano was  
21 purchased, was there a purchase of goodwill along with  
22 that part of the purchase package? If this is  
23 something that you don't want to discuss in public, we  
24 could deal with it in post-hearing. I just wanted --

25 MR. CANNON: I think it would be best if I

1 answered in the post-hearing brief because I want to  
2 make sure I get the accounting terms right, because  
3 goodwill has sort of -- it's strictly an accounting  
4 terminology for it. But what I can answer is, is how  
5 it was accounted for, the acquisition.

6 VICE CHAIRMAN PEARSON: Okay.

7 MR. CANNON: Does that answer your question?

8 VICE CHAIRMAN PEARSON: Yes, that would be  
9 fine. Because, Mr. Cannon, the reason for asking is  
10 that I don't think I've had the opportunity before to  
11 think about, in a legal sense, if there is goodwill  
12 involved here and it's some meaningful chunk of the  
13 cost, how we would evaluate those costs if they flow  
14 through to the surviving company, the acquiring  
15 company and is it somehow influencing the financials  
16 as we see them, in a way that we should think about.  
17 And, actually, I can pose this question in advance to  
18 the Respondents, because I think if there's something  
19 there that we should know, help us think it through,  
20 okay. There may be nothing. It might be just an  
21 ordinary cost. But, I have never considered goodwill  
22 to be just an ordinary cost.

23 MR. CANNON: Okay. I take it this is  
24 something we can address in the brief.

25 VICE CHAIRMAN PEARSON: Right. I would like

1 to second Commissioner Lane's comments regarding  
2 causation. I share her uncertainty as to what to make  
3 of this record. In particular, could you explain what  
4 has allowed domestic pricing to remain -- to rise in  
5 the face of this continued underselling, because our  
6 record shows both? Is there something particular  
7 about this marketplace that has allowed that to  
8 happen, whereas in many other cases, we wouldn't see  
9 that type of relationship?

10 MR. CANNON: Well, I think the number one  
11 thing that has allowed this to happen is the domestic  
12 industry has lost sales volume. I mean, you can have  
13 to strategies to deal with dumped imports. You can  
14 hold your prices. Because you're losing money, you  
15 can't afford to drop your price any lower. But, if  
16 you do that, you lose volume. So, there, you see flat  
17 prices or even increasing prices, but your volume is  
18 going away.

19 Or your strategy could be, I'm going to  
20 reduce my price, prices are going to go down, because  
21 I'm going to compete with those imports and try to  
22 hold my volume. In that kind of case, your market  
23 share might stay the same. In fact, if you start out  
24 with a profitable industry that's making money, the  
25 normal case you might see there is domestic industry

1 is profitable. The imports come in. So, they start  
2 cutting their price to compete with the imports. So,  
3 the domestic price goes down and the profits go down  
4 and that's one version of injury.

5 Another scenario, though, is you start out  
6 at a deep loss. The only way to make money is to  
7 raise your price, but you've got the imports. If you  
8 raise your price, you lose volume and that's what's  
9 happened. They've lost volume, so much volume,  
10 they've shut down a plant; so much volume, that they  
11 can't spread a fixed cost adequately; so much volume,  
12 the remaining plant isn't full.

13 VICE CHAIRMAN PEARSON: Right. But on this  
14 record, aided by the testimony this morning, we have  
15 some evidence of lost revenues where instead of  
16 holding prices high, there has been a reduction in  
17 price to maintain volume.

18 MR. CANNON: Yes. I would say this is not -  
19 - I think no case is a pure volume case. I think  
20 there are also price effects. They've suffered some  
21 price depression. And in individual instances at  
22 accounts, they've lost volume or they've had to reduce  
23 prices. That's fair. I mean, I think it's a blend.  
24 I'm simply pointing out that it's certainly logical to  
25 conclude that there is a connection between imports

1 and domestic shipments in a case where the domestic  
2 industry is losing a lot of money and it's trying to  
3 hold its prices so that the losses don't just keep  
4 going.

5 VICE CHAIRMAN PEARSON: Okay. We're using  
6 Chairman Aranoff's time right now. Did you have  
7 something quick to add, Mr. McFarland?

8 MR. MCFARLAND: The only think I wanted to  
9 add is -- I mean, Mr. McGrath did comment that BASF  
10 had been putting up their prices, right. So, their  
11 prices have been going up and ours has been going up  
12 and the background to all that is raw materials,  
13 natural gas, caustic soda, soda ash. So, both of our  
14 prices have been going up. Theirs have just remained  
15 below ours. And we've had to make the strategic  
16 decision as to where do we shed volume, because we're  
17 not prepared to go that low, or whether we keep volume  
18 by accepting that lower price, and that's part of  
19 Tom's job everyday to make that decision.

20 VICE CHAIRMAN PEARSON: Okay, thank you.  
21 Commissioner Okun?

22 COMMISSIONER OKUN: Thank you, Mr. Vice  
23 Chairman. Let's see, if I could go back just on these  
24 questions about the lost sales as it relates to  
25 Repano. And I know, again, in the testimony this

1 morning, Mr. McFarland had indicated that BASF  
2 replaced Repano in supplying one of the major water  
3 treatment customers based on price and this came on  
4 the heels of a lost of another large solution customer  
5 to BASF, who supplied dry product. And then, Mr.  
6 Nelson, you had indicated that customers have asked us  
7 to quote prices for both liquid and dry sodium  
8 nitrite. I've had an opportunity to talk with staff  
9 and for post-hearing -- well, I guess the question is  
10 do you believe you have provided the specific lost  
11 sales, lost revenues for Repano that you mentioned in  
12 your testimony today?

13 MR. NELSON: I believe I have, but we'll  
14 confirm that and if we haven't, then we'll make sure  
15 that it gets submitted.

16 COMMISSIONER OKUN: Okay. I think what  
17 would be helpful, just again in talking with staff, is  
18 that if you can, in doing that, provide the names and  
19 the contact information for those customers, so that  
20 we can -- so that they can be matched up. Because, it  
21 would be easier for you to do it, than for us to look  
22 back through, because the staff report does not have  
23 that broken out and that's why I was not able to --  
24 have not been able to look at what you've said and --

25 MR. NELSON: Right.

1                   COMMISSIONER OKUN:  -- and understand where  
2 that shows up.

3                   MR. NELSON:  We can provide that.

4                   COMMISSIONER OKUN:  Okay, that would be  
5 great.  And then with regard to the testimony we've  
6 heard and seen in the brief with respect to the  
7 pricing data for liquid sodium nitrite, the pricing  
8 data we have in the pricing section relates to dry and  
9 I'm wondering if there is data that you have available  
10 that would help us understand this -- you know, what's  
11 going on with liquid versus dry, in terms of pricing  
12 trends.

13                   MR. NELSON:  We can provide that in the  
14 post-hearing.

15                   COMMISSIONER OKUN:  Okay.  And if you could  
16 just work with us staff, as well, to make sure that  
17 that's in a form that would be helpful.  Mr. Cannon,  
18 you wanted to --

19                   MR. CANNON:  Yeah, okay.  I was going to say  
20 do you want the break -- solution isn't -- there's  
21 only one grade.  It's just solution.  So, I guess we  
22 could do quarterly volume and value and just say  
23 product one and product two.

24                   COMMISSIONER OKUN:  Okay.  I'll have you  
25 work with staff and just see what --

1 MR. CANNON: Okay. I'm happy to -- we'll do  
2 that.

3 COMMISSIONER OKUN: -- how that thought  
4 would work. I think it would be helpful, to the  
5 extent that that argument has been made. But, I'll  
6 have you be in contact with Ms. DeFilippo on that.  
7 Okay, that's helpful.

8 And then, I'm not sure, as I hop along on  
9 crutches, whether I missed this question, when we're  
10 talking about this market now, are customers looking  
11 to duo source and has that changed over the period of  
12 investigation, in other words, having a U.S. supplier  
13 and a backup or a primary importer and the U.S. as a  
14 backup?

15 MR. NELSON: Typically, our customers source  
16 from one supplier. We have historic accounts that  
17 we've supplied for years and years and years. So, I  
18 would say they don't tend to do that. They have their  
19 source of supply and they're comfortable with it and  
20 happy with it and they don't necessarily look, unless  
21 they're trying to get a better price or a better deal  
22 and then will use that as leverage. But, if you're  
23 looking at it purely from the I want a second source,  
24 we don't hear that argument. We hear, what's your  
25 price; can you meet this price. But, we don't hear,

1 we need to have a second supplier. We've just been  
2 the supplier of record for a lot of these accounts for  
3 years and years and years.

4 COMMISSIONER OKUN: Okay. So, when you're  
5 talking about the price competition you're seeing in  
6 the marketplace, and maybe this is a little bit of a  
7 follow-up that you're just responding to Commissioner  
8 Pearson on, in this type of market where you said you  
9 have a price letter, but not a quantity, and they come  
10 back and you negotiate on price, you would expect  
11 then, to, if you keep your price high, to lose all  
12 that account, if you don't meet the price?

13 MR. NELSON: That's correct. Then, they  
14 will start supplying from a different supplier. But,  
15 they typically don't buy half the requirement from one  
16 or the other. It's not what we've seen in the market.

17 COMMISSIONER OKUN: Okay. Maybe just a  
18 response on this, then, as well, because, again,  
19 looking at the price spread between this, and  
20 obviously I'll have an opportunity to quiz the  
21 Respondents about that huge price spread that we see  
22 here from a major European producer, I guess I would  
23 say -- then, I would be amazed that you have anybody  
24 left, right? I mean, it's a big producer; why doesn't  
25 everyone go there? Help me. I don't want to sound

1 flip. I mean, that sounds a little bit flip. Help me  
2 understand why someone would stick and how the  
3 strategy, which I understand is primarily  
4 characterized as a keep our prices, we've lost volume,  
5 help me understand how that happens.

6 MR. MCFARLAND: I think first and foremost,  
7 we would argue that's where the --

8 COMMISSIONER OKUN: Come closer to your  
9 microphone.

10 MR. MCFARLAND: I think first and foremost,  
11 we would argue that's where the market is going,  
12 right. And Tom is talking about end users, in large  
13 part, a lot of the business goes to distributors. At  
14 this time, we obviously have an advantage that if they  
15 want to order material from us, they place an order on  
16 Monday, they can get it on Friday. To come from  
17 Germany, it takes eight, 12 weeks; similar issues with  
18 China. But, I think it is that difference that is  
19 what's driving this continual increase in volume year  
20 over year. I think customers have to make that  
21 decision that they're going to convert away from  
22 somebody that they bought from for a long time. Tom  
23 spends a lot of time from a marketing perspective  
24 deciding what pricing he is going to supply it to them  
25 at. And that is essentially the battle and where it

1 is going to end up depends a lot on what happens in  
2 this case. And we're either going to continue to lose  
3 volume for the reason you just said or we're going to  
4 have to lower our price, in order to retain volume.  
5 But, I don't think lowering our price is the answer.

6 COMMISSIONER OKUN: Okay. And then I just  
7 want to go back, I know in the record, I believe,  
8 there is information indicating, I believe from your  
9 pre-hearing brief, indicating that BASF has raised its  
10 prices substantially post order and it might be a  
11 confidential number. But, is there information you  
12 have from customers or anywhere else to substantiate  
13 that? I mean, obviously, we're going to be asking  
14 BASF that, as well. But, I just wondered if there is  
15 anything you could tell us about what has happened.  
16 Mr. Nelson?

17 MR. NELSON: Yes. And in recent customer  
18 visits, the customers either are aware of that or have  
19 said they've heard something in the marketplace that  
20 BASF prices have gone way up. And so, they're asking  
21 us about that.

22 COMMISSIONER OKUN: Okay. So, if you have  
23 any of the -- you may have already supplied, but any  
24 of the information like you've had for other pricing  
25 data indicating that, it would be helpful to see that.

1           MR. NELSON: I don't have anything from  
2 customers. I may have something indicating their  
3 current price level. But, I think more of it has been  
4 anecdotal and customer visits would have indicated  
5 something.

6           COMMISSIONER OKUN: Okay.

7           MR. MCFARLAND: I believe --

8           COMMISSIONER OKUN: Mr. McFarland?

9           MR. MCFARLAND: Okay, sorry. I believe  
10 we've put in the brief a note with BASF announcing a  
11 50 cent a pound price increase. And our feedback from  
12 all the customers that they have, have been in contact  
13 with us about this. And we are in some level of  
14 discussion, approval, supply, whatever, with all of  
15 them.

16           COMMISSIONER OKUN: Okay. And just so --  
17 I'm sure it's in the data, but I now recall you saying  
18 this, in your view, then, has that led to you being  
19 able to increase your volume or your prices more?

20           MR. MCFARLAND: At this point, the most  
21 important thing is it's enabled us to increase our  
22 volume.

23           COMMISSIONER OKUN: With existing customers  
24 or regaining customers that you --

25           MR. MCFARLAND: With both, because one set

1 of customers is the distributors and the other one is  
2 regaining end users, right. So, it's a bit of both.

3 COMMISSIONER OKUN: Okay. To the extent --  
4 that may already be broken out, but to the extent  
5 post-hearing, you would kind of go through that, I  
6 would like to see that, as well. It would be helpful,  
7 Mr. Cannon.

8 And then, just going back again on this  
9 Repano, because I think that in light of a number of  
10 the questions you've received, again, I think, Mr.  
11 Cannon, a little bit to a legal analysis, because I  
12 think that if you -- if one were to review the Repano  
13 closer as related to subject imports, then the data  
14 reflects a survivor bias, which we've seen in other  
15 cases, and have looked to and determine. I think that  
16 is essentially -- I want to make sure that I  
17 understand, that is the argument you're making: to  
18 the extent the trends are not matching rising imports  
19 leading to financial decline, it's because you believe  
20 there is a survivor bias showing up in the data,  
21 because of the closure of Repano.

22 MR. MCFARLAND: Exactly.

23 COMMISSIONER OKUN: Okay, all right. I just  
24 wanted to make I sure I understand how that is. And  
25 with that, Mr. Vice Chairman, I'm going to stop on my

1 yellow light and give Chairman back some time, and I  
2 want that noted.

3 VICE CHAIRMAN PEARSON: Congratulations,  
4 Commissioner. Commissioner Lane?

5 COMMISSIONER LANE: I was going to say that  
6 I noticed that we had two witnesses here that came all  
7 this way and I wouldn't want them to be ignored and  
8 I'm going to see how badly I can butcher these names:  
9 Mr. Opalewski and Mr. Imbriaco. Okay. You might not  
10 like my question, though. Did you all buy Repano  
11 knowing that you were going to close it down?

12 MR. OPALEWSKI: The answer to that question  
13 is yes. The strategy from the beginning, one of the  
14 strategies that was discussed notionally was the idea  
15 that there was enough volume that the capacity of  
16 either of these facilities really, and as Douglas  
17 pointed out, Syracuse, in particular, could handle the  
18 volume out of Gibbstown, out of the Repano site into  
19 Syracuse. So, the idea has been discussed of  
20 spreading those fixed costs, spreading a plant  
21 manager's cost, compliance costs, reinvestment in the  
22 facility. It's much better to rebuild one pump in  
23 Syracuse than two pumps, one in Syracuse and one in  
24 Gibbstown. So, there was logic to consolidating that  
25 volume into one facility, we felt it could be done and

1 that was part of the strategy, yes.

2 COMMISSIONER LANE: Okay, thank you. Now,  
3 in looking at the information that's in the staff  
4 report, particularly on Table 6-2, on page 6-5, could  
5 you, please, explain what is happening between 2005  
6 and 2007 with regard to the unit values of cost and  
7 the extent to which this data might be influenced by  
8 your acquisition and closure of the former Repano  
9 facility? And you might have to do that post-hearing.

10 And then, secondly, could you provide copies  
11 of Table 6-2 separated for the Syracuse plant and the  
12 former Repano plant?

13 MR. CANNON: Yes, we'd be happy to do that.  
14 And just looking at the table, if you're looking at it  
15 now, or studying these costs, I believe that what  
16 you're referring to is that if you look under the  
17 column on energy and utility costs, what you see is a  
18 substantial reduction in unit cost between 2006 and  
19 2007. In fact, the unit cost goes down, in some cases,  
20 a very great amount. And that reflects running one  
21 plant, right. When you're running two plants, you've  
22 got twice as much energy and the factory overhead is  
23 the same thing when you're running two plants. So, by  
24 only running one plant, that's what you're seeing  
25 there and that's why there is this big decline.

1       Anyway, I hope that answered your question.

2               MR. MCFARLAND: We'll address that in our  
3 post-hearing brief.

4               COMMISSIONER LANE: Okay, thank you. Now,  
5 one of you, in your oral presentation, put up a chart  
6 showing a steady decline in the sales of dry product.  
7 I would like for you to look at Table 3-4 on page 3-11  
8 of the staff report. Now, that data is business  
9 proprietary. But, I note that the trends you showed  
10 on your chart do not seem to be exactly the same,  
11 looking at the granular and flake quantities on Table  
12 3-4. Can you explain the difference?

13              MR. CANNON: I believe -- you know, I'll  
14 have to do this in a post-conference brief.

15              COMMISSIONER LANE: Could you speak into the  
16 mic? I'm sorry.

17              MR. CANNON: I'll have to do it in the post-  
18 hearing, because looking at Table 3-4, I believe what  
19 you're saying is that you add up all the dry product -  
20 -

21              COMMISSIONER LANE: The granular and the  
22 flake. It's not a decline.

23              MR. CANNON: Yeah, and that's why I have to  
24 figure out the source was for this table. I suspect  
25 this came out of General Chemical only, as opposed to

1 including Repano; in other words, the same problem  
2 with the pricing data. But, I can't be sure of that.  
3 I'll have to look at the questionnaire again. I'm  
4 sorry.

5 COMMISSIONER LANE: Okay. So, you will get  
6 that post-hearing. Okay, thank you.

7 MR. CANNON: I think what we'll do -- I  
8 mean, we gave the chart with percentage, right, or an  
9 index. So, obviously, in the post-hearing, we will  
10 give you the real figures, Repano's dry and General  
11 Chemical's dry. And off the top of my head, I'm not  
12 even sure where Table 3-4 came from, because the staff  
13 asked us for a percentage breakouts of these data, not  
14 for the actual volume. So, it's not entirely clear to  
15 me what this is. I guess I'll have to talk to staff  
16 about that. Thanks.

17 COMMISSIONER LANE: Okay, thank you. Do you  
18 have any idea as to the capacity that China has for  
19 sodium nitrite?

20 MR. MCFARLAND: I've been to visit one  
21 Chinese facility making sodium nitrite. I thought  
22 their capacity was probably similar to ours. There  
23 are multiple producers of sodium nitrite in China.  
24 One of the reasons for that is, I mentioned in my  
25 testimony, that our facility made soda ash, it makes

1 synthetic soda ash. When you go back 100 plus years,  
2 when you make synthetic soda ash, you make it with  
3 ammonia, limestone, and coke. So, what that means is  
4 that anybody, who makes synthetic soda ash, and there  
5 are many producers of synthetic soda ash, because soda  
6 ash is required for glass and so forth. It's  
7 basically a basic in life. Every single one of those  
8 is capable of making sodium nitrite, because they have  
9 the ammonia and the soda ash on site and,  
10 consequently, there are multiple producers in China.

11 COMMISSIONER LANE: Would it be your  
12 expectation that China in the future will be bringing  
13 more sodium nitrite into the U.S. than it is now?

14 MR. MCFARLAND: That's absolutely our  
15 expectation, if there isn't a dumping duty put in  
16 place. I mean, it's consistent with many other  
17 chemicals, inorganic chemicals in North America and  
18 it's in chemicals that we've been involved in.

19 COMMISSIONER LANE: Okay, thank you. Mr.  
20 Vice Chairman, that is all I have.

21 VICE CHAIRMAN PEARSON: Commissioner  
22 Williamson?

23 COMMISSIONER WILLIAMSON: Okay, thank you.  
24 I don't think it's been addressed and I haven't seen  
25 anything on it. Could you, either now or post-

1 hearing, indicate how did you finance the acquisition  
2 of Repano?

3 MR. MCFARLAND: It was a cash transaction,  
4 Mr. Commissioner.

5 COMMISSIONER WILLIAMSON: Okay, thank you.  
6 Let's see. You mentioned the increase in input cost  
7 is a factor in declining profitability of the domestic  
8 industry prior to the Repano acquisition. And I was  
9 wondering, to what extent were the cost of your  
10 foreign competitors following the same trend, in the  
11 early period of review?

12 MR. MCFARLAND: My expectation is that they  
13 would follow the same trend. And I say that, because  
14 the three key raw materials here are ammonia, caustic  
15 soda, and soda ash and those are globally priced raw  
16 materials. So, I've been in China and asked how much  
17 soda ash was and the pricing was remarkably close to  
18 what our pricing was. The same with ammonia, ammonia  
19 is priced -- if you look at Green Markets, which is  
20 published every week, that shows you basically the  
21 price of ammonia across the globe and you will see the  
22 prices are very similar. It only differs really from  
23 transportation from the location of the manufacturer  
24 or key manufacturing locations, which is where natural  
25 gas is. So, they would be experiencing the same

1 issues that we're experiencing.

2 COMMISSIONER WILLIAMSON: And so ammonia --  
3 caustic soda is available in a number of different  
4 places around the world?

5 MR. MCFARLAND: I mean, there are a number  
6 of places that make ammonia in the U.S. But, the big  
7 places for ammonia are Trinidad because of natural  
8 gas, the Middle East because of natural gas, and the  
9 Ukraine because of natural gas. I mean, those are  
10 kind of -- and when you look at re-markets, you'll see  
11 them reference those. The reason pricing in North  
12 America on ammonia is f.o.b. Tampa, because that's  
13 where the big ships come in, bringing ammonia.

14 COMMISSIONER WILLIAMSON: Okay. And so for  
15 Germany, it might be the Middle East or the Ukraine  
16 that would get the ammonia?

17 MR. MCFARLAND: They would get -- I mean, I  
18 believe BASF has said they're virtually integrated, so  
19 they have a -- that would suggest they have ammonia  
20 plants on site. But, then, they presumably would be  
21 bringing in natural gas and my general geography  
22 understanding of that is that there isn't much natural  
23 gas in Germany, right. It's in Russia or in the North  
24 Sea. So, they would be getting that natural gas from  
25 one of those two locations.

1                   COMMISSIONER WILLIAMSON: And for the Far  
2 East, would that --

3                   MR. MCFARLAND: The Far East, they would  
4 either be getting it from natural gas or I believe  
5 they do make it through this coal gasification  
6 process, where they take coal and turn it into a  
7 natural gas and then that then gets converted to  
8 ammonia.

9                   COMMISSIONER WILLIAMSON: What about the  
10 supply of caustic soda?

11                  MR. MCFARLAND: Caustic soda is -- again is  
12 globally -- I mean, it's everywhere. It's a basic for  
13 life. The low cost producers are those, who have  
14 cheap electricity. So, a place like Canada, North  
15 America -- Canada is the cheaper place where caustic  
16 soda is made. It tends to be manufactured relatively  
17 near to its users, because it's 50 percent water. So,  
18 for that reason, people tend to -- a lot of  
19 manufacture is local, but it relies on local  
20 electricity. It's an electrolysis process. So, your  
21 cost of manufacture is related to your cost of energy.

22                  COMMISSIONER WILLIAMSON: Thank you. A  
23 different question -- since you're using sodium  
24 nitrite solution, using the raw sodium nitrite, you  
25 don't have to put any caking agents in. Would the

1 granular that's brought in from BASF include anti-  
2 caking agent? Does that affect how people use it in a  
3 liquid form?

4 MR. MCFARLAND: I mean, people are taking  
5 the anti-caking agent from us and from BASF. Both are  
6 free flowing. Both has an anti-caking agent. The  
7 level is very low, .1 percent, and it goes into  
8 solution. I mean, it's part of the process. Yes, you  
9 dissolve it.

10 COMMISSIONER WILLIAMSON: Okay. So, it's  
11 not a factor when somebody decides to use --

12 MR. MCFARLAND: There are some customers,  
13 who may say they don't want it, but the majority will  
14 accept it. And I say that because the majority of  
15 customers are taking dry material and putting it into  
16 the process somewhere with that anti-caking agent.  
17 And if they can't accept it, then they'll take one  
18 without it and have to deal with the clumping issues.  
19 Remember, they're putting it into solution. And you  
20 can buy equipment, for example, which takes clumps and  
21 breaks it up and then dissolves it. It's relatively  
22 straightforward. I worked in the sugar industry and  
23 it was one of the things, sugar would clump and we  
24 would have equipment basically to break it up before  
25 we dissolved it for reprocessing. I mean, it's off-

1 the-shelf equipment.

2 COMMISSIONER WILLIAMSON: Thank you.  
3 Another question -- did you say that it was likely  
4 that you would have kept the Repano plant open if  
5 Chemtura had maintained its U.S. operations?

6 MR. MCFARLAND: I'm sorry?

7 COMMISSIONER WILLIAMSON: I'm trying to  
8 remember whether you addressed the question of whether  
9 or not you would have kept the Repano plant open if  
10 Chemtura had maintained its U.S. operations.

11 MR. MCFARLAND: No, I don't -- no, I think  
12 what I was talking about was the Chemtura volume  
13 wasn't enough to justify that. What I was saying is  
14 that as we went through the acquisition process and  
15 strategized over what we were going to do, that if the  
16 opposite had happened, if Chemtura decided we're not  
17 going to move overseas, we're going to actually double  
18 our production here -- and I said the same for PMC,  
19 right. I mean, there's no reason that saccharin  
20 production couldn't have been doubled in the U.S., in  
21 which case our volume would have doubled.

22 COMMISSIONER WILLIAMSON: Okay. So, it  
23 wasn't just maintaining. They had to go up, in terms  
24 of --

25 MR. MCFARLAND: Well, because I don't think

1 Chemtura was big enough on its own to keep Repano  
2 open.

3 COMMISSIONER WILLIAMSON: Thank you. Either  
4 here or in your post-hearing brief, could you explain  
5 the basis on which your reported production capacity  
6 in the Commissioner's questionnaire, the total machine  
7 capacity versus on some other basis, and is the  
8 physical capacity at Solvate plant greater than maybe  
9 what is reported?

10 MR. MCFARLAND: Okay. In our post-hearing  
11 brief, absolutely; absolutely.

12 COMMISSIONER WILLIAMSON: And if it is  
13 greater, what is the limitation on --

14 MR. MCFARLAND: Okay.

15 COMMISSIONER WILLIAMSON: -- how much you  
16 produce there?

17 MR. MCFARLAND: We can address that. And I  
18 think we've actually had a similar question from the  
19 Commission staff and we're in the process of putting  
20 together an answer for that.

21 COMMISSIONER WILLIAMSON: Okay. And I guess  
22 the question, if there are limitations, what would  
23 take to remove those?

24 MR. MCFARLAND: Okay, absolutely.

25 COMMISSIONER WILLIAMSON: In the

1 Commission's pre-hearing report, it observes that a  
2 continuous production process is generally difficult  
3 to turn down or operate intermittently. Is that true  
4 in your experience and how do you sort of turn down or  
5 intermittently cut back?

6 MR. MCFARLAND: That's absolutely true and  
7 one of the reasons I mentioned the temperature of the  
8 catalyst in the bed where we oxidize the ammonia was  
9 it's at 750 degree centigrade. You can't -- I takes  
10 more than a few minutes to heat up and more than a few  
11 minutes to cool down. I mean, you're talking half a  
12 shift. And you've also got to remember is what we're  
13 making here is nitrogen oxides, which now have to be  
14 absorbed into the soda ash. So, all of that, just  
15 start stuff on a batch process, is really not  
16 practical. So, how do we run it? We run it by  
17 turning it down and then at some point, you could move  
18 to campaigning, where you essentially run maybe 10  
19 days or shut down for four, although that's not the  
20 best way of doing it. More likely, you would run a  
21 month and then shut down for a week or two weeks and  
22 just let your inventories go down. So, that's the  
23 only way you could address -- reduce production. We,  
24 at the moment, we're not at the point where we can do  
25 that. We basically just turn down the plant and run

1 the whole plant at a lower level.

2 COMMISSIONER WILLIAMSON: Okay, thank you.  
3 Thank you. I have no further questions, Mr. Chairman.  
4 Thank you, very much.

5 VICE CHAIRMAN PEARSON: Commissioner  
6 Pinkert?

7 COMMISSIONER PINKERT: I have nothing  
8 further. But, I would like to thank the panel and I  
9 look forward to the post-hearing.

10 VICE CHAIRMAN PEARSON: I have no more  
11 questions. Commissioner Lane? No further questions  
12 from the dais? Okay. Do members of the staff have  
13 questions for this panel?

14 MR. CORKRAN: Douglas Corkran, Office of  
15 Investigations. Thank you, Vice Chairman Pearson,  
16 staff has no further questions.

17 VICE CHAIRMAN PEARSON: Mr. McGrath, do  
18 Respondents have questions for the Petitioner's panel?

19 MR. MCGRATH: Mr. Vice Chairman, I do have  
20 one question, if I could --

21 VICE CHAIRMAN PEARSON: Please.

22 MR. MCGRATH: -- for Mr. McFarland. The  
23 solution that you made in the cup, what is the  
24 concentration of that?

25 MR. MCFARLAND: It's 38 percent. That was

1 my R&D, one of my PhD's made it up to make a 38  
2 percent solution.

3 MR. MCGRATH: Okay, thank you.

4 VICE CHAIRMAN PEARSON: Okay. Well, let me  
5 add my thanks to this panel. It's been an excellent  
6 discussion this morning. I've learned a lot and I'm  
7 looking forward to this afternoon's presentations.  
8 Let's take -- with the Chairman out of town, let's  
9 take an hour and four minutes and come back at 1:10.  
10 This hearing stands in recess.

11 (Whereupon, at 12:06 p.m., the hearing in  
12 the above-entitled matter was recessed, to reconvene  
13 at 1:10 p.m. on this same day, Wednesday, July 2,  
14 2008.)

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1 current position since January 2005. I'm a long-term  
2 employee of BASF and I and others in my group,  
3 including Karen Katz, who is here with me today, are  
4 responsible for the marketing of a wide variety of  
5 products, including sodium nitrite in North American  
6 market. BASF Corporation, headquartered in Florham  
7 Park, New Jersey, is the North American affiliate of  
8 BASF SE, formerly BASF AG in Germany, and employs more  
9 than 15,500 people in North America, the majority of  
10 which are in the United States. BASF is the world's  
11 leading chemical company and has a portfolio that  
12 ranges from chemicals and plastics, to performance  
13 products, agricultural products, and fine chemicals.  
14 Our chemical portfolio ranges from basic petrochemicals  
15 and inorganics, to intermediates and speciality  
16 chemicals for a variety of industries, including  
17 pharmaceutical, construction, textile, and the  
18 automotive industries. BASF Corporation imports and  
19 distributes sodium nitrite, produced by our parent  
20 company in Germany, which is vertically integrated in  
21 the production of the most important raw materials  
22 used to produce sodium nitrite, including caustic soda  
23 and ammonia. In addition, we are also back integrated  
24 into natural gas, which is the primary input into the  
25 production of ammonia. This decreases our costs,

1 increases our productivity and efficiency, and makes  
2 BASF more efficient than most other global suppliers  
3 of sodium nitrite. It is, therefore, not fair to  
4 accuse BASF of selling sodium nitrite below its costs  
5 without understanding exactly what BASF's costs are.

6 We strongly believe that the antidumping  
7 petition filed by General Chemical is unjustified and  
8 no injury claimed by that company can be attributed to  
9 BASF's presence in the U.S. marketplace. BASF has  
10 charged steadily increasing prices for sodium nitrite  
11 in the U.S. market, as raw material costs have  
12 increased for our parent company in Germany, and our  
13 customer portfolio has remained stable throughout the  
14 period 2005 to 2007 with the addition of only one  
15 significant customer. Any financial problems claimed  
16 by the Petitioner are clearly tied to its acquisition  
17 of its only domestic competitor, Repano Products, and  
18 a long-term decline for sodium nitrite in its solution  
19 form. Within months after announcing the acquisition,  
20 General Chemical closed the former Repano facility in  
21 Gibbstown, New Jersey, leaving only General Chemical's  
22 Syracuse, New York plant in production in the United  
23 States. Despite being forced to close the Repano  
24 facility, General Chemical still had to absorb the  
25 cost of that merger, which undoubtedly affected its

1 financial performance. Clearly, however, General  
2 Chemical thought it was worth taking a temporary  
3 financial hit, in order to gain a monopoly in the  
4 United States production of sodium nitrite.

5 Repano was primarily a producer of sodium  
6 nitrite solution. Since solution is not imported into  
7 the United States, the closure of the Repano facility  
8 cannot be attributed to imports. In reality, the  
9 facility was closed because Repano's major customers  
10 were shifting production of their downstream products  
11 outside of the United States, eliminating their need  
12 for sodium nitrite solution in the United States.  
13 This is part of a long-term decline in U.S. demand for  
14 sodium nitrite solution, as purchasers of sodium  
15 nitrite solution have been closing their facilities or  
16 moving production offshore for a number of years.

17 General is now depicting that shift in its  
18 solution market as a contraction in overall demand for  
19 sodium nitrite and simply attributing greater combined  
20 market share to BASF. However, we cannot be capturing  
21 an increasing share of a market, in which we do not  
22 participate. While General Chemical wants to argue  
23 that this is a simple process, that a purchaser would,  
24 at the very least -- I'm sorry -- a purchaser would,  
25 at the very least, need to make significant

1 modifications to their facilities, in order to turn  
2 granular material into solution, including equipment  
3 to handle the granular product, personnel to charge  
4 the crystal to a solution tank, a solution tank, a  
5 pump and appropriate piping, a method of agitation, a  
6 heat source to dissolve and keep nitrite in solution,  
7 especially in cold weather areas, a method to address  
8 water quality, a method to manage and control foaming,  
9 a chemist to test the solution for the desired  
10 concentration. These are significant investments that  
11 a customer is unlikely to make when they can simply  
12 purchase solution ready made from General Chemical.

13 BASF is well aware of the cost of trying to  
14 produce solution from imported granular material.  
15 BASF has attempted to import granular material product  
16 from Germany and turn it into solution in the United  
17 States in a safe, responsible manner. We quickly  
18 discovered, however, that this process was not cost  
19 effective and the resulting solution was not  
20 competitive with the prices being offered by General  
21 Chemical. I, also, find it hard to believe that  
22 General Chemical is lowering its prices for solution,  
23 because customers are citing BASF price quotes for  
24 granular. While customers will always try to get the  
25 lowest price for any product, it is important to know

1 your customers well enough to know if you're being  
2 mislead. In this case, it would be essential to have  
3 an idea of the cost that customers would have to  
4 incur, in order to turn a granular product into  
5 solution form, if they are not set up to do so  
6 already. I would submit that if BASF could not  
7 convert Germany granular product into solution in a  
8 cost-effective manner, that it is unlikely that many,  
9 if any, significant customers could do so.

10 In fact, we are also aware of this from our  
11 own experience, as we are a customer of General  
12 Chemical for sodium nitrite solution, BASF within the  
13 United States. In 2006, BASF purchased Englehart  
14 Catalyst, one of their manufacturing facilities  
15 require sodium nitrite solution. Naturally, we  
16 attempted to supply this need with our own German-  
17 sourced crystal and we could not cover the added cost  
18 to do so. So, General Chemical, today, supplies this  
19 BASF solution through a distributor with their own  
20 nitrite solution.

21 We can state the above, because we have done  
22 much more than a back-of-the-envelope calculation in  
23 terms of the cost that it takes to turn granular into  
24 solution product. We have and we can provide third-  
25 party quotes from vendors, from tollers, who we

1 examined to perform this process for us, and the  
2 quotes are much higher than the cited five cents per  
3 pound, down to as low as three cents per pound by the  
4 previous testimony. The range that we have is in the  
5 eight to nine cents per pound on a dry basis, on a 100  
6 percent basis. In addition, all of those quotes had  
7 minimum volume commitments and some even had capital  
8 participation by BASF tied to them.

9           There is likewise no threat of injury posed  
10 by German exports to the United States. BASF SE's  
11 capacity utilization is very high and inventories are  
12 declining. So, there is no excess supply seeking out  
13 American markets. BASF SE's home market sales are  
14 higher volume than its sales to the U.S. and they're  
15 projected to grow. BASF SE's exports to third  
16 countries are stable and the U.S. represents an  
17 overall small percentage of the company's global sales  
18 volume. Any suggestion by General that BASF SE is  
19 seeking to unload supplies in the United States is  
20 unsupportable speculation.

21           In conclusion, there is no injury being  
22 caused or threatened by imports from Germany or China.  
23 This case seems to be no more than an attempt by  
24 General Chemical to acquire monopoly control over the  
25 U.S. market for sodium nitrite with government

1 sanctions. The first step was the acquisition of  
2 Repano, the only other domestic supplier of sodium  
3 nitrite. The second step was the filing of this  
4 petition -- of the petition in this case, seeking to  
5 eliminate all significant import competition. We,  
6 respectfully, urge the Commission to reject that  
7 attempt and reach a negative determination. Thank you  
8 for your time and I will be happy to answer any  
9 questions.

10 MS. KATZ: Good afternoon. I am Karen Katz  
11 and I'm the Senior Product Manager for BASF  
12 Corporation in Evan City, Pennsylvania. I have been  
13 with BASF since 1998 and have been in my current  
14 position since 2004. My responsibilities include the  
15 marketing of a variety of products, including sodium  
16 nitrite. It is important to note that BASF only sells  
17 one forms of sodium nitrite in the U.S. market,  
18 granular. General Chemical, by contrast, sells not  
19 only granular form of the product, but also sodium  
20 nitrite in its solution form and in flake form.  
21 General Chemical has an essentially uncontested market  
22 for these two forms in the United States, since BASF  
23 does not produce flake and it is uneconomical to ship  
24 solution to the United States.

25 Allow me to explain why BASF Corporation

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1 does not sell solution in the United States. While  
2 BASF does produce sodium nitrite solution in Germany  
3 and sells it in the European Union, shipping solution  
4 internationally means shipping approximately 60  
5 percent of water, which dramatically will increase the  
6 unit shipping cost of sodium nitrite. It is simply  
7 not economical for BASF or any other foreign producer  
8 to sell solution in the United States.

9 It is also uneconomical for BASF to ship  
10 granular sodium nitrite to the United States and then  
11 convert it to solution here. In BASF's production  
12 process, sodium nitrite is initially produced as a  
13 solution. BASF then produces granular by driving off  
14 the water, a process that is capital and energy  
15 intensive. To incur the cost of producing granular,  
16 package and ship the granular, then re-dissolve the  
17 granular into a marketable product all adds  
18 significant costs and effectively prevent BASF from  
19 participating in the solution market in the United  
20 States.

21 We understand that General Chemical has  
22 claimed that there is competition between domestic  
23 solution and importing granular product. However,  
24 BASF is only aware of one significant purchaser, who  
25 switched from using solution to converting granular

1 product to solution in their own facility, and this  
2 occurred well before the period of this investigation.  
3 At that time, there were two domestic producers of  
4 sodium nitrite, each offering dry and solution forms  
5 of the product. So, BASF's presence in the granular  
6 market was not the determining factor.

7 Just as it is uneconomic for BASF to ship  
8 granular to the United States and convert it into  
9 solution, it is unlikely that major purchasers could  
10 be doing this economically, as opposed to simply  
11 buying the bulk solution from General Chemical. In  
12 addition, even assuming that a purchaser has the  
13 personnel trained to make such a conversion, they  
14 would still need to make a significant capital  
15 investment as described by Mr. Work.

16 Finally, it is our understanding that  
17 solution customers are charged based on the contained  
18 nitrite. It, therefore, makes little economic sense  
19 for the customer to buy dry material and perform the  
20 additional processing steps to produce solution when  
21 the customer can simply buy the solution.

22 BASF has tried and failed to convert the dry  
23 product into solution for a customer in an  
24 economically feasible manner. I do not believe that  
25 our distributor customers could accomplish that

1 conversion effectively for their customers and be in  
2 any better position to realize a profit than we could.  
3 I believe that any effort by distributors to quote  
4 granular sodium nitrite as a substitute for liquid  
5 products is not commercially plausible and the U.S.  
6 customers for the solution form of the product are  
7 aware of this.

8           It is also important to note that the market  
9 for sodium nitrite solution has been declining, a  
10 trend that is completely unaffected by imported sodium  
11 nitrite. Solution is the form in which significant  
12 volumes have traditionally been sold for dye stuffs  
13 and rubber chemical applications, industries which  
14 have been in decline in the United States for a number  
15 of years. Repano, of course, lost two of its major  
16 customers because of such declining downstream  
17 markets, ultimately leading General Chemical to shut  
18 down that facility after it purchased the Repano  
19 business. Those two customers were Chemtura, a rubber  
20 producer, and PM Specialties, a saccharin and  
21 tolyltriazole producer. Neither of these companies  
22 switched from using solution to imported granular, nor  
23 was BASF in a position to solicit their business.  
24 Rather, the domestic industry lost these customers  
25 simply because they ceased U.S. production of the

1 downstream product, in which they use sodium nitrite  
2 solution. It is this decline in the market for sodium  
3 nitrite solution and not the imports of granular,  
4 which caused any problems for the domestic industry.

5           These fundamental differences between the  
6 solution and dry markets highlight the contrived  
7 nature of General Chemical's arguments in their brief  
8 about granular price quotes affecting prices for  
9 solution. For instance, one significant purchaser of  
10 both dry and solution product is a pigments and resins  
11 producer. We, BASF, sell them granular product and we  
12 are aware that they have a need for solution in other  
13 plants that cannot be fulfilled by BASF. We analyze  
14 the value added for us to supply the solution and  
15 concluded that it is simply not feasible. So, those  
16 other sites are being supplied by General Chemical.  
17 They are being duo supplied by BASF and General  
18 Chemical, at the same time.

19           In another instance, General cites a  
20 purchaser, who buys BASF dry product and allegedly  
21 puts it into a 55 gallon drum to produce solution, so  
22 they leverage the BASF dry price to get lower solution  
23 prices from General for their other cites, another  
24 situation of duo supply. This seems highly unlikely.  
25 BASF dry product has an anti-caking agent, which is

1 susceptible to foaming. Furthermore, the handling  
2 cost of such small batch processing would be  
3 prohibitive for large volumes. A reasonable supplier  
4 would not respond to the threat of such crude and  
5 potentially unsafe processing by lowering its prices  
6 to supply the bulk solution.

7 In two other claims, General says that  
8 customers for metal treating products, who purchase  
9 solution, attempted to leverage a lower price from  
10 General Chemical, by implying they would switch to dry  
11 material from BASF. However, we cannot supply any  
12 metal treatment customers, since that application  
13 almost always requires solution. Therefore, any cost  
14 price leveraging, which General Chemical attributes to  
15 BASF price quotes, is nothing more than a customer  
16 negotiating tactic and not support by documented  
17 facts. The reality in the market is that dry product  
18 can technically be converted into solution, but it  
19 must be economical for a manufacture to do so, which  
20 includes consideration such as customer handling  
21 capability, storage requirements, the size of the  
22 customer's needs. Virtually all U.S. market needs for  
23 sodium nitrite solution can only be met by General  
24 Chemical for a combination of reasons and the  
25 customers know that neither BASF or its distributors

1 have the ability to play a major role in the segment  
2 of this market.

3 Thank you for your time. I will be happy to  
4 answer any questions.

5 MR. MCGRATH: That concludes the direct  
6 testimony from our witnesses. I just had two or three  
7 additional points I would like to add before we close  
8 our direct presentation.

9 In discussing this issue of  
10 interchangeability and listening this morning and  
11 going over our testimony again, it occurs to me that  
12 you could probably cite any number of customers or  
13 potential customers where there is a disagreement over  
14 whether or not they could or might convert from using  
15 liquid product -- purchasing liquid product, to buying  
16 a dry product and converting it on their own. I think  
17 the best traditional way of going about getting at the  
18 answer to this question for the Commission is to look  
19 at your questionnaire responses and your own staff  
20 report. There is more evidence showing that customers  
21 do not view these as interchangeable and that they do  
22 not take one and convert it to the other, than what  
23 has been presented this morning by General Chemical.  
24 And I think the reality is in those responses.

25 Certainly, a company like BASF, with its

1 significant profile and portfolio products, is going  
2 to have investigated every possible way of making this  
3 product and concluded it was not something that they  
4 could do. So, that, if they were seeking to sell it  
5 or buy it, they would know what those additional costs  
6 were and, indeed, they have investigated and we can  
7 provide that information of third-party quotes on  
8 conversion costs. But, I would urge you to look to  
9 the questionnaire responses and to the staff report  
10 for guidance on that issue.

11 This is extremely important, obviously,  
12 because so much of the market reduction that has been  
13 pointed out by the Petitioners and pointed to as  
14 evidence of injury, and which they had on the screen  
15 earlier today with the chart showing the index of the  
16 decline in production. I think one of the questions  
17 presented and asked was how much of that is  
18 represented by the loss of the customers for solution  
19 product. And the answer is right there. It's broken  
20 out. It's most, if not all, of the decline and the  
21 reduction is due to the solution decline and the lost  
22 of the Repano customers, who left the country. So,  
23 that is very important in the analysis of causation  
24 here. We believe that the dry product that's being  
25 offered by BASF and cumulated with China, for that

1 matter, do not cause injury, that the problems that  
2 have been pointed to have to do with the decline in  
3 the total combined market for the dry product and the  
4 solution product.

5 Finally, just a brief word on third-country  
6 sources. There's not -- we don't have to get into a  
7 full blown Bratsk analysis of whether there is  
8 alternative sources that might supply the product.  
9 The history doesn't show that there is any significant  
10 supply from anyone else. There are small amounts that  
11 have been made available from Poland, perhaps some  
12 supply available from India. But one thing that I  
13 think is certain and is directly contrary to what the  
14 Petitioner said this morning is that few customers of  
15 a chemical product, who are manufacturing other  
16 products, will be content to live for long without an  
17 available alternative. So, if the price increases to  
18 a level, which makes it in the interest of that  
19 consumer to seek out alternatives, they will find  
20 alternatives, whether it's India, who begins  
21 producing, or Poland or someone else, or whether it's  
22 simply a much high price paid to BASF for the product.

23 The notion that the entire amount might be  
24 supplied in the future, the entire U.S. demand can be  
25 supplied by General Chemical and that all of the

1 customers for the product in this country will want to  
2 live with that situation is, I think, illusory.  
3 Eventually, there will be an effort and a desire by  
4 that industry to seek out some alternative source to  
5 supply. So, we don't have an alternative that we  
6 could point to in this circumstance to say they might  
7 supply the entire source. That's not -- I'm not  
8 suggesting there's a causation factor there, but  
9 simply observing that a single supplier for the  
10 product is not liable to be supplying everything that  
11 the customers out there eventually would like to see.

12 That I think completes our direct  
13 presentation, and we're happy to respond to your  
14 questions.

15 VICE CHAIRMAN PEARSON: Let me begin by  
16 thanking all of you for being with us today. I don't  
17 think I've ever seen a Respondent's panel that's been  
18 really happy to be involved in an anti-dumping case.  
19 So I appreciate the circumstance that you are in.

20 Mr. Work, in your statement, you made  
21 reference to BASF's cost structure. Are you able to  
22 say anything more about that on the record, or if  
23 necessary, in the post-hearing? I'm interested in  
24 understanding whether there is something about the  
25 plant in Germany, the way the substreams are

1 generated, that gives some real cost advantage for  
2 producing sodium nitrite there.

3 MR. WORK: Yes, Mr. Commissioner -- Mr.  
4 Chairman, excuse me -- Vice Chairman, sorry.

5 VICE CHAIRMAN PEARSON: Vice Chairman --  
6 that's okay, we're excusing that oversight.

7 MR. WORK: First of all, I am not a  
8 production manager, nor do I have complete  
9 transparency on my supplier or my parent company's  
10 cost structure. I can say though that we are back  
11 integrated into the main inputs into the production of  
12 sodium nitrite/sodium nitrite, as well.

13 Those being caustic; we are a producer of  
14 caustic. We receive rock salt, as I recall, in large  
15 quantities on the Rhine River, which are then  
16 transported into our chlorine caustic plants. So we  
17 go back to the very basics, if you will, in the  
18 production of chlorine and caustic.

19 Likewise, we do have a natural gas position.  
20 We are back-integrated, in fact, with gas from Russia.  
21 I will get the legal entity wrong here, but we have a  
22 joint venture. We have a joint ownership and a supply  
23 arrangement with GAZPROM, whereby gas is piped from  
24 Russia into Western Europe.

25 We take a portion of that gas, and we also

1 distribute it, I believe, in the retail market. So we  
2 clearly are back-integrated into natural gas as was  
3 kind of a question mark left open from earlier  
4 testimony.

5 VICE CHAIRMAN PEARSON: So when you use the  
6 term "back integration" in regard to natural gas,  
7 you're talking about having a committed long-term  
8 supply, and then not only using it yourself, but doing  
9 some distribution to other users.

10 MR. WORK: Yes, sir, that's my  
11 understanding. Fundamentally, those are the main  
12 inputs into this product. In addition, I don't know  
13 the age of our plants, but investment levels have been  
14 high.

15 The plants are very well run, very  
16 professionally managed, in terms of squeezing every  
17 efficiency out of them. Our capacity is significant;  
18 but as I mentioned, at a very high utilization rate.  
19 I think all of these things tend to give us a very  
20 efficient production cost structure.

21 VICE CHAIRMAN PEARSON: Does BASF sell  
22 caustic soda or ammonia on the merchant market?

23 MR. WORK: Yes, sir, we do.

24 VICE CHAIRMAN PEARSON: Okay.

25 MR. WORK: Caustic soda, I am quite certain.

1 Ammonia, I am not certain. We can provide that after,  
2 in an additional filling.

3 VICE CHAIRMAN PEARSON: Okay, and you may  
4 want to elaborate on this in the post-hearing. But  
5 I'm just trying to get a sense. The managers of the  
6 sodium nitrite business in Germany are having to  
7 compete against merchant customers for caustic soda  
8 and ammonia in order to make their product. I'd like  
9 to have some better understanding of that.

10 MR. WORK: Yes, in fact, they do. It's not  
11 necessarily a short term decision. But clearly, over  
12 the medium and long-term, we are always looking at  
13 where is the highest return in terms of selling  
14 upstream products, or putting them further downstream  
15 into nitrite, for example.

16 If, for instance, we saw that the caustic  
17 market was much stronger than the value that we could  
18 get from that molecule by putting it into nitrite,  
19 it's very conceivable we would make a decision to  
20 divert the caustic that is going into nitrite and sell  
21 that caustic on the open market.

22 VICE CHAIRMAN PEARSON: Is the sodium  
23 nitrite business in Germany organized as a separate  
24 business unit -- you know, separate PNL -- from the  
25 parts of the business that produce ammonia and caustic

1 soda?

2 MR. WORK: Yes, sir, it is.

3 VICE CHAIRMAN PEARSON: Okay, so as we think  
4 of the internal dynamics of BASF, as the managers are  
5 trying to, well, let's just say the caustic soda  
6 managers are not going to want to give anything away  
7 to those people who are in the sodium nitrite  
8 business. Because that very likely affects their  
9 bonuses if they're not maximizing their profits.

10 Are you able, either now or in the post-  
11 hearing, to tell us something more about what sodium  
12 nitrite is worth in Europe?

13 MR. WORK: Yes, we can.

14 VICE CHAIRMAN PEARSON: Because it would be  
15 interesting to know, if it's possible to put this on  
16 the record, whether BASF has been able to earn as much  
17 on sodium nitrite sold to the United States as sold in  
18 Europe. Again, I'm not trying to look behind what  
19 Commerce does with the margins; but just trying to  
20 understand the conditions of competition in this  
21 marketplace; Mr. McGrath?

22 MR. MCGRATH: Yes, Mr. Vice Chairman, we can  
23 provide the information about sales and some pricing  
24 information sufficient, I think, to answer your  
25 question about sales of the product in other markets.

1           We did not provide full information or  
2 participate on the Commerce Department side. But the  
3 point being made here -- and I think it is important  
4 as part of the analysis of what is the motivation here  
5 for a company like BASF to be selling product at less  
6 than fair value -- the analysis that we heard this  
7 morning was that, well, it makes sense from the anti-  
8 dumping theory dating back to 1920. It makes sense  
9 that someone would sell at a lower price in the U.S.  
10 market in order to keep their own home market capacity  
11 running at a higher level.

12           However, in a case like a vertically  
13 integrated entity that can sell product at various  
14 points long the production stream, and does that  
15 analysis constantly to see where they're likely to  
16 make the best profit, that particular theory doesn't  
17 necessarily apply quite so neatly. Because the  
18 company will be looking to maximize its return, as you  
19 said.

20           Now internally, dynamics may vary because  
21 someone gets a bonus, and that somehow intervenes in  
22 that rational decision-making process. But it is a  
23 different kind of an analysis.

24           We will try and submit as much as we can to  
25 show that yes, we do make a profit on this product,

1 and there is a product line that it is included in,  
2 that is in a product stream that could be not sold  
3 because some earlier product in the product stream  
4 could make a better return. Will provide as much as  
5 we can.

6 VICE CHAIRMAN PEARSON: Okay, another way of  
7 looking at this that might be helpful would be, to  
8 extent possible, providing some information regarding  
9 the profitability of the sodium nitrite operation,  
10 relative to other chemicals produced in the same  
11 facility; perhaps also, information on pricing into  
12 other export markets, if that's not to come up with.

13 Basically, part of the thesis of the  
14 domestic industry is that because the United States is  
15 a relatively large market for sodium nitrite, that it  
16 has been a reasonable long-term strategy for BASF to  
17 price product in here at a low level in order to build  
18 market share. I don't know whether there's any way to  
19 shine a light on that issue by providing some  
20 comparisons.

21 MR. MCGRATH: We will discuss with the  
22 parent company how much information we can provide. I  
23 think we're a little bit reluctant to commit to  
24 precisely what they'll be able to provide. We did do  
25 a foreign producer questionnaire. So we can put in as

1 much as is available.

2 But I did want to observe that it was  
3 pointed out this morning that it is not a large  
4 business for the producers. Overall, it may be a  
5 large business for them. But I think for anyone in  
6 this industry, it's not an exceptionally large  
7 business.

8 So that comes into play when the  
9 manufacturer is a company as large as BASF. They  
10 consider that, as well. It's certainly not worth it  
11 to them to invest a tremendous amount of money in a  
12 losing proposition for a small line. But they do sell  
13 a number of different products in the United States.  
14 So they want to maintain that product availability.

15 VICE CHAIRMAN PEARSON: I appreciate, and I  
16 recognize the confidentiality of all this information.  
17 I also would just state that the Commission is really  
18 good at maintaining the confidentiality of those  
19 submissions.

20 So the managers of the business in Germany  
21 may wonder, if they provide the information, is it  
22 going to leak out. I've not seen it yet since I've  
23 been here.

24 MR. MCGRATH: I've assured them that that's  
25 not a concern.

1                   VICE CHAIRMAN PEARSON: We're on the  
2 Chairman's time now. Are you done? Okay,  
3 Commissioner Okun?

4                   COMMISSIONER OKUN: Thank you, Mr. Vice  
5 Chairman, and thank you to this panel of witnesses. I  
6 appreciate you being here and providing your testimony  
7 and responses to our questions.

8                   Let me continue on some pricing questions  
9 and a little bit of the line. I'm going to start with  
10 the Petitioners this morning which is, setting aside  
11 whether I think it's appropriate to look at this as  
12 liquid versus granular, even on dry which General  
13 Chemical sells and which BASF sells, pricing  
14 differentials are really big.

15                   So I'm trying to understand how you see this  
16 market. I mean why is it that General Chemical's  
17 prices are where they are, and how does BASF see  
18 itself in competing in that way with General Chemical?  
19 We'll start with the producer; thank you.

20                   MR. WORK: First of all, I can't quantify  
21 really big. There are certain pieces of data I  
22 haven't seen. I don't have perfect market  
23 transparency. I wish I did.

24                   COMMISSIONER OKUN: I understand that.

25                   MR. WORK: I think there's several factors,

1       though. It was even mentioned in the earlier  
2       testimony. All things being equal, I think the  
3       markets are pretty rational, and our buyers can run  
4       the calculations and do those things. They're  
5       probably in the better position to weigh one decision  
6       against the other.

7                 But in our case, we have very long lead  
8       times, number one; eight to twelve weeks when things  
9       are going well. Sometimes maybe it's maybe even  
10      longer. What that does is impose a burden, if you  
11      will, on our customers in terms of inventory levels;  
12      in terms of planning; in terms of current assets;  
13      costs, risks. If they're our customer and our  
14      customer solely, ships do get delayed; those kinds of  
15      things.

16                I think those tend to push us in a direction  
17      of, we have to be somewhere potentially below an  
18      equivalent cost from a domestic producer who can, as I  
19      think we heard, take an order on Monday, deliver on  
20      Friday. Those are all inconveniences, if you will,  
21      and cost items, I would suggest, to our customers and  
22      our customer base.

23                COMMISSIONER OKUN: Do you agree with the  
24      testimony from this morning that customers -- and you  
25      are competing for the same customers with General

1 Chemicals -- don't duo-source? In other words that if  
2 you get a contract, you're getting it for the full  
3 supply, and they're not looking to kind of split their  
4 business between the domestic supplier and another  
5 source. Ms. Katz may be a better one for that.

6 MS. KATZ: What we found specifically when  
7 General Chemical and Repano merged is that customers  
8 have become nervous. Previously, they viewed Repano  
9 and General Chemical as two sources of supply, and  
10 when they merged, they became uncomfortable with  
11 having just one source of supply; and have actually  
12 come to us and asked us if we could supply them  
13 solution.

14 COMMISSIONER OKUN: Okay, do you have any  
15 information or documentation that backs that up, that  
16 the customers are looking for duo, for an additional  
17 source?

18 MS. KATZ: Yes, I do.

19 COMMISSIONER OKUN: Okay, if it's not  
20 already in the record, and I don't recall seeing it,  
21 if you could please provide that post-hearing. I  
22 appreciate that.

23 Let's see, I want to ask, Ms. Katz, in your  
24 testimony, you had noted that BASF is aware of only  
25 one significant purchaser who switched from using

1 solution to converting granular product to solution in  
2 their own facility. This occurred well before the  
3 period of this investigation.

4 In the testimony from Mr. McFarland this  
5 morning, they had discussed, quoting from their  
6 written testimony, for example, BASF replaced Repano  
7 in supplying one of the major water treatment  
8 customers based on price. This came on the heels of a  
9 loss of another large solution customer to BASF who  
10 supplied dry product.

11 I know we don't have specifics here. But  
12 are those inconsistent statements from your  
13 description of what you believe with Repano having  
14 lost one; there being one significant purchaser who  
15 switched from solution.

16 Are we talking about Repano there or a  
17 Repano customer, or do you know? I mean, this might  
18 be a little difficult to do. You know, on the one  
19 hand, I'm hearing one thing, and I'm just trying to  
20 figure it out.

21 MS. KATZ: The customer that I am  
22 referencing is a pigment and resins customer. They  
23 source their dry from us. They convert it into  
24 solution at one facility; and the other facility,  
25 General Chemical, supplies solution to them.

1 COMMISSIONER OKUN: Okay.

2 MS. KATZ: That happened prior this point in  
3 time.

4 COMMISSIONER OKUN: Okay, well, we've  
5 obviously spent a lot of time this morning, and I  
6 don't know if you can add any more information on  
7 that, of what was going on at Repano in relation to  
8 its customers. Because I think today, what you are  
9 saying, consistent with your pre-hearing brief is, you  
10 know, that Repano shut down because it lost these two  
11 big end use customers.

12 What Petitioners argued this morning was  
13 that Repano itself had failed this import competition,  
14 and that was the reason in purchasing Repano, there  
15 was already a decision made to consolidate and close.  
16 I'm trying to sort through and try to understand those  
17 facts, and I didn't know if there was anything that  
18 you could add to that.

19 MR. MCGRATH: If I could just add before  
20 turning it over to Karen and Bill, from what we heard  
21 this morning, I think it was a pretty straight-forward  
22 answer to your question or to the Commission's  
23 questions, in taking over Repano, they intended to  
24 close it down to reduce the amount of capacity that  
25 existed.

1           They said that they were aware of one of  
2 those major customers going off shore, PMC, I think.  
3 But the Chemtura one came as somewhat of a surprise  
4 during the negotiation or just afterwards, I guess;  
5 and that the intent all along was to reduce the total  
6 capacity.

7           I think there was careful footwork around  
8 the question of whether they intended to reduce its  
9 production. But I think pretty clearly, that's what  
10 was intended. If you want to reduce capacity and you  
11 want to reduce unit costs, you're going to be looking  
12 overall at reducing production. They now feel that  
13 they have a combined capacity after eliminating Repano  
14 in 2006/2007. They've got a capacity able to supply  
15 all of U.S. demand.

16           As far as whether or not Repano was feeling  
17 the heat from competitive import sources, I invite you  
18 to look at the record there. I think imports were a  
19 much smaller factor then, leading up to 2006, even if  
20 you look at it now. I mean now, it's a fairly modest  
21 amount.

22           But even in 2006/2005, imports were not a  
23 major factor. The bigger factor had to do with the  
24 contraction of that market for the liquid product. I  
25 think they've admitted that that was their plan; to

1 reduce the amount of output and the capacity. That's  
2 a rational plan. I don't think anyone disagrees that  
3 that would be something that someone might do if you  
4 combined the capacity in a market that had too much.

5 But I would only point out that that, as the  
6 Commission acknowledged in the preliminary, was a  
7 change in the marketplace that was fairly significant;  
8 that didn't have to do with imports. Imports didn't  
9 cause that to happen. There was already a decline  
10 taking place in the market for the liquid product, and  
11 that change was not affected by imports.

12 I'm sorry to ramble on about this. But it's  
13 such a critical point in our analysis of the market.  
14 I agree with some of the earlier questions, that it's  
15 hard to causal link here. You've got increasing  
16 prices, and a steady or increasing demand for the main  
17 product where there's competition, and you've got an  
18 improved performance.

19 COMMISSIONER OKUN: Mr. Work, let me ask you  
20 -- and now I don't have my hands on it, but I did want  
21 to ask about it.

22 MR. WORK: I'm sorry for using all your  
23 time.

24 COMMISSIONER OKUN: That's okay. Mr. Cannon  
25 had noted that again, your argument on the granular to

1 granular, that the data that you provided did not  
2 include Repano's production of granular. Therefore,  
3 the trends look different than, in fact, they were. I  
4 wanted to give you a chance to comment on that.  
5 Because I haven't had a chance to go back and look at  
6 the data; and obviously, we'll do that post-hearing.

7 MR. WORK: The data, as we understand it -

8 COMMISSIONER OKUN: As I understand, you  
9 used pricing data, which did not include Repano.

10 MR. WORK: Well, we don't think it included  
11 Repano. Because when we look at the questionnaire  
12 responses, which formed the basis for what went into  
13 the staff report, it appeared that there was not  
14 Repano data reported. But in the tables that you were  
15 shown this morning, they appear to present an entire  
16 industry, including dry shipments of Repano. I don't  
17 know why it wouldn't have been included in the earlier  
18 information.

19 But we were using information that was  
20 available; that was from the questionnaires and the  
21 staff reports. We're going to have to take a look at  
22 it again, as well, to see whether or not Repano was  
23 there.

24 COMMISSIONER OKUN: Okay, my light is on.  
25 I'll have a chance to come back. But for post-

1 hearing, obviously, I think that is something that  
2 we'll need to have you address again in the chart that  
3 you have provided, to see if it needs to be revised;  
4 thank you.

5 VICE CHAIRMAN PEARSON: Commissioner Lane?

6 COMMISSIONER LANE: Good afternoon, in your  
7 testimony, you said that BASF had a number of  
8 facilities in this country and you had 15,500  
9 employees, mostly in the United States. Do you have  
10 facilities in the United States that make sodium  
11 nitrite or are capable of making sodium nitrite?

12 MR. WORK: We do not.

13 COMMISSIONER LANE: Okay, so you have no  
14 facilities that could make sodium nitrite?

15 MR. WORK: I don't mean to be obtuse. But  
16 it depends on what you mean by "could". Without  
17 additional investment, the answer is no. Without  
18 significant additional investment, we could not.

19 COMMISSIONER LANE: Okay, does BASF use  
20 sodium nitrite in its manufacturing facilities in the  
21 United States?

22 MR. WORK: I'm aware of the one that I  
23 mentioned in my testimony. With the acquisition of  
24 Engelhard Catalysts in mid-2006, we have a requirement  
25 there, yes, and there may be other smaller ones.

1           COMMISSIONER LANE: Okay, do you then use  
2 sodium nitrite for internal consumption in that  
3 operation?

4           MR. WORK: We do.

5           COMMISSIONER LANE: Okay, what percentage of  
6 the sodium nitrite that you import into the United  
7 States is transferred internally for use in your own  
8 plant, and what percentage is sold to third parties?

9           MS. KATZ: The nitrite that we use at the  
10 BASF plant is not BASF nitrite. It's General Chemical  
11 nitrite.

12           COMMISSIONER LANE: Okay, so none of the  
13 nitrite that you import in the United States is used  
14 in any of your facilities in the United States.

15           MS. KATZ: Correct, the only facility that  
16 we are aware of in the United States that uses  
17 nitrite, they need it in solution form, and we cannot  
18 economically provide it to them. The source is  
19 General Chemical, and they purchase it through one of  
20 General Chemical's distributors.

21           COMMISSIONER LANE: Okay, thank you; in your  
22 brief, you argue that there's attenuated competition  
23 between subject imports and domestic like product.  
24 General Chemical's pre-hearing brief cites a previous  
25 investigation on sulfanilic acid, where the Commission

1 considered similar situations in which customers will  
2 shift form one of the product to another, in order to  
3 obtain the lowest prices.

4 How is this case different from sulfanilic  
5 acid, and isn't it likely that at some price point,  
6 the cost to the customer of shifting will be out-  
7 weighed by a lower price for the alternative form of  
8 the product?

9 MR. MCGRATH: Commissioner, I'd be happy to  
10 elaborate on it. I'm an embarrassed to admit, I was  
11 involved in that case, and I can't give you an  
12 immediate answer. Because I think my involvement was  
13 tangential.

14 But there is going to be a point of analysis  
15 where a customer will consider shifting. We haven't  
16 presented a like product analysis here. We're not  
17 saying it's a separate like product or anything like  
18 that.

19 What we are saying though is, up to this  
20 point, in the analysis that we've done, it's been  
21 uneconomical for us or our subcontractors to be able  
22 to do this. We know that the cost of conversion is  
23 about eight and-a-half or nine cents.

24 COMMISSIONER LANE: Have you done that  
25 calculation?

1           MR. MCGRATH: The calculation, I believe, is  
2 based on the third party bids.

3           MR. WORK: Those are based on third party  
4 bids, ma'am. When we went out to various tollers, and  
5 asked them what it would take.

6           COMMISSIONER LANE: And if that's not  
7 already in the record, could you please provide it for  
8 the record?

9           MR. WORK: Certainly.

10          COMMISSIONER LANE: Okay, thank you; I'm  
11 sorry, Mr. McGrath, go ahead.

12          MR. MCGRATH: There will be a point at which  
13 that analysis would justify making a switch. But  
14 whoever the customer is, as Mr. Work pointed out,  
15 would have to be willing to make the significant  
16 investment in all the additional equipment in order to  
17 offset it; or will consider having it toll processed  
18 in some fashion.

19                 But the investment will vary. The problem  
20 is, all we can give you is an estimate based on the  
21 toll processing bids for a third party. We can't tell  
22 you for the individual customers; some of whom may  
23 need a lot more investment in handling capability than  
24 others. That will be an individual company's specific  
25 calculation.

1           COMMISSIONER LANE: On page 18 of your pre-  
2 hearing brief, you compare price increases of German  
3 product one with domestic product one. How do your  
4 statements about price increases square with that in  
5 the staff report that show consistent under-selling of  
6 both German and Chinese product one, relative to U.S.  
7 product one, during 2007 and the first quarter of  
8 2008?

9           MR. MCGRATH: I'm sorry, Commissioner, where  
10 on page 16?

11           COMMISSIONER LANE: It's page 18 of your  
12 pre-hearing brief.

13           MR. MCGRATH: I'm sorry, 18 -- I believe  
14 what we were saying was that the rate of increase over  
15 the period of investigation for the German produce  
16 one, which is the granular product, had been greater  
17 than the rate of increase for the domestic competitive  
18 product one.

19           I know that the evidence for the quarterly  
20 pricing data is suggesting margins of under-selling in  
21 most instances. I don't have an explanation for  
22 squaring the two; other than the rate of increase has  
23 been greater for the German product during the POI,  
24 and both the German and the domestic product have  
25 increased in price. Our argument is that that

1 behavior does not suggest price suppression; certainly  
2 not price depression.

3 COMMISSIONER LANE: But you're not  
4 contesting that the German and Chinese product are  
5 still under-selling the U.S. product.

6 MR. MCGRATH: I'll have to take a look at  
7 when that period cut off. I don't think they are any  
8 more. If that's the end of the first quarter 2008 --

9 COMMISSIONER LANE: Yes.

10 MR. MCGRATH: -- we'll take a look at that.  
11 I will have to comment on that in the post-hearing  
12 brief.

13 COMMISSIONER LANE: Okay, thank you; in  
14 BASF's sales of dry sodium nitrite to U.S. customers,  
15 do price negotiations for dry sodium nitrite include a  
16 discussion of the price of General Chemical's liquid  
17 sodium nitrite?

18 MR. MCGRATH: Let me just rephrase. You  
19 would like to know whether when Karen, for instance,  
20 is discussing with the customer the price at which she  
21 can make dry crystalline product available to a  
22 customer, whether they discuss the price of General  
23 Chemical solution product.

24 COMMISSIONER LANE: Yes, that's correct.

25 MS. KATZ: I'd say no for two reasons. One,

1 I don't normally talk to the customers. We have a  
2 sales staff that talks to the customers.

3 COMMISSIONER LANE: Okay.

4 MS. KATZ: Okay, but number two is that we  
5 are selling dry. We cannot sell solution and make a  
6 profit. So we don't discuss solution.

7 COMMISSIONER LANE: Okay, well, let me make  
8 sure I understand what you're saying. You don't talk  
9 to the customers anyway. But you think that the  
10 people who do talk to the customers don't discuss the  
11 price of liquid when they're negotiating prices for  
12 the dry.

13 MS. KATZ: Correct.

14 COMMISSIONER LANE: But you don't know that  
15 for sure.

16 MR. MCGRATH: We can review sales reports to  
17 see if there's any report on discussion. Say, for  
18 instance, a customer might say, I'd like to buy -- I  
19 think what you're asking us is, if the customer would  
20 say, I'd like to buy some of your crystalline product  
21 because I want to convert it into a liquid product  
22 that gives me a better deal than what I'm going to get  
23 from --

24 COMMISSIONER LANE: That's exactly what I'm  
25 asking you.

1 MR. MCGRATH: Okay.

2 COMMISSIONER LANE: Okay.

3 MR. MCGRATH: We'll check sales reports, and  
4 provide anything we have.

5 COMMISSIONER LANE: Okay, thank you; thank  
6 you, Mr. Vice Chairman.

7 VICE CHAIRMAN PEARSON: Commissioner  
8 Williamson?

9 COMMISSIONER WILLIAMSON: Thank you, Mr.  
10 Vice Chairman, and I do want to express my  
11 appreciation to the witnesses for coming here today  
12 and giving their testimony.

13 Ms. Katz, you raise on page four of your  
14 oral testimony the question that BASF's dry product  
15 has an anti-caking agent. You suggest that foaming  
16 would take place if someone were to convert that to  
17 liquid.

18 How much of a problem is that, and can end  
19 users get rid of the forming problem; or is that  
20 really inhibited for them to take your product and  
21 convert it to a liquid, if they want to do it that  
22 way?

23 MS. KATZ: I am not a manufacturing expert.  
24 But I do know that because of the material with the  
25 anti-caking agent, that is the only way that we could

1 bring it from Germany and convert it into solution.  
2 Because it has to go across the ocean; and as it goes  
3 across the ocean, it picks up water.

4 If we tried to ship anything other than  
5 product with an anti-caking agent, when it arrived  
6 here, it would be like a big block and, therefore,  
7 would be very difficult to convert into solution.

8 So when it comes here, it has to have the  
9 anti-caking agent on it, so it can be free flowing,  
10 like was demonstrated in one of those jars. It does  
11 foam, and you have to keep that under control, or you  
12 could end up with a spillage mess all over the floor.  
13 It's very hard to do with a small batch. You really  
14 have to be set up to handle a conversion operation  
15 like that.

16 COMMISSIONER WILLIAMSON: Okay, so it's not  
17 that a manufacture or end user couldn't deal with it.  
18 It's just that you're dealing with a 55 gallon drum  
19 and you probably would not. Is that what you said?

20 MS. KATZ: True; the other thing is that the  
21 material is toxic. It's an irritant to the eyes. So  
22 there are practices that you have to use, and there's  
23 protective equipment that you have to wear to keep  
24 yourself safe.

25 COMMISSIONER WILLIAMSON: Okay, this morning

1 it was pointed out that some companies that might take  
2 a dry form and convert it to liquid are already  
3 chemical manufacturers and, therefore, they have  
4 equipment already. Do you disagree with that?

5 MS. KATZ: I really couldn't comment; could  
6 you?

7 COMMISSIONER WILLIAMSON: Mr. Work?

8 MR. WORK: That certainly can be the case.  
9 But if one uses assets -- I think idle assets were  
10 mentioned. Oh, we have a tank over there. We have a  
11 pump over there. We generally like to have a return  
12 on those assets, whether they were used or not. So we  
13 would impute a cost.

14 If you put dead assets into a system like  
15 that at no cost, that would be to your advantage,  
16 certainly. But we and I tend not to think like that.  
17 If I'm using something, I assign a replacement cost to  
18 it or a cost. So I think it's not quite a clean  
19 analysis to say, if I use an existing tank that's not  
20 in use, there's no cost to it.

21 MR. MCGRATH: Commissioner, if I could also  
22 add, in a lot of the circumstances, the anecdotal  
23 sales competition references that have been offered in  
24 the brief and this morning, and what Karen attempted  
25 to address, had to do with instances in which certain

1 customers were already set up to buy both dry and  
2 liquid product.

3 In one or two of their sites, they will  
4 handle liquid product. At other sites, they will  
5 handle the dry product. So they will be negotiating  
6 for both dry and liquid at the same time.

7 For some of those, there may be a perception  
8 that's being presented that they can use them inter-  
9 changeably. But as Mr. Work has said, if the assets  
10 are not set up and designed to be able to assign the  
11 cost to those assets to do the conversion process,  
12 it's really just a negotiating tactic. That customer,  
13 we have found, we supply dry to customers that will  
14 also at the same time buy liquid product from another  
15 site that's set up to handle the liquid product.

16 So the short answer to your question is, no  
17 we don't disagree certainly that some chemical  
18 producers will have the ability to handle the product.  
19 It's not that it's technologically insurmountable.  
20 It's just that the economics and the reality of that  
21 are that we're not aware of customers who really do  
22 that very often.

23 COMMISSIONER WILLIAMSON: Could you, for  
24 post-hearing, take a look at Table 2-11 on page 215 of  
25 the staff report, and address that question regarding

1 the interchangeability, and also take a look at the  
2 size of some of the companies listed there; and just  
3 elaborate on your view of this question that it  
4 doesn't happen.

5 Mr. McGrath, I also wanted to go to the  
6 question of the timing of the acquisition of Repano,  
7 and what General Chemical know about the reason for  
8 doing it; compared to the times when Chemtura and PMC  
9 got out of the market.

10 Is there any reason to disagree with the  
11 statements this morning that U.S. manufacturers were  
12 finding themselves in difficulty, and that there was a  
13 reason to rationalize even before these two companies  
14 got out of the market?

15 MR. MCGRATH: I would agree that there were  
16 problems at the time they combined. I think that was  
17 a reason for doing the combination.

18 But where we disagree is what were the  
19 reasons for those problems. We don't think that  
20 imports were a factor at all in the market, when the  
21 problems that arose from having too much capacity and  
22 a declining market for solution product had any causal  
23 effect; that imports were simply not a factor then.

24 What they were doing is dealing with the  
25 reality of the marketplace then, excess

1 capacity/declining market, by combining and  
2 eliminating some capacity for the product, that was  
3 not in competition with imports at all. That produced  
4 a rationalization in the industry which seems to have  
5 resulted in a recovery in profitability and  
6 improvement in production costs.

7 COMMISSIONER WILLIAMSON: Well, this  
8 morning, the testimony, I think, wasn't just about the  
9 liquid, the overall demand for the product. I was  
10 wondering, do you disagree with that?

11 MR. MCGRATH: Let me just ask Mr. Work  
12 something. Overall, we don't take issue with the  
13 general status of the market being somewhat even.  
14 There have been some uses that have declined; some  
15 others that have appeared. In fact, there are some we  
16 haven't talked about; some new technological  
17 developments that increase the demand for the granular  
18 product.

19 What we see is the decline in the demand for  
20 that solution product; where we didn't participate in  
21 the first place. So, I guess, yes we do agree with  
22 the evaluation that the market is relatively steady  
23 for that.

24 I think we have some disagreement over what  
25 date is being used to see what the shipment levels

1 have been for domestic product in the crystal market.  
2 We're going to have to get that information clarified.  
3 Because Repano, pre-2006, it's unclear whether they're  
4 included or not.

5 But we think that in the market, Repano was  
6 not a major player in the granular market before the  
7 merger. So their departure from that and the  
8 inclusion of their data or their production of dry  
9 product in with General Chemical wouldn't have had a  
10 major effect on the overall data. The big effect has  
11 been the decline in solution.

12 COMMISSIONER WILLIAMSON: Okay, now you  
13 mentioned something about technical development. I  
14 was going to ask the question about your  
15 characterization for the market for dry sodium as a  
16 growing market.

17 MR. MCGRATH: For the dry product?

18 COMMISSIONER WILLIAMSON: Yes, I think we  
19 had some disagreement this morning.

20 MR. MCGRATH: Well, we felt that the market  
21 had expanded in terms of looking forward into the  
22 future. I don't think we're projecting that there's  
23 going to be a large increase in demand.

24 But it appeared from the data that we  
25 included in our brief and that we saw in the reports,

1 that there had been an increase in the overall demand  
2 for crystal product, for the granular product -- not a  
3 large increase, but it has increased from the  
4 beginning of the period to the end.

5 COMMISSIONER WILLIAMSON: Okay.

6 MR. MCGRATH: I know that we have a table  
7 here that shows that it declined somewhat. That was  
8 presented this morning. But even when you just narrow  
9 it down to the granular product, we're not talking  
10 about a major decline. The only thing that makes this  
11 look like a steep decline is the addition of the  
12 liquid product on that table. So we're looking at a  
13 fairly even demand profile.

14 COMMISSIONER WILLIAMSON: Okay, in which  
15 there is competition between the subject product and  
16 the domestic producer.

17 MR. MCGRATH: Yes, there is; there is  
18 competition between the subject imports and the  
19 domestic production for the granular product.

20 COMMISSIONER WILLIAMSON: Okay, thank you,  
21 my time is up.

22 VICE CHAIRMAN PEARSON: Commissioner  
23 Pinkert?

24 COMMISSIONER PINKERT: Thank you, Mr. Vice  
25 Chairman; I join my colleagues in thanking this panel

1 for taking the time to help us understand these issues  
2 today.

3 I want to follow-up on a line of questioning  
4 that Commissioner Williamson was just engaged in. I  
5 believe that earlier today, Ms. Katz, you testified  
6 that the problems of the domestic industry are  
7 entirely attributable to that contraction that you  
8 talked about in the customer base. So I'm trying to  
9 understand what you think was going on in mid-2005,  
10 when there was talk about consolidation in the  
11 domestic industry because of some problems.

12 Are you saying that there weren't any  
13 problems, or am I missing something of the problems  
14 that the domestic industry was facing?

15 MS. KATZ: The acquisition happened in July  
16 of 2006. PMC and Chemtura were having financial  
17 problems prior to that point in time. So them moving  
18 their production over to off seas, that was occurring  
19 prior to July of 2006 in both cases.

20 COMMISSIONER PINKERT: But I believe we had  
21 testimony that the discussions about consolidation  
22 either got started or became more intensive in mid-  
23 2005. Does that not tally with your understanding of  
24 the facts?

25 MS. KATZ: I'm not sure I follow.

1           MR. WORK: I don't believe we can comment,  
2           sir, about those discussions. If you're speaking of  
3           the discussions between General Chemical and Repano,  
4           we would not have any reason nor would we know when  
5           and how those developed.

6           COMMISSIONER PINKERT: Well, but then just  
7           to ask the question hypothetically, suppose that we  
8           are talking about the condition of the domestic  
9           industry in mid-2005. Is it your view that everything  
10          was hunky-dorey that time; or is it your view that  
11          there may have been problems related to loss of the  
12          customer base; or what exactly were you saying about  
13          that, Ms. Katz, earlier today?

14          MS. KATZ: Crompton, which was formerly the  
15          name of Chemtura, had published documents in September  
16          of 2004, that indicated that they were having  
17          financial difficulties in the rubber industry. So  
18          that's why I'm saying that I know prior to the  
19          acquisition, that there was a difficulty there with  
20          Chemtura, as well as PMC.

21          MR. MCGRATH: If I could, one of the  
22          problems is that Karen and Bill sell this product in  
23          the dry market. So what was happening in the solution  
24          market is not necessarily going to be in there, in  
25          their vision.

1           Our position is that the industry was having  
2           some problems in 2005/2006; that the problems that  
3           were there had to do with a declining -- it is my  
4           understanding, both companies at that time, prior to  
5           the merger, General and Repano both sold solution and  
6           dry product. But Repano was far more based in the  
7           solution, with some dry product; and General Chemical  
8           was the opposite, far more the dry product.

9           General had decided that one of the ways to  
10          address excess capacity in the market would be to  
11          combine their capacity, reduce output, and lower their  
12          overall unit costs for the two units combined.

13          It made sense to do that at a point when the  
14          Repano market for their solution product was declining  
15          anyway. Our position is that the presence of import  
16          competition had nothing to do with what was happening  
17          that affected the combined performance of both of  
18          those entities and the fact that they had excess  
19          capacity.

20          General, still as I understand it, sold some  
21          liquid product prior to 2006, didn't they? Therefore,  
22          they had an overall interest in what the total  
23          capacity was that was available out there to supply  
24          the market.

25          So I just want to emphasize, we are

1 acknowledging that according to the financial data  
2 submitted, there were some problems in the  
3 marketplace. They have tried to explain what the  
4 reason was for it.

5 Just looking at what the financial condition  
6 is now, it appears to have improved. I think they've  
7 addressed the situation by reducing total capacity,  
8 total production; and prices and volumes of imports  
9 have had no influence there.

10 COMMISSIONER PINKERT: Thank you, now how  
11 much of the decrease in apparent U.S. consumption over  
12 the period of investigation is attributable to the  
13 loss of the two customers that you testified to? I  
14 know earlier, you talked about the loss in U.S.  
15 production. But I'm wondering if you can perhaps  
16 extend that to a discussion of the loss on the U.S.  
17 consumption side.

18 MR. MCGRATH: I was just observing that when  
19 that question was put to Petitioners, I think this  
20 chart was up on the board at the time. It appears, I  
21 mean, it has broken down the consumption between the  
22 liquid and dry product.

23 I'm assuming that most of what's above the  
24 line is the liquid product. That would be the  
25 percentage. They've set it up on an index basis. It

1 looks like roughly half the market seemed to be  
2 declining rapidly down to eventually a quarter of the  
3 total market.

4 So just from looking at the chart that  
5 they've presented on an index basis, and assuming it  
6 includes both Repano and General Chemical for both dry  
7 and liquid, that would show you what the percentage  
8 is.

9 COMMISSIONER PINKERT: Thank you, now can  
10 you help us understand why U.S. shipments of flake  
11 increased over the POI?

12 MR. WORK: I think the short answer,  
13 Commissioner, was the acquisition of one major  
14 customer, as well as some generic growth by our  
15 existing customers. Maybe Karen can add to that. I'm  
16 sorry, we don't sell any flake. If you mean granular  
17 or solid form, that's the reason. If you mean just  
18 flake, we don't sell flake, sir.

19 COMMISSIONER PINKERT: Okay, but can you  
20 comment on flake shipments within the U.S. market  
21 during the POI?

22 MR. WORK: I cannot; can you Karen?

23 MS. KATZ: We're not familiar with that.

24 MR. WORK: Part of the challenge that we  
25 have here, sir, is we don't have perfect market where

1 we don't participate. Because we don't feel that  
2 that's a reasonable place for our product. So we  
3 don't go to the effort of quantifying the market, and  
4 of collecting a lot of market data.

5 MS. KATZ: I could add, too, we can't make  
6 flake. So it wouldn't be worth it for us to spend  
7 time to look at a flake customer, because we can't  
8 supply them flake anyway.

9 COMMISSIONER PINKERT: Okay, I understand  
10 that you don't make flake, and you can't make it. But  
11 how does flake enter into the competition in the  
12 market with respect to the other dry forms of the  
13 product?

14 MR. MCGRATH: Our understanding is that the  
15 flake form of the product is something that had been  
16 supplied by Chinese producers; probably at the -- I'm  
17 sorry, I'm talking about prilled now. I think  
18 probably we should leave this question to the post-  
19 conference. Because we really don't know about flake  
20 product in the market.

21 COMMISSIONER PINKERT: Again, this might be  
22 a question for the post-hearing; but if you can  
23 comment, perhaps publicly, on this issue. Why is  
24 there no imported flake from any country in the U.S.  
25 market, despite the fact that it constitutes an

1 significant share of U.S. shipments?

2 MR. MCGRATH: We will have to reserve that  
3 for the post-conference brief.

4 COMMISSIONER PINKERT: Thank you, now  
5 turning to the issue of the wet form, I call it syrup.  
6 But I guess that's not quite the right terminology.

7 Is there any significant evidence of lost  
8 sales of syrup to the imported product? I recognize  
9 that that's sort of flipping the question that one  
10 might ask the Petitioners. But perhaps on the  
11 Respondent's side, you could comment on whether or not  
12 you regard any of the evidence that might educed in  
13 favor of that proposition as being significant.

14 MR. WORK: No, sir, I couldn't identify any  
15 significant losses of solution to granular, aside from  
16 the one account that we are in agreement on, that was  
17 well before the period of investigation.

18 COMMISSIONER PINKERT: Thank you; thank you,  
19 Mr. Vice Chairman.

20 VICE CHAIRMAN PEARSON: Our pricing data  
21 would suggest that in many instances, BASF would seem  
22 to have had the ability to charge higher prices in the  
23 U.S. market, while still remaining competitive with  
24 general Chemical. Why haven't BASF prices been  
25 higher?

1 I understand there may be a post-hearing  
2 answer to that. But if there's anything that can be  
3 said now, I would be most interested. Just going to  
4 the public staff report, page 513: "Prices for German  
5 sodium nitrite were below those for U.S. produced  
6 sodium nitrite in 17 of 21 instances."

7 MR. WORK: Again, sir, not having the exact  
8 data, I think it goes again to the point that I made  
9 earlier about a domestic supplier versus an off-shore  
10 supplier, some 3,500 miles away, with several  
11 motorized vehicles and ships in between, longer lead  
12 times. Those are all items that a rational buyer  
13 takes into account when making a buying decision.

14 To me, and this would be a difficult metric  
15 to get to, total cost in use might be a better  
16 indicator of why a purchasing manager makes certain  
17 decisions.

18 I will tell you, sir, that we walk away from  
19 business. We do not accept every offer that's thrown  
20 at us. We try to understand our strengths, our  
21 weaknesses; and we are ready to lose business, and we  
22 do walk from business when we think that we don't have  
23 good data, when we think that we're being told a  
24 story. Frankly, I'm just glad that my boss isn't here  
25 when you question me on why my prices are higher.

1                   VICE CHAIRMAN PEARSON: Well, we're quite  
2 accustomed to seeing instances where imported product  
3 will be selling somewhat at a discount in relation to  
4 the time lag of ordering and when it arrives. That's  
5 a cost, and it's not unfair that that should be  
6 reflecting in pricing. Here, let's just say the price  
7 spread is a little larger than I might expect for that  
8 type of phenomenon.

9                   MR. WORK: Sir, it could also have to do  
10 with the size of the customers. You know, there is a  
11 range of decisions we will go through on how much  
12 material a customer might take; have they proven to be  
13 good partners in the past; what's our overall  
14 relationship with that customer, if it's a  
15 distributor. Those are all points that come into our  
16 pricing policy.

17                   MS. KATZ: Could I add something else that I  
18 don't has been said before? The only way that we sell  
19 material into the United States is through full ocean  
20 containers. So that's, you know, about 38,000 pounds.

21                   So for our customers, in addition to waiting  
22 eight to twelve weeks or maybe even longer for the  
23 material to show up, they have to carry inventory for  
24 that length of time, to make sure that they've got  
25 their production covered; or we work through

1 distributors, just like General Chemical, in order to  
2 supply smaller accounts. Because we only ship for  
3 ocean containers.

4 VICE CHAIRMAN PEARSON: Okay, so all of your  
5 customers will take at least one full container.  
6 That's a minimum shipment level.

7 MS. KATZ: That's a minimum shipment level.

8 VICE CHAIRMAN PEARSON: You don't have a  
9 U.S. facility where you're receiving containers, and  
10 then breaking them down and parceling out smaller  
11 lots?

12 MS. KATZ: No.

13 VICE CHAIRMAN PEARSON: Okay, and your  
14 thesis would be that some of the domestic sales would  
15 be one truckload, which would be --

16 MS. KATZ: And they can deliver it in a  
17 couple days.

18 VICE CHAIRMAN PEARSON: What did you say the  
19 container weight was?

20 MS. KATZ: Thirty-eight thousand pounds --  
21 we have to ship the containers a little less. A  
22 truckload is usually about 42,000 pounds. Our  
23 containers, we have to ship at about 38,000 pounds.  
24 Because when they come into the ocean port, they get  
25 put on a truck, and you have truck restriction weights

1 that you have to deal with, as well.

2 VICE CHAIRMAN PEARSON: Okay, so the size of  
3 the shipment that you are doing is very similar to the  
4 size of shipment that General Chemical does out of its  
5 plant.

6 MS. KATZ: It's slightly smaller.

7 VICE CHAIRMAN PEARSON: Right, and then they  
8 testified that the distributors would break shipments  
9 down and deliver smaller amounts to certain customers,  
10 based on whatever arrangements they have.

11 MS. KATZ: It's the same way we operate.

12 VICE CHAIRMAN PEARSON: Okay, well, in cases  
13 involving sophisticated suppliers from developed  
14 countries, it's not unusual that we see some mixed  
15 pattern of under-selling/over-selling. You know,  
16 we're not seeing quite that same pattern here. Mr.  
17 McGrath, I think you have seen the confidential  
18 report, and you have idea of what I'm noticing.

19 MR. MCGRATH: Yes, I have some explanations  
20 for it that I'm going to have to talk with our clients  
21 about to provide it to you in confidence. I cannot  
22 give you a public record explanation for the  
23 distinctions.

24 In some cases, I'm not so certain about that  
25 data being comparable. But that's not the entire

1 explanation. There will be instances of under-selling  
2 that there are reasons for, but I need to provide that  
3 in confidence.

4 VICE CHAIRMAN PEARSON: Okay, good, because  
5 what I'm really interested in, of course is, to go to  
6 the point that the domestic industry has made, that  
7 they see this record, including the pricing  
8 information, as supporting the argument that this is a  
9 traditional case of dumping, where you have a firm  
10 with a large plant running at capacity, moving some  
11 cost overseas, moving some product overseas at a price  
12 high enough to cover variable costs; thus, under U.S.  
13 law, using that unfair pricing technique to gain  
14 market share in the United States.

15 So they offer that explanation. I look at  
16 the data. I'm not persuaded that they're not right.  
17 So that's what I'm looking for.

18 MR. MCGRATH: I understand the theory. All  
19 I can say is, we'll have to respond to that in post-  
20 hearing submission.

21 VICE CHAIRMAN PEARSON: Okay, shifting  
22 gears, Ms. Katz, there was an earlier discussion that  
23 one of my fellow Commissioners was leading, and I  
24 wrote down this question.

25 Have you ever had duo supply customers tell

1 you that they want to ensure the continued existence  
2 of General Chemical so as not to be dependent only on  
3 imports; in other words, the reverse side of what was  
4 being asked before where you have customers indicate  
5 they really want another supplier in addition to  
6 General Chemical, which would be you. Have you seen  
7 that flipped around?

8 MS. KATZ: I am aware of cases where a  
9 customer ants to make sure that they can buy from  
10 General Chemical and BASF, because they want duo  
11 supply.

12 VICE CHAIRMAN PEARSON: They won't give you  
13 their full volume. They're holding part of their  
14 volume for General Chemical.

15 MS. KATZ: Yes, there have been instances  
16 where they want duo supply and they don't want just  
17 BASF. I'm not sure about somebody that just says, I  
18 want General Chemical, because they wouldn't tell us  
19 that.

20 VICE CHAIRMAN PEARSON: Okay, well, if you  
21 have anything you could put on the record for the  
22 post-hearing, that would be interesting.

23 Mr. McGrath, this is a question for you. In  
24 the event we look at a threat analysis here, what's  
25 your position regarding whether Germany should be

1 cumulated with China?

2 MR. MCGRATH: With respect to threat, it's  
3 certainly our position that the Chinese product does  
4 not compete in the same market with the German  
5 product.

6 The prill apparently does compete in the  
7 U.S. market for other dry product. As far as  
8 cumulation for threat purposes though, our position  
9 would be that the German product and the Chinese  
10 product, from what we know of the Chinese product, are  
11 not in competition in selling in the United States,  
12 and don't participate in the same market.

13 Whoever purchases that product is  
14 specifically looking for it for storage purposes, as  
15 opposed to the reason they might be purchasing the  
16 BASF product. So we would argue that they should not  
17 be looked at as being present in the same market and  
18 cumulated together.

19 VICE CHAIRMAN PEARSON: For the purposes of  
20 the post-hearing then, will you elaborate that  
21 thoroughly enough so that if we would decide to take  
22 those arguments into consideration, we would know  
23 precisely what they are?

24 MR. MCGRATH: We will do that.

25 VICE CHAIRMAN PEARSON: Okay, thank you;

1 Commissioner Okun?

2 COMMISSIONER OKUN: Thank you; let's see, I  
3 wanted to just go back and follow-up on again the  
4 competition in the marketplace between BASF and  
5 General Chemical, and maybe just have some further  
6 elaboration.

7 One of the things that struck me in Mr.  
8 Nelson's testimony in the brief and their exhibits is,  
9 you know, we don't always in cases have emails and  
10 other traffic indicating what customers are saying.  
11 So when I see it, I do find it, you know, helpful in  
12 helping me understand what the competition is like in  
13 the marketplace.

14 Yet, when I listen to Ms. Katz, it seems  
15 like it's one way. You know, it's only General  
16 Chemical being told that there's some other price in  
17 the marketplace, and your folks don't see it.

18 So I guess I'm struggling with that a little  
19 bit. Because it seems to me, or at least some of the  
20 evidence on the record would suggest, that BASF's  
21 prices are being used as a tactic.

22 Now Mr. McGrath, I think I heard you say,  
23 well, yes, it's a negotiating tactic if you're talking  
24 about liquid, because they could never use it. I'm  
25 not sure that I can discount that.

1           In other words, if it's possible and if it's  
2 out, and you're pointing to imports as an actual  
3 price, are you saying I should just discount any of  
4 that by saying these guys could never shift; and  
5 therefore, General Chemical should be saying, I don't  
6 have to look at BASF's prices, because we know they  
7 can't switch? Therefore, we can hold on our prices.  
8 I don't know if that's very artfully put. So I put  
9 that question on the liquid side. But then I want to  
10 go the granular side, as well.

11           MR. MCGRATH: On the liquid side, I don't  
12 think we're -- it doesn't happen. The customers don't  
13 say that.

14           Probably if you could summarize what we're  
15 saying about that allegation is they shouldn't listen  
16 to it as much as they apparently do. It is a  
17 negotiating tactic. They should be demanding, as we  
18 do, some verification, documentation about the ability  
19 of the customers, what their cost is in being able to  
20 take the dry product at a cheaper price from the  
21 imports and convert it into the liquid that they need,  
22 rather than buying that liquid at the price that's  
23 being offered by General.

24           We certainly can't say that people don't  
25 raise that as a negotiating tactic. Maybe they do.

1 Our position, just as Mr. Work has said, is that if a  
2 price is being thrown back in a negotiation where BASF  
3 is trying to sell dry product, if the price is being  
4 tossed back as what the customer wants to pay and we  
5 just don't think there's room for negotiation, BASF  
6 will walk away from it.

7 What we're saying is that in cases where  
8 General is trying to sell solution and their customer  
9 says BASF will sell the dry product to me for this  
10 amount, I'll take that and convert it, we don't think  
11 it's plausible that that particular negotiating tactic  
12 should be as effective as they claim that it is.

13 That's why we're not bringing up this whole  
14 issue of interchangeability really as a like product  
15 issue. It's more a question of competition and what  
16 is the competitive meeting point in the marketplace  
17 between the import and the domestic product. They are  
18 saying that the imported product meets their domestic  
19 liquid product head to head because customers cite it  
20 as being a competitive price. What we're saying is  
21 that we do compete with them for the sale of the dry  
22 product, where we're both trying to sell the dry  
23 product, but our liquid product doesn't compete with  
24 them or should not be competing as they say it  
25 competes. We have to take their word and I guess

1 you'll have to look at their e-mail traffic on whether  
2 or not that's a plausible claim.

3 COMMISSIONER OKUN: Another question, you  
4 may have responded in your brief but I just want to  
5 have a chance to hear it here. One of the things that  
6 Petitioners have pointed to is the improvement in the  
7 industry's performance in the interim period. They  
8 cite to that as evidence of the impact of the order.  
9 I wanted to get your response to that, to the  
10 improvements that we see there during that period and  
11 how to evaluate them.

12 MR. McGRATH: The Petitioner's claim that  
13 their financial improvement has been in response to  
14 the pendency of the antidumping petition I think is  
15 belied by the fact that the increase in improvement in  
16 the industry's performance occurred after the merger  
17 and before the filing of the petition.

18 The improvement was obviously underway, and  
19 I have to be careful what I say here but I'll be happy  
20 to discuss it more in the brief. The improvement was  
21 underway before the petition was filed. The  
22 improvement continued after the petition was filed  
23 when prices went up.

24 The improvement they were seeking was not so  
25 much stopping low-priced imports, it was eliminating

1 excess capacity from the U.S. market. They were able  
2 to accomplish that by closing down Repano and reducing  
3 the total amount that was produced in the market in  
4 the U.S.. Our position, it's not the petition that  
5 caused that improvement, the improvement was already  
6 underway by the second and third quarter of 2007. The  
7 petition was filed late in 2007. There's naturally  
8 going to be some first quarter improvement in 2008  
9 since the market's aware of that case pending, but the  
10 increase, the improvement was underway.

11 COMMISSIONER OKUN: That reminds me that I  
12 think I didn't have a chance to ask Petitioners  
13 whether, I believe they are advocating an extended  
14 period of investigation to include 2004.

15 Did you have a chance to respond to that  
16 yet?

17 MR. McGRATH: We haven't mentioned it here  
18 today. We think you should be looking at the normal  
19 period of investigation, 2005 to the present. I think  
20 2004 is an effort to simply capture an earlier year's  
21 period of production and sales of the solution product  
22 which our argument is not competitive with the imports  
23 anyway.

24 COMMISSIONER OKUN: And Mr. Cannon, since I  
25 didn't have a chance when you were up here, the one

1 part of your argument with respect to that, if you  
2 could just post-hearing, I think you raised that you  
3 thought the Commission had extended the period of  
4 investigation when the preliminary and the final were  
5 occurring in different calendar years. I don't think  
6 we've done that. I was going to talk to staff about  
7 that.

8 If you can just address again the period of  
9 investigation, what you think Commission precedent is  
10 to make sure I'm clear on what the argument is for  
11 post-hearing, I'd appreciate that.

12 There's one other demand question I'm not  
13 sure, Mr. Work, if you're in a position to answer.  
14 But we talked about, there was a lot of testimony  
15 about the demand for liquid moving off-shore with  
16 these customers. I wasn't sure, is that a phenomenon  
17 that's affecting Europe as well? Are they moving off-  
18 shore? Maybe there was some testimony about where  
19 they actually moved to. Are they moving to Asia? Do  
20 you know?

21 MR. WORK: I don't know. I would suspect  
22 it's very strongly a movement towards Asia and that  
23 Europe is impacted to some degree as well.

24 COMMISSIONER OKUN: I was just curious about  
25 whether there was shifting and where they were, which

1 is what it sounds like. That would be helpful.

2 With that I don't think I have any other  
3 questions. I do appreciate all the answers that  
4 you've given us. Thank you.

5 VICE CHAIRMAN PEARSON: Commissioner Lane?

6 COMMISSIONER LANE: I realize that you don't  
7 sell liquid product, but based on your knowledge of  
8 the industry, for equivalent amounts of sodium nitrite  
9 content is the price of liquid higher, lower or the  
10 same as dry?

11 MS. KATZ: It should be higher because you  
12 have extra effort involved in making the liquid.

13 COMMISSIONER LANE: And this is a question  
14 for General. I'd like to know if General agrees with  
15 that answer. Then you could do that post-hearing, and  
16 in your response please comment on Footnote 10 on page  
17 58 of the confidential pre-hearing report.

18 Thank you. That's all I have.

19 VICE CHAIRMAN PEARSON: Commissioner  
20 Williamson?

21 COMMISSIONER WILLIAMSON: Thank you, Mr.  
22 Chairman.

23 VICE CHAIRMAN PEARSON: That's Vice  
24 Chairman, but I'm not paying any attention.

25 COMMISSIONER WILLIAMSON: Thank you.

1 (Laughter).

2 COMMISSIONER WILLIAMSON: Mr. Work, I  
3 believe you mentioned in response to Commissioner  
4 Pinkert that U.S. imports of sodium nitrite increased  
5 due to your acquisition of a major customer. And I  
6 was wondering, has this customer previously purchased  
7 sodium nitrite? If so, from whom, and why did they  
8 switch? It may have to be post-hearing.

9 MR. WORK: First of all, I'd like to answer  
10 most of this after the hearing confidentially.

11 I do not know if they purchased nothing from  
12 us and then we acquired them completely, or if there  
13 was somewhat of a share shift. As to the reasons, I'd  
14 like to comment after the hearing, please.

15 COMMISSIONER WILLIAMSON: Okay. Thank you.

16 Mr. McGrath, I think you sort of indicated  
17 you don't really challenge the like product  
18 determination. I was wondering why you didn't, since  
19 you seem to say you're arguing so strong that these  
20 are two different products, and that mostly there's  
21 competition.

22 MR. McGRATH: I'd be happy to answer that.

23 We do challenge the interchangeability part  
24 of the like product analysis. Our position is that  
25 these are not interchangeable products.

1           However, with respect to the overall like  
2 product analysis, most of the other elements that  
3 you're looking at, common manufacturing facilities,  
4 perceptions of the common channels of distribution,  
5 perceptions of customers, except with respect to  
6 whether you can substitute one for the other and other  
7 elements of commonality in the marketplace.

8           We don't take issue with analyzing this as a  
9 single industry. What we're saying is that with  
10 respect to just the interchangeability question that's  
11 an important factor in looking at the tenuated  
12 competition and looking at causation. Our position is  
13 because these are not easily interchangeable, they are  
14 technically technologically interchangeable. Somebody  
15 can make that switch if they invest the right amount  
16 of money, have the right equipment.

17           But because there is that distance between  
18 them in the marketplace and because of the fact that  
19 the German product hasn't even participated in the  
20 solution in the marketplace, we're saying they aren't  
21 fully interchangeable. Even if they are considered  
22 like products.

23           Let me clarify one thing, too. I don't want  
24 to be accused of having said we never sold solution.  
25 We did attempt to sell solution in the market, and we

1 did sell some to a customer. I think we discussed  
2 during the preliminary investigation a small amount of  
3 it. We found it was not economical. That's how we  
4 know about that marketplace. It accounted for less  
5 than five percent of sales back in 2006. So we did  
6 try to do it but found we could not.

7 COMMISSIONER WILLIAMSON: Was it that it  
8 wasn't profitable or economical because you didn't  
9 have a large enough market? Or was there something  
10 technically that made it --

11 MR. McGRATH: It was basically the value  
12 added in being able, it wasn't even the size of the  
13 market that was the issue. Well, maybe Mr. Work could  
14 answer the question.

15 MR. WORK: That's correct. Even on the cost  
16 basis of taking our crystal and making it into  
17 solution at one particular customer, the economics  
18 were not there. It was not a significant issue of  
19 scale and had we continued down that path we would  
20 have grown into some efficient operation. That was  
21 not the case, sir.

22 COMMISSIONER WILLIAMSON: I'm still trying  
23 to figure out why, I assume if the demand were there  
24 you would make a profit, make a go at it?

25 MR. WORK: If I may I'd like to answer that

1 in the post-hearing brief because I think it takes us  
2 down a trail of intercompany transfer pricing and that  
3 kind of thing that I'm really uncomfortable discussing  
4 here.

5 COMMISSIONER WILLIAMSON: Okay, thank you.  
6 I would appreciate some clarification on that.

7 Could you elaborate on the role of  
8 distributors in your marketing compared to, is there  
9 any difference between the way you approach the use of  
10 a distributor than maybe General Chemical does? Given  
11 that all your product is imported.

12 MS. KATZ: We have distributor agreements  
13 with all of our major distributors. They're basically  
14 the same ones that General Chemical mentioned, Univar  
15 and Brenntag. They have 30 day price protection in  
16 their distributor agreements which means 30 days  
17 before I want to increase the price I have to let them  
18 know. The other thing is that every year at the  
19 beginning of the year in January we discuss with them  
20 some commitment of volume because I have to go back to  
21 Germany and let them know how much product I'm going  
22 to need here in the United States to make sure that I  
23 have my little share coming here to the United States  
24 to supply those distributors. So we come to an  
25 agreement.

1                   COMMISSIONER WILLIAMSON: May I ask if  
2 that's a binding agreement?

3                   MS. KATZ: It's put in writing and I monitor  
4 it on a monthly basis. If I don't see that they're  
5 fulfilling what they told me, we will question them on  
6 it.

7                   MR. McGRATH: It sounds like it's different  
8 from what we heard in the description this morning  
9 with respect to what General does. They have a price  
10 commitment good for a longer period of time and no  
11 minimum quantities. So there is a difference in how  
12 we approach them. But we approach them I think for  
13 the same purposes, to sell them full product that they  
14 intend to resell.

15                   COMMISSIONER WILLIAMSON: Do the roller  
16 distributors help you in terms of selling to smaller  
17 volume end users?

18                   MS. KATZ: I can address that. A lot of  
19 people use the internet and they go on there and they  
20 find out oh, BASF makes this product. They will call  
21 us and ask us, hey, I want to buy one bag of so and  
22 so. In the case of this particular product we get the  
23 inquiries through the internet, we get phone calls  
24 through our inside sales department, and we will  
25 explain to them that we only sell full ocean

1 containers and that's roughly 38,000 pounds. However,  
2 if you need a smaller quantity we have these  
3 distributors. We'll ask them exactly where they're  
4 located, we'll tell them what distributors we have in  
5 that state, we'll give them phone numbers so they can  
6 go ahead and call one of our distributors in order to  
7 purchase our product.

8 COMMISSIONER WILLIAMSON: Have you seen a  
9 change in the role of the distributors who are  
10 marketing this product? Do you see a trend changing  
11 the way things are going now?

12 MS. KATZ: No.

13 MR. McGRATH: I think as far as BASF is  
14 concerned their role has been constant, which is to  
15 take those full containers and then achieve whatever  
16 value added they can in supplying smaller lots.

17 COMMISSIONER WILLIAMSON: Thank you.

18 Mr. Chairman, I think I have no further  
19 questions.

20 VICE CHAIRMAN PEARSON: Commissioner  
21 Pinkert?

22 COMMISSIONER PINKERT: I just have a few  
23 questions. For Mr. McGrath, you talked a little bit  
24 about your view on cumulation for purposes of threat  
25 analysis. I'm wondering whether you've also looked at

1 volume and price trends and how they might relate to  
2 that issue.

3 MR. McGRATH: With respect to price trends,  
4 we've seen the trend going up which in the threat  
5 analysis should be an indication of absence of threat.  
6 We've seen prices go up across the board for domestic  
7 and imported product.

8 In terms of volume, we have focused on the  
9 dry side of the market. We see the volume having  
10 shown an increase.

11 Our sales have continued and increased  
12 through the first quarter of this year, even after the  
13 investigation was commenced. I think sales had  
14 increased and the market had continued to increase  
15 through the first quarter. We don't see there being,  
16 based on volume and price trends, being a threat of  
17 injury at all.

18 COMMISSIONER PINKERT: What I was  
19 specifically trying to get at is this question of  
20 whether to cumulate China and Germany for purposes of  
21 the analysis of threat. Whether you've looked at the  
22 volume and price trends to see whether they're  
23 different in the two countries.

24 MR. McGRATH: I haven't done that specific  
25 analysis for the volume trends. The pricing, as I

1 understand it, had, they had followed different  
2 trends, and then the Chinese product more or less  
3 dropped off the map.

4 But we will look at it and comment on it in  
5 the brief.

6 COMMISSIONER PINKERT: Thank you.

7 Also, are there any indications, and I  
8 realize that you're not here on behalf of the Chinese  
9 producers, but just to get your reaction to this. Are  
10 there any indications that Chinese sodium nitrite will  
11 have a greater U.S. presence in the U.S. market in the  
12 near future?

13 MR. McGRATH: We don't have any indication  
14 that they're likely to come in and seek to sell more  
15 product here in the near future at all. No.

16 COMMISSIONER PINKERT: Mr. Work, have you  
17 heard anything that might be relevant to that issue?

18 MR. WORK: I would agree with that response.  
19 I think I said in the hearing back in December that we  
20 very very rarely bump up against Chinese competition,  
21 and I don't believe it's increased in recent history  
22 nor do I have reason to believe that it will.

23 COMMISSIONER PINKERT: Thank you.

24 Ms. Katz, anything to add to that?

25 MS. KATZ: We don't run into Chinese. We

1 heard of Indian, that's it.

2 COMMISSIONER PINKERT: Thank you.

3 Thank you, Mr. Vice Chairman.

4 I'd like to thank the panel for their  
5 testimony today and I look forward to the post-hearing  
6 submissions.

7 VICE CHAIRMAN PEARSON: I have no further  
8 questions.

9 Are there any further questions from the  
10 dais?

11 (No response).

12 Okay.

13 Do members of the staff have questions for  
14 Respondent's panel?

15 MR. CORKRAN: Douglas Corkran, Office of  
16 Investigations.

17 Thank you Vice Chairman Pearson. The staff  
18 has no questions.

19 VICE CHAIRMAN PEARSON: Mr. Cannon, do  
20 Petitioners have any questions for this panel?

21 MR. CANNON: No, thank you.

22 VICE CHAIRMAN PEARSON: Well, then permit me  
23 to thank all panelists for their participation today.  
24 It pretty well kills the day, doesn't it? It's very  
25 interesting and helpful to us.

1 MR. McGRATH: It's been a pleasure.

2 VICE CHAIRMAN PEARSON: I'm not sure whether  
3 all people who come in front of us can say that, but I  
4 appreciate it.

5 You may be dismissed.

6 We have now the closing arguments. A time  
7 check here.

8 The Petitioners have 21 minutes left from  
9 their direct presentation and five for closing, or a  
10 total of 26. Respondents have 36 minutes left from  
11 their direct presentation and five for closing, so  
12 it's a total of 41.

13 That would be over an hour of closing. Mr.  
14 Cannon, is it your intention to use all of your time,  
15 or might you use somewhat less?

16 MR. CANNON: No, I will not use all of my  
17 time.

18 VICE CHAIRMAN PEARSON: Would you like  
19 separate time for rebuttal, or would you just like to  
20 wrap it all into one and go directly into closing  
21 commentary?

22 MR. CANNON: I'll just wrap it all into one,  
23 make a few remarks, and that will be fine for me.

24 VICE CHAIRMAN PEARSON: Okay. Why don't we  
25 go ahead and recess the panel and Mr. Cannon, you may

1       come forward.

2                   MR. CANNON: Can I have five minutes?

3                   VICE CHAIRMAN PEARSON: We'll give two,  
4       okay?

5                   MR. CANNON: Thank you.

6                   VICE CHAIRMAN PEARSON: The Chinese proverb,  
7       the heavens are high and the emperor is far away,  
8       which means we can do what we want, but I don't know  
9       that the emperor is quite that far away.

10                   (Whereupon, a brief recess was taken).

11                   VICE CHAIRMAN PEARSON: Mr. Cannon, I'm  
12       advised two minutes have expired.

13                   MR. CANNON: Our request was actually sort  
14       of in the vein of what I tell the clients when they  
15       ask for a memo and I give them 50 pages and they  
16       really wanted two. If you give me more time, I can  
17       get it down to two. So in my two minutes I was hoping  
18       to work down my 26.

19                   I want to make a few comments about first  
20       the big gap in prices because I think there's a lot of  
21       attention to that today.

22                   One factor is you heard testimony, BASF is  
23       selling largely through the two big distributors,  
24       Univar and Brenntag. Directly through those  
25       distributors. And is letting those distributors split

1 up the quantities to small users.

2           The domestic producers are also doing that  
3 but they are, because they're local, serving more of a  
4 variety of customers. You appreciate that when you  
5 ask for the data and the price section, you're asking  
6 quarterly quantities and values so you're getting our  
7 average price across many different customers of many  
8 sizes.

9           So head to head, we have these lost sales  
10 examples, our price is very close to the BASF price.  
11 But in other accounts, perhaps they haven't found  
12 those accounts yet, we're still able to get a higher  
13 price.

14           Also BASF has circulated through the market  
15 a price sheet, a list price so to speak, and they  
16 offer this price to anyone, 35 cents plus five  
17 percent. Any taker, any size, anybody can get this  
18 price.

19           Imagine the impact on our market. We have  
20 two domestic producers. They're selling at, look at  
21 the price data, 40, 50 cents a pound. In comes a  
22 source of import, puts out a price list, and it says  
23 35 cents plus five percent. Anybody, any day, any  
24 time. What's going to happen? We're going to lose  
25 sales volume. Customers are going to migrate to that

1 product. In fact you heard them testify that they  
2 never hear about our prices. We hear about their  
3 prices all the time. Maybe they don't hear about our  
4 prices because they're higher so the customers simply  
5 use that to leverage a lower price from the domestic  
6 industry. I think that's what's happened and that's  
7 the linkage between this large gap between prices and  
8 what you're seeing in the volume.

9           What you're seeing in the volume is clear.  
10 Domestic volume is going down. Import volume is going  
11 up. The margin of underselling is substantial. We  
12 talked a lot about dry and solution. In the end, it's  
13 really kind of an attempt to sort of slice and dice.  
14 The respondents want you to take the market, all  
15 sodium nitrite, nor solution, nor flake, okay. If you  
16 focus only on the dry market they have a very large  
17 market share in the dry market. Their volumes are  
18 substantial.

19           If you look at product one, which is the  
20 heartland here. We're talking technical grade  
21 granular. That's the basic product. The biggest  
22 volume product for us. Look at their volume versus  
23 General Chemical in the staff report. Quarter by  
24 quarter. That shows you their market share on head to  
25 head competition. They are tremendously large in that

1 product and that is the most important product to us.

2 Don't lose sight by thinking about well,  
3 we've got solution, we've got flake, and they want to  
4 carve all this off. We are competing with them  
5 directly, head to head, for product one, for product  
6 two, for the dry product.

7 Now they said they want to segment the  
8 market. This is not a case like the difference  
9 between a white table clothed restaurant and a Denny's  
10 where they're selling salmon, right? The imports of  
11 salmon were sold in Denny's. The domestics were  
12 selling in the white table clothed restaurant, so the  
13 Commission found no causation.

14 This is not like roses. Domestic producers  
15 are not selling only to florists and the imports are  
16 only in grocery stores. That's not what's happening.  
17 They're selling to Univar and Brenntag the same  
18 product. Product one, product two. They're  
19 identical. There is no debate about that.

20 So what it really amounts to is  
21 misdirection. They want you to look at solution. You  
22 don't need to look at solution. Look at the dry  
23 market. What will you see? Shipments are declining.  
24 Domestic shipments are declining, imports are  
25 increasing. Import market share is increasing. These

1 are your statutory factors, right? Domestic shipments  
2 are declining, therefore what's happening? Domestic  
3 output is declining. What's happening? We're under-  
4 using our capacity. They are linked in virtually  
5 every factor.

6 Now we talked this morning about  
7 profitability. That's virtually the only factor  
8 that's not linked. Profitability improved, but it  
9 improved because Repano and General Chemical got to  
10 the point where neither one could stand alone.

11 So you heard the testimony. Repano  
12 approached General Chemical and they said we'd like to  
13 buy you. The companies start negotiating, they look  
14 at the math, and they changed positions. General said  
15 well gee, we ought to be buying Repano because we can  
16 get your customer list, our process is more efficient,  
17 we have lower energy costs. We ought to put that  
18 volume in our plant, not your plant. So that's what  
19 they did. But that was a reaction to the market. The  
20 market declining. And it was a reaction to what was  
21 admitted, what was conceded. But it's also what  
22 happened outside of your period, as if you should  
23 ignore it, right?

24 A witness sat here for BASF and they said  
25 we're talking about the same customer. Yes. We did

1 convert an important solution customer. It was  
2 Repano's customer and we took that business for dry,  
3 but that was before the period. It was in 2002 when  
4 it happened. With a substantial customer. It is one  
5 of the significant events that drove Repano to the  
6 position where it couldn't load its capacity any more.  
7 That is a material event that led to what happened in  
8 the market.

9 For that reason I think you can conclude,  
10 based on the testimony that you heard from BASF, that  
11 imports at a minimum contributed to the condition of  
12 the industry.

13 I want to just step back sort of  
14 analytically from that. A lot of what happened in  
15 this case is due to demand. Demand is declining. So  
16 both companies are in a tough situation. Demand is  
17 declining and they've got a lot of capacity.

18 In fact if you look in the staff report and  
19 you look at page 35, see the domestic capacity in 2005  
20 and 2006. You can compare that with page 77, BASF's  
21 capacity and their utilization. You can see the  
22 relative position of these two companies. Three  
23 companies. Right? You have three companies. You  
24 have this enormous company in Europe, BASF, and look  
25 at their capacity number and look at how much they're

1 using of their capacity.

2 Imagine the health of this company with that  
3 type of performance.

4 Compare that to these two domestic  
5 producers. Look at their capacity and what they're  
6 confronting. They simply do not have enough sales  
7 volume to fill their capacity. So indeed they are in  
8 a tough position. They are in a hard spot, a spot  
9 that none of us want to be in. And had they not  
10 merged, I would have two clients and the losses would  
11 be a lot deeper, or perhaps one of them would be out  
12 of business by now and we would be sitting here and  
13 there wouldn't be any of this argument about well,  
14 profits went up, so gee. What am I missing? What's  
15 the disconnect?

16 The reason is that if I had two clients and  
17 they were both deeply losing money, then I think it  
18 would be so clear what's happened here in this case.

19 But in fact what they did is what any small  
20 businessman would do. They tried to improve their  
21 position, combine those two businesses. As I said,  
22 Repano came to General Chemical and said can we buy  
23 you? What happened is they consolidated.

24 So in 2007 you see the capacity level. It  
25 is an enormous amount of capacity that has left this

1 industry. That alone, just the loss of productive  
2 capacity in America, the loss of those assets. That  
3 alone is a statutory factor. You don't often see a  
4 permanent closure of capacity in your cases that  
5 amounts to half or more of an industry, and that's  
6 what happened.

7 Then in 2007, having done that, having laid  
8 those people off, having shut down that factory, they  
9 tried to make a profit by selling at the price, the  
10 best, the highest price they could get, and what  
11 happened? The imports continued. The imports in this  
12 case are inexorable. They are persistent and they are  
13 persistently way below the domestic price. And year  
14 after year they increase. Every year.

15 So it is quite obvious what's going to  
16 happen. to the managers of this business then, they  
17 look at the situation. They're in a very difficult  
18 position. Any return they're earning in 2007 doesn't  
19 justify capital investment in this industry. It is  
20 simply not adequate to keep going.

21 Now you get to 2007, the end, we file the  
22 dumping case, what happens? In 2008 the imports slow  
23 down. They still increase, but they slow down.

24 You probably know the Commerce Department  
25 rule. If the import, 15 percent increase, they'll be

1 hit with critical circumstances, so they only  
2 increased 13 percent. But you know, they'd been  
3 increasing 35 percent a years, so 13 percent is pretty  
4 good. So the domestics get some relief in the first  
5 quarter. In addition, counting on the case, confident  
6 that this is a case with merit, that you should vote  
7 in the affirmative, confident that's what's going to  
8 happen, they increased production in the first quarter  
9 of 2008. They want to be ready.

10 When those customers come back, when BASF  
11 put out their price release and said we're increasing  
12 our prices 50 cents, 50 cents a pound they increased  
13 their price. They wanted to be ready to fill those  
14 orders, so they built inventory. When you build that  
15 inventory you spread your fixed costs, you lower your  
16 costs, and for the first time in three years you see  
17 almost a reasonable rate of return in the first  
18 quarter of 2008.

19 Ask yourself what's going to happen if you  
20 don't give them. That 50 cent a pound increase that  
21 BASF put in disappears. We go back to 35 cents plus  
22 five percent every day all across America. Imports  
23 keep increasing, and the one plant that's left out of  
24 these two businesses will not survive. Thank you.

25 VICE CHAIRMAN PEARSON: Thank you, Mr.

1 Canon.

2 Mr. McGrath?

3 And we may give extra points for not using  
4 all those 41 minutes in your case as well.

5 MR. McGRATH: I promise you I will not use  
6 all of the time allotted. I don't even remember how  
7 much it was that I have left.

8 Thank you very much for having us here and  
9 allowing us to testify today.

10 This is an unusual case and it is somewhat  
11 different from what you're used to seeing. You seldom  
12 have somebody that is pointing so vociferously at a  
13 product distinction without also arguing that there's  
14 a like product argument involved, but that's what we  
15 have. I think the evidence that's been educed and  
16 been presented to you really does support that  
17 differential analysis to take a look at what the  
18 impact has been.

19 I agree with a number of the questions here  
20 today concerning how a profile of some of the key  
21 elements of the case don't seem to match what you  
22 normally see as being injurious imports. And that's  
23 because they are not.

24 The imports that have been coming in as has  
25 been testified by both sides, do compete in the dry

1 market. The only way that an argument can be made  
2 that they compete in the solution market is the claim  
3 that we tried to refute that the price that's offered  
4 for the imported German product as cited by customers  
5 in trying to get lower prices out of General for the  
6 solution product.

7 But there can be no disagreement about the  
8 fact that the solution market in the United States has  
9 declined significantly, that the demand for solution  
10 in the United States has declined, that that was  
11 underway before the period of investigation, and that  
12 a consolidation of the two remaining producers  
13 addressed that issue. It reduced capacity both for  
14 the dry but also eliminated a lot of the excess  
15 capacity that existed for the solution which is not  
16 supplied by imports.

17 That's the reason why you had a poor  
18 performance according to the indicators in the staff  
19 report for the combined industry that seemed to  
20 improve throughout this period, and it's a very  
21 unusual situation to see that a big portion of the  
22 market was combined out of existence and the industry  
23 performance indicators improved and prices increased  
24 and the size of the market for the remaining portion,  
25 the dry products, stayed fairly stable or increased,

1 depending on which of the data sources we end up  
2 agreeing on here when we get that sorted out with the  
3 staff.

4 But there were a few points that I did want  
5 to offer in rebuttal to some of the testimony this  
6 morning.

7 One of the points that was made was that  
8 this merger that took place between Repano and General  
9 Chemical was I think we just heard it again, it was a  
10 situation where a producer reached out to the other  
11 producer to try to resolve the problem they had of  
12 access capacity by merging, and then the difficult  
13 decision was made to lay people off and close  
14 facilities and reduce domestic productive capability.

15 I think it's all presented in a way that is  
16 intended to strongly tie that action or strongly imply  
17 that that action was directly attributable to the  
18 presence of imports in the market when every  
19 indication seems to be that that isn't the case, that  
20 those facilities had to close and people ended up  
21 losing their jobs because downstream purchasers moved  
22 off shore and people lost jobs at those facilities as  
23 well. None of this had anything to do with the  
24 imported product upstream. It had to do with the  
25 changes in the technology and the production

1 facilities and capacity of customers who were going to  
2 buy those products. That's happened in some cases  
3 before, and usually when you see this in some market,  
4 you're seeing a situation where there isn't quite the  
5 distinction between solution and dry product that  
6 you're able to see here.

7           You're seeing a contracting market with  
8 injurious imports being there in that contracting  
9 market, competing with the domestics. By their very  
10 nature, they're present in a market that is taking up  
11 more market share of a contracting market, and your  
12 response to that is generally to look at that and say  
13 this is injurious. Even if their market volumes  
14 remain somewhat stable, or even if their prices remain  
15 stable.

16           In this case you can draw a pretty clear  
17 line as to why a certain portion of the industry went  
18 out of business and what the reduction was in the  
19 overall capacity in the United States. So we're not  
20 trying to throw any misdirection at you. As a matter  
21 of fact, contrary to what Mr. Canon just said, the  
22 market share in the United States for imports, the  
23 market share of the dry product in the United States  
24 is higher than what it would be for the combined  
25 product, and we don't deny that. But we do deny that

1 it's having any injurious impact as evidenced by the  
2 improvement in the financial performance and the  
3 continuing increase in prices that everybody is  
4 passing along that reflect increased costs.

5           So I disagree that this is a situation where  
6 you should be looking at the closing of a plant as  
7 somehow being tied into imports, and that being part  
8 of your injury analysis. I think you properly defined  
9 that in the previous decision as being due to other  
10 factors, not due to imports.

11           Another point, and I just wanted to  
12 emphasize this because our witnesses did talk about  
13 the evaluation of the cost of doing the conversion. I  
14 don't think I can stress enough that an allegation  
15 that a customer is using your quotation for a  
16 different product to negotiate a lower price from a  
17 competitor, has to be a plausible and a credible kind  
18 of a negotiating tactic in order for it to be taken  
19 into account.

20           I think that really needs to be emphasized  
21 here because we heard from Mr. Nelson this morning  
22 that they did a back of the envelope calculation as to  
23 what it's going to cost for a customer to be able to  
24 do conversion of dry product into liquid so that they  
25 knew what they were dealing with when they negotiated

1 with that customer to supply a price for liquid  
2 product.

3 Then almost in the same breath he said that  
4 most or all of the customers for solution will mention  
5 the price that's being offered by BASF for the dry  
6 product. How can he do a back of the envelope  
7 calculation for that conversion when every single  
8 customer is raising that, and how can you say you're  
9 taking it seriously if it's just a back of the  
10 envelope calculation?

11 So there is a definite split between these  
12 two types of products here, and there is attenuated  
13 competition.

14 I think I would like to conclude by saying  
15 that the pricing in this marketplace has shown a  
16 definite upward movement. Price increases that have  
17 taken place as we will show in our submissions have  
18 covered costs, have resulted in a profitable business.  
19 They have not been injurious to the Petitioners, nor  
20 have they been presented in a head to head competitive  
21 fashion which has caused them to reduce prices.

22 As I said at the outset, all the indicators  
23 -- operating income, net income, cash flow, unit cost,  
24 they've all shown considerable improvement in this  
25 market.

1           The Petitioners have said don't reward BASF  
2           for its bad behavior in the market. I could only say  
3           that it would be unfortunate if the Commission were  
4           put into a position of in effect rewarding a single  
5           producer for its tenacious effort to try to take  
6           advantage of the antidumping laws in order to impose  
7           prices that will create a monopoly because that is in  
8           fact what is likely to happen. A large producer like  
9           BASF is most likely to simply not remain involved in  
10          that business and eventually customers will do what  
11          customers do in such a situation, they'll find an  
12          alternative source of supply.

13           The facts of this case and in the record,  
14          and as we will add in our post-hearing submission  
15          indicate that there is not an indication of a causal  
16          connection between the imports and the problems that  
17          the Petitioner claims they have.

18           At best there was a simultaneous presence in  
19          the marketplace and this is not an injurious presence.  
20          The problems that had been experienced have been  
21          addressed.

22           I ask you to rule in the negative. Thank  
23          you very much.

24           VICE CHAIRMAN PEARSON: Thank you, Mr.  
25          McGrath.

1                   In accordance with Title 7 of the Tariff Act  
2 of 130, posthearing briefs, statements responsive to  
3 questions and requests of the Commission and  
4 corrections to the transcript must be filed by July  
5 10, 2008; closing of the record and final release of  
6 data to parties, August 4th; final comments on August  
7 6th. This hearing is adjourned.

8                   (Whereupon, at 3:27 p.m., the hearing in the  
9 above-entitled matter was concluded.)

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**CERTIFICATION OF TRANSCRIPTION**

**TITLE:** Sodium Nitrite from China & Germany

**INVESTIGATION NOS.:** 701-TA-453 & 731-TA-1136-1137 (Final)

**HEARING DATE:** July 2, 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:** July 2, 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 E. 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 Del Pino

Signature of Court Reporter