

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:) Investigation Nos.:
1-Hydroxyethylidene-1, 1-Diphosphonic Acid from China) 701-TA-558 and 731-TA-1316 (FINAL)

Pages: 1 - 145
Place: Washington, D.C.
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UNITED STATES OF AMERICA
BEFORE THE
INTERNATIONAL TRADE COMMISSION

IN THE MATTER OF:) Investigation Nos.:
1-HYDROXYETHYLIDENE-1, 1-DIPHOSPHONIC) 701-TA-558
ACID FROM CHINA) 731-TA-1316 (FINAL)

Main Hearing Room (Room 101)
U.S. International Trade
Commission
500 E Street, SW
Washington, DC
Thursday, March 23, 2017

The meeting commenced pursuant to notice at 9:38
a.m., before the Commissioners of the United States
International Trade Commission, the Honorable Vice Chairman
David S. Johanson, presiding.

1 APPEARANCES:

2 On behalf of the International Trade Commission:

3 Commissioners:

4 Vice Chairman David S. Johanson (presiding)

5 Commissioner Irving A. Williamson

6 Commissioner Meredith M. Broadbent

7 Commissioner F. Scott Kieff

8

9

10

11 Staff:

12 William Bishop, Supervisory Hearings and Information

13 Officer

14 Sharon Bellamy, Records Management Specialist

15

16 Calvin Chang, Investigator

17 Raymond Cantrell, International Trade Analyst

18 Aimee Larsen, Economist

19 David Boyland, Accountant/Auditor

20 Brian Soiset, Attorney/Advisor

21 Elizabeth Haines, Supervisory Investigator

22

23

24

25

1 APPEARANCES:

2 Opening Remarks:

3 Petitioners (Jeffrey Levin, Levin Trade Law, P.C.)

4 Respondents (Matthew T. McGrath, Barnes, Richardson &
5 Colburn, LLP)

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

8 Levin Trade Law P.C.

9 Bethesda, MD

10 on behalf of

11 Compass Chemical International LLC ("Compass Chemical")

12 Daniel McCaul, Chief Executive Officer, Compass
13 Chemical

14 Mark Allen, Plant Manager, Compass Chemical

15 Cara Groden, Economist, Economic Consulting Services,
16 LLC

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

19 Barnes, Richardson & Colburn, LLP

20 Washington, DC

21 on behalf of

22 Shandong Taihe Water Treatment Co., Ltd.

23 Joanna Cheng, Regional Sales Manager, Shandong Taihe
24 Water Treatment Co., Ltd.

25 Matthew T. McGrath - Of Counsel

1 Rebuttal/Closing Remarks:

2 Petitioner (Jeffrey Levin, Levin Trade Law, P.C.)

3 Respondent (Matthew T. McGrath, Barnes, Richardson &
4 Colburn, LLP)

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1 P R O C E E D I N G S

2 MR. BISHOP: Will the room please come to order.

3 VICE CHAIRMAN JOHANSON: Good morning on behalf of
4 the U.S. International Trade Commission, I welcome you to
5 this hearing on investigation number 701-TA-558 and
6 731-TA-1316 (Final) involving 1-Hydroxyethylidene-1
7 1-Diphosphonic Acid from China.

8 The purpose of these investigations is to
9 determine whether an industry in the United States is
10 materially injured or threatened with material injury, or
11 the establishment of an industry in the United States is
12 materially retarded by reason of imports of
13 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from China.

14 Schedules setting forth the presentation of this
15 hearing, notices of investigation, and transcript order
16 forms are available at the public distribution table. All
17 prepared testimony should be given to the Secretary. Please
18 do not place testimony directly on the public distribution
19 table. All witnesses must be sworn in by the Secretary
20 before presenting testimony. I understand that parties are
21 aware of the time allocations. Any questions regarding the
22 time allocations should directed to the Secretary.

23 Speakers are reminded not to refer in the
24 remarks or answers to questions to business proprietary
25 information. Please speak clearly into the microphones and

1 state your name for the record for the benefit of the court
2 reporter.

3 If you will be submitting documents that contain
4 information you wish classified as business confidential,
5 your requests should comply with the commission Rule 201.6.

6 Mr. Secretary, are there any preliminary
7 matters?

8 MR. BISHOP: Mr. Chairman, there are no
9 preliminary matters.

10 VICE CHAIRMAN JOHANSON: Very well, let's begin
11 with opening remarks.

12 MR. BISHOP: Opening remarks on behalf of
13 Petitioner will be given by Jeffrey Levin of Levin Trade
14 Law.

15 OPENING REMARKS OF JEFFREY LEVIN

16 MR. LEVIN: Good morning, Mr. Chairman,
17 Commissioners. My name is Jeffrey Levin. I'm with Levin
18 Trade Law. I have the privilege of representing the
19 Petitioner in these investigations, Compass Chemical
20 International, the sole U.S. manufacturer of
21 1-Hydroxyethylidene-1, 1 Diphosphonic Acid, which thankfully
22 is referred to in the industry and in the market by the
23 acronym HEDP.

24 I am honored to be joined today by Compass
25 Chemical's CEO Danny McCaul and the company's plant manager

1 Mark Allen. These gentlemen know, as well as perhaps anyone
2 in this country, the product, the manufacturing process, and
3 the market. And they know all too well what is happening to
4 this industry, their company, at the hands of cheaply
5 priced, directly competitive imports from China.

6 During the period of investigation, U.S. imports
7 of HEDP from China have substantially increased in volume
8 and have captured a significant share of the U.S. market at
9 the expense of the domestic industry. Since HEDP from China
10 is fully interchangeable with domestically manufactured
11 HEDP, with competition among the several sources
12 predominantly rooted in price, there is every reason to
13 believe that cheaply priced and unfairly traded subject
14 imports will continue to increase at a rapid pace in the
15 absence of pricing discipline.

16 Indeed, because of significant underselling by
17 subject imports, Compass Chemical confronts inexorable
18 downward price impressions and has lost a substantial volume
19 of sales, resulting in significant declines in the
20 industry's trade and financial indicia.

21 Moreover and perhaps more ominously, spurred by
22 the enormous and expanding production capacity of the
23 Chinese HEDP industry, these unfair trade practices present
24 a fundamental obstacle to the domestic industry's ability to
25 recover its competitive footing.

1 We believe that the evidence of record will
2 illustrate that the volume of subject imports is
3 significant, that subject imports have had and continue to
4 have a pronounced adverse impact on the U.S. prices of the
5 product, and that trade -- and that the trade and financial
6 posture of this industry is being and will be severely
7 undermined by the rising tide of cheaply priced, directly
8 competitive, completely interchangeable, and as we now know
9 from the Commerce Department's final determination
10 announced Tuesday, wildly unfairly traded imports.

11 Furthermore, we respectfully submit that the
12 presence of nonsubject imports in the U.S. market during the
13 period of investigation does not mitigate, let alone negate,
14 the impact of dump and subsidized Chinese imports.

15 On behalf of Compass Chemical, we respectfully
16 submit that the evidence of record will demonstrate that the
17 domestic industry is suffering material injury by reason of
18 unfairly traded imports from China and is threatened with
19 further and continuing material injury by reason of these
20 imports. Thank you.

21 MR. BISHOP: Opening remarks on behalf of
22 Respondent will be given by Matthew T. McGrath of Barnes,
23 Richardson & Colburn.

24 OPENING REMARKS OF MATTHEW T. MCGRATH

25 MR. MCGRATH: Good morning, Mr. Chairman,

1 members of the Commission. I'm Matt McGrath, Barnes,
2 Richardson & Colburn, appearing today on behalf of Tyco,
3 Incorporated of Cherry Hill, New Jersey. They are the
4 importer and subsidiary of its -- and I'm also appearing on
5 behalf of the parent company Shandong Taihe Water Treatment
6 Technologies of Zaozhuang, China.

7 We submit that the issue before the Commission
8 today is relatively straightforward. It's one of lack of
9 causation. There are three main points, but several other
10 subsidiary points that we'll talk about through the day.

11 First, it's important to note that the
12 Petitioner does not manufacture only HEDP. That's one of a
13 group of phosphonate chemicals which by its own admission is
14 a supporting player in its portfolio. So I just want to be
15 clear at the outset, we're not talking about the last gasp
16 of one -- a company industry. Basically, we're looking at
17 a supporting player of a producer of phosphonate chemicals.

18 Second, because it has other production
19 priorities, the Petitioner here has not moved forward to
20 enhance its own manufacture of HEDP by implementing the kind
21 of technology that Taihe and Chinese manufacturers have
22 implemented and utilized, continuous reaction production
23 processes using lower cost inputs that result in higher
24 value byproducts which is a very important part of Taihe's
25 production.

1 They continue to use obsolete technology, which
2 yields a low value byproduct, which increases their cost of
3 goods sold, thus increasing their cogs to net sales ratio, a
4 factor that is often looked at by the Commission. This can
5 only damage their bottom line. That's their decision. And
6 that's not caused by low cost imports.

7 Third, there's no doubt that nonsubject imports
8 had a significant and an increasing impact on the U.S.
9 market during the POI. Indian HEDP, which was once a target
10 of Compass concerns, there was a previous anti-dumping
11 order, has been set aside by them for now because they
12 prefer to focus on China. India's supply to the U.S. is
13 increased much more rapidly than Chinese, and its pricing
14 has become much more challenging to Compass than China's.

15 As India rises, Compass' profitability falls.
16 In the meantime, China's production has focused on its
17 domestic sales and other third country demand and their U.S.
18 sales have remained flat. India is clearly the cause of any
19 damage to Compass bottom line, not Chinese sales.

20 We look forward to presenting testimony in these
21 issues. And we submit that there should be a negative
22 decision in this case. Thank you.

23 MR. BISHOP: Would the panel in support of the
24 imposition of anti-dumping and countervailing duty orders
25 please come forward and be seated? Mr. Chairman, all

1 witnesses on this panel have been sworn in.

2 MR. LEVIN: Good morning, again, Mr. Chairman,
3 Commissioners, we'd like to begin our presentation this
4 morning with Compass Chemical's plant manager Mr. Mark
5 Allen. Mark?

6 STATEMENT OF MARK ALLEN

7 MR. ALLEN: Thank you, Jeff and good morning
8 Commissioners. My name is Mark Allen and I am the plant
9 manager for Compass Chemical. I have Bachelor of Science
10 degrees in Chemistry and Chemical Engineering from Clemson
11 University and I've been with Compass Chemical since 2009.

12 Prior to my employment with Compass, I was
13 employed by the Dow Chemical Company from 1988 to 2005 and
14 Velsicol Chemical from 2005 to 2009. Altogether, I've been
15 in the chemical industry for about 28 years.

16 As a plant manager of Compass Chemical, I am
17 responsible for the daily operations of the HEDP production
18 plant, including the methods of production and sourcing of
19 raw material inputs. As part of my responsibilities, I
20 track and record input units, production cycle times, energy
21 requirements, and the like. I'm very familiar with the
22 production of HEDP as defined in the petition and this
23 investigation, as well as the production of other phosphate
24 -- phosphonate products including those produced by Compass
25 Chemical.

1 I would like to begin this morning by describing
2 what HEDP is, how it's produced, and how it is used. HEDP
3 belongs to a class of chemicals known as phosphonates, which
4 are added to water to increase the solubility of certain
5 ions and to inhibit the precipitation of certain mineral
6 compounds. It is the only phosphonate that combines these
7 critical functional properties. First, it can sequester
8 heavy metal ions that color water supplies or heavy metals
9 that interfere with the cleaning function of laundry soap or
10 body soap.

11 Second, they connect as a scale inhibiting agent
12 to prevent scale formation in commercial heating and cooling
13 systems such as steam boilers, air conditioners, and cooling
14 towers.

15 And third, it can prevent the breakdown of
16 oxidizing agents such as peroxide bleach. It is a
17 well-defined chemical product and it is assigned a CAJS,
18 Chemical Ax Jack Service registry number of 2809²¹⁴.

19 HEDP is an odorless liquid and is colorless or
20 pale yellow in appearance. It is generally produced and
21 sold as a 60 percent nominal aqueous solution, meaning that
22 HEDP can constitute 60 percent of the final product weight,
23 the balance being water.

24 Based on my knowledge of the production
25 processes for HEDP and information from the market, it is my

1 understanding that 60 percent nominal aqueous solutions of
2 HEDP also accounts for the vast majority of imports of HEDP
3 from China.

4 The applications for HEDP include industrial
5 water treatment, specifically to treat cooling water, which
6 is by far the biggest end use of the product. HEDP is used
7 as an anti-scalant in reverse osmosis desalination processes
8 which are and have been a growing end use application,
9 particularly as raw water quality deteriorates and demand
10 for clean drinking water increases in the U.S. and around
11 the globe.

12 It is used for municipal water treatment to
13 control red water, which indicates the presence of iron or
14 black water, which indicates the presence of manganese. And
15 it has a limited but important role in the alkaline peroxide
16 bleaching of textiles, which has a much larger end use here
17 in the United -- which was a much larger end use here in
18 the United States before much of the textile manufacturing
19 industry moved abroad.

20 Excuse me. There are generally two commercial
21 methods for producing HEDP. One method involves reacting
22 phosphorus trichloride or PCL3 with acetic acid which then
23 produces hydrochloric acid as a byproduct and may also
24 produce small volumes of acetyl chloride.

25 The second method involves reacting phosphorus

1 acid with acidic and hydride, which produces acetic acid as
2 a byproduct. The balance chemical equations for both
3 methods of manufacturer were detailed in our petition. We
4 believe that most if not all Chinese producers of HEDP
5 employ the first production method, that is production that
6 begins with phosphorus trichloride.

7 Compass Chemical uses a second production method
8 described above, that is production that begins with
9 phosphorous acid and which results in acetic acid as a
10 byproduct.

11 Prior to the Compass ownership of the Smyrna
12 facility, the company began production of HEDP in the 1980s
13 using PCL3 to make phosphorous acid and reacting phosphorous
14 acid with acidic and hydride. Towards the end of 2006, the
15 company reevaluated whether or not it should use PCL3 rather
16 than the phosphorous acid and concluded that it would be
17 advantageous from a cost of production view to switch its
18 production methodology away from the PCL3, route since that
19 raw material was more expensive and more difficult to
20 handle.

21 Since then, the company has manufactured HEDP,
22 starting with imported phosphorous acid crystal.

23 Both production methods whether beginning with
24 phosphorous acid or with PCL3, result in identical products
25 with the same chemical formulation and end uses. In fact at

1 the point of first sale, the HEDP, which we produce and
2 imported HEDP, are chemically identical. And assuming the
3 products have the same level of purity, that is 60 percent
4 aqueous solution, they can be comingled and sold as one
5 product.

6 HEDP is packaged in a variety of ways. It can
7 be sold in bulk tank trucks or in the case of imported HEDP,
8 international standards organization or ISO containers,
9 which are essentially bulk import containers. They can be
10 sold in 55 gallon drums and what we refer to as totes.
11 These are typically 275 gallon, which is roughly equivalent
12 to about 5 drums.

13 These are often referred to as tote bins or
14 sometimes intermediate bulk containers or IBCs. Both
15 Compass Chemical and U.S. importers of HEDP sell to
16 distributors or compounders. It is also sold to formulators
17 and large end users such as utility companies and large
18 water treatment companies.

19 As I said earlier, so long as a product is at
20 the same level of purity, for example as a 60 percent
21 aqueous solution, and meet certain baseline standards
22 uniformly recognized throughout the industry, HEDP from
23 different sources is completely interchangeable whether it's
24 HEDP manufactured by Compass, by a Chinese producer, or in
25 India, or in Europe.

1 Customers will often comingle domestic and
2 imported HEDP in their bulk tanks. They assign the same raw
3 material codes to both imported and domestic HEDP. And
4 importers and customers can and often do switch suppliers of
5 HEDP, depending on price and availability.

6 Although Compass manufacturers a range of
7 phosphonates, our HEDP production process is the only one
8 that yields acetic acid as a byproduct. If we did not
9 manufacturer HEDP, we would not produce acetic acid.

10 That of course is not the point of our being in
11 the business of HEDP production, but considering the fact
12 that sales of this byproduct significantly contributes to
13 the continuing commercial viability of our HEDP production
14 under current market conditions, it is as of now an
15 important element to our overall company's operations.

16 As Danny will mention in his testimony, it is
17 truly ominous from a business perspective that not only is
18 there a notable decline in what we can charge for HEDP due
19 to unfair competition from China, but market conditions are
20 also resulting in declining prices for sales of the
21 byproduct.

22 While we make a range of phosphonates at the
23 Smyrna facility, HEDP is by far our largest volume
24 production. And its production requires specially
25 designated reactors as well as related production equipment

1 not used for the production of other chemicals.

2 So if we discontinue production of HEDP, a
3 distinct possibility under prevailing market prices and
4 market conditions in the absence of relief from the impact
5 of dumped and subsidized Chinese imports, several dominos
6 would fall. The HEDP reactors and related production
7 equipment would sit idle. They can't currently be used for
8 production of other products without some retrofitting
9 capital investments.

10 Any revenue that is derived from the sale of
11 acetic acid disappears. As I mentioned, HEDP is the only
12 product which we manufacture, which yields us byproduct.
13 And perhaps most importantly, our relationships with
14 customers suffer since we would no longer be in a position
15 to provide this critical phosphonate within our aggregate of
16 U.S. manufactured product offerings.

17 Compass Chemical as the only full range
18 phosphonate producer in the United States is well positioned
19 to compete with other manufacturers in China and around the
20 world if we're able to do so on a fair and level basis. But
21 in the absence of relief from dumped and subsidized Chinese
22 imports, continued production of HEDP becomes economically
23 tenuous.

24 Compass was once an importer of HEDP and we no
25 longer are and we have not been for many years. It is our

1 intention to keep it that way, but only if we return -- if
2 our return on investment is reflected in fair market
3 pricing.

4 Thank you for the opportunity to you to present
5 this testimony. And I look forward to answering any
6 questions you may have. Thank you.

7 MR. BISHOP: Thank you, Mark. Our next witness
8 will be Compass Chemical's CEO, Mr. Danny McCaul. Danny?

9 STATEMENT OF DANIEL MCCAUL

10 MR. MCCAUL: Good morning, gentleman. Good
11 morning, Mr. Chairman and Commissioners, gentleman and lady,
12 I'm sorry. I am Danny McCaul. I am the CEO of Compass
13 Chemical International, LLC. I thank you for the
14 opportunity to present our case.

15 For a quick word about my background, although
16 originally from Ireland, I have lived and worked in the
17 United States for the past 41 years. I became a U.S.
18 citizen 35 years ago. I have a Mechanical Engineering
19 degree from Portsmouth University in England. I have worked
20 in the chemical industry for about 47 years. I guess I'm an
21 old guy.

22 I have since 1996 been involved with the
23 manufacturing facility in Smyrna, where Compass produces
24 HEDP. Compass Chemical was formed in 1999 and arrived and
25 acquired the phosphonate manufacturing facility in Smyrna,

1 Georgia from Links Chemical Group in 2006.

2 The Smyrna manufacturing plant began making
3 phosphonates in the 1980s and has had different ownership at
4 different times. One Rock Capital Partners, for example, a
5 private equity group based in New York City, acquired
6 Compass in March of 2015. And then subsequently last year,
7 Compass was sold to Italmatch Chemicals, which is a
8 chemicals manufacturer based in Italy.

9 However, Compass effectively operates as a
10 separate company within Italmatch in conducting our
11 day[^]to[^]day operations as we have throughout the various
12 changes in ownership.

13 In addition to the plant in Smyrna, Compass owns
14 and operates a plant in Huntsville, Texas. Texas plant is a
15 blending facility. It's a large warehouse. We ship
16 manufactured products from our Georgia plant down to Texas
17 for distribution.

18 Compass manufactures a range of specialty
19 chemicals and some products, which are probably more
20 correctly defined as commodity chemicals. The markets we
21 serve are primarily industrial water treatment, oil and gas
22 production, industrial and institutional compounding for
23 such things as cleaners and sanitizers, recreational water
24 treatment such as swimming pool chemicals, and chemical
25 distribution.

1 Compass has a total of about 200 customers in
2 North America of various sizes. Some customers are
3 multinational water treatment service companies, while some
4 are small formulators or compounders. Mark Allen has
5 explained a little about HEDP. And I would like to explain
6 why it is an important product for Compass Chemical.

7 MR. MCCAUL: HEDP is the largest volume product
8 we manufacture. It is the most widely used phosphonate
9 throughout the world and is a very important part of our
10 product offering. Because we make HEDP we are often
11 provided the opportunity to supply other products to our
12 customers. We are the only full line phosphonate
13 manufacturer remaining in the United States and in fact, we
14 are the only remaining producer of HEDP in this country.

15 We hope to remain a U.S. Producer of HEDP but
16 that is becoming more and more difficult as we continue to
17 battle unfairly traded imports from China.

18 Acetic acid, as Mark mentioned, is an unavoidable
19 byproduct of Compass's current method of HEDP production and
20 the quantity produced is roughly the same as the HEDP
21 volume. If we are forced to shut down the HEDP production
22 line we lose not only that portion of our overall business
23 attributable to HEDP which is about 20 percent but we would
24 lose the portion of our overall business attributable to
25 acetic acid as well.

1 Compass competes with imported HEDP from China,
2 from Europe and from India. The HEDP produced by compass is
3 completely interchangeable with Chinese HEDP and with
4 imports from other foreign sources. There are no quality or
5 purity issues that limit the interchangeability of HEDP from
6 various sources. While domestic manufacturing provides some
7 benefits in local service and responsiveness, these benefits
8 are insufficient to overcome significantly lower prices from
9 Chinese Imports.

10 There are several Chinese producers and I
11 understand that only one Shandong Taihe is participating in
12 this investigation but in addition to Shangdong Taihe other
13 major Chinese Producers include the other mandatory
14 respondent to the Commerce Department in the Investigation,
15 Nantong Uniphos and Wujin Water as well as Henan
16 Qingshuiyuan, Hebe Longke Water Treatment companies is
17 another producer in China.

18 A significant amount of capacity for phosphonate
19 production in general and for HEDP in particular had been
20 added in China over the past few years. We believe that the
21 current stated capacity of the Chinese companies known to
22 Compass is in excess of 200 million pounds per year. While
23 the worldwide market for HEPD is perhaps 150 million pounds
24 per year.

25 Based on available data, we estimate the market

1 in the United States at roughly 25 million pounds per year.
2 Our believe is that China has significantly overbuilt
3 production capacity in recent years and now many companies
4 are lowering prices below normal value in order to keep
5 their production units operating. One example and perhaps
6 the most ominous is the manufacturer that is opposing this
7 petition, Shandong Taihe.

8 The company announced in July 14 that it has
9 installed new production capacity solely for HEPD with a
10 projected annual output of sixty thousand metric tons.
11 That's over 130 million pounds more than 5 times the
12 estimated size of the U.S. Market by this one producer alone
13 and to the best of our knowledge that company was not a
14 producer during the period examined in prior investigations
15 of HEDP from China.

16 To put this in a slightly different perspective,
17 during the prior investigation the ITC calculated combined
18 HEDP production capacity in China and India as 67.5 million
19 pounds combined. So the new production capacity represented
20 by Shandong Taihe is twice the combined capacities of the
21 Chinese and Indian HEDP industries from a few years back.

22 Simply stated, the Chinese HEDP industry built
23 far more production capacity than needed and now it has to
24 do something with it in order to validate investments,
25 maintain employment and lower per unit production costs.

1 Unfortunately, that something has meant turning to the U.S.
2 Market and turning it into a dumping ground for HEPD
3 production. As a result, imports of HEPD from China have
4 jumped by our calculations from about 6.7 million pounds in
5 2013, the first year evaluated by the Commission in its
6 preliminary phase investigations and the last full year
7 before the prior antidumping order on China was revoked to
8 10.2 million pounds in 2016.

9 The 2016 total from china would have been even
10 higher to a likely all time record high of approximately 12
11 million pounds if the Chinese Imports did not decline
12 substantially in the 4th quarter as a result of the Commerce
13 Department's preliminary determinations.

14 At the same time, our shipments have decreased.
15 Compass has submitted several examples of lost revenues. We
16 are now under constant pressure to reduce our prices in
17 order to have the opportunity to compete against
18 cheaply-priced dumped imports from China. In fact, with
19 respect to one major customer we have determined that the
20 participation in that company's bid process could no longer
21 be justified as we stood no chance of getting the business
22 in the face of Chinese prices.

23 As another customer stated to us and I quote "A
24 previous supplier of ours has rejoined the competition for
25 this product and is currently beating everyone by 20 cents a

1 pound. I don't know if they've made a math mistake in
2 calculating profit or their supplier is just that cheap but
3 I'm rolling with it." We know and have identified in the
4 Petition that the supplier which this person mentions is a
5 U.S. Importer sourcing product from China.

6 The situation has been rapidly deteriorating.
7 Prior to the filing of our Petition, we were seeing a
8 Chinese price at or about 40 cents a pound. That's not a
9 guesstimate. We have received numerous offers to buy from
10 Chinese producers at or around that price and you can see
11 from our response in the Commission's questionnaire how the
12 Chinese price compares to what we are able to offer. The
13 price which we are able to get for Domestic Produced HEPD
14 has declined over the Period of Investigation.

15 As had been stated previously, without revenue
16 from the byproduct of acetic acid, Compass' HEPD business
17 would be operating at an even greater loss and could not be
18 sustained. Unfortunately as well as lower HEPD pricing in
19 the marketplace, acetic acid pricing is also deteriorating
20 after having remained stable for a number of years. On a
21 per pound basis, price which we were able to recover through
22 sales of the byproduct dropped by about 35 percent over the
23 Period of Investigation and that has dropped further still
24 in the new year.

25 Acetic acid is the byproduct, not the object of

1 our HEDP production. It has been a bit of a lifeline for us
2 in terms of helping to maintain the viability of our HEDP
3 production but one that cannot be sustained. As the Chinese
4 price for HEDP drops and the price which we are able to
5 obtain for the byproduct drops our competitive position for
6 HEDP is in jeopardy.

7 We cannot continue to produce what is our largest
8 phosphonate product by volume by relying on a revenue stream
9 from its byproduct. That is a poor business model. One
10 that we did not intend when we decided to cease imports from
11 China and wholly invest in the U.S. Manufacturing and one
12 that we cannot rely upon or sustain over the short, medium
13 or long term.

14 HEDP is an important, really a critical product
15 for us. We understand the need to be competitive but we
16 have to be on the break-even to the positive side with the
17 product. The overall phosphonate business is important to
18 Compass and it has been estimated that HEDP represents about
19 30 to 40 percent of all phosphonate consumption in North
20 America.

21 We could stop making HEDP and just make the other
22 phosphonates. Without HEDP volume to absorb some of the
23 plant's fixed costs, it would force the other phosphonates
24 to carry more costs and make them less competitive. We also
25 believe that if we don't offer HEDP as part of our

1 portfolio, if we don't have that product along with the
2 others then it would be difficult for us to be a major
3 player and to grow our business.

4 In 2008, Compass filed an antidumping petition
5 against HEPD from China and India. When the order was
6 implemented, Compass saw some short term relief.
7 Unfortunately one of the major Chinese Producers, Wujin
8 Water Quality Stabilizer Factory was assessed as zero dummy
9 margin and we believe that HEDP continued to be exported to
10 the United States through that company, possibly from other
11 producers.

12 Recently Wujin Water combined forces with two
13 other Chinese manufacturers to form an even larger company,
14 Nangtong Uniphos. In time, the antidumping duty became
15 ineffective in the face of this exclusion. Therefore, we
16 made a decision that filing a new Petition could bring a
17 justified and sustainable result and we are very encouraged
18 by Final Determinations announced by the Commerce Department
19 earlier this week.

20 On behalf of Compass Chemical I want to express
21 my appreciation to the Commission and the investigation
22 staff and urge an affirmative finding in this investigation.
23 I look forward to answering your questions and providing
24 additional information in our brief. Thank you very much.

25 MR. LEVIN: Thank you, Danny. Our next witness

1 will be Ms. Cara Groden. Cara is an Economist with Economic
2 Consulting Services.

3 STATEMENT OF CARA GRODEN

4 MS. GRODEN: Good morning, Mr. Chairman and
5 members of the Commission. My name is Cara Groden and I'm
6 an Economist with Economic Consulting Services. My
7 testimony will address the adverse impacts Subject Imports
8 of HEDP have had on the U.S. Producers' volume, pricing and
9 overall condition over the POI.

10 Although I am somewhat limited in what I can say
11 today due to the confidential nature of the record, we
12 submit there is ample record evidence that Subject Imports
13 have caused material injury to the domestic HEDP industry
14 and as MR. Levin will discuss later, threaten to cause
15 future injury.

16 Firstly, the volume of Subject Imports is and has
17 been significant over the POI. As shown at page 8
18 Petitioner's prehearing brief, data called from peers
19 demonstrate that imports from China constituted a distinct
20 majority of U.S. Imports of HEDP in every year of the POI.
21 Furthermore, Subject Imports increased significant over the
22 POI.

23 Although the annual import figures collected by
24 Staff from Importer Questionnaires may show a decline in
25 imports from China between 2014 and 2016, when broken down

1 by month or quarter the data tell a very different story.
2 Monthly Peers data are presented at Exhibit 1 to
3 Petitioner's Prehearing Brief.

4 I have one exhibit to my testimony today which
5 you should have in front of you. This chart shows Peers
6 Quarterly Import from China from 2014 through the end of
7 2016. The Peers data for HEDP are consistent with annual
8 volume trends demonstrated in the questionnaire data though
9 Peers data shows slightly higher import volumes every year.

10 These quarterly data show that Subject Imports
11 spiked in the 2nd quarter of 2016, then fell off
12 significantly in the 3rd and 4th quarters. These declines
13 in Subject Imports volume coincide precisely with key dates
14 in this investigation; the filing of the Petition on March
15 31, 2016 led to a sharp decline from the 2nd to 3rd quarters
16 and Commerce's affirmative prelim CDD determination on
17 September 8th, an affirmative prelim determination on
18 November 4th caused imports to fall off even further in the
19 4th quarter.

20 In the first three quarters of 2016, Subject
21 Imports were 2.4 million pounds higher than in the same
22 period of 2015. That's an increase of 35 percent or if you
23 were to annualize those first three quarters of 2016 to
24 assume no effect of the filing of the Petition and
25 Commerce's preliminary determinations, Subject Imports were

1 on track to reach 12.3 million pounds in 2016. A 20 percent
2 increase over full year 2014 and a 28 percent increase over
3 2015. These are significant volumes and represent a
4 significant increase in the volume of Subject Imports.

5 Even considered on an annual basis as presented
6 in Staff Report when the volume of Subject Imports appear to
7 decline between 2014 and 2016, U.S. shipments of those
8 imports in fact increased. The growth in U.S. Shipments of
9 Subject Imports occurred commensurate with an increase in
10 apparent U.S. Consumption of HEPD over the POI. However,
11 the sole U.S. Producer, Compass Chemical captured no part of
12 that growth in demand.

13 As Subject Import volumes grew in the U.S. Market
14 Compass' production and shipment volumes declined. Instead
15 of Compass sharing in the increase in demand, Subject
16 Imports captured market share at the expense of the Domestic
17 Industry.

18 Second, Subject Imports were able to capture this
19 market share because HEDP is a commodity product traded on
20 the basis of price and pricing pressure by Subject Imports
21 has been relentless. As shown on Table 2-8 of the Staff
22 Report, a clear majority of purchasers found U.S. and
23 Chinese HEDP comparable on all factors except for price.
24 Those same purchasers almost universally consider Chinese
25 HEDP to be lower-priced.

1 This pricing relationship is borne out in the
2 underselling data collected by the Commission which showed
3 that Subject Imports undersold U.S. Produced HEDP in 24 of
4 36 quarterly comparisons by an average margin of 10.7
5 percent. Chinese prices for each of the three pricing
6 product fell over the POI. This in turn drove down prices
7 of U.S. HEDP in each product as well.

8 The Staff Report provides an annual count of
9 instances of underselling at page 5-11 footnote 2. The
10 increase in instances of underselling by Subject Imports
11 over the POI shows that not only are Subject Imports priced
12 lower than HEDP, but their prices fell faster. Instances of
13 underselling increased from 5 instances in 2014 to 7
14 instances in 2015 until finally Subject Imports undersold
15 the U.S. Producer in all 12 quarterly comparisons in 2016
16 when according to Peers data, imports from China reached
17 their highest quarterly volume.

18 Staff notes at page 5-4 of the Staff Report that
19 the pricing data account for approximately 100 percent of
20 U.S. Producer shipments of HEDP and 98.8 percent of U.S.
21 shipments of Subject Imports from China in 2016. This is
22 unusually comprehensive coverage for the Commission's
23 pricing data. It shows that every pound of HEDP Compass
24 sells must compete directly with imports from China.

25 Therefore, every sale is adversely impacted by

1 the depressing and suppressing effects of low-priced
2 unfairly traded Subject Imports. I will note briefly that
3 we believe these underselling figures are understated,
4 particularly in the early part of the POI. This is due to
5 certain aberrational data included in the questionnaire
6 record. The relevant confidential discussion is provided at
7 pages 14 to 15 and confidential exhibits 2 and 3 to
8 Petitioners Prehearing Brief.

9 We submit that the analysis prevented there
10 should be taken into consideration in weighing the results
11 of the underselling analysis as it stands. Not only did
12 Compass' pricing product AUVs fall but data show that
13 averaging at values for commercial shipments and net sales
14 were also depressed with each exhibiting declines over the
15 POI. Furthermore, when prices and sales values fell
16 Compass' ratio of cogs-to-net sales increased showing that
17 Compass was prevented from increasing prices for HEDP which
18 it sorely needed to do.

19 The pricing pressure by Subject Imports has led
20 to a significant volume of lost sales and lost revenue by
21 Compass Chemical. Six purchasers reported switching their
22 purchases from Compass to Subject Imports because the
23 imports were lower priced. The details of those switches
24 are provided at Table 5-9 in Staff Report and discussed at
25 Page 15 to Petitioner's prehearing brief. Additionally, one

1 purchaser confirmed that Compass reduced its price by three
2 percent to compete with Imports from China resulting in a
3 loss of revenue.

4 Finally, the increased presence in the U.S.
5 Market of low-priced Subject Imports has had an adverse
6 impact on the overall condition of the Domestic Industry.
7 The increase in U.S. shipments of Subject Imports over the
8 POI mirror declines in essentially all of Compass Chemicals'
9 trade and financial indicia. Commercial shipments and net
10 sales declined in both quantity and value. Production
11 volumes fell, leading to a decline in capacity utilization.

12 These factors contributed to the loss in market
13 share by the U.S. Producer even as apparent consumption
14 increased over the POI. The declines in production volume
15 and sales values particularly due to pricing pressure by
16 Subject Imports in turn had a significant adverse effect on
17 Compass' operations on HEDP. Productivity fell while unit
18 labor cost increased and gross profit, operating income and
19 net income all declined both in absolute terms and as a
20 share of net sales.

21 By any measure, the industry's condition has
22 declined. There is no question that the increased presence
23 of Subject Imports over the POI and the pricing declines of
24 already low-priced HEDP from China in that same period have
25 distinctly and adversely impacted every facet of the

1 domestic HEPD industry. We respectfully submit therefore
2 that an affirmative finding of current material injury is
3 warranted. Thank you.

4 MR. LEVIN: And thank you, Cara. Good morning
5 again. My name is Jeff Levin. I am with Levin Trade Law
6 and I am Counsel for the Petitioner. I would like to
7 complete this morning's witness Panel by touching on a few
8 issues presented in this Investigation.

9 First, Subject Merchandise and domestic like
10 product. In its prior investigations of HEDP from China and
11 India and in its preliminary determinations in the current
12 investigations the Commission found that the domestic like
13 product was properly defined as coextensive with the
14 definition of Subject Merchandise, that is HEDP.

15 No arguments have been raised during these final
16 phase investigations for defining the domestic like product
17 otherwise. In the Preliminary Phase Investigations one U.S.
18 Purchaser Envirotech Chemical Services made certain claims
19 regarding so-called "high purity HEDP which it now sources
20 from China. In its preliminary determination the Commission
21 evaluated the claims presented by Envirotech Chemical
22 Services and found that such high purity HEDP does not
23 constitute a separate domestic like product.

24 Since to the best of my knowledge there have been
25 no arguments presented by Envirotech in further support of

1 their argument and since the information detailed by the
2 Commission in its preliminary determination remains equally
3 accurate now, we respectfully submit that the domestic like
4 product should be defined as it was previously HEDP.
5 Compass Chemical is the only domestic manufacturer of HEDP
6 and therefore constitutes the entire Domestic Industry as
7 defined in 19 USC Section 16-77 4A.

8 Second, material injury and threat of material
9 injury. Because this is a single company Domestic Industry
10 I am of course limited in what I can say in a public forum.
11 Ms. Groden has reviewed the material injury factors as we
12 have discussed in our prehearing brief, but generally
13 production has declined over the Period of Investigation as
14 has Compass' capacity utilization rate and shipments.

15 Sales prices have declined, as has revenue.
16 Subject Imports have had a depressive and suppressive effect
17 on the price for HEDP which Compass was able to attain
18 during the Period of Investigation and the company's
19 financial bottom line for HEDP has deteriorated. The
20 company has lost market share. There is lost sales. There
21 are customers which Compass has lost and may very well never
22 see again. There are significant margins of underselling.
23 A manufacturing line confronting these indicia cannot long
24 endure at least insofar as U.S. based production is
25 concerned.

1 In sum, unfairly traded imports from China have
2 had an adverse impact on every facet of the U.S. HEDP
3 industry and therefore we respectfully submit an affirmative
4 determination of culling material injury by reason of
5 Subject Imports is warranted. Moreover the record evidence
6 clearly demonstrates that the Domestic Industry is
7 threatened with further and continuing material injury by
8 reason of Subject Imports.

9 The factors as a whole suggest that further
10 dumped and subsidized imports from China are imminent and
11 that further injury by reason of Subject Imports will occur
12 absent the issuance of an antidumping and or countervailing
13 duty order. In its affirmative preliminary threat
14 determination, the Commission made a serious of findings
15 which we sited page 21 of our prehearing brief and which
16 remain as applicable now as they did last spring.

17 MR. LEVIN: Namely, the Commission determined
18 as follows: That there was a likelihood of a substantial
19 increase in the volume of subject imports in the imminent
20 future, from the already significant volume of subject
21 imports prevailing during the POI; that subject imports are
22 likely to continue underselling the domestic like product to
23 a significant degree, and enter at prices that are likely to
24 have a significant depressing effect on domestic prices and
25 that are likely to increase demand for further imports; and

1 that a substantial increase subject import volume is likely
2 imminent, and that significant subject import underselling
3 will likely continue, causing a significant depressing or
4 suppressing effect on domestic prices and the likely
5 increase in demand for further imports.

6 As Mr. McCaul referenced in his testimony,
7 imports of HEDP from China have jumped by our calculations
8 from about 6.7 million pounds in 2013 to 10.2 million pounds
9 in 2016, and the 2016 total from China would have been even
10 higher to a likely all-time record high of approximately 12
11 million pounds if the Chinese imports did not decline
12 substantially in the end of the third quarter and fourth
13 quarter of 2016 as a result of the Commerce Department's
14 preliminary determinations.

15 And, as Mr. McCaul also discussed in his
16 testimony, production capacity in China has exploded in
17 recent years. The resulting production is coming here.
18 Again, confidentiality rules limit discussion in an open
19 forum, but the evidence of record in both the preliminary
20 phase investigations, where the Commission had access to
21 data from a few Chinese manufacturers as well as in these
22 final investigations clearly demonstrate the efficiency of
23 the Commission's findings during the preliminary
24 investigation.

25 Mainly, "the subject HEDP industry in China is

1 very large and growing, possesses significant unused
2 capacity and exports significant amounts of HEDP. Both HEDP
3 producers in China and U.S. importers hold substantial an
4 increasing inventories of the subject merchandise.

5 In light of the factors, the increase in
6 subject import volume and market penetration that occurred
7 during 2000 to 2015 will likely accelerate."

8 Lastly, non-subject imports. As is
9 well-settled and noted by the Commission, the Federal
10 Circuit in addressing the causation standard of the statute
11 has directed that "as long as its effects are not merely
12 incidental, tangential or trivial, the foreign product sold
13 at less than fair value meets the causation requirement."
14 And, as has been noted in the preliminary determination in
15 these investigations, the Commission is not required to
16 apply the so-called replacement/benefit test that was
17 included in Commission opinions subsequent to the federal
18 court's decision in *Brackiz v. United States*.

19 But for present purposes, I will note that
20 yes, HEDP has become commoditized. It is a commodity. But
21 we do not believe that imports from India or from Europe are
22 generally price competitive with subject imports. Moreover,
23 non-subject imports are for purposes of these investigations
24 fairly traded, while subject imports are not. This is a
25 critical distinction.

1 As detailed in Exhibit 1 of our prehearing
2 brief, in the vast majority of months during the Period of
3 Investigation preceding the fourth quarter of 2016, that is
4 in 28 of 33 months, the volume of Chinese HEDP imports
5 exceeded and more often than not greatly exceeded the volume
6 of Indian HEDP imports. As detailed in the staff report, in
7 most quarterly comparisons the price of imports from India
8 was actually higher than the price for domestically
9 manufactured HEDP, and also higher than the price for
10 subject imports in many instances.

11 These data strongly indicate that the injury
12 suffered by Compass Chemical during the Period of
13 Investigation and the looming threat of further and
14 continuing injury is predominantly the result of the
15 deleterious impact of unfairly-traded subject imports, not
16 of fairly traded imports from India. In this case, the
17 domestic industry is faced with a high volume of subject
18 imports, all of which have been unfairly traded in the
19 extreme, produced and exported by an industry in China which
20 has the present capacity to continually flood the U.S.
21 market.

22 Compass Chemical is not looking to eliminate
23 competition in the U.S. marketplace. Rather, it is looking
24 to eliminate the unfair advantage gained by unfair trade
25 practices. Compass is perfectly willing to compete for

1 sales in the U.S. market against fairly traded imports, much
2 as it would face competition from another domestic producer.

3 Therefore, we respectfully submit that the
4 evidence of record in these final investigations, as will be
5 further supported in our post-hearing brief, strongly
6 supports an affirmative determination. With that, and on
7 behalf of Compass Chemical and our witnesses, we thank the
8 Commission for the opportunity to testify before you this
9 morning, and we look forward to the Commission's questions.
10 Thank you.

11 VICE CHAIRMAN JOHANSON: Thank you Mr. Levin
12 and thank you to the witnesses and to Ms. Groden for
13 appearing here today.

14 MR. LEVIN: Excuse me Mr. Chairman. If I may,
15 just a quick procedural point. May we reserve our remaining
16 time for rebuttal if necessary?

17 VICE CHAIRMAN JOHANSON: Yes.

18 MR. LEVIN: Thank you very much.

19 VICE CHAIRMAN JOHANSON: Thank you, and once
20 again I appreciate y'all appearing here today. It sounds
21 like y'all are keeping quite busy. I know being a plant
22 manager is not an easy job, and running a company is not an
23 easy job. So we appreciate you providing us with your
24 expertise today. I'm going to begin with a question for Mr.
25 Levin, and this regards the prior order which expired in

1 2014.

2 During the preliminary staff conference, as
3 noted at the transcript at page 35, Mr. Levin you explained
4 the plan regarding the previous order as "let the thing
5 expire, die a natural death, see what happens in the
6 marketplace," and to refile "if things go awry." Compass
7 refiled at the end of March 2016, based I would imagine on
8 data from 2015.

9 Looking at measures like U.S. producers'
10 market share, U.S. shipment quantity, production workers and
11 operating margin in 2015, is it accurate to state that those
12 had gone awry when compared to 2015, and what as the biggest
13 factor in early 2016 that led Compass to refile?

14 MR. LEVIN: Thank you, Mr. Chairman. What we
15 were hearing from Compass Chemical, the domestic industry,
16 is that the AD order on China and India had some beneficial
17 effect when it first went -- when it was first implemented.
18 But the benefits of that faded over time, and although there
19 was some relief from pricing pressures in the years
20 following the issuance of the orders, the pricing pressures
21 became exacerbated over 2014, 2015 and significantly into
22 the beginning of 2016, which as to the second part of your
23 question, why the filing was done at that point.

24 The exclusion of the one major Chinese
25 manufacturer did leave a major hole in the prior order. We

1 were thankful for the Commission's final determinations in
2 those investigations. We were thankful for the orders. We
3 were thankful for the temporary relief. But as time went on
4 and especially in light of the fact that Jen Dum Tae He or
5 Taico, I guess is the correct pronunciation began
6 manufacturing the middle of 2014 and really ramped up what
7 they were sending over to the United States, those were the
8 precipitating factors.

9 VICE CHAIRMAN JOHANSON: So I think what
10 you're stating, and correct me if I'm wrong, is that a major
11 producer was excluded from the prior order and that Taihe
12 has in effect supplanted what was being sent by the other
13 producer?

14 MR. LEVIN: I don't think the -- generally
15 speaking, yes, with a slight twist. Shandong Taico did not
16 supplant the excluded producer. It was added on to the
17 excluded producer. Now that excluded producer subsequently
18 went through some ownership changes and closures and all of
19 that, and has morphed into Nantong Uniphos.

20 But what we were talking about or what we were
21 looking at was a brand new producer, Shandong Taico, who was
22 not in the market, did not produce during the initial Period
23 of Investigation, came online with an enormous amount of
24 production capacity, we've quoted the figures, which are not
25 inconsistent with data collected by the Commission. It was

1 the threat as well as the actuality of this new company's
2 exports to the U.S. that became a trigger point.

3 VICE CHAIRMAN JOHANSON: Thank you Mr. Levin,
4 and also in the preliminary staff conference, as noted at
5 page 35 of that transcript, you explained the decision not
6 to seek continuation of the previous order as based on the
7 previous order having a large hole, and I assume that was
8 the other producer being not included in the order; is that
9 correct?

10 MR. LEVIN: That is correct.

11 VICE CHAIRMAN JOHANSON: Okay. Thanks for
12 clarifying that. As far as any threat analysis is
13 concerned, do we not have a natural experiment here? Can't
14 we look at what happened when the orders were revoked in
15 2014? There were no orders on during the calendar year 2015
16 and no petitions were filed during that year. So isn't 2015
17 a clean year upon which to form some judgment on how
18 producers in China will react?

19 MR. LEVIN: Yes and no. It was not totally a
20 clean year because it is the first year in which you've had
21 the market participation by a new major Chinese producer.

22 VICE CHAIRMAN JOHANSON: That being Tae Hee?

23 MR. LEVIN: Correct.

24 VICE CHAIRMAN JOHANSON: All right. Thank
25 you, Mr. Levin. I'm getting into a more technical matter,

1 which I assume Mr. McCaul and Mr. Allen might want to
2 address. I would like to get the Petitioners' take on the
3 argument of the Respondents at pages five to six of their
4 brief, specifically how the two different production methods
5 have different raw material costs and byproduct values that
6 are advantageous to the Chinese process that is contended by
7 the Chinese producers?

8 MR. ALLEN: Yes thank you. The processes that
9 were referred by Shadong Taico we're familiar with of
10 course, the PCL3 being the primary raw material versus
11 phosphorous acid. We look at this process on a regular
12 basis. In fact, as I said in my testimony, we in the past
13 have manufactured HEDP using phosphorous trichloride, and we
14 choose not the less glamorous method. We choose the best
15 economic method that results in the lowest cost of
16 producing HEDP.

17 So our movement to that method of production
18 would actually increase our net costs. So that's why we
19 choose to make it the way we choose to make it.

20 VICE CHAIRMAN JOHANSON: And my apologies if
21 this was addressed in the briefs. I just don't recall. Is
22 the Chinese process a newer process? Is it more -- and in
23 that way could it be seen as perhaps more efficient? Well,
24 they do highlight in their testimony, in their brief I
25 believe that they can generate the acetyl chloride, as

1 another additional product.

2 That is of course possible, and in the United
3 States the key drivers for the economics are the purchase
4 price of the phosphorous trichloride raw material, and the
5 relative pricing of acetic acid and hydrochloric acid in the
6 United States. We monitor this on a continuing basis, and
7 if the economics were to shift in the favorable direction
8 based on purchasing and sales of these byproducts, we also
9 could shift to a phosphorous trichloride methodology. But
10 we choose not to, again based on the economics. Does that
11 answer your question?

12 VICE CHAIRMAN JOHANSON: Yes, it does.

13 MR. McCAUL: Can I add to that a second? Yes,
14 the comment that they make, that our method is -- I think
15 they said outdated and inefficient, you know, respectfully
16 that isn't true. Our method is different yes, but we did,
17 as Mark was saying, we used PCL3 in our HEDP process for
18 many years, and then we switched because it was -- it was
19 more cost effective to do it the way we do it today.

20 The process that they use and that most
21 Chinese use, they start with PCL3 and glacial acetic acid,
22 and they can, with the process, manufacture a byproduct or
23 co-product called acetyl chloride. There's a good market
24 for that in China. There's very little market for that in
25 the United States.

1 For example, that's another reason why it
2 makes sense for us to use the process that we use. However,
3 we're constantly monitoring the cost of PCL3, the cost of
4 phosphorous acid crystal that we use, and if it switches, we
5 will switch our production method back to using the PCL3
6 again. So the method that they're using has been around for
7 many years, just like the method we use has been around for
8 many years. It's simply a matter of economics. We would
9 use the method that Shadong Taico uses if it made economic
10 sense for us, and we could convert our plant quite easily to
11 make that -- use that production method if it made sense.

12 VICE CHAIRMAN JOHANSON: Thank you for your
13 responses. And my time has expired, so we will now turn to
14 Commissioner Williamson.

15 COMMISSIONER WILLIAMSON: Thank you, and I do
16 want to express my appreciation for the witnesses coming
17 today and taking time away from their businesses.
18 Continuing along that -- Commissioner Johanson's questions,
19 you started talking about the advantages, the Chinese use
20 the methods they use because it's advantageous in terms of
21 the byproduct they produce. Is there anything about the
22 inputs that give them an advantage using that versus another
23 method?

24 MR. McCAUL: I would say maybe the fact that
25 PLC3 in China, the cost for PCL3 in China is lower than the

1 cost of PCL3 in the United States, would also push them to
2 that production method. But I don't know in terms of
3 phosphorous acid crystal whether or not they would -- there
4 would be a financial advantage. I would say though that the
5 byproduct of acetic acid would be an issue in China as well,
6 whether or not they could in manufacturing these large
7 quantities of product, whether they could consume an acetic
8 acid byproduct if they used the alternative method of
9 production.

10 It's just a matter of economics, the total
11 picture, which process that you decide to use, which method.
12 In the end, you're making the same product, HEDP, and the
13 biggest driver really is what does the market for HEDP look
14 like and can you make a good profit, a reasonable profit
15 producing HEDP by one method versus the other.

16 COMMISSIONER WILLIAMSON: And to round out the
17 picture, what's the situation in India? Do they use one
18 method versus the other in their --

19 MR. McCAUL: In India, the -- I'm just going
20 to make some general comments about India and Indian
21 production. India, the situation that we saw in the
22 marketplace was that Indian shipments to the United States
23 were declining somewhat. In fact, fairly significantly, and
24 then when the Chinese -- the Indians were having difficulty
25 in competing with the Chinese costs and the Chinese pricing

1 in the United States.

2 And so their volume was declining and actually
3 since the preliminary order went into place, the Indian
4 imports to the United States have jumped back upwards, and
5 the Indian product now is -- their volume coming into the
6 United States has gone up quite significantly. The only
7 good thing I would say about that is that the average
8 pricing that we're seeing in the marketplace from the
9 Indian product is higher than we were seeing with the
10 Chinese product.

11 So that we are able to move our pricing
12 upwards versus what it was, not to the extent that we would
13 like, of course, but because we have to compete with the
14 Indian product and that's the sort of situation that we see
15 today. The Indian production methods, if that's what you
16 were asking about, I'm honestly not certain what process the
17 Indian manufacturers use today. I would have to investigate
18 that but --

19 COMMISSIONER WILLIAMSON: Well, the reason I
20 was asking was did that have anything to do with the price
21 at which they're selling in the U.S. market?

22 MR. McCAUL: No. The price that we're selling
23 in the U.S. market is totally driven by the general market
24 price and what's available and, you know, whether the Indian
25 product is fairly priced or not, I can't sit here and tell

1 you that I know that. All I know is that the average price
2 from the Indian product is higher than where the Chinese
3 were at, and I'm hopeful that when things settle down, our
4 average pricing will be better than it was.

5 If it isn't, then I don't know what -- excuse
6 me, I don't know why we went through this whole process to
7 begin with. It would have been a costly and wasted
8 exercise. But I really do think that we'll settle out in a
9 better place as a result of this. The last time around,
10 there was a question about that. I would just add to it
11 what Jeff had to say. In the end, at first the order was
12 very helpful to us but, you know, it seemed like people
13 were able to circumvent it and the pricing got really bad
14 and eventually when we decided to file again this last time,
15 it was --

16 I mean the prices from China were unbelievably
17 low and lots of people offering product at very low prices.
18 It just reached the point where we said my God, we need to
19 do something here. We need to file again.

20 COMMISSIONER WILLIAMSON: Okay, good. Sort of
21 kind of a related question. Are most countries depending on
22 China for many of their raw materials, feedstocks for HEDP
23 production such as elemental phosphorous and other
24 phosphorous chemicals?

25 MR. McCAUL: Yes. Both countries you are asking

1 about, the Indian manufacturers use phosphorus from China,
2 but from other parts of the world as well. There's more
3 than just Chinese phosphorus available.

4 COMMISSIONER WILLIAMSON: Okay. It would be fine
5 post-hearing about this, part of the reason I'm raising the
6 question is because--I've forgotten exactly what Mr. McGrath
7 said, but it was sort of like, you know, if India is your
8 problem, or something like that, it might get--and so I'm
9 trying to sort of evaluate that statement. And so if you
10 have anything post-hearing that would kind of clarify the
11 basis on which the Indians are competing it would be
12 helpful.

13 MR. LEVIN: We'd be happy to, Mr. Commissioner.
14 I'll just add the remark--I'll add two things.

15 First of all, why we didn't file against Indian
16 again would be a natural question. Two basic reasons for
17 that. First of all, Compass was not really seeing from
18 India at that time the pricing pressures, the injurious
19 pricing pressures, that they were from China.

20 Second, just to put things sort of like in a
21 real-world context, because it's true, these things are
22 expensive, these investigations.

23 COMMISSIONER WILLIAMSON: I understand.

24 MR. LEVIN: And they eat up a lot of time and
25 resources. And especially for a company like Compass,

1 there's nobody else to share the bill with. And therefore
2 the question is: Okay, you know, what is doable within a
3 realistic budget? And if we're going to take the budget,
4 where are we going to aim the budget--

5 COMMISSIONER WILLIAMSON: No, no, I understand.
6 You don't have to justify why--

7 MR. LEVIN: I just wanted to add that context to
8 it.

9 COMMISSIONER WILLIAMSON: I'm just thinking of the
10 Respondents' statement, and also sometimes we get one
11 country and the next thing you know it's--

12 MR. LEVIN: And I understand. And the second part
13 of what I was going to add to it is, in this instance, in
14 this marketplace you have Chinese imports that greatly
15 outnumber the Indian imports, and the pricing comparisons
16 are in the staff report.

17 COMMISSIONER WILLIAMSON: Okay. One--

18 MS. GRODEN: Mr. Commissioner, could I add one
19 more thing to that?

20 COMMISSIONER WILLIAMSON: Sure. Go ahead.

21 MS. GRODEN: Within the context of Indian imports,
22 or imports from India being an issue throughout the POI, I
23 don't think that's quite the case, and I don't think that's
24 what the data show right now.

25 If you look at the monthly Piers data provided at

1 Exhibit 1 to the Petitioner's prehearing brief and compare
2 that to the pricing data for India available at Appendix D
3 to the staff report--

4 COMMISSIONER WILLIAMSON: Yes, I'm aware of that.

5 MS. GRODEN: Yeah, you do see a distinct linkage
6 between pricing trends, particularly as pricing fell for
7 HEDP throughout the period for all sources. And when the
8 increases in volume occurred for those producers. And I
9 think there's a clear trend of price being linked with
10 volume in this industry.

11 COMMISSIONER WILLIAMSON: Okay. Thank you. My
12 time has expired. Thank you.

13 VICE CHAIRMAN JOHANSON: We will now turn to
14 questions from Commissioner Broadbent.

15 COMMISSIONER BROADBENT: Ms. Groden, why are you
16 all focusing on the Piers data as an alternative to the data
17 set that we use in the investigation?

18 MS. GRODEN: The Piers data offer more nuance.
19 They offer more granularity, and also if you look at the
20 quarterly data that I provided today it's linked a little
21 bit more closely with the under-selling data.

22 The apparent consumption tables, looking at it on
23 an annual basis, lose out on the petition effects and the
24 effects of the determinations by Commerce. And particularly
25 with the arguments that Respondents are making in terms of

1 Indian impact in this industry and we felt it was important
2 that the volumes of subject imports from China during this
3 POI be made particularly clear to the Commission, and the
4 insight from those observations included in your analysis.

5 COMMISSIONER BROADBENT: Okay.

6 MR. LEVIN: Which is--Madam Commissioner, not to
7 discount the data that are in the staff report, the
8 importance of the data of U.S. importers shipments, et
9 cetera, et cetera. But as Cara had indicated, there is
10 nuance and detail in the Piers report that just is not
11 captured in annual data, or even quarterly data in the staff
12 report.

13 COMMISSIONER BROADBENT: Okay, are we disagreeing
14 that the nonsubject imports were higher priced and were
15 capturing market share from both the domestic industry?

16 MS. GRODEN: This is Cara Groden. From both the
17 domestic industry and from imports from China?

18 COMMISSIONER BROADBENT: Yes.

19 MS. GRODEN: I think we are disagreeing to that
20 extent, because the big increase in imports from India shown
21 at Exhibit 1 to the Petitioner's prehearing brief occurred
22 when Chinese imports left the market after Commerce's prelim
23 determinations.

24 So to say that China--that imports from India
25 were capturing market share throughout 2016 is simply not

1 the case. And we can try to expand on that in post-hearing
2 if you'd like.

3 COMMISSIONER BROADBENT: Yes.

4 MS. GRODEN: With other confidential information
5 that we have on the record.

6 COMMISSIONER BROADBENT: Okay. Compass was sold a
7 couple of times in the last several years. Can you kind of
8 describe to me what was going on with those changes in
9 ownership?

10 MR. McCAUL: Yes. Compass was owned by a couple
11 of individuals, one of them being me, and we--I was a
12 minority owner of the company, and the majority owner
13 basically decided he wanted to sell the company.

14 So we went through a process of selling the
15 business, and there were a lot of companies interested in
16 acquiring us. We were obviously privately held. And in the
17 process we chose to--a purchaser called One Rock Capital
18 that I mentioned in my testimony, and One Rock was a private
19 equity company from New York. This other company, Italmatch
20 were interested in buying us, but they lost out in the
21 process of bidding for our business for our company. But
22 the continued to stay interested, and One Rock decided to
23 sell to them, but kept a part of the ownership in their
24 portfolio.

25 So although we're owned by Italmatch, One Rock

1 has a substantial portion of the ownership, we well.

2 COMMISSIONER BROADBENT: And has that--have those
3 changes affected your production abilities, and just kind of
4 the general operation of the plant?

5 MR. McCAUL: They haven't had any major effect on
6 our plant so far, except in a positive way in that because
7 we are now part of a larger company we are working to expand
8 our plant and our product line, and hopefully we'll become a
9 more substantial company as time goes by.

10 COMMISSIONER BROADBENT: Okay. Mr. Allen, do you
11 agree with that?

12 MR. ALLEN: Yes, I do. The only extent of they
13 have not had significant impact on our phosphenate
14 production. It's been generally operating in the same
15 manner. With respect to HEDP and other phosphenates, but
16 other product lines that Danny's referred to, yes, we're
17 working on those projects as we speak.

18 COMMISSIONER BROADBENT: Okay. Several purchasers
19 reported that Compass has been unable to supply their firms
20 with HEDP during the POI, and half of responding purchasers
21 who reported that they purchased imported HEDP from China
22 instead of U.S. produced product reported that they did so
23 for reasons of availability.

24 Has Compass been able to fully supply its
25 contract and spot sales?

1 MR. ALLEN: Yes. We produce whatever we're being
2 asked to produce. Danny, did you want to jump in on that?

3 MR. McCAUL: Yeah, I mean we have additional
4 capacity. And I'm not sure actually where this is coming
5 from, but, look, our supply position is very good. We
6 typically respond to customers and they get used to getting
7 product from us in a very short lead time.

8 In other words, we can ship product like the next
9 day, or within two days. Typically I would say we're
10 supplying product in certainly less than five business days
11 on average. So customers get used to this, and they take it
12 for granted at times, and I suppose it's possible that in a
13 couple of cases here or there a customer might have wanted
14 to order some product and some temporary situation where our
15 inventory was maybe not quite what it normally is and maybe
16 we told them we would have to wait a little longer for it.
17 I honestly don't know, Ms. Broadbent. I couldn't tell you
18 that. But I'd have to investigate the individual cases
19 where somebody is alleging that they couldn't get the
20 product from us.

21 But in general, that would be a complete
22 distortion of the situation, to suggest that we could not
23 supply several customers, or a significant volume, and
24 that's why they had to go somewhere else.

25 COMMISSIONER BROADBENT: But when you have one

1 producer in the country, and then you get a sense that, you
2 know, your supply may be a little shaky. You know, we see
3 oftentimes in cases where the imports come in just as, you
4 know, any general purchaser feels like he needs to diversify
5 just to protect himself.

6 MR. McCAUL: Yes, and I understand that
7 completely. But when you, for example, say the supply may
8 be shaky, if you look at the volume that we've produced over
9 the years, year after year, you'll see that the volume is
10 pretty flat, pretty steady. There's nothing shaky about it.
11 And what I'm saying, and we can prove, is that we have the
12 capacity to supply a great deal more of the product than we
13 normally do.

14 So the allegation that we couldn't supply
15 somebody and that's why they went to buy it from China is,
16 you know, just to be frank, I would say that's nonsense.

17 COMMISSIONER BROADBENT: Okay. Alright, let's
18 see. Several purchasers reported that due to environmental
19 regulations demand for HEDP is decreasing as end-users
20 switch to non-phosphate solutions.

21 When were these environmental regulations put
22 into place? And do they impact specific end users more than
23 others?

24 MR. McCAUL: I have to be honest and say I don't
25 know what they're talking about. There's no changes that

1 have affected the use of HEDP that I'm aware of.

2 COMMISSIONER BROADBENT: Is that right?

3 MR. McCAUL: Correct.

4 COMMISSIONER BROADBENT: And that's your
5 understanding, Mr. Allen?

6 MR. ALLEN: That's also my understanding. I'm not
7 aware of anything, and I think the volume data for domestic
8 HEDP purchasing supports that.

9 COMMISSIONER BROADBENT: Okay, thank you very
10 much.

11 MR. McCAUL: Perhaps, let me just add one thing
12 about that. In Europe, phosphates are used in detergents,
13 and there's a large market for phosphates in detergents in
14 Europe. But in the United States, phosphates are not
15 used. There's an issue about the P content, the phosphorous
16 content in the detergents that limits the amount of
17 phosphates that can be used. Detergent manufacturers in
18 the United States chose a few years ago, because of the
19 regulations on the phosphorus content, to eliminate the use
20 of phosphates in the detergent formulations in the U.S.

21 So there's a difference in the marketplace there.
22 Whether somebody is referring to something like that, that's
23 the only stretch I could make to address what you were
24 asking about, Commissioner Broadbent.

25 COMMISSIONER BROADBENT: Okay. Alright, I see my

1 light is blinking so I'll yield to my colleagues.

2 VICE CHAIRMAN JOHANSON: We'll next turn to
3 Commissioner Kieff.

4 COMMISSIONER KIEFF: Thank you. I join my
5 colleagues in welcoming you.

6 A few follow-ups for maybe each of you. Mr.
7 Levin, if I could just start with you: To the extent you're
8 comfortable discussing the economics of the business
9 realities that you were describing earlier about how to file
10 a case, I just wanted to invite you for a minute or so to
11 just briefly give a little bit of understanding. It would
12 help me not just in this case but in a bunch of cases. I am
13 genuinely curious.

14 What is, roughly speaking, the marginal cost of
15 adding a country like India to a case like this focused on
16 China?

17 MR. LEVIN: Considerable.

18 COMMISSIONER KIEFF: But so in percentages is it
19 like 2X, 1.5X, is it another 10 percent kicker, or what are
20 we talking about?

21 MR. LEVIN: It would certainly be more than 10
22 percent. I mean, there's additional work, not a huge amount
23 of additional work, but some additional work on the ITC side
24 of stuff. The really costly aspect is the Commerce
25 Department investigation. And the Commerce Department

1 investigation to add a country--

2 COMMISSIONER KIEFF: Basically doubles it?

3 MR. LEVIN: I wouldn't go so far as saying double,
4 because it's not double the whole budget--

5 COMMISSIONER KIEFF: Okay, so there are some
6 economies of scope--

7 MR. LEVIN: --right, but it would be a 50 percent
8 increase.

9 COMMISSIONER KIEFF: Okay, that's helpful. Just
10 that ballpark is helpful. For me, one of the things I have
11 often discussed with parties during hearings is this
12 question about how seriously we should consider starting and
13 ending cases, recognizing that at least for me I care a lot
14 about data and grounding my decisions in data, and so my
15 feeling is, especially in cases where we're very focused on
16 hypothesizing future states of the world, one of the factors
17 that I often weigh in my mind is: Well, gosh, how hard is it
18 on a business to wait a little bit and see what happens?
19 And your answer helps me understand that that's a nontrivial
20 cost. So I appreciate it.

21 MR. LEVIN: Thank you.

22 COMMISSIONER KIEFF: The other, or the second
23 follow up I think is for the two industry witnesses. Can
24 you briefly give me a little bit better understanding of
25 what is happening in China with respect to the market for

1 the particular byproduct that you identified as having a
2 special demand in China? Can you just tell me a little bit
3 about what industries use that byproduct?

4 MR. LEVIN: And if I may--

5 COMMISSIONER KIEFF: Whoever would like to.

6 MR. LEVIN: Just a prefatory remark. Compass
7 doesn't produce that byproduct. We don't have that market
8 here in the United States for that byproduct. So, yes, this
9 would be based on whatever industry knowledge they have from
10 contacts with China.

11 COMMISSIONER KIEFF: Correct. And if it turns out
12 you don't have that at your fingertips, it's not a quiz. I
13 don't mean to--I mean, if you happen to have any information
14 about that, that would be helpful.

15 MR. LEVIN: Danny or Mark, do you want to say
16 anything about it?

17 MR. McCAUL: We can possibly provide a wee bit
18 more information about the market for that co-product. We
19 think it's used in the pharmaceutical industry, but I'll be
20 honest and tell you I don't know exactly what it's used for.
21 I just know that we have in the past examined and looked for
22 data on is that a product that we should be making in the
23 United States? Is there a large enough market for it? And
24 it's minuscule. It just--

25 COMMISSIONER KIEFF: So in effect your decision to

1 not use the process your opponents have described, you're
2 telling us your decision was reached after deliberate
3 consideration of alternatives, including that process, and
4 it was noneconomic for you in the U.S. market to do that?

5 MR. McCAUL: That's what I'm telling you. And I'm
6 telling you also that the market for that product in China,
7 if you look at the other Respondent here, Shandong Taihe,
8 they manufacture this byproduct, acetyl chloride on purpose
9 from the process that we use.

10 Now please understand that that process is such
11 that you can make more or less of that material. But if you
12 look at the data that they've provided in their
13 publications, you will see that they describe the capacity
14 for producing that byproduct and it's very, very much lower
15 than the capacity for making HEDP.

16 And what I'm telling you is that the market even
17 in China for that byproduct versus HEDP is a very small
18 portion of the HEDP market. So that byproduct that they are
19 professing to be a big deal and, you know, it's very
20 valuable and all that, I'm not disputing that it's a
21 valuable byproduct, but the volume is tiny compared to HEDP
22 volume.

23 So in the overall economics, it plays a part but
24 I'm suggesting to you that it's not a major part.

25 COMMISSIONER KIEFF: Sure. And I take it the

1 reason they're raising it, if I understand it, is not so
2 much to explain their motivation. They have--they have, if
3 I understood their opening remarks, and of course I'll be
4 asking them to explain this during their panel, no secrets
5 here, as I understand it they're saying that we the
6 Commission have to make a determination about causation with
7 respect to your decisions--sorry, your experience as a
8 company trying to thrive, and they are attributing any
9 lacking of thriving on your part to I think, in their words,
10 your decision to not use their process.

11 Your answer I think is already a complete answer
12 to that, which is you researched their process and the math,
13 the economics don't add up. So the question I'll be asking
14 them this afternoon is, do they somehow think they
15 understand your business better than you do? And can they
16 please educate us all about why you would be making more
17 money if you decided their way?

18 If it turns out they're right, one side benefit
19 is you can take notes.

20 (Laughter.)

21 MR. McCAUL: That's true. I'm always willing to
22 learn.

23 COMMISSIONER KIEFF: Of course. I guess I don't
24 think we have to belabor it any more than that. You've
25 provided at least a prima facie complete answer.

1 MR. LEVIN: If I may, in highlighting the rule of
2 once you get to the answer you should just shut up, but they
3 not only evaluate. They evaluate on a continuing basis.
4 And I asked Danny and Mark this a few days ago: Okay, let's
5 just take the use of PCL fully as the primary raw material
6 input, which they used to do many, many years ago before
7 they switched, and Danny and Mark both testified that, yeah,
8 they look at it from time to time.

9 And I said, okay guys, what do you actually do?
10 Okay? And he said, we sit in Danny's office, about every
11 six months, and we go through the numbers, and we figure is
12 there anything here that should give us consideration to
13 switch the production methodologies?

14 COMMISSIONER KIEFF: That's helpful. For Ms.
15 Grodén, if you could just briefly try to either now or in
16 the posthearing give us a better understanding of what you
17 think is going on with the nonsubject import volume.

18 We certainly, at least I have heard the panel
19 discuss a lot about nonsubject import price, but I'm still
20 trying to understand the volume effect, and in particular
21 I'm just trying to understand why there is--why India is in
22 this market, I guess. And in particular whether the
23 volumes, if you will, lost from China are not replaced by
24 India?

25 MS. GRODEN: Sure thing. Yes. I think, due to

1 the nature of most of the data on this record, we will have
2 to look at this posthearing.

3 COMMISSIONER KIEFF: Sure.

4 MS. GRODEN: And as for why India is in this
5 market, I might ask Danny and Mark to hop in. Because my
6 understanding is that they've been a player for a long time,
7 especially as they were included in the prior case.

8 I think with respect to nonsubject imports in
9 this situation and their interplay with the volumes of
10 subject imports, I think the price is really important,
11 which is why it keeps coming up. And I understand you're
12 asking particularly about volumes in this instance. But
13 what we see from just the public accounts of underselling,
14 it's that prices from India were higher than China but in
15 some instances still lower than the U.S. producer. And so
16 they were able to increase volumes more than they had been
17 at other periods of the POI, which we see in the Piers data,
18 and which is reflected to a certain extent in the
19 confidential data, but I obviously won't get into that here.

20 And the pricing that they were able to get in the
21 market--trying to be delicate with the data, you understand--
22 was able to influence their volumes within the market. But
23 this is really something we'll have to touch on posthearing.

24 COMMISSIONER KIEFF: That's very helpful. Totally
25 understood. And the time is up, and obviously we look

1 forward to your counterparts fleshing out a little bit more
2 their take, because they seem to hang their hat on these two
3 points, and that may be where the rubber hits the road, is
4 these two points.

5 MS. GRODEN: Sure. We'll be happy to expand on
6 that for you.

7 COMMISSIONER KIEFF: That wraps up my questions
8 for the panel. Thanks so much.

9 VICE CHAIRMAN JOHANSON: Alright, I'm going to
10 turn back to the question I started with this morning, or
11 rather the issue that I started with this morning, and that
12 deals with the prior order.

13 Can the instances of over-selling on this record
14 be tied to the existence of the previous order?

15 MR. LEVIN: If I may, Mr. Chairman, I'd like to
16 address that in the post-hearing brief.

17 VICE CHAIRMAN JOHANSON: Alright, certainly. I
18 look forward to reading that.

19 The staff report at page VI-2 notes that "from a
20 marketing perspective, HEDP reportedly plays an important
21 role in terms of allowing Compass to offer a full range of
22 phosphates to its customers."

23 Are there other aspects of the company's
24 operations that benefit directly or indirectly from the
25 presence of HEDP manufacturing? Conversely, are there areas

1 of the company's overall operations that would be negatively
2 impacted by the discontinuation of HEDP manufacturing?

3 MR. MCCAUL: So HEDP, as we mentioned, it's the
4 largest phosphate that's manufactured that is used and if
5 you think about somebody who's buying phosphates, not just
6 HEDP, but other phosphates customers you know they shop
7 around, of course, but especially I would say medium-size or
8 smaller customers they like to one-stop shop. You know they
9 like to go somewhere where they don't have to place lots of
10 different orders with different suppliers, but they can get
11 from one supplier the range of phosphates that they use. So
12 being able to provide HEDP as well as the other phosphates
13 is important. It's a great benefit.

14 And you can imagine too it's a switch from us to
15 buy HEDP from somebody else. You know it's a short step to
16 find them deciding to buy other products and so we would
17 lose even more volume if we didn't have HEDP in the
18 portfolio. So that's a big thing and very important to us.

19 The second thing about HEDP is that it is a
20 large volume product. And even though we don't -- you know
21 the numbers come out and it looks like it doesn't make any
22 money for us the situation would be even worse if we stopped
23 producing it because none of the fixed costs that are
24 absorbed by making HEDP are not being absorbed anywhere and
25 then you know you find what am I going to do? I'm going to

1 have to cut costs somewhere else and I'll probably have try
2 to cut back on other resources -- labor and what have you.
3 So to stop making HEDP, yes, we could stop, but it would be
4 I think even worse for our business than it is today if we
5 stopped producing it.

6 I also happen to believe that I know what's
7 happened in the industry over the years. There used to be
8 other people that made the product here and made other
9 phosphates here in the United States. They've all basically
10 fallen by the wayside. We're the sole survivor. I think
11 it's good to have a U.S. producer of the product and so I'll
12 just leave it at that.

13 MR. ALLEN: Just along the lines of what Danny
14 mentioned is we also get possibly some purchasing leverage
15 on the phosphorus acid because the amount of purchased
16 phosphorus acid HEDP is quite significant versus the rest of
17 our phosphates. So if we lost our -- if our volume
18 decreased in half or some other similar magnitude we may be
19 facing possibly higher prices due to our lower volume
20 purchases, so that's also a possibility.

21 MR. MCCAUL: I want to add one comment here too.
22 You know I hate to sit here and appear like we're whining
23 about our situation. We're not whiners. You know we're
24 just trying to deal with the facts and you know the people
25 from China that are manufacturing these products are good

1 people, but you know it's got to be a level playing field
2 and if it is we're very good. We're very good at what we do
3 and our customers really like us and we can -- the thing is,
4 though, we can't compete if the playing field isn't level.

5 VICE CHAIRMAN JOHANSON: Thank you Mr. McCaul
6 and Mr. Allen.

7 And following up on that question, to what
8 extent, if any, does your firm's price of the byproduct
9 affect the sales price of HEDP?

10 MR. MCCAUL: It doesn't affect the sales price
11 of HEDP because the HEDP is competing in the market with
12 HEDP produced by various people. There's European, there's
13 Indian, there's Chinese. The customers who buy HEDP
14 couldn't care less about what our byproduct situation is.
15 They're only dealing with HEDP and pricing.

16 VICE CHAIRMAN JOHANSON: On page 7 of the
17 Respondent's brief, they characterize the byproduct that
18 results from Compass's product process as "low margin, low
19 quality acidic acid." Do you know what they mean when they
20 state "low quality"?

21 MR. MCCAUL: I'm trying not to be insulted by
22 that. The quality of our acidic acid byproduct is excellent
23 and I don't know what they're talking about. Now it is a
24 byproduct material. I will admit that. It's not glacial
25 product, but it is excellent and it gets used by some large

1 customers in the United States where they use it to make
2 inks. You know inks that are used in computer printers and
3 magazine production ink and so and so forth and it's used in
4 the textile industry, carpet industry and so and so forth
5 and the quality is excellent. So those comments are --
6 they're just not correct.

7 VICE CHAIRMAN JOHANSON: Thank you Mr. McCaul.
8 Mr. Allen do you want to add something? Alright.

9 Respondents argue that pricing is not an
10 important factor in purchasing decisions and that
11 underselling by subject imports did not affect the condition
12 of the domestic industry. As evidence of this, Respondents
13 point to two trends. First, the volumes of non-subject
14 imports experienced the greatest increases over the period
15 of investigation even though price comparisons show that
16 non-subject imports oversold both the domestic-like product
17 and subject imports in most quarters.

18 And second, when subject import volumes and
19 underselling increased in 2015 the financial condition of
20 the domestic industry improved. How do you respond to these
21 arguments, which can be found at pages 3 to 4 of the
22 Respondent's pre-hearing brief?

23 MR. LEVIN: If we may, we'll discuss this in
24 detail using the confidential information in the
25 post-hearing brief with the Chairman's leave, but I will

1 make one point.

2 Again, skirting around confidential information,
3 the lost sales and revenue findings in the staff report
4 would indicate that there is serious price competition.

5 MS. GRODEN: This is Cara Groden.

6 One more thing that I would add is that the vast
7 majority of purchasers noted that price was one of their
8 more important purchasing factors, that HEDP from the U.S.
9 and China are comparable in all factors, except for price,
10 that U.S. pricing was inferior to Chinese pricing because it
11 was higher. So I think that any assertion that price is not
12 an important factor in this industry is not supported by the
13 evidence.

14 VICE CHAIRMAN JOHANSON: Thank you Ms. Groden
15 and Mr. Levin. I'll look forward to reading the
16 post-hearing brief. My time is about to expire, so we will
17 turn to Commissioner Williamson.

18 COMMISSIONER WILLIAMSON: Okay, thank you.

19 Mr. McCaul, you made reference to the fact that
20 a lot of the other companies have gotten out of this
21 business and you're the only one. I don't think you
22 actually answered the question why did it happen. Why did
23 the others get out? Why are you the only one left?

24 MR. MCCAUL: It basically it was advent of China
25 getting into the marketplace and Chinese production over the

1 years. I mean when I first got involved with the phosphate
2 business, the HEDP business, in particular, that was about
3 -- I don't know, 20 years ago, something like that. It was
4 little stuff -- there was very little product coming in from
5 China at that point, but you know it just grew tremendously
6 and it just killed a lot of the industry in the U.S. as far
7 as phosphate production is concerned.

8 So why were we able to survive? You know we're
9 pretty good at what we do. Our plant is efficient. It's
10 not outdated and inefficient as has been suggested. We have
11 excellent people. They really know what they're doing and
12 we're very efficient. We don't have a lot of employees that
13 aren't needed. We're lean and a good team, so we've been
14 able to source raw materials properly, efficiently, and
15 effectively. We've got good operations and we've been able
16 to compete with China and India and Europe. And it's not
17 been easy and it has gotten really tough lately and that's
18 why we decided we had to take this step because it was just
19 incredible the way prices were falling coming from China.
20 They were just unbelievably low and so that's why we're here
21 today.

22 COMMISSIONER WILLIAMSON: So before you made
23 your last few statements, I was going to say it was really
24 not so much the product -- others didn't get out because of
25 the product, but because of the market. But I guess you

1 could also say you're very good with working with the
2 product and maybe the others weren't as good.

3 MR. MCCAUL: Yes, I'm saying that too I mean
4 there's a level at which you can stay manufacturing a
5 product and some people make a judgment that you know this
6 is just not worth it and others could say, well, although
7 we're making a very small margin we could still survive with
8 making this margin. So I mean that's the determination we
9 made and so we're still making this product today. I don't
10 know what the future's going to bring, but I'm hopeful we
11 can continue to make this product and stay in business, but
12 maybe in a different form. I don't know. We'll see.

13 COMMISSIONER WILLIAMSON: That leads to a
14 question. Did the domestic demand for HEDP increase during
15 this period of investigation?

16 MR. MCCAUL: It has increased a little bit, I
17 think, but it's not a huge growth. I think the growth of
18 HEDP is kind of tied to the general GDP growth to the extent
19 it's a widely used product in a lot of different industries,
20 so if we get more growth in the U.S., I think the market's
21 going to grow for HEDP.

22 COMMISSIONER WILLIAMSON: Is that the way you
23 would describe your expectations for the future?

24 MR. MCCAUL: Yes, it is, I mean for HEDP. I'm
25 not seeing some area where the demand could explode for

1 HEDP. I think it's going to be tied to the general economy
2 more than anything else. There are some products that you
3 can look at, not HEDP. There are other products, phosphates
4 that we manufacture that are more tied to oil and gas
5 production. And when oil product you know spikes upwards
6 the demand for those, but not HEDP.

7 COMMISSIONER WILLIAMSON: This is sort of across
8 the board more.

9 MR. MCCAUL: Yes.

10 COMMISSIONER WILLIAMSON: Good, thank you.

11 Mr. Levin, I think you sort of partially
12 answered this. I had a question about the affects of the
13 duties on Compass and you talked, I think -- you said you
14 were going to answer part of the price question later, but I
15 was curious if there was any other positive effects the
16 temporary duties have had that you can address here or else
17 do it all post-hearing.

18 MR. LEVIN: I'd prefer to do it in post-hearing,
19 but it allowed the company to survive a little longer.

20 COMMISSIONER WILLIAMSON: Okay, thank you.

21 I was wondering and we've talked a lot about
22 switching between the different methods of production and I
23 was wondering what kind of capital investment is involved in
24 doing that?

25 MR. MCCAUL: That is a good question. We have

1 equipment in place already that allows us to use the PCL-3,
2 so since we haven't used PCL-3 in quite a few years now, I
3 will admit that we would have to refurbish some of that
4 equipment and make sure that it's useable. In fact, we are
5 currently refurbishing some part of the plant that will
6 allow us to use PCL-3. Already we've decided to take that
7 step for other reasons, I'll say. I'll put it that way, but
8 as far as dollar-wise you know to be able to get back into
9 using PCL-3 in the plant we've made some estimates about
10 what our capital investment would be there and it's not a
11 huge number. I'd rather not quote the number.

12 COMMISSIONER WILLIAMSON: No, that's fine.

13 MR. MCCAUL: But I would tell you it's not a
14 number that -f-

15 COMMISSIONER WILLIAMSON: It's not a prohibitive
16 thing.

17 MR. MCCAUL: No, definitely not, definitely not.

18 COMMISSIONER WILLIAMSON: Okay, good. Thank
19 you.

20 You mentioned something about I guess the
21 detergent manufacturers stopped using phosphorous. Was it
22 you said a few years ago or was it quite a bit longer than
23 that? I thought it was quite a while ago.

24 MR. MCCAUL: It was quite awhile ago that the
25 American producers of detergents stopped using phosphates.

1 You know it's a fact too that even though that there were
2 restrictions on the amount of -- they could use phosphates
3 in detergents in the United States if they really wanted to.
4 And of course, I wish they would, but it's interesting to me
5 that the regulations are such that they're not forbidden
6 entirely from using phosphates, but they made the decision
7 some years ago.

8 COMMISSIONER WILLIAMSON: We're talking about in
9 the eighties, the nineties?

10 MR. MCCAUL: I'm not sure when. It could've
11 been eighties, but it was certainly in effect in the
12 nineties, that's for sure.

13 COMMISSIONER WILLIAMSON: I've been doing trade
14 policy for a long time and I remember this issue coming up
15 when.

16 MR. MCCAUL: Yes, yes.

17 COMMISSIONER WILLIAMSON: Okay, thank you.
18 We'll just settle it at that.

19 Respondents have noted that Compass uses the
20 acidic anhydride that you use is I guess controlled in the
21 U.S. because it also can be used to produce certain
22 narcotics. Does Compass incur any regulatory burdens or
23 costs associated with using this material?

24 MR. MCCAUL: No, no, absolutely not. I read
25 that too and I was puzzled by those comments. I mean acidic

1 anhydride, yes, some of the comments they're making are
2 correct as far as what it could be used for, but honestly,
3 there's no special costs involved because you know we use
4 acidic anhydride. You know the cost of acidic anhydride has
5 been pretty steady for a long time too. I mean, Mark, do
6 you have any comments on that?

7 MR. ALLEN: No, it's just an initial making sure
8 that your plant records are adequate to maintain inventory
9 and ensure that there are no losses, so it's part of our
10 normal MRP system anyway and so it's not particularly
11 burdensome at all. In fact, a phosphorous trichloride is a
12 much more difficult material to handle than acidic
13 anhydride, in my opinion.

14 COMMISSIONER WILLIAMSON: Okay. MRP
15 manufacturing process or what?

16 MR. ALLEN: Typical acronym used for just an
17 overall ^^^^ like you've heard of SAP we can patch these
18 systems with all your contractual data is stored in those.

19 COMMISSIONER WILLIAMSON: Okay, thanks.

20 MR. MCCAUL: MRP stands for Material Resource
21 Planning.

22 COMMISSIONER WILLIAMSON: Okay, I just wanted to
23 know. I'm always learning new acronyms here, and thank you
24 for those answers.

25 VICE CHAIRMAN JOHANSON: Commissioner Broadbent.

1 COMMISSIONER BROADBENT: Okay, thank you.

2 Let's see, Mr. Allen, this product appears to be
3 highly interchangeable and the price appears to be really
4 important in the market. Given that it's surprising that
5 there's much of a price different -- you know a difference
6 in price at all really between imports and the domestic
7 product or between individual firms why are there price
8 differences? Is this an issue of sort of imperfect
9 information in the market or some attenuation I'm not
10 seeing?

11 MR. LEVIN: If I could jump in before Mark
12 speaks.

13 Well, first of all, the Chinese are dumping.

14 MR. ALLEN: Ms. Broadbent, I don't really have
15 anything to do with pricing. I just make the material at
16 the lowest possible cost.

17 COMMISSIONER BROADBENT: Mr. McCaul.

18 MR. MCCAUL: I have something to do with
19 pricing. The product itself is interchangeable, of course,
20 as you point out. Now why would somebody sell product at a
21 lower price than somebody else? I mean there's a lot of
22 reasons for that.

23 COMMISSIONER BROADBENT: It's really why would
24 somebody buy it at a higher price?

25 MR. MCCAUL: Why would you buy at a higher

1 price? That's the problem we have all the time. We can't
2 get people to pay a higher price, you know, because they
3 compare us. And what happens -- no, I mean this is a fact.
4 I mean you go into a customer and you say, look, we need to
5 charge you so much for this product and they immediately
6 tell you, well, wait a minute, we had some people in from a
7 Chinese supplier last week and they're offering this price,
8 you know, and this is much lower.

9 And then we say, well look, here's all the
10 benefits you get from dealing with us. First of all, we're
11 great people and you know -- but no, we provide good service
12 and follow up and you know we've got inventory and we can
13 supply your emergency requirements right away and all of
14 this kind of stuff. And you hope to differentiate yourself
15 by that and you can get maybe a few cents, but you can't get
16 a whole big difference. So what happens is that someone
17 comes in with lower pricing it drives the market down and
18 that's the problem we have to deal with.

19 COMMISSIONER BROADBENT: Do they cite the
20 Chinese prices to you when they're negotiating?

21 MR. MCCAUL: Yes, oh yeah. Oh yeah.

22 COMMISSIONER BROADBENT: And do you have any --
23 you might want to put some of that on the record if you
24 could.

25 MR. MCCAUL: I think we have submitted some

1 information about quotes from China that we've had to deal
2 with, you know, and that's an everyday situation.

3 COMMISSIONER BROADBENT: Okay.

4 MS. GRODEN: If I may add, briefly.

5 I mentioned this in my testimony that the
6 pricing products account for almost 100 percent of both
7 Chinese shipments and the U.S. producers' shipments, which
8 is frankly uncommon in the cases that I've been involved in
9 and I think does show that there is no segment of those
10 sales that isn't going into exactly the same market. So
11 just to address your point on the attenuation quickly, I
12 don't think we see any evidence of that.

13 COMMISSIONER BROADBENT: Okay.

14 Page VI-2 of the staff report includes a
15 statement by a Compass company official stating that while
16 HEDP pricing does not contain a specific pass-through
17 mechanism or pricing formula for changes in its primarily
18 inputs "There is an expectation from customers that we might
19 achieve lower costs. We would be expected to adjust our
20 prices accordingly." Do you agree with this quote?

21 MR. MCCAUL: Yes, I do.

22 COMMISSIONER BROADBENT: Okay, do you know who
23 said it?

24 MR. MCCAUL: It was probably me. I don't know.
25 I'm not sure.

1 COMMISSIONER BROADBENT: Okay.

2 Alright, both the average per pound HEDP sales
3 value and raw material costs declined throughout the period.
4 To what extent do raw material prices affect prices for
5 HEDP? Do your customers analysis the prices for key raw
6 materials and do they reference those in your price
7 negotiations?

8 MR. MCCAUL: Depends of how sophisticated the
9 customer is. But some customers who are aware how products
10 are made, not just HEDP but other products they would site
11 evidence of, the price of phosphorus for example, has
12 declined so you think that your cost should have gone down,
13 and therefore you should be lowering your price to us. That
14 sort of thing happens. And then you have to respond to that
15 with facts, but you can support your position for perhaps
16 asking for a price increase, or for perhaps defending
17 perhaps you want to keep the price where it is.

18 That's sort of an everyday occurrence that we
19 deal with too. I would have to tell you though, that at the
20 end of the day, what matters is, what's the market for this
21 HEDP product? You can run to a customer and say, hey my cost
22 have gone up, because this raw material is more expensive,
23 than it ever was, and they're often not interested in that,
24 they're only interested in the fact that they can buy HEDP
25 from somebody else at a lower price.

1 COMMISSIONER BROADBENT: Okay. In assessing
2 whether there has been a cost price squeeze we normally look
3 at cogs to net sales ratio. Over this period the cogs to net
4 sales ratio increased. However, cogs is calculated by
5 including byproduct revenues, which are based on the
6 industries sales of a product, that's unrelated to the
7 merchandise, in the scope of this investigation. To what
8 extent should we take into account that changes in the
9 industries byproduct revenues as we accessed the cogs to net
10 sales ratio and whether the industry did actually experience
11 a cost price squeeze.

12 MR. LEVIN: If we may commissioner we'd like to
13 address that in our post hearing brief, especially since
14 we're getting very close to confidential information.

15 COMMISSIONER BROADBENT: Okay. Mr. Chairman that
16 concludes my questions. I want to thank the panel for
17 appearing here today, it was really helpful.

18 VICE CHAIRMAN JOHANSON: Commissioner Kieff?

19 COMMISSIONER KIEF: I have nothing.

20 VICE CHAIRMAN JOHANSON: I am next up. Do
21 Commissioner Williamson, or Commissioner Broadbent have any
22 further questions?

23 COMMISSIONER BROADBENT: None from me.

24 COMMISSIONER WILLIAMSON: I have one question. Are there
25 differences in the types of purchasers, that purchase

1 through contracts, and those that purchase through spot
2 sales?

3 MR. MCCAUL: In this industry, and I'm referring
4 to the sales of the types of products that we sell. The
5 number of contracts that we have are miniscule. Most of the
6 business we do is simply -- you would probably describe it
7 as spot business. It's more than that. I would say there's
8 an understanding and a relationship, and a goal that you
9 make with a customer to supply to them and they usually stay
10 with you, unless something changes. You know, somebody
11 comes in and offers them a lower price, they often give you
12 the chance to respond and lower your price to match, that
13 happens a lot. But contract -- we have very few sales
14 contracts.

15 COMMISSIONER WILLIAMSON: Okay. Good. Thank
16 you for that. Thank you for your answers.

17 VICE CHAIRMAN JOHANSON: We would like to thank
18 you all for appearing here this morning. We will now take a
19 -- we will recess -- oh, I apologize. I'm new at this
20 business. Do staff have any questions?

21 MR. CHANG: Calvin Chang. Staff has no further
22 questions.

23 VICE CHAIRMAN JOHANSON: Do respondents have
24 questions?

25 MR. McGRATH: We have no questions.

1 VICE CHAIRMAN JOHANSON: We will now break for
2 lunch. But first, I would like to thank the witnesses for
3 appearing here today and their counsel and their economists.
4 We found it quite informative. So we will now take a break
5 for lunch. We will return at 12:45. And please be sure to
6 remember that you should not leave confidential business
7 information in the hearing room, because this room is not
8 secure.

9 MR. LEVIN: Thank you, Mr. Chairman, and thank
10 you Commissioners.

11 VICE CHAIRMAN JOHANSON: Thank you.

12 (Whereupon, at 11:45 a.m., the hearing was
13 adjourned to reconvened at 12:47 p.m., this same day.)

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1 A F T E R N O O N S E S S I O N

2 VICE CHAIRMAN JOHANSON: Mr. Secretary, we are
3 prepared to begin with the Respondent's testimony. Are
4 there any preliminary matters?

5 MR. BISHOP: Mr. Chairman, I would note that
6 those in opposition to the imposition of the anti-dumping
7 and countervailing duty orders have been seated. All
8 witnesses have been sworn.

9 VICE CHAIRMAN JOHANSON: Thank you.

10 MR. BISHOP: Mr. McGrath, you may begin when
11 you're ready.

12 MR. MCGRATH: Thank you and good afternoon. And
13 it's a pleasure to appear before you today. I'm going to
14 introduce our witness here, Ms. Joanna Cheng, to present
15 testimony on behalf of Taihe Water Technology.

16 I wanted to just offer a few opening comments
17 first and then she will discuss the production process that
18 we heard about this morning in some more detail, explain
19 some of the issues that we were raising.

20 I did want to apologize for any misperception on
21 the part of Mr. McCaul that we had characterized his
22 byproduct, acedic acid, as poor quality. Irishmen don't
23 usually insult each other unless there's drinking involved.
24 What I meant to refer to -- what we were referring to in the
25 brief was simply the fact that it is a byproduct. There are

1 impurities. It's not likely to have the same sort of value
2 in the market as a first-quality product like, as he said a
3 glacial acetic acid or other pure forms of acetic acid that
4 might be used as used for inputs for production.

5 So I did want to introduce Ms. Cheng. She is
6 going to discuss the production process and I believe it was
7 Commissioner Kief who suggested that Mr. McCaul might want
8 to take notes. I can assure everyone there's no need to.
9 Mr. McCaul has been to the plant. He has seen it. The
10 company welcomed him there and he had a good visit, so he
11 knows how this is done and so now she will explain it to the
12 Commission. Ms. Cheng.

13 STATEMENT OF JOANNA CHENG

14 MS. CHENG: Good afternoon Mr. Chairman and
15 members of the International Trade Commission. I'm Joanna
16 Cheng. I'm the North American Regional Sales Manager of
17 Shandong Taihe Water Technologies.

18 I'm here to today to explain why Taihe and the
19 Chinese producers of HEDP do not cause injury to the U.S.
20 industry. Taihe is able to sell the HEDP globally as a
21 profit because China has the complete industrial chain from
22 yellow phosphorous to the finished product. And in our
23 company, Taihe, has regional industrial advantage and
24 advanced production technologies. The details are as
25 follows.

1 There are many process routes to produce HEDP
2 and the producers all over the world are using cheaper
3 material phosphorous trichloride and acidity acid as raw
4 materials, which are further reacted together to form
5 phosphate ester by one step esterification, then the
6 subjected HEDP will be generated after hydroxylation and
7 distillation. During this process, acedic chloride is also
8 produced as a byproduct in Taihe's production process, which
9 is widely used as intermediate in pharmaceuticals and
10 pesticide industries, as well as hydrochloric acid is
11 produced as byproduct, which has wider applications.

12 Taihe uses its own advanced, independent
13 research and has developed a continuous high-pressure
14 production process, which reduces the production time to
15 less than one-tenth of the traditional technology. This
16 reduces energy consumption greatly and enhances the
17 utilization rates of raw materials to almost 100 percent.
18 Taihe continues the process has achieved the complete
19 automatic operation and uses very few workers, so there's an
20 innovative production road.

21 Compass's plant is in the United States like
22 other industries in recent decades the U.S. or American
23 chemical industries have moved to some other countries,
24 especially the high-risk and high-pollution industries. Now
25 America does not have the industrial chain related to

1 phosphor to produce HEDP, phosphorous trichloride as the raw
2 material of HEDP is made from chlorine and yellow phosphor.

3 As we all know, chlorine is a very hazardous
4 chemical and was once used to make chemical weapons. It is
5 very hazardous during transportation. Another raw material,
6 yellow phosphorous, is almost only produced in China. Even
7 India is importing yellow phosphorous from China, so it is
8 impossible for Compass to produce the phosphorous
9 trichloride by U.S. material only, so they use the
10 inefficient production technology, which using phosphorous
11 acid and acedic anhydride.

12 First, Compass purchase phosphorous acid solid
13 from China, which is extracted from chemical waste or
14 produced through crystallization centrifugal separation
15 process after hydroxylation and the distillation from
16 phosphorous trichloride. It is a complete production
17 process.

18 Second, they use expensive acetic anhydride
19 instead of the low-priced acetic acid and the two parts of
20 acetic anhydride in the production process will produce one
21 part of acetic acid with low value.

22 So it is significantly and cheaper to use
23 phosphorous trichloride and acedic acids, like Taihe, to
24 produce HEDP rather than to use acedic anhydride and
25 phosphorous acid like Compass because the raw materials

1 itself are much cheaper. Acetic acid cost half as much as
2 the acetic anhydride. In addition, it is a chemical
3 procedure to illegal production of heroin and
4 methamphetamines. Acetic anhydride is strictly controlled,
5 thus, Compass is likely to face additional costs involved in
6 handling this chemical under the narcotics regulations.

7 One reason Taihe changed to its production
8 method is was the needs applied to Chinese public security
9 department every time they need to procedure acetic
10 anhydride due to the tighter anti-drug controls. And also
11 when phosphorous acid reacts with acetic anydride it is in a
12 high temperate will create a chemical called acetyl chloride
13 which is a high toxic and inflammable. It can be dissolved
14 in byproduct acetic acid, which is not good for the workers.

15 And another point is the advantage of the raw
16 materials in China. The HEDP production chain is not
17 functioning enough in the United States. Phosphorous
18 trichloride is made from chlorine gas and yellow
19 phosphorous. Chlorine gas is highly toxic and unsuitable
20 for long term and long distance transportation. Yellow
21 phosphorous cannot be obtained from U.S. source. Both the
22 raw materials are hard to get and Compass is unlikely to
23 produce the PCL-3, which is also called phosphorous
24 trichloride.

25 The factory site of Compass is neither close to

1 the production site of chlorine gas or phosphorous
2 trichloride. Transportation requirements are relatively
3 strict. It is very difficult for Compass to import
4 phosphorous trichloride directly. Even the purchasing cost
5 of phosphorous trichloride is higher. They cannot obtain
6 it. The only way is to import the phosphorous acid, a
7 crystal from China. There is abandoned phosphorous
8 resource in China. The phosphorous trichloride source
9 around the Taihe plant is very plentiful, so the procurement
10 cost is very low. We have a list of all the nearby
11 suppliers of phosphorous trichloride, so I can provide the
12 list in post-hearing.

13 Compass has no advantage of phosphorous serious
14 products since there is no such cheap raw material in U.S.
15 the only way to buy raw materials from China in a high price
16 by hydrolyzing phosphorus trichloride to get phosphorous
17 acid liquid and then after crystallization to make the new
18 product, phosphorous acid or solid. Compass cannot manage
19 the low cost for raw material directly.

20 Also, the advantage of the production processing
21 Taihe helps. When Taihe produce HEDP, acedic chloride is
22 produced as a byproduct, which is used as a pharmaceutical
23 intermediate with high value. It can share the production
24 cost of HEDP. HEDP makes continuous innovation production
25 technologies with the rapid continued production

1 technologies instead of slow, single-batch production way
2 which can reduce the energy consumption. Compass does not
3 have such advantage comparing with Chinese producer.

4 Injury of the anti-dumping for U.S. customer
5 Compass action is very harmful for the American market and
6 to the customers, which also can be the user of these
7 chemicals in the United States, which will legally increase
8 the cost of the U.S. users. China had ready-made, low
9 chemicals; however, Compass insists to produce by themselves
10 with no advantage and they are actually buying raw materials
11 from China.

12 Finally, as Compass capacity cannot meet the
13 needs of U.S. market, India will import a large amount of
14 HEDP from China and then resell to United States market. It
15 is the cost just to increase the cost of American users.
16 The defense of no existing dumping behavior from other
17 company. To sum up really the advantage of raw materials and
18 the advanced production technologies. Other production
19 costs are significantly lower than that Compass Company.

20 The sales price is lower than that of the
21 Compass Company in the United States. It is a result of a
22 full market competition rather than malicious dumping. As a
23 person ran in the company regularly, we cannot understand
24 why Compass used such high-cost methods to produce HEDPA.
25 They just are serving by using anti-dumping waste.

1 We believe that under the circumstance of raw
2 material, different production process, and even finished
3 products it is not suitable to make comparison and to say
4 that Chinese manufacturers has done any damage to the
5 interest of Compass. It is like earth has abandoned
6 resource. You can easily to grow fruits in here. For
7 somebody to make the raw materials to month-to-month and use
8 the space to produce it and then say the fruit in earth
9 damaged the fruit in moon.

10 We have nothing to say if you insist in
11 considering it is a damage. The train of the industrial
12 chain is gathering to the place where the resource is easy
13 to obtain. Meanwhile, some high cost and high pollution
14 industries transfer from developed countries to the
15 undeveloped countries and/or undeveloped areas. All the
16 countries origins without any strict environmental
17 production policy. The United States has shifted the very
18 dangerous and high pollution raw material out from the
19 country. China may do the same thing a couple years later.

20 In addition, the development of the production
21 company consistently challenged themselves by optimizing the
22 production technologies; otherwise, no materials how good a
23 protection it is, it cannot allow the enterprise to survive
24 easily.

25 MR. MCGRATH: Thank you, Ms. Cheng.

1 We had a written version that had to be revised
2 and I apologize for not having that in front of you. I'll
3 work with the transcriber to make sure that all of the
4 testimony is correct. And we had to make a number of
5 last-minute changes based on input from folks in the
6 management chain and China, who are up at 1:00 a.m. making
7 changes.

8 Just to summarize a bit, the point the company
9 would like to make very clear is that their choices about
10 production technology, the fact that they're located in the
11 place in the world where all the phosphorous is made and
12 sold to the other producers around the world, the fact that
13 they are using a continuous production process rather than a
14 batch-processing system, a lot of these things -- and the
15 fact that they're producing a fairly high value acetyl
16 chloride byproduct, which brings in additional income,
17 reduces their overall costs as well. All of those things
18 taken together put them in a superior position to be able to
19 produce at a fairly low cost and make a reasonable profit.

20 I did want to add one thing that I knew would
21 come up either now in this direct presentation or in
22 rebuttal or at some point since it's always done and that is
23 the presumption that is laid forth usually on your desk that
24 because there is a high dumping margin against Chinese
25 producers that means that there's a very high margin of

1 unfair pricing practices that are going on. I think
2 everyone knows by now, but I'd like to say it for the
3 record, when dealing with China in an anti-dumping case
4 margins mean very little.

5 Dumping margins are calculated based on
6 surrogate values from six or seven other countries, a
7 selection gets made, the margin can go from 10 percent to
8 500 percent just by choosing a different country for a
9 financial ratio. It really doesn't mean very much. For
10 market economies, those calculations are done on the basis
11 of what is the fair value for the producers' exports versus
12 their home market sales and a calculation is done, assuming
13 that their costs are their costs, but that's not done with
14 China.

15 So I would just simply point out the fact that
16 their might be a high margin against any Chinese company in
17 any case is not necessarily an indication that they're
18 selling at that percentage below their actual costs. As a
19 matter of fact, in the countervailing duty case found a very
20 low percentage for subsidies, actual direct subsidies to
21 these companies.

22 So with that being said, I would like to add a
23 few other things and then open up the questions. With
24 respect to like product issues, we take no issue with what's
25 been decided previously in the preliminary and the previous

1 cases and we're not suggesting that it should be different.

2 I know this came up in the preliminary and there
3 was discussion about it this morning, so I'll go ahead and
4 discuss it myself, and that is the use of data. In some
5 instances, you might refer to Peer's data or publicly
6 available data of some sort as a surrogate for using actual
7 numbers where you have a situation with like this with only
8 one domestic producer and only one reporting foreign
9 producers and perhaps a limited number of importers.

10 We've done the same thing in trying to analyze
11 what is the import volume. We looked at Data Mine. We
12 looked at Peers. The Petitioner's have used Peers. There's
13 some significant differences between the numbers they come
14 up with and what the staff comes up with. And I would urge
15 you, if at all possible, I think the staff data should be
16 the gold standard. They usually are for me. If there's a
17 real serious problem with them, I think the staff usually
18 provides alternatives as well, but I think from, what I've
19 seen; the Peer's data that they've been using is overstating
20 the volume of imports. And the public information that they
21 have that they're talking about with this massive growth of
22 capacity overseas I think is overstating the capacity in
23 China.

24 Yes, there was some additional capacity that was
25 created by Taihe a few years ago. They became a player in

1 the market with a new facility, a new plant, but the amount
2 of the volume that's attributed to that new facility is
3 definitely not what they're capable of producing. We would
4 urge you to look at and question us, if necessary, on our
5 questionnaire answer. We put that data on the record.

6 And then with respect to the issues that are at
7 the heart of the causation discussion, we submit that there
8 are some counter -- not countercyclical. There are some
9 contrary implications from different data that's on the
10 record here that suggest that there might be a break in the
11 causation, the causal nexus between the imports -- the
12 subject imports and the domestic industry's financial
13 situation.

14 They seemed to have improved their financial
15 situation when subject imports increased, but one thing that
16 is fairly clear I know that there were statements a few
17 times from the Petitioners that the subject imports from
18 China greatly outnumbered or outpaced Indian imports,
19 exceeded Indian imports. The staff's Table C-1 suggests
20 otherwise. It shows that during the period the subject
21 import volume was higher than Indian volume, but it also
22 shows a change in the relationships during the period of
23 investigation and it shows that sales of imports from
24 subject imports from China seemed to be fairly even
25 throughout the period. When there was a movement, an

1 adverse movement by the domestic industry, there was an
2 equivalent increase from India. It seems pretty clear that
3 there's a direct relationship between Indian sales and the
4 domestic industry's volume of sales.

5 MR. McGRATH: So with that, I will save the rest
6 of my comments I guess for rebuttal, or perhaps offer them
7 in answer to your questions, and we're both available for
8 questions. Thank you.

9 VICE CHAIRMAN JOHANSON: Thank you, Ms. Cheng and
10 Mr. McGrath. We will now begin our questioning.

11 Commissioner Williamson is the first Commissioner to speak.

12 COMMISSIONER WILLIAMSON: Thank you. Thank you
13 for being here this afternoon.

14 Ms. Cheng, I'm not sure, are you based in the
15 U.S.? Or are you based in China?

16 MS. CHENG: Excuse me. I'm basically located in
17 China, and sometime forth and back from China and here for
18 business.

19 COMMISSIONER WILLIAMSON: Okay. Thank you for
20 traveling so far and being here today. I guess the
21 question, Mr. McGrath, due to a large part of your argument
22 is based on the use of different production processes,
23 saying that Compass process is less efficient. Also, even
24 if we accept this as true, how should this affect our
25 material injury analysis?

1 I was going to add that, you know, Commerce has
2 found the imports to be unfair but you've already addressed
3 that question, so I won't add that, but what do we make of--
4 how should that change your argument, or analysis? And
5 also, Petitioners this morning spent a lot of time talking
6 about how they analyze the two different processes, and they
7 regularly review them, and are you questioning their
8 business judgment about what is the most--what seems to make
9 the most sense for their market?

10 MR. McGRATH: No, I have no doubt that as rational
11 business people they're making a decision that is best for
12 them, but it's starting from a static point of what are they
13 doing now? And it could well be, the description we heard
14 Mr. McCaul give of what would be necessary to start using a
15 different input, PCL-3, took as a given that the basic, the
16 reactors that they have in place and the process for
17 production is not really going to change dramatically. What
18 they would do is make adjustments, what adjustments were
19 necessary to switch to a different raw material input, and
20 that's only one of the assertions that we're making about
21 the production process differences.

22 The major one, one of the major ones certainly
23 has to be the fact that we have a continuous reaction
24 process. So the period of time that it takes for a product
25 to go from start, from raw materials to finished product

1 takes much less time, and it's on a continuous basis, and it
2 uses less energy.

3 So those are all elements that I don't think,
4 when they sit down and try to analyze whether they would
5 change their production process, yes, this is probably a
6 very expensive thing for them to do. It would be more than
7 the capital expenditure that I think Mr. McCaul was talking
8 about in order to really make this kind of a change.

9 COMMISSIONER WILLIAMSON: I mean you're talking
10 using not only the different input, but their whole
11 production process.

12 MR. McGRATH: Perhaps different reactor vessels,
13 other kinds of production. Instead of having a batch
14 reaction process, to change to--

15 COMMISSIONER WILLIAMSON: Okay, understood. I
16 will invite Petitioners to respond to that in posthearing.
17 Posthearing will be fine, thank you.

18 The--

19 MR. McGRATH: But--excuse me?

20 COMMISSIONER WILLIAMSON: Yes?

21 MR. McGRATH: But you started to ask the question
22 about how should it affect your analysis.

23 COMMISSIONER WILLIAMSON: Yes.

24 MR. McGRATH: One of the things that I tried to
25 point out at the beginning was that this issue of a higher

1 value byproduct that reduces the cost of production quite a
2 bit is one way that it would have an impact on your
3 analysis. You often look at the ratio of COGs to net sales,
4 and if it's going up that's an indication of a cost/price
5 squeeze and that is part of your analysis.

6 We're suggesting that a reason for that is their
7 selection of their choice of production process, and their
8 lack of having a higher value byproduct. There is in fact--

9 COMMISSIONER WILLIAMSON: I didn't talk to you
10 about the byproduct--I forgot the name of it--

11 MR. McGRATH: Acetyl chloride is the byproduct
12 that--they make acetic acid.

13 COMMISSIONER WILLIAMSON: Yes. And I think they
14 said that that market was not that large. So do you
15 disagree with that? And what's the basis?

16 MR. McGRATH: That's what we heard this morning.
17 We're not sure exactly how big the market is, but I talked
18 with Ms. Cheng. They have done some exports of Acetyl
19 chloride to the United States. I'll let her comment on
20 other markets.

21 MS. CHENG: We export Acetyl chloride, a large
22 quantity to India because it's a really important
23 pharmaceutical intermediate. So China is a big market, and
24 also India is a big market. And also another part of the
25 world use it. It's used widely. So we don't think the

1 market is really small.

2 COMMISSIONER WILLIAMSON: What about the U.S.
3 market for that?

4 MS. CHENG: In the past few years I did saw U.S.
5 company do have the amount of it. Well, it's not our only
6 way to sell it to United States. It can offer globally.
7 Why only say U.S. is only market?

8 COMMISSIONER WILLIAMSON: Okay. Are there any
9 export taxes, export restrictions on exports of the raw
10 materials that you talked about?

11 (Pause.)

12 MR. McGRATH: We'll have to check on that, but I'm
13 not aware of there being specific export taxes to try to
14 restrict the exports of phosphorus. It's also exported to
15 other countries that want to obtain it to make their own
16 HEDP. So India gets all their phosphorus acid from China.
17 I think that was discussed this morning.

18 COMMISSIONER WILLIAMSON: Yes. No, I'm trying--
19 because what you're implying is that one's more efficient
20 effects, and also the fact that China is the source of a lot
21 of the raw materials is why you have a cost advantage. And
22 so I just wanted to make sure that, at least in terms of the
23 cost of the raw materials to other countries, whether or not
24 there was--

25 MR. McGRATH: Understood. We'll check to see if

1 there's any restriction.

2 MS. CHENG: And I also want to add one point.
3 Because the phosphorus acid is somehow the downstream
4 chemical, which is more cost added. For example, India
5 import yellow phosphorus which is lower cost compared to
6 import of the phosphorus acid, because it's upper stream,
7 it's cheaper. The downstream chemical is more expensive.

8 COMMISSIONER WILLIAMSON: But then it has to be
9 converted.

10 MS. CHENG: Yes, it's need to concentrated to
11 solid first in China, and then shipped to U.S., and then
12 diluted again. So it's kind of added cost for the process.

13 COMMISSIONER WILLIAMSON: Okay. `So taking all of
14 those costs into effect, how should that affect our analysis
15 of the profitability of the domestic industry in terms of--I
16 mean, when you've got the imports--you say, okay, if you do
17 a different process it's going to lower your cost, but then
18 the inputs cost.

19 MR. McGRATH: Well, to a certain extent there are
20 natural advantages of being in China. I think I heard
21 Petitioners this morning indicate that everything changed
22 when China came into the market. But it begged the
23 question, why did China come into the market? China has
24 some pretty major natural advantages of being located in
25 China, and one of them is the availability of the

1 phosphorus acid. It's not available here, so it has to be
2 purchased from China and has to be bought from China.

3 That creates just a difference in the relative--
4 they're not playing on the same ball field to start with, I
5 guess. I mean, to level the playing field thing doesn't
6 really apply here if there are just certain natural
7 advantages of location that exist. And that's something
8 that has to be considered.

9 It's--if there's a reason to think that the
10 Chinese industry is dumping its product because it has too
11 much of it, which I don't think is the case. I think what
12 they're doing is selling it at a profit, at a cheaper price,
13 because they have some advantages. Some of them are
14 advantages they've developed through technology, and some of
15 them are availability of raw material. It's a combination
16 of the two.

17 COMMISSIONER WILLIAMSON: Okay, thank you for
18 those answers.

19 VICE CHAIRMAN JOHANSON: Commissioner Broadbent?

20 COMMISSIONER BROADBENT: Okay. Mr. McGrath,
21 several Petitioners reported that due to--this is not the
22 one I wanted. I'm going to retract that just a second.

23 Here we go. Okay, in assessing--this is for Mr.
24 McGrath--in assessing whether there has been a cost/price
25 squeeze in the industry's COGs in its sales ratio, over the

1 period the COGs net sales ratio increased. However, COGs is
2 calculated by including the byproduct revenues which are
3 based on the industry's sales of a product that is unrelated
4 to the merchandise corresponding to the scope.

5 To what extent should we take into account
6 changes in the industry's byproduct revenues as we assess
7 the COGs to net sales ratio, and whether the industry
8 actually did experience a cost/price squeeze?

9 MR. McGRATH: Well, I think that is an issue that
10 the Commission has to look at because it affects the cost of
11 goods sold in terms of what that number is and what it looks
12 like.

13 One of the points we're making is that, is that
14 byproducts are an issue in both types of production. It's
15 just that they are different byproducts. And one reason
16 that Taihe and others choose that particular production
17 process is because it does have that higher value byproduct.
18 And it's more likely to stay high than what has been
19 happening to acetic acid, which is the byproduct that is
20 made by compass.

21 So I think it should simply be taken into account
22 in terms of how byproduct revenues affect the cost of goods
23 sold when you make that calculation. We're not suggesting
24 that it should be treated differently, but that's a fact of
25 byproduct--or of cost-of-goods sold calculation, reduced by

1 the byproduct revenue.

2 COMMISSIONER BROADBENT: Right. Okay. Can you
3 talk to me about the market share shift? The imports from
4 China did come at the expense of the domestic industry. Why
5 should we not see this as injury?

6 MR. McGRATH: Well I think there are a couple of
7 different databases you can look at for that, and in looking
8 at the sales of imports in the United States that did not
9 appear to be the case. I didn't see a shift, a decline of
10 U.S. sales at the expense directly of Chinese sales.

11 The Chinese sales, imports and sales appear to be
12 fairly steady. It's not a huge increase over the POI. It
13 sounded from what Petitioners said that that's not the case
14 with their Piers data, but it seems to be the case with the
15 ITC's--with the staff information.

16 So I don't see that there was a correlation
17 there. We'll take a look at the other data, at the various
18 databases and try to compare them, but it looked a lot more
19 obvious to me that there was a shift, a decline in domestic
20 market share that mirrored an increase in Indian market
21 share.

22 Now why that is, I'm not sure. They did talk a
23 great deal about how the Indian product was--on a price
24 basis was overselling both China and the domestic. But for
25 whatever reason we're not saying that price is not a factor

1 in the marketplace. It apparently is. I'm not challenging
2 the notion that this is a commodity article. But something
3 other than purely price had to have an impact with respect
4 to the growth of China back in the marketplace.

5 If we're assuming that, you know--I'm sorry, I
6 misstated. The growth of India back in the marketplace. If
7 we're assuming that India, because they're not covered by
8 this investigation, are fairly traded, they seem to have
9 increased their market share.

10 COMMISSIONER BROADBENT: Okay. How were the
11 nonsubject imports able to capture market share if they were
12 generally priced higher than both subject imports and
13 domestic product?

14 MR. McGRATH: So we were discussing that a bit
15 earlier, as well, trying to figure out how that happened,
16 but it seems to be what the numbers suggest. We don't know.
17 We will try to get as much intelligence as we can from all
18 those at the company in the marketplace to offer some
19 explanations in a posthearing brief, but at the moment we
20 don't have one.

21 COMMISSIONER BROADBENT: Okay.

22 MR. McGRATH: One possibility might be simply
23 seeking multiple suppliers. There might be more companies,
24 when they see that there's an antidumping case going on, it
25 could be that they're seeking multiple sources of supply.

1 We didn't for the year see a big drop in Chinese
2 product, but we did see a drop in some domestic and an
3 increase in Indian. And perhaps it has to do with supply
4 around for those who need to buy volume. And they would
5 normally maintain two sources of supply anyway. Some of the
6 bigger ones buy from all three.

7 COMMISSIONER BROADBENT: Okay. If Compass's
8 financial support--financial performance is affected by its
9 production process, if it's production process hasn't
10 changed over the POI, what factors led to changes in the
11 industry's financial performance over the period 2014 to
12 2016?

13 MR. McGRATH: One of the things that they have
14 highlighted was a decline in the price that they received
15 for acetic acid over the period. So that was definitely a
16 decline. Their--let me just ask a question...

17 (Pause.)

18 Well part of it has to do probably with what
19 you've heard from many industries who have come in. The
20 economy globally over the last few years was in the doldrums
21 and sales declined, and fuel costs increased.

22 There were various other explanations. We don't
23 really have a prepared theory on why their performance went
24 the direction that it did, but we'll be happy to offer that.
25 Again, it's difficult to talk about on the record with just

1 one company.

2 COMMISSIONER BROADBENT: Right. Let's see. I
3 think you referred in your brief to about 16 companies that
4 have closed in China that produce HEDP or did product it,
5 due to--the closing was due to environmental laws in China.

6 Can you discuss these laws further? Are they new
7 laws, or are they existing laws that are being more strictly
8 enforced? What is the outlook for the Chinese industry with
9 respect to the regulatory environment?

10 MR. McGRATH: Yes, Ms. Cheng I think has pretty
11 much enforced what I heard from other officials at the
12 company, that the laws themselves haven't changed all that
13 much, but the enforcement policies have. And the
14 enforcement has become much stricter in the last few years.
15 And of course Chinese enforcement of environmental law is
16 quite different than we might see anywhere else. And that
17 is, if you're not following the law the way that they've
18 decided that it should be followed, the business can be
19 closed, and it has been. Not just for producers of these
20 chemicals, but producers of a lot of chemical products that
21 we've seen as well.

22 And one reason that Taihe felt that it was
23 justified to build significant capacity was because of the
24 fact that a lot of the other smaller producers were going
25 out of business. That's one of the things that we talked

1 about in the preliminary, as well. Their intent was to
2 replace a lot of capacity; it wasn't to over-run the market
3 with capacity.

4 COMMISSIONER BROADBENT: Okay. For purposes of
5 analyzing the Chinese industry, should the Commission
6 analyze data from the preliminary phase which included
7 questionnaire responses from three additional Chinese
8 producers? Or should we focus our analysis on this final
9 phase in which we received only a single foreign producer
10 questionnaire response?

11 MR. MCGRATH: That's a good question. I think
12 that my immediate reaction to that would be that you should
13 use what data's available. They submitted data that was --
14 didn't cover the full POI you're looking at now, but unless
15 it seems contradicted by other information you received, I
16 would suggest that it be looked at and evaluated.

17 Those companies did participate throughout the
18 Commerce Department side. So they had been involved. They
19 just chose not to participate in the final ITC phase.

20 COMMISSIONER BROADBENT: Okay. Thank you.

21 VICE CHAIRMAN JOHANSON: Commissioner Kieff?

22 COMMISSIONER KIEFF: Thank you. And I join my
23 colleagues in thanking you for coming and presenting. And I
24 just also want to make a special note of appreciation to
25 both Mr. McCaul and Mr. McGrath for taking the good

1 opportunity to not take the bad opportunity to find conflict
2 where it didn't need to be found, so that we could focus on
3 the core legal issues for us to decide. I think that that
4 reflects very well on each of you and your teams and
5 reflects very well on the community of the Commission's bar.
6 And I just want to congratulate that.

7 Let me -- if I could shift, Mr. McGrath, to a
8 kind of a conceptual question. As I heard a lot of your
9 discussion Commissioner Williamson in particular, as well as
10 your presentation on this panel, you seemed to be focusing a
11 lot of attention on what I'm going to summarize as pricing
12 advantages that your client might have that would be totally
13 unrelated to a dumping margin. Did I at least hear that
14 right?

15 MR. MCGRATH: I -- it's not an unfair
16 characterization. I think I -- what I was trying to focus
17 on was -- is cost advantages.

18 COMMISSIONER KIEFF: Okay. I'm sorry. That's
19 what I meant.

20 MR. MCGRATH: That could translate into price
21 advantages or not. The company could choose to sell at a
22 higher price if the market would bear and make a higher
23 profit.

24 COMMISSIONER KIEFF: Very, very fair
25 distinction. And I wasn't trying to suggest otherwise. So

1 that's very helpful. With that in mind, let's assume that
2 you are 100 percent correct, could the -- let me ask a few
3 questions.

4 One question is could the other side win at the
5 ITC even if you are 100 percent correct? And could you win
6 at the CIT if you're 100 percent correct to reverse an ITC
7 decision?

8 Put differently, isn't your quibble really with
9 Commerce's determination of the margin? And don't we have
10 to take the margin as given by Commerce and make our
11 determination about whether that given margin is causing or
12 likely to cause harm or injury to the domestic industry,
13 which would then put you in position to appeal to the courts
14 to argue that causation might be irrelevant to your victory
15 in those courts because the margin is in fact wrong? I
16 mean, it sounds to me like you're basically saying your
17 costs are largely due to things like a continuous process
18 instead of a batch process and a low cost of inputs because
19 you're located very near source of materials. But that's
20 all of about margin, not about injury, isn't it?

21 MR. MCGRATH: I'm thinking.

22 COMMISSIONER KIEFF: That's okay. And I don't
23 mean to put you on the spot either. You're welcome to
24 follow up post hearing. I just --

25 MR. MCGRATH: No.

1 COMMISSIONER KIEFF: -- I wanted to confess to
2 you as someone who has to decide the case you put before me
3 what I heard from you and what it meant to me and what
4 significance I'm drawing from it, so that you can tell me
5 why I'm wrong in whatever medium is fairest to you to make
6 that argument. I -- the goal is not to put you on the
7 spot.

8 MR. MCGRATH: Well --

9 COMMISSIONER KIEFF: The goal is to be
10 transparent in the decision making.

11 MR. MCGRATH: I only point out the margin
12 argument, the size of the margin and how it's uniquely
13 calculated for China, because of the nonmarket economy
14 methodology. I point that out because it's often pointed
15 out by the other side as being indicative of some large
16 percentage of unfair pricing behavior. But that's not
17 really -- you don't really need to look at that. And you
18 gather enough information about underselling to look at the
19 comparison of the prices between the imported product, the
20 domestic product, and the subject imports and nonsubject
21 imports to make decisions about the relationship without
22 having to really focus on the size of the margin that is
23 calculated by the Commerce Department. Yes, I take issue
24 with their margin calculation as I do in every Chinese case.
25 It's just the nature of that methodology. But I think your

1 analysis really doesn't have to rest on that.

2 COMMISSIONER KIEFF: Yes, sir.

3 MR. MCGRATH: All you need to do is take from
4 them a finding that there was dumping.

5 COMMISSIONER KIEFF: Okay. But then given all
6 of that, does your -- I'm trying -- does your case here win
7 or lose on -- well, I'm trying to find the touchstone
8 factors here. So it sounds to me like --

9 MR. MCGRATH: I --

10 COMMISSIONER KIEFF: -- the discussion about
11 different production procedures may not ultimately drive our
12 conclusion one way or the other in this case?

13 MR. MCGRATH: It might not. I see -- I mean, I
14 don't disagree with that. I've done enough work here to
15 see how this is done and what the courts have said about the
16 approach.

17 COMMISSIONER KIEFF: Got you.

18 MR. MCGRATH: That you have a record that you
19 develop of standard elements that are in the statute and
20 you're evaluating them and --

21 COMMISSIONER KIEFF: So it is the --

22 MR. MCGRATH: If there had been a different
23 methodology calculating the margin, we might not be here
24 because --

25 COMMISSIONER KIEFF: Got you.

1 MR. MCGRATH: -- we might not even -- we might
2 have been excluded from the case. So --

3 COMMISSIONER KIEFF: I see.

4 MR. MCGRATH: There is a separation between the
5 two. I don't disagree with that, but I'd like to develop
6 that a little better for the --

7 COMMISSIONER KIEFF: No problem at all. Take
8 your time in the post hearing. Let me just briefly then ask
9 to -- so that I know where to focus my thinking. Does the
10 best shot at a win for you then come from our thinking about
11 a nonsubject import analysis as a replacement benefit
12 argument in effect? So that, you know, India is hurting
13 them. Sorry, China is irrelevant to the behavior they are
14 observing in their market because China and India are
15 swapping off with each other?

16 MR. MCGRATH: I think what I'm trying to get
17 across is that there's a combination of considerations here.
18 You are directed, I believe, by the statute to consider not
19 only whether imports are significant, and what's the effect
20 of price and all the various elements of domestic industry
21 performance, but also as part of that, domestic industry's
22 decisions and choices that they made on whether or not
23 injury might somehow be related to those. I'm pointing that
24 out in addition to the fact that there is a nonsubject
25 import presence in the market that --

1 COMMISSIONER KIEFF: Okay.

2 MR. MCGRATH: -- the two of them combined I
3 think.

4 COMMISSIONER KIEFF: Got you.

5 MR. MCGRATH: Any one of them alone, perhaps
6 not.

7 COMMISSIONER KIEFF: Okay.

8 MR. MCGRATH: That's why I'm raising both of
9 them and I think they're both important to consider.

10 COMMISSIONER KIEFF: So let me just suggest
11 because I'm about to run out of time and I apologize that I
12 also have to run, but I will be reviewing the transcript.
13 Let me just invite in the posthearing to try to highlight.
14 And again, I'm offering this in the spirit of transparency
15 that for me, one of the concerns I have about our statutory
16 framework is it lists so many factors. So multifactor tests
17 are for me as a decision maker especially uncomfortable
18 precisely because I like my decisions to -- I like to
19 highlight exactly what drove my decision so that then
20 reviewing courts in Congress can tell me, hey, yay, we're
21 happy with that, and here's why. Or hey, boo, we're sad
22 with that and here's why.

23 So it will help me make a decision either way if
24 we can focus in on maybe a top one, two, or three hit list
25 of which of the many long list of factors is really driving

1 our analysis in this case because I think we're all at our
2 best when we stand or fall on a few factors. I think it
3 just actually helps with democracy and transparency and
4 predictability overall. So to the extent you can do that --

5

6 MR. MCGRATH: But it gives people like me and
7 Mr. Levin so many more things that we can argue about.

8 COMMISSIONER KIEFF: I know, I know.

9 MR. MCGRATH: Not argue, place before you on the
10 record.

11 COMMISSIONER KIEFF: That's fair. I appreciate
12 -- I'm just trying to gently steer.

13 VICE CHAIRMAN JOHANSON: Thank you very much.
14 We will discuss it further in our brief.

15 MR. MCGRATH: That's great.

16 COMMISSIONER KIEFF: I have no further questions
17 for the panel, too.

18 VICE CHAIRMAN JOHANSON: Thank you, Commissioner
19 Kieff. And I would like to thank both of you for being here
20 today. In particular, Ms. Cheng, thanks for coming such a
21 long, long way to educate us further on the situation
22 involving this product.

23 This morning, Petitioners stated that they
24 sought this new order because a previous order, which was
25 allowed to expire in 2014, had holes in it. Petitioners

1 explained that several Chinese exporters were either exempt
2 from the order or not subject to duty deposits. During the
3 period covered by the previous order roughly 28 -- 2008 and
4 2014, was Shandong Taihe required to pay antidumping duties
5 or make duty deposits?

6 MR. MCGRATH: We'll find out how much. I know
7 that they were shipping some to the U.S. It was -- and it
8 was before they had modified their production process. So
9 they would have been subject to dumping deposits at the
10 time.

11 VICE CHAIRMAN JOHANSON: Okay, if you could make
12 just provide a little bit more background --

13 MR. MCGRATH: Sure.

14 VICE CHAIRMAN JOHANSON: -- on that in your
15 posthearing brief, I would appreciate it.

16 Compass argues that domestically produced HEDP
17 and subject imports are highly substitutable and that price
18 is a primary deciding factor in sales. Yet you all argue in
19 your briefs that price is not an important purchasing
20 factor. Please describe what factors other than price you
21 believe to be important for purchasing decisions and why
22 underselling by subject imports would not affect prices of
23 domestic HEDP?

24 MR. MCGRATH: Well, one of the issues would be
25 that a lot of purchasers want to have multiple sources of

1 supplies. So they're willing to pay higher prices for some
2 and lower prices for others. I think the reference in our
3 brief to price not having an impact was really in the
4 context of trying to evaluate those Indian sales and why
5 they were being sold at higher prices. I think it was more
6 speculation than a conclusion that obviously price must not
7 be the only thing that is in the mind of the purchasers.

8 We don't take exception to the argument. We
9 don't disagree with the argument that it is basically a
10 commodity that's -- that is substitutable for each other.
11 There are other products that are not HEDP that are
12 substitutable for HEDP, but HEDP's pretty standardized
13 product. And they are -- they can be substituted.

14 So price, it can't be denied that price is going
15 to be an issue, but whether it's the most important is now
16 subject to question and that India seems to have been so
17 successful coming in with apparently higher priced product.

18 MS. CHENG: And also, as a supplier, I saw a lot
19 of our customers evaluate us whether we can supply the
20 chemical long-term and stably and the qualities, every
21 batch is similar. And also, whether we can serve them
22 globally. That's another concern. So that's just one
23 point, but it's not a whole thing. A lot of other things
24 needs to consider. And also whether it focus on
25 environmental protection law, whether it's good for the

1 workers, all the things combined together.

2 MR. MCGRATH: Which also, I guess, an issue I
3 should have pointed out, Taihe is a global supplier. Some
4 of the Chinese -- other Chinese producers supply globally.
5 And it doesn't appear from the data that Compass is -- has
6 that particular element in their price negotiations. I'm
7 not looking at global supply and a domestic producer.

8 VICE CHAIRMAN JOHANSON: Thank you, Mr. McGrath
9 and Ms. Cheng. On page 14 of Petitioner's brief, it cites
10 the ITC staff reports table 5-7 for an average selling
11 margin of 10.7 percent. Do you think that this high value -
12 - that this is a high value given that we are dealing with
13 a commodity product?

14 MR. MCGRATH: I'm sorry, so the question is
15 whether or not the margin of underselling is a --

16 VICE CHAIRMAN JOHANSON: Is significant?

17 MR. MCGRATH: -- is significant.

18 VICE CHAIRMAN JOHANSON: In particular, given
19 that this is a commodity product?

20 MR. MCGRATH: Well, it's indicative of the fact
21 that probably something more than just price is involved.
22 There's not a need to have a 10 percent or more, you know,
23 range of underselling or marginal underselling unless
24 there's some reason for that. It seems to be a fairly
25 significant difference. So given the fact that it is

1 commodity product, there may have been reasons for that
2 level of margin to be there.

3 There also seemed to be some fairly high margins
4 of overselling from time to time. And given the fact that,
5 as you say, it is a commodity, there probably are some of
6 the other issues that Ms. Cheng just mentioned that might be
7 involved in the purchasing decisions.

8 VICE CHAIRMAN JOHANSON: Thanks. On page 10 of
9 your prehearing brief, you state that the difficulties of
10 the U.S. industry "are of its own making" and that "will not
11 be remedied by the imposition of AD and CBD orders".

12 To the extent, however, that duties act to raise
13 import prices and lessen the frequency of underselling,
14 won't this allow the domestic industry to obtain higher
15 prices for its output? Wouldn't this provide a remedy?

16 MR. MCGRATH: Long-term, no. Short-term, yes,
17 it probably would give them an opportunity to sell some
18 quantity of product at a higher price, but I would not be
19 surprised to see them back here in the hearing room again in
20 a year with the case against India. They had an order
21 against India and China both in the past, would likely be
22 back here again.

23 So long-term, our view is as we've posited here
24 today that the technology's moving on and there are certain
25 advantages that a producer who wants to stay in this

1 business should be taking advantage of and utilizing. And
2 that's modern technology, continuous process bulk
3 production, high value byproduct sales, global sales. Other
4 issues like that I think are really more likely to give it a
5 longer term resolution.

6 I did also notice that I think both Mr. McCaul
7 and Mr. Allen indicated that they had imported HEDP
8 originally and switched from importing it to producing it
9 here. There probably were reasons for that, good reasons.
10 And they decided that they wanted to expand their
11 phosphonate line and it made sense to have HEDP if you're
12 going to have an expanded phosphonate line. But whether
13 that makes sense without also adapting production technology
14 as you go is a different question. I think that's it.

15 VICE CHAIRMAN JOHANSON: All right. My time is
16 about to expire, so we will now turn to Commissioner
17 Williamson.

18 COMMISSIONER WILLIAMSON: Thank you. Ms. Cheng,
19 when did Shandong Taihe introduce this new continuous
20 process in technology?

21 MS. CHENG: This new -- you means the
22 production technology, right?

23 COMMISSIONER WILLIAMSON: Yes, what you said,
24 allowed you to guess to -- what do in 10 percent of the
25 time or?

1 MS. CHENG: Yes. It's been developed in years.
2 But start from which year, I need to double check back to --

3

4 COMMISSIONER WILLIAMSON: Is it within the last
5 two or three years or is it more than five years ago?

6 MS. CHENG: It's even longer term. We start to
7 --

8 COMMISSIONER WILLIAMSON: Possibly 10 --

9 MS. CHENG: -- searching and collect the
10 information and do the test. It's not just made suddenly.
11 It's long time preparing.

12 COMMISSIONER WILLIAMSON: Okay.

13 MS. CHENG: Uh-huh.

14 COMMISSIONER WILLIAMSON: Do other company --
15 producers in China use the same technology?

16 MS. CHENG: I don't think so.

17 COMMISSIONER WILLIAMSON: Okay. Is it --

18 MS. CHENG: It's quite a unique design by
19 ourselves.

20 COMMISSIONER WILLIAMSON: Is there a proprietary
21 technology?

22 MS. CHENG: It's -- yes, it's kind of --

23 MR. MCGRATH: A lot of it is -- it's
24 proprietary, but not necessarily patented.

25 COMMISSIONER WILLIAMSON: Okay.

1 MR. MCGRATH: There are trade secrets involved
2 and --

3 COMMISSIONER WILLIAMSON: Sure.

4 MR. MCGRATH: -- but it's -- it has developed
5 over a period of time. They started I believe in 2008 in
6 HEDP. We're not sure of the exact time that they started,
7 but we'll clarify that. And then they improved it and
8 perfected it over the last several years in order to get to
9 the point where they are now. But as was reported and
10 certainly it was public. It was on the website that they
11 increased the size of the plant. They incorporated and
12 perfected a lot of their continuous production process and
13 put it into the new plant in 2014, 2015.

14 MS. CHENG: The new plant is 2014, but before
15 that, we start to test and use it.

16 COMMISSIONER WILLIAMSON: Okay. What about what
17 production processes are you -- what do you know about the
18 production processes in India?

19 MS. CHENG: I'm sorry, I'm not a production
20 people. I better to answer the later then to let our
21 technical people to answer it. But I'm not 100 percent
22 sure.

23 MR. McGRATH: We'll provide what information we
24 can about the Indian process.

25 MS. CHENG: I'm not 100 percent sure.

1 COMMISSIONER WILLIAMSON: Okay. Others have asked
2 you about the under-selling, and as noticed the price of the
3 domestic product declined over the POI for each of the three
4 pricing products. And since you're saying it's not the
5 subject--under-selling by subject imports, what caused these
6 price declines?

7 MS. CHENG: From our understanding, and this past
8 several years is kind of the worst after 2008 crisis, so the
9 entire chemical industry the prices dropped to the bottom,
10 and we can find out that the crude oil prices dropped as
11 well. So it's all linked together. So the globally all the
12 prices dropped.

13 COMMISSIONER WILLIAMSON: Okay--

14 MS. CHENG: If that makes sense.

15 COMMISSIONER WILLIAMSON: This is--

16 MS. CHENG: It's kind of the global market trend.

17 COMMISSIONER WILLIAMSON: Going back to the unique
18 production technology, ultimately somebody has that. They
19 often will under sell the competition but make as much
20 profit as they can off it. And that raises the question why
21 that isn't happening in this case, why there is so much
22 under selling given that the other suppliers who may be
23 under selling but not as much.

24 MR. McGRATH: I think the first answer to that
25 would be the fact there are other suppliers, other people

1 who are also out in the marketplace. And there is
2 competition. We don't doubt that. But the fact that we
3 have a more efficiently produced product allows us to have
4 more flexibility with pricing and still make a profit
5 because of that efficiency from that unique process.

6 And the process is known. You know, the details
7 of it and the exact mixtures of chemicals at what point and
8 at what temperature, et cetera, is not widely know, but the
9 methodology just as we're explaining here. It's known that
10 it's out there, and in fact it was one of the reasons why
11 the company welcomed Compass to come and see their process.

12 They felt that there was more to be gained by
13 having this--some of this knowledge spread around than to be
14 hiding it. But they no doubt are taking advantage of it not
15 by slashing prices but by making profits.

16 COMMISSIONER WILLIAMSON: Okay. Let me go to some
17 other subjects. Are certain types of customers or industry
18 sectors more likely to purchase HEDP that's domestically
19 produced and others more likely to purchase subject and
20 nonsubject imports? If so, can you identify these customers
21 or provide some information on their relative shares of the
22 U.S. market? I assume some of this would have to be done
23 posthearing.

24 MR. McGRATH: I guess we'll have to look into that
25 and provide what information we can get.

1 COMMISSIONER WILLIAMSON: Okay. And you've argued
2 that the U.S. is simply not an important market for the
3 Chinese industry. And I was wondering why this is the case.
4 Given the Chinese unused capacity, which exceeds the U.S.
5 market, why wouldn't China significantly increase exports to
6 the U.S.?

7 MS. CHENG: Honestly, U.S. markets for us is a
8 relatively small market. The big gap, or big needs in the
9 globally is not just the U.S. So even we have a big
10 capacity, however some time chemical is really tight to
11 supply. So we're not intend to sell low price or something.
12 If a customer asks for chemical from us, so we will like to
13 supply for reasonable price. We're thinking U.S. market is
14 not that big.

15 COMMISSIONER WILLIAMSON: Is there a potential for
16 the U.S. market to be a bigger market for you in the future?

17 (Pause.)

18 MS. CHENG: Well, you talk HEDP product only,
19 right?

20 COMMISSIONER WILLIAMSON: Yes.

21 MS. CHENG: Well, its really depends. If the HEDP
22 cost of use is really high, people may thinking to buy other
23 chemicals instead of it. I'm not sure how to evaluate
24 whether it's gonna be a bigger market of HEDP, but it all
25 depends.

1 MR. McGRATH: I think it's an issue that we
2 haven't done a lot of thinking on because it's been
3 traditionally a fairly small--total production, percentage
4 of total sales for Taihe. The fact is, if there is a
5 barrier to entry here because of a dumping duty that would
6 have to be paid, this company will likely be selling
7 elsewhere. I mean, it's not that big that losing 2 percent
8 of their export sales is likely to cause them to rethink how
9 can the market grow in the U.S. down the road. If it does
10 grow, that will be fine and they'll be back.

11 COMMISSIONER WILLIAMSON: Okay, thank you. Are
12 there other global HEDP producers that you're aware of who
13 are using the same production method, or a similarly
14 efficient production method that Taihe uses?

15 MS. CHENG: You mean the importer, or just the
16 process of manufacturing it?

17 COMMISSIONER WILLIAMSON: Yes, that achieves the
18 same kinds of efficiencies that you've been talking about.

19 MS. CHENG: If talk about production process, I
20 think Taihe is only use it globally from our knowledge. If
21 talk about the two main chief chemicals, which is phosphorus
22 trichloride--

23 COMMISSIONER WILLIAMSON: I'm thinking about--you
24 put aq lot of weight on how much more efficient the process
25 is.

1 MS. CHENG: Right.

2 COMMISSIONER WILLIAMSON: And what that gives you
3 in the ability of pricing. And I'm asking, are there other
4 companies who either use this or some other technology that
5 are producing the same kind of efficiencies? The same kind
6 of competitive advantages.

7 MS. CHENG: We can double check, but from right
8 now knowledge no, we're kind of unique technology for it.

9 COMMISSIONER WILLIAMSON: Okay. Thank you. Thank
10 you for those answers.

11 VICE CHAIRMAN JOHANSON: Commissioner Broadbent?

12 COMMISSIONER BROADBENT: No questions.

13 VICE CHAIRMAN JOHANSON: Thank you, Commissioner
14 Broadbent. I'm now going to ask a question which I also
15 posed to the Petitioners this morning.

16 As far as any threat analysis concerns, don't we
17 have a natural experiment here? Can't we look at what
18 happened when the orders were revoked in 2014? There were
19 no orders on during calendar year 2015, and no petitioners
20 were filed during that year. So isn't 2015 a clean year
21 upon which to form some judgments on how producers in China
22 will react?

23 MR. McGRATH: It certainly presented different
24 conditions, I guess, to look at. But in order to find a
25 single clean year you'd also want to find something that

1 didn't otherwise have other changed conditions from the year
2 before and the year after such as economic conditions, or
3 some demand factors that are involved there.

4 In our case, I think 2015 was when some of the
5 additional product was available from the--at the end of
6 2015. I think the additional product was available from
7 Taihe. It may not be the most comparable--or it might not
8 be the perfect experimental year to be looking at. I had
9 not--I guess I didn't hear the question earlier, so I would
10 have thought of an answer. But we'll take a look at it and
11 provide what ideas we might have about whether that would be
12 a useful exercise.

13 VICE CHAIRMAN JOHANSON: Thank you, Mr. McGrath.
14 On pages 10 to 11 of your prehearing brief, you argue that
15 many Chinese producers of HEDP have closed in recent years,
16 and you provide a list of producers who no longer ship HEDP
17 to the United States.

18 Please provide supporting information for this
19 argument in your posthearing briefs, including the
20 information on which this list of companies is based and why
21 it supports your contention that producers of HEDP have
22 closed in China in recent years.

23 MR. McGRATH: Okay, we'll be happy to do that.
24 This information came from the people in the marketing and
25 production groups at the company in China, and they have--

1 that's their job is to know who's opening and who is
2 closing, and who the competition is. So we'll provide any
3 source information we have for that.

4 VICE CHAIRMAN JOHANSON: Okay. Thank you. And
5 this is another question which I asked the Petitioners this
6 morning but I'm going to raise with you also.

7 To what extent, if any, does your firm's price of
8 the byproduct affect the sales price of HEDP that you
9 produce?

10 MR. McGRATH: I think our answer is pretty much
11 the same. HEDP has its own demand profile, and its own
12 market. The byproduct is sold to a narrow, specific market
13 like pharmaceuticals and pesticides, as an intermediate for
14 production of those products, and its demand is going to be
15 driven by other factors for the acetyl chloride.

16 VICE CHAIRMAN JOHANSON: Okay, thank you, Mr.
17 McGrath. On page 15 of Petitioners brief it cites our staff
18 report's Table 5-9 for the existence of six confirmed lost
19 sales. For posthearing, could you please comment on the
20 commercial significance of those lost sales allegations?

21 MR. McGRATH: I think I did look at them. We
22 didn't really have a way to confirm or deny anything because
23 it's APO material. So we will provide what information we
24 can. That's Exhibit 5-9? Or is it page 5-9?

25 VICE CHAIRMAN JOHANSON: That's Table 5-9.

1 MR. McGRATH: Table 5-9, okay.

2 VICE CHAIRMAN JOHANSON: And that's also, once
3 again, discussed at page 15 of the Petitioners brief. They
4 are citing our staff report.

5 And also for the posthearing, I would appreciate
6 it if we could receive an explanation for Shandong Taihe's
7 capacity utilization figures for 2014 through 2016 as
8 displayed in Table 7-3 of the staff report.

9 I don't want to characterize them publicly, but I
10 do find them interesting, especially in the context of the
11 trend in capacity in this investigation.

12 MR. McGRATH: I understand what you're talking
13 about, and we will provide that.

14 VICE CHAIRMAN JOHANSON: I look forward to seeing
15 that.

16 Okay, this is kind of an interesting subject here
17 that caught my attention. Respondents have argued that one
18 of Compass's inputs, acetic anhydride, is a controlled
19 substance in the United States due to its use in certain
20 narcotics. So that's kind of interesting, right?

21 On page 6 of Respondent's brief, they admit that
22 the raw material they use in their process, phosphorus
23 trichloride, is a toxic and corrosive chemical that is
24 difficult to transport. And a check on the Internet also
25 shows that this chemical is listed as controlled by the

1 Chemical Weapons Convention, which is also very
2 interesting, as it can be used in chemical weapons.

3 And I imagine that the use of this product
4 requires additional cost in handling. From a cost and
5 logistical standpoint, which raw material would you rather
6 deal with? The one that is a controlled--that is controlled
7 as a chemical weapon, or the one that is controlled as a
8 precursor of narcotics? I mean this sounds like pretty--it
9 sounds like something you'd have in a movie, right?

10 MR. McGRATH: It will make you think twice before
11 you dive into a swimming pool.

12 VICE CHAIRMAN JOHANSON: Right.

13 (Laughter.)

14 MR. McGRATH: I'll pick door number two with the
15 narcotics--

16 VICE CHAIRMAN JOHANSON: It's kind of interesting.
17 This is my last question, and I'm asking it because--

18 MR. McGRATH: I had the same questions myself when
19 I first found out about these products. Well, this is
20 highly corrosive, and this explodes, and the product
21 anhydrous anhydride that you were talking about there, Ms.
22 Cheng was telling me that there are precursors to that which
23 resulted in explosions and deaths in chemical plants in
24 China. So the point being, in pointing that out, we were
25 just trying to say that certain types of products add

1 additional costs.

2 If you're going to use them and you have to
3 transport them, they add additional costs to the
4 manufacturing process. And that has to be taken into
5 account. We heard this morning that the precursor to the
6 narcotic product did not add additional cost that they would
7 recognize, and I'll just take that at face value, but the
8 reason why we point it out is that when Taihe used to use
9 that chemical, as Ms. Cheng said in her testimony, they had
10 to get special approvals from the state security authority,
11 and from police in order to even transport product into
12 their facility, and they had to engage in separate storage,
13 and separate kinds of protection in order to have the
14 product.

15 So it was something they wanted to get out of
16 their production stream and out of their cost profile in
17 order to have a more efficient production. But, yeah, there
18 seem to be some restrictions on these chemicals, which are
19 going to add to the headaches of using them in the
20 production process.

21 VICE CHAIRMAN JOHANSON: That's what it sounded
22 like. I guess it's kind of a risky business, but somebody's
23 got to do it to make the products.

24 Alright, that concludes my questions.
25 Commissioner Williamson?

1 COMMISSIONER WILLIAMSON: I just have one
2 question, Mr. McGrath, for posthearing. Take a look at
3 Table C-1, looking at Shandong's exports, and take a look at
4 Table C--I mean Table 7-1, and then you look at the C-1
5 Table, and I was wondering, when you take a look at that, if
6 Shandong is the only one that's using its processes, the
7 super efficient process? And even taking that into account,
8 don't you still--wouldn't you still have injury from subject
9 imports here?

10 MR. McGRATH: I'm sorry, I don't have those
11 tables--

12 COMMISSIONER WILLIAMSON: I'm not asking you to
13 answer it now, because--

14 MR. McGRATH: But what they show is what?

15 COMMISSIONER WILLIAMSON: If you look at what
16 percentage of the market Shandong accounts for of the
17 exports, and they're the only ones that have the super
18 efficient process which you've kind of sort of said that's
19 why the Chinese are beating the U.S., I assume those other
20 exports don't benefit from that. And so I'm raising the
21 question: Don't you still have injury?

22 MR. McGRATH: The other exports to the U.S. are
23 using the less expensive inputs, similar to what we're
24 using. They're not using the same product, or process that
25 we're using.

1 COMMISSIONER WILLIAMSON: You may want to take a
2 look at it posthearing.

3 MR. McGRATH: Okay. Well I'll have to take a look
4 at the tables and see. But your question has to do with
5 just given the fact that others are shipping from China to
6 the United States, even if we say that our process is such
7 that it couldn't be causing injury, others are likely
8 causing injury simply because of the volume of imports? Is
9 that--

10 COMMISSIONER WILLIAMSON: The value of the pricing
11 of imports, yes.

12 MR. McGRATH: I'll take a look at it and we'll
13 respond.

14 COMMISSIONER WILLIAMSON: Okay. That's all I
15 have. Thank you.

16 VICE CHAIRMAN JOHANSON: Thank you, Commissioner
17 Williamson. And that concludes Commissioners' questions, so
18 thank you all for appearing here. We appreciate you
19 informing us on this subject..

20 Does staff have any questions?

21 MR. CHANG: Calvin Chang. Staff has no further
22 questions.

23 COMMISSIONER WILLIAMSON: Do Petitioners have
24 questions for the Respondents?

25 MR. LEVIN: Mr. Vice Chairman, no, we do not.

1 COMMISSIONER WILLIAMSON: Thank you, Mr. Levin.
2 Okay, we will now have the Petitioners rebuttal and closing,
3 and you will have 16 minutes for direct, and 5 minutes for
4 closing, for a total of 21 minutes.

5 Mr. Levin, you may come to the front.

6 MR. BISHOP: Rebuttal and closing remarks on
7 behalf of petitioner will be given by Jeffrey Levin of Levin
8 Trade Law. Mr. Levin, you have a total of twenty-one
9 minutes. You may begin when you're ready.

10 CLOSING REMARKS OF JEFFREY LEVIN

11 MR. LEVIN: Thank you, Mr. Bishop.
12 Commissioners, I promise to take far less than twenty-one
13 minutes. Unless you want me to. In any case, I want to
14 make just a couple of quick points here.

15 First of all, respondents' panel and respondent
16 counsel, Mr. McGrath, indicated that there was actually no
17 real increase in subject imports over the period of
18 investigation. He characterized it more or less as flat
19 over the period of investigation. The data do not show that
20 to be the case, and that's about as far as I will go at this
21 point. But the record is pretty clear on that.

22 Second point, Mr. McGrath understandably is
23 trying to minimize the significance or the importance or
24 even the real-world basis of the anti-dumping margins. Say
25 what you want about the methodology that results in dumping

1 margins. Say what you want about the non-market economy
2 methodology that often results in higher margins for subject
3 imports from China, as is the case here.

4 We could quibble on all of those fun things, but
5 at the end of the day, the margins are large first of all.
6 But second of all, the anti-dumping margins are, by statute,
7 one of the factors that the Commission needs to take into
8 consideration in its injury and causation analysis. Not
9 just the fact that it was dumping, but the margins as well.

10 Number three, we've skirted around this a little
11 bit, both in this morning's panel, this afternoon's panel,
12 but let me be clear about one thing. Shandong Taihe, Taihe,
13 who is appearing and doing what they can to present their
14 position and their investigation. But they're the only
15 people, the only Chinese companies that have showed up for
16 the final phase investigation.

17 We will go into this in a little bit more detail
18 in the post-hearing brief, but let me make a couple of
19 points. First of all, please recognize Shandong Taihe Taihe
20 production and shipments as a percent of the total
21 production and shipments when you look at companies in
22 addition to Shandong Taihe Taihe. And you can get that data
23 from the preliminary staff report in the preliminary
24 determination.

25 So all of the arguments that they are

1 presenting--I shouldn't say that--the principle argument
2 that they are presenting about their proprietary production
3 process and all the advantages and all of that, and why
4 Compass is inferior and outdated, to the extent that that is
5 true at all with regard to Taihe's production process, that
6 only applies to Taihe.

7 And in fact, I believe Ms. Cheng and Mr. McGrath
8 both said this afternoon that to their knowledge, Taihe is
9 the only Chinese company that uses this particular
10 production process. Now, other companies have decided not
11 to participate in the final investigation after
12 participating in the preliminary investigation. The issue
13 was raised, "Well, what do we do? What does the Commission
14 do for the final? What data do we look at?"

15 As we indicated in our prehearing brief, and
16 we'd be too happy to expound in our post-hearing brief, the
17 Commission is permitted, by statute, to apply adverse facts
18 available and to make adverse inferences where respondent
19 parties do not cooperate with the Commission's request for
20 information.

21 Obviously, any secondary information needs to be
22 corroborated or in most instances, it needs to be
23 corroborated. You do have data on the record here from the
24 preliminary investigation. You do have just one company
25 showing up for the final. We urge the Commission to

1 consider where and how to apply adverse facts available and
2 adverse inferences in their analysis in the final
3 determination here.

4 Fourth, and lastly, Shandong Taihe essentially
5 has two major arguments. One is about the advantages of
6 their production process and everything that they claim
7 stems from that. The second is knowing subject imports.

8 So, with margins like this, with volumes like
9 this, with adverse price effects like this, with injurious
10 indicators for the domestic industry, basically what the
11 respondents are asking the Commission to determine is that
12 the country whose imports are at about maybe half the level
13 of subject imports.

14 The country who is actually overselling the
15 domestic industry in the majority of instances, twenty-seven
16 out of thirty-six. The country that is, for purposes of
17 these investigations, shipping fairly-traded imports to the
18 United States, according to Shandong Taihe, any injury
19 that's being suffered is by reason in large part of those
20 imports, not the country that is responsible for about twice
21 the level of the Indian imports. Not the country that has,
22 based on record evidence, impressed upon the U.S. industry
23 adverse price effects. Not the country that has now been
24 found to be dumped and subsidized. It's not them.

25 It's the lower volume, more expensive

1 fairly-traded imports. That does not quite match up to
2 reality, at least in my mind. On behalf of Compass'
3 byproduct, acetic acid, I appreciate Mr. McGrath's
4 clarification that he didn't really mean that it was
5 low-quality. I've spoken to the acetic acid. They feel a
6 lot better about that now.

7 In any case, in sum and substance, we do believe
8 that in this investigation, in these investigations, the
9 evidence of record, the legal analysis, the economic
10 analysis, all strongly support an affirmative determination
11 in the final investigations.

12 On behalf of Compass Chemical, we very much
13 appreciate that Commissioners' attention, the questions
14 today, the questions that we'll follow-up with in the
15 post-hearing brief. We appreciate very much the work of the
16 Commission staff, Mr. Boyland, who made the verification
17 trip down to Smyrna, Georgia. Thank you for doing that.
18 And we look forward to addressing those questions and issues
19 that still remain in our post-hearing brief. Thank you very
20 much.

21 MR. BISHOP: Rebuttal and closing remarks on
22 behalf of the respondents will be given by Matthew T.
23 McGrath of Barnes, Richardson & Colburn. Mr. McGrath, you
24 have thirty-four minutes remaining from your direct, and
25 five minutes closing, for a total of thirty-nine minutes.

1 You may begin when you're ready.

2 CLOSING REMARKS OF MATTHEW T. MCGRATH

3 MR. MCGRATH: Thank you. Likewise, I won't need
4 thirty-nine minutes. But thanks to all who asked some very
5 penetrating questions, I think every time I come here, it's
6 another lesson in all of the ways you can hold up the
7 multi-sided glass ball of anti-dumping law and try to see it
8 in a different perspective, in a different light.

9 Thanks also to the staff. As always, they do a
10 tremendous job and under deadline pressures often. And we
11 appreciate that. Which is why I urge the Commission to not
12 put too much attention on the PIERS data or other outsources
13 of data and use the staff's data, because they're usually
14 the most accurate and the most reliable.

15 There were just a couple of issues that I did
16 not -- and most of the rebuttal commentary that I wanted to
17 say, I included during our direct discussion, our direct
18 presentation. But it raised a new issue in my mind as Mr.
19 Levin just said that the ITC is required to consider the
20 amount of the margin in doing its analysis.

21 And I thought back to Mr. Kieff's question about
22 looking for a single element to hang your hat on, that
23 raises a question. If I'm right about the margin and I go
24 to court and the court says, "You're right. The margin
25 should've been calculated this way." And it ends up going

1 to Commerce and is calculated in that way, and it's suddenly
2 2% instead of a much higher rate. What does that do to your
3 analysis if you've relied heavily on that factor? That may
4 be one reason why the Commission doesn't often rely heavily
5 on the size of the margin in doing their analysis.

6 And again, I have the -- harking back on the
7 volume of imports from India, our entire case is not resting
8 on the fact that India happens to be in the market. We are
9 pointing out that it should be considered very carefully
10 that India's volume, it's not less than half of -- maybe it
11 is in the PIERS data or something -- but it's not less than
12 half of the subject merchandise.

13 It's rising and it seemed to have risen more
14 than just something that happened in the fourth quarter
15 because there was a preliminary decision. It's a
16 substantial player in the marketplace. And I get to win a
17 prize or something if they're back here a year from now with
18 a case against India.

19 I also wanted to highlight the fact that the --
20 we heard some discussion this morning about what changed in
21 the market, what changed with production, what changed in
22 the market in the United States, that changed the profile
23 and perhaps the financial fortunes of domestic production of
24 HEDP. And that was proposed to be the entry of China, the
25 appearance of China in the market.

1 And I ask again, the real question is, "Well,
2 why did China get in the market at that point?" "Were they
3 there before? Or not there before?" And why is it that
4 when Compass bought the predecessor company, they were
5 importing HEDP. They weren't making HEDP. There was a
6 reason for that.

7 And many of the reasons were all of the facts
8 that Ms. Cheng testified to about the natural advantages of
9 being based in China, having the access to the phosphorus
10 acid, having the ability to handle certain toxic chemicals,
11 which are expensive to handle. And there may well be a
12 reason why there is only one producer.

13 And the reason why that producer decided to go
14 back into the production of HEDP in the United States
15 might've been because of other chemicals that it decided
16 were important to make in the United States rather than the
17 HEDP that it had previously been importing to that point.

18 So I just wanted to leave it at that. We're not
19 resting entirely on an argument that India caused the
20 injury. We are pointing out that there are advantages to
21 this process. Some of the advantages are not just
22 advantages -- or some of the advantages are unique to Taihe,
23 but there are advantages that other Chinese producers have
24 as well in using cheaper inputs.

25 So we ask that you consider all of this. We

1 will respond to all of your very pertinent questions in the
2 post-hearing brief. And we ask that you return a negative
3 decision in this case and not have to go through another
4 case against -- I hope that you don't have to go through
5 another case against India next year. Thank you very much.

6 VICE CHAIRMAN JOHANSON: Thank you, Mr. McGrath.
7 I will now make the closing statement. Post-hearing briefs,
8 statements responsive to questions and requests of the
9 Commission, and corrections to the transcript must be filed
10 by March 30th, 2017. Closing of the record and final
11 release of data to parties occurs on April 14th, 2017, and
12 final comments are due on April 18th, 2017. This hearing is
13 adjourned.

14 (Whereupon at 2:34 p.m., the hearing was
15 adjourned.)

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CERTIFICATE OF REPORTER

TITLE: In The Matter Of: 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from China

INVESTIGATION NOS.: 701-TA-558 and 731-TA-1316

HEARING DATE: 3-23-17

LOCATION: Washington, D.C.

NATURE OF HEARING: Final

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: 3-23-17

SIGNED: Mark A. Jagan

Signature of the Contractor or the
Authorized Contractor's Representative

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceedings 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 proceedings.

SIGNED: Duane Rice
Proofreader

I hereby certify that I reported the above-referenced proceedings 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 proceedings.

SIGNED: Larry Flowers
Court Reporter

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