

# UNITED STATES INTERNATIONAL TRADE COMMISSION

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In the Matter of:  
CERTAIN BIAXIAL INTEGRAL GEOGRID  
PRODUCTS FROM CHINA

) Investigation Nos.:  
) 701-TA-554 AND 731-TA-1309  
) (FINAL)

Pages: 1 - 200

Place: Washington, D.C.

Date: Wednesday, December 21, 2016



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UNITED STATES OF AMERICA  
BEFORE THE  
INTERNATIONAL TRADE COMMISSION

IN THE MATTER OF: ) Investigation Nos.:  
BIAXIAL INTEGRAL GEOGRID PRODUCTS ) 701-TA-554 AND  
FROM CHINA ) (FINAL) 731-TA-1309

Main Hearing Room (Room 101)  
U.S. International Trade  
Commission  
500 E Street, SW  
Washington, DC  
Wednesday, December 21, 2016

The meeting commenced pursuant to notice at 9:30  
a.m., before the Commissioners of the United States  
International Trade Commission, the Honorable Irving A.  
Williamson, Chairman, presiding.

1 APPEARANCES:

2 On behalf of the International Trade Commission:

3 Commissioners:

4 Chairman Irving A. Williamson (presiding)

5 Commissioner Dean A. Pinkert

6 Commissioner Meredith M. Broadbent

7 Commissioner F. Scott Kieff

8 Commissioner Rhonda K. Schmidtlein

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10

11 Staff:

12 William Bishop, Supervisory Hearings and Information

13 Officer

14 Nadiya Samon, Student Intern

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16 Calvin Chang, Investigator

17 Jennifer Catalano, International Trade Analyst

18 Cindy Cohen, Economist

19 David Boyland, Accountant/Auditor

20 Patrick Gallagher, Attorney/Advisor

21 Elizabeth Haines, Supervisory Investigator

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2 Opening Remarks:

3 Petitioner (Jeffrey D. Gerrish, Skadden, Arps, Slate,  
4 Meagher and Flom LLP)

5 Respondents (Yohai Baisburd, Dentons US LLP)

6

7 In Support of the Imposition of Antidumping and

8 Countervailing Duty Orders:

9 Skadden, Arps, Slate, Meagher & Flom LLP

10 Washington, DC

11 on behalf of

12 Tensar Corporation

13 Mike Lawrence, President and CEO, Tensar Corporation

14 Scott Edgecombe, Executive Vice President and General  
15 Manager, Grid Western Hemisphere, Tensar Corporation

16 Robert F. Briggs, Executive Vice President, General  
17 Counsel and Secretary, Tensar Corporation

18 William Shelton, Vice President, Materials Technology,  
19 Tensar Corporation

20 Bryan C. Gee, Director of Marketing, Tensar Corporation

21 Ann Shockley, Director of Materials and SIOP, Tensar  
22 Corporation

23 Carey Witt, President, GeoSolutions, Inc.

24 Michael Coleman, Vice President, Coleman-Moore Company

25 Dave Brooks, President, ACF Environmental

1           Jeffrey D. Gerrish, Nathaniel B. Bolin and Luke A.  
2           Meisner - Of Counsel

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

6           Dentons US LLP

7           Washington, DC

8           on behalf of

9           Hanes Companies, Inc.

10          Hill Country Site Supply

11                 John Dowdell, President, Hanes Companies, Inc.

12                 Bobby Starling, Jr., Vice President, Hanes Companies,  
13                 Inc.

14                 Clay Cashatt, Vice President, Hill Country Site Supply,  
15                 an operating branch of Hanes Companies, Inc.

16                 Yohai Baisburd and Daniel Morris - Of Counsel

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18           Petitioner (Jeffrey D. Gerrish, Skadden, Arps, Slate,  
19           Meagher and Flom LLP)

20           Respondents (Yohai Baisburd, Dentons US LLP)

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P R O C E E D I N G S

9:31 a.m.

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

COMMISSIONER PINKERT: Good morning. On behalf of the U.S. International Trade Commission I welcome you to this hearing on Investigation No. 701-TA-554 and 731-TA-1309 Final involving Biaxial Integral Geogrid Products from China. The purpose of these investigations is to determine whether an industry in the United States is materially injured or threatened with material injury or the establishment of an industry in the United States is materially retarded by reason of imports of Biaxial Integral Geogrid Products from China.

Schedule setting forth the presentation of this hearing, notices of investigation and transcript order forms are available at the Public Distribution Table. All prepared testimony should be given to the Secretary. Please do not place testimony directly on the Public Distribution table. All witnesses must be sworn in by the Secretary before preparing testimony.

I understand that parties are aware of the time allocations. Any questions regarding the time allocations should be directed to the Secretary. Speakers are reminded not to refer in their remarks or answers to questions to business proprietary information. Please speak clearly into

1 the microphones and state your name for the record for the  
2 benefit of the court reporter. If you will be submitting  
3 documents that contain information you wish classified as  
4 business confidential, your request should comply with  
5 Commission Rule 201.6. Mr. Secretary, are there any  
6 preliminary matters?

7 MR. BISHOP: Mr. Chairman, I would note that all  
8 witnesses for today's hearing have been sworn in and there  
9 are no other preliminary matters.

10 COMMISSIONER PINKERT: Very well, let us begin  
11 with our opening remarks.

12 MR. BISHOP: Opening remarks on behalf of  
13 petitioner will be given by Jeffrey D. Gerrish, Skadden,  
14 Arps, Slate, Meagher and Flom.

15 COMMISSIONER PINKERT: Welcome, Mr. Gerrish. You  
16 may begin when ready.

17 OPENING REMARKS OF JEFFREY D. GERRISH

18 MR. GERRISH: Thank you. Good morning. I'm Jeff  
19 Gerrish of the Law Firm Skadden Arps representing Petitioner  
20 Tensar Corporation. We are here today because the Domestic  
21 Industry has suffered severe injury as a result of a flood  
22 of unfairly-traded imports of Biaxial Geogrids from China.

23 As you will see, the statutory factors that the  
24 Commission normally considers have unquestionably been met  
25 here and the Commission should reach an affirmative

1 determination. In conducting its analysis, the Commission  
2 should find the like product to include only biaxial  
3 geogrids, not triaxial geogrids. As a result, we will focus  
4 primarily on biaxial geogrids because we think that's the  
5 right way to look at it under your like-product criteria.

6 But let me be absolutely clear. Regardless of  
7 whether you look at biaxial geogrids only or biaxial and  
8 triaxial geogrids together, the result is the same. The  
9 Domestic Industry has suffered severe material injury and is  
10 threatened with further injury due to Subject Imports.

11 Imports of Biaxial Geogrids from China increased  
12 dramatically over the Period of Investigation. In absolute  
13 terms, the volume of dumped and subsidized imports surged  
14 by millions of square yards from 2013 to 2014 and then grew  
15 significantly again in 2015.

16 The growth in Subject Imports over the Period of  
17 Investigation was massive. Subject Imports also increased  
18 relative to U.S. consumption and production. In fact, as  
19 they poured into this market, Chinese Imports quickly took  
20 sales from the Domestic Industry and seized a large amount  
21 of additional market share. This came at the direct expense  
22 of the Domestic Industry's market share which plummeted over  
23 the same period. The result was that the Domestic Industry  
24 lost millions of dollars in sales in both 2014 and 2015.

25 With respect to price, the record shows that

1 Chinese Imports seized this market share by undercutting the  
2 Domestic Industry's prices. Underselling occurred in the  
3 vast majority of comparisons. This pervasive underselling  
4 resulted in rapid and substantial gains in market share for  
5 the Subject Imports all at the expense of the Domestic  
6 Industry.

7 The Subject Imports also depressed and suppressed  
8 prices in this market. When the Chinese Imports first  
9 surged into the United States, they took huge amounts of  
10 sales from the Domestic Industry. As Tensar tried to stop  
11 the hemorrhaging of its market share at the end of 2014 and  
12 into 2015 it was forced to drop its prices even further to  
13 compete with the Chinese Imports.

14 Over the entire Period of Investigation but  
15 particularly for the third quarter of 2014 to the end of  
16 2015, domestic prices plunged to unsustainably low levels.  
17 The impact on the Domestic Industry has been devastating.  
18 Based on favorable underlying demand for biaxial geogrids,  
19 this should have been a period of strong profits. Instead,  
20 the flood of unfairly traded imports from China caused the  
21 Domestic Industry to cut its prices drastically and to  
22 suffer declines in production, capacity utilization, sales  
23 and market share.

24 In turn, this caused the Domestic Industry's  
25 gross profits, operating income, operating margins and net

1 income to fall significantly from 2013 to 2014. In 2015,  
2 things went from bad to worse. Despite growing demand,  
3 Tensar was forced to cut prices even more in order to avoid  
4 losing sales to the Chinese. As a result, it suffered an  
5 operating loss in 2015. Tensar has had to reduce its  
6 operations, shut down its plant for extended periods and  
7 lay off workers.

8           The evidence here is simply overwhelming that  
9 unfairly traded Subject Imports has caused present material  
10 injury. Subject Imports also threaten additional injury.  
11 The Chinese Imports have completely stonewalled you and  
12 refuse to provide you with the data needed to conduct your  
13 analysis. As a result, you should apply adverse inferences.  
14 The evidence that is on the record shows the Chinese  
15 producers have massive capacity to produce biaxial  
16 geogrids, receive large export subsidies and are confronting  
17 difficult demand conditions in other markets.

18           The rapid increase in Subject Imports that has  
19 occurred demonstrates how quickly Chinese producers can  
20 increase exports to the United States and that they have a  
21 clear interest in this market. Without trade relief there  
22 is no question that they will continue to attack this market  
23 causing additional harm to the Domestic Industry.

24           The data you have collected are clear and  
25 compelling in showing the Domestic Industry has suffered

1 present material injury and is threatened with further  
2 injury. Our witnesses today will discuss their experiences  
3 in the market and shed further light on the data you've  
4 collected. As you will hear, the Domestic Industry created  
5 this produce and the market for it.

6 Unfairly traded Chinese Imports have quickly  
7 surged into this market and have threatened to destroy this  
8 industry almost overnight. The only way to stop this crisis  
9 is with trade relief. We ask you to grant this relief and  
10 issue an affirmative determination. Thank you.

11 MR. BISHOP: Opening remarks on behalf of  
12 Respondents will be given by Yohai Baisburd, Dentons US.

13 COMMISSIONER PINKERT: Welcome Mr. Baisburd and  
14 you may begin when ready.

15 OPENING REMARKS OF YOHAI BAISBURD

16 MR. BAISBURD: Thank you. Good morning  
17 Commissioners and Staff. I am Yohai Baisburd with Dentons,  
18 US LLP. We represent Hanes Company Inc. and Hill Country  
19 Site Supply, an operating division of Hanes. As you just  
20 heard, Tensar will likely spend the morning talking about a  
21 Domestic Industry that makes no sense. The Commission  
22 properly found during the preliminary phase that there is no  
23 clear dividing line between square, rectangular and  
24 triangular geogrids.

25 The record developed during the final phase

1 supports that determination. Triax and other biaxial  
2 geogrids share physical characteristics and uses, are  
3 interchangeable, are sold through the same channels of  
4 distribution, are produced at the same facility with similar  
5 production processes and employees and are perceived by  
6 customers as similar. What is clear from the record is why  
7 Tensar is trying so hard to create this artificial line.

8 Tensar claims that they have done everything  
9 right, but the record shows otherwise. Heavy-handed  
10 tactics, like announcing that they would discontinue  
11 rectangular geogrids in favor of transitioning the market to  
12 triax whether the market was ready for that or wanted it or  
13 not; maintaining rigid exclusive distribution networks and  
14 aggressively relying on private label sales left independent  
15 distributors no other option than to look for imports.

16 Since this is basically an industry of one,  
17 almost all of the information in the Staff Report is  
18 confidential so there is only so much I can say about  
19 volume, price effects and impact at this hearing because I  
20 can't summarize Tensar's data the way they can, but a few  
21 points to illustrate.

22 First, demand increased over the POI and so did  
23 Tensar's U.S. Shipments. In contrast, there was a steady  
24 decrease in their export shipments from 2013 to 2015.

25 Second, polypropylene prices declined 28 percent

1 over the period. You would expect prices to trend downward  
2 as the cost of the main raw material is declining.

3 Third, the pricing data collected by the  
4 Commission shows that Tensar is the dominant price leader  
5 and the role played by its private label program in the  
6 market.

7 Finally, Tensar's financial performance is  
8 healthy by any standards let alone the data you typically  
9 see in an injury investigation here.

10 When listening to Tensar's panel this morning, I  
11 urge you to keep two things in mind. First, they're  
12 probably not talking about the Domestic Industry that you  
13 defined at the Preliminary Phase, but rather one that  
14 excludes triax and second, until May 2012, six months before  
15 the first year of the period here, Tensar essentially had a  
16 monopoly. That is a key condition of competition.

17 When you have enjoyed a hundred percent market  
18 share for decades it will take some time to adjust to the  
19 new reality. Thank you.

20 MR. BISHOP: Would the Panel in support of the  
21 imposition of antidumping and countervailing duty orders  
22 please come forward and be seated?

23 CHAIRMAN WILLIAMSON: I want to welcome the panel  
24 to this morning's proceedings and Mr. Gerrish you may begin  
25 when you're ready.

1 STATEMENT OF JEFFREY D. GERRISH

2 MR. GERRISH: Great, thank you Mr. Chairman.

3 Again, for the record, I'm Jeff Gerrish of Skadden Arps on  
4 behalf of Tensar Corporation. Here are the key points to  
5 keep in mind in this case. Demand for biaxial geogrids was  
6 healthy and growing during the Period of Investigation.  
7 However, the Domestic Industry could not take advantage of  
8 this strong demand due to soaring volumes of unfairly traded  
9 Chinese Imports which took significant market share  
10 directly from the Domestic Industry.

11 The Subject Imports gained this market share by  
12 significantly underselling the Domestic Industry. As a  
13 result, the industry suffered massive declines in its  
14 production, capacity utilization, sales, gross profits,  
15 operating income and net income. In fact, the data that the  
16 Commission has collected for the interim periods of 2015  
17 through 2016 clearly show the impact of Subject Imports. As  
18 Subject Imports began to recede from the market in 2016, the  
19 Domestic Industry's condition began to improve. No other  
20 factor explains this turn around in the industry in 2016.

21 Finally, the Domestic Industry remains extremely  
22 vulnerable and failure to grant relief will lead to further  
23 devastating injury because of this year's scale of the  
24 Chinese Industry, the Chinese Producers' capacity, excess  
25 capacity and inventories and their continued interest in

1 this market.

2 In your Preliminary determination you found a  
3 single domestic like product consisting of biaxial geogrids  
4 and triaxial geogrids. However, you stated that you would  
5 reexamine this issue in the final phase. The Staff has done  
6 an excellent job gathering the data and information needed  
7 to do this and you now has an extensive record with respect  
8 to each of the six factors that you consider in your like  
9 product analysis.

10 We will certainly be talking more about this and  
11 we have covered it extensively in our prehearing brief but  
12 an examination of each of these factors shows that biaxial  
13 and triaxial geogrids are separate like products. Among  
14 other things, the two products have different physical  
15 characteristics and uses and they are recognized as  
16 different by the foremost experts in the field and in state  
17 and local specifications.

18 In fact, because of their different properties  
19 and uses, customers are willing to pay significantly higher  
20 prices for triaxial geogrids. And as Vice Chairman Johanson  
21 and your Staff saw at Tensar's plant, there are key  
22 differences in the way the products are manufactured. We  
23 think the facts clearly show that you should find that  
24 biaxial geogrids and triaxial geogrids are separate like  
25 products but whichever like product definition you choose,

1 the evidence before you overwhelmingly shows that the  
2 Domestic Industry has suffered present material injury and  
3 is threatened with further injury if relief is not granted.

4 Let me turn now to the factors in your present  
5 material injury analysis. One thing to note as we move  
6 forward is that pursuant to the guidance of the staff,  
7 certain data labels have been removed from the slides on the  
8 screen to avoid revealing confidential information. Each of  
9 you should have received the confidential version of these  
10 files.

11 Let's start with the volume of Subject Imports.  
12 Demand for biaxial geogrids was stable in 2013 and 2014 and  
13 then grew significantly in 2015. For an industry like this  
14 that must benefit from the good times in order to survive  
15 the inevitable downturns, it is critical for Domestic  
16 Producers to be able to take advantage of this type of  
17 steady and growing demand but the Domestic Producers weren't  
18 able to do that here.

19 The reason was Subject Imports which absolutely  
20 exploded from 2013 to 2014. Even though demand remains  
21 steady from 2013 to 2014 Subject Imports seized a  
22 significant amount of sales and market share directly from  
23 the Domestic Industry. Subject Imports continued to flood  
24 into this market in 2015 as you can see here. There is no  
25 question that the volume of Subject Imports and the

1 increase in that volume were significant in absolute terms  
2 over the Period of Investigation.

3 The surge in Subject Imports over the Period of  
4 Investigation was also significant relative to Domestic  
5 consumption. Subject Imports also took a substantial amount  
6 of market share directly from the Domestic Industry and  
7 those millions of square yards in lost sales represent  
8 material injury to the Domestic Industry.

9 Next, let me address the price effects of the  
10 Chinese Imports. The record shows that Subject Imports  
11 gained market share by significantly underselling the  
12 domestic like product. The underselling analysis set forth  
13 in your pre-hearing staff report certainly shows that.

14 The chart on this slide takes in those data and  
15 adds in the underselling data for the private label sales to  
16 present a complete picture as we did in our prehearing  
17 brief. As you can see, underselling occurred in the  
18 overwhelming majority of quarterly comparisons and the vast  
19 majority of sales by volume. The unfairly traded Chinese  
20 Imports also created an oversupply in the U.S. Market that  
21 drove prices lower. Subject Imports soared in 2014 even  
22 though apparent consumption remained relatively flat. The  
23 result was that by the end of 2014 the market was becoming  
24 oversupplied. This oversupply in the market depressed and  
25 suppressed prices. In fact, faced with this oversupply and

1 in an effort to stop the bleeding and regain some of the  
2 market share it had lost at the hand of Subject Imports,  
3 Tensar was forced to slash its own prices in 2015.

4 Subject Import volumes continued to increase in  
5 2015 after prices had started to decline. They did this  
6 through continued massive underselling both through their  
7 underselling and the oversupply they created, Subject  
8 Imports had a devastating effect on price but you don't have  
9 to take our work for it.

10 Just look at the responses to your U.S.  
11 Purchasers' Questionnaire. These U.S. Purchasers  
12 specifically told you that they shifted at least 3.2 million  
13 square yards of purchases from the Domestic Industry to  
14 Chinese Imports precisely because the Chinese Imports were  
15 lower priced. Even more purchasers testified that they had  
16 seen Subject Imports cause the Domestic Industry to lower  
17 its prices by up to 75 percent to try to match the price of  
18 the Chinese Imports. This is absolutely compelling evidence  
19 of the highly damaging price effects of the Subject Imports.

20 Now let's consider the impact of Subject Imports.  
21 As you've already seen, when they surged into this market  
22 from 2013 to 2014, Subject Imports took a huge amount of  
23 market share from the Domestic Industry. If Tensar could  
24 have maintained its 2013 market share in 2014 and 2015 then  
25 it would have sold millions more square yards of biaxial

1 geogrids.

2           Even if you conservatively assume that prices  
3 would have been the same as what the Chinese unfairly traded  
4 imports were selling for, those lost sales would have been  
5 worth millions of dollars more in revenues. Those  
6 additional revenues would have made a tremendous difference  
7 to the health of the Domestic Industry. On its own, this  
8 shows that the adverse impact of Subject Imports was  
9 significant, but the impact on the Domestic Industry went  
10 far beyond lost volumes.

11           In fact, every other indicator of the Domestic  
12 Industry's performance was negative despite strong demand.  
13 Net sales were down. Unit values were also down. Capacity  
14 utilization fell to abysmally low levels. These trends can  
15 only be explained by the impact of unfair trade. The same  
16 is true when you look at the Domestic Industry's  
17 profitability. Despite healthy and growing demand, the  
18 industry's gross profit, operating income and net income all  
19 show dramatic declines and the industry suffered an  
20 operating loss in 2015. Again, Subject Imports are the only  
21 plausible explanation.

22           The human cost of the Subject Imports has also  
23 been devastating. Tensar has been forced to lay off workers  
24 each year of the Period of Investigation. Even with those  
25 layoffs, the average hours worked for each worker have

1 declined. Even worse, at the end of 2015, a year that saw  
2 the strongest demand growth in many years, Tensar was forced  
3 to institute further layoffs and reduce its hours of  
4 operation.

5 In short, the industry and its workers have  
6 suffered overwhelming material injury and are now vulnerable  
7 to even more injury. As a result of unfairly traded Subject  
8 Imports, Tensar has had to delay, postpone or cancel needed  
9 investments, has been unable to replace aging and obsolete  
10 equipment and has seen its ability to invest in critical  
11 research and development severely weakened.

12 To the extent you have any doubt that Subject  
13 Imports were the cause of this injury, you need only look at  
14 the data you have of the 2016 interim period. These data  
15 show that as Subject Imports receded from the market in 2016  
16 after the filing of these cases and the imposition of  
17 preliminary duties the Domestic Industry experienced  
18 improvement in its sales, shipments, production, capacity  
19 utilization, operating income and net income.

20 However the industry is not back where it needs  
21 to be and there are large volumes of very low-priced Subject  
22 Imports that remain in the market and that are continuing to  
23 suppress prices even today. In fact, these Subject Imports  
24 overhanging the market were rushed in after the filing of  
25 these cases in January of 2016 to try to beat the

1 preliminary duties. This is exactly what the Critical  
2 Circumstances Provision of the statute was intended to  
3 remedy and we think that you should make an affirmative  
4 determination of critical circumstances.

5 As I mentioned earlier, we have been presenting  
6 the data for biaxial geogrids only because we think it is  
7 the right way to do it under your like product analysis but  
8 no matter which like product definition you choose, the case  
9 for material injury to the Domestic Industry is  
10 overwhelming.

11 As you can see, even when you look at biaxial and  
12 triaxial geogrids combined, the story is exactly the same  
13 with virtually every measure of the Domestic Industry's  
14 performance showing significant downward trends over the  
15 Period of Investigation. No matter which way you look at  
16 it, the material injury factors have clearly been met here.

17 We believe that the evidence of present material  
18 injury is compelling and that you don't even need to reach  
19 the issue of threat. If you do however, Tensar's brief  
20 contains extensive evidence detailing why in the absence of  
21 trade relief Subject Imports would rapidly return to this  
22 market and cause further injury. I won't go through all  
23 that evidence, but I do want to highlight a few critical  
24 facts.

25 First, the Chinese Industry is huge. Tensar has

1       been able to identify over 75 producers and exporters in  
2       China and there are likely many more. However you have no  
3       questionnaire data from these producers. None. Even though  
4       they participated in the Commerce proceedings, the Chinese  
5       Producers have refused to cooperate with the Commission.  
6       This is a clear case for the Commission to use its Statutory  
7       Authority to apply Adverse Inferences.

8                 But even setting that aside, the evidence that is  
9       on the record clearly shows that the Chinese Industry has  
10      massive capacity and excess capacity holding enormous  
11      inventories and is highly export oriented. In fact, just 7  
12      of the Chinese Producers currently have over 400 million  
13      square yards of capacity in factories close to major ports  
14      in China.

15                This slide shows just how heavily concentrated  
16      the Chinese Producers are in coastal areas like Shangdong  
17      Province. It is a simple matter for them to rapidly ramp up  
18      their export to this market once again. Even assuming that  
19      only a small fraction of the massive capacity of the Chinese  
20      Producers remains unused, it is clear that the Chinese  
21      Producers maintain more than enough excess capacity to  
22      completely overwhelm the U.S. Market.

23                Adding to that threat, the Chinese Producers also  
24      hold enormous inventories that they can use to further  
25      increase shipments to this market if relief is not granted.

1 The record also shows that Chinese Producers had significant  
2 subsidies that violate the WTO agreement on subsidies and  
3 countervailing measures. Some of these subsidies even  
4 identify specific Chinese Producers that are hand-picked by  
5 the authorities for promotion.

6 Finally, it is clear that the size of the Chinese  
7 Producers and their many incentives to continue shipping  
8 here mean that the threat they pose to all of Tensar's  
9 operations is staggering. As you can see here, even in  
10 comparison to the U.S. Market's for biaxial and triaxial  
11 geogrids combined, the production capacity of the Chinese  
12 Industry is massive. If relief is not granted, even the  
13 small handful of the 75 Chinese Producers and Exporters can  
14 easily wipe out the entire U.S. Industry.

15 The threat they pose is simply overwhelming.  
16 Indeed, it would be difficult to find a clear example of the  
17 kind of market distorting practices and overcapacity that  
18 have provoked so much policy debate in recent months. This  
19 is a case of an innovative Domestic Industry that has done  
20 everything right but has nothing to show for it because all  
21 of its success has been stolen in a few short years by  
22 Chinese Producers engaged in massive unfair trade who can't  
23 even bother to cooperate in your investigation.

24 The future of the U.S. Industry is teetering on  
25 the edge of a complete disaster with literally nothing left

1 to cup. It is absolutely critical that the Commission grant  
2 it the relief that it so urgently needs. With that, I will  
3 turn it over to our first witness, Mike Lawrence, President  
4 and CEO of Tensar Corporation.

5 STATEMENT OF MIKE LAWRENCE

6 MR. LAWRENCE: Good morning Mr. Chairman,  
7 members of the Commission. I'm Mike Lawrence, chief  
8 executive officer of Tensar, and on behalf of Tensar I'd  
9 like to start by thanking the Commission and its staff for  
10 all of your hard work on this case.

11 A perfect example of this is the time and effort  
12 and attention that you, Vice Chairman Johanson and the  
13 Commission devoted to your visit to our Morrow facility in  
14 Georgia in November. I really appreciated the chance to  
15 meet with all of you then and introduce our company to some  
16 of the key members of your team, and some of those folks are  
17 here today with us and I thank you for that opportunity.

18 As you saw when you visited our plant, Tensar is  
19 a company founded on innovation. We're a group of  
20 engineers and problem-solvers absolutely dedicated to what  
21 we do, and we have succeeded by continuing to invent and  
22 develop products by biaxial and triaxial geogrids. We not  
23 only invents these products, we created the markets for them  
24 literally from the ground up.

25 Thirty years ago, biaxial geogrids were a

1 completely new product on the market. They showed amazing  
2 potential for stabilizing roadways, railways and other  
3 surfaces and for the construction and geotechnical  
4 applications as well. They also offered a substantial cost  
5 savings, because they reduced the amount of stone, aggregate  
6 and other materials that must be used, and increased the  
7 life span and durability of the finished roadways and other  
8 projects.

9 But when they were first introduced, biaxial  
10 geogrids were a new and a novel product. We had to work  
11 with the construction industry, engineers, state  
12 transportation officials, contractors to show the benefits  
13 of using that product. Then we had to get it accepted by  
14 state departments of transportation, municipal governments,  
15 standardization bodies, federal agencies to name a few and  
16 today, thanks to all that hard work, biaxial geogrids are  
17 widely used across the country and continue to demonstrate  
18 their benefits every day.

19 In 2009, we introduced triaxial geogrids, a new  
20 product with new and different characteristics from biaxial  
21 grids. At our Morrow plant, you saw how these different  
22 products are used and how they are made, the physical and  
23 mechanical characteristics of each that they have and the  
24 differences in how they're used and the benefits they  
25 provide to our customers.

1                   We believe that triaxial geogrids are an  
2                   innovative new product and have worked hard to promote that  
3                   product and build acceptance of it. But just because we  
4                   have had to work to promote triaxial geogrids since their  
5                   introduction and just because we think they are an important  
6                   new product does not in any way diminish Tensar's commitment  
7                   to biaxial geogrids. On this point, let me be absolutely  
8                   clear. Tensar has and will be and continues to be now and  
9                   in the future 100 percent committed to biaxial geogrids.

10                   Biaxial geogrids are a vital part of our product  
11                   offering. They have a host of critical applications,  
12                   provide important benefits and are very important to our  
13                   customers and thus to us. If you have any doubt about that,  
14                   please look at the confidential slides and financial data in  
15                   our submissions that we have made. Biaxial geogrids are a  
16                   keystone to our future. We would not be here before you  
17                   today if they were not.

18                   Unfortunately, that future is being increasingly  
19                   threatened by unfair trade. Over the past four years, our  
20                   company has been devastated by a flood of low priced Chinese  
21                   imports of biaxial geogrids. We were expecting competition  
22                   when the biaxial geogrids came off patent in 2012, and we  
23                   were prepared for it.

24                   But we were not prepared for the surge of dumped  
25                   and subsidized Chinese imports that followed. In 2013,

1 Chinese imports came into the U.S. market in big volumes.  
2 In 2014, they skyrocketed even more, seizing well over 40  
3 percent of the market in that year. As they surged, the  
4 Chinese imports significantly undercut our prices. This  
5 pressure on price was relentless and overwhelming.

6 As a result, our U.S. shipments and sales  
7 volumes plummeted, even though demand was generally very  
8 good in 2013 and 2014. As our sales and shipments dropped,  
9 we were forced to cut production and our inventories grew.  
10 We tried to hold the line on pricing, but with our  
11 production sales and shipments all down and our inventories  
12 growing even larger, we had to take action.

13 So we cut our prices even more to try to  
14 recapture our lost market share. From 2014 to 2015, this  
15 drastic action allowed us to recapture some of the market  
16 share we had lost, but it came at a terrible cost. We had  
17 to slash not just cut our own prices to try to match the  
18 Chinese prices. The result was a direct hit to our bottom  
19 line.

20 Our financial data for 2014 and 2015 reflect the  
21 harm we suffered. Whether you look it on the basis of our  
22 operations on biaxial geogrids or on the numbers and  
23 triaxial geogrids combined, the results are plain to see.  
24 Our gross profits, operating income and net income all  
25 dropped dramatically. In fact, on biaxial geogrids in 2015,

1 we suffered an operating loss and an even deeper net loss.  
2 This has been an absolute nightmare for our company.

3 But it wasn't just our finances that took a  
4 beating. Let me give you a few examples that further  
5 illustrates just how painful the past few years have been  
6 for Tensar and its workers. The first is our capacity  
7 utilization. Our plant is designed to run at very high  
8 levels of capacity utilization, but in 2014 and 2015, even  
9 as demand grew at a healthy rate, our capacity utilization  
10 remained well below where it needs to be to allow fair  
11 return on our investment.

12 This had a human as well as financial cost for  
13 us. In fact, as a result of the impact of Chinese imports  
14 that I just described, we have been forced to cut hours,  
15 shut down production at our plant for extended periods and  
16 lay off workers. At the end of 2015 things grew so bad that  
17 we were forced to make the very painful and difficult  
18 decision to lay off even more of our production workers.

19 And as if that weren't bad enough, the unfairly  
20 traded Chinese imports have increasingly affected our  
21 ability to invest in the future. Our whole business is  
22 built around continually improving our products and  
23 demonstrating their benefits to more and more customers.  
24 But because of unfairly traded Chinese imports, we've been  
25 unable to do what we need to do in that critical area to

1 continue to be competitive.

2 The capital expenditures in R&D spending that we  
3 do is to make primarily focused on keeping our operations  
4 running as efficiently as possible, and trying to cut every  
5 penny of cost that we can to match the Chinese prices. But  
6 as I appear before you today, there just isn't any room left  
7 to cut.

8 There's light at the end of the tunnel, but only  
9 if you grant relief. Since these cases were filed, we've  
10 seen the situation to stabilize a little. Our production  
11 capacity utilization, sales and shipments are all up  
12 somewhat, and our gross profits, operating income and net  
13 income are moving in the right direction again.

14 But we are still extremely vulnerable. With  
15 nothing left to cut and price still extremely low, we are  
16 fighting for every penny, and that's been especially hard  
17 despite the decline in imports in recent months, because  
18 there is still so much very low priced Chinese product in  
19 the market that is continuing to undersell us every day.

20 As a company built on innovation, we know that  
21 value of hard work and creative thinking. We have never and  
22 will ever ask for a handout. All we ask is that our trade  
23 laws be enforced fairly and appropriately so we can get back  
24 to work and compete again on a level playing field.

25 On behalf of Tensar and our hundreds of

1 hard-working employees and innovators, I ask you to give us  
2 that chance. Thank you very much.

3 STATEMENT OF SCOTT EDGECOMBE

4 MR. EDGECOMBE: Good morning Mr. Chairman and  
5 members of the Commission, and thank you for the opportunity  
6 to be before you today. I am Scott Edgecombe, executive  
7 vice president and general manager for the Grid Western  
8 Hemisphere at Tensar. In that role, I'm responsible for all  
9 of Tensar's sales, marketing, engineering, customer service  
10 operations throughout the United States and the rest of  
11 North America and South America.

12 My job requires me to have great familiarity  
13 with the conditions in the market for biaxial geogrids.  
14 I've seen and experienced firsthand the injury caused to our  
15 company and our workers by unfairly traded Chinese imports,  
16 and would like to emphasize a few key points.

17 The past few years have been disastrous for our  
18 company. We have lost a significant amount of sales and  
19 market share over the Period of Investigation due to the  
20 flood of dumped and subsidized Chinese imports that have hit  
21 the market. They have surged into this market in massive  
22 quantities, and at an incredibly low and ever-decreasing  
23 prices.

24 I constantly hear from our sales people and our  
25 distributors that Chinese material is being offered for far

1 below our lowest price, and that we have to match that  
2 price or lose the sale. Customers are basing their  
3 purchasing decisions solely on price. If we don't lower our  
4 price to meet what the Chinese are offering, we lose the  
5 sale.

6 We have done everything we can to compete with  
7 the dumped and subsidized Chinese products. We have cut our  
8 cost to the bone, and we have continually lowered our prices  
9 to try to match the Chinese prices. Because as it becomes  
10 painfully clear, that as much as we cut our prices, the  
11 Chinese cut theirs more. The result was that from 2013 to  
12 2014, we lost a lot of sales and suffered a huge drop in our  
13 production, shipments and market share.

14 We've slashed our prices even more in 2015 to  
15 try to regain some of our sales and market share. Although  
16 we saw gains in our sales volumes, it came at a terrible  
17 cost. We took a severe hit to our bottom line and had an  
18 operating loss for the year on our biaxial geogrids product  
19 line.

20 We've started to see some bright spots this year  
21 as a result of this case, but we continue to be locked out  
22 of a significant percentage of the market by unfair trade.  
23 We still haven't been able to charge a true market-based  
24 price. We have to keep our prices low enough to avoid  
25 losing sales to dumped and subsidized imports. Even then we

1 continue to lose sales to ridiculously low priced Chinese  
2 material. The impact of the Chinese imports has truly been  
3 devastating.

4 I would also like to address a few other topics  
5 that may arise today. The first is the claim made by the  
6 other side that Tensar has somehow undermined its position  
7 to private label sales. That claim is simply ludicrous. As  
8 you've just heard from Mr. Lawrence, the prices for biaxial  
9 geogrids are being driven by the prices from the Chinese  
10 product. That is true when we were competing not only for  
11 sales to distributors and end users, but also for sales to  
12 the private label segment of the market.

13 Indeed, what the other side has conveniently  
14 ignored is that the Chinese producers themselves sell  
15 directly to private label customers here in the United  
16 States. These private label customers are also our  
17 customers, companies like Hanes and others. So we are  
18 competing directly with the Chinese producers on the same  
19 level of trade whenever we try to sell to those same private  
20 label customers.

21 Obviously, we are not going to be able to make a  
22 sale to these private label customers if we can't match the  
23 Chinese producers' own prices. That's what has been  
24 driving down the prices of our private label sales, and make  
25 no mistake about it: the Chinese are still undercutting our

1 prices even on private label sales today.

2 So the prices we have been forced to charge for  
3 our private label sales are simply another indication of  
4 the terrible toll that the unfairly-traded Chinese imports  
5 are having on this market. It's preposterous to claim that  
6 we are competing with ourselves on those sales. The fact is  
7 that the Chinese have been driving the prices lower on all  
8 of our different types of sales, sales to distributors,  
9 sales to end users, sales to private label customers.

10 You're also likely to hear today that our prices  
11 have declined because of declining raw material cost. I'm  
12 here to tell you that simply has not been the case. Just  
13 look at what's happened to raw material costs since 2012.  
14 The key raw material for biaxial geogrids is polymer,  
15 mainly polypropylene resin. The average price for  
16 polypropylene resin increased each year from 2012 through  
17 2014.

18 So in a normal market, you would have expected  
19 biaxial geogrids prices to rise along with it. But as  
20 you've seen from our confidential submissions, we were  
21 unable to raise our selling prices for biaxial geogrids over  
22 the same time period. Instead, we were continually forced  
23 to lower our prices, even as our raw material costs were  
24 increasing.

25 Why? Because of the onslaught of dumped and

1       subsidized Chinese imports that entered and continue to  
2       enter this market. In 2015, prices for polypropylene resins  
3       declined. However, we continued to face severe pricing  
4       pressure from Chinese imports. In fact, many of the Chinese  
5       biaxial geogrid prices have been at or below the price of  
6       polypropylene resin.

7               The prices for biaxial geogrids fell faster and  
8       to a greater degree than the price of polypropylene resin  
9       due to the influx of unfairly-traded Chinese imports. So  
10      even though our raw material costs improved somewhat in  
11      2015, that didn't help our bottom line. To the contrary, we  
12      suffered an operating loss last year because of the unfairly  
13      low Chinese prices for biaxial geogrids. In 2016, we have  
14      been forced to reduce prices even more to try to keep our  
15      market share, even though our raw material costs are rising  
16      again.

17             Clearly, the movement in raw material costs does  
18      not even begin to explain what has happened with the  
19      pricing for biaxial geogrids. The 2016 data that you have  
20      on record are important to keep in mind as you listen to the  
21      arguments of the other side later today, because they clear  
22      show that the unfairly traded Chinese imports are the cause  
23      of our injury.

24             As those data show, since the filing of this  
25      case in January, we've seen the first green shoots of a

1       turnaround. Our sales, shipments and production volumes are  
2       all up, as is our capacity utilization rate. Our financial  
3       performance is up somewhat as well, with modest improvements  
4       in gross profit, operating margins and net income.

5                   Is this improvement due to increased demand?

6       No. We haven't seen an increase in demand for the product.

7       Is it due to a decline in raw material cost? No. As I just  
8       explained, they are up this year. Is it because we've been  
9       able to increase our export sales? No. Our exports are  
10      actually lower for the first three quarters of 2016 compared  
11      to the same period in 2015.

12                   Is it due to a greater focus in triaxial  
13      geogrids and biaxial geogrids? No. The trends I just  
14      outlined are all there, whether you look just at our biaxial  
15      geogrid operations or our biaxial and triaxial geogrid  
16      operations combined. In fact, there is only one possible  
17      explanation for the slight improvements that we've begun to  
18      see this year. Chinese imports have begun to recede from  
19      the market, and we've been able to begin to win more bids  
20      and make more sales and recapture some of our lost market  
21      share.

22                   Are we back to where we need to be? Absolutely  
23      not. We remain extremely vulnerable. There is a massive  
24      amount of very low-priced Chinese product still in the  
25      market that is still suppressing prices. We think this is

1 because companies brought in a huge amount of Chinese  
2 product in the first quarter of this year in order to beat  
3 the preliminary duties, and have been sitting on it ever  
4 since.

5 We've heard from our sales contacts that  
6 companies selling Chinese material are going to keep prices  
7 low until January, as they await the outcome of this case.  
8 If no relief is granted, they will go right back to their  
9 Chinese suppliers and resume bringing in even more dumped  
10 and subsidized materials. In other words, the Chinese  
11 imports are going to flood back in.

12 So unless we can obtain relief going forward,  
13 the situation that's stabilized for the time being is only  
14 going to grow worse and worse. As Mr. Lawrence has told us,  
15 there just isn't any room left for us to cut in either our  
16 cost and our prices and remain a viable company. The other  
17 side we'd like to point our continued R&D and capital  
18 expenditures as an indication that we have not been hurt.  
19 The expenditures we have made in these areas have been  
20 necessary simply to maintain our current facilities and  
21 equipment. We use efficiencies so that we can cut costs as  
22 low as possible to try to compete with the incredibly low  
23 Chinese prices and improve our product offerings for biaxial  
24 and triaxial geogrids to meet the needs of the market.

25 Even so, we've been forced to make painful cuts

1 in our spending in these areas, and delay much-needed  
2 investment because of the harm we've been suffering at the  
3 hands of unfairly traded Chinese imports. If you look at  
4 our historical levels of R&D and Cap-X, you'll see that this  
5 is true. We've not even been able to replace aging and  
6 obsolete equipment at our plant because we cannot afford to  
7 do so.

8 Tensar and the rest of the domestic industry are  
9 at a critical point. We can either fail to get relief and  
10 be forced again to try to survive an onslaught of dumped  
11 and subsidized Chinese biaxial geogrids, or relief could be  
12 granted and we can be given the chance to compete on a level  
13 playing field. The choice is that stark and that simple,  
14 and the future of the domestic industry and its workers  
15 depend on it.

16 I urge you to grant the relief that this  
17 industry so desperately needs, and we will do the rest.  
18 Thank you for your time.

19 STATEMENT OF MIKE COLEMAN

20 MR. COLEMAN: Good morning Mr. Chairman and  
21 members of the Commission. My name is Mike Coleman and I am  
22 vice president of the Coleman Moore Company in Des Moines,  
23 Iowa. I have over 20 years in the geosolutions business,  
24 and co-founded Coleman Moore in 2004 to supply geogrids,  
25 geotech styles, erosion control and other products to

1 customers in Iowa and the surrounding states.

2 We are a distributor of Tensar biaxial and  
3 triaxial geogrids, serving the state of Iowa, western South  
4 Dakota and eastern Wyoming. Our biaxial geogrid customers  
5 are mainly earth-moving and paving companies. We also sell  
6 the triaxial geogrids, but biaxial geogrids are our core  
7 product, with a ratio of about five to one in square yard  
8 sales. The vast majority of our geogrid sales are of the  
9 biaxial geogrids to projects run by the Iowa Department of  
10 Transportation, municipal and county governments.

11 The Iowa DOT specifications for geogrids  
12 requires biaxial geogrids and does not allow for the  
13 triaxial geogrids. We work closely with our customers on  
14 all aspects of their projects, from strategic site  
15 evaluations to consult of engineers and architects, to  
16 ensure that the delivery and installation of the products go  
17 smoothly. We don't simply just move product out the door.  
18 We are a full service supplier.

19 As a result, we really get to know our customers  
20 and their requirements. My extensive experience with  
21 biaxial and triaxial geogrids has given me a lot of insight  
22 into the differences between the products and their uses.  
23 In our region, I never see customers interchanging biax for  
24 a triax specification. To do that, you would have to  
25 completely redo the design of the project.

1           Triaxial geogrids offer other benefits that  
2           biaxial geogrids cannot provide, such as pavement  
3           optimization, a longer pavement life and substantial savings  
4           in the amount of aggregate required for a project. In terms  
5           of their characteristics and -- , they really are two very  
6           different products, and the market recognizes that.

7           That's why we sell both, and why both will  
8           continue to be key parts of our product offerings going  
9           forward. I understand that the other side of this case has  
10          said that triaxial geogrids are really just another form of  
11          biaxial geogrids, and that the two are completely  
12          substitutable. This simply is not true. In fact, it  
13          doesn't even make sense.

14          If that were true, there would be no market for  
15          triaxial geogrids at all because they are so much  
16          higher-priced. Our customers are contractors and state and  
17          local government officials who are focused exclusively on  
18          the bottom line. They're smart, savvy, highly educated  
19          professionals and business people with countless years of  
20          real world experience. There is no way in the world that  
21          they would somehow be duped into paying more for a  
22          higher-priced product if a truly equivalent choice were  
23          available for less.

24          But that is what the Commission is being asked  
25          to believe by the other side. I strongly urge you to reject

1 that ridiculous notion. I also understand that the other  
2 side would like you to believe that tensar is not committed  
3 to selling biaxial geogrids, and that it has signaled this  
4 to the market. That is nonsense. Tensar continues to  
5 produce and sell significant volumes of biaxial geogrids in  
6 my markets, and has worked hard to sell more.

7 Of course the real reason our sales and prices  
8 for biaxial geogrids have been falling is the very  
9 low-priced Chinese biaxial geogrids being sold by Hanes and  
10 other companies. They are the price leaders in the markets  
11 I serve, not Tensar. When I testified in this case in  
12 February, I said that the current prices were not  
13 sustainable.

14 Unfortunately, because so much Chinese product  
15 came into this country in the early part of this year, and  
16 continues to be quoted at rock bottom prices, pricing has  
17 not improved. In Iowa, I continue to see Chinese product  
18 being sold at prices below what I pay from Tensar, even when  
19 forward delivery charges are added. For example, in May  
20 Chinese producer and exporter Feichulienyu quoted me biaxial  
21 geogrids at prices as low as 36 cents per square yard  
22 delivered to Des Moines. There is no possibility of  
23 competing with prices like that.

24 But the low priced Chinese offers are not  
25 limited to Iowa. Wyoming in particular has become a dumping

1 ground for very low-priced Chinese biax, with prices as low  
2 or lower than what I'm seeing in Iowa. Again, there's no  
3 way we can compete with these prices. It is really  
4 discouraging to be in a market where these ultra-low priced  
5 imports have taken the profitability completely out of the  
6 market.

7 There is simply no more room to cut, and the  
8 situation is untenable. Without relief and the chance to  
9 compete on a level playing field, the entire future of this  
10 industry is very bleak. I urge you to grant relief in this  
11 case. Thank you for the case to appear here today.

12 STATEMENT OF CAREY WITT

13 MR. WITT: Good morning, Mr. Chairman, and  
14 members of the Commission. My name is Carey Witt and I am a  
15 professional engineer and founder and president of  
16 GeoSolutions, Incorporated, a full-service provider of  
17 geosynthetic products and solutions, and a distributor of  
18 biaxial and triaxial geogrids.

19 GeoSolutions was founded in 1999 to serve as a  
20 solution-centric, customer-driven business and not simply a  
21 materials warehouse. We are focused on the customer's needs  
22 to solve site construction problems with products that will  
23 save time and money and improve performance.

24 We are based in Austin, Texas, and have offices  
25 in Oklahoma and five other locations across Texas. We are

1 the exclusive distributor for Tensar products in Texas and  
2 Oklahoma, and the largest distributor of such products in  
3 the United States.

4 I sell a lot of biaxial and triaxial geogrids, so  
5 I know these products very well. Biaxial and triaxial  
6 geogrids have different physical and mechanical properties  
7 and different performance characteristics.

8 The marketplace certainly recognizes these  
9 differences, as well. In fact, we have projects in Texas  
10 that specifically provide structural credit for road  
11 construction for the use of triaxial geogrids but not for  
12 the use of biaxial geogrids because of the differences in  
13 these products.

14 I also know this market very well. I have been  
15 in this business for over 20 years. We have faced some  
16 tough times before, but I've never seen a market as bad as  
17 the one we've been forced to endure since 2013.

18 That is not because of demand. There has been  
19 continued demand for biaxial grids from a number of  
20 different business sectors across Texas and Oklahoma. For  
21 example, the Texas Department of Transportation is the  
22 largest consumer of biaxial grids in the State of Texas.

23 The TexDot specification requires the use of  
24 biaxial geogrids. Texas has built a lot of roads and had a  
25 lot of projects over the past three years. There has also

1       been a significant amount of private construction activity  
2       in the form of subdivisions, private roads, and other  
3       projects.

4               So overall, demand in the markets we serve has  
5       generally been healthy. The problem is that since 2013  
6       there has been a huge amount of very low-priced Chinese  
7       product showing up in the marketplace. And it has been  
8       offered at extremely low prices by companies like Hanes,  
9       Hill Country, and others.

10              I understand that the parties on the other side  
11       of this case have been saying that we in Tensar have been  
12       driving down the prices for biaxial geogrids in Texas. That  
13       is inaccurate.

14              Over the last three years, it has been the  
15       companies selling Chinese products that have been the price  
16       leaders in Texas and that have continually driven down the  
17       prices. We have lost project after project in the TexDot  
18       market to Chinese biaxial geogrids being sold at unfairly  
19       low prices, and have only recently been able to win a few  
20       bids since these cases were filed and the duties were  
21       imposed.

22              Two years ago, Type One biaxial geogrid was  
23       selling in Texas and Oklahoma for about 90 cents a square  
24       yard. This year, we've repeatedly seen Chinese biaxial  
25       geogrids offered for less than 50 cents a square yard.

1           Of course when we see these low Chinese prices we  
2           ask Tensar if they could lower their price to keep us  
3           competitive. Tensar has tried to do this when they can, but  
4           that's been increasingly difficult because the prices and  
5           margins are now so low on every biaxial geogrid sale.

6           Just a few years ago, over 30 percent of our  
7           geogrid sales were on TexDot projects. Now, due to the  
8           low-priced Chinese biaxial geogrids we have lost more than  
9           half of that business.

10          As a result, our TexDot business is only 15  
11          percent of our geogrid sales, and we get significantly less  
12          margin on those sales. Obviously, the sales that we've lost  
13          have meant a lot to our bottom line.

14          The loss hurts us in other ways, too. In this  
15          business, when you lose out on one sale to a customer it's  
16          that much harder to make the next one, or even learn of the  
17          opportunity to make the next one. Customers will likely  
18          call the low-priced provider the next time. If you lose a  
19          customer, it's very difficult to get them back. It is a  
20          snowball effect.

21          The result is that we've been forced to match or  
22          beat the Chinese product pricing just to try to maintain our  
23          customer base. The prices now are so low there's simply no  
24          more room to cut. It's simply not a sustainable sales  
25          strategy.

1                   We cannot continue down this path. I urge the  
2 Commission to grant relief in this case and give us all the  
3 opportunity to compete again on a level playing field.

4                   Thank you, very much.

5                   STATEMENT OF DAVE BROOKS

6                   MR. BROOKS: Good morning, Mr. Chairman, and  
7 members of the Commission, and thank you for the opportunity  
8 to be here today.

9                   I am Dave Brooks, President of ACF Environmental.  
10 ACF is based in Richmond, Virginia, and serves customers on  
11 the East Coast. We have been in the business of  
12 distributing geosynthetics products and solutions for over  
13 30 years.

14                   We sell Tensar biaxial and triaxial geogrids,  
15 along with a host of other geosynthetic products. ACF is  
16 the exclusive distributor for Tensar in Virginia, Maryland,  
17 Delaware, parts of New York, but we also sell Tensar  
18 products in other areas along the East Coast including North  
19 and South Carolina.

20                   Our main customers are contractors. Indirectly  
21 we work with the engineering community to help define  
22 specifications for particular projects, which then in turn  
23 drives our direct sales. However, all our sales go through  
24 a base of contractors.

25                   The driver for demand of biaxial geogrids in our

1 sales territory is road construction, particularly in areas  
2 where subsoils are not as stable as other areas, or where  
3 the engineers and contractors for projects want to minimize  
4 the amount of stone used in the base.

5 Stone can be expensive, and anything you can do  
6 to cut down on that adds to savings on the projects. Our  
7 market and our customers are very sensitive to price.  
8 Anything a project engineer, contractor, or installer can do  
9 to drive the price down, they will do.

10 This is often driven by contract requirements  
11 that require the sale that goes to the lowest bidder, but  
12 it's also just a simple fact of life in the market. Our  
13 customers are sophisticated and want the product that meets  
14 their requirements for the lowest possible price.

15 Since 2013, the lowest price in the market has  
16 come from the Chinese imports, particularly imports that are  
17 sold by Hanes, which is the biggest player in the East Coast  
18 markets that we serve.

19 Hanes is the price leader, and they have been  
20 driving prices only in one direction: down. And we have  
21 seen huge volumes of low-priced Chinese product in the  
22 marketplace. The unfairly traded Chinese product has become  
23 so widespread that when we try to sell Tensar product we are  
24 immediately asked to drop our prices to match a supplier  
25 selling material from China.

1           That continues to this day. In fact, it is  
2 widely known in the market that a huge volume biaxial  
3 geogrid was brought in from China in early 2016 after these  
4 cases were filed in order to beat the duties.

5           This inventory has been continuing to weigh on  
6 prices. So while we've seen prices stabilize this year,  
7 they have not gone up. The presence of so much low-priced  
8 Chinese product in the market has had a huge impact on how  
9 we sell.

10           Since 2013, we have repeatedly had to tell Tensar  
11 to lower its price or we will lose the business to  
12 low-priced imports. So even though demand has been good  
13 over the past few years, prices have continued to decline.

14           The level of pricing created by the imports from  
15 China has reached a point where it is impossible to compete  
16 to survive. We cannot continue like this. We cannot  
17 continue to lower our prices and our margins and lose sales  
18 forever. Something has to give.

19           Without relief from unfair trade, that something  
20 will be the U.S.; industry. I urge you to do everything in  
21 your power to prevent that from happening.

22           Thank you for your time.

23           MR. GERRISH: Mr. Chairman, that concludes our  
24 testimony. Thank you.

25           CHAIRMAN WILLIAMSON: Good. Thank you. I want to

1 again express our appreciation to all the witnesses for  
2 coming today. And this morning I will begin the  
3 questioning.

4 Of course you've said a lot about the differences  
5 in physical characteristics between biaxial and triaxial  
6 geogrids. How much longer is the service life? And what  
7 are the project cost savings associated with using triaxial  
8 geogrids instead of biaxial ones?

9 I assume it varies, but what's --

10 MR. LAWRENCE: Mike Lawrence, Tensar, Mr.  
11 Commissioner. The length of the life when it's in a  
12 roadbed? Is that the question?

13 CHAIRMAN WILLIAMSON: Yes.

14 MR. LAWRENCE: It depends on the requirement for  
15 the road. And each road has its own specification, but  
16 generally these products will last 10 to 20 years in an  
17 application, just depending on the weight of the use of the  
18 road and how much traffic that road has, whether it's paved  
19 or unpaved.

20 CHAIRMAN WILLIAMSON: So does the triaxial tend to  
21 last longer than the biaxial used in the same conditions?

22 MR. LAWRENCE; Under the same conditions, it  
23 will last longer with the triaxial product in the roadway,  
24 everything else being equal.

25 CHAIRMAN WILLIAMSON: And I assume that--and so in

1 thinking about the cost of the project, the payback, how  
2 does that get factored in?

3 MR. LAWRENCE: Yes. Mike Lawrence again, Tensar.  
4 Calculations are made in the engineering process up front  
5 where all of these projects would be highly engineered to  
6 understand, you know, how long does that road need to last?  
7 What weight of traffic does it need to have? What's the  
8 condition that the road needs to be in, you know, after  
9 three years, five years, ten years? And then a  
10 specification is drawn up and products like our triaxial  
11 geogrid are specified because they do tend to be the lowest  
12 cost for the entire roadbed by eliminating pavement, or  
13 aggregate, as well as saving time on the entire project and  
14 getting these projects to much quicker finish than others.

15 CHAIRMAN WILLIAMSON: Mr. Edgecombe?

16 MR. EDGECOMBE: This is Scott Edgecombe. I was  
17 just going to add to that. So we have a large body of  
18 engineering and science around both of these products, and  
19 you can choose to reduce cost with triax, or you can go with  
20 the same cross-section and extend the life. And so it would  
21 be different in each case, but it's all based on engineering  
22 and science. And we have all the tools and software to sort  
23 through those differences.

24 CHAIRMAN WILLIAMSON: Okay.

25 MR. GERRISH: Jeff Gerrish on behalf of Tensar.

1 Just to add briefly to that. And there's been analyses and  
2 studies done by experts in the field. And the foremost  
3 experts in this field, including Dr. Drew who we cite in our  
4 brief, have recognized that the two products have very  
5 different physical and mechanical properties, and the triax  
6 has very different performance characteristics than the  
7 biaxial geogrid product.

8 So it's independent testing and analyses that  
9 have been done that have recognized the differences in the  
10 characteristics and the difference in the performance  
11 between the two products.

12 CHAIRMAN WILLIAMSON: So if an engineer is doing a  
13 road project, beginning and planning a road project, how do  
14 you figure this out? Of course you talk about some states  
15 require using only biaxial and others don't, but if that  
16 wasn't a consideration what would be the process like?

17 MR. LAWRENCE: Mike Lawrence, Tensar. The  
18 engineers will base their decision of course on their  
19 history of working with our products, and we've mostly  
20 taught the industry over the last 20 to 30 years about these  
21 types of products and the benefits that they bring.

22 But each engineer will bring their own expertise,  
23 and then each project will be very different. If this was a  
24 mine and they had very heavy equipment on an unpaved road,  
25 it would have a certain need for that product and the

1 equipment on it. If it was a farm-to-market type road, it  
2 would be very different. So the engineering is specific to  
3 each road and each project.

4 The triax product can eliminate paved surface.  
5 And that's something that's unique only to triax. We have a  
6 lot of data that shows that we can, and some of our states  
7 will tell you in their specifications that triax is the only  
8 product allowed to reduce paved surface in a roadway.

9 So that's one of the unique factors that we  
10 bring.

11 MR. EDGECOMBE: This is Scott Edgecombe. In many  
12 cases it's an education process. There's other competing or  
13 substitute products outside of biax, like soil cement and  
14 lime, and/or traditional methods. Just putting more rock  
15 into the roadbed to create the stiffness and the  
16 cross-section you need. So there's very clearly different  
17 methods to engineer and design a roadway, and triax happens  
18 to be one of them that competes with biax, that competes  
19 with soil-cement. That competes with traditional  
20 construction methods.

21 MR. GERRISH: Jeff Gerrish on behalf of Tensar.  
22 Just one additional fact to add to that. In terms of how  
23 the engineers approach this and look at it, the other factor  
24 here is of course the difference in specifications.

25 You know, many states have a specification for

1       biax and do not have one for triax. So, you know, for those  
2       particular projects, you know, triax cannot be used unless  
3       there's some sort of special use provision that's put in  
4       place.

5                   But there's been a recognition in those states in  
6       terms of the differences in the two products with the way  
7       they treat them in the specification, with biax being  
8       provided for in many states and triax not being provided for  
9       and not being able to be used.

10                   CHAIRMAN WILLIAMSON: Are ya'll busy teaching  
11       about triax in engineering schools nowadays?

12                   MR. LAWRENCE: Mike Lawrence, Tensar. We try to  
13       get our message out as best we can. We're not a large  
14       company, but with the resources we have we give information  
15       on engineering support for all of our products, because we  
16       make multiple different products beyond triax and biax, but  
17       all the products are important to us in our business. And  
18       that's part of the outreach is that, as well as design  
19       seminars that we do regularly for engineers.

20                   CHAIRMAN WILLIAMSON: Okay. Thank you.

21                   In your prehearing brief you note that the amount  
22       of time needed to make adjustments to machines for the  
23       production of biax and triax can vary. What is the typical  
24       downtime in production as a result of these adjustments?  
25       And how often are these adjustments made each week?

1                   MR. GERRISH: Here is Bill Shelton from a  
2 manufacturing--

3                   MR. SHELTON: Mr. Chairman, good morning, and  
4 Commissioners. I am William Shelton. I am the Vice  
5 President of Materials Technology. The downtime varies. It  
6 depends on what you're doing.

7                   The biax and triax process is a three-stage  
8 process from extrusion of the sheet, to punching of the  
9 sheet, to orientation of the sheet. If you're making a  
10 simple change at either one of those stages, it can vary  
11 from as short as an hour to up to almost 18 to 24 hours if  
12 you have to pull out the machinery, reset it up, reprocess  
13 it altogether, retool it altogether. So it does vary  
14 depending on what you're doing.

15                   If you're doing a polymer change, then that takes  
16 an extensive amount of time. If you're going from biax to  
17 triax, it's complete different tooling at punching, and it's  
18 different equipment in stretching that we have to modify or  
19 retool to make that product.

20                   So it could vary--it does vary from anywhere from  
21 one hour to almost 18 hours to make those changes.

22                   CHAIRMAN WILLIAMSON: Okay, and I guess the cost  
23 varies with that time.

24                   MR. SHELTON: It does, indeed.

25                   CHAIRMAN WILLIAMSON: So is the strategy to get as

1 much of one thing as you can?

2 MR. SHELTON: We try to schedule the plant, yes,  
3 to be as efficient as possible in making a particular  
4 product type.

5 CHAIRMAN WILLIAMSON: Okay. How does import  
6 competition affect that, those costs?

7 MR. LAWRENCE: I can probably jump in on that.  
8 Thanks, Bill. Mike Lawrence, Tensar. The import  
9 competition, you know, basically has been lowering price  
10 year after year after year, even as we mentioned earlier, as  
11 our resin prices went up from '13 to '14. They did come  
12 down a little bit in '15, but across that time period the  
13 prices have just been devastatingly low. And we lose share  
14 in that process. We showed that, and you will see it in  
15 some of your confidential documents.

16 The share loss was massive. We've had to take  
17 down time. We've had to cut hours at our plant. We've had  
18 to cut shifts. Bill has been doing all of that hard work  
19 for us, and that's very difficult. And it's also cost us  
20 quite a bit of money when we can't run the plant.

21 CHAIRMAN WILLIAMSON: It makes it very unpopular,  
22 too.

23 MR. LAWRENCE: Yes, very unpopular and difficult  
24 on our employees, as well.

25 MR. GERRISH: Mr. Chairman, Jeff Gerrish on behalf

1 of Tensar. You know, Tensar has made great strides and  
2 great efforts to try to just cut out as much cost in the  
3 process, because they've had to, because they've had to  
4 compete with these unfairly low Chinese prices.

5 But as much as they've cut their prices, the  
6 Chinese cut theirs more. And they've seized a significant  
7 amount of market share over the Period of Investigation in  
8 the process, and by cutting those prices, and you can see  
9 that in your underselling analysis that you have in your  
10 staff report. And we've, you know, also done some analysis  
11 of that in our prehearing brief, as well. I can't get into  
12 the specifics of it because it's confidential information,  
13 but you've shown that in your staff report, what's happened  
14 in underselling. But as you've heard here today, there's  
15 just no more room to cut the cost, or cut the prices for  
16 this industry, and to help them, to keep them viable.

17 The other thing, just on the production process  
18 in terms of the costs, obviously there is a lot of retooling  
19 and other adjustments that have to be made to go from  
20 producing one product to the other. And what they've tried  
21 to do as much as possible is keep production of one product  
22 on one line and, you know, vice versa, so that they--you  
23 know, but when they have to switch over, they have to do  
24 this significant changeover, and you have to have entirely  
25 new equipment to be able to produce triax that you don't

1 need to produce biax.

2 CHAIRMAN WILLIAMSON: Okay. Good. Thank you.  
3 Commissioner Pinkert?

4 COMMISSIONER PINKERT: Thank you, Mr. Chairman.  
5 And I thank all of you for being here today to help us to  
6 understand the issues in this case.

7 I want to begin with a question about the patent  
8 on biax. Did the increase in subject imports of biax occur  
9 in response to the expiration of the patent?

10 MR. LAWRENCE: Yes. Mike Lawrence, Tensar. Thank  
11 you for the question, Commissioner Pinkert. We of course  
12 expected the patent to have an impact on our market. We've  
13 seen that before. We've seen it in other markets, including  
14 Canada and others. And so we knew what the typical reaction  
15 would be.

16 That was 2012. The patent really had no impact  
17 on what happened in '13, '14, '15, and even in '16. You  
18 know, years later we're seeing huge, huge imports and prices  
19 just dropping continually. So we don't believe there's any  
20 reaction to the patent beyond 2012 that's cause for this,  
21 but more along the lines of unfair trade.

22 MR. GERRISH: Commissioner, Jeff Gerrish on behalf  
23 of Tensar. And as Mr. Lawrence was just saying, they've had  
24 the product come off patent. They've had biax come off  
25 patent in other markets.

1           So they made adjustments based on that experience  
2           in those other markets that were not affected by unfair  
3           trade. They made adjustments to their pricing leading up to  
4           the expiration of the patent. So had reduced their prices  
5           based on what they knew was the likely reaction to the  
6           expiration of the patent.

7           But what of course they couldn't make any  
8           provision for is just the onslaught of these incredibly  
9           low-priced Chinese imports that came into the market, and  
10          that have continued to come in in 2013, 2014, 2015, and into  
11          the beginning of 2016, and have continued to take market  
12          share by charging these very low prices undercutting  
13          Tensor's prices and driving the prices down lower and lower  
14          and lower.

15          The effects of the patent are long-since over  
16          have been over how for several years.

17          MR. EDGECOMBE: This is Scott Edgecombe, and I  
18          want to state it a different way. Again, plenty of markets  
19          where this has come off of patent and, absent subsidies,  
20          absent dumping, we're successful. We can compete. We will  
21          be able to compete here with a level playing field.

22          COMMISSIONER PINKERT: Now if I understood what  
23          you just said correctly, Mr. Gerrish, you were suggesting  
24          that in other markets the patent holder, when the biax comes  
25          off patent would make some adjustment for the fact that

1       there would be additional competition in that market, some  
2       adjustment of price.

3               How should I benchmark what happened in the U.S.  
4       market? Is there some way to look at what would be normal  
5       in response to the expiration of the patent? And then  
6       compare it with what actually happened in the U.S. market  
7       subsequent to 2012?

8               MR. GERRISH: Jeff Gerrish on behalf of Tensar.  
9       Commissioner Pinkert, we actually provided some information  
10      on that in our post-conference brief, because again Tensar  
11      was the patent holder in those other markets. And they were  
12      able to show what their experience was in those other  
13      markets.

14              And it showed exactly what they had provided for  
15      when the patent was coming off in the United States, because  
16      they had seen this. They had experienced it in these other  
17      markets, and they saw what the price effects were. So they  
18      knew what to expect and they made adjustments for that  
19      before it came off patent.

20              So that does provide you with that sort of  
21      information, but it shows you that that's what they did in  
22      preparation for the product coming off patent in the United  
23      States.

24              COMMISSIONER PINKERT: Thank you. If you could  
25      supplement that with some sort of benchmarking exercise so

1       that I understand what the company would have expected in  
2       this market in the circumstances of this case relative to  
3       what actually happened, I think that would be helpful.

4               MR. GERRISH: Jeff Gerrish for Tensar. We will do  
5       that in our post-hearing brief.

6               COMMISSIONER PINKERT: Thank you very much.

7               Now another sort of comparison exercise. The  
8       operating margin trends for biax and triax are similar from  
9       2013 to 2015. Why would this be the case if one is facing  
10      competition from subject imports and the other one isn't?

11              MR. GERRISH: Commissioner, I can start on that.  
12      Jeff Gerrish on behalf of Tensar. You know, clearly  
13      obviously when you're putting the two products together, you  
14      know, you're going to obviously have similar trends in the  
15      data, you know, for both biax and triax. You know, with the  
16      various measures of profitability.

17              But also, I mean, you know, with triax there is  
18      some indirect competitive effect that, you know, what's  
19      happened with the Chinese imports has caused to not only  
20      biax but triax as well. You know, I mean you're going to  
21      have some indirect competitive effect even though the  
22      products are different. It's the same thing that you would  
23      see, and I think others can add to this, is you would see  
24      with different alternatives even to geogrid.

25              You know, if there's a change in pricing to, you

1 know, to, to other substances like additional, you know,  
2 like aggregate, or chemical stabilization, that's going to  
3 impact pricing as well, and impact the bottom line.

4 So, you know, I think you're seeing some of that  
5 indirect competitive effect on the--you know, on triax as  
6 well as biax because of the unfairly traded imports from  
7 China.

8 MR. LAWRENCE: Yes, it's the--Mike Lawrence,  
9 Tensar. As Mr. Gerrish was saying, a substitute technology  
10 of any kind that could be used instead of a biax or a triax,  
11 or a fabric, for instance, or cement stabilization soil,  
12 more aggregate, or gravel, all of those cost elements, if  
13 one were to be very cheap, if aggregate tomorrow were free,  
14 then they would probably just stack up a lot more aggregate  
15 and use that as an alternative. And that would drive prices  
16 used for the rest of the technologies in the market.

17 So pretty typical, if one technology starts to  
18 fall substantially then others will have to fall to some  
19 extent to match that need of a substitute product that has  
20 now taken market share.

21 COMMISSIONER PINKERT: So how would I develop an  
22 understanding of whether those effects are direct effects on  
23 both biax pricing and triax pricing? Or, as you  
24 characterized them, an indirect effect on the triax segment?

25 MR. GERRISH: Jeff Gerrish on behalf of Tensar.

1 You know, I think you can see in the data that's been  
2 collected for both biax and triax, you know there's been an  
3 effect, you know, on both products. You know, you've had,  
4 you know, if you look at the biax pricing, that's gone  
5 significantly down over the period. The imports have driven  
6 the prices down for that product.

7 Obviously they've taken market share away from  
8 Tensar throughout the Period of Investigation. The same is  
9 true on triax. The prices have been driven down, and  
10 they've taken market share away from Triax in that product  
11 as well.

12 So, you know, it is impacting both of their  
13 segments on both of their products here. So you can see  
14 that in your data, and certainly when you combine the data  
15 it certainly shows significant downward trends for the two  
16 products over the period of investigation across virtually  
17 every indication of the domestic industry's performance.

18 I think you saw that in the slides here, you  
19 know, just how much of an impact that has had, you know,  
20 across the board on both products. I'm just trying to find  
21 exactly which slide that was, but, let's see here, yes,  
22 slide 23. If you look at that slide again, you know, you  
23 can see just every indicator of the domestic industry's  
24 performance for the two products has been adversely  
25 impacted.

1           You know, their sales. The unit values, Capacity  
2           utilization. And, you know, of course all their indicators  
3           of their profitability. So definitely this onslaught of  
4           imports has had a big impact on both products, and certainly  
5           had a huge impact on biax but it's also had an impact on  
6           triax as well.

7           COMMISSIONER PINKERT: Thank you. And can you  
8           compare your projected future demand for triax with your  
9           expected future demand for biax? Is one expected to grow  
10          more than the other?

11          MR. LAWRENCE: Mike Lawrence, Tensar. That will  
12          really be market determinant in our minds. And, you know,  
13          biax is certain markets that we can't sell and don't sell  
14          triax. And if that market were to grow, you know, maybe a  
15          mining market or a marine application, then that would grow  
16          biax. If it was more roads and asphalt, pavement  
17          optimization as we call it, then triax would grow.

18          So we really grow with the markets, and it will  
19          depend on the future growth of those markets which of our  
20          products grow and take off.

21          MR. GERRISH: Jeff Gerrish for Tensar. You can  
22          see in 2015 demand was very strong and growing for biax.  
23          And so, you know, again as Mr. Lawrence indicated, it  
24          depends on sort of what happens in the market.

25          You know, I think all projections are that demand

1 is going to stay steady and stable for these products, and  
2 there's always going to be a market for biaxial geogrid.  
3 You know, many, many states have specifications that require  
4 biaxial geogrid, and customers require it even outside of  
5 those contexts. So this is a key part of their market.

6 But again, all projects are that demand looks  
7 stable and steady going forward.

8 COMMISSIONER PINKERT: If you have any documented  
9 internal projections on those two products, not  
10 characterizing them as different products or same product,  
11 but those two different forms of the product, please submit  
12 them with the post-hearing.

13 MR. GERRISH: We'll do that.

14 CHAIRMAN WILLIAMSON: Commissioner Broadbent?

15 COMMISSIONER BROADBENT: Okay. Mr. Lawrence, what  
16 are the--I was just trying to get this difference clear in  
17 my mind, but your target customers for the triaxial versus  
18 the biaxial, how do you characterize the two different  
19 groups?

20 MR. LAWRENCE: Mike Lawrence, Tensar. It depends  
21 on the market that they're in. As I mentioned, some markets  
22 are strictly biax markets. Marine applications are strictly  
23 biaxial markets, right? While mining might be half biaxial  
24 market half triaxial market, it just depends.

25 So when we approach a market segment, we would

1 typically look at the applications of our products and try  
2 to design the most efficient, cost-effective, fastest  
3 possible way for us to engineer and work with our customer  
4 in that market. And that product could be a biax product, a  
5 triax product. We're not discussing some of our other  
6 products, but we have UX products as well. It will be  
7 application-specific and we have designed help and software  
8 that is designed to help with that application every time.

9 So it is market specific, and then project  
10 specific as well.

11 COMMISSIONER BROADBENT: Okay. And just not being  
12 familiar with this industry, I don't think I could get the  
13 gist of what you just told me. What is the target market  
14 for biaxial? I understand that's for the marine market.  
15 Why?

16 MR. LAWRENCE: Mike Lawrence again. There are  
17 many target markets--I'm sorry, maybe I'm not quite  
18 understanding the question--we don't necessarily target just  
19 roadways. Roadways is probably the largest market. So  
20 perhaps that's more of an answer to your question. In  
21 roadways we use triaxial products or biaxial. It depends on  
22 the need and the use for that road and the design for the  
23 customer.

24 But there's rail applications. As I said,  
25 there's mining. There's marine. There's, you know,

1 multiple different construction methods--paved roads,  
2 unpaved roads. Each has its own need. We don't really  
3 target one at the exclusion of the other. We go after all  
4 of those markets because that's what is necessary to run our  
5 business in the proper way.

6 COMMISSIONER BROADBENT: Okay, but for marine why  
7 is it mostly biaxial?

8 MR. LAWRENCE: Marine is almost exclusively  
9 biaxial product just because of the nature of the use. They  
10 use it for bridge scour and also protection of erosion  
11 around different river and also ocean kind of applications.  
12 And the biaxial product is specified, but it's also the best  
13 product, engineered in the right way, to be used for the  
14 application. Triax wouldn't be as effective a product in  
15 that application.

16 COMMISSIONER BROADBENT: That's kind of what I'm  
17 trying to get at. What makes biaxial the most appropriate  
18 for that demand?

19 MR. LAWRENCE: Part of it is the shape. You know,  
20 it's a square. It's not a triangle. There's certain  
21 strength and needs on the way that they--we actually produce  
22 a kind of a basket, if you will. We call it a mattress  
23 that's filled with rocks, with a biax product on all sides,  
24 and that application is the best use, as opposed to a  
25 pavement optimization on a road which would be, we believe,

1 most of the time best used triax to reduce the--if you  
2 wanted to reduce your asphalt layer, that would be the  
3 product to use exclusively in that application.

4 COMMISSIONER BROADBENT: I'm so sorry. I'm just  
5 trying to figure out the characteristic of the biax versus  
6 triax and why it's better for one use than the other. So  
7 the bridge mattress -- excuse me, the mattress application  
8 is that dependent on the shape of the --

9 MR. EDGECOMBE: This is Scott Edgecombe speaking  
10 from Tensar.

11 So I mean these products have different  
12 properties, both in terms of their physical characteristics  
13 and then the properties in use and so when you start  
14 thinking about a marine mattress that's something where it  
15 gets wrapped around. BX tends to be biax. It tends to be  
16 less stiff and it allows it to be formed and formed into  
17 this mattress where you're not going to be able to do that  
18 with triax, so these are very different, I'll say, physical  
19 characteristics. I'll say the property of the product and  
20 then the property and use.

21 That's probably less important in the marine  
22 application. There's other applications where the  
23 performance and its intended use is markedly different and  
24 so you would choose one product over the other for that  
25 reason as well.

1                   COMMISSIONER BROADBENT: Okay. But what is this  
2 physical characteristic.

3                   MR. EDGECOMBE: The stiffness would be one.

4                   COMMISSIONER BROADBENT: Of the plastic?

5                   MR. EDGECOMBE: Correct -- of the grid. The  
6 plastic is similar.

7                   COMMISSIONER BROADBENT: Okay.

8                   MR. EDGECOMBE: It's the geometry of the grid  
9 and the geometry of the ribs.

10                  MR. GERRISH: Commissioner Broadbent, if I could  
11 just add briefly to that. Jeff Gerrish on behalf of Tensar.

12                  You know I think what Scott was just talking  
13 about too with the differences and why biax is better can  
14 only -- only biax can be used for the marine mattress, the  
15 same is true with wall application. Biax can only be used  
16 for that and not triax for the same reasons.

17                  COMMISSIONER BROADBENT: For a wall application?

18                  MR. GERRISH: Wall application, yes, so for the  
19 same reasons. And there's differences in roadway as well.

20                  COMMISSIONER BROADBENT: The same reasons being?

21                  MR. GERRISH: The stiffness -- the relative  
22 stiffness between the products and being able to -- it's the  
23 same sort of concept that you wrap around the biax and  
24 therefore the stiffness makes a difference in terms of which  
25 product can be used versus the other.

1                   And then even in roadway applications there's  
2                   different reasons to use the different products. And I  
3                   think Mike talked about the fact that only triax can be used  
4                   for pavement optimization. And in fact, that's been  
5                   recognized in state specifications. In the California Green  
6                   Book, they've recognized that only triax can be used for  
7                   pavement for optimization, but there's other roadway  
8                   applications for which biax is a better product to use and  
9                   is more applicable. It depends on the design  
10                  specifications for the roadway which is the best product to  
11                  use and so it just depends on the relative strengths or  
12                  performance capabilities of the two products, which are very  
13                  different and have been recognized to be very different by  
14                  the experts in the field.

15                 MR. BOLIN: Commissioner, Nat Bolin on behalf of  
16                 Tensar.

17                 Just to give you an example of why the triax is  
18                 a stiffer product, I'd refer to page 14 of our brief. On  
19                 that page you'll see a diagram showing the cross-section of  
20                 the rib structure of triax and a diagram showing the rib  
21                 structure of biax and you'll see from that why the  
22                 structural differences in the products. In part, the very  
23                 rigid structure to triax that's not present in biax.

24                 COMMISSIONER BROADBENT: So it's thicker?

25                 MR. BOLIN: It's not only thicker -- and others

1       may want to speak to this, but it's also the particular  
2       shape and structure of the rib, which is the joining part  
3       between each part of the overall material.

4                   COMMISSIONER BROADBENT:   Okay.

5                   MR. GERRISH:   Jeff Gerrish for Tensar.

6                   It's the rib profile and depth for the triax  
7       versus the biax and the rigidity of the product.  You know  
8       the triax product, based on the design of the product and  
9       the geometry of it, has rigidity across 360 degrees of the  
10      geogrid plane and it's demonstrated to do that and that's  
11      what the diagrams are intended to demonstrate there as well  
12      and so that's the difference in the stiffness and rigidity  
13      of the product and it's just based on the design of the --  
14      it's the geometry with the triangular and hexagonal  
15      structure of it, also with the rib structure as well and  
16      junction strength as well.  That's also a big difference  
17      between the two products based on the design and that's why  
18      they rarely get a patent on it.  It's a different product  
19      and made in a different way.

20                   COMMISSIONER BROADBENT:   Okay, yes.

21                   MR. SHELTON:   This is William Shelton with  
22      Tensar.

23                   I just wanted to add that we use a phenomenal  
24      word called "aspect ratio" when we talk about stiffness of  
25      product.  The triax product the width of the strain divided

1 by the height or depth of the strain defines aspect ratio.  
2 And by design, it is a smaller aspect ratio than that of  
3 biax and that's where you get your stiffness from. So it's  
4 much stiffer per strain on triax than it is for the biax  
5 product.

6 COMMISSIONER BROADBENT: Okay, yes.

7 MR. GEE: If I could, Brian Gee with Tensar.

8 I'd like to add one other thing that I don't  
9 think has been covered here and that is another reason for  
10 deciding between the two would be how critical the  
11 application is. Triax allows -- because we have a lot more  
12 data and most of the designs are predictive over a long a  
13 period of time, if you're very concerned about the  
14 application over a longer period of time you're going to  
15 want to use the product that has more data. There are other  
16 times when biaxial geogrid is good enough.

17 COMMISSIONER BROADBENT: Okay, Mr. Gerrish,  
18 could you go over a couple of the Commission precedents on  
19 domestic-like product that would be most similar to the  
20 argument that you're making here?

21 MR. GERRISH: Sure. I think the one we've  
22 identified that I think is most applicable is the  
23 determination that's been made with respect to welded  
24 standard pipe versus welded line pipe. There are  
25 overlapping uses and I think could be argued that, okay,

1 while the products are generally produced in a similar  
2 manner in terms of production process, but I think there  
3 we've shown that, in fact, although there is overlapping end  
4 uses that's only because the welded line pipe is made to a  
5 higher specification and it's dual specified, dual stenciled  
6 to meet whatever the applications are for standard pipe as  
7 well as line pipe. And that case those were treated as  
8 separate like products and we think a similar situation and  
9 a similar finding should be made here.

10 I mean, generally yes, do triax and biax go  
11 through the same general production process? Yes, they go  
12 through extruding, punching, and stretching, but within that  
13 production process there are significant differences. You  
14 need different equipment to be able to produce triax that  
15 you don't need for biax. Tensar had to get a much larger  
16 punch press to be able to punch triax. They also had to get  
17 tension management equipment that they didn't need, a  
18 larger quench tank -- you know different equipment. They  
19 also have to retool to be able to produce both products.

20 COMMISSIONER BROADBENT: Thank you very much.

21 CHAIRMAN WILLIAMSON: Thank you. Commissioner  
22 Kieff?

23 COMMISSIONER KIEFF: Thanks.

24 Just to follow up on some of this discussion,  
25 let me see if I'm tracking what you're saying. Sounds like

1 you're drawing a distinction between an application in which  
2 you're building something akin to a sheet as distinguished  
3 from something akin to a pillar where you are in sheet  
4 worried about two dimensions, a plane, and in a pillar  
5 worried about three dimensions.

6 You use your triax for two-dimension sheets and  
7 your biax for building three dimensional shapes like baskets  
8 and pillars; is that a distinction you're drawing?

9 MR. GERRISH: Commissioner, I could start. I'm  
10 Jeff Gerrish for Tensar again, and again, others who are  
11 going to want to chime in on this.

12 There is that distinction between biax and triax  
13 in terms of certain applications where -- you know, for  
14 instance, where biax is being used in the marine mattress  
15 application or in wall units, but biax is used as a sheet as  
16 well in roadway applications.

17 COMMISSIONER KIEFF: I understand. But if I  
18 understand correctly from your other testimony there the  
19 distinction is primarily about overall cost of installation  
20 rather than mechanical -- long-term mechanical performance.

21 MR. LAWRENCE: Mike Lawrence, Tensar.

22 No, there's an absolute difference in  
23 performance of the biaxial versus the triaxial in the same  
24 application in a road, absolute. And so, depending on what  
25 you need and what your requirements are and specifications

1 for that road, you would look at one product versus the  
2 other, but there's absolute differences. And the radial  
3 stiffness is one of the largest differences between the kind  
4 of two-directional stiffness of a biax, very different  
5 products.

6 COMMISSIONER KIEFF: Okay, that makes sense.

7 MR. GERRISH: Commissioner, if I could just add  
8 just one thing real quick.

9 You know even in the roadway surfaces now one  
10 thing just important to point out. You know there is an  
11 important distinction too in terms of the ability to use  
12 triax for pavement optimization as well. That's something  
13 that they do not use biax for, so that's something  
14 different.

15 COMMISSIONER KIEFF: Sure. So as a follow up,  
16 do you ever use this stuff in concrete instead of rebar?

17 MR. LAWRENCE: Mike, Tensar.

18 No, it's not used to substitute rebar. It is  
19 used in concrete road surfaces to do a similar stabilization  
20 underneath that surface, which would help, but it's not used  
21 to replace rebar.

22 COMMISSIONER KIEFF: But is it used in the  
23 aggregate layer below the concrete?

24 MR. LAWRENCE: Mike Lawrence.

25 Yes, correct. It's used in the aggregate layer

1 below.

2 COMMISSIONER KIEFF: So you never make a  
3 concrete composite with it?

4 MR. LAWRENCE: We do not.

5 COMMISSIONER KIEFF: Okay, thanks. That's  
6 really more for my home use as I work on my driveway. Thank  
7 you.

8 MR. LAWRENCE: Mike Lawrence again.

9 Under a driveway is an excellent application,  
10 however, because it would -- and make your driveway last  
11 longer and in case a truck pulls onto your driveway you  
12 won't have any issues.

13 COMMISSIONER KIEFF: That's fine. I appreciate  
14 it and I'm sorry to geek out on the home repairs.

15 So can I then try to follow up on what seems to  
16 be -- there's a lot of effort spent by both sides to talk  
17 about the like product question and I'm trying to get an  
18 understanding of why that might matter, if at all. And I  
19 take it your point is, in effect, it doesn't and I get that  
20 as well; but to the extent it might matter, is the nature of  
21 that argument a numerator/denominator argument? The other  
22 side is, in effect, saying these are all together, so that  
23 they can then show the degree of affect summed across the  
24 entire pool is smaller.

25 MR. GERRISH: Jeff Gerrish on behalf of Tensar.

1                   I believe that is, in fact, what they are doing.  
2           They're trying to show that there is a difference in the  
3           magnitude of the impact, I guess, if you will, between the  
4           two. And I think we've made very clear we have presented the  
5           facts, primarily, with respect to biaxial geogrids only  
6           because we think that's the right result and the right  
7           answer under your like product analysis. However, we've  
8           made very clear in the brief and today that, as you've said,  
9           Commissioner, it really doesn't matter.

10                   The impact has been severe on this industry,  
11           regardless of how you slice or dice the data; you see the  
12           same devastating trends across all the different measures of  
13           this industry's performance. But I think they just are  
14           trying to say, oh well, there's a difference in magnitude.  
15           Well, no, look at the data. The trends are going down the  
16           same way either way you look at it.

17                   COMMISSIONER KIEFF: I take it your position is  
18           even if there were differences in degree they would not be  
19           so great as to drive a difference in outcome for our legal  
20           reasoning of material injury or threat.

21                   MR. GERRISH: Jeff Gerrish for Tensar again.

22                   That is exactly right. It does not make a  
23           difference in terms of the ultimate result and ultimate  
24           conclusion you should reach after analyzing this.

25                   And I think one thing they will try to say is,

1 well -- and I think you heard a little bit in the opening --  
2 well, this industry had high levels of profitability. Well,  
3 first of all, we would dispute that for either looking at it  
4 just for bi-ax or for bi-ax and tri-ax together. We don't  
5 agree with that at all, but the fact of the matter is, as we  
6 all know, with the change in the statute that took place a  
7 little over a year ago, just because an industry is  
8 profitable doesn't change the analysis.

9 The question is was their performance worse as a  
10 result of unfair trade? There's no question that it was.

11 COMMISSIONER KIEFF: And I don't even think your  
12 position would be different before the statute changed.

13 MR. GERRISH: No, absolutely not. No, I agree.  
14 It's exactly the same. Absolutely right, but just to -- if  
15 they are trying to make the position, okay, they're  
16 profitable, well, it doesn't matter.

17 COMMISSIONER KIEFF: So what about -- and I'm  
18 going to ask this question delicately because I get that it  
19 triggers territory that may be confidential, so I'm going to  
20 try to ask it vaguely in the hopes that it's clear enough to  
21 communicate the nature of the question without trespassing  
22 into bad territory.

23 I think the other side tries to point out some  
24 examples where they think that your pricing is, in effect,  
25 lower than Chinese pricing. Two obvious questions, one, is

1 that factually correct and then two, would it matter?

2 MR. LAWRENCE: Mike Lawrence, Tensar.

3 Absolutely not factually correct. I know that  
4 there's data that we can provide many, many times to show  
5 you that, as many times as you'd like. We actually compete  
6 directly with the Chinese importers in the private label on  
7 level playing field and compete and sell to the customers in  
8 the room, Hanes included, and so we know exactly what we  
9 hear when we give them a price about where the Chinese  
10 prices are on a regular basis every time and we see it  
11 through our distributors as well.

12 COMMISSIONER KIEFF: So for Mr. Gerrish then, if  
13 despite that, we were of the view that there were some  
14 examples can you help us understand why, even if they were  
15 there, they wouldn't drive a decision against you. And  
16 then, of course, invite your opponents to argue the opposite  
17 in the second panel, but just to really make sure we  
18 understand where the rubber hits the road.

19 MR. GERRISH: Absolutely. Jeff Gerrish for  
20 Tensar.

21 Yes, I'd be happy to answer that. You know even  
22 if there were a few examples where Tensar's prices have been  
23 lower than the Chinese prices I mean that's why, of course,  
24 you collect your pricing product data and you've done your  
25 underselling analysis and it shows significant amounts of

1 underselling throughout the period and really it's an  
2 overwhelming underselling case here.

3 COMMISSIONER KIEFF: So in effect, you're saying  
4 that as long as there is material injury in material  
5 segments of the market even if you weren't thoroughly  
6 injured in every part of the market you'd still be entitled  
7 to an affirmative determination.

8 MR. GERRISH: Jeff Gerrish for Tensar.

9 Well, I think we are and I think Tensar's  
10 demonstrated they are thoroughly being injured throughout  
11 the market.

12 COMMISSIONER KIEFF: I get that. I just mean if  
13 it turned out we didn't agree with you on 100 percent of  
14 that you wouldn't lose is what you're saying.

15 MR. GERRISH: That's absolutely right. And I  
16 think the data also show that the underselling has resulted  
17 in them taking huge amounts of market share. And you have  
18 your purchasers out there that you've collected information  
19 from them and they clearly showed you that they shifted 3.2  
20 million square yards in purchasers because the Chinese  
21 product was lower priced and of course, Tensar's had to try  
22 to lower its prices to try to meet the competition and many  
23 times not successfully. Once in a while, did they get a  
24 sale because of that? Yes.

25 COMMISSIONER KIEFF: And then just a last

1 question, which you might prefer to answer later in the  
2 post-hearing and invite the other side to as well, but just  
3 to discuss if you think there's somehow some very particular  
4 legal or policy interaction between the trade law analysis  
5 and the patent law analysis that should shape our thinking  
6 one way or the other in this case, both with respect to what  
7 I understand to be in effect the turning off of the patent  
8 protection with expiration for bilateral and the turning on  
9 of patent protection for triaxial.

10 MR. GERRISH: Jeff Gerrish for Tensar.

11 We'd be happy to address that in the  
12 post-hearing brief.

13 MR. EDGECOMBE: This is Scott Edgecombe with  
14 Tensar.

15 I know you're out of time. I just wanted to add  
16 one thing. So the example that I saw cited or the affidavit  
17 with the pricing I think that was very specifically put  
18 forward to mislead the Commission. I don't want to get into  
19 those weeds, but I'd like to go through the details in the  
20 post-hearing brief because it gets very deep into the weeds.

21 COMMISSIONER KIEFF: Yes, the post-hearing is  
22 great for everybody. Thanks so much.

23 CHAIRMAN WILLIAMSON: Thank you. Commissioner  
24 Schmidtlein.

25 COMMISSIONER SCHMIDTLEIN: Thank you. Good

1 morning. Thank you all for being here today. We appreciate  
2 it.

3 I just thought I'd let you know that I have to  
4 leave after this round of questioning, but I will definitely  
5 read the transcript from the entire day and my aide will  
6 stay throughout, so if there are questions that we wanted to  
7 ask that aren't asked, then we will submit those for the  
8 record afterwards.

9 So with that, I mean part of the problem when  
10 you go last in the order here is that all of the really good  
11 questions have already been asked, so let me just cover a  
12 few basic points just to make sure that I understand the  
13 position that you're taking.

14 The first question I had is do you agree with  
15 the Respondents that triax is competing directly against the  
16 biaxial product? I know we sort of talked around this, but  
17 I just wanted to hear --

18 MR. LAWRENCE: Sure. Yes, Mike Lawrence,  
19 Tensar. Thank you for the question.

20 Every technology competes, so definitely triax  
21 competes with biax competes with soil stabilization, cement  
22 stabilization, traditional methods, fabrics -- geo-fabrics  
23 that might be used, so all of them compete on every project.  
24 Some projects are specifically -- can't use a triax, let's  
25 say, right, as we mentioned before and then other projects

1       you probably couldn't use a triax, so some are more specific  
2       like pavement optimization for triax and like the marine for  
3       biax.

4                   COMMISSIONER SCHMIDTLEIN:   So you agree there's  
5       a lot of substitutes?

6                   MR. LAWRENCE:   There's a lot of substitutes.  
7       There's always different methods.  It requires engineering  
8       and an entire workup each time you change from one to the  
9       other to make sure that you've engineered that project to  
10      last and to do what it's meant to do and meet  
11      specifications, but all technologies compete each time you  
12      go out.

13                   COMMISSIONER SCHMIDTLEIN:   Each time you go out?

14                   MR. LAWRENCE:   Yes.

15                   MR. EDGECOMBE:   This is Scott Edgecombe.

16                   I just want to add to that, though.  So there's  
17      a very defining difference between triax and biax,  
18      especially when you get to I'll say the structural credit  
19      given for triax.  When we talk about pavement optimization  
20      and reducing asphalt and/or reducing the cross-section  
21      there's many -- there's also data to support this, not only  
22      from Dr. Drew, but also from the California Green Book, from  
23      examples in Texas where you are only given structural  
24      credit for triax; in other words, the strength of the  
25      cross-section, so that's where biax can't compete against

1 triax.

2 COMMISSIONER SCHMIDTLEIN: Okay. So when you  
3 have purchasers looking at or end users probably looking at  
4 these different products or different ways to support their  
5 project, given that that's going on, can you affect demand  
6 then by adjusting price? I know road construction has been  
7 strong, but is it also a function of creating demand. I  
8 know in the beginning you mentioned that you sort of created  
9 this market.

10 MR. LAWRENCE: Good question. Mike Lawrence,  
11 Tensar, again.

12 So to your point, creating demand isn't just a  
13 price game you know. If people aren't aware of the benefits  
14 of your product, don't know how to engineer it, don't have  
15 the software and everything else that we would provide, the  
16 training, they won't use your product at all no matter what  
17 the price because they don't understand it in use, so we  
18 have to do all of that training. We've done it for many,  
19 many years. We've trained the entire market on the uses of  
20 the products; beyond that, though, once the specification is  
21 written and it's a biax specification.

22 For instance, price would absolutely take over  
23 the equation, right, because it's now a straight up  
24 price-on-price. You know the design is done. They've  
25 chosen whatever technology. You know in my example, biax

1 price becomes the determinator. It doesn't drive the  
2 market, but it does take share from one player to another in  
3 this case.

4 COMMISSIONER SCHMIDTLEIN: Maybe you covered  
5 this already, but are you having to really educate people?  
6 Are people still not that familiar with product?

7 MR. LAWRENCE: Mike Lawrence, Tensar.

8 Absolutely, we educate on a regular basis. It's  
9 a big part of what we do. Engineers get trained. They go,  
10 they retire.

11 COMMISSIONER SCHMIDTLEIN: I see.

12 MR. LAWRENCE: We have to continually educate  
13 the market of engineers as well as contractors as well as  
14 state bodies. And then when we have new products that we  
15 like to innovate, we have to train on the uses and the best  
16 characteristics of those produces as well, so it's a  
17 continuing process that we do.

18 MR. GERRISH: Commissioner, if I may, going back  
19 to your point about growing the market, I think we've heard  
20 from the other side that, oh, all they're doing is growing  
21 the market and they've provided a lower-priced alternative,  
22 but if we can go back to Slide 5, you know if you just look  
23 at the 2013 to 2014 story, the market was not growing.  
24 Demand was stable in those two years and yet, if you flip to  
25 the next slide you can see just this huge explosion of

1 imports that occurred from 2013 to 2014. So the market was  
2 not growing. The market was flat during that period. They  
3 were not growing demand. They were just coming in and  
4 stealing market share from the domestic industry by charging  
5 much lower prices.

6 They were undercutting them on prices across the  
7 board throughout that period. Tensar lost huge amounts of  
8 market share and sales. And obviously, it had the  
9 corresponding impact on their bottom line as well. So this  
10 was not a matter of growing the market at all. They were  
11 just coming in, in sort of a stable market, and completely  
12 taking away sales and market share from the domestic  
13 industry on this product just by charging lower prices.

14 COMMISSIONER SCHMIDTLEIN: And you don't think  
15 that it has anything to do with the patent having expired in  
16 2012.

17 MR. LAWRENCE: No. I think by this time the  
18 patent -- getting in 2014 you're two years past the  
19 expiration of the patent at that point and again, Tensar had  
20 been selling biax for many, many years and had made  
21 adjustments to the price leading up to the patent coming  
22 off. So this was significantly past the expiration of  
23 patent in 2014 when these things were -- you know the  
24 imports were continuing to flood into the market.

25 COMMISSIONER SCHMIDTLEIN: Do you believe that

1 the Commission should consider the expiration of the patent  
2 as a condition of competition?

3 MR. LAWRENCE: I don't think so because, first  
4 of all, it's not -- I mean the patent expired before the  
5 period of investigation that you're considering here, so I  
6 do not think that you should consider that and I think any  
7 price impact from the expiration of the patent in the lead  
8 up to the expiration and certainly was wrapped up during  
9 this period.

10 COMMISSIONER SCHMIDTLEIN: Okay. So going back  
11 to the support and the education that you were talking  
12 about, I think I read here where you were -- I think for the  
13 branded product that you were selling that you were reducing  
14 the level of support -- Tensar was for that product. Does  
15 that have an impact on the price and how does that compare  
16 to -- how does the level of support you provide your  
17 products compared to what imports are providing -- subject  
18 imports?

19 MR. LAWRENCE: Mike Lawrence.

20 So our level of support is -- you know it's hard  
21 to say how much higher it is because there really is no  
22 level of support from any manufacturing level for any of the  
23 imported products. So Tensar support for biaxial as well as  
24 -- biaxial as well triaxial products and all the rest of  
25 ours is only supported in our markets from that engineering

1 perspective. There really isn't any. Our distributors who  
2 would sit here on our panel also provide some of that  
3 support to their customers as well, so between those two  
4 layers that's what's done for the market and there really  
5 isn't any from the competition.

6 COMMISSIONER SCHMIDTLEIN: Does that affect the  
7 price that you're able to offer? I would assume that your  
8 price would have to be higher then.

9 MR. LAWRENCE: Mike Lawrence, Tensar.

10 We look at our pricing as in end use value,  
11 typically, of what the product is worth to our customers and  
12 that's how we price. It also has to do with substitute  
13 technologies and where those are. But in this case, we've  
14 seen pricing many times in many markets. We've seen patents  
15 come off, as Jeff has mention, and where prices go. We know  
16 what to expect. What we didn't expect here was devastating  
17 price decreases in our core market that we've never seen  
18 before and continual and continuing today even, which is  
19 just shocking to us.

20 COMMISSIONER SCHMIDTLEIN: So let me just follow  
21 up on that for a second. So earlier, when you were  
22 discussing the fact that you started selling under private  
23 label in anticipation of the patent expiring because that  
24 helped you prepare for the patent expiring. Can you explain  
25 that a little bit more, given that you would expect that

1 prices are going to drop? You said you expected  
2 competition, so why lower your prices before the patent  
3 actually expires through this private label exercise?

4 MR. LAWRENCE: Mike Lawrence, Tensar.

5 You know that competitors will be importing  
6 product. We expect that when the patent came off, so we  
7 know we'll have competition of a different sort that we've  
8 had. The patents are given for innovative companies to try  
9 to gain the value that we invest in capital as well as R&D  
10 and things like that, which we do, and we appreciate that  
11 protection, but we know when it's over -- it's done there'll  
12 be a more competitive market prepared for that. Part of  
13 that is to open up different channels of distribution to  
14 broaden our reach into the market and that's the reason to  
15 go with a private label, both before and after into this  
16 market.

17 COMMISSIONER SCHMIDTLEIN: Okay. Mr. Gerrish?

18 MR. GERRISH: Commissioner, Jeff Gerrish, on  
19 behalf of Tensar.

20 And as the period of investigation progressed,  
21 of course, on private label as well as the other forms of  
22 sales to end users and distributors the Chinese continued to  
23 drive the price down on all of those different levels of  
24 trade. So I mean Tensar made an adjustment to try to make  
25 sure that they were competitive from day one when that

1 patent came off based on what they had seen with other --  
2 you know experienced in other markets.

3 The did that, but then when the Chinese imports  
4 started coming you the prices going lower and lower and  
5 lower in all three different levels of trade for their  
6 sales.

7 COMMISSIONER SCHMIDTLEIN: Alright, thank you  
8 very much. My time is up.

9 CHAIRMAN WILLIAMSON: Thank you.

10 Just to go back to the question I'd asked  
11 earlier about the time it takes to do adjustments, and what  
12 I don't think I got an understanding is how often do you  
13 actually do it in practice? And if you want to do here or  
14 you want to do it post-hearing, that's fine.

15 MR. SHELTON: This is William Shelton with  
16 Tensar. In terms of these adjustments, we try to optimize  
17 the plant and schedule campaigns, and campaigns could run  
18 from as little as three days to maybe a ten-day campaign of  
19 a particular product. So we will probably do adjustments of  
20 three to four times or a month on particular products.

21 CHAIRMAN WILLIAMSON: Okay, and then less  
22 frequently on -- say if you're going from biaxial to  
23 triaxial --

24 MR. SHELTON: Yes, we try to. If we're on biax,  
25 we do attempt to stay on biax campaigns for an extended

1 period of time, and then we go to triax, it'd be the same  
2 thing, to try to minimize the cost associated with the  
3 changes.

4 CHAIRMAN WILLIAMSON: Okay, thank you. I'm  
5 trying to get an idea of how often you encounter projects  
6 where only biax is appropriate and projects where triax  
7 simply does not meet the performance characteristics  
8 required. And so can you estimate and also can you estimate  
9 the share of your total biax sales where triax would not  
10 work as well as biax? I don't know if this is clear. And  
11 again, there might be a post-hearing?

12 MR. GERRISH: Mr. Chairman, this is Jeff Gerrish  
13 for Tensar. I can start and I think a good portion of that  
14 we would have to do, I think in a post-hearing brief because  
15 it'll get into confidential information.

16 Clearly, in those states and for those  
17 standardizing organizations that only provide for biax, and  
18 I think that information's on the record. Just how many  
19 more states there are that provide for biax -- for those  
20 states that would be limited to biax.

21 And I think you heard from Mike Coleman that in  
22 Iowa, for instance, that's the case and with Texas DOT as  
23 well. That specification is specific to biax, and only biax  
24 is provided for under that specification.

25 And then of course there's certain applications

1 we talked about where only biax can be used with the marine  
2 mattresses and wall units as well.

3 CHAIRMAN WILLIAMSON: No, I understand all of  
4 that, but I guess the question is, if you're looking at the  
5 demand for the products, what percentage of the total market  
6 might you expect to be one versus the other? And as I said,  
7 if you want to do it post-hearing, that's fine.

8 MR. GERRISH: I think that would probably be the  
9 best thing, just because I think that is going to get into  
10 confidential information. But I just wanted to add that  
11 additional flavor to it as well. But the specifics, in  
12 terms of the percentage breakdowns, we'll provide that post  
13 hearing.

14 CHAIRMAN WILLIAMSON: Okay, thank you. Are  
15 geogrids widely used on projects outside of the United  
16 States?

17 MR. LAWRENCE: Mike Lawrence, Tensar.  
18 Absolutely the market exists around the world. We actually  
19 produce and sell in -- we produce in China and sell in Asia,  
20 we produce in Russia, we produce in Europe and sell to all  
21 those markets from those local manufacturing sects.

22 CHAIRMAN WILLIAMSON: Okay. What about -- how's  
23 the market in China for the use of --- is that a growing one  
24 too? Is that a growing one, too?

25 MR. LAWRENCE: Yeah. The market has slowed down

1       drastically, but there's still growth in China. But the 10%  
2       plus market conditions are no longer the norm and it's  
3       probably single digits--5% of so--I don't know the exact  
4       number these days. But still a healthy market, but much,  
5       much slower growth than it was in the last, probably five to  
6       ten years.

7                   CHAIRMAN WILLIAMSON: Okay. Like a broader  
8       Chinese economy.

9                   MR. GERRISH: Mr. Chairman. That's exactly  
10       right, and that's sort of the point I was going to make -- I  
11       mean this is something you've seen, obviously with other  
12       industries as well. And the Chinese, through massive  
13       subsidies, have built up these incredibly big industries,  
14       and including this product as well.

15                   And now that the growth in China has slowed and  
16       there's difficult market conditions elsewhere, you see this  
17       flood of imports coming into the United States and it's just  
18       completely overwhelming the domestic industry. And this is  
19       sort of something, a problem we've seen in several other  
20       industries and it's certainly plaguing this one.

21                   CHAIRMAN WILLIAMSON: Thank you. Just out of  
22       curiosity -- and you can do this post-hearing if you want --  
23       when is the triax expected to come off patent?

24                   MR. LAWRENCE: It's 2023 in the U.S.

25                   CHAIRMAN WILLIAMSON: Okay, thanks. Okay, in

1 your prehearing brief you note that the biaxial geogrid  
2 industry in China is apprised of more than seventy-five  
3 producers and exporters, but you specifically referenced  
4 eight of -- the combined capacity of eight manufacturers.  
5 Should we view these eight companies as constituting the  
6 majority of biaxial geogrid -- of the geogrid industry  
7 capacity? And that the other seventy are just small  
8 players?

9 MR. GERRISH: Mr. Chairman, we use those eight  
10 just to reflect that, in fact, just that small portion of  
11 the overall industry just obviously has just incredible  
12 amounts of capacity and excess capacity. Frankly, because  
13 you don't have the data you need to conduct that assessment,  
14 we don't know if that's, you know -- and obviously it's a  
15 small number of the overall producers.

16 We don't really know what the other producers  
17 have in the way of capacity. It could be multiples of what  
18 we've already provided. But just based on -- we can say  
19 this publicly because there's some information that's  
20 confidential, because it was based on what a producer  
21 provided in your preliminary phase and did not participate  
22 in your final phase, so that's a helpful piece of  
23 information, but it's on the record for you.

24 But just with the seven that we've talked about  
25 today we had up on our slide, it's over 400 million square

1 yards. That is, of capacity, that is multiples and  
2 multiples of -- not just biax -- the biax market in this  
3 country, biax and triax put together. You know, it's just  
4 incredible, and when you look at the capacity that they have  
5 versus the market here, they could completely destroy the  
6 U.S. industry many times over.

7 MR. BOLIN: Commissioner, Nate Bolin on behalf  
8 of Tensar. Just to add to that. To give you a sense that  
9 this list of seventy-five producers and exporters that we've  
10 provided is not the complete list, if you look at the  
11 discussion that begins on Page 72 in our brief on threat,  
12 you will see that there's an announcement reference that was  
13 posted in China soon after these cases were filed where the  
14 industry was telling its members that if you were not one of  
15 the producers named in the petition, not one of these  
16 seventy-five, some companies, that you should participate  
17 and show up and try to provide at least participation in the  
18 U.S. proceedings because these were very important to the  
19 industry.

20 CHAIRMAN WILLIAMSON: Thank you. What impact  
21 has private label pricing had on the prices for branded  
22 products?

23 MR. LAWRENCE: Private labels, a different  
24 channel, right? And but it's a specific channel to market,  
25 nonetheless prices of private label are similar to other

1 technologies in that way -- if they're much, much lower,  
2 then branded prices tend to be impacted and then other  
3 technologies, triax included, would tend to have an impact  
4 on their price as well. So very, very low prices in  
5 private label can drive decreases in other pricing as in the  
6 market, absolutely.

7 MR. GERRISH: The Chinese, of course, are making  
8 private label sales as well, and Tensar has to try to  
9 compete as Mr. Lawrence was just saying, in that channel,  
10 that separate channel. They're trying to sell to the very  
11 same customers, the importers. And so it's a separate  
12 channel, but they both are making private label sales, and  
13 once again, the Chinese are driving the prices down on those  
14 private label sales and so they're competing there on that  
15 channel as well, with the Chinese just undercutting U.S.  
16 prices and driving those prices down, and they've done that  
17 over the period. And your data reflect that. You have the  
18 data in your staff report.

19 CHAIRMAN WILLIAMSON: Does the level of service  
20 provided affect the price from charge for their geogrids?

21 MR. LAWRENCE: There's a -- from an engineering  
22 firm perspective, they need support from companies like  
23 ours. So engineering companies and some contractors that do  
24 their own engineering are very willing to pay a price that  
25 includes that service, but many, many contractors in the

1 market look really hard just at the bottom line price, once  
2 it's been specified.

3 So there is a group of customers that may be  
4 willing, but for the most part, customers look at bottom  
5 line price and, if it meets the specification. That's  
6 generally the direction they'll go.

7 CHAIRMAN WILLIAMSON: Okay. And do the  
8 importers ever provide assistance?

9 MR. LAWRENCE: I'm not aware of any engineering  
10 design assistance that's provided by the importers. There  
11 may be a very small amount, but not that I've seen.

12 CHAIRMAN WILLIAMSON: Okay. And what type of  
13 service is provided when it is asked for?

14 MR. LAWRENCE: Most of the support is around the  
15 engineering side of the design for a project. Many projects  
16 will look and say, here's the need that we have, or the  
17 surface underneath a specific roadway, and we would say,  
18 well, you can save a significant amount of time, materials,  
19 lower carbon footprint, if you use our engineering  
20 technology, and we will go out there and show them that and  
21 we have design support and software and engineering services  
22 all aligned with our customers to do that.

23 CHAIRMAN WILLIAMSON: Okay. Thank you.  
24 Commissioner Pinkert?

25 COMMISSIONER PINKERT: Thank you, Mr. Chairman.

1 Does the existence of an exclusive distributor network limit  
2 competition between subject imports and the domestic  
3 industry?

4 MR. GERRISH: I can start with that, but I think  
5 others can add to that. First of all, this is not unusual  
6 in some of the cases you see, and you've seen other cases, I  
7 think, where there are exclusive distributor networks. I  
8 know we've had cases where that's been the case.

9 But, these distributors, and I think they've  
10 told you here today and certainly can tell you now, they're  
11 having to meet these Chinese prices as well. They're having  
12 to -- these arrangements that Tensar has don't have price  
13 terms in them. They have to try to compete on every sale to  
14 meet the Chinese price.

15 And distributors are having to come back to them  
16 constantly and say, all right, well the Chinese are charging  
17 this price. Can you try to match that? And perpetually  
18 driving -- the Chinese are perpetually driving that price  
19 down and down and down. So the exclusive distributor  
20 network and some of the distributors are exclusive, some of  
21 them are not.

22 It doesn't in any way shield Tensar from the  
23 competition. Just to the contrary. Those guys are out  
24 there competing with the same Chinese prices and having to  
25 try to match their prices.

1                   MR. EDGECOMBE: This is Scott Edgcombe with  
2                   Tensor. It absolutely does not limit competition on biaxial  
3                   geogrid. Not only is it available from imported product,  
4                   it's available from our private label, as well as our  
5                   branded product. And we have national distributors on  
6                   private label, and so there's -- it's readily available in  
7                   all markets.

8                   MR. GERRISH: I would add, too -- there is  
9                   another domestic producer here as well. Of course no one  
10                  really has talked about it -- Tenax. And there are other  
11                  import sources, as well, from nonsubject countries. So  
12                  there are other sources of geogrid as well. There is a lot  
13                  of competition that these guys have to meet, but in the  
14                  current POI, it's been the Chinese imports that have just  
15                  come in and decimated the market.

16                  COMMISSIONER PINKERT: I'm just trying to  
17                  understand, to the extent that it is an exclusive  
18                  distributor, I understand that they're not all exclusive.  
19                  But to the extent that it is an exclusive distributor, why  
20                  is it that there's that price competition with the Chinese  
21                  price? You were saying they still have to meet the Chinese  
22                  price. Why?

23                  MR. GERRISH: Well, they are -- where there is  
24                  this exclusive distributor relationship in place, of course,  
25                  they're exclusive to Tensor. And they are competing against

1 in their various markets, they are competing against the  
2 Chinese product that's being imported. I mean they're  
3 competing against -- you'll hear from Hanes and Hill  
4 Country, which is now part of Hanes later. They're  
5 competing against Hanes in their market.

6 And as I think they've indicated, Hanes is the  
7 price leader in their markets. But they're selling the  
8 Chinese material, and other distributors are selling and  
9 importers are selling the Chinese material. So those  
10 exclusive distributors for Tensar where they're in place,  
11 they're competing against the Chinese product that's being  
12 sold by other distributors in that same market. That's true  
13 across the country.

14 MR. LAWRENCE: And it's direct importers as  
15 well. Even without distribution. Maybe Michael could  
16 comment. This morning he mentioned he got a new price from  
17 a Chinese importer last night at a very, very low level, and  
18 that's a continuing issue.

19 MR. COLEMAN: Yes, that is correct. I was  
20 solicited via e-mail last night from China by the same  
21 company that I've talked about in my statement. Again,  
22 really ridiculously low pricing.

23 COMMISSIONER PINKERT: Thank you. And as Hanes  
24 argues that the December 2015 enactment of Fixing America's  
25 Surface Transportation Act, or FAST Act, will stimulate

1 demand for biaxial grid with large investments in U.S.  
2 highways. Do you agree?

3 MR. LAWRENCE: We hope that the FAST Act will  
4 stimulate that demand. We haven't seen a lot of that yet,  
5 but we believe that that will help. The actual amount of  
6 money increase is about 5% in the first couple of years  
7 versus normal spend, so it's just a surety that there'll be  
8 some money there for a long period of time, which should  
9 help to get some legs under some longer term projects  
10 perhaps.

11 But it really doesn't decrease the fact that  
12 from 2013 through now, we've seen devastating prices, which  
13 we believe are unfair, from the Chinese, and taking  
14 significant market share, whether the market grows or not in  
15 the future. But we do see single digit growth into the  
16 future and a solid market conditions which we're well able  
17 to manage with the capacity that we have. We're highly  
18 under-utilizing our factories today.

19 Next year, for instance, our plans include  
20 hiring back that shift based on the case that we have here,  
21 the extra shift that we had to lay off to make more material  
22 next year, to take care of that market, that is based on the  
23 favorable result of the hearing. Thank you for that.

24 MR. GERRISH: Commissioner Pinkert. We've  
25 provided some information in our prehearing brief with

1 different analyses and studies that have been done in terms  
2 of what the impact's going to be. And I think it's similar  
3 to what Mr. Lawrence just indicated.

4 It's going to provide some stability and some  
5 stable, steady demand going forward, but it's not supposed  
6 to increase spending dramatically in any way. It's just  
7 supposed to provide some stability going forward and so  
8 that's the assessment that they've made. Maybe some modest  
9 growth, but just basically stability in the market.

10 MR. EDGECOMBE: We have a year behind us since  
11 this has been put into place, and we haven't seen -- the  
12 reality is we haven't seen any tremendous growth in the  
13 market place due to the FAST Act.

14 MR. GERRISH: In fact, if anything, demand is  
15 going down a little bit in 2016. And that's what we were  
16 talking about earlier. If you look at the 2016 situation,  
17 it shows you exactly the impact that the imports have had.  
18 Because in 2016, there's literally no explanation for the  
19 industry's increase in its performance, other than the fact  
20 that the Chinese imports have left the market.

21 And demand is not up. Raw materials haven't  
22 gone down, they've gone up. Tensar's export shipments have  
23 actually gone down in 2016. Despite all that, Tensar's  
24 performance is up in 2016. Why is that? The imports have  
25 left the market. After the duties went into effect, they

1       receded from the market. That's the only explanation. That  
2       shows you then, when they're in the market, that's what was  
3       causing their injury.

4                   COMMISSIONER PINKERT: Thank you.

5                   CHAIRMAN WILLIAMSON: Commissioner Broadbent?

6                   COMMISSIONER BROADBENT: Mr. Gerrish and Mr.  
7       Lawrence, I think we had a claim in 2011 regarding patent  
8       infringement of triax in China. To the extent that you can  
9       here and then maybe in post-hearing, can you identify any  
10      claims of patent infringement of Tensar's biaxial geogrids  
11      with regards to Chinese producers?

12                  MR. LAWRENCE: It was the triaxial geogrid, I  
13      believe, that you should be referring to as patents in  
14      China. Yes, and we do have and continue to have  
15      infringement. We have successfully prosecuted several of  
16      those cases and we win, but at the same time, intellectual  
17      property in China has not been something that's been  
18      well-recognized and we're the fourth largest producer of our  
19      own patented product in China, and three others have a  
20      larger market share. So we continually go after them on a  
21      regular basis. It's a very costly process, but it is one  
22      that we continue to pursue.

23                  MR. GERRISH: Commissioner, we can talk more  
24      about that in the post-hearing brief. But I know that --  
25      and just to indicate or follow up on what Mr. Lawrence said,

1       yeah, I mean they face continuing problems with patent  
2       infringement.

3                       And it's interesting that one of the Chinese  
4       producers, TMP, produces triax in China despite the patent,  
5       and they themselves have touted the significant differences  
6       between the triax and biax products.  It's just sort of  
7       interesting that they're producing it there and making those  
8       claims that there is this difference between the two  
9       products.  But we can provide more information on the patent  
10      situation.

11                      COMMISSIONER BROADBENT:  In terms of the Chinese  
12      producers, how do we know that Chinese producers you  
13      identify are dedicated biaxial geogrid producers?  Should  
14      the excess capacity be understood in the context of an  
15      ability to shift products?

16                      MR. GERRISH:  We've based our analyses on the  
17      information that they've provided through various sources,  
18      websites, and otherwise.  We've also based, and this gets  
19      into confidential information, so I won't get into the  
20      specifics, but we've based part of our analysis as well on  
21      the one questionnaire response you received back in the  
22      preliminary phase, from one of the Chinese producers.

23                      And we've taken very conservative estimates as  
24      to what we think they're capacity utilization is.  In fact,  
25      at one point we've estimated that they had 90% capacity

1 utilization, which is a very conservative estimate based on  
2 the information that we have, that in terms of what they are  
3 doing in their own market.

4 And so we've done the analysis of their capacity  
5 and excess capacity based on the information that's  
6 available for them. And taking very conservative estimates  
7 to make that determination.

8 COMMISSIONER BROADBENT: Okay. Mr. Gerrish,  
9 back on the expiration of the patent, I guess I'm just  
10 surprised that on just overall market pricing you would be  
11 able to -- you would have such one- or a two-year effect on  
12 market pricing in your estimation. You said you prepared  
13 for it and it expired, and there was some effect the first  
14 couple of years, but then everything else was the Chinese  
15 imports. And it doesn't ring true to me--I'm not sure  
16 why--but could you talk a little bit more about that?

17 MR. GERRISH: Yes, I'd be happy to, Commissioner  
18 Broadbent. Tensar and others can jump in here as well.  
19 That's based on the fact that, again, Tensar had this prior  
20 experience in other markets.

21 They knew what to expect in terms of what they  
22 had seen with fair competition in those other markets in  
23 Europe, in Canada, and so they knew what to expect based on  
24 those prior experiences and so had taken -- they were  
25 proactive in the months leading up to the patent coming off

1 and bringing their prices down to a level that they thought  
2 would be, what it would be with fair competition. So really  
3 the change in the prices due to the patent coming off,  
4 really occurred in that year, in 2012.

5 COMMISSIONER BROADBENT: Just in that one year?

6 MR. GERRISH: Yeah. And they had made the  
7 adjustments leading up to the patent expiring. So the rest  
8 of it --

9 COMMISSIONER BROADBENT: You mean decreasing  
10 prices?

11 MR. GERRISH: Yes. And so it started in 2011  
12 when they were making the adjustments to those prices.  
13 Again, it wasn't just they--all of a sudden--did something  
14 when the patent expired. They were in the months leading up  
15 to it, and it's including starting in 2011, started to try  
16 to bring their prices down to -- in anticipation of the  
17 patent coming off, and knowing what they knew about market  
18 competition in other markets where the patent had expired.  
19 So the price effects in your period of investigation were  
20 purely due to Chinese imports.

21 COMMISSIONER BROADBENT: Okay.

22 MR. WITT: Commissioner, I may add from a  
23 distributor's standpoint, Carey Witt. It was really our  
24 urging to Tensar to try to decrease prices in preparation of  
25 the patent expiration, because what we didn't want to happen

1 is, the day the patent expired, we had a price and we're  
2 just going to pick a number, \$2 a square yard, and then the  
3 very next project they may bid the day after the letting our  
4 competition may come in at \$1.50. We didn't want to lose  
5 business because there was such a dramatic impact to that,  
6 so we really, in anticipation of that lowered prices, so  
7 that we could maintain our customer base.

8 COMMISSIONER BROADBENT: Okay.

9 MR. GERRISH: Just one additional piece on that,  
10 Commissioner Broadbent. And I think Carey Witt talked about  
11 this in his testimony. I mean you can see from their  
12 perspective, too, once you have to keep your customers.  
13 Once you lost a customer, you may lose them forever.

14 And so they knew that going in to the patent  
15 expiring, and so wanted to make sure they kept as much of  
16 their customer base as they could. And of course, as soon  
17 as the patent came off, the imports started flooding into  
18 the market at these extremely low prices. They were taking  
19 sales and customers away from the distributors and from  
20 Tensar, of course.

21 MR. EDGECOMBE: I just want to add one thing.  
22 Because on top of that, it was somewhat -- you could almost  
23 argue irrational pricing. I mean in the face of raw  
24 material prices going up, their prices continued to drop.  
25 And so you looked at this and said, we're very comfortable

1 with price competition, very comfortable with competing on a  
2 level playing field, but this was irrational. It was being  
3 propped up with subsidies and other things that made it  
4 impossible for us to compete.

5 COMMISSIONER BROADBENT: Okay. In terms of  
6 profitability and financial performance, what are the key  
7 factors related to biaxial geogrids and triaxial geogrids,  
8 the different operations, which would explain the different  
9 financial performance and profitability?

10 MR. LAWRENCE: Is the question, are there  
11 differences in profitability between those two --

12 COMMISSIONER BROADBENT: Yeah, there are, as I  
13 understand it.

14 MR. LAWRENCE: Sure. Almost all of it's driven  
15 by the pricing that we've seen in the biax market.  
16 Devastatingly low pricing driving margins that are very,  
17 very tight. We produce all over the world. We know the  
18 cost to produce all over the world. We're very proud of the  
19 work that we do, and the efficiency of which we run our  
20 operations and yet we're seeing pricing on those biax  
21 products out of China that's just doesn't make any sense to  
22 us at all.

23 And we've had to respond to that to maintain, or  
24 try to maintain even, and try to get back some of the market  
25 share that we lost. And we've responded to that. But it's

1       devastating. It helps run the plants and have a little bit  
2       more capacity utilization which helps, but at the prices we  
3       have, that biax market.

4                   COMMISSIONER BROADBENT: And why do you think  
5       the pricing is so much lower in the biaxial versus the  
6       triaxial?

7                   MR. LAWRENCE: The only thing that we've seen is  
8       Chinese pricing is just predatory in nature, to try --

9                   COMMISSIONER BROADBENT: But why wouldn't they  
10      be doing it in the triaxial market, too?

11                  MR. LAWRENCE: We have a patent in the triax in  
12      the U.S. They do similar things in places, other parts of  
13      the world, let's say. But we have a patent we've been  
14      protecting, and we've had to protect multiple times. Both  
15      in China where it's still being protected as we speak.  
16      There's always some, some challenge, but also in Canada, as  
17      well as Germany, in the U.S., in other parts of the world,  
18      we protect the patent vigorously.

19                  COMMISSIONER BROADBENT: So that helps you on  
20      pricing --

21                  MR. GERRISH: Well, Commissioner Broadbent, in  
22      terms of pricing for triax, it's a reflection of the  
23      differences in the two products, between biax and triax.  
24      Customers are paying the price for the additional  
25      performance characteristics in different applications that

1 triax can be used for.

2           Again, if you have a situation where you're  
3 trying to use a particular product for pavement, asphalt  
4 reduction, pavement optimization, you're going to pay more  
5 for the triax product because it's a better different  
6 product and it's the only product that can be used for that  
7 particular application. So the pricing difference is a  
8 reflection of the differences in the physical  
9 characteristics and the different applications and  
10 capabilities of the different products.

11           COMMISSIONER BROADBENT: Okay. My time's  
12 expired. Thank you.

13           CHAIRMAN WILLIAMSON: Commissioner Kieff?

14           COMMISSIONER KIEFF: I have no further questions  
15 and I just look forward to the afternoon panel bringing its  
16 perspective to these questions and to both panels providing  
17 the post hearing briefs and thank you all for coming on all  
18 sides. Thank you very much.

19           CHAIRMAN WILLIAMSON: Okay. Thank you. What I  
20 was gonna say may be proprietary information, please  
21 describe the factors which would explain the relatively high  
22 level of SG&A expenses ratios reported in the staff report.

23           MR. GERRISH: Mr. Chairman, most of that  
24 discussion I think is going to require getting into business  
25 proprietary information, so I think we'll reserve that for

1 the post hearing brief, and I think we'll be able to show  
2 that those are normal levels for this industry and so it's  
3 not in any way impacting any of the numbers that you're  
4 seeing. But we'll get into that more in the post hearing  
5 brief.

6 CHAIRMAN WILLIAMSON: Okay, thank you. That's  
7 all I have for right now. Commissioner Pinkert?

8 COMMISSIONER PINKERT: I just thank the panel.

9 CHAIRMAN WILLIAMSON: Thank you. All right. We  
10 have no further questions for you. So does staff have any  
11 questions for this panel?

12 MS. HAINES: Elizabeth Haines. Staff has no  
13 questions.

14 CHAIRMAN WILLIAMSON: And do respondents have  
15 any questions for this panel?

16 MR. BAISBURD: Yohai Baisburd on behalf of the  
17 respondents. We have no questions. Thank you.

18 CHAIRMAN WILLIAMSON: Okay, in that case, we  
19 want to thank you very much for coming this morning and  
20 giving your testimony and we will take a recess and we'll  
21 reconvene at 12:55. And I want to remind everybody that  
22 this room is not secure, so please take any business  
23 proprietary, business confidential information that you have  
24 with you. And with that, this hearing is recessed.

25 (Whereupon a lunch recess was taken to reconvene

1       this same day at 12:55 p.m.)

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1 stability, and that of other non-aligned distributors as  
2 well.

3 A couple of comments were made earlier today  
4 that I feel compelled to go ahead and respond to, that are a  
5 bit off script. So let me go there. First of all, Mr. Witt  
6 earlier today asked for a level playing field, was the exact  
7 terminology he used. That's hardly the case and has not  
8 been the case for the length of time that Tensar has had a  
9 protected position related to biaxial grids.

10 The question was asked earlier today, as it  
11 relates to the Petitioners' position or I'm sorry,  
12 Respondents' position on why is market definition so  
13 critical, one of the reasons goes well beyond just the  
14 numerator and denominator associated with market condition.

15 The issue here is that Tensar has been working  
16 for literally years, as we'll expand in our testimony, to  
17 shift the industry from biaxial and triaxial products, where  
18 they will continue to have patent protection through 2023,  
19 as we talked about earlier today, and have had tremendous  
20 success with that.

21 So as you look at what's happened that may be  
22 eroding the geogrid market as it relates to biaxial grids,  
23 one of the biggest factors is the fact that they've been the  
24 leading manufacturer in the industry, the company with the  
25 highest brand recognition, the company that truly does lead

1 pricing within this market, has been very proactively  
2 working to migrate the industry from biaxial products to  
3 triaxial products.

4           When we say it's important to us to consider  
5 that in total, that's the main underlying reason for that,  
6 is the fact that they've been concertededly using all of their  
7 resources to move the market in that direction, and I'll  
8 expand upon that by reading a letter that was put out by Tim  
9 Oliver, the Vice President for Global Marketing of Tensar,  
10 that is included in our submissions.

11           "To whom it may concern: Rationalization of  
12 Tensar Biax Type 2 Geogrid. Effective June 24th, 2010,  
13 Tensar will discontinue regular production of Type 2 BX 1200  
14 and will move it from its standard list of products. This  
15 decision follows the very positive response from the market  
16 to the introduction of triax in April 2009, and it marks the  
17 next stage in our strategy to transition all of our BX  
18 markets to triax grids."

19           The letter goes on and you have copies of it in  
20 your file, but the point there is you can't unring that  
21 bell. They very publicly announced their intent to move  
22 from biaxial to triaxial, to discontinue supporting the  
23 biax, and the letter goes on to state specifically that the  
24 triax product is a substitute for biax in by far the largest  
25 market segment that they supply.

1           So from our perspective, you know, this is --  
2           this is a critical component of looking at what's happened  
3           to the market. To come back to script, you heard a lot this  
4           morning about the alleged differences between triax and the  
5           other biaxial geogrids. Tensar said the same thing at the  
6           preliminary phase. However, we agree with your preliminary  
7           decision to treat triax the same as other biaxial geogrids.  
8           We'll discuss like products later in the presentation, but I  
9           want to start with an overview of the punched and drawn  
10          geogrid market, the role of imports and Tensar's private  
11          label program.

12                 Geogrids were invented approximately 35 years  
13          ago by Netlon Limited, a British company. So one of the  
14          underlying themes that's been coming through today is we're  
15          an innovative American-based company. Their innovation was  
16          to acquire the patent developed by Netlon in Britain was the  
17          initial innovation that occurred.

18                 Now they've done a wonderful job of developing  
19          the brand, the market and introducing the product in the  
20          U.S. I really believe that the team is best in class in  
21          those regards within our industry.

22                 Tensar then acquired the rights, creating a  
23          monopoly in the U.S. market, and that continued until the  
24          middle of 2012, when certain patents expired. Through 2012,  
25          Tensar controlled who sold geogrids by creating an exclusive

1 distributor network that had no direct competition for this  
2 segment of the market.

3 As you saw at the preliminary phase, the market  
4 started to change before the patent expired, when Tensar  
5 tried to move the market from its well-established  
6 rectangular geogrids to the still patented triax products.  
7 Failing that, Tensar then destabilized the market by  
8 implementing a new low-priced private label program before  
9 imports ever arrived in the U.S.

10 Now one thing that's important for you to  
11 understand is when that private label program was originally  
12 initiated, it wasn't an open program. If you were to buy  
13 Tensar private label products at that point in time, their  
14 sole private label distributor was a company called Syntech.  
15 So if we wanted access to that product, we would buy from  
16 Syntech.

17 Now think about this from my perspective, being  
18 responsible for the 236 employees that we've got. What  
19 Tensar has done is they went out very publicly and said  
20 we're going to discontinue supporting biaxial geogrids.  
21 We're moving the market to triax. They then set up another  
22 distributor as the sole access to private label  
23 distribution. While they've kept their exclusive  
24 distribution fully aligned with them on triax and continuing  
25 to have access to biax products.

1                   What kind of competitive position from your  
2 perspective do you think that would place our company in if  
3 we didn't look for other sources of supply? There was no  
4 other rational business alternative other than to explore  
5 other sources of supply, and that's what we did. Beginning  
6 in the middle of 2012, imports began to play a role in the  
7 market. From that point forward, there was increasing  
8 levels of competition within the U.S. market.

9                   First, design engineers could choose between  
10 triax or square or rectangular geogrids. Second, purchasers  
11 could choose between Tensar branded or Tensar low-priced  
12 private label goods, and third, there was no longer a sole  
13 source for geogrids. So purchasers could choose between  
14 Tensar and import products.

15                   Since 2012, we have imported grids from China  
16 and there are several reasons why. First, Tensar had an  
17 exclusive private label program with one company and it was  
18 not Hanes Geo, as I mentioned earlier. For our geogrid and  
19 fabric products, we generally rely on our own brands. So we  
20 private label in-house. We don't just sell a Tensar private  
21 label product. Our product that we take to the market is  
22 Teragrid.

23                   We try to do this to ensure that we have a  
24 consistent national marketing program and training for our  
25 sales and marketing teams, and it also facilitates getting

1 state approvals for pre-approved product lines. We are a  
2 national distributor, but I probably should step back  
3 because Mr. Coleman gave us far too much credit earlier  
4 today.

5 We have 38 stocking locations. They're  
6 basically ranged around the outskirts of the U.S. and  
7 Toronto, and one in Montreal. That's how our organization's  
8 arranged. We were credited earlier today with leading the  
9 market down and the states given as examples were South  
10 Dakota, Wyoming and Iowa. We have no locations in those  
11 states, and this business hinges on the ability to service  
12 contractors directly. So while I'm flattered, it's  
13 unrealistic to believe for even a moment that we're driving  
14 prices down in states where we're not even located.

15 Having said that, we do have supply agreements  
16 that reach across multiple states with a number of  
17 manufacturers. In those instances, we've got to be able to  
18 supply them with product that we can consistently market to  
19 them. So for example, the way the Tensar sales model works  
20 right now, it's basically regional distribution-based. They  
21 have a distributor in Texas. They have a distributor in  
22 Iowa. They have a distributor in Virginia and the  
23 Carolinas. You heard from those gentlemen today.

24 If we were aligned solely with Tensar and they  
25 gave us access to one state, it would be very hard for us to

1 market to someone we serviced in multiple states just using  
2 the Tensar product. We'd be telling them okay, we can  
3 supply you Tensar here, but we're going to supply you  
4 Teragrid here. So that's one of the main reasons that we  
5 drive a private label program, so that we can have  
6 consistency in our product offering as we take it out to  
7 contractors that we supply.

8           Prior to 2015, imports were our only way to get  
9 access to punch and drawn geogrids. We didn't have direct  
10 access to those products through Tensar. So you know,  
11 really that was our only option. A second point I'd make is  
12 Tensar's tight control on triax sales continues to put us at  
13 a competitive disadvantage to their other distributors. As  
14 you heard this morning and as we've discussed at the staff  
15 conference, Tensar's focus is promoting triax.

16           That is where they put their marketing dollars,  
17 the attention of their technical and sales support teams and  
18 their corporate resources. Having only limited access to  
19 triax in two or three local markets, we're put at  
20 significant competitive disadvantage if we were solely  
21 reliant on the triax-branded products, because their favored  
22 distributors can undercut our pricing and/or offer triax as  
23 an alternative. Other distributors that are outside  
24 Tensar's system face similar issues.

25           The third point I'd make is Tensar announced

1 their intention to discontinue the triax product, I'm sorry,  
2 the biaxial product and transition the market to triax. The  
3 Chinese producers gave us and other suppliers the ability to  
4 continue to supply rectangular and square geogrids once the  
5 market opened in 2012.

6 The Chinese producers worked with us to ensure  
7 that we could provide value-added service previously  
8 provided by Tensar and still demanded in the market. The  
9 comment was made earlier today Chinese provide no support.  
10 That's totally unfounded. That's not accurate. The support  
11 that they give us includes maintaining state of the art  
12 laboratories that meet our very stringent quality standards,  
13 providing technical assistance with developing our own  
14 design softwares and alternatives to Tensar's Spectrapave  
15 program, and partnering with us on joint investment for in  
16 ground testing needed to establish product equivalency in  
17 the U.S.

18 So they've helped us with testing; they've  
19 invested in testing in the U.S.; they've developed software  
20 programs that allow us to provide design support to  
21 contractors and engineers as it's needed, and we've vetted a  
22 handful of Chinese manufacturers that we're aware of and  
23 that we identified two that met the quality standards that  
24 we were looking for. That's not to say the others don't  
25 necessarily make quality products, but we felt like their

1 lab capabilities were on par with what we saw in the U.S.  
2 market, and those are ^^^^ that's where we have sourced  
3 from.

4 I'd also like to discuss factors that we  
5 consider when making purchasing decisions. Price is  
6 certainly a factor, but our number one consideration is  
7 quality. The geogrid we purchase must consistently meet  
8 product specifications, so we can have confidence that it  
9 will meet the design specifications of a given project. If  
10 a product doesn't perform in the field, the potential  
11 liability far outweighs the value that you get from the  
12 sale.

13 Said another way, if we sell a product that  
14 fails in the field, we may be held accountable for the value  
15 of the road, not just the grid that goes into it. So when  
16 we're making our buying decision table stakes to even come  
17 and have a discussion with us, it really is around being  
18 able to ensure the product quality is met.

19 And for that reason, we haven't purchased from  
20 the lowest cost Chinese suppliers we know. Feichang was  
21 brought up a couple of times today. They gave a low quote.  
22 They're one -- they're the third Chinese manufacturer we're  
23 aware of. It's not that their product is not a high quality  
24 product, but we certainly did not have the confidence in the  
25 testing standards that they had internally, and that would

1 be an example of a company that we've done absolutely no  
2 business with in that regard, and I think I speak for the  
3 Hill Country team coming on as well.

4           The next issue beside quality is availability.  
5 We look for long-term stable relationships. Not a situation  
6 where you're saying this is not a cornerstone product for  
7 us; we're moving the market to triax. It's not just that  
8 you can fulfil the order today, but you have to be able to  
9 supply our needs in the future as well. This was one of the  
10 challenges we faced with Tensar, for the reasons I've  
11 already stated.

12           It's also a shared concern within our industry  
13 that Tensar is highly leveraged because of aggressive  
14 refinancing activities, underperforming acquisitions and  
15 global investments in Russia and yes China. Also, relative  
16 to other manufacturers in our industry, their overhead level  
17 is extremely heavy, and I say this from a position of  
18 experience.

19           I was a senior manager in one of the  
20 geosynthetic manufacturers within this industry for 20 years  
21 before joining the Hanes team over a decade ago, and the  
22 SG&A levels that were asked about before, I haven't seen  
23 those numbers. But I can count heads, and they're heavy.

24           With respect to price, our sales prices are  
25 driven by market conditions, not our product acquisition

1 cost. Geogrids are generally sold on a project by project  
2 basis. The lead time between bid dates and installation can  
3 be more than a year. When bidding projects, we look at the  
4 current market and competitive conditions in that region and  
5 try to gauge where that particular -- where the market is at  
6 that particular point in time.

7           If we're the leader in pricing, it would surely  
8 shock me given the fact that we certainly don't close over  
9 half of the project we bid as it relates to geogrid.  
10 There's a reason that we're not closing more projects on  
11 geogrid, and that's because we're chasing pricing. We're  
12 not leading it. Tensar is the clear price-setter through  
13 their distributors in this market. They're the leader in  
14 market share, have the strongest brand recognition.

15           So while price may be a consideration when  
16 making our purchases, the real question we ask every day is  
17 what can sell the grids for on current projects. The price  
18 is typically driven by Tensar and what their exclusive  
19 distributors are doing at that time in the market. To give  
20 a specific example, and this hits on two important  
21 components right here. One is the pricing pressures that  
22 we're under, and the other is the interchangeability between  
23 triaxial and biaxial products.

24           So here's a specific example that would be  
25 confidential, other than the fact that Tensar's well aware

1 of it, so I'll share it with you. A recent project in Elba  
2 Island, Georgia, which was specified for triaxial products  
3 initially. We approached the project engineer and were able  
4 to flip the project, getting Type 2 bioaxial geogrid  
5 approved as an alternative. We then bid our Teragrid 1200  
6 and secured the project.

7 Tensar responded by providing very aggressive  
8 pricing on their branded Type 2 product, undercutting the  
9 prices we had already bid by over five percent. It was only  
10 because of our relationship with the contractor, our ability  
11 to service the project that we kept the sale in spite of  
12 Tensar's aggressive pricing.

13 I'd also like to talk a bit about how imports  
14 have helped us increase demand for geogrids, and again this  
15 goes to the fact that the point being made by the Tensar  
16 team was that biaxial grid markets are flat. Well yeah,  
17 biaxial grid markets were flat 2014 to 2015, growing now.  
18 In all that while, they're trying to move the market from  
19 bi-ax to tri-ax.

20 Why do you think that the market continues to  
21 grow on biaxial during that period of time? It's because  
22 more distributors have access to it and were out actively  
23 promoting it as an industry, instead of really just having  
24 one aligned distributor in each market that's in the process  
25 of marketing the product. So we've helped to grow the

1 industry overall through broader access, through a broader  
2 effort around trying to get the product specified and  
3 approved within the market.

4 We've just increased the number of distributors,  
5 working with engineers, approval bodies, contractors, and  
6 basically rectangular and square grids are no longer sole  
7 source products. As a result, they're much more likely to  
8 be able to approve products lists.

9 One point that was made earlier also was well,  
10 many states only have biaxial grids on their approved  
11 product list. The reason for that typically is because  
12 there was only one supplier, and the states are prohibited  
13 from sole source specifications typically. So as the market  
14 opened up and as we were able to go to the states from  
15 another supplier perspective, we were able to get those  
16 products typically added to specifications. It's one of the  
17 main drivers behind that.

18 Demand should continue to increase going  
19 forward. The five stats, which shows five year long term  
20 funding for infrastructure products has stabilized the  
21 market. The question was asked has it improved the market?  
22 It absolutely has. Prior to that, we had passed basically,  
23 I don't know what it was, 16-18 short term funding measures.  
24 States can't release long term projects on short term  
25 funding. That's why Fast Act stabilized it, and it has

1 improved the market overall and it will continue to do so.

2 The new administration, of course, has made  
3 infrastructure spending a priority, which will also help to  
4 grow the market. In addition, the ability of non-patented  
5 alternatives will also improve the market. The one other  
6 factor that I think you'll see have a major impact in  
7 overall market size as it relates to the energy sector, the  
8 downturn in the energy markets hit all of us in the industry  
9 hard, because it has reduced the utilization of these  
10 products for that segment.

11 As prices stabilize, as we continue to see a  
12 rebound there, we believe that we will see that also benefit  
13 us. Thank you, and I look forward to answering any  
14 questions you might have.

15 STATEMENT OF CLAY CASHETT

16 MR. CASHETT: Good afternoon. My name is Clay  
17 Cashett, and I am the former vice president and co-owner of  
18 Hill Country Site Supply, a small disadvantaged business  
19 entity in Texas, that distributes geogrid and other  
20 construction products. We're now part of Hanes Geo. I want  
21 to thank you, the Commissioners, for your time you've  
22 invested in this case, and I also want to thank the staff  
23 for your countless hours sifting through the data  
24 surrounding the global geogrid industry and analyzing how  
25 those circumstances have created the U.S. market that we

1       enjoy today.

2                   I'd like to speak to you today about my  
3       experiences in the Texas market, because our company was  
4       based in Texas. As stated by both the Petitioners and  
5       Respondents, Texas is the largest geogrid market in the  
6       United States. So it tends to draw a lot of attention.  
7       Despite what you've heard from the Petitioners, I'm happy to  
8       say that the future for geogrid looks extremely promising  
9       there. Texas continues to enjoy strong economic growth from  
10      a rapidly-expanding population.

11                   It has many of the fastest-growing towns, cities  
12      and counties in the U.S., claiming first place in all  
13      three. The energy sector, as John just mentioned, has  
14      renewed buzz with some recent upward ticks in oil pricing,  
15      and just last month we had confirmation that the largest oil  
16      and gas, natural gas reserves in North America are right  
17      there in Texas. So not only is there direct use for oil and  
18      natural gas facilities, but its use will be critical to the  
19      rehabilitation of roads and highways that are subjected to  
20      the demands of energy exploration and production, as these  
21      18 wheelers traffic and go back and forth to the sites.

22                   Combined with a strong job market for a variety  
23      of other industries including high tech, Texas stands to  
24      prosper for a full generation of population growth,  
25      requiring an equally expanding road infrastructure. So

1 demand for geogrid is naturally on the rise there. So not  
2 only can we rely on geogrid to continue to grow  
3 organically, but we can also expect it to continue to gain  
4 market share against alternate technologies that you've  
5 heard about, such as chemical treatments of the soils or  
6 just simply adding more stone or more asphalt.

7 Both triangular and rectangular geogrids have  
8 substantial and identical benefits in these applications,  
9 including lower life cycle costs, a lower carbon footprint  
10 and increased performance, all of which are garnering  
11 endorsements from and support from a younger generation of  
12 historically conservative slow to change engineers. I can  
13 say that; I'm a civil engineer and I can speak to that  
14 nature.

15 So I hope that by the time my two sons are my  
16 age, that there's just no reason why geogrids can't be used  
17 in every single roadway that's constructed. But to get our  
18 industry to that point, there needs to be a uniform message  
19 to the market. I touched on this point in the preliminary  
20 staff conference, and I feel it's very important to convey  
21 this message directly to you here today.

22 I believe that the biggest event that could have  
23 united our industry was the expiration of Tensar's patents  
24 in 2012. Up until then, we all carried very differently  
25 geogrids. Woven geogrids, knitted products, bonded

1 products, extruded products and the punch drawn products  
2 that you're aware of that Tensar carries.

3           They all had different messages. Engineers were  
4 thoroughly confused and frustrated. But after 2012,  
5 distributors united behind the more economic punch drawn  
6 process, and could finally give engineers a fairly uniform  
7 message about the benefits of this technology. The only  
8 outlier was Tensar's stubborn message to the market, to  
9 justify a price premium by attempting to differentiate their  
10 triax triangular product as somehow magically better than  
11 their own tried and true rectangular products.

12           Now I think we can all agree that all geogrid  
13 products improve road performance. None of them hurt a  
14 road; they all help a road, and the market is growing. It's  
15 undeniable. Tensar dominates the market. That's  
16 undeniable. So why is Tensar claiming injury, or injury,  
17 sorry? Why are they claiming injury? I just -- I don't  
18 understand.

19           I can only guess that they're doing so because  
20 they didn't execute the triax plan like they thought. But  
21 they're responsible for their own missteps. Tensar made a  
22 critical miscalculation when it tried to kill the market for  
23 rectangular biaxial geogrids. Rather than transitioning  
24 everyone to triax, it should have tried to expand the market  
25 for all geogrids. But the market rejected the wholesale

1 change.

2           The other misstep that continues to hold back  
3 huge growth in geogrid is Tensar's grip on supply, as John  
4 mentioned. At Hill Country Site Supply, our goal never was  
5 to import geogrids. I want to make that clear. We never  
6 sought out to import geogrids. We always chose domestic  
7 products for all of our line of products when at all  
8 possible.

9           In fact, we first obtained a private label  
10 product in 2011 from Syntech, Tensar's exclusive distributor  
11 of private label geogrids at the time. However, we quickly  
12 found we could not compete, as Tensar drove pricing down  
13 with their branded products. We adapted and later tried to  
14 again source domestically from other Tensar distributors,  
15 but we were unsuccessful.

16           Tensar even threatened to cut off other  
17 distributors who attempted to sell us branded products. So  
18 we were finally forced to import directly. Tensar gave us  
19 no choice. They had a monopoly on punch drawn geogrids,  
20 which is what our customers increasingly demanded. Tensar  
21 leveraged that advantage and simply refused to support us  
22 directly, instead hanging on to their exclusive distributor  
23 arrangement with others.

24           So when you look at Tensar's data, realize that  
25 they chose not to sell to us through the Period of

1 Investigation. Had they supported us, our data and the data  
2 from countless others would be in their columns. Tensar's  
3 low pricing of its branded products pushed us out of the  
4 market when we purchased their private label products.

5 Tensar's low pricing has also driven down the  
6 pricing of our own import products. Since 2011, I've  
7 consistently seen Tensar use its market power to undercut  
8 our prices, and in 2016, even since enacting the tariff,  
9 we've seen Tensar branded products as the lowest priced  
10 product on numerous bids in Texas.

11 So I urge you to look at the choices Tensar's  
12 made, to fully understand the impact of those choices and  
13 how they themselves directly affect Tensar's performance.  
14 In particular, Tensar's insistence on a closed distribution  
15 system, which forced us and many others to sell import  
16 material. Thank you for your time.

17 STATEMENT OF BOBBY STARLING

18 MR. STARLING: Good afternoon. I'd like to  
19 thank all the Commissioners for your time today. My name is  
20 Bobby Starling. I'm a vice president with Hanes Geo. I've  
21 been with Hanes for about ten years now, but in the industry  
22 for over 25. As a part of my responsibilities with Hanes, I  
23 routinely travel to our suppliers to evaluate their  
24 facilities, especially for new suppliers.

25 We want to make sure they're actual

1 manufacturers and not marketing companies. I've traveled  
2 several times to China to research the Chinese biaxial  
3 geogrid industry. Most recently I spent three weeks in 2014  
4 and over a month in 2015 visiting geogrid plants and other  
5 plants that supply other products that we carry in our  
6 locations.

7 My visits to China have included travel to both  
8 Tian City and Chinghou, which is where the biaxial geogrid  
9 manufacturers are located.

10 During these visits I toured production and  
11 warehouse facilities, met and interviewed my counterparts at  
12 the Chinese companies producing and exporting biaxial  
13 geogrids to the United States, as well as reviewing their  
14 entire product lines. Whenever we are looking for potential  
15 suppliers, we typically evaluate as many producers as  
16 possible, to identify the right sources not only for  
17 ourselves as a company but ultimately for our customers.  
18 I'm confident that the research I've conducted over the past  
19 years that I've identified the major Chinese producers that  
20 could potentially meet U.S. specifications. To my  
21 knowledge, there are four. One is TMP, the other is BOSTD.  
22 There's a company called Feiching Leihye that was mentioned  
23 earlier and Tensar. That's it. I have heard of one other  
24 company called the CNBM, but my knowledge CNBM has a single  
25 line that runs intermittently only to small orders. Maybe



1                   MR. MORRIS: Good afternoon. My name is Daniel  
2 Morris. I'm with Dentons, here on behalf of Hanes, GEO  
3 Companies and Hill Country. The Commission should retain  
4 the like product definition it found in its preliminary  
5 determination, that triax is part of the domestic like  
6 product of biaxial geogrid. I'd like to just briefly walk  
7 through how the record aligns with each factor in the  
8 Commission's analysis.

9                   One, triax has the same physical characteristics  
10 and uses as other biaxial geogrids. Triax is made from the  
11 same materials to serve the same purpose. There's no  
12 genuine debate that the overwhelmingly predominant use of  
13 both triax and other biaxial geogrids is as a substrate for  
14 traffic surfaces. The reason this industry exists is  
15 because when you incorporate triax or another biaxial  
16 geogrid into the design of a street or a parking lot or  
17 other traffic surface, good things happen.

18                   Depending on the design, that can mean using less  
19 asphalt or crushed rock. That can mean reduced maintenance  
20 demands or it can mean increased strength and longevity,  
21 excuse me. This is true for triax and it's true for other  
22 biaxial geogrids. Tensar has asserted that triax is  
23 different because it is "triaxially oriented," claiming that  
24 triax and biax geogrids are differently oriented at a  
25 molecular level.

1                   But that's not accurate. Even at the molecular  
2 level, these are the same products. In both cases, they are  
3 molecularly oriented in the same direction as the lines of  
4 their grids. It is axial orientation. With triax, the  
5 molecules are oriented in line with the product's axes.  
6 With rectangular biaxial geogrid, the molecules are also  
7 oriented in line with the product's axes. Either way, it's  
8 axial orientation.

9                   Two. Triax shares common manufacturing  
10 facilities with other biaxial geogrids. Triax is made from  
11 the same raw materials in the same machines in the same  
12 steps. Both products are made by stretching sheets of  
13 polypropylene in two directions.

14                   Three. Triax and other biaxial geogrids are  
15 interchangeable at the design stage. Tensar's own software  
16 allows you to evaluate designs with triax or with  
17 rectangular biaxial geogrids in the same way that you  
18 evaluate whether to use a Type 1 or Type 2 bioaxial  
19 geogrid. For that matter as you've heard in 2009 and 2010,  
20 Tensar tried to force the biaxial geogrid market to switch  
21 over to triax.

22                   Tensar announced in open letters that Tensar  
23 would be replacing its rectangular biaxial geogrids with  
24 triax, that it would no longer be making production runs of  
25 rectangular biaxial geogrids, and that customers seeking to

1 buy one of the Tensar's rectangular biaxial geogrids should  
2 be directed to use triax.

3 Tensar put in writing and announced to the world  
4 that its strategy was "to transition all of our BX markets  
5 to triax." Until a few months ago, Tensar published a  
6 single installation guide that covered both triax and  
7 rectangular biaxial geogrids. We've attached it as Exhibit  
8 6 to our prehearing brief.

9 The installation guide doesn't have separate or  
10 additional steps for one or the other. For the most part in  
11 fact, the guide just refers to "Tensar geogrid," not triax,  
12 not biaxial, not -- just Tensar geogrid. Two products that  
13 are installed the same way in the same applications are by  
14 definition interchangeable. We know that flipping takes  
15 place, where one of the competitors in this market space  
16 convinces the project owner or designer to move the bid  
17 specification to include as an option a geogrid that would  
18 have originally been excluded because of the bid spec.

19 Flipping happens between Type 1 and Type 2  
20 rectangular biaxials, and it happens between triax and  
21 rectangular biaxial geogrids. Indeed, it's no secret the  
22 domestic industry is telling us in its public brief that it  
23 is even now engaged in the project of flipping the  
24 specifications of various state Departments of  
25 Transportation, so that Tensar can be bid -- so that Tensar

1 can bid triax in place of rectangular geogrids.

2 Four. Triax shares common channels of distribution with  
3 other biaxial geogrids. The same Tensar distributor who  
4 sells triax sells Tensar's rectangular geogrids. The fact  
5 that some distributors don't sell triaxial ever isn't  
6 because triax has a different channel of distribution from  
7 rectangular biaxial; it's because Tensar won't sell triax to  
8 those distributors. That's not a difference in the channel  
9 of distributions. It's just Tensar's market control.

10 Five. Customers perceive triax to be part of the  
11 biaxial geogrid product continuum. We of course noted in  
12 our prehearing briefs some of the comments in questionnaire  
13 responses indicative of customer perception, and then  
14 included samples of bid documents from project owners and  
15 designers, the customers here, specifying triax alongside  
16 rectangular biaxial geogrids as alternatives.

17 Six. This is one of those cases where price  
18 doesn't help define the domestic like product. Tensar has a  
19 unique position in this marketplace, and it has leveraged  
20 that position in its price placement of triax. Triax price  
21 says more about the market's perceptions of Tensar than it  
22 does about the perceptions or characteristics of triax.  
23 In sum, the fact that the holes in triax are in the shapes  
24 of triangles instead of being in the shapes of rectangles is  
25 not even to draw a clear dividing line between triax and

1 other biaxial geogrids. Biaxial geogrid is a continuum  
2 product. The Commission's preliminary determination was  
3 correct. The domestic like product includes triax. Thank  
4 you.

5 STATEMENT OF YOHAI BAISBURD

6 MR. BAISBURD: Before moving on to questions, I  
7 would like to briefly address private label sales and their  
8 impact on the pricing analysis. Tensar's sales to  
9 distributors are at the same level of trade as Hanes and  
10 other importer sales to distributors. That is true whether  
11 it's Tensar selling private label or branded product to that  
12 distributor.

13 Tensar wants the Commission to treat importers,  
14 purchases of imports as lost sales and compare the landed  
15 duty price paid of those imports to Tensar's prices for  
16 private label sales. But that's not how the Commission  
17 conducts its pricing analysis. You don't compare importer  
18 purchases to U.S. producer sales. In all cases, there are  
19 imports and importers. By definition, those importers  
20 purchase product from foreign exporters, not the U.S.  
21 producers.

22 The Commission does not compare the foreign  
23 exporters' sales price to the U.S. producers' sales price.  
24 What the Commission compares is the U.S. producers' sale to  
25 the distributor, to the importer sale to a distributor. For

1 pricing comparison purposes, the question is not what Hanes  
2 paid for the imports and how that compares to what Tensar  
3 would have sold private label products to them once it  
4 decided in 2015 to sell such products to Hanes.

5 The question is what price did Hanes sell the  
6 imports to other distributors or end users and how does that  
7 compare to Tensar's sales to the same channels of  
8 distribution? The Commission looks at the profitability of  
9 the U.S. industry, not the profitability of the importers.

10 As you heard in the testimony and will see in the  
11 record, Tensar is the price leader. Hanes and the other  
12 importers make bids based on prevailing market conditions.  
13 One of those conditions is that Tensar decided long before  
14 imports even entered the market to offer low price private  
15 label products that are indistinguishable from their branded  
16 product. They have continued that program throughout the  
17 POI, and those sales are significant.

18 I can't go into details here, but we discuss the  
19 volume and impact of Tensar's private label sales in our  
20 brief, and we're ready to answer questions. Thank you.

21 CHAIRMAN WILLIAMSON: Good, thank you. I want to  
22 thank all of the witnesses for coming this afternoon and  
23 giving us their testimony. This afternoon we'll begin our  
24 questioning with Commissioner Pinkert.

25 COMMISSIONER PINKERT: Thank you Mr. Chairman,

1 and I thank all of you for being here today to help us  
2 understand these issues. I want to begin with something  
3 that has been mentioned right at the end of your testimony,  
4 Mr. Baisburd, but really pervaded the testimony in the  
5 morning and in the afternoon, and that is this issue of  
6 price leadership.

7           How can we sort through the data that we have on  
8 the record, and determine price leadership? I understand  
9 that we can talk about specific instances and whether a  
10 particular price had to be met by a particular distributor  
11 or particular seller. But looking at the data that we have  
12 on the record, how can we sort through the price leadership  
13 issue?

14           MR. BAISBURD: Since you're asking about the data  
15 on the record, I'll answer first and then others may want to  
16 talk about how the market itself is structured. So there  
17 are three pricing products, and I think it's critical when  
18 looking at pricing comparisons to look at those three  
19 products and what happened with those products. Products,  
20 without going into any specifics, but Product 2 and Product  
21 3 tell a very clear story, and in our prehearing brief we  
22 laid that story out for you and we'll develop it further in  
23 the post-hearing brief.

24           But that's not anecdotal evidence. That is  
25 quarter by quarter analysis of where Tensar sold and where

1 imports are being sold at the same level of trade, and we  
2 have to reject this notion that there's any mixing here of  
3 private label or not, because when Tensar sells to a  
4 distributor and Hanes, an importer, or Hill Country, an  
5 importer, sells to a distributor, that's the very same level  
6 of trade.

7 That is your traditional pricing analysis, and  
8 Products 2 and Products 3 I think are very clear in the  
9 story that they tell. I think overall in terms of  
10 leadership, look at the volume, look at the market  
11 dominance, look at the brand awareness. Everyone in this  
12 room agrees that Tensar is best in class or best in breed I  
13 think is what John said, and so they set the price.

14 They have it in terms of market recognition, time  
15 in the market and experience. So I think with that I'll  
16 segue if others want to talk about what they see themselves.

17 MR. DOWDELL: John Dowdell. I look at it at a  
18 little more of a detail nuts and bolts level. But within  
19 our organization, we do a very good job of bidding projects  
20 and tracking what projects we're successful on, and what  
21 projects we fail to close, and we're very disciplined around  
22 looking at okay, who did we lose it to and why?

23 And one piece of anecdotal data that I can point  
24 to is as we track those product closures, grid is one of our  
25 lowest success close rates, across the market. There's a

1 very consistent trend of when we don't close a specific grid  
2 project that we bid, we typically have lost it to Tensar.  
3 And I shouldn't say it that way. We've typically lost it to  
4 a Tensar distributor.

5 In July, subsequent to the preliminary hearing,  
6 we lost major projects in the state of Texas to a  
7 Tensar-branded product, and you know, we have good feedback  
8 from the contractors. They're pretty up front about here's  
9 where you were at and here's where they were at, and we were  
10 out of step by five percent at least in each of those  
11 instances, on what was bid on branded product.

12 I don't have access to the data that you have  
13 access to, but I do know that if you look across the market,  
14 in spite of the fact that now, instead of having one  
15 distributor in every state, in some states maybe two that  
16 are out actively trying to market and sell the Tensar  
17 branded products, now there are multiple distributors in  
18 very state that have access to grid. I guarantee if you  
19 look at the data, whether you call it -- whether you include  
20 the triax or you exclude it, Tensar is still going to be  
21 market leader even though they're outgunned significantly  
22 with feet on the street that are out actively promoting  
23 that.

24 Some of that's going to be driven by the  
25 specification work they've done. Some of it's going to be

1 driven by relationships their sales team has in place. They  
2 would have you believe that it's all based on price. That's  
3 not the reality, but price is a component and they lead in  
4 price.

5 COMMISSIONER PINKERT: Okay. Well, I would ask  
6 you to do for the post-hearing, as you continue to break  
7 down this price leadership issue, is to look at the  
8 conclusions that are offered in the staff report at Roman  
9 V-25 with regard to price comparisons, and explain how your  
10 conclusion on price leadership relates to what is in that  
11 staff report at that point.

12 MR. BAISBURD: We're happy to do so in our  
13 post-hearing brief.

14 COMMISSIONER PINKERT: Thank you. Now I don't  
15 want to put words in anybody's mouth here, so if this  
16 inference or this statement is not true that's fine, and we  
17 can move on. But I want to understand. If it is your  
18 contention that the existence of the exclusive distributors  
19 for Tensar is a factor that in your view limits competition  
20 between subject imports and the domestically produced  
21 product.

22 MR. DOWDELL: John Dowdell. I'm not sure I'm  
23 going to answer the question you're asking me correctly, so  
24 please redirect me if I'm misunderstanding specifically what  
25 you're asking. It certainly has an impact on

1        competitiveness within the market. Traditionally, the  
2        market was -- for punched and drawn grids, which are the  
3        most cost effectiveness and frankly in this class or  
4        products the most effective products offered in the  
5        industry, was extremely tightly controlled.

6                    If you wanted to buy those products, you bought  
7        only through an authorized Tensar distributor. That's how  
8        the product got to market because they were patent protected  
9        and that's how they can bring them to market. As the market  
10       opened up, now a company like Hanes, and we do a lot of  
11       business with Tensar; let's be clear on that first of all.  
12       But a company such as Hanes, if we buy solely from Tensar  
13       and don't have other alternatives, we will invariably we  
14       leveraged out of the market through pricing from them to us.

15                    If that's our only source of supply is to buy  
16        from Tensar, they will always favor their aligned  
17        distributors that are helping them try to shift the entire  
18        market from biaxial and triaxial, where they can enjoy  
19        patent protection. That's part and parcel of this. That's  
20        why even on their private label programs, they continue to  
21        price us out of jobs. That's the quid pro quo with their  
22        line distributor partner. They're going to keep them  
23        competitive in that market segment, and they've done a very  
24        effective job of it from my perspective. Now were you  
25        asking me something different than that?

1                   COMMISSIONER PINKERT: Well, I'm going to let Mr.  
2                   Baisburd respond in a second, but I just think back to the  
3                   testimony we heard earlier, where it was said look, just  
4                   because it's an exclusive distributor of our product doesn't  
5                   mean that they don't have to meet the so-called China price.  
6                   So if you want to respond to that or if you want to respond  
7                   to that, that's fine.

8                   MR. DOWDELL: And again I'll go back to when we  
9                   look at the project close rates, most of our losses track  
10                  back to Tensar distributors when we're looking at projects  
11                  that we don't close. It's rare that we lose a project to a  
12                  competitive Chinese distributor that someone that's buying  
13                  from a Chinese distributor. Most of our losses go to  
14                  Tensar.

15                  There are a number of reasons why that can occur,  
16                  including the type product specification that you might not  
17                  be able to flip in that particular instance because of an  
18                  engineer's preference. The most prevalent reason that we  
19                  lose them is on pricing, and in -- we're chasing those  
20                  prices. It's not unusual at all for us to get beat on  
21                  bidding a Chinese product against a Tensar-branded product,  
22                  and that's the reality we operate in on a routine basis.

23                  MR. BAISBURD: I think the exclusivity is an  
24                  important condition of competition, but not because it  
25                  insulates Tensar from import competition, but rather because

1 it insulated Tensar from competition. So until May 2012,  
2 not only did they have a patent, but within the U.S. market  
3 there's not competition amongst the distributors because  
4 they're regional-based exclusive distributors.  
5 So it's kind of two levels of a market where they have 100  
6 percent share and pricing is based on having one authorized  
7 distributor for any given region, before the private label  
8 comes into the marketplace. So what does that do? Once the  
9 patent comes off and imports can come in, you have  
10 competition because imports are finally in the marketplace.  
11 So now in any given region, and especially with national  
12 distributors like Hanes, you have competition throughout,  
13 which the exclusivity brought in imports because people like  
14 Hill Country down in Texas couldn't get the product. They  
15 hadn't, right, as I understand your testimony.

16 So that's why it is a relevant condition of  
17 competition, as you're looking at the impact of imports over  
18 the POI, because of the change that occurred with finally  
19 competition. I mean that's the prevalent condition of  
20 competition here, is for the first time in decades, they had  
21 to face competition in the U.S. market.

22 COMMISSIONER PINKERT: Thank you very much. Did  
23 you want to add something, Mr. Starling? Thank you.

24 CHAIRMAN WILLIAMSON: Thank you. Commissioner  
25 Broadbent.

1                   COMMISSIONER BROADBENT: Okay. I'm hearing you,  
2 but I'm just trying to relate it to the statute that we're  
3 looking at. I mean we need to look at the effect of the  
4 imports causing material injury, and you've made a lot of  
5 arguments about the anti-competitive nature, the patent  
6 protection and the single source of supply. But are there  
7 references in the statute or in prior Commission  
8 determinations, where we've really looked closely at  
9 anti-competitive effects?

10                   MR. BAISBURD: So when you do your volume effect,  
11 price effect and impact analysis, it's within the context of  
12 the conditions of competition of the industry. So two  
13 things. First, you have said before and we can include the  
14 site in our post-conference, in other cases that a patent  
15 doesn't create a separate like product. So in terms of just  
16 the like product analysis on triax, I would mention that.

17                   In terms of the sole sourcing and the exclusivity  
18 and the impact of the patent, there was a natural decline in  
19 market share over the period because when you go from 100,  
20 it has to go down, and when there's a new market  
21 participant, there is competition and competition rarely  
22 leads to higher prices, you know, immediately, right.

23                   COMMISSIONER BROADBENT: Right.

24                   MR. BAISBURD: So and I think that those again  
25 are not -- they aren't statutory factors in the sense that

1 you're required to consider the conditions of competition  
2 and not attribute to subject imports the impact of other  
3 things in the marketplace. One of the other things in the  
4 marketplace is the fact that they went from having a patent  
5 protected period to one where they weren't, and that they  
6 also frankly failed to transition the market to their next  
7 patent protected product, and that is also something that  
8 happened.

9 I think in both of those instances, as you said  
10 earlier, it just doesn't ring true that these didn't have an  
11 impact on their own operations. I think the data shows the  
12 impact that they had, and I think a fair reading of the  
13 entire record, with those conditions of competition in mind,  
14 kind of informs in particular the price effect and impact  
15 aspects of your analysis.

16 COMMISSIONER BROADBENT: Okay. Why has the  
17 public acceptance of triax been so slow?

18 MR. CASHETT: Hi. Clay Cashett, Hill Country.  
19 Triax is another biaxial product. It's going to be marketed  
20 differently now that it's patent protected and the BX is  
21 not. In many of the DOTs, they will not accept a sole  
22 source patented product when there's an alternate product  
23 that's just as suitable. So that's probably the largest  
24 factor, is that the public sector has not endorsed it  
25 because of the proprietary nature.

1                   COMMISSIONER BROADBENT: Okay. Assuming that  
2 U.S. purchasers wanted to diversify their sources of supply  
3 for biaxial, do you agree following the expiration of the  
4 patent and in light of Tensar being the predominantly source  
5 of supply in the U.S. market, why wouldn't producers in  
6 China look to increase production and export more to the  
7 United States?

8                   MR. BAISBURD: In terms of timing, are you asking  
9 in 2012 or --

10                  COMMISSIONER BROADBENT: During the Period of  
11 Investigation. I mean why aren't the incentives there for  
12 China to start really ramping up production and exporting to  
13 the U.S.?

14                  MR. BAISBURD: Well, so you see over the Period  
15 of Investigation, the level at which imports entered the  
16 marketplace, and they had the effect of expanding demand.  
17 They didn't take -- well, they took market share away  
18 because now it went from 100 to something else.

19                  COMMISSIONER BROADBENT: Right.

20                  MR. BAISBURD: But overall demand expanded during  
21 the period. So what they -- it's not that they were taking  
22 market share away from the U.S. production and ramping up  
23 and destroying, as you heard alleged this morning, but  
24 rather they were being pulled into the market by people who  
25 weren't able to obtain the product from the sole U.S.

1 producer, Tensar.

2 I mean again going back to the condition of  
3 having an exclusive distributor arrangement, you could not  
4 get product outside of the Tensar family. So you had no  
5 choice but to bring in imports, and even then when the  
6 patent expired, there was growth for sure, but it's not at  
7 levels that are, you know, shocking, unless you just believe  
8 that you're entitled to 100 percent of the market.  
9 Then if you believe you're entitled to 100 percent of the  
10 market, anything less than that is I suppose shocking.

11 MR. DOWDELL: And I want to -- this is John  
12 Dowdell. I want to go back and make sure. I heard your  
13 question a little bit differently, so I want to respond to  
14 it a little bit differently. As I understood the question,  
15 why haven't we seen Chinese manufacturers invest to fill the  
16 void and grow their market or grow their production to  
17 support this market?

18 I'm not aware of any Chinese manufacturer that's  
19 put new lines in. That's not to say it hasn't happened.  
20 All I'm saying is I'm unaware of it. So I'm not seeing that  
21 investment in excess capacity. The capacity of each  
22 individual line is significant and can cover a, you know,  
23 significant amount of product.

24 So my perception is latent capacity within the  
25 market does exist. It's allowed them to participate in the

1 grand scheme of things in a relatively minor way that they  
2 have to this extent, and it does bring to mind one of the  
3 points made earlier today. When you look at the ramp-up in  
4 2014 and the point was made everyone brought in inventory or  
5 Chinese manufacturers filled the market in 2014, but the  
6 sales weren't there to support it.

7 Well, the rest of that sentence was the sales  
8 were there in 2015. When you're importing product first of  
9 all from a domestic distributor's perspective, importing is  
10 not easy. So there are a lot of small regional distributors  
11 that really don't have the resources to effectively  
12 important. That's one point.

13 It's very capital-intensive. You have to be able  
14 to take a long inventory position because most of our orders  
15 go literally next day. When a contractor calls, you've got  
16 to have it the next day. The ramp up you saw in sales in  
17 2014 were in anticipation of the sales in 2015. Our company  
18 and any other responsible distributor would stock their  
19 warehouses in that manner, and that's what you've seen  
20 there.

21 COMMISSIONER BROADBENT: Ok Mr. Starling, you  
22 mentioned your research in China during your testimony, and  
23 I wondered if in the post-hearing you could submit the  
24 production and capacity figures of the three other firms  
25 that were identified, since we I think we only have

1 information on one of those.

2 MR. STARLING: Yes. Bobby Starling. Typically  
3 our discussions revolve around our company's needs going  
4 into the future, but I do have some information that I could  
5 supply post-hearing.

6 COMMISSIONER BROADBENT: Okay. Is it your view  
7 that the combined capacity of those four firms is not  
8 significant?

9 MR. STARLING: That's confidential.

10 COMMISSIONER BROADBENT: Okay.

11 MR. STARLING: I'll share that with you  
12 post-hearing.

13 COMMISSIONER BROADBENT: Okay. What's going on in  
14 the export markets in this product? Why have U.S. exports  
15 of this product declined?

16 MR. STARLING: We don't export the product.

17 COMMISSIONER BROADBENT: I know you don't, but the  
18 domestic industry, Tensar, why have their exports declined?  
19 Any sense of that?

20 MR. DOWDELL: Frankly, I was not aware of it. I  
21 think, speaking for the group, since we don't participate in  
22 the market we're really focused on supplying the domestic  
23 industry and, you know, people in the field doing  
24 construction projects.

25 It surprises me that they would have had a robust

1 export market beyond Canada prior to this, but they  
2 certainly may have.

3 COMMISSIONER BROADBENT: So you don't focus on the  
4 global markets?

5 MR. DOWDELL: No. We really are focused on the  
6 U.S. and, in some ways, Canada as well. And that's pretty  
7 much the extent of our reach as it relates to these  
8 products, because we wouldn't bring value to that since  
9 we're not a manufacturer. Our position in the value chain  
10 is to get the product to an installer to provide that level  
11 of service.

12 COMMISSIONER BROADBENT: Okay. Alright, thank  
13 you, Mr. Chairman.

14 CHAIRMAN WILLIAMSON: Thank you. Commissioner  
15 Kieff?

16 COMMISSIONER KIEFF: I join my colleagues in  
17 thanking you all for coming. And just to jump right in and  
18 try to build on some of the discussions, you've mentioned, a  
19 couple of you, situations in which efforts to try to get  
20 access to the other side's product was not successful and  
21 that's why you had to in effect go with imports.

22 In the post-hearing, to the extent you have  
23 contemporaneous business records to provide us that will  
24 give us evidence of the nature and degree and frequency of  
25 those occurrences, that would be very helpful.

1                   MR. BAISBURD: We're happy to provide that in the  
2 post-hearing.

3                   COMMISSIONER KIEFF: And then let me if I could  
4 just change gears, and maybe this is a bottom-line question,  
5 maybe this is a macro question, I don't know which way to  
6 think about it, but what if it turns out everything  
7 everybody has said today is true? In other words, your  
8 take on the case accurately reflects your well-informed  
9 perceptions of what you've been experiencing in the market,  
10 as has theirs, but as I think Commissioner Broadbent was  
11 getting at, as our statute is written we don't really do a  
12 broad--we're not supposed to do a broad-textured unfair  
13 competition analysis in this part of our docket.

14                   We, by the way, have that option. Bring a 337  
15 and we can talk about it. But here in the Title 7 part of  
16 the docket, we don't do white hat/black hat, good guy/bad  
17 guy, and we don't do unfair competition. What we do is ask  
18 ourselves whether the record supports, through a combination  
19 of analysis of the data on volume and price and impact,  
20 material injury to the domestic industry.

21                   And even a skeptic of that side of the docket at  
22 least would see a more than prima facie case here. And I  
23 guess what I'm trying to get a sense of is what's wrong with  
24 that prima facie case? Where does it--what's the most  
25 glaring problem with that that I'm overlooking?

1           MR. BAISBURD: First I would say the answer will  
2 depend on how you define the like product.

3           COMMISSIONER KIEFF: Okay, and why?

4           MR. BAISBURD: Why? Right. So if you move away  
5 from your preliminary decision and somehow find there's a  
6 clear dividing line on this continuum of products, then--

7           COMMISSIONER KIEFF: Let's say we go with you.  
8 You want to say this is one.

9           MR. BAISBURD: We want to--well, we believe it's  
10 one applying the statutory factors.

11          COMMISSIONER KIEFF: Let's go there.

12          MR. BAISBURD: Then if it's one and you look at  
13 the data, the impact and the effect have to be by reason of  
14 subject imports.

15          COMMISSIONER KIEFF: Right.

16          MR. BAISBURD: And the predominant--I think I  
17 said--well, the predominant, most significant market  
18 presence for pricing, and the impact that pricing has on the  
19 volume of your sales, on your profitability, on your  
20 productivity and all of that, is Tensar. And they are  
21 setting the price.

22                 And I think, going back to what I said earlier,  
23 if you look at product two and product three, I think the  
24 data supports what I'm saying.

25          COMMISSIONER KIEFF: Well, so--

1 MR. BAISBURD: I mean, I--

2 COMMISSIONER KIEFF: Right. I asked the  
3 price-leading question in the morning, and we had other--and  
4 we'll be looking very carefully at everybody's answers in  
5 the post-hearing on the pricing data, but of course that's  
6 just one of--I mean there are really three statutory  
7 factors--price, volume, and impact--and I take it their  
8 response to you, if they were to be in the business of  
9 conceding points--advocates often have a hard time doing  
10 that; that's fine--but I think they in effect said, even if  
11 there's one product, not two, and even if the price declined  
12 in large part because of the end-of-patent term on the  
13 biaxial geogrid, and even if we were unsuccessful in getting  
14 everybody to switch to our triaxial, even if, even if,  
15 there's still, gosh, an immense amount of stuff coming in.  
16 And it's materially impacting our ability to sell, to close  
17 deals. And that's why our prices are dropping,

18 I take it in effect that's their argument. And  
19 if that's their argument, my first question is: Is that a  
20 sufficient argument under our statute? Or have I got  
21 something wrong there?

22 MR. BAISBURD: Well if that was a sufficient  
23 argument under the statute, then every case that had a  
24 negative trend in certain areas would go affirmative. And  
25 that's not what happens at the Commission. Because there's

1 a causal link element that is critical.

2 And the analysis of the movement in those  
3 performance indicators is analyzed within the context of the  
4 conditions of competition of the industry. And I think that  
5 that's--

6 COMMISSIONER KIEFF: Well I'm with you there. I  
7 mean I'm with you there. I don't take their argument to be  
8 the--well, we wouldn't have to agree with them that imports  
9 are the dominant cause, or the only cause.

10 The statute, unfortunately for you, the statute  
11 only demands that we find it to be a material cause. Right?

12 MR. BAISBURD: Yes, I would agree with that.

13 So there are other elements here that we've  
14 alluded to, and I think developed in our briefs, and we can  
15 talk to about as well, that there are other aspects here.  
16 It's not just price. So price is one element. But the  
17 sales are also closed based on services, and I'm sure they  
18 would like to testify to the fact that they provide a high  
19 level of service, which is what the market expected for  
20 biaxial. And what Tensar has pulled back from.

21 So you can't have it both ways, right? You  
22 cannot condition a market for decades to say we're going to  
23 provide you high levels of service, hand-holding assistance,  
24 you know, marketing support, et cetera, for projects and  
25 then all of a sudden we want a new project. Right? We want

1 a new product. We want you to fire a new patented product.  
2 We're not going to give you those services anymore.

3 That's going to have an impact on your sales  
4 because you're going to find an alternative who is willing  
5 to provide you those services. So it's not by reason of  
6 unfairly traded imports that those sales are being lost,  
7 it's because they're pulling back and saying we're not going  
8 to give you the service that you used to require.

9 COMMISSIONER KIEFF: I mean, no, I mean I really  
10 hear you. My concern is that that is an amazingly  
11 interesting, normative point for the policy debate about  
12 having antidumping law coexisting with IP law, and allowing  
13 vertical restraints in IP law under the theory that they  
14 can, at least under a rule-of-reason analysis be  
15 procompetitive, and, absent a showing of market power, et  
16 cetera, not.

17 But again, we have got those cases in our 337  
18 part of our docket, and we're really --- I think we're all  
19 really jazzed up and interested in understanding that stuff,  
20 but in this part of our--I think in effect that's a reason  
21 not to have this part of Title 7. But when we have this  
22 part of Title 7, I'm not sure what we do with it.

23 MR. BAISBURD: Yeah, so I think we are trying--  
24 well, I am trying to ground our analysis in Title 7  
25 statutory factors and not engage in a question of whether or

1 not those laws should be there, or how they should be  
2 applied.

3 But in that Title 7 context, the conditions of  
4 competition are an element of your analysis.

5 COMMISSIONER KIEFF: Sure.

6 MR. BAISBURD: And the case, you know, the market  
7 decisions are made on a variety of factors. And I think all  
8 of those factors go into your analysis.

9 COMMISSIONER KIEFF: So you think the dominant  
10 effects --- the dominant factors are in effect their IP  
11 oriented strategy in time one, just by the way a lot of IP  
12 owners do this. IP expires. They roll out IP version two.  
13 And then they try to switch their market to their new  
14 IP-protected--and you're saying that that strategy which  
15 happens not to, in this case in your view, have moved a lot  
16 of the market to their new, to their three-access product is  
17 the cause of the shortcomings they're experiencing in their  
18 business?

19 MR. BAISBURD: That is certainly one of the  
20 causes. I think other things like maintaining, as was  
21 mentioned earlier, high levels of SGNA, declining export  
22 sales. I mean there are a number of things happening here  
23 that I think in the cumulative effect have the impact that  
24 you're seeing.

25 And I would like to just answer, because I

1 started on the like-product analysis, I mean we clearly  
2 think it's one product, and not because we want a bigger  
3 denominator but because we actually think it's right. I  
4 mean for me the noise here is that they kept it out, not  
5 that we're trying to pull it in.

6 But that being said, if it's out then what impact  
7 did those triax sales have on the biaxial industry that  
8 they're defining a limited to the squares? Because, you  
9 know, Clay can go into greater detail, but this? And this  
10 (indicating)? The only difference is the shape of the  
11 aperture. And both of these are going to go in the road.

12 So if this isn't part of the like product, then  
13 all sales that were --- every square yard of this could have  
14 been this (indicating), and subject imports are immaterial  
15 at that point.

16 COMMISSIONER KIEFF: Thank you. And I see that my  
17 time has expired. And I'm going to have to be leaving a  
18 little early, but I do look forward to the rest of the  
19 transcript and to the post-hearing for everybody. And thank  
20 you very much, very helpful.

21 CHAIRMAN WILLIAMSON: Okay. Good. Continuing on  
22 this line, when you talked about their strategy of trying I  
23 guess use triad to get everybody to move to triad, they said  
24 that, you know, the biaxial products that expired in 2009  
25 and in 2012 that effect was gone, are you saying that you

1 think the impact of losing the patent protection and pricing  
2 impact was much longer than the period that they said?

3 MR. DOWDELL: I'm really not certain that it was.  
4 I think that the level of exposure of the products in the  
5 market, the number of distributors that have access to it  
6 certainly has grown during that period of time. So there is  
7 I think a natural increase in competition at a distribution  
8 level.

9 When we look at our ---

10 CHAIRMAN WILLIAMSON: The market has also grown,  
11 too, hasn't it?

12 MR. DOWDELL: The market has grown, as well. When  
13 we look at our pricing of imports--and, Bobby, you're closer  
14 to this than I am--but the data that we've looked at  
15 recently, it's really been fairly steady through that period  
16 at least where we're purchasing product.

17 Now to Yohai's point earlier, I'm not sure that's  
18 the relevant level of the market because we're going to sell  
19 at what the market will bear. So while our purchasing cost  
20 has really been relatively flat throughout it, our margins  
21 have been compressed frankly because we keep losing orders  
22 to the Tensar distributors and we're chasing those prices to  
23 try to define where the market is.

24 MR. BAISBURD: And if I could add just to clarify,  
25 so Triax started trying to be sold in 2009. And the

1       biaxial, the square and rectangle geogrid, that patent  
2       expired in 2012, in May of 2012, which was the first year of  
3       the POI at the preliminary phase. And so we are still  
4       seeing the impact in the marketplace of having competition.

5                   And there used to not be competition until May of  
6       2012 because of the patent.

7                   CHAIRMAN WILLIAMSON: And what would you say? Do  
8       you disagree with the arguments that they did preparatory  
9       steps lowering the price to get ready for the expiration of  
10      the patent protection? Do you think that had any impact?

11                  MR. DOWDELL: John Dowdell. It absolutely had an  
12      impact, that they came out and introduced a single--and I  
13      think that's an important thing for the committee to  
14      recognize --- a single private-label distributor with lower  
15      prices. That rumbled through the market, that they dropped  
16      the pricing on those products in advance.

17                  But bear in mind, at that point for us to buy we  
18      still couldn't go directly to Tensar. If we were going to  
19      buy that product, we would have had to buy it from Syntec,  
20      who was putting a margin on it. Syntec also sold direct.  
21      So Syntec was both selling direct and trying to sell to  
22      distributors. And as they sold direct, they I believe did  
23      damage the market at that point in time.

24                  It was in the direction the market was obviously  
25      going to head as there was an increase in competition, but

1 again a key point to this to me is that at a producer level,  
2 you know, I'm not sure that we've seen the same magnitude of  
3 price deflection that we're talking about here.

4 A lot of this is, you know, project by project  
5 trying to find where the market is at a distribution level.  
6 And, you know, it's very competitive at that level just  
7 because now instead of one distributor or two having access  
8 to the product in a region, you know, you can get it from  
9 multiple sources, at least in our case, three sources.

10 CHAIRMAN WILLIAMSON: Okay.

11 MR. BAISBURD: Actually, may I also --

12 CHAIRMAN WILLIAMSON: Sure.

13 MR. BAISBURD: Let me chime in on that for a  
14 second? Because this isn't the typical private-label  
15 situation where it's a small percentage of the overall  
16 sales. I mean, you can look in the data at the volumes both  
17 from the information in 2012 and then throughout the period.

18 The private label is a significant percentage of  
19 the sales. And it's at a very --- well, it's obviously at a  
20 much lower price than the branded product. And the  
21 conditioning of the market, these are indistinguishable as  
22 between Tensar producing something that it sells as Tensar,  
23 and producing the private label under SBX-1200 and the  
24 Tensar branded 1200. They're from the same facility at the  
25 same, you know, the same exact production process.

1           And they're telling the market at that point that  
2 look at the differential you can have in pricing. So  
3 they're conditioning the market at that point for the first  
4 time, as competition is starting, that their brand equity,  
5 the value, the premium they were getting for their brand, is  
6 not going to continue going forward.

7           And that's going to have a natural effect of  
8 lowering price over time, plus the fact that you have  
9 competition from other sources at that time.

10           MR. STARLING: Bobby Starling. One other point.  
11 When I looked at the data, especially for product one during  
12 the Period of Investigation from 2013 until fourth quarter,  
13 excuse me, third quarter of 2016, there was absolutely no  
14 deflation in that product between contractor sales, direct  
15 that we took, and dealer sales that we also took.

16           There was some slight deflation in product two,  
17 but it's not these dramatic--

18           CHAIRMAN WILLIAMSON: What do you mean  
19 "deflation"?

20           MR. STARLING: Price deflation--price decline, I'm  
21 sorry.

22           CHAIRMAN WILLIAMSON: Okay. Repeat your  
23 statement, then.

24           MR. STARLING: For the Period of Investigation,  
25 when you look at our average selling price for contractors

1 and dealers for product one, so 2013 to third quarter 2016,  
2 there was almost no price decline on an average basis.

3 We've all talked about specific points in time  
4 and projects, but when you look at it on the average there  
5 was no decline. There was a slight decline on product two  
6 for an average--and again, I would point there are certain  
7 instances where the price went down on a project basis--but  
8 overall, it's not the huge, drastic declines in price that  
9 we've seen in the charts presented today.

10 CHAIRMAN WILLIAMSON: So what's your explanation  
11 for that? What does that mean? Does that mean the  
12 in-between people, the middle people are making more money?

13 MR. STARLING: No, I'm telling you we're pricing  
14 to market, and we're not leading the price down the path  
15 that Tensar's been telling you about today. Our average--

16 CHAIRMAN WILLIAMSON: But I thought you were  
17 saying that there wasn't a decline in price?

18 MR. STARLING: Our average selling price has not  
19 gone down. That's what I'm trying to tell you.

20 CHAIRMAN WILLIAMSON: So are you saying that the  
21 stuff we're seeing in the pricing tables is not--well, you  
22 don't have that--

23 MR. STARLING: I'm looking at my analysis of our  
24 pricing.

25 CHAIRMAN WILLIAMSON: Okay. Okay. Okay, Mr.

1 Baisburd, I guess the Petitioners can address that, try to  
2 explain that deviation.

3 A question regarding type one or type two biaxial  
4 geogrids. Because, I forgot who it was, but when you were  
5 talking about their strategy in 2012 of trying to move to  
6 get out of the biaxial and move people to the triaxial, you  
7 specifically mentioned type two, which sort of says maybe  
8 they expected type one to continue.

9 I mean I can look at the pricing table and  
10 description of product one and product two, or type one and  
11 type two, but I'm trying to also get the understanding of  
12 why the statement, whatever statement was made, of why they  
13 were saying they were trying to get out of type two as  
14 opposed to --- and move to the triad, but maybe not type  
15 one. And I assume the specifications are different on the  
16 two products.

17 MR. DOWDELL: John Dowdell.

18 Yes, sir, the specifications are different. In  
19 layman's terms, the Type 1 is typically a lighter weight  
20 product, but that's the main difference.

21 And let me read that paragraph again so that I  
22 can highlight the importance end sentence of that particular  
23 paragraph. It says "Effective, June 24, 2010, Tensar will  
24 discontinue regular production runs of Type 2 BX1200 and  
25 will remove it from the standard list of products. This

1 decision follows the very positive response from the market  
2 to the introduction of triax in April 2009 and it marks the  
3 next stage in our strategy" -- and this is the important  
4 part -- "to transition all of our biax markets to triax.

5           So while they're saying in this one right now  
6 we're telling you we're going to discontinue that product,  
7 and the reason they're do that is because people would have  
8 bids out against that product, so they're saying we're  
9 telling you this is the date we're stopping it. But the key  
10 part of that sentence, in my mind, is this last segment  
11 which says "In our strategy to transition all of our biax  
12 markets to triax."

13           They're not distinguishing that it's just that  
14 one market. They're saying we're moving them all over time.

15           CHAIRMAN WILLIAMSON: How does that square with  
16 -- there was quite a bit of discussion this morning that  
17 there were many applications. I think they talked about  
18 marine mattresses in particular and wall projects where biax  
19 geogrid is the superior to triax and so if there's certain  
20 applications that are superior why -- it doesn't add up.

21           MR. CASHATT: Clay Cashatt here.

22           So the marine application I don't have the data.  
23 I don't if they've given you the data on the quantity or the  
24 volumes of that market and maybe you should ask for that. I  
25 would guess it's a fraction of a fraction of a percent of

1 the roadway market.

2 All it is, is they're taking a biax grid and  
3 they're wrapping a rock inside of it. There's no reason why  
4 a triax --

5 CHAIRMAN WILLIAMSON: They're wrapping a what  
6 inside of it?

7 MR. CASHATT: Big rocks. They call it gabians  
8 and they wrap the rock and tie the grid together to encase  
9 the rock. There's absolutely no reason why they couldn't  
10 also wrap that rock in triax and tie it together. But  
11 again, the market is very, very tiny when you look at  
12 volumes. It's very insignificant. I think it's just an  
13 attempt to make it appear that there's these huge markets  
14 out there that only biax can participate in.

15 CHAIRMAN WILLIAMSON: Well, I've asked them to  
16 provide post-hearing some kind of breakdown.

17 MR. CASHATT: Perfect.

18 CHAIRMAN WILLIAMSON: And you all have any  
19 information on that or views on that that would be helpful  
20 too.

21 MR. CASHATT: Certainly. I think that you'll  
22 see that it's very small in the scope of their volumes.

23 CHAIRMAN WILLIAMSON: I think they were saying  
24 there are other applications too.

25 MR. CASHATT: That's right. And the wall

1 applications that you just mentioned that they also  
2 mentioned, so we have uniaxial geogrids means that the  
3 strength is in one predominant direction. That does not  
4 mean that it doesn't have any strength in other directions.  
5 In fact, uniaxial geogrids, square geogrids or biax is what  
6 we're calling them today, or triangles all have strength in  
7 360-degree directions, okay. So there is no magic about  
8 this one that it has 360 degrees of strength and that the  
9 other ones do not.

10 The uniaxial is the predominate product in  
11 retaining walls. You can also use a biaxial product, so let  
12 me clarify this. A retaining is trying to fall over or  
13 slide you can stack layers of grid behind it and tie it back  
14 into the soil. You just have to have a certain amount of  
15 strength -- tensile strength. It doesn't matter how. You  
16 just have to add up to have enough to keep it from falling  
17 over. You can use a uniaxial. You could put this one back  
18 there. You could put the triangles back there. There's  
19 nothing preventing it.

20 In fact, they said that it has 360 degrees of  
21 strength all the way around. By their own admission, you  
22 could spin this from whichever direction you want to, to  
23 reinforce that wall, so there's nothing preventing triax  
24 from being used in every biaxial application and vice versa.

25 CHAIRMAN WILLIAMSON: Okay.

1                   MR. BAISBURD: Quickly, because you had asked  
2                   about precedence as well. I mean can you imagine aluminum  
3                   extrusions had you drawn like product distinctions based on  
4                   use or a small case about lumber that we had a while ago and  
5                   you're going to have before you really soon again to decide  
6                   about. I mean the bed frame component versus a 2x10, right,  
7                   versus a 1x2. I mean you use things that fall within the  
8                   like product for different purposes, but the overwhelming  
9                   use of this is to build roads. And when you build a road at  
10                  the design stage you can choose which one of these products  
11                  you want, a Type 1 versus a Type 2, this type of triax  
12                  versus that type of triax, this triax or that square or  
13                  rectangular. In those applications, they're used the same.

14                 CHAIRMAN WILLIAMSON: Okay, thank you. My time  
15                 has expired. Commissioner? I need to take a break, but let  
16                 me ask another question, then we'll wrap this up.

17                 You mention in your testimony that there are few  
18                 geogrid suppliers in China and elsewhere. Why don't we see  
19                 more non-subject suppliers to the U.S. market? Do you  
20                 expect to see more geogrid exports to the United States from  
21                 countries, other than China?

22                 MR. STARLING: Bobby Starling.

23                 There are a couple of others. There are a  
24                 couple of lines in Greece that produce predominately for  
25                 Europe. It's a square grid. The specifications of the

1 products they're currently producing would not be accepted  
2 here. The only other line that I'm aware of is in Poland  
3 and they too only make a square grid, not a rectangular  
4 product, which is predominately what we sell, so it  
5 wouldn't really be suitable for the United States either.

6 CHAIRMAN WILLIAMSON: Okay.

7 MR. STARLING: Those are the only other ones I'm  
8 aware of.

9 CHAIRMAN WILLIAMSON: Okay. Thank you.

10 Mr. Cashatt, what factors go into the  
11 decision-making on whether to make domestically-produced  
12 geogrid versus imports for distribution and do your  
13 customers whether the product you supply them is domestic or  
14 imported?

15 MR. CASHETT: Clay Cashatt.

16 I am not aware of a single time where a customer  
17 has asked us specifically to source domestic product. We  
18 just always have chosen to do so. As John mentioned  
19 earlier, as a small company, it's very difficult to import  
20 product. It's a lot of cash outlay and long lead time, big  
21 inventory holds, and quite frankly, we don't have the  
22 resources to understand the complexity of the importing  
23 procedure and documentation and what not. So we were never  
24 really successful, in a large degree, in that. That's we're  
25 late in our -- you'll see in the POI that we imported very

1 late in the POI because of necessity.

2 As far as our customers asking or requiring that  
3 it be domestic; is that your question?

4 CHAIRMAN WILLIAMSON: Yes.

5 MR. CASHETT: That's not typically the case.  
6 There are some federally-funded projects, ports and such,  
7 that require domestically-made projects, but we were  
8 unsuccessful in winning those.

9 CHAIRMAN WILLIAMSON: Are those a significant  
10 part of their market?

11 MR. CASHETT: As far as the U.S. made?

12 CHAIRMAN WILLIAMSON: In other words, are there  
13 significant numbers -- of the consumption of this product,  
14 does Buy America cover any significance?

15 MR. CASHETT: No, sir.

16 CHAIRMAN WILLIAMSON: Okay. I was wondering why  
17 I hadn't heard the words "Buy America" today.

18 I sort of kind of asked this already, but what  
19 involved in substituting one type of biax or product for  
20 another, the Type 1 and 2? I think you're almost are saying  
21 you can use one almost.

22 MR. CASHETT: Clay Cashatt.

23 Absolutely. So I'm holding here in my left hand  
24 a Type 1 by the definition of your products. And I'm  
25 holding here in my right hand the Type 2. The Type 2 is

1        simply heavier and stronger. So naturally, you can imagine  
2        the stronger product is going to reinforce the rock better.  
3        What that allows you to do is to raise it an elevation  
4        higher -- use less rock. So where you might use 10 inches  
5        of rock on top of this one with asphalt on top of the rock  
6        there, you maybe could use 8 inches of rock on this one with  
7        asphalt and maybe with no geogrid you might have to use 12  
8        inches of rock.

9                        So first, the engineer looks at the pavement  
10       with no geogrids to see what the costs and performance  
11       associated with the pavement. And maybe it's, just for sake  
12       of argument, 12 inches of stone. And then he looks at a  
13       Type 1 and he says, okay, I can reduce it to 10 inches of  
14       stone and with the Type 2 I can reduce it to 8 inches of  
15       stone. So he looks at the stones savings and costs versus  
16       the cost of the materials in ways which one is the  
17       economical for his client.

18                      CHAIRMAN WILLIAMSON: And he might make one  
19       decision in New England or New York State and something else  
20       -- .

21                      MR. CASHETT: Oh, absolutely. No, that is a  
22       very good point. I'm glad you brought that up is your  
23       proximity to a rock quarry is a big, big component of  
24       whether these products are economical in the first place.  
25       If you're right next to a rock quarry and rock is very

1       inexpensive, then the engineer tends to use what he's done  
2       for his whole career and just use a lot of rock, but where  
3       they're far from a rock quarry or transportation, fuel,  
4       other factors come into play, then geogrids make more sense,  
5       and that's for all geogrids. And so whenever I take the  
6       triangles -- again, in my left hand I've got the weaker of  
7       the two and in my right hand I've got the stronger. The  
8       same holds true. They have different rock requirements.  
9       The stronger one can use less rock than the weaker one.

10               The question comes in is where do you find  
11       equivalency between the squares and the triangles. At some  
12       point, the stronger square product will meet the triangular  
13       product, even by Tensar's own software, even by their own  
14       admission, there are product equivalencies where you use the  
15       exact same amount of stone and that is where the debate  
16       holds, so there is no difference in how an engineer looks at  
17       these, other than those simple components. And then at that  
18       point of equivalency, if they're both, let's say, at 8  
19       inches of stone, which product then costs less to the end  
20       user and that's what the engineer picks.

21               CHAIRMAN WILLIAMSON: Okay.

22               MR. CASHETT: Does that help?

23               CHAIRMAN WILLIAMSON: Yes, that is helpful.

24               So in your opinion, what is the major reason for  
25       the geogrid price declines during the period of

1 investigation? I mean you're saying they didn't decline,  
2 but if they did --

3 MR. STARLING: Bobby Starling.

4 I said our average selling price of Type 1 did  
5 not decline over the POI. I don't know what the other --

6 CHAIRMAN WILLIAMSON: Okay. Anyone have  
7 thoughts on that or you can do it post-hearing.

8 MR. DOWDELL: John Dowdell.

9 The number of distributors having access to it,  
10 I think, to end users has impacted just the level of  
11 competition. The fact that there are now in many states  
12 half a dozen distributors that have the opportunity to bid  
13 that product line to an end user would've impacted that just  
14 through the fact that there are more people bidding that  
15 particular line on a project bid.

16 The question I've heard brought before the group  
17 today is "and who lead that decline?" I think there's  
18 abundant evidence that the Tensar distribution team has been  
19 more than complaisant in leading that decline. I think  
20 they're still winning the majority of projects out there.  
21 If, in fact, they were chasing a market that was on sharp  
22 decline from the back, then I don't believe that would be  
23 the case, that they're still continuing to win the majority  
24 of those projects.

25 CHAIRMAN WILLIAMSON: Okay, thank you.

1                   Mr. Cashatt, thinking about a company like  
2 yours, would you say that in their sales to their customers  
3 they would charge a similar markup for, say, a domestic  
4 geogrid, one that they imported directly, recognizing that  
5 it's hard for a small company to do that, and a geogrid  
6 purchased from an importer?

7                   MR. CASHETT: Clay Cashatt.

8                   Are you asking if we charge the same price to  
9 our customers regardless of the source?

10                  CHAIRMAN WILLIAMSON: Yes.

11                  MR. CASHETT: Yes.

12                  CHAIRMAN WILLIAMSON: Okay.

13                  MR. CASHETT: Yes. That was our motto. It's  
14 called "Last Look." We try to match our competitor's price,  
15 which means you're selling at the highest price in the  
16 market at that time. That's about as best you can do as a  
17 small business with limited resources.

18                  CHAIRMAN WILLIAMSON: And what role does service  
19 plan in this?

20                  MR. CASHETT: Huge. That's everything in our  
21 business. We are a distributor of a variety of products.  
22 Without storage and service of those products, we wouldn't  
23 even exist.

24                  CHAIRMAN WILLIAMSON: So what are the types of  
25 services? I asked this question this morning too.

1 MR. CASHETT: Other types of services?

2 CHAIRMAN WILLIAMSON: What types of services,  
3 yes, are important?

4 MR. CASHETT: Obviously, to facilitate the  
5 orders, alright, but we also offer the client a cost saving,  
6 so we're constantly looking for value-engineered situations  
7 where maybe the customer had no geogrid in their roadway and  
8 we then say, hey, if you use geogrid you can save stone and  
9 you can save your client money. The contractor's happy.  
10 The engineer and the owner are happy. So that's a level of  
11 service and technical ability that we provide to our  
12 customer and in return for that the customer stays loyal to  
13 our company.

14 CHAIRMAN WILLIAMSON: Okay, thank you.

15 Mr. Dowdell, you mentioned, I think, that  
16 contractors want to get the product from you the next day,  
17 but does that mean that the distributor really has to know  
18 what projects are out there or likely to be out there so  
19 that they know that they're going to have enough available  
20 for their customers who don't look that far ahead?

21 MR. DOWDELL: John Dowdell.

22 We certainly try to have that type of foresight  
23 from our customers, and in many instances we do. They'll  
24 have a production schedule that they've given us ahead when  
25 their crew is going to be out there and what their lay-down

1 schedule is, so it's not usual for us to have instances  
2 where we'll have a lay-down schedule for a project that's  
3 kind of their project plan and we'll certainly coordinate  
4 with that.

5 In the field, many things go awry. You'll get  
6 into a situation where you have softer soils than you  
7 might've anticipated, so maybe grid wasn't in the project,  
8 but when they hit a soft soil area, they need product to  
9 address that condition on the site that they hadn't  
10 foreseen. So those are the situations where we'll get a  
11 call and say that we need something out here tomorrow  
12 morning.

13 We've had instances where their measurements are  
14 wrong. A good example, there's not a Saturday that goes by  
15 that I don't personally release orders somewhere around the  
16 company because our credit team's off to supply a contractor  
17 that's come to our location and needs an order released  
18 because they have to work over the weekend and they didn't  
19 plan on it because they're behind on their timing on that as  
20 well, so the service component of it is extremely critical.

21 To Clay's point earlier, Last Look, in many  
22 instances is all you an ask for in this industry and a lot  
23 of times it's providing that level of service that gets you  
24 Last Look.

25 And one last point I'll make on this is

1 oftentimes the products we're delivering are a minor  
2 component in the overall cost of the construction projects.  
3 We deliver in Chicago, Illinois. Those are unionized  
4 workers that are being paid \$65 an hour. You leave a crew  
5 sitting out there waiting on your product you can't recover  
6 that with that contractor. You better be on the spot when  
7 they call for it and have the product there and that's where  
8 we bring value in the chain.

9 CHAIRMAN WILLIAMSON: Okay, thank you. Thank  
10 you for all those answer. I think there are no further  
11 questions from Commissioners. Does staff have any questions  
12 for this panel?

13 MR. CHANG: Kevin Chang.

14 Staff does not have any questions. Thank you.

15 CHAIRMAN WILLIAMSON: Thank you.

16 Do Petitioners have any questions for this  
17 panel?

18 MR. GERRISH: Jeff Gerrish.

19 We have no questions.

20 CHAIRMAN WILLIAMSON: Okay, thank you.

21 Well, I want to thank this panel and dismiss you  
22 now. And it's time for closing statements and Petitioners  
23 have 16 minutes direct and 5 for closing for a total of 21  
24 minutes.

25 Respondents have 20 minutes direct and 5 minutes

1 for closing for a total of 25 minutes. You can combine  
2 those and of course you don't have to use all the time that  
3 you have. So I want to thank you and we're going to take a  
4 four or five-minute break because the Chairman needs to and  
5 then we'll do closing statements. Thank you.

6 MR. BISHOP: Will the room please come to  
7 order?

8 CHAIRMAN WILLIAMSON: Mr. Gerrish, you may begin  
9 when you're ready.

10 CLOSING STATEMENT OF JEFFREY GERRISH

11 MR. GERRISH: Jeff Gerrish for Tensar  
12 Corporation. First let me thank you all very, very much for  
13 all of your hard work on this case, and thank you to the  
14 Commissioners and the staff for all of your hard work and  
15 your patience here today. I promise I will not use my full  
16 allotted time. I know you've already been here long enough.

17 The biaxial integral geogrid industry in the  
18 United States is in crisis as a direct result of the surge  
19 in unfairly-traded imports from China. The question before  
20 you, of course, is whether the domestic industry is  
21 materially injured or threatened with material injury by  
22 reason of subject imports. The question is are the imports  
23 a cause of material injury to the domestic industry.

24 The answer is a resounding yes. It is clear  
25 that Respondents simply have no plausible explanation for

1 what happened to this industry. Let's go through some of  
2 the claims they have made here this afternoon.

3 Respondents claim that the surge of Chinese  
4 imports was simply a natural consequence of the product  
5 coming off patent. But as you heard this morning, this is  
6 not a situation where a product was priced too high coming  
7 off patent, and the price simply came down to normal levels.  
8 This is a situation where the Chinese have ravaged and  
9 destroyed the market with dumped and subsidized prices that  
10 are not sustainable.

11 Prices were going down year after year after  
12 year during the Period of Investigation. We are over four  
13 years out from the expiration of the patent, and the prices  
14 remain very low. It has been the Chinese imports that have  
15 been driving the prices lower and lower over the entire  
16 Period of Investigation. If this is a simple matter of more  
17 competition in the market, why haven't any other U.S. or  
18 non-Chinese producers entered the market?

19 There are producers in different countries  
20 around the world. There are producers in Greece, Russia,  
21 Poland, Saudi Arabia. Where are they in the market?  
22 They're not in the market because they know they cannot  
23 survive at the prices the Chinese are charging. They  
24 wouldn't be able to compete at those ridiculously low dumped  
25 and subsidized prices.

1           You can't say that unfair trade and material  
2           injury is the norm for this or any other industry. That's  
3           why the law is here. It's set up to prevent this situation  
4           from happening and provide a remedy to domestic companies,  
5           domestic industries that are injured as a result of that.

6           Respondents have also made some claims about the  
7           exclusive distributors that Tensar has. Again, there's no  
8           support for any of the claims that they're making. Like  
9           many companies, Tensar has an exclusive -- has exclusive  
10          distributors for its products. This allows Tensar to  
11          carefully regulate the marketing and sale and distribution  
12          of its products. It's also because Tensar's a relatively  
13          small company. They can't be out there doing all the  
14          distribution. They have distributors that do that for  
15          them, of course.

16          There is no evidence that Tensar somehow  
17          couldn't or wouldn't meet demand in the market. In fact,  
18          Tensar has had available capacity to meet all demand  
19          throughout the Period of Investigation, and they sell to all  
20          these companies. They sell to Hanes and Hanes has told you  
21          that. In fact, Hanes said we do a lot of business with  
22          Tensar. They can buy this product from whoever they want,  
23          as long as they're doing it at fair prices. That's all  
24          we're saying.

25          They can get it from Tensar, which they are

1 already. There is another domestic producer, Tenax.  
2 There's also the possibility of, you know, other import  
3 sources, and you know, if they were getting it from the  
4 Chinese at fair prices, of course that wouldn't be a  
5 problem. The problem is they've been buying this material  
6 at dumped and subsidized prices that have severely injured  
7 the domestic industry throughout the Period of  
8 Investigation.

9 Respondents claim that Tensar has signaled that  
10 it is no longer interested in biaxial integral geogrid, and  
11 instead is focused on triaxial geogrid. They said that  
12 Tensar tried to, and I quote, "kill the market" for BX.  
13 However, the facts tell a very different story. Now first  
14 of all, they're relying on letters for this claim that are  
15 from 2009 and 2010, three to four years before the Period of  
16 Investigation, and that relate to one skew of BX.

17 Now Tensar very clearly and very quickly  
18 realized that they couldn't even discontinue regular  
19 production of that one skew of BX, and they quickly changed  
20 course, and they established that in the preliminary  
21 conference that that was the case. The fact is, they've  
22 been completely committed to all biax products throughout  
23 the Period of Investigation, and continue to be committed to  
24 those products.

25 They have sold, they have produced and sold

1 substantial volumes of biaxial geogrids, all types of  
2 biaxial geogrids throughout the Period of Investigation.  
3 Again, all you have to do is look at the data that you've  
4 collected on the record. The data plainly show that Tensar  
5 -- they plainly show Tensar's strong commitment to the  
6 biaxial geogrids market, and testimony you've heard from  
7 both Tensar and its distributors overwhelmingly confirms  
8 that.

9 Not only have they remained committed to biax  
10 products, they've looked to develop additional skews of biax  
11 products and have sold those to the market, to meet the  
12 market demand and their customers' demands. That shows  
13 ultimate commitment to the market, and they will continue to  
14 do so. You heard that from Mike Lawrence, the president and  
15 CEO of Tensar Corporation this morning.

16 Now you heard another claim today about price  
17 leadership and who is the price leader, and you heard from  
18 the Respondents that Tensar is the clear price leader in the  
19 market. Well if Tensar is the clear price leader in the  
20 market, then why did Tensar lose so much market share during  
21 the Period of Investigation?

22 The reason is they're not the price leader. The  
23 Chinese are the price leaders in this market, and they took  
24 significant amounts of sales and market share from the  
25 domestic industry during the Period of Investigation by

1       undercutting the domestic industry's prices, driving the  
2       prices down significantly, and significantly underselling  
3       the domestic like product.

4                You know, we've heard some information about  
5       specific products, and whether they're lower-priced or not  
6       in particular situation. We even heard that, you know, from  
7       one company that their average prices did not decline. Your  
8       data show completely to the contrary. The overall story  
9       here is that the underselling situation in this case, based  
10      on your own data and your staff report, is almost 60 percent  
11      of the comparisons.

12              This is compelling in its own right. But of  
13      course that doesn't include what happened on the private  
14      label sales. The private label sales show, you know, you  
15      can see what the private label sales show in your staff  
16      report and the underselling for those. But even on the data  
17      that you have, based on the comparisons between, you know,  
18      the domestic product and Chinese product for sales to end  
19      users and sales to distributors, almost 60 percent of the  
20      comparisons were undersold. That's a significant amount of  
21      underselling.

22              Your underselling data and what the purchasers  
23      told you completely contradict their claim, that Tensar is  
24      the price leader. Again, you don't have to take our word  
25      for it. You can just look at what the purchasers said. The

1 purchasers told you in sworn questionnaire responses that  
2 they shifted 3.2 million square yards to subject imports  
3 because they were lower priced. That's on page -- well, I'm  
4 sorry, your underselling analysis on page 5-25 of the staff  
5 report. You also have that information regarding the  
6 purchasers in your staff report as well.

7           What else did the purchasers tell you? They  
8 told you that the domestic producers had to reduce their  
9 prices by as much as 75 percent, to try to match the Chinese  
10 prices. That's not evidence of Tensar being price leader;  
11 that's clear and overwhelming evidence that it's the Chinese  
12 that are the price leaders in this market.

13           There was some discussion by the Respondent that  
14 private label sales are not a separate level of trade.  
15 Well, the facts show differently on that. The fact is these  
16 private label sales, there's private label sales being made  
17 by the Chinese, and there's private label sales being made  
18 by Tensar. They are being made to the exact same customers.

19           So that's where the comparison should be made.  
20 It should be made at that level, not at the level of the  
21 importers' prices to their customers. You would then be  
22 comparing the importers' prices that they charge to their  
23 customers to Tensar's prices to the importers. Those are  
24 completely different levels of trade.

25           So the private label sales are at a different

1 level of trade than any other sales that you have, the  
2 normal sales to distributors and the sales to end users as  
3 well. You have all the data for the private label sales.  
4 You have all the data that allows you to do the underselling  
5 analysis. We've provided that as well and an analysis of  
6 that in our prehearing brief, and we provided it in the  
7 confidential slides that you saw today.

8           Yet another claim you've heard today is that  
9 triaxial geogrid should be considered part of the same like  
10 product as biaxial geogrid, and included in the analysis in  
11 this case. The record before you, including the testimony  
12 you heard today, demonstrates very clearly that you should  
13 biaxial geogrid to be a distinct like product based on the  
14 factors you typically consider in the like product analysis.  
15 Just to summarize some of the key facts, I'm not going to  
16 get into all of them. We've discussed them at length and  
17 we'll do so in our briefs.

18           The triax has significantly different physical  
19 and mechanical properties and performance characteristics.  
20 The foremost experts in the field, you've heard of Dr. Drew  
21 and there's other experts as well, have recognized that  
22 triax has these different physical and mechanical properties  
23 and performance characteristics.

24           So this leads to different end uses and  
25 applications for the products. Now we used as examples this

1 morning the marine mattresses and the wall facing for walls,  
2 where biax can be used, not triax. That's one example that  
3 just shows you, it exemplifies the differences in the  
4 characteristics of these products. Once again just to  
5 emphasize, there's some dispute on that this afternoon.  
6 Triax cannot be used and is not used in that, in those  
7 applications.

8 We also have differences in the applications in  
9 roadway surfaces. So it is not just in these other two.  
10 Those were just used as examples. It's also in roadway  
11 surfaces, where you have different applications for triax  
12 and biax. Only triax can be used in pavement optimization,  
13 and again there are specifications which clearly recognize  
14 that.

15 The California Green Book. There's also a  
16 specification in Texas as well, but various specifications  
17 recognize that only triax can be used for pavement  
18 optimization, to reduce asphalt. The two products are not  
19 interchangeable. For example, many state specifications  
20 either do not allow the use of triax at all, or classify it  
21 in a separate category from biaxial geogrids.

22 This is not a sole source issue. You can work  
23 around that. The reason why they're treated differently in  
24 the specifications is because the products are different and  
25 the state Departments of Transportation have recognized

1 this. There was also some discussion about flipping between  
2 triax and biax. You cannot do that without a significant  
3 reengineering design, I'm sorry, a redesign of the  
4 engineering and the redesign of the whole project.

5 If you don't do that, you risk failure of the  
6 entire project. So you cannot flip between one product and  
7 the other. Third difference is in the machinery and  
8 production processes for the two products. Triax requires  
9 the installation of special and expensive equipment for the  
10 stretching line. The tools are also different and specific  
11 to each line.

12 Triax and biax aren't sold and marketed  
13 differently. Only biax are sold through pirate label  
14 arrangements. Triax is not. In addition, triax of course  
15 is under patent and is only available from Tensar.  
16 Customers perceive the products to be different as evidenced  
17 by the different specifications and requirements issued with  
18 respect to the two products. Of course, you will hear from  
19 those who don't sell triax that it's not different than  
20 biax. That's because they don't sell it and can't sell it.  
21 What else would they say? Of course they're going to try  
22 to say it's different.

23 But the perceptions of those who make it and  
24 those who buy it show that the two products are different.  
25 Lastly, triax is priced significantly higher than biax. You

1 heard this morning that the customers for this product would  
2 not pay that significantly higher price if there also wasn't  
3 a significant difference in the products.

4 Those facts plainly show there are significant  
5 differences between triax and biax, and that triax should  
6 not be considered part of the like product. But no matter  
7 how you slice and dice the data, no matter how you look at  
8 this, this company, this industry is injured and Respondents  
9 cannot demonstrate otherwise.

10 On threat, we heard from Respondents that they  
11 had only heard of four Chinese producers. But they have not  
12 provided any information to rebut the information we've  
13 provided, which clearly shows that there are over 75  
14 producers and exporters of this product. That information  
15 is based on the company's own websites and other publicly  
16 available information. The information on that and the  
17 capacity and unused capacity for those companies is based on  
18 the same publicly available information, as well as the  
19 information you received from the one producer in your  
20 preliminary phase of this investigation.

21 There's over 75 producers and exporters of this  
22 product. We've shown only -- if you just take seven of  
23 those, it's more than 400 million square yards of production  
24 capacity. That is an absolutely staggering figure, and it  
25 is multiples of the size of the industry for this product,

1 and multiples of the size of the market for the product.

2 If just a small fraction of that were to come  
3 into the United States, it would completely overwhelm this  
4 industry and completely drive it out of business. As it is  
5 now, the industry is on the brink of disaster. As these  
6 examples demonstrate, Respondents have failed to explain or  
7 even adequately address the record before you.

8 The fact of the matter is that the record here  
9 tells a simple and compelling story. Much of the key  
10 evidence is undisputed and all of it adds up to the fact  
11 that subject imports have caused present material injury to  
12 the domestic industry and threatened further injury going  
13 forward. This is an industry that did all the work to  
14 create and develop this product, and to create the market  
15 for it in the United States.

16 Please don't let the Chinese come in with their  
17 dumped and subsidized imports and take all of that away from  
18 them unfairly. We urge the Commission to effectively  
19 enforce the trade laws, and to reach an affirmative  
20 determination. Thank you.

21 CHAIRMAN WILLIAMSON: Thank you. You may begin  
22 when you're ready.

23 CLOSING STATEMENT OF YOHAI BAISBURD

24 MR. BAISBURD: Yohai Baisburd on behalf of Hanes  
25 and Hill Country again. Thank you again for your time

1 today. I promise I'm not going to use anywhere near the  
2 time I have available now and, you know, we're just going to  
3 try to hit some of the highlights and emphasize some of the  
4 points that I think may have gotten lost a little bit today  
5 in the rhetoric and in the shuffle.

6 So I'm going to start with like product, and the  
7 starting point for your like product analysis is the scope  
8 of the investigation. As we said in our prehearing brief,  
9 the triax product would be in the like product but for the  
10 exclusion or the way they define the aperture shape. So  
11 they tried this morning to use these alternative  
12 technologies, trying to spin triax as some new alternative  
13 technology like chemical stabilization or additional  
14 aggregate or woven coated product.

15 But it's not any of those things. It is a  
16 biaxially oriented integral geogrid. It's the same as a  
17 rectangular and square. The difference is it has a  
18 different shape. It's on the same continuum of product and  
19 there's no clear dividing line between it. We then offer a  
20 truncated like product definition to try to change the  
21 denominator there, putting forth a truncated like product in  
22 order to make their case seem much stronger than it really  
23 is.

24 I think your preliminary analysis at the  
25 preliminary phase shows that when you apply the traditional

1       like product factors to the facts in this record, that triax  
2       is part of the like product. I just want to highlight one  
3       little point. There was a lot of discussion this morning  
4       about the production process and the changes that occur, and  
5       one of the precedents they cited was line pipe and standard  
6       pipe.

7                       Well, when you're making either of those  
8       products and you want a different diameter, there's down  
9       time and you have to change the rollers and change the mills  
10      to get to the diameter that you're looking at. That's a  
11      minor change. For biaxial and triax, you extrude the  
12      product, you punch the product and you stretch the product.  
13      You might have some intermediate steps that are slightly  
14      different, but those are three things you do.

15                      Ironically, the other producer that they  
16      identified in their petition and have tried to bring up a  
17      couple of times today, Tenax has an entirely different  
18      production process. They're not a punched and drawn  
19      geogrid; they're an extruded geogrid. So it would defy all  
20      reason and logic to suggest that that product is part of the  
21      like product, but triax, which is also extruded, punched and  
22      drawn is not.

23                      In terms of precedents that show why it's part  
24      of the same like product, I mentioned aluminum extrusions  
25      earlier and lumber. The steel cases as well. I mean

1 there's a lot of down time when you're changing between  
2 grades of steel, but the Commission has not found that  
3 different grades of steel within the same physical  
4 dimensions, like in the plate case, are separate like  
5 products, and you shouldn't do so here for triax.

6 Just fundamentally, they're completely  
7 interchangeable. You might have to design differently, but  
8 every square yard of triax that was sold during the period  
9 could have been a square yard of biaxial geogrid. They  
10 spent some time talking about the steps that they took  
11 before imports entered the market in May 2012, to try to get  
12 ready for competition.

13 We don't deny that they took steps, but you  
14 should look at those steps and were they effective or not?  
15 So the one, the first step they tried was to transition the  
16 entire market from a well-established product, biaxial, you  
17 know, the rectangular and square biaxial geogrids, to the  
18 new patented triax. The market pushed back. There's a  
19 space for triax. It's very successful, but it hasn't been  
20 the -- the market hasn't adopted it to the same level that  
21 they expected, and thus they were now between promoting and  
22 selling the rectangular and square biaxial and also having  
23 triax out there.

24 Another step that they took was the whole  
25 private label program, and it's really important to

1 understand what they did and how they did it. So first, the  
2 private label program was not an open competitive private  
3 label program. They identified one distributor in the U.S.,  
4 Syntech, and they sold private label to them. So no one  
5 else in the U.S. market was able to get the private label  
6 from Tensar without buying it from Syntech first.

7 The private label program was high volumes at  
8 very low prices, and it occurred before a single import ever  
9 arrived in the U.S. They're talking about this underselling  
10 at the private label level, and that is a complete red  
11 herring because they would have you do a completely new  
12 pricing analysis, because your pricing analysis always  
13 starts from the importer sale to the first unaffiliated  
14 customer in the U.S.

15 Tensar sells to a distributor. That's a sale on  
16 the U.S. side. An importer sells to a distributor, that's  
17 the first sale that you always consider. The fact that  
18 Tensar sold private label to a distributor and the fact  
19 that the importers sold its product to a distributor, those  
20 are the same level of trade. It's the first sale to a  
21 distributor in the U.S. market, and this notion of trying to  
22 compare the landed duty paid price to the Tensar resell  
23 price would be completely different from any other analysis  
24 that you typically do.

25 They also told the market -- another step that

1       they took was that we're not going to support biaxial.  
2       Nobody questions that they're still involved in the biaxial  
3       market. They still clearly want to defend it; they brought  
4       this case. But that's what they're doing now. But what did  
5       they do before now? What they did before now is they told  
6       the market that we're not as interested in that part of the  
7       market as we are for triax, and we'll quote later, because  
8       they said it very clearly at the staff conference at the  
9       preliminary phase, that they don't give the same level of  
10      support of services to the biaxial geogrids. They give no  
11      support and no services, they said, for their private label  
12      sales, and they give limited support for their branded sales  
13      of biaxial, and they give tremendous support for their sales  
14      of triax.

15                 Service, as you've heard many times today and  
16      was brought up in the briefs as well, is a key component.  
17      Yes, price is important, but price is not the only main  
18      factor in purchasing. They pulled away, and that was one of  
19      the steps that they took.

20                 In terms of pricing analysis, as I mentioned  
21      earlier, they're not consistent and the Commission generally  
22      tries to avoid looking at average unit values and looks at  
23      the pricing comparisons of the pricing products. I would  
24      urge you to do that again in this case because it's not a  
25      consistent story, and their activity and the level of

1       overselling, not underselling but overselling for two  
2       products in particular is quite significant and tells the  
3       story of how Tensar sets the price in the market.

4               So we're not just relying on anecdotal evidence,  
5       although there's plenty of that where Tensar has crashed the  
6       market and come in well below what others were bidding at  
7       the time. You cannot use the trade laws to defend your own  
8       bad pricing decisions. So if pricing, if subject imports  
9       are underselling and pulling prices down, that's something,  
10      and you know, if you meet the other statutory criteria, then  
11      an order can go in place.

12             But if a U.S. producer vastly misses the market  
13      and comes in completely under where the market is, that's on  
14      them. That's not on the subject imports. It's not by  
15      reason of subject imports that they crashed the Texas  
16      market. It's because they sold at prices that were well  
17      below where the market was at. The other factor to continue  
18      to consider is the decline in raw material costs over the  
19      POI, and how that impacts pricing as well.

20             I'd like to conclude by just focusing a little  
21      bit on financial performance, and you can't bring imports  
22      for falling exports. They had significantly decreasing  
23      sales. That's in the public staff report, export sales.  
24      You can't fault subject imports for their high SG&A. They  
25      have a high SG&A because they want to provide service, but

1 they're telling you that they're providing service for triax  
2 and not biaxial. So there's a kind of inconsistency there,  
3 and obviously maintaining high levels of SG&A will affect  
4 profitability.

5 They also cannot blame imports for the impact  
6 that not providing the services the market requires and  
7 demands has on their volume of sales. The financial data  
8 also shows anything but a company that's teetering on the  
9 edge of collapse. The Commission, every domestic industry  
10 that comes before you feels like they're struggling. You  
11 see what this industry is doing compared to everything else  
12 that you see, and I am not suggesting -- I know what the  
13 statute says, that you have to have losses. We have never  
14 argued that you have to have losses in order to find  
15 material injury.

16 But you have to have injury, and that injury has  
17 to be material, and this industry, when well-defined,  
18 maintains healthy levels of profitability and has been able  
19 to make consistent investments throughout the period.  
20 Finally quickly on threat, listen. It's unfortunate the  
21 exporters didn't respond to the questionnaires. But you  
22 have data on this record, and we will develop more for the  
23 post-hearing brief, that shows who the actual producers are  
24 and what their relative size is, and you have their  
25 behavior over the POI to give you an indication of their

1 likely level of activity in the foreseeable future.

2 So based on the entire record and when analyzed  
3 within the conditions of competition, we believe that you  
4 should not find that subject imports were the cause of  
5 material injury or threat of injury to the domestic  
6 industry. Thank you very much.

7 CHAIRMAN WILLIAMSON: Thank you. I want to  
8 thank everyone for participating. Time for the closing  
9 statement. Post-hearing briefs, statements responsive to  
10 questions and requests of the Commission and corrections to  
11 the transcript must be filed by December 29th, 2016.  
12 Closing of the record and final release of data of the  
13 parties, January 26th, 2017. Final comments are due January  
14 30th, 2017.

15 Again, I want to thank everybody for  
16 participating in this hearing, and the hearing is adjourned.

17 (Whereupon, at 3:06 p.m., the hearing was  
18 adjourned.)

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## CERTIFICATE OF REPORTER

TITLE: In The Matter Of: Certain Biaxial Integral Geogrid Products from China

INVESTIGATION NOS.: 701-TA-554 and 731-TA-1309

HEARING DATE: 12-21-16

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: 12-21-16

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  
Signature of 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: Gaynell Catherine  
Signature of Court Reporter